

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC 96

Originating Application No 49 of 2026

Between

Tengku Abdul Kadir bin
Mohamed

... Claimant

And

- (1) New Eastern (1971) Pte Ltd
- (2) Lim Sing Yong (Lim Xinrong)

... Defendants

GROUND OF DECISION

[Companies — Directors — Resignation]

[Companies — Members — Meetings — Whether chairperson has right to disallow votes]

[Companies — Members — Meetings]

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Tengku Abdul Kadir bin Mohamed
v
New Eastern (1971) Pte Ltd and another

[2026] SGHC 96

General Division of the High Court — Originating Application No 49 of 2026
Chua Lee Ming J
18 March 2026

6 May 2026

Chua Lee Ming J:

Introduction

1 The claimant, Tengku Abdul Kadir bin Mohamed, is a shareholder of the first defendant, New Eastern (1971) Pte Ltd (“Company”). The second defendant, Mr Lim Sing Yong (Lin Xinrong) (“Lim”), is a director of the Company.

2 In this application, the claimant sought various orders. I did not grant most of the orders sought but I granted the following orders:

- (a) A declaration that Lim’s decision, as chairperson of the Extraordinary General Meeting (“EGM”) of the Company on 11 September 2025, disallowing the claimant’s vote (via his proxy) against a particular resolution was invalid. The resolution related to a proposal to commence legal proceedings against a former director. Lim

disallowed the claimant's vote on the ground that the claimant was in a position of conflict of interests.

(b) An order requiring the Company to hold a general meeting for the purposes of deciding whether to remove any of the existing directors and/or to appoint new directors.

3 The Company has appealed against both the above orders made by me.

Facts

4 The Company was incorporated in 1971. Its primary business is in the wholesale of food, beverages and basic industrial chemicals. As of 1 February 2020, the directors of the Company were Lim and one Ms Tan Hui Ling ("Tan"). Lim was reappointed on 1 November 2018 (having served previously as a director of the Company from 11 January 2018 to 10 October 2018) and Tan was appointed on 1 October 2019.¹

5 The claimant holds 27.3% of the shares in the Company. These shares were transferred to the claimant after one of the co-founders of the Company, Mr Loy Teu Wee ("Loy"), passed away in mid-2018. The claimant is Loy's brother-in-law and the executor of Loy's estate. Tan is Loy's niece and her mother is one of the beneficiaries of Loy's estate.

6 The claimant is the largest shareholder of the Company. The rest of the shares are held by eight other shareholders. Neither Lim nor Tan is a shareholder of the Company.

¹ Claimant's 1st Affidavit affirmed on 10 January 2026 ("Claimant's 1st Affidavit"), at pp 65–66.

7 Lim is the son of Mdm Tay Hong Peng (“Tay”), who holds 24% of the shares in the Company and is the second largest shareholder of the Company, after the claimant.

Lim declared Tan’s office as director to have been vacated

8 On 23 July 2025, Lim signed a declaration as director of the Company, declaring that, in accordance with Art 74(h) of the Company’s Memorandum and Articles of Association (“M&AA”), Tan had “automatically vacated her office as Director of the Company on 25 January 2022”.² Article 74(h) of the M&AA provided that the office of director shall become vacant if the director “is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest in [the] manner required by the [Companies Act]”.³

9 On the same day, Lim sent a letter to the Company’s shareholders (“23 July Letter”),⁴ in which he alleged that:

(a) Tan had authorised the Company to enter into 122 transactions (having a cumulative invoice value of \$806,019.88) for the sale of various food products to an entity in which Tan’s husband was a partner.

(b) As Tan failed to declare the nature of her interest in the transactions, pursuant to Art 74(h) of the M&AA, Tan’s office as director was automatically vacated on 25 January 2022 when the first of the 122 transactions was entered into.

² Lim’s 1st Affidavit affirmed on 30 January 2026 (“Lim’s 1st Affidavit”), at p 283.

³ Lim’s 1st Affidavit, at p 272.

⁴ Lim’s 1st Affidavit, at pp 216–256.

10 In the 23 July Letter, Lim pointed out that there were other issues to be discussed at the upcoming EGM. One issue was that, under the M&AA, certain powers could only be exercised with the approval of at least two directors and thus could not be exercised by himself as a sole director. Another issue concerned the Company's future. Lim expressed concern as to whether the Company could maintain the same level of profitability that it had previously enjoyed.

EGM held on 8 August 2025 and 22 August 2025

11 A notice of EGM also dated 23 July 2025 was issued for an EGM to be held on 8 August 2025. The first and second items on the agenda are not relevant for present purposes. The third item on the agenda was to:⁵

- (a) consider and discuss the 23 July Letter; and
- (b) discuss the Company's position and consider member's feedback on the steps to be taken in respect of the Company's future directions and plans.

12 On 5 August 2025, Lim sent to the Company's shareholders an addendum to the 23 July Letter ("Addendum").⁶ The Addendum sought to bring certain events, and further allegations against Tan, to the attention of the shareholders. Section F of the Addendum discussed the next steps for the Company, including (a) recovering remuneration mistakenly paid to Tan as a director after her office was automatically vacated; and (b) seeking compensation against Tan for breach of fiduciary duties.

⁵ Lim's 1st Affidavit, at pp 287–288.

⁶ Lim's 1st Affidavit, at pp 290–329.

13 At the EGM on 8 August 2025 (“8 August EGM”), the two matters set out in [11] above (including the Addendum) were adjourned to 22 August 2025 to give the shareholders time to consider them.⁷ It was also agreed that the adjourned EGM would also consider and discuss how the board of directors was to be authorised to transact any business of the Company that required the approval of two directors.

14 At the adjourned EGM on 22 August 2025 (“Adjourned EGM”), it was agreed that a fresh EGM would be held on 11 September 2025, and that the issues raised in Section F of the Addendum (see [12] above) would be further discussed at that EGM.⁸ No further action was taken on the two matters set out in [11] above.

EGM held on 11 September 2025

15 On 27 August 2025, a notice was issued for an EGM to be held on 11 September 2025.⁹ The Agenda set out three items for consideration:

(a) The first was to consider how the board of directors was to be authorised to transact any business that required the approval of two directors, given that Lim was then the sole director.

(b) The second was to consider the 23 July Letter and the Addendum and if appropriate, authorise the Company to commence such legal actions that may be appropriate to seek compensation and/or other remedies.

⁷ Lim’s 1st Affidavit, at pp 332–334.

⁸ Claimant’s 1st Affidavit, at pp 78–79.

⁹ Lim’s 1st Affidavit, at pp 347–348.

(c) The third was to discuss any other business, including the Company's position and consider members' feedback on the next steps to be taken in respect of the Company's future directions and plans.

16 Lim chaired the EGM held on 11 September 2025 ("11 September EGM").¹⁰

17 With respect to the first item, it was resolved ("Resolution 1") that:

(a) Lim would "exercise his powers under Article 70 of the [M&AA]" to appoint a candidate from KSN Corporate Services Pte Ltd ("KSN") (which provided corporate secretarial services to the Company) as a nominee director of the Company; and

(b) Lim and the nominee director would sign off on the Company's audited accounts and call the Annual General Meeting ("AGM") for the financial year ending 31 December 2024 as soon as possible.

18 Article 70 of the M&AA provided as follows:¹¹

70. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

¹⁰ Lim's 1st Affidavit, at pp 350–354.

¹¹ Lim's 1st Affidavit, at p 272.

19 With respect to the second item, Lim confirmed that it was to vote on whether to commence legal action against Tan (“Resolution 2”). The results of the poll were as follows:

For:	40.8%
Against:	30.0%
Marked:	27.3%
Absent:	1.9%.

20 The claimant had voted (through his proxy) against Resolution 2. However, Lim said that the claimant was in a position of conflict and as such, the vote attributed to the claimant’s 27.3% shareholding would be “marked” pending further clarification on the issue of conflict of interests. Lim declared Resolution 2 passed in the interim, subject to his final determination as to whether the claimant’s vote would be counted.

21 With respect to the third item:

(a) Two of the shareholders (with a combined shareholding of 22.5%) wanted the Company to be liquidated. However, the meeting subsequently agreed with Lim’s suggestion that this issue be discussed at the upcoming AGM of the Company so as to get input from the two largest shareholders (*ie*, the claimant and Tay).

(b) Lim informed the meeting that he was not agreeable to concurrently performing Tan’s duties if his director’s remuneration was not commensurately increased. Lim proposed that he be empowered to redistribute Tan’s share of director’s remuneration amongst all members of the staff (including himself) who had to take over and perform Tan’s duties (“Resolution 3”). A poll was taken and 48.3% voted in favour of Resolution 3 whilst 49.8% abstained. The holders of the remaining 1.9%

of the shareholding in the Company did not attend the meeting. Resolution 3 was therefore passed.

22 Pursuant to Resolution 1, Mr Neelamegam Agatheeswaran (“Neelamegam”) was appointed as a director of the Company with effect from 1 October 2025.¹²

23 On 4 December 2025, Lim informed the Company’s shareholders that:¹³

(a) In his capacity as chairperson of the 11 September EGM, he had determined that the claimant’s vote (through his proxy) in respect of Resolution 2 (see [20] above) should be disallowed on the ground that the claimant was the executor of Loy’s estate and one of the beneficiaries of Loy’s estate was Tan’s mother. Therefore, the interests of the claimant and the beneficiaries of Loy’s estate were not independent of Tan.

(b) Accordingly, excluding the claimant’s vote (which accounted for 27.3%), 57.63% had voted for and 42.37% had voted against Resolution 2. Resolution 2 was therefore passed.

AGM held on 28 October 2025 and 12 December 2025

24 On 13 October 2025, a notice was issued for the Company’s AGM to be held on 28 October 2025.¹⁴ One of the purposes of the AGM was to re-elect

¹² Lim’s 1st Affidavit, at p 369.

¹³ Lim’s 1st Affidavit, at pp 419–420.

¹⁴ Lim’s 1st Affidavit, at p 382.

Neelamegam as a director in accordance with Art 66 of the M&AA. Article 66 provided as follows:¹⁵

66. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office. A retiring director shall be eligible for re-election.

25 At the AGM on 28 October 2025 (“28 October AGM”), questions arose as to whether:¹⁶

(a) Neelamegam’s re-election should be conducted pursuant to Art 66 or Art 70 of the M&AA; and

(b) Art 67 of the M&AA required Lim to retire as the longest serving director and seek re-election.

26 Article 67 of the M&AA provided as follows:

67. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

27 If Neelamegam vacated his office as director and became eligible for re-election pursuant to Art 70, it would mean that at the time of the 28 October AGM, Lim was the sole remaining director and would not have been required to retire under Art 66. However, if Neelamegam’s re-election was to be conducted pursuant to Art 66, then Lim (as the longest serving director) should

¹⁵ Lim’s 1st Affidavit, at p 271.

¹⁶ Lim’s 1st Affidavit, at pp 386–392.

have been the one to retire at the 28 October AGM and seek re-election, instead of Neelamegam.

28 The resolution regarding Neelamegam’s re-election was adjourned to a date to be fixed pending the Company’s determination as to whether Neelamegam should seek re-election pursuant to Art 66 or Art 70, and whether Art 67 required Lim to retire.

29 On 26 November 2025, a notice was issued for the adjourned AGM to be held on 12 December 2025 to re-elect Neelamegam as a director in accordance with Art 70 (instead of Art 66) of the M&AA.¹⁷

30 At the adjourned AGM on 12 December 2025 (“Adjourned AGM”), the resolution to re-elect Neelamegam as a director was not passed.¹⁸ A shareholder’s proxy asked for clarification as to why there was no longer any reference to Art 66. The Company’s legal adviser explained that:

- (a) as Neelamegam was seeking re-election as a director pursuant to Art 70, he was not counted in calculating the number of directors who were to retire by rotation pursuant to Art 66; and
- (b) as there was only one director (*ie*, Lim) in office for the purposes of Art 66 for the time being, the number nearest one-third was zero and as such, Lim was not required to retire pursuant to Art 66.

The claimant’s case

31 In the present proceedings, the claimant:

¹⁷ Lim’s 1st Affidavit, at p 417.

¹⁸ Lim’s 1st Affidavit, at pp 423–427.

- (a) challenged the validity of Resolutions 1 and 2 on the ground that the EGM at which these resolutions were passed was not validly convened;
- (b) challenged the validity of Resolution 1 with respect to the appointment of Neelamegam as a nominee director on the ground that Art 70 of the M&AA did not permit Lim, as the sole director, to make the appointment;
- (c) challenged the Company's decision that Lim was not required to retire at the 28 October AGM;
- (d) challenged the validity of Lim's decision to disallow his vote on Resolution 2; in the alternative, the claimant challenged the validity of Resolution 2 itself; and
- (e) sought an order that the Company holds a general meeting for the purposes of voting on the election of new directors pursuant to the M&AA.

Whether the 11 September EGM was validly convened

32 The claimant submitted that:

- (a) Art 65 of the M&AA provided that the number of the directors shall not be less than two;
- (b) at the time that the 8 August EGM, the Adjourned EGM and the 11 September EGM were convened, the board of directors was improperly constituted because Lim was the sole director; and

(c) therefore, the Company lacked the legal authority to convene the EGMs in question and any resolutions passed at these EGMs were invalid.

Although the claimant also challenged the validity of the 8 August EGM and the Adjourned EGM, for present purposes, it was the validity of the 11 September EGM that was in question as Resolutions 1 and 2 were passed at that EGM.

33 I rejected the claimant's submission. Article 46 of the M&AA provided that *any director* may convene an EGM.¹⁹ Further, pursuant to Art 86 of the M&AA, Lim (as the continuing director) had the power to summon a general meeting of the Company despite the fact that the number of directors was reduced below the number fixed as the necessary quorum of directors (*ie*, two). It was clear that Lim had the power to convene the EGMs in question. There is no appeal by the claimant against my decision on this point.

Whether the resolution relating to the appointment of a nominee director was valid

34 The claimant submitted that Resolution 1, which authorised Lim (as the sole director) to exercise his powers under Art 70 of the M&AA to appoint a candidate from KSN as a nominee director (see [17(a)] above) was invalid because the powers under Art 70 could only be exercised by the board comprising at least two directors.

35 I disagreed with the claimant's submission. The substance of Resolution 1 was that the shareholders voted to have a representative from KSN appointed

¹⁹ Lim's 1st Affidavit, at p 269.

as a nominee director and authorised Lim to decide on the person to be appointed. Even if the reference to Art 70 was incorrect, that was not a reason to invalidate the resolution or Neelamegam's appointment. There is no appeal by the claimant against my decision on this point.

Whether Lim was required to retire at the AGM

36 The claimant submitted that pursuant to Arts 66 and 67 of the M&AA, Lim, as the longest serving director, was required to retire at the 28 October AGM. I disagreed with the claimant's submission.

37 I agreed with the Company that pursuant to Art 70 of the M&AA:

- (a) Neelamegam ceased to hold the office of director at the AGM, thus leaving Lim was the sole director; and
- (b) Neelamegam was not to be taken into account in determining the directors who were to retire by rotation under Art 66 of the M&AA.

Thus, for the purposes of Art 66, there was only one director (*ie*, Lim) at the AGM. As the number nearest one-third of one was zero, Lim was not required to retire at the AGM pursuant to Art 66. There is no appeal by the claimant against my decision on this point.

Whether Lim's decision disallowing the claimant's vote was invalid

38 The claimant submitted that Lim had no power under the M&AA to disallow his vote on Resolution 2. The claimant submitted that in the absence of any contract to the contrary, the shareholders were entitled to decide, by majority vote, whether the Company should commence legal action. The claimant complained that there was no clarity on (a) the prospects of succeeding

in the claims against Tan; (b) whether the Company had suffered actual loss and if so, the quantum of the loss; and (c) what the legal costs involved in pursuing a claim against Tan were expected to be.

39 The Company submitted that Art 60 of the M&AA permitted Lim, as chairman of the 11 September EGM, to disallow the claimant’s vote on Resolution 2, and that under Art 60, Lim’s decision was final and conclusive. Article 60 provided as follows:²⁰

60. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

40 I disagreed with the Company’s submission. In my view, Art 60 did not give Lim the power to disallow the claimant’s vote on the ground of conflict of interests. As a matter of interpretation, the scope of Art 60 was limited to objections to the qualification of any voter on the ground that relevant requirements under the M&AA were not complied with. For example, Art 60 would apply to questions as to whether a shareholder had complied with Art 59 (a shareholder cannot vote if he has not paid calls or other sums payable in respect of his shares), or Art 62 (the form to be used for appointing a proxy), or Art 63 (where and when the proxy form had to be deposited). There are two reasons for this interpretation of Art 60.

41 First, the right to vote is the most fundamental right of a member of the company and is protected by s 180 of the Companies Act 1967 (2020 Rev Ed) (“Companies Act”): Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law*

²⁰ Lim’s 1st Affidavit, at p 271.

(Academy Publishing, 2nd Ed, 2024) (“*Corporate Law*”) at para 12.013.

Section 180 provides as follows:

180.—(1) A member has, despite any provision in the constitution of the company, a right to attend any general meeting of the company and to speak on any resolution before the meeting.

(2) In the case of a company limited by shares, the holder of a share may vote on a resolution before a general meeting of the company if, in accordance with the provisions of section 64, the share confers on the holder a right to vote on that resolution.

...

42 Section 64 of the Companies Act provides as follows:

Rights and powers attaching shares

64.—(1) Subject to subsections (2) and (3), sections 21 and 76J, and any written law to the contrary, a share in a company confers on the holder of the share the right to vote on a poll at a meeting of the company on any resolution.

(2) A company’s constitution may provide that a member is not entitled to vote unless all calls or other sums personally payable by the member in respect of shares in the company have been paid.

(3) Subject to subsection (4) and section 64(a), a right specified in subsection (1) may be negated, altered, or added to by the constitution of the company.

...

43 In my view, it was clear from ss 64 and 180 of the Companies Act that a shareholder’s right to vote is subject only to any written law (including the Companies Act) to the contrary and to the company’s constitution. Article 60 did not itself set out any constraint on the shareholders’ right to vote. In my view, Art 60 of the M&AA must have been intended to apply to objections to the qualification of a voter based on grounds of non-compliance with the Company’s M&AA.

44 Second, I agreed with the claimant that a shareholder is entitled to vote in its own personal interests even if its personal interests conflict with the company's interests: *Peck Constance Emily v Calvary Charismatic Centre Ltd* [1991] 1 SLR(R) 57 at [60]; *TYC Investment Pte Ltd v Tay Yun Chwan Henry* [2014] 4 SLR 1149 at [90]. There was nothing in the M&AA that sought to negate this principle by imposing an obligation on shareholders to vote in the interests of the Company. In the circumstances, in my view, Art 60 of the M&AA could not have been intended to apply to objections to the qualification of a voter based on the ground of conflict of interests, much less to give the chairman of the meeting the power to make a final and conclusive determination as to whether a shareholder's vote should be excluded on the ground of conflict of interests.

45 The Company relied on a statement in *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, 3rd Ed, 2009) ("*Company Law*") at para 5.38 which states: "... a member's vote on whether an action should be brought against a wrongdoing director is only counted if the member is independent of the director".

46 In my view, the above statement in *Company Law* had to be looked at in context. The complete para 5.38 in *Company Law* is as follows:

5.38 Fifthly, on a related point, a member's vote on whether an action should be brought against a wrongdoing director is only counted if the member is independent of the director.⁸⁷ If a majority of the independent members are against the bringing of an action, the court will take that into account and may not allow a derivative action to be brought against the director, even though a minority member who wanted to proceed has standing to bring the derivative action under the 'fraud on the minority' exception to the rule in *Foss v Harbottle*.

47 The rule in *Foss v Harbottle* (1843) 2 Hare 461 (“*Foss v Harbottle*”) is that the proper claimant in an action in respect of a wrong alleged to be done to a corporation is, *prima facie*, the corporation. The “fraud on the minority” exception to the rule in *Foss v Harbottle* applies where what has been done amounts to fraud and the wrongdoers are themselves in control of the company. A shareholder may be allowed to bring a common law derivative action on behalf of the company if he can show a *prima facie* case that the company is entitled to the relief claimed and the action falls within the exception to the rule in *Foss v Harbottle* (see *Corporate Law* at para 10.013).

48 The discussion in para 5.38 in *Company Law* is in the context of a common law derivative action. The point made in para 5.38 in *Company Law* is that the court may decide not to allow a derivative action to be brought against a director if a majority of the shareholders have voted not to do so, but in counting the votes in this regard, votes by shareholders who are not independent of the director are to be excluded. Paragraph 5.38 in *Company Law* does not purport to state any general principle that a shareholder’s vote on any resolution has to be rejected if his personal interests conflict with those of the company.

49 The Company also relied on *Ting Sing Ning v Ting Chek Swee* [2008] 1 SLR(R) 197 (“*Ting Sing Ning*”). In that case, the appellant (a director and holder of 10% of the shares in the company) commenced a common law derivative action against the respondents (also directors of the company) and other directors of the company for, among other things, relief for breach of fiduciary duties. The company’s board of directors refused to adopt the action. At an EGM, the shareholders unanimously voted against continuing the action. The preliminary issue before the court was whether the appellant had standing to bring the derivative action. The appellant contended that he had standing as the

action fell within the “fraud on the minority” exception to the rule in *Foss v Harbottle*.

50 The respondents had a majority of the votes in the company if the shares held by the first respondent’s sister were included. The High Court rejected the appellant’s argument that the sister’s votes should be included, finding that there was no basis for concluding that the sister was likely to vote in favour of the first respondent by virtue of their relationship.

51 The Court of Appeal allowed the appeal, holding (at [19]) that it was more likely than not that the first respondent’s sister would vote in support of the first respondent and his group given the relationship between the first respondent and his sister, the fact that the sister was also the largest shareholder in another company which had benefited from the alleged breach of fiduciary duties by the first respondent, and the fact that the sister’s shareholding in the other company was a gift from the first respondent.

52 *Ting Sing Ning* does not stand for any general principle that a shareholder has to vote in the interests of the company or that a shareholder’s vote on a resolution is to be excluded if his personal interests conflict with the company’s interests. As the Court of Appeal stated (at [15]), the issue was whether the shareholding of the first respondent’s sister should be counted as part of the total shareholdings of the respondents for the purpose of determining absolute control. The Court of Appeal made a finding of fact that it was more likely than not that the first respondent’s sister would vote in support of the first respondent and his group, and therefore the respondents were in control of the company.

53 The Company submitted that *Ting Sing Ning* showed that it is permissible to take cognisance of a shareholder's ties when voting on a resolution to pursue legal action against an errant director related to the said shareholder. That was correct in the context of the facts and the issue that was before the court in *Ting Sing Ning*. However, it would be wrong to extrapolate that to support a general proposition that a shareholder's vote on any resolution has to be rejected if his personal interests conflict with those of the company. The general principle remains that a shareholder is free to vote in his personal interests, even if when he has a personal interest in its outcome (see, also, *Company Law* at para 5.32). If the resolution that is passed unfairly discriminates against or is otherwise prejudicial to a member, that member can seek remedies under s 216 of the Companies Act.

54 Finally, the Company referred me to *Wall v London and Northern Assets Corporation* [1899] 1 Ch 550 ("*London and Northern*") and *Wall v Exchange Investment Corporation Limited* [1926] 1 Ch 143 ("*Exchange Investment*").

55 In *London and Northern*, Art 63 of the company's articles of association provided as follows:

No objection shall be made to the validity of any vote excepting at the meeting at which such vote shall be tendered, ... and every vote, whether given in person or by proxy, not disallowed at any one of such meetings, shall be deemed valid for all purposes whatsoever.

56 At a meeting of the company, a number of proxies were objected to. The chairman accepted the proxies and declared the relevant resolutions duly passed. The English Chancery Court held that the most that could be said was that the chairman had taken an erroneous view as to the validity of some of the votes, but Art 63 meant that "all objections to votes at a meeting must actually be taken

and dealt with at the meeting, and the decision as to their validity by the person who presides is to be final on that point.”

57 In *Exchange Investment*, Art 58 of the company’s articles of association was identical to Art 63 in *London and Northern*. The objection was that certain votes should not be counted because the proxy for those shares was given by the holder of a power of attorney from the registered holder of the shares, and the power of attorney did not authorise voting by proxy. The chairman had perused the power of attorney and concluded that the proxy was valid.

58 The English Court of Appeal agreed with *London and Northern* and held that the decision of the chairman, who, in the *bona fide* exercise of the power conferred upon him by Art 58, had refused to disallow a vote by proxy, was final and would not be reviewed by the court.

59 In my view, neither *London and Northern* nor *Exchange Investment* assisted the Company’s case. The question in both cases was whether the chairman’s decision was final. The court in each case did not have to, and did not, decide whether the objection that was taken fell within the scope of the relevant article. These two cases simply proceeded on the assumption that the objection taken in each case fell within the scope of the relevant article.

60 In contrast, the question in the present case was whether the objection that the claimant was in a position of conflict of interests with respect to Resolution 2 was an objection to the qualification of the claimant to vote within the meaning of Art 60 of the M&AA.

Whether the Company should be ordered to hold an EGM

61 As stated in [30] above, at the Adjourned AGM, the shareholders voted against the resolution to re-elect Neelamegam as a director. That left Lim as the sole director. Under the M&AA, the board had to have at least two directors. The affidavits before me did not show that a second director had been appointed or that Lim had taken any steps to properly constitute the board of directors. On the face of it, an EGM ought to be called to appoint a second director.

62 The Company then informed me that it already had two directors as Neelamegam was appointed as a director on 2 January 2026 by Lim in the exercise of his powers under Art 86 of the M&AA.

63 Article 86 provided as follows:

86. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

64 However, Lim did not mention his appointment of Neelamegam as a director in his affidavits despite the fact that one of the reliefs sought in the present application was for a general meeting to be called for the purposes of voting on the election of new directors. Further, and in any event, Lim's decision to appoint Neelamegam as a director went against the decision by a majority of the shareholders not to re-elect Neelamegam as a director at the Adjourned AGM, which was held just some three weeks earlier. There was no explanation by Lim for his decision.

65 The original appointment of Neelamegam pursuant to Resolution 1 (see [17] and [22] above) has to be viewed in context. The first item on the agenda for the 11 September EGM was to consider and discuss how the board of directors was to be authorised to transact any business of the Company that required two directors (see [15(a)] above). The Company’s legal adviser advised that the shareholders could (a) nominate a candidate to be appointed by the shareholders as a director; (b) the M&AA could be amended to empower a sole director to act; or (c) a nominee director could be appointed.

66 The shareholders chose the route of appointing a nominee director. They voted to authorise (a) Lim to appoint a candidate from KSN as a *nominee* director; and (b) Lim and the nominee director to sign off on the audited accounts and call the AGM for 2024. The shareholders’ refusal to re-elect Neelamegam at the Adjourned AGM showed that Neelamegam’s appointment pursuant to Resolution 1 was intended to be an interim measure. The minutes of the 8 August EGM showed that the shareholders knew that the Company needed to hold an AGM and file its audited financial statements for 2024.²¹

67 In the circumstances, it seemed to me that the constitution of the Company’s board of directors, in particular the appointment of Neelamegam, should be clearly decided by the shareholders.

68 The Company pointed out that the claimant had not tried to requisition an EGM and submitted that the claimant failed to establish “impracticability” as required under s 182 of the Companies Act. Section 182 of the Companies Act provides as follows:

²¹ Lim’s 1st Affidavit, at p 334.

182. If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the constitution or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit ...

69 Pursuant to s 177(1) of the Companies Act, two or more members holding not less than 10% of the total number of issued shares of the company (excluding treasury shares) may call a meeting of the company. The claimant had a 27.3% shareholding in the Company and could call a meeting of the Company if he could get another shareholder to join him. However, he had not tried doing so.

70 Nevertheless, in my view, even if the claimant managed to get another shareholder to join him in calling for a general meeting to appoint new directors. Lim's conduct in appointing Neelamegam raised doubts that he would cooperate in calling a meeting that could result in Neelamegam being removed, or in him losing control of the board or even in him being removed as director.

71 In my judgment, the interest of the Company required me to exercise my discretion to order the Company to hold a general meeting for the purposes of deciding whether to remove any of the existing directors and/or to appoint new directors.

The claimant's claims against Lim

72 The claimant sought orders for Lim to pay the costs of the present application on an indemnity basis and to reimburse the Company for legal fees and disbursements paid by the Company arising out of the present application.

The claimant submitted that this was justified because Lim repeatedly acted in breach of the M&AA.

73 I agreed with Lim that the claimant had no basis to add him as a defendant in his personal capacity. As the Court of Appeal held in *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd* [2018] 1 SLR 818 at [65]:

... a director would ordinarily be immune from tortious liability for authorising or procuring his company's breach of contract in his capacity as a director, unless his decision is made in breach of any of his personal legal duties to the company. ...

74 The onus was on the claimant to prove that Lim's acts were in breach of his personal legal duties to the Company. In the present case, the claimant did not show any grounds to support his claims against Lim in his personal capacity. Accordingly, I dismissed the claimant's claims against Lim. There is no appeal by the claimant against my decision on this point.

Conclusion

75 For the above reasons, I dismissed the claimant's challenges against (a) the validity of the 11 September EGM; (b) the validity of the resolution authorising Lim to appoint a nominee director (*ie*, Resolution 1); and (c) the Company's position that Lim was not required to retire at the 28 October AGM. However, I granted the following orders:

- (a) a declaration that the decision of Lim, as chairperson of the 11 September EGM, that the claimant's vote against Resolution 2 be disallowed, was invalid, void and of no effect; and
- (b) the Company was to hold a general meeting, within two months, for the purposes of deciding whether to remove any of the existing directors and/or appoint new directors.

76 I made no order as to costs as between the claimant and the Company as each of them had succeeded partially. I ordered the claimant to pay costs to Lim fixed at \$3,000 all in.

Chua Lee Ming
Judge of the High Court

Hewage Ushan Saminda Premaratne and Tan Liqi, Joseph (USP Law
LLC) for the claimant;
Kang Kok Boon, Favian (Jiang Guowen) (Centurion Law LLC) for
the first defendant;
Khelvin Xu Cunhan, Rebecca Soh Jia Qi and Chua Wei Rong
(Covenant Chambers LLC) for the second defendant.
