

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0007
Case Numbers	ADGMCFI-2020-020 and ADGMCFI-2022-299
Name of Cases	NMC Healthcare LTD and associated companies 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	8 July 2024
Catchwords	Preliminary issues. Fraudulent trading. Wrongful trading. Continuance of bodies corporate in the ADGM. Statutory interpretation. Retrospective legislation. The common law presumption. Presumption against double penalisation. Federal Constitution, Article 112. Interpretation Regulations, Section 25. “ <i>Sufficient connection</i> ” with the jurisdiction.
Cases Cited	<p>NMC Healthcare Ltd v Dubai Islamic Bank PJSC [2023] ADGMCFI 0017</p> <p>In re Overnight Ltd [2009] EWHC 601 (Ch)</p> <p>In re Farmizer Products Ltd [1997] BCC 655</p> <p>Bilta (UK) Ltd v Tradition Financial Services Ltd [2023] EWCA Civ 112</p> <p>Morphitis v Bernasconi [2003] EWCA Civ 289</p> <p>Base Metal Trading Ltd v Shamurin [2004] EWCA Civ 1316</p> <p>In re Howard Holdings Inc. [1998] BCC 549</p> <p>Stocznia Gdanska SA v Latreefers Inc [2001] BCLC 116</p> <p>Re Gerald Cooper Chemicals Ltd [1978] Ch 262</p> <p>Black-Clawson International Ltd v Papierwerke WaldhofAschaffenburg A G [1975] AC 591</p> <p>R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] AC 349</p> <p>Spillers Ltd v Cardiff (Borough) Assessment Committee and Pritchard [1931] 2 KB 21 R (O) v Secretary of State for the Home Department [2022] UKSC 3</p> <p>In re CS Holidays Ltd v Secretary of State for Trade and Industry v Gash [1997] BCC 172</p>

	<p>In re Hawkes Hill Publishing Ltd [2007] BCC 937</p> <p>Marina Towage Pte Ltd v Chin Kwek Chong [2021] SGHC 81</p> <p>R v Sutcliffe-Williams and Gaskell [1983] Crim L R 225</p> <p>Wilson v Secretary of State for Trade and Industry [2003] UKHL 40</p> <p>L'Office Cherifien des Phosphates v Yamishita-Shinnihon SS Cl Ltd [1994] AC 486</p> <p>Yew Bon Tew v Kenderaan Bas Mara [1983] 1 AC 553</p> <p>R v Field [2002] EWCA Crim 2913</p> <p>Tradition Financial Services Ltd v Bilta (UK) Ltd [2023] EWCA Civ 112</p> <p>Bogdanic v Secretary of State for the Home Dept [2014] EWHC 2872 (QB)</p> <p>ESS Production Ltd v Sully, [2005] EWCA Civ 554 para 78</p> <p>In re Paramount Airways Ltd (in administration) [1993] Ch 223</p> <p>Orexim Trading Ltd v Mahivir Port and Terminal Pte Ltd [2018] EWCA Civ 1660</p> <p>Guaranty Trust Co of New York v Hannay & Co [1915] 2 KB 536</p> <p>AWH Fund Ltd v ZCM Asset Holding Co Ltd [2019] UKPC 37</p> <p>Jyske Bank (Gibraltar) Ltd v Spijndnaes [2000] BCC 16</p> <p>Avonwick Holdings Ltd v Azitio Holdings Ltd [2018] EWHC 2458 (Comm)</p> <p>Suppipat v Narongdej [2020] EWHC 3191 (Comm)</p> <p>Suppipat v Narongdej [2023] EWHC 1988 (Comm)</p> <p>Raymond v Honey [1983] AC 1</p> <p>Iraqi Civilians v Ministry of Defence [2016] UKSC 25</p> <p>Byers v Saudi National Bank [2022] EWCA Civ 42</p> <p>Marina Towage Pte Ltd v Chin Kwek Chong [2021] SGHC 81</p> <p>Case No. 632 of 22 (26 October 2003), UAE Federal Supreme Court</p> <p>Case No. 6 of 16 (7 April 2016), Dubai Court of Cassation</p> <p>Case No. 1118 of 2019 (30 October 2019), Dubai Court of Cassation</p> <p>Case No. 136 of 2021 (26 October 2021), Abu Dhabi Court of Cassation</p> <p>Case No. 2 of 2020 (27 January 2021), Dubai Court of Cassation</p> <p>Case No. 87 of 2022 (25 April 2022), Abu Dhabi Court of Cassation</p> <p>Case No. 493 of 18 (26 October 1997), UAE Federal Supreme Court</p> <p>Case No. 340 of 6 (19 April 2012), Abu Dhabi Court of Cassation</p> <p>Case No. 493 of 2018 (26 October 1997), UAE Federal Supreme Court</p> <p>Case No. 1/ 14 (3 February 1993), UAE Federal Supreme Court</p> <p>Case No. 632/ 22 (26 October 2003), UAE Federal Supreme Court</p>
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Legislation and Authorities Cited	<p>ADGM Insolvency Regulations 2015 – Sections 7 and 200</p> <p>ADGM Insolvency Regulations 2022 – Sections 198, 251, 252, 253, 266, 297, 298 and 299</p> <p>ADGM Court Procedure Rules 2016 – Rule 117(2)</p> <p>Abu Dhabi Law No 4 of 2013 – Articles 3 and 6(1)</p> <p>ADGM Companies Regulations 2020 – Sections 1, 146 and 857</p> <p>Constitution of the United Arab Emirates – Articles 112 and 122</p> <p>Insolvency Act 1986 (UK) – Sections 213, 214, 221 and 238</p> <p>ADGM Interpretation Regulations 2015 – Sections 7, 24 and 25</p> <p>ADGM Companies Regulations 2015 – Sections 101, 102 and 107</p> <p>ADGM Companies (Amendment No 1) Regulations 2020</p> <p>ADGM Application of English Law Regulations 2015 – Sections 1 and 7</p> <p>Commercial Companies Law 2021 (Federal Law 32/2021) (UAE) – Article 5(1)</p> <p>ADGM Court, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 230</p> <p>Federal Law No 5 of 1985 on the Civil Transactions Law of No.5 of the United Arab Emirates (the “UAE Civil Code”) – Articles 246, 282, 285, 304, 318 and 319</p> <p>Companies Act 1928 (UK) – Section 75</p> <p>Companies Act 1947 (UK) – Section 101</p>
Executive Summary	<p>This judgment addresses preliminary legal questions. The core issues revolve around whether ADGM insolvency laws regarding fraudulent and wrongful trading apply to actions that occurred before the companies were registered in the ADGM or before the relevant ADGM Insolvency Regulations came into effect. The judgment also considers whether a ‘sufficient connection’ between the defendants and the ADGM is a mandatory requirement for the Court to exercise its powers under these laws.</p> <p>Ultimately, the Court determined that these ADGM insolvency provisions can apply to conduct predating the companies' ADGM registration and the enactment of the regulations, and that a sufficient connection with the ADGM is not always a mandatory requirement for the Court's jurisdiction to make orders under Sections 251/252 of the ADGM Insolvency Regulations.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment addresses preliminary issues in proceedings brought by the Joint Administrators (“JAs”) of NMC Healthcare Ltd (“NMCH”) and NMC Holding Ltd (“Holding”) against Dr Bavaguthu Raghuram Shetty, Mr Prasanth Manghat, and Bank of Baroda.</p>

	<p>NMCH and Holding were placed into administration in the ADGM on 27 September 2020, as a result of their inability or likely inability to pay debts, which is alleged to stem from a fraud against the NMC Group occurring from 2012 until December 2019, with claims valued at at least US\$5 billion. The companies were registered in the ADGM on 15, 16, and 17 September 2020, shortly before entering administration. The Claimants, including the JAs, are bringing both “Civil Claims” under UAE law and “Insolvency Claims”. The Insolvency Claims include actions for fraudulent trading under Section 251 of the ADGM Insolvency Regulations 2022 (“IR 2022”) against all three Defendants, and wrongful trading under Section 252 of the IR 2022 against Dr Shetty and Mr Manghat.</p> <p>The key preliminary issues considered were:</p> <ol style="list-style-type: none"> 1. Can an order be made under Sections 251 and 253 IR 2022 in respect of fraudulent trading <i>before</i> a company is continued into the ADGM? 2. Can an order be made under Section 252 IR 2022 in respect of wrongful trading <i>before</i> a company is continued into the ADGM? 3. Can a claim under Sections 251/252 cover conduct <i>before</i> the IR 2015 (predecessor to IR 2022) came into effect? 4. Is a "sufficient connection" between the defendant and the ADGM mandatory for a successful claim under Sections 251/252? <p>Analysis</p> <p>The Court answered Yes to Issues 1 and 2. The Court found that the language in Sections 251 and 252 referring to "<i>the Company</i>" identifies the legal entity whose business was carried on fraudulently or wrongfully, and does not impose a temporal requirement that the entity must have been an ADGM company at the time of the conduct. The companies are the same legal persons as before they were continued into the ADGM.</p> <p>For Issue 3, the answer was also Yes. While Article 112 of the UAE Constitution generally dictates that laws apply only to events occurring <i>after</i> they become effective, preventing retrospective application, UAE Courts recognise that laws pertaining to public order can apply immediately and directly to ongoing effects. The UAE bankruptcy and insolvency regime is considered a matter of public order, overriding the general principle of non-retroactivity under Article 112.</p> <p>Regarding Issue 4, the Court concluded Yes, meaning a claim can be successfully brought under Sections 251/252 absent a sufficient connection between the defendant and the ADGM. Drawing on English law principles relevant in the ADGM, the Court determined that a sufficient connection is not a mandatory requirement for jurisdiction, but rather a discretionary consideration for the Court when deciding whether to grant relief. Although the contingent question about whether the pleaded facts showed a sufficient connection did not require a definitive answer, the Court stated that if it had arisen, it would have answered Yes.</p> <p>Conclusion</p> <p>In summary, the judgment holds that claims for fraudulent and wrongful trading under the IR 2022 can proceed based on conduct that occurred</p>
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	before the companies were registered in the ADGM and before the IR 2015 came into effect. It also clarifies that demonstrating a sufficient connection between the defendant and the ADGM is not a mandatory prerequisite for bringing these claims.
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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.