

JUDGMENT SUMMARY

Neutral Citation	[2022] ADGMCFI 0003
Case Number	ADGMCFI-2020-020
Name of Case	NMC Healthcare LTD and associated companies
Judge	Justice Sir Andrew Smith
Date Issued	4 April 2022
Catchwords	Anti-suit injunction. Injunction to protect assets of company in administration. Injunction to enforce terms of Deed of Company Administration. Submission to insolvency jurisdiction by submission of proof of debt. Injunction to restrain enforcement of judgment in another Emirate. Delay. Full and frank disclosure on application for <i>ex parte</i> relief. Exercise of discretion to make anti-execution injunction.
Cases Cited	<p>Goel v Credit Suisse (Switzerland) Limited [2021] DIFC CA 002</p> <p>Donohue v Armco Inc and others [2001] UKHL 64</p> <p>Fleming v Dubai Islamic Bank PJSC [2021] ADGMCFI 0006</p> <p>Bushby v Munday (1821) 5 Madd 297, 307</p> <p>Stichting Shell Penioenfond v Krys [2014] UKPC 41</p> <p>Bloom v Harms Offshore AHT “Taurus” GmbH & Co [2009] EWCA (Civ) 632</p> <p>DSC Holdings Australia Pty Ltd v Helenic Pty Ltd (2014) 307 ALR 143</p> <p>Erste Group Bank AG v JSC “VMZ Red October” [2015] EWCA 379</p> <p>Federal Supreme Court in Civil Cassation No 113 of 2016, session of 11 April 2016</p> <p>Riverrock Securities Ltd v International Bank of St Petersburg (JSC) [2020] EWHC 2483</p> <p>Emirates NBD Bank PJSC v KBBO CPG Investment LLC, CFI 045/2020</p> <p>Ludhyan v Lucina [2020] DIFC Arb 27</p> <p>NMC Healthcare Ltd v Dubai Islamic Bank PJSC [2021] ADGMCFI 0006</p>

	<p>Rubin v Eurofinance SA [2012] UKSC 46</p> <p>Ecobank Transnational Inc v Tanoh [2015] EWCA Civ 1309</p> <p>Rex v Kensington Income Tax Commissioners, Ex parte Princess Edmond de Polignac [1917] 1 K.B. 486</p> <p>Fundo Soberano de Angola and ors v Dos Santos [2018] EWHC 2199 (Comm)</p> <p>Masri v Consolidated Contractors International Co SAL [2008] EWCA Civ 625</p>
Legislation and Authorities Cited	<p>ADGM Insolvency Regulations 2015 – Sections 2, 45(5), 76(1), 78(3), 81, 215(2) and 298</p> <p>ADGM Companies Regulations 2020 – Section 107</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 41(1)</p> <p>ADGM Court Procedure Rules 2016 – Rule 170</p> <p>Abu Dhabi Law No. (4) of 2013, as amended by Abu Dhabi Law No. (12) of 2020 (the “ADGM Founding Law”) – Articles 6(1), 7(1), 13(7) and 13(9)</p> <p>UAE Constitution – Articles 3, 99 and 104</p> <p>UAE Cabinet Resolution No. 21M/8F</p> <p>UAE Cabinet Resolution No. 17 of 2020</p> <p>UAE Cabinet Resolution No. 28 of 2007</p> <p>Federal Decree-Law No. (42) of 2022 Promulgating the Civil Procedure Code (the “UAE Civil Procedure Law”) – Articles 31(1), 31(3) and 63(1)</p> <p>Dicey, Morris and Collins, The Conflict of Laws, 15th Ed (2012) – Paragraph 31.039</p> <p>Snell’s Equity 34th Ed (2019) – Paragraph 18-035</p>
Executive Summary	<p>This judgment considers an anti-suit injunction application brought by NMC Healthcare Ltd (“NMCH”), a company in administration, against Noor Capital PSC (“Noor”). The judgment addresses Noor’s attempts to enforce a judgment obtained in the Dubai courts against NMCH, despite NMCH being subject to an administration order and a Deed of Company Arrangement (“DOCA”) in the ADGM. Key issues examined include the ADGM Court’s jurisdiction to issue such injunctions to protect assets and enforce the terms of the DOCA, given Noor’s submission of a proof of debt in the ADGM administration, and the relationship between the ADGM Courts and the Dubai Courts jurisdictions. The Court considered arguments from both parties regarding the appropriateness of injunctive relief and the impact of related proceedings in the Dubai Courts. The</p>

	<p>judgment ultimately ordered a stay of proceedings pending further developments in Dubai.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns an application by NMC Healthcare Limited (“NMCH”), a company in administration, for an anti-suit injunction against Noor Capital PSC (“Noor”). NMCH is one of 36 NMC Group companies placed into administration by the Court on 27 September 2020, following the discovery of major fraud and undisclosed liabilities within the Group. NMCH had previously continued into the ADGM in September 2020.</p> <p>Noor was a creditor, having loaned AED 550,000,000 to NMCH (NMCH’s obligations being guaranteed by Dr B R Shetty) under a facility agreement governed by UAE law. Critically, before NMCH entered into administration, Noor obtained a payment order judgment for approximately AED 567 million against NMCH and Dr Shetty in the Dubai Court of First Instance on 6 May 2020 and initiated execution proceedings in Dubai.</p> <p>NMCH sought an ADGM Court Order to restrain Noor from pursuing proceedings or enforcement in Dubai regarding the debt, arguing this was necessary to protect the administration assets and because Noor’s actions breached the Deed of Company Arrangement (the “DOCA”).</p> <p>The NMCH DOCA, approved by creditors (including Noor, who was bound despite not voting) on 1 September 2021, prohibited creditors from taking steps, including any enforcement action, to recover their claims without the Deed Administrators’ consent. The DOCA is governed by ADGM law, with exclusive ADGM Court jurisdiction.</p> <p>Analysis</p> <p>The Court held it had jurisdiction to grant the injunction. This was primarily because Noor submitted to the jurisdiction of the ADGM Court’s insolvency process by filing a proof of debt in NMCH’s administration on 13 October 2020. Submission to the insolvency jurisdiction implies submission to related court orders, including injunctive relief.</p> <p>The Court noted that its insolvency jurisdiction was not overridden by the facility’s jurisdiction clause. As a matter of interpretation of the facility, the Court considered that the expression “<i>the Courts of Abu Dhabi</i>” includes the Courts of ADGM, which are Courts of the Emirate of Abu Dhabi. The Court clarified that the injunction sought was an <i>in personam</i> order against Noor, based on its submission to the ADGM insolvency, and was not a challenge to the Dubai Court’s jurisdiction. Therefore, it did not create a “conflict of jurisdiction” requiring resolution by the UAE Federal Supreme Court under Article 99(8) of the UAE Constitution.</p>

	<p>The Court rejected Noor's arguments that NMCH's conduct, such as delay, lack of 'clean hands' or inadequate disclosure on the <i>ex parte</i> application, barred the equitable relief. The Court found delay was not a bar given the application was prompted by recent enforcement steps and the reliance on the later-approved DOCA.</p> <p>The Court determined that granting an anti-execution order to protect administration assets, ensure equitable distribution, and enforce the binding DOCA was appropriate, particularly noting the risk of "copy-cat attempts" by other creditors.</p> <p>However, the situation was altered by recent decisions of the Dubai Courts. The Dubai Court of Appeal had upheld a stay on execution on 9 March 2022. Critically, on 28 March 2022, the Dubai Court of Cassation ordered a stay of execution pending determination of NMCH's appeal in the Dubai Court of Cassation against the payment order. In light of this, NMCH did not 'press for' a final injunction.</p> <p>Conclusion</p> <p>The judgment concludes that the interim anti-execution order of 1 March 2022 was properly made. However, given the current stay ordered by the Dubai Court of Cassation, the ADGM proceedings concerning the injunction are stayed, with liberty for either party to apply to lift the stay based on future developments in Dubai.</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.