Section 314 of Companies Act: court orders one-member extraordinary general meeting

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In February 2020 a high court allowed a shareholder to convene a one-member extraordinary general meeting (EGM) of a family-run company in *Lee Yee Wuen v Kien Yiap Trading Sdn Bhd.*(1) In applying for a court-ordered meeting, applicants must prove that it is otherwise impracticable to hold the meeting. This case is significant to the issue of whether the application of this test is different for family-run companies.

Background

The subject company has two shareholders. The plaintiff (majority shareholder) filed an oppression action against, among others, a family member who is the other shareholder (minority shareholder) of the company (first originating summons). The plaintiff filed another action pursuant to Section 314 of the Companies Act 2016 to convene the EGM in respect of the same company (second originating summons). The second originating summons was filed due to the minority shareholder's absences from the previous EGMs sought by the plaintiff. Due to the two-person quorum requirement for a members' meeting, the plaintiff had been unable to hold an EGM. Both applications included a request to hold an EGM.

Preliminary objection

Before going into the merits of the second originating summons, the court had to consider a preliminary objection raised by the minority shareholder – namely, whether the second originating summons should be struck out due to multiplicity of proceedings, given that both applications included the same request for the holding of an EGM.

The court dismissed the preliminary objection, essentially because the basis for invoking the meeting in the first and second originating summons was different. In the first originating summons, the company secretary issued a notice for the members to discuss the proposed appointments of the plaintiff and another person as directors of the company. That earlier EGM had not proceeded due to the lack of quorum caused by the minority shareholder's non-attendance. In the second originating summons, a separate notice was issued by the plaintiff under Section 314 of the Companies Act for the appointment of a different set of persons as directors. The court was also influenced by the fact that the request to convene the EGM in the first originating summons would be withdrawn.

Impracticability of meeting

The main issue was whether it was impracticable to hold a meeting of the company, which is the test under a Section 314 application.

The court started by examining the reasons put forward by the minority shareholder for not attending the EGM – namely, the minority shareholder alleged that he had needed to:

- spend time considering creditors' and suppliers' concerns so as to prevent them from taking legal action; and
- attend a case management hearing fixed for the same day.

The court did not consider these as valid reasons. The court held that the minority shareholder's absence at the EGM had been deliberate. The excuse regarding the attendance of a case management hearing was unacceptable, as the minority shareholder's personal attendance was not directed by the court.

The court then investigated the relevant provisions in the company's memorandum and articles of association. In this regard, the court acknowledged that Article 46 of the memorandum and articles of association provides for a quorum of two for members' meetings and Article 67 of the memorandum and articles of association provides that a minimum of two directors are required for a company meeting.

In dealing with the allegations that the plaintiff would act against the company's best interests, the court found that:

- a shareholder owes no duty to the company;
- a shareholder is entitled to prioritise its own interests; and
- no oppression action had been filed against the plaintiff.

Thus, the minority shareholder was prohibited from stifling the company's proper functioning and operation. The court was minded to enforce and maintain proper corporate governance in accordance with the Companies Act and the memorandum and articles of association. Minority shareholders must accept the principle of majority rule, so long as there is no oppression, and cannot use the quorum provision to curtail the majority's right. Importantly, the court also recognised that the application of the test under Section 314 of the Companies Act is no different in terms of a family-run company. Notably, the relationship between the members in this case was not otherwise regulated by a shareholder agreement.

Hence, the court was satisfied that it was impracticable for the plaintiff to convene the EGM without the court's intervention. The second originating summons was allowed.

Comment

This judgment has re-entrenched the judiciary's role in safeguarding the hallmarks of corporate democracy and preserving the majority rule. The court will not hesitate to intervene when certain shareholders purport to use the company's quorum requirements as a form of veto to deny the majority's rights. Notably, the court also applied the judgment of Aedit Abdullah JC in *Lim Yew Ming v Aik Chuan Construction Pte Ltd* ([2015] 3 SLR 931 (Singapore High Court)) that no special treatment is to be given in terms of family-run companies. The same legal test of impracticability should be applied consistently across the board.

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Endnotes

(1) *Lee Yee Wuen v Kien Yiap Trading Sdn Bhd* [2020] 1 LNS 236 (high court).
