



In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION**

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Claimants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Claimants)

Claimants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Defendants

AND

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION**

IN THE MATTER OF NMC HEALTHCARE LTD (in administration) (subject to deed of company arrangement) AND THE COMPANIES LISTED IN SCHEDULE 1 TO THE ADMINISTRATION APPLICATION

AND IN THE MATTER OF THE INSOLVENCY REGULATIONS 2015

BETWEEN



(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Applicants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Applicants)

Applicants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Respondents

JUDGMENT OF JUSTICE SIR ANDREW SMITH



Neutral Citation:	[2023] ADGMCFI 0024
Before:	Justice Sir Andrew Smith
Decision Date:	29 December 2023
Decision:	<ol style="list-style-type: none"> 1. The Shetty Restraint Application is refused. 2. The costs of the proceedings, and any other consequential matters arising from this Judgment, be determined at a consequential hearing to be fixed by the Court.
Hearing Dates:	13 December 2023 and 14 December 2023
Date of Order:	29 December 2023
Catchwords:	Parallel proceedings in different jurisdictions. Should ADGM proceedings be stayed or restrained? Public policy that civil proceedings be stayed pending resolution of criminal proceedings. Disclosure and statutory protections of confidentiality.
Legislation Cited:	<p>ADGM Court Procedure Rules 2016</p> <p>ADGM Insolvency Regulations 2022</p> <p>ADGM Insolvency Regulations 2015</p> <p>Senior Courts Act 1981 (UK)</p> <p>Federal Law No. 5 of 1985 on the Civil Transactions Law of the United Arab Emirates</p> <p>Federal Law No. 2 of 2015 on Commercial Companies</p> <p>Companies Act 2006 (UK)</p> <p>Federal Decree Law No. 38 of 2022 on the Issuance of the Criminal Procedure Law</p> <p>Federal Decree Law No. 14 of 2018 on the Central Bank and the Organisation of Financial Institutions and Activities</p> <p>UAE Central Bank Regulations</p> <p>UAE Central Bank Consumer Protection Standards</p> <p>Federal Decree Law No 45 of 2021 on the Protection of Personal Data.</p>
Cases cited:	<p>J Bollinger SA and anor v Goldwell Ltd [1971] FSR 405</p> <p>Athena Fund SICAV-FIS SCA and ors v Secretariat of State for the Holy See, [2022] EWCA Civ 1051</p> <p>Unwired Planet International Ltd and anor v Huawei Technologies (UK) Ltd and anor, [2020] UKSC 37</p> <p>Shaaban v AUMET Ltd [2022] ADGMCFI 0010</p> <p>R v Panel on Takeovers and Mergers Ex p. Al-Fayed [1992] BCC 524</p> <p>Merck KGaA v Merck, Sharpe & Dohme Corp, [2014] EWHC 428 (Ch)</p> <p>In re NMC Healthcare Ltd, [2023] ADGMCFI 0022</p>



	NMC Healthcare Ltd (in administration) and associated companies v Dubai Islamic Bank PJSC and ors [2023] ADGMCFI 0013
Case Numbers:	ADGMCFI-2020-020; and ADGMCFI-2022-299
Parties and representation:	<p><i>Claimants/ Respondents (NMC Healthcare LTD, NMC Holding and Joint Administrators)</i></p> <p>Mr Henry King KC, Mr Nico Leslie and Ms Alexandra Whelan (Instructed by Quinn Emanuel Urquhart & Sullivan)</p> <p><i>First Defendant/ Applicant (Dr Shetty)</i></p> <p>Ms Ruth den Besten KC and Mr Kajetan Wandowicz (Instructed by Farrer & Co)</p> <p><i>Second Defendant/ Respondent (Mr Manghat)</i></p> <p>Mr Huw Davies KC and Ms Sophia Hurst (Instructed by Kobre & Kim)</p> <p><i>Third Defendant/ Respondent (Bank of Baroda)</i></p> <p>Mr Neil Kitchener KC and Ms Maria Kennedy (Instructed by Baker & McKenzie LLP)</p>

JUDGMENT

Introduction

1. The circumstances that give rise to the question before me are explained in my judgment of 14 November 2023, [2023] ADGMCFI 0021, on what I shall call the “**Manghat Directions Application**” in the cases of Abu Dhabi Commercial Bank PJSC v Manghat (ADGMCFI-2022-111) (the “**ADCB claim**”) and NMC Healthcare Limited and ors v Shetty and ors (ADGMCFI-2022-299 and ADGMCFI-2022-020) (the “**ADGM proceedings**”). I shall refer to that judgment as the “**November Judgment**”. I shall not repeat the background to these disputes that I explained there.
2. By the Manghat Directions Application, Mr Manghat seeks an order that there be “*co-ordinated case management*” and a “*concurrent trial*” of the ADCB claim and the ADGM proceedings. For reasons that I explained in the November Judgment, I did not then decide the Manghat Directions Application. The essential difficulty in doing so was that Dr Shetty had made an application in the English High Court which was designed to resolve whether the ADGM proceedings should be tried before or after proceedings in the Chancery Division of the English High Court, Claim No. BL-2022-002097 (the “**English proceedings**”), in which the Joint Administrators of NMC Health PLC (“**NMC PLC**”) make claims against Dr Shetty, Mr Manghat and the Bank of Baroda. Those claims are, in the words of Mr Benjamin Longworth of Farrer & Co, Dr Shetty’s solicitors, “*broadly duplicative*” of those in the ADGM proceedings, which are brought in this Court by the Joint Administrators of subsidiaries of NMC PLC against the same defendants. The three Joint Administrators of NMC PLC include the two Joint Administrators of the NMC companies that bring the ADGM proceedings, and the claimants in both actions are represented by the same solicitors, Quinn Emanuel Urquhart & Sullivan UK LLP (“**QE**”). The purpose of Dr Shetty’s application to the English Court is to bring it about that the English proceedings are determined before the ADGM proceedings are heard.



3. If an order of this kind were made, the proposal in the Manghat Directions Application that there be co-ordinated case management and a concurrent trial of the ADCB claim and the ADGM proceedings would clearly be unrealistic. It was not suggested, and could not sensibly be suggested, that the hearing of the ADCB claim be deferred until after the English proceedings have been heard.
4. Dr Shetty's submission that the ADGM and the English proceedings should not both go ahead to trial in parallel makes obvious sense and is uncontroversial. Although defences have not been served in either case, there is no good reason that the Courts should defer engaging with the question which case should go ahead. However, Dr Shetty's contention is that the English proceedings should be determined first, and, for the reasons that I explained in the November Judgment, to my mind it should be for this Court, rather than the English Court, to decide whether the proceedings here should be restrained.
5. With the encouragement of the Court, therefore, by an application notice dated 21 November 2023 (the "**Shetty Restraint Application**"), Dr Shetty applied that these proceedings be stayed. Although the application is that they be stayed pending judgment in the English proceedings or further order of this Court in the meantime, it is not controversial that the sensible order to achieve Dr Shetty's purpose might not be a stay, but some other order restraining the progress of the ADGM proceedings, without completely staying them. The exact form of order is not important for my decision.
6. I heard the application on 13 and 14 December 2023. The representation of the parties was largely the same as that on the earlier hearing of the Manghat Directions Application: Dr Shetty was represented by Ms Ruth den Besten KC, leading Mr Kajetan Wandowicz; the claimants in the ADGM proceedings were represented by Mr Henry King KC, leading Mr Nico Leslie and Ms Alexandra Whelan; Mr Manghat was represented by Mr Huw Davies KC, leading Ms Sophia Hurst; and the Bank of Baroda was represented by Mr Neil Kitchener KC and Ms Maria Kennedy. Mr Rajesh Pillai KC and Mr Scott Ralston attended the hearing on behalf of ADCB, but did not make any representations.

The power to stay proceedings

7. This Court does not have a specific power under the ADGM Court Procedure Rules 2016 (the "**CPR**") to order a stay for case management reasons, but it is not disputed that it may do so under rule 8(1) of the CPR: "*The Court may make any order, give any direction or take any step it considers appropriate for the purpose of managing the proceedings and furthering the overriding objective of these Rules as set out in Rule 2(2)*". The inherent power of the English High Court to stay proceedings is recognised in section 49(3) of the Senior Courts Act 1981: "*Nothing in this Act shall affect the power of ... the High Court to stay any proceedings before it, where it thinks fit to do so ...*". Although this Court is exercising a statutory, not an inherent, power and is to exercise it to further the overriding objective of the CPR, the English authorities about when it is appropriate to order a stay provide useful guidance, and should be followed by this Court, unless there is good reason to do otherwise.
8. The starting point is that "*a litigant is entitled not to be delayed in the determination of his dispute without good cause*": *J Bollinger SA and anor v Goldwell Ltd [1971] FSR 405*, 416 per Megarry J. As Males LJ observed in *Athena Fund SICAV-FIS SCA and ors v Secretariat of State for the Holy See, [2022] EWCA Civ 1051* para 59, "*the usual function of a court is to decide cases and not to decline to do so, and access to justice is a fundamental principle under both the common law and Article 6 of [the European Convention for the Protection of Human Rights and Fundamental Freedoms]*". Similarly, in this jurisdiction, the overriding objective of the CPR is to secure that the system of civil justice in the ADGM is "*accessible*", as well as fair and efficient.



9. That said, the English Courts have recognised that a stay might properly be ordered “*where there are parallel proceedings in another jurisdiction, raising similar or related issues between the same or related parties, where the earlier resolution of those issues in the foreign proceedings would better serve the interests of justice than by allowing the English proceedings to continue without a temporary stay*”: *Unwired Planet International Ltd and anor v Huawei Technologies (UK) Ltd and anor*, [2020] UKSC 37 at para 99 per Lord Reed. Lord Reed went on to say that a stay “*would be justified only in rare or compelling circumstances*”. However, where there are parallel proceedings in different jurisdictions, as in other cases, ultimately the test is always whether it is in the interests of justice to grant a stay: see the *Athena Capital Fund* case (loc cit) at para 59.

The parties’ positions on the Shetty Restraint Application

10. Both the ADGM proceedings and the English proceedings include claims under the applicable insolvency regime (the *ADGM Insolvency Regulations 2022* (the “**IR 2022**”) in this jurisdiction, and the *Insolvency Act 1986* (UK) in the NMC English proceedings), and civil claims. The claims are large: their value in the ADGM proceedings is said in the claim form to be “[at] least USD 5 billion”, and the claims in the English proceedings are of comparable size.
11. In procedural terms, the ADGM proceedings and the English proceedings are at the same stage. The proceedings and particulars of claim have been served, and defences are due in early 2024. The parties are agreed that proceedings will not be ready to be tried in either Court before the latter part of 2025 at the earliest, and both this Court and, I was told, the Chancery Division of the English High Court could accommodate a trial then.
12. I shall explain below the similar nature of the allegations and claims in both actions. It is not in dispute between the parties that, in view of the similar nature of the allegations against the three defendants in the ADGM and the English proceedings, it is in the interests of justice that one or other of the actions be stayed, or at least that the progress of one be restrained so that unnecessary costs are avoided pending the determination of the other. The Shetty Restraint Application was supported by the Bank of Baroda. It was opposed by Mr Manghat, contending that the ADGM proceedings should be heard before the English proceedings. The claimants here also opposed the application: they agreed that, subject to a qualification that there should be a so called “*Common Findings Agreement*”, to which I shall refer shortly, one of the actions should be restrained, but they submitted that the ADGM proceedings should be heard first. They told me that the claimants in the English proceedings took the same view.
13. I readily accept that both proceedings should not proceed to trial in parallel. I consider this in the interests of justice, and in so far as proceedings should be stayed or restrained only in rare or compelling circumstances, such circumstances are provided by the degree of overlap between the two actions and the consensus that one or the other should be restrained.

Common Findings Agreement

14. As I have said, the claimants in both actions say that the parties should enter into a Common Findings Agreement before either action is restrained. By this, they mean that the parties should agree that the findings by the Court that conducts the first trial are to be binding at the second trial, notwithstanding the claimants in the two actions are different. The nature of the agreement that is proposed was described by Mr Nicholas Marsh of QE in a witness statement of 28 November 2023, referring to the position if the ADGM proceedings are to be tried first, as follows: “*The object of such agreement would be to create the equivalent effect of there being res judicata and/or issue estoppels of findings on common issues in the [ADGM] Proceedings into and binding upon the parties to the ... English Proceedings*”.



15. As I understand it, all the parties agree that some agreement of this kind would be sensible, at least if the English proceedings are tried before the ADGM proceedings and if appropriate terms can be agreed. I am not, however, persuaded that this should be a pre-condition of one or the other action being restrained: I consider that to be in the interests of justice in any event. Moreover, the judgment in the first trial is likely de facto to resolve many issues in the second action, even if no Common Findings Agreement is made. If the claimants in the first action are awarded anything like the sum that they claim, it is difficult to think that the claimants in the second action would see much advantage in pursuing their claim at least against Dr Shetty and Mr Manghat. If the claimants in the first action fail in their claims, no doubt, as Officers of the Court, they would think long and hard before they pursue the similar claims in the other action.

The claims in the two proceedings

16. The insolvency claims in both actions are for fraudulent trading and, as against Dr Shetty and Mr Manghat, wrongful trading.
17. The civil claims in the ADGM proceedings are made under United Arab Emirates (“UAE”) law, and alternatively under ADGM law: it is not suggested that ADGM law differs from English law in any material respect.
18. The civil claims under UAE law against Dr Shetty and Mr Manghat are made under article 282 of *Federal Law No. 5 of 1985 on the Civil Transactions Law of the United Arab Emirates* (the “**Civil Code**”), which imposes liability for acts (or failures to act) which are harmful and cause harm; under article 285, which provides for liability for deceit; under article 104 of *Federal Law No. 2 of 2015 on Commercial Companies*, which imposes liability on a company’s manager in specified circumstances, including for fraudulent acts and improper use of power; and on the basis of liability in respect of payments to them, in the case of Dr Shetty under articles 318 and 319 of the Civil Code and in the case of Mr Manghat under articles 304 and 310 of the Civil Code. The civil claims under ADGM law are for breach of duties, for conspiracy to injure by unlawful means and dishonest assistance and, against Dr Shetty, for knowing receipt or unjust enrichment.
19. The civil claims against the Bank of Baroda under UAE law include allegations of breach of tortious and contractual duties and of fraud or gross negligence, and reliance is placed on article 282 of the Civil Code (with regard to tortious duties), on article 283 (as regards contractual duties) and on article 285 (with regard to fraud or gross negligence). The alternative claims against the Bank of Baroda under ADGM law include claims for breach of contract and tortious duties, for conspiracy to injure by unlawful means, for dishonest assistance of breaches of fiduciary duties and for knowing receipt.
20. In the English proceedings, NMC PLC puts its claims primarily under English law against each of the defendants, making claims for breach of duty against Dr Shetty and Mr Manghat, a claim in dishonest assistance against the Bank of Baroda, and a claim in unlawful means conspiracy against all the defendants. In the alternative, it brings against all the defendants claims under UAE law, which mirror the claims in the ADGM proceedings.
21. The English proceedings also include claims against Dr Shetty in English law, and alternatively under the Civil Code, under so-called Relationship Agreements, whereby, it is alleged, in 2012 and 2014 he and other shareholders in NMC PLC entered into various commitments to NMC PLC with regard to their dealings with and concerning it. The ADGM proceedings do not include any corresponding cause of action. Further, the English proceedings include claims for breach of duties under sections 172 and 175 of the Companies Act 2006. Comparable statutory claims are not advanced in the ADGM proceedings, but similar claims are here made on the basis of equitable duties to act faithfully in the best interests of the NMC companies and not to make an unauthorised or undisclosed profit.



22. Mr Longworth exhibited to his evidence in support of Dr Shetty's application to the English Court a document that compares the Particulars of Claim in the ADGM proceedings and the English proceedings, and, as Mr Longworth says, it shows that *"they are in very substantial parts identical"*.

The arguments that the NMC English proceedings should be determined first

23. This leads to the questions whether the ADGM proceedings should be deferred so as to allow the English proceedings to be tried first. The arguments advanced by Dr Shetty and the Bank of Baroda that the English proceedings should proceed first are these:

- a. The English proceedings are wider in scope and will require more comprehensive findings of fact than the ADGM proceedings (the **"Scope of the Proceedings Argument"**).
- b. The potential disruption to the ADGM proceedings if criminal charges are brought against Dr Shetty or Mr Manghat (the **"Criminal Charges Argument"**).
- c. Potential preliminary issues might disrupt the progress of the ADGM proceedings, and decisions on them adverse to the claimants would mean that issues in the English proceedings would not be decided in the ADGM proceedings (the **"Preliminary Issues Arguments"**).
- d. There are likely to be more documents available as a result of disclosure in the English proceedings than in these proceedings (the **"Disclosure Argument"**).
- e. England is the natural and proper forum for the English proceedings (the **"Natural Forum Argument"**).
- f. The English High Court is well-placed to determine the English proceedings because there are and will be other actions in England relating to the affairs of NMC PLC, including proceedings brought by NMC PLC against its former auditors, Ernst & Young LLP (**"EY"**) (the **"Other Proceedings Argument"**).
- g. There is more prospect of Dr Shetty being able to give evidence in England than in ADGM (the **"Shetty Evidence Argument"**).
- h. The costs will be less if the English proceedings are heard first (the **"Costs Argument"**).
- i. The parties are more likely to conclude a Common Findings Agreement if the ADGM proceedings are restrained (the **"Common Findings Agreement Argument"**).

24. Ms den Besten described the Scope of the Proceedings Argument, the Criminal Charges Argument and the Preliminary Issues Arguments as the *"key factors that support [Dr Shetty's] position"*. Mr Kitchener submitted that the Criminal Charges Argument is *"an absolutely dispositive point which weighs so heavily in the balance that it is actually hard to imagine anything defeating it as a consideration"*.

The Scope of the Proceedings Argument

25. As I have said, the two actions are in large measure similar in their scope. In particular, referring to the paragraphs of the particulars of claim in the English proceedings:



- a. At paragraphs 11 to 25, the defendants and others are described and allegations about them are made in similar terms.
 - b. At paragraphs 26 to 55, allegations about the NMC Group and the discovery of the alleged fraud are set out in similar terms.
 - c. At paragraphs 56 to 100, there are pleaded allegations of fact about the fraud, including about payments made directly or indirectly to Dr Shetty or his “*affiliates*”, payments made on behalf or for the benefit of Dr Shetty, payments made to other shareholders and entities alleged to be related to them, payments to Mr Manghat, undisclosed debt and undisclosed collateral benefits, related party transactions and the perpetuation of fraudulent business.
26. The allegations and claims against the Bank of Baroda are also pleaded in substantially the same terms in the two proceedings.
 27. Ms den Besten argued that, nevertheless, the English proceedings include claims and allegations that are not made in the ADGM proceedings. Despite Ms den Besten’s attractive presentation of the Scope of the Proceedings Argument, Mr King’s submissions for the claimants went a long way to refute it.
 28. As I have already said, the English proceedings plead a cause of action against Dr Shetty for breach of the Relationship Agreements. However, both the Relationship Agreements and Dr Shetty’s alleged breach of them are expressly pleaded in the ADGM proceedings too. Although these allegations are not said to give rise to a discrete cause of action in the ADGM particulars of claim, that seems to me of little significance to the scope of the proceedings.
 29. Ms den Besten also referred in her skeleton argument to what she called “*the status of the guarantees issued by [NMC] PLC*”: in her oral argument, she identified allegations that NMC PLC issued guarantees securing indebtedness of other companies in the NMC Group, and that a substantial part of this liability was undisclosed; and that NMC PLC was balance sheet insolvent from 31 December 2013, and Dr Shetty, Mr Manghat and the Bank of Baroda knew this. I find it difficult to accept that any significant issue is likely to arise between the parties about the “*status of the guarantees*”: none of the defendants suggested that they would dispute that NMC PLC gave them. As for the allegation that NMC PLC was balance sheet insolvent and the knowledge of the defendants about that, although this is not pleaded in those terms in the ADGM proceedings, the claimants here allege that the companies registered in the ADGM were balance sheet insolvent from 31 December 2013, and also that the NMC Group (including NMC PLC) prepared financial statements and that they did not fully disclose indebtedness for the years ended 31 December 2012 to 31 December 2018. In these circumstances, I accept Mr King’s submission that there is not any difference of substance in the pleaded allegations.
 30. Next, in the English proceedings, but not in the ADGM proceedings, the allegations of fraudulent trading and of wrongful trading take account the position of NMC PLC as well as its subsidiaries: by way of a single example, with regard to fraudulent trading, it is pleaded in the English particulars of claim that “... *in the period from April 2012 to February 2020, the business of NMC PLC was carried on with the intent to defraud creditors of NMC PLC (and/or the creditors of [its subsidiaries]) ...*”. A similar point is made about the pleading against the Bank of Baroda in that, for example, it is pleaded with regard to the allegation of conspiracy to injure by unlawful means that “*the unlawful acts in question included [pleaded] breaches of duty ... as well as unlawful acts of assisting, inducing and/or procuring NMC PLC and/or its subsidiaries to enter into transactions at an undervalue defrauding creditors ...*”; and the pleading continues that, but for the wrongdoing of the Bank of Baroda, no further unlawful payments would have taken place and otherwise loss would not have been incurred. However, while the point is naturally presented differently in the English

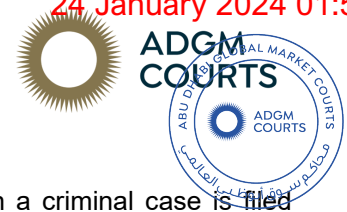


pleading of NMC PLC, it is pleaded in the ADGM proceedings, as I have already said, that the financial statements did not disclose the full indebtedness: if that is established, I would expect the English Court to be able to resolve without difficulty (if it be disputed) whether as a result NMC PLC was balance sheet insolvent; and if Dr Shetty and Mr Manghat are held to have known about the undisclosed debt, to resolve without much difficulty whether they knew that NMC PLC was balance sheet insolvent. Similarly, it is alleged in the ADGM proceedings that the Bank of Baroda knew of payment instructions involving sham suppliers, funds transfers involving related parties and payments that were unlawful or designed to conceal fraud. While it does not immediately follow, if this is established, that the Bank knew that NMC PLC was balance sheet insolvent, findings in the ADGM proceedings would be likely to assist to resolve the position about that in the English proceedings.

31. With regard to remedies, the relief claimed in the English proceedings covers losses of both NMC PLC and its subsidiaries: thus, it is pleaded “*The fraud involved the extraction of money and other forms of value from NMC PLC and NMC PLC’s subsidiaries ...*”. To my mind, this is not a reason that the English proceedings should be heard before the ADGM proceedings. Indeed, the position was fairly stated in Ms den Besten’s skeleton argument: she cited, and endorsed, evidence of Mr Marsh that the pleaded claims in the two actions differ in that: (i) the wrongful trading claims are advanced by reference to the net deficit in each administration, and (ii) the civil claims in the ADGM proceedings seek recovery of unlawful payments and also advisory and professional fees, bonuses, third party costs and damages, whereas in the English proceedings the claimants seek shareholder dividends, remuneration and bonuses, fees and third party costs and damages. I agree with Ms den Besten that these points do not “*impact on the question which court should go first because it cuts both ways*”: the civil claim damages will have to be determined separately, whichever case is heard first.
32. I conclude that, on analysis, the Scope of the Proceedings Argument is not a consideration that provides more than marginal support for Dr Shetty’s Restraint Application. The issues that arise only in the English proceedings pale into near insignificance when compared with the issues that the two cases have in common.

The Criminal Charges Argument

33. The UAE Federal Decree Law No. 38 of 2022 on the Issuance of the Criminal Procedure Law, provides at article 29 (according to the undisputed translation that is in evidence) as follows: “*Where a civil claim is brought before the civil court, it must be stayed until a decisive judgment is rendered in the criminal action filed prior to or during the examination of the civil case. ...*”. In a letter dated 21 November 2023 from Ibrahim & Partners, a firm of UAE lawyers with offices in Abu Dhabi and Dubai (the “**Ibrahim Letter**”), which was put in evidence on behalf of Dr Shetty, it is explained that the article is concerned with the position where a civil claim is brought before a court at the same time as or before a relevant criminal claim is brought before a criminal court, a relevant criminal claim being one with the same subject matter as the civil claim, although the purpose of the claim may be different. The Ibrahim Letter states that “*In such a case, the civil court is **obliged** by virtue of Article (29) to place the civil claim in abeyance until the issuance of a final judgment in the criminal claim*” (emphasis in original). The reason for this requirement is said to be two-fold: first, to avoid judgments being issued by the civil and criminal courts which are mutually contradictory; and secondly, where the civil and criminal claims are “*interconnected*”, the legislature supposed that the findings of the criminal court relating to the alleged wrongdoing would be considered to be by way of a decision on a preliminary issue, and civil compensation would be decided accordingly.
34. The Ibrahim Letter explains three other points:



- a. The obligation to stay the civil proceedings is triggered when a criminal case is filed before the criminal court. It is not triggered by an investigation by the Police or the Public Prosecutor.
 - b. As Ibrahim & Partners interpret article 29, the ADGM Court, being a Court of the UAE, would be obliged to stay civil claims before it in the circumstances covered by article 29. Their view is supported by the judgment in this Court in *Shaaban v AUMET Ltd [2022] ADGMCFI 0010*, and I accept it.
 - c. Article 29 enacts a requirement of public order, and accordingly, if a Civil Court becomes aware of relevant criminal proceedings, it is obliged to stay related civil proceedings of its own motion and whether or not any party applies for a stay.
35. It was suggested by Mr Huw Davies KC for Mr Manghat that article 29 might not apply when the complaint that leads to the criminal charge is not brought by the claimant in the civil claim. I find Mr Davies' argument unconvincing, and see no basis to suppose that article 29 is subject to a limitation of this kind. The suggestion is not supported by any expert evidence, nor by anything in the wording of the article. It appears to me inconsistent with the description in the Ibrahim Letter of what constitutes a related and relevant claim. Moreover, the risk of contradictory judgments does not arise only where the criminal charge results from a complaint by the claimant in the civil claim, and a claim for compensation in criminal proceedings can, as I was told, be made not only by the original complainant, but others who claim to have suffered loss as a result of the criminal conduct.
 36. In April 2020, ADCB brought a criminal complaint in the UAE against Dr Shetty and Mr Manghat in relation to the affairs of the NMC Group. According to the information available to the Court, the investigations by the Public Prosecutor are continuing, and no criminal proceedings have been brought.
 37. Against this background, Dr Shetty and the Bank of Baroda submitted that the risk of the ADGM proceedings being stayed because criminal charges are brought against Dr Shetty or Mr Manghat or both is a reason that the English proceedings should go ahead, rather than the ADGM proceedings. It was argued that a criminal charge relating to the ADGM proceedings might be brought at any time before or during the trial or any appeal after trial, and the Court would then have no option but to bring the civil proceedings to a halt. The potential serious disruption to the orderly disposal of the civil litigation between the parties is obvious.
 38. Under English law, on the other hand, if criminal proceedings were brought in the UAE, the English Court would have a discretion whether to stay the English proceedings, but it is a power that is not readily exercised: it has been said that a party seeking a stay must show "*a real risk of serious prejudice which may lead to injustice*" (see *R v Panel on Takeovers and Mergers Ex p. Al-Fayed, [1992] BCC 524, 531* per Neill LJ); and it was argued that, even if a party to the English proceedings applied for a stay, the application might well not be granted.
 39. This argument led to submissions by the parties about the likelihood of the investigations resulting in a criminal charge. Mr Kitchener for the Bank of Baroda contended that criminal proceedings cannot be said to be unlikely given that the NMC companies maintain that Dr Shetty and Mr Manghat were parties to an extremely serious criminal fraud, and Mr Manghat's contention that the fraud was perpetrated by Dr Shetty. On the other hand, Mr Manghat, while acknowledging the risk that the ADGM proceedings might be stayed under article 29, contended that it is a remote risk. He pointed out that, when Dr Shetty argued that the proceedings brought by ADCB against him in the English Court should be stayed (see para 4 of the November Judgment), he relied on the criminal complaint against him as a reason that the English Court should not take jurisdiction over ADCB's claim, without mentioning the possibility of a stay under article 29. Further, Mr Manghat



argued that, since criminal proceedings have not been brought since the investigations started in April 2020, it is the less probable that they will now be issued.

40. In these circumstances, as Mr Manghat submitted, it would be wrong for the Court to stay these proceedings unless and until criminal proceedings are brought. Certainly, the Court would not normally stay civil proceedings because there is no more than a risk of criminal proceedings. Dr Shetty and the Bank of Baroda do not suggest otherwise: they contend that, given that either the English proceedings or the ADGM proceedings should be restrained, the risk is a powerful reason for restraining the ADGM proceedings, thereby avoiding the mandatory stay and consequent disruption if a criminal charge is brought.
41. I readily understand the immediate attraction of this argument, but I cannot accept it. As the Ibrahim Letter makes clear, article 29 reflects and implements a public policy of the UAE: that, as a matter of public order, when criminal proceedings are pending in the Criminal Courts of the UAE, the issues in them should be determined before they are determined in civil proceedings. It was argued by Ms den Besten and Mr Kitchener that this policy is directed only to parallel proceedings in the Civil Courts of the UAE, and has no application to civil proceedings elsewhere. Nothing in the Ibrahim Letter that Dr Shetty himself put in evidence or elsewhere in the material before the Court supports this argument, and such a limitation is not suggested or justified by the reasons that are said in the Ibrahim Letter to lie behind article 29: as I read it, it indicates that the Criminal Courts should not be put in the position of making findings that are inconsistent with what has been decided by a Civil Court; and that compensation should be determined in light of the determinations in a criminal trial.
42. Of course, it does not contravene article 29 for foreign proceedings to go ahead while criminal proceedings are pending in the UAE, and, as Ms den Besten and Mr Kitchener emphasised, article 29 does not require foreign courts to stay their proceedings: the UAE's jurisdiction is subject to territorial limits, and the UAE legislation cannot require that foreign proceedings be stayed. But what matters for present purposes is not the scope of article 29, but of the UAE public policy behind it; and the scope of the public policy is not dictated by the scope of article 29. The public policy, as it seems to me, applies to foreign proceedings: there is no reason that the concern about inconsistent judgments should be limited to concern about inconsistency between the Courts of the UAE, or that, where there are criminal proceedings, civil compensation should not accord with the findings in relation to the criminal issues.
43. The Court is not being asked to restrain the English proceedings: such an application would be most unlikely to succeed. But the Court, a Court of the UAE, is being asked to make an order with a view to the English proceedings going ahead, regardless of whether criminal charges are brought against Dr Shetty or Mr Manghat. That is to say, the Court is being asked to facilitate the English proceedings going ahead, notwithstanding the public policy of the UAE. I would in any case see a strong argument that the Court should not assist a party to achieve that purpose, but here there is an additional objection to doing so. The Court is being asked to facilitate the English proceedings going ahead when, whether or not a Common Findings Agreement is concluded, the parties expect and intend that the findings in the English proceedings would *de facto* determine the claims in the ADGM proceedings, or at least most of the issues in them. In other words, despite the UAE public policy considerations, the Court is being asked to make an order so as to allow issues in the ADGM proceedings to be resolved (at least *de facto*) in civil litigation, whether or not related and relevant criminal proceedings are pending in the UAE.
44. The point can be illustrated by considering the position if the English Court makes findings in the English proceedings that are inconsistent with findings in criminal proceedings in the UAE. Is it suggested that, in these circumstances, this Court should adopt the findings of the English Court? Even if the parties had concluded a Common Findings Agreement, a question might arise about whether there are public policy objections to it being recognised and enforced.



45. It might be that an English Court would, in the circumstances of this case, stay the English proceedings if criminal proceedings were issued in the UAE. It is not for me to express any view as to whether it should do so. But the Criminal Charges Argument supposes that the English proceedings would not be stayed, notwithstanding article 29, and so the progress of the civil litigation would not be disrupted by criminal charges. The answer to it, in my judgment, is that this “*disruption*” is in accordance with public policy of the UAE, and this Court, a Court of the UAE, should not make an order designed to overcome the risk of such disruption. The question of what is in the interests of justice must be decided by this Court in light of UAE public policy, and, as Mr King put it, “*it would be positively inimical in the interests of justice, understood in their proper context in this jurisdiction, for the parallel proceedings in England in relation to the alleged crime to go ahead*”. As I see it, therefore, the Criminal Charges Argument does not support the contention that the ADGM proceedings should be restrained. Indeed, to my mind, it points to a reason that they should not be.

The Preliminary Issues Arguments

46. Some or all of the defendants in the ADGM proceedings will challenge the insolvency claims on the basis that their alleged wrongdoing is not covered by the relevant provisions of the IR 2022: section 251, which concerns fraudulent trading, and section 252, which concerns wrongful trading. Although defences have not been pleaded, and so the arguments have not been formulated exactly, they are likely to argue that these provisions are not applicable because the alleged wrongdoing was done (i) before the claimants, NMC Healthcare Ltd (“**NMCH**”) and NMC Holding Ltd, and other NMC Group companies that are said to have assigned their claims to NMCH (see para 2 of the November Judgment) were incorporated in the ADGM, and (ii) before the *ADGM Insolvency Regulations 2015* (the “**IR 2015**”), the predecessor of the IR 2022, were enacted and came into force. The claimants allege wrongdoing between 2012 and 2019. Before September 2020, the relevant NMC companies were variously incorporated in Abu Dhabi, Dubai and Sharjah: they were registered in the ADGM only on 15, 16 and 17 September 2020, shortly before they were put into administration on 27 September 2020. The IR 2015 were enacted and came into force on 3 March 2015.
47. On the face of it, these arguments about whether sections 251 and 252 apply (as it was put) “*retrospectively*” (the “**Retrospectivity Defences**”) would, if the ADGM proceedings are not restrained, be suitable for determination as preliminary issues. During the hearing, Mr Kitchener made clear that the Bank of Baroda would apply for preliminary issues of this kind if the Shetty Restraint Application is refused. This is the background to two submissions in support of the Shetty Restraint Application: that the determination of preliminary issues of this kind would disrupt and delay the progress of the ADGM proceedings, particularly since any decision at first instance would likely go to appeal; and that, if the insolvency claims in this Court were defeated by the Retrospectivity Defences, issues in the English proceedings would not be resolved by findings at the trial of the ADGM proceedings. The English proceedings do not involve these, or comparable, questions, and these difficulties would therefore, it is said, be avoided if the English proceedings are tried first.
48. In response to these arguments, the claimants and Mr Manghat submitted that preliminary issues might be proposed and ordered in the English proceedings. Mr Davies observed that in his evidence Mr Charles Thomson of Baker & McKenzie LLP (“**B&M**”), the Bank of Baroda’s solicitors, said that the Bank was “*considering what further potential there might be to seek the preliminary determination of issues in both sets of proceedings*”. Mr Davies gave as an example of a matter that might be the subject of preliminary determination, the issue about which law governs the civil law claims (such a preliminary issue was ordered in *Merck KGaA v Merck, Sharpe & Dohme Corp, [2014] EWHC 428 (Ch)*). Mr King gave a different example of the plea in the English particulars of claim that under UAE law NMC PLC might bring proceedings for breach of duties to other persons



(“duties owed by [the Bank of] Baroda to the Baroda Customers, breaches of which are actionable under UAE law at suit of third parties including NMC PLC ...”). It seems to me that, taken together, these two questions might, depending on how they were determined, dispose of the civil claims in the English proceedings. However that might be, the argument that there might be significant preliminary issues in the English proceedings is distinctly more speculative than the prospect of preliminary issues in the ADGM proceedings. The allegations of the claimants in the English proceedings identified by Mr Davies and Mr King might not be disputed, and (while of course this would be entirely a matter for the English Court in due course) the questions identified strike me as less obvious matters for preliminary issues than the Retrospectivity Defences in these proceedings. In my judgment, the possibility that there will be preliminary issues in the English proceedings does not go far to answer the Preliminary Issues Arguments.

49. I am not persuaded by the first of the Preliminary Issues Arguments about potential delay and disruption to the proceedings. Regardless of any preliminary issue, none of the parties proposed that the English proceedings should be heard before the latter half of 2025 at the earliest, and it is not realistic to expect a trial to start before late 2025 or 2026. If preliminary issues about the Retrospectivity Defences were ordered in the ADGM proceedings, there is no reason that they should not be heard and determined, at first instance and upon any appeal, by about the middle of 2024. Mr Longworth’s evidence was that “*a degree of preparation may be possible in tandem with the running of this preliminary issue*”, although the issues to be covered in the evidence and the length of the trial would not be clear pending resolution of them. I consider that the parties could make considerable progress in preparing evidence and otherwise progressing the litigation pending their determination, and the hearing of preliminary issues need not delay the trial.
50. Coming to the second submission, I observe first that, although the contention that, if the insolvency claims are defeated by the Retrospectivity Defences, then the findings at the trial of the ADGM proceedings would not cover some issues in English proceedings, was presented as a difficulty resulting from the Retrospectivity Defences being decided as preliminary issues, similar questions potentially might arise if the Retrospectivity Defences succeed either on a preliminary issue or at trial.
51. If it is held that the IR 2015 do not apply to wrongdoing before the IR 2015 came into force in March 2015, this would not affect the insolvency claims with regard to the period between March 2015 and 2019, and I am not persuaded that the scope of findings that might apply to the English proceedings would be significantly reduced. The more important point is whether the IR 2022 apply to the NMC companies before they were registered in the ADGM. I say nothing about the merits of the argument: I have not heard submissions about them, and I am not in a position to form even a provisional view about them. I shall assume that, as Dr Shetty and the Bank of Baroda submitted, there is a real prospect that this Retrospectivity Defence might succeed.
52. I accept that this identifies a reason that the English proceedings, rather than the ADGM proceedings, should proceed to trial first, and this must be taken into account when deciding where the interests of justice lie. However, I do not consider this to be as weighty a factor in determining where the interests of justice lie as Ms den Besten, in particular, submitted. The Retrospectivity Defences are only about the insolvency claims: they do not affect the civil claims, which are essentially based on the same allegations of fact as the insolvency claims in the English proceedings. The findings of the ADGM Court about the civil claims would still be available at a later trial of the English proceedings, and, if they were of binding effect either because of a Common Findings Agreement or for any other reason, this would much reduce the issues to be decided by the English Court.
53. Moreover, the outcome of a trial of the civil claims in the ADGM would in any event surely affect the likelihood of the English proceedings coming to trial. If the findings were adverse to the ADGM claimants, it must be questionable whether the claimants in England would pursue their claims



there. Further, although Mr Kitchener emphasised that the civil claims are for a smaller amount than the insolvency claims, they are, as he acknowledged, for well over US \$1 billion: if the ADGM claimants were successful in obtaining judgment for anything like that amount against Dr Shetty and Mr Manghat, it seems improbable that they would pursue claims against them in England in the hope of securing and enforcing a judgment for more. As for the Bank of Baroda, if the civil claims succeeded in the ADGM, it would surely increase the prospects of a settlement of the English proceedings against it.

54. Before leaving the Preliminary Issues Arguments, I should refer to another matter raised by Ms den Besten. Article 252 of the IR 2015 provides that the Court may declare a person who was a director of a company at the relevant time liable for wrongful trading if the company has gone into an insolvent administration or has entered insolvent administration and before it did so, *“the person knew or ought to have concluded that there was no reasonable prospect of the Company avoiding going into insolvent liquidation or entering insolvent administration”*. In the particulars of claim in the ADGM proceedings, the claimants plead that the cause of action in wrongful trading against a director is *“for engaging in wrongful trading under s.252 which occurs where the company has entered insolvency and prior to that time a director ... knew or ought to have concluded that there was no reasonable prospect of the company avoiding insolvency”*.
55. Thus, it is said, the allegation against them does not correspond with the statutory requirement for liability for wrongful trading. In so far as the point is a matter simply of pleading, it could likely be resolved without significant disruption to the progress of the litigation. However, although Ms den Besten presented it by reference to the pleading, her argument was essentially that, when they were directors of the relevant companies, Dr Shetty and Mr Manghat could not realistically have been expected to have foreseen that the companies would or might enter into an ADGM insolvency procedure because they were not incorporated here. This is really an argument that section 252 cannot apply to alleged wrongdoing in relation to a company before it was incorporated in the ADGM.

The Disclosure Argument

56. The Bank of Baroda submitted that an advantage of the English proceedings being heard first is that *“a larger pool of documents is likely to be available as a result of the disclosure phase in the English Proceedings than from the disclosure phase of the ADGM proceedings”*. Mr Kitchener referred to an observation of Mr Marsh in evidence filed on the Manghat Directions Application, that *“the disclosure regime in the ADGM is not as wide as the regime under Practice Direction 57AD of the English Civil Procedure Rules”*. It is said to be in the interests of justice for findings to be made first in the case in which there will be wider disclosure.
57. The disclosure regime under the CPR does differ from that in England, and the approach in the ADGM is, as a general rule, to control disclosure within proportionate limits. An order for standard disclosure requires a party to disclose all documents that he will rely on at trial, unless they have already been submitted (CPR r.86(3)), and *“[t]he Court discourages unfocused or disproportionate requests for further disclosure of documents”* (Practice Direction 2.75). Indeed, unlike Mr Kitchener’s submission, the Court’s approach does not focus on the number of documents disclosed but on ensuring that there is disclosure of the documents required for the fair disposal of the litigation. As I understand it, the English Courts too are exercised that, even in the largest cases, disclosure is proportionate and kept within proper limits. But whatever the general rules, both regimes are flexible, and both allow procedures to be tailored to the requirements of complicated cases such as these.
58. Next, Mr Kitchener said that the claimants in the ADGM proceedings have argued in other contexts that they do not control, and so cannot be required to disclose, documents held by the administrators of NMC PLC; and that, if they adopt that position in the ADGM proceedings, the



disclosure in the ADGM and the English proceedings might be “*significantly different*”. This point was answered by a development during the hearing. By letter of 6 December 2023, B&M had written to QE that it was a condition of the Bank of Baroda entering into a Common Findings Agreement that the claimants in both actions did not take “*any point regarding separate corporate personality of the corporate claimants in particular as regards documents within the control of the Claimants in the English and ADGM Proceedings. So, for example, the Claimants in the English Proceedings will not seek to argue that documents within the control of the Claimants in the ADGM Proceedings are not within their own control and vice versa*”. In response to B&M’s letter, by letter dated 14 December 2023 QE wrote to the Court on behalf of the claimants in both actions that they “*will not take any point in the ADGM Proceedings regarding separate corporate personality of the corporate claimants in relation to questions of disclosure*”.

59. Mr Kitchener also referred to CPR r.89, and suggested that the ADGM Court might not have power to permit documents disclosed in the ADGM proceedings to be used in other proceedings. I cannot accept that suggestion, for the reasons explained in my judgment on the Manghat Directions Application, [2023] ADGMCFI 0025, which I issue at the same time as this: see para 76. In any case, this would not be a reason to restrain the ADGM proceedings.
60. There is another point about disclosure. It is not unusual in this Court, both with regard to disclosure by the parties and on third party disclosure applications, to have to engage with UAE Federal statutes that protect rights of confidentiality and provide for criminal and civil liability of persons who contravene the protections. I referred to statutory provisions of this kind in my judgment of 5 December 2023 in *In re NMC Healthcare Ltd*, [2023] ADGMCFI 0022 at paras 127 and 128. The NMC Group’s relationship with the Bank of Baroda is said to have been conducted predominantly in the UAE, the NMC companies largely dealing with its UAE branches, and in cases involving banks it is necessary to consider, in particular, article 120 of *Federal Decree Law No. 14 of 2018 on the Central Bank and the Organisation of Financial Institutions and Activities* (the “**Federal Banking Law**”), which has been translated as follows: “*All data and information relating to customers’ accounts, deposits, safe deposit boxes and trusts with Licensed Financial Institutions and related transactions shall be considered confidential in nature, and may not be accessed, or directly or indirectly disclosed to any third party without the written permission of owner of the account or the deposit, or his legal representative or authorised agent, and in cases authorised by law*”. I understand that banks have obligations regarding the processing and disclosure of personal data pursuant to the *UAE Central Bank Consumer Protection Regulations*, the *UAE Central Bank Consumer Protection Standards* and *Federal Decree Law No. 45 of 2021 on the Protection of Personal Data*.
61. It has generally been accepted, in my experience, that, if it is ordered by this Court, a person or entity may make disclosure without contravening UAE law: an order is taken to mean that disclosure is “*authorised by law*” within the meaning of article 120 of the Federal Banking Law, or permitted under similar exceptions to general prohibitions in other statutes. It appears to me highly likely that in the course of this litigation, whether in the ADGM or England, authorisation for disclosure will be required from this or another UAE Court by the Bank of Baroda, and potentially by third parties from whom disclosure might be sought: for example, from UAE entities said to be associated with Dr Shetty or Mr Manghat, or from the former operating subsidiaries of the NMC Group that have come out of administration pursuant to the DOCAs.
62. It was not suggested that an order of the English Court for disclosure would constitute authorisation to make disclosure for the purposes of the UAE statutes. Thus, a question arises about how disclosure of documents that are covered by UAE statutory provisions of this kind would be managed in the English proceedings. No doubt, as Mr Kitchener submitted, the English Courts take account of the risk to a party being held liable for breaching UAE law when considering an application for an order for disclosure, but, if an order were made in the English proceedings, an application for authorisation would probably have to be made to this Court or another UAE Court,



supported by the decision of the English Court. This Court would not necessarily authorise disclosure: it would have a duty to balance the requirement of disclosure in the litigation against the rights of confidentiality: see, for example, *NMC Healthcare Ltd (in administration) and associated companies v Dubai Islamic Bank PJSC and ors* [2023] ADGMCFI 0013. The respect afforded in the UAE to rights of confidentiality is recognised by this Court, and when applications for authorisation come before this Court, great care is taken before disclosure is ordered, and sometimes detailed consideration must be given to appropriate redactions. These questions can be difficult and time-consuming even when the Court is balancing rights of confidentiality and the requirements of litigation before this Court, and they would be the more difficult when the requirements of disclosure in foreign litigation must be weighed. On any view, this indicates that disclosure in the English proceedings might well not be straightforward, and it might well become a very inconvenient and cumbersome process.

63. I am therefore not persuaded by the Disclosure Argument that there are likely to be more documents available as a result of disclosure in the English proceedings than the ADGM proceedings. On the contrary, the difficulties in managing disclosure in the English proceedings to which I have referred are, in my judgment, an important consideration that weighs against the Shetty Restraint Application.

The Natural Forum Argument

64. Dr Shetty's Natural Forum argument is that England is the natural and proper forum for the claims made by NMC PLC. When applying to the English Court for permission to serve the English proceedings out of the jurisdiction, the claimants identified many reasons that England has jurisdiction over the claims and that they should be determined in England; and there was no suggestion that the English claimants did not intend to pursue the claims to trial with proper expedition. I accept that argument as far as it goes. Equally, however, the ADGM is the appropriate forum for the claims brought here. These points balance each other, and I consider this a neutral point as to which proceedings should be heard first.
65. It was said that Dr Shetty has adopted different positions about which jurisdiction is the proper forum for hearing disputes about the NMC Group: that, when challenging the jurisdiction of the English Court to hear the claim brought against him and others by ADCB, he argued that Abu Dhabi was the appropriate forum, and he has resisted challenges to the jurisdiction of the New York Court to hear his claim there (see para 12 of the November Judgment). While the complaint of inconsistency or opportunism might have some superficial forensic attraction, I do not consider it of any great importance to the Shetty Restraint Application, not least because there is no reason that it should prejudice the Bank of Baroda.

The Other Proceedings Argument

66. Next, Dr Shetty argued that the English High Court is well-placed to try the NMC English proceedings, and that it is relevant that NMC PLC's claim against EY (the "**EY Proceedings**") is also pending in England. The EY Proceedings are listed for trial from April or May 2025. Considerations of this kind can, in some cases, be relevant to deciding which forum is the appropriate jurisdiction for litigation: thus, when discussing the English law principle of about *forum non conveniens*, Dicey, Morris & Collins, the Conflict of Laws (16th Ed, 2022) identifies as a potentially relevant factor in determining the forum conveniens is "*whether the claim is part of a larger overall dispute which would be damaged by being fragmented; or where the court has specialist expertise which ought to be made available in related cases*".
67. I cannot accept that this weighs significantly in favour of the English proceedings being tried before the proceedings in this Court. While the EY Proceedings are in England, as indeed is a claim by ADCB against Mr Kumar (see para 13 of the November Judgment), there have been and are other



proceedings in this Court, including the litigation against Dubai Islamic Bank PJSC, which was tried earlier this year (see judgment [2023] ADGMCFI 0017). Apart from the ADCB claim against Mr Manghat, two other trials relating to the affairs of the NMC Group, the cases of Sayacorp BSC v NMCH Ltd and ors (ADGMCFI-2022-002) and NMC OpCo Ltd v Noor Bank PJSC (ADGMCFI 2020-020), are listed for trial in 2024. Moreover, while in England the actions concerning the NMC Group have variously been issued in the Commercial Court and the Chancery Division, the proceedings here are in a single Court and indeed have thus far been managed and heard by the same Judge.

68. Mr Kitchener referred to the Seventh Progress Report of the Joint Administrators of NMC Health PLC, which states that new claims are planned “*against certain former officeholders, related entities and third parties, including liaising with the Joint Administrators of [NMCH] in relation to claims that could potentially be brought jointly [by NMC PLC and NMCH]*”. He submitted that, while the ADGM has a long history of dealing with matters arising out of the NMC insolvency, “*the bulk of pending and future litigation brought by NMC concerning the facts of the alleged fraud is likely to be conducted in England*”. I was not persuaded of that. The basis for the suggestion about future litigation is, apparently, that claims might be time-barred under article 298 of the Civil Code, which provides that “*No claim for indemnity arising out of a harmful act shall be heard after the expiration of three years from the day on which the victim became aware of the occurrence of the harm and of the identity of the person responsible for it*”. However, it is a matter of speculation whether claims would be time barred under article 298, and there is no evidence about whether article 298 applies to claims that are not governed by UAE law. If claims governed by UAE law were time-barred under article 298, they would be held time-barred in England too under the *Foreign Limitation Periods Act, 1984*. Further, under English procedure, permission would be required to serve a defendant outside England: permission might not be granted, or, if granted, successfully challenged, as in ADCB’s English proceedings against Dr Shetty, Mr Manghat and others.
69. If the Other Proceedings Argument is to be brought into account at all, my assessment is that there is more past and pending litigation in this Court than in England, and that it is too speculative to take a view where future proceedings might be brought. The Other Proceedings Argument does not seem to me a weighty consideration in deciding which proceedings should be heard first, but if and in so far as it is relevant, this consideration weighs against the Shetty Restraint Application.

The Shetty Evidence Argument

70. Dr Shetty is in India. He travelled there in early February 2020, and has remained there. Mr Longworth explains that he did so initially because of Covid travel restrictions, and then the Indian authorities have imposed a travel ban on him. He has brought judicial review proceedings to challenge the travel ban, but he has not succeeded in overturning it.
71. According to Mr Longworth’s evidence, the travel ban might be relaxed so as to permit Dr Shetty to travel to the United Kingdom to give evidence in the English proceedings. It is said that this is more likely than that he would be permitted to travel to the UAE to give evidence in the ADGM proceedings. I understand that Mr Longworth’s evidence is based on what he has been told by Dr Shetty: he said that “*Dr Shetty ...envisages there being a greater prospect of his being able to travel to attend trial and to give evidence in person in the English proceedings*”. The material before me does not explain why Dr Shetty envisages this, and I do not consider the evidence compelling. Dr Shetty did not, apparently, mention this point when he challenged the proceedings that ADCB brought against him and others in England, arguing that Abu Dhabi was a more appropriate forum for ADCB’s claim.
72. I cannot accept the Shetty Evidence Argument.

The Costs Argument



73. If the ADGM proceedings were tried first, it is likely that the Court would direct that it be tried, at least for the most part, in person in ADGM, and not remotely. Dr Shetty argued that the costs of a trial in England are likely to be less than the costs of a trial here. The main reason given for this is that most of the lawyers instructed by the parties are based in London, although Mr Manghat has instructed solicitors based in the UAE and B&M have offices in the UAE. Mr Thomson gave evidence that it was expected “*most of [the Bank of Baroda’s] forensic accountancy and/or quantum expert teams would also be London based*”, but he did not explain the reason for this assumption. Against this, however, any experts in UAE law and in UAE banking practice are likely to be based in the UAE; and, unsurprisingly since the material events largely took place in the UAE, there was no evidence, and counsel did not suggest, that any witness of fact will be from England. Neither Ms den Besten nor Mr Kitchener emphasised the Costs Argument in their submissions, and in my judgment they were right not to do so.

The Common Findings Agreement Argument

74. Finally, it was suggested by the Bank of Baroda that the parties were more likely to conclude a Common Findings Agreement if the ADGM proceedings were restrained with a view to the English proceedings being tried first. I take it that this is because Dr Shetty and the Bank of Baroda have not indicated that they would enter into one if the Shetty Restraint Application is refused. I am not persuaded that my decision on the application makes an agreement more or less likely, but in any case, it does not seem to me that this consideration much affects where the interests of justice lie.

Arguments that the ADGM proceedings should be tried first

75. Those being the arguments advanced in support of the Shetty Restraint Application, what considerations did the claimants and Mr Manghat rely on to oppose it? I have referred to their most important arguments when assessing the submissions on behalf of Dr Shetty and Mr Manghat. I should refer briefly to four other points.

76. First, it was said that weight should be given to the preference of the claimants in both jurisdictions, being Court-appointed office-holders. Of course, the claimants’ choice of jurisdiction is of relevance – that is why the onus is generally on a party who wishes to restrain proceedings to show that, exceptionally, the interests of justice warrant a stay. However, I reject the suggestion that, in the context of adversarial litigation of this kind, Court-appointed office-holders are to be treated differently from other litigants, or that their views are to be given especial weight.

77. Next, it was said that the “centre of gravity” of the alleged fraud that gives rise to the claims is the UAE, or the “factual nexus” of the claims is with the UAE. I accept that, but it does not seem to me a telling consideration on an application of this kind, or to assist in deciding how the interests of justice are best served.

78. Mr King also observed that, while NMC PLC is a creditor in the administration of NMCH, the claimants in the ADGM proceedings and other ADGM companies that were in the NMC Group are not creditors in the administration of NMC PLC. It was argued that, therefore, it would be logical that the loss of NMCH be determined first in the ADGM proceedings, because this will affect the measure of NMC PLC’s loss, and the level of recoveries by NMCH would be relevant to the contribution to the NMC PLC in the English insolvency claims. I do not find that argument persuasive. Indeed, Mr King rightly accepted that “*if one set of proceedings goes first, then its finding on the recoverable loss will have consequences for the other set of proceedings, but won’t resolve all the issues in the other set of proceedings*”.

79. Finally, it was said that these proceedings should go first because this Court is accessible, and it would assist efficient management of this complex litigation that here cases are assigned to



particular judges. I am not persuaded that the English Court would be less efficient than this Court in case management, and the English Court could appoint an assigned Judge to the English proceedings if this was thought necessary.

Conclusion on the Shetty Restraint Application

80. I have considered all the arguments about where the interests of justice lie and how the overriding objective of the CPR is best furthered, but in my judgment the most important factors are, on the one hand, the public policy consideration that are engaged by the risk of criminal charges and the implications of UAE legislation for disclosure in the English proceedings; and, on the other hand, the possibility that the Retrospectivity Defence that the IR 2022 do not apply to alleged wrongdoing before September 2020 might limit the findings required to determine the insolvency claims in England. On balance, and having particular regard for these considerations, I conclude that Dr Shetty has not shown that the interests of justice warrant restraining these proceedings or that to do so would further the overriding objective. I therefore refuse his application. It will of course be for the English Court to decide whether the English proceedings should be restrained in view of my decision, and it is not for me to express any view about that.



Re-Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
24 January 2024