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

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

BETWEEN

ABU DHABI COMMERCIAL BANK PJSC
Claimant

and

PRASANTH MANGHAT
Defendant

AND

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

BETWEEN

(1) NMC HEALTHCARE LIMITED
(in administration) (subject to a deed of company arrangement)
(2) NMC HOLDING LIMITED
(in administration)
(3) RICHARD DIXON FLEMING
(in his capacity as Joint Administrator of the First and Second Claimants)
(4) BENJAMIN THOM CAIRNS
(in his capacity as Joint Administrator of the First and Second Claimants)
Claimants

and

(1) BAVAGUTHU RAGHURAM SHETTY
(2) PRASANTH MANGHAT
(3) BANK OF BARODA
Defendants

AND

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

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

AND IN THE MATTER OF THE INSOLVENCY REGULATIONS 2015

BETWEEN

(1) NMC HEALTHCARE LIMITED

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

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

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

(4) BENJAMIN THOM CAIRNS

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

Applicants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Respondents

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2023] ADGMCFI 0025
Before:	Justice Sir Andrew Smith
Decision Date:	29 December 2023
Decision:	1. The Manghat Directions Application be granted. 2. The trial date and the pre-trial review in case [2022] ADGMCFI 111 be vacated. 3. There be a case management conference fixed in cases [2022] ADGMCFI 111, [2022] ADGMCFI 299 and [2020] ADGMCFI 020 in the second half of February 2024 or in early March 2024.
Hearing Date(s):	13 November 2023 and 14 November 2023
Date of Orders:	29 December 2023
Catchwords:	Co-ordinated management of proceedings, and order for joint trial. Defendant facing like allegations in separate proceedings. Risk of inconsistent decisions. Vacating trial date, prejudice to claimant. Disclosure, CPR r.89(1)
Cases Cited	Karam Salah Al Din Awni Al Sadeq v Dechert LLP and ors [2021] EWHC 1149 (QB) Lungowe and ors v Vedanta Resources plc and anor [2019] UKSC 20 Aratra Potato Co Ltd v Egyptian Navigation Co (The El Amria), [1981] 2 Lloyd's Rep 119 J Bollinger SA and anor v Goldwell Ltd [1971] FSR 405 Athena Fund SICAV-FIS SCA and ors v Secretariat of State for the Holy See [2022] EWCA Civ 1051 Abraham and anor v Thompson and ors [1997] All ER 362 Marex Financial Ltd v Sevilleja [2020] UKSC 31 Mulholland and anor v Mitchell [1971] AC 666 Deeny and ors v Gooda Walker Ltd (in liquidation) and ors [1995] 1 WLR 1206
Legislation Cited:	Federal Law No. 5 of 1985 on the Civil Transactions Law of the United Arab Emirates Federal Law No. 2 of 2015 on Commercial Companies ADGM Insolvency Regulations 2022 ADGM Court Procedure Rules 2016 Federal Decree Law No. 14 of 2018 on the Central Bank and the Organisation of Financial Institutions and Activities
Case Number:	ADGMCFI-2022-111; ADGMCFI-2022-299; and ADGMCFI-2020-020

Parties and representation:	**Case No.: ADGMCFI-2022-111** ***Claimant*** Mr Rajesh Pillai KC, Mr Scott Ralston and Ms Rebecca Zaman Instructed by Holman Fenwick Willan LLP ***Defendant*** Mr Huw Davies KC and Mr David Peters Instructed by Kobre & Kim (GCC) LLP **Case Nos.: ADGMCFI-2022-299; and ADGMCFI-2020-020** ***Claimants/ Applicants*** Mr Henry King KC, Mr Nico Leslie and Ms Alexandra Whelan Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP ***First Defendant/ Respondent*** Ms Ruth den Besten KC and Mr Kajetan Wandowicz Instructed by Farrer & Co ***Second Defendant/ Respondent*** Mr Huw Davies KC and Mr David Peters Instructed by Kobre & Kim (GCC) LLP ***Third Defendant/ Respondent*** Mr Neil Kitchener KC and Ms Maria Kennedy Instructed by Baker & McKenzie LLP

JUDGMENT

Introduction

1. By an application of 14 September 2023 (the "**Manghat Directions Application**"), Mr Prasanth Manghat seeks orders that two claims against him in different proceedings be "*subject to co-ordinated case management",* and that there be "*a concurrent trial*" of the two proceedings. I heard the Manghat Directions Application at a hearing on 13 and 14 November 2023, but, for reasons that I explained in my judgment of 17 November 2023, [2023] ADGMCFI 0022 (the "**November judgment**"), I deferred my decision until I had heard an application by another defendant in one of the actions, Dr B R Shetty, (the "**Shetty Restraint Application**") that those proceedings be stayed pending determination of related proceedings in the English High Court. I heard Dr Shetty's application on 13 and 14 December 2023, and at the end of that hearing, I was assisted by further brief submissions about one point that arises on the Manghat Directions Application.

2. By a judgment to be issued at the same time as this, [2023] ADGMCFI 0024, I refuse the Shetty Restraint Application. I therefore proceed to decide the Manghat Directions Application.

The background to and nature of the proceedings against Mr Manghat (repeated from the November judgment)

3. I set out the background to and nature of the proceedings against Mr Manghat in the November judgment, and, for convenience of reference, I repeat some of it.

4. The actions both concern the NMC Group of companies, of which Mr Manghat has been Chief Financial Officer, then Deputy Chief Executive Officer and then from March 2017 to February 2020 Chief Executive Officer, and of which Dr Shetty was the founder and the Chief Executive Officer until 2017 and thereafter its Non-Executive Joint Chairman.

5. In April 2020, the English High Court made an administration order in respect of the parent company of the NMC Group, NMC Health PLC ("**NMC PLC**"), because it was insolvent. In September 2020 this Court appointed administrators over NMC Healthcare Limited ("**NMCH**") and NMC Holding Limited ("**Holding**"), and many of NMCH's operating subsidiaries. NMCH, Holding and these operating companies had originally been incorporated variously in Abu Dhabi, Dubai and Sharjah, and were registered in the Abu Dhabi Global Market ("**ADGM**") earlier in September 2020. NMCH and Holding are still in administration. The operating subsidiaries came out of administration in March 2022, after they and NMCH had entered into interlinked deeds of company arrangement (the "**DOCAs")**, whereby, as NMCH claims, the operating companies assigned to NMCH various rights and actual and prospective claims arising out of the insolvency and events leading to it.

6. The insolvencies are said to have resulted from a fraud perpetrated against the NMC Group. I gave a description of the Group and the alleged fraud in my judgment in *NMC Healthcare LTD (in administration) and associated companies v Dubai Islamic Bank PJSC and ors, [2023] ADGMCFI 0017* at paragraphs 42-51.

7. The first claim against Mr Manghat, to which I shall refer as the "**ADCB claim**", is made by Abu Dhabi Commercial Bank PJSC ("**ADCB**"), which extended facilities to the NMC Group and which is a major creditor in the administrations. These proceedings were brought in May 2022. The background is that ADCB had brought proceedings in England against Mr Manghat and five other senior officers of the NMC Group, including Dr Shetty and including a Mr Suresh Kumar, who had been the Group's Deputy Chief Financial Officer from November 2016 until February 2020. However, Dr Shetty, Mr Manghat and some other defendants successfully challenged the jurisdiction of the English Court, and these English proceedings were stayed against those defendants by a judgment of 1 April 2022 of HH Judge Pelling QC. He concluded (at para 183 of his judgment) that "*(a) there is another forum which is clearly and distinctly more appropriate than the English forum namely Abu Dhabi and (b) ... there are no circumstances by reason of which justice requires this claim to be tried here rather than Abu Dhabi"*.

8. Essentially, ADCB pursues in this Court against Mr Manghat, and only Mr Manghat, the complaints that it had brought in the English proceedings. It alleges, *inter alia*, that Mr Manghat knowingly participated in a so-called "*Loan Recycling Scheme*", whereby, it is said, property and monies were improperly extracted from the NMC Group, and the resulting debts were not disclosed in the Group's financial statements; and that he gave ADCB false assurances about the accuracy of the financial statements. ADCB makes claims under the *Federal Law No. 5 of 1985 on the Civil Transactions Law of the United Arab Emirates* (the "**Civil Code**"), particularly Articles 282 and 285, and *Federal Law No. 2 of 2015 on Commercial Companies*' (the "**CCL"**). Mr Manghat denies the allegations. ADCB places a value of "*at least*" some US$1.1 billion on its claims.

9. The other proceedings in this jurisdiction against Mr Manghat, to which I shall refer as the "**JA claim**", are brought by NMCH, Holding and their joint administrators (the "**JAs**"). The claims of NMCH and its administrators include claims that are said to have been assigned to it by the

operating subsidiaries. The defendants are Dr Shetty, Mr Manghat and the Bank of Baroda. The proceedings involve, *inter alia*, claims under the *ADGM Insolvency Regulations 2022* in fraudulent trading and against Dr Shetty and Mr Manghat in wrongful trading, claims under United Arab Emirates ("**UAE**") law alleging fraud and gross negligence, and claims in conspiracy and liability as an accessory under ADGM law. The case against the Bank of Baroda also includes claims under Indian law alleging breach of banking standards. The JA claim is said to have a value of "*at least*" US$5 billion.

10. Mr Manghat's argument was presented by Mr Huw Davies KC and Mr David Peters. The application was opposed by ADCB, represented by Mr Rajesh Pillai KC with Mr Scott Ralston and Ms Rebecca Zaman; by Dr Shetty, represented by Ms Ruth den Besten KC and Mr Kajetan Wandowicz; and by the Bank of Baroda, represented by Mr Neil Kitchener KC and Ms Maria Kennedy. The JAs, represented by Mr Henry King KC, Mr Nico Leslie and Ms Alexandra Whelan, stated their position as being that "*they do not oppose the application of Mr Manghat*" and that, in their view, there are "*compelling practical reasons why the proposed coordination will promote the administration of justice*".

11. I should add that, in evidence in support of the Manghat Directions Application, Mr Paul Hughes of Kobre & Kim LLP, Mr Manghat's legal representatives, observed that both the Bank of Baroda and Dr Shetty said that a fair outcome would be to stay the ADCB claim pending resolution of the JA claim; and that, although this is not the "*primary aim*" of Mr Manghat's application, it remains open to the Court to order a stay, given that ADCB stand to benefit from "*any positive ruling*" on the JA claim in view of it being "*the primary creditor*", and noting that Mr Manghat has disclosed that his assets do not exceed US$50 million. However, no party has applied for a stay of the ADCB claim.

12. The proceedings with which the Manghat Directions Application is directly concerned are two of the numerous complaints and actions, in this jurisdiction, elsewhere in the UAE, in England and in other jurisdictions, that have resulted from the NMC Group's affairs and insolvency. Before considering the arguments on the application, I introduce some of the other proceedings.

13. First, ADCB has made criminal complaints against Dr Shetty and Mr Manghat in the UAE. As far as the complaint against Mr Manghat is concerned, it has not, so far as he is aware, resulted in criminal proceedings against him, but it has resulted in an assets freeze and travel bans for him and his family. As far as the information before me goes, the complaint against Dr Shetty has not resulted in criminal proceedings against him.

14. Secondly, Dr Shetty, together with an Abu Dhabi company called Neopharma LLC, has brought proceedings in New York against, amongst others, the Bank of Baroda, Mr Manghat and Mr Kumar, Dr Shetty claiming that he is the victim of a "*massive fraud surrounding NMC Health PLC and its surrounding entities*".

15. Thirdly, Mr Kumar did not apply to stay the proceedings brought against him in England by ADCB, and they continue against him there. I was told that the trial is listed to start on 22 October 2025.

16. Fourthly, NMC PLC has brought proceedings for damages in England against Ernst & Young LLC, the former auditors of the NMC group, alleging that they failed to identify the fraud. Those proceedings are listed for hearing over 15 weeks between about April or May 2025 and October 2025, and therefore the hearing is due to conclude shortly before the ADCB proceedings against Mr Kumar are listed for trial.

17. Finally, NMC PLC has brought proceedings against Dr Shetty, Mr Manghat and the Bank of Baroda making claims under the *Insolvency Act 1986 (UK)* and civil claims under English law for breach of

duty, breach of contract and conspiracy, and in the alternative claims based on the Civil Code. They are described in my judgment on the Shetty Restraint Application.

The legal basis of the Manghat Directions Application

18. In my November judgment, I upheld Mr Manghat's submission that the Court has power to make the order that he seeks under the ADGM Court Procedure Rules 2016 ("**CPR**") rule 8(1) which provides as follows: "*The Court may make any order, give any direction or take any step it considers appropriate for the purpose of managing the proceedings and furthering the overriding objective of these Rules as set out in Rule 2(2)*". The question that I now decide is whether such an order is appropriate and furthers the overriding objective, which is stated in Rule 2(2) to be to "*secure that the system of civil justice in the ADGM Courts is accessible, fair and efficient*".

19. All counsel before me cited English authority about applications for concurrent trials, and in particular the judgment of Murray J in *Karam Salah Al Din Awni Al Sadeq v Dechert LLP and ors [2021] EWHC 1149 (QB).* At paragraph 79 of his judgment, Murray J provided a useful check-list of principal factors that might be relevant on an application of this kind, but I found judgments in this and other cases of little assistance for two main reasons: first, a decision for such a direction is, as Murray J said, distinctly fact-sensitive; and secondly, as I have said, CPR r. 8 itself stipulates the principles that should govern my decision, and they are not exactly reflected in English law.

The main arguments in support of the Manghat Directions Application

20. The basis for Mr Manghat's application is that he faces the prospect of having to litigate twice whether the NMC Group was the victim of the alleged fraud, and if so, whether he was party to it or knew of it: in the proceedings brought by ADCB against him, which are listed to be tried over five weeks from August 2024; and the JA claim, which is likely to be listed for a considerably longer trial in late 2025 or 2026, perhaps a trial, it has been realistically suggested, over 12 to 16 weeks. He argues that this is unfairly oppressive for him, and that case management considerations call for the proceedings to be co-ordinated, not least to avoid the risk of inconsistent judgments.

21. I need no persuading of the demands that separate trials would make on Mr Manghat, who is a private individual without the financial means of the claimants who are suing him in the two actions. No doubt, if ADCB succeeds in its claim against him for anything like the sum claimed, the claimants in the JA action will review whether their prospects of enforcing any judgment justify pursuing claims against him, and it is possible that he would not, in the event, face a second trial. Even then, it will be demanding, and expensive, for Mr Manghat to have to defend the JA claim while preparing for the ADCB trial. But the greater concern is, to my mind is that, if Mr Manghat defeats the claims by ADCB, Mr Manghat will have to face a second trial on what he argues are essentially the same allegations, and have to find, if he can, the resources to do so.

22. Mr Pillai described as a "*factor of peripheral importance*" that Mr Manghat is being vexed by two proceedings. He acknowledged that Mr Manghat faces the prospect of giving evidence and being cross-examined twice, but submitted that this consideration is the less concerning because Mr Manghat was the CEO of a company listed on the English Financial Times Stock Exchange 100 index which had some $4 billion in undisclosed debt, and "*is alleged to have conducted himself in such a way as to give rise to multiple fraud claims against him ...*". This submission comes close to inviting me to decide the Manghat Directions Application on the assumption that, whether or not he is liable to ADCB, Mr Manghat's conduct as CEO is to be criticised, and that he is therefore responsible for inviting claims against him. I decline to do so.

23. It was also said that, in any case, Mr Manghat faces claims in New York brought by Dr Shetty and in England by the Administrators of NMC PLC. However, I was told that the New York proceedings

have not been served on Mr Manghat, and certainly there is no evidence that they are being actively pursued against him. The future of the English proceedings is uncertain in view of my decision on the Shetty Restraint Application.

24. Next, Mr Pillai observed that Mr Manghat will recover, or is likely to recover, costs if he defeats the ADCB claim. That is so, but in litigation of this kind, a party seldom recovers all the costs that he incurs, and they are not recovered immediately.

25. Finally, Mr Pillai responded to Mr Manghat's concern about dealing with the JA claim while preparing for the ADCB trial by arguing that he will have served his defence in the JA claim in early 2024 and thereafter his commitments can be managed "*in the ordinary way*". I do not consider that this answers Mr Manghat's concern, but I agree that this part of his argument, if taken in isolation, is of relative importance.

26. In my judgment, Mr Manghat's complaint that it is oppressive for him to face two trials is certainly not of merely "*peripheral*" significance. It is not by itself determinative of where the interests of fairness and justice lie, but it is an important consideration.

27. The basic structure of ADCB's pleaded claim is that: (i) misrepresentations were made to it, including that financial statements of NMC PLC had been honestly prepared and were not materially misstated; (ii) NMC PLC was carrying on its business properly and legitimately, and Mr Manghat was not aware of anything that prevented financial statements of NMC PLC from giving a true and fair view; (iii) Mr Manghat made or was otherwise responsible for those misrepresentations, and knew that they were false; (iv) in reliance on the representations, ADCB entered into agreements for, and advanced, facilities to the NMC Group; (v) as a result, ADCB suffered loss when the NMC Group was revealed to be insolvent because it cannot recover outstanding sums owing on the facilities; and (vi) ADCB is entitled to compensation for that loss under the Civil Code and the CCL.

28. It is therefore the case, as Mr Pillai submitted, that the ADCB claim raises matters that are irrelevant to the JA claim, I have described the causes of action pleaded in the JA claim in my judgment on the Shetty Restraint Application, and I need not repeat that description here. It suffices for present purposes to say that the focus of the JA claim is that wrongdoing is alleged to have taken place in the NMC Group, including as against Mr Manghat on his alleged part in, and knowledge of, it; and that the wrongdoing involved: (i) unlawful payments made, directly and indirectly, to Dr Shetty and other shareholders (together, the "**Principal Shareholders**"); (ii) unlawful payments to Mr Manghat or for his benefit; (iii) unlawful payments to or transactions for the benefit of, related parties; and (iv) that the NMC Group entered into facilities and other commitments for wrongful purposes that were not disclosed in the financial statements.

29. Mr Manghat, for his part, admits in the ADCB claim that there was fraud in the NMC Group, but he does not admit its nature, extent and duration, and denies being party to it or having knowledge of it.

30. The discrete issues in the ADCB claim therefore include the following: (i) whether the alleged representations were made to ADCB; (ii) whether Mr Manghat is responsible for them; (iii) whether ADCB entered into the facilities and the terms of any facilities; (iv) whether it relied on the representations if it extended facilities to the NMC Group; (v) whether it was deceived; and (vi) what liabilities for the facilities were outstanding when the NMC Group was revealed to be insolvent.

31. Mr Damian Honey, of Holman Fenwick, Willan LLP ("**HFW**"), ADCB's solicitors, was therefore able to say in a witness statement that "*the majority of factual and legal issues in the ADCB claim do not fall for determination in the ADGM JA Claims*". That might be so, depending on what is counted

as a single "*issue*", although Mr Davies disputed Mr Honey's evidence, presenting his own detailed analysis of what allegations are disputed in the two actions. I shall not engage in an analysis of that kind, because what matters is not so much what is formally in issue on the pleadings, but what realistically are likely the core issues at trial. Here I am persuaded by the thrust of Mr Davies' submissions, summarised in his skeleton argument as follows: "*The key point is that the vast majority of the disclosure, evidence (written and oral) and submissions in both the ADCB Claim and the JA Claims are likely to be devoted to the existence and extent of the Alleged NMC Fraud, and the responsibility of various persons (including non-defendants) for the perpetration of that alleged fraud. The overlap between the NMC Claims is therefore very substantial. It is no answer for ADCB to point out that there are various issues which are not common to those claims – particularly where those non-common issues are much narrower in their scope*". Allowing for an element of advocate's licence in the expression "*vast majority*", I agree.

32. At the heart of both cases is the allegation that Mr Manghat was party to and knew of the wrongdoing that I have described. Indeed, ADCB has incorporated into its particulars of claim allegations as pleaded in the JA claim, expressly adopting long schedules of payments alleged to have been made unlawfully to Dr Shetty or for his benefit, a schedule of payments alleged to have been made wrongfully to or for the benefit of Mr Manghat, a schedule of payments alleged to have been made wrongfully to other shareholders, and a schedule of undisclosed collateral benefits. With regard to the undisclosed debt, ADCB pleads that "*[t]he best up to date particulars that ADCB can give of the current estimate ... are those relied upon by the Joint Administrators, namely, the sum of USD 4 billion as at 30 June 2019*", which is the amount pleaded by the JAs in their Particulars of Claim, which I infer is ADCB's source.

33. No doubt anticipating this point, Mr Honey said that the allegations of fraud will have to be proved in far more detail in the JA claim than in the ADCB claim, because in the ADCB claim the Court will not require detailed evidence about, nor need to make detailed findings about, "*the precise mechanics and duration of the NMC Fraud or the total amount stolen from the NMC Group or the NMC Group's total losses as a result*", and that ADCB "*simply needs to establish that Mr Manghat participated in the NMC Fraud, and that Mr Manghat knowingly deceived ADCB about the true state of the affairs in the NMC Group to induce ADCB to extend or continue credit to NMC*". This argument stands in contrast to the minute detail of ADCB's pleading against Mr Manghat, which is the case that Mr Manghat has to meet. I find this evidence of Mr Honey unpersuasive: it might well be that, in the end, ADCB does not need to prove each one of its detailed allegations in order to establish Mr Manghat's liability, but that does not mean that the trial will not focus on the specific instances of wrongdoing that are alleged and Mr Manghat's part in them. It flies in the face of experience to suppose that serious allegations of complex financial wrongdoing cannot be properly assessed without examining specific allegations with particularity.

34. I therefore accept Mr Manghat's submission that, if the two claims in this jurisdiction are tried separately, he will face two trials, and face cross-examination at two trials, that focus on the same allegations of wrongdoing against him. It was said in evidence by Mr Benjamin Longworth of Farrer & Co LLP, who act for Dr Shetty, that "*this is the inevitable consequence of [Mr Manghat's] agreement to the ADGM Court's jurisdiction, when no other defendant to the English ADCB Proceedings was prepared to do so*". Mr Longworth does not explain on what basis Mr Manghat might have disputed this Court's jurisdiction over ADCB's claim against Mr Manghat, and in any case I am not persuaded by Mr Longworth's point: Mr Manghat is not to be criticised for not making a jurisdiction challenge.

35. I come to Mr Manghat's related argument that, if there are separate trials, there is a real risk of inconsistent judgments. Of course, there will always be a risk of inconsistent decisions when the same issues are to be decided at two or more trials, but I consider that the risk is particularly acute

here. It would appear that neither Dr Shetty nor Mr Manghat will contend that there was no fraud in the NMC Group, and the thrust of the defence of each of them to the JA claim will be that he knew nothing of the fraud and that, together with third parties, the other is responsible for it. Although defences have not been filed by Dr Shetty or Mr Manghat in the JA claim, that appears to me a reasonable inference from Dr Shetty's pleading in his New York action and from Mr Manghat's defence to the ADCB claim. Dr Shetty is not, of course, party to the ADCB claim, and it appears highly unlikely that his evidence will be available at a separate trial of the ADCB claim. On the face of it, it is likely that, if the JA claim proceeds to trial against them both, Dr Shetty and Mr Manghat will both give evidence. Therefore, I must consider the risk that inconsistent judgments might result from a trial in which Dr Shetty does not give evidence and one where he does, and I regard that risk as far from fanciful.

36. It was said that ADCB could not complain if, as a result of separate trials, it fails to establish wrongdoing against Mr Manghat, whereas he is held liable for it in the JA claim. However, there is a public interest in judgments being consistent. Moreover, there is no corresponding argument about the position if Mr Manghat were to be held liable for wrongdoing in the ADCB claim, but it was determined at a subsequent trial of the JA claim that he was not liable for any wrongdoing.

37. Further, the JAs properly identify a risk of inconsistent judgments because the Court faces the prospect of having to decide in both proceedings identical issues of UAE law (both claims rely on articles 282 and 285 of the Civil Code and on the CCL) and to apply them to the same facts.

38. Mr Pillai argued that, given the number of actions proceeding in different jurisdictions as a result of the affairs and insolvency of the NMC Group, the Court should accept that the risk of inconsistent findings and decisions is unavoidable, and "*it is not the role of this Court, or any court, to act as a public inquiry tasked with discovering the truth of the NMC fraud*"; and that the Court's role is to resolve the disputes that come before it in each case. Mr Kitchener similarly submitted that the risk of inconsistent judgments "*is irreducible in the present circumstances given the multiplicity of claims brought worldwide by a multiplicity of different parties*". That does not persuade me that, because the risk of inconsistent judgments cannot be eliminated, the Court should not seek to minimise it, at least between the ADGM cases that it decides.

39. I add that I am inclined to think that the point about the volume of litigation in different jurisdictions was exaggerated: for example, Mr Kitchener claimed that Mr Manghat is defendant to seven pieces of litigation, and the Bank of Baroda is involved in no fewer than eighteen, but those claims do not withstand scrutiny. A schedule to Mr Kitchener's skeleton argument showed that, apart from the ADCB claim and the JA claim that are the immediate subjects of this application, and the proceedings in England brought by the Joint Administrators of NMC PLC, which are considered in my judgment on the Shetty Restraint Application and where the parties are making sensible effort to avoid parallel proceedings being pursed to trial, the "*pieces of litigation*" against Mr Manghat were the ADCB claim in England, which has been stayed against four of the defendants, including Mr Manghat; the proceedings brought in New York by Dr Shetty, which I was told have not been served on Mr Manghat and in which the jurisdiction of the New York Court has been challenged by other defendants; and criminal complaints in the UAE and India, which have not yet resulted in charges. As for the pieces of litigation involving the Bank of Baroda, they apparently include many separate actions brought by the Bank of Baroda against Dr Shetty in India and the UAE. The Bank has not explained the nature of these proceedings or why it has brought so many separate actions against him.

40. Mr Kitchener cited the judgment of Lord Briggs in *Lungowe and ors v Vedanta Resources plc and anor [2019] UKSC 20* about the principle of *forum conveniens*: referring to the position where proceedings could not be brought against all defendants to a claim in the same jurisdiction, with

the consequence that trial there against only some of the defendants carried a risk of "*multiplicity of proceedings about the same issues, and inconsistent judgments*", Lord Briggs said "*the cases in which this risk has been expressly addressed tend to show that it is only one factor, albeit a very important factor indeed, in the evaluative task of identifying the proper place*" (at para 69). Mr Kitchener argued that, similarly here, the risk of inconsistent judgments is not a conclusive argument in support of the Manghat Directions Application. I agree, but I consider that, also similarly, it is a relevant and important consideration.

41. It is firmly established that the common law Courts seek to manage litigation to avoid the risk of inconsistent decisions. In a well-known dictum in *Aratra Potato Co Ltd v Egyptian Navigation Co (The El Amria), [1981] 2 Lloyd's Rep 119* (at p.128) (which Lord Bingham cited in *Donohue v Armco Inc and ors [2001] UKHL 64 at para 27),* Brandon LJ described *"the risk inherent in separate trials ... that the same issues might be determined differently in the two countries*" as *"a potential disaster from a legal point of view*". I would similarly regard the risk of inconsistent decisions by the same court in the same jurisdiction. It would necessarily mean that the Court, though governed by the same procedural code, has reached the wrong result in one or other of the cases (if not in both). I am not persuaded that this can be accepted simply as a matter inherent in adversarial litigation, as Mr Pillai seemed to suggest, nor that therefore the Court should view the risk with such equanimity.

42. In my judgment, therefore, there is force in both the main arguments that Mr Manghat presented in support of his application: that separate trials of unco-ordinated proceedings would be oppressive on him, and that there is a real risk of inconsistent judgments resulting therefrom.

ADCB's main argument against the Manghat Directions Application

43. If the application is granted, clearly the trial of ADCB's claim cannot go ahead in August 2024, and will be delayed until late 2025 at the earliest. As a general rule, claimants are entitled to have their claims tried with reasonable expedition: in my judgment on the Shetty Restraint Application, I cite the dictum of Megarry J in *J Bollinger SA and anor v Goldwell Ltd [1971] FSR 405, 408* that "*a litigant is entitled not to be delayed in the determination of his dispute without good cause"*, and the judgment of Males LJ in *Athena Fund SICAV-FIS SCA and ors v Secretariat of State for the Holy See, [2022] EWCA Civ 1051* esp at para 59. Mr Pillai also cited Potter LJ in *Abraham and anor v Thompson and ors [1997] All ER 362, 374:* "*the starting point in any case where a stay is sought … should be the fundamental principle that … an individual … is entitled to untrammeled access to a court of first instance in respect of a bona fide claim based on a properly pleaded cause of action …". A fortiori*, a party is not lightly deprived of a fixed trial date. In this jurisdiction, this principle is reflected in the overriding objective of the CPR to secure that the system of civil justice in the ADGM is "*accessible",* as well as fair and efficient: see CPR r.2.

44. Mr Pillai submitted that, if the trial were deferred, the evidence would be less reliable because the memories of witnesses would fade. I am not persuaded that this is a weighty consideration here: I find it difficult to accept that the ADCB claim will depend upon the reliability of oral evidence, or that the delay that would result from granting the Manghat Directions Application would detract from such oral evidence as will be required for the trial.

45. It was also said that ADCB is properly concerned (although the evidence submitted on its behalf does not so state) to have its claim tried promptly in order to show that it will robustly investigate and pursue complaints of fraud, and it is in the public interest that it does so. This policy is, of course, appropriate for a bank of ADCB's standing, and I do not doubt that its concern is sincere: it has already been demonstrated by the persistence with which ADCB has pursued its claim and by its criminal complaint against Dr Shetty and Mr Manghat. However, ADCB has not explained why this requires that the claim against Mr Manghat be tried in August 2024 rather than later, nor,

as far as the material before me suggests, why its robust policy about fraud has not required it to pursue its claim against Dr Shetty after the English claim against him was stayed.

46. Nevertheless, I should not vacate the August 2024 trial date and delay the trial of ADCB's claim in the face of ADCB's opposition without strong reasons for doing so. It is no answer that, as Mr Davies argued, at one time ADCB preferred a trial later in 2024. Nor am I impressed by Mr Manghat's argument that ADCB has not progressed its claim expeditiously. The fact remains that ADCB has been preparing for trial in August 2024, and I do not consider that any such criticisms of ADCB justify delaying the trial or should make the Court more ready to defer it.

47. Nor do I consider that, as was suggested, the Court should be less concerned about delaying the resolution of the ADCB claim because ADCB is a substantial creditor in the NMC Group's insolvent estate, and (as Mr Davies put it in his skeleton argument) "*has a direct financial interest in the JA Claims being resolved as quickly and as efficiently as possible*". It was established in *Marex Financial Ltd v Sevilleja [2020] UKSC 31* that a creditor of an insolvent company is entitled to pursue a claim against a wrongdoer for a loss that has an existence recognised in law to be separate and distinct from the loss of the insolvent company, and that there is no reason to give the insolvent company an automatic right to some priority over the creditor in pursuing claims against a wrongdoer. As the UK Supreme Court said in the *Marex* case (at para 87), "*the pari passu principle does not give the company, or its liquidator, a preferential claim on the assets of the wrongdoer, over the claim of any other person with rights against the wrongdoer, even if that creditor is also a creditor of the company"*.

48. Mr Manghat argued that, in any event and whether or not the proceedings are co-ordinated with a view to a joint trial, the trial of the ADCB claim might not be ready to go ahead in August 2024, in particular because ADCB substantially amended its particulars of claim in September 2023. He also referred to an application by ADCB for third party disclosure from the JAs of NMCH, but that is of relatively little significance in view of the limited disclosure that I ordered. In view of these developments, it was argued that the ADCB claim was being rushed to trial in August 2024, and it was suggested that the trial estimate of 5 weeks is inadequate. I am not persuaded that these reasons would warrant adjourning the trial. If necessary, more time would have to be allocated to it.

49. However, there is another and more serious obstacle to the trial going ahead in August 2024. ADCB rightly accepts that, if Mr Manghat is held liable, the quantification of damages must take account of its recoveries from the estates of the NMC Group: it pleads that, "*ADCB will make appropriate allowance in so far as the harm it has suffered is diminished by any other litigation, enforcement of security, or relevant recoveries by reference to the Administration carried on by the English Administrators and the ADGM Administrators"*. ADCB makes its claim under UAE law, but it does not plead that UAE law would adopt a different approach from that of English law about what constitutes an "*appropriate allowance"*, and there is no evidence or other material that suggests a difference of approach. In this, ADCB's pleading differs from its plea that, as a result of the DOCAs, it received certain instruments known as *"Exit Instruments*", but that, under UAE law, it is not obliged to give credit for the value that it has assigned to the Exit Instruments for accounting purposes, because the "*nature and extent of any future monetary realisation from the Exit Instruments is unknown"*.

50. It is common ground between ADCB and Mr Manghat that the ADCB claim is not a case in which there could sensibly be separate trials of liability and quantum of compensation, and I agree with that: there is no clear demarcation between issues of liability and quantum. For example, Mr Manghat:

a. pleads article 287 of the Civil Code that provides that, if he "*proves that the harm arose out of an extraneous cause in which he played no part such as ... act of a third party .. he shall not be bound to make it good ...* "; and that, because, on ADCB's own case, the Loan Recycling Scheme and the fraud were perpetrated primarily by the Principal Shareholders, ADCB's loss is a natural result of their acts, and not any act of Mr Manghat; and

b. intends to argue (but has not yet pleaded) that article 291 of the Civil Code provides that "*If a number of persons are responsible for a harmful act, each of them shall be responsible in proportion to his share in it, and the judge may make an order against them in equal shares or by way of joint or several liability as between them";* and so, even if he is liable to ADCB at all, he should be liable only for a part of its loss.

(I have cited from the translation of the Civil Code in Wheeler's commentary.)

The question therefore arises whether an appropriate allowance can be assessed after a trial in August 2024, and in particular before the JA claim is tried.

51. Mr Hughes gave evidence that ADCB is the largest creditor of the NMC Administrations, and argued that the quantum of its claim cannot the determined independently of the JA claim. Mr Longworth said that it "*may well be desirable*" for the ADCB claim to be stayed pending resolution of the JA claim, one reason being that the requirement that the credit for recoveries, which is acknowledged in ADCB's pleading, implicitly recognises that "*the final resolution of [the ADCB claim] can only occur after the determination of [the JA claim and the corresponding proceedings by the JA of NMC PLC in England]*". Mr Nicholas Marsh of Quinn Emanuel Urquhart & Sullivan (UK) LLP, who act for the JAs, argued that the Court will need to manage the risk of double recovery and that "*the best way to manage these issues is by hearing the claims together ...".*

52. Against this, ADCB argued that quantum can properly be assessed without delaying the trial. Its contention is stated by Mr Honey as follows:"...*as at the date of assessment of damages, ADCB must and will account for any recovery it has made through the administration, and its loss will be reduced accordingly. However, should ADCB obtain judgment before any recovery in the administration, then ADCB is entitled to claim its full loss from Mr Manghat's assets. To the extent ADCB reduced its loss by successfully enforcing that judgment against Mr Manghat, the size of its claim in the administration will then likewise reduce. Either way, ADCB is not entitled to double recovery and is alive to this point. But there is no requirement that the potential avenue of recovery through the administration must take precedence to self-help".* Accordingly, Mr Pillai submitted that any "*post-judgment recoveries*" are brought into account not in the compensation awarded by the Court, but by reducing to that extent the amount for which it may enforce a judgment.

53. Assuming, without deciding, that this submission is consistent with ADCB's pleaded case, I cannot accept that, when assessing ADCB's loss resulting from making facilities available to NMCH, the Court is to leave out of account the prospects of NMCH repaying in the future what is owed under the facilities. This leads to the question whether the Court might properly assess the prospects after a trial in August 2024, or whether it should defer doing so. Of course, the general rule is that damages are to be assessed "*once for all at the time of the trial notwithstanding that in many cases ... uncertain matters have to be taken into account*": *Mulholland and anor v Mitchell [1971] AC 666, 674* per Lord Hodson. But that is not an inflexible rule, and there are cases in which the Court is required to defer the assessment of damage in order to do justice. This is illustrated by the judgment of Phillips J in *Deeny and ors v Gooda Walker Ltd (in liquidation) and ors [1995] 1 WLR. 1206.* In that case, it was decided that an assessment of damages should be deferred in view of the uncertainly of the future losses that would be incurred by the claimant Lloyd's names and the complex web of litigation concerning Lloyd's of London, of which the *Deeny* claim was a part. I accept Mr Davies' submission that the position in this case is comparable, and that, here too, justice

would require that the assessment of compensation (and so the trial, given the common ground that liability and quantum should be resolved together) be deferred. I reject Ms den Besten's submission that "*[t]here does not appear to be any complex dispute as to quantum in the ... ADCB Proceedings*".

54. Of course, by way of a *reductio ad absurdum* argument, it might be said that, by parity of reasoning, the argument for deferring a decision about compensation until the JA claim is decided requires that the decision be deferred until the administrations in both ADGM and England are concluded, because until then there can be no certainty about what recoveries ADCB might make. But it is a question of degree, and about how such uncertainty will lead a Court to decide that it cannot fairly assess compensation. The authorities show that the Court will not readily reach such a decision. On any view, after the JA trial the Court will be much better placed to make an assessment, and in my judgment, it is then likely to conclude that it can properly do so.

55. There is a further difficulty in the trial of the ADCB claim taking place when it is fixed in August and September 2024. Although a procedural timetable for the JA clam has not yet been directed, it is likely that disclosure will be taking place shortly before or during the trial and mean that the trial has to be adjourned, possibly part-heard and for a considerable period; alternatively or additionally, there might be disclosure after the hearing has concluded but before judgment is delivered, leading to applications to re-open evidence or submissions or both; or while an appeal is pending, leading to applications to adduce further evidence on appeal. All these prospects are distinctly unattractive in terms of orderly conduct of the proceedings, and they seem to me entirely realistic possibilities and foreseeable difficulties with an August/September 2024 trial.

The costs implications of the Manghat Directions Application

56. ADCB also argues that, if there is a joint trial of its ADCB claim and the JA claim, it will incur significantly more by way of costs: it would be involved in complex interlocutory questions before trial, and have to attend a longer trial, because the trial of the JA claim alone is estimated at 12 to 16 weeks and a joint trial of both claims will inevitably be longer. Mr Honey said in evidence that HFW estimate that the additional costs for ADCB would be "*at least £6 million*". That estimation must be pretty speculative, but I accept that ADCB's costs will increase by a substantial amount if there is a joint trial, and I infer or assume that, if ADCB is successful in its claim, Mr Manghat is unlikely to be able to pay ADCB's costs in addition to an award of compensation. Further, ADCB has incurred some costs in preparing for a discrete trial of its claim, such as costs relating to its recent third party disclosure application against the JAs, which will be wasted if the Manghat Directions Application is granted, but I would expect that the amount of such costs would be small in relation to the amounts in issue in the proceedings.

57. Dr Shetty also raised concerns about his increased costs if the Manghat Directions Application is granted. On behalf of Dr Shetty, Ms den Beston said in her skeleton argument that "*any savings to Mr Manghat are likely to be significantly diminished by the extra layers of complexity created by such joinder and the trade-off would undoubtedly be a substantial increase in costs for every other party*" (emphasis in original). As for Dr Shetty's own position, it is said that "*[t]he additional cost to Dr Shetty is not quantifiable, but it is likely to be significant where, like Mr Manghat, funding is limited*". (No evidence of the funds available to Dr Shetty is in evidence. In the case of Mr Manghat, the Court has had evidence of his assets, which he was ordered to provide in support of the freezing order against him.) Dr Shetty undoubtedly would incur more costs, but I find it impossible to estimate how much more they would be.

58. The Bank of Baroda refuted any suggestion that co-ordinated proceedings and a joint trial will bring about costs savings, and submitted that the difficulties and disputes that would inevitably result from Mr Manghat's proposals will cause increased costs.

59. The JAs accept that Dr Shetty and the Bank of Baroda would incur additional costs, but submitted that they would not have to engage with any additional issues if there is a joint trial rather than a discrete trial of the JA claim, and that "*the increase is unlikely to be significant relative to the sums at stake"*. Moreover, it is said, if they defeat the claims against them, they are likely to recover their costs. The JAs argued that the prejudice to ADCB will be mitigated because they will benefit from the JAs' analysis of the fraud and their evidence supporting the allegations of wrongdoing, and from having their claim determined in light of the cross-allegations between Dr Shetty and Mr Manghat that might well feature in the trial of the JA claim. The incorporation of allegations from the JA's pleading into ADCB's pleading provides some support for this.

60. Mr Davis challenged the contentions of ADCB, Dr Shetty and the Bank of Baroda about costs. He accepted, and clearly could not realistically have disputed, that a concurrent trial of the two claims will result in a longer trial than either of the individual trials, but submitted that this would not necessarily mean that ADCB, Dr Shetty or the Bank of Baroda would need therefore to incur extra costs because, as far as ADCB is concerned, it could rely upon the JAs to prove the alleged fraud, and that there is no reason that other parties should "*involve themselves in matters which arise in the ADCB Claim which do not overlap with the JA Claims"*. It is submitted that therefore, if there is a concurrent trial, the parties could and should cooperate to minimise duplication of effort, and so to save costs.

61. I regard Mr Mangaht's argument as unrealistic. Given the scale and contentious nature of the litigation and the nature of the allegations against the defendants, it seems to me highly unlikely that the parties will co-ordinate their efforts as Mr Manghat envisages, and to my mind they cannot reasonably be expected to do so.

62. I accept that, if the Manghat Directions Application is granted, the parties other than Mr Manghat will incur increased costs, in particular ADCB, but also significantly Dr Shetty and the Bank of Baroda. While they cannot be quantified, their increased costs must be brought into account when deciding what is in the interests of justice. Further, more Court time will be required at interlocutory stages of the litigation, but the demands on the Court are a relatively minor factor.

Dr Shetty's arguments of unfairness and "confusion"

63. The term "*confusion"* was used by Murray J in his judgment in the *Al Sadeq* case (loc cit, at para 79(iii)) to mean "*the risk that there will be an unconscious and unfair impact of one claim on the other claim if they are tried together*". It is, as Murray J indicated (at para 94), a consideration given greater weight in England in cases tried by a jury than by a judge alone.

64. Dr Shetty submitted that a joint trial of these cases would risk confusion and work to his prejudice. He argued that a joint trial would be particularly unfair to him because, after he has successfully challenged the jurisdiction of the English Court to try the allegations of ADCB against him, a joint trial would, as it was put by Mr Longworth in his evidence, "*require Dr Shetty in substance to answer ADCB's allegations in the ADGM*". He also said that Dr Shetty has "*grave concerns*" that Mr Manghat intends to join Dr Shetty in the ADCB claim. Mr Longworth invited the inference that "*quite apart from the inevitable cross-contamination which will occur as a result of the ADGM ADCB and [JA] Proceedings being case managed and heard together, even if Dr Shetty is not a party to the ADCB ADGM Proceedings, Mr Manghat intends to (or at least considers he might in the future) seek formally to join Dr Shetty"*.

65. I am not impressed by this point. Mr Manghat might apply to join Dr Shetty as a party to the ADCB claim, whether or not the Manghat Directions Application. If such an application is made, the Court will adjudicate upon it, having proper regard to Dr Shetty's position and any unfairness to him. In so far as Mr Longworth's point is that it would be unfair for Dr Shetty to be cross-examined on behalf of Mr Manghat, it is difficult to envisage what matters might be put to Dr Shetty by Mr Manghat but not by the JAs, and more importantly, while it is premature to decide how a joint trial might be conducted, the Court has adequate powers to prevent unfair cross-examination.

66. Ms den Beston had another argument: she submitted that the judgment of Judge Pelling staying ADCB's English claims against Mr Manghat and him creates an issue estoppel that is binding between ADCB, Dr Shetty and Mr Manghat that ADGM is not "*the appropriate forum for determination of ADCB's claim",* or alternatively that it is an abuse of process for Mr Manghat to argue that ADGM is an appropriate forum for resolving issues between ADCB, Dr Shetty and Mr Manghat because it would amount to a collateral attack on the decision of the English Court. It is said that, in these circumstances, this Court "*should protect Dr Shetty from being drawn into the ... ADCB Proceedings by either party, in circumstances where ADCB and Mr Manghat both entered into those proceedings in full knowledge that Dr Shetty would not take part in the same, and the ... estoppel*". I reject that submission. There was no issue in the English proceedings whether ADGM or the on-shore Abu Dhabi Court is a more suitable forum for resolving any dispute, and there was no issue in the proceedings between Dr Shetty and Mr Manghat.

67. Mr Kitchener suggested that another example of potential "*cross-contamination*" is that the ADCB proceedings will involve consideration of *"ADCB's approach to lending to NMC, the general banking relationship between the entities and the personal relationship that it had and the matters that it relied upon in lending"*. The suggestion, as I understand it, is that the Court might therefore assume, or be inclined to suppose, that the Bank of Baroda should have adopted similar practices, but this seems to me far-fetched, not least because the Bank of Baroda apparently envisages that it will call expert evidence of banking practices. I am not persuaded that this might unfairly impact upon the resolution of the claim against the Bank of Baroda, or upon the trial of the JA claim more generally.

68. There is another point to mention in this context. As I have said, in answer to the ADCB claim, Mr Manghat attributes responsibility for the fraud to Dr Shetty and others, and argues that this either exculpates him entirely or, if he is liable, is relevant to the assessment of compensation that he is liable to pay. Mr Kitchener submitted that "[*a]nything said by this Court in the ADCB Proceedings as to the guilt or otherwise of Dr Shetty ... would have no influence in the [JA] proceedings ...*". Of course, Mr Kitchener is right about that. But he also said that "*the judge would no doubt be careful to avoid commenting on the guilt or innocence of person not before the Court"*. Given the nature of Mr Manghat's arguments, it seems highly unlikely the Judge will be able to avoid doing so. This being so, it seems to me that separate trials does not avoid the risk of what Murray J referred to as confusion, the risk of "*an unconscious and unfair impact of one claim on the other claim*", or at least a perception thereof.

Is co-ordinated management and a joint trial practical?

69. Mr Kitchener submitted that, in view of its size and complexity, the JA claim will require *"bespoke*" case management in any event, and that, in effect, it would become unmanageable if it was co-ordinated with the ADCB claim with a view to a joint trial. I have already referred to Dr Shetty's concern about how cross-examination at a joint trial. Mr Kitchener and other counsel identified other contentious interlocutory disputes that are likely to arise, particularly with regard to discovery

70. Mr Kitchener submitted that it is premature to engage with the Manghat Directions Application before pleadings are closed, or at least defences have been served, in the JA claim, and he objected to a trial date being fixed. I agree that it is not necessary or appropriate to give detailed procedural directions or to set a date for trial yet, but it would not be sensible to defer engaging with the Manghat Directions Application altogether: ADCB and Mr Manghat need to know whether the trial of the ADCB claim will go ahead in August 2024. Mr Kitchener did not identify any specific difficulty in me deciding that.

71. Mr Manghat recognises that the two proceedings cannot be consolidated, but has not set out in detail how he envisages that proceedings should be otherwise co-ordinated. In the draft order filed with his application, it was proposed that, when pleadings are closed in the JA Claim, there should be a case management conference in both actions to consider directions in relation to (inter alia) factual and expert evidence for the JA claim, questions of confidentiality, including rights of third parties under UAE law, and "*[d]isclosure and sharing of document, witness and expert evidence between the parties to the [two actions]*". Those opposing his application made much of Mr Manghat not making more detailed proposals, but their complaint does not assist me to decide it. It is obvious that, if there is to be co-ordinated case management, directions will have to be given at a Case Management Conference at the earliest sensible opportunity. For this reason, I see nothing in the Bank of Baroda's expressed concerns that that, if there is to be co-ordinated case management, it will face an expedited timetable to trial and the Court will *"straitjacket itself"* by making premature directions in the JA Claim or by making any order that might prejudice the ability of the Court to make appropriate directions in the possession of all the relevant facts.

72. However, that does not mean that the trial timetable will not be demanding: it necessarily will be in view of the nature of the litigation. The Bank of Baroda should not assume that the Court will be sympathetic, for example, with the apparent suggestion in the evidence of Mr Charles Thompson of Baker & McKenzie, who act for the Bank, that the timetable to trial should be the more relaxed because his clients are "a *state owned Indian bank where hierarchy is strictly observed*" and "*various levels of approvals within the Bank*" are required to access some documents. As a general rule, the Court expects parties to adapt their procedures to its requirements, rather than vice versa.

73. ADCB, Dr Shetty and the Bank of Baroda also emphasised that in some ways Mr Manghat and the JAs have made different suggestions about the directions that might govern any co-ordination of the proceedings: for example, Mr Mangat apparently contemplates that disclosed documents will be shared between the parties to both actions, whereas the JAs apparently do not. I shall return to the matter of disclosure shortly, but it is unremarkable that the JAs do not subscribe wholesale to Mr Manghat's proposals: after all, although counsel for ADCB, Dr Shetty and the Bank of Baroda persistently stated that the JAs supported Mr Manghat's application, they have consistently, both before and during the hearing, made clear that their position is that they do not oppose it.

74. I need no persuading that, if the two proceedings are co-ordinated and heard at a joint trial, some difficult interlocutory questions will arise, and active case management will be required. Management of the JA claim will be demanding, and I entirely understand ADCB's concern, in particular, that, as a result, it will be drawn into interlocutory battles. However, this Court has proved itself able to make itself available, at short notice if necessary, to hold interlocutory hearings, and to be flexible in its approach to case management of complex cases. I am confident that the inevitable difficulties of co-ordinated case management are not insuperable.

75. I should refer specifically to potential difficulties and disputes that are likely to arise about disclosure if a joint trial is directed, and objections raised to Mr Manghat's proposal that all documents disclosed in either action should be available to the parties in both.

76. I consider that the Court has power to make a direction about disclosure such as Mr Manghat suggests, if it considered it appropriate to do so. Mr Kitchener questioned this, referring to CPR r.89(1): *"Except as provided by practice directions, a party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed",* and observed that the Court's Practice Directions do not provide for exceptions to the general rule in CPR r.89(1). (Rule 89(1) differs in this regard from CPR r.102, which concerns the use of witness statements: rule 102 expressly provides that the general rule does not apply, among other circumstances, if the Court permits some other use.) However, rule 89(1) must be interpreted and applied with a view to securing that the Court is accessible, fair and efficient (see CPR r.2(3)), and accordingly, in my judgment, the rule is to be interpreted as applying subject to any contrary direction of the Court. This is how it has been interpreted in the past, albeit in cases in which the Court's power to give directions permitting collateral use of documents has not been challenged. In any case, CPR r.89(1) is about restricting how the recipient of disclosure documents may use them, and does not restrict what orders for disclosure the Court may make against a party to proceedings. Moreover, the Court also has powers under CPR r.88 to order disclosure against non-parties if it is required to do so.

77. Mr Kitchener raised two further points about the disclosure of the Bank of Baroda's documents. First, he said that the Bank of Baroda has concerns about sharing its disclosure with ADCB, with whom it is a competitor. I am not persuaded that this is a weighty consideration. The Court has powers to protect proper interests of privacy and confidentiality if there is a sufficient basis for doing do. However, banks, and other parties to litigation, often have to make disclosure of documents that they regard as confidential in the interests of justice, and the Bank of Baroda did not identify any special or unusual reason for concern about their documents.

78. Mr Kitchener also observed that the Bank of Baroda's disclosure obligations are likely to raise questions about their duties under article 120 of Federal Decree Law no. 14 of 2018 on the Central Bank and Organisation of Financial Institutions and Activities, whereby financial institutions in the UAE are required to keep information confidential. I accept that, in all probability, such questions will arise in any event: see paras 60 and 61 of my judgment on the Shetty Restraint Application. I am not persuaded that they will be significantly more taxing if the Manghat Directions Application is granted.

79. It is premature to decide whether, if there is co-ordinated case management, disclosed documents should be made available to the parties in both actions (subject to specific exceptions), or whether, as the JAs appear to suggest, generally documents would not be shared. What matters for present purposes is that, while disclosure in co-ordinated proceedings would probably require more Court supervision than is usual, it would be manageable.

Conclusion

80. I have not found it easy to balance the considerations supporting the Manghat Directions Application against the objections to it. I take account of the additional costs that will be incurred, and, in particular, I do not readily deprive ADCB of its fixed trial, not least because the overriding objective requires that the Court must aim to secure an accessible system of justice, However, that concern is mitigated by the real difficulties that I see in the trial going ahead in August 2024, whether or not the claims are to be heard together. Despite these objections, I have concluded that considerations of efficiency and overall fairness weigh in favour of granting the Manghat Directions Application, and I grant it.

81. What order should be made? Mr Pillai perceptively observed that effectively Mr Manghat is asking at this stage only that the August trial date of the ADCB claim be vacated. I shall order on his application that the trial date, together with that for the pre-trial review, be vacated, and that there be a case management conference fixed in the second half of February 2024 or in early March 2024, with a view to making directions for the future conduct of the two actions, and fixing a date for a joint trial.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
29 December 2023