

JUDGMENT SUMMARY

Neutral Citation	[2022] ADGMCFI 0008
Case Number	ADGMCFI-2020-020 and ADGMCFI-2021-091
Name of Case	NMC Healthcare LTD and associated companies
Judge	Justice Sir Andrew Smith
Date Issued	11 November 2022
Catchwords	Order for preliminary issue; Issue not decisive; Striking out application; Administrators' application for directions; Insolvency Regulations s.95(7); Whether directions binding on third party.
Cases Cited	<p>Tilling v Whiteman, [1980] AC 1, 25</p> <p>Steele v Steele, [2001] CP Rep 106</p> <p>Re Sigma Finance Corp, [2009] UKSC 2</p> <p>McLoughlin v Groves, [2001] EWCA Civ 1743</p> <p>TAQA Bratani Ltd and ors v Rockrose UKCSS Ltd, [2019] EWHC 2382</p> <p>Re Ansett Australia Ltd, (2001) 39 ACSR 355</p> <p>Re Stockport (Nq) Pty Ltd (subject to deed of company arrangement) (Carter and Lewis as joint admins), (2003) 44 ACSR 324</p> <p>Re G B Nathan and Pty Ltd, (1994) 24 NSWLR 674</p> <p>NMC Healthcare Ltd v Dubai Islamic Bank PJSC, [2021] ADGMCFI 0006</p> <p>Barrow v Bankside Agency Ltd, [1996] 1 WLR 257, 263B</p> <p>Tinkler v Ferguson, [2020] EWHC 1467</p>
Legislation and Authorities Cited	<p>Insolvency Regulations 2015 – Sections 88 and 95(7)</p> <p>Corporations Law 2001</p>
Executive Summary	This judgment considered and refused a preliminary issue and struck out an administrators' directions request in the NMC Healthcare insolvency

	<p>case. The Court found the preliminary issue wouldn't be decisive or avoid trial disruption. Directions were deemed advisory, not binding on third parties, offering no practical benefit to resolve the secured claim dispute with ADIB.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns applications within the ongoing administration of NMC Healthcare Ltd (“Healthcare”). Healthcare, an ADGM-incorporated holding company, was part of the larger NMC Group, which provides private healthcare in the UAE. In September 2020, Healthcare and 35 of its subsidiaries were placed into administration, with Mr. Richard Dixon Fleming and Mr. Benjamin Thom Cairns appointed as Joint Administrators (“JA's”). The NMC Group's main source of revenue came from “<i>insurance receivables</i>”.</p> <p>In 2021, the JA's proposed a reorganisation plan via Deeds of Company Arrangement (“DOCA's”). Healthcare and 34 subsidiaries (the “Related DOCA Companies”) entered these interrelated DOCA's on 25 March 2022, known as the Restructuring Effective Date (“RED”), aiming to restructure the group. While unsecured claims were released, secured claims were not. A key dispute arose with Abu Dhabi Islamic Bank PJSC (“ADIB”), which claimed to be a secured creditor for over AED 1.2 billion through insurance receivables, a claim disputed by Healthcare in ongoing proceedings set for trial in July 2023 (“Proceedings”).</p> <p>In August and September 2022, the JA's sought an early judicial determination of how the Related DOCA's affected ADIB's security claim. This led to two applications: the JA's Directions Application under section 95(7) of the Insolvency Regulations 2015 (“IR”), and Healthcare's Preliminary Issue Application (“PI Application”) within the main Proceedings. ADIB made an application to strike out the Directions Application or stay it, arguing that it improperly sought to determine substantive rights.</p> <p>Analysis</p> <p>The Court examined both the PI Application and ADIB's application to strike out the Directions Application.</p> <p>Preliminary Issue Application: Healthcare sought an early ruling on whether the Related DOCA's, under IR s.76, restricted ADIB's security interest to only property existing at the RED, thereby excluding receivables arising after that date. While the Court affirmed its jurisdiction, it noted the inherent risks of preliminary issues. The Court rejected ADIB's contention that extensive factual evidence was needed for interpretation, stating that admissible background material was limited to what all parties knew or were presumed to know.</p> <p>However, the Court agreed with ADIB on several points. Firstly, a ruling on the PI might prove “<i>unnecessary</i>” if Healthcare succeeded on other grounds in the main Proceedings, such as the invalidity of the “<i>Insurance</i>”</p>

	<p><i>Proceedings Assignment</i>". Secondly, even if decided, the PI would <i>not</i> resolve other core issues in the Proceedings, including the nature of ADIB's charge or ADIB's counterclaims. Crucially, if the PI favoured Healthcare, ADIB indicated it would apply under IR s.88 to terminate the DOCA's on grounds of unfair prejudice, meaning the PI would not be "<i>decisive</i>" of the overall dispute.</p> <p>Furthermore, the Court found that introducing the PI would significantly disrupt the already tight schedule for the main trial in July 2023, "<i>almost inevitably</i>" causing its postponement, thus defeating the efficiency objective of a preliminary issue. The PI's formulation was also deemed imprecise, with ambiguities regarding key terms like "<i>property</i>" and "<i>receivables</i>". Consequently, the Court concluded the PI would not contribute to the "<i>orderly and efficient disposal</i>" of the litigation and refused the application.</p> <p>Directions Application: The JA's sought advisory directions under IR s.95(7) on how to act concerning the Related DOCA's impact on ADIB's security. The Court confirmed its jurisdiction under s.95(7), as the directions would assist the JA's in distributing "<i>DOCA Creditor Entitlements</i>" connected to the Healthcare DOCA's operation. The Court stressed that such directions are "<i>advisory</i>" and protect administrators but do not "<i>determine the rights of third parties</i>".</p> <p>Despite having jurisdiction, the Court found the Directions Application to be an "<i>abuse of process</i>". It would create "<i>duplicate litigation</i>" over an issue already central to the main Proceedings, risking "<i>inconsistent findings</i>". Moreover, if the directions were not binding on ADIB, the application would serve "<i>no real purpose</i>". The JA's failed to demonstrate a specific, urgent need for early guidance that would resolve the underlying financial pressures or enable distributions before the main trial. The Court ultimately determined it would inevitably refuse to give the guidance sought, making striking out the sensible course.</p> <p>Conclusion</p> <p>The Court refused Healthcare's PI Application and granted ADIB's application to strike out the Joint Administrators' Directions Application. The PI Application was rejected because it would not decisively resolve the litigation, would disrupt the main trial, and lacked precise formulation. The Directions Application was struck out as an abuse of process; it constituted duplicate litigation and, being advisory, would not practically resolve the substantive dispute regarding ADIB's secured claims. The comprehensive determination of ADIB's security claims will proceed as scheduled in the main trial in July 2023. The JA's retain the option to renew a directions application if justified by future circumstances.</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.