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In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

IN THE MATTER OF NMC HEALTHCARE LTD (IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT) AND THE COMPANIES LISTED IN SCHEDULE 1 TO THE ADMINISTRATION APPLICATION

and

IN THE MATTER OF THE ADGM INSOLVENCY REGULATIONS 2022

NOOR CAPITAL PSC

Applicant

and

NMC HEALTHCARE LIMITED

(IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT)

Respondent

JUDGMENT OF JUSTICE SIR ANDREW SMITH

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Neutral Citation:	[2026] ADGMCFI 0004
Before:	Justice Sir Andrew Smith
Decision Date:	30 January 2026
Decision:	1. Noor's application is refused. 2. Unless otherwise ordered, any consequential matters shall be dealt with in writing.
Hearing Date:	16 January 2026
Order:	1. Noor's application is refused. 2. Unless otherwise ordered, any consequential matters shall be dealt with in writing.
Catchwords:	Insolvency Regulations. Administration. Moratorium. Enforcement proceedings. Deed of Company Arrangement (DOCA). DOCA creditor entitlements. Hard bar date. Court's powers to vary a DOCA. Discretion to lift moratorium.
Cases Cited:	*NMC Healthcare Ltd v Noor Capital PSC [2022] ADGMCFI 0003* *NMC Healthcare Ltd v Noor Capital PSC & Ors [2023] ADGMCFI 0003* *DSG Holdings Australia Pty Ltd v Helenic Pty Ltd [2014] NSWCA 96* *NMC Healthcare Ltd v Abu Dubai Islamic Bank PJSC [2022] ADGMCFI 0008* *In re Sigma Finance Corp (In Administration) [2009] UKSC 2* *In re Marconi Corp Plc [2013] EWHC 324 (Ch)* *Henderson v Henderson (1843) 3 Hare 100* *Guaranty Trust Company of New York v Hannay & Company [1915] 2 KB 536* *In re Pan Atlantic Insurance Co Ltd [2003] EWHC 1696 (Ch)* *In re Lehman Brothers International (Europe) (In Administration) [2018] EWHC 1980 (Ch)* *In re Atlantic Computer Systems Plc [1992] Ch 505* *Cook v Mortgage Debenture Ltd [2016] EWCA Civ 103* *In re Nortel Networks UK Ltd (In Admin.) Unite (The Union) v Nortel Networks UK Ltd [2010] EWHC 826 (Ch)* *AES Barry Ltd v TXU Europe Energy (in admin.) [2004] EWHC 1757 (Ch)* *Cargologicair Ltd v WWTAI Airopco 1 Bermuda Ltd [2024] EWHC 508 (Comm)* *Foreign Representative of Samyung Enc Co Ltd v United*

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	Kingdom Hydrographic Office [2025] EWHC 3245 (Ch)
Legislation Cited:	*ADGM Insolvency Regulations 2015* *ADGM Insolvency Regulations 2022* *Corporations Act 2001(Cth)* *Limitation Act 1980 (UK)* *ADGM Application of English Law Regulations 2015* *Insolvency Act 1986 (UK)*
Case Number:	ADGMCFI-2020-020
Parties and Representation:	***Applicant*** Ms Zeina Azzi and Ms Marlene Tayah of Obeid & Medawar Law Firm LLP ***Respondent*** Mr Adam Al-Attar KC and Mr Matthew Abraham of counsel (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

JUDGMENT

The application

1. By an application dated 3 October 2025, Noor Capital PSC ("**Noor**") applied for: (i) an order permitting it to pursue proceedings before the Dubai Execution Court; or alternatively (ii) an order permitting it to be seek relief in accordance with the terms of a Deed of Company Arrangement (the "**NMCH DOCA**"), which was executed by the Respondent, NMC Healthcare Ltd ("**NMCH**") on 21 September 2021. The application was supported by a witness statement dated 2 October 2025 of Mr Abdul Jabar Al Sayegh. NMCH resists the application, and it served in response a witness statement dated 20 October 2025 of Mr Richard Dixon Fleming, one of the Joint Administrators of NMCH. Noor served in reply a second witness statement of Mr Al Sayegh dated 10 November 2025.

2. I heard the application on 16 January 2026. Noor was represented by Ms Zeina Azzi and Ms Marlene Tayah of Obeid & Medawar Law Firm LLP. NMCH was represented by Mr Adam Al-Attar KC and Mr Matthew Abraham of counsel.

The administration

3. On 27 September 2020, I made an order (the "**Administration Order**") under the *ADGM Insolvency Regulations 2015* (the "***IR 2015***"), which were then in force, placing into administration NMCH and 35 associated companies (together, the "**NMC Companies**"),

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and I appointed Mr Fleming and Mr Benjamin Thom Cairns (the "**Joint Administrators**") to be joint administrators of all 36 companies. The Administration Order was made because the NMC Companies were unable to pay their debts, apparently as a result of a serious fraud, and I considered that the Administration Order was reasonably likely to achieve the purpose of the administration, in particular to rescue the NMC Companies' business as a going concern; and to achieve a better result for their creditors as a whole than would be likely if they were wound up.

4. By subsequent orders, I extended the administration of NMCH until 26 September 2027.

5. As a result of the Administration Order, under sub-section 45(5) of the *IR 2015*, no legal proceedings may be instituted or continued against NMCH except with the consent of the Joint Administrators or with the permission of the Court. The *IR 2015* have now been replaced by the *ADGM Insolvency Regulations 2022* (the "***IR 2022***"), and sub-section 45(5) of the *IR 2015* has been replaced with sub-section 45(5) of the *IR 2022*, which is similar in effect. It provides that: "*No legal process (including legal proceedings) may be instituted or continued against the Company or property of the Company except— (a) with the consent of the administrator of the Company; or (b) with the permission of the Court*". The plain implication is that a creditor is entitled to apply to the Court for permission to institute or continue legal process.

Noor's proceedings in Dubai

6. Before the Administration Order was made, on 6 May 2020 the Dubai Court of First Instance had made an order (the "**Payment Order**") against NMCH for the payment to Noor of AED 567,235,857, which it claimed under a security loan agreement dated 12 December 2019 (the "**Facility**"). NMCH sought to appeal against the Payment Order, and it requested a stay of execution. The Dubai Court of Appeal granted a stay of execution on condition that the judgment sum be deposited with the Court's Treasury, but NMCH did not comply with that condition and so no stay on execution resulted.

7. However, at around this time, the Federal Government issued prohibitions on pursuing claims or proceedings against companies in the medical sector in response to the Covid 19 pandemic, and NMCH and its affiliates were specifically covered by the prohibition. Accordingly, on 15 December 2020, the Dubai Court of Appeal stayed NMCH's appeal against the Payment Order for six months. By this time, this Court had made the Administration Order. When the six months' period expired, therefore, NMCH submitted a memorandum to the Dubai Court of Appeal, requesting that the proceedings be stayed, and challenging the Court's jurisdiction in respect of the appeal on the basis that the Administration Order gave the ADGM Court jurisdiction over the claims against it and that such claims were to be determined in accordance with the ADGM's insolvency regime. On 15 February 2022, the Dubai Court of Appeal dismissed NMCH's appeal and upheld the Payment Order. On 28 February 2022, NMCH appealed to the Dubai Court of Cassation,

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and on 28 March 2022, the Dubai Court of Cassation ordered a stay of execution pending determination of the appeal. On 5 September 2022, the Dubai Court of Cassation dismissed NMCH's appeal and the stay lapsed.

8. As for enforcing the Payment Order, in late May or early June 2020, Noor issued an application (by way of Commercial Execution No. 3972 of 2020) in the Execution Department of the Dubai Courts to start execution proceedings, and a notice of execution was served on NMCH on 14 June 2020. On 21 June 2020, the Execution Court stayed the execution procedures because of the Covid 19 prohibitions.

9. On 14 March 2021, NMCH, relying on the Administration Order, requested that the Execution Court stay the execution procedures until the end of the Administration of NMCH. The Execution Judge acceded to the request, and gave instructions that the enforcement against NMCH be stayed. Noor challenged the stay, and made applications to and requests of the Execution Court to enforce the Payment Order.

10. On 26 February 2022, NMCH applied to this Court for what is often called an "*anti-suit injunction*" (or an "*anti-enforcement injunction*"), an order to restrain Noor from seeking to enforce the Payment Order through the Dubai Courts. I granted NMCH interim relief, and the substantive application came before me on 14 and 17 March 2022. I heard extensive submissions on various arguments of Noor that the Court did not have jurisdiction to grant the relief sought by NMCH or that it was inappropriate to do so. Before I delivered judgment on NMCH's application, the Court of Cassation had on 28 March 2022 ordered the stay of execution proceedings in Dubai. In those circumstances, NMCH did not "*press for*" an injunction. However, it asked that I deliver a judgment on the issues that had been argued before me, and Noor agreed that I should do so. I delivered a judgment (the "**April Judgment**") on 4 April 2022 ([2022] ADGMCFI 0003), in which I concluded (at para. 102) that it "*would have been a proper case for an anti-suit injunction, subject to the question whether, in view of the recent decisions in Dubai, it is any longer reasonably required*". I held in particular that the Court had personal jurisdiction over Noor because it had (as I shall explain) submitted a proof of debt in the administration of NMCH, and it had thereby submitted to the jurisdiction of the ADGM Court (at paras. 56-60). In the event, because execution proceedings in Dubai had been stayed by the Court of Cassation, I did not then make an injunction, but I directed that, after consequential and ancillary matters had been concluded, the proceedings should be stayed.

11. When the stay on the execution proceedings lapsed on 5 September 2022, Noor resumed its steps to enforce the Payment Order, and it made a number of applications to the Enforcement Judge in Dubai to attach bank accounts and for other relief. Accordingly, on 23 September 2022, NMCH applied to the Court to lift the stay of the anti-suit injunction proceedings, and I did so. On 6 October 2022, I made an anti-suit injunction against Noor (the "**October 2022 Anti-Suit Injunction**"), prohibiting it from bringing or pursuing proceedings in Dubai against NMCH for enforcement or execution of any debt or claim

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relating to the Facility or Noor's proof of debt in the Administration. It provided that the prohibition was subject to an exception (the "**Exception**"): it did not apply to "*any proceedings commenced or continued with any permission granted to* [Noor] *by this Court pursuant to the provisions of the* [ADGM] *Insolvency Regulations, in particular, sections 44, 45 and 78 thereof* ...". (The October 2022 Anti-Suit Injunction referred to the *IR 2022*, which had come into force on 29 August 2022).

12. The October 2022 Anti-Suit Injunction notwithstanding, Noor continued in October and November 2022 to take steps in the Dubai Courts to enforce the Payment Order. On 9 December 2022 and thereafter, NMCH filed applications in this Court seeking orders that Noor; Mr Adel M El Hassan (Noor's Legal Manager); Mr Al Sayegh (Noor's Chairman); other persons who were its directors at the material times; and its Chief Executive Officer be held in contempt of Court by reason of breaches of the October 2022 Anti-Suit Injunction. In a judgment dated 23 February 2023 ([2023] ADGMCFI 0003), Justice Kenneth Hayne found seven counts of contempt proved against Noor and Mr Al Sayegh, but that contempt was not proved against the other respondents. On 8 June 2023, Justice Hayne made an order (the "**June 2023 Anti-Suit Injunction**") largely in the same terms as the October 2022 Anti-Suit Injunction, including the Exception. The June 2023 Anti-Suit Injunction also added to the October 2022 Anti-Suit Injunction this paragraph 3A:

> "*In particular, and without limitation,* [Noor], *whether by itself, its servants, agents or otherwise, shall not apply to lift orders for stay or otherwise seek further hearings or make any further applications for that purpose in respect of Dubai Courts Execution No. 3972 of 2020*".

Noor's claim in the administration

13. On 13 October 2020, Noor submitted a proof of debt in NMCH's administration claiming AED 567,235,857, the equivalent of some US$ 154,454,964.

14. On 9 August 2021, the Joint Administrators formally made a detailed presentation to the creditors of a proposed restructuring of the NMC Group by way of deeds of company arrangement ("**DOCAs**"). I shall refer to this as the "**August 2021 Presentation**". They considered that the proposal presented (as Mr Fleming expressed it in his evidence) "*the best way to maximise value for creditors*". Drafts of the proposed DOCAs were made available to creditors on the creditor portal.

15. I can continue with this introduction to the NMCH DOCA, and associated DOCAs for other NMC Companies that were put into administration on 27 September 2020, by repeating paragraphs 20 and 21 of the April Judgment:

> "*On 1 September 2021, a meeting of the creditors of NMCH and other companies of the NMC Group in administration in ADGM was held remotely to*

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consider and vote on proposals by the Joint Administrators for the restructuring of the NMC Group, which had been presented to the creditors in detailed Revised Administrators' Proposals dated 9 August 2021. The proposals were for separate but inter-related Deeds of Company Arrangement … for NMCH and 34 of the 35 other companies in administration, and the creditors of NMCH approved the proposed DOCA for NMCH … by a large majority, as did the creditors of each of the other 34 companies in administration. The DOCAs did not bring to an end the administration of the companies, including NMCH, and the prohibition on legal process under section 45(5) of the IR continued. Mr Fleming and Mr Cairns remained the Joint Administrators under the Administration Order, as well as being appointed Deed Administrators under the DOCAs.

In broad outline, the scheme of the proposed DOCAs was to allow creditors to submit claims for proof, such proofs being in the administration of the relevant debtor company as well as under the relevant DOCA; and proving creditors were to share rateably in the value of the Group through instruments of entitlement in the restructured Group. A new company in the Group was to take over the subsidiary companies and through them the operating businesses, principally through transfers of shares owned by NMCH. … Thus, the subsidiary companies were to continue as going concerns. NMCH was to continue in administration in order to collect and distribute assets so as to achieve the best result for its creditors as a whole".

16. I add to this explanation that under the scheme the creditors of the NMC Companies were treated as Group Creditors and were to share in the assets of the NMC Group: in that way, the structure of the separate companies in the NMC Group was overridden. The scheme was put into effect through two companies, NMC Holdco SPV Ltd ("**Holdco**"), the holding company of the new structure that had been incorporated to acquire substantially all the assets of the NMC Companies; and NMC Opco SPV Ltd ("**Opco**"), the newly incorporated operating company of the Holdco Group.

17. On 21 September 2021, the Joint Administrators, in their capacity as the "*Deed Administrators",* NMCH, Holdco and Opco entered into a deed of company arrangement, which implemented the decision taken on 1 September 2021. On 27 October 2021, they entered into the NMCH DOCA, which included some variation to the earlier deed made under section 84 of the *IR 2015* after a meeting of creditors had passed an appropriate resolution: the variations are irrelevant for present purposes.

18. On 22 March 2022, the restructuring arrangements under the DOCAs were effected, and 34 of the NMC Companies came out of administration. They did not include NMCH, which still remains in administration.

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19. Noor had attended the meeting on 1 September 2021, at which the creditors of NMCH approved the terms of the DOCA which the Joint Administrators proposed, but it did not vote on the proposals. However, it is bound by the decision of the meeting: section 76(1) of the *IR 2015* provides that: "*A* [DOCA] *binds all creditors of the Company, so far as concerns claims arising on or before the date specified in the* [DOCA] …", which in this case was 27 September 2020. Section 78(3) of the *IR 2015* provided that, until a DOCA terminates, a person bound by it cannot *"(a) begin or proceed with a proceeding against the Company or in relation to any of its property; or (b) begin or proceed with enforcement process in relation to property of the Company except (c) with the leave of the Court; and (d) in accordance with such terms (if any) as the Court imposes*". The term "*property*" is widely defined in section 215(2): see too section 298. (Sections 76, 78, 215(2) and 298 are not changed in the *IR 2022*). In this context, I cited in my April Judgment (at para. 55) the judgment of Leeming JA in *DSG Holdings Australia Pty Ltd v Helenic Pty Ltd [2014] NSWCA 96,* who was considering the comparable position under the *Corporations Act 2001 (Cth)*, and said this:

> "*A resolution in favour of a deed of company arrangement resembles a creditors' scheme of arrangement, in that all creditors - even those voting against it - are bound. … the mere carriage of a resolution has legal effect, subject to successful application being made to a court to set it aside. Upon the resolution being carried, the administrator is required to bring into existence and execute a deed … which binds all creditors, even those voting against it …, who may not act inconsistently with the deed even before it is executed …*" (at para. 73).

20. Indeed, by an order dated 1 April 2022, I made certain declarations about the NMCH DOCA and other associated DOCAs, which included these:

    (i) that "[t]*he DOCAs were each executed on 21 September 2021 duly and in accordance with section 74 of the Regulations*", and certain DOCAs, including the NMCH DOCA, were "*duly subsequently amended and executed on 27 October 2021*"; and

    (ii) that "[e]*ach DOCA binds all Deed Company Creditors in respect of that DOCA to the extent and as provided for by the terms of the DOCAs …*".

21. On 1 November 2021, the Joint Administrators advised Noor that its proof had been rejected in the full amount on the basis of a set-off against it, but they accepted the proof in the sum of US$ 149,454,964. On 15 November 2021, Noor wrote to the Joint Administrators that it agreed to the reduced amount "*provided that* [NMCH] *will pay the admitted claim amount of USD 149,454,964 within 30 days with effect from the date hereof*". The Joint Administrators did not accept that condition, but Noor did not appeal against the decision to refuse some US$ 5 million of the proof, and the time to do so has

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lapsed. Therefore, under the terms of the NMCH DOCA, their decision became binding and Noor's claim for US$ 149,454,964 became an "*Admitted Group Claim*".

22. On 22 November 2021, Noor was notified that NMCH had a potential "*Offensive Claim*" (as defined in the NMCH DOCA at clause 1.1) against it, and because Noor's claim might therefore be subject to a set off, it became a so-called "*Holdback Claim*", and so the Joint Administrators, in their capacity as the Deed Administrators, had a discretion under clause 9.7 of the NMCH DOCA to delay distribution of entitlements under it.

23. On 26 September 2022, Noor was notified by email that, because legal proceedings in respect of an "*Offensive Claim*" had not been brought within the stipulated period, its claim was no longer classified as a "*Holdback Claim*", and it had returned to being classified as an "*Admitted Group Claim*". The email notification invited Noor to complete the documentation that was required under the NMCH DOCA for it to receive its entitlements. It explained that, "[p]*ursuant to clause 9.11(b) of the* [NMCH] *DOCA, if* [Noor fails] *to comply with the Subsequent Distribution Requirements by the Expiry Date, being 25 March 2023,* [Noor] *shall be deemed to have abandoned* [its] *DOCA Creditor Entitlements without any further right to make a claim in respect of* [Noor's] *Group Claim*". The email sent an "*Admitted Group Creditor Letter",* which stated that: "*Failure to validly complete and submit this Admitted Group Creditor Letter may impact an Admitted Group Creditor's right to receive its allocated DOCA Creditor Entitlements, whether directly or through a Nominated Recipient*".

24. Noor had not submitted the required documentation by 14 March 2023, and it was sent another email, headed "*Action Required*", which stated this:

> "*We are writing to you because we have not received a correct and/or complete Admitted Group Creditor Letter ("AGCL") from you. Please be reminded that in order to receive any entitlements in relation to your claim you must complete an AGCL and satisfy certain Subsequent Distribution Requirements as defined in the* [NMCH DOCA] ... .
>
> *Pursuant to Clause 9.11(b) (Expiry of DOCA Creditor Entitlements) of the* [NMCH DOCA]*, if you fail to submit an AGCL and satisfy the Subsequent Distribution Requirements within 12 months following the Restructuring Effective Date (the "Compliance Deadline") you will be* ***deemed to have abandoned your entitlements*** *without any further right to make any recovery in respect of your admitted claims in the administrations or deeds of company arrangement of the DOCA Companies.*
>
> ***The Compliance Deadline is 11:59pm (Gulf Standard Time) on 25 March 2023****. The Compliance Deadline is a hard deadline pursuant to the terms of the* [NMCH DOCA] *that cannot be extended. We are not required to accept any*

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AGCL or KYC documents submitted after the Compliance Deadline. In order for your benefits to not be cancelled upon the Compliance Deadline you must:

- *correctly complete and submit an Admitted Group Creditor Letter and supporting documents … . A blank AGCL is attached; …*

- *provide evidence satisfactory to* [the Deed Administrators and others] *that you or your Nominated Recipient have satisfied the* [Know Your Customer] *Requirements*" (emphasis in original).

25. On 22 March 2023, Noor replied that the deadline of 25 March 2023 did not give it enough time to consider and to take advice, and it asked that time be extended. They were told by email the same day that the deadline could not be extended.

26. On 24 March 2023, Noor wrote to NMCH that the Admitted Group Creditor Letter "*includes some provisions through which Noor Capital has no right to claim the indebtedness and losses* [sic] *all its rights under the judgment of Dubai Court if there are no funds after the Secured Creditors paid*". It asked questions, including questions about what secured creditors there were, what NMCH's assets were, what its liabilities were and "[w]*hat percentage of* [Noor] *gets back its indebtedness*". NMCH responded the same day with answers to Noor's questions. It warned Noor that "*the recovery will be nil if the Admitted Group Creditor Letter is not completed before the deadline or the other Subsequent Distribution Requirements are not met as Noor Capital will be deemed to have abandoned its entitlements without any further right to make any recovery in respect of its admitted claims*".

27. On 25 March 2023, Noor again emailed that it needed more time to consider its position, and recorded objections that it had "*no full information*" about NMCH, and that it had "*not been given enough time to consider*" NMCH's financial situation. It did not submit the required documentation before the deadline of 11.59 pm GST on 25 March 2023.

28. In his evidence in support of Noor's application, Mr Al Sayegh said that: "*Given that the funds in question represent investments held in trust for numerous investors,* [Noor] *was unable to secure the requisite unanimous investor consent within the exigent timeframe stipulated by the Administrators. Consequently,* [Noor] *was precluded from participation in the restructuring and liquidation process, notwithstanding repeated requests for extensions, on the asserted basis that the relevant deadline was peremptory and not susceptible to extension*".

29. The difficulty in obtaining investor consent is not reflected in the contemporaneous correspondence. There is no suggestion that Noor protested that the period of about six months was too short when it received the email of 26 September 2022. In any case, to my mind, it is an inadequate explanation for not providing the required documentation within

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the six months' period that Noor was afforded. There is no sign that during that time Noor was doing anything to meet the deadline of 25 March 2023. Instead, it was pressing ahead with enforcement proceedings in Dubai in breach of the October 2022 Anti-Suit Injunction.

The Interpretation of the NMCH DOCA

30. In the April Judgment, I said (at para. 55) that "[i]*n some ways, the position of the creditor, whether or not it votes for the DOCA, is comparable to that of a contracting party…"*. In my judgment in *NMC Healthcare Ltd v Abu Dubai Islamic Bank PJSC [2022] ADGMCFI 0008* because I considered the interpretation of the DOCAs is governed by the same principles of contracts, I said that "*the material admissible upon questions of interpretation of a multi-party arrangement such as the DOCA's is limited to what all parties to it knew or are to be taken to have known at the time when it was entered into: see In re Sigma Finance Corp [2009] UKSC 2 at para 37 per Lord Collins. Here, therefore, it is limited to what the relevant Related DOCA company and all its creditors knew or are taken to have known*" (at para. 26). Applying this principle, I accept that, as Mr Al-Attar submitted, it is legitimate to take into account the August 2021 Presentation if it helps to interpret the NMCH DOCA.

31. The NMCH DOCA expressly provided at clause 17.9(a) that: *"This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of ADGM*". The essential principles of contractual interpretation in English law (and so ADGM law) have been summarised in many judgments. Like Henderson J in *In re Marconi Corp Plc [2013] EWHC 324 (Ch)*, which concerned the interpretation of a scheme of arrangement between a company and its members, I am content with this summary from para. 37 of his judgment of these principles, which apply equally to the interpretation of the NMCH DOCA:

> "*(1) The court must consider the language used and ascertain what a reasonable person would have understood the parties to have meant. A reasonable person in this context is someone who has all the background knowledge which would reasonably have been available to the parties in the situation they were at the time of the entry into the instrument: …*
>
> *(2) The words used in an instrument should be given their natural and ordinary meaning. This means that the court will not readily accept that the parties have made linguistic mistakes in formal documents: …*
>
> *(3) If, however, in a commercial instrument, detailed semantic and syntactical analysis of words is going to lead to a conclusion that flouts business common sense, it must be made to yield to business common sense: …*
>
> *(4) Where one is dealing with complex commercial instruments of the kind here in issue, there are bound to be ambiguities, infelicities and inconsistencies, and an over-literal interpretation of one provision without regard to the whole may*

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distort or frustrate the commercial purpose. Accordingly, the wording must be interpreted as a whole in light of the commercial intention which may be inferred from the face of the instrument and from the commercial context: …

(5) In cases where the language is ambiguous or there are two possible constructions, it is generally appropriate to prefer the construction which is more consistent with business common sense and reject the other: …".

32. In this case, clause 2 of the NMCH DOCA assists in applying the fourth of these principles: it sets out its "*purpose and objects*". I need not set them all out, but they include these: to "*provide a continuation of the moratorium established upon the appointment of the* [Joint Administrators]", and to "*provide for a quick, cost efficient and fair mechanism for the management of Proofs of Debt and the determination of the Group Creditor Claims*".

The statutory machinery under which a DOCA may be varied

33. Mr Al-Attar submitted, and I accept, that the Court has only very limited powers to vary the terms of a DOCA. They are found in Part 1, Chapter 8 of the *IR 2022*. Reference was made to three sections. Section 85 empowers the Court to cancel a variation of a DOCA made by resolution of the creditors under section 84: it does not apply here. Section 88 empowers the Court to terminate a DOCA if it is satisfied of one of the matters specified in the section (such as that the creditors were given false or misleading information relevant to the decision whether to support that DOCA proposal) or that the DOCA "*should be terminated for some other reason*". Section 92 gives the Court power, on the application of an administrator of a DOCA, a member or creditor of the company, or the Companies Registrar, to declare a DOCA, or a term of a DOCA, void if "*there is doubt, on a specific ground, whether a* [DOCA] *was entered into in accordance with* [Part 1, Chapter 8 of the *IR 2022*] *or complies with* [that Chapter]"; and where the Court declares a provision of a DOCA void, it may order it be varied provided the administrator of the DOCA consents to the variation.

34. It suffices to say that Noor has not requested that the Court exercise any of these powers. Mr Al-Attar said that, if it now sought to do so, NMCH might object on the basis of an abuse of process under the principle in *Henderson v Henderson (1843) 3 Hare 100,* but that question is not before the Court and I say nothing about it.

Noor's application for permission to pursue proceedings before the Dubai Courts

35. Noor's application for permission to pursue enforcement proceedings before the Dubai Courts requires considerations of these questions:

    a. Is Noor entitled to apply for this permission?

    b. Does Noor have a right that it could pursue before the Dubai Courts?

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c. Does the Court have jurisdiction to grant Noor permission to pursue such proceedings?

d. Is Noor in breach of the NMCH DOCA in applying for permission to pursue Dubai enforcement proceedings?

e. Should the Court grant permission?

The real issues between the parties were about the last two questions.

Is Noor entitled to apply for permission to pursue proceedings before the Dubai Courts?

36. In his evidence in opposition to Noor's application, Mr Fleming referred to paragraph 3A of the June 2023 Anti-Suit Injunction, which he described as "*clear and unambiguous*". He said that this prohibits Noor from making "*any further applications for that purpose in respect of*" Dubai Case No. 3972/2020, and therefore neither Noor nor Mr Al Sayegh, to whom personally the June 2023 Anti-Suit Injunction extends, is entitled to seek the relief in the first paragraph of the application.

37. Ms Azzi submitted that Noor's application does not contravene the June 2023 Anti-Suit Injunction, because it is covered by the Exception. Specifically, she submitted that it does not contravene paragraph 3A, which, as I have said, was not included in the October 2022 Anti-Suit Injunction: it was first added by the June 2023 Anti-Suit Injunction. Ms Azzi argued that paragraph 3A is designed to prohibit "*unilateral recourse*" to the Dubai Courts without obtaining the permission of this Court, so as to ensure that any enforcement steps are taken "*only within the framework and control of the ADGM insolvency proceedings*". It does not, properly interpreted, limit the Exception that allows Noor to seek permission under section 45 of the *IR 2022*.

38. Mr Al-Attar did not dispute that submission, and I accept that Noor's application for permission to pursue proceedings in Dubai does not contravene the June 2023 Anti-Suit Injunction for the reasons that Ms Azzi advanced. It is clear that it would not have contravened the October 2022 Anti-Suit Injunction. Paragraph 3A is introduced by the words "*In particular*": its purpose was not to limit the previous paragraphs of the June 2023 Anti-Suit Injunction but to spell out a particular aspect in the prohibition. I do not interpret it as restricting the Exception that allows Noor to pursue proceedings with the permission of this Court, which plainly implies that Noor is permitted to apply for such permission.

Does Noor have a right that it could pursue proceedings before the Dubai Courts?

39. The question whether Noor has a right that it could pursue in proceedings before the Dubai Court depends upon the proper interpretation of the NMCH DOCA, and in particular clause 9.11(b).

40. Clause 9 of the NMCH DOCA is headed "*Distribution of Entitlements*", but I note that the

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heading does not affect the interpretation of the NMCH DOCA: see clause 1.2(c). Clause 9.1 requires that, in order to be eligible to receive a distribution of specified entitlements, called the "*EPM Entitlements*", Admitted Group Creditors must complete the so-called "*Initial Distribution Requirements*" and deliver them to the Joint Administrators, in their capacity as the Deed Administrators. Clause 9.1(b) provides that, subject to an exception that is irrelevant, only Admitted Group Creditors who had done so by the stipulated time "*will be entitled to receive the EPM Entitlements at the Initial Distribution Time*".

41. I shall set out in full clause 9.11, which is headed, "*Expiry of DOCA Creditor Entitlements*":

> *"(a) In order to receive DOCA Creditor Entitlements, an Admitted Group Creditor (and its Nominated Recipient, if applicable) other than a Disqualified Creditor must comply with the Initial Distribution Requirements or the Subsequent Distribution Requirements (as applicable) by the later of:*
>
> *(i) 12 months after the Restructuring Effective Date; or*
>
> *(ii) in the case of a Holdback Claim, sixteen (16) Business Days after the date on which the Deed Administrators notify the relevant creditor that its Holdback Claim has been admitted as an Admitted Group Claim, (the "**Expiry Date**").*
>
> *(b) Admitted Group Creditors (excluding a Disqualified Creditor) who fail to comply with the Initial Distribution Requirements or the Subsequent Distribution Requirements by the Expiry Date shall be deemed to have abandoned their DOCA Creditor Entitlements without any further right to make any claim in respect of its Group Claim and their DOCA Creditor Entitlements shall be distributed by the Holding Period Trustee to Group Creditors pursuant to the EPM Re-Run*".

42. The NMCH DOCA defines the "*ERM Re-Run*" as having the meaning given to it in the Holdco Common Terms Agreement, a related agreement. The Holdco Common Terms Agreement is not itself in evidence, but the "*EPM*" is defined as the "*entity priority model which calculates stakeholder claims and respective recoveries across the Group DOCA Companies* ...". The concept of an EPM Re-Run is more fully explained in the August 2021 Presentation, which said that there was to be an EPR Re-Run of the entitlements of Group Creditors, ten days before the first, second and third anniversaries of "*Completion*" and whenever else it was reasonably requested by Holdco. Following an EPM Re-Run, there would be a reallocation of entitlements that had been reserved for Group Creditors whose claims were ultimately rejected to DOCA Creditors who would have been entitled to them if they had not been so reserved. It explained that this reallocation procedure would never result in existing entitlements being withdrawn, cancelled, reduced or transferred.

43. Thus, clause 9.11 states in (a) what creditors needed to do to receive DOCA Creditor

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Entitlements, and in (b) the consequences if they do not do so.

44. The first question is whether Noor materially failed to comply with the requirements of clause 9.11(a). It appeared from Mr Al Sayegh's second witness statement that Noor disputes this. He said that Noor "*substantially complied with all procedural requirements under the DOCA and that the Administrators were, at all times, in possession of actual knowledge of Noor's debt and creditor status. To exclude Noor from the benefit of the DOCA on the basis of a rigid procedural interpretation of Clause 9.11* ***when its claim was already acknowledged, substantiated, and relied upon by the Administrators****, would amount to an inequitable and disproportionate forfeiture of substantive rights*" (emphasis in original). Ms Azzi did not develop this point in her submissions, and she was right not to do so. Even if the "*de minimis*" doctrine permitted minor failures to comply with the stipulated procedure to be excused (which I question, given the need for all parties to have certainty with regard to the procedure for distributing entitlements), I cannot accept that it would cover Noor's failings. I do not accept that it substantially complied with requirements of sub-clause 9.11(a): it simply did not submit the required Initial Distribution Requirements (either by the deadline or indeed thereafter).

45. Noor also argued that its failure to comply with the requirements of clause 9.11(a) does not extinguish the debt that it is owed by NMCH. It submitted that sub-clause 9.11(b) makes clear that, if a Group Admitted Creditor misses the relevant deadline, it is treated as having abandoned its right to its DOCA Creditor Entitlements, which then become subject to an EPM Re-Run. That does not discharge the underlying debt.

46. Ms Azzi therefore submitted that the debt still exists independently of the NMCH DOCA, and Noor still has the right to seek to recover it through other methods outside the DOCA process. I accept the first step in Ms Azzi's submission: it is consistent with section 82 of the *IR 2022* , which provides that a DOCA "*releases the Company from a debt only in so far as— (a) the Deed of Company Arrangement provides for the release; and (b) the creditor concerned is bound by the Deed of Company Arrangement*". Noor is bound by the NMCH DOCA, but it does not provide for discharge of the debt owed to Noor.

47. The second step in Ms Azzi's submission depends upon whether Noor is precluded from taking steps to recover the debt outside the DOCA process, specifically to enforce the Payment Order in Dubai, by the terms of the NMCH DOCA and whether it is or should be so precluded by the Administration Order. I come to that later.

Does the Court have jurisdiction to grant Noor permission to grant permission to pursue such proceedings?

48. Section 45(5) of the *IR 2022* provides as follows: "*No legal process (including legal proceedings) may be instituted or continued against the Company or property of the Company except— (a) with the consent of the administrator of the Company; or (b) with the*

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permission of the Court".

49. In a much-cited dictum in *Guaranty Trust Company of New York v Hannay & Company [1915] 2 KB 536,* Pickford LJ distinguished two senses in which the term "*jurisdiction"* is used*:*

> "*The first and, in my opinion, only really correct sense of the expression that the Court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject matter before it, no matter in what form or by whom it is raised. But there is another sense in which it is often used, i.e., that although the Court has power to decide the question it will not according to its settled practice do so except in a certain way and under certain circumstances*".

50. Mr Al-Attar rightly accepted that, under section 45(5) of the *IR 2022*, the Court has jurisdiction in Pickford LJ's "*correct*" sense to give Noor permission to pursue enforcement proceedings in Dubai.

Is Noor in breach of the NMCH DOCA in applying for permission to pursue enforcement proceedings in Dubai?

51. Clause 4.2 of the NMHC DOCA is headed "*Deed Moratorium*", and clause 4.2(a) provides that:

> "*... no person bound by this Deed may, without the consent of the Deed Administrators, in relation to any Deed Company Claim:*
>
> ...
>
> *(ii) begin, take any further steps in, or continue with, any legal proceedings ... in relation to their respective Deed Company Claims;*
>
> *(iii) begin or continue with a proceeding against* [NMCH] *in relation to any of its Assets, or begin or proceed with any kind of Enforcement Action in relation to Assets used or occupied by, or in the possession of,* [NMCH] *except with the leave of the Court or in accordance with such terms (if any) as the Court imposes;*
>
> *(iv) take any action whatsoever to seek to recover any part of its Deed Company Claim from* [NMCH]*, including through any Enforcement Action. ...*".

52. "*Enforcement Action*" is widely defined and covers the proceedings in Dubai that Noor is seeking permission to pursue.

53. Clause 4.2(b) provides that "*Nothing in this Clause 4.2 ... will impact the application of any moratorium applicable to the Deed Company in connection with the Administration, in*

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particular, pursuant to section 44 and 45 of the Regulations". (The Regulations were defined to mean the *IR 2015*, but it is now to be understood to refer to their successor, the *IR 2022*).

54. NMCH argues that Noor's right to pursue its claim is restricted by clauses 8 and 13 of the NMCH DOCA.

55. I do not consider that clause 13 assists NMCH. Its argument here is that Noor is bound by the terms of clause 13.4 of the NMCH DOCA, and so it would be in breach of the NMCH DOCA if it pursued enforcement proceedings in Dubai, unless (which is not the case here) the Joint Administrators, in their capacity as the Deed Administrators, consent. Clause 13 is headed "*Release and discharge of Deed Company Claims*", the *"Deed Company"* being NMCH and the term *"Deed Company Claim"* being defined to cover the claim made by Noor against NMCH.

56. Clause 13.1, headed "*Partial discharge of claims against* [NMCH]", provides as follows:

> "*(a) Holdco will issue the* [NMCH] *EPM Entitlements to the Deed Company Creditors ... at the time specified in the Restructuring Implementation Deed (the "**Holdco Issuance**").*
>
> *(b) The Holdco Issuance shall be treated as discharging the relevant Deed Company Creditor's claim against the Deed Company pro tanto, notwithstanding that it is made by Holdco. Accordingly:*
>
> *(i) each Deed Company Creditor's Admitted Group Claims against the Deed Company shall be discharged by an amount equal to the value of its* [NMCH] *EPM Entitlements;*
>
> *(ii) each Holdback Creditor's Holback Claim shall be discharged by an amount equal to the value of the* [NMCH] *EPM Entitlements prospectively allocated to it with the amount of any such release being adjusted... ; ... .*
>
> *(c) The following Deed Company Claims shall not be affected by this Clause 13.1:*
>
> *(i) the Unsecured Group Creditor Claim of a Deed Company Creditor, insofar as and only to the extent that the amount of such the Unsecured Group Creditor Claim exceeds the value of the* [NMCH] *EPM Entitlements issued to such Deed Company Creditor ... and, for the avoidance of doubt, the Deed Company Creditor will retain a claim against the Deed Company in respect of such unaffected claims;*
>
> *(ii) the Secured Claims;*
>
> *(iii) the claim of a Preferential Creditor...*".

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57. Clauses 13.2 and 13.3 are irrelevant for present purposes. Clause 13.4, headed "*Agreement not to claim*", provided that:

> *"Each Deed Company Creditor that is bound by this Clause 13 will not, without the consent of the Deed Administrators:*
>
> *(a) commence or continue, or instruct, direct or authorise any other person to commence or continue any proceedings arising out of; and*
>
> *(b) exercise or attempt to exercise any self-help remedy (including, for the avoidance of doubt, the cashing or claiming of liability in respect of any cheques provided to the relevant Group Creditor by the Deed Company prior to the Appointment Date),*
>
> *in connection with or with respect to their Deed Company Claims or any other associated claim howsoever arising in any jurisdiction or forum other than any process expressly permitted in accordance with Clause 6 (Claims Determination Process)".*

58. Clause 13.5, headed "*Waiver",* provides:

> "*(a) In accordance with and at the time specified in the Restructuring Implementation Deed and subject to the provisions of Clause 13.1 above, each Deed Company Creditor shall acknowledge that it may discover facts in addition or different to those which it presently knows or believes to be true with respect to the subject matter of this Deed, but it is its intention to fully and finally forever settle and release any and all matters, disputes and differences, whether known or unknown, suspected or unsuspected, which presently exist, may later exist or previously have existed between it, the Deed Company and/or the Released Parties in respect of the claims released in accordance with this Clause 13, and that in furtherance of this intention, the waivers, releases and discharges given in this Deed and the Restructuring Implementation Deed shall be and shall remain in effect as full and complete general waivers, releases and discharges notwithstanding the discovery or existence of any such additional or different facts.*
>
> *(b) The distribution of* [NMCH] *EPM Entitlements shall be treated by the Deed Company Creditors as settlement of all and any claims and Liabilities against the Deed Company waived or released under this Deed and/or the Restructuring Implementation Deed to the extent outlined in Clause 13.1 above*".

59. Mr Al-Attar submitted that clause 13.4 applies to all Deed Creditors. He was constrained to acknowledge that on his interpretation the words "*that is bound by this Clause 13*" are surplusage in that it would make no difference if they were omitted. I cannot accept that

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interpretation: I consider that it is more natural to understand them to confirm that, if and in so far as a claim is discharged under clause 13.1, the Creditor will not pursue any other claims in respect of it or resort to self-help remedies. It therefore does not apply to a creditor in Noor's position.

60. NMCH finds more help in clause 8, which is headed "*Entitlements*". Clause 8.1 provides that the DOCA Creditor Entitlements are property available to pay the admitted claims (with irrelevant exceptions), and no other property of NMCH would be available to do so. Clause 8.1(c) provides as follows:

> "*Group Creditors are only entitled to receive the DOCA Creditor Entitlements that are declared by the Deed Administrators and the Deed Company and provided for in this Deed and the Related DOCAs and the Restructuring Document, and the right of recourse in respect of each Group Creditor Claim is solely limited to such DOCA Creditor Entitlements*".

61. Clause 1.3 of the NMCH DOCA provides that: "*If there is any inconsistency between the provisions of this Deed and the Regulations, this Deed prevails to the extent permitted by law*". However, I do not consider there to be any inconsistency between clause 8 and section 45(5) or section 78(3) of the *IR 2022*. Clause 8 provision does not prohibit Noor from bringing or pursuing enforcement or other proceedings. I do not consider that it overrides or restricts the implied right of creditors to seek permission to institute or continue proceedings under section 45 and section 78(3) of the *IR 2022*. After all, as I have said, one of the objects of the NMCH DOCA was to continue the moratorium that came into force when the Administration Order was made, and that moratorium was subject to the Court's power to permit proceedings. However, as I shall explain, I consider clause 8.1(c) relevant to how the Court should exercise its discretion upon an application for permission.

The application for an order for relief under the terms of the NMCH DOCA

62. It is convenient next to consider Noor's alternative application for an order that the Court should grant it relief by permitting it "*to be reinstated into the ongoing restructuring process of* [NMCH] *... in such a manner as* [the] *Court deems just and equitable*". Noor argues that, unless such relief is available, it had a strong case that fairness demands that the moratorium be lifted to allow it to pursue enforcement proceedings in Dubai.

63. It is not clear to me what order Noor seeks from the Court by way of relief under the terms of the NMCH DOCA. In his first witness statement Mr Al Sayegh refers to clause 9.11 and says that "*while the failure to meet the deadline results in forfeiture of* [Noor's] *direct entitlement under the DOCA, the claim itself remains subject to redistribution. In effect,* [Noor's] *entitlements are not extinguished in substance but are instead reallocated for the benefit of the remaining Group Creditors through the mechanism of the EPM Re-Run ...*".

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He goes on to say that in would be inequitable, disproportionate and contrary to the purpose of the NMCH DOCA to treat Noor's "*failure to meet a procedural deadline as a complete forfeiture of substantive rights*". In his second witness statement, Mr Al Sayegh explains a little more specifically that Noor seeks either (i) a direction that Noor's "*claim be reinstated with the DOCA process and treated as a valid admitted claim for* [the] *purposes of distribution"*. I therefore understand Noor's submission on its alternative application is that the Court should require NMCH to conduct an EPM Re-Run which recognises it as a creditor and allocates to it DOCA Creditor Entitlements.

64. I cannot accept this argument: the NMCH DOCA does not contemplated that the EPM Re-Run machinery should operate in this way or for this purpose. Indeed, Mr Al Sayegh rightly acknowledged in his evidence that "[a]*t face value* [clause 9.11] *appears absolute and creates a procedural cut-off point to allow the administrators to move forward with final distributions and avoid infinite delays*".

65. I accept Mr Al-Attar's submission in response to Noor's alternative application: as Noor was warned on 14 March 2023, the compliance deadline of 25 March 2023 was a "*hard deadline*". He distinguished two kinds of "*bar dates*" that are found in insolvency arrangements of this kind: "*hard*" or "*extinctive*" bar dates, where a failure to meet them results in the entitlements being extinguished; and "*soft*" bar dates, where late claims may be accepted so as to share in the distributions with other creditors. He cited cases in which the English Courts have recognised and given effect to hard bar dates, including *In re Pan Atlantic Insurance Co Ltd [2003] EWHC 1696 (Ch)* and *In re Lehman Brothers International (Europe) (In Administration) [2018] EWHC 1980 (Ch)*.

66. The NMCH DOCA provides, at clause 6.4, for a soft bar date (5.00 pm GST on 30 April 2021) for admitting claims. Clause 6.4(a) provides:

> "*(a) Subject to Clause 6.4(b), if a Deed Company Creditor:*
>
> *(i) submits or has submitted a Proof of Debt in respect of a Deed Company Claim following the Bar Date; or*
>
> *(ii) fails to submit a Proof of Debt in respect of a Deed Company Claim at all,*
>
> *(i) and (ii) both constituting a "**Barred Claim**"), that Deed Company Creditor will be deemed to have abandoned its Deed Company Claim against the Deed Company and its Deed Company Claim will accordingly be extinguished*".

67. However, clause 6.4(a) is softened by clause 6.4(b): "*Notwithstanding (a)(i) above, the Deed Administrators may admit any Proof of Debt submitted after the Bar Date in their absolute discretion and the relevant claim will be considered by the Deed Administrators*

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as if it was not a Barred Claim for the purposes of determining rights or entitlements under this Deed".

68. The bar date in clause 9.11 is not subject to a comparable, or any, qualification to mitigate the consequences of failing to comply with it. There was good reason that it should be a hard bar date: as the August 2021 Presentation explained, at the heart of the restructuring that was designed to save the NMC Group's business was the establishment of "*a process by which Holdco Facilities Commitments can be distributed against the Group Company Creditors using an EPM to calculate their proportional claims against the Group DOCA Companies, taking into account the varying nature of each Group Company Creditor's existing claims against the Group DOCA Companies*". I accept Mr Al-Attar's submission that it was of central importance to this restructuring that the EPM to distribute the entitlements in this way, and its efficiency and efficacy would be compromised by the uncertainty of a soft bar date. In any case, not only was there good reason for a hard bar date: in my judgment, the NMCH DOCA unambiguously provided for one.

69. I reject Noor's alternative application for some form of relief under the terms of the NMCH DOCA.

Should the Court permit Noor to pursue enforcement proceedings?

70. Returning to the primary relief sought by Noor, Ms Azzi submitted that the Court has power under section 45(5) of the *IR 2022* (and, as I infer that she would argue, section 78(3) of the *IR 2022*) to permit Noor to pursue proceedings in Dubai to enforce the Payment Order, and that it should exercise it in the interests of fairness. Unless Noor is entitled to recover under the DOCA scheme, it would be unfair to Noor if, at the same time, it has no prospect of enforcing its judgment debt against NMCH. As Ms Azzi put it in her closing submissions: "*Fairness cannot mean that a debt is allowed to exist … without any possibility of recovery*". In this case, the debt is very large indeed, and, before the Administration Order was made, Noor's claim was upheld by the Dubai Court, who then had jurisdiction in the matter. NMCH's attempts to overturn it on appeal have failed. In these circumstances, Noor contends that the Court should avoid the perceived unfairness by allowing it to enforce the Payment Order in Dubai.

71. I make three initial observations. First, I have no evidence about what is likely to be recovered by other creditors who have complied with the DOCA scheme, but I cannot assume that they will recover their claims in full. On the face of it, it would be unfair to them to allow Noor to achieve a better result by by-passing the scheme to which they are taken to have agreed. Ms Azzi did not dispute this, and she readily accepted that the Court should properly attach terms to any leave to pursue proceedings so as to avoid that result. (There is no doubt that the Court is entitled to attach terms if it grants leave under section 45(5): see *In re Atlantic Computer Systems Plc [1992] Ch 505, 543E*). It would not be easy in this case to formulate terms that would achieve this end, but I am prepared to assume (without

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deciding) that it would be possible to do so.

72. Secondly, Ms Azzi argued that it would be a strange outcome if Noor has rights against NMCH but the law prevents it from having any route to enforce them. She said that, if the Court allowed Noor's claim to be "*a debt that survives in theory but is extinguished in practice*", it would "*create a category unknown to insolvency law*". I am not persuaded of that: generally, insolvency law does not admit proof of a claim which is time-barred under the *Limitation Act 1980 (UK)*, and therefore, the right giving rise to the claim is not extinguished but proceedings cannot be brought to enforce it. (The *Limitation Act 1980 (UK)* is incorporated into ADGM Law under the *ADGM Application of English Law Regulations 2015*).

73. Thirdly, I have referred to Noor's and Mr Al Sayegh's breaches of the October 2022 Anti-Suit Injunction and their proven contempt of this Court. The Court is entitled to have regard to this when deciding whether to give leave to pursue proceedings, but Mr Al-Attar did not place great weight upon this in his submissions. My decision does not depend upon this point.

74. The parties' representatives did not make submissions about the principles that should govern whether the Court should excuse a creditor from the moratorium imposed by section 45 of the *IR 2022*, and no authorities were cited to me about that. To my mind, it is helpful to start with this clear explanation of the purpose of the insolvency proceedings and the moratoriums that they trigger in the judgment of Richards LJ in *Cook v Mortgage Debenture Ltd [2016] EWCA Civ 103*:

> "*In the case of liquidation and bankruptcy, the purpose of these provisions is essentially twofold. First, given that the property of the company or individual stands under the statute to be realised and distributed, subject to any existing interests, among the creditors on a pari passu basis, the moratorium prevents any creditor from obtaining priority and thereby undermining the pari passu basis of distribution. Second, given that both a liquidation and bankruptcy contain provisions for the adjudication of claims by persons claiming to be creditors, the moratorium protects those procedures and prevents unnecessary and potentially expensive litigation. In circumstances where the potential liability of the company or bankrupt is best determined in ordinary legal proceedings, as for example is often the case with a personal injuries claim, the court will give permission for proceedings to be commenced or continued, but usually on terms that no judgment against the company or individual can be enforced against the assets of the estate.*
>
> *In the case of an administration, this is not a sufficient description of the purposes of the moratorium in paragraph 43(6). An administration may be a prelude to a liquidation or, once an administrator gives notice of an intention to*

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> *make distributions to creditors, may become a substitute for a liquidation. In such circumstances, the purposes described above apply also to the moratorium in the case of an administration. But before that point is reached, the principal purpose of an administration is either to rescue the company itself as a going concern or to preserve its business or such parts of its business as may be viable. The purpose of the moratorium is to assist in the achievement of those purposes. The moratorium on legal process against the property of the company best preserves the opportunity to save the company or its business by preventing the dismemberment of its assets through execution or distress. The moratorium on legal proceedings serves the same purpose by preventing the company from being distracted by unnecessary claims. As Nicholls LJ put it in In re Atlantic Computer Systems plc [1992] Ch 505 at 528, the moratorium provides "a breathing space". Once again, however, the court will readily give permission for proceedings to be commenced or continued where it is appropriate to do so*".

75. Section 45 of the *IR 2022* is modelled on paragraph 43 of Schedule B1 to the *Insolvency Act 1986 (UK)*, and more specifically section 45(5) is modelled on paragraph 43(6). The statutory provisions say nothing about when leave should be given to institute or continue legal process against a company in administration. *Lightman & Moss on The Law of Administrators and Receivers of Companies (6th Ed, 2011)* states that, while the correct approach depends upon the nature of the claims being asserted, "*two principles may be said to apply across the board. First, it is for the applicant to make the case for the moratorium to be lifted. Secondly, an applicant seeking an order lifting the stay will need to demonstrate that its underlying claim is seriously arguable*" (at para. 9-035). In this case, the second condition is plainly established by the Payment Order.

76. There is also clear authority in English law that where, as here, the claim is simply a monetary one (and no proprietary or security interest is asserted), permission to lift the moratorium will be granted only in exceptional circumstances: see *Halsbury's Laws of England (5th Ed, 2024), vol 16* para. 152 fn 7. In *re Nortel Networks UK Ltd (In Admin.) Unite (The Union) v Nortel Networks UK Ltd [2010] EWHC 826 (Ch)* at para. 8, Norris J cited and applied this observation of Patten J in *AES Barry Ltd v TXU Europe Energy (in admin.) [2004] EWHC 1757 (Ch)* at para. 24: "*... it will be in exceptional cases that the court gives a creditor whose claim is simply a monetary one, a right by the taking of proceedings to override and pre-empt that statutory machinery*" (at para. 8).

77. Patten J accepted, unsurprisingly, that there are exceptional cases. One example is where litigation outside the insolvency regime is the best way to resolve a dispute, as is illustrated by *Cargologicair Ltd v WWTAI Airopco 1 Bermuda Ltd [2024] EWHC 508 (Comm)*, where it was observed that, "*it will often be in the creditors' collective interests, as well as the individual claimant's, for the parties to have a definitive decision about what the liability is and therefore understand the company's financial position*" (at para. 17). But it is not a

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necessary requirement for leave to pursue a simple monetary claim that it should be in the interest of the body of creditors as a whole: it is important not to shackle with hard rules a decision where the statute gave the courts an unfettered discretion.

78. For my part, I would be prepared to accept the suggestion of ICC Judge Barber in *Foreign Representative of Samyung Enc Co Ltd v United Kingdom Hydrographic Office [2025] EWHC 3245 (Ch)* at para. 47 that in this context a case is to be regarded as exceptional if "*the applicant creditor … demonstrate*[s] *a circumstance or combination of circumstances of sufficient weight to overcome the strong imperative to have all the claims dealt with in the same way (and in the instant case by the insolvency court)"* (at para. 47), provided (i) it is not supposed that the Court will readily find such circumstance(s), and (ii) it is recognised that it will always have at the forefront of its thinking whether it would assist or impede the administration and its purpose to lift the moratorium.

79. I see force in Ms Azzi's submission that in one sense it is a harsh and "*disproportionate*" consequence of Noor's failure to follow the proper procedure to claim DOCA Creditor Entitlements that it is unable to enforce its claim for some US$ 150 million. Mr Al-Attar submitted that Noor should not be granted permission because, having failed to comply with the procedure in clause 9.11 of the NMHC DOCA, it does not have "*clean hands*" and should not be granted this or other "*just and equitable*" relief. I do not regard permission under section 45 (or section 78) as a form of equitable relief, and do not accept that the "*clean hands*" doctrine is applicable to it. However, I have less sympathy with Noor because I cannot accept that it made any sincere attempt to comply with the requirements for receiving its entitlements under the NMCH DOCA.

80. I consider that there are three other major reasons to refuse Noor permission. First, the NMCH DOCA is binding on Noor, and by clause 8.1(c) it accepted that it (and other Group Creditors) were only entitled to DOCA Creditor Entitlements in respect of its claim and that it had no other "*right of recourse*". This is consistent with and reflects the structure of the NMCH DOCA as a whole. It would be inconsistent with the structure of the DOCA and clause 8.1(c) in particular, for Noor to pursue enforcement proceedings in Dubai. Secondly, as I have said, the primary purpose of the administration was to rescue the NMC Group business. The success of the scheme depended on there being certainty as to creditors' entitlements. It would undermine that certainty to give permission. Thirdly, the purpose of the administration, and of the moratorium under it, is to protect the interests of the creditors as a body. It would prejudice other creditors to allow Noor to enforce the Payment Order outside the DOCA structure.

Conclusion

81. Ms Azzi presented Noor's arguments clearly, succinctly and forcefully, and I pay tribute to her submissions. Nevertheless, I am unpersuaded by them, and I refuse Noor's application.

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82. Unless otherwise ordered, I shall deal with any consequential matters in writing.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
30 January 2026