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WINDING UP IN CASES OF OPPRESSION[1]

Kuah Kok Kim v. *Chong Lee Leong Seng Co. (Pte.) Ltd.*[2]
Re Gee Hoe Chan Trading Company Pte. Ltd.[3]

TWO recent decisions have addressed important questions of substantive law concerning section 216 of the Singapore Companies Act.[4] Both cases involved petitions by minority shareholders of a private company seeking the court's relief under section 216.[5] The first case, *Kuah Kok Kim* \. *Chong Lee Leong Seng Co. (Pte.) Ltd.* (*"Kuah Kok Kim"*)[6] is a Court of Appeal decision reversing the 1989 decision of Justice Chan Sek Keong in the court below.[7] The second, *Re Gee Hoe Chan Trading Company Pte. Ltd.* (*"Re*

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1 In this note, the term "oppression" is used generally to describe actions brought under s. 216(1) of the Singapore Companies Act (Cap. 50, 1990 Rev. Ed.) notwithstanding that they may have been brought on grounds other than the "oppression" ground. S. 216(1) sets out the different grounds upon which a petition may be founded, see *infra*, note 5. For a detailed analysis of the separate, independent grounds of action under this section, see Philip Pillai, "Oppression of Minority Shareholders: The Singapore and Malaysian Experience" (1979) 21 Mal.L.R. 241.

2 [1991] 2 M.L.J. 129.

3 [1991] 3 M.L.J. 137.

4 The equivalent provision in Malaysia is s. 181 of the Malaysian Companies Act 1965 (Act 125).

5 Under s. 216(1), any member or debentureholder of a company may apply to the court for an order seeking relief on the ground that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to, or in disregard of, his or their interests or that some act of the company has been done or is threatened or that some resolution has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more members or debenture-holders (including himself). If the court is satisfied that any one of these grounds has been established, it is empowered under s. 216(2) to make such order as it thinks fit with a view to bringing to an end or remedying the matters complained of. Without prejudice to this general discretion of the court, s. 216(2) additionally sets out six reliefs (one of which is the winding up relief) which the court may grant.

6 *Supra*, note 2.

7 [1989] 3 M.L.J. 343, reported as *Re Chong Lee Leong Seng Co. (Pte.) Ltd.* The Court of Appeal reversed Chan J.'s decision to strike out a petition under s. 216 which had been wrongly presented as a winding up petition. It held that such a procedural irregularity was not so fundamental or serious in nature that it could not be corrected. Notwithstanding this difference in opinion the appeal judges concurred with Chan J. on essentially two points

Gee Hoe Chan ")[8] is the first reported case in which a local court has ordered a winding up under section 216.

In ***Kuah Kok*** *Kim,* the judgment delivered by Justice L.P. Thean on behalf of the Court of Appeal addressed important questions concerning the object of section 216, the nature of winding up as a relief under section 216, and when a court may exercise its discretion to wind up a company under this section. This note will first consider the impact of this decision on recourse to winding up a company under section 216. The unprecedented decision of Justice Chao Hick Tin in *Re Gee Hoe Chan* to order the winding up of a company under section 216 will then be analysed in the context of the Court of Appeal decision in *Kuah Kok Kim.*

Kuah Kok Kim

The appellants in this case were minority shareholders of the respondent company. In 1989 they instituted proceedings under section 216 of the Singapore Companies Act by way of a petition under the Companies (Winding Up) Rules 1969[9] seeking an order that the respondent company be wound up under the Act or, alternatively, an order that six directors of the company be removed as directors.

The company applied to strike out the proceedings on the ground that they were wrongly started by a winding up petition and should have been commenced by way of an originating petition under Order 88 of the Rules of the Supreme Court 1970 ("R.S.C.").[10] It was contended by counsel for the company that proceedings for any relief under section 216 were not winding up proceedings and must be commenced under R.S.C., Order 88 and not the 1969 Rules.

The primary issue in this case was whether proceedings under a section 216 petition which includes a prayer for the winding up relief are winding up proceedings. In determining this issue, the court first had to consider an important question of substantive law as to the nature of an action (which includes a winding up relief) under section 216."

(though not with all his reasoning on the first point) — that proceedings instituted under s. 216 are not winding up proceedings under Part X of the Singapore Companies Act, and on the object of s. 216. Hence these parts of his Honour's judgment remain helpful and illuminating. Both the Court of Appeal and High Court decisions will be referred to in this note as *Kuah Kok Kim.*

8 *Supra,* note 3.

9 S. 184/69.

10 S. 59/70.

11 Its importance lies in the ensuing legal disabilities and consequences which attach to a company, its shareholders and directors, and also outsiders who have dealings with the company, upon the commencement of winding up proceedings against a company: see ss. 258-261, 262(3), 267 and 335 of the Singapore Companies Act.

The case was heard before Justice Chan in the first instance.[12] His Honour held the petition had been improperly presented as a winding up petition under the Companies (Winding Up) Rules 1969 and ought to have been commenced by way of an originating petition under R.S.C., Order 88, and he ordered the petition struck out.

In reaching this conclusion, the learned judge distinguished the local provision from its English and Australian antecedents (sections 210 and 186 of the United Kingdom Companies Act 1948 ("1948 U.K. Act")[13] and Australian Uniform Companies Act 1961, respectively), and instead compared it to section 218 of the Ghanaian Companies Code 1961. Section 216, which was modelled after section 218 of the Ghanaian Code, differs in construction from the U.K. and Australian provisions. Unlike section 210 of the 1948 U.K. Act which historically tied oppression actions to winding up petitions on the "just and equitable" ground,[14] section 216 provides an entirely new ground for relief.

In a section 216 petition, the court may exercise its discretion to grant any of the prescribed remedies, including making a winding up order, provided it finds it is necessary to do so in order to end the oppression against the petitioner. There is no overriding requirement that the facts must justify the winding up of the company on the ground that it is just and equitable to do so. His Honour then added as follows:

> It is my view that, consonant with the object of s. 216, a court in Singapore will not wind up a company on the ground of oppression where any of the other reliefs provided therein is a sufficient remedy to bring to an end the matters complained of, notwithstanding Lord Wilberforce's statement in *Re Kong Thai Sawmill*[15] that 'the option (i.e. winding up) ranks equally with the others'. The underlying object of s. 216 is not to wind up the company but to end any acts of oppression

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12 *Supra,* note 7.

13 11 & 12 Geo. 6, c. 38.

14 See s. 210(2)(b) of the U.K. Companies Act 1948 which has been interpreted to mean that, *inter alia,* the court must be of the opinion that the facts of the case would otherwise justify the making of an order on the ground that it is "just and equitable" that the company should be wound up before it will grant relief; and s. 210(5) of the same Act which expressly links a petition under s. 210 to a winding up petition. A petition to wind up a company under the "just and equitable" ground is expressly covered by s. 254(1)(i) of the Singapore Companies Act; the equivalent provision in the United Kingdom was s. 222(f) of the U.K. Companies Act 1948, now s. 122(l)(g) of the U.K. Insolvency Act 1986 (1986, *c.* 45).

15 *Re Kong Thai Sawmill (Miri) Sdn. Bhd.* [1978] 2 M.L.J. 227, a Privy Council decision on appeal from Malaysia on s. 181 of the Malaysian Companies Act 1965. In this case, the Privy Council rejected an appeal to wind up a company under s. 181 on the ground that the facts of the case did not justfy a winding up. See the judgment of Lord Wilberforce at pp. 233-234. See also, *infra,* note 42.

> against minority shareholders. A petitioner who seeks to wind up a company on the ground of oppression whether as the principal or only relief is not entitled to such an order even where he proves his case ... in a s. 216 petition, the petitioner is not entitled as of right to wind up the company even where he proves oppression and even where the facts justify (although this is not a statutory requirement) a winding up on the ground that it is just and equitable. A court will only wind up the company as a last resort in order to give effect to the object of s. 216.[16]

The Court of Appeal in *Kuah Kok Kim* endorsed Justice Chan's view on the object of section 216. It agreed with the learned judge that the object is "to put an end to or remedy the matters complained of"[17] under section 216, and that in giving effect to this section a court will consider "all the circumstances and grant what it considered the appropriate remedy."[18] In this respect, a shareholder seeking relief under section 216 need not ask for an order to wind up the company. Where he does seek such relief, whether as a sole or a principal remedy, or as an alternative remedy, the court might not grant it and instead might grant some other relief if it thought fit. Hence a shareholder applying for relief under section 216 may or may not obtain a winding up order against the company, irrespective of whether or not such relief is expressly asked for.[19]

This view that section 216 confers power upon the court to grant relief for the purpose of ending the oppression or remedying the matters complained of, and not to grant relief where the facts justify an order on the "just and equitable" ground, is doubtless correct. The wording of section 216(2) states unequivocally that the court may make such order as it thinks fit "with a view to bringing to an end the oppression or remedying the matters complained of. Unlike the position under section 210 of the 1948 U.K. Act,[20] no reference is made in section 216 to the "just and equitable" ground.

This interpretation of section 216 is also supported by Professor L.C.B. Gower's criticism of section 210 of the 1948 U.K. Act in the Final Report of the Commission of Enquiry into Company Law in Ghana as unnecessarily tying up oppression actions to winding up petitions on the "just and equitable" ground.[21] Section 210 of the 1948 U.K. Act has since been superseded by

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16 *Supra*, note 7 at pp. 347-348.
17 *Supra*, note 2 at p. 132.
18 *Ibid.*
19 *Ibid.*
20 *Supra*, note 14.
21 See *Final Report of the Commission of Enquiry into The Working and Administration of the Present Company Law of Ghana*, 1961, p. 161, also reproduced in Philip Pillai, *Sourcebook of Singapore and Malaysian Company Law* (1986, 2nd ed.), at pp. 1036-1037;

section 75 of the U.K. Companies Act 1980[22] (now section 459 of the U.K. Companies Act 1985)[23] which has severed its links with winding up under the "just and equitable" ground.[24]

Although they agreed with Justice Chan on the object of section 216, the appeal judges disagreed with his view of winding up under section 216 as a remedy of the last resort. They held that the reliefs listed in section 216(2) rank equally and it is incorrect to treat the relief as available only if all the other reliefs specified in section 216(2) are found to be inadequate or ineffectual. In their view, section 216 confers on the court an unfettered discretion, and no general rule should be laid down to limit or restrict the exercise of such discretion. Whether a court will or will not grant the remedy of winding up depends on the circumstances of the case, and on whether it considers this an appropriate remedy.

Whilst recognising that the court has an unfettered discretion, the appeal judges added that "as a matter of practicality" in considering whether to grant the winding up relief a court "will have to bear in mind the drastic character of winding up."[25] On this point, they endorsed and repeated the following words of Lord Wilberforce in the Privy Council decision in *Re Kong Thai Sawmill*[26] with regard to winding up:

> Winding up is specifically mentioned in s 181(2)(e) of the [Malaysian] Companies Act [the equivalent of s 216(2)(f) of the Singapore Companies Act] as a head of relief which the court may grant. No limiting conditions are imposed, so that the granting of it is in the discretion of the court. In exercising this discretion the court will have in mind the drastic character of this remedy, if sought to be applied to a company which is a going concern; it will take into account (a statement which is not exhaustive) the gravity of the case made out under s 181(1); the possibility of remedying the complaints proved in other ways than by winding the company up; the interest of the applicant in the company; the interests of other members of the company not involved in the proceedings.[27]

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and criticisms of s. 210 of the U.K. Companies Act 1948 by the Jenkins Committee in *Report of the Company Law Committee* (1962) Cmnd. 1749, para. 201 in which the Committee recommended the repeal of references to winding up on the "just and equitable" ground in s. 210.

22 1980 c. 22.

23 1985 c. 6.

24 For a commentary on s. 75, see Walter Woon, "A Note on Unfair Prejudice - Section 75 of the U.K. Companies Act 1980" (1983) 25 Mal.L.R. 397.

25 *Supra*, note 2 at p. 131.

26 *Supra*, note 15.

27 *Ibid.*, at p. 233.

In rejecting Justice Chan's attempt to limit the application of the winding up relief under section 216, the Court of Appeal rightly upheld the spirit of the original recommendation of the 1945 Cohen Committee which recommended that the court's "discretion must be unfettered, for it is impossible to lay down a general guide to the solution of what are essentially individual cases."[28] However, in adding that "as a matter of practicality in considering whether to grant such a remedy the court will have to bear in mind the drastic character of winding up"[29] and in this respect, the practical considerations enunciated by Lord Wilberforce, the appeal judges seem to be treading somewhere between conferring upon the court a wholly unfettered discretion and rejecting any attempt to limit the court's discretion with a strict rule that the winding up relief may only be granted as a last resort.

The difficulty remains as to the weight a court is now required to attach to these words when exercising its discretion under section 216. In saying the court "will have to" bear in mind the drastic character of winding up the appeal judges not only endorsed the Privy Council's position on winding up in *Re Kong Thai Sawmill* but also made it clear that it is not open to a court to ignore the peculiar nature of this relief. Consequently in deciding whether to grant this relief a court will have to engage in an exercise in balancing the practical implications of winding up a company which is a going concern with all the other circumstances of the case. A winding up relief will be ordered only if it is the most appropriate remedy in all the circumstances of the case to end the oppression or remedy the matters complained of - ultimately a very subjective decision involving the exercise of the court's discretion on a case by case basis, and therefore one which is invariably difficult to challenge.

Re Gee Hoe Chan

The petitioners and respondents in this case were shareholders of a company engaged in the business of real property investment and commission agents. The company was incorporated as a private limited company in 1960. Prior to incorporation, it was a partnership established by two men, namely Messrs Ng Boon Hong and Ng Ah Kim.

Ng Boon Hong died in 1952, and his interest in the partnership devolved to his wife and children, the fourth to eighth petitioners, who became

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28 *Report of the Committee on Company Law Amendment,* June 1945 Cmnd. 6659, para. 60. See also Professor L.C.B. Gower's comments in the *Final Report of the Commission of Enquiry into the Company Law of Ghana, supra,* note 21 at p. 162 in which he endorsed the Committee's view and recommended the court should have an unfettered discretion to find a solution and impose it on the parties irrespective of whether the relief was prayed for.

29 *Supra,* note 2, at p. 131.

shareholders upon incorporation of the company. Ng Ah Kim died in 1976, and the remaining shares in the company were thereafter held by his family, which included the first three petitioners and the respondents.

The petitioners, who were minority shareholders of the company, applied for relief under section 216. They relied upon a number of facts to prove "oppression" and "disregard" under section 216 but of these Justice Chao considered only three were relevant. These related to the non-declaration of dividends for the years 1984-88; the question of representation on the board of directors; and whether the respondents had managed the affairs of the company diligently and honestly in the interest of the shareholders.

On the issues of non-declaration of dividends and board representation, Justice Chao was satisfied the petitioners had established a case of "oppression" or "disregard" under section 216(1)(a). He found that the respondents, by lining their pockets with the profits of the company in the form of salaries, bonuses and directors fees, and not declaring dividends in the years 1984-88, had "acted in the affairs of the company in their own interest rather than in the interest of the members as a whole."

The petitioners as shareholders of more than 40 per cent of the issued share capital of the company were also entitled to proper representation on the board. The removal from the board of the only petitioner who was a director, and the refusal of the board to accede to the petitioners' request for board representation, were acts clearly intended to prevent the petitioners from examining the accounts of the company. However, his Honour was not prepared to hold that the lack of competence or poor judgment in the management of bad debts of the company by the respondents fell within the scope of section 216(1).[30]

Having found "oppression" and "disregard", Justice Chao concluded it was "impractical" for the company to continue with proper representation on the board for the petitioners having regard to the parties being at loggerheads and the loss of mutual trust and confidence between them. The "buy-out" alternative was also not feasible as the respondents had indicated they were unable to purchase the petitioners' shares. In the event he ordered the company wound up.[31]

The decision of Justice Chao to exercise the court's discretion to grant a winding up relief under section 216 marks a bold step in the direction of strengthening the statutory rights of minority shareholders. Consistent with the intention of the Cohen Committee,[32] section 216 was drafted to

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30 *Supra*, note 3, at p. 144. The view that mismanagement is not sufficient to found a case under s. 216(1) is supported by case law - see *Re Kong Thai Sawmill (supra*, note 15) and *Re Five Minute Car Wash Service Ltd.* (1966) 1 W.L.R. 745. See also Walter Woon, *Company Law* (1988), at pp. 120-122.

31 *Supra*, note 3, at p. 144.

32 *Supra*, note 28.

confer an exceptionally wide discretion upon the court to make such order as it thinks fit in cases of oppression. A court should therefore not balk in making whichever order it thinks fit - including, where necessary, a winding up order – if to do so will accomplish the purpose of section 216.

Regrettably, in making the order, Justice Chao made no reference in his judgment to the object of section 216, or to existing case law, to support his decision on this point. Neither Lord Wilberforce's judgment in *Re Kong Thai Sawmill* nor the Court of Appeal's judgment in *Kuah Kok Kim* was referred to or discussed. This is unfortunate as the resulting vacuum raises questions concerning the propriety of granting the winding up relief in this case - in particular, the question as to whether the learned judge had borne in mind both the object of section 216 and the consequences of winding up a company which was a going concern.

The petitioners had prayed for several alternative reliefs. First, the granting of proportional representation on the board, together with the appointment of a nominee to examine the company accounts and the power to commence proceedings against the respondents in the name of the company if warranted. Second, that the respondents be ordered to purchase the petitioners' shares at a price to be fixed by an independent expert. Third, that the company be wound up.

At the close of the hearing, the petitioners indicated that they were not seeking a winding up and that the first alternative was not feasible. (This move was possibly a tactical one since a buy-out at an independent price can be an attractive option - particularly in the case of a private company where the petitioner would be compensated in cash at a fair price for shares which he might otherwise have difficulty disposing of given the restrictions on share transfers in the articles of association of a private company). The respondents, quite understandably, indicated they were unable to purchase the shares.

In ordering a winding up once the respondents had indicated their inability to buy-out the petitioners, Justice Chao certainly had in mind the impracticability of keeping a company going "having regard to the fact that the parties were at loggerheads and the loss of mutual trust and confidence between the parties".[33] It may be that, for this reason, his Honour thought winding up the most appropriate relief to end the oppression or remedy the matters complained of since there appeared to be no other possible relief under the circumstances. However, it is uncertain whether the learned judge actually thought so as the judgment did not address this point specifically. It is also not apparent from the judgment whether the learned judge had weighed the consequences of winding up the company which was a going concern in reaching his decision.

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[33] *Supra*, note 3, at p. 144.

The rationale that a company should be wound up once parties are at loggerheads and there is loss of mutual trust and confidence harks back to cases involving deadlocks in quasi-partnerships[34] where winding up is available on the "just and equitable" ground under section 254(1)(i) of the Singapore Companies Act.[35] An argument in favour of this approach is that these cases serve as useful analogies: if it can be established that it is "just and equitable" for the company to be wound up, *a fortiori,* a judge should not balk at making a winding up order where this is the only practical remedy available.

The writer submits that this approach of linking a section 216 oppression action to a section 254 winding up petition is undesirable. Firstly, it increases the confusion surrounding both sections. Secondly, and more importantly, the argument fails to recognise section 216 as providing "an entirely new ground for winding up a company, which is that the court finds that it is necessary to do so in order to end the oppression [or remedy the matters complained of] against the petitioners",[36] and the different natures of both actions.

In granting whichever relief it thinks fit under section 216, the court's object is to end the oppression or remedy the matters complained of. Facts which justify a winding up on the "just and equitable" ground under section 254 may not necessarily render winding up the most appropriate remedy to end the oppression or remedy the matters complained of. In a section 254 petition, once the just and equitable ground is established, the only relief available to the court is to order a winding up. In a section 216 action, once the petitioner has established a case of oppression, the court may avail itself of any number and types of reliefs - winding up is only one of many reliefs.

Given this choice, in deciding whether winding up is the appropriate relief, the court in a section 216 action, unlike a section 254 petition, must bear in mind not only the different object of the section but also the peculiar nature of this relief. Certainly, it must, as stated by the Court of Appeal in *Kuah Kok Kim,* bear in mind the drastic character of this remedy and the practical considerations enunciated by Lord Wilberforce in *Re Kong Thai Sawmill.*

Under section 216(2)(c), the court has a discretion to authorise civil proceedings to be brought in the name, or on behalf, of the company. At

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34 See, for example, *Re Yenidge Tobacco Co. Ltd.* [1916] 2 Ch. 426, and *Loch* v. *John Blackwood Ltd.* [1924] A.C. 783 and more generally, Walter Woon, *supra,* note 30, at pp. 489-493.

35 The approach of selecting the winding up relief once other alternatives appear to be exhausted is also reminiscent of Chan J.'s approach in the High Court in *Kuah Kok Kim* of treating winding up as a remedy of the last resort.

36 *Per* Chan J., *supra,* note 7, at p. 347.

the time when the petition was presented in 1989, the company had suffered a huge loss of S$2,451,322 for that year. Prior to this, in the years 1984 to 1988, when the company was profitable, the respondents used their position as directors and shareholders to ensure no dividends were declared. Instead, the respondents lined their pockets with the profits of the company in the form of generous salaries, bonuses and directors' fees.

Having found that "it was grossly inequitable that the majority shareholders should make use of their controlling power in both the general meeting and the board to adopt a policy which only benefitted themselves and gave hardly any benefit to the minority shareholders"[37] and that the "respondents had acted in the affairs of the company in their own interest rather than in the interest of the members as a whole",[38] it was open to the court to order proceedings under section 216(2)(c) against the respondents to recover excessive payments authorised in breach of their duties as directors and shareholders.

Winding up the company might have seemed the immediate and most practical, or "just and equitable", solution once Justice Chao considered board representation to be "impractical" and a buy-out "unfeasible".[39] But it is arguable whether the decision has truly "remedied" the inequities complained of in so far as the issue of the misappropriated funds is concerned.

Finally, it remains to be seen whether prospective petitioners will now plead the "impracticality" argument under a section 216 action once parties are at loggerheads, mutual trust and confidence is lost, and there is a deadlock. Since these conditions are invariably present by the time shareholders have submitted to litigious proceedings in court, will this argument open floodgates for *de facto* winding up petitions under section 216? The writer believes it should not, and that the decision in this case is best confined to its particular facts.

First, what is "practical" or "impractical" to a judge is highly subjective. In cases of small family companies which are essentially "quasi-partnerships", a judge might, as in this case, be genuinely convinced that it is impractical to order that the company continue with proper representation on the board of directors for the minority shareholders as this would only result in further litigation. On the other hand, he might, particularly in the case of larger companies, be unconvinced that it is impractical to allow the company to continue with such proper board representation. The appointment of professional advisers to represent minority shareholders' interests on the board coupled with some other relief may, in other circumstances, be sufficient to end the oppression and remedy the matters complained of.

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37 *Supra*, note 3, at p. 141.
38 *Ibid.*, at p. 143.
39 *Ibid.*, at p. 144.

Secondly, and more critically, the lack of practical alternatives is usually one of many factors to be taken into account by the court.[40] The person with regard to winding up under section 216 is now clear following the decision in *Kuah Kok Kim*. Unlike a section 254 petition, the court when presiding over a section 216 petition has a wide discretion. Given the wide ranging reliefs available to it under section 216, it will almost certainly "as a matter of practicability"[41] weigh the consequences of ordering a winding up. In this respect, its decision will not be swayed solely by the lack of practical alternatives. The other factors stated by Lord Wilberforce in *Re Kong Thai Sawmill*[42] could be equally important.

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40 See Lord Wilberforce in *Re Kong Thai Sawmill, supra,* notes 15 and 26, in which his Lordship stated a number of factors which should be taken into account by the court when making a winding up order. The lack of alternatives - in the words of his Lordship: "... the possibility of remedying the complaints proved in other ways than by winding the company up" - is only one of many factors. The other factors (which are not exhaustive) are the gravity of the case made out under the section, the interest of the petitioner in the company, and the interests of other members of the company not involved in the proceedings.

41 *Per* Thean J., *supra,* note 2 at p. 131.

42 *Supra,* notes 15, 26 and 40. In this case, the Privy Council refused to grant an order winding up the company for two reasons. Firstly, the respondent had failed to make out any case of oppression or disregard under s. 181(l)(a) of the Malaysian Companies Act 1965. Secondly, there were independent shareholders, holding over 20 per cent of the company's shareholding, who had not come forward in support of the winding up claim, and whose interests had to be taken into account *(supra,* note 15, at pp. 233-234). Also, note that in contrast to the petitioner's 2.43 per cent shareholding, 34 per cent of the shareholders of the company's issued share capital took no part in the proceedings. The position in *Re Gee Hoe Chan* was very different. In that case, the petitioners held a substantial shareholding of more than 40 per cent, and there were no shareholders, other than the petitioners and the respondents, who would be affected by a winding up.