

JUDGMENT SUMMARY

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| Neutral Citation | NMC Healthcare LTD and associated companies |
| Case Number | ADGMCFI-2020-020 and ADGMCFI-2021-042 |
| Name of Case | NMC Healthcare LTD and associated companies |
| Judge | Justice Sir Andrew Smith |
| Date Issued | 24 May 2021 |
| Catchwords | Notice of grounds of service out of the jurisdiction; Power to give an administrator directions under Insolvency Regulations 2015; Application for relief affecting rights of third parties; Stay of proceedings under Arbitration Regulations 2015; Legal proceedings in respect of a “matter”; Meaning of “agree to refer ... to arbitration” in Article (13)9 of the Founding Law; Arbitrability; Stay of proceedings to enforce exclusive jurisdiction clause; Stay in favour of another UAE court. |
| Cases Cited | <p>Cherry v Boulton (1838) 2 Keen 319</p> <p>National Bonds Corp PJSC v Taaleem PJSC [2011] DIFC CA 001</p> <p>Re G B Nathan and Co Pty Ltd. (1991) 24 NSWLR 674</p> <p>Re J W Murphy & P C Allen (1996) ACSR 569</p> <p>Australian Securities Commission v Melbourne Asset Management Nominees Pty Ltd. (1994) 121 ALR 626</p> <p>Editions Tom Thompson Pty Ltd v Pilley [1997] 77 FCR 141</p> <p>Australian Securities & Investment Commission v Edwards [2009] QSC 360</p> <p>Meadow Springs Fairway Resort Ltd v Balanced Securities Ltd [2007] FCA 1443</p> <p>Korda v Silkchime Pty Ltd [2010] WASC 155, 78 ACSR 675</p> <p>In re Dawson International plc [2019] SCLR 65</p> <p>Allanfield Property Insurance Services Ltd v Aviva Insurance Ltd [2015] EWHC 3721 (Ch)</p> |

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| | <p>Bresco Electrical Services Ltd v Michael J Lonsdale (Electrical) Ltd [2020] UKSC 25</p> <p>Re Worldspread Ltd [2015] EWHC 1719 (Ch)</p> <p>Lombard North Central plc v GATX Corpn. [2012] EWHC 1067 (Comm)</p> <p>Autridad del Canal de Panama v Sacyr SA [2017] EWHC 2228 (Comm)</p> <p>Sodzawiczny v Ruhan [2018] EWHC 1908 (Comm)</p> <p>Tomolugen Holdings Ltd v Silica Investors Ltd [2015] SGCA 57</p> <p>Bridgehouse (Bradford No. 2) Ltd v BAE Systems Ltd [2020] EWCA Civ 759</p> <p>Fiona Trust & Holding Corp v Privalov [2007] UKHL 40</p> <p>Trust Risk Group SpA v Am Trust [2015] EWCA 437</p> <p>Larsen Oil and Gas Pte Ltd v Petropod Ltd [2011] SGCA 21</p> <p>McGuinness v Norwich and Peterborough Building Society [2011] EWCA Civ 1286</p> <p>Moschi v Lep Air Services Ltd, [1973] AC 331</p> <p>Salford Estates (No 2) Ltd v Altomart Ltd (No 2) [2014] EWCA Civ 1575</p> <p>Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855</p> <p>Rinehart v Welker (2012) 95 NSWLR 221</p> <p>ACD Tridon Inc v Tridon Australia Pty Ltd [2002] NSWSC 896</p> <p>New Cap Reinsurance Corp Ltd v Grant (2009) 72 ACSR 638</p> <p>Riverrock Securities v International Joint Bank of St</p> <p>Petersburg (Joint Stock Company) [2020] EWHC 2483</p> <p>Investment Group Private Ltd v Standard Chartered Bank [2015] DIFC CA 004</p> <p>Allianz v Al Ain Ahlia CF2012/2012</p> <p>Donohue v Armco Inc and Others, [2001] UKHL 64</p> <p>Fitzpatrick v Emerald Green Pty Ltd [2017] WASC 206</p> |
| <p>Legislation and Authorities Cited</p> | <p>Insolvency Regulations 2015 – Sections 1, 2, 45, 95(7), 96, 97, 143(3), 215(2), 254, 298 and Schedule 5</p> <p>ADGM Court Procedure Rules 2016 – Rules, 24, 25 and 56</p> <p>UK Insolvency Act 1986 – Section 81(1) and Schedule B1</p> |

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| | <p>ADGM Court, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015</p> <p>Convention on the Recognition of and Enforcement of Foreign Arbitral Awards (1958) – Article 2</p> <p>English Arbitration Act 1996 – Sections 9, 10 and 81(1)</p> <p>Arbitration Regulations 2015 – Sections 16 and Schedule 1</p> <p>Application of English Law Regulations 2015</p> |
| Executive Summary | <p>The judgment concerned NMC Healthcare's administration. The Court refused to grant administrator's "<i>directions</i>" on substantive rights. It stayed claims against Dubai Islamic Bank ("DIB") by original guarantors for arbitration under a Master Murabaha Agreement, and by NMCH for jurisdiction under an Assignment of Receivables Agreement. The Court rejected the Claimants' application to amend their claim to bypass these agreements and allowed administrators to pursue their own claims.</p> |
| Overall Summary | <p>Background</p> <p>This Abu Dhabi Global Market ("ADGM") Court of First Instance (Commercial & Civil Division) judgment concerns several applications related to the administration of NMC Healthcare LTD ("NMCH") and its 35 associated companies (the "NMC Group"). The core dispute revolves around the security interest of Dubai Islamic Bank PJSC ("DIB") over "<i>insurance receivables</i>" belonging to the NMC Group, which faced massive undisclosed debts (US\$4.3 billion to US\$5.3 billion) due to alleged fraud. The NMC Group entered administration in September 2020.</p> <p>The Joint Administrators brought an application (the "Directions Application") under ADGM Insolvency Regulations 2015 ("IR 2015") on 28 March 2021 and initiated proceedings by a claim form dated 15 April 2021 (the "Claim Form Proceedings"), which DIB opposed by challenging jurisdiction and seeking stays based on these agreements ("Jurisdiction Application"). The main application before the Court was the application brought by DIB.</p> <p>Analysis</p> <p>The Court first considered the Directions Application under ADGM Insolvency Regulations 2015, section 95(7), which sought declarations on DIB's security and orders concerning insurance receivables. The Court found that "<i>directions</i>" are limited to guiding an administrator's internal functions, not determining substantive third-party rights, and thus dismissed this application for lack of jurisdiction.</p> <p>Regarding the Claim Form Proceedings, DIB sought a stay based on arbitration agreements in two Master Murabaha Agreements ("MMA") and jurisdiction clauses in two Assignment of Receivables Agreements ("ARA") and Account Pledge and Assignment Agreements ("APAA"). The</p> |

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| | <p>MMA contained an arbitration agreement for disputes, while the ARA had an exclusive jurisdiction clause pointing to the Dubai Courts.</p> <p>The Court assessed DIB's "<i>Propositions</i>" to determine if they fell within the scope of the Arbitration Agreement. It found that:</p> <ul style="list-style-type: none"> • Claims by NMCH were subject to the ARA's jurisdiction clause, not the MMA's arbitration agreement. • The "<i>Undertakings Proposition</i>" (claims against insurers based on separate undertakings) was outside the arbitration agreement's scope. • The "<i>Rectification Proposition</i>" and "<i>Agency Proposition</i>" concerning Original Guarantors being parties to the ARA were also closer to the ARA's jurisdiction clause. • However, the "<i>Equitable Assignment Proposition</i>", which questioned whether the MMA itself constituted an equitable assignment of insurance receivables by the Original Guarantors, fell within the scope of the Arbitration Agreement. <p>Despite arguments about non-arbitrability due to <i>in rem</i> rights, statutory causes of action, or impact on third parties, the Court adopted a narrow view of non-arbitrability, aligning with English law. It acknowledged that an arbitral award might not bind all third parties or could fragment the dispute resolution, but deemed these acceptable consequences for upholding arbitration agreements.</p> <p>Consequently, the Court stayed the Claim Form Proceedings in two aspects:</p> <ol style="list-style-type: none"> 1. Between DIB and the Original Guarantors for matters within the scope of the Arbitration Agreement, specifically the Equitable Assignment Proposition. 2. Between DIB and NMCH for matters within the scope of the exclusive jurisdiction agreement in the ARA, deferring these to the Dubai Courts. The Court rejected the argument that it could not stay proceedings in favour of another UAE court when parties had expressly agreed to that jurisdiction. <p>The Claimants' subsequent application in the Claim Form Proceedings (the "Amendment Application") to restructure the proceedings to bypass these stays was refused as improper.</p> <p>Conclusion</p> <p>The Court found that it lacked jurisdiction to grant the substantive relief sought by the Joint Administrators in their Directions Application under section 95(7) of the IR 2015, clarifying that this power is limited to guiding administrators on their functions, not determining third-party rights.</p> <p>The Court granted a partial stay of the Claim Form Proceedings. Specifically, disputes concerning the "<i>Equitable Assignment Proposition</i>" between DIB and the Original Guarantors, which fell within the MMA's</p> |
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| | <p>arbitration clause, were referred to arbitration. Claims brought by NMCH against DIB were stayed in favour of the Dubai Courts, as stipulated by the exclusive jurisdiction clause in the ARA.</p> <p>The Joint Administrators' attempt to amend their claim to bypass these dispute resolution mechanisms was refused. The Court found that the Joint Administrators were entitled to pursue their own claims for remuneration and expenses in the Court, as they were not party to the Arbitration Agreement, nor are they are not subject to any jurisdiction agreement.</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.