



Neutral Citation Number [2024] EWHC 2165 (Ch)

IN THE HIGH COURT OF JUSTICE

Claim No: CR-2020-BHM-000384

BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

IN THE MATTER OF CORRUGATED BOX SUPPLIES LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006

BETWEEN:

MR MANTIR SINGH SAHOTA

Petitioner

-and-

(1) MR ALBINDER SINGH SAHOTA

(2) MR JURLODEN SINGH SAHOTA

(3) MR JAGDISHAN SINGH SAHOTA (deceased)

(4) MR JAN SINGH SAHOTA

(5) CORRUGATED BOX SUPPLIES LIMITED

Respondents

Birmingham Civil Justice Centre
Bull Street,
Birmingham

Handing Down Date: 19th August 2024

Before:

HIS HONOUR JUDGE Rawlings
(Sitting as a Judge of the High Court)

Hearing 3 – 7 June, 10 – 13 June 2024

INTRODUCTION

1. The petitioner, Mantir Singh Sahota (“Mantir”) has issued a petition under Section 994 of the Companies Act 2006 (“the 2006 Act” and “the Petition”) asserting that the affairs of the Fifth Respondent, Corrugated Box Supplies Limited (“the Company”) are or have been conducted in a manner that is unfairly prejudicial to his interests as a member of the Company. As I will explain below the Petition was amended by Mantir, pursuant to permission which I gave to him on 24 May 2024, shortly before the trial. When I refer in this judgment to “the Petition” I am referring, unless the context shows otherwise, to the Petition as amended.
2. The respondents to the Petition (other than the Company, which is joined as nominal respondent) are all younger brothers of Mantir (I will refer to them as the Respondents (as the only active Respondents) and Mantir and the Respondents collectively as “the Brothers”). The Brothers between them own substantially all of the shares of the Company in equal shares. The names which I will use for the Respondents after this paragraph are the names which the parties have used throughout these proceedings and are:
 - (a) Albinder Singh Sahota (“Jitha” or “First Respondent”);
 - (b) Jurloden Singh Sahota (“George” or “Second Respondent”);
 - (c) Jagdishan Singh Sahota (“Harvey” or “Third Respondent”); and
 - (d) Jan Singh Sahota - (“Jan” or “ Fourth Respondent”).
3. Unfortunately Harvey died in March 2023.
4. Mantir says that the Company was carried on by the Brothers, from the outset, as a quasi-partnership based on mutual trust and confidence and that the Respondents or some of them have destroyed that mutual trust and confidence by their conduct. In the Petition Mantir identifies seven categories of conduct that he says is unfairly prejudicial to him and which he says destroyed the trust and confidence between the Brothers:
 - (a) financial information being withheld from Mantir;
 - (b) the exclusion of Mantir from the management of the Company;
 - (c) the Respondents and in particular Jitha have mismanaged the affairs of the Company;
 - (d) Jitha has misappropriating the assets of the Company;
 - (e) Jitha has diverted opportunities from the Company to other businesses that he runs;
 - (f) the Company has failed to pay dividends or failed to make payment of dividends to the correct shareholders; and

- (g) the signature of Mantir has been forged on a number of documents filed at Companies House.
5. Mantir seeks an order that the Respondents purchase his shares at a price to be fixed by the court and without a minority discount.
 6. The Respondents:
 - (a) accept that, the Company was carried on from the outset as a quasi-partnership based on mutual trust and confidence, between the Brothers;
 - (b) say that Mantir, by his conduct has destroyed the mutual trust and confidence that existed between the Brothers, by his bullying and violent behaviour and his refusal to accept the decisions of the majority;
 - (c) deny that the affairs of the Company are or have been conducted in a manner that is unfairly prejudicial to Mantir ;
 - (d) deny that Mantir is entitled to any remedy, or if Mantir is entitled to a remedy, that it should be that the Respondents or any of them purchase his shares.
 7. As I will mention in due course, Mantir in his Reply and by Mr Khangure, at the start of the trial and in closing argument, has confirmed that he does not pursue a number of the allegations of unfair prejudice contained in the Petition.
 8. I have to determine: (a) whether, and if so to what extent, the affairs of the Company have been carried on in a manner which is unfairly prejudicial to Mantir, in his capacity as a member of the Company; (b) which, if any of the Respondents is responsible for any conduct falling within (a); (c) whether to grant a remedy against any or all of the Respondents and if so which; (d) if so what that remedy should be; and (d) if the remedy should be that one or more of the Respondents should purchase Mantir's shares, what is the value of those shares.

BACKGROUND

9. The Brothers father, Swaran Singh came to England in 1954. He started a business called Shere Punjab in or around 1960 which was transferred to a limited company named Shere Punjab Fur Fabric Limited ("Fur Fabric"). In time each of the Brothers became directors and shareholders of Fur Fabric and worked in its business.
10. Shere Leisure Limited was incorporated in 1990, it sold jackets from a site in Brick Lane in London. Each of the Brothers was again an equal shareholder in Shere Leisure. The business was run by Mantir and Jan, it was not successful and was closed, after making losses.
11. The Company was incorporated on 12 November 1996 to carry on the business of manufacturing and supplying corrugated cardboard boxes ("Boxes"). The Boxes are sold,

by the Company, to merchants who supply to the end users, rather than direct to the end users. Each of the Brothers were directors and equal shareholders of the Company from incorporation.

12. The Company started trading in April 1997 at which point only Jitha and Jan were working in the Company's business with Mantir, George and Harvey continuing to work in the business of Fur Fabric. It is common ground that the costs of setting up the Company and acquiring assets to enable it to commence trading were discharged by all the Brothers, principally through the income of Fur Fabric.
13. At the end of 2000 Mantir, Harvey and George joined the Company and Fur Fabric ceased trading. Whilst the Brothers took on multiple roles when they started working for the Company, over time, as the Company grew, they took on the following roles:
 - (a) Jitha became Managing Director, he took on overall responsibility for the management of the Company;
 - (b) Mantir took on responsibility for sales;
 - (c) Harvey managed the production of Boxes;
 - (d) George became transport manager; and
 - (e) Jan became Commercial manager with particular responsibility for preparing costings, that is to calculate how much it would cost the Company to provide Boxes to a particular customer, depending on the terms of the enquiry/order.
14. Whilst the Brothers were the original directors of the Company (and Jitha the Company Secretary) Jitha, George, Harvey and Jan all resigned as directors of the Company on 22 July 2003, they were then re-appointed as directors as follows: (a) Jitha on 7 November 2013; (b) Harvey on 1 November 2015; George on 20 June 2016; and Jan on 5 October 2016. Mantir says he was unaware of the resignations and reappointments of Jitha, Harvey, George and Jan. Jitha, Harvey, George and Jan say that both they and Mantir were aware of the resignations and re-appointments, they say that the resignations and re-appointments were carried out in accordance with the advice of the Company's then auditor A K Bhagi. Jitha says he doesn't really remember what the reason was but thinks it was something to do with risk. Harvey, George and Jan say they cannot remember the reason. It is common ground that, notwithstanding the resignations, the roles performed by the Brothers within the Company, after 22 July 2003, remained the same.
15. Pack King Limited ("Pack King") was incorporated on 29 January 2009. Pack King's business was that of a merchant supplying Boxes to end users. It is common ground that the purpose behind incorporating and trading Pack King was to give the Brothers control over a merchant and therefore a means of the Company supplying end users, with Boxes, through Pack King. The Company was the sole supplier of Boxes to Pack King but the shares in Pack King were owned by the Brothers equally, not by the Company. George was Pack King's sole director and Jitha its company secretary. It is common ground however that George played no part in the management of Pack King

and Jitha had overall responsibility for the management of Pack King, until November 2019 when Mantir took over responsibility for its management.

16. On a day to day basis what the Brothers refer to as “the next generation” were involved in running Pack King: (a) Sukhjinder Singh (“Sukh”) who is Harvey’s son was in charge of sales; (b) Pavandeep Singh (“Pav”), Mantir’s son was in charge of production; and (c) Manpreet Singh (“Mani”) was in charge of costings. Pack King built up a substantial debt with the Company of around £1.4m. On 1 January 2019 £490,000 of the outstanding debt was converted to a loan repayable over 3 years. On 13 August 2020 all of the Brothers except Mantir at a board meeting agreed that: (a) PCPC Limited (“PCPC”) a company owned by Mani would buy Pack King’s stock for £75,000 and its website “Packaging Now” for £5,000 and the balance of Pack King’s business, trade and assets would be transferred to the Company. Pack King thereafter ceased to trade and its customers were supplied direct by the Company.
17. In around December 2013/January 2014 the Company acquired the share capital of Connect Packaging Limited (“Connect Packaging”). Connect Packaging carried on business in Essex manufacturing Boxes. The business and assets of Connect Packaging were hived up into the Company at the end of 2018, thereafter the business formerly carried on by Connect Packaging was carried on by the Company and Connect Packaging ceased to trade.
18. At the date of presentation of the Petition (21 July 2020) the issued capital of the Company amounted to £26,000 consisting of: (a) 25,000 ordinary shares of £1 each, with 5,000 being held by each of the Brothers; and (b) 1,000 A ordinary shares of £1 each, held as to 200 each by the Brothers five wives. None of the Brother’s wives are a party to these proceeding, no relief is therefore sought by or against any of them.
19. The registered office of the Company is at CBS House, Brandon Way, West Bromwich (“CBS House”) which is also its trading address. The freehold to that property is held by Swaran Properties Limited. The shares in Swaran Properties Limited are also held by the Brothers, in equal shares.
20. On 18 June 2020 notice was given to Mantir that a General Meeting of the Company would be held on 14 July 2020, to consider removing him as a director of the Company. Prior to that meeting taking place Mantir issued an application for an injunction returnable on 14 July 2020. That hearing never took place because on 13 July 2020 a consent order was sealed by the court, by which the Respondents undertook to the court that, pending further order of the court, they would not cause or permit a meeting of the Company to take place at which the removal of Mantir as a director of the Company would be considered.
21. On 21 July 2020 Mantir issued the Petition. On 24 May 2024 I gave permission to Mantir to amend the Petition to plead what the parties refer to as “the KTS Issue”. I explain what Mantir’s case on the KTS Issue is in paragraph 27(f) below.

REPRESENTATION

22. Mantir was represented at trial by Mr Khangure KC and the First, Third and Fourth Respondents by Mr Zaman KC. The Third Respondent died in March 2023. His estate was not represented and took no active part in the trial

THE PARTIES' CASES

23. In this section of my judgment I will set out:

- (a) the matters that Mantir says, in the Petition, alone or collectively, amount to conduct on the part of the Respondents, or some of them, which is unfairly prejudicial to Mantir, in his capacity as a member of the Company;
- (b) what the Respondents say, in their Defence, about those matters;
- (c) Mantir's Reply to the Defence, in so far as it deals with the matters that he says amount to unfair prejudice (including the matters that Mantir says in his Reply that he will no longer pursue); and
- (d) which of the matters that Mantir says in the Petition amount to unfair prejudice he indicated, by his counsel, Mr Khangure, he would no longer pursue and when that indication was given.

THE PETITION

24. The Petition alleges that the Company has, since incorporation, been carried on as a quasi-partnership between the Brothers based upon mutual trust and confidence and that, as a result of the matters alleged to amount to unfair prejudice, that mutual trust and confidence has been destroyed. I have set out in the paragraphs that follow a summary of the allegations of unfair prejudice set out in the Petition.

25. Financial information has been withheld from Mantir:

- (a) for over 10 years very little financial information has been provided to the Brothers, only a one-page summary, which Mantir has been unable to corroborate against the Company's books and records. As well as Jitha, Mantir believes that Jan has had access to more financial information than he has, because Jan is the person responsible for making and receiving payments and general banking;
- (b) Mantir requested financial information orally which led Jitha to threaten to remove Mantir as a director, if he persisted with his requests. Jitha told Mantir he had no right to the information he asked for, because it was "not his department";
- (c) Mantir requested detailed accounting records and Company information for the previous 6 years, following a board meeting on 18 January 2020. In response the Respondents said they would allow Mantir to inspect limited accounting information

for the previous 2 years, but only on the basis that all questions that Mantir wished to raise were resolved by 28 February 2020, failing which the Respondents would call a meeting to consider removing Mantir as a director;

- (d) Mantir sent an email to the head of the Company's accounts team, Premage Josen ("Mr Josen") asking for all profit and loss schedules for the first quarter of the year. Mr Josen refused to provide the information without Jitha authorising him to do so;
- (e) Jitha has made it clear that Mantir is not allowed to have any contact with the Company's auditors. Jitha said that he had control of the Company's financial affairs and would deal with the auditors and Mantir should stick to his department;
- (f) Mantir requested financial information from Anil Bhagi of AK Bhagi accountants ("Mr Bhagi"), the then auditors of the Company. Mr Bhagi told Mantir that he could not provide the information, because Jitha had not authorised it;
- (g) Mantir understands that the Company's bank is Lloyds, but the Company probably has accounts elsewhere. Jitha and Jan are the only people with access to the online banking facilities, he is not permitted to know or have contact with the Bank's personnel. He does not know who the signatories to the bank account are and he has requested, but not been provided with, copies of bank statements;
- (h) Mantir does not know what income the Company receives from its property portfolio;
- (i) Pack King has the same shareholders as the Company and has paid the Company approximately £500,000 which Mantir has been told is repayment of a loan, but details have never been disclosed to Mantir; and
- (j) Jitha has dealt with Mantir's self-assessment tax returns, but Mantir was never asked to approve them and has never been provided with copies

26. Mantir has been excluded from participating in the management of the Company:

- (a) Jitha, with the approval of the other Respondents, has decided that he is Managing Director and will manage the Company without oversight from the other directors;
- (b) Jitha has informed Mantir that if he persists in interfering, it would put Mantir's position as director in jeopardy. On 18 June 2020, notice of a meeting of members to consider the removal of Mantir as a director of the Company was given to Mantir, it is to be inferred that this was motivated by a desire to prevent Mantir exercising his rights as director/shareholder to obtain information about the Company's financial affairs and participate in its management;
- (c) board meetings were rare and only ever called by Jitha, but since January 2020 they have taken place monthly and Mantir tries to ensure that they are minuted;
- (d) no general meetings have been called;
- (e) Jitha told Mantir and the other Respondents that he would sell the Company, within two years. A recent offer was made by Smurfit Kappa which Mantir was not informed of; and
- (f) the following matters have been decided by Jitha without the approval of the other directors:
 - (i) wages, dividends and holidays, company cars and the roles of the directors;
 - (ii) hiring staff who are told to report directly to Jitha and salaries for staff;

- (iii) Jitha has fired a nephew (Bahadur Sahota) twice, once from the Company and once from Pack King;
- (iv) purchases and disposals of machinery;
- (v) layout of the Company's site (decided in conjunction with Jan);
- (vi) supply and service providers and prices and contracts;
- (vii) Jitha procured that Mantir signed documents on the signature page without allowing him to read the documents;
- (viii) controlling every aspect of the business;
- (ix) after Mantir, was appointed to act as Managing Director of Pack King, Jitha interfered with his management of it. Whilst Pack King is not the Company, many of the staff of Pack King are also staff of the Company;
- (x) Mantir is bullied and segregated from the day-to-day operations of the Company: - each of the Respondents head their own departments, but Mantir does not head sales; and - Jan told a customer that Mantir had made mistakes, but the mistakes were those of Jan or his team;
- (xi) the Respondents leave Mantir out when introducing new staff; and
- (xii) in a photograph published in an online trade magazine, photographs and descriptions were included of all the directors of the Company, except Mantir.

27. Mantir says that the Company has been mismanaged in the following ways:

- (a) Mantir has concerns that reported profits of the Company reduced significantly in 2016. Jitha has said that costs increased but those increased costs were passed on to customers. When Mantir raised questions about the fall in profits Jitha threatened to remove him as a director;
- (b) Mantir is unaware of any board meetings having been held to approve the accounts;
- (c) £1m was written off in 2018 and Jitha has never given any satisfactory explanation for this;
- (d) the Company has a high turnover of experienced staff because Jitha is unwilling to authorise pay increases, the Company has lost account managers, CAD designers and machine operators, as a result;
- (e) in 2019 the Company purchased a new corrugating machine. The old one was marketed for sale and offers were received but Jitha refused those offers. The old corrugator had to be dismantled and placed in storage depreciating in value and causing a loss of rental income of around £50,000 per annum for the unit that it is stored in; and
- (f) by amendment to the Petition, Mantir asserts that the Company made payments totalling £1,231,200 to a company named KT Supplies Limited ("KTS") between 2 June 2013 and 29 June 2018, the making of those payments amounts to mismanagement and/or misappropriation of the Company's money, in circumstances where:
 - KTS was dissolved on 9 December 2009;
 - the KTS invoices contain an invalid VAT number;
 - the Company claimed input VAT of £205,200;
 - the signatories to the Company's bank account were Jitha and Jan;

- the KTS payments were recorded as if cheques payable to KTS had been drawn, but in fact cheques were drawn to cash;
- on occasions KTS invoices were entered in the Company's Sage records, before the date of the invoice; and
- who received the cash is unknown to Mantir ("the KTS Issue").

28. In 2016, Jitha told Mantir and the other Respondents that he had used the Company's money to demolish and rebuild a house for himself at 23 Gorway Rd, Walsall ("Gorway Rd") which he said he would repay, he did not seek the consent of any of the other Brothers to this (I will refer to this issue as the Gorway Rd Issue and to the house to be rebuilt at Gorway Rd as "the House").

- (a) Jitha now denies using any of the Company's money in the construction of the House;
- (b) an accountant who Mantir asked to look at the Company's accounts has noted that the Company's expenses increased by around £610,000 between 2015 and 2016 and at around that time Jitha built the House; and
- (c) Mantir asked Jitha if he had repaid any of the Company's money used to build the House. At first Jitha said he had repaid some of the money, but in 2019 Jitha denied using any of the Company's money to build the House.

29. Mantir says that Jitha may be conducting other businesses, using trading names similar to the Company's, namely: (a) CBS Packaging; (b) Corrugated Paper Sales; and (c) Packaging Now. Jitha has said that these companies were created to protect the trading names of the Company, but Jitha's children appear to be actively trading some or all of the businesses. Mantir infers that, absent any other explanation, the entities have been registered with similar names to the Company, with the intention that they will trade, in competition with the Company.

30. Mantir says that he has been paid dividends by the Company, but there has never been a meeting at which dividends were discussed or he was asked to approve a dividend and it appears that between 2013 and 2018 the Company has paid £1.62m in dividends and it is not clear that Mantir has received the dividends he is entitled to.

31. Mantir says that his signature has been forged on at least the Company's accounts for 31 December 2003, 31 December 2007 and 31 December 2016. His signature has also been forged in the statutory accounts of Connect Packaging, for 2016. In October 2019 Mantir says that he asked Jitha if he knew anything about his signature being forged in the accounts, but Jitha denied any knowledge.

THE DEFENCE

32. In their Points of Defence the Respondents admit that the Company has been carried on, since incorporation, as a quasi-partnership between the Brothers, based on mutual

trust and confidence, but they say that this was subject to the understanding that none of the Brothers would do anything to undermine that mutual trust and confidence. It is the Respondents' case that Mantir has acted in a disruptive manner, thereby destroying the mutual trust and confidence, between the Brothers.

33. The Respondents say the apparent trigger for the issue of the Petition was the sending out of the notice on 18 June 2020, of a meeting to be held on 14 July 2020, to consider a resolution to remove Mantir as a director. Notice was sent because Mantir had become so disruptive that he had destroyed the trust and confidence between the Brothers, so that they could not be expected to continue with him acting as a director of the Company.

34. The Brothers work together in long established roles, namely:

- (a) Jitha as Managing Director, whose role is to develop strategies for the growth and prosperity of the Company and to control the Company's direction;
- (b) Harvey, when alive, was in charge of production and engineering;
- (c) George is in charge of logistics and distribution;
- (d) Jan operates as site manager; and
- (e) Mantir is a sales executive.

35. Frequent discussions were held between the Brothers and once a month the Brothers attended a presentation given by the Company's financial controller, Mr Josen, as to its present financial performance. If Mantir did not attend a meeting, he was told about what was discussed, at that meeting

36. Mantir has, for many years, expressed resentment that he, as the eldest brother, is not in sole control of the Company and he has acted in the following ways which have destroyed trust and confidence between the Brothers:

- (a) verbally and physically attacking Jan for many years including: (i) in 2010 punching Jan multiple times; and (ii) in October 2011 punching Jan multiple times in the back of the head, when Jan was sitting at his desk, knocking off Jan's turban;
- (b) since the beginning of 2019, disrupting board meetings, being physically threatening and being critical of the decisions made by the other directors;
- (c) refusing to accept the decisions of the majority;
- (d) in October 2019 physically attacking Jitha, punching and kicking him and threatening to "bury him 6 feet under";
- (e) in January 2020, when George visited Mantir, Mantir said he had proof that Jitha and Jan had stolen £2m, which was a false allegation, intended to cause dissension between the Respondents;
- (f) on 14 October 2020, Mantir entered the Company's premises accompanied by his son, Pav and removed samples of Boxes in the following circumstances:
 - (i) on 22 June 2020, a new company, Pure Packaging Limited was incorporated, its registered office is at Mantir's home and the sole shareholder is shown as Pav;

- (ii) between 15 June and 22 June 2020, Pav emailed to his personal email account confidential information about Pack King's business, by which he was then employed;
- (iii) on 20 July 2020 Mantir sent an email, by mistake to Jitha's son, Mani, with details of customers spend and the account names of customers of Pack King, it is asserted that Mantir intended to send the email to his own personal email address;
- (iv) on 22 July 2020 Pav resigned as an employee of Pack King;
- (v) on 20 October 2020, following a board meeting at which Mantir had assaulted Jitha, George and Jitha's vehicles were blocked on their way home by Pav who said "we are going to take everything from you and leave you with nothing"; and
- (v) it is to be inferred that the above happened so that Pav could compete with the Company.

37. As to the allegations in the Petition, that Company information has been withheld from Mantir:

- (a) there were frequent discussions between the Brothers and once a month Mr Josen provided a summary of the Company's present financial position and performance to the Brothers, including Mantir;
- (b) the allegations made by Mantir, that information was withheld from him in 2020, took place at a time when Mantir was engaged in misconduct which undermined the trust and confidence of the Respondents in him, even then Mantir was offered access to financial information which he declined;
- (c) Mantir has not been denied access to the auditor;
- (d) the Company's only bank account is at Lloyds Bank, Mantir signed many of the facility documents. The signatories to the bank account have been Jitha and Jan from the outset;
- (e) Pack King is a company in which the Brothers are shareholders. It was a customer of the Company and sold direct to the public, something that the Company did not do. Pack King accumulated a trade debt of around £500,000 to the Company, which was reclassified as a loan. The Pack King's business was transferred into the Company, Mantir was aware of all this; and
- (f) Mantir's self-assessment tax returns are nothing to do with the affairs of the Company.

38. As to Mantir's allegations, that he has been excluded from management of the Company, the Respondents say:

- (a) Mantir has not been excluded from management, his entitlement to participate in the management of the Company, depended on him not carrying out acts that undermined and destroyed trust and confidence between the Brothers;
- (b) Jitha has been Managing Director, from the outset. The other directors agreed to this;
- (c) notice of a resolution to remove Mantir was served because of Mantir's misconduct;
- (d) typical of family companies, the Company has operated informally. More formal meetings only became necessary, because of Mantir's disruptive conduct;
- (e) Mantir has never requested a general meeting of the Company;

- (f) there has been no plan to sell the Company. Informal approaches have been made and they have been discussed between the Brothers, but considered not to be adequate;
- (g) each director does not need to get involved in managing areas assigned to others. Jitha makes decisions appropriate to a Managing Director, including the acquisition and disposal of machinery and review of expenditure, he has never dismissed a nephew. Harvey and Jan decide on the site layout, Jan generally deals with suppliers and service providers. The affairs of Pack King are not the affairs of the Company; and
- (h) it is denied that Mantir has been bullied.

39. As to the allegations of mismanagement (other than the KTS Issue which was added to the Petition after the Points of Defence were served (see paragraph 27 (f)):

- (a) all filed accounts were independently audited, approved by the board and signed by Mantir;
- (b) there was no threat to remove Mantir because he asked questions about the fall in profits Mantir's misconduct was the reason why the Respondents considered his removal;
- (c) profits go up and down, depending on trading condition and acquisitions and investments. There are limitations on the Company's ability to increase its prices and the Company had to replace old machinery;
- (d) Mantir is aware that the impairment of £1,160,550 was due to the auditor's treatment of the acquisition Connect Packaging;
- (e) a turnover of staff is inevitable and customers are lost from time to time;
- (f) the acquisition of a new corrugator was essential. The old corrugator was offered for sale, but it was decided not to sell in the UK, to avoid setting up a new competitor. The old machine is stored in a unit owned by the brothers, not the Company; and
- (g) the Defence does not plead to the KTS Issue because, as I will explain I gave permission to Mantir just over a week prior to the start of the trial to amend the Petition to include the KTS Issue and given the proximity to trial, gave no direction for consequential amendments to the Respondents' Defence.

40. As to the Gorway Rd Issue:

- (a) Jitha paid for the cost of building the House, from his own resources; and
- (b) there were no conversations between Jitha and Mantir about Jitha using the Company's funds.

41. As to the allegation that Jitha has diverted opportunities from the Company:

- (a) CBS Packaging Limited was incorporated on 3 August 2012 and is dormant;
- (b) CBS Packaging (North) Limited was incorporated on 18 September 2012 and is dormant;
- (c) Corrugated Paper Sales is a trading name of the Company; and

(d) Mantir shut down the Packaging Now website, in November 2019 and its stock was left in storage. Jitha's son, Mani, expressed an interest in acquiring the Packaging Now website and on 13 August 2020, Pack King sold its stock and the Packaging Now website to PCPC Limited, a company of which Mani is director and sole shareholder. The sale was approved by the directors of the Company. PCPC, like Pack King before it, sells direct to the public, which the Company does not do.

42. Mantir received £324,000, being his share of the overall dividends paid of £1.62m.

43. It is denied that Mantir's signature has been forged on any accounts and that Mantir asked Jitha whether he knew anything about his signature being forged in any accounts.

THE REPLY

44. The Brothers all had an equal role in the Company, meaning that they were entitled:

- (a) to remain as directors;
- (b) to be given sufficient access to the Company's accounting records to understand the financial position of the Company;
- (c) to be given notice of and entitled to attend meetings of directors at which management decisions were taken; and
- (d) to participate and vote in such meetings.

45. Mantir denies that he has done anything to undermine the trust and confidence placed in him by the Respondents. The Respondent's actions, in trying to expel Mantir, began in around October 2019, when he requested access to the Company's books and records, to investigate a fall in the Company's profits.

46. Whilst Mantir accepts that each of the Brothers has undertaken a particular role, he says that he is still entitled, as a director of the Company, to oversee the way in which the Company's business is being managed.

47. The Respondents have acted to diminish Mantir's role in sales in that:

- (a) unlike the other Respondents, he is not a head of department;
- (b) a new sales representative, Paul Fabri was recruited without his knowledge;
- (c) the Respondents removed Mantir's responsibility for dealing with 13 client accounts;
- (d) he has been overlooked for promotion to principal sales roles, those roles have been given to less experienced members of staff; and
- (e) his input to the Company's management has been ignored.

48. Mantir accepts that historically formal board meetings have not been held, but the practice of informal discussions between the Brothers was, he says, unworkable because financial and management information available to the directors was

insufficient to enable them to discharge their duties as directors. Mantir therefore insisted on formal board meetings with Mr Josen present, starting from early 2020.

49. Mantir has always acted in good faith and in what he considers to be the best interests of the Company, by insisting on access to the Company's management and financial records and properly planned and held board meetings. He denies attacking Jan and denies telling George that Jitha and Jan had stolen £2m.
50. The allegation that Mantir became disruptive is denied, he was requesting access to financial and management records and proper board meetings. He did not threaten anyone at board meetings.
51. Mantir accepts that he and his son, Pav, went to the Company's premises at around 6.30 pm on 14 October 2020:
- (a) Mantir took away samples to demonstrate to a potential customer of the Company, called Zanfish Limited. He attended with Pav, after hours to avoid a confrontation;
 - (b) Pav did email material to his personal email account relating to Pack King's business, this was to enable him to work remotely from home, Pack King's own system for remote working was not functioning;
 - (c) Mantir emailed to himself (initially, by mistake to Mani) historic sales performance details for Pack King for 8 months, in order to verify the customer accounts; and
 - (d) neither Mantir nor Pav have used any of the information of the Company to compete with it.
52. At the board meeting on 20 October 2020, Mantir sought to raise an item of business which the Respondents refused to deal with. Jitha snatched Mantir's mobile phone, Mantir followed him into the warehouse to retrieve it and the other Respondents joined with Jitha in taunting Mantir, Mantir acted in self-defence. Pav did pull his car in front of Jitha/George's cars, he was angry at how Mantir had been treated by the Respondents, there was no physical aggression, Pav simply told Jitha/George to leave Mantir alone.
53. Mantir accepts that the Company has no property portfolio and withdraws his allegation concerning the Company's property portfolio.
54. Pack King was a customer of the Company and accumulated a trade debt but Mantir does not know how it could be reclassified as a loan or how the business of Pack King could be transferred into the Company.
55. As for Mantir's exclusion from management:
- (a) Mantir denies he has been kept informed of matters transacted at Company meetings, when he was not present;
 - (b) Mantir denies that the Brothers discussed offers for the Company/its business. The fact of an offer was raised at a board meeting on 1 May 2020, when Mantir was

informed, for the first time, that an offer had been made. As a result Mantir called an emergency board meeting on 11 May 2020 to discuss it; and

- (c) notwithstanding that the management of particular areas of the Company's business have been delegated to particular directors, all directors retain an obligation to oversee the discharge of those delegated functions, Mantir was entitled therefore to have access to the Company's books and records to discharge that duty.

56. As to mismanagement:

- (a) The Respondents have not explained what the impairment entered in the Company's accounts was or whether it was taken into account in making the acquisition of Connect Packaging; and
- (b) Mantir was told by Jitha that two parties in India had expressed an interest in the old corrugator and one flew over to inspect it.

57. As to the diversion of the Company's opportunities:

- (a) the assets of Pack King included its online business, Packaging Now;
- (b) it is denied that the sale of the Packaging Now website was properly approved by the board of the Company. The intention to sell was raised at the end of the board meeting on 13 August 2020 under "any other business" and was not properly discussed; and
- (c) the board were not provided with sufficient material on which to make any decision, the sale was to a party connected with Jitha, but Jitha failed to make full and proper disclosure of his conflict-of-interest. Mantir objected to the matter being considered and pointed out that others may be willing to make an offer.

58. Mr Khangure confirmed that the following matters are no longer pursued by Mantir:

- (a) at the start of the trial, that it was not asserted that the purchase of a new corrugator amounted to mismanagement; and
- (b) at the start of his closing argument:
- (i) that the following allegations of mismanagement were no longer pursued:
- the fall in profits from 2016;
 - diversion of the Company's business opportunities to other named companies;
 - high staff turnover and loss of customers; and
 - the write off of £1m in the 2018 accounts (save that withholding information in respect of it is still pursued); and
- (ii) the payment of dividends

THE ISSUES

59. Prior to the trial counsel prepared a draft list of issues. There were disagreements between them as to what the final list should be, which were not resolved. I have used that draft list of issues to identify the issues that I need to determine, in order to decide

what allegations (if any) of unfair prejudice Mantir has proved and what (if any) remedy to grant to Mantir on the basis of what (if any) allegations of unfair prejudice he has proved. I have removed from counsel's draft list of issues the matters which Mantir, by his counsel Mr Khangure, indicated he no longer pursues.

60. The issues I need to resolve are as follows:

- (a) has financial information been wrongly withheld from Mantir and if so which Respondents are responsible for the withholding of that information?
- (b) has Mantir been wrongly excluded from the management of the Company and if so which Respondents are responsible for that exclusion?
- (c) have any of the Respondents and if so which, been responsible for mismanaging the Company (excluding those allegations of mismanagement no longer pursued)?
- (d) have any of the Respondents misappropriated the assets of the Company and if so which and what is the value of those assets?
- (e) was the sale of the Packaging Now website and stock of Pack King to Mani appropriately approved;
- (f) in respect to (a) – (e) do they separately or collectively amount to the carrying on of the affairs of the Company in a manner that is unfairly prejudicial to Mantir, in his capacity as a member of the Company and if so which, if any, of the Respondents is/are responsible for that unfairly prejudicial conduct;
- (g) does Mantir's own conduct mean that any conduct of the Respondents, which would otherwise be unfairly prejudicial to Mantir, in his capacity as a member of the Company, is not unfair:
- (h) if unfair prejudice is established what if any remedy is Mantir entitled to; and
- (i) if the appropriate remedy is an order that any or all of the Respondents should purchase Mantir's shares in the Company, then:
 - what is the appropriate date of the valuation;
 - what is the value of Mantir's shares at that date; and
 - should a minority discount be applied to that valuation.

THE EVIDENCE

61. In this section of my judgment I will:

- (a) set out the substance of the evidence of each factual witness, in their respective witness statements, in so far as it relates to the issues that I need to resolve;
- (b) provide my comments on the credibility and honesty of the evidence of each factual witness. In doing so I will address matters which the factual witnesses deal with in their witness statements and/or in their respective cross examinations which range beyond the issues that I need to resolve, but which are relevant to the credibility and honesty of their evidence;

- (c) set out the substance of the evidence of the expert witnesses in relation to the issues that I need to resolve, indicating where those matters are agreed between the experts instructed by Mantir and the Respondents;
- (d) comment on how credible and reliable I found the opinions of the relevant experts to be. In doing so, I will deal with opinions expressed by them on issues which have subsequently been agreed between the relevant experts, and their opinions on matters which are no longer pursued by Mantir, where I consider it relevant to do so, in order to assess the credibility and reliability of the opinions of the relevant expert, on matters on which the experts do not agree; and
- (e) explain why: (i) other than in dealing with the credibility and honesty of the factual witnesses; or (ii) where they are directly relevant to the issues that I need to resolve, I have decided not to deal, in any detail with specific alleged incidents of violence, intimidation and bullying behaviour which Mantir asserts that the Respondents have engaged in, or the Respondents allege Mantir has engaged in.

62. Once I have dealt with items (a) - (e) above I will proceed to determine the issues I have identified in paragraph 60 above.

63. In addressing the honesty of the factual witnesses, I bear in mind the comments of Lewison J, as he then was in **Painter v Hutchinson** [2007] EWHC 758 (Ch) at paragraph 3 where he identified a number of matters, in that case which made the evidence of Mr Hutchison unsatisfactory. Those matters were:

- a. evasive and argumentative answers;
- b. tangential speeches avoiding the questions he was asked;
- c. placing strained meanings on his pleadings and witness statement;
- d. blaming legal advisers for the content of documentation (statements of case and witness statements);
- d. disclosure and evidence shortcomings;
- e. self-contradiction in cross examination;
- f. internal inconsistency;
- g. shifting his case; and
- h. new evidence in cross examination not contained in his witness statement.

64. Witnesses can however lie for different reasons. Lies in themselves do not necessarily mean that the entirety of the evidence of a witness should be rejected. A witness may lie in an attempt to bolster a case, but the actual case nevertheless remains good irrespective of the lie.

65. Mantir has the burden of proving, on the balance of probabilities, each factual allegation that he makes, that the conduct of the Respondents, or one or more of them is unfairly prejudicial to him, in his capacity as a shareholder of the Company, that I should grant him a remedy and, if I decide that I should grant him a remedy, that that remedy should be an order that one or more of the Respondents should purchase his shares in the Company as he contends it should be. Where I refer, in this judgment to being satisfied of some fact or matter, or that I should grant a remedy or a particular remedy, I mean

that Mantir has satisfied me, on the balance of probabilities. Where I say that I am not satisfied of a fact or matter, or that I should grant a remedy or a particular remedy, I mean that Mantir has not satisfied me, on the balance of probabilities.

EVIDENCE OF FACTUAL WITNESSES RELATING TO THE ISSUES

66. Mantir relied on witness statements from two factual witnesses at trial:

- (a) Mantir who made two witness statements which he relied on at trial dated 30 September 2022 and 15 May 2024; and
- (b) Pav dated 30 September 2022.

67. The Respondents relied on the following witness statements at trial:

- (a) Jitha who made three witness statements which he relied on at trial, dated 30 August 2022, 14 May and 30 May 2024;
- (b) Jan who made two witness statements which he relied on at trial, dated 30 August 2022 and 30 May 2024;
- (c) George who made one witness statements which he relied on at trial dated 30 August 2024;
- (d) Harvey who, prior to his death, made a witness statement dated 30 August 2022;
- (e) Mr Josen who made two witness statements which he relied on at trial dated 16 August 2022 and 31 May 2024;
- (f) Fiona Helen Smith ("Ms Smith") who made a witness statement dated 24 August 2022;
- (g) Satnam Singh Maan ("Mr Maan") who made a witness statement dated 30 August 2022; and
- (h) David Pretty ("Mr Pretty") who made a witness statement dared 31 May 2024.

MANTIR'S FACTUAL WITNESSES

MANTIR

Mantir – Witness Statement dated 30 August 2022

68. As to the withholding of information:

- (a) prior to 2020 he requested financial information verbally, but he was met with threats by Jitha to remove him as a director, if he persisted;
- (b) he has not historically been provided with any financial information except the occasional one-page document. On occasions Jitha did provide more financial information but, when he did so, any documents distributed were collected from Mantir, he was not allowed to retain them;

- (c) following a board meeting on 18 January 2020 he sent an email to Jitha requesting financial information for the previous 6 years. Later in January, he received a letter signed by all the Respondents which said that he could only have documents for the last two years and that, if he did not satisfy himself, as to the position, by 28 February 2020, then the Respondents would proceed to call a meeting to discuss the possible termination of his appointment as a director;
- (d) on 24 April 2020 he emailed Mr Josen requesting profit and loss schedules for the last quarter of the year. Mr Josen responded to say that he could not provide the information without Jitha's authority;
- (e) Jitha made it clear that Mantir could not meet with or contact the auditors and on the occasions that he did ask Mr Baghi for financial information, Mr Baghi said that Jitha had to authorise its release; and
- (f) he has never seen the Company's bank statements, prior to disclosure by the Respondents. He now sees a substantial number of transactions between the Company and Swaran Properties and he does not know what these transactions are.

69. As to the exclusion of Mantir from the management of the Company:

- (a) there were infrequent general discussions between the Brothers about the business of the Company;
- (b) he was never told about any discussions to sell the Company and only found out at a board meeting at some point in 2020 about a possible sale, he was told that, if the offer was accepted the Brothers would get £3.5m each;
- (c) it was agreed that each of the Brothers would have the same salary of £6,000 per month and a similar value car, but Jitha got whatever car he wanted, without discussion by or the agreement of the other Brothers;
- (d) since the Respondents attempted to remove him he has been forced to work from home;
- (e) he has had 21 customer accounts removed from him, for no reason;
- (f) rather than being in charge of the sales function he has been expected to report to Mark Richards, then Mr Pretty and now Jitha;
- (g) he is simply ignored at board meetings;
- (h) Pack King used to operate its business about 400 yards away from CBS House. Mani, Jitha's son is company secretary and George the only director. In spite of his being asked to take over as Managing Director of Pack King, Mani refused to supply him with financial information concerning Pack King. He was told that he would have to ask Jitha, if he wanted financial information;
- (i) examples of his being sidelined by the Respondents are:
 - he is not head of the sales department, the Respondents are heads of their departments. In April 2020 a new sales representative, Paul Fabri was hired and Mantir was not informed about it until after it happened. When he emailed Jitha on 14 April 2020 to ask him about the appointment, Jitha said that Mantir was not told, in case the information leaked;
 - he was left out of an online publication which included a photographs and details of all the Respondents, but not him; and

- allegations are constantly made that he is being disruptive. On 14 October 2020 he attended CBS House at 6 - 7pm to pick up product samples to show to Zanafish, he went at night to avoid friction with the Respondents, but they then alleged that he was trying to steal the Company's customers.

70. As to mismanagement/misappropriation of the Company's assets:

- (a) Jitha did say that he was using the Company's funds to rebuild the House. He said he would repay these funds and that he was using the Company's money, in order to save on VAT. Much later Jitha told him that he had repaid some of the money, but not all; and
- (b) the Respondents suggest that substantial amounts of cash were paid to a recruitment agency for temporary staff used by the Company. It appears however that KTS was dissolved in 2008 and was not registered for VAT. He had no knowledge of any temporary labour being supplied or of Tarsem Singh who is said, by the Respondents, to be a director of KTS, who it is alleged he knew. He has never met with Tarsem Singh or had any dealings with him. He was asked by Jitha to collect cash on occasions, which he handed to Jitha. The Respondents have failed to name even one temporary employee, to whom these cash payments relate.

71. His signature has been forged on the Company's accounts filed at Companies House at least for 2003, 2007 and 2016. In October 2019 he asked Jitha if he knew anything about the forging of his signature. Jitha denied any knowledge.

72. Pack King sold products on eBay, Amazon and its own Packaging Now website. He decided to close eBay and Amazon. He did not leave Pack King's stock to rot as the Respondents assert, this comment only related to four lines of products which had not sold in two years and which were removed to a separate unit. On 20 April 2020 Mani emailed Pav and Sukh to say that he was taking the Packaging Now online platform. On 23 April 2020 he sent an email to Mani saying that he had no right to do this. On 13 August 2020 Jitha said he was going to allow Mani to take the Packaging Now website and run his own company. Mantir objected and all the other Respondents agreed with Jitha that the Packaging Now website and Pack King's stock should be sold to Mani. Mantir sent an email on 14 August 2022 to Jitha complaining about that decision.

Mantir – Witness Statement dated 15 May 2024

73. He responds to concerns expressed by Andrew Donaldson ("Mr Donaldson") the Respondents' forensic accounting, about the future performance of the Company's business as follows:

- (a) whilst Mr Donaldson expresses concern about the possibility of the local council taking action because of the noise emitted by the new corrugator, he believes that the new corrugator has been successfully soundproofed, since correspondence was sent by the council, to the Company;

- (b) the business plan for the period 2022 - 2026 relating to the future expansion of the business notes that the corrugator is only running at one third capacity, the plan was to acquire two or three other businesses so that the new corrugator could be used to maximum capacity. Mr Donaldson fails to consider this;
- (c) there has been a reduction in paper prices, so despite a slight decrease in turnover, profit is up;
- (d) the Company recently spent £1.5m on a new conversion machine which makes production much more cost effective enabling the Company to grow and increase profit; and
- (e) Mr Donaldson refers to a dearth of transactions in the sector, but Mantir's internet searches show that there is an active market for sales and mergers in this sector.

74. In relation to the KTS Issue:

- (a) £1,231,200 was paid in cash purportedly to KTS between 2013 and 2018, but he understands that payments go back to 2008, even though documents do not exist for the period between 2008 and 2012; and
- (b) he has never known the Company to use temporary labour other than truck drivers to cover driver holidays. He did not see any temporary staff on the shop floor.

75. As for Gorway Rd:

- (a) Jitha told him that he had spent £350,000 on constructing the House;
- (b) Mr Donaldson relies upon information given to him by Jitha, that a substantial amount of building work was undertaken by the Company in 2015/16. Mr Donaldson suggests, based upon this information, that more was spent by the Company on repair and maintenance work in 2015/16 than in other years, inflating the amount debited to the Company's repair and maintenance ledger, to which the costs of materials used on the House were also debited. However:
 - (i) the new canopy and loading bay referred to was built in 2014 and would not therefore affect the repairs and maintenance spending of the Company for 2015/16; and
 - (ii) repairs to units in Kelvin Way were not the responsibility of the Company, because these units were owned by Swaran Properties in 2015/16 and occupied by third-party tenants (not the Company).

Mantir - the honesty and credibility of his evidence

76. Mr Zaman spent a considerable part of his closing argument criticising the honesty and credibility of the evidence given by Mantir. For reasons that I will explain, I consider that much of that criticism is justified, such that I find that in many respects Mantir's evidence was neither credible nor honest. Whilst, in setting out why I have come to those conclusions, I will not refer here to matters which are directly relevant to the issues I have to resolve, those conclusions undermine the weight that I am able to

attribute to assertions that Mantir makes in respect of matters that are directly relevant to those issues.

77. In paragraph 107 of his witness statement dated 30 September 2022, Mantir says - "Allegations have been made that I have assaulted some of the respondents, which are not true." Those allegations included an allegation by Jan that, in October 2011 Mantir walked behind him and hit him a number of times knocking his turban off. Jan's allegation is supported by the witness statement of Mr Maan, dated 30 August 2022, who says that he witnessed the assault.
78. Early on in his cross examination, Mantir said that he accepted that there was an incident between him and Jan, during the course of which he had knocked Jan's turban off. When Mantir was asked why, in his witness statement, he had denied ever assaulting any of the Respondents, Mantir said that he was embarrassed about the incident, because knocking a Sikh's turban off is a disgrace and he did not wish to admit having done so.
79. It may be that Mantir did deny assaulting any of the Respondents (including Jan) in his first witness statement, because he was embarrassed to admit knocking off Jan's turban and he decided, as he said, in cross examination to "come clean". However, Mantir's willingness to sign a witness statement, with a statement of truth, denying that he had ever assaulted any of the Respondents, when it is clear that he did recall knocking off Jan's turban, when he made his first witness statement, in September, means that, in considering the evidence in Mantir's witness statements, I am unable to start from the premise that Mantir treated the statement of truth at the end of his first witness statement with sufficient seriousness to ensure that what is contained in it represented his honest recollection of events. I also bear in mind that Mantir had an opportunity to correct that evidence, in his first witness statement, when he made his second witness statement and immediately before his cross examination commenced, when he confirmed the truth of the contents of both his witness statements, but did not do so.
80. Mantir maintained in cross examination, that he did not assault Jitha in October 2019. In his first witness statement, Jitha says that - "It was becoming obvious that [Mantir] couldn't do his job and he was asking people in the office to process orders and quotes within timescales and costs which just couldn't be done without enough information. Although Jan was our commercial manager and the director responsible for these issues, when Mantir got pushback from the team he would chase me as he didn't get on with Jan and didn't want to talk to him about it.... I told Mantir that I couldn't keep doing his job and he started having a go at me. I said that if he was in charge mum and dad would have put him in charge and I asked him why he wasn't in charge? He didn't like that and I remember he threatened me by saying he would come to my house and kill me and bury me 6 feet under my front yard. As I was stood outside my office in the foyer, he started to attack me by punching and kicking me. George saw what was happening and tried to stop him, in doing so I recall that George hurt his fingers, they got bent back, but it was George that broke it up."

81. In his witness statement, George says that - "I also remember an incident that happened in around October 2019 where Mantir began punching and attacking Jitha....he was trying to bully Jitha and hitting him. I didn't go to hospital but I am pretty sure that whilst breaking the assault up I broke my finger. It now looks a bit bent and funny. Mantir said some horrible things to Jitha..... I heard him say that he was going to kill Jitha and bury him in his own backyard".
82. Mantir himself, during the course of his cross examination, said that George is a "good and honest man". During his cross examination it was put to George that the incident had not occurred, George said that it had and he held up his hand to show that two of his fingers are still bent. As I will say in due course, whilst I have reservations about the reliability of some aspects of George's evidence, I have no doubts about his honesty and accept George's evidence about the incident in October 2019. I find that Mantir recalls the incident of October 2019 (it is inconceivable, in my judgment, that he has forgotten about it) when he punched and kicked Jitha and lied about it not taking place in his first witness statement and during his cross examination.
83. It was put to Mantir that he knowingly helped his son, Pav, to set up Pure Packaging Limited to sell Boxes to end users and helped Pav to obtain information and assets belonging to the Company's and Pack King for the purpose of promoting the business of Pure Packaging. Mantir denied this.
84. Pav resigned from his employment by Pack King on 8 July 2020 (although he brought a claim for constructive dismissal). Prior to his resignation Pav incorporated Pure Packaging Limited on 22 June 2020. On 26 June 2020, Pav sent ten Pack King quotes to his home email address. Following his resignation from Pack King, Pav caused Pure Packaging to commence trading as a merchant purchasing Boxes (from competitors of the Company) and supplying them to end users. That is the same business as that carried on by Pack King until its business and assets were transferred to the Company in August 2020.
85. It was put to Mantir that:
- (a) he knew about Pav incorporating Pure Packaging, on or about 22 June 2020 when it was incorporated. Mantir denied this, in spite of the fact that Pav and his family live with Mantir;
 - (b) he provided financial support for Pav to establish Pure Packaging's business. Mantir said that he had lent £20,000 to Pav about 18 months ago (December 2022/January 2023) but nothing prior to this;
 - (c) he had emailed to his home email address on 28 July 2020 details of customers spend with Pack King, between January and March 2018 and the names and addresses of some of Pack King's customers. It was suggested to Mantir that this information was intended for Pav to use to approach potential customers, for Pure Packaging. Mantir denied it;

- (d) Mantir accepted that Pav had gone with him to visit PB Plastics, a former customer of the Company on 17 March 2022. It was suggested that Pav went with Mantir with a view to persuading PB Plastics to purchase from Pure Packaging. Mantir denied this saying that he was simply giving Pav a lift home and the owners of PB Plastics are friends of his family, including Pav. Whilst Mantir accepted that he had suggested that PB Plastics could buy Boxes from Pure Packaging, he said that it was not a serious suggestion; and
- (e) on 14 October 2020 samples of Boxes were taken by Mantir and Pav, from CBS House. It was put to Mantir that the samples were intended for use by Pav to show to potential customers of Pure Packaging. Mantir denied this, saying he had attended CBS House after hours to avoid a confrontation with any of the Respondents and took Pav with him for his protection. He intended to show the samples to Zanfish in an attempt to persuade them to order Boxes from the Company.

86. I find Mantir's evidence, that Pav did not tell him, either before he incorporated Pure Packaging on 22 June 2020 or shortly thereafter, that he had done so, or, at around the same time, that he intended to use Pure Packaging to supply Boxes to end users not to be credible. On 20 April 2020, Mani had sent an email to Sukh and Pav to say that he was taking over the Packaging Now online platform personally and Mantir had complained that he had no right to do this. On 29 May 2020 the directors of the Company voted for Jitha's proposal that the business and assets of Pack King should be transferred to the Company, Mantir voted against. Mantir was served on 18 June 2020 with notice of a meeting to consider his removal as a director of the Company. Whilst Pav had not yet resigned as an employee of Pack King it was quite clear that there was unlikely to be any role for Pav within the Company, once the business of Pack King was transferred to the Company (Pav himself, in substance, confirms this, see paragraph 97 below) and I find it inconceivable, in those circumstances, that Pav would not have discussed with his father, Mantir his future plans for Pure Packaging and how he was going to earn a living, given that Pav and his wife and child were living with Mantir at the time.

87. During his cross-examination, Mantir was asked about the visit to PB Plastics on 17 March 2022. Mantir said that PB Plastics was no longer a customer of the Company and he was trying to persuade them to order from the Company again. He said he gave Pav a lift home from town and told him that he had to go to a meeting which Pav could accompany him to or stay in the car. The son of the owner of PB Plastics (Sonny) said that the Company's prices were too high and Mantir said, jokingly, that perhaps Pav could supply them with Boxes, he said it was not a serious comment as Pav is a merchant and could not have supplied PB Plastics more cheaply than a manufacturer, such as the Company. I am not satisfied that Mantir was telling the truth when he explained why he said that Pav had accompanied him to PB Plastics or that his suggestion that Pav, through Pure Packaging, might supply PB Plastics, was intended to be a joke, for the following reasons:

- (a) the suggestion that Mantir was simply giving Pav a lift home and stopped off at PB Plastics on the way home to try to sell Boxes to be supplied by the Company does not

ring true. Mantir's visit to PB Plastics must, in my judgment have been arranged in advance, Mantir could hardly just pop in on his way home, on the off chance (family friend or not) that they would have time to see him. The visit would be likely to take more than just a few minutes and was not likely to be something that Mantir would simply interrupt his journey home to deal with; and

(b) when Jitha found out that Pav had gone with Mantir to visit PB Plastics he sent an email to Mantir on 25 March 2022 saying: "I learned from a customer of ours, [BP Plastics] that you went to see on 17/3/22 that they told you that they are not going to buy any more from us as our prices were not competitive. Instead of trying to get the customer to buy from us and get some better pricing proposal, you suggested that the customer should get a quote from Pav's business Pure Packaging...". Mantir responded on 29 March that PB Plastics was not a customer...they are family friends and going to see friends is not against the law". In his cross examination, Mantir accepted he had not gone to see PB Plastics as a social visit, but instead to try to obtain orders from them, for the Company. Mantir's reply to Jitha's email of 29 March was therefore evasive and misleading, in suggesting that the fact that the owners of PB Plastics were not currently customers of the Company and were family friends somehow justified his taking Pav with him to the meeting and suggesting that PB Plastics might order from Pure Packaging. The content of the email is inconsistent with Mantir's evidence at trial that the purpose of his visit was to try to secure orders from PB Plastics for the Company.

88. Consistent with his first witness statement, on the first day of his cross-examination, Mantir said that the reason he had gone to CBS House on 14 October 2020, in the early evening, was because he thought the Respondents would not be there and he wanted to avoid a confrontation with them. When he was asked why he took Pav with him, Mantir said that it was for his protection, in case any of the Respondents were there. The samples, he said, were to show to a potential customer of the Company.

89. On the second day of his cross examination, a recording of part of a board meeting taking place between the Brothers on 20 October 2020 was played to Mantir. During the recording Mantir is asked why he brought Pav with him on 14 October 2020 to CBS House. Mantir replies that "he knew what style he wanted to show his customer" and Mantir is then asked why he came at night, to which he replies "because he rang me and said dad I want samples". Mantir was asked, by Mr Zaman, why he had lied in saying that Pav had gone with him for his protection when he had confirmed at the meeting on 20 October 2022 that it was because Pav wanted some samples to show to Pav's customer. Mantir said that Pav could not supply the potential customer, for whom the sample was intended and wanted the Company to take them on. I find this answer implausible, I cannot see why Pav, who was trying to establish his own business would have gone to so much trouble to refer a potential customer that he could not supply to the Company, it seems to me to be much more likely that Pav was intending to show the samples to a customer he was trying to win for Pure Packaging. More importantly, on the first day of his cross examination, Mantir said that Pav had come with him for his protection, he said nothing about Pav coming with him because Pav knew what samples

he wanted to show to the potential customer (whether that was a potential customer of Pure Packaging or the Company). He was forced to change his reasons for Pav going with him, after the recording was played of him explaining to the Respondents, on 20 October 2020, why Pav had come with him. Mantir therefore gave answers in cross examination which were inconsistent with his first witness statement and the previous answers given in his cross examination. I note that the evidence in Mantir's first witness statement dated 30 August 2022, in respect of this issue, is also inconsistent with Pav's witness statement dated 30 September 2022 (see paragraph 93 (c) below).

90. On the first day of his cross-examination, Mantir was asked about his assertion that his signature has been forged on accounts of the Company filed at Companies House and how he found out about this. Mantir said that an accountant had told him, when he was asked which accountant, Mantir said he could not recall. Mantir was pressed to say whether it was Mr Southall he said no, he was then asked if it was Mr Plaha. At first Mantir said he did not know whether it was Mr Plaha, before agreeing that Mr Plaha could be ruled out because he had been instructed too late to be the accountant who told Mantir about his signature being forged on the Company's filed accounts. Mantir then said that he may have got it wrong, in suggesting that it was an accountant at all, it may have been his daughter in law, who looked at the accounts on Companies House and told him. Mr Zaman suggested that Mantir had been deliberately vague about how he first became aware that his genuine signature was not on some of the Company's filed accounts, because he had known for a long time that a number of the filed accounts bore signatures purporting to be his signature but not resembling his normal signature. I am unsure of why Mantir changed his position so many times and so quickly about how he first became aware that what purported to be his signature, on at least three of the Company's filed accounts, is dissimilar to his normal signature. The changing and inconsistent answers that Mantir gave to questions asked of him on this issue does however undermine the reliability of his evidence generally.

91. Mantir was taken to an email exchange between him and Jitha dated 18 July 2021. The email and Mantir's reply to Jitha refer to an allegation by Mantir that Harvey had nearly knocked him over with a fork lift truck. Mantir was asked whether he had reported the alleged incident to the police or the HSE. Mantir said that he had not. It was pointed out to Mantir however, that in his reply to Jitha's email, he said he had reported the incident to both the police and the HSE. Mantir apologised and said that a lot of things were going on at the time and he had not recalled that he had in fact reported the incident to the HSE and the police. He then said that the HSE were not interested and left it to be dealt with by the Company internally. It was clear, once Mantir was taken to the part of his email to Jitha in which he confirmed that he had reported the alleged incident to the police and the HSE, that he did remember having done so, because he confirmed that the HSE were not interested in his complaint. In my judgment, Mantir calculated that, for some reason, it would not suit his case for him to have reported the alleged incident to the police and the HSE, which is why he said that he had not done so. However once it was apparent from his email reply to Jitha that he had reported the incident to the police and the HSE, he was forced to backtrack on his previous answer. This is, in my judgment,

another example of Mantir giving initially a dishonest answer, which he was forced to back track on, when it was clear that his answer was incorrect.

92. In cross-examination, Mantir said that it was a practice of Jitha to present to him for signature, only the signature page of a document he wanted him to sign and to insist upon him signing it, without showing Mantir the document of which the signature page formed part. Mantir was taken to filed accounts of the company which he accepts he did sign. Those accounts have a statement just above Mantir's signature that "the financial statements were approved by the Board of Directors on [a date] and were signed on its behalf by" followed by Mantir's signature. It is Mantir's case that the Company's accounts were never, at least prior to 2020, approved by the Board of directors of the Company. Mantir said that he did not read the statement which appears above his signature in the accounts (not that he could not recall reading it but that he definitely did not read it). I commented that this showed a remarkable memory in relation to accounts which were signed by him around 10 years ago. In my judgment, this was another example of Mantir giving an answer in cross examination which he considered would best support his case which, on even the barest analysis, simply cannot be true (that he did not read the statement above his signature).

PAV

Pav's witness Statement dated 30 September 2022

93. There is nothing of direct relevance to the issues I have to resolve, in the witness statement of Pav. In cross examination, he supported his father, Mantir's position that:

- (a) he did not tell his father that he had incorporated Pure Packaging in June 2020. He went on to say that, when he incorporated Pure Packaging he had not yet decided to trade it and did not start to trade it until September 2020;
- (b) his father was giving him a lift home when he went to visit PB Plastics. He said that he knew the owners son, Sonny, who said that PB Plastics needed deliveries at particular times which the Company was unable to arrange and his father said, Pav is a merchant why don't you buy off him;
- (c) he did ask his father to get samples from the Company so that he could show them to a potential customer of the Company. The samples that were taken were for a £500,000 per annum customer which he could not take on, through Pure Packaging; and
- (d) he said that on 20 October 2020 he had blocked George's car following the Board Meeting. His father had told him that the Respondents had attacked him and he wanted to understand why George had attacked his father.

Pav - honesty and credibility of evidence

94. As already noted, Pav's evidence does not go directly to any of the issues that I need to resolve. His evidence, particularly given in cross-examination, dealt principally with the disagreements and friction between Mantir and the Respondents and to the question of

whether or not Mantir and/or Pav attempted to use information and assets of the Company to promote the business of Pure Packaging.

95. 22 April 2020 was not the first occasion on which Pav incorporated a company called Pure Packaging Limited. Pav also incorporated a company with the name Pure Packaging Limited on 29 September 2014. Pav said he did so, at that time, because he liked the name, not because he wanted to do anything with it and that he did not tell his father about it. Whilst there is no evidence that the company, Pure Packaging Limited, which was incorporated on 29 September 2014, ever traded (it was struck off in March 2016) nonetheless I do not accept that Pav incorporated Pure Packaging Limited in on 29 September 2014 with no intention of ever using it to run a business and simply because he liked the name.
96. I am prepared to accept (just) that, even though Pav lived with Mantir (and always has) he may not have told Mantir that he incorporated Pure Packaging Limited, in September 2014.
97. Pav incorporated a second company with the name Pure Packaging on 22 June 2020. His explanation was that, on 20 April 2020 Mani had already told Sukh and Pav that he intended to trade using the Packaging Now website and on 1 June 2020 Mani had incorporated PCPC. For those reasons, said Pav, he was concerned that Pack King may not be trading for much longer, so he incorporated another company named Pure Packaging Limited, although again he said he had no firm plans to trade through it, when he incorporated it. Pav said that he did not tell Mantir that he had incorporated Pure Packaging Limited on this occasion either but Mantir found out later.
98. Pav was asked about the email that he sent to his home email address on 26 June 2020 which had attached to it historic quotations given by Pack King to its customers. At first Pav said that these quotations would be of no use to him for the purposes of Pure Packaging's business however later he accepted that they would be of some use.
99. Pav said that he attended CBS House with Mantir on 14 October 2020 to collect samples. He accepted that he asked his father to get some samples for a customer but said it was a customer worth £500,000 per annum in turnover, which he would have been unable to supply through Pure Packaging, he suggested that he still had an interest in the success of the Company because of his father's shareholding in it and was therefore intending to show the samples to the customer, with a view to that customer ordering from the Company.
100. In my judgment Pav did tell his father, Mantir about incorporating Pure Packaging on 22 June 2020. Pav and his family lived with Mantir and in my judgment he told Mantir that he had incorporated Pure Packaging and intended to trade as a merchant selling Boxes to end users, a trade which he had learned as an employee of Pack King because:

- (a) Pav's plans for making a living in light of Pack King's likely closure, would be of particular interest to Mantir, not only because he is Pav's father, but because Pav and Pav's family, including Mantir's grandchild were living with Mantir at the time; and
- (b) Mantir had just been served with the notice dated 18 June 2020, of a meeting of the Company's shareholders, to consider removing Mantir as a director of the Company.

101. I am also satisfied that, in emailing to his home email address, 10 quotations sent by Pack King to potential customers, four days after he had incorporated Pure Packaging Limited, Pav intended to use those quotations as a means of approaching the recipients of those quotations, for business himself, through Pure Packaging. Pav did not deal with sales at Pack King, his role was operations and the sending of the 10 quotes to his home email address was of obvious assistance to Pure Packaging, in seeking customers, but not obviously part of Pav's operations role at Pack King.

102. I do not accept that Pav asked Mantir to provide him with samples of Boxes, in October 2020, so that he could show them to someone, with a view to their becoming a customer of the Company. I have explained why I have not accepted Mantir's evidence on this point in paragraph 89 above. To be added to those points is the fact that, on Pav's evidence, he had only just started trading through Pure Packaging, in September 2020. I consider it very unlikely that, one month later he would have been keen for Mantir to obtain samples of Boxes so that he could try to obtain orders for the Company, rather than orders for Pure Packaging. It is much more likely, in my judgment, that he wanted to show the samples to potential customers of Pure Packaging.

THE RESPONDENTS' FACTUAL WITNESSES

JITHA

Jitha's witness statement dated 30 August 2022

103. The other Brothers gave Jitha autonomy to grow the business, 99% of the time the Brothers agreed on matters. Meetings, were informal, with the Brothers, in the early days meeting up to have breakfast at a restaurant on Saturday mornings, to discuss the Company's business.

104. When it was just Jan and Jitha working at the Company, Jan covered the commercial and manufacturing side of the business, learning how to cost and make Boxes and Jitha dealt with sales and overall management. When the other Brothers joined the Company, in 1999, they fitted in doing labouring jobs and he sent Mantir out to deal with sales. Over time the Brothers took on more defined roles:

- (a) Jitha – Managing Director;
- (b) George – transport;
- (c) Harvey – production;

- (d) Jan commercial; and
- (e) Mantir – sales.

105. In 2003, on the advice of the auditor, Mr Bhagi, all the Brothers except Mantir resigned as directors. Mr Bhagi said it was a risk thing. Jitha, George, Harvey and Jan were later re-appointed as directors, at various times.
106. All the Brothers were provided with financial information by the financial controller, Mr Josen, who provided the numbers as hardcopy documents, in advance of meetings. He does not recall Mantir ever asking Mr Josen any questions about the numbers.
107. The Company bought a second-hand corrugator in 2002. The Brothers all agreed that, by 2018, a new corrugator should be purchased, it cost £5 million. They tried to sell the old corrugator, but no one wanted it and he did not want to set up a competitor in the UK, by selling it in the UK. There was interest from India, but they pulled out. He cannot recall any other interest in it. The Brothers all agreed that the old corrugated should be taken out in July 2019 to accommodate the new corrugator and stored at premises owned by Swaran Properties. It stayed there for 2 years, whilst they tried to sell parts of it. Only around £10,000 - £20,000 was recovered for parts that were sold and the remaining machine was scrapped in 2021.
108. In 2010 he bought a bungalow at 23 Gorway Road, but could not afford at that stage to do anything with it. In around 2015 plans were prepared to extend it and he ended up knocking most of it down. He used Blue Bricks Construction Limited ("Blue Bricks") to rebuild the House at a cost of £350,000 which was funded from personal money, sale of his previous house and he borrowed around £90,000 - £100,000 from George, Jan and Harvey. He no longer has any documents from Blue Bricks. He denies using any of the Company's money for the construction of the House and that he ever told anyone that he had used Company money or that he would repay it.
109. The Company sells to middlemen who sell Boxes to the end users. Pack King was set to sell Boxes to end users. It was owned by the Brothers in equal shares and purchased its Boxes from the Company. George was the director but key decisions were made by Jitha and then Mantir. The idea was that the children of the Brothers would run Pack King, in due course. Sukh, Harvey's son dealt with sales, Pav, Mantir's son dealt with operations and Mani, Jitha's son dealt with costings (subject to supervision from Jitha and then Mantir).
110. Pack King did not make money and at one point owed the Company £1.4m. About £500,000 was reclassified as a loan, but Pack King could not afford the loan repayments and therefore it was reclassified again, as a trade debt. Mantir offered to run Pack King and went in and started culling the business. Pack King sold Boxes through eBay, Amazon and through its own website, Packaging Now. Mani told him that Mantir had decided to stop doing e-business to save money. Pack King's biggest customers

amounting to 40% of its business said they would leave. Mantir prepared a plan which showed that Pack King would lose £180,000 in the first year of the plan. Jitha proposed to shut Pack King down, transfer its assets to the Company and have the Company collect its debts. All the Brothers, except Mantir, agreed to Jitha's plan.

111. Jan emailed the staff on 22 June 2020 announcing a merger between Pack King and the Company. On 31 July 2020 the assets of Pack King were transferred to the Company, in return for a reduction in the debt that Pack King owed to the Company. On 13 August 2020 a board meeting approved the acquisition of the assets of Pack King by the Company, apart from the Packaging Now website and Pack King's stock, which the board agreed should be sold to PCPC, a company owned by Mani. Mantir had left £90,000 of Pack King's stock on the floor when he closed it down and said that it should be "left to rot". The agreement with PCPC provided for it to pay £75,000 for the stock and £5,000 for the Packaging Now website.
112. KTS supplied labour to the Company. Harvey was responsible for production in the factory. Mantir introduced Tarsem of KTS to Harvey. KTS supplied invoices for the external labour. Jitha did not check the invoices or enter details of them on Sage. Sometimes Jitha went to the bank to get cash for KTS either on his own or with Jan or Mantir. The auditors have not raised any issues about KTS and the Company has been subject to one or two HMRC VAT inspections which raised no issues. The Company stopped using KTS in 2018, when it recruited all its own employees.
113. 3 - 4 years ago Mantir started throwing his weight about. Mantir is a black belt in karate and when he does not get his own way, he resorts to violence. In 2010 and 2011 Mantir attacked Jan, Jitha did not witness either attack but he was called, after the 2011 attack and saw Jan putting his turban back on. In September 2019, shortly after the new corrugator was purchased, at a time when the Company was £13m in debt, Mantir came to see him and demanded that the Company buy him a Rolls-Royce. In October 2019 Mantir was asking people to process orders and quotes in timescales and at prices that could not be met. Mantir kept coming to Jitha when he had a problem, Jitha could not keep on doing Mantir's job for him. Jitha asked why Mantir was not in charge and why their father had not put Mantir in charge, Mantir did not like that and said he would come to Jitha's house and kill him and bury him 6 feet under in his front yard, he then started to punch and kick Jitha. George tried to stop Mantir and hurt two of his fingers in the process.
114. Prior to 2020, Mantir sometimes requested information verbally and was provided with the figures he wanted. Following a board meeting on 18 January 2020, Mantir requested information about dividends and other financial information and documents going back over six years, while alleging that Jitha had used the Company's money to build the House. The size of the request was ridiculous. On 29 January 2020 the Respondents signed a letter addressed to Mantir, saying that they would provide Mantir with documents and information for the last two years only and on the basis that all questions would be resolved by 28 February 2020, failing which the Respondents would

consider removing Mantir as a director. Jitha say he thought the threat might bring an end to Mantir's behaviour which he saw as disruptive and unnecessary. Mantir withdrew his request on 6 February 2020.

115. Financial information has always been seen and discussed by all the Brothers, in monthly management meetings and when the accounts are finalised. Accountants and auditors were seen by Mantir when they visited CBS House, because his desk is at the front of the office. On some occasions Mantir went to the bank and met with the relationship manager, Ian Hollingsworth. Mantir also signed off the accounts as director.
116. He doesn't encourage directors to ask Mr Josen questions as Mr Josen is very busy. In March 2020 Jitha was taken seriously ill with Covid, a lot of staff got Covid and the factory was shut for two weeks. At a board meeting on 11 May 2020 he asked the directors to vote on whether he should remain as Managing Director, all except Mantir voted in favour. Mantir was disruptive at board meetings, making accusations of directors stealing from the Company. Mantir continued with his requests for information even though Jitha had asked him to put them to one side during Covid. George and Harvey wanted Mantir out, originally he wanted Mantir to stay, but eventually he decided that enough was enough. He contacted Guy Morgan of Crowe and on 29 May 2020 Mr Morgan sent a text message to confirm what needed to be done, if Mantir was to be removed as a director. On 18 June 2020 a meeting was called to be held on 14 July 2020 to consider a resolution to remove Mantir.
117. Between 15 June 2020 and 22 June 2020, confidential Pack King information was sent by Pav to his personal email address and on 20 July 2020, Mantir accidentally sent to Mani's email address a list of customer spend with Pack King in the period January – March 2018, he believes that Mantir intended to send the email to his home email address and accidentally sent it to Mani. In June 2020, Pav started trading Pure Packaging Limited and in October 2020 Pav and Mantir removed product samples from the Company, which he believes were taken so that Pure Packaging could provide quotes to potential customers. Since June 2020 some smaller clients who no longer deal with the Company, have told him that Mantir had suggested that they should buy from Pav.
118. As to excluding Mantir from the management of the Company:
- (a) whilst Mantir was not included in a photograph taken by an on line publisher, this was not deliberate, at the time the photograph was taken Mantir was off work with Covid;
 - (b) he did recruit Paul Fabri as a sales manager. Mantir had shown, at Pack King, that he could not build a sales team. He asked Mantir to find someone to act as a sales manager but Mantir came back with nothing. The recruitment of a new sales manager was discussed at a board meeting on 11 May 2020 and at previous board meetings, when Mantir expressed no concerns; and
 - (c) he is not aware of any sales accounts being removed from Mantir.

119. If Mantir has not signed all of the accounts which appear to bear his signature, then he does not know who has signed them. Mantir has never questioned the whereabouts of the accounts that he says he did not sign.

Jitha's witness statement dated 14 May 2024

120. As to the Gorway Rd Issue:

- (a) Mantir's surveyor, Surinder Buray ("Mr Buray") concluded, on the balance of probabilities, that some of the material used to construct the House had been invoiced to and paid by the Company. The total value of those invoices is £18,942.53, including VAT.
- (b) when Mantir applied for permission for Mr Buray to produce a report, other invoices addressed to the Company were in the application bundle. Together with other employees of the Company and Derek Lamb ("Mr Lamb") (an insurance broker) he has reviewed the remaining invoices in the bundle to see what they were for. He exhibits a letter from Mr Lamb with a schedule containing Mr Lamb's comments and Jitha's comments upon those invoices. When going through the exercise he noticed two other invoices where he and Mr Lamb could not be sure that the items had been purchased for the Company. These were: (i) an invoice from JT Matthews Roofing; and (ii) an invoice from Cambabest, these invoices total £4,424.95 including VAT. His personal credit card payments show he made a payment on his credit card to JT Matthews Roofing which is why he thinks that the invoice from JT Matthews Roofing, addressed to the Company, may have related to the House. Other than that he does not consider that any other invoice forming part of the application bundle could relate to items used in building the House;
- (c) Mr Southall (Mantir's forensic accountant) has suggested that some suppliers were only used when the House was being built. Mr Southall refers to JK Building Supplies, but they have been a supplier of the Company, since 2003. Jitha exhibits invoices from JK Building Supplies, addressed to the Company, dated prior to 2015;
- (d) Mr Donaldson (the Respondents' forensic accountant) produces a schedule, at Appendix 2 to his report. Mr Donaldson says that the nature of the costs in the Company's nominal code 7830 for 2015 and 2016 means that he cannot conclude that no costs incurred in the construction of the House were included in that ledger. Mr Donaldson explains however that a lot of building work was being undertaken for the Company during those years, including a canopy extension at CBS House, a new loading bay and additional units were also being built at Kelvin Way, which were used by the Company;
- (e) Mr Donaldson has looked at the average spending of the Company debited to nominal code 7830 before and after 2015/16, when the House was built and considers that the average spend in 2015 and 2016 was £45,688 excluding VAT, above that average. Whilst that is Mr Donaldson's worst case position and is not the amount of the Company's money which Jitha believes was spent on the House, Jitha has created a directors loan account for £54,826 (£45,688 plus VAT) which will be paid once the judge gives judgment (or such lower amount as the court decides

represents materials paid for by the Company, but used in the construction of the House); and

- (f) he produces his bank statements for the build period and refers to two Excel spreadsheet created with the help of an accountant from information contained in those bank statements which are exhibited to his statement. He says that those spreadsheets show:
- (i) the first spreadsheet - all deposits into his Halifax account between 2014 and 2020, which includes receipts into the account from two remortgages of Gorway Rd and £25,000 transferred from his savings account;
 - (ii) the second spreadsheet shows that: - large amounts of cash were taken out of the account which he says he paid to Blue Bricks; - he repaid his son Mani at the rate of £800 per month (a total of £64,000 which is the amount that he says Mani paid by using Mani's credit cards to pay costs associated with the building of the House; and - he repaid, in cash, £16,000 to Jan on 5 September 2016, £15,000 to Harvey on 6 September 2016; £16,000 to George on 14 September 2016; and £15,000 to Jan on 5 October 2016 for loans they made to him, which enabled him to fund the construction of the House.

121. As to Mr Southall's valuation of the Company:

- (a) he produces a document showing the financial performance of independent corrugated box companies for the last two years which he says shows that there has been a serious down turn in performance in 2024;
- (b) there has been a national minimum wage increase;
- (c) raw material costs are increasing but no major player in the market has put up their box prices;
- (d) he does not agree with Mr Southall, that the performance of the Company, for 2024 is likely to be the same as that for 2023, he considers it will be worse; and
- (e) the Company can only expand production by acquiring a fully automated conversion plant which would be extremely expensive.

122. He wished to correct what is said in paragraph 79 of his first witness statement about a board meeting on 11 May 2014. In paragraph 79 he said that all of the Brothers except Mantir voted in favour of his remaining as Managing Director, in fact all the Brothers, including Mantir, voted in favour.

Jitha's witness statement dated 30 May 2024

123. In this witness statement, pursuant to the permission that I gave on 24 May 2024, Jitha deals with the KTS Issue.

124. So far as he is concerned, the person who represented KTS was Tarsem Singh, this is not the same person as Harvey talks about in his witness statement, who was Tarman Singh, one of KTS's workers. He has no recollection of meeting Tarsem Singh.

125. He believes that the Company started using KTS because it was short of labour at the time for menial tasks such as cleaning, stripping and counting bundles. Harvey said that he needed more people for the Midland's site. Mantir said he knew someone who could help and he told Mantir to "crack on" with it. Mantir introduced KTS.
126. Harvey decided how much additional labour was required, he did not give Jitha the names of the people to Jitha. The KTS invoices show how many temporary workers were needed, 10 most weeks at first, but then it increased to 15.
127. Jitha did see the KTS invoices, as he approved supplier payment runs, he asked Harvey if all the labour on the invoice was supplied and when he said yes, he approved the invoice for payment.
128. In the early days KTS was paid by cheque, later Mantir told them that Tarsem wanted cash, so he could pay the KTS workers immediately.
129. Payment to KTS was handled by Mantir. Jan and Jitha signed the cheques and completed the cheque stubs to show who the cash was paid to (KTS). Jan only collected the cash on a few occasions from the bank, Mantir would often collect the cash when Jitha was not around. Sometimes they would go to the bank together so that the car could be held on double yellow lines outside the bank whilst the cash was collected. If Jitha collected the cash he would give it to Mantir and Mantir would give the cash to Tarsem or someone else from KTS, on occasions Harvey may have given the cash to KTS.
130. The company has 675 active suppliers and they trust them. It never occurred to them to check the VAT number on the KTS invoices.
131. He has created a spreadsheet to show the Company's turnover of staff. Between 2013 and 2018 the Company's wages, as a percentage of turnover, varied between 10 and 14%. He has looked at average wages as a percentages of the turnover of competitors and notes that: (a) WE Roberts Limited is 22 – 27%; (b) CePac Limited is 18 – 21%; and (c) Ribble Packaging Corp is 19 – 23%. Even after taking into account what was paid to KTS, the Company had a lower percentage of labour costs to turnover than these competitors.

Jitha - honesty and credibility as a witness

132. Jitha was what I would describe as combative in answering questions at least at times. On some occasions he asked where a particular question was going, rather than simply answering the question. He normally did this, in my view, when he was having difficulty answering the question (Lewison J in **Painter v Hutchinson** identifies evasive and argumentative answers as an indication of unreliable factual evidence) . On occasions he would comment on the background to a question outlined by Mr Khangure, before the question was asked (although some of Mr Khangure's questions

had long pre-ambls to the question, which gave Jitha the opportunity to comment, before the question was asked).

133. The Respondents disclosed a document marked “special notice” dated 24 December 2015 which gives notice of a meeting on 1 February 2016 to consider the removal of Mantir as a director of the Company, because of “incompatibility with other directors/members”. There is space on the notice for it to be signed and underneath that space appears Jitha’s name. In disclosing that document, the Respondents’ solicitors said that it was prepared by A H Bhagi and Co (the then auditors of the Company). Jitha claimed to know nothing about the document and said that he did not instruct Mr Bhagi to prepare it or discuss it with him. Notwithstanding that it is common ground that the notice was never served on Mantir, I consider it implausible that Jitha did not know about it. Jitha accepted that he was the principal contact at the Company at the time for Mr Bhagi and the Notice has clearly been prepared for Jitha to sign.

134. In paragraph 72 of his first witness statement, Jitha said that the Respondents had replied to Mantir’s requests for 6 years of information and documents on 29/1/20 to confirm that he could inspect 2 years only on the basis that all his questions would be resolved by 28/2/20 (the letter actually says 29/2/20). He said that he felt that, by limiting the documents to 2 years it would cause less disruption to the business and that the threat would bring an end to Mantir’s behaviour and endless requests. In cross examination Jitha was asked about this paragraph, he said that the proposal was that Mantir should receive the information and documents he had asked for, 2 years at a time. It was pointed out to him, not only that paragraph 72 of his witness statement said that Mantir would only receive 2 years of documents/information but that this was what the letter itself said. Jitha accepted that the letter gave that impression. In my judgment, in suggesting that the intention was to offer Mantir the 6 years of documents/information that he was asking for, 2 years at a time, Jitha was simply following what Harvey says, in paragraph 13 of his witness statement (with which I deal below). Given the clear wording of paragraph 72 of Jitha’s witness statement and the letter of 29/1/20, I do not accept that Jitha really intended that the letter should or thought that the letter did offer Mantir all of the 6 years of information and documents that he had asked for, 2 years at a time.

135. Whilst, in considering the honesty and credibility of Jitha at this point I will only refer to this one instance when I do not consider that Jitha gave honest evidence. When, in due course, I come to deal with the issues I will say that Jitha gave a considerable amount of dishonest evidence in respect of the use of the Company’s funds to construct the House.

JAN

Jan’s witness statement dated 30 August 2022

136. In the early days the Brothers would sit around a table every week, normally on a Saturday to make business decisions. Mantir stopped coming on a Saturday because he wanted to go biking and the meeting was therefore switched to a weekday. At the meeting they would discuss the previous month's financial numbers which were presented initially by Jitha and later by Mr Josen. The information was shown on screen. Mantir never asked questions, he was not interested in anything except how much money he would get.
137. In 2003 all the Brothers except Mantir resigned on the advice of Mr Bhagi. He can't remember the exact reason, he thinks it was something to do with tax.
138. The old corrugator dated back to the 1960s and was falling apart, there were a lot of breakdowns and quality issues. All the Brothers agreed that they would need to buy a new corrugator. They tried to sell the old corrugator but could not do so. There was interest from India but nothing came of it, they wanted the Company to dismantle the old corrugator, transport it to India and install it there. The old corrugator was put into storage.
139. He has never got on with Mantir. There was a fallout between their families over the attitude of Mantir's daughter and subsequently, in 2012/13, he sacked Mantir's son, Pav. He believes that there was an altercation between him and Mantir in 2010, but he cannot recall the details. In October 2011 however he does recall that Mantir walked behind him and hit him knocking his turban off. He then stayed away from Mantir. The situation with Mantir made him become depressed and he started taking tablets and wanted to leave the Company, but was persuaded by the Respondents not to do so.
140. Over the last couple of years Mantir has made numerous requests for financial information and documents. However Mantir had access to everything that the other Brothers had access to. To Mantir, his requests are just a game. Mantir asked for 6 years financial information and we offered him two years. It would have taken far too long to produce the information that Mantir asked for. Mantir withdrew his request.
141. In March 2020 Jitha got Covid and later Jan got it, he was off work for 3 - 4 weeks, there was no way that the documents and information that Mantir was asking for could be produced at that time. When Mantir was given answers he simply wanted different ones. All the Respondents agreed that Mantir should be removed as a director and they agreed to call a meeting for that purpose, to take place on 14 July 2020.
142. Pack King was set up because merchants were dictating to the Company and so it seemed a good idea to set up a merchant business. Mani/Sukh/Pav were brought in to the run Pack King, Jan disagreed with Pav being part of Pack King but the majority overruled him. Pack King owed the Company around £1.3m, at one point. Mantir went in to run Pack King and closed down the Packaging Now website without discussion with any of the Respondents. There were two plans as to what should happen to Pack King: (a) Mantir presented a plan which would have led to Pack King losing £600,000 a year

whilst he attempted to turn it round; and (b) Jitha proposed that Pack King should become part of the Company. The Respondents decided to support Jitha's plan. The Respondents agreed that the Packaging Now website and Pack King's stock should be sold to PCPC (£5,000 for the website and £75,000 for the stock). This was a good price as Mantir had said he was going to let the stock rot and no one else was interested.

143. All the Brothers get paid the same salary and dividends. Jan does not believe that Jitha took any of the Company's money to pay to construct the House. Jitha certainly didn't say that he would repay any money to the Company. Jitha borrowed money from Jan, George and Harvey to construct the House.

Jan's witness statement dated 30 May 2024

144. In around 2008 or 2010, we were looking for temporary staff for the Company. The issue was discussed between the Brothers, which led to Mantir saying that he knew someone at a staffing company.

145. Jan does not know what staff KTS supplied or what number of staff were needed, as labour and staffing issues were not something that he got involved in. He knows that KTS staff performed basic functions only. Jan and Jitha would sign cheques and he recall signing cheques which were payable to KTS. He does not recall seeing any KTS invoices, but he knows that it was the same amount each month.

146. Jan has not been involved in any discussions with KTS about them wanting cash payments. Jitha and Mantir told Jan, Harvey and George about the change to cash. He thinks it was because KTS wanted to pay their staff without waiting for a CBS cheque to clear. Making the cheques payable to cash made no difference.

147. Usually Mantir or Jitha would collect the cash from the bank, Mantir would collect it if Jitha was not around. Jan collected the cash on maybe a handful of occasions, when he collected the cash he would hand it to Mantir

148. Jan does not know why Mantir is raising issues about KTS now, when he was involved in the dealings with KTS, he knew that cash was taken out to pay them, because he was there.

Jan - honesty and credibility as a witness

149. Jan accepted, right at the start of his cross examination and says at many points in his witness statement that he has not got on with Mantir for many years. Jan made it clear that, if he had had his way, Mantir would have been removed as a director and employee of the Company a long time ago. Jan says that he was pressurised by the Respondents, and in particular Jitha to continue to work with Mantir. Jan also said that he does not get on with Mantir's son, Pav who he sacked as an employee of the

Company in 2012/13. He opposed Pav returning to work for Pack King, but Mantir, who wanted Pav to work for Pack King got his way. He says that Mantir would often belittle him and blame him for things that were Mantir's fault and that Mantir has been violent towards him on a number of occasions including in October 2011 when he says that Mantir knocked his turban off. In paragraph 80 of his first witness statement, Jan says: "I can't work with Mantir moving forwards. I wouldn't work with him or his family if my life depended on it...".

150. In my judgment Jan's evidence is tainted by his animosity towards Mantir and Mantir's family. I approach Jan's evidence in light of that animosity which was and is capable of clouding Jan's judgment in respect of Mantir and his evidence of past events concerning Mantir.
151. There were a number of occasions on which, in his cross examination, Jan gave evidence which was inconsistent with the content of his witness statements. I accept that those inconsistencies may well have had more to do with Jan's lack of care, in ensuring that his witness statement was accurate and may have been affected by his animosity towards Mantir, rather than Jan deliberately giving evidence he knew to be untrue. Those inconsistencies however undermine the reliability of Jan's evidence. Two examples are:
- (a) in paragraph 48 of his first witness statement, Jan says that Mantir asserts that sales accounts were taken off him. He says that this is not correct and that the accounts were given to Mantir by the Company historically and were not accounts that Mantir had brought to the Company. Jan accepted that the paragraph was badly worded and that accounts were taken off Mantir and others in the sales department. He said that what he meant to say was that some established accounts were being dealt with by his team without the involvement of any member of the sales team. The customer would simply place an order with his team by email. Those customers were removed as accounts treated as the responsibility of particular members of the sales team, including Mantir; and
 - (b) in paragraph 72 of his first witness statement, Jan says that, during a violent incident between the Brothers which took place on 20 October 2020, Jitha took Mantir's phone off him and "we then chucked the phone around between us." Jan said, in cross examination, that he was not in fact involved in throwing Mantir's phone around, as he was filming the incident. I was shown footage from Jan's mobile phone and it is clear that Jan was filming the incident and was not throwing Mantir's phone around (although he was taunting Mantir).
152. Jan was asked why the Respondents had resigned in 2003, leaving Mantir as the sole director of the Company. It was put to him that, in agreeing that Mantir should be the sole director of the Company, he must have trusted Mantir to be the sole director, which was contrary to his evidence that, at least since working with Mantir, at Shere Leisure in early 1990s he did not trust Mantir's business acumen. Jan accepted that there

was a contradiction in these two positions, eventually he said that he still had his shareholding in the Company, but that was no answer to the apparent contradiction.

153. When Jan was asked why the Respondents resigned as directors in 2003 he said it was in accordance with the auditors advice he could not remember the reason (his witness statement says he thought it was something to do with tax). He also could not recall when he had been reappointed as a director or why he was reappointed as a director when he was (in 2016). Jan said that he thought that Mr Bhagi had recommended that he should be reappointed, but he then said that he wasn't sure if Mr Bhagi was in fact still the auditor of the Company in 2016.
154. Whilst it was Jan's evidence that the resignation and re-appointment of the Respondents, as directors of the Company, was discussed and agreed between the Brothers, I am not satisfied that Jan has any recollection of resigning or being re-appointed as a director of the Company or of why or when this happened. This may have been discussed between Jitha and the auditor at the relevant times but I consider that it was Jitha who decided that the Respondents should resign and subsequently be reappointed as directors and when this should happen. Jan may well have been told, at least about his re-appointment as a director in 2016, because he would need to sign a form consenting to his re-appointment, but I do not think that Jan played any part in deciding that he or the other Respondents should resign and then be re-appointed as directors, or when this should happen
155. In one respect I am satisfied that Jan did not give honest evidence to the court. On or about 26 January 2020 Mantir asked Jitha for information and documents going back for 6 years. In response, in a letter dated 29 January 2020 signed by all four of the Respondents, the Respondents said that Mantir would be provided with 2 years of documents and information and would have until 29 February 2020 to satisfy himself with the information/documents he had received, failing which the Respondents would consider calling a meeting to remove him as a director. Jan was in court when Jitha said, in cross examination, that, notwithstanding what the letter of 29 January appeared to say, the Respondents had in fact agreed between them, that they should give Mantir 2 years of information and documents at a time, until he had the full 6 years of information and documents that he had requested. During his cross examination Jan confirmed that this is what the Respondents had agreed. In my judgment Jan was simply repeating what he heard Jitha say earlier and knew it to be untrue. I find this because: (a) the wording of the letter of 29 January is clear and that is that Mantir would only get 2 years of information and documents and if he did not confirm that that satisfied his requests, then the Respondents would consider convening a meeting to remove him as director; and (b) at paragraph 57 of his first witness statement, Jan says that he has been shown Mantir's request for information and documents going back over 6 years, he remembers the points generally but not in detail and the Respondents offered 2 year's worth of information. He does not say that the Respondents agreed that they would provide the full 6 years of information that Mantir asked for, in batches of 2 years at a time.

GEORGE

George's witness statement dated 30 August 2022

156. Jitha was appointed by the Brothers as managing director, Mantir was supposed to do sales but he was not very good at it, we did not complain as he is the eldest brother. The Brothers discussed everything and did not disagree. On Saturday mornings they met and had breakfast and discussed everything. When Mr Josen came on board he provided financial information about once a month, initially he just took the Brothers through the numbers but from about 5 years ago we got financial numbers in hard copy. Mantir did not seem bothered and did not ask questions about the numbers.
157. We needed a new corrugator in order to survive, the old one was towards the end of its life and costing us money. There were lots of returns from customers, George saw those returns, as transport manager. We tried to sell the old corrugator but there was no interest, except from India, but no firm offer, they wanted us to fit it in India for them. It was stored for 1 – 2 years and bits of it were sold off. George does not know whether rent was paid to Swaran Properties for the unit it was stored in.
158. Mantir has made numerous requests for information, in George's view he is asking for information he already has, he signed the accounts. Mantir could speak to the accounts team or the auditors if he wanted to. If George wanted to know something would ask Mr Josen or Crowe or Mr Bhagi before Crowe.
159. On 18 January 2020, Mantir asked for details of historic dividends and financial information going back 6 years. The Respondents agreed he could have 2 years information. March 2020 was a really difficult time, because of Covid, Jitha got it worse than the rest of us. George has been shown an email from Mantir to Harvey/Jan/Jitha dated 11 June 2020 requesting information and documents, he does not receive or send emails himself and therefore did not receive it, but he thinks he was aware of it, emails just get in the way of him doing his job.
160. George was the sole director of Pack King but he was not involved in running it on a day-to-day basis. Pav/Mani/Sukh ran Pack King, but not very well. Mantir went in to try to turn it round. Pack King owed the Company £1m which was reclassified as a loan. George is not sure if it was ever repaid. Mantir decided to close the website, Packaging Now, without discussing it. All the Brothers, except Mantir, agreed to bring Pack King into the Company and to sell Packaging Now to PCPC for £5,000 and Pack King's remaining stock for £75,000, Mantir had called it dead stock and said that he would leave to rot.
161. George's relationship with Mantir has not been the same since Mantir attacked Jan in 2010. Harvey called him into the office and he found Mantir beating Jan up. In the last couple of years Mantir's behaviour has got worse. Harvey and George wanted Mantir off

the board but Jitha said he did not want to get rid of Mantir, we respected Jitha's decision and carried on.

162. In October 2019 Mantir began punching Jitha, in trying to break it up, George believes he broke his finger. George heard Mantir say that he was going to kill Jitha and bury him in his own back yard.
163. George does not believe that Jitha used the Company's money to build the House. Jitha borrowed money from George and the other Respondents. Jitha never said that he would repay money borrowed, from the Company.
164. On 11 May 2020 there was a board meeting at which Jitha asked for a vote of confidence in him as Managing Director, all except Mantir voted in favour of Jitha remaining as Managing Director.
165. George recalls Jitha telling the Brothers that he had had an approach from someone about purchasing the Company, but nothing came of it.

George - honesty and credibility as a witness

166. I consider George to have been an honest witness. One problem in relying on the evidence of George to assist me is that, in response to questions he was asked in cross-examination, he would often say that he could not remember or did not know the answer. For example:
 - (a) he said he could not remember resigning as a director of the Company in 2003 and he did not know that Mantir was the sole director of the Company for a period of time. He also did not know, when he was reappointed as a director. I am satisfied that those were honest answers. In this respect, I do not consider that this was necessarily an issue with George's memory, but rather, I am not satisfied that George in fact knew, in 2003 that it had been recorded that he had resigned as a director of the Company or knew, in 2016 that he had been reappointed as a director;
 - (b) he said he could not recall why he, Jitha, Harvey and Jan had signed a letter addressed to Mantir on 29 January 2020, threatening to call a meeting to consider removing Mantir as a director, if Mantir was not satisfied with 2 years of the 6 years of information and documents Mantir had requested. In his witness statement, George suggests that the Respondents had decided to give Mantir 2 years of information because this would satisfy his ego. I am not satisfied that George recalls why he signed the letter, either when he signed his witness statement dated 30 August 2022 or now;
 - (c) as to whose idea it was, to write the reply of 29 January 2020 to Mantir, George said it was probably Harvey's idea. When asked why he thought it was Harvey's idea he said "Harvey is like that"; and
 - (d) in his witness statement George said that he had lent money to Jitha to enable him to build the House, but in cross-examination he said he could not recall when he had lent money to Jitha or when it was repaid. He did say that he thought he would have

given Jitha a cheque for the money that he lent him and that he would have been repaid by Jitha, by cheque (not, in either case cash).

167. George said that he thought that, if a director of the Company asked for financial information he would be given that information but it was clear to me that George has never asked for financial information concerning the Company because George said he did not feel that he needed to ask for financial information and that he never really disagreed with anything that Jitha said or proposed. There was no objectively good reason therefore for George to hold his view that, if a director of the Company asked for financial information they would be given it.
168. It is also clear to me that George would not, in any event have understood much of the financial information that was given to him:
- (a) he was asked about the decline in the Company's profits for the 3 years from 2016. He said he knew about the decline in profits, in his role in transport, because a lot of Boxes were being rejected by customers and returned to the Company. He did not appear to understand there would be any other reason for a fall in profits;
 - (b) George was asked whether he understood what "an impairment" in accounts was, he asked whether it was something to do with wages; and
 - (c) when he was asked about whether the formalities of declaring dividends had been dealt with he said that he left all that to be dealt with by someone else.

HARVEY

Harvey's witness statement dated 30 August 2022

169. The Company was already up and running when he joined, he came in as sales representative, but he was more qualified as an engineer and therefore became production manager. Jitha was the Managing Director, Jitha was the only one who wanted the role.
170. In 2003 he was advised to resign as a director by the auditors, he cannot recall why.
171. The Brothers met on Saturdays, when Mr Josen joined, the Company meetings were moved to a Friday and Mr Josen provided a financial presentation, initially on a projector.
172. He knows that Mantir requested a lot of information in January 2020 and he has been shown a response sent to that request, signed by all the Respondents on 29 January 2020. The Respondents considered Mantir's request for 6 years of financial information and documents. They decided it would be best to provide him with the paperwork in stages, first two years of paperwork and so on. He signed the response of 29 January 2020, in which a deadline was set for Mantir to stop raising questions, failing which, the Respondents threatening to convene a meeting to consider dismissing

Mantir, as a director. He does not recall the discussions, but would not have signed the letter, if he had not agreed to it at the time.

173. At one time (he cannot remember when) basic labourers were leaving without telling them. Mantir and Jitha told Harvey that KTS was their new supplier of labour. He remembers dealing with Tarman Singh who used to bring the labourers in each day and stay while they worked. There could be 10 or 15 people, he used to know how many people he would need for the following day. He kept a list of how many people were needed to come in each day and provided it to Jitha. He remembers that initially KTS were paid by cheque, but then Mantir and Jitha told him that they wanted cash and they all agreed to that.
174. The corrugator is at the heart of everything. There was a lot wrong with the old corrugator which was nearly 40 years old, there was a lot of waste. They wanted to sell the old corrugator and a couple of people came and looked at it. A company from India showed an interest but they wanted Harvey to go to India and teach them how to run it. He had to get the old corrugator out in two weeks but he could not get it out in good condition. It was stored at Kelvin Way, they thought they could sell part of it, but eventually it was scrapped.
175. Pack King was set up to generate work for the Company. Jitha was running Pack King with Sukh, Mani and Pav, but it was too much for Jitha to manage and he asked Mantir to take over, it then went down downhill and Mantir started taking sides with Pav against the other two (Sukh and Mani). He knows that Pack King ran up a £1.3 m debt with the Company. He does not recall any loan agreement, but he is sure that he would have been aware of it at the time. Finances are not his area, he left that to Jitha and Mr Josen. The Brothers discussed bringing Pack King into the Company, over a number of weeks. He does not recall Mantir making any proposal. Mantir said that he would let Pack King's stock rot. There was no one other than Mani to sell the stock and website to, he thought it was a good deal.
176. In the spring/summer of 2020 he became sick of Mantir always arguing. Jitha told him that Mantir had threatened that he was going to bury him. Mantir was so disruptive at every meeting that the Respondents could not work with him any longer. At a board meeting Harvey and George said that they wanted Mantir out.
177. Jitha told the Brothers about a phone call from an interested party, just after the Company got the new corrugator. At the time the Company's figures were negative, it was not a good time to sell.
178. If Jitha had used the Company's money to construct the House, the other Brothers would have known about it. In Harvey's view he did not do so.

The weight to be attached to Harvey's evidence

179. This is not a case where a witness has made a witness statement and then, without good excuse, has failed to turn up to the trial for cross examination. Harvey died in March 2023. Nonetheless the fact that Harvey has not been cross examined on the content of his witness statement means that I can attribute little weight to the evidence contained in Harvey's witness statement, insofar as it is relevant to the issues I need to decide. I will expand on why that is the case in the next paragraph.

180. An example of a point on which Harvey might have been asked questions, in cross examination, is paragraph 13 of his witness statement, in which he says that, in replying to Mantir's January 2020 request for information and documents going back 6 years, the Respondents decided to provide Mantir with the information/documents that he requested in stages, 2 years at a time. However at the end of that paragraph Harvey says "My memory on this is vague and if I am honest, I don't recall our discussions on this, but I wouldn't have signed [the letter] if I wasn't happy with it and in agreement with it at the time". It is difficult to understand how, on the one hand Harvey can say that the Respondents all agreed that the information/paperwork should be provided to Mantir in 2 year tranches, but on the other hand that he doesn't really recall the discussions. Exactly what Harvey did and did not recall about the discussions and about what was agreed between the Respondents would have been tested in cross examination had Harvey not, unfortunately died before trial. Harvey could also have been asked about his assertion that the Brothers would have known about it, if Jitha had used the Company's money to build the House (in light of the fact that it is now common ground that he did do so). These are just two examples of the ways in which Harvey's evidence, in his witness statement, could have been tested in cross examination and why, in the absence of such cross examination, I am unable to attach much weight to what he says in his witness statement.

MS SMITH

Ms Smith's witness statement dated 24 August 2022

181. Ms Smith is the Human Resources manager employed by the Company. In her witness statement she deals with grievances lodged by Mantir against some of the Respondents and grievances lodged by some of the Respondents against Mantir, in most cases in relation to incidents occurring in 2020/2021 after the Petition was issued. The content of Ms Smith's witness statement is not of direct relevance to any of the issues I need to resolve.

182. During her cross examination, Ms Smith was asked questions about matters relevant to the KTS Issue and about an email that Mantir sent to her asking her for information regarding one of Mantir's nephew's being dismissed by the Company. Those matters are relevant to issues I need to resolve and I will deal with Ms Smith's evidence on these points when dealing with the relevant issue.

Ms Smith - honesty and credibility as a witness

183. I found Ms Smith to be an honest witness although she was able to provide very little evidence on matters that are of assistance to me in resolving the issues in this case.

MR MAAN

Mr Maan's witness statement dated 30 August 2022

184. Mr Maan says that he has been employed by the Company for 18 years and that in October 2011 he was present, at CBS House, when Mantir assaulted Jan. He says that Jan was sitting at his desk with his back to Mantir when Mantir came up behind Jan and started punching Jan. He says that he did not see anything that caused Mantir to act in that way and that he and Mani tried to split them up.

Mr Maan - honesty and credibility as a witness

185. I found Mr Maan to be an honest witness and I accept his evidence as to Mantir assaulting Jan, in October 2011. As already noted, having denied assaulting any of the Respondents in his first witness statement, Mantir accepted, at the start of his cross examination, that he had knocked Jan's turban off during an incident in October 2011. Mr Maan (and Jan) suggest that Mantir's assault upon Jan in October 2011 was much more serious than Mantir suggested it was, during his cross examination. Mantir suggested that his arm had accidentally knocked Jan's turban off, however, I prefer the evidence of Jan and Mr Maan on this point because: (a) I have found Mr Maan to be an honest witness; (b) although I have made some adverse comments regarding the reliability of Jan's evidence I found him also generally to be an honest witness; (c) Mantir initially denied assaulting any of the Respondents in his first witness statement, but then, at trial admitted knocking off Jan's turban. In my judgment, Mantir admitted knocking off Jan's turban not because, the incident was playing on his mind and he deciding to admit it, as Mantir suggested during his cross examination, but because Jan's evidence (of Mantir's assault) was supported by the evidence of Mr Maan; and (d) because, in my judgment, it would take a fair amount of force to knock Jan's turban off which it unlikely to be exerted by Mantir's arm accidentally hitting Jan's turban.

MR PRETTY

Mr Pretty's witness statement dated 31 May 2024

186. Mr Pretty has 24 years of experience of working with corrugators. In January 2016 he joined Connect Packaging as operations manager and became group operations manager, employed by the Company, from April 2017.

187. He is familiar with the old corrugator and was involved in looking for a new corrugator and the project to remove the old corrugator and install the new one.

188. He only became involved in day-to-day production at CBS House after Harvey died in March 2023.
189. He believes that, from his experience, he knows what the minimum number of staff required to operate the machinery, including the old corrugator at CBS House was, prior to its removal. He was asked to say how many staff would be required for two shifts between 2015 and 2018 at CBS House. He provided a schedule of the likely staff requirement to Mr Josen. He was later told that there was only one shift at CBS House in 2018.
190. He has prepared a new spreadsheet which he exhibits to his witness statement reflecting the current staff levels needed at CBS House for one shift. Whilst production is now more efficient with the new corrugator, the same number of staff are required but fulfilling different roles, with a greater need for permanent roles.
191. He was not personally involved in anything relating to KTS.

Mr Pretty - honesty and credibility as a witness

192. I consider that Mr Pretty was an honest witness. I accept that he believes that the schedules that he produced of the number of people required to run the machines at CBS House, before and after the new corrugator was acquired are accurate based on his experience (although not based on his personal knowledge of the number of people actually employed in operating the machinery, before the new corrugator was installed).
193. It was Mr Pretty's evidence that, prior to his becoming involved with the Company's business, very few records were kept compared with companies at which he had previously worked. He did not believe that the Brothers or anyone else employed by the Company understood what records they should be creating or retaining. I accept that evidence.

MR JOSEN

Mr Josen's witness statement dated 16 August 2022

194. He originally joined the Company in 2003 but left to work in London in November 2006, returning to the Company as finance manager in 2011. He set up his own business in 2020 and now has the role of financial controller of the Company, employed by the Company on a self-employed basis.
195. Initially there were informal monthly management meetings on a Saturday which then subsequently moved to a weekday. The directors discussed their plans for the Company at those meetings. He produced monthly accounts. Up to the last few years he only sent the monthly accounts to Jitha, thereafter he has emailed them to the other directors. He went through the figures with the directors at the monthly meetings. If

areas needed improving either he or Jitha would raise it. No other directors asked him questions about the numbers. The Brothers appeared to him to leave Jitha to make all the business decisions

196. In the last two years the meetings have been on a Friday at 4 pm they have become pointless and disruptive as a result of the conflict between Mantir and the others.
197. Mantir has full knowledge of the company's relationship with KTS, he is pretty sure that Mantir introduced the Company to KTS and Mantir went to the bank to cash cheques to pay KTS. KTS was set up correctly on Sage, as KT Suppliers Limited, but then the Company got invoices referring to KT Supplies and not KT Suppliers. KTS were paid by a mixture of cash and cheques.
198. It is not feasible for Jitha to have used the Company's money to build the House. You can't hide such large sums from the purchase ledger team. Costs like this would have been glaringly obvious, we have controls in place to prevent it. If an invoice had come in referring to work on the House, it would have been flagged up.
199. To avoid a large write-off of the Pack King debt he reclassified part of the trade debt as a loan to be paid back monthly. This was explained to Mantir in an email dated 28 May 2020. Pack King could not pay the monthly payments of £5,000 and so he brought it back in as an aged debt. On 31 July 2021 the Company purchased Pack King's assets in return for a reduction in the debt owed by Pack King to the Company. PCPC purchased the stock and website from Pack King. He did not value the website but was involved in valuing the stock, he went through the Sage stock report, which Mantir said was accurate.
200. Jan and Mantir often argued, Mantir turns violent if things do not go his way. In 2006/2007 Mantir jumped over a four tiered desk and karate kicked Jan. Predominantly Mantir starts things, he likes to argue, if he loses the argument he bullies and intimidates people. Mr Josen does not feel that he can work with Mantir because Mantir has degraded him in emails, calling him useless, a liar and untrustworthy. Mantir has abused Mr Josen verbally in front of everyone.
201. In the last couple of years Mantir has asked numerous questions and made requests for documents. Previously he was never bothered. Mantir's future daughter-in-law worked in the accounts department of the Company in 2013/14, Mantir could have asked her questions in those years. Mantir also had access to the auditors.
202. At the end of April 2020 Jitha told him not to provide financial information to Mantir or any other directors without Jitha's authorisation. He thinks Jitha did this to protect him from being bombarded by Mantir with requests.

203. Mantir says that he did not sign the Company's accounts for the years 2003, 2007 and 2009. He has seen Mantir do different variations of his signature, some squiggly and some not.

Mr Josen's witness statement dated 31 May 2024

204. Mr Donaldson (the Respondent's forensic accountant) has misunderstood Mr Pretty's schedule insofar as it sets out the number of people employed at the Midlands site. The number of staff in 2018 includes 17 people based in Manchester. The correct number for the Midlands site was 100 (and if the 15 workers supplied by KTS is added then 115).

205. The accounts team appear to have made an error in setting up the Sage account in the name KT Suppliers Limited instead of the correct name which is KTS Suppliers Limited. He was not working for the Company when KTS originally became a supplier to the Company. A lot of his knowledge about KTS comes from Sage, but he exhibits to his witness statement emails showing that there was internal email correspondence about KTS:

- (a) an email in 2016 from Mr Josen to Balinder Gill ("Bally"), a member of his team confirming that Mr Josen would chase KTS for invoices. He says he would have chased Mantir or Harvey to get the invoices;
- (b) a 2017 email from Mr Josen to Jitha, about the supplier payment run, where he refers to KTS as being one of the suppliers to be included in that run; and
- (c) an email from Mr Josen to Sharon in the accounts team, dated 21 August 2014, in which he says that, with respect to KTS "... to make sure we match the labour within the month we can accrue for the entire month i.e. the three days remaining in July." He regularly made an accrual for KTS labour costs.

206. He did not deal day-to-day with entering supplier invoices onto Sage, but on occasions he would help out by doing so. He did create a list of suppliers to be paid each week.

207. He does not know how KTS was introduced to the Company as he was not working full-time for the Company at that time but: (a) he recalls Bally talking about getting KTS invoices from Mantir; (b) Mantir was the one who paid KTS; and (c) it was common knowledge that KTS were the Company's supplier of labour. He finds it strange that Mantir says that he does not know where the money has gone, given that he understands that Mantir was the one who paid KTS and because Mantir's daughter-in-law was responsible for checking KTS invoices and inputting them onto Sage.

208. He does not know how KTS invoices arrived at CBS House.

209. KTS is the only supplier that he recalls being paid in cash on a regular basis. Sometimes accounts staff would not put supplier invoices on Sage until a number of

days or even weeks after they arrived. If a payment was made before the invoice arrived it would be marked as a payment on account.

210. All KTS invoices dated January/February 2018 were stamped, with a date stamp, 29 January 2018, he does not why, it could be an error, or that KTS sent a batch of invoices together, some in advance.
211. He has noticed that, in 2015, some cheques (payable to cash as usual) were for £5,000, even though the invoices were the £3,600. Over time the difference will have been reconciled, which is confirmed by the fact that invoices and payments for the period 2013 – 2018, both total £1,231,200.
212. The Company's auditors (AH Bhagi & Co, at the time) raised, in 2017, whether KTS labourers should be treated as employees of the Company. It was looked at and there were no concerns or issues raised.
213. They never checked the VAT numbers on invoices.
214. Crowe informed Mr Josen and Jitha that HMRC typically look back for only 4 years in reopening VAT returns. Only the VAT return for the quarter ending 30 September 2018 fell within this four year period, when the issue with KTS having put an invalid VAT number on its invoices first came to light and only one KTS invoice, dated 18 August 2018, was included in that VAT return. The invoice was for £5,000 with VAT of £1,000 which is why the liability of the Company for failing to notice that KTS did not have a valid VAT registration number would, in accordance with Crowe's advice, be limited to £1,000.

Mr Josen - honesty and credibility as a witness

215. Particularly in his first witness statement, but also during the course of his cross examination, Mr Josen, in my judgment gave evidence to support the Respondents' position on various issues which was expressed as fact, when Mr Josen did not know it was fact or as opinion, when Mr Josen could not reasonably have held the opinion. Mr Josen was caught out when matters he presented as facts and confidently expressed as opinions turned out to be wrong. On occasions also, in my judgment, Mr Josen gave evidence that he knew to be untrue.
216. In his first witness statement Mr Josen made a number of statements to the effect that it would not be possible for the Company's money to have been spent on the construction of the House, because his accounts department would have picked this up, had it occurred. This evidence supported Jitha's case that he had not used any of the Company's money to pay for the construction of the House:

(a) at paragraph 60 he said that "it is simply not feasible for this [Jitha using the Company's money for building work on the House at 23 Gordon Rd] to happen";

- (b) at paragraph 62 “if he had taken the money and there is anything on an invoice that came into [the Company] relating to building work on the House, it would have been flagged up...” and
- (c) at paragraph 63 “you can’t hide a large amount of sums from the purchase ledger team. They would have flagged it up as per the training I have given them..”.

217. Ultimately, during his cross-examination, Mr Josen had to accept that the confidence he had expressed in paragraph 60, 62 and 63 of his first witness statement was wholly misplaced, given that it is now common ground that materials were purchased by the Company and used in the construction of the House and at least one of the invoices showed 23 Gorway Rd as the delivery address for the materials. Mr Josen went on to accept that he would authorise the payment of low cost regular invoices but otherwise Jitha and occasionally Harvey authorised payments and if Jitha authorised the payment of an invoice then it would be paid without any questions being asked. That hardly amounted to the foolproof system which would prevent Jitha from causing the Company to pay for the build costs of the House, which Mr Josen’s first witness statement suggested existed at the Company, at the relevant time.

218. In paragraph 59 of his first witness statement, Mr Josen says, about workers supplied by KTS: “There is an invoice payment and I have seen the workers”. Prior to his cross-examination, Mr Josen said that he wished to insert the word “not” between the word “have” and the word “seen” in this sentence. That is, Mr Josen wanted to change his evidence from evidence that he had seen temporary workers provided by KTS, to say that he had not seen them. I do not accept that this was simply a typographical error in Mr Josen’s witness statement. Paragraph 59 provides reasons why the court should conclude that: (a) KTS provided temporary workers to the Company; and (b) that Mantir would have been aware of this. Mr Josen went on to say, during his cross examination, that he very rarely went onto the factory floor which is where he understood the KTS workers were employed. I am satisfied that, when he made his first witness statement in August 2022, Mr Josen would have known that he could not honestly say that he had seen any of the KTS workers at CBS House and I conclude that it was dishonest of him to say that he had, in a paragraph which was aimed at supporting the conclusion that KTS supplied temporary workers to the Company and that Mantir was aware of this.

219. In paragraph 81 of his first witness statement, Mr Josen says: “.....I think this was around 2006/2007. I have seen Mantir come running and jump over a 4 tier desk and karate kick Jan.”. No one else, including Jan, refers to an occasion on which Mantir jumped over a 4 tier desk or any desk and karate kicked Jan. Mr Josen was cross examined on the alleged incident and it was put to Mr Josen that it was inherently implausible that Mantir could have launched himself over a 4 tier desk and kicked Jan. Whilst Mr Josen maintained, in cross examination, that the incident had occurred, the lack of any corroboration, from Jan or anyone else for his evidence and the inherent improbability of Mantir achieving what Mr Josen asserts that he achieved, leads me to conclude that it did not occur.

220. In paragraph 58 of his first witness statement, Mr Josen says that “I think the auditor..... were concerned if the workers should be treated as employees on the books or could they be treated as agency staff. It has been looked at and there was no issue or concerns raised”. In cross-examination, Mr Josen said that he believes that Mr Bhagi discussed the issue with the directors but he does not know what was said. None of the directors have referred to speaking to Mr Bhagi about this issue and it was clear from Mr Josen’s answers in cross-examination that, whilst he may have a vague recollection that Mr Bhagi was going to discuss the issue with the directors, he has no idea what was said, or indeed whether anything was said at all and if so what and to whom. He could not therefore honestly say that “It has been looked at and there were no issues”
221. In his second witness statement, at paragraph 39, Mr Josen says that: “Crowe informed me that HMRC typically look back 4 years to deal with amendments on VAT returns ...” He concluded, based upon this, that the maximum liability of the Company as a result of the KTS Issue is £1,000. However, in cross examination, Mr Josen was taken to the email correspondence passing between him and Guy Morgan of Crowe which he exhibits to his second witness statement and which provides no details to Mr Morgan of the KTS Issue. Mr Josen said that “we” had a conversation with Crowe about it, but when he was asked for details of what was said, he said he could not recall.
222. During his cross-examination, Mr Josen said, about the converting of part of the Pack King trade debt to a loan, that the bank knew that the ledger balance was reduced by converting part of the trade debt to a loan. When he was asked how the bank knew, at first he said that he would have told the bank, then that either he or Jitha would have told the bank and then that he did not recall who had told the bank.
223. Lewison J as he then was, in **Painter v Hutchinson** (see paragraph 63 above) identified new evidence in cross examination and self-contradiction in cross examination as instances of unsatisfactory evidence given by a witness that at least may lead a judge to look for corroboration of a witnesses evidence before accepting it. Here Mr Josen, in my judgment was prepared to support the Respondents case by: (a) presenting, in his witness statement, and in cross examination, as facts things he did not know to be facts: (b) in at least two cases (recalling seeing KTS workers at CBS House and Mantir jumping over a table and karate kicking Jan) made assertions that he knew to be untrue; and (c) expressed opinions which I am satisfied he did not in fact hold. Mr Josen’s willingness to support the Respondents’ case in these ways and then backtracking on what he says in his witness statement and initially in his cross examination undermines the credibility and reliability of Mr Josen’s evidence.

EXPERT EVIDENCE

224. Reports were prepared by expert witnesses in three disciplines:

- (a) handwriting experts who provided evidence as to whether Mantir had signed the Company's accounts for the financial years ending 31 December 2003, 2007 and 2016, as well as the accounts of Connect Packaging for the financial year ending 31 December 2016. Mantir instructed Elisabeth Briggs ("Ms Briggs") and the Respondents instructed Ellen Radley ("Ms Radley"). By their reports dated 10 May 2021 and 4 October 2022 respectively and by a joint report dated 6 February 2023, Ms Briggs and Ms Radley agreed that the signatures appearing on the four sets of accounts did not bear the normal signature of Mantir. In light of their agreement, neither Ms Briggs, nor Ms Radley were asked to attend the trial for cross examination and the trial proceeded on the basis that Mantir did not sign those accounts;
- (b) surveying - on 29 September 2023 I gave Mantir permission to rely upon the expert evidence of Mr Buray (a Surveyor) as to whether items which the Company paid for had been used in the construction of the House. The items were: (i) 21 internal doors, invoiced by JB Kind Limited to the Company on 7 March 2026, at a price of £3,802.56 (including VAT) ("the Doors"); (b) Double Bull nose paving slabs, invoiced by JK Building Supplies Limited to the Company in invoices dated between April and May 2016 at a total price of £3,067.84 plus VAT ("the Slabs"); and (c) roof tiles, invoiced by Stoneleaf Building Materials Limited to the Company on 5 August 2015 at a price of £10,800 including VAT ("the Roof Tiles"). In a report dated 21 December 2023, Mr Buray concluded that the material supplied pursuant to all of those invoices had been incorporated into the House, or the land surrounding it. That expert evidence has been accepted by the Respondents, who have not sought to rely on their own expert surveyor; and
- (c) forensic accounting expert evidence in relation to certain of the matters said in the Petition to amount to unfairly prejudicial conduct, on the part of the Respondents and as to the valuation of the Company, as to which Mantir initially instructed Mr Plaha and the Respondents instructed Mr Donaldson. Mantir subsequently replaced Mr Plaha with Mr Southall as his forensic accounting expert, but continued to rely upon the reports signed by Mr Plaha. The following reports have been prepared by Mr Plaha, Mr Donaldson and Mr Southall:
 - (i) Mr Plaha a report dated 28 October 2022;
 - (ii) Mr Donaldson a report dated 28 October 2022;
 - (iii) Mr Plaha and Mr Donaldson a joint report dated 22 February 2023;
 - (iv) Mr Southall a report, prepared as a supplemental report to Mr Plaha's report dated 19 April 2024;
 - (v) Mr Donaldson a supplemental report dated 19 April 2024; and
 - (vi) Mr Southall and Mr Donaldson a joint report dated 8 May 2024.

225. So far as the matters pleaded in the Petition, as amounting to unfair prejudice, are concerned, I will summarise what is said about them in each report and joint report of the three forensic accountants. Where issues are agreed between the forensic accountants, I will summarise what they have agreed, I will do so, even where Mantir has chosen not to pursue the issue as, in those cases, the agreement of the forensic accountants, on those issues, explains why Mantir has chosen not to pursue the issue.

226. So far as valuation of the Company (and Mantir's shares in it) is concerned, matters have moved on somewhat from the joint report of Mr Plaha and Mr Donaldson. Mr Southall and Mr Donaldson have both valued the Company as at 29 February 2024 and Mr Southall and Mr Donaldson have agreed upon the basis upon which the Company should be valued and some of elements of the valuation on that basis. I will simply therefore, at this point, summarise the content of the joint report of Mr Southall and Mr Donaldson dated 8 May 2024, on valuation.

227. Finally, in commenting on the evidence of the forensic accountants, at this stage, I will refer to parts of their respective reports and joint reports which are relevant to the reliability and credibility of their expert opinions, even where the opinions of the experts on those particular issues have been subsequently agreed.

MATTERS ALLEGED IN THE PETITION TO AMOUNT TO UNFAIR PREJUDICE

228. The forensic accountants have dealt, in their reports, with the following matters:

- (a) the Corrugator;
- (b) the £1m write off in the accounts of the Company to 31 December 2018;
- (c) dividend payments;
- (d) the fall in the Company's profits 2013 - 2018;
- (e) the Gorway Rd Issue; and
- (f) the KTS Issue.

229. I will summarise, by reference to each of these issues what is said in: (a) Mr Plaha's report dated 28 October 2022; (b) Mr Donaldson's report of 28 October 2022; (c) the joint report of Mr Plaha and Mr Donaldson dated 22 February 2023; (d) Mr Southall's report dated 19 April 2024; (e) Mr Donaldson's report dated 19 April 2024; and (f) Mr Southall and Mr Donaldson's joint report dated 8 May 2024.

The Corrugator

230. As to the Corrugator:

- (a) Mr Plaha 28/10/22 - he could not comment on whether the purchase of a new corrugator was necessary or what cost savings or increase in turnover was achieved as a result of the purchase of a new corrugator. There was no cost to the Company of storing the old machine, because the Company did not pay Swaran Properties any rent. He requested further information.
- (b) Mr Donaldson 28/10/22 - there was only one expression of interest from India for the old corrugator and no firm offer. The old machine was stored for 20 months at no cost to the Company and £50,741 was received for scrap;
- (c) joint report of Mr Plaha and Mr Donaldson 22/2/23 - Mr Plaha said that information he had requested was still outstanding and Mr Donaldson said that there was no evidence of mismanagement; and

- (d) Mr Southall and Mr Donaldson's reports of 19/4/24 and their joint report of 8/5/24 all confirmed that there were no issues in relation to the purchase of the new corrugator or disposal of the old one, from an accounting perspective.

£1m Write off in the Company's Accounts to 31/12/18

231. As to the £1m write off:

- (a) Mr Plaha 28/10/22 - Connect Packaging was acquired for £2,540,000 in the Company's financial year to 31/12/13. In the financial year ending 31 December 2018, an impairment of £1,160,500 appeared in the Company's accounts. The entry does not represent a withdrawal funds and has no impact on the Company's valuation, on a consolidated basis;
- (b) Mr Donaldson 28/10/22 - there is no reason to consider that the write off was not appropriate and he notes that Mantir signed the accounts to 31/12/18; and
- (c) all other reports and joint reports of Mr Plaha/Mr Donaldson and Mr Southall add nothing to Mr Plaha and Mr Donaldson's 28/10/22 reports.

Dividend Payments

232. As to the dividend payments:

- (a) Mr Plaha 28/10/22 - dividend payments appeared to have been paid in equal shares to the Brothers, he requests further information;
- (b) Mr Donaldson 28/10/22 - dividend payments have been paid to the Brothers equally;
- (c) joint report of Mr Plaha and Mr Donaldson 22/2/23 - Mr Plaha had not been provided with the additional information that he had asked for. Mr Donaldson had nothing to add to his report; and
- (d) Mr Southall and Mr Donaldson's reports of 19 April 2024 and their joint report of 8 May 2024 all confirm that they had nothing to add.

Fall in profits 2013 - 2018

233. As to the fall in profits:

- (a) Mr Plaha 28/10/22 - the acquisition of Connect Packaging increased administration expenses and the investment in Connect Packaging was completely written off in the accounts. He requested further information;
- (b) Mr Donaldson 28/10/22 - no evidence of mismanagement;
- (c) joint report of Mr Plaha and Mr Donaldson 22/2/23 - Mr Plaha is awaiting further information and Mr Donaldson considers that there is no evidence of mismanagement;
- (d) Mr Southall 19/4/24 - profits for 2016 were reduced by:

- (i) a £500,000 reduction in turnover and a reduced profit margin (26.1% - 25.4%) reducing gross profit by £310,000; and
- (iii) there was an increase in Administrative expenses, including a £400,000 write off of the investment in Connect Packaging;
- (e) Mr Donaldson 19/4/24 - nothing to add to his previous report; and
- (f) Mr Southall and Mr Donaldson's joint report of 8/5/24 - Mr Southall needed further information to consider the issue fully. He was concerned that the increase in costs may relate to the Company paying for materials used in the construction of the House. Mr Donaldson had seen nothing that he considered amounted to mismanagement.

The Gorway Rd Issue

234. As to the construction of the House:

- (a) Mr Plaha 28/10/22 - administrative expenses increased by £610,485 in 2015/16. He has not been able to identify any expenditure relating to the construction of the House;
- (b) Mr Donaldson 28/10/22 - there have been no Company payments to Blue Brick Construction Limited (the company which Jitha says constructed the House). The expenditure debited to nominal code 78304 in 2015/16 is not inconsistent with the type of expenditure he would expect to see for the Company. Jitha says that in the financial years 2015/16 the Company incurred higher than usual building costs in:
 - (i) building a canopy extension at CBS House;
 - (ii) building a new loading bay at CBS House;
 - (iii) general repairs and maintenance at CBS House; and
 - (iv) additional units were built at Kelvin Way, some of which were used by the Company;
- (c) joint report of Mr Plaha and Mr Donaldson 22/2/23 - Mr Plaha has not been provided with the additional information requested. Mr Donaldson sees no evidence of misappropriation;
- (d) Mr Southall 19/4/24 - the report of Mr Buray identifies that materials invoiced to the Company totalling £15,184.64 have been used in the construction of the House. In addition:
 - (i) three suppliers in 2015 and 2016 were only used in that period, namely Cambabest, JK Building Supplies and Stone Leaf Building Materials;
 - (ii) the use of skips increased in 2015 and 2016;
 - (iii) the Company paid £66,547.77 plus VAT to JK Building Supplies during the construction of the House;
 - (iv) Jitha has avoided paying personal tax and VAT on supplies used in the construction of the House; and
 - (v) the Company has incorrectly reclaimed VAT and paid less corporation tax, as a result of paying for building supplies, used in the construction of the House;

- (e) Mr Donaldson 19/4/24 – he has been told that the expenditure (noted in paragraph 234 (b) (i)- (iv) above) was incurred in 2015 and 16. He is aware that significant work was carried out in 2019 and 2020, in relation to the new corrugator line. He has considered the expenditure in nominal account 7830 over the period 2014 – 2023 and provides a summary of expenditure for this period, showing average expenditure was £63,750.91, over the period. The amount expended in 2015 and 2016 above the average spend of £63,750.91, is £45,688 excluding VAT; and
- (f) Mr Southall and Mr Donaldson's joint report of 8/5/24:
- (i) they agree that:
- Mr Buray is more suitably qualified to address the issue of whether materials purchased by the Company were used in the construction of the House;
 - if Company money had not been spent on construction of the House, then it could have been distributed or provide further funds at the valuation date;
 - Stone Leaf Building Materials and Cambabest were only paid by the Company during the period that the House was being constructed;
 - Model Builders (Birmingham) was paid more than £10,750 (net of VAT) by the Company, during the period when the House was being constructed, with only limited expenditure, in other years; and
 - JK Building Supplies was paid more than £66,500 (net of VAT) by the Company during the period that the House was being constructed with only limited expenditure, in other years;
- (ii) Mr Southall says that:
- building expenditure in 2013 and 2014 was £55,786;
 - building expenditure in 2015 and 2016 was £173,190;
 - over average expenditure for 2015 and 2016 calculated on this basis is £117,404; and
 - assessing the average building costs of the Company for the later years is not appropriate because this includes installing the new corrugator and the significant increase in turnover following its installation; and
- (iii) Mr Donaldson says:
- he assesses over average expenditure for 2015 and 2016 at £45,688;
 - Mr Southall's hypothesis is based on there being no over average genuine expenditure in 2015 and 2016, but he understands that the expenditure referred to in his report (see paragraph 234 (b)) was incurred by the Company in those years which will inflate genuine Company expenditure, in those years.

KTS

235. As to the KTS Issue:

- (a) Mr Plaha 28/10/22 - he has identified 27 payments totalling £162,000 from 29/12/17 - 10/7/20 to KTS, which was dissolved in 2008 and the VAT number quoted on the KTS invoices does not match any VAT reference recognised by HMRC. Mr Plaha asked for further information;

- (b) joint report of Mr Plaha and Mr Donaldson 22/2/23 - the further information requested by Mr Plaha had not been supplied. Mr Donaldson was not instructed to deal with the KTS Issue;
- (c) Mr Southall 19 April 2024 -
- (i) between 28/6/13 and 23/2/18 KTS invoices having a value of £1,123,200, including VAT of £205,200, were received by the Company and paid using cheques that he understands were drawn to cash;
 - (ii) prior to June 2016 invoices for 10 employees were charged at £3,000 plus £600 VAT and from January 2016 invoices for 15 employees were charged at £5,000 plus £1,000 VAT;
 - (iii) given that 10 employees were supplied until January 2016 and thereafter 15 employees, consistently each week, the labour does not appear to have been supplied on a flexible basis;
 - (iv) he has been provided with a spreadsheet referring to staffing level requirements, which appears to show that, between 2015 and 2017, the actual headcount was less than the required headcount and in 2018, 12 more staff were supplied than the spreadsheet shows were required;
 - (v) if KTS's workers wanted to be paid in cash, rather than waiting for cheques to clear, then KTS should have made the arrangements to do this, paying them in cash itself, rather than requiring the Company to pay KTS cash; and
 - (vi) he cannot determine who the cash was paid to;
- (d) Mr Donaldson 19 April 2024:
- (i) KTS Suppliers Limited was incorporated on 25/1/05 and dissolved on 19/12/08. KTS Supplies Limited was incorporated on 12/10/06 and dissolved on 10/3/20;
 - (ii) the VAT number on KTS's invoices is not a valid VAT number;
 - (iii) he is instructed that KTS supplied labour and Mantir is aware of this;
 - (iv) he has been provided with details of required staffing levels prepared by Mr Pretty, this shows that against the staff requirement identified by Mr Pretty, in 2015, 98 staff are required and 98 were employed (88 by the Company and 10 by KTS); in 2016, 118 staff were required, 124 were employed (109 by the Company and 15 by KTS); in 2017, 118 staff were required and 132 employed (117 by the Company and 15 by KTS); and in 2018, 133 staff were required and 121 were employed (111 by the Company and 10 by KTS) based on this he does not consider it unreasonable that KTS labour was used;
 - (v) Crowe have advised that the only VAT return affected by KTS not having quoted a valid VAT number on its invoices is that for the period ending 30/9/18 and he is instructed that that VAT return has been corrected and a £1,000 underpayment of VAT paid to HMRC; and
- (e) Mr Southall and Mr Donaldson's joint report of 8 May 2024 -
- (i) the following points are agreed:
 - the Company has paid invoices that were purportedly raised by a legal entity that was dissolved in 2008;
 - between 2/6/13 and 29/6/18, KTS invoiced the Company for £1,231, 200 (including VAT). This amount was paid and input VAT of £205,200 was reclaimed on these invoices, only £1,000 has been repaid, based on the advice of Crowe;

- they are unable to determine who the cash payments were made to;
- had money not been paid by the Company to KTS, then the cash paid could either have been distributed or would have been additional funds that would have been available at the valuation date;
- it is unusual, but not impossible, to see prolonged periods of consistent temporary flexible staff being used;
- it is less common to see payments being posted in Sage in advance of the actual KTS invoices being posted, rather than the other way round. Mr Southall considers this unusual, Mr Donaldson notes that if "KTS" needed cash to pay wages on a timely basis then there may be a lag between the posting of the cash payment and the invoice ;
- there is an absence of contemporaneous evidence from the period 2014 – 2018 as to the staffing requirements of the Company and the number of staff employed to meet those requirements; and
- it is a matter of evidence as to whether the Company require additional temporary labour at the levels disclosed, in the period covered by KTS invoices;

(ii) Mr Southall makes the following points:

- the labour supplied by KTS was meant to be supplied on a "flexible weekly basis" but it appears to have been insufficient to fulfil the Company's staffing requirement for a 3 year period and in 2018 12 of the 15 personnel provided by KTS were surplus to its staff requirements;
- Mr Southall notes that Mr Donaldson has a different analysis of staff numbers than that provided to Mr Southall. This appears to show that KTS supplied labour which was surplus to requirements in 2016 and 2017 and that the Company had a staff shortage in 2018;
- the fact that both staff requirement analyses show that staff requirements were not achieved in spite of using temporary labour from KTS undermines the credibility of the assertion that the KTS staff were employed on a temporary flexible basis; and

(iii) Mr Donaldson makes the following points:

- it is not unreasonable that KTS labour was used to meet labour requirements. Mr Donaldson considers that Mr Southall is placing undue weight on the accuracy of the evidence provided by Mr Pretty when it is clear that: - Mr Pretty's assessment is retrospective and can only provide approximate staff requirement figures; and the Company's staff numbers are extracted from financial statements and include all staff employed by the Company at all sites, not just CBS House. Consequently Mr Donaldson considers that Mr Pretty's figures are best estimates; and
- Mr Donaldson notes that he had to make adjustments to his figures to restrict staff numbers solely to CBS House as the numbers extracted from the financial statements of the Company include staff at Connect Packaging. Nonetheless Mr Pretty's analysis indicates that there is a difference between Mr Pretty's expected staff requirement and the number of staff employed by the Company and if that difference existed then the shortfall could only be met from temporary labour.

236. In a letter dated 31 May 2024 addressed to the court, Mr Donaldson says that he had now seen the witness statement of Mr Josen dated 31 May 2024 and understood that Mr Pretty's schedule: (a) in error was based upon their being two shifts in 2018, but there was only one, so his estimate of staff required was too high; and (b) the number of staff taken by Mr Donaldson to be employed by the Company included staff employed not only at CBS House, but also at Connect Packaging in Essex. He says that the revised numbers are as follows in 2015, 98 staff were required and 88 were employed (78 by the Company and 10 by KTS); in 2016, 118 staff were required, 107 were employed (92 by the Company and 15 by KTS); in 2017, 118 staff were required and 115 employed (100 by the Company and 15 by KTS); and in 2018. 121 staff were required and 108 were employed (93 by the Company and 10 by KTS). That is there was a shortfall in each year between the number of staff that Mr Pretty thinks were necessary for the production activities at CBS House and the number of staff actually used, employed directly by the Company, and through KTS.

VALAUTION OF THE COMPANY

237. In their joint report dated 8 May 2024 Mr Donaldson and Mr Southall agreed that:

- (a) they would prepare their valuations of the Company as at 29 February 2024;
- (b) the primary basis of calculation of the value of the Company, as at 29 February 2024, should be a capitalised earnings basis, rather than a discounted cash flow ("DCF") basis, with a DCF valuation being a sense/cross check of the capitalised earning valuation;
- (c) in order to calculate the value of the Company on a capitalised earnings basis it was necessary to: (i) calculate the Company's Maintainable EBITDA; (ii) calculate an appropriate EBITDA multiplier; (iii) multiply the Company's Maintainable EBITDA by the EBITDA multiplier to arrive at an Enterprise Value for the Company; and (iv) add to that Enterprise Value, Surplus Assets to arrive at a value for the Company as at 29 February 2024;
- (d) the Maintainable EBITDA of the Company, as at 29 February 2024 was £3.83m; and
- (e) the Company's Surplus Assets as at 29 February 2024 were £3.6m.

238. Mr Southall considers that the appropriate EBITDA multiplier is 6.6 and Mr Donaldson considers the appropriate EBITDA multiplier to be 5.

239. Mr Southall calculates the EBITDA multiple at 6.6 by reference to the historic average multiples of listed companies and transactions which he identifies and which he considers are comparable to the Company. Mr Southall then adjusts the average multiples for both the PLCs and transactions by applying premiums and discounts to reflect the particular circumstances of the Company. Finally Mr Southall considers the published EBITDA multiples from: (a) the BDO PCPI index; and (b) the UK 200 Group index.

240. Mr Donaldson considers an EBITDA multiple at 5 to be reasonable. He considers that both the listed companies and the transactions identified by Mr Southall relate to a broader sector or sectors than the sector in which the Company operates and are therefore not appropriate comparables. Mr Donaldson also says that Mr Southall has failed to take into account a reduction in the values of listed companies taking place after the date of the comparable transactions that Mr Southall has used. Finally (and representing the biggest difference between Mr Donaldson and Mr Southall) Mr Donaldson says that specific challenges are faced by the Company which justifies a significant discount to the average listed and transaction comparables. Mr Donaldson does not produce his own calculation of how he arrives at his EBITDA multiple of 5.
241. As to whether a minority discount should be applied, in calculating the value of Mantir's shares:
- (a) Mr Southall and Mr Donaldson agree that the question of whether a minority discount should be applied at all and, if so the magnitude of that discount is a matter for the court to determine;
 - (b) Mr Southall considers that a minority discount, if appropriate at all, of 20% would be reasonable, reflecting the guidance set out in the ACCA technical fact sheet for dispute situations, which states that a discount of no more than 33% may be appropriate for small, uninfluential minority interests; and
 - (c) Mr Donaldson considers a discount of 50% is reasonable reflecting the guidance set out in the ACCA technical factsheet relating to non-dispute situations.

THE CREDIBILITY AND RELIABILITY OF THE OPINIONS OF THE FORENSIC ACCOUNTANTS

242. In this section of my judgment I will comment generally on the credibility and reliability of the opinions expressed by Mr Plaha, Mr Southall and Mr Donaldson.
243. There is no material difference between the opinions of all three on the first four of the six specific matters raised by Mantir as instances of unfairly prejudicial conduct by the Respondents (see paragraphs 228 – 235 above).
244. The difference between Mr Southall and Mr Donaldson in relation to the use of the Company's funds, in construction of the House (see paragraph 234 above) relates to a difference in the factual instructions that they have received (as to whether the Company incurred higher than normal genuine expenditure in 2015 and 2016 when the House was being constructed) and their different calculations of the Company's average spend on building repairs debited to nominal ledger 7830. Mr Plaha's opinion was expressed before Mr Buray produced his report confirming that at least £18,947.53 of the Company's money has been used in purchasing materials which have been incorporated into the House, and has therefore been overtaken by that event. I will determine whose opinion I prefer, as to the appropriate means of calculating average expenditure on nominal account 7830, when determining the Gorway Rd Issue.

245. There is no material difference between Mr Southall and Mr Donaldson on the KTS Issue, so far as their opinions relate to the facts that can be deduced from the available accounting entries and documents are concerned (see paragraph 235 above).

246. As to the valuations of the Company, there is a very significant difference between the valuations of Mr Plaha and Mr Donaldson. Mr Plaha calculated the Enterprise Value of the Company, calculated on a DCF basis, at £41.313m and on a capitalised earnings basis at £30.545m. Mr Plaha then took the average of those valuations at £35.9m, deducting from that net debt and adding surplus cash to arrive at his final valuation of £34.2m. In contrast Mr Donaldson valued the Company on a DCF basis at £17.25m.

247. Mr Southall and Mr Donaldson have prepared new valuations, as at 29 February 2024. The valuation prepared by Mr Plaha, and the previous valuation of Mr Donaldson and the joint report of Mr Plaha and Mr Donaldson in 2022/23 have, for that reason, largely become redundant. It is nonetheless relevant, in my judgment, to consider whether there are any matters in relation to those reports that are relevant to the credibility and reliability of the opinions, in particular Mr Donaldson, but also Mr Plaha, in so far as Mr Southall may have adopted any part of the approach of Mr Plaha.

Mr Plaha

248. Mr Plaha did not attend trial for cross examination on his report, or his contribution to the joint report of Mr Plaha and Mr Donaldson, because Mantir, in accordance with the permission I gave him on 14 March 2024 changed his forensic accountancy expert from Mr Plaha to Mr Southall. Mr Southall could have been cross examined on the opinions expressed by Mr Plaha, but in the event he was not because: (a) Mr Southall prepared his own valuation of the Company at a different date from Mr Plaha; and (b) in dealing with the six matters relied on by Mantir as unfairly prejudicial conduct by the Respondents which were dealt with by the forensic accountants, four were agreed and the position in relation to the remaining two (the Gorway Rd Issue and the KTS Issue) had moved on considerably since Mr Plaha prepared his report and his joint report with Mr Donaldson, such that those reports are no longer relevant to those matters.

Mr Donaldson

249. Mr Donaldson accepted that in his first report dated 28/10/22 he had made a number of errors, in his valuation of the Company. Those errors were pointed out by Mr Plaha, in their joint report dated 22 February 2023. The errors were as follows:

- (a) errors in calculating working capital;
- (b) the incorrect incorporation of a cash balance;

- (c) Mr Donaldson did not include a small company premium or a firm specific risk discount ; and
- (d) Mr Donaldson had added cash of £3m to his Enterprise Value, but had not deducted debt as at 31/12/21 from his Enterprise Value and the date (31/12/21) for the net debt calculation was not consistent with the valuation date of 23/10/22.

250. The errors in Mr Donaldson's first report are mostly errors in calculation, rather than errors of principle. Mr Donaldson said, in his joint report with Mr Plaha, that he would in his supplemental report address those issues, but the errors show at least a lack of care and attention to detail on the part of Mr Donaldson in preparing his first report. This does not mean that Mr Donaldson's supplemental report and more particularly his contribution to the joint report of Mr Donaldson and Mr Southall dated 8/5/24, as to the value of the Company, as at 29/2/24 is not reliable, but it does mean that there is reason to approach his opinion in those reports with a degree of caution.

251. Of more concern, in respect of Mr Donaldson's opinion as to the value of the Company, as at 29/2/24 is that Mr Donaldson accepted, in the joint report of Mr Donaldson and Mr Southall, that his calculation of the value of the Company, on a DCF basis as at 29/2/24, in his supplemental report (of £22.77m) contained an arithmetical error which, if corrected would ascribe a value to the Company of £29.29m. The error was that, instead of increasing the Company's turnover by 5% per annum as he had intended to do, in his DCF calculation, Mr Donaldson had applied a negative growth figure of -5%.

252. In the joint report of Mr Southall and Mr Donaldson, Mr Donaldson recalculated the value of the company using the capitalised earnings approach, at £22.75m and on a DCF basis at £23.7m. Unsurprisingly, Mr Donaldson was asked about his error in cross examination by Mr Khangure and about how he felt able, having initially calculated the value of the Company (once adjusted for the arithmetical error) at £29.29m on a DCF basis to then recalculate the value of the Company at £22.75 (on the capitalise earnings basis) and £23.71 a DCF basis.

;

253. In response to those questions, Mr Donaldson's explanation was as follows:

- (a) having already valued the Company, on two occasions, prior to his supplemental report dated 19/4/24, he had already had a good idea of what the value of the Company, was, at 29/2/24, which he considered to be around £22m;
- (b) when he carried out a DCF valuation and came up with a figure of £22.77, this confirmed his initial view about the value of the Company and he did not look further into the assumptions that he had made in carrying out his DCF calculation;
- (c) once he realised that, based on the assumptions made in his DCF calculation in his supplemental report, the value produced was £29.29m, he revisited his assumptions and decided that he had not sufficiently take into account issues specific to the Company, which he considered reduced its value; and

(d) he decided to produce a valuation on a capitalised earnings basis, in order to match Mr Southall who had prepared a valuation on that basis, so that the two valuations could be directly compared. He considered that, taking into account, in particular specific difficulties that the Company faced with growing its business, an EBITDA multiple of 5 was reasonable. This produced a valuation for the Company of £22.75 which was in line with his initial view as to the Company's value.

254. Mr Donaldson said that he regarded the view that he had as to the fair value of the Company, before he carried out any detailed calculations was a very reliable indicator of the Company's approximate value. I asked why, in those circumstances, he had not simply said in his supplemental report that, in his opinion the value of the Company was approximately £22m. Mr Donaldson said that "we all have our hypotheses, that is the nature of these reports".

255. There is a good reason why forensic accounting experts produce detailed calculations to arrive at a value for a company, that reason is that a valuation based upon such detailed calculations is susceptible to objective analysis and challenge. If instead, an expert was simply to say that their view is that £22m is about right for the value of a company, without more, it would not be possible to properly analyse or challenge that opinion. In saying this I accept that there are elements of a detailed valuation which are nonetheless based upon the opinion of the expert. In the case of a capitalised earnings calculation, for example: (a) whether particular listed companies or transactions are sufficiently comparable to the company being valued for their EBITDA multiples to be included in the calculation of average EBITDA multiples (prior to discounts and premiums being applied to those averages); and (b) what discounts and premiums should be applied to the average EBITDA multiples of the listed companies and transactions. The opinions of the experts on these points are still however capable of being challenged and scrutinised, potentially with the assistance of another expert.

256. In my judgment, Mr Donaldson's approach of forming an opinion as to the value of the Company, then carrying out a detailed calculation and only if it matches his initial opinion accepting it, undermines the credibility and reliability of his opinion as to the value of the Company. This is because, it is not a detailed calculation which I can scrutinise which forms the real basis for Mr Donaldson's opinion, but his initial opinion as to the value of the Company which cannot be scrutinised because his reason for forming that opinion is that he had an idea as to the value of the Company, based upon his having valued it twice before at different dates. In any event, Mr Donaldson has not provided any calculation of how he arrives at his EBITDA multiple of 5, he merely says that 5 is reasonable and so there is no calculation which I can even nominally scrutinise, as to whether 5 is reasonable (bearing in mind that Mr Donaldson seems to rely principally upon his view that the approximate value of the Company is £22m). In short, once Mr Donaldson was made aware that he had made an arithmetical error in his DCF calculation which attributed a value of £29.29m to the Company, he: (a) adopted the capitalised earnings approach to valuing the Company that Mr Southall used; (b) expressed the view that an EBITDA multiple of 5 was reasonable (as opposed to the 6.6

calculated by Mr Southall); (c) justifies his view that an EBITDA multiple of 5, rather than 6.6 is reasonable (valuing the Company at £22.75m) on the basis of constraints on the Company's future growth prospects, all of which he had referred to in his report of 19/4/24 in which, on a DCF basis, after making allowance for his arithmetical error, he valued the company at £29.29; and (d) provides no calculation showing how he arrives at his EBITDA multiple of 5.

257. My concerns about the credibility and reliability of Mr Donaldson's expert opinions do not necessarily mean that I will prefer the opinions of Mr Southall to those of Mr Donaldson as to the value of the Company as at 29/2/24, but I will approach with caution the opinion of Mr Donaldson, as to the appropriate EBITDA multiple, having regard to the matters summarised in paragraph 256 above and the errors made by Mr Donaldson in his 28/10/22 report to which I refer in paragraph 249 above. Those matters are less relevant to Mr Donaldson's opinions on the Gorway Road and the KTS issues, but the confidence that I can have in Mr Donaldson's opinions on those issues are also, to an extent undermined by those shortcomings in his valuation reports.

Mr Southall

258. It was put to Mr Southall, in cross examination, that Mr Plaha, like Mr Donaldson, in his recent capitalised earnings calculation set out in the joint report, had calculated the Company's EBITDA multiple at 5, in contrast to Mr Southall who had calculated it at 6.6. Mr Southall said that Mr Plaha was considering the risk of the Company not achieving the very much higher Maintainable EBITDA that Mr Plaha had attributed to the Company in his report, rather than the very much lower Maintainable EBITDA that Mr Southall had included in his report and at a valuation date which was 16 months prior to the valuation date used by Mr Southall and Mr Donaldson (23/10/22 rather than 29/2/24).

259. It was put to Mr Southall that there were very significant differences between the public listed companies and transactions from which he had extracted EBITDA multiples to arrive at his average EBITDA multiples, to which he had applied premiums and discounts, in arriving at his valuation. Mr Southall accepted that there were differences, particularly in the size and diversity of businesses, but said that the discounts that he had applied took these differences into account.

260. Various points were put to Mr Southall about the Company being subject to specific and significant risks in relation to its future growth. Mr Southall responded that those risks were taken into account in the Company's forecasts and that he considered that he had applied appropriate discounts and premiums taking into account, what he considered the specific risks faced by the Company.

261. I do not consider that anything arose from the cross-examination of Mr Southall, his report or his contribution to the joint report, which causes me to conclude that his

expert opinions are generally unreliable. I will consider, in more detail the questions asked of Mr Southall about his valuation, when determining the value of the Company.

THE ISSUES

ISSUE 1 - THE WITHOLDING OF FINANCIAL INFORMATION FROM MANTIR WAS FINANCIAL INFORMATION DELIBERATELY WITHELD FROM MANTIR

262. Mr Khangure says that Mantir has a right, as a director of the Company, under Section 388 of the 2006 Act to have access to the Company's accounting records at any time. Under Section 173 of the 2006 Act, Mantir, as a director must exercise independent judgment and under Section 172 he has to act in the way that he considers, in good faith, would be most likely to promote the success of the Company, for the benefit of its members as a whole. As a result of Mantir being denied access to the Company's financial accounting records, contrary to his rights under Section 388, Mantir has been prevented from complying with his duties under Sections 172 and 173.
263. Mr Khangure says that, for a period of over 10 years, but more frequently since January 2020, Mantir has been asking for information and documents that have not been provided to him:
- (a) prior to December 2019, Mantir's requests for information and documents were made verbally. They were met with a threat, in December 2015, to remove Mantir as a director, if he persisted in asking questions;
 - (b) very limited financial information was provided to directors, prior to January 2020, typically only a one-page summary of financial information which was removed from the directors, after they have been allowed to inspect it, briefly;
 - (c) following a board meeting on 18/1/20, Mantir sent an email to Jitha in which he requested detailed accounting records and information for the previous 6 years in respect of the Company and details of dividends paid out over that period. In response to those requests, on 29/1/20 the Respondents wrote to Mantir to say that they would allow him to inspect financial information (not including the books and records of the Company) for the previous 2 years only, on the basis that all questions that Mantir had, in respect of that information, were resolved, by 28/2/20, failing which the Respondents would call a meeting to consider removing Mantir as a director of the Company;
 - (d) on 24/4/20 Mantir sent an email to Mr Josen requesting profit and loss schedules for the first quarter of the year. Mr Josen responded, the same day, to say that he would not provide the information without the prior authorisation of Jitha;
 - (e) Jitha has made it clear to Mantir that he is not allowed to meet with or contact the Company's auditors or the Company's bank;

- (f) on two occasions Mantir verbally requested information from the then auditors of the Company, AK Bhagi. Mr Bhagi advised Mantir that he could not provide any information to Mantir, without the authority of Jitha;
- (g) on 1/5/20, Ms Smith responded to a request from Mantir for information about the dismissal of one of his nephews from the Company and Pack King that she knew little about it and if he had any questions about the circumstances he should ask Jitha;
- (h) on 11/5/20, Mantir asked Mr Josen why Pack King owed the Company £1.38m and why “they were made to pay a £500k loan to [the Company]”. Mr Josen responded, on 28/5/20, saying that the loan was a reclassification of an aged debt balance which was then reclassified back to an aged debt balance. He concludes that “unfortunately I am unable to provide any further financial information without authorisation from the managing director.”;
- (i) on 12 May 2020 Jitha sent an email to Mantir, Harvey and Jan in relation to a board meeting that had taken place the previous day. He said that he intended to address Mantir’s reasonable concerns as soon as possible, but only once the economy and our business stabilises (the country was in the grip of the Covid pandemic at the time). In a further email from Jitha to Mantir dated 12/6/20, Jitha said that he would deal with the matters raised by Mantir as a soon as the economy recovers;
- (j) at a meeting of shareholders and directors of the Company on 29/5/20, Mantir is recorded as saying that Jitha had used the Company’s money to build the House and not paid it back, but he denied accusing Jitha and Jan of stealing £2m. Jitha responded that his personal finances were not Mantir’s business and all directors took equal drawings and he confirmed that he had been accused by Mantir of theft and Mantir threatened to kill him and bury him in his own back yard. Jitha said that a letter would be issued calling another meeting to propose Mantir’s removal as a director of the Company;
- (k) on 11/6/20 Mantir sent a very detailed email to Jitha requesting information and documents; and
- (l) on 18/6/20 notice was given of Jitha’s intention to propose a resolution to remove Mantir as a director of the Company, at a general meeting of the Company, on 14 /7/20.

264. Mr Zaman says that:

- (a) there were frequent oral discussions between the Brothers, prior to January 2020, about the Company’s finances. Mr Josen provided a summary of the financial position of the Company each month to the Brothers (including Mantir). Mr Josen in particular gave evidence that Mantir, George, Jan and Harvey paid little attention to the financial information he provided;
- (b) Mr Josen’s evidence was that, since January 2020, Mantir had raised an awful lot of questions but that Mantir has always had access to relevant information;
- (c) Mantir could request information from the Company’s auditor, Crowe and their predecessor, AK Bhagi;

- (d) Jitha did ask Mr Josen to run past him Mantir's requests for information, but he only did so in order to ease the burden on Mr Josen who Jitha feared would probably leave the Company, if he were not protected from Mantir's excessive requests for financial information and documents;
- (e) Mantir asked the Respondents to produce information that he already had, namely the Company's accounts which he had already obtained from Companies House. Mantir was not seeking information to further his duties as a director of the Company, but rather trying to make a nuisance of himself and trying to build a case of unfair prejudice. Mantir accepted, in cross examination, that he asked for information that he already had, because he wanted to show that the Respondents would not provide it to him when asked for it and that he made oral requests for information prior to January 2020, but written request thereafter because "I had to prove I was asking questions";
- (f) Mantir accepted that he would not have understood or been able to analyse many of the documents that he was asking for and would need to get someone to look at them for him; and
- (g) Mr Josen, Jan, Jitha and George all gave evidence that Mantir had access to the financial accounting records of the Company.

265. Mr Zaman refers to the Court of Appeal decision in ***The Oxford Legal Group Limited v Sibbasbridge Services plc [2008] BCC 558*** in which Sir John Chadwick considered whether a director's right at common law and under Section 222 of the Companies Act 1985 (now section 338 of the 2006 Act) to inspect a company's accounting records would be enforced by the court, where the director was seeking the court's assistance to enforce that right, not so that they could comply with the duties that they owed to the company, but for some ulterior purpose. In my judgment that case may go to the question of whether, in the event that I find that financial information was deliberately withheld from Mantir, it was unfair and prejudicial to Mantir for it to be withheld, at this point however, I am simply considering whether financial information was deliberately withheld from Mantir and it is not necessary for me to consider what Mantir's motives were for seeking the financial information and documents.

266. I am not satisfied that, prior to January 2020 any financial information or documents requested by Mantir was withheld from him. I come to this conclusion for the following reasons:

- (a) Mantir, in his witness statement and in reply to questions asked of him in cross examination, confirmed that, prior to January 2020, his requests for financial information were made orally. Mr Khangure did however refer me to 2 documents that he says are evidence of Mantir requesting information orally and not being given it and of a threat being made to remove Mantir as a director, if he persisted in asking questions;
- (b) the first document is an email from Mantir to Jitha dated 27 January 2015, in which Mantir says that "we" have still not been given December's numbers and that "you

seem to show figures when and how you please.”. That email responded to Jitha’s email to Mantir, copied to Jan and Harvey of earlier the same day, in which Jitha set out details of investments to be made by the Company in the first four months of 2015. Jitha explained, in the email, that although the Company would remain profitable, as a result of those investments, there would be a lack of cash available in the business. It is not entirely clear why Jitha sent his email to Mantir, copied to Jan and Harvey, or why, as appears to be the case, Mantir was unhappy with its contents. I consider it likely that Jitha, for some reason felt he needed to tell Mantir, in particular (as the email was addressed to him and copied to Jan and Harvey) that cash was tight ;

- (c) I do not consider Mantir’s email to Jitha of 27 January 2015 to be a request for financial information, instead it is a response to the financial information that Jitha had provided in his email of earlier that day. Mantir’s email contains two complaints: (i) that “we” have still not seen the December numbers; and (ii) that Jitha only showed figures when and how he pleased. The first complaint is of a delay, in December’s numbers being provided, which necessarily implies that monthly numbers were normally provided before the 27th of the following month. The second complaint, that Jitha only showed figures as and when he pleased, does not indicate that Jitha had refused to provide information that Mantir had previously requested;
- (d) the second document is the draft notice dated 24 December 2015, giving notice of a meeting of the Company to take place on 1 February 2016 to consider a resolution to remove Mantir as a director of the Company. The stated reason for Mantir’s removal, in the draft notice, is incompatibility with the other directors. I have dealt with the notice in paragraph 133 above where I conclude that, despite his denials, it was implausible that Jitha did not know about the notice. It is nonetheless common ground that no notice was served on Mantir in 2015/16 or at all, prior to January 2020 of a meeting of members to consider Mantir’s removal as a director; and
- (e) Jitha, Jan, George and Mr Josen were all consistent in saying that, prior to January 2020 when Mantir started to send emails requesting information, he showed very little interest in the financial information which was produced to the Brothers at monthly meetings. Mr Josen suggested that the only figure of interest to Jan, George, Harvey and Mantir was the profit figure and that it was he and Jitha who suggested action points to address any issues arising from the financial information presented to the Brothers. I accept the evidence of Jitha, George, Jan and Mr Josen that Mantir was not interested in the Company’s financial information, provided other than the profit, prior to January 2020 and that therefore Mantir was not making oral requests for information and documents, prior to that date, which were not supplied to him.

267. I am satisfied that information was deliberately withheld from Mantir, after he sent emails to Jitha, on 26/1/20, asking for financial information and documents dating back 6 years. I am also satisfied, for the reasons mentioned in paragraph 266 above, that 26/1/20 was the first occasion upon which Mantir had requested a material amount of financial information/documents relating to the Company. I am satisfied that information and documents were deliberately withheld from Mantir, after 26/1/20 for the following reasons:

- (a) in his email of 26/1/20 Mantir asked for details of dividends paid out by the Company and documents and other financial information dating back for 6 years. In a letter addressed to Mantir dated 29/1/20 and signed by all the Respondents, it is made clear to Mantir that he would only be provided with 2 years of information and documents if he did not confirm, by 29/2/20 that his requests for information/documents were satisfied, the Respondents would call a meeting to consider removing Mantir, as a director;
- (b) I have explained, in paragraph 179 above, why I cannot give any weight to the statement in paragraph 13 of Harvey's witness statement that the Respondents decided (prior to signing the letter of 29/1/20) to provide Mantir with the 6 years of information/documents that he requested, but in stages of 2 years at a time. I have also explained why I have rejected the evidence of Jitha, given in cross examination to the same effect (see paragraph 134);
- (c) in my judgment, the letter of 29/01/20 signed by all the Respondents constituted a refusal (combined with a threat) to provide Mantir with 4 years of the information/documents that he had requested. The fact that Mantir subsequently withdrew his request on 6/2/20, apparently after he had been provided with some documents, by Derek Lamb, because, he said, 2 years of information was insufficient for him, does not alter the fact that the Respondents' letter of 29/1/20 refused to provide Mantir with 4 of the 6 years of documents and information that he had asked for;
- (d) Mantir started to ask for information and documents again on 24/4/20, although his email of that date to Mr Josen simply asked for profit and loss schedules for the first quarter of the year, which was current financial information, rather than the more historic financial information that he had asked for on 26/1/20;
- (e) Jitha accepted that he had told Mr Josen to check with him before providing Mantir with information that Mantir requested. Jitha suggested that this was to prevent Mr Josen from being overwhelmed with requests for information from Mantir which Mr Josen did not have time to deal with and to avoid the risk of Mr Josen leaving the Company as a consequence. Whether or not those are the real reasons why Jitha instructed Mr Josen not to provide information or documents to Mantir, without Jitha's prior authorisation, is something that I will consider later, when dealing with the question of whether the withholding of information from Mantir amounted to unfairly prejudicial conduct. Jitha's instruction to Mr Josen's had the effect however of preventing Mantir from obtaining financial information and documents direct from Mr Josen (or his team) unless Jitha authorised Mr Josen to respond, as is confirmed in Mr Josen's responses to Mantir's emails requesting information from Mr Josen, dated 24/4/20 and 11/5/20 and there is no evidence that Jitha ever gave Mr Josen that authorisation;
- (f) in his emails dated 12/5/20 and 12/6/20, in the first case to Mantir, Harvey and Jan and in the latter case to Mantir alone, Jitha said that he would deal with the points raised by Mantir, but only once the business/economy recovered from the coronavirus pandemic. It is clear that, as a result of Jitha instructing Mr Josen (which Mr Josen accepted included an instruction to his team) not to provide financial

information to Mantir, without Jitha's prior authority and Jitha determining that he would not deal with questions raised by Mantir until the UK economy had recovered from the coronavirus pandemic, that Jitha was preventing Mantir from obtaining the very considerable amount of information and documents that he had requested from Mr Josen and Jitha on and after 24/4/20, following the withdrawal of his previous requests of 26/1/20;

- (g) Ms Smith confirmed that, having considered the content of her email of 1/5/22 to Mantir, she believed that she would have discussed Mantir's request for information regarding the dismissal of one of his nephews by the Company/Pack King with Jitha and Jitha would have told her to obtain his authority before providing any information to Mantir. There is no evidence that Mantir requested any other information from Ms Smith, but this is another example of Jitha cutting off Mantir's access to information concerning the affairs of the Company;
- (h) I am not satisfied that Jitha told Mantir that he was not allowed to approach AK Bhagi for information, or that AK Bhagi refused to provide information to Mantir, unless Jitha authorised it, on two occasions. There is no evidence, other than Mantir's bare assertions, on these points. Mantir accepted that Mr Bhagi did provide him with some accounts after AK Bhagi ceased to be the Company's auditors. AK Bhagi ceased to be the Company's auditors during its financial year ending 31/12/18 and I have already concluded that I am not satisfied that Mantir sought a material amount of financial information and documents, prior to January 2020. There would, on the face of it therefore be no reason for Jitha to tell Mantir that he could not approach AK Bhagi for information, or to tell AK Bhagi not to provide Mantir with information or documents, at a time when Mantir was not seeking financial information or documents (prior to January 2020). Further, there is no complaint made in any documents (including emails) prior to pre action correspondence that Jitha told Mantir that he could not speak to the auditors or that AK Bhagi had refused to provide information/documents to Mantir, without Jitha's authority;
- (i) as far as the new auditors, Crowe are concerned, in cross examination, Mantir confirmed that he was happy with the services provided to the Company by Crowe and he has not provided particulars of any occasion on which he says that Jitha told him that he could not speak to Crowe or upon which he asked Crowe for any information or documents, but they refused to provide them. In addition, in response to an email from Mantir to Jitha dated 23/6/24, in which Mantir complained that Jitha had not answered a single question that he had asked, Jitha replied, the same day, suggesting that Mantir instruct an employee of Crowe to address his concerns and they would respond. Mantir responded to Jitha again the same day, by email, attaching a list of questions which he said dated back to the meeting which took place on 1/5/20, he does not comment on Jitha's suggestion that he approach an employee of Crowe to obtain answers to his concerns. If Jitha had previously told him that he could not approach Crowe, or Crowe had told him that it could not supply information to him, without Jitha's authority, then I would expect Mantir to mention this in his email. In addition there are no contemporaneous documents (including emails) that I have seen, dated prior to pre-action correspondence, which complain

about Jitha telling Mantir that he could not contact the auditors or the auditors refusing to provide information/documents to Mantir without Jitha's authority; and (j) finally, I am not satisfied that Jitha told Mantir that he was not allowed to have contact with employees of the Company's bank (including the Company's relationship manager) for essentially the same reasons as I am not satisfied that Jitha told Mantir that he could not contact the auditors (lack of Mantir specifying any occasion on which Jitha told him this or of any occasion on which he tried to speak to anyone employed by the Company's bank).

WHICH OF THE RESPONDENTS IS RESPONSIBLE FOR WITHHOLDING FINANCIAL INFORMATION FROM MANTIR?

268. The attitude of Jitha to providing financial information to the other directors of the Company, is, in my judgment, reflected in comments made in his first witness statement, in which he says, at paragraph 76: "Whilst we have always been open on the numbers and the financials I don't encourage just anyone to walk in and have access to the finances. If we gave documents away then I would expect that they would go missing. This applies to everyone really, including the directors. We have a trust between one another, the brothers gave me responsibility to run [the Company] and given the figures are discussed with directors, approved and signed within the accounts, then those accounts are audited by external auditors, I see no need for directors to see anything further..... I don't encourage the directors to ask questions direct of [Mr Josen] as he is a busy man and only works part-time. I take the view that they have enough information given to them."

269. I have found that, it was clear from George's evidence that he had never felt the need to ask for financial information and that, beyond relatively simple financial information, George would be unlikely to understand any financial information that was given to him in any event (see paragraphs 167 and 168 above).

270. In paragraph 15 of his witness statement, Harvey says that, in his role he does not need to speak to external auditors and he has never raised any queries with the auditors as he feels that the finances are explained properly by Jitha and Mr Josen and he is happy with that.

271. In paragraph 23 of his witness statement, Jan says that Jitha initially presented the Company's financials for the previous month, once a month and subsequently Mr Josen took this over. "Mantir never asked question. He was just like a nodding dog. He was never interested. Mantir was only ever interested in how much money he would get....". I have already said, in paragraph 150 above that I consider that Jan's evidence is tainted by his animosity towards Mantir, I approach with caution therefore his description of Mantir as "a nodding dog" but I accept the broad thrust of his evidence, that Mantir took little interest in the financial affairs of the Company and asked very few, if any questions

about the financial information that was presented at the monthly meetings, at which I accept financial information for the previous month was presented.

272. Mr Josen says, in paragraphs 26 and 27 of his first witness statement, of the monthly meetings, at which he presented figures showing how the Company had performed, in the previous month, that: "if there were areas that need improving, it was either myself or Jitha that raised that.... To be honest, the other directors were not concerned. As long as [the Company] was performing and everyone was doing their job that was ok..... Apart from Jitha, no director took responsibility for the finances in the area they were responsible for. I would simply present the numbers and explain how they were doing on sales, performance, profits and then it was just a sort of general chitchat. There were no real questions asked and no one would flag up issues with their areas. No one asked any questions on the numbers. This includes Mantir.....". In cross examination Mr Josen was asked whether Jitha told the other directors what to do, at first he said that Jitha "gave advice in their direction" but when pressed he accepted that the answer was "probably yes". I accept that Mr Josen's answer, when pressed, that Jitha, at least generally told the other directors what to do, represents his view of the position.
273. Although Mantir suggests that he did ask for financial documents orally, prior to January 2020, and was threatened with being removed as a director, if he persisted in asking questions, I have concluded that I am not satisfied that Mantir did ask for any material amount of financial information or documents concerning the Company, prior to January 2020 (see paragraph 266 above).
274. I conclude, based upon what I have said in paragraphs 268 - 273 above that, prior to January 2020: (i) the directors, other than Jitha, were satisfied with the monthly updates that they received initially from Jitha and subsequently from Mr Josen and they asked very few, if any questions regarding the financial information contained in those monthly updates; and (ii) Jitha's experience (and that of Mr Josen) was that the other directors were not really interested in the financial affairs of the Company, as long as it was making a profit and neither of them were accustomed to receiving any material requests for financial information or documents concerning the Company from any of the other directors. I also accept that, at least generally, Jitha did tell the other directors what to do and that they, including Mantir, at least until January 2020, generally did what he told them to do. Against that background, I conclude that it was primarily Jitha and not the Respondents acting together or any other of the Respondents, who decided not to provide Mantir with the financial information and documents that he requested from 26 January 2020 onwards. I find this for the following reasons:
- (a) Mantir approached Jitha and subsequently Mr Josen for financial information and documents. because, in my judgment, he knew that George, Harvey and Jan did not have that information to give to him. Mantir never suggested that they did. Nor did George, Harvey or Jan have any responsibility for managing Mr Josen, whereas Jitha did;

- (b) it was Jitha who instructed Mr Josen and Ms Smith not to provide information to Mantir without his prior authority. There is no evidence that Jitha consulted with George, Harvey or Jan, prior to giving this instruction to Mr Josen. It was not put to Jitha, George or Jan that there had been any such consultation;
- (c) it was Jitha who said, in emails to Mantir dated 12/5/20 and 12/6/20, that he would provide to Mantir what he had requested, once the business/economy had recovered from the Covid pandemic. Again there is no evidence that Jitha ever consulted with George, Harvey or Jan prior to responding in this way to Mantir and it was not suggested in cross-examination to any of them, that such a consultation took place; and
- (d) the letter of 29/1/20 only offered to provide Mantir with 2 years of documents and information against his request for 6 years. Notwithstanding that all the Respondents signed that letter I consider that it was Jitha who was the driving force behind the letter being sent and its content, including that Mantir should only receive 2 of the 6 years of documents/information that he had requested (although I consider that Jan, George and Harvey generally supported the approach that Mantir should not be provided with all that he had asked for). I come to this conclusion because:
- (i) Jitha chose to involve the other Respondents in replying to Mantir's requests for information and documents, sent by Mantir by email to Jitha on 26/1/20. Jitha could have replied himself to Mantir's emails which were sent only to him. I find that Jitha involved the other Respondents in replying to Mantir's emails, because the letter of 29/1/20 included a threat to convene a meeting of members to consider the removal of Mantir as a director of the Company and having the other Respondents sign the letter made it clear that Jitha had the support of the other Respondents in making that threat and that Mantir could be removed by the Respondents acting together; and
- (ii) I have found that George, when he signed the letter, did not fully understand what he was signing (see paragraph 166 (b) above). At paragraph 19 of his witness statement, George says that Jitha would explain what was going on ... "we didn't really disagree with anything". Although George goes on in the paragraph to say that if there was disagreement, it would be put to a vote, given that it was Jitha who told the Respondents, or at least George, what was going on and he says that the other Brothers didn't really disagree with anything, this appears to me to be a tacit admission by George that, at least generally, Jitha decided what should happen;
- (iii) Jan accepted that he had not got on with Mantir for many years and that he simply wanted Mantir to be removed as a director and employee of the Company. I concluded, at paragraph 150 that, whilst Jan may have understood what the content of the letter of 29/1/20 meant he would join the other Respondents in any action that opposed what Mantir wanted. Whilst Jan suggests that decisions were made collectively by the Brothers I consider that the weight of the evidence suggests that it was principally Jitha who would decide. I accept however that Jan also was at least generally supportive of limiting what was provided to Mantir and of threatening to call a meeting of members to consider his removal as a director if he was not prepared to accept that limited information;

(iv) as for Harvey, there has been no opportunity to ask Harvey about why he signed the letter of 29/1/20 or about the discussions (if any) that led to him signing it. In paragraph 180 above I comment on the evidence in paragraphs 13 and 14 of Harvey's witness statement which deals with him signing the letter dated 29/1/20. In paragraph 13 Harvey gives a detailed description of what he says the Respondents agreed to say in response to Mantir's request for 6 years of information and documents. However, at paragraph 14 of his witness statement Harvey says (notwithstanding the detail provided in paragraph 13 of his witness statement) that: "My memory on this is vague and if I am honest, I don't recall our discussions on this, but I wouldn't have signed [the letter] if I wasn't happy with it and in agreement with it at the time". I have concluded that, because of the inconsistency between the positive and detailed evidence in paragraph 13 of Harvey's witness statement about what was discussed and agreed between the Respondents and his statement, in paragraph 14 that he does not in fact recall the discussions, (and because the content of the letter does not accord with what Harvey says, in paragraph 13 was agreed) I cannot attribute any weight to Harvey's assertions in paragraph 13 as to what was discussed and agreed. In paragraph 6 of his witness statement, Harvey says that "Jitha was appointed managing director because he was in charge of everything....". Harvey goes on to say that, in spite of this, if Jitha doesn't get majority support "... he doesn't get the decision. Notwithstanding this I don't usually disagree with Jitha.....". In my judgment, notwithstanding the caveat that Jitha could be overruled by a majority of the Brothers, Harvey acknowledges that, in reality the other Brothers (including himself) usually went along with what Jitha wanted; and (v) in asserting that he has been excluded from the management of the Company (which I will deal with next) Mantir asserts that Jitha runs the Company in an autocratic manner, without discussing matters with the other directors, this would be consistent with Jitha deciding what the response to Mantir's letters of 26/1/20 should be; and

(vi) in paragraph 72 of Jitha's first witness statement, in which he refers to Mantir's requests of 26/1/20 and the response of 29/1/20 he mentions no discussion with the other Respondents about the reply and says: "I replied... confirming that he could inspect financial information for the previous 2 years I felt that by limiting the documents to 2 years they would be easier to pull together, causing less disruption to the business and I hoped that by including [a threat to remove Mantir as a director] that threat would bring an end to Mantir's behaviour and endless requests which I saw as being disruptive and unnecessary." (my underlining added). There is nothing in that paragraph which suggests that the content of the letter of 29/2/20 was the subject of serious discussion and agreement as to its content, by the other Respondents, to the contrary the paragraph is consistent with Jitha having decided what the letter should say.

275. Given my finding that sending the letter and having Jan, George and Harvey sign it was principally Jitha's idea, it could be said that Jan, George and Harvey failed to comply with the duty that they owed to the Company, under Section 173 of the CA 2006 to exercise independent judgment in deciding whether or not to sign the letter and going along with

its content. I will consider whether this amounts to conduct by Jan, George and Harvey (or any of them) which is unfair and prejudicial to Mantir, in his capacity as a member of the Company, when dealing with that issue below.

ISSUE 2 - HAS MANTIR BEEN WRONGLY EXCLUDED FROM THE MANAGEMENT OF THE COMPANY?

276. Mr Khangure says:

- (a) the Company was incorporated as a quasi-partnership, all the Brothers, including Mantir have a legitimate expectation of holding office as director and of participating in the management of the Company;
- (b) the Respondents have continually refused to allow Mantir to participate in the management of the Company;
- (c) on 18/6/20, Mantir received a notice, signed by Jitha. of a meeting to take place on 14/7/20, to consider a resolution to remove Mantir as a director. The notice was sent because Mantir was making reasonable requests for financial information and documents and insisting upon the Company's affairs being conducted properly;
- (d) Jitha said he would sell the Company within 2 years but acted alone in discussing with Smurfit Kappa its interest in acquiring the Company, without discussing this interest with, or seeking the approval of, the other directors;
- (e) Jitha runs the Company in an autocratic manner without discussing matters with the other directors, including Mantir, examples of which are:
 - (i) deciding on the directors' benefits package including the wages, dividends, annual leave and the type of vehicle they were entitled to and defining the directors' roles as employees and day-to-day responsibilities;
 - (ii) creating all management positions and hiring staff who are told to report directly to him and having the final say about wage increases;
 - (iii) deciding what type of machinery is required by the business, who to buy it from and negotiating its purchase and how to dispose of old machinery;
 - (iv) deciding the layout and flow of the trading site, in conjunction with Jan;
 - (v) deciding, in conjunction with Jan, who should be suppliers to the Company, prices and contracts;
 - (vi) if Jitha requires Mantir to sign a document, then Jitha insists that it must be signed in front of him and only the signature page of the document is made visible to Mantir; and
 - (vii) even though Jitha is not a director of Pack King, he exercised the same control over its affairs as he does for the Company;
- (e) Jitha says that the matters in paragraph 276 (a) – (d) above fall within the ambit of his role as managing director. This assertion is however misconceived because, even if aspects of management of the Company have been delegated to Jitha, the other directors retain a legal obligation to oversee the discharge of those delegated powers. The Respondents, other than Jitha, have acted in breach of their duties, by dismissing Mantir's concerns about Jitha, at least some of which concerns, have proved to be well founded;
- (f) Mantir has been segregated from the day-to-day operations of the Company, in that:

- (i) the Respondents head their own departments within the Company but Mantir is not the head of the sales department;
 - (ii) Mantir is blamed for mistakes which have nothing to do with him; and
 - (iii) the Respondents do not introduce new staff to Mantir, even when they are taken on in the sales department; and
- (g) marketing literature for the Company contains pictures of the Respondents, but not Mantir's picture.

277. Mr Zaman says:

- (a) Mantir's complaints about being excluded from the management Company are, in reality complaints that decisions have not gone Mantir's way and that formalities in respect of the management of the Company and conduct of its affairs have not been observed. However Mantir has been a director of the Company, since it started trading in 1996 and he was content for the affairs of the Company to be conducted in an informal manner (which is common for family run companies, particularly where, as here, its directors are not particularly well educated) until January 2020, when Mantir started to demand documents and information and to insist upon formalities being observed; and
- (b) Mantir is not a victim of unfairness but rather a man who pursues his own self-interests in an aggressive and sometimes violent manner and who has disrupted the affairs of the Company. Mantir's violence, bullying and disruptive behaviour is sufficient to justify Mantir's exclusion from the management of the Company, insofar as he has been excluded.

278. I will consider whether Mantir has been excluded from the management of the Company and will then go on to decide, if he has been excluded, which of the Respondents are responsible for that exclusion. I will not, for the moment, deal with the question of whether, if Mantir has been excluded from the Company, that exclusion was justified by Mantir's behaviour, I will consider that when dealing with issue 7.

279. The Respondents accept that the Company is a quasi-partnership between the Brothers and for that reason I accept that Mr Khangure is right that the starting point is that all the Brothers have a legitimate expectation that they would hold office as director and participate in the management of the Company. This does not however mean that the Brothers had a legitimate expectation that they would participate in every management decision that needed to be made, in the sense that there would be a vote on every decision, the Brothers were entitled to delegate particular decisions to one or more of their number, subject to what I say below about overseeing the exercise of any delegated powers. Any of the Brothers could also choose not to participate in the management of the Company or only to participate to a very limited degree and if they did so they could not complain that they had, by their own choice been excluded from the management of the Company.

280. Before dealing with Mantir's allegations that he has been excluded from the management of the Company I will say what I consider to have been the immediate cause of what, for reasons I will explain, I find to be, a fundamental shift in Mantir's

approach to the financial and other affairs of the Company, from the end of 2019/beginning of 2020.

THE CATALYST FOR A CHANGE IN MANTIR'S ATTITUDE

281. I have found that, in spite of his denials, Mantir did punch and kick and threaten to bury Jitha in his own backyard, during an altercation between Jitha and Mantir, in October 2019 (see paragraph 82 above).
282. Jitha says that, prior to the altercation in October 2019, Mantir came to him in September 2019 and demanded that the Company buy him a Rolls-Royce. George said, at trial, that Mantir had told him that he wanted the Company to buy him a Rolls Royce and that George just laughed. Again, notwithstanding that Mantir denied, in cross examination, ever saying that he wanted a Rolls-Royce or demanding that Jitha should cause the Company to buy him one, I find that in fact both are true. I find this because: (a) I have found Mantir to have given, if I can put it this way, more dishonest evidence than Jitha (compare paragraphs 133 - 137 above for Jitha and 76 - 92 above for Mantir) for that reason, I prefer the evidence of Jitha to that of Mantir on this issue; (b) I have found George to have been an honest witness and he confirms that Mantir did say that he wanted the Company to buy him a Rolls Royce; and (c) during his cross examination Mantir and subsequently Mr Josen were taken to extensive and vitriolic email correspondence passing between Mantir and Mr Josen about Mantir wanting a more expensive mobile phone than anyone else, which I consider confirms the evidence of Jitha, George, Jan and Mr Josen that Mantir likes to have expensive things and to flaunt them, this is consistent with him wanting the Company to buy him a Rolls Royce (see Jitha first witness statement paragraph 69, Mr Josen first witness statement, paragraph 85 and 96 - 99 and Harvey's witness statement, paragraph 45).
283. Mantir asserts that, in 2016, Jitha told him that he had used the Company's funds to discharge at least part of the cost of constructing the House but that, in 2019, Jitha denied using any of the Company's money for this purpose (see paragraph 28 above). I deal with the 23 Gorway Road Issue below where I come to the conclusion that Jitha did tell Mantir, in around 2016, that he had used or would use the Company's money to pay for at least some of the cost of building the House at 23 Gorway Road. I find that, after the incident in October 2019, Mantir started to question Jitha about whether Jitha had repaid to the Company the Company's money which he had used in constructing the House. I do not consider that he would have done so, at that time, but for Jitha's refusal to cause the Company to buy Jitha a Rolls Royce and the altercation with Jitha, in October 2019. It is common ground that Mantir asserted at a board meeting on 18/1/20 that Jitha had used the Company's money to pay for the costs, or part of the cost of constructing the House and that Jitha had denied it. Mantir says, in the Petition (see paragraph 28 (c)) that he asked Jitha how much of the Company's money, that he had used in the construction of the House, he had repaid and Jitha denied using any of the Company's money for that purpose. The Petition does not suggest that that conversation took place at the board meeting on 18/1/20 and I am satisfied that it would have taken place prior to that date.

284. I have found that, prior to January 2020, Mantir had not requested any material amount of financial information/documents from Jitha or anyone else and had generally shown little interest in the financial affairs of the Company (see paragraph 266 and in particular 266 (e) above). Jitha accepts however that, at the board meeting that took place on 18/1/20, Mantir requested information on historic dividends paid to the shareholders of the Company for the last six years and for significant amounts of historic financial information, whilst at the same time alleging that Jitha had used the Company's money to build the House (which Jitha denied). The longer of the two emails sent by Mantir to Jitha on 26/1/20 refer to his having asked for the information detailed in that email, at the meeting on 18/1/20.

285. I am satisfied that, prior to the board meeting on 18/1/20, Mantir had already:

- (a) approached Mr Bhagi and obtained from him at least some of the Company's accounts for the period that they were audited by AK Bhagi (up to 31/12/18) and other accounts of the Company from Companies House. I find this because Mantir accepted, in cross examination, that he had obtained accounts from Mr Bhagi after AK Bhagi & Co ceased to be the Company's auditors and that he already had the Company's accounts from Mr Bhagi or Companies House when he requested them from Jitha (on 26/1/24). Given that I have found that Mantir did not request a material amount of financial information in relation to the Company and his general lack of interest in the financial affairs of the Company, prior to January 2020, I find that Mantir obtained these accounts after his attitude to those issues changed following the October 2019 incident and before the board meeting on 18/1/20; and
- (b) sought and obtained the assistance of some person or persons with knowledge of company law and procedures to assist him in deciding what questions to ask at the board meeting on 18/1/20 and what to include in his emails of 26/1/20. I find this because Mantir is unlikely to have known himself what information/documents to ask for and the emails suggest that Mantir had obtained advice from someone and contain language or phrases which, in my judgment, only someone with knowledge of company law and procedures would know or use (which knowledge I am satisfied Mantir did not have in January 2020, he did not suggest that he did). Examples are:
 - (i) from the longer of the two emails that: "I have also been made aware as per Regulation 100 Articles of Association, all meetings, formal or informal are required to have minutes taken"; "... I would also like to be notified and kept in loop with development of all companies this will promote the success of the company and exercise independent judgment..." (these are the duties imposed on directors by Sections 172 and 173 of the 2006 Act); and "...If the following information is not provided, you will be in breach of the Companies Act 2006. My main concern is that you are in breach of your directors duties as per Companies Act 2006; and
 - (ii) from the shorter email "it has come to my attention that dividends have been taken out from all companies within the group without the appropriate protocols being adhered to.... I feel I have been unfairly prejudiced by the company....(unfair prejudice being the basis on which the Petition is brought).

286. I am satisfied that Jitha's refusal to cause the Company to buy Mantir a Rolls-Royce and what Jitha said to Mantir, in October 2019, which caused Mantir to physically attack and threaten Jitha, led to a fundamental change in Mantir's behaviour. In short, I

am satisfied that Mantir decided to get back at Jitha, initially by asking Jitha if he had repaid to the Company, the Company's money that he had used to build the House and when Jitha denied using the Company's money in the construction of the House (having previously accepted that he had) Mantir took advice and decided to embark upon a wide ranging request for information and documents to see whether Jitha in particular, but perhaps the other Respondents as well, had received from the Company more than he had. Mantir asserted, at the board meeting on 18/1/20 that Jitha had used Company money to construct the House and requested information and documents, which he followed up with his emails of 26/1/20.

WAS MANTIR EXCLUDED FROM MANAGEMENT PRIOR TO JANUARY 2020?

287. It is common ground that, in substance Jitha took on the role of managing director of the Company, from when the Company started trading up to the present day. The Respondents say this was agreed by all the Brothers, Mantir says it was never agreed, but he does not dispute that that is what happened and does not suggest that any of the Brothers (including Mantir) ever objected to it. I have accepted (see paragraph 272-274 above) that generally the Brothers (including Mantir) did what Jitha wanted and that, of the Brothers, it was really only Jitha who took an interest in the Company's financial affairs and was looking for ways to improve its financial performance. It is common for the responsibilities of a managing director, even in a family run company, to include overall responsibility for the most significant day to day decisions. It may well be that Jitha took on more responsibility for decision making than even a managing director normally does, but the question I need to answer is whether Mantir, as a director was wrongly excluded from involvement in the management of the Company.
288. Mr Khangure says that the Respondents continually refused to allow Mantir to participate in the management of the Company. However, in my judgment, at least prior to January 2020, Mantir was content, consistent with what I have found to be his lack of interest in the financial affairs of the Company, for Jitha to make all the important decisions. I have not been referred to a single document in which Mantir objects to Jitha making all or too many the decisions, or even referring to any such objection, prior to January 2020. In his first witness statement, Mantir refers to (a) there never being an agreement that Jitha should become Managing Director, but he does not say that any of the Brothers, including himself ever objected to it; (b) that, if he asked questions, Jitha would bully him and say that he did not need to know; (c) Jitha runs the Company's affairs like a dictator; and (d) Mantir has sent emails to Jitha challenging his authority as well as asking for financial information (the emails requesting financial information were sent after January 2020). In my judgment Mantir is a forceful character, well able to stand up to Jitha, if he chose to do so, I do not accept his suggestion that Jitha bullied him or that, when he asked questions, he was told that he did not need to know and Mantir left matters at that. Mantir cannot complain that he was excluded from the management of the Company, prior to January 2020, when, on my findings he had no desire to participate more fully in the management of the Company and did not object to Jitha making, at least the majority of the important decisions.

289. Even if I were persuaded that Mantir did not acquiesce in Jitha making the majority of the decisions, it is clear that the Respondents did support Jitha doing so and the Respondents, as four of the five Brothers, holding the majority of the Company's shares and seats on the board, would have been entitled to decide that power to make the majority of the management decisions should be delegated to Jitha, whether or not Mantir agreed.
290. Mr Khangure says that, even if aspects of the management of the Company are delegated to a particular director, then the other directors would still have a duty to oversee that director's use of the delegated powers. I accept that that is so, but in my judgment, Mantir made no attempt to oversee Jitha's use of his powers before January 2020, prior to obtaining advice from a person or persons experienced in company law and procedures (see paragraph 285 (b) above) Mantir would not, in my judgment even know that he had any duty to act independently or oversee powers delegated to Jitha by the Brothers, prior to obtaining that advice.
291. I will consider next whether Mantir was excluded generally from participating in the management of the Company from January 2020 onwards and will then go through the individual matters that Mantir says demonstrate him being excluded from taking part in the management of the Company.

WAS MANTIR EXCLUDED FROM MANAGEMENT AFTER JANUARY 2020?

292. In paragraph 46 of his first witness statement, Mantir says that he has sent emails to Jitha challenging his authority as well as seeking financial information. In subsequent paragraphs of his first witness statement, Mantir points the emails in which he seeks financial information and documents and the responses that he received to those requests but he does not point to any emails in which he challenged Jitha's authority (nor have I been taken to any by Mr Khangure). I have dealt with these emails above and concluded that, after January 2020, financial documents and information were withheld from Mantir at the behest of Jitha. None of these emails however appear to challenge Jitha's authority to make decisions (as Jitha suggests in paragraph 46 of his first witness statement, they do). In any event, as I have already observed, even if Mantir did object to powers being delegated by the Board of Directors to Jitha, to make important day-to-day decisions, it is clear that the Respondents as a whole did agree that those powers should be delegated to Jitha and were entitled to insist upon those powers continuing to be delegated to Jitha, even if Mantir objected.
293. Mantir insisted that board meetings should be properly minuted, after January 2020, and they have been minuted. Mantir asked for information and documents in those board meetings. He was able to use those board meetings as an opportunity to scrutinise and oversee the Company's affairs and to ask for historic information and documents. He was not provided with what he asked for, but that is a separate complaint that I have already dealt with. If Mantir disagreed with a decision which the Respondents favoured, then he would be outvoted, but Mantir has to abide by the decisions of the majority.

294. At a board meeting taking place on 11 May 2020, it is common ground that Jitha asked for a vote of confidence in his continuing as managing director and that all the Brothers (including Mantir) voted in favour of Jitha continuing as managing director. Mantir objected to the words included in the minute of that board meeting, which suggested that a resolution was passed that Jitha would not be answerable to any single director, nevertheless Mantir voted in favour of Jitha remaining as managing director. Mantir may have voted in favour because he knew that the Respondents would outvote him in any event, or because he recognised that it was in the interests of the Company that Jitha remain as managing director, or for another reason. Whatever the reason, Mantir does not appear to have taken the opportunity to make it clear that he opposed Jitha exercising the powers that it appears Jitha had been exercising from the outset, as managing director, or to suggest that increased scrutiny of the exercise of those powers by Jitha, was necessary or desirable.

295. For the above reasons, even though, from January 2020 Mantir was asking for information and documents that he was not provided with, I am not satisfied that Mantir was demanding, after January 2020, that he should play a greater role in the management of the Company or that Jitha should play a lesser role. In spite of Mantir asserting that he challenged Jitha's authority (as well as seeking information and documents) by email after January 2020, I cannot see that any of his emails do so. Mantir voting in favour of Jitha continuing as managing director on 11 May 2020, without challenging the extent of the powers that were being delegated to Jitha, or saying that the use of those powers should be subjected to greater scrutiny, is inconsistent with Mantir's assertion that he was challenging Jitha's authority. Mantir insisted that board meetings should be minuted and they were. The Respondents consider that Mantir disrupted those board meetings after January 2020, Mantir says that he was simply asking questions which he was entitled to ask, in exercise of his powers and duties as a director of the Company. Subject to considering the individual complaints that Mantir makes about being excluded from the management of the Company my conclusion is that I am not satisfied that, even after January 2020, Mantir was seeking to play a more significant role in the management of the Company, or to restrict Jitha's management role.

MANTIR'S SPECIFIC COMPLAINTS

296. Mantir says that he has been excluded from taking part in the management of the Company in the ways set out in paragraph 276 (c) – (g) above I will now deal with each of those allegations in turn, but leaving 272 (c) (sending out a notice to consider a resolution to remove Mantir as a director) until last.

Failing to discuss the interest of Smurfit Kappa

297. At paragraph 69 of his first witness statement, Mantir says that he was not made aware of any discussions in relation to an approach by Smurfit Kappa to purchase the Company and only found out at a board meeting at some point in 2020. He says that he was told that Smurfit Kappa made an offer pursuant to which, if it were accepted, the Brothers would get £3.5m each.

298. I am not satisfied that information was improperly withheld from Mantir (or the other directors) by Jitha. Smurfit Kappa had to approach someone initially to indicate their interest and that appears to have been Jitha. I am not satisfied that there were lengthy discussions or negotiations between Jitha and Smurfit Kappa, or that anything other than an indication of what Smurfit Kappa might offer was given by Smurfit Kappa to Jitha, which, in substance, Jitha reported to the board. The Respondents certainly appear to have been of the view that it was the wrong time to consider an offer, because the new corrugator had only just been installed and the Company was only just starting to reap the benefits of greater efficiencies and costs savings that followed from its installation. The decision of the board seems to have been not to pursue the interest and the matter was left there. Mantir does not suggest that he disagreed with that decision.

Deciding on the directors' benefits package and their roles as employees

299. It is the Respondents' position, which I accept, that the Brothers decided (albeit informally) annually what dividend should be declared. Jitha may have made recommendations, in relation to the dividends but I do not accept that he alone decided what they should be. Some of the formalities in connection with the declaration of the dividends may not have been followed, but Mantir has withdrawn his claim that any failure to follow the formalities was unfairly prejudicial to him and that he may not have received his proper share of the dividends paid (he did not assert that the Brothers did not agree what the dividend should be).

300. The Brothers did not receive any financial benefits from the Company as a result merely of them each holding the office of a director of the Company. They received financial benefits in the form of dividends, as shareholders, in equal amounts and as employees, in the form of a salary and other financial benefits, again broadly in similar amounts. It is not at all clear that Jitha did decide what benefits the Brothers should receive from the Company, because, as I say, the Brothers received broadly similar benefits, or what roles the Brothers played within the Company, because these evolved over time. However, insofar as Jitha did make any decisions in relation to these matters, the Brothers were also entitled to delegate those decision to Jitha as managing director. What did and did not fall within Jitha's role evolved over time and given the informality with which the affairs of the Company were conducted, prior to 2020, it is not possible to point to an occasion upon which the Brothers decided that Jitha should decide on any particular matters, but I am satisfied that each of the Brothers (including Mantir) at least acquiesced in Jitha exercising the powers that he has exercised, because there is no evidence of any of the Brothers objecting and Mantir has produced no evidence that he, or any of the other Brothers did object.

Creating management positions, hiring staff who reported to Jitha/deciding wage increases

301. Ms Smith said that Jitha was only involved in the hiring of senior staff (on which he sometimes took her advice) and that she dealt with the hiring of more junior staff. I accept Ms Smith's evidence on this point. Subject to that, for the same reasons as I have set out in paragraph 300 above I find that the Brothers (including Mantir) at least

acquiesced in Jitha exercising these powers and therefore delegated those powers to Jitha.

Deciding on the purchase and sale of machinery

302. For the reasons set out in paragraph 300 above I find that the Brothers (including Mantir) at least acquiesced in Jitha exercising these powers and therefore delegated them to Jitha.

Deciding the layout of the site in conjunction with Jan

303. For the reasons set out in paragraph 300 above I find that the Brothers (including Mantir) at least acquiesced in Jitha and Jan exercising these powers and therefore delegating them to Jitha and Jan.

Deciding on suppliers, prices and contracts in conjunction with Jan

304. For the reasons set out in paragraph 300 above I find that the Brothers (including Mantir) at least acquiesced in Jitha and Jan exercising these powers and therefore delegating them to Jitha and Jan.

Not allowing Mantir to see the documents that he is signing

305. In paragraph 75 of his first witness statement, Mantir says that, if he was asked, by Jitha, to sign a document, which has happened on a number of occasions, he was provided with little or no information in respect of it and was simply told to sign the last page. The Respondents deny this.

306. I have already said (see paragraph 288 above) that Mantir is a forceful character. I do not accept that, if Mantir wanted to read any document that he was asked to sign by Jitha, before he signed it that he could not have insisted on reading it first and if he did not do so then, on the face of it Mantir may well have breached his duties as a director under Sections 173 and 174 of the 2006 Act (duty to act independently and to exercise reasonable skill, care and diligence) . For those reasons, even if this did happen, I am not satisfied that it amounts to conduct, on the part of Jitha, which was unfairly prejudicial to Mantir in his capacity as a shareholder of the Company. In short, if it happened, I am satisfied that Mantir could and should have insisted on reading any document before signing it.

Exercising control over Pack King even though Jitha was not a director of it

307. I do not accept that Jitha exercising control over Pack King (to the extent he did) is capable of amounting to conduct, by Jitha, which is unfairly prejudicial to Mantir in his capacity as a shareholder of the Company. The Company never has held any shares in Pack King and in any event: (a) George is the only director of Pack King and it is common ground that he has never had anything to do with running Pack King, and all the Brothers have acquiesced in this; and (b) Mantir accepts that he took over running Pack King from Jitha, in 2020 and at least gave himself the title of managing director. I

cannot see therefore how Mantir can complain about Jitha doing something that he himself did and which all the Brothers (Mantir does not say otherwise) went along with.

All the Brothers except Mantir head their own departments

308. As I have already said the Brothers roles and responsibilities as directors are different from their roles and responsibilities as employees of the Company. I am satisfied, for the reasons set out in paragraph 300 above, that the Brothers acquiesced in Jitha deciding the roles and responsibilities of the Brothers as employees (although these largely evolved over time, rather than being the subject matter of specific decisions). Jitha may have decided that Mantir should not be the head of the sales department, but Mantir is not entitled to be the head of the sales department of the Company simply because he is a shareholder and director of the Company. It cannot therefore be unfairly prejudicial to Mantir, in his capacity as a shareholder of the Company, that Jitha has simply failed to make Mantir head of the Company's sales department. If it is anything, it is an employment issue, which is not the subject matter of a petition under Section 994 of the 2006 Act. I do not accept that any expectation that Mantir had because the Company was carried on as a quasi-partnership extends to him being made the head of sales.

Being blamed for mistakes that are nothing to do with him

309. In the Petition, Mantir asserts that Jan told a customer that Mantir had made a mistake in an order, but the mistake was Jan's. Jan denies that he blamed Mantir for his or his team's mistakes. Jan says that, on the contrary, Mantir is constantly blaming others for Mantir's mistakes. Jitha supports Jan's position.

310. I have no particulars of the occasion or occasions on which Mantir is asserting that he has been wrongly blamed for the mistakes of others and I cannot therefore be satisfied that what Mantir says is correct. Even if I were satisfied that what Mantir says is correct, I cannot see that this could amount to conduct that is unfairly prejudicial to Mantir, in his capacity as a shareholder of the Company. Mantir's complaint, in reality, is about the performance by Mantir and Jan of their roles as employees of the Company, and not Mantir's interests as a shareholder being unfairly prejudiced or his reasonable expectation that he will be involved in the management of the Company, being infringed.

Not introducing/consulting Mantir about the hiring of new sales staff

311. Mantir says that Paul Fabri was hired, as a new sales representative, by Jitha and that he was not informed about this until after it happened. Mantir says that, when he emailed Jitha about this, Jitha said that Mantir was not told about the hiring of Mr Fabri, before it happened, in case it leaked out. Jitha says that the need for a new sales manager was discussed and that Mantir was present during those discussions and raised no objection to it.

312. This appears to be a particular instance of Mantir's more general complaint that Jitha deals with the hiring of staff, which I have dealt with in paragraph 301 above. The

same points apply to Jitha exercising the power to hire Mr Fabri and the Brothers, including Mantir, acquiescing in Jitha exercising this power. In the case of Mr Fabri, there are the added features that he was hired as an employee in the sales department, in which Mantir works, and Mantir complains that he should have been told about Mr Fabri before he was hired, but was not. I do not consider that these additional features add anything to the point that, in my judgment, the Brothers acquiesced in Jitha exercising the power to hire staff. What Jitha told Mantir about the hiring of Mr Fabri and when is disputed, but even if Mantir is right, that he did not know about the hiring of Mr Fabri, until after it had happened, this does not amount, in my judgment, to excluding Mantir from the management of the Company (given that I have accepted that the Brothers acquiesced in Jitha exercising the power to hire staff) or to conduct capable of amounting to unfair prejudice to Mantir in his capacity as a member of the company. The hiring of Mr Fabri principally affected Mantir in his capacity as an employee of the Company, not as a shareholder.

Not including Mantir in a marketing publication

313. It is accepted, by the Respondents, that an on line marketing publication about the Company, includes a photograph of all the Respondents and their names, but does not include a photograph of Mantir or mention Mantir's name. Jitha says that Mantir was not deliberately excluded from the marketing publication. The publisher arranged to take the photograph at short notice and at the time Mantir was away from work suffering from Covid. Jitha accepted that he did not contact Mantir to tell him that the publisher was coming to take the photograph, he said he did not do so, because he did not wish to disturb Mantir, when he was sick.
314. It appears that the photograph was taken at about the time that Mantir was off work, having contracted Covid and that what Jitha says may be true. I am not satisfied that Mantir was excluded from the publication deliberately. It follows that Mantir has not made out the factual basis for his complaint.
315. Had I found that Mantir had made out the factual basis for his complaint (that he was deliberately excluded from the publication) I accept that this is at least capable of amounting to conduct that is unfairly prejudicial to Mantir, in his capacity as a shareholder of the Company. It is common ground that the Company has, at all material times, been a quasi-partnership creating a reasonable expectation that all the Brothers, including Mantir, would be directors of the Company and take part in the management of the Company. The deliberate exclusion of Mantir from marketing literature that has a photograph of the Respondents, but not Mantir, and mentions the names of all the Respondents, but not Mantir, does not directly infringe Mantir's legitimate expectation that he would be a director or take part in the management of the Company, however, in my judgment, it is at least arguable that Mantir's reasonable expectations extended to the Respondents not concealing that Mantir is a director and involved in the management of the Company, from the outside world. This would be subject to the Respondents' argument that Mantir, by his behaviour, destroyed the mutual trust and confidence between the Brothers, so that Mantir no longer had a legitimate expectation of being a director of the Company and participating in its management (or that this would not be concealed from the outside world).

Giving notice to remove Mantir as a director of the Company

316. The giving of notice to Mantir, on 18/6/20, that a meeting of the members of the Company would take place on 14/7/20, to consider removing Mantir as a director of the Company would, had the Respondents not undertaken, on 13/7/20, not to proceed with that meeting (see paragraph 20 above) have inevitably resulted in Mantir being removed as a director of the Company. This is because the Respondents hold between them 80% of the Company's voting shares and I am satisfied they would all have voted in favour of such a resolution (each of Jitha, George, Harvey and Jan confirm in their witness statements that they could no longer work with Mantir and Jitha, George and Jan confirmed this, in cross examination).
317. The removal of Mantir, as a director of the Company, would be contrary to the understanding which I have found there was between the Brothers (as a result of their quasi partnership relationship) that all the Brothers, including Mantir, would be directors of the Company and take part in its management. Removing Mantir, as director, would remove Mantir's rights, as a director, under Section 388 of the 2006 Act to have access to the Company's accounts and records and to scrutinise the exercise of, what I have found to be, powers that were delegated to Jitha (and to a lesser extent Jan). I will consider later whether the serving of the notice and any other matters that I find are capable of amounting to conduct which is unfairly prejudicial to the interest of Mantir, as a member of the Company, when considered individually and cumulatively, in fact amount to conduct that is unfairly prejudicial to Mantir, in his capacity as a shareholder of the Company (see Issue 6 below).

Post - Petition allegations of exclusion

318. In his first witness statement, Mantir refers to other examples of what he says amount to unfairly prejudicial conduct by the Respondents, falling broadly under the category of excluding him from the management of the Company, which arose after the issue of the Petition (and which are not pleaded in the Petition) namely that:
- (a) he has been forced to work from home;
 - (b) he has had 21 customer accounts removed from him, for no reason; and
 - (c) he refers to the incident on 14 October 2020 (see paragraphs 85 (e) and 88 – 89 above) when he attended CBS House with Pav and says he was wrongly accused by the Respondent of trying to steal the Company's customers, when all he was doing was trying to avoid a confrontation with the Respondents.
319. Mr Khangure accepted, in closing, that unpleaded conduct occurring after the presentation of the Petition cannot be taken into account as conduct establishing that the affairs of the Company have been conducted in a manner that is unfair and prejudicial to Mantir, as a member of the Company. Mr Khangure says that such post-Petition conduct can and should however, be taken into account in deciding on remedy, if Mantir makes out his case that the affairs of the Company have been conducted in a manner that is unfair and prejudicial to him. In light of that concession, I will not

consider the three additional matters referred to in Mantir's first witness statement (paragraph 318 (a) – (c)) at this stage.

WHO IS RESPONSIBLE FOR EXCLUDING MANTIR FROM THE MANAGEMENT OF THE COMPANY?

320. I have found that the only conduct of the Respondents, which Mantir places under the category of excluding him from the management of the Company, which is capable of amounting to conduct which is unfairly prejudicial to Mantir, in his capacity as a member of the Company, is the service of the notice on 18/6/20.
321. Unlike the letter of 29/1/20 (which threatened to convene a meeting of the Company to consider the removal of Mantir, as a director of the Company (see paragraphs 267(c) above)) which was signed by all the Respondents, the notice of 18/6/20 was only signed by Jitha. I have found that, notwithstanding that the letter of 29/1/20 was signed by all the Respondents, it was, in reality, principally Jitha who decided only to agree to provide Mantir with 2 of the 6 years of information and documents that he had requested and to threaten to convene a meeting to consider the removal of Mantir as a director if he did not confirm that he was satisfied with what he had received, by 29/2/20 (see paragraph 274 above). Whilst the fact that Jitha alone signed the notice of 18/6/20 might suggest that, superficially at least, there are even stronger reasons to conclude that Jitha alone decided to serve the 18/6/20 notice on Mantir, in my judgment, the Respondents did all decide that the 18/6/20 notice should be sent to Mantir, for the following reasons:
- (a) as I said in paragraph 150 above Jan had wanted Mantir removed as a director (and preferably as an employee of the Company) for a long time. George and Harvey also wanted Mantir removed, but they say that initially Jitha wanted him to remain (paragraph 46 and 47 of George's witness statement). It is clear that, by 26/6/20, Jitha had stopped trying to persuade the other Respondents that Mantir should remain as a director and Jitha wanted Mantir removed as well; and
 - (b) none of Jan, Harvey or George have suggested that they did not understand the purpose and effect of the notice served on 18/6/20 and unlike the letter of 29/1/20, I find that there is no reason to suppose that they did. The letter of 29/1/20 merely threatened to convene a meeting to consider the removal of Mantir, as a director, with the apparent intention of limiting what was provided to Mantir in response to his requests of 26/1/20 and I found that George did not understand what the letter proposed should be provided to Mantir (see paragraph 274 above). The notice of 18/6/20, on the other hand was a notice convening a meeting to consider Mantir's removal as a director. I am satisfied that Jan, Harvey and George understood both the purpose and the consequences of the notice (that it would lead to the removal of Mantir as a director) a result that they all wanted.

ISSUE 2 - HAS THERE BEEN MISMANAGEMENT?

322. In the Petition (as amended) Mantir refers to six matters that he alleges amount to mismanagement, by some or all of the Respondents (see paragraph 27 above), Three of these allegations have been withdrawn and one has been partially withdrawn. The remaining issues are that:

- (a) Mantir is unaware of any board meetings having been held to approve the accounts;
- (b) Jitha refused offers for the old corrugated which had to be dismantled and placed into storage, depreciating in value and causing a loss of rental income of around £50,000 per annum for the unit in which it was stored (Mantir has withdrawn any suggestion that purchasing a new corrugator to replace the old corrugator was mismanagement); and
- (c) the KTS Issue.

323. Mantir's allegations of mismanagement are not allegations that any of the Respondents deliberately took steps to harm his interests as a member of the Company, but rather that, through mismanagement of the Company's affairs, for which they are responsible, the Company has suffered loss and therefore Mantir, as a member of the Company has suffered loss. It is not sufficient for Mantir simply to point to a decision made by the Respondents or any of them which has turned out, in hindsight, to be wrong. Directors make decisions on a daily basis, some of which, with the benefit of hindsight will inevitably turn out to be wrong. In ***Re Sunrise Radio Limited [2009] EWHC 2893 (Ch)*** HH J Purle QC at paragraph 4 referred to mismanagement, so serious that the petitioner cannot be expected to have the minimum trust and confidence in the board (or individual director) that a shareholder can reasonably expect to have. In short the mismanagement must be very serious mismanagement (sometimes referred to as gross mismanagement) in order to amount to unfair prejudice for the purpose of a petition under Section 994.

324. The Company has been extremely successful, starting from nothing in 1996 to achieve a turnover of £23m with profits of £1.3m, when the Petition was presented, increasing turnover to in excess of £39m and profits of £3.9m in 2022. This does not mean that Mantir cannot make out gross mismanagement, because the Company has been, overall, very successful, but, the fact that that success has been achieved by the Brothers (and principally, it is common ground with Jitha making the major decisions on the direction of the Company) none of the Brothers having had a higher education, forms the background or context to Mantir's allegations of mismanagement.

Board meetings have not been held to approve the Accounts

325. Mantir's assertion is that he does not know whether board meetings have been held to approve the Company's accounts on an annual basis. The Respondents say that meetings were held to approve the accounts, albeit informal meetings. This allegation was not withdrawn by Mantir, but in my judgment it ought not to have been pursued and fails for the following reasons:

- (a) none of the Brothers are sophisticated directors, as I have already noted, none of them attended higher education;
- (b) it is common ground that the management of the affairs of the Company have been conducted by the Brothers on an informal basis, at least until January 2020, when Mantir started to insist on greater formality. I have found that Mantir insisted on this, after he obtained advice from a person or persons experienced in company law and procedures (see paragraph 285 (b)); and
- (c) if, and it is not clear whether this is the case, no board meetings took place to formally approve the accounts of the Company (which accounts were often signed by Mantir underneath a statement to the effect that they had been approved by the board) then Mantir cannot complain that any such failure is unfairly prejudicial to him when he is as responsible as any other of the directors for any such failure.

Refusing offers for the old corrugator

326. The Petition asserts that: (a) the old corrugator was marketed for sale and offers were received but Jitha refused to consider the offers because he said he could find better ones; and (b) the old corrugator was dismantled and moved to a Company unit for storage where it has depreciated in value, losing the Company around £50,000 per annum in rental income. I am not satisfied that these allegations are made out, for the following reasons:

- (a) whilst Mantir asserts that offers were made for the old corrugator, the only particulars he gives of this are that Jitha told the Brothers that parties in India and Pakistan have expressed interest and one flew over to inspect the old corrugator;
- (b) in his witness statement, Harvey says that the old corrugator was nearly 40 years old when the Company purchased it. He lists a number of things that were wrong with it, he says it was inefficient, kept breaking down and was producing a lot of waste product and there were a large number of returns from customers (something that George confirms). Mantir does not challenge the decision to replace the old corrugator. I am not satisfied that, prior to the old corrugated being dismantled, it was in a condition in which a substantial offer might have been obtained for it as a machine capable of manufacturing corrugated card reliably;
- (c) Harvey also says that a couple of people came in to look at the old corrugator, including a company from India which wanted him to go to India to show them how to use it, which he was not interested in doing. Jitha says that he was reluctant to sell it in the UK and thereby set up a competitor but that in any event no one wanted it as it was "so old and knackered". Jitha does mention an interested party flying over to see it, but he says that they pulled out because the manufacturer of the old corrugator, BHS told them that BHS could not guarantee that the old corrugator would run once it was moved to India. I am not satisfied that there was an offer for the old corrugator that the Company could have accepted, prior to it needing to be dismantled in order for the new corrugator to be installed;

- (d) Harvey says that when they finally gave up on trying to sell the old corrugator as an operating machine, there was only 2 weeks left, before the new corrugator was to be installed. Harvey says that, given the size and weight of the old corrugator BHS said it would take more than two weeks to take out. It was nonetheless taken out within the two weeks, but Harvey says that he could not get it out in good condition and that they were subsequently only able to sell parts of it. I have said that, because it has not been possible to cross examine Harvey on the contents of his witness statement I can attribute little weight to what is said in Harvey's witness statement. However George, at trial supported Harvey's evidence, that the old corrugator could not be taken out in good condition. I accept that evidence, which adds weight to Harvey's evidence on this point. Even if it had been possible to dispose of the old corrugator as a working machine prior to it being taken out (and I am not satisfied that it was, I am satisfied that it was not possible after it had been taken out;
- (e) Jitha says that the old corrugator was stored in premises owned by Swaran Properties, prior to it being scrapped. The forensic accountants confirm that there is no evidence of the Company being charged for the storage of the old corrugator. I am not satisfied that the Company incurred any cost, as a result of the old corrugator being stored.

The KTS Issue

327. I have summarised, in paragraph 27 (f) above, how Mantir puts his case on the KTS Issue, in the Petition. The facts pleaded by Mantir are facts which are agreed between Mr Southall and Mr Donaldson, except for the pleaded fact that Mantir did not know who the cash drawn from the Company's bank was paid to, which is not something that they can determine from the Company's accounting records.
328. There is no pleaded defence to the pleading of the KTS Issue in the Petition, because the KTS Issue was added to the Petition by a late amendment, for which I gave permission on 24 May 2024, just over a week prior to the start of the trial (see paragraph 21 above). There was no time therefore for the Respondents to amend their defence and I did not require them to do so. The Respondent's case in relation to the KTS Issue is however, in simple terms that:
- (a) it was Mantir who suggested that the Company should use KTS as a source of temporary labour, given the Company's shortage of labour at the time. KTS was therefore Mantir's contact, he knew them better than any of the Respondents. On occasions it was Mantir who withdrew the cash from the Company's bank account to pay KTS and often, or usually it was Mantir who handed the cash to the KTS representative. There was therefore no misappropriation of the Company's funds, the cash was used to pay KTS for the temporary labour that the Company needed and Mantir is well aware of this; and
- (b) whilst it appears that the company specified on the KTS invoices is not the company that supplied labour to the Company and the VAT registration number quoted on the

KTS invoices is not a valid VAT number, these are points which the Company's staff did not check at the time and it does not amount to mismanagement, by any of the Respondents, for them not to have done so.

329. In spite of the KTS Issue appearing in the Petition, under the heading of "mismanagement", Mr Khangure says that all of the following point to a fraud and that I should infer that there has been a fraud perpetrated on the Company because:

- (a) no staff supplied by KTS have ever been identified, nor has a single document been produced relating to KTS staff, for example, no timesheets or clocking in records and no health and safety records;
- (b) the KTS invoices have the appearance of being "home-made";
- (c) KTS invoices have, on occasions, been stamped with a Company date stamp, dated before the date of the KTS invoice;
- (d) at one time £30,000 was paid on account to KTS, in spite of no invoices having been produced to cover that figure;
- (e) Mr Josen, in his second witness statement, said that he had seen KTS employees but then at trial, changed his evidence to say that he had not seen any KTS employees;
- (f) cheque stubs referred to "KTS" but in fact all the cheques to which those stubs relate were made payable to cash;
- (g) on the Respondents' case (that the justification for cash payments was that KTS did not want to wait for a Company cheque to clear) the Respondents could not explain why the Company did not make bank transfers to KTS, leaving KTS to make cash payments to its workers, rather than the Company paying cash to KTS; and
- (h) Mr Pretty accepted that the arrangements were "very unusual".

330. I asked Mr Khangure who he said had committed the fraud, Mr Khangure said Jitha although he suggested that Jan may also be involved, as the other signatory to the Company's bank account.

331. As to the alternative allegation of mismanagement, Mr Khangure says that if, contrary to his primary case, that this is a fraud, the cash payments were genuinely made in return for temporary workers supplied to the Company, then the Company has incurred a potentially very significant liability to pay VAT to HMRC, which was wrongly claimed as input VAT and set off against its VAT output liability to HMRC.

332. Mr Zaman says:

- (a) there is a fundamental conflict of evidence between Mantir who says that he knows nothing about KTS and the Respondents who say that Mantir introduced KTS to the Company and knows all about them;
- (b) Mantir was the sole director of the Company when he introduced KTS to the Company, in around 2006/8;
- (c) Mantir accepts, in his witness statement, that he collected cash on a number of occasions from the bank for "wages". In cross-examination he accepted that he knew

- that the Company's employees were paid through the payroll, so Mantir must have known that the cash payments were for temporary workers;
- (d) Mantir instructed Mr Plaha, on 22/3/22, that KTS was a recruitment agency and asked him to look into the cash payments, so he knew at that point that the cash payments were made to a recruitment agency;
 - (e) the Company was and is run by unsophisticated individuals and Mr Pretty describes the Company as functioning chaotically, at least prior to the installation of the new corrugator. The arrangements with KTS were part of that chaos; and
 - (f) no fraud can be inferred against any of the Respondents because:
 - (i) if Jitha was trying to fraudulently extract cash from the Company he would hardly ask Mantir to collect the cash from the bank, to enable him to do so;
 - (ii) Mantir, in his witness statement, refers to cashing the cheques for "wages" but as noted he knew that the permanent staff were paid from the payroll and therefore, he would have immediately been alerted to the fraud, if there were no temporary staff being paid with that cash;
 - (iii) Mr Khangure suggested that perhaps the cash taken by Jitha funded the construction of the House, but Jitha remortgaged 23 Gorway Road in order to raise the funds to build the House;
 - (iv) there is no evidence that Jitha carried on any sort of lavish lifestyle;
 - (v) Mantir accepts that he was a personal friend of the auditor, Mr Bhagi, if any of the Respondents were perpetrating a fraud they would not ask Mantir to collect the cash, which was integral to the alleged fraud, knowing that Mantir might tell the auditor;
 - (vi) if, as was put to Mr Josen, by Mr Khangure, the cheque stubs were completed to record KTS as the payee, to disguise the cash payments, the payments were not being disguised from Mantir, because he was asked to collect the cash;
 - (vii) Mr Pretty demonstrated that the staff requirement to run the production line, including the old corrugator, when KTS invoices were being received, was more than the number of permanent employees employed by the Company, so there was a need for temporary labour at the time, Mantir does not suggest that such need was satisfied from any other source; and
 - (viii) the circumstances show that it was KTS which was perpetrating a VAT fraud on the Company and HMRC.

333. I have already summarised what each of the Respondents and Mr Josen say about KTS:

- (a) Jitha, in his witness statement dated 30 August 2022, at paragraph 112 above and in his witness statement dated 30 May 2024 at paragraphs 123 – 131 above;
- (b) Jan, in his witness statement dated 30 May 2024, at paragraphs 144 – 148 above;
- (c) Harvey, in his witness statement dated 30 August 2022, at paragraph 173 above;
- (d) George does not deal with KTS in his only witness statement dated 30 August 2022; and
- (e) Mr Josen, in his witness statement dated 31 May 2024, at paragraphs 205 – 214 above.

334. The KTS Invoices which have been disclosed have the name KTS Supplies Limited on them. Companies House records that company number 5965525 was incorporated with the name KTS Supplies Limited on 12 October 2006 and was dissolved on 10 March 2020, having the same name throughout. Whilst those incorporation and dissolution dates make it possible that company number 5965525 is the company named on the KTS invoices, that company's registered office was at 21-23 Concord Rd, Norwich, Norfolk and it is common ground that it is not the entity that purported to trade from 34 Queens Court Trading Estate, West Bromwich B70 9EL and to provide temporary workers to the Company. It is also common ground that the VAT registration number quoted on KTS invoices, 861 8377 92 is not and never has been a valid VAT registration number.

335. I infer, based upon the agreed facts set out in paragraph 334 that a fraud has been perpetrated, using the KTS invoices in one of two ways:

- (a) a fraud involving the misappropriation of the Company's money by withdrawing cash from Company's bank account and that cash being retained by someone. In this scenario, the Company did not receive any labour in return for the payments of cash which were withdrawn from its bank account and the KTS invoices were created by the fraudsters. If this is the fraud that took place, then some or all of the Respondents are likely to have been a party to that fraud, because Jitha and Jan will have signed cheques to allow cash to be withdrawn from the Company's bank account and it is, in my judgment, inconceivable that they would not know that the Company was not in fact receiving any labour in return for those payments over a period of around 13 years. In addition Jan, Jitha and Harvey will have lied in their witness statements about temporary labour being supplied to the Company by KTS, in order to cover up the fraud. This is the fraud that Mr Khangure contends that I should infer occurred, I will refer to it as "Fraud A"; or
- (b) KTS did supply labour to the Company but whoever was purporting to act for KTS, and received the cash payments produced invoices which identified KT Supplies Limited as the entity providing the labour (when it was not) and contained an invalid VAT number. In this case, the party who is the current victim of the fraud is HMRC because the Company has set off the VAT elements of the KTS Invoices against the Company's output VAT thereby reducing its VAT liability to HMRC by a similar figure. I will refer to this as "Fraud B".

336. Whilst Mr Zaman only contends that Fraud A did not take place and does not explicitly contend that Fraud B did, he does not contend that KT Supplies Limited was inadvertently named as the supplier of labour to the Company on the KTS Invoices or that the wrong VAT number was inadvertently put on the KTS Invoices. It is because, in my judgment it is highly improbable that these were simple errors taking place over around 13 years and in hundreds of invoices, that I consider that the KTS invoices are part of a fraud. I am fortified in that view by the fact that, it is again common ground

that, after a short period when KTS were paid by cheque, thereafter they were paid in cash, rather than by cheque or bank transfer. In order to cash a cheque or receive a bank transfer, I infer that it would have been necessary for a bank account, in the name of KT Supplies Limited to be opened. At a time when company 5965525, was the only company which could legitimately set up a bank account in the name KT Supplies Limited I consider that the fraudsters would find it difficult and perhaps impossible to set up a bank account in the name KTS Supplies Limited to receive bank transfers or enable cheques payable to KTS Supplies Limited to be cashed. This explains why the fraudsters would want cash.

337. There is very little documentary or other evidence of the Company ever having used workers supplied by KTS (other than the evidence of Jitha, Jan, Harvey and to a lesser extent, Mr Josen):

- (a) Mr Josen, having originally said, in his first witness statement, that he had seen KTS workers at CBS House, at trial amended his evidence to explain that he had not seen any KTS workers at CBS House, although he did say that he hardly ever went into the factory, where those temporary workers would have been located (if there were any);
- (b) Ms Smith, in cross examination, said that she did not consider that she had any responsibility for workers who are not employed directly by the Company and she could not say whether there have been any workers supplied by KTS at CBS House, during the period that she has been employed by the Company;
- (c) no contemporaneous documents have been produced relating to workers, on the Respondent's case, having been supplied to the Company by KTS other than two emails produced by Mr Josen: (i) an email of 25 July 2000 from Mr Josen to "Bally", asking him to allocate payments against invoices for a number of suppliers, including KTS and saying that Mr Josen would chase KTS for invoices (Mr Josen said that he would have asked Mantir or Jitha to chase KTS for the outstanding invoices); and (ii) an email dated 29 August 2017 from Mr Josen to Jitha providing details of payments to suppliers to be included in a payment run for September 2017, including three payments of £6,000 each to KTS. These emails do not directly evidence that KTS were supplying workers to the Company.

338. There are a number of, what I would describe as peculiarities relating to how and when the Company's accounts department (that is Mr Josen's department) dealt with KTS invoices:

- (a) the Company paid money "on account", to KTS, at one point amounting the £30,000. Mr Josen explained that this meant that the payment was made before the KTS invoice was received by the Company, but not before KTS supplied the workers;
- (b) KTS invoices dated between 12/1/18 and 2/3/18 all have a date stamp "29/1/18" applied to them. Mr Josen accepted that the date stamp was likely to be a date stamp used by his accountancy team to stamp the invoices with the date when they were received. He suggested that either the date on the date stamp had not been changed or KTS invoices may have been received (some late and some in advance) in a single

batch at the same time and all were therefore stamped to show that they were received on the same date; and

(c) on occasions, KTS invoices were entered on the Company's Sage supplier ledger for KTS, before the date of the invoice.

339. The Respondents say that KTS was supplying temporary staff on a "flexible basis". In fact, prior to January 2016, according to the KTS invoices, 10 workers were supplied every week by KTS and from January 2016, 15 workers were supplied every week until, on the Respondents' case, KTS ceased to supply temporary workers in August 2018. This pattern of the regular supply of 10 workers each week until January 2016 and then 15 workers each week until August 2018 is not only inconsistent with the Respondents' description of the labour supplied by KTS as flexible, but also inconsistent with the content of Harvey's witness statement, in which he says that he told KTS how many people he wanted for the following day and kept a list of the people that KTS supplied, which he handed to Jitha (Jitha says that in fact Harvey just told him how many people KTS had supplied, rather than supplying him with a list, but that is also inconsistent with the consistent level of workers supplied by KTS, according to the KTS Invoices).
340. Whilst I have inferred that a fraud has been perpetrated with the use of the KTS Invoices, I am not satisfied that Mantir has proved that it is Fraud A, rather than Fraud B. I come to this conclusion for the reasons that follow.
341. The wrong company name and VAT registration number appearing on the KTS Invoices, whilst indicating that a fraud has taken place, does not support the conclusion that it was Fraud A as opposed to Fraud B.
342. The lack of documents evidencing workers being supplied to and used by the Company, on the face of it, tends to support the conclusion that Fraud A was committed. However, in my judgment if Fraud B was committed, then whoever was supplying workers to the Company and receiving the cash (the perpetrator of the fraud under Fraud B) would want, in my judgment, to keep paperwork to a minimum and is unlikely to have been ensuring strict compliance with various regulations relating to the supply of workers in those circumstances to the Company, the compliance with which would be likely to generate paperwork that may have been kept by the Company.
343. It is, as Mr Pretty accepted, very unusual that no documents relating to the presence of KTS workers at CBS House over approximately a 13 year period can be produced, other than two emails produced by Mr Josen, relating to the payment of KTS invoices. However: (a) Mr Pretty also said that the Company's working practices were chaotic prior to the installation of the new corrugator and its record keeping was very poor; and (b) it is the Respondents' case that the workers supplied by KTS were not treated in the same way as direct employees of the Company and Ms Smith was of the view (rightly or wrongly) that she had no responsibilities in relation to workers who were not directly employed by the Company. Ms Smith's evidence was that she

considered that KTS would have been responsible for its own employees and she would not keep HR records in respect of them.

344. Mr Josen withdrew the comment in his witness statement that he had seen KTS workers at CBS House and said that he had not done so. I took this to mean that he could not say that he had seen any workers provided by KTS, because he did not know if he had, rather than that he knew that he had not. Even though Mr Josen was not employed by the Company between 2007 and 2011 (a period during which, on the Respondent's case, KTS was supplying workers to the Company) he was employed for a significant period when, on the Respondents' case, KTS were supplying 10 workers every week until January 2016 and then 15 workers every week from January 2016 to August 2018. However Mr Josen worked in the offices at CBS House and not the factory where any workers supplied by KTS would have worked and on any occasions on which he did venture into the factory I accept that he would not necessarily have known who were permanent employees of the Company and who were temporary workers supplied by KTS. Mr Smith could not say whether she had seen any worker supplied by KTS at CBS House, however she joined the company in February 2015 and she also said that she rarely ventured into the factory and considered that she had no responsibilities for workers not directly employed by the Company. When she was cross examined, Ms Smith said that she does not deal with health and safety issues, or the training of staff, even for the Company's employees. Ms Smith said that she could not say whether temporary workers were used by the Company, at CBS House after she joined in 2015.

345. As for what I have referred to as the peculiarities in how the Company's accounts department dealt with KTS invoices:

- (a) according to the Respondents, KTS requested that it be paid in cash (after a short period when it was initially paid by cheque) so it could pay its workers without waiting for the Company's cheque to clear. Given that payments were being made to KTS every week in cash, it is not entirely surprising that the Company paid KTS consistently every week, even if KTS had not supplied an invoice for that week, in order to maintain the supply of workers. Fraud A would involve one or more of the Respondents, or someone on their behalf, creating the KTS invoices. Fraud B involves the individual or individuals who were supplying workers to the Company and receiving the cash, creating and supplying the KTS invoices. It seems to me that delays in the Company's accounts department receiving KTS invoices and consistent weekly cash payments even if a KTS Invoice had not yet been received for that payment is no more consistent with Fraud A, than with Fraud B;
- (b) the stamping of 8 KTS invoices dated between 12/1/18 and 2/3/18 with the date stamp 29/1/18 could well occur if KTS supplied a batch of invoices in one go (some in advance and some in arrears) particularly when there seems to have been problems with the Company receiving the KTS invoices in a timely fashion (see paragraph 337 (c) above). Again I do not consider that the supply of KTS invoices in a batch, some in arrears and some in advance, is any more consistent with Fraud A than Fraud B; and

(c) I do not consider that KTS invoices being entered in the KTS purchase ledger, before the date of the invoice, is any more indicative of Fraud A than Fraud B. KTS payments were made regularly every week in cash and there were delays in receiving KTS invoices, whilst invoices should not have been entered in the KTS supplier ledger, before they were received, there is no reason to suppose that this somehow facilitated Fraud B, but not Fraud A, on the few occasions on which it occurred.

346. Mr Khangure says that the reason that the Respondents give for KTS insisting on wanting payments in cash (that it did not want to wait for KTS cheques to clear) makes no sense, the Company could have transferred the money to a KTS bank account and KTS would then pay its workers in cash. That is true, but again it is no more indicative, in my judgment of Fraud A, than Fraud B. Under Fraud B, the person supplying workers to the Company would be likely to find it difficult to set up a bank account in the name KT Supplies Limited for the reasons set out in paragraph 336 above. For that reason the person supplying workers to the Company under Fraud B would want to be paid in cash. The same problem with opening a bank account in the name KT Supplies Limited applies for a perpetrator of Fraud A.

347. As I have said in paragraph 339 above, the pattern of KTS supplying 10 workers each week until January 2016 and then 15 workers each week until August 2018 is inconsistent with the Respondents' case that KTS was supplying flexible labour to the Company and with the evidence of Harvey and Jitha to the effect that the number of workers supplied by KTS varied from time to time according to the Company's requirements for temporary workers. However, Mr Pretty has produced a schedule of the number of workers that he considered would be needed to run the production process at CBS House prior to the new corrugator being installed in or around August 2018 (see paragraph 189 – 190 above). I have concluded that Mr Pretty gave his honest opinion as to how many workers were likely to be required (see paragraph 192 above). Whilst there were difficulties with Mr Donaldson and Mr Southall understanding what Mr Pretty's schedule was meant to show and there were at least some errors in the schedule, I am satisfied that Mr Pretty's schedule shows that the number of workers needed to run the Company's production process between 2015 and 2018 was more than the number of workers directly employed by the Company and that, even taking into account the workers (on the Respondents' case) supplied by KTS there was still a shortfall in the number of workers Mr Pretty thought was required. This would be consistent with the Company having a requirement for additional temporary workers each week which is what the KTS Invoices show (although an increased need from January 2016). I do not consider that the inconsistency between the evidence of Harvey and Jitha who suggest that the number of workers that KTS supplied varied, according to the Company's requirement for unskilled labour undermines the Respondent's case that KTS supplied the workers set out in the invoices. Mr Pretty's schedule suggests that the Company was consistently operating below the level of workers that he believed was necessary, he does not suggest that the number required would have fluctuated. It appears that Harvey and Jitha are mistaken in their recollections that the number of workers supplied by KTS varied (other than increasing from 10 to 15 in January 2016).

The discrepancy is not, in any event, in my judgment a reliable indicator that Fraud A (no workers being supplied by KTS) rather than Fraud B (10 or 15 workers being provided by KTS) was being perpetrated.

348. Importantly there are, as Mr Zaman points, out a number of difficulties with Mantir's denial of any knowledge of KTS or of their providing any workers to the Company. Having considered those points I have come to the conclusion that the evidence of Jitha, Jan, Harvey and Mr Josen, that Mantir knew that payments were being made to KTS in cash in return for the supply of temporary workers, is to be preferred to the evidence of Mantir that he did not know this. I have come to that conclusion for the reasons that follow.
349. Mantir accepts that he did, on occasion, collect cash from the bank to pay for what he was told by Jitha were wages. In cross examination, Mantir accepted that he knew that the workers employed by the Company were paid through the payroll and it follows that he knew that the cash could not have been for workers directly employed by the Company.
350. Mr Khangure invites me, as I will say shortly to conclude that at least Jitha, but possibly also Jan were a party to Fraud A, but why then would Jitha ask Mantir (as Mantir accepts he did) to collect large amounts of cash from the bank to pay wages. If Jitha was perpetrating a fraud by keeping the cash himself, inevitably he would want to conceal this (including from Mantir).
351. Why would Mantir not question why large amounts of cash were being withdrawn from the Company's bank account on a weekly basis for the purpose of paying "wages" if he knew that the Company's employees could not be the recipients of the cash. Mantir does not suggest that there were any other workers that the cash could have been for. Mantir does not suggest that he questioned it in any way or at any time over the 13 years or so that it appears that cash was withdrawn from the Company's bank account to pay wages.
352. On 22 March 2022, Mantir gave the following instruction to his then forensic accountant, Mr Plaha - "...We are wanting you to investigate the following points ...1. 6k going out of the bank almost on a weekly basis from around 2017 to the current payment made by cheque ...4. Around 2013 to 2016 and maybe going beyond these years, Jitha used a recruitment agency for labour supposedly, worth looking into ie., Was it legitimate company or not, as I have a feeling it closed some time before." This is the instruction to Mr Plaha to investigate the KTS Issue. The content of the instruction of 22 March 2022 was only revealed when I directed, on the second day of the trial, that it should be produced, because of an ambiguity in Mr Plaha's report as to what instruction he was given, to investigate the KTS Issue.

353. Mantir undoubtedly knew that £6,000 was going out of the Company's bank account every week in cash because, even on his own case, he collected the cash on occasions. Mantir knew (he said to Mr Plaha, because he had been told by Jitha, the Respondents say because he arranged for KTS to supply labour) that a recruitment agency was being used (Mantir said "supposedly"). The instruction to Mr Plaha also reveals that for some reason Mantir had doubts about whether the recruitment agency company was a legitimate company, because he had "a feeling" that it had closed some time before. In due course, Mr Plaha reported that the KTS invoices bore an invalid VAT number and that the company KTS Suppliers Limited (which was the name entered in the Company's supplier ledger for KTS) had been dissolved in 2008. In my judgment Mantir's instruction to Mr Plaha supports the conclusion that Mantir knew more about KTS than he admitted knowing in his witness statement or in cross examination: (a) he describes the entity as supposedly a recruitment agency for labour. On the Respondents' case KTS supplied labour to the Company; and (b) Mantir says that he has a "feeling" that the company may have closed before 2013 – 2016, he does not say why he has that feeling. In my judgment he could only realistically have had that feeling if he knew that the KTS dealing with the Company was not a legitimate company or he or someone assisting him carried out some research into KT Suppliers Limited (probably just a search at Companies House) and found out that KT Suppliers Limited had been dissolved in 2008, as Mr Plaha confirmed in his report, in due course, that it had (KT Suppliers Limited not being the name on the KTS invoices, but the name wrongly allocated to KTS on the Company's nominal Ledger where payments to KTS were recorded).

354. In summary therefore I find that Mantir has not proved that Fraud A was perpetrated upon the Company because:

- (a) the fact that the invoices for the supply of labour by KTS bore the name of a company, which it is common ground did not supply labour to the Company and an invalid VAT number, I infer means that the arrangements with KTS involved a fraud which was either Fraud A or Fraud B. Mantir bears the burden of proving that it was Fraud A and which of the Respondents was a party to Fraud A;
- (b) the peculiarities and suspicious circumstances of the arrangements with KTS are broadly as consistent with Fraud A as they are with Fraud B;
- (c) the involvement of Mantir in collecting large amounts of cash from the Bank and even on his own case, being told by Jitha that the cash was for wages, when he knew it was not for wages for the Company's own employees, is not only inconsistent with any of the Respondents and in particular Jitha attempting to perpetrate a fraud on the Company (fraud A) but would, in my judgment have given rise to Mantir asking questions if, as he says he was not involved in any arrangements for KTS to supply workers to the Company and has no knowledge of KTS actually supplying workers;
- (d) the instruction that Mantir gave to Mr Plaha, on 22 March 2022, lead me to conclude that Mantir knew that KT Suppliers Limited had been dissolved in 2008 (the name on the KTS purchase ledger). I consider that Mantir would know that payments of large amounts of cash to KTS on a weekly basis which he knew had taken place would,

combined with the dissolution of KT Suppliers Limited in 2008 create a suspicion that something untoward had gone on in relation to the cash payments, which was something that he could seek to lay at the door of the Respondents and in particular Jitha, if he was able to distance himself from those arrangements. In my view Mantir attempted to distance himself from the arrangements with KTS by claiming that he knew nothing about the arrangements with KTS other than what he was told by Jitha. That claim does not however ring true for the reasons set out in (c) above and this paragraph (d); and

(e) in light of (c) and (d) above I prefer the evidence of Jitha, Jan, Harvey and to a lesser extent Mr Josen (given my findings as to the credibility of Mr Josen's evidence on various matters relating to the KTS Issue, see paragraphs 218 and 220-221) that Mantir was sufficiently aware of the arrangements with KTS to know that: (i) the Company was being supplied with low skilled, low paid workers each week for which the Company paid weekly in cash; and (ii) cash had to be collected weekly from the Company's bank over around 13 years, with Mantir himself collecting the cash on occasions.

355. Mr Khangure's alternative case, if I found that labour had been supplied to the Company in return for the payments made by the Company to "KTS" (that is Fraud B) is that the Respondents or one or more of them has mismanaged the Company's affairs thereby exposing the Company to a large potential liability for VAT. I am not satisfied that all or any of the Respondents can be said to have mismanaged the Company's affairs in that way, for the following reasons:

- (a) the mismanagement, on Mr Khangure's alternative case, would be in the context of Fraud B. Under that scenario, the Company received workers in return for the cash paid to KTS (or someone purporting to represent KTS) but some or all of the Respondents mismanaged the Company's affairs, by failing to check whether the company name and VAT number on the KTS Invoices was the company that was supplying labour to the Company and was a valid VAT number;
- (b) I have already set out my reasons for concluding that Mantir at least knew, in substance, what the arrangements with KTS were (ie after a short period when cheques were paid to KTS, KTS was paid in cash every week for supplying workers to the Company). In those circumstances, Mantir would need to show that one or more of the Respondents bore more (and in my view significantly more) responsibility than he did for not checking the name of the company and the VAT number on the KTS Invoices, in order to make out a case of mismanagement against them;
- (c) George runs the Company's transport department. It is common ground that he had nothing to do with paying KTS, he did not collect the cash from the bank, he did not sign any of the cheques which were payable to cash, he will not have received any of the invoices or input any of them into Sage and he has no management responsibility for the accounts department run by Mr Josen. Any worker supplied by KTS would not have worked in his department, but rather in Harvey's department. There is no basis for concluding therefore that George could have any responsibility

for not checking the name of the company or VAT registration number on the KTS Invoices;

- (d) Harvey was in charge of production and therefore the workers supplied by KTS would have worked under him (in Fraud B workers were supplied to the Company). Harvey however did not sign any of the cheques payable to cash, did not collect any of the cash from the bank and did not receive any of the invoices or input them into Sage and he has no management responsibility for the accounts department run by Mr Josen. In those circumstances I cannot see how Harvey could bear any responsibility for failing to check the name of the company or VAT registration number on the KTS invoices;
- (e) Jan was a signatory to the bank account and it appears that on occasions he signed cheques payable to cash and collected the cash from the bank. Jan did not however receive the KTS invoices or input them into Sage and he has no management responsibility for the accounts department run by Mr Josen, There is no basis for concluding therefore that Jan could have any responsibility for not checking the name of the company or VAT registration number in the KTS Invoices;
- (f) Jitha was also a signatory to the bank account and on occasions he collected cash from the bank to be paid to KTS. Jitha did not receive the KTS invoices or input them into Sage. As managing director, Jitha did have overall responsibility for the management of the Company and Mr Josen reported to him. It was Mr Josen who had direct responsibility for the accounts staff who received the KTS Invoices and input them into Sage (and on occasions he accepts that he input them onto Sage himself). Mr Josen had accountancy qualifications, Jitha had none and, in common with the other Brothers, Jitha did not attend school after he was 16. It would not be fair or realistic, in my judgment to hold that Jitha has grossly mismanaged the affairs of the Company, because he did not tell Mr Josen to check VAT numbers and company names appearing on supplier invoices generally or specifically in relation to the KTS Invoices; and
- (g) assuming that Fraud B occurred, which I do for the purposes of Mr Khangure's alternate case, there are features of the arrangements between the Company and KTS that it could be said, should have been what Mr Khangure referred to as "red flags" that a fraud might be being perpetrated by KTS. In particular the large payments in cash to KTS every week, in circumstances where the reason given by KTS for wanting cash (that it did not want to wait for the Company's cheques to clear) do not stand up to scrutiny. I put it to Mr Khangure, during his closing argument, that the Brothers may have been prepared to pay KTS in cash and "not ask too many questions", in order to obtain the supply of cheap unskilled labour that the Company wanted. Even if that is what happened, and in my judgment there is insufficient evidence from which I could infer that it is, and fraud B could have been prevented, had the Brothers questioned the arrangements with KTS, more closely, the Brothers share responsibility for not asking those questions and not preventing Fraud B from occurring, the responsibility cannot be laid by Mantir at the door of one or more of the Respondents.

ISSUE 3 HAVE ANY OF THE RESPONDENTS MISAPPROPRIATED THE PROPERTY OF THE COMPANY?

356. Having dealt with the KTS Issue, under the heading of “mismanagement” (although Mr Khangure’s primary case is that it was a misappropriation of the Company’s property) there is only one remaining allegation by Mantir that the Company’s property has been misappropriated, namely that the Company’s money was used to discharge, at least part of the cost of construction the House at Gorway Rd.
357. I have summarised, in paragraph 28 above how Mantir puts his case in relation to the Gorway Rd Issue and in paragraph 40, the defence to the Gorway Rd Issue.
358. At paragraph 108 of his 30/8/22 witness statement, Jitha says that he knocked down most of the existing house at Gorway Rd and used Blue Bricks to rebuild the House at a cost of around £350,000 which he says he funded from his personal money, the sale of his previous home and £90,000 – £100,000 which he borrowed from George, Jan and Harvey. He denies using any of the Company’s money to construct the House or telling anyone that he had done so.
359. On 29/9/23 an application was made by Mantir for permission to rely on an expert report from Mr Buray, on the question of whether items which the Company had purchased were used in the construction of the House. The application was opposed by Jitha and by his son Mani who also lived at the House with Jitha (in the latter case, on the basis that directing that a surveyor be allowed access to the House would interfere with Mani and his family’s right to a private family life).
360. I granted Mantir permission to rely upon the expert evidence of Mr Buray as to whether three specific items that were purchased by the Company had been incorporated into the House and the surrounding land. The three items were the Doors, the Slabs and the Roof Tiles (see paragraph 224 (b) for details of the invoices and materials) .
361. In a report dated 21 December 2023, Mr Buray concluded that the Doors, Slabs and Roof Tiles supplied pursuant to all three of the invoices had been incorporated into the House, or the land surrounding it. The Respondents have not sought to rely on their own expert surveyor and Mr Buray was not asked to attend for cross examination. I therefore proceed on the basis that it is common ground that the Doors, Slabs and Roof Tiles purchased by the Company for a total of £18,942.52 (including VAT) have been incorporated in the construction of the House.
362. Mr Southall and Mr Donaldson, both defer to Mr Buray’s expertise in identifying that the Doors, Slabs and Roof Tiles were incorporated into the House. Their expert evidence is as follows:

- (a) in his report dated 19/4/24 (see paragraph 234 (d)) Mr Southall says that three suppliers to the Company in 2015/16 were only used in that period, namely Cambabest, JK Building Supplies and Stoneleaf Building Materials, the use of skips increased in 2015 and 2016 and the Company paid £66,547.77 plus VAT to JK Building Supplies during the period when the House was being constructed, suggesting that the Company purchased far more materials, than just the Doors, Slabs and Roof Tiles, used in the construction of the House;
- (b) in his report, also dated 19/4/24 (see paragraph 234 (e) above) Mr Donaldson repeats what he says in his earlier report about being instructed that the Company carried out significant works of its own whilst the House was being built in 2015 and 2016: building a canopy extension at CBS House; building a new loading bay at CBS House; general repairs and maintenance at CBS House; and additional units were built at Kelvin Way, some of which were used by the Company. Mr Donaldson says he has considered the expenditure in nominal account 7830 for building works and repairs over the period 2014 – 2023 and calculates that the average expenditure over the period was £63,750.91. The amount expended in 2015 and 2016 in excess of the average spend of £63,750.91, is £45,688 excluding VAT; and
- (c) in Mr Southall and Mr Donaldson's joint report of 8/5/24 (see paragraph 234 (f) above) they agree that:
 - (i) Stoneleaf Building Materials and Cambabest were only paid by the Company during the period that the House was being constructed;
 - (ii) Model Builders (Birmingham) was paid more than £10,750 (net of VAT) by the Company, during the period when the House was being constructed, with only limited expenditure in other years; and
 - (iii) JK Building Supplies was paid more than £66,500 (net of VAT) by the Company during the period that the House was being constructed, with only limited expenditure in other years; and
- (d) Mr Southall carries out his own calculation, in the joint report, of the average expenditure of the Company entered in nominal account 7830. He calculates the expenditure on nominal account 7830 at £55,786 for 2013 and 2014 and at £173,190 for 2015 and 2016. On this basis he calculates the over average expenditure for 2015 and 2016 at £117,404.

363. In Jitha's second witness statement dated 14/5/24 (see paragraph 12 above) he:

- (a) accepts, without comment, that Mr Buray has concluded that the Doors, Slabs and Roof Tiles paid for by the Company have been incorporated into the House, at a cost to the Company of £18,942.53 (including VAT);
- (b) says that he has reviewed all of the invoices addressed to the Company, which were included in the bundle prepared by Mantir's solicitors, in support of his application to rely upon expert evidence from Mr Buray. Jitha says that, with the assistance Mr Lamb, he has gone through all these invoices and has prepared a schedule (which he exhibits to his witness statement) in which he and Mr Lamb comment on whether the materials, included in those invoices, could have been used in the construction of the House. Jitha says that when he and Mr Lamb went through this exercise, they only

- found that two other invoices totalling £4,424.95 (including VAT) might possibly have related to materials used in the construction of the House;
- (c) he produces invoices addressed to the Company from JK Building Supplies dated prior to 2015, which he says shows, contrary to what Mr Southall says, in his report dated 19/4/24, that they were a supplier to the Company prior to 2015;
 - (d) says that he has set up a director's loan account for £54,826 (the figure identified by Mr Donaldson as the over spend in 2015 and 2016 (including VAT), compared to the average for 2014 -2023) and that he will pay this to the Company once it is decided (by me) what the Company spent on materials for the House; and
 - (e) he produces his Halifax bank account statements for the period 2014 – 2020 and two spreadsheets containing figures extracted from those bank statements which show:
 - (i) all of the receipts into the account from which he says the construction of the House was funded; and
 - (ii) the large amounts of money taken out of the account in cash, which he says were paid by him to Blue Bricks to construct the House and repaid to his son, Mani (who paid for building costs on his credit card) and to George, Harvey and Jan, who he borrowed money from, to construct the House.

364. Mr Khangure says:

- (a) it is Mantir's case that, in 2016, Jitha told him that he had used the Company's money, in building the House, which Jitha said he would repay to the Company;
- (b) the Respondents, in their defence, denied that any of the Company's money was used in constructing the House and Jitha says that he no longer has any documents relating to Blue Bricks, which he says constructed the House;
- (c) Mantir obtained, from the suppliers direct the: (i) JB Kind Limited invoice for £3,802.56 for the Doors; (ii) JK Building Supplies Limited invoices for £3,067.84, for the Slabs; and (c) Stoneleaf Building Materials Limited invoice for £10,800, for the Roof Tiles. These invoices should have been disclosed by the Respondents, but were not. Mr Khangure suggests that the JB Kind invoice, in particular was deliberately withheld because it shows 23 Gorway Rd as the delivery address;
- (d) the Respondents' solicitors were asked about the three invoices and responded that the Respondents could not remember what the materials supplied under the three invoices had been used for, but that they did not believe that the materials had been used for any purpose, other than the purposes of the Company
- (e) Jitha, with the assistance of his son Mani, sought to prevent an order being made to allow Mr Buray to inspect the House to determine if materials paid for by the Company, including the Doors, Slabs and Roof Tiles, had been used in its construction. This was done, because Jitha knew that they had been used in the construction of the House and therefore that, inevitably Mr Buray would conclude, as he did, that all of the materials had been used in the construction of the House;
- (f) Jitha still denies telling Mantir that he had used the Company's money in the construction of the House, in spite of it being clear that he must have done;
- (g) as to how much of the Company's money was spent on the House:

- (i) the purchase of particular materials by the Company matches the stages of the construction of the House, with materials which would be used in constructing foundations being purchased by the Company when the House's foundations were being built, right up to the purchase of roofing materials (in addition to the Roof Tiles) when the roof of the House was being constructed;
- (ii) as to Jitha's suggestion that the Company was incurring additional expenditure on building works in 2015 and 2016: the canopy for CBS House was largely completed in 2014 and the Units at Kelvin Way were owned by Swaran Properties and not the Company and the Company was not occupying any of the Kelvin Way Units, so it should not have been paying for the building of additional units at Kelvin Way; and
- (h) Mr Southall's calculation of over average expenditure for 2015 and 2016 should be preferred to that of Mr Donaldson's, because the Company incurred additional building costs when the new corrugator was installed in 2018 and thereafter as a result of the additional turnover achieved with the new corrugator and Mr Donaldson has included figures from nominal ledger 7830, for these years, in his calculations.

365. Mr Zaman says:

- (a) Mantir has changed his case from an assertion that all the costs of constructing the House were paid for by the Company, to an allegation that, at most £117,404 of the cost of building the House were paid for by the Company;
- (b) in cross-examination, Mantir said that he agreed that Jitha could use the Company's money to build the House, provided that it was repaid. If the court finds that this was agreed, then this is not a case of the Company's money being misappropriated, but merely a failure to repay a loan;
- (c) there is a contemporary photograph taken by Mantir himself of the House under construction with a builder's board bearing the name Blue Bricks on it which shows that Blue Bricks was constructing the House;
- (d) Jitha has disclosed his bank statements and these show how the rebuilding of the House was financed: (i) £120,000 from an initial remortgage taken out on 29/1/14; (ii) £82,661.97 from a further remortgage, following completion of the rebuild on 30/8/16; and (iii) the remuneration/dividends that Jitha received from the Company at the rate of £7,000 per month throughout the build period. These alone amount to approximately the £350,000 that Jitha estimated it cost to rebuild the House;
- (e) Jitha has shown that he has spent £339,134.06 from his account on the rebuild and on renting alternative accommodation, while the House was being built;
- (f) the small amount of the Company's funds that were used in the construction of the House were used in error, rather than deliberately; and
- (g) Mr Southall's approach of calculating an over spend for 2015 and 2016 is misconceived. He has chosen the lowest spending years of 2013 and 2014 to calculate the Company's average spend on building works and he has thereby artificially reduced the size of the Company's average spending on building works.

366. I will make findings in respect of the Gorway Rd Issue on the following points:

- (a) did Jitha tell any of the other Brothers, and if so who, that he had used, was using or would use the Company's money in the construction of the House;
- (b) did Jitha deliberately use the Company's money in the construction of the House or was it, as Mr Zaman suggests, inadvertent; and
- (c) how much of the Company's money was used in paying the costs of the construction of the House?

Who did Jitha tell?

367. In paragraph 11 of Petition, Mantir asserts that in or about 2016, Jitha informed the other Brothers (including Mantir) that he had used the Company's money to build the House, which Jitha said he would repay. Mantir says that Jitha did not seek Mantir's consent or, so far as Mantir is aware, the consent of the other Respondents before using the money and that Jitha said that had used the Company's money in order to save on VAT.

368. In paragraph 82 of his witness statement dated 30/09/22, Mantir says that "I will say that Jitha did discuss using company funds for the renovation of [the House] which he said he would repay. Jitha told us that he was doing it with a view to making a saving on VAT. He then told me much later he had repaid some of the money but not all. I understand now that he denies he used any company money...."

369. The defence, at paragraph 23 (1) says, in response to paragraph 11 of the Petition that "[Jitha] funded the build of [the House] from his own resources. There was no such conversation between Mantir and [Jitha], as alleged."

370. In his witness statement dated 30/8/22, at paragraph 40 Jitha says that the funds to construct [the House] came from his own personal monies, from the sale of his old house, some money he had in the bank and money he had borrowed from George, Jan and Harvey (probably £90/£100k). "...I no longer have any documents from Blue Bricks relating to the work they did at my property but I never took or borrowed any money from [the Company] to fund the build and never said to anyone that the money would be repaid - as I never took any money in the first place."

371. Each of George and Jan say, in their respective witness statements dated 30/8/22, that Jitha never told them that he had used any of the Company's money in constructing the House and that they do not believe that he did so. Jan says that Jitha asked to borrow money off him, George and Harvey. He does not say that he lent money to Jitha. George says that Jitha borrowed some money from him and also he believes from Harvey and Jan. Harvey says that "If [Jitha] was going to use company money, we would have known about it. My view is that I know he did not". Harvey does not say anything about Jitha borrowing money.

372. During his cross-examination, Mantir said that Jitha told Mantir and the other Respondents about his intention to use Company money on the rebuilding of the House, before the work started. I asked Mantir what Jitha had said to him. Mantir said that Jitha said he would be using the Company's money to save on VAT but would repay it and that we all agreed on the basis that he would pay it back, but later Jitha said that he had not used the Company's money. There are two inconsistencies between what is said in the Petition and what Mantir said in cross-examination: (a) in the Petition, Mantir said that Jitha told Mantir and the other Respondents that he had used the Company's money to build the House, but in cross examination Mantir said that Jitha said that he was going to use the Company's money; and (b) the Petition also says that Jitha did not seek the consent of Mantir, or so far as he is aware the consent of the other Respondents, before using the Company's money in the construction of the House. Whereas, in cross-examination, Mantir said that they had all agreed that Jitha could use the Company's money, provided that he paid it back.

373. I am satisfied that Jitha did tell Mantir that he would use, was using or had used the Company's money to pay for at least part of the cost of constructing the House, I cannot however say which. I find this because:

- (a) for reasons that I will explain shortly I have found (below) that Jitha did intentionally use the Company's funds to pay part of the cost of building the House. This finding has two implications, for the present issue: (i) it makes it more likely that Jitha would tell Mantir that he would use, was using or had used the Company's monies to fund at least part of the cost of building the House; and (ii) my finding that Jitha intentionally used the Company's money to fund part of the cost of construction the House (and then lied about having done so) means that I can give little weight to Jitha's assertion that he did not tell Mantir that he was going to use, was using or had used the Company's to pay part of the cost of building the House;
- (b) in closing I asked Mr Zaman how, if Jitha had not told Mantir that he had used the Company's money to pay for at least part of the cost of building the House, Mantir would know that this was what had happened, in order to assert it in the Petition. Mr Zaman could offer no explanation for this. The evidence that Jitha had used the Company's funds to pay for the Doors, Slabs and Roof Tiles appears to have come to light after the Petition was issued. The fact that Mantir asserted in the Petition that Jitha had told him about using the Company's monies in the construction of the House is strong evidence that Jitha did tell Mantir that he was going to do so, was doing so or had done so. How, I asked rhetorically, would Mantir know to include this allegation which has proved to be true, in the Petition unless Jitha did tell him; and
- (c) the discrepancies in the assertions in the Petition and Mantir's evidence in cross examination (see paragraph 372 above) do not lead me to conclude that the substance of Mantir's evidence, that Jitha told him about using the Company's money to construct the House, is untrue but they do mean that I cannot say whether Jitha told Mantir that he would use, was using or had used the Company's money.

374. I am not satisfied that Jitha told George, Harvey or Jan that he was going to use, had used or was using the Company's money to fund some or all of the costs of building the House, for the following reasons:

- (a) George and Jan deny that Jitha told them that he had used, was using, or was going to use any of the Company's money in the construction of the House. Harvey does not explicitly deny that Jitha told him that he had used any of the Company's money in the construction of the House, but he says that if Jitha was going to use the Company's money to construct the House "we would have known about it" and that his view is that Jitha did not use the Company's money for this purpose. Harvey could not form the view that Jitha did not use the Company's money to discharge part of the cost of constructing the House, if he recalled Jitha telling him that he intended to use, was using or had used the Company's money for this purpose;
- (b) as noted there are inconsistencies between what Mantir says in the Petition and what he said in cross examination about what Jitha said about use of the Company's money to build the House and whether this was agreed to by the other Brothers or not. This undermines the credibility of Mantir's evidence that Jitha told him and the Respondents; and
- (c) whilst it is possible, I think it unlikely that George, Jan and Harvey would have forgotten that Jitha had told them that he had used, was using or would use the Company's money to construct the House, but that Mantir remembers this. This is particularly so, because it is common ground that Mantir asserted, at a board meeting, as long ago as 18 January 2020 that Jitha had used the Company's money in the construction of the House and Jitha denied it. George, Jan and Harvey were present at the board meeting and it is unlikely that George, Harvey and Jan would have forgotten, as early as January 2020 that Jitha had told them at some time after 2014, but Mantir remembered it. As to whether Jan, George and Harvey did remember Jitha telling them, but lied about not remembering that he had done so, I prefer the evidence of Jan, George and Harvey, to that of Mantir as I have more reason to doubt the honesty of Mantir's evidence than that of Jan, Harvey and particularly George.

Was the use of the Company's funds deliberate or inadvertent?

375. During his cross-examination Jitha said that some of the Company's money was used in buying materials for the construction of the House, by mistake, Jitha apologised for this happening and said that he was in Essex a lot in 2015/16 dealing with Connect Packaging and invoices were accidentally paid by the Company.

376. I am not satisfied that payment for the Doors, Slabs and Roof Tiles was made by the Company, in error, for the following reasons:

- (a) the invoices for the Doors, Slabs and Roof Tiles are addressed to the Company. Jitha offered no explanation as to why materials used in the construction of the House would be invoiced to the Company;

- (b) Jitha's suggested that a mistake might have been made because, at the relevant time he was spending a lot of time in Essex dealing with Connect Packaging, but that does not explain why the suppliers would have invoiced the Company for materials delivered to 23 Gorway Rd. In my judgment they would be only be likely to do so if instructed to invoice the Company and I am satisfied that the person who instructed them to do so was Jitha and it was not a mistake because:
- (i) Jitha did not suggest that he was normally, or indeed ever involved in ordering building materials for the Company's use, so that, if he ordered materials for the House, the supplier might mistakenly assume that the invoice should be sent to the Company;
 - (ii) the Doors were paid for by Jitha's Company Credit card and the delivery address on the invoice is stated to be 23 Gorway Road, so Jitha clearly ordered the Doors for the House and caused the Company to pay for those materials. Jitha has then initialled the credit card receipt to authorise it as a payment properly made by the Company, causing it to be entered on nominal ledger 7830. If this was a mistake, there would in fact have to be two mistakes by Jitha, mistakenly putting the Doors on his Company credit card and then mistakenly initialling the credit card receipt to confirm that it is a proper payment by the Company. Jitha does not explain in his second witness statement dated 14/5/24 how either mistake occurred;
 - (iii) as Mr Josen ultimately accepted (see paragraph 217 above) whilst invoices would only be entered on nominal account 7830 if properly authorised, most payments which were not regular small payments were authorised by Jitha and if Jitha authorised them, they would be entered in that nominal code, no questions asked by Mr Josen's accounts team. I consider it unlikely that anyone other than Jitha would have authorised the invoices for the Slabs and Roof Tiles for payment by the Company (he certainly authorised the Company paying for the Doors) when he was normally the person who authorised payments of this type (not regular and not small) and they were not for materials to be used by the Company, but instead for use in the construction of the House; and
 - (iv) of those who could authorise payments by the Company, only Jitha would know what materials were required, for the construction of the House;
- (c) in the case of Stoneleaf Building Supplies, which provided the Roof Tiles, Mr Southall and Mr Donaldson agree that it had never supplied the Company before and so, in the case of its invoice it cannot be that the supplier simply addressed the invoice to the entity that it had invoiced before. Mr Southall and Mr Donaldson also agreed that JK Building Supplies had made very few supplies to the Company, prior to 2015, making it unlikely that JK Building Supplies would invoice the Company, because it had done so before; and
- (d) all the materials will have been delivered to 23 Gorway Rd. In the case of the Doors, the invoice from JB Kind shows the delivery address as 23 Gorway Rd and I am satisfied that the Slabs and Roof Tiles will also have been delivered to 23 Gorway Road and not the Company, because that is where they have been used. The person ordering those items would have to tell the supplier where to deliver them and of those, who on the face of it, might appear to the supplier to be authorised to order materials on behalf of the Company, only Jitha would know what supplies were

needed for the construction of the House, he does not suggest that anyone else ordered (or could have ordered) the Doors, Slabs or Roof Tiles.

377. My conclusion, in paragraph 376, is supported by my finding that Jitha told Mantir that he had used, was using or was going to use the Company's money to fund at least part of the cost of building the House:

- (a) if he said he was using or would use the Company's money, then it follows that the use of the Company's funds was deliberate;
- (b) if he said that he had used the Company's money, I accept, that in theory at least, it might not been deliberate, however:
 - (i) Mantir also said that Jitha told him that the reason why he had/was using the Company's money was to save on VAT, if that is true, then the use of the Company's money must have been deliberate. Jitha could not recover the VAT that he paid, but the Company could recover it by setting it off as input VAT against its VAT output liability. This tends to support the conclusion that the use of the Company's funds was deliberate, even if Jitha told Mantir that he had used the Company's funds; and
 - (ii) even if Jitha told Mantir that he had used the Company's funds, in my judgment his subsequent attempts to cover this up suggests that it was deliberate (see the next paragraph).

378. Jitha, in my judgment, sought (with the assistance of others) to cover up the fact that the Doors, Slabs and Roof Tiles had been purchased by the Company. Jitha would only do so if he knew that they had been. The evidence of an attempt, by Jitha to cover this up is:

- (a) invoices which were debited to nominal account 7830 were disclosed by the Respondents except for the invoices for the Doors, Slabs and Roof Tiles. Mr Josen said that copies of all invoices debited to nominal ledger 7830 would have been kept in a file. He could not offer an explanation as to why the invoices for the Doors, Slabs and Roof Tiles had not been disclosed;
- (b) when it was put to the Respondents' solicitors (Mantir having obtained copies of the invoices addressed to the Company from the suppliers direct) that the Doors, Slabs and Roof Tiles were used in the construction of the House and they were sent catalogues containing pictures of the Doors, Slabs and Roof Tiles supplied under the invoices addressed to the Company and photographs of the House showing these materials in situ, in and on the House, whilst recognising the similarities, the solicitors continued to deny, on instructions that the materials shown in situ at the House were those supplied under invoices which had been paid for by the Company. They did not suggest that the Company money had been used by mistake;
- (c) Jitha, with the support of his son, Mani opposed an order being made for Mantir to rely upon a report by Mr Buray on whether materials used by the Company had been used in construction of the House. Whilst Mantir wanted to be given permission to rely upon an expert report from Mr Buray upon the use of materials in the House that went beyond the Doors, Slabs and Roof Tiles, the application was opposed, even if

the permission was restricted to those three materials. The grounds for objection in my judgment, were spurious and aimed at preventing a surveyor from confirming what Jitha knew to be true and the catalogues and photographs of the House showed, namely that the Doors, Slabs and Roof Tiles had been incorporated into the House. Mani objected on the basis that allowing a surveyor to inspect the House would interfere with his and his family's right to a private family life, because they lived at the House. However any disturbance would be minimal and I am satisfied that the real reason why the application was opposed was because Jitha knew that Mr Buray would confirm that the three materials had been incorporated into the House; and

(d) ultimately Mr Buray said that the Doors, Slabs and Roof Tiles had been incorporated into the House and I am satisfied that Jitha knew he would say this.

How much of the Company's money was used in the construction of the House?

379. Jitha's case now is that very little, if any, of the Company's money was used to purchase materials used in the construction of the House, other than the Doors, Slabs and Roof Tiles which he has been forced to accept were paid for by the Company. In support of that contention he:

- (a) says that Blue Bricks not only constructed the House, but provided all the materials (or nearly all the materials) needed for its construction;
- (b) attaches to his second witness statement a schedule, prepared from his bank statements, which he says shows the large amounts of cash that he withdrew from the account to pay to Blue Bricks and the money he repaid to the other Respondents and his son Mani, which he says they lent to him to assist in paying for the construction of the House (see paragraph 363 (e) above); and
- (c) attaches a second schedule to his second witness statement which he says he prepared with the assistance of Mr Lamb, showing that he and Mr Lamb reviewed all the invoices paid for by the Company, that Mantir asserted were for materials used in the construction of the House and they concluded that only two other invoices might have been for materials used in the construction of the House (see paragraph 363 (b) above).

380. The only documentary evidence that Jitha relies on to show that Blue Bricks were involved in the construction of the House at all, is a photograph taken by Mantir of the House under construction showing a builders board, with the name "Blue Bricks" on it, in the foreground. Whilst this may be good evidence that Blue Bricks was involved in the construction of the House, it does not show that Blue Bricks supplied substantially all of the materials used in the construction of the House.

381. In cross-examination, Jitha was asked why he had obtained no confirmation from Blue Bricks of the works that it had carried out and the materials that it had supplied to construct the House or what it had been paid. Jitha said that he had fallen out with Blue Bricks over extra money that they wanted. Later in his cross examination, I asked Jitha whether he had sought any confirmation from Blue Bricks of its involvement in the

construction of the House. He said that he had had a meeting with them about a year ago, however there is no mention of this meeting in Jitha's second witness statement dated 14 May 2024. If such a meeting did take place, I would expect it to be mentioned in that witness statement and at least some document or documents to be produced as a result of that meeting.

382. The first schedule attached to Jitha's second witness statement purports to show that Jitha paid out of his bank account the following cash sums, in connection with the construction of the House:

- (a) £219,029.06 in cash to Blue Bricks;
- (b) £64,000 to Mani by payments of £800 per month from June 2014 until August 2020, which Jitha says reimbursed Mani for payments that Mani had made towards the construction of the House;
- (c) £62,000 which Jitha said he had repaid to Jan, Harvey and George in cash for money they lent him, in cash, to pay for the construction of the House, as follows:
 - (i) £16,000 to Jan on 5/9/16;
 - (ii) £15,000 to Harvey on 6/9/16;
 - (iii) £16,000 to George on 14/9/16; and
 - (iv) £15,000 to Jan on 5/10/16.

383. Jitha also says that he spent £34,247 on his personal credit card, on construction costs.

384. As to the £219,029.06 which Jitha says he withdrew in cash and paid to Blue Bricks, as I have already said, Jitha has not only failed to produce a single contemporaneous document relating to Blue Bricks involvement in the construction of the House or payments made to it, but he has not even produced a letter, or email, from Blue Bricks confirming their involvement or what they supplied or what they were paid. Whilst I accept, based upon the photograph, that Blue Bricks were involved in the construction of the House the total absence of any documents or confirmations from Blue Bricks undermines Jitha's assertion that Blue Bricks supplied substantially all of the materials used in the construction of the House and that £219,029.06 was paid to them by Jitha, in cash

385. I am not satisfied that Mani paid £64,000 towards the cost of constructing the House which Jitha said was paid by Mani by using Mani's credit card or cards, for the following reasons:

- (a) the House is owned jointly by Jitha and Mani and both of them and their wives (and in the case of Mani his children) live there. Even if, which I do not accept, Mani did contribute towards the cost of constructing the House, it does not follow that Jitha should reimburse him for that cost;

- (b) in his witness statement dated 30/8/22 (see paragraph 358 above) Jitha does not mention Mani paying anything towards the cost of constructing the House or his repaying any money to Mani;
- (c) it is common ground that construction of the House did not start until mid-2015. I asked Jitha why he was repaying money to Mani for money that he said Mani contributed towards the construction of the House in 2014, before construction works started. Jitha said that Mani had paid costs associated with the obtaining of planning permission. In my judgment, Jitha made that up, when faced with the problem that the £800 per month that his bank statements show he was paying to Mani and which Jitha said were to reimburse Mani for what he had paid towards the cost of constructing the House, started, before the construction of the House started;
- (d) Mani was around 26 years old in 2014, I consider it highly unlikely that a credit card company or companies would allow Mani credit of £64,000. There is no evidence of what Mani's income was in 2014 and I infer, given his age and the absence of any evidence to the contrary, that his income would have been relatively modest and would not have supported Mani being advanced unsecured credit of £64,000;
- (e) Jitha says that he made large cash payments to Blue Bricks in 2015 and 2016 and right at the end of the period when the House was being constructed, ordered materials and paid for them on his personal credit card. It would not make sense for Mani to pay for, or contribute towards the cost of planning in 2014, incurring very high interest rates on his credit card balance(s) at the very start of the project to reconstruct the House, rather than, as Jitha did at the end;
- (f) no document recording Mani making any credit card payments has been produced; and
- (g) finally, Jitha was trying to show how he had paid the £350,000 approximately that he said it had cost to construct the House. Jitha never suggested that planning costs were included in this figure and so, even if I had accepted that Mani contributed towards the planning costs, (which I do not, for the reasons already given) the £64,000 would not form part of the costs of constructing the House (£64,000 is in any event a very large sum of money to pay for planning costs in connection with a domestic property).

386. I also reject Jitha's evidence that Jan, George and Harvey lent him £90,000/£100,000 to fund the costs of constructing the House, or that he repaid £62,000 to them, as set out in paragraph 382 (c) above:

- (a) Jitha said that Jan, George and Harvey had lent him £90,000/£100,000 towards the cost of constructing the House. When asked about the discrepancy between what was lent and what was repaid he said that he probably still owed them some money. I found that answer unconvincing;
- (b) Jitha said that Jan, George and Harvey lent him the money in cash and then he used this to make cash payments to Blue Bricks (without the money being paid into his bank account). If the money had been advanced by cheque or bank transfer, or even in cash, but paid into Jitha's bank account there would have been some record of it. I cannot see why it would make practical sense for Jan, George and Harvey to all give

large amounts of cash to Jitha, rather than giving him a cheque or making a bank transfer to Jitha's account, even if Jitha paid Blue Bricks in cash. The lack of practicality to what Jitha says happened and lack of explanation as to why things were done in that way (other than by Jan, see below) undermines the credibility of Jitha's case that loans were advanced to him by Jan, George and Harvey, in cash, to pay for part of the costs of construction of the House;

- (c) George does not say, in his witness statement, how much he lent to Jitha. When he was asked, in cross examination, about money he lent to Jitha, he said that he lent him some money, it could have been for the House. George said that the money that he lent would have been lent by giving Jitha a cheque, not in cash (contrary to what Jitha says) and he could not say what had been lent and what repaid. George's evidence does not support Jitha's case. If it had been lent, as George said, by George giving Jitha a cheque, then the cashing of this cheque would show up in Jitha's bank statements, which it does not;
- (d) Harvey did not identify, in his witness statement, how much he had lent to Jitha and how he had lent it. Harvey's evidence provides no material support for Jitha's case and of course there was no opportunity to cross examine him upon it. I can attach no weight to Harvey's evidence in support of Jitha's case;
- (e) in his witness statement Jan said that Jitha borrowed money from Jan, George and Harvey to construct the House. In cross examination, Jan said that he had lent money to Jitha in cash. When he was asked where he got the cash from he said that he did not trust banks and he had cash in a safe at home from some rental properties that he owns. Jan said that Jitha had repaid about £25,000, but Jitha says he repaid £31,000 to Jan. I did not find Jan's evidence about lending Jitha cash convincing and his evidence as to what Jitha has repaid is inconsistent with Jitha's evidence. Jan's evidence provides no material support for Jitha's case; and
- (f) whilst I accept that arrangements to lend and repay money between brothers can be informal, neither Jitha, Jan or George seemed to have any idea of what was lent by them to Jitha or repaid by Jitha to them and in the case of George what he had lent money to Jitha for.

387. I asked Jitha how, after this length of time, he was able to identify cash payments out of his account in the way that he had. Jitha said that he was only making cash payments out of the account at the relevant time, in relation to the construction of the House. In my judgment, what Jitha has done is to go through his bank statements and assert that every payment out of cash was used in one way or another to discharge the costs of constructing the House. For cash payments made after construction of the House was completed, which he could not say were directly used to discharge the costs of construction, Jitha has suggested that cash payments out of his account were used to repay loans made to him in cash, by the other Respondents to fund the construction costs. Jitha then characterises payments of £800 per month that he made by bank transfer to Mani, before, during and after the House was constructed as payments to reimburse Mani for money spent on Mani's credit cards towards the cost of construction (or planning). I have rejected that evidence for the reasons already given. Whilst I accept that some of the cash payments made out of the account were likely

paid to Blue Bricks (possibly to others as well) for construction costs, this leaves a shortfall of around £130,000 (even if all of those cash payments were made for construction cost) between the cash payments of £219,029.06 and the £350,000 which Jitha said were the costs of construction. If Jitha's credit card payments of £34,247 are taken into account, then the shortfall is just under £100,000 again assuming that the total build costs were about £350,000 of which there is no evidence, other than Jitha's assertion.

388. Mr Zaman approaches the task of showing how Jitha funded the costs of constructing the House differently. He refers to the two remortgages taken out by Jitha before and after the construction of the House (approximately £200,000) and adds to them Jitha's monthly income of £7,000 per month throughout the duration of the building works. He totals those three items at around the £350,000 that Jitha says it cost to construct the House. However this is not how Jitha says that he funded the costs of construction and it ignores the monthly expenses that Jitha would need to discharge from his income, including the £800 per month that he was paying to Mani and the cost of alternative accommodation throughout the building works.

389. As to the second schedule attached to Jitha's second witness statement, in which he and Mr Lamb comment on the invoices addressed to the Company which Mantir attached to his application for permission to rely on an expert report from Mr Buray, I do not consider this to have any evidential value:

- (a) there are no documents to support the comments made;
- (b) no permission was given for Mr Lamb to provide expert evidence, which in substance is what his comments appear to amount to and in any event it is unlikely that Mr Lamb would be a suitably independent expert;
- (c) there is no statement of truth attached to Mr Lamb's comments;
- (d) it is unclear how far Mr Lamb has simply relied upon what he has been told by Jitha in coming to his opinions;
- (e) Jitha and Mr Lamb appear to have formed the opinion that only two more invoices totalling £4,424.95 might possibly have been used in the construction of the House, however, as I will explain in the next paragraph it is clear that far more than that, at least might have been used in the construction of the House; and
- (f) given what I have found to be, Jitha's dishonest evidence on the Gorway Road Issue I cannot attribute any weight to his opinion about whether materials shown in invoices paid for by the Company were, or might have been, used in construction of the House.

390. Mr Khangure refers to the evidence available of the dates upon which the various stages of the construction of the House were undertaken. He says that invoices addressed to the Company show that the Company was purchasing materials at the times when they would be required for that stage of construction of the House. For example, materials that would be needed to construct foundations were purchased by the Company, when the foundations of the House were being constructed and so on through the various stages of construction. Mr Khangure referred to the purchase by

the Company of: (a) hardcore, when the foundations of the house were being constructed; (b) internal panelling, including moisture resistant panels used for bathrooms, when the House reached the second floor; (c) at least some of the components needed for underfloor heating; (d) timber and other components for the roof (in addition to the Roof Tiles) when the roof was being constructed; and (e) sockets for electric razors and TV sockets, when the House was being fitted out. Jitha accepted that materials of those types would have been used in constructing the House, but suggested nonetheless that they were used for the Company. As to the underfloor heating, Jitha accepted that underfloor heating was installed in the House, he was unable to say where the Company might have installed underfloor heating (it was suggested by the Respondents' solicitors at one stage that underfloor heating may have been installed in Harvey's office, but this was not supported by any of the Respondents or by any evidence).

391. Whilst Mr Khangure pressed me to find that all, or almost all, of the costs of building materials debited to nominal account 7830, in 2015 and 2016, were used in constructing the House, as Mr Zaman pointed out this would mean that the Company spent nothing on building materials for the purpose of its business, when it is clear that in all other years it has spent relatively significant amounts.

392. Mr Zaman accepted that a "the Broad Axe" approach may have to be employed in this case to arrive at a value for how much of the Company's money has been used to fund the cost of constructing the House (this comes from the speech of Lord Shaw in ***Watson Laidlaw & Co Limited 1914 SC (HL) 18*** where Lord Shaw speaks of the correct level of compensation being decided "to a large extent by the exercise of a sound imagination and the practice of the broad axe" where there is a lack of precise evidence).

393. I am unable to say, with any precision at all how much of the Company's money has been used in the construction of the House because:

- (a) I do not accept the various attempts made by Jitha to demonstrate that very little of the Company's money was used: (i) the First Schedule attached to Jitha's second witness statement, seeking to demonstrate the sources from which Jitha funded the construction of the House (see paragraph 382 – 387); and (ii) the Second Schedule to Jitha's second witness statement which sets out Jitha and Mr Lamb's comments on whether the cost of materials debited to nominal ledger 7830 in 2015/16 could have been used in the construction of the House (see paragraph 389 above);
- (b) I do not accept Mr Zaman's alternative suggestion of how Jitha paid for the construction of the House (see paragraph 388 above);
- (c) the only evidence I have of how much it cost to construct the House is Jitha's assertion that it cost around £350,000, but that is a mere assertion, not backed by any evidence and given my findings that Jitha deliberately used the Company's money to purchase materials used in the construction of the House, then lied by asserting that he did not do so and attempted to conceal the evidence that he had, I can give little weight to that assertion; but

(d) I accept that it is unrealistic to assume that everything that was debited to nominal account 7830 in 2015 and 2016 was a cost associated with the construction of the House.

392. The forensic accountants, Mr Southall and Mr Donaldson, have each carried out a calculation of the amount by which the Company's expenditure on nominal account 7830 was greater in the years 2015 and 2016, than it was, on average in other years. I accept that, given the lack of evidence that enables me to say precisely how much of the Company's money has been used in the construction of the House, this is the appropriate "Broad Axe" method to arrive at a figure,

393. Mr Southall calculates that the costs debited to nominal account 7830 for the years 2013 and 2014 are £55,786. Mr Southall says that expenditure debited to account 7830 for 2015 and 2016 totals £173,190 and on that basis he calculates that the expenditure debited to account 7830 for 2015 and 2016 was £117,404 in excess of the average for the previous two years. Mr Southall does not consider it appropriate to include building and repair works from the years after 2016, as Mr Donaldson has done as he says that this includes the period after the installation of the new corrugator, after which the turnover of the business increased significantly.

394. Mr Donaldson calculates the average costs debited to nominal account 7830 for the years 2014 – 2023 at £63,750.91. He calculates the expenditure on nominal account 7830 for 2015 at £102,910.612 and for 2016 at £70,279.21 and calculates, on that basis, the over average expenditure for 2015 was £39,159.70 and for 2016 was £5,528.30, giving a total over average expenditure for 2015 and 2016 of £45,688 (excluding VAT). Mr Donaldson says that Mr Southall's figures are based upon there being no additional genuine above average expenditure by the Company on building works in 2015 and 2016, but he understands that additional works were carried out in 2015 and 2016.

395. Mr Donaldson, in his 28/10/22 report (see paragraph 234 (b) above) says, on instructions from Jitha, that in the financial years 2015 and 2016 the Company incurred higher than usual building costs in:

- (a) building a canopy extension at CBS House;
- (b) building a new loading bay at CBS House;
- (c) general repairs and maintenance at CBS House; and
- (d) additional units were built at Kelvin Way, some of which were used by the Company.

396. I do not accept that the Company incurred higher than usual building work and repair costs in 2015 and 2016: (a) most of the costs of building the canopy extension were incurred in 2014; (b) there is a no evidence of the Company incurring any or any significant costs in building a loading bay in 2015 and 2016; (c) the units at Kelvin Way are owned by Swaran Properties and Mantir has provided evidence that none of them were occupied by the Company in 2015 and 2016, so there was no reason for the Company to expend money on them in 2015 and 2016; and (c) I have no details of what building or building repair works the Company was undertaking in other years to form a view about whether what was undertaken in terms of building repairs/works by the Company in 2015 and 2016 was more, or less than in other years.

397. I have found that Mr Donaldson made errors in connection with the opinions he expressed in his reports on the valuation of the Company (see paragraph 249 - 257). I do not find that Mr Donaldson has made any errors in calculating the average expenditure of the Company debited to nominal account 7830. I do not consider that the errors made by Mr Donaldson, in his reports on valuation, affect the credibility of his opinion as to the appropriate way to calculate the value of materials paid for by the Company, which are incorporated into the construction of the House. The difference in approach between Mr Southall and Mr Donaldson is straightforward, Mr Southall prefers to base his calculation of excess expenditure over and above the average for 2015 and 2016, based upon what was debited to nominal account 7830 in the years 2013 and 2014 and Mr Donaldson prefers to calculate the excess expenditure, above the average, for 2015 and 2016 based upon what was debited to nominal account 7830 between 2013 and 2020.

398. I prefer the approach of Mr Southall and find that the appropriate comparator to what was debited to nominal ledger 7830 in 2015 and 2016 (to arrive at an estimate of what was spent on construction materials for the House in 2015 and 2016) is to look at what the Company spent in 2013 and 2014 for the following reasons:

- (a) whilst I accept that, on the face of it, all other things being equal, a more accurate calculation of the Company's average spend on building works and repairs would be arrived at by including more years in the calculation, in this case I do not consider that all other things are equal. I accept that after the new corrugator was installed at the end of 2018 building works and repairs may well have increased, commensurate with the increase in turnover achieved as a result of the installation of the new corrugator. Another significant relevant event is the hiving up of the business and assets of Connect Packaging into the Company at the end of 2018, after which building works and repair costs in respect of the Connect Packaging site would be borne by the Company. Significantly increased building work/repair costs were incurred by the Company after 2018, costs debited to nominal account 7830 increasing from £29,335 in 2017 and £15,965.61 in 2018 to consistently over £70,000 for the four years 2019 - 2022;
- (b) if 2013 - 14 and 2017 - 18 (that is the 2 years before and the 2 years after 2015 and 2016) were used to calculate average expenditure, as the comparator to 2015 and 2016, then the average would be lower than the average for 2013 and 2014 of £27,893 used by Mr Southall;
- (c) Mr Donaldson's average includes the years 2015 and 2016 and his average is therefore affected by money spent on the House in those years; and
- (d) including years that are further away from 2015 and 2016, in calculating an average spend involves moving further away from the conditions pertaining when the Company incurred the building and building repair costs which it incurred in 2015 and 2016, of which the installation of the new corrugator, and the hiving up of the business and assets of Connect Packaging, both at the end of 2018, are examples.

399. I therefore assess the value of materials purchased by the Company and used in the construction of the House at £117,404.

ISSUE 4 - SIGNATURE OF MANTIR ON VARIOUS COMPANY DOCUMENTS

400. The handwriting experts agree that the signature appearing on the Company's accounts for 31 December 2003, 2007 and 2016 is not Mantir's normal signature, although it purports to be. Mr Zaman has not sought to cross examine the handwriting experts and this allegation has proceeded on the basis that those accounts were not signed by Mantir.

401. Jitha denies that he signed the accounts other than in his own name.

402. It is not sufficient for Mantir to prove that he did not sign the accounts, in order to show that one or more of the Respondents have acted in a way that is unfairly prejudicial to him, he has to prove which of the Respondents forged his signature in the accounts. Mantir relies upon an inference that it was Jitha who forged his signature, because it was Jitha who normally asked him to sign Company documents, including accounts and Jitha was also a signatory to the 2016 accounts. There is no direct evidence that Jitha forged Mantir's signature on the 2003, 2007 or 2016 audited accounts and he denies it. I do not consider that I am able to infer that Jitha forged Mantir's signature on any of those accounts, merely because he might be regarded as perhaps the most likely person to have done it.

403. No loss was suffered by the Company, as a result of Mantir's signature being forged on the three sets of accounts and at least normally, conduct that results in no financial loss to the Company cannot be unfair and prejudicial to a petitioner in their capacity as a shareholder of the company (see paragraphs 412 and 413 below). Mr Khangure says that, even if there were no financial consequences to the Company, as a result of Mantir's signatures being forged, it was still unfair and prejudicial to Mantir, because, as a result of his signature being forged, Mantir took on some responsibility for the content of the accounts. However Mantir complains (see paragraph 305 - 306) that Jitha would put the signature pages of Company documents in front of him to sign but would not allow him to see the full document before he signed it (but Mantir still went ahead and signed the documents anyway). On the basis of Mantir's evidence therefore he would have signed the 2003, 2007 and 2016 accounts if asked to do so by Jitha without insisting on reading them first and thereby taken on any responsibility for them that appending his signature to the accounts involved. In those circumstances I do not consider that the forging of Mantir's signature in the 2003, 2007 and 2016 accounts, even if done by Jitha or one or more of the other Respondents was unfair or prejudicial to Mantir, because, on his own evidence he would have signed the accounts without reading them anyway.

ISSUE 5 - SALE OF THE PACKAGING NOW WEBSITE AND STOCK TO PCPC

404. This issue is not raised directly in the Petition. In paragraph 12 of the Petition Mantir says that Jitha may be conducting other businesses using trading names similar to the Company's, one of those business names is Packaging Now which he says that Jitha's children appear to be actively trading (see paragraph 29 above).

405. The Defence says that Mantir shut down Packaging Now, in November 2019, and its stock was left in storage. Jitha's son, Mani, expressed an interest in acquiring the Packaging Now website and on 13 August 2020, Pack King sold its stock and the Packaging Now website to PCPC, a company of which Mani is director and sole

shareholder. The sale was approved by the directors of the Company (see paragraph 41 (d) above).

406. The Reply says that the assets of Pack King included its online business, Packaging Now. The sale of the Packaging Now website and stock were not properly approved. The intention to sell was raised at the end of the board meeting on 13 August 2020 under “any other business” and was not properly discussed. The board were not provided with sufficient material on which to make any decision, the sale was to a party connected with Jitha, but Jitha failed to make full and proper disclosure of his conflict-of-interest. Mantir objected to the matter being considered and pointed out that others may be willing to make an offer (see paragraph 57 above).
407. This issue was dealt with briefly in closing argument by Mr Khangure who said that the assets sold to PCPC were not properly valued and that Mantir raised the issue of the conflict of interest at the board meeting on 13 August 2020 and this conflict was not addressed.
408. I am not satisfied that the sale of the Packaging Now website and/or the Pack King stock to PCPC was unfairly prejudicial to Mantir in his capacity as a shareholder of the Company:
- (a) the Packaging Now website and stock were assets of Pack King. Jitha says that all the assets of Pack King were transferred to the Company on 31/7/ 20, but that it was not approved by the board until 13/8/20, when the board of the Company approved the transfer of all the Pack King assets to the Company, except the Packaging Now website and stock which the board agreed should be transferred to PCPC (see paragraph 111 above). If it is right that the transfer of all Pack King’s assets to the Company took place on 31/7/20, then, as at 14/8/20, the Packaging Now website and stock were owned by the Company and it was the Company that would have to agree to transfer them to PCPC. Points (b) and (c) below are made on that basis;
 - (b) as for disclosure of a conflict of interest, all the Brothers knew that it was Mani’s company which was acquiring the Packaging Now website and stock and that Mani is Jitha’s son. It is clear that Jan, George and Harvey considered the proposed sale to be at a good price (see paragraphs 142 for Jan, 160 for George and 175 for Harvey) and they voted in favour of the sale. In those circumstances the failure of Jitha to formally disclose the conflict of interest at the board meeting on 14/8/20 is not unfair or prejudicial to Mantir, because, even if Jitha had disqualified himself from voting on the basis that there was a conflict of interest, the sale would still have been approved by Jan, George and Harvey, who would have outvoted Mantir;
 - (c) whilst no valuation was obtained before the meeting on 13/8/20 approved the sale, Mantir does not assert that either the Packaging Now website or the stock were sold for less than they were worth, merely that the sale was not properly approved and that someone else might have been interested. There is no evidence before me that the value paid for either the Packaging Now website or the Pack King stock was less than they, or either of them were worth, at the time of the sale, or that anyone else

was, or would have been, interested. For those reasons, I am not satisfied that the value obtained either for the Packaging Now website or the stock was less than they were worth. If the value obtained was not less than they were worth then, Mantir cannot show that he has suffered any loss as a shareholder of the Company and for that reason, in my judgment, the sale is neither unfair nor prejudicial to Mantir, even if it was not properly approved; and

- (d) If contrary to (a) the Packaging Now website and stock had not been transferred to the Company, before the board meeting on 13/8/20, then Pack King is a separate legal entity in which the Company held no shares and the sale of Pack King's assets to PCPC could not be unfair or prejudicial to Mantir, in his capacity as a shareholder of the Company.

ISSUE 6 – HAVE THE AFFAIRS OF THE COMPANY BEEN CONDUCTED IN A MANNER THAT IS UNFAIRLY PREJUDICIAL TO MANTIR

409. Section 994 of CA 2006 provides:

- (1) A member of a company may apply to the court by petition for an order under this Part on the ground:
- (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
 - (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

410. Mantir must demonstrate that the Conduct of one or more of the Respondents of the affairs of the Company is both unfair and prejudicial to him in his capacity as a shareholder of the Company.

411. The test for unfairness is objective, but considered by reference to factors and standards that the courts expect directors to adhere to such as keeping promises, honouring agreements and exercising their fiduciary powers properly. In *Re Saul D Harrison & Sons plc* [1994] BCC 475, p.488 Hoffman LJ (as he then was) said: "The answer to this question often turns on the fact that the powers which the shareholders have entrusted to the board are fiduciary powers, which must be exercised for the benefit of the company as a whole. If the board act for some ulterior purpose, they step outside the terms of the bargain between the shareholders and the company. As a matter of ordinary company law, this may or may not entitle the individual shareholder to a remedy. It depends upon whether he can bring himself within one of the exceptions to the rule in *Foss v Harbottle* (1843) 2 Hare 461. But the fact that the board are protected by the principle of majority rule does not necessarily prevent their conduct from being unfair within the meaning of Section 459 [the predecessor to section 994] enabling the court in an appropriate case to outflank the rule in *Foss v Harbottle* was one of the purposes of the section."

412. Whilst prejudice often is financial and measured in terms of diminution in the value of the shareholder's shareholding, in the relevant company, prejudice can be sustained by the shareholder in other ways. In *Re Sunrise Radio Limited* [2009] EWHC

2893 (Ch) at paragraph 4 HHJ Purle QC said: *“There must be both prejudice and unfairness. Prejudice will most often be established by reference to conduct having a depressive effect (actual or threatened) on the value of the petitioner’s shareholding, which will in most cases be a minority holding, typically in a private company with restrictions on transfer. Unfairness, in turn, most often connotes some breach of the articles, statute, or general principles of company law. However, the operation of the section is not necessarily limited to such cases. The test is an objective one. There may be mutual understandings between shareholders giving rise to special rights of a quasi-partnership kind. Even without that, the conduct of the company’s directors may, whether by reason of malevolence, crass stupidity, or something in between, fall so far short of the standards to be expected of them as to lead to the conclusion that the petitioning shareholder cannot reasonably be expected to have the minimum of trust and confidence in the integrity or basic competence of the board that any shareholder is entitled ordinarily to expect. This is so irrespective of any impact on the value of his or her shares, and irrespective of whether any specific breach of the articles, statute, or the general principles of company law is involved.”*

413. However, in *Re Coroin [2012] EWHC 2343* (Ch David Richards J (as he then was) said that “Where the act complained of has no adverse financial consequence, it may be more difficult to establish relevant prejudice. This may particularly be the case where the acts or omissions are breaches of duty owed to the company rather than to shareholders individually, if it is said that the directors or some of them have been in breach of duty to the company but no loss to the company has resulted, the company would not have a claim against those directors. It may therefore be difficult for a shareholder to show that nonetheless as a member he has suffered prejudice

414. I accept that:

- (a) Mantir must show that the conduct of one or more of the Respondents has resulted in his interests as member of the Company being unfairly prejudiced;
- (b) breaches of fiduciary or statutory duties by directors, can be and often are unfair to shareholders;
- (c) prejudice does not have to be financial, but it may be difficult for Mantir to show that he has suffered prejudice as a member of the Company, if the Company has suffered no financial loss;
- (d) if a breach of fiduciary or statutory duty makes no difference to what would have been done in any event then such a breach of fiduciary or statutory duty is not likely to be unfair or prejudicial (in ***Sunrise Radio*** paragraph 7 of HHJ Purle QC’s judgment, acknowledged that point); and
- (e) if the conduct of the directors falls so far below the minimum standard of integrity and basic competence that any shareholder is entitled to expect, then, irrespective of whether there has been a breach of the Articles, statute or general principles of company law, and irrespective of whether the value of the Petitioning shareholder’s shares have been impacted, the conduct may be unfair and prejudicial (see paragraph 4 of the judgment of HHJ Purle QC in ***Sunrise Radio***)

415. I have found that the following matters may amount to the conducting of the affairs of the Company in a manner that is unfairly prejudicial to Mantir:

- (a) Jitha deliberately withheld Company information and documents from Mantir after Mantir sent two emails to Jitha, on 26/1/20, asking for financial information and documents dating back 6 years and made other requests thereafter and the other Respondents joined with Jitha, in signing the letter to Manter dated 29/1/20 (see paragraphs 267 and 274 above);
- (b) all the Respondents decided to give notice to Mantir, on 18/6/20, that a meeting of the members of the Company would take place on 14/7/20, to consider removing Mantir as a director of the Company (see paragraphs 316 – 317); and
- (c) Jitha deliberately causing the Company to purchase materials used in the construction of the House and denying that he had done so. I have assessed the value of materials purchased by the Company and used in the construction of the House at £117,404 (see paragraphs 357 – 399).

416. I now need to decide separately for each Respondent, whether the conduct which I have found may amount to conduct which is unfairly prejudicial to Mantir, singularly or in combination, in fact amounts to conduct which is unfairly prejudicial to Mantir, in his capacity as a member of the Company. Once I have decided that, I will go on, in Issue 7, to consider whether Mantir's own conduct justifies or excuses any conduct of the Respondents which I find would otherwise be unfair and prejudicial to Mantir.

DELIBERATELY WITHHOLDING INFORMATION FROM MANTIR

417. Mr Zaman says that the withholding of information from Mantir was justified by Mantir's conduct, I will consider this point under issue 7.

418. As a result of the findings I have made in respect of the Gorway Rd Issue, the withholding of information and documents from Mantir, from 26/1/20, took place in circumstances where: (a) Jitha had told Mantir that he had used was using or would use the Company's money to fund at least part of the cost of constructing the House; (b) Jitha then used (or had used/was using) over £100,000 of the Company's money to purchase materials utilised in the construction of the House (although Mantir did not know the value, in January 2020); and (c) Jitha then denied, 2019/beginning of 2020 using any of the Company's money to pay for any of the cost of constructing the House.

419. Mantir was (and remains) a director of the Company and was, on the face of it entitled, in that capacity, to ask for and be provided with information and documents in relation to the Company and its affairs.

420. Mr Zaman refers to the decision of Sir John Chadwick in the Court of Appeal case of the **Oxford Legal Group Limited** (see paragraph 265 above). Mr Zaman says that that case is authority for the proposition that a director's right under Section 338 CA 2006 to inspect the books and papers of the Company must be exercised for the purpose for which that power is given, namely for the purpose of enabling the director to perform

the duties that they owe to the company of which they are directors. Here, says Mr Zaman, Mantir was requesting large amounts of information and documents going back over many years, some of which he already had, not to perform the duties that he owed to the Company as its director (for example to promote the success of the Company, exercise independent judgment and exercise reasonable skill and diligence, Sections 172-174 CA 2016) but to disrupt the business of the Company and build an unfair prejudice case.

421. In the ***Oxford Legal Group*** case, at first instance, the judge refused the claimant company's application for summary judgment, on the basis that the claimant company director was seeking access to the books and records of the defendant company to provide assistance to the claimant company's shareholder in unfair prejudice proceedings involving the defendant company. The Court of Appeal dismissed the appeal on the basis that the first instance judge on an application for summary judgment, was entitled to recognise that there was a serious issue to be tried as to whether the claimant director was using its right to inspect books and records for an improper purpose, because the court would not aid that purpose by requiring the company to provide the director with the books and records which they wished to inspect.
422. I am not satisfied that Mantir requested information and documents for an improper purpose. I have found that the catalyst for Mantir asking Jitha whether he had repaid to the Company, the Company's money which had been used towards the cost of constructing the House was Jitha's refusal to countenance the Company purchasing a Rolls Royce for Mantir and Mantir's altercation with Jitha, in October 2019 (see paragraph 281 - 286 above). In response to Mantir asking Jitha whether he had repaid the Company, Jitha denied using any of the Company's money towards the cost of constructing the House even though (I have found) he previously told Mantir that he had used, was using or would use the Company's money for this purpose. Following Jitha's denial that he had used any of the Company's money in constructing the House, it was reasonable, in my judgment, for Mantir to want to investigate the conduct of the Company's affairs for the previous 6 years and in particular issues relating to monies paid out by the Company to the Brothers and any significant unexplained entries in the Company's accounts. In doing so he may have been motivated by self-interest in trying to ensure that he had received an equal share of benefits from the Company alongside the Respondents, rather than with regard to the Company's interests, but that does not mean that he was pursuing an inappropriate ulterior purpose. It was, in my judgment, a proper purpose for Mantir to use his entitlement as a director of the Company under S388 CA 2006 to inspect the books and papers of the Company, to check that the Brothers, as equal shareholders and pursuant to the understanding that it is common ground that the Brothers had, had received equal benefits from the Company.
423. I am satisfied, on the basis that Mantir's requests for information and documents were not made for an improper purpose, that Jitha was not entitled to block Mantir's attempts to obtain Company information and documents, in the way that I have found

he did (see paragraph 267 and 274 above). I am also satisfied that Jitha's actions were unfair and prejudicial to Mantir, in his capacity as a shareholder of the Company (which it is common ground was carried on as a quasi-partnership) because they prevented Mantir from investigating whether Jitha and the other Respondents had received more from the Company than he had, in breach of the understanding that the Brothers would all receive equal benefits from the Company.

424. I have found (see paragraph 274 above) that Jan, George and Harvey signed the letter of 29/1/20, primarily because Jitha asked them to sign it (although also because they believed that Mantir was simply trying to cause trouble and disruption by requesting 6 years of information and documents. It is arguable that Jan, George and Harvey signing the letter at 29/1/20, primarily because Jitha asked them to was a failure on their part to exercise independent judgment in accordance with their duties under Section 173 CA 2006, however in my judgment, simply signing the letter was not conduct by Jan, George and Harvey which was unfair and prejudicial to Mantir for the following reasons:

- (a) a breach of duty by a director of a company who is also a shareholder, does not automatically mean that the conduct of that person is unfair and prejudicial to a minority shareholder for the purposes of Section 994, it is still necessary for the petitioning minority shareholder to show that the particular conduct was both unfair and prejudicial to them;
- (b) if Jan, George and Harvey did apply their minds to the question of whether it was appropriate for them to sign the letter, then on the basis of what they knew on 29/1/20, I am not satisfied that it was contrary to their duties as directors to have signed the letter or unfair to Mantir, based upon what Jan, George and Harvey knew and believed, at that point in time which was that:
 - (i) prior to January 2020, Mantir took very little interest in the financial affairs of the Company (see paragraph 266 (e) above) asking very few if any questions at the monthly meeting at which the Company's financial performance was discussed (see paragraph above);
 - (ii) on 26/1/20 Mantir wrote to Jitha asking for historic information and documents dating back over 6 years. This request was entirely contrary to Mantir's previous attitude of disinterest about the Company's financial affairs prior to that date;
 - (iii) Mantir's request was made a few months after Mantir had asked Jitha to cause the company to buy him a Rolls Royce, which request Jitha had refused and a month later, Mantir assaulted Jitha and threatened to bury him 6 feet under which assault had been broken up by George, all of which Jan, George and Harvey were aware of;
 - (iv) at a board meeting on 18/1/20 Mantir had asserted that Jitha had used the Company's money to pay for the construction of the House, Jitha had denied it, Jan, George and Harvey believed Jitha; and
 - (v) in those circumstances it was not unreasonable for Jan, George and Harvey to come to the conclusion, as I am satisfied they did, that Mantir was asking for large amounts of historic information and documents in order to cause trouble and be disruptive, because he had not got what he wanted (a Rolls Royce) and he had had a

major falling out with Jitha during the course of which Jitha had drawn attention to the fact that Mantir was not in charge, in spite of being the eldest of the Brothers; and

(c) given (b) (i) – (v) in so far as Jan, George and Harvey did not apply their independent minds, as directors of the Company, to the question of whether they should sign the letter, I am satisfied that, had they done so, on the basis of what they knew and believed on 26/1/20, they would have signed it in any event.

SERVICE OF THE NOTICE ON 18/6/20

425. The threat to hold a meeting of members, to consider the removal of Mantir, as a director of the Company, was not followed through, because Mantir sought an injunction to prevent the meeting of members taking place and on 13 July 2020, the day before the injunction was due to be heard, the Respondents undertook to the court not to hold the meeting (see paragraph 20).

426. Whilst I am satisfied that the service of the notice was unfair to Mantir, I am not satisfied that the mere service of the notice was prejudicial to Mantir in his capacity as a member of the Company because:

- (a) there were no financial consequences for the Company or Mantir (Mantir incurred costs in issuing the application for an injunction, but the costs consequences of that were dealt with by consent order); and
- (b) whilst the fact that there were no financial consequences does not rule out a finding that the service of the notice was both unfair and prejudicial to Mantir, the fact that, not only was Mantir not removed as a director of the Company, but a meeting was not even held to consider his removal, leads me to conclude that there were no consequences of the service of the service of the notice, which could be regarded as prejudicial to Mantir.

GORWAY ROAD

427. It is, in my judgment, clear that the conduct of Jitha, which I summarise in paragraph 415 (c) above was both unfair and prejudicial to Mantir, in his capacity as a member of the Company:

- (a) Mr Zaman says that, if I accept that Jitha used the Company's money to pay for materials used in the construction of the House, with the consent of the other Brothers, then in effect all that has happened is that Jitha has failed to repay to the Company a loan made to him by the Company. I have found that Jitha did tell Mantir that he had used, was using or was going to use the Company's money's to pay for at least part of the costs of constructing the House, but that I am not satisfied that he told the other Respondents (see paragraphs 373 - 374 above). Whilst I have not found

that Mantir agreed that Jitha could use the Company's money for this purpose, Mantir did not suggest that he objected and therefore I am satisfied that Mantir at least acquiesced in Jitha using the Company's money for this purpose. In those circumstances I do not consider that it was unfair to Mantir, in his capacity as a shareholder of the Company, for Jitha to use the Company's money to purchase materials for use in the construction of the House;

- (b) Jitha acted dishonestly however, in denying that he had used the Company's money to pay for part of the costs of constructing the House (until he was forced to accept that this happened, when Mr Buray produced his report). It is Jitha's dishonest denial that he had used the Company's money to fund at least part of the costs of constructing the House and consequent failure to repay it which is unfair and prejudicial to Mantir in his capacity as a shareholder of the Company. It is not, as Mr Zaman sought to portray it, a simple failure by Jitha to repay a loan from the Company, he dishonestly denied that he owed any money to the Company at all; and
- (c) the Company paid, on my findings £117,400, for materials used in the construction of the House and wrongly set off, in its VAT returns, the VAT element of the invoices that it paid, as VAT input tax. The Company therefore suffered financial loss and exposed itself to the risk of a claim from HMRC for the VAT wrongly set off against the Company's VAT liability. The financial loss to the Company and the risk to which it was exposed are, I find prejudicial to Mantir, in his capacity as a shareholder of the Company.

ISSUE 7 - MANTIR'S CONDUCT

428. In ***London School of Electronics Limited [1986] Ch 211***, Nourse LJ at paragraphs 221-222 said that *"the conduct of the petitioner may be material in a number of ways, of which the two most obvious are these. First, it may render the conduct on the other side, even if it is prejudicial, not unfairSecondly even if the conduct on the other side is both prejudicial and unfair, the petitioner's conduct may nevertheless affect the relief which the court thinks fit to grant...."*
429. In ***VT Football Assets v Blackpool Football Club (Properties) Limited [2017] EWHC 2767 (Ch)*** at 419 Marcus Smith J said *"In terms of the petitioner's conduct rendering otherwise unfairly prejudicial conduct merely prejudicial, and not unfair, it seems clear that the mere fact that the petitioner is a wrongdoer, even in relation to the company of which he is a member, is not enough to deny him or her a remedy under section 994. What is required is some connection or nexus between the petitioners conduct and the alleged unfair prejudice."*
430. The question, for present purposes therefore is a whether Mantir's conduct renders the conduct of Jitha not unfair to Mantir in his capacity as a shareholder of the Company. To put it another way, does Mantir's conduct justify or excuse Jitha's conduct, in: (a) causing the Company to withhold information and documents requested by Mantir; and/or (b) using the Company's money to purchase materials used in the

construction of the House and then denying that he had and seeking to cover it up/minimise its scale.

431. The conduct of Mantir, of which the Respondents complain consists of the following:

- (a) Mantir's violent behaviour towards Jan, in particular in October 2011, when Mantir knocked Jan's turban off (which Mantir admitted, at the start of his cross examination (paragraphs 78 and 139 above));
- (b) Mantir's demand that Jitha cause the Company to purchase him a Rolls Royce, in September 2019, and his assault upon Jitha, in October 2019, which I have determined were together, the catalyst for Mantir to: (i) ask Jitha whether he had repaid the Company's money he had used to construct the House; and (ii) when Jitha denied using any of the Company's money for this purpose, obtain advice from someone experienced in company law and procedures and to start asking for information and documents from January 2020 (see paragraphs 281 - 286);
- (c) making voluminous requests for information and documents, from January 2020 onwards, in order to cause disruption to the Company's affairs;
- (d) Mantir and his son, Pav accompanying the process server to CBS House on 8/7/20 and letting him in so that he could serve Jitha, Jan, George and Harvey with papers for the injunction hearing on 14/7/20, causing an altercation;
- (e) physically attacking the Respondents after a board meeting on 20/10/20; and
- (f) assisting his son, Pav to set up Pure Packaging Limited to supply Boxes as a wholesaler and promoting the business of that company, in ways that were detrimental to the Company and its business (see paragraphs 83 -89) namely: (i) by introducing Pav to JB Plastics, on 17/3/22 a potential customer of the Company and suggesting that they buy Boxes from Pav's company (see paragraph 87); and (ii) by going with Pav to CBS House on 14/10/20, to collect samples which belonged to the Company to show to potential customers of Pav's company (see paragraph 88).

432. There is no connection or nexus between Mantir's alleged conduct and Jitha using the Company's money to purchase materials used in the construction of the House (which I have found not to be unfair to Mantir in his capacity as a shareholder of the Company) and his later conduct in denying he had used it, which I have found was both unfair and prejudicial to Mantir in his capacity as a shareholder of the Company) (see paragraph 423 above). Mantir's conduct does not therefore justify or excuse this conduct of Jitha.

433. There is no connection or nexus between 431 (a) or (d) - (f) and the withholding of information and documents from Mantir by Jitha, after 26/1/20, because: (a) took place over 8 years previously; (e) and (f) took place after the Petition was issued and therefore after (in some cases long after) the withholding of information and documents complained of in the Petition occurred; and (d) whilst taking place before the Petition was issued, took place after the withholding of information and documents complained of in the Petition and there is no connection between the incident that occurred on

8/7/20 when the injunction papers were served and the withholding of information and documents, Mr Zaman did not suggest that there was.

434. As to the conduct set out in paragraph 431 (b) and (c), I have found that (see paragraph 284) Jitha's refusal to cause the Company to buy Mantir a Rolls-Royce and what Jitha said to Mantir, in October 2019, which caused Mantir to physically attack and threaten Jitha, resulted in Mantir asking whether Jitha had repaid to the Company the money that Jitha had previously told Mantir he was going to use, was using or intended to use to pay for the construction of the House. When Jitha denied that he had used any of the Company's money to fund the costs of constructing the House, then Mantir took advice and embarked upon wide ranging requests for information and documents to see whether Jitha in particular, but perhaps the other Respondents as well, had received from the Company more than he had.
435. There is therefore a connection or nexus between Mantir's requests for information and documents and his own misconduct in physically attacking Jitha and (if it can be termed misconduct) his demand that Jitha should cause the Company to purchase him a Rolls Royce. Nonetheless, even if what started Mantir down the path towards requesting information and documents was his own misconduct, having been previously told by Jitha that Jitha was going to use, was using or intended to use the Company's money towards the cost of constructing the House and then denying that he had done so, it was, in my judgment objectively reasonable for Mantir to take advice and start asking for information and documents, with a view to determining whether Jitha or any of the other Respondents had received more from the Company than he had and to question accounting entries that seemed, at least to Mantir, to be suspicious. Further, in causing the Company to withhold financial information and documents from Mantir, Jitha may have been motivated by a wish to avoid Mantir obtaining information or documents which would show that Jitha had used the Company's money to discharge part of the costs of constructing the House. Even if that formed no part of Jitha's motivation for preventing Mantir obtaining the information and documents that he requested and even if Mantir's request for the information and documents was motivated by resentment at being denied his Rolls Royce and by what Jitha said to him in October 2020, I have found that Mantir was still entitled to be provided with the information and documents that he requested (see paragraphs 267, 274, 422 and 423) and Jitha should not have caused the Company not to provide the information and documents, whatever his motive for doing so was.
436. Mr Zaman says that the Company is a quasi-partnership (which is common ground) and that it is the conduct of Mantir that lead to a breakdown in mutual trust and confidence between the Brothers such as to render the conduct if Jitha not unfair to Mantir. Mr Zaman refers to ***Re Edwardian Group Limited [2018] EWHC 1715*** per Fancourt J.
437. In ***Re Edwardian Group***, Fancourt J said at paragraph 412 that a "*number of authorities established that, in certain circumstances, the removal of a quasi-partner*

without making such an offer [to purchase the petitioner's shares] can be objectively justified. Those circumstances are, essentially, where the quasi partner has brought his removal on himself by conduct that objectively justified the other members in excluding him in that way..." and at 415 "... the authorities do not establish any bright line between what does and does not justify exclusion without an offer, but it is clear that the conduct in question must be misconduct in the affairs of the company, not merely personal misconduct. It must be so serious as to undermine the basis for the equitable considerations that bound the parties..."

438. **Re Edwardian Group** is, in my judgment, merely an extension of the principle that there must be a nexus or connection between the conduct of the petitioner and the alleged unfairly prejudicial conduct of the respondent(s) in order for that conduct to be taken into account in deciding whether the conduct of the respondent(s) is in fact unfair to the petitioner. If the petitioner's conduct, in a quasi-partnership, causes a breakdown in the trust and confidence on which the quasi-partnership is founded, then the removal of the petitioner as a director/their exclusion from the management of the company by the respondent(s) may be justified by the petitioner's conduct, I see no reason why this should not also apply to withholding information and documents from a petitioner. Jitha's conduct in causing the Company to withhold information and documents from Mantir and using the Company's money to purchase materials used in the construction of the House and then deny that he had done so, cannot be justified, on the basis that Mantir caused a breakdown in trust and confidence between the Brothers, because there is no connection or nexus between Mantir causing such a breakdown and Jitha's conduct in those two respects.

439. I have found that Jitha's conduct, in joining with the Respondents in serving notice on Mantir, on 18/6/20 of a meeting of members, convened for 14/7/20, to consider the removal of Mantir as a director of the Company, was not prejudicial to Mantir in his capacity as a shareholder of the Company for the reasons set out in paragraphs 425 - 426 above. If I had found that the service of the notice was unfairly prejudicial to Mantir, then, if it was, in fact, the conduct of Mantir, rather than that of any of the Respondents, that led to the breakdown in trust and confidence between the Brothers, that in turn led to the service of the notice, then, this may well mean that Jitha was justified in joining with the other Respondents in serving the notice on Mantir on 18/6/20.

440. Whilst I accept the Respondents' evidence that there had been a poor relationship between all the Respondents (and in particular Jan) for many years, I do not accept that, prior to the beginning of 2020, that there had been a fundamental breakdown in the relationship of trust and confidence between the Brothers. For example: (a) for over 10 years, between 2003 and 2013, Mantir was the sole director of the Company; (b) Mantir was entrusted with collecting rent due to Swaran Properties for many years; and (c) Mantir was entrusted, from November 2019 (after his request for a Rolls Royce, in September 2019 and his assault of Jitha in October 2019) with the management of Pack King and the task of trying to make it profitable. In my judgment, if by those dates, the

relationship of trust and confidence between the Respondents and Mantir had completely broken down, then Mantir would not have been entrusted with any of the tasks (a) – (c).

441. In my judgment, the breakdown in trust and confidence between Mantir on the one hand and the Respondents on the other, which led to Mantir presenting the Petition, is primarily due to Jitha's conduct. Had Jitha not: (a) denied using the Company's money to pay for part of the costs of constructing the House; (b) then deliberately caused the Company to withhold information and documents requested by Mantir; and (c) finally joined with the other Respondents, in giving notice to Mantir, on 18/6/20, that a meeting of the members of the Company would take place on 14/7/20, to consider removing Mantir as a director of the Company (when, on the evidence I am not satisfied that the other Respondents knew that Mantir's assertion that Jitha had used the Company's money to buy materials used in the construction of the House was true (see paragraph 372 above)) then, in my judgment, the relationship of trust and confidence between the Brothers would not have broken down completely, leading to the presentation of the Petition.

ISSUE 8 – SHOULD I GRANT A REMEDY AND IF SO WHAT REMEDY?

442. As noted in paragraph 428 above the conduct of Mantir can be taken into account in deciding whether to grant a remedy at all to Mantir, or if I decide to grant a remedy, in deciding on the appropriate remedy, nonetheless, in order to be taken into account, Mantir's conduct would still have to have a nexus or connection with the conduct which I have found to be unfairly prejudicial and, as I have already explained, in my judgment it does not.

443. Mr Zaman and Mr Khangure were content that a summary of the principles applying to remedy are fairly summarised in my decision in ***Bridgen v Bridgen and others [2023] EWHC 3232 (Ch)*** at paragraph 208, as follows:

- (a) the burden is on the petitioner to establish his entitlement to a remedy;
- (b) the appropriate remedy should be assessed at the date of the remedy hearing (I accept that this means, as Mr Khangure asserted that, in deciding on remedy, I can have regard to Jitha's post-Petition conduct. That is Jitha maintaining his lie in the Petition and his first witness statement that he had not used any of the Company's money to fund the construction of the House and not disclosing documents that proved that the Company's money had been used in the construction of the House and dishonestly suggesting that only a small amount of the Company's money was used);
- (c) the court has a wide discretion as to what remedy should be granted;
- (d) the court should look at all the relevant circumstances in deciding what order to make to put right the conduct which the petitioner has suffered at the hands of the respondent and prevent it happening in the future;
- (e) the court should consider the whole range of possible orders to remedy the unfair prejudice suffered and deal fairly with the situation which has occurred;

- (f) the usual order (for a small private company) is one requiring the respondent to buy out the petitioner's shares at a price fixed by the court. Such an order enables the petitioner to recover their share of the value of the business and the company to be preserved for the benefit of the respondent, thereby ensuring a clean break;
- (g) the court can have regard to the effect of its order on third parties and their interests, although the weight to be given to those interest depends on the circumstances;
- (h) the court is not bound to provide the relief sought by the petitioner; and
- (i) the remedy must be proportionate to the unfair prejudice found. In the case of relatively minor unfair prejudice, a buyout order may be disproportionate.

444. Mr Khangure says that I should grant a remedy and the remedy I should grant is an order that the Respondents (in the event only Jitha, because he is the only Respondent who I have found to be responsible for conduct which is unfairly prejudicial to Mantir) should purchase Mantir's shares in the Company.

445. In closing, Mr Zaman said he was not instructed to make any submissions on the appropriate remedy.

446. In my judgment it is appropriate to grant Mantir a remedy in relation to my findings of unfairly prejudicial conduct and the appropriate remedy is that Jitha, should be ordered to purchase Mantir's shares in the Company. I have come to these conclusions for the following reasons:

- (a) Jitha's conduct of using the Company's money to pay for, on my findings over £100,000 of the cost of constructing the House, lying about having done so and then attempting to cover it up (the lie being repeated in the Petition and Jitha's first witness statement, the attempted cover up including failing to disclose documents that showed that the Company's money had been used in the construction of the House, being post-Petition matters that I can take into account in deciding on remedy (see paragraph 443 (b) above)) are a very serious breaches of the duties that Jitha owed to the Company, as its director and the amount involved is also relatively significant. I am easily satisfied that that alone means that it is appropriate to grant Mantir a remedy in respect of Jitha's conduct. Jitha's conduct in causing the Company not to provide to Jitha the information and documents he requested and to which he was entitled makes the granting of a remedy all the more appropriate;
- (b) as already noted, the usual order for small private companies is one that requires the respondent to purchase the petitioner's shares at a price fixed by the court. In this case the advantages of such an order are particularly pertinent. The Respondents say that they cannot work with Mantir. If Mantir's shares are purchased by Jitha, then the Respondents will be able to work together, as they have for many years, without the distraction of Mantir being a shareholder and director of the Company. Mantir will be able to recover his share of the value of the Company and pursue interests elsewhere with the money he receives. A clean break will be achieved; and
- (c) in my judgment it is proportionate to order Jitha to purchase Mantir's shares in light of his very serious misconduct in using the Company's money to fund the construction of the House and then dishonesty asserting that he had not done so and attempting to cover up his misconduct. That alone, in my judgment makes an order that Jitha purchases Mantir's shares proportionate and fair. In addition, Jitha ensured that the

Company did not provide information and documents to Mantir that Mantir was requesting, which Mantir was entitled to receive. Whether or not Jitha did so wholly or partly to cover up his use of the Company's money to buy materials used for the construction of the House, preventing Mantir from receiving the information and documents which he was entitled to, is additional conduct by Jitha which makes it both fair and proportionate to order Jitha to purchase Mantir's shares.

447. If I had found that Jan and/or George and/or Harvey's conduct, in joining with Jitha to sign the letter dated 29/1/20 was unfair and prejudicial to Mantir, in his capacity as a member of the company, which I have not, then I would not have considered it appropriate to grant any remedy against Jan, George or Harvey. This is because granting a remedy to Mantir in respect of their very limited involvement in causing the Company not to provide information and documents that Mantir, merely signing that letter, compared to the involvement of Jitha in denying Mantir the information and documents he requested would not, in my judgment, be fair or proportionate.

ISSUE 9 THE PRICE AT WHICH JITHA SHOULD BUY MANTIR'S SHARES

448. There are three things that I need to decide, in determining the price at which Jitha should purchase Mantir's shares:

- (a) the appropriate date of the valuation of Mantir's shares;
- (b) the value of Mantir's shares at that date; and
- (c) whether a minority discount should be applied to that valuation.

THE APPROPRIATE DATE

449. It is common ground that the appropriate date at which to value Mantir's shares is 29/2/24 being the valuation date used by Mr Donaldson and Mr Southall. I will therefore value Mantir's shares at that date.

WHAT IS THE VALUE OF MANTIR'S SHARES?

450. I have already summarised, in paragraphs 237-241 above, the opinions of Mr Donaldson and Mr Southall, as set out in their joint report dated 8/5/24.

451. In his report dated 19/4/24, Mr Donaldson calculates the value of the Company, by using the DCF method. In his report dated 19/4/24, Mr Southall calculates the value of the Company, by using the capitalised earnings method. In the joint report dated 8/5/24, Mr Donaldson agrees to adopt the capitalised earnings method and comments upon Mr Southall's calculation prepared on that basis. Mr Donaldson does not, as I will explain shortly, produce his own capitalised earnings calculation.

452. In order to calculate the value of the Company on a capitalised earnings basis it is necessary to:
- (a) calculate the Company's maintainable EBITDA;
 - (b) calculate an appropriate EBITDA multiple;
 - (c) multiply the maintainable EBITDA figure by the EBITDA multiple to arrive at what is known as the Enterprise Value of the Company; and
 - (d) add to the Enterprise Value, the Company's surplus assets.
453. In their joint report, Mr Donaldson and Mr Southall agree that the value of the Company's maintainable EBITDA, as 29/2/24, was £3.83m and the Company's surplus assets at the same date were £3.6m. In light of the agreement of Mr Southall and Mr Donaldson on those issues, all that is needed, in order to arrive at a value for the Company, as at 29/2/24, is to determine what the appropriate EBITDA multiple was, as at 29/2/24. Mr Southall is of the opinion that the correct EBITDA multiple as at 29/2/24 is 6.6, valuing the Company at £28.878m, Mr Donaldson considers that the correct EBITDA multiple, as at 29/2/24 is 5, valuing the Company at £22.75m.
454. Mr Donaldson and Mr Southall agree that the process used to calculate a EBITDA multiple is as follows:
- (a) obtain details of the EBITDA multiples of publicly listed companies in a similar sector to the Company, calculate the average of those EBITDA multiples and then apply, if appropriate a control premium and discounts to the average, for the different risk and return profiles of the listed companies compared to the Company;
 - (b) obtain details of the EBITDA multiples applying to transactions, by which companies operating in a similar sector to the Company were acquired, calculate the average EBITDA multiple from those transactions and then apply premiums and discounts, as appropriate, to reflect differences between the companies acquired and the Company;
 - (c) consider the information provided by published general indices on EBITDA multiples applying to acquisitions; and
 - (d) after considering all that information arrive at a suitable EBITDA multiple for the Company.
455. Mr Southall calculates the Company's EBITDA multiple as follows:
- (a) he accepts that a listed company is unlikely to serve as a direct comparator to the Company, but he says that the difference in size and diversity of listed companies can be dealt with by applying an appropriate discount and averaging the EBITDA multiples of the listed companies after applying the appropriate discount;
 - (b) he has chosen 5 listed companies as comparators to the Company and calculates the median listed company EBITDA multiple, for those 5 listed companies as 6.1;
 - (c) he applies a premium of 25% to the median listed company EBITDA multiple of 6.1 because a purchaser of Mantir's shares in the Company would obtain an element of control that a purchaser of a listed company's shares would not obtain;

- (d) he applies the following 3 discounts to the listed company median EBITDA multiple of 6.1 to reflect the difference in risk and return profiles of the Company and the listed companies:
 - (i) a discount of 10% to reflect the smaller size of the Company compared to the listed companies and the lack of marketability of the Company's shares;
 - (ii) a discount of 10% to reflect the lack of diversification in the Company's business and risk compared to the businesses of the listed companies; and
 - (iii) a discount of 10% to reflect uncertainties about growth: in the sector generally; and for the Company;
- (e) the premium of 25% and discounts totalling 30% reduce the median listed company EBITDA multiple to 5.8;
- (f) he identifies transactions which he considers are comparable to the Company: the acquisition of DE Jong Verpakking, by Stora Enso OYj, in January 2022, with an EBITDA multiple of 9.25 and the acquisition of GWP Holdings Limited by Macfarlane Group PLC, on 26/2/21, with an EBITDA multiple of 7.88 (he refers to the acquisition of Westrock Company by Smurfit Kappa Group PLC on 12 September 2023, but says that it operates in a different geographical area and he does not therefore take its EBITDA multiple into account);
- (g) he considers the De Jong transaction which was a very large transaction should be discounted by 25% to an EBITDA multiple of 6.9 and that a transaction EBITDA multiple of between 6.9 and 7.9 is therefore appropriate, with the midpoint being 7.4;
- (h) Mr Southall identifies two public indices: the PCPI, published by BDO quarterly which had an average EBITDA multiple of 9.6 across all deals in the final quarter of 2023 and the UK 200 group of small and medium enterprise transactions which, for the 5 years to November 2023 records average EBITDA multiples of 5.4 - 6.1. Mr Southall considers that the EBITDA multiplier for the Company would be higher than the UK 200 group average because the Company's maintainable EBITDA, turnover, profit and asset base is considerably higher than the average of those companies appearing in the UK 200 Group index, but lower than the PCPI general index for the final quarter of 2023; and
- (i) the mid-point between the adjusted listed company EBITDA multiple of 5.8 and the transactions EBITDA multiple midpoint of 7.4 is 6.6, which Mr Southall considers to be consistent with the published PCPI and UK 200 Group index EBITDA multiples, making allowance for the differences between the Company and those general indices.

456. Mr Donaldson does not challenge Mr Southall's approach to the calculation of the EBITDA multiple and does not provide his own calculation to substantiate the EBITDA multiple of 5 which he considers is appropriate. In support of his contention that 5 is a reasonable EBITDA multiple for the Company, he makes the following points about Mr Southall's EBITDA multiple calculation:

- (a) the calculation of the listed company EBITDA multiple at 5.8 takes into account listed companies that operate in a much broader sector than the Company;
- (b) the calculation of the transaction EBITDA multiple at between 6.9 and 7.9 is reasonable based upon the transactions identified by Mr Southall but the transactions that Mr Southall identifies: (i) relate to a broader sector than the Company operates in; (ii) Mr

Southall has only identified a small number of post-Covid transactions; (iii) the De Jong transaction identified by Mr Southall is a Finnish company acquiring a Dutch company and comparing that to the Company must be treated with caution; (iv) Mr Southall fails to take account of falls in listed company EBITDA multiples between 2021 and 2023 of 45.6%; (v) more recent (confidential) data is available suggesting a fall in the EBITD multiple for the Company's sector; and (vi) Mr Southalls' discounts do not reflect business specific challenges that are faced by the Company.

457. Mr Donaldson's reference to more recent confidential data being available is a reference to confidential information relating to the attempted disposal of what Mr Donaldson says are two competitors of the Company, where he says that the expectation is that a relatively low EBITDA multiple will be achieved. I determined, at the trial, that this confidential information could not be relied upon in determining the value of the Company, because the confidential information was not available to be commented on by Mr Southall or to be scrutinised by the court. I will therefore disregard Mr Donaldson's comments about the confidential data.

458. Mr Donaldson identifies the following matters specific to the Company that he says should substantially reduce the EBITDA multiplier for the Company:

- (a) the Company is restricted in its ability to grow at its main site at CBS House and faces potential action relating to noise emitted from CBS House;
- (b) his analysis of the Company's forecasts suggests that future growth of the Company may be limited to price increases in 2024 and 2025;
- (c) there is a significant volatility in profit margin largely due to the lag between price rises for raw materials and the ability of the Company to pass on those price rises to its customers;
- (d) the growth which Mr Southall apparently expects from a recent investment of £1.5m is only included in 2026; and
- (e) Mr Southall has picked up on comments made by Jitha, in August 2023 (that the Company would double in size within 5 years) however Mr Donaldson understands that these comments were meant to boost the Company's reputation with its funders and in the wider industry and did not reflect Jitha's real view of the Company's growth potential. In any event, Mr Donaldson says, market conditions have worsened, since August 2023.

459. As Mr Donaldson has not produced his own calculation showing how he arrives at his EBITDA multiplier of 5, I will approach my determination of the appropriate EBITDA multiple by considering the extent to which Mr Donaldson's criticisms of Mr Southall's calculations (and Mr Southall's opinions which are integral to those calculations) are well founded and if so, to what extent Mr Southall's figure of 6.6 should be reduced. Before doing that, I will summarise the findings that I have already made as to the general credibility and reliability of Mr Southall and Mr Donaldson's opinions.

The general credibility of Mr Southall and Mr Donaldson

460. I have found (see paragraphs 258 – 261 above) that there was nothing that arose from the cross examination of Mr Southall, his report or his contribution to the joint report of Mr Southall and Mr Donaldson, which causes me to conclude that the opinions that he expresses are unreliable. I have however, for the reasons explained by me in paragraphs 249 – 257 above, expressed concerns about the credibility and reliability of Mr Donaldson's expert opinions, as to the value of the Company. There were errors in Mr Donaldson's 2022 report, but of more concern is Mr Donaldson's 19/4/24 report and the Donaldson's contribution to Mr Donaldson's and Mr Southall's joint report. Mr Donaldson includes in his 19/4/24 report, a DCF calculation of the value of the Company, which, when adjusted for Mr Donaldson's arithmetical error, would value the Company at £29.9m. When Mr Southall pointed out to Mr Donaldson, as recorded in their joint report, the arithmetical error in his DCF calculation, Mr Donaldson says that he realised then that his DCF valuation, adjusted for the error came out at a figure which was far higher than his initial view, that the value of the Company is about £22m. Mr Donaldson says that he then, for the purposes of the joint report, revisited the assumptions he made in his DCF valuation and concluded that specific adverse issues affecting the Company, that may impede its future growth, should attract a far higher discount than he had applied in his DCF valuation. Although Mr Donaldson raises other issues with Mr Southall's valuation, the principal reason why Mr Donaldson says that Mr Southall's EBITDA multiple is too high is because of the specific adverse issue that he considers that the Company is facing, summarised in paragraph 458 above.

461. Mr Donaldson said, in cross examination, that he regarded the view that he had of the approximate value of the Company of about £22m, before he started his 19/4/24 supplemental report, as reliable and once he realised that the arithmetical error in the DCF calculation in his 19/4/24 report, once corrected would attribute a value of £29.29m to the Company he decided that he needed to revisit the basis of his calculation. I have explained, in paragraphs 255 – 256 above why I consider that approach to be flawed and the credibility of Mr Donaldson's opinion as to the correct EBITDA multiple thereby undermined. Mr Donaldson's failure to provide any detail at all as to how he calculates his EBITDA multiple of 5, either by saying which of Mr Southall's figures included in Mr Southall's EBITDA multiple calculation should be amended and by how much or to provide his own calculation of the EBITDA multiple of 5 (other than to say that 5 appears reasonable) compounds, in my judgment, Mr Donaldson's flawed approach of deciding that the value of the Company is about £22m, before he carried out any calculations and then adjusting his calculations, until they approximate to that figure.

462. I will now consider, in turn the reasons given by Mr Donaldson for reducing the EBITDA multiple from Mr Southall's figure of 6.6 Mr Donaldson's figure of 5.

The listed company EBITDA multiple uses companies operating in a much wider sector

463. In cross examination, Mr Zaman pointed out to Mr Southall that all of the listed companies used as comparators, in his listed company EBITDA multiple calculation were considerably larger than the Company (some of them very considerably larger) and that most, whilst operating in the UK operated in other markets as well. In response, Mr Southall made the same point, as he does in the joint report, that Mr Plaha and Mr Donaldson used the same listed companies in their 2022 reports without adverse comment from Mr Donaldson, he also said that listed companies are normally would much larger and more diverse in terms of product and geography than the private company that is to be valued and the point of the discounts is to take into account those differences.
464. I am not satisfied that there should be any adjustment (or further adjustments) to Mr Southall's median EBITDA multiple for the listed companies to take account of the difference in size and diversity between the Company and the listed companies used. As Mr Southall pointed out, in valuing a private company, there is always likely to be a significant difference between the listed companies chosen as comparators, in terms of size and diversity, compared to the private company to be valued and the method used to take account of those differences is to apply suitable discounts.
465. Mr Donaldson does not disagree with the methodology used by Mr Southall in arriving at his capitalised earnings valuation. All that Mr Donaldson has done, in my judgment, is to seek to cast doubt on Mr Southall's selection of appropriate listed company comparators by pointing out differences between the listed companies used by Mr Southall and the Company, which would commonly be present in a capitalised earnings valuation, he does not suggest his own list of comparator listed companies (having raised no issue with that list in 2022) or suggest what alternate discounts should be applied to those that Mr Southall uses. Put simply, Mr Donaldson: (a) accepts that producing a capitalised earnings valuation includes the process of choosing comparable listed companies and applying premiums and discounts to their EBITDA multiples; (b) does not say that a capitalised earnings method is not appropriate, because there are no comparable listed companies, on the contrary, in the joint report Mr Donaldson agrees to adopt that method; and (c) proposes no alternative listed companies to those chosen by Mr Southall (having used the same listed companies as comparables in his October 2022 valuation). In my judgment, simply referring to differences between the Company and the listed company comparables, which would be common to any capitalised earnings valuation for a private company and not suggesting alternative discounts or premiums to those applied by Mr Southall, to reflect those differences does nothing to undermine Mr Southall's listed company EBITDA multiplier of 5.8, being the median of the listed company EBITDA multiples identified by him, after applying a control premium and discounts.

The discounts applied to the listed company EBITDA multiple

466. Mr Southall was challenged by Mr Zaman, in cross examination, upon the discounts that he applied to the listed company EBITDA multiples, in the following ways:
- (a) when Mr Zaman asked Mr Southall whether there would be a range of expert opinions as to what a suitable discount for size and lack of marketability of the Company's shares would be, Mr Southall said that there would be a range and he thought that range would be 5 - 15%, with his assessment of the appropriate discount, at 10% falling in the middle of that range. Mr Southall said that size does not necessarily affect marketability and that the Company has traded very profitably and 10% reflected his professional opinion of the appropriate discount. I found Mr Southall's answers convincing and see no reason to depart from his opinion that the correct discount is 10%;
 - (b) as to a discount for the risk associated with the Company's lack of diversification, compared to the listed company comparables, Mr Southall said that the Company has been historically consistently profitable and for that reason he did not consider that there was a substantial diversification risk. I see no reason to depart from Mr Southall's opinion as to the appropriate size of the diversification discount;
 - (c) Mr Zaman put it to Mr Southall that there was a risk to growth because there was no succession plan in place. Initially, Mr Southall accepted that the lack of a succession plan could affect the appropriate discount creating an uncertainty as to the Company's future growth, but then he said that the lack of sophistication of the Brothers would reduce that perceived risk and that the next generation of the family may provide the succession. I am not satisfied that any additional discount is appropriate for any perceived lack of succession planning. It may be true that there is no succession plan (although there is no evidence, other than assertion, on this point) but, I accept Mr Southall's point that the relative lack of sophistication of the Brothers means that (with the possible exception of Jitha) any purchaser is unlikely to consider any lack of a plan as to how the Brothers are to be replaced as directors, as a significant issue. I found Mr Southall's answer persuasive and see no reason to depart from Mr Southall's discount of 10%; and
 - (d) also, in relation to the risk to growth discount, Mr Zaman referred to the accounts which Jitha has produced for competitor companies which Mr Zaman said suggested that the market for Boxes is flat and to likely future increases in the minimum wage as being threats to the future growth of the Company. Mr Southall said that those factors were all taken into account in the forecasts he had been given and that the Company has consistently outperformed its competitors, which, if anything would attract a premium. I found Mr Southall's answers convincing and see no reason to depart from his discount of 10%.

The transaction EBITDA multiple uses transactions involving companies operating in a much wider sector than the Company

467. Mr Donaldson says that the transactions chosen by Mr Southall relate to acquired companies that operate in a much wider sector than the Company operates in and are not therefore appropriate comparators.

468. Mr Southall identified the acquisitions of De Jong and GWP Holdings as transactions relevant to his calculation of the Company's EBITDA multiple.

469. Mr Zaman put it to Mr Southall that:

- (a) De Jong is based in the EU but operates in the US and EU markets, in contrast, the Company only operates in the UK market. Mr Southall said that, based upon his research, he considered DeJong to be relevant because it operates extensively in the EU market and was therefore sufficiently comparable to the Company to provide a guide to its valuation (subject to discounts and premiums); and
- (b) GWP Holdings, Mr Zaman suggested was benefitting from a "Covid bounce" at the time it was acquired. Mr Southall said that he accepted that manufacturers of Boxes, unlike many other manufacturers, benefitted, in terms of demand, from the Covid pandemic, but he felt that, by the time of the transaction, in February 2022, the worst of the Covid pandemic was over and therefore the effect of the "Covid bounce" was reduced. Mr Southall observed that Mr Donaldson had used the GWP Holdings transaction in his previous report from October 2022.

470. In order to arrive at an appropriate EBITDA multiple for the Company it is necessary to identify comparator transactions and apply appropriate discounts and premiums to them. Mr Donaldson does not identify any transactions that he considers are more appropriate comparators than those identified by Mr Southall and nor does he say that the capitalised earnings is not an appropriate basis for calculating the value of the Company, because of the lack of suitable transaction comparators. Instead Mr Donaldson has elected, in the joint report to adopt the capitalised earnings basis of calculation that Mr Southall uses, but rather than produce a detailed calculation of his own, as to how he arrives at his EBITDA multiple of 5, he simply criticises the comparable transactions identified by Mr Southall, on the basis that the acquired companies operate in sectors much wider than that in which the Company operates, without identifying alternative transactions that might be used as comparators (having identified GWP Holdings as an appropriate comparator transaction in his October 2022 report). In those circumstances, subject to the question of whether Mr Southall has applied appropriate discounts and premiums to the two transactions he identifies, I accept the comparator transactions identified by Mr Southall.

Only a small number of transactions have been identified

471. Mr Zaman criticised Mr Southall for referring to a very small number of comparator transactions (DeJong and GWP Holdings). Mr Southall said that he considered the number of comparator transactions to be adequate. As to that, I repeat the comments I have made in paragraph 470 above that Mr Donaldson: (a) chose to adopt the capitalised earnings basis of valuing the Company, an essential part of which

is to identify comparator transactions; (b) has not provided any comparator transactions of his own; and (c) included the GWP Holdings transaction in his February 2022 valuation. For those reasons, subject to considering whether Mr Southall has applied appropriate discounts and premiums to those transactions, I do not consider that Mr Zaman's criticism is well founded.

Failing to take into account falls in listed company EBITDA multiples

472. In the joint report, Mr Donaldson says that there was a significant decline in listed company EBITDA multiples between 2020 and 2023 and in particular between 2021 and 2023. Mr Donaldson produces a table setting out EBITDA multiples for three of the five listed companies which Mr Southall relies upon in calculating his listed company EBITDA median multiple of 6.1. Mr Donaldson says that, in consequence of that decline, the comparable transactions used by Mr Southall, need to be viewed with caution in light of the decline in the market, since those transactions took place, which he suggests is illustrated by the decline in listed company EBITDA multiples reflected in his table.

473. The Southall says that he does not consider that there has been a decline in listed company EBITDA multiples up to the valuation date (29/2/24):

- (a) the average EBITDA multiple of 6.7 for listed companies at the valuation date, used by Mr Southall is, he says, similar to the average of 6.72 as at 31/12/20, set out in Mr Donaldson's table and a stark improvement on the position as at 31/12/23 referred to by Mr Donaldson; and
- (b) the De Jong acquisition was made in January 2023, when the listed company average EBITDA multiple was 5.87 which is lower than it was at the valuation date.

474. I am not satisfied that any adjustment to the EBITDA multiple, for transactions, in respect of a decline in the market is appropriate:

- (a) it is the nature of the exercise of identifying comparable transactions that these will always be historic, at the valuation date. I accept that if there is a marked rise or fall in the relevant market between the date of the comparable transaction and the valuation date, then it may be appropriate to apply a discount; but
- (b) I am not satisfied that any such discount is appropriate in this case as I am not satisfied that there has been a material overall decline in the market between the dates of the transactions used by Mr Southall and the valuation date (29/2/24), for the reasons he gives, namely:
 - (i) the De Jong transaction took place, in January 2022, when the average EBITDA multiple for listed companies was lower than it was at the valuation date; and
 - (ii) the GWP Holdings, this transactions took place on 26/2/21 and as already noted, as at 31/12/20 (2 months before the transaction) the average EBITDA multiple, taken from Mr Donaldson's table was 6.72, similar to the average of 6.7 used by Mr Southall.

Specific challenges faced by the Company

475. Mr Donaldson makes it clear, in the joint report, that issues specific to the Company are his main reason for considering that 5 is a reasonable EBITDA multiplier for the Company. Mr Donaldson identifies, in the joint report, the following issues which he says would represent a higher risk to a buyer of the Company's shares than buying shares in companies which are subject to general market conditions:

- (a) management have told him that the existing site at CBS House has constraints on its capacity to increase production, due to the limited size of the site and the inability to accommodate large lorries;
- (b) in his first report, Mr Donaldson referred to a letter from Sandwell MBC dated 12/10/22 regarding noise nuisance at CBS House. He suggests that this may limit the ability of the Company to operate more than one shift;
- (c) future growth expectation for 2024/2025 is restricted to price increases; and
- (d) there is a volatility in margin caused by a lag between prices paid by the Company for raw materials and price increases being passed on by the Company to its customers.

476. As to Mr Donaldson's points, Mr Southall says:

- (a) Mr Donaldson's forecast growth in his DCF valuation (containing in his report of 19/4/24) is 5% per annum which is higher than Mr Southall's assumed growth figure of 4.5% per annum;
- (b) the Company has recently invested £1.5m in equipment installed in January 2024 and it is unclear whether any improvements from the use of this new equipment are included in the Company's forecasts;
- (c) EBITDA for the year ending 31/12/24 at current run rate is likely to be between £4.175m and £4.680m. Mr Donaldson and Mr Southall have agreed a maintainable EBITDA of £3.83m, if in fact EBITDA for the year to 31/12/24 turns out to be around £4.68m rather than the £4.1m assumed in the forecasts, then this would make his EBITDA multiplier of 6.6 even more reasonable, given that EBITDA is also expected to increase in 2025/2026;
- (d) in an interview with Lloyds Development Capital, reported in the Times newspaper on 19/10/23, Jitha said that the Company would double in size over the next five years; and
- (e) the above points demonstrate that the Company's internal issues are unlikely to materially restrict its growth and it is unclear why Mr Donaldson considers that issues relating to the Company which may restrict its growth are materially worse than those experienced by other companies operating in the same sector.

477. Mr Donaldson responds to Mr Southall's points 476 (b) and (d) that: growth from the investment made in January 2024 is only included in the forecast to 2026; and that the comments made by Jitha to Lloyds Development Capital were aspirational, intended to boost the Company's reputation with its funder and with the wider industry and market conditions have deteriorated since Jitha gave the interview, in August 2023.

478. I am not satisfied that any additional discount should be made for the Company specific issues identified by Mr Donaldson:

- (a) the four points made by Mr Donaldson to which I refer in paragraph 475 above were all included in Mr Donaldson's report dated 19/4/24, notwithstanding which, Mr Donaldson's DCF valuation included in his 19/2/24 report still assumed a growth rate of 5% per annum. After it was pointed out to Mr Donaldson that, due to an arithmetical error in his DCF valuation, once corrected for that error, his DCF valuation valued the Company at £29.9m and not the £22.7m stated in his report of 19/4/24, Mr Donaldson says that he revisited the assumptions and discounts which he had applied in arriving at his DCF valuation. Mr Donaldson said that he then concluded that he had not attributed sufficient significance to matters specific to the Company affecting its future growth prospects and concluded that a much larger discount should be applied for those items. For the reasons that I have set out in paragraph 249 - 257, I do not consider this approach, by Mr Donaldson, to be a reliable basis for valuing the Company, capable of objective scrutiny and assessment. For those reasons I do not accept that Mr Donaldson is justified in relying on Company specific matters which were mentioned and taken into account in the DCF valuation in his report dated 19/4/24, as a basis now for substantially discounting the value of the Company (via the EBITDA multiple) well below his calculation of the Company's value in his 19/4/24 report (once corrected for arithmetical error);
- (b) as for the letter from Sandwell MBC dated 12/10/22, that letter was over 16 months old as at the valuation date of 29/2/24 and there is no evidence of the Council following up that letter in any way. It was put to Mr Donaldson, in cross examination, that soundproofing has been installed at CBS House since 12/10/22 and will therefore have mitigated the noise nuisance caused by the corrugator machine installed at the end of 2018. Mr Donaldson said that, in his view, there remained a risk of noise emissions from the CBS House site being a restraint on increasing the production hours at that site. I do not consider that the Council's letter of 12/10/22 is good evidence that noise emissions from the CBS House site, as at 29/2/24, were a material restriction on the Company increasing production hours at that site given: (i) the age of the letter; (ii) the absence of any evidence of issues being raised by the Council after October 2022; and (iii) the steps which appear to have been taken, or which could be taken, to install soundproofing at the CBS House site, which may well (there is no evidence either way, on the point) mitigate the noise emitted from the CBS House site, thereby avoiding the Council taking any action, if production hours were increased;
- (c) I accept Mr Southall's point that Mr Donaldson does not say why he considers that other companies operating in the same sector as the Company would not be faced with production constraints or other issues affecting their growth potential, of a similar magnitude to the Company. Unless there are issues specific to the Company which clearly and obviously restrict its ability to grow to a greater extent than might be expected for other companies operating in the same sector (which in my judgment the issues identified by Mr Donaldson do not) it is difficult to quantify whether the possible restrictions on the Company's growth potential which Mr Donaldson identifies are

materially more significant than those of other companies operating in the same sector, such as to justify applying a discount, or a greater discount, to the EBITDA multiple. I accept Mr Southall's point that all of the points made by Mr Donaldson, which he now says should attract a significant discount to the EBITDA multiple (and therefore to the valuation of the Company) are points made in Mr Donaldson's report of 19/4/24, but nonetheless Mr Donaldson's DCF valuation, in that report, anticipated growth at the rate of 5% per annum which is more than the 4.5% per annum anticipated in Mr Southall's capitalised earnings valuation. I ask rhetorically what has changed to apparently persuade Mr Donaldson that those issues should attract a substantially greater discount. The answer appears to be that: (i) Mr Donaldson believed, before he prepared the DCF valuation, in his report of 19/4/24, that the Company is worth about £22m; (ii) the only way he could reduce the DCF valuation in his 19/4/24 report of £29.9m to about £22m using the capitalised earnings method, was by applying an EBITDA multiplier of 5; and (iii) the only way he could justify an EBITDA multiplier of 5 was to apply a significant discount for the Company specific issues which he had already identified in his 19/4/24 DCF valuation (notwithstanding that he had anticipated a higher rate of growth for the Company in his 19/4/24 DCF valuation, than Mr Southall did in his 19/4/24 capitalised earnings valuation). That approach, for the reasons set out in paragraphs 249 - 257 above is, in my judgment, flawed; and

- (d) finally, for completeness, I should say that it was put to Mr Southall in cross examination, that he could not place any reliance upon the interview that Jitha gave to Lloyds Development Capital in August 2023 in considering the Company's future growth prospects. Mr Southall said that he had based his view of the Company's future growth prospects upon the Company's own forecasts. I accept that evidence and that therefore what Jitha said to Lloyds Development Capital was not a factor taken into account by Mr Southall in calculating the EBITDA multiple at 6.6, he merely points to it, in the joint report, as supporting his EBITDA multiple.

Conclusion on the value of the Company

479. For the reasons given I prefer the opinion of Mr Southall to that of Mr Donaldson as to the correct EBITDA multiple and find that the correct EBITDA multiple is 6.6 and the value of the Company at 29/2/24 is £28.878m.

480. To be added to that valuation is an adjustment for the value of materials purchased by the Company and used in the construction of the House which I have valued at £117,404. Mr Donaldson and Mr Southall agree (see paragraph 234 (f) (i)) that any of the Company's money used in the construction of the House should be added as surplus cash to my valuation of the Company. I therefore valued the company at £28,995,400. The value of Mantir's shares, subject to any minority discount, is £5,575,815 (Mantir owns 19.23% of the Company's shares, £28,995,400 x 19.23% = £5,575,815).

A MINORITY DISCOUNT?

481. Mr Khangure says that:

- (a) the overriding objective is that the valuation of a petitioner's shares should be a fair one;
- (b) generally a minority discount should not be applied;
- (c) if the company is a quasi-partnership and the minority shareholder is excluded from the management of the Company, there is a strong presumption that no minority discount should be applied (***Re Blue Index [2014] EWHC 2680 (Ch)*** per Deputy High Court Judge Hollington KC);
- (d) the experts agree, in their joint report, that the question of whether a minority discount should be applied, and if so the amount of the discount is a matter for the court, however in cross examination, Mr Donaldson accepted that, because between them, the Respondents would acquire substantially all the remaining shares in the Company, by purchasing Mantir's shares, applying a minority discount may not be appropriate.

482. Mr Zaman says that, if I find that Mantir destroyed the trust and confidence between the Brothers himself, then he should not be rewarded for doing so and a minority discount should be applied.

483. In ***Re Lloyds Autobody Ringway Limited [2018] EWHC 2336 (Ch)***, HHJ Hodge QC sitting as a High Court Judge summarised the law relating to the application of minority discounts as follows, at paragraph 113:

"(1) The task of the court, in granting relief under section 994, is, first, to identify the unfair prejudice which has been established and, then, to fashion the relief so as to cure that prejudice. That principle must underly the issue whether or not a discount for a minority shareholding should be applied.

(2) The whole purpose of the unfair prejudice remedy is to grant the oppressed minority a remedy which they would not otherwise have. It would substantially defeat the purpose of the new remedy if the oppressing majority were routinely rewarded by the application of a discount for minority shareholding.

(3) Thus, whether or not a discount for a minority shareholding is applicable involves drawing a distinction between the general case, where it would be unfair to treat the wronged petitioner as a willing seller, and therefore for the price to be fixed on a discounted basis, and the exceptional case where it would be fair to do so because (for example) he had acquired his shares at a discounted price, or had so acted as to deserve his exclusion from the company. In other words, the emphasis of the underlying principle lies in the unfairness in treating a successful petitioner as a willing seller.

(4) Although the general rule is that there should be no discount, the court retains a wide discretion and may apply a discount where, apart from section 994, the

petitioner would not have succeeded in securing a winding-up order on the just and equitable ground: ...

(5) The choice is not necessarily between an undiscounted and a fully discounted valuation. The wide terms of section 994 leave it open to the court to order the purchase of the petitioner's shares at some middle figure, involving an intermediate discount, where neither a pro rata valuation nor a minority shareholding valuation would be fair: ... However, in my judgment such cases are likely to be rare; and the court must beware of the dangers of applying "palm tree" justice before adopting some middle course..."

484. I will follow the guidance given by HHJ Hodge QC in ***Re Lloyds Autobody Ringway Limited***. In accordance with that guidance, the starting point is to identify the findings that I have made of conduct by Jitha that is unfairly prejudicial to Mantir, in his capacity as a shareholder of the Company. My findings of unfairly prejudicial conduct, in summary are:

- (a) Jitha deliberately withheld Company information and documents from Mantir, which Mantir had requested in two emails he sent to Jitha dated 26/1/20 and thereafter (see paragraphs 267 and 274 above); and
- (b) Jitha deliberately causing the Company to purchase materials used in the construction of the House, denying having done so and trying to cover it up. I have assessed the value of materials purchased by the Company and used in the construction of the House at £117,404 (see paragraphs 355 – 399).

485. Mantir accepts that he assaulted Jan in 2011 (see paragraphs 78 and 79 above) although I consider that he tried to play down the seriousness of the assault. I have also found that Mantir assaulted Jitha in October 2019 after Jitha had refused Mantir's request, in the previous month, that the Company purchase Mantir a Rolls-Royce (see paragraphs 281 – 286 above). I have also found (see paragraph 286) that the two incidents between Jitha and Mantir, in September and October 2019 resulted in Mantir asking Jitha whether he had repaid to the Company the money that Jitha had told Mantir he had used was using or would use, towards the cost of constructing the House and Jitha denied using any of the Company's money. Mantir having taken advice, then embarked upon wide ranging requests for information and documents to see whether Jitha in particular, but perhaps the other Respondents as well, had received from the Company more than he had.

486. Mantir's requests for historic information and documents were blocked by Jitha, I have not come to any conclusion about whether Jitha blocked Mantir's requests for information and documents wholly or partly to try to prevent Mantir from finding evidence that proved that Jitha had used the Company's money to buy materials used in the construction of the House or, as Jitha suggests, to prevent Mr Josen, in particular from being overwhelmed with Mantir's requests. I have however concluded that Mantir was entitled to ask for historic information and documents, as a director of the

Company and it was reasonable for him to do so, in the context of Jitha wrongly denying that he had used any of the Company's money to pay for the costs of constructing the House, when he had previously told Mantir that he had done so, was doing so or would do so (see paragraph 435 above).

487. For the reasons set out in paragraphs 440 and 441 above I have concluded that the breakdown in trust and confidence between the Brothers that led to the presentation of the Petition was substantially caused by the conduct of Jitha.

488. I find that a minority discount should not be applied to the price at which Jitha should be ordered to purchase Mantir's shares because:

- (a) I am satisfied that the general rule is that a minority discount should not be applied;
- (b) if Mantir had been predominantly responsible for the breakdown in trust and confidence between the Brothers, that led to the presentation of the Petition, then that may well have been a reason why it would be fair for a minority discount to be applied, however I have found that it was Jitha who was primarily responsible for that breakdown in trust and confidence;
- (c) no other good reason to apply a minority discount is asserted by Mr Zaman; and
- (d) Jitha will not, as a result of purchasing Mantir's shares, become the majority shareholder in the Company, but the Respondents between them will hold substantially all of the Company's shares. Whilst the relationship of trust and confidence between Mantir on the one hand and the Respondents on the other, has broken down, the evidence of all the Brothers overwhelmingly supports the conclusion that the Respondents still have trust and confidence in each other, so that, following the acquisition of Mantir's shares by Jitha (or the Respondents equally should they wish to ensure a continued equal shareholding) the Respondents will between them be able to control the Company, free of any involvement by Mantir in the Company. As Mr Donaldson conceded, in cross examination, in those circumstances a minority discount applied to reflect the fact that Mantir's shares represent a little under 20% of the Company's shares may not be appropriate regardless of other factors, because acquiring it gives control to the Respondents to the exclusion of any ongoing involvement in the Company by Mantir.