



Neutral Citation Number: [2025] EWHC 2374 (Ch)

Case No: CR-2024-005081

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

IN THE MATTER OF BINOMIA LTD
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 19 September 2025

Before:

DEPUTY ICC JUDGE ARUMUGAM

Between:

ABCOR FINANCE SECURITIES LIMITED

Petitioner

- and -

BINOMIA LTD

Respondent

JAMIE MCCRACKEN (instructed by **Backhouse Solicitors Limited**) for the **Petitioner**
PATRICK BOCH (instructed on a public access basis) for the **Respondent**

Hearing date: 6 May 2025

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 19 September 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

Deputy ICC Judge Arumugam:

1. This is the hearing of a winding up petition presented on 30 August 2024 by Abcor Finance Securities Limited (the “**Petitioner**”) against Binomia Ltd (the “**Company**”) (the “**Petition**”). The petition debt is £305,811.91 and is said to arise under a Parent Company Guarantee dated 9 October 2022 made between the parties.
2. By an Order made by consent on 9 October 2024, it was ordered that the Petition be listed for a half-day hearing to determine whether there is a genuine and substantial dispute in relation to the petition debt, with advertisement of the Petition to be restrained pending that determination and directions given for the filing of evidence by the parties.
3. The Company opposes the Petition on the grounds that: (a) the petition debt is disputed on genuine and substantial grounds as the debt was not legally due and payable at the time the Petition was presented; and (b) the Court in its discretion should not make a winding up order because (it is alleged) the Petitioner unlawfully confiscated stock belonging to a subsidiary of the Company, which then led to the Petition being presented. As part of this, the Company says that the subsidiary has a cross-claim against the Petitioner which equals or exceeds the petition debt.
4. In opposition to the Petition, the Company relies upon two witness statements of its director Andrew Chesney dated 6 October 2024 and 8 January 2025. In support of the Petition, the Petitioner relies upon the witness statement of its director Colm O’Reilly dated 11 December 2024.
5. At the start of the hearing before me, I refused the Company’s application dated 30 April 2025 for permission to adduce a third witness statement from Mr Chesney dated 28 April 2025 exhibiting what he described as an expert valuation report produced in order to quantify the Company’s cross-claim. I gave my reasons for refusing that application in an oral judgment given at the hearing.
6. I am grateful to counsel who appeared before me, Mr McCracken for the Petitioner and Mr Boch for the Company, for their assistance at the hearing.

Relevant law on the winding-up jurisdiction

7. It is a well-settled rule of practice (and not disputed between the parties) that the court will dismiss a winding up petition where it is satisfied the debt on which the petition is based is disputed on genuine and substantial grounds. In *Angel Group Ltd v British Gas Trading Ltd* [2012] EWHC 2702 (Ch), Norris J said at [22]:

“The principles to be applied in the exercise of this jurisdiction are familiar and may be summarised as follows:-

a) A creditor’s petition can only be presented by a creditor, and until a prospective petitioner is established as a creditor he is not entitled to present the petition and has no standing in the Companies Court: Mann v Goldstein [1968] 1WLR 1091.

b) The company may challenge the petitioner’s standing as a creditor by advancing in good faith a substantial dispute as to the entirety of the petition debt (or at least so much as will bring the indisputable part below £750).

c) A dispute will not be “substantial” if it has really no rational prospect of success: in Re A Company No.0012209 [1992] 1WLR 351 at 354B.

d) A dispute will not be put forward in good faith if the company is merely seeking to take for itself credit which it is not allowed under the contract: ibid. at 354F.

e) There is thus no rule of practice that the petition will be struck out merely because the company alleges that the debt is disputed. The true rule is that it is not the practice of the Companies Court to allow a winding up petition to be used for the purpose of deciding a substantial dispute raised on bona fide grounds, because the effect of presenting a winding up petition and advertising that petition is to put upon the company a pressure to pay (rather than to litigate) which is quite different in nature from the effect of an ordinary action: in Re A Company No.006685 [1997] BCC 830 at 832F.

But the court will not allow this rule of practice itself to work injustice and will be alert to the risk that an unwilling debtor is raising a cloud of objections on affidavit in order to claim that a dispute exists which cannot be determined without cross-examination (ibid. at 841C).

The court will therefore be prepared to consider the evidence in detail even if, in performing that task, the court may be engaged in much the same exercise as would be required of a court facing an application for summary judgment: (ibid at 837B).”

8. Further, the court has a discretion and may decline to order winding up where there is a genuine and serious cross-claim that the respondent to the petition has been unable to litigate that equals or exceeds the amount of the petition debt: see *Re Bayoil SA* [1999] 1 All ER 374.

9. When considering whether to make a winding-up order in the face of opposition, it is not practical or appropriate for the court to conduct a long and elaborate hearing, examining in minute detail the case made on each side: *Re Swan Campden Hill Limited* [2021] EWHC 2470 (Ch) per ICC Judge Burton at [10]. The Judge then cited *Re Bayoil*, where Ward LJ said at p.383e:

“a winding-up order is a draconian order. If wrongly made, the company has little commercial prospect of reviving itself and recovering its former position. If there is any doubt about the claim or the cross-claim, that seems to me to require that the court should proceed cautiously.”

10. The Court must take a realistic view of whether a company is likely to establish a genuine and substantial dispute, taking into account that bare assertions will not suffice. There is a minimum evidential threshold: see *Swan Campden Hill Limited* at [11].

Background

11. Circular Tech Solutions Limited (“CTS”) is a subsidiary of the Company based in Northern Ireland. Mr Chesney for the Company explains that CTS operates a phone refurbishment business.
12. On 9 September 2022, Abcor Finance Limited (“Abcor”) which I understand is part of Abcor’s group of companies issued an offer letter to CTS, stating that CTS “has been approved for a trade finance Facility ... to be provided by Abcor and its subsidiaries” as detailed in that offer letter. The letter goes on to state, under the heading “Overview of the Proposed Transaction”:

“Abcor hereby offers the Facility to CTS to enable CTS to source and purchase goods (“Goods”) to be used by [the Company] in its normal course of business. Specifically for the purpose of this facility CTS purchase and sale [sic] of the related stock.

Abcor will finance the Goods from CTS Suppliers, upon confirmation of order and Supplier invoice... The invoices/funds from the sales will be assigned to Abcor.

Abcor will retain title (ROT) over sold goods until the proceeds from those Goods are paid directly to an account controlled by Abcor. The ROT will remain in place until the Goods have been paid for in full.

Abcor will finance supplier against a Purchase Order and confirmation of Supplier invoice...”

13. The offer letter goes on to state that “Funding will be up to a maximum of 45 days and will be linked to the purchase and sale cycle.” The offer is stated to

remain valid until 21 days from the date of the offer letter. The version of the offer letter before the Court is signed by Abcor's director but is not countersigned by CTS. However it was not suggested by the Company before me that the offer letter was never received or did not form part of the background to the matter.

14. On 9 October 2022, CTS entered into a loan agreement with Abcor Finance No 2 Limited ("**Abcor 2**") (a subsidiary of Abcor) pursuant to which Abcor 2 made available a £250,000 loan facility to CTS (the "**Loan Agreement**"). Mr Chesney for the Company explains that the purpose of this loan was for CTS to buy stock (mainly high-end phones) to refurbish and resell at a higher price.
15. It is necessary to set out some of the terms of the Loan Agreement.
16. Clause 1.1 (Definition) includes the following defined terms:

<i>"Drawdown</i>	<i>means the utilisation of the Facility;</i>
<i>Event of Default</i>	<i>has the meaning given to it in Clause 11 (Events of Default);</i>
<i>Facility</i>	<i>means the Sterling term loan facility made available under this Agreement;</i>
<i>Interest Rate</i>	<i>means 1.75% (one point five [sic] percent) per 30 days equivalent to 21.3% (twenty one point three percent) per annum;</i>
<i>Loan</i>	<i>means the loan made under this Agreement to the extent not repaid;</i>
<i>Potential Event of Default</i>	<i>means an event that with the giving of notice, lapse of time or other applicable condition would be an Event of Default"</i>

17. Clause 2 (The Facility) provides as follows:

"2.1 Subject to the terms of this Agreement, the Lender makes the Facility available to the Borrower.

2.2 The Facility to be made available to the Borrower by the Lender is up to £250,000.00 and shall be paid directly into the Bank Account, which is governed in accordance with the Finance Documents.

2.3 Following the drawdown of the Facility into the Bank Account, the Borrower requires the Lender to make payment as set out in appendix 1 of this Agreement.

2.4 The Lender is under no obligation to investigate how any amount borrowed under this Agreement is used.”

18. Clause 3 (Interest) provides as follows:

“3.1 Payment of interest

3.1.1 Interest on the principal amount of the Loan shall accrue daily on the basis of a 365–day year and for the actual number of days elapsed. A minimum of 30 days interest will accrue for any loan drawdown.

3.2 Interest Rate

The rate of interest applicable to the Loan shall be the Interest Rate.

3.3 Default interest

If the Borrower fails to make any payment due under this Agreement or any Finance Document on its due date, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment (both before and after judgment) at a rate of 8% (eight per cent) above the Interest Rate and the Borrower undertakes to pay any such interest to the Lender immediately on demand by the Lender.”

19. Clause 4 (Repayment, prepayment and cancellation) provides as follows:

“4.1 Repayment

4.1.1 The term of the Facility provided to the Borrower will be up to 90 days from the date of drawdown in accordance with clause 2.

4.1.2 The Borrower must repay the Loan in full by way of a single repayment upon sale of all goods purchased with the Loan; or

4.1.3 The Borrower must repay the Loan in instalments on the following basis set out in Appendix 1 of this agreement”

20. Clause 6 (Costs, expenses and indemnity) provides as follows:

“6.1 The Borrower must, within 3 Business Days of demand by the Lender, pay to the Lender on a full indemnity basis all costs, expenses,

losses and liabilities (including legal fees) together with VAT on such amounts incurred by or on behalf of the Lender arising at any time as a result of or in connection with:

6.1.1 the occurrence of an Event of Default;

6.1.2 the negotiation, preparation, execution, perfection, or enforcement of this Agreement or the Finance Documents;

6.1.3 any losses, taxation, penalties or levies incurred by the Lender in relation to the Loan.”

21. Clauses 9.1 and 11 include the following terms:

“9.1 Notification of default

The Borrower must, promptly on becoming aware of the same, notify the Lender of the occurrence of:

9.1.1 any Event of Default or Potential Event of Default together with the steps being taken to remedy it (if applicable); and

9.1.2 any default under any other agreement or instrument which is binding on it.”

“11 Events of Default

11.1 The occurrence of any of the following is an Event of Default:

11.1.1 Non-payment: *the Borrower fails to pay any amount payable by it under this Agreement or any Finance Document to which it is a party on the date it falls due;*

11.1.2 Breach of obligations: *the Borrower fails to perform promptly any of its obligations under this Agreement or any Finance Document to which it is a party;*

11.1.3 Misrepresentation: *any representation or warranty contained in this Agreement or any Finance Document or in any document or instrument delivered under or in connection with this Agreement or any Finance Document, is incorrect or misleading when made or deemed to be made;*

11.1.4 Enforcement of security: *any step is taken to enforce any security over the undertaking, property, revenue or assets of the Borrower”.*

22. Clause 11.2 provides as follows:

“11.2 Consequences

If an Event of Default occurs and is continuing, the Lender may, by notice to the Borrower, declare that:

11.2.1 the Loan and any other amount due or becoming due to the Lender is immediately due and payable (in which case those amounts shall be immediately due and payable); and/or

11.2.2 it intends to exercise any or all of its rights, remedies, powers or discretions under this Agreement or the Finance Documents (in which case it may exercise any such rights).”

23. Clauses 15 and 16 provide as follows:

“15 Notices

15.1 Any notice or other communication given by a party under this Agreement must be in writing and be signed by or on behalf of the party giving it.

15.2 Notices will be delivered by hand by pre-paid first-class post or other next working day delivery service to the parties at the addresses detailed at the outset of this Agreement.

15.3 A Party may change any of its details given in Clause 15.2 by giving not less than 5 Business Days’ notice to the other Party.

15.4 This Clause 15 (Notices) does not apply to any notice given in legal proceedings, arbitration or other dispute resolution proceedings.

16 Amendments

No amendment, waiver or variation of any of the terms of this Agreement will be valid or effective unless made in writing and signed by or on behalf of the Parties.”

24. Appendix 1, which is referred to in clauses 2.3 and 4.1.3 above, states as follows:

“Appendix 1

[insert date]

*To: Abcor Finance no 2 Limited (the **Lender**)*

*From: Circular Technology Solutions Limited (the **Borrower**)*

Dear Abcor Finance no 2 Limited,

Loan agreement between the Borrower and the Lender dated [insert date] (the Loan Agreement)

Terms defined and references construed in the Loan Agreement have the same meaning and construction in this notice.

We request [the OR a] Loan to be drawn down under the Loan Agreement as follows:

Amount of Loan: £[insert amount]

Drawdown Date: [insert date]

Purpose of Loan: [insert purpose of loan]

Please pay the Loan into the following account:

Bank: [insert name of bank]

Account name: [insert name of account]

Account number: [insert account number]

Sort code: [insert sort code]

We confirm that on the date of this notice and on the Drawdown Date:

- 1 no Event of Default or Potential Event of Default has occurred and is continuing or will occur on the making of the Loan; and*
- 2 all representations and warranties set out in Clause 8 (Representations and warranties) of the Loan Agreement are true.*

.....

[insert name of director or other authorised person]

[Director OR Authorised signatory]

for and on behalf of Circular Technology Solutions Limited”

25. In the version of the Loan Agreement before the Court, the references in square brackets to inserting dates, names or other information is italicised and highlighted in yellow. In any event, it appears that Appendix 1 is essentially a pro forma document, for later completion by one or both of the parties.
26. Together with the Loan Agreement, the parties entered into a number of other agreements, namely:
 - i) A debenture dated 12 October 2022 between CTS and Abcor, pursuant to which CTS provided fixed and floating charges in respect of its obligations under the Loan Agreement;
 - ii) A Security Trust Deed dated 9 October 2022 made between CTS as borrower, Abcor as security trustee and 4 Abcor group companies including Abcor 2, who are described as “original lenders”;
 - iii) A personal guarantee and indemnity from the Company’s director to Abcor dated 9 October 2022; and
 - iv) A Parent Company Guarantee dated 9 October 2022 (the “**Guarantee**”) made between the Company and Abcor, pursuant to which the Company guaranteed CTS’ due performance of the Loan Agreement on the terms and conditions set out in the Guarantee.
27. Turning specifically to the Guarantee, clause 3 provides (*inter alia*) as follows:

“3 Guarantee

3.1 In consideration of the Security Trustee and/or the Original Lenders entering into the Agreement with the Customer, the Guarantor:

3.1.1 unconditionally and irrevocably guarantees and undertakes to the Security Trustee to procure the due and punctual performance by the Customer of each and all of the obligations, representations, warranties, duties and undertakings of the Customer under the Agreement when and if the same become due and performable under the terms of the Agreement; and

3.1.2 unconditionally and irrevocably agrees that, in the event that the Customer fails to pay any amount or perform any obligation under the Agreement, the Guarantor will on demand pay such amount or perform such obligation as if it were the principal obligor under the Agreement;

3.1.3 as a separate and independent obligation, agrees to indemnify the Security Trustee against all losses which the Security Trustee and/or the Original Lenders suffer under or otherwise in connection with the Agreement, whether in contract or tort (including negligence), breach of statutory duty, or otherwise:

(a) including by reason of any breach by the Customer of its obligations, representations or warranties under the Agreement; and

(b) if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal, provided that the Guarantor's liability shall be no greater than the Customer's liability is or would have been under the Agreement.

3.2 This Guarantee is a primary obligation of the Guarantor and accordingly the Security Trustee shall not be obliged before enforcing this Guarantee to take any action or proceedings against the Customer, to make any claim against or any demand of the Customer, to enforce any other security held by it in respect of the obligations of the Customer under the Agreement or to exercise, levy or enforce any distress, diligence or other process of execution against the Customer. If the Security Trustee brings proceedings against the Customer, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.”

28. Clause 9 of the Guarantee provides as follows:

“9 Variations to and extension of the Agreement

9.1 The Guarantor acknowledges and agrees that:

9.1.1 nothing in this Guarantee prevents the Customer and the Security Trustee from making any addendum or variation to the Agreement (in accordance with the terms of the Agreement); and

9.1.2 it shall guarantee the due and punctual performance of the Agreement, as amended by the addendum or variation, in the same manner and in accordance with the terms of this Guarantee.

9.2 This Guarantee shall continue if the Agreement is extended or renewed and shall automatically apply to the terms of the amended or extended Agreement.”

29. Finally, clause 11 of the Guarantee provides as follows:

“11 Notices

11.1 Notices under this Guarantee shall be in writing and sent to a party's address as set out on the first page of this Guarantee (or to the fax number or email address set out below). Notices may be given, and shall be deemed received:

11.1.1 by first-class post: 2 Business Days after posting;

11.1.2 by airmail: 7 Business Days after posting;

11.1.3 by hand: on delivery;

11.1.4 by email to andy.beck@abcorfinance.com in the case of Abcor Finance Securities Limited and a.chesney@gettech.com in the case of Binomia Limited: on receipt of a delivery return email.

11.2 This clause does not apply to notices given in legal proceedings or arbitration."

30. On 9 March 2023, CTS and Abcor 2 entered into an Addendum Loan Agreement pursuant to which they increased the value of the facility provided under the Loan Agreement from £250,000 to £400,000. It was not suggested by either party before me that this in any way affected the validity of the Guarantee or the other security documents entered into by the parties on 9 and 12 October 2022.
31. Mr O'Reilly for the Petitioner says that there were 19 separate drawdowns/trades made by CTS under the Loan Agreement which were successfully repaid. He exhibits to his statement 8 drawdown requests dated between 5 April 2023 and 30 June 2023 which are in the form of Appendix 1 to the Loan Agreement, but in each case fully completed. Mr O'Reilly points out that in each of these drawdowns, the maturity date stated is "up to 90 days". The total loan amount under these 8 drawdown requests is £294,629.96. Mr O'Reilly also exhibits to his statement a breakdown of how the petition debt is calculated (in the form of a table). That table lists these same 8 drawdown requests.
32. Mr O'Reilly also exhibits a number of emails which passed between him and Mr Chesney from 5 July 2023. This seems to indicate that the Company was seeking extensions for the repayment of some of the loan drawdowns, which the Petitioner was willing to support. By an email of 19 July 2023 Mr O'Reilly said that the Petitioner was "willing to support and help" but that this would be "on a strict basis". Mr O'Reilly then sets out a number of items of information that he says he wanted to see. This includes "an unequivocal confirmation from you [Mr Chesney] that sales proceeds from the stock we have purchased come back to Abcor. No commingling or diversion of funds" and "The area where the stock is held needs to have signage confirming that all stock is pledged to Abcor Finance."

33. Mr O'Reilly's evidence is that at the end of July 2023, Mr Chesney contacted him and confirmed that there had been an issue with the staff at CTS, the Company and another company within the Company's group, Trueblue Ecommerce Limited ("**Trueblue**") and that a significant amount of staff had left the business. This account is not accepted by Mr Chesney.
34. On 31 July 2023, Mr O'Reilly emailed Mr Chesney to say that "I will be visiting Cork on Wednesday 2/8 and doing a full reconciliation of the stock, payments etc. I will be there at approximately 10am." The evidence before me is that the Cork premises to which Mr O'Reilly was referring to were the premises of Trueblue.
35. Mr O'Reilly says that when he arrived at the Cork site, "one worker presented themselves to me ... and confirmed that he was the only person working as everyone else had walked out." He says the worker then showed him a computer and allowed Mr O'Reilly to review the stock list. Mr O'Reilly says it became apparent to him that "a large amount of stock, in particular high end iPhones, had already been sold and were no longer on the premises, but the funds had not been used to repay [Abcor 2] for the existing outstanding loans."
36. Mr O'Reilly then seized a substantial volume of stock which was at the Cork site. A list of those items seized is before the Court and shows 1,741 items (various phones of differing models) were seized with a "cost value" of Euro 234,849.85.
37. On 30 August 2023, Mr Chesney emailed Mr O'Reilly, suggesting that either the parties "try to work together to sell the stock in an orderly manner to realise the best value of the stock" or CTS would need to consider an insolvency process. Further emails between the two directors show attempts to discuss the co-operation around selling the stock. Mr O'Reilly draws attention to the fact that in none of those emails does Mr Chesney take issue with the Petitioner having seized the stock in the first place, or suggest that this was not permitted under the parties' contractual arrangements.
38. On 22 September 2023, solicitors acting for the Petitioner wrote to the Company making "formal demand" under the Guarantee for the immediate payment of the sums said to be outstanding from the Company in the total sum of £265,529.05. That letter also notes that the Petitioner had made "a formal demand on the [Company] on 16 August 2023 for payment" of the outstanding loan sums. I have not been provided with a copy of that demand by either party before me.
39. Mr O'Reilly says that the Company did not co-operate with the efforts to sell the stock, and in the end the Petitioner sold the stock and realised some £74,000 itself.
40. On 11 June 2024, the Petitioner served a statutory demand (dated 7 June 2024) upon the Company in the sum of £305,811.91. Curiously, the demand refers to

the debenture, Guarantee and the personal guarantee given by Mr Chesney, but does not specify the exact basis upon which the Company's liability arises. However, the demand does say that the Petitioner has "filed a formal demand on Binomia Limited to request immediate repayment of the funds under the Parent Company Guarantee on 22 September 2023 but to date no payment has been made." It would therefore appear the petition debt is based upon the Company's alleged liability under the Guarantee.

41. The statutory demand remained unpaid, and on 30 August 2024, the Petitioner presented the Petition. This was in the same sum as the statutory demand. The particulars of debt essentially repeat the details of debt set out in the statutory demand, although reference is now added to some of the seized stock having been sold by the Petitioner.
42. I turn to consider the grounds upon which the Company opposes the Petition.

Ground 1 – Debt is disputed

43. The first ground advanced by the Company is that it says the Petition debt is disputed as not being due and payable. Mr Boch for the Company essentially relied on 3 points under this head. First, he says that there was no event of default under the Loan Agreement. Second, he says that no notice under the Loan Agreement was given. Third, he says that notice was not served on the Company. The effect of each of these, Mr Boch says, is that the Petitioner's liability under the Guarantee has not arisen.
44. On the first of these grounds, Mr Boch says that the Petitioner has not to date made clear what the event of default was. He says that if the default was failure to repay the loan when due, then clause 4.1 of the Loan Agreement is in point. Mr Boch says that clause 4.1 is unclear and is internally contradictory. As to this, he submits that:
 - i) Clause 4.1.1 refers to the "term" of the facility and gives a timeframe of 90 days from the date of drawdown in accordance with clause 2. However, Mr Boch says, clause 2 is silent as to repayment;
 - ii) Clause 4.1.2 says the loan must be repaid in full by way of a single payment upon sale of all the goods purchased with the loan. Mr Boch emphasises the word "all" in this passage;
 - iii) Finally clause 4.1.3 refers to payment by instalments on the basis set out in Appendix 1. However, Appendix 1 includes no terms as to instalment payments as it appears to be a pro forma template document;
 - iv) Mr Boch submits that the interaction between these provisions is unclear and unsatisfactory. He also says that as there is an apparent right to repay

in instalments, there is an argument that the Loan Agreement contains an error in respect of which an application for rectification may be made.

- v) The effect of this is that the Company submits there has been no event of default within the meaning of clause 11.1 of the Loan Agreement.
45. Second, the Company says that even if an event of default has occurred, the Petitioner has not given notice in compliance with clause 11.2. That provision says that the consequence of an event of default is that the Petitioner may by notice declare that (a) the loan and any other amount due or becoming due is immediately due and payable and/or (b) it intends to exercise any or all of its rights, remedies, powers or discretions under the Loan Agreement or the other finance documents (which includes the Guarantee). Mr Boch submits that Mr O'Reilly relies only on communications given by email and that none of them specifically comply with either of the two requirements of clause 11.2 that I have mentioned. Since no notice has been given, it is submitted, the loan is not "immediately due and payable".
46. Third, Mr Boch submits that even if the Petitioner could show that proper notice was given by email, this does not comply with the notice requirements of clause 15 of the Loan Agreement, which provides that any notice given under the agreement must be given in writing, signed and delivered by hand, or by first class post or other next working day delivery service.
47. The Company's argument is that if any of these points are true, then the Company's liability under clause 3 of the Guarantee does not arise.
48. Mr McCracken for the Petitioner kept his written submissions concise. He said that the matter was straightforward and in reality this was a very simple issue. He accepted that the salient provisions as regards the terms of the arrangements are to be found at paragraph 4 of the Loan Agreement. In oral submissions, Mr McCracken submitted that:
- i) The drawdown requests which are before the Court show that the Company acknowledged that the drawdown terms were 90 days;
 - ii) Emails between the parties, including the email dated 5 July 2023, show that the parties conducted their relationship on the basis of 90 days repayment terms, with any extension being expressly negotiated and fees paid;
 - iii) Mr O'Reilly's evidence (at paragraph 9.8 of his statement) is that clause 4.1.1 of the Loan Agreement makes clear that repayment must be within 90 days and this is consistent with the parties' conduct with drawdown requests. As such, the Company is now trying to re-interpret clause 4 in a different manner to how the parties acted upon it;

- iv) The reality of the contractual relationship is that the Petitioner granted to the Company's subsidiary a 90-day on demand finance arrangement, which has not been repaid within the 90 days or on demand.
49. I was also referred to the email communications between the parties following the seizure of stock on 3 August 2023, in which Mr Chesney did not raise any objection to what had happened in Cork.
 50. Having considered the evidence before me and the parties' submissions, in my judgment I am satisfied that there is a genuine dispute on substantial grounds as to whether the Petition debt was due and payable at the time the Petition was presented. Clause 4.1 of the Loan Agreement is problematic. It is internally inconsistent and does not make complete sense in the form it was drafted. The proper interpretation of that clause is not a matter which is suitable for determination in this court. The court will need to consider all the admissible circumstances and disclosure and oral evidence is likely to be needed for the court to make a determination on this issue. Based upon the material that has been placed before me, it is not possible or appropriate for this issue to be decided in the context of insolvency proceedings.
 51. Similarly, I am satisfied that, on their face, none of the emails to which Mr O'Reilly refers in his evidence set out the specific matters which are provided for in clause 11.2 of the Loan Agreement. As such, there is a genuine and substantial dispute as to whether or not notice has been given to the Company under the Loan Agreement.
 52. Furthermore, even if I am wrong on that second point, there is plainly a genuine and substantial dispute on the third ground as to whether or not the emails sent by Mr O'Reilly constitute a valid notice for the purposes of clause 15 of the Loan Agreement. In this regard I note that: (a) it is arguable that the emails have not been "signed" within the meaning of clause 15.1; and (b) clause 15.2 does not include email as a method of delivery permitted under the Loan Agreement. This is, again, plainly not a matter which is suitable for determination by way of winding up proceedings in this court.
 53. Under those circumstances, I am satisfied that there is a genuine and substantial dispute as to whether the loan was due and payable at the time the Petition was served. This is not a matter which is suitable for determination in this court and I will therefore dismiss the Petition.

Other grounds

54. Given my finding in relation to the first ground, it is not strictly necessary for me to decide the second ground advanced by the Company, namely that the Court in its discretion should not make a winding up order because the Petition debt has come about as a direct result of the Petitioner's allegedly "unlawful" conduct in seizing CTS' stock. However, given that the parties argued the matter before me, I will briefly address this point.

55. In my judgment, even if I am wrong on the first ground, there is plainly an argument that the self-help remedy which the Petitioner exercised by seizing assets at Trueblue's premises in Cork was not permissible under the Guarantee. As to this:
- i) The evidence before the Court is that the premises were not those of CTS and were those of a third party to their contractual arrangements;
 - ii) I have found that there is a genuine and substantial dispute as to whether the sums claimed in the petition were due and payable at the time of the seizure. It is then arguable whether any right to seize assets under the Petitioner's security had arisen;
 - iii) There is also evidence before me that some of the stock taken by the Petitioner was not the property of CTS. That is a matter which, on the evidence before me, is not capable of determination in this court.
56. I note that any potential cross-claim would be made by CTS and/or Trueblue who are not parties to this Petition. However, in the circumstances of this Petition, it would be inappropriate to make a winding up order when the Petitioner's actions in seizing property at the Cork site is under question and is claimed to give rise to the petition debt. I should make clear that I make no determination on the substance of this point, which will need to be decided by separate Part 7 proceedings.

Conclusion

57. I will therefore dismiss the Petition. I will invite counsel to agree a draft order (including as to costs) within 7 days of handing down this judgment. In the absence of agreement, I will direct there be a further hearing to be held remotely by Microsoft Teams to determine any outstanding points.