ADGM COURTS
محاكم سوق أبوظبي العالمي

In the name of
His Highness Sheikh Khalifa 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	Applicant
and	
BAVAGUTHU RAGHURAM SHETTY	First Respondent
BRS INVESTMENT HOLDINGS 1 LTD **Company No.000001360**	Second Respondent
BRS INVESTMENT HOLDINGS 2 LTD **Company No.000001417**	Third Respondent
BRS INVESTMENT HOLDINGS 3 LTD **Company No.000001419**	Fourth Respondent
BRS INVESTMENT PROPERTY LIMITED **Company No.000000750**	Fifth Respondent
BRS HEALTH LIMITED **Company No.000000662**	Sixth Respondent

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2021] ADGMCFI 0004
Before:	Justice Sir Andrew Smith
Decision Date:	8 April 2021
Decision:	The Court orders that: 1. an Injunction be made against the Second to Sixth Respondents, being respectively (2) BRS Investment Holdings 1 Ltd; (3) BRS Investment Holdings 2 Ltd; (4) BRS Investment Holdings 3 Ltd; (5) BRS Investment Property Limited (6) BRS Health Limited, prohibiting them from facilitating or registering dealings in shares presently registered in the First Respondent's name in each of them. 2. a Domestic Freezing Injunction be made against the First Respondent, being Bavaguthu Raghuram Shetty. 3. a Worldwide Freezing Injunction be made against the Second to Sixth Respondents, being respectively (2) BRS Investment Holdings 1 Ltd; (3) BRS Investment Holdings 2 Ltd; (4) BRS Investment Holdings 3 Ltd; (5) BRS Investment Property Limited (6) BRS Health Limited. Together with ancillary relief.
Hearing Date(s):	8 April 2021
Date of Orders:	8 April 2021
Catchwords:	Injunctive relief in relation to proceedings outside the jurisdiction, requirement for claim form. Service of documents by an alternative method. Domestic freezing order. Worldwide freezing order under Chabra principle.
Legislation Cited:	Abu Dhabi Law No (4) of 2013, as amended by Abu Dhabi Law No (12) of 2020, Article 13 (7) ADGM Court, Civil Evidence Judgments, Enforcement and Judicial Appointments Regulations, 2015 English Civil Procedure Rules ADGM Civil Procedure Rules 2015, r.64
Cases Cited:	Ras Al Khaimah Investment Authority v Bestfort Development LLP, [2015] EWHC 1955 (Ch) Société Generale v Goldas Kuyumculuk Sanayi Ithalat Ihracat AS, [2017] EWHC 667 (Comm) Bayat v Cecil, [2011] EWCA Civ 135 Abela v Baadarani, [2013] UKSC 44 Lakatamia Shipping v Morimoto, [2019] EWCA Civ 2203 Sabbagh v Khoury, [2014] EWHC 3233 TSB Private Bank International SA v Chabra, [1992] 1 WLR 231 PJSC Vseukrainskyi v Maksimov, [2013] EWHC 422 Ras Al Khaimah Investment Authority v Bestford Development LLP, [2017] EWCA Civ 1014

	Yukong Line Ltd v Rendsburg Investments Corp., [2001] 2 Lloyd's Rep 113 JSC Mezhdunarodniy Promyshlenny Bank v Purgachev, [2015] EWCA Civ 139 Algosaibi v Saad Investments Co Ltd., 2011 (1) CILR 178
Case Number:	ADGMCFI-PCA-2021-003
Parties and representation:	**Abu Dhabi Commercial Bank PJSC (Applicant)** Represented by Mr Rajesh Pillai QC, Mr Scott Ralston of Counsel and Ms Rebecca Zaman of Counsel Instructed by Mr Damian Honey of Holman Fenwick Willan LLP **Bavaguthu Raghuram Shetty (First Respondent)** Appeared in person (without submitting to the jurisdiction of the Court) **BRS Investment Holdings 1 Ltd Company no.000001360 (Second Respondent)** No appearance **BRS investment holdings 2 Ltd Company no.000001417 (Third Respondent)** No appearance **BRS investment holdings 3 Ltd Company no.000001419 (Fourth Respondent)** No appearance **BRS Investment Property Limited Company no.000000750 (Fifth Respondent)** No appearance **BRS Health Limited Company no.000000662 (Sixth Respondent)** No appearance

JUDGMENT

1. The applicant in this matter is Abu Dhabi Commercial Bank PJSC ("ADCB"), a bank incorporated in the United Arab Emirates ("UAE") which is majority owned by the Government of Abu Dhabi through the Abu Dhabi Investment Council. It seeks orders against Mr Bavaguthu Raghuram Shetty and five other respondents, which are companies said to be associated with Mr Shetty and which are conveniently referred to together as the "corporate respondents". Mr Shetty is, according to the evidence before the Court, an Indian national with a residency permit for the UAE. (In this judgment, I refer to "Mr" Shetty. It might be that he is more properly referred to as Dr Shetty, as he is in some documents. In any event, I intend no discourtesy.) The corporate respondents are incorporated in the Abu Dhabi Global Market ("ADGM").

2. I conducted a hearing of the applications remotely on 8 April 2021. ADCB was represented by Mr Rajesh Pillai QC, Mr Scott Ralston and Ms Rebecca Zaman. Mr Shetty addressed me in person: it was acknowledged by ADCB that he should not be regarded as thereby submitting to the jurisdiction of the Court on his own behalf or as representing any of the corporate respondents (if and in so far as he addressed me on their behalf). At the end of the hearing, I announced that I would made orders substantially as sought by ADCB, and would give my reasons later. An order was issued on 9 April 2021 accordingly. These are my reasons for making it.

3. The applications concern a group of companies, the "NMC Group", the origins of which lie in a business founded in Abu Dhabi in the 1970's by Mr Shetty and his wife, and which grew to become the largest providers of private healthcare in the UAE. In 2008, Mr Shetty incorporated NMC Healthcare Limited, which became the ultimate holding company of the Group. It was owned until 28 March 2012 by Mr Shetty and two other shareholders, Mr Khaleefa Butti and Mr Saeed Butti. In 2012, the ultimate parent company of the Group became NMC Health plc, an English company which was listed on the London Stock Exchange. After an initial public offering of shares in 2012, Mr Shetty and Messrs Butti are said together to have held 67% of the shares, but their holding was, apparently, later reduced. NMC Healthcare LTD remained the main operating entity in the Group.

4. On 9 April 2020, NMC Health plc was placed into administration by an order made by the English Court on ADCB's application. On 27 September 2020, sitting in this Court, I made an administration order on the grounds of insolvency in respect of NMC Healthcare LTD and of 35 other companies, which are its direct or indirect subsidiaries. These 36 companies had been variously incorporated in the Emirates of Abu Dhabi, Dubai and Sharjah and had been continued into ADGM under certificates of continuance issued by the ADGM Registrar.

5. ADCB contends that the reason for the Group's insolvency was fraud on a massive scale, and that Mr Shetty was a participant in the fraud. It claims to have suffered very large losses as a result of the fraud, more specifically as a result of fraudulent misrepresentations made in relation to various lending arrangements that it had with the Group. On 2 December 2020, it brought proceedings in the English Commercial Court against Mr Shetty and five other defendants for damages, and on the same day Mr Justice Bryan made a worldwide freezing order against Mr Shetty and the other defendants in respect of assets of each of them to a value of US$1 billion. The order also required that the defendants each provide information about his assets worldwide exceeding US$20,000 in value.

6. On 9 March 2021 by a further order in the English proceedings made by consent by Mrs Justice Cockerill DBE, the English Court permitted ADCB to apply to this Court for (i) "a domestic freezing order against [Mr Shetty]"; (ii) "a domestic freezing order or injunction restraining [the corporate respondents and another company, BRS KBBO] from facilitating or registering dealings in [Mr Shetty's] shares in [those companies]", and (iii) "a worldwide freezing order against [the corporate respondents and BRS KBBO]". The consent order also provided that any such application should be made on notice to Mr Shetty.

7. In these proceedings, ADCB seeks such orders, except no orders are sought against BRS KBBO. On 31 March 2021, it filed an application notice under rule 64 of the ADGM Civil Procedure Rules 2015 ("CPR"). In support of it, it filed an affidavit dated 30 March 2021 of Mr Damian Honey, a solicitor and partner in Holman, Fenwick Willan LLP ("HFW"), who act for ADCB; a notice to Mr Shetty dated 31st March 2021, notifying him that the Application was to be served on him outside the jurisdiction; and a draft order. It sought:

   (1) An order restraining Mr Shetty until further order of the Court from "remov[ing] from the ADGM any of his assets which are in the ADGM up to a value of US$1,000,000,000".

   (2) An order restraining the corporate respondents until further order of the Court from "facilitating or registering any dealings in [Mr Shetty's] shares in each of them".

   (3) An order restraining the corporate respondents until further order of the Court from "remov[ing] from the ADGM any of its assets which are in the ADGM up to the value of US$1,000,000,000" and "in any way dispos[ing] of, deal[ing] with or diminish[ing] the value of any of its assets whether they are in or outside the ADGM up to the same value".

8. These documents were served on the corporate respondents at their respective registered offices. As far as service on Mr Shetty is concerned, ADCB took these steps: first, it sent the documents electronically to an email address that Mr Honey believes "belongs to" Mr Shetty and

is accessed by him. HFW had used the address on 3 December 2020 to serve the English proceedings on Mr Shetty and received a response from Amsterdam & Partners, who act for Mr Shetty in relation to the English proceedings. Secondly, ADCB had the documents delivered by courier to an address in India that Mr Shetty gave as his address in an affidavit dated 8 January 2021 in the English proceedings, but it is unclear from the evidence whether they were received by, or left with, Mr Shetty himself. Thirdly, ADCB sent the documents to five email addresses of persons at Amsterdam & Partners, and also sent them to the offices of Amsterdam & Partners in London. However, in a letter of 23 February 2021 HFW had asked Amsterdam & Partners whether they had authority to accept service of the ADGM proceedings, and on 16 March 2021 they replied that they were not instructed to do so.

9. Two matters need to be considered about the steps taken by ADCB. First, when the matter came before me, ADCB had not issued a claim form. I infer that it was thought that the proper procedure was to bring these proceedings by issuing an application notice since ADCB is seeking interim remedies in relation to the English proceedings: rule 72(7) of the CPR provides as follows: "Where a party wishes to apply for an interim remedy but the remedy is sought in relation to proceedings which are taking place, or will take place, outside the jurisdiction, or the application is made … before a claim has been commenced, the application must be made in accordance with Part 8 of these Rules", which sets out general rules about applications for Court orders.

10. In my judgment, this rule does not mean that no claim form is required in the circumstances of a case such as this. My reasons are essentially those given by Mr Richard Spearman QC, sitting as a Deputy High Court Judge in the Chancery Division of the English High Court in Ras Al Khaimah Investment Authority v Bestfort Development LLP, [2015] EWHC 1955 (Ch), who considered the effect of the comparable rule 25.4 of the English Civil Procedural Rules. He observed that "a claim provides a vehicle for an application for an interim remedy; and the existence of a claim enhances the court's ability to control the proceedings". I add that this interpretation of the ADGM CPR finds support in rule 25, which refers to the requirement that, when a claim form is served out of the jurisdiction, notice containing a statement of the grounds on which it may be so served must be filed and served with the claim form, no such notice being required when other documents are served out of the jurisdiction. It would, I think, be strange if in such cases as this the respondent were deprived of such notice because no claim form was required, and indeed ADCB did serve a notice in respect of its application form, apparently recognising this.

11. Accordingly, I directed that ADCB should file and serve a claim form seeking substantially the same relief as that sought in its application notice, and it has now done so.

12. This led to a second question, which concerns service of the claim form. The corporate respondents, being registered in ADGM, could be served within the jurisdiction at their registered offices under rule 16B(1)(a) of the CPR. As for service on Mr Shetty, a claim form may be served on an individual if it is left with him at his place of residence: see rule 16(1). Further, rule 16B provides that a claim form may be served electronically, and that that this may be done (inter alia) by email "provided that it must be shown that the email account to which the document is sent belongs to the person to be served and is still accessed by that person". ADCB is concerned that the steps that it took to serve the application notice and other documents on Mr Shetty might not comply with these provisions, and doubts might arise about service of the claim form if it took similar steps to serve it. The evidence about his email address is over four months old, and there is no clear evidence that Mr Shetty is at the residence in India. Clearly, the documents were not and would not be served by sending them by courier or electronically to Amsterdam & Partners in view of their response of 16 March 2021. I can therefore understand ADCB's caution, and share its concern.

13. In order to put any question of service on Mr Shetty beyond doubt, ADCB sought orders for service by an alternative method under CPR rule 19 to ensure that there had been effective service of the documents sent to Mr Shetty before the hearing and that there would be effective service of the claim form: orders that the steps that it took by way of delivery of documents to the residence in India and sending them in electronic form to the email address believed to be used by Mr Shetty are sufficient to constitute good service, and that it be permitted to serve the claim

form similarly. Such orders may be made "[w]here it appears to the Court that there is a good reason" to do so. In Société Generale v Goldas Kuyumculuk Sanayi Ithalat Ihracat AS, [2017] EWHC 667 (Comm) at para 49, Popplewell J summarised the principles applicable to the exercise of this power or, more precisely, the comparable power under the English rules. He pointed out that, while something more than the fact that a defendant has learned of the existence and content of a claim form is not sufficient to constitute a good reason for exercising the power, this is a "critical factor".

14. At paragraph 49(9) Popplewell J considered the cases about service abroad by an alternative method where there is a relevant bilateral treaty between countries, and I refer to this in view of the Agreement of 25 October 1999 between the Government of the UAE and the Government of the Republic of India on Juridical and Judicial Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgments and Arbitral Awards, which provides at article 3(1) that "Summons and other judicial documents in the Contracting Parties shall be served …. In the case of India, through the court in whose jurisdiction the concerned person resides". Where there is a relevant bilateral treaty, in particular, it will not normally be a good reason for an order for alternative service that complying with the agreed formalities of service will take additional time and cost, and the Court will make an order only exceptionally. However, even in these circumstances, where the case is one in which urgent injunctive relief is sought, an order may be proper: see the judgment of Stanley Burnton LJ in Bayat v Cecil, [2011] EWCA Civ 135 at para 68, which Popplewell J regarded as remaining good law after the decision of the Supreme Court in Abela v Baadarani, [2013] UKSC 44. It does not seem to me that the orders sought in this case would be contrary to the Agreement of 25 October 1999 or inimical to its spirit, and in all the circumstances this is, to my mind, a proper case for an order for service by alternative means.

15. I recognise that these orders might be considered unnecessary in that either the steps taken by ADCB in relation to the application notice and other documents by way of sending them to Mr Shetty's email address or couriering them to the residential address (or one of these steps) might have constituted good service of them and similar steps might effect good service of the claim form; or that in any event Mr Shetty might choose to take no point on service. Indeed, it should be acknowledged that Mr Shetty consented to an order in the English proceedings permitting these applications, and when he addressed me, Mr Shetty gave me to understand that he had "received the message by email" and that he took no point on the jurisdiction of this Court. It would be unfair to think that he is taking any technical or unmeritorious points of this kind. However, he was acting in person and, I think, without legal advice about this, and I should be reluctant to rely on my understanding of what he said to assume a jurisdiction which the Court would not otherwise have.

16. In all the circumstances, I considered that, on the rather unusual facts of this case, there is good reason to take a cautious approach with regard to service and to make an order under rule 19, and I made the orders sought by ADCB under the rule.

17. This Court has jurisdiction to make the orders sought against the corporate respondents under article 13(7)(a) of Abu Dhabi Law No (4) of 2013, as amended by Abu Dhabi Law No (12) of 2020, (the Founding Law), which provides that the Court has jurisdiction to consider and decide on civil or commercial claims and disputes involving any of the Global Market Establishments of ADGM. The expression "Global Market Establishment" is defined in Article 1 of the 2013 Law, and covers corporate respondents.

18. In the Notice sent to Mr Shetty, ADCB contended that the Court has jurisdiction to make an order against him under both article 13(7)(a) and article 13(7)(d) of the Founding Law. At the hearing before me, it relied only on article 13(7)(d). That article provides that this Court of First Instance has jurisdiction to consider and decide on "Any request, claim or dispute which the Global Market's Courts has jurisdiction to consider under Global Market Regulations". The ADGM Court, Civil Evidence Judgments, Enforcement and Judicial Appointments Regulations, 2015 (the "2015 Regulations") provide that "… there shall be exercisable by the Court of First Instance all such jurisdiction as is conferred on it by (a) Articles 13(7) and 13(8) of the ADGM Founding Law; …. (c) these Regulations; (d) any other ADGM enactments". The expression "ADGM enactment"

means “ADGM regulations and any rules made under ADGM regulations, including court procedure rules”: Regulation 227. Thus, it covers both the and the CPR.

19. Regulation 41 of the 2015 Regulations provides as follows:

> “(1) The Court of First Instance may by order (whether interim or final) grant an injunction … in all cases in which it appears to the Court just and convenient to do so”. …
>
> (3) The power of the Court of First Instance under subsection (1) to grant an interim injunction restraining a party in any proceedings from removing from the jurisdiction of the Court of First Instance or the Emirate, or otherwise dealing with assets located within that jurisdiction or the Emirate shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction”.

20. As I interpret this Regulation, the Court therefore has jurisdiction to make a freezing order in support of foreign proceedings. This view is supported by Rule 72(7) of the CPR, which I have already recited, and by Rule 71, which provides:

> “(1) The Court may grant such interim remedies as are necessary in the interests of justice (whether in the particular case or more generally) including -
>
> (a) an interim injunction …
>
> (f) an order (referred to as a “freezing injunction”) restraining a party from removing from a particular jurisdiction assets located within that jurisdiction or from dealing with or removing from ADGM or any other jurisdiction assets which are located there.”

21. I accept ADCB’s submission that the Court has jurisdiction under article 13(7)(d) to make a freezing order against Mr Shetty. Indeed, it would be a remarkable gap in the jurisdiction of the Court, and at odds with the general policy adopted by common law courts particularly in cases of what Dicey, Morris & Collins (15th Ed., 2012) at 8-040 calls “the special case of fraud”, if there were no power to make a freezing order in respect of assets in its jurisdiction in a case such as this.

22. I therefore had to decide whether it is just and convenient to make the orders sought by ADCB. I take first the application for a freezing order against Mr Shetty. The applicant for such an order must show that it has a “good arguable” case against the respondent. I need not set out ADCB’s case in more than the barest outline. As I have said, it claims that it was induced by fraudulent misrepresentations to make banking facilities available to the NMC Group, that Mr Shetty was a party to the fraudulent scheme, and that as a result it suffered damage. The evidence before me is that the fraud came to light through a report of a New York Investment firm called Muddy Waters Capital LLP, which was published on 17 December 2019, and subsequent investigations. The financial misconduct described in the report included manipulation of the balance sheets of NMC Health plc for the year 2018, apparent related party transactions, profit margins described as being “Too good to be true” and a reported cash balance which appeared inconsistent with low annual interest income and high borrowings. Mr Shetty’s involvement in misconduct is said to be indicated by, inter alia, unusually high capital costs, suggesting overpayments, associated with a particular development the principal contractor of which was apparently controlled by Mr Shetty; and the sale in “staggering quantities” of shares in the Group by persons including Mr Shetty.

23. On 17 January 2020, the NMC Group appointed Freeh Group International Solutions LLC (“Freeh”) to investigate these matters, and on 26 February 2020 NMC Health plc made an announcement that included the following under the heading “Supply chain financing arrangements”:

> “[Freeh] have identified supply chain arrangements which were entered into by [NMC Health plc] and which are understood to have been used by entities controlled by Dr B

> R Shetty and Mr Khaleefa Butti Omair Yousif Ahmed Al Muhairi (the "Related Parties"). Under these arrangements, suppliers to companies owned by the Related Parties were paid by certain credit facility providers, while those companies were responsible for settling the amounts payable to the credit facility providers, the contractual obligation rests with NMC, which also provided a guarantee in the event of non-payment or default … These arrangements were not disclosed to, or approved by, the Board and were not disclosed as related party transactions in accordance with the Listing Rules. The arrangements were not reflected on the Company's balance sheet nor reported in the Company's financial statements for the financial year ended on 31 December 2018".

24. By September 2020, it was estimated that the Group had accumulated what has been described as "secret debt" amounting to US$4.357 billion to $5.32 billion, far exceeding the Group's publicly reported debt of some US$2.1 billion.

25. With regard to damages, ADCB pleads that, but for the fraud, it would not have granted credit facilities to the NMC Group, but would have otherwise applied its capital and made alternative returns with similar profit to that which it expected under NMC's facilities. On the basis of an estimate of its losses by reference to the amounts outstanding on ADCB's facilities, it pleads damages of just over US $1 billion.

26. In my judgment, ADCB has demonstrated that it has a good arguable case against Mr Shetty. Mr Shetty denies that he was party to any fraud, and told me that he himself was a victim of greed and fraudulent conduct of others associated with the NMC Group, who arranged for a bogus account to be opened in his name at the Bank of Baroda and for monies to be transferred into it. He is anxious to clear his name and restore his reputation. Of course, on the information before me I cannot reach a decision whether he is guilty of fraud or an innocent man who has been duped, and I do not do so. As I have said, the question for present purposes is whether ADCB has demonstrated a good arguable case, and this test does not require it to show that its claim is likely to succeed, or more likely to succeed than not. The English Court of Appeal has described the test as "a not particularly onerous one": Lakatamia Shipping v Morimoto, [2019] EWCA Civ 2203 at para 35. I consider that ADCB's case satisfies that test, whether the claim be governed by English Law, the relevant provisions of the UAE Civil Code or some other law.

27. My conclusion about this corresponds with that in the English proceedings of Bryan J. Mr Pillai invited me to rely on that judgment as evidence in support of ADCB's case. He might be right that I would be entitled to do so (see Sabbagh v Khoury, [2014] EWHC 3233 at paras 202 to 209), but the law about this is less than clear, and I prefer, not having had the benefit of full argument about this, to base my decision on my own assessment of the material.

28. The evidence before me is that Mr Shetty does have assets, including specifically shares in the corporate respondents, which are within the jurisdiction of the Court and will therefore be covered by the order sought by ADCB. It appears that Mr Shetty owns 96% of the shares in BRS Investment Holdings 1 LTD and 80% of the shares in BRS Investment Holdings 2 LTD, and is the sole shareholder in BRS Investments 3 LTD, BRS Investment Property LTD and BRS Health LTD.

29. An applicant for an order of this kind must also show that there is a real risk of "dissipation", in the sense of a real risk that a judgment in his favour would go unsatisfied by reason of the respondent disposing of his assets unless restrained by the Court from doing so. A good arguable case that the respondent has been dishonest is not enough to establish that risk: it is necessary to examine the evidence to see whether any evidence of dishonesty indicates that assets may be dissipated: Lakatamia, (cit sup) at para 34. Further, the fact that a respondent has used offshore structures for his dealings does not in itself demonstrate such a risk, but this can be relevant on the facts of a particular case, and I consider it to be so in this case: Mr Shetty apparently has used a particularly complex structure of entities in various jurisdictions, and I have seen no explanation for him doing so. In my judgment, ADCB has demonstrated a risk of dissipation: I agree with the reasons given by Bryan J for reaching that conclusion on the evidence before him (see, in particular, paras 38 and 90 to 97 of his judgment) and I reach a similar conclusion on the basis of the evidence before this Court. I also consider that this

conclusion is reinforced by criticisms of Mr Shetty's response to the order of the English Court for information about his assets, although I acknowledge the difficulties that Mr Shetty might reasonably have had in responding fully to that order and that his responses might be seen as proper in due course.

30. It is, to my mind, just and convenient to make the order sought by ADCB against Mr Shetty. Of course, Mr Shetty is already restrained by the English worldwide freezing order from dealing with or disposing of assets in this jurisdiction, but this does not mean that a domestic freezing order made by this Court would be otiose or pointless. It supports and complements the English order, not least because it can be served by ADCB on, and bind, ADGM entities (including the corporate respondents). In short, it overcomes territorial limitations that, at least arguably, might restrict the efficacy of the English order.

31. I considered specifically whether it is just and convenient that the limit on the freezing order be US$1 billion. As I have said, ADCB's assessment of its loss as a result of the fraud that it alleges is based on the amount of NMC's outstanding borrowing under the ADCB facilities. It does not take account of what recoveries might be made from the NMC Group companies in administration. At a trial this and many other matters about quantum will, no doubt, be carefully examined. However, I concluded that the limit of US$1 billion is just and convenient for a freezing order on the basis of the information presently available: convenient because it mirrors the limit in the English freezing order, and just because at this stage ADCB is entitled to protection in respect of its potential loss if recoveries are small. I note further that the US $1 billion limit does not include separate protection in respect of interest since November 2020, ADCB's costs of investigation or legal costs. In any case, Mr Shetty has liberty to apply if ADCB makes significant recoveries. I also requested, and ADCB gave, an undertaking to notify the Court as soon as reasonably practicable if the English worldwide freezing order is discharged or materially varied in respect of Mr Shetty; or "substantial sums are recovered by ADCB such that the limits of US$ 1 billion … may be affected". Thus, the Court will be able to reconsider the limit of its own motion if this becomes appropriate.

32. I can give my reasons for making the order against the corporate respondents in respect of Mr Shetty's shares briefly. The effect of the freezing order against Mr Shetty is that, in all likelihood, the corporate respondents would be in contempt of the Court were they to facilitate any dealings in his shares with them. It is just and convenient that the position be made clear by a specific injunction against the corporate respondents to that effect.

33. The basis of ADCB's application for a worldwide freezing order against the corporate respondents is what is usually referred to as the Chabra jurisdiction, so-called after the case of TSB Private Bank International SA v Chabra, [1992] 1 WLR 231, which established that in some circumstances the Court can make a freezing order against a respondent who is not subject to any cause of action by the applicant if it is just and convenient to do so. The jurisdiction has been described as "exceptional" and is exercised cautiously: PJSC Vseukrainskyi v Maksimov, [2013] EWHC 422 at para 7. The applicant must establish:

    i. That there are "grounds for belief" (per Longmore LJ in Ras Al Khaimah Investment Authority v Bestford Development LLP, [2017] EWCA Civ 1014 at para 39) or is "good reason to suppose" (the Maksimov case, loc cit, para 7) that the respondent has assets that will be covered by the order. It is, as I see it, of no real importance which formulation is preferred: both have been said to be little different from the criterion of "good arguable case", and so it is not necessary for the applicant to show that the chances are better than even.

    ii. That there is good reason to suppose that the respondent has assets that would be amenable to some process, ultimately enforceable by the courts, by which the asset would be available to satisfy a judgment against the person against whom the applicant asserts a substantive case. The applicant does not have to identify specific assets in the hands of the respondents that would be available: Yukong Line Ltd v Rendsburg Investments Corp., [2001] 2 Lloyd's Rep 113 at para 44.

iii. That there is a real risk that a judgment in the applicant's favour would go unsatisfied by reason of the respondent disposing of assets unless restrained by the Court from doing so.

34. I am satisfied that these requirements are satisfied in the cases of all the corporate respondents. As for the first requirement, in his disclosure on affidavit in the English proceedings Mr Shetty said that the values of his interests in BRS Holdings 1 LTD, BRS Holdings 2 LTD, BRS Holdings 3 LTD and BRS Health LTD were "currently unknown" or "unknown", and that the value of his holding in BRS Investment Property LTD was $22.88 million (a value later revised in correspondence to $25.1 million). The corporate respondents do not, as it appears from the evidence, trade, and prima facie are likely to hold assets: this is sufficient to satisfy the burden on ADCB on this question. I do not overlook that in the schedule to a later letter, Amsterdam & Partners revised the value of Mr Shetty's interest in BRS Health LTD to nil. However, this change from Mr Shetty's sworn evidence was unexplained and would be an unsatisfactory basis to decline to make an order against the company, particularly since, when Mr Shetty addressed me, I was given to understand that the position about BRS Health LTD's assets was less straightforward than might have appeared from Amsterdam & Partners schedule.

35. Is there good reason to suppose that the corporate respondents have assets that would be available to satisfy a judgment against Mr Shetty? Although this requirement would be met if the corporate respondents hold their assets as nominees or agents of Mr Shetty or he otherwise has a beneficial interest in them, the requirement does not demand this. It is put as follows in Gee, Commercial Injunctions (7th Ed, 2021) at paras 13-013 and 13-014: "The jurisdiction is not limited to cases in which the non-party may hold assets of the defendant … It is not limited to where the enjoined party may be using a third party as pockets or wallets of that respondent. It can apply where the third party may have some liability to the defendant or owe a debt, assets in his control may be reached under s.423 of the [UK] Insolvency Act 1986 or through some other way of setting aside a transaction, or by any means through which assets may become through some compulsory process available for satisfying the claim or a judgment founded on it … The jurisdiction recognises that the third party is a separate person from the defendant, and does not involve piercing the corporate veil". It is to be observed that the requirement is not met merely because the defendant is in a position to control how the third party deals with its assets: see JSC Mezhdunarodniy Promyshlenny Bank v Purgachev, [2015] EWCA Civ 139 at para 13, citing Algosaibi v Saad Investments Co Ltd., 2011 (1) CILR 178 per Chadwick P at paras 32-33.

36. There is evidence, including evidence from the information disclosed by Mr Shetty in the English proceedings, that Mr Shetty, while conducting his affairs through companies, regards the companies' assets as his own. For example, in the annual report of NMC plc for 2018, Mr Shetty described shareholdings as "direct" holdings of his own, although the majority of them were held through various companies, including BRS International Holdings Ltd and BRS Capital Ltd. Secondly, in information about his assets made in the English proceedings, Mr Shetty included an aircraft that was in fact owned by BRS Avio Pvt Ltd and a London property owned by Multi Skies Ltd. There is also evidence that Mr Shetty considered that he had a beneficial interest in assets held in BRS Investment Holdings LTD 1, BRS Investment Holdings LTD 2 and BRS Holdings LTD 3. According to Mr Honey's affidavit, these companies were significant shareholders in Finabir plc. In an announcement dated 9 March 2020, Finabir plc stated that its board has received confirmation from Mr Shetty and his son, Mr Binay Shetty, of information as to the shareholding level set out in an Initial Public Offer prospectus about the level of investment by those three corporate respondents and that they were "presently the beneficial owners of 459,579,042 shares, representing 65.65% of the Company".

37. In view of the evidence about how Mr Shetty appears to use an international structure of companies in different jurisdictions to hold his assets and that each of the corporate respondents is a holding company or "special purpose vehicle" and does not trade, to my mind the second requirement is met in the case of each of the corporate respondents.

38. Effective control of the corporate respondents is relevant to the third requirement for granting a freezing order against the corporate respondents, that ADCB has shown that a judgment against Mr Shetty in its favour would go unsatisfied by reasons of the corporate respondents disposing of assets unless restrained by the Court. The evidence is that Mr Shetty and his son Mr Binay

Shetty are the registered directors of BRS Investment Holdings 1 LTD, BRS Investment Holdings 2 LTD, BRS Investment Holdings 3 LTD and BRS Health LTD. In the case of BRS investment Property LTD, they were apparently the only directors until 8 June 2020, when Mrs Shivani Shetty was also appointed to the board. The three directors resigned in November 2020 and January 2021, and were replaced by Mrs Seema Shetty, apparently a daughter of Mr Shetty, and Mr Richard Clarke, apparently a Managing Director of Duff & Phelps, a consultancy firm engaged by Mr Shetty in December 2020. I infer that Mr Shetty effectively has substantial control over the affairs of all the corporate respondents and, for the same reasons that I concluded there is a substantial risk that he will "dissipate" his own assets, in my judgment there is a real risk that the corporate respondents will do so.

39. I concluded that it is just and convenient to make a freezing order against each of the corporate respondents, and that, while it is not known to ADCB what assets they have or where they hold them, in view of the complexity and opacity of instruments holding Mr Shetty's various interests in various jurisdictions, it is just and convenient that the order be on a worldwide basis and the corporate respondents be ordered to provide information about their assets.

40. I therefore granted the orders sought by ADCB, having considered their detailed terms at the hearing on 8 April 2021.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
22 April 2021