

JUDGMENT SUMMARY

Neutral Citation	[2021] ADGMCFI 0004
Case Number	ADGMCFI-PCA-2021-003
Name of Case	Abu Dhabi Commercial Bank PJSC v Bavaguthu Raghuram Shetty & Others
Judge	Justice Sir Andrew Smith
Date Issued	22 April 2021
Catchwords	Injunctive relief in relation to proceedings outside the jurisdiction. Requirement for claim form. Service of documents by an alternative method. Domestic freezing order. Worldwide freezing order under Chabra principle.
Cases Cited	<p>Ras Al Khaimah Investment Authority v Bestfort Development LLP [2015] EWHC 1955 (Ch)</p> <p>Société Generale v Goldas Kuyumculuk Sanayi Ithalat Ihracat AS [2017] EWHC 667 (Comm)</p> <p>Bayat v Cecil [2011] EWCA Civ 135</p> <p>Abela v Baadarani [2013] UKSC 44</p> <p>Lakatamia Shipping v Morimoto [2019] EWCA Civ 2203</p> <p>Sabbagh v Khoury [2014] EWHC 3233</p> <p>TSB Private Bank International SA v Chabra [1992] 1 WLR 231</p> <p>PJSC Vseukrainskyi v Maksimov [2013] EWHC 422</p> <p>Ras Al Khaimah Investment Authority v Bestford Development LLP [2017] EWCA Civ 1014</p> <p>Yukong Line Ltd v Rendsburg Investments Corp. [2001] 2 Lloyd's Rep 113</p> <p>JSC Mezhdunarodniy Promyshlenny Bank v Purgachev [2015] EWCA Civ 139</p> <p>Algosaibi v Saad Investments Co Ltd. 2011 (1) CILR 178</p>

Legislation and Authorities Cited	<p>Abu Dhabi Law No (4) of 2013, as amended by Abu Dhabi Law No (12) of 2020 (the “ADGM Founding Law”) – Articles 1 and 13 (7)</p> <p>ADGM Court, Civil Evidence Judgments, Enforcement and Judicial Appointments Regulations 2015</p> <p>English Civil Procedure Rules 1998 – Rules 25.4, 41 and 227</p> <p>ADGM Civil Procedure Rules 2016 – Rules 16, 16(B)(1)(a), 19, 25, 64, 71 and 72(7)</p> <p>Insolvency Act 1986 (UK) – Section 423</p> <p>Agreement of 25 October 1999 between the Government of the UAE and the Government of the Republic of India on Juridical and Judicial Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgments and Arbitral Awards – Article 3(1)</p> <p>Dicey, Morris & Collins (15th Ed., 2012) – Paragraph 8-040</p> <p>Gee, Commercial Injunctions (7th Ed, 2021) – Paragraphs 13-013 and 13-014</p>
Executive Summary	<p>This judgment considered an application by Abu Dhabi Commercial Bank (“ADCB”) against Dr Bavaguthu Raghuram Shetty and five associated corporate entities incorporated in the ADGM (the “Corporate Respondents”). ADCB alleged a large-scale fraud within the NMC Group, seeking to recover significant losses. The Court considered ADCB's request for domestic and worldwide freezing orders against Dr Shetty and the Corporate Respondents to prevent asset dissipation while parallel proceedings are ongoing in England. The judgment details the Court's decision to grant the requested injunctions and freezing orders, outlining the legal basis for doing so and the rationale for finding a good arguable case and a risk of dissipation of assets.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerned applications made by Abu Dhabi Commercial Bank PJSC (“ADCB”) against Dr Bavaguthu Raghuram Shetty and five associated corporate entities incorporated in the ADGM (the “Corporate Respondents”).</p> <p>The case is related to the insolvency of the NMC Group, which ADCB contends was caused by massive fraud in which Dr Shetty was a participant. ADCB claimed substantial losses from fraudulent misrepresentations linked to lending arrangements with the NMC Group.</p>

	<p>Prior English proceedings resulted in a worldwide freezing order against Dr Shetty. The English Court subsequently permitted ADCB to apply for orders in the ADGM Court.</p> <p>ADCB applied for: (i) a domestic freezing order against Dr Shetty for up to US\$1 billion of assets in the ADGM, (ii) an injunction restraining the Corporate Respondents from facilitating dealings in Dr Shetty's shares in those companies, and (iii) a worldwide freezing order against the Corporate Respondents up to US\$1 billion of their assets.</p> <p>Analysis</p> <p>The Court considered several legal points. Firstly, it determined that a claim form was required, even though ADCB was seeking interim remedies in relation to the English proceedings, interpreting the ADGM Court Procedure Rules 2016 (the “CPR”) similar to the English Civil Procedure Rules 1998. ADCB was directed to file one, which it did.</p> <p>Secondly, regarding service on Dr Shetty, ADCB had attempted service via email and courier to an address in India. Given doubts about the certainty of service, ADCB sought orders for service by an alternative method under Rule 19 of the CPR. The Court found good reason to permit this, noting the urgency of injunctive relief and that Dr Shetty had indicated he received the message by email and took no point on jurisdiction, although he was acting in person without legal advice.</p> <p>Thirdly, the Court established its jurisdiction. It found jurisdiction over the Corporate Respondents as “<i>Global Market Establishments</i>” under Article 13(7)(a) of Abu Dhabi Law No (4) of 2013, as amended by Abu Dhabi Law No (12) of 2020 (the “ADGM Founding Law”). Jurisdiction over Dr Shetty was found under Article 13(7)(d) of the ADGM Founding Law and Article 41 of the ADGM Court, Civil Evidence Judgments, Enforcement and Judicial Appointments Regulations 2015, which allow the Court to grant injunctions and freezing orders supporting foreign proceedings.</p> <p>The court then assessed whether it was just and convenient to grant the orders. For the freezing order against Dr Shetty, the Court found that ADCB had shown a good arguable case of fraud based on the evidence. It also found a real risk of dissipation of assets, supported by the complexity of Dr Shetty's asset structure and his response to asset disclosure orders. Therefore, the Court concluded that the US\$1 billion limit was just and convenient, aligning with the English order.</p> <p>The specific injunction against the Corporate Respondents regarding Dr Shetty's shares was deemed just and convenient to clarify that facilitating such dealings would likely constitute contempt of the freezing order against Dr Shetty.</p> <p>Finally, the Court granted the worldwide freezing order against the Corporate Respondents based on the Chabra principle, which allows freezing orders against non-cause of action defendants in certain circumstances. The Court found grounds for belief that the Corporate Respondents held assets and good reason to suppose these assets could be available to satisfy a judgment against Dr Shetty, noting evidence that</p>
--	--

	<p>Dr Shetty treated company assets as his own and the companies' nature as holding vehicles. A real risk of dissipation was also found due to Dr Shetty's substantial control over the Corporate Respondents.</p> <p>Conclusion</p> <p>Based on these reasons, the Court granted the orders sought by ADCB. The final orders included: (i) an injunction against the Corporate Respondents regarding share dealings; (ii) a domestic freezing injunction against Dr Shetty; and (iii) a worldwide freezing injunction against the Corporate Respondents.</p>
--	--

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.