Neutral Citation Number: [2023] EWHC 2815 (Comm)

Case No: CL-2023-000291

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, WC4A 1NL

Date: 9 November 2023

Before :

MRS JUSTICE DIAS DBE

- -

Between :

(1) Chowgule & Company Private Ltd
(2) Rudra Shipping & Trading Ltd

Claimants

- and -

(1) Pratap Shirke
(2) Pradip Mahatme
(3) Vijay Chowgule
(4) Panoceanic Bulk Carriers (UK) Ltd

Defendants

- -
- -

Mr Simon Salzedo KC, Mr Edward Harrison, Mr Tom Pascoe and Mr Charles Wall (instructed by Milbank LLP) for the Claimants
Mr Harish Salve KC and Mr Rupert Hamilton (instructed by Mills & Co. Solicitors Ltd) for the First and Fourth Defendants

Hearing dates: 3-5 October 2023

- -

JUDGMENT

Mrs Justice Dias DBE:

1. This matter comes before me on the adjourned hearing of an application for a freezing injunction and ancillary relief against the First and Fourth Defendants, to whom I shall refer as "**Mr Shirke**" and "**POBCUK**" respectively. As rapidly became apparent, the underlying dispute is part of an ongoing feud between two rival camps of the Chowgule family in India. The camp to which the Claimants belong allege that the Defendants were guilty of masterminding a massive US$128 million fraud on the Claimant companies, while the Defendants deny any fraudulent dealing and maintain that the present application is merely an attempt to exert pressure in the context of the family dispute.

The parties

2. The First Claimant ("**CCPL**") is an Indian company and the parent company of the Chowgule Group, a conglomerate comprising numerous entities with wide-ranging interests, including metals, mining, shipbuilding, shipping and heavy engineering. Most, if not all, of its shares are either directly or beneficially owned by members of the Chowgule family based in Goa, of whom there are many members. Of particular relevance to the present application are the siblings, Mr Vijay Chowgule, Mr Ashok Chowgule, Mrs Sarita Shirke (née Chowgule) and Ms Padma Chowgule. Other family members who have featured in the documents before me are Mr Aditya Chowgule, Mr Arjun Chowgule, Ms Deepa Chowgule, Mr Jaywant Chowgule and Mr Umaji Chowgule. To avoid confusion and without intending any disrespect, I refer to the various Chowgule individuals by their given names.

3. The Second Claimant ("**Rudra**") is a wholly-owned subsidiary of CCPL which was incorporated in Guernsey on 7 July 2009. Rudra had two wholly-owned Guernsey

subsidiaries, Nandi Trading Private Ltd ("**Nandi**") and Nilgiri Shipping & Trading Ltd ("**Nilgiri**").

4. Vijay (the Third Defendant) was a director of CCPL from 16 August 1974 to 12 January 2021. During that time, he was also Managing Director (1 January 1988 to 28 May 2019) and Chairman of the board of directors (18 November 2008 to 28 May 2019). Vijay owns some 10% of CCPL (either directly or indirectly) and is resident in India. The Second Defendant, Mr Mahatme, is a chartered accountant and a long-standing adviser and friend of Vijay, who previously acted for CCPL and the companies under its control. He was a non-executive director of CCPL from 14 February 1989 to 12 January 2021 and also is resident in India.

5. Both men resigned as directors of CCPL as part of the settlement of a long-running and bitter feud between rival factions of the family: Group A (which includes Padma, Ashok, Jaywant and Umaji) and Group B (which includes Vijay and Sarita). On 11 January 2021, a Family Settlement Agreement (the "**FSA**") was concluded in an attempt to resolve the dispute by effectively dividing the Chowgule Group between the two factions. As part of that settlement, CCPL and Rudra were allocated to Group A. Padma, Ashok, Arjun, Jaywant and Umaji are thus all on the current board of directors of CCPL and Padma is now Chairman and (jointly with Ashok) Managing Director of the company. She was also appointed as a director of Rudra on 9 January 2023.

6. The First Defendant, Mr Shirke, has had close personal and business connections with the Chowgule family since 1964. He was a friend and school contemporary of Ashok at Millfield School and has been married to Sarita for over 50 years. Sarita owns about 10% of CCPL either directly or indirectly, although Mr Shirke himself

has no equity or other interest in any of the Chowgule companies except for a small shareholding in Chowgule Steamships Ltd ("**CSL**").

7. Mr Shirke is a successful businessman in his own right, initially in the construction sector, and he remains on the board of his family company, BG Shirke Construction Technology Ptd Ltd in India. His first real involvement in shipping was in 1987 when he was asked by Mr Chowgule senior to supervise the running of the overseas Chowgule shipping interests alongside his own businesses. In 1997, a Guernsey company, Panoceanic Bulk Carriers Limited ("**POBC**"), was incorporated as a joint venture with Royal Maritime Corporation (an arm of Marubeni) to purchase six Panamax bulk carriers. The vessels were eventually sold in 2007 at which time Royal Maritime Corporation exited POBC. POBC remained in existence as a subsidiary of another Guernsey company, Pan Gulf Group Ltd ("**PGG**"), until it was dissolved on 24 December 2018.

8. The Fourth Defendant, POBCUK, was incorporated in the UK on 4 March 1999 as a wholly owned subsidiary of POBC until the latter's dissolution, at which time ownership was transferred to a Panamanian company, Natlata Holding Corporation. POBCUK carried on business providing commercial chartering and ship management services until it ceased trading in 2020.

9. PGG and Natlata were owned by a trust, the Wadi Foundation, of which Mr Shirke is one of a number of discretionary beneficiaries. However, it is not in dispute that Mr Shirke controlled both companies and their subsidiaries and that he remains a director of POBCUK.

10. Other companies which featured prominently in this application are ASP Ship Management Pte Ltd ("**ASP**") and ASP Holdings Ltd ("**ASP Holdings**"). ASP's

core business was technical vessel management and it was acquired in 1997 by PGG. The ASP group expanded over the years and a significant portion of the business was the subject of a management buy-out in 2018. However, ASP Holdings (of which Mr Shirke is a director and which is also indirectly owned by the Wadi Foundation through PGG) still retains some of the ASP businesses. Again it is not in dispute that Mr Shirke controlled ASP and ASP Holdings at all material times.

11. In 1984, Mr Shirke and Sarita moved to the UK, and have been resident at the same address in Surrey since that date. Although Mr Shirke remains an Overseas Citizen of India and has substantial business interests and family connections there, he also has substantial ties to this jurisdiction. He was a director of the Newcastle P&I Club from 1994 and, following its merger with North P&I Club, became Club Chairman from 2011-2021. He continues to chair various of its committees and subsidiaries, positions which require approval from the financial regulatory authorities in the UK and Ireland. He was a governor of Sevenoaks School from 2007 to 2018 and remains a trustee of the Sevenoaks School Foundation.

12. Unfortunately, the FSA has not been successful in attaining its objective and I was informed that there are currently multiple other sets of proceedings ongoing in India between Group A and Group B members in India, including an arbitration commenced by Group B against Group A to enforce the terms of the FSA, a complaint against Mr Mahatme filed with the Disciplinary Committee of the Institute of Chartered Accountants in India and a criminal complaint filed in Goa against Vijay, Mr Mahatme and various other Group B members.

13. As already stated, the present proceedings are brought against Mr Shirke, Mr Mahatme, Vijay and POBCUK alleging that they were all party to a conspiracy to defraud CCPL and Rudra of sums totalling some US$128 million. Since Mr Shirke is domiciled in England and POBCUK is an English company, proceedings were served on them within the jurisdiction and permission was obtained to serve Vijay and Mr Mahatme in India on the basis that they are necessary and proper parties to the claims against Mr Shirke and POBCUK. It is suggested on behalf of Mr Shirke that he and POBCUK have only been included in these proceedings as nominal anchor defendants in order to secure jurisdiction over Vijay and Mr Mahatme who would not otherwise be susceptible to English jurisdiction, being Indian residents with no connection to the UK. This is, of course, hotly denied by the Claimants.

14. At all events, all four Defendants are applying to have the proceedings either set aside (Vijay) or stayed (Mr Shirke, Mr Mahatme and POBCUK) on the grounds that India and not England is the appropriate forum for the resolution of the dispute. The stay application is currently listed to be heard on 11-12 December 2023 and nothing I say in this judgment should be taken as expressing any view on the merits of that application one way or the other.

The alleged fraud in outline

15. It is the Claimants' case in general terms that the Defendants were party to a conspiracy over a number of years to divert substantial sums of the Claimants' money to entities connected to the Defendants and/or to use the Claimants' money for the benefit of such entities to the detriment of the Claimants. It is said that effective management of CCPL was predominantly vested in Vijay and Mr Mahatme and that the first three Defendants (the "**Individual Defendants**") were

also shadow and/or *de facto* directors of Rudra who effectively controlled not only the management of Rudra and its subsidiaries but also the information that was made available to the board of CCPL. It was therefore only after the change in control of CCPL following the FSA that the conspiracy came to light.

16. More specifically, it is alleged that over a period of some 5 years between 31 July 2009 and 22 April 2014, the Individual Defendants induced CCPL to make equity investments in Rudra totalling some US$128 million, ostensibly in connection with a chemical tanker business, on the basis that the funds would be deployed to advance the commercial purposes of Rudra and its subsidiaries to the ultimate benefit of CCPL as Rudra's owner. Instead, however, the monies advanced to Rudra were (in broad terms) deployed improperly as follows:

    (a) Some US$47 million was loaned to POBC and its affiliates effectively to subsidise POBC's business losses (the "**Rudra-POBC loans**"). These loans were never enforced and were subsequently written off;

    (b) Some US$14.7 million was invested in or loaned to Nandi which was in turn loaned to POBC and its affiliates and subsequently written off (the "**Nandi investments/loans**");

    (c) Some US$57.6 million was invested in Nilgiri and used to enter into transactions which substantially benefited Mr Shirke (the "**Nilgiri investments**");

    (d) Some US$9 million was invested in Chowgule Steamships Overseas Ltd ("**CSOL**") which was subsequently impaired to US$1. At the hearing Mr Simon Salzedo KC, who appeared for the Claimants, made clear that he did not

rely on this fourth category for the purposes of the freezing order application, although the Claimants were not thereby accepting that the investment was unobjectionable.

17. It is alleged by the Claimants that the Individual Defendants knew from the outset that these loans and investments were not in the best interests of CCPL or Rudra and that they always intended that the monies would be "skimmed off" for the benefit of the Defendants, particularly Mr Shirke. Even if the Individual Defendants did not have a fraudulent intention at the outset and/or even if it could be said that the initial investments could reasonably have been thought to be in the Claimants' interests, there came a time when it must have been obvious that this was no longer the case. The Individual Defendants nonetheless continued to extract money from CCPL and to conceal what they had done. In the event, the US$128 million provided by CCPL has been completely lost, either because the loans made by Rudra were not enforced or because they were written off on the instructions or advice of the Individual Defendants. There has been no satisfactory explanation as to where the money went.

The causes of action

18. Against this background, the Particulars of Claim assert the following causes of action against the Defendants:

    (a) Breach of fiduciary duties owed respectively by Vijay and Mr Mahatme to CCPL and by all the Individual Defendants to Rudra, to act in the company's best interests, with reasonable care and skill, not to benefit themselves or a third party at the expense of the company, and not to put themselves in a position of conflict of interest;

(b) Deceit on the basis of fraudulent misrepresentations:

(i) to CCPL that the investments in Rudra were in CCPL's best interests, alternatively that the Individual Defendants had reasonable grounds to believe that they were;

(ii) to Rudra that the loans and investments set out in paragraph 16 above were in the best interests of Rudra, alternatively that the Individual Defendants had reasonable grounds to believe that they were;

(c) Unlawful means conspiracy to procure CCPL's investment in Rudra and Rudra's subsequent loans/investments to the benefit of the Defendants at the expense of CCPL and Rudra.

19. POBCUK's involvement arises on the basis that it is said to be fixed with Mr Shirke's knowledge and thus party to his misrepresentations and conspiratorial actions.

20. The remedies sought include damages, equitable compensation and a proprietary claim arising from the alleged breaches of fiduciary duty.

The respondents' case

21. For the purposes of this application, it is unnecessary to draw any distinction between Mr Shirke and POBCUK. References to Mr Shirke should therefore be understood where appropriate as also including POBCUK.

22. Mr Shirke's case is that the entire allegation of fraud and conspiracy is a fantasy concocted by the Group A members of the Chowgule family in order to bring pressure to bear on the Group B members in the context of the ongoing family

disputes. Not only is there no direct evidence to support the allegations made (which are accepted almost entirely to depend on inference) but many of the claims are in any event now time barred. His inclusion and that of POBCUK in the proceedings is simply a device to allow the Claimants to found jurisdiction in England against their real targets, Vijay and Mr Mahatme.

23. More specifically, Mr Shirke does not dispute that he approached Vijay in 2009 to see whether CCPL would be interested in investing in his chemical tanker business. He explains in his evidence that prior to 2008, POBC had identified this sector as a good investment prospect and had ordered five Ice class chemical carriers from a Chinese yard in 2007. However, the Chinese yard was unable to meet its commitment and the order was reduced to two vessels (the "**Chinese vessels**"[1]). POBC had also ordered five further chemical carriers from a Korean yard. Funds for the purchase of these latter vessels was raised through the Norwegian KS system in partnership with Lorentzens Skibs AS. Two partnership entities were involved: a silent partnership, Ross Chemical II DIS, and a general partnership, Ross Chemical II AS (subsequently renamed Blue Mountain Tankers DIS ("**BMTDIS**") and Blue Mountain Tankers AS ("**BMTAS**") respectively). POBC invested US$2.5 million for a 10% interest in BMTDIS while the other 90% (including a 2.6% interest held via BMTAS) was held by the Norwegian investors. The total purchase price of the five Korean vessels was US$111,512,500, funded largely by a US$94 million loan from DNB which was secured, as is usual, by mortgages on the vessels. The loan was repayable over seven years by quarterly instalments culminating in a

[1] Of which only one vessel was eventually proceeded with.

balloon payment of US$51.21 million which fell due on the final maturity date of 30 June 2015.

24. The vessels were delivered during 2008 and, pursuant to a condition of the loan, were bareboat chartered by BMTAS to POBC for a seven year term at a fixed minimum rate of hire. POBC then let them on time charter to third parties at commercial rates. POBCUK was appointed chartering manager for the vessels, while ASP acted as technical manager. The bareboat charters all contained purchase options exercisable from the end of year 2.

25. Meanwhile, the Chinese vessels were put into a separate KS partnership, Ross Chemical IV, in which POBC held an equity investment of US$1,950,000 as nominee for a Chowgule family entity, Chowgule Steamship (Bahamas) Ltd ("**CSBL**"). Finance for these vessels was initially provided by DSB, which was later taken over by Commerzbank. DSB's loan of US$67 million was again repayable over seven years with a balloon payment of US$22,500,000 due on maturity.

26. Unfortunately, 2008 proved to be a catastrophic year for shipping, and charter rates which had previously been running at about US$18,000 per day fell to around US$6,000-8,000 as compared with operating costs of about US$8,000 per day. It also seems that there were problems with the generators of some of the Korean vessels. These should have been rectified by the yard under warranty but the yard had gone out of business leaving the owners to pick up the costs in order to keep the vessels operational. Since it was apparent that the vessels' earnings would be insufficient to cover both operating costs and bareboat hire, POBC engaged in discussions with DNB and the other investors in Ross Chemical II to find a solution.

27. It was against this background that Mr Shirke approached Vijay in 2009 to see whether CCPL or one of the other Chowgule companies might be interested in investing in the vessels, his view at the time being that the market would pick up in the medium term. In the event, CCPL set up Rudra as a subsidiary through which (via Nilgiri) it bought out the Norwegian investors in 2009 thereby acquiring a 92% interest in BMTAS/BMTDIS for a total of some US$29 million.

28. In 2011, CCPL loaned a further US$24 million to BMTAS via Rudra and Nilgiri to acquire from Ross Chemical IV one of the Chinese vessels then on order. The second vessel was terminated with a repayment of the deposit which had been paid. This vessel, the "Oceanic Indigo" was then put into BMTAS/DIS and operated together with the Korean vessels.

29. Unfortunately, the market did not pick up as had been hoped. POBC continued to make losses on the operation of the vessels and the venture required substantial support which was provided by CCPL through Rudra in order to fund the shortfall between POBC's income and the operating costs and bareboat hire. POBC's obligation to pay bareboat hire was reduced or deferred by agreement with BMTAS, although sufficient was always paid to ensure that the loan repayments to DNB were met.

30. By 2015, CCPL was looking to exit the investment within the next five years and, with the deadline for the balloon payment looming, it negotiated a one-year extension to the loan with DNB. In 2016, the bareboat charters came to an end. Two of the tankers were sold, and BMTAS took over operation of the remainder directly, albeit still retaining POBCUK as commercial manager (at a 50% reduced fee from 1 July 2018) and ASP (initially at least) as technical manager.

31. Two more vessels were sold in 2019 with the final two being disposed of in 2020. However, vessel values had fallen by this time leaving BMTAS balance sheet insolvent. The outstanding loans by Rudra were written off and BMTAS/DIS were liquidated in 2020. POBCUK ceased trading at that point and remained in existence only to settle its remaining liabilities. New shares were issued to Natlata for a total of US$720,000 which was used to close down the office, pay off the employees and repair the pension deficit. I understand that the company would have been struck off the register earlier this year but for the Claimants' solicitors' request for the process to be halted.

32. In short, it is Mr Shirke's case this was an investment which had seemed promising at the outset and was supported for as long there appeared some prospect of salvaging the situation, but which ultimately proved to be unsuccessful. In total, at least US$108 million of the US$128 million allegedly siphoned off by the Defendants can be accounted for by the sums invested in the acquisition and subsequent operation of the vessels.

33. Although he introduced the investment initially, Mr Shirke asserts that he was not involved in any of the internal discussions within CCPL and never sought to provide any advice as it was for the company to form its own view of the investment opportunity. Presentations to the board of directors were made by Vijay and Mr Mahatme, and Mr Shirke was not aware of what was said, still less did he approve, authorise or encourage any statements that were made. Nor was he a shadow director or involved in any way with the management or control of Rudra. He cannot therefore speak to the detail of the loans made by Rudra and, pending disclosure (whether in the context of the stay application or otherwise), he cannot

currently explain or document every single transaction of which the Claimants complain. He does, however, deny that there was anything nefarious in the various payments which the Claimants assert amounted to an unlawful preference of his interests over those of the Claimants. POBCUK and ASP in particular were providing arm's length commercial services for the operation of the vessels for which they were entitled to be paid.

34. Finally and in any event, it is submitted that such documentation as is available shows that the loss-making nature of the business and the need for continuing injection of funds were explained to the board of CCPL which can have been under no illusions as to the state of the business. Moreover, all transactions were fully disclosed and properly reflected in the publicly available accounts. CCPL therefore had every opportunity to scrutinise the transactions and cannot now complain that it did not know exactly what it was being asked to invest in. Mr Shirke points out that the Chowgule Group had numerous shipping interests (through CSL and CSBL amongst others) and would have been thoroughly familiar with the cyclical nature of the market. Even if the knowledge of Vijay and Mr Mahatme as directors is not to be attributed to the board, the documents before the court show that other directors were involved in and had full knowledge of what was going on. This not only undermines any allegation of fraudulent concealment, but also gives rise to a potential limitation defence.

Procedural history

35. The Claim Form in these proceedings was issued on 29 May 2023 and served on Mr Shirke and POBCUK together with Particulars of Claim on 1 June 2023.

Permission to serve Vijay and Mr Mahatme out of the jurisdiction was granted on paper on 19 June 2023.

36. On 11 July 2023, Mr Shirke and POBCUK applied for a stay of the proceedings. On 17 July 2023 the Claimants issued and served the present "on notice" application against both Defendants for a Freezing Order and ancillary disclosure orders. They then applied on paper for an expedited hearing. It is not disputed that because the application had been made "on notice", the Claimants took the view that they were not obliged to comply with the duty of full and frank disclosure which attaches to all "without notice" applications.

37. The application for expedition was considered by Mr Justice Foxton who was clearly concerned that the Defendants would not have sufficient time to prepare if the application was expedited. Accordingly, he directed on 20 July 2023 that it be listed provisionally for the following week on a "without notice/on notice" basis such that the Claimants would be required to comply with the duty of full and frank disclosure unless the Defendants were in fact able to deploy their evidence and prepare properly for the hearing, in which case it could be treated as being fully on notice.

38. The matter duly came before Mr Justice Bryan on 27 July 2023, the Claimants having the previous afternoon served a further (unsworn but approved) affidavit purporting to comply with the duty of full and frank disclosure. The Judge indicated at the outset of the hearing that he was not prepared to decide the application that day and that it should be relisted for a fully *inter partes* hearing. He did nonetheless make an order formally recording certain undertakings that had been offered by Mr

Shirke not to remove or dispose of certain assets and not to destroy or dispose of certain categories of documents.

39. The Defendants complain about the failure to give full and frank disclosure and this is a matter to which I shall return later in this judgment.

40. On 24 August 2023, I gave directions on the Claimants' application for an extension of time for service of their reply evidence in the stay application. Given the close connection between the evidence required for both the freezing order application and the stay application, I proposed that the two could be heard together in early October and ordered accordingly. In the event, this proved not to be possible, in part because Mr Mahatme had meanwhile been served with the proceedings in the jurisdiction and had applied successfully for a postponement of the stay application. Accordingly, the freezing order application has proceeded before me separately.

The applicable law

41. The present application seeks a freezing order only against Mr Shirke, while ancillary disclosure is sought against both Mr Shirke and POBCUK.

42. It was common ground that for the purposes of the freezing order, the burden is on the Claimants to demonstrate (1) a good arguable case on the merits against Mr Shirke; (2) a real risk of dissipation; and (3) that it is an appropriate case for the exercise of the court's discretion to grant a freezing order.

Good arguable case

43. There was some debate before me as to what exactly the Claimants must demonstrate in order to show the requisite good arguable case. I was referred by

Mr Salzedo to *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV,* [2019] EWCA Civ 10; [2019] 1 WLR 3514. This concerned a jurisdiction challenge where the judge at first instance had applied the same test of "good arguable case" in relation to the question of jurisdictional gateway. At paragraphs 57ff, the Court of Appeal discussed the nature of the test to be applied in some detail and, in particular, whether it was absolute (such that the claimant need only meet a specified evidential threshold irrespective of whether its case was stronger or weaker than that of the defendant) or relative (requiring the claimant to show that its case was relatively stronger than that of the defendant).

44. After reviewing the authorities, the Court concluded that there could no longer be any doubt but that the three-limbed test first articulated by Lord Sumption in *Brownlie v Four Seasons Holdings Inc,* [2017] UKSC 80; [2018] 1 WLR 192 at [7] and subsequently endorsed by the Supreme Court in *Goldman Sachs International v Novo Banco SA*, [2018] UKSC 34; [2018] 1 WLR 3683 was now authoritative:

> *"In my opinion [the good arguable case test] is a serviceable test, provided that it is correctly understood. The reference to 'a much better argument on the material available' is not a reversion to the civil burden of proof which the House of Lords had rejected in* Vitkovice Horni A Hotni Tezirstvo v Korner *[1951] AC 869. What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it."*

45. The Court of Appeal did, nonetheless, give useful guidance on the application of this test in practice. As to limb (i), it held that this is a relative test which requires an evidential basis showing that the claimant has the better argument. Limb (ii)

requires the court to seek to overcome evidential difficulties and arrive at a conclusion on any disputed issue of fact if it reliably can, applying judicial common sense and pragmatism. If, however, it is unable to decide which side has the better argument on the material then available, limb (iii) allows some flexibility for the court to move away from a relative test and assume jurisdiction provided there is sufficient plausibility of evidence to support it.

46. I approach the present application on that basis.

47. With specific reference to the evidence required to support a plea of fraud, I was referred by Mr Harish Salve KC, who appeared on behalf of Mr Shirke, to *King v Stiefel*, [2021] EWHC 1045 (Comm) at [378] where the court adopted the summary set out in *Barrowfen Properties v Patel,* [2020] EWHC 1145 (Ch) at [7], including the following:

> *"For a valid plea of fraud/dishonesty the claimant does not have to plead primary facts which are consistent only with dishonesty. The correct test is whether, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. There must be some fact or facts which tilts the balance and justifies an inference of dishonesty."*

48. Finally, Mr Salzedo placed reliance on *Gee on Commercial Injunctions* (7th ed, 2021) at 12-033 where it is pointed out that there is a difference between an application for freezing relief and a jurisdictional challenge, in the sense that once the court has assumed jurisdiction the question of jurisdictional gateway will never thereafter be revisited. By contrast, the question in a freezing injunction case is whether it is just and convenient at the time of the hearing to grant the injunction and the court will not usually express any opinion on the ultimate merits of the claim which fall to be determined at a later date.

49. I accept that there is a distinction between jurisdictional challenges, where the question of jurisdiction falls to be decided once and for all, and freezing orders where there is no final determination of the merits and it is always possible to have the order set aside. That said, given the serious consequences of a freezing order – which is after all one of the law's "nuclear weapons" and carries penal sanctions – I have some doubts as to whether it would ever be appropriate to grant a freezing order, particularly in a claim asserting fraud, unless the court was satisfied that the claimant had the better of the argument as compared with the defendant. As it is, I have found myself able to reach a conclusion on the relative merits of the respective cases such that limb (iii) becomes moot.

Risk of dissipation

50. In his skeleton argument, Mr Salzedo set out a number of principles which were not challenged by Mr Salve. Mr Salve also referred me to the useful summary set out in the judgment of Haddon-Cave LJ in *Lakatamia Shipping Co. Ltd v Morimoto Su,* [2019] EWCA Civ 2203; [2020] 1 CLC 562. It was therefore common ground that:

    (a) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets, i.e., putting assets out of reach of a judgment creditor, whether by concealment or transfer;

    (b) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient;

    (c) It is not sufficient merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets may be

dissipated, and also to see whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty;

(d) The defendant's former use of offshore structures is relevant but does not itself equate to a risk of dissipation. Businesses and individuals often use offshore structures as part of the normal and legitimate way in which they deal with their assets, e.g., for tax planning and privacy;

(e) What must be threatened is unjustified dissipation. A freezing order is not intended to provide the claimant with security or to stop an individual defendant from conducting his personal affairs as he has always done (provided it is legitimate) or a corporate defendant from dealing with its assets in the normal course of business. If no change in the existing way of handling assets is threatened, the fact that such continued conduct would prejudice the claimant's ability to enforce a judgment is not sufficient to justify a freezing order;

(f) Each case is fact specific and all relevant factors must be looked at cumulatively.

51. It follows that the mere difficulty of enforcement because, for example, assets are in a remote place or likely to be illiquid or inadequate, does not of itself amount to a risk of unjustified dissipation. To grant a freezing order for this reason would effectively be to grant the claimant security, which is impermissible: see *Laemthong International Lines Co. Ltd v ARTIS*, [2004] EWHC 2226 (Comm) at [54].

Good arguable case

52. Mr Salzedo accepted frankly that there was no direct evidence to support the Claimants' case of fraud against Mr Shirke which accordingly rested on inference and, moreover, that any representations made to the board of CCPL were made by

Vijay and Mr Mahatme, not by Mr Shirke. This might be thought to be an unpromising basis from which to launch an application for a freezing order but he submitted that since the purpose of seeking investment was to finance the shipping venture in which he was engaged, Mr Shirke must have known, approved and/or encouraged the representations that were made and is thus personally liable for such representations as were made.

53. Furthermore, he submitted that while the ostensible reason given to CCPL for becoming involved was in order to invest in the chemical tanker business, in truth the Individual Defendants always knew that this would not be in the best interests of CCPL and that the investment would never be recovered. He pointed to the fact that POBC needed to be bailed out by CCPL because the business was already in difficulties and argued that in truth there was never any realistic hope of things improving. However, Mr Shirke had an interest in having large sums of money passing through complex structures which he controlled so that he could (and did) skim off substantial sums, for example in the guise of fees to POBCUK and ASP. Moreover, the Defendants continued to extract money from CCPL via Rudra even when they knew it was certain to be lost, thus ensuring that Mr Shirke's companies were paid while Rudra was left high and dry without hope of recovering any of its loans. No honest person, it was said, could ever have thought it was in the best interests of CCPL or Rudra to continue to prop up the business, and the true position was actively concealed from the board of directors.

54. In the absence of any explanation as to precisely what became of the US$128 million invested by CCPL in Rudra and in the light of Mr Shirke's failure to provide any documentation regarding the relevant transactions, Mr Salzedo submits that a

fraudulent conspiracy between the Defendants is not only a plausible inference but in fact the only realistic inference to be drawn.

55. There are many questions which are raised by the Claimants' pleaded case, for example:

    (a) The extent to which it can be said that Mr Shirke encouraged or acquiesced in any representations made by Vijay and/or Mr Mahatme to the board of directors;

    (b) Whether or not it can be inferred that Mr Shirke was a shadow director of Rudra;

    (c) Whether the Defendants can establish a limitation defence on the basis of any knowledge the board of directors in fact had or should have had.

56. However, none of these questions arises unless the Claimants can establish a good arguable case that this was in fact a fraudulent scheme rather than simply a *bona fide* investment in a business that ultimately proved to be unsuccessful. As Mr Salzedo accepted, that is the critical dispute on the facts.

57. It follows that there are three key propositions for which the Claimants need to establish a good arguable case if the application is to succeed:

    (a) The investment was intended from the outset to be for the benefit of Mr Shirke and he did not honestly or reasonably believe that it was in the best interests of CCPL to make it or, having done so, to continue with it. Alternatively, if he did honestly and reasonably believe that it was a good investment prospect, he knew that Vijay and Mr Mahatme did not share that view but nonetheless encouraged or allowed them to represent to the board of directors of CCPL that it was;

(b) Funds were improperly diverted to the benefit of Mr Shirke and companies associated with him (principally ASP and POBCUK), leaving Rudra with mounting irrecoverable loans;

(c) Dishonest concealment of what was happening.

58. The first two propositions are closely linked. Indeed the first proposition is heavily dependent on the second, since it is accepted that there is no direct evidence of dishonesty and the Claimants rely on the alleged improper diversions in order to draw an inference of dishonesty.

59. It was common ground that the documentation before the court was far from complete and had many gaps. The Claimants complained that they had no access to relevant documentation such as the POBC company accounts or bank statements. For his part, Mr Shirke said that POBC had been struck off the register in 2018 but that its records should all have available to the Claimants on the Tally system.[2] He said that he had had no involvement in the internal affairs of either CCPL or Rudra and that the detail of the various transactions was within the knowledge of Vijay and Mr Mahatme rather than himself. Accordingly, he had very little documentation of direct relevance to the claims.

60. This is therefore very much a case where the court has to do the best it can on the material available. Unfortunately, the piecemeal nature of the material shown to me does not make for very clear exposition in what follows.

61. That said, certain matters were not in dispute:

[2] An electronic accounting system widely used in India.

(a) The original interest in the chemical tanker business was primarily that of Mr Shirke through POBC, although CSBL was also an investor in Ross Chemical IV through POBC as nominee;

(b) Mr Shirke controlled (albeit not formally owning) PGG, POBC, POBCUK, ASP, ASP Holdings and Natlata;

(c) Mr Shirke was also the chairman of BMTAS;

(d) All of these facts were known to the board of directors of CCPL, which must therefore have appreciated that an investment in the business would necessarily benefit Mr Shirke at least indirectly in circumstances where POBC was (like the rest of the shipping industry) in considerable financial difficulty following the financial crash.

62. I therefore turn to the three propositions which Mr Salzedo must make good.

(1) No honest or reasonable belief that the investment was in the best interests of CCPL/intention to benefit Mr Shirke

63. The evidence of Mr Shirke is that at the time CCPL entered into the transactions with Ross Chemical II and Ross Chemical IV, he considered the investment to be a good medium-term prospect, particularly since CCPL was able to obtain the equity at a significant discount. He thought it should be possible to ride out the downturn and there was no evidence that the sector would not bounce back to perform in accordance with previous forecasts. A relevant consideration in his mind was that DNB was continuing to support the venture. Accordingly, it seemed a good opportunity to cut out the Norwegian investors at an advantageous price which would allow the Chowgule Group not only to ring fence the current healthy bank

balance (which the Norwegians wanted to distribute) but also to keep any upside of the investment for themselves alone.

64. In my judgment it is impossible to say that this was an unreasonable view to have held. Shipping is known to be cyclical and is notoriously volatile because it is directly impacted by all manner of geopolitical, economic and environmental events, with potentially huge swings – often occurring quite suddenly. I bear in mind, moreover, that 2009 was in the very recent aftermath of the global financial crisis and that this had adversely affected the entire industry.

65. One of the key documents in the case is an undated note headed *"Reorganisation of Chemical Tanker Business of Blue Mountain AS"*. This was produced by the Defendants and is said to have been prepared on 12 July 2015, although its author is not stated. The general tone and format suggests that it was prepared for presentation to the CCPL Board and there is nothing to suggest that it was not so presented. Annexure 1 to the note is headed *"Background and present status of Chemical Tanker Business"* and records the history of the investment as follows:

(a) In the original partnership, POBC had held a 10% share. (It should be noted that POBC is expressly referred to as being owned by a *"Family Member"* which, in context, can only be a reference to Mr Shirke);

(b) CCPL joined the venture in June 2009, initially with a 20% stake. However, it became clear that POBC was incurring substantial financial burdens as a result of the bareboat charter arrangement from which the other shareholders were benefitting and it therefore seemed necessary to buy them out. CCPL accordingly increased its stake to 92% in December 2009 at a cost of US$29.59 million;

(c) Further contributions were made to cancel certain swap obligations attached to the DNB loan (US$3.99 million) and to acquire a further vessel (US$24 million).[3] CCPL's total investment was accordingly US$57.58 million;

(d) Earnings from the tankers had been under pressure over the previous five years. They were either less than or only just sufficient to cover operational expenses, leaving nothing to cover the repayment of the bank loan. A further US$46.10 million had therefore been advanced by CCPL to cover loan repayments (US$36.32, including fees), survey costs (US$3 million) and operational expenditure (US$6.78 million);

(e) In the result, CCPL's total exposure was US$103.68 million and total outstanding liabilities amounted to US$57.21 million;

(f) All six vessels were currently trading at rates slightly in excess of operational and administrative costs and there was therefore a positive contribution from operations *"at the moment"*.

66. This account of the background to and genesis of the investment is also confirmed in a note prepared by Mr Mahatme in March 2020 at the express request of Padma after she became Chairman and Joint Managing Director of CCPL. This likewise refers to Mr Shirke as a member of the Chowgule family and describes him as *"almost the face of Chowgule Shipping Business"*. It notes that one of CCPL's reasons for investing was accordingly to avoid the risk of reputational damage if the business collapsed following foreclosure by DNB. It was pointed out that CSBL

[3] This was "Oceanic Indigo", the sole vessel ultimately purchased from the Chinese yard.

(which was owned by all the members of the Chowgule Group) had been an investor even before CCPL became involved.

67. As to the continuing investments made by CCPL following its initial acquisition of Blue Mountain, Mr Shirke confirms in his evidence what is in any event obvious, namely that once you are committed to an investment, different considerations come into play and, even if it turns out to be less successful than hoped, careful consideration has to be given to the question of whether or not to maintain support in the hope that things might improve. Even if a decision to exit is taken in principle, it may still not be possible to do so immediately, and exit strategy and timing need to be carefully managed. In this context, I can well see that where a large group of family companies is concerned, the focus cannot simply be on the particular investment; all aspects of the group's business will need to be taken into account because of the possible ramifications of exit on the group's reputation and perceived stability and its other operations. So far as shipping in particular is concerned, it is usually the case that a trading vessel can be sold for more than one which is laid up and that, too, is no doubt a factor to be taken into account.

68. Furthermore, the suggestion that no honest person could have thought it was in the interests of CCPL to continue investing in the business completely ignores the fact that the bareboat charter to POBC was a condition of the loan from DNB. It was therefore essential to keep POBC afloat in order to avoid a breach of the loan terms and invite immediate foreclosure.

69. In my judgment, these considerations go a long way towards explaining why it might honestly and reasonably have been thought to be in CCPL's interests to continue putting money into POBC to support the operation. If it had failed to do

so, the business would have collapsed and it would have lost its entire investment. As long as there was *either* a reasonable and genuine belief in the possibility of a market recovery *or* a reasonable and genuine belief that an immediate sale would be worse than managing the exit over a period of time, that would have been a sensible decision to take which could not be said to be contrary to CCPL's interests.

70. That this was the thinking finds support in the *"Note on Funds Requirement"* which was exhibited to Ms Vaswani's Fourth Affidavit on behalf of the Claimants. It is accepted that this note appears to have been prepared for the CCPL Board although the Claimants are apparently presently unable to say whether any board members saw it. There being no evidence that they did not, and bearing in mind that the burden is on the Claimants to make their case, I proceed on the assumption that it was presented to the Board.

71. Although undated, this note must have been prepared sometime in late 2011 or early 2012. It records the following:

(a) POBC was 100% owned by Mr Shirke;

(b) The bareboat charter was one of DNB's financing requirements;

(c) POBC's only business was the charter and operation of the Blue Mountain vessels;

(d) POBC was therefore in essence *"nothing but a part of BTML* [sic] *operations and therefore both these companies need to be looked at together. Accordingly it becomes responsibility of CCPL to make sure that POBC has enough funds to meet its obligations to BMTL"*;

(e) The vessels were managed by ASP (who also managed all of CSL's vessels, as well as two vessels for CCPL);

(f) Some US$20,750,000 had been provided to POBC to date but it had an immediate requirement for a further US$6.682 million;

(g) Annual shortfalls of around US$5 million were projected up to the 2015/16 year, although it was anticipated that the entire investment could be recouped through sale of the vessels by 2021/22;

(h) Immediate sale, by contrast, would result in a loss of US$72.5 million which would have to be written off.

72. The note concludes that in those circumstances it would be advisable to continue to support operations by providing further finance rather than by trying to sell, unless of course a good price could be obtained.

73. On the basis that this note may well have been presented to the CCPL Board, it seriously undermines the Claimants' case that CCPL and Rudra were being dishonestly induced to continue supporting the operation without being made aware that the business was making significant losses. The note is quite clear and certainly cannot be accused of sugaring the pill. On the contrary, it spells out plainly that the business is making losses and is expected to continue to do so, but that CCPL is more likely to recover its investment by continuing to hold on rather than pulling the plug immediately. This should not have come as a surprise; an email of 6 May 2011 from Mr Mahatme to (amongst others), Arjun, Deepa, Vijay, Mr Shirke, Mr Sawant (the CFO of CSL), and Mr Satpute (CCPL's Senior General Manager

Finance & Accounts) also records a loss of US$5 million in 2010/11 and forecasts a further loss in 2011/12.

74. The original DNB loan was due to expire on 30 June 2015 with a balloon payment due of over US$50 million. This was discussed in some detail in the following documents:

(a) An undated *"Note on the Chemical Tankers owned by Blue Mountain A/S"*[4],

(b) The note headed *"Reorganisation of Chemical Tanker Business of Blue Mountain AS"* referred to in paragraph 65 above;

(c) A Board Note entitled *"Second Note on the Chemical Tankers owned by Blue Mountain A/S"* prepared by Vijay on 1 September 2015 (clearly an updated version of the note in (a));

(d) Notes from a meeting held on 10 September 2015 entitled *"Chemical Tanker Business Review of Options".*

75. These documents indicate that CCPL had by then taken a decision to withdraw from the investment since the notes are all prepared on the premise that CCPL would be making a planned exit from the market within five years and that the only question was how and when this would take place. This is consistent with Padma's evidence that CCPL's cash reserves had been steadily depleting following the introduction of a prohibition on mining in Goa in 2012. The notes accordingly discuss all the available options. Immediate sale of the vessels was projected to result in a substantial write-off. Refinance was considered although DNB had categorically

[4] This is undated but seems to have been prepared before June 2015. The Claimants accept that it was presented to the CCPL Board.

refused to consider this and a number of other banks had also declined. A further option under initial consideration was a joint venture with DNB. This fell through, although DNB did instead agree to extend the loan for a further year against immediate payment of US$6 million and security over a vessel called "Espace" (owned by one of Nandi's subsidiaries).

76. Mr Salzedo criticises these notes for presenting an unduly optimistic view of the market. However, I fail to see how this can possibly be said in circumstances where all the major ship financing banks were refusing to refinance the loan. It is true that the Second Note sets out some positive views of the market expressed by a potential third party purchaser, but that cannot fairly be said to support the criticism. They were simply one person's views which were passed on for what they were worth in the context of a specific proposal which never in fact materialised. There is in any event no evidence to suggest that the third party in question did not or could not reasonably or honestly have held those views.

77. Looking at all this material, I find it impossible to infer that any of the Defendants, let alone Mr Shirke, had a dishonest intention from the start or dishonestly sought to persuade CCPL to continue making loans when they knew there was no prospect of recovery. I have been shown nothing to suggest that Mr Shirke's assessment of market prospects in 2009 was not honestly and reasonably held, in which case, given the clearly close connection between him and the Chowgules and their respective companies, there was a variety of reasons for CCPL to become involved. Thereafter, there is a more than plausible argument that it was necessary to keep POBC afloat in order to avoid breaching the loan conditions.

78. I am wholly unpersuaded by Mr Salzedo's submission that there must have been dishonest intent because POBC had already accrued substantial losses at the date of CCPL's involvement so that the investment could only ever have been for the benefit of Mr Shirke. Obviously POBC was struggling; that was why an injection of further funds was required in the first place. Indeed, the email of 6 May 2011 referred to in paragraph 73 above states as a matter of historical record that CCPL had provided finance to clear all of POBC's debts up to 30 June 2010. The recipients of this email included Mr Satpute and Mr Sawant who were senior officers in the Chowgule operation, as well as Arjun and Deepa who attended CCPL board meetings (albeit neither was then a director). No challenge or query seems to have been made by any of these individuals to this email, raising a strong possibility that an informed decision to cover these losses had indeed been taken by the company.

79. I am not, of course, attempting to reach a final conclusion on the merits and nothing I say in this judgment should be taken as pre-empting any decision that may fall to be made hereafter when fuller information is available. Suffice it to say that the material before the court at present does not demonstrate that the Claimants have the better of the argument on this proposition. On the contrary, it is in my judgment distinctly more likely that the investment was, as Mr Shirke says, regarded as a good medium term prospect at the time it was proposed and was taken up by the Chowgule family on that basis even if they were in part also motivated by the desire to help a close family connection whose business activities and reputation were closely associated with their own. When the anticipated upturn in the market failed to materialise, the decision to keep supporting POBC and Blue Mountain until the vessels could be sold cannot be said to have been unreasonable. The pros and cons

of the various options were clearly set out in the board notes prepared in 2015 and I cannot conclude, despite Mr Salzedo's urgings, that no honest person could have thought it in CCPL's and Rudra's interests to carry on investing in the business. A reasonable and honest businessman could well have taken the view that this was in fact the best way to salvage as much as possible from an investment which had not turned out as hoped.

(2) Improper diversions

The Nilgiri investments

80. It is convenient to address the Nilgiri investments first.

81. There is no dispute that some US$57,625,000 was invested by Rudra in its subsidiary, Nilgiri.

82. Mr Shirke's case as to how these monies were expended is set out in the March 2020 note prepared by Mr Mahatme at Padma's request. In short:

    (a) US$17.5 million was spent in acquiring an 87.4% shareholding in BMTDIS from the Norwegians;

    (b) US$12.5 million was paid to increase the paid-up capital of BMTDIS as demanded by DNB;

    (c) US$0.1 million was spent to acquire the entire shareholding in BMTAS;

    (d) US$3.58 million was spent in reversing BMTDIS' interest swaps with DNB;

(e) US$24 million was spent on financing the acquisition of the "Oceanic Indigo" from the Chinese yard.[5]

83. The March 2020 note is entirely consistent in this regard with the *"Note on Funds Requirement"* prepared in 2011/2012 (paragraph 70 above) and with the Annexure to the board paper prepared on 12 July 2015 (paragraph 65 above).

84. Mr Salzedo attacked the figures relied upon by the Defendants as unreliable. He pointed, in particular, to discrepancies between some of the documents as to whether the original loan from DNB was US$94 million or US$98 million. I did not find these criticisms convincing. It is not in dispute that the actual loan was for US$94 million. That much is evident from the Loan Agreement itself. However, the strong inference is that the figure of US$98 million includes the sum of nearly US$4 million that was paid to reverse the interest rate swaps with DNB, as indeed was submitted on behalf of Mr Shirke. If so, there is nothing nefarious or dishonest about presenting the bank's overall support as totalling US$98 million.

85. Mr Salzedo also attempted to pick holes in the Defendants' figures on the basis that they could not all be reconciled precisely. Given (i) the incomplete state of the evidence in this case, (ii) the fact that many of the figures would have been rounded for presentational purposes and (iii) potential exchange rate fluctuations, the existence of discrepancies is hardly surprising. However, there is a difference between discrepancies which might be explicable if full information is available and discrepancies which cannot be explained even on the basis of full

[5] As Mr Shirke explains in his statement, the US$24 million was loaned to BMTAS to allow it to buy out Ross Chemical IV and repay Commerzbank and then bring the vessel into Ross Chemical II, thereby resolving a loan to value issue which had begun to emerge in relation to the DNB loan due to the drop in vessel values.

documentation. In any event, I am not prepared to infer fraud simply because the figures do not all match to the last cent.

86. In relation to the acquisition of "Oceanic Indigo", paragraph 49 of the Particulars of Claim alleges that POBC (and therefore ultimately Mr Shirke) received a significant benefit in that part of the US$24 million paid by Rudra was used to discharge POBC's liability to Ross Chemical IV following an earlier US$9 million payment to POBC by the latter. It is alleged that POBC was thus enabled to retain that payment for its own benefit. However, further interrogation of the documents suggests that this is to misrepresent the situation. On 30 July 2010, Rudra adopted a Board Resolution noting and attaching a Protocol of Understanding between Rudra, Deutsche Schiffsbank AG, the Chowgule Group, POBC, PGG and Ross Chemical IV. These documents show that the US$9 million had been paid to POBC pursuant to the original purchase MOAs for the two Chinese vessels dated 16 January 2008 and applied by POBC in payment of a pre-delivery instalment of the purchase price due to the yard. There was therefore no discernible benefit to either POBC or Mr Shirke. The fact that upon the acquisition of the vessel by Nilgiri, Ross Chemical IV in fact agreed to accept reimbursement in a lower amount is entirely irrelevant.

87. Finally in relation to Nilgiri, there is a complaint that it was eventually sold to Natlata (admittedly one of the companies controlled by Mr Shirke) for a sum of US$1 when it was said to be worth considerably more than that because its subsidiary, BMTAS, held cash of some US$118,408. That ignores the fact that at the date of the sale BMTAS appears to have had liabilities far in excess of that amount, including liabilities to Natlata itself, which it was unable to settle. In any

event, this is a drop in the ocean in the context of an alleged US$128 million fraud and hardly betokens theft on the grand scale asserted.

The Rudra-POBC loans

88. Mr Salzedo emphasised the fact that the majority of the loans made to POBC were interest-free and unsecured. That might have raised eyebrows in the context of an arm's length commercial loan arrangement, but on any view this was less a commercial loan than an investment by a family company in a venture in which not only a close family associate but also one of its own companies (CSBL) was interested. It was not suggested that the associations were not well known to the CCPL Board and I am therefore not inclined to place too much weight on this fact particularly if POBC was regarded as *"nothing but a part of BTML operations…"*.

89. It is common ground that Rudra loaned a total amount of around US$47 million to POBC over the years which the Claimants say is almost identical to the amount of bareboat charter hire which should have been paid by POBC to Blue Mountain. The complaints are that (1) instead of utilising the entire amount to pay bareboat hire, POBC instead diverted some of the money to other improper purposes leaving a US$24.2 million shortfall in hire payments and (2) the shortfall was eventually written off in March 2016 with no attempt being made to enforce the loan agreements against POBC.

90. As to (1), in support of the argument that this was redolent of fraud, Mr Salzedo drew attention to the stated purpose of at least some of the loan agreements which he submitted was solely to finance POBC's bareboat charter obligations. By way of example, he drew my attention to a consolidated loan agreement dated 25 October 2010 where the loan was stated to be for use *"exclusively for shipping*

business viz. operation of the ships taken on bareboat charter basis from Ross Chemical II AS only."

91. It is not disputed that POBC did not pay the full amount of bareboat hire to BMTAS although it did always pay sufficient to ensure that the loan repayments to DNB were met. However, ships have many other expenses to pay in order to remain operational. POBC had no other business than Blue Mountain and the bareboat charter was a condition of the DNB loan. Accordingly, it would have been imperative to keep POBC afloat in order to satisfy the requirements of the lender and prevent foreclosure.

92. In my judgment the use of Rudra's loans to pay operational expenses and support POBC generally is therefore entirely consistent with the loan being used exclusively for the shipping business, POBC having no other business on its books. This is made clear in the *"Note on Funds Requirement"* which expressly states that POBC needs to be regarded as part of the Blue Mountain operation and considered together with it.

93. Some of the money would therefore have been required to make payment of normal operating expenditure, such as management fees, repair costs,[6] survey and dry docking costs, port disbursements, insurance and the like. Thus, the Board Note dated 12 July 2015 shows that over the five years since acquisition, some US$3 million had been spent on survey costs and US$6.78 million on operational expenditure. Mr Salzedo argued that this was an inflated figure and that BMTAS' own accounts only showed operational expenses of US$1.08 million over the same

[6] In particular repair of the generators which should have been undertaken by the Korean shipyard.

period. However, BMTAS was not operating the ships directly at that stage, so would have incurred minimal expenses of its own.

94. Moreover, despite Mr Salzedo's arguments to the contrary, I can see nothing inherently objectionable in the payment of management fees to ASP and POBCUK. There is no allegation that they charged anything other than normal commercial rates and in circumstances where POBC and BMTAS were effectively treated as a single business unit it is difficult to see this as an improper preference of Mr Shirke's interests over those of Rudra which was, of course, the owner of BMTAS. It is also to be noted that POBC paid no dividends or salaries or directors' emoluments at all and that POBCUK stopped paying dividends in 2008, i.e., before CCPL's initial investment.

95. Once this is accepted, the foundation for the complaint largely falls away. It is clear from the documents and the Board Notes previously referred to that POBC generated losses every year from 2008 since charter rates were consistently below or at the level of operating expenditure. In the circumstances, it would have needed continual support to keep it operational. It is true that there seems to have been some internal debate in May 2011 as to whether the loans ought to be used to pay bareboat hire in full rather than being partly used for operational expenditure. However, as Mr Mahatme recognised in the 6 May 2011 email, in that event the requirement to cover operating expenditure would have to be dealt with separately. In other words, operational expenses would still have had to be met somehow.

96. Nonetheless, the Claimants relied on the following specific transactions which they alleged were unjustifiable and fraudulent.

US$500,000 transferred to Folar Investments SA

97. This sum was transferred by Rudra on 24 March 2010 at the request of Vijay. Save that the instructions from Vijay were transmitted through Mr Jones of POBCUK to the directors of Rudra, there is nothing to link this transaction with Mr Shirke who is not alleged to have had any interest in Folar.

98. It is not clear what the purpose of the transfer was but it was disclosed at least to Mr Sawant who does not appear to have raised any objections.

US$997,000 transferred to ASP Holdings

99. This sum is alleged to have been transferred by Rudra between February and June 2010. Again it is unclear what the purpose of the transfer was, since ASP Holdings was not itself fulfilling any vessel management function. Nonetheless, I note the statement in the email of 6 May 2011 that finance had been provided to clear all debts of POBC up to 30 June 2010. Given the state of the market, it is at least possible that Mr Shirke had provided support to POBC via ASP Holdings prior to CCPL's involvement.

US$164,000 transferred to Quail

100. Quail Investments Ltd ("**Quail**") is a BVI company which was 50% owned by the Wadi Foundation. The documents show that the remaining 50% was owned by a company of which various Chowgule family members (including Padma, Ashok, Vijay, Deepa, Rohini, Umaji and Sarita) were themselves shareholders.

101. On 15 April 2010, Vijay (with a copy to Mr Shirke and Mr Mahatme) instructed Rudra via Mr Jones to transfer £106,000 (i.e., c.US$164,000) to Quail for the renovation of an office in London. Mr Jones responded that he would arrange for the money to be passed from Quail to *"Devonshire Square Holdings".* The

registered office of POBCUK and some other companies associated with Mr Shirke was at 15 Devonshire Square. The money was paid on 24 April 2010. Three years later, in October 2013, POBC transferred US$164,000 (presumably from monies loaned by Rudra) back to Quail which Quail then used to repay the original loan from Rudra.

102. This was alleged to be a transaction solely for Mr Shirke's benefit. Again, however, it is not at all clear that this was the case in circumstances where POBC/POBCUK's only business was in connection with the operation of the Blue Mountain tankers and where the renovation of its offices (for, it has to be said, a comparatively small sum) would have benefitted the entire business.

€220,000 debt transferred from Havre NV to Zephyr in October 2013

103. Havre NV and Havre SA are companies associated with Mr Shirke. There are references to them in numerous documents evidencing inter-company transfers. This particular payment is said to be the unpaid balance of a loan of US$2.21 million made by Nandi to Havre NV in 2010, which was then transferred by novation to Zephyr (one of Nandi's subsidiaries) and written off, thereby allegedly benefitting Havre which was controlled by Mr Shirke. However, I note that the documents also suggest that the entire loan was repaid by Havre NV using funds advanced by POBC which originated with Rudra. Both cannot be right; either the loan was repaid in full by Havre NV or it was not. This, therefore, is another unexplained oddity on the documents as is the loan apparently made by Rudra to Havre NV in connection with an apartment in 2010. No-one was able to cast any light on these transactions.

US$667,000 used for "Univan, P Shirke and ASP"

104. A draft forecast for POBC for the 2015/16 year prepared on 14 April 2015 by Mr Rothon (a director and company secretary of POBCUK) and sent to Arjun and Mr Sawant among others, shows that POBC had free cash of US$667,000 which Mr Rothon assumed was to be used as follows:

"Univan - bal PD + Coral boiler	*(295)*
P Shirke	*(100)*
ASP – pay down creditors	*(200)*
Adj to nca	*(19)*
	53"

105. Again the allegation is that this shows Mr Shirke preferring his own interests to those of the Claimants. However, Univan were independent third party technical managers who were being employed to manage some of the vessels in place of ASP and who were also being considered as technical managers for a proposed joint venture with DVB (which in the event came to nothing). This appears from the evidence of Mr Rothon and also from the Board Notes on the Chemical Tankers referred to in paragraph 74 above. In any event, a payment for port disbursements and repairs to the boiler on the "Coral" discloses no improper preference. Nor does the payment to ASP to be utilised to pay down creditors. On the contrary, this might most naturally be thought to be of benefit to the business.

106. As regards the payment of US$100,000 to Mr Shirke, it is unclear why this was made, although I note that Mr Shirke seems personally to have loaned money to POBC in much greater amounts from time to time. This appears from, amongst others, an email dated 24 January 2018 from Mr Rothon to Mr Mahatme (also forwarded to Arjun) which contains a summary of balances for POBC. The summary shows that POBC was owed some US2.908 million by PGG which was

assessed to be irrecoverable, but also owed money to Havre-Folar (US$450,000), CSBL (US$2.363 million), Natlata (US$1.75 million), Nandi (US$250,000) Rudra (US$33.637 million) and Zephyr (US$1.14 million). The US$250,000 provided by Nandi appears to have been used to settle a debt in the same amount owed to Mr Shirke.

107. It is difficult to know what to make of this document. It was compiled relatively late in the day when CCPL was already in the process of managing its exit from the market. All that can be said is that the balances are presently unexplained by the documents currently available although it is clear that there were very many inter-company movements over the years. However, in the context of this particular business and the fact that it was being wound up, it is not easy to say that this was obviously contrary to the interests of the Claimants or that the natural inference is one of fraudulent theft of funds. It is worth noting that in so far as Mr Shirke and Natlata had provided funding to POBC, repayment could hardly be said to have conferred any direct benefit on them. Moreover, Natlata ultimately wrote off the debt owed to it by POBC when the latter was dissolved. This is inconsistent with any unlawful diversion for the personal benefit of Mr Shirke.

108. Mr Salzedo nonetheless had a more subtle point, which was that even if the debts owed to Mr Shirke and his companies were legitimate, it was unlawful to prefer them over the debts owed to Rudra. However, the point loses most of its force (certainly so far as an allegation of fraud is concerned) if in fact the interests of POBC and the Claimants were identical because they were effectively co-partners in the overall venture.

109. As to the complaint about the writing off of the US$24.2 million shortfall in hire, BMTAS' accounts for 2015/16 confirm expressly that this was agreed (together with the release of PGG's guarantee) as part of the loan restructuring negotiated with DNB following which BMTAS took over the operation of the vessels.

The Nandi investments/loans

110. Some €10,311,246 (equivalent to US$14,788,000) was lent to or invested in Nandi by Rudra. As explained by Mr Mahatme in his March 2020 note, Nandi was incorporated to handle transactions in euros.

111. A slide deck prepared by Arjun in 2014/15 based on information supplied by Mr Deshpande[7] shows that Nandi itself had two wholly owned subsidiaries:

(a) Garud BV which owned two vessels, "Flinter Goa" and "Flinter Ridhi", both financed by Credit Suisse;

(b) Zephyr Shipping Ltd, which owned the vessel "Espace".

112. The same slide deck shows that Nandi had loaned €4.939 million (US$6.73 million) to Garud and €5.275 million (US$7.21 million) to Zephyr. It had also loaned €2.01 million (US$2.21 million) to a company called Navigia which owned a further six vessels. Very little is known about these vessels or the Navigia loan but it is not suggested that Mr Shirke had anything to do with them, or indeed with the Garud or Zephyr vessels which were entirely Chowgule owned.

[7] It was originally stated by Padma that this had been presented to the CCPL Board but she subsequently corrected her evidence to clarify that, after speaking to Arjun, it was in fact prepared for his own benefit. There was no evidence from Arjun himself.

113. On the face of it, therefore, none of the loans to Nandi were connected to Mr Shirke. However, it is not in dispute that at least some of the money loaned to Nandi was transferred to other companies. So far as can be seen, this appears to have been channelled solely through Zephyr. Certainly there is no present allegation that Garud was involved in advancing money to Blue Mountain or any of Mr Shirke's companies.

114. It is accepted in Mr Mahatme's March 2020 note that €5.173 million (c. US$6.763 million) was advanced from the Nandi monies to BMTAS/BMTDIS and others, although this amount is not further broken down. It is the Claimants' case that sums totalling €3,237,692 were improperly loaned by Nandi as follows:

(a) €278,068 to POBC between 23 December 2015 and 31 March 2018;

(b) €2.242 million to Havre NV;[8]

(c) €419,371 to ASP in November 2018 which was then written off;

(d) €298,253 to Quail on 12 June 2018 which was also written off.

115. The Claimants further assert that of the monies loaned to Zephyr, €5,316,202 was outstanding as at 1 April 2015[9] and that Zephyr paid:

(a) US$1,750,366.06 to BMTAS between 6 May 2016 and 24 April 2017;

(b) US$1,788,000 in aggregate by way of loans to POBC between 18 February 2016 and 18 August 2016;

[8] This appears to be the loan of which an unpaid balance was novated to Zephyr: paragraph 103 above.
[9] This figure corresponds roughly to the amount of the loan to Zephyr shown in Arjun's slide deck.

(c) US$500,000 to POBC, later categorised as commission on the sale of the "Espace";

(d) €887.03 to POBCUK.

116. Again the nature and purpose of all these transfers is not explained on the documents although, consistently with what I have said above, I do not regard payments to POBC or ASP as inherently objectionable. I do not ignore Mr Salzedo's submission that after 2016 POBC was no longer actively managing the vessels. Nonetheless it would still have had historic debts which would have needed to be settled.

117. Other documents which may or may not have a bearing on these transactions include:

(a) Mr Mahatme's email of 6 May 2011 which records that *"Mike will submit a note on loan to Havre which we have discussed."*;

(b) BMTAS' accounts for 2015/16 which show loans of US$3 million from Havre SA and a further US$3.5 million from Zephyr being made in order to pay a cash deposit to DNB. This accords with the Board Note of 1 September 2015 (paragraph 74(c) above) recording that DNB had demanded a cash deposit of US$3 million for extending the loan term;

(c) BMTAS' accounts for 2017/18 which show receipt of loans from Zephyr (US$2 million), Quail (US$1,550,000), Nilgiri (US$1,500,000) and Nandi (US$930,000);

(d) BMTAS' draft financial position for 2018/19 (attached to an email from Mr Rothon to, among others, Padma, Aditya, Vijay, Mr Shirke and Mr Sawant) showing loans in similar amounts, namely Zephyr (US$1,950,000), Quail (US$1,600,000), Nandi (US$930,000) and Natlata (US$100,000). It also shows net liabilities to ASP of US$2,980,678 although this is said to have been reduced to US$834,000 following receipt of further funds from Quail (US$1,172,000), Nandi (US$475,000), Havre (PSB) (US$400,000) and CSB (US$100,000);

(e) POBC's accounts for 2017/18 which show that it had received a loan of US$450,000 from Havre NV (Folar) as well as US$1.75 million from Natlata.

118. For the reasons given in paragraph 107 above, however, I cannot infer fraud from the mere fact that these transactions are presently unexplained.

119. Standing back, I am left with the abiding impression that the Claimants have alighted upon documents here and transfers there, spanning a number of years, which are not obviously explicable on the available documents. They have then attempted to build on this in order to assert that the only possible explanation must therefore be fraud.

120. While this is, of course, a possible explanation, I cannot accept that it is a proper inference to draw at this stage of proceedings. There was clearly a complex series of transactions over many years between companies which were either related or closely connected in a commercial sense. But that in itself is not surprising in the context of a group of family companies with wide-ranging interests, such as the Chowgule Group, which was embarking effectively on a joint investment with someone who was a family member by marriage. The mere fact that it is not possible on the current state of the evidence to explain many of these transactions

does not lead inexorably to an inference of fraud, particularly when there is also a wholly innocent explanation for the vast majority of the allegedly improper transfers and the remainder concern fairly trifling sums in the context of the massive fraud alleged.

121. As said by Wallbank J in the BVI High Court when rejecting an alleged set off in liquidation proceedings, in a passage quoted with approval by Butcher J in *Magomedov v TPG Group Holdings (SBS) LP*, [2023] EWHC 2655 (Comm) at [44], [83]:

> *"It is not good enough simply to impute the knowledge and intentions of others onto Halimeda, as a separate legal person, at all stages. Sian says that the nature of conspiracies is such that the conspirators do not leave evidence lying around. It is inherently difficult to prove them, as one is forced heavily to rely upon inference. That is right, but the Court must decide a case upon evidence. It can draw inferences, but based upon evidence. A conspiracy theory such as is being advanced by Sian, though it has that superficially attractive feature of explaining everything, requires a lot of parts and players all to fall into their right places, at their proper times and to function seamlessly with no more plausible or probable bona fide or innocent explanation. The mere possible existence of such a conspiracy does not suffice for raising a sufficient cross-claim against Halimeda. Sian would have to go further. Causation is necessary."*

122. Precisely the same can be said here in the context of the Claimants' application for a freezing order.

123. Mr Salzedo sought to draw an inference that Mr Shirke was participating in a dishonest scheme from the fact that much of the correspondence concerning the loans was either sent or copied to him. However, this does not justify any such inference. In circumstances where Mr Shirke not only controlled the operator and bareboat charterer (and original purchaser) of the vessels but was also chairman of Blue Mountain, he had an obvious legitimate interest in anything that concerned the business. It is therefore unsurprising that he was party to much of the correspondence.

124. Attention was also drawn to the fact that instructions to Rudra's corporate directors were channelled through Mr Jones rather than being given directly by Vijay. This was said to give rise to an inference that Mr Shirke was a shadow director of Rudra. In my judgment it does no such thing. Mr Salzedo accepted that there was no evidence to show that instructions to Rudra were emanating directly from Mr Shirke and there is certainly nothing in the documents which demonstrates that the Rudra directors were accustomed to act at his direction or that he was exercising de facto control over its day to day operations. The mere fact that he was present at a meeting (also attended by Mr Mahatme and Vijay) at which this channel of communication was agreed takes the matter no further. But in any event, Arjun was party to the email chain recording the communication path and would therefore have been aware of the situation.

125. In truth the allegation that Mr Shirke was a shadow director of Rudra rested principally on making good the allegation that the Rudra loans were being utilised for his benefit. As will be apparent from what I have already said, I do not regard this as an appropriate inference to draw from the material before me.

(3) Dishonest concealment

126. Nor am I able to discern any material from which I could reliably draw an inference of dishonest concealment, whether that be concealment from CCPL's board of directors or from the various sets of auditors.

127. CCPL knew very well from the outset that Mr Shirke had a pre-existing interest in Blue Mountain and that it would effectively be bailing him out by investing in the chemical tanker business. As recorded in Annexure 1 to the 12 July 2015 note, he was considered as a Family Member and *"almost the face of Chowgule Shipping*

Business". Moreover the *"Note on Funds Requirement"* prepared in 2011/2012 made pellucidly clear that POBC had been making losses *and was expected to continue making losses* possibly up to 2016. In these circumstances, it is difficult to say that the board of CCPL continued to advance money in ignorance that this was a loss-making venture. The Board Notes prepared in 2015 also make the position clear.

128. Padma asserts in her evidence that none of the directors of CCPL was told or appreciated that any of the monies advanced to Rudra would be paid to Mr Shirke for purposes unrelated to the rescue of Blue Mountain or paid out to prefer Mr Shirke's own debts. However, this formulation entirely begs the question of whether the monies paid out *were* unrelated to the rescue of Blue Mountain or paid out to prefer Mr Shirke. To the extent that she is asserting that none of the directors had any idea that monies were being expended to cover the costs incurred by POBC in operating the vessels, I find this frankly implausible, especially given the *"Note on Funds Requirement"* and the March 2020 note, both of which she must have seen.

129. In any event, the intercompany transfers all seem to have been recorded in the books of Rudra, BMTAS and POBC. The evidence of Mr Rothon is that CCPL exercised considerable scrutiny and oversight of POBC's income and expenditure following its investment in the business. He was told that POBC's accounting books would be transferred to the Tally system and that all entries would be made by CCPL's staff and he accordingly sent the necessary information for this to be done. At CCPL's request, POBC also appointed the same London auditors as Rudra and its subsidiaries. Moreover, there were regular meetings with Mr Sawant, Mr

Mahatme and Vijay and also meetings and calls with other family members (including Padma) although Mr Rothon only identifies Arjun as having ever physically visited London. Accordingly all the relevant information was contemporaneously available to senior officials in the Chowgule Group.

130. As to the Defendants' case that all the accounting information for POBC is stored on the Tally system in India and thus currently available to the Claimants' employees in any event, this is denied by the Claimants and raises a factual dispute which I cannot resolve at this stage.

131. In so far as complaint is made that the directors of CCPL were unaware that bareboat hire was not being paid in full, a note in BMTAS' accounts for 2015/16 expressly refers to an addendum having been agreed to the DNB loan whereby bareboat hire could be reduced provided that BMTAS' expenses were covered and there was no breach of the loan agreement. This is consistent with the fact that hire was always paid in sufficient amount to cover the loan repayments. Moreover, since BMTAS' accounts would have been attached to the CCPL consolidated accounts, it cannot be said that this fact was concealed.

132. Mr Salzedo also argued that the board was kept in ignorance of the fact that when it was asked to approve the advance of funds to cover the purchase of the "Oceanic Indigo", it was not told that a decision had already been made to cancel the second vessel. I cannot see any concealment or misrepresentation here. The board resolution expressly records that the decision was to buy *"1 or 2 or both"* vessels, there being no necessary assumption that both would in fact be purchased. Moreover, Ashok and Arjun were both involved in the purchase of the "Oceanic Indigo" and would therefore have known about the cancellation of the second vessel

and the refund by the shipyard of the deposit which was used to repay part of the loan from Commerzbank. Ashok was a director of CCPL and although Arjun was not then a director, he nonetheless attended board meetings.

133. As for the emails which were said to demonstrate attempts to mislead the auditors, these were largely isolated exchanges taken out of all context. On the present state of the evidence I do not read them with such a suspicious eye. For example:

(a) The exchanges in May 2011 record openly a discussion as to whether bareboat charter hire should be paid in full rather than diverting money to pay operating expenses. Since the emails were sent to Arjun, Deepa, Mr Satpute and Mr Sawant it can hardly be said that the non-payment of hire was being actively concealed from the company or the senior officers of the Chowgule Group. The emails also record that POBC was making losses which were expected to continue. It is therefore hardly surprising that the auditors would require some justification of its negative net worth. However, there is no suggestion that any figures would be falsified. On the contrary, it was because the unvarnished figures were to be given to the auditors that justification was required. Moreover, since the continuation of the bareboat charter was a condition of the DNB loan it was very much in the Claimants' interests for POBC to be maintained as a going concern.

(b) Arjun at least was copied into much of the correspondence relating to POBC's loan drawdown. He and Deepa were also part of the correspondence chain with DNB regarding the arrears of bareboat charter hire.

(c) As regards Mr Rothon's emailed draft forecast for POBC (paragraph 104 above), it was no secret that POBC was in deficit in 2015 as it had been for

many years. It was therefore obvious – at least to the parties to these exchanges – that the Rudra loan was unlikely to be recoverable. The email of 14 April 2015 is nonetheless said to suggest (i) that Mr Shirke was conspiring with Vijay and Mr Mahatme to conceal this fact from the auditors of POBC and Rudra, and (ii) that in fact there had never been any intention to seek recovery because the plan was to merge POBC with Rudra once the loan extension had been finalised with DNB and then write the loan off after five years.

(d) However:

(i) The fact that Mr Rothon stated that his forecast was only for internal consumption and not intended for the auditors does not give rise to an inference that anything was being actively concealed from the board (particularly given that Mr Sawant and Arjun were copied into it) or from the auditors. There must be many companies who discuss matters internally in a less guarded manner than they would necessarily adopt with outsiders;

(ii) Email exchanges between Vijay/Mr Mahatme and Arjun one year later show that the proposal to merge POBC and Rudra was still very much on the cards. As was correctly pointed out, POBC was by then no longer operating the vessels, and so had no prospect of recouping its losses. Accordingly, Rudra's loan would necessarily have to be treated as irrecoverable. However, writing it off in a single year would show above the line in CCPL's accounts, whereas a merger would allow it to be amortised over five years. While it was not certain that the auditors would accept the idea, there is no suggestion that anything would be concealed from them. The response to this proposal from Arjun is illuminating. His reaction was that

a write-off was indeed inevitable but that he was anxious to do it over five years if possible because an immediate write-off might adversely affect an existing corporate loan with SBI as well as CCPL's other fund-raising endeavours elsewhere.

(e) Arjun was also party to the email of 24 January 2018 in which the certain irrecoverability of the PGG loan was discussed.

134. Rather than demonstrating any attempt to conceal or defraud, these communications show that the parties involved were on the contrary considering how best to manage matters in the wider interests of CCPL given that, as stated by Padma in her evidence, CCPL's cash reserves had become depleted following the introduction of the prohibition on mining in 2012.

135. In short, I accept the submission of Mr Salve that there is nothing to suggest that any figures were going to be changed or that the auditors were going to be misled as to the actual financial situation of the company. The most plausible construction to put on these communications is simply that the authors were concerned about presentation and whether there was a sufficient prospect that the auditors could be persuaded to accept POBC as a going concern so as to avoid an immediate write-off. Since no such merger ever took place, it must be inferred that either the proposal was abandoned or that the auditors were not so persuaded.

Conclusion on good arguable case

136. On any view, if this was a fraud, it was extraordinarily unproductive in terms of what the Defendants directly derived from it. POBC was loss-making throughout and made no profits. There is no evidence that Mr Shirke was paid any dividends

by either ASP or POBCUK during the relevant period and his salary as a director was modest. He had made loans from his own funds and companies into the venture and while, technically, any repayments may have been for his benefit, such benefit was no more than a minimisation of his losses. It must likewise not be forgotten that POBC itself lost its original US$2.5 million investment on the liquidation of Blue Mountain. It seems more than likely that Natlata also lost the US$1.75 million owed to it by POBC.

137. As Mr Salve submitted, it is therefore not as if the Defendants ran away with a lot of money. If they had really been intent on defrauding CCPL and Rudra, there were very much easier and more effective ways of doing it than investing in a loss-making business.

138. For the purposes of this application, I have only looked at the position of Mr Shirke and POBCUK (the latter's position being effectively the same as that of the former). However, it is far from clear to me what either Vijay or Mr Mahatme stood to gain from the alleged fraud, particularly when their interests were so closely bound up with those of CCPL. Mr Shirke confirms that neither of them received any personal benefit from the investment so far as he was aware and it is inherently unlikely that Vijay would have wanted to defraud a successful company – the family company built up by his father in which he and his immediate family had a significant stake. The same is of course also true of Mr Shirke, whose wife held a similar 10% shareholding in CCPL.

139. Mr Salzedo accepted that the Claimants had no direct evidence that either Vijay or Mr Mahatme had any interest in Mr Shirke's companies but submitted that this could be inferred because they would otherwise have had no incentive to favour Mr

Shirke's interests. The circularity involved in this proposition is obvious. Moreover, POBC had no other business other than the Blue Mountain venture which, following the initial investment, was majority-owned by CCPL. Vijay and Mr Mahatme and, indeed, CCPL itself accordingly had an obvious interest in continuing to support POBC for as long as this was commercially sensible.

140. I am far from saying that there are not matters which still need to be investigated. As already noted, there were a large number of inter-company transactions and there is clearly a lot of background still to be revealed. It may well be that the involvement of Vijay and Mr Mahatme in the stay application will shed much greater light on the course of events. So far as concerns the present application, however, the Claimants' case is unequivocally based on allegations of fraud and it follows that if I am not satisfied that they have the better of the argument as to the existence of that alleged fraud, the application must fail.

141. Having heard both sides at some length, I cannot conclude that the Claimants do have the better of the argument. On contrary, on the basis of the material shown to me, my conclusion is that the Defendants' case is considerably more plausible. This is for the following reasons:

(a) It is not usually the case that people act dishonestly;

(b) Neither Vijay nor Mr Mahatme had any incentive to defraud a company of which they were both directors when they were not apparently deriving any personal gain from the fraud at all;

(c) Even Mr Shirke's alleged personal gains are modest by comparison with the amounts said to have been abstracted, the vast majority of which appears to have been applied to perfectly legitimate purposes;

(d) The transfers to other entities which are presently unexplained are likewise only a small fraction of the US$128m allegedly stolen. But the mere fact that the reason for a particular transaction is not immediately obvious without further investigation does not by itself give rise to an inference that it must have been fraudulent;

(e) There is no clear indication on the evidence shown to me that the Defendants were preferring Mr Shirke's individual interests over those of the business as a whole. Indeed, the sheer number of inter-company transfers suggests that POBC and Blue Mountain were being considered very much as a single unit in the context of a much wider group of associated companies;

(f) There is insufficient evidence to support a case that the investment was dishonest from outset and that POBC was never planning to repay the loans;

(g) The subsequent loans then become explicable on the basis that CCPL was by then locked into the investment and had to manage its exit in the least damaging way possible;

(h) This explains why loans would still have needed to be made even after 2016 when BMTAS took over direct management of the vessel;

(i) I am not persuaded that the emails relied upon demonstrate any intent to mislead auditors or conceal relevant matters from the board of CCPL. In any event, if there was no fraudulent scheme, there was nothing to conceal;

(j) The principal transactions were explained in the various Board notes. Padma's evidence as to the material she saw at board meetings and the discussions which took place is vague and unsatisfactory in the context of allegations of fraud. The court does not have a full set of board minutes and it is not clear that the Claimants have even provided all the minutes in which the Blue Mountain investment was discussed, only those at which loans were actually approved. Padma's evidence was that discussions would generally only take place when fresh infusion of funds required. However, that does not exclude the possibility that discussions took place at other meetings as well. For example, there does not appear to be a copy of the minutes of the meeting when the first *"Note on the Chemical Tankers owned by Blue Mountain A/S"* was presented (this clearly having been prepared before June 2015);

(k) Even accepting Padma's evidence that papers relating to Rudra were only handed out on the day of the meeting and then taken away again so that she no longer has access to them, it is striking that she has made no attempt to describe her recollection of any discussions beyond what she says in paragraphs 16 and 19 of her first affidavit, namely that:

(i) The Chowgules had been in the shipping industry for decades and understood the business so that this would be an opportunity which they should take and which would provide a good return;

(ii) It was later repeatedly projected that further investments needed to be made to preserve and return the initial investment;

(iii) This was a cyclical market and CCPL needed to stay the course;

This is all entirely consistent with Mr Shirke's case, save that there may well be some debate as to whether the board was initially told that the investment "would" provide a good return as opposed to being told that it was a reasonable prospect. However, that is a matter where recollections may legitimately vary or be mistaken and I am not prepared to infer fraud on the basis of this one sentence which seems to fly in the face of most of the documents.

(l) Other than this, however, there is nothing to show that any representations or statements were made to the board which do not appear in the various Board Resolutions and board papers;

(m) Arjun, a current director of CCPL, was involved in the management of the tanker business and privy to many of the emails relied upon, as also were Messrs Sawant, Satpute, Deshpande and Bilguchie – all senior officers in the Chowgule Group whose knowledge might well be attributable to the company. Other members of the family were party to some of the transactions as well. However, none of them apparently raised any objection or queried what was going on. Mr Salzedo's response was that Arjun (and therefore presumably also the others) must have been party to the fraud as well. With respect, that is simply not good enough. Rather than adding ever-increasing numbers of parties to the fraud, the more natural inference is surely that there was no fraud at all: see in this regard the comments of Wallbank J quoted in paragraph 121 above.

142. Finally under this head, I regard the presentation and subsequent withdrawal of the allegation of fraud in relation to the US$9 million advanced to CSOL as deeply unsatisfactory. Mr Mahatme's email to Aditya and Mr Sawant dated 8 January 2019 refers expressly to Rudra having invested the money in acquiring preference

shares in CSOL (a subsidiary of CSL) which would, if converted into equity, give it a 50% shareholding. Other documents show that the payment was made in connection with the acquisition of a vessel. There is no suggestion that any of this had anything to do with Mr Shirke and, since it was a matter within the knowledge of CSL's Chief Financial Officer as well as Aditya, it might have been expected that reasonable enquiries would have elicited this clarification. There is some force in Mr Shirke's criticisms that the Claimants have been coy about stating precisely what enquiries they carried out before concluding that it was appropriate to advance the very serious allegations of dishonesty and theft contained in the Particulars of Claim. They have relied in the context of delay on the fact that they needed time to carry out reasonable enquiries into Mr Shirke's assets, but it is not apparent to me that similar diligence was devoted to making all reasonable and proper enquiries with regard to the underlying facts. This does not invite confidence in the thoroughness with which the Claimants have prepared their case.

143. Instead, they made much of what they claimed was Mr Shirke's inability to explain or defend any of the transactions they relied upon. In circumstances where the evidence is patchy, to say the least, and where the input of Mr Mahatme in particular is likely to be critical to a proper understanding of events, Mr Shirke's position is entirely understandable if, as he asserts, he played no part in the decisions taken by or on behalf of the Claimants. He has exhibited such documentation as he can and can hardly be criticised for not having access to material outside his control.

144. It is true that Mr Shirke could have taken steps to obtain POBC's bank accounts and had there been a more compelling case against him, this might have been a factor which counted in the Claimants' favour. As I agree, however, that the

Claimants fail to demonstrate an arguable case of fraud, I do not regard it as particularly telling.

145. In short, I hold that no good arguable case of fraud has been demonstrated to me on the material available and that the Claimants certainly do not have the better of the argument in this respect.

Risk of dissipation

146. Since I am not satisfied as to the existence of a good arguable case, the question of risk of dissipation does not arise. I can therefore deal with it shortly.

147. Suffice it to say that I would not have been satisfied that there was any evidence of a risk of dissipation, let alone the "solid evidence" that is required by the authorities. Indeed far from providing "solid evidence" of a risk of dissipation, the Claimants relied rather on an inference to be drawn from the alleged fraud and what they said was the opaque offshore web behind which Mr Shirke sheltered his assets. Once fraud is dismissed, however, that case all but collapses in the absence of any other objective facts from which it can be inferred that Mr Shirke is likely to dissipate his assets unjustifiably.

148. To the contrary, the unchallenged evidence before the court is that Mr Shirke is a man of good reputation and unimpeachable character.

149. As regards the other factors relied upon by Mr Salzedo in his skeleton argument:

(a) The mere fact that Mr Shirke accepted that he had an interest in POBC and ASP and later clarified that this was in his capacity as a discretionary beneficiary of the Wadi Foundation appears to be nothing more than the truth. Despite having

no formal ownership, he has never sought to deny that they are companies in which he was interested and which he controlled.

(b) It may be that Mr Shirke's family home is owned by the Wadi Foundation but he has lived there since 1984 and he has many substantial ties to this country.

(c) His use of offshore structures for his business interests is not itself evidence of an intention to conceal assets: see paragraph 50(d) above. The question is whether there is some indication that he is proposing to change his normal business practices. In this case I can see none.

(d) The insinuation that Nilgiri was sold to Natlata simply in order to put relevant records out of the Claimants' reach is merely prejudicial speculation unsupported by evidence.

(e) The winding up of POBC and POBCUK is entirely explicable in circumstances where they had ceased business and were effectively dormant.

Delay

150. The question of delay in bringing the application for a freezing order is likewise now moot. While the substantial delay does not improve the Claimants' position, I accept that it was appropriate to conduct proper investigations into Mr Shirke's assets and I would not have refused an injunction on this ground.

Full and frank disclosure

151. As stated above, the Defendants have complained bitterly about the Claimants' failure to make full and frank disclosure when initially bringing this application. This raises the difficult question of the extent to which the duty of full and frank

disclosure bites where an application is issued on notice. Intuitively, I would have thought that any claimant for freezing relief should be obliged to disclose aspects of its case which it believed itself to be weak or in the defendant's favour, whether the application was on notice or not. However, I accept that, as presently articulated, the duty only applies to without notice hearings.

152. I also considered whether, if I had concluded that the Claimants were guilty of "sharp practice" in issuing an on notice application and then seeking to have it expedited, that would be a factor to take into account in the general exercise of my discretion. Such behaviour would be unattractive, particularly where the Claimants had sought to excuse their own delay on the grounds that it was necessary in order to carry out investigations. As it is, however, the question does not arise and I say no more about it.

Other issues

153. I am conscious that I have not attempted to deal with many other issues raised by the application, for example:

(a) The claim for disclosure in support of the proprietary claim;

(b) Whether the other ingredients of the causes of action relied upon are sufficiently established (e.g., Mr Shirke's liability for representations made by Vijay and Mr Mahatme, whether he was a shadow director of Rudra, and whether the Individual Defendants conspired together);

(c) Quantum and reflective loss;

(d) Limitation.

154. Since, however, I have found that there is no good arguable case on the key factual matters and since the claim may continue on the merits either here or in India (depending on the outcome of the stay application), it would not be appropriate for me to express any views one way or the other, particularly on evidence which is admittedly incomplete.

155. The application for a freezing order and ancillary disclosure is accordingly dismissed and the undertakings currently in place from Mr Shirke are discharged. Unless they can be agreed, I will hear counsel on all consequential matters in due course.