



Neutral Citation Number: [2026] EWHC 2758 (TCC)

Claim No. HT-2023-000420

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

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

Date: 27/10/2026

Before :

ADRIAN WILLIAMSON KC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between :

(1) ION SURETY COMPANY S.A.

Claimants

(2) ION INSURANCE COMPANY, INC

- and -

SHAPOORJI PALLONJI MIDEAST LLC

Defendant

Joanne Box (instructed by **Enyo Law LLP**) for the **Claimants**
Laurence Page (instructed by **Stewarts Law LLP**) for the **Defendant**

Hearing dates: 6, 7 and 8 October 2026

JUDGMENT

This judgment was handed down remotely on 27 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ADRIAN WILLIAMSON KC

Adrian Williamson KC:

Introduction

1. In these proceedings the Claimants, who will be referred to collectively as “**Ion**” save where it is necessary to differentiate between “**Ion Surety**” and “**Ion Insurance**”, seek to recover a debt said to be due under an indemnity entered into by the Defendant (“**SPME**”).
2. The Shapoorji Pallonji Group is a global construction business originally founded in India before its expansion to the Middle East. It now operates in over 25 countries. On 3 May 2020, Shapoorji Pallonji UK Limited (“**SPUK**”) entered into a JCT Design and Build Contract 2016 edition (the “**Construction Contract**”) with Sherhill (Barking) Limited (“**Sherhill**”) in relation to a large construction project in Axe Street, Barking, (“**the Project**”). This was SPUK’s first project.
3. Sherhill required a bond in its favour: originally a performance bond and eventually an on-demand bond. Ion Insurance supplied an on-demand bond in the sum of £3.5 million (“**the Bond**”). Ion Surety reinsured Ion Insurance’s liability. In order to provide the bond, Ion required a cross company indemnity (“**the CCI**”). That indemnity was supplied by SPME to Ion Surety.
4. On or around 1 August 2023, Ion Insurance received a demand from Sherhill under the bond. Sherhill subsequently issued court proceedings which were settled on terms that Ion Insurance pay to Sherhill the sum of £3,657,684.29. Ion Surety reimbursed Ion Insurance pursuant to the reinsurance agreements.
5. On the face of it, these simple facts should not have detained the court for very long, and SPME should simply have paid the sums due under the CCI. However, SPME say that they are not liable thereunder. The principal points taken by Mr Page, who appears for SPME, are set out as follows in his speaking note for oral closing:

“The case should be dismissed, because (i) Mr O’Leary was not authorised to sign the CCI; (ii) Ion was told in writing on 25.2.20 that the Manager/Mr Kakkar could sign the CCI, and was sent the document – the MOA –proving

this statement; (iii) Mr O’Leary wrongly described himself as the Manager pursuant to the MOA; and (iv) nobody at Ion compared the MOA, the Board Resolution or the CCI, as Mr Whitney had already signed the Bond 18 days before the CCI arrived.”

6. The parties have helpfully agreed a list of issues. I propose to deal with those issues as follows:

- a) The facts;
- b) The evidence;
- c) Actual authority;
- d) Apparent authority;
- e) Liability, demands and loss;
- f) Answers to the issues.

A. The facts

7. In September 2016, SPME executed a Revised Memorandum of Association (“**the MOA**”). This identified a Mr Kakkar as the “Manager” in Article 10. Article 10 explained that Mr Kakkar had all authority necessary to manage the company and had, in particular, the authority to appoint others and to delegate all or any of his powers to any person(s) (with emphasis added):

The partners agreed to appoint Mr. RAJIVKUMAR RUPLAL KAKKAR, [...] - as a manager of the company to manage the company from the date of registering the same in the commercial register. [...] The manager shall have all the authorities necessary to manage the company and shall sign on its behalf and shall carry out all the affairs required for its objects and such authority shall not be limited only by the context of the commercial companies law and the resolutions of the partners and the manager; for the purpose of his management of the company, may sign all the documents whatever their type or nature and may apply and follow any or all the claims necessary or required by any municipality or chamber of trade and industry in United Arab emirates or abroad or before departments of economic development or Ministry of Economy or the Central Bank of United Arab Emirates or Authority of Securities and Commodities or stock markets or before any authority in United Arab Emirates

or abroad and shall have the authority to appoint others and for such purposes, he shall have the following authorities:

Deal with, manage, perform and carry out all the affairs, matters and things required or necessary for the business of the company and its financial affairs and others or which related thereto in any way including, without limitation, performing and...applying the documents to the competent [sic] perform all the correspondences related to such matters.

Claim returning, receiving or attaching the financial amounts and the guaranties against the money, the debts, the shares, the goods, the objects and movable or non- movable things due or belong to the company now or in the future and to sign, execute and deliver the valid receipts, the discharge and other releases regarding any of the properties.

Purchase, rent or acquire and sell, lease, bear. mortgage, discharge, mortgage write off, dispose or deal with any movable money or property of the company now or in the future which may belong to the company and enter and sign all documents necessary in this regard.

[...]

Employ and dismiss any attorneys, clerks, employees, laborers or any other persons for the interest of the company and give power of attorney, employ and direct advocates, legal consultants and/ or debts collectors and delegate them to act on behalf of the company and represent the company and dismiss them from time to time.

Sign, execute and perform all the agreements, contracts and other undertakings entered by the company with any person or other persons or entity or establishment and exchange or terminate and/ or end any of such documents, provide corporate guarantee to any banks and third party in UAE and overseas

[...]

In general, manage and direct the company in daily basis and supervise the performance of the company business and in this regard, act all the actions, affairs, matters and things whatever regarding the properties or real estate or affairs of the company and perform all the deeds, documents and agreements to give the same the full effect under the authorities given to him and agree with the persons who have mutual interests with the company in such matters and in performing such actions in an effective way fulfills all the intentions and objects

To delegate from time to time all or any of the above mentioned powers to any person(s) by virtue of written authorization of whatever approved by him and to cancel the same time after time

8. However, other persons also acted on behalf of SPME. For example, a Mr Saini signed the 2018 accounts as “General Manager” and the 2019 accounts as “Managing Director”.
9. SPUK was incorporated on 23 January 2020. The intention behind creating this company appears to have been to break into the UK construction market. On 29

January, SPUK completed a Performance Bond Application Form, naming as its directors/partners Mr Saini, Mr O’Leary and a Ms Muldowney. This was with a view to advancing SPUK’s prospects for the Project.

10. Thereafter, SPUK/SPME proceeded in this matter mainly through a Mr Forde, an insurance broker. On 28 January he emailed Mr Harrison of Ion as follows:

“We would be interested if you could advise if you could supply a Bond for SHAPOORJI PALLONJI UK LTD - Company number 12419835 for a project on Axe Street.

...The project duration shall be approximately 16 months from site commencement

· Employer: Lindhill Properties Limited

· Value: £35m 10% bond required

· No amendments shall be accepted to warranties that move away from the form provided.

· Bond in the name: SHAPOORJI PALLONJI UK LTD - Company number 12419835

· No Cash security will be accepted either

Please see attached link to Dropbox for the following information =>

https://www.dropbox.com/sh/v74z39svdw0c4i4/AAAUQu5_WrRs56wQFphC0xnja?dl=0

· Accounts for share holding companies

· Group Structure for UK

- Our Company Brochure

· Bond Wording”

11. It is worthy of note that the Dropbox documents indicated that Mr Saini and Mr O’Leary held senior managerial posts within the Shapoorji group.

12. On 29 January Ion indicated the following terms (which were thereafter amended to allow for a 24 month Project duration):

“ISSUER: Ion Surety Co

LIMIT: GBP 3,500,000.00

TERM: 16 months to release at PC

RATE: 2.795 g/f

FORM: Approved as submitted

SECURITY: CCI - Ultimate parent company

SUBJECT TO: Current Financials from ultimate parent company; copy of executed contract”

13. As one would expect, Ion required a CCI. On 4 February Ms Muldowney sent an internal email to Mr Gaur (of whom more anon), copied to Mr O’Leary and Mr Dhoot, saying that “We need to issue a Cross Company Indemnity with our

bond. Please can advise if the attached is acceptable.” The “attached” was a draft CCI, in substantially similar format to the CCI eventually entered into, subject to certain changes mentioned below.

14. Ms Muldowney followed this up with a further email to Mr Gaur on 12 February, with the same circulation list, and also copied to Mr Swaminathan, another senior executive:

“We need to issue a Cross Company Indemnity with our bond for London. We have acceptance of a bond from Ion. Please confirm your acceptance to allow us to move forward. Please let me know if there are any issues as Rob will need to discuss with Mr Saini and Mr Swaminathan as we need to keep momentum going on this”.

15. Mr Gaur responded immediately as follows, emphasis as original:

“As discussed, the words of attached CCI are okay to proceed subject to the project details are mentioned as annexure to it so it will be some kind of cap, below information may be added to the CCI:

Project Name: < Full title with address>

Ultimate Client Name: < Our Project Client name>

Value of the Indemnity: < Equivalent to the Performance bond they will be issuing>

Expiry date of this Indemnity: < Equivalent to the project completion dates>

Kindly get it modified and send across for getting it signed by Authorized signatory of SPML (The parent entity).”

16. On 16 February a meeting was held, of which the following was minuted (**“the Board Minute”**):

“EXTRACT OF MINUTES OF A MEETING OF THE DIRECTORS OF SHAPOORJI PALLONJI MIDEAST LLC HELD AT SHAPOORJI PALLONJI MIDEAST LLC OFFICE ON 16TH FEB 2020

1. The meeting was convened to consider a proposal for the Company to enter into a guarantee of the obligations of

I. Sherhill (Barking) Limited for Parent guarantee

II. Ion Surety Company S.A for Agreement of Indemnity for the Project: Demolition of existing buildings and the re-development of the site located on Axe Street

2. The draft guarantees in final form was presented to the meeting and it was reported that the award of the Contract to the Subsidiary is conditional on the grant of a parent company guarantee in the terms of the draft guaranteeing the obligations of the Subsidiary under the Contract.

3. *It was noted that under the terms of the draft Guarantee, no invalidity in the Contract will affect or impair the liability of the Guarantor.*

4. *Accordingly, it was unanimously resolved that it was in the best interests of and for the benefit of the Company to enter into the Guarantee.*

5. *After careful consideration by the directors of the terms of the Guarantee and of the character and extent of the liabilities which it would impose on the Company, it was unanimously resolved that the Guarantee be entered into and that it be executed as a Deed and delivered by the Company in the manner required by the draft Guarantee.*

I hereby certify that this is a true copy of the entry appearing in the Company's minute book and that the above resolution was duly passed in accordance with the articles of association of the Company at a duly convened and quorate meeting of the directors

Company Secretary/Chairman

Mr Mohan Dass Saini”

17. It is noteworthy that Mr Gaur, in his witness statement, observed that “there is a strong question mark over whether or not the board minute is an authentic SPME board minute”. Mr Page did not seek to pursue this line of argument at trial and I have no doubt that the Board Minute was authentic.
18. On 17 February Ms Muldowney passed onto Mr Forde what Mr Gaur had said in his 12 February email.
19. On 19 February Mr Gaur made some changes to the draft CCI. This introduced a proposed cap of the liability of the indemnitor to £3.5 million and amended the signature block to provide for signature by a Manager rather than by two directors and a secretary, as the draft had provided. The signature was to be “Given under authority vested by Memorandum of Association with copy attached this day of 2020.”
20. Ms Muldowney queried this change to the signature block and Mr Gaur, by email of 25 February, explained that:

“There is no Director in SP Mideast LLC, in the Memorandum of Association(Copy Attached- refer Article 10) of the company all such power is vested in favor of Mr. Rajiv Kumar Ruplal Kakkar being the Manger of the company duly appointed by the shareholders. Hence all such documents can be signed singly by Mr. Rajiv as manager of the company.”

21. Ms Muldowney passed on this explanation to Mr Forde the same day. He then immediately told Ion that:

“Client expects to finalise contracts for the project this week, so we are hopeful we will have sight of that before COB on Friday, all being well. Shapoorji have made some minor changes to the CCI for your review. To confirm there is no Director in SP Mideast LLC, in the Memorandum of Association(Copy Attached- refer Article 10) of the company all such power is vested in favour of Mr. Rajiv Kumar Ruplal Kakkar being the Manger of the company duly appointed by the shareholders, hence all such documents can be signed singly by Mr. Rajiv as manager of the company. I trust you will find in order but any queries please let me know and if you can confirm all is in order I would appreciate it.”

22. Mr Harrison of Ion responded that this was:

“Exciting stuff and many thanks for your pre-advice on the potential order. In regard to the amendments to the CCI, reviewing them in light of your kind explanation makes perfect sense and they are approved as amended.”

23. Contrary to the expectations of all concerned, the Project did not proceed straightaway, as the world descended into lockdown in March and April 2020. It was not, therefore, possible to make progress with the Project until the end of April.

24. When business resumed, it emerged that there had been an error on behalf of the funders of the Project, who had mistakenly put a requirement for a performance bond in the tender documents, whereas in fact an on-demand bond was needed. Mr Forde informed Ion of this changed requirement on 24 April and Mr Harrison responded on 27 April that:

“That's quite an error on their part. Hope they have good E&O cover. Amended terms are as below:

Issuer: Ion Insurance Company

Limit: GBP3,500,000.00

Term: 16 months to release at PC

Rate: 4.35% g/f

Form: On-Demand

Security: On-Demand CCI - Ultimate Parent w/ supporting Board Resolution ; SBLC - 33% (GBP1,155,000.00)

Subject to: 2020 1st quarter statement ultimate parent ; Copy of the contract”

25. The next day Mr Forde queried which Ion entity would be issuing the Bond, to which Mr Harrison responded that “Yes. I was actually going to suggest that we

issue in Ion Insurance Company as it is the USA domiciled and regulated subsidiary which sounds better than Costa Rica but it makes no difference to us. Ion Surety is the issuer we normally use in the UK though.” Mr Forde replied on 29 April that “If you could complete the document from Ion Insurance Company as it is the USA domiciled entity I would appreciate it”.

26. It is apparent that, on both sides, this was regarded as a deal between (broadly speaking) Ion and the Shapoorji Group. There was a distinct lack of interest in exactly which company was contracting with which, provided that the overall arrangements were in place.

27. On 1 May Mr Harrison confirmed that:

“ The bond will be signed by Richard Whitney as our Managing Director and I will witness his signature. Prior to that happening we will need:

1) Fully executed CCI by the Principal's Indian Parent.

2) Supporting Board Resolution.

3) Draft details of the required LOC.

Once these has been reviewed and approved we will provide delivery instruction for the LOC and wiring coordinates for the premium. Upon receipt of both, the bond will be issued and sent by courier as instructed.”

28. Mr Whitney signed the necessary documentation by Docusign on that day.

29. On 3 May, SPUK and Sherhill entered into the Construction Contract for the Project. SPUK, Sherhill and SPME entered into a Parent Company Guarantee the same day. This Guarantee had also been discussed in the exchanges summarised above.

30. On 7 May, Mr Forde emailed Ms Muldowney as to the remaining requirements for the Bond and CCI:

“Following on from our conversations to facilitate a seamless release of the original bond in due course we will need the following:

1) Confirmation to BBi that you wish to proceed with bond and that all terms and conditions are acceptable to all parties.

2) Fully executed CCI by the Principal's Indian Parent (attached).

3) Supporting Board Resolution.

4) Draft details of the required Contract.

5) 2020 1st quarter statement ultimate parent.”

31. On 13 May Ion Insurance raised an invoice for the Bond.
32. Ms Muldowney circulated internally the 7 May email. On 19 May Mr Dhoot confirmed that “We had already executed this indemnity from Shapoorji Pallonji Mideast LLC.” Consistently with this, on the same day, Mr O’Leary (cc. Ms Muldowney) confirmed to Mr Forde that:

*“Dear Anthony
Further to your discussion with Karen, please see attached
. Fully executed CCI by the Parent Company
. Supporting Board Resolution
. Copy of JCT contract and Parent Guarantee to Sherhill
. Shapoorji Pallonji Mideast Account as of March 2019
We have paid for the bond so confirm all terms and conditions are acceptable to all parties.
We are under serious pressure now to action, I have copied the client directly on this email as there is now serious concern on their side as to the status of the bond,
Can you please ensure we receive a specimen this evening if original might take a day or two longer as we are anxious to get onsite and started and our program clock is ticking.”*

33. On that same day, Mr Forde emailed Mr Harrison that:

*“Hi Robert,
Please see attached
. Fully executed CCI by the Parent Company
. Supporting Board Resolution
. Copy of JCT contract and Parent Guarantee to Sherhill
Monies will be transferred this afternoon.”*

34. Mr Forde attached, inter alia, the CCI which was said to be “Executed and delivered as a deed on behalf of ‘Shapoorji Pallonji Mideast LLC’ Registered Number: 43008 By: 1. Manager: Name: Robert O’Leary”. He also enclosed the Board Minutes of the meeting on 16 February.
35. SPME/SPUK were very keen to progress the Bond. Mr O’Leary wrote to Mr Forde on 21 May to say that he needed an “update on the bond, we desperately need to get [this] in place.” Mr Forde confirmed by return that he had “been in touch with insurers and they have confirmed all documents are in order and just awaiting them to digitally sign off the bond.”

36. There then seems to have been some confusion about the transfer of funds, and SPME/SPUK were becoming increasingly anxious to get the Bond in place. Mr Forde therefore wrote to Ion on 25 May seeking some assistance in this regard:

“My bank will have this with you tomorrow or Wednesday.

Richard / Robert - As this contract is awaiting the release of the bond, to commence work, would it be possible to provide a digital signature on the bond and its subsequent release, as funds have been transferred, which I can provide further evidence if required tomorrow by my bank? I would really appreciate your support on this, as client and employer are putting me under pressure to get onsite. Your support would be appreciated?”

37. Mr Whitney of Ion agreed to this by return email. The next day Mr Forde confirmed that the funds were being transferred. Mr Turner of Ion told Mr Whitney “Please find bond attached for your execution. Please send an electronic copy back to this email thread and copy in @Anthony Forde. Please hold the original until you receive funds.” Mr Whitney responded “Please find attached the signed and stamped Shapoorji Pallonji UK Ltd bond. The original will be couriered once funds are confirmed”.
38. On 3 June 2020, Mr Whitney’s son witnessed Mr Whitney’s signature on the documents.
39. Pausing there, the obvious conclusion from the exchanges set out above is that SPME entered into the CCI with Ion Surety in order to facilitate its arrangements under the Construction Contract. SPME necessarily authorised Mr O’Leary to sign the CCI on its behalf, which exposed SPME to the obligation set out at clause 2 of the CCI, namely:

“The Indemnitor shall indemnify and keep indemnified the Surety from and against all claims, liabilities, costs, expenses and/or losses (including loss of interest) incurred by the Surety under or by virtue of any Bond. Costs and expenses shall include those incurred by the Surety where a claim or threatened claim is resisted or disposed of or to make a payment to a third party to avoid a claim being made by the Beneficiary in such sum or sums as may be required to satisfy or limit all loss and expense arising in relation to the Bond or as result of the Surety having issued it, without any payment being made in respect of any such claim. The obligations of £3,500,000.00 (GBP Three Million Five Hundred Thousand Only) of the Indemnitor under this clause 2 are not to be reduced or qualified in any way by the other provisions of this Deed.”

40. Moreover, it is clear that Ion were not willing to enter into the Bond without receipt of the necessary funds from SPME and a duly executed CCI.
41. Thereafter claims were made on the Bond by Sherhill and by Ion on the CCI. These will be discussed further at section E below.
42. SPME did not make payment as demanded and so these proceedings were commenced on 10 November 2023. Ion's claim, as initially put, was straightforward: SPME were liable to make payment under the CCI and had not done so.
43. On 9 February 2024 SPME served a brief Defence. Its case appeared to be that the CCI was not binding upon SPME because:

"On 18 February 2020 Robert O'Leary, an employee of the Defendant signed a document named on its face "Agreement of Indemnity" ("Indemnity"). This document:

4.1 Was stated on its face

(i) to be between the Claimant and the Defendant; and

(ii) to have been entered into "in return for the Surety's [i.e. the Claimant] provision

of Bonds" (preamble (c)); but

4.2 Was:

(a) not countersigned by any person purporting to have authority on behalf of the Claimant; and

(b) not validly executed as a deed in accordance with section 44 Companies Act 2006 such that it was not in all circumstances executed by the Defendant and/or does not bind the Defendant."

44. It is to be noted that there was no suggestion that Mr O'Leary lacked authority to sign the CCI. The points pleaded at paragraph 4 of the Defence were not pursued at the trial. Contrariwise, it was not until the Defendant's response to the Claimants' request for further information of 23 October 2025, served in November 2025, that SPME began to develop the case now put at the centre of its defence of this matter, that is the lack of authority of Mr O'Leary.

B. The evidence

45. The recitation of facts set out above makes clear that the exchanges between the parties were all in writing, principally by Mr Forde on behalf of SPME. This is,

therefore, a classic case where I can and should generally rely upon the contemporaneous documents put before me. This accords with the proper approach to oral/factual evidence outlined by Leggatt J, as he then was, in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at paragraphs 15-22.

46. The parties each called one factual witness: Mr Whitney for the Claimants and Mr Gaur for SPME.
47. Mr Whitney is the co-founder of the Ion group of companies. I found him to be a careful and reliable witness, albeit one who understandably struggled to recall the minutiae of matters from some six years ago.
48. Mr Gaur is a Senior Manager in the Finance and Accounts team at SPME, having previously been a Manager in the Finance and Accounts team at Shapoorji Pallonji International FZE ("SPIF"). He was only peripherally involved in these matters and could offer little evidential assistance.
49. The parties called experts (Mr David Russell KC and Mr Sadique Mohd) to deal with the following issues:

“What laws and/or legal principles are relevant to the determination of the following questions, as a matter of Dubai law:

(a) whether the 'Agreement of Indemnity' ('Indemnity') was validly executed and is binding on by the Defendant?

(b) whether Robert O'Leary had actual (express or implied) authority to bind the Defendant to the Indemnity at the time of its execution?”

50. The expert evidence was helpful but, in the end, relevantly dealt only with a relatively narrow part of the case, and one upon which the experts were essentially agreed.
51. What is striking in this case, however, is the absence of evidence. On the face of it, it is remarkable if, as now alleged, Mr O'Leary took it upon himself to sign the CCI without having the necessary authority to do so. Moreover, if SPME's case is correct, they have had the benefit of the Bond and the Construction Contract without accepting any liability to provide a counter indemnity in the usual way.

52. The burden of proof in relation to both actual and ostensible authority lies upon Ion. However, it does seem to me that SPME's case is so extraordinary that it is very surprising that they did not call evidence from any of the senior managers who might have been available to cast some light upon what was going on here, such as Mr Kakkar, Mr Saini or Mr O'Leary.
53. In this regard, I have been referred to the observations of Lord Leggatt (as he now is) in *Royal Mail Group Ltd v Ejobi* [2021] 1 W.L.R. 3863 at paragraph 41:

"The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

54. Following this guidance, it does seem to me that I can properly draw an inference from the complete failure of SPME to call any evidence to explain what has happened here, namely that there is no or no adequate explanation. I note that:

- i) It has not been shown to my satisfaction that there was any difficulty in providing one or more of these witnesses to give evidence. Mr Kakkar was still an employee of SPME when witness statements were exchanged. Mr Saini and Mr O'Leary had left their employment by that time, but this would not have prevented them being called as witnesses;
- ii) They could clearly have given relevant evidence;

- iii) No evidence at a high managerial level within SPME has been proffered;
 - iv) An explanation of what transpired as to the signing of the CCI was central to the case as a whole.
55. Such an inference does not displace or alter the burden of proof. However, it is one of the ingredients at which I can look in considering whether the necessary burden has been satisfied. I return to the question of inferences at section F below.

C. Actual authority

56. The relevant principles are not in dispute. It is common ground that:
- i) Whether Mr O’Leary had actual authority to bind SPME to the CCI is governed by Dubai law, the law of SPME’s incorporation;
 - ii) The Manager of a Dubai company is required to be specified under the formal process in Article 83 of the *Commercial Companies Law*; and that the appointment to a position such as Director or Manager is a formal process: see the experts’ agreement;
 - iii) The experts also agree that in the absence of having been appointed to such position, the only basis upon which an individual could have actual authority to execute a document such as the CCI under the law applicable in Dubai is if he were formally authorised to do so by the properly authorised organ of the Company, at or prior to the time he executed it;
 - iv) Mr Kakkar was the Manager identified in Article 10 of SPME’s Revised Memorandum of Association;
 - v) The burden is upon Ion to show that Mr O’Leary had actual authority to bind SPME to the CCI.
57. The question, therefore, is whether Mr Kakkar delegated the relevant power to Mr O’Leary, as envisaged by the final words of Article 10: “To delegate from time to time all or any of the above mentioned powers to any person(s) by virtue of written authorization of whatever approved by him”.

58. As to this point, Mr Page submits that Ion are wholly unable to point to a “written authorization” by Mr Kakkar to anyone, let alone to Mr O’Leary. And he says that I cannot properly infer that such a document must have existed, despite none such being disclosed, because the agreed disclosure regime was limited in time and as to the named custodians.
59. There is some force in these points, but I have nonetheless concluded that Mr O’Leary did have actual authority to bind SPME to the CCI. My reasons are as follows.
60. It is clear that very broad authority was delegated to Mr Saini, comprising all of the powers that Mr Kakkar had under Article 10, including the power to enter into contractual arrangements on behalf of SPME. Documents signed by Mr Saini on behalf of SPME include the Parent Company Guarantee, the 2018 and 2019 financial statements and the Amended Defence in these proceedings.
61. It seems to me that this authority must have been further delegated by Mr Saini to Mr O’Leary. That is the only sensible construction of the Board Minute of 16 February, a document which, to the knowledge of SPME, was provided to Ion as part of the arrangements necessary in order to procure the Bond and, therefore, the Construction Contract. The Board Minute:
- i) Was plainly concerned with both the Parent Company Guarantee and the CCI. Any other reading makes no commercial sense;
 - ii) Recorded the decision of SPME that both these documents “be entered into and that it be executed as a Deed and delivered by the Company in the manner required”;
 - iii) Was signed by Mr Saini as “Company Secretary/Chairman”.
62. Further, and standing back from the minutiae, Mr O’Leary’s signature on the CCI as “Executed and delivered as a deed on behalf of ‘Shapoorji Pallonji Mideast LLC’ Registered Number: 43008 By: 1. Manager: Name: Robert O’Leary” simply makes no sense unless he was authorised to do so, as part of the suite of documents necessary to allow SPUK to enter into the Construction

Contract. Without in any way seeking to reverse the burden of proof, it does seem to me that the complete lack of explanation for Mr O’Leary’s signature, in the context set out in section A above, strains credulity beyond breaking point.

63. For completeness, I should say that:

- i) The fact that some limited changes were made to the draft CCI and other documents after 16 February 2020 does not matter. These were at the Shapoorji Group’s request and for SPME’s benefit;
- ii) It does not matter whether Mr O’Leary was the ‘Manager’ or not, provided that he had actual authority. Mr Mohd accepted in evidence that where an agent has authority to enter into an agreement, but misdescribes the capacity in which he is acting, the contract will still ascribe to the principal.

64. For these reasons, I conclude that Mr O’Leary signed the CCI with actual authority vested in him pursuant to Article 10.

D. Apparent/ostensible authority

65. If I am wrong about actual authority I next need to consider apparent/ostensible authority. It is common ground that the question whether Mr O’Leary had apparent authority to bind SPME to the CCI is governed by English law.

66. This doctrine is explained by *Bowstead & Reynolds on Agency* (23rd Ed) at para 8-009:

“Where a person, P, by words or conduct, represents or permits it to be represented that another person, A, has authority to act on P’s behalf, P is bound by the acts of A with respect to anyone dealing with A as an agent on the faith of any such representation, to the same extent as if A had the authority that A was represented to have, even though A had no such actual authority.”

67. The leading case remains the decision of the Court of Appeal in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 Q.B. 480, in which Diplock LJ (as he then was) analysed the requirements as follows at pp.505-506:

*“If the foregoing analysis of the relevant law is correct, it can be summarized by stating four conditions which must be fulfilled to entitle a contractor to enforce against a company a contract entered into on behalf of the company by an agent who had no actual authority to do so. It must be shown: *506*

(1) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;

(2) that such representation was made by a person or persons who had "actual" authority to manage the business of the company either generally or in respect of those matters to which the contract relates;

(3) that he (the contractor) was induced by such representation to enter into the contract, that is, that he in fact relied upon it; and

(4) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent.”

68. The recent decision of the Supreme Court in *The Law Debenture Trust Corp plc v Ukraine* [2024] AC 411 has added two further ingredients at para 39, which I have annotated below:

*“Apparent or ostensible authority, on the other hand, describes a relationship between the principal and a contractor which arises from a representation made by the principal to the contractor that an agent has authority to enter on behalf of the principal into a contract within the scope of that apparent authority. The representation, if acted upon by the contractor, by entering into a contract with the agent, creates an estoppel, preventing the principal from asserting that he is not bound by the obligations which the contract imposes on him: *Freeman & Lockyer*, at p 503 per Diplock LJ. [5] For the estoppel to operate the representation must be one upon which the contractor could and did reasonably rely. The doctrine protects a contractor who is entitled to assume that the person with whom he is dealing has the authority which he appears to have.[6] But the principle cannot be relied upon by a contractor who is put on inquiry, by which we mean that the contractor fails to make the inquiries that a reasonable person would have made in all the circumstances to verify that the person with whom he is dealing does indeed have authority: *East Asia Co Ltd v PT Satria Tirtatama Energindo* [2020] 2 All ER 294 (“PT Satria”), paras 92 and 93.”*

69. As I explored with Counsel, I find ingredient [6] a little difficult to follow. One can see that, where a person is actually put on inquiry, by some information which suggests that the agent lacks authority, they may not be able to rely on the concept of ostensible authority. But the wording seems to extend to the person who should have been on inquiry, because they had failed to make the

inquiries that a reasonable person would have made in all the circumstances. In what follows, I assume (to the benefit of SPME) that ingredient [6] covers both situations.

70. I therefore deal with this issue under those six headings, as follows:

- i) SPME made a representation that Mr O’Leary had authority to enter on behalf of the company into the CCI. The Resolution represented to the reasonable person that SPME had authorised entry into the CCI. The 2018 and 2019 financial statements represented to Ion and others that Mr Saini had authority to act for and sign documents on behalf of SPME. Article 10 of the MOA represented that Mr Kakkar could delegate all of his powers including authority to enter into agreements such as the CCI. Others might therefore have that authority. Having already seen the 2018 financial statements, a reasonable reader would understand that Mr Saini was one such person;
- ii) Such representation was, in effect, made by Mr Kakkar, a person who had "actual" authority to manage the business of the company;
- iii) Ion relied upon the representation. The chronology set out above shows that Ion were not prepared to release the electronic or wet signed versions of the Bond until the signed CCI and the Board Resolution were received. On this aspect, Mr Page sought to argue that Mr Whitney was happy to sign the Bond electronically before the CCI arrived. But I do not think this matters. Mr Whitney’s signature was not witnessed until 3 June 2020, and it was quite clear from the whole of his evidence that Ion were not prepared to commit themselves until they had all the necessary documents from SPME;
- iv) Article 10 of the MOA meant that SPME had the capacity to enter into the CCI and/or to delegate authority to enter into the same;
- v) Ion did reasonably rely upon the representations. They would not, in my judgment, have been willing to enter into the Bond without the CCI. Mr Whitney was clearly an experienced and careful businessman, and his

colleagues appeared (from their correspondence) to be equally competent. Ion would have been extremely foolhardy to execute an on-demand bond without some financial protection in place, and I am sure that they did not do so;

- vi) Ion did not fail to make the inquiries that a reasonable person would have made in all the circumstances to verify that the person with whom they were dealing did indeed have authority. On the contrary, they proceeded carefully and prudently throughout.

71. Two further points should be noted in this context.

72. The first is the relevance of the rule in *Royal British Bank v. Turquand* 6 E. & B. 327. The following statement of the rule was approved by the House of Lords in *Morris v. Kanssen* [1946] A.C. 459 by Lord Simonds at p. 474:

"persons contracting with a company and dealing in good faith may assume that acts within its constitution and powers have been properly and duly performed and are not bound to inquire whether acts of internal management have been regular."

73. Lord Simonds later explained the rationale of the rule, at p. 475: "The wheels of business will not go smoothly round unless it may be assumed that that is in order which appears to be in order."

74. This seems to be exactly the position of Ion and Mr Whitney, and this assumption, reasonably made by Ion, reinforces the conclusions set out above. As Mr Whitney explained in cross-examination:

"Q. And do you accept that Ion did not check whether Mr. O'Leary had authority to sign the indemnity?"

A. It was requested.

Q. Ion simply assumed he had authority?"

A. I would assume that they would be proper in good faith provide a legitimate signature for the guarantee. I would not think they would deliberately mislead or conceal any documents that we asked for that weren't complete."

75. Secondly, another possible way of looking at the facts is that Mr O'Leary was able to communicate to Ion the fact that SPME had resolved to enter into the

CCI and that he could sign it on the basis of the Board Resolution. In this connection, the decision of the Privy Council in *Kelly and others v Fraser* [2013] 1 A.C. 450 is of relevance:

“15. It is clear from the judgments in First Energy that the Court of Appeal regarded their approach in that case as being wholly consistent with the law stated by Lord Keith in Armagas Ltd v Mundogas SA [1986] AC 717. In the Board's opinion, they were right to regard them as consistent. Lord Keith's speech remains the classic statement of the relevant legal principles. An agent cannot be said to have authority solely on the basis that he has held himself out as having it. It is, however, perfectly possible for the proper authorities of a company (or, for that matter, any other principal) to organise its affairs in such a way that subordinates who would not have authority to approve a transaction are nevertheless held out by those authorities as the persons who are to communicate to outsiders the fact that it has been approved by those who are authorised to approve it or that some particular agent has been duly authorised to approve it. These are representations which, if made by someone held out by the company to make representations of that kind, may give rise to an estoppel. Every case calls for a careful examination of its particular facts.”

76. This interpretation of the facts also reinforces the conclusions set out above.
77. For these reasons, I would conclude that the CCI was entered into with SPME's apparent authority, if actual authority was lacking.

E. Liability, demands and loss

78. SPME's primary case relates to lack of authority. I have dealt with this above. However, they submit that, even if the CCI was entered into with appropriate authority, neither Claimant can successfully claim thereunder. Mr Page frankly submitted that SPME's case was that there was here a “black hole”: the party with the claim had suffered no recoverable loss and the party who had suffered the loss had no claim.
79. I turn therefore back to the facts. It is now necessary to distinguish a little more carefully between Ion Surety, the party to the CCI, and Ion Insurance, the party to the Bond.
80. As already mentioned, Ion Surety entered into the CCI with SPME. Relevant clauses for this part of the case included the following:

“2 INDEMNITY

The Indemnitor shall indemnify and keep indemnified the Surety from and against all claims, liabilities, costs, expenses and/or losses (including loss of interest) incurred by the Surety under or by virtue of any Bond. Costs and expenses shall include those incurred by the Surety where a claim or threatened claim is resisted or disposed of or to make a payment to a third party to avoid a claim being made by the Beneficiary in such sum or sums as may be required to satisfy or limit all loss and expense arising in relation to the Bond or as result of the Surety having issued it, without any payment being made in respect of any such claim. The obligations of £3,500,000.00 (GBP Three Million Five Hundred Thousand Only) of the Indemnitor under this clause 2 are not to be reduced or qualified in any way by the other provisions of this Deed.

3 DEMANDS FOR PAYMENT

3.1 In the event of any payment being made by the Surety in respect of any claim, liability, costs, expenses and/or losses under or by virtue of any Bonds, the Indemnitor shall pay the full amount thereof to the Surety forthwith upon demand by the Surety and it is expressly agreed that the acknowledgement, receipt or other voucher made given or received by the Surety in respect of any such payment shall, save in the case of obvious error as between the Indemnitor and the Surety be conclusive evidence that the amount of such payment has been made and is accordingly payable under this Deed by the Indemnitor to the Surety.

3.2 The Indemnitor shall discharge its payment obligations under clauses 3.1 and 4 by making payment to "Ion"...

11. PROCURED SURETIES

If Ion shall procure the execution of any Bond or Bonds by another as a procured sole surety or as a procured co-surety then this Deed shall also operate for the benefit of such procured sole surety or co-surety and Ion is irrevocably authorised to extend the benefit of this Deed to any such procured sole surety or co-surety so far as such extension may be required to protect the interests of such procured sole surety or co-surety and without reducing or otherwise qualifying the obligations of the Indemnitor to the Surety under this Deed."

81. Ion Insurance entered into the Bond on 3 June 2020. Pursuant to the Bond, it undertook "to pay to [Sherhill] any sum or sums not exceeding in total the amount of £3,500,000.00, upon receipt by [Ion Insurance] of [Sherhill's] written demand conforming to the requirements of this Bond". The Bond was valid until "the practical completion of the works under the Construction Contract".
82. On or around 14 July 2020, Ion Surety and Ion Insurance entered into a Special Acceptance Endorsement Schedule ("**the Endorsement**") in relation to the Quota Share Reinsurance Agreement that had been in place between those

parties since June 2019 (“**the Reinsurance Agreement**”). Pursuant to the Endorsement, Ion Insurance agreed to “cede by way of a Quota Share equivalent to 97.50% of 100% of the bond fees and liability under” bonds for SPUK’s account up to a per bond limit of US\$6 million.

83. On or around the same day, Ion Surety and Ion Insurance entered into a separate further reinsurance agreement specifically in relation to the Bond (“**the Second Reinsurance Agreement**”).
84. On or around 1 August 2023, Ion Insurance received a demand from Sherhill under the bond.
85. The English Court ordered the winding up of SPUK on 9 August 2023.
86. Sherhill subsequently issued a claim against Ion Insurance in the English High Court, claiming £3,500,000 plus interest and costs, on 29 August 2023.
87. Ion made a demand of SPME under the CCI on 29 September 2023 pursuant to Clause 4.3, alternatively Clause 4.1.
88. On 28 November 2023, Ion Insurance settled the Sherhill Claim on terms that required Ion Insurance to pay to Sherhill the sum of £3,657,684.29 (“**the Settlement Sum**”). Ion Insurance had no defence to the Sherhill Claim.
89. On 16 May 2024, Ion Surety wrote to Ion Insurance as follows:

“Re: 'An On-Demand Bond relating to a development at Axe Street' dated 3 June 2020 between Ion Insurance Company, Inc ("Ion Insurance"), Shapoorji Pallonji UK Ltd and Sherhill (Barking), Ltd (the "Bond")

Dear Ion Insurance,

For the avoidance of doubt, Ion Surety Company S.A. ("Ion Surety") confirms that it has, insofar as is required, and to the extent that such confirmation has not already been provided, extended the benefit of the 'Agreement of Indemnity' made on 18 February 2020 between Shapoorji Pallonji Mideast LLC and Ion Surety (the "Indemnity") to Ion Insurance in relation to the issuance of the Bond.

This extension is made pursuant to clause 11 of the Indemnity.”

90. Ion made a further demand of SPME on 22 October 2024. The demand was put as follows:

“In light of Sherhill's claim under the Bond and the settlement of such claim, Ion Surety requires SPM to make payment under clause 3.1 and 3.2 of the Indemnity in the sum of £3,657,684.29.”

91. SPME have refused to make any payment under the CCI.
92. A ledger entry for the year to 31 December 2025 in Ion's documentation provides that:

*“\$4,570,637.59 to record claim expense due from Surety to INC. INC made the following claim payments for Sherhill bond and 97.5% of the policy was ceded to Surety:
12/13/2023 \$2,114,293.43;
1/9/2024 \$1,294,030.00;
2/7/24 \$1,279,510.00”*

93. These simple facts have given rise to a considerable number of permutations as to the correct answer. However, it seems to me that the solution is relatively straightforward. The fact that Ion Surety supplied the CCI and Ion Insurance provided the Bond is essentially a matter of Ion's internal arrangements. It would be surprising if this left neither Ion company with a valid claim in the circumstances.
94. Pursuant to the Reinsurance Agreement and the Second Reinsurance Agreement, Ion Surety indemnified Ion Insurance for 97.5% of the Settlement Sum paid to Sherhill (approximately £3.56m).
95. The initial offer of the Bond came from Ion Surety. Ion Surety was the entity which specialised in bond and guarantee products. Ion subsequently confirmed that the Bond could be provided by Ion Insurance, which was US domiciled, if preferred. Mr Forde asked Ms Muldowney which SPME would prefer. The following day, Mr Forde confirmed to Ion that “If you could complete the document from Ion Insurance Company as it is the USA domiciled entity I would appreciate it.” It is to be inferred that this was at SPME's instruction.
96. Ion Surety's liability to Ion Insurance was, therefore, a “liability, cost, expense and/or loss” incurred “by virtue of” the Bond. SPME is therefore liable to Ion Surety under Clauses 2 and 3.1.

97. Ion Surety issued the relevant demand under the CCI. Accordingly, SPME is liable to pay £3.5m to Ion Surety, this being the limit of its liability under the CCI.
98. Alternatively, SPME is liable to Ion Surety under Clauses 2, 3.1 and 11. Ion Surety is entitled to protect Ion Insurance's interests and recover the sums paid by Ion Insurance pursuant to the Bond. Ion Surety extended the benefit of the CCI to Ion Insurance on 16 May 2024. SPME had no entitlement to withdraw the CCI prior to that date or at any subsequent date.
99. In particular:
- i) Ion Surety, in the circumstances set out above and at Section A, procured the execution of the Bond by Ion Insurance;
 - ii) So that the CCI also operated for the benefit of Ion Insurance;
 - iii) Such that Ion Surety was irrevocably authorised to extend the benefit of the CCI to Ion Insurance.
100. Given these conclusions, I do not think that it is necessary to deal with the further alternative ways of putting the case.

F. Answers to the issues.

101. Counsel helpfully agreed a list of issues, albeit this process was not completed until 15 October 2026, and, even then, there were substantial areas of disagreement.
102. Before coming to the answers, it is worth unearthing a little of the history of the pleadings in this case.
103. As already mentioned the authority issue did not emerge until November 2025. The parties then exchanged pleadings on this issue during 2026.
104. The final shot from SPME in this regard was its Re-Re-Amended Defence served on 1 October 2026. On 23 September 2026, less than a week before the date for filing skeleton arguments, SPME produced a draft of this document.

The draft amendments were extensive, covering almost all issues in the case. No explanation has been given to me as to why these amendments could not have been made sooner.

105. Ion consented to all but two of these amendments. SPME did not pursue these two points and on 2 October 2026 a consent order was made in the following terms:

“1. The Defendant has permission to file and serve its Re-Re-Amended Defence in the form annexed to this order by 1pm on Friday 2 October 2026.

2. The Claimants have permission to make any consequential amendments to their Amended Reply, if so advised, and shall file and serve any Re-Amended Reply by 4pm on Monday 5 October 2026.”

106. So far as material, this latest batch of amendments asserted as follows (amendments underlined):

“8AC. Paragraph 7AC (Mr O'Leary had actual authority) is denied. Mr O'Leary lacked actual authority to sign the Indemnity because under the law of Dubai, authority to give an indemnity in the terms of the Indemnity required a special mandate conferred upon the signatory by the Defendant's competent organ at or before the date of execution. No such mandate was conferred upon Mr O'Leary. Neither Mr O'Leary's employment by the Defendant, if it subsisted, nor his seniority, nor his job title, nor his description in any publication of the Shapoorji Pallonji group, conferred authority to give the Indemnity. Nor did any authority he held from any other company within that group, each company having a separate legal personality under the law of Dubai. Management of the Defendant was vested by Article 10 of its Memorandum of Association in its Manager, Mr Kakkar, alone...

8AD. Paragraph 7AD (Mr O'Leary had apparent authority/mandate) is denied. Paragraph 8AC above is repeated. The Defendant did not represent to the Claimants or either of them that Mr O'Leary had authority to enter into the Indemnity. Any representation as to his authority came from Mr O'Leary himself, or from persons who had no authority to make representations on the Defendant's behalf. Further, the Claimants did not rely upon any representation(s) by the Defendant, alternatively any reliance placed upon such representations was not reasonable...

107. In the Re-Amended Reply, Ion pleaded to these paragraphs as follows:

“8C. As to paragraph 8AC :-

8C. It is admitted that management of the Defendant was vested in Mr Kakkar by Article 10 of its Memorandum of Association. Article 10 permitted Mr

Kakkar to "To delegate from time to time all or any of the above mentioned powers to any person(s) by virtue of written authorization of whatever approved by him". That included the power to "Sign, execute and perform all the agreements, contracts and other undertakings entered by the company with any person or other persons or entity or establishment and exchange or terminate and/ or end any of such documents, provide corporate guarantee to any banks and third party in UAE and overseas".

8C.2 Mr Saini signed the Defendant's 2018 and 2019 financial statements alongside Mr Kakkar as "General Manager" or "Managing Director". He also signed an earlier version of the Defendant's Defence as "Director". It is to be inferred that Mr Kakkar delegated to Mr Saini such powers or authority as would be expected in the ordinary course of those roles. This included specific authority to enter into the Indemnity and equivalent agreements on the Defendant's behalf.

8C.3 Even if actual authority were not otherwise delegated to him, Mr Kakkar and/or Mr Saini conferred authority onto Mr O'Leary to enter into the Indemnity by means of the Resolution. It is to be inferred either (i) that Mr Kakkar participated in the meeting referred to in the Resolution or (ii) that Mr Saini resolved to enter into the Indemnity in accordance with authority delegated to him by Mr Kakkar...

8D. As to paragraph 8AD:

8D.1 The Defendant represented to the Claimants through the Resolution that the Defendant had authorised entry into the Indemnity. The Resolution was signed by Mr Saini who had the Defendant's actual, alternatively apparent, authority. The Defendant had represented by its financial statements that Mr Saini was its "General Manager" or "Managing Director", that Mr Saini was senior to Mr Kakkar and that Mr Saini had authority to sign documents on its behalf. It had also represented that it had a Board. The Defendant had further represented by Article 10 of its Memorandum of Association that Mr Kakkar could delegate his powers and authority to others. Mr Kakkar knew that Mr Saini was holding himself out as having authority to act for the Defendant and took no steps to prevent or neutralise such representations. The Claimants had no reason to inquire into Mr Saini's authority.

8D.2 It is denied that the only representation of authority came from Mr O'Leary. Representations of authority were also made by Mr Saini and/or the Board."

108. SPME contend that, in effect, Ion should not be allowed to advance these points. In an email dated 15 October 2026, Mr Page summarised SPME's objection as being that they "did not have any notice of the argument about the allegation until the Friday before trial in circumstances where the points being alleged call for focused searches of the Kakkar/Saini mailboxes prior to January 2020, and witness evidence from Kakkar/Saini." He also submitted during the trial that I

should not draw any adverse inferences from the absence of Messrs Kakkar and Saini as witnesses and/or custodians.

109. I am afraid that I do not have a great deal of sympathy for SPME on this aspect. Insofar as they wished to raise issues about authority – a matter within their exclusive purview – they could and should have done this long ago. By putting forward a Re-Re-Amended Defence so close to trial, they were obviously giving Ion an unattractive choice: press on with the trial with very little time to consider the new points or seek a (no doubt lengthy) adjournment to deal with the new matters. Ion understandably took the former course.
110. Furthermore, SPME consented to an order whereby Ion could serve a consequentially Re-Amended Reply, and they did so. The matters pleaded above were, in my view, properly within the scope of the consent order. Ion were, therefore, entitled to deploy these matters at trial. SPME have created this situation by their lateness and they cannot now complain of the same.
111. Yet further, I agree with the points made by Ms Box in her responsive email of 15 October 2026 as follows:

“Mr Page suggested in his email below that SPME objects because ION’s pleading calls for focused searches of the Kakkar/Saini mailboxes prior to January 2020, and witness evidence from Kakkar/Saini. However, such evidence was also relevant to its own amendments. In Stewarts’ letter of 23 September 2026 (which accompanied the draft re-re-amendments to the Defence), SPME sought to reassure ION that further searches had been undertaken to identify documents between Mr Saini and Mr Kakkar: see {H/13/2} at paragraph 7. Mr Kakkar and Mr Saini were always relevant witnesses. SPME had every opportunity to call them at an earlier stage and chose not to do so.”

112. In relation to the agreed issues (where I have adopted Ion’s formulation as the more accurate) I would answer the issues as follows, answers shown in bold:

“1) Was the CCI binding on SPME?

Yes

a) Was the CCI entered into with SPME’s actual authority?

Yes

- i) Are the Claimants permitted to contend that (i) Mr Kakkar delegated power to Mr Saini to enter into the CCI, per Re-Amended Reply ¶8C.2; and/or (ii) Mr Kakkar attended the meeting referred to in the Resolution (RARep ¶8C.3)? If so, are the Claimants permitted to prove this case by adverse inference?

Yes and yes.

- ii) Did Mr Kakkar delegate authority to Mr Saini, and did Mr Saini delegate authority to Mr O’Leary pursuant to Article 10 of the Memorandum of Association?

Yes

- iii) Did the Board Resolution confer actual authority on Mr O’Leary?

Yes

- b) Was the CCI entered into with SPME’s apparent authority?

Yes

- i) Are the Claimants permitted to contend that (i) the Defendant represented that it had a board, that Mr Saini was senior to Mr Kakkar, and that Mr Saini had authority to sign documents on behalf of the board (RARep ¶8D.1)? If so, are the Claimants permitted to prove this case by adverse inference?

Yes

ii) What representations of authority (if any) were made by the Defendant?

That Mr O’Leary had delegated authority from Mr Kakkar and/or Mr Saini to enter into the CCI on behalf of SPME.

iii) Were Ion Surety and/or Ion Insurance put ‘on inquiry’? If so, did they fail to make the inquiries that a reasonable person would have made in all the circumstances?

No and No.

iv) Did Ion Surety and/or Ion Insurance rely on any representations made?

Yes

2) If the CCI was binding, is SPME liable to the First and/or Second Claimant and if so in what sum?

Yes; £3.5 million.

a) Is SPME liable to Ion Surety under Clauses 2 and 3.1?

Yes

i) Has Ion Surety incurred a “liability, cost, expense and/or loss” “by virtue of” the Bond? Did Ion Surety indemnify Ion Insurance under the Reinsurance Agreements?

Yes and yes.

ii) Is SPME estopped from denying liability to Ion Surety on the basis that Ion Insurance supplied the Bond?

Not necessary to answer this question.

b) Alternatively, is SPME liable to Ion Surety under Clauses 2, 3.1, 3.2 and 11 (for the protection of Ion Insurance's interests following its settlement of the Sherhill Claim)?

Yes

i) Did Ion Surety procure the execution of the Bond by Ion Insurance?

Yes

ii) Did Ion Surety extend the benefit of the CCI to Ion Insurance (if necessary)?

Yes

c) Alternatively, is SPME liable to Ion Insurance under Clauses 2, 3.1 and 11?

Not necessary to answer this question.

i) Can Ion Insurance advance a claim pursuant to Clause 11?

ii) Can Ion Insurance advance a claim pursuant to section 1 of the Contracts (Rights of Third Parties) Act 1999? Is any such claim barred by Clause 1.5?

d) Alternatively, is SPME liable to Ion Surety and/or Ion Insurance under Clauses 4.1, 6.1 and/or 11 as a result of a failure to provide financial statements to ION?

Not necessary to answer this question.

e) Did Ion Surety and/or Ion Insurance serve a valid demand?

Yes

3) If there is no liability under the CCI, is SPME liable to Ion Insurance in contribution? If so, in what sum?

Not necessary to answer this question.