

Neutral Citation Number: [2018] EWHC 763 (Ch)

Case No: 8193 of 2016

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
Insolvency and Companies List (ChD)

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 13/04/2018

Before :

HHJ DAVID COOKE

Between :

Jatinder Singh Sandhu (1)

JRG (Leicester) Ltd (2)

- and -

Rostum Nagra (1)

Rocco Fashion Ltd (2)

Fashionup Ltd (3)

Poppy Red (Leicester) Ltd (4)

Petitioners

Respondents

Hugh Jory QC (instructed by **CLP Solicitors**) for the **Petitioners**
Olivier Kalfon (instructed by **Geldards LLP**) for the **Respondents**

Hearing dates: 30,31 January, 1-2, 5-9, 12-16 February 2018

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ DAVID COOKE

HHJ David Cooke:

Introduction

1. This is a petition under s 994 Companies Act 2006 in which the petitioners allege that the affairs of the third respondent Fashionup Ltd ("the Company" or "Fashionup") have been conducted in a manner unfairly prejudicial to their interests as members. They seek an order that their shares be bought out by the first respondent Mr Rostum Nagra and/ or the second respondent, Rocco Fashion Ltd ("Rocco") which is a company solely controlled by him or his family. Although the trial was listed to deal with "all matters other than relief (if any) and the valuation of shares" in the Company, it is common ground that if I find the petition is well founded I should decide whether the petitioners' shares should be bought out, and if so by whom and fix the date of valuation, the valuation itself being left over for agreement or later determination. The petitioners say that the valuation will be substantial as the Company had a turnover of several million pounds per annum and was very profitable.
2. The Company was based in Leicester and engaged in the manufacture of clothing. By far its biggest customer was a chain of shops trading under the name "Select". The Company's operations involved design of clothing to Select's requirements, following which it would purchase material and then, for the most part, send it to cut make and trim ("CMT") subcontractors who would produce the finished garments for delivery to Select. The allegations, in summary, are that in breach of his duty to the Company as its sole director Mr Nagra extracted all its business and assets and transferred them to himself or to Rocco by a combination of:
 - i) From October 2014, arranging for a series of companies pretending to be CMT suppliers ("the alleged pretend suppliers") to present false invoices purporting to be for CMT work, including VAT and at inflated prices. These companies would be paid by bank transfer but would immediately return to Mr Nagra in cash the pre VAT price and a proportion of the VAT stated in those invoices. The petitioners say they have a record made by Mr Nagra himself of one set of transactions in which the 20% VAT element was split as to 9% returned to Mr Nagra and 11% retained by the alleged pretend supplier. The petitioners say that from their investigations it appears many of these suppliers were not registered for VAT and/or were within a short period dissolved without having paid it to the Crown. The petitioners' case is that the real CMT work was done by others who were paid in cash at normal commercial rates, which were much lower.
 - ii) From 20 May 2015, interposing Rocco between the Company and Select, such that the Company sold its goods to Rocco at a substantial discount to the price agreed with Select and Rocco sold them on, making a profit for itself.
 - iii) From 27 July 2015, causing all sales to be made direct from Rocco to Select such that the Company received nothing at all from them.
 - iv) Notwithstanding the sales were being invoiced by Rocco, causing the Company to continue to incur all the costs of operation such as wages and premises costs.
 - v) Eliminating the balance due from Rocco, as well as balances apparently due to two of the pretend manufacturers, by the creation of false credit notes the amounts of which were calculated so that the Company was able to discharge its

genuine creditors but was left with a balance of assets of only £2, after which Mr Nagra attempted to have it dissolved.

3. The respondents' position is, again in summary, that:
 - i) All the alleged pretend suppliers did perform the CMT services at the prices stated on their invoices which represent genuine commercial transactions. There was no false invoicing and no underhand distribution of cash to Mr Nagra.
 - ii) Mr Jatinder Sandhu agreed with Mr Nagra at a meeting or meetings in May or June of 2015 that he could close down the Company and establish a new business of his own in which the Sandhu family would have no interest, with the implication that Mr Nagra could transfer the business and assets of the Company to that new business for his own benefit. That, with the agreement of Mr Nagra and his wife, constituted the unanimous consent of the Company's shareholders such as to authorise or ratify any steps taken to transfer the business and assets. Accordingly there was no breach of duty and no unfairly prejudicial conduct.
4. The legal basis for the respondents' position is commonly referred to as the "Duomatic principle", derived from *Re Duomatic Ltd* [1969] 2 Ch 365 in which Buckley J said:

“I proceed upon the basis that where it can be shown that all shareholders who have a right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into effect, that assent is as binding as a resolution in general meeting would be.”
5. The respondents say that even if the complaints or some of them are established the court should not make a buyout order. In that event the petitioners seek alternative relief by way of permission to bring a derivative claim for loss to the company arising from the same acts against Mr Nagra and Rocco, which they say is liable on the basis of unlawful means conspiracy with Mr Nagra, and/or knowing assistance in his breaches of trust and/or knowing receipt of the proceeds.
6. By way of general remarks about the witness evidence, it is common ground that the garment trade in Leicester is one in which a great number of people and businesses work in a close-knit community. The allegations in this case involve "off the books" cash dealings which are said to be common knowledge to many people in the trade but which if true are likely to be matters that are not generally documented (and for which any documents that are created are likely to be kept from outside eyes) and of which few people will speak openly. Each side claims to have spoken to witnesses who will support its case, only to find that they were subsequently unwilling to make a statement or changed what they had previously said. Each side accuses the other of intimidating witnesses, either to make statements for that side or to change or retract statements made that support the first. Many people referred to by one side or the other were not called as witnesses, and each side sought to attach significance to the fact they had not been. Other witnesses who had provided statements did not appear at trial, presenting either no reason or no very convincing reason for their inability to do so. In the circumstances, I can attach little weight to the fact that someone who might have relevant knowledge was not called- it might mean they would not support a case,

but it might equally mean that for fear of exposing their own involvement or retribution by the other side they are unwilling to appear in court.

7. In particular a considerable number of people were interviewed by Mr Bulbinder Sandhu, the father of the first petitioner, and the solicitor then acting for the petitioners, Mr Dass. Mr Dass made attendance notes and in some cases prepared draft statements, but many of the potential witnesses refused to sign those statements. Subsequently in some cases they made statements in support of the respondents, accusing Bulbinder Sandhu and Mr Dass of having bullied or pressured them into saying untrue things in support of the petitioners. One of the interviews (with Shingara Singh) was recorded, and very shortly before trial the respondents produced what was said to be a translated transcript of this interview which did not, in a number of respects, support the attendance note Mr Dass made of it. On the one hand therefore we have the respondents saying that Bulbinder Sandhu and/ or Mr Dass had improperly pressured witnesses into making statements and/or misrepresented what they had said. On the other Mr Dass who gave evidence maintains that there was no pressure on the witnesses, who freely told him and Bulbinder Sandhu what they knew, and he is intensely suspicious of their subsequent changes of heart which he considers show they must have been "got at" by someone.
8. I will refer to some of this witness evidence in the course of dealing with the specific issues below. As to the allegations of interference and intimidation however, I do not consider I can make any specific finding against either party. So far as the respondents' allegations are concerned, the transcript of the meeting with Shingara Singh does not in my view show any evidence of improper pressure on him, still less intimidation, or that Shingara or his wife were afraid of Bulbinder Sandhu. Certainly Bulbinder Sandhu asserted his view of what had happened and how badly he considered Mr Nagra had behaved. But he did not threaten or browbeat Shingara Singh or his wife and it is apparent in my view that they were not in any way compelled to say anything they did not wish to. Shingara did subsequently make a statement on behalf of Mr Nagra, but when he was called as a witness he effectively declined to testify. Other witnesses called by the respondents did allege threats against them, on the basis they might be regarded as participants in the unlawful acts alleged against the respondents. But that in itself would not be improper, because if the petitioners are right those witnesses may well have been involved in serious illegality. Further, in general I have not regarded the evidence of those witnesses on the disputed matters as reliable, and I do not consider I can place any greater reliance on allegations they make against Bulbinder Sandhu or Mr Dass.
9. The second general matter I mention at the outset is that both parties were given leave to call an expert witness as to whether Mr Nagra wrote the many manuscript documents the petitioners rely on. The petitioners' expert Mr Cosslett found there was "conclusive evidence" he wrote at least the vast majority of the entries on all these documents. The respondents in the end did not produce any expert report, although it is apparent from the correspondence that they did send the documents to an expert. Mr Nagra in the witness box sought to deny a number of documents in their entirety, and certain entries on others, that he had not previously contested, including some that had been provided to Mr Cosslett as reference specimens against which the questioned documents could be compared. Many of the entries he now contested were those that seemed to be most damaging to his case, as appears below. Mr Kalfon makes the point that the specimens had not been agreed in advance with Mr Nagra's lawyers; nevertheless the very late attempt to expand the number of documents and

entries questioned was in my view an inappropriate attempt by Mr Nagra to take the expert by surprise.

10. Mr Kalfon put it to Mr Cosslett that the strength of his conclusions must be undermined because some of his specimen material must, he said, now be disregarded. Mr Cosslett did not accept that; he had he said compared all the specimen documents with each other to satisfy himself that they were (with limited exceptions) all consistent and apparently written by the same person, and had done the same with all the questioned documents. In his view all the material formed one body and (with the limited exceptions referred to) was completely consistent with being written by one person. The fact that Mr Nagra acknowledged the bulk of the writing meant that it too could be considered as specimen material, and most of the entries Mr Nagra now challenged were entirely consistent with the unchallenged writing.
11. Mr Cosslett did accept that he could not entirely rule out the possibility that someone with similar writing to Mr Nagra may have made some individual entries on the documents, and that if he had been asked to express a conclusion solely on the now disputed entries considered in isolation it would be unlikely to have been conclusive. But he had no evidence that they were made by anyone else and repeated that they were entirely consistent with the accepted material. He had not been asked to consider the individual entries in isolation and it would be unrealistic to do so, since the question is whether they are consistent with the material available that is known to be in Mr Nagra's hand, including that which he might have challenged but does not.
12. I refer to some specific entries below, but in general, and subject to some that are accepted as not being by Mr Nagra (as to which I should say that these are for the most part plainly in a different hand and/or ink, even to the untrained eye and especially when the original documents are examined as I was able to do) on the basis of Mr Cosslett's evidence I am satisfied on the balance of probabilities that they were written by Mr Nagra.

Factual background

13. The first petitioner Mr Jatinder Sandhu is in his 20s and in 2015 had recently qualified as an accountant after three years post graduate training with a major national firm. Although he is the direct and indirect holder of shares in the Company, he has not played any part in its day to day operations or those of its predecessor businesses. They derive from the activities of his father, Bulbinder (known as Bali) Sandhu. For clarity I will refer to them henceforth as Bulbinder and Jatinder, as they were at trial. I begin therefore by describing Bulbinder's background insofar as it relates to the issues before me.
14. Bulbinder began manufacturing clothing in 1987 as a sole trader under the name Isher Fashions. At the end of that year he transferred his business to a newly formed company, Isher Fashions Ltd. That company however went into liquidation in 2001 and Bulbinder reverted to being a sole trader, this time under the name Isher Clothing. In that business he employed Mr Nagra as a production manager.
15. In 2003 Bulbinder was disqualified from acting as a director for 8 years. During that period he continued business as a sole trader but in 2011 it appears he was declared bankrupt and the business was then transferred to a new company called Isher Clothing Ltd, of which Mr Nagra was the sole director and shareholder.

16. In 2012 Bulbinder was discharged from bankruptcy and in May 2013 he was appointed a director of Isher Clothing Ltd and Mr Nagra transferred the shares to him, resigning as a director but remaining employed as production manager. There is a written agreement recording that Mr Nagra was paid £20,000 for the sale of the shares. The circumstances very much suggest that Mr Nagra's role may have been as an effective caretaker of the business while Bulbinder could not be seen to own or control it. He gives that description of himself in one of his witness statements.
17. By about the beginning of 2014 however Bulbinder was facing criminal charges alleging breach of his disqualification order by acting as de facto director of two other limited companies. Anticipating that he might be convicted and imprisoned, on his account he arranged for Fashionup Ltd to be incorporated in July 2014, with Mr Nagra again as sole director and shareholder. It appears that it did not begin to trade immediately but in about September 2014 shortly before his trial Bulbinder said he took Mr Nagra to introduce him to his contacts in the purchasing department at Select and effectively handed over the trading relationship to him, with the Company beginning to invoice in its own name from that month. At about the same time the cutting tables and other assets owned by Isher Clothing Ltd were transferred to the Company at a modest price recorded in sales invoices.
18. In October 2014 Bulbinder was convicted and sentenced to 5 months in prison, from which he was released in December 2014. He was also disqualified for a further period of 12 years.
19. Bulbinder remained on the register as a director of Isher Clothing Ltd until his release in December 2014, he says (implausibly) because he could not get access to the necessary forms to resign while in prison. On his release however his resignation was recorded and a Mr Upinder Rana was appointed as director to manage the winding up of its affairs, it by then having ceased to trade.
20. In December 2014 Mr Nagra transferred half the shares he held in Fashionup Ltd to Jatinder, and arrangements were made to redesignate these as "A" shares and create a new class of "B" shares, entitled to distributions of income but not to vote or participate in capital, which were issued as to 62% to the second petitioner, JRG (Leicester) Ltd ("JRG"), a company wholly owned by Jatinder, and 38% to the fourth respondent Poppy Red (Leicester) Ltd ("Poppy Red"), which is owned by Mr Nagra's wife.
21. According to the petitioners' evidence it had been agreed between Bulbinder and Mr Nagra when the Company was incorporated in July that it would be owned by Mr Nagra and Jatinder, and the transfer of shares in December was to give effect to that agreement. However it was agreed at that point that profits would be split in the proportions 62:38 and it was Jatinder who then devised the idea of a separate class of shares to receive dividends in order to achieve that split. The documentation to put this in place and incorporate the new shareholding companies was prepared by a Mr Chauhan, the principal of a firm of accountants called KRC that acted for the Company and had done so for its predecessor businesses.
22. Although the Company had begun to invoice Select from late September, Select was in the habit of paying 60-90 days after invoice, so that payment began to be received by the Company (rather than Isher Clothing Ltd) at about the beginning of December. From December 2014 until July 2015 the Company paid monthly amounts by bank transfer of £9,000 to JRG and £5516 to Poppy Red. These amounts are in the

proportion 62:38 and Mr Nagra accepts in his written evidence that this was the agreed income split. No interim or final dividend was formally declared on either class of shares, but Jatinder's evidence is that these amounts were paid on account of dividends expected to be declared later, and JRG accounted for them on that basis.

23. Bulbinder says in one of his witness statements that it had also been agreed that the Company would pay him "as shareholder in Isher Clothing Ltd" £1.5m for goodwill and £200,000 for plant machinery intellectual property and other assets, and he complains (though he does not plead it as part of his case) that none of it was ever paid. There is no documentary evidence of any such agreement, and of course if any such payment had been agreed, on the face of it the appropriate recipient would be Isher Clothing Ltd and not Bulbinder. Bulbinder said in evidence however that he was personally the owner of the sewing machines and was entitled to be paid for goodwill because it had been transferred to him "in lieu of monies owed". There is no documentary evidence of either of these matters. Isher Clothing Ltd went into compulsory liquidation in 2015 on the petition of HMRC. I have no evidence that the liquidator was told of any such transfers or that Bulbinder considered the assets transferred to him to be worth these amounts.
24. The manner in which the business was transferred from Isher Clothing Ltd to the Company is not clearly described in the evidence. There was an invoice for sale of certain assets for just over £73,000 but little to go on beyond that. The circumstances suggest that Mr Nagra's role was again, to some extent, as caretaker during a period when Bulbinder was not able to be involved. The difference on this occasion is that it is accepted on the petitioners' side that Mr Nagra would become and remain a part owner of the new vehicle through which it was carried on (ie the Company) and that the other owner would be Jatinder rather than his father. The latter may be understandable given Bulbinder's personal position but there is no explanation given why Jatinder could not have been made a shareholder at the outset, if that was what had been agreed at the time.
25. Mr Nagra's evidence suggests there was no initial agreement that either Bulbinder or Jatinder should have any ownership, that he started the Company on his own initiative and was the sole owner, but he was persuaded in December to give Jatinder a share in order that he could provide for his disabled brother. I do not however find it remotely plausible given the history of Bulbinder's maintenance of his business through different manifestations for nearly 30 years that he would have effectively gifted it to Mr Nagra in September or, if it had been from then entirely owned by him, Mr Nagra would then have given more than half its value away without payment in December, so although I do not believe I have had a full account from either of them I consider the general arrangement is likely to have been closer to that described by Bulbinder. I do not however accept that Mr Nagra had agreed to pay Bulbinder £1.5m or anything like it; Bulbinder's future interest was to be through his son's part ownership. It may be that in July Bulbinder had an expectation that "his" share of the new company would in some way be transferred to his order when he came out of prison but had not then settled on it going to Jatinder, or perhaps that if he was anxious not to appear to be connected to it at all he thought it best that even Jatinder's name should not appear on the record until later.
26. By December 2014 Bulbinder was released from his first sentence but was facing further criminal charges, and in March 2015 he pleaded guilty to cheating the public revenue in relation to VAT and was sentenced to a further two years imprisonment.

He was released from that in October 2015. It was after this, he says, that he discovered that unknown to him Mr Nagra had caused the business to be transferred to Rocco and he set about investigating what had gone on.

27. To do so he went to the offices of KRC and asked for what he regarded as his papers relating to Isher Clothing and Fashionup. Amongst the documents he was given were records of the business with manuscript annotations made, he says, by Mr Nagra, and other notes and documents in what he says are Mr Nagra's writing. These included
- i) A four page document that the petitioners refer to as "the cash book", which they say is a record of receipts and payments made by Mr Nagra in cash and which do not appear in the company's official accounting system.
 - ii) A one page document which the petitioners say is a record of cash Mr Nagra generated through the false invoicing scheme, which I will refer to as "the alleged cashback schedule".
 - iii) Delivery acknowledgments issued by Select marked with notes that the petitioners say show the true CMT manufacturers of the goods sold and the amounts due to them.
 - iv) Various other untitled notes, some of which are attached to the cash book or delivery documents, which the petitioners say are calculations showing the makeup of figures that are then entered in the cash book.
28. These documents have been intensively analysed by Jatinder and his legal team, with the result that, they say, almost all the entries can be identified and reconciled although at first sight they look cryptic and incomprehensible. Together, they say, these documents paint a coherent picture of what Mr Nagra was in fact doing over the period covered, and (with other circumstantial evidence) show that the invoices later received from the purported CMT manufacturers are false documents.
29. The question whether Jatinder did or did not agree that the Company could be closed down with Mr Nagra starting a new one in its place is obviously pivotal. My finding on that will depend very largely on the credibility of the two men, and in Mr Nagra's case a very important part of my credibility assessment flows from the evidence about the alleged false invoicing and off the books cash system and what he has had to say about it. I turn next therefore to that evidence.

The alleged cash book and related documents

30. This document consists of four pages in manuscript. They were not originally numbered, but numbers were added by Jatinder or someone on his side. It is not disputed these denote the pages in the right order, and it is agreed that those pages show a running calculation of some sort, divided into weekly segments, beginning with the week of 17 October 2014 and continuing to the week of 12 December 2014. The copy referred to at trial is in the bundle at vol D 2/p 1443-6. Mr Nagra does not dispute that most of it was written by him, though he maintains that some of the entries and some of the documents said to relate to it and to support the petitioners' explanation are not.
31. The first page starts with a figure (1430) which is marked "BF" in a circle. Mr Nagra denies he wrote the "BF" and it may have been added later (as may the circled letters

A to D that appear against certain entries and appear to have been made by someone, probably on Jatinder's side, correlating figures between documents). It ends with a figure (23) which also appears at the start of the next page (as 23K, and not marked "BF"), and this pattern is repeated on the following pages. Mr Nagra accepts this represents the carrying forward of the final balance from one page to the next. The petitioners say it should be inferred there must have also been earlier sheets from which the opening "1430" has been brought forward, and also later ones to which the final balance on p 1446 of "[£]17[000]" is carried, but Mr Nagra denies this.

32. The analysis and cross referencing are complex, and although Mr Nagra was taken through every entry it would not be practicable to do so in this judgment. I will set out the general structure as alleged by the petitioners and the entries for a sample week, with cross references to the documents said to tie in to them, and then the explanation given by Mr Nagra in evidence, assessing the rival versions by reference to those and other sample entries.
33. The period covered begins shortly after Fashionup submitted its first invoice to Select on 25 September 2014. That invoice was paid in early December, consistent with the 60-90 day payment period. Any payments being received prior to December from Select must therefore have been from goods sold by Isher Clothing prior to 25 September. No source of cash other than payments by Select has been suggested by any witness. If as the petitioners say Mr Nagra was getting access to incoming cash in this period it must be because he was able to obtain it from those Select payments, though he denies this and says he was only the production manager at Isher Clothing with no power to sign cheques or payment instructions to its bank. Given that payments were undoubtedly made by Select in this period, that they were in all probability made out in the name of Isher Clothing but its sole registered director (Bulbinder) was in prison, Mr Nagra's evidence leaves unexplained how they can have been received and dealt with. He must have been the person effectively dealing with the running of the business in this period, whichever of the vehicle companies was involved in individual transactions, and it is not in my view at all likely that he would not have been aware of these payments and at least know how they were dealt with, even if it had not been by him.
34. In each week, the petitioners say, the entries start with a balance carried forward from the previous week. From this are deducted:
 - i) Amounts marked "W" or "wages" (in one instance misspelt) which they say represent wages paid in cash
 - ii) Amounts mainly but not always marked "CMT", which they say represent amounts paid in cash to the real CMT suppliers and can be reconciled to the annotations on the delivery acknowledgments
 - iii) Amounts for other outgoings, marked with a name or initial to show who they were paid to and sometimes an indication what they were for.
35. There are positive figures added, which the petitioners say represent cash paid back from the splitting of VAT on the false invoices and can be reconciled to the alleged cashback schedule.
36. The resulting balance is periodically compared to a figure marked "Actual" or "Act", sometimes with a reconciliation of the difference, and the "actual" figure is then used

as the one to carry forward to the next week. The petitioners say this shows Mr Nagra had somewhere a store of cash which he periodically counted, adjusting his calculations in the alleged cash book in respect of any payments he had omitted if he could identify them and, even if he could not, in any event proceeding then from the actual figure.

37. The example week I will refer to is marked "21/11" ie the week ending Friday 21 November 2014. Immediately above is a figure of £16,000, the balance at the close of the previous week. The entries below it are:

- i) "LB 490 ✓"
- ii) "+ 16,080 19/11"
- iii) "+ 13,900 21/11"
- iv) "- 21450 CMT 21/11"
- v) "- 2936.63 W 21/11"
- vi) "= 21,103.37 21/11 Act 21,100 -1000 (100 heater 500 waste 200 zips)"

Assuming line (i) is a deduction from £16,000 and all the figures are in pounds, the arithmetic result of lines (i)-(v) is £21,103.37 as appears on line (vi). This would be consistent with a check to actual cash held on 21 November of £21,100. The further deduction of £1000 from that, the petitioners say, is for further payments as listed (there is a rounding or additional £100 unspecified to make £1000). A further £100 is evidently knocked off for some reason as the starting figure for the next week is "20k". The petitioners say the explanation of lines (i)-(v) is as follows.

38. Line (i) probably represents a cash sum paid to a fabric supplier called Leicester Bindings. It is accepted there was such a supplier.

39. Lines (ii) and (iii) are derived from the alleged cashback schedule (D 3/1598). That schedule has in the top right corner a formula " $\div 1.2 + 9$ ". Mr Nagra denies he wrote that formula but accepts the rest of the page is his. The petitioners say this is his writing and shows how the VAT split worked; the pretend supplier would be paid a VAT inclusive sum (say £12,000) and would return the VAT exclusive amount ($\text{£}12,000 \div 1.2 = \text{£}10,000$) plus 9% of that amount, (so a total of £10,900 in this example) and retain 11% of the 20% VAT for himself. The schedule has entries on lines with dates from "24/10" to "17/12", which are accepted to refer to 2014.

40. The two lines that produce the figures on the alleged cash book are:

- i) "W 19/11 17700 – (16080) – 19/11 ✓(16080)"
- ii) "F 21/11 15300 – (13900) – 21/11 ✓(13900)"

The figures I have put in brackets are circled on the original. The first line the petitioners say means that on Wednesday 19 November Mr Nagra paid £17,700 to someone and received back £16,080, which is the amount the formula produces, rounded to the nearest £5 as it was to be paid in banknotes. The second line shows a similar payment out of £15,300 on Friday 21 November with £13,900 returned. If the petitioners are right, the fact the circled figures are repeated, the second time with a

tick, may indicate Mr Nagra first noting what amount he expected to get back and then confirming he had done so and the date he received it. All the lines on this schedule down to Friday 5 December follow the same format.

41. Line (iv) the petitioners say represents the sums paid in cash to the real CMT suppliers, and correlates with notes Mr Nagra accepts he made on the document Select produced to acknowledge deliveries on 13 November 2014 (D 2/1431). Each line on this document records the quantity of a particular style of garment delivered to Select. Marked in manuscript against each line is an initial and one or two figures.
- i) There are four sets of initials "KD" "G" "R" and "K" which the petitioners say refer to the four actual manufacturers, individuals called Kuldeep, Goldie (real name Gurvinder Singh), Laxman Raya (and/or his brother Ram Modwhadia with whom he worked) and Keema respectively.
 - ii) The first figure represents the price to be paid per item.
 - iii) The second is a total for the line (price x quantity).

42. These figures are aggregated in a table at the top which shows four lines and a total:

| | |
|----|-------|
| KD | 3890 |
| G | 6940 |
| R | 5440 |
| K | 5180 |
| | 21450 |

Against this is written a date "21/11" and a circled figure "83p". The petitioners say this shows the date the suppliers were paid, which in the trade is normally 7 days after delivery, and the average CMT cost per garment.

43. It is accepted that the arithmetic works as the petitioners say, ie that the line totals are the result of multiplying the first figure by the quantity of goods, and the table at the top aggregates all the lines marked "KD" and so on respectively. Further, the 83p represents the total of £21,450 divided by the total number of garments. That total is of course the figure marked "CMT" in the alleged cash book with the date "21/11".
44. Line (v) the petitioners say is explained by a calculation on a scrap of paper attached to the above delivery acknowledgment. It has a date of 21/11 and is table of figures totalled to £2,936.63. Mr Nagra denied at trial it is written by him, but he had not previously done so and it appears very similar to other writing he accepts. Mr Cosslett said he regarded it as completely consistent with other writing, including figures, acknowledged by Mr Nagra. In any event, the use of the exact total figure from this calculation shows he must have used it to make his entry in the alleged cash book, whether or not he wrote the separate document himself. The same pattern is seen for several other weeks' entries and similar scraps of paper, though sometimes the figures are slightly rounded. It is not possible to believe these are coincidences. Most or all of them bear a date, which always corresponds to a Friday which is the day wages were paid.

45. The individual figures in the table are similar in many cases to lines in the other similar papers. Several are exact amounts such as "222.69" and some are identified by initials. Beginning in mid December, wages were paid (in part at least) through the bank account and appear in the accounts ledgers; when that happens some of the same figures (such as the £222.69) are seen in those ledgers and the initials can be seen to correspond with the names of employees. I am satisfied therefore that these papers do represent wage payments. The largest figure on them (£1190) does not appear in the later ledgers, but in my view the petitioners are probably right to suggest it represents what Mr Nagra took for himself.
46. Mr Nagra refers to the alleged cash book as "rough jottings" he says he made every Friday. He gave an explanation of it and of the alleged cashback schedule in cross examination that he had not advanced in his pleadings or his many witness statements, as follows.
47. The alleged cashback schedule represented not cash received by him but amounts that various people had asked him to pay. He had not actually paid them but knew he would need to and so kept track of them. He referred to them himself as "hypothetical" payments. The first figure on each line was the amount they had asked for. The second amount was lower because "I always knock about 10% off".
48. The alleged cashbook represented a running balance he referred to as his "red figure" that he knew he had to provide for. He added to it the amounts he had been asked to pay suppliers and deducted from it amounts he had saved the company, for example by negotiating lower prices with suppliers. Thus for instance the lines marked "W" or "wages" were not payments of wages but sums he had saved the company by working himself for a less than commercial wage. He said for instance that for someone of his experience the company would have had to pay £1000-£1500 for his production management, a similar amount for other management functions and more to represent the value of cutting work he did himself.
49. The periodic adjustment to a figure marked "Actual" was to take account of some other saving that he had made, the nature of which he had not recorded at the time.
50. He maintained an explanation he had given in his witness statements that the markings on the Select delivery documents did not indicate the sums paid to suppliers but his estimate of profit made on each item and his assessment of the future potential for that product. Thus "K" "KD" "G" and "R" did not refer to names but "Crap" "Definitely Crap" "Good" and "Repeatable". The first two represented feedback from the CMT manufacturer, reporting problems that meant they would not be willing to make those items again. He used "K" instead of "C" because of problems distinguishing "C" and "G" in his writing, and put "KD" instead of "DK" through idiosyncrasy. The figures against each line were not prices but estimates of the profit made after material costs and the totals were his analysis of total profit between his various categories.
51. I have no hesitation in rejecting this explanation as a complete fabrication. There are too many inconsistencies and incredibilities in it to set them all out, but among them are:
 - i) In relation to the entries for sums supposedly sought as payments on account by suppliers, Mr Nagra's account is implausible and does not fit the documents. The suppliers who were paid by invoice, he said, were contracted

on 60-90 day terms but would nevertheless ask for payment early. If so, there is no explanation why they would ask for amounts less than the full payment but not a round sum, and always on a Wednesday or Friday. He made no note of when he expected to pay them and, if he was in some way planning his cash flow, did not actually pay them the amounts recorded when funds began to arrive in early December.

- ii) His explanation of "knocking about 10% off" made no sense; the difference in the first two figures on his schedule was not 10% but corresponded exactly to the formula on the sheet (which produced a result of 88.33%, rounded to £5) on each line and cannot have been coincidental. A deduction from interim payment requests makes little sense anyway; he did not say he had negotiated any discount and was not actually offering early payment that might have justified it.
- iii) He gave no explanation for the third column of figures (he was not asked about it), but a provision for what he himself called hypothetical future payments does not fit with the existence of a third column with dates against it (always on or within a day or so of what he said was the date of the payment request) when he was not actually making any payment, or with the circling and ticks that appear to emphasize the correspondence between the figures in the second and third columns.
- iv) Transposing those figures to the alleged cash book does not make sense if they, representing future cash requirements, are put into a running calculation in which the other entries are not for cash coming in but profits and cost savings (which are themselves not comparable concepts) respectively. Such a calculation would not show the cumulative or time-apportioned cash requirement, or what cash would be available to meet it, nor would it show profits or variations in expected profit. The two sets of entries are simply not comparable with each other. Both accounting experts were asked whether such a calculation could serve any accounting purpose; neither identified any and Mr Donaldson, the petitioners' expert said he "struggle[d] to see how that would work". Mr Flear for the respondent could only say he considered it would be "of limited value".
- v) The figures supposed to represent profits are not supported by any calculations such as one might expect to see setting out the selling price and the cost elements to be deducted from it such as fabric, wages, overheads and CMT contractors costs. Mr Nagra did not say he had done these calculations elsewhere in order to arrive at the figures per garment he wrote on the Select delivery notes, and if he had done so he has not produced any such calculation and could not explain how he would have arrived at those figures other than that they were his rough estimates at the time. I note that one of the Select documents (D 2/1422) is evidently tied in to a separate page of calculations that produce the totals on the delivery note itself, analysed between the initials "G" "K" and so on, by way of lines calculated to the penny and then slightly rounded in the totals. It is easy to see this as a calculation of sums due, but not as a summary of rough profit estimates.
- vi) Most of these figures were labelled "CMT" in the alleged cash book, consistent with them being costs paid to CMT suppliers but not with profit estimates. Mr Nagra denied that some (but not all) these labels were in his

handwriting, but this was not supported by Mr Cosslett, whose view as set out above was that they are consistent with the other writing Mr Nagra accepts is his. He identified no reason to think they were written by anyone else and the respondents have not suggested any differentiating features. I find they were written by Mr Nagra.

- vii) Mr Nagra accepts these figures are derived from the calculations on the Select delivery acknowledgments, which aggregate figures between categories labelled "G", "K" and so on. His explanation that these codes represent likely repeatability is wholly unconvincing. There is no difficulty distinguishing between "C" and "G" as he writes them, and he uses "C" freely elsewhere. He had no explanation why he would consistently reverse the word order if describing something as "definitely crap".
- viii) Other documents and evidence are consistent with there being suppliers with the names the petitioners propose as the true explanations. Page D 2/1455 is said to be a note of charges for cutting services prepared by Ranjit Singh (a contract garment cutter) in October 2014. Mr Nagra was very evasive when asked about it, though he accepts that Ranjit Singh did provide cutting services and would deliver the cut panels to another supplier to make them up. For reasons that will appear below I am satisfied the petitioners' explanation is correct. This document has a number of lines, each setting out an order number, garment description and quantities ordered and actually cut. Against each line is a name which the petitioners plausibly say must be the person who took the cut panels to make them up. Mr Nagra said he had difficulty reading these, but they are in fact sufficiently clear to read and consist of "Kuldeep" "Laxman" "Keema" and "Goldi", so matching the names the petitioners give (assuming "R" stands for Laxman Raya). The total payable on this document is £2131.92, below which is written, in writing appearing to match Mr Nagra's, "Paid 1000 3/12 1131.92 12/12". These figures appear in the alleged cash book, with entries of "1000 Ranjit" in week commencing 28/11, consistent with a payment on 3 December, and "Ran 1130" in the week commencing 12 December. Mr Nagra denied he wrote the labels "Ranjit" and "Ran" but for the reasons given above I find that he did. It would not in any event be plausible that he would make entries for "savings" that so exactly corresponded in time and amount with figures elsewhere noted (whether or not by Mr Nagra) as payments. There can be little doubt therefore that these amounts represent payments and not savings.
- ix) There are two other references to "KD" in the alleged cashbook on p 1446 that are consistent with reference to a person. One is "28/11 Raju 870? KD600?". Raju is the name of a person, so this looks like a note of possible payments to two people. The second is "5/12 KD old 220 he's finished". This plainly refers to "KD" as a person, rather than a concept of a "definitely crap" product. As Mr Jory showed, it also ties in with a note at D 2/1436 which has a calculation totalled to "220" against which is written "5/12 Kdeep". Mr Nagra denied writing "Kdeep" but admitted the rest. I find he wrote it all. I have no doubt he denied it because this note makes it untenable for him to maintain, as he did, that he does not deal with anyone called Kuldeep.
- x) The explanation that the sums labelled "W" or "Wages" are savings on wages is incredible. No broad brush calculation such as Mr Nagra suggested could

plausibly produce figures exact to the penny such as are seen. The totals in the alleged cash schedule plainly derive from the calculations on the scraps of paper. Mr Nagra denied writing these, but I again and for the same reasons find that he did. Even if someone else had written them, he must have used them to obtain the figures he accepts he wrote on the alleged cash schedule. The items totalled are too exact to be explicable as estimated savings, and the correspondence of the figures and reference initials to sums later shown in the ledgers to have been paid as wages to individuals with the same initials shows in my view that these must be calculations of wages. Further, there was late disclosure of a number of wage slips showing that one of the employees was paid wages in cash in this period, stated to have been by Isher Clothing Ltd in the period prior to December, corresponding to amounts on these slips. These entries on both the scraps of paper and the alleged cash schedule therefore are payments and not savings.

- xi) Other entries that Mr Nagra insisted were savings cannot plausibly be. I will give one example; there is an entry for the week commencing 28 November "746 Pakistan 760 Actual". It is accepted this relates to a bank transfer payment made on 28 November 2014 to a Mr Ullah in Pakistan; see the transfer instruction at D 2/1461 which shows the amount sent as £746, with fees charged making a total of £761. Mr Nagra said (in cross examination; it was not something he had raised before) this was a payment for labels which he had bought in Pakistan for half the price he would have had to pay in the UK. He had thus saved exactly the same amount as he paid. That would be a remarkable coincidence (and he has provided no supporting evidence either that the payment was for labels or of the UK price for such labels). But even if it were true it would not explain why he had also saved an amount equivalent to the bank charges or why, if it happened that the saving matched the aggregate of the payment and charges he would record both figures and describe one as "actual".
- xii) Mr Nagra had no plausible explanation for the periodic adjustments to "actual" amounts. Even if it were accepted that he had factored in some amounts that he had not labelled at the time, on his own account all the entries he was making were of figures he described as "hypothetical" potential payments, profit estimates and savings estimates. No balance derived from them could ever be described as an "actual" figure.

52. Mr Flear considered three possible explanations of this document:

- i) A record of cash transactions prior to opening a bank account or starting formal accounting records but intended to be later entered into the formal accounting records
- ii) A record of "off the books" cash transactions, or
- iii) Rough jottings of the Company's financial position as Mr Nagra had claimed.

He did not himself consider any of these explanations could be correct. In relation to the third, he said in his report and again in cross examination that it was not consistent with the periodic reconciliations to an actual figure.

53. Mr Flear noted that when payments began to be received from Select they were not entered into this record. He considered this would be inconsistent with it being a cashbook precursor to formal accounting records because any such cashbook would surely note such large receipts. He also accepted Mr Jory's propositions firstly that none of the entries in this document were in fact later transposed to the formal ledgers when they were set up (though I do not consider his suggested explanation that this may have been inadvertent as being likely) and secondly that during the period covered by the alleged cashbook someone on behalf of Fashionup must have been paying the wages and supplier costs it appeared to refer to, because that company was by then trading, had taken over the business previously carried on by Isher Clothing and so must have been incurring such costs.
54. He considered however that the document could not be a cashbook at all, whether intended to record legitimate or off the books transactions, because "the 'income' prior to 5 December 2014 has no apparent (or theorised) explanation and could not logically exist- at least from the activities of [Fashionup]" (D 3/1614). He was unwilling to accept the explanation Mr Jory suggested, that this income derived from monies paid by Select on account of sales by Isher Clothing to which Mr Nagra somehow had access, but the likelihood of that explanation being true is a matter for the court, and not an expert witness, to find on the facts.
55. In my judgment, and taking as a whole the evidence in relation to this document and the transactions it shows together with my conclusion that the explanation Mr Nagra has offered for it is fabricated, it is entirely credible that Mr Nagra was in some way able to get access to payments intended to be for Isher Clothing and that he used those to fund the start of his trading through Fashionup. It is not difficult to believe he could have had that access; he was presumably authorised to operate the bank account in the period until May 2013 when he was sole director and there is no evidence apart from his own assertion that he was prevented from doing so thereafter. He has provided no alternative explanation himself of how the costs of the business could have been met in that period, or why, if his explanation is correct that he was keeping track of payments he would have to make in future, he did not in due course record those payments when made.
56. This conclusion is supported by the fact that certain entries in the alleged cash book do appear to refer to money deriving from payments to Fashionup. Entries for the week of 5 December, a few days after the first payment by Select to Fashionup, include "+7950 3/12 +6200 FU 1st". There is an entry for 7950 with a date of 3/12 against it on the alleged cashback schedule, but no entry for [£]6200. Other entries on an attached note however (analysed below) include a line marked "given 6200 FU balance".
57. Further, the same note includes a line "-11810 RL 28/11 CMT". This links with an entry for the previous week "-13720 CMT 28/11 – 11810 RLax FU". The explanation for these entries seems to be that there was not enough cash to pay the total CMT costs in the week of 28 November, which were £25,530 as recorded on a Select delivery note of that date (D 2/1433). £13720 was paid that week to the other suppliers (leaving a cash balance in hand recorded in the alleged cash book as "=3993 Actual 3830") and the balance of £11810 due to Laxman Raya held over to be paid from monies deriving from the payment to Fashionup. A similar note was made on the Select document, in the table of amounts to be paid which includes a line "R 11810 – FU".

58. Taken together these entries (as explained below) support the conclusion that the £6200 received and the £11810 paid to Laxman Raya were derived from a similar cash laundering system in respect of monies paid from Fashionup's bank account to Stylewear Ltd, which was not accounted for on the alleged cashback schedule. They show that this must have been a separate though similar scheme, and accordingly support the view that somehow Mr Nagra was able to get access to the earlier flow of payments made to Isher Clothing. As I have said, the most likely explanation is that, contrary to his denials, he was able to make or arrange for payments out of Isher Clothing's bank account, since the essence of these schemes was to turn money recorded in bank transactions into untraceable cash. In the absence of any records from Isher Clothing it is not possible to say who was the other party to the laundering transactions that used that company's money.
59. I summarise my main findings in relation to the alleged cashbook as follows:
- i) It is in fact a cashbook recording transactions in the period covered that Mr Nagra made in cash and did not intend to (and did not in fact) enter into the formal accounting records.
 - ii) The positive figures in it represent income and are taken from the alleged cashback schedule, which I deal with separately below.
 - iii) The figures labelled "W" or "wages", however spelt, represent wage costs or equivalents such as cash payments to himself
 - iv) Other entries that appear to relate to suppliers or expenses do in fact do so, and not to savings. I have not referred to all of these above, but they include items such as "Raju 1120 for dogstooth trousers" "350 trims" and "10k City".
 - v) The initials "CMT" marked against various entries were written by Mr Nagra and denote that those sums are totals of payments made for CMT services and not estimated profits or anything else.

I will therefore refer to it from now on as "the cashbook".

60. It follows from the last finding that the figures on the Select delivery documents that make up the CMT totals also represent CMT costs. I reject Mr Nagra's explanation for the various initials and find that they denote the persons to whom the CMT payments were made, ie the actual suppliers of CMT services. It follows further, and will be relevant later, that I find the individual amounts stated on the garment lines represent the prices agreed with those suppliers for CMT work on those garments.

False invoicing and the alleged cashback schedule

61. There are a number of companies said to have been involved in providing false invoices to the Company for the purpose of the scheme to generate cash and split the VAT element of those invoices that I briefly described above. Different companies were involved over different periods. Mr Nagra's evidence is that all of them provided genuine services and he did not receive any cash payments back from any of them. In the case of some of them he served witness statements from the individuals behind those companies to the same effect. Not all of these witnesses attended trial, but Mr Kalfon sought permission to put in the statements as hearsay evidence (CPR 32.5(1)) notwithstanding the respondents had not complied with the formalities required by the

Civil Evidence Act and CPR 33.2. I agreed to admit them as hearsay, subject to consideration of the weight to be attached in light of the fact the witnesses had not attended and the reasons, or lack of reasons, given. In the event I consider that given the witnesses were not prepared to make themselves available for cross examination no substantial weight can be given to any of their statements insofar as they seek to deny or provide exculpation for involvement in the fraudulent dealings I am satisfied took place.

62. It is convenient to start with two such companies, Stylewear Ltd and Sewing Box Ltd.
- i) Stylewear was incorporated on 10 July 2014 (the day after Fashionup, which the petitioners say is not coincidental). It began to invoice Fashionup on 1 October 2014 though it was not paid anything on these invoices until December, by which time Fashionup had begun to receive payment from Select on its own invoices. In the period from 1 October 2014 to 27 February 2015 Stylewear invoiced Fashionup £431,184.24 (including VAT) and between 1 December 2014 and 19 October 2015 was paid £356,186.36 from Fashionup's bank account. It was dissolved on 9 August 2016.
 - ii) Sewing Box was incorporated on 26 February 2014. It sent invoices to Fashionup totalling £418,249.92 (including VAT) between 12 November 2014 and 19 June 2015. It was paid a total of £244,776.18 from Fashionup's bank account between 20 January and 18 August 2015. It was dissolved on 20 October 2015.
63. According to a witness statement served by Laxman Raya (C/638) the directors of Stylewear were (in succession) Sanjay Odedra, Ram Modwhadia (between 1 October 2014 and 15 October 2015 when it traded with Fashionup) and then Raju Goraniya, who held office until Stylewear was dissolved. He did not say who the shareholders were. Mr Goraniya had also been the only director of Kaisen Mode (Leicester) Ltd, another company referred to in this case.
64. Mr Raya said in his witness statement that he had worked for Stylewear in the period his brother Mr Modwhadia had been the director and had also "helped out" at Kaisen Mode (Leicester) Ltd which had adjacent premises. Mr Raya had also later been the sole shareholder and director of Gold Label Leicester Ltd, which also invoiced Fashionup for CMT services.
65. Mr Raya did not however attend the trial. No reason was given for his absence. An unsigned letter was sent on the day before the hearing in the name of his brother Ram Modwhadia saying he had "to travel to India tomorrow because of a family matter". Mr Modwhadia had not made a witness statement, but had been served with a witness summons by the petitioners. Mr Prahlad Sajanbhai Odedra did give evidence, but it related only to a different company, Link Fashions Ltd. It is not said that he is the Sanjay Odedra referred to as a past director of Stylewear. Nor was there any evidence from Mr Goraniya.
66. According to Jatinder, the registered director of Sewing Box was a Mr Nitin Magan Heera, who was also a director of Vidhi Fashions Ltd, another alleged pretend supplier. There is no evidence from him. Mr Kanwaljit (aka Kamaljit) Singh was listed to give evidence, having said in his witness statement that he had acted as agent for both Vidhi and Sewing Box. He however did not attend trial, giving no explanation.

67. There was thus no live evidence from any person associated with either Stylewear or Sewing Box. The only witness able to answer questions about dealings with them was Mr Nagra.
68. Mr Jory asked him about a payment of £34,122.69 shown in the ledger to have been made to Stylewear on 4 December 2014 in respect of an invoice dated 8 October. A manuscript calculation starting with this number appears on an otherwise blank piece of paper (D 2/1418) Mr Nagra denied writing this, but as with other contested writings Mr Cosslett's evidence was that he considered it consistent with Mr Nagra's other documents. In view of that and because it ties in with the cashbook, I find on the balance of probabilities that it was written by him.
69. The next line in this calculation is "31847.84", and Mr Jory put it to Mr Nagra that this followed a similar formula to entries on the alleged cashback schedule, but this time the percentage of VAT returned was improved from 9% to 12% ($£34,122.69 \div 1.2 + 12\% = £31,847.84$). Mr Nagra denied that he had made any such arrangement but would say nothing about this document except that it was not his.
70. Subsequent lines show an addition of £660 and deductions of £5100 (with a date 5/12) and 13(000) before a total "=14407.84". The cashbook entries for week of 5 December include a receipt marked "+4440 RLax which is 5100 5/12 – 660 owed". Further down are entries "12/12 10640 + 13k" and "+12/12 14407". It was put to Mr Nagra that these entries meant (i) Laxman Raya, as the man behind Stylewear, had made a payment of £5100 on 5 December but already owed £660 from some other transaction, so the net credit was £4440, and (ii) he had paid £13,000 and £14407 on 12 December, making a total of £31,847 returned out of the payment to Stylewear. Mr Nagra denied this but had no other explanation.
71. A similar calculation on a scrap of paper is attached to the cashbook next to the entries for the week of 5 December. Mr Nagra denies writing this document also, but for the reasons given above I find he did. It starts with a figure of £18730.88 which, as Mr Jory points out, may be derived by applying the same formula providing for return of 12% of the VAT element to an amount of £20,068.80 paid from Fashionup's bank account to Stylewear on 1 December 2014 (see ledger at E2/2407). If that is right, Mr Nagra would be expecting to receive £18,730 from Stylewear. The next line is "-11810 RL 28/11 CMT" which is consistent with (a) (as I noted above) Laxman having been paid that amount for CMT services, held back from the previous week because Mr Nagra did not have enough cash in hand and paid from monies derived from Fashionup, and (b) Mr Nagra treating Laxman and the company he "worked for" as one and the same.
72. There is then a balance ("= 6920.88") and an entry "given 6200 FU balance", which appears to correlate with the entry in the cashbook for week ended 5 December "+6200 FU 1st", consistent with Mr Nagra having been given cash of £6200 deriving either from Fashionup's first receipt from Select, or perhaps Stylewear's first invoice to Fashionup.
73. There are then figures "720 – 60" and an entry on the right "to give 5/12 660" which would be consistent with Mr Nagra expecting a further £720 to make up the £6920, of which £660 (ie £720-60) would be paid on 5 December. That would be consistent with the deduction of "£660 owed" when crediting a further £5100 paid by Laxman on 5 December.

74. The figures on this note, tied in with the cash payment due to Laxman for CMT work and the cashbook entry showing £6200 received from money in some way deriving from Fashionup's first receipt, show, as I find on the balance of probability, that it relates to dealings with cash derived from monies paid to Stylewear, returned on the basis of Mr Nagra having a 12% split of the VAT.
75. There are no similar documents relating to any subsequent payments to Stylewear. The next payment of one of its invoices was £20,000 paid on 15 December (part payment of an invoice for £43,524; see E2/2407). But that was after the period covered by the cashbook pages Mr Nagra obtained, so if any cash was received back from it that would be shown in some other record, if at all.
76. In relation to Sewing Box, Mr Jory showed in his cross examination of Mr Nagra that two of its invoices (No 186 at K2/613 and 189 at K2/619) related to goods delivered to Select on 20 and 27 November 2014. For each of these deliveries however we have copies of the Select delivery notes, annotated by Mr Nagra with what I have found are records of the actual amounts paid to the CMT manufacturers of those goods and which tie in to the cashbook. The Sewing Box invoices show considerably higher prices for each line of goods than the prices actually paid. It follows that these two invoices, at least, cannot represent genuine invoices for services provided by Sewing Box Ltd even if (as may have been the case for Laxman Raya at least) the individuals to whom cash was paid for CMT work might have been in some way associated with that company.
77. Both of these invoices are associated with separate schedules containing a list of the items, with quantities and prices, that are set out on the invoices themselves (K2/612, 618). Mr Nagra accepts he wrote these schedules, saying he did so in order to ensure he was billed for the correct items and at the correct prices by Sewing Box. This would be implausible in any event- one would expect a genuine supplier to draw its invoice from its own records of what it had delivered and the price it had agreed for them. But since the invoices do not represent sales by Sewing Box, these schedules cannot represent genuine reminders to Sewing Box of what it should bill.
78. The same is true of Sewing Box's invoices 184 (p 633) and 190 (p 627).
79. Instead, it is much more likely (and I find) that they are as Mr Jory suggested to Mr Nagra, instructions by him to Sewing Box to prepare false invoices which would tie in with the records of deliveries to Select. In that connection I also note:
 - i) Each of these schedules has at the top a note of the date of the corresponding Select delivery note, and a date which appears on the Sewing Box invoice. The one at p618 for example reads "D/N 26/11 Inv 28/11". Mr Nagra might have wished for his own purposes to note the date of delivery, but there is no obvious reason why he should specify the date to appear on his supplier's invoice.
 - ii) Each invoice is made out in manuscript, and sets out the same list of items, in the same order and with the same exact description, as provided in Mr Nagra's schedules, including spelling mistakes (eg "Tartan" copied in one case but "Tarten" copied in another). This suggests slavish copying, rather than using the schedules as reminders to check against the supplier's own records.

80. There are other Sewing Box invoices that post-date the period covered by the cashbook and other manuscript records Bulbinder managed to obtain, so it is not possible to compare them directly with other documents that show they are also false. But in my judgment the most likely inference is that they are, and that they represent the continuation of a system that can be seen to have been established by these early invoices.
81. In combination therefore these documents show in my judgment that (a) Mr Nagra arranged with Sewing Box for the production of false invoices purporting to be for CMT work in fact done by others who were paid in cash, and (b) in relation to Stylewear that payment of its invoices (which were also for prices much higher than the typical CMT costs noted as actually paid) resulted in return of cash recorded in the cashbook corresponding to a split of the VAT element of those invoices. These are the two essential elements of the system Mr Jory submitted was operated, and are consistent with the entries on the alleged cashback schedule also representing the operation of such a system.
82. I find therefore that Mr Nagra was operating the cashback scheme alleged throughout the period covered by the cashbook entries, and that the entries on the alleged cashback schedule represented transactions pursuant to that scheme. Mr Nagra wrote the formula " $\div 1.2 + 9$ " on it to record the arrangement he had with the cash launderers and help him calculate what he expected them to pay him. Henceforth I will therefore call it "the cashback schedule".
83. I find further that Mr Nagra continued that system after the period covered by the cashbook, at least in relation to the dealings with Stylewear and Sewing Box that I have referred to. He may or may not have kept track of these later payments by a record similar to the cashback schedule. If so it has not come into the petitioners' hands and, unsurprisingly, Mr Nagra has not disclosed it himself.
84. Although the records only allow cross checking of the early transactions with those two companies, there is no reason to think that at any point they were transformed into genuine suppliers. Throughout, their invoices were at prices much higher than those Mr Nagra recorded as paid to genuine CMT suppliers in the cashbook period, and there is no reason to think he suddenly became unable to source supplies at the previous prices and became obliged actually to pay the inflated prices he had hitherto used in the production of false invoices. I find therefore that all his dealings with Stylewear and Sewing Box were false and for the purposes of laundering cash.
85. What of the other alleged pretend suppliers to Fashionup? There are four named in the Points of Claim:
- i) HKM Trading Ltd
 - ii) ZAK Fashions Ltd
 - iii) Honey Garments Ltd
 - iv) SSK Fashions Ltd

Mr Jory confirmed that these, together with Stylewear and Sewing Box, are all the purported suppliers to Fashionup identifiable from its accounting records. In addition, allegations are made that a similar cash laundering scheme was operated after the

transfer of the business to Rocco, involving all the identifiable suppliers to that company apart from a company called Gold Label Leicester Ltd. That company was at the time it made supplies owned and controlled by Laxman Raya, and no allegations are made about it because the prices shown on its invoices are accepted to be comparable to those that the petitioners submitted (and I have found) were charged by genuine CMT suppliers to Fashionup in the period covered by the cashbook.

86. Mr Nagra called evidence from Mr Hassan Malik, the owner of HKM Trading Ltd, and Mr Arif Patel, owner of Honey Garments Ltd. In addition he called Mr Mubarak Patel, owner of T&S Fashions Ltd, Mr Raju Karavadra, owner of Dream Trading (Leic) Ltd and Mr Prahlad Odedra, owner of Link Fashions Ltd, each of which companies has delivered invoices to Rocco alleged to be part of a continuation of the cash laundering scheme in that company (but not to have been party to any transaction with Fashionup).
87. There was thus no evidence directly on behalf of ZAK Fashions Ltd. Gurvinder ("Goldie") Singh said that he had acted as "intermediary" for ZAK and could verify that its invoices represented genuine trading. There was no evidence on behalf of SSK.
88. Mr Donaldson, the petitioners' accounting expert, was asked to analyse the available documentary evidence in relation to transactions with these companies. In his report of 10 November 2017 (D 2/1084) he said:
 - i) Gold Label invoiced a total of just under £46,000 for CMT supplies between March and May 2016 at an average price of 83p per garment, consistent with the charges paid to genuine suppliers in the cashbook period
 - ii) Certain garments appeared to have been invoiced to Rocco both by Gold Label and by other suppliers. In one case it appeared there were two invoices for one supply, because of the similarity in date and quantity. In others there appeared to be different supplies of similar goods but the prices were markedly different. The charges from the other suppliers were always higher than those of Gold Label, in one case to the extent that the apparent supplier charge of £3.50 per garment made the selling price to Select (£3.95) plainly uneconomic when factoring in material costs and overheads. These suppliers were SN Trading (Leicester) Ltd, Oak Garments Ltd, Fashion Spot Ltd (owned by "Goldie") and Style Leicester Ltd.
 - iii) He was provided with other invoices from questioned suppliers, unhelpfully redacted, but he was able to determine the average price per garment was £1.44, significantly above that charged by Gold Label. These were Lesta Exports Ltd, Dream Trading Ltd, Vidhi Fashion Ltd, Fashion Spot Ltd, Oak Garments Ltd and T&S Fashions Ltd.
 - iv) 12 out of 14 questioned suppliers had been dissolved. The dissolved companies appeared to have a short business life, achieving high turnover soon after they were incorporated but being dissolved relatively shortly afterwards. This he considered suspicious. Mr Kalfon made the point that it was apparent from the evidence that participants in this market were accustomed to operating their businesses through a succession of companies and it would thus not be unusual for a new company to have a substantial turnover if an existing operation was transferred to it. I accept that, but the pattern of moving a

continuing business from one entity to another at short intervals itself suggests some imperative to distance the business from those entities. It is a pattern often seen where liabilities to trade creditors or tax authorities are being evaded, and so not at all inconsistent with the possibility that these companies may have been involved in laundering cash in the way suggested.

- v) The only two such suppliers still in business were Honey Garments and T&S Fashions. Honey Garments was incorporated in 2008 and according to its director Arif Patel has been trading since at least 2009, so appears to have had a relatively long trading history. T&S, according to Mr Mubarak Patel, was incorporated in 2011 and has a staff of about 80 working in a 9000 square foot factory.
89. In his report of 15 December 2017 Mr Donaldson looked at bank statements obtained by way of third party disclosure for six of the questioned suppliers: Oak Garments, Zak Fashion, SSK Fashions, Lesta Exports, SN Trading and Style Leicester. He said:
- i) All of them showed significant receipts from Fashionup and/or Rocco (as well as from others)
- ii) All of them showed a pattern of very large cash withdrawals immediately after payments in
- iii) None of them showed any significant level of payments that could be identified as trading expenses. While it was possible such payments could have been made from the cash withdrawn, Mr Donaldson did not consider that likely in a genuine business with the turnover these statements appeared to show
- iv) Although all of them charged VAT in invoices to Fashionup or Rocco, and all should have been registered for VAT given their apparent turnovers, four of them showed no payments to HMRC for VAT and the amount paid by the other two (Style Leicester and SSK) appeared much too small to be consistent with their apparent turnover.
90. Hassan Malik's evidence was that his company HKM Trading did not itself do any manufacturing but acted as a middleman arranging for work by others. It had been the evidence of DS Scutt (a) that his investigation into HKM was in relation to suspected money laundering, considering that HKM had no premises employees or apparent trading activity in its bank account (it had only one account that was dormant apart from receipts from Fashionup and withdrawals of those amounts) to support its claimed turnover and had not provided any other evidence to corroborate the suggested trading, (b) that this investigation was continuing and (c) that Mr Nagra when interviewed had declined to make any comment on any questions about his dealings with HKM. It would appear from that evidence that either the explanation that HKM was only acting as a middleman had not been given to the police or it had not satisfied them. Further, as set out below, Mr Nagra was evidently sufficiently concerned by the police's visit to him to initiate a meeting with Mr Chauhan to seek to get Jatinder's agreement to close down Fashionup, which suggests he did not have an easy and innocent explanation of the dealings they were enquiring about.
91. Mr Jory put it to Mr Malik that based on his invoices to Fashionup alone HKM had a turnover of some £86,000 in the quarter to February 2015 and should have paid VAT

of over £16,000. Yet his return (obtained from HMRC) showed turnover of only about £12,000 and a claim for a modest repayment. Mr Malik replied that he had not been paid by the quarter end and "according to the way I do it I wouldn't have put it in till then". He claimed not to have been aware he was obliged to account for sales in the period invoiced rather than in the period paid. This I suspect took Mr Jory by surprise- he was not armed with any later returns to put to Mr Malik. Later in closing he referred me to HKM's bank statements, which show no substantial VAT payments in any subsequent period despite the considerable payments that had been made by Fashionup. These had not been put to Mr Malik, so I do not know if he could have offered any explanation, but it is not easy to see what it might have been.

92. Mr Malik maintained that the police investigation against him had come to an end and there were no outstanding allegations against him. He said he had been acquitted at three trials, as if this proved his point, but on further questioning admitted that those trials had no connection with his dealings with Fashionup. When it was put to him that the officer in charge of the investigation had given evidence it was continuing, he said he would not trust what the police said and he had made complaints about them, as if his knowledge of their position would be better than their own.
93. Mr Malik had no records to support any of his alleged trading. He had, he said, moved to Falmouth in late 2015 and not taken any records with him, saying "presumably I threw them away". His company was not by then dissolved but he said "due to the behaviour of the police I decided to move. I needed a clean break". So on his own account he destroyed the records of his company while it was still in existence and he knew the police were investigating its affairs.
94. He said he had tried to get copy records from a Mr Iqbal, who he said was his only contact with the actual manufacturer, but had been unable to contact him because the police had seized his own mobile phone which was his only record of Mr Iqbal's number, as if that phone was his only record of the number that was his only means of contact. A moment later, and inconsistently, he said he had been to Temple Building where Mr Iqbal had worked but found he had he had left and changed his mobile number, implying that despite the absence of his own phone he still had access to the number Mr Iqbal originally used.
95. Mr Malik accepted he had immediately withdrawn in cash substantially everything paid to him by Fashionup, saying he needed to do so "to pay the maker". This did not explain why he needed to do the same for the amount representing the margin he would have presumably made. He denied giving any cash to Mr Nagra.
96. Mr Malik gave his evidence throughout in a brash manner, seeking to blame everything on the police and smirking as he came up with his explanations for not declaring his turnover, having destroyed his records and being unable to contact the person he said had done all the work. I did not believe his evidence on any material point. It is not in my view credible (a) that Mr Nagra had insufficient contacts to need to pay inflated prices to a middleman like Mr Malik (b) that if Mr Malik was genuinely acting as a middleman he would have only one such contact with the actual suppliers and know so little about him that he could only reach him by mobile phone or (c) that if acting genuinely he would have no documentation available or would have destroyed what he had in the manner he claimed.
97. I conclude that Mr Malik lied throughout, and the most likely explanation is (and I therefore find) that the dealings he invoiced were not genuine but he was another

party with whom Mr Nagra entered into cash laundering transactions of the sort described above.

98. None of the other witnesses called by Mr Nagra as representatives of the various companies alleged to have provided false invoices to Fashionup or Rocco provided any documents to support the existence of the genuine trading transactions they asserted had been entered into. None of them produced any bank documentation to show how they had dealt with the monies they had received. All of them said that they had not been asked to bring any such documents, though most agreed that their business would have produced or held such documents and they could have been provided (or obtained from the bank) if they had been asked for. Mr Nagra was well aware that the allegations were that there was no genuine trade but an arrangement for money to be paid to a bank and then immediately withdrawn in cash and mostly returned to him, and so would be aware that any documentation showing that the transactions were genuine trading, or that monies had not been dealt with as alleged, would be valuable corroboration.
99. In many cases Mr Dass on behalf of the petitioners had written to the same witnesses making clear the nature of the allegations and asking for disclosure of their documents and bank records. None had been provided to him, but the witnesses must have been aware themselves that documents that would support their account would be relevant and important. Some of them said they had taken Mr Dass's letters to Mr Nagra to ask him what to do.
100. In these circumstances, I accept Mr Jory's submission that it is appropriate to draw an adverse inference as to their credibility from the failure to provide such documentation. If it existed, Mr Nagra could have been expected to ask them to produce it. He must (at least) have not made that request, and it is proper to infer that the likely reason is that the documentation either does not exist or would not support his case or the evidence he had asked them to give.
101. Gurvinder (Goldie) Singh gave evidence as to his own dealings and those of ZAK, for which he said he had acted as intermediary to arrange work. In relation to that he said he did not go looking for anyone, but sometimes people knocked on his door asking for work from Rocco and he would introduce them to Mr Nagra. Sometimes he had to translate for Mr Nagra into Hindi or Gujarati.
102. This is not in my view a credible explanation for the work said to have been placed with Zak Fashions. That company invoiced just over £300,000 for work said to have been done between January and May 2015. If genuine, it must have been a substantial business. While it might have valued an introduction to Mr Nagra, might have approached Goldie if it knew him to be able to effect such an introduction and might have continued to involve Goldie in some way to facilitate business, it does not seem commercially realistic that Mr Nagra would agree to take on a new supplier at prices substantially higher than he had been accustomed to paying those who dealt with him in cash, as I have found he did in the period covered by the cashbook.
103. One of those suppliers, I am satisfied, was Goldie himself, referred to as "G" in the cash records. It may well have been the case, as he said, that Goldie did not have the capacity himself to do everything Mr Nagra required and he placed work with others, but if so he was evidently able to do that within the cash price Mr Nagra paid him and it was not therefore a reason why Mr Nagra should pay more to others. Goldie denied ever dealing with Mr Nagra in cash. I am satisfied that he was lying about that, as he

was paid in cash during the cashbook period. This further affects his credibility, though it does not necessarily mean he would have taken part himself in the cash laundering scheme Mr Nagra ran. However Goldie ran his own company, Fashion Spot Ltd, which did claim to have supplied to Rocco, at prices which Mr Jory showed in at least one instance were more than double what he had himself been paid in cash for apparently similar goods. The most likely explanation is that this company was another false supplier, as was Zak Fashions, whatever the nature of Goldie's involvement with that company.

104. Of the questioned suppliers to Fashionup, only Honey Garments Ltd has had any long period of trading and only that company is still in existence. Its owner and director Mr Arif Patel gave evidence, but I did not find it convincing. He seemed to have been primed to respond to almost any question with a response along the lines "we did the work and they paid us for it", whether that addressed the thrust of the question or not. He seemed to accept he had immediately drawn in cash what had been paid to his company, saying he had a factory and needed to pay the wages, something he repeated frequently, giving the impression it too was a prepared response, but which did not explain why he would need to withdraw the whole amount received, since he presumably had other business costs in addition to wages.
105. Mr Jory put it to him that his company had also made substantial payments to four of the other questioned suppliers, whose bank records showed that the money had been immediately withdrawn in cash. This he said he was nothing to do with him; he said they did work for him and he just paid for it, an answer that reflected what he said about his own dealings. He gave this response with a broad smirk however and I concluded it was a lie.
106. Mr Patel provided no documents in support of his evidence other than some invoices which he acknowledged had been provided to him by Mr Nagra. He said that he or his accountant had all his documents and he could have provided them if asked, but he had not been asked to do so. Honey Garments does appear to have a genuine business, so if these transactions had formed part of it I have no doubt there would have been some documentation created in the course of them that could have been obtained, but it appears Mr Nagra did not ask for it. I infer the likelihood is that there is in fact no such documentation, and the most likely reason is that whatever other business Honey Garments has, these transactions were not genuine.
107. It appears to be the case that some of the other questioned suppliers, or the individuals behind them (such as Goldie), do have genuine manufacturing operations. Mr Kalfon submitted that was a reason to believe their explanations that they had done work for Mr Nagra as they said. But that in my view is of little weight in relation to the specific transactions under question. It is evident (as Mr Kalfon urged himself in a different context) that the individuals participating in this trade may do so through a variety of guises, acting in person or through one company or another as it suits them from time to time. It is perfectly plausible that an individual such as Goldie may have been paid in cash for work he did or arranged, but simultaneously arranged for a false invoice for a different price to be raised by a company he controlled claiming payment for the same work. Without any supporting evidence, it would not be safe to conclude from the fact that he must have arranged the labour and facilities to perform the work that the employees or the costs involved were necessarily provided or incurred or paid through the medium of the limited company named on the invoice. Thus neither the fact that some of the questioned suppliers appear to have genuine trading operations,

nor the fact that some of them are associated with, fronted by or said to be represented by individuals with whom Mr Nagra clearly had some business dealings is any reliable indication that the transactions he put through the books were genuine.

108. Mr Kalfon submitted that it was unlikely that Mr Nagra can have formed the cash laundering scheme alleged, identifying the method and other participants in it, so quickly that it could be put into operation immediately from the time Fashionup began to trade, as was the implication of the pleaded case against him. I am inclined to agree, but having heard all the evidence I do not consider that the inference to be drawn is that there was no such scheme and it is all an unsupported theory of the petitioners, as Mr Kalfon suggested. It is more likely that Mr Nagra was already aware of this scheme and chose to put it in to operation when he was able to. It appears from the evidence that there are a number of individuals who participate in such a scheme in the garment trade in Leicester, and if so Mr Nagra as a person well connected in that trade over a long period might well be expected to be aware of it.
109. It does appear, as set out above, that Mr Nagra was running this scheme at a time when payments were being made to Isher Clothing Ltd, suggesting that any invoices would have been made out to that company and raising the question whether the scheme can have begun only from the point where Bulbinder ceased to be in a position to act as director of that company. But Mr Nagra has not alleged for instance that such a scheme had been running previously at Isher Clothing with Bulbinder's knowledge and participation and was simply continued by him when Bulbinder went to prison. His case has been that there was no such scheme at all. I have found against him on that, and do not need to speculate on matters beyond the pleaded allegations.
110. The conclusion that Mr Nagra was running a cash laundering scheme of this nature, over a prolonged period and involving very substantial amounts, and that his various attempts to explain away the documentation that he must have known was completely fatal to his case were all lies is of course severely damaging to his credibility. Further, on the cases run by the parties, it must be taken to be the case that he ran this scheme for his own benefit and did not disclose it either to Jatinder, the fellow shareholder in Fashionup, or Bulbinder, the owner of Isher Clothing. He was thus defrauding them, and is likely to have been willing to continue to do so and to lie about it.

The alleged meetings and consent to transfer the business to Rocco

111. Mr Nagra's pleaded case is (summarised from paras 8-11 of the Points of Defence)
 - i) In about May 2015 he told Mr Chauhan he wanted to close Fashionup to put an end to any perceived association with Bulbinder, but Mr Chauhan told him he would need Jatinder's consent.
 - ii) He accordingly "subsequently" met Jatinder at the company premises on or about 3 June 2015, told him that Bulbinder had been interfering in the business from jail and that the police had visited him on about 5 occasions in April or May enquiring whether Fashionup was a phoenix of the Isher Clothing business, and said that he wanted to close Fashionup and not be associated with Bulbinder any further.
 - iii) Jatinder had agreed Fashionup would be closed, asked what Mr Nagra would do afterwards and been told he wanted to open his own clothing business in place of Fashionup.

- iv) Jatinder had said Mr Nagra should not worry about him or his mother as they had plenty of money, and he should go off and earn some money for himself.
 - v) Mr Nagra relayed this to Mr Chauhan who said he would check with Jatinder and "on or around 8 June 2015" Mr Chauhan told him Jatinder had agreed that Fashionup could be closed down.
112. Mr Kalfon submits that the reference to a business "in place of" Fashionup and consent to that amounts to a consent to transfer the business of Fashionup to a new company under Mr Nagra's sole control.
113. In his witness evidence at the time of the freezing injunction (C/439) Mr Nagra had:
- i) Described a meeting with Jatinder in similar terms to the above "in late May or early June 2015".
 - ii) Said he had "after that meeting" raised it with Mr Chauhan, who had told him he (Mr Chauhan) would not deal with the closure without Jatinder's agreement
 - iii) Said he told Mr Chauhan to discuss it with Jatinder and Mr Chauhan "told me he subsequently did and he reported to me that [Jatinder] had confirmed it would be in order to close Fashionup down".
114. Thus the pleaded case alleged an additional conversation about closure with Mr Chauhan in May prior to any meeting with Jatinder, but maintained that (a) Mr Nagra's meeting with Jatinder had been no later than about 3 June and (b) Mr Chauhan had met Jatinder and reported his agreement no later than about 8 June.
115. In the same witness statement, Mr Nagra gave as one of the reasons for his wishing to close the business down the fact that he had been visited by the police four or five times, that they were interested in dealings between Fashionup and HKM which they considered might be money laundering, that they had also visited Select but in the end "confirmed that they had no issue with me or Fashionup but firmly advised me to sever any business ties I had with Bali". The necessary implication was that all this had happened before the meeting he said he had with Jatinder on or about 3 June.
116. In a later witness statement of 22 September 2017 Mr Nagra added to the details of his alleged discussion with Jatinder, saying:
- i) He had told Jatinder that when visiting Bulbinder in prison Bulbinder had asked him to pay a court order on his behalf and became upset when he refused.
 - ii) He told Jatinder his last dividend would be paid in July
 - iii) He believed Jatinder was "not asking for anything back in terms of wanting any more money for anything at all going forward". He does not say Jatinder told him this specifically but it was his inference.
 - iv) He did not give a date for that meeting, but reiterated that he had spoken to Mr Chauhan about it afterwards and Mr Chauhan had told him on 8 June that he (Mr Chauhan) had spoken to Jatinder and confirmed his agreement.

117. The reference to a discussion about a conversation with Bulbinder in prison cannot be accurate, because prison records show Mr Nagra visited only once, in July. At the opening of his evidence Mr Nagra sought to change this, saying Bulbinder had telephoned him from prison about the payment. But I do not think that is likely to have happened in May or June; Mr Nagra himself said Bulbinder sent him a form to request the payment in a letter postmarked 31 July. He was either misremembering the date of this incident or backdating it to add credibility to his claim to be upset with Bulbinder's demands on him.
118. Mr Nagra does not say at any point in his evidence that he had told Jatinder he had already begun to take steps to divert revenue away from Fashionup to Rocco. The documents show the first invoice interposing Rocco was dated 20 May, although Rocco was not in fact incorporated until 9 June. On his own account, by 20 May Mr Nagra must have decided to incorporate Rocco and put in place documentation to divert profit to it, but this was before any meeting with Jatinder (for which his earliest suggested date was "late May" and he later settled on a date on or about 3 June) and he did not tell Jatinder about it in any event.
119. In a letter of 13 June 2016, Mr Nagra's solicitors alleged that Jatinder had been to the company's premises "to pick up his father's car" after repair, at which time they had discussed the business, agreed it should not be associated with Bulbinder and Jatinder had told Mr Nagra to "shut it down" and go off and make money for himself. Jatinder denies any such meeting and points out that text messages show that Mr Nagra asked him to pick up the car from the dealer, not at the company's premises. The allegation of that meeting has not been pursued and must be taken to have been incorrect.
120. In support of his contention that Jatinder was expecting the closure of Fashionup and had agreed to it, Mr Kalfon pointed to the facts that:
- i) In a text exchange just after his release Mr Nagra had told Bulbinder " I work for myself now" and received the reply "I had gathered that".
 - ii) Jatinder had not made any enquiry about the fact his dividend payments had ceased after the beginning of July.

He further suggested that Jatinder may have been motivated to agree with the closure because he was potentially embarrassed by having, as Mr Nagra alleged, demanded and received two payments in cash additional to the agreed monthly dividends.

121. Jatinder denies any meeting with Mr Nagra to discuss the business or other business plans of Mr Nagra until much later, on 29 July. That he says came about because:
- i) Mr Chauhan telephoned him on 28 July and asked to meet him. They agreed to meet that evening in the car park of a local cinema.
 - ii) At that meeting Mr Chauhan said Mr Nagra was concerned about a recent visit from the police and recommended Jatinder should see Mr Nagra. He told Jatinder that Mr Nagra was "thinking about setting up a new company" and Jatinder had said that was a matter for Mr Nagra.
 - iii) Jatinder met Mr Nagra the next day. They discussed a number of matters including a recent visit from the police, a disagreement with a neighbour that had led to vandalism and a fight between the neighbour and Mr Nagra and

problems Mr Nagra said he was having running the business without Bulbinder. Mr Nagra told him business was "slow tough and quiet".

- iv) Mr Nagra "briefly touched on the potential to open a new company in the future... to do something other than clothing... I was unsure what this business venture would be and I stated this was something for him to decide."
- v) Jatinder accepts he was handed cash on two occasions by Mr Nagra, but he said it was not at his request and the documentary evidence shows that (a) he was asked by Mr Nagra to come and collect it and (b) there was no corresponding bank withdrawal, so it must have been paid from cash Mr Nagra already held and not specially drawn as he had said.

122. In his oral evidence, Jatinder said he understood the police visit was in connection with the neighbour incident and not anything else, although it was pointed out that his witness statement appeared to indicate these were separate matters so that the visit must have been about some other subject. Jatinder denied ever having been told about a proposal to close down Fashionup or start a new company dealing with clothing. He denied ever being told about the incorporation of Rocco or the steps that by then were well in progress to transfer all the existing business to it.

123. Mr Chauhan said in his witness statement:

- i) In May or June Mr Nagra had come to see him with a solicitors letter alleging breach of copyright in some dress designs, and suggested that Fashionup be liquidated to avoid this claim. Mr Chauhan had said he could not advise about that and cautioned Mr Nagra against such action.
- ii) Some days later police had called at his office enquiring about invoices from HKM. They had been referred to him by Mr Nagra.
- iii) A few days after the police visit, Mr Nagra had told him he wanted to start an internet based clothes selling business similar to one called "Boohoo" and instructed him to incorporate Rocco, which was to be owned by his then fiancée (now wife) Michelle. He did so on 9 June. He said he understood Rocco was to be a purely internet sales business.
- iv) Mr Nagra without giving him the details gave him to understand that "he was being pressurised by HMRC and the police and as a consequence was looking to close down Fashionup".
- v) On 28 July Mr Chauhan advised Mr Nagra he would need the consent of all the shareholders to close down Fashionup. The same day Mr Nagra told him he had spoken to Jatinder who had consented.
- vi) Mr Chauhan nevertheless decided to speak to Jatinder himself and did so that day (he agreed in his oral evidence that this had been at the meeting in the car park referred to by Jatinder) and to Michelle. Both had confirmed to him that Fashionup should be closed.
- vii) He had advised Mr Nagra to cease its trading activities immediately, by Mr Nagra said he could not do so until he had fulfilled existing orders.

124. In cross examination, Mr Chauhan:

- i) Said he had told Jatinder Mr Nagra was thinking of a new company to do something different and agreed he understood this would be an internet business akin to Boohoo.
- ii) Agreed he had no reason to think Jatinder was aware that Rocco had been incorporated.
- iii) Said the main point of the meeting on 28 July had been to get Jatinder's agreement to close Fashionup. Jatinder had agreed to this. He had asked what Mr Nagra intended to do next and Mr Chauhan had said he was not sure but it would be something new.
- iv) Agreed he considered Jatinder had agreed to close Fashionup on the basis that Mr Nagra was going to do something new.

125. It was the evidence of DS Scutt that:

- i) The police investigation concerned dealings of HKM and possible money laundering.
- ii) His officers had first attempted to speak to Mr Nagra on 21 July 2015 but been told he was on holiday. They saw him by arrangement later and took a statement dated 23 July 2015. There had been no enquiries with Fashionup relating to HKM before that.
- iii) Their only visit to Select had been considerably later, in January 2016.
- iv) He had been made aware subsequently that there had been a previous prosecution relating to Isher Clothing, but that was by HMRC. There was no indication in his records of any police enquiry about Isher Clothing, and no suggestion that Bulbinder was a person of interest, or of any advice to Mr Nagra that he should dissociate himself from Bulbinder. The officer Mr Nagra had named as having made four or five visits asking about Isher Clothing was a member of his unit, such that he would expect to have a record if any such visits had been made or any relevant enquiry was in progress.
- v) Mr Nagra had been arrested and bailed later, in December 2016. At that point he had been asked about Isher Clothing in interview and declined to comment. His bail conditions included no contact with parties involved with HKM but not Bulbinder.
- vi) It was possible that Mr Nagra might have been advised after his arrest not to contact Bulbinder while enquiries were continuing, but the police would not have advised him to sever any business connections.
- vii) The investigation was continuing.

126. It is not possible completely to reconcile all of this evidence. Considering it all, I reach the following conclusions:

- i) I do not believe that the police at any relevant stage advised or suggested to Mr Nagra he should dissociate himself from Bulbinder. Mr Nagra's accounts of the police involvement in his witness statement were substantially untrue, referring to enquiries about HKM as if they were made before June when they

were not until late in July and wrongly stating that the police had concluded their investigation when they had not. Insofar as Mr Nagra suggested that police advice was a reason for closing Fashionup or starting Rocco, it was not true. He did not mention that to Jatinder or Mr Chauhan. Nor do I believe he expressed any complaint to Jatinder or Mr Chauhan about Bulbinder interfering with the operation of the business from prison.

- ii) On the other hand I am satisfied that Mr Nagra resented the continuing participation of Bulbinder's family in the business. This came through in his own evidence and that of his wife who considered he was doing too much work for Bulbinder's benefit. I have little doubt Bulbinder did continue to make enquiries about the business from prison, probably because he regarded himself as still having a stake in it through his son and considered that Mr Nagra was, in a general way, taking care of it for him as he had before.
- iii) I find Mr Nagra did not have any meeting or other discussion about the future of Fashionup with Jatinder with possible reference to its closure before 29 July 2015. As to what was discussed on that occasion, see below. But insofar as he said he had discussed closing Fashionup with Jatinder in May or June, or on any date before 29 July, that was not true.
- iv) Mr Nagra did not tell Jatinder about the incorporation of Rocco or the steps he had taken to transfer business to Rocco at any stage, either before or on 29 July. I accept Mr Chauhan's evidence that Mr Nagra told him Rocco was intended to be a new venture dealing with internet sales and find he did not tell Mr Chauhan, at least until after 29 July, about any transfer of Fashionup's business to Rocco.
- v) The only relevant meeting Mr Nagra had with the police was on 23 July 2015. The subject of that meeting was Fashionup's dealings with HKM. Either Mr Chauhan must be misremembering when he says that Mr Nagra told him about a police visit before 9 June (when he gave instructions to incorporate Rocco) or Mr Nagra had untruthfully told him that there had been a police visit when there had been none.
- vi) The police visit to Mr Chauhan's office must have been at some time between 23 July (when they saw Mr Nagra) and 28 July.
- vii) It was probably those visits and the enquiries about dealings with HKM that caused Mr Nagra to accelerate the arrangements he was already making to transfer the business and to seek to get Mr Chauhan to close down Fashionup. He had reason to be concerned that those enquiries might reveal the cash laundering he was engaged in and, I infer, may have thought that getting rid of Fashionup as an entity could help protect him from any consequences.
- viii) Mr Chauhan told Mr Nagra on 28 July he could not close Fashionup without Jatinder's consent. I accept Mr Chauhan's evidence that Mr Nagra told him later the same day that Jatinder had consented, but that was not true because Mr Nagra had not at that stage spoken to Jatinder. Mr Chauhan was wise to insist on speaking to Jatinder himself.
- ix) Notwithstanding Jatinder's denials, I consider that he must have had some conversation with Mr Chauhan on 28 July, and therefore probably also with

Mr Nagra on 29 July, in which the closure of Fashionup was mentioned and Jatinder indicated he agreed with it. Mr Chauhan, whose evidence in many respects undermined that of Mr Nagra such that I could not consider him as having been willing to say anything that Mr Nagra wished, was firm on that point and in the end Mr Jory did not suggest he was wrong or untruthful in that respect. However Mr Chauhan did not tell Jatinder about any transfer of business to Rocco (because he was not aware of it) and gave Jatinder to understand that Mr Nagra's intention was to start a different internet based business, which was what Mr Nagra had told him.

- x) When Mr Nagra saw Jatinder on the 29th, he told Jatinder, untruthfully, that business was tough. He did not tell Jatinder about any actual or proposed transfer of the business to Rocco and if he mentioned his future plans at all it was either in vague terms or by suggesting he would start some different activity, as he had told Mr Chauhan.
- xi) I reject Mr Nagra's evidence that he told Jatinder he intended to start a business "in place of" Fashionup, or said anything that implied he would take over under his sole ownership a business derived from Fashionup's. I further reject his evidence that Jatinder said anything to the effect that he should not worry about Jatinder's financial position, or should feel free to go and make money for himself, or anything else that could reasonably be understood as abandoning any financial interest in Fashionup or consenting to Mr Nagra taking it over for his sole benefit. Such candour on Mr Nagra's part would be surprising, given the lengths he had gone to to implement the transfer without disclosing it to Jatinder and the untruthful explanation he had given Mr Chauhan about his intentions. The only evidence of such conversations comes from Mr Nagra himself, and it would not be safe to rely on his word. He is prepared to lie and invent explanations to suit his case, as I have found above, and I find that these matters were further inventions on his part to make a case to resist the petition.
- xii) I conclude therefore that Mr Nagra set out to transfer the business to Rocco without telling Jatinder anything about it. He may very well not have intended to do so at all, at least until it was a fait accompli. He concealed his intentions also from Mr Chauhan, telling him an untrue story about proposals for an internet business so that he would incorporate Rocco without telling Jatinder, and only involving Jatinder at all when Mr Chauhan would not proceed further until he did. When that happened, he did not reveal that far from being tough, business was booming to the extent Fashionup had an annualised turnover in excess of £3m, or that he had already implemented steps to transfer this business to his new vehicle Rocco. Nor, it must be assumed, did he tell Jatinder anything about the cash laundering scheme by which he was siphoning off the profit it should have made into cash in his own hands. Insofar therefore as he did get Jatinder to express agreement to closing Fashionup it was by virtue of a combination of untruthful statements and suppression of facts such that (to put it no higher) a misleading picture was presented to Jatinder. He has subsequently embellished the conversations he had with Jatinder to seek to turn the incomplete and distorted picture he presented to Jatinder to get him to agree to "close down" Fashionup into a justification for him taking all the benefit of its business for himself.

127. I confess to some unease that these conclusions still leave an incomplete picture suggesting that Jatinder and Bulbinder may not have given a full account to the court. I have found that Jatinder must have spoken to Mr Chauhan about closure of Fashionup. That raises the question what he was expecting to happen afterwards. He has not given any explanation of that, presumably because it would be inconsistent with his own account. But I do not think it plausible that if he had (as he says) understood that Fashionup was continuing in business he would not have made some enquiry when his dividend payment for August did not arrive. It would be credible that if he had done so and been told there were no profits to pay any dividend he might have swallowed that, but it does not seem likely that, as he says, he was told nothing in advance and merely assumed without asking that the explanation for non payment must be lack of profit.
128. Further, Bulbinder's text to Mr Nagra on his release indicates that he was aware by then that Mr Nagra was working through some vehicle other than Fashionup. It would perhaps be surprising if someone with the extensive contacts he had in the trade had not picked up some indication of Fashionup's activity being wound down and/or the existence of Rocco. It may be (I can only speculate) that he did so but advised Jatinder not to rock the boat until he was released and able to speak to those he knew in the trade to find out the full picture.
129. It is also puzzling why Jatinder would have agreed, with no or very little enquiry as to the reasons or what would happen next, to the closure of what he must have thought was a cash generating business (on account of the dividend payments he was receiving) even if he was not aware of the cash laundering scheme. A possible explanation might be that he accepted that business was tough as Mr Nagra had told him and that Mr Nagra was just going to close it and walk away to do something different. But that would seem to indicate enormous naivety on his part, even if I could believe that he would have gone along with such a proposal without discussing it with his father. Alternatively, one may speculate that Jatinder might have been told the business would have to be moved out of Fashionup in some way because of the police enquiry but either expected or was given to understand he would still participate in that business in its new form. But neither side has put forward any such scenario and I must decide the case on the pleadings and evidence as to the issues they have raised.
130. Whatever the truth about these matters may be, I do not consider the scenario presented by the respondents to be credible. On their account, Jatinder agreed without any enquiry to walk away from a business that his father had maintained by one means or another for almost 30 years and which up to then had been paying his family at least £9,000 per month, and turn it all over to Mr Nagra without any payment or other return. Whatever the nature of their discussions, I do not consider it at all likely Jatinder would have agreed that.

Conclusions

131. Given these findings, the respondents' case that any actions that would otherwise amount to breaches of director's duty were authorised by Jatinder must fail. It is clear that in order to rely on informal consent by shareholders as authorising, waiving or ratifying any such acts the shareholders must have given their consent with full knowledge of the relevant facts; see *Sharma v Sharma* [2013] EWCA Civ 1287, per Jackson LJ (with whom the other members agreed) at paras 44-52.

- i) Whatever Jatinder said when he met Mr Nagra on 29 July 2015 could not be an informed consent to any of the acts Mr Nagra had already undertaken to transfer business or profits to Rocco for his own benefit, because he was not told about them.
 - ii) Insofar as he consented to the closure of Fashionup, no reliance can be placed on that because he was deceived as to its trading position and financial performance, firstly by the deliberately misleading statement that trading was tough, secondly by non disclosure of the cash laundering scheme Mr Nagra was running which must have falsified any accounting information that he had seen and thirdly by non- disclosure of the steps already taken and those planned to continue the business through Rocco.
 - iii) Even if Jatinder had validly consented to closure of Fashionup as a company in principle, he was not asked to and did not agree that the closure could be effected by taking further steps to transfer the business for no consideration to Rocco and give away the value of its business or assets. Accordingly, it was not a consent to any actions Mr Nagra took after 29 July that would otherwise have been in breach of duty.
132. It is not disputed that Mr Nagra pursued a strategy of eliminating any surplus of assets held in Fashionup's name over its liabilities. He contends that it was justified to do so because he ensured that Fashionup's affairs were wound down and its creditors were paid. His evidence is that he considered this normal and proper and that Jatinder's consent to closure was a consent to proceed in this way even if it meant that value that could have been realised in Fashionup was effectively transferred to Rocco.
133. At some point any tangible assets such as machines and cutting tables were transferred, for an invoice price that was said to be what Fashionup had paid Isher Clothing. There was no allegation that that price was an undervalue.
134. Mr Nagra continued to pay costs of premises supplies and wages out of Fashionup, even after all orders were being processed exclusively in the name of Rocco. In doing so he ran down assets in Fashionup and benefitted himself through Rocco. That was a breach of his duty to have regard to the interests of Fashionup, to which Jatinder had not given any valid consent.
135. I am satisfied that in procuring the credit notes he did from suppliers and writing off part of the debt due from Rocco he was simply manipulating the figures on the books of Fashionup to produce his intended elimination of its assets. The invoices from the supposed suppliers were in all probability fictional in any event, intended for the cash laundering scheme but ones he had not got round to paying for that purpose. He no longer needed them so required the "suppliers" to eliminate them. The supposed explanation of a dispute over design copying is wholly unsupported by any independent evidence, and I do not consider I can place any weight on the witness evidence of Mr Nagra or the individuals he produced to testify to it. If there had been any genuine liability to those suppliers, there was no plausible reason, if he were considering the interests of Fashionup, to pass the benefit of having it released to Rocco- there was no evidence at all of any loss of sales to Rocco nor, if there had been, any reason why Fashionup should compensate Rocco for it.
136. If Mr Nagra had been acting properly to close down the trading of Fashionup it would have been his duty to that company to realise the proper value of its business and

assets for the benefit of the company and its shareholders, unless the shareholders had consented to some other course. Jatinder had not been informed about and had not expressly or by implication consented to giving that value away to Rocco. The further steps Mr Nagra took for that purpose were therefor also breaches of duty.

137. Drawing all this together, I find that Mr Nagra acted in wholesale breach of duty to Fashionup by conducting its affairs using a cash laundering scheme in which all its purported suppliers of CMT services were in fact participants in a fraudulent scheme to launder cash for his own benefit (which must also have had the effect of falsifying its accounts and its VAT and tax returns) and by transferring all the value of its business and assets to Rocco, again for his own benefit. He obtained what he regarded as a consent of some sort from Jatinder to closure of Fashionup, but that was ineffective to validate any of his actions because of his deliberate deception of Jatinder and failure to disclose any of the acts he was engaged in. Although I am concerned that there may have been other matters they discussed in connection with the obtaining of that consent, neither side has put forward any case that there were, still less what they might have been. As a result, the only conclusion I can reach is that to the extent Jatinder said he agreed to the closure of Fashionup, that was obtained by deception and was wholly invalid.
138. The conclusion that Fashionup's affairs were conducted in a manner unfairly prejudicial to the interests of both petitioners as members inevitably follows.
139. As to relief, the court has a wide discretion. The petitioners' shares are now valueless as a result of the actions complained of, so it would plainly not be fair to them to order a sale at the value at the date of judgment, which is the common starting point in a minority shareholder's petition (the petitioners are not of course a minority). In principle, in my view, the court should aim to restore to the petitioners the value their shares would have had but for the unfairly prejudicial conduct. Mr Jory's submission is that this should be achieved by valuing the shares at 20 May 2015, immediately before the transfer of value to Rocco began, but on the basis that its costs as shown in its books are adjusted so as to ignore the invoices from the pretend suppliers and substitute amounts, as best they can be estimated, likely to have been paid to undocumented cash suppliers.
140. This would no doubt not be straightforward, but could in principle be achieved, using the guidance of what I have found to be cash records. No doubt it would mean a reconstitution of its tax and VAT affairs to show the position the company would have been in if it had conducted its business in a regular manner. It would mean that any increase or reduction in sales turnover or profits after the transfer to Rocco would be ignored, but neither side has suggested that would be unfair. It would, as Mr Jory suggests, be a much simpler exercise than attempting any similar reconstruction at a later date when the business was being run by Rocco, with more and different suppliers and the difficulty of establishing which of them were genuine and which were involved in any continued cash laundering scheme.
141. I propose therefore to make an order for the petitioners to be bought out on the basis Mr Jory seeks. Before finalising it however I will give the parties the opportunity to make further submissions, because I am aware that Select, the principal customer, has recently proposed a CVA and they may wish to argue that should be reflected in some way in the order.

142. Finally, it is appropriate in my judgment to make the order against Mr Nagra and Rocco jointly. The breaches of duty were committed by Mr Nagra, but he was the effective controller of Rocco which not only benefitted from them but took part by interposing itself between Fashionup and Select and receiving the transfers of assets and goodwill from the Company. It must be taken to have his own knowledge that he was acting in breach of duty. Rocco is therefore equally responsible with Mr Nagra, as a participant in his breaches and as knowing recipient of the benefit of them.
143. I will list a hearing for this judgment to be handed down. There need be no attendance on that occasion, but I anticipate there will be a need for a hearing to consider matters arising. The parties should submit an agreed time estimate and available dates so that it can be listed.