ADGM COURTS
محاكم سوق أبوظبي العالمي

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/ Applicants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Defendants/ Respondents

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2023] ADGMCFI 0014
Before:	Justice Sir Andrew Smith
Decision Date:	10 June 2023
Decision:	1. Grant the Orders sought in the applications made under CPR Rule 19(2). 2. No orders made on the applications made under CPR Rule 19(1). 3. The applications made under CPR Rule 19(1) are adjourned with liberty to restore.
Hearing Date:	10 June 2023
Date of Order:	10 June 2023
Catchwords:	Application for order that steps taken be effective service of claim form. Relevance of applicable bilateral treaty.
Legislation Cited:	ADGM Court Procedure Rules
Cases cited:	Abu Dhabi Commercial Bank PJSC v Shetty [2021] ADGM CFI 0004
Case Number:	ADGMCFI-2022-299
Parties and representation:	***Claimants/ Applicants*** Mr Richard Lissack KC, Mr Nico Leslie and Mr Christopher Monaghan Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP

JUDGMENT

1. I have to consider applications in this Claim (the "**Claim**") and in three applications made under the Insolvency Regulations. In the Claim, the claimants are NMC Healthcare Limited (to which I refer as "**NMCH**"), NMC Holding Limited (to which I refer to as "**Holding**") and their Joint Administrators, and the defendants are Dr BR Shetty, Mr P Manghat, and the Bank of Baroda. In two of the Insolvency Regulations applications, the applicants are NMCH and their Joint Administrators, and in the third the applicants are Holding and its Joint Administrators. There are two applications by NMCH and its Joint Administrators because in the one they bring proceedings for NMCH's own claims, and in the other for claims assigned or said to be assigned to it by other companies that were in the NMC Group.

2. The background to all the proceedings is one with which the Court is familiar through other litigation: the insolvencies of NMCH, Holding, NMCH's parent company, NMC PLC, an English company and numerous subsidiaries: insolvencies which are alleged to result from fraudulent activity on the part of, among others, Dr Shetty and Mr Manghat, allegations that are denied by Dr Shetty and Mr Manghat.

3. The position of the claimants - and that is a term I shall use to include the claimants in the Claim and the applicants in the Insolvency Regulations proceedings – is that the proceedings have been validly and effectively served on the Bank of Baroda, although it is pointed out to me that this might be disputed by the Bank, and the Bank might in any event dispute this Court's jurisdiction

or argue that the Court should not exercise any jurisdiction that it has because of terms in various agreements or on other grounds.

4. The applications before me today concern the proceedings against Dr Shetty and Mr Manghat. They are supported by four witness statements dated 2 June 2023, again 2 June 2023, 7 June 2023, and 10 June 2023 made by Mr Nicholas Marsh, a partner in Quinn Emanuel Urquhart & Sullivan UK Limited, the claimants' solicitors. And I also have before me two other statements of Mr Marsh dated 14 December 2022 and 27 May 2023.

5. The applications came before the court as paper applications, but the claimants lodged a skeleton argument referring to many authorities. For this reason, if no other, I directed an oral hearing, which has taken place by video link. The hearing is of *ex parte* applications. I understand that it is attended by at least Baker & McKenzie for the Bank of Baroda and Kobre & Kim, who have been assisting Mr Manghat in at least some matters arising from the allegations made against him, but neither firm of solicitors took part in the hearing.

6. The applications are for these directions and orders. First, for orders under the ADGM Court Procedure Rules (the "**CPR**") r.19(2), that steps already taken to bring a document to a person's attention shall be effective service on it; secondly, for orders under CPR r. 19(1) permitting service by an alternative method; and thirdly, for orders to extend the time for service of documents.

7. The orders sought for service by an alternative method contemplate service on Dr Shetty and Mr Manghat in India. I note that there is in force a bilateral treaty between the Republic of India and the United Arab Emirates dated 25 October 1999 on Juridical and Judicial Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgments and Arbitral Awards (the "**Treaty**"). Article 3(1) of the Treaty provides 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*". As I said in my judgment in the case of *Abu Dhabi Commercial Bank PJSC v Shetty*, [2021] ADGM-CFI-0004 at paragraph 14, where there is relevant bilateral treaty, the court will make an order only exceptionally. The same applies in Hague Convention cases.

8. There are proceedings in England relating to the same or very similar allegations against the same parties. First, there are proceedings brought by NMC PLC by way of a claim form and by way of applications under the English Insolvency Act (the "**PLC Proceedings**"). Further, there are proceedings brought by NMCH, Holding and their Joint Administrators. As for the latter, Mr Marsh describes them as protective, and he says that they have lapsed against the Bank of Baroda without being served, and that NMCH, Holding and the Joint Administrators do not intend to serve them on Dr Shetty and Mr Manghat, and intend the proceedings to lapse against them also. I am proceeding today on the basis that they will not be pursued, and the claimants have given an undertaking to the Court not to serve those English proceedings without the permission of this court.

9. Reverting to the PLC Proceedings, on 8 June 2023 Mr Justice Marcus Smith held a hearing in the English court about service of them on Dr Shetty and Mr Manghat, among other matters. Mr Justice Marcus Smith made an order for their consolidation, he gave permission for their service out of the jurisdiction, and he made an order for alternative service. I have before me a note of his reasons, which I understand to have been approved by him. It is his reasons of permitting service by an alternative method that are most directly in point for present purposes. However, in his remarks about the application for permission to serve out of the jurisdiction, he referred to these proceedings as "*potentially parallel proceedings in another jurisdiction*." He said this:

> *"It does seem to me that this is not a case of parallel duplicative proceedings which courts take against. This is much more a case where there are related proceedings going on in two jurisdictions which interact but do not duplicate".*

I agree with his assessment.

10. I come to the applications before me under the CPR r.19(2). For reasons that I need not explain and are apparent from Mr Marsh's evidence, it is overwhelmingly likely that Dr Shetty and Mr Manghat are well aware of these proceedings. Further, it is clear that service of the proceedings of them in India would involve additional cost and would cause delay. However, I observed in my judgment in *ADCB v Shetty* (cit sup) that, on an application under CPR r. 19(1) for the permission for service by an alternative method in circumstances where there is a relevant bilateral treaty, delay and costs are not sufficient reason for an order and, as I have said, the Court will make an order only exceptionally. I observe that the CPR require a good reason for permitting service by an alternative method, and that there is no express requirement to that effect in CPR r. 19(2). That said, to my mind similar considerations arise under the two CPR r. 19 provisions where there is a bilateral treaty, and I proceed on the basis that the Court should only exceptionally accede to an application under CPR r.19(2) in such circumstances.

11. When considering the English applications for service by an alternative method, Mr Justice Marcus Smith adopted a test as to whether there were exceptional circumstances. He considered the question finely balanced, but concluded that there were.

12. He recognised that delay involved in service in accordance with the Hague Convention in itself did not amount to an exceptional circumstance. He also observed that Dr Shetty and Mr Manghat had solicitors who were well able to take notice and transmit the substance of any claim to their clients, but went on to say that that was a consideration that he discounted:

> *"Comity is a matter that entitles those subject to litigation from another state to insist upon their rights, and their rights in this case can be defined by a combination of their national law and the Hague Convention to which their national status has subscribed. If they want to say, 'I wish to be served in a more cumbersome means than in other courts', then that is their right. The fact that this puts claimants to inconvenience is not a matter that can be relevant".*

13. Marcus Smith J then went on to say that, if he did not accede to the application for alternative service, he would, "*pretty much automatically*" be imposing a stay on the proceedings that otherwise could be advanced expeditiously against the Bank of Baroda, and he considered that the question before him was whether that fact outweighed comity. He said that the matter really appeared to him as straightforward as this: whether a likely stay on the claims against the defendant within the jurisdiction outweighed the comity arguments with regard to the claims against Dr Shetty and Mr Manghat. He said he had to judge that balance in a case where there were solicitors, "*in the wings, not on the record, not accepting service*"; and considered that matter to be, "*in effect a decisive factor in a finely balanced case*".

14. I have reached similar conclusion with regards to the question before me on the applications under CPR r 19(2). I would endorse the reasoning of Mr Justice Marcus Smith and adopt it, but I add two further considerations. First, for reasons that Mr Marsh explains, if an order is not made under rule 19(2), there is every prospect of disputes of an arid nature coming before the Court in the future about whether there has been effective service in India.

15. Secondly, as matters stand, as a result of the order made by Mr Justice Marcus Smith the PLC Proceedings are ready to go ahead. Of course, there might be applications to set aside the *ex parte* orders of Mr Justice Marcus Smith, but I must deal with matters as they stand and on the basis that it might be that no applications will be made to set aside his orders and that, if made, they might be refused. It is desirable that both this Court and the English Court be in a position to manage parallel and interacting proceedings with sensible regard for their efficient disposal in both jurisdictions, and that there be sensible cooperation to that end. Orders under CPR 19(2) will facilitate that; contrary-wise, the problems of managing parallel proceedings would be aggravated if, in the one jurisdiction, they went ahead and in the other jurisdiction they were in

abeyance pending service, perhaps for very many months. This might be the position were I to refuse the applications with regard to service.

16. I add that I see no advantage in permitting service by an alternative method under CPR r.19(1), rather than making the orders sought under CPR r.19(2). That would simply put the claimants through unnecessary hoops for no practical purpose. Therefore, subject to any questions of drafting, I grant the orders sought under CPR r.19(2). I shall make no orders under CPR r.19(1) other than to adjourn those applications and give claimants liberty to restore them. That liberty is designed to cater for the position if Dr Shetty or Mr Manghat successfully applies to set aside my *ex parte* order under CPR r.19(2).

17. Those are my reasons for granting of the CPR r.19(2) applications.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
13 June 2023