ADGM COURTS
محاكم سوق أبوظبي العالمي

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

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2022] ADGMCFI 0007
Before:	Justice Sir Andrew Smith
Decision Date:	30 September 2022
Decision:	1. Application for a Worldwide Freezing Injunction granted. 2. The parties have liberty to apply regarding the costs of the Application.
Hearing Date:	30 September 2022
Date of Order:	30 September 2022
Catchwords:	Worldwide Freezing Injunction; good arguable case; risk of dissipation of assets; delay; whether freezing order just and convenient; oppression.
Cases Cited:	Abu Dhabi Commercial Bank PJSC v Shetty, [2021] ADGMCFI 0004 Lakatamia Shipping Co Ltd v Moritomo, [2019] EWCA Civ 2033 Thane Investments Ltd v Tomlinson (No 1), [2003] EWCA Civ 1272 Ninemia Corp v Trave Schiffahrtsgesellschaft GmbH (The Niedersachsen), [1983] 2 Lloyd's Rep 600 Sabbagh v Khouri, [2014] EWHC 3233 Madoff Securities International Ltd v Raven, [2011] EWHC 3102 JSC Mezhdunarodnniy Promyshlenniy Bank v Pugachev, [2015] EWCA Civ 906
Case Number:	ADGMCFI-2022-111
Parties and representation:	Mr Rajesh Pillai KC and Mr Scott Ralston instructed by Holman Fenwick Willan LLP for the Claimant Mr Adam Zellick KC and Mr Daniel Carall-Green instructed by King & Wood Mallesons (MENA) LLP

JUDGMENT

Introduction

1. The claimant in these proceedings is Abu Dhabi Commercial Bank PJSC ("**ADCB**"), a bank incorporated in the United Arab Emirates ("**UAE**") and majority owned by the government of Abu Dhabi. It claims in respect of facilities that it granted to the NMC Group of companies.

2. The origins of the NMC Group apparently lie in a business founded in Abu Dhabi in the 1970's by a Dr B R Shetty and his wife. It grew to become the largest provider of private healthcare in the UAE. In 2008 Dr Shetty incorporated NMC Healthcare ("**Healthcare**") in Dubai, and it became the ultimate holding company of the NMC Group, being owned until 2012 by Dr Shetty and two other shareholders, Mr Khaleefa Butti and Mr Saeed Butti (the three "**Principal Shareholders**"). In 2012,

after an initial public offering of its shares on 2 April 2012, NMC Health plc became the holding company of the Group, and it was listed on the London Stock Exchange ("**LSE**").

3. On 9 April 2020, NMC Health plc was placed into administration by an order by the English Court on ADCB's application. On 27 September 2020, this Court made an administration order on the grounds of insolvency in respect of Healthcare and 35 other companies which were its direct or indirect subsidiaries, appointing Mr Richard Fleming and Mr Ben Cairns of Alvarez & Marshall (Europe) LLP ("**A&M**") as joint administrators of them. Evidence in support of the application for the order was given by witness statements of 19 September 2020 made by Mr Michael Davis, who was the Acting Chief Executive Officer of the NMC Group, and by Mr Max Frangulov, a Managing Director of A&M.

4. ADCB claims is that it is the victim of a fraud carried out by senior executives of the NMC Group, including Dr Shetty and the other Principal Shareholders. In these proceedings, it brings a claim for damages and ancillary relief against Mr Prasanth Manghat, whom it accuses of being one of the senior executives responsible for the fraud.

5. Mr Manghat is an India national, who moved to work in the UAE in 2003. He is a chartered accountant, and the positions that he has held in the NMC Group include these: between February 2011 and April 2012 he was the Chief Financial Officer ("**CFO**") of Healthcare, and between April 2021 and the end of 2014, he was the CFO of NMC Health plc. He was a director of NMC Health plc from June 2014 until 26 February 2020, becoming de facto its Deputy Chief Executive Officer from October 2014 and being formally appointed to that position from 1 January 2015. From 8 March 2017 until 26 February 2020, he was the Chief Executive Officer ("**CEO**") of NMC Health plc. He was also a director of Healthcare from 2018 or 2019 until 2020.

6. On 2 December 2020, ADCB brought proceedings in the English High Court against six defendants, including the Principal Shareholders and Mr Manghat, claiming damages for fraudulent misrepresentations and conspiracy. On the same day, Mr Justice Bryan gave permission for the proceedings to be served out of the jurisdiction, and made a worldwide freezing order against all the defendants in respect of assets up to US$1 billion. He stated in his judgment ([2020] EWHC 3423 (Comm)) that ADCB had a good arguable claim, whether it be governed by English law or the law of the UAE. He also concluded (at paragraph 104) that it had "*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*".

7. Mr Manghat and the Principal Shareholders challenged the jurisdiction of the English Court. In a judgment of 1 April 2022 ([2022] EWHC 529 (Comm)), HHJ Pelling QC upheld that challenge and stayed the proceedings against the four defendants. He was satisfied that there was a real issue to be tried between ADCB and the defendants, including Mr Manghat, and that there was jurisdiction under the statutory "*gateways*" for service outside the jurisdiction, but he also concluded (at paragraph 188) that *"(a) there is another forum which is clearly and distinctly more appropriate for the trial of this claim than England, namely Abu Dhabi and (b) there are no circumstances by reason of which justice requires that this claim be tried [in England] rather than Abu Dhabi*". As is recorded in his order, HHJ Pelling accepted undertakings from the Principal Shareholders to submit to the jurisdiction of the onshore civil courts of Abu Dhabi and from Mr Manghat "*not to challenge the jurisdiction of the onshore civil courts of Abu Dhabi or the offshore Abu Dhabi Global Markets courts*".

8. ADCB sought to bring an appeal against HHJ Pelling's decision, but on 26 April 2022 Males LJ refused permission to do so. He extended the freezing order until 13 May 2022.

9. On 10 May 2022, ADCB brought these proceedings and it applied for a worldwide freezing order against Mr Manghat on the same date. The application is supported by two affidavits of Mr Damian Honey, who is a partner of Holman, Fenwick Willan LLP ("**HFW**"), ADCB's solicitors, dated 10 May 2022 and 5 August 2022. He exhibited to his first affidavit the evidence of Mr Davis and Mr Frangulov to which I have referred and an affidavit sworn by Mr Mazen Zo'mot, the Head of Wholesale Banking for Abu Dhabi and Al Ain at ADCB, and dated 1 December 2020, upon which ADCB relied in support of its application to Bryan J in the English proceedings. Mr Manghat made a witness statement dated 7 July 2022 in opposition to the application: ADCB did not rely on the fact that Mr Manghat's evidence was not sworn.

10. Initially Mr Manghat did not authorise his solicitors to accept service on his behalf and in his witness statement he reserved his position with regard to service. That question has been resolved, and due service of these proceedings is no longer in issue: by an order dated 9 September 2022 and made by consent the Court directed that Mr Manghat should be deemed served on that date.

11. As I have said, the freezing order in the English proceeding was due to expire on 13 May 2022. However, the parties agreed that it should be extended pending determination of ADCB's application for a freezing order in these proceedings.

12. I heard the application on 30 September 2022. ADCB was represented by Mr Rajesh Pillai KC and Mr Scott Ralston. Mr Manghat was represented by Mr Adam Zellick KC and Mr Daniel Carall-Green. Towards the end of the hearing, I said that I would make a freezing order with a limit of US$1 billion, essentially in the terms for which ADCB applied, and that I would give my reasons in a written judgment.

13. There was no dispute about my jurisdiction to make a freezing order of the kind for which ADCB applied. I explained the basis for this jurisdiction in my judgment in *Abu Dhabi Commercial Bank PJSC v Shetty, [202 ADGMCFI 0004*, and I need not repeat it.

14. Nor was there dispute between Mr Pillai and Mr Zellick about the legal principles that should guide my decision whether to make a freezing order. In *Lakatamia Shipping Co Ltd v Moritomo, [2019] EWCA Civ 2033*, Haddon-Cave LJ (at para 33) described the basic legal principles governing the grant of the worldwide freezing order as "*well-known and uncontroversial*", and endorsed this summary given by Peter Gibson LJ in *Thane Investments Ltd v Tomlinson (No 1), 2003] EWCA Civ 1272* at para 21: the court must be satisfied that "*the applicant for the order has a good, arguable case, that there is a 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*." Mr Pillai submitted that all three limbs of this test are satisfied; Mr Zellick submitted that none was.

Good arguable case

15. The first question, therefore, is whether ADCB has a good arguable case against Mr Manghat. In the *Lakatamia* case (cit sup, at para 35) Haddon-Cave LJ described the test here as "*not a particularly onerous one*". As it was described by Mustill J in *Ninemia Corp v Trave Schiffahrtsgesellschaft GmbH (The Niedersachsen), [1983] 2 Lloyd's Rep 600*, 605, ADCB has to show that its case is "*one that 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*".

16. In its Particulars of Claim ADCB has pleaded the claims in considerable detail, alleging that, if the matter is governed by English law (or, I would suppose, the law of the Abu Dhabi Global Market) Mr Manghat is liable for deceit and for conspiracy by unlawful means and alternatively that he is liable under the UAE Civil Code for tortious damages by reason of acts of harm and deceit. The thrust of Mr Manghat's argument was not to dispute that ADCB was defrauded, or at least that there is a good arguable case that it was, but to dispute that there is a sufficient case that he was party

to any fraud, conspiracy or other wrongdoing. I can therefore briefly introduce the allegation that there was a fraud by so-called "Co-conspirators" with this description from Mr Honey's evidence:

> "*In summary, ADCB claims that the Co-conspirators extracted money from the NMC Group by a variety of methods including generous transactions with related parties and the procurement of secret debt and the use of two sets of accounting records to maintain secrecy about the illicit transactions and their effect. The fraudsters defrauded ADCB to obtain funds from a legitimate source and to maintain the illusion that [NMC Health plc] was a great success story. At the centre of the deception of ADCB was the use of [NMC Health plc] as a respectable entity listed on the London Stock Exchange, whose financial statements disclosed a picture of a growing and successful company. But the basis on which ADCB lent money to the NMC Group was totally false and the audited financial statements of NMC plc can now be seen to have been fictitious*".

The financial statements to which Mr Honey referred included the annual accounts for the years ended 31 December 2016, 31 December 2017 and 31 December 2018, which had been audited by Ernst & Young LLP.

17. According to the evidence before me, ADCB extended credit facilities to the NMC Group, including these so-called "*Core Facilities*":

    a. a facility agreement first made in 2002 by Union National Bank PJSC, another UAE based bank with which ADCB merged in 2019, and renewed from time to time, most recently by ADCB on 29 August 2019;

    b. a syndicated facility agreement made in February 2018 and amended and renewed on 29 November 2019;

    c. the purchase of Sukuk certificates which were part of a "Sukuk Offering" of US$400 million Sukuk certificates issued in November 2018 and admitted to the International Securities Market of the LSE;

    d. a Club Facility Agreement entered into in February 2019;

    e. a "Bilateral Facility Agreement" dated 4 November 2019; and

    f. a Murabaha Facility Agreement dated 11 November 2019.

18. I do not need to refer to all the misrepresentations made in the course of the fraud on which ADCB pleads reliance. It suffices to say that they include misrepresentations by way of misstatements in NMC Health plc's annual accounts and "*Compliance Certificates*" giving continuing assurances about the financial position of NMC Health plc and the NMC Group that ADCB required from time to time in order to continue its credit facilities. ADCB pleads, and it has not been disputed, that such certificates were signed by Mr Manghat (amongst others) between March 2016 and May 2017.

19. On 17 December 2019, a New York investment firm, Muddy Waters Capital LLP ("**Muddy Waters**") issued a report in which it made allegations of financial misconduct associated with the NMC Group derived from public information and its investigations. This caused ADCB concern, and on 18 December 2018 it had a meeting with Mr Manghat, and received from him reassurance, to which I shall refer later in my judgment.

20. On 17 January 2020, NMC plc appointed to investigate the allegations in Muddy Waters' report Freeh Group International Solutions LLC ("**Freeh**"), an investigations firm founded by Mr Louis Freeh, a former director of the Federal Bureau of Investigation and Federal Court Judge in the

United States, with the law firm, Glaser Weil LLP. In his witness statement, Mr Davis sets out how Mr Patrick Meade, one of the former directors of NMC Health plc, had told him the investigation proceeded: after the investigators had initially been unable to have access to the documents that they required, "*in late-February, a series of documents purporting to be bank account balances generated from the NMC Group's finance system were uploaded to the Freeh Group's document review portal by employees in the NMC Group's Treasury Department. However, the employees accidentally uploaded two versions of the same bank statement – the true copy and a copy of 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*".

21. On 26 February 2020, NMC Health plc issued an announcement that investigations had identified chain financing arrangements which had been made by the NMC Group without disclosure to or the approval of the Board and which were not reflected in the financial statements for the year ended 31 December 2018; and that as at 31 December 2019 about US$335 million had been drawn down under them. NMC Health plc dismissed Mr Manghat on the same day: according to the account given by Mr Meade to Mr Davis, the Board considered that he was obstructing Freeh from accessing information. NMC plc appointed Mr Davis, its Chief Operating Officer, as its Interim Chief Executive Officer. In his witness statement of 19 September 2020, Mr Davis estimated that the undisclosed debt of the NMC Group to be approximately US$4.357 billion to US$5.352 billion.

22. In its Particulars of Claim, ADCB pleads that the best particulars that it can give of its losses resulting from the deceit and the conspiracy are that they correspond to the amount outstanding on the six Core Facilities, which as at 19 November 2020 was US$1,003,550,058. Mr Honey describes this as "*a broad-brush approach for the purpose of this stage of the case*".

23. As I have indicated, Mr Manghat argued that ADCB has not demonstrated to the required standard that it has a good arguable case against him because it has not shown that he knew of or was party to the fraudulent conspiracy that it alleges. His case is that he has not been dishonest and had no involvement in any such fraud. Mr Zellick pointed out that there is no documentary evidence of his involvement. The case is one of inference and, it is said, there is no sufficient basis for it and indeed there are considerations that suggest that he was not involved.

24. Mr Pillai presented the case that it is to be inferred that Mr Manghat was party to the fraud under seven heads. First, this was alleged in the evidence of Mr Davis and Mr Frangulov presented in support of the application for the appointment of administrators made to this Court in September 2020. In particular, Mr Davis said this about investigations carried out by A&M after Joint Administrators of NMC Health plc were appointed: "*The documentary evidence uncovered by the A&M forensic team shows that the Fraud was perpetrated against [companies in the NMC Group] by the Principal Shareholders, their vehicle companies and other family businesses, Mr Manghat, certain members of the senior management of NMC Group, including the former CFO team, and various institutions which conspired in the wrongdoing*".

25. Mr Zellick submitted that this allegation is "*wholly unparticularised, unsubstantiated by evidence and apparently based solely on the notion that Mr Manghat's conduct in relation to the Freeh investigation was suspicious*", and I see some force in those observations. However, ADCB is not privy to the information available to A&M and the NMC Group, and Mr Davis explained in his statement that he did not want to reveal matters that would alert those responsible for the fraud to the results of A&M's investigation and possibly therefore frustrate the recovery of property. While recognising Mr Zellick's criticisms, I observe that not only did Mr Davis specifically name Mr Manghat as one of those involved in the fraud, but also gave evidence that the NMC Group is "*able to produce documentary evidence in support of [this part of his evidence] should it be necessary or appropriate to do so*". Accordingly, Mr Pillai was able to submit that at trial, after disclosure, including

potential disclosure from the NMC Group, ADCB will likely be in a better position to support Mr Davis' evidence of Mr Manghat's involvement.

26. Secondly, Mr Pillai relied upon Mr Manghat's role in the NMC Group and submitted that Mr Manghat's "*close involvement and control over the NMC Group's financial func*tion" is to be inferred not only from the senior positions that he held (which I have described at paragraph 5 of this judgment) but also from the following:

    a. He is described in the 2018 Annual Report of NMC Health plc as having "*20 years' experience in accounting, corporate finance, treasury and banking*", and as having "*spearheaded*" the initial public offering in 2012.

    b. His remuneration as CEO, which Mr Manghat described in his evidence: "*My remuneration increased in line with becoming a CEO. My remuneration was commensurate to the pay packages of a CEO of a FTSE 100 company on the rise … my remuneration as at 2018 was similar to the median FTSE 100 CEO pay*".

    c. Annual reports of NMC Health plc indicate that Mr Manghat had responsibility for financial management. According to the 2017 report, the Chief Financial Officer reported to him, and the 2018 report describes the finance function as being "under" him.

27. Mr Zellick observed that seniority of Mr Manghat's position does not in itself show that he was party to or knew of any fraud. No such allegation is made against other senior management, including Mr Davis who was appointed as Chief Operating Officer of the NMC Group in 2017 and held the position until 26 February 2020, nor against other members of NMC Health plc's Board, nor against its auditors, Ernst & Young.

28. Mr Manghat's evidence is that as CEO he did not have oversight of the finance function of the NMC Group, and that even during his 16 months as CFO he "*did not participate in the day-to-day operations of preparing accounts but rather had a team of accountants who reported to me*". Against that, however, I must weigh not only what the Annual Reports said of his involvement with the Group's financial management but also evidence about Mr Manghat's profile on his LinkedIn account: "*During the last fourteen years, Prasanth has successfully served in key roles with the NMC including his previous role as the Deputy CEO of NMC Healthcare. He also served as Chief Financial Officer for five years where he was responsible for managing the company's finance function including treasury, corporate finance and accounting*".

29. It appears to me, on the evidence presently before me, that, given the nature and scale of the alleged fraud, the wrongdoers must have exercised close control over the Group's internal management and accounting information. I accept that no inference of fraud can properly be made from the evidence about Mr Manghat's senior positions by itself, nor did Mr Pillai so contend: he presented it as one of the considerations from which I should infer a sufficiently arguable case for present purposes, and I consider it an important one.

30. Thirdly, Mr Pillai referred to Mr Manghat's involvement with NMC plc's Audit Committee, the "*key role*" of which was described in the 2018 Annual Accounts as being "*to ensure the integrity of published financial reports; compliance with applicable legal and regulatory regulations in the group areas of activity; effectiveness of internal controls and assessing the independence and expertise of the external and internal auditors and assessing their effectiveness and performance during the year*". It was submitted that Mr Manghat's involvement with the Committee in turn suggests that he was involved in preparation of the financial statements.

31. Mr Manghat's response in his witness statement was that, while he was "*involved in*" the Audit Committee, he was never "*part of it*", the Committee comprising "*solely of independent non-executives*". He said that "*many parts of the Audit Committee meetings took place in private*", and it met with third parties and auditors without management being involved. He continued "*On certain occasions I, and other management figures, were invited to attend certain Audit Committee meetings, or parts of meetings, as guests*", and that, as the CEO, his interaction with the Committee was "*limited to providing an update on the strategy and long-term goals of NMC at Audit Committee meetings, attending as a guest, if requested to do so*".

32. To my mind, ADCB can properly argue that NMC Health plc's Annual Report for the year ended 31 December 2018 might suggest that Mr Manghat was rather more involved than this with the Committee's work: it says that meetings were "*normally*" attended by the CEO, as well as the CFO and the Deputy Financial Officer, and that it met "*separately with external auditors and management with other parties not present*". However that might be, I accept ADCB's submission that Mr Manghat's engagement with the Audit Committee provides support for the inference that it invites.

33. Next, ADCB points out that Mr Manghat held powers of attorney to act for companies in the NMC Group. In particular, in 2018 he was given a power of attorney to act for Healthcare specifically by way of conducting negotiations and dealings with banks and financial institutions and conducting banking operations; requesting and accepting credit facilities; and executing security documents.

34. Fifthly, it is submitted on behalf of ADCB that I should attach significance to Mr Manghat's remuneration for his role as CEO, including bonuses that he received.

35. Sixthly, in proceedings in the State Courts of New York against Mr Manghat and others, Dr Shetty has alleged that he was the victim of a fraud and conspiracy to which Mr Manghat was party. Further, in a complaint dated 6 October 2020 to the Indian police Dr Shetty alleged that Mr Manghat and others were guilty of offences by way of fraud and misappropriation of funds.

36. ADCB acknowledges that these allegations "*might well be an attempt to divert attention from Dr Shetty's own position*". I am not, of course, in a position to form any view about whether Dr Shetty was guilty of any impropriety and would have any reason to "*divert attention from his own position*". It suffices for me to say that, to my mind, the powers of attorney, the level of Mr Manghat's remuneration and Dr Shetty's allegations against Mr Manghat do not contribute significantly to ADCB's argument that it has a sufficiently arguable case against Mr Manghat for the purposes of its application for a freezing order.

37. I therefore come to the last consideration upon which ADCB relied: Mr Manghat's conduct when Muddy Waters issued its report and during the subsequent investigation. Here ADCB make three points. First, Mr Zo'mot said in his affidavit of 1 December 2020 that, when he met Mr Manghat on 18 December 2019 to discuss ADCB's concerns arising from the Muddy Waters report, Mr Manghat dismissed the report as "*misleading*" describing it as *"short seller noise*". According to Mr Zo'mot's evidence, at further meetings on 4 January 2020 and 6 January 2020 at which ADCB pressed for the payment of promised funds, Mr Manghat not only gave assurances that the funds would be paid but that he was "*personally involved in managing the entire matter"* and promised that *"neither ADCB, nor any other bank dealing with the NMC Group, would be hurt*".

38. Mr Manghat submits that his response on 19 December 2019 was that of a CEO defending and upholding the Group's standing in a meeting with its bankers, and quite consistent with him being unaware of any fraudulent or improper dealings. However, the concerns raised by the detailed report of Muddy Waters were not about the general success of the business but about specific wrongdoing, and I see force in Mr Pillai's submission that, if he was unaware of the matters raised by the report, he might have been expected to have shown more interest in them before giving ADCB such assurances.

39. Next, it is suggested that Mr Manghat obstructed the investigations of Freeh. Mr Manghat denies that: his evidence is that he "*encouraged NMC's banking team to give full co-operation to the investigators, calling meetings, making calls to the Chief Financial Officer and the Deputy Chief Financial Officer and explaining that the Treasury team needed to provide the requisite documents more quickly*". He relied on a letter that he issued on 25 February 2020 in which he "*authorized [those concerned] to immediately release or provide access to any and all information requested by the Independent Review Committee, or its legal counsel and advisers (including Glaser Weil LLP and Freeh Group International Solutions)*".

40. Understandably, Mr Zellick emphasised that no details have been provided by ADCB of how Mr Manghat is said to have obstructed the investigation. It seems to me equally understandable that it has not done so: on the face of it, ADCB is not in a position to know. According to the statement of Mr Davis, however, the view was formed by the Board of Directors of NMC Health plc that Mr Manghat, together with Mr Suresh Kumar, a Deputy CFO of NMC Health plc, was obstructing the Freeh investigators from obtaining information, and, his evidence suggests, this led to, or contributed to, the decision to dismiss him. The letter on which Mr Manghat relies, which was issued on the eve of his dismissal, does not, as I presently see it, go far to answer this point.

41. Thirdly, shortly after he was dismissed, on about 1 March 2020, Mr Manghat left for his home in India, and he has not since returned to the UAE. Mr Manghat has explained in his witness statement that typically he made a trip to India every year, that the trip was planned and that, before he was dismissed, he had told the Board of NMC Health plc of his plan. He also said that "*Whilst [he] was in India, [he] became aware that others connected with NMC were seeking to cast blame upon [him], and that he was concerned that, if he returned to the UAE he would be imprisoned, potentially for a very long time, without having the opportunity to explain his innocence and without right to bail*".

42. I can understand that Mr Manghat, whether party to the fraud or innocent of it, might in these circumstances decide not to return from India, and there is no reason to doubt his evidence that the trip was planned in advance and cleared with the Directors. However, Mr Manghat went ahead with the trip despite all that was unfolding with the NMC Group. He decided to do so, on his own account, before he learned that he was being blamed by others, and he gives no evidence about why he so decided. Again, as I presently see it, Mr Manghat has not fully answered ADCB's point.

43. I therefore accept that the case that Mr Manghat was party to wrongdoing is, as it stands, one of inference. It might be understandable that ADCB is not in a position to put forward more concrete evidence, but I must examine whether it has shown a good arguable case against Mr Manghat. I disregard the points advanced by ADCB about the powers of attorney, about the level of Mr Manghat's renumeration and about the allegations made by Dr Shetty. I have concluded that ADCB's other arguments, taken cumulatively, make out a good arguable case against Mr Manghat.

44. I reaching this conclusion, I do not overlook points made by Mr Zellick that might suggest that Mr Manghat was unaware of any wrongdoing. In particular, it is not disputed that Mr Manghat is a chartered accountant with a hitherto unblemished reputation, and, unlike others, he did not sell his shares in NMC Health plc before concerns or when the Group came to light. Mr Manghat will no doubt make these and other points at the trial of the proceedings, but they do not persuade me to reject ADCB's argument that it has a sufficient case for a freezing order.

45. I have reached this conclusion on the basis of the evidence and assisted by the submissions that were presented to me. In the English proceedings, Bryan J and HHJ Pelling reached the same conclusion on the material before them, but that has not influenced my decision. Mr Pillai referred to the judgment of Carr J in *Sabbagh v Khouri, [2014] EWHC 3233* in which she said that she was inclined to accept that *"the findings of another court may be relied on an interlocutory stage for the limited purpose of demonstrating whether there is a serious issue to be tried, for example in considering what material at trial there might be*" (at para 206). However, as Mr Pillai acknowledged,

it is not clear whether she was referring to findings of another court at an interlocutory hearing (as were the hearings before Bryan J and HHJ Pelling.) or findings after a trial. However that might be, in a case such as this where there is no reason to think that material was available to Bryan J or HHJ Pelling that is not before me, I consider that I should make my own independent assessment of it.

Risk of Dissipation

46. I come to the question whether ADCB has shown what is often called a risk of dissipation, or in the language of Peter Gibson LJ (cit sup) that there is a real risk that judgment would go unsatisfied by reason of the disposal by Mr Manghat of his assets, unless he is restrained by the court from disposing of them. The test is stated in the *Lakatamia* judgment (loc cit at para 33) in the following terms: "*The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer*". Again, the applicant for a freezing order does not have to prove on the balance of probabilities that there is the risk of dissipation: it must show a good arguable case of a risk: *Lakatamia* at para 36.

47. Mr Zellick also cited these propositions, all of which are supported by the judgment of Haddon-Cave in the *Lakatamia* case (at para 34) and which I accept:

    a. "*The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient*";

    b. "*The risk of dissipation must be established separately against each respondent*";

    c. "*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*"; and

    d. "*The respondent's former use of offshore structures is relevant but does not itself equate to a risk of dissipation*".

    In this case, the second of these propositions is not directly in point: there is only one respondent. Nor is the fourth proposition directly relevant: it is not alleged that Mr Manghat has used off-shore structures.

48. I have concluded that ADCB has a good arguable case that Mr Manghat was dishonest, but ADCB did not rely simply on this bald contention in support of its case that there is a risk of dissipation. It relies on the nature and scale of the wrongdoing: that it involved clever and sophisticated deception, and disguising the movement of funds by creating and maintaining, apparently over a long period of time, two sets of accounts so as to procure enormous loans without the Board or the auditors discovering them. ADCB submits that, where there is a good arguable case of such dishonest dealings, it strongly indicates a risk of dissipation through comparably sophisticated subterfuge.

49. Further, Mr Manghat held himself out to be, and apparently is, a sophisticated international businessman who had a central role in running the NMC Group and its finances over a long period. He apparently would have the skill and knowledge to deal secretively with his own assets if minded to do so. Accordingly, it is submitted that the freezing order against Mr Manghat in the English proceedings should now be replaced with a worldwide freezing order in this jurisdiction to prevent him from doing so, or at least to reduce the risk of him doing so. ADCB's concerns are

understandably aggravated by the evidence about Mr Manghat's response to the Muddy Waters report and the investigation by Freeh and Glaser Weil LLP, and by his decision to go to India.

50. Mr Zellick argued on behalf of Mr Manghat that these considerations are insufficient to establish a risk of dissipation. I disagree: in particular, the complexity and apparently subtlety of the scheme that ADCB alleges to my mind provide powerful support for the case of a risk of dissipation. However, Mr Zellick's arguments did not end there: he submitted that there are powerful considerations that weigh against ADCB's case.

51. In my judgment, his most powerful point was one which he advanced in his skeleton argument under the heading "*Unjustified delay*": that ADCB did not apply for and obtain a freezing order until December 2020, over nine months after Mr Manghat had been dismissed and gone to India. He argued that, if ADCB had any real reason to believe that Mr Manghat would hide or dispose of his assets, it would have sought a freezing order sooner. ADCB apparently knew of the fraud long before December 2020: in his affidavit in the English proceedings Mr Zo'mot said that "*by April 2020 it was clear to [him] and to [ADCB] that some kind of 'fraud on a massive scale' had taken place at NMC plc under the nose of its then management*". I should add that Mr Zo'mot also said that ADCB had no information about what the fraud was, how it had been perpetrated who had perpetrated it and how it had affected the loss suffered by ADCB.

52. Mr Manghat did not rely upon this allegation of delay in his witness statement and it was first raised in Mr Zellick's skeleton argument. The point was therefore not covered by ADCB's evidence in reply. However, I heard submissions about the reasons for ADCB not bringing proceedings or seeking a freezing order before December 2020: about whether the delay was justified or not. That debate seems to me beside the point as to whether ADCB has established a risk of dissipation. (I come later to a separate argument of Mr Manghat that, because ADCB unjustifiably delayed until December 2020 before seeking a freezing order, a freezing order should not be made now.) The point is that Mr Manghat had some months after the fraud was discovered to transfer or conceal his assets, and if he did not take that opportunity, this indicates that he will not do so in the future. It does not depend on whether there was good reason for the timing of the application for a freezing order.

53. I see force in the argument, but in the end I am not persuaded by it. As Flaux J said in *Madoff Securities International Ltd v Raven, [2011] EWHC 3102* at para 156, "*The mere fact of delay in bringing an application for a freezing injunction … does not, without more, mean that there is no risk of dissipation. If the court is satisfied on other evidence that there is a risk of dissipation, the court should grant the order, despite the delay, even if only limited assets are ultimately frozen by it*". Similarly, in *JSC Mezhdunarodnniy Promyshlenniy Bank v Pugachev, [2015] EWCA Civ 906*, Bean LJ said at para 34, "*If the court is satisfied on the evidence that there remains a real risk of dissipation it should grant the order, notwithstanding delay, even if only limited assets are ultimately frozen by it*".

54. I am not in a position to assess, and the Bank is not in a position to know, how Mr Manghat dealt with his assets after his dismissal in February 2020. Mr Manghat has put no detailed evidence about this before me beyond asserting that he had not dissipated his assets either before the English proceedings were brought or since, and, that he still has shares in NMC Health plc and has not sought to dispose of them or realise them. (He said that his disclosure of assets in the English proceedings shows them to be his biggest asset, being valued at some US$13.5 million, but that does not deal with the position when the fraud was detected and he was dismissed.) Even assuming, however, that between the fraud coming to light and December 2020 Mr Manghat did nothing to transfer or conceal assets so as to reduce the prospects of a judgment against him being enforced, it is one thing for him so to conduct his affairs before proceedings were brought against him. It does not follow that he will take the same course now that ADCB has formulated a pleaded case against him and sued him initially, in England and now in this Court.

55. Mr Zellick had other arguments that, when all the evidence is considered, ADCB has not shown a sufficient case for a risk of dissipation. First, he relied on Mr Manghat's disclosure in the English proceedings: it is said that, unlike the other defendants in England, Mr Manghat complied with his disclosure obligations promptly and in full. In response to this, Mr Honey observed that ADCB is not in a position to know whether his disclosure is truthful and accurate, although ADCB made no application to the English Court alleging breach of the asset disclosure obligations. I take into account Mr Manghat's evidence about his disclosure, but also that, as Mr Honey observes, it has not been tested.

56. Mr Manghat also submitted that in assessing the risk of dissipation it is relevant that, after ADCB (and another bank) made a complaint of criminal conduct to the Abu Dhabi Public Prosecutor against him (and others) dated 14 April 2020, all his assets and those of his family in the UAE have been frozen. I do not find that point persuasive: as Mr Honey explains, while a private party is entitled, as ADCB did, to urge the Public Prosecutor to exercise his power to freeze assets, it cannot control the Private Prosecutor's decisions, or prevent him from releasing frozen assets. In any case, this restriction only covers assets in the UAE.

57. Mr Manghat gave evidence that another consequence of the criminal complaint against him is that he and his wife are both subject to a travel ban that prevents them from leaving the UAE: his wife and their children remain here. It was submitted that Mr Manghat is unlikely to risk aggravating his family's difficulties and jeopardising their wellbeing by dissipating assets. Again, I am not persuaded by this: even assuming that Mr Manghat thought that the Public Prosecutor might learn that he had disposed of assets, it is a matter of speculation how the criminal authorities would view the disposal of an asset outside the UAE and so not covered by the freezing order imposed in relation to the criminal complaint.

58. Notwithstanding the various considerations that Mr Zellick urged upon me, I conclude that ADCB has shown a sufficient risk of dissipation.

Is a freezing order just and convenient?

59. Is it just and convenient, and otherwise appropriate, to make a freezing order? I next consider three arguments raised by Mr Manghat that it is not.

60. First, the case pleaded by ADCB is to the effect that the main wrongdoers were the Principal Shareholders: for example, it is pleaded that they owned more than half the shares in NMC Health plc at relevant times, that the fraud was carried out through non-NMC companies controlled by them, and that they greatly benefitted from the alleged fraud. Notwithstanding this, after the stay of the English proceedings, ADCB has not brought proceedings (in this or any jurisdiction) against them. Moreover, the English proceedings, I was told, have not been pursued against the two defendants who did not challenge jurisdiction, a settlement having been reached with one of them and there being a stay of the proceedings against the other. Mr Manghat complains that it is oppressive for him alone to be sued by ADCB for the full amount of its loss, and for ancillary freezing relief. While Mr Zellick recognized that ADCB is entitled to pursue its claim against Mr Manghat alone, he submitted that for this reason the Court should not exercise its discretionary and equitable jurisdiction to make a freezing order.

61. I reject this complaint. ADCB acknowledges that it has not brought new proceedings against the Principal Shareholders: it does not explain the reasons for this or its intentions in this regard, nor is it incumbent upon it to do so. Mr Manghat cannot complain that, after his challenge to the English proceedings succeeded on the grounds that Abu Dhabi is a more convenient forum than England, he is sued in this Court, particularly in view of his undertaking to the English Court not to challenge this Court's jurisdiction over proceedings against him.

62. Next, it was argued that the application for a freezing order is oppressive in view of his assets being frozen as a result of the criminal complaint. I reject that argument, essentially for the reasons that I have given in paragraph 56 of this judgment.

63. I return to the question of delay: Mr Manghat submits that, even if ADCB has established a risk of dissipation, it is relevant when deciding whether a freezing order is just and convenient that ADCB did not seek a freezing order against him until December 2020. As I have explained, this point not having been raised in Mr Manghat's evidence, ADCB has not had an opportunity to explain in its evidence in reply why it did not proceed earlier. I do not consider that, in these circumstances, I can fairly conclude that the delay was not justified. Even if it was, it did not cause Mr Manghat any specific prejudice that has been identified, and I would not consider it sufficient reason to refuse a freezing order.

ADCB's recoveries and its loss

64. In his evidence in support of the application, Mr Honey said that "*it is expected that ADCB will make substantial recoveries via [the administration procedures], but the amount is not certain*". He referred more specifically to a notice issued by ADCB on 25 March 2022 that "[ADCB] *has received 37.5% of transferable exit certificates in a US$ 2.25 billion facility issued by a new NMC holding company following completion of a debt restructuring process and a successful exit from administration … Holders in NMC's exit instruments will ultimately be repaid following monetarization of the business at a later stage. Participants will benefit from any further value creation at the NMC business*".

65. As I have said, in its Particulars of Claim ADCB pleads an assessment of its loss of US$1,003,550,058 on the tentative basis that I have explained. It also pleads that "*ADCB will make appropriate allowance insofar as its future losses are diminished by any other litigation, enforcement of security, or the NMC Group companies now in administration*". In his second witness statement Mr Honey said that ADCB has received US$5,292,824 through the administrations of the NMC companies, and ADCB recognises that that sum reduces its recoverable loss. It is not in dispute that credit will have to be given for any future recoveries, and in the draft order that ADCB has proposed, it offers an undertaking to notify the Court as soon as reasonably practicable if substantial sums are recovered such that the limit of the freezing order may be affected.

66. In his witness statement, Mr Manghat did not challenge the level of the freezing order for which ADCB applied, or indicate that there would be an issue about how account should be taken of the possibility of future recoveries. However, in subsequent correspondence, after the evidence had closed in accordance with a timetable agreed between HFW and Mr Manghat's solicitors, King & Wood Mallesons ("**KWM**") and directed by a consent order of 13 June 2022, KWM invited ADCB to confirm that its position about the administration process, about the amount of debt outstanding on the Core Facilities, about the value of the Exit Instruments and about "*the terms and potential for profit or upside from the NMC business*". Being dissatisfied with HFW's response to this invitation, KMW obtained on Mr Manghat's behalf a report from J S Held Middle East Claims Settlement Services LLC ("**J S Held**"), which was said to provide a "*preliminary opinion on the current market value of [the] 'Exit Instruments' held by [ADCB] as at [20 September 2022]*". On 20 September 2022, KWM sent a copy of the report to HFW, requesting that it be included in the hearing bundle. HFW did not agree to this.

67. At the hearing, Mr Zellick sought to present J S Held report in evidence. Mr Pillai submitted that there were procedural objections to admitting the evidence, and also that, in any case, ADCB had sound legal arguments that the calculation of its loss should not bring into account the Exit Instruments or any value attached to them.

68. I considered that the procedural objections to admitting the report in evidence had force. The report was presented late: by the order of 13 June 2022, I directed that Mr Manghat should file his evidence in response to the application by 8 July 2022, and that the hearing bundle should be filed by 12 September 2022. Mr Manghat had not sought, and had not been given, permission to adduce expert evidence. The report does not comply in various respects with the requirements of rule 141 of the ADGM Court Procedure Rules 2016. Moreover, J S Held purports to present no more than a "*preliminary opinion*" about the value of the Exit Instruments.

69. More importantly, in my judgment, the argument about the value of the Exit Instruments takes the value of them in isolation from other aspects of the administration process and how the administration process as a whole and its consequences affect or might affect ADCB's losses. Because the report was presented late, ADCB had no opportunity chance to put the Exit Instruments in the context of the conduct of the administrations more generally. I considered this unfair to ADCB.

70. At the same time, I thought it unfair to Mr Manghat to prevent him altogether from relying on this point to challenge the freezing order, and in particular its limit I therefore invited ADCB to undertake that, if Mr Manghat applied to vary or indeed discharge a freezing order on the grounds that the value of the Exit Instruments should be brought into account, it would not contend that Mr Manghat's application should not be entertained because there had been no material change of circumstances since the freezing order was made. ADCB gave that undertaking.

71. I therefore refused to receive the report in evidence. It seemed to be fairer to both parties for this argument to be considered if Mr Manghat applies to vary or discharge my freezing order, when each party can properly present the evidence on which it wishes to rely.

72. In these circumstances, I shall not express any opinion about Mr Pillai's argument that, even if admitted, the evidence provided no answer to ADCB's application for a freezing order with a limit of US$1 billion. It suffices to say that I consider that, on the evidence before me, ADCB has presented a sufficient case about its loss to justify the limit of US$1 billion in the freezing order.

Conclusion

73. I therefore made a freezing order essentially in the terms proposed by ADCB, and Counsel assisted with submissions about the terms of the order.

74. I am grateful to the parties' representatives for the orderly presentation of the application and for both parties' clear and helpful submissions.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
3 October 2022