

No Discount for Oppressed Minority Shareholders: The Appellate Division Sets the Record Straight

In a landmark ruling on share buyout orders under s 216 of the Companies Act, Singapore's Appellate Division has confirmed that courts - not valuers - must decide whether minority discounts apply, and that oppressive conduct should not be rewarded through a discounted exit price.

CASE REFERENCE

Thia Tiong Siong and others v POP Holdings Pte Ltd and another appeal
[2025] SGHC(A) 9

Appellate Division of the High Court - Civil Appeals Nos 72 and 73 of 2024

Background

This appeal arose out of a joint venture dispute between two groups of shareholders in RIC Dormitory (SG) Pte Ltd, a Singapore company in the business of running foreign worker dormitories. POP Holdings Pte Ltd (“POP”) held a 70% majority stake, while H8 Holdings Pte Ltd (“H8”) held the remaining 30% as minority shareholder.

The relationship between the parties deteriorated after POP alleged that H8’s representatives had, prior to the formation of the joint venture, misrepresented the legally approved capacity of a dormitory property at 34 Kaki Bukit Place (“34KB”). The URA-approved capacity was 130 workers, but POP claimed it was told the capacity was 362 - a figure that substantially influenced the \$42 million purchase price of the company. POP commenced a separate action for fraudulent misrepresentation.

In parallel, H8 brought a minority oppression claim under s 216 of the Companies Act. The High Court found oppression in two respects: the dilution of H8’s shareholding from 30% to 15% through a rights issue that H8 could not take up, and an excessive increase in a director’s remuneration to \$30,000 per month. The High Court ordered POP to buy out H8’s shares, but with a discount for lack of control (“DLOC”), and left it to an independent valuer to decide whether a discount for lack of marketability (“DLOM”) should also apply.

H8 appealed against the DLOC and DLOM orders. Silvester Legal LLC acted for H8 and the other appellants in both appeals.

The Oppression Appeal: Minority Discounts

The central issue in H8’s appeal was whether it was appropriate to discount H8’s shares when ordering a buyout following a finding of oppression. The Appellate Division held that the High Court had erred, and set aside both the DLOC order and the decision to leave the DLOM question to the valuer.

The court - not the valuer - must decide whether to apply a discount. Consistent with the Court of Appeal’s decision in *Kiri Industries Ltd v Senda International Capital Ltd* [2024] 2 SLR 1, it is for the court to determine at the outset whether commercial fairness requires a DLOC or DLOM. The quantum, if any, is for the valuer. The High Court had therefore erred in delegating the DLOM question to the valuer entirely.

The applicable standard is commercial fairness. In a non-quasi-partnership (as was found here), there is no presumption for or against a discount. The burden rests on the party seeking the discount to demonstrate that it is fair and equitable in the circumstances.

Oppressive conduct should not be rewarded. The High Court had placed too much weight on the irretrievable breakdown of the relationship as a reason to impose a discount. The Appellate Division emphasised that it was the court’s finding of oppression, not the breakdown per se — that justified the buyout order. Ordering a discounted buyout in these circumstances effectively rewarded the oppressor. As the court put it: “it appeared that POP was being rewarded for its oppressive conduct, although that was not the Judge’s intention.”

A willingness to exit does not make H8 a willing seller at any price. While H8 had been open to exiting the joint venture, this did not mean it was a willing seller on discounted terms. The court affirmed that where a minority shareholder is forced to relinquish shares due to oppressive conditions, the correct measure is the proportional share of the business value - without discount.

H8’s contributions were undervalued. The Appellate Division found that the High Court gave insufficient weight to H8’s foundational role in the joint venture. Without H8’s initiative and operational expertise at both 34KB and 8ER, the joint venture would not have materialised.

POP’s gain in control was a critical factor. Following reversal of the oppressive rights issue, POP’s shareholding reverted to 70%. A full buyout would take POP beyond 75% - the threshold for passing special resolutions. This significant increase in voting power weighed heavily against any minority discount. The court noted that POP’s own counsel had accepted at trial that if the rights issue were set aside, there should be no DLOC.

OUTCOME ON MINORITY DISCOUNTS

- The DLOC ordered by the High Court was set aside.
- The decision to leave the DLOM to the valuer was set aside.
- The Appellate Division ordered that H8's shareholding be valued without any DLOC or DLOM.

The Deceit Appeal: Transaction Date Rule and Damages

The Appellate Division also considered POP’s cross-appeal on the deceit claim. While upholding the finding of fraudulent misrepresentation — confirming that a reasonable investor would understand a representation about “capacity” to mean legally approved capacity — the court set aside the High Court’s damages award of \$3.5 million.

The High Court had departed from the “transaction date rule” - the principle that damages for deceit are assessed by reference to the value of the asset at the time of acquisition — and instead used the date of POP’s discovery of the fraud. The Appellate Division held this was an error.

The transaction date rule is not inflexible, but departure from it requires justification. The recognised exceptions, set out in *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254, arise where the fraud continued to operate so as to lock the claimant into the property. On the facts, POP was not locked into the joint venture, was not seeking rescission, and the mere passage of time before discovery of a fraud does not in itself justify departing from the rule. To hold otherwise would effectively render the rule otiose.

Crucially, POP had not adduced any valuation evidence as at the transaction date (5 March 2015). Without proof of the relevant figure, POP had failed to establish the quantum of its loss. The court substituted the \$3.5 million award with nominal damages of \$1,000.

Key Principles from This Case

On minority oppression and buyout orders: Courts must make the threshold determination on discounts themselves — this is not a matter to be delegated to valuers. Where oppression has been established, the default leans toward a no-discount valuation, particularly where the majority gains full or enhanced control following the buyout.

On fraudulent misrepresentation and damages: The transaction date rule remains the starting point. Departure requires clear justification - specifically, that the claimant was locked into the asset by the fraud itself. Delayed discovery alone is not sufficient. Claimants must adduce valuation evidence as at the appropriate date and will not be given a second opportunity at appellate stage.

On representations about commercial assets: In commercial negotiations for the acquisition of an operating business, a representation about the “capacity” of a regulated facility will be interpreted by reference to its legally approved capacity. A law-abiding investor would naturally understand the representation in its lawful sense.

PRACTICAL TAKEAWAYS

Minority shareholders facing oppression should resist the application of DLOC and DLOM, particularly where the majority will gain full control following the buyout. Courts must make this determination - it is not within the valuer's remit.

Claimants in deceit cases should ensure that valuation evidence is led at trial as at the transaction date. The appellate courts will not permit a second bite at the evidential cherry.

In negotiations for joint ventures or share acquisitions, representations about the regulated capacity of operating assets carry significant legal weight and will be construed against the representor.

About This Case

Silvester Legal LLC acted for H8 Holdings Pte Ltd and the other appellants in Civil Appeals Nos 72 and 73 of 2024. The appellants were represented by Walter Ferix Silvester and Siraj Shaik Aziz.

The full judgment is available at [2025] SGHC(A) 9 on the Singapore Supreme Court's eLitigation portal.

This article is for general information only and does not constitute legal advice. If you have a matter involving minority shareholder rights, joint venture disputes, or claims for misrepresentation, contact Silvester Legal LLC to discuss how we can assist.