

JUDGMENT SUMMARY

Neutral Citation	[2023] ADGMCFI 0022
Case Number	ADGMCFI-2020-020 and ADGMCFI-2022-063
Name of Case	NMC Healthcare LTD and associated companies In the matter of NMC Health Plc (In Administration)
Judge	Justice Sir Andrew Smith
Date Issued	5 December 2023
Catchwords	Section 256 of the Insolvency Regulations 2022. Extraterritorial scope of the power. Relationship with section 255 of the I Insolvency Regulations 2022. Schedule 10, article 21 to Insolvency Regulations 2002, its territorial limits. Exercise of discretion under section 256 of Insolvency Regulations 2022. Relevance of prohibitions on disclosure under UAE laws. Relevance of confidentiality, and proprietary interests. Relevance of order being onerous on respondent.
Cases Cited	<p>A C Network Holding Ltd and ors v Polymath Ekar SPV1, [2023] ADGMCA 0002</p> <p>Bilta (UK) Ltd v Nazir (No 2), [2015] UKSC 23</p> <p>Clark v Oceanic Contractors Inc, [1983] 2 AC 130</p> <p>Cloverbay Ltd v BCCI SA, [1991] Ch 90</p> <p>Gorbachev v Guriev, [2022] EWCA Civ 1270</p> <p>In re Akkurate Ltd (in liquidation), [2020] EWHC 1433 (Ch)</p> <p>In re Atlantic Computers [1998] BCC 200</p> <p>In re Bank of Credit and Commerce International SA [1997] BCC 561</p> <p>In re British & Commonwealth Holdings plc (nos 1 and 2), [1993] AC 426</p> <p>In re Carna Meats (UK) Ltd, [2019] EWHC 2503 (Ch)</p> <p>in re Chesterfield United Inc, [2012] EWHC 244 (Ch)</p> <p>In re Comet Group Ltd, [2014] EWHC 3477 (Ch)</p> <p>In re M F Global UK Ltd (No 7), [2015] EWHC 2319 (Ch)</p> <p>In re Mid East Trading Ltd, [1998] BCC 726</p> <p>In re Omni Trustees Ltd (No 2), [2015] EWHC 2697 (Ch)</p> <p>In re Paramount Airways Ltd, [1993] Ch 223</p> <p>In re Rolls Razor Ltd, [1968] 3 All E R 698,700</p> <p>In re Rolls Razor Ltd (No 2), [1970] Ch 576</p> <p>In re Seagull Co Ltd, [1993] Ch 345</p> <p>In re Tucker (RC) (a bankrupt) [1990] Ch 148</p> <p>In re Webinvest Ltd, [2017] EWHC 2446 (Ch)</p> <p>In re XL Communications Group plc, [2005] EWHC 2413 (Ch)</p> <p>Larsen v Navios International Inc [2011] EWHC 878</p>

	<p>Marcel v Commr of Police of the Metropolis, [1992] Ch 225</p> <p>Masri v Consolidated Contractors Int (UK) Ltd, [2009] UKHL 43</p> <p>Nix v Emerdata Ltd, [2022] EWHC 718 (Comm)</p> <p>NMC Healthcare Ltd and ors v Dubai Islamic Bank PJSC and ors, [2023] ADGMCFI 0013</p> <p>R (KBR Inc) v Director of the Serious Fraud Office, [2021] UKSC 2</p> <p>Rosewood Hotel Abu Dhabi LLC v Skelmore Hospitality Group Ltd [2020] ADGMCFI 0002</p> <p>Sasea Finance Ltd v KPMG, [1998] BCC 216</p>
Legislation and Authorities Cited	<p>Abu Dhabi Law No. (4) of 2013 (as amended by Abu Dhabi Law No. 12 of 2020) – Articles 2, 3, 6(1), 13(6) and 13(7)</p> <p>Abu Dhabi Law No. 12 of 2020</p> <p>ADGM Insolvency Regulations 2022 - Sections 2(2), 3, 254(1), 255, 256, 297(1) and 298</p> <p>ADGM Application of English Law Regulations 2015 – Sections 1, 2</p> <p>Federal Law 18/1993, the Commercial Transactions Law – Article 30</p> <p>Federal Law 12/2014, the Regulation of the Auditing Profession Law – Article 12(1)</p> <p>Federal Law 14/2018, Regarding the Central Bank & Organization of Financial Institutions and Activities – Section 120</p> <p>Federal Law 31/2021, the Issuance of Crimes and Penalties Law – Article 432</p> <p>Federal Law 34/2021, the Law Concerning the Fight against Rumours and Cybercrime – Article 44 and 45</p> <p>Federal Law 45/2021, the Protection of Personal Data Law – Article 4 and 7</p> <p>Federal Law 50/2022, the Commercial Transactions Law</p> <p>United Nations Commission on International Trade Law (UNCITRAL) - Articles 15, 17 and Schedule 21</p>
Executive Summary	<p>The Court largely granted the Joint Administrators' applications, compelling Neopharma LLC, Nexgen Pharma FZ LLC, and Ernst & Young Middle East to produce documents for the NMC Group fraud investigation. The Court affirmed its extra-territorial powers within the UAE and balanced the administrators' critical need for information against the respondents' objections regarding burden, confidentiality, and various UAE laws.</p>
Overall Summary	<p>Background</p> <p>This judgment, issued by Justice Sir Andrew Smith of the Abu Dhabi Global Market (ADGM) Court of First Instance on December 5, 2023, pertains to applications by Benjamin Thom Cairns and Richard Dixon Fleming (the "JAs"). The JAs serve as joint administrators of NMC Healthcare Ltd ("NMCH"), NMC Holding Ltd ("Holding"), and NMC Health PLC ("NMC PLC"). The NMC Group, a prominent private healthcare provider headquartered in the United Arab Emirates, faced insolvency due to alleged extensive fraud and substantial financial irregularities, including over US\$4.1 billion in undisclosed debts. The JAs' investigations revealed a widespread fraud encompassing manipulated financial statements, fund dissipation, undisclosed borrowings, inflated revenue, and compromised IT systems.</p>

	<p>The JAs sought orders under sections 255 and 256 of the ADGM Insolvency Regulations (IR) 2022, and Schedule 10 of the IR for NMC PLC, to compel the production of crucial information and documents. The applications targeted three respondents:</p> <ol style="list-style-type: none"> 1. Neopharma LLC: An Abu Dhabi-incorporated company with significant financial dealings and guarantees involving the NMC Group, where former NMC Group senior officers like Prasanth Manghat held positions. 2. Nexgen Pharma FZ LLC: A Dubai-registered joint venture, also linked to Dr. B. R. Shetty (NMC Group's founder) and Mr. Manghat, with substantial financial flows to and from the NMC Group. 3. Ernst & Young – Middle East ("EYME"): The auditor for many NMC Group companies, whose component audits contributed to NMC PLC's audits by EY, and who provided other services such as "Project Nightingale" related to NMC PLC's Initial Public Offering (IPO). The JAs emphasized that NMC Group records were incomplete, inaccurate, or missing, with emails of senior executives reportedly deleted. <p>Analysis</p> <p>The Court's decision rested on its authority to issue such orders and the appropriate exercise of judicial discretion in light of the respondents' objections.</p> <p>Jurisdiction and Extra-territoriality: A central argument from the respondents, particularly Neopharma and EYME, was that the ADGM Court lacked jurisdiction over persons or documents located outside its territorial boundaries. The Court rejected this, clarifying that the term "person" in IR Section 256 encompasses corporate entities and that the Court's powers are not physically restricted to the ADGM. Referencing English insolvency precedents, the Court underscored the public interest in investigating insolvent companies and the necessity for Office-holders to perform their duties effectively in a globalized economy. It ruled that confining the IR's scope to the ADGM would "seriously handicap" the insolvency regime and contradict the legislative intent to position Abu Dhabi as a global financial hub. The Court determined that its power extended at least across the entire UAE.</p> <p>Confidentiality and UAE Law Prohibitions: EYME contended that disclosing the requested documents would violate various UAE laws (including those related to crimes and penalties, auditing, cybercrime, and personal data protection) and breach client confidentiality. The Court found this risk unconvincing, noting that such laws typically include exceptions for disclosures "required by law," a condition an ADGM Court order would likely satisfy. While acknowledging legitimate third-party confidentiality concerns, the Court deemed these outweighed by the JAs' critical investigative needs, especially with the JAs' undertaking to maintain confidentiality regarding the obtained information.</p> <p>Oppression and Burden: All respondents argued that the JAs' requests were overly broad, vague, and would impose an unreasonable burden and expense. The Court conceded that compliance would cause inconvenience but balanced this against the JAs' legitimate and crucial</p>
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	<p>need for the information to investigate a large-scale fraud and recover assets. The Court also dismissed arguments alleging "collateral" use of the documents for other litigation, affirming that assessing and pursuing potential claims is a proper purpose for Office-holders.</p> <p>Specific Orders:</p> <ul style="list-style-type: none"> • Neopharma & Nexgen: The Court granted orders for the production of various documents, including contracts, general ledgers (with redactions for non-NMC entities), finance documents, bank statements (with redactions), and emails of key NMC personnel (Prasanth Manghat, Prasanth Shenoy, Deepak Gosh, and Suresh Kumar). However, requests for oral examination of an officer were adjourned as premature. • EYME: Orders were granted for engagement letters, client and matter ledgers, and documents related to EYME's financial and operational review work (specifically "Project Nightingale") and the NMC PLC board's investigation into shareholder allegations. The request for audit files was approved but limited to the period from 2011 to 2019 (excluding 2009 and 2010 audits as less relevant) and with potential for further refinement regarding the number of companies covered. An application by the JAs under IR Section 255 was refused as it was "faintly pursued" and deemed unnecessary given the extensive orders under Section 256. <p>Conclusion</p> <p>The Court substantially granted the Joint Administrators' applications against Neopharma LLC, Nexgen Pharma FZ LLC, and EYME.</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.