IN THE GRAND COURT OF THE CAYMAN

ISLANDS FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 28

CAUSE NO: FSD 0080 OF 2025 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF NAAS TECHNOLOGY INC

Before:	The Hon. Justice David Doyle
Appearances:	Marcus Staff, Charlotte Walker and Jaemin Shin of Appleby (Cayman) Ltd for NaaS Technology Inc
	Tom Lowe KC instructed by Paul Smith, Sarah McLennan and Moesha Ritch of Forbes Hare for LMR Multi- Strategy Master Fund Limited
Heard:	9 April 2025
***Ex tempore* judgment delivered:**	9 April 2025
Draft transcript circulated:	10 April 2025
Transcript approved:	15 April 2025

Determination of an application in respect of a statutory demand – whether the presentation of a winding up petition would be an abuse of process – filing of notice of arbitration - whether the debt is bona fide disputed on substantial grounds – indemnity costs

The Summons

1. NaaS Technology Inc (the "Company") in an originating summons dated 3 April 2025 (the "Summons") seeks the following relief:

   (1) a declaration that there is a genuine and substantial dispute concerning the debt claimed in a statutory demand (the "Alleged Dispute") served by LMR Multi-Strategy Master Fund Limited ("LMR") on the Company on 5 February 2025 (the "Statutory Demand");

   (2) a declaration that the Statutory Demand is not in conformity with the requirements of law and an order that it be set aside;

   (3) an order that LMR be restrained from advertising and/or presenting any petition to wind-up the Company on the sum claimed in the Statutory Demand;

   (4) further, or in the alternative, an order that LMR be restrained from advertising and/or presenting any petition to wind up the Company until such time as the Alleged Dispute is resolved by way of arbitration.

2. The Company no longer pursues paragraph (2) of the Summons.

Mr Dai's evidence

3. The Summons is supported by an 18 page signed (but not yet notarised) affirmation of Zhen Dai ("Mr Dai") dated 3 April 2025.

4. Mr Dai says he is a director of the Company which is listed on the Nasdaq Stock Market. He describes LMR as "a purported creditor of the Company". At paragraph 5 he states:

> "The Company's firmly-held belief is that parties connected to and/or directed by LMR have coordinated the short-selling of the Company's stock …"

5. Mr Dai accepts at paragraph 7 that in "early 2025, the Company failed to make an interest payment of US$364,583.33 and a cash consideration payment of US$537,581 …". On 5 February 2025 LMR served the Statutory Demand claiming that the Company owed LMR the total sum of US$35,960,497.66 (the "Alleged Disputed Debt"). Mr Dai says (at paragraph 8) that the Alleged Disputed Debt is the subject of a genuine and substantial dispute, which is governed by New York law and subject to arbitration before a tribunal administered by the Hong Kong International Arbitration Centre ("HKIAC"). He says that a notice of arbitration has been filed but does not refer to its date at paragraph 8 or paragraphs 49 to 51 of his affirmation but does at paragraph 32. At paragraph 45 of the Company's skeleton argument dated 7 April 2025 it is stated that the Notice of Arbitration was filed on 3 April 2025 (the same day as the Summons was dated and nearly 2 months after the Statutory Demand was served). On 13 January 2025 LMR had served an Acceleration Notice and a Demand Notice on the Company.

6. At paragraph 22 Mr Dai uses the wording "what I suspect was a coordinated practice of short-selling of the Company's stock."

7. At paragraph 24 Mr Dai says that the share price collapse from the strike date set under the First PSRA to the time that the Statutory Demand was served "caused the Company to investigate the trading pattern of its stock and led to its belief that LMR is directing and/or coordinating the short-selling of the Company's stock."

8. At paragraph 28 Mr Dai says:

> "I believe that LMR has coordinated the short-selling of the Company's stock with the intention of benefiting itself …"

9. Mr Dai adds that "If this belief is ultimately found to be true, the Company (and, by extension, its public shareholders) have been enormously harmed by LMR's conduct."

10. Mr Dai says he intends to cause the Company to pursue claims of a breach by LMR of the implied covenant of good faith and fair dealing which he says form an integral part of each of the

agreements between the parties. He says at paragraph 29 that these are New York law governed claims which are "fully articulated in the HKIAC Notice of Arbitration" and must be resolved in that forum.

11. Mr Dai at paragraph 57 says that there is a genuine and substantial dispute between the parties and LMR's continued threats in respect of a winding up petition constitute an abuse of the process of the court.

The Notice of Arbitration

12. Mr Dai refers at paragraph 49 of his affirmation to the Notice of Arbitration. It is dated 3 April 2025 and runs to some 15 pages.

13. At paragraph 2 of the Notice of Arbitration it is stated that the parties' dispute arises from a Convertible Note Exchange Agreement entered into by the Company and LMR on 4 October 2024 (the "CNEA") and a Convertible Note dated 16 October 2024 ("New Note") stated to be issued pursuant to the CNEA.

14. At paragraph 3 it is stated that the Company believes that "LMR, or parties connected to or controlled by LMR, have coordinated the short-selling of the [Company's] stock, benefiting LMR to the [Company's] significant detriment and amounting to a breach of the implied covenant of good faith and fair dealing contained within the New York law-governed New Note and CNEA."

15. In a very generalised and ambitious plea, but perhaps reflecting the regret of the Company at entering into the agreements with LMR, it is stated at paragraph 4 that:

> "high-hand tactics had been deployed by [LMR] against the [Company] during the process of contractual formation. The [Company] was effectively coerced into signing these documents, which contain terms that are grossly unfavourable to it and unconscionable. It is the [Company's] case that these agreements are illegal, and formed under coercive and unconscionable circumstances and thus unenforceable and liable to be set aside."

16. At paragraph 14 it is stated that the "CNEA and the New Note arose out of and formed part of a complicated scheme designed by LMR starting from around June 2023 (the "Scheme"). Pursuant to the Scheme, the [Company] was made to borrow a significant sum of money from [LMR] with

exorbitant "interest". It was further made to redeem or repurchase its own shares using the loan it borrowed from [LMR]."

17. I note in particular paragraphs 14 to 20 of the Notice of Arbitration as the Company at paragraph 46 of its skeleton argument says that these set out the "supporting facts" of its relevant claims. Paragraphs 15-16 simply refer to the June 2023 Agreements and the Convertible Note dated 6 July 2023. Paragraphs 17-18 simply refer to the August 2023 Agreements and the Convertible Note dated 5 September 2023 and paragraphs 19-20 simply refer to the CNEA and the New Note.

18. At paragraph 21 it is stated that various agreements "are grossly unfair and unconscionable and entered into at a time when the [Company] had little bargaining power and with no meaningful alternative."

19. At paragraph 22 it is stated that because of that "undue burden" the Company "became embroiled in increasing cash flow difficulties" and the "difficulties were escalated by the unusually steep decline of the share price of the [Company]"

20. At paragraph 23 it is stated:

> "By the time the CNEA and the New Note were entered into in 2024, the [Company] was in an even worse position than that in mid-2023 and practically had no alternative but to concede to those agreements to avoid the dire consequences threatened by [LMR] such as a winding-up petition and the total collapse of the share price of the [Company]."

21. At paragraph 24 it is stated that in those circumstances the Scheme is "invalid and unenforceable" in that:

(1) it constitutes a share redemption or repurchase scheme which may contravene the requirement of section 37 of the Companies Act of the Cayman Islands;

(2) it is unenforceable "when [LMR's] conduct allowed it to take advantage of an artificially lower market value of the [Company] to the prejudice of the [Company] in breach of the implied covenant of good faith and fair dealing under New York law;

(3) it is unenforceable "because of the coercive and/or unconscionable foundation of the Scheme."

22. At paragraph 29 of the Notice of Arbitration, the Company seeks the following relief against LMR:

(1) a declaration and/or order that the CNEA and the New Note are unenforceable;

(2) alternatively, an order that the CNEA and the New Note be set aside;

(3) a declaration and/or order that LMR is not entitled to any payment under the CNEA and/or the New Note;

(4) damages to be assessed; and

(5) costs.

Mr Wong's evidence in response

23. In her first affidavit sworn on 7 April 2025 Moesha Ritch of Forbes Hare exhibits various documents including the affirmation of Wong Hung Hing ("Mr Wong") signed on 7 April 2025. The sworn affirmation was filed on 8 April 2025.

24. In his 8-page affirmation Mr Wong (also known as Kane Wong) says that he is a portfolio manager employed by LMR and that he is authorised to swear the affirmation on behalf of LMR.

25. At paragraph 12 Mr Wong says that LMR's overall position was always a "long" position. In other words, LMR stood to make more money from a rise in the price of the stock of the Company.

26. Mr Wong at paragraph 15 rejects "absolutely the implicit and negative connotations of the "firmly-held belief" of the Chairman [Mr Dai] about the activities of LMR in relation to the Company". He also rejects the suggestion at paragraph 4 of the Notice of Arbitration about alleged coercion or unconscionable conduct by LMR.

27. Mr Wong at paragraph 16 says that there is "absolutely nothing sinister or otherwise improper about the entry into any of the contracts or arrangements between LMR and the Company – for all these

arrangements, each party was represented by experienced counsel: Sullivan & Cromwell for LMR and Skadden for the Company …".

28. At paragraph 17 Mr Wong stresses that the commercial interests of LMR are, in fact, aligned with those of the Company given LMR always holds an overall long position in the Company which has been continuously maintained.

29. At paragraph 18 Mr Wong states that the table set out at paragraph 22 of Mr Dai's evidence does not take into account the losses that LMR suffered due to the fall in the Company's share price.

30. At paragraph 19 Mr Wong states "without any reservation, that the aspersions of coordinated market manipulation are entirely baseless and spurious. There is simply no truth or factual basis to the speculative statement of the Chairman that there has been "manipulative short selling" of securities issued by the Company." Mr Wong adds that "LMR has never conducted short selling by borrowing stock in the market and subsequently short selling such borrowed stock, nor has LMR procured such short selling by any affiliate or third party".

31. At paragraph 21 it is stated that "LMR maintains that there is no genuine or substantial dispute about the indebtedness payable to LMR."

32. At paragraph 23 it is noted that "LMR has acted, at all times lawfully and in accordance with the terms of the" relevant documentation.

33. At paragraph 24 Mr Wong states that in the ordinary course of the operation of the international markets (including securities that are listed on NASDAQ), it is lawful to short-sell securities. He says that the investment approach of any hedge fund (including LMR) is to maximise returns in both a falling and rising market. Mr Wong says that the evidence of Mr Dai is "fundamentally misconceived as it conveniently ignores the customary activities of hedge funds, and the purposes and consequences of the terms of the Existing Documentation as duly executed by LMR and the Company."

The various notices, demands and correspondence

34. By Acceleration Notice dated 13 January 2025 LMR gave the Company notice of a non-payment default in that interest of US$364,583.33 had not been paid by 8 January 2025.

35. By Demand Notice dated 13 January 2025 LMR demanded that the Company pay forthwith the "Cash Consideration in the amount of US$537,581 in cash" which was due on or before 31 December 2024.

36. By Statutory Demand dated 24 January 2025 which was served on the Company on 5 February 2025, LMR demanded that the debt of US$35,960,497.66 (being US$39,537,581 plus interest of US$422,916.66) be paid within 21 days of service. A receipt appears on the document under divider 6 with the name Tami Powers for/on behalf of "Naas Technology Inc" date and time 5 February 2025 11:44am.

37. By letter dated 27 February 2025 Linklaters for LMR wrote to the Company indicating that the statutory time period for the Company to pay the outstanding debt in full expired on 26 February 2025 without any payment being incurred. They inferred that the Company had no funds to satisfy the debt "nor any *bona fide* defence to the immediate obligation to repay the Outstanding Debt." They stated that the Company was now deemed to be insolvent and LMR were entitled to present a winding up petition. Concerns were expressed over a proposed share buy back, a connected transaction involving the Company and its controlling shareholder and the cancellation of the AGM scheduled for 25 January 2025. At paragraph 4.1 they reiterated the position that "clearly there can be no *bona fide* dispute to the repayment of the Outstanding Debt". LMR's rights were reserved including its right to proceed immediately with the presentation of a winding up petition.

38. By letter dated 11 March 2025 Appleby for the Company referred to the Statutory Demand dated 24 January 2025 which had been served on the Company's registered office on 5 February 2025. Appleby gave some brief background to what they described as "the Disputed Debt." Appleby stated:

> "Investigations by the Company into the trading of its listed shares
>
> The Company is in the process of undertaking a forensic investigation into the public trading activity of its listed shares. The preliminary findings suggest a pattern of manipulative short selling, leading to the precipitous decline in the Company's share price. These investigations are being conducted as a matter of urgency. No conclusive finding has been made at this time. For the time being, LMR has emerged as the only party which might stand to benefit from a collapse in the Company's share price.

Genuine dispute

In the premises, and at least until the Company's forensic investigation has been completed, there is a genuine dispute founded on substantial grounds as to the validity of the Disputed Debt. Were it to emerge that LMR had perpetrated, supported or otherwise been involved in the suspected short selling, there would be no basis for LMR to petition to wind the Company up. If LMR were to present a petition based on the Disputed Debt, the Company's share price would be yet further impacted, causing irreparable loss and damage to the Company's other creditors and general body of shareholders."

39. Appleby stated that "winding-up proceedings should not be commenced where the petition debt is genuinely disputed on substantial grounds. Further, it is an abuse of process to seek to use the winding-up court as a debt collection agency …". Appleby requested an undertaking before 12pm 13 March 2025 not to present a winding up petition and failing such reserved the Company's right to apply for an urgent injunction.

40. Linklaters responded by letter dated 13 March 2025 referring to Appleby's "baseless assertion that our Client has been involved in a pattern of manipulative short selling trades aimed at benefitting themselves from the collapse in the Company's share price" and complained about the lack of "any supporting fact or other evidence" adding that even "by the contents of the 11 March Letter, it is mere speculation pending a professed and unilateral investigation". The allegations are "categorically refuted."

41. Forbes Hare then appear to have come onto the scene for LMR and also wrote a letter to Appleby dated 13 March 2025. LMR "denies categorically the insinuation in [the] letter [11 March 2025] that LMR may have been involved in any short selling of shares in … the Company". Reference is made to the words "suspected", "preliminary finding", "ongoing" investigation, "suggest", "[n]o conclusive finding has been made" and it is stated "Plainly, the Company does not have sufficient evidence to positively allege that any manipulative short selling has taken place." They say that the "letter does not identify any evidence linking LMR to any short selling". They maintain that "there is no genuine dispute on substantial grounds that the debt the subject of the Statutory Demand is due and payable by the Company." They add that if an injunction is applied for "LMR will oppose the grant of any such relief and will seek an order for indemnity costs as a mark of

displeasure at the Company's bad faith concoction of a frivolous purported objection to the payment of a debt that is not honestly disputed."

42. Appleby respond to both letters by letter dated 20 March 2025 and again seek an undertaking and state that in the meantime "the Company will negotiate with LMR in good faith with a view to achieving a consensual resolution to the extant dispute between the parties."

43. Linklaters respond by letter dated 20 March 2025 reiterating the position of LMR that there is "no substantial or *bona fide* dispute to the Outstanding Debt and the insinuation made in your letter dated 11 March 2025 that our client has engaged in some manipulative market trading has, seemingly, been abandoned." The Company was invited to prepare an appropriate Make Whole Plan.

44. Linklaters sent a chaser on 25 March 2025. A draft of the winding up petition was attached.

45. Linklaters by letter dated 2 April 2025 to Appleby complained about "the unlawful intimidatory conduct of the CFO of the Company, Mr Steven Sim and the Company's Chairman, Mr Zhen Dai" in respect of Mr Wong. Linklaters added that unless their request made on 20 March 2025 for a clear and comprehensive Make Whole Plan was satisfied by 3 April 2025 "end of day" LMR sees no reason or proper justification to delay the presentation of a winding up petition. At paragraph 49 of the Company's skeleton argument the allegations of "unlawful intimidatory conduct" are not denied but it is submitted that "while these allegations, if substantiated, are grave, the conduct is attributable not to [the] Company, but its employee [Mr Sim]."

46. By letter dated 3 April 2025 Appleby served on Forbes Hare the Summons, Mr Dai's affirmation and exhibit and a draft order.

47. In an email from Appleby to Forbes Hare dated Friday 4 April 11:23:59am it was indicated that the Summons was listed for 2:30pm on 9 April 2025. By email sent on that day at 4:13:07pm Appleby informed Forbes Hare that the court required "all hearing materials, including the skeleton argument" by 2.30pm on Monday 7 April 2025.

48. I should add that by email dated 3 April 2025 10:22am to court administration Appleby requested that the Summons be heard on 9 April 2025. Appleby were informed by email dated 4 April 2025 10:28am from court administration that the Summons was listed "2.30pm on Wednesday, April 9

2025. All hearing materials, including the skeleton argument, bundles, and attendance list, must be delivered to Ms Karen Hoskins by 2:30pm on Monday, April 7."

The Company's submissions

49. I have considered the Company's skeleton argument dated 7 March 2025 and the oral submissions of Marcus Staff who appears on behalf of the Company. The main submissions appeared to be as follows:

(1) the determination of the Summons is urgent because the issuance of a winding up petition will immediately result in irremediable harm to the Company;

(2) the 7 connected agreements between the parties each of which are governed by New York law provide that disputes shall be referred to arbitration in Hong Kong;

(3) the Company answered LMR's debt claims on various grounds including the contention made in a letter Appleby sent Forbes Hare on 11 March 2025 that the Company's share price had fallen in a way that inured to the advantage of LMR, and stating that this was probably a result of short-selling which the Company was investigating to establish the facts;

(4) a lot of the relevant information is in the hands of LMR rather than the Company;

(5) even if LMR could persuade a court that it was entitled to engage in short sales of the Company's shares it makes no difference in this case because any such trading would have to be done within the bounds of good faith and fair dealing under New York law;

(6) the Company has an arguable and genuine claim to bring and there is nothing suspicious about the Company raising it only after service of the Statutory Demand;

(7) the relevant arbitration claims appear in paragraphs 2 and 3 of the Notice of Arbitration and the supporting facts are set out in paragraphs 14-20. The Company no longer relies on paragraph 24(2) which reads:

> "Secondly, it is unenforceable when [LMR's] conduct allowed it to take advantage of an artificially lower market value of the [Company] to the prejudice of the [Company] in breach of the implied covenant of good faith and fair dealing under New York law."

While the Arbitration Notice contains additional claims, those claims are not relied on in support of the application for the injunction. The debt is apt to be rendered unenforceable and there is a counterclaim for damages and there can be no question that the value of the counterclaim exceeds the value of the debt. The Company also relies on paragraph 29, the relief claimed; and

(8) in the circumstances there are grounds for a strong inference to be drawn that there have been breaches of the implied duties of good faith and fair dealing.

LMR's submissions

50. I have considered the skeleton argument of LMR dated 7 April 2025 and the oral submissions of Tom Lowe KC who appears for LMR. The main submissions appeared to be as follows:

(1) the Company has been on notice for several weeks that the presentation of a petition was imminent but did not apply for an injunction until 3 April 2025;

(2) LMR categorically rejects the assertion that there is a genuine and substantial dispute regarding the debt owed by the Company;

(3) the Alleged Dispute is based on a wholly unsubstantiated allegation that LMR has engaged in short-selling the Company's shares which (i) LMR has denied in correspondence (ii) is now further denied on oath by Mr Wong and (iii) most pertinently is expressly admitted by the Company to be unsupported by any evidence (paragraph 52(a) of Mr Dai's affirmation);

(4) Mr Dai in effect admits at paragraph 52(c) of his affirmation that the Company is insolvent;

(5) the Alleged Dispute is plainly a "put-up job";

(6) the Summons appears to be based on "belief" and no details are given as to the alleged investigation carried out by the Company;

(7) there is no evidence in support of the alleged "belief"; and

(8) Mr Lowe refers to LMR's concerns in respect of the Company as outlined in correspondence and says that LMR still awaits the "detailed written explanation with respect to each of the matters or transactions mentioned in Linklaters' letter dated 27 February 2025" promised in Appleby's letter dated 20 March 2025 "by no later than Monday, 7 April 2025."

Law and Practice

51. I have considered the relevant law and practice including *ICM SPC v Jarvis* [2025] CIGC (FSD) 17 and *Sian Participation Corp (in liquidation) v Halimeda International Ltd* [2024] UKPC 16, [2024] 3 WLR 937.

52. It is well established that winding up proceedings should not be commenced where the petition debt is genuinely disputed on substantial grounds and that it is an abuse of process to present a winding up petition where a debt is so disputed (see *ICM SPC v Jarvis* [2025] CIGC (FSD) 17 at [22] to [27]).

53. On the subject of arbitration agreements and winding up proceedings, as Lord Briggs and Lord Hamblen stated in their much discussed judgment in *Sian Participation Corp (in liquidation) v Halimeda International Ltd* [2024] UKPC 16 [2024] 3 WLR 937 at [92]:

> "To require the creditor to go through an arbitration where there is no genuine or substantial dispute as the prelude to seeking a liquidation just adds delay, trouble and expense for no good purpose …"

54. At paragraph 99 their Lordships added:

> "99. Accordingly, the Board concludes that, as a matter of BVI law, the correct test for the court to apply to the exercise of its discretion to make an order for the liquidation of a company where the debt on which the application is based is

> subject to an arbitration agreement or an exclusive jurisdiction clause and is said to be disputed is whether the debt is disputed on genuine and substantial grounds. This conclusion applies to a generally worded arbitration agreement or exclusive jurisdiction clause. Different considerations would arise if the agreement or clause was framed in terms which applied to such a liquidation application."

55. In *Sian* the Judicial Committee of the Privy Council overruled *Salford Estates (No2) Ltd v Altomart Ltd (No2)* [2015] Ch 589, an English Court of Appeal judgment.

56. With impressive foresight of the changing judicial winds overseas prior to *Sian*, Ramsay-Hale CJ in *BPGIC Holdings Ltd* (FSD unreported judgment 20 November 2023) had earlier declined to follow *Salford Estates* and had noted the different Cayman statutory provisions in respect of arbitrations.

57. In *BPGIC* Mr Valentin KC for the company relied on *Salford Estates* in support of the proposition that the winding up petition be dismissed without any inquiry into the question of whether the debt is genuinely disputed as there was an arbitration clause.

58. The learned Chief Justice was having none of it.

59. Ramsay-Hale CJ at [14] referred to the petitioner's reliance on the decision of Parker J in *Re Grand State Investments Limited* (FSD unreported judgment 28 April 2021) following the decision of Jones J in *Re Duet Real Estate Partners I LP* (FSD unreported judgment 7 June 2011) in which the court proceeded on the basis that the court will need to be satisfied as to the existence of a *bona fide* dispute on substantial grounds prior to being able to exercise its discretion to stay the proceedings in favour of arbitration.

60. At [18] Ramsay-Hale CJ stated:

> "18. The legislative policy in the Cayman Islands, unlike the UK following *Salford Estates*, is not that the Court should stay or dismiss a petition once the debt is disputed, but that it should inquire into the question of whether the debt is *bona fide* disputed on substantial grounds."

61. The Chief Justice robustly added:

> "27. In contradistinction to the position in the UK, the approach of the Cayman Courts, which is to determine the threshold question of whether the dispute is genuine and substantial before dismissing a petition in favour of arbitration as in *Duet*, is entirely consistent with the legislative policy in of the FAAEA.
>
> 28. I do not share the view that, in undertaking the threshold inquiry, the Court would be carrying out a summary judgment type analysis. The Court's normal practice is not to resolve or determine the dispute in the petition (see *Sparkasse* supra) but rather to stay the petition if it finds that there is a genuine dispute of substance with respect to the debt, leaving the dispute to be resolved in a different action or in a different forum. That is not to say that in an appropriate case the Court could not resolve the dispute: see Vos JA in *In the matter of GFN Corporation Limited* [2009 CILR 650] at [94], but there is a distinction between the resolution of the threshold question, which is being proposed by the Petitioner here, and the resolution of the substantive dispute for which proceedings by way of petition are ill-suited."

62. Both Mr Lowe and Mr Staff rely on *BPGIC* and *Sian* as representing good Cayman law to the effect that the applicant for an injunction to restrain the presentation of a winding up petition, even in the context where there is an arbitration clause, must show that there is a genuine and substantial dispute about the debt giving rise to the proposed petition.

Determination

63. I now turn to my determination of the Summons.

64. On the evidence and arguments presently put before the court I am not persuaded that it would be an abuse of process to present a winding up petition in the circumstances of this case. I am simply not satisfied that there is a genuine dispute founded on substantial grounds as to the debt.

65. The whole thrust of the Company's case is based on "belief". There has apparently been an investigation into the short-selling but it is not clear whether such was an internal investigation or whether outside independent investigators were engaged. Either way the results or latest findings of the investigator(s) have not been shared. Strikingly, the Company refers to its "suspicion" that

LMR, or its associates/affiliates "might have been engaged in manipulative short-selling of the Company's stock" but openly accepts that "it has not found any evidence that this is the case" (paragraph 52 (a) of Mr Dai's affirmation). Suspicions and speculation are insufficient to justify the court granting the relief requested.

66. At paragraph 28 of the Company's skeleton argument dated 7 April 2025 it is stated that Mr Dai concludes "his explanation with the statement that the evidence tends to show that LMR has coordinated the short-selling of the Company's stock for its own benefit by exploiting the operation of the conversion mechanisms set out in the CNPAs and the repurchase mechanisms in the PSRAs footnote[11]". Footnote [11] refers to paragraph 28 of Mr Dai's affirmation to make that statement good. Nowhere in paragraph 28 does Mr Dai refer to "the evidence". He starts paragraph 28 with the words "I believe". He adds "If this belief is ultimately found to be true …". Mr Dai at paragraph 28 is referring to his belief. He is not referring to any evidence in support of his belief at paragraph 28.

67. The timing of the Company's allegations of short-trading against LMR and its filing of the Notice of Arbitration also cast some doubt over the genuineness of its belated claims. The distinct and unpleasant flavour of the Company's response to the Statutory Demand is that of a Company regretting with hindsight entering into various contracts and seeking to avoid payment of its debts on spurious and belatedly invented grounds.

68. The filing of the Notice of Arbitration subsequent to the service of the Statutory Demand and the threat of a winding up petition has on its face all the hallmarks of a company making a belated tactical manoeuvre in a somewhat hopeless endeavour to delay the presentation and determination of a winding up petition in respect of which there is no genuine dispute of the debt on substantial grounds. There seemed to be some considerate force in Mr Lowe's submission that the recent filing of the Notice of Arbitration "highlights that the alleged dispute is a desperate last roll of the dice by the Company to avoid the inevitable."

69. In the circumstances of the present case there is no satisfactory evidence before the court to enable the court to conclude that the claims of the Company are genuine, serious and of substance.

70. The Company has not persuaded me that the debt is *bona fide* disputed on substantial grounds.

71. There are no clear and persuasive grounds for the orders sought.

72. I dismiss the Summons.

73. Having heard oral submissions on costs following my dismissal of the Summons, I make a costs order against the Company with such costs to be taxed on the indemnity basis in default of agreement. The adverse comments against the Company in this judgment speak for themselves. In my judgment the Company has engaged in unreasonable conduct to a high degree which should be considered outside the norm. In such circumstances an order for costs on the indemnity basis is justified and that is the order I make.

Order

74. Counsel should send an email to my PA before 3pm tomorrow with a draft of an order reflecting the determinations I have made in this judgment.

75. I thank counsel for their assistance to the court.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT