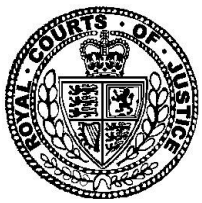

Neutral Citation Number: [2020] EWHC 3423 (Comm) Case No: CL-2020-000784

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 2 December 2020

Before:

THE HON. MR. JUSTICE BRYAN

Remotely via Skype

- -

Between:

ABU DHABI COMMERCIAL BANK PJSC Claimant/

Applicant

- **and -**

(1) **BAVAGUTHU RAGHURAM SHETTY**

(2) **KHALEEFA BUTTI OMAIR YOUSIF ALMUHAIRI**

(3) **SAEED MOHAMED BUTTI MOHAMED ALQEBAISI**

(4) **PRASANTH MANGHAT**

(5) **SURESH KUMAR VADAKKE KOOTALA Defendants/**

(6) **PRASHANTH SHENOY Respondents**

- -

- -

MR. RAJESH PILLAI QC, MR. SCOTT RALSTON and

MS. REBECCA ZAMAN (instructed by **Holman Fenwick Willan LLP**) for the

Claimant/Applicant

THE DEFENDANTS/RESPONDENTS did not appear and were not represented

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APPROVED JUDGMENT

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Email: info@martenwalshcherer.com Web: www.martenwalshcherer.com **MR. JUSTICE BRYAN:**

1.
This is an application by the claimant Abu Dhabi Commercial Bank PJSC (the “Bank") for an urgent worldwide freezing order and related disclosure order against the defendants who until earlier this year were the principal owners and officers of NMC Healthcare Plc ("NMC Plc") and its subsidiaries ("NMC Group"). NMC Plc is a UK company incorporated in 2012 and as at December 2019 it appeared that NMC Plc was a successful FTSE 100 company but, after what is characterised by the Bank as a "calamitous and well publicised fall from grace" it was placed in administration in April 2020 in England on the application of the Bank.

2.
At the start of this hearing the Court was asked to sit in private under CPR 39.2. I indicated that I considered it was appropriate for this hearing to be in private. CPR 39.2 provides at (1) the general rule is that the hearing is to be in public. At (2) the requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public. At (3):

"a hearing, or any part of it, must be held in private if ...

(a) publicity would defeat the object of the hearing; ...

(e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing; ...

(g) the court ... considers this to be necessary ..." in the interests of justice.

3.
I indicated that I considered that it was an appropriate case notwithstanding the open justice principle to hear this matter in private because publicity would defeat the object of the hearing, i.e. under (a), but also that there might be confidential information in relation to certain respondents and also that in any event I considered it necessary in the interests of justice. Accordingly, the hearing proceeded in private.

4.
It was also a without notice application. This was not addressed in any particular detail in the skeleton argument of the Bank, but I did raise with Mr. Pillai, who appears on behalf of the Bank, as to whether

or not it was appropriate for this application to be on a without notice basis. The reason I asked that was set against the background of the fact that not only has there been an administration in England of the underlying entity but there has also been an administration of associated UAE companies in the ADGM courts as well as a number of proceedings which have actually been brought in various courts.

5.
Set against that background it might be said that in circumstances where the defendants have been represented, it might have been appropriate to go ex parte on notice. However, I am satisfied that it was appropriate to go without notice, in particular, as I shall come on to when considering the risk of dissipation, I considered that this was a case where it was appropriate to go without notice to avoid the risk that the alleged fraudsters would be "tipped off".

6.
Turning to the claims themselves, the Bank seeks compensation for losses caused by fraudulent misrepresentations and conspiracy. It is said that the defendants colluded in a scheme by which false accounts were created to give a misleading impression as to, first, their accuracy and reliability and, second, the strength and robustness of NMC Plc's financial performance. The accounts were adopted as the basis for related certificates and/or financial models that were provided to the Bank to induce them, it is said, to enter into or renew six credit arrangements by which the Bank committed approximately US$1.2 billion to entities in the NMC Group ("the Core Facilities").

7.
It is said that a fraud on this scale will have entailed very close control over internal management and accounting information and although the Bank says it is at an early stage, it appears that the fraud may have began as far back as 2013. In summary, it appears that two sets of inconsistent financial accounts were being kept. It is said by reason of the roles played and control exerted by each defendant over the operation of NMC Plc and the main UAE subsidiary, NMC Healthcare Plc ("NMC Healthcare"), that each of the defendants was party to this dishonest scheme which, it is said, operated for their mutual benefit.

8.
Turning to the defendants themselves, the first defendant B.R. Shetty is the founder of the NMC Group. He was the CEO of NMC Plc from 20th July 2011 until March 2017 and was the Managing Director of NMC Plc from 20th July 2011 until his resignation on 16th February 2020. He was also Joint Non-Executive Chairman of NMC Plc from March 2017 until his resignation in February 2020. He was a director of NMC Healthcare from 2011. Along with the second and third defendants he was a principal shareholder of NMC plc and while their combined shareholding was initially 67%, following an IPO in 2012 until recent events, principal shareholders held around 58% of the total share capital in NMC plc. The second defendant, Khaleefa Butti was Executive Vice Chairman of NMC plc from 20th July 2011 to 25th March 2014 and director from 28th June 2017 to 14th February 2020. He was a director of NMC Healthcare from 2011 and was a well-known businessman in the UAE as founder of the KBBO Group and was a principal shareholder of NMC plc. The third defendant, Saeed Butti, was a non-executive director of NMC plc from 20th July 2011 to 20th February 2014. He was a director of NMC Healthcare from 2011. He was founder of Infinite Investment and was the principal shareholder of NMC plc directly and indirectly through Infinite Investment which he jointly owns with Khaleefa Butti, the second defendant. So those three defendants, the first, second and third, had directorship roles within NMC plc and other NMC companies. That is one of the two groups of defendants.

9.
The other groups of defendants are the fourth, fifth and sixth defendants. The fourth defendant, Mr. Manghat, who is a qualified Chartered Accountant, was Company Secretary of NMC plc from 20th July 2011 to 1st September 2012 and CFO of NMC plc from 2011 to 2014 during which time he led NMC plc's IPO in 2012. He was also a director of NMC plc from 26th June 2014 to 26th February 2020 and deputy CEO of NMC plc from January 2015 until March 2017 when he replaced BR Shetty as CEO. He remained in his role of CEO of NMC plc from March 2017 until his removal on 26th February 2020. Separately he was also a director of NMC Healthcare from 2018 to 2020 along with the sixth defendant (Mr. Shenoy and a Mr. Hani Buttikhi). Mr. Manghat was removed from his role by the Board of NMC plc on 20th February 2020. The fifth defendant, Mr. Kumar, was the joint deputy CFO

and Head of Treasury of NMC plc. He joined the NMC Group in 2000. In his role as deputy CFO he was regularly in contact with the Bank in relation to lending arrangements. He left the UAE around 26th February 2020 per the evidence of one of the Administrators, Mr Davis, who I shall come on to. The sixth defendant, Mr. Shenoy, also a Chartered Accountant, was appointed CFO of NMC plc in August 2017 having been appointed deputy CFO in 2016. He was a director of NMC Healthcare from 2018. His role, as described in the NMC plc 2017 annual report described him as having "rounded experience in corporate finance, managing business collaborations/overseas subsidiaries, Treasury, foreign exchange, risk management, business strategy, preparing business plans and evaluation of investments opportunities". Again, Mr. Davis's evidence is that Mr. Shenoy left the UAE in January 2020.

10.
The application that is before me today is supported by an affidavit of Mazin Yusuf Zo'mot dated 30th November 2020. A large part of Mr. Zo'mot's affidavit is in fact to recount and present before the Court evidence in two witness statements, one from a Michael Brendan Davis of 19th September 2020 and also a statement of a Mr. Maxim Frangulov also dated 19th September 2020. Those statements were given by those individuals in the context of an administration application in the ADGM Court. The relevance of that evidence is that it identifies evidence of what is said to be longstanding and widespread fraud within NMC plc in which it has been identified by those administrators that (and I quote from paragraph 62 of Mr. Davis' statement): "The documentary evidence uncovered by the forensic team shows that the fraud was perpetrated against the applicants and other companies in the NMC Group by the principal shareholders" – that is D1 to D3 – "their vehicle companies and other family business, Mr. Manghat" – that is D4 – "certain members of senior management of NMC Group including the former CFO team and various other institutions which conspired in the wrongdoing" – which Mr. Davis describes as "the alleged perpetrators", the Bank saying that the senior management of NMC Group, including the former CFO team, extends to defendants 4 to 6.

11.
The background to the current application is as follows. It is said, per Mr. Davis, that the cause of the NMC Group's current grave financial position is not any underlying failing in what was and is, as I understand it, a successful healthcare business in the UAE but, rather, a fraud which it is said has been perpetrated against it by certain of NMC Group's former principal shareholders i.e. D1 to D3, and senior management which include (it is said by the Bank) D4 to D6. It is said that such fraud was perpetrated from at least 2012 to February 2020.

12.
The events leading to the revelation of the fraud began on 17th December 2019 when the short seller, Muddy Waters LLC ("Muddy Waters"), published a report alleging that there were "red flags" and

discrepancies in NMC Group's financial statements. Over the following months an investigation began into those allegations within the NMC Group which revealed the existence of approximately US$4.357 billion to US$5.352 billion of debt owed by the Group that was not part of the US$2.1 billion of debt disclosed in its latest financial statements (the "undisclosed debt") and revealed evidence of the proceeds of some or all of this undisclosed debt had been applied for the benefit of NMC Group's former principal shareholders and the senior management, i.e. including D1 to D6 in these proceedings.

13.
On 3rd April 2020, as I have foreshadowed, the Bank as one of NMC Group's largest creditors, applied to the English court for an order that the English administrators be appointed to manage NMC Health plc for the dual purpose of rescuing the company as a going concern and/or obtaining a better result for NMC plc's creditors than would be the case in a liquidation without a prior administration. On 9th April 2020 that application was granted ("the English Administration").

14.
The Muddy Waters report discovered, as I have foreshadowed, a number of "red flags" causing it to have "serious doubts" about the company's financial statements and "concerns about fraudulent asset values and theft of company assets". In broad summary, the report alleged:

(1)
The NMC Group's balance sheet in its 2018 financial statements had been manipulated by failing to disclose certain supply chain borrowings and failing to disclose certain leases associated with one of its acquisitions as finance leases which represented a US$350 million liability.

(2)
Large amounts of NMC Group's money appeared to have been invested in redeveloping purchases in certain medical facilities, the cost of which appeared to have been inflated. The contractor engaged on the redevelopment, Modular Concepts LLC, appeared to be de facto controlled by BR Shetty, yet that had not been disclosed.

(3)
The interest income reported in NMC Group's financial statements was too low to be credible and its profit margins were "too good to be true" relative to its competitors.

(4)
The standard of corporate governance "falls well short". Its "independent

Board" is not "not truly independent" and "the relationship with its auditor, Ernst & Young, raises flags" and "insiders have cashed out approximately 300 million of stock net".

(5)
There had allegedly been an attempt to cover up the fact that NMC Group had purportedly entered into a US$105 million facility arranged by regional bank, First Energy Bank, chaired by one of its principal shareholders, Khaleefa Butti, i.e. the second defendant. Muddy Waters concluded, "We are unsure how deep the rot at NMC goes but we do not believe that its insiders or financials can be trusted."

15.
Mr. Davis's evidence in his witness statement was that he learned of those allegations by Muddy Waters after the publication of its report but that he recalled the temperament of the CEO, Mr.

Manghat, i.e. D4, had become increasingly strained and unsettled in the months leading up to its publication. His evidence is that Muddy

Waters had been emailing enquiries to an employee in NMC Group's Public Relations Department who had taken instructions on the responses to those enquiries from employees who have since left UAE, whether or not they have fled the UAE or whether they have other reasons for leaving the UAE.

16.
The publication of that Muddy Waters report did cause a considerable reduction in the price of NMC Health plc's share price which was at a higher level as a result of the apparent success of NMC. There was on 19th December 2019 an RNS issued to the market by Mr. Manghat and his team, apparently on behalf of the NMC Group, in response to the Muddy Waters report, "NMC concludes the report to be false and misleading and outlines below factual inaccuracies and provides important additional information".

17.
That was followed by an announcement to the market on 23rd December that the NMC Group would be commencing an independent investigation into the allegations made by Muddy Waters. There was a meeting of the Board of NMC Health plc on 6th January at which it was decided a subcommittee of the Board would be formed to oversee the investigation. In mid-January Freeh Group International Solutions LLC (an investigations firm founded by Mr. Louis Freeh, a former director of the FBI and Federal Court Judge of the United States) was engaged to undertake the proposed investigation.

18.
Mr. Davis' evidence is that the early weeks of that investigation were characterised by delay and an inability to access documents which were required for the investigation. His understanding was that in late February a series of documents purporting to be bank account balances generated from the NMC Group's financing system were uploaded to the Freeh Group's document review portal by employees in the NMC Group Treasury Department. However the employees accidentally uploaded two versions of the same bank statement, the true copy and a copy which they had fabricated. They also uploaded other bank statements which contained typos in fields recording supposed cash entries that should have been automatically populated by the finance system which indicated that the statements had been tampered with. Despite attempts by the employees to recall these documents, they were retained by the Freeh Group.

19.
The evidence of Mr. Davis recounting what he was himself told by a Patrick Meade (one of the former directors of NMC Health plc) was that a series of meetings then took place with the head of Treasury and the deputy CFO, Mr. Suresh Kumar, i.e. D5, and with Mr. Manghat, i.e. D4 at which, per his evidence, it became evident to members of the Board of Directors of NMC Health plc that Mr. Manghat and Mr. Kumar were obstructing the Freeh Group from accessing information. On the evening of 25th February 2020 these events were described to him by Mr. Meade, and Mr. Davis was asked to prepare to take over as acting CEO of the NMC Group. On 26th February 2020 the Board of Directors of NMC Health Group met again and resolved to remove Mr. Manghat from his positions which I understand to have occurred.

20.
Mr. Davis' evidence is that a large contingent of the employees in the NMC Group's Treasury Department and other centralised functions had emigrated to the UAE from Kerala in Southern India and its surrounding area which is where Mr. Manghat and his family are from. Around this time it is

said multiple employees in the Treasury Department and the joint deputy CFO's, Mr. Kumar and a Mr. Deepak Ghosh, suddenly, without notice to the NMC Group, boarded flights to India whilst the CFO, Mr. Shenoy, the sixth defendant, had already left the country in January.

21.
On 6th February 2020 NMC Health plc announced to the market that the Freeh Group had discovered the existence of certain supply chained financing arrangements the proceeds of which were used by entities controlled by the principal shareholders and the amount of debt drawn down on those facilities was thought to be US$355 million. On 24th and 27th February the principal shareholders made inconsistent Rule 8.3 disclosures of their shareholding which appeared to confirm that, in breach of the applicable listing rules, they had disposed of the majority of their shares through share pledges and transactions between themselves. Throughout January and February, at a time when share sales were going on, the share price of NMC Health plc declined significantly prior to the shares being suspended from trading on 27th February 2020.

22.
Mr. Davis's evidence is that as the Freeh Group gained access to the documents which had been withheld from them, they, as he put it, discovered an extraordinary portfolio of undisclosed debt, the proceeds of which had never been received by the NMC Group or had been dissipated and the existence of fabricated financial statements and balances. This led to disclosure on 24th March 2020 of the existence of US$2.7 billion, and then another US$1.6 billion, of formerly undisclosed debt. The size of the NMC Group's undisclosed debt, US$4.357 billion to US$5.352 billion, including that US$355 million that I have referred to, dwarves the size of its latest reported debt portfolio which had been US$2.1 billion.

23.
It is really Mr. Davis's evidence, supported by the evidence of Mr. Frangulov, which is heavily relied upon by the claimant in the application that is made before me today. Mr. Davis identifies what he says are the key features of the fraud which he says shows that it was perpetrated against the applicants to the administration application in the ADGM court by essentially the first to third defendants, the principal shareholders, their vehicle companies and other family businesses, as well as senior management of NMC Group which the claimant says includes D4 to D6, D4 and D6 being named by Mr. Davis in paragraph 62 of his statement.

24.
Mr. Davis' evidence is that while the investigation into the fraud did not complete and the investigations are still continuing, it appears that the fraud has taken many forms between at least 2013 and the revelation of the fraud and it appears from the documentation to have included the following: (1) The creation and regular maintenance of two sets of financial accounts of which the Administrators are now in possession; (2) Theft of money from bank accounts owned by the applicants and other companies in the NMC Group by transferring money to or for the benefit of what are described as "the alleged perpetrators" which are D1 to D3 as well as the senior management of the NMC Group; (3) The procurement of loans from financial institutions which were not reported in NMC Group's financial accounts, many of which were regularly refinanced; (4) Misappropriation of some portion of the proceeds of these loans either by using them to pay for the acquisition of assets by third parties, by arranging for them to be directly drawn down into bank accounts which were not in the name of any NMC Group company which were owned or controlled by the alleged perpetrators or by transferring the proceeds out of accounts owned by the applicants and other NMC Group companies to and through accounts owned or controlled by the alleged perpetrators; (5) These were some

portion of the proceeds of these loans to: (i) finance an existing portfolio of undisclosed debt; and (ii) make frequent payments to employees of the applicants and other persons who were involved in the fraud which had the characteristic of bribes including by first transferring the proceeds to bank accounts of conduit companies outside the NMC Group which were controlled by the alleged perpetrators; and (6) The management and servicing by employees of the applicants in the Treasury and Finance Departments of portfolios of bank accounts in companies which were owned or controlled by the alleged perpetrators together with NMC Group companies and their

bank accounts as if they were a single group of companies under common ownership, which they were not.

25.
The Bank alleges, so far as the alleged fraud on the Bank is concerned, that this fraud was part of the wider deception of fraud within the NMC Group that I have just referred to based on Mr. Davis' evidence. It is said that at various points between 2015 and 2019 the defendants made false representations to the Bank: (i) via third parties that the NMC plc financial statements had been honestly prepared and not materially misstated ("the Representations via Third Parties"); (ii) by signatures of the Syndicated Facility Agreement ("the SFA Representations"); (iii) by signature of the Club Facility Agreement ("the CFA Representations"); (iv) by signatories of certain compliance certificates ("the Compliance Certificate Representations"); (v) as to the accounts ("the Accounts Representations); together "the Representations".

26.
It is said that the defendants knew and intended that the fundamental purpose and effect of those representations was to confirm to the Bank the Group's robust financial health and growth. It is said that in essence the representations were all parasitic upon the falsely produced accounts. It is said that the intention behind the defendants' joint conduct was to ensure the Bank would extend loan facilities to the NMC Group and the borrowing entity primarily used for that purpose was the UAE company, NMC Healthcare, with guarantees from NMC plc and other Group entities.

27.
Over the course of a number of years different defendants made different representations to the Bank in order to induce the Bank to lend money under the Core Facilities. It is said that the core feature of these representations was that they all went to confirm the strong financial performance of NMC plc which is said was a determinative factor in any lending decision. It is explained that in its dealings with NMC plc the Bank dealt with officers and management and the representations were made by those people – often, by the very nature, implied – that form the basis of the claim which is pleaded out in draft particulars of claim which are before me and which I have had regard to.

28.
It is said that the claim that is advanced, or proposed to be advanced on the issue of the claim form and associated particulars of claim, should be understood through the prism of an ongoing, longstanding commercial relationship. It is said in fact that those representations were false, the Bank relied on such representations or were induced to provide NMC Healthcare with the Core Facilities under which the amount outstanding is approximately US$1 billion. There were in fact six facilities as identified by Mr. Zo'mot who sets out the associated information at Schedule 1 to his affidavit.

29.
The individuals who dealt directly with the Bank from time to time were BR Shetty, the first defendant, Mr. Manghat, Mr. Kumar and Mr. Shenoy, the fourth, fifth and sixth defendants. It is said

that even if a given defendant did not personally make a representation they may each be held liable for having made the representations on the basis that they procured, adopted or encouraged others to endorse the integrity of the accounts: see Cargill v Bower (1878) 10 ChD 502 at pages 514 to 516.

30.
I have already identified the nature of the fraudulent activities that were identified by Mr. Davis. The claimant (the Bank) says that the defendants' involvement over the relevant time is demonstrated by a table of the positions held by those defendants with

NMC that I have already foreshadowed which is Mr. Zo'mot's affidavit at Schedule 5, which I have also had regard to.

31.
It is said that although it is not known exactly what happened with the NMC Group Treasury function, to which I have already referred, which is referred to in the claimant's skeleton argument as the "black box", it is submitted, based on the evidence before me that, at least in part, this Group Treasury function involved other moneys being recycled to keep up the appearance of a successful business.

32.
It is said that it is to be inferred that Mr. Manghat, Mr. Kumar and Mr. Shenoy were integral to the mechanics. In particular, the Bank says there is no way for two sets of accounts to be created and operated without the connivance and knowledge of these individuals. Additionally, and as Mr. Davis explains, it appears that the Treasury team managed and serviced all the perpetrators' accounts and companies (that is D1 to D6) along with NMC Group companies and accounts, as if they were a single group of companies.

33.
The detail of the scheme and the true debt position, it is said, was concealed from the Bank and, it is said very likely, from other creditors. It is said the Bank made the decisions to enter the Core Facilities relying on express and implied endorsements of the financial data that informed its perception of the NMC Group. Reliance is also placed, to an extent at least, on what happened from the initial discovery of matters in late December in relation to what the defendants did. I should make clear though that this is only one side of the story and as part of the duty of full and frank disclosure indeed, some of the matters have been identified which could give innocent reasons for such departures.

34.
Mr. BR Shetty, the first defendant, for example, left for India and has been there since February 2020. He says that he went there to visit an ailing relative and that, despite a recent attempt, he has not been allowed to return to the UAE to clear his name. He says that he is the victim of the actions of a number of subordinates, including D4 to D6. This is set out, both in a written criminal complaint he has made to a police station in Bangalore and also in a letter to the UAE Attorney General asking for an investigation. He has also claimed in proceedings in the Abu Dhabi local court that guarantees that were provided to the Bank in relation to him were forged. He essentially says that after a certain period of time he left matters to the fourth to the sixth defendants.

35.
The Buttis (D2 and D3) left for India but it appears have since returned to the UAE. They also have claimed in proceedings in the Abu Dhabi local court that the guarantees provided to the Bank were

forged. In April 2020 Mr. Khaleefa Butti claimed that he had not been given a reasonable opportunity to engage with and assist the internal investigations at NMC Group.

36.
Mr. Manghat, Mr. Kumar and Mr. Shenoy (D4 to D6) have all left for India. As I have already foreshadowed, Mr. Shenoy left first in January and is said to have been on sick leave since late February. The evidence before me is that Mr. Manghat and Mr. Kumar tried to obstruct the investigations in February 2020 which led to Mr. Manghat being removed from his position and that Mr. Manghat and Mr. Kumar then left the UAE.

37.
As I have already foreshadowed, it became clear in February 2020 to Mr. Davis "that certain employees and senior management were engaged in fabricating records, amending account balances and in the deletion of financial documents and records in order to conceal the fraud". Those matters are mentioned both in the context of full and frank disclosure but also the risk of dissipation of assets and also on the basis that, certainly Mr. Shetty, the first defendant, appears to be accepting that there was indeed a fraud along the lines alleged but he alleges that he is the victim of that fraud.

38.
Another aspect which again comes into the matter in the context of risk of dissipation of assets is that both BR Shetty and the Butties have recovered very large sums by selling shares in NMC plc at the time of the Muddy Waters allegation before share trading was suspended.

39.
Then to the application itself and its timing. One matter that I pressed Mr. Pillai on was as to the timing of this application and whether or not there had been any delay. I asked him about that set against the backdrop of facts, of course, that it was the Bank who applied to put NMC plc into administration in England in April and the fact that it appears that the hearing on the administrators' application took place on 27th September 2020, so just over two months ago.

40.
Mr. Pillai explained that the matter is a complicated matter compounded by the fact that, as a third party creditor, the Bank has no direct access to primary documentation or information from within the NMC Group so as to identify the likely perpetrators of the fraud. It has had to rely on information provided by the companies themselves and the Administrators, particularly the statement of Mr. Davis and Mr. Frangulov deployed at that administration application at the end of September 2020. Mr. Pillai also points out the obligations that arise in relation to pleading what are serious allegations, including allegations of fraud and that it has taken time to marshal the material and for those instructed on the Bank's behalf to be satisfied that there was a proper case which could be pleaded. In this regard, draft particulars of claim have been drafted which is of particular assistance on an application such as this.

41.
On the basis of the information before me I am satisfied that there has not been any delay, still less any undue delay in the making of this application. It is a very substantial application with a very substantial affidavit in support which runs to some 56 pages, quite apart from the witness evidence of Mr. Davis and that of Mr. Frangulov and an associated bundle which runs to some 4,938 pages (which is the exhibit to the affidavit of Mr. Zo'mot).

42.

Turning then to the applicable legal principles which are well known, the court has the power to grant the relief sought pursuant to section 37 of the Senior Courts Act and the Court must be satisfied,

"… that the applicant for the order has a good, arguable case, that there is real risk that judgment would go unsatisfied by reason of the disposal by the defendant of his assets, unless he is restrained by the court from disposing of them, and that it would be just and convenient in all the circumstances to grant the freezing order."

That quote of the test comes from Lakatannia Shipping v Morimoto [2020] 2 All ER (Comm) 359 at [33].

43.
Turning first to "good arguable case", the Bank is required to establish that its case is "… one which is more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success." See Gee on Commercial Injunctions (6th Edition) at paragraphs 12-025 to 12-026. Indeed the Court of Appeal in the Lakatannia case at paragraph 35 described the test as "a not particularly onerous one".

44.
The first question that arises in that regard is what law governs the claims which are foreshadowed. That is determined by the Rome II Regulation. The two claims that are advanced as a matter of English law are, first, the tort of deceit which includes four ingredients: first, the defendant makes a false representation to the claimant; second, the defendant knows that the representation is false, alternatively is reckless as to whether it is true or false; third, the defendant intends that the claimant should act in reliance on that; and fourth, the claimant does act in reliance on the representation and, in consequence suffers loss.

45.
The second is an unlawful means conspiracy, a conspiracy to injure. Unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure by unlawful means, whether or not it is the predominant purpose of the defendant to do so: see Kuwait Oil Tanker v Al Bader [2000] 2 All ER (Comm) 271 at [108].

46.
If UAE law is the applicable law, the Bank claims damages in tort (or "acts of harm") under Article 282 of the Civil Code, it being a civil law jurisdiction, and, more specifically, for deceit under Article 285 through the defendants causing harm to the Bank by deceiving it into lending moneys under the Core Facilities. Joint liability for tort claims is available under Article 291. I should say that the application is supported by advice that Mr. Zo'mot has received from UAE lawyers although at this stage, at a time when there is no order from the Court for expert evidence and the matter is not yet at the time of a return date, there is no independent evidence in relation to the position under UAE law, which I take from Mr. Zo'mot and the matters to which he refers.

47.
Returning then to what the applicable law is under the Rome II Regulation, the general rule under Article 4 is that the applicable law shall be "the law of the country in which the damage occurs" (Article 4(1)). That is irrespective of where the event giving rise to the damage occurred and where any indirect consequences of that event occur. Where the parties are habitually resident in the same country then the law of that country applies (Article 4(2)). But if all the circumstances of the

case demonstrate that the tort is “manifestly more closely connected” with a country other than that indicated by the previous two rules, then the law of that country will apply (Article 4(3)).

48.
It is said, based on the factual summary of Mr. Zo’mot, that the events giving rise to the tortious liability arose in England because they are premised on the falsification of, and misrepresentations made in respect of, NMC plc’s accounts and/or further parasitic misrepresentations. Those misrepresentations were also made by NMC plc’s

senior management as part of a conspiracy involving directors and principal shareholders of the plc to falsify its accounts in breach of their fiduciary duties. The Bank ultimately acted upon the representations in Abu Dhabi, from where the relevant loan funds were drawn down by NMC Healthcare.

49.
The Bank notes that there are reasons to suppose that the defendants were all habitually resident in the UAE, as was the Bank, at the date of wrongdoing. So it may be argued that either UAE law applies (based on Article 4(1) or Article 4(2)) or that English law applies (based on Article 4(3)).

50.
Reference is also made to Article 12 of Rome II which provides that:

“… the law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.”

51.
It is pointed out that on current authority, this probably does not apply in respect of the Core Facilities themselves, because those are contracts between the Bank and NMC entities, not with the defendants. But it is noted that some are governed by English law and the rest are governed by UAE law. It is said that Article 12 might be argued as applying because in addition to the Core Facilities, on the basis that there were personal guarantees with BR Shetty and the Buttis and those are governed by UAE law, but the Bank would say these are ancillary to the transactions at the heart of the fraud (and not all were initially given to the Bank, though it now holds title to sue) and do not come into account.

52.
It is said that the Court does not need to reach a firm conclusion about which law applies because it is said the Bank has a good arguable claim applying either English or UAE law.

53.
I consider that that is right for the reasons I am going to come on to. So far as deceit is concerned, I am satisfied that there is a good arguable case of deceit given the material that I have referred to. In that regard I have had regard to the matters set out in the draft particulars of claim which identifies the representations at paragraphs 31 to 49, then at paragraphs 50 to 57; the representations were relied on in respect of each of the Core Facilities; the fact that this all derives from what appears to be a false set of accounting records; and the fact that most representations were made directly primarily by Mr. BR Shetty or by one or more of D4 to D6. But in addition – and I am satisfied that this is also the case – it is not necessary for each defendant to have himself have been the source of a specific

representation for him to be liable for that representation in circumstances where responsibility for such action may be imposed by reason of knowledge, adoption and/or procurement.

54.
So far as falsity is concerned, that is pleaded out at paragraphs 58 to 64 and is drawn based on NMC plc's own announcements, the evidence of Mr. Davis and Mr. Frangulov. I am satisfied that although that evidence obviously has not been tested at this stage, given the independent role of Mr. Davis and Mr. Frangulov in that regard and their access to the underlying original documentation, and the context in which

they give their evidence, that evidence is, at first blush, credible and supports a good arguable case of fraud in relation to the deceit claims.

55.
Equally, so far as unlawful means conspiracy is concerned, from an English perspective at least, I am satisfied to a good arguable case standard based on what is set out in the particulars of claim at paragraphs 21 to 24 with the use of unreliable accounts central to a deception and the production of accounts required by the defendants in breach of their fiduciary duties to NMC plc, the use of false financial statements and the defendants' involvement in the production and/or dissemination of those statements in breach of their fiduciary duties as amounting to unlawful means. The principal shareholders on the evidence before me were able to benefit from their dealings in NMC plc shares, whose value had been inflated on the evidence before me by the dishonest preparation of the statutory accounts. Their knowledge of that falsity is, in turn, derived from the fact of their involvement based on Mr. Davis' evidence and the core of the fraud within NMC plc. A central aspect of that fraud was indeed the obtaining of external lending which has the characteristics of loan recycling based on accounts that could not be relied upon with the losses inflicted on the Bank being the other side of the coin as regards the defendants' intention to secure benefits for themselves.

56.
So far as causation and loss is concerned, that will be a matter in the action and in due course for any trial. The Bank's best estimate at the moment of its loss is just over US$1 billion, which is US$1,003,550,058.04. This is assessed by proxy against the outstanding debt, on a no transaction measure, but no doubt this will involve detailed factual and expert analysis in due course.

Accordingly, and set against the backdrop of the material that I have identified, the evidence of Mr. Davis, the evidence of Mr. Frangulov as recounted by Mr. Zo'mot, for the reasons that I have given, I am satisfied that there is a good arguable case whether under English law or under the relevant provisions of UAE law in the Civil Code, including under Article 282 generally in relation to acts of harm and for deceit under Article 285.

57.
Turning then to the jurisdictional regime and the existence of any gateway. The applicable principles are well known with the three-stage test: (i) there is a good arguable case the claim falls within one of the gateways or grounds in practice direction 6B 3.1; (ii) that there is a serious issue to be tried against the defendant in question; (iii) that England is the clearly or distinctly appropriate forum for the trial of the dispute or, as more recently put, the forum in which the case can be suitably tried for the interests of all parties and for the ends of justice.

58.

I have already set out the good arguable case standard for freezing injunctions generally. To the extent that there is a distinction in the specific context of jurisdiction disputes and the gateway a three-limbed test applies:

“(i) The claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway;

(ii)
If there is an issue of fact about it or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but

(iii)
The nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it.”

(See the breakdown and application of the test in the Court of Appeal decision of Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV [2019] 1 WLR 3514 at [70] to [80].

59.
The central concept is that the Bank must supply a “plausible evidential basis in relation to each gateway”. In this regard the claimant relies upon what is set out in the draft particulars of claim and the evidence in Mr. Zo’mot’s affidavit.

60.
The primary argument of the Bank is based on the first defendant BR Shetty as an anchor defendant, being the registered director of two or, possibly now, three UK companies and so, further to section 1140 of the Companies Act 2006, he may be sued at the address he has given. It is then said that the other defendants go through a relevant gateway because they are necessary and proper parties to the Bank’s claim against Mr. Shetty, i.e. under 3.1(3).

61.
There have been a number of first instance decisions holding that the effect of section 1140 is that the director can be served at the registered address in the jurisdiction in respect of any claim even if the director is in fact outside the jurisdiction. In particular, there is the decision of Master Marsh in Key Homes Bradford v Rafik Patel [2015] 1 BCLC 402; a decision of Mr. Richard Salter QC (sitting as a Deputy High Court Judge) in Idemia v Decatur [2019] EWHC 946 (Comm); and a decision of Jacobs J in Arcelormittal USA LLC v Essar Steel [2019] EWHC 724 (Comm). The decision of Mr. Richard Salter QC, Idemia v Decatur, was the subject of an appeal, but I am told by Mr. Pillai that it is believed that in fact that action settled before any judgment of the Court of Appeal. There is also the judgment of Foxton J in Njord Partners SMA-Seal v Astir Maritime [2020] EWHC 1035 (Comm) in which he also followed that line of authority although he did say at paragraph 45:

“It is fair to say that the statutory effect which section 1140 has been held to have or assumed to have is surprising, albeit when the wording of the section is read, it is easy to see why such findings or assumptions have been made, I have decided to follow those judgments at first instance.”

The most recent case that is relied upon is a decision of Waksman J in Republic of Mozambique v Safa, unreported, 30th July 2020 at [5] to [13] where, in robust terms, he also concluded that there was jurisdiction under section 1140 of the Companies Act even in circumstances such as those identified in the prior authorities.

62.
I too am satisfied that that is the correct interpretation of s.1140 of the Companies Act 2006 and in any event I would follow the other first instance judgments in that regard. I am therefore satisfied that there is a relevant gateway under s.1140 of the Companies Act in relation to the first defendant.

63.
So far as the other defendants are concerned, as to whether they are necessary and proper parties to the claim against Mr. Shetty, I am satisfied that: first, the claims against the anchor defendant involve a real issue to be tried; secondly; that it is reasonable for the court to try that issue; thirdly that the foreign defendants are necessary or proper parties to the claims against the anchor defendant and that the claims against the foreign defendants have a real prospect of success. I am also satisfied that England is the proper place in which to bring those combined claims.

64.
Setting out those points in a little bit more detail, so far as the “real issue to be tried against Mr. Shetty” is concerned, he was at the centre of the alleged fraud and appears to have been one of the prime beneficiaries. I consider the Bank is right to characterise him as the “chief protagonist” in this dispute. In saying that, of course, I recognise the matters that I have already foreshadowed and that are identified by Mr.

Zo’mot by way of full and frank disclosure, i.e. that Mr Shetty denies that he is party to the fraud. But, I am satisfied there are real issues to be tried in respect of deceit and conspiracy under either applicable law. This is not one of those cases where a party is sued only for the purpose of bringing in others. So I am satisfied that there is a real issue to be tried.

65.
So far as “reasonable for the court to try the issues”, the backdrop is that it was Mr.

Shetty himself who brought NMC’s business to London to take advantage of the opportunities that such a profile allows. Indeed, at the time of the listing itself in 2012 he was explaining that the listing in London was to “allow the company to develop existing and new facilities as well as expanding to new high growth markets … We have specifically chosen London for the IPO given its deep pool of capital and global profile”. I have already noted that Mr. Shetty held senior roles within NMC plc including as CEO, Managing Director and Chairman and was one of its principal shareholders over the period in which the alleged fraud took place through, amongst other things, the creation and dissemination of false accounts.

66.
I am satisfied, given the seriousness of these issues which relate to the high profile collapse of a FTSE 100 company and involve a number of officers, senior management and the main owners of the company, that that requirement of it being reasonable for the court to try the issues is met.

67.
So far as “necessary and proper party” that has to be considered by reference to each of the defendants but the facts underlying the claim require detailed and common investigation. The same essential issues lie at the heart of the claims against each and all of the defendants, namely, whether there was an enormous fraud orchestrated by the various parties, each playing a different role.

68.

I am satisfied that there is substance, to the requisite standard for the present application, in the Bank's submission that Mr. Shetty could not have carried out the fraud without the knowledge and assistance of the other defendants and indeed no doubt many others within the Treasury Department. That is the context in which the unlawful means conspiracy is alleged and operated, it is said it involves all six defendants and their dealings with each other. I am satisfied that D2 to D6 are necessary and proper parties to the claim against Mr. Shetty, not least given the fact that Mr. Shetty (as I have already foreshadowed) is implicating the fourth to sixth defendants and no doubt the Buttis may well do the same because they also allege that certain documentation has been forged. So one set of factual inquiries will be needed

to determine all the issues, and all matters need to be tried together. Of course, the loss claimed is the same and it is claimed on a joint and several liability.

69.
Put another way, as referred to in the White Book, all the claims relating to the representations and the combination in relation thereto are "closely bound up" and the legal and factual matters share a "common thread". If there had not been a requirement for service out, then clearly the claims would all be tried together. Therefore, supposing all the parties were in the same jurisdiction, would they have been proper parties to the action? The answer to that is clearly, in my view, "Yes".

70.
So therefore there are available gateways which I am satisfied to the requisite standard the claimant has succeeded in going through for the purpose of jurisdiction in the context of the action itself. In one sense that would mean if those gateways have been rightly identified and are upheld on the return date, the claimant would have no need for any other gateways.

71.
The other gateways are as follows: first, a claim in tort, where damage is said to be sustained from an act committed within the jurisdiction, i.e. 3.1(9)(b). It is an alternative basis which the Bank says applies to all the defendants. In this regard reliance is placed on what was said in Newsat Holdings v Zani [2006] 1 All ER (Comm) 607 at [39] to [44], that the place where the harmful event giving rise to damage has occurred is where the misstatement was made, rather than where it was received.

72.
It is said that all the representations arise from, or are parasitic upon, the adoption of the accounts of NMC plc, the misstatements all having in common their origin in the falsification and promulgation of the accounts of a UK listed plc and were accordingly made in England. Equally, in relation to the conspiracy, whilst at present the Bank is unable to particularise the specific events of combination that gave rise to the conspiracy, I am satisfied that the court can infer for present purposes at least, by reason of the defendants' separate, strong connections to NMC plc, that the events giving rise to the conspiracy in relation to those misrepresentations are likely to have at least taken place in some substantial or efficacious part through NMC plc in England.

73.
I am satisfied that the tort gateway, damage sustained from acts committed within the jurisdiction, is satisfied in those circumstances in relation to all the defendants and, accordingly, that gateway is passed as well.

74.

The next gateway is a “claim in respect of a contract which is governed by English law and a further claim on closely connected facts: 3.1(b)(c) and 3.1(4A)”. Again, it is said to apply to all the defendants. The fraud of which the Bank complains encompasses six facilities as I foreshadowed and as Mr. Zo’mot identifies. Two of them, the Syndicated and Club Facilities, make up over US$700 million worth of overall lending. Both are agreements governed by English law and include English law guarantees by NMC plc. It is said that the Bank was induced to enter into the relevant facilities as a result of the deceit and conspiracy.

75.
It is said that to come within this gateway, the claim itself does not have to sound in contract. The Bank’s claims in deceit and conspiracy as far as they relate to the

Syndicated and Club Facilities are “in respect of a contract governed by English law”.

It is said that that reflects the appropriately broad construction that should be applied to the phrase “in respect of” in the preamble to this gateway. It is said that English law governed the syndicated facility agreements which were the main means by which the victim was separated from its money.

76.
My attention was drawn to the decision of the Court of Appeal in Alliance Bank v Aquanta Corporation [2012] EWCA (Civ) 1588. In that case, the claimant Kazakh Bank said it had been the victim of a fraud at the hands of former board members and their related entities. It brought claims in fraud alleging it was induced to enter security contracts governed by English law. The Court of Appeal contemplated this gateway could only be used in limited circumstances and said at paragraph 71:

“… unless the claimant is suing in order to assert a contractual right or a right which has arisen as a result of the nonperformance of a contract, his claim is not in this context properly to be regarded as one made in respect of a contract. I think it likely that ordinarily such claims can only be made in respect of contracts to which the intended defendant is party” which, of course, is not this case.”

77.
More recently, in the Njord Partners v Astir case (to which I have already referred) in relation to an application for a freezing injunction, Foxton J rejected an argument under this gateway saying at [40]:

“… it must be a rare case in which this head of jurisdiction can avail against a defendant who is not party to the relevant contract and who has not thereby participated voluntarily in creating the nexus to this jurisdiction which the gateway assumes nor, at least on the current pleaded case, can it be said that this is a claim in which the claimants seek to enforce their performance interest under a contract against a non-party.”

78.
It is submitted by Mr. Pillai, on behalf of the Bank, that the restrictions set out in those decisions are not part of the rule and each case turn on its own facts. It is said that this is a rare case where the gateway should be applied because: (i) these two English law contracts were signed by two of the defendants (Mr. Manghat and Mr. Shenoy), so while they are not contracting parties they were directly involved in creating the English nexus; (ii) NMC plc is a guarantor under both agreements and that is a further strong link; (iii) a number of the pleaded representations arise out of the contracts themselves (based on underlying financial statements), which means the deceit and conspiracy claims are firmly grounded by reference to these contracts.

79.

Bringing that altogether he submits that the alleged fraud arises directly out of two of the key contracts, which form a very substantial part of the value of the claim overall. In those circumstances, it is said it would be surprising if any of the defendants could say they were unfairly surprised at being before this court.

80.
Notwithstanding Mr. Pillai's valiant attempts to bring the claimant within that gateway, this is a situation where the relevant defendants are not party to the agreements concerned. I consider it would be a very rare case indeed where the gateway could be used in those circumstances. I am not satisfied that the matters identified by him suffice in order to meet the requirements of that gateway. Accordingly, albeit that the point is academic, I am not satisfied that this gateway is satisfied.

81.
In those circumstances it is not necessary for me to consider the application of gateway 3.1(4A). I am satisfied that there is a serious issue to be tried against each defendant in relation to the gateways I have identified.

82.
Turning to "proper place" i.e. the forum in which the case can be most suitably tried for the interests of all the parties and for the ends of justice, this is addressed at length in Mr. Pillai's skeleton argument and also by Mr. Zo'mot in his witness statement. In particular it is said that there are significant connections with England, the representations were made over a period of time and were referable to the relevant accounts of NMC plc. The claims therefore are drawn from that primary source, which were published in the first instance from England. NMC plc's public listing on the London Stock Exchange was a background feature relevant to the representations. The majority of the Bank's exposure under the Core Facilities arises out of English law syndicated lending contracts that were guaranteed by NMC plc. The benefits reaped by D1 to D3 at least are linked directly to their sale of the shares in NMC plc, the value of which appears to have been artificially inflated as a result of the loan. NMC plc, as I have already noted, is in administration in England. It is said that it is therefore logical for the English court to be the home forum for resolving such matters.

83.
The tort, for the reasons I have identified, originated in England. The misrepresentations were committed in England albeit the effects were felt by the Bank in the UAE. It is also said I should bear in mind that it is an international fraud and events may take place in various jurisdictions. The language of the fraud is English law. That appears to be the working language of at least D1, D4, D5 and D6. There is no reason to believe that D2 and D3 would not also be comfortable addressing matters in English. Whilst there were aspects of the fraud that took place in the UAE, the documents are likely to have been created and held electronically.

84.
It is said that the English court is best placed to try this action being a fraud claim turning on oral testimony and scrutiny of documents. There will be significant disclosure. In terms of any aspects that need to be dealt with remotely, the Commercial Court is well experienced and flexible and accommodating to international parties in that context. Whilst the Bank and the Buttis are based in the UAE, the rest of the parties are based in India.

85.
There are distinctive features of the litigation process in the UAE. So far as the ADGM courts are concerned it appears they do not have jurisdiction without opting in from the defendants which seems

unlikely, andthose courts are not the most likely to be appropriate for resolving the overall disputes. So far as the local courts are concerned, there is evidence before me that the UAE legal system does not contemplate extensive disclosure and equally in terms of the giving of live witness evidence, this is not much used. In this regard I have in mind, in particular, what was said in the skeleton argument at paragraph 122.4.

86.
It will be seen, therefore, that there are factors connecting the subject-matter of the action with England. There are also factors that connect it to the UAE and there are also factors which connect it to India. I have no doubt in due course that those matters will be investigated further and that there are additional points to be made to those which are identified by Mr. Zo'mot and by Mr. Pillai, albeit the nature of such points have been properly foreshadowed.

87.
Ultimately, I am satisfied that there is a proper case for service out and I am satisfied for present purposes that England is distinctly and conveniently the most appropriate forum. In this regard the legal centre of gravity of the dispute is the underlying accounts. Interlinked with all of that is the role of NMC plc and the associated representations giving rise to the causes of action in deceit and the associated claims in unlawful means conspiracy, all of which points to England as the most appropriate forum.

88.
For those reasons I consider that England is indeed distinctly and conveniently the most appropriate forum and is likely to be the best place to try the action. In reaching this conclusion I have also taken into account, as has been drawn to my attention, that there are already some proceedings in other jurisdictions including, for example, the Bank initiating claims in the Abu Dhabi onshore court against each of D1 to D3 in respect of specific guarantee liabilities. Nevertheless, I do not consider that detracts from the overall conclusion that England is distinctly and conveniently the most appropriate forum.

89.
Bringing matters together in terms of jurisdiction, I am satisfied that the Bank has met the threshold by establishing at least a plausible evidential basis for its jurisdiction arguments in relation to the gateways that I have identified. I am satisfied, therefore, that I have jurisdiction over each of the defendants based on service upon Mr. Shetty under the Companies Act or otherwise in the respects identified, and I grant permission to serve all the defendants outside the jurisdiction on the basis of the gateways I have identified.

90.
Returning to the requirements for a freezing injunction and the risk of dissipation, the applicable principles are well known. The standard of proof is "good arguable case" and the Bank must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. "Dissipation" means putting the assets out of reach of a judgment whether by concealment or transfer. The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient. The risk of dissipation must be established separately against each defendant. It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets may be

dissipated. It is also necessary to take account of whether there appear, at the interlocutory stage, to be properly arguable answers to the allegations of dishonesty.

91.
In this regard, the use of offshore structures is relevant but does not in itself equate to a risk of dissipation. The reason for that, of course, is that businesses and individuals

often use offshore structures as part of the normal and legitimate way in which they deal with their assets. Such legitimate reasons may properly include tax planning, privacy and the use of limited liability structures. It is said here, though, in the context in particular of the Treasury Department within NMC plc and the associated entities and movement of money that that is not such a case.

92.
The key point is that what must be threatened is unjustified dissipation. The reason for that, of course, is that the purpose of a worldwide freezing order is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it judgment proof (see generally Lakatamia at [34]).

93.
In VTB Capital Plc v Nutritek International Corp the Court of Appeal observed on the facts before it, that:

"… it would have been right for the judge to take into account a finding of a good arguable case that Mr. Malofeev had been engaged in a major fraud, and that he operated a complex web of companies in a number of jurisdictions, which enabled him to commit the fraud and would make it difficult for any judgment to be enforced. We would regard such factors as capable of providing powerful support for the case of a risk of dissipation."

94.
In AH Baldwin and Sons v Sheikh Saud Al-Thani [2012] 3156 (QB) at 31(4) the Court observed that:

"If there is a good arguable case in support of an allegation the defendants acted fraudulently or dishonestly or with unacceptably low standards of morality giving rise to a feeling of uneasiness about the defendant (Thane Investments Ltd v Tomlinson [2003] EWCA (Civ) 1277 at 28) then it is often unnecessary for there to be any further specific evidence of dissipation for the court to be entitled to take the view that there is a sufficient risk to justify granting Mareva relief."

95.
I am satisfied, as submitted by the Bank, that the starting point is that the Bank, on the basis of the findings I have made on this without notice application, has a good arguable case that each of the defendants has been engaged in a major fraud that was concealed for a number of years and to some degree is still being covered up by obstruction and delay, as I have identified based on the evidence of Mr. Davis. That is something that applies, I am satisfied, to each of the defendants.

96.
In this regard I have given careful consideration to the position in relation to each defendant. First, Mr. BR Shetty: there is no doubt that he is a sophisticated international businessman linked to a number of companies and assets in different jurisdictions. I have a schedule that shows the many different jurisdictions to which that applies. By reason of his position of control within the NMC Group

over a number of years and the way in which he monetised his shareholding, he has significantly benefited from the

NMC Group's appearance of prosperity. I take into account that the complex and opaque nature of his corporate holdings was such that as at 24th February 2020, and based on the evidence of Mr. Zo'mot at paragraph 63.4, Mr. Shetty himself could not readily explain his own (and associated) total interests in NMC plc and the exercise was said to require "a legal review". It is said that that has all the hallmarks of a structure being deliberately difficult to understand, rather than efficiently structured for any legitimate reason. It is also pointed out that despite that apparent complexity over 2018 and 2019 Mr. Shetty had felt able to pledge large numbers of shares in transactions with lenders, including a Goldman Sachs collar transaction. And it is submitted that Mr. Shetty is likely to adopt methods to place assets out of the reach of enforcement action.

97.
In viewing that, I do, of course, bear in mind everything that has been said by way of full and frank disclosure and Mr. Shetty's denials. Nevertheless, I do consider there is considerable force in the points made on behalf of the Bank.

98.
So far as the Buttis are concerned, they owned shares individually and through Infinite Investment. They both had positions that allowed them jointly to exercise control over the NMC companies for a number of years, along with, course, Mr. Shetty himself. The evidence is they also held the NMC Group's medical licenses in their own names, which shows they had the concentrated commercial control in their hands. Like Mr. Shetty, they also realised very large sums of money from share sales, in fact doing so in January 2020, when the investigations were being set up. Like Mr. Shetty they also made undisclosed share pledges to underpin lending. It is said that they have the sophistication to attempt to make themselves judgment proof. Again, I consider there is considerable force in what is said in relation to the Buttis.

99.
Mr. Manghat, as the former CFO and then CEO of NMC Healthcare, in those roles, was in a position, I am satisfied, to exert a controlling role and oversee the business and the financial dealings in the Treasury function which is at the very core of the fraud. The evidence, based on Mr. Davis' evidence, is that he was part of the cover up after the Muddy Waters report came out and he also met with the Bank and made a promise that overdue payments of $200 million would be made which were not forthcoming (per Mr. Zo'mot's evidence at paragraphs 90 to 97). He was removed from that position, as I have noted, in February 2020. The reason for that is said to be attempts to obstruct the Freeh Investigation from accessing information. It appears from Mr. Davis's evidence that he was fired because he was obstructing an investigation. Again, I consider that that is an important aspect of the evidence going towards the risk of dissipation of assets. Those are not the actions of an innocent man.

100.
Mr. Kumar was the deputy CFO of NMC plc. Like Mr. Manghat and Mr. Shenoy, in those roles he was in a position to exert control and oversee the business and the financial dealings in the Treasury Department which, for the reasons that I have identified, appear to be at the core of the fraud. Again Mr. Davis' evidence is that he also obstructed the Freeh Investigation in February 2020 and, like Mr. Manghat, he also left the UAE and has not returned.

101.

Mr. Shenoy was NMC plc's CFO and again was therefore in a position to exert control and oversee the business and the financial dealings in the Treasury function at the core of the fraud. I consider that it is an important point in his case, where it

might be thought, at least at first blush, that the evidence was less detailed than in relation to the other defendants, that he was involved in the aftermath of the Muddy Waters report by telling the Bank that the contents of the report were (and this is based on Zo'mot 1, paragraph 91): "all short seller noise and that the NMC Group was in good financial health".

102.
Standing back, the reality would appear to be that Mr. Manghat and Mr. Kumar and Mr. Shenoy are all likely to have been involved as key individuals in their financial role in preparing or overseeing or having access to the two sets of accounts that were being run in the Treasury Department to present false public statements. It is clear that in order to achieve that, and indeed for the Treasury Department to do what it did in relation to other individual companies and the movement of money, a high degree of sophistication financially had to be undertaken and also a very disciplined approach had to be given. All those matters point towards dishonesty. Whilst there may be innocent explanations, the suggestion that these individuals left the jurisdiction to evade possible civil or criminal authorities is certainly consistent with such a factual background.

103.
These facts, in their turn, I am satisfied, give rise to a risk that the individuals would dissipate assets to avoid enforcement. In reaching such a conclusion I am alive to, and have not lost sight of the fact that, Mr. Shetty, the Buttis and Mr. Manghat, through their legal advisers, deny any wrongdoing. It may well be that the other defendants take exactly the same stance. That has all the hallmarks of cut-throat defences in my view.

104.
Bearing in mind the general points that I began with about the fact that the Bank has a good arguable case against each defendant of being engaged in a major fraud and the specific involvement and roles of each individual defendant, I am satisfied that the Bank has made out the risk of dissipation to the requisite standard, i.e. a real risk judged objectively that a future judgment would not be met because of an unjustified dissipation of assets. I am satisfied that the material available goes beyond mere evidence of fraud but, taken as a whole, amounts to solid evidence going beyond inference or general assertion. Rather, they come from the central features of the Bank's good arguable case.

105.
I am also satisfied for present purposes that the fact the defendants are likely to have operated this fraud means they can be expected to have used, and be in the process of using, that expertise to dissipate assets. It could be said, of course, that a considerable period of time has gone by; there has been the Muddy Waters report; there has been the Freeh Investigation; there has been administration of the Plc; there has been the application to the ADGM court, all of which have provided a backdrop against which one or more of these defendants could already have dissipated their assets. In other words, an assertion, which is often run, that "the horse may have bolted" and there is not really any more any risk of dissipation given the period of time that has gone past and the opportunities the defendants have already had.

106.
As is recognised in many of the cases, such submissions are inherently unattractive and I consider that the risk of dissipation remains at this stage, which is another reason why I was willing to hear

this matter on a without notice basis. For completeness, I should also say in the context of risk of dissipation that I am aware, based on the full and frank disclosure, that there have been some other freezing orders

already granted, but it appears only in a specific jurisdiction and not for anywhere near the amount of money as is sought in relation to this worldwide freezing order. I do not consider that such other freezing relief means that there is no requisite risk of dissipation. I should add that I do not in any event have sufficient information about those other injunctions to know what has happened to them and whether or not they are still in place. I do not consider that any of that detracts from the risk of dissipation.

107.
I am satisfied, given the nature of the fraud and the underlying sophistication, the financial manipulation and concealment, that the order would be just and convenient and it is appropriate for this court to make a worldwide freezing order. I do not consider that that conclusion is in any way detracted from by the fact that the Bank has made other more limited attempts to obtain compensation for the loss they have suffered elsewhere. I am satisfied that the present action is the only one by which the Bank is able to obtain overall compensation for the losses caused by entry into the transactions in that regard.

108.
So far as the administration itself is concerned, the evidence before me is that the Bank is unlikely to recover anything like full compensation. At this stage no proceedings have been brought by the administrators, for example, against any of the defendants and I do not consider that the existence of the administration is any reason not to make the order sought. Equally, as to the actions in Abu Dhabi, the claims on the personal guarantees do not cover all the types of losses claimed in this action and the claimant has already confirmed that if any recoveries are made, they will be brought into account. I have already addressed the point that there are other freezing orders in place, but I do not consider that detracts against the making of the present order.

109.
For all those reasons I consider that the requirements for a worldwide freezing order are satisfied, and I make such an order. I make a worldwide freezing order, because it is quite apparent from the schedules which are before me that a number of the defendants have assets within the UK, and elsewhere in multiple jurisdictions around the world. To the extent that there is not at the moment evidence before me of where particular assets are, I bear in mind the fact – and this really is directed more to defendants 4, 5 and 6 – that they had very substantial remuneration packages and are likely to have substantial assets in various jurisdictions in the world.

110.
For those reasons, the worldwide freezing order would, I am satisfied, have utility and be of use both in relation to assets in the UK and also on the basis of the wording of the Order in relation to the defendants themselves so far as they have assets elsewhere in the world.

111.
I should confirm, lest the matter be considered on the return date, that I have carefully read and given very careful consideration to the matters identified in Mr. Zo'mot's witness statement in relation to full and frank disclosure (which I will not lengthen this extempore judgment by recounting). I have also considered paragraphs 160 through to 167 in relation to full and frank disclosure as well. Some of those matters I have already touched upon, but I bear them all in mind. I am satisfied that none of

the matters that have there been identified would detract from the making of a worldwide freezing order. I also bear in mind everything that was said to me orally by Mr. Pillai during the course of the application today.

112.
That leads on to the next aspect of the relief that is sought before me today. Turning to the forms of alternative service which are sought, the defendants need to be served in India and the UAE. Under CPR 6.40 service of the claim form, particulars of claim, application and related orders must take place according to any convention or regulation that applies as between England and India/UAE. As to service in India, India is a party to the Hague Service Convention. The evidence is that service through the FPS is expected to take eight months. India has registered an objection to service by any method other than that set out by the treaty. As to service in the UAE, this is governed by a treaty. I have seen a hyperlink to that treaty that by Article 7 this treaty is not an exclusive code unlike the Hague Service Convention. The evidence before me from Mr Zo'mot is that service through the FPS is expected to take eight months.

113.
As is well established, the court may order service by an alternative method where there is a good reason for declaring the proposed method of service at a proposed place be regarded as good service. The method of service proposed must not be unlawful that is, i.e. positively contrary to the law of the country where service is to take place. Even where the Hague Convention or a treaty applies and so prescribes the specific method of service, the court may "in exceptional circumstances" grant an order for service out of the jurisdiction by alternative means. (See Marashen Ltd v Kenvett Ltd [2018] 1 WLR 288 at [57]). There is a debate which sometimes arises as to the precise circumstances that are required. However in the present case that is academic as I am satisfied that there are exceptional circumstances in this case.

114.
Like Foxton J before me in the Njord Partners case supra, where the learned judge granted a freezing injunction and also permitted orders for alternative service to known email addresses, WhatsApp and on lawyers known to act for one or more of the parties, the judge permitted in that case service by alternative means because:

"I am satisfied that there is a special need for urgency when a without notice freezing order has been made which meets the test of special circumstances where service under an applicable convention might delay the point at which the order is formally served on the respondent" (paragraph 51).

115.
I respectfully agree. In that case Foxton J held that course was appropriate notwithstanding the potential distinction between the Hague Service Convention and UK/UAE treaty in that case. I agree with that and that the same is true in the present case. It is particularly important in the context of without notice freezing orders, and the need for urgency that matters are drawn to the attention of the defendants at the earliest possible juncture.

116.
I am satisfied that the forms of alternative service which are identified in the draft order are appropriate in the exceptional circumstances of this case and are the appropriate forms of service by alternative means which should be adopted in this case.

117.

I am also satisfied – and this is addressed in the draft order – that this is an appropriate case where the requirements for personal service do not need to be met in circumstances where I am satisfied that the means of service that are adopted will be such, in relation to each defendant, as to properly bring to their attention, in a sufficiently formal manner, the fact of, and the content of, the Order itself.

118.
Accordingly, and for the reasons I therefore give, in addition to granting the worldwide freezing order, I grant service by alternative means. As is common, asset disclosure is also sought in the usual form and forms part of the standard order. The purpose of it is to identify and preserve assets of the defendants which might otherwise be dissipated notwithstanding the injunction. I am satisfied that it is necessary to make asset disclosure orders in the form sought in order to police, and ensure the effectiveness of, the worldwide freezing order. The purpose of the order further encompasses obtaining the information so that notice of the injunction can be given to third parties who will then become bound not to commit a contempt of court and so that further orders can be obtained from the courts of other jurisdictions so that freezing orders may be sought there and support orders for delivery up of specified assets; always, of course, subject to the prior approval of this court to release parties from the scope of the undertakings that they will be giving in the Order.

119.
Accordingly, I am satisfied that it is appropriate to grant relief in the form of the worldwide freezing order in the terms set out in the draft order including an associated asset disclosure order and for there to be service out by alternative means as specified in the draft order. I will now finalise the terms of the order with counsel for the Bank including the setting of the return date.

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