Neutral Citation Number: [2024] EWHC 1816 (Ch)

Claim No: CR-2021-000377

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (Ch D)
IN THE MATTER OF SOLID STAR LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1 NL
Date: 17 July 2024

Before:

MR DAVID REES KC
(Sitting as a Deputy Judge of the High Court)

- -

Between :

QUEENSGATE PLACE LIMITED

Petitioner

(1) SOLID STAR LIMITED (IN LIQUIDATION)
(2) VIKING WORLD INVESTMENTS SA
(3) PRAKASH BHUNDIA
(4) MINESH BHUNDIA
(5) PROPERTY X1 LIMITED

Respondents

- -

Fenner Moeran KC (instructed by **Setfords Solicitors**) for the **Petitioner**
Mr Jamie Cockfield (instructed by **Stephenson Harwood LLP**) for the **First Respondent**
The Second Respondent was represented by its director, the **Third Respondent**
The Third Respondent appeared in person
Ms Sarah Bayliss and **Mr James Kane** (instructed by **Spencer West LLP**) for the **Fourth Respondent**
The Fifth Respondent was not present and was not represented

Hearing dates: 11, 12 June 2024

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I direct that no official shorthand note shall be taken of this Judgment and that copies of this Judgment as handed down may be treated as authentic

David Rees KC, Deputy High Court Judge

Mr David Rees KC :

Introduction

1. This judgment deals with the issue of the appropriate remedy for unfair prejudice that has been sustained by a member of a company, Solid Star Ltd (**"SSL"**). In a previous judgment handed down on 20 September 2023 (*Queensgate Place Ltd v Solid Star Ltd & Others* [2023] EWHC 2277 (Ch)) ("**the Liability Judgment**"), I determined that the petitioner, Queensgate Place Ltd ("**QPL**") had suffered unfair prejudice as a result of actions by the Second to Fourth Respondents.

2. As at the liability hearing, QPL was represented by Mr Fenner Moeran KC. The Third Respondent Mr Prakash Bhundia ("**Prakash**") appeared in person and, as its director, he also represented the Second Respondent, Viking World Investments SA ("**Viking**"). The Fourth Respondent, Mr Minesh Bhundia ("**Minesh**") was represented by Ms Sarah Bayliss and Mr James Kane of counsel. SSL, the First Respondent, did not play an active role in the hearing but its interests were represented by Mr Jamie Cockfield of counsel who attended and observed the hearing. I did not hear any oral evidence on this occasion. Once again I must record my gratitude to all the advocates for their careful written and oral submissions.

3. I will not repeat in any great detail in this judgment the facts that I recited and the conclusions that I reached in the Liability Judgment, and this judgment should be read as one with my earlier one. However, by way of summary and to aid understanding of this judgment:

   (1) Underlying this dispute is the development of a hotel in Kensington into 20 flats and mews houses. The development was a joint venture between Viking (a company controlled by Prakash and owned by him and / or other members of his family) and QPL, a company originally owned and controlled by Mr Attahiru Bafarawa ("**Alhaji**"), a Nigerian politician and subsequently by his son Mr Sagir Bafarawa. SSL was the joint venture vehicle that conducted the development and was owned beneficially by Viking and QPL in equal shares.

   (2) Prakash and Minesh were the directors of SSL. Throughout its period of operation Prakash was left in effective control of the company by Minesh who

failed to play a proper role in its governance. Thus, as I found in the Liability Judgment, no board meetings of SSL ever took place and Minesh played no role in the preparation or approval of the company's accounts. Minesh's failures regarding the governance of SSL left Prakash in a position whereby he was able to deal with the company's affairs howsoever he wished.

(3) QPL and Viking each agreed to introduce £3.5M into the development by way of loan. I found in the Liability Judgment that each did so. Their agreement also provided that these loans should be repaid *pari passu*. I found in the Liability Judgment that this did not take place, with substantial repayments being made to Viking, but not to QPL.

(4) Prakash was the director of a number of other companies. In the Liability Judgment, I found that he treated the funds of these companies, including SSL, as a single pot from which payments could be made at will without regard as to whether the payment being made was a proper liability of the company paying it and without any adequate records of these cross-liabilities being kept.

(5) The development took place and a number of the redeveloped flats were sold, realising cash to meet the development costs. In April 2017 (at a time when there were 7 properties left unsold) Prakash and Alhaji reached an agreement on behalf of Viking and QPL for the division of the remaining properties between them *in specie*. This agreement did not take account of a number of liabilities of SSL that remained unpaid as at that date, including the repayment of a third party loan owed to Qatari Diar in excess of £1.6M.

(6) Pursuant to the April 2017 agreement QPL injected a further £368,000 into SSL. However, as I held in the Liability Judgment, these funds were not applied by Prakash for the benefit of SSL.

(7) The April 2017 agreement was purportedly repudiated on behalf of QPL by a Mr Temi Ugboma, who had been appointed as director of that company. Although various negotiations subsequently took place between QPL and Prakash / Viking to reach an alternative agreement to effect a distribution of SSL's assets between its members, nothing was agreed.

(8) Between February 2019 and November 2020 the seven remaining properties were sold by SSL. One, as I found in the Liability Judgment, was sold for full consideration to enable a debt owed by SSL to HMRC to be paid. However, the remaining six properties were transferred to a company, Property X1 Ltd ("**PX1**") a company of which Prakash was the sole director and in respect of which he had significant control. As I explained in the Liability Judgment, the purchase price for these properties was not paid by PX1 to SSL but was left outstanding. PX1 borrowed on the security of these properties and with the proceeds of those loans paid some debts that were clearly liabilities of SSL. However, it also used some of these borrowed funds to pay debts (in excess of £2.25M) that were liabilities of other companies controlled by or connected to Prakash and which had nothing to do with SSL. I also found in the Liability Judgment that the price agreed between PX1 and SSL in respect of three of these properties was an undervalue.

(9) In the meantime Prakash and SSL had been joined as defendants to a claim ("**the Lazuli Claim**") brought in relation to an entirely separate property development joint venture carried out by another company controlled by Prakash. Following a trial in October 2021, the outcome of the Lazuli Claim was that SSL was held to be jointly and severally liable together with Prakash and other defendants in a sum which, as at March 2023, stood at over £3.2M.

(10) As a result of the judgment in the Lazuli Claim, Prakash was made bankrupt and SSL was placed in insolvent liquidation.

(11) In the Liability Judgment I held that Viking and Prakash had caused unfair prejudice to QPL in respect of four matters, namely:

a) Making unequal repayment of the shareholder loans;

b) Failing to obtain payment from PX1 of the purchase price for the six properties transferred to PX1 (and the fact that three of these were sold at an undervalue);

c) Failing to ensure that the additional £368,000 odd introduced by QPL into SSL in 2017 was applied for the benefit of SSL; and

d) Involving SSL in an unrelated joint venture development, so that it became liable for the judgment on the Lazuli Claim.

(12) I held that as a result of his abdication of the duties that he owed as a director of SSL Minesh was also responsible for these matters, save that it was accepted by QPL that Minesh was not in a position to prevent the first two sales to PX1 (so that his liability in respect of that head extends only to the final four sales).

(13) However, I accepted that there was a distinction between the culpability of Prakash and Minesh. Prakash was the controlling mind of SSL and the instigator of the actions that caused the unfair prejudice. I found Prakash's actions in relation to three of the established grounds of unfair prejudice to be dishonest (the exception being the failure to repay the loans on a *pari passu* basis). Minesh's responsibility on the other hand arose from his failure to play any form of active role in the governance of SSL and his abdication of the duties that he owed as a director of the company. I did not find him to be dishonest and I observed at [173]:

> "(1) As set out above Minesh does not share responsibility with Prakash for all of the unfair prejudice that I have found to have occurred; and
>
> (2) My initial view is that as between themselves, Prakash as the controlling mind and instigator of the prejudicial acts, should bear the greater part of the responsibility."

(14) Three of the properties transferred by SSL to PX1 have since been sold by the receivers appointed by PX1's lender. However, three remain unsold and following the Liability Judgment, on the application of the liquidators of SSL, I made a declaration that these properties were held by PX1 on constructive trust for SSL. These three properties have since been transferred back into the name of SSL.

(15) There are thus likely to be assets available within the liquidation of SSL to enable it to make a partial distribution to its unsecured creditors. However, it

is clear that on the completion of the winding-up there will be no surplus available for its members.

4. Thus, although SSL carried out the development of the hotel and sold the units that were thereby created (save for the three since recovered by the liquidators), QPL has not received any distribution arising from the development. Indeed it has introduced over £3.8M in capital (its original loan of £3.5M and the further funds of £368,685 pursuant to the April 2017 agreement) into SSL and is now left to prove in the company's liquidation to recover a fraction of those sums.

5. On behalf of QPL Mr Moeran KC now seeks an order that Viking, Prakash and Minesh buy its shares in SSL at a valuation which would reflect the loss that QPL has thereby sustained. This is resisted by Prakash and Viking. For Minesh, Ms Bayliss and Mr Kane take a different line. They do not dispute that QPL should be entitled to some form of compensation for the unfair prejudice that it has sustained. However, they seek to place the blame for the unfair prejudice firmly on Prakash's shoulders and seek an order either absolving Minesh from any obligation to compensate QPL or, in the alternative, limiting Minesh's liability up to a maximum of 15% of the total compensation awarded.

The Law

6. As a litigant in person, Prakash did not make any detailed legal submissions. However, Mr Moeran, Ms Bayliss and Mr Kane produced a joint bundle of authorities containing 35 cases, although I was referred to considerably fewer than this in the course of their oral submissions. Although each party sought to rely on certain cases as illustrating particular approaches that have been taken by the court when formulating a remedy for unfair prejudice, as was the case at the liability hearing, there was not any significant divergence between counsel on the underlying principles.

7. The starting point is section 996 of the Companies Act 2006. This provides:

"(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may —

(a) regulate the conduct of the company's affairs in the future;

(b) require the company—

(i) to refrain from doing or continuing an act complained of, or

(ii) to do an act that the petitioner has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;

(d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly."

8. Thus, as Oliver LJ identified in *Re Bird Precision Bellows Ltd* [1986] Ch 658 at 669D (in relation to the predecessor of section 996), the court has:

"a very wide discretion to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company."

The court's jurisdiction is, however, not unlimited, and must be exercised judicially and on rational principles (*Profinance Trust SA v Gladstone* [2002] 1 WLR 1024).

Any remedy awarded should be proportionate to the prejudice found; it is not a "punishment for bad behaviour" (*Hawkes v Cuddy (No 2)* [2007] EWHC 2999 (Ch) at [246] per Lewison J).

9. The list of potential remedies identified at section 996(2) is, as the section itself makes clear, non-exhaustive. Thus, it is not just existing members of the company that can be required to purchase the petitioner's shares in the company.

> "Relief can be granted to remedy wrongs done to the company, and in such a situation the alleged wrongdoers must be made parties to the petition. Non-members of a company who are alleged to have been responsible for such conduct can be joined as respondents, and, in an appropriate case, such non-members can be made primarily or secondarily liable to buy the petitioners' shares." *Apex Global Management Ltd v Fi Call Ltd & Others* [2013] EWHC 1652 (Ch) per Vos J at [125].

10. When identifying the appropriate remedy it is important to keep in mind the role of each respondent in the unfairly prejudicial conduct. As Sales J identified in *F&C Alternative Investments (Holdings) Ltd v Barthelemy (No 2)* [2011] EWHC 1731 (Ch) at [1096]:

> "What is the relevant test of attribution of responsibility beyond the narrow class of case where an agency relationship exists? In my judgment, the test is whether the defendant in a section 994 claim is so connected to the unfairly prejudicial conduct in question that it would be just, in the context of the statutory regime contained in sections 994 to 996, to grant a remedy against that defendant in relation to that conduct. The standard of justice to be applied reflects the requirements of fair commercial dealing inherent in the statutory regime. This is to state the test at a high level of abstraction. In practice, everything will depend upon the facts of a particular case and the court's assessment whether what was done involved unfairness in which the relevant defendant was sufficiently implicated to warrant relief being granted against him."

11. For the petitioner, Mr Moeran argues that the appropriate order here is an order for the purchase of QPL's shares in SSL. Ms Bayliss in her submissions, although identifying that the court has power to order respondents to pay compensation to the company or

to the petitioner without making that linked to the purchase of shares, did not seek to argue for that form of relief in preference to a "buy-out" order, and on the facts of this case, the practical differences between an order requiring the respondents to pay compensation to the petitioner and an order requiring the respondents to purchase the petitioners' shares in SSL are likely to be very limited.

12. Ms Bayliss did however seek to rely upon the decision of Mr Richard Sykes QC in the case of *Re Hailey Group* [1993] BCLC 459 as authority for the proposition that requiring a respondent to purchase the shares of a petitioner in an insolvent company is tantamount to imposing a fine on them: there is nothing of any value to purchase (*ibid* at [473]). However, that case identified that the position may be different if at the time that the substantive relief was sought, the company was solvent:

> "In that case it might reasonably be said that the petitioner should remain entitled to the relief he was entitled to at the outset, despite supervening insolvency".

In answer to Ms Bayliss's point, Mr Moeran drew my attention to the decision of Mr Edward Bartley Jones QC in *Re Via Servis Ltd; Skala v Via Servis Ltd* [2014] EWHC 3069 (Ch) where at [78] the Deputy Judge indicated that he did not find the reasons given in *Re Hailey Group* for not making a share purchase order on the facts of that case to be "compelling". In any event in that case, Mr Bartley Jones QC noting the exception identified in *Re Hailey Group* that I have set out above, held himself to have jurisdiction to make a share purchase order notwithstanding the subsequent insolvency of the company.

13. Here, I note that the petition was issued in February 2021, over a year before judgment was given against SSL in the Lazuli claim, and at a time when there was no immediate reason to suppose that SSL was insolvent. I am satisfied having regard to the authorities that if I consider it otherwise fair and appropriate to do so, I am entitled to make a share purchase order here, notwithstanding that SSL is now insolvent.

14. Miss Bayliss, by reference to *dicta* of Vinelott J in *Re A Company (No 002612 of 1984)* (1986) 2 BCC 99453 at 99495, sought to argue that to impose such a "fine" would not usually be appropriate unless there had been "oppressive" or "unscrupulous" conduct. However, I am satisfied that although Vinelott J, on the facts of that case, considered the respondent's actions to have been unscrupulous, the

judge was not suggesting that a share purchase order could only be ordered in such circumstances. I further note that in that case, although there had been a significant fall in the value of the shares between the date chosen for valuation and the date of the court's order, that fall appears to have been attributable to market movement in the relevant sector rather than as a result of any default of the respondent.

15. Ms Bayliss also sought to argue that the means of the respondents should be taken into account when making an order, relying upon *Re Cumana Ltd* [1986] BCLC 430 at 444. There Nicholls LJ held:

> "If, in a particular case, the court considers that a respondent who has wrongfully extracted substantial sums of money from a company should make recompense by paying a stated sum to the petitioner, or to the company, I do not see why such an order should not be made even if the respondent does not have and is unlikely to obtain the necessary means; although, no doubt, his financial position would be a matter to be taken into account by the court in deciding upon the form of relief. If that is correct, I do not see why the position is in principle any different in the case of a purchase of shares: the respondent is being ordered to pay a fixed sum of money, and shares (like other forms of property) may subsequently fall or rise in value. Of course, in considering whether to make a purchase order, the court will have regard to the means of the respondent and also, if he will need to have recourse to the property which is the subject of the purchase order, or other property, to obtain the purchase price, to the likelihood of him being able to realise or obtain money on the security of that property. But these are questions of degree, and the weight to be attached to these considerations will depend on all the circumstances of the case. They are matters for the discretion of the trial judge."

16. I do not consider that this passage helps Minesh greatly. Whilst I am directed to have regard to his means and those of the other respondents, it seems to me that this is merely one factor which I need to bring into consideration in exercising my very wide statutory jurisdiction under section 996, and if I consider that it is necessary to do so to compensate the petitioner for the unfair prejudice that it has sustained, I may make an order requiring a share purchase even though the person against whom the order is directed may appear to lack the funds needed to satisfy that order.

17. Ms Bayliss and Mr Kane also referred me to a number of authorities where judges had been required to apportion liability between multiple respondents. Beyond being examples of the general and uncontroversial proposition that a respondent's liability will depend upon the extent of their involvement in the unfairly prejudicial acts, I did not find these cases to be of any great assistance to my task. Each case clearly depends upon its own particular circumstances.

Share Purchase

18. Having regard to the authorities, and to the situation in which the parties now find themselves, I am satisfied that the appropriate remedy in this case is to order a buy-out of the petitioners' shares in SSL by Prakash, Viking and Minesh as the authors of the unfair prejudice. Although those shares now have no real value it is clear that, absent the acts of the respondents which caused unfair prejudice to the petitioner, the company had significant assets which would have been available for distribution to its members. I therefore need to identify a valuation for the buy-out which represents a fair assessment of the loss that QPL has sustained because of the respondents' actions.

The Position of Viking

19. Before I turn to questions of quantum, I need to say something about the position of Viking. As will be noted from the Liability Judgment, the acts or omissions that I have found caused unfair prejudice to QPL were acts or omissions of Prakash and Minesh. It is harder to identify the role that Viking may or may not have played in these events, not least because at all material times Prakash has been the sole director of Viking and it is difficult to separate their respective actions and knowledge of events. However, no one (including Prakash who represents both himself and Viking) has sought to persuade me that I should draw any distinction between the acts of Prakash and those of Viking, and the declarations that I made consequent on the Liability Judgment therefore treated Viking and Prakash as being responsible for the same unfair prejudice. In my remedies order Viking will therefore be jointly and severally liable with Prakash and to the same extent.

Limitation

20. A further issue that needs to be addressed is that of limitation. Ms Bayliss and Mr Kane have sought to argue that any liability to compensate QPL for the failure to repay the shareholder loans *pari passu* is limitation barred. This point is not raised in their pleaded case, which is unsurprising as at (1) the time that the petition was presented and (2) the time of the liability trial before me, it was understood that no statutory limitation period applied to petitions under section 994 Companies Act 2006. Instead, the fact that a claim was stale was a factor that the court could take into consideration when formulating its remedy under section 996.

21. However, and subsequent to my handing down the Liability Judgment, the Court of Appeal has given judgment in the case of *THG Plc v Zedra Trust Company (Jersey) Limited* [2024] EWCA Civ 158, in which it held that a claim under section 994 Companies Act 2006 is subject, depending upon the relief sought, to either a 12 year limitation period as an action on a specialty under section 8 Limitation Act 1980 or a six year period under section 9 of that act (as an action to recover money recoverable by virtue of an enactment). As a result of this decision Ms Bayliss and Mr Kane identify that, at the very least, some £1,446,789 of the repayments made to Viking of its shareholder's loan were made more than 12 years before the presentation of the petition and argue that liability for this is now limitation barred. They add that if the claim is viewed as one for a compensatory payment rather than a share purchase order, a further £215,737 falls outside the applicable six year limitation period.

22. Mr Moeran argues that I should reject this argument in its entirety. His first argument is that limitation is an issue which should have been taken at the liability trial. It was not, and has not been pleaded by Minesh (and no application to amend their Defence was made by Ms Bayliss and Mr Kane). Mr Moeran's case is that absent a successful application to the Court of Appeal to appeal the Liability Judgment out of time, Minesh is not able to rely on the Limitation Act 1980 as a defence to the petition. He also argues that, in any event, no limitation defence can arise here since there was a fresh breach of duty each year when Minesh failed to take any steps to approve the company's accounts. A new cause of action therefore arose each year, on the basis

that, had Minesh fulfilled his director's duties, the unequal repayments of the shareholder loans would have been identified and rebalanced.

23. I agree that this is an issue which should have been taken at the liability stage. That it was not is unsurprising, and I make no criticism of Ms Bayliss or Mr Kane for not doing so. At the time of the liability trial the Court of Appeal's decision in *THG Plc* had not been handed down and the Limitation Act 1980 was therefore not generally understood to apply to section 994 petitions. Nonetheless I accept Mr Moeran's argument that as a matter of formal pleading, it is not now open to Minesh to raise a Limitation Act defence which goes to *liability* at the *remedies* stage of this petition.

24. However, that is not the end of the issue. Ms Bayliss and Mr Kane also argue that even if I do not accept that Minesh can now rely upon the provisions of the Limitation Act 1980 as a partial defence to QPL's claim, the delay in pursuing this issue is still a matter which can, and should, be taken into account when formulating an appropriate remedy. They therefore argue that I should take into account the fact that elements of QPL's claim are stale and decline to compensate them for that part of the claim.

25. In principle, I can see the force in this argument. It is not the fault of either Minesh or his legal advisers that the limitation argument was not raised at the liability trial; rather the availability of this as a defence has only become apparent following the decision of the Court of Appeal in *THG Plc*. At the liability stage of this petition they had doubtless envisaged arguing these issues at the remedies hearing. Given the wide discretion that I have in fashioning an appropriate remedy, I consider that it would be unfair to prevent them from raising these issues now, and I have therefore taken their arguments into account in this regard.

26. That said, I have reached the conclusion that although there was clearly a significant delay between the partial and unequal repayment of Viking's shareholder loan and the bringing of the petition, this does not alter the remedy (either in scope or quantum) that I consider it appropriate to grant in this case. Because I have reached this view for different reasons from those put forward by the parties, I need to provide some explanation for this decision, and I do so at paragraphs 35 *et seq* below. However, before I do so I need to explain more about my approach to valuation.

Valuation – General Principles

27. Having determined to order a buy-out by the respondents of the petitioner's shares, I need to identify the appropriate value. The starting point is that the petitioner's shares should be bought out at a fair price (*Scottish Co-Operative Wholesale Society Ltd v Meyer* [1959] AC 324 at 369).

28. SSL was a company which had a single purpose; the redevelopment of the Kensington block of flats. It was not engaged in any other form of trade, and as such I am satisfied that the correct approach to the valuation of QPL's shares in the company is simply to identify the value of the company's assets that would have been available to its members had the unfair prejudice not taken place.

29. I need to decide upon a date for that valuation. Where the company is sold as a going-concern then the date upon which the purchase occurs is likely to be the appropriate date for valuation (*Re London School of Electronics Ltd* [1986] Ch 211 at 224 per Nourse J). However, fairness to one side or the other may require the court to take another date (*Profinance Trust SA v Gladstone* [2002] 1 WLR 1024 at [61]). The court's powers also extend to awarding a sum equivalent to interest where an earlier valuation date is adopted (*ibid* at [31]). Mr Moeran's written submissions somewhat ambitiously sought an equivalent to compound interest. However, in his oral submissions he limited his claim to 1% above the Bank of England base rate from time to time.

30. As to the date for valuing the company Mr Moeran has provided a menu of possible dates.

    (1) His starting point is that I should adopt the date of the 2017 agreement. That is when the parties agreed to dissolve the joint venture, he says, and but for the unfairly prejudicial conduct this could and should have occurred relatively promptly.

    (2) His second date is the date of sale of each of the properties sold by SSL to PX1. He argues that this date is the date of the primary unfairly prejudicial conduct, and had the properties actually been sold for a true market price and

no other breaches had occurred then the division of those proceeds could have taken place shortly thereafter.

(3) His fallback date is the date of the valuation reports in the evidence provided for the liability trial.

31. I do not consider it appropriate to adopt the date of the April 2017 agreement for valuation. Whilst this was indeed the moment that Prakash on behalf of Viking, and Alhaji on behalf of QPL agreed to dissolve their joint venture, I consider that it is entirely QPL's own fault that this agreement was not implemented. Shortly after the agreement was reached Mr Temi Ugboma was appointed as a director of QPL and he purported to repudiate it. There then followed a period in which Mr Ugboma on behalf of QPL made any form of agreement for the winding up and dissolution of SSL impossible. He was eventually removed as a director at the end of 2019. I have said more about Mr Ugboma's conduct in the Liability Judgment and I do not consider that it would be fair to the respondents to take a valuation date during the period that Mr Ugboma was representing QPL.

32. In my view the appropriate date is the date of sale of the six properties sold by SSL to PX1. I agree with Mr Moeran that it was the sale of these properties which proved to be the primary act of unfair prejudice. Had the properties been sold at market value then the net proceeds of sale could have been used to discharge SSL's liabilities (including the outstanding balances on the shareholder loans) with the remaining funds being available for distribution to SSL's members. I therefore propose to value the company as at the date of the final sales to PX1 namely 29 October 2020 (this appears to me to be the fairest date for the valuation as it takes into account the fact that Mr Ugboma was still at the helm of QPL when the first two sales to PX1 were made). I adopt the valuations provided by Mr Alford MRICS for these properties namely:

Property	**Date**	**Mr Alford's Market Value**
23 Queen's Gate Mews	15 February 2019	£4,150,000
Flat 9 5 Queen's Gate	29 January 2019	£3,650,000
Flat 2, 6 Queen's Gate	17 February 2020	£2,265,000
Flat 3, 6 Queen's Gate	5 March 2020	£1,325,000
Flat 1, 5 Queen's Gate	29 October 2020	£1,600,000
Flat 1, 6 Queen's Gate	29 October 2020	£1,230,000
	TOTAL	£14,280,000

33. This then permits me to adopt a counter-factual approach and consider what the position would have been if SSL, instead of transferring its remaining properties to PX1, had sold them on the open market and used the net proceeds of sale to repay its liabilities with the balance being distributed among its members. I consider that such an approach will provide me with a fair valuation for the price that should be attributed to QPL's shares.

34. This approach also provides an objective mechanism to enable me to assess the relative contributions of Prakash and Minesh to the losses that QPL has sustained. In the Liability Judgment I found that Minesh bore responsibility (jointly with Viking and Prakash) for the transfer of four of the properties to PX1, but that he was not responsible for the first two transfers. I therefore also propose to adopt a second counter-factual hypothesis, looking at what the position would have been if the four

properties for which Minesh bears responsibility had been sold on the open market. In doing so, I can identify the proportion of QPL's losses which can properly be said to flow from Minesh's acts and omissions.

35. The adoption of this counter-factual approach also explains my conclusion that the relative staleness of QPL's complaint about the unequal repayment of the shareholder loans should not affect the relief that I grant. As set out in the Liability Judgment I concluded that the acts and omissions of the respondents had led to four separate heads of unfair prejudice, one of which was the early and partial repayment of Viking's shareholder loan. Although each of the four heads identified caused unfair prejudice to QPL, I do not consider that the repayment of Viking's shareholder loan in preference to that of QPL was in fact an effective cause of the substantive loss that QPL has now sustained. This is because until the PX1 property transfers took place in 2019/2020 SSL retained sufficient assets to repay all shareholder loans in full, and the preferential payment of Viking's shareholder loan could have been corrected. The properties could have been sold and the outstanding loans to both Viking and QPL could have been repaid from the net proceeds of sale.

36. In my judgment, the substantive cause of QPL's losses and the reason why it is now appropriate to compensate it for those losses, is the transfer by SSL of the six properties to PX1 in 2019/2020 without taking steps to ensure that full consideration was received or secured for these properties. This was then compounded by Prakash's involvement of SSL in the development that led to the Lazuli Claim and judgment being entered against SSL in those proceedings.

37. The difference in the outstanding balances of Viking and QPL's loan account is therefore a matter which would have been resolved in the distribution of the net proceeds of sale in the counter-factual scenario that I am postulating. Seen in that context, I do not consider that this element of QPL's claim can be seen as stale and this point has therefore not affected the remedy that I have adopted.

38. Having determined to adopt a notional valuation date of 29 October 2020, I am satisfied that it is fair that the relief that I grant should also award QPL a sum equivalent to interest at a rate of 1% above the applicable Bank of England base rate from that date to the date of my order.

Applying the counter-factual

39. I therefore adopt the following approach:

(1) I will assume that instead of transferring six properties to PX1 between 2019 and 2020, SSL had instead sold these properties on the open market for full consideration.

(2) From those net proceeds of sale I will then deduct the liabilities of SSL that would have fallen to have been deducted at that stage. These will include third party debts. I will however ignore any liabilities that were not the responsibility of SSL, and the judgment arising from the Lazuli Claim.

(3) I will then deduct the outstanding balances of the shareholder loans.

(4) This then will identify the surplus which should have been available for distribution between the members of the company.

(5) I will then repeat this exercise looking only at the proceeds of sale of the four properties in respect of which I have found Minesh to bear responsibility.

Shareholder Loans

40. Before I turn to the calculations, there is one final point that I need to address, namely the extent of the shareholder loans as at the valuation date. The headline figures, taking into account the repayments to the principal shareholder loans that I identified in the Liability Judgment (which in the case of Viking extend only to 2011) and the further £368,685 introduced by QPL pursuant to the April 2017 agreement are:

Member	QPL	Viking
Initial Loan	£3,500,000	£3,500,000

Further funds introduced	£368,685	-
Repayments	(£13,808.75)	(£1,662,526)
Net balance	**£3,854,876.25**	**£1,837,474**

The difference between these two figures is £2,017,402.

41. However, there is a further issue. As set out in paragraph 71 of the Liability Judgment, SSL's accounts show that in addition to the principal shareholder loan accounts there was a separate running account documenting payments between Viking and SSL. SSL's accounts for 2011 (the last year in which it is possible to quantify this account) shows that SSL had provided additional financial support to Viking of £1,188,875. In the Liability Judgment I found that the use of SSL's funds to support Viking in this way was a further breach of the Shareholders' Agreement. However, I did not make any findings as to the balance of this running account between Viking and SSL at any date beyond 2011.

42. This issue now assumes some importance as it will affect the value of assets that should have been available to SSL's members as at October 2020. For the petitioner Mr Moeran relies upon the 2011 figure and on my comment at paragraph 57 of the Liability Judgment that:

> "I have therefore reached the conclusion that even the filed accounts of the various companies must be treated with considerable caution, and I have given them greater weight where their contents support the petitioner's case than where they have been relied upon by Prakash in support of his assertions."

43. In his submissions Prakash drew my attention to the accounts for SSL for years subsequent to 2011. From 2012 onwards only abbreviated accounts were filed, and in some years no breakdown of creditors is provided. However, the accounts show sums owed to "group undertakings" as follows:

Year	**Amount**
2016	£5,939,961
2017	£6,196,994
2018	£7,893,900

44. Prakash sought to argue that these figures show SSL's total liability to QPL and Viking and that therefore by 2018 the sum owed to Viking was in excess of that owed to QPL. I do not accept that Prakash's version of events can be correct. The figures in the SSL accounts are not consistent with those to be found elsewhere and I have no confidence in them.

    (1) In the Liability Judgment I have already noted (paragraph 57) that the audited accounts of SSL showed its liability to Phoenix Hotels Ltd ("**PHL**") (a company owned by Viking) falling between 2008 and 2011 whilst the audited accounts of PHL showed SSL's liability to it increasing over the same period.

    (2) Secondly PHL's accounts for 2018 claim that SSL owed it £5,616,575. Yet, SSL's accounts for the same period show total creditors of £7,893,900 of which nearly £3.5M is clearly owed to QPL. The two sets of accounts cannot be reconciled.

45. I do not have evidence which would enable me to determine this issue arithmetically. It is simply not possible on the documents that I have for me to determine the state of the running account between Viking and SSL at any date after 2011. Nonetheless, I accept that as the development progressed and funds were required to pay for this, it is likely there would have been further changes in the balance of the "running account"

between SSL and Viking, and that it is likely that further funds would have been injected into SSL to fund the building works, although I have no way of accurately assessing what actually took place.

46. However, I note that the April 2017 agreement which Prakash entered into on behalf of Viking and Alhaji entered into on behalf of QPL envisaged that the remaining assets of SSL would be divided equally between its two members (subject to an equalisation payment to reflect the difference in value between the properties each were to receive[1]). I am therefore confident that, as at this date, Viking did not consider itself to be entitled to a greater sum from SSL than QPL.

47. I have therefore decided to proceed on this basis.

    (1) I find that there was a repayment by SSL of its principal shareholder loan from Viking in the sum of £1,662,526 which I will take into account when calculating the sums that each shareholder would have received in the counter-factual scenario I am considering.

    (2) However, I propose to ignore the separate running account between SSL and Viking on the basis that although I consider it likely that it would have been less than the £1,188,875 it stood at in 2011, I am not satisfied that there was a net figure owed to Viking by SSL either. I remind myself that in constructing a remedy for unfair prejudice I am not seeking to take a formal account between the parties, but am ultimately seeking to determine a fair price for the shares. In my judgment the fairest way to proceed here is to leave the separate running account out of my calculations entirely.

48. I will therefore treat QPL as being entitled to a loan equalisation payment of £2,017,402 before any distribution is made to the members generally.

49. I turn then to place a value on the shares.

Calculating net proceeds of sale

[1] As I explain at paragraph [15] of the Liability Judgment there appeared to have been an error in the calculation of this equalisation payment. Prakash, who was asked questions about this issue by Mr Moeran was unable to explain why the equalisation payment had been calculated in that way. Notably, he did not suggest at that time that Viking was entitled to receive this payment because it had injected any additional funds into SSL beyond the original £3.5M loan.

50. Taking the value of the properties that were transferred to PX1 from Mr Alford's report:

23 Queen's Gate Mews	£4,150,000
Flat 9, 5 Queen's Gate	£3,650,000
Flat 2, 6 Queen's Gate	£2,265,000
Flat 3, 6 Queen's Gate	£1,325,000
Flat 1, 5 Queen's Gate	£1,600,000
Flat 1, 6 Queen's Gate	£1,230,000
Total	**£14,220,000**

51. It is common ground between Mr Moeran and Ms Bayliss that a deduction of 1.5% then needs to be made for the costs of sale. Prakash suggested that this should be increased to 1.8% to allow for the VAT that would also have been payable by SSL. However, taking everything into account I am satisfied that 1.5% is a fair deduction. Allowing for this gives a revised total of **£14,006,700**.

Deducting Liabilities

52. The next stage is to deduct the undisputed third party liabilities of SSL that would have had to have been discharged from the proceeds of sale of the properties (and were met by PX1). These were:

Repayment of QD loan	£1,641,714.70

Repayment of Jenmark loan to cover balance of HMRC winding up petition	£56,448
Payment to HMRC in respect of further winding up petition	£163,002.77
Total	**£1,861,165.47**

53. Deducting these liabilities from the net proceeds of sale gives a total figure of:

Net proceeds of sale	14,006,700
Less Third Party liabilities	(£1,861,165)
Total net assets	**£12,145,535**

Deducting Shareholder Loans

54. The next step is to rebalance the loans as between the members of SSL. As set out above the respective balances of the shareholder loans that I am taking into account are:

QPL	**Viking**

£3,854,876.25	**£1,837,474**

55. To equalise the position between QPL and Viking it will therefore be for QPL to receive the first £2,017,401 from the net assets before the balance is divided equally between the two.

Division of Assets

56. Thus the net assets should be divided between the two members of SSL as follows:

Net Assets: £12,145,535

Less QPL loan equalisation payment: (£2,017,401)

Balance: £10,128,134

Each member entitled to 50% £5,064,067

On this basis they each should have received the following:

	QPL	**Viking**
Loan Equalisation	£2,017,401	-
50% of balance	£5,064,067	£5,064,067
Total	**£7,081,468**	**£5,064,067**

57. Thus, if there had been no unfair prejudice, and the company had been wound up by its members at the date of the last PX1 transfer, QPL would have been entitled to receive a total distribution of £7,081,468. Instead, it has so far received nothing, although it is likely that it will receive a dividend as a creditor from the liquidation of the company. In my judgment the total sum that is therefore required to compensate

QPL for the unfair prejudice that it has sustained is £7,081,468 less any sums that it receives from the liquidation of SSL.

58. However, I do not consider that all of this can fairly be laid at Minesh's door. As set out at paragraph 167 of the Liability Judgment I concluded (and QPL accepted) that Minesh bore no responsibility for the transfer of the first two properties to PX1. In those circumstances I do not consider that it would be fair to make Minesh jointly and severally liable with Prakash and Viking for the totality of this sum. Nevertheless, it is clear that Minesh's actions meant that four properties were transferred to PX1 without any corresponding payment being made to SSL for the purchase price.

59. Three of these properties have now been transferred back to SSL as a result of orders made by me in these proceedings. However, I do not accept the argument made by Ms Bayliss and Mr Kane that the return of these properties means that no loss (at least in respect of these properties) has arisen from Minesh's actions and omissions. Had there been no default by Minesh, then the significant costs which have arisen as a result of SSL being placed in insolvent liquidation would not have been incurred. There are other liabilities too (such as the unpaid judgment debt from the Lazuli Claim) which also flow from Minesh's default.

60. I therefore propose to adopt the following approach to assessing Minesh's liability. I will apply a counterfactual scenario similar to the one that I have applied above, but looking instead at the funds that would have been available to QPL if only the transfers of the four properties for which Minesh shares culpability had not taken place and those properties had instead been sold at market value and a solvent winding up then occurred.

61. Taking the value of those four properties from Mr Alford's report:

Flat 2, 6 Queen's Gate	£2,265,000
Flat 3, 6 Queen's Gate	£1,325,000
Flat 1, 5 Queen's Gate	£1,600,000

Flat 1, 6 Queen's Gate	£1,230,000
Total	£6,420,000
Net proceeds of sale (allowing for 1.5% sale costs)	**£6,323,700**

Repeating the exercise set out above using this figure for the net proceeds of sale:

Net proceeds of sale:	£6,323,700
Less third party debts:	(£1,861,165)
Less QPL equalisation of debts	(£2,017,401)
Balance available for distribution	£2,445,134
Each member entitled to 50%	£1,222,567

On this basis they each should have received the following:

	QPL	**Viking**
Loan Equalisation	£2,017,401	-
50% of balance	£1,222,567	£1,222,567
Total	**£3,239,968**	£1,222,567

62. Thus, on this scenario, if there had been no unfair prejudice and the company had been wound up by its members at the date of the last PX1 transfer, QPL would have been entitled to receive a total distribution of £3,239,968. This is 45.7% of the distribution of £7,081,468 that would have been received by QPL if all six properties had been retained.

63. On either scenario, any sum which QPL is entitled to receive in the liquidation of SSL should be deducted. As the three properties that have been recovered are properties in respect of which all three respondents are culpable I am satisfied that any recovery which is available to QPL from the liquidation of SSL should be applied first against the portion of the share purchase price for which Minesh, Prakash and Viking are jointly and severally liable.

64. In these circumstances, and subject to a final point about Corporation Tax that I raise at paragraph 67 below, I have concluded that the total purchase price for QPL's shares in SSL should be £7,081,468, together with a further sum equivalent to simple interest at a rate of 1% above the applicable Bank of England base rate from 29 October 2020 to the date of my order. Against that QPL must give credit for any sums it receives from the liquidation of SSL. Liability for the purchase will be as follows:

(1) Prakash, Viking and Minesh are to be jointly and severally liable for 45.7% of the total sum due.

(2) Viking and Prakash are jointly and severally liable for the remaining balance of 54.3%.

(3) Any sums recovered by QPL in the liquidation of SSL shall be set against liability (1) in priority to liability (2); and

(4) Any sums recovered by QPL from Prakash and Viking shall reduce liability (1) in priority to liability (2).

65. The share transfer on the sale to the respondents is to remain unexecuted unless and until the earlier of:

(1) The payment of the full share price (taking into account any distributions from SSL to QPL as shareholder); or

(2) SSL's liquidators make a final distribution to creditors and / or shareholders in the liquidation.

On the occurrence of either of these events QPL's shares in SSL are to be transferred into the names of Prakash, Viking and Minesh. The shares are to be transferred to them to be held as to 45.7% for Minesh and as to 54.3% for Viking and Prakash.

66. As between Minesh on the one hand and Prakash and Viking on the other, I consider that Prakash / Viking as the active wrongdoer behind the unfair prejudice must shoulder the greater part of the blame. Although Minesh clearly failed to fulfil his duties as a director of SSL (thereby allowing Prakash's own breaches of duty to take place), it was the actions of Prakash and not Minesh which were the ultimate cause of the unfair prejudice. Had Prakash not acted as he did, then Minesh's failings as a director (significant though they were) would not, on their own, have led to any unfair prejudice. Whilst this does not affect my decision on their liability as against QPL, as between each other, I consider that if Minesh seeks a contribution from Prakash and Viking, their respective culpability should be assessed as 10% Minesh and 90% Prakash and Viking.

Tax

67. A final point that I need to consider is the impact of Corporation Tax on the counter-factual scenarios that I have analysed above. This was not the subject of any argument by the parties, and I have not therefore included it in my analysis. However, it does appear to me likely that in the scenarios postulated above a charge to Corporation Tax would have arisen as a result of the sale of the properties on the open market and that accordingly an allowance should be made for this additional tax liability in calculating QPL's loss (and thus the purchase price for the shares). I will give the parties an opportunity to make submissions on the extent (if any) to which the figures I have set out above should be amended to reflect this additional liability.

68. That is my judgment.