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23. MEDIATION AND APPROPRIATE DISPUTE RESOLUTION

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I. Introduction

23.1 In 2022, it is noteworthy that the General Division of the High Court ("High Court (General Division)") has increasingly, in its published judgments, called for disputing parties to proactively pursue mediation. For instance, in *Leong Quee Ching Karen v Lim Soon Huat*,[2] the claimant filed a case for minority oppression in the High Court (General Division). Practically speaking, it would have been most feasible for her to obtain a buyout remedy for her stake in the company. Nonetheless, the claimant insisted on having her day in court by applying to the courts to force a special audit on the company instead of being content with the buyout remedy. Though the High Court (General Division) refused to strike her claim out, Goh Yihan JC urged the disputing parties to consider mediation to resolve what he thought was a shareholder dispute over a narrow and technical issue.[3]

23.2 In *Phua Kiah Mai v The Kheng Chiu Tin Hou Kong and Burial Ground*,[4] the plaintiff applied to wind up a company which was incorporated in 1964 for the purposes of maintaining a temple that

1 The authors would like to thank legal researcher Sarah Lim Hui Feng for her research and editorial contributions to this chapter.
2 [2022] SGHC 309.
3 *Leong Quee Ching Karen v Lim Soon Huat* [2022] SGHC 309 at [99].
4 [2022] SGHC 36.

was built by local Hainanese migrants and providing support to the Hainanese community in Singapore. The High Court (General Division) ordered the company to be wound up because, despite years of attempts at reconciliation and mediation, the underlying crux of disputes between the stakeholders of the company remained unresolved. Emphasising the importance of reconciliation and mediation to further the best interests of communities, Aedit Abdullah J did not mince his words after ordering the winding up of the company:[5]

> I must note here what I said in the earlier action which culminated in the Consent Order that came to nought: the needs of the community have not been well served by the disputes between the parties. Mediation did not resolve matters, and even the involvement of eminent persons did not help. I feared that the present legal proceedings would not be the end of things, even when the matter was disposed of on appeal. There was every danger that there would be a downward spiral, with the depletion of resources that were meant to be for the good of the community. Whether that downward trajectory could be arrested was a matter for the persons involved, who claimed to be leaders of that very same Hainanese community.

23.3 In *Gunasegarn s/o Sinniah v Singapore Indhia Kalaingyar Sangam (Singapore Indian Artistes' Association)*,[6] the plaintiff was a former leader of an association that was set up to promote Indian drama, dance and music in Singapore, who was expelled for technical breaches of the association's constitution. Choo Han Teck J urged:[7]

> It would be in the interests of the defendant to mediate an amicable settlement so far as the plaintiffs are concerned if it is to continue its high social aim of promoting art and artistes. This court is not in a position to resolve the fundamental problems that gave rise to the two applications. Justice may not have been complete in this case, but courts cannot always do justice because they do not have unlimited powers, as they are sometimes imagined to have. …
>
> … But sometimes a solution can be found outside rules and regulations, outside the law – and be found, instead, in the idea known as sportsmanship. Sportsmanship can turn losers into winners, just as poor sportsmanship can turn winners into losers. Sportsmanship may therefore find justice in places that the law cannot reach. This case may still have a happy ending if the parties can accept that the rules have not been clearly drafted, and work together to have a clearer set of rules. Membership fights such as this run against the spirit of social and cultural societies such as the defendant.

5 *Phua Kiah Mai v The Kheng Chiu Tin Hou Kong and Burial Ground* [2022] SGHC 36 at [98].

6 [2022] SGHC 42.

7 *Gunasegarn s/o Sinniah v Singapore Indhia Kalaingyar Sangam (Singapore Indian Artistes' Association)* [2022] SGHC 42 at [19]–[20].

23.4 This Annual Review's chapter on mediation and appropriate dispute resolution ("ADR") is drafted to complement the court's advocacy for the proactive pursuit of non-litigious methods of dispute resolution. The authors aim to inform readers about the evolving legal landscape in Singapore which nudges disputing parties towards resolving conflict amicably and out of court.

23.5 The body of judgments on subject matters relating to mediation and ADR in Singapore is developing. Therefore, the categories of cases examined in this chapter may vary from year to year. For the 2022 Annual Review, there is a review of cases in three categories. First, the authors examine four noteworthy cases on the enforcement of negotiated and/or (mediated) settlement agreements (including one which was enforced by the Singapore International Arbitration Centre), and one case on the recognition of a negotiated settlement agreement which may be considered by the Commissioner for Labour when assessing compensation sums payable by employers under the Work Injury Compensation Act[8] ("WICA").

23.6 Throughout this chapter, negotiated settlement agreements are examined on the same level as mediated settlement agreements as the jurisprudence on negotiated settlement agreements is directly relevant to mediated settlement agreements. As Andrew Phang Boon Leong JA has observed "parties' negotiations with a view to a settlement also happen on platforms that 'effectively [take] the place of a mediation'".[9] This is the reason for the references to (mediated) settlement agreements throughout this chapter.

23.7 Secondly, three cases which address issues in mediation and ADR practice and ethics will be reviewed: this includes one decision from a disciplinary tribunal evaluating if a solicitor had breached the Legal Profession (Professional Conduct) Rules 2015 ("PCR 2015") by not sufficiently advising their clients on ADR mechanisms to resolve disputes. Finally, three cases in relation to mediation, ADR and civil procedure will be considered.

23.8 Some of these cases may be examined in other chapters of this Ann Rev, as they may deal with legal issues beyond mediation. In this chapter, the focus is on mediation and ADR-related issues only.

8 Cap 354, 2009 Rev Ed; Act 27 of 2019.

9 *LVM Law Chambers LLC v Wan Hoe Keet* [2020] 1 SLR 1083 at [28], citing *Ian West Indoor and Outdoor Services Pty Ltd v Australian Posters Pty Ltd* [2011] VSC 287 at [25].

Category	Focus of review comments	Case
Recognition and enforcement of (mediated) settlement agreements	Enforcing (mediated) settlement agreements	*Zhong Lingyun v Yuan Fang*[10] *CPU v CPX*[11] *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd*[12] *Metupalle Vasanthan v Loganathan Ravishankar*[13]
	Recognition of (mediated) settlement agreements	*MTM Ship Management Pte Ltd v Devaswarupa*[14]
Mediation, ADR practice and ethics	A solicitor's duty to direct his clients to consider ADR	*The Law Society of Singapore v Andrew John Hanam*[15]
	Sums quoted during settlement negotiations cannot be exploited as admissions of liability or other legal positions	*Pradeepto Kumar Biswas v Sabyasachi Mukherjee*[16]
	Majority shareholders of company approving settlement agreement in good faith does not constitute minority oppression or unfairness	*Baker, Samuel Cranage v SPH Interactive Pte Ltd*[17]

10 [2022] SGHC 82.
11 [2022] 4 SLR 314.
12 [2022] SGHC 129.
13 [2022] SGHC(A) 18.
14 [2023] 3 SLR 474.
15 [2022] SGDT 12.
16 [2022] 2 SLR 340.
17 [2022] SGHC 238.

Mediation, ADR and civil procedure	Solicitor fees which have been settled cannot be taxed	*Loganathan Ravishankar v ACIES Law Corp*[18]
	Allegations of unreasonable behaviour at mediation not reviewed by court because of mediation confidentiality	*The Wave Studio Pte Ltd v General Hotel Management (Singapore) Pte Ltd*[19]
	Adverse orders for not proceeding to mediation	*Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd*[20]

II. Recognition and enforcement of (mediated) settlement agreements

23.9 It is widely accepted that there are high compliance rates to dispute resolution outcomes arising out of mediation.[21] Yet it bears restating that the ability of disputants to secure recognition and enforcement relief from the courts for a validly concluded (mediated) settlement agreement continues to be a crucial element of consideration in dispute risk management: a recent empirical study conducted by the Singapore International Dispute Resolution Academy on international dispute resolution[22] has shown that a significant proportion of mediation users remain concerned about enforceability issues over mediated settlement agreements.[23] It is further noteworthy that these concerns have increasingly been alleviated in recent times,[24] owing to a persistent (and

18 [2022] SGHC 135.
19 [2022] SGHC 142.
20 [2022] SGDC 171.
21 Shouyu Chong & Felix Steffek, "Enforcement of International Settlement Agreements Resulting From Mediation Under the Singapore Convention – Private International Law Issues in Perspective" (2019) 31 SAcLJ 448 at 451, para 5.
22 Singapore International Dispute Resolution Academy, *SIDRA International Dispute Resolution Survey: Final Report 2022*.
23 Singapore International Dispute Resolution Academy, *SIDRA International Dispute Resolution Survey: Final Report 2022* at p 31, where 50% of respondents indicated that "Direct Enforceability" was an important factor to consider before parties proceed to mediation.
24 Notably, the observation in the 2022 Singapore International Dispute Resolution Academy ("SIDRA") survey on respondents' attitude towards "Direct Enforceability" was a decrease from the 2020 SIDRA survey, where 67% of respondents indicated that "Enforceability" was an important factor to consider before parties proceeded

(cont'd on the next page)

rather successful) information campaign by mediation practitioners, interest groups, academics and other relevant stakeholders to inform industry players that mediated settlement agreements are often complied with in practice.[25]

23.10 In this year's review, the authors will consider (a) a case where the High Court (General Division) was asked to enforce a settlement agreement where payments were delayed because the paying party encountered financial difficulties as a result of the COVID-19 pandemic; (b) a case where an arbitral award from the Singapore International Arbitration Centre ("SIAC"), which enforced a settlement contract, was challenged in the Singapore International Commercial Court ("SICC"); (c) a case where the High Court (General Division) enforced a settlement agreement that was concluded by the parties in dispute over e-mail conversation; (d) a case where the Appellate Division of the High Court ("High Court (Appellate Division)") enforced an oral settlement agreement concluded over telephone conversation; and (e) a case where the High Court (General Division) recognised the effect of a settlement agreement in setting off work injury compensation claims made under the WICA.

A. Enforcing (mediated) settlement agreements

(1) Enforcement of settlement agreement – Allegations of fraud and deception

23.11 In *Zhong Lingyun v Yuan Fang*, the disputing parties, Zhong Lingyun ("the plaintiff") and Yuan Fang ("the defendant") were stakeholders in a Singapore-incorporated company named Fu Xin Construction Pte Ltd. In May 2018, the defendant acquired 70% of the shares of the company.[26] However, they did not satisfy their end of the bargain for the acquisition of shares, resulting in a dispute between the parties. A settlement agreement was concluded on 14 June 2018, where the defendant agreed to buy out the plaintiff's remaining 30% stake in the company.[27] Specifically, the agreement stipulated that "the plaintiff shall procure the transfer of the remaining 30% of shares of the Company … to the defendant within five working days from the date of the Settlement

to mediation (Singapore International Dispute Resolution Academy, *SIDRA International Dispute Resolution Survey: Final Report 2020* at p 46).

25 See, for instance, the trend recently observed in the UK: United Kingdom, Ministry of Justice, *Consultation Outcome: Consultation on the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018)* (updated 2 March 2023) at para 4.4.

26 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [3].

27 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [6].

Agreement", whilst "the defendant shall pay $350,000.00 to the plaintiff within 2 years from the date of the Settlement Agreement".[28] Furthermore, the settlement agreement provided that it "constitutes the entire and final settlement [between the parties]" and "in the event that the defendant fails to pay the prescribed sum, the plaintiff shall be entitled to apply to the court for judgment entered against the defendant".[29]

23.12 Subsequently, the defendant did not make the necessary payments to the plaintiff by 14 June 2020. Thereafter, the plaintiff took legal action against the defendant to enforce the settlement agreement.[30] It is noteworthy that an extension of time was granted to the defendant to make payment in light of the financial hardships flowing from the COVID-19 pandemic. Through e-mail communications when that extension was sought, the defendant acknowledged that he had entered into the settlement agreement with the plaintiff and did not raise any challenge with respect to his obligations to pay them accordingly.[31]

23.13 Even so, the defendant alleged that he was coerced into signing the settlement agreement under the deception of the plaintiff and their lawyers.[32] This allegation was mainly founded on the fact that he was unrepresented by solicitors when he concluded the settlement agreement. Additionally, the defendant alleged that the plaintiff, in preparing the settlement agreement, was in breach of their underlying agreement for the acquisition of shares.

23.14 Choo Han Teck J was not impressed by any of the defendant's arguments. First, the court noted that the settlement agreement was concluded in clear and unequivocal terms (that the defendant shall transfer $350,000 to the plaintiff in return for the remaining 30% stake in the company), and that the parties agreed that the settlement agreement constituted the "entire and final settlement" of a dispute over compliance with the underlying acquisition agreement.[33] This provided for the terms of the settlement agreement to supersede those terms that were disputed in the underlying agreement;[34] therefore, it was not possible for the plaintiff to be in breach of the superseded underlying agreement.

23.15 Secondly, Choo J rejected the defendant's allegations of deception. The court was resolute in ruling that the mere fact that a party was not

28 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [6].
29 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [6].
30 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [7].
31 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [7].
32 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [9].
33 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [10]–[11].
34 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [11].

represented by legal counsel when entering into a settlement agreement is simply insufficient to prove an allegation of fraud:[35]

> The defendant cannot vitiate the contract merely because he made a bad bargain. He cannot claim that he had not sought legal advice, as a cover for his own bad bargain. In the absence of specific evidence proving that the plaintiff fraudulently induced the defendant to enter into the Settlement Agreement, I find that the Settlement Agreement is a valid agreement that is legally binding and enforceable between the parties.

23.16 In the context of mediation and ADR of commercial disputes, this case provides a straightforward demonstration of how clearly drafted settlement agreements may be readily enforceable in court in the event of non-compliance of its terms. The Singapore courts will also treat mere allegations of deception and fraud cautiously. Furthermore, the mere fact that a party to a *commercial* transaction was not represented by legal counsel at the conclusion of a settlement agreement is not sufficient to vitiate that settlement agreement.

(2) Enforcement of settlement agreement – Collateral attack on settlement agreements enforced by arbitral tribunal – Duress and incapacity – Issues resolved in settlement agreement cannot be relitigated at arbitration

23.17 In *CPU v CPX*,[36] an arbitral award from the SIAC, which enforced a settlement contract, was challenged in the SICC. This is an interesting case as it provides an illustration of how settlement agreements may be enforced by an arbitral tribunal in the SIAC, and how that decision may furthermore be challenged or affirmed by the courts of the seat of arbitration.

23.18 The facts appear to be quite complex. However, for the purposes of this chapter, the authors endeavour to provide a brief summary of its essentials. Three applicants (CPU, CPV and CPW) filed an application to the SICC to set aside an award issued by the SIAC in favour of a respondent, CPX. The parties were in business with each other and were engaged in a cross-border joint venture which did not materialise. CPU and CPV were natural persons who were stakeholders in the company, CPW, which was incorporated under the laws of Ruritania. CPX was a company that was incorporated under the laws of Oceania. CPU and CPV persuaded the director of CPX to invest in CPU's business. Thereafter, in early 2013, CPX entered into a series of agreements with CPW to invest

35 *Zhong Lingyun v Yuan Fang* [2022] SGHC 82 at [12].
36 See para 23.8 above.

capital and draw further investments into the latter's business.[37] However, there were disputes between the companies over the acquisition of further investment capital, and by the end of 2015 the parties decided to part ways.

23.19 A settlement agreement was drawn up to facilitate the transfer of the stakeholding in CPW, which was held by CPX, back to CPU and CPV for a consideration of US$10m:[38]

> 1. [The applicants] hereby agrees and undertakes to purchase and acquire all [CPW] Shares, being the shares held by [the respondent] in [CPW Singapore], for an aggregate consideration of USD 10 million payable by [the applicants] to [the respondent] in one tranche, simultaneously with the transfer of shares in favour of [the applicants]. [The applicants] will purchase the shares from [the respondent] and pay the aforesaid agreed consideration of USD 10 million to [the respondent] on or before 31st March 2016, time being of essence in this agreement.
>
> …
>
> 7. This Contract shall be governed by and construed in accordance with the laws of the Republic of India.
>
> 8. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the [SIAC] in accordance with the [SIAC Rules] for the time being in force, which are deemed to be incorporated by reference to this clause.

However, the parties were subsequently locked in another dispute over the enforceability of this settlement agreement. CPU and CPV alleged that this settlement agreement was procured by parties related to CPX who coerced them into signing the agreement under threats and duress,[39] and should be rendered void and unenforceable.[40] Besides that, they alleged that they were of unsound mind when they entered into the settlement agreements.[41] Furthermore, they argued that the settlement agreement should not have any effect because CPX was in breach of a collection of agreements concluded before the settlement agreement was reached.[42]

23.20 In respect of the first argument, the tribunal ruled that the applicants had failed to prove on the balance of probabilities that they

37 *CPU v CPX* [2022] 4 SLR 314 at [9].
38 *CPU v CPX* [2022] 4 SLR 314 at [21].
39 *CPU v CPX* [2022] 4 SLR 314 at [19]–[20] and [23].
40 *CPU v CPX* [2022] 4 SLR 314 at [5(a)].
41 *CPU v CPX* [2022] 4 SLR 314 at [5(b)].
42 *CPU v CPX* [2022] 4 SLR 314 at [5(c)].

had entered into the settlement agreement under duress or coercion.[43] While the SICC judgment reported only some fragments of the arbitral tribunal's findings on the duress and coercion issue, Sir Henry Bernard Eder IJ provided some insight into the kinds of allegations that were lobbed against the respondents:[44]

> On 17 November 2015, a draft of a settlement agreement for the dispute above was circulated by one Mr X, a friend of Mr B [who is the managing director of CPX], to the first applicant. This draft was sent to the applicants' legal counsel on the same day, who (according to the applicants) advised the applicants to not sign the settlement agreement under any circumstances.
>
> The applicants claim that on 19 November 2015, Mr B, Mr X and one Mr Y attended the first applicant's residence unannounced; that during this meeting, Mr B, along with the other two gentlemen, threatened the first applicant with 'dire consequences' should the applicants fail to sign the settlement agreement, and repay the respondent and/or Mr B the US$10m that they had invested in the third applicant; and that Mr B further made various allusions to his deep-rooted connections with the 'underworld'.
>
> The next day (*ie*, on 20 November 2015), Mr B, Mr X, and one Dr K went to the first applicant's office and placed an agreement in front of the first applicant to sign. Given the alleged threats made by Mr B the day before, the first applicant complied by signing the settlement contract dated 20 November 2015 (the 'Settlement Contract'). Following this, Mr B allegedly pressured the first applicant to procure the second applicant's signature to the Settlement Contract, even though the second applicant was not involved in the JVA. The second applicant was made to attend at the first applicant's offices immediately to sign the Settlement Contract. After procuring the signatures, Mr B left the office.
>
> …
>
> The applicants claim that following the signing of the Settlement Contract, they sought Mr B's indulgence to defer the payment obligations under the said Contract. Sometime later, on 7 February 2018, Mr B allegedly demanded that the first applicant attend at his hotel room in Mumbai, India. The first applicant complied with the demand, again allegedly out of fear. According to the applicants, present in the hotel room were Mr B, his wife, and Dr K; once in the room, Mr B asked the first applicant to sign another document (the 'Supplemental Settlement Contract') at knifepoint; and the second applicant was compelled to sign the Supplemental Settlement Contract under duress as well. In summary, the applicants agreed under the Supplemental Settlement Contract to fulfil their obligations under the Settlement Contract by 6 March 2018, and to provide the respondent with detailed particulars of all their assets by 26 February 2018. The respondent would also be entitled to pursue any remedies against the applicants jointly and/or severally, should the applicants breach the Settlement Contract or the Supplemental Settlement Contract. …

43 *CPU v CPX* [2022] 4 SLR 314 at [6(a)].
44 *CPU v CPX* [2022] 4 SLR 314 at [18]–[20] and [23].

23.21 It bears reiterating that these allegations were not accepted by the tribunal. Without venturing into speculation (as the tribunal's award was not published in full within the SICC's judgment), it remains clear that the tribunal opined that the applicants were unable to prove those allegations to their satisfaction, on a balance of probabilities.[45] Therefore, the tribunal would enforce the settlement agreement accordingly. This finding by the arbitral tribunal *cannot be impeached by the SICC*, which acts as the court of the seat of arbitration. The authors note, however, that the SICC permitted the applicants to make submissions on the coercion allegations raised at the arbitration.

23.22 In respect of the second argument, the tribunal ruled that the applicants had failed to prove on the balance of probabilities that they were of unsound mind when they entered into the settlement agreement.[46] Therefore, because there was a "clear lack of proper evidence" that the applicants had been labouring under a mental illness when they concluded the settlement agreement,[47] the tribunal enforced the settlement agreement accordingly. Dissatisfied with the tribunal's findings, the applicants framed another argument on the basis of breach of natural justice, alleging that they were denied a fair hearing when the tribunal excluded some medical reports, which were submitted at the eleventh hour[48] during the arbitration. The fact that the applicants did not raise any objections to the exclusion of these reports before the publication of the tribunal's award was sufficient to dismiss their claim that there had been a breach of natural justice.[49] Further, the SICC opined as to what would have happened had the tribunal considered the excluded medical reports. Eder IJ observed:[50]

> Third, even if it might be said that the Tribunal should have allowed the Medical Reports to be admitted in evidence and that the Tribunal thus acted in breach of the rules of natural justice, the contents of such reports lacked any legal or factual weight, such that they could not have reasonably made a difference to the findings of the Tribunal. It is fair to say, as submitted by the applicants, that the Medical Reports show that Dr P diagnosed the first applicant with depressive disorder and attention deficit disorder, and the second applicant with schizoaffective disorder. Further, the applicants emphasise that the Medical Reports state that the first applicant 'has not coped well with stressful situations' and that the second applicant has 'often been erratic and irrational in his decision making-processes and at other times, he has procrastinated or avoided pieces of work'.

45 *CPU v CPX* [2022] 4 SLR 314 at [6(a)].
46 *CPU v CPX* [2022] 4 SLR 314 at [6(a)].
47 *CPU v CPX* [2022] 4 SLR 314 at [58].
48 *CPU v CPX* [2022] 4 SLR 314 at [60(d)] and [60(e)].
49 *CPU v CPX* [2022] 4 SLR 314 at [61].
50 *CPU v CPX* [2022] 4 SLR 314 at [62]–[65].

> However, in my view, the views expressed by Dr P in the Medical Reports fall far short of evidence that might show, whether on a balance of probabilities or otherwise, that the first and second applicants were suffering from some 'incapacity' at the relevant time. Crucially, while the Medical Reports make general observations about the first and second applicants' mental conditions and treatment history, there is nothing in the reports to suggest that they were suffering from mental illnesses of such severity and extent, that they were incapable of understanding the effect of the Contracts (or of making a rational decision) at the material time. …
>
> As for the second applicant, the Tribunal stated at para 421 of the Award as follows:
>
> > 421. [The second applicant] chose not to give evidence in the proceedings and, more significantly, there was also no evidence, especially from an expert medical witness, concerning his alleged conditions other than the prescription documents which on its face were of little evidential value with respect to the contentions advanced relating to his alleged unsoundness of mind. …
>
> I bear well in mind that the applicants strongly criticise both these paragraphs in the Award because, according to the applicants, the reason why there was no evidence from an expert medical witness was simply because the Tribunal itself had decided to exclude Dr P's Medical Reports which the applicants had sought to adduce in evidence. As formulated, that is correct. However, the Medical Reports were adduced far too late and, as I have stated above, it seems to me that the decision to exclude them was unobjectionable and entirely justified in the circumstances of the case, for the reasons given by the Tribunal. Moreover, at the risk of repetition, the contents of such reports fell far short of showing that the applicants suffered from any relevant 'incapacity'.
>
> [emphasis in original omitted]

23.23 Ultimately, however, the tribunal's finding that the settlement agreement was enforceable because the applicants had not successfully proven that they had entered into it whilst labouring under a mental incapacity is one which cannot be impeached by the court of the seat of arbitration (in this case the SICC). The SICC could have stopped its analysis there, but, as seen in the excerpts above, it went on to briefly consider the applicants' arguments concerning the hypothetical impact that the excluded medical reports could have had on the arbitration. These musings should be considered *obiter dicta* and should *not* be read as providing precedent for parties, who have unsuccessfully challenged a settlement agreement at arbitration, to have a second bite of the cherry by relitigating their allegations in the course of challenging the arbitral award before the court of the seat of arbitration. Instead, the SICC's findings here should be limited to confirming that the arbitral tribunal's jurisdiction

was properly founded on an enforceable arbitration agreement, which was not impugned by duress or coercion.[51]

23.24 In respect of the third argument (that is, that CPX was in breach of prior agreements), the arbitral tribunal promptly dismissed that claim, owing to a lack of jurisdiction. The tribunal reiterated the settled position that where parties have settled a dispute which was embodied in a settlement agreement, any disputes resolved therein *cannot be relitigated*[52] unless the settlement agreement itself is impugned. The applicants attempted to challenge the tribunal's findings on jurisdiction at the SICC, framing it as an issue of breach of natural justice.[53] However, Eder IJ dismissed this argument as one that was "quite hopeless".[54]

23.25 *CPU v CPX* is an interesting case because it demonstrates the scope and limits of how settlement agreements, which have been enforced by an arbitral tribunal, may be challenged in the courts of the seat of arbitration.

(3) Enforcement of settlement agreement – Settlement agreement concluded over e-mail – Authority to conclude settlement agreements – Authority of persons to enter into a settlement agreement for companies

23.26 In *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd*,[55] the defendant (Ehub Pte Ltd) engaged the plaintiff (RMD Kwikform Singapore Pte Ltd) to supply scaffolding systems and equipment on hire in relation to the construction of a number of residential development projects. The plaintiff filed a claim against the defendant for the non-payment of hiring fees, the non-payment of fees from the latter's purchase of equipment from the former, fees due when the latter lost or failed to return the former's equipment ("shortage fees"), and fees due when the equipment returned by the latter was damaged ("damage fees").[56]

23.27 The High Court (General Division) allowed a substantial amount of the plaintiff's claims.[57] However, the court had notably reduced the shortage and damage fees claimable against the defendant because they had successfully demonstrated that they had reached a settlement agreement with the plaintiff for a lower amount of money.

51 *CPU v CPX* [2022] 4 SLR 314 at [77].
52 *CPU v CPX* [2022] 4 SLR 314 at [6(b)].
53 *CPU v CPX* [2022] 4 SLR 314 at [95]–[98].
54 *CPU v CPX* [2022] 4 SLR 314 at [98(e)].
55 See para 23.8 above.
56 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [8].
57 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [181].

23.28 S Mohan J observed that after some negotiations, the managing director of the defendant, Edward Choo, wrote an e-mail to the plaintiff's country manager, Graham Hartland, on 13 December 2015.[58] The e-mail set out the following details:[59]

> Hi Graham,
>
> We discussed on Thursday and agreed the amount for the following Losses/DR/DBR amount as follows:-
>
> 1. Twin Fountains Loss & Damages/DBR - $40,000.00 – Account Closed as lumpsum.
>
> 2. One Canberra – Losses - $46,011.04. Based on ehub attached worksheet assessment.
>
> 3. One Canberra – Damages/DBR - $50,568.67. Based on ehub attached worksheet assessment.
>
> 4. Forestville – Losses - $51,701.91. Losses Account Closed. Based on ehub attached worksheet assessment.
>
> I have also stated that ehub has agreed to pay what we have assessed at our end deemed reasonable and fair but if RMD disputes our assessments, RMD is free to make additional justifiable claims for reassessment.
>
> …

Subsequently, the plaintiff's regional director, Hamish Bowden, wrote an e-mail to Choo on 21 December 2015:[60]

> Hi Edward,
>
> As discussed this afternoon, we will provide you with 3 further invoices for partial/progress payment, totalling 4 invoice for total of $188k.
>
> Please send details as soon as possible, to target collection of check tomorrow.
>
> …

23.29 The plaintiff disputed the defendant's assertion that the e-mail sent by Choo on 13 December 2015 constituted a final and binding settlement agreement in respect of their claim against the latter for some of its shortage and damage claims. However, Mohan J was not persuaded by the plaintiff's arguments. The court noted that Choo had set out specific sums of money which would be paid by the defendant to the plaintiff in that e-mail.[61] The fact that specific sums of money were referred to in Choo's e-mail led to the inference that the parties had

58 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [89].
59 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [89].
60 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [91].
61 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [91].

arrived at an agreement, rather than that they were still in the midst of negotiations. Furthermore, the subsequent e-mail sent by Bowden to Choo which referred to an invoicing of a sum of money totalling $188,000 (which closely matched the sum of payments agreed on by the parties in Choo's e-mail: S$40,000 + S$46,011.04 + S$50,568.67 + S$51,701.91 = S$188,281.62) further persuaded the court that there was an agreement concluded by the parties on a settlement sum.[62] Two days after Bowden's e-mail (on 23 December 2015), the plaintiff issued the invoice for payment of the above-mentioned sums; the fact that this was the *final* invoice issued by the plaintiff in respect of the disputed claims further reinforced the court's view that a final settlement was concluded.[63]

23.30 Finally, the court considered the plaintiff's argument that Hartland had no authority to conclude a settlement agreement on its behalf with the defendant. The plaintiff averred that only Bowden or its divisional operations director had such authority.[64] This was quickly dismissed by Mohan J because it was noted that Bowden had ultimately followed up on the settlement agreement concluded by Hartland and Choo through his e-mail on 21 December 2015.[65]

23.31 In the context of ADR of commercial disputes, this case illustrates how settlement agreements concluded through e-mail discussions and negotiations may be effectively enforced. Where a settlement agreement arises from a series of negotiations (taking reference from e-mail communications and minutes of meetings), the courts may consider the entire context of the settlement negotiations when deciding whether a final and binding agreement has actually been concluded. Moreover, parties that are corporate entities need to be cognisant that only representatives of the company with the requisite authority may conclude such settlement agreements on their behalf.

62 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [92].

63 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [94]. S Mohan J also took note of the reference to "partial/progress payment[s]" in Bowden's e-mail. However, ruling that the context of the e-mail conversation between the parties' directors demonstrated that a final settlement of the plaintiff's claims was concluded, the High Court (General Division) declined to give weight to the literal reading of those words: *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [93].

64 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [97].

65 *RMD Kwikform Singapore Pte Ltd v Ehub Pte Ltd* [2022] SGHC 129 at [97].

(4) Enforcement of settlement agreements – Conclusion of oral settlement agreements over telephone – Authority to conclude settlement agreements

23.32 In *Metupalle Vasanthan v Loganathan Ravishankar*,[66] the High Court (Appellate Division) heard an appeal by Metupalle Vasanthan ("Dr Vas") and Laszlo Karoly Kadar ("Laszlo") in respect of a claim dismissed by the High Court (General Division) against the respondent, Loganathan Ravishankar ("Logan"). This was a claim for a debt of US$3.05m ("the Skantek debt"), which Logan allegedly owed to Laszlo, and which was subsequently assigned by the latter to Dr Vas.

23.33 In 2013, Laszlo sold his shares in SkanTek Group Limited ("Skantek") to Logan for US$4m. Logan paid US$950,000, leaving a balance of US$3.05m unpaid. Subsequently, in a letter dated 25 June 2014 written by Logan's lawyer, Tan Siew Bin Ronnie, it was acknowledged that US$2.4m from that transaction would be paid to Laszlo in December 2014.[67] It is unclear what transpired between the parties, but the court recognised that the disputed Skantek debt fell between US$2.4m and US$3.05m.[68]

23.34 Laszlo and Logan subsequently fell out with each other, and the former demanded that the Skantek debt be paid. Logan refused to pay because he alleged that Laszlo had fraudulently misrepresented the true value of the Skantek shares. Sometime after 19 December 2014, there was a telephone call between Laszlo and Tan, the minutes of which were recorded in a comprehensive and detailed attendance note.

23.35 According to Tan's attendance note, during the call, the parties had agreed to not file claims against each other, in light of Logan's allegations of fraudulent misrepresentation.[69] It was thus Logan's position that the Skantek debt had been compromised: Logan would not pursue his claims in court for fraudulent misrepresentation in return for Laszlo's abstention from claiming the Skantek debt. However, Laszlo disputed that a compromise had actually been reached. First, he argued that Tan did not have the authority to conclude a settlement agreement with him. Next, he argued that he had proposed during that telephone call that "the parties should move on, but only after Mr Logan had paid him the sum of US$2.4 million".[70]

66 See para 23.8 above.
67 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [3].
68 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [3].
69 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [4].
70 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [4].

23.36 The High Court (General Division) believed Logan's account and ruled that the Skantek debt had been compromised orally during the telephone call.[71] The High Court (Appellate Division) agreed with the High Court (General Division)'s findings.[72] The issue of Tan's authority may be addressed in a straightforward manner. The courts were persuaded by the series of e-mail correspondence between Laszlo, Logan and Tan, which demonstrated that Laszlo evidently knew that he was to only communicate with Tan (that is, Logan's lawyer) in matters surrounding the dispute.[73] Hoo Sheau Peng J noted furthermore that Tan had not reserved his client's rights during the telephone call.[74] Moreover, after the telephone call, Laszlo did not demonstrate any need or anxiety to follow up with Tan on the question of whether the latter had obtained instructions to settle from Logan.[75] Therefore, the High Court (Appellate Division) affirmed the High Court (General Division)'s decision when it found that Tan had the requisite authority to conclude the compromise agreement on the telephone call.[76]

23.37 As to the issue of whether there was an actual oral settlement concluded over the telephone, the High Court (Appellate Division) agreed with the High Court (General Division)'s analysis.[77] The High Court (Appellate Division) justified its position by noting that other parts of Tan's attendance note corroborated his testimony on the telephone conversation. Significant weight was given to the attendance note because it was comprehensively recorded in good detail.[78] Hoo J affirmed the High Court (General Division)'s findings:[79]

> As explained by the Judge, he accepted 'Mr Tan's evidence that an agreement was concluded on the telephone call, with Mr Tan saying words to the effect "Yes, okay, you want to settle, *it is settled as you say*, *I will bring it to [Mr Logan]* [emphasis added]"'. In the Judge's view, this position was 'captured' in the last line of paragraph 9 of the Attendance Note where Mr Tan recorded that '[Mr Tan] would relay whatever [Mr Laszlo] told [him] to [Mr Logan] and take instructions from there.' Further, the Judge observed that being a careful solicitor, if there had been no concluded compromise, Mr Tan would have expressly reserved Mr Logan's position. Mr Tan did not say that he needed to take Mr Logan's instructions, and come back to Mr Laszlo before there was a

71 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [11]; *Metupalle Vasanthan v Loganathan Ravishankar* [2021] SGHC 238 at [37].
72 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [15]–[25].
73 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [16].
74 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [16].
75 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [16].
76 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [25].
77 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [17].
78 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [21].
79 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [18]–[20].

> concluded compromise. Instead, Mr Tan ended the conversation 'believing he had served his client's interest by settling the dispute' (see the Judgment at [37]).
>
> Read in isolation, it appears to us that there is some ambiguity whether the last line of paragraph 9 truly 'captured' Mr Tan's stance that during the telephone call, he had concluded the compromise. Without reference to Mr Tan's evidence, that line could be interpreted, as Mr Laszlo contends, to mean that Mr Tan would bring Mr Laszlo's offer to Mr Logan, *ie*, *relay whatever Mr Laszlo told him*, and take Mr Logan's instructions. In this connection, we note that Mr Tan candidly conceded that there was no mention of a binding settlement agreement in the Attendance Note. Nonetheless, he disagreed that this was not mentioned during the 2014 Telephone Call. That was the substance of the conversation. This was duly considered by the Judge and he believed Mr Tan's testimony.
>
> Having considered Mr Tan's evidence and the Judge's analysis, and reading the Attendance Note in its entirety, we are of the view that the last line of paragraph 9 supports Mr Tan's account that he would report to Mr Logan that the matter has been settled with Mr Laszlo (which Mr Logan confirmed he did).
>
> [emphasis in original]

23.38 The High Court (Appellate Division) also disbelieved Laszlo's claim that he had proposed during that telephone call that "the parties should move on but only after Mr Logan had paid him the sum of US$2.4 million".[80] This was because Laszlo had also allegedly proposed to take legal action, which should have realistically been perceived as a legal threat by Tan, who was praised by the court as "a careful solicitor".[81] As Hoo J observed:[82]

> There was absolutely no mention of Mr Laszlo's alleged demand and threat of legal action [in the Attendance Note]. If Mr Laszlo had threatened legal action if he was not paid US$2.4m, undoubtedly, Mr Tan would have recorded this, and informed Mr Logan. Otherwise, he would put Mr Logan at risk of being sued. Instead, as pointed out above, the Attendance Note recorded that Mr Laszlo proposed, more than once, that parties should have no claims against each other. Mr Laszlo's account, therefore, was undermined by this contemporaneous record.

The High Court (Appellate Division) was therefore resolute in concluding that parties had indeed reached an oral settlement agreement during the telephone call in December 2014.

23.39 In the context of ADR of commercial disputes, this case illustrates how oral settlement agreements concluded through telephone negotiations may be effectively enforced. Where a settlement agreement

80 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [22].
81 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [18].
82 *Metupalle Vasanthan v Loganathan Ravishankar* [2022] SGHC(A) 18 at [22].

arises orally from negotiations and discussions over the telephone, courts will consider the entire context of the settlement negotiations. This is why taking comprehensive notes and minutes of meeting of such negotiations is exceedingly important: the courts will give substantial weight to these notes as a matter of evidence. Ideally, legal advisers and parties to such negotiations should strive to produce a comprehensive and agreed set of minutes of meeting at the conclusion of such negotiations.

B. Recognition of (mediated) settlement agreements

(1) Settlement agreements and the Work Injury Compensation Act – Prevention of double claims under Work Injury Compensation Act – Functus officio *of Commissioner for Labour – Breach of terms of settlement agreements*

23.40 In *MTM Ship Management Pte Ltd v Devaswarupa*,[83] the High Court (General Division) recognised a settlement agreement which was concluded between the relatives of a deceased ship worker and the latter's employer to settle a work injury claim, made under the Work Injury Compensation Act ("WICA"). The facts leading up to this claim were tragic. Gainady Ajay Bhavani Prasad was killed in an accident whilst on board the vessel "STRATEGIC EQUITY" at the port of Rosario, Argentina, in the course of his employment. His next-of-kin – his wife, mother and two children – were the first, second, third and fourth respondents respectively to this claim.

23.41 Gainady's employment contract incorporated some standard form terms (a memorandum of collective agreement which the employer acceded to with the Singapore Organisation of Seamen) which provided for compensation of US$144,000 in the event of the death of any seaman.[84] Gainady's employer, MTM Ship Management Pte Ltd (the applicant), duly made full payment to Gainady's wife and mother ("the Settlement Sum").[85] The court noted:[86]

> Following receipt of the Settlement Sum, the first and second respondents executed a document titled 'Deed of Receipt, Release, Discharge & Indemnity Agreement' on 28 September 2020 (the 'Deed'). Under the Deed, the first and second respondents confirmed, *inter alia*, that they had received the Settlement Sum and that in consideration of the Settlement Sum, they did not have 'any claims or demands whatsoever against the [applicant]', and the applicant was 'fully and absolutely released and forever discharged from any further payment

83 See para 23.8 above.
84 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [8].
85 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [8].
86 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [9].

> of any and all compensation … whether arising now or in the future or whether in Contract, or in Tort, or any other Law'. In addition, the first and second respondents also each signed a receipt acknowledging the payment of the Settlement Sum as 'full and final payment, settlement and discharge' of any and all claims for compensation.

23.42 However, subsequently on 26 November 2020, the respondents lodged a claim with the Commissioner for Labour ("the Commissioner") for compensation under the Work Injury Compensation Act 2009[87] ("WICA 2009"). The Commissioner issued a notice of assessment of compensation to Gainady's employer on 23 December 2020, stating that the deceased employee's next-of-kin had a valid claim for compensation, and that the sum payable was assessed to be S$95,230.[88] The notice of assessment warned that any objections had to be submitted within 14 days from the date it was served, failing which the employer would be bound to pay the assessed compensation sum.[89] The respondents only received the notice of assessment on 5 February 2021. Within the next seven days they were able to successfully inform the Commissioner that Gainady's average monthly earnings were approximately double of what was actually assessed, amounting to S$190,703.96.[90] At this point in time, the employer did not raise any objections to the amended notice of assessment, nor did it inform the Commissioner that it had already paid a Settlement Sum to the respondents.[91]

23.43 On 4 March 2021 at 3.18 pm, Assistant Commissioner Jason Loh Chee Boon issued a Certificate of Order ordering the employer to pay the respondents a sum of S$190,703.96. An officer from the Ministry of Manpower, Damien Lim, subsequently sent an e-mail to the parties at 3.30 pm on the same day, informing them that the Certificate of Order had been issued, and all parties would receive a copy of it soon. At 4.24 pm, the employer replied to Lim's e-mail, raising the fact that it had already concluded a settlement agreement with the respondents, and that the Settlement Sum had already been paid out.[92] The employer set out its position that it was not bound to pay any further amount of compensation to the respondents, and requested for the Certificate of Order to be withdrawn.[93] On 24 March 2021, Lim replied to the employer, stating that the Commissioner would not withdraw the Certificate of Order because

87 Cap 354, 2009 Rev Ed. The succeeding piece of legislation, which was passed in 2019, has the same title, but has a different citation: (Act 27 of 2019).
88 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [10].
89 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [10].
90 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [11].
91 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [11].
92 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [12].
93 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [13].

they had failed to lodge an objection to the notice of assessment within the required time period.[94]

23.44 After reiterating its position through its solicitors in a letter sent to the Ministry of Manpower on 30 March 2021 but failing to obtain a different response, the employer filed an appeal with the High Court (General Division) on 1 April 2021 against the decision of the Commissioner as contained in the Certificate of Order.[95]

23.45 The High Court (General Division) noted:[96]

> The applicant sought, *inter alia*, (a) an order for the Deed to be recorded as a settlement agreement and as an order under s 51 of the WICA 2019; (b) alternatively, a declaration that the applicant is discharged from its obligation to make payment under the Certificate of Order; or (c) alternatively, for the Certificate of Order to be set aside.

However, S Mohan J reframed the issues above as follows:[97]

> (a) Does the applicant have a right of appeal against the Commissioner's decision ("Issue 1")?
>
> (b) Is the applicable legislation the WICA 2009 or the WICA 2019 ("Issue 2")?
>
> (c) Should the Certificate of Order be set aside ("Issue 3")?

Issue 2 was easily addressed as the court ruled that the WICA 2009 should have applied. There were some technical disputes over whether the WICA 2009 or WICA 2019 should have applied, but Mohan J was not persuaded that a finding that either one would apply would be "material or fatal for the purposes of this appeal".[98]

23.46 With respect to Issue 1, Mohan J noted that the Commissioner's decision may only be appealed if that appeal involves a substantial question of law and the amount in dispute is not less than S$1,000.[99] The sum in dispute was well in excess of S$1,000. As a threshold inquiry, the court had to decide if a substantial question of law was at issue, taking

94 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [14].
95 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [15].
96 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [15].
97 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [33].
98 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [41].
99 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [34]; *per* s 29(2A) of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) and s 58(1) of the Work Injury Compensation Act 2019 (Act 27 of 2019).

reference from the kinds of questions that had been accepted by the courts in previous cases:[100]

> I noted that a brief survey of the case law suggests that the requirement of a 'substantial question of law' is also fulfilled where novel issues of statutory interpretation are present. For instance, in *Pang Chew Kim (next of kin of Poon Wai Tong, deceased) v Wartsila Singapore Pte Ltd and another* [2012] 1 SLR 15, Tay Yong Kwang J (as he then was) found that the issues on appeal raised substantial questions of law, partly because the issues to be determined involved a statutory interpretation of s 3(1) of the WICA 2009 – specifically, the meaning to be ascribed to the terms 'accident' and 'course of employment' (at [21]). Likewise, in *Kee Yau Chong v S H Interdeco Pte Ltd* [2014] 1 SLR 189, George Wei JC (as he then was) considered that the appeal involved a substantial question of law, as one of the main points in contention pertained to how the terms 'accident' and 'arising out of and in the course of employment' under ss 3(1) and 3(6) of the WICA 2009 should be interpreted (at [19]).

The court concluded:[101]

> The present case involved, among others, the question of whether the Commissioner has the power under the WICA 2009 or the WICA 2019 to take into account settlement payments made by an employer to an employee when assessing the amount of compensation payable by the employer. … [T]his was an important question that necessarily involved questions of statutory interpretation. In the circumstances, I was satisfied that a substantial question of law arose on the present facts, and that the applicant was entitled to appeal against the decision of the Commissioner.

23.47 It is, the authors suggest, noteworthy that the applicant was placed in its position simply because it failed to put the Commissioner on notice of the settlement agreement within 14 days from the date of service of the Commissioner's notice of assessment.[102] Therefore, it is arguable that the *proper* question to be investigated *ought to have been*: Does the Commissioner have the power under the WICA 2009 or the WICA 2019 to take into account settlement payments made by an employer to an employee when assessing the amount of compensation payable by the employer *if notice of that payment was given to the Commissioner outside the 14-day*[103] *statutory notice period*?

23.48 Framed in this way, the court would likely have found that there was *no* substantial question of law to be tried. Mohan J later noted in his judgment that:[104]

100 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [37].
101 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [38].
102 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [10]–[12].
103 See ss 25(1) and 25(2) of the Work Injury Compensation Act (Cap 354, 2009 Rev Ed).
104 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [51].

> If the applicant desired to rely on the Settlement Sum to argue that no further compensation should be paid to the respondents under the WICA 2009, it should have filed a notice of objection by the relevant deadline explaining why, by reason of the payment of the Settlement Sum, the amount stated in the Notice of Assessment should either be reduced or reversed altogether. The prescribed form for raising an objection, which had been attached to the Notice of Assessment, clearly allowed for such an objection, given that the section for indicating the grounds of an objection included an option labelled '[o]thers (please specify)'. Having failed to raise an objection within the stipulated timeline despite having the means to do so, I found that the applicant has no basis to complain that its objection was ultimately disregarded by the Commissioner.

23.49 Proceeding on the basis that the court was correct in its analysis with respect to the threshold inquiry in Issue 1, the third issue of whether the Certificate of Order should be set aside needs to be considered. Mohan J found that the Commissioner did not err in refusing to take into account the Settlement Sum[105] because the employer had simply failed to notify the Commissioner of its existence within the given statutory timeframe.[106] In this regard, the court ruled that once the Commissioner issues a Certificate of Order, he would be *functus officio* and would rightfully be bound to disregard any belated objections.[107]

23.50 Whilst the findings above should have led to the end of the matter, interestingly, the court invoked O 55 r 2(1) of the Rules of Court[108] to allow an appeal by way of a rehearing. The court opined:[109]

> Moreover …, the present appeal involved, *inter alia*, the novel and important question of whether the Commissioner has the power under the WICA regime to take into account settlement payments when assessing the amount of compensation payable. In these special circumstances, I was prepared to consider, in deciding the appeal, whether the payment of the Settlement Sum by the applicant to the first and second respondents should be taken into account. In my judgment, it would be fair, reasonable and in the interests of justice to do so in this case, and it is to that issue that I now turn.

Despite recognising that the Commissioner, upon issuing a Certificate of Order, is *functus officio*, it appears technically possible for the High Court (General Division) to substitute its own decision for the Commissioner's whenever it thinks that it would be "fair, reasonable and in the interests of justice to do so". Any applications made under O 55 r 2(1) of the Rules of Court for a rehearing of the Commissioner's decision at the High Court

105 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [52].
106 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [51].
107 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [52].
108 2014 Rev Ed.
109 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [52].

(General Division) must be read with the specific jurisdictional provisions, which carefully circumscribe the boundaries for judicial review of such a decision.[110] As the court acknowledged earlier, the Commissioner's decision may be *appealed* if that appeal involves a substantial question of law and the amount in dispute is not less than S$1,000.[111] Because both requirements were met, the court was entitled to rehear the case.

23.51 Through an extensive analysis, Mohan J found that there is nothing wrong in principle with the Commissioner taking into account settlement payments made by an employer to an employee when assessing the amount of compensation payable by the employer.[112] Therefore, the court reversed and set aside the Commissioner's Certificate of Order.[113] It substituted the Commissioner's order with its own by ordering that no additional compensation be paid to the respondents by the employer.[114]

23.52 This application could have been dealt with in a more straightforward manner. The applicant should have applied for an enforcement of the settlement agreement terms instead. After all, it was stipulated when the settlement payments were made out to the respondents that the respondents would "fully and absolutely [release] and forever [discharge the applicant] from any further payment of any and all compensation … whether arising now or in the future or whether in Contract, or in Tort, or any other Law".[115] The applicant should have filed a claim for damages for breach of that settlement agreement and obtained a declaration from the court that such damages would be properly set off from their obligations to pay the compensation sum under the Commissioner's Certificate of Order. As the disputed sum of damages in this case was under the S$250,000 threshold, this case could have been ventilated at a lower cost in the State Courts.

III. Mediation, ADR practice and ethics

23.53 In this part, the following three cases will be examined: (a) a case heard by a disciplinary tribunal, where a solicitor was accused of breaching the PCR 2015 for not sufficiently advising his client on pursuing ADR mechanisms to resolve disputes; (b) a case from the Court of Appeal which reiterates how sums quoted during settlement negotiations cannot be exploited by parties as admissions of liability or other legal positions;

110 Rules of Court (2014 Rev Ed) O 55 r 1(3).
111 See para 23.47 above.
112 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [53]–[82].
113 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [93].
114 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [93].
115 *MTM Ship Management Pte Ltd v Devaswarupa* [2022] SGHC 178 at [9].

and (c) a case from the High Court (General Division) which found that a majority of shareholders of a company approving a settlement agreement *in good faith* does not constitute oppression or unfairness on minority shareholders.

A. A solicitor's duty to direct their clients to consider ADR

(1) Duties under the Legal Profession (Professional Conduct) Rules 2015 – Duty to evaluate the use of ADR processes

23.54 In *The Law Society of Singapore v Andrew John Hanam*,[116] the disciplinary tribunal had to decide whether a lawyer had breached his duty to evaluate with his client the use of alternative dispute resolution processes, as required by r 17(2)(*e*)(ii) of the PCR 2015. Pertinent to this chapter's coverage of settlement agreements, there were also allegations concerning the solicitor's failure to properly advise on the offers to settle received from the opposing party, as well as the solicitor issuing an offer to settle without the client's instructions, which were found to be in breach of rr 17(2)(*e*)(i) and 17(2)(*f*).

23.55 The underlying case from which the complaint had arisen involved two subcontracts for the construction of the Marina Bay Mass Rapid Transit Station. The complainant was the director of P&P Engineering & Construction Pte Ltd ("P&P"), which had contracts with Kori Construction (S) Pte Ltd ("Kori") for the provision of manpower and steel fabrication works. Kori had failed to pay P&P close to S$1.5m that was due under the subcontracts, and the complainant engaged the respondent lawyer to pursue the matter.

23.56 On 25 November 2016, P&P filed HC/S 1255/2016 ("Suit 1255") in the High Court (as it then was) for payment of money due under both subcontracts. However, the suit only covered invoices that had fallen due on or before November 2016. Further invoices only due in December 2016 were not included in the suit. Parties subsequently settled the claim under the manpower subcontract on 17 October 2017, with Kori agreeing to pay an agreed sum to P&P ("the Settlement Sum"). However, Kori then took the position that the Settlement Sum would become payable only upon the conclusion of Suit 1255, which was continuing so that the claims under the steel fabrication subcontract could be decided.

23.57 In the meantime, on 11 December 2017, P&P filed another suit, HC/S 1167/2017 ("Suit 1167"), in the High Court against Kori for the

116 See para 23.8 above.

sums under the invoices that had become due in December 2016. On 9 April 2018, P&P filed DC/OC 1043/2018 ("DC Suit 1043") against Kori for payment of the Settlement Sum. On 27 July 2018, Kori issued an offer to settle DC Suit 1043 ("the first OTS"), but P&P did not respond.

23.58 On 31 December 2018, the High Court in Suit 1255 found in favour of P&P overall, and again on 21 January 2019 in respect of Suit 1167. This left just DC Suit 1043 ongoing.

23.59 By the end of January 2019, Kori had paid the Settlement Sum, so the only outstanding issue in DC Suit 1043 was interest of $9,588.19 and costs. On 30 January 2019, Kori issued a second offer to settle in DC Suit 1043, offering to pay half of the interest amount claimed and proposing that parties bear their own costs ("the second OTS"). P&P did not accept and proceeded with trial in order to claim the full interest amount. Ultimately, the District Court on 16 August 2019 dismissed DC Suit 1043 and awarded costs of around $20,000 to Kori, including indemnity costs for costs incurred after Kori's second offer to settle had been issued. P&P discharged the respondent lawyer in the same month.

23.60 The relevant PCR 2015 rules are set out below:

> (2) A legal practitioner —
>
> …
>
> (*e*) must, in an appropriate case, together with his or her client —
>
> (i) evaluate whether any consequence of a matter involving the client justifies the expense of, or the risk involved in, pursuing the matter; and
>
> (ii) evaluate the use of alternative dispute resolution processes; and
>
> (*f*) must advise his or her client on the relevant legal issues in a matter, to enable the client to make an informed decision about how to act in the matter.

The Law Society argued that the respondent had failed to evaluate ADR processes with the complainant client in all three lawsuits, which amounted to three instances of breach of r 17(2)(*e*)(ii) of the PCR 2015. The tribunal disagreed in respect of Suits 1255 and DC Suit 1043 but found that the respondent had breached his statutory obligation in respect of Suit 1167.

23.61 Addressing the allegations in respect of Suit 1255, the tribunal started by noting that r 17(2)(*e*)(ii) requires solicitors to evaluate together with the client the use of ADR processes "in an appropriate case", so

the solicitor has some discretion to decide whether to conduct such an evaluation or not.[117]

23.62 In any case, the documentary evidence suggested the respondent solicitor had indeed advised P&P about the option of mediation. For one, the complainant had signed an ADR offer stating that P&P was available for mediation. For another, the respondent lawyer had written to the complainant advising him to attempt mediation as it might shorten the claims process and result in a saving of legal fees, and attached a copy of Appendix I of the Supreme Court Practice Directions, the Guidelines for Advocates and Solicitors Advising Clients about ADR.[118] Additionally, the respondent wrote to the complainant attaching a fresh ADR offer from Kori, and a draft ADR response rejecting the offer alongside the respondent's advice to reject the ADR offer due to P&P's lack of funds, the unlikelihood of settlement at mediation and the strength of P&P's case against Kori.[119] While P&P ultimately did not proceed with the mediation and there were some questions as to why, as well as some indications that the respondent had not forwarded all correspondence with the Singapore Mediation Centre ("SMC") on the mediation, the tribunal considered those peripheral issues and concluded that there was no basis to find a breach of r 17(2)(*e*)(ii) of the PCR in respect of Suit 1255.[120]

23.63 Similarly, in DC Suit 1043, the respondent had written to the complainant asking him to sign the attached court-issued ADR form, in which the respondent had already indicated that the complainant wanted to opt out of ADR. While there was some dispute about whether the respondent had given any additional advice on this issue, the tribunal declined to hold the respondent in breach of r 17(2)(*e*)(ii) of the PCR 2015. To the tribunal, since DC Suit 1043 was filed after, and against the background of, Suit 1255, the complainant would already have benefited from the respondent's earlier explanation of ADR processes. Indeed P&P had opted into mediation in Suit 1255, though it did not pursue it. The

117 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [116]. Additionally, there is no timing stipulation, so the solicitor has some latitude to decide when and at what stage of the legal proceedings to do so. That said, the tribunal noted in the same paragraph that the solicitor's discretion should be exercised reasonably and in the best interests of the client.

118 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [117].

119 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [120]. The respondent had also advised in the same letter that rejecting the offer might translate to higher costs being awarded against P&P Engineering & Construction Pte Ltd ("P&P") should P&P lose its claim, but reiterated that P&P was likely to succeed so there would not likely be adverse consequences.

120 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [124].

complainant had signed the ADR form in DC Suit 1043 in this context and had not alleged that he did not understand what he was signing.[121]

23.64 It seems also that the tribunal may not have considered DC Suit 1043 as an "appropriate case" for detailed discussion of ADR processes with the complainant. The tribunal had noted that the dispute in DC Suit 1043 was simply about whether the Settlement Sum was payable immediately or only after the judgment in Suit 1255 had been rendered, and was "not the type of situation where ADR would have been considered a top priority".[122]

23.65 The tribunal, however, came to the opposite conclusion in respect of Suit 1167, the suit concerning the invoices that had fallen due in December 2016, which had been filed on 11 December 2017. They considered it an "appropriate case" for the respondent to have evaluated the use of ADR processes together with the complainant because many events had transpired since the first suit in this series, Suit 1255, was filed one year earlier in November 2016. The respondent had not forwarded to the complainant the SMC's April 2018 letter providing information on mediation. He claimed that there had been a discussion on ADR after the defence was filed, but there were no documentary records or attendance notes evidencing this.[123] He also took the position that the complainant "knew very well all about ADR".[124] The tribunal rejected the respondent's arguments:[125]

> In our view, it is not sufficient for the Respondent to say that the Complainant knew the ADR options for Suit 1167. Rule 17(2)(*e*)(ii) of the PCR 2015 is not fulfilled simply because a client is advised of or knows about ADR options. It requires the legal practitioner to evaluate the use of ADR processes with the client in an appropriate case. In an appropriate case, the legal practitioner has to discuss with and advise the client on the competing considerations, whether legal, financial or practical, in relation to the use of ADR processes in the client's matter. We find that the Respondent failed to do this in relation to Suit 1167.

23.66 The disciplinary tribunal also found fault with the way the respondent lawyer had conducted himself when receiving and making offers to settle on behalf of his client, and found him in breach of rr 17(2)(*e*)(i) and 17(2)(*f*) of the PCR 2015.

23.67 On 27 July 2018, the opposing party Kori had issued the first OTS in DC Suit 1043. While the respondent claimed to have discussed

121 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [155]–[159].
122 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [158].
123 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [179]–[181].
124 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [179].
125 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [183].

the first OTS with the complainant, his claims were not backed up with attendance notes or any other documentary evidence. This, coupled with the undisputed fact that the first OTS was not forwarded to the complainant, led the tribunal to draw an adverse inference against the respondent.[126] Further, the timelines had played out such that it was increasingly likely that the decision in Suit 1255 would be issued, and Kori would therefore pay the Settlement Sum, before the trial of DC Suit 1043 could take place. Since the Settlement Sum constituted the bulk of the claim in DC Suit 1043, this timeline issue could change the calculus of accepting the first OTS, and the respondent had a continuing duty to evaluate the first OTS together with the complainant but he had failed to do so.[127]

23.68 On 29 January 2019, Kori issued the second OTS in DC Suit 1043. Kori had already paid the Settlement Sum, and the only outstanding issue was whether it was also liable to pay $9,558.19 in interest. In the second OTS, Kori offered to pay half the interest and for parties to bear their own costs. On 30 January 2019, the respondent wrote to the complainant, informing him of the second OTS, asking for instructions, and also noting that the trial judge at the hearing of DC Suit 1043 had indicated it might be in the parties' interests to settle the issue of interest as the issue could go either way.[128] To the tribunal's mind:[129]

> This meant that there was a possible, even significant, chance that P&P might not prevail at the trial of DC 1043. Yet, there was no discussion with the Complainant on balancing the benefits of recovering half the sum of $9,558.19 from Kori against the exposure of P&P to the legal costs and possible adverse costs orders of proceeding with the trial. Even if P&P prevailed at the trial, there was no certainty at all that the amounts and costs recovered from Kori would cover P&P's actual legal costs payable to the Respondent.

Additionally, the tribunal found that the respondent had, on P&P's behalf, issued an offer to settle to Kori without the knowledge or instructions of the complainant, plainly in breach of rr 17(2)(*e*)(i) and 17(2)(*f*) of the PCR 2015.[130]

23.69 This case highlights that, although not every case may be an "appropriate" one for detailed discussions with the client regarding their ADR options, solicitors should also be aware that there is a continuing duty to evaluate ADR options with the client where the circumstances

126 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [139]–[142].
127 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [143]–[146].
128 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [148]–[149].
129 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [153].
130 *The Law Society of Singapore v Andrew John Hanam* [2022] SGDT 12 at [176]–[178].

have changed over the course of the legal proceedings. Additionally, it is incumbent on legal advisers to have written records of them advising their clients about ADR.

B. Use of sums quoted during settlement negotiations

(1) Use of sums quoted during settlement negotiations – Admissions of liability during settlement negotiations

23.70 In *Pradeepto Kumar Biswas v Sabyasachi Mukherjee*,[131] the applicants filed for a retrial of a dispute which was decided by the High Court[132] on 11 December 2018.[133] The High Court decision had already been the subject of two appeals to the Court of Appeal; one appeal was struck out, and the other deemed withdrawn.[134] Two years later, the applicants alleged that there was a miscarriage of justice as the respondents had committed perjury during the trial.[135] The Court of Appeal orally dismissed the applicants' claims on the grounds that the court simply had no jurisdiction to hear such applications.[136] Because this is a relatively straightforward case, for the purposes of this chapter, only one of the applicants' arguments is relevant for consideration.

23.71 To substantiate its allegation of a miscarriage of justice, the applicants submitted a letter from the respondents' lawyers, dated 29 August 2019. This letter was part of the disputing parties' communications after the rendering of the High Court's judgment on 11 December 2018, when the appeals process to review that judgment was underway. Between 2 July 2019 and 19 July 2019, the parties discussed potential terms of settlement over e-mail,[137] which led to the reply from the respondents' lawyers in the letter dated 29 August 2019. Read *in isolation*, para 2(c) of that letter states:[138]

> **Within 7 working days** from our clients' receipt of the cashier's order(s) and/or demand draft(s), our clients shall take all necessary steps to transfer all beneficial interests and rights in [the Investments] (and any corresponding returns) to Mr Biswas:
>
> > (i) The investment in [Neodymium], with the principal investment amount being US$250,000.00;

131 See para 23.8 above.
132 See *Sabyasachi Mukherjee v Pradeepto Kumar Biswas* [2018] SGHC 271.
133 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [2]–[3].
134 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [4].
135 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [5].
136 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [26]–[35].
137 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [46].
138 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [44].

> (ii) The investment in [Peak], with the principal investment amount being US$500,000.00;
>
> (iii) The investment in [Pacatolus], with the principal investment amount being US$2,250,000;
>
> (iv) The investment in [Trade Sea], with the principal investment amount being US$200,000; and
>
> (v) The investment in [SEW], with the principal investment amount being US$250,000.00.
>
> [emphasis in original]

23.72 The applicants attempted to convince the court that these provisions drafted by the respondents, when *read in isolation from the rest of the conversation between the parties*, demonstrated the respondents' true intentions in the subject matter of the dispute. At trial, the respondents' position was that the disputed investments were a sham. The applicants argued that the respondents' letter was evidence that they had perjured themselves, as that letter had "ascribed a value to each investment and/or asset",[139] thus implying their belief that these were actually genuine investments.

23.73 The Court of Appeal rejected the applicants' arguments. Delivering the judgment of the court, Andrew Phang Boon Leong JA noted that the context of the entire conversation should be considered. The court took pains to contextualise the letter from 29 August 2019 with the rest of the correspondence between the parties and concluded that the letter was simply a formalisation of the *applicants'* proposed settlement agreement.[140] It was therefore more a reflection of the applicants' intentions rather than the respondents'. Phang JA concluded that the letter "could ***not*** be said to be *irrefutable proof* that [the respondents'] evidence at trial (that the Investments were shams) was false. [The applicants] had accordingly, in our view, *not* proven a miscarriage of justice" [emphasis in original].[141]

23.74 This case serves as an apt illustration of the Singapore courts' sensible and contextualised approach when dealing with documentary evidence of negotiations during an ADR process. In this case, the applicants had attempted to exploit the sums quoted during their settlement negotiations and misconstrue them as an admission of an alternative legal position. It is evident that the courts will be slow to read aspects

139 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [45].
140 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [47].
141 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2022] 2 SLR 340 at [50].

of the settlement negotiations in isolation and will not allow parties to thereby create a skewed narrative of the dispute resolution process.

C. Approval of settlement agreements by majority shareholders

(1) Approval of settlement agreements by majority shareholders in good faith – Conclusion of settlement agreements by corporate actors – Minority oppression in conclusion of settlement agreement on behalf of corporate actors

23.75 In *Baker, Samuel Cranage v SPH Interactive Pte Ltd*,[142] the plaintiffs (Samuel Baker and Jeremy Lee) were the founders of a company, StreetSine Technology Group Pte Ltd ("SSTG"), which was the third defendant in this dispute. In 2012, the plaintiffs were approached by the second defendant, Singapore Press Holdings Ltd ("SPH"), which was interested in acquiring SSTG.[143] In 2014, SPH acquired 60% of the shares in SSTG through their wholly owned subsidiary, SPH Interactive Pte Ltd ("SPHI"), which was the first defendant to this dispute.[144] The two plaintiffs each retained a 20% share in SSTG.

23.76 The parties had ambitions for listing SSTG on an internationally recognised stock exchange.[145] However, these plans fell through owing to a series of events. The Singapore Institute of Surveyors and Valuers ("SISV") issued a press release in April 2016 critiquing some of SSTG's business methods. In response, SSTG had to file a complaint with the Competition and Consumer Commission of Singapore, as well as a suit in the High Court (General Division) ("the SISV Litigation"), to vindicate its rights in respect of the SISV's adverse report.[146] The SISV Litigation unfolded concurrently with SSTG experiencing significant internal management and business conflicts.[147] The internal conflict came to a head on 28 April 2020 when the chief executive officer of SSTG, Jason Lewis Barakat-Brown (the fourth defendant) reported to the board that the company would not be able to continue to trade by the end of June 2020 owing to financial difficulties. This triggered action from the majority shareholders of SSTG, who applied to place the company under judicial management.

142 See para 23.8 above.
143 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [8].
144 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [10].
145 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [13].
146 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [15].
147 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [16]–[23].

23.77 Aggrieved, the plaintiffs, who were minority shareholders of SSTG, filed a claim for minority oppression against all defendants. They were unsuccessful before the High Court (General Division).[148] This part comments only on the plaintiffs' argument that they were victims of minority oppression when the majority decided to resolve the SISV Litigation amicably[149] without the input of the minority shareholders.[150]

23.78 The plaintiffs took issue with the fact that SISV paid no compensation under the settlement agreement.[151] They alleged that this was a potential source of funds that SSTG could have exploited to avoid judicial management, which did not materialise, to the detriment of the minority shareholders. However, the High Court (General Division) disagreed with the plaintiffs' assertions. Philip Jeyaretnam J first observed that the majority's decision to accept the settlement agreement was founded on "appropriate steps to assess the best course of action".[152] The company sought a legal opinion from esteemed lawyers in November 2019 on the merits of their claim in the SISV Litigation.[153] The legal opinion advised the company that it had about a fifty-fifty chance of succeeding in its claims[154] and that its estimated legal costs would be substantial if it continued to pursue litigation. Furthermore, the lawyers opined that even if the claim was successful, the quantum of damages awarded would likely be lower than expected. Since it was evident that the company relied on this legal opinion in its decision to accept the settlement agreement terms, Jeyaretnam J was satisfied that it made its decision in good faith and in the best interests of the company.[155] Therefore, the court ruled that the plaintiffs were not the victims of unfair or oppressive conduct by the company.

23.79 This case illustrates how corporate actors entering into settlement agreements may also be bound to consider the interests of their minority shareholders. Whilst it is not within the ambit of this chapter to address specific issues of minority oppression and unfairness, readers will appreciate that internal conflicts in companies can sometimes adversely affect the outcome of mediation or settlement negotiations. Not all shareholders will agree on every aspect of a compromise agreement concluded by the company's authorised representative. At the same time, it is unrealistic to expect the company to accommodate *all* contrasting

148 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [131].
149 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [24].
150 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [75].
151 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [24].
152 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [80].
153 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [24].
154 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [80].
155 *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 at [82].

views of its competing shareholders. In *Baker, Samuel Cranage v SPH Interactive Pte Ltd*, the High Court (General Division) has broadly set out the standard expected of the company's authorised representative(s): any decision to enter into settlement agreements with external stakeholders should be founded on appropriate steps adopted to assess the best course of action objectively, for example, by obtaining objective legal advice. Where the company's representative has taken these appropriate steps, they are likely to be viewed by the courts as having acted in good faith and in the best interests of the company. This should generally militate against a finding of minority oppression and unfairness.

IV. Mediation, ADR and civil procedure

23.80 In this part, the authors review (a) a case about the taxation of disputed solicitors' fees which had been settled in part;[156] (b) a case where the High Court (General Division) commented on mediation confidentiality shielding the court from examining the disputing parties' conduct at the mediation table; and (c) a consumer protection case where adverse orders were issued where parties were unco-operative in *proceeding* to mediation.

A. Settling disputed solicitors' fees out of court

(1) Taxation of solicitors' fees – Settlement agreements on solicitors' fees cannot be taxed

23.81 In *Loganathan Ravishankar v ACIES Law Corp*,[157] the plaintiff was a client of the defendant law firm. For work done in the pre-action stage of litigation, the defendant issued three invoices for its legal services.[158] The first two invoices were paid but the third invoice, for $426,347.92, was not.[159]

23.82 The defendant sued the plaintiff in 2021 for payment of the third invoice, but discontinued the suit subsequently because parties concluded a settlement agreement. The plaintiff made partial payment,[160] but decided with the benefit of hindsight to have all three invoices taxed in accordance with the Legal Profession Act 1996[161] ("LPA").

156 Legal Profession Act 1996 (2020 Rev Ed).
157 See para 23.8 above.
158 *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 at [1].
159 *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 at [2].
160 *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 at [2].
161 Legal Profession Act 1996 (2020 Rev Ed) ss 120(1) and 122.

23.83 This chapter will not discuss the technical details of how solicitor fees may be taxed. However, the outcome of this case presents an interesting conundrum for parties that choose to settle disputed solicitor fees out of court. Choo Han Teck J ruled that where a dispute arises between a solicitor and client over legal fees, and that dispute was compromised in a settlement agreement, any future claim on that debt would not be susceptible to taxation.[162] Once a settlement agreement is concluded, that debt is no longer an invoice for legal fees susceptible to regulation under the LPA, but is recharacterised as a binding and enforceable compromise agreement that falls outside the LPA's ambit.[163] Examining the parties' communications, Choo J found that the plaintiff had agreed to pay $426,347.92 in exchange for the defendant filing a notice of discontinuance.[164] This was, in the court's view, a clear, valid and enforceable settlement agreement concluded to compromise the parties' dispute over the third invoice for legal fees:[165]

> By entering into the Settlement Agreement, the plaintiff agreed to subsume all claims and disputes concerning the 3rd Invoice, including disputes over the quantum of the bill, into a contract with the defendant. Unless the Settlement Agreement is set aside, the plaintiff must now comply with the terms of the Settlement Agreement. … [B]y entering into the Settlement Agreement, the plaintiff's obligation to pay the defendant $426,347.92 arises from the plaintiff's promise to compromise an action and no longer bears the character of payment for the defendant's legal services. Consequently, the plaintiff is not entitled under s 120 of the LPA to tax the 3rd Invoice.

23.84 Ironically, mediation and ADR may sometimes take place post-dispute between a disputant and their solicitor. The LPA protects users of legal services by allowing any excessive billing to be taxed by the court. Unfortunately, *Loganathan Ravishankar v ACIES Law Corp* sets a precedent in Singapore of clients that voluntarily enter into settlement agreements over their solicitor fees bearing the risk of opting out of the LPA's protections at the same time. There may be a slight disconnect between the LPA's policy of protecting users of legal services from being billed excessively, and the general judicial encouragement for parties to resolve their disputes out of court and/or at ADR forums. It is hoped that the taxation regime under the LPA will be amended to keep settlement agreements concluded over solicitors' fees within the LPA's purview.

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162 *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 at [7], citing *Connolly Suthers v Geoffrey Ellis Frost* [1994] QCA 285 with approval.
163 *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 at [7].
164 *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 at [8].
165 *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 at [9].

B. Mediation confidentiality

(1) Confidentiality of discussions at mediation – Disputes over party conduct at mediation

23.85 In *The Wave Studio Pte Ltd v General Hotel Management (Singapore) Pte Ltd*,[166] the parties were engaged in a copyright infringement dispute. In this review, the focus is on the court's calculation of the disbursements awarded to the plaintiffs. Specifically, the plaintiffs applied to claim the fees paid for two mediation sessions, which the parties had attended in an attempt to resolve their dispute out of court, as part of their disbursements. In support of their claim for this head of disbursements, the plaintiffs alleged that the defendants had refused to settle at mediation.[167]

23.86 The High Court (General Division) rejected the plaintiffs' claim for their mediation fees. Mavis Chionh Sze Chyi J reminded the plaintiffs that since the negotiations at mediation were confidential, there "was no way the trial court would be in a position to determine which side had behaved unreasonably in the mediation".[168] The fact that there is confidentiality at mediation means that parties are not allowed to submit any evidence of the discussions at the mediation table in court, unless the parties subsequently agree to waive such privilege. Realistically, no fair-minded party would agree to lift mediation confidentiality to expose their own unco-operativeness at the mediation table in court. It is also important to keep in mind that parties are not obliged to reach a settlement in mediation.

23.87 In any event, Chionh J also found that the costs of mediation are not considered costs incurred in the legal proceedings before the court, such that they may be claimable by way of disbursements.

166 See para 23.8 above.

167 *The Wave Studio Pte Ltd v General Hotel Management (Singapore) Pte Ltd* [2022] SGHC 142 at [241].

168 *The Wave Studio Pte Ltd v General Hotel Management (Singapore) Pte Ltd* [2022] SGHC 142 at [241].

C. Adverse orders for not proceeding to mediation

(1) Mediation of consumer disputes – Punitive consequences of not responding to calls to attend mediation

23.88 In *Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd*,[169] the Competition and Consumer Commission of Singapore ("CCCS") brought proceedings against a group of companies trading under the "Nail Palace" brand (collectively "the Defendants"), which offer manicure and pedicure services and foot-related treatments, under s 9 of the Consumer Protection (Fair Trading) Act 2003[170] ("CPFTA"). CCCS had received multiple complaints by consumers in Singapore about the unfair consumer practices perpetuated by the Defendants[171] and applied under s 9 of the CPFTA to the District Court to obtain enforcement action.

23.89 As this is not a chapter that reviews consumer protection judgments from the Singapore courts, the specific and substantive details of CCCS's enforcement action shall not be discussed in this chapter. However, this judgment presents a cautionary case to note for businesses that have been invited by CCCS to attend a mediation session to resolve any complaints filed by consumers.

23.90 If parties do not comply with the invitation to attend mediation, there may be subsequent punitive consequences if enforcement action is brought by CCCS under s 9 of the CPFTA. Such was the case involving the Defendants; they were invited multiple times by the relevant consumer authorities to attend a mediation session with their aggrieved consumers,[172] but they failed to respond. CCCS thereafter applied to the court to subject the Defendants to a series of accompanying orders, which would compel them to comply with fair-trading practices on pain of contempt of court.[173] The rather *extensive* list of accompanying orders is as follows:[174]

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169 See para 23.8 above. The Defendants' appeal was dismissed by the High Court (General Division) on 26 April 2023: *Nail Palace (BPP) Pte Ltd v Competition and Consumer Commission of Singapore* [2023] SGHC 111.

170 2020 Rev Ed.

171 *Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd* [2022] SGDC 171 at [10]–[13].

172 *Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd* [2022] SGDC 171 at [84]–[85].

173 *Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd* [2022] SGDC 171 at [87] *ff*.

174 *Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd* [2022] SGDC 171 at [100].

(a) a declaration that each of the defendants has engaged in an unfair practice within the meaning of section 4(*d*), read with paragraph 1B of the Second Schedule, to the CPFTA, by making a misleading representation concerning the need for fungal treatment(s) or fungal treatment package(s); and

(b) a declaration that Nail Palace SM has also engaged in an unfair practice within the meaning of section 4(*a*) of the CPFTA, by omitting to inform a consumer that certain products were included in the price of a treatment package, thereby resulting in the consumer being misled;

(c) that Nail Palace BPP be restrained from engaging in the unfair practice referred to in subparagraph (a) above;

(d) that Nail Palace SM be restrained from engaging in the unfair practices referred to in subparagraphs (a)-(b) above;

(e) that each of the defendants publish, at their own expense, within fourteen days from the date of this decision, details of the declaration and injunction granted against them, by way of a full page public notice in the Straits Times, Lianhe Zaobao, Berita Harian, and Tamil Murasu;

(f) that each of the defendants must, before any consumer enters into a contract in relation to a consumer transaction with them during a period of two years from the date of this decision:

(i) notify the consumer in writing about the declaration and injunction in force against that defendant; and

(ii) obtain the consumer's written acknowledgement of receipt of the said notice;

(g) that each of the defendants must, for a period of two years from the date of this decision, notify the plaintiff in writing within fourteen days of the occurrence of any of the following events:

(i) a change in the premises or number of premises at which the defendant carries on its business as a supplier;

(ii) the conversion of the defendant from a private company to a limited liability partnership under section 21 of the Limited Liability Partnerships Act;

(iii) the defendant undergoing any arrangement, reconstruction or amalgamation under Part VII of the Companies Act;

(iv) an order being made under section 71 of the Insolvency, Restructuring and Dissolution Act 2018 approving a compromise or an arrangement between the defendant and its creditors;

(v) the defendant being subjected to receivership under Part 6 of the Insolvency, Restructuring and Dissolution Act 2018;

(vi) the defendant being subjected to judicial management under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018;

> (vii) the defendant being subjected to winding up under Part 8 of the Insolvency, Restructuring and Dissolution Act 2018;
>
> (viii) a change in the defendant's name or the name under which the defendant is carrying on business;
>
> (ix) any arrangement by the defendant to participate in a trade fair;
>
> (x) if the defendant adopts for its business a new name, symbol or design, any arrangement by the defendant to carry out any activity for the purpose of identifying its business with that new name, symbol or design;
>
> (xi) a change in the board of directors of the defendant or a change in the person or persons who hold directly or indirectly 15% or more of the total voting power or total issued shares in the defendant; or
>
> (xii) any shareholder of the defendant entering into an arrangement under which that shareholder holds on behalf of another person any profits, gains or dividends derived from the carrying on of the defendant's business.

23.91 When granting the relevant accompanying orders prayed for by CCCS under s 9 of the CPFTA, the court noted that such orders should only be granted if there is a "real risk that the defendants might persist in their unfair practices".[175] Furthermore, the court saw it fit that such orders may be granted to deter businesses that have been accused of engaging in unfair practices from being unco-operative with the consumer authorities:[176]

> Moreover, the defendants have, through their uncooperativeness …, refused to avail themselves of the options available at the front end of the spectrum, such as mediation. This has regrettably necessitated the expenditure of public resources to bring these proceedings. In my view, such uncooperative conduct is another factor supporting the grant of accompanying orders, bearing in mind that one of Parliament's objectives behind the 2016 Amendments [to the CPFTA] is to move more cases towards the front end of the spectrum …. Granting accompanying orders in this case would send a signal to businesses that insofar as they have engaged in unfair practices, they should avail themselves of the options at the front end of the spectrum. A failure to do so may count against them in subsequent enforcement proceedings brought under section 9 of the CPFTA.

175 *Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd* [2022] SGDC 171 at [88].

176 *Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd* [2022] SGDC 171 at [89]–[90].

> In the premises, I find it entirely appropriate, and in line with Parliament's objectives behind the 2016 Amendments, to grant the proposed accompanying orders ….

23.92 It appears that until the High Court (General Division)[177] sets out clear guidelines on how accompanying orders may be granted under s 9 of the CPFTA, businesses run the risk of being made subject to quite an extensive list of restrictions, in the form of accompanying orders, if they fail to comply with an invitation by CCCS to proceed to mediation to resolve a dispute with their aggrieved consumers.

177 It is noteworthy that the Defendants' appeal was dismissed by the High Court (General Division) on 26 April 2023 on procedural grounds: *Nail Palace (BPP) Pte Ltd v Competition and Consumer Commission of Singapore* [2023] SGHC 111.