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

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

BETWEEN

ABU DHABI COMMERCIAL BANK PJSC
Claimant

and

PRASANTH MANGHAT
Defendant

JUDGMENT OF JUSTICE SIR NICHOLAS PATTEN

Neutral Citation:	[2024] ADGMCFI 0018
Before:	Justice Sir Nicholas Patten
Decision Date:	22 November 2024
Decision:	The Variation Application is refused.
Hearing Date:	14 November 2024
Date of Orders:	22 November 2024
Catchwords:	Application to vary financial limit and territorial application of worldwide freezing order. Whether credit to be given for value of security. Evidence on UAE law and valuation.
Cases Cited:	Lakatamia Shipping Company Ltd v. Morimoto [2019] EWCA Civ 2203 Orji v. Nagra [2023] EWCA Civ 1289 Koza & Ipek Ltd and another v. Koza Altin Isletmeri AS [2020] EWCA Civ 1018
Legislation Cited:	UAE Federal Decree Law No. (5) of 1985 Concerning the Issuance of the Civil Transactions Law (as amended) UAE Federal Decree Law No. (2) of 2015 on Commercial Companies ADGM Court Procedure Rules 2016
Case Number:	ADGMCFI-2022-111
Parties and representation:	***Claimant*** Mr Rajesh Pillai KC and Mr Scott Ralston (Instructed by Holman Fenwick Willan MEA LLP) ***Defendant*** Mr Huw Davies KC and Ms Sophia Hurst (Instructed by Kobre & Kim (GCC) LLP)

JUDGMENT

1. This is an application by Mr Manghat for a variation of the worldwide freezing order which was made by Justice Sir Andrew Smith on 30 September 2022 (the "**WFO**"). I summarised the general background to these proceedings in my earlier judgement of 19 November 2024 on the applications by the Bank of Baroda and Dr Shetty to extend time for disclosure in the "**JA Claim**" *NMC Healthcare LTD (in administration) (subject to a deed of company arrangement) & Others v. Bavaguthu Raghur"am Shetty & Others ADGMCFI-2022-299 and ADGMCFI-2020-020*) . As explained there, the "**ADCB Claim**" in which the present application is made is a claim by Abu Dhabi Commercial Bank PJSC ("**ADCB** ") for damages in tort against Mr Manghat for the losses which ADCB says it has suffered as a result of lending to various of the NMC Group of companies (the "**NMC Group**") on the basis of group annual accounts which contained materially false statements about the borrowings, assets and solvency of the NMC Group. Mr Manghat is alleged to have facilitated the various payments to Dr Shetty and others from the assets of the NMC Group which are the subject of the JA Claim and also to have benefited financially from a number of the transactions involved. He faces allegations of deceit and knowing participation in a fraudulent scheme.

2. The claim by ADCB against Mr Manghat is governed by UAE law and relief is sought under Articles 282 and 285 *UAE Federal Decree Law No. (5) of 1985 Concerning the Issuance of the Civil Transactions Law (as amended)* (the "***UAE Civil Code***") and Article 84 of the *UAE Federal Decree Law No. (2) of* /2015 on Commercial Companies. ADCB pleads that under Article 292 of the Civil Code the court has a discretion to award compensation or damages both for the amount of harm suffered and for what it describes as loss of profit and loss of opportunity resulting naturally from the harmful act. On this basis it seeks damages under three heads:

    a. the legal costs and management time expended in the administration of the insolvent NMC Group;

    b. the amount of the losses suffered in respect of the loans made to the NMC Group; and

    c. loss of profits that would have been generated had the principal of the NMC loans been applied on other performing loans.

3. The amount of the loans made to the NMC Group totals US$960,987,134. The claims for the costs of the administration and for loss of profits add some US$16,774.549 and US$133,750,405 respectively to the amount sought by way of damages against Mr Manghat. Against this ADCB accepts that it must give credit for the amount it has received from the administration (US $5,292,824) and for what it recovered by enforcing a pledge of shares in Alexandria Medical Services Co. that were taken as security for one of the NMC facilities (US$12,328,140).

4. A significant dispute remains, however, about the position of what are described as exit instruments (the "**Exit Instruments**") which ADCB obtained as part of the company re-structuring arrangements which allowed a number of NMC companies to exit the administration. The precise nature of these Exit Instruments has taken a little while to establish and it is part of Mr Manghat's complaint that ADCB has been obstructive in failing properly to disclose the arrangements under which they were obtained. It is now, however, tolerably clear that the Exit Instruments are not shares or some kind of bonds but rather a term for describing the 37.5% interest which ADCB received in a US$ 2.25 bn debt facility issued by NMC HoldCo SPV Ltd (the "**Holdco**"), the new company created as part of the debt re-structuring process which brought the administration to an end. As part of that process creditors

such as ADCB did assign or surrender their contractual rights under the original loan agreements with the NMC Group, in return for what I shall continue to call the Exit Instruments. These debts have now been assigned to Holdco. It follows that ADCB no longer has claims in debt against the NMC Group in respect of the facilities particularised under paragraph 95 of the Re-amended Particulars of Claim (the "**RAPC**"). But a central issue on this application is whether it is obliged to set-off the value of the Exit Instruments against its pleaded losses and whether the estimated value of the Exit Instruments should now be taken into account in setting the value of Mr Manghat's assets which are subject to the WFO.

5. The financial limit of US $1 bn contained in paragraph 2 of the WFO was based on the shortfall on the loans to the NMC Group which as at 19 November 2020 was calculated to be US $1,003,550,058. In his witness statement of 10 May 2022, Mr. Honey of Holman Fenwick Willan MEA LLP ("**HFW**"), ADCB's solicitors, explained that this figure gave credit for recoveries in the administration but did not include any claim for loss of interest. The amount of the contract debt was being used as a proxy for the amount of loss which would be sought to be recovered as damages in tort and was, as he put it, "*a broad brush approach for the purpose of this stage of the case*".

6. The WFO is in conventional form. It applies to assets whether in the UAE or elsewhere up to the value of US $1 bn. It allows Mr Manghat to spend US$12,600 a week towards his ordinary living expenses. This amount may be varied by agreement between the parties. It also allows him to spend a reasonable sum on legal advice and representation and to deal with or dispose of any of his assets in the ordinary and proper course of business subject to giving notice to ADCB's legal representatives. ADCB also gave undertakings in the WFO. Paragraphs (5) and (6) of Schedule B state:

> *"(5) the Applicant will notify the Court as soon as reasonably practicable if substantial sums are recovered by it, including if there is any disposal or charging of the exit instruments issued by NMC HoldCo SPV Ltd,.. such that the limit of US $1[billion] in paragraphs 2 and 5 above may be affected.*
>
> *(6) If the Respondent applies to vary the limit in paragraphs 2 and 5 above or discharge this order on the basis of the value of the exit instruments, the Applicant will accept that no material change of circumstances is required to be shown to make that application."*

7. In deciding to grant the WFO, Justice Sir Andrew Smith applied the settled principles governing the grant of this type of relief which are set out in the judgement of Haddon- Cave LJ in *Lakatamia Shipping Company Ltd v. Morimoto [2019] EWCA Civ 2203*. He found that ADCB had established a good arguable case against Mr Manghat for tortious damages under the UAE Civil Code and that there was a real risk of dissipation. At paragraphs 48 to 50 of the Judgment dated 3 October 2022 (the "**October Judgment**") the judge said:

> *"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: this 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 of 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..."

8. The judge also addressed the question of the financial limit to be included in the WFO. He referred to the evidence that ADCB would give credit for any recoveries in the administration and to the fact that it had already received the US$5.292 m I have mentioned. He also referred to the dispute which had arisen about giving credit for the value of the Exit Instruments. At paragraphs 66 - 72 of the October Judgment he said:

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.

9. Mr. Manghat now makes an application to vary the scope of the WFO (the "**Variation Application**"). In his original notice of application dated 8 October 2024 (the "**Original Application**"), he sought the reduction of the US$1bn limit to an amount determined by the court. But he now seeks a reduction of the limit from US$1bn to US$ 16,774,549.70 and a variation limiting the scope of the order to assets situated within the UAE. The Original Application was largely based on the argument that ADCB must give credit for the value of the Exit Instruments and that argument remains. But Mr. Manghat now also relies on a new argument to the effect that under UAE law the assignment of the NMC debts to Holdco as part of the re-structuring arrangements has had the effect of extinguishing any claim based on the losses which it suffered on the loans it made to the NMC Group. This is said to extend to the claims for loss of interest. The result is to leave ADCB with a claim for the costs of the administration. The case for limiting the WFO to assets within the UAE is based on considerations of hardship. These include the imminent threat that Mr Manghat's matrimonial home in Dubai is about to be repossessed by the mortgagee, Dubai Investment Bank ("**DIB**"), and a sudden and unexpected deterioration in his wife's health which may necessitate expensive medical treatment. I will come to that later in this judgment.

10. The dispute as to whether ADCB must give credit for the value of the Exit Instruments pre-dates the grant of the WFO. As appears from the passage in the judgment of Justice Sir Andrew Smith quoted earlier, Mr Manghat's solicitors had already been in correspondence with HFW about the value of the Exit Instruments and had put in evidence a preliminary report from JS Held about their current value. Although the judge declined to reduce the amount of the WFO below that of the unpaid loans he did not bar Mr Manghat from raising the issues about the Exit Instruments in a subsequent application.

11. The subsequent procedural history begins with an order of 16 March 2023 by which Justice Sir Andrew Smith ordered ADCB to serve the Amended Particulars of Claim (the "**APC**") that gave further particulars about quantum. Mr Manghat objected to the proposed pleading dated 5 May 2023. The details of his objections are set out in a letter dated 12 May 2023 to HFW from Kobre & Kim (GCC) LLP ("**K&K**"), Mr Manghat's solicitors, in which they challenge as inadequate the plea in paragraph 71 of the APC that ADCB will make appropriate allowance in so far as its losses are diminished by relevant recoveries by reference to the administration. K&K said that it was inconceivable that ADCB could not plead the value of its Exit Instruments which must be accounted for.

12. On 5 April 2023 Mr Manghat had filed an application for the hearing of a preliminary issue as to the proper law governing ADCB's claim. This was disposed of by a consent order under which ADCB conceded that UAE law was the proper law of its claims in tort. On 19 May 2023 Justice Sir Andrew Smith directed ADCB to file a further draft APC by 30 June 2023 to meet various of Mr Manghat's objections that had been raised in correspondence. In this version of the APC (dated 7 July 2023), ADCB pleaded the recovery of US$5.92m in the administration and the US$12.328m obtained from the realisation of its security. It also pleaded the fact that it had obtained the Exit Instruments from Holdco under the restructuring arrangements. But in paragraphs 100 and 101 of the APC it maintained the position that it was not obliged to give credit for the value assigned to the Exit Instruments in its accounts and that the accounting value of US$845m was not an appropriate guide to the amount which ADCB will receive when payment under the facility becomes due.

13. Mr Manghat maintained his objection to the pleading on quantum in a letter from K&K dated 17 July 2023, but Justice Sir Andrew Smith substantially allowed these amendments to the claim. At a hearing on 31 August 2023 the judge was addressed on the issue of whether under UAE law ADCB was obliged to bring into account the estimated value of the Exit Instruments when formulating its claim on quantum. But his order of 4 September 2023 permitted ADCB to file the APC dated 5 September 2023 which plead details of the Exit Instruments and their accounting value of US $845m but maintain in paragraph 101 that they are not obliged to give credit for that sum as a reduction in harm for the purpose of the claim in tort under UAE law.

14. Since permission was given for ADCB to file its RAPC Mr Manghat has continued to press for details of the Exit Instruments and in particular to investigate whether the re-structuring arrangements under which Holdco was created have impacted on ADCB's ability to pursue its claim in damages against him. Some, but not all, of the re-structuring documents are in the public domain and it is evident that as part of the arrangements necessary to allow various NMC companies to exit the administration, creditors including ADCB assigned to Holdco their claims in debt under the various facilities they had granted. The right to recover these debts was transferred to Holdco in return, in effect, for the issue of the Exit Instruments. ADCB thereby received the benefit of performing loans in place of the non-performing loans which formed the basis of its contractual claim against the original NMC companies and which forms part of its pleaded loss in these proceedings.

15. None of this is controversial but Mr Hughes of K&K in his witness statement of 8 October 2024 in support of the Variation Application, complains about the refusal of ADCB to disclose the assignments it has executed pursuant to clause 5.3 of the Amended and Restated Restructuring Implementation Deed dated 17 March 2022. Mr Manghat's concern, based on a misreading of the restructuring arrangements, was that the assignments would or might have included an assignment of ADCB's claim in tort against him. What clause 5.3 required ADCB and the other Demand Creditors (as defined) to assign to Holdco were their rights and interest in their Deed Company Claims. These are their contractual claims against the NMC companies in administration and do not include any

third-party claims such as the claim in this action against Mr. Manghat, which would not of course be relevant to the solvency of the companies in administration. After some pressure from the Court, Mr Honey of HFW has now produced an affidavit confirming that there has been no assignment of ADCB's claim in tort against Mr Manghat and Mr Davies KC has not pressed the matter further on the application.

16. Mr. Manghat continues to argue that ADCB must now give credit for the value of the Exit Instruments in calculating and pleading its loss attributable to the harm which he is alleged to have caused. In addition, there is the new argument that under UAE law the assignment to Holdco of the contractual claims against the NMC Group has extinguished or bars ADCB from pursuing its claim in tort against Mr Manghat. In response, ADCB contends that to allow Mr Manghat to re-litigate on this application his argument about whether credit should be given for the value of the Exit Instruments would amount to an abuse of process. On the second issue, Mr Pillai KC for ADCB submits that Mr Manghat should not be allowed to advance an argument which is not yet part of his pleaded defence; in respect of which no permission has been given for him to produce expert evidence and where the evidence of UAE law which is now relied upon is in any event unconvincing. The Court, he submits, cannot proceed to determine the point absent a full hearing with expert evidence and cross examination.

17. I can deal first with the issue about abuse of process. There is no doubt that the Court's ability to prevent an abuse of process in the form of re-litigating issues already argued and decided applies just as much to interlocutory proceedings as it does to decisions following a trial: see *Orji v. Nagra [2023] EWCA Civ 1289 at [47] per Coulson LJ: Koza Limited & Ipek v. Koza Altin Isletmeri AS [2020] EWCA Civ 1018*. In the second of these authorities Popplewell LJ (at [42]) said:

> *"Many interlocutory hearings acutely engage the court's duty to ensure efficient case management and the public interest in the best use of court resources. Therefore the application of the principles will often mean that if a point is open to a party on an interlocutory application and is not pursued, then the applicant cannot take the point at a subsequent interlocutory hearing in relation to the same or similar relief, absent a significant material change of circumstances or his becoming aware of facts which he did not know and could not reasonably have discovered at the time of the first hearing."*

18. Mr Pillai KC submits that the point taken about whether ADCB must give credit for the value of the Exit Instruments in pleading its case on quantum was decided by Justice Sir Andrew Smith on 4 September 2023 when he gave ADCB permission to file and serve the APC containing paragraph 101. It would therefore be an abuse of process for the matter to be re-opened on this application.

19. I am not persuaded by this. In deciding whether to give permission to amend the judge was not required to decide whether the amendments had a real prospect of success. In his judgment he said:

> *"Finally, Mr Peters complains about the pleading of the quantum loss. He makes two points in his skeleton argument. First, he submits that the pleaded quantum is insufficient to support ADCB's recent injunction. That argument might support an application for challenging the freezing order or its limit. I don't consider it a reason to refuse permission to amend. Secondly, it's said that the proposed pleading doesn't allow credit for the so called exit instruments. It pleads that their value is too uncertain to do so. However, it also contends that, as a matter of UAE law, it isn't obliged to bring their value into account.*

I cannot, of course, say whether that position is cogent as a matter of UAE law. I do say that it is pleadable. Mr Manghat, therefore, has numerous complaints against the proposed pleading. I hope I have commented on his main points. I'm not persuaded that there's sufficient reason to refuse permission. In essence, the proposed amendments replead the case to reflect ADCB's acceptance that it's governed that their claims are governed by UAE law. They introduce a claim based on the Federal Law which is based on substantially the same facts as existing claims. It provides further details and clarifies existing allegations and clarifies the case on quantum. "

20. It is clear that Justice Sir Andrew Smith was not attempting to decide the point of UAE law on which Mr Manghat's argument depends. The amendments had therefore to be allowed unless it could be said that they had no prospect of success which was not a view it was open to the judge to take on that application. A slightly different argument might have been that Mr Manghat needed to show a material change of circumstances in order to ask the court to revisit the terms of the WFO. But this was expressly considered by the judge at the time when the WFO was made, and the WFO contains the undertaking by ADCB that I have already referred to that it would not oppose the application on the ground that there had been no material change of circumstances since the WFO was made.

21. I can turn then to Mr Manghat's arguments that the financial limit of the WFO should be reduced either in order to take into account the value of the Exit Instruments or because of the new point about the extinguishment of ADCB's claim under UAE law. The first issue is whether I can decide the relevant issues of UAE law on this application. As Mr Pillai KC has said there has been no order for the admission of expert evidence on the point, but Mr Davies KC says that I can deal with the matter on the basis of submissions under Rule 117(2) of the ADGM Court Procedure Rules which was how it was dealt with on the earlier applications.

22. Although I am content to proceed on that basis it has obvious disadvantages. The financial limit of a freezing order is normally set by reference to the highest sum in respect of which the claimant can make out a good arguable case. Justice Sir Andrew Smith made the WFO on the basis that ADCB had established a good arguable case against Mr Manghat for the relief sought. But in respect of the quantum of the claim he was unable to form any view about the relevant point of UAE law and in paragraphs 70 and 71 of the October Judgment he contemplated that the point could be taken on a subsequent application to vary. Similarly in relation to the value of the Exit Instruments the judge held that this was not something which he could or should seek to determine on the basis of the preliminary opinion of JS Held and that the question of value should be re-considered at a subsequent hearing.

23. The position today is that neither side has sought permission to file evidence about the value of the Exit Instruments. ADCB's position is that although they have been given a value in the accounts of US$845m their future value on maturity in 2027 remains uncertain. Mr Manghat contends that they have and will continue to have a significant value evidenced by the fact that they have been traded in the market for at least 70-75 cents on the dollar.

24. On the legal issues as to whether ADCB should give credit for the value of the Exit Instruments as part of its quantum calculation and whether its claim against him has been extinguished, Mr Manghat relies upon a witness statement of 4 November 2024 from Mr Mohammed Al Dahbashi who is a qualified UAE Advocate. He says that he has considered the 2021 deeds of company arrangement (the "**DOCAs**"), referred to earlier and has analysed their impact on the claim against Mr Manghat in these proceedings. He says that the DOCAs were designed to and constitute a settlement of claims

under Article 722 of the UAE Civil Code. The Deed Company Claims were released in exchange for the Group Creditors obtaining their respective entitlements in terms of the Exit Instruments. Once a claim (in this case the claims of ADCB against the NMC Group) is settled then a party loses its right to claim in respect of any of the settled matters covered by the settlement agreement: see Article 730 of the UAE Civil Code. On this basis ADCB's claim for the outstanding debts has, he says, been extinguished under UAE law and it cannot pursue this claim against Mr. Manghat: see Article 106 of the UAE Civil Code. Mr Manghat is also entitled to the benefit of the terms of the settlement contained in the DOCAs under Article 252 of the UAE Civil Code.

25. Mr. Pillai KC has advanced various criticisms of this evidence and there are a number of questions which it raises. Even assuming that the assignment of the NMC debts under the DOCAs does constitute a settlement of those claims for the purposes of Article 722 of the UAE Civil Code it is not obvious why it affects anyone beyond ADCB and its former debtors. Article 730 limits the accord to the parties to it and their heirs and ADCB is not asserting its contractual rights for the purposes of its claim against Mr Manghat so as to engage Article 106. Article 252 clearly does allow the benefit of a contract to be extended to third parties but that does not necessarily assist Mr. Manghat. There is no provision in the DOCAs under which ADCB has agreed to terminate its claims to recover its losses from third parties.

26. All of this confirms to me that I am not in the position on this application as it stands to decide the issues of UAE law as to whether credit must now be given for the value of the Exit Instruments and whether the DOCAs have had the effect of extinguishing ADCB's claim in tort against Mr. Manghat. To do so would require a consideration of expert evidence in all probability with cross examination. The summary disposal of these issues is simply not possible. Similarly, despite the time which has elapsed since the WFO was granted Mr Manghat has not sought to adduce valuation evidence of the kind which Justice Sir Andrew Smith indicated would be necessary for the Exit Instruments to be valued. Given the issue of law as to when and how credit is to be given for any recoveries which ADCB makes in relation to the Exit Instruments, the valuation evidence would need to include reasoned opinions on value both now, at the date in 2026 currently set for the trial and possibly at the maturity date in 2027. None of this is currently available.

27. I think that Mr Davies KC recognised these difficulties. But his principal submission on this aspect of the case is that regardless of whether under UAE law, ADCB must give credit now or only after trial for the value of the Exit Instruments it is indisputable that it cannot obtain double recovery. If it succeeds in the action then one way or another it will become bound to give Mr Manghat credit for the value of the Exit Instruments when the court determines what sum by way of damages, Mr. Manghat must pay. Mr Pillai accepted this. The Court should therefore, Mr Davies says, make some allowance for this when deciding what should be the financial limit of the WFO. Not to do so would be oppressive. The WFO is a discretionary remedy and the interests of ADCB can be sufficiently protected by an order in a reduced sum which recognises the reality of what is likely to happen in respect of the Exit Instruments. ADCB, he says, has purchased more Exit Instruments for US$67m all of which indicates that it recognises what they are likely to be worth. It has also appointed three out of the seven members of the board of Holdco. It is in the best position, he says, to know what the company's future prospects are likely to be. Yet it has chosen to put in no evidence about this and simply relies on a legalistic argument about when under UAE law it needs to take account of the value of the Exit Instruments.

28. These are serious arguments, but in the end, I feel bound to reject them. This is an application to vary the financial limit which was placed on the WFO by reference to the amount of ADCB's claim. Justice

Sir Andrew Smith recognised that there were issues about quantum which would depend at the trial on evidence about UAE law and valuation. He declined to deal with those issues on the material before him but made provision in the form of the undertakings obtained from ADCB for Mr Manghat, if so advised, to raise them for consideration on a subsequent application for the variation of his order. Mr. Manghat has taken advantage of that but does so without filing any further valuation evidence or evidence of UAE law which relates to the issue of quantum and the position of the Exit Instruments. I am therefore in no better position than the judge was when granting the WFO in the first place. The amount of the claim is pleaded and particularised; there is a live issue about how and when credit will be given for the value of the Exit Instruments; and there is no valuation evidence to assist me in deciding what, if any, value is to be ascribed to them some years hence which is the time when any question of giving credit for them is likely to arise. In these circumstances I would not, in my judgment, be justified in reducing the financial limit on these grounds.

29. The argument about giving credit for the value of the Exit Instruments, even if successful, would not of course support a reduction in the amount of the WFO from US$1bn to US$16.7 m. ADCB has pleaded claims for losses of over US$1.1 bn. Even if this were to be reduced by the accounting value of the Exit Instruments of US$845m it would still justify an order freezing assets of up to US $250m. Mr Davies KC accepts that as a matter of arithmetic giving credit now for the value for the Exit Instruments even at a value of US$845 million would not reduce ADCB's claim to anything approaching the figure of $16.7m which is the amount referred to in the draft order. To get to that figure I would have to accept the new argument that the effect of the DOCAs under UAE law was to extinguish all but ADCB's claim for the costs of the administration. For the reasons which I have already given that is not possible on this application.

30. The basis for seeking the territorial restriction of the WFO to the UAE is the hardship which Mr Manghat says that he is suffering as a result of the WFO in its present form. In his recent witness statement of 4 November 2024, he says that the combined effect of the WFO and a parallel attachment order made in the pending criminal investigation against him has made it virtually impossible for him to meet his ongoing liabilities in particular in respect of the payment of the mortgage on his house in Dubai. Although Mr Manghat has left Abu Dhabi for India where he remains, his wife and children continue to live at the house in Dubai. There are now significant arrears on the mortgage account and DIB, the mortgagee, has taken steps to foreclose and obtain possession of the property.

31. Although Mr Manghat has assets both in the UAE and abroad which could be used to pay the mortgage instalments and his other living expenses, it has been, he says, practically impossible to do so due to a combination of two factors. The first is the effect of the attachment order imposed on him as part of the criminal investigation. This affects only his assets in the UAE where he has various bank accounts with sufficient funds to discharge his mortgage and other liabilities. But the attachment order (unlike the WFO) does not contain any provision entitling him to use his money in the UAE in order to meet his living and other expenses. Unless this position changes his entitlement under the WFO to withdraw US$12,600 a week towards his ordinary living expenses will not enable him to access the accounts in the UAE. The only assets which he will be able to use are those located in India and elsewhere abroad.

32. Mr. Manghat does have assets in India including property and shareholdings in a number of private companies. But he says that the existence of the WFO and its extension to his assets in India has made it impossible in practice to access these sources of funds. Indian banks and other financial institutions are said to be very conservative when dealing with someone who is subject to a freezing

order and in practice will not allow him to deal with any of his assets. Nor will they lend money to him even if secured by a mortgage on the property which he owns. Many of his assets, such as the shares in private companies, are also not easily tradeable and Mr. Manghat says that potential buyers will not deal with him once his identity is revealed to them.

33. There are three matters which he says are of immediate concern. The first is the possible re-possession of his home in Dubai which I have already mentioned. The second is the health of his wife. She may need medical treatment in the near future which will have to be paid for. As I understand it, there is no public health service in Dubai. The third concern is his legal costs. To date they have been funded under an insurance policy but the cover is not indefinite and may become exhausted, he says, by the first quarter of 2025.

34. Mr. Manghat criticises ADCB for the length of time which the criminal investigation has taken. It began in 2020 after ADCB had filed a complaint against him and he says that there is no indication that ADCB has made any attempt to bring the complaint to a conclusion. I am not sure what he is suggesting that ADCB should do. Once a complaint has been filed, then it is for the authorities in the UAE to conduct the investigation and decide whether to prosecute. In 2023 Justice Sir Andrew Smith was persuaded to send a letter to the Abu Dhabi Public Prosecutor asking for an update on the position. The Prosecutor replied in November 2023 confirming that no criminal proceedings have been commenced and that the investigation is still ongoing.

35. The variations of the WFO which Mr Manghat seeks are intended to address the impasse which he says is created by the combined effect of the criminal attachment order and the application of the WFO to his assets in India. The restriction of the WFO to the UAE will, he says, enable him to dispose of his assets in India more easily so as to be able to pay the mortgage arrears and his wife's medical expenses. On the basis that the criminal attachment order is likely to continue for the foreseeable future this is said to be the only way in practice of enabling Mr Manghat's living and legal expenses to be met.

36. I accept, of course, that a freezing order is not to be used as an instrument of oppression and is intended to prevent dissipation of assets; not expenditure by a defendant on what is needed to meet his ordinary living and other expenses. But the difficulty which I have with the application is that the original WFO has already made provision for this. If the limits contained in paragraph 7 of the WFO are inadequate to meet the situation which has arisen then they can be varied either by agreement between the parties or if necessary by application to the Court either to increase the amount which Mr. Manghat is entitled to spend or to free an identified asset from the order so as to allow it to be realised.

37. The present application, however, seeks a blanket variation of the WFO so as to remove its extra-territorial effect entirely. This is put on the basis that banks and other financial institutions in India take too conservative a view of the meaning and effect of a WFO and (by inference) are reluctant to allow assets under their control to be used even for the purposes permitted by the order. There is however no specific evidence of a bank taking this position in relation to Mr Manghat nor, for example, of correspondence between his solicitors and a bank or other institution in relation to a refusal to give effect to the terms of paragraph 7 of the WFO. One would have thought that it would be possible for Mr. Manghat's solicitors to bring expressly to the attention of the relevant party in India precisely what the WFO does and does not permit. I am also unclear as to why Mr Manghat's position will necessarily be improved in relation to the disposal of his other assets by the restriction of the WFO to the UAE.

If, as he suggests, the problem is one of reputation then that is likely to continue until the end of the proceedings.

38. Ultimately, I am not persuaded that the removal of a substantial part of the protection granted by the WFO in its present form is justified on this application either as a matter of law or on the evidence. Justice Sir Andrew Smith granted a worldwide order on the basis that ADCB had established a good arguable case for a claim in the sum of US$1bn and that there was a real risk of dissipation. I would not be justified in restricting that order to Mr Manghat's assets in the UAE simply on the basis that banks and other institutions in India may be misinterpreting the terms of the WFO. If that is a problem then there are other ways of addressing it. Mr Manghat has solicitors who can clarify what he is permitted to do. It would not be a proper exercise of my discretion to attempt to meet that problem by depriving ADCB of a significant part of the protection which the WFO was intended to provide.

39. I therefore refuse the Variation Application. Any submissions on costs should be filed and I will deal with them on the papers.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
22 November 2024