

JUDGMENT SUMMARY

Neutral Citation	[2020] ADGMCFI 0008
Case Number	ADGMCFI-2020-020
Name of Case	NMC Healthcare LTD and associated companies
Judge	Justice Sir Andrew Smith
Date Issued	27 September 2020
Catchwords	Company administration order. Balance sheet insolvency. Cashflow insolvency. Reasonable likelihood of company administration achieving its purpose. Priority funding application. Notification to creditors.
Cases Cited	<p>Re Atlantic Computer Systems PLC [1992] Ch.505</p> <p>BLV Realty Organization Limited v Batten [2009] EWHC 2994 (Ch)</p> <p>BNV Limited v Eurosail PLC [2013] UKSC 28</p> <p>Bucci v Carman [2014] EWCA Civ. 383</p> <p>Harms Offshore etc GmbH v Bloom [2009] EWCA Civ. 632</p> <p>Re European Directories BV [2010] EWHC 3472 (Ch)</p> <p>Re Design Studio Group Limited [2020] SGHC 148</p>
Legislation and Authorities Cited	<p>ADGM Commercial Licensing Regulations 2015</p> <p>ADGM Insolvency Regulations 2015 – Sections 2, 5(1), 7, 8(1)(a), 44(4), 45(5), 109A, 200 and 298</p> <p>ADGM Companies Regulations 2015 – Section 1</p> <p>ADGM Companies Regulations 2020 – Section 107</p> <p>Practice Direction 14 – Paragraph 14(11)</p> <p>UAE Federal Cabinet Resolution No. 21M/8F of 2020</p> <p>UAE Judicial Council Resolution No. 17 of 2020</p> <p>Abu Dhabi Supreme Judicial Council Circular No. 5 of 29 June 2020</p>

	Lightman & Moss on the Law of Administrators and Receivers of Companies (6th ed., 2017) – Paragraph 12.008
Executive Summary	<p>This judgment considered the administration of NMC Healthcare Ltd and 35 of its associated companies. The Court considered whether the companies were unable to pay their debts and if administration was reasonably likely to achieve a better result for creditors. The judgment also considered the approval of a priority funding arrangement (the “AFF”) deemed crucial for the companies' continued operation and potential rescue or orderly liquidation. The Court addressed concerns from a creditor regarding the funding application's urgency and the potential impact on other legal proceedings. Ultimately, the Court granted the administration order and approved the AFF, citing the companies' insolvency, the lack of viable alternatives, and the administrators' assessment that this approach offered the best outcome for creditors as a whole.</p>
Overall Summary	<p>Background</p> <p>In this Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment, the Court granted an application made by NMC Healthcare Ltd and 35 of its subsidiaries (collectively, the “Applicants”) under the ADGM Insolvency Regulations 2015 (the “Insolvency Regulations”) to place them into administration. The Court also approved a priority funding arrangement under Section 109A of the Insolvency Regulations.</p> <p>The NMC Group faced financial distress following the revelation in December 2019 of previously undisclosed debt exceeding US\$4.5 billion. This followed a report by Muddy Waters Capital LLP alleging fraud and misrepresentation in the Group’s financial statements.</p> <p>Analysis</p> <p><i>Jurisdiction and Eligibility</i></p> <p>The Applicants had recently re-registered under the ADGM Companies Regulations 2020, giving the Court jurisdiction to hear the case. Under Section 7 of the Insolvency Regulations, before making an administration order, the Court had to be satisfied that the companies were or were likely to become unable to pay their debts and that administration was reasonably likely to achieve its statutory purposes.</p> <p><i>Insolvency</i></p> <p>The Court found that all 36 applicants were insolvent, both on a balance sheet and cashflow basis. Evidence showed liabilities exceeded assets in each company, and centralised cash management meant that the companies could not meet operational liabilities without urgent funding. These findings satisfied the statutory insolvency threshold.</p> <p><i>Purpose of Administration</i></p>

	<p>The Court found that administration would likely achieve the statutory purpose of either rescuing the companies as going concerns or achieving a better outcome for creditors than liquidation. The administrators of the companies proposed to maintain clinical operations, explore restructuring options, and investigate the fraud allegations. The administrators showed that creditor recovery in administration could be 8.9–18.7% compared to 1.8–4.9% in liquidation.</p> <p>Creditor Support and Litigation</p> <p>Major creditors including Abu Dhabi Commercial Bank (“ADCB”), HSBC Bank Middle East Limited (“HSBC”), Barclays Bank PLC and others (collectively owed over US\$2.1 billion) supported the administration application, fearing a “<i>value-disruptive collapse</i>” of the NMC Group without administration.</p> <p>Several creditors, including the Bank of Baroda and the State Bank of India, had launched enforcement actions in the onshore UAE Courts and the Dubai International Financial Centre Courts, prompting concerns about creditor disunity and piecemeal asset seizures.</p> <p>Priority Funding Application</p> <p>Following the administration order, the administrators applied under section 109A(2) of the Insolvency Regulations to enter into a priority funding facility (the “AFF”), valued at US\$325 million, to fund immediate operational needs.</p> <p>The Commercial Bank of Dubai PSC initially sought adjournment due to lack of notice, but the Court proceeded due to urgency (staff payroll and critical supply needs).</p> <p>The AFF, underwritten by ADCB, HSBC, Emirates Islamic Bank, and Sculptor Capital Investment, included new money, refinancing, and roll-up loans. The AFF was granted ‘super-priority’ status over other unsecured and some insolvency expenses.</p> <p>Applying the criteria in <i>Re Design Studio Group Limited</i> [2020] SGHC 148, the Court found that the AFF was in creditors’ best interests, viable, reasonably priced, and necessary to preserve value. Preferential creditors, mainly employees, would benefit more under administration than liquidation.</p> <p>Conclusion</p> <p>The Court concluded that both limbs of the statutory test for administration were met. The Court exercised its discretion in favour of granting the administration and priority funding orders, prioritising the collective interests of the creditors and the viability of the healthcare operations.</p>
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This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court’s reasons.