Neutral Citation Number: [2025] EWHC 198 (Ch)

Case No: CR-2023-002346

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

IN THE MATTER OF MPB DEVELOPMENTS LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986
AND IN THE MATTER OF THE COMPANIES ACT 2006

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Tuesday, 28th January 2025

Before:

MRS. JUSTICE JOANNA SMITH

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Between:

(1) CRESTA ESTATES LIMITED **(2) LUXOR PROPERTIES LIMITED** **(3) STANBRECK PROPERTIES LTD**	**Petitioners**
- and -	
(1) MPB DEVELOPMENTS LIMITED **(2) PAUL HILTON** **(3) MATTHEW WELSH**	**Respondents**

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MR. TIM MATTHEWSON (instructed by **Kingsley Napley LLP**) for the **Petitioners**

THE RESPONDENTS appeared **In Person**

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Approved Judgment
(On Petition)

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MRS. JUSTICE JOANNA SMITH:

1. These proceedings, commenced by way of a petition presented on 5 May 2023, involve a winding-up petition by Cresta Estates Limited, ("**Cresta**") and Luxor Properties Limited ("**Luxor**") (together "**the Creditors**"), to wind-up MPB Developments Limited, ("**the Company**"), on the basis it is unable to pay its debts under section 122(1)(f) of the Insolvency Act 1986 ("**IA 1986**").

2. By an order dated 16 February 2023, ICC Judge Mullen ordered that the Creditors' winding-up petition ("**the Petition**") be determined as a preliminary issue and gave directions to achieve that end. A further winding-up petition brought by Stanbreck Properties Limited ("**Stanbreck**") as contributory and an unfair prejudice petition, also pursued by Stanbreck, were adjourned until the determination of the Creditors' winding-up Petition. In the event that the Creditors are successful in obtaining an order that the Company be wound up by the court under the provisions of IA 1986, the adjourned petitions will not need to be determined by the court.

Background to the petition

3. The Company was incorporated on 6 February 2018 as a private company limited by shares under the Companies Act 2006 with a view to investment. The Company was incorporated with the name London and South East Property Development Limited, but changed its name to MPB Developments Limited on 15 October 2019. The total number of issued shares in the Company is 100, divided into 100 shares of £1 each.

4. The shareholders of the Company are Stanbreck (50 shares, registered since 4 July 2019), the Second Respondent ("**Mr. Hilton**") (25 shares, held since the date of incorporation) and the Third Respondent ("**Mr. Welsh**") (25 shares held since the date of incorporation). Stanbreck, Mr. Hilton and Mr. Welsh are also the Company's directors. Stanbreck is a company that is owned by Mr. Baruch Erlich ("**Mr. Erlich**") and his sister, Ms. Judith Erlich (together "**the Erlichs**"). Cresta and Luxor are also owned by the Erlichs.

5. Mr. Erlich met Mr. Hilton, a chartered financial planner, in around 2009 or 2010 when he was working for Union Bank of Switzerland and Mr. Hilton subsequently introduced him to Mr. Welsh. Mr. Hilton had for some time been handling the affairs of the Erlichs' mother and uncle from whom the Erlichs inherited their various property interests and shareholdings. From around 2014, Mr. Hilton and Mr. Welsh became involved in advising on the investment of the Erlichs' funds, initially proposing an investment from Cresta into the Orthios Group and later advising on the incorporation of the Company. Mr. Erlich agreed with Messrs. Welsh and Hilton that the Company would operate as a vehicle for development projects, carried out through subsidiary companies. Messrs. Hilton and Welsh managed the day-to-day administration of the Company.

6. As a non-trading holding company, the Company has invested in four subsidiary companies that are principally in the business of property holding and property development. The Company has the following interests in its four subsidiary companies, (together "**the Subsidiary Companies**").

i) First a 100% shareholding in Whitehall Farm Business Park Limited, a property holding company which does not have any subsidiary undertakings.

ii) Second, a 50% shareholding in Impact Developments Romford Limited (“**IDR**”), a property holding company whose assets comprise its sole ownership in (1) Impact Developments Romford 1 Limited and (2) Impact Developments Romford 2 Limited, IDR2.

iii) Third, a 50% shareholding in Impact Capital Group Limited (“**ICG**”), a holding company for various property development companies, namely (1) Impact Smart Homes Limited, which in turn owns nine subsidiary companies, two of which were dissolved in July 2024; (2) Impact Development Group Limited, a dormant company; (3) Impact Development Management Limited; and (4) Impact Modular Group Limited whose two subsidiary companies, Impact Modular Limited and Impact Modular Construction Limited are respectively in administration and dissolved.

iv) Fourth, a 50% shareholding in Impact Offices Limited (“**IOL**”), a holding company for companies that provide serviced offices and the sole owner of (1) Impact Spectrum Limited and (2) Impact Working Limited, a trading company which operates as a development manager for IDR, ICG and IOL.

7. The Subsidiary Companies are managed on a day-to-day basis by Mr. Robert Whitton and his team, described by Mr. Welsh in his evidence as a joint venture partner. Mr. Whitton owns the remaining 50% shareholding in ICG and IOL. Mr. Hilton and Mr. Welsh are the representatives of the Company on the various boards of the Subsidiary Companies but they are only two of a number of directors and Mr. Welsh describes their role as being that of non-executive directors.

8. The Company’s investments in its subsidiaries have been financed by unsecured interest-bearing loans provided by Cresta and Luxor between April 2018 and June 2021. It is common ground that Cresta has loaned a total of £54,810,000 to the Company, (“**the Cresta Loan**”) and that Luxor has loaned a total of £2,400,100 to the Company, (“**the Luxor Loan**”), pursuant to written loan agreements both dated 7 November 2019 in materially identical terms. Under clause 5 of each of the loan agreements the interest rate on the loan is LIBOR plus 1% per annum. Under clause 6 of each of the loan agreements the Company is required to repay the loan, together with interest, on 31 December 2029.

9. Upon the failure of the Orthios Group in early 2022 and in the face of requests for Cresta to lend yet more money to the Company and its subsidiaries, Mr. Erlich decided he was no longer prepared to lend or invest any more money into the Company or any company associated with it.

10. The primary allegation in the Re-Re-Amended Petition is that the Company is deemed unable to pay its debts because it is balance sheet insolvent under section 123(2) IA 1986 as the value of its assets is less than the amount of its liabilities, taking into account contingent and prospective liabilities. An alternative case of cash flow insolvency was also advanced by the Petitioners in the Petition, but as will become clear, it is unnecessary for me to address that alternative case.

11. The unsecured Cresta and Luxor Loans lie at the heart of this case, the issue for the court being whether the Company can reasonably be expected to meet these liabilities when they fall due for repayment on 31 December 2029.

Relevant procedural background

12. The Petition was served on the Company in accordance with rule 7.9 of the Insolvency (England and Wales) Rules 2016, ("**IR 2016**"), on 22 May 2023, as set out in the certificate of compliance dated 3 July 2023. By order of ICC Judge Greenwood dated 12 July 2023, the Petitioners were permitted to serve an Amended Petition on 14 July 2023 and the requirement to give notice of the Petition under rules 7.10(1) and 7.31(2)(c) IR 2016 was dispensed with. The Amended Petition was to stand as Points of Claim in the proceedings. Upon service by the Petitioners of a Re-Amended Petition on 7 September 2023, Deputy ICC Judge Schaffer ordered on 18 September 2023 that the requirement to give notice of the Re-Amended Petition would again be dispensed with.

13. The Respondents served Points of Defence on 18 October 2023 and the Petitioners served Points of Reply, subsequently amended by consent on 11 November 2024.

14. By his order of 16th February 2024, ICC Judge Mullen gave detailed directions for the conduct of the preliminary issue, which included disclosure as to the value of the Company's assets and liabilities, together with any business plans, projections and forecasts created since January 2022 for the Company and each of the Subsidiary Companies, exchange of factual evidence and permission to both the Petitioners and the Respondents to adduce written and oral evidence in the fields of accountancy/valuation and property valuation.

15. Witness statements were duly exchanged on 12 July 2024. The Petitioners served one witness statement from Mr. Erlich. Two witness statements from Messrs. Hilton and Welsh were served on behalf of the Respondents. Each of these statements made clear that the Respondents anticipated that the outcome of the preliminary issue would turn on the "robustness and viability" of business plans provided under cover of an email dated 31 May 2023 on which they relied ("**the Business Plans**"). Each statement also specifically observed that provision had been made "for expert evidence on these issues".

16. However, on 7 August 2024, the Respondents' then solicitors, Hill Dickinson LLP ("**Hill Dickinson**") informed the Petitioners' solicitors, Kingsley Napley LLP ("**Kingsley Napley**") by e-mail, that the Respondents had advised that "they will not be instructing property experts" to value the properties held by the Subsidiary Companies. This decision was explained on the basis that: "... any current valuations are not material given that the scheme of the business plan is to sell the properties as and when appropriate to reinvest the proceeds." This was said to be consistent with the Respondents' defence to the effect that the true test of the assumptions in the Business Plans on which they relied and the ability to repay any moneys due to be repaid under the Cresta and Luxor Loans: "... will not materialise until 31 December 2029."

17. The Petitioners served reports from two property valuation experts, Mr. Andrew Pilbrow and Mr. Peter Roberts, on 29 August 2024.

18. On 28 October 2024, the date for exchange of the expert accounting evidence, Hill Dickinson informed Kingsley Napley, again by e-mail, that the Respondents had "elected not to rely on any further accountancy evidence at this time". The reference to "any further" accountancy evidence appears to be a reference to the fact that, in their initial disclosure, the Respondents disclosed a three-page letter to Hill Dickinson from Mr. Benjamin Grunberg of Sopher & Co, dated 10 July 2023, (the "**Grunberg Letter**") which recorded his opinion as a chartered accountant that, in light of the content of the Business Plans, "it is incorrect to suggest that MPB is insolvent and would not be in a position to repay its debts as and when they fall due."

19. The Grunberg Letter was expressly not a CPR Part 35 compliant report and it was not served by the Respondents as expert evidence in the proceedings. The Respondents are not seeking to call Mr. Grunberg to give evidence and I am unable to attach any weight to this letter.

20. On 28 October 2024, the Petitioners served their expert accounting evidence in the form of a report from Mr. Viral Desai.

21. On 4 November 2024, in a letter to Hill Dickinson, Kingsley Napley queried how the Company could continue with its defence to the Petition in the absence of expert accountancy evidence. They reminded the Respondents that the Petitioners seek an order for the costs of the Petition personally against Mr. Hilton and Mr. Welsh, as is clear from the prayer for relief in the Petition. It is accepted by the Petitioners that such an order would be analogous to a non-party costs order and that it would require a further hearing in the event that the Petitioners are successful in the winding-up Petition.

22. On 20 November 2024, Hill Dickinson filed notices of change of legal representative for each of the three Respondents. The notices all indicated that the Respondents would now be acting in person.

23. Under cover of a letter dated 14 January 2025, Kingsley Napley served on the Respondents the Petitioners' Re-Re-Amended Petition, dated 11 November 2024, in accordance with rule 7.9 IR 2016. Permission for the service of the Re-Re-Amended Petition had been granted by a consent order dated 19 November 2024, although no order had been made dispensing with the need to give notice of the Re-Re-Amended Petition. For the sake of good order, the Petitioners invited me, in their skeleton argument for this trial, formally to dispense with the requirement for notice in respect of the Re-Re-Amended petition, which I did. In circumstances where the parties to the Re-Re-Amended Petition were already aware of it, and included the Company, its shareholders, directors and only material creditors, this was quite obviously an appropriate course to adopt. It is the course that was previously adopted in respect of earlier iterations of the Petition and it was not resisted by the Respondents today.

24. At the outset of the trial, I drew Mr. Hilton and Mr. Welsh's attention to the provisions of CPR 39.6 and asked whether either or both of them wished to seek the court's permission to represent the Company at the hearing. Mr. Welsh indicated that the Company no longer wished to defend the Petition, but in light of the need for me to deal with two evidential issues at the outset of the hearing and thus for submissions to be made on behalf of the Company, I granted Mr. Welsh permission to represent the Company on the basis that he had its authority to do so. This was not objected to by

the Petitioners. I have addressed those evidential issues in an *ex tempore* judgment given this morning and need not address them further now, save to say that I have determined that the entirety of Mr. Erlich's witness statement is admissible, together with a transcript of discussions which took place between Mr. Erlich and Mr. Welsh in November 2022.

25. In light of the Respondents' indication that they no longer wished to defend the Petition, I invited Mr. Matthewson, on behalf of the Petitioners, to take me through the relevant law and the evidence at a high level, which he did. I have already read the witness statements and expert reports, together with key underlying documents, including various documents to which my attention has been drawn during the hearing.

26. In taking me to the expert evidence, and in particular the report of Mr Desai, Mr. Matthewson reminded me of the principle in *Griffiths v TUI* (*UK) Ltd* [2023] UKSC 48 (per Lord Hodge DPSC at [42]-[43]) to the effect that it is a long-standing rule of general application in civil cases that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point if he or she wishes to submit to the court that the evidence should not be accepted on that point, a rule that applies to both witnesses as to fact and expert witnesses. Lord Hodge described the rule as "a matter of the fairness of the legal proceedings as a whole".

The Law

27. Under section 124(1) of the IA 1986 an application to the court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories. Cresta and Luxor are owed debts that will become due on 31 December 2029 and they are therefore prospective creditors and have standing to seek the winding-up of the Company.

28. Under section 122(1)(f) of the IA 1986, a company may be wound up by the court if "the company is unable to pay its debts".

29. Inability to pay debts is defined in section 123 of the IA 1986:

    i) under section 123(1)(e) a company is deemed unable to pay its debts if "it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due". This is often referred to as "cash flow" insolvency.

    ii) under section 123(2) of the IA 1986, "[a] company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities". This is often referred to as "balance-sheet" insolvency.

30. The Respondents make submissions in their skeleton argument for the hearing about the applicable legal test and, in deference to those submissions which I consider to misunderstand that test, it is only right and proper that I should address the test in a little detail in my judgment.

31. As the Respondents correctly identified, the leading case on the test of insolvency under sections 123(1)(e) and 123(2) IA 1986 is the decision of the Supreme Court in *BNY Corporate Trustee Services Limited v Eurosail-UK 2007-3BL plc* [2013] 1 WLR 1408, ("*Eurosail*"). The key points emerging from the decision in *Eurosail* were summarised by Lewison LJ in *Bucci v Carmen (Liquidator of Casa Estates (UK) Ltd)* [2014] BCC 269 ("*Casa*") at [27]-[28] as follows:

> "27. In my judgment the following points emerge from the decision of the Supreme Court in *Eurosail* (and in particular the judgment of Lord Walker):
>
> (i) The tests of insolvency in s.123(1)(e) and 123(2) were not intended to make a significant change in the law as it existed before the Insolvency Act 1986: [37].
>
> (ii) The cash-flow test looks to the future as well as to the present: [25]. The future in question is the reasonably near future; and what is the reasonably near future will depend on all the circumstances, especially the nature of the company's business: [37]. The test is flexible and fact-sensitive: [34].
>
> (iii) The cash-flow test and the balance-sheet test stand side by side: [35]. The balance sheet test, especially when applied to contingent and prospective liabilities is not a mechanical test: [30]. The express reference to assets and liabilities is a practical recognition that once the court has to move beyond the reasonably near future any attempt to apply a cash-flow test will become completely speculative and a comparison of present assets with present and future liabilities (discounted for contingencies and deferment) becomes the only sensible test: [37].
>
> (iv) But it is very far from an exact test: [37]. Whether the balance sheet test is satisfied depends on the available evidence as to the circumstances of the particular case: [38]. It requires the court to make a judgment whether it has been established that, looking at the company's assets and making proper allowance for its prospective and contingent liabilities, it cannot reasonably be expected to meet those liabilities. If so, it will be deemed insolvent even though it is currently able to pay its debts as they fall due: [42].
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> 28. In the course of his judgment in *Eurosail* Lord Walker approved what he described as the "perceptive judgment" of Briggs J. in *Re Cheyne Finance Plc* [2007] EWHC 2402 (Ch); [2008] B.C.C. 182. Two of the points that Briggs J. made bear on our case:
>
> (i) Cash-flow solvency or insolvency is not to be ascertained by a blinkered focus on debts due at the relevant date. Such an approach will in some cases fail to see that a momentary

> inability to pay is only the result of temporary illiquidity. In other cases it will fail to see that an endemic shortage of working capital means that a company is on any commercial view insolvent, even though it may continue to pay its debts for the next few days, weeks, or even months: [51].
>
> (ii) Even if a company is not cash-flow insolvent, the alternative balance-sheet test will afford a petitioner for winding up a convenient alternative means of proof of a deemed insolvency: [57]".

32. As Lewison LJ went on to say in *Casa*, at [29], the cash flow and balance sheet insolvency tests are alternatives, although the two tests, "... feature as part of a single exercise, namely, to determine whether a company is unable to pay its debts". He added, at [31], that it seemed "… counterintuitive…that a company that manages to stave off cash-flow insolvency by going deeper and deeper into long-term debt is not insolvent. It may be able to trade its way out of insolvency and thus avoid going into insolvent liquidation, but that is a different matter".

33. In addition, I add the following from my review of the authorities to which I was referred:

    i) The burden lies on the party asserting that the company is balance-sheet insolvent (*Eurosail* at [37], per Lord Walker JSC);

    ii) The more distant the liabilities, the harder it will be to establish that the company cannot reasonably be expected to meet those liabilities (*Eurosail* at [42], again per Lord Walker JSC);

    iii) Only the present assets of the company are to be taken into account (*Eurosail* at [37] and *Burnden Holdings UK Limited (In Liquidation) v Fielding* [2019] Bus LR 2878 [2019] EWHC 1566 (Ch) ("*Burnden*"), per Zacaroli J (as he then was), at [348]). It is not correct to take into account, in addition to assets presently owned by the company, any hope or expectation the company has that it would acquire further assets in the future without any accompanying right to such further assets (*Byblos Bank SAL v Al-Khudhairy* [1986] 2 BCC 99549 per Nicholls LJ at 99562). However, an inquiry into the nature of the present assets will also include their future profit or loss generating potential (*Carton-Kelly v Darty Holdings SAS* [2023] BPIR 305, [2022] EWHC 2873 (Ch) per Falk J (as she then was) at [126]);

    iv) Although the amounts recorded in the financial statements of a company for its assets and liabilities constitute evidence of, and may even be a starting point for, considering their value, the focus must be on their commercial value (*Burnden* at [349]). Similarly, a commercial view must be taken of the company's prospective and contingent liabilities. Proper allowance must be made for future and contingent liabilities, discounted for contingencies and deferment. In the case of contingent liabilities, this requires a series of commercial judgments to be taken as to the likelihood of the contingency falling in, the date it might do so, the amount of that liability and the appropriate

discounts to apply in relation to each aspect (*Eurosail* at [37] and [42] and *Burnden* at [352]);

v) The statutory test in section 123 IA 1986 "must not be mechanistically applied but must be applied in a way that has regard to commercial reality" (*Re Rococo Developments Limited* [2017] Ch 1, [2016] EWCA (Civ) 660 per Lewison LJ at [24]).

Decision

34. Having regard to those principles, I am satisfied on the unchallenged evidence produced by the Petitioners that the balance-sheet insolvency test in section 123(2) of the IA 1986 is met in this case. I say that for the following main reasons.

35. It is common ground that Cresta and Luxor have loaned a total of £57,210,100 to the Company and that those loans are repayable with interest at LIBOR plus 1% on 31 December 2029.

36. It is Mr. Desai's evidence, which is unchallenged and which I accept, that the total amount of the Company's liabilities (including interest) owed to Cresta and Luxor on 31 December 2029 will be £78,458,760 (assuming that the principal amount outstanding on both loans remains unchanged). I also accept his evidence that the present date value of those liabilities (i.e. applying a discount for deferment) is £64,101,287. The Respondents have not adduced any evidence on the amount of the Company's liabilities.

37. It is Mr. Desai's evidence, based on a detailed analysis of the asset position (including inter-company loans) of the Subsidiary Companies, which includes his adoption of the evidence of the expert valuers (which is unchallenged and which I accept), that the present date value of the Company's assets is £5.5 million. I accept this evidence. In the Points of Defence, the Respondents contend that the present value of the Company's assets is £30.8 million, but they have served no expert evidence to support that assertion and I reject it as being inconsistent with the unchallenged evidence of Mr Desai. Even if it were right, that would not affect my ultimate conclusion. Mr. Welsh accepts in his witness statement that there has, in any event, been (what he refers to as) "a slight deterioration" of the Company's assets since then, although he does not say what that deterioration amounts to.

38. Pausing there, it is, in my judgment, very clear that the value of the Company's assets is very significantly less than the amount of its liabilities, taking into account its contingent and prospective liabilities. I accept the Petitioners' submission that taking a commercially realistic approach and having regard to the principles identified in the case-law, to which I have referred, the test of balance-sheet insolvency appears to be satisfied on this evidence alone.

39. However, bearing in mind that an enquiry into the nature of the assets and their future profit generating potential may be relevant to the assessment of how prospective or contingent liabilities should be taken into account and given that the court must ultimately be satisfied that the company cannot reasonably be expected to meet those liabilities, it is necessary also to have regard to the Business Plans. Specifically, the Business Plans suggest that the Company intends to restructure its assets by exiting its

investments and instead implementing a new business model which will move from an "asset heavy" to an "asset light" business, thereby generating some £88.5 million in the Subsidiary Companies by December 2029 such that the Company will be able to meet its liabilities.

40. However, I have seen nothing in the Business Plans which enables me to conclude that there is any real prospect that the Company will be able to meet its liabilities in 2029. Given the Respondents' reliance upon the Business Plans, I should say a little more about them. I was taken through them at the hearing in detail by Mr Matthewson.

41. I accept Mr. Desai's evidence that the Business Plans do not provide a realistic or viable basis on which to draw any conclusions as to the likely value of the Company's assets in 2029. There is nothing to contradict that evidence, notwithstanding that the Respondents' defence relied almost entirely on their accuracy.

42. I also accept that the Business Plans (described as "illustrative" when they were provided after the Respondents became aware of the Petition), are out-of-date; that most, if not all, of the assumptions on which they were based have not come to fruition; that there has been no attempt to update them in the 20 months since they were created (and certainly no attempt to produce the 5-year plan in Q4 2023, or any time thereafter, which they refer to as being a necessary "stress test"). They are therefore both highly speculative and wildly optimistic. There is no evidence that the restructuring that was envisaged in the Business Plans has been carried out or that it is realistic to suppose that it will be carried out in the future.

43. A comparison of other business plans for the Subsidiary Companies prepared <u>prior</u> to the Respondents becoming aware of the Petitioners' intention to present the Petition on 3 May 2023, clearly illustrates that, at that earlier time, much more subdued forecasts were being made. I draw the inference, as I was invited to do, that the Business Plans sent at the end of May 2023 were prepared with the specific intention in mind of seeking to advance the defence of the Petition and thus to stave off the winding-up of the Company. They appear to bear little resemblance to reality and they certainly do not provide a reasonable basis upon which to assess the likely value of the Company's assets in December 2029.

44. Very far from the suggestion in the ICG & Affiliates value creation recap document (one of the key Business Plans on which the Respondents sought to rely), that the Company's assets (in the shape of the Subsidiary Companies) would be worth £88.5 million in December 2029, I accept Mr. Desai's evidence that it is far more likely that, if it is not wound up, the Company's assets will be worth only £4.3 million in December 2029 (or, alternatively, in the assumed event of further funding, £6.9 million). Comparing either of these figures with the liabilities of the Company as at December 2029 amply justifies Mr. Desai's conclusion that the value of the Company's assets as at that date will still be far less than the value of its liabilities.

45. Finally, although not in any way determinative, I accept Mr. Erlich's evidence in his witness statement of the discussion he had with Mr. Welsh in November 2022 and the proposal he received from Mr. Whitton in February 2024. On balance, this evidence tends to support, in my judgment, Mr. Matthewson's submission that Mr. Welsh and Mr. Whitton were both of the view that the Company would not be able to repay the Cresta and Luxor Loans when they fell due.

46. In all the circumstances, I need not deal with the Petitioners' fallback alternative case. I am prepared to exercise my discretion, as I am invited to do, in favour of granting the Petition.

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