IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR

(COMMERCIAL DIVISION)

[ORIGINATING SUMMONS NO. WA-24NCC-569-10/2019]

In the matter of the Special Notice and Notice of Extraordinary General Meeting dated 19 September 2019 (the EGM Notice") issued by three members of Golden Plus Holdings Berhad purporting to convene an extraordinary general meeting for the removal of directors and for the appointment of directors under sections 206 and 322 of the Companies Act 2016

And

In the matter of the Extraordinary General Meeting of members convened purportedly pursuant to section 310(b) of the Companies Act 2016 by three members of the Company on 16 October 2019 at 9:00 a.m. at Melia Seasons Restaurant, 43, Jalan Ria 1, Kawasan Perindustrian Ria, 43000 Kajang, Selangor

And

In the matter of the Articles of Association of Golden Plus Holdings Berhad

And

In the matter of the Companies Act 2016 and inter alia sections 206, 310, 311 and 322 thereof

And

In the matter of sections 41, 50 to 53 of the Specific Reliefs Act 1950

And

In the matter of Order 15 rule 16 of the Rules of Court 2012

And

In the matter of the inherent jurisdiction of this Court

BETWEEN

GOLDEN PLUS HOLDINGS BERHAD
(Company No: 113076-T) ... Plaintiff

AND

1. TEO KIM HUI
[Identity Card No.: 940605125261]

2. TEO HAN TONG
[Identity Card No.: 311106125089]

3. LAI SU-CHEN
[Passport No.: 306729784]

4. CHIEW KEONG ON
[Identity Card No.: 620626125056]

5. YAPP KIAM YEN
[Identity Card No.: 591007125357]

6. WONG KOON WAI
[Identity Card No.: 750914145795]

7. TEH WEI KIAN
[Identity Card No.: 960531435109]

8. YONG CHOOI LAN
[Identity Card No.: 690802105332]

9. KWA KIM LEONG
[Identity Card No.: 770601086251]

10. WU KWOK YING MARIA
[Passport No.: GBR548181044] ... Defendants

GROUNDS OF JUDGMENT

Abstract

[1] This appeal touches on the new provision introduced under section 310 of the Companies Act 2016 ("**the 2016 Act**"). It is a determination of whether two (2) or more members of a company are allowed to convene a meeting under section 310 (b)

of the 2016 Act. The primary issue being the use of the noun "member" rather than the plural noun of "members".

[2] This decision explains the reason why the noun "member" in section 310 (b) permits more than two (2) persons to convene a meeting under the said new provision.

Introduction

[3] The Plaintiff in this action filed the Originating Summons ("**the OS**") seeking among others for the following relief at Prayer 1:

> "A declaration that the Notice dated 19th September 2019 issued by the 1st to 3rd Defendants ("the EGM Notice") convening an Extraordinary General Meeting of Golden Plus Holdings Berhad ("the Company") be declared null and void as being contrary to section 310(b) of the Companies Act 2016".

[4] At the conclusion of the hearing, this Court disallowed the abovementioned prayer and ruled that the meeting was validly convened by the First, Second and Third Defendants.

[5] The Plaintiff, the 7th Defendant and the 8th Defendant who are aligned with the Plaintiff appealed against the dismissal of Prayer 1.

[6] For purposes of addressing the parties in this case, Golden Plus Holdings Berhad will be addressed as "**the Company**". The 1st to 3rd Defendants who issued the Special Notice and Notice of Extraordinary General Meeting dated 19.9.2019 ("**the EGM Notice**") shall be addressed as "**the Conveners**".

Agreed facts

[7] The agreed facts as can be found in enclosure 19 are:

1. A Notice for an Extraordinary General Meeting dated 12.9.2019 ("the EGM Notice") was issued by the 1st to 3rd Defendants who are the following members ("the Conveners") of Golden Plus Holdings Berhad ("the Company"), each of whom held the following number of shares being the following percentage of shares in the Company:

	Name of Shareholder	*Amount of shares*	*Percentage*
1.1.	Teo Kim Hui	3,878,500	2.64%
1.2.	Teo Han Tong	5,447,900	3.71%
1.3.	Lai Su-Chen	7,802,000	5.31%

2. The EGM Notice proposed resolutions to remove the entire Board of the Company and replace them with the 4th to 6th Defendants who were nominated by the Conveners ("the Resolutions").

3. The EGM was convened on 16.10.2019, and Tan Yen Siang was the Chairman of the EGM. Tan Yen Siang was one of four members of the incumbent Board present at the EGM and is the 5th Defendant in Kuala Lumpur High Court Originating Summons No. WA-24NCC- 583-10/2019 (Suit 583).

4. Upon the commencement of the EGM, one Quek Yiing Huey being the proxy for three members (including the 8th and 10th Defendant herein) raised a point of order challenging the validity of the EGM Notice relying on

section 310(b) of the Companies Act 2016. She contended that the convenor was required to be a single member holding not less than 10% of the issued share capital of the Company rather than a composite of various members together holding in aggregate the 10% threshold under the provision.

5. After hearing arguments from members present, the Chairman announced that he would be adjourning the EGM to a time and date to be fixed later on purportedly pursuant to Article 65 of the Company's Constitution to ascertain the point of law raised.

6. The Chairman, the directors and some members including Quek Yiing Huey being the proxy for three members then left the meeting venue.

7. After the adjournment, those members who remained in the meeting venue purportedly appointed another Chairman and held an EGM whereby The Resolutions were passed *in toto*.

Analysis of the Court

[8] It is apposite to state that the Companies Act 2016 ("**the 2016 Act**") provides four (4) modes on how meetings of members can be convened.

[9] The four (4) modes are by :

(i) the Board;

(ii) a member;

(iii) the Board at the request of members;

(iv) the Court.

[10] It bears emphasis that the drafters of the 2016 Act saw it fit to introduce a new standalone provision found in section 310. The 2016 Act empowers either the board of the company or a member of the company, on their own volition to convene a meeting. This is found under section 310 of the Act. It reads as follows:

> "310 Power to convene meetings of members
>
> A meeting of members may be convened by-
>
> *(a)* the Board; or
>
> *(b)* any member holding at least ten per centum of the issued share capital of a company or a lower percentage as specified in the constitution or if the company has no share capital, by at least five per centum in the number of the members".

[11] Therefore, at their own volition, a board of the company and a member of a company exercising a right to self-help, are entitled to convene a meeting. In the case of a member wishing to exercise this right, it can be done if the said member meets the statutory threshold of holding the requisite number of shares.

[12] When a member elects to convene a meeting under this provision, the member is responsible to make all the necessary arrangements for the meeting. This includes the issuance of the notices. Apart from ensuring the statutory requirements are met, the member is also responsible for arranging for the venue and bearing the cost of the said meeting (See *Wintoni Group Berhad v. Kang Choun Leu @ Kang Chee Sim*). Section 310 (b) is

similar to section 145 of the Companies Act 1965 ("**the 1965 Act**").

[13] A meeting can be convened by the board of the company at the request of members. This is found in section 311 of the 2016 Act. This provision must be read together with sections 312 and 313 of the 2016 Act. If a meeting is convened by this mode, the company shall bear the organizational cost and will be responsible to issue the requisite notice to call for the meeting.

[14] A court may also convene a meeting of a company. This is found under section 314 of the 2016 Act. This can be done by the court on its own initiative, on the application of the directors of the company or members who are entitled to vote or the personal representative of any such member.

[15] The issue for determination by this Court focuses on section 310 (b) of the 2016 Act. In particular whether a plurality of shareholders making up 10% of the shareholding in the Company can validly convene an EGM.

[16] It is the contention of the Plaintiff that the meeting convened by the Conveners was invalid as section 310 (b) only allows a single member to requisition for a meeting. It is to be noted that the term "single member" was emphasised by the Plaintiff. However, the actual language found in section 310 (b) only uses "member".

[17] In considering the arguments, recourse was made by this Court to section 4(3) of the Interpretation Acts 1948 and 1967 ("**Act 388**") which reads as follows:

> "4(3) Words and expressions in the singular include the plural, and words and expression in the plural include the singular".

[18] It is axiomatic that this Court is entitled to rely on Act 388. There is no prohibition for this Court from doing so. Reference to Act 388 should be the first port of call where an interpretation of any law is required. This is consistent with the long title of Act 388 which reads as:

> "An Act to provide for the commencement, application, construction, interpretation and operation of written laws; to provide for matters in relation to the exercise of statutory powers and duties; and for matters connected therewith."

[19] As such, based on the section 4(3) of Act 388, section 310(b) does not suffer from an interpretation that excludes the plurality of the word member. Member can include members and vice versa. Furthermore, there is no express prohibition to disallow two (2) or more members to convene a meeting under section 310(b) of the 2016 Act.

[20] The application of section 4(3) of Act 388 with regards to the plurality of the word member was approved in the recent decision of the Court of Appeal in *Kwan Hung Cheong & Anor V. Zung Zang Trading Sdn Bhd* [2018] 10 CLJ 517:

> *"Going by s. 4(3) of Act 388, words in the singular include the plural, and vice versa. We are therefore of the opinion that the words "members" and "requisitionists" in s. 144 of the CA 1965 may be construed to refer to "member" and "requisitionist" in the singular in that section, as the case may be. Thus, it cannot be held against the*

respondent if there is only one requisitionist, and not more than one requisitionist, who made the requisition for the EGM. Be that as it may, having held earlier that the requisition issued by PW1 is invalid, we do not think that this issue."

[21] This was also the position taken in *Granasia Corporation Bhd & Ors v. Choong Wye Lin & Ors And Another* [2008] 4 CLJ 893 where the court held a that a single member was competent to requisition a meeting despite the language of section 145 of the 1965 Act which states "*Two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per centum in number of the members of the company or such lesser number as is provided by the articles may call a meeting of the company*."

[22] However, in the case of *Dato' Abdul Rahman Dato' Mohammed Hashim & Ors v. Mass Media Interactive Sdn Bhd & Ors* [2011] 1 CLJ 533**,** the court ruled that a single shareholder cannot requisition a meeting as the provision of section 145 of the 1965 Companies Act expressly states "two or more shareholders".

[23] The current drafting of section 310(b) harmonises the rulings in ***Granasia*** and ***Dato' Abdul Rahman*** as it allows one (1) or more shareholders to convene a meeting as interpreted under Act 388.

[24] This Court is of the view that the drafters of the 2016 Act in their own wisdom saw it appropriate to draft section 310 (b) in such a manner as section 4(3) of Act 388 would allow an interpretation of the term member to include members.

[25] In canvassing their point, the Plaintiff argued that if more than one (1) shareholder desires to requisition a meeting, it must be convened under section 311 (3) (a). It was stressed to this Court

that this is the only avenue open when two (2) or more members wish to convene a meeting. With respect, this Court is unable to accept the argument for the following reasons.

[26] Firstly, by applying the reasoning of the Plaintiff, it would mean two (2) or more shareholders cannot requisition a meeting of the company on their own volition. They must instead require the directors or the board to requisition a meeting on their behalf. Such an interpretation works against the spirit of the 2016 Act which recognises the different modes of how meetings are convened.

[27] Such an interpretation would potentially deny the right of shareholders to convene a meeting. In a scenario where shareholders and the board are in dispute, seeking the board to convene a meeting under section 311 may well be a futile effort.

[28] Secondly, the right to convene a meeting must be unfettered as it is equated with the right of a shareholder to vote. The right to vote is sacrosanct to a member and cannot be dispossessed. (See *Seacera Group Berhad v. Dato' Tan Wei Lian & Ors* [2019] 1 LNS 762). This Court is also guided by the Court of Appeal decision in *Indian Corridor Sdn Bhd & Anor v. Golden Plus Holdings Berhad* [2008] 3 MLJ 653 where the right of shareholders to convene a meeting was described as a valuable right.

[29] This Court is further fortified in its view when the 2016 Act introduces a new provision which spells out the powers attached to shares. This is provided in section 71 where it reads as:

71. Rights and powers attached to shares

(1) A share in a company, other than preference shares, confers on the holder-

(a) the right to attend, participate and speak at a meeting;

(b) the right to vote on a show of hands on any resolution of the company;

(c) the right to one vote for each share on a poll on any resolution of the company;

(d) the right to an equal share in the distribution of the surplus assets of the company; or

(e) the right to an equal share in dividends authorized by the Board.

(2) Notwithstanding paragraph (1)*(e)*, the right to dividends as specified therein may be negated, altered or added to by the constitution of the company or in accordance with the terms on which the share is issued.

[30] With such clear powers conferred on shareholders, it must a *fortiori*, mean the power to exercise those rights cannot be curtailed by limiting the persons who can convene a meeting under section 310(b).

[31] Thirdly, to require a single member to hold 10% of a company's shares before being able to requisition a meeting would be simply too onerous. While it would be common for institutional members to hold 10% or more shares, it would not be common to have a single individual member to hold 10% of a company's shares especially in public companies where the shareholding spread run into millions of shares.

[32] To put it in perspective, section 136 of the 2016 Act defines a substantial shareholder as "*A person who has an interest in one or more voting shares in a company and the number or the aggregate number of such shares is not less than 5% of the total number of all the voting shares included in the company.*" It cannot mean that only a single substantial shareholder who holds at least 10% of the shares can convene a meeting under this provision. Such a rigid interpretation must be avoided.

[33] Fourthly, shareholders whether acting individually or in a group must be empowered to act. This is consonant with the intention of Parliament to empower shareholders under the 2016 Act. Section 310(b) which provides for self-help, is one such empowering provision. It must *ex necessitae rei* receive a liberal interpretation in order to achieve the object aimed by Parliament.

[34] The purpose and object underlying the statute should be heeded. This is prescribed by section 17A of the Act 388, which reads:

> "Section 17A - Regard to be had to the purpose of Act
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object."

[35] Minority shareholders must be allowed to group together and be permitted to requisition meetings. The interpretation to include more than one member in section 310(b) will dovetail seamlessly with the intention of empowering shareholders.

[36] Counsel for the Plaintiff also argued that not only is section 310 (b) and section 311 different on the use of the word "members", they also differ on the type of share capital. Section 310 (b) uses 10% of issued share capital while section 311 (3) (a) uses 10% of paid up share capital.

[37] It is trite and common understanding that issued share capital essentially speaks of shares that are both paid and not paid. While it may not necessarily mean that all shares have been paid for, but for those allotted and paid, it is the paid-up share capital of the company.

[38] In terms of classification of shares, they are the same. They are ordinary shares. Only nomenclature distinguishes them. With respect, this Court does not consider this to be a pertinent issue in this current case. Nothing turns on this argument but for an attempt to split hairs to raise it as a separate requirement.

[39] Treasury shares are simply shares that are bought back by the company which has the effect of reducing the shares in the open market. It is not in circulation and rightly so, it is excluded under section 311.

[40] On the strength of the above findings by this Court, there is no requirement for this Court to embark on a comparison of the term "members" found in section 311 (3) (a) of the 2016 Act as well as other parts of the 2016 Act which makes mention of the word member and members.

[41] In the foregoing, the EGM Notice dated 19.9.2019 requisitioned by the Conveners was validly issued pursuant to section 310 (b) of the 2016 Act.

Conclusion

[42] Premised on the above reasoning, prayer 1 of the OS is therefore dismissed with costs.

(AHMAD FAIRUZ ZAINOL ABIDIN)
Judge
High Court of Malaya
Kuala Lumpur

Dated: 10 APRIL 2020

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Legislation referred to:

Companies Act 2016, ss. 71, 310(b), 311, 314

Companies Act 1965, s. 145

Interpretation Acts 1948 and 1967, s. 4(3)