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

BETWEEN

ABU DHABI COMMERCIAL BANK PJSC
Claimant

and

PRASANTH MANGHAT
Defendant

AND

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Claimants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Claimants)

Claimants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Defendants

AND

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

IN THE MATTER OF NMC HEALTHCARE LTD (in administration) (subject to deed of company arrangement) AND THE COMPANIES LISTED IN SCHEDULE 1 TO THE ADMINISTRATION APPLICATION

AND IN THE MATTER OF THE INSOLVENCY REGULATIONS 2015

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Applicants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Applicants)

Applicants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Respondents

JUDGMENT OF JUSTICE SIR NICHOLAS PATTEN

Neutral Citation:	[2024] ADGMCFI 0020
Before:	Justice Sir Nicholas Patten
Decision Date:	15 December 2024
Decision:	1. The time by which the Bank of Baroda is to complete its standard disclosure is extended to 20 January 2025. 2. All applications for further or specific disclosure in relation to the issues identified in paragraph 5 of the Order dated 19 September 2024 shall be made by a. no later than 8.00 pm GST on 25 April 2025 in the JA Claim; and b. no later than 8.00 pm GST on 28 February 2025 in the ADCB Claim. 3. All applications for permission to adduce expert evidence in relation to the issues identified in paragraph 5 of the Order dated 19 September 2024 shall be made by 8.00 pm GST on 28 March 2025. 4. In relation to whether UAE law issues should be decided at the trial on the basis of submissions or expert evidence: a. the claimants in each of the JA Claim and the ADCB Claim shall file and serve an application for the determination of such matter by 8.00 pm GST on 14 February 2025; b. any evidence in response to such applications shall be filed and served by 21 February 2025; c. any evidence in reply may be filed and served by 28 February 2025; d. the hearing of the applications shall be listed for the first convenient date after 8 March 2025; and e. the parties' skeleton arguments shall be filed two days prior to the hearing. 5. The Original 4 June Application (as amended and defined in the Judgment) filed by the Claimants in the JA Claim be restored. 6. Train of inquiry disclosure pursuant to the Original 4 June Application (as amended) and the Travelex Application be given by the Bank of Baroda by 25 February 2025. 7. A further case management conference shall be held before 25 February 2025. 8. The costs of the Original 4 June Application (as amended), the Travelex Application, the Extension Application, the November CMC and the December CMC be costs in the case. 9. The parties' disclosure statements shall be in accordance with CFI Form FI 13, except that "control" shall be

	substituted for "possession" and should include the contents referred to in para 157 of the NMC Claimants' skeleton argument and para 19 of ADCB's skeleton argument; and 10. Mr Manghat shall make and serve his disclosure statement in the form pursuant to this Judgment by 18 December 2024.
Hearing Date:	11 December 2024
Date of Order:	To be drafted by Counsel to give effect to this Judgment.
Catchwords:	Extended standard disclosure. Extension of deadlines for extended standard disclosure. Train of Inquiry Disclosure. Differences between ADGM CPR and English CPR for train of inquiry disclosure.
Cases Cited	Berezovsky v. Abramovich [2010] EWHC 2010 State of Qatar v. Bank Havilland SA [2020] EWHC 1248 (Comm) Ras Al Khaimah Investment Authority v. Azima [2022] EWHC 1295 (Ch)
Legislation Cited:	ADGM Court Procedure Rules English Court Procedure Rules UAE Federal Decree Law No. 14 of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities
Case Numbers:	ADGMCFI-2022-111; ADGMCFI-2022-299; and ADGMCFI-2020-020
Parties and representation:	**Case No.: ADGMCFI-2022-111** ***Claimant*** Mr Rajesh Pillai KC, Mr Scott Ralston and Ms Rebecca Zaman (Instructed by HFW) ***Defendant*** Ms Sophia Hurst (Instructed by Kobre & Kim (GCC) LLP) **Case Nos.: ADGMCFI-2022-299 and ADGMCFI-2020-020** ***Claimants / Applicants*** Mr Henry King KC and Mr Damien Bruneau Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP ***First Defendant / Respondent*** Ms Ruth den Besten KC and Ms Gretta Schumacher (Instructed by Farrer & Co)

	Second Defendant / Respondent Ms Sophia Hurst (Instructed by Kobre & Kim (GCC) LLP) ***Third Defendant / Respondent*** Mr Harish Salve KC, Ms Sarah Tresman and Ms Maria Kennedy Instructed by Baker & McKenzie LLP

JUDGMENT

1. This is my judgment on the various applications which I heard at the Case Management Conference held on 11 December 2024 (the "**December CMC**").

2. After the Case Management Conference on 8 November 2024 (the "**November CMC**"), I made various orders extending time for disclosure by the Bank of Baroda ("**Baroda**") and Dr Shetty. The background and relevant procedural history are set out in my judgment of 19 November 2024: [2024] ADGMCFI 0015 (the "**November Judgment**"). As things stand, both Baroda and Dr Shetty have until 20 December 2024 to complete the extended standard disclosure ordered by Justice Sir Andrew Smith (the "**Directions Order**") at the first Case Management Conference on 14 February 2024 (the "**First CMC**"). Under paragraph 27 of the Directions Order, disclosure and production of documents was to take place by no later than 25 October 2024. The judge also disapplied the provisions concerning standard disclosure which are contained in the ADGM Court Procedure Rules (the "**ADGM CPR**"), rule 86(2) and (3) and substituted for that a requirement to give extended standard disclosure which was defined in paragraph 28(a) of the Directions Order. This is similar in terms and effect to Model D disclosure under the English Court Procedure Rules (the "**English CPR**") (PD 57 AD) (the "**English CPR PD**") but does not include train of inquiry disclosure as provided for under Model E of the English CPR PD. There is no equivalent to these provisions in the ADGM CPR, but the court has power under ADGM CPR rule 8(1) to make any order or give any direction which it considers appropriate for the purpose of managing the proceedings and under ADGM CPR rule 86(1) and (2) it may order disclosure on a different basis from standard disclosure. All the parties accept that Justice Sir Andrew Smith was therefore entitled to direct extended standard disclosure and that the court may order train of inquiry disclosure if appropriate.

3. In paragraphs 6 and 7 of the November Judgment, I summarise the various extensions of time granted for extended standard disclosure. On 8 November 2024, I granted further extensions of time to 20 December 2024 for Baroda and Dr Shetty to complete their standard disclosure. Neither of these defendants then sought any further extension of time beyond 20 December 2024 although Baroda did indicate both in its evidence and in Mr Salve's submissions that it had yet to obtain clearance in Oman for the disclosure of eight lever arch files of hardcopy documents and was still processing data contained on the MDaemon server and in the 0365 mail accounts. It was agreed that these matters would be revisited at the December CMC.

4. Baroda (but not Dr Shetty) has now issued an application for a further extension of time until 31 January 2025 to provide its extended standard disclosure (the "**Extension Application**"). It proposes that the deadlines for any applications for further or specific disclosure under paragraph 29 of the Directions Order and for applications to adduce expert evidence on the issues identified in paragraph 5 of the court's order of 19 September 2024 (the "**September Order**") should be extended to 28 March 2025.

5. The claimants in the "**JA Claim"** (the "**NMC Claimants**") (*NMC Healthcare LTD (in administration) (subject to a deed of company arrangement) & Others v. Bavaguthu Raghuram Shetty & Others - ADGMCFI-2022-299 and ADGMCFI-2020-020)* have issued an application to restore for hearing their original application of 4 June 2024 (the "**Original 4 June Application**") seeking train of inquiry disclosure in relation to what are now disclosure issues 55, 63, 64, 65, 66 and 68 in the List of Disclosure Issues ("**LOID**") dated 8 July 2024. They have also issued a new application for train of inquiry disclosure in relation to issue 55 of the LOID for the periods 1 to 31 May and 17 August to 16 September 2014 (the "**Travelex Application**"). The Original 4 June Application relates only to issues in 2019. The purpose of the Travelex Application is to capture documents relevant to the payments which were made to enable Dr Shetty to acquire Travelex in 2014.

6. In addition to these applications, I have also heard an application by Abu Dhabi Commercial Bank PJSC ("**ADCB**") for relief under article 120 of the UAE Federal Decree Law No. 14 of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities (the "**Article 120 Application**") in respect of the disclosure of a further 30 documents. These are loan documents relating to Dr Shetty and bank documents relating to a development project carried out by a special purpose vehicle owned or controlled by Dr Shetty and a Mr Almuhairi. Dr Shetty has consented to the Article 120 Application and ADCB has made strenuous efforts to contact Mr Almuhairi and has served the Article 120 Application on his former solicitors. They have also sought confirmation from Mr. Almuhairi as to whether he consents to the Article 120 Application. To date there has been no response. I take the view, however, that the disclosure of the documents would be in the interests of justice and that the confidential information relating to Mr Almuhairi which they contain can be adequately protected by provisions in the order restricting the use of the documents to the proceedings and their disclosure to the parties to the proceedings. I therefore made an order in the "**ADCB Claim**" (*Abu Dhabi Commercial Bank PJSC v Prasanth Manghat – ADGMCFI-2022-111*) on 12 December 2024 deeming service of the Article 120 Application on Mr Almuhairi's solicitors to be good service on him and for the disclosure of the documents on the terms I have mentioned.

Extension of time

7. In his Twelfth Witness Statement of 3 December 2024 ("**Thomson 12**"), Mr Thomson of Baker & McKenzie LLP ("**BM**") provided an update of the position about Baroda's disclosure exercise. He says that significant progress has been made since the November CMC and that on 15 November 2024, Baroda disclosed all relevant data from its UAE hardcopy documents and all email data from the 0365, Exchange on Premises and MDaemon servers that had been collected and processed up to that date. By 20 December 2024, Baroda expects to be able to disclose additional hardcopy documents from 10 files located in the UAE; 0365 email data (including from 18 newly identified custodians) which is currently being processed; email data from the entire MDaemon server which he says has now been collected and reviewed; transaction data from Finacle; AML alerts from the decommissioned FRCM system; documents

from the hard drives of desktop computers and from shared drives; and relevant policies and circulars located on Baroda's intranet.

8. What Baroda does not expect to be able to disclose by 20 December 2024 and for which it now seeks an extension to 31 January 2025 are:

   a. data from Baroda Connect (Baroda's now decommissioned electronic fund transfer system);

   b. hard copy documents from Baroda's London branch. These may contain material relating to relevant transactions in 2014;

   c. hard copy documents from Baroda's Corporate Office in India;

   d. One Drive data. This is a cloud-based electronic storage platform associated with an 0365 email account;

   e. data from various iPads and laptop computers. Some of these were retained by employees who are now abroad and an issue exists as to whether any relevant data they may contain is recoverable or perhaps even disclosable; and

   f. email data on mobile devices. Baroda is investigating whether WhatsApp and other relevant communications are held on mobile devices by relevant custodians. Two at least have already been identified. Custodians have been asked to preserve any potentially relevant documents.

9. The other two relevant classes of documents which Mr Thomson says are unlikely to be available for disclosure by 20 December 2024 are the Oman hard copy documents and documents from the Central Bank of the UAE ("**CBUAE**") cheque enquiry system. As yet, no authorisation has been obtained from the Central Bank of Oman for disclosure of hard copy and electronic data relating to Oman customers. The position about the CBUAE data is that Baroda is prohibited by CBUAE policy from disclosing copies of cheques other than as part of the cheque clearing process. An application has been made for consent to disclose copies in the proceedings, but no response has yet been received.

10. Baroda's position on the Extension Application is that it should be able to complete extended standard disclosure by 31 January 2025 except possibly in the two cases where it does not control disclosure. These are documents, such as the Oman documents, where some regulatory consent has to be obtained and data on mobile and other devices which are in the possession or former Baroda employees.

11. The NMC Claimants' position is set out in Mr Marsh's witness statement of 5 December 2024 ("**Marsh 25**"). In relation to the categories of documents for which Baroda seeks an extension of time, he queries whether the documents on the OneDrive platform require the extra time sought. They ought, he says, to be capable of being collected within a day. In relation to data contained on iPads, laptops and mobile phones, Mr Marsh says that it is evident that Baroda did not turn its mind to the collection of this data until after the November CMC despite earlier correspondence between his firm and BM in which BM were asked to confirm that internal messaging between employees during the relevant period would be subject to disclosure searches. Even now Baroda, he says, has failed adequately to explain precisely what it is doing to investigate the position concerning mobile phones and other electronic devices. Questions remain as to when it first became aware that they may contain disclosable material and as to

the identity of the relevant employees concerned. Nor have Baroda disclosed the details (if any) of its employment contracts which govern the use of personal mobiles for work purposes and the right of Baroda under these contracts to access relevant information.

12. Mr. Marsh also says that there have been considerable delays by Baroda in processing and reviewing the 0365 email data and in pursuing the consents necessary for the disclosure of the Oman documents. No details are given as to when authorisation was sought and it is highly unsatisfactory not to know with any certainty when disclosure of these materials is likely to occur.

13. At the December CMC, Mr Salve was able to provide some further information about the progress that has been made in relation to the outstanding sources of disclosure identified by Mr Thomson in Marsh 25. He told me that the data from Baroda Connect will be with BM by the end of the week for them to process and analyse. The same is true of the hard copy documents from Baroda's London and Mumbai offices. The electronic data from OneDrive is already with BM. The position about the iPads and laptops retained by former employees and data on mobile phones is more complicated. There were 25 iPads and laptops of which 10 remain in Baroda's possession and control. Fifteen others were purchased by former employees. Baroda has contacted a number of them but does not yet know whether they have retained the devices and if so whether they will consent to the downloading of the contents. But Mr Salve says that his clients expect to know this by the end of the week.

14. Contrary to what was indicated earlier, it now appears that Baroda did not issue mobile phones to its employees. They purchased their own phones although they could in some cases obtain reimbursement of the whole or part of the cost from Baroda. As yet it is not known whether these employees will consent to Baroda accessing their data from messaging services such as WhatsApp or how much of any material relevant to the issues in the proceedings has been preserved.

15. There is as yet no indication of whether and if so when the Central Bank of Oman will consent to the disclosure of the hard copy and electronic data located there. It now appears that Baroda wrote asking for consent comparatively recently, on 2 December 2024. It requested consent to download and copy the information contained on the CBUAE system on 21 November 2024 but again no indication has been received as to whether consent will be forthcoming.

16. It seems to me that the extension of time cannot be justified and should not be considered by reference to the material in Oman and on the CBUAE system. Baroda does not suggest that it will be able to give disclosure of these materials even by 31 January 2025 and to postulate a date for the disclosure would be entirely arbitrary and speculative. The position is that if consent is eventually given then they must and will be disclosed. But if it is not given then the material will not be disclosable by Baroda as being material under its control.

17. The Extension Application therefore falls to be judged by reference to the other classes of documents which Baroda says that it should be able to disclose by 31 January 2025. Of these, items 12 to 15 in the appendix to Thomson 12 do not in my view necessitate an extension of that length of time. They either are or will shortly be provided to BM and are of a type and on a scale which can be analysed more quickly. The more uncertain categories are items 16 and 17 (the iPads, laptops and mobile phones) where real uncertainty still exists as to whether the relevant data has been preserved and whether Baroda is in the position to obtain its disclosure. If Mr Salve is right and Baroda has no right to compel disclosure by ex-employees, then it will depend entirely on the goodwill of the persons concerned. Based on what Mr Salve has told me, most

of these uncertainties should be resolved one way or another in the next two weeks. If the material remains accessible and disclosure is not resisted, I see no reason why disclosure should not be made by 20 January 2025. If, on the other hand, Baroda does not have control of the data sources and disclosure is resisted then that is probably the end of the matter.

18. I propose therefore to extend the time for Baroda to complete its standard disclosure to 20 January 2025.

Consequential deadlines

19. This brings me to the deadlines for applications for further or specific disclosure and for permission to adduce expert evidence in relation to the issues identified in paragraph 5 of the September Order (the "**Paragraph 5 Issues**"). The NMC Claimants' position on further disclosure is that they require three months from the date for the completion of extended standard disclosure by Baroda which will now be 20 January 2025. Mr King therefore asks for an extension of time to 25 April 2025 for making any application for further or specific disclosure against Baroda. But he says that other applications for further disclosure against his clients and the other parties should, in broad terms, be three months from when their disclosure was given. I think that there will be advantages in terms of case management if a single deadline for applications for further or specific disclosure is imposed in the JA Claim and I will therefore make an order that all such applications should be made no later than 8.00 pm GST on 25 April 2025. In the ADCB claim it is agreed that the deadline for such applications should be 28 February 2025, and I will so order.

20. There seems to be agreement that the last date for making applications for permission to adduce expert evidence on the Paragraph 5 Issues should be 28 March 2025. If that is right, I will make the order. But there is a dispute as to the way in which the court should determine the issues of UAE law which are relevant to both claims. What is therefore proposed is that there should be a hearing for directions as to whether the UAE law issues should be decided at the trial on the basis of submissions or on the basis of expert evidence. To this end the claimants in the JA Claim and the ADCB Claim shall file an application for the determination of that question by 14 February 2025. Evidence in response will be filed by 21 February 2025 and any evidence in reply by 28 February 2025. The hearing will be listed for the first convenient date after 8 March 2025 and skeleton arguments will be filed two days prior to the hearing.

Train of inquiry disclosure

21. As mentioned earlier there is no express provision in the ADGM CPR for a party to give train of inquiry disclosure. But the order of Justice Sir Andrew Smith made at the First CMC has displaced ADGM CPR rule 86 in favour of a form of extended standard disclosure which equates to Model D of the English PD57AD. None of the parties to these applications has suggested that I lack jurisdiction to make an order for train of inquiry disclosure if such an order is otherwise justified. The opposition to the Original 4 June Application has therefore been based on two principal arguments: (1) that the restoration of the Original 4 June Application is premature because there has been no material change of circumstances since the judge declined to order train of inquiry disclosure at the second CMC on 6 June 2024 (the "**Second CMC**") and instead gave the claimants liberty to restore the application in the light of what disclosure was made in the autumn; and (2) that in any event train of inquiry disclosure should only be ordered in exceptional circumstances and the disclosure sought on the claimants' two applications does not satisfy these criteria.

22. The Original 4 June Application as amended seeks train of inquiry disclosure in respect of Baroda's knowledge about the failure to apply proper "*KYC*" and "*AML*" procedures in respect of transactions concerning the NMC Group and/or Dr Shetty and/or other connected entities in early 2019 (LOID 55); and in respect to what Baroda knew about the conduct of senior NMC Group employees in relation to the presentation of audit information to EY MENA, the NMC Group's auditors in that period (LOID63). This was the occasion in early 2019 when the auditors were presented with two conflicting sets of consolidated financial statements only one of which disclosed the Group's actual state of indebtedness to Baroda. The auditors then received a letter on Baroda notepaper saying that the statements which disclosed the Group's indebtedness were erroneous. The allegation in the JA Claim is that Baroda knew that the letter had not come from the bank and that NMC Group employees were providing false information to the auditors. But the auditors were not alerted to this. LOID 64 to 66 and 68 all relate to the question of whether Baroda investigated this provision of false information; whether the subsequent repayment in March 2019 by the NMC Group of the bulk of its liabilities to Baroda was demanded by Baroda as the price of its continued silence; and the extent to which Dr Shetty, Mr Manghat or other NMC Group employees knew about the March 2019 arrangements.

23. In the Travelex Application, the NMC Claimants seek an order in relation to LOID 55 for the period 1 to 31 May 2014 and 17 August to 16 September 2014. These are the periods during which the equivalent of some $151.586m was transferred from NMC Group bank accounts with Baroda to enable Dr Shetty to acquire Travelex. Details of the transfers are pleaded in paragraphs 71(3) and 152(1)(b) of the "***RRAPOC***" (the Re-Re-Amended Particulars of Claim). The NMC Claimants' case is that some of the payments came from accounts with Baroda held by UAE Exchange, Nexgen and FFT and were in turn funded by transfers from NMC Group accounts or trust receipt facilities for which NMC Group entities were liable.

24. The NMC Claimants' case (as pleaded in RRAPOC paragraphs 162-4) is that Baroda failed to carry out the KYC and AML checks which a reasonably competent bank would have done in these circumstances and did not follow the correct compliance procedures because its employees knew or were recklessly blind to the fact that each of the payments was fraudulent. It is also pleaded that it is to be inferred that the employees were instructed to accommodate these transfers by more senior persons in Baroda. Dr Shetty's case is that he was not aware that any NMC funds were used to purchase Travelex. Mr Manghat denies facilitating any of the transfers of NMC funds used for that purpose.

25. The NMC Claimants say that Baroda has disclosed only 69 documents relating to the period 1 May to 31 May 2014 and none of these are documents relating to KYC or AML. There has also been no disclosure of any document relating to the transfers from New Medical Centre Trading LLC, Nexgen, FFT or UAE Exchange. For the August to September 2014 period, no documents have been disclosed which relate to KYC or AML and only two documents in this period relate to Dr Shetty's acquisition of Travelex. Mr Marsh also relies on the unavailability of documentary evidence. The disclosure already made by Baroda indicates that its employees did use WhatsApp on their mobile phones to communicate information about customer transactions. This I think is confirmed by the present attempts by Baroda I mentioned earlier to investigate the availability of data contained on mobile phones. If it turns out that Baroda does not have control of this data or that it has not been preserved, then the NMC Claimants say that there is a serious risk that many relevant communications will not be disclosed as part of the current exercise.

26. As already explained, the regime which Justice Sir Andrew Smith set in place for extended standard disclosure corresponds to the provision of extended disclosure under the English PD57AD and there is common ground that although not bound by the English authorities this court should adopt the same approach when considering whether to order the train of inquiry disclosure which is sought on the Train of Inquiry Application. PD 57 A.D. paragraph 6.4 states:

> *6.4 In all cases, an order for Extended Disclosure must be reasonable and proportionate having regard to the overriding objective including the following factors—*
>
> *(1) the nature and complexity of the issues in the proceedings;*
>
> *(2) the importance of the case, including any non-monetary relief sought;*
>
> *(3) the likelihood of documents existing that will have probative value in supporting or undermining a party's claim or defence;*
>
> *(4) the number of documents involved;*
>
> *(5) the ease and expense of searching for and retrieval of any particular document (taking into account any limitations on the information available and on the likely accuracy of any costs estimates);*
>
> *(6) the financial position of each party; and*
>
> *(7) the need to ensure the case is dealt with expeditiously, fairly and at a proportionate cost.*

27. Disclosure Model E, which provides for train of inquiry disclosure, is only to be ordered in an exceptional case: see CPD57AD paragraph 8.3. Further guidance as to what this entails can be found in various first instance decisions of the High Court. In *Berezovsky v. Abramovich [2010] EWHC 2010* Gloster J. (as she then was) was faced with a wide ranging application for train of inquiry disclosure with no limitations suggested as to the time or the issues to which such disclosure might relate. Although accepting that the case might in due course justify an order for such disclosure, she refused it at that stage. At [12] she said:

> *Moreover, if a document is not searched for or disclosed when it should have been, the* consequences *for a party may be serious, as he may be accused of deliberately withholding it. I take the view that if such an order is to be made in this case, then the relevant party who is being asked to conduct disclosure on such a basis, and the court before whom the application is being made, should have an appropriately clear idea as to: what documents are likely to fall within the scope of the order; to what specific issues the relevant documents to be searched on the enhanced basis relate; and what the relevant "trains of inquiry" might be. On the basis of the information presently before me, I have no way whatsoever of making an informed decision as to such matters.*

28. This approach has been adopted by Cockerill J. in *State of Qatar v. Bank Havilland SA [2020] EWHC 1248 (Comm)* and by Moulder J in *Kelly Baker [2021] EWHC 964 (Comm)*. In the State of Qatar case Model E disclosure was refused but later ordered by David Edwards QC (sitting as a High Court judge): see *[2021] EWHC 2172 (Comm)* in relation to certain issues in a conspiracy claim on the basis that various communications had been taken off-line. In *Ras Al Khaimah Investment Authority v. Azima [2022] EWHC 1295 (Ch)* Model E disclosure was also ordered by

Michael Green J. in another case involving an alleged conspiracy. In his judgment he referred to the decision of Mr Edwards QC. Whilst accepting that the mere fact that the case involving allegations of fraud or conspiracy was not enough to make the case exceptional for the purpose of ordering Model E disclosure the judge did consider that the nature of the alleged conspiracy was relevant to a consideration of what documents would be likely to be available for disclosure, absent a train of inquiry order. At [71] he said:

> *"As to the nature of the allegations that Mr Azima makes, this is relevant to a further reason by Mr Edwards QC for ordering Model E disclosure on select critical issues. Mr Azima alleges a clandestine conspiracy to hack his confidential data. Because those involved in the alleged conspiracy would be unlikely to create documents that revealed it or contained smoking guns together with the policies of document destruction, this means that Mr Azima's case will largely have to be built on inferences. Mr Plewman QC said that with these sorts of allegations of serious wrongdoing, including the giving of perjurious evidence and of misleading the court, there should be scepticism and possibly alarm at any attempt by the Defendants to limit their disclosure obligations."*

29. I turn first to the Original 4 June Application. By paragraph 12 of his order of 6 June 2024, Justice Sir Andrew Smith gave the NMC Claimants liberty to restore the application following extended standard disclosure. As is evident from the transcript of the hearing, the judge did not decide the application although he did indicate that it was very likely, in his view, that train of inquiry disclosure would eventually be ordered on most if not all of the issues. His reason for postponing any decision on the application to the autumn was that he accepted Baroda's submission that it would be more efficient for them to complete standard disclosure first. At that time, the date for completion of standard disclosure was 26 October 2024.

30. Given that the judge did not decide the application I am not convinced that the NMC Claimants need show a material change of circumstances in order to be able to restore it for hearing. The real issue is whether I should now conduct a hearing of that application before Baroda has completed its standard disclosure. It seems to me that it would be more efficient in terms of case management if I now decided the matter. The bulk of Baroda's standard disclosure will be complete by 20 December 2024. What remains is limited and as I have already explained may (in the case of the mobile phones and other devices) lead to issues about control and availability. The scale, therefore, of the task still facing Baroda and its solicitors in completing standard disclosure does not justify the further postponement of the train of inquiry issue, especially since that will, if ordered, generate further work and delay. The sooner it is faced the better. I will therefore restore the Original 4 June Application for hearing.

31. I have already explained the issues to which the Original 4 June Application and the Travelex Application relate. Although they concern different periods of time, they both centre on specific events and transactions which the claimants say indicate that Baroda through its employees was aware of the fraud on NMC. Unlike many cases the fraud is not really disputed in these actions. None of the defendants contend that the removal of the huge sums of money from the NMC Group can be justified. The issue between them is whether they were responsible for the fraud and in the case of Baroda, whether it was aware of the fraud but kept quiet largely to preserve its business relationship with Dr Shetty and NMC.

32. Mr King submits that this is an exceptional case in which the orders he seeks for train of inquiry disclosure would be proportionate, necessary for the fair disposal of the claims and would require Baroda to disclose identifiable classes of documents linked to specific issues and

specific periods of time. In addition, the application must be considered against the background in which some primary documentary evidence is unlikely to be available and there is evidence that some relevant discussions between Baroda employees were taken off-line.

33. In one sense the case is clearly exceptional both in terms of the sums of money involved (more than US $6 billion) and the gravity of the allegations made against Baroda. Those factors may not be sufficient in themselves to make the case exceptional for disclosure purposes, but they are highly relevant to informing the background and context for the applications. This case is also different from the situation faced by Gloster J. in *Berezovsky* in that the train of inquiry disclosure is limited to identified issues and to specific periods of time.

34. I was taken to various of the email and WhatsApp exchanges which have been disclosed and they are clearly highly relevant to the allegations of knowledge which the NMC Claimants make. Mr King says that the court should also bear in mind that potentially incriminating exchanges are likely in most cases to be suppressed and that the NMC Claimants will, as he puts it, be at a severe information disadvantage. There is a serious issue as to whether Baroda has control over its employees' mobile phones and other devices and more particularly whether it will have the authority to access their private WhatsApp and email accounts. As mentioned earlier, Mr Salve accepts the Baroda has no obvious contractual right to obtain this information and may have to depend on its employees' goodwill. There is also the likelihood that some of the relevant data has not been preserved. We know from Mr Thomson's evidence that not all of the data on decommissioned systems such as FCRM will necessarily be recoverable. Some loss of data may simply be due to the complexity of the methods of Baroda's record keeping spread over a variety of systems across multiple branches. It is also clear that WhatsApp was used by Baroda employees to communicate about customer transactions including in relation to Dr Shetty and NMC. In the interests of time, I do not propose to refer to the detail of that evidence but some of it is exhibited to Mr Marsh's Twenty Fourth Witness Statement. The fact that relevant discussions were taken off-line in this way has been a relevant factor in the cases I have referred to where Model E disclosure has been ordered.

35. The judge raised the question as to whether train of inquiry disclosure in relation to LOID 55 was necessary or possibly a duplication in relation to the events of 2019. Mr King submits that it is relevant because in March 2019 the majority of NMC's borrowing was repaid by Dr Shetty even though it was not due until 2028. The NMC Claimants' allegation is that this was done to buy Baroda's silence. But in disclosure terms such an unusual event would or should have triggered internal compliance enquiries and the claimants therefore seek disclosure of all KYC and AML related communications concerning the NMC Group and other Shetty related entities in the identical periods of time.

36. Baroda's position on the substance of the application is that the NMC Claimants have not satisfied the test for train of inquiry disclosure. Mr Salve says that no additional documents have been identified as a result of my order of 8 November 2024 requiring Baroda to conduct future searches on a train of inquiry basis. Furthermore, Baroda has in any case, he says, adopted what he describes as a broad approach to relevance in its extended disclosure which means that most if not all train of inquiry documents should be captured and disclosed as part of the existing disclosure exercise. It is also, he said, insufficient on the authorities that the case involves allegations of conspiracy, is for a substantial amount of money, and may cause serious reputational damage. The disclosure order must be proportionate and likely to be necessary for a fair trial.

37. Some of Baroda's resistance to the Original 4 June Application is because of the additional burden which an order will place on it and its solicitors in terms of revisiting disclosure material that it has already analysed. Mr Thomson has said that a retrospective train of inquiry exercise will involve at least 80 hours of additional work at a cost of some £12,000 together with corresponding delays to the disclosure timetable. I accept that there will, obviously, be additional work to be done. The precise scale of it is difficult to assess without knowing more about BM's disclosure process. But I do not consider that this can be an objection to an order in this case if it is otherwise justified. Justice Sir Andrew Smith made it clear when postponing the hearing of the Original 4 June Application that if Baroda chose to conduct any train of inquiry disclosure as a separate exercise, it was bound to lead to additional cost and delay. Baroda cannot have it both ways.

38. In my view train of inquiry disclosure should now be ordered in respect of all of the issues referred to in the Original 4 June Application (as amended). This should include LOID 55. This is a relevant issue for the reasons submitted by the NMC Claimants and will not lead in my view to any unnecessary duplication. The NMC Claimants have demonstrated that this is an exceptional case not merely because it involves allegations of serious fraud but principally because those allegations against Baroda that it knew about the deceit practised by NMC on its auditors but kept quiet in return for the early repayment of NMC's liabilities are so serious that by their very nature they are unlikely to be established by a limited disclosure trail. This is compounded in the present case by the fact that many of the relevant communications are likely to have been off-line and the possibility of disclosure of all or even the majority of that data is unlikely for the reasons I have explained. The application is also highly focused. It does identify specific issues and periods of time and is quite unlike the broadly based application which was rejected in *Berezovsky*. I have taken into account Mr Salve's points about the lack of documentation thrown up in Baroda's current searches and the fact that its historic approach to disclosure has been broadly based. But neither of these is sufficient to convince me that train of inquiry disclosure is not justified and necessary. It is clear that the broader approach is not equivalent to train of inquiry disclosure and the fact that limited numbers of additional documents have been produced by my earlier order is inconclusive. I will therefore make the order now sought on the Original 4 June Application in its amended form. It is common ground that the train of inquiry exercise will not be complete by the 20 January 2025 deadline and will not be subject to my earlier order extending time for standard disclosure to that date. I propose therefore to order the train of inquiry disclosure be given by 25 February 2025 and that there should be a further CMC held in February 2025 before that date when any further questions of timetabling can be addressed (the "**February 2025 CMC**").

39. That takes me to the Travelex Application. I propose to grant this application for essentially the same reasons. It is confined to a particular issue; restricted to specific and very limited periods of time; and is justified by reference to the nature of the allegation and the availability of primary documentation. Baroda opposes it as premature and disproportionate. Mr Salve says that the relevant data is likely to be produced as part of the existing disclosure exercise and that as of now only four documents have been identified as falling within LOID 55 for the proposed period. There is also, he says, no issue as yet about Baroda's control of the data on mobile phones although he concedes that the mobiles of former employees are not within the custody of the bank and that the disclosure of information may require consideration of Indian confidentiality and privacy laws.

40. All of this seems to me to confirm that there is likely to be a problem with obtaining disclosure of the primary sources and that a train of inquiry order is justified. If Baroda has conducted its searches since 8 November 2024 so as to include a proper search for train of inquiry documents, then the extra burden placed on it by this judgment may be limited. But I reject the argument that it is premature. For the reasons I have given, the matter must now be decided in the interests of the proper management of the case. I will therefore make the order with the same February deadline for compliance. Again, any timing issues can be revisited at the February2025 CMC.

Costs

41. The costs of all parties to a case management conference will ordinarily be costs in the case but on this occasion the NMC Claimants seek adverse costs orders against Baroda and Dr Shetty in respect of their various applications for extensions of time to complete extended standard disclosure. I am also asked to consider making orders disallowing Baroda and Dr Shetty from recovering all or part of the costs of their respective extended disclosure exercises regardless of the outcome of the proceedings. Baroda and Dr Shetty resist these applications and also suggest that some of their costs should be paid by the claimants. I am not going to make any of these orders.

42. Rule 195 of the ADGM CPR empowers me to make such orders as I consider to be just. Costs can be awarded on the standard or indemnity basis and the NMC Claimants ask for costs on an indemnity basis. Mr King has made a number of forceful submissions criticising both Baroda and Dr Shetty for their delay in instituting and progressing the disclosure process which he says has led to the Extension Application and has generated additional costs and prejudice for his clients. But the scale of the disclosure faced by the defendants should not be underestimated. One can criticise Baroda for delays in sourcing certain types of data but the nature of the bank's organisation and the existence of a number of decommissioned IT systems has made this a complicated and prolonged process. Baroda and Dr Shetty are criticised for not making additional resources available, but they have engaged competent solicitors to oversee the disclosure process and I am not persuaded (nor is it alleged) that any of the delay has been deliberate or an attempt to obtain a procedural or litigation advantage to the detriment of the NMC Claimants. Given the serious nature of the allegations they face, both Baroda and Dr Shetty have had to investigate multiple sources of disclosable material and any inadequacies or delays in the process are not such in my view as to require them to be penalised with an adverse costs order even on the standard basis. This is managed litigation on an enormous scale and there are bound to be things which could have been done more quickly and perhaps better. But looked at overall the conduct of Baroda and Dr Shetty does not justify any of the orders which the NMC Claimants seek. The costs of the November and December CMS which I have conducted and of all the applications heard will be costs in the case.

Disclosure statements

43. There is an outstanding issue in both claims as to the proper form which the disclosure statements should take. I agree that the statements should refer to "*control*" rather than "*possession*" and should include the contents referred to in para 157 of the NMC Claimants' skeleton argument and para 19 of ADCB's skeleton argument. There seems to be an issue as to whether form CFI 13 is the appropriate form to use but the important point is that the statements should be in the form I have indicated. I will also order Mr Manghat to make and serve his disclosure statement in this form within seven days.

Conclusion

44. I am grateful to all counsel and their instructing solicitors for their assistance. I would be grateful if the parties would assist the court by providing an agreed form of order as soon as possible. This should include provision for a further CMC on a date to be fixed in February 2025 as I have indicated.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
15 December 2024