

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR
(COMMERCIAL DIVISION)
COMPANIES (WINDING-UP) PETITION NO. WA-28NCC-445-07/2021**

In the matter of Chiptar Holdings Sdn
Bhd (Company No: 198601009017)

And

In the matter of Section 465(1)(h)
Companies Act, 2016

And

In the matter of the Companies
(Winding-Up) Rules, 1972

BETWEEN

TER CHIN HENG

(NRIIC NO: 601208-10-5359)

...PETITIONER

AND

1. CHIPTAR HOLDINGS SDN BHD

(Company No: 198601009017)

2. TER THIAN TIN

(NRIC No.: 760705-14-5771)

3. TER WEI HONG

(NRIC No.: 960916-56-5473)

4. LI YUHUA

(Peoples' Republic of China Passport No.: ED6209302)

5. THE PERSONAL REPRESENTATIVE OF

THE ESTATE OF TEH YU CHAI @ TER SWEE LEONG

...RESPONDENTS

HEARD TOGETHER WITH

DALAM NEGERI WILAYAH PERSEKUTUAN, MALAYSIA

(BAHAGIAN DAGANG)

SAMAN PEMULA NO. WA-24NCC-387-09/2021

Dalam Perkara Chiptar Holdings Sdn
Bhd (No. Syarikat: 198601009017)

Dan

Dalam Perkara Akta Syarikat 2016

Dan

Dalam Perkara Aturan 29 dan/atau
Aturan 92 Kaedah 4 Kaedah-Kaedah
Mahkamah 2012

Dan

Dalam Perkara Seksyen 50, 51
dan/atau 52 Akta Relief Spesifik
1950

ANTARA

TER THIAN TIN

(No. Kad Pengenalan: 760705-14-5771)

...PLAINTIF

DAN

1. TER CHIN HENG

(No. Kad Pengenalan: 601208-10-5359)

2. CHIPTAR HOLDINGS SDN BHD

(No. Syarikat: 198601009017)

...DEFENDAN-DEFENDAN

GROUND OF JUDGMENT

(Enclosure 1 of OS 387 and Enclosure 1, 15, 18 & 60 of Winding-Up
Petition)

Introduction

1. There are before this Court 2 related matters which have been heard together being Companies (Winding-Up) Petition No. WA-28NCC-445-07/2021 (Petition) and Originating Summons No. WA-24NCC-387-09/2021 (OS).
2. In the OS which was filed on 9.9.2021, Ter Thian Ti ("TTT") the Plaintiff therein, who is also the 2nd Respondent in the Petition, had applied to this Court for *inter alia* a Fortuna Injunction against the Defendants therein, who are the Petitioner, Ter Chin Heng ("TCH") and Chipstar Holdings Sdn Bhd ("Company") who is the 1st

Respondent in the Petition, either personally and/or its agents and/or employees be prevented from proceeding with the Petition dated 9.7.2021.

3. The Petition which was filed on 9.7.2021, sought in enclosure 1 thereto an order that the Company be wound up pursuant to section 465(1)(h) of the Companies Act 2016. In the Petition, apart from enclosure 1, various other enclosures were also fixed to be heard on the same day, namely enclosure 15 filed by TCH for an order *inter alia* that the Company be restrained from convening an extraordinary general meeting (EGM) of the Company or any adjourned meeting thereof requisitioned by TTT pursuant to a Notice dated 29.6.2021 (Enclosure 15), enclosure 18, filed by TCH for an interim liquidator to be appointed until the making of the Winding Up Order pursuant to the Petition (Enclosure 18) and enclosure 60 which is an application filed by TTT for, amongst others, the EGM to be called, conducted and held in 21 days from the date of the order to vote on a number of resolutions (Enclosure 60).
4. At the hearing of the OS and Petition on 6.12.2021, this Court had directed that the OS be heard first, but in the course of the hearing over 3 other dates, i.e 20.1.2022, 8.2.2022 and 9.2.2022, TTT's counsel had also submitted not only on the OS but its opposition to the Petition and TCH's counsel had thereafter submitted in reply to both the OS and submitted on its case vis a vis the Petition, after which the Court has ruled that it would decide on the OS, and the respective enclosures in the Petition together.

Factual Background

5. Chiptar is an investment company that is governed and bound by the MAA along with its formalities and requirements. Chiptar was established to manage its assets and properties based on the constitution of Chiptar. TTT and his late father, Teh Yu Chai@Ter Swee Leong are the 2 individuals that always been managing the affairs of Chiptar until Teh Yu Chai@Ter Swee Leong passed away on 11/2/2020.
6. Before Teh Yu Chai@Ter Swee Leong passed away on 11/2/2020, the shareholding of Chiptar is comprised of:-

No.	Name	Share Percentage (%)
1.	Ter Chin Heng (Petitioner)	10
2.	Ter Wei Hong (3 rd Respondent)	20
3.	Li Yuhua (4 th Respondent)	6
4.	Teh Yu Chai@Ter Swee Leong	54
5.	Ter Thian Tin (2 nd Respondent)	10

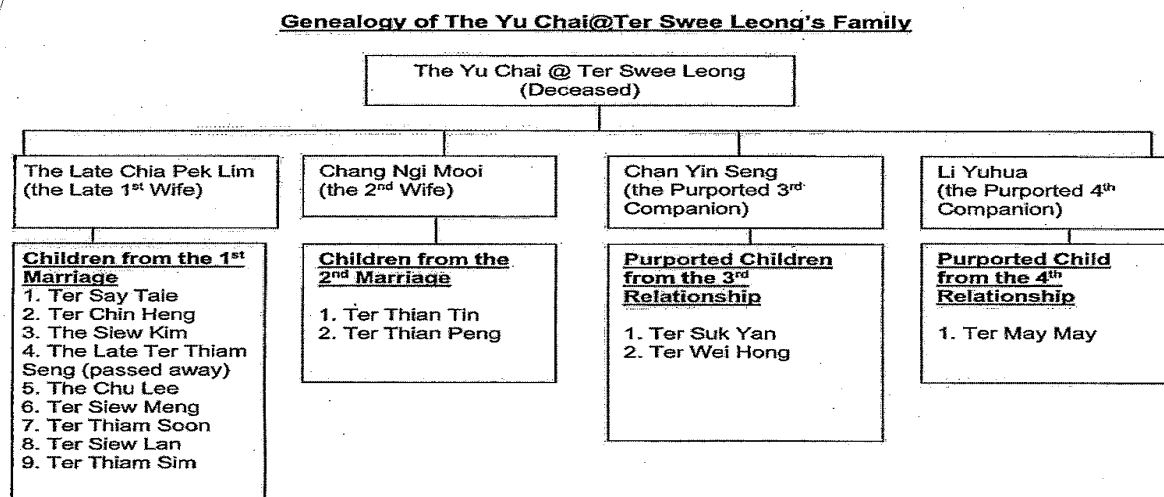
The directors of Chiptar before Teh Yu Chai @Ter Swee Leong passed away on 11/2/2020 were:

No.	Name
1.	Ter Chin Heng (Petitioner)
2.	Li Yuhua (4 th Respondent)
3.	Teh Yu Chai@Ter Swee Leong
4.	Ter Thian Tin (2 nd Respondent)

7. TCH, the 3rd Respondent and 4th Respondent had never been involved in the affairs of Chiptar besides attending to the signing of documents. TCH is a director and shareholder of the company Capital Route Sdn Bhd, a retailer and process of rice as well as wholesale distributor of household products. TCH primarily manages the affairs of this company which has an aggregate revenue of RM265,091,101.00.
8. The 3rd Respondent was not a director of Chiptar. He was only a shareholder of Chiptar. The 3rd Respondent did not manage the affairs of Chiptar. His mother Chan Yin Seng and his half-sister, Lim Suk Yee are directors and shareholders of the Company Checkers Hypermarket Sdn Bhd which also trades in household products and groceries where his interest truly lies. Eventually, the 3rd Respondent appointed Lim Suk Yee as an alternate director of Chiptar.
9. The 4th Respondent is a foreigner originated from China. Therefore, she did not want to take part in the management of the affairs of Chiptar.
10. On 6/11/2021, TTT's late father, Teh Yu Chai@Ter Swee Leong allotted 30% of his shares in Chiptar to TTT before he passed away on 11/2/2020. The allotment received the approval by all the shareholders and directors of Chiptar at that time and the transfer was witnessed by the company secretary at that time, Dato' Haji Zailan bin Mohamed. TCH, 3rd and 4th Respondents later dispute this transfer of share in which TTT credibly denies. Ultimately, all of them recognized the legitimacy of the transfer of shares when they

approved and signed the Annual Report for the Financial year End 30 June 2020 without any opposition.

11. Teh Yu Chai@Ter Swee Leong's was married to the late Chia Pek Lin through a customary marriage where they had 9 children. One of them is TCH. On or around the year 1975, Teh Yu Chai@Ter Swee Leong married Chang Ngi Mooi through a customary marriage. Through that marriage, 2 children were borne and one of them is TTT.
12. After 1/3/1982, Teh Yu Chai@Ter Swee Leong purportedly got to know Chan Yin Seng and the 4th Respondent but Ter Yu Chai@Ter Swee Leong did not register any marriage with any of them. The 3rd Respondent was born out of wedlock as a result of the affair between Teh Yu Chai@Ter Swee Leong and Chan Yin Seng.
13. The family tree of Teh Yu Chai@Ter Swee Leong is as below:



14. After Teh Yu Chai@Ter Swee Leong passed away on 11/2/2020, the shareholding of Chiptar is shown below:

No.	Name	No. of Shares	Percentage	New Percentage
1.	Ter Chin Heng (Petitioner)	150,000	10%	13.2%
2.	Ter Wei Hong (3 rd Respondent)	3000,000	20%	26.3%
3.	Li Yuhua (4 th Respondent)	90,000	6%	7.9%
4.	Teh Yu Chai@Ter Swee Leong	360,000	24%	
5.	Ter Thian Tin (2 nd Respondent)	150,000	40%	52.6%
	TOTAL SHARES	1,140,000	76%	100%

15. After this, the 3rd Respondent was appointed as the director of Chiptar. TCH, 3rd and 4th Respondents then appointed alternate directors into Chiptar. Ter Siew Lan who is a shareholder of Capital Route Sdn Bhd was appointed as alternate director to TCH. Lim Suk Yee who is the director and shareholder of Checkers Hypermarket Sdn Bhd was appointed as alternate director to the 3rd Respondent. Lee Saik Choo who is the company secretary to both Capital Route Sdn Bhd and Checkers Hypermarket Sdn Bhd was appointed as the alternate director to the 4th Respondent.

No.	Director	Alternate Director
1.	Ter Chin Heng (Petitioner)	Ter Siew Lan
2.	Ter Wei Hong (3 rd Respondent)	Lim Suk Yee
3.	Li Yuhua (4 th Respondent)	Lee Saik Choo

16. After TTT's late father, Teh Yu Chai@Ter Swee Leong passed away on 11/2/2020, TCH, 3rd and 4th Respondent have participated in the control of the management of Chiptar along with their newly-appointed alternate directors. Amongst the various resolutions since approved are as follows:

- (i) Appointed the 3rd Respondent as Director of Chiptar on 4/3/2020;
- (ii) Appointed Ter Siew Lan, Lee Saik Choo and Lim Suk Yee as alternate directors for TCH, 3rd and 4th Respondents in Chiptar on 4/3/2020;
- (iii) Appointed Lee Mooi Yoke, the sister of Ms Lee Saik Choo to replace Dato' Haji Zailan bin Mohamed as company secretary of Chiptar on 5/6/2020;
- (iv) Appointed Messrs CK Chan Law Practice as solicitors and Messrs Navaratnam Chambers as counsel for Chiptar on 28/8/2020;
- (v) Changed the registered office of Chiptar on 5/6/2020;
- (vi) Appointed Messrs Actax Management Sdn Bhd as the new tax agent of Chiptar on 5/6/2020;
- (vii) Changed the Bank signatories of Chiptar on 4/12/2020;
- (viii) Opposed the convening of EGM by TTT on 8/6/2021 and 23/6/2021;

- (ix) TCH and 3rd Respondent authorized to sign on behalf of the Board of Directors of Chiptar on 27/5/2021;
- (x) TCH be primarily responsible for the financial management of the Chiptar on 27/5/2021;
- (xi) Appointed Ter Siew Lan as General Manager with remuneration in Chiptar on 4/12/2020.

17. TTT alleges that he was entrusted with the management of THC Rice Sdn Bhd. The shareholding of THC Rice Sdn Bhd is shown below:

Current Shareholders of THC Rice Sdn Bhd

No.	Name	Total Shares	Percentage of Shares
1.	Chiptar Holdings Sdn Bhd	2,023,214	19.1892%
2.	Ter Thian Tin	8,094,250	76.7702%
3.	Chong Forng Har	426,013	4.0405%
4.	Chang Ngi Mooi	1	0.0001%
	Total	10,543,478	100%

Directors

No.	Name
1.	Ter Thian Tin
2.	Chong Forng Har
3.	Chang Ngi Mooi

Court's Findings

Fortuna Injunction

18. This Court will firstly determine the OS and whether the Fortuna Injunction sought should be allowed.
19. In coming to its decision on the OS, the Court has observed that TTT's learned counsel had initially sought for Enclosure 60 in the Petition to be heard and decided and only thereafter to hear the OS as can be seen in the Written submissions of TTT at paragraph 89 of enclosure 113 in the Petition but at the hearing on 6.12.2021, of both the OS and the respective enclosures in the Petition, TTT's counsel had made an about-turn for the OS to be heard first.
20. Be that as it may, although the OS is primarily for a Fortuna Injunction to prevent TCH and the Company from proceeding with the Petition dated 9.7.2021, there were also the prayers in the OS that Enclosures 15, 18 and 60 in the Petition be proceeded with despite the pending OS having yet to be disposed off. I further take notice that the OS was filed with a Certificate of Urgency for the said OS to be heard on an urgent basis.
21. I have taken note of TTT's submissions on the OS and why it should be granted which were primarily that:-
 - (i) there were current alternative proceedings going on between the parties being Suit WA -24NCC-530-11/2020 (Rights Issue

Suit) being initiated by the Company and Suit WA-22NCC-364-08/2021 initiated by the Company (Fiduciary Duty Suit);

- (ii) the Company was an ongoing concern;
- (iii) the Petition has caused irreparable damage to the Company and there is no prospect of success;
- (iv) if the OS is not granted then TCH Rice Sdn Bhd as the guarantor to a loan from Public Bank and Agro Bank would be dragged into financial difficulties and be prejudiced;
- (v) if the OS is granted then the natural consequence of the same would be to allow Enclosure 60 in the Petition but that this Court should allow Enclosure 60 first followed by the Fortuna Injunction;
- (vi) the Court has an inherent power to prevent an abuse of the Court's process so as to ensure that the court's process is not used for a collateral purpose i.e to stop the EGM from being convened by TTT;
- (vii) that a Fortuna Injunction can still be granted after the presentation of a Petition.

22. I have since read ***Permata Trans Offshore Sdn Bhd v New Wing Energy Sdn Bhd [2019] 1 LNS 1273*** where the High Court has held:

“[20] However, where a winding up petition has already been presented, it seems to me that consistent with the statement by

McGarvie J, if any application is to be made to prevent an abuse of the court process, such application should rightfully be made in the court where the proceedings have been commenced, namely, the winding up court. This is notwithstanding that the High Courts may have jurisdiction to grant such injunctive relief even after a winding up petition has been filed as held in Volkswagen Group Malaysia Sdn Bhd v. Loo Chay Meng [2016] 10 CLJ 748; [2016] 9 MLJ 191.”

23. I have also considered the case of ***Fortuna Holdings Pty Ltd v Deputy Federal Commissioner of Taxation [1976] 2 ACLR 349*** wherein it was held:

“When a court restrains the presentation of a winding up petition to that court it exercises part of its inherent jurisdiction to prevent abuse of its process. Mann v Goldstein [1968] 2 All ER 769 ; [1968] 1 WLR 1091 at 1093–4 . Usually a court acts against abuse of its process after proceedings have been commenced. Thus, existing proceedings may be stayed or dismissed, or documents delivered as a step in the proceedings may be struck out. This is done to relieve a party to the proceedings from an oppressive and damaging situation in which he has been placed through abuse of court process. The law has long recognized that with proceedings to wind up a company, intervention after the commencement of proceedings would often be too late to relieve the company of oppression and damage. The courts have recognized that irreparable damage may be done to a company merely through public knowledge of the presentation of a petition. Usually the damage flows from the loss of commercial reputation which results. The

courts have also been conscious of the pressure which may be put on a company, by a person with a disputed claim against it, threatening to present a winding up petition unless the company meets his claim. While that threat exists, the company, in order to avoid the damage involved in the presentation of a petition, is pressed to meet the claim although it may have substantial and genuine grounds for regarding itself as not required to do so.

The decisions of the courts have established the principle that the presentation of a winding up petition may be restrained by injunction where its presentation would amount to an abuse of the process of the court. The courts apply this principle similarly to restrain the advertisement of a petition already presented. The principle enables companies to be protected from threatened or apprehended oppression and damage from abuse of court process.”

24. I have also noted that in the Court of Appeal case of ***Mobikom Sdn Bhd v Inmiss Communications Sdn Bhd [2007] 3 MLJ 316***, the Court of Appeal had accepted that there was a second branch for the applicability of a Fortuna Injunction to be applied in situations where the first branch in ***Fortuna Holdings Pty Ltd (supra)*** does not where it was stated as follows:-

“The second branch applies to cases where there is a more suitable alternative means of resolving the dispute involved in a disputed claim against the company. They are not necessarily cases in which, as a matter of law or through absence of evidence, there is an inherent incapacity of success. They may be cases where the petitioner is entitled to present the petition, the ground is sufficient in law and there is evidence to support

the ground. They are cases, though, where, due to the availability of the more suitable alternative remedy, the court hearing the petition would in the circumstances, in the exercise of its discretion, decline to make a winding up order, at least while the circumstances remain as they are at the time of the application for an injunction. Thus the second branch applies where, because of the availability of a suitable alternative procedure, the petition is unlikely to succeed in the circumstances existing at the time.”

25. The above cases are thus authority that a Court can prevent the presentation of winding up where it amounts to an abuse of court process and to prevent the filing of a Winding Up Petition or to restrain the publication by way of an advertisement or gazette, now famously referred to as a Fortuna Injunction, where there is a threat of oppression and damage as a result of the said abuse of process and secondly where, due to the availability of the more suitable alternative remedy, the court hearing the petition would in the circumstances, in the exercise of its discretion, decline to make a winding up order whilst ***Permata Trans Offshore Sdn Bhd (supra) which had Volkswagen Group Malaysia Sdn Bhd v Loo Chay Meng [2016] 9 MLJ 191*** had decided that the argument of the defendant that the plaintiff’s application for injunctive relief is academic as the winding up petition was presented cannot be sustained following *Mobikom’s* case where the Court of Appeal held otherwise.
26. Following from the above, I now turn to consider the various suits filed by the parties against one another and in particular the effect of

the pending Rights Issue Suit being initiated by the Company and the Fiduciary Duty Suit.

27. From the facts before this Court, I have noted that there were a number of suits filed by TTT and for which CS 256, CS 400 and OS 528 in respect of the same as referred to below have been dismissed by the various Courts after hearing the same and that costs of RM420,000 in total have been ordered against TTT, being

- (i) WA-22NCC-256-06/2020 (CS 256) in exhibit TTT-21 in enclosure 4 against Ter Wei Hong and 3 others for various declarations pertaining to the Company's Directors Resolution Circular dated 4.3.2020 to be declared null and void and a permanent injunction prohibiting the BOD from passing any resolutions from exercising any due diligence on the account of Thai Hong Chan (KL) Sdn Bhd;
- (ii) Civil Suit No. WA-24NCC-400-08/2020 (CS 400) which can be found in Annexure 14 of the Petition in Enclosure 1 which is a Suit filed against TCH and 6 others for amongst others a declaration that the BOD meeting to be held on 28.8.2020 be postponed and an injunction prohibiting the BOD from being held until the disposal of CS 256;
- (iii) Originating Summons WA-24NCC-528-11/2020 (OS 528) as found in exhibit TTT-58 in enclosure 7 against the Company and 7 other Defendants to register the transfer the shares from Chong Hong Far and Chan Ngi Fong with the Companies Commission of Malaysia (CCM), a declaration

that Ter Wei Hong be removed as director valid and various other orders sought for Para 19 AIS

28. I have also perused the:

- (i) Rights Issue Suit in Suit WA -24NCC-530-11/2020 (CS 530) which can be found in exhibit TTT-36 of enclosure 5, where the Company has sought various declarations that TTT, Chong Hong Far and Chan Ngi Mooi have inter alia conducted the affairs of the Company in a manner that is oppressive and/or in disregard to the Company's interest as a member of TCH Rice Sdn Bhd and an order to cancel the allotment of shares of TCH Rice Sdn Bhd;
- (ii) Suit No. WA-24NCC-252-07/2020 (CS 252) filed by TCH in exhibit TTT-39 which was allowed by the Court wherein TCH was allowed to examine the accounting records of the Company;
- (iii) Suit No. WS-22NCVC-197-03/2021 (CS 197) which is a suit involving the Letters of Administration for the estate of The Yu Chai @ Ter Swee Leong which is still pending;
- (iv) Suit WA-22NCC-364-08/2021 (CS 364) i.e Fiduciary Duty Suit which was initiated by the Company for wrongful retention of monies which is also still pending

29. The question thus arises is whether the Rights Issue Suit and the Fiduciary Suit are more suitable alternative remedies, in which

event this court hearing the petition should in the circumstances, exercise its discretion, and grant an injunction in the OS to grant the injunction sought for in the OS and/or decline to make a winding up order.

30. After taking into account TTT's counsel submissions on the same and the submissions of counsel for TCH as well as the facts surrounding this matter and the applicable law therein as propounded above, this Court has decided in respect of the OS the following:

- (i) the prayers in the OS with regards Enclosures 15,18 and 60 in the Petition be proceeded with despite the pending OS is in my view incongruous with the prayer for the Fortuna Injunction in the OS itself and that the same appears to be a back door attempt to obtain certain reliefs which would have the effect of changing the composition of the Board of Directors (BOD) of the Company;
- (ii) from the facts and available evidence before this Court, this Court has found that the advertisement was done on 9.8.2021 and 11.8.2021 and the gazette has been done on 17.8.2021 in respect of the Petition and there is currently no status quo to preserve and that there is therefore no irreparable harm in respect of these issues to be preserved;
- (iii) the true intent of filing the OS was to have another bite of the cherry to challenge and/or change the composition of the

BOD of the Company and is therefore an abuse of this Court's process;

- (iv) on 10.9.2021 this Court was informed of the OS but nevertheless had stated that the Petition would proceed with the hearing of the Petition on 2.12.2021;
- (v) there should no longer be any delay in the hearing and disposal of the Petition;
- (vi) the issue of whether the Petition has produced irreparable damage to the Company and that the Petition would be incapable of success as matter of law or as a matter of fact has not in my view been *prima facie* proven by TTT;
- (vii) the Rights Issue Suit and the Fiduciary Suit were commenced by the Company and although TTT claims that TCH had played a part in the said suits and that as such the Petition filed is not the proper remedy as there are the availability of more suitable alternative remedies; this Court finds that the said Rights Issue Suit and the Fiduciary Suit are separate and distinct issues i.e the Rights Issue Suit is to determine the lawfulness of the rights issue in THC Rice and the dilution of the Company's shares to be diluted from 81% to 19% whilst the Fiduciary suit is to recover monies amounting to RM3.7 million which allegedly had been misappropriated by TTT as opposed to the issues raised in the Petition;

- (viii) the proper remedy in a claim for an alleged irretrievable breakdown in mutual trust and confidence is a winding up petition;
- (ix) the facts in the case of ***Mobikom Sdn Bhd (supra)*** shows that in that case the plaintiff taken out an originating summons claiming an injunction to restrain the defendant from presenting a winding up petition and from prosecuting it but before the plaintiff's summons could be heard the defendant presented its petition to wind up the company and that the Court of Appeal had in fact applied;
- (x) THC Rice financial position is not a material factor in deciding the OS as it is not a party to the OS and/or the Petition and that the proper party to assert any financial issues with regards THC Rice that may arise as a result of the Petition is THC Rice itself and that it is not for TTT to assert the same;

31. In the circumstances, this Court is dismissing the OS with costs of RM15,000 to be paid by the 2nd Respondent to the Petitioner.

Petition

32. The 3rd and 4th Respondents, who are Ter Wei Hong (TWH) and Li Yuhua (LY) respectively are supporting the Petition whilst Amanah Raya Berhad acting for the 7th Respondent, who is the Personal Representative of The Estate of Teh Yu Chai @Ter Swee Leong has taken a neutral position. In coming to this Court's decision herein, I have thus considered the submissions from the respective

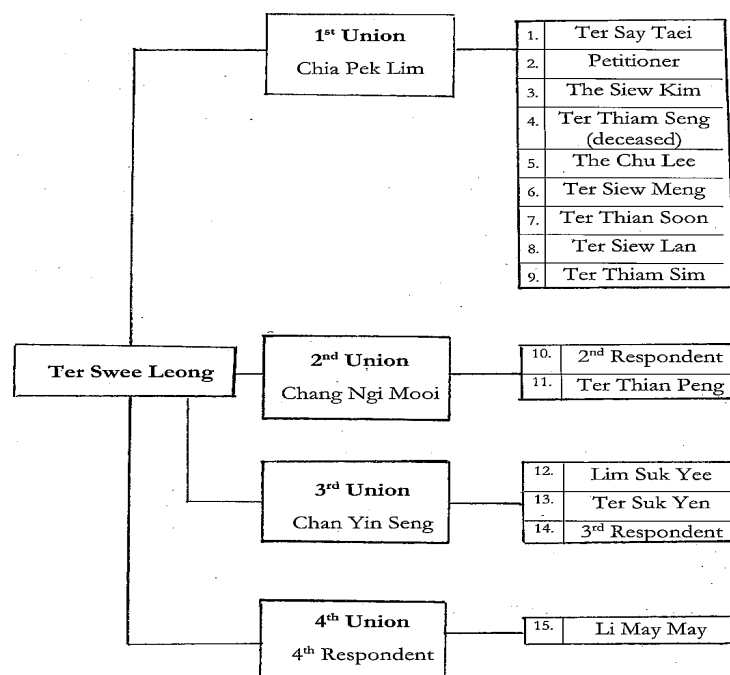
learned counsels for 3rd and 4th Respondents which in essence echo's TCH's submissions before this Court.

33. From the facts before this Court it is undisputed that as long as Teh Yu Chai @ Ter Swee Leong ("TSL") the patriarch and founder of the Company was alive, the affairs and business of the Company was under his sole control and ownership.

34. It is also undisputed that TSL had unions with individuals who were the following:

- (i) his lawful wife Chia Pek Lim, deceased
- (ii) his consort, Chang Ngai Mooi (CNM)
- (iii) his consort, Chan Yin Seng (CYS)
- (iv) his consort, Li Yuhua (LY)

35. TSL's family tree can be detailed as follows, as per Annexure B of the Petition:-



36. From the Petition, it can be seen that the primary assets of the Company were its shareholding in a trading company, THC Rice (formerly known as Thai Hong Chan (KL) Sdn Bhd) and that TSL had in his lifetime relied on TTT to help him manage the Company.

37. It was submitted by TCH that TSL had relied on TTT to help him manage the Company as:

- (i) TCH had his own business to manage and run;
- (ii) TWH was young and in the mist of pursuing his tertiary education;
- (iii) LY was a foreigner, illiterate in terms of languages apart from Mandarin and had no experience whatsoever to manage a business;
- (iv) the other BOD members and shareholders had trusted TTT believing that he was acting under TSL's instructions.

38. It is my finding that with the demise of TSL on 11.2.2020, certain issues then started to arise being:

- (i) the alleged lack of trust and confidence in TTT by TCH and the other Respondents which led to disharmony and eventually hostilities between TTT and the rest;
- (ii) TCH and the other Respondents had now sought to be more involved in the management, business and affairs of the Company;
- (iii) TWH, who owned 20% of the shares in the Company had wanted to be appointed on the board of directors;

(iv) for the Company to be run in accordance with its Constitution and the Companies Act 2016.

39. This Court has also noted, as seen in Annexure 5 and paragraph 56 of enclosure 1, that a BOD Meeting was convened on 4.3.2020 which was attended to by TTT's proxy, one Rajinder Singh a/l Kaheer Singh, wherein TWH was appointed as a director of the Company and that alternate directors for TCH, TWH and LY being TSL, Lim Suk Yee (LSY) and Lee Saik Choo (LSC) were respectively appointed.

40. It would appear that TTT had thereafter filed CS256 to challenge *inter alia* TWH's appointment wherein TCH, TWH and LY the discovered from the cause papers filed in CS 256 that the Company's shares in THC Rice were allegedly wrongfully diluted from 81% to 19% (Alleged Dilution) and that TTT had now held 81% shares in THC Rice.

41. It is also in evidence that:

- (i) there has been an alleged illegal transfer of RM3.7 million from the Company's bank accounts to THC Rice without the consent or knowledge of the other directors and which is the subject matter in the legal proceedings known as CS 364;
- (ii) CS 252 was filed based on the ground that TCH had wanted to investigate the Alleged Dilution and gone to the business premises of the Company to check the accounting records but was denied entry/access to the same;

- (iii) CS 252 was allowed by the High Court on 23.7.2020 and an order was given to allow TCH to inspect the Company's records as seen in Annexure 12 of Enclosure 1;
- (iv) a BOD meeting was called on 28.8.2020 (28.8.2020 BODM), as shown in Annexure 13 of Enclosure 1, to appoint a solicitor and seek advice on the available remedies over the Alleged Dilution after which CS 400 was filed by TTT and an injunction sought to prevent the said 28.8.2020 BODM but the same was dismissed by the High Court on 28.8.2020;
- (v) TTT had thereafter filed CS 528 to convene an EGM and to transfer 1 share from himself to his mother and wife;
- (vi) TTT has requisitioned an EGM to remove TWH as a director of the Company and to appoint to his mother and wife as directors as exhibited in Annexure 16 of Enclosure 1;
- (vii) TTT has sought to convene a BOD Meeting on 21.7.2020 to *inter alia* approve the transfer 1 share from himself to his mother and wife as can be seen in Annexure 17 of Enclosure 1;
- (viii) at the BOD Meeting on 21.7.2020, the agenda was not put to a vote and adjourned to a subsequent meeting as seen in the minutes as annexed in Annexure 19 and 20 of Enclosure 1, where various questions were posed to TTT but TTT had stated he wanted to leave early as he was feeling 'very uncomfortable' as he had a headache;

- (ix) there has been an allegation of TTT's failure to ensure timeous payment of rental collection from its factory at Shah Alam which are allegedly owned/controlled by TTT which has led to cash flow constraints resulting in the Company defaulting on its loan repayments which necessitated a BOD meeting on 2.10.2020 and 6.11.2020 to discuss the same but the Company was unsuccessful in collecting the outstanding rentals as seen in Annexure 37 and 39 respectively of Enclosure 1;
- (x) TTT had, via a letter from its solicitors dated 30.10.2020, disputed the existence of any debt from THC Rice to the Company as exhibited in Annexure 40 of Enclosure 2;
- (xi) on 28.5.2021, TTT had issued a notice to the board to convene an extraordinary general meeting to pass resolutions to amongst others appoint one Rajinder Singh Kahar Singh as a director of the Company and to remove TCH and LY as directors but the Board did not approve the said resolution which has led to the filing of Enclosure 60 before this Court;
- (xii) the Company no longer has any board representation in THC Rice and will thus have no say in how THC Rice will be run.

42. In coming to my decision, I have also considered amongst others TTT's submissions that:-

- (i) the Company had always been governed by the Memorandum and Articles of Association;

- (ii) there was no understanding or contract that TCH, TWH and/or LY would have participation in the management of the Company by way of seat in the board and as such, there is no basis for any purported breakdown in mutual trust and confidence;
- (iii) TCH, TWH or LY had never taken any interest in the affairs of the Company during the lifetime of TSL;
- (iv) after the demise of TSL, TCH, TWH and/or LY had taken control of the BPD of the Company and had passed whatever resolutions they deemed fit in their interest;
- (v) the Petition is a knee jerk reaction to TTT convening an EGM which was due on 28.7.2021 in which resolutions to remove TCH and the 4th Respondent as directors of the Company was proposed;
- (vi) there is no oppression suffered by TCH, TWH and/or LY;
- (vii) there is no deadlock in the management of the Company as the shareholders of the Company are not split 50:50;
- (viii) there is no evidence of embezzlement of the fund;
- (ix) the sole reason for the Petition is to ensure that the EGM convened by TTT will not take place;
- (x) TCH has not come with clean hands;

- (xi) ongoing concerns where TCH Rice will be affected should the Petition be granted such as loss of jobs and the survivability of TCH Rice financially due to the corporate guarantees given;
- (xii) what has been done by TCH is a valid exercise of powers conferred upon him by the Articles;
- (xiii) TCH, the 3rd and 4th Respondents were not excluded from the management in the Company;
- (xiv) the Company is not insolvent;
- (xv) the relief of winding up would likely compromise the business of its subsidiary Company;
- (xvi) TTT has the right as the majority shareholder to remove any directors without reason and that the minority shareholders must submit to the will of the majority;
- (xvii) TCH has not proven that TTT has exercised any powers for a purported improper purpose and that there is an absence of any findings by a Court of any purported breach of director's duties, fraud or conspiracy;
- (xviii) the Court should be slow to interfere with the business decision of the Company and should only craft orders which are the least intrusive to the management of the affairs of the Company;

- (xix) there is no legitimate expectation that the 3rd Respondent must be appointed as a director of the Company and that TCH, the 2nd and 3rd Respondent has acquiesced to the fact that the Company was primarily managed by TTT and Teh Yu Chai @ Ter Swee Leong (TYC) all this while and thus there was never a legitimate expectation that the Company would have adequate representation among the family members of TYC;
- (xx) the withdrawal of RM7 million by TTT which TCH is alleging is illegal and which TTT claims is a loan made by TYC which was never disputed by anyone when he was alive;
- (xxi) the parties can still cooperate with each other.

Law

43. It is trite that it is, in law, justifiable to wind up a company where there is a breakdown of mutual trust and confidence, and which authority for this can be found in ***Ebrahimi v Westbourne Galleries Ltd & Ors [1973] AC 360*** and the Privy Council in ***Tay Boon Chok v Tahansan Sdn Bhd [1987] 1 CLJ 441*** where Lord Templeman held:

“The Courts of Malaysia are agreed that the principles enunciated in In Re Westbourne Galleries [1973] AC 360 apply to a petition under s. 228 for a winding up on just and equitable grounds. In that case Lord Wilberforce, at p. 379, pointed out that 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 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 structure. That structure is defined by the Companies Act 1965 and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not,... entitle one party to disregard to 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; 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."

44. The Federal Court in ***Perak Integrated Networks Services Sdn Bhd Urban Domain Sdn Bhd & Anor [2018] 5 CLJ 513*** has made it clear that the elements of a quasi-partnership enumerated by Lord Wilberforce in *Ebrahimi* are not preconditions before the 'just and equitable' provision can be relied on and that there may be a myriad of circumstances where the said rule may apply. It was stated in ***Perak Integrated Networks Services Sdn Bhd (supra)*** as follows:

"[70] Lord Wilberforce went on to enumerate a number of elements typically present where the "just and equitable" ground is invoked:

"The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves."

[71] It is noted that these elements are non-essential, and are not to be interpreted as preconditions before the just and equitable clause can be relied upon: Tien Ik Enterprise Sdn Bhd & Ors v Woodsville Sdn Bhd [1995] 1 LNS 99; [1995] 1 MLJ 769 at 776.

45. The Court is also not required to apportion blame to any one party as can be seen in cases such as ***Liew Then Song & Anor v Percetakan Yelian Sdn Bhd & Anor*** [2019] 9 CLJ 139 where the High Court held:

"[37] As the author Margaret Chew said in her book "Minority Shareholders' Rights and Remedies ", oftentimes, the reality is that the relationship between erstwhile business partners

deteriorates to one peppered with bitterness, virulence and spite, without a catalytic or particularly blameworthy party. The courts are amenable to winding up a company without apportioning fault or blame, on the basis that the parties have fallen out. In Re Central Realty Co (Pte) Ltd [1999] 1 SLR 559, Rubin J held that the company concerned ought to be wound up on the following fault-neutral basis:

Whatever the true nature of the understanding [between the shareholder-directors], the facts presented by both parties amply demonstrated that there had been a complete breakdown of their relationship. While I was hesitant to attribute blame to either party for the cause of such unpleasant bitterness and rancour, it became apparent that parties were unlikely ever to co-exist in any enterprise between themselves and in this regard I share the sentiments expressed by Wylie J in Re Rangomātane Farms Ltd that 'where there can be no clear cut apportionment of blame for bringing about the breakdown, the real determinant should be the existence of the breakdown, not the cause of it.'"

46. After careful consideration of the issues before me, in particular each of TTT's submissions and contentions herein, I do find that the parties are unable to work together based on the alleged differences amongst them in particular the allegations of the Alleged Dilutions i.e the Fiduciary Suit and the Rights Issue Suit as well as the numerous civil suits that have been filed against one another and of which some are still pending in the Courts as well as the dispute on the withdrawal of RM7 million by TTT from the Company.

47. With respect, I find as I did in ***Williams Boniface Mobin Roy V. Abdul Sani Abdul Kudus & Ors [2020] 1 LNS 2144*** where this Court had stated:

“I find that it is quite apparent that the relationship between the parties have deteriorated to a point where the parties can no longer communicate with each other and which would, in my view, cause the Company to be unable to continue to function as a commercial entity in particular to purchase properties for investments and to collect rentals thereto, as there appears to now have been a breakdown in the mutual trust and confidence between the said parties grounded on the conduct of R1 in regard to the company's business.”

48. I also refer to case of ***Yap Lai Seng v High-On Industries Sdn Bhd & Anor [2016] 1 AMCR 146***, where there was a breakdown in the relationship and the parties were no longer on talking terms. The Court there found it is just and equitable to wind up the company as it would be difficult for the parties to be working together again. At paragraph [25] of the judgment, the learned Judge held:

*"The company still owns the land estimated to be worth between RM1 million and RM2,400,000.00 based on the offer. The parties are no longer on talking terms. There has been a breakdown of mutual trust and confidence between the parties. The partnership or quasi-partnership between the Petitioner and the 2nd Respondent has broken down. It would be difficult for both of them to be working together in the company or to enhance the interest of the company: see *Ebrahimi v Westbourne Galleries Ltd [1972] 2 All ER 492*; *Tay Bok Choon v**

Tahansan Sdn Bhd [1987] 1 CLJ 441; Tan Kim Hor & Ors v Tan Heng Chew & Ors [2009] 2 CLJ 242".

49. All that said and done and based on the facts before me, I hold that there is a complete breakdown and total mistrust and confidence between TCH, TWH and/or LY on the one hand against TTT on the other, which has reached the point of no return and for which it is impossible for the parties in dispute to continue to co-exist. I must at the risk of being repetitious, state that it matters not who was responsible for this impasse as it is clear that the parties are no longer on talking terms. In this Court's opinion, it is clearly been demonstrated that there had been a complete breakdown of their relationship and accordingly based on the same, I agree with TCH that the only way for the shareholders to realize a fair value for their shares is through a liquidation exercise.
50. With respect, this Court cannot therefore allow the prevailing situation to prevail and for further and endless litigation between the parties. This will be contrary to the interest of the Company as well as its shareholders and in the circumstances, the Company cannot be expected to continue to function or administered as a going concern.
51. As mentioned earlier, this Court has noted that TWH and LY have supported the Petition and that their joint shareholding together with TCH amounts to 36% of the shareholding in the Company which factor has also played a part in this Court's determination of the Petition herein.

52. Wherefore this Court will grant an order in terms for:

- (a) paragraph 1 of the prayer in Enclosure 1 to wind up the Company;
- (b) as for paragraph 2, this Court had considered the nominations of the respective parties in respect of the liquidator to be appointed and after due consideration of the same, this Court has after taking into account the justice of the case, will appoint Ralph Ravin Ratnaswamy as the liquidator for the Company as there has been no legitimate challenge made by TTT on the same save that TTT has proposed his own choice of liquidator;
- (c) paragraph 4 therein with costs of RM30,000 to be paid by the 2nd Respondent to the Petitioner.

Enclosures 15, 18 & 60

53. Following from my decision on the Petition, I hold that Enclosure 15 for an order *inter alia* that the Company be restrained from convening an extraordinary general meeting (EGM) of the Company or any adjourned meeting thereof requisitioned by TTT pursuant to a Notice dated 29.6.2021 and enclosure 18, filed by TCH for an interim liquidator to be appointed until the making of the Winding Up Order pursuant to the Petition as well as enclosure 60 which is an application filed by TTT for, amongst others, the EGM to be called, conducted and held in 21 days from the date of the order to vote on a number of resolutions are now academic and that Enclosures 15, 18 and Enclosure 60 are hereby dismissed.

54. I make an order for costs of RM10,000 to be paid by the 2nd Respondent to the Petitioner for enclosure 60 and no order as to costs for enclosures 15 & 18.

Dated: 21st day of March 2021

sgd.

**NADZARIN WOK NORDIN
JUDICIAL COMMISSIONER
KUALA LUMPUR HIGH COURT**

Parties:

*David Thomas Matthews, Tina Ann Francis and Jason Tan Jen Hua for the Petitioner in the Petition and the 1st Defendant in the Originating Summons and mentioning on behalf of Amanah Raya Berhad as personal presentative representing the 5th Respondent in the Petition
[Messrs Mathhews Hun Lachimanan]*

*Derrick Chan Choon Keong and Brandon Toh Xianming for the 2nd Defendant in the Petition
[Messrs CK Chan Law Practice]*

*James Ee Kah Fuk, and Marcus Chong Chao Shern for the 2nd Respondent in the Petition and the Plaintiff in the Originating Summons
[Messrs K.F Ee & Co.]*

Dato' Prem Ramachandran and Shaarvin Raaj for the 3rd Respondent in the Petition

[Messrs Kumar Partnership]

Harvinder Singh Sidhu for the 4th Respondent in the Petition

[Messrs Vin Law Co.]