ISM SENDIRIAN BERHAD

v.

QUEENSWAY NOMINEES (ASING) SDN BHD & ORS AND ANOTHER APPEAL

Federal Court, Putrajaya
Nordin Hassan, Lee Swee Seng, Collin Lawrence Sequerah FCJJ
[Civil Appeal Nos: 02(f)-9-03-2025(W) & 02(f)-10-03-2025(W)]
21 April 2026

Company Law: *Minority Oppression — Dispute concerning oral shareholders' agreement — Whether breach of shareholders' agreement could not be basis for filing petition under s 181 of Companies Act 1965 — Whether complaint under s 181 must be confined to matters relating to affairs of company — Whether breach of shareholders' agreement not a matter relating to affairs of company but was a private matter enforceable by parties to shareholders' agreement — Whether quasi-partnership relationship existed between parties to shareholders' agreement*

The appellant, ISM Sendirian Berhad, had entered into an oral shareholders' agreement with MPHB Capital Berhad ('MPHB') to acquire and develop lots adjoining an abandoned project, on an integrated basis ('Imbi Project'). In furtherance of that project, a joint venture company consisting of 5 different companies was incorporated to acquire lands for the project. It was agreed that the appellant would hold 30% of the equity in the joint venture companies with the remaining 70% to be held by MPHB. No formal shareholders' agreement was executed by the appellant and MPHB and both parties agreed to be bound by the terms of the oral agreement. Disputes subsequently arose concerning funding for the joint venture companies. The appellant contended that funding was to be divided into a cash portion and loan portion apportioned on a 30:70 basis, and as regards the cash portion, it was to contribute 30% (or 9%) of the total funds required, and that MPHB was to contribute 70% of the cash portion and was also liable to fund the entire loan amount. The appellant therefore asserted that MPHB was to contribute 91% of the total funding required by each joint venture company for land acquisition. MPHB however contended that the funding for the joint venture companies was in proportion to the parties' agreed equity interests, ie on a 30:70 basis, with 30% for the appellant and 70% for MPHB. The dispute resulted in the appellant commencing proceedings vide 5 separate actions which were consolidated into one suit, for minority oppression under s 181 of the Companies Act 1965 ('CA 1965') on the grounds *inter alia*: (i) that MPHB's demand for the appellant to contribute 30% of the purchase price for a particular land that was acquired, was contrary to the appellant's stand that it was only required to contribute 30% of the cash portion or 9% of the total acquisition costs for each property acquired under the joint venture; (ii) the diluting of its shareholding in 3 of the joint venture

companies namely, the 1st, 2nd and 3rd respondents by the rights issues shares undertaken by the said companies; and (iii) the imposition of interest on the shareholder advances made for the cash portion of the funding for the joint venture companies.

The High Court found that an oral shareholders' agreement existed between the appellant and MPHB and that the appellant had proven its case of oppression, unfair prejudice and disregard of interest on the aforesaid grounds. Upon appeal by the respondents, the Court of Appeal, relying on *Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal* ('*Jet-tech*'), set aside the High Court's decision upon finding that the dispute concerned the oral shareholders' agreement between the appellant and MPHB which was a private matter, and not related to the company's affairs and thus, the issue of minority oppression under s 181 of the CA 1965 was not applicable in the circumstances. The Court of Appeal also found that there was no *quasi*-partnership between the appellant and MPHB. Hence the instant appeals against the decisions of the Court of Appeal in allowing the respondents' appeal and dismissing the appellant's appeal. Leave to appeal was allowed on the following two questions of law: (1) whether as a matter of law, the true *ratio decidendi* of the Federal Court's decision in *Jet-Tech* was that the breach of the terms of a shareholders' agreement could be actionable under s 181 of the CA 1965 when accompanied by findings of oppression, disregard of interest, unfair discrimination, or unfair prejudice against the complainant; and (2) whether the proposition espoused by the Federal Court in *Jet-Tech* at para 37 of the reported judgment that '…breaches of a shareholders' agreement could not be a basis for bringing a petition under s 181. A complaint under s 181 of the CA must be confined to matters relating to the affairs of the company. Shareholders' agreement and breach of the same were clearly not matters relating to the affairs of the company. They are private matters enforceable by the parties to the shareholders' agreement…' was correct in law.

The appellant contended that para 37 of the judgment in *Jet-Tech* was wrong in law as it treated a breach of a shareholders' agreement as a private matter that could not form part of the company's affairs, thereby limiting the application of s 181 of the CA 1965 and therefore Question 2 should be answered in the negative. The appellant submitted that the Federal Court's decision in *Looh Siong Chee v. Numix Engineering Sdn Bhd & Ors And Other Appeals* (*'Looh Siong Chee*') which also concerned an oppression petition under s 181 of the CA 1965, and wherein it was decided that the core issue relating to the test under s 181 was a factual one, contradicted *Jet-Tech* and was not considered by the Court of Appeal in coming to its decision. The appellant thus submitted that by implication of the decision in *Looh Siong Chee*, breach of the shareholders' agreement was actionable under s 181. The appellant further also contended that the relationship between it and MPHB was a *quasi*-partnership. MPHB denied the said contention and argued that the relationship should be treated as an unincorporated joint venture at arm's length, a pure corporate venture.

Held (dismissing both appeals):

(1) There was nothing in the grounds of judgment in *Looh Siong Chee* that contradicted the principle of law in *Jet-Tech* in particular, para 37 thereof. In the circumstances, the principle of law in para 37 of the *Jet-Tech* case was correct and the Federal Court's finding therein was based on the factual matrix of the case. Consequently, the Court of Appeal's reliance on *Jet-Tech* and in particular para 37 of the grounds of judgment therein was not an error of law that required intervention. Hence the answer to Question 2 was in the affirmative, and there was no necessity to answer Question 1. (paras 78, 79, 80 & 101)

(2) Given that matters relating to the affairs of the company were not established, the action for minority oppression under s 181 of the CA 1965 in this instance could not be sustained. (para 82)

(3) On the facts and in the circumstances, there was no reason to disagree with the Court of Appeal's finding that the relationship between the appellant and MPHB was a purely commercial relationship at arm's length and not a *quasi*-partnership. There was no personal relationship between the parties that had developed mutual trust and confidence. (paras 89-92)

Case(s) referred to:

Auspicious Journey Sdn Bhd v. Ebony Rsyeditz Sdn Bhd & Ors [2021] 3 MLRA 703 (refd)

Datuk Syed Kechik Syed Mohamed & Anor v. The Board Of Trustees Of The Sabah Foundation & Ors [1998] 2 MLRA 277 (refd)

Ebrahimi v. Westbourne Galleries Ltd [1972] 2 All ER 492 (refd)

Heng Tang Hai & Anor v. Dato' Dr Gue See Sew & Ors [2019] MLRHU 1667 (refd)

Ho Yew Kong v. Sakae Holdings Ltd And Other Appeals And Other Matters [2018] SGCA 33 (distd)

Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal [2013] 2 MLRA 345 (folld)

Lim Cheng Huat Raymond v. Teoh Siang Teik [1996] SGCA 63 (refd)

Looh Siong Chee v. Numix Engineering Sdn Bhd & Ors And Other Appeals [2015] 4 MLRA 471 (refd)

Low Cheng Teik & Ors v. Low Ean Nee [2024] 6 MLRA 220 (refd)

Meidi-Ya Co Ltd Japan & Anor v. Meidi (M) Sdn Bhd [2008] 3 MLRA 80 (refd)

Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd & Anor [1995] 2 MLRA 461 (refd)

Pan-Pacific Construction Holdings Sdn Bhd v. Ngiu-Kee Corporation (M) Bhd & Anor [2010] 1 MLRA 761 (refd)

Re Cumberland Holdings Ltd 1 (1976) ACLR 361 (refd)

Re Kong Thai Sawmill (Miri) Sdn Bhd ; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung [1978] 1 MLRA 235 (refd)

Re Neath Rugby Ltd (No 2) Hawkes v. Cuddy and Others (No 2) [2009] EWCA Civ 291 (refd)

Strahan v. Wilcock [2006] EWCA Civ 13 (refd)

Tay Bok Choon v. Tahansan Sdn Bhd [1987] 1 MLRA 68 (refd)

Teh Wei Kian & Anor v. Golden Plus Holdings Bhd & Ors [2020] MLRHU 2290 (refd)

Terengganu Forest Products Sdn Bhd v. Cosco Container Lines Co Ltd & Anor & Other Applications [2012] 5 MLRA 618 (folld)

Teoh Kiang Hong v. Theow Say Kow @ Teoh Kiang Seng Henry & Other Appeals [2025] 2 MLRA 504 (distd)

Tuan Haji Ishak Ismail v. Leong Hup Holdings Berhad & Other Appeals [1995] 2 MLRA 198 (refd)

Legislation referred to:

Companies Act 1965, ss 181(1)(a), (b), (2), 218(1)

Companies Act 2016, s 346

Courts of Judicature Act 1964, s 96(a), (b)

Rules of the Federal Court 1995, rr 47(4), 57(2)

Counsel:

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[For the Court of Appeal judgment, please refer to *Queensway Nominees (Asing) Sdn Bhd & Ors v. ISM Sendirian Bhd & Another Appeal* [2025] 1 MLRA 882]

JUDGMENT

Nordin Hassan FCJ:

Introduction

[1] This case concerns an application by the appellant for minority oppression under s 181 of the Companies Act 1965 ("CA 1965") (now s 346 of CA 2016). The appellant's claim and the reliefs sought were allowed by the High Court, but the Court of Appeal overturned the decision. Hence, the present appeal before this Court.

[2] There are two appeals before us filed by the appellant, which are Appeal No. 02(f)-9-03-2025(W) ("Appeal No.9") and Appeal No.02(f)-10-03-2025(W) ("Appeal No.10"). Appeal No.9 is the appellant's appeal against the decision of the Court of Appeal to set aside the decision of the High Court dated 21st June 2019, which allowed the appellant's claim for minority oppression.

Appeal No.10 is the appellant's appeal against the whole decision of the Court of Appeal dated 21st October 2024 that the appellant's appeal be dismissed with no order as to costs.

[3] On 18 February 2025, having heard two applications for leave to appeal by the appellant under s 96(a) of the Courts of Judicature Act 1964 ("the CJA 1964"), this Court allowed the leave to appeal only on two questions of law, which are as follows:

(i) Question 1

Whether, as a matter of law, the true ratio decidendi of the Federal Court decision in *Jet-tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal* [2013] 2 MLRA 345 is that the breach of the terms of a shareholders' agreement can be actionable under s 181 of the Companies Act 1965 when accompanied by findings of oppression, disregard of interest, unfair discrimination, or unfair prejudice against the complainant?

(ii) Question 2

Whether the proposition espoused by the Federal Court in *Jet-tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal* [2013] 2 MLRA 345 at paragraph 37 of the reported judgment that "breaches of a shareholders' agreement cannot be a basis for bringing a petition under s 181. A complaint under s 181 of the CA must be confined to matters relating to the affairs of the company. Shareholders' agreement and breach of the same clearly not matters relating to the affairs of the company. They are private matters enforceable by the parties to the shareholders' agreement..." is correct in law by reference to the following authorities:

(i) *Ho Yew Kong v. Sakae Holdings Ltd And Other Appeals And Other Matters* [2018] SGCA 33

(ii) *Heng Tang Hai & Anor v. Dato' Dr Gue See Sew & Ors* [2019] MLRHU 1667; and

(iii) *Teh Wei Kian & Anor v. Golden Plus Holdings Bhd & Ors* [2020] MLRHU 2290.

Preliminary Objection

[4] On 5 March 2026, when the hearing of the substantive appeals was set before this Panel, counsel for the respondent raised a preliminary objection that the appellant, in his written submissions for the appeal, had included other grounds, 72 grounds to be exact, that were outside of the two leave questions allowed by this Court. Counsel for the respondent objected to all grounds

not within the two leave questions and requested that this Court clarify the parameters of the appeal.

[5] On the other hand, counsel for the appellant contended that the other grounds presented are necessary to enable this Court to determine on the plainly wrong test, which requires this Court to assess the conflicting findings of facts between the High Court and the Court of Appeal. *Teoh Kiang Hong v. Theow Say Kow @ Teoh Kiang Seng Henry & Other Appeals* [2025] 2 MLRA 504 was quoted to support the contention. Further, it was submitted that the determination also involves an assessment of the witnesses' credibility.

[6] In answering the preliminary objection, it is apposite to re-examine the background facts relating to the issue and the application of the relevant laws. As mentioned earlier, the appellant filed two applications for leave to appeal before this Court with 41 proposed questions. At the hearing on the leave applications, counsel for the appellant presented 12 revised questions and dropped the other 29. Having heard the submissions by parties, this Court allowed only two questions of law that met the threshold of s 96(a) of the CJA 1964 as laid down earlier at paragraph 3.

[7] Having obtained leave to appeal on the two leave questions, the appellant prepared the memorandum of appeal, which contained, among others, 72 grounds that are not within the two leave questions and questions that this court has rejected in the leave application or questions not proceeded with by the appellant. The respondents objected to the inclusion of the 72 additional grounds in the memorandum of appeal through several letters to the appellant.

[8] The appellant thereafter filed two notices of motion before this Court, among others, seeking orders allowing the appellant to ventilate the 72 grounds that are beyond the two leave questions granted by this Court pursuant to r 57(2) of the Rules of the Federal Court 1995.

[9] In Motion 227, among the prayers sought by the appellant are the following:

> "3. The appellant be granted leave pursuant to r 57(2) of the Rules of the Federal Court 1995 **to raise such further or other grounds** of objection as pleaded in the existing Grounds 3,4,6,7,9 to 76 and the proposed amendments in paragraph 57A to 57C of the Amended memorandum of appeal as annexed in Annexure A to the said Notice of Motion filed herein."
>
> [Emphasis added]

[10] The appellant presented the grounds for the motion 227 to raise other grounds, among others, as follows:

> "4) the proposed amendments pertain to grounds, issues, and matters arising from the decision of the Court of Appeal, and is necessary to prevent the appeal from being limited and/or hindered by procedural or technical objections unrelated to the substantive merits of the appeal."

[11] On 22 October 2025, this Court, chaired by the Chief Justice, heard all the Motions filed by the appellant and dismissed them. In the brief grounds, it was held, among others, as follows:

> "Having read the 72 additional grounds sought to be included, we noticed that these grounds are, these grounds were advanced during the leave stage and had them dismissed, or had elected to abandon them at the leave hearing. There is therefore no miscarriage of justice because the same was dealt with by this Court before granting leave. As such, the Motions and encls 223, 227, and 42 are dismissed."

[12] The factual matrix on this issue disclosed that this Court, on two occasions, has decided that the present appeal is confined only to the two questions of law granted by the leave panel of this Court on 18 February 2025.

[13] This decision is consistent with r 47(4) of the Rules of the Federal Court 1995, which provides:

> "Appeal from the Court of Appeal
>
> 47.(4) The hearing of the appeal **shall be confined to matters, issues, or questions in respect of which leave to appeal has been granted**."
>
> [Emphasis added]

[14] The provision of the law is unambiguous that any appeal from the Court of Appeal shall be confined to matters, issues, or questions within the scope or parameter of the leave granted by the Federal Court, and in the present case, within the scope of Questions 1 and 2.

[15] Next, the parameters of an appeal from the Court of Appeal to the Federal Court have been specified clearly under s 96 of the CJA 1964, which states:

> Conditions of appeal
>
> 96. Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court-
>
> (a) **from any judgment or order of the Court of Appeal** in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction **involving a question of general principle decided for the first time** or **a question of importance** upon which further argument and a decision of the Federal Court would be to public advantage; or
>
> (b) from any decision as to **the effect of any provision of the Constitution**, including **the validity of any written law** relating to any such provision.
>
> [Emphasis added]

[16] The legislature, in s 96 of the CJA 1964, has placed conditions on appeals from the Court of Appeal to the Federal Court where the decision of the Court of Appeal concerns a matter from the High Court exercising its original jurisdiction. The appeal from the Court of Appeal is not automatic or as of right; leave to appeal must be obtained from the Federal Court. The conditions or parameters are the following:

> section 96(a)
>
> (i) matters that involve a question of general principle decided for the first time; or
>
> (ii) a question of importance, the further argument and decision of the Federal Court would be to the public advantage.
>
> section 96(b)
>
> (i) from the decision as to the effect of the provision of the Federal Constitution, including the validity of any written law relating to the provision of the Federal Constitution.

[17] The intention of Parliament has been laid down by this Court in *Terengganu Forest Products Sdn Bhd v. Cosco Container Lines Co Ltd & Anor & Other Applications* [2012] 5 MLRA 618 in the following words:

> "[8] The Explanatory Statement to the Courts of Judicature (Amendment) Bill 1998, introducing the amendment as well as the speech of the Minister moving the Bill, was supposed to reflect the intention of Parliament in making this amendment. As such, I reproduce them below. The Minister, in his speech, said;
>
> 6. Clause 8 seeks to amend s 96 of Act 91. Appeals from the High Court in the exercise of its original jurisdiction to the Court of Appeal are automatic. However, appeals to the Federal Court from the Court of Appeal may only be made with the leave of the Federal Court. Since 1886, the principles applied by the English Courts in granting leave have been those principles which the proposed amendments seek to incorporate in s 96. These are sound principles which have been followed by Malaysian Courts. Putting these principles in the statute will eliminate lengthy arguments and hasten the disposal of applications for leave to appeal.
>
> [9] The relevant part of the explanatory statement to the Bill reads:
>
> Section 96 is amended to include the principle of public importance in deciding whether leave to appeal to the Federal Court should be given. This principle is applied in the courts of Britain, and it has managed to limit submissions in such applications for leave and expedite such applications.
>
> [10] It is therefore obvious that the intention of Parliament was to adopt the same principles applicable in the grant of leave to appeal before the House of Lords (since October 2009 known as the Supreme Court)..."

[18] We are also in agreement with the rationale explained in the *Terengganu Forest* case for the need to meet the threshold of s 96(a) of the CJA 1964, which is as follows:

> "[22] To obtain leave, it must be shown that it falls under either of the two limbs of s 96(a), but they can also fall under both limbs. The argument put that leave should be more liberally allowed to enable the law to be developed would defeat the limitation set by the two limbs of s 96(a). **The purpose of s 96 is not to allow for correction of ordinary errors committed by the lower courts as would in an appeal as of right**, particularly where the relevant laws are well settled. **When a case comes to the Federal Court, the case would already have been reviewed on merits by three experienced judges at the Court of Appeal. So once an issue has been decided by the trial judge, and the appeal decided by a panel of three at the Court of Appeal, that is final** unless it can be shown that the case falls within the scope of s 96(a).
>
> [Emphasis added]

[19] Further, this Court, in the *Terengganu Forest* case, has provided a simplified guideline on s 96(a) that could assist parties in a leave application. At para 34 of the case, this is stated:

> "[34] In summary, an intended applicant for leave to appeal to this Court should consider the following points before filing his application, namely:
>
> **1) Basic prerequisites:**
>
> i) that leave to appeal must be against the decision of the Court of Appeal;
>
> ii) that the cause or matter must have been decided by the High Court exercising its original jurisdiction;
>
> iii) that the question must involve a question of law which is of general principle not previously decided by the Federal Court (first limb of s 96(a); and
>
> iv) that the issue to be appealed against has been decided by the Court of Appeal.
>
> 2) As a rule, **leave will normally not be granted in interlocutory appeals.**
>
> 3) Whether there has been a consistent **judicial opinion which may be uniformly wrong,** e.g., *Boonsom Boonyanit v. Adorna Properties Sdn Bhd (1)* [1989] 2 MLRH 360.
>
> 4) Whether **there is a dissenting judgment** in the Court of Appeal.
>
> 5) Leave to appeal against **interpretation of statutes will not be given** unless it is shown that such interpretation is of public importance.
>
> 6) That **leave will not normally be given:**

i. where it **merely involves interpretation of an agreement** unless this Court is satisfied that it is for the benefit of the trade or industry concerned;

ii. the answer to **the question is not abstract, academic, or hypothetical;**

iii. either or both **parties are not interested in the result of the appeal.**

7) That on first impression **the appeal may or may not be successful;** if it will inevitably fail, leave will not be granted."

[Emphasis added]

(see also: *Datuk Syed Kechik Syed Mohamed & Anor v. The Board Of Trustees Of The Sabah Foundation & Ors* [1998] 2 MLRA 277; *Meidi-Ya Co Ltd Japan & Anor v. Meidi (M) Sdn Bhd* [2008] 3 MLRA 80)

[20] In the present case, this Court, in the leave application, has considered the parties' submissions and all the proposed questions and decided that only Questions 1 and 2 met the threshold of s 96(a). Thus, the appeal by the appellant should only be confined to the said two leave questions granted by this Court. The decision of the leave panel was further confirmed by the motion panel, which dismissed the appellant's application to ventilate the appeal beyond the two leave questions.

[21] This Court's decision in *Teoh Kiang Hong v. Theow Say Kow @ Teoh Kiang Seng Henry & Other Appeals* [2025] 2 MLRA 504, cited by the appellant, can readily be distinguished on its facts and the questions of law granted by the Court. The granted questions of law concern the assessment of a witness's evidence. Even so, the Court emphasized that in assessing the findings of fact, it must be made within the parameters permitted by the granted questions of law.

[22] In the circumstances, we uphold the preliminary objection by the respondent and ordered that the appeal should be confined only to the two leave Questions as laid down earlier.

The Substantive Appeal

[23] In determining the substantive appeal based on the two leave Questions, it is pertinent to know the essential background facts and the basis on which the appellant's claim of minority oppression hinges. The detailed facts of the present case have been laid down by the High Court and the Court of Appeal, and for the appeal before this Court, the essential facts, among others, are the following.

The Essential Facts

[24] ISM Sendirian Berhad ("ISM") was owned by Dato Ray Cheah and his wife, Datin Teoh Lye Chan. They are also the company's directors. Sometime in June 2006, Dato Ray was asked to assist in the rehabilitation of an abandoned project located at a junction of Jalan Imbi and Jalan Sultan Ismail. The land's proprietor was a company that had obtained credit facilities from a wholly owned subsidiary of MPHB Capital Berhad ("MPHB"). As the said land is too small to develop a mixed-use commercial project, they planned to acquire the adjoining lots and develop them on an integrated basis, referred to as the "Imbi Project".

[25] In furtherance of this project, a joint venture company was incorporated to acquire land for the project. The joint venture companies consist of five different companies, which are Queensway Nominees (Asing) Sdn Bhd ("QNA"), Queensway Nominees (Tempatan) Sdn Bhd ("QNT"), West-Jaya Sdn Bhd ("WSJB"), Multi Kluang Maritime Carriers Sdn Bhd ("MKMC"), and Leisure Dotcom Sdn Bhd ("LDC"). It is undisputed that the parties agreed that ISM would hold 30% of the equity in the joint venture companies, and MPHB would hold the remaining 70%.

[26] Eleven lots were acquired from 2006 to 2012 for the Imbi Project, namely lots 1282 and 1283 ("the CN Lands"), lots 646 and 1216 ("De Vegas Lands"), and lots 200, 634, 637, 642, 643, 644, 1199, and 1286. Two of these lots were held by Caribbean Gateway Sdn Bhd and MP Factor Sdn Bhd, companies that are not in the joint venture.

[27] Sometime in 2009, there was a proposal to use Caribbean Gateway Sdn Bhd as the entity to hold all the lands held by the three companies in the joint venture that are Queensway Nominees (Asing) Sdn Bhd ("QNA"), Queensway Nominees (Tempatan) Sdn Bhd ("QNT"), and West-Jaya Sdn Bhd ("WSJB") for the Imbi Project. It was also intended that the Caribbean Gateway would obtain bank loans to finance land acquisition for the project.

[28] Thereafter, Caribbean Gateway obtained four loans from Malayan Banking Berhad, which were on-lent to the joint venture companies to repay the shareholder advances made by MPHB to those companies. The proposal to make Caribbean Gateway hold the lands held by the three joint venture companies did not materialize.

[29] Next, on 24 July 2009, MPHB presented a draft shareholders' agreement to ISM for consideration. The parties to this shareholders' agreement are MPHB and ISM. In this draft agreement, it states, among others, that parties have agreed to use Caribbean Gateway Sdn Bhd as their joint venture company to acquire properties in Jalan Sultan Ismail/Jalan Imbi Business District of Kuala Lumpur and to develop the Properties into comprehensive commercial developments to maximize the development potentials and values of the Properties.

[30] Properties under the draft agreement are the properties in the Jalan Sultan Ismail/Jalan Imbi District that Caribbean Gateway is to acquire from time to time for the Projects. The Projects mean the comprehensive mixed-use commercial development(s) comprising retail podiums, hotels, offices, luxury serviced apartment blocks, and car parking structures erected or to be erected on the Properties, including any changes, modifications, or amendments thereto.

[31] Further, cl 21.1 of the draft agreement provides that nothing in the agreement (or any of the agreements contemplated by this Agreement) shall be deemed to constitute a partnership between the parties, nor, save as may be expressly set out in the agreement, constitute either party the agent of the other party for any purpose.

[32] ISM did not raise any objection to the terms of the shareholders' agreement, except for the clause that provides that the agreement did not constitute a partnership between the parties. However, no formal shareholders' agreement was signed by ISM and MPHB. Be that as it may, parties agreed that the terms of the oral agreement between them bind them.

[33] The main disagreement between the parties concerns funding for the joint venture companies. ISM contended that the funding was to be divided into a cash portion and a loan portion apportioned on a 30:70 basis. On the cash portion, ISM would contribute 30% or 9% of the total funds required for each joint venture company. On the other hand, MPHB is to contribute 70% of the cash portion and will also be liable to fund the entire loan amount at an interest rate of 8% per annum. Thus, ISM states that MPHB contributes 91% of the total funding required by each joint venture company for land acquisition.

[34] However, MPHB contended that the funding of the joint venture companies is in proportion to the parties' agreed equity interests, that is, on a 30:70 basis, with 30% for ISM and 70% for MPHB.

[35] This main dispute resulted from ISM filing an action in court for minority oppression under s 181 of the CA 1965. Five civil suits filed by ISM have been consolidated into one suit. ISM's claim for minority oppression was on the grounds, which have been categorized into 5 grounds by the court, as follows:

(a) The demand by MPHB that ISM contributes 30% of the purchase price for the De Vegas land that Leisure Dotcom Sdn Bhd acquired. This was contrary to ISM's stand that it was only required to contribute 30% of the cash portion, or 9% of the total acquisition costs, for each property acquired under the joint venture.

(b) The rights issues shares undertaken by Queensway Nominees (Asing) Sdn Bhd, Queensway Nominees (Tempatan) Sdn Bhd, and Mulpha Kluang Maritime Carriers Sdn Bhd, which were said to have the effect of diluting ISM's holdings in the three joint venture companies.

(c) The imposition of interest on the shareholder advances made by MPHB for the cash portion of the funding to the joint venture companies. ISM's position is that MPHB would be liable to contribute 70% of the cash portion and to fund the entire loan portion at the interest rate of 8% per annum. On the other hand, the cash portion was not to bear any interest.

(d) The refusal to re-elect Dato Ray Cheah as a director of the five joint venture companies. This was said as an oppression of his rights as a shareholder.

(e) The transfer of one share in each of Leisure Dotcom Sdn Bhd, Mulpha Kluang Maritime Carriers Sdn Bhd, and West-Jaya Sdn Bhd to Jayavest Sdn Bhd. It was also contended that the transfer of shares constitutes an oppression of ISM's rights as a shareholder in the joint venture companies.

[36] MPHB then filed its counterclaim against ISM in all the suits and sought a declaration that the joint venture agreement had been terminated as a result of ISM's breach of its obligation to contribute 30% of the total funding required by the five joint venture companies. MPHB also sought to recover interest on 30% of the Maybank loans and the opportunity cost of the 70% of the interest paid by MPHB to Maybank.

The Decision Of The High Court

[37] To begin with, the High Court found that there exists an oral shareholders' agreement between ISM and MPHB, and parts of the terms of the agreement are as follows:

(a) The equity in the joint venture companies was to be held on a 30:70 basis, with 30% held by ISM and 70% by MPHB.

(b) The funding for the joint venture companies was to be divided into a cash portion and a loan portion, apportioned on a 30:70 basis. Of the cash portion, ISM would be liable to contribute 30% (i.e., 30% of 30%, or 9% of the total funds required for each joint venture company). MPHB would be liable to contribute 70% of the cash portion, and would also be liable to fund the entire loan portion, at the rate of interest of 8% per annum; and

(c) All the decisions regarding the joint venture companies have to be made on a consensus basis.

[38] The High Court further found that ISM has proved its case of oppression, unfair prejudice, and disregard of interest on three of the five grounds advanced by ISM. The three grounds are:

(i) The demand by MPHB that ISM contributes 30% of the purchase price for the De Vegas land that Leisure Dotcom Sdn Bhd acquired.

(ii) The rights issues shares undertaken by Queens Nominees (Asing) Sdn Bhd, Queens Nominees (Tempatan) Sdn Bhd, and Mulpha Kluang Maritime Carriers Sdn Bhd.

(iii) The imposition of interest on the shareholder advances made by MPHB for the cash portion of the funding to the joint venture companies.

[39] The High Court rejected the other two grounds presented by ISM to establish oppression. They are the refusal to re-elect Dato Ray Cheah as a director of the five joint venture companies, and the transfer of one share in each of Leisure Dotcom Sdn Bhd, Mulpha Kluang Maritime Carriers Sdn Bhd, and West-Jaya Sdn Bhd to Jayavest Sdn Bhd.

[40] ISM did not file any appeal on this finding of the High Court.

The Decision Of The Court Of Appeal

[41] On appeal to the Court of Appeal, the respondents' appeal was allowed, and the High Court's decision was set aside. The Court of Appeal found that the dispute concerns the oral shareholders' agreement between ISM and MPHB, and is not related to the company's affairs. It is a private matter. As such, the issue of minority oppression under s 181 of the CA 1965 is not applicable under the circumstances. The Federal Court case of *Jet-tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal* [2013] 2 MLRA 345 was relied upon.

[42] The Court of Appeal further examined the grounds presented by the appellant at trial and found that none of them constituted minority oppression under s 181 of the CA 1965.

The Questions Of Law

[43] At the beginning of the appeal hearing, counsel for the appellant informed us that the appellant would first submit on Question 2 before Question 1, which we allowed. For easy reference, we restate Question 2, which is as follows:

Question 2

Whether the proposition espoused by the Federal Court in *Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal* [2013] 2 MLRA 345 at para 37 of the reported judgment that "breaches of a shareholders' agreement cannot be a basis for bringing a petition under s 181. A complaint under s 181 of the CA must be confined to matters relating to the affairs of the

company. Shareholders' agreement and breach of the same clearly not matters relating to the affairs of the company. They are private matters enforceable by the parties to the shareholders' agreement…" is correct in law by reference to the following authorities:

(iv) *Ho Yew Kong v. Sakae Holdings Ltd And Other Appeals And Other Matters* [2018] SGCA 33

(v) *Heng Tang Hai & Anor v. Dato' Dr Gue See Sew & Ors* [2019] MLRHU 1667; and

(vi) *Teh Wei Kian & Anor v. Golden Plus Holdings Bhd & Ors* [2020] MLRHU 2290.

[44] In this regard, counsel for the appellant submitted that para 37 of the *Jet-Tech* case is not a correct statement of law, and that this Court should answer Question 2 in the negative.

[45] The appellant contended that para 37 of the *Jet-Tech* case is wrong in law, as it treats a breach of a shareholders' agreement as a private matter that cannot form part of the company's affairs. This limits the application of s 181 of the CA 1965, which the Parliament did not intend. The core issue, as envisaged under s 181, is whether the affairs of the company are being conducted or directors' powers are being exercised oppressively, in disregard of interests, in a way that is unfairly discriminatory, or otherwise prejudicial. A breach of shareholders' agreement that can form the basis of an oppression claim can still trigger the application of s 181. The absolute bar on the application of s 181 in the event of any breach of the shareholders' agreement is commercially unfair.

[46] The cases of *Looh Siong Chee v. Numix Engineering Sdn Bhd & Ors And Other Appeals* [2015] 4 MLRA 471; *Re Kong Thai Sawmill (Miri) Sdn Bhd ; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung* [1978] 1 MLRA 235; *Pan-Pacific Construction Holdings Sdn Bhd v. Ngiu-Kee Corporation (M) Bhd & Anor* [2010] 1 MLRA 761; *Auspicious Journey Sdn Bhd v. Ebony Ritz Sdn Bhd & Ors* [2021] 3 MLRA 703 and *Ho Yew Kong v. Sakae Holdings Ltd And Other Appeals And Other Matters* [2018] SGCA 33 are among cases cited by the appellant to support its contention.

[47] On the other hand, counsel for the respondent submitted that the statement in para 37 of the *Jet-Tech* case is a correct proposition of law. Paragraph 37 states that a complaint under s 181 must be confined to matters relating to the company's affairs, and this is the requirement of law under s 181 of the CA 1965. Therefore, para 37 must be read and understood in the context of that case. It was further argued that the same paragraph is not meant to be read as saying that no shareholders' agreement is ever actionable under s 181.

[48] Counsel for the respondent also argued that the High Court cases of *Heng Tang Hai & Anor v. Dato' Dr Gue See Sew & Ors* [2019] MLRHU 1667 and *Teh Wei Kian & Anor v. Golden Plus Holdings Bhd & Ors* [2020] MLRHU 2290 are consistent with para 37 of the *Jet-Tech* case that what was determinative in minority oppression claim was whether the alleged oppressive act relate to the affairs of the company.

[49] It was further submitted that the Court of Appeal, having found that the complaints were not related to the company's affairs, has proceeded to examine the grounds that allegedly constitute oppression and justified the application of s 181 of the CA 1965. The Court of Appeal then decided that those grounds failed to establish an act of oppression as envisaged under the said provision of the law.

[50] In answering Question 2, it is pertinent for this Court to be familiar with the essential facts of the *Jet-Tech* case and the reasons the Federal Court reached its decision.

[51] The *Jet-Tech* case concerns a shareholder dispute in Yushiro-Jet Chemicals Sdn Bhd. ("The company"). There are 4 shareholders of this company: Yushiro Chemical Industry Co. Ltd ("Yushiro"), Jet-Tech Materials Sdn Bhd ("Jet-Tech"), and two individuals, Gan Lai Ban ("Gan") and Firdaos Azhar ("Firdaos").

[52] The company, formerly known as Jet Chemical Sdn Bhd, was incorporated on 27 December 1990 by one Chen Siew Man ("Chen"). It was a Malaysian trading company that marketed a blended chemical cutting fluid for lubrication and heat removal. This product was manufactured in Japan by Yushiro, and the company was its authorized distributor. Its original shareholders were Chen (51.5%), Chen's wife, Soo Yoke Yew (23.5%), and Gan (25%).

[53] The shareholders of the company then entered into a shareholders' agreement on 29 August 1996 with Yushiro, Jet-Tech, and Firdaos, where the original shareholders agreed to sell their shares to Yushiro, Jet-Tech, and Firdaos. In addition, a technical assistance agreement was entered into with Yushiro. This is to facilitate the parties' participation in the manufacturing and sale of the said product. Consequent to the shareholders' agreement and the increase in the paid-up capital, the new shareholders of the company were Jet-Tech (43.5%), Firdaos (30%), and Yushiro (26.5%).

[54] The shareholders' agreement also provides that Jet-Tech could nominate three directors of the company, and Yushiro could nominate one director. The Board of Directors of the company comprised Chen as the Managing Director, Firdaos as the Executive Director, and Gan and Ota Aisaku ("Ota") as Directors.

[55] Thereafter, on 8 October 2003, Yushiro bought 500,000 new shares of the company for RM2.5 million, resulting in the following shareholding: Yushiro (51%), Jet-Tech (29%), Gan (13.33%), and Firdaos (6.67%). This makes Yushiro the company's majority shareholder.

[56] Sometime in December 2004, Jet-Tech and Chen ("the appellants") filed a petition under s 181 of the CA 1965 against Yushiro, Gan, and Firdaos, alleging minority oppression. The amended petition by the appellants disclosed that Yushiro, as the majority shareholder of the company, had acted oppressively by the following actions.

(a) deceitfully taking over the majority shares in the company by promising orally to have the company as the lead company to manufacture and sell the product in Thailand, and that Yushiro would only invest through the company and not directly, but thereafter proposing an investment plan whereby Yushiro would by-pass the company and invest substantially directly by itself in the new company to be incorporated in Thailand;

(b) deciding to allot only 16% in the company in Thailand, contrary to the promise to appoint the company as the lead company in Thailand;

(c) using its majority shares in the company in an attempt to remove Chen as a director of the company, contrary to the shareholders' agreement;

(d) refusing to allow Jet-Tech and Chen to remove their nominees (Gan and Firdaos) from the Board of Directors of the company, contrary to cl. 4(1) of the shareholders' agreement; and

(e) using its majority shares in the company to effectively appoint Ota, Sakurai, Gan, and Firdaos, totalling four directors, to the Board of Directors of the company on behalf of Yushiro, contrary to the terms of the shareholders' agreement.

[57] The High Court found that the respondents had engaged in oppressive conduct under s 181 of the CA 1965 and ordered Yushiro to purchase 735,000 ordinary shares in the company from Jet-Tech at a cost of RM8,200,165.00. Yushiro was also ordered to pay Jet-tech RM3,610,698.00 in compensation for the loss of controlling interest in the company, arising from the allotment of RM500,000.00 shares to Yushiro.

[58] However, on appeal to the Court of Appeal, the respondents' appeal was allowed, and the High Court's decision was set aside. The Court of Appeal found that the High Court had failed to give any grounds for its findings of oppression by the respondents. Further, the Court of Appeal decided that Chen, a person who claims to have a beneficial interest in the company's shares

through a registered member, does not have *locus standi* to file a petition under s 181.

[59] The 5 questions of law granted for determination of the Court are as follows:

> "Question 1
>
> Whether the interpretation given to the words "just and equitable" by the House of Lords in *Ebrahimi v. Westbourne Galleries Ltd* [1972] 2 All ER 492 and by the Privy Council in *Tay Bok Choon v. Tahansan Sdn Bhd* [1987] 1 MLRA 68 in the winding-up provision of the Companies Act 1965, *viz* s 218(1) with respect to a quasi-partnership company apply to the interpretation of the oppression provision in the Companies Act 1965 *viz* s 181.
>
> Question 2
>
> Whether the respondents acted in a manner oppressive to or disregard of or otherwise prejudicial to the interests of the appellants within the meaning of s 181(1).
>
> Question 3
>
> Whether a breach by a majority shareholder of a written shareholder agreement would amount to "oppressive conduct" or be "otherwise prejudicial" to a minority shareholder within the meaning of s 181(1)(a) or (b), thereby entitling a court to grant relief pursuant to s 181(2).
>
> Question 4
>
> Whether the expressions "affairs of the company" under s 181(1)(a) or "some act of the company" under s 181(1)(b) should, to reflect Parliament's intention, be given the widest import, having regard to the infinite or unlimited circumstances under which companies carry on business and/or manage their affairs.
>
> Question 5
>
> Whether it is open to a majority shareholder who has no objection to the most extreme or drastic remedy provided in s 181(2), namely, an order that the company in question be wound-up, being granted by the court, to object to the court granting a remedy of lesser gravity, *viz*, and order that the majority shareholder purchases the shares of a minority shareholder."

[60] The Federal Court, having considered the facts and circumstances of the case, held that the respondents had not committed any oppressive conduct within the meaning of s 181 of the CA 1965. The Federal Court also agrees with the Court of Appeal that the High Court failed to give any reasons for its finding of oppressive conduct against the respondents. Thus, the appellants' appeal is dismissed.

[61] Paragraph 37 of the grounds of judgment of the Federal Court is now the centre of discussions and requires this Court's determination on its correctness, and the legality of the principle of law enunciated therein, as laid down in Question 2. Paragraph 37 needs to be analyzed in its entirety alongside the grounds of judgment of the Federal Court, and, for a start, it is pertinent to set out the full para 37 to understand its context.

[62] Paragraph 37 of the grounds of judgment is as follows:

> "[37] It was alleged by the appellants that Yushiro's conduct in refusing to allow Chen to remove Gan and Firdaos as directors of the company amounted to a breach of the shareholders' agreement. **In this regard, we are in agreement with the submission of learned counsel for the respondents that breaches of a shareholders' agreement cannot be a basis for bringing a petition under s 181. A complaint under s 181 of the CA must be confined to matters relating to the affairs of the company. Shareholders' agreement and breach of the same clearly are not matters relating to the affairs of the company**. They are private matters enforceable by the parties to the shareholders' agreement (see *Beh Chun Chuan v. Paloh Medical Centre Sdn Bhd & Ors* [1999] 2 MLRH 840, *Tuan Haji Ishak Ismail v. Leong Hup Holdings Berhad & Other Appeals* [1995] 2 MLRA 198 and *Russel v. Northern Bank Development Corp Ltd* [1992] BCLC 1016)."
>
> [Emphasis added]

[63] Focusing first on the above paragraph, it reveals that the paragraph began with the appellants' contention that Yushiro's refusal to allow Chen to remove Gan and Firdaos as directors of the company constituted a breach of the shareholders' agreement. In the same paragraph, the Federal Court emphasized that the complaint under s 181 must relate to the company's affairs, and the breach of the shareholders' agreement in that case is not a matter relating to the company's affairs but a private matter. The analysis and pronouncement in para 37 are in the context of its factual matrix and consistent with s 181, which states:

> Section 181
>
> Remedy in cases of an oppression
>
> 181.(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister, may apply to the Court for an order under this section on the ground
>
> (a) **that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures, including himself, or in disregard of his or their interests as members, shareholders, or holders of debentures of the company; or**

(b) that some **act of the company** has been done or is threatened, or that some **resolution of the members**, holders of debentures, or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

[Emphasis added]

Section 181(1)(a) refers to the affairs of the company being conducted oppressively or the power of the directors being exercised oppressively against one or more members of the company, whilst s 181(1)(b) refers to an act of the company or a resolution of the members unfairly discriminates or prejudice one or more members of the company. Both limbs of s 181(1) relate to the company.

(see also: *Low Cheng Teik & Ors v. Low Ean Nee* [2024] 6 MLRA 220; *Auspicious Journey Sdn Bhd v. Ebony Ritz Sdn Bhd & Ors* [2021] 3 MLRA 703; *Pan-Pacific Construction Holdings Sdn Bhd v. Ngiu-Kee Corporation (M) Bhd & Anor* [2010] 1 MLRA 761; *Re Neath Rugby Ltd (No 2) Hawkes v. Cuddy And Others (No 2)* [2009] EWCA Civ 291; *Re Cumberland Holdings Ltd* 1 (1976) ACLR 361).

[64] The statement in para 37 above is also in answering Question 3 of the leave question, which we reproduced below:

"Question 3

Whether a breach by a majority shareholder of a written shareholder agreement would amount to "oppressive conduct" or be "otherwise prejudicial" to a minority shareholder within the meaning of s 181(1)(a) or (b), thereby entitling a court to grant relief pursuant to s 181(2)."

[65] In para 37, the Federal Court answered Question 3 by holding that a breach of the shareholders' agreement must relate to the affairs of the company before it is actionable under s 181 of the CA 1965, a view with which we agree.

Affairs Of The Company

[66] There is no legal definition in our law of "affairs of the company". This requires assessing the facts of each case to determine whether the act relates to the company's affairs.

[67] In *Re Cumberland Holdings Ltd (supra)*, the Supreme Court of New South Wales explained the phrase in the following words:

"(3) The words "**the affairs of the company**" are as wide as one could well have. **They are not limited to business or trade matters, but encompass capital structure, dividend policy, voting rights, consideration of take-over offers, and indeed, all matters which may come before the board for consideration.**"

[Emphasis added]

[68] Next, the English Court of Appeal in *Re Neath Rugby Ltd (No 2) Hawkes v. Cuddy And Others (No 2) (supra)*, the phrase was discussed as follows:

> "[50] The judge cited the observations of Powell J in *Re Dernacourt Investments Pty Ltd* (1990) 2 ACSR 553 at 556:
>
> > "The words' **affairs of a company**" are extremely wide and should be construed liberally: (a) in determining the ambit of the "affairs" of a parent company for the purposes of s 320, **the court looks at the business realities of a situation and does not confine them to a narrow legalistic view**; (b) "affairs" of a parent company includes refraining from procuring a subsidiary to do something or condoning by inaction an act of a subsidiary, particularly when the directors of the parent and the subsidiary are the same..."
>
> **I would accept these proposition, but with some qualification. Proposition (b) may extend to matters which are capable of coming before the board for its consideration, and may not be limited to those that actually come before the board: I do not accept that matters that are not considered by the board are not capable of being part of its affairs**. Nonetheless, like a judge, I am unable to see how it can be said that the affairs of Neath and of Osprey were so intermingled that all of the affairs of the latter were the affairs of the former. It would, for example, be quite irrational to suggest that Mr Blyth, when acting as a director of Osprey, was conducting the affairs of Neath."
>
> [Emphasis added]

[69] The above authorities serve as a guide in determining what constitutes the company's affairs, but, again, there is no exhaustive classification of the company's affairs, and it primarily depends on the factual matrix of the case. Certainly, the company's affairs cannot be equated with those of its shareholders. The latter is a private matter that may give rise to a private suit by the parties involved. In any event, refusing to allow the removal of individuals as directors, as in the *Jet-Tech* case, is not a matter of the company's affairs.

[70] It is also settled law that to establish oppressive conduct on the balance of probabilities under s 181 requires that the affairs of the company are being conducted or that the power of the directors is being exercised in an oppressive manner or in disregard of its interest, or to its prejudice.

(see also: *Auspicious Journey Sdn Bhd v. Ebony Ritz Sdn Bhd & Ors* [2021] 3 MLRA 703; *Looh Siong Chee v. Numix Engineering Sdn Bhd & Ors And Other Appeals* [2015] 4 MLRA 471; *Pan-Pacific Construction Holdings Sdn Bhd v. Ngiu-Kee Corporation (M) Bhd & Anor* [2010] 1 MLRA 761; *Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd & Anor* [1995] 2 MLRA 461; *Re Kong Thai Sawmill (Miri) Sdn Bhd ; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung* [1978] 1 MLRA 235; *Tuan Haji Ishak Ismail v. Leong Hup Holdings Berhad & Other Appeals* [1995] 2 MLRA 198).

[71] Reverting to para 37 of the Federal Court grounds of judgment in the *Jet-Tech* case, it is a reiteration of the law that to sustain a complaint under s 181, the conduct complained of must relate to or be a matter in the company's affairs. However, in that case, the Federal Court found otherwise at para 37, in particular. We also need to state here that there is no express pronouncement or indication in para 37 or any part of the grounds of judgment that any breach of the shareholders' agreement is not actionable under s 181 of the CA 1965. The lucid and express pronouncement in para 37 is that the matter must relate to the company's affairs.

[72] The decisions in the two High Court cases cited in Question 2 by the appellant, *Heng Tang Hai & Anor v. Dato' Dr Gue See Sew & Ors* [2019] MLRHU 1667 and *Teh Wei Kian & Anor v. Golden Plus Holdings Bhd & Ors* [2020] MLRHU 2290, in fact, are consistent with the principle laid down in para 37 that any alleged oppressive act must relate to the affairs of the company to trigger the application under s 181 of the CA 1965.

[73] In a Singapore Court of Appeal case of *Lim Cheng Huat Raymond v. Teoh Siang Teik* [1996] SGCA 63, the refusal to recognize the respondent's interest in 12.5% shares of the company was not an act of oppression under s 216 (equivalent to s 181 CA). However, it was not denied that the respondent was the beneficial owner of 12% of the company's shares as provided under the Funding Agreement. The court held that the claim for the shares had nothing to do with the affairs of the company, nor was the refusal to transfer the shares an act by the appellant in the exercise of his powers as a director of the company. The other Singapore Court of Appeal case cited by the appellant, *Ho Yew Kong v. Sakae Holdings Ltd And Other Matters* [2018] SGCA 33, can be distinguished on its facts and issues for determination by the court. Further, in that case, para 37 of the Jet-Tech case was commented on out of context, without considering that the Federal Court in *Jet-Tech* placed great emphasis on the element of the company's affairs under s 181, which was lacking in the facts of that case.

[74] Further, the appellant submitted that the decision of the Federal Court in *Looh Siong Chee v. Numix Engineering Sdn Bhd & Ors And Other Appeals* [2015] 4 MLRA 471 contradicts the *Jet-Tech* case, and that the Court of Appeal did not consider the *Looh Siong Chee* case in coming to its decision.

[75]*Looh Siong Chee* case also concerns an oppression petition under s 181 of the CA 1965, and the only leave question concerns the test under that section. The question is as follows:

> "Whether the test under s 181 of the Companies Act 1965 as expounded by the Privy Council in *Re Kong Thai Sawmill (Miri) Sdn Bhd ; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung* [1978] 1 MLRA 235 should be reconsidered in the light of recent developments in England on the law of oppression namely the passage of s 994 Companies Act 2006 read with *O'Neill v. Phillips* [1992] BCLC 1 and *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14."

[76] In that case, the appellants submitted on the issue of the affairs of the company as the requirement for an action under s 181, as stated in para 21 of the grounds of judgment, as follows:

> "[21] It was submitted by the appellants that the test under s 181 should be further explained on two aspects, namely:
>
> (1) That the expressions 'affairs of the company' under s 181(1)(a) and 'some act of the company' under s 181(b) must necessarily exclude complaints arising purely out of disputes between the shareholders in their private arrangements;
>
> (2) That the requirement of s 181 must be for the Petitioners to prove either a continuing state of "affairs of the company" or consequences of such 'act done or threatened' which has actually injured or can actually injure their rights as members.
>
> Based on the above, it will be shown that the matters complained of by the Petitioners clearly do not amount to the oppression within the meaning of s 181."

[77] It was eventually decided in that case that the core issue relating to the test under s 181 is a factual one. Given concurrent findings by the courts below, the Federal Court found no reason to interfere. (see para 31 of the grounds of judgment)

In the present case, the appellant submitted that, by implication of this decision, breach of the shareholders' agreement is actionable under s 181 and that this decision contradicts the *Jet-Tech* decision.

[78] We disagree with the appellant's simplistic approach. There is nothing in the grounds of judgment of the *Looh Siong Chee* case that contradicts the principle of law in *Jet-Tech*, in particular para 37. In fact, paras 29 and 32 of that case cited the *Jet-Tech* decision with approval. The paragraphs are as follows:

(i) "[29] Next, there is the latest Federal Court decision in ***Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal*** **[2013] 2 MLRA 345**, where in the judgment delivered by Raus Sharif PCA, *inter alia*, (from pp 359-362) it was held as follows:.."

(ii) "[32] Since the question posed to this court is whether the test under s 181 should be reconsidered, the answer lies in the position of the law and the application of the facts of the case to the law. On the facts of the case, we find that there is nothing in them to justify a choice of principle between the English case cited in the question and that in *Re Kong Thai Sawmill*. **All has been succinctly considered by this court in *Jet-Tech* and *Pan-Pacific***."

[Emphasis added]

[79] In the circumstances, we find the principle of law in para 37 of the *Jet-Tech* case is correct, and the Federal Court's finding or decision was based on the factual matrix of the case. Therefore, the answer to Question 2 is in the affirmative.

[80] Consequently, the Court of Appeal's reliance on the *Jet-Tech* case and, in particular, paragraph 37 of its grounds of judgment in coming to its decision is not an error of law that requires the intervention of this Court. The Court of Appeal initially emphasized that the five joint venture companies are only a vehicle for holding the would-be-acquired land for the Imbi Project. There were no "affairs" or business in these five companies. This was also acknowledged by the High Court, which found that the joint venture companies were no more than shell entities incorporated for the primary purpose of holding the real properties to be acquired. There was nothing for the companies to manage.

[81] Thereafter, based on the draft shareholders' agreement between MPHB and ISM, it was agreed that Caribbean Gateway Sdn Bhd would be used as their joint venture company to acquire and develop the property for the Imbi Project. (cl 2B of the draft shareholders' agreement). This, however, did not materialize.

[82] As matters that relate to the affairs of the company have not been established, an action for minority oppression under s 181 in the present case cannot be sustained.

[83] In any event, as mentioned earlier, the Court of Appeal nonetheless proceeded to examine the grounds and issues relied on by the appellant to establish oppression against the respondent, although the issues are beyond the two leave Questions.

[84] Before we proceed to discuss other issues and analyze whether there exists the element of oppression or disregard under s 181 of the CA 1965, it is relevant to refresh our thoughts on these issues as explained by Lord Wilberforce in the *Re Kong Thai Sawmill* case *(supra)* as follows:

> "Secondly, **for the case to be brought within s 181(1)(a) at all, the complaint must identify and prove "oppression" or "disregard". The mere fact that one or more of those managing the company possess a majority of the voting power and, in reliance upon that power, make policy or executive decisions, with which the complainant does not agree, is not enough**. Those who takes interests in companies limited by shares have to accept majority rule. **It is only when majority rule passes over into rule oppressive of the minority, or in disregard of their interests, that the section can be invoked**. As was said in the decision upon the United Kingdom section, there must be a visible departure from the standards of fair dealing and a violation of the conditions of fair play which the shareholder is entitled to expect before a case of oppression can be made (*Elder v. Elder & Watson Ltd*.): their Lordships would place the emphasis on "visible". And similarly, **"disregard" involves something more than a failure to take account of the minority's interest:**

> **there must be awareness of that interest and an evident decision to override it or brush it aside or to set at naught the proper company procedure** (per Lord Clyde in *Thompson v. Drysdale*). Neither "oppression" nor "disregard" need to be shown by a use of the majority's voting power to vote down the minority: either may be demonstrated by a course of conduct which in some identifiable respect, or at an identifiable point of time, can be held to have crossed the line."
>
> [Emphasis added]

The Issue Of Quasi-Partnership

[85] The other pertinent issue in the present case is whether the relationship between the appellant and MPHB is a quasi-partnership, as the appellant contends. This contention was denied by MPHB, which argued that the relationship should be treated as an unincorporated joint venture at arm's length, a pure corporate venture.

[86] The categorization of the relationship between the parties affects the application of the "just and equitable principles" in minority oppression cases under s 181. This principle applies if there is a *quasi*-partnership between the parties. The principles addressed the concept of unfairness as explained by Lord Wilberforce in *Ebrahimi v. Westbourne Galleries* [1972] 2 All ER 492:

> "The words 'just and equitable' are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is no room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations *inter se* which are not necessarily submerged in the company structures. That structure is defined by the Companies Act 1948 and by the articles of association by which shareholders agree to be bound. In most companies and most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. **The "just and equitable" provision does not, as the respondents [the company] suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it**. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."
>
> [Emphasis added]

(See also: *Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal (supra)*; *O'Neill And Another v. Phillips And Others* [1999] 2 All ER 961)

[87] In a quasi-relationship, equitable considerations may apply, but the foundation of such a relationship involves a personal relationship or personal dealings between the parties. In *Strahan v. Wilcock* [2006] EWCA Civ 13, Arden CJ explained the relationship in the following manner:

> "[19] The question whether the relationship between shareholders constitutes a 'quasi-partnership' is relatively easy to answer if the company's business was previously run by a partnership in which the shareholders were the partners. It is indeed common for partnerships to be converted into companies for tax or other reasons. It is also relatively easy to establish whether a relationship between shareholders constitutes a "quasi-partnership" when a company was **formed by a group of persons who are well known to each other**, and the incorporation was with a view to them all working together in the company to exploit some business concept which they have....Lord Wilberforce specifically refers to **an association "formed and continued" on the basis of a personal relationship**."
>
> [Emphasis added]

[88] In the present case, MPHB is a public listed company with about 33,406 shareholders at the material time and regulated by Bursa Malaysia and the Securities Commission. The majority shareholder of MPHB is Tan Sri Surin Upatkoon. On the other hand, ISM is a private limited company owned by Dato Ray Cheah and his wife, who are also the company's directors.

[89] In relation to the Imbi Project, Dato Ray mainly dealt with the MPHB's Chief Operating Officer, Madam Kheoh And Yeng, and had once presented a feasibility study for the Imbi Project to Tan Sri Surin and Madam Kheoh. Before the Imbi Project, there were no dealings or business transactions between ISM and MPHB. Their dealings in the Imbi Project were also brief. In the circumstances, we do not see any personal relationship between the parties that has developed mutual trust and confidence.

[90] The Court of Appeal found that there was no *quasi*-partnership between ISM and MPHB, essentially *inter alia*, on the following facts:

(i) Before the Imbi Project, on or around April 2007, Tan Sri Surin, Madam Kheoh, and Dato Ray were unknown to each other, except that they encountered each other socially on a few occasions. Dato Ray met Madam Kheoh sometime in March 2007, and the first land acquisition for the project, lot 646, was in April 2007.

(ii) MPHB considered Dato Ray's business proposal as any other business proposal, and it was within Dato Ray's knowledge that any decision to be made by Madam Kheoh upon consultation with MPHB's Board and its management. Madam Kheoh was the only MPHB employee and could not make any decision without MPHB's approval.

(iii) None of the MPHB's representatives on the Board of the five joint venture companies had a personal or business relationship with Dato Ray or his wife.

[91] The Court of Appeal then found that there was no mutual trust and confidence between ISM and MPHB within the brief period of two months,

and that MPHB considered it a commercial venture, especially given that ISM had no track record in a business of this scale.

[92] On the facts and circumstances of the present case, we have no reason to disagree with the Court of Appeal that the relationship between ISM and MPHB is a purely commercial relationship and arm's length and not a quasi-partnership.

The demand by MPHB that ISM contributes 30% of the purchase price for the De Vegas land that Leisure Dotcom Sdn Bhd acquired. This was contrary to ISM's stand that it was only required to contribute 30% of the cash portion, or 9% of the total acquisition costs, for each property acquired under the joint venture.

[93] On this issue, firstly, it was not disputed that parties agreed that ISM would hold 30% of the equity in the joint venture companies, whilst MPHB would hold the remaining 70%. In evidence, Dato Ray also conceded that ISM's shareholding in the venture would never be 30%, as it would be diluted once all the lands are placed in the joint venture entity. The evidence also revealed that the appellant received emails from MPHB requesting payment of its loan portion, which the appellant did not object to. The appellant was also shown to have paid RM 2.243 million on 2 October 2012, as part of the loan portion, without any objection. In Dato Ray's evidence, he agrees that the payment of RM2.243 million was based on the MPHB Group's computation sheet, without any protest.

[94] The appellant's contention that the payment of RM 2.243 million was made as a gesture of goodwill and that the appellant was not required to pay the loan portion, but the joint venture companies do, is bereft of any merit.

[95] Likewise, the payment of RM400,000.00 by the appellant on 9 July 2014. It was contended that the payment was intended to improve the cash flow of the joint venture companies, but the evidence disclosed that it was a part payment of the interest on the Maybank loans.

[96] As such, the appellant has failed to establish that MPHB's demand that the appellant contribute 30% of the purchase price for the De Vegas land acquired by Leisure Dotcom Sdn Bhd was oppressive. In fact, on 11 November 2011, the appellant made a payment of RM120,000.00, together with a prior payment of RM60,000.00, representing 30% of the acquisition price for the 1/13 share of Lot 643 for this project.

The rights issues shares undertaken by Queens Nominees (Asing) Sdn Bhd, Queens Nominees (Tempatan) Sdn Bhd, and Mulpha Kluang Maritime Carriers Sdn Bhd, which were said to have the effect of diluting ISM's holdings in the three joint venture companies.

[97] In the present case, it was established that the appellant was obligated to contribute 30% of the project's acquisition costs. The purpose of the rights

issue was to ensure that the shares allocated would maintain the appellant's and MPHB's proportionate shareholdings once subscribed. In fact, the appellant has been given notice of the rights issues exercised by an email dated 12 December 2014. The Memorandum of Association of the companies involved in the rights issues also provides for such an exercise. As there was no quasi-relationship between the parties, and Dato Ray conceded that the appellant's shareholding would never be 30%, the contention by the appellant that the rights issue was prejudicial as it dilutes the appellant's holdings in the three joint venture companies is without basis.

The imposition of interest on the shareholder advances made by MPHB for the cash portion of the funding to the joint venture companies. ISM's position is that MPHB would be liable to contribute 70% of the cash portion and to fund the entire loan portion at the interest rate of 8% per annum. On the other hand, the cash portion was not to bear any interest.

[98] On this issue, the appellant contended that the parties had agreed that the cash portion would be an interest-free advance, and the imposition of interest unilaterally by MPHB constitutes an act of oppression.

[99] However, in evidence, Dato Ray confirmed that none of the agreed terms by the parties relate to the interest, and there was no agreement that the cash portion would be an interest-free advance. It was also within the appellant's knowledge in respect of the interest costs on all advances by MPHB to the five joint venture companies. The transfer pricing guidelines, which was made known to the appellant in a letter dated 11 March 2008, also show that MPHB is entitled to charge 8% interest per annum on the advances made to the joint venture company. Therefore, the imposition of interest under the circumstances could not be considered an act of oppression.

Other Grounds

The refusal to re-elect Dato Ray Cheah as a director of the five joint venture companies. This was said as an oppression of his rights as a shareholder.

The transfer of one share in each of Leisure Dotcom Sdn Bhd, Mulpha Kluang Maritime Carriers Sdn Bhd, and West-Jaya Sdn Bhd to Jayavest Sdn Bhd. It was also contended that the transfer of shares constitutes an oppression of ISM's rights as a shareholder in the joint venture companies.

[100] As mentioned earlier, the trial judge found that these two grounds did not constitute an act of oppression, and no appeal was filed challenging those findings. The findings of the trial judge were also concurred by the Court of Appeal, a view with which we too agree.

Conclusion

[101] As discussed earlier, we answer Question 2 in the affirmative, and as a result of the answer to Question 2, we find that there is no necessity to answer Question 1.

[102] We also find that there is no appealable error by the Court of Appeal that warrants the intervention of this Court. Thus, both of the appellant's appeals are dismissed with costs.