Excerpts from the judgment dated 22 November 2022 passed by High Court of England in which in Harrington & Charles Trading Company Ltd (in liquidation) and others vs Jatin Rajnikant Mehta.

"77. I start with an explanation of the so-called Grant Thornton Scheme, because it pervaded the case of all four Respondents. The essential point made by the Respondents was that the Claims were all an artificial contrivance which was, in essence, a joint venture between SCB and Grant Thornton, with a view to trying to avoid all the problems which confront the making of claims against the Defendants arising out of the Alleged Fraud.

78. The Respondents say that from around 2019, or possibly earlier, SCB instructed Grant Thornton to explore claims on SCB's behalf outside India, with a view to recovering what had been lost as a result of the Defaults and the calls on the SBLCs. What is said to have happened is that SCB and Grant Thornton entered into a collaboration agreement and a litigation funding agreement, pursuant to which, by a series of pre-planned steps, the Claims could be made. The pre-planned steps are said to have involved SCB restoring the Claimant Companies to the register, so far as the same had been dissolved, appointing Grant Thornton (in the person of the Liquidators), and making claims and presenting proofs in the liquidations of the Claimant Companies. For its part Grant Thornton would procure litigation funding through an associated company, in return for a share of the recoveries from the Claims, and would pursue the Claims by litigation.

79. There did not appear to me to be much in dispute, at least in factual terms, in relation to the way in which the Claims came to be made, as summarised in my previous paragraph. The principal evidence which was said by the Respondents to disclose the existence of the Grant Thornton Scheme came from a note of what was referred to as the Dubai Presentation. What happened was that Mr Wood, the Eighth Claimant, attended at a conference called Thought Leaders 4 Fire in Dubai, at which he gave a presentation. According to Mr Wood's evidence the purpose of the conference, which was held in November 2021, was to bring the global asset recovery community together and share experiences operating in the contentious insolvency, fraud litigation and international enforcement arena. As part of his presentation Mr Wood included a case study which was anonymised but was in fact the present case. Also attending the conference was an associate solicitor working for Jones Day, the Three Defendants' solicitors, who were then acting for all four Respondents. By November 2021 the applications to restore the relevant Claimant Companies to the register had been heard, in the course of which the First Defendant had been identified. The Respondents had become aware of this, and had become aware of the potential for proceedings against them in this jurisdiction. I assume that this is what resulted in the instruction of Jones Day.

80. Mr Travers, the solicitor at Jones Day with conduct of this matter, says in Travers 2 (paragraph 16/footnote 10) that he became aware that one of the associates at Jones Day would be attending the conference, and that certain individuals from Grant Thornton were to make a presentation on the subject of a "Case Study of a Billion Dollar Multi-Jurisdictional Fraud". Mr Travers put two and two together and

instructed the associate to take a note of what was said in the presentation. The result can be found in an email sent by the associate to Mr. Travers, which is dated 17th November 2021 and contains a note of what was said by Mr Wood. The note provides an interesting record of how the Claims have come about.

81. Of most relevance, for present purposes, is the part of the note which is headed "Comments on how GT got involved + implemented their new strategy". I set this section of the email out in full:

> *"• As with most jobs it starts with GT's director of development (Nick Clarke Note to DT: I am having coffee with Nick Clarke tomorrow but obviously do not plan on mentioning this case in any way) having a beer with a lawyer who mentioned the case. At the time GT was setting up its asset-recovery fund (GT now self-fund some of these cases) and GT thought this case would be ideal for their fund as the international bank (as opposed to the Indian ones) was very keen to progress the recovery and enforcement efforts. After that, Nick Wood (Partner at GT) had a couple of beers with the head of one of the consortium banks and they were able to secure the matter.*
> *• Even though the international bank is massively keen to press-ahead there was still a number of hurdles before things could get started (internal approvals/ T&Cs to be agreed etc.. which takes 3 or 4 months). Then the international banks said they wanted to add the Indian banks (approx. 14) to the claim — so GT had to carry out a number of trips to Mumbai and Delhi to meet with the Indian banks. Unfortunately — it's near impossible to meet with decision makers in Indian banks so GT felt a lot of time was wasted with indirect meetings and referrals up the chain. This took many weeks and every time GT thought they'd agreed something they would realize the agreement then needed to be vetted by countless individuals and go through a whole new approval process.*
> *• All the above, created a c. 12 month delay and the Claimants became concerned about limitation issues.*
> *• So there was a need to re-think the strategy to be able to proceed fast. The Indian banks did want to do this, they agreed with the strategy but they didn't want any active involvement or to sign a collaboration agreement. So, GT needed a new plan to lead the consortium without the Indian banks signing a collaboration agreement. GT was sure the Indian banks also didn't want to spend any money themselves — so they were pretty confident the Indian banks would not be taking any competing enforcement action.*
> *• GT finally understood that the route was via the UK derivative companies — these UK companies had gone through a solvent liquidation process in the UK and had been dissolved for a couple of years.*
> *• Accordingly, the new strategy was to restore the UK derivative companies then put GT in as liquidators of these companies. This was a better workable solution as all the Indian banks had to do was not object to the proposal to put GT in as liquidators (so no longer a need for the Indian banks to sign any type of collaboration agreement).*
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> *• From the brief factual background presented — "any idiot could see this was an outright fraud" [direct quote]. So GT thought it would be pretty simple to establish + there was just a need to put the evidence in front of a judge and*

the latter would doubtlessly make the necessary orders. However, GT had not taken into account the full & frank disclosure obligation (+ recent caselaw about the granular level of disclosure that is required). This turned a relatively simple application for restoration and liquidation into a 150 page WS with $150k in legal spend."

82. In his first witness statement, prepared in response to Travers 2, Mr Wood (one of the Liquidators) confirmed that the note contained in the email "is a fairly accurate note of the presentation", given by Mr Wood. Mr Wood did seek to argue, somewhat faintly, that passages from the note referred to in Travers 2 had been taken out of context and created a misleading impression. It seems to me however that the note speaks for itself. I agree with Mr Hunter that what it shows is that there was a Plan A and a Plan B, both conceived by Grant Thornton as ideal for their asset-recovery fund, which had been set up by Grant Thornton to fund the pursuit of this kind of litigation. Plan A was to persuade the Indian Consortium Banks to join SCB, which I assume to be "the international bank" referred to in the note, in taking direct recovery and enforcement action. Unfortunately, and for the reasons given in the note, it proved difficult to sign up the Indian Consortium Banks to collaboration agreements. This created a delay, which in turn created concerns about limitation issues. The result was a re-thinking of the strategy and a resort to Plan B. Plan B was, to quote from the note, "to restore the UK derivative companies then put GT in as liquidators of these companies. This was a better workable solution as all the Indian banks had to do was not object to the proposal to put GT in as liquidators (so no longer a need for the Indian banks to sign any type of collaboration agreement).". Put more simply, Plan B comprises the process which has resulted in the making of the Claims.

83. I also agree with Mr Hunter that the note shows how and why Plan B was conceived to replace Plan A, following the failure of Plan A.

84. In Travers 2, at paragraph 201, Mr Travers speculates that Grant Thornton have negotiated a 50% share of the recovery in respect of the Claims. This has not been contradicted or responded to by the Claimants in their evidence for this hearing. There has been no disclosure by the Claimants, as matters stand, either of any litigation funding agreement which is in existence, or of what is described as the collaboration agreement entered into between SCB and Grant Thornton in respect of the pursuit of the Claims.

85. I have taken some time to give a summary of what was characterised by the Respondents as the Grant Thornton Scheme because the Grant Thornton Scheme pervaded the submissions of the Respondents, at a number of different levels. The implementation of the Grant Thornton Scheme, in its Plan B phase, was said by the Respondents to be an abuse of process, justifying a strike out of the Claims on that basis alone. The Grant Thornton Scheme also formed a substantial part of the Respondents' complaints of non-disclosure and lack of fair presentation. The way in which Plan B of the Grant Thornton Scheme operated was also said by the Respondents to explain, in substantial part, why the Claims were not viable and gave rise to no good arguable case.

86. The Claimants objected to the Respondents' description of the origin of the Claims as the Grant Thornton Scheme, on the basis that this description carried unfair connotations. I do not agree. I do not think that the Grant Thornton Scheme is an unfair description of what is evidenced by the note of what was said by Mr Wood at the Dubai conference, and I will use the same expression. I will refer to what was said by Mr Wood at the Dubai conference, as recorded in the note, as ***"the Dubai Presentation"****. The actual implications of the Grant Thornton Scheme, both for the Claims and for the various applications which have been made, constitute a separate set of questions.*
(…)

103. In the event, and since the First Hearing, seven Consortium Banks have given written confirmation that they will be submitting proofs in the liquidations. One other Consortium Bank has indicated that it intends to submit proofs in due course, and a further Consortium Bank has said that it is actively considering doing so. By the time of this hearing additional proofs of debt had in fact been received from four of the Consortium Banks; see the letters from the Claimants' solicitors to the Respondents' solicitors dated 5th October 2022 and 7th October 2022 (the later letter enclosed copies of the actual proofs of debt). These are of course events subsequent to the First Hearing, but it does seem to me to be of some significance that these subsequent events demonstrate that some, at least, of the Consortium Banks have clearly not made any decision not to participate in the Claims. To the contrary, they have made the opposite decision. This in turn would seem to suggest that the Consortium Banks have not been deterred from participating in the Claims (collaboration may be a more accurate description of the role intended for the Consortium Banks in the Claims) by the problems which the Three Defendants allege to have been created by the pursuit in India of the various forms of civil proceedings against Winsome, Forever Precious and the First Defendant. This would also suggest that Mr Wood is right to say, in Wood 1 at paragraphs 13 and 14, that the reluctance of the Indian Consortium Banks to participate in the Claims can be attributed to legal and business factors peculiar to the Indian banking system."