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Trends and Developments

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Arbitrating Shareholder Disputes and Breach of Directors' Duties Claims in Singapore: Navigating Fractured Dispute Resolution

Introduction

Shareholder disputes and claims alleging breach of directors' duties are a mainstay of corporate law litigation in Singapore, often giving rise to complex procedural and substantive questions – particularly where arbitration agreements, a company's constitution and statutory remedies under Singapore's Companies Act 1967 (CA) intersect. This article explores these issues through an examination of the scope of Section 216 (shareholder oppression claims) and Section 216A (statutory derivative action), and the evolving landscape of international arbitration through the lens of Singapore's particularly pro-arbitration stance through leading judicial pronouncements.

Context – Singapore as an international arbitration hub

The Singapore courts adopt a strongly pro-arbitration stance, upholding party autonomy and the finality of arbitration awards with minimal curial intervention. This approach is seen as essential to supporting Singapore's reputation as an international arbitration hub. Courts intervene only on limited, statutorily prescribed grounds, such as breaches of natural justice, jurisdictional errors, or violations of public policy, and exercise their supervisory powers with great restraint. The courts emphasise upholding arbitration agreements, supporting the arbitral process, and reading awards supportively rather than hypercritically.

The most recent case of *ONI Global Pte Ltd* & *Anor v GNC Holdings LLC* & *Anor* [2026] SGCA(I) 3 best illustrates this stance. Here, the Court of Appeal reaffirmed that while it has a duty to assess whether an award is contrary to public policy, it must also respect the finality of arbitral awards and party autonomy. The Court of Appeal discussed the approaches available – minimal, maximal, and contextual review – emphasising the balance between upholding arbitral finality and the jurisdiction's own fundamental concerns, including public policy. Even when procedural fraud is alleged, the courts will not intervene lightly and will generally defer to the findings of the arbitral tribunal unless the statutory thresholds are clearly met.

Statutory framework: Section 216 and Section 216A of the Companies Act 1967

Section 216: personal remedies for shareholder oppression

Section 216 of the CA enables a member (or debenture holder) to apply to court for orders/remedies where the company's affairs are conducted in a manner oppressive or prejudicial to them or the members generally. However, not any act or omission will suffice: courts require that there be conduct that is oppressive, unfairly discriminatory or prejudicial – at its core – commercially unfair conduct. Courts have a broad discretion to curate remedies, including regulating company conduct, setting aside transactions, ordering a buyout of shares or for the company to be wound up. The provision is remedial and personal in nature – a key distinction when considering remedies appropriate for corporate wrongs versus personal wrongs.

Section 216A: statutory derivative action

Section 216A provides a mechanism for members (and persons deemed proper) to bring an action or arbitration in the name and on behalf of the company (a derivative action), subject to court approval. The court must be satisfied the applicant is acting in good faith, has notified the directors, and that the claim is prima facie in the company's interest. The object is to redress corporate wrongs that the company itself, acting through its management, will not pursue (eg, because alleged wrongdoers are in control). The remedies available under Section 216A are intended to address corporate wrongs suffered by the company rather than personal wrongs suffered by shareholders in their personal capacity.

The nature of shareholder and boardroom disputes

Overlap between private contract, company constitution, and statute

Shareholder disputes often involve both private agreements (shareholders' agreements, joint venture contracts), and statutory/company law rights arising from a company's constitution and the CA. Notably, a claim may be available under contract (eg, breach of shareholders' agreement), under the company's constitution (articles), or under statute (eg, Section 216 or directors' fiduciary duties). This particular aspect of

shareholder/boardroom disputes has given litigants the ability to couch and frame disputes creatively, giving rise to much tactical manoeuvring that may see parties attempting to challenge and side-step arbitration agreements.

Side-stepping arbitration clauses

It is common for the parties' private agreements – eg, a shareholders' agreement – to include an agreement to arbitrate. While such shareholder agreements often mirror articles found within a company's constitution, there is no boilerplate provision providing for arbitration as the preferred form of dispute resolution within the constitution. In such scenarios, the enforceability of arbitration agreements, and the scope of disputes referable to arbitration, become shrouded in uncertainty and have provided much fodder for protracted litigation.

BTY v BUA [2018] SGHC 213 involved a dispute between the shareholders of a joint venture company. The minority shareholder (plaintiff) sued the company (defendant) for an alleged breach of the company's articles of association. The investment agreement between the parties included an arbitration clause, but the company's articles did not. The central issue was whether the dispute, characterised as arising under the articles (the "constitution"), could be compelled to arbitrate under the arbitration clause in the investment agreement, or whether litigation in court was permissible notwithstanding that clause.

The Court distinguished between disputes arising under the investment agreement and those arising under the company's articles of association (ie, the constitution). The judge found that although some provisions in the articles restated provisions in the investment agreement, the articles and the agreement nonetheless created two distinct legal relationships, operating "on separate legal planes". The High Court allowed the litigation to proceed and refused to stay the action in favour of arbitration. The judge reasoned as follows:

- The "matter" in this litigation was whether the company had acted in breach of the articles, not whether there was a breach of the investment agreement.
- The investment agreement's arbitration clause did not extend to cover disputes under the articles.
- The obligation to comply with the articles arises by operation of company law and is distinct from the private contractual obligations under the investment agreement.
- There was no effective incorporation of the arbitration agreement from the investment agreement into the articles.
- Entire agreement clauses and similar contractual provisions in the investment agreement did not operate to subject the articles to the arbitration mechanism.

The court was also cognisant that its interpretation might result in disputes under the investment agreement being resolved by arbitration while disputes under the articles are resolved in litigation even where the provisions and substance overlapped. However, the court still found that this did not contradict the principles of "one-stop dispute resolution" because the plain language and structure of the respective documents and their dispute resolution regimes prevailed.

Arbitrability of minority oppression and directors' duties claims

Section 216A of the CA contemplates that derivative actions may be commenced in the form of "arbitration" as well as in court proceedings. The express statutory language of Section 216A(2) states that a complainant may apply for permission "to bring an action or arbitration in the name and on behalf of the company or intervene in an action or arbitration to which the company is a party for the purpose of prosecuting, defending or discontinuing the action or arbitration on behalf of the company".

In *A Co and others v D and another* [2018] SGHCR 9, the Court clarified that leave under Section 216A does not confine subsequent proceedings to being commenced only in the courts and does not preclude the pursuit of the derivative claim by arbitration. The court expressly clarified that the order granting leave to commence a derivative action does not prevent the parties from electing to pursue that claim through arbitration, if appropriate. The judge noted that Section 216A accommodates both court and arbitral

proceedings, and the granting of leave is intended simply to permit the bringing of a derivative claim – without foreclosing the possibility that the claim can be brought by way of arbitration, provided such an avenue is contractually and procedurally open to the company.

Pre-Tomolugen Holdings

In contrast, Section 216 does not use the term "arbitration". Instead, it empowers the court to make orders to bring an end to matters complained of and explicitly allows the court to "authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct". The term "civil proceedings" in Section 216 does not expressly refer to arbitration, and the dominant focus of Section 216 is on granting personal remedies to members or holders of debentures in cases of oppression or injustice.

The "Tomolugen Holdings" clarification

The High Court in *Silica Investors Ltd v Tomolugen Holdings Ltd* [2014] SGHC 101 debated whether oppression claims under Section 216 of the CA are arbitrable, noting that such claims "straddle the line between arbitrability and non-arbitrability because the remedy sought can affect the arbitrability of the claim".

The High Court considered the existence of statutory remedies only available to the court (notably orders with in rem effect or involving third parties) as highly relevant. Although it did not articulate a blanket rule, the High Court decided that where claims seek relief which was beyond the jurisdiction of the arbitral tribunal (for example, winding-up or remedies affecting third parties), such claims are not arbitrable. On the specific facts, the High Court refused a stay in favour of arbitration because the reliefs sought were partly beyond arbitral competence and relevant parties were not all parties to the arbitration agreement.

On appeal, the Court of Appeal fundamentally departed from the High Court's position. In *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2015] SGCA 57, the Court of Appeal held that, as a general proposition, minority oppression claims under section 216 are arbitrable. The Court of Appeal asserted a presumption of arbitrability where a dispute falls within the scope of an arbitration agreement, unless: (i) Parliament intended to preclude arbitration (as shown by statutory text/legislative history); or (ii) public policy considerations indicate otherwise. The Court found no such intention or policy in Section 216 and concluded that oppression/unfair prejudice claims primarily serve to protect the commercial expectations of parties in a company and do not ordinarily engage public interest sufficient to render them non-arbitrable.

Other than the issue of subject matter arbitrability, both the High Court and Court of Appeal grappled with – but the Court of Appeal clarified and systematised – the management of fractured proceedings, prioritising efficiency, fairness, and party autonomy within the statutory framework.

The Court also emphasised that, where only a part of the dispute is arbitrable or only some parties are bound by the arbitration clause, the court retains discretion, as a matter of case management, to stay related proceedings in whole or in part. The decision whether to stay the non-arbitrable aspects (or aspects involving non-parties to the arbitration) requires balancing the claimant's right to choose whom to sue and where, the need to give effect to legitimate arbitration clauses, and the efficient management of litigation to prevent inconsistent outcomes or procedural unfairness.

On the facts of *Tomolugen Holdings*, the Court allowed a partial stay: where a matter (here, minority oppression vis-à-vis "Management Participation Allegation") fell within the arbitration agreement, that issue as between the parties to the clause should be mandatorily stayed for arbitration. The rest of the proceedings could also be stayed for case management, but the plaintiff was required to elect whether to pursue or forgo certain allegations. This "split" or "fractured" approach is intended to serve the ends of justice while respecting party autonomy and avoiding procedural abuse.

Law governing arbitrability (shareholder oppression under foreign law), anti-suit injunctions

In *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] SGCA 1, the parties were shareholders in People Interactive (India) Private Limited, an Indian company. A shareholders' agreement (SHA) contained an arbitration agreement providing for disputes to be referred to arbitration under the ICC, seated in Singapore. The appellant ("Mr Mittal") commenced proceedings in the National Company Law Tribunal (NCLT) in India alleging minority oppression and mismanagement under India's laws. The respondent ("Westbridge") sought and was granted a permanent anti-suit injunction in Singapore, restraining the NCLT proceedings on the basis that Mr Mittal breached the arbitration agreement.

The Singapore High Court and Court of Appeal granted and upheld the permanent anti-suit injunction. Amongst other matters, the following issues were considered.

Arbitrability of oppression claims

A central issue was whether minority oppression claims brought under India's laws were arbitrable. Mr Mittal argued that such disputes were non-arbitrable under Indian law (which he claimed was the proper law of the arbitration agreement) and that, consequently, the arbitration agreement was null and void if it purported to cover such disputes. The court clarified that the law governing the question of subject-matter arbitrability at the pre-award stage is, in the first instance, the law governing the arbitration agreement. As the contract was silent on the proper law, the court undertook a three-stage analysis:

- stage 1 – whether there was an express choice of law for the arbitration agreement;
- stage 2 – whether there was an implied choice of law (usually the same as the main contract); and
- stage 3 – if neither, which law had the most real and substantial connection to the arbitration agreement.

Applying this, the court found that Singapore law, not Indian law, governed the arbitration agreement. The choice of Singapore as the seat and institutional rules, along with the parties' intention to arbitrate all disputes, displaced the presumption that Indian law governed. The court reasoned it would make little commercial sense for the parties' intention to arbitrate to be nullified due to technicalities under foreign law.

Anti-suit injunctions in support of arbitration

The court emphasised Singapore's strong pro-arbitration stance and held that, where parties have agreed to arbitrate disputes seated in Singapore, court proceedings brought elsewhere in breach of the arbitration agreement should generally be restrained. The anti-suit injunction was justified because the continuation of the NCLT proceedings undermined the parties' agreement to arbitrate. The case stands for the principle that, under Singapore law, most shareholder disputes – including those for minority oppression – are arbitrable if they relate to matters covered by the arbitration clause. Singapore courts will enforce such agreements robustly, including with anti-suit injunctions, unless strong reasons exist not to do so.

Key takeaways

- When drafting shareholders' agreements, explicit drafting of arbitration clauses to encompass statutory and constitutional claims should be carefully considered.
- Where minority oppression or breach of directors' duties claims are contemplated to be pursued through arbitration, practitioners should analyse the source of the right/wrong (contract, constitution or statute), the identity of the proper claimant (member, company or both), and the precise remedies being pursued to avoid the possibility of a fractured dispute resolution scenario.
- Parties must consider, when drafting arbitration clauses or advising clients, the importance of the seat's law in determining which claims are arbitrable as a matter of jurisdiction at the stay stage. At the pre-award, stay, or anti-suit injunction stage, the issue of whether a dispute (including one for oppression under Section 216 of the Companies Act) is arbitrable is governed by the law of the seat of arbitration – typically Singapore law if the seat is Singapore. This means that even if the arbitration agreement is governed by a foreign proper law, the Singapore court will apply its own law to determine arbitrability for the purposes of stay or anti-suit relief, not foreign law.

- A party can generally obtain an anti-suit injunction to restrain foreign litigation brought in breach of an arbitration agreement, unless there is a "strong reason" not to grant relief. The party resisting arbitration cannot defeat the anti-suit injunction merely by invoking the (foreign) proper law's notion of non-arbitrability; Singapore law as the seat governs.