



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

**ABU DHABI COMMERCIAL BANK PJSC**  
Claimant

and

**PRASANTH MANGHAT**  
Defendant

**AND**

**(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**

**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**



|                                    |   |
|------------------------------------|---|
| <b>Neutral Citation:</b>           | [2023] ADGMCFI 0021   |
| <b>Before:</b>                     | Justice Sir Andrew Smith  |
| <b>Decision Date:</b>              | 14 November 2023  |
| <b>Decision:</b>                   | <ol style="list-style-type: none"> <li>1. Determination that the Court has power to make order sought.</li> <li>2. Question whether the Court should exercise its power adjourned.</li> <li>3. Costs reserved.</li> </ol>   |
| <b>Hearing Dates:</b>              | 13 and 14 November 2023   |
| <b>Date of Order:</b>              | To be drafted by Counsel  |
| <b>Catchwords:</b>                 | Coordinated case management of different proceedings against same party. Appropriate procedure for coordinating proceedings in different jurisdictions. Rule 8(1) – width of case management powers.  |
| <b>Cases Cited:</b>                | NMC Healthcare LTD (in administration) and associated companies v Dubai Islamic Bank PJSC [2023] ADGMCFI 0017<br>Walker v Walker [1987] 1 FLR 31<br>Sandra Holdings v Al Saleh [2023] DIFC CA 003   |
| <b>Legislation Cited:</b>          | Insolvency Regulations 2015<br>ADGM Court Procedure Rules 2016  |
| <b>Case Numbers:</b>               | ADGMCFI-2022-111; ADGMCFI-2022-299; and ADGMCFI-2020-020  |
| <b>Parties and representation:</b> | <p><b>Case No.: ADGMCFI-2022-111</b></p> <p><b>Claimant</b></p> <p>Mr Rajesh Pillai KC, Mr Scott Ralston and Ms Rebecca Zaman<br/>Instructed by Holman Fenwick Willan LLP</p> <p><b>Defendant</b></p> <p>Mr Huw Davies KC and Mr David Peters<br/>Instructed by Kobre &amp; Kim (GCC) LLP</p> <p><b>Case Nos.: ADGMCFI-2022-299; and ADGMCFI-2020-020</b></p> <p><b>Claimants/ Applicants</b></p> <p>Mr Henry King KC, Mr Nico Leslie and Ms Alexandra Whelan<br/>Instructed by Quinn Emanuel Urquhart &amp; Sullivan UK LLP</p> <p><b>First Defendant/ Respondent</b></p> <p>Ms Ruth den Besten KC and Mr Kajetan Wandowicz<br/>Instructed by Farrer &amp; Co</p> <p><b>Second Defendant/ Respondent</b></p> <p>Mr Huw Davies KC and Mr David Peters<br/>Instructed by Kobre &amp; Kim (GCC) LLP</p> |

**Third Defendant/ Respondent**

Mr Neil Kitchener KC and Ms Maria Kennedy

Instructed by Baker &amp; McKenzie LLP

**JUDGMENT**

1. I have before me an application made by Mr Prasanth Manghat, who is a defendant in two proceedings in this court. They both concern the NMC Group of companies, of which Mr Manghat has been Chief Financial Officer, then Deputy Chief Executive Officer and then from March 2017 to February 2020 its Chief Executive Officer, and of which Dr B.R. Shetty was the founder and the Chief Executive Officer until 2017 and thereafter its Non-Executive Joint Chairman.
2. In April 2020 the English High Court made an administration order in respect of the parent company of the group, NMC Health PLC, because it was insolvent. In September 2020 this Court appointed administrators over NMC Healthcare Limited (to which I refer as “**NMCH**”) and NMC Holding Limited (to which I refer as “**Holding**”), and many of NMCH's operating subsidiaries. NMCH, Holding and these operating companies were all registered in the Abu Dhabi Global Market (“**ADGM**”). They had previously been incorporated variously in Abu Dhabi, Dubai and Sharjah, and were registered in the ADGM earlier in September 2020. NMCH and Holding are still in administration. The operating subsidiaries came out of administration in March 2022, after they and NMCH had entered into a scheme of interlinked deeds of company arrangement, whereby, as NMCH claims, the operating companies assigned to NMCH various rights and actual and prospective claims arising out of the insolvency and events leading to it.
3. The insolvencies are said to have resulted from a fraud perpetrated against the NMC Group. I gave a short description of the Group and the alleged fraud in my judgment in *NMC Healthcare LTD (in administration) and associated companies v Dubai Islamic Bank PJSC and ors*, [2023] ADGMCFI 0017 at paragraphs 42-51.
4. The first claim against Mr Manghat, to which I shall refer as the “**ADCB claim**”, is made by Abu Dhabi Commercial Bank (“**ADCB**”), which extended facilities to the NMC Group and which is a major creditor in the administrations. These proceedings were brought in May 2022. The background is that ADCB had brought proceedings in England against Mr Manghat and five other senior officers of the NMC Group, including Dr Shetty and including a Mr Suresh Kumar, who had been the Group's Deputy Chief Financial Officer from November 2016 until February 2020. However, Dr Shetty, Mr Manghat and some other defendants successfully challenged the jurisdiction of the English Court, and the English proceedings were stayed against those defendants in April 2022.
5. Essentially, ADCB pursues in this Court the complaints that it had brought in the English proceedings against Mr Manghat, and only Mr Manghat. It alleges inter alia that Mr Manghat knowingly participated in a so-called loan recycling scheme, whereby, it is said, the property and monies were improperly extracted from the NMC Group, and the resulting debts were not disclosed in the Group's financial statements; and that he gave ADCB false assurances about the accuracy of the financial statements. ADCB makes claims under the United Arab Emirates (“**UAE**”) Civil Code, particularly Articles 282 and 285, and under Article 84 of the UAE's Commercial Companies Law. Mr Manghat denies the allegations. ADCB places a value of “*at least*” some US\$1.1 billion on its claims. The ADCB claim is listed for hearing over five weeks commencing August 2024.



6. The other proceedings in this jurisdiction against Mr Manghat, to which I shall refer as the **“JA claim”**, are brought by NMCH, Holding and their joint administrators (the **“JAs”**). The claims of NMCH and its administrators include claims that are said to have been assigned to it by the operating subsidiaries. The defendants are Dr Shetty, Mr Manghat and the Bank of Baroda. The proceedings involve, inter alia, claims under the ADGM *Insolvency Regulations 2015* (the **“IR”**) in fraudulent trading and against Dr Shetty and Mr Manghat in wrongful trading, claims under the UAE law alleging fraud and gross negligence, and claims in conspiracy and liability as an accessory under ADGM law. The case against the Bank of Baroda also includes claims under Indian law alleging breach of banking standards. The JA Claim is said to have a value of *“at least”* US\$5 billion. Some of the particulars of claim in the JA claim have been adopted by ADCB in its own pleadings in the ADCB claim.
7. By his application Mr Manghat seeks orders that *“The JA claims and the ADCB claims are to be subject to coordinated case management...”*; and *“there is to be a concurrent trial”* of the JA claim and the ADCB claim. He also seeks various consequential procedural orders, and that the trial date of August 2024 for the ADCB claim be vacated.
8. Mr Manghat’s argument was presented by Mr Huw Davies KC and Mr David Peter. The application was opposed by ADCB, represented by Mr Rajesh Pillai KC with Mr Scott Ralston and Ms Rebecca Zaman; by Dr Shetty, represented by Ms Ruth den Besten KC and Mr Kajetan Wandowicz; and by the Bank of Baroda, represented by Mr Neil Kitchener KC and Ms Maria Kennedy. The claimants bringing the JA claim, represented by Mr Henry King KC, Mr Nico Leslie and Ms Alexandra Whelan, stated their position as being that *“they do not oppose the application of Mr Manghat”* and that they considered that there are *“compelling practical reasons why the proposed coordination will promote the administration of justice.”*
9. I should add that, in evidence in support of the application, Mr Paul Hughes of Kobre & Kim LLP, Mr Manghat’s legal representatives, observed that both the Bank of Baroda and Dr Shetty said that a fair outcome would be to stay the ADCB claim pending resolution of the JA claim; and that, although this is not the *“primary aim”* of Mr Manghat’s application, it remains open to the Court to order a stay, given that ADCB stand to benefit from *“any positive ruling”* on the JA claim in view of its position as *“the primary creditor”*, and noting that Mr Manghat has disclosed that his assets do not exceed US\$50 million. However, no party has applied for a stay of the ADCB proceedings.
10. The proceedings with which the application is directly concerned are two of the numerous complaints and actions in this jurisdiction, elsewhere in the UAE, England and elsewhere that have resulted from the NMC Group’s affairs and insolvency. Before considering the arguments on the application, I introduce some of the other matters.
11. First, ADCB has made criminal complaints against Dr Shetty and Mr Manghat in the UAE. As far as the complaint against Mr Manghat is concerned, it has not, so far as he is aware, resulted in criminal proceedings against him, but it has resulted in an assets freeze and travel bans for him and his family. As far as the information before me goes, the complaint against Dr Shetty has not resulted in criminal proceedings against him.
12. Secondly, Dr Shetty, together with an Abu Dhabi company called Neopharma LLC, has brought proceedings in New York against, amongst others, the Bank of Baroda, Mr Manghat and Mr Kumar, Dr Shetty claiming that he was the victim of a *“massive fraud surrounding NMC Health PLC and its surrounding entities.”*
13. Thirdly, Mr Kumar did not apply to stay the proceedings brought against him in England by ADCB, and they continue against him there. I was told that the trial is listed to start on 22 October 2025.
14. Fourthly, NMC Health PLC has brought proceedings for damages in England against Ernst & Young LLC, the former auditors of the NMC group, for their failure to identify the alleged fraud. Those



proceedings are listed for hearing over 15 weeks between about April or May, 2025 and October 2025, and therefore the hearing is due to conclude shortly before the ADCB proceedings against Mr Kumar are listed for trial.

15. Finally, and most directly relevant to the issues with which I have to engage, NMC Health PLC has brought proceedings against Dr Shetty, Mr Manghat and the Bank of Baroda making claims under the UK Insolvency Act and civil claims under English law for breach of duty, breach of contract and conspiracy, and in the alternative claims based on the UAE Civil Code. These proceedings have been referred to as the “**English NMC proceedings**”. It suffices for present purposes to say that they largely, but not entirely, mirror the claims against the same three defendants in the JA claim here.
16. On 30 August 2023 Dr Shetty made an application in the English NMC proceedings. It has been listed to be heard in January 2024. The application is for “*An order directing that these proceedings should proceed to trial because (1) there exist duplicative proceedings in a foreign court, (2) all parties agree that the two sets of Proceedings should not proceed to trial in parallel and (3) for the reasons set out in [a witness statement] ... it is in the interests of justice that these proceedings be determined first.*” (The draft order in support of the application case is more oblique: “*The English proceedings shall proceed to trial with the following steps to be taken....*”, and then it is left blank, giving no further indication of the order sought.)
17. In these proceedings Mr Benjamin Longworth of Farrer & Co, Dr Shetty's solicitors, described the purpose of the English application as being: “*To resolve the question of how the broadly duplicative proceedings issued by NMC [that is to say the JA proceedings and English NMC proceedings] should be determined.*” Dr Shetty's purpose is also to bring it about that the English NMC proceedings be heard before the JA proceedings. Mr Longworth said that Dr Shetty has therefore sought a direction that the English NMC proceedings proceed to trial in order to “*clarify the position and enable the parties to arrange for one set of NMC proceedings to proceed with the other set stayed to await the outcome of the first*”. Indeed, Mr Damian Honey of Holman Fenwick Willan LLP, ADCB's representatives, referred to Dr Shetty's application as seeking an order that the English NMC proceedings be determined before the JA claim in this Court. While that is not the form of the order sought by Dr Shetty, this is why the application has been made. As far as Mr Manghat's application is concerned, Dr Shetty submits that, since, if granted, it would “*cut across*” Dr Shetty's application in England, that Mr Manghat's application should be dismissed, and that this Court should direct a case management conference to take place after Dr Shetty's English application is resolved. Dr Shetty explained, therefore, that, while he does not contend that the English Court could or should fetter the ADGM Court's power to manage its own proceedings, his application is an attempt to resolve “*current procedural chaos*” where two sets of proceedings are being pursued against the same defendants in different jurisdictions by administrators of companies in the NMC Group.
18. I can well understand why Dr Shetty considers it sensible to bring order to the procedural position. Nobody disputes that. Indeed, in a letter of 26 July 2023 Quinn Emanuel Urquhart & Sullivan LLP, as the representatives of the Joint Administrators of both NMC Health PLC and the ADGM companies, wrote: “*Our clients see the sense of avoiding the English proceedings in the ADGM proceeding concurrently given the areas of overlap between these proceedings*”. They go on to say that the Administrators' then view was that the ADGM proceedings ought “*after close of pleadings*” take priority over the English proceedings.
19. I say nothing about whether it would be better for the English NMC proceedings or the JA claim in this Court to be heard first. That is a controversial question, the administrators of NMC Health PLC and of the ADGM companies now stating clearly (although defences have not been served) that the claim here should be determined first. As things stand, that question does not arise directly on





Mr Manghat's application, and in any case, I am not at present in a position to express any concluded view about it.

20. However, to my mind Dr Shetty's English application is not the right way to seek to resolve this question. In effect, it asks the English court to fire the starting gun for what Sir John Donaldson MR described as an "*unseemly race with foreign courts*" (*Walker v Walker [1987] 1 FLR 31*), a race of a kind which offends comity and is deplored by courts in England and elsewhere. If the English application were granted, this Court would be put in the position where either it participates in the unseemly race or is compelled to stay or restrain its own proceedings so that the English court would, in effect, have directed a result that it could not itself order. Dr Shetty made the English application, although it was open to him to apply here for a stay of the JA claim on the ground that this Court should defer to the English NMC proceedings. That procedure would respect the right of this Court to manage its own proceedings without inappropriate pressure from elsewhere. Contrarywise, to my mind, it would be entirely proper for the Administrators of NMC Health PLC, if so advised, to apply to the English courts to restrain the English NMC proceedings, or for other directions, with a view to allowing the JA claim to be determined first, whereas the JAs would have a difficult job in justifying an application to this Court for directions designed to win a race against the English court.
21. When I raised this point with Ms den Besten, Dr Shetty and his representatives responded with flexibility and in a spirit of cooperation for which I am grateful. Through his counsel, he expressed himself willing to apply to the English court to vacate the January listing, and said that he is willing to apply to this Court to stay the JA claim, with a view to obtaining a determination as to which proceedings should go ahead first. That seems to me to be the appropriate course, and it leads to a question as to when such an application can and should be heard.
22. The Court can hear it in December. This, I recognise fully, would cause no small inconvenience to some of the parties, especially the respondents to the JA claim whose defences are due in mid-January 2024.
23. However, against that, firstly, I see no other reason that a stay application cannot properly proceed to a fair hearing speedily and with a short timetable. Dr Shetty's arguments that the English NMC proceedings should go first have already been deployed in a witness statement in those proceedings of Mr Longworth. It is possible that Dr Shetty might want to expand upon the points or to update them, but the essential argument is set out. It seems to me that the respondents to a stay application are likely to adduce very limited evidence of fact, possibly evidence about costs or such matters. But a stay application will really turn upon legal argument and submissions, rather than on disputed evidence of facts, and most of the relevant material is, in any case, already before the Court on this hearing.
24. The second important point is the impact on Mr Manghat's application, and in particular the ADCB claim. It is one thing for Mr Manghat to ask that there should be coordination if both proceedings are going ahead in this Court. It is quite another for him to say that ADCB's claim should be deferred with a view to it being coordinated with proceedings which are themselves stayed or restrained, pending determination of the English NMC proceedings.
25. Mr Davies for Mr Manghat argued that the position is, as things stand, that there is no application for a stay of the JA claim, and I should determine his application on the assumption that the JA claim will go ahead in the normal way. But in a complex morass of litigation such as this, I must have a less blinkered view as to the realities.
26. There is, to my mind, clearly much to be said for deferring a decision on Mr Manghat's application pending a decision on a stay application. But Mr Manghat's application cannot be long delayed: the trial date for the ADCB claim is creeping up, and preparations for it are afoot. That is the second reason to my mind that a stay application should be determined in December.



27. I have it well in mind that there is a complication in this plan: it concerns what I have labelled the “retrospectivity point”. Although there are no pleaded defences in the JA claim, the question has been raised whether the JAs can rely upon the IR in the circumstances of this case. The retrospectivity point has two aspects: first, a question as to whether relief under the IR is available in respect of matters that took place before they came into force - they were enacted on 3 March 2015; and the second limb of the retrospectivity point is about whether the relief under the IR is available in respect of the matters complained of because they took place before the relevant companies were registered in the ADGM in September 2020. Understandably, Ms den Besten said that this question might affect the view taken by parties as to which of the proceedings should go ahead first.
28. That said, I can only consider the arguments on the stay application if and when they are raised. What I say today is that, while the difficulty was properly raised and ventilated, I am not persuaded that this problem cannot be overcome or is sufficient reason not to direct that a stay application be heard in December 2023.
29. I shall, therefore, adjourn Mr Manghat's application with a view to deciding it on December 2023 on a stay application to be issued by Dr Shetty and on the basis of the arguments which have already been deployed, save in so far as there is good reason for them to be updated.
30. There is another matter that I can usefully deal with now. Mr Manghat submits that the Court has power to make the order that he seeks under the ADGM Court Procedure Rules (“CPR”) Rule 8(1) which provides as follows: “The court may make any order, give any direction or take any step it considers appropriate for the purpose of managing proceedings and furthering the overriding objective of these rules as set out in Rule 2(2)”. The overriding objective is stated in Rule 2(2) to be to “secure that the system of civil justice in the ADGM Courts is accessible, fair and efficient”.
31. No party has adopted the position on the application that the Court does not have power to make the order sought, but not all accepted that it does. Ms den Besten submitted that it is for Mr Manghat to satisfy the Court that Rule 8(1) extends to the relief he seeks, and puts forward various questions about the extent of the court’s powers under it.
32. First, she said that the Court does not have an unlimited jurisdiction, because it is a statutory court with statutory powers. That is obviously true, but Mr Manghat relies on a statutory power.
33. Secondly, she said that Mr Manghat accepts there was no express power to order consolidation or concurrent proceedings. Certainly, there is no specific power, but this observation does not help to determine whether the express power conferred in general terms in Rule 8(1) covers Mr Manghat's application. Ms den Besten went on to submit that it is doubtful whether the general power extends to an order of this kind, citing *Sandra Holdings v Al Saleh*, [2023] DIFC CA 003. I do not consider that authority deals with what I have to decide. It concerned whether the rules of the DIFC Court could expand the jurisdiction conferred by the Dubai Judicial Authorities Law, and unsurprisingly the DIFC Court of Appeal decided that they could not.
34. Ms den Besten's third point was that at common law the Court's general power to manage its own affairs did not include powers to order consolidation of cases or concurrent hearings of them. Again, that observation does not seem to me to bear upon how a statutory provision is to be construed.
35. Fourthly, it was suggested that it is not surprising that the CPR contain no express power to consolidate cases or order concurrent hearings because that procedure is “foreign to the UAE legal tradition.” Reference was made to a letter dated 8 October 2023 from Ibrahim & Partners, lawyers practising in Abu Dhabi, to Farrer & Co, which states that such orders are not made in the on-shore courts. Mr Longworth relied on this to support his evidence that: “The orders sought by Mr Manghat would clearly be considered, at best, extremely unorthodox by other UAE courts.” As I read it, the letter does not provide support for this: it does not suggest that the UAE courts are unaware of other





legal systems making such orders. It is only evidence that such orders would not be made on-shore, but this Court's procedures do not mirror those of the on-shore Courts, and were not designed to do so.

36. Finally, Ms den Besten observed that under the Founding Law, Abu Dhabi Law No. 4 of 2023 as amended by Law No. 12 of 2020, this Court is one of the Emirate of Abu Dhabi, and submitted that *"It is to be expected that procedural devices which any other court would find unorthodox would, if adopted at all in the ADGM, be provided for expressly."* I cannot accept that. As I have said, the Founding Law established a separate jurisdiction in the common law tradition and it was to be expected that their procedures would differ from those of on-shore Courts.
37. In my judgment, Rule 8(1) of the CPR is drafted in the widest terms to afford the Court very wide powers of case management, and I see no reason to restrict the wording so as to exclude the powers of the kind that Mr Manghat invites me to exercise. Neither Ms den Besten nor any other party sought to formulate a restriction which would limit the powers of Rule 8(1) so as to exclude such an order. I therefore accept Mr Manghat's submission that the Court has power to make the order that he seeks. What I intend to decide in December 2023 is whether I should exercise that power in the circumstances of this case.



Issued by:

**Linda Fitz-Alan**  
**Registrar, ADGM Courts**  
**17 November 2023**