

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0014
Case Number	ADGMCFI-2022-299
Name of Case	NMC Healthcare Ltd (In Administration) (Subject to a Deed of Company Arrangement) and Others v Bavaguthu Raghuram Shetty and Others
Judge	Justice Sir Andrew Smith
Date Issued	10 June 2023
Catchwords	Application for order that steps taken be effective service of claim form. Relevance of applicable bilateral treaty.
Cases Cited	Abu Dhabi Commercial Bank PJSC v Shetty [2021] ADGM CFI 0004
Legislation and Authorities Cited	ADGM Court Procedure Rules – Rule 19(2)
Executive Summary	This judgment considered and granted applications allowing previous steps to constitute effective service of claim forms on Dr. Shetty and Mr. Manghat in India.
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns applications regarding the service of legal documents on two defendants, Bavaguthu Raghuram Shetty (Dr. Shetty) and Prasanth Manghat (Mr. Manghat). The Claimants/Applicants in this case are NMC Healthcare Limited (“NMCH”), NMC Holding Limited (“Holding”), both in administration along with their Joint Administrators. Bank of Baroda is also a defendant.</p> <p>The background to these proceedings stems from the insolvencies of NMCH, Holding, NMC PLC (an English company), and numerous subsidiaries. These insolvencies are alleged to have resulted from fraudulent activity, with Dr. Shetty and Mr. Manghat being among those against whom these allegations are made, though they deny them.</p>

	<p>The primary applications sought orders under the ADGM Court Procedure Rules (CPR) r.19(2) to validate steps already taken as effective service on Dr. Shetty and Mr. Manghat, who are located in India. Additionally, applications under CPR r.19(1) for permission to use an alternative method of service and requests to extend the time for service of documents were considered.</p> <p>Analysis</p> <p>The Court considered the legal challenge that arose from the 1999 bilateral treaty between the Republic of India and the United Arab Emirates, which governs juridical and judicial cooperation, including the service of documents. Article 3(1) of this Treaty stipulates that service in India should be effected <i>"through the court in whose jurisdiction the concerned person resides"</i>. The Court reiterated its position, previously stated in <i>Abu Dhabi Commercial Bank PJSC v Shetty</i>, that orders for alternative service in cases governed by a relevant bilateral treaty are granted <i>"only exceptionally"</i>. Similar considerations were applied to applications under CPR r.19(2).</p> <p>The judgment highlighted that there are <i>"potentially parallel proceedings in another jurisdiction"</i> in England (the "PLC Proceedings") involving the same or very similar allegations and parties. On June 8, 2023, Mr. Justice Marcus Smith in the English court made an order for alternative service and permission for service out of jurisdiction in the PLC Proceedings. He assessed the ADGM proceedings as <i>"related proceedings going on in two jurisdictions which interact but do not duplicate"</i>, an assessment with which Justice Sir Andrew Smith agreed.</p> <p>The Court determined that Dr. Shetty and Mr. Manghat were <i>"overwhelmingly likely"</i> to be already aware of the ADGM proceedings. While acknowledging that adherence to the treaty for service in India would lead to <i>"additional cost and... delay,"</i> the Court emphasized that these factors alone were insufficient to meet the <i>"exceptional circumstances"</i> test for alternative service in treaty cases. The Court adopted the reasoning of Mr. Justice Marcus Smith from the English proceedings. The English judge, while finding the matter <i>"finely balanced,"</i> ultimately concluded that exceptional circumstances existed. Marcus Smith J had acknowledged a litigant's right to insist on a more cumbersome, treaty-compliant service and discounted the inconvenience to claimants. However, the English judge's decisive factor was whether a likely stay on claims against a co-defendant (Bank of Baroda) within the English jurisdiction outweighed the principles of comity, especially given that solicitors for Dr. Shetty and Mr. Manghat were aware of the claims but were not formally accepting service.</p> <p>The Court concurred with this reasoning and added two further compelling considerations. First, denying the CPR r.19(2) orders would predictably result in <i>"disputes of an arid nature"</i> concerning the effectiveness of service in India. Second, it is desirable for both the ADGM Court and the English Court to manage parallel and interacting proceedings efficiently and cooperatively. Granting these orders facilitates this, whereas refusal could <i>"aggravate"</i> the challenges of managing these</p>
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	<p>concurrent proceedings, potentially leaving the ADGM actions in "abeyance" for an extended period.</p> <p>Conclusion</p> <p>The Court granted the orders sought under CPR r.19(2), deeming the steps already taken as effective service. The applications under CPR r.19(1) for alternative service were not granted at this stage but were adjourned with liberty for the claimants to restore them should the <i>ex parte</i> order under CPR r.19(2) be successfully set aside.</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.