

Neutral citation number: [2023] EWHC 1612 (KB)

**Claim No. QB-2022-001490**

**IN THE HIGH COURT OF JUSTICE**

**KING'S BENCH DIVISION**

Royal Courts of Justice,  
Strand, London, WC2A 2LL

Heard on 4<sup>th</sup> April 2023  
Judgment given on: 4<sup>th</sup> July 2023

**Before: MASTER YOXALL (Sitting in Retirement)**

**B E T W E E N**

**INDIA INFRASTRUCTURE FINANCE COMPANY (UK) LIMITED**

**Claimant**

**And**

**[1] RELIANCE NAVAL & ENGINEERING LIMITED**  
**(previously known as Pipavav Defence & Offshore Engineering Company Limited)**

**[2] SKIL INFRASTRUCTURE LIMITED**

**[3] MR. NIKHIL PRATAPRAI GANDHI**

**[4] MR. BHAVESH PRATAPRAI GANDHI**

**Defendants**

Representation:

For the Claimant: Mr. Vivek Kapoor, of counsel, instructed by Field Fisher LLP

For the Second, Third and Fourth Defendants: The Fourth Defendant, in person.

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**JUDGMENT**  
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*This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to the National Archives. The date and time for hand-down is deemed to be 10.30am on 4<sup>th</sup> July 2023*

1. This is an application by the Claimant for summary judgment against the Second, Third and Fourth Defendants. Mr. Vivek Kapoor, of counsel, appeared on behalf of the Claimant. The Fourth Defendant represented himself and, with my permission, represented the Second and Third Defendants. I shall refer to the respondents to the application as the Defendants. The First Defendant has played no part in these proceedings and is involved in a corporate insolvency resolution process in India.<sup>1</sup>
2. On the 4<sup>th</sup> April 2023 there was a hearing conducted by MS Teams during which I heard the Claimant's submissions and the submissions of the Defendants in response. There was insufficient time for Mr. Kapoor's submissions in reply and I gave permission for those submissions to be provided to me in writing.
3. At the hearing I had a hearing bundle running to over 1200 pages. In the course of argument, the Fourth Defendant emailed me an additional document which was said to be significant. I shall return to that document below.
4. The Claimant's pleaded case is set out in the Particulars of Claim. The Defendants have each served a Defence and these are in similar terms. In support of the application there are two witness statements by Ms Priyanka Kapoor, solicitor with conduct of the proceedings on behalf of the Claimant, dated 14<sup>th</sup> December 2022 and 15<sup>th</sup> March 2023 respectively. In response, I have a witness statement dated 27<sup>th</sup> March 2023 made by the Defendants jointly.
5. On the 6<sup>th</sup> April 2023, Ms Emma Freudenthal, a solicitor acting for the Claimant, provided me with a bundle of 131 pages comprising six additional documents. Ms Freudenthal's covering email explained that the documents were not thought necessary for the purposes of the application but were now needed to rebut the assertions made by the Defendants in argument.
6. On the 11<sup>th</sup> April 2023, Mr. Kapoor provided me with his written submissions in reply. Those submissions made reference to the additional documents. I then directed that the Defendants were entitled to respond in writing to the reply in so far as it relied on the additional documents. I directed that any such response should be received by me by 18<sup>th</sup> April 2023. I stated that I would consider the admissibility of the additional documents, and what weight should be attached to them, if admitted, once I had the

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<sup>1</sup> In fact, the Claimant does not seek any relief against the First Defendant in the claim. According to paragraph 2.3 of the Particulars of Claim, the First Defendant has been added as a party to the proceedings "due to its relevance to this claim."

Defendants' response. I have not received any further submissions from the Defendants.

7. I must add that I am grateful for the written and oral submissions made on behalf of the parties. I bear in mind that, as he told me, the Fourth Defendant has no legal training and that English is not his first language. That said, I found the Fourth Defendant to be perfectly articulate in English and that he had a clear understanding of the issues.
8. As far as the application for summary judgment is concerned, it is for the Claimant to show that the Defendants have no real prospect of successfully defending the claim and that there is no other compelling reason why the case should be disposed of at a trial; see CPR r.24.2. I remind myself that it is not for the Defendants to show that they would win the case at trial. The key question is whether or not the Defendants have a *real* prospect of successfully defending the claim. As is well known, a fanciful prospect of success will not do.

### *The Background*

9. In broad terms, the undisputed background facts are as follows.
10. The Claimant is in the business of lending to fund infrastructure projects. The First Defendant, a company incorporated in India, was in the business of ship building and heavy industry. On the 18<sup>th</sup> March 2014, the Claimant entered into a loan facility agreement ["ECB Facility Agreement"] with the First Defendant and the Union Bank of India. Under this agreement the Claimant agreed to lend US\$68 million to the First Defendant. The agreement provided for the payment of interest in default of repayment and for the payment of costs and expenses.
11. There were a number of other parties lending to the First Defendant under separate agreements. The Claimant was part of a consortium of lenders providing funding to the First Defendant. On the 18<sup>th</sup> March 2014, all lenders, including the Claimant, entered into an Inter Creditor Agreement ["ICA"] amongst themselves in order to have a co-ordinated approach to the various loans to the First Defendant.<sup>2</sup> These loans comprised Indian Rupee lending and the Claimant's lending in US dollars.
12. Under the ECB Facility Agreement, the First Defendant agreed to procure the execution of a corporate guarantee by the Second Defendant and personal guarantees by the Third and Fourth Defendants. Clause 16.3 of the agreement specifically provided that the facility and interest and other monies be secured, inter alia, by the said corporate and personal guarantees.

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<sup>2</sup> The ICA is at pages 2-87 of the additional bundle.

13. The Second Defendant, a company incorporated in India, is in the business of infrastructure development. On the 18<sup>th</sup> March 2014, the Second Defendant entered into a corporate guarantee with IL & FS Trust Company Limited (in its capacity as the security trustee for the Claimant) to guarantee due repayment of the outstanding principal amount, interest, costs and expenses under the ECB Facility Agreement.<sup>3</sup>
14. Pursuant to clause 2.4 of the corporate guarantee, the Second Defendant agreed that the Claimant and the security trustee would be at liberty to vary, alter or modify the terms and conditions of the ECB Facility Agreement and to defer or revise repayment or discharge the facility and/or payment of interest and other monies payable by the First Defendant. The clause further provides that the liability under the guarantee “shall in no manner be affected by any such variations, alterations, modifications, waiver or dispensation of this Guarantee, and that no further consent of the Guarantor is required for giving effect to any such variation, alteration, modification, waiver or dispensation of this Guarantee.”
15. Clause 2.5 of the corporate guarantee provides that should the security trustee forbear to enforce payment or to enforce any remedy available with respect to the facility, the guarantor shall not be released.
16. Clause 2.8 of the corporate guarantee provides that in order to give effect to the liability under the corporate guarantee, the Second Defendant will be the principal debtor to the Claimant.
17. Clause 2.14 of the corporate guarantee provides, inter alia, that the liability of the guarantor shall not be affected by any change in the constitution or winding up of the borrower, or any change in the management of the borrower.
18. Clause 2.18 provides that the corporate guarantee is a continuing one and shall remain in full force and effect until such time as the borrower discharges the facility and pays all interest, guarantee commission, charges and costs.
19. The Third Defendant was the promoter and founder of the First Defendant at the time of the loan facility agreement was made. He was also the non-executive chairman and director of the First Defendant at that time. He is currently a director, chairman and member of the board of the Second Defendant.
20. The Fourth Defendant was the promoter and co-founder of the First Defendant at the time the loan facility agreement was made. He was also the executive chairman and director of the First Defendant at that time. He is currently a director, vice-chairman and member of the board of the Second Defendant.

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<sup>3</sup> As is apparently usual with multi-lender facilities, the security trustee was appointed to create and hold security on behalf of various lenders, including the Claimant.

21. On the 29<sup>th</sup> April 2014 and 9<sup>th</sup> May 2014 respectively, the Third and Fourth Defendants each entered into a personal guarantee with the security trustee for the benefit of the Claimant for the payment of any outstanding principal amount under the ECB Facility Agreement plus interest, costs and expenses. These personal guarantees are in the same terms.
22. Recital HH of the personal guarantees, provides that such guarantees would remain valid and in full force until full repayment of the ECB Facility and any payment due thereunder, irrespective of the Third and Fourth Defendants relationship with the First Defendant in the future.
23. Pursuant to clause 2.5 of the personal guarantees the Third and Fourth Defendants agreed to indemnify the Claimant against all losses, damages, costs, claims and expenses which the Claimant may suffer by reason of any default by the First Defendant.
24. Pursuant to Clause 2.6 of the personal guarantees, the Third and Fourth Defendants agreed that the First Defendant and the Claimant would be at liberty to vary the terms of the loan agreement and/or security; and/or to defer, postpone or revise the repayment of the facility or interest and other monies. The Third and Fourth Defendants agreed that the liability under the guarantees shall in no manner be affected by any such variations, waiver or release of security.
25. Clause 2.9 of the personal guarantees provides that the Claimant shall have full liberty to exercise any power under the loan agreement or other finance documents and to enforce or to forbear to enforce payment of the facility and that the guarantors shall not be released.
26. Clause 2.13 of the personal guarantees provides that in order to give effect to the guarantee, the Claimant would be entitled to act as though the Third and Fourth Defendants were principal debtors to the Claimant. Further, it was agreed that in so far as the contractual obligation of the Third and Fourth Defendants towards the Claimant exists, they will be the principal debtors jointly with the First Defendant.
27. Clause 2.19 of the personal guarantees provides that the liability of the Third and Fourth Defendants would not be affected by, inter alia, any change in the constitution or winding up of the First Defendant or any merger with any other company, corporation or concern; or any change in the management of the First Defendant.
28. Clause 2.20.6 of the personal guarantees provides that the liability of the Third and Fourth Defendant shall be joint and several between themselves and with the Second Defendant.

29. On the 28th April 2014 the Claimant duly advanced \$34 million to the First Defendant with an obligation to repay by 41 instalments by 1st February 2021. No further sums were advanced under the ECB Facility Agreement.

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30. By a purchase agreement dated 4<sup>th</sup> March 2015, made between [1] the Second, Third and Fourth Defendants and SKIL Shipyard Holdings Private Limited and Grevek Investment and Finance Private Limited, together described as the Founder Promoters of the First Defendant, and [2] Reliance Defence Systems Private Limited [“Reliance Defence”], the founder promoters agreed to sell their share holding in the First Defendant to Reliance Defence. By this agreement Reliance Defence was to obtain ownership and control of the First Defendant.

31. Clause 5.10 of the purchase agreement states that Reliance Defence recognised that the founder promoters (i.e., the Defendants) should be discharged from all their guarantees provided in relation to any existing loan or facility used by the First Defendant. Reliance Defence agreed to make best endeavours to release such guarantees as soon as reasonably practicable and not later than 3 months from the completion date. In the interim, Reliance Defence and the First Defendant agreed to promptly reimburse and indemnify the founder promoters on demand for any loss suffered by the founder promoters on account of the enforcement of the guarantees.

32. As envisaged by the purchase agreement, on the 30<sup>th</sup> March 2015 the First Defendant entered into a Master Restructuring Agreement [“MRA”] with a group of Corporate Debt Restructuring Lenders [“CDR Lenders”]. According to the purchase agreement, this was under the Corporate Debt Restructuring Scheme of the Reserve Bank of India.

33. Recital C of the MRA sets the scene. It states:

(C) The operations of the Borrower have come under strain due to various reasons and the Borrower has requested the CDR Lenders for restructuring of its corporate debt.

34. Recital D of the MRA states:

(D) At the request of the Borrower and in consideration of the Borrower’s commitment to improve its operations, the Borrower has been admitted to the Corporate Debt Restructuring Forum, a *non-statutory voluntary mechanism* set up under the aegis of the Reserve Bank of India (hereinafter referred to as the “CDR”), for the efficient restructuring of its corporate debt.

(The emphasis is mine).

35. The Claimant was not a party to the said purchase agreement and was not a party or signatory to the MRA. The CDR lenders were listed in Schedule 1 of the MRA. The Claimant was not included in the list of CDR lenders.<sup>4</sup> As will be seen, the Defendants contend that, in the circumstances which arose subsequently, the Claimant became a party to the MRA or should be treated as if it was a party to the MRA.
36. Although the purchase agreement and MRA were executed in March 2015, Reliance Defence or the Reliance group [“Reliance”] did not take over the management of the First Defendant until the 18<sup>th</sup> January 2016. At this point the name of the First Defendant was changed to Reliance Naval & Engineering Limited and the Defendants withdrew from the management of the First Defendant.
37. Reliance Defence did not provide alternative security as envisaged under Clause 5.10 of the purchase agreement.
38. [1] According to the Defendants, there was a further refinancing scheme involving the First Defendant in 2016/2017. I will not rehearse all the correspondence relating to this.
- [2] By letter dated 9<sup>th</sup> September 2016, the First Defendant asked the Claimant to approve a refinancing plan as it was crucial for the First Defendant’s revival.
- [3] On the 7<sup>th</sup> March 2017, the Claimant wrote to Reliance Defence in relation to the approval of modification of sanction terms.
- [4] By letter dated 6<sup>th</sup> October 2017 to all lenders the First Defendant requested all lenders to accept modifications in the terms of lending to correspond with changes in its business plan. However, the request from the First Defendant did not relate to any modification in the terms or nature of the security available to lenders at that time.
39. On the 1<sup>st</sup> March 2018 the First Defendant defaulted on its payment obligations under clause 6 of the ECB Facility Agreement. On the 11<sup>th</sup> May 2018 the Claimant issued demand notices against the Defendants. As at the 1<sup>st</sup> March 2018 the outstanding principal amount owed by the First Defendant was \$32,640,000. As at the 3<sup>rd</sup> April 2023, the sum claimed against the Defendants in respect of principal and interest was \$58,103,230.97.

### *The parties’ contentions*

40. Having set out the background, I turn to the parties’ contentions.

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<sup>4</sup> Furthermore, the Claimant was not listed as an “Existing Lender” in Schedule 2 of the MRA.

41. The Claimant's case can be stated simply. It contends that the corporate and personal guarantees provided by the Defendants were valid and enforceable and remain valid and enforceable. Given the express terms of the guarantees, nothing has happened which could result in the release or discharge of any of the Defendants. According to the Claimant, the purchase agreement and the MRA have no bearing on the Defendants' liability under the guarantees. The Claimant contends that it was never a party to the purchase agreement or to the MRA.
42. The Defendants' case is not so straightforward.
43. The Defendants do not dispute that the corporate and personal guarantees were validly executed at the outset and that the Claimant advanced \$34m to the First Defendant. It is not disputed, and cannot be disputed, that the guarantees were in place as at the date of the purchase agreement as that agreement recognised their existence and Reliance Defence agreed to make its best endeavours to release the guarantees.
44. The Defendants contend that at some point after the purchase agreement or MRA the Claimant behaved in such a way as to extinguish or release the guarantees. The Defendants are not able to say exactly when this release took place.
45. The Defendants further contend that the Claimant and other lenders colluded so as to prevent Reliance Defence from releasing the guarantees and/or providing alternative security of its own. The Defendants make the point that Reliance Defence and the Reliance group of companies were in a far stronger financial position than the Defendants and better able to provide security. The Defendants submitted that they were being made the scapegoats for the Claimant's own folly in failing to secure alternative security.
46. The Defendants submit that the Claimant was, in effect, a party to the MRA and obliged to procure the release of the Defendants as guarantors – in particular when the Defendants ceased to be involved in the management of the First Defendant.
47. The Defendants state that the Claimant attended and participated in various, if not all, meetings with other creditors of the First Defendant even after the Defendants ceased to be involved in the First Defendant's management. As indicated above, in the course of submissions, the Fourth Defendant emailed me the minutes of a meeting of the Joint Lenders Forum ["JLF"] held on 28<sup>th</sup> April 2016. The annexed attendance sheet shows that a representative of the Claimant did attend the meeting. The Defendants ask; if the Claimant was not a party (or bound by) the MRA why did it attend all the meetings and be a party to the discussions?
48. The Defendants contend that there was a refinancing scheme involving the Claimant and First Defendant in 2016/2017.



49. [1] The Defendants rely on a letter dated 7<sup>th</sup> March 2017, from the Claimant to Reliance Defence, which was a letter of approval for modification of sanction terms.<sup>5</sup> The letter rehearsed that the Claimant had already disbursed \$34m out of the sanctioned \$68m and that “subject to compliance of terms of the ECB facility agreement and modifications, any further disbursements by (the Claimant) shall be limited to USD 34 million ... “. Annexure 1 of the letter provided, inter alia, for the provision of collateral security by Reliance and additional security. The additional security required was stated to be - until the completion of collateral security – that “the erstwhile Promotors and Promotor Group belonging to Skill Group shall furnish prior to release of fresh facilities....” a corporate guarantee from the Second Defendant and personal guarantees from the Third and Fourth Defendants.<sup>6</sup>

[2] The Defendants make the point that if the corporate and personal guarantees given in 2014 remained in force there would be no need for this proposed additional security. Put another way, the request for the said additional security shows that the 2014 guarantees were no longer in force. The Defendants submitted that the use of the words “shall furnish” highlight this point.

[3] The Defendants did not provide the requested additional security. However, they state that the re-financing proceeded and the First Defendant exited the Corporate Debt Restructuring as the letter of the 7<sup>th</sup> March 2017 envisaged. Also that rights issues envisaged by 7<sup>th</sup> March 2017 letter took place.

### *Conclusions*

50. I remind myself that on a summary judgment application, I must proceed on the basis that the facts are as asserted by the Defendants unless what is asserted is untenable. That said, on the facts asserted by the Defendants I consider that the contention that the Defendants were released or discharged from their guarantees has no real prospect of success.

51. The Defendants assert that the Claimant and other lenders colluded so as to prevent Reliance from releasing the guarantees and/or providing alternative security. I find this to be mere assertion without any supporting evidence. The point has no real prospect of success.

52. The argument that the Claimant itself was under an obligation to obtain alternative security (and especially when the Defendants ceased to be involved in the

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<sup>5</sup> Bundle p.622.

<sup>6</sup> The letter and annexure are detailed. The annexure sets out a number of other conditions before further funds would be released. I do not need to set these out.

management of the First Defendant) has no real prospect of success. The obligation to provide alternative security was with Reliance Defence. I bear in mind here that the guarantees each provided that they would remain in force even after a change in management of the First Defendant. The Claimant was never under any legal obligation to find alternative security.

53. For the purposes of this application, I proceed on the basis that the Claimant did attend and participate in various meetings with other creditors of the First Defendant. However, I reject the contention that this, somehow, resulted in the Claimant becoming a CDR lender under the MRA, or a party to the MRA, or resulted in the discharge of the guarantees. This contention is hopeless. In my judgment, the Claimant attending such meetings is not at all prejudicial to its claim under the guarantees. The Claimant had advanced a significant sum to the First Defendant. It is hardly surprising that it would take an interest in the First Defendant's condition and progress. Indeed, the ICA provided for a mechanism for the exchange of views and information between all lenders; i.e., including the CDR lenders and the Claimant. Clause 2 of the ICA provides, inter alia, that each lender shall use reasonable efforts to promptly make available to other lenders information having a bearing on; the operation of the project, the financial condition of the borrower and on the securities. The Clause also provides for meetings of all the lenders. The minutes of the 28<sup>th</sup> April 2016 meeting (taking that meeting as an example) show that its purpose was to discuss the First Defendant's account having been categorised as "SMA-2" with various banks; i.e., that repayments were overdue by 61-90 days and that the lenders wanted a corrective action plan put in place.

54. Paragraph 16 of the minutes (page 4) states:

"... erstwhile promoters [the Defendants] are now seeking the release of pledge and personal guarantee (PG) & corporate guarantee (CG) furnished by them. As such, new promoters shall have to pledge their shareholding and furnish PG and CG...Shri Bansal [of IDBI] advised company official to take immediate steps to pledge shareholding of new promoters with lenders."

55. The existence and purpose of the ICA was recognised in the personal guarantees provided by the Third and Fourth Defendants and is referred to in the ECB Facility Agreement; see recital DD in each personal guarantee. It follows that the Defendants must have been aware of the ICA.

56. I should add that as a lender to the First Defendant, the Claimant would have been aware of the MRA and may well have approved it. This does not make the Claimant a party to the MRA or a CDR lender under the MRA.<sup>7</sup> The Claimant could not be a party to the MRA or be a CDR lender given that it was lending in US dollars and was outside

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<sup>7</sup> See Reliance Infrastructure's letter to the First Defendant's lenders dated 7<sup>th</sup> March 2015 requesting the lenders to approve the Corporate Debt Restructuring [CDR] package. Bundle p.597.

India.<sup>8</sup> In any event, given the terms of the corporate and personal guarantees, such approval could not result in the discharge of the guarantees.

57. As far as the 2016/2017 refinancing scheme was concerned, for the purposes of this application, I proceed on the basis that re-financing of the First Defendant's financial obligations did take place and that the First Defendant did exit the CDR. However, such re-financing did not involve or emanate from the Claimant. The letter of the 7<sup>th</sup> March 2017 from the Claimant to Reliance Defence contemplated further disbursements subject to the provision of collateral security and additional security. No such security was provided to the Claimant and the Claimant did not advance any further monies. There was no concluded re-financing agreement as between the Claimant and the First Defendant. The ECB facility agreement, and the guarantees under it, remained in place. The concluding paragraph of Annexure 1 of the letter of 7<sup>th</sup> March 2017 states:

"It is however clarified that pursuant to this letter the ECB facility and other financing documents would be required to be amended / freshly executed and such documents once executed by (the Claimant), such documents would supersede the existing ECB facility agreement."

58. The MRA may well have fallen away following the refinancing agreement (to which the Claimant was not a party) but the ECB Facility Agreement and the 2014 guarantees remained in place. The ECB Facility Agreement was always separate from the MRA and its CDR lenders. Any argument to the contrary has no real prospect of success. On the 11<sup>th</sup> March 2015, the First Defendant wrote to the Claimant stating:

"... As you are aware, the ECB exposure of USD 68 mn is kept outside the restructuring scheme. There is no change in the repayment terms and there is no interest rate sacrifice. Once CDR is implemented, it will be our endeavour to service the ECB exposure regularly. ..."<sup>9</sup>

59. I reject the argument that the Claimant seeking, in effect, interim guarantees from the Defendants pending the provision of collateral security by Reliance Defence shows that the corporate and personal guarantees were no longer effective. Such an argument has no real prospect of success. In my judgment, it was perfectly legitimate for the Claimant to seek the comfort of such fresh interim guarantees for further advances given the change in the First Defendant's management. Put another way, to advance a *further* \$34 million relying on the 2014 guarantees when the Defendants were no longer involved in the First Defendant's management – might be regarded as somewhat risky as far as the further advance is concerned. As far as the money already advanced is concerned, the guarantees remain valid and enforceable.

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<sup>8</sup> Para 4.3.2 of the CDR Guidelines states that: "The lenders in foreign currency outside the country are not part of CDR system".

<sup>9</sup> Bundle p.1,000. The First Defendant's letter dated 8<sup>th</sup> May 2015 to the Claimant likewise states that the Claimant has been kept outside the restructuring agreement so as to allow repayment of the \$68m as per the original schedule; Bundle p.1,007.

60. In conclusion, bearing in mind the terms of the corporate and personal guarantees, I consider that the Defendants have no real prospect of successfully defending the claim and that there is no other compelling reason why the case should be disposed of at a trial. From the Defendants' point of view, it is unfortunate that Reliance Defence were not able to provide the alternative security promised but, as already stated, that was not the fault of the Claimant.
61. I should add that the Claimant made the point that on 23<sup>rd</sup> December 2022 an announcement was published on the First Defendant's website which indicated that the Defendants had filed claims in the First Defendant's insolvency resolution process in their capacity as guarantors of the First Defendant. In argument, the Fourth Defendant told me that that the claims were filed to protect the Defendants' position. Mr. Kapoor made the point that to make such a false claim in the insolvency process is a criminal offence in India. For the purposes of this application, I have ignored the Defendants' statement in the insolvency process.
62. The Claimant also told me that the Defendants were under investigation in India. The Fourth Defendant accepted that there was an investigation but denied any wrongdoing. For the purpose of this application, I attach no weight at all to this investigation.
63. As far as the additional documents provided to me after the hearing are concerned, I have had to consider these to determine whether or not they should be admitted in evidence to rebut the Defendants' submissions. I have decided to admit them in evidence, although the evidence and documents before me at the hearing would have been more than sufficient for me to rule in the Claimant's favour. That said, the ICA agreement provided in the additional bundle helped me to put the lenders' meetings in context.
64. In the circumstances, I will give summary judgment for the Claimant against the Second, Third and Fourth Defendants.
65. A draft of this judgment was sent to the Claimant and Defendants on 11<sup>th</sup> May 2023.