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

(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 a 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 ANDREW SMITH

Neutral Citation:	[2025] ADGMCFI 0017
Before:	Justice Sir Andrew Smith
Decision Date:	5 August 2025
Decision:	1. Dr Shetty shall file and serve the Information in a witness statement. 2. The Parties shall file and serve any costs submissions on or before **5.00 pm GST on 12 August 2025**, and any costs submissions in response on or before **5.00 pm GST on 19 August 2025.**
Hearing Date:	29 July 2025
Date of Order:	To be drafted by Counsel
Catchwords:	Power under CPR r.11(2) where Order not complied with. Order for information about funding. Non-Party Costs Order.
Cases Cited:	Michael Wilson & Partners Ltd v Sinclair [2017] EWHC 2424 (Comm) In Re RBS Rights Issue Litigation [2017] EWHC 463 (Ch) Dymocks Franchise Systems (NSW) Pty Ltd v Todd [2004] UKPC 39 Kazakhstan Kagazy Plc v Zhunus [2019] EWHC 2630 (Comm) AJ Bekhor & Co Ltd v Bilton [1981] QB 923 Deutsche Bank AG v Sebastian Holdings Inc [2016] EWCA Civ 23 Wall v Royal Bank of Scotland Plc [2016] EWHC 2460 (Comm)
Legislation and Other Authorities Cited:	ADGM Court Procedure Rules 2016 – rr. 2, 11(2), 195(1) and 253 ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – section 225(6) The Civil Procedure Rules 1998 (UK) – r. 25.14 Senior Courts Act 1981(UK) – section 51(3)
Case Numbers:	ADGMCFI-2022-299 and ADGMCFI-2020-020
Parties and Representation:	***Claimants*** Mr Damien Bruneau (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

	First Defendant
	Mr Kajetan Wandowicz
	(Instructed by Bishwajit Dubey)
	Second Defendant
	No appearance
	Third Defendant
	No appearance

JUDGMENT

1. This is my judgment on a matter that arises as a result of the application for the determination of preliminary issues (the "**PI Application**") upon which I delivered Judgment on 8 July 2024 ([2024] ADGMCFI 0007) and the Judgment of the Court of Appeal on 30 December 2024 ([2024] ADGMCA 0001) dismissing the appeals from my Judgment. The submissions of the First Defendant, Dr B R Shetty, and of the Third Defendant, the Bank of Baroda ("**Baroda**"), were rejected, and the preliminary issues were determined in favour of the Claimants.

2. In an Order of 6 August 2024, I ordered, *inter alia*, that Dr Shetty pay the Claimants' costs of and incidental to the PI Application and that Baroda pay 85% of them, that those costs be subject to a detailed assessment on the standard basis unless agreed, and that the parties have liberty to apply. After the Judgment on the appeals, the Claimants and Baroda reached an agreement that Baroda should pay the Claimants US$654,500 in respect of costs of the PI Application, including the appeals.

3. By an Order dated 11 April 2025 (the "**April Order**"), HH Justice Kenneth Hayne ordered (subject to a condition which is immaterial for present purposes) that: (i) Dr Shetty should pay Baroda US$99,160 *"as full and final satisfaction of any claim which Baroda has or may have against Dr Shetty for contribution in respect of so much of his liability in respect of the costs of the Appeals as has been satisfied by Baroda's payment of the NMC Parties"*; and (ii) that Dr Shetty should pay the Claimants a further sum of US$115,840 in respect of their costs of the Appeals. The sum of US$115,840 accrued due for payment by Dr Shetty on 28 May 2025, but Dr Shetty has not paid any part of it. There is no information before the Court whether he has paid any sum to Baroda.

4. By an application dated 30 June 2025, supported by a witness statement of 20 June 2025 by Mr Nicholas Marsh of Quinn Emanuel Urquhart & Sullivan UK LLP, their legal representatives, the Claimants sought orders for the summary assessment and payment of their costs of the PI Application, and for an order for certain information (the "**Information**"): "*By no later than* [14 days from date of order], *Dr Shetty shall file and serve a witness statement confirming (i) the reason(s) for his non-compliance with the* [April Order] *and whether and when he will comply; and (ii) the source of his funds used to pay his current and past legal representatives in these proceedings for their work in 2025, including*

(a) whether another person or entity is paying or otherwise assuming responsibility for Dr Shetty's legal costs (in whole or in part) and if so, their identity and (b) whether Dr Shetty is party to any conditional fee agreement, litigation funding agreement or other agreement or arrangement in respect of his liability for legal fees and/or adverse costs in relation to the ADGM Proceedings". This part of the application is made under the ADGM Court Procedure Rules 2016 ("**CPR**"), rule 11(2). Rule 11 concerns "*Non-compliance with these Rules*", and rule 11(2) provides as follows: "*Where any provision in these Rules or any relevant practice direction or Court order is not complied with, the Court may give whatever directions appear appropriate, having regard to the seriousness of the non-compliance and generally to the circumstances of the case*".

5. The application came on for hearing on 29 July 2025. I heard helpful submissions from Mr Damien Bruneau on behalf of the Claimants and from Mr Kajetan Wandowicz on behalf of Dr Shetty. I gave an oral ruling at the hearing on the application for summary assessment of the costs of the PI Application: I assessed them summarily (notwithstanding the Order of 6 August 2024, the circumstances having changed in view of the settlement agreement between the Claimants and Baroda) and ordered Dr Shetty to pay the Claimants' costs of US$154,000. I gave oral reasons for doing so, which I need not repeat. I reserved Judgment on the application that Dr Shetty provide a witness statement.

6. The basis of the Claimants' argument is that Dr Shetty has not complied with the April Order. There is no dispute that he has not done so. Further, although his legal representative Mr Bishwajit Dubey filed a witness statement of 3 July 2025, Dr Shetty has neither apologised to the Court for his breach of the April Order, nor offered any excuse or explanation of any kind for it.

7. Mr Wandowicz submitted that "*the seriousness of the non-compliance is at the lower end of the scale"*. His arguments were that Dr Shetty failed to comply with an order for the payment of money, that the failure has not and does not impact on the proceedings themselves, and that the Claimants' right to payment remains intact. He cited the Judgment of Sir Richard Field in *Michael Wilson & Partners Ltd v Sinclair* [2017] EWHC 2424 (Comm) in support of the proposition that "*the policy behind the imposition of costs orders made payable within a specified period of time before the end of the litigation* [is] *to discourage irresponsible interlocutory applications or resistance to successful interlocutory applications*" (at para. 29(2)). I accept that the PI Application, which gave rise to the costs order against Dr Shetty, was far from irresponsible. However, these arguments are, to my mind, easily outweighed by his failure to explain or excuse his non-compliance with the April Order or to seek to do so. In these circumstances, the Court is bound to regard the non-compliance as serious.

8. Dr Shetty does not dispute that the Court has jurisdiction to make the orders sought by the Claimants. However, Mr Wandowicz submitted that the Court should not deploy what he described as "[g]*eneral case management powers*" in order "*to bypass specific procedures or circumvent specific tests"*. I am not impressed by the point: like Hildyard J in *Re RBS Rights Issue Litigation* [2017] EWHC 463 (Ch) (to which I refer in more detail below): "*the court should not be quick to cut down the general power of case management by reference to other provisions directed to other matters"* (at para. 105). I see no good reason to cut

down the general words of CPR r.11(2). More specifically, I reject Dr Shetty's submission that, because the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**Courts Regulations**") provide at section 225(6) that "[a] *litigant who enters into a litigation funding agreement in respect of proceedings must put every other party to the relevant dispute on written notice"* (without the need for a Court order that he do so), therefore the Court should not exercise its discretion in an appropriate case to require disclosure of other funding arrangements.

9. The main thrust of Dr Shetty's argument was that the Claimants are seeking to exploit his non-compliance with the April Order to obtain information to which they would not ordinarily be entitled, and, as Mr Dubey put it, attempting "*to exert improper pressure on Dr Shetty in respect of a costs liability, the enforcement of which lies in established enforcement procedures"*. In reply to this contention, Mr Marsh said in a witness statement of 16 July 2025 that the application was a "*proportionate initial step towards resolving the issue of*" Dr Shetty's non-compliance; and that the Claimants might have taken firmer steps in response to his breach of the April Order by way of (i) an application for an order that, unless he complied, he should be debarred from defending the claim against him, or (ii) an application under CPR r.253 to obtain information from Dr Shetty as a judgment debtor. He explained that the Claimants hoped that Dr Shetty would provide information in response to their application and so avoid the need for further enforcement steps against him. Mr Wandowicz advanced various arguments that Dr Shetty might deploy against an application for an unless order or an application under CPR r.253, but I need not engage with them: no such applications have been made. Mr Marsh's point was that the Claimants are not behaving oppressively, and I accept that they are not doing so. There is no real basis to attribute improper motives to them.

10. Mr Dubey also objected that the Claimants sought information that "*may be protected by litigation privilege and confidentiality"*. Mr Bruneau rightly acknowledged that some of the Information is of a kind that is usually sensitive, and which parties prefer to keep confidential. However, I am not persuaded that the concern expressed about privilege is a reason to refuse the application. The Claimants have made it clear that they do not seek disclosure of any privileged information, and that it might be proper for documents to be redacted if they are to be disclosed. However, this is not a good reason to refuse the application. I return to the point about confidentiality later in my Judgment.

11. The Claimants first sought the Information in a letter from their solicitors dated 2 June 2025. It explained the purpose of the request as being to allay the Claimants' concerns "*as to Dr Shetty's ability to continue to meet legal costs of* [these] *proceedings (including, in particular, any adverse costs order ultimately … made against him in the* [Claimants'] *favour in the ongoing proceedings in the Court of First Instance)"*. Mr Wandowicz submitted that the risk that a defendant might not have means to satisfy a judgment or order is one which claimants take when deciding to bring or pursue proceedings and this in itself does not justify an order for information of the kind sought here. Mr Bruneau rightly did not argue that it does: his argument was that the Information should be ordered in view of Dr Shetty's non-compliance with the April Order. The Information is being sought by the Claimants, as Mr Bruneau explained, because "[i]*f Dr Shetty is being funded, then the NMC Claimants will have recourse against those funding him for the costs awarded by"* the April Order.

12. This Court has the power to make an order that costs be paid by a person who is not a party to the litigation (a "**Non-Party Costs Order**") under CPR r.195(1), "*The Court may make such orders as it considers just in respect of any application, hearing, trial, appeal or other proceeding before the Court*". It was not disputed that the Court's powers are comparable with those under the English regime, where section 51(3) of the Senior Courts Act 1981 (UK) expressly provides that: "*The court shall have full power to determine by whom and to what extent the costs are to be paid*".: section 49(3) of the Courts Regulations is similarly worded. Mr Wandowicz observed that orders of this kind have been said to be exceptional, and this was not really disputed by Mr Bruneau. However, he referred to the Judgment of Lord Brown in *Dymocks Franchise Systems (NSW) Pty Ltd v Todd* [2004] UKPC 39 at para. 25 (as cited by Jacobs J in *Kazakhstan Kagazy Plc v Zhunus* [2019] EWHC 2630 Comm at para. 30), where Lord Brown explained that "*exceptional*" in this context means only "*outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense",* while accepting that "*generally speaking*" a non-party who is a "*pure funder"* is not ordered to pay costs.

13. In his judgment in *Re RBS Rights Issue Litigation* (cit. sup.) Hildyard J determined an application by the defendants that was presented as a preliminary step to enable them to consider applying for security for costs against non-parties under the English Civil Procedure Rules 1998 r.25.14 for security costs or against one or more of the Claimants. Rule 25.14 allows the Court in appropriate circumstances to order security for costs against a person who "*has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; and is a person against whom a costs order may be made"*. Hildyard J ordered disclosure of the names and addresses of any such person, citing (at para. 31) the dictum of Ackner LJ in *AJ Bekhor & Co Ltd v Bilton* [1981] QB 923, 942H*: "where the power exists to grant the remedy, there must also be inherent in that power the power to make ancillary orders to make that remedy effective"*. This confirms, if confirmation be needed, that this Court has the power to make orders of the kind sought by the Claimants in this case.

14. Hildyard J also rejected (at para. 33) an argument by the respondents to the application before him that the Court should not exercise its jurisdiction to order disclosure where the applicants had not "*unequivocally determined"* to apply for security for costs once names and addresses were revealed. However, he went on to say (at para. 35) that "*the applicant must, at least, demonstrate that its putative application for security is a real possibility on realistic grounds, and not one simply posited as a possibility for some tactical purpose without any real intention of pursuing it*".

15. This case differs from the matter before Hildyard J in that here information is not sought with a view to the Claimants considering whether to apply for security for costs against a non-party, but in order to consider an application for costs against a non-party (or non-parties). However, the question before me is comparable with that considered by Hildyard J. When I invited Counsel's submissions about para. 35 of *Re RBS Rights Issue Litigation*, Mr Wandowicz adopted the test formulated by Hildyard J of the putative application being "*a real possibility on realistic grounds*". Mr Bruneau, for his part, did not dissent, but emphasised that the formulation was adopted to distinguish such a case from one in which the applicant had no real interest in making a subsequent application. I accept that this

indicates that the test formulated by Hildyard J is not to be taken to be an overly demanding one. In any case, it must be remembered that CPR r.11(2) must, like other provisions of the CPR, be interpreted and applied with a view to securing the overall objective that the system of civil justice in the Abu Dhabi Global Market and the Court are "*accessible, fair and efficient*": CPR r.2. It does not require the applicant to show that the further putative application will probably succeed or require the Court to scrutinise its prospects in great detail. In this case, it requires the Claimants to show a genuine prospect that the Information might lead them to bring an application for a Non-Party Costs Order and have some realistic, rather than fanciful, basis for it.

16. There is no good reason to doubt that the Claimants have genuine concerns that Dr Shetty will not satisfy the April Order against him. Although it is not strictly in evidence, Mr Wandowicz accepted that I need not pretend to be unaware that several Judgments have been entered against him in other Courts of the United Arab Emirates for very large sums indeed, and that Dr Shetty has not satisfied them. Indeed, in his skeleton argument Mr Wandowicz suggested that the Claimants might be seeking the Information rather than trying to enforce the April Order against Dr Shetty because "*they have made the commercial assessment that recognising and enforcing the* [April Order] *against any property of Dr Shetty would involve them in a time-consuming process with Dr Shetty's multiple judgment creditors"*. I do not regard that as a reason to refuse relief: I have no sympathy with the suggestion that Dr Shetty should be allowed to exploit the Claimants' dilemma so as to prevent the April Order being satisfied.

17. However, Mr Wandowicz criticised as "*speculative"* the argument that the Claimants were taking an initial step with the prospect of using the Information to seek a Non-Party Costs Order. Of course, the Claimants are driven to some degree of speculation: they seek the Information because, as things stand, they can only speculate about the best course available to have paid to them the costs due under the April Order. But in my judgment, it is not baseless speculation.

18. I consider that the Claimants have realistic grounds to suppose that Dr Shetty's legal costs are probably being paid by a non-party (or non-parties). As I have said, the unsatisfied Judgments against him are clear evidence that Dr Shetty is not in a position to pay them himself. Further, since the PI Application was determined, Dr Shetty has changed his legal representatives twice: in February 2025 he replaced the London firm of Farrer & Co LLP with the Mumbai firm of Cyril Amarchand Mangaldas ("**CAM**"), and in May 2025, he changed to Mr Bishwajit Dubey of New Delhi. Indeed, Mr Wandowicz contended that the Claimants' application was precipitated by Dr Shetty "*cutting down his legal team",* and realistically asked me to take judicial notice that "*broadly speaking, a London firm like Farrer & Co is more expensive than a Mumbai firm like CAM. And broadly speaking, … a sole practitioner like Mr Dubey is less expensive than CAM"*. Dr Shetty was entitled to change his representation and it is not for other parties or the Court to demand his reasons for doing so. However, the changes might be to do with whether cover for his legal costs remains available under Directors' and Officers' insurance ("**D&O Insurance**"). There is no distinct evidence about this, but Mr Richard Fleming, one of the Joint Administrators of the Corporate Claimants, has provided evidence in the proceedings that Dr Shetty and Mr Prasanth Manghat were drawing on the same D&O Insurance, and Mr Manghat is now

representing himself: this suggests that cover might be exhausted or nearly so. Whatever the reason for Dr Shetty changing his representatives, the changes give grounds to suppose that Dr Shetty's legal costs might well be being met by a third party against whom an application for a Non-Party Costs Order might be made. I simply do not accept Mr Wandowicz's contention that "*there is no sufficient evidential basis for the suggestion that there is a funder lurking*".

19. Of course, as Mr Wandowicz submitted and Lord Brown observed (see para.12 above), the Court does not usually make a costs order against a "*pure funder*", such as a family member or a friend: the Courts do not discourage such funding, considering it to provide access to justice. However, this is not an absolute rule: in *Deutsche Bank AG v Sebastian Holdings Inc* [2016] EWCA Civ 23 Moore-Bick LJ observed that "*the exercise of the discretion* [to make a Non-Party Costs Order] *is in danger of becoming over-complicated by authority*" and emphasised that "*the only immutable principle is that the discretion must be exercised justly*" (at para. 62). Moreover, the Claimants contemplate the possibility of an order against "*a fund, family office or corporate affiliate which is funding a defence to protect its own exposure (either financially or reputationally)*". They cannot establish that it is more than a possibility without the Information, but I judge it to be a realistic one. Given the scale of this expensive litigation, anyone funding it is likely to have some reason to do so other than generosity. Although each case must turn on its own facts, I find comfort for this in the Judgment of Mr Andrew Baker QC in *Wall v the Royal Bank of Scotland Plc* [2016] EWHC 2460 (Comm); he inferred that, where an individual without apparent means was pursuing expensive litigation and there was no evidence that anyone else was funding it altruistically, the probability was, absent contrary evidence, that "*whoever is funding the litigation is doing so in return for a share of any proceeds*": see para. 38.

20. Mr Wandowicz had another point: the PI Application was made and determined in 2024. The changes to legal representation were made in 2025, and the second limb of the Information is specifically confined to the work of legal representatives in 2025. Mr Wandowicz submitted that it is "*unlikely in the extreme that the court would allow* [an application for the Non-Party Costs Order] *in relation to last year's costs on the basis that the funder is funding Dr Shetty's fees now*". This argument had an immediate attraction, but on reflection I am not persuaded by it. Without deciding the point, I cannot dismiss as unarguable the response that, if a third party has reached an arrangement to fund the litigation and potentially to benefit in some way from an outcome favourable to Dr Shetty, he takes the litigation as he finds it, including any liability for what has happened in the past.

21. Having concluded, therefore, that the Claimants have shown a genuine prospect that the Information might lead them to bring an application for a Non-Party Costs Order with a realistic, rather than fanciful, basis, I must decide whether to exercise my discretion to grant the order sought. The Claimants' interest in obtaining the Information must be balanced against other considerations, in particular Dr Shetty's understandable wish to keep the Information confidential. However, his preference for confidentiality must, as Mr Bruneau submitted, be weighed against his breach of the April Order and his decision to offer no explanation for it. In all the circumstances (and subject to a qualification in para. 22 below), I am persuaded that I should order Dr Shetty to provide the Information in a witness statement.

22. One further matter should be mentioned. As I have said, there is evidence that Dr Shetty's legal costs might have been paid, at least in part, from D&O Insurance, which was apparently taken out by the Corporate Claimants' parent company, NMC Health plc. Mr Fleming's evidence in the proceedings is that the Claimants do not know whether or how much cover remains: the insurers have been asked for information about that, but they have not provided it. Mr Wandowicz contended in his skeleton argument that the Court should not make an order that would require that the Claimants be provided with information that the terms of the D&O Insurance cover contemplate should be confidential from them. I accept that it might be appropriate for any order for the provision of the Information to be qualified so as to exclude any such matters: I cannot accept that it is a reason to refuse the application for Information altogether.

23. I should be grateful if Mr Bruneau would draft an order to give effect to this Judgment, which should include a provision expressly recognising that Dr Shetty is not obliged to disclose legally privileged information (see para. 10 above), and possibly a qualification of the kind contemplated in para. 22 above. I hope that the Parties can agree upon a draft, but, if not, I intend to resolve any differences without a further hearing.

24. I invite submissions about costs on or before **5.00 pm on 12 August 2025**, with submissions in response on or before **5.00 pm on 19 August 2025**. Again, I intend to resolve any issue of costs without a further hearing.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
5 August 2025