Neutral Citation Number: [2024] EWHC 853 (Ch)

Case No: BR-2016-001808

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

Royal Courts of Justice,
Rolls Building,
Fetter Lane,
London EC4A 1NL

Date: 19th April 2024

Before :

ICC JUDGE MULLEN

- -

In the matter of the Insolvency Act 1986

Re Malathi Latha Sriram (AKA Mukti Roy)

Between :

Malathi Latha Sriram
(acting by her litigation friend,
the Official Solicitor) **Applicant**

- and –

(1) Commissioners for HM Revenue & Customs
(2) Louise Brittain
(trustee in bankruptcy of
Malathi Latha Sriram) **Respondents**

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- -

Ms Rachel Sleeman (instructed by **Keidan Harrison LLP**) for the **Applicant**
Mr Raj Arumugam (instructed by the **Solicitor to HM Revenue and Customs**) for the **First Respondent**
Mr Reuben Comiskey (instructed by **Edwin Coe LLP**) for the **Second Respondent**

Hearing dates: 10th, 11th, 12th October 2023, 1st December 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 19th April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ICC JUDGE MULLEN

ICC JUDGE MULLEN :

1. Malathi Latha Sriram ("Ms Sriram") was adjudged bankrupt on 4th September 2017 on a petition presented by HM Revenue & Customs ("HMRC") on 2nd December 2016. By an application made on 25th August 2020, she applied to annul the bankruptcy order under section 282(1)(a) of the Insolvency Act 1986, that is to say on the ground that the bankruptcy order ought not to have been made.

2. The application notice was amended pursuant to an order of ICC Judge Prentis dated 19th January 2021. As amended, the application notice contends that the statutory demand and petition leading to the bankruptcy were not properly served in that attempts were made to serve, and substituted service was later effected, at addresses at which Ms Sriram did not live and that insufficient efforts were made to bring the statutory demand or the petition to her attention. It also states that Ms Sriram lacked capacity during the currency of the bankruptcy proceedings so that she was not able to appreciate the nature or implications of bankruptcy or to make decisions for herself.

3. In the alternative, the application contended that the bankruptcy should be annulled under section 282(1)(b) of the 1986 Act, that is to say on the ground that all the bankruptcy debts and expenses have been paid or secured to the satisfaction of the court. This was explained on the basis that the debts set out in the petition, totalling £71,577.13 and made up of unpaid assessed taxes, penalties, surcharges and interest, should be reduced to less than the £18,612 held by the trustee in bankruptcy, Ms Louise Brittain. This is no longer pursued but Ms Sriram maintains that, were the bankruptcy to be annulled, the sum due to HMRC would be much reduced and could be discharged.

4. HMRC opposes the application to annul. Ms Brittain is neutral on the question.

5. By way of background I mention that Ms Sriram is married to Mr Ravi Gupta, though they are said to be estranged. I addressed Mr Gupta's own application for an annulment of his bankruptcy in *Re Ravikanth Gupta (also known as Ravikanth Borra)* [2022] EWHC 1195 (Ch). I regarded Mr Gupta as dishonest and concluded that he had made separate applications to the court using two identities to try and create the impression that the target of the bankruptcy petition issued in that case was not him. I should make it clear that Ms Sriram's application is not tainted by the evidence in her husband's case. That was a case between different parties in which she had no involvement.

6. The earlier case is however relevant to the background of this application in that Ms Brittain is also Mr Gupta's trustee in bankruptcy and has made applications to realise properties, in which some of Ms Sriram's family claim an interest. Some of those properties were transferred to Ms Sriram shortly before or after her husband's bankruptcy on 2nd October 2019. The beneficial ownership of those properties is not a question that I have to decide, but the contentions in respect of them are relied upon by HMRC as pointing to an opacity in Ms Sriram's affairs that, when taken with a lack of cooperation on Ms Sriram's part, militates against the annulment of the bankruptcy as a matter of the exercise of the court's discretion. I also noted in my earlier judgment that that Ms Sriram herself used the alias "Mukti Roy". The reasons for that were not explored in that case but Ms Sriram explained in her evidence in this case, to which I shall refer below.

7. Mr Gupta and Ms Sriram are connected to a number of addresses to which I shall refer in this judgment. They are:

   i) 11 Westfields Avenue, London SW13 0AT ("11 Westfields Avenue"). This property was purchased in 2012 and registered in the name of Ms Sriram. It was later transferred to Mr Gupta and transferred back to Ms Sriram, using the name Mukti Roy, by a transfer dated 30th September 2019. She and her brother, Mr Shoban Sriram, now say that the beneficial interest in this property was vested in Mr Shoban Sriram. This property was sold by Ms Brittain in 2020 and there is an ongoing dispute as to the entitlement to the proceeds of sale. The statutory demand was served at this address.

   ii) Flat B, 4 Gloucester Crescent, London NW1 7DS ("4 Gloucester Crescent"). This property was purchased in 2016 and registered in Ms Sriram's name. It was transferred to Mr Gupta in August 2017, although Ms Sriram said that she did not sign the transfer deed on the date that the transfer bears, and was undergoing treatment in India at the time. She became the registered proprietor again, this time under the name Mukti Roy, pursuant to a transfer dated 16th October 2019. She gave 4 Gloucester Crescent as her address for service on the proprietorship register. Again, she and her brother contend that this property is owned beneficially by Mr Shoban Sriram.

   iii) 2 Nicolson Street, London SE1 0XP ("2 Nicolson Street"). This property was purchased in 2012 and registered in the name of Ms Sriram. It was transferred to Mr Gupta in 2016 and transferred back to Ms Sriram, using the name Mukti Roy, pursuant to a transfer dated 16th October 2019. She and her father, Mohan Gupta Sriram ("Mr Sriram senior"), contend that the beneficial interest is vested in him, though Ms Sriram was to be entitled to a percentage of the gain on sale.

   iv) 3 Stamford Road, East Ham, London E6 1LP ("3 Stamford Road"). This address was lived in by Ms Sriram but she says that she ceased living at this address since she moved to Sweden in May 2012.

   v) 480 Upper Richmond Road, London SW15 5JG ("480 Upper Richmond Road"). This property was purchased in 2014 and registered in the name of Mr Gupta (whose address as entered into the proprietorship register was 106 Woking Close, London SW15 5LB). It was transferred into the name of Ms Sriram, using the name Mukti Roy, by a transfer dated 30th September 2019. Her address was given as 480 Upper Richmond Road. She and Mr Sriram senior contend that the beneficial interest is vested in Mr Sriram senior though, again, Ms Sriram was to be entitled to a percentage of the gain on sale. This is the address at which Ms Sriram was served with the petition by way of substituted service.

   vi) Flat 4, Dickinson Court, Brewhouse Yard, London EC1V 4JX ("Dickinson Court"). This was registered to Mr Gupta (under the name Ravikanth Borra) in 2014. Ms Sriram was registered as the proprietor of this property, under the name Mukti Roy, pursuant to a transfer dated 30th September 2019. She gave Dickinson Court as her address for service in the proprietorship register. Ms

Sriram's friend, Mamatha Gowda ("Ms Gowda"), claims to be the beneficial owner of this property.

vii) 36-08 North Tower, Aykon Building, Nine Elms Lane, London SW8 5BE ("the Aykon Building"). This was a property that Mr Gupta and, on the face of it, Ms Sriram, were corresponding with conveyancing solicitors about between 2016 and 2020.

viii) Apartment 92, 3 Riverlight Quay. This property was registered in the name of Mr Gupta in 2016, but HMRC assessed Ms Sriram for stamp duty land tax on the purchase in the sum of £57,200 which is included in the proof of debt.

8. Two further properties that will feature in this judgment are 106 Woking Close, London SW15 5LD ("106 Woking Close") and 111 Woking Close, London SW15 5LD ("111 Woking Close"). These properties are owned by Ms Gowda. 106 Woking Close was given by Ms Sriram as an address to HMRC on a number of occasions, most recently in 2016.

Background to the petition, the course of the petition and the application to annul

9. The following is an uncontentious summary of the events which led to, and followed, the bankruptcy.

10. Between 2008 to 2011, Ms Sriram worked as an IT contractor. She says that her payroll company used a tax planning scheme, which provided for her income to be paid in two parts, the first being a salary as conventionally understood and the second being in the form of an allowance, which in reality was a loan. HMRC regarded this as a disguised remuneration scheme designed to avoid tax.

11. On 7th February 2013, HMRC wrote to Ms Sriram enclosing a notice of assessment to income tax for the tax year 2008-09 in the sum of £8,217.80. The assessment was sent to 3 Stamford Road, the address then recorded on HMRC's Taxpayer Business Service, or "TBS", system. This is a database that maintains details of taxpayers, including their address. No response was received from Ms Sriram, on her case because she was living in Sweden at the time.

12. On 25th September 2013, Ms Sriram's address was changed to 2 Nicholson Street**.** HMRC's internal records record a call from "cust", which I infer is an abbreviation of "customer", on 23rd September 2013 to give this address. Ms Sriram's evidence is that, although she cannot remember informing HMRC of this address, she must have done so but that she had not lived at this address at any time. A further tax assessment for income tax for the tax year 2010-11 in the sum of £43,750 was sent to that address on 4 December 2013. Ms Sriram says that the tenant at the property did not pass the correspondence on to her.

13. An HMRC field force officer attended 11 Westfields Avenue in June 2016 for the purposes of serving an insolvency warning letter as a prelude to the commencement of the bankruptcy process. That was the address that HMRC then had as Ms Sriram's home address. HMRC's records show that the officer spoke to Ms Sriram, who gave the alternative address of 106 Woking Close, but a call at that address met with no response and the insolvency warning letter left at the address went unanswered.

14. The statutory demand is dated 8th September 2016 and the debt totals £71,577.13, comprising:

    i) £10,741.15 in tax, NIC, interest and surcharges for 2008/09;

    ii) £56,743.93 in tax, NIC, interest and/or penalties for 2010/11; and

    iii) £4,092.05 made up of penalties and interest for the period 2011-2014.

    It was served by posting it through the letterbox of 11 Westfields Avenue on 16th September 2016, calls at that property to effect personal service having been unsuccessful.

15. The bankruptcy petition was presented by HRMC on 2nd December 2016. Following presentation of the petition, two orders to extend the date of the first hearing, to use the language of the Insolvency Rules 1986 then in force, were obtained in order to allow for attempts to be made to serve the petition on Ms Sriram personally before the petition came on for first hearing.

16. On 4th May 2017 Registrar Derrett made a further order to postpone the date of the first hearing to 17th July 2017, together with an order for substituted service by sending the petition to 480 Upper Richmond Road, London SW15 5JG by first class and recorded delivery post. This was done on 31st May 2017.

17. The matter came before the court for the postponed first hearing on 17th July 2017. On that occasion a letter had been filed at court on 13th July 2017. This was dated 10th July 2017 ("the 10th July 2017 Letter") and said as follows:

> "Dear Sir/Madam,
>
> My friend has sent me documentation with regard to bankruptcy petition on my name MALATHI LATHA SRIRAM.
>
> Please accept my apologies if I'm not presenting myself in legal terms.
>
> My first note is, I'm in India and cannot make to the hearing on 17th July 2017
>
> Secondly, I'm not the person whom HMRC is trying to get in touch
>
> Thirdly, I have not got a job to pay NI or Income tax
>
> Fourth, I don't even think I was in the country in the mentioned periods
>
> Fifthly, I cannot afford solicitor or contact CAB from India
>
> Sixth, My India address is: Sree Mani Krupa, S N Pet 3'd Cross Link Road, Bellary 583103

> I request HMRC not to file bankruptcy on my name unnecessarily.
>
> Many thanks,
>
> Malathi Latha Sriram"

It is not clear whether the court was referred to this letter in terms but it must be assumed that at least the gist of it was brought to the court's attention because the petition was adjourned to 4th September 2017. It was then that the bankruptcy order was made.

18. A public examination of Ms Sriram was ordered on 7th November 2017, which was subsequently adjourned generally. An order was made on 29th November 2017 suspending her discharge from bankruptcy until she co-operated with her obligations to the satisfaction of the Official Receiver. She remains an undischarged bankrupt.

19. Ms Sriram's case is that she did not become aware of the statutory demand, petition or the bankruptcy until the early part of 2019 when she applied for a job. Having discovered this, she completed a preliminary information questionnaire for bankrupts ("PIQB") on 1st March 2019. More than 17 months then passed before the application to annul was issued.

20. Ms Sriram explains that she was suffering from severe psychiatric illness and was undergoing treatment in India in 2017. She says that, even if she had been aware of the proceedings she could not have engaged with them as she lacked capacity, within the meaning of the Mental Capacity Act 2005, to deal with the proceedings. She says that, had she been able to do so, she would have been able to discharge the debt due. This is not, however, the debt set out in the petition but rather the smaller sum of £12,004.69 that HMRC appeared to accept to be the amount due in a letter sent to Ms Sriram on 28th October 2021 following correspondence with her and her advisors.

21. On 1st September 2021, Ms Sriram applied to adduce expert evidence as to her capacity at the date of service of the statutory demand, the petition and at the date on which she was adjudged bankrupt. Those applications came before Chief ICC Judge Briggs on 7th October 2021 and he granted permission for expert medical evidence to be adduced by both Ms Sriram and HMRC. He stayed the application in relation to the beneficial interest in the proceeds of sale of 11 Westfields Avenue pending the outcome of the annulment application.

22. By 12th May 2022, when Ms Sriram was examined by Dr John Shaw, she had lost capacity to conduct the proceedings. Dr Shaw provided a certificate to that effect. ICC Judge Prentis appointed the Official Solicitor as Ms Sriram's litigation friend on 17th October 2022. Further directions were thereafter given for supplementary expert reports, and consequential directions thereon, including the vacation of the trial of the annulment application at the end of 2022. The matter was relisted over three days in October 2023.

23. There are some 23 witness statements in relation to the application in the bundle. 14 of them have been produced by six witnesses for Ms Sriram and Ms Sriram herself. I have also seen a statement made by Ms Sriram made for the purposes of her

application to stay the sale of 11 Westfields Avenue. Four statements have been produced by three witnesses on behalf of HMRC and four statements have been produced by Ms Brittain. There are also five statements dealing with verification of the petition and contemporaneous accounts of service made during the currency of the bankruptcy proceedings themselves.

24. The only significant witness from whom I did not hear was Ms Sriram herself as a result of her ongoing incapacity. Her statements are admissible hearsay in the circumstances and I shall turn to my approach to that evidence in due course. As I will explain, the evidence of Mr Sriram senior took longer than expected and a further day had to be obtained to conclude the hearing. I also heard oral evidence from the two experts instructed in the case. I will first deal with the evidence of the witnesses of fact, other than Ms Sriram.

The witnesses of fact

Mr Mohan Gupta Sriram

25. Mr Sriram senior is Ms Sriram's father. There are two statements in his name in the documents before me, dated 28th October 2020 and 18th November 2022. The first concerns the beneficial ownership of 2 Nicolson Street and 480 Upper Richmond Road, in which he asserted a beneficial interest. The second deals shortly with Ms Sriram's mental health and states that he was aware of her stamp duty land tax liabilities in relation to property purchases. He stated that he was under the impression that he had already paid those liabilities for her but, had he known that these liabilities were outstanding in 2016 when the bankruptcy proceedings were on foot, he would have agreed to pay them had he been asked.

26. He gave oral evidence by video link from India, via an interpreter who translated to and from the Telegu language. He was assisted by a family friend who sat in the room from which he gave evidence to help him with the technology. He gave his evidence very slowly and haltingly. Whether he himself has capacity has been raised in relation to proceedings concerning the property but as far as I was able to ascertain he understood the questions that were put to him. The difficulties that he appeared to have in relation to answering the questions may well have arisen as a result of the absence of a hearing bundle, which became apparent only during the course of his evidence.

27. Mr Sriram senior said that he could read English but not speak it. He confirmed that he signed his first statement, dated 28th October 2020, and had understood it at the time even though he did not have a version in Telegu when he signed it. The only Telegu translation was one translated from the English, according to the certificate, on 14th September 2023, nearly three years after his first statement was signed. Mr Arumugam, who appeared for HMRC, attempted to ask him to explain what another document in the bundle was so that he could demonstrate that he could read documents written in English. Mr Sriram senior appeared confused by the question. It then emerged that he did not in fact have the bundle at all, apparently having been unable to open the PDF that had been sent to him. An attempt at screen sharing pages from the electronic bundle also appeared to fail, in that Mr Sriram senior said that he could not see them on his device. The practical solution to this was that Mr Arumugam provided Ms Sleeman, counsel for Ms Sriram, with a list of pages to

which he proposed to refer Mr Sriram senior. These were turned into a small PDF bundle and emailed to him over the short adjournment so that they could be printed out by the family member who was assisting him.

28. Once that had been dealt with, Mr Arumugam asked Mr Sriram senior how his statement had been produced. Mr Sriram senior said that a typist had typed it but he did not remember their name. He then said that he had told the attorney what he wanted to say and the attorney had given it to the typist. He was unable to offer an explanation as to why his first statement bore similarities to that of his son, Mr Shoban Sriram, beyond saying that others must have said the same to the lawyer.

29. Mr Sriram senior said in his written evidence that the arrangement was that he would invest in property which would be held in the name of Ms Sriram, her husband or both of them and that he was the beneficial owner of 2 Nicholson Street and 480 Upper Richmond Road. He was taken by Mr Arumugam to a declaration of trust, dated 25th September 2012 in respect of 2 Nicholson Street and made between Ms Sriram as trustee and himself as beneficiary exhibited to his witness statement. Under this declaration, Ms Sriram apparently declared that she held the property and profits from it on trust for her father. When asked what this document was Mr Sriram senior said, in English, "Deed of Trust", apparently reading the front page of the document on which it is so described. When asked if he understood what it was he said that he did not understand anything, but when referred to the parts of his first witness statement in which he referred to this deed, of which statement he appeared to have the Telegu translation, he said that he understood it.

30. His statement says that the arrangement was to make a long-term investment and to help Ms Sriram gain a foothold to develop a property management business. He said:

> "2… The purpose of the arrangement was for me and other members of my family to benefit from the returns on the investment, and for the funds to be invested in a secured long term asset. My daughter has a passion towards property management and this was to help her gain a foothold to develop a business as a property management professional.
>
> 3. Under this arrangement, the properties would be rented out and the mortgages would be paid for from the rent. Upon being sold, my daughter would receive between 10% and 20% of the gain, depending on the gains in the property. This would be in exchange for her putting her name to the arrangement and for managing the property. By doing it this way, it was easier, given that I am living abroad, to obtain mortgage finance, as well as in respect of other practical matters that arise when you invest in property in the United Kingdom."

31. There is, however, no mention of such an arrangement in the trust deed, which provides that the whole of the net proceeds of sale will be paid to Mr Sriram and recites that Ms Sriram had agreed to relinquish any interest in the property or in the proceeds of sale to her father. The arrangement was also said to have made it easier to obtain mortgage finance. Mr Sriram senior said he was not allowed to obtain such finance and that he could not remember whether it was Mr Gupta or Ms Sriram who

took the finance. He said that he had sent the money to Ms Sriram but, when it was put to him that this was not disclosed to the mortgagee, said he did not know what his daughter and Mr Gupta had done in respect of this but he confirmed that he sent the money for the purchase to Ms Sriram.

32. I am not satisfied that Mr Sriram senior was in fact able to read and understand English documents as he said, beyond a rudimentary ability to enunciate the words on the front of the deed of trust. I bear in mind that he is an elderly gentleman who is not in the best of health. Both Ms Sriram and his eldest daughter have also been seriously ill, which might have affected his focus, but he was not able to do much more than repeat the contents of his first statement by reference to the translation provided to him. That statement does use the same phrasing as that of Mr Shoban Sriram, to whom I turn next, and indeed both bear a resemblance to that of Ms Gowda. That is particularly surprising given that Mr Sriram senior cannot speak English with any fluency, in which language both his son and Ms Gowda are fluent. As such, his first statement should have been prepared in his own language and translated into English in accordance with CPR PD32, paragraphs 19.1(8) and 23.3. One would not expect a statement made by him in his first language to be rendered in identical terms to those who gave their instructions for their statements in English. It is quite clear that the statement in this case was prepared in English rather than Mr Sriram senior's own words. While his second witness statement does appear to have been prepared in Telegu and translated into English, there is a real danger that Mr Sriram senior's evidence does not represent his own words but includes words put into his mouth. I am not satisfied that I can rely upon his evidence, either as to the arrangements with his daughter or his willingness to pay her liabilities.

Mr Shoban Kumar Sriram

33. Mr Shoban Sriram made two statements, dated 28th October 2020 and 19th January 2021. The first statement deals with the beneficial ownership of 11 Westfields Avenue and 4 Gloucester Crescent. The second deals with 11 Westfields Avenue and the circumstances of its sale.

34. Mr Shoban Sriram's first statement is short and very similar to that made by his father. He explained this by saying that they had the same lawyer and explained the same things to him. He said that the "strategy" was the same. He said that both his father and himself had wanted to invest and they gave Ms Sriram the freedom to do what she wanted. His first statement explains that:

> "2… The purpose of the arrangement was for me to benefit from the returns on the investment with a trusted advisor looking after and managing the properties.
>
> 3. Under this arrangement, the properties would be rented out and the mortgages would be paid for from the rent. Upon being sold, my sister would receive between 10% and 20% of the gain, depending on the gains in the property. This would be in exchange for her putting her name to the arrangement and for managing the property. By doing it this way, it was easier, given that I am living abroad, to obtain mortgage finance, as well as in respect of other practical matters that arise for a non-

> resident investor to invest and manage the property in the United Kingdom."

The third paragraph is almost word-for-word the same as paragraph 3 of Mr Sriram senior's statement, only the references to the familial connection being changed. It is also very similar to paragraph 3 of Ms Gowda's statement.

35. It is accepted that neither Mr Sriram senior nor Mr Shoban Sriram applied for a mortgage and there is no indication that the arrangement was explained to the mortgagee in either case. Mr Shoban Sriram said that, while he did not know what had been discussed, all questions that had been asked had been answered. He trusted his sister – she was to obtain the loan and they would share in the profits. He rejected the contention that there was an attempt to defraud the mortgagee.

36. Mr Sriram accepted that he had signed the deed of a trust in respect of 11 Westfields Avenue, dated 12th October 2012. It does not mention any arrangement whereby Ms Sriram was to receive between 10% and 20% of the gain on sale. It, like the deed in respect of 2 Nicholson Street, states that she agreed to relinquish any interest she had in the property or the proceeds of sale to Mr Shoban Sriram and that the net proceeds of sale were to be paid to him. The deed of trust in respect of 4 Gloucester Crescent is dated 25th February 2016 and gives Ms Sriram's address as 11 Westfields Avenue. It provides that Ms Sriram as "Owner" and Mr Shoban Sriram as "Beneficiary" held the property on trust for themselves as to 1% for Ms Sriram and as to 99% for Mr Shoban Sriram.

37. Ms Sriram, however, plainly saw 11 Westfields Avenue as her own property. In her application to stay possession of that property she referred to the property as her home and said in the accompanying witness statement dated 1st October 2020:

> "If the sale is let to happen, I would lose my retirement home and in addition would make a huge financial loss of more than 500k (due to low asking price), as the sales is done by rushing to complete within 4 weeks".

This statement was put to Mr Shoban Sriram, as was the absence of any reference to a trust arrangement. He said that he did not see an inconsistency as Ms Sriram had been given full rights to manage the property, but nonetheless that her lawyer might have misinterpreted what she said. I have to say that Mr Shoban Sriram's evidence in this regard was evasive and unsatisfactory. There is plainly a difference between the arrangement painted in his statement, and indeed his father's statement, under which Ms Sriram was simply a trustee of investment properties for them and that painted in Ms Sriram's evidence, which unequivocally portrays 11 Westfields Avenue both as her home and an asset of her own.

38. Nor was Mr Shoban Sriram himself clear about the ownership of the properties, saying in his first statement that "is now necessary to look at the payments made in order to determine the relative beneficial ownership of each party to the arrangement". He maintained in oral evidence that by "each party" he meant himself. Nor was he able to explain why the statements of his father and Ms Gowda also referred in broadly similar terms to the need to submit evidence to determine beneficial ownership.

39. Mr Shoban Sriram was a defensive witness and I am troubled by his unwillingness to see the plain contradiction between the evidence of his sister in the possession proceedings and his own. Nor was he able to explain the contradictions between the stance adopted in his evidence as to the ownership of the properties and that contained in the trust deeds. Again, in my judgment, I cannot take his evidence at face value.

Ms Mamatha Gowda

40. Ms Gowda's statement, dated 28th October 2022, contains similar phrasing to that of Mr Sriram senior and Mr Shoban Sriram. In relation to Dickinson Court, which she contends belongs to her beneficially, she stated that it was to be held by Ms Sriram or Mr Gupta, but that she was to be the beneficiary of the return on her investment. Again, she said that Ms Sriram would receive between 10% and 20% of the gain on the sale.

41. The explanation for this arrangement is, again, said to have been to avoid difficulties with the obtaining of a mortgage. She said:

> "Under this arrangement, the property would be rented out and the mortgage would be paid for from the rent. Upon being sold, Malathi Sriram would receive between 10% and 20% of the gain, depending on the gain amount. This would be in exchange for her putting her name to the arrangement and for managing the property. By doing it this way, it will allow me to own a new property in London and be the owner, surpassing the difficulties to obtain mortgage finance. Malathi is good in respect of other practical matters that arise in dealing with property management and I trust her decisions."

Again, in cross-examination, she said that she did not know what was said to the mortgagee about the alleged arrangement. She said that she knew that Mr Gupta and Ms Sriram had applied for a mortgage. Although it was Mr Gupta who in fact applied for the mortgage, Ms Gowda said that Mr Gupta and Ms Sriram had worked as a team and that she considered them as one.

42. Ms Gowda's written evidence was that:

> "In connection with this purchase, a trust deed was drawn up by solicitors to document the fact that Malathi Sriram was not the beneficial owner of the property. The trust deed has been executed with the help of conveyance solicitors who are specialised in this subject and have confirmed this is legal and valid."

An unsigned 2009 declaration of trust states that the beneficial interest in Dickinson Court would be held as to 1% for Ravikanth Gupta and as to 99% for Ms Gowda, although Ms Gowda's statement says that its purpose was "to document the fact that Malathi Sriram was not the beneficial owner of the property." Again, there is no mention of the arrangement to give either Ms Sriram or Mr Gupta 10%-20% of any gain on sale.

43. Oddly, given the purpose that Ms Gowda ascribed to the 2009 declaration of trust, the property was registered in the name of Mr Gupta rather than Ms Sriram on 29th September 2009 and it does not appear to have been thought necessary to draw up similar deeds on the subsequent transfers –

    i) to Mr Mohan Babu Krishnappa, Ms Gowda's husband, in August 2011; or

    ii) back to Mr Gupta (using the name Ravikanth Borra) in April 2014; and

    iii) to Ms Sriram (using the name Mukti Roy) on 30th September 2019, a few days before her husband's bankruptcy.

    Ms Gowda explained that these transfers were for the purposes of convenience of management. Ms Gowda denied that Mr Gupta was divesting himself of his property because of the threat of bankruptcy, though she was a witness to the deeds of transfer of properties at 480 Upper Richmond Road, 257 Burgess Road and 4 Gloucester Crescent from his name at around the same time. She denied that documents had been put before Ms Sriram for signature without her being aware of what they were.

44. Ms Gowda is also the owner of 106 Woking Close and 111 Woking Close. Ms Gowda confirmed that Ms Sriram lived with her at those addresses for a period, but not between March 2016 and January/February 2017. Ms Gowda herself had lived at 480 Upper Richmond Road from 2016 to early 2017. She contends that she was the author of a number of letters and emails sent under the name of Ms Sriram to HMRC, the court and to solicitors acting on the purchase of the Aykon Building, including the 10th July 2017 Letter. Indeed, she stated that she had given oral instructions to those solicitors by telephone, though there was no fixed arrangement with Ms Sriram to do so.

45. Not only that, she had written to the court enclosing the 10th July 2017 Letter with her own covering letter, which said as follows:

> "Dear Sir/Madam,
>
> I Mamatha, residing at 480 Upper Richmond Road, SW15 5JG have signed and collected the post referring to Malathi Latha Sriram. Unfortunately, Ms. Malathi is not in the country and has requested me to communicate the same.
>
> I hereby apologise for inconvenience caused by me and returning all the post for which I have signed. Ms. Malathi will not be attending the hearing on 17th July 2017 and emailed me to attached letter as the matter is of high urgency.
>
> Many thanks,
>
> Mamatha"

    Ms Gowda's evidence was that Ms Sriram had not in fact asked her to forward the 10th July 2017 Letter and she had written it herself. Ms Sriram had not been in a state to do so as she was in a very poor condition, living with her father in India.

46. Ms Gowda spoke about the cultural stigma attached to mental illness as an explanation for her actions in impersonating Ms Sriram. That may indeed have been her motivation for doing so. I am satisfied that she did indeed write letters and emails and communicate with others pretending to be Ms Sriram while Ms Sriram was undoubtedly very ill and unable to do so. She did so in a thoroughly misleading way, though she claimed that the list of reasons for resisting the petition given in the 10th July 2017 Letter was not invented by her – for example the contention that Ms Sriram was not the person with whom HMRC was trying to get in touch, but were derived from previous discussions with Ms Sriram.

47. I will refer in more detail to her involvement in the progress of the statutory demand and petition in due course but for present purposes I can say that, again, I regarded her as an unsatisfactory witness generally. It is impossible to accept that the reason for the multiple transfers of Dickinson Court was similarly administrative convenience in the management of the property. It need hardly be said that properties are often managed by persons other than their owners. There is simply no reason to transfer them repeatedly between individuals for reasons of management. Similarly, while there may be cultural taboos regarding mental illness in Ms Sriram's community that might have justified concealing the fact on occasion, the letter sent to the court in Ms Gowda's name on 10th July 2017 and the accompanying 10th July 2017 Letter in Ms Sriram's name were dishonest. Again, I am unable to accept Ms Gowda's account without corroborative evidence.

Mr Benjamin Wormald

48. Mr Wormald is a Technical Higher Officer who was concerned in the pursuit of tax from Ms Sriram, rather than its calculation. He made two witness statements, dated 11th December 2020 and 26th January 2023, which are principally directed to the circumstances of the service of insolvency warning letters, statutory demand and petition on Ms Sriram. He gave his evidence straightforwardly and fairly and he was clear about the limits of his direct knowledge. I am satisfied that he was seeking to assist the court. I accept his evidence.

Mr Thomas Moore

49. Mr Moore was an officer in the contractor avoidance team at the time that he made his single statement, dated 17th December 2020. He started working on Ms Sriram's case in 2020. He left the team in early 2021. He explained that HMRC had issued a number of discovery assessments in relation to Ms Sriram's work as an IT contractor. He dealt principally with the calculation of tax and his correspondence with Ms Sriram and those advising her as to the debt in 2020 and HMRC's willingness to postpone recovery of the debt or to reconsider the amounts claimed on the basis of information provided by Ms Sriram. His evidence was confidently delivered, direct and I am satisfied that he was seeking to assist the court. Again, I accept it.

Mr Paul Reynard

50. Mr Reynard took Ms Sriram's matter over from Mr Moore. He too addressed the outstanding tax and HMRC's initial willingness to accept the revised income figures provided by Ms Sriram and the subsequent withdrawal of the acceptance of her appeal against the assessments and penalties as a result of knowledge of Ms Sriram's

bankruptcy and discussions with Ms Brittain. He similarly addressed HMRC's willingness to accept an appeal if one were now made by Ms Brittain. Mr Reynard was seeking to assist the court to the best of his recollection and I accept his evidence.

Ms Louise Brittain

51. Ms Brittain appeared by video link from the Netherlands as a result of the trial timetable having been disrupted by the unexpected difficulties in relation to Mr Sriram senior's evidence. She confirmed that, as far as she was aware, there were only two creditors of Ms Sriram, Santander and HMRC. The Santander proof of debt was in the region of £6,000. She had not, however, received a list of creditors from Ms Sriram and she had not yet advertised for creditors.

52. She gave evidence as to why she had not pursued the appeal in relation to tax that HMRC had indicated that they were willing to accept. Her position was that her investigations into Ms Sriram's affairs had called into question her income, in that she was aware of documents that suggested a larger income than that disclosed to HMRC. In the absence of supporting documentation she was unable to pursue the appeal on the basis that had been advanced by Ms Sriram to HMRC. Ms Brittain was a direct and professional witness and I accept her evidence.

Mr Borra Narasimha Murthy and Mrs Borra Rathnamala

53. These witnesses are Ms Sriram's parents-in-law. They made a two-paragraph joint statement, the only substantive paragraph of which is:

> "We confirm deposits of £10,757 and £10,700 to my daughter-in-law in [27 Jan 2020, 29th Jan 2020] [*sic*] for her maintenance and her legal fees. We are very troubled by the fact that the Trustee has taken this money, as it leaves my daughter-in-law and the family in a very difficult position, We have taken loan and cannot afford to raise any more money leaving my daughter-in-law and grandkids in a vulnerable situation in different country."

I understand from Ms Sleeman that Mr Murthy has sadly died. Mrs Rathnamala was not called. There is little weight that I can attach to this statement and, indeed, it is of limited probative value in any event.

The evidence of Ms Malathi Sriram

The Civil Evidence Act 1995

54. Ms Sriram could not be cross-examined as a result of her ongoing illness. Her statements are however admissible hearsay. The approach to the weight, if any, to be given to them is provided for by section 4 of the Civil Evidence Act 1995 as follows:

> "(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

> (2) Regard may be had, in particular, to the following—
>
> (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
>
> (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
>
> (c) whether the evidence involves multiple hearsay;
>
> (d) whether any person involved had any motive to conceal or misrepresent matters;
>
> (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
>
> (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

Phipson on Evidence (20th Ed.) offers the following general principle at paragraph 29-16:

> "The basic principle under which the courts operate is that evidence is given orally with cross-examination of witnesses, and the admission of hearsay evidence is, and should be, the exception to the rule. Caution should be exercised before tendering important evidence through hearsay statements. Hearsay evidence is better used where the evidence is peripheral or relatively uncontroversial."

55. In this case, there is no alternative but to rely on hearsay statements from Ms Sriram but the ability to assess the credibility of what is said by her is greatly hampered by the absence of cross-examination, especially in a case where there are so many conflicting documents and admitted deception on the part of Ms Gowda. I do however bear in mind that Ms Sriram does have a motive to conceal or misrepresent matters, given her desire to see the bankruptcy annulled. Indeed, as I note below, there are some elements of her evidence that are implausible, inconsistent or unforeshadowed in her earlier evidence in circumstances where it might be expected to appear. Again, I have to treat it with caution.

Ms Sriram's witness statements

56. I will briefly summarise some of the more significant elements of Ms Sriram's written evidence. Her first statement, dated 25th August 2020, states that she was staying in India and receiving treatment for her mental illness during the entirety of "the bankruptcy process" and was out of the country when the order itself was made. She said that the statutory demand had not been served on the correct address and the

order for substituted service was obtained on the basis of "invalid information". She also disputed the tax due from her.

57. Her second statement of 1st October 2020 stated that she had not been in the country since 2017 and had mostly been in hospitals undergoing treatment or at her parents' home in India. She again disputed the tax due. This statement was prepared for the purposes of her stay application.

58. Her third statement, dated 28th October 2020 set out her background. She explains that she came to London in 2005 after her marriage to her now estranged husband, Mr Gupta. Between 2008 and 2011 she worked as an IT contractor. Her salary consisted of a salary proper and an "allowance" which was in fact a loan challenged by HMRC as disguised remuneration. She complains that a discovery assessment was sent to 2 Nicholson Street in December 2013, an address at which she had never resided. She said that after she lost her job she wanted to become a property management professional and therefore helped her father, brother and her friend, Ms Gowda, to invest in property. She said that the arrangement was that she would hold the property on bare trust for them and this was formalised in deeds for each of the five properties held in her name. Notwithstanding the preparation of trust deeds, she said that the arrangement was "not very formal" because the investment was in the family context and there was a high degree of trust between them. She said of the arrangements:

> "As per the deeds the investors will get all the profits. But I told the investors that I would need 10-20 percent on profit (verbally). The reward for ongoing management of the properties by me and my husband was that we would get between 10% and 20% of any gain realised once a given property had been sold. Over the period of time as I didn't have income, I used rent money left over after paying mortgages. So, eventually exhausted all our gains."

She explained that she went to India in 2016 as follows:

> "22nd June 2016 - 4th October 2016 during which period I was staying with my parents; and
>
> 29th March 2017 – 12th October 2017 during which time I was living alone".

59. On her return to the UK in October 2016 she changed her name to "Mukti Roy" as an indicator that she had left her past life with her husband behind – "mukti" apparently meaning "liberation". On returning to India she received further treatment for her illness. She was entirely unaware that she had been made bankrupt, the statutory demand having been served at an address where she was not living, even though HMRC had "the correct address". She does not state in terms what the correct address was but she exhibits a page of HMRC's records, on which are shown two screenshots. These show 106 Woking Close as a "nominated" address and 11 Westfields Avenue as a "base" address.

60. She says that she only became aware that she had been made bankrupt when looking for a job in January or February 2019. It was on 1st April 2020 that she "realised that

the Trustee in bankruptcy had also taken possession of my home" at 11 Westfields Avenue, though she says that:

> "as a result of the arrangement described above, the property cannot be said to be mine in a real sense – as has been explained, I hold it on bare trust for brother, Shoban – so the Trustee has no right to sell it."

61. Her next statement of 15th December 2020 was made in response to the trustee's statements in response to the application to annul and in opposition to Ms Sriram's application for a stay of the bankruptcy proceedings to prevent the trustee from selling property in Ms Sriram's name. She addresses the process server's visit to 480 Upper Richmond Road on 17th February 2017. In his statement, the process server said that he had spoken to a "Maktpi Rai". She says of this:

> "Although I was in the UK at the time, I was not living at this address. Instead, the Process Server met with and spoke to a woman called Meghna Rao, who was the living at this address at the time. I had separated from my husband and this was his new partner and, as the Court will appreciate, her name is similar to the name given to the Process Server. As to 480 Upper Richmond Road, I have never lived at this address and I do not believe my husband had either, however, as 11 Westfields had works going on at the time and he had got close to Meghna Rao this must have been the address he gave to the solicitors. Since 2016, when in the UK, I have predominantly been living at either 106 or 111 Woking Close with my friend, Mamatha Gowda (although there was a short period where I was living with another friend). Woking Close is around the corner from Upper Richmond Road and 106 and 111 are properties that Mamatha owns. I would add that, in March 2016, I had separated from my husband and he had decided to try and purchase the property at 36.08 Aykon Nine Elms with money from my family and friends. I had therefore been forced to become involved in this purchase as, if anything went wrong, my family and friends would look to me for the money. I was not therefore involved in supplying the address to the solicitors."

62. She says that it was originally intended that 11 Westfields would be rented out but, in 2013/14, she had moved into the property and lived there until the end of 2015, when refurbishment works were undertaken, continuing until February 2017. Ms Sriram returned to India in March 2017 for treatment, not returning until October 2017. The property was let out at the time for a fixed term of three years and when the tenant moved out in March 2020, the trustee proceeded to take possession of the property.

63. She said that she had previously referred to 11 Westfields as "her" property because of a further arrangement with her brother:

> "In summary, 11 Westfields is owned beneficially by Shoban. However, he is my brother and, knowing my personal issues,

> he has agreed that I could live in 11 Westfields as long as required and that, in return, I would agree to forgo any profits that I would be entitled to on the sale of the properties. Also, Shoban was planning to move to the UK and, in light of my recent medical issues, we were going to live together in one house, which was to be 11 Westfields. In light of this and the intention that my daughter would go to school in the local area, I envisaged living at 11 Westfields for an extended period of time and that is why I refer to it as 'my' property. I appreciate that the wording does not accord with the legal position, however, I am not legally trained and the witness statement upon which Ms Brittain makes these points was made without legal advice."

This explanation is not a compelling reason for describing a property as "my" property or regarding it as "home" when on Ms Sriram's case it was (i) bought by her brother (ii) intended to be let out (iii) lived in for only a year or so before refurbishment works began (iv) let out for a three year term on the completion of the refurbishment works and (v) sold by the trustee on the effluxion of the tenancy.

64. In a further statement of 16th February 2021 Ms Sriram addressed the contention that she had given 106 Woking Close as an alternative address to the field force officer who attempted to serve an insolvency warning letter:

> "it is possible that I did give the Field Force Officer the alternative service address of 106 Woking Close as this was the address for my friend Mamatha Gowda. Mamatha has been a good friend to me over the years (although we did fall out for a period) and so, where I had no fixed abode, I would often give her address as being one at which I could be contacted. By 2016, renovation works were going on at 11 Westfields and I was living with friends in between going back and forth to India to seek medical help and so I may have given Mamatha's address."

65. Again, in relation to a process server having been told on 16th September 2016 that she lived at 11 Westfields Avenue, but was not in at the time, she reiterated her contention that there was no one living at the property because of the refurbishment works and she was in India at the time. She does not know who the individual at 480 Upper Richmond Road was who told the process server on 10th April 2017 that she had gone out but repeated that she was in India at the time. She addresses Mr Wormald's evidence that the petition was sent by recorded delivery and signed for by "Sriram" on 2nd June 2017 by saying that there was no one of that name living at 480 Upper Richmond Road at the time. She states that she did not write the 10th July 2017 Letter and that she believed that this was written without her knowledge by Ms Gowda.

66. The next statement is dated 12th November 2021. As to the giving of the address of 106 Woking Close she said:

> "At paragraph 8 of Mr Wormald's statement he says that an HMRC field force officer ("FFO") attended 11 Westfields Avenue on 1 June 2016 and that I myself gave the alternative service address of 106 Woking Close. As I say in my Third Witness Statement at paragraph 7, it is possible that the FFO's recollection is correct. 106 Woking Close is my friend's Mamatha Gowda's address and I often gave her address as my residence when I had no fixed address. Therefore, as HMRC knew that a possible address for me was 106 Woking Close, it has never been clear to me why HMRC served the statutory demand at 11 Westfields Avenue on 27 September 2016. To my knowledge they have never provided a satisfactory answer for this."

67. She said she had no recollection of her husband calling her when a process server attended 11 Westfields Avenue on 30th December 2016. She notes that he had done "many things to make my life, and those of my children, very difficult." Similarly, she says that she was not on good terms with the neighbour on Westfields Avenue whom she infers spoke to the process server on 10th January 2017 when he was informed that she lived "somewhere on Upper Richmond Road". She said that this neighbour has similarly always made life difficult for her. She does however confirm that she was in England at the time, despite the statement apparently made by builders at 11 Westfields Avenue that she was in India in January 2017. She reiterates that letters then sent to HMRC in her name and a telephone call ostensibly made by her were likely to have been made by Ms Gowda.

68. She then deals with correspondence apparently between her and Gordons solicitors in relation to the purchase of Apartment 36.08 Aykon Nine Elms on 19th September 2018, relied upon as showing that she was in England at the time. She accepts that she was in England at the time but, she says:

> "I have never disputed that I was in England in September 2018. What I would like to make clear is at this point I did not know I was bankrupt which I do appreciate is an aspect of my application for annulment that I have not explained before. All of my finances when I was made bankrupt in September 2017 were handled by Ravi. On this subject, I would like to explain that by May 2016 I had closed three of my UK bank accounts with Santander, RBS and Barclays. At the time I closed these accounts, my mental state was particularly bad and there may be other UK bank accounts in my name which are still open but which I am unaware of. What I can say is that when I was made bankrupt in September 2017 I did not receive notification of this fact from any UK financial institution."

69. She addresses that purchase of the property later on in the statement as follows:

> "Louise Brittain says that when Ravi and I instructed Gordons solicitors in relation to the purchase of Apartment 36.08 at the Aykon Nine Elms Development, we gave our correspondence address as 480 Upper Richmond Road. I should make it clear,

> as I do in this statement and in my Second Witness Statement, that I have not lived at this property at any time. The reality as I have explained in my Second Witness Statement at paragraph 14 is that I had been forced 'to become involved in this purchase as, if anything went wrong, my family and friends would look to me for the money'."

Surprisingly, she does not address who wrote the emails in her name to Gordons and she does not deny doing so, although, as I will explain, she gave instructions to her solicitors, Mr Akin, to that effect.

70. She further explains that she never lived at 480 Upper Richmond Road, although she was currently the registered proprietor of it. As at February 2017 she was not living there but "living between the houses of some of my friends".

Mr Alexander Akin

71. Mr Akin is a solicitor at Keidan Harrison LLP, the solicitors for Ms Sriram. He was not cross-examined. His evidence addresses the instructions that he took from Ms Sriram in about April 2022 in order to settle a further witness statement, which she was not able to make as a result of her supervening incapacity.

72. The instructions primarily concerned the suggestion that Ms Sriram was communicating with the Gordons Partnership, the solicitors acting on the purchase of the Aykon Building from 2016, at a time when she claims that she was very ill and unable to conduct her own affairs. In broad summary, Ms Sriram's case is that the emails sent in her name from her email account were sent by Ms Gowda or by Mr Gupta. Indeed, one email sent from that account concludes "Thanks.. Ravi" and then "Regards.. Malathi", which she said was as a result of her husband using her Yahoo account, which automatically includes the latter words as an email signature. Looking at that email, that does indeed seem likely to be what happened.

73. She also referred to the attendance note of a telephone conversation with Ms Mary Clifford, a staff member at Gordons, on 19th July 2017. Ms Sriram's position is that she did not make this call and that she had an arrangement with Ms Gowda that Ms Gowda would instruct Ms Clifford. She said that she recognised the number registered to Ms Gowda, although she did sometimes use that phone herself. She was in India at the time and the phone had remained in the UK. Ms Gowda's evidence was that there was not necessarily a positive arrangement to do so, although she confirmed that she gave instructions to Ms Clifford, pretending to be Ms Sriram.

74. She was asked about a Metro Bank account opening form identified by the trustee. She said that the address of 480 Upper Richmond Road given in that form was incorrect as, when the form was completed in February 2019, she was living between 106 or 111 Woking Close, before moving to 11 Westfields Avenue in January or February 2020. She stated that she thought that Mr Gupta had opened the account but she accepted that she did go to the Putney branch with her passport.

75. She accepted that she had not completed the PIQB sent to her by Ms Brittain. Mr Akin instructed her to fill it in as if she were completing it on the date of her

bankruptcy. She lost capacity before she was able to do this. In fact, as I have noted, she did partially complete a PIQB in March 2019.

76. She denied signing the TR1 form transferring 2 Nicholson Street to Mr Gupta on 21st October 2016 on the date it bears. She said that either Mr Gupta or Ms Gowda asked her to sign documents and she would simply sign what was put in front of her. This is at odds with Ms Gowda's evidence that she did not do that because she did not want to fool Ms Sriram.

77. I accept Mr Akin's evidence insofar as it reports what he was told by Ms Sriram. As I have noted above however, I treat Ms Sriram's account, whether given in her witness statements or to Mr Akin, with caution.

Service of the statutory demand and the petition

The statutory demand

78. Rule 6.3(2) of the Insolvency Rules 1986, in force at the time of service of the statutory demand, is said not to have been followed. This provides:

> "The creditor is, by virtue of the Rules, under an obligation to do all that is reasonable for the purpose of bringing the statutory demand to the debtor's attention and, if practicable in the particular circumstances, to cause personal service of the demand to be effected."

79. The 1986 Rules were at the relevant time supplemented by the Practice Direction on Insolvency Proceedings 2014. The relevant parts were contained in paragraph 13.2 as follows:

> "13.2.1 The creditor is under an obligation to do all that is reasonable to bring the statutory demand to the debtor's attention and, if practicable, to cause personal service to be effected (rule 6.3(2)).
>
> 13.2.3 Where personal service is not effected or the demand is not advertised in the limited circumstances permitted by rule 6.3(3), substituted service is permitted, but the creditor must have taken all those steps which would justify the court making an order for substituted service of a petition. The steps to be taken to obtain an order for substituted service of a petition are set out below. Failure to comply with these requirements may result in the court declining to issue the petition (rule 6.11(9)) or dismissing it.
>
> 13.2.4 In most cases, evidence of the following steps will suffice to justify acceptance for presentation of a petition where the statutory demand has been served by substituted service (or to justify making an order for substituted service of a petition):
>
> (1) One personal call at the residence and place of business of the debtor where both are known or at either of such places as

> is known. Where it is known that the debtor has more than one residential or business address, personal calls should be made at all the addresses.
>
> (2) Should the creditor fail to effect personal service, a letter should be written to the debtor referring to the call(s), the purpose of the same and the failure to meet the debtor, adding that a further call will be made for the same purpose on the [day] of [month] 20[ ] at [ ] hours at [place]. Such letter may be sent by first class prepaid post or left at or delivered to the debtor's address in such a way as it is reasonably likely to come to the debtor's attention. At least two business days' notice should be given of the appointment and copies of the letter sent to or left at all known addresses of the debtor. The appointment letter should also state that:
>
> > (a) in the event of the time and place not being convenient, the debtor should propose some other time and place reasonably convenient for the purpose;
> >
> > (b) (In the case of a statutory demand) if the debtor fails to keep the appointment the creditor proposes to serve the debtor by [advertisement] [post] [insertion through a letter box] or as the case may be, and that, in the event of a bankruptcy petition being presented, the court will be asked to treat such service as service of the demand on the debtor;
> >
> > (c) (In the case of a petition) if the debtor fails to keep the appointment, application will be made to the Court for an order for substituted service either by advertisement, or in such other manner as the court may think fit.
>
> (3) When attending any appointment made by letter, inquiry should be made as to whether the debtor has received all letters left for him. If the debtor is away, inquiry should also be made as to whether or not letters are being forwarded to an address within the jurisdiction (England and Wales) or elsewhere."

80. In *Regional Collection Services Ltd v Heald* [2000] BPIR 661 the process server had attended at the debtor's residence but not his business addresses. Nourse LJ considered the approach of the judge below as follows:

> "The real question before us today is the question which was before the judge. Mr Mann submits that he applied too high a test. He says that he asked himself whether the petitioner had failed to take *any* reasonable step and, on the footing that he had, concluded that the test had not been satisfied. In my view that is not what the judge did. I agree with Mr Orr that the test laid down in the first part of r 6.3(2) is in truth a high one. The creditor is under an obligation to do all that is reasonable for the purpose of bringing the statutory demand to the debtor's

> attention. In describing it as a high test, I do not mean that it is as high as Mr_Mann submits the judge understood it to be. In substance, the test is that the creditor must take all such steps as are reasonable in the circumstances for the purpose of bringing the statutory demand to the creditor's attention. I think the judge correctly understood the test and correctly applied it. I can see no reason at all why he was not perfectly entitled to come to the conclusion he did, namely that, by not visiting the respondent's business premises and by not leaving or sending any communication there, the petitioner did not take all such steps as were reasonable in the circumstances."

Here, Ms Sleeman says that there was a clear failure to follow the rules and to meet the high bar set by them.

81. It is first helpful to note the information recorded by HMRC in relation to taxpayers. Mr Wormald explained the system maintained by HMRC for recording taxpayer addresses, among other details, the TBS, recorded both "base" and "nominated" addresses. "Base" addresses are residential addresses, while "nominated" addressees are those addresses provided by taxpayers. If an address was given as the taxpayer's residential address it would be recorded as their base address.

82. Mr Wormald's witness statement records the first visit on 1st June 2016 to an address held for Ms Sriram prior to the commencement of proceedings:

> "On 01 June 2016 a Field Force Officer ('FFO') visited 11 Westfield's [*sic*] Avenue SW13 0AT, a property owned by the Applicant. The property was being renovated. The FFO obtained a mobile number for the Applicant. The FFO spoke to the Applicant who confirmed an alternate address of 106 Woking Close SW15 5LB. The FFO visited this address but there was no answer so he left an Insolvency Warning Letter ('IWL')."

Mr Wormald explained that whenever a field force officer was unable to make contact with a debtor they would use whatever information they had, such as a telephone number, to attempt to contact the debtor. The contemporaneous note on HMRC's system exhibited to Mr Wormald's first witness statement states:

> "3905276 cm 1-6-16 to 11 SW13 renovation building work on property owned by Mrs Sriram obtained mob [number redacted] she gave me new address as 106 Woking Close SW15 visited she didn't answer left iw10 BY letter to 106 SW15 small block of flats"

83. There having been no contact at 106 Woking Close, Mr Wormald described the next stage:

> "The case was then transferred to the Respondent's 'LAST' office, this is the Last Stage Debt Resolution Unit. It is the last stage for debt resolution prior to a matter being sent for

> enforcement. On 5 July 2016 the LAST office issued IWLs to 106 Woking Close and 11 Westfields Avenue. There was no response received from either of these letter."

As Ms Sleeman noted, the LAST officer sent the letters to both 106 Woking Close and 11 Westfields Avenue. The matter was then transferred to Mr Wormald's department for enforcement. Mr Wormald accepted that the LAST office had apparently thought it reasonable to send the insolvency warning letter to both of those addresses and that his own office would have been aware of this. Indeed, 106 Woking Close had been shown on the TBS as a "base" address for short periods in 2013 and 2014.

84. The process server was nonetheless instructed to serve the statutory demand at 11 Westfields Avenue, but not 106 Woking Close. HMRC's internal records have the following note on 22nd August 2016:

> "R4185613- MUO1 review- No EIS 100. Appears property asset. Residence confirmed tel cal 1/6/16. Case to be set up & registered for a FULL VET to be undertaken

Then, on 23rd August 2016:

> "4930169- new case accepted at EIS for By action. CPW pl issue SD using Westfields address (has an s at end of Westfield) & use BTC as london postcode. I have completed a 17eo as extra info."

85. The process server was not given the 106 Woking Close address. Mr Wormald was asked why his office had not taken the same approach as the LAST office when sending out the statutory demand. He said that they do not take a "scattergun approach". Everything pointed to Ms Sriram living at 11 Westfields Avenue.

86. Mr Wormald explained that this was because residence had been confirmed at 11 Westfields Avenue. It is not however entirely clear what "residence confirmed" means in the context of the 22nd August 2016 note. The only note in relation to the 1st June 2016 telephone confirmation simply refers to the alternative address of 106 Woking Close being given. Mr Wormald's evidence was that Ms Sriram would have gone through security questions, which would have included confirmation of the base address held. Field force officers were supposed to confirm the address in all cases and HMRC's solicitor would not accept cases unless residence had been confirmed.

87. The witness statement of the process server, Kenneth Donovan, dated 28th September 2016 records his attempts to serve the statutory demand:

> "3. On Friday the 16th September 2016 I attended at the debtor's address at 11 Westfields Avenue, Barnes, Greater London, SW13 OAT, where I spoke to an adult female who stated that the debtor resides at the address aforesaid, but was not then within.

> 4. On Friday the 16th September 2016 I inserted through the letterbox a formal letter of appointment for service addressed to the debtor at 11 Westfields Avenue, Barnes, Greater London, SW13 OAT aforesaid.
>
> 5. On Tuesday the 27th September 2016 at 11 am I again called to the address of the debtor and kept the appointment for service, but received no reply to knocking at the door thereat.
>
> 6, My appointment letter has not been returned through the Royal Mail or otherwise. I have not received any reply thereto save as referred to herein.
>
> …
>
> 10. On Tuesday the 27th September 2016 at 11am I effected substituted service of the Statutory Demand upon the debtor by placing the same in a sealed envelope marked 'Private & Confidential' addressed to the debtor through the letterbox of the debtors address at 11 Westfields Avenue, Barnes, Greater London, SW13 OAT."

88. In my judgment the likelihood is that Ms Sriram had been asked to confirm that 11 Westfields Avenue was her residential, or "base" address to use the language of HMRC's database, and had done so on 1st June 2016. 106 Woking Close was given as an alternative way of contacting her. There has been one attendance at 106 Woking Close to serve an insolvency warning letter. Ms Sriram was not at that address, despite having given it to the process server. An insolvency warning letter left at that address did not receive a response.

89. The reason for that is explained in Ms Sriram's third witness statement set out above. On Ms Sriram's own evidence, she is not sure if she did in fact give this address herself but, if she had, she had given an address at which she did not live but which she used on occasion. Ms Gowda confirmed that Ms Sriram was living with another friend called "Saroj" between March 2016 to early 2017. There is no explanation as to why Mr Sriram did not give the address of that friend, where she could be found personally. Indeed, that address has still not been given. As was evident from the lack of response to the insolvency warning letter some three months prior to service of the statutory demand, 106 Woking Close was not an effective place at which Ms Sriram could be contacted. A person at 11 Westfields Avenue, a property registered in Ms Sriram's name, had however confirmed her residence there.

Service of the petition

90. IR 6.14 provided as to service of the petition:

> "(1) Subject as follows, the petition shall be served personally on the debtor by an officer of the court, or by the petitioning creditor or his solicitor, or by a person instructed by the creditor or his solicitor for that purpose; and service shall be effected by delivering to him a sealed copy of the petition.

> (2) If the court is satisfied by a witness statement or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service of the petition or other legal process, or for any other cause, it may order substituted service to be effected in such manner as it thinks just"

91. That rule was replaced on 6th April 2016 with rule 10.14 of the Insolvency (England and Wales) Rules 2016, which, taken with Schedule 4 of those rules and Part 6 of the CPR, similarly requires personal service but permits service by an alternative method. The requirements for an order for service by an alternative method remained as set out in the practice direction, which remained in force at the relevant time.

92. HMRC's evidence in relation to attempts to serve the petition is set out in the statement of N. Mills Oaka, dated 22nd March 2017, in support of the extension of the petition hearing date. This exhibits the correspondence received from the process servers recording their attempts to serve the petition at the end of 2016 and the beginning of 2017. The first letter is dated 16th January 2017 and records that the process server attended 11 Westfields Avenue on 30th December 2016 in order to serve the petition to find builders at the property. The builders said that they would telephone the owner, a "Mr Ravi". The process server spoke to him and he stated that Ms Sriram was in India but he would attempt to call her. There was apparently no reply. Ms Sriram was not in India at the time.

93. On 10th January 2017 the agent returned to the property. On his return he again met with builders at the property and was informed that Ms Sriram was a "former tenant" at the property and had returned to India. Enquiries of a neighbour suggested that Ms Sriram lived on Upper Richmond Road and that he had seen Ms Sriram and her husband as their children attended the same school. 480 Upper Richmond Road was identified as a possible address. Again, Ms Sriram was not in India at the time.

94. According to the letter, the agent attended 480 Upper Richmond Road and:

> "met with a Maktpi Rai who stated that the subject had returned to India last May but had stayed at the property after separating from her husband, our agent challenged Maktpi Rai, stating that the debtor had been seen recently in the local area, but Maktpi Rai would not answer any further questions and shut the door in our agents face. Unfortunately the neighbours interviewed could not assist with our enquiries and as the hearing date is imminent it is with regret that we return your papers unserved."

Ms Gowda's evidence was that the "Maktpi Rai" was not her but could have been Mr Gupta's girlfriend, "Meghna Rao". She did not remember meeting someone and did not know why she would have introduced herself in that way. She did however confirm that Ms Sriram had returned to England at that point. It might be thought that the name "Mukti Roy" might be more easily misheard as "Maktpi Rai" than the name "Meghna Rao" but the names are relatively similar so it is not impossible.

95. A further letter exhibited to N. Mills-Oaka's statement dated 28th February 2017 records the next steps taken by the process server. The process servers returned to 11

Westfields Avenue on 11th February 2017. The builder then working on the site said he did not know Ms Sriram's name and a neighbour said that she had not been seen for some time. The process servers visited 480 Upper Richmond Road again and reported as follows:

> "On Friday the 17th February 2017 our agent attended at the debtor's other given address at 480 Upper Richmond Road, Greater London, SW15, where our agent met with an adult female who spoke very poor English but advised that she rents a room at the property and that the debtor was currently in India. After a few minutes another female came to the door and identified herself as Maktpi Rai who stated that the debtor is still in India, but is currently filing for a divorce, after her husband removed her from the marital home, but would not be returning to the UK until around April/May once she had a fixed date for her proceedings. She also advised that the debtor's son is living with her as the debtor's mother wanted to keep him in School in the UK."

It is notable that the process server again understood that the person that he spoke to was "Maktpi Rai". Again, Ms Gowda thought that "Maktpi Rai" might have been Mr Gupta's girlfriend. She accepted that, whoever Maktpi Rai was, she gave false information to the process server, in that Ms Sriram was not still in India, having returned to the UK in October 2016. She did not leave for India until the end of March 2017.

96. The account of the attempts at service is taken up in the statement of another process server, Mark Seymour, dated 26th April 2017, in support of HMRC's application for substituted service of the petition at 480 Upper Richmond Road. He states that:

> "2. On Friday the 7th April 2017 I attended at the debtor's address at 11 Westfields Avenue, Barnes, Greater London, SW13 OAT, to find that the property is currently unoccupied.
>
> 3. On Monday the 10th April 2017 I attended at the other known address for the debtor at 480 Upper Richmond Road, Greater London, SW15 5JG, where I spoke with an adult male, who stated that the debtor resides at the address, but had gone out."

He left the usual appointment letter and returned to the property as follows:

> "5. On Monday the 24th April 2017 at 7.50pm I attended at the debtor's address at 480 Upper Richmond Road, Greater London, SW15 5JG aforesaid and kept the appointment for service, where I spoke with an adult female, who stated that the debtor was not then within."

The order for substituted service having been made on the basis of this evidence, the petition was posted to 480 Upper Richmond Road on 31st May 2017.

Conclusion on service of the statutory demand and petition

97. For the sake of completeness, I should say that the records provided to the expert witnesses in respect of Ms Sriram's capacity include a Child and Family Assessment carried out on 27th October 2016 by a social worker acting for the local authority. It gives the "primary address" of Ms Sriram's eldest child as 480 Upper Richmond Road, noting that it had been so from 31st May 2016 "to date", prior to that it had been 11 Westfields Avenue for a few days, with 480 Upper Richmond Road having been his address from 2007 to 27th May 2016. "Unborn Sriram" was noted as having a primary address of 111 Woking Close, although it is later stated in the same assessment form to be 480 Upper Richmond Road from 31st May 2016 to the present date. It records that Ms Sriram had left the flat to get some space but had returned. On a follow up in December 2016, following the birth of Ms Sriram's daughter it was noted that Ms Sriram was staying with a friend and would remain there until January 2017. The assessment said:

> "The family is bit distributed. Mr. [Gupta] stays in Sweden. While [Ms Sriram's] house residence is under construction lives in temporary place with the intent to move to family home."

The primary address was given as 11 Westfields Avenue at the date of the review meeting on 20th March 2017 and it was said that:

> "The family live in a privately owned home. The house is currently occupied by Ms Sriram, Dishith, Kashni, Ms Gowda. Ms Sriram and Dishith report that they live downstairs and have their own eating, sleeping and living area. Dishith also has his own bedroom within the home. Mr Borra reports that the family own a number of rental properties in the area that they manage."

The suggestion given by the report is that Ms Gowda was living with the family, rather than the family living at Ms Gowda's property. It is said that Mr Gupta had left the family home. Quite how this assessment was compiled and how the information as to residence was provided to the local authority is not clear. It was not in the possession of HMRC when attempting service and does not clarify where Ms Sriram was to be found to any great extent.

98. The position here is that, having received no answer from 106 Woking Close, or to a letter left there, the process servers attempted service of the statutory demand at 11 Westfields Avenue. They received confirmation when attending that address that the address was associated with Ms Sriram but that she was out. Letters sent to that address did not receive an answer and so the statutory demand was posted through the letterbox. Information obtained when attempting to serve the petition appeared to show that 11 Westfields Avenue was no longer occupied and identified that Ms Sriram had an address on Upper Richmond Road. The process server received confirmation from someone within that she resided there, but was not then at home. The Child and Family Assessment certainly confirms an association with that property, if not actual residence.

99. The question is whether the fact that HMRC did not also attend or send the documents to 106 Woking Close means that it did not do all that was reasonable to serve the statutory demand and the petition. In my judgment it does not. Attempts to communicate with Ms Sriram at that address, an address which she did not own, went unanswered. This is not surprising. Ms Sriram's own evidence is that she was not living there between March 2016 and January/February 2017. In other words she was not there either when she gave the address to the field force officer or when the statutory demand came to be served. Since being given the address, the process server had received confirmation of Ms Sriram's residence at 11 Westfields Avenue from a person at the property, and thereafter of her residence at 480 Upper Richmond Road.

100. The Insolvency Rules required the petitioner to do all that was reasonable to bring the statutory demand to the debtor's attention and allowed for substituted service of the petition where personal service could not be effected. The practice direction on insolvency proceedings then in force provided guidance as to what was reasonable for the purposes of serving the statutory demand and for the purposes of justifying an order for substituted service of the petition. This required a visit to the residence if "known" and, where more than one residence was "known", to each of those residences. 106 Woking Close was not a "known" residence at the time, albeit it appears to have been given as a means of getting in touch with Ms Sriram. It does not appear to me that reasonableness required HMRC to take what Mr Wormald described as a "scattergun" approach. Indeed, had HMRC trawled the list of addresses with which Ms Sriram had a connection according to their internal records and attempted service at each of them, "scattergun approach" would be an apt expression.

101. Having received no response to an attendance at 106 Woking Close or to correspondence left there it cannot be described as a "known" residence. It does not seem to me to be reasonable to expect HMRC to attempt service at an address at which a debtor is not in fact living and which has shown itself not to be an effective method of communicating with the debtor. In my judgment it was reasonable for HRMC to have attempted to serve Ms Sriram at 480 Upper Richmond Road and to have sought substituted service at that address, without reference to other addresses.

102. Before turning to the question of capacity, I should briefly turn to events following the service of the petition and any light they might shed on the attempts at service. When the petition was served it was signed for, according to the Royal Mail's recorded delivery service, by "Sriram". HMRC thereafter received a call, on 10th July 2017. The HMRC note of the call is as follows:

> "Lady called, saying that Pet recd and she opened it (lives @ same Add). Said Debtor doesn't speak English. I said should go to CAB for advice. She then said Debtor is in India. Conf Deb should write to Court. To ring EIS & advise Debtor abroad"

Ms Gowda remembered contacting HMRC but could not recall the date. She said that she had called them to let them know that Ms Sriram was in India. She said that she would not have said that Ms Sriram did not speak English. It is common ground that Ms Sriram does speak English. On the same day, there was a further call:

> "a mr mukbi phoned to say he had opened petition & signed for it, actual t/p is in india & does not know any english, i

> suggested he return to sols with report & i will advise them accordingly."

Ms Gowda did not know who "Mr Mukbi" was but thought it might have been Mr Gupta. She said that she had opened the petition. She herself had been living at 480 Upper Richmond Road from about February or March 2016 until towards the end of 2017.

103. Given Ms Gowda's adoption of Ms Sriram's identity and correspondence with HMRC and the court in her name, in my judgment it is likely that it was she who confirmed Ms Sriram's residence at 480 Upper Richmond Road in the name of "Maktpi Rai" precisely so that she could deal with correspondence sent to Ms Sriram at that address, assuming that "Maktpi Rai" was not Ms Sriram herself. The evidence is that Ms Gowda adopted Ms Sriram's identity and dealt with her affairs on her behalf in a number of contexts and it is more probable than not that she did so when confronted with process servers at 480 Upper Richmond Road.

Ms Sriram's mental capacity at the relevant dates

104. CPR Part 21 deals with the procedural requirements for claims involving a protected party, in other words a person who lacks capacity to conduct the proceedings him or herself. CPR 21.2(1) provides:

> "A protected party must have a litigation friend to conduct proceedings on their behalf."

105. CPR 21.3 then provides:

> "(1) This rule does not apply where the court has made an order under rule 21.2(3).
>
> (2) A person may not, without the court's permission—
>
> (a) make an application against a child or protected party before proceedings have started; or
>
> (b) take any step in proceedings except—
>
> (i) issuing and serving a claim form; or
>
> (ii) applying for the appointment of a litigation friend under rule 21.6,
>
> until the child or protected party has a litigation friend.
>
> (3) If during proceedings a party lacks capacity to continue to conduct proceedings, no party may take any further step in the proceedings without the court's permission until the protected party has a litigation friend.
>
> (4) Any step taken before a child or protected party has a litigation friend has no effect unless the court orders

otherwise."

106. The Mental Capacity Act 2005 provides the statutory test for capacity. Section 1 provides:

> "**1 The principles**
>
> (1) The following principles apply for the purposes of this Act.
>
> (2) A person must be assumed to have capacity unless it is established that he lacks capacity.
>
> (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
>
> (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
>
> (5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
>
> (6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.
>
> **2 People who lack capacity**
>
> (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
>
> …
>
> (4) In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.
>
> …
>
> **3 Inability to make decisions**
>
> (1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable–
>
> (a) to understand the information relevant to the decision,
>
> (b) to retain that information,

> (c) to use or weigh that information as part of the process of making the decision, or
>
> (d) to communicate his decision (whether by talking, using sign language or any other means).
>
> (2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
>
> (3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.
>
> (4) The information relevant to a decision includes information about the reasonably foreseeable consequences of–
>
> (a) deciding one way or another, or
>
> (b) failing to make the decision."

107. The principles involved in assessing capacity were set out by Baker J in *A Local Authority v P* [2018] EWCOP 10 at paragraph 15, recently cited with approval by Lewis LJ, with whom Edis and Moylan LJJ in the Court of Appeal in *Cannon v Bar Standards Board* [2023] EWCA Civ 278 at paragraph 21. I need not set them out insofar as they repeat the statutory provisions that I have mentioned above. There are some particular points to highlight, however –

i) The burden of proof lies on the party asserting that a person does not have capacity.

ii) The test involves two stages. The first ("the diagnostic test") is to determine whether the person has an impairment of or disturbance in the functioning of the mind or brain. The second ("the functional test") is to determine whether that renders the person incapable of making the relevant decision.

iii) Capacity is both issue-specific and time-specific. A person can have capacity to do certain things but not others and may have capacity at some times but not at other times.

iv) It is not necessary for a person to comprehend every detail of the issue – it is enough if they comprehend and weigh the salient details relevant to the decision.

v) The court must avoid the "protection imperative" – the danger that the court will be drawn towards an outcome that will protect the individual rather than carrying out a detached and objective assessment of capacity.

108. Again, in *A Local Authority v JB* [2022] AC 1322, it was noted by the Supreme Court that:

> "68 As the assessment of capacity is decision-specific, the court is required to identify the correct formulation of 'the matter' in respect of which it must evaluate whether P is unable to make a decision for himself…
>
> 69 The correct formulation of 'the matter' then leads to a requirement to identify 'the information relevant to the decision' under section 3(1)(a) which includes information about the reasonably foreseeable consequences of deciding one way or another or of failing to make the decision: see section 3(4).
>
> …
>
> 75… there should be a practical limit on what needs to be envisaged as the 'reasonably foreseeable consequences' of a decision, or of failing to make a decision, within section 3(4) of the MCA … To require a potentially incapacitous person to be capable of envisaging more consequences than persons of full capacity would derogate from personal autonomy.
>
> 76 Once the information relevant to the decision has been identified then P is unable to make a decision for himself in relation to the matter (section 2(1)) if, for instance, he is unable to understand the information (section 3(1)(a)) or to use or weigh that information as part of the process of making the decision (section 3(1)(c)).
>
> 77 P's ability under section 3(1)(c) MCA to use or weigh information relevant to the decision as part of the decision-making process 'should not involve a refined analysis of the sort which does not typically inform the decision . . . made by a person of full capacity': *In re M (An Adult) Capacity: Consent to Sexual Relations)* at para 81. It would also derogate from personal autonomy to require a potentially incapacitous person to undertake a more refined analysis than persons of full capacity.
>
> 78 If the court concludes that P is unable to make a decision for himself in relation to the matter, then the second question that the court is required to address under section 2(1) is whether that inability is 'because of' an impairment of, or a disturbance in the functioning of, the mind or brain. The second question looks to whether there is a clear causative nexus between P's inability to make a decision for himself in relation to the matter and an impairment of, or a disturbance in the functioning of, P's mind or brain."

109. In *Masterman-Lister v Jewell* [2002] EWCA Civ 1889, a case decided before the coming into force of the 2005 Act, it was noted that the court has power to regularise

the position retrospectively under the provisions of the CPR. Kennedy LJ addressed this at paragraph 31:

> "So a court can regularise the position retrospectively, and that was also possible under the Rules of the Supreme Court: see *Kirby v Leather* [1965] 2 QB 367. Provided everyone has acted in good faith and there has been no manifest disadvantage to the party subsequently found to have been a patient at the relevant time I cannot envisage any court refusing to regularise the position. To do otherwise would be unjust and contrary to the overriding objective of the Civil Procedure Rules, but in any given case the ultimate decision must depend on the particular facts. In the context of litigation, rules as to capacity are designed to ensure that plaintiffs and defendants who would otherwise be at a disadvantage are properly protected, and in some cases that parties to litigation are not pestered by other parties who should be to some extent restrained. However, finality in litigation is also important, and the rules as to capacity are not designed to provide a vehicle for reopening litigation which, having apparently been properly conducted (whatever the wisdom of the individual decisions in relation to it), has for long been understood to be at an end."

110. The experts here are considering capacity retrospectively. In *Public Guardian v RI* [2022] EWCOP 22 the Court of Protection considered the capacity of a donor of a Lasting Power of Attorney some 12 years earlier. Poole J said at paragraph 1:

> "I understand that although it is not uncommon for the courts to determine past capacity to execute an LPA, there is a dearth of published authority on the issue. I have been greatly assisted by an extract of a judgment of Senior Judge Lush in In the matter of Collis, unreported, 27th October 2010… but no subsequent judicial authority has been brought to my attention. Although the issues are not complex, the lack of judicial authority has prompted me to publish this, suitably anonymised, judgment."

111. He went on:

> "12. In considering a question of past capacity, the principles under ss.1 to 3 of the MCA 2005 apply to the specific decision at the specific time, but the court will have regard to all the evidence relevant to capacity at the material time, including evidence of matters that have come to light subsequent to the making of the decision in question. I have regard to all of those principles and provisions, including…"

He set out the relevant provisions of the 2005 Act and continued:

> "27. The burden of proof is on the Public Guardian who alleges that RD did not have capacity to execute the LPA in 2009. I have to determine RD's capacity to execute the LPA in

> December 2009, over 12 years ago. Ideally, where there is a dispute about past capacity which the court is required to determine, it would be helpful to have evidence as to,
>
> a. The certificate provider's experience – in particular in making a sufficient assessment of the capacity of a prospective donor who is known to have a learning disability or other impairment which might affect their capacity to execute an LPA – their usual practice or their specific recollections of the making of the LPA;
>
> b. Evidence from carers and family members relevant to P's capacity to execute an LPA at the relevant time and to any changes in P's condition, relevant to capacity, over time.
>
> c. Medical evidence, capacity assessments, assessments for benefits, records from carers or activity centres, or other professional evidence roughly contemporaneous with the relevant date when the LPA was executed.
>
> d. An assessment by a suitably qualified and experienced person of P's current capacity and reasoned opinion as to their capacity to execute the LPA at the relevant time, such opinion being informed by review of relevant medical records, contemporaneous assessments, and the evidence from carers and family members."

The expert evidence in relation to capacity

112. Those acting for Ms Sriram instructed Dr Rachel Gibbons, a consultant adult psychiatrist and consultant medical psychotherapist, to provide an opinion as to Ms Sriram's mental capacity at the points at which the statutory demand and the petition were served, during the currency of the proceedings and at the date of the hearings. HMRC instructed Dr Anthony Akenzua, also a consultant adult psychiatrist, to provide a report setting his opinion on those questions. They prepared a joint statement, dated 10th April 2023. They are agreed that Ms Sriram suffers from a severe mental disorder, referred to as schizoaffective disorder. This has symptoms of both bipolar disorder and schizophrenia and Ms Sriram has suffered depressive episodes and manic episodes, on occasion becoming what was termed "floridly psychotic", which to say that her psychosis was very evident.

113. Both experts agree that schizoaffective disorder is episodic in nature, with periods of remission during which patients are able to regain function to varying degrees. They disagree as to the extent to which Ms Sriram regained such function between, and during, hospital admissions and have formed different views as to what the medical records indicate.

114. The following is an uncontentious summary of the more significant records of Ms Sriram's mental health. Ms Sriram's illness is of long-standing and she was admitted to the Spandana Nursing Home in Bangalore in October 1999. A Dr Dharitri, a consultant clinical psychiatrist in Bangalore, produced a report on 1st November 1999

in which it was noted that Ms Sriram gave the impression of Borderline Personality Disorder with psychotic episodes.

115. Ms Sriram was admitted to a hospital in India in 2015 and required to stay for 15 days. She was diagnosed with Bipolar Affective Disorder. She was treated with a number of medications, including anti-psychotics, and had a number of cycles of electro-convulsive therapy. She continued to take her prescribed anti-depressant and other medications.

116. On 27th May 2016 Ms Sriram was taken to Kingston Hospital Accident and Emergency Department by the police as a result of concerns raised by her general practitioner. She was reviewed by a psychiatrist in the Kingston Liaison Psychiatry team. She was reported to have stopped her anti-depressants as a result of her pregnancy and to have had arguments with her husband about whether to continue the pregnancy. The report notes that she considered her husband to be emotionally blackmailing her, including by showing her graphic videos of an abortion procedure. Ms Gowda's evidence was to the same effect as to Mr Gupta's reaction to Ms Sriram's wish to have a termination.

117. Ms Sriram was not noted to have hallucinations or paranoid ideation. Her insight was described as "good, willing to accept medication and engage with services." As to capacity, the report states:

> "She was able to understand, retain and weigh up information to make a reasoned decision. She was able to communicate her decisions to me. In my opinion she had capacity to make decisions about her care."

The overall impression recorded was of a woman with low mood as a result of the pregnancy and marital difficulties. Schizoaffective disorder was not mentioned. It appears that Ms Sriram wished to restart antidepressant medication and this was approved by her physician.

118. She was treated by Cadabams Hospital in Bangalore in July 2016. The manuscript notes set out a plan of treatment, and the first step recorded is "stop all antidepressant medication". It would appear therefore that, if Ms Sriram did indeed restart antidepressants after attending Kingston Hospital, she took them for only a very short time. Cognitive Behavioural Therapy was also recommended. She underwent repetitive transcranial magnetic stimulation in July 2016. Dr Gibbons explained that it appeared that Cadabams Hospital were focusing on treating her depression without antidepressants to avoid any risk of harm to the foetus. Ms Sriram saw the clinical psychologist three times, the last occasion being on 5th August 2016.

119. A Child and Family Assessment was carried out on 27th October 2016 by a social worker acting for the local authority. This again set out much of the history of Ms Sriram's mental health. I have set out some of it above in relation to Ms Sriram's address. In the follow up report in March 2017 she was noted to have depression but to have a good level of understanding about the effect that marital strife was having on the children.

120. Ms Sriram was admitted to hospital again on 27th July 2017, this time to the National Institute of Mental Health and Neuro Sciences in Bangalore ("NIMHANS"). She was discharged on 22nd August 2017. The discharge summary states:

> "Patient came to NIMHANS with illness of 1.5 years duration, insidious onset, continuous course and increased since May 2017 along with new onset of symptoms characterised by hearing of voices, belief of being controlled by someone along with acting out behaviour and h/o irritability, decreased sleep and increased activity along with increased self esteem unlike her usual self with significant bio-socio-occupational dysfunction."

It listed a range of medications that Ms Sriram had taken over time, including anti-depressants of various types, together with anti-psychotics. She was prescribed an anti-psychotic in NIMHANS and it is not in issue that this was at the maximum dose. It is apparent that she was very ill at times during her time at NIMHANs and was treated without her consent on occasion. Her mental state was described as:

> "Speech increased and with restlessness noted. Content of thought revealed delusion of control, somatic passivity. Perceptual abnormalities like 2nd PAH was noted. Judgement was impaired with absent insight. Cannot concentrate on anything. Decrease perception of time. Short term memory loss. Cannot control her body during any type of movement and unsteadiness. Abnormal expression of feelings unrelated to the topics discussed, seeing or hearing people and talking to imaginary people during day and night with no real proper or normal conversations or interactions and talks too slow and thinks a lot and later forgets. Unable to manage money or investments and doesn't want to live. Started to have headaches, eyesight issues and blackouts."

She was recommended for psychotherapy "aimed at insight facilitation and to improve treatment adherence on OP basis". Her condition at the point of discharge was described, rather non-specifically, as "improved".

121. Ms Sriram was assessed at the Retreat Hospital in Hyderabad in September 2017. The history taken records that she had recovered well from her treatment in 2015 but by the end of 2015 her condition deteriorated. It states that following her visit to Cadabams Hospital in Bangalore she had returned to the UK but was "still vulnerable and mentally unwell". Her admission to NIMHANS resulted in

> "a noticeable improvement in the reduction of hearing voices, delusion of control, and acting out behaviour along with improvement in bio-socio-functioning".

122. Ms Sriram continued to be very unwell however. The assessment carried out at the Retreat Hospital confirmed that she was suffering from a disturbance in the functioning of her mind or brain and was unable to understand transactions or accounts. She was suffering from hallucinations. She forgot conversations and

repeated efforts to help her understand information for any decision was unsuccessful. She was in a delusional state with frequent hallucinations and could not remember to eat or take medicines. Overall the conclusion was:

> "Patient lacks capacity to take any health or personal well-being, looking after children, finance, investments or job. "
>
> Patient needs constant care to perform day to day activities and medication for mental health.
>
> Patient lacks capacity to take any decision in her current capacity."

123. In broad summary those were the background records available to the medical experts to shed light on Ms Sriram's capacity at and around the time of the petition. Dr Gibbons produced a report dated 17th January 2022. She both reviewed the medical records and met Ms Sriram. Her assessment was that:

> "83… In my opinion she suffers with a longstanding schizoaffective disorder that started at university. This is a serious psychiatric illness that required frequent hospitalisation for treatment
>
> 84. Ms Sriram's illness was characterised by psychotic and depressive episodes.
>
> 85. She was taking both antipsychotic and antidepressant medication.
>
> 86. As part of this disorder she also suffered serious depressive episodes."

124. In relation to psychotic episodes, Dr Gibbons described the effect that this would have on a person:

> "a. Engagement with reality changes and contact with the external world is lost.
>
> b. The perception of time is distorted.
>
> c. There is an intense preoccupation internal psychotic experience generated by the mind which includes hallucinations and disorder of thinking.
>
> d. Profound confusion"

For Ms Sriram, this included hallucinations, difficulty communicating, thought disorder, loss of concentration and confusion. Pinning those to the requirements of the 2005 Act she considered:

> "She would therefore have had:

> a. an impairment of or disturbance in the functioning of her mind that would be serious psychiatric illness, schizoaffective disorder.
>
> i. She would have been very unlikely to understand the information given to her due to her psychosis and distortion of reality.
>
> ii. To retain that information long enough to be able to make the decision due to her psychosis, confusion and distortion of reality.
>
> iii. To weigh up the information available to make the decision due to the psychosis, distortion in her thinking, confusion and self-destructive disturbance.
>
> iv. To communicate her decision. In the records it is clear that she found it very difficult to communicate due to psychosis and depression."

125. She concluded that, when served with the statutory demand on 27th September 2016, she was less than 50% likely to have had capacity. She was unwell with a serious psychotic mood disorder and the records from the hospital in India show that she "would not have had any capacity to understand, retain, weigh up or communicate her decision at this time." While she would have been able to open the envelope containing the demand, she would have been less than 50% likely to understand the contents of the statutory demand or seek assistance from a friend or firm of solicitors to address it as a result of a psychotic or depressed state of mind. She was of the same opinion in relation to the petition itself. Similarly, Dr Gibbons was of the view that she would not have been able to attend a hearing of the petition, appreciate what a bankruptcy order meant and the implications that it would have on her finances. Nor would she have been able to instruct solicitors to act on her behalf.

126. Dr Gibbons prepared a supplementary report in which she responded to the correction of some dates to which she had referred in her first report and made further observations as to Ms Sriram's capacity on discharge from the NIMHANS hospital in India. She was asked to comment on the note in the records which stated that Ms Sriram's condition at discharge was "improved". Dr Gibbons interpreted this to mean that she had a lessening of symptoms and was able to survive outside of the hospital environment. Similarly, she did not think that Ms Sriram's return to the UK on 12th October 2017 would alter her opinion. She noted that someone can be very unwell and still be able to fly. Her attention was also drawn to emails that came to light in relation to proceedings concerning her husband, purportedly written by Ms Sriram, to which I will refer below.

127. Dr Akenzua produced a report dated 20th February 2023. He too had sight of the medical records and also of Dr Gibbon's report. He did not examine Ms Sriram. He agreed that Ms Sriram suffered from schizoaffective disorder. He noted, that capacity is time and task specific and can fluctuate and said that:

> "it is plausible that Ms Sriram did not have capacity at some point between 06 September 2016 and 04 September 2017 but Ms Sriram also received treatment in July/August 2017 which alleviated her symptoms to enable her [to] choose to engage in psychological therapy"

His overarching opinion was:

> "It is impossible to state definitively that Ms. Sriram lacked capacity all through the period 06 September 2016 to 04 September 2017. Ms Sriram from the description of her mental state in July and part of August 2017 was too distressed and disturbed mentally to make any meaningful attendance at any court hearing, however, at the time of discharge, it is my opinion that Ms Sriram had capacity to make decisions regarding the bankruptcy petition."

His opinion on the discharge summary on 22nd August 2017 was that Ms Sriram's mental functioning had improved so that she could make decisions about her care and engage in psychological therapy. He considered:

> "that would involve a level of cognitive ability that would imply ability to understand and retain information, and use information to make reasoned choices between alternatives and communicate clearly enough to professionals the reasoning behind decisions made"

He thought that Ms Sriram would have had periods when she did not have capacity and that this would certainly have been the case for some time during her stay in Bengaluru between 27th July 2017 and 22nd August 2017.

128. Dr Akenzua placed weight on what he described as the "comprehensive assessment" in May 2016 when Ms Sriram was considered to have capacity to make decisions about her care and treatment. He said:

> "The mental state examination showed that Ms Sriram could understand, retain and process information, weighing the advantages and disadvantages of options and could communicate her decision. The inference is that she would have had capacity to engage with the bankruptcy proceedings in May 2016 however by August 2017 she was suffering from disordered thoughts and perception and could not make complex decisions."

On this basis he thought she had capacity to understand the contents of the statutory demand on 27th September 2016.

129. He said:

> "at the point of discharge, Ms Sriram's mental functioning had improved and that she could make decisions about her care and

> engage in psychological therapy that would involve a level of cognitive ability that would imply ability to understand and retain information, and use information to make reasoned choices between alternatives and communicate clearly enough to professionals the reasoning behind decisions made."

He was unable to form a conclusion in relation to her ability to open the envelope containing the petition in the absence of a record or a mental state examination on or around that date, Ms Sriram having been admitted on 27th July 2017. He was similarly unable to form an opinion in relation to understanding the petition or attending a hearing in July or August 2017.

130. Both Dr Gibbons and Dr Akenzua gave oral evidence and were cross-examined. They are highly-qualified and experienced individuals and were of great assistance in understanding Ms Sriram's mental health. I prefer, however, the impressive evidence of Dr Gibbons.

131. She stressed the context of the assessment carried out at Kingston Hospital in May 2016. This is the assessment that Dr Akenzua described as "comprehensive" and on which he placed significant reliance. She was said to understand, retain and weigh up information to make a reasoned decision and to have capacity to make decisions about her care. Dr Gibbons considered that this assessment was very questionable. She explained that the examining physician had very little evidence, whereas Dr Gibbons was able to draw upon much more material, with the benefit of hindsight, in forming her own opinion. In the Accident and Emergency Department context specialty doctors would, she said, often be comparatively junior and lacking in experience, called upon multiple times to assess patients during the course of their shift.

132. Whether or not the specialty doctor was justified in her assessment, Dr Gibbons noted that where "capacity" or "insight" was referred to in the medical records, the focus would have been on capacity to accept treatment. The opinion of the doctor at Kingston Hospital was directed to whether Ms Sriram had sufficient capacity to engage with psychiatric services on an outpatient basis. She described this as "basic capacity". It indicated an awareness of being unwell and needing treatment, but it did not mean that the psychosis had gone.

133. Dr Gibbons' opinion was that conditions such as schizoaffective disorder might not be diagnosed at first. With the benefit of the information available to the experts it was possible to identify that Ms Sriram was severely mentally ill. Dr Gibbons' opinion was that Ms Sriram was in the grip of a long episode which was getting worse until she was hospitalised in India. This had begun as a result of the cessation of her antidepressant medication as a result of her pregnancy and her condition deteriorated from there. She lost insight early, necessitating the involvement of the police when she was taken to Kingston Hospital and had become "floridly psychotic". She had been forcibly treated in NIMHANS and, had she been in the UK at the time, would have been detained under the Mental Health Act 1983. Her view was that it was highly unlikely that she would have had capacity to make decisions in relation to finances during this time.

134. She similarly did not accept that Ms Sriram would have been well when discharged from NIMHANS in August 2017. She explained that she would have been discharged while still unwell but at a point when the treating psychiatrists felt that she would continue to take her medication. She explained that the recommendation for psychotherapy on discharge did not indicate that Ms Sriram was no longer seriously ill. Psychotherapy is apparently used to help a patient develop insight into their illness so that they understand the fact of their illness and continued treatment. Indeed the discharge report suggests psychotherapy for precisely that purpose while Ms Sriram continued to be treated with the maximum dose of an anti-psychotic drug. I did not understand Dr Akenzua to disagree as to the use of psychotherapy or the level of medication. Dr Gibbons was of the view that Ms Sriram would have remained very unwell for some months thereafter.

135. It was put to Dr Gibbons that she had not sufficiently addressed the emails in Ms Sriram's name to the Gordons Partnership in 2017. She was asked to comment on these. Her supplemental report said as follows:

> "This does not affect my conclusion. The detail of these discussion seem to not be reasonable. Mrs Sriram is very unwell now and then. She has a serious mental health disorder that has clearly affected her capacity throughout this period. To argue that from one month to another, at one point to another there is evidence that she had capacity does not make sense to me as a psychiatrist and can only serve to increase the pressure and stress on Mrs Sriram. There is no evidence at all that Mrs Sriram has not been totally open and honest."

It was put to her that this was dodging the question. I do not agree, though Dr Gibbons' written response is perhaps a little less focussed on the question than it might have been. It is tolerably clear to me from her evidence as a whole that Dr Gibbons did not think that these exchanges were explicable in the context of Ms Sriram's illness.

136. I accept that Ms Gowda impersonated Ms Sriram on occasion. I similarly accept that she and Mr Gupta corresponded with Gordons at the relevant times using Ms Sriram's email account. That is made clear by the fact that at least one email from Ms Sriram's email account is signed "Ravi". Taking into account the overall picture created by the medical evidence, which is that Ms Sriram is likely to have been too ill to engage in correspondence about these transactions, and Ms Gowda's evidence as to her impersonation of Ms Sriram, it seems to me to be likely that Ms Gowda or Mr Gupta wrote these emails in Ms Sriram's name and Ms Gowda similarly impersonated Ms Sriram on the telephone. The correspondence with Gordons does not therefore cause me to doubt that Ms Sriram was in the grip of a prolonged period of illness from, at the latest, the first attempts to serve the statutory demand up to and including the date of the bankruptcy order, at the earliest, during which her mental capacity was impaired such that she was not able to address her affairs.

137. I am persuaded by Dr Gibbons that Ms Sriram was suffering from a serious mental illness and that her condition declined from the point that she stopped taking her medication in mid-2016. While her illness was punctuated by instances of "florid psychosis" Ms Sriram did not regain the capacity to manage her affairs between those

instances so as to have been able to address the bankruptcy proceedings. Dr Gibbons explained that sufferers who develop psychotic symptoms can lose touch with reality, projecting their own mind onto the world, not having sufficient insight into their own condition to realise that they were unwell. She described it as a profoundly challenging illness. Again, I do not think that this was controversial as between Dr Gibbons and Dr Akenzua. Dr Gibbons explained to me that a person who is not "floridly psychotic" or in a manic state, may nonetheless remain psychotic, in the sense that their reality is distorted by their internal narrative. While they appear "normal" and, as she put it, "holding it together" they may remain in the grip of psychosis for long periods.

138. Dr Akenzua too accepted that a patient being released from hospital did not mean that that they could make all decisions for themselves and that there would have been a recovery phase which could last for several years. He remained of the view that, in the absence of positive proof of incapacity on or close to a relevant date a person must be presumed to have capacity. He considered that Ms Sriram would not have had capacity to understand the statutory demand but could not confidently say either way whether she would have appreciated the importance of the petition. He thought that, as she was able to make decisions about her care, she would have had the ability to seek help from a third party. He thought, however, that she would have "struggled" with understanding what bankruptcy meant and its implications for her finances.

139. The essential difference between Dr Akenzua and Dr Gibbons was that Dr Akenzua felt constrained by the absence of medical evidence at the times at which he was asked to comment on Ms Sriram's capacity to assume capacity. He rightly regarded it as an important part of a person's autonomy but in my judgment he took a too restrictive approach to this. The experts' task was to form a view on the basis of the medical evidence as a whole and extrapolate from that what Ms Sriram's ability to deal with her affairs was at the relevant times.

140. I am satisfied that Ms Sriram lacked capacity by the date of service of the statutory demand, the petition and during the currency of the proceedings. This is evident from the medical evidence and consistent with Ms Gowda's description of Ms Sriram as "broken". It is apparent that she has, sadly, suffered from a distressing and debilitating illness for a long period. While it was controlled by medication, the cessation of medication in April 2016 precipitated a relapse. No doubt periods of "florid psychosis" would have been episodic, but Dr Gibbon's opinion and the medical records which she, and indeed Dr Akenzua, so helpfully interpreted satisfy me that her underlying psychotic state remained so that she would have been unable to understand the nature and effect of the documents served on her, or the proceedings, and weigh up the options available to her.

141. I am therefore satisfied that, while Ms Sriram was properly served with the statutory demand and petition, she lacked capacity to understand or deal with those documents, or to engage with the bankruptcy proceedings at all, up to and including the date on which she was made bankrupt.

Discretion to annul

142. My attention was drawn to the decision of His Honour Judge Pelling QC, sitting as a judge of the High Court, in *Haworth v Cartmel and Her Majesty's Revenue and*

Customs [2011] BPIR 428. In that case, unlike this, HMRC had notice of the debtor's mental health difficulties. He noted at paragraph 96:

> "It was submitted by Mr Shields in para 43 of his written closing submissions, that even if I reached the conclusion that the applicant did not have capacity of the relevant sort at the relevant time it did not follow automatically that the bankruptcy order ought to be annulled. I accept that to be so – indeed that such is the case is common ground between the parties."

That was similarly common ground in this case and, indeed, all of the parties approach the question as one of whether to exercise the discretion to annul under section 282, rather than a question of whether to validate the proceedings as a whole under CPR 21.3(4).

143. In *JSC Bank of Moscow v. Kekhman* [2015] EWHC 396 (Ch) Morgan J considered some of the factors relevant to the exercise of the discretion:

> "74. The power to annul under section 282 is discretionary ("the court may annul"). Thus, even if the court is satisfied that on the grounds existing at the date of the bankruptcy order, the order ought not to have been made, the court can still decide not to annul the order. An obvious example would be where the annulment would be pointless, for example, where the circumstances were such that a new bankruptcy order would certainly be made. Another example would be where circumstances had changed following the bankruptcy order making it inappropriate to annul the order. It follows that when considering whether to exercise its discretion to annul an order which it has found ought not to have been made the court will take into account all relevant matters, including matters which have come about after the bankruptcy order was made."

144. The discretion to annul was recently considered by the Court of Appeal in *Khan v Sing-Sall* [2023] EWCA Civ 1119. Nugee LJ considered the authorities and said:

> "62. *Guinan* was another case where annulment was sought on the basis (primarily) that the petition debt was disputed. It was common ground that even if it was established that the debt was disputed the Court still had a discretion whether to annul, something that Neuberger J said was clearly right (at [11]). In the event Neuberger J found that the debt was disputed on sufficiently substantial grounds. He continued:
>
> '49. As I have mentioned, there is a discretion even if there is an arguable case, but it seems to me that unless there are special circumstances such as other creditors who have undoubted debts, or clear other evidence of insolvency, or facts such as were before the Court of Appeal in *Askew v Peter Dominic Ltd* [1997] BPIR 163, namely that the debt in question

> was not challenged, then it seems to me, save in exceptional circumstances, that it must be right not to uphold a bankruptcy order.'
>
> 63. I do not read Neuberger J in this passage as saying that the discretion not to annul a bankruptcy order should only be exercised in exceptional circumstances. I read it as saying that there must be something to set in the scales against annulment, whether that be other creditors with undoubted debts, or other evidence of insolvency, or that the debt was not challenged, or something else; and that in the absence of anything of that nature, one would normally expect the bankruptcy order to be annulled, and the circumstances would have to be unusual not to do so. Read in this way, I do not find it a surprising proposition. That was I think how Mr Mohyuddin read it, as he commented that the headnote (which suggested that one always needed exceptional circumstances) did not accurately reflect what Neuberger J said: HC Judgment at [53].

He went on:

> "66… If I can express it in my own words, the Court has a discretion to be exercised having regard to all the circumstances; but where the Court has concluded that the bankruptcy order ought not to have been made, there must usually be something of some weight to put in the scales on the other side before that fact is outweighed and an annulment refused. I do not think it is right to say that that has to be exceptional; but it does have to be something sufficient to lead to the conclusion that annulment should be refused. This was effectively the view taken by Mr Mohyuddin: see HC Judgment at [104].
>
> 67. In practice the most significant consideration is likely to be the question of the applicant's solvency. If there are debts which can be pursued against the debtor and which he cannot meet, then there is usually little benefit to anyone in granting an annulment. This is, as Mr Brown said, a consistent theme which runs through the cases."

As to cooperation on the part of the bankrupt he considered the case of *Artman v Artman* [1996] BPIR 511:

> "71. That does not seem to me to justify the conclusion that the question of the bankrupt's conduct is important in every case. In the present case Mr Ian Tucker, who appeared for the Trustee, confirmed that the case before DJ Hart had not been advanced on the basis that Mr Khan had committed offences, the high point of the submissions having been that his alleged misconduct was towards the more serious end of the scale. I think a note of caution is in order: the question whether a

> bankrupt has co-operated with a trustee, or has been obstructive or worse, is often a highly contentious one involving a protracted factual inquiry. It seems to me that the Court should be careful not to allow annulment applications to be unduly taken up with or diverted by issues of conduct that may involve extensive oral evidence, especially where such allegations are really being ventilated as a prelude to arguing over who should pay for the trustee's costs and expenses."

145. Mr Arumugam says there are a number of factors that in any event militate against the granting of an annulment –

i) the significant delay in bringing this application, being over three years after the bankruptcy order was made and about 18 months after Ms Sriram became aware of the bankruptcy order;

ii) evidence of a lack of co-operation from Ms Sriram with the trustee;

iii) evidence that Ms Sriram conducted her affairs at all times in an opaque way, adopting the name "Mukti Roy" and taking the transfer of property in that name, but continuing to use her old name interchangeably with her new name.

iv) if the bankruptcy order is annulled, the inevitable consequence is that HMRC can and will present a further petition against Ms Sriram.

146. Much emphasis was placed by Ms Sleeman for Ms Sriram on HMRC's willingness to accept an appeal in relation to the assessments and the trustee's failure to prosecute that appeal so as to reduce the tax payable to a negligible amount. In this regard, Mr Moore corresponded with Ms Sriram, her tax consultant, Mr Phil Manly, and an organisation called TaxAid, in 2020. On 12th October 2020 Mr Moore invited Ms Sriram to provide details of loans received from her employer in the years 2008/2009 and 2010/2011 as follows –

> "However, in the interests of fairness and certainty, HMRC would like to invite you to supply any evidence of figures you have from this period if you think the amounts are incorrect. We consider that bank statements would be the most suitable evidence."

He accepted in his evidence that, at this stage, HMRC was prepared to consider evidence in connection with her appeal.

147. Following receipt of those statements in November 2020 he confirmed that HMRC was prepared to amend the 2010/2011 assessment, though he made clear that the 2008/2009 year was unaffected.

148. Whilst Mr Reynard was dealing with the matter, HMRC were willing to stand over the 2008/09 and 2010/11 assessments pending the outcome of the lead appeal in *Hoey v Commissioners for Her Majesty's Revenue & Customs* (subsequently decided in HMRC's favour on 13th May 2022 and reported at [2022] EWCA Civ 656). Returns were lodged for the tax years 2011/12, 2012/13 and 2013/14. Mr Reynard therefore

wrote to Ms Sriram on 28th October 2021 to confirm HMRC's stance on Ms Sriram's own appeal. As a result the position was:

i) in relation to 2008/09, £10,741.15 was due pursuant to an assessment, but had been stood over pending the *Hoey* appeal (this includes late payment penalties of £896.26, which were later waived);

ii) in relation to 2010/11, £2,507.18 was due pursuant to an assessment but had been stood over pending the *Hoey* appeal (this includes late payment penalties in the sum of £307.38, which were later waived);

iii) in relation to 2011/12 the submitted return showed that Ms Sriram did not meet the self-assessment criteria, so late filing penalties were cancelled;

iv) for 2012/13 and 2013/14 Ms Sriram did meet the self-assessment criteria but no tax was due. As a result of her explanations late filing penalties plus interest of £1,690.52 and £1,638.60 were waived.

The effect of this was that the amount said by HMRC to be due under the returns was £12,044.69 and this was postponed pending Ms Sriram's appeal.

149. On 5th January 2022, however, Mr Reynard wrote to withdraw the acceptance of Ms Sriram's appeal. This was simply because he recognised that, following Ms Sriram's bankruptcy, the right to challenge the assessments vested in the trustee. In evidence he said that he had not seen any reasons for Ms Brittain's decision not to pursue Ms Sriram's appeal, even though HMRC had expressed a willingness to consider the appeal in January 2022. Mr Reynard fairly accepted that he imagined that HMRC would be willing to consider such an appeal now, although not on the basis of the points advanced in *Hoey*.

150. On 12th January 2022 Keidan Harrison LLP asked Ms Brittain to request that HMRC consider the appeal on the same basis as had been presented to it by Ms Sriram. They considered that the difficultly was no more than a "locus point" and that, as the appeal had already been accepted, there would be no difficulty in progressing the appeal. Edwin Coe replied substantively on behalf of Ms Brittain on 18th February 2022. They said:

> "You will also understand that, save in relation to a prior event requiring adjudication, the expense to the estate of an adjudication is delayed in the Insolvency (England and Wales) Rules 2016 until such time as the estate is in a position to declare a dividend. You will further recall from our letter of 10 December 2021 that we provided you with a proof of debt dated 1 December 2021 received from HMRC. We invited your comment but, to date, you would appear not even to have acknowledged receipt of our letter.
>
> In these circumstances, our clients must receive all information and documentation on which your client based and advanced her appeal before any decision can be taken by our clients with

> respect to either or both of a) an appeal; or b) an adjudication of that part of HMRC's claim."

151. When sent Ms Sriram's tax returns for the years 6 April 2011 to 5 April 2012, 6 April 2012 to 5 April 2013, 6 April 2013 to 5 April 2014 and her medical records on 20th April 2022, Edwin Coe's response on 10th May 2022 was to ask for further information. They said:

> "In previous correspondence exchanged by the parties in respect of your client's appeal to HMRC we explained that our client would require full financial disclosure from your client. Your client has now provided her tax returns for 2011/2012, 2012/2013 and 2013/2014 and her medical records. However, this disclosure is not sufficient for our client to make an appeal on her behalf. In addition to the documents already provided our client will require information which supports the figures in the tax returns such as:
>
> a) Employment details to include employment contracts, payslips, P60; and
>
> b) Details of any benefits claims during the period;
>
> c) Income received from rental properties; and
>
> d) Bank Statements for all bank accounts from 2011 – 2014, with specific reference to transactions which correlate with information shown in her tax returns.
>
> This list is not intended to be exhaustive and upon receipt of the above documentation, our client may require further information from your client.
>
> Our client will also require an updated PIQB from your client. We note that even though this was requested in our letter of 6 October 2021, we are yet to receive one."

152. Ms Brittain's evidence when challenged on this was quite clear. She was not satisfied that the information supplied to HMRC was true and complete. She had identified other sources of income and, as an officer of the court and insolvency practitioner, she did not feel able to submit an appeal unless she understood the basis of it and was satisfied that it was correct. She had not received the bank account statements provided to Mr Moore, either from HMRC or from Ms Sriram. She had had sight of a mortgage application from 2016 in which Ms Sriram had declared an income in excess of £200,000 per annum. She had identified other bank accounts and could see rental income being received by Ms Sriram.

153. As a result, the reductions accepted on appeal and the sums the collection of which was stood over pending the appeal in *Hoey* were reinstated and HMRC's final proof of debt was submitted in the total sum of £151,461.88. While Mr Reynard very fairly said in his evidence that he imagined that HMRC would be willing to consider an

appeal if lodged now, it is impossible to accept that such an appeal would be allowed without investigation of the matters of concern to Ms Brittain. I am not at all satisfied that such an appeal, if properly presented, has a real prospect of success. The lack of cooperation and marked reluctance on the part of Ms Sriram to provide information to the trustee, to which I shall refer below, together with the trustee's evidence as to her identification of rental income, satisfy me that it is likely that it would not succeed. Nor am I satisfied that the debt would be paid, although Mr Sriram senior expressed his willingness to pay it and exhibited what he said was proof of funds, though it is a tabulation of monies he says he holds in India, rather than bank statements, so I can have no confidence at all that any sums are available. Nor can I accept that the petition debt would have been paid, even at the reduced level of £12,004.69, had Ms Sriram been able to represent herself, or been represented by a litigation friend, during the currency of the proceedings.

154. That leads to the question of cooperation. I bear in mind Nugee LJ's words of caution in relation to this contested area, but it appears to me that in this case Ms Sriram plainly has not co-operated with the trustee. This is clear from the PIQB completed by her in March 2019. As pointed out by Mr Comiskey on behalf of the trustee –

i) She did not mention her alias, Mukti Roy, despite there being a specific question about other names, including nicknames and aliases, on the form;

ii) She ticked the box marked "single" to describe her marital status, rather than "married" or "separated", which are also given as options on the form;

iii) She mentions only her Barclays account, with a nil balance, although the trustee's enquiries have since revealed:

a) a TSB account;

b) a Metro Bank Account in the name of Mukti Roy and giving an address at 480 Upper Richmond Road; and

c) a Nationwide account in the name M L Sriram, giving 2 Nicholson Street as the address.

Ms Brittain's position is that other accounts also exist.

iv) She does not list any properties in answer to the question:

> "List all properties that you currently own, rent, lease or otherwise have an interest in **and also** any properties that you have owned, rented, leased or otherwise had an interest in during the past 5 years. Include everywhere that you have lived in the last 5 years and any premises you are currently using, or have previously used, for business purposes."

The fact that other properties were registered in her name arose only as a result of a letter written by her direct access barrister in August 2020 in an attempt to avoid the sale of 11 Westfields Avenue.

v) She does not list any creditors at all, although she now accepts that she had a credit card debt owed to Santander in the sum of £8,736.77.

Ms Sriram was invited to attend an interview with the trustee at a time when she had capacity in January 2020 but did not do so. Correspondence between Gordons Partnership and Ms Sriram in June 2020, again when she had capacity, shows that she sought to persuade Gordons not to disclose their conveyancing files to the trustee and queried "how she got to know about this". While Mr Akin's statement puts forward some context for these emails, it is quite clear that Ms Sriram was concerned that the trustee had identified this conveyancing transaction and did not want to volunteer information in relation to it.

155. Ms Sriram's affairs are very opaque, even with regard to where she has been living from time to time, and she has done little to shed light on them. On the contrary, she has obfuscated and sought to conceal, with the result that one cannot with any confidence say what the full extent of her assets and liabilities is. She has given self-evidently conflicting accounts of the ownership of 11 Westfields Avenue, for example. Moreover, the absence of reference to her alias, Mukti Roy, in the March 2019 PIQB may suggest that she was aware of an intention to transfer properties into her name using that alias in the event that her husband was made bankrupt. The petition in Mr Gupta's case was presented only a few months later in June 2019. It is simply impossible to accept that the transfer of Dickinson Court, or any of the other properties, into the name Mukti Roy was attributable to convenience of management. Taken with her failure to mention her marriage to Mr Gupta or her connection with any of the properties in which they had lived or been registered as proprietor it is difficult to avoid the conclusion that the intention was to throw the trustee off the scent. In any event, it is certainly impossible to accept that Ms Sriram, at a time when there is no suggestion that she lacked capacity, would have forgotten that she had changed her name, and indeed had a passport issued in her new name. It can only have been a deliberate omission.

156. While I start from the proposition that a bankruptcy that proceeded during a debtor's incapacity ought to be annulled, it seems to me that the above factors require me to exercise my discretion against annulment. It is also of significance that the application was not made for some 18 months after the point at which Ms Sriram says that she became aware of it. Given that Ms Sriram had returned to the UK and had recovered capacity in 2018, it is hard to believe that she would not have been aware of her bankruptcy as a result of the freezing of her accounts or as a result of having been told about the petition by Ms Gowda. However that may be, it is difficult to avoid the conclusion that it was launched belatedly in order to attempt to defeat the trustee's realisation of property that she had discovered to be registered under Ms Sriram's alias. Given that the extent of Ms Sriram's liabilities is not known, not least because she has not cooperated with the trustee, it is possible that an annulment would mean that certain creditors find themselves with debts that have become statute-barred and lose their claim upon her estate, though the effect of an annulment on the running of time for the purposes of limitation is open to question given the observations of the Court of Appeal in *Khan v Singh-Sall*. However that may be, an annulment so long after the event may prejudice any creditors who might have given up any pursuit of Ms Sriram on the understanding that she was bankrupt and may not have notice of an annulment in sufficient time to bring their claims. Given Ms Sriram's lack of candour

with the trustee I have to be cautious about prejudicing any creditors who are not yet known. Not all of the delay in these proceedings is attributable to Ms Sriram of course, but the length of time between discovery of the bankruptcy, on Ms Sriram's case, and the making of the annulment application is significant and may very well lead to prejudice to creditors were I to annul the bankruptcy. There must, as observed in *Masterman-Lister*, be finality in litigation. An applicant for an annulment should act as promptly as circumstances allow. While inevitably there will be a period in which a bankrupt who has previously been unaware of the fact of his bankruptcy will have to establish just what has happened, this is a case where there was a tax debt and bankruptcy proceedings of which Ms Sriram says she was unaware. There is no proper reason for the delay in making the application. In the circumstances, I decline to annul the bankruptcy.

Conclusion

157. I am satisfied that HMRC took all reasonable steps to serve Ms Sriram with both the statutory demand and the petition. It has acted in good faith throughout, in ignorance of Ms Sriram's capacity issues, which were concealed from it by the actions of Ms Gowda and possibly others. It would have been perfectly possible for Ms Gowda or others concerned in Ms Sriram's care to have disclosed to HMRC her mental health condition. They however misled HMRC.

158. While I am satisfied that at the point of service of the statutory demand and petition, and during the currency of the proceedings up until the making of the order, Ms Sriram lacked capacity to understand or conduct the litigation herself, the factors that weigh against annulment are of such significance that there is a real risk of detriment to creditors were I to do so. Ms Sriram's assets and liabilities remain opaque as a result of her own lack of cooperation. I am persuaded that in the exercise of my discretion I should not direct that the bankruptcy be annulled.

159. The application is therefore dismissed.