



Case No: CR-2024-LDS-001020

Neutral Citation : [2024] EWHC 3112 (Ch)

**IN THE HIGH COURT OF JUSTICE
LEEDS INSOLVENCY AND COMPANIES LIST (Ch D)**

BUSINESS AND PROPERTY COURTS IN

Business and Property Court in Leeds
4th Floor
Westgate
6 Grace Street
Leeds LS1 2RP
Date: 29 November 2024

Before :

**UPPER TRIBUNAL JUDGE MARK WEST SITTING AS A JUDGE OF THE
HIGH COURT**

Between :

A.M.1. CONSULTING LIMITED

Applicant

- and -

SS TECHNOLOGY CONSULTANCY LIMITED

Respondent

Lisa Linklater KC (instructed by **Blacks LLP**) for the **Applicant** **Simon Hill** (instructed by **Amar Kansal Solicitors**) for the **Respondent**

Hearing date: 8 November 2024

Remote hand-down: This judgment was handed down remotely at 10.30 am on 29 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Judgment

The Parties

1. The parties to this application are A.M.1. Consulting Ltd (“AM1”) and SS Technology Consultancy Ltd (“SS”). The application was brought on 4 November 2024 by AM1 pursuant to CPR 31.12 and Rule 12.27 of the Insolvency Rules for specific disclosure of certain documents from SS within 7 days of the order. As will be apparent, one of the documents of which specific disclosure was sought has been provided to AM1 and only the dispute over invoices and bank statements remained live between the parties. The application also sought an order that SS be restrained from presenting a winding up petition until an injunction application to restrain its presentation was heard. (On 11 October 2024 AMI had issued an application to restrain the presentation of a winding up petition which was originally listed for hearing for 3 hours on 8 November 2024, but that was adjourned by the order which I made on 4 November 2024 to enable the specific disclosure application to be heard for 1 hour in its place.)

The Application

2. I heard the application by video on the morning of 8 November 2024. AM1 was represented by Ms Lisa Linklater KC of counsel and SS by Mr Simon Hill of counsel, to both of whom I am indebted for their concise written and oral submissions. I had before me a hearing bundle of 503 pages, including various witness statements, to which I shall refer below, an authorities bundle of 211 pages and counsel’s respective skeleton arguments. I reserved my decision so that I could read in more detail the background documents and the inter-solicitor correspondence on which much of the argument was based.

3. The witness statements were those of Mr Philip Rice (“Mr Rice”), the operating officer of AM1, dated 12 October 2024, Mr Yashodhar Bhide (“Mr Bhide”), director of SS and former consultant to AM1, dated 30 October 2024, Ms Victoria Tynan (“Ms Tynan”), solicitor of Blacks Solicitors LLP, dated 4 November 2024, Mr Amar Kansal (“Mr Kansal”), the solicitor for AM1, dated 5 November 2024 and the second witness statement of Mr Bhide, dated 6 November 2024.

The Order Sought

4. The first paragraph of the application sought specific disclosure within 7 days of

(1) invoices raised by Orbrick Consulting PVT Limited (“Orbrick”) to SS between November 2023 and April 2024 (relating to the provision of services to South Lanarkshire Council, the London Borough of Hillingdon and the Royal Borough of Kensington and Chelsea) (“the Orbrick invoices”).

(2) bank statements of SS evidencing payment made to Orbrick in respect of those invoices (“the bank statements”).

(3) a deed of assignment between Sky Advisory Services Limited (“Sky”) and SS dated 19 September 2024 (“the deed of assignment”).

(I note, however, that the draft order attached to Ms Tynan’s witness statement provided a timeframe of 14 days for disclosure.)

4. By the time of the hearing, the deed of assignment had been produced, so that only the issue of the invoices and the bank statements remained live. I need say no more about the deed of assignment. (I shall deal with the application to restrain presentation of the winding up petition below.)

The Law

5. Rule 12.27 of the Insolvency Rules is entitled “Further information and disclosure” and provides (so far as material):

“A party to insolvency proceedings in court may apply to court for an order-

...

(b) for disclosure from any person in accordance with CPR Part 31 (disclosure and inspection of documents)”.

6. CPR Part 31 contains rules on disclosure and inspection. Rule 31.12 is entitled “Specific disclosure or inspection” and provides:

“(1) The court may make an order for specific disclosure or specific inspection.

(2) An order for specific disclosure is an order that a party must do one or more of the following things-

(a) disclose documents or classes of documents specified in the order;

(b) carry out a search to the extent stated in the order;

(c) disclose any documents located as a result of that search.

(3) An order for specific inspection is an order that a party permit inspection of a document referred to in rule 31.3(2).

...”.

AM1’s Submissions Background

7. The disclosure application was made in the context of an application dated 11 October 2024 by AM1 to restrain presentation of a winding up petition by SS (“the restraint application”). The restraint application followed personal service of a statutory demand dated 20 September 2024 (“the statutory demand”) upon Ms Amanda Rice, the director of AM1, claiming payment of £170,981.78 in respect of three invoices (“the unpaid invoices”) and a further claim in respect of an alleged debt stated to be due to Sky. This was part of a wider dispute in respect of the invoices as set out below. The disclosure application also sought the adjournment of the restraint application for 14 days with an injunction restraining presentation of a winding up petition until that application was heard.

8. The statutory demand, said Ms Linklater KC, followed threats of imprisonment for up to 10 years “if they are found guilty of fraudulent trading” and wholly unfounded allegations that AM1 “set out to defraud creditors”.

9. More recently, SS by its solicitor Mr Kansal stated that it had provided an undertaking not to present a winding up petition so that AM1 could make an on notice application for an injunction restraining a winding up petition. On 14 October 2024, following the restraint application, Mr Kansal confirmed in writing that he was “prepared to undertake not to present a petition so that [the injunction application could] be made on notice.” Blacks LLP responded stating, “I shall treat your email as your undertaking not to present a petition ... pending the hearing of my client’s application.” Mr Kansal did not respond nor clarify his position. (In fact at the hearing before me Mr Kansal confirmed that he undertook not to present a petition so that [the injunction application could] be made on notice.)

10. SS had staunchly resisted disclosure of the Orbrick invoices and bank statements, both before and after the disclosure application. For the reasons set out in the witness statements of Mr Rice and Ms Tynan, AM1 acknowledged that the invoiced value by Orbrick ought to be paid as the service was ultimately provided. However, it was also clear that AM1 had overpaid on the paid invoices, payment being made prior to the disclosure of Orbrick’s involvement. Given that the provision of the Orbrick invoices and bank statements would therefore resolve the dispute swiftly and cost-effectively, the failure by SS to disclose them was very disappointing.

11. Plainly there was no issue of proportionality. SS had claimed that disclosure of the invoices contained “commercially sensitive information”. Commercial sensitivity was not a ground to resist disclosure of a document (compare e.g. damage to the public interest: CPR 31.19).

Specific Disclosure

12. CPR 31.12 empowered the Court to make an order for specific disclosure or specific inspection.

13. The application of the overriding objective was clear on the application. It was an inexpensive step, wholly proportionate to the amount in dispute, which would save expense, and ensured that the dispute was dealt with expeditiously and fairly.

The Wider Dispute

14. The wider dispute was set out in the witness statement of Mr Rice. AM1 contracted with local authorities, providing programme and project management. Mr Bhinde agreed to take on operational activities for AM1 through a corporate entity for a fee of £15,000 per month (plus VAT). As such, he was an agent who owed a duty of loyalty to AM1. Those services were provided through Sky.

15. Mr Bhinde indicated that the extension of a project with South Lanarkshire Council, in a contract which named individuals included in the unpaid invoices, was an opportunity for AM1 to become more profitable, using different contractors to provide services to that Council (and, moving forwards, the London Borough of Hillingdon). Mr Bhinde indicated that those individuals would be provided by a company which would employ those individuals.

16. When the initial three invoices were received by AM1 from SS (on 28 October 2023, 21 December 2023 and 12 January 2024), they were duly paid following assurances by Mr Bhinde that SS was the appropriate entity. In breach of his duty of loyalty, he did not at that stage disclose that the contractors were supplied to SS by a third party, Orbrick. AM1 only became aware of Orbrick when witness statements were provided by the contractors to the effect that they were contracted by Orbrick and that SS was an intermediary company. The three unpaid invoices (together with the Sky invoice referred to below) on which the statutory demand was based were dated 7 February 2024, 4 March 2024 and 4 April 2024. That was the last invoice received by AM1 from Mr Bhinde; they agreed to part company at the end of March 2024. Mr Bhinde caused Sky to render a final invoice dated 28 March 2024, which had also not been paid (all of the other previous monthly invoices rendered by Sky had been paid).

17. The reality was that the commercial sensitivity was the secret profit made by SS, a company now solely owned by Mr Bhinde and of which he was director, which was at the heart of this dispute.

18. AM1's case was that there was an unlawful means conspiracy between Mr Bhide, SS and Orbrick. The elements of unlawful means conspiracy were:

- (1) a combination or agreement between two or more individuals;
- (2) an intent to injure (required for both types of conspiracy, but which must be shown as the sole or predominant purpose for an unlawful means conspiracy);
- (3) unlawful acts carried out pursuant to the combination or agreement as a means of injuring the claimant;
- (4) which caused loss and damage to the claimant

(see *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All E.R. Comm 271 at [108]).

19. The debt claimed in the unpaid invoices was genuinely disputed on substantial grounds (i.e. real as opposed to frivolous grounds), AM1 clearly having a cross-claim both in respect of the unpaid invoices and the paid invoices. The Orbrick invoices and bank statements were necessary to calculate the amount of that cross-claim.

20. In addition, the unpaid Sky invoice was addressed to AM I.T. Consulting (North) Ltd, a different entity. Moreover, Sky had included periods of time when Mr Bhide was unavailable for work through illness or holiday.

Conclusion

21. This was a classic instance of the winding up process being used oppressively. That conclusion was reinforced by the uncooperative position taken by SS in respect of the disclosure application and continued refusal to provide the Orbrick invoices and proof of payment.

22. The Court was invited to make the disclosure order and related orders adjourning the restraint application to enable the dispute to be resolved following such disclosure.

SS's Submissions

23. For SS in reply Mr Hill sought to rely upon on Mr Bhide's second witness statement which had been filed and served after 4 pm on 6 November 2024.

24. He submitted that:

(a) no extension of time or relief from sanction was required. The Court's direction was for a response by a certain date/time, with which there was compliance. There was no express or implicit sanction that no further evidence might be filed and served thereafter.

(b) the 4 pm deadline on 5 November 2024 was imposed on the Court's own initiative. Pursuant to CPR rule 3.3(5)(a), SS had 7 days to apply to vary that order. SS did apply to vary that order, to extend time as SS required. Such an application was not a relief from sanction application¹ and should be granted in the circumstances;

(c) if an extension of time or relief from sanction were required, then SS applied for it. SS had between 13:13 and 16:00 on 5 November 2024 to put its response together, after receiving a sealed copy of the November 2024 application and order of 4 November 2024. SS did file and serve a witness statement from SS's solicitor, within time, but Mr Bhide's witness statement was only signed on 6 November 2024. The delay was either c.24/36 hours, which was not serious or significant; there was good

¹ Such an application was not one for relief from sanctions, governed by CPR r.3.1(7). In *Haley v Siddiqui* [2014] EWHC 835 (Ch), Judge Hodge QC, sitting as a judge of the High Court, explained, at [14], that "...unlike one to set aside an order made at a hearing which the parties have either attended, or had an opportunity to attend, the restrictions contained within CPR 3.1(7), as laid down by the Court of Appeal in the case of *Tibbles -v- SIG plc* [2012] EWCA Civ 518, [2012] 1 WLR 2591 have no application. Since the parties have not had an opportunity of making representations to the court before an order was made without a hearing, or of the court's own initiative, the parties are entitled to invite the court to review whether it was appropriate to make the order in the first place."

reason and/or it was just in all the circumstances to grant the extension or relief from sanction sought.

25. As to the substantive application for specific disclosure, the White Book 2024 commentary provided at paragraph 31.12.1:

“The application should set out the documents or classes of documents for which disclosure or inspection is sought, or the

extent of the search sought. If a class of documents is specified, the class should be carefully defined so it is *limited to what is relevant and proportionate*, and so the disclosing party is in no doubt as to the scope of their obligation: *City of Gotha v Sotheby’s* [1998] 1 W.L.R. 114 at 123H, CA; *Berkeley Administration v McClelland* [1990] F.S.R. 381 at 382. It may also be appropriate to explain why it is reasonable and appropriate for that disclosure or search to be done”.

26. The issue for the Court was whether the requested disclosure/inspection was both relevant and proportionate to order SS to provide.

27. In ***Superdrug Stores Plc v Protein World Ltd*** [2023] 7 WLUK 547, Deputy ICC Judge Parfitt had to consider two applications (paragraph 1):

(a) an injunction to restrain advertisement of a creditors winding up petition; and,

(b) an application for disclosure pursuant to rule 12.27 of the Insolvency Rules 2016.

28. Those two applications were issued by the debtor/respondent to a creditor’s winding up petition, between presentation and advertisement. On the injunction application, the debtor said it had two grounds for warranting an injunction: (a) the petition debt (c.£240,000), based on invoices for repayment of sums which the petitioner had already paid, was in good faith disputed on substantial grounds and (b) the debtor had a cross claim (for c£1m) which met or exceeded the petition debt (paragraph 3). The Judge found, however, that there was no good faith, nor substantial dispute, as to the invoices. That was because:

(a) there had been delay in raising the dispute - the debtor had not raised the dispute before insolvency proceedings commenced (paragraph 8);

(b) there was no meaningful material to back up the debtor's assertion:

“...the [debtor] has been unable to provide any meaningful substance to back up its assertion that the petition debt is disputed, and even less in relation to the supposed cross-claim of £1 million. This is surprising, given that it must have been clear to the [debtor] from a long time ago, if there really was a substantial dispute, that these invoices being rendered were being wrongly rendered” (paragraph 9).

29. On the specific disclosure application, the Judge noted that the debtor had raised an argument that this was a ‘chicken and egg’ situation (paragraph 10), that the debtor

“... was unable to prove that there was a substantial dispute because they did not have the documents and if it had the documents it would then be able to prove it ...” (paragraph 10).

30. As to that, the Judge said at paragraph 11:

“It seems to me that the approach the [debtor] has taken here is to use the disclosure exercise as a fishing expedition to attempt to gather material to support a claim that does not presently exist, a claim of the most ephemeral nature which, if it had any substance, would be capable of being proved from documents that would already be in the [debtor's] possession. In an appropriate case this court has the power to order disclosure, even in a winding-up petition, albeit that the jurisdiction is sparingly exercised, particularly in the context of proceedings such as this. I have had cited to me a number of decisions, including my own decision in *Re Yurov* and a decision of Lawrence Collins J, as he then was, in *Highberry v Colt Telecom*. That was an administration application. [Counsel for the debtor] said that the disclosure in that case was sought on the question of solvency and in the context of an urgent application for administration which made it considerably less likely that disclosure would be ordered. For his part, [counsel for the petitioner] draws more of a parallel with the *Highberry v Colt* situation and it seems to me that that parallel is rightly drawn.

Proceedings on a creditor's winding-up petition are summary; they do not involve a full and detailed enquiry. If there is a need for a substantial enquiry that tends to demonstrate that there is a bona fide dispute on substantial grounds, which would be enough to prevent the petition from proceeding. A winding-up petition is supposed to be dealt with in a fairly summary process and, contrary to [counsel for the debtor's] submission, it is a process that requires a speedy resolution. For as long as there is a petition outstanding the [debtor's] trading is imperilled..."

31. From this, it could be seen that the Court had jurisdiction to make a specific disclosure order, even in insolvency proceedings. While there might not, in the present case, be extant winding up petition proceedings, the Judge's words in **Superdrug** could be applied, by analogy. The outcome of that was that:

(a) the jurisdiction should be exercised sparingly;

(b) it was process which required a speedy resolution; it was supposed to be a fairly summary process, not requiring a full and detailed enquiry. Ordering disclosure went against that speedy, summary nature. It was unnecessary/disproportionate where it involved more than was required to determine the issue in the case.

32. It was necessary to recall the nature of the injunction application: it was to determine whether:

(a) the debt on which the petition was based was disputed on genuine and substantial grounds (or such that less than £750 was undisputed debt);

(b) the debt, though not disputed on genuine and substantial grounds, was overtopped/eclipsed by a genuine and substantial cross-claim, which equalled or exceeded the petition debt (or was such that less than £750 was nonovertopped/eclipsed debt).

33. It must be explained why the disclosure sought was necessary, relevant and proportionate to the fairly summary (insolvency) process.

Specific Disclosure Sought

34. Mr Hill took the two outstanding paragraphs in the November 2024 application in reverse order, but first made a general submission relating to both paragraphs.

Paragraph 1.1 and 1.2.

35. In relation to those two paragraphs:

(a) parallels could be drawn between **Superdrug** and the present case. As in **Superdrug**, AM1 was trying to use the disclosure exercise as a fishing expedition - to attempt to gather material to support a claim which did not presently exist, a claim of the most ephemeral nature which, if it had any substance, would be capable of being proved from documents which would already be in AM1's possession.

(b) as in **Superdrug**, AM1 had not explained the nature of its alleged claim - it was ephemeral at best. It was not for SS to identify AM1's alleged claim; AM1 must identify it. AM1 had given no particularity about what cause of action was alleged against SS. SS was not Mr Bhide. It was Mr Bhide, not SS, who it was alleged was AM1's agent (seemingly through the intermediary Sky) and who owed, and breached, fiduciary obligations (Mr Bhide denied it was part of the scope of his work to source subcontractors anyway). How was it said that SS was liable to AM1 for Mr Bhide's alleged wrongdoings? Mr Bhide and SS were separate persons. SS was not liable for Mr Bhide's wrongs (if any) in his relationship with AM1, or Mr Bhide's relationship to Sky and Sky's relationship to AM1. That related both to:

(1) the alleged right (the legal foundation for which AM1 had not actually identified) which AM1 said that it held to cancel, rescind or terminate the contractual relationships (which would, if exercised, cancel, rescind or terminate the debts in the invoices (the same debts used to found the statutory demand dated 20 September 2024 which SS served on AM1)).

(2) AM1's alleged cross-claim against SS, somehow connected to Mr Bhide's alleged wrongs.

(c) AM1 had tried other lines of defence to SS's invoices previously. That undermined the credibility of AM1's contention now that it had this alleged claim against SS.

(d) only since 15 August 2024, so long after the material events, had Mr Bhide become the director of SS.

(e) AM1 seemingly wanted this disclosure to know how much SS/Orbrick agreed upon as payment on their subcontracting link in the supply chain, but that was commercially sensitive information in that:

(1)AM1 and SS were both middlemen (neither was actually undertaking the underlying service - broadly, IT assistance).
Each was, in that sense, a competitor.

(2)it was commercially useful to a competitor to know what contractual term/margins other competitors were willing to accept/agree, particularly to anyone wishing to cut out a party in a supply chain or outbid them in any competition.

(I should add that, at the hearing, Mr Hill no longer pursued the point that it was commercially sensitive to disclose the margin, but he submitted that there was commercial sensitivity in relation to the terms of payment.)

Paragraph 1.2

36. Paragraph 1.2 was irrelevant or at least not sufficiently material. It was unclear how evidence that SS had paid invoices raised by Orbrick to SS was material/relevant to either:

(a) SS/AM1 contracts being "cancelled" or "terminated" or "rescinded";

(b) AM1's professed claim against Mr Bhide for alleged breach of his fiduciary duties owed as agent to AM1.

37. It was not in dispute that SS contracted with Orbrick in India, for Orbrick to supply subcontractors who could do the underlying IT service. Why then did it matter/was it relevant to AM1's alleged dispute to the invoices/cross-claim, whether SS had actually performed its contractual obligations to pay Orbrick?

Paragraph 1.1

38. It was not in dispute that Orbrick had raised invoices for work done by Orbrick. The point about commercially sensitive information was repeated.

Interim Injunction Application

39. The November 2024 application also sought an order that SS be restrained from presenting a winding Up petition until the injunction application was heard.

40. That was unnecessary. An undertaking had already been given. In any event, should a petition be presented, there would be an adequate gap between service of any petition and it becoming permissible to advertise the petition, within which time AM1 could seek such an interim order.

Conclusion

41. The Court was requested to dismiss the November 2024 application, in particular to dismiss the specific disclosure element in paragraphs 1.1 and 1.2 as not being relevant/proportionate or being an impermissible fishing expedition, and to dismiss the application for an interim injunction until the injunction application was heard, as unnecessary.

Discussion

42. In the first place I admit the second witness statement of Mr Bhide dated 6 November 2024.

43. The deadline of 4pm on 5 November 2024 for the production of any witness statement was imposed on the Court's own initiative. I agree with Mr Hill's analysis that, pursuant to CPR rule 3.3(5)(a), SS had 7 days to apply to vary that order. SS did apply to vary that order, to extend time as SS required. Such an application was not a relief from sanction application governed by CPR r.3.1(7) for the reasons explained by HH Judge Hodge QC in **Haley v Siddiqui** at [14-15], namely that

“... unlike one to set aside an order made at a hearing which the parties have either attended, or had an opportunity to attend, the restrictions contained within CPR 3.1(7), as laid down by the Court of Appeal in the case of *Tibbles –v- SIG plc* [2012] EWCA Civ 518, [2012] 1 WLR 2591 have no application. Since the parties have not had an opportunity of making representations to the court before an order was made without a hearing, or of the court's own initiative, the parties are entitled to invite the court to review whether it was appropriate to make the order in the first place.”

44. I am satisfied that the order should be varied so as to admit the witness statement.

45. If and to the extent that an extension of time or relief from sanction were required, I grant such relief. In the circumstances of the case the delay in serving the witness statement was not serious or significant. As was apparent from the chronology cited by Mr Hill (which I do not need to repeat), there was good reason for the slight delay and in the circumstances I am satisfied that it is just in all the circumstances to grant the extension or relief from sanction sought.

46. As to the application of the principles laid down in **Superdrug**, there are points of both difference and similarity. What divided the parties was the significance to be attributed to those factors.

47. On the one hand, the application seeks only the disclosure of three invoices and the same number of entries on bank statements. It is therefore not like the application in **Superdrug** which involved five years of documents relating to the entirety of the trade between Superdrug and Protein World being disclosed. The

very width of the disclosure sought and the disproportionate exercise which the Court was invited to order demonstrated why it was not in accordance with the overriding objective to order the disclosure sought by the company in that case.

48. Equally, this is not a case where AM1's claim, if it had any substance, would be capable of being proved from documents already in the company's possession.
49. On the other hand, the situation in this case is clearly analogous to that in **Superdrug**, save that it arises in the context of a previous application to restrain presentation of a winding up petition rather than to restrain its advertisement.
50. Moreover, it is also the case here, as in **Superdrug**, that proceedings on a creditor's winding-up petition are summary and do not involve a full and detailed enquiry. A winding-up petition should be dealt with in a fairly summary process and is a process which requires speedy resolution. If there is a need for a substantial enquiry, that tends to demonstrate that there is a bona fide dispute on substantial grounds, which would be enough to prevent the petition from proceeding.
51. It is also the case that **Superdrug** states that, whilst in an appropriate case the Court has the power to order disclosure, even in a winding-up petition, that the jurisdiction is sparingly exercised, particularly in the context of proceedings such as this. A winding up petition is much closer to an administration application in terms of its urgency and that is a factor which must be weighed in the balance when considering whether it is in accordance with the overriding objective to order disclosure in this case.
52. The chicken and egg situation also arises in this case as it did in **Superdrug**. AM1 is potentially unable to prove that there is a substantial dispute because it does not have the documents and, if it had the documents, it would then be able to prove it, or alternatively the documents would prove that there was in fact no substance and the company would abide by the outcome demonstrated by the documents.

53. The problem, however, with the claim which AM1 seeks to make out is that it has undergone not inconsiderable mutation since it was first raised. As originally formulated in Blacks' letter of 26 April 2024, it was said that the contractual relationship between the parties had been terminated. In contrast, Blacks stated on 19 July 2024 that there was no direct contractual relationship between AM1 and SS, but that there had been deceit and sub-standard service. By further contrast, in Ms Tynan's witness statement of 4 November 2024 (which echoed what had been said in Blacks' email of 6 September 2024, which was not to be the last formulation of the claim, the allegation was of breach of fiduciary duty on the part of Mr Bhinde and/or Sky, which tainted the contract between AM1 and SS and which gave rise to the right to have the contract rescinded.

54. More fundamentally, however, it is by no means clear to me how there is a claim by AM1 against SS, as opposed to Mr Bhinde (or Sky), at all. It is Mr Bhinde, not SS, who is alleged (via the intermediary of Sky) to have been AM1's agent and who owed and breached fiduciary obligations. It was not clear in any of these formulations how

SS is said to be liable to AM1 for Mr Bhinde's alleged wrongdoings. The last invoice was rendered by SS on 7 April 2024, but Mr Bhinde did not become a director of, and shareholder in, SS until 15 August 2024.

55. By the time of the skeleton argument the claim had morphed again, now into one of unlawful means conspiracy between Mr Bhinde, SS and Orbrick, presumably to counter that problem, but that simply serves to illustrate the shifting and inchoate nature of the cause of action and the alleged parties to it.

56. Weighing all of these considerations in the balance, it is the last of them which has the most decisive weight. Ultimately therefore I conclude that AM1 is seeking to use the disclosure exercise as a fishing expedition to attempt to gather material to support a claim which does not presently exist. Although it is not an ephemeral claim in the way that the claim in **Superdrug** was, it is nevertheless a claim which is inchoate, speculative and lacks particularity.

57. In any event, I would not have ordered disclosure of the bank statements for the reasons submitted by Mr Hill. It is unclear how evidence that SS had paid invoices raised by Orbrick is material or relevant to either the contract between AM1 and SS being cancelled, terminated or rescinded or to AM1's claim against Mr Bhinde (or Sky) for alleged breach of his fiduciary duties owed as agent to AM1. It is not in dispute that SS contracted with Orbrick, in India, for the latter to supply subcontractors who could provide the underlying IT service. Why then does it matter or is it relevant to AM1's alleged dispute on the invoices or the cross-claim whether SS had actually performed its separate contractual obligations to pay Orbrick?

58. Weighing all of the factors together, I am satisfied that on balance it is not in accordance with the overriding objective to order disclosure in this case and that this case can be justly disposed of without an order for disclosure. I therefore refuse AM1's application.

59. There should now be a hearing before a Judge of the Business and Property Court with a time estimate of the originally envisaged 3 hours to establish whether the debt allegedly owed by AM1 to SS is disputed on substantial and bona fide grounds. In the attached order I have made provision for the service of further evidence if the parties consider that such evidence needs to be served.

60. Given that SS has undertaken not to present a winding up petition prior to the decision of the Court on that hearing, I do not need to order any injunctive relief.

61. The hearing of the winding up petition is therefore adjourned until the Court's decision on that hearing.

62. As also provided in the attached order, the parties are to provide short written submissions as to the correct order for costs of the application of 4th November 2024, which I will determine on the papers without a further oral hearing.