



Neutral Citation Number: [2024] EWHC 2719 (Ch)

Case No: CR-2019-004187/008077

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (CHD)**

7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date of hearing: Wednesday, 9 October 2024

**Before:**

**MR JUSTICE ADAM JOHNSON**

**Between:**

**KRISHNA HOLDCO LIMITED**

**Petitioner**

**- and -**

**(1) GOWRIE HOLDINGS LIMITED**

**(2) SAMIT GOVINDJI HATHI**

**(3) GOVINDJI THAKERSHI HATHI**

**(4) ALPA HATHI**

**(5) PORTSIDE NORTH LIMITED**

**(6) LAXMICO GROUP FINANCE LIMITED**

**(7) SYRI LIMITED**

**(8) LAXMI BNS HOLDINGS LIMITED**

**Respondents**

-----  
-----

**MR ROBERT WINSPEAR** appeared for the **Petitioner**  
**MR SAMIR AMIN** appeared for the **First to Seventh Respondents**  
**MR CHRISTOPHER HARRISON** appeared for the **Eighth Respondent**

-----  
**Approved Judgment**

*If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.*

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

Digital Transcription by Marten Walsh Cherer Ltd.,  
2<sup>nd</sup> Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.  
Telephone No: 020 7067 2900. DX 410 LDE  
Email: [info@martenwalshcherer.com](mailto:info@martenwalshcherer.com)  
Web: [www.martenwalshcherer.com](http://www.martenwalshcherer.com)

**MR JUSTICE ADAM JOHNSON:**

1. I have to give a ruling on the question whether the company at the heart of these unfair prejudice proceedings (“LBNS”) should be subject to ongoing costs budgeting as regards its involvement in those proceedings. Although the real dispute is between the Petitioner and the First to Seventh Respondents, LBNS has been joined in the action as the Eighth Respondent in the usual way, so it is bound by the outcome.
2. LBNS, represented by Mr Harrison, suggests that it should be subject to costs budgeting and has put forward an overall proposed budget figure of approximately £459,000. Representing the Petitioner, Krishna HoldCo Limited (“*Krishna*”), Mr Winspear has also said that in principle costs budgeting should apply to LBNS, but invites me to determine that the budgeted figure should be zero. That would have the effect, in the event that LBNS obtained an order for costs at some future stage, of preventing it from recovering any costs unless it were able to persuade the costs judge that there was some good reason to depart from the budgeted figure.
3. It seems to me, looking at the relevant authorities and principles, that there are a number of points wrapped up in this debate.
4. To start with, both parties have very helpfully referred me to the classic statement of principle by Lindsay J in Re a Company (No 1126 of 1992) [1993] BCC 325 concerning the ability of the Court to provide endorsement in advance of the expenditure of company funds. The situation there was different. It did not involve costs budgeting, but instead was an attempt on the part of the company’s directors to pre-empt any argument that might later be made that they were guilty of misfeasance in using the company funds in the ongoing conduct of an unfair prejudice petition.
5. At pages 333A to 333G, Lindsay J gave some useful guidance, having reviewed the relevant authorities. I do propose to recite the guidance in full, but the gist of it is that the relevant test in such cases should be whether expenditure is necessary or expedient in the interests of the company as a whole. That is essentially a business or commercial judgment for the company’s management. That being so, Lindsay J said that, in considering such matters, the Court’s starting point should be a sort of “*rebuttable distaste for such participation and expenditure, initial scepticism as to its necessity or expediency.*” He went on to say (emphasis in original):

“ ... if a company seeks approval by the court of such participation or expenditure *in advance*, then, in the absence of the most compelling circumstances proved by cogent evidence, such advance approval is very unlikely.”
6. Admittedly, the situation here is different, as Mr Harrison points out, because I am concerned with costs budgeting and not with an application for advance authorisation of expenditure with a view to eliminating the risk of any later challenge to the conduct of the company’s directors.
7. Nonetheless, it seems to me that there is a material risk that, by endorsing a costs budget, the Court would by a sidewind be making it very difficult for any challenge later to be brought against the actions of the company’s management: the nature of the

costs budgeting exercise is endorsement by the Court of proposed expenditure by the company, and the budget will be authorised only if the Court is satisfied that the proposed expenditure is fair and reasonable.

8. Mr Harrison has sought to persuade me that there is a difference between the Court forming a view about the amount to be spent, and the underlying question whether the expenditure is, in fact, justified and in the company's interests. Perhaps there is a theoretical difference between the two, but, for my own part, I find it very difficult to identify the precise ambit of that difference or to say that it makes any real difference to the present inquiry. Therefore, it seems to me that I should be very cautious about endorsing a costs budget in the absence of the sort of cogent evidence that Lindsay J referred to.
9. The difficulty for LBNS is that even on its own case, it cannot be sure that the expenditure it proposes to incur is justified. It says the position is very unclear and is naturally cautious. The point is exemplified by the comments made by Mr Harrison himself in his oral submissions and indeed in his skeleton argument at paragraph 19, where he says the following:

*“This makes it a little difficult, at this stage, for LBNS to know how to proceed in relation to costs budgeting. LBNS has not found it easy to anticipate exactly what role it will need to play, and therefore to estimate exactly what its costs are likely to be. Indeed, as noted in paragraph 9 above, its skeleton for the 24.1.24 CMC noted that it would keep an eye ‘to see to what extent, if any’ it may need to be involved.”*
10. It seems to me that, in such circumstances, it is very difficult to be satisfied that there is cogent evidence that the proposed expenditure identified in LBNS's costs budget is truly appropriate. LBNS itself is very unclear of its position and very unclear as to what it can or should properly be doing in the ongoing action. I think the Court should be very cautious about taking steps by means of approving a costs budget that might, indirectly, be seen as providing endorsement for essentially commercial decisions which are still to be made by LBNS's directors, the nature of which not even the directors themselves presently know about.
11. The second and related point which I am anxious about is this. This point relates more directly to the question of costs budgeting. The nature of the costs budgeting exercise is to provide a present view of proposed costs which can then be used as a benchmark in any future costs assessment between the relevant parties. That contemplates that the party seeking approval of its budget will actually be in a position to recover its costs against another party at some future stage. Here, as it seems to me, there is considerable uncertainty about whether LBNS will ever be in a position to recover its own costs against any other party and in particular, against Krishna.
12. When pressed on the matter in submissions, Mr Harrison accepted that the situation was very unclear. LBNS's main interest for the moment is in maintaining a watching brief. Mr Harrison was not able to identify any particular instances in which he thought that cost orders might actually be made in LBNS's favour in the future. Such uncertainty, again, makes me very cautious about the wisdom of spending time and energy at this stage in a costs budgeting exercise which appears likely to have no practical point.

13. LBNS's counsel Mr Winspear had a different tack, as I have said. His submission was that LBNS should be subject to costs budgeting but with a budget of zero. I am not though attracted by that course of action. I am very cautious today about taking a step that might effectively preclude LBNS from obtaining recovery of its costs at some future stage if appropriate circumstances arose. As presently advised, it seems very unlikely that such circumstances *will* arise, but we cannot be certain about the future and they might. If they do, a crude determination made now that there be a costs budget of zero might cause unnecessary complications even accepting, as Mr Winspear pointed out, that the costs judge would have power to depart from the budget if satisfied there was good reason for doing so: there would still be potential for debate and disagreement, especially in a case which has been as hard fought as this.
14. It seems to me much more efficient and sensible to leave matters at large for the time being. That will leave no-one any better or worse off in real terms. The result will be that LBNS will remain entitled to expend such costs in monitoring the ongoing action as its management considers appropriate. It will also remain entitled in the future to seek such costs orders in the action as it thinks appropriate, depending on how matters develop and the precise nature of its ongoing involvement (if any). If any costs order is made and costs fall to be assessed, then Krishna will be able to make submissions by reference to the costs LBNS has actually incurred. Such submissions are likely to be much better informed at that stage than at the moment, as is any judicial determination of the reasonableness of the costs in question.
15. For all those reasons, I do not propose to make LBNS subject to costs budgeting but will leave costs at large.

-----

**(This Judgment has been approved by the Judge.)**