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

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

ABU DHABI COMMERCIAL BANK PJSC

Claimant

and

PRASANTH MANGHAT

Defendant

AND

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

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

IN THE MATTER OF THE ADGM INSOLVENCY REGULATIONS 2022

AND

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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

JUDGMENT OF JUSTICE SIR ANDREW SMITH

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APPENDIX TO JUDGMENT

Glossary

Term	Definition
"0090 account"	see paragraph 191
"0242 account"	see paragraph 197(a)
"2015 Syndicated Facilities"	see paragraph 709(a)
"2017 Intercreditor Agreement"	see paragraph 709(b)
"2017 Syndicated Facilities"	see paragraph 709(c)
"2018 Syndicated Loan"	see paragraph 117
"2359 account"	see paragraph 191
"2466 account"	see paragraph 197(a)
"5596 account"	see paragraph 193(a)
"7013 account"	see paragraph 191
"9228 account"	see paragraph 193(b)
"A&M Europe"	Alvarez & Marsal Europe LLP
"Accounts Representations"	see paragraph 747
"ACI"	Assam Company India Ltd
"ADBC"	Abu Dhabi Bankruptcy Court
"ADCB"	Abu Dhabi Commercial Bank PJSC
"ADCB Action"	The action brought by ADCB against Mr Manghat
"ADGM"	Abu Dhabi Global Market
"ADGM Companies"	The 34 companies in the NMC Group whose claims, together with those of their former Joint Administrators, were assigned to NMCH
"Admitted Group Creditor"	see paragraph 133
"Advance Account"	see paragraph 187
"AED 367 Million Facility"	see paragraph 118
"AFF"	Administrative Funding Facility
"AFF Exit Instruments"	see paragraph 791(b)
"AHB"	Al Hilal Bank
"AHB BCIC"	AHB's Board Credit Investment Committee
"Al Zahra"	Al Zahra PVT Hospital Company Limited
"B1 Facility"	see paragraph 339(b)
"Baroda"	Bank of Baroda
"Beiersdorf"	Beiersdorf Cosmetic Trading Co LLC
"Bilateral Facility"	see paragraph 339(e)
"Bin Buttis"	SAQ and KBBAM
"BRCC"	Board Risk & Credit Committee
"BRS Holdings"	BRS Holdings Ltd
"BRS Ventures"	BRS Ventures Investment Limited
"BRS Ventures & Holdings"	BRS Ventures & Holdings Limited
"BVI"	British Virgin Islands
"C1 Facility"	see paragraph 339(b)
"CBUAE"	The Central Bank of the UAE

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"CCL 1984"	*UAE Federal Law No. 8 of 1984 on Commercial Companies*
"CCL 2015"	*UAE Federal Law No. 2 of 2015 Concerning Commercial Companies (as amended by UAE Federal-Decree Law No. 26 of 2020)*
"Centurion"	Centurion Investments
"CEO"	Chief Executive Officer
"CFO"	Chief Financial Officer
"Civil Claims"	The claims brought by the JA Claimants under the Civil Code and other UAE statutory provisions
"Civil Code"	*Federal Law No. 5 of 1985 Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates*
"Club Facility"	see paragraph 339(d)
"Commentary"	The *Official Commentary on the UAE Civil Code of the Ministry of Justice*
"Commitment"	see paragraph 650
"Compliance Certificates"	see paragraph 718(b)
"Core Facilities"	see paragraph 339
"CP Certificates"	see paragraph 719(a)
"CPR"	*ADGM Court Procedure Rules 2016*
"Creditor Exit Instruments"	see paragraph 791(a)
"DAN"	Delta Al Neil General Maintenance & Real Estate
"Deed Administrators"	see paragraph 132
"DHE"	Delta for Heavy Equipment LLC
"Dicey"	*Dicey, Morris & Collins on the Conflict of Laws (16th Ed, 2022)*
"DIFC"	Dubai International Financial Centre
"Direct Manghat Payments"	see paragraph 197
"Direct Shetty Payments"	see paragraph 191
"DOCA"	A Deed of Company Arrangement
"Dr Shetty"	Dr Bavaguthu Raguhram Shetty
"EIB"	Emirates Islamic Bank PJSC
"Emirates HG"	Emirates Hospital Group LLC
"Everest"	Apex Everest Summit General Contracting
"Exit Instruments"	see paragraph 130
"EY"	Ernst & Young LLP and/or Ernst & Young Middle East
"EY Note"	see paragraph 356
"EYME"	Ernst & Young Middle East
"FFT"	Falcon Future Trading FZE
"Finablr"	Finablr plc
"First Muddy Waters Report"	see paragraph 120
"First Resolution Letter"	see paragraph 364
"Freeh Group"	Freeh Group International Solutions LLC
"FRP Report"	see paragraph 102

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"FTSE 100"	UK's Financial Times Stock Exchange 100 index
"GCC"	Gulf Cooperation Council
"GGCM"	Guide General Contracting & Maintenance LLC
"Group Creditors"	see paragraph 132
"HE Al Mazrouei"	HE Abdulla Humaid Al Mazrouei
"Holding"	NMC Holding Limited
"IAS 24"	International Accounting Standard 24
"IFRS"	International Financial Reporting Standards
"Implicated Litigants"	see paragraph 24
"IND"	Increased Net Deficiency
"Independent Review Committee"	see paragraph 122
"Indirect Shetty Payments"	see paragraph 191
"Infinite"	Infinite Investments LLC
"Insolvency Claims"	The claims brought by the JA Claimants under the *ADGM Insolvency Regulations 2022*
"IPO"	An Initial Public Offering
"IR 2015"	*ADGM Insolvency Regulations 2015*
"IR 2022"	*ADGM Insolvency Regulations 2022*
"JA Action"	The proceedings brought by (i) NMCH, (ii) Holding, and their Joint Administrators: (iii) Mr Richard Dixon Fleming and (iv) Mr Benjamin Thom Cairns
"JA Action Accountant Experts"	see paragraph 75
"JA Claimants"	(i) NMCH, (ii) Holding, and their Joint Administrators: (iii) Mr Richard Dixon Fleming and (iv) Mr Benjamin Thom Cairns
"JAs"	The Joint Administrators of NMCH and Holding: Mr Richard Dixon Fleming and Mr Benjamin Thom Cairns
"KBBAM"	Mr Khaleefa Butti Omair Yousef Almuhairi
"Kelvin Gulf"	see paragraph 194
"La Sara"	see paragraph 194
"Loan Recycling Scheme"	see paragraph 8
"Manghat Directions Application"	see paragraph 13
"Manghat GGCM Payments"	see paragraph 632
"Modular Concepts"	Modular Concepts LLC
"Mr Manghat"	Mr Prasanth Manghat
"Mr Manghat's Written Submissions"	see paragraph 23
"MRA Rating"	Moody Risk Analysis rating
"MRCC"	Management Risk & Credit Committee
"Muddy Waters"	Muddy Waters Capital LLC
"Murabaha Facility"	see paragraph 339(f)
"Neopharma"	Neopharma LLC
"New Medical Centre"	New Medical Centre Trading LLC
"Nexgen"	Nexgen Pharma FZ LLC
"NMC Group"	The group of companies headed by NMC plc
"NMC plc"	NMC Health plc

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"NMCH"	NMC Healthcare Limited
"NMCH DOCA"	NMCH's Deed of Company Arrangement
"NNMC"	NNMC Ltd
"Post-Hearing Submissions"	see paragraph 41
"Principal Shareholders"	Dr Shetty and the Bin Buttis
"Purchased Exit Instruments"	see paragraph 791(c)
"RAN"	Risk Assessment Note
"RCS"	Royal Catering Services LLC
"RED"	Restructuring Effective Date
"Related Party DOCAs"	The ADGM Companies' Deeds of Company Arrangement
"Relationship Agreements"	see paragraph 104
"Relevant Period"	see paragraph 7
"Retrospectivity Defences"	see paragraph 15
"RGI"	Royal Gourmet Investment LLC
"RRP"	Revised Resolution Plan
"Rule 110 Notice"	see paragraph 55
"Rumasa"	Rumasa SA
"SAQ"	HE Saeed Mohamed Butti Mohamed Khalfan Al Qebaisi
"Sayacorp"	Sayacorp BSC
"Second Resolution Letter"	see paragraph 386
"September 2014 Spreadsheet"	see paragraph 670
"Sham Suppliers"	see paragraph 208
"Sobha & BR"	Sobha & B R Aviation Ltd
"SPA"	Sale and Purchase Agreement
"STIP"	Short-Term Incentive Plan
"Sukuk Offering"	see paragraph 339(c)
"Travelex"	Travelex Holdings Limited
"UAE"	United Arab Emirates
"UAE Exchange"	UAE Exchange Centre LLC
"UNB"	Union National Bank PJSC
"UNB Facility"	see paragraph 141
"Undisclosed Debt"	see paragraph 202
"Undisclosed Securities"	see paragraph 200

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Neutral Citation:	[2026] ADGMCFI 0027
Before:	Justice Sir Andrew Smith
Decision Date:	5 November 2026
Decision:	**ADCB Claim:** See paragraph 876 of this Judgment. **JA Claim:** See paragraph 876 of this Judgment.
Hearing Dates:	23 – 27 and 30 March 2026; 9 – 10, 13 – 14, 16 – 17, 20 – 21, 23 – 24 and 27 – 29 April 2026; 1, 4 – 8, 11 – 15, 18 – 23 May 2026; 1, 3 – 5, 8, 10, 27, 29 – 30 June 2026; and 1 – 3 July 2026.
Order:	To be determined after a further hearing.
Catchwords:	Insolvency. Fraudulent trading. Dishonesty. Wrongful trading. Contribution to company's assets. Article 282 of the UAE Civil Code. Article 285 of the UAE Civil Code. Unjust enrichment. Liability of manager of a company. Damages recoverable under article 292 of the UAE Civil Code.
Cases Cited:	*Davy v Garrett (1878) 7 Ch D 473* *Re William C Leitch Bros Ltd [1932] 2 Ch 71* *Hollington v F Hewthorn & Co Ltd [1943] KB 587* *Fowler v Lanning [1959] 1 QB 426* *Re Murray-Watson Ltd (unreported), 6 April 1977* *Trendtex Trading Corp v Credit Suisse [1982] AC 679* *R v Ghosh [1982] QB 1053* *Re Augustus Barnett & Son Ltd (1986) 2 BCC 98904* *Re Produce Marketing Consortium Ltd (No 2) [1989] BCLC 520* *British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd (1995) 11 Const LJ 365* *Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378* *In Re C S Holidays Ltd [1997] BCC 172* *In Re Howard Holdings Inc [1998] BCC 549* *McPhilemy v Times Newspapers Limited and Others [1999] EMLR 751* *Three Rivers District Council v Bank of England [2001] UKHL 16* *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd*

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	[2001] UKHL 1 *In Re Bank of Credit and Commerce International SA (In Liquidation) (No.14) [2003] EWHC 1868 (Ch)* *Morphitis v Bernasconi [2003] EWCA Civ 289* *Standard Life Assurance Ltd v Building Design Partnership Ltd [2021] EWCA Civ 1793* *Bouchier v Booth [2023] EWHC 3195 (Ch)* *Morris v Bank of India [2004] EWHC 528 (Ch)* *Barlow Clowes International Ltd (In Liquidation) v Eurotrust International Ltd [2005] UKPC 37* *In Re Hawkes Hill Publishing Co Ltd (In Liquidation) [2007] BCC 937* *Fiona Trust & Holding Corp v Privalov [2010] EWHC 3199 (Comm)* *Brumder v Motornet Service and Repairs Ltd [2013] EWCA Civ 195* *Madoff Securities International Ltd (In Liquidation) v Raven [2013] EWHC 3147 (Comm)* *Thevarajah v Riordan [2015] EWCA Civ 41* *Bilta (UK) Ltd (In Liquidation) v Nazir [2015] UKSC 23* *JSC Bank of Moscow v Kekhman [2015] EWHC 3073 (Comm)* *In Re Ralls Builders Ltd (In Liquidation) [2016] EWHC 243 (Ch)* *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67* *JSC BM Bank v Kekhman [2018] EWHC 791 (Comm)* *Re Tradestar Ltd [2018] EWHC 3595 (Ch)* *King v Stiefel [2021] EWHC 1045 (Comm)* *Royal Mail Group Ltd v Efobi [2021] UKSC 33* *ED&F Man Capital Markets v Come Harvest Holdings Ltd [2022] EWHC 229 (Comm)* *Tradition Financial Services Ltd v Bilta (UK) Ltd [2023] EWCA Civ 112* *London Capital & Finance Plc v Thomson [2024] EWHC 2894 (Ch)* *Wright v Chappell [2024] EWHC 1417 (Ch)* *London Capital & Finance Plc v Thomson [2024] EWHC 3438 (Ch)* *Bilta (UK) Ltd (in liquidation) v Tradition Financial Services Ltd [2025] UKSC 18*

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	Credit Suisse Life (Bermuda) Ltd v Ivanishvili [2025] UKPC 53 *Musst Holdings Ltd v Astra Asset Management UK Ltd [2026] EWHC 1599 (Ch)* *Tendcare Medical Group Holdings Pte & Ors Ltd v Gong Ruizhong & Ors [2021] SGHC 80* *NMC Healthcare Limited and Associated Companies [2020] ADGMCFI 0008* *NMC Healthcare Limited v Noor Capital PSC [2022] ADGMCFI 0003* *NMC Healthcare Limited (in administration) and Associated Companies v Dubai Islamic Bank PJSC & Others [2023] ADGMCFI 0017* *Abu Dhabi Commercial Bank PJSC v Prasanth Manghat [2023] ADGMCFI 0021* *Abu Dhabi Commercial Bank PJSC v Prasanth Manghat [2023] ADGMCFI 0025* *NMC Healthcare Limited (in administration) (subject to a deed of company arrangement) & Others v Shetty & Others [2024] ADGMCFI 0007* *Abu Dhabi Commercial Bank PJSC v Prasanth Manghat [2024] ADGMCFI 0010* *Dr Bavaguthu Raghuram Shetty v NMC Healthcare Limited (in administration) (subject to a deed of company arrangement) & Others [2024] ADGMCA 0001* *NMC Healthcare Limited (in administration) (subject to a deed of company arrangement) & Others v Shetty & Others [2025] ADGMCFI 0004* *Union Properties PJSC & Anor v Trinkler & Partners Ltd & Others [2026] ADGMCFI 0010* *Secure Capital Equipment LLC v NMC Healthcare Limited [2026] ADGMCFI 0011* UAE Federal Supreme Court Case 127/1999 dated 10 October 1999 UAE Federal Supreme Court Case 183/2011 dated 1 June 2011 Abu Dhabi Court of Cassation Case 48/2019 dated 22 April 2019 Abu Dhabi Court of Cassation Case 495/2022 dated 19 July 2022 Abu Dhabi Court of Cassation Case 1196/2023 dated 24 January 2024 Dubai Court of Cassation Case 254/2003 dated 12 October

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	2003 Dubai Court of Cassation Case 302/2003 dated 7 March 2004 Dubai Court of Cassation Case 216 & 239/2005 dated 15 January 2006 Dubai Court of Cassation Case 330/2005 dated 26 March 2026 Dubai Court of Cassation Case 28/2006 dated 27 March 2006 Dubai Court of Cassation Case 46 & 49/2006 dated 8 May 2006 Dubai Court of Cassation Case 445/2008/75 dated 19 January 2009 Dubai Court of Cassation Case 130/1012 dated 14 October 2012 Dubai Court of Cassation Case 95/2014 dated 24 July 2014 Dubai Court of Cassation Case 636/2015 dated 10 November 2015 Dubai Court of Cassation Case 20/2017 dated 21 March 2017 Dubai Court of Cassation Case 409/2022 dated 22 September 2022 Dubai Court of Cassation Case 2/2024 dated 24 July 2024 Ras Al-Khaimah Court of Cassation Case 54/2024 dated 27 August 2024
Legislation Cited:	*The Constitution of the United Arab Emirates* *UAE Federal Law No. 10 of 1980 on the Central Bank, the Monetary System and Organisation of Banking* *UAE Federal Law No. 8 of 1984 on Commercial Companies* *UAE Federal Law No. 5 of 1985 Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates* (the Civil Code) *UAE Federal Law No. 4 of 2002 Regarding the Criminalisation of Money Laundering* *UAE Federal Law No. 8 of 2004 on Financial Free Zones* *UAE Federal Law No. 12 of 2014 on the Regulation of the Audit Profession* *UAE Federal Law No. 2 of 2015 Concerning Commercial Companies (as amended by UAE Federal-Decree Law No. 26 of 2020)*

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	UAE Federal Decree-Law No. 9 of 2016 on Bankruptcy *UAE Federal Decree-Law No. 14 of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities* *UAE Federal Decree-Law No. 20 of 2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organisations* *UAE Federal Decree-Law No. 31 of 2021 Promulgating the Crimes and Penalties Law* (the UAE Penal Code) *UAE Federal Decree-Law No. 34 of 2021 Concerning Countering Rumours and Cybercrimes* *UAE Federal Decree-Law No. 45 of 2021 Concerning the Protection of Personal Data* *UAE Federal Decree-Law No. 6 of 2025 Regarding the Central Bank, Regulation of Financial Institutions, Activities and Insurance Business* *UAE Federal Decree-Law No. 10 of 2025 on Anti-Money Laundering, Counter-Terrorism Financing and Counter-Proliferation Financing* *Dubai Law No. 9 of 2004 Concerning the Dubai International Financial Centre* *Abu Dhabi Law No. 4 of 2013 Concerning the Abu Dhabi Global Market* (the ADGM Founding Law) *UAE Central Bank Circular No. 24/2000 Concerning Procedures for Anti-Money Laundering* *UAE Federal Cabinet Resolution No. 10 of 2019 on the Executive Regulations of UAE Federal Decree-Law No. 20 of 2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organisations* *ADGM Companies Regulations 2015* *ADGM Real Property Regulations 2015* *ADGM Insolvency Regulations 2015* *ADGM Application of English Law Regulations 2015* *ADGM Court Procedure Rules 2016* *ADGM Insolvency Regulations 2022* *Marine Insurance Act 1906 (UK)* *Companies Act 1948 (UK)* *Civil Liability (Contribution) Act 1978 (UK)* *Limitation Act 1980 (UK)* *Foreign Limitation Periods Act 1984 (UK)*

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	Insolvency Act 1986 (UK) *Civil Procedure Rules 1998 (UK)* *English Practice Direction 32* *Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (India)*
Case Numbers:	ADGMCFI-2022-111; ADGMCFI-2020-020; ADGMCFI-2022-299
Parties and Representation:	***ADCB Claim*** ***Claimant*** Mr Rajesh Pillai KC, Mr Scott Ralston, Ms Rebecca Zaman, Mr Lucas Jones, Mr Ali Al Aidarous and Mr Ali Al Hashimi (Instructed by Holman Fenwick Willan LLP) ***Defendant*** Mr Patrick Hennessey (Instructed by Mr Prasanth Manghat) ***JA Claim*** ***Claimants*** Mr Bankim Thanki KC, Mr Henry King KC, Mr Robin Lööf, Ms Alexandra Whelan, Mr Damien Bruneau, Mr Jerome Squires, Mr Ali Al Aidarous and Mr Ali Al Hashimi (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) ***First Defendant*** Mr Kajetan Wandowicz (Instructed by Bishwajit Dubey) ***Second Defendant*** Mr Patrick Hennessey (Instructed by Mr Prasanth Manghat) ***Third Defendant*** Mr Harish Salve KC, Ms Victoria Windle KC, Ms Sarah Tresman, Ms Celia Rooney, Mr Timothy Lau, Ms Maria Kennedy, Mr Mark Baldock, Dr Habib Al Mulla, Mr Hany Maher, Dr Karen Seif, Mr Ahmed Al Zaabi and Professor Chibli Mallat (Instructed by Baker & McKenzie LLP)

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JUDGMENT

Introduction

1. This is my Judgment in two actions, both of which arise from a fraud against a group of companies known as the "**NMC Group**", the parent company of which was NMC Health plc ("**NMC plc**"), an English company.

2. In one action, which has come to be referred to as the "**JA Action**", the Claimants (the "**JA Claimants**") are (a) two companies in the NMC Group, being (i) NMC Healthcare Limited ("**NMCH**") and (ii) NMC Holding Limited ("**Holding**"), and (b) their Joint Administrators, being (iii) Mr Richard Dixon Fleming and (iv) Mr Benjamin Thom Cairns (the "**JAs**"), both of Alvarez & Marsal Europe LLP ("**A&M Europe**"). (NMCH and Holding act by the JAs.) The JA Claimants bring claims in their own right. NMCH also brings claims as assignee of the claims of the so-called "**ADGM Companies**", being 34 companies which were in the NMC Group, and of their former Joint Administrators.

3. At the start of the trial, there were three Defendants in the JA Action: two former executives in the NMC Group, (i) Dr Bavaguthu Raghuram Shetty ("**Dr Shetty**") and (ii) Mr Prasanth Manghat ("**Mr Manghat**"), and (iii) the Bank of Baroda ("**Baroda**"), an Indian bank. Towards the end of the trial, the JA Claimants and Baroda reached a settlement, and the JA Claimants discontinued their claims against it.

4. In response to the claims, Dr Shetty makes claims against the other Defendants, and Baroda similarly makes claims against Dr Shetty and Mr Manghat (and, before the settlement, brought various counterclaims against the JA Claimants). When the claims against Baroda were discontinued, I told the parties that I would not decide these matters in this Judgment, and that I would hear further argument about them after I had delivered it and in light of my decisions in it.

5. The claims in the JA Action fall into two categories: (i) claims brought under the *United Arab Emirates* ("**UAE**") *Federal Law No. 5 of 1985 Concerning the Issuance of the Civil Transactions Law* (the "**Civil Code**") and other UAE statutory provisions, to which I shall refer as the "**Civil Claims**"; and (ii) the claims under the *Abu Dhabi Global Market* ("**ADGM**") *Insolvency Regulations 2022* ("**IR 2022**"), to which I shall refer as the "**Insolvency Claims**". The Civil Claims are brought by NMCH (in its own capacity and as assignee of the ADGM Companies' Civil Claims) and by Holding. The Insolvency Claims are brought by the JAs and NMCH (as assignee of the ADGM Companies' former Joint Administrators' Insolvency Claims). All the Claims are denied.

6. The second action (the "**ADCB Action**") is brought against Mr Manghat by Abu Dhabi Commercial Bank PJSC ("**ADCB**"), a bank incorporated in the UAE. It makes claims under the Civil Code, particularly Articles 282 and 285, and under Article 84 of the *UAE Federal*

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Law No. 2 of 2015 Concerning Commercial Companies (as amended by UAE Federal-Decree Law No. 26 of 2020) (the "**CCL 2015**"). Mr Manghat denies the claims.

7. It is not in dispute that the NMC Group was a victim of massive and sophisticated fraud between 2 April 2012 and 9 April 2020 (to which I shall refer as the "**Relevant Period**"). In essence, it had two main elements: (i) the misappropriation of assets of the NMC Group, and (ii) the misrepresentation of its finances in its financial statements by way of overstating its net assets and its true turnover. NMC plc was put into administration by order of the English High Court on 9 April 2020, and NMCH, Holding and the ADGM Companies were put into administration by order of this Court on 27 September 2020. The core issues that I have to decide are whether Dr Shetty and Mr Manghat were parties to the fraud. Dr Shetty contends that he knew nothing of it, and that he was the victim of a fraud carried out by Mr Manghat and other senior managers of the NMC Group. Mr Manghat disputes his role in the fraud, and he contends that Dr Shetty perpetrated it and that it was for Dr Shetty's benefit.

8. In the ADCB Action, in broad summary ADCB alleges *inter alia* that Mr Manghat knowingly participated in the fraud, particularly in an aspect of it that it calls the "**Loan Recycling Scheme**", whereby borrowings taken out by the NMC Group to cover the misappropriations were not disclosed in the Group's financial statements; and that Mr Manghat gave ADCB false assurances about the NMC Group's financial position.

9. At the Appendix to this Judgment is a glossary of the abbreviated terms that I use in it.

The proceedings

10. The ADCB Action was brought on 10 May 2022. The background to it is that, on 2 December 2020, ADCB had brought proceedings in England against Dr Shetty, Mr Manghat and four other shareholders and senior executives of the NMC Group. Dr Shetty, Mr Manghat and some other defendants successfully challenged the jurisdiction of the English Court, and the English proceedings were stayed against those defendants in April 2022. Essentially, ADCB pursues in this Court against Mr Manghat alone the complaints that it had brought in the English proceedings.

11. The JA Action was brought on 15 December 2022.

12. There have been many protracted interlocutory applications in these proceedings, but I need mention only some of them.

Concurrent trials

13. First, by an application of 14 September 2023 (the "**Manghat Directions Application**"), Mr Manghat sought orders that the claims against him in the two proceedings be "*subject to co-ordinated case management*", and that there be "a *concurrent trial*" of them. By a judgment of 29 December 2023 ([2023] ADGMCFI 0025), I granted the Manghat Directions

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Application, and the Actions have been conducted accordingly, both before and at the trial. In particular, I directed that the evidence in each Action should stand as evidence in them both.

The preliminary issues

14. Secondly, as I have said, the JA Claimants bring claims under the IR 2022. More specifically, they made claims against Dr Shetty, Mr Manghat and Baroda for fraudulent trading under section 251 of the IR 2022, and against Dr Shetty and Mr Manghat for wrongful trading under section 252 of the IR 2022. The allegations pursued against Dr Shetty and Mr Manghat relate to conduct between 2012 and 2020 and the allegations pursued against Baroda related to conduct between 2013 and 2020. As I shall explain, NMCH, Holding and the ADGM Companies were registered in the ADGM only in September 2020, shortly before they were put into administration, and liability for fraudulent and wrongful trading was first introduced into ADGM law in 2015 by the *ADGM Insolvency Regulations 2015* ("**IR 2015***"*), the predecessor of the IR 2022.

15. Dr Shetty and Baroda advanced what came to be termed "**Retrospectivity Defences**" to these Insolvency Claims: that sections 251 and 252 of IR 2022 do not apply to anything that they were alleged to have done (i) before the JA Claimants were incorporated in the ADGM, or (ii) before the IR 2015 were enacted and came into force. They also contended that they had insufficient connection between the Insolvency Claims and the ADGM for this Court to entertain them.

16. These arguments were determined by way of preliminary issues. By a judgment of 8 July 2024 ([2024] ADGMCFI 0007), I rejected the Retrospectivity Defences, determining the issues as follows:

> "a. ***Issue 1****: Can an order be made under sections 251 and 253 of the [IR 2022] in respect of the fraudulent carrying on of the business of a company prior to the time at which that company was continued in the ADGM?* ***Yes***.
>
> *b.* ***Issue 2****: Can an order be made under section 252 of the [IR 2022] in respect of the wrongful carrying on of the business of a company prior to the time at which that company was continued in the ADGM?* ***Yes***.
>
> *c.* ***Issue 3****: Can a claim be brought under section 251 and/or section 252 in respect of the fraudulent and/or wrongful carrying on of business before the date when sections 251 and section 252 first came into effect in the ADGM (... pursuant to the [IR 2015], which was the predecessor of the [IR 2022])?* ***Yes***.
>
> *d.* ***Issue 4****: Can a claim successfully be brought under section 251 and/or section 252 absent a sufficient connection between the defendant and the ADGM?* ***Yes****; and*

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e. If not, assuming (for present purposes only) the facts pleaded by the Claimants, including in their proposed Re-Re-Amended Particulars of Claim, to be true, would there be a sufficient connection between the relevant Defendant and the ADGM? ***This does not arise, but if it did, I would answer, Yes***".

17. Dr Shetty and Baroda appealed against my determinations, but their appeal was dismissed by the Court of Appeal on 30 December 2024 (*[2024] ADGMCA 0001*).

Submissions on UAE law

18. Thirdly, the proceedings give rise to issues of UAE law. In the JA Action, the Civil Claims are governed by UAE law, but the Insolvency Claims are governed by ADGM law. In the ADCB Action, the claims are governed by UAE law.

19. In a judgment of 10 March 2025 (*[2025] ADGMCFI 0004*), I refused applications by ADCB and the JA Claimants to adduce evidence of UAE law. Dr Shetty and Baroda had argued that instead the Court should deal with the UAE law issues by way of legal submissions under rule 117 of the *ADGM Court Procedure Rules 2016* (the "**CPR**"), and I accepted their argument.

20. This does not change the task of the ADGM Court when determining questions of UAE law: it is to determine how they would be interpreted and applied by the onshore Courts of the UAE: see *NMC Healthcare Limited (in administration) and Associated Companies v Dubai Islamic Bank PJSC & Others [2023] ADGMCFI 0017* at para. 24.

21. The JA Claimants and ADCB presented joint submissions on UAE law. Mr Manghat and Baroda presented submissions in response, and the JA Claimants and ADCB made further submissions in reply. Dr Shetty did not present submissions on UAE law, but, as I shall explain, he adopted those of Baroda on some points.

ADCB's application to join Dr Shetty

22. Fourthly, by an application dated 3 May 2024, ADCB applied for permission to join Dr Shetty as a defendant in the ADCB Action. By a judgment dated 30 July 2024, [2024] ADGMCFI 0010, and an Order dated 30 July 2024, I refused the application, saying (at paras. 86 and 87 of my judgment): "*The problems in accommodating the joinder of Dr Shetty in the ADCB claim within the timetable to the March 2026 trial are a result of ADCB allowing the trial date and the procedural timetable to be directed without indicating that it would, or might, seek to join Dr Shetty as a defendant. While that is the context in which I decide the Joinder Application it is not in itself a reason for refusing it. I do not lightly refuse the Joinder Application: there is an obvious attraction in having these proceedings resolve not only issues between ADCB and Mr Manghat but also the complaints of both ADCB and Mr Manghat against Dr Shetty. … In the end, I have concluded (i) that it would be unfair to Dr Shetty to require him to add the demands of these proceedings to the already demanding programme to prepare for trial in March 2026, and (ii) that to grant the*

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Joinder Application would seriously jeopardise the trial date. I have therefore decided that it would not be just, and would not advance the overall objective, to grant the Joinder Application".

Mr Manghat's supplementary "witness statement"

23. On 23 December 2025, Mr Manghat applied for permission to file and serve a further witness statement after the stipulated date for evidence had expired. His application was resisted on the grounds that the statement comprised argument rather than evidence. At the pre-trial review on 27 January 2026, I declined to receive the statement into evidence, but I directed that it should be received by way of submissions on Mr Manghat's behalf. I refer to it as "**Mr Manghat's Written Submissions**".

The Bin Buttis settlement agreement

24. The last pre-trial direction that I should mention concerns the position about documents relating to a settlement agreement reached by the JAs in relation to Mr Khaleefa Butti Omair Yousef Almuhairi ("**KBBAM**") and HE Saeed Mohamed Butti Mohamed Khalfan Al Qebaisi ("**SAQ**"), KBBAM's uncle, who together were referred to as the "**Bin Buttis**". On 27 July 2021, KBBAM and the so-called "**Implicated Litigants**" entered into restructuring procedures in the Abu Dhabi Bankruptcy Court (the "**ADBC**") pursuant to *UAE Federal Decree-Law No. 9 of 2016 on Bankruptcy*. The Implicated Litigants included SAQ in his personal capacity and in his capacity as the ultimate sole owner of Centurion Investments ("**Centurion**"), a sole proprietorship based in Abu Dhabi, and Infinite Investments LLC ("**Infinite**"), a company registered in Abu Dhabi, in which the Bin Buttis each held half the shares.

25. The NMC Group, or more specifically NMC plc, made a claim in the bankruptcy, but, as I explain in more detail at para. 170 below, by February 2022 it had reached a settlement agreement covering any claims against KBBAM, SAQ and others; and the agreement was ratified by the ADBC. The JA Claimants had in their control documents relating to the proceedings in the bankruptcy that were certainly relevant to issues in the JA Action, but they were prohibited by the ADBC from making them available for inspection in these proceedings.

26. On 24 December 2025, Judge Ali Bakhit Al Katheri issued a decision in the ADBC that allowed a partial and limited relaxation of the prohibitions. He permitted the Defendants in the JA Action limited access to the settlement agreement and other documents, solely for the purposes of the JA Action and in order to defend them, the permission expressly being given on the basis that this Court would treat them confidentially and issue an order accordingly. The decision stipulated restrictions on the permitted access, including that the number of persons so granted access was limited to nine persons, being up to three persons for each Defendant, the so-called "Access Individuals". On 11 February 2026, I

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gave directions to implement a regime to manage the confidential documents in accordance with the ADBC's decision.

The pleadings

27. As I said in my judgment in *Union Properties PJSC & Anor v Trinkler & Partners Ltd & Others [2026] ADGMCFI 0010, "it has long been established that (in the words of Thesiger LJ in Davy v Garrett (1878) 7 Ch D 473) fraud and comparable allegations 'must be distinctly alleged and as distinctly proved'"*. I cited this summary of the proper approach from the judgment of Cockerill J in *King v Stiefel [2021] EWHC 1045 (Comm)* at para. 25:

> *"i) The Court should bear in mind that cogent evidence is required to justify a finding of fraud or other discreditable conduct, reflecting the court's conventional perception that it is generally not likely that people will engage in such conduct.*
>
> *ii) Pleadings of fraud should be subjected to close scrutiny and it is not possible to infer dishonesty from facts that are equally consistent with honesty.*
>
> *iii) However, in view of the common feature of fraud claims that the Defendant will, if the underlying allegation is true, have tried to shroud his conduct in secrecy, the Court should adopt a 'generous' approach to pleadings".*

28. In his speech in *Three Rivers District Council v Bank of England [2001] UKHL 16* (at paras. 185 and 186), Lord Millett distinguished two requirements where fraud is alleged: that an allegation of this kind be unequivocally pleaded and the principle that it be properly particularised.

29. I fully recognise those principles and their importance. That said, it is necessary to keep a sense of proportion: Lord Millett's first requirement is not an excuse for digging for ambiguity in the literal wording of a plea where the pleader's meaning is clear, nor is his second requirement a justification for demanding unnecessary particularisation. As was said by Saville LJ in *British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd (1995) 11 Const LJ 365* at p. 367 (in an observation cited by Lord Hope in the *Three Rivers* case at para. 49): "*The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this basic purpose and to seek particularisation even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and to interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is made by the other and is able properly to prepare to deal with it*". See too the judgment of Lord Woolf MR in *McPhilemy v Times Newspapers Limited and Others [1999] EMLR 751*.

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30. The pleadings in both these Actions are long, necessarily but rather inconveniently so. Nevertheless, the Defendants made criticisms (both in their own pleadings and in their submissions) that the allegations against them are not adequately pleaded. I shall consider the more significant complaints of this kind in the course of this Judgment, but I do not engage with all of them where I consider the Claimants' pleading is fully adequate.

31. Moreover, as Cockerill J said, it is characteristic of fraud cases of this kind that the victim is not always able to spell out in full detail how it was done and the exact role of those involved in it. Therefore, for example, I am not impressed by Mr Manghat's plea in his defence in the JA Action that he "*will rely on the paucity of particulars specifically alleging his involvement in support of his case that he was not involved in the fraud*", not least because, as I conclude, he was involved in hiding or destroying relevant documentation when the fraud started to come to light: see para. 435 below.

The trial

32. The trial took place between 23 March 2026 and 3 July 2026. I had directed that it be conducted mainly in person in the ADGM, but circumstances in the Gulf region after about 28 February 2026 prevented that. It was therefore conducted remotely.

Representation

33. The representation was as follows:

    a. The JA Claimants were represented by Mr Bankim Thanki KC, Mr Henry King KC, Mr Robin Lööf, Ms Alexandra Whelan, Mr Damien Bruneau, Mr Jerome Squires, Mr Ali Al Aidarous and Mr Ali Al Hashimi.

    b. ADCB was represented by Mr Rajesh Pillai KC, Mr Scott Ralston, Ms Rebecca Zaman, Mr Lucas Jones, Mr Ali Al Aidarous and Mr Ali Al Hashimi.

    c. Dr Shetty was represented by Mr Kajetan Wandowicz.

    d. Mr Manghat was represented by Mr Patrick Hennessey.

    e. Baroda was represented by Mr Harish Salve KC, Ms Victoria Windle KC, Ms Sarah Tresman, Ms Celia Rooney, Mr Timothy Lau, Ms Maria Kennedy, Mr Mark Baldock, Dr Habib Al Mulla, Mr Hany Maher, Dr Karen Seif, Mr Ahmed Al Zaabi and Professor Chibli Mallat.

34. From 3 February 2025, Mr Manghat had no solicitor acting for him, apparently because of financial constraints: Mr Hennessey was directly instructed. This obviously placed an enormous burden upon him and Mr Hennessey, even more so because Mr Manghat alone is party to both Actions. Those representing other parties recognised this, and did not

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create unnecessary procedural difficulties, but this did not disguise that there was an unusually stark difference between Mr Manghat's representation and the resources available to the JA Claimants (with eight counsel), ADCB (with six counsel) and Baroda (with twelve counsel), and even, although to a distinctly lesser extent, those of Dr Shetty.

35. Mr Manghat's difficulties were aggravated because (i) he had limited access to his documents when preparing his defences to the claims, and (ii) he was unwell both before and during the trial, particularly when he was giving evidence.

36. The Court did what it could to mitigate these and other difficulties facing Mr Manghat. For example, it adjusted sitting times when Mr Manghat was giving evidence to accommodate his medical needs, and it engaged a neutral barrister to assist Mr Manghat, particularly while he was giving evidence, to navigate the electronic documents. Dr Shetty was given similar assistance when he gave evidence.

37. I am satisfied that the trial process was fair to all the parties, and I have made proper allowance for the disparity between the representation and in the resources of the parties when deciding the issues.

Mr Manghat's post-hearing submissions application

38. Understandably in the circumstances, Mr Manghat did not make opening submissions in writing. Further, he did not present written closing submissions as directed by the Court during the trial, despite Mr Hennessey indicating from time to time that he was about to serve them. In contrast, the written closing submissions of the other parties (including Baroda) ran in total to well over 2,000 pages.

39. More than two months after the hearing was concluded, on 17 September 2026, the Court received an email from Mr Hennessey that Mr Manghat still planned to file written closing submissions. I responded that he would need to apply for permission to make further submissions after the hearing.

40. On 5 October 2026, more than three months after the hearing had finished, Mr Manghat applied to the Court for permission to file written closing submissions. His witness statement in support of the application attributed responsibility for the delay to Mr Hennessey, who was said to have been ill. Closing submissions should have been filed before the oral closings, and nothing explains or excuses Mr Manghat's failure to give the Court and the other parties any earlier indication that he intended to apply to file submissions after the end of the hearing.

41. Mr Manghat attached to his witness statement a document by way of submissions (the "**Post-Hearing Submissions**"), which extended to some 147 pages. They were incomplete in that they were to have four appendices, including draft amended defences in the two Actions, but those appendices were not provided. Mr Manghat said that he anticipated being "*in a position to file the appendices in the next 2 to 3 days*". In the event,

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three of the four appendices were provided on 14 October 2026, and the fourth on 16 October 2026.

42. To put it mildly, this was unsatisfactory. Mr Manghat's conduct here is in stark contrast to the consideration that other parties showed to him before and throughout the trial. Further, by the time that Mr Manghat made his application, preparation of the Judgment was pretty well advanced and the considerable inconvenience and the delay that an application of this kind causes need not be explained. Unsurprisingly given the nature of his contentions, the Post-Hearing Submissions criticise other parties and their witnesses, in particular Dr Shetty. It would have been particularly unfair to Dr Shetty to take account of Mr Manghat's criticisms without giving him a chance to reply. That would, of course, have caused further delay and expense. Mr Manghat could not have complained if his application were refused, and I altogether disregarded the Post-Hearing Submissions.

43. However, the practical answer to the difficulties created by Mr Manghat seems to me to be this: I shall disregard Mr Manghat's submissions when assessing the JA Claimants' claims against Dr Shetty. They have not influenced any of the findings that I make about them.

44. On the other hand, I have considered the points made in Mr Manghat's Post-Hearing Submissions when assessing the claims made against him by the JA Claimants and by ADCB. To my mind, they do not assist him. Insofar as the Post-Hearing Submissions purport to engage with the substance of the case against Mr Manghat, they are characterised by broad and largely inconsequential generalisations. In my judgment, their main impact is to emphasise that Mr Manghat has no answer to the specific allegations made against him. To take just one example, they make no reference at all to the events of early March 2019: see paras. 357ff below.

Initial observations on Mr Manghat's Post-Hearing Submissions

45. I shall refer to the Post-Hearing Submissions to the extent necessary in the course of my Judgment. Here, I make only two observations.

46. First, two of the appendices included draft amended defences that apparently purported to answer amendments made to their Particulars of Claim by the JA Claimants and ADCB. However, it was explained that Mr Manghat was not applying to amend his defences in either Action: the draft pleadings, it was said, were provided "*as illustrative and supportive*" of Mr Manghat's arguments. Much in them was not appropriate for inclusion in a pleading, being by way of a commentary on and complaints about procedural matters and the difficulties that Mr Manghat had in dealing with the litigation in view of his limited resources.

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47. More generally, much of the Post-Hearing Submissions emphasise the difficulties that Mr Manghat has had dealing with the demands of the litigation, such as those in respect of amended pleadings and disclosure, before and during the trial. As it was put, "*Mr Manghat's unusual and demanding position cannot be ignored or downplayed*". I have already acknowledged this, but it does not, in itself, answer the allegations of ADCB or the JA Claimants. Other considerations must also be kept in mind.

48. First, while Mr Manghat complains that he is "*required, in one trial, to answer two separate, but overlapping and interconnected claims; brought by two, theoretically independent, but openly collaborate Claimants*", it must not be forgotten that it was Mr Manghat who applied for concurrent trials.

49. Secondly, Mr Manghat complains that: "*To add insult to injury, whether by accident or design, Mr Manghat has been further disadvantaged because claims have not been advanced against other alleged participants in and/or beneficiaries of the fraud*". Of course, it was for ADCB and the JA Claimants to decide whom they should sue, and when ADCB applied to join Dr Shetty as a defendant in the ADCB Action, Mr Manghat declined to support the application, but he maintained a neutral position. Further, it would have been open to Mr Manghat to apply to join others to the proceedings had he been so advised. Perhaps more importantly, on the face of it, the proceedings would have been the more demanding on Mr Manghat (and others) if there had been more defendants.

50. Next, Mr Manghat now makes complaints about procedural matters that he could have raised, but did not raise, before the trial. To take just one example, he complains about the late disclosure and production of documents relating to the settlement with the Bin Buttis, but he did not apply under rule 86 of the CPR for further or specific disclosure to have them produced earlier at any of the case management conferences or at the pre-trial review.

51. The Court has, since Mr Manghat ceased to act with solicitors, granted him all possible assistance to prepare and present his case. Not least, he has now been afforded generous time to marshal his arguments, in that I am taking account of his very late Post-Hearing Submissions. He has not identified any specific prejudice that he has suffered as a result of having limited representation and assistance, nor did he explain how he might have presented his case significantly differently if he had had more resources available to him.

The documentary evidence

52. An enormous number of documents were disclosed, and the electronic trial bundles that were prepared for the trial were correspondingly large. However, the documentary record is not as complete as it might have been: as I shall explain, documents held by the NMC Group were destroyed or hidden in early 2020.

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53. The ADGM procedural regime does not include a provision, corresponding to paragraph 27.2 of the English *Practice Direction 32*, that documents in agreed trial bundles are admissible unless otherwise ordered by the Court or a notice of objection has been given. In order to manage the trial, by an Order of 3 February 2026 following the pre-trial review, I directed that a document should be treated as being in evidence at the trial only if it was (a) specifically referred to (and, where applicable, identified by bundle reference) in a statement of case, a witness statement, an expert report or submissions on matters of UAE law; (b) specifically referred to in a party's written opening submissions (including any schedules to the opening submissions); (c) put to a witness in examination in chief, cross-examination or re-examination; (d) included in a chronology, *dramatis personae*, or other trial document which the Court has directed be prepared or permitted to be referred to at trial; or (e) otherwise permitted by the Court.

54. During the trial, including in closing submissions, various suggestions were made from time to time that the disclosure of each of the parties was inadequate. I was not impressed by those points, not least because generally I was not invited to draw any specific inference from the supposed deficiency in disclosure. It suffices to say that these complaints have not affected any of my conclusions.

55. Rule 110 of the CPR provides that: "*A party shall be deemed to admit the authenticity of a document disclosed to him under Part 13 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial*". On 27 June 2025, Dr Shetty served a notice (the "**Rule 110 Notice**") that he required the JA Claimants to prove "*any document said to bear the signature of Dr Shetty, to the extent relied upon by* [the JA Claimants] *against Dr Shetty as evidence that Dr Shetty in fact signed, approved, authorised, or otherwise consented to the document or its contents*". The JA Claimants submitted that the Rule 110 Notice was not sufficient to displace the presumption of authenticity under the CPR, and that the documents relied upon by the JA Claimants bearing Dr Shetty's signature are to be taken to be authentic.

56. I do not accept the JA Claimants' submission. The JA Claimants seek to rely in support of their case against Dr Shetty on many documents, spanning a period of some eight years, which, on their face, bear his signature, either a 'wet' signature or an electronic signature. Throughout the proceedings, Dr Shetty has made clear that, in many cases, he does not know whether what appears to be his signature is: (i) an electronic signature applied without his knowledge or consent; (ii) a signature that he wrote on a document placed before him, typically in a large pile of documents, without appreciating what the document was or its terms or purpose; (iii) a signature on a document that he might have signed in blank for use by NMC Group executives when required; or (iv) a signature that was forged by some other person. Given the number of documents apparently signed by him on which the JA Claimants rely, Dr Shetty's position seems to me readily understandable, and the Rule 110 Notice appropriate to defeat an argument that what appears to be Dr Shetty's signature on a document, in itself, conclusively establishes the "*authenticity*" of the document, not least because it is not clear quite what is meant by

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"*authenticity*" in this context: I note that, in their closing submissions, the JA Claimants do not commit themselves as to whether a deemed admission of "*authenticity*" would preclude an argument that an electronic signature was applied without Dr Shetty's consent.

57. In support of their complaint about the Rule 110 Notice, the JA Claimants contended first that it does not identify what documents are in dispute. I consider that there is nothing in this point: its purpose and scope is clear.

58. Secondly, it was said that a notice of this kind is not an appropriate way to make an allegation of fraud or forgery. Again, this is beside the point: Dr Shetty is not making an allegation that his signature was forged on any particular document, and that his signature was obtained by fraud in any particular case: understandably, he says that he does not remember, and is not in a position to know, how his signature was obtained in any particular case. He simply asserts his right to have the JA Claimants discharge their burden of proving the case against him.

59. This also answers another point made by the JA Claimants: that Dr Shetty made an unsuccessful application to adduce expert evidence about handwriting and whether his signature had been forged on occasions. By an Order of 25 March 2025, I refused his application because it did not properly identify the issues to which the evidence should go, but I gave him liberty to restore his application provided the issues were properly identified and a draft report was produced. Dr Shetty did not restore the application, and the JA Claimants complain that nevertheless "*Dr Shetty now invites the Court to make findings of forgery*". I do not accept that characterisation of Dr Shetty's position.

WhatsApp exchanges

60. The documentary evidence included WhatsApp exchanges, and, as will be apparent from my Judgment, some of them are important to the cases against Dr Shetty and Mr Manghat. Many of these exchanges were disclosed late. When he opened Mr Manghat's case and in his closing submissions, Mr Hennessey expressed concern that Mr Manghat, who understandably did not recall the exchanges and had not had access to his own WhatsApp account, had not had the time or resources to satisfy himself that this evidence was fairly presented: that there were not significant omissions in the disclosure and in what was presented in evidence, and that the extracts relied upon were presented in context and without their meaning being distorted.

61. I accept that this concern must be given due weight when I am asked to rely on WhatsApp messages to support submissions against Mr Manghat, and indeed against Dr Shetty. I cannot believe that the WhatsApp evidence upon which I have relied in reaching my conclusions is vulnerable to problems of the kind to which Mr Hennessey referred. Nor is there any specific reason to think that the disclosure is materially incomplete to the disadvantage of either of the remaining Defendants.

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62. Mr Hennessey also submitted that, when considering the WhatsApp messages, I should recognise what he called the "*informality*" of such communications: "*It is much more of a medium that is used among friends and in a group format, which tends itself to sort of jokiness and hyperbole*". I accept that this is typically a characteristic of WhatsApp messaging, but that can, at times, make them the more telling as evidence. In this case, the importance of these messages lies in the substance of what was being said, rather than manner of expression.

The witnesses of fact

63. The JA Claimants called three witnesses of fact, all of whom gave oral evidence and were cross-examined:

    a. Mr Julian Jones, who is a managing director in Alvarez & Marsal Disputes & Investigations LLP, a part of A&M Europe. Mr Jones had led a forensic investigation team that examined the fraud and other aspects of the history of the NMC Group. He presented material about how the fraud was operated.

    b. Mr Richard Dixon Fleming, much of whose evidence was unchallenged. I later (at paras. 162 – 180) consider the suggestion put to him in cross-examination that the JAs might have pursued claims against other potential defendants to recover losses from the fraud.

    c. Lord Clanwilliam (Patrick Meade), who was a non-executive director of NMC plc from 8 March 2012 until 11 April 2020. In his closing submissions, Mr Hennessey submitted that Lord Clanwilliam's "*recollection was a curious thing*" in that he could not remember some matters at all and "*very unusually there were some things he could remember incredibly specifically*", and that, while he was a "*fair*" witness, he was not "*particularly reliable in his recollection*". I do not find it at all strange that Lord Clanwilliam's memory was in some ways patchy. I regard him as an honest witness, and where he was able to recall matters, in my judgment, his evidence was reliable.

64. In Mr Manghat's Written Submissions and in his Post-Hearing Submissions it was explained that the JAs' investigations and their attempts to reconstruct a financial record of the NMC Group were based on incomplete information and assumptions about missing documentation. Mr Jones said, for example, "*I don't think that we ever got the complete record*", and Mr Fleming accepted that the JAs' investigations were continuing. However, when Mr Jones was cross-examined by Mr Hennessey, he was not challenged on specific points or particular assumptions. Moreover, much of Mr Jones' evidence was superseded by, and largely endorsed by, the forensic accounting evidence of expert witnesses. To my mind, Mr Manghat's criticisms do not materially detract from Mr Jones' evidence.

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65. ADCB called four witnesses of fact. All of whom gave oral evidence and were cross-examined:

a. Mr Mazen Yousif Zo'Mot, who was the Executive Head of Wholesale Banking for ADCB's Abu Dhabi and Al Ain branches from 2016. As such, he reported to the Group Head of Wholesale Banking, initially Mr Colin Fraser and later Mr Ludovic Nobili.

b. Mr Aied El Khaldi, who at the relevant time worked for ADCB as a Unit Manager, managing its Trading, Services and Manufacturing Unit.

c. Mr Jean-Marc Le Jeune, who was the Head of Financing Solutions within ADCB's Investment Banking Group from 2015 to 2020.

d. Ms Reem Al Satari, who worked for Al Hilal Bank ("**AHB**") before it merged with ADCB, officially joining ADCB on 1 November 2019 as a Credit Specialist. She had worked for AHB from October 2015 as a Relationship Manager until she joined its Credit Team as a Credit Manager and Secretary to the Credit and Investment Committee in May 2018.

66. I shall consider the evidence of ADCB's witnesses when I come to assess ADCB's claims against Mr Manghat, although the evidence of Mr Le Jeune and particularly of Ms Satari is irrelevant to the important issues between the parties. I say here only that I generally regarded them as honest and reliable witnesses.

67. Dr Shetty gave oral evidence on his own behalf and he called no other oral evidence. He was cross-examined over four days. Any witness would have found it demanding to face such extensive cross-examination about detailed allegations of fraud extending over a long period some years ago, but I recognise that it would have been particularly demanding for Dr Shetty, who, although apparently remarkably robust, was aged 83 when he gave his oral evidence. Further, I accept the submission of Mr Wandowicz that, while fluent in English, which he has used in his business affairs for many years, he did not always fully grasp the nuance of a question put to him. Further, he would, I think, sometimes respond '*yes*' to acknowledge the question, rather than to agree to a proposition put to him: I have been cautious about always interpreting that answer as amounting to an admission.

68. I shall, of course, refer to much of his evidence in the course of this Judgment. I say here that I consider that his cross-examination was conducted fairly. In his closing submissions, Mr Wandowicz contended that Dr Shetty had been "*bamboozled and just* [said] *yes to everything out of inertia*". I reject any connotation that Dr Shetty was tricked into giving answers: indeed, I doubt whether that connotation of "*bamboozled*" was intended. In his written closing submissions, Mr Wandowicz acknowledged that the

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cross-examination was "*entirely properly conducted both as to manner … and as to contents*".

69. For reasons that I shall explain, I am unable to rely upon Dr Shetty's evidence on any controversial matter unless it is corroborated by other evidence.

70. Mr Manghat also gave oral evidence on his own behalf and was cross-examined over six days (slightly shortened days to accommodate Mr Manghat's medical needs). Because he became unwell in the course of his cross-examination, some of it was conducted before Baroda's witnesses of fact but it was completed, and Mr Manghat was re-examined, after the other witnesses of fact.

71. Again, I shall assess his evidence later in my Judgment. It suffices here to say that, although he was unwell, it was clear from his cross-examination that Mr Manghat is a very intelligent man, with a remarkable command of detailed facts and a quick mind. Sometimes his answers digressed far from the question that he was asked. It was suggested that this was a device to distract from difficult questions, and sometimes this appeared to be so. However, none of my conclusions depend upon whether this was the case.

72. As with Dr Shetty, for reasons that I shall explain, I am unable to rely upon Mr Manghat's evidence on any controversial matter unless it is corroborated by other evidence.

73. Mr Manghat also relied on a witness statement of his wife, Ms Jyothy Manghat Palat. No party wished to cross-examine her and so she did not give oral evidence. Her evidence is peripheral to what I have to decide.

74. Baroda called fifteen witnesses to give oral evidence and be cross-examined. They included: (i) Mr Palamadai Sundarajan Jayakumar, who was Baroda's Managing Director and the Chief Executive Officer (the "**CEO**") from October 2015 to October 2019; (ii) Mr Devarakonda Ananda Kumar, who was the Chief Executive of Baroda's Gulf Cooperation Council ("**GCC**") Operations from October 2017 to February 2021; (iii) Mr Mahaveer Gupta, who from April 2017 to July 2020 was the Head of Baroda's Abu Dhabi branch, where Dr Shetty, NMCH, Holding and other NMC companies had most of their accounts during the Relevant Period; and (iv) Mr Jaideep Sharma, who was the Head of Credit at the Abu Dhabi branch from September 2016 to May 2021.

Expert evidence

75. The JA Claimants, ADCB and Baroda served reports of forensic accountants to give expert evidence about the claims with which they were concerned, and they all gave oral evidence and were cross-examined. The JA Claimants called Mr Mark Bezant of FTI Consulting LLP. ADCB's witness was Mr Mark Taylor of Secretariat Partners UK LLP. Baroda's witness was Mr Andrew Grantham of AlixPartners UK LLP. All are qualified chartered accountants and fellows of the Institute of Chartered Accountants in England

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and Wales, and they were all qualified to give their expert evidence. When I refer to the "**JA Action Accountant Experts**" in this Judgment, I am referring to Mr Bezant and Mr Grantham.

76. The JA Claimants and Baroda also relied on reports and oral evidence of Mr David Saul of SEDA Experts LLC and Mr Christopher Tatham of 2ransform Ltd, respectively their expert witnesses about banking issues, but their evidence does not significantly bear upon the JA Claimants' claims against Dr Shetty and Mr Manghat or, to my mind, upon the issues in the ADCB Action.

Cross-examination

77. I directed a timetable for the trial, restricting the time allowed for oral submissions and cross-examination of both factual and expert witnesses. Counsel therefore had to curtail their cross-examination accordingly. For example, the JA Claimants and ADCB did not have time to put to Dr Shetty, Mr Manghat or some of the Baroda witnesses all their allegations of wrongdoing: they had to put their case by reference to examples. I am satisfied that this neither prejudiced the JA Claimants and ADCB, nor prevented the Defendants from presenting their cases fully. In particular, as I shall further explain, I reject Mr Wandowicz's submission that Dr Shetty was not given a proper opportunity to answer the JA Claimants' case that Dr Shetty would still be liable to them even if he was not party to the fraud.

The failure to call witnesses

78. In some circumstances, the Court may draw inferences that are adverse to a party from the fact that he did not call evidence from a witness who was available to him. The question whether any inference of this kind should be drawn "*depends entirely on the context and particular circumstances*": *Royal Mail Group Ltd v Efobi [2021] UKSC 33* at para. 41 per Lord Leggatt. I was invited to draw such adverse inferences in this case, particularly by Dr Shetty and Mr Manghat against the JA Claimants and ADCB. This does not seem to me a case in which it is appropriate to do so.

79. In this context, Dr Shetty referred to evidence from the JAs' Progress Reports that interviews had been conducted by or for the JAs with directors of the NMC plc and "*individuals in NMC finance and IT departments*". It was submitted that I should infer (i) that board members would have supported Dr Shetty's contentions "*as to his approach to management, the degree of his day-to-day involvement in the business, and his reliance upon his inner circle*"; and (ii) that finance employees would have support Dr Shetty's case about how the finance department functioned and about "*free use of Dr Shetty's financial structures and signatures*".

80. I am not impressed by these points. Mr Wandowicz acknowledged that Lord Clanwilliam was "*a good witness who tried to assist the Court*" and submitted that "[t]*he principal*

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value of his evidence lies in his ability to assist the Court with understanding the dynamics at the top of NMC at the relevant time". Dr Shetty was able to cross-examine Lord Clanwilliam, and Dr Shetty could have taken steps himself to present evidence from others who served with him on NMC plc's board. It is not surprising that the JA Claimants did not call persons in NMCH's finance department, given their contentions about widespread corruption there.

81. As I understand it, Mr Manghat's main argument about a failure to call witnesses who might have assisted the Court is directed against ADCB. Reference was made, for example, to the fact that there was no evidence from Mr Nobili, the Head of ADCB's Investment Banking Group from January 2015 to December 2019. Mr Manghat did not identify what useful evidence of further witnesses from ADCB might have been given or what significant inference adverse to ADCB might be drawn from it not calling more evidence. The documents provide the best evidence about how ADCB's decisions about lending were taken, and in so far as it might be said that evidence of its direct dealings with Mr Manghat is relevant, Mr Zo'Mot, who had dealt with Mr Manghat from 2011 or 2012, was better placed to assist than Mr Nobili, who apparently first met Mr Manghat in 2017.

Judgments in other cases

82. In support of his contention that Dr Shetty was responsible for the fraud, Mr Manghat sought to rely upon determinations in other cases brought by various banks against Dr Shetty in the Courts of the Dubai International Financial Centre (the "**DIFC**"), in which the Courts rejected his claims of innocence and in particular his challenges to his apparent signature on such documents as guarantees. The judgments that he relied on are set out in detail in Mr Manghat's Written Submissions. I do not consider that I should take account of these decisions: they are inadmissible under the principle explained by the English Court of Appeal in *Hollington v F Hewthorn & Co Ltd [1943] KB 587*. I add only that, in any case, I do not consider that they provide material support for Mr Manghat's defence of the claims against him, and they would not have affected my decision. (In their written opening submissions, the JA Claimants similarly sought to rely upon a DIFC judgment in support of their case against Dr Shetty, but they did not pursue the point when I questioned its relevance.)

The settlement with Baroda

83. As I have said, the JA Claimants reached a settlement with Baroda towards the end of the trial. By then, all the evidence had been heard, the parties, other than Mr Manghat, had filed written closing submissions, and I had read and considered them. The JA Claimants and ADCB had presented their oral closing submissions, and Mr Wandowicz was in the course of presenting those of Dr Shetty. After the settlement, Mr Wandowicz concluded them, Mr Hennessey presented Mr Manghat's submissions and the JA Claimants presented submissions in reply. ADCB declined my invitation to do so.

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84. Baroda's written submissions dealt with various issues in the JA Action that were relevant to the claims against all the Defendants but were not covered in any detail, and sometimes not covered at all, in the closing submissions of Dr Shetty and Mr Manghat. They include:

a. Questions of UAE law, including the question of whether the assignments of the Civil Claims by the ADGM Companies were valid: Baroda and Dr Shetty had disputed that such rights could be assigned under UAE law. Mr Manghat agrees "*in principle that civil claims of a company are capable of being assigned and makes no further submissions on this point*". Dr Shetty was content to adopt Baroda's arguments.

b. Questions of English law (and so ADGM law) about fraudulent trading: Mr Manghat made no submissions about this, at least before his Post-Hearing Submissions. Dr Shetty made relatively short submissions in writing, but he did not develop them orally.

c. Arguments about quantum: evidence about quantum was given by Mr Bezant and Mr Grantham both about the Civil Claims (about which they were practically in agreement) and about the Insolvency Claims, and the closing written submissions of the JA Claimants and Baroda made submissions on the basis of this evidence.

85. Because of the settlement, I did not hear oral closing submissions from Baroda about these matters, and the JA Claimants' oral submissions largely went unanswered. Nevertheless, I have considered Baroda's written submissions about them where I consider them of any real relevance to the claims against Dr Shetty and Mr Manghat.

Proof of fraud

Cogent evidence

86. I have referred (at para. 27 above) to the requirement that fraud must be distinctly proved, and I cited Thesiger LJ in *Davy v Garrett* (*loc. cit.*) and the observations of Cockerill J in *King v Stiefel* (*loc. cit.*). In *Fiona Trust & Holding Corp v Privalov [2010] EWHC 3199 (Comm)* at para.1438, I said this:

> *"It is well established that 'cogent evidence is required to justify a finding of fraud or other discreditable conduct': per Moore-Bick LJ in Jafari-Fini v Skillglass Ltd [2007] EWCA Civ 261 at para.73. This principle reflects the court's conventional perception that it is generally not likely that people will engage in such conduct: 'where a claimant seeks to prove a case of dishonesty, its inherent improbability means that, even on the civil burden of proof, the evidence needed to prove it must be all the stronger', per Rix LJ in Markel v Higgins [2009] EWCA 790 at para. 50. The question remains one of the balance of probability, although typically, as Ungoed-Thomas J*

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> *put it in In re Dellow's Will Trusts [1964] 1 WLR 415, 455 (cited by Lord Nicholls in In re H [1996] AC 563 at p.586H), 'The more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it'. Associated with the seriousness of the allegation is the seriousness of the consequences, or potential consequences, of the proof of the allegation because of the improbability that a person will risk such consequences: see R(N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA 1605 para. 62, cited in Re Doherty [2008] UKHL 33 para. 27 per Lord Carswell*".

87. This principle is well-established, and the allegations of dishonesty and wrongdoing against Dr Shetty and Mr Manghat are certainly very serious. However, the principle is not to be applied mechanically. In his opening submissions, Mr Wandowicz illustrated this aptly by reference to the judgment of Bryan J in *JSC BM Bank v Kekhman [2018] EWHC 791 (Comm)*, a case in which it was "*common ground that there were extensive frauds and deceits perpetrated by* [the company's] *employees over an extended period of time*" (at para. 58). It is self-evident that this colours the conventional view that persons are not likely to engage in fraud: as Bryan J noted, "*That is of relevance when considering* [the] *likelihood and the probability or improbability of someone in Mr Kekhman's position, and indeed Mr Kekhman himself, knowing of, and being involved in, such fraud when considering the evidence before the Court as to the degree of involvement of Mr Kekhman in the business*" (loc. cit. at para. 58). Here, the position is starker: it is not disputed either that there was an extensive fraud over some years in the NMC Group, or that at least one of Dr Shetty and Mr Manghat was party to it.

88. The need for cogent evidence is a procedural requirement and therefore a matter for the *lex fori*. Accordingly, I adopt it when considering the Civil Claims, notwithstanding that they are governed by UAE law, as well as in relation to the Insolvency Claims.

Fraud: motive

89. Mr Wandowicz argued that Dr Shetty had no rational motive for misappropriating funds from the NMC Group, being enormously wealthy by 2012, and having won respect and recognition both in India and in the UAE. He was about to turn 70, and there was no reason that he should have risked his wealth and reputation by turning to fraud. As it is, as a result of the collapse of the NMC Group, he has been the subject of a series of personal claims in respect of borrowings of the NMC Group for which he gave personal guarantees, and I understand that other proceedings against him are pending.

90. I shall consider these arguments further when I assess the allegations about Dr Shetty's involvement in the fraud. Here, I only introduce the relevance of motive in cases of this kind, and refer to the judgment of Calver J in *ED&F Man Capital Markets v Come Harvest Holdings Ltd [2022] EWHC 229 (Comm)*. He said this (at paras. 71 (iii) and 71(iv)):

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> "*Although not strictly a requirement for such a claim, motive 'is a vital ingredient of any rational assessment' of dishonesty: Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Gida Sanayi Ve Pazarlama AS [2009] EWHC 1276 (Ch) at para. 858 per Briggs J. By and large dishonest people are dishonest for a reason; while establishing a motive for conspiracy is not a legal requirement, the less likely the motive, the less likely the intention to conspire unlawfully: Group Seven Ltd v Nasir [2017] EWHC 2466 (Ch) at para. 440 per Morgan J.*
>
> *Assessing a party's motive to participate in a fraud also requires taking into account the disincentives to participation in the fraud; this includes the disinclination to behave immorally or dishonestly, but also the damage to reputation (both for the individual and, where applicable, the business) and the potential risk to the 'liberty of the individuals involved' in case they are found out: Tokyo-Mitsubishi UFJ Ltd v Baskan Gida Sanayi Ve Pazarlama AS [2009] EWHC 1276 (Ch) at paras. 858, 865 per Briggs J*".

91. While I agree with this, and I add these observations. First, it must be recognised that it might not always be possible for a victim of fraud to know the motive of those involved in it.

92. Secondly, motive is not to be understood in a narrow sense. The question is really whether there is a plausible explanation for the alleged behaviour.

93. Thirdly, a connected point: the authorities about motive must be assessed in light of the decision of the United Kingdom Supreme Court in *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*, which was decided after the decision in the *Bank of Tokyo-Mitsubishi UFJ Ltd* decision which Calver J cited. I consider the judgment in the *Ivey* case in more detail below (at paras. 271 – 274). It establishes that a person's honesty or dishonesty is not determined by reference to whether he acts contrary to his own standards of morality, but whether there is a plausible and rational explanation for him not acting in accordance with objective standards of honesty; when considering a person's motive, therefore, the Court is not necessarily looking at whether there is an explanation for doing what he himself considers to be wrong.

94. Lastly, the question of motive does not only impose a burden upon a claimant in a case such as this. It is also proper to take it into account when assessing the defendants' cases about how others behaved. In this case, perhaps the most significant question about motive arises when considering whether Mr Manghat and others might have had any plausible reason improperly to divert the NMC Group's funds to make acquisitions for Dr Shetty without letting him know that they were enriching him.

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The parties and associated persons

Dr Shetty and the origins of the NMC Group

95. Dr Shetty is an Indian national, having been born in Karnataka, India in 1942. He acquired some early experience in pharmaceuticals as a distributor and sales representative, and in 1973, he immigrated to the UAE and worked selling medicines. In 1976, he married Dr Chandrakumari Shetty in Bangalore, and she joined him in Abu Dhabi.

96. In 1975, Dr Shetty established in Abu Dhabi a healthcare centre, with a pharmacy, a dental clinic and a laboratory. He did so in partnership with HE Abdulla Humaid Al Mazrouei ("**HE Al Mazrouei**"), who had an interest of around 60% in the enterprise. They went on to acquire further pharmacies and hospital businesses, and in 1981 Dr Shetty's business interests expanded into pharmaceutical distribution. These enterprises were the foundation of the NMC Group, which in due course grew to become the largest healthcare provider in the UAE, operating over 200 hospitals and other medical facilities, predominantly (but not exclusively) in the UAE and across the Middle East.

97. Until 2008, Dr Shetty operated through various sister companies and partnerships. On 29 April 2008, NMCH was incorporated as a holding company for the various operations.

98. In 2010, the NMC Group sought external financing and funds by way of a private placement, but it had difficulties in raising external finance. KBBAM assisted the NMC Group to do so. On 30 January 2011, Centurion bought shares in NMCH. The shareholdings then came to be owned by Dr Shetty as to 30%, by HE Al Mazrouei as to 30% and by Centurion as to 40%. By April 2011, the directors were the Bin Buttis and Dr Shetty. (In the proceedings, the term "**Principal Shareholders**" was used to refer together to Dr Shetty and the Bin Buttis. I shall use it in this Judgment.)

99. Shortly thereafter, HE Al Mazrouei disposed of his shareholding to SAQ, KBBAM and Infinite. Thus, the shares came to be held by: Dr Shetty as to 30%, SAQ as to 43%, KBBAM as to 15% and Infinite as to 12%.

100. The changes in the ownership of the NMC Group led to dispute between Dr Shetty and HE Al Mazrouei. Early in 2012, HE Al Mazrouei brought civil proceedings in the UAE against, amongst others, Dr Shetty, Mr Manghat (who, as I shall explain, had become NMCH's Chief Financial Officer ("**CFO**") in 2011) and Centurion, and criminal proceedings in the UAE against Dr Shetty, Mr Manghat and others. Proceedings were also brought in India. As a result of the UAE criminal proceedings, a travel ban was imposed upon Dr Shetty and Mr Manghat. According to the evidence before me, it was determined in 2013 that the dispute was a civil matter, the criminal proceedings were terminated and the travel ban lifted. The civil proceedings were settled in 2014: on 23 July 2014, Dr Shetty issued a series of post-dated cheques payable to HE Al Mazrouei.

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101. On 20 July 2011, NMC plc was incorporated in England, in preparation for an Initial Public Offering (the "**IPO**"). Its original directors were Dr Shetty, the Bin Buttis and Infinite. In March 2012, four further directors were appointed: on 8 March 2012, Mr Mark Tompkins, who was the Chairman of NMC plc from 8 March 2012 to 26 March 2020, Mr Justin Jewitt and Lord Clanwilliam, and on 19 March 2012, Ms Heather Lawrence. Mr Binay Shetty, Dr Shetty's son, was the Chief Operating Officer. Further directors, including Mr Binay Shetty, were appointed in 2014.

102. On 28 March 2012, NMC plc became the ultimate parent company of NMCH and the other companies in the NMC Group, and it remained the ultimate parent of the operating companies until 25 March 2022, when the NMC Group was restructured (see para. 128 below), and of NMCH until 22 December 2023. Ernst & Young LLP ("**EY**") worked with NMCH's management on the IPO, and they prepared a Project Long Form Report and a Financial Reporting Procedures Report (the "**FRP Report**"), both dated 2 April 2012. On 2 April 2012, pursuant to the IPO, 33.05% of NMC plc's shares were listed on the London Stock Exchange, the other 66.95% being retained by Dr Shetty (20.32%) and the Bin Buttis and Infinite (together, 46.63%). As Mr Manghat explained, and I accept, the IPO not only raised money from shareholders, but also made it easier to raise bank debt because lenders would take comfort from the listed status of NMC plc and its audited financial accounts.

103. Dr Shetty held senior positions in the NMC Group. From its incorporation in 2011 until 2020, he was a director of NMC plc. He was its CEO from 20 July 2011 until 8 March 2017, its Executive Vice-Chairman from 31 December 2014 until 8 March 2017, and its Non-Executive Vice-Chairman from 8 March 2017 until 16 February 2020. Dr Shetty was also: (i) a director/manager of NMCH from 28 April 2008 to 20 June 2018; (ii) a director/manager of Holding from 12 May 2011 to 7 November 2018; and (iii) a director/manager of most of the ADGM Companies.

104. The relationship that Dr Shetty and the Bin Buttis had with NMC plc and between themselves was governed by relationship agreements that they entered into with NMC plc on 2 April 2012 and on 15 November 2014 (together the "**Relationship Agreements**"). They provided *inter alia* that Dr Shetty and SAQ would each conduct all transactions with any member of the NMC Group at arm's length and on normal commercial terms **(**and that they would use their best endeavours to procure that their respective "*Associates*" as defined therein, would do so). The Relationship Agreements provided that these terms would continue to bind Dr Shetty and SAQ for as long as they or their "*Associates*" remained the direct or indirect beneficial owners of at least 15% of the entire issued share capital of NMC plc.

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The Bin Buttis

105. The Bin Buttis are UAE nationals and were wealthy, prominent and well-connected businessmen. They held substantial shareholdings in NMC plc until it was put into administration. SAQ was appointed as: (i) a director of NMCH from at least 16 February 2011 to 20 June 2018; (ii) a director of Holding from 12 May 2011 to 7 November 2018; and (iii) a non-executive director of NMC plc from 20 July 2011 to 24 February 2014. KBBAM was appointed as: (i) a director of NMCH from at least 7 April 2011 to 20 June 2018; (ii) a director of Holding from at least 12 May 2011 to 7 November 2018 at the latest; (iii) the Executive Vice Chairman of NMC plc from 20 July 2011 to 25 March 2014; and (iv) a director of NMC plc from 28 June 2017 to 14 February 2020.

106. As I have said, on 27 July 2021 bankruptcy proceedings were commenced before the ADBC in relation to the Bin Buttis and their related entities.

NMC plc and its subsidiaries

107. As Mr Manghat pleaded in the JA Action and was not disputed, "[NMC plc] *was the holding company, but … the group was run and operated out of* [NMCH] *in the UAE, with de minimis activities and no full-time employees in the UK*". Therefore, under the new structure, NMCH remained an intermediate holding company of the operating subsidiaries, and it managed the NMC Group's banking and other financial operations in Abu Dhabi. The financial organisation comprising, at least from 2014, a Treasury Team and an Accounts and Reporting Team. NMCH's shares were held by Holding, an intermediate holding company, and Holding was in turn wholly owned by NMC plc.

108. At around the time of the IPO, there were some twenty companies in the NMC Group, including NMC plc, Holding and NMCH. The other companies fell into two categories: the healthcare division, including pharmaceuticals, and the trading division, which distributed medical and pharmaceutical supplies.

109. The large number of operating companies in the healthcare division was explained by Mr Manghat in his defence in the JA Action, his explanation was not disputed and I accept it: "*The NMC Group structure was such that subsidiaries were required to be incorporated for each hospital, because it was not possible for regulatory reasons to open branches, and each medical practice would need a separate insurance policy which was easier to arrange for a dedicated subsidiary company. However … the NMC Group was managed and operated at Group level, from and by* [NMCH]. *The subsidiary companies did not have separate Board meetings*".

110. The trading division included a subsidiary of NMCH called NMC Trading LLC and its own subsidiaries, Mr Manghat described it in an email of 4 September 2014 as "*the trading and services arm"* of NMC plc with "*exclusive rights to engage in the importing, marketing*

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and distribution of over 50,000 products from leading brands including [Fast Moving Consumer Goods]".

111. NMC plc, being the listed parent company of the NMC Group, was required to publish, and throughout the Relevant Period until 30 June 2019 did publish, consolidated and statutory financial statements at six monthly periods at 30 June and 31 December in each year. The consolidated statements, and NMC plc's statements, were audited by EY. For its part, NMCH prepared annual financial statements in respect of the NMC Group that it controlled for the years ending 31 December 2012 until 31 December 2018, and these were audited by EY's associated entity, Ernst & Young Middle East ("**EYME**"). The difference between EY and EYME is not important to what I have to decide, and I shall refer to them without distinction as "**EY**".

112. By the end of 2014, the NMC Group had acquired four further companies, and thereafter the NMC Group continued to expand through acquisitions in the UAE and elsewhere.

113. In 2015, NMCH obtained a syndicated loan facility of US$ 825 million, which was partly used to refinance existing debt, but also provided funds for a major programme of further acquisitions. In 2015, the NMC Group acquired seven companies or corporate groups, including companies outside the Gulf region, in Spain and Italy.

114. In 2016 and 2017, the NMC Group continued its programme of expansion: in 2016, it acquired six more companies or groups, in the UAE, Denmark and Brazil. On 14 December 2016, NMC plc had a rights issue, which raised US$ 322 million: those funds were used to part-finance the acquisition on 13 February 2017 of Al Zahra PVT Hospital Company Limited ("**Al Zahra**"), which came to be called NMC Royal Hospital LLC (but in this Judgment, I shall refer to it throughout as Al Zahra). In 2017, it also made acquisitions in the Kingdom of Saudi Arabia and Oman.

115. By 2017, differences had apparently arisen between Dr Shetty and the Bin Buttis. In 2016, Dr Shetty had entered into discussions about transferring to Centurion all his shares in NMC plc, BRS Ventures & Holdings Limited ("**BRS Ventures & Holdings**"), UAE Exchange Centre LLC ("**UAE Exchange**") and associated companies for US$ 2 billion, and a term sheet dated 28 December 2016 was signed that recorded the "*principal terms and conditions"* for the purchase. That deal did not go ahead, for reasons that, according to Mr Manghat, he did not know. Discussions continued about a different deal, and it was proposed that Dr Shetty should sell most of his shares in NMC plc to Centurion. However, the regulatory body of the UK, the Panel on Takeovers and Mergers, allowed Dr Shetty to transfer to Centurion no more than 5% of the issued shares of NMC plc. On 31 May 2017, Dr Shetty entered into the so-called "2017 MOUs": he was to transfer just under 5% of the issued shares to the Bin Buttis, and to divest himself of a further 10% to be held on trust for them; and the Bin Buttis were to have control of the board of NMC plc. This arrangement involved Mr Binay Shetty resigning as a director, his resignation being announced on 28 June 2017. In exchange, Dr Shetty was to acquire the Bin Buttis' shares

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in the foreign exchange businesses of UAE Exchange and other companies. He also was to receive US$ 220 million.

116. In September 2017, NMC plc joined the UK's Financial Times Stock Exchange 100 index (the "**FTSE 100**").

117. In 2018, the NMC Group raised further debt by way of a syndicated loan of US$ 2 billion in February 2018 (the "**2018 Syndicated Loan**"), a US$ 450 million convertible bond issue in April 2018 and a US$ 400 million sukuk financing arrangement. According to its financial statements and a company announcement, the purpose of the 2018 Syndicated Loan was to refinance debt, to make further acquisitions and to provide headroom for future needs. The stated purpose of the convertible bond issue and the sukuk arrangement was to repay part of a US$ 1 billion bridging facility that had been arranged at the time of the 2018 Syndicated Loan.

118. By an agreement of 4 November 2018, NMCH entered into a term loan facility agreement with Baroda for a loan of AED 367 million (the "**AED 367 Million Facility**"), repayable in 24 quarterly instalments commencing in March 2020 (or, if earlier, 24 months after the "*Utilisation Date*" as defined therein).

119. In 2018, the NMC Group's acquisitions included not only the acquisition by NMCH of some nineteen entities in the UAE and elsewhere, but also the direct acquisition by NMC plc of a 70% interest in BIVF Management Services LLC, an American investment sometimes referred to as Boston IVF, and a 49% interest in Fakih IVF LLC. In 2019, NMCH made two further acquisitions, Exeter Orthopedic Spinal Center LLC and Fertimed SA.

120. On 17 December 2019, Muddy Waters Capital LLC ("**Muddy Waters**"), an American investment company that specialises in investigations to identify corporate failings, published a report on NMC plc (the "**First Muddy Waters Report**"), identifying what it called "*numerous red flags*" in its consolidated accounts, and expressing "*serious doubts*" about NMC plc's financial statements and "*concerns about fraudulent asset values and theft of company assets*". It said this: "*We are unsure how deep the rot at NMC goes, but we do not believe that its insiders or financials can be trusted*".

121. Unsurprisingly, NMC plc's share price immediately suffered a significant fall. Undoubtedly, the First Muddy Waters Report would have had an immediate impact on NMC plc's lenders: Mr Zo'Mot's evidence of his concern was not challenged, and Mr El Khaldi considered it so serious that he told his colleagues at ADCB that they should not communicate with the NMC Group until further notice.

122. On 19 December 2019, NMC plc refuted the criticisms in the First Muddy Waters Report, and on 23 December 2019, it announced the appointment of an "**Independent Review Committee**", under the chairmanship of Mr Jonathan Bomford and including Lord Clanwilliam, to investigate its allegations. It sought advice from Glaser Weil LLP and, on

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17 January 2020, it announced that the Independent Review Committee had engaged Freeh Group International Solutions LLC (the "**Freeh Group**"), an international investigations firm, to conduct a review of the corporate governance issues and other matters alleged in the First Muddy Waters Report.

123. On 10 February 2020, Muddy Waters issued a further report, in which it identified undisclosed share pledges and it suggested that shares might have been used to secure undeclared loans, and that there had been "*massive undisclosed share movements among* [Dr] *Shetty,* [the Bin Buttis] *and various banks*".

124. On 27 February 2020, at the request of the board of NMC plc, its shares were suspended from trading on the London Stock Exchange. On 10 March 2020, it reported that some US$ 2.7 billion of debt had not been previously disclosed or approved by the board, and on 24 March 2020, it reported that a further US$ 1.6 billion of debt had not been previously disclosed.

The administrations

125. On 2 April 2020, ADCB applied to the English High Court for an order that NMC plc be put into administration. On 9 April 2020, the English High Court made an Administration Order, and the JAs, together with Mr Mark Firmin, also of A&M Europe, were appointed as its Joint Administrators.

126. Before September 2020, NMCH and Holding were incorporated in onshore Abu Dhabi, and NMCH had operating subsidiaries variously incorporated in Abu Dhabi, Dubai and Sharjah. On 14 and 15 September 2020, NMCH, Holding and the ADGM Companies were re-registered under the *ADGM Companies Regulations 2015* (as amended), as I described in my judgment in these proceedings of 8 July 2024, [2024] ADGMCFI 0007, esp. at paras. 27ff. On 27 September 2020, I made an Order to put NMCH, Holding and the ADGM Companies into administration, and I appointed the JAs as their Joint Administrators: see my judgment of 6 October 2020, [2020] ADGMCFI 0008. Not all the subsidiary companies of NMCH went into administration (nor into other insolvency procedures, either in the ADGM or elsewhere).

127. By my Order of 27 September 2020 and my judgment of 6 October 2020, [2020] ADGMCFI 0008, I also permitted the JAs to enter into an Administrative Funding Facility ("**AFF**") under section 109A of the IR 2015.

128. On 21 September 2021, NMCH and the ADGM Companies (but not Holding) each entered into a Deed of Company Arrangement ("**DOCA**", and respectively the "**NMCH DOCA**" and the "**Related Party DOCAs**") for the restructuring of the business of the NMC Group on the so-called "*Restructuring Effective Date*" (the "**RED**"), which was 25 March 2022. (The NMCH DOCA was amended on 27 October 2021.) The administration of the 34 ADGM Companies, and the JAs' appointments as their Joint Administrators, ended on 25

March 2022. NMCH and Holding remain in administration and the JAs remain their Joint Administrators.

129. In a judgment dated 4 April 2022, *NMC Healthcare Limited v Noor Capital PSC [2022] ADGMCFI 0003*, I summarised the overall scheme of the DOCA arrangements as follows:

> "*In broad outline, the scheme of the proposed DOCAs was to allow creditors to submit claims for proof, such proofs being in the administration of the relevant debtor company as well as under the relevant DOCA; and proving creditors were to share rateably in the value of the Group through instruments of entitlement in the restructured Group. A new company in the Group was to take over the subsidiary companies and through them the operating businesses, principally through transfers of shares owned by NMCH. (Under section 81 of the IR, the administrator of a DOCA may transfer shares in the company with the written consent of the owner of the shares or the Court's leave.) Thus, the subsidiary companies were to continue as going concerns. NMCH was to continue in administration in order to collect and distribute assets so as to achieve the best result for its creditors as a whole*" (at para. 21).

130. In a judgment dated 15 April 2026, *Secure Capital Equipment LLC v NMC Healthcare Limited [2026] ADGMCFI 0011,* I added to this summary: "[U]*nder the scheme, the creditors of the NMC Companies were treated as 'Group Creditors' and were to share in the assets of the NMC Group: in that way, the structure of the separate companies in the NMC Group was overridden. The scheme was put into effect through two companies: NMC Holdco SPV Ltd ('**Holdco**'), the holding company of the new structure that had been incorporated to acquire substantially all the assets of the NMC Companies; and NMC Opco SPV Ltd ("**Opco**"), the newly incorporated operating company of the Holdco Group. The creditors of the NMC Group were to participate in the new structure by being issued with so-called 'DOCA Creditor Entitlements'*" (at para. 26). The NMCH DOCA defines the term "*DOCA Creditor Entitlements*" to mean the EPM Entitlements and the Litigation Entitlements. The EPM Entitlements are commonly referred to as "**Exit Instruments**", and I shall adopt that term.

131. It is the JA Claimants' case that, under the DOCA arrangements, the ADGM Companies assigned to NMCH any claims that they or the JAs in their capacity as their Joint Administrators had against, *inter alia*, Dr Shetty or Mr Manghat. Dr Shetty (and, before the settlement, Baroda) disputed the validity of the assignments, and I consider this issue at paras. 233ff.

132. The NMCH DOCA sets out the procedure for "**Group Creditors**" (as defined therein) to make claims, and the Related Party DOCAs were materially similar. Under clauses 6.2 to 6.5 of the NMCH DOCA, Group Creditors were entitled to submit proofs of debt, which the JAs, in their capacities as "**Deed Administrators**" (as defined therein), were entitled

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to accept or reject (in whole or in part). Where a proof of debt was rejected, a Group Creditor could seek an adjudication under clauses 6.6 and 6.7 of the NMCH DOCA (and, in some circumstances a Group Creditor could being court proceedings in respect of a rejected proof of debt under clause 6.8).

133. Dr Shetty submitted a proof of debt against NMCH, which was rejected by the Deed Administrators in full. Dr Shetty exercised his right to have his rejected claim determined by an independent adjudicator pursuant to clause 6.6(b) of the NMCH DOCA. The adjudication process is subject to confidentiality restrictions, and I need say nothing about it except that Dr Shetty is not an "**Admitted Group Creditor**" (as defined therein in the NMCH DOCA).

134. Mr Manghat did not submit any proof of debt claim and is not an Admitted Group Creditor.

135. On the RED, 25 March 2022, ADCB and other Admitted Group Creditors received Exit Instruments. In exchange, they waived their creditor claims. Accordingly, clause 13.1 of the NMCH DOCA provided that, on the RED, Holdco would issue Exit Instruments to the creditor: this "*Holdco Issuance*" (as defined therein) was deemed to discharge the claim pro tanto. Therefore, the recipient creditor's claims were discharged in an amount equal to the value of the Exit Instruments. Clause 13.5 provided that the distribution of the Exit Instruments was to be treated as settling all claims and liabilities to the extent provided for in clause 13.1. The Related Party DOCAs had similar provisions, except that they provided that claims would be fully released and extinguished (and not discharged pro tanto).

Dr Shetty's other interests

136. Dr Shetty had many commercial interests other than those in the NMC Group. They included the following:

    a. Neopharma LLC ("**Neopharma**"), a company incorporated in Abu Dhabi in 2003, which was a pharmaceutical manufacturer. According to Dr Shetty, he had a 90% interest in it, the other 10% being owned by Dr Abdul Rahim Jaffar. Mr Manghat was its Finance Manager (or, as the JA Claimants plead, "*acted as Chief Financial Officer for Neopharma")* from 2003 to 2009, and its CFO from 2009 to 2011.

    b. Nexgen Pharma FZ LLC ("**Nexgen**"), another pharmaceuticals company, which was incorporated in Dubai. Dr Shetty owned a 45% interest in Nexgen, through his interest in Neopharma, the other owner being Hetero FZCO, an Indian pharmaceuticals company founded in 1993 by Dr Bandi Parthasaradhi Reddy. Mr Manghat was named as a manager on Nexgen's trade licence and he was a signatory on its bank accounts, but he denies being involved in its "*day-to-day operations and management*".

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c. Guide General Contracting & Maintenance LLC ("**GGCM**"), a company incorporated in Abu Dhabi in 1985. (During the hearing, it was generally referred to simply as "*Guide*".) Its business was initially by way of maintenance work, but it expanded into contracting. Dr Shetty was its beneficial owner.

d. Delta for Heavy Equipment LLC ("**DHE**"), a business based in Abu Dhabi, which, *inter alia*, supplied or rented lifting or loading machines.

e. Delta Al Neil General Maintenance & Real Estate ("**DAN**"), a business established in Abu Dhabi.

f. NNMC Ltd ("**NNMC**"), a British Virgin Islands ("**BVI**") company, which was incorporated on about 17 April 2014. Despite its name, it never was a company in the NMC Group. The JA Claimants say that Dr Shetty was its sole shareholder, and that he and Mr Manghat were its directors. Dr Shetty admits this, but he pleads that he was never aware either of his shareholding nor that he was a director, inferring that these arrangements were made without his knowledge by Mr Manghat or on his instructions. Mr Manghat admits that he was a director of NNMC from its incorporation until at least 2016. (Mr Manghat pleads that in around 2016 he "*communicated his wish to resign",* but that he does not know when this was "*formally effected*".)

g. BRS Ventures Investment Limited ("**BRS Ventures**"), a company incorporated in the DIFC on 24 May 2016, which was owned by BRS Holdings Ltd ("**BRS Holdings**"), incorporated in the BVI on 11 December 2015. Dr Shetty was the Chairman and the ultimate beneficial owner of BRS Ventures, BRS Holdings and their subsidiaries.

h. Royal Catering Services LLC ("**RCS**"), a company incorporated in Abu Dhabi, which supplied hospitality services.

i. BRS Ventures & Holdings, another BVI company, which was initially wholly owned by Dr Shetty. From 14 May 2014, it was owned by Dr Shetty as to 91%, and by the Bin Buttis as to 9%.

j. Travelex Holdings Limited ("**Travelex**"), a company incorporated in the UK, which provided currency exchange and money transfer services. Dr Shetty and the Bin Buttis agreed to buy it in 2014, and on about 29 January 2015, Travelex was acquired by UTX Holdings Limited, a company incorporated in Jersey and a wholly owned subsidiary of BRS Ventures & Holdings. Thus, Dr Shetty became the ultimate beneficial owner of a majority of the shares in Travelex. Dr Shetty and Mr Binay Shetty were directors from 26 February 2015 to 18 March 2020.

k. UAE Exchange, a company that Dr Shetty established in Dubai in 1980, which provided currency exchange facilities, principally for expat workers in the UAE to remit funds home. Dr Shetty had a 40% interest in UAE Exchange, and, as I have

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said, he acquired further shares in 2017. He was its Chairman. His son, Mr Binay Shetty, was its Vice-Chairman. Mr Manghat's brother, Mr Promoth (or Promod) Manghat, was UAE Exchange's CFO and then CEO throughout the Relevant Period.

l. Finablr plc ("**Finablr**"), a company incorporated in the UK in about July 2018 and listed on the London Stock Exchange in 2019. It was a holding company for, *inter alia*, UX Holdings Limited, and (at least from about May 2019) Travelex. Thus, Finablr indirectly owned an interest in UAE Exchange. Dr Shetty had a majority beneficial interest in Finablr, and he and Mr Binay Shetty were directors from 26 July 2018 until after the end of the Relevant Period.

137. The JA Claimants plead that other entities were controlled by "*Dr Shetty and/or Mr Prasanth Manghat*", including Falcon Future Trading FZE ("**FFT**"), a company incorporated in the Sharjah Airport International Free Zone, and Modular Concepts LLC ("**Modular Concepts**"), a company incorporated in Dubai, but that is controversial. I refer to Mr Manghat's involvement with FFT at para. 697 below. The question of whether Mr Manghat was involved with Modular Concepts is not important to what I have to decide.

138. I do not list here all of Dr Shetty's extensive interests: for example, there was reference in the evidence to his investments in realty, in schools and other educational establishments, in American oil exploration and in tea plantations. Dr Shetty also gave evidence of his long-standing involvement in humanitarian works of different kinds.

ADCB

139. ADCB is a major UAE bank. It is majority owned (as to some 60%) by the government of Abu Dhabi through Mubadala Investment Company PJSC.

140. On 1 May 2019, ADCB merged with Union National Bank PJSC ("**UNB**"), another UAE-based bank, through a UAE statutory merger. UNB was dissolved, and all its assets, rights and liabilities were transferred to ADCB. On the same day, 1 May 2019, ADCB also acquired the UAE bank, AHB, which continues to operate as a separate Islamic bank.

141. At the time of the IPO in April 2012, ADCB had little financial exposure to the NMC Group, providing only a relatively small working capital facility. However, in 2002, UNB had entered into a facility arrangement (the "**UNB Facility**") with New Medical Centre Trading LLC ("**New Medical Centre**"), which was renewed from time to time, NMCH becoming the borrower in 2011. On 1 May 2019, upon merger of the banks, ADCB became the lender of the UNB Facility, and it was renewed by ADCB on 29 August 2019.

142. After the IPO, ADCB's exposure increased considerably. Its primary exposure was by way of a series of syndicated facility agreements with NMCH in the years from 2013 to 2017. It also increased the limit on the working capital facility: for example, over 2014 to 2015, it increased the limit from AED 70.3 million to AED 295 million. As I shall describe in more detail at paras. 339 – 340 below, in 2018 and 2019, ADCB extended major lending

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facilities to the NMC Group. When the NMC Group was put into administration in 2020, ADCB was its largest creditor.

143. After the First Muddy Waters Report, NMCH defaulted on its obligations under its agreements with ADCB. More specifically, on 26 February 2020, it defaulted on its obligation under the 2018 Syndicated Loan to make a payment of some US$ 70 million, and in March 2020 it defaulted on other obligations under it. On 2 April 2020, NMCH defaulted on an obligation under the 2018 Syndicated Loan to pay some US$ 223 million, which led ADCB to serve a notice of default so that the full amount outstanding under the 2018 Syndicated Loan (including interest) immediately accrued due and payable.

144. As I have said, on 2 April 2020, ADCB issued its petition in the English High Court for NMC plc to be put into administration. On 14 April 2020, ADCB announced that it had made a criminal complaint to the UAE authorities against, among others, Dr Shetty and Mr Manghat.

Mr Manghat

145. Mr Manghat is an Indian national, having been born in Kerala, India, in 1974. In 2001, he qualified as a chartered accountant, and was first employed at Kotak Mahindra Bank, an Indian bank. He met Dr Shetty in December 2002 through his brother, Mr Promoth Manghat, who was then employed as the Finance Manager of UAE Exchange. Dr Shetty invited Mr Manghat to work for him, or his companies, and he moved to the UAE to do so in January 2003. In about August 2003, he became the Finance Manager of Neopharma. While so employed, at Dr Shetty's request, Mr Manghat did some work for NMCH and in 2009 he became a part-time financial adviser of NMCH.

146. In 2011, Mr Manghat was appointed as the CFO of NMCH, being so appointed from 1 May 2011. He remained the CFO of the NMC Group until December 2014.

147. From 1 January 2015, he became the Deputy CEO of the NMC Group, having been appointed as its Acting Deputy CEO in October 2014, and he was promoted to be its CEO from 8 March 2017, a position that he held until 2020. (Apparently, Dr Shetty had planned that he should be succeeded as CEO by his son, Mr Binay Shetty. According to Mr Manghat, Mr Binay Shetty told him that he did not want the position. However, that might be, in the event Mr Manghat was appointed.) During this period, Mr Manghat held other positions in the NMC Group, including as a director of NMC plc from 26 June 2014 until 26 February 2020, and a director of NMCH from 20 June 2018 until 26 February 2020.

148. After his appointment as Deputy CEO and later as CEO, Mr Manghat continued to be closely involved with the NMC Group's financial affairs. The minutes of a board meeting of NMC plc on 19 October 2014 record that "*Prasanth Manghat is promoted to the position of Deputy CEO retaining oversight of financial matters and taking responsibility for all operational matters of the Group*".

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149. The evidence shows that as Deputy CEO:

a. Mr Manghat frequently made presentations to the NMC plc board on matters relating to the bank facilities, the financial strategy and the overall financial position. For example, the minutes of a meeting on 16 February 2015 and 2 June 2015 record him reporting on the financial implications of proposed acquisitions; and the minutes of meetings on 20 April 2015 and 25 August 2015 record him reporting on "*M&A and Strategic Financial matters*".

b. Mr Manghat negotiated the terms of the NMC Group's banking facilities and signed loan agreements.

150. After his appointment as CEO, Mr Manghat continued to have oversight and control of the NMC finances. For example:

a. At a board meeting of NMC plc on 5 February 2018 (which was not attended by Mr Prashanth Shenoy, then the CFO but not a director), Mr Manghat presented a paper on the "*new US$ 2 bn Group Debt Financing Facilities*" (the 2018 Syndicated Loan). In cross-examination, Mr Manghat said that he was asked to make this presentation because "*I was involved anyway in the finance*".

b. He negotiated and signed these banking facilities, none of which was disclosed in NMC Group's financial statements: (i) a term sheet dated 29 March 2017 for US$100 million bridging finance for Al Zahra with Abu Dhabi Islamic Bank PJSC; (ii) a term sheet dated 1 April 2017 with Noor Bank for Al Zahra for a AED 367 million Shari'a facility; and (iii) a term loan facility dated 4 July 2018 with First Abu Dhabi Bank PJSC for NMCH for up to AED 200 million. (As ADCB demonstrated in its closing submissions, and Mr Hennessey did not dispute, WhatsApp exchanges prove Mr Manghat's close involvement in arranging these facilities.)

151. This picture is corroborated by the evidence of Mr Zo'Mot, who said that: "*Certainly from my perspective Mr Manghat ran NMC from October 2014 onwards; taking the lead on all NMC financing requests to ADCB, managing all key meetings, and providing key updates to ADCB in relation to NMC*".

152. On 26 February 2020, Mr Manghat was removed as a director of NMC plc and NMCH. He also then ceased to work for NMC plc, although he pleads that his contract of employment was not formally terminated. On 22 March 2020, he ceased to be on the board of Holding.

153. On 29 February 2020, Mr Manghat travelled with his wife and family from the UAE to India. His wife, Mrs Manghat, and their two children returned to the UAE on 11 March 2020. Mr Manghat travelled to London to consult lawyers, but while he was there, COVID-19 travel restrictions were introduced. Whilst in London, Mr Manghat was advised that, if he went

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to the UAE, he would face arrest. He travelled to India, and he has not since returned to the UAE.

154. As a result of a complaint made by ADCB in April 2020, Mr Manghat's assets in the UAE have been frozen, as have those of his wife and other family members. He and Mrs Manghat are also subject to travel restrictions, and therefore Mr Manghat has felt unable to visit the UAE and his wife has been unable to leave the country: they have been apart for some years. Mr Manghat has seen little of their children.

155. Mr Manghat says that he also suffered financial loss as a result of the fraud because he retained his shareholding in NMC plc and indeed increased it in 2018 and 2019 when the share price was falling. He pleads in the ADCB Action that he did so on the advice of J P Morgan and Barclays "*in order to give confidence to the market*". He also says that in early 2020, when the fraud was coming to light, he kept his shares; and that his shareholding, worth some US$ 13.5 million on the basis of the shares' value when acquired, are now of negligible value. In contrast, he contends, Dr Shetty and the Bin Buttis sold shares in early 2020, and reduced their combined shareholding in NMC plc, which had totalled some 59% in March 2019, to some 26% of the shares in February 2020. Mr Manghat's arguments are that this supports his contentions that:

a. Dr Shetty and the Bin Buttis were the (or the principal) beneficiaries of the fraud, and enriched themselves, knowing that the fraud, which had inflated the value of the shares, was about to be exposed; and

b. had he known about the fraud, he would not have increased his shareholding but would, like Dr Shetty and the Bin Buttis, have disposed of his shares.

156. The factual basis of these allegations are not admitted by other parties and Mr Manghat did not prove them by proper evidence. However, the contentions about the shareholdings of Dr Shetty and the Bin Buttis were pleaded by ADCB before, in the course of the trial, I ordered the allegations in ADCB's Particulars of Claim to which they related be struck out. That does not prevent Mr Manghat from relying on ADCB's struck-out pleading: *Thevarajah v Riordan [2015] EWCA Civ 41 (*esp. at para. 33) establishes that this is the position in the ADCB Action, and it seems to me to follow that Mr Manghat can also rely on the statements made by ADCB as hearsay evidence in relation to the JA Claimants' claims. I shall therefore consider Mr Manghat's contentions on the assumption that the factual basis for them is made out.

157. I am not persuaded of Mr Manghat's first contention. There is no reason to suppose that decisions by Dr Shetty and the Bin Buttis to sell NMC plc shares in early 2020 were driven by knowledge that fraud was about to be discovered, rather than by concern that the value of the shares would be adversely affected by the allegations of Muddy Waters, whether they were right or wrong.

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158. I accept that Mr Manghat's second contention might provide some modest support for his denial that he was party to the fraud or knew of it. However, in this case, it is overshadowed by the specific allegations made against Mr Manghat that I shall examine.

NMCH's other financial management

159. As well as Mr Manghat, the NMC Group's senior management included the following executives:

a. Mr Suresh Krishnamoorthy, who was Head of Management Information and Corporate Planning from 2011 to 2014, Finance Manager from 2014 to 2015 and succeeded Mr Manghat as the CFO on 1 January 2015. He remained the CFO until 31 August 2017.

b. Mr Prashanth Shenoy, who was the Deputy CEO responsible for mergers and acquisitions from mid-2016 to August 2017, and the CFO from 1 September 2017 to 24 March 2020.

c. Mr Suresh Kumar, who was Head of Banking and Trade from 2011 to 2016 and the Deputy CFO from 20 November 2016 until 26 February 2020 with responsibility for Treasury and Corporate Finance.

d. Mr Deepak Ghosh, who joined NMCH in 2007 and was the Head of Corporate Accounting at the time of the IPO. He was the Deputy CFO from 20 November 2016 to 26 February 2020 with responsibilities for Accounting and Corporate Reporting.

e. Mr Praveen Kumar, who worked as a Manager in the NMC Group's Treasury and Corporate Finance Department from August 2007 until 26 February 2020.

160. An organisational chart in the FRP Report at the time of the IPO shows Mr Suresh Krishnamoorthy, Mr Suresh Kumar and Mr Deepak Ghosh reporting to Mr Manghat as the CFO. In cross-examination, Mr Manghat accepted that this organogram accurately represented the organisation of the finance structure of NMCH at the time of the IPO, including his role overseeing it.

161. Within NMCH's financial organisation, the Treasury Team was directed and supervised by Mr Suresh Kumar, and the Accounts and Reporting Team by Mr Deepak Ghosh. Mr Suresh Kumar and Mr Deepak Ghosh reported to the CFO: to Mr Krishnamoorthy from 1 January 2015 and then to Mr Shenoy from 1 September 2017.

Other proceedings and mitigation

162. Mr Fleming gave evidence that the companies in the NMC Group and the JAs brought proceedings and reached settlements against other persons; and that they had decided

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in some cases not to pursue possible claims. I refer to these matters because Mr Manghat, and before the settlement Baroda, appeared to argue that, by failing to pursue potential remedies against others, the NMC Group had not mitigated its loss.

163. Mr Manghat did not plead a defence of this kind, but Mr Manghat's Written Submissions contended that it is clear, and the JA Claimants should have known, that the NMC Group had potential remedies against UAE Exchange, Neopharma and (as I understand it) Nexgen. Mr Hennessey did not develop these arguments in his closing submissions, but I do not understand them to have been abandoned.

164. Baroda pleaded in its defence that any recovery by the JA Claimants should be reduced because of the fault of the JA Claimants and some of the ADGM Companies in "*failing to bring claims against other wrongdoers who perpetrated the fraud*", and it referred specifically to them not pursuing claims against the Bin Buttis. Further, despite the settlement, I shall refer to other matters that Ms Windle put to Mr Fleming in cross-examination.

NMC plc's proceedings against EY

165. NMC plc brought proceedings against EY in the English Commercial Court in respect of their role as auditors of the NMC Group's financial statements. They were tried between May and October 2025, but on 29 January 2026, before judgment was given, a settlement was reached by agreement, whereby the claim was resolved without admission of liability. As I understand it, it was not suggested that the settlement was not a reasonable one for NMC plc and its Administrators to conclude.

UAE Exchange

166. In Mr Manghat's Written Submissions, it was contended that there was evidence that the NMC Group had transferred substantial sums to UAE Exchange, and he invited the inference that the "*failure to pursue this avenue was a deliberate decision motivated by political considerations and/or, more disturbingly, an undeclared conflict of interest*". He argued that UAE Exchange's parent company, Finablr, having been acquired by Prism Group AG (now called Wizz Financial), would have had funds, or funds would have been available, to satisfy any claim that the NMC Group might bring.

167. The basis for the allegation about political considerations is an announcement by Finablr that Prism Group AG acquired it in a consortium that included "*Abu Dhabi's Royal Strategic Partners*". As for the allegation of a conflict of interest, Mr Hennessey put to Mr Fleming in his cross-examination that he (and presumably Mr Cairns) had an undeclared conflict of interest that influenced the JAs' decision with regard to investigating or pursuing a claim against UAE Exchange. The suggestion, as I understood it, was that, after they were appointed as the JAs, A&M Europe acted for Prism Group AG in respect of its acquisition of Finablr and thereafter. Mr Fleming explained that A&M Europe has

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(unsurprisingly) robust processes to identify and prevent conflicts of interest. The allegation was a serious one, but it was not properly explained or developed, and I see no proper basis for it. I reject it.

168. I also reject the argument that it would have been reasonable for companies in the NMC Group or the JAs to have pursued claims against UAE Exchange. Mr Fleming stated that UAE Exchange was insolvent when it was acquired by Prism Group AG, and it was sold for GBP 1. Mr Manghat's argument supposed that its purchaser would have met claims against it: there is no reason to think that it would have done so.

Neopharma and Nexgen

169. Mr Manghat's contention about Neopharma and Nexgen was that they had received "*substantial illegitimate payments from NMC*". He appeared to make a similar allegation about Nexgen. It was not clear to me from the cross-examination of Mr Fleming quite how these allegations are put. However, I accept the JA Claimants' submission that Neopharma and Nexgen would almost certainly be unable to meet any judgment against them, and for this reason alone, it would not have been sensible to pursue proceedings against either of them. They were companies involved in what was called the "*Sham Suppliers Scheme*", and they apparently defaulted on their debts in 2020. Indeed, on 31 March 2020, Neopharma's creditors were asked to agree to a "*standstill*" in view of the financial difficulties that it faced, and in July 2020, it reported to Baroda and other banks a loss of over AED 998 million in the 2020 financial year. Although Mr Manghat observed that Neopharma has apparently not filed for insolvency, there is no proper reason to doubt A&M Europe's assessment that there was no realistic chance of any meaningful recovery from Neopharma or Nexgen.

The Bin Buttis

170. There is no dispute that the Bin Buttis are bankrupt. In July 2021, bankruptcy proceedings were brought against KBBAM in the ADBC. The NMC Group made a claim in the bankruptcy, but by February 2022 (relatively shortly before the RED for the restructuring of the NMC Group on 25 March 2022), it reached a settlement covering any claims against KBBAM, SAQ and others, and it was ratified by the ADBC.

171. Ms Windle cross-examined Mr Fleming about claims that the JA Claimants or the ADGM Companies might have had against the Bin Buttis, and she questioned him about evidence that he had given in the English proceedings against EY about the claims that might have been brought. Mr Fleming explained that he understood that the merits of the claims in UAE law were uncertain, and more generally why the settlement was considered to be in the best interests of creditors, not least because it enabled the restructuring under the DOCAs to proceed.

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172. I accept Mr Fleming's evidence that the settlement agreement "*was essential for the orderly restructuring of the NMC Group and was in the best interests of creditors*": the prospects of recoveries in the bankruptcy clearly would not have justified the risk to the restructuring plans if no agreement was reached. I do not understand Dr Shetty or Mr Manghat to dispute it. Nor do I understand either of them to pursue an argument that the JA Claimants or any of the ADGM Companies failed to mitigate their loss by settling claims against the Bin Buttis as they did. If they do, I would reject it.

Claims against banks

173. On 6 January 2022, Sayacorp BSC ("**Sayacorp**"), a Bahraini bank which was formerly known as First Energy Bank BSC and the Chairman of which was at one time KBBAM, brought proceedings in this Court against NMCH and other companies of the NMC Group after the JAs had rejected a proof of debt filed by Sayacorp on the grounds of set-off against a claim against Sayacorp. NMCH and the JAs (who had been added as defendants to Sayacorp's claim) brought a counterclaim. The trial was fixed for April 2024, but on 26 March 2024, the proceedings were settled. I can see no basis on which it might be argued that the settlement was not a reasonable one for NMCH and the JAs to make, or that they failed to mitigate their loss in entering into it.

174. Ms Windle cross-examined Mr Fleming as to why proceedings had not been brought against Emirates Islamic Bank PJSC ("**EIB**"), through which payments had been made to Dr Shetty and to the Bin Buttis by the NMC Group and which had issued trust receipts relating to the "*Sham Suppliers Scheme*". However, it was not put to Mr Fleming that the JA Claimants or the ADGM Companies had failed to mitigate their losses by not bringing proceedings, and no such argument was advanced by Dr Shetty or Mr Manghat. Again, I can see no reason to conclude that the JA Claimants acted unreasonably in not bringing proceedings against EIB.

Mr Hani Buttikhi and Mr Abdulrahman Basaddiq

175. In his witness statement, Mr Fleming said: "*I am aware that the Joint Administrators' team has identified amounts paid to Mr* [Hani] *Buttikhi and Mr* [Abdulrahman] *Basaddiq which are traceable to NMC funds and which were not disclosed in the audited annual reports*".

176. Mr Buttikhi was a director of NMC plc from 28 June 2017 to 16 February 2020 and acted as the Chief Investment Officer of the NMC Group during this period. He was also associated with Centurion. Mr Fleming explained in his evidence that the JAs knew that he had "*a relationship with Sayacorp*", and the JA Claimants entered into a settlement agreement with Mr Buttikhi under which the amount payable by Mr Buttikhi would be reduced if a settlement was reached with Sayacorp by 29 February 2024. In the event, as I have said, a settlement with Sayacorp was agreed only after that date, and, in the event, Mr Buttikhi paid US$ 7.5 million in settlement of the claims against him.

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177. Mr Basaddiq was a director of NMC plc from 24 February 2014 to 16 February 2020: he replaced SAQ on the board and it was said by Mr Manghat that he "*represented the interests of the* [B]*in Buttis*". He is a Chartered Accountant: he had held senior positions with EY and was involved in the audit of the NMC Group. In March 2026, the JA Claimants, NMC plc and its administrators entered into an agreement with Mr Basaddiq, whereby he agreed to pay £ 800,000 in settlement of a dispute in which it was alleged that he had received AED 23,762,240 from the NMC Group, Dr Shetty, GGCM and others.

178. It was not put to Mr Fleming that the agreements with Mr Buttikhi and Mr Basaddiq were improper settlements for the JA Claimants to make or that they failed to mitigate their loss by entering into them. I would reject any such contention.

Other directors of NMC plc

179. Finally, I mention for completeness, that Ms Windle asked Mr Fleming about settlements with three former directors of NMC plc, including Lord Clanwilliam, under which no sums were paid by them, and about the JA Claimants not bringing claims against other directors of NMC plc, including Mr Binay Shetty. Mr Fleming explained that the JAs had limited resources, and it was not possible to pursue every possible avenue with limited funds. I see no proper basis for criticising those decisions.

180. Mr Manghat's Written Submissions referred to payments made to Ms Nandini Tandon and Mr Keyur Nagori, both of whom were appointed non-executive directors in 2014. It does not appear to be contended that, therefore, proceedings should have been brought against them, and I do not understand what point is being made by Mr Manghat. If and in so far as it is suggested that they should have been sued, I would reject the allegation in view of Mr Fleming's explanation about the limited resources available to explore all possible claims.

The Claimants' case about the fraud

Before the IPO

181. Mr Manghat gave evidence, and I accept, that, before the IPO, when Dr Shetty and HE Al Mazrouei were the shareholders of NMCH, they had used the company's money to make private investments in real estate and other personal purchases. Mr Manghat explained that this was not unusual in the UAE where businesses were commonly sole proprietorships or partnerships, although he said that, in the case of NMCH, the practice caused cashflow difficulties. When he was cross-examined, Dr Shetty did not dispute that before the IPO he "*had been extracting money from the NMC Group*".

182. Mr Manghat also said that the "*mindset*" did not change when the business was transferred to a listed company. Here, Dr Shetty disagreed: he said that he had not extracted money "*after listing. It was not my inten*[tion] *at all. I know what the meaning of listing. I can't touch one dirham without board's approval*".

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183. Mr Manghat was appointed to be NMCH's CFO in February 2011 in place of Mr Joseph Pinto. Mr Pinto moved to work in Dr Shetty's private office, and he did so for many years. As Dr Shetty testified, he was wholly trusted by Dr Shetty. However, for a while, Mr Pinto continued to deal with the NMC Group's day-to-day activities, allowing Mr Manghat to concentrate on the IPO. He died in 2023.

184. When Mr Manghat became the CFO, Mr Krishnamoorthy reported to him, and in turn Mr Suresh Kumar reported to Mr Krishnamoorthy. The three men had worked together since 2003.

185. In his written evidence, Mr Manghat said that his roles and responsibilities included operational matters within the financial department, liaising with banks, working to raise equity and restructuring the balance sheet. He was also tasked with bringing the IPO to the market.

186. Mr Manghat acknowledged that, in order to manage the IPO, he "*had to be fully informed about* [NMCH's] *true financial position*". He was informed of fund transfers made from the NMC Group to persons and companies outside the NMC Group. For example, by an email of 4 June 2011 headed "*FW: Fund Transfers"* and sent to Mr Manghat, Mr Suresh Kumar sent a list of transfers made in the period 2 April 2011 to 1 June 2011 to and from (among others) Dr Shetty, HE Al Mazrouei, Nexgen, Neopharma and DHE. Mr Manghat described this as "*routine reporting*" to him.

187. It is also apparent from the evidence that, even before the IPO, the NMC Group was involved in manipulating its records to disguise the true state of its finances from EY. As Mr Jones explained, throughout the Relevant Period, NMCH used suspense or control accounts, including a so-called "**Advance Account**", the purpose of which was to record transactions that it wished to disguise. (It kept the account secret from EY, apparently, by reducing the balance in it to zero at each year end. According to the evidence before me, EY required trial balances only at each year end and did not require a moving trial balance for any time during the accounting period.)

188. Although in his written evidence Mr Manghat said that he had learned of the Advance Account "[s]*ince leaving the company*", he accepted in cross-examination that around the time of the IPO he was aware of it (although he disputed, or at least said that he could not remember, whether he knew of it being used afterwards).

189. On 7 July 2011, Mr Manghat and Mr Krishnamoorthy had this email exchange: under the heading "*Jan-June numbers – Urgent*", Mr Krishnamoorthy wrote that "*E&Y has already taken the trail* [sic] *balance as well as the patient numbers as of 31st May, 2011 … Changing the figures for the period Jan-May will be suicidal. Better to make adjustments for June figures alone*". Mr Manghat replied, "*No probs do that way*". (Mr Manghat confirmed that "*trail*" should read "*trial*" and that a "*trial balance is a financial report that lists at all account balances from a company's general ledger at a specific point in time*".)

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I cannot accept the explanation that Mr Manghat gave for this exchange: that it would have been "*suicidal*" to amend the figures for January to May 2011 because it would involve too much work and time. I conclude that Mr Krishnamoorthy sent his email because he was concerned that EY would be suspicious if the figures were changed, and that Mr Manghat so understood it.

The allegations of misappropriation

190. The JA Claimants' case about the misappropriation of assets, and the fraudulent scheme more generally, is confined to the Relevant Period. Baroda observed that the pattern and types of payments made through accounts with it did not change materially in the three months before and after 2 April 2012, and the JA Claimants include transactions before 2 April 2012 in a schedule to their Particulars of Claim that lists the transfers of funds between the NMC Group and Dr Shetty's accounts that they allege. However, if there were earlier misappropriations or other acts of wrongdoing, there is no claim in respect of them, and the evidence of the JA Action Accountant Experts that is relied on in support of the claims in the JA Action excludes earlier dealings.

191. The JA Claimants divide the alleged misappropriations to Dr Shetty into two categories, the "**Direct Shetty Payments**" and the "**Indirect Shetty Payments**". The Direct Shetty Payments comprise the transfer of funds to bank accounts in Dr Shetty's name at Baroda and other banks, for which it is said there was no legitimate reason. They were made from companies in the NMC Group and New Medical Centre, which was not incorporated. The transfers were frequent and for large amounts: in a schedule to their Particulars of Claim the JA Claimants list over 500 transfers, the majority being from NMC Group accounts at Baroda and to three accounts at Baroda in Dr Shetty's name, being (i) an account whose number ended 2359 (the "**2359 account**"), (ii) an account with the number ending 0090 (the "**0090 account**") and (iii) an account with a number ending 7013 (the "**7013 account**").

192. The evidence of the JA Action Accountant Experts, which was not challenged and which I accept, was that the total amount so transferred during the Relevant Period was AED 4,183 million. Large amounts were also transferred from Dr Shetty's accounts to the NMC Group by way of what were called at the trial "*counter-payments*". Taking these into account, the net value of the Direct Shetty Payments was some AED 2.6 billion.

193. In their Particulars of Claim, the JA Claimants describe the Indirect Shetty Payments as "*payments into the Shetty Private Baroda Accounts from external companies that had received those funds from or at the expense of the NMC Group*". They identify the "*external companies*" involved in these payments as Nexgen, GGCM and FFT, and they are said to have amounted in aggregate in the Relevant Period to "*at least*" AED 426.4 million. More specifically, it is alleged that:

    a. Between 2013 and 2015, some AED 273 million was transferred from two accounts

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of Nexgen at Baroda, with numbers ending 5596 (the "**5596 account**") and 7928, to Dr Shetty's 2359 account and his 0090 account. These payments are said to have been funded by transfers from the NMC Group to the Nexgen accounts for which there was no commercial or otherwise legitimate purpose.

b. There were three transfers to Dr Shetty's 2359 account from an account of GGCM with Baroda with an account number ending 9228 (the "**9228 account**"), which were funded out of sums provided by the NMC Group: a transfer of AED 50 million on 14 April 2015; a transfer of AED 6,535,000 on 2 April 2017; and a transfer of AED 28 million on 4 June 2017.

c. On 22 May 2014, the sum of AED 70 million was transferred to Dr Shetty's 2359 account from an account of FFT at Baroda with a number ending 8369, and the JA Claimants allege that this was funded from monies provided by the NMC Group.

194. Further, the JA Claimants allege that, between July 2014 and November 2015, some AED 17.5 million was misappropriated from the NMC Group by way of transfers to two accounts of NNMC at Baroda, accounts with numbers ending 8746 and 9272. It is alleged that these funds were used to support investments by Dr Shetty, including energy investments in Wyoming and Texas (referred to as "*Espy Fields*" and "***La Sara***" respectively), in the UAE (referred to as "***Kelvin Gulf***") and elsewhere.

195. As well as the Direct and Indirect Shetty Payments and the misappropriations through NNMC, the JA Claimants plead that the NMC Group's funds were used improperly for Dr Shetty's benefit in two other ways:

a. First, it is said that he purchased a private aircraft (or an interest in one) with funds deriving, at least in part, from the NMC Group.

b. Secondly, it is said that Dr Shetty used funds derived from the NMC Group to buy two plots for development in the Dubai Hills Grove Community, Dubai, and for construction work there.

196. The JA Claimants' case about payments to, or for the benefit of, the Bin Buttis or entities associated with them is pleaded in less detail. They say that in the period from 2012 to 2020, some AED 9.8 billion was transferred from the NMC Group and that there were counter-payments by them to the NMC Group of some AED 7.3 billion, "*with the resultant net dissipation from the NMC Group being AED 2.5 billion*".

197. The case about misappropriations for the benefit of Mr Manghat is that between 12 April 2012 and March 2020 he improperly received at least AED 9.3 million from the NMC Group, the "**Direct Manghat Payments**". These comprised:

a. A transfer of AED 100,000 on 9 October 2012 from NMCH's account at Baroda with a number ending 0242 account (the "**0242 account**") into his account at

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Baroda with a number ending 2466 (the "**2466 account**").

b. A transfer of AED 1 million on 28 October 2019 to Mr Manghat's 2466 account from an account of Holding at Baroda with a number ending 5916.

c. A transfer of AED 2 million on 4 December 2018 to Mr Manghat's 2466 account from an account at Baroda of NMCH with a number ending 0550.

d. Sums withdrawn in cash from accounts of the NMC Group at Baroda on 28 January 2013, 14 April 2014, 21 April 2014, 13 August 2017 and 22 October 2017 in the amounts respectively of AED 400,000, AED 150,000, AED 1.35 million, AED 50,000 and AED 250,000.

198. Further, payments totalling AED 4 million received on 7 and 13 November 2019. The JA Claimants' case is that Mr Manghat had given instructions for those payments by letter to NMCH's Chief Compensation Officer, describing those payments as being a "*special incentive*".

199. The JA Claimants also allege against Mr Manghat that:

a. Either he himself benefitted from the transfers of funds to NNMC, to which I have referred at para. 195 above, or he allowed Dr Shetty to do so; and

b. Between 25 March 2015 and 11 December 2019, he improperly received from GGCM's 9228 account at Baroda payments in the aggregate of AED 54,836,500 into his 2466 account or other accounts, and that these payments were funded not by GGCM but by the NMC Group or Dr Shetty.

Undisclosed Securities

200. The JA Claimants allege that the NMC Group provided for the benefit of Dr Shetty and the Bin Buttis what they call "*Undisclosed Collateral Benefits*": that, between 2012 and 2020, the NMC Group provided "*guarantees or some other form of security*" (the "**Undisclosed Securities**") for facilities with banks for Dr Shetty, KBBAM and entities associated with them, including Neopharma, GGCM, RCS, Modular Concepts and Centurion. Although these were benefits for "*related parties*" for the purposes of the relevant accounting standards and therefore should have been disclosed in the NMC Group's consolidated financial statements, they were not so disclosed. The JA Claimants' case is that "*many of the guarantees provided were not called upon in the proof of debt process*". They do not say whether the other forms of security (e.g. post-dated cheques) were enforced by the banks, but there is no evidence that they were.

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The insolvency of the NMC Group

201. The JA Claimants plead that: "*The Unlawful Payments caused substantial damage to the balance sheet and cashflow of the NMC Group. As a result, over time the wrongdoing shareholders and/or managers were required to arrange substantial additional debt to shore up the Group's finances. However, they hid that additional debt from the* [NMC plc] *Board and it was not disclosed in the NMC Group's accounts, so as to conceal the Unlawful Payments themselves and the damage caused by them*".

202. Thus, the JA Claimants' case is that, in order to disguise the (direct and indirect) impact of the misappropriations on the balance sheet and cashflow of the NMC Group, those involved in the fraud arranged additional debt and facilities (the "**Undisclosed Debt**"), which were not revealed to EY or the board of NMC plc and were not disclosed in their accounts.

203. The expert evidence of the JA Action Accountant Experts demonstrates, and it was not disputed by Dr Shetty or Mr Manghat, that, as a result of the Undisclosed Debt and the Undisclosed Securities, at all times from 31 December 2013 NMCH and the other companies in the NMC Group were "*balance sheet insolvent*": that is to say, in the case of each company, the value of the company's current assets was less than the amount of its current liabilities, taking into account its contingent and prospective liabilities: see section 123(2) of the *Insolvency Act 1986 (UK)* and section 200(2) of the IR 2022. (The ADGM Companies ceased to be balance sheet insolvent as of 25 March 2022, as a result of the restructuring under their DOCAs.)

204. Mr Jones accepted, and the JA Claimants acknowledge, that the immediate cause of the insolvency was not the misappropriations themselves, but the NMC Group's borrowings, including the Undisclosed Debt: that is to say, from 2013, NMCH and the other companies would have been balance sheet insolvent even if the net amount of the misappropriations were notionally restored to them. The "*technical insolvency*" (as Mr Jones put it) was the scale of the debt and the need to fund it. New Undisclosed Debt not only allowed misappropriations to continue, but covered interest and finance costs of existing debt and provided cash to cover the inflated revenue.

205. Further, it was the expert evidence of Mr Bezant that, on the insolvency of NMCH, Holding and the 34 ADGM Companies would have had no real prospect of avoiding insolvent liquidation or administration in the period from 31 December 2013 to 31 December 2018. This allegation is the basis of the JAs' claim against Dr Shetty and Mr Manghat for wrongful trading. No claim for wrongful trading was made against Baroda, and accordingly this question was not considered by Mr Grantham. Mr Bezant's evidence about this was not challenged by Dr Shetty or Mr Manghat, and I accept it.

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The Undisclosed Debt

206. It was not significantly disputed, and I find, that, throughout the Relevant Period, the consolidated financial statements of the NMC Group did not properly account for all of its borrowings. Nor was it significantly disputed, and I find, that the amount of both the total borrowing of the NMC Group and the Undisclosed Debt increased annually from 2012 until 30 June 2019 (the date of the interim accounts of NMC plc). Thus:

a. As of 31 December 2012, the total reported debt was AED 1,115.3 million (or some US$ 303 million), and the total unreported debt that has been identified was AED 893.1 million (or some US$ 243 million), the total debt therefore being AED 2,008.4 million (or some US$ 546 million).

b. As of 31 December 2013, the total reported debt was AED 1,221 million (or some US$ 332 million), and the total identified unreported debt was AED 1,640.1 million (or some US$ 446 million), the total debt therefore being AED 2,861.1 million (or some US$ 779 million).

c. As of 31 December 2014, the total reported debt was AED 1,381.5 million (or some US$ 376 million), and the total identified unreported debt was AED 3,251.2 million (or some US$ 885 million), the total debt therefore being AED 4,632.7 million (or US$ 1,261 million).

d. As of 31 December 2015, the total reported debt was AED 2,682.4 million (or some US$ 730 million), and the total identified unreported debt was AED 5,454.5 million (or some US$ 1,485 million), the total debt therefore being AED 8,136.9 million (or some US$ 2,215 million).

e. As of 31 December 2016, the total reported debt was AED 3,853.5 million (or some US$ 1,049 million), and the total identified unreported debt was AED 7,530.1 million (or some US$ 2,050 million), the total debt therefore being AED 11,383.6 million (or some US$ 3,099 million).

f. As of 31 December 2017, the total reported debt was AED 5,138.6 million (or some US$ 1,399 million), and the total identified unreported debt was AED 9,922.5 million (or US$ 2,701 million), the total debt therefore being AED 15,061.1 million (or some US$ 4,100 million).

g. As of 31 December 2018, the total reported debt was AED 7,319.2 million (or some US$ 1,993 million), the total identified unreported debt was AED 14,283.5 million (or some US$ 3,888 million), the total debt (excluding bonds and sukuk, which I can disregard for present purposes) being AED 21,602.7 million (or some US$ 5,881 million).

h. As of 30 June 2019, the total reported debt in the interim accounts was AED 7,695.7

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million (or some US$ 2,095 million), and the total reported debt was AED 15,025.4 million (or some US$ 4,090 million), the total debt therefore being AED 22,721.1 million (or some US$ 6,168 million).

207. These increasing levels of Undisclosed Debt reflect both new loans and other facilities arranged during the financial year, and the interest and other servicing charges on Undisclosed Debt from previous years.

208. The JA Claimants divide the Undisclosed Debt into three categories: (i) term loan financing (including syndicated loans); (ii) short-term borrowing in the form of working capital loans and/or supplier advances, which involved the arrangements with the so-called "**Sham Suppliers**" that I explain at paras. 216 – 220 below; and (iii) other forms of short-term debt financing by way of overdrafts, sales invoice factoring facilities, cheque discounting facilities and salary loans.

209. The Undisclosed Debt was generally recorded in internal ledger records of the NMC Group (in particular, in the Advance Account or in a specific ledger account pending transfer to the Advance Account at the end of accounting periods). It was thus disguised through manipulation of the underlying accounting ledgers, and thereby it was concealed from EY.

210. Those involved with the fraud were able to conceal the Undisclosed Debt in this way because the NMC Group did not have an adequate accounting system. Mr Manghat said in his witness statement and confirmed in cross-examination that its "*balance sheet was essentially kept as a very complicated Excel spreadsheet*" and it did not have a "*proper IT environment*". EY, he said, "*never reviewed the company's general ledger and computer accounting systems to complete the auditing process*". Towards the end of the Relevant Period, after some years of pressure from EY, the NMC Group began to use a consolidated software system, apparently from about mid-2019, but the fraudsters continued to conceal the fraud by maintaining two sets of books.

211. Obviously, a sophisticated fraudulent scheme of this kind required those involved to track carefully the NMC Group's true financial position. The evidence shows that they did so, and three spreadsheet documents illustrate this.

    a. First, on 20 August 2013, Mr Praveen Kumar sent to Mr Suresh Kumar, with copies to Mr Manghat and Mr Krishnamoorthy, a spreadsheet that set out the NMC Group's banking position as at three dates: December 2012, March 2013 and June 2013. The spreadsheet included both (i) facilities that were disclosed to the NMC plc board and were to be disclosed to its auditors, and (ii) undisclosed facilities: thus, the position as at March 2013 included an overdraft facility and a trust receipt facility with Al Masraf Bank which was not included in an otherwise similar spreadsheet used in a presentation by Mr Manghat to the NMC plc board.

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b. Secondly, on 25 November 2015, Mr Udayakumar Nair, who worked in the Finance Department, sent Mr Krishnamoorthy and Mr Suresh Kumar a spreadsheet headed "*EXPOSURE – 25-11-15*", which listed 50 banking facilities and recorded that the NMC Group's exposure on them was some AED 8.24 billion. This far exceeded the exposure of AED 2.68 billion reported in the financial statements for 31 December 2015. On 26 November 2015, Mr Krishnamoorthy forwarded the email and the spreadsheet to Mr Manghat.

c. Similarly, on 8 August 2016, Mr Suresh Kumar forwarded to Mr Manghat an email and spreadsheet that listed 69 bank facilities, showing outstanding bank lending of some AED 10.4 billion as at 31 July 2016. The reported figures for 30 June 2016 showed outstanding bank lending of some US$ 790 million (or some AED 2.9 billion).

212. It is clear from the nature of the fraud, and in particular from the accounting systems devised to disguise it from the board and the auditors, that it required all the relatively senior executives in NMCH's Treasury or Finance Department to participate in it. This is well illustrated by documents relating to the arrangements made for maintaining two sets of books when the NMC Group was finally succumbed to EY's pressure to upgrade its electronic systems. On 11 March 2019, Mr Sreekanth Nair, an executive in the Treasury Department, sent Mr Udayakumar Nair an email with the minutes of a meeting of seven executives held that day on the topic of "[p]*ractical difficulties in the maintaining of two sets of books*". They recorded that the group was to meet again on 18 March 2019 "*when Mr Vyshak* [Harindranath, an Associate Vice President for Corporate Accounting and Reporting] *and Mr Praveen* [Kumar] *is back to office*".

213. The operation of the scheme was therefore threatened when, on 17 March 2012, Mr Tompkins on behalf of the independent directors of NMC plc sent an email to Dr Shetty and KBBAM, making a series of governance recommendations, including the appointment of a Deputy CFO in Abu Dhabi. Mr Tompkins explained that the recommendation came from EY, who had proposed that NMC plc "*strengthen the finance team under the leadership of* [Mr Manghat] *through the appointment of an experienced Footsie 250 Plc deputy Chief Financial Officer*". Mr Manghat opposed the proposal: he wrote to Dr Shetty, KBBAM and others that "*I would like to reiterate that self is qualified Chartered Accountant from India, England and Wales. Also certified in international accounting from UK for last 9 years. For support I welcome, but for this my suggestion is we should recruit someone from our region and the best from existing and new recruits should be groomed for succession. This to me is the best solution to our organisation considering cultural challenges and other issues which we know*".

214. This response does not fit well with Mr Manghat's evidence at the trial, when he minimised his qualifications and experience when he became NMC plc's CFO: he said that he was an Indian Chartered Accountant, and "*I don't have a competent knowledge of IFRS* [International Financial Reporting Standards] *and UK reporting standards*". He

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maintained that position although, as the CFO, he was responsible for reviewing the Group's draft financial statements and ensuring that they were International Financial Reporting Standards ("**IFRS**") compliant.

215. Mr Manghat was not able satisfactorily to explain why, in these circumstances, he was unwilling to accept the suggestion that a suitably experienced accountant be appointed to be his deputy CFO. I reject his answer that he was too optimistic about his own abilities. I accept Mr Pillai's submission that Mr Manghat did not want someone recruited from outside to discover how the accounting systems were arranged so that the NMC Group's true financial position could be kept disguised.

The Sham Suppliers transactions

216. I have referred to the undisclosed short-term borrowing raised from arrangements with Sham Suppliers. This scheme generated increasing amounts by way of short-term borrowings throughout the Relevant Period. They amounted to US$ 985,455 million as of 30 June 2019. I heard detailed evidence about the operation of the scheme, and examined individual transactions relating to it, but its main relevance, as I see it, went to the JA Claimants' case against Baroda. I do not need to examine much of it to determine the claims against Dr Shetty and Mr Manghat.

217. In summary, the scheme operated in this way:

a. A third-party company (a Sham Supplier) would issue an invoice to a company in the NMC Group for the supply of goods and services. It was a sham in that it was never intended that there should be any genuine supply.

b. The NMC Group would arrange for a third-party financial institution (often referred to as the trust receipt bank) to pay the invoice to the Sham Suppliers pursuant to a short-term lending arrangement, typically for 90, 120 or 180 days.

c. The Sham Suppliers would transfer the funds received to the NMC Group.

d. When repayment of the short-term lending fell due, the NMC Group would discharge the Sham Supplier's obligation, together with any interest or other charges.

218. The JA Action Accountant Experts agreed that the Sham Suppliers scheme assisted in concealing the NMC Group's true debt position. The extent of Sham Suppliers activity and the funding it provided to the NMC Group was, as Mr Bezant put it, "*significant*". Mr Bezant also explained that the Sham Suppliers scheme enabled the NMC Group to obtain injections of funds and to strengthen its short-to-medium cashflow, without entering into formal facility agreements. It thus enabled the NMC Group to operate without taking on additional debt for accounting purposes and without disclosing its true financial position.

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219. The Sham Suppliers transactions operated and were accounted for differently from genuine purchases by the NMC Group in that, when the NMC Group bought genuine supplies, (i) the initial supply of goods or services and the corresponding invoice were accounted for in the general ledger of the relevant NMC entity, and (ii) the supplier retained the funds received for them; and, on the other hand, in the case of the Sham Suppliers arrangements, (i) the relevant NMC Group company did not enter the initial supply of goods or services in its general ledger to record the purchase as an expense or the invoice as a liability, and (ii) the funds received by the Sham Suppliers from the financial institution against their invoices were remitted to the NMC Group. The Sham Suppliers involved in this scheme included companies in which Dr Shetty had an interest, such as Neopharma and Nexgen, which Mr Jones described as "*consistently the largest supplier, by total value, used for sham supplies in each of those years*" from 2012 to 2019, and companies that were independent of Dr Shetty and Mr Manghat.

220. Between 2012 and 2019, the use of Sham Suppliers arrangements increased both in terms of the number of transactions and the amounts involved, and from 2016 or 2017 it became more complex in that the funds from the financial institutions were remitted back to the NMC Group through intermediate companies. Mr Jones' evidence, which was not disputed, showed that in 2012 a total of AED 0.2 billion was advanced to the NMC Group, using four Sham Suppliers who could be identified; in 2013, a total of AED 1.1 billion was advanced, using eight identified Sham Suppliers; in 2014, a total of AED 3.1 billion was advanced, using eight identified Sham Suppliers; in 2015, a total of AED 4.7 billion was advanced, using fourteen identified Sham Suppliers; in 2016, a total of AED 6.7 billion was advanced, using 26 identified Sham Suppliers; in 2017, a total of AED 8.8 billion was advanced, using 30 identified Sham Suppliers; in 2018, a total of AED 8.5 billion was advanced, using 26 identified Sham Suppliers; and in 2019, a total of AED 10.1 billion was advanced, using 26 identified Sham Suppliers.

Related Party Transactions

221. The last aspect of the fraud that is pleaded against Dr Shetty is that, between 2012 and 2018, there were transactions with related parties for which there was "*no obvious commercial basis*". It is alleged that there were such transactions between the NMC Group and Neopharma to the value of at least AED 7.1 billion; between the NMC Group and UAE Exchange to the value of at least AED 2.5 billion; between the NMC Group and Nexgen to the value of at least AED 18.9 billion; and a "*substantial volume*" of transactions between the NMC Group and each of GGCM, Modular Concepts, DAN and DHE.

222. The JA Claimants' case is that these transactions greatly exceeded the related party transactions reported in the NMC Group's annual accounts. In particular, the related party transactions processed through the NMC Group's Baroda accounts alone greatly exceeded the reported related party transactions. Their effect was to give an exaggerated picture of the NMC Group's commercial activity and cash flow.

Offset deposits

223. I also mention for completeness the NMC Group's "*Offset Deposits*" arrangements which were used to disguise its true finances and to misrepresent them in its financial statements. They were pleaded in support of the JA Claimants' case against Baroda, and not against Dr Shetty or Mr Manghat.

224. From 2012, the NMC Group would place term deposits with Baroda, and Baroda would grant it overdraft facilities of an equivalent, or almost equivalent, amount. The rate of interest paid on the deposits was lower than that paid for use of the overdraft facilities.

225. It is clear, and was confirmed by Mr Saul and Mr Tatham, that, as they put it in their joint report, "*Offset Deposits were a legitimate and recognised banking product in the UAE during the Relevant Period and there were circumstances in which a corporate customer might use such a product for legitimate commercial purposes*". For example, such facilities can assist a business to manage erratic or unpredicted cashflow demands and to ensure that cheques will be honoured.

226. However, as the JA Claimants allege, and I accept, the NMC Group used the offset deposits in a manner that could have had no proper commercial purpose in that (as it is pleaded) "*the NMC Group was depositing money with Baroda for a fixed period (via the term deposits) for a relatively low rate of interest, then immediately borrowing that money back from Baroda (via the overdrafts) at a relatively high rate of interest and for the entire duration of the fixed term deposit, and then renewing these arrangements*". These allegations are confirmed by the evidence of the JA Action Accountant Experts.

227. The JA Action Accountant Experts also agree that, for the most part (and with minor exceptions), the term deposits associated with the offset deposits were reflected in the NMC Group's annual financial statements between 31 December 2012 and 31 December 2018, but the corresponding overdrafts were not reported, being either not recorded in the corporate general ledger; or being recorded as a credit entry to a suspense account and so helping to conceal or suppress the balance on the account; or being recorded as a credit entry to an appropriate overdraft liability.

228. Thus, the JA Claimants allege, and I accept, that: "*The functional purpose of the Offset Deposits was to allow the NMC Group to declare the term deposits as assets in its consolidated financial statements, whilst not declaring the offsetting overdrafts. In this way, the value of the NMC Group's apparently available assets was inflated, and the extent of its borrowing was concealed*".

ADCB's "key features" of the fraud

229. In his closing submissions, Mr Pillai emphasised three features of the fraud. They were, I think, uncontroversial and might appear obvious, but they are worth identifying and emphasising.

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230. First, the fraud, which lasted from at least 2012 to 2019, was carried out on a massive scale. The Undisclosed Debt amounted to over AED 22.721 billion by June 2019. The concealed transactions in the Advance Account included some 20,000 postings with a debit value of over AED 100 billion and a credit value of over AED 87 billion.

231. Secondly, the fraud required discipline, organisation and meticulous planning. In order to conceal the true state of the NMC Group's finances from EY, the fraudsters went to great trouble manually to reconcile the fake accounts to the ledger data provided to EY.

232. Thirdly, disciplined and time-consuming work was also required to keep track of the NMC Group's true cash position over the many accounts, including the Sham Suppliers accounts, and the true debt position across its many short-term facilities.

Assignments

The DOCAs

233. The JA Claimants plead that, by the Related Party DOCAs and the associated Restructuring Implementation Deeds:

a. The ADGM Companies assigned their Civil Claims to NMCH; and

b. The JAs, in their capacities as the Joint Administrators of the ADGM Companies, assigned to NMCH the Insolvency Claims of the ADGM Companies.

234. Clause 9 of the Related Party DOCAs provided as follows:

> "*(a) In accordance with and at the time specified in the Restructuring Implementation Deed, the Deed Company absolutely and unconditionally assigns to* [NMCH] *and/or the* [NMCH] *Administrators all their rights, title, interest, and benefit in and to the Assigned Claims.*
>
> *(b) In exchange for the assignment in Clause 9(a) above, Deed Company Creditors shall be entitled to receive Post-Restructuring Litigation Recoveries pursuant to clauses 11 (Litigation Undertaking) and 12 (Post-Restructuring Litigation Recoveries) of the* [NMCH] *DOCA (including the Litigation Undertaking)*".

235. The term "*Assigned Claims*" was defined in clause 1 as follows:

> "*all actual and prospective litigation and/or arbitration claims (whether commenced or contingent) of the Deed Company, including civil law claims and statutory insolvency claims assigned pursuant to section 253A of the Regulations and any information or evidence held by the Deed Company in relation to the same, but does not include:*

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(a) any Arbitration Claim as that term is defined in clause 6.9 (Arbitration Claims) of the [NMCH] *DOCA;*

(b) the litigation in proceedings ADGMCFI-2020-020 / ADGMCFI-2021-042; and

(c) any actual or prospective litigation and/or arbitration claims of the Deed Company against any suppliers, customers (including without limitation, any insurer, credit card acquirer, payment processor, or other person who makes or processes payment in respect of or on behalf of patients or other users of the Group's services or products) and/or any other entity with whom the Deed Company has, or may at any time have had, a trading relationship".

236. Clause 5.4 of the Restructuring Implementation Deed (as amended on 17 March 2022) provides:

"***Restructuring Step 3: Assignment of Assigned Related DOCA Claims and provision of the Litigation Undertaking***

Immediately following the completion of Restructuring Step 2:

(a) each Related DOCA Company shall assign the Assigned Related DOCA Claims under each Related DOCA to [NMCH] *pursuant to clause 9 (Assignment of Assigned Claims) of the applicable Related DOCA;*

(b) the Related DOCA Assignment Deed shall be dated and released; and

(c) in consideration for the assignments provided under Clauses 5.4(a) and 5.4(b), [NMCH] *shall provide the Litigation Undertaking set out in clause 11 (Litigation Undertaking) of the* [NMCH] *DOCA in favour of the Related DOCA Creditors*".

237. Further, on 25 March 2022, each of the ADGM Companies entered into a deed of assignment of "*Assigned Related DOCA Claims*". Clause 2 of the deeds of assignment provided that:

"*Without prejudice to the assignment by each Related DOCA Company of its Assigned Claims (as defined in its Related DOCA) pursuant to clause 9 (Assignment of Assigned Claims) of its Related DOCA, each Related Administrator hereby absolutely and unconditionally assigns their Assigned Claims (the "****Administrator Assigned Related DOCA Claims****") to* [NMCH] *in consideration for* [NMCH] *providing the Litigation Undertaking for Administrator Assigned Litigation Recoveries*".

238. The term "*Assigned Claims*" was defined as in clause 1 of the Related Party DOCAs.

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The governing laws

239. The general rule about the law that governs the validity of the assignments is stated in *Dicey, Morris & Collins on the Conflict of Laws (16th Ed, 2022)* ("**Dicey**") at para. 25R-057:

> *"RULE 143 - (1) As a general rule:*
>
> *(a) the mutual obligations of assignor and assignee under a voluntary assignment of a right against another person ('the debtor') are governed by the law which applies to the contract between the assignor and assignee; and*
>
> *(b) the law governing the right to which the assignment relates determines its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.*
>
> *(2) But in other cases (semble), the validity and effect of an assignment of an intangible may be governed by the law with which the right assigned has its most significant connection*".

240. I observed during the hearing that Dicey's commentary on Rule 143 says (*loc. cit.* at para. 25-072) that there are cases in which it might be inappropriate to apply the general rule and that: "*The validity of the assignment of a bare right of action may be governed by the lex fori*", citing *Trendtex Trading Corp v Credit Suisse [1982] AC 679*. Nevertheless, neither the JA Claimants nor any other party disputed that the general proposition in Rule 143(1) applies in this case. In these circumstances, I shall assume (without deciding) that it does, and therefore I shall assume that (as Baroda contended and Dr Shetty, who adopted Baroda's argument, contends) the question whether the Civil Claims are assignable is governed by UAE law.

The Assignments of the Insolvency Claims

241. Mr Manghat admitted the assignments in his defence. Dr Shetty's defence and Baroda's defence denied the assignment of both the Insolvency Claims and the Civil Claims.

242. However, at the trial, no party advanced an argument that the Insolvency Claims were validly not assigned to NMCH, and I hold that they were. At the relevant time, the IR 2015 (as amended from 1 April 2021 by the *Insolvency (Amendment No. 1) Regulations 2021*) empowered an "*office-holder*" (defined to include an administrator) to assign a right of action for fraudulent trading or wrongful trading. Further, the *ADGM Real Property Regulations 2015* permit the legal assignment of a "*thing in action*", with the assignment taking effect from the time that written notice is given to the debtor or trustee or other person from whom the assignor would have been entitled to claim: see section 152. Notice was given to the Defendants by service of the Claim Form and Particulars of Claim

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on 20 December 2022 (if not before then). Even without notice, ADGM law would recognise an equitable assignment of the Insolvency Claims.

The Assignments of the Civil Claims

243. The issue at trial between the JA Claimants and Dr Shetty (and between the JA Claimants and Baroda before the settlement) was whether the Civil Claims were validly assigned. The Civil Claims are governed by UAE law, and therefore I determine their assignability by reference to UAE law. The JA Claimants contended that the Civil Claims were assignable under UAE law, and so that they were validly assigned. I was much assisted by Mr Al Hashimi's arguments in support of this contention in the JA Claimants' closing submissions. Dr Shetty advanced no submissions of his own about UAE law (either on the assignment issue or on any other matter), but Mr Wandowicz said in his closing submissions that he adopted Baroda's argument. In its written opening submissions, Baroda advanced an argument that the Civil Claims were not assignable under UAE law, and therefore they were not validly assigned. It did not develop this submission in its written closing submissions, and, because of the settlement, Baroda did not make oral closing submissions.

244. The JA Claimants' submission is that, while the Civil Code does not make express provision for the assignments of rights, the UAE Courts, including the Federal Supreme Court, have consistently recognised assignments of rights, and have not required any specific formalities for a valid assignment of them. Indeed, it was common ground between the JA Claimants and Baroda that the school of Imam Malek (the Maliki school) recognises the assignment of rights. The JA Claimants cited an article of Mr Nicholas H D Foster, "*An Unstoppable Force Meets a Moveable Object? Assignment of Rights in the UAE*" in Arab Law Quarterly, 2004, Vol. 19 at p.179, in which the author observes that the authoritative Egyptian jurist, Dr Abdul Razzak Ahmed El-Sanhouri "*writes that it is wrong to say that Islamic law did not allow the transfer of a right, basing his argument on the fact that the Malikis allowed it*".

245. Baroda accepted that, under UAE law, in principle rights are assignable, "*unless otherwise provided by law, agreement, or the nature of the obligation*", but it submitted that the Civil Claims, being bare rights to litigate, are not assignable. Baroda did not cite authority for its distinction between rights to litigate and the underlying substantive right. There are exceptions to the general rule that rights are assignable, but rights to litigate are not within the recognised excepted categories: Dr El-Sanhouri explains in his *Al Waseet* that these exceptions are rights closely tied to the person of the creditor, such as a right to alimony or compensation for moral harm that has not been determined by agreement or claimed before the courts; and he provides other examples, including the right of a partner under a partnership agreement or the right of a tenant in a lease where the personality of the creditor is to be taken into account. Baroda argued that the Hanafi school prohibits "*the sale or transfer of abstract rights, including lawsuits*", but this proposition was disputed by Mr Al Hashimi. Moreover, the Civil Code requires that regard

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be had to the Maliki and Hanbali schools in preference to the Hanafi and Shafi'i schools: see article 1 of the Civil Code.

246. I am persuaded by Mr Al Hashimi's submission that the distinction that Baroda sought to draw between rights to litigate and other rights is not supported by, and indeed inconsistent with, judgments of the UAE Courts. However that might be, the JA Claimants contend, and I accept, that the ADGM Companies validly assigned the underlying rights to NMCH, along with the right to enforce them.

247. I need refer to only two of the authorities cited by Mr Al Hashimi to justify his view that the Civil Claims were assignable under UAE law. Baroda's argument was that the UAE authorities that regard rights as assignable are concerned only with assignment of debts or contractual obligations. A decision of the Federal Supreme Court of 10 October 1999 in case 127/1999 refutes this. In this case, the claimant bank had sought a ruling "*to confirm the validity and enforceability of the assignment of rights issued by the Company in favor of the Bank, which included its assignment to the Bank of all payments and compensation due to it from* [a] *Ministry for the nursing school and dorms project, amounting to 7,124,685 dirhams*". That claim was upheld. It is clear from the judgment that the Court was not concerned only with the assignment of debts: it consistently refers to the assignment of rights ("*rights to future payments and compensation from the Ministry for the project*", "*transfer of compensation and payments*").

248. The second case to which I refer is the decision of the Dubai Court of Cassation of 26 March 2006 in case 330/2005. It was cited by Mr Al Hashimi to refute a suggestion by Baroda that authorities upon which he relied were concerned with subrogation, rather than with assignment. The claimant was the insurer of the Dubai Electricity and Water Authority, and the defendants were a company engaged to transport machinery of the Authority and an employee of the company. The machinery was damaged in transit, and the insurers paid for repairs. The insurers brought proceedings against the Defendants, but the claim was dismissed on the basis that the insurers lacked standing to bring it. Their appeal to the Court of Cassation succeeded. Referring to the insurers' complaint about the judgment against them, the Court said: "*This objection is valid, as the transfer of rights allows a creditor to transfer their rights against the debtor to a third party, who then becomes the creditor in place of the original one. This principle applies to all rights unless otherwise stipulated in by law, agreement or the nature of the obligation. It is established by this Court that the transfer of a right is permissible, provided that no legal prohibitions or obstacles prevent it. The transfer of rights is formed through mutual consent between the transferor and the transferee, independent of the need for the debtor's consent or acceptance. However, the fact that the transfer of rights is formed is inadequate for enforcing it against the debtor or in favor of any third party against whom the transferee acquired the transferred right from the transferor, except from the date that such creditor or third party become aware of the transfer, considering it occurred without their consent, and it is plausible that they are unaware of this transfer, leading them to treat their original creditor as their sole creditor. Therefore, the debtor should know about*

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the transfer to protect the rights of the latter and the new creditor. To establish this knowledge, all legally recognized means of proof may be utilized".

249. I conclude that the UAE Courts would consider the ADGM Companies' rights relating to the Civil Claims to be assignable, and that they would uphold the validity of the assignments. I therefore conclude that the rights of the ADGM Companies in the Civil Claims and of their Joint Administrators in the Insolvency Claims were validly assigned to NMCH by the Related Party DOCAs and the associated agreements.

The JA Claimants' Insolvency Claims: the law

The legislation

250. As I have said, the Insolvency Claims against Dr Shetty and Mr Manghat are claims under the IR 2022 for fraudulent trading and wrongful trading. The Claimants allege that Dr Shetty and Mr Manghat are liable in respect of fraudulent trading from April 2012, and for wrongful trading from "*at least*" 31 December 2013.

251. The ADGM provisions about fraudulent trading at section 251 of IR 2022 are similar to those in the *Insolvency Act 1986 (UK)* (at section 213 about fraudulent trading in the context of winding up, and at section 246ZA about fraudulent trading in the context of administration), and those about wrongful trading at section 252 of IR 2022 are also similar to those in the *Insolvency Act 1986 (UK)* (at section 214 about wrongful trading in the context of winding up, and at section 246ZB about wrongful trading in the context of administration).The English authorities about fraudulent and wrongful trading are therefore relevant to the Insolvency Claims under ADGM law.

The fraudulent trading claims

252. Section 251 of the IR 2022 provides as follows:

> "*(1) If in the course of the winding-up of a Company or while it is in administration it appears that any business of the Company has been carried on with intent to defraud creditors of the Company or creditors of any other person, or for any fraudulent purpose, subsection (2) applies.*
>
> *(2) The Court, on the application of the liquidator or the administrator, as the case may be, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned are liable to make such contributions (if any) to the Company's assets as the Court thinks proper*".

253. Accordingly, in order to establish a claim for fraudulent trading against a defendant, an administrator of a company must prove that:

a. The business of the company was carried on fraudulently, in the sense that it was

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carried on with the intent to defraud its creditors or those of another person or was carried on for a fraudulent purpose.

b. The defendant was party to the business being carried on fraudulently (in this sense).

c. The defendant so acted knowingly.

d. The defendant acted dishonestly.

e. The Court should exercise its (discretionary) power to hold the defendant liable to make a contribution to the company's assets.

I shall consider the fifth matter later in my Judgment when I come to questions about the appropriate remedy if the case in fraudulent trading is established. It is convenient to say something about the other requirements here.

The carrying on of a business

254. The Courts take a wide view about what constitutes carrying on a business fraudulently. As Miles J said in *London Capital & Finance Plc v Thomson [2024] EWHC 2894 (Ch)*, "*the case-law does not seek to define or delimit the concept of fraud"* (at para. 1537). He illustrated this by reference to the well-known dictum of Maugham J in *Re William C Leitch Bros Ltd [1932] 2 Ch 71*: "[I]*f a company continues to carry on business and to incur debts at a time when there is to the knowledge of the directors no reasonable prospect of the creditors ever receiving payment of those debts, it is, in general, a proper inference that the company is carrying on business with intent to defraud*" (at para. 1539). Miles J also cited English criminal cases, which show that it need not be intended that third parties should suffer loss, saying this (at para. 1540):

> "*In R v Grantham [1984] QB 675, the Court of Appeal dismissed an appeal against a direction given to a jury that there could be an intent to defraud if someone 'obtains or helps to obtain credit or further credit when he knows there is no good reason for thinking funds will become available to pay the debt when it becomes due or shortly thereafter'. At p. 683, Lord Lane CJ said: 'If further authority is required that such actions may amount to an intent to defraud, it is to be found in Reg. v. Sinclair [1968] 1 WLR 1246. In that case the trial judge had directed the jury, at p. 1249: 'It is fraud if it is proved that there was the taking of a risk which there was no right to take which would cause detriment or prejudice to another ... you have to be sure that it was deliberate dishonesty ...'. The Court of Appeal (Criminal Division) approved that direction. In Reg. v. Allsop (1976) 64 Cr.App.R. 29, the Court of Appeal (Criminal Division) held that a person is guilty of fraud if he intends by deceit to induce a course of conduct in another which puts that other's economic interests in jeopardy,*

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even though he does not intend that actual loss should ultimately be suffered by that other'".

255. However, notwithstanding this generous application of the fraudulent trading legislation, the business must have been '*carried on*' fraudulently: it is not enough that there was some incidental dishonesty on the part of the company while conducting its business. In *Re Murray-Watson Ltd (unreported), 6 April 1977*, Oliver J illustrated this point by an example of a director of a second-hand car dealership lying to a customer about the age of a car, which he considered insufficient to establish that the business was being carried on fraudulently. But this does not mean that a company cannot be trading fraudulently simply because it is conducting a legitimate business. As Lewison LJ put it in *Tradition Financial Services Ltd v Bilta (UK) Ltd [2023] EWCA Civ 112*: "*What must be established is that the company's business (or a discrete part of that business), taken as a whole, had been carried on fraudulently*". He gave this example (at para. 93): "*Suppose that a manufacturer regularly supplies counterfeit designer clothes to a retailing company, knowing that the retailer will pass them off as genuine. It is, in my judgment, no misuse of language to describe the manufacturer as 'party to the carrying on' of a fraudulent business, even though he exercises no managerial or controlling role within the retailing company; and the manufacturer may have other business activities that are not fraudulent*". This was endorsed by the UK Supreme Court: see *[2025] UKSC* 18 at para. 36: see para. 258 below.

256. This leads to the question what business was being carried on by the relevant companies: by NMCH, by Holding and by the ADGM Companies (who assigned their Insolvency Claims to NMCH). Before and during the trial, the parties did not distinguish between the business carried on by different companies, but they referred to the fraudulent conduct of the business of the "*NMC Group*" or the "*NMC Group companies*". The JA Claimants pleaded the fraudulent trading claims against Dr Shetty and Mr Manghat in these terms: "*... in the period from April 2012 to February 2020, the business of the NMC Group, and specifically that of* [NMCH, Holding] *and the ADGM Companies, was carried on with the intent to defraud creditors of the NMC Group, and specifically of* [NMCH, Holding] *and the ADGM Companies, and/or for the fraudulent purposes set out above ...*". The claim against Baroda was in similar terms, except that it referred to the "*Baroda Customers*", (sc. to those ADGM Companies that had an account with Baroda) rather than to all the ADGM Companies. None of the Defendants suggested that the business of the different companies should be distinguished for the purpose of assessing the fraudulent trading claims, and all (including Baroda in its written closing submissions) defended the fraudulent trading claims on the basis that they were not knowingly party to any fraudulent conduct on the part of any company.

257. When they were presenting their closing oral submissions, I asked Counsel for the JA Claimants whether the proper approach to the fraudulent trading claims was to consider the business that each company was carrying on, or whether it was proper to consider the position of the activity of the NMC Group, regarding each company (as I put it) as "*a*

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cog in the Group". Specifically, I asked about whether it could be said that an intermediate holding company (such as Holding) could be said to be "*carrying on*" a business, and if so what business. The JA Claimants responded that what matters is the business carried on by the individual company, and I agree that that is the proper approach. It is supported by the decision of Hoffmann J in *Re Augustus Barnett & Son Ltd (1986) 2 BCC 98904*.

258. In that case, the company, which was a subsidiary of Rumasa SA ("**Rumasa**"), was able to continue to trade as a going concern only because Rumasa had given letters of comfort which were noted in the company's accounts and had made statements of continued support. After the company went into liquidation, the liquidators commenced proceedings against Rumasa under section 332 of the *Companies Act 1948 (UK)* (the materially similar predecessor of section 213 of the *Insolvency Act 1986 (UK)*) on the basis that Rumasa had induced the board of the company to continue to trade. Rumasa successfully applied for the claim to be struck out on the ground that it disclosed no reasonable cause of action. Hoffmann J held that the claim failed because (i) there was no allegation of fraud against those who actually carried on the company's business; and (ii) in any event there was no basis for inferring fraud on Rumasa's part. In relation to the first ground, he stated (at pp.173-174): "*The only point with which I am concerned is whether section 332 can form the basis for imposing liability on a parent company otherwise than as accessory to fraudulent trading by the persons who actually carried on the business of the subsidiary. In my judgment it cannot. The language of the section is clear and unambiguous*". In *Bilta (UK) Ltd (in liquidation) v Tradition Financial Services Ltd [2025] UKSC 18* (at para. 45), the Supreme Court endorsed this, subject to a linguistic observation that "*we would not speak of accessory liability but rather of liability arising from participation in the fraudulent acts of those carrying on the business of the company*".

259. This is consistent with the case of *Tendcare Medical Group Holdings Pte & Ors Ltd v Gong Ruizhong & Ors [2021] SGHC 80,* to which the JA Claimants drew my attention. In that case, a successful fraudulent trading claim was brought against a holding company in the Courts of Singapore under legislation in materially similar (but not identical) terms to the English and ADGM provisions. However, there the holding company received funds from investors and the claim concerned misappropriation of the funds. The holding company had taken an active role in raising funds, and so "*carried on*" a business. As Kannan Ramesh J put it (at para. 52), the *"relevant fraudulent business was raising … funds*".

260. In this case, NMCH was not merely an intermediate holding company, holding shares in the ADGM Companies and other operating companies in the NMC Group. Throughout the Relevant Period, it had an active role managing the finances of the whole of the NMC Group, including those of the operating companies, and it is not really in dispute that it managed them fraudulently. As far as NMCH is concerned, that is the "*relevant fraudulent business*".

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261. The JAs' case about Holding is less clear. The only pleaded contention against Dr Shetty and Mr Manghat is that payments were made from Holding's account with Baroda to Dr Shetty in July 2019 to February 2020 and to Mr Manghat in October 2019. There is no pleaded basis for a fraudulent trading claim by Holding before July 2019. As against Mr Manghat, the JA Claimants submitted in their submissions in reply that "*Holding's relevant business was its holding and group-finance support function*", but it is quite unclear to me what its "*group-finance support*" function is said to have been.

262. None of this, it appears, is of practical importance: the JA Claimants acknowledged that Holding's Insolvency Claims add nothing to those of NMCH. Further, the JA Claimants' arguments about this did not emerge until the JA Claimants' closing reply submissions. In these circumstances, I do not propose to determine these claims of Holding in this Judgment. I shall allow the parties to make further submissions about it, if so advised, when I have issued this Judgment.

263. What of the ADGM Companies, whose claims were assigned to NMCH? Although the case about each of the 34 ADGM Companies was not pleaded or argued separately, it is clear from the evidence that, while they were carrying on their various businesses as operating subsidiaries of the NMC Group, these companies used NMCH to manage and conduct their financial affairs. I also conclude, and neither Dr Shetty nor Mr Manghat disputed, that: (i) NMCH managed and conducted their financial affairs as part of, and in the course of, the fraud that affected the management of the whole of the NMC Group; and (ii) the operations of all 34 ADGM Companies were financed by the fraud. I conclude that their business, as well as that of NMCH, was carried on fraudulently.

Being "party" to the carrying on of a business

264. In its decision in the *Bilta (UK) Ltd* case, the UK Supreme Court decided that, on the proper interpretation of section 213 of the *Insolvency Act 1986 (UK)*, it is not only those who control or manage a business who may be required to make contributions to a company's assets because they were knowingly parties to the company's fraudulent trading. The Supreme Court accepted, however, that there are some limitations on the circumstances in which liability might be incurred, as Lord Hodge DPSC and Lord Briggs explained at paras. 25 and 26 of their judgment: "*We note certain features of the language which limit the circumstances in which liability may be incurred under section 213. First, the person to incur liability must be a party to the carrying on by the company of a fraudulent business and not merely involved in a one-off fraudulent transaction, unless the fraud is sufficient evidence on its own of the carrying on of a fraudulent business: In re Murray-Watson Ltd (unreported) 6 April 1977, Oliver J; Morphitis v Bernasconi [2003] Ch 552, para. 46, Chadwick LJ. Secondly, being party to the carrying on by the company of a fraudulent business does not extend to a mere failure to advise: see In re Maidstone Buildings Provisions Ltd [1971] 1 WLR 1085, in which Pennycuick V-C held that the failure of a company secretary to give advice to the company's directors did not bring him within the ambit of section 332 of the Companies Act 1948, a predecessor of section 213 the IA*

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1986: p 1092. Thirdly, the person liable must have had an active involvement in the carrying on of the fraudulent business by the company: In re Maidstone (above); R v Miles [1992] Crim LR 657. Subject to those limitations, there is nothing in the language of section 213(2) which restricts the scope of the provision to directors and other 'insiders' who were directing or managing the business of the company".

265. I also cite para. 36 of the judgment of Lords Hodge and Briggs:

> "*Here the provision creates civil liability where a person is knowingly involved in fraud when he or she knowingly becomes a party to the carrying on of business by a company with intent to defraud creditors or for any fraudulent purpose. Liability under section 213(2) depends upon dishonest participation and it exists to discourage such participation. The purpose of discouraging fraud is not a reason for taking a maximalist interpretation of the relevant words so as to extend the ambit of the section if there are indications which might limit that ambit. The requirement of knowing participation in the fraudulent carrying on of the company's business is such a limitation; but it does not militate against the inclusion of a counterparty to a fraudulent transaction or transactions by the company within the ambit of the section where the counterparty has the requisite knowledge of, including wilful blindness to, the fraudulent activity in the conduct of the company's business. We agree with Lewison LJ in para 93 of his judgment in this case in which he stated: 'The extent to which a counterparty must be involved in the carrying on of the fraudulent business may depend upon the facts. Suppose that a manufacturer regularly supplies counterfeit designer clothes to a retailing company, knowing that the retailer will pass them off as genuine. It is, in my judgment, no misuse of language to describe the manufacturer as 'party to the carrying on' of a fraudulent business, even though he exercises no managerial or controlling role within the retailing company; and the manufacturer may have other business activities that are not fraudulent. The manufacturer knows about the retailer's fraudulent business and is actively participating in it in the sense of furthering and facilitating it'. In In re Gerald Cooper Chemicals Ltd [1978] Ch 262, 268 Templeman J famously stated that 'a man who warms himself with the fire of fraud cannot complain if he is singed.' We agree*".

Knowledge

266. The requirement of knowledge raises three questions: (i) when does the participant have to know; (ii) knowledge of what; and (iii) what constitutes knowledge.

267. The answer to the first question is clear. The relevant knowledge "*has to be contemporaneous with the assistance that was given at the time by entering into the various transactions. Subsequent knowledge based on hindsight is not enough*": *Morris v Bank of India [2004] EWHC 528 (Ch)* at para. 13.

268. On the second question, I need only refer again to the *London Capital* judgment (cit. sup.): "*It is enough that the participant had relevant knowledge that their conduct was connected with a fraud. Where a participant assists in a fraud, such as by making arrangements which are known to conceal what is happening from a third party, the participant takes the risk that he or she is part of a fraud, the details of which they do not know. Lewison J explained this in the context of participation in VAT fraud in HMRC v Livewire Telecom Limited [2009] EWHC 15 (Ch) at [103]. The same principles have been applied to dishonest assistance in a breach of fiduciary duty, see Agip (Africa) Ltd v Jackson [1990] Ch. 265, at p. 295: (at para 1552): 'In my judgment, however, it is no answer for a man charged with having knowingly assisted in a fraudulent and dishonest scheme to say that he thought that it was 'only' a breach of exchange control or 'only' a case of tax evasion. It is not necessary that he should have been aware of the precise nature of the fraud or even of the identity of its victim. A man who consciously assists others by making arrangements which he knows are calculated to conceal what is happening from a third party, takes the risk that they are part of a fraud practised on that party*" (at para. 1552).

269. Although a person is not liable for a contribution as a party in fraudulent trading unless he participated "*knowingly*", he does not have to have actual knowledge of the fraud. It is sufficient that he has what the English cases often call "*blind-eye knowledge*" or (as I would prefer) "*shut-eye knowledge*": see *London Capital* judgment (cit. sup.) at para. 1551ff. Thus, it is sufficient that the participant deliberately shuts his eyes to what is obvious because he does not want to confirm a suspicion of fraud. In *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd [2001] UKHL 1,* Lord Scott said this (at para. 116): "*In summary, blind-eye knowledge requires, in my opinion, a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist. But a warning should be sounded. Suspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts. In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe. To allow blind-eye knowledge to be constituted by a decision not to enquire into an untargeted or speculative suspicion would be to allow negligence, albeit gross, to be the basis of a finding of privity*".

270. The question in the *Manifest Shipping* case was about the mental state required for a person to have "*privity*" to a matter within the meaning of section 39(5) of the *Marine Insurance Act 1906 (UK)*, but Lord Scott's observations have been applied elsewhere, including with regard to what constitutes fraudulent trading. For example, in *In Re Bank of Credit and Commerce International SA (In Liquidation) (No.14) [2003] EWHC 1868 (Ch),* Patten J cited Lord Scott's speech in support of this statement of the position in a fraudulent trading case: "*Knowledge includes deliberately shutting one's eyes to the*

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obvious, provided that the fraudulent nature of the transactions did in fact appear obvious to those who dealt with these matters at [State Bank of India] *at the relevant time. It is well established that it is no defence to say that one declined to ask questions, when the only reason for not doing so was an actual appreciation that the answers to those questions would be likely to disclose the existence of a fraud. But liability in such cases depends upon that stage of consciousness having been reached.* [State Bank of India's] *submission, which I accept, is that one needs to be careful to draw a distinction between a conscious appreciation of the true nature of the business being carried on and a failure, however negligent, to appreciate that fraud was being perpetrated. The case for* [State Bank of India] *is that at no time during the course of these transactions did it in fact suspect that anything untoward was going on*" (at para. 11).

Dishonesty

271. As was said in *Bilta (UK) Ltd (in liquidation) v Tradition Financial Services Ltd* (cit. sup.) at para. 36, liability for fraudulent trading "*depends upon dishonest participation*". In *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*, Lord Hughes explained how the English Courts decide whether a person has been dishonest: "*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest*" (at para. 74).

272. Before Lord Hughes' judgment, there had been a prevailing school of thought, following the decision of the UK Court of Appeal in *R v Ghosh [1982] QB 1053,* that an issue of dishonesty was to be decided by a two-stage test: (i) a question whether the conduct complained of was dishonest by the lay objective standards of ordinary reasonable and honest people; and (ii) if so, a question whether the defendant must have realised that ordinary honest people would so regard his behaviour. The UK Supreme Court rejected the second stage of the test, and it held that issues of dishonesty are to be decided by the first question alone.

273. As Lord Hughes explained (loc. cit. at para. 60), this does not mean that beliefs that contribute to a person's understanding that his conduct is justified (in the sense that it meets the standards of ordinary reasonable and honest people) are to be disregarded. The test of dishonesty is objective: it is clearly stated by Lord Hoffmann in *Barlow Clowes International Ltd (In Liquidation) v Eurotrust International Ltd [2005] UKPC 37*: "*Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's*

mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards" (at para. 10). Further, the objective test is one of universal application, and it does not depend upon the views about what is honest in a particular business or in a particular country or locality: thus, in *Ivey*, when explaining the objective test (at para. 62), Lord Hughes cited *Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378,* in which the Privy Council considered what constituted dishonesty in Brunei. However, the objective test is to be applied taking into account any relevant knowledge or beliefs of the person against whom dishonesty is alleged. The objective test takes that knowledge and those beliefs into account. This was explained by Lord Hughes in *Ivey* (at para. 60) by reference to this vivid and helpful example, which derives from the *Ghosh* case:

> "*It is plain that in R v Ghosh [1982] QB 1053 the court concluded that its compromise second leg test was necessary in order to preserve the principle that criminal responsibility for dishonesty must depend on the actual state of mind of the defendant. It asked the question whether 'dishonestly', where that word appears in the Theft Act, was intended to characterise a course of conduct or to describe a state of mind. The court gave the following example, at p 1063, which was clearly central to its reasoning:*
>
> *'Take for example a man who comes from a country where public transport is free. On his first day here he travels on a bus. He gets off without paying. He never had any intention of paying. His mind is clearly honest; but his conduct, judged objectively by what he has done, is dishonest. It seems to us that in using the word 'dishonestly' in the Theft Act 1968, Parliament cannot have intended to catch dishonest conduct in that sense, that is to say conduct to which no moral obloquy could possibly attach'.*
>
> *But the man in this example would inevitably escape conviction by the application of the (objective) first leg of the Ghosh test. That is because, in order to determine the honesty or otherwise of a person's conduct, one must ask what he knew or believed about the facts affecting the area of activity in which he was engaging. In order to decide whether this visitor was dishonest by the standards of ordinary people, it would be necessary to establish his own actual state of knowledge of how public transport works. Because he genuinely believes that public transport is free, there is nothing objectively dishonest about his not paying on the bus. The same would be true of a child who did not know the rules, or of a person who had innocently misread the bus pass sent to him and did not realise that it did not operate until after 10.00 in the morning. The answer to the court's question is that 'dishonestly', where it appears, is indeed intended to characterise what the defendant did, but in characterising it one must first ascertain his actual state of mind as to the facts in which he did it. It was not correct to postulate that the conventional objective test of dishonesty involves judging only the actions and not the state of knowledge or belief as to the facts*

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in which they were performed. What is objectively judged is the standard of behaviour, given any known actual state of mind of the actor as to the facts".

274. Therefore, before coming to apply the objective test to the conduct of a person said to be dishonest, it is necessary to consider what he knew or believed that was relevant to that conduct. What matters here is the person's actual state of mind: as far as the legal position is concerned, it is beside the point whether his knowledge and beliefs were reasonable or unreasonable.

275. I need hardly add that the reasonableness of a belief might be considered, together with other relevant evidence, when making findings of fact about the person's state of mind: the Court might conclude that a belief would have been so unreasonable that it does not accept the person truly held it, or contrarywise consider it quite understandable that a person came to have a belief, albeit a mistaken belief.

The wrongful trading claims: the law

276. Section 252 of the IR 2022 provides as follows:

> "*(1) Subject to subsection (3) below, if in the course of the winding-up of a Company or while it is in administration it appears that subsection (2) applies in relation to any person being a past or present Director of the Company, the Court, on the application of the relevant Office-holder, may declare that person is to be liable to make such contribution (if any) to the Company's assets as the Court thinks fit.*
>
> *(2) This subsection (2) applies if—*
>
> *(a) the Company has gone into an insolvent liquidation or has entered insolvent administration;*
>
> *(b) at some time before the commencement of the winding-up of the Company or before the Company entered administration, as the case may be, the person knew or ought to have concluded that there was no reasonable prospect of the Company avoiding going into insolvent liquidation or entering insolvent administration; and*
>
> *(c) the person was a Director of the Company at that time.*
>
> *(3) Subsection (1) shall not apply to any person if the Court is satisfied that after the Director first knew or ought to have concluded that there was no reasonable prospect of the Company avoiding going into insolvent liquidation, he took every step with a view to minimising the potential loss to the Company's creditors as (on the assumption that the person had knowledge of the matter mentioned in subsection (2)(b)) he ought to have taken.*

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(4) For the purposes of this Section, the facts which a Director of the Company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that Director in relation to the Company (including functions which he does not carry out but which have been entrusted to him); and

(b) the general knowledge, skill and experience that Director has".

277. The principles applicable to wrongful trading claims under the *Insolvency Act 1986 (UK)* were summarised by Leech J in *Wright v Chappell [2024] EWHC 1417 (Ch)*. They apply equally to claims for wrongful trading under IR 2022. At para. 463, Leech J identified three conditions in section 214(1) of the *Insolvency Act 1986 (UK)* about which the liquidator or administrator must satisfy the Court:

a. that the company has gone into insolvent liquidation or, as the case might be, insolvent administration;

b. that the defendants were directors when the third condition was met; and

c. that, at some time before the commencement of the insolvent liquidation or insolvent administration, the defendants knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation or insolvent administration, the so-called "*Knowledge Condition*".

278. If these conditions are satisfied, then the Court has a discretion to order such contribution to the assets of the company as it thinks fit, provided there is some causal link between the continuation of trading and the amount of the payment: *In Re Ralls Builders Ltd (In Liquidation) [2016] EWHC 243 (Ch)*.

279. As with fraudulent trading, the "*Knowledge Condition*" raises questions about what is to be known and what constitutes knowledge. It is not satisfied simply because the director knew or ought to have concluded that the company was or would become insolvent: see *In Re C S Holidays Ltd [1997] BCC 172, 178* and *In Re Hawkes Hill Publishing Co Ltd (In Liquidation) [2007] BCC 937* at para. 28. It requires that, at the relevant time, the director either knew or ought to have known that there was no reasonable prospect of the company avoiding going into insolvent liquidation or going into insolvent administration.

280. As to what constitutes knowledge, I shall cite this submission made by the JA Claimants in their written opening on the basis of paras. 465, 466 and 479 of the *Wright v Chappell* judgment, which Mr Wandowicz accepted and which Mr Hennessey did not dispute:

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> "*The 'Knowledge Condition' may be satisfied by proving that the defendants had actual knowledge (i.e. they 'subjectively concluded that the Companies had no real prospect of avoiding insolvent liquidation or insolvent administration') or that they 'should have concluded that this was the case after an objective evaluation of the facts which they knew or the information which was provided to them at each [relevant date]'. As to the latter, the Court must apply 'the standard of the reasonably diligent person having both the general knowledge, skill and experience expected of a person carrying out the same functions but also the general knowledge, skill and experience of [the specific defendants] themselves', which Mr Justice Leech described as the standard of the 'Notional Director'. If a director's general knowledge, skill and experience are higher than that of a reasonably diligent person, they will be held to that higher standard; but if a director's general knowledge, skill and experience is lower than that of a reasonably diligent person discharging the same functions, they will be held to the objective standard (i.e. it is no defence for a director to say that they did not have that general knowledge, skill and experience*)".

281. A further question about the "*Knowledge Condition*" arises because NMCH, Holding and the ADGM Companies were not incorporated in the ADGM until September 2020. In my Judgment on the preliminary issues, [2024] ADGMCFI 0007 at paras. 45 to 52, I rejected an argument advanced on behalf of Dr Shetty that the "*Knowledge Condition*" requires (actual or constructive) knowledge of an insolvency procedure in the ADGM Court, observing that it would be a most unusual case where a director knew or ought to have known that a non-ADGM company would become subject to an ADGM insolvency process. I held that, although the terms "*insolvent liquidation*" and "*insolvent administration*" in section 252 of IR 2022 refer to ADGM insolvency processes, the question is whether a director of an ADGM company in the position of the defendant ought to have concluded that there was no reasonable prosect of avoiding an ADGM insolvent liquidation or insolvent administration. The ADGM Court of Appeal upheld my decision, and held that, in the circumstances of this case, the question as to whether a director ought to have had the requisite knowledge (which it referred to as the "*second limb*" of the "*Knowledge Condition*"), as follows: "*In a case such as the present (where it is alleged that there was wrongful trading before the company concerned was continued within ADGM) the second limb is to be applied by reference to the factual inquiry which would underpin the making of an order by the ADGM Court for an insolvent liquidation or insolvent administration. That is, at the risk of undue abbreviation the inquiry would be whether the person ought to have concluded that there was no reasonable prospect of the Company being and remaining unable* [sic] *to pay its debts as they fall due (as that standard is understood and applied under ADGM law). In a particular case this may be a factually difficult inquiry but the standard which is to be applied is clear. Because the standard to be applied is clear it presents no legal issue that precludes the section's*

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application in respect of a continued company's wrongful trading before continuance": [2024] ADGMCA 0001 at para. 50. (I think that "*unable*" is an error for "*able*".)

282. This answers the plea in Dr Shetty's defence that "*when Dr Shetty was a director of any of the relevant companies, none of them was likely to enter into insolvent liquidation or insolvent administration within the meaning of the Insolvency Regulations, which concern specific insolvency processes within the ADGM*".

283. The ADGM Court of Appeal also rejected an argument of Dr Shetty that section 252 of IR 2022 does not apply in these circumstances because Leech J's second condition requires that the defendant be a director of a company within the meaning of IR 2022. It said this: "*As for the point about the application of sub-sec(2)(c)'s requirement that 'the person was a Director of the Company' at the time of the wrongful trading, there are four related observations to be made. First, s 252(1) applies in relation to '**any** person being a **past** or present Director of the Company' (emphasis added). Second, as noted earlier, 'Company' is defined as 'a company formed or registered under [the Companies Regulations 2020] **(whether or not it was incorporated under these Regulations**)' (emphasis added). Third, s 252(6) provides that in s 252, 'Director includes a shadow director'. Fourth, s 146 of the Companies Regulations provides that in those regulations 'director' includes 'any person occupying the position of a director, by whatever name called' and s 147 defines 'shadow director' as 'a person in accordance with whose directions or instructions the directors of the company are accustomed to act'. Together these observations require the conclusion that a person who was shown to have been a director or shadow director of the body corporate at the time of the alleged wrongful trading (before continuance within ADGM) is a person in respect of whom a wrongful trading order can be made under s 252. That person was a director of a Company that was not incorporated under ADGM law but by continuance became a Company formed or registered under ADGM law*" (loc. cit. at paras. 51 and 52).

284. I return to the question as to the standard by which the Court will decide whether a director "*ought to have concluded*". Here, as Leech J said, the Court applies "*the standard of the reasonably diligent person having both the general knowledge, skill and experience expected of a person carrying out the same functions but also the general knowledge, skill and experience of* [the specific defendants] *themselves*". If a director's general knowledge, skill and experience are higher than that of a reasonably diligent person, he will be held to that higher standard. On the other hand, if a director's general knowledge, skill and experience is lower than that of a reasonably diligent person discharging the same functions, he will be held to the objective standard: it is no defence for a director to say that they did not have that general knowledge, skill and experience. Further, account should be taken of the size and type of the company: the director of a small and unsophisticated company will not be required to have the skill of a director of a large and sophisticated entity, such as NMCH.

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285. A board of directors may properly delegate management functions and areas of responsibility to identified directors or to employees who are not on the board, but director's duties are personal and it remains the duty of each director to monitor and supervise the discharge of those functions: see *Brumder v Motornet Service and Repairs Ltd [2013] EWCA Civ 195* at para. 55 per Beatson LJ. As Popplewell J said in *Madoff Securities International Ltd (In Liquidation) v Raven [2013] EWHC 3147 (Comm*), a director *"owes duties to the company to inform himself of the company's affairs and join with his fellow directors in supervising them*" (at para. 191).

286. Finally, a defence to a claim in wrongful trading provided in section 252(3) of IR 2022, is not readily available. In the *Wright v Chappell* case (loc. cit. at para. 488), Leech J said: "*It is not enough for the directors to prove that they continued trading with the intention of reducing the net deficit of the company. They must also show that it was designed to minimise the risk of loss to individual creditors*". However, I need say no more about section 252(3) of IR 2022: I do not understand either Dr Shetty or Mr Manghat to rely upon this defence.

The JA Claimants' Civil Claims: UAE law

The claims

287. I next introduce the law about the JA Claimants' Civil Claims, which are governed by UAE law. The JA Claimants allege that Dr Shetty and Mr Manghat both acted fraudulently with regard to the business of the NMC Group, or in the alternative that each of them failed to act with the care reasonably to be expected of a person in their position at the time. On the basis of these allegations, they make claims under:

    a. Article 282 of the Civil Code, which provides as follows: "*Any harm done to another shall render the doer thereof, even though not a person of discretion, liable to make good the harm*".

    b. Article 285 of the Civil Code, which provides as follows: "*If a person deceives another he shall be liable to make good the harm resulting from that deception*".

288. The JA Claimants also make claims against Dr Shetty and Mr Manghat, on the basis of essentially the same allegations, under *UAE Federal Law No. 8 of 1984 on Commercial Companies* ("**CCL 1984**") and CCL 2015 for breach of their duties or liabilities in their capacities as their directors and managers.

289. Further, the JA Claimants rely on article 304 of the Civil Code, which is concerned with extortion, and articles 318 and 319, which are concerned with unjust enrichment. These articles provide as follows:

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Article 304:

"*(1) The hand that has taken remains bound until it gives back.*

(2) Whoever misappropriates property belonging to another must restore it to that other in the condition it was in when, and at the same place where, the misappropriation took place.

(3) If (the tortfeasor) has consumed or damaged the property or if it has diminished or been damaged either with or without a wrongful act on his part, he must make good in kind or in value as at the day and place of misappropriation.

(4) He must indemnify for any benefits or increase of the property".

Article 318:

"*No person may take the property of another without lawful cause, and if he takes it he must return it*".

Article 319:

"*(1) Any person who acquires the property of other person without any disposition vesting ownership must return it if that property still exists, or its like or the value thereof if it no longer exists, unless the law otherwise provides.*

(2) If the property of any person leaves his possession without his so intending and by unavoidable event becomes joined with the property of another person in such a way that it cannot be separated therefrom without causing harm to one of the owners, the property of the lesser value shall be added as part of the property of the greater value after payment of the value thereof, and if they are of equal value then the property shall be sold and the proceeds distributed unless there is an agreement or a provision of law to the contrary".

Article 282

290. The *Official Commentary on the UAE Civil Code of the Ministry of Justice* (the "**Commentary**") explains the principle that underlies article 282: "*In this Article, the legislator prescribes the general principle that each act causing harm to another requires to be compensated. This principle is based on what is prescribed under the Islamic Sharia that: 'no harm shall be done, nor harm done in return' (Article (19) of Al-Majalla); 'harm shall be removed' (Article (20) of Al-Majalla); or 'if the principal becomes void, the substitute shall subsist' (Article (53) of Al-Majalla)*". (The principles in articles 19 and 20

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of *Al-Majalla* are embodied in Article 42 of the Civil Code.) Thus, the root of the principle is not fault, but an obligation on persons to undo harm that they cause.

291. Accordingly, there are three elements to liability under article 282: (i) a harmful act; (ii) harm suffered; and (iii) a causal link between the act and the harm suffered.

292. The harmful act may, as the Commentary explains, be "*either positive or negative*", or, in language more familiar to the common law, an act or an omission. However, the concept of a harmful act has been restricted in UAE law: the Courts have recognised that some limits must be placed on what is so regarded. For example, the Dubai Court of Cassation said this in a judgment of 27 March 2006, DCC 28/2006: "*if a person competes with others, whether in work or in trade, he is not liable to pay indemnity for the harm that this may cause to others, as long as the competition is within lawful limits. If the person exceeds such lawful limits, then the competition is a harmful act that implies the liability of the person who carried it out to indemnify others for the damage that may occur to them. Exceeding the limits of lawful competition takes place when committing acts that contravene the Law or Norms, or using ways or means contrary to the principles of honour and honesty in transactions, if they are meant to cause harm to others*". Accordingly, when considering a claim under article 282, the Court will evaluate the act, taking into consideration a wide range of factors. The Commentary explains: "*It is self-evident that if the provisions of the legislation were to enumerate the acts out of which harm in this sense might be caused, that would be no more than to give examples, and it could not result in the creation of a comprehensive and exhaustive statement. The determination of what amounts to harm is left to the discretion of the judge, who will be guided therein by the general guiding elements to be deduced from the nature of the prohibition in the law against causing harm. There is an obligation imposed upon everybody not to cause harm to others. A breach of that prohibition is one which involves harm*".

293. As is reflected in the Dubai judgment, the circumstances in which an act will be considered to be one which is "*harmful*" and attract liability under article 282 are sometimes expressed in terms of whether the actor has gone "*beyond the limit*". The Commentary puts it in this way: "*The meaning of harm here is an attempt 'to go beyond the limit' at which one should stop, or 'to fail to reach that limit' to which one should go in acting or in refraining to act, in such a way as to cause harm*". The Abu Dhabi Court of Cassation said in a judgment of 24 January 2024 (1196/2023): "*Articles (282) and (283) of the Civil Code indicate that the basis of civil liability is the unlawful act or causing harm. This means either exceeding the limit at which one must stop or failing to reach the required standard, whether by an act or omission, and the occurrence of harm as a result*".

294. I therefore accept, at least as far as is material for the purpose of these proceedings, the JA Claimants' contention pleaded as follows:

> "*(b) A claim may be brought under Article 282 by reference to, inter alia:*

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(i) Any violation of a duty imposed by law that causes harm.

(ii) Any breach of the societal standards or norms reasonably to be expected of a given person in a given context so as to avoid harm to others (the 'UAE Tortious Standards'), and which define what amounts to negligence, taqseer or khataa jaseem (gross negligence) or fraud by a given person in a given context. In this regard:

a. Under UAE law, a claim for taqseer or khataa jaseem (the terms being interchangeable for this purpose) will arise where there has been a serious default, such as where a professional person (such as a banker) or a person in a position of particular responsibility (such as a company director or a person who is a signatory on a company's bank accounts) fails to take reasonable care in the performance of his duties.

b. Whether a default is taqseer / khataa jaseem will depend on whether the default is to be considered serious in all the circumstances (for example, by reference to the identity of the malfeasor, his relationship with the claimant, the default in question and the length of time it spanned; the consequences of the default are also relevant)".

The pleading explains that: "*The translation of taqseer or khataa jaseem as 'gross negligence' is adopted herein without thereby denoting that concept as understood under ADGM law*".

295. In so far as Dr Shetty and Mr Manghat took issue with this in their defences, the points were not developed by Mr Wandowicz or Mr Hennessey, and they do not appear to me to materially bear upon the questions that I have to decide.

296. I can deal more briefly with the second element of liability under article 282 (harm suffered), but it is convenient to mention here (although it is more relevant to ADCB's claim against Mr Manghat than to the JA Claimants' claims) that, as is expressly stated in article 292, the concept of harm includes loss of profit that is the natural result of the harmful act. (The word translated as "*profit*" is "*kasb*", which has a wider connotation than profit might have, and might be better translated as "*gain*" or "*earnings*".) The Commentary illustrates this by reference to a case of deceit: "*Article 189 of the Iraqi civil code provides that if a person deceives another then he shall make good the damage, and if a person says to traders in the market: 'such and such a young person is my son, sell him goods as I have permitted him to trade' and it appears thereafter that the youth is somebody else's son, the market traders may make a claim against him for the cost of the goods sold by them to the youth, and compensation for other damage*". As I understand it, Mr Manghat did not challenge this.

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297. I come to the requirement that there be a causal link (or, as it is put in the Commentary, a "*causal relationship*") between the harmful act and the harm suffered. I make two observations. First, the JA Claimants submitted that, so far as is material for present purposes, it is not necessary for a claimant to show what would have happened if the defendant had not done the harmful act. The English law concept of 'but for' causation is not part of the UAE law with which this case is concerned. I accept the JA Claimants' submission, which was not, as I understand it, disputed.

Article 283

298. Secondly, article 283 of the Civil Code must be mentioned. In Whelan's translation, it provides:

> "(*1) Harm may be direct or by causation.*
>
> *(2) If harm is direct, it must unconditionally be made good, and if it is consequential there must be a wrongdoing or a deliberate act or the act must have led to harm*".

299. The distinction between direct harm and harm by causation is fact-sensitive and a matter for assessment by the trial judge. The Dubai Court of Cassation said in a judgment of 7 March 2004, 302/2003: "*It is also settled that concluding the harmful act and whether it occurred by way of causation or directly, as well as the subordination relationship between the party that caused the harm and its superior falls under the sole power of the trial court without any supervision, so long as its decision in this respect is reasonable and substantiated in the case papers*". Similarly, the Abu Dhabi Court of Cassation said in a judgment of 19 July 2022, 495/2022: "*It is also decided that establishing or denying the harmed party's contribution to the occurrence of the harm through his act is a matter of fact which the trial judge shall assess without being subject to the supervision of the Court of Cassation in this respect. However, his conclusion in that respect must be reasonable and substantiated in the case papers, under which the same court shall have the power to determine the establishment of this fault, its extent, whether it occurred directly or by causation, and its effect on the occurrence of the harm*".

300. However this might be, it does not seem to me to matter in this case whether the harm that the JA Claimants and ADCB say that they have suffered is direct or by causation. In either case, harm must be made good if it results from "*wrongdoing*" or a deliberate act or "*led to the harm*". "*Wrongdoing*" occurs when a person has no lawful right to do the harmful act: the Abu Dhabi Court of Cassation said in a judgment of 24 January 2024, 1196/2023: "*However, civil liability by way of causation arises when a person commits an act whose consequences result in the harm rather than the act itself. In this case, civil liability shall be conditional upon the existence of a deliberate act or wrongdoing. A deliberate act is when the act intends to cause harm to another, and wrongdoing refers to unlawfully committing an act or committing an act that is impermissible, meaning that*

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the doer did not have the right to commit the act that caused the harm, whether that act is positive or negative". A harmful act is regarded as deliberate when the harm was intended, and it is not sufficient that the act was intended: the Commentary states: "*The meaning of deliberate here is the deliberate causing of harm, and not the deliberate doing of the act*". The third limb of article 283(2) covers cases where the act was by its nature harmful: the concept is illustrated by the decision of the Dubai Court of Cassation of 12 October 2003, 254/2003, in which a contractor, who had used a flame to remove paint caused a fire, and damage was caused by the water used by the firefighters. The Court said: "*Given that the civil defence were forced and compelled by the nature of their duties to intervene in order to eliminate the sources of the smoke, the indirect actor (the Company - the Appellant in Cassation) shall be therefore liable to make good the harm for forcing the direct act that resulted in the occurrence of the harm*".

301. If the allegations of the JA Claimants and ADCB are proved, if and in so far as the harm resulting to them was not direct but by causation, liability to make it good is within article 283(2).

Article 285

302. The elements of a claim in deceit under article 285 are: (i) a deception; (ii) harm suffered; and (iii) causation.

303. The principles governing the elements of harm suffered and causation are similar here to those applicable to article 282.

304. With regards to the element of deception, the Arabic text uses the terms "*taghrir*", which is translated as "*deceives*", and "*ghurur*", which is translated as "*deception*". The concepts are similar: see, for example, judgment of the Dubai Court of Cassation of 21 March 2017, 20/2017, in which the terms are used interchangeably. They connote intentional wrongdoing: the Commentary states: "*The word 'ghurur' as to the subject matter is used by the jurists in the meaning of making someone accept what is no good by lying and misleading means, inducing him to proceed, in a circumstance where if he had known the truth he would not have proceeded. Thus, there is no ghurur save where it is exercised in respect of the subject matter, and is used as a means of inducement by the deceiver by false and lying means designed to make facts appear otherwise than as they are, practised deliberately by the deceiver, and in bad faith*".

305. Silence, or a failure to speak when there is a duty to do so, can constitute deceit. Article 185 of the Civil Code, which is about deceit in the context of contractual relief by way of recission uses the same word "*taghrir*", and here article 186 expressly states that, "*Deliberate silence concerning a fact or circumstance shall be treated as a misrepresentation if it is proved that the person misled thereby would not have made the contract had he been aware of that fact or circumstance*". Although there is no corresponding provision in the Civil Code relating to article 285, the case law shows the

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position is similar, provided that the Court concludes that, in the circumstances of the case, the defendant had a duty to speak. For example, in its judgment of 10 November 2015, 636/2015, the Dubai Court of Cassation held that the defendants were liable to pay compensation "*due to the misrepresentations they committed by deliberately remaining silent"* and by "*hiding*" them. In another case (183/2011), the UAE Federal Supreme Court on 1 June 2011 held that, where an investor had given cheques to reserve an apartment and parking space in a development project that had been cancelled, the manager of the development company, who knew the project had been cancelled but said nothing, was held liable on the basis that: "*It is sufficient, in some circumstances, for one party to withhold information that he was obliged to disclose to the other, for fraud to be established - provided that the concealment was intended to mislead*".

306. Mr Manghat pleads in his defence to ADCB's claim that, "*Avoiding or refraining from action will only be actionable where the defendant was legally obliged to act*". In his submissions on UAE law, however, Mr Manghat did not maintain this contention: he said that he did not take issue with the submissions of the JA Claimants and ADCB that silence can trigger liability under article 285.

307. I conclude that liability under article 285 can arise from silence without the defendant being under a legal duty to speak. This is illustrated by these two cases, to which the JA Claimants and ADCB referred:

a. In a judgment of 22 April 2019 in case 48/2019, the Abu Dhabi Court of Cassation held that there was deceit when an employee agreed to reduced entitlements from his employer where the business was being restructured. Shortly afterwards, the employer terminated the employment, citing the restructuring to justify it, and declined to pay more than the reduced entitlements.

b. In a judgment of 24 July 2014 in case 95/2014, the Dubai Court of Cassation held that there was deceit when a professional footballer was retained for a marketing exercise without the value of advertising revenue being disclosed.

308. Baroda submitted that silence in itself cannot give rise to liability under article 285, and it observed that the Commentary does not refer to deceit by silence or concealment. It argued that silence can only give rise to liability when it is accompanied by conduct: it gave as an example the case where the seller of a sheep delayed her milking and concealed this in order to trick a buyer into believing she was high-yielding.

309. As I see it, there is no real issue between the parties here. I find it difficult to imagine a case in which it would be held that a person is under a duty to speak in the absence of any conduct that puts him under such a (legal, commercial or social) obligation.

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Article 304

310. As I understand the JA Claimants' case, they do not rely on article 304 to make distinct claims in extortion. Their pleaded contention is that the conduct of Dr Shetty and Mr Manghat constituted extortion in breach of article 304 and this supports the claims against them under article 282: it shows that their conduct was "*beyond the limit*".

311. Article 304 applies where:

a. a person takes possession of the property of another;

b. possession is taken without the owner's permission and without legal justification; and

c. the taking of possession results in harm to the owner.

312. UAE law takes a wide view about what constitutes property in this context. The Commentary says that: "*Property* [mal] *is anything or right having a material value in dealing*", and Whelan explains his translation of the Commentary as follows: "*Mal, translated as property, is a wider word and includes 'thing', money, and also non-tangible rights*".

313. It is not necessary in order for article 304 to apply that the person taking possession was at fault. Professor Mohamed Hussein in *Al Motawwal: In Explaining the Civil Code of the United Arab Emirates (2015)* gives these examples of the application of article 304: "*if a person pays money thinking that he is indebted, then it thereafter becomes evident to him that he was wrong, the taker must return it*"; and "*if a person withholds lost property to himself, he is considered a misappropriator who is under an obligation to indemnify until he gives it back to its owner*". He also said that the rule applies "*whether or not the misappropriator knew that it was the property of a third party*".

Articles 318 and 319

314. As the Commentary explains, the three elements of a claim for unjust enrichment under articles 318 and 319 of the Civil Code are these: (i) the defendant has been enriched, or he has had a gain; (ii) the enrichment corresponds to the impoverishment of the claimant due to a property being transferred or value being given; and (ii) there was no lawful cause justifying the enrichment and corresponding impoverishment.

315. The first element is met when, in the words of the Commentary, "*the value of what was enriched enters into the patrimony of the debtor*". The obligation arises from the receipt: it does not depend upon whether the recipient has done anything to effect the transfer, nor upon whether he is at fault, nor necessarily upon his knowledge of the receipt, although it is less clear whether knowledge might be relevant to whether the defendant has truly been enriched or has had a gain or value come into his "*patrimony*". Mr

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Wandowicz argued that Dr Shetty would not be liable under article 318 if, without his knowledge, moneys were transferred into his bank account with Baroda or another bank and then transferred on out of the account before Dr Shetty discovered that his account was being so used. His argument was that, in those circumstances, it cannot be said that Dr Shetty had been enriched: see para. 868 below.

316. The Commentary also explains that the enrichment "*may be direct or indirect, material or moral*", provided that it is quantifiable in money. The Dubai Court of Cassation said in case 409/2022 (22 September 2022), that there is enrichment when "*the value of what is gained … enters into the debtor's financial assets*". Although the enrichment must correspond to the impoverishment of the claimant, there is no requirement that the gain to the recipient and the impoverishment of the loser should be of the same value, as the Commentary makes clear in this passage: "*the law requires the enriched party to compensate the creditor for the loss sustained by the latter, but only to the extent of his enrichment. That is, the enriched party shall be required to return the lesser of the two values: the value that the enriched party has gained, and the value by which the creditor has been impoverished*".

317. It makes no difference to the liability of the person enriched that the money or other enrichment is no longer enjoyed by the recipient. The obligation to restore the value of the enrichment arises upon receipt and the recipient remains liable for it notwithstanding he does not retain what he received.

318. Before leaving articles 318 and 319, there is a pleading matter that I should mention concerning the case against Mr Manghat. In the section of the Particulars of Claim where the JA Claimants set out their Civil Claims against Mr Manghat, no mention is made of a claim in unjust enrichment or of article 318 and 319. However, in the passage directed to "*Remedies*", it is pleaded that the corporate claimants are entitled to restitution as against Mr Manghat: it is pleaded that Mr Manghat was unjustly enriched "*in respect of funds amounting to at least AED 39,050,000, and other benefits*", but I consider what payments he received at paras. 632ff below.

319. Although the omission of the restitution claim from the earlier passages of the Particulars of Claim is curious, Mr Manghat did not argue that the claim is not properly pleaded against him. In the event, it makes no difference to the outcome whether or not the JA Claimants have properly pleaded for restitution on the grounds of unjust enrichment, but to my mind they have done so.

CCL 1984 and CCL 2015

320. CCL 2015 came into force on 1 July 2015, and it applied to companies incorporated in the UAE, including NMCH, Holding and the ADGM Companies. The JA Claimants plead claims by reference to these articles: article 22, article 84, article 150, article 153 and article 162. Before 1 July 2015, the CCL 1984 was in force, and the JA Claimants rely on

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its corresponding provisions where applicable.

321. Article 22 of CCL 2015 provides as follows: "*A person authorised to manage the company shall preserve its rights and extend such care as a diligent person. Such person shall do all such acts in agreement with the objective of the company and the powers granted to such person by virtue of an authorisation issued by the company in this respect*". Article 1 of the CCL 2015 defines a "*diligent person*" as: "*The person having sufficient experience and commitment required in the performance of his work*". There was no corresponding duty under the CCL 1984.

322. Article 84 of CCL 2015 provides that a director or manager should be liable to the company, partners and third parties for any fraudulent acts, for any losses or expenses incurred due to improper use of power, contravention of the provisions of any applicable law, the memorandum of association or contract of appointment, or for gross error. A broadly corresponding provision was at article 111 of the CCL 1984.

323. Article 150 of CCL 2015 provides that a director or manager should be required to notify the board of directors of any common interests or conflicts of interest. A corresponding provision was at article 109 of the CCL 1984.

324. Article 153 of CCL 2015 prohibits a company from providing loans to any member of its board or execute suretyships or provide guarantees in connection with any loans granted to them, and that any such contract should be invalid. A corresponding provision was at article 197 of the CCL 1984.

325. Article 162 of CCL 2015 provides that a director or manager should be liable to the company, partners or any third party for any fraudulent acts and for any losses or expenses incurred due to improper use of power in contravention of any applicable law, the memorandum of association or contract of appointment, and any errors of management. Corresponding provisions were at articles 111 and 112 of the CCL 1984.

326. As far as is material, Dr Shetty and Mr Manghat did not dispute these provisions of UAE law. In his defence, Dr Shetty admitted that the standard of care required by article 22 was that of a diligent person, but he denied that the required standard was that of a person "*having sufficient experience and commitment required in the performance of his work*", but I infer that the definition in article 1 was overlooked: Mr Wandowicz did not pursue the point. Other matters about the provisions of the CCL 2015 and the CCL 1984 that are pleaded in Dr Shetty's defence and Mr Manghat's defence do not affect what I have to decide.

Mr Manghat's defences

327. Before leaving questions of UAE law relating to the JA Action, I mention that Mr Manghat pleads in his defence these arguments:

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a. "*Article 287* [of the Civil Code] *provides that a perpetrator will be relieved of liability if the loss was as a result of, inter alia, an act of a third party, or the act of the person who sustained the loss or damage*"; and that any losses of NMCH or Holding were the result of the acts of Dr Shetty or others.

b. "*Article 290* [of the Civil Code] *provides that the Judge may reduce the level of indemnity (including to zero), if the person suffering harm participated by his own act in bringing about or aggravating the harm*"; and that the JA Claimants cannot claim for loss resulting from its own employees' acts.

328. As the Commentary makes clear, article 287 of the Civil Code is about causation, and whether the causal link between the harmful act and the harm is broken. It operates where a defendant "*played no part*" in the intervening event.

329. In his Post-Hearing Submissions, Mr Manghat agreed that article 287 is about causation, and he said that he relies on it "*as part of his causation case*". His argument is that the conduct of a third party or another intervening event can mean that the losses claimed cannot "*truly … be treated as the natural and legal consequence of his own conduct*". Provided that this submission is not intended to dispute that, under article 283(2), consequential loss as well as direct loss may be recoverable, this proposition is not controversial. However, Mr Manghat does not specifically identify what intervening conduct or events he relies on.

330. Mr Manghat did not develop his argument about article 290 of the Civil Code. If and in so far as Dr Shetty or others under his direction acted in fraud of NMCH or its associated companies, it was not explained how, under UAE law, their acts would be treated as acts of NMCH. I do not consider that they would be, and in any case, I would not consider this a proper case to reduce Mr Manghat's liability under article 290.

ADCB's claims

UAE law

331. ADCB's claims are made under articles 282 and 285 of the Civil Code and article 84 of the CCL 2015. I need add nothing to what I have already said about articles 282 and 285 of the Civil Code. I should say something more about ADCB's claim based on the plea that "*Mr Manghat was a Manager within the meaning of Article 84 of the 2015 CCL in respect of the Manghat Relevant LLCs*".

332. The definition of the "*Manghat Relevant LLCs*" covered ten companies, but at trial ADCB's case was presented only on the basis that Mr Manghat was a manager of NMCH and Al Zahra. It says (i) that Mr Manghat was formally appointed as a manager of NMCH on 20 June 2018; (ii) that he was de facto a manager of NMCH from 2011; and (iii) that he was formally appointed as a manager of Al Zahra on 1 March 2017, Al Zhara having been acquired by the NMC Group in February 2017. In fact, as Mr Pillai acknowledged, it is

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sufficient for ADCB's claim that Mr Manghat was a manager of NMCH at the material times.

333. Mr Manghat admits that he was appointed as "*Manager/Board Member*" of NMCH on 20 June 2018, and as a "*Manager*" of Al Zahra on 1 March 2017. I find it more difficult to understand Mr Manghat's pleaded position about whether he was a de facto manager of NMCH before 20 June 2018, and Mr Hennessey did not develop or explain this part of Mr Manghat's case during the trial or in the Post-Hearing Submissions. Mr Manghat's defence denies that "*ADCB is entitled to claim compensation from Mr Manghat under Article 84 as he was not a 'manager' in the relevant sense*". He also pleads, somewhat obliquely, that: "*The use of the term director/manager is unknown to UAE company law and wrongly equivocates the differing roles, corporate governance structures, and in many cases differing systems of law*", and that the concept of a "*de facto director/manager*" is "*unknown to UAE law*". Further, he avers that: "*Article 84 governs the conduct of formally appointed managers (as defined in in* [sic] *the CCL) of LLCs who are recorded on the company trade licence*".

334. Whatever the intended effect of this pleading, I have reached these conclusions:

a. Mr Manghat acted as a de facto manager of NMCH at all times relevant to ADCB's claim.

b. A person may be liable as a "Manager" under article 84 of CCL 2015 and the corresponding provisions of its predecessor, CCL 1984, if he in fact acted as a company's manager.

c. It is not necessary for a person to be liable under article 84 of CCL 2015 and under the corresponding provisions of CCL 1984 that he be recorded as a manager on the trade licence.

335. As for the first conclusion, I accept ADCB's submission that Mr Manghat clearly fulfilled the role of a de facto manager of NMCH from 2011. As I have said, from the time of his appointment as CFO of NMCH in February 2011, Mr Krishnamoorthy reported to him directly and Mr Suresh Kumar reported to Mr Kristnamoorthy; and in his witness statement, Mr Manghat described his role as including "*operational matters within the finance department such as ownership of budgets and risk assessments, tracking cash flow and keeping track of NMC's financial health*".

336. I heard submissions from Mr Al Hashimi that a de facto manager may be liable under article 84 of CCL 2015, notwithstanding he has not formally been appointed as a manager. He cited three cases in support of this proposition, but I need refer only to a decision of the Ras Al-Khaimah Court of Cassation of 27 August 2024, 54/2024. In that case, the first appellant was employed by the second appellant company, and he deceived the second respondent into paying a deposit. At first instance, the claim against

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the employee failed on the basis that he was only the manager and his employer company alone was liable. That decision was reversed in the Ras Al-Khaimah Court of Appeal, whose decision was upheld by the Court of Cassation. The Court of Cassation said this (referring to the employee as "*the partner*"): "[I]*f the partner undertakes management activities in the company and serves as the responsible manager, then he shall be liable towards the company, its partners and third parties for compensating the damages resulting from his fault or negligence in management, and for all acts of fraud, abuse of power, and any violation of the law or the company's articles of association – particularly in dealings with the company's creditors or contractors in a manner that leads to the misappropriation of their funds and causes them to lose their rights*". The case turned upon what activities the employee undertook, and not upon any formal appointment.

337. As for the pleaded case that a person should be named in the company's trade licence, Mr Pillai accepted that no relevant licence was in Mr Manghat's name, but Mr Manghat effectively abandoned any reliance on this point in his submissions on UAE law. He accepted that this is not a statutory requirement. His case is that: "*As a matter of practice, a person's name will not be listed as Manager on the trade licence unless they were formally appointed via one of the methods under Article 83 and have provide evidence of the same to the relevant corporate authority*".

ADCB's allegations

338. The main basis of ADCB's claims is that Mr Manghat knowingly participated in what ADCB calls the "*Loan Recycling Scheme*", and that as a natural result thereof, it suffered harm. ADCB makes similar allegations to those of the JA Claimants with regard to the nature of the fraud in the NMC Group and the misrepresentations in its financial statements. It describes the Undisclosed Debt as "*the product of a loan recycling scheme … the purpose of which was to extract money and property from the NMC Group while maintaining the appearance of a successful and growing business*".

339. ADCB's claims arise from these credit facilities (described as the "**Core Facilities**"), which it contends that it was deceived into extending. Its claims are based on the sums outstanding on the Core Facilities on 22 March 2020.

a. The UNB Facility (see para. 141 above), under which, as I have said, ADCB became the lender on 1 May 2019, upon its merger with UNB, and which was renewed on 29 August 2019. ADCB claims that US$ 132,492,735 was outstanding on the facility on 22 March 2020.

b. The 2018 Syndicated Loan, first provided in February 2018, whereby ADCB was the agent, the arranger and a lender under a syndicated loan facility for US$ 2 billion. It comprised a term loan facility of US$ 600 million, a bridge to bond facility of US$ 1 billion (the "**B1 Facility**"), and a revolving credit facility of US$ 400 million

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(the "**C1 Facility**"). ADCB's participation in the 2018 Syndicated Loan totalled US$ 650 million. NMCH was the borrower. ADCB claims that US$ 536,944,055 was outstanding by way of its share in the Loan on 22 March 2020.

c. Sukuk Certificates: ADCB was one of the joint lead managers of the Sukuk offering issued on 22 November 2018 for US$ 400 million (the "**Sukuk Offering**"), which was designed to refinance some of the B1 Facility. The issuer of the Sukuk certificates was NMC Healthcare Sukuk Limited, and the obligor was NMCH. ADCB bought certificates with a face value of US$ 30 million. ADCB claims that US$ 24 million was outstanding by way of its share of the Offering on 22 March 2020.

d. A club facility (the "**Club Facility**") dated 19 February 2019 in the sum of US$ 250 million, which was proposed by NMCH in December 2018, and the purpose of which was also to provide refinance for the B1 Facility. ADCB acted as the facility agent, the arranger and the original lender, its share of the exposure being US$ 175 million. NMCH was the borrower. ADCB claims that US$ 155,555,556 was outstanding by way of its share of the Facility on 22 March 2020.

e. A bilateral facility (the "**Bilateral Facility**"), which was by way of the annual renewal of a working capital facility for AED 345 million that ADCB extended to NMCH. The last iteration was dated 4 November 2019. ADCB claims that US$ 49,385,638 was outstanding on the Facility on 22 March 2020.

f. A Murabaha facility agreement (the "**Murabaha Facility**") for US$ 200 million, provided under an agreement between ADCB and NMCH of 11 November 2019. It replaced a comparable facility that AHB had provided to NMCH before it was acquired by ADCB on 1 May 2019. ADCB claims that US$ 53,969,322 was outstanding on the Facility on 22 March 2020.

g. When it was acquired by ADCB, AHB was providing to NMCH an Ijarah facility under an Ijarah lease financing agreement dated 3 October 2018, which ADCB also 'onboarded' when it acquired AHB. ADCB claims that US$ 12,764,349 was outstanding on the Facility on 22 March 2020.

340. ADCB's case is that, by 22 March 2020, it was no longer receiving any payments under the Core Facilities, and the sum due to it in respect of them was US$ 965,111,653.

Mr Manghat's limitation defence

341. It is convenient next to deal with a limitation defence that Mr Manghat pleads. I do so only briefly because it is another point pleaded by Mr Manghat to which he made no reference at the trial or in his Post-Hearing Submissions and which has not been explained.

342. Mr Manghat pleads that "*the limitation period for an action under Article 84 of the 2015*

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CCL is three years from the date upon which the victim knew of the injury and the identity of the person who was responsible". As ADCB observes in its reply, Mr Manghat does not plead a factual basis for this allegation, and he has not explained the factual basis for the plea.

343. The relevant provision of UAE law is article 298 of the Civil Code: "*No claim for indemnity arising out of a harmful act shall be heard after the expiration of three years from the day on which the victim became aware of the occurrence of the harm and of the identity of the person responsible for it*". However, this is subject to article 484 of the Civil Code: "*The prescription period shall be interrupted upon a judicial claim being made or by any judicial proceeding being taken by an obligee to enforce his right*": see the judgment of the Dubai Court of Cassation of 24 July 2024 (2/2024). Thus, as ADCB submits, the prescription period under UAE law was interrupted by the proceedings brought by ADCB in England against Mr Manghat and others on 2 December 2020. (UAE law does not, as I understand it, consider that the prescription period is interrupted by foreign proceedings before a court or tribunal that lacks jurisdiction, but ADCB's English proceedings were not stayed on the basis that the English Court had no jurisdiction over them but because it declined to exercise its jurisdiction.)

344. It appears from Mr Manghat's UAE law submissions that there is no issue between the parties about the relevant UAE law. As I understand his position, he maintains that the claim under article 84 of CCL 2015 is barred because it was introduced by amendment pursuant to permission granted at a hearing on 31 August 2023, and it was based upon materially different facts from what ADCB had previously alleged.

345. I cannot accept that. At the hearing on 31 August 2023, counsel then representing Mr Manghat argued that the amendment to introduce the claim under article 84 should not be permitted because it was not based on "*substantially the same*" facts as claims that were already pleaded. This argument was based upon the *Limitation Act 1980 (UK)*. Under section 35 of that Act, a cause of action introduced by amendment is deemed to have been made when the action was originally brought, but amendments to allow this are permitted only if they arise out of the same or substantially the same facts as are already in issue in the proceedings. These rules governed the amendments to introduce the article 84 claim because, although, under the *Foreign Limitation Periods Act 1984 (UK)*, the question of limitation is generally subject to UAE law, being the law governing the claim, nevertheless the English doctrine of relation back applies and so for limitation purposes it is deemed to have been brought when the proceedings were brought: see sections 1 and 35 of the *Limitation Act 1980 (UK)*. (Both the *Foreign Limitation Periods Act 1984 (UK)* and the *Limitation Act 1980 (UK)* have force in the ADGM under the *ADGM Application of English Law Regulations 2015*.)

346. For reasons that I explained in my ruling on 31 August 2023, I rejected the argument on behalf of Mr Manghat. I considered that the claim under article 84 was made on substantially the same factual basis as claims already made. For the same reasons, I

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reject Mr Manghat's argument that the claim is barred under UAE law because it is based on materially different facts. Indeed, Mr Manghat did not respond to ADCB's submission that the limitation question was effectively determined by my ruling of 31 August 2023.

347. I therefore reject Mr Manghat's limitation defence.

The 2019 allegations and subsequent matters

Introduction

348. I come to consider the evidence upon which the JA Claimants and ADCB rely in support of their contention that Dr Shetty and Mr Manghat were parties to the fraud. Perhaps somewhat counter-instinctively, it is convenient first to consider the JA Claimants' allegations about the involvement in early 2019 of Dr Shetty and Mr Manghat in matters arising from EY's audit of the NMC Group for the year ended 31 December 2019, and in what happened thereafter, before coming to earlier events.

349. Some of the evidence about the audit was most directly concerned with the case against Baroda, but it is necessary to set out the history at some length. The JA Claimants not only contend that these matters, in themselves, give rise to claims against Dr Shetty and Mr Manghat, but also that they support their case that Dr Shetty and Mr Manghat were party to earlier wrongdoing, not least because their evidence about the later events shows that they were dishonest witnesses.

The first balance confirmations

350. The financial years for NMC plc ended on 31 December. On 27 December 2018, Mr Sameeh Ullah of EY wrote to Baroda's Abu Dhabi branch asking for information for its audit about the balances on the accounts with it. The letter was countersigned on behalf of NMCH so as to authorise Baroda to provide the information. There were similar letters about other companies in the NMC Group.

351. By letters of the same date, NMCH also wrote to Baroda's Abu Dhabi branch, asking it to provide "*confirmation letters*" addressed to EY's Abu Dhabi office in respect of balances as of 31 December 2018 for identified accounts "*along with other facility accounts maintained with you such as Term Deposits & Marginal Deposits, if any*". It said that a NMC employee, Mr Sajeem Rashid, was authorised to collect the confirmation from the branch "*physically*".

352. On 7 January 2019, Ms Jissa Mary, who worked in the Advances Department of Baroda's Abu Dhabi branch, sent to Mr Praveen Kumar draft balance confirmation letters in respect of NMCH's accounts (and also accounts of NMC Specialty Hospital LLC and New Marketing and Trading Co LLC). Mr Praveen Kumar amended the draft letters and returned them to Ms Jissa Mary under cover of an email with the instruction "*please proceed*". Mr Kumar's amendments were significant: whereas Ms Mary's drafts had

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included a confirmation showing debit balances of some AED 369 million on a term loan (the AED 367 Million Facility) and of AED 170 million on an overdraft in the same letter as set out substantial credit balances, Mr Praveen Kumar provided two separate letters, one for the credit balances and the other for the debit balances. On 9 January 2019, Mr Jaideep Sharma of Baroda signed 15 separate letters, including letters recording separately the two large debit balances. Each letter was (as the JA Claimants put it) "*self-contained, in the sense that it did not make clear that it was one of a set of 15*". Mr Praveen Kumar collected them from Baroda's Abu Dhabi branch.

353. The JA Claimants' case, which I accept, is that the NMC Group arranged to have these separate letters so that it could provide EY with confirmations of NMCH's credit balances with Baroda without revealing the debit balances (on the AED 367 Million Facility and the overdraft). It could not use the confirmations drafted by Ms Mary because the debit balances were included in the same letter as the credit balances, and because the letter said that the overdraft facility with the debit balance of AED 170 million was "*fully secured by pledge and lien*" over term deposits. Those term deposits, which were of AED 300 million in aggregate, were themselves confirmed in a separate letter.

354. Messages sent on WhatsApp by Mr Praveen Kumar to Mr Suresh Kumar on 9 January 2019 show the purpose of the NMC Group executives. He wrote that initially the letters that he went to collect had mentioned "*lien details under deposit confirmation*". He managed to have the reference to the lien removed.

The Usman letter

355. On 13 February 2013, Mr Jayakumar received an email that was signed in the name of Mohammed Usman. (It is unclear whether that was his real name.) It was headed "*Confidential Information – Borrower in UAE*", and told Baroda that "*one of the major groups based out of UAE to which your bank has a huge exposure, is in deep financial distress. The group has raised multiple loans across the various entities within the group. Its financials are not reliable at all as it is fully manipulated. The aggregate of the borrowings of the Group are more than 6x of that disclosed in its financials. Majority of its borrowings, including many of the facilities availed from your bank, are not disclosed in its financials. Unless you take immediate action, this will turn out to be another big NPA* [sc. Non-Performing Asset] *for your bank. You may write to the auditors of your major customers (at least the top 5 in UAE) directly and confirm the year end balances. You will be surprised with the outcome*".

356. In response, Baroda instructed officers of branches in the GCC zone, including the Abu Dhabi branch, to obtain certificates from the auditors of five identified customer groups, "*certifying the present* [outstanding] *bank borrowing of the companies vis-à-vis the Bank borrowing as per their latest* [balance sheets]". Three of the five customers, including the NMC Group, banked with the Abu Dhabi branch, and Mr Jaideep Sharma contacted their auditors. He received replies from the auditors of the two other customers, and, having

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received no reply from EY about the NMC Group, he arranged a meeting. A note made by EY (the "**EY Note**"), which sets out EY's record of their dealings with the balances on the NMC Group's accounts at Baroda in February and March 2019, records that, on 25 February 2019, Mr Sharma met Mr Ullah at EY's offices. According to the EY Note, which I accept as accurate, Mr Sharma asked Mr Ullah to confirm that the balances provided by Baroda "*appear*[ed] *in the NMC books as they ha*[d] *a regulatory requirement to ensure this*", but Mr Ullah declined to do so because of concerns about client confidentiality. Therefore, on 26 February 2019, Baroda sent EY a letter, signed by Mr Mahaveer Gupta, asking that EY provide the outstanding bank balances and borrowings as at 31 December 2017 and 31 December 2018 for NMCH, Neopharma, UAE Exchange and NMC Specialty Hospital LLC.

Early March 2019

357. As it appears from the EY Note, EY decided to send Baroda copies of the confirmations that it had received from Baroda in January 2019, considering that this would give Mr Sharma "*indirect confirmation*" of what appeared in the NMC Group's books. Accordingly, on 2 March 2019, Mr Ullah sent Baroda by email copies of 24 confirmation letters from Baroda. They did not include letters relating to four accounts with debit balances amounting to some AED 980 million, which, as I infer, had not been provided to EY by the NMC Group. In response, Mr Sharma asked whether EY had more confirmation letters from Baroda or whether they had sent the "*full set*". Mr Ullah replied with an email attaching requests for balance confirmations that EY had sent for Baroda on 27 December 2018, and he wrote "*Kindly send us balance confirmations*".

358. Accordingly, at 4.15 pm on 2 March 2019, Mr Sharma sent an email setting out the balances on 31 December 2018 on 11 accounts that NMCH had with Baroda showing credit balances, and six accounts with debit balances, together with details of a bank guarantee. They included the four debit balances for which Mr Ullah had not sent confirmation letters earlier that day. Mr Sharma attached to his email the relevant confirmation letters, and he wrote: "*We request you to advise if there is any difference or discrepancy*".

359. It appears that Mr Ullah spoke to the NMC Group about the information in Mr Sharma's email. At 8.56 pm, he forwarded to Mr Deepak Ghosh a copy of Mr Sharma's email and its attachments, and Mr Ghosh sent it on to Mr Manghat and other NMC executives.

360. On 3 March 2019, Mr Praveen Kumar sent to Baroda's Credit Department, apparently for Mr Sharma, an email attaching four balance confirmation letters: they did not cover the four debit balances. Shortly afterwards, Mr Sharma sent Mr Ullah an email in which he wrote: "*As per our telephonic talk and various discussions held, we request you to provide the confirmation of Bank balances of NMC Healthcare as on 31.12.18*".

361. These developments clearly caused a major problem for the NMC Group executives who

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were trying to finalise, and have EY certify, accounts for the year ended 31 December 2018 without revealing the true liabilities to Baroda. The problem was the more urgent because, on 5 March 2019, NMC plc's Audit Committee was due to meet with EY in order to finalise the financial statements for the year ended 31 December 2018.

362. On 3 March 2019, Lord Clanwilliam, as the Chairman of the Audit Committee, had an informal meeting (by way of what he termed a "*dress rehearsal*" for the formal meeting) with Mr Victor Veger, EY's lead audit partner, and probably with others. Lord Clanwilliam recalled, and I accept, that he was told that Baroda had caused some confusion in the course of the audit by mixing up NMC Group accounts and personal accounts of Dr Shetty. Although Lord Clanwilliam suspected that this was nothing other than a confusion, his memory is corroborated by his contemporaneous note: "*BANK OF BARODA. ADDITIONAL LOANS. 1bn AED. £200m!! Shenoy What is this Baroda Bank. Story??*".

363. Mr Veger's mention to Lord Clanwilliam of confusion between accounts of the NMC Group and Dr Shetty's personal accounts reflects how the NMC Group executives were going about dealing with their problem, and, as I infer, discussions that they had already had with EY. The EY Note records that EY considered that they required a letter from Baroda's Abu Dhabi branch explaining the conflicting information that they had been given. EY provided a draft letter for the NMC Group to pass on to Baroda under cover of an email to Mr Ghosh dated 3 March 2019. The EY Note also states that it was agreed that EY would collect the letter "*directly*" from Baroda, and that "[o]*n 4 March 2019, EY directly picked the letter from bank which confirmed that additional balances of AED 1 billion doesn't belong to NMC*".

364. A letter (the "**First Resolution Letter**", as it was referred to during the trial) was indeed provided to EY. The First Resolution Letter was dated 4 March 2019 and appeared to be on Baroda's letter paper, to be signed by Mr Jaideep Sharma and to bear Baroda's stamp. It purported to confirm a list of balances on NMCH's accounts with Baroda as of 31 December 2018 which did not include the four debit balances. It went on to state that: "[F]*ollowing facilities/balances communicated on email dated 2 March 2019 to Mr. Sameeh Ullah of Ernst & Young in his capacity as independent external auditors of* [NMCH] *for the audit as per December 31, 2018 do not belong to* [NMCH]"; and it listed accounts including the four debit balances. The letter concluded: "*These have been reported by an error*".

365. However, the First Resolution Letter was not signed by Mr Sharma, and did not come from Baroda: it was a forgery by NMC Group's executives. I find that it was created with Mr Manghat's knowledge and assistance. The WhatsApp and email exchanges between NMC Group executives on 3 March 2019 demonstrate this. At 11.47 am Mr Suresh Kumar sent Mr Manghat a draft of a proposed letter that was intended to deceive EY about the true liabilities. At about 3.45 pm Mr Praveen Kumar sent (i) an email to Mr Udayakumar Nair and (ii) a WhatsApp message to Mr Suresh Kumar to which he attached a draft letter

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to EY that listed balances with Baroda other than the four debit balances, and Mr Suresh Kumar forwarded it to Mr Manghat. Mr Ghosh later forwarded to Mr Manghat the draft letter that he had received from EY. In all material respects, the First Resolution Letter was in the same terms.

366. Their WhatsApp exchanges of 4 March 2019 also reflect how the NMC executives went about satisfying EY's requirement that they collect the letter from the branch. As I interpret exchanges between Mr Suresh Kumar and Mr Ghosh, they were aware that Mr Sikkander Ali of EY was to collect it, and they arranged for Mr Praveen Kumar to meet him, presumably at or near the branch, and to hand over the First Resolution Letter. At 12.34 pm, Mr Suresh Kumar reported to Mr Ghosh that Mr Praveen Kumar would be "*going with Sikander any time now*"; at 12.49 pm he reported to Mr Ghosh that Mr Ali had "*collected and gone*"; and at 12.51 pm he reported similarly to Mr Manghat. At 1.06 pm, Mr Praveen Kumar reported to Mr Suresh Kumar that Mr Ali had sent an "*image*" of the First Resolution Letter to Mr Ullah. Somehow, apparently through impersonation of Baroda staff, Mr Ali was tricked into believing that he had collected the forged letter from Baroda directly.

367. This trick, however, did not fully resolve the difficulties for those seeking to deceive EY because Mr Ullah wanted to speak to Mr Sharma after receiving the letter from Mr Ali. At 11.29 am Mr Ghosh had sent a message to Mr Suresh Kumar: "*After collecting Sameeh* [sc. Mr Ullah] *will talk to Jaydeep* [sc. Mr Jaideep Sharma]".

368. Apparently, they did speak. At 4.47 pm, Mr Ullah sent Mr Sharma an email in which he wrote: "*Further to our call, as you requested to be specific about my query. Our query is noted below: Bank initially confirmed accounts (listed below) belong to NMC. However, in revised confirmation it was confirmed to us that these accounts doesn't belong to NMC. We just want to understand the process flaw which resulted the revision of confirmation*". It listed accounts, including those with the four debit balances.

369. Mr Sharma was, of course, puzzled by this email, and did not understand the reference to a "*revised confirmation*". He must have spoken to Mr Ullah about it: he does not, he said, recall the conversation, but Mr Ullah sent him another email at 5.51 pm, which was introduced with the words "[f]*urther to our discussion*". He attached to it balance confirmation letters from Baroda, which did not include letters relating to the four debit balances. He also attached a copy of the First Resolution Letter. Mr Sharma, of course, realised that the confirmation letters were incomplete, and that, although the First Resolution Letter appeared to bear his signature, he had not signed it. However, having spoken to Mr Mahaveer Gupta, he responded to Mr Ullah without telling him that he had not signed the First Resolution Letter. He simply told EY by email that Baroda was "*not confirming the balance of trailing mail* [sic. Mr Ullah's email of 4.47 pm] *right now. We are examining the things internally. We will revert to you very shortly*", and later at 7.28 pm on 4 March 2019 that "*the Balances as on 31.12.2018 of* [NMCH] *which was informed vide our mail dated 02.03.2019 along with the Balance Certificates*", and repeated the

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balances set out in the email of 2 March 2019.

370. Late on 4 March 2019, at 6.55 pm, Mr Suresh Kumar set up a WhatsApp group called "*Financial 2018*" for Mr Manghat, Mr Shenoy, Mr Ghosh, Mr Udayakumar Nair and himself. Its purpose was to coordinate a way of handling the situation, and they exchanged their ideas that evening. Mr Suresh Kumar told Mr Ghosh that he had cancelled a trip to Dubai that was planned for 5 March 2019 because Baroda "*need*[ed] *to be managed*".

371. The plan that was developed is apparent from a WhatsApp exchange at 4.37 pm on 5 March 2019 between Mr Suresh Kumar and Mr Shenoy in which Mr Kumar outlines a conversation that might be held between EY and Baroda. He suggested that Baroda might explain that: "*NMC is one of the oldest accounts we are having in our branch and our relationship started even before their listing, we are having their promotors accounts also and its legal obligation is with the share holders and not with N*[MC]. *It is just tagging the names that caused the error while preparing the confirmations manually*". I shall explain shortly why Mr Kumar was constructing such a conversation.

Dr Shetty becomes involved

372. Mr Manghat and Dr Shetty were due in London on 5 March 2019 for the meeting of NMC plc's Audit Committee with EY to finalise the accounts. At 00.25 am on 5 March 2019, Mr Manghat sent Dr Shetty a WhatsApp message in which he wrote that there "*is a big issue*" and another in which he repeated "[i]*t's a big big problem*". He said that the problem was about "*bank*": he was certainly referring to Baroda because he provided Dr Shetty with Mr Mahaveer Gupta's telephone number. Mr Manghat was on his way to London, and he told Dr Shetty that Mr Suresh Kumar would speak to him. At 08.34 am on 5 March 2019, Dr Shetty sent Mr Manghat this WhatsApp message: "*I talked to Mr Mahaveer* [Gupta]. *Nothing to worry. He is proud of us. Any cooperation. He is ready*" (with added punctuation).

373. The meeting of the Audit Committee took place in London at 2.00 pm on 5 March 2019. It was preceded by an informal buffet lunch in the board room. Lord Clanwilliam gave evidence that, in the course of it, a partner of EY, either Mr Veger or Mr Mobin Khan, mentioned that an error had occurred in connection with Baroda in that the Bank had apparently mixed up the accounts of the NMC Group and personal accounts of Dr Shetty, and sent EY statements about Dr Shetty's personal accounts. Lord Clanwilliam said that he had a "*very acute memory*" of Dr Shetty saying that the accounts in question related to him and not to NMC. He accepted that Dr Shetty did not claim to have investigated the matter, but he recalled that Dr Shetty corroborated what EY had said about the accounts being his personal ones. He remembered thinking: "*What is Dr Shetty doing with a $ 200 million loan?*"

374. In his second witness statement, Dr Shetty said that he had no recollection of saying this

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or of the buffet lunch. When cross-examined, he said that he recalled that there was a buffet lunch and when asked about Lord Clanwilliam's account, he responded: "*His recollection is correct, but the subject is wrong. 200 million, never, never, never*".

375. The minutes of the Audit Committee record that the meeting was attended by Lord Clanwilliam, Dr A Abdullah and Mr J Bomford as members of the Committee, and eleven invitees, including Dr Shetty, Mr Manghat, Mr Shenoy, Mr Ghosh, Mr Veger and Mr Khan. The Committee agreed that the draft annual report for 2018 should be presented to the board for approval.

376. The minutes themselves do not refer to the issue about the Baroda balances. However, an internal note of EY states that there was reference at the meeting to the "*outstanding issue with respect to Bank of Baroda confirmation*", and that Dr Shetty explained that "*this bank serves him across many investments and territories and he would not be surprised they have coupled too many of his accounts to NMC as this is his primary business venture*". Although Lord Clanwilliam had no recollection of this exchange, he did not dispute the accuracy of EY's records, and I accept their accuracy.

377. It is the JA Claimants' pleaded allegation that "*Dr Shetty dishonestly corroborated the view expressed by EY that the statements by Baroda showing loans of around USD 200 million were a mix-up and the loan was personal to him and not connected with NMC: Dr Shetty knew that that was not the case"*. Dr Shetty's defence pleads that he said that "*the explanation provided by EY seemed plausible to him, because he and his businesses had extensive dealings with Baroda, making administrative errors not unlikely. This was an honest statement*". Mr Manghat pleads that at the meeting of the Audit Committee on 5 March 2019, "*Dr Shetty assured the Audit Committee and EY that the discrepancy between the earlier and the later confirmation letters was a personal debt and not a liability of the NMC Group. It was agreed at the meeting that this was a simple accounting mistake*".

378. As I have said, the JA Claimants contend that Dr Shetty acted dishonestly in supporting the explanation to EY that his accounts had been confused with NMCH accounts. They invite me to infer that, after Mr Manghat had contacted him about the "*big, big problem*", he spoke to Mr Suresh Kumar, who asked him to play his part in the scheme by telling EY and the Audit Committee that the debts to Baroda were his personal liabilities, and he agreed to do so; and that, having spoken to Mr Gupta at Mr Suresh Kumar's request to ask him that Baroda cease to communicate directly with EY, he was confident that the scheme would succeed.

379. Mr Wandowicz disputed this. He submitted that the far simpler, and more probable, explanation is that "*Dr Shetty was told the same lie as EY*" by the NMC executives. I cannot accept that submission, and I accept the JA Claimants' contention.

380. First, Mr Wandowicz's submission is not in line with what Dr Shetty pleads and is not

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supported by his evidence. His pleaded position is that he "*does not recall the conversations with Mr Kumar or Mr Gupta*".

381. Secondly, if Dr Shetty had been told by Mr Suresh Kumar or Mr Manghat that the problem resulted from Baroda confusing his accounts and NMCH's accounts, I would find it strange that he did not, as it appears from the evidence, say so either at the buffet lunch or at the meeting: his natural response when the matter arose would surely have been to say that he had been given the same explanation by the executives.

382. Thirdly, Mr Wandowicz's submission does not fit with Mr Manghat's WhatsApp messages: a mix-up of this kind between accounts would not have been a "*big, big problem*". More importantly perhaps, if the strategy had been to convince Dr Shetty that the problem was simply the result of administrative confusion within Baroda, Mr Manghat would have minimised it when communicating with Dr Shetty about it, and he would not have described it as he did.

383. I should add that, although it was put to Dr Shetty that he knew of the forged First Resolution Letter, it is not an essential part of the JA Claimants' case that he was aware of it by 5 March 2019. I need not, and do not, make any finding about that.

The fake telephone conversation and the Second Resolution Letter

384. EY did not regard the position about the Baroda balances as fully resolved by the time of the meeting of the Audit Committee. The EY Note records that "*EY … requested NMC management to … confirm with the bank directly what is correct vs incorrect and in doing so NMC arranged a call between EY and the bank* on *5 March 2019 afternoon. Call was attended by* [EY representatives in London and Abu Dhabi]. *From Bank side it was attended by* [Mr Jaideep Sharma and Mr Mahaveer Gupta]. [Mr Mahaveer Gupta] *explains that they have various facilities with Dr. B R Shetty and these are tagged manually. Due to manual tagging some of* [the] *personal facilities of Dr. Shetty were included under NMC account*[s] *by mistake*. [Mr Jaideep Sharma and Mr Mahaveer Gupta] *also confirmed that* [the] *letter issued on 4 March 2019 remains correct and confirmed that they understand the balances of AED 1 Billion will not appear in NMC books. EY requested* [the] *bank that due to all these confusions and multiple confirmations, we need a fresh letter from* [the] *bank and also requested* [that] *it would be good if* [the] *same can be signed by some body independent of* [Mr Jaideep Sharma and Mr Mahaveer Gupta] *in the bank*". (EY made a more detailed note of the telephone call, but this suffices for present purpose.)

385. In fact, there was no call between EY and Baroda. By a brazen trick, Mr Jaideep Sharma and Mr Mahaveer Gupta were impersonated on the call by, respectively, Mr Udayakumar Nair and Mr Suresh Kumar (or possibly another NMCH Executive). They conducted a conversation along the lines that Mr Suresh Kumar had outlined to Mr Shenoy in their WhatsApp exchanges on 5 March 2019 between 5.42pm and 7.14pm UAE time, after the meeting of the Audit Committee had started.

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386. On 5 March 2019, Mr Ullah sent to Mr Shenoy and Mr Ghosh an email attaching the draft letter that they required from Baroda, stating that they would "*directly pick this from Bank*". It stated balances on the NMCH account, omitting the four accounts with debit balances. It was to have two signatories, and it was said to supersede "*all other communications and confirmations sent earlier to Ernst & Young*". The NMC executives therefore had to complete their subterfuge by forging signatures on the letter (which was referred to at trial as the "**Second Resolution Letter**") and by impersonating Baroda personnel when EY went to collect it from the branch the next day. The messages in the "*Financial 2018*" WhatsApp group reflect their arrangements and show that Mr Manghat, a member of the group, was privy to them.

387. The NMC executives again succeeded in tricking EY: the EY Note records that "[o]*n 6 March 2019, EY directedly picked the letter from* [the] *bank. EY noted that* [the] *letter is signed by the same persons (*[Mr Jaideep Sharma and Mr Mahaveer Gupta]*) however, EY's request that it also need to have an independent signature was not accommodated. EY then sent back the letter to* [the] *bank and* [the] *bank reissued the letter which was counter signed by Easwar* [Nagarajan]*, Chief Manager – Corporate banking. On receipt of* [the] *letter, EY agreed it with NMC books and noted that it is now tying to NMC books*".

388. Mr Manghat continued to be party to the dealings with EY. When the 2018 financial statements were finally approved and signed by EY late on 6 March 2026, Mr Manghat sent WhatsApp messages on the "*Financial 2018*" group saying that: "*God is great*" and "[t]*hat power helped us do this*".

Mr Devarakonda Ananda Kumar's meeting with Mr Manghat and Mr Shenoy

389. However, the problems with EY were not finally resolved on 5 March 2019. On 11 March 2019, Mr Jaideep Sharma sent an email to Mr Ullah, explaining that Baroda was merging with two other banks, and requesting that EY "*provide us the confirmation of trailing mail (which was sent on 04.03.2019 at 7.28 PM) that the exposure mentioned in trailing mail is considered in Bank Borrowings and Bank Balances*". EY did not reply to Baroda, but Mr Ullah contacted the NMC Group about it: on 14 March 2019, Mr Ghosh wrote to Mr Suresh Kumar that Mr Ullah, was "*here asking about the bank issue*", and on 17 March 2019, Mr Ullah forwarded the email to Mr Prasanth Shenoy, with a copy to Mr Manghat, and asked to discuss it.

390. On 17 March 2019, Mr Manghat and Mr Shenoy met Mr Devarakonda Ananda Kumar in Oman. The JA Claimants plead that Mr D A Kumar, Mr Manghat and Mr Shenoy discussed the "*audit issue*" and the repayment of outstanding debt owed to Baroda by the NMC Group. They do not accept that it was a chance meeting: their contention is that it was one of two meetings arranged by the NMC Group executives that led to an agreement that the NMC Group would repay virtually all its liabilities to Baroda in exchange for Baroda not revealing the true position about its accounts with the NMC Group, the second meeting being between Dr Shetty and Mr Jayakumar in India.

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391. Mr D A Kumar's account of the meeting on 17 March 2019 is pleaded in Baroda's defence. It is that he was in Muscat for reasons unconnected with the NMC Group and "*Mr Manghat and Mr Shenoy were also in Oman on business, staying at the same hotel as Mr D A Kumar and the three of them had an informal chat in the hotel lobby. Insofar as it is alleged that this constituted a formal meeting, that is denied: it was a short, chance encounter. Mr Shenoy mentioned the discrepancy in the information that had been provided by EY MENA. He told Mr D A Kumar that: (a) the Bank had provide the correct balances to EY MENA; and (b) this had resulted in EY MENA signing off the balance sheets for the NMC Group. Mr D A Kumar therefore believed that the issue had been resolved upon the Bank providing correct information to EY MENA. The parties also briefly discussed the repayment of the debt, where Mr D A Kumar explained that the* [Central Bank of the UAE] *believed the Bank to be in breach of regulatory restrictions in UAE relating to banks' exposure as a proportion of their capital base*".

392. According to Mr D A Kumar, the background to the exchange about the NMC Group repaying its debts to Baroda was this. The regulatory regime of the Central Bank of the UAE ("**CBUAE**"), to which Baroda's Abu Dhabi branch was subject, placed a limit on the permissible exposure of any individual customer by reference the bank's total balance sheet. Mr Kumar said that in late 2018, the CBUAE expressed concern about Baroda's exposure to the NMC Group in view of the AED 367 Million Facility; that his understanding was that the CBUAE would allow a "*grace period*" until the end of March 2019 to remedy the position; and that the NMC Group had been informed that they would have to repay Baroda by the end of March 2019. (This evidence was strongly disputed by the JA Claimants, but I do not need to resolve that issue.)

393. Mr Manghat pleads in his defence that he "*has no knowledge*" of the meeting. However, in his witness statement in reply to Mr D A Kumar's account, he said that he was in Oman on other matters, and by chance he met Mr D A Kumar. He said that he had no recollection of Mr D A Kumar mentioning the AED 367 Million Facility, but that "*if he had done so I would have told him that Dr Shetty was meeting P S Jayakumar to discuss the loan*". Mr D A Kumar's evidence was that Mr Manghat and Mr Shenoy had said that Dr Shetty would be meeting Mr Jayakumar "*soon*" to speak about repayment of the loan.

394. I am unable to accept that Mr Manghat and Mr Shenoy met Mr D A Kumar by chance, having gone to Muscat for other reasons. The evidence show that their flights were not booked until late on 16 March 2019, and they flew to Oman in the early hours of 17 March 2019, arriving at their hotel at 3.00 am. They left the hotel at 9.28 am to return to Abu Dhabi. Shortly after they arrived at the hotel, and apparently before meeting Mr D A Kumar, Mr Manghat sent these WhatsApp messages to Dr Shetty, who had flown to Assam, India on 16 March 2019: "*Urgently need to speak to you. It's manageable but your presence is needed today. Will speak. Thanks*"; "*Regarding Bank of Baroda*"; and "*Sir it's better if you can reach* [M]*umbai today. Will let you know in an hour*". It appears that Dr Shetty did not reply by WhatsApp to these messages: about two and a half hours after the last message, Mr Manghat wrote again, *"Ignore above messages. We spoke after this*". I

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conclude that Mr Manghat and Mr Shenoy had gone to Oman in order to discuss with Mr D A Kumar the continuing difficulties about the audit. This does not necessarily mean that they had made an arrangement with Mr D A Kumar to meet him: the meeting might have come as a surprise to him: I need not decide that question.

Dr Shetty's meeting with Mr Jayakumar

395. There was a meeting between Dr Shetty and Mr Jayakumar on 18 March 2019 at Baroda's offices in Mumbai, Dr Shetty having flown there from Assam.

396. Mr Manghat's pleaded case about this meeting is that the Abu Dhabi branch of Baroda was unable to explain why contradictory letters were sent to EY, and that they suggested that he discuss the matter with "*senior management*", and that he and Mr Shenoy "*accompanied Dr Shetty … on a trip to India, where Dr Shetty met alone met with* [Mr Jayakumar]". He continued that, while it "*appeared from the outcome of that meeting that Dr Shetty once again agreed to settle the liability*", Mr Manghat denied that he (Mr Manghat) had promised Baroda that "*the NMC Group would repay all its outstanding debt to the bank by the end of March 2019*".

397. Dr Shetty's pleaded case about the meeting is this. He admits that he had a meeting with Mr Jayakumar "*in or about March 2019*". He then pleads that "*Dr Shetty was asked to attend that meeting (at very short notice) by Mr Manghat. … When Dr Shetty arrived at the meeting, he was met by Mr Shenoy (alone), and Mr Shenoy informed him that Mr Manghat and he were meeting Mr Jayakumar, and that in light of Mr Jayakumar's seniority within Baroda, Mr Manghat considered it desirable for Dr Shetty to meet with Mr Jayakumar first. Mr Manghat himself had not yet arrived, and Dr Shetty did not see him that day*". He said that he met Mr Jayakumar "*briefly*" in Mr Jayakumar's office. They were alone, and "*to the best of Dr Shetty's recollection,* [they discussed] *the plan to list UAE Exchange*". He said that he did not know what was discussed at any subsequent meeting that Mr Jayakumar had with Mr Manghat and Mr Shenoy.

398. When Dr Shetty first pleaded his defence, he averred that Mr Manghat provided him with no explanation for asking him to go to Mumbai to meet Mr Jayakumar. It seems to me incredible that he would go to Mumbai at very short notice without being given a reason to do so. After WhatsApp exchanges were disclosed, Dr Shetty accepted that he was given an explanation, although he has no recollection of it. He also pleads that he "*would have acted according to Mr Manghat's counsel*".

399. In his second witness statement, Dr Shetty said that he spoke with Mr Jayakumar "*briefly about the plan to list UAE Exchange*" and that he did not discuss with him "*NMC Group's debt obligations*". When he was cross-examined, Dr Shetty confirmed his written evidence and his (amended) pleaded case about what was discussed at his meeting with Mr Jayakumar.

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400. Mr Jayakumar gave evidence about a meeting with Dr Shetty alone on, as he inferred from the documents, 18 March 2019. He said that he had been told before the meeting by Mr D A Kumar that the NMC Group was going to repay the AED 367 Million Facility because of the regulatory issue. Mr Jayakumar's account of the meeting was that Dr Shetty told him of the proposal to repay the facility, and that he asked whether "*he could obtain some additional limit for one of the other companies in the group*". When Mr Jayakumar replied that he did not think that Baroda could lend more without further repayment, Dr Shetty offered to repay the remainder of the NMC Group's overdraft and short-term borrowing. Mr Jayakumar responded that he should discuss that with the branch. There was also some discussion of Dr Shetty's plans to list the UAE Exchange business. He denied that he reached any agreement about repayment of the AED 367 Million Facility "*in exchange for the Bank turning a blind eye to the incorrect information that had been provided to EY MENA*". His evidence was that he did not recall discussing the balance confirmations with Dr Shetty or any other representative of the NMC Group.

401. The WhatsApp messaging between Dr Shetty and Mr Manghat shows that Dr Shetty asked Mr Manghat to brief him before his meeting, and Mr Manghat's response. Dr Shetty wrote early on 18 March 2019: "*Good morning what was the discussion with* [Mr Jayakumar]*? What exactly happened! Please explain so that I speak on the same page let me prepare myself by noontime I will arrive Mumbai*".

402. Mr Manghat gave this account in reply:

> "*1*. [Mr D A Kumar] *briefed* [Mr Jayakumar] *4 days back all what happened including documents*.
>
> *2*. [Mr Jayakumar] *was worried whether we have issues but for which* [Mr D A Kumar] *comforted*.
>
> *3*. [Mr Jayakumar] *used his* [EY] *contact in India to help them to get information from* [UAE] *EY. This is not legal so they can't pursue*.
>
> *4. This Saturday* [16 March 2019] *I got a call from EY* [UAE] *that they received a new mail from Bank stating all issues*.
>
> *5*. [Mr] *Shenoy spoke to* [Abu Dhabi] *BOB* [sc. Abu Dhabi branch of Baroda] *who suggested to speak to* [Mr D A Kumar]. [Abu Dhabi] *team was helpful this time*.
>
> *6*. [Mr] *Shenoy and me met* [Mr D A Kumar] *today morning in* [M]*uscat. He told us the entire issue and showed his willingness to help*.
>
> *7. He spoke to EY* [I]*ndia and stopped them in contacting EY* [UAE]. *This is very good*[.]

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8. He also spoke to [Mr Jayakumar] *explainin*[g] *that these are not in accounts and client ready to pay off without affecting credibility*[.]

9. [Mr Jayakumar] *was very upset but concluded that client close the account*[.]

10. This settlement to be done this week. No option. This will also stop EY issue[.]

Sir, the only way is somehow convince [Mr Jayakumar] *they* [accept] *our funds and close but without probing.*

We have done good analysis and ha[ve] *clear story for all his probable questions which I can send maybe after you read this. Also we can speak before we go to* [Baroda]*"*.

403. Dr Shetty's responses indicated no surprise about this briefing. He thanked Mr Manghat for it, and wrote "*No issues take it easy he is our wellwisher*".

404. The WhatsApp messaging shows clearly that Dr Shetty was aware of the problems that Mr Manghat and others were trying to resolve by the time that he met Mr Jayakumar. Dr Shetty said that he could not remember the messages, and Mr Wandowicz submitted that "*Dr Shetty cannot explain a message he does not recall*". There is no explanation for the messages that is consistent with Dr Shetty's case. The messages speak for themselves unambiguously.

405. Before I determine what was discussed between Dr Shetty and Mr Jayakumar, I refer to two issues about the arrangements for the meeting between the JA Claimants and Dr Shetty:

a. Whether Dr Shetty went to Mumbai specifically in order to meet Mr Jayakumar, as the JA Claimants contend. Dr Shetty's case is, as Mr Wandowicz put it in his closing submissions, that "*it is tolerably clear that … he was already going to be in Mumbai for a meeting, and this* [sc. the meeting with Mr Jayakumar] *was just slotted in at short notice when Mr Manghat asked*"; and

b. Whether Dr Shetty met with Mr Manghat before the meeting to be briefed further. Dr Shetty's evidence was that he did not meet Mr Manghat at any time on this visit to Mumbai. He said that he saw Mr Shenoy when he went to Baroda's offices and he recalled that Mr Shenoy touched his feet.

406. On the first issue, I conclude that Dr Shetty went to Mumbai specifically for the meeting. He had flown from Abu Dhabi to Assam in his private jet on 16 March 2019. He left Assam on 18 March 2019, and, flying via Kishangarh, Rajasthan, he arrived in Mumbai at 2.15 pm. He left for Abu Dhabi at 5.00 pm after 2 hours 45 minutes. Even if he did not meet Mr Manghat before the meeting with Mr Jayakumar, he would not, on the face of it, have had time for a separate meeting with an (unidentified) third party.

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407. The JA Claimants submitted that this is significant. Whereas, as Mr Jayakumar testified "[o]*n occasion, Dr Shetty … visited Baroda's corporate office in Mumbai when he was in Bombay"* and they had "*high level*" conversations, the meeting on 18 March 2019, as the JA Claimants argued, "*was not an ordinary commercial relationship meeting. Dr Shetty made a substantial detour, for a very short visit to Mumbai, at a critical moment in the March 2019 events specifically to see Mr Jayakumar*". Mr Wandowicz observed that the detour would be less burdensome when travelling by private jet, but I still see force in the JA Claimants' point.

408. Mr Wandowicz made three points in support of Dr Shetty's case about this. First, and most importantly, he relied on a schedule for Dr Shetty's travels between 16 and 18 March 2019 that he had disclosed. It includes the visit to Mumbai and an entry "*Meeting in Trident BKC* [a hotel in the Bandra Kurla Complex] *on Monday 18 March at 3.15pm*". Mr Wandowicz argued that this timing would allow Dr Shetty, having landed in Mumbai at 2.15 pm, to go to Baroda's offices for a short meeting before 3.15 pm. Furthermore, Mr Wandowicz submitted that it shows that the 3.15 pm meeting was recorded on the schedule for the trip when Dr Shetty set off on his travels on 16 March 2019.

409. Mr Wandowicz's second argument was based on the terminology in Mr Manghat's WhatsApp message on 16 March 2019: "*Sir it's better if you can reach* [M]*umbai today*". It was argued that this wording indicates that Mr Manghat knew that Dr Shetty would be going to Mumbai and his request concerned when it was "*better*" that he should arrive, rather than that he should go at all.

410. Thirdly, he pointed to the evidence that Mr D A Kumar had been told at the meeting in Oman that Dr Shetty would be meeting Mr Jayakumar "*soon*", and he argued that this indicated that the meeting had already been arranged.

411. Mr Thanki convincingly answered Mr Wandowicz's first argument. He pointed out that the schedule, and comparable documents, are in the nature of programmes that would likely have been updated from time to time as plans for the trip developed. There is no good reason to think that the entries on which Mr Wandowicz relies were in a document completed before Dr Shetty left Abu Dhabi on 16 March 2019.

412. I can place little weight on Mr Wandowicz's second argument: the general style of Mr Manghat's WhatsApp messages does not bear such exact analysis.

413. Mr D A Kumar's evidence does not suggest that a meeting had been arranged, but only that one was expected.

414. Further, there is no support from either Dr Shetty's evidence or his disclosure for the contention that Dr Shetty went to Mumbai for another meeting that had been planned in advance. Accordingly, there is no information about whom Dr Shetty might have been meeting or his purpose in doing so. In any case, I do not find it credible that, if there were

such a meeting with a third party, no documentary trace of it remains.

415. I conclude that, if Dr Shetty did meet Mr Manghat before seeing Mr Jayakumar, there would simply have been no time during Dr Shetty's stop in Mumbai for even the briefest of meetings with Mr Jayakumar before a 3.15 pm meeting with a third party. This leads to the second issue. Again, the WhatsApp exchanges are the best evidence about this. At 1.38 pm, Mr Manghat sent Dr Shetty a message: "*We are in lobby of hotel*". Shortly afterwards, Dr Shetty sent a message: "*On my way shall we*" (sic.). Dr Shetty had no convincing explanation for this exchange. I conclude that Dr Shetty met Mr Manghat and Mr Shenoy before he went to Baroda's offices, and the purpose can only have been to discuss with them how he should conduct the meeting with Mr Jayakumar. This is likely the meeting referred to in the schedule.

416. Whatever was discussed at the meeting between Dr Shetty and Mr Jayakumar, Mr Manghat was clearly relieved at the outcome, and grateful to Dr Shetty. He sent him a WhatsApp message that evening: "*Thanks a lot for the way you led us. God is kind to us*". The language of this message to my mind confirms my conclusion that Mr Manghat had met Dr Shetty. So too does an email that Dr Shetty sent to Mr Jayakumar, which refers to his "*colleagues*", and which is most naturally understood as referring to Mr Manghat and Mr Shenoy.

417. This email was sent to Mr Jayakumar by Dr Shetty on 19 March 2019. In it, he thanked Mr Jayakumar in effusive terms for "*the time and courtesies extended to my colleagues and me as we came over to see you*"; he wrote that he "*wish*[ed] *to thank from the bottom of my heart at the display of your understanding of an entrepreneur's pain*"; and also for Mr Jayakumar's "*support and guidance on NMC*". It is apparent from the WhatsApp exchanges that Mr Manghat had helped to draft the email. The JA Claimants contend that its extravagant expressions of gratitude support their case that Mr Jayakumar had agreed to help cover up the problem with the balance confirmations.

418. When Dr Shetty was asked about the letter in cross-examination, he responded that "*it's not my letter*". I accept that he did not draft it, but he approved the wording: he responded to the draft provided to him: "*Thanks Prasanth, excellent*". On 20 March 2019, he forwarded the text to his son, Binay, who replied, "*Very well written*".

419. In late March 2019, NMCH repaid some AED 1,000 million of its liabilities to Baroda, including the facilities referred to in the confirmation letters that the NMC Group had not produced to EY. In parallel, the NMC Group also placed offset deposits with Baroda totalling AED 875 million.

420. Dr Shetty was interested in ensuring that the NMC Group made these repayments. In his defence, Dr Shetty pleaded that he "*has no contemporaneous knowledge of the repayment of NMC Group's liabilities to Baroda and, for the avoidance of doubt, was not aware of or party to any discussions relating to the same*". I cannot accept that denial

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because it is inconsistent with this exchange by WhatsApp between Dr Shetty and Mr Manghat on 31 March 2019: Dr Shetty wrote to Mr Manghat: "*Good evening please inform* [Baroda] *we closed*", and Mr Manghat replied, "*Yes we* [did]". Shortly afterwards, Dr Shetty wrote: "[Completely] *paid? As on which date?*". Mr Manghat's reply is not in evidence, but Dr Shetty was satisfied and concluded the exchange with the message: "*Good*".

421. When asked about these exchanges in cross-examination, Dr Shetty said, "*We don't know who sent this message*", and he insisted that he did not want to check that Baroda's facilities were repaid. However, the WhatsApp exchange was disclosed by Dr Shetty, and, when Mr Manghat was cross-examined, it was not suggested to him that the exchange was not a genuine one.

422. In his closing submissions, Mr Wandowicz did not seek to maintain the pleaded case. He acknowledged that, in their WhatsApp messages, "*Mr Manghat plainly did advise Dr Shetty that it was vital for NMC to repay Baroda's liabilities*", and "*it definitely would have got through to Dr Shetty*". He submitted that, in this context, it "*is entirely to be expected of Dr Shetty to ask: how are you doing? Have we done what you said was so vital?*". He submitted on this basis that the exchanges were "*consistent with both parties' cases*".

423. I disagree. First, the exchanges are not consistent with Dr Shetty's (original or amended) pleaded case. Secondly, the submission is inconsistent with Dr Shetty's evidence, which itself is not credible. Thirdly, Dr Shetty's enquiries about repayment reflect Dr Shetty's real concern that the facilities were repaid, and more than merely an interest about whether Mr Manghat had carried out his plans. They support the JA Claimants' case that Dr Shetty had himself given a commitment to Mr Jayakumar.

424. In an internal Baroda letter of 13 May 2019, Mr D A Kumar explained why Baroda had not charged NMCH for repaying the AED 367 Million Facility early: that he had instructed the Abu Dhabi branch "*on the instructions of our higher management on 18.03.2019, to settle the outstanding under* [NMCH]"; that the AED 367 Million Facility had been repaid on 25 March 2019; and that the working capital facilities reduced to nothing on 28 March 2019. He said that no prepayment penalty charge had been levied since the facilities, including the AED 367 Million Facility, had been "*settled at the instance of our bank*".

425. I return to what was discussed at the meeting between Dr Shetty and Mr Jayakumar. I reject Dr Shetty's evidence that the discussion was only about a plan to list UAE Exchange, and that there was no discussion of the NMC Group's liabilities to Baroda. I am prepared to accept that there might have been some mention of the listing of UAE Exchange, but I find that there was discussion about the NMC Group's liabilities and settlement of them. Dr Shetty's evidence about that is inconsistent with Mr Jayakumar's evidence. Furthermore, it is inconsistent with the briefing for the meetings that he had requested and received from Manghat. Nor does it explain why the NMC Group's borrowings were repaid shortly after the meeting.

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426. The JA Claimants advanced persuasive arguments in their closing submissions in support of their case that Dr Shetty and Mr Jayakumar agreed that the NMC Group would repay virtually all their liabilities to Baroda in exchange for Baroda not revealing the true position about their accounts with Baroda. However, I did not hear Baroda's response to the JA Claimants' submissions. It would be unfair to Baroda and to Mr Jayakumar personally to make a finding about that, and it is unnecessary to do so in order to deal with the claims before me.

427. I therefore reach these conclusions about what Dr Shetty said at the meeting to deal with what Mr Manghat called the "*EY issue*". The objective of Mr Manghat and the NMC Group, as Mr Manghat had briefed Dr Shetty, was that Baroda should be content to have their exposure to the NMC Group repaid and should not probe further into the EY issue. It was hoped that this could be achieved, although Mr Jayakumar was "*worried*", and, as Mr Manghat understood (whether rightly or not) and as he told Dr Shetty, Mr D A Kumar had explained to Mr Jayakumar that Baroda's loans "*are not in accounts and client* [sc. the NMC Group] *ready to pay off without affecting credibility*". As Dr Shetty pleaded, he acted according to Mr Manghat's counsel, and he spoke to Mr Jayakumar with a view to securing the result that Mr Manghat sought. Accordingly, I conclude that he assured Mr Jayakumar that the NMC Group would repay facilities that Baroda had extended to it so that Baroda was no longer exposed; and that he did so because he hoped that, in these circumstances, Baroda would not reveal to EY the true position on the Baroda accounts as of 31 December 2018.

428. I reach no conclusion as to what Mr D A Kumar had in fact told Mr Jayakumar about the EY issue before the meeting. Nor do I reach any conclusion about whether, in response to Dr Shetty, Mr Jayakumar said that Baroda would be content to be repaid without doing anything about the EY issue. It might be that Dr Shetty judged at the meeting that, having been promised that the borrowings from Baroda would be repaid, Mr Jayakumar and Baroda were satisfied, and he decided not to press for any express commitment about the EY issue, perhaps judging that it would be impolitic to do so.

The response to the Muddy Waters Reports

429. I go next to the response of Mr Manghat and others at the NMC Group after the First Muddy Waters Report was published on 17 December 2019. As I have said, Mr Zo'Mot and Mr El Khaldi at ADCB were seriously concerned about it, but at a meeting on 18 December 2019, Mr Manghat told them that the Report was "*short seller noise*". He repeated such assurances over the coming weeks. He also promised that a substantial part of NMC's debts to ADCB would be repaid. In fact, US$ 400 million was repaid on the C1 Facility, but otherwise promised repayments were not made.

430. ADCB contended that Mr Manghat was making promises that were unrealistic and giving assurances that he knew were untrue. Mr Manghat denied that: he said that the NMC Group was "*holding discussions*" and that the "*principal shareholders are also giving me*

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belief that the funds are coming in". I accept ADCB's contention, and I do not accept Mr Manghat's evidence. His WhatsApp exchanges show that the NMC Group was facing severe cash deficiencies: for example, he wrote on 20 January 2020 that Noor Capital PSC should not be paid on a cheque that fell due, writing "[t]*hey want some money but we don't have*", and on 29 January 2020, Mr Suresh Kumar wrote to Mr Manghat, "[w]*e need cash urgently. We have only sufficient cash to pay off the cheques for the next 2-3 days*".

431. After NMC plc announced that the Freeh Group had been engaged to conduct an investigation, Mr Shenoy and Mr Suresh Kumar were concerned about how documents might be concealed from the investigators. In a WhatsApp message of 18 January 2020, Mr Suresh Kumar told Mr Shenoy: "*We want to shift the non showing bank files to some other place. Can we ask ravi rai for a vacant flat got*", to which Mr Shenoy replied *"Ok"*. (The term "*non showing bank files*" refers, of course, to bank facilities that had not been disclosed to NMC plc's board or disclosed in its financial statements.)

432. Mr Manghat too had exchanges with Mr Suresh Kumar on 29 and 30 January 2020 about obstructing the investigation and planning what information should be revealed: his responses about the exchanges in cross-examination were not convincing, but he did accept that he "*messed up*". On 8 February 2020, Mr Suresh Kumar sent Mr Manghat messages about how to respond to the questions of Freeh Group's investigators: "*In tomorrow's meeting with* [Freeh Group] *I can talk on the lines agreed the other day*", "*Particularly with regard to balance confirmation*". In cross-examination, Mr Manghat agreed that "*it could be*" that he had agreed with Mr Suresh Kumar how he should respond to the investigators' questions, but he sought to excuse this on the basis that his mind was not "*on any of the investigation*".

433. Mr Manghat continued to obstruct the investigation. On 21 February 2020, he sent an email to Mr Dan Luther of Channel Capital, whose lending to the NMC Group was undisclosed, giving instructions that it was not to engage with the Freeh Group in any way, an instruction that he was forced to withdraw on 24 February 2020.

434. Mr Manghat denied in his defence in the ADCB Action that he sent the email of 21 February 2020, pleading that it is not in language that he "*would use*", and that he had left for Saudi Arabia earlier on 21 February 2020 and was not accessing his emails. When asked about this in cross-examination, Mr Manghat initially sought to maintain his denial about sending the email of 21 February 2020, but then he only said that he did not remember doing so, saying: "*I might have done a lot of mistakes*". I conclude that, even if Mr Manghat did not himself send the email, he was aware of it and authorised it. It is incredible that, in the circumstances, an email of this kind would otherwise have been sent in his name.

435. Further, Mr Jones identified two emails dated 24 February 2020, with Excel attachments, giving instructions to delete electronic documents by reference to key words and specific

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email addresses, including those of Mr Manghat and Ms Sabina D'Mello. (Ms D'Mello had been Mr Manghat's personal assistant from 2011 to 2017, and she became an Administration Manager in the CEO's office at about the time when he became the CEO.) I cannot believe that this was done without Mr Manghat's knowledge and involvement. Mr Wandowicz observed, and I accept, that the specified email addresses did not include those of Dr Shetty, and that this purge did not affect emails to or from Dr Shetty's family office.

436. I should refer to one other happening on 24 February 2020, after the Freeh investigators discovered evidence that the NMC Group had been falsifying financial information. A board meeting of NMC plc was held at 3.00pm that afternoon. The minutes record this: "*Judge Freeh advised that his team had encountered a number of problems progressing some areas of review relating to the Treasury function. Following some obstructions and delays in the process relating to both cash reconciliation and Supply Chain Financing reviews, Mr Suresh Kumar was being interviewed earlier in the day and the interview had been terminated forcibly by Mr Manghat just as progress was being made. The specific questioning of Mr Kumar related to bank statement documentation. Suresh Kumar … had subsequently been suspended from his employment by Mr Manghat*".

437. Mr Manghat accepted that he had interrupted an interview of Mr Suresh Kumar by the Freeh investigators. In his defence and his evidence, he said that he intervened because Mr Kumar's wife telephoned him and told him that Mr Kumar was "*locked in a room*". Mr Manghat was concerned because Mr Kumar had "*cardiac issues*" at the time. When he was denied entry to the office where the interview was being conducted, Mr Manghat called Mr Mark Tompkins, who, with Mr Bomford, came and gave instructions that the interview of Mr Suresh Kumar should be discontinued.

438. This account cannot reasonably be reconciled with the minutes of the Board meeting, which was chaired by Mr Tompkins and attended by Mr Bomford. However, I do not need to determine quite how Mr Suresh Kumar's interview came to be curtailed. It is not disputed that Mr Suresh Kumar was suspended from his employment on 24 February 2026, and that on 26 February 2026, when NMC plc made an announcement about the Undisclosed Debt, Mr Manghat was "*removed*" from his post as CEO "*with immediate effect*".

439. In the ADCB proceedings, Mr Manghat pleads that "*it was* [his] *recommendation to appoint the Freeh Group and was fully supportive of the Independent Review Committee appointing Glasser Weil LLP and [the Freeh Group] to investigate issues in the company and was fully supportive of their investigation. Mr Manghat encouraged NMC's treasury team to give full-cooperation to the investigators …*". I am not able to say whether Mr Manghat suggested that the Freeh Group should conduct an investigation, but it is clear from Lord Clanwilliam's evidence that, if he did so, this was after the Independent Review Committee had decided that there should be a professional investigation and it only remained to choose who should conduct it. (According to Mr Manghat, Lord Clanwilliam

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and Mr Basaddiq were in favour of KPMG conducting it.) I cannot accept that he supported the investigation or encouraged others to do so. He tried to thwart it.

Dr Shetty's WhatsApp Exchange with Mr Krishnamoorthy

440. It appears that, in February or March 2020, Mr Krishnamoorthy returned to help the NMC Group to deal with the crisis that it faced. On 16 February 2020, Dr Shetty resigned as a director and Joint Non-Executive Chairman of NMC plc. On 27 February 2020, NMC's shares were suspended from trading on the London Stock Exchange and the Financial Conduct Authority had announced an investigation in its affairs.

441. Against this background, on 5 and 6 March 2020, Dr Shetty and Mr Krishnamoorthy exchanged WhatsApp messages. On 5 March 2020, Mr Krishnamoorthy wrote that "*Situation here is very bad. We are bankrupt*", and he asked whether Dr Shetty could provide funds by "*trading off*" one of his assets. Dr Shetty declined to do so, but he provided Mr Krishnamoorthy with contact details for a Mr Sunil Kaushal at Standard Chartered Bank. Mr Krishnamoorthy replied that Standard Chartered would not help: "*NMC owes billions to them*", "*Noone will help in the crisis hour*", "*All banks are asking where the money went*", "*We cannot tell them that we used unrelated business purposes*".

442. Early on 6 March 2020, Dr Shetty asked, "*Billions, where gone my dear*?". Mr Krishnamoorthy replied, "*SUT Hosp 200 crores, SUT land 200 crores, Neopharma month after month, Oman cement factory and port, Egypt hosp, UAE Exchange, loan of Burj Khalifa, Assam tea estate, Travelex acquisition, your villa in Abu Dhabi etc"*. Dr Shetty asked, "*My God! Can you give proofs*?".

443. Shortly after that, it seemed that their exchanges were finished for the night, and Dr Shetty and Mr Krishnamoorthy wished each the good night. However, Dr Shetty was clearly anxious for further information, and shortly afterwards he resumed their communications, asking about "*Centurion proceeds*" and an allegation of Muddy Waters about siphoning money by overvaluing assets. Then he asked "*if any binami companies in my name please inform me"*. Dr Shetty explained in cross-examination that "*binam*i" (or "*benami*") is a Bengali term and here it means sham. Mr Krishnamoorthy responded to this last request, "*Binami cos I am not aware. Maybe Modular Concepts in Pradeep Rai's name is what they are referring"*. Mr Rai is Dr Shetty's brother-in-law.

444. The exchanges ended with Mr Krishnamoorthy emphasising the NMC Group's dire financial position: "*Right now, the priority is to keep NMC up and running. If we can have some funds in the system, we can pull on for some more time. We are literally cash starved. If you can support on that, it will be the best thing that NMC can have now"*.

445. I set out this exchange in some detail because Mr Wandowicz submitted in his opening submissions that it demonstrates that Dr Shetty was shocked by the expenditure that Mr

Krishnamoorthy listed. To my mind, this outs too much weight on Dr Shetty's responses.

Departure of Dr Shetty and Mr Manghat to India

446. The JA Claimants plead that "*Between February and April 2020, each of Dr Shetty, Mr Manghat, Mr Shenoy, Mr [Suresh] Kumar and Mr Ghosh left the UAE and departed to India without warning. .... In addition, towards the end of February 2020 around 30 members of the NMC Group's Corporate Accounts and Reporting team also departed for India without warning*". They also plead of Dr Shetty that the lack of a legitimate basis for the Direct Shetty Payments is to be inferred from, inter alia, his "*departure to India shortly after the suspension of trading in NMC plc's shares, and his prolonged failure to return to and resume his residence in the UAE ...*".

447. There was no evidence supporting the allegation that Dr Shetty or Mr Manghat or other persons left for India "*without warning*". Both Dr Shetty and Mr Manghat gave evidence explaining why they went to India in or about February 2020. There is no proper basis to reject their evidence. Nor is there any mystery about why Dr Shetty did not return to the UAE for some time: he was, as Mr Wandowicz put it, "*forcibly kept in India at the instigation of Baroda*" and "*spent four years fighting in the Indian courts for the right to come back home to the UAE*".

448. I assume that the supposed relevance of the JA Claimants' plea is that in some way the departures to, and Dr Shetty's stay in, India are some evidence in support of the case that Dr Shetty, Mr Manghat and others were party to the fraud. If so, I reject the point, and the allegation does not influence the conclusions that I have reached.

Dr Shetty's investigation and proceedings

449. Shortly after the fraud was uncovered by the Muddy Waters reports, Dr Shetty commissioned Mr Mohammed Soliman Omar of WiseHouse Consultancy**,** an accounting expert with the UAE Federal Court and the UAE Ministry of Justice, to conduct an investigation and to produce a report. His brief was this: "*to review the financial statements of both NMC Healthcare LLC and Finablr LLC and to identify Dr Shetty's responsibilities for those financial statements and the validity of the financial statements contained therein. Work towards fact-finding to the extent possible about the financial crisis announced by NMC, exposing facts about the discovered fraud and embezzlement attributed to both the management of NMC and UAE Exchange*". WiseHouse produced a report dated 30 April 2020. In summary, it exonerated Dr Shetty in respect of the matters investigated, and made findings adverse to Mr Manghat and others. Dr Shetty deployed the report in proceedings that he brought in India against Mr Manghat and sixteen others: indeed, I infer that this was its purpose, since the report describes Dr Shetty as the "*Plaintiff*" and lists seventeen "*Respondents*". Certainly, Dr Shetty brought criminal proceedings in both India and the UAE against Mr Manghat and others.

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450. I do not know in any detail what material was available to Mr Omar, and Mr Wandowicz rightly accepted that his findings are not probative in these proceedings. However, he relied on the fact that Dr Shetty commissioned the report and brought criminal proceedings against others to argue that this response to the disclosure of the fraud "*contrasts sharply with the theory that he was the mastermind behind it*".

451. I shall take this argument into account, but it seems to me to have limited force. Perhaps surprisingly in view of the argument advanced on his behalf, Dr Shetty gave no evidence about why he obtained the report and brought the proceedings. I am left to conjecture whether his response to the disclosure of the fraud was that of an innocent victim of it, or whether he considered that attack was the best form of defence.

Was Dr Shetty party to the fraud?

Introduction to JA Claimants' case

452. The JA Claimants summarised their case against Dr Shetty as being that, after the IPO, Dr Shetty continued to treat the NMC Group's property and credit as if they were his own, and that he had no regard for the corporate boundary between the NMC Group and his private interests. This, they say, manifests itself in the Direct Shetty payments and the use of the funds of the NMC Group for Dr Shetty's private benefit more generally, and the same disregard for proper corporate boundaries and governance manifests itself in other aspects of the fraud, including the Undisclosed Debt, the Related Party Transactions and the Undisclosed Securities.

Assam Tea Company Ltd

453. In support of this broad contention, Mr Thanki referred to a Revised Resolution Plan ("**RRP**") dated 5 August 2018, which set out an offer by BRS Ventures to buy an insolvent Indian company called Assam Company India Ltd ("**ACI**") under the provisions of the Indian Insolvency and Bankruptcy Code 2016. In support of the offer, the RRP identified an available "*surplus liquid investible fund*": it stated that, as of 3 July 2018, BRS Ventures had available to it INR 2,030 crores, comprising funds in Dr Shetty's accounts of 235.83 crores and "*Balance in various current accounts of M/s UAE Exchange LLC, & UAE NMC Healthcare LLC*" of 1,794.17 crores. The funds of NMCH and UAE Exchange, it was submitted, were being treated as available to BRS Ventures if Dr Shetty so chose.

454. Although in his email of 6 March 2020 Mr Krishnamoorthy included the "*Assam tea estate*" as one of the purchases on which the NMC Group's "*billions*" were spent, it is not alleged by the JA Claimants that ACI was bought with its funds. Dr Shetty's evidence that he bought it with his own money was not challenged. They rely upon the evidence given by Dr Shetty in cross-examination as illustrating how he regarded, and was willing to treat, the NMC Group's corporate assets. He readily agreed that, in the RRP, he represented that the 2,030 crores were his "*own surplus investment fund*". When it was put to him

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that he was using "*a publicly traded company's treasury as your own private assets to secure*" a personal purchase, he responded *"Not private asset. It's my company. Publicly listed, and that will be the net worth of the company. It will add to my net worth*". Although the answer is slightly obscure and Dr Shetty might not have appreciated quite what he was being asked, Dr Shetty clearly thought that the assets of the NMC Group, in which he was a minority shareholder, were part of his own "*net worth*".

455. In response to this argument, Mr Wandowicz pointed out (i) that the JA Claimants do not plead any allegation about the purchase of ACI; (ii) that, in this part of his cross-examination about the RRP, Dr Shetty was being asked a lengthy legal document written in 2018; and (iii) that there is no evidence about his involvement in putting together or approving the RRP.

456. I do not criticise the JA Claimants for not pleading the point: they do not allege that it involved dishonesty on Dr Shetty's part or that the purchase of ACI was part of the fraud on the NMC Group. The purchase was introduced into the case when Dr Shetty relied in his opening submissions on his response to Mr Krishnamoorthy's email of 6 March 2020 as evidence of his innocence, and it was proper in those circumstances for the JA Claimants to explore the matters that Mr Krishnamoorthy listed.

457. I decline to place weight upon how the RRP presented the "*surplus liquid investible fund*" of 2,030 crores: there is no sufficient reason to think that Dr Shetty was party to drafting that part of the document or even that he was aware of its exact wording. However, that is not a complete answer to Mr Thanki's point. I accept that Dr Shetty's answers in cross-examination reflected an indifference on his part to corporate boundaries, and a readiness to regard corporate funds as his to deploy as he saw fit. This was not because he was unaware of the principles governing corporate funds: Mr Wandowicz did not suggest that he was, and I have already referred to Dr Shetty's evidence in cross-examination that "*I know what the meaning of listing. I can't touch one dirham without board's approval*".

Introduction to Dr Shetty's case

458. Dr Shetty denies that he was party to the fraud. In his Defence, he pleads this by way of a summary, "*Dr Shetty had no knowledge of the fraud at the NMC Group. The Claimants' case against Dr Shetty is wholly inferential, but the indirect evidence upon which it rests, when properly considered, does not support the inferences drawn by the Claimants as to Dr Shetty's alleged deliberate wrongdoing. The true position is that Dr Shetty was himself misled, and a victim of fraud committed by others. At all material times, Dr Shetty honestly believed: (i) the NMC Group to be a successful and robust business; (2) that he was a wealthy individual, largely but not exclusively owing to (what he thought was) the success of the NMC Group; and (3) that the NMC Group would continue to be successful long after his retirement, representing his legacy to the UAE*". He goes on to plead that the fraud commenced when financial control over the NMC Group was concentrated into the

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hands of "*Mr Manghat and his trusted associates";* that even before 2102 Dr Shetty was not directly involved in financial matters, and relied on others; that Dr Shetty reposed full trust and confidence in Mr Manghat; and that only in retrospect he now realises that Mr Manghat and his associates "*orchestrated and carried out the fraud at the NMC Group"*.

Initial observations on Dr Shetty's argument

459. I make four initial observations about the argument that Dr Shetty presented. First, Mr Wandovicz suggested in his closing submissions that the "*logical route"* is to determine whether Dr Shetty was party to the fraud is first to decide whether Dr Shetty was an honest witness, and, in light of the answer to that, to decide such questions as whether he "*dishonestly procured the Direct and Indirect Payments*"; whether he knew that NMC funds were being used for transactions relating to Travelex, RCS, the aircraft, the Dubai Hills Villas and investments through NNMC; and whether "*Dr Shetty knew of the accounting irregularities within NMC"*. This does not seem to me logical or a sensible approach: the question whether Dr Shetty's evidence was honest should not be decided in the abstract or as a matter of general impression, but by testing it against the documentary and other evidence about the Direct and Indirect Payments, the other acquisitions and the accounting records.

460. Secondly, Mr Wandowicz engaged with the JA Claimants' case on this basis that "*What is alleged is that [Dr Shetty] was the protagonist of this fraud, the man who directed [that] some 3 billion dirhams is stolen for him by Mr Manghat and his team. So no narrow or lesser basis has been advanced"*. I cannot accept that this fairly represents how the case was presented by the JA Claimants. I acknowledge that, in the Particulars of Claim, they plead that the frauds were "*perpetrated by certain of the former management of [NMCH] (who were also the principal shareholders of [NMC plc])",* but I cannot accept that the case advanced against Dr Shetty was as narrow as Mr Wandowicz contended. The case was that the fraudulent schemes were operated by Mr Manghat and others in NMCH's financial operation. The essential case against Dr Shetty was that he received enormous benefits from the fraud, knowing that he was not entitled to them and dishonestly.

461. Thirdly, Mr Wandowicz submitted that, while dishonesty in civil proceedings is proved on the balance of probabilities, "*it is not open to the Court to find that the defendant acted dishonestly if the evidence is equally consistent with the defendant acting honestly"*. He cited in support of this contention the speech of Lord Millett in the *Three Rivers DC* case (cit. sup., at para. 186): "*It is not open to the court to inter dishonesty from fact which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved"*.

462. In view of the volume of transactions that were alleged by the JA Claimants to be unlawful, necessarily the JA Claimants' approach to the trial in general and the cross-examination of Dr Shetty in particular was to examine in detail particular transactions that they

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submitted prove Dr Shetty's participation in the fraud. As he developed his argument orally, Mr Wandwicz submitted that, therefore, in respect of these exemplar transactions, it was incumbent on the JA Claimants to demonstrate that "[t]*hose examples must be definitely inconsistent with honesty*".

463. I agree with Mr Thanki that this overstates the position. The proper approach is that explained by Flaux J in *JSC Bank of Moscow v Kekhman [2015] EWHC 3073* (Comm) at paras. 19 and 20: there too, counsel for the defendants cited Lord Millett's speech and submitted that the test derived from it is this: *"...the primary facts must necessarily lead to the inference that [the first defendant] is guilty of fraud because otherwise and ex hypothesi the primary facts can be consistent with innocence ... You don't get to arguability until you've established that there is a proper fraud plea. You don't establish that there is a proper fraud plea before particulars are pleaded which are only consistent with [the first defendant] being dishonest and which cannot be consistent with [the first defendant] being honest*". Rejecting that submission and holding that the submission exaggerates what is required for a valid plea of fraud, Flaux J said, "*The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it, there must be some fact 'which tilts the balance and justifies an inference of dishonesty'. At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud. If the plea is justified, then the case must go forward to trial and assessment of whether the evidence justifies the inference is a matter for the trial judge*". In support of this, Flaux J cited the speech of Lord Hope in the *Three Rivers case* (loc. cit. at paras. 55, 56).

464. I add that, in assessing whether the inference of dishonesty is more likely than one of innocence or negligence, the Court is not required in a case such as this (as Mr Wandowicz appeared to argue) to examine each allegation of dishonesty in relation to a transaction in isolation. The proper approach is to examine the totality of the evidence relied upon by the parties and to assess it cumulatively.

465. Finally, Mr Wandwicz understandably argued that Mr Manghat was responsible for operating the fraudulent scheme. That is not, of course, enough to exculpate Dr Shetty. The JA Claimants' case is that Dr Shetty and Mr Manghat acted together, not only in early 2019 but from 2012 and throughout the Relevant Period, in that, for example, they co-signed transfer requests, and Dr Shetty rewarded Mr Manghat for what he did (for example, as I shall explain, in respect of his assistance on the Travelex acquisition).

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The Direct Shetty payments

466. The JA Claimants contend that between 2 April 2012, the date of the IPO, and 16 February 2020, when he resigned as a director of NMC plc, Dr Shetty received a total of at least AED 4.1 billion of payments from the NMC Group into his personal accounts at Baroda and other banks, some AED 3.9 billion of payments being received from NMCH, Holding and the ADGM Companies; and that, taking into account payments from Dr Shetty's personal accounts back to the NMC Group over that period, he received a net sum of at least AED 2.6 billion from the NMC Group.

467. As I have said, most of the Direct Shetty payments were made to three accounts in Dr Shetty's name at Baroda. Dr Shetty accepted that two of the accounts, the 2359 account and the 0090 account, were his.

468. He also accepted that he used the 2359 account for his personal banking: it appears to have been his principal personal account. This is shown by an analysis by the JA Claimants of cheques that Dr Shetty accepted were signed by him and drawn on the 2359 account for his personal benefit. I need not list them all: they include payments for property acquisitions, including a payment of AED 90.5 million for land on Al Reem Island; payments for service fees and other expenses relating to his properties in Burj Khalifa and elsewhere; and payments connected with his interests related to education.

469. The 2359 account was also used to make the payments by post-dated cheques under his settlement agreement with HE Al Mazrouei: see para. 100 above. The JA Claimants referred in particular to a payment of an instalment of AED 60 million: when the cheque was first presented on 20 August 2015, it was returned because there were insufficient funds in the account. On 1 September 2015, AED 60 million was transferred from NMCH to the 2359 account, and the cheque was paid when it was re-presented.

470. Dr Shetty's evidence was that he did not recall the 7013 account, but he said that it might have been his. I conclude it was. This is shown by emails sent to Dr Shetty on 27 November 2018 and 30 January 2019 relating to payments into that account for his sale of shares to a Dr Nandini Tandon.

471. The accounts at other banks into which the JA Claimants says that Direct Shetty Payments were made are:

a. an account at Falcon Private Bank Limited (with a number ending in 1520);

b. an account at National Bank of Fujairah (with a number ending 0966);

c. an account at UNB (with a number ending 1638);

d. an account at First Gulf Bank (with a number ending 8014); and

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e. an account at First Gulf Bank (with a number ending 8025).

472. Dr Shetty accepted in his evidence that he "*was aware of*" the account at Falcon Private Bank Limited.

473. He said that he did not recall opening or using an account at National Bank of Fujairah, but the account opening form is in evidence: on its face, it was signed by Dr Shetty and the signature verified by a Mr Ravinder Ochani. There is no reason to think that the signature and the verification are not genuine, and I conclude that the account was Dr Shetty's.

474. Dr Shetty also said that he was also unaware of the accounts at UNB and First Gulf Bank. Although the JA Claimants said that the evidence shows that Dr Shetty used these accounts, they did not identify specific evidence to show this, and I have been unable to find it. On the other hand, however, no argument about this was developed by Mr Wandovicz. In these circumstances, I shall allow the JA Claimants, if so advised, to identify the relevant evidence after I have issued this judgment and allow further argument about these payments into these accounts.

475. Dr Shetty did not admit in his Defence that the transfers to his accounts were made, but they are proved by the evidence of Mr Jones and the JA Action Accountant Expert, which was not challenged. The JA Action Accountant Experts also agreed that the Direct Shetty payments were accounted for by recording a debit in the Advance Account or some other suspense account; and a credit was recorded to a bank or cash ledger account.

476. Dr Shetty contended that he did not himself "*operate*" the 2359 account, the 0090 account and other accounts. However, he accepted in cross-examination that he maintained control over his accounts, and he was the sole signatory on them. This is clear from Baroda's mandates for accounts 2359 and 7013, and, although the documentation does not include the mandate for account 0090, I accept the JA Claimants' submission that the operation and control of account 0090 would not have differed from that of his other accounts.

477. Further, Dr Shetty pleaded that his accounts with Baroda were used "*to make payments on behalf of the NMC Group in the course of legitimate NMC business*", and that therefore "*no inference can be drawn from the fact that money was paid into one of [his Baroda accounts] as to the purpose or intended recipient of the money …*". Dr Shetty exemplified this contention only with small payments from his account made on 19 November 2012, 9 March 2013 and 1 September 2013, the total of these payments being less than AED 5 million. They are said to have been made in relation to the lease of a plot for a clinic. I cannot accept that, as Dr Shetty said, the inference to be drawn is that these payments are "*part of the overall established practice of using the Shetty Private Baroda Accounts for business purpose for the group*". There was no evidence that I can accept that

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supported that contention and Mr Wandowicz did not develop a convincing argument in support of the pleaded inference.

478. The JA Claimants say that their contention that the Direct Shetty Payments were not properly made is supported by their treatment in NMC's internal records. Large payments were recorded in the NMC Group's internal records and on NMC's "SCORE" database with no real statement as to their purpose, and often with such uninformative explanations as "*remittance*" or "*transfer to Chairman*" or "*Own Account Transfer*". Dr Shetty did not assert or explain in his evidence that there was any other legitimate basis for him receiving the Direct Shetty payments. They were not salary or other remuneration. No NMC Group company other than NMC plc could properly pay him dividends. It was not plausibly suggested that the payments were by way of legitimate loans to Dr Shetty. None of the Direct Shetty Payments were recorded as expenses in the NMC Group's income statements.

479. In his oral opening, Mr Wandowicz identified that a transfer which the JA Claimants list as a Direct Shetty Payment and which is described in the NMC Group's records as a "*transfer to Chairman*" is shown by the documentary evidence (in particular by an email from one of Dr Shetty's own companies, BRS Capital, to Mr Suresh Kumar and Mr Pinto dated 7 March 2018) to be by way of repayment to the company of a short term loan that it had extended to the NMC Group. This explanation was not supported by Dr Shetty's evidence, but I accept it. However, this isolated case does not change the pattern for the vast majority of the Direct Shetty Payments.

Dr Shetty's knowledge of the Direct Shetty Payments

480. Mr Thanki suggested in his closing submissions that there was a change of emphasis in the presentation of Dr Shetty's argument about the Direct Shetty Payments between his opening submissions, in which it was emphasised that the JA Claimants had not investigated the destiny of misappropriated funds ("*No-one knows where the misappropriated funds ultimately went, because [the JA Claimants] did not carry out any meaningful asset tracing exercise and so do not come to Court with evidence of the onward chain, or who, at the end, was left with the stolen money*", and the closing submissions, in which emphasis was placed on Dr Shetty's state of knowledge. I see nothing in that point: it has always been a central plank of Dr Shetty's defence that he knew nothing of the fraud, and the argument that there is no or limited information about what happened to the misappropriated funds was properly advanced in support of that.

481. In response to Dr Shetty's denial that he knew of the Direct Shetty Payments, the JA Claimants say that ordinarily payments into a person's personal bank account are received for the account holder's benefit and, at least where he is the sole signatory on the account, it can generally be inferred that they were made for his benefit. In this case, they contend, it simply is not credible that such large sums should be paid into his accounts over so long a period without his knowledge. They illustrated the point by

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observing that 83 transfers to Dr Shetty each exceeded in amount the total of his legitimate remuneration during the Relevant Period. (The evidence about his legitimate remuneration was not disputed. When he was the CEO of NMC plc, Dr Shetty's monthly salary rose from AED 125,000 in 2012 to AED 390,000 in 2016. He also received annual payments under a Short-Term Incentive plan, which rose from AED 421,875 in 2013 to AED 1,950,000 in 2016. He received shares, and no cash, under a Long-Term Incentive Plan. Upon becoming the Non-Executive Chairman in March 2017, he became entitled to fees of £ 210,000 per annum.)

482. The JA Claimants also argued that the inference that the Direct Shetty Payments were made with Dr Shetty's knowledge and for his benefit is corroborated in that:

a. As far as the evidence goes, the Direct Shetty Payments were made by transfers that, on the face of it, bear his signature. The JA Claimants submitted that all the transfers in evidence were made under what appears to be his (wet or electronic) signature, and Mr Wandowicz identified no exception.

b. The fraudulent scheme could have been operated secretly from Dr Shetty only if not only Mr Manghat and other senior executives of NMCH but also numerous more junior personnel were party to concealing it from him.

c. Dr Shetty's personal banking was handled in his own office, in particular by Mr Pinto, whom Dr Shetty said was honest and loyal to him. For example, when asked about a document signed by him in which he authorised persons including Mr Pinto, to collect bank statements for his personal accounts from Baroda, Dr Shetty acknowledged the document, saying "*Of course, Joseph Pinto's signature is there, it must be okay*".

483. As for the first point, Dr Shetty responded that his apparent signature on documents relating to the transfer of funds is not cogent evidence against him, even assuming (rightly or wrongly) that his signatures were not forged. First, there is no dispute, as I understand it, that Mr Manghat and those who worked with him had access to Dr Shetty's electronic signature and Mr Wandowicz persuasively submitted that it appears that electronic signatures were used to make many of the transfers that the JA Claimants say were unlawful. Further, even where a document bears a wet signature, it does not follow that Dr Shetty understood the nature or purpose of the document when he signed it. He pleaded that he was asked to sign large numbers of documents on a day-to-day basis, and, even when he was given some explanation about the document, it was only a brief one.

484. I accept that Dr Shetty signed documents without reading them properly and trusted the explanations that he was given about why they were required. That said, I find it difficult to accept that, over the years of the Relevant Period, he signed so many obviously important documents, such as agreements for banking facilities and documents relating

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for such large transfers, without taking any interest in at least their general nature and purpose.

485. I also see force in the JA Claimants' other two points: first, Dr Shetty's case is that his accounts were misused without his knowledge not only by Mr Manghat but also (to list only those whom would Dr Shetty claims in his first witness statement were involved) Ms D'Mello, who, according to Dr Shetty's evidence, "*operated the 2359 bank account";* Ms Rachel dela Torre, who had been an account executive since 2006; Mr Udayakumar Nair; Mr Praveen Kumar; Mr Prajeesh Veerachan, an account executive since at least 2013; and Mr Suresh Nandiraju, the CEO of Nexgen. Mr Sreekanth Nair's email of 11 March 2019 (see para. 212 above) also illustrates how many were involved in maintaining the fraud. It is inherently most improbable that a secret on such a scale might have been maintained successfully for so many years. No explanation was suggested as to why so many persons would have been willing to deceive Dr Shetty, or how Mr Manghat and others principally responsible for the fraud could have supposed that, with so many involved, the scheme could have been kept secret from him.

486. In his witness statement, Dr Shetty said that "*Bank statements would never come to me. Bank of Baroda never sent me intimation about transactions or bank statements for my accounts".* It is clear from the evidence that Mr Pinto had access to statements and other documents relating to Dr Shetty's personal accounts. Mr Mahaveer Gupta said that sometimes he would go to Baroda to collect them. Dr Shetty explained that he dealt with banking matters without visiting the offices of Baroda (or, as I infer, of other banks), but through his private office staff and in particular through Mr Pinto, and in cross-examination he accepted that his office staff, including Mr Pinto, had access to the statements and would review them. Thus, on Dr Shetty's own case, Mr Pinto and others were in a position readily to identify large and suspicious movements in the accounts, such as many of the Direct Shetty Payments. This is inconsistent with Dr Shetty's case that the Direct Shetty Payments were part of a scheme on the part of the executives of the NMC Group of which he was unaware and of which he was the victim.

487. I conclude that, throughout the Relevant Period, Dr Shetty was aware that he was receiving into his bank accounts payments from the NMC Group which were not properly justified.

The Indirect Shetty Payments

488. In support of their case against Dr Shetty about the Direct Shetty Payments, the JA Claimants also rely upon particular benefits that, they say, he received. Before I come to those, I shall consider the Indirect Shetty Payments. The JA Claimants' case is that, during the Relevant Period, Dr Shetty also received into his personal accounts at least AED 426.4 million, which derived from the NMC Group and was channelled to him, much of it through Nexgen, and also through GGCM and FFT, all companies that, they say, were in Dr Shetty's control.

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489. As with the Direct Shetty Payments, the evidence of Mr Jones and the JA Action Accountant Experts that the payments were made was not significantly challenged. It shows that:

a. There were 53 Indirect Shetty Payments made through two accounts that Nexgen had with Baroda;

b. There were three transfers made from GGCM's 9228 account; and

c. There was one payment from FFT to Dr Shetty's 2359 account.

All were funded by the NMC Group.

490. Their treatment in NMC's internal records was similar to that of the Direct Shetty Payments: in so far as they were recorded in the general ledger, they were entered as debits in the Advance Account; and in so far as they are recorded on SCORE, generally no purpose for the payment was given.

491. Dr Shetty, however, contends that he did not control Nexgen, GGCM or FFT, and that the Indirect Shetty Payments were made into his bank accounts without his knowledge. He pleads that:

a. He had an indirect ownership interest of 45% in Nexgen, but that Mr Manghat was a director of it from 15 June 2010, and Dr Shetty delegated to him "*full powers and authority to undertake all acts on behalf of Nexgen …, including in respect of financing*";

b. He did not control FFT. He pleads that, as he now understands, it was controlled by Mr Manghat and/or Mr Praveen Kumar; and

c. He had an interest in GGCM, but he pleads that its "*legitimate business … was operated on a day-to-day basis by Anil Kumar Hegde*".

492. As for Dr Shetty's interest in Nexgen, although he said in his witness statement that "*I now understand that I hold an indirect ownership interest of 45%*", this was misleading. In cross-examination he accepted that he understood "*right from the day one*" that he had an interest in the company.

493. The JA Claimants accept that Dr Shetty did not have "*the day-to-day operational levers*" over Nexgen, and that he might not have known of all its transactions. The evidence shows that, at least with regard to the operation of the Baroda accounts, NMC personnel gave banking instructions on Nexgen's behalf, apparently without reference to Nexgen. The JA Claimants argue that nevertheless Dr Shetty had control of Nexgen, in as much as he could have rescinded the management powers that he conferred on Mr Manghat, and he signed Nexgen's financial statements. Whether Dr Shetty should be described

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therefore as having "*control*" of Nexgen seems to me an arid semantic question. The more important question is whether he knew that Nexgen was an instrument for making Indirect Shetty Payments from the NMC Group to him.

494. As with the Direct Shetty Payments, the JA Claimants' first point is that the volume and value of the payments into Dr Shetty's personal accounts was such that it is simply incredible that he was, as he contends, wholly unaware of them. As I have said, there were 53 such payments in the Relevant Period, and their total value was AED 273 million. The evidence of the JA Action Accountant Experts, which was not challenged and which I accept, was that, of the payments from Nexgen's 7928 Baroda account, AED 111.6 million was funded by transfers at the expense of the NMC Group, and a further AED 131.6 million of payments from Nexgen's 5596 account was so funded. Payments from Nexgen were used to purchase Travelex, RCS and the Dubai Hills properties, and, as I infer, were made in order to do so. There was no legitimate reason for the NMC Group to fund the payments to Dr Shetty and for his benefit, and there was no proper explanation as to why, if these payments were to be made by the NMC Group, they should be routed via Nexgen.

495. The JA Claimants conclude their submission about the Nexgen Indirect Payments as follows: "*[Dr Shetty's] contention that Mr Manghat controlled Nexgen, taken to its logical conclusion, asks the Court to accept that Mr Manghat decided, 53 times, to transfer funds totalling more than AED 270 million into Dr Shetty's personal accounts without Dr Shetty's knowledge or approval. That is not credible*". I certainly accept that Dr Shetty's case about this matter is highly improbable and that this is further powerful evidence that he was party to the fraud.

496. I come to the Indirect Shetty Payments via GGCM. Dr Shetty accepted in cross-examination that GGCM was "*under his control*".

497. There was no dispute that the three payments for a total of AED 84.535 million were made to Dr Shetty's 2359 account from the 9228 account; nor was there any challenge to the evidence of the JA Action Accountant Experts that the payments were funded by the NMC Group. It was not suggested by Dr Shetty that there was any legitimate reason for the payments.

498. There is documentary evidence about how only one of the three transfers was effected: Baroda was given instructions dated 1 June 2017 to transfer AED 28 million from NMCH's 0050 account to GGCM's 9228 account, and from GGCM's 9228 account to Dr Shetty's 2359 account, and both instructions appear to be signed by Dr Shetty. In his evidence, Dr Shetty denied that he ever authorised any payment from GGCM, and he asserted that the transfer instruction of 1 June 2017 from the GGCM account was "*fabricated by them*".

499. I did not find it easy to follow Dr Shetty's evidence about payments from the GGCM account, and my impression is that, at this stage in his cross-examination, Dr Shetty became rather confused. In the end, I am not persuaded of the JA Claimants'

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submissions that the "*natural inference*" from the evidence "*is that Dr Shetty knew about and authorised these payments*". However, this conclusion does not seem to me much to assist Dr Shetty: I am driven to conclude that he knew of NMC funds being directed directly and indirectly into his own accounts and for his benefit, and he was not concerned about the route whereby the funds were being transferred.

500. The single Indirect Shetty Payment that the JA Claimants say was made via FFT was a transfer of AED 70 million into Dr Shetty's 2359 account on 22 May 2014. As Mr Bezant explained, it was funded by NMCH and New Medical Centre Trading Ltd**,** who had transferred a total of AED 73.7 million to FFT shortly before the payment to Dr Shetty.

501. The purpose of the FFT Indirect Shetty Payment was to contribute to his acquisition of Travelex: see paras. 526ff below. As I explain, I conclude that Dr Shetty knew that funds from the NMC Group were being used for the acquisition. It is likely that he knew that some of the funds reached his account through FFT, but even if he was not aware of that, it suffices for present purposes that (as with the GGCM Indirect Shetty Payments) he knew of NMC funds being directed directly and indirectly into his own accounts and for his benefit, and he was not concerned about the route whereby the funds were being transferred.

The Sobha & BR aircraft

502. In his Defence, Dr Shetty denied that he asked for any of the Direct Shetty Payments to be made to him. In cross-examination, he qualified this position, saying "*I never asked them to transfer any money except these [2 or 3 items] … It is true that I must ask them to give the aircraft money and other money". No other – I never asked any money".* As I shall explain, it appears that the "*other money*" related to money used to invest in the Oman Cement Company. First, I consider the money spent on an aircraft for Dr Shetty's use.

503. By a memorandum of understanding dated 6 July 2014, Dr Shetty and Mr Puthan N C Menon entered into an arrangement whereby they acquired a Gulfstream G450 aircraft "*for their private use … with equal partnership":* this is recorded in a settlement agreement dated 15 January 2017 ending the arrangement, after Dr Shetty had told Mr Menon by an email dated 18 August 2016 that he wished to do so. The aircraft was operated by Sobha & B R Aviation Ltd ("**Sobha & BR"**), a BVI company.

504. The JA Claimants allege that NMC funds were used to meet the costs of the arrangements. Dr Shetty did not dispute this, and I so find. In particular, the evidence of the JA Action Accountant Experts shows that:

a. On 17 September 2014, US$ 4,206,834.84 was paid to Sobha & BR; and

b. On 12 August 2015, AED 5 million was paid to Mr Menon.

Both payments were made from one of NMCH's Baroda accounts.

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505. In his Defence, Dr Shetty accepts that, at Mr Menon's invitation, he shared in the acquisition of the aircraft. (He pleads that he "*resigned his stake in the aircraft on 1 October 2015*". It is not clear quite what he meant by that: it is clear that he had some residual interest in it after October 2015, but I do not consider this in itself discredits Dr Shetty's evidence about the aircraft, the JA Claimants' submissions notwithstanding.)

506. Dr Shetty also pleads that he "*was clear with Mr Manghat that the aircraft was a personal investment but that it was subsequently to be used by Dr Shetty for business purposes. Accordingly, Dr Shetty understood that following the acquisition, the costs of maintaining the aircraft going forward would be split between the various businesses for whose purposes Dr Shetty would be travelling (including the NMC Group, UAE Exchange, Neopharma etc)*", and that payments were then arranged by Mr Manghat and Ms D'Mello. He denies having any "*contemporaneous knowledge that the aircraft had not been, as he had instructed and understood, acquired with his personal funds*".

507. I cannot accept the pleaded case that Dr Shetty believed that he had instructed that his personal money be used to funds the acquisition of the aircraft: it is inconsistent with the evidence that Dr Shetty gave when he was cross-examined. The JA Claimants relied here on his answer agreeing that that he had signed the transfer request for payment on 17 September 2014, but that answer in isolation does not seem to me very significant. More telling to my mind was his answer, when refuting that GGCM funds were used, that he had "*authorised Manghat and his brother to pay from UAE Exchange about the Sobha airline, Sobha BR. And how they manage it, we don't know. But GGCM, no way*". This is not, of course, evidence that NMC Group money was used, but it is not consistent with the case that Dr Shetty thought that he was using his personal money.

508. There is also evidence that Dr Shetty again looked to the NMC Group to fund the aircraft in January 2016 (after Dr Shetty pleads that he had resigned his share in it). On 30 December 2015, Mr Binay Shetty sent Mr Manghat a WhatsApp message that Dr Shetty had agreed to "*continue with the plane*" and that there were "*some payments due*". On 3 January 2016, he requested "*Payment to Menon of [AED] 5 m if possible immediately or total of [AED] 16.43 m by 10th Jan*" and he asked if that was possible. No payment was made, and Mr Binay Shetty asked again on 13 January 2016. Mr Manghat replied that "*Dr Shetty took 15 mio kept for payments to Oman*" but that he would "*work for funds*". Although Dr Shetty denied that the funds were used for payments "*to Oman*", but I reject that evidence: by a transfer request dated 14 January 2016, NMCH requested Baroda to make a transfer of AED 15 million to Dr Shetty's 2359 account.

509. Three further payments relating to the aircraft were made in 2016 from Dr Shetty's 2359 account, and each was funded by a Direct Shetty Payment by the NMC Group:

    a. On 21 January 2016, NMCH transferred AED 41,375,000 to the 2359 account, and on the same day AED 5 million was paid by Dr Shetty to PNC Investments LLC. (Mr Jones'

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evidence that the payment by Dr Shetty was made "*in relation to the private aircraft*" was not challenged.)

b. On 14 March 2016, NMCH transferred AED 2,200,000 to the 2359 account. On the same day, Mr Udayakumar Nair emailed a request that this transfer be made and that then AED 2,161,520 be transferred to Mr Menon.

c. On 11 July 2016, NMCH transferred AED 3,817,139 to the 2359 account, and the same amount was transferred on the same day from the 2359 account to Mr Menon.

Dr Shetty offered no answer to the JA Claimants' complaints about these payments.

510. I should also mention that in 2015 GGCM made two payments relating to the aircraft: a payment of 5 million to Sobha & BR on 8 January 2015, and a payment to Mr Menon of AED 5 million on 1 June 2015. There is no evidence that these payments were made from funds provided by the NMC Group. The JA Claimants abandoned any reliance upon them in their closing submissions.

511. The JA Claimants contend that Dr Shetty knew that NMC Group funds were being used to make payments for the private aircraft, and that he allowed and approved of this. I accept their contention.

Oman Cement City Company

512. It is not in dispute that in 2016 Dr Shetty made an investment in an Oman Cement City Project. It was an investment unconnected with the NMC Group.

513. On 16 January 2016, Mr Pinto sent to Mr Krishnamoorthy Suresh an email which read, *"As advised by Dr Shetty, we have prepared the transfer letter for remitting Omani Rial 1.5 Million as the validation fee (5%) for the Oman City Project"*. The attached request was for the transfer to 1.5 million rials from the 2359 account to an account at the National Bank of Oman. On the same day, NMCH's treasury department sent Baroda a request to transfer AED 15 million from NMCH's 0242 account to Dr Shetty's 2359 account.

514. When he was asked about this matter in cross-examination, Dr Shetty accepted the propositions that "*that was how things worked … when you wanted money*", and that he "*would simply ask for money to be deposited in his personal account and the NMC treasury team would make that happen*". I consider that it would place too much weight on these answers to take Dr Shetty to have accepted that, as a general rule, this was how the Direct Shetty Payments and the Indirect Shetty Payments came to be made. His answers are to be understood in the context of questioning about the investment in the Oman City Cement Project. I do accept that his answers are an admission that he asked to have money transferred from the NMC Group for his investment in the Oman City Cement Project.

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515. Further, on 9 May 2016, Baroda transferred AED 47,750,000 to Dr Shetty's 2359 account, and on the same day Dr Shetty gave instructions to remit OMR 5 million (the approximate equivalent of AED 47,750,000) to HE Al Sayyid in respect of the Oman investment. When asked about the requests for these transfers, Dr Shetty suggested that his signature on the transfer request to Baroda might be electronic, and there is no reason to doubt that. Mr Wandowicz submitted that, on the other hand, the signature of the request for the transfer from his own account to HE Al Sayyid was Dr Shetty's wet signature, and I am prepared to accept that.

516. There is further evidence that Dr Shetty was willing to use NMC Group funds for his Oman City Cement Project investment. On 14 March 2017, Dr Shetty sent Mr Krishnamoorthy a WhatsApp message: "*Since process takes time for the proceeds of NMC, I need to pay tomorrow 6 million Omani royal to port project and 25 million to Dr Sabha Brindavan College"*. He then sent another message*, "Please arrange and oblige either from NMC or Dubai Islamic proceeds*". (The reference to "*Dubai Islamic proceeds*" was to a facility that Dr Shetty was arranging with Dubai Islamic Bank. Mr Krishnamoorthy explained that the facility would not have been available since it was earmarked for another purpose.)

517. In re-examination, Dr Shetty said that the "*proceeds of NMC"* referred to a dividend payment expected from NMC plc, but I cannot accept that explanation. No dividend was due from NMC plc: its dividend was not paid until June 2017, and when it was paid, it was only about US$ 6.5 million, whereas Dr Shetty was looking for a payment of 6 million Omani rials, the equivalent of over US$ 15 million, in March 2017. While Dr Shetty might not have known quite what dividend he would be receiving from NMC plc, he was too acute a businessman to have expected a sufficient dividend to cover the payments that he required.

518. Mr Wandowicz pointed out that the JA Claimants' pleading does not specifically refer to this investment in Oman, although transfers related to it are included in the Schedule of Direct Shetty Payments. I am not impressed by that point. This matter is of particular relevance because they explain the qualification that Dr Shetty himself introduced when he was cross-examined to his own pleaded case, where he denied requesting any of the transfers into his accounts.

519. Mr Wandowicz also observed that the use of an electronic signature on the transfer request to Baroda of 9 May 2016 is consistent with Dr Shetty signing the request for the transfer of OMR 5 million in the belief that he was investing his own funds. That might explain the May 2016 instalment of the investment if taken in isolation, but the other evidence about the Oman investment undermines Mr Wandowicz's contention.

The 2017 aircraft purchase

520. The JA Claimants also cross-examined Dr Shetty about the purchase of an aircraft by Dr Shetty in 2017. As with the Oman investment, Mr Wandowicz observed in his closing

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submissions that their pleadings do not refer to this purchase, but this line of inquiry too arose from Dr Shetty's evidence when he was cross-examined that he asked for money for the aircraft.

521. In WhatsApp messages to Dr Shetty on 30 May 2017, Mr Krishnamoorthy wrote "*Urgently need USD 7.5 m for the plane. The last day for payment is Monday"; "NMC's fund position is very tight"; "Can [you] ask Pramod [Manghat] to spare this amount. We can pay it back in a week's time"*. I understand that the request that Mr Promoth Manghat might "*spare the money"* was that UAE Exchange might provide the funds.

522. Dr Shetty agreed to the request. The exchange went on to refer to a dividend that Dr Shetty was to receive, but, as I have said, the dividend that NMC plc paid him in 2017 was of only US$6.5 million and it would not have covered the full amount needed.

523. There is no pleaded allegation, and there is no satisfactory evidence, about what funds were in fact used to buy the aircraft. The JA Claimants submit that the WhatsApp exchange, together with Dr Shetty's acceptance in cross-examination that he was unconcerned whether money from the NMC Group or UAE Exchange was used to fund the purchase, is another example of Dr Shety's readiness to regard corporate assets of the NMC Group as his own. I accept that this matter provides some further evidence to corroborate the JA Claimants' contention.

Travelex

524. Travelex was a foreign exchange business. Dr Shetty acquired it in 2014. It was never part of the NMC Group.

525. Payment was made for Travelex in two instalments: a payment of AED 366,360,000 on 22 May 2014, and a payment of AED 360,313,000 on 1 September 2014. The May instalment was paid to Linklaters LLC's Client Account. (Linklaters LLC acted for Dr Shetty on the acquisition.) The September payment was made to an account in the name of "*Project Squadron*".

526. The May instalment was paid by way of a transfer from Dr Shetty's 2359 account, which received funds to make the payment into the account by way of:

a. Transfers totalling AED196,390,000 made by New Medical Centre Trading LLC on 20 May 2022;

b. A transfer of AED 70 million made by UAE Exchange on 21 May 2014; and

c. Transfers totalling AED 100 million made by Nexgen and FTT on 22 May 2014, Nexgen and FFT having received the funds to make these payments from New Medical Trading LLC, NMCH and NMC Specialty Hospital LLC.

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527. Payment of the September instalment was also made by a transfer from Dr Shetty's 2359 account, which had received the funds from NMCH by a series of twenty payments, nineteen for AED 18 million each and one for AED 18,313,000. (The funds were transferred in this way because Baroda's mandate for the operation of the accounts of NMCH and its subsidiaries allowed transfers of these amounts on the signature of Dr Shetty and Mr Manghat. It would have required the signatures of Dr Shetty and KBBAM for the full amount to have been made by way of a single transfer. The JA Claimants relied upon this point in support of their case against Baroda, but it does not appear to me important to the cases against Dr Shetty and Mr Manghat.)

528. As far as the evidence goes, Dr Shetty's signature was on the transfers from the NMC Group accounts (as well as those from his personal accounts). However, they appear to have been electronic signatures, and Dr Shetty gave evidence that they were "*fake",* and "*scanned*" signatures used without his knowledge. Moreover, as Mr Wandowicz submitted, the evidence shows that the transaction to acquire Travelex was handled for Dr Shetty by Mr Manghat and his brother, Promoth: the advisers and others corresponded with them, and it was the finance department at NMCH, and not Dr Shetty's office, that arranged the payments for the acquisition. I do not consider that, in itself, the fact that Dr Shetty's signatures were on the transfers provides any real support for the JA Claimants' contentions about Travelex.

529. Dr Shetty does not dispute that the payments that I have described were made. His case is that, as far as he was aware, no funding for the Travelex purchase came from the NMC Group. He pleads that he "*understood that he was making a personal investment funded by initial lending of USD c750m, and – or so he thought- investment by UAE Exchange"*. In his first witness statement, he said that he did not know that NMC funds were being used, and that he "*believed that the funds of UAE Exchange were deployed for the acquisition of Travelex"*. In his second witness statement, he said that he "*was given to understand that the initial funding for the Travelex acquisition came from a USD $750 million facility arranged by Goldman Sachs and later refinanced through a separate $490 million loan";* and that Mr Manghat and his brother, Promoth, informed him that the remaining funds *"were intended to be provided by UAE Exchange"*.

530. The documentary evidence does not support the contention that UAE Exchange was making an investment in Travelex, or that it was otherwise involved in the purchase, beyond providing AED 70 million of the funding that Dr Shetty used for the May Instalment. Nor did Dr Shetty unequivocally support this case when he was cross-examined. He was shown a report in "*The National*" of an interview that he gave on 1 July 2014, in which he is recorded as saying this about the acquisition: "*Travelex was my own acquisition. I have known them a long time and saw the opportunity. They approached me a year or so back as a potential buyer*". In cross-examination, he confirmed that it was his own acquisition. At the same time, he said that it was "*supposed to be UAE money to be put*", and that "*We had surplus money there in the Exchange*".

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531. I am persuaded by the JA Claimants that Dr Shetty's case about Travelex is so improbable as to be incredible. I find it impossible to think that, if UAE Exchange was making an investment as Dr Shetty pleaded, there would not be documents reflecting this. Nor can I accept that Dr Shetty made such large transfers from his personal account without understanding them and the source of the funds. I also find it impossible to accept that Mr Manghat was (as Dr Shetty said when he was cross-examined) the "*architect*" for the acquisition, while keeping the arrangements for it secret from Dr Shetty but without obtaining any benefit to himself.

532. I reject Dr Shetty's evidence about the Travelex acquisition, and I conclude that he knew that his personal acquisition was largely funded with money from the NMC Group, and that the funding was unlawful.

533. I reach this conclusion without relying on Mr Manghat's evidence. As I have said and shall explain further, generally I do not consider that I can rely upon his evidence. However, with regard to Travelex, in my judgment it provides some additional support for the conclusions that I have reached. He said that, as he had understood it, Dr Shetty was concerned that he would lose his shares in UAE Exchange because of his dispute with HE Al Mazrouei, and he wanted to acquire Travelex "*to break UAE Exchange's hold on the market, as Travelex was a bigger brand*".

Acquisitions though NNMC: introduction

534. The JA Claimants further contend that Dr Shetty used NMC Group funds to make other personal acquisitions, using NNMC as a vehicle to do so. Those acquisitions included RCS, the Dubai Hills Villas and an oil investment in Wyoming.

535. As I have said, although Dr Shetty was the sole shareholder of NNMC and he and Mr Manghat were its directors, his case is that he was never aware of its existence during the Relevant Period. He pleads that it was incorporated on or around 17 April 2014, and that he infers that its incorporation was "*arranged by (or on the instructions of) Mr Manghat*". He also pleads that, shortly thereafter, on 6 May 2014, the NNMC board purportedly passed a written resolution which authorised either Dr Shetty or Mr Manghat to open and operate bank accounts for it; and that on 10 September 2014 a request was made for Baroda to open a bank account in NNMC's name. Dr Shetty disputes his signatures on the documents putting these arrangements in place, and says that, if they were genuine, they were obtained by deception. Thus, Dr Shetty's case is this: "*The incorporation and operation of NNMC ostensibly controlled by Dr Shetty, under a name designed to suggest it was a part of the NMC Group, but where it was in reality controlled by Mr Manghat, appears to [have] been intended to disguise this entity as part of legitimate business structures, so as to (1) minimise the risk of detection, (2) create plausible deniability, and/or (3) enable Mr Manghat and his associates to represent externally that NNMC was legitimate*".

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536. I shall return to this contention after considering the particular acquisitions that the JA Claimants say were made by Dr Shetty through NNMC.

Royal Catering Services

537. In May 2015, Dr Shetty, with Mr Manghat's help, acquired RCS from Captain Abdi Simreem and HE Al Mazrouei for AED 410 million. It was purchased in the name of NNMC. The JA Claimants say that Dr Shetty used NNMC to divert NMC funds for this private acquisition.

538. Dr Shetty does not dispute that RSC was his private acquisition, and that it was never part, and it was never intended that it should be part, of the NMC Group. He also agrees that Mr Manghat helped him make the acquisition. However, his case is that it was "*hidden*" from him that NNMC was involved: in cross-examination, he said "*I'm not aware of it at all*".

539. The acquisition was made following a Memorandum of Understanding in the form of a letter dated 20 December 2014 from NNMC to Captain Simreem and HE Al Mazrouei. It was, or purported to be, signed by Dr Shetty and countersigned by Captain Simreem and HE Al Mazrouei, the countersignatures being dated 21 December 2014. It was on what appears to be NNMC letterhead. On 21 December 2014, a Mr Sharad Bhandari of Ardent Advisory, who were apparently financial advisers based in Abu Dhabi, sent an email to Dr Shetty at his NMC email address, which was copied to Mr Manghat and reads as follows: *"Dear Mr Shetty, Just to let you know MOU has been signed with Royal Catering. We will now move forward with Due Diligence etc. I am meeting Prasanth [Manghat] today at 4.30pm to finalise the time table and due diligence requirements. Prasanth [Manghat] has been a tremendous help to expedite the process"*.

540. When the Sale and Purchase Agreement (the "**SPA**") was concluded in May 2015, Ardent Advisory circulated it on 21 May 2015, the email being copied to two of Dr Shetty's emails addresses. The email said that "*we already have Dr Shetty's signature*", but, as it appears from an email sent by Ardent Advisory to the sellers on the same day, he had signed only the last page of the SPA. Further signatures were required from him. Ardent Advisory proposed a meeting on 23 May 2015 for the signatures to be finalised, but that plan did not work smoothly because Dr Shetty had to travel to India for a meeting and presentation in the Prime Minister's Office, and then on to Doha and Morocco. Ardent Advisory asked that he should speak directly to Captain Simreem about the delay in signing to documentation.

541. It is not disputed that Dr Shetty was in Morocco on 28 May 2015, and he signed the documentation for the acquisition when he was there. The SPA named NNMC as the purchaser, and it described NNMC as "*a limited liability company established in the [BVI] ... represented by Dr B R Shetty ...*". It ran to 47 pages, and each page was initialled by Dr Shetty.

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542. Two addenda to the SPA were executed, dated 5 August 2015 and 22 October 2015. Dr Shetty signed the addenda on behalf of both NNMC and Royal Gourmet Investment LLC ("**RGI**"). On 21 October 2015, a final execution version of the second addendum was circulated to, among others, Dr Shetty. It said that Dr Shetty represented the purchaser, and that NNMC had nominated RGI, also represented by Dr Shetty, as the "*Purchaser's Nominee*". It provided at clause 4 for payment of consideration of AED 405 million in accordance with a schedule.

543. I find it impossible to accept Dr Shetty's contention that it was hidden from him that NNMC was involved in his acquisition of RSC. It was clearly identified on the documents that he signed, and I cannot believe that he signed them without knowing for whom he was signing. Moreover, Ardent Advisory and others communicated with him without making any attempt to disguise the arrangements and asked him to engage with Captain Simroon direct. Obviously, Mr Bhandari had not been told to keep NNMC hidden from Dr Shetty.

544. In his closing submissions, Dr Shetty made no admission about the funding of payments for RCS, explaining that he has no knowledge about how the acquisition was funded. However, Dr Shetty did not challenge the evidence of Mr Jones and the JA Action Accountant Experts that the acquisition of RCS was funded by five Direct Shetty Payment and one Indirect Shetty Payment, and I accept their conclusions:

a. AED 134 million from NMCH to the 2359 account pursuant to a transfer request to Baroda dated 21 May 2015;

b. AED 68.444 million from NMC Specialty Hospital LLC to the 2359 account pursuant to a transfer request to Baroda dated 9 November 2015;

c. AED 8.5 million from NMCH to the 2359 account pursuant to a transfer request to Baroda dated 9 November 2015;

d. AED 70 million from Beiersdorf Cosmetic Trading Co LLC ("**Beiersdorf**") to the 2359 account pursuant to a transfer request to Baroda dated 10 November 2015;

e. AED 62.5 million from NMC Specialty Hospital LLC to the 2359 account pursuant to a transfer request to Baroda dated 10 November 2015; and

f. AED 62 million from Nexgen to the 2359 account pursuant to a request to Baroda dated 10 November 2015, the payment by Nexgen being funded by NMCH and NMC Specialty Hospital LLC.

545. I reject Dr Shetty's answer to the JA Claimants' case about RSC. I conclude that Dr Shetty knew that the investment was funded with funds from the NMC Group.

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546. I add that, while Dr Shetty pleaded, and Mr Wandowicz argued, that, after the acquisition, RCS was refinanced, and AED 275 million was returned to NMCH, this does not seem to me to answer the JA Claimants' complaint in any way.

Dubai Hills Villas

547. The JA Claimants plead that Dr Shetty bought real property, specifically two plots for development in the Dubai Hills Grove Community, using funds derived from the NMC Group, and that between May 2014 and May 2018 a total of some AED 70.4 million was spent in acquiring and developing the plots. They contend that the payments to Dr Shetty for this purpose were fraudulent.

548. Their case is that the costs of the development and its funding was this:

a. On 8 May 2014, a payment of AED 7,935,914 was made out of the 2359 account, and it was funded by a Direct Shetty Payment into the 2359 account from NMCH of the same amount that day;

b. On 14 May 2014, a payment of AED 5,964,924 was made out of the 2359 account, and it was funded by a Direct Shetty Payment into the 2359 account from NMCH of the same amount that day;

c. On 19 May 2014, payments of AED 1,327,676 were made out of the 2359 account, and they were funded by a Direct Shetty Payment into the 2359 account from NMCH of the same amount that day;

d. On 18 August 2014, payments of AED 3,056,850 were made out of the 2359 account, and they were funded by a Direct Shetty Payment into the 2359 account from NMCH of the same amount that day;

e. On 25 September 2014, payments of AED 9,200,956 were made out of the 2359 account, and they were funded by a Direct Shetty Payment into the 2359 account from NMCH of the same amount that day;

f. On 20 December payments of AED 3,056,850 were made out of the 2359 account, and they were funded by a Direct Shetty Payment into the 2359 account from NNMC's account at Baroda on 18 December 2014;

g. On 21 January 2015, payments of AED 3,958,578 and AED 5,242,378 were made out of the 2359 account, and they were funded by a Direct Shetty Payment from Beiersdorf on 14 January 2015 and a payment from NNMC on 19 January 2025;

h. On 25 April 2015, payments of AED 2,037,900 were made out of the 2359 account, and they were funded in part by a Direct Shetty Payment into the 2359 account from NMCH of the AED 1.710,000;

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i. On 1 August 2015, payments of AED 9,200,996 1,327 were made out of the 2359 account, and they were funded by a Direct Shetty Payment into the 2359 account from NMCH of approximately the same amount that day;

j. On 27 September 2016, a total of AED 2 million was transferred by NMCH to the property developer, Dubai Hills Estate LLC; and

k. On 7 March 2018 and 28 March 2018, a total of AED 17.4 million was paid by Nexgen to Dubai Hills Estate LLC.

549. Dr Shetty does not dispute that funds from the NMC Group were so expended, nor that the plots were his own personal investment and their purchase and development were unconnected with the NMC Group. He pleads that one villa was for his own use and the other for Dr Reddy of Hetero FZCO. He continues, "*the opportunity to acquire the villas was presented to Dr Shetty by Mr Manghat and Mr Manghat informed Dr Shetty that they would be acquired with the benefit of a dividend due to Dr Shetty from Nexgen (and that Dr Reddy was also interested in purchasing a villa using the dividend due to him)*". He said that he did not "*handle the acquisition of the villas himself*", but the transaction was handled for him by Mr Joseph Antony of BRS Ventures and any payments made by Ms D'Mello, on the instructions, as he inferred, of Mr Manghat. Thus, Dr Shetty's answer to this part of the JA Claimants' case is (in the words of his second witness statement) that he denies "*having any contemporaneous knowledge that NMC (or indeed NNMC, of which he was unaware) funds were used to purchase the villas*".

550. I accept the JA Claimants' submission that the purchase was not in fact funded by a dividend from Nexgen: the annual accounts of Nexgen do not record the payment of any dividend for the year ended 31 December 2015. The issue is whether Dr Shetty believed that it was so financed. The JA Claimants say that Dr Shetty's contention simply beggars belief.

551. I agree: the JA Claimants' arguments are wholly convincing. The two plots cost some AED 46 million in total. Nexgen's audited accounts for the year ended 31 December 2015, signed by Dr Shetty and Mr Manghat, record total assets of AED 16 million in 2014 and AED 59 million in 2015, and incomes of AED 1.3 million in 2014 and AED 13.7 million in 2015. AED 19.8 million and AED 26.2 million. I find it incredible that Dr Shetty believed that a dividend from Nexgen might significantly contribute to the purchase. He disavows accounting ability, but he is an acute and experienced businessman. I conclude that Dr Shetty knew that the acquisition as wholly or largely funded by the NMC Group.

552. This conclusion is corroborated by the evidence of Mr Manghat, who pointed out that it was Dr Shetty, and not he, who benefitted from the villas being acquired with NMC Group's funds. No credible reason was suggested as to why Mr Manghat would want to trick Dr Shetty into thinking that the acquisition was being financed by a dividend (or dividends) from Nexgen.

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Wyoming oil field

553. In July 2014, NNMC invested some US$ 3.9 million in leases for oil exploration in Wyoming, United States of America. As I understand it, it is not disputed, and in any case I find, that the investment was funded by a transfer of AED 14.33 million (the equivalent of some US$ 3.9 million) from one of NMCH's accounts with Baroda. On its face, the transfer request bears Dr Shetty's signature, but he denies signing it.

554. The JA Claimants submitted that I should not accept Dr Shetty's denial. They argued that he could not possibly know whether or not he signed this particular request, given the many documents that he used to sign, sometimes in batches. To my mind, this issue is not important. I am prepared to consider the complaint about the Wyoming investment on the basis that Dr Shetty did not sign the instructions for the transfer of funds himself. After all, his electronic signature might have been used.

555. On 3 July 2014 and 5 July 2014, Mr Michael Lansing, a Wyoming lawyer, sent emails to a Mr Tariq Basheer about investing in a lease and the procedure for doing so. It is clear from the documents that Mr Basheer was in contact with Mr Manghat.

556. On 7 July 2014, Ms D'Mello sent an email to Mr Basheer, copied to Mr Manghat. She attached to it "*lease transfer documents"* said to have been signed by Dr Shetty. When he was cross-examined, Dr Shetty said that he was not aware of the documents.

557. However, Mr Lansing required the documents to be notarised so as to comply with Wyoming law. On 13 July 2014, Ms D'Mello circulated scanned copies of the documents which had been notarised and stamped. One stamp affirmed that the documents were "*Signed before me by Dr B R Shetty";* another is the stamp of the Indian Embassy in Abu Dhabi; a third stamp bears the date of 13 July 2014; a fourth provides details of the consular official, Mr S P Rawat, who notarised the documents, his signature appearing above the stamp.

558. Dr Shetty denied attending the Embassy to sign the documents, but I find that his signatures on the documents are genuine, and the notarisation is truthful. It is highly improbable that a consular official would improperly notarise a document of this kind (or any kind), and the more improbable that an official would improperly notarise a document as being signed by a person of the prominence and standing that Dr Shetty had in the UAE.

559. I reject Dr Shetty's denial that he knew of NNMC's investment in Wyoming oil exploration. I also conclude that he knew that the investment was funded by the NMC Group.

Other NNMC payments

560. The JA Action Accountant Experts, whose evidence was not disputed, agreed that a total of AED 17.5 million was transferred by NMCH to NNMC. As well as the payment relating

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to the Wyoming investment, there were seven other transfers between July 2014 and March 2015. The NMC Group's records provide no explanation for them.

561. The JA Claimants plead that the money was put into various investments, and that it is to be inferred that "*these investments were made as part of the establishment of a personal investment portfolio on behalf of Dr Shetty and that they were made at his direction, for his personal benefit and at the expense of the NMC Group*".

562. I therefore return to Dr Shetty's contention that he was unaware of the existence of NNMC, and that it was incorporated and operated by Mr Manghat without his knowledge. I find it impossible to accept Dr Shetty's contention in view of NNMC's part in the acquisition of RSC and the investment in Wyoming. The payments from NNMC for the Dubai Hills Villas, though less powerful evidence by themselves, provide some further support for my conclusion.

563. Mr Wandowicz, however, argued that there is other evidence that supports Dr Shetty's case. He advanced five points, but I am not persuaded by them.

564. First, he submitted that some documents relating to NNMC's affairs are "*fabrications*", citing minutes of a board meeting said to have taken place in the UK on 3 February 2015 and to have been attended by Mr Manghat and Dr Shetty. In fact, Dr Shetty was in the UAE on 3 February 2015. This does not, to my mind, show that Dr Shetty did not know of NNMC's existence.

565. Next, Mr Wandowicz placed reliance on Mr Manghat's response to Dr Shetty's contention that Mr Manghat arranged an investment by NNMC in the La Sara oil field in Texas. Emails relating to it were found on Mr Manghat's email address with BRS Holdings. Mr Manghat denied that he had access to that account. Mr Wandowicz submitted that Mr Manghat's denial was untrue, and that his false denial vindicates Dr Shetty's case that Mr Manghat controlled the investments through NNMC. However, this would not mean that Dr Shetty was unaware of the La Sara investment, still less that he was unaware of the existence of NNMC.

566. Thirdly and fourthly, Mr Wandowicz relied on (i) Mr Manghat's denial that NNMC was incorporated by him or on his instructions; and (ii) his denial that he exercised any control or transacted any business for NNMC. These denials, it was said, were clearly untrue. Again, even if Mr Manghat did arrange the incorporation of NNMC and even if he did exercise control over NNMC and transact business for it, these matters do not provide support for Dr Shetty's denial that he knew of its existence.

567. Finally, Mr Wandowicz referred to an investment made by NNMC in an entity called Kelvin Gulf (apparently its original name) or Lattice (as it was apparently renamed). It was the subject of a WhatsApp exchange between Dr Shetty and Mr Manghat on 28 October 2019. Dr Shetty sent Mr Manghat an image of the trade licence, asking what the company was

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and explaining that his daughter, Reema, had told him that he owned it. Mr Manghat responded that Dr Shetty had helped a Mr Tariq Basheer, a banker with Dubai Islamic Bank, in relation to it, and saying that they could "*skip it to him*" since it was of no great value.

568. When asked about this in cross-examination, Mr Manghat accepted that it was most likely that, at some time in 2014, he had told Dr Shetty that Mr Basheer needed help, Dr Shetty had agreed to provide help and to invest in the Kelvin Gulf entity, and Mr Manghat had arranged it. Dr Shetty submitted that this illustrates Mr Manghat's control of his investments, and that, since Dr Shetty was apparently unaware of the acquisition of Kelvin Gulf or Lattice, which Mr Wandowicz described as "*a substantive acquisition*", it would not be reasonable to assume without solid evidence that he knew of NNMC, a "*mere investment vehicle*".

569. I am not persuaded by this argument. It is understandable that Dr Shetty might not have recognised the name of the company that his daughter mentioned as being the object of some help afforded to Mr Basheer some five years earlier, especially if the company had changed its name and was then of little value. I cannot accept that this supports the contention that Dr Shetty might not have been aware of the company through which he acquired RSC and the Wyoming investment.

570. I conclude that Dr Shetty knew of NNMC, that it was a vehicle for his personal investments and that his investments through NNMC were improperly funded by the NMC Group.

The misappropriations for Mr Manghat's benefit

571. I shall consider the allegations that funds were misappropriated from the NMC Group for the benefit of Mr Manghat later in my judgment. Here, I only say that these allegations are peripheral to the case that Dr Shetty was party to the fraud.

The misappropriations for the benefit of the Bin Buttis

572. The JA Claimants plead that it is to be inferred that Dr Shetty was party to the fraud and participated in fraudulent trading from, *inter alia*, "*his knowledge of the Unlawful Payments (alternatively, his knowledge of some part thereof)*", and in their pleading the term "*Unlawful Payments*" is used to cover payments to the Bin Buttis and their related companies, as well as payments to or for the benefit of Dr Shetty and Mr Manghat. They did not develop their case about Dr Shetty's knowledge of payments to the Bin Buttis and their associated companies in their cross-examination of Dr Shetty or their submissions. I do not need to make any findings about this part of the case against Dr Shetty, and I decline to do so.

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Dr Shetty and other aspects of fraudulent scheme

573. I uphold the JA Claimants' case that Dr Shetty knew of and benefitted from the Direct Shetty Payments and the Indirect Shetty Payments, and that, as Dr Shetty knew, there was no lawful basis for them. I also uphold, in substance, their case about Dr Shetty's involvement in the events of March 2019. Therefore, these core elements of the case against him are established. The JA Claimants also say that their allegations about other elements of the fraudulent scheme are not "*makeweights*" in that they "*demonstrate the same disregard for corporate boundaries, the use of NMC resources for Dr Shetty's benefit and the concealment of the resulting financial position*". Nevertheless, I can deal with these further allegations against Dr Shetty relatively briefly.

Dr Shetty: the Undisclosed Securities

574. I have introduced the Undisclosed Securities at paras. 200ff above. The JA Claimants plead that, during the Relevant Period, "*on at least 16 occasions loans or facilities were entered into by related parties where the NMC Group provided guarantees or some other form of security, which should have been, but were not, disclosed in the NMC Group's consolidated financial statements*". The other forms of security included post-dated cheques, undated security cheques and other collateral. (In their closing submissions, the JA Claimants said that there were seventeen undeclared financial benefits: I believe that they overlooked that the case about one of the benefits originally pleaded, a facility for Dr Shetty provided by AHB, had been abandoned.) The JA Action Accounting Experts agree that:

a. Such arrangements should have been disclosed in NMC plc's financial statements, being financial guarantee contracts within the definition in the IFRS 9: *A contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a debt instruction*". (The term "*debt instrument*" is not defined.)

b. None of these arrangements alleged by the JA Claimants was disclosed in the financial statements.

575. Mr Manghat admits the Undisclosed Securities, and Baroda did not dispute them in its expert accounting evidence. Dr Shetty did not admit them in his Defence. However, he did not challenge that evidence of Mr Jones or of the JA Action Accountant Experts about them, and I find that the Undisclosed Securities were proved by the JA Claimants.

576. Dr Shetty also pleads that "*to the extent that the alleged Undisclosed Collateral Benefits were provided in respect of Dr Shetty and/or entities said to be connected with him*", then (i) he denies knowledge of them; (ii) he does not admit that were valid or enforceable

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against the NMC Group companies; and (iii) he does not admit that granting them was unlawful or improper and, if and to the extent that it was, Dr Shetty denies knowing this.

577. Mr Wandowicz advanced no argument that the banks had accepted invalid or unenforceable security, and I reject that suggestion. Nor would it be an answer to the complaint of non-disclosure if the securities were unlawful or otherwise improper. Nor was it argued that Dr Shetty was unaware of his disclosure obligations. The real question is whether Dr Shetty knew of the Undisclosed Securities.

578. Of the sixteen Undisclosed Securities, seven supported by bank facilities granted to Dr Shetty personally, in one case jointly with KBBAM. Of the other nine, seven were granted to entities associated with Dr Shetty (three to Neopharma, two to GGCM and one each to RCS and Modular Concepts). The other two were granted to KBBAM and Centurion.

579. The six facilities were granted to Dr Shetty by First Gulf Bank, Baroda and Dubai Islamic Bank, and they were, in total, to a value of over AED 900 million. The joint facility for Dr Shetty and KBBAM was a facility of AED 523 million granted by AHB and ADCB.

580. On the face of it, Dr Shetty signed all the facilities that he was granted, and I find it impossible to believe that all these banks were deceived into accepting forged signatures. I conclude that they were signed by him. Further, I find it impossible to believe that Dr Shetty was, in some way, tricked into signing the facilities agreement without knowing that he was doing so. After all, in the case of the joint facility, it was not suggested that KBBAM was tricked into entering into a facility without knowing of it, and I find it impossible to suppose that, in these circumstances, Dr Shetty was so deceived.

581. This conclusion is corroborated in the case of the facility granted to him by Dubai Islamic Bank: I have already referred (at para. 516) to Dr Shetty's WhatsApp message on 14 March 2017 in which he told Mr Krishnamoorthy to use either NMC funds of "*Dubai Islamic proceeds*" to the Oman Cement City investment and make other payments.

582. I accept that JA Claimants' submission that Dr Shetty knew that facilities that he had entered into personally were supported by security from the NMC Group, and that the facilities were not disclosed as they should have been in NMC plc's financial statements.

583. I also conclude that Dr Shetty was aware of the other Undisclosed Securities. For example, in May 2017, Modular Concepts obtained a facility from Commercial Bank of Dubai, secured by a personal guarantee of Dr Shetty, a personal guarantee of Mr Rai and a corporate guarantee of NMCH: it is one of the Undisclosed Securities. Dr Shetty acknowledged in cross-examination that it was "*wrong*" for NMCH to give a corporate guarantee, but he denied that he had signed his personal guarantee. Given his relationship with Mr Rai, I cannot accept that.

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Dr Shetty: the Undisclosed Debts

584. I have explained that debts incurred by the NMC Group were not disclosed in its financial statements throughout the Relevant Period. Dr Shetty does not dispute the JA Claimants' allegations about the debt that was hidden. His case about this is pleaded as follows: "*[Dr Shetty] was one of the persons from whom the fraudulent conduct, and the additional debt taken on to prop up NMC's finances, was hidden. In particular, at all material times, Dr Shetty's understanding of the financial position of NMC was as presented to him at the board meetings of NMC plc*".

585. The JA Claimants submit that this position is incredible. The Undisclosed Debt was incurred in significant part in order to cover up the vast payments to Dr Shetty and for his benefit. They contend that, given Dr Shetty's knowledge of the scale of these payments, he cannot have believed that the finances of NMC, as a listed group, were being properly presented to the market.

586. Further, Dr Shetty was aware of the lending facilities that the NMC Group entered into. The JA Claimants cited these examples of facilities that he signed: a facility with Dubai Islamic Bank dated 25 March 2012 for AED 200 million; a facility with Abu Dhabi Islamic Bank dated 8 February 2016 for AED 275 million; and a facility with Dubai Islamic Bank dated 25 March 2018 for facilities of US$ 350 million.

587. When he was cross-examined, Dr Shetty denied that he was closely involved in the borrowing arrangements for the NMC Group, but the question is not whether he was involved in entering into the facility arrangements, but whether he knew of them. His more important answers in cross-examination are therefore these: answer, "*but they don't give unless I sign, that's for sure*"; question, "*… I suggest you would have had at least a rough idea of the true scale of NMC's debts*"; answer, "*Rough idea I had, yes*". I would reject any suggestion that, in giving these answers, Dr Shetty was confused or did not mean what he said.

588. I conclude that, given Dr Shetty's knowledge of the vast funds that he was receiving from the NMC Group and given that he had a rough idea of the NMC Group's borrowings, he must have known that the borrowings were not fully reported in its consolidated financial statements.

Dr Shetty: the Sham Suppliers

589. As I have explained, the Sham Suppliers Scheme was a crucial part of the machinery whereby the NMC Group executives managed to present a false picture of the financial position in the audited financial statements. The JA Claimants submit that I should infer that Dr Shetty was aware of it.

590. Here, they rely upon two points: the first is the WhatsApp exchange between Dr Shetty and Mr Krishnamoorthy on 6 March 2020 (see para. 441 above), and in particular Dr

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Shetty's inquiry whether there were any "*binami companies in my name*". Here, the JA Claimants' point that Dr Shetty did not ask whether sham (binami) companies were being used, but whether they were in his name. They submit that the formulation of the question suggests that Dr Shetty was aware that sham companies were being used as part of the fraudulent scheme.

591. Thus far, I see some force in the JA Claimants' point. However, it is not surprising that by early March 2020 Dr Shetty knew that sham companies had been used: there must have been a good deal of discussion after the revelations of the Muddy Waters reports about how the fraud was carried out. It does not follow that Dr Shetty was aware of the Sham Suppliers Scheme before those reports and while the scheme was being operated.

592. The JA Claimants' second point was about Nexgen. I have already, when considering the acquisition of the Dubai Hills villas, referred to Nexgen's financial statements, which Dr Shetty signed, and to Dr Shetty's case that he believed that a dividend from Nexgen would finance it: see para. 549 above. The 2015 statements record cash at bank balances of AED 349,296, and total shareholders' equity of AED 4,625,617. The JA Claimants' point, as I understand it, is that Dr Shetty must have realised that Nexgen had no significant legitimate commercial business and its activity was largely by way of Sham Suppliers transactions.

593. Again, I am not convinced by the JA Claimants' argument that this shows that Dr Shetty was aware of the Sham Suppliers Scheme. There is no sufficient reason to think that Dr Shetty would be concerned to turn his mind to the nature of Nexgen's activities.

594. I am therefore not persuaded that the JA Claimants have shown that Dr Shetty was aware of the Sham Suppliers Scheme while the fraud was being perpetrated. He must have known that improper and dishonest devices were being used to disguise the fraud in the internal accounts, but he might well have been content to leave it to others to deal with these matters – either out of indifference or because he decided that it was best that he did not know.

Dr Shetty: the Related Party Transactions

595. In their Particulars of Claim, the JA Claimants plead their case about related party transactions as follows: "*Based on investigations, between 2012 and 2018, there were related party transactions (i) between the NMC Group and Neopharma totalling at least AED 7.1 billion, (ii) between the NMC Group and UAE Exchange totalling at least AED 2.5 billion, and (iii) between the NMC Group and Nexgen totalling at least 18.9 billion. There was also a substantial volume of related party transactions between GGCM, Modular Concepts, [DAG] and [DHE]. These related party transactions greatly exceeded the related party transactions reported in the NMC Groups annual accounts. ... Based on these investigations, there was no obvious commercial basis for these transactions*".

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596. Dr Shetty did not plead in response to the substance of these allegations, declining to do so until they were "*properly pleaded*". His complaint was that he could not understand what volume of unreported transactions is alleged, who was alleged to have given instructions for them, who was responsible for reporting them, and the relevance of whether or not there was a commercial basis for them. If a party does not understand the case against him, there are proper and familiar procedures that he can use to deal with the problem. It is not open to him simply to decline to engage with it, as Dr Shetty did. In any case, the case that the JA Claimants advanced was clear enough, particularly after their Reply. I reject Dr Shetty's pleading complaint.

597. International Accounting Standard 24 ("**IAS 24**"), which was in force throughout the Relevant Period, provides as follows: "*If an entity has had related party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements"*. Further, the notes to the accounts of NMC plc included a note about related party transactions: for example, the statements for the year ended 31 December 2015 said, "*These represent transactions with related parties, including major shareholders and senior management of the Group, and entities controlled, jointly controlled or significantly influenced by such parties. or where such parties are members of the key management personnel of the entities*".

598. There is no dispute that Neopharma, Nexgen, GGCM, DHE, DAN, UAE Exchange and Modular Concepts were all related parties for the purposes of IAS 24 and the notes to the accounts. Dr Shetty admits 90% ownership of Neopharma, a 54% indirect interest in Nexgen, 100% ownership of GGCM and DHE, ownership of DAN and a 40% interest in UAE Exchange. He also knew that Mr Rai, who had a 30% shareholding in Modular Concepts, was the NMC Group's production manager.

599. Further, the evidence of Mr Jones and the JA Action Accountant Experts establishes that there were substantial transactions between the NMC Group and the each of these companies, which should have been, but was not, disclosed in the financial statements. (The only difference between the experts was whether the volume of transactions should be described as "*vast",* Mr Grantham declining to endorse this description for the understandable reason that it involved a subjective assessment.) The scale of the omission from the accounts was illustrated by the JA Claimants in their final submissions by reference to (i) the year ended 31 December 2014, when the related party transactions exceeded AED 2 billion but the financial statements reported related party purchases of US$32.34 million (or AED 118.77 million) and related party sales of US$9.78 million (or AED 35.92 million); and (ii) the year ended 31 December 2018, when the related party transactions exceeded AED 4 billion but the financial statements reported related party purchases of US$130.11 million (or AED 477.83 million) and related party sales of US$0.15 million (or AED 0.55 million).

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600. The real issue here is that the JA Claimants plead that Dr Shetty knew of the related party transactions (or some of them) and allege "*his knowing participation, during the relevant period, in the preparation and publication of false and misleading consolidated financial statements of NMC plc and the wider NMC Group*"; and Dr Shetty denies knowing participation.

601. The JA Claimants made detailed submissions that, to my mind, demonstrate that the dealings with each of the related parties differed so much from what was disclosed that Dr Shetty must have realised that proper disclosure was not being made. I do not propose to set out those submissions in detail. I accept them, and shall confine myself to four illustrations of why I do so:

a. NMC plc's statements for 2015 and 2016 did not disclose any related party dealings with Neopharma, but Mr Jones' reconstruction of the Neopharma ledger account in NMCH's records (which was not challenged) proves debts of AED 400 million in 2015 and AED 477 million in 2016.

b. The related party note in NMC plc's 2016 statement records a single sum of US$ 14,000 for its sales to related parties, but by a transfer request to Baroda dated 9 October 2016 and apparently signed by Dr Shetty**,** DHE paid AED 48,846,000 (or US$ 13.3 million) to NMCH. As Dr Shetty accepted, this alone shows that sales to related parties were massively understated in 2016.

c. Dr Shetty pleads that "*GGCM was a substantial supplier of services to the NMC Group"*, but no dealings with GGCM were disclosed in any of NMC plc's accounts during the Relevant Period. Dr Shetty was its 100% owner and its sole authorised signatory, and he received Indirect Shetty Payments from it. As I have said, I cannot accept that Dr Shetty was unaware of GGCM.

d. No dealings with Modular Concepts were disclosed in any of NMC plc's accounts during the Relevant Period. I accept the JA Claimants' submission that, given Mr Rai's role as the NMC Group's Head of Procurement, and his relationship with Mr Rai, Dr Shetty cannot have been unaware that there were dealings between the NMC Group and Modular Concepts.

602. When he was asked about the failure to declare related party transactions, Dr Shetty disavowed that it was his responsibility. He said, "*This is CFO's job. Auditors' job*"; and he said that he had no responsibility because "*my job is to make the companies and progress it*". I accept that Dr Shetty's responsibilities did not extend to calculating for himself the exact level of transactions with the various related entities. I do not accept that he had no responsibility in respect of what was reported in the financial statements nor that he believed that he had no responsibility in respect of what was reported. I note that Dr Shetty signed NMC plc's financial statements for the years 2012 to 2016. Further, at a meeting of NMC plc's board on 26 August 2012, which Dr Shetty attended, the

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company secretary, Mr Simon Watkins, had spelt out the importance of disclosure of related party transactions, and the directors confirmed that their interests were fully disclosed. I cannot believe that Dr Shetty was unaware of his duties with regard to disclosure.

603. I conclude that, as a director of NMC plc and the signatory of the financial statements between 2012 and 2016, Dr Shetty was aware that related party transactions were not properly disclosed in them.

The Neopharma Promissory Note Scheme

604. In their closing submissions, the JA Claimants contended that what they called the "*Neopharma Promissory Note Scheme"* is a further illustration of Dr Shetty's knowledge that "*artificial financing arrangements"* were being used by the NMC Group. In a WhatsApp exchange on 25 May 2017, Mr Krishmanoorthy put forward the idea that Neopharma might issue a promissory note for AED 500 million payable to a NMC company, and that the NMC Group might "*monetise"* it: that is to say, that Neopharma should produce a promissory note that the NMC Group might discount. Mr Suresh Kumar observed that Neopharma was not in a position to make such a large payment. In subsequent messages, Dr Krishnamoorthy said that he had spoken to Dr Shetty about the idea, apparently on 23 May 2017 when he was in London for a NMC plc board meeting. Further, Mr Krishnamoorthy said that, since he and Mr Suresh Kumar thought differently about the proposal, "*Monday, we will meet with Dr Shetty together with [Mr Manghat]"* to resolve the question.

605. The scheme would not have been a legitimate device to raise money: there is no evidence as to whether or not it was implemented. However, the JA Claimants submitted that the exchanges show that "*the NMC finance teams had no qualms bringing illegitimate schemes to him for consideration*" and that *"[t]his exchange … supports the inference that Dr Shetty was aware of, and engaged with, the deliberate generation of artificial funding arrangements*".

606. When the JA Claimants presented this argument, I observed that they had not pleaded anything about the Neopharma Promissory Note Scheme, and I questioned whether they could properly rely upon in it in support of an allegation of dishonesty or improper conduct on the part of Dr Shetty. Mr Thanki accepted that they could not pursue an allegation that the Neopharma Promissory Note Scheme was dishonest, and he was right to do so.

607. However, the JA Claimants still sought to argue that this exchange illustrates that Dr Shetty took important decisions about, or at least was involved in important decisions about, the finances of the NMC Group, that the NMC finance executives consulted him about such questions, and that Dr Shetty's entities outside the NMC Group were treated as "*instruments freely available for NMC's financing purposes"*. These arguments were,

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in reality, advanced to support the contention that Dr Shetty was party to the fraud, and I cannot accept that they can properly be advanced without being pleaded. I shall disregard the JA Claimants' contentions about the Neopharma Promissory Note Scheme.

Dr Shetty: the Offset Deposits

608. The JA Claimants invited me to find that the Offset Deposit scheme "*formed part of the machinery by which the extraction of NMC Group resources was funded and concealed",* and that it was not hidden from Dr Shetty but he either knew of it or deliberately shut his eyes to it. As I have said, the complaint about Offset Deposits is pleaded in support of the JA Claimants' case against Baroda, and not against Dr Shetty (or Mr Manghat). I decline to make the findings that the JA Claimants invite about Dr Shetty knowing of the scheme or deliberately shutting his eyes to it.

Dr Shetty's arguments

609. When I assess whether I should conclude from this evidence and these considerations, taken together, that Dr Shetty knew of and was party to the fraud on the NMC Group, I must, as Mr Wandowicz powerfully argued, give full consideration to Dr Shetty's position and achievements, his personality and qualities, his modus operandi, and the nature of his dealings with others and in particular with Mr Manghat.

610. By the time of the IPO, Dr Shetty was 70 years of age. He was, as Lord Clanwilliam testified, looking to step back from a leadership role and to have his son, Mr Binay Shetty, succeed him. He had achieved great financial success and was immensely wealthy. He also had won public recognition, both in India and in the UAE. Mr Wandowicz argued that there was absolutely no reason for him to turn to dishonesty and fraud, and thereby risk both ignominy and severe punishment. It is even more improbable, it was said, that Dr Shetty would have entered into a fraudulent scheme to misappropriate corporate assets without making any attempt to disguise his association with it, but the scheme alleged by the JA Claimants involved funds being transferred to Dr Shetty's personal accounts in the UAE under instructions to banks that referred, for example, to "*transfer to Chairman*" or "*transfer to Dr Shetty*" and with corresponding entries in the NMC Group's internal accounts.

611. As I have already said, it is right in cases of this kind to consider whether the conduct alleged against a defendant is explicable in terms of what might plausibly have motivated him or might account for his conduct. Mr Thanki suggested that the explanation for Dr Shetty's conduct might be pure greed, but I am not wholly comfortable with that explanation. However, to my mind, it is not difficult to suppose that, after conducting his business affairs with great success and over many years without the discipline that comes with operating through a listed company, Dr Shetty was not prepared or willing to accept the constraints that are the price of a public listing. He knew the rules, as he

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acknowledged in cross-examination, but apparently he was not willing to change his ways and to comply with them.

612. This view of Dr Shetty's state of mind is, to my mind, more consistent with the fact that, through the counter-payments, monies were returned to the NMC Group from Dr Shetty's personal accounts, albeit in a distinctly lesser amount than the payments to them, than the view that Dr Shetty might have been motivated by simple greed.

613. What of Dr Shetty's qualities and personality? I accept Mr Wandowicz's submission that Dr Shetty's success in business came not from expertise in accounting matters but, as it seems to me, hard work, an acute eye for business opportunities and, as it was put, "*his ability with people*". I accept his evidence that he was "*not directly involved or qualified in financial functions of the companies*". As Lord Clanwilliam put it, "*Dr Shetty was a man of words, not a man of detail*".

614. I do not consider that this answers the JA Claimants' case. The allegations against him are not about detailed financial arrangements, and do not depend on him having much knowledge of accounting principles or familiarity with record keeping. They are based on the movements of large sums of money over an extended period, and how Dr Shetty made major acquisitions.

615. It was not in dispute between the parties that Dr Shetty was not involved in the routine conduct of the business of the NMC Group. His involvement in its financial affairs was, as Mr Wandowicz submitted, very limited. I accept Dr Shetty's evidence that his "*leadership style was always consultative and built on trust and delegation*". Mr Manghat's evidence suggested that Dr Shetty could be demanding and at times a bully, and the evidence of Mrs Manghat provided some support for this, but this is not reflected in the documentary evidence, and I do not give weight to that evidence when assessing the case against Dr Shetty.

616. Consistent with this style of leadership, the evidence illustrates gaps in Dr Shetty's knowledge about the NMC Group's and his own business interests. One example that Mr Wandowicz referred to concerns the acquisition of the Kelvin Gulf or Lattice business (see para. 567 above). I mention two other illustrations:

a. On 28 October 2019, Dr Shetty was visiting Saudi Arabia. He sent WhatsApp messages to Mr Manghat in which he inquired how many hospitals the NMC Group had in Saudi Arabia and asked for their names and locations; and also how many hospitals it had worldwide. Mr Manghat provided the information, and Dr Shetty replied "*Congratulations*".

b. On 18 March 2015, a Mr M Padmanabha Rao of Larsen & Toubro Limited, who were contractors engaged in constructing the Khalifa City hospital for the NMC Group, sent Dr Shetty an email asking him to expedite payments said to be

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overdue. Dr Shetty apparently wrote on the printed copy of the email an instruction for payment to be expedited, which was sent to Mr Manghat and Ms de Mello for the matter to be dealt with. Mr Wandowicz persuasively referred to this as showing Dr Shetty involving himself at "*a high level*" and leaving it to others carry out his wishes.

617. Also consistently with this style of leadership, Dr Shetty had few dealings with Baroda, and, as I would infer, with the NMC Group's other banks. Unsurprisingly, their dealings were mostly with the NMCH employees who operated the NMC Group's treasury function. The picture given by the Baroda witnesses was, as Mr Wandowicz described it, that their engagement with Dr Shetty was "*either … in the nature of courtesy contact with a VIP client only touching on business at a high level if at all, or seeing him at organised business or cultural gatherings of the Indian community in Abu Dhabi or similar formal functions*". (As Mr Wandowicz acknowledged and as is reflected in the events of March 2019, his relationship with Mr Jayakumar was of a different nature, and they discussed business, albeit typically in general terms.)

618. It is also clear that persons within the NMC Group had access to Dr Shetty's personal bank accounts. For example, it seems from a WhatsApp exchange on 18 July 2017 that Mr Kumar was able to check Dr Shetty's balance, and asked Mr Manghat (and not Dr Shetty) whether he might use the funds there. As I have said, those in Dr Shetty's personal office, in particular Mr Pinto, received his bank statements and handled his personal banking.

619. Mr Wandowicz was also able to argue that not only were the NMC Group executives in a position to make payments and conduct transactions without involving Dr Shetty but on occasions they would trick or manipulate him. Thus:

a. In a WhatsApp message on 25 December 2016, Mr Krishnamoorthy reported to Mr Suresh Kumar that he had "[*m]anaged to get the letter signed*" by telling Dr Shetty the "*[s]ame story*". There is no evidence about what letter is referred to or what "*story*" was told, but the natural interpretation is that Mr Krishnamoorthy had misled Dr Shetty.

b. In a WhatsApp message on 30 June 2016, Mr Krishnamoorthy reported to Mr Suresh Kumar that he had secured Dr Shetty's signature on an instruction for funds to be transferred from Canara Bank to Baroda because Dr Shetty "*was excited with the new plane + Canara Bank official was with me while signing so didn't realise*". Again, the purpose of the transfer is unclear, but Dr Shetty was purposely being kept uninformed about it, if not actively deceived.

c. On 1 October 2018, Mr Manghat sent a WhatsApp message to Mr Suresh Kumar about a drawdown of AED 50 million from a facility with AHB: "*I will tell you how to use others. Don't tell anyone now including Dr Shetty on withdrawal*". On 4

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October 2018, he sent another message, "*Hope next week can withdraw. Don't tell Dr Shetty for what this funds are",* and "*If he ask tell it's for Tower*".

620. Mr Manghat was asked about the messages of October 2018 when he was cross-examined. Although he was reluctant to admit it, I conclude that he was telling Mr Suresh Kumar to mislead Dr Shetty about the purpose of the facility, and to give Dr Shetty the false impression that it was to do with the acquisition of the Al Maryah Tower (see para. 757 below).

621. Mr Manghat explained that he did not wish Dr Shetty to know about the drawdown of the AHB facility because "*there was pressure on the finance*" (that is to say, on the NMC Group's cash flow) and that, if Dr Shetty knew of the drawdown, he would have "*definitely put pressure on them to make payments to Neopharma"* but there was *"pressure from everyone"* and the NMC Group needed to be *"very careful on what we do"*. There is other evidence that Dr Shetty would make demands for funds without recognising that they were required for other purposes.

622. I accept that on occasion Dr Shetty was misled into signing documents. However, the significance of this must be kept in proportion. Dr Shetty gave no evidence to suggest that he was misled in this way as to the purpose of any of the acquisitions that were pleaded against him by the JA Claimants, nor do these examples provide any proper basis for thinking that Dr Shetty was misled with regard to any of the payments made to him directly or indirectly by the NMC Group.

Conclusion about whether Dr Shetty was party to the fraud

623. I conclude that throughout the Relevant Period Dr Shetty participated in the fraud, and in particular that:

a. He knowingly received from the NMC Group substantial sums that were improperly transferred to him and for his benefit both directly and indirectly;

b. He either used or allowed his signature to be used to make such transfers;

c. He knowingly acquired with funds so transferred personal assets and investments, including Travelex, his share with Mr Menon in the aircraft, RCS, the Dubai Hills Villas and the Wyoming oil field and other investments through NNMC;

d. He opened and used personal bank facilities knowing that they were supported by Undisclosed Securities, which were not properly disclosed in the NMC Group's financial statements;

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e. As a director of NMC plc, he allowed the NMC Group to publish financial statements that concealed its true financial position, including by way of its borrowings and related party transactions; and

f. In March 2019, Dr Shetty knew of and assisted in hiding the NMC Group's borrowings from EY.

624. The JA Claimants have not proved that Dr Shetty knew about the Sham Suppliers Scheme. I make no findings about Dr Shetty's knowledge of the payments to or for the benefit of Mr Manghat and the Bin Buttis. It is not open to the JA Claimants to pursue allegations against Dr Shetty in relation to the Neopharma Promissory Note Scheme or the Offset Deposits.

Was Mr Manghat party to the fraud?

Introduction

625. As it is put in the JA Claimants' closing submissions, their case against Mr Manghat is, in summary, this: "*Mr Manghat was the principal operational architect of the fraud. He was not its primary beneficiary, although his unlawful extractions were far from modest. He built and maintained the finance function through which the fraud was carried out. He facilitated the extraction of NMC Group funds for the benefit of the principal shareholders. He established and orchestrated the Sham Supplier scheme. He determined what the auditors were told. He received unlawful payments totalling AED 64.1 million. When the fraud threatened to unravel in March 2019, he acted to conceal it. The evidence shows a close relationship with Dr Shetty. Dr Shetty ensured that Mr Manghat was rewarded for his participation in the fraud, authorising substantial unlawful payments to him*".

626. For his part, Mr Manghat said in his Post-Hearing Submissions that the *"kernel"* of his defence is that "*Dr Shetty and the principal shareholders were the true architects and beneficiaries of the fraud"*. (I should state that there is no persuasive evidence that the Bin Buttis devised the fraud.)

627. Mr Manghat's fundamental defence is identified by ADCB as being that "*despite his position, he was ignorant of, and had no involvement in, the Loan Recycling Scheme"*. His defence in the JA Action is similar. Further, (i) Mr Manghat denied receiving any money from the NMC Group to which he was not entitled, and (ii) in his closing submissions, Mr Hennessey submitted that the JA's claim against Mr Manghat "*rests on a reconstruction exercise, and one which Mr Jones accepted was underlined with assumptions, assumptions applied to incomplete and difficult-to-parse records"*. (Mr Hennessey also submitted that ADCB's case is fatally flawed because there is no credible evidence that it relied on any representation of Mr Manghat, but I defer consideration of the point

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because it does not go directly to whether Mr Manghat was party to the fraud: see para. 774 below.)

628. The case that Mr Manghat was party to the fraud throughout the Relevant Period, as pleaded by the JA Claimants in paragraph 119 of its Particulars of Claim (and essentially adopted by ADCB), has five limbs:

a. Knowledge of the unlawful payments for the benefit of the Principal Shareholders;

b. Knowledge of the unlawful payments for Mr Manghat's own benefit;

c. Facilitation of the unlawful payments;

d. Knowledge of the related party transactions, the Undisclosed Debt and the Undisclosed Securities, concealment of the Undisclosed Debt and Undisclosed Securities and knowing participation in the preparation and publication of false and misleading financial statements; and

e. *"[K]nowledge of and involvement in the events of March 2019 …"*.

629. I need not return to the events of March 2019. For reasons that I have explained, I conclude that Mr Manghat was deeply involved both in misleading EY through the forged First Resolution Letter and Second Resolution Letter, and in manoeuvres later in March 2019 to ensure that Baroda did not contact EY and reveal the extent of the borrowing at 31 December 2018.

Mr Manghat's qualifications and expertise

630. In assessing the other four limbs of the case against Mr Manghat, I keep in mind that, as I have said, Mr Manghat was a qualified chartered accountant. Nevertheless, in cross-examination, when he was asked about periodic meetings that, according to the FRP Report, he was to attend with the "*Corporate Finance team*" to review the "*completeness and accuracy of consolidated IFRS management accounts*" and of "*consolidated IFRS statements*", Mr Manghat described himself as an "*ignorant person*" with regard to IFRS. I cannot accept the picture that Mr Manghat gave of his abilities, and it is inconsistent with his contemporaneous claims, such as his exchange with Mr Tompkins in March 2012 about appointing a deputy CFO: see para. 213 above.

631. I have also already said that it was evident from his cross-examination that Mr Manghat is a very intelligent man, with an alert mind and an impressive memory for detail. Mr Zo'Mot formed a similar opinion from his dealings with Mr Manghat: "*he was financially astute, highly intelligent, deeply engaged with the details of any deals (both past and present) and was someone who knew at all times exactly what was going on at NMC, particularly in respect of its financial position, borrowings and relationships*".

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Payments to Mr Manghat

632. Coming to the remaining four limbs of the case that Mr Manghat was party to the fraud, I take first his knowledge and facilitation of the payments for his own benefit. In the JA Claimants' pleading, the alleged benefits fall into three categories: the Direct Manghat Payments, the payments by GGCM (the "**Manghat GGCM Payments"**) and benefits from payments made to NNMC.

633. I can dispose immediately of the third category. It is not pleaded unequivocally that Mr Manghat himself received benefits from the payments to NNMC: the pleaded case is that "*it is inferred that he either benefited from those investments [*sc investments from payments by the NMC Group to NNMC] *directly, or allowed and facilitated the dissipation of the NMC Group's assets in this way in order to benefit his co-conspirator, Dr Shetty, at the expense of the NMC Group".* At trial, neither the JA Claimants nor ADCB contended that I should infer that Mr Manghat himself benefited from the NNMC payments.

634. When considering the Direct Manghat Payments and the GGCM payments, I have in mind the level of Mr Manghat's legitimate earnings from NMC, which were set out in Mr Jones' unchallenged evidence. They comprised his salary, benefits and a cash element of a Short-Term Incentive Plan ("**STIP**"). (Further bonuses by way of shares in NMC plc might be awarded under the STIP and a Long-Term Incentive Plan.) His remuneration is sufficiently illustrated by referring to Mr Jones' undisputed evidence that in 2012 his remuneration was just under US$ 300,000; in 2015 it was just over US$ 600,000; in 2016 (when he had an unusually high pension benefit) it was US$1.345 million; and in 2019 it was US$ 1.746 million.

The Direct Manghat Payments

635. The JA Claimants and ADCB plead that Mr Manghat received Direct Manghat Payments totalling AED 9.3 million for which there was no legitimate basis. ADCB abandoned the claim in respect of one pleaded payment, for AED 50,000, which was said to have been withdrawn from Baroda on 13 August 2014. The JA Claimants still asserted in their closing submissions that Mr Manghat received "*a total of at least AED 9.3 million"*, but they did not explain how they might justify pursue the claim about the AED 50,000 payment, and (if and in so far as they pursue it) I reject it.

636. Of the remaining Direct Manghat Payments, the first was by way of a transfer from NMCH's 0242 account on 9 October 2012. Mr Manghat admits the transfer and pleads that he recalls that the payment was made "*to reimburse certain legal fees incurred by him"* in respect of the legal proceedings brought by HE Al Mazrouei (see para. 100 above), which Dr Shetty had promised to reimburse to him. There is no documentary evidence that supports this explanation, and NMCH's internal ledgers do not record any purpose for the payments. As Mr Pillai observed, it seems strange that Mr Manghat, given his level of remuneration in 2012, should have been expected to incur the fees and that they were

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not directly borne by Dr Shetty or NMCH. It is also remarkable that the expenses amounted, apparently, to exactly AED 100,000. Nevertheless, if I were considering this payment in isolation, I would not consider that there is sufficient basis to reject Mr Manghat's explanation. However, given my conclusion that the other Direct Manghat Payments were unlawful, I am unable to accept Mr Manghat's evidence and conclude that there was no proper reason for the payment.

637. Secondly, on 28 January 2013, AED 400,000 was withdrawn in cash from NMCH's 0242 account by two cheques, both apparently signed by Mr Manghat. On the same day, Mr Praveen Kumar sent an email to "*Rajesh.v*" at an NMC email address, which was copied to Mr Suresh Kumar and Mr Veerachan: it was headed "*Cash Withdrawal*" and read "*Please find attached the receipt & cheque copy pertaining to cash withdrawal of Dhs 400,000. The proceeds is being handed over to Mr Prasanth Manghat by Mr Prajeesh V.V* [sc. Mr Veerchan]". Mr Manghat said in evidence that he could not remember receiving this money and denied taking any cash from NMCH. I reject that. I cannot accept that those working in the finance department under Mr Manghat would have sent and copied emails falsely recording that a significant sum was being given to him in cash.

638. Next, on 14 April 2014, Mr Veerachan sent an email to Ms Meena Thomas of NMCH's accounts department and asked her to issue a cash cheque for AED 300,000 "*as instructed by Mr Suresh Kumar*". Later that day, he sent a further email to her in which he said that he had withdrawn AED 300,000 from Baroda and handed over AED 150,000 to Mr Suresh Kumar and "*to Ms Sabina [D'Mello] AED 150,000 (for Mr Prasant Manghat)*". He added "*This is only for our records*". The second email was copied to both Mr Suresh Kumar and Mr Manghat. Mr Manghat denied that he had received this money from Ms D'Mello, and he said in evidence that he did not need "*this much cash, physical cash*". I reject his denial: I cannot accept that Mr Veerachan would have copied his email to Mr Manghat if he was not to receive the money.

639. Fourthly, on 21 April 2014, Mr Praveen Kumar sent an email to Ms Thomas asking her to prepare to cash a cheque for AED 1.35 million, "*the proceeds of the same to be handed over to Mr Prasanth Manghat*", and later that day he sent her another email, which was copied to Ms D'Mello and others, and in which he referred to four cheques and confirmed that the "*proceeds of the same is being handed over to Ms Sabina [D'Mello] for Mr Prasanth Manghat*". Mr Manghat denied receiving this money, and when shown Ms D'Mello signature acknowledging receipt of it, he pointed out that she had not specifically confirmed that she had handed it over to Mr Manghat or would do so. I find it impossible to accept that Ms D'Mello did not hand it over, especially given how many of her fellow employees knew that she was receiving the cash for Mr Manghat.

640. On 22 October 2017, NMCH's accounts department sent Mr Praveen Kumar an email headed "*Cash cheque for Mr Prasanth Manghat*" and attaching a cheque drawn on NMCH for AED 250,000, which bore a receipt signed by Ms D'Mello, "*Received on behalf of Mr Prasanth Manghat*". In his Defence to the ADCB claim, Mr Manghat denied receiving

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any cash payments, but in cross-examination he said that he might have given NMCH a cheque and received the cash "*to make certain payments, maybe some of the family, charity events, taking care of people and all*". In view of my conclusions about other Direct Manghat Payments find this (tentative) explanation entirely unconvincing. There is no documentary support for the sudden suggestion that Mr Manghat might have made a corresponding payment for the NMC Group.

641. The sixth Direct Manghat Payment was made by way of a bank transfer by NMCH of AED 2 million on 4 December 2018. It was described in the NMC Group's internal records as "*Allowances paid to Prasanth Manghat*". In cross-examination, Mr Manghat said that this was a payment made to him by the NMCH board, and that there should be documentary support for this "*in the payroll, because it was paid though the payroll, because in 2018 they were not paying through payroll*". I did not find his account evidence coherent, but I also find it incredible. It was not pleaded or otherwise foreshadowed before Mr Manghat gave evidence, and it is not consistent with Mr Jones' unchallenged evidence about Mr Manghat's legitimate remuneration. Mr Manghat did not explain why the board of NMCH might have decided that he should receive this substantial payment. I conclude that the payment was not legitimate.

642. Next, on 28 October 2019, a Direct Manghat Payment was made by Holding (whereas all the others were made by NMCH). It was a bank transfer from Baroda for AED 1 million. It was described in Baroda's bank statement as "*allowance paid*". Mr Manghat said that he could not remember the payment. However, it is clear from a WhatsApp exchange between Mr Manghat and Mr Suresh Kumar on 28 October 2018 that Mr Manghat requested AED 1 million urgently, and Mr Suresh Kumar arranged the payment. In cross-examination, Mr Manghat said that Mr Suresh Kumar would have had authorisation from "*payroll*" to make the payment, but this is again inconsistent with Mr Jones' evidence and there is no explanation for why a payment should be made by Holding.

643. Finally, by a letter apparently dated 6 November 2019, Mr Manghat wrote to NMCH's Chief Compensation Officer that the "*management is pleased with the performance of the following employees and in recognition of their efforts, have decided to give them a special incentive as follows: 1. Prasanth Manghat, AED 4 m, 2. Prasanth Shenoy, AED 4 m, 3. Suresh Kumar, AED 2 m, 4. Hani Buttikhi, AED 2 m. Please do the needful*". The letter was signed by Mr Manghat (alone). On 7 and 13 November 2019, Mr Manghat received two payments, each of AED 2 million.

644. Mr Manghat's pleaded defence (in both the JA Action and the ADCB Action) is that he "*does not recall signing the letter to NMC's Chief Compensation Officer, and would not have been authorised to do so for a payment to himself*", but that he "*understood that in 2018, the Board at [NMCH] level (at the time,* [SAQ], [KBBAM] *and Dr Shetty) discussed and approved management incentive payments. It is to be inferred that they (and not Mr Manghat) authorised and/or instructed the payment, which came into effect in 2019. It was common in the NMC Group for payments to be delayed*". When he was cross-

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examined, Mr Manghat did not put forward this contention merely as a matter of inference, but he asserted that "*This is the board of [NMCH] has resolved it, and I executed it as a CEO*", and he said that the payment would have been reflected in the 2019 accounts.

645. Again, I am unable to accept Mr Manghat's explanation. First, it contradicts Mr Jones' unchallenged evidence. Secondly, no documentary evidence supports Mr Manghat's account. Thirdly, it is inconsistent with a letter of 21 March 2019, sent to Mr Manghat by Mr Bomford in his capacity of Chairman of NMC plc's Remuneration Committee, in which he set out the position as to the bonuses or incentive payments that Mr Manghat was to receive, in particular the cash element of the STIP, a payment of AED 2,528,277 that he was to receive in March 2019. (This third point was not put to Mr Manghat when he was cross-examined, but it had been specifically pleaded against him by the JA Claimants**,** and Mr Manghat did not answer it.)

646. I conclude that Mr Manghat was entitled to none of the Direct Manghat payments, and there was no legitimate reason for them to be made. I also conclude that Mr Manghat knew that.

The GGCM Manghat payments

647. The JA Claimants and ADCB contend that between March 2015 and December 2019 Mr Manghat received payments from GGCM of AED 54,836,500 by way of monies transferred from GGCM's 9228 account to his account at Baroda.

648. They also plead that the source of the funds for the Manghat GGCM Payments was "*the NMC Group and/or Dr Shetty*". However, the unchallenged evidence of the JA action Accounting Experts was that AED 24.7 million of the AED 54,836,500 could be shown to have been funded by the NMC Group, and I accept their evidence.

649. Mr Manghat pleads that he did not "*hold any role at GGCM",* but he "*accepts that GGCM was a vehicle used by Dr Shetty to make payments, and he (Mr Manghat) and Ms D'Mello assisted relevant individuals in facilitating payments on his behalf".* ADCB allege that he apparently "*controlled and/or operated GGCM's 9228 Account, including via Ms D'Mello*", and identified WhatsApp messages from Mr Manghat in which he instructed Ms D'Mello to make payments from it. He also directed that payments be made to GGCM's account for Dr Shetty's use (or "*for boss"*).

650. The JA Claimants and ADCB contend that Mr Manghat received the payments as a reward for his help with the fraudulent scheme. Mr Manghat admits in his pleading that he received AED 45 million, and at trial he did not dispute that he received the full amount of the GGCM Manghat payments. He said that the payments were, or that he believed them to be, legitimate payments from Dr Shetty. He pleads that he understood that the GGCM Manghat payments "*were effectively payments from Dr Shetty personally, and for*

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purposes unconnected with NMC (including, for example, payments to his daughter Reema Shetty and her businesses)". More specifically, he pleads that "*[t]hroughout the IPO, the Board and Dr BR Shetty promised to reward Mr Manghat with equity and/or a bonus for his work"*; that in 2014, Dr Shetty agreed to pay him a bonus personally (i) for his work on the IPO, (ii) because his remuneration had been below market rates, (iii) for work in relation to the dispute with HE Al Mazrouei, and (iv) for "*assisting Dr Shetty personally with aspects of his Travelex acquisition, including to arrange a pledge of his shares to raise personal funds*"; and that in early 2017, Dr Shetty signed a commitment (the "**Commitment**") to award Mr Manghat and his brother, Mr Promoth Manghat, a bonus of US$ 40 million "*contingent upon the sale of Dr B R Shetty's interests in NMC, UAE Exchange and Travelex"*.

651. The Commitment is headed "*Bonus Payment*", and it reads as follows: "*In connection with the sale of the interest of Dr B R Shetty in NMC, UAE Exchange and Travelex it is hereby agreed to award a bonus of USD 40 Million each to Mr Prasanth Manghat and Mr Promoth Manghat in the following manner:*

> *"On transfer of shares in NMC and SPA execution of UAE Exchange and Travelex: USD 30 Million each*
>
> *On closing of UAE Exchange and Travelex sale transaction: USD 10 Million each"*.

As it appears on its face, Dr Shetty had signed it and written on it a note saying "*good luck*". According to Mr Manghat, he asked Dr Shetty to write this in order to prevent him from later denying his signature. The Commitment also had a space marked for Mr Binay Shetty to sign, but his signature is not on the copy that is in evidence.

652. Dr Shetty disputed that he ever owed Mr Manghat or his brother any bonus under any such agreement or otherwise, and he gave evidence that "*no such 'bonus' payment was ever approved by me from Guide's accounts or otherwise*".

653. There are twelve GGCM Manghat payments. The first was by way of a transfer of AED 5 million made to him on 25 March 2015. He had initially told Ms D'Mello to transfer AED 3 million, but on learning thar GGCM had available a balance of AED 10 million, he told Ms D'Mello to arrange transfers of 5 million each to himself and his brother, Promoth. An internal spreadsheet of NMCH, headed *"Guide Transactions",* described these payments as "*Incentives – AED 5 mio Travelex Deal*".

654. In his written evidence, Mr Manghat said that Mr Promoth Manghat and he worked to arrange a facility agreement to refinance borrowing entered into by BRS Ventures & Holdings in respect of the acquisition of Travelex, which involved reducing the borrowings to AED 490 million by transferring AED 250 million of the funding to UAE Exchange. He said that Dr Shetty promised that they would receive in return a 10% equity interest in

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Travelex, but that in the event they did not receive "*any equity interest or remuneration for this work*". He continued, "*Instead the promise was later amended that we would be paid a substantial amount between us, which was essentially a cumulative bonus for this and years of other work we had done for him. This was never paid in full*".

655. I find this evidence incredible. A 10% equity interest in Travelex would have been worth some US$90 million (as Mr Manghat accepted in cross-examination), and I cannot accept that Dr Shetty would have agreed to such a reward for arranging a facility of AED 490 million, or for arranging a pledge of shares, or for both. When it was put to Mr Manghat in cross-examination that a bonus of 10% of the equity in Travelex would have been absurdly generous, he said that there was no connection between the promise of 10% of the equity and the arrangement of the facility, but that, to my mind, contradicts his witness statement. In his oral evidence, he described how he had complained to Dr Shetty that he was under-remunerated compared with other executives, and Dr Shetty had promised him money and invited him to "*take the payment from my other companies*". In respect of the transfer on 25 March 2015 specifically, Mr Manghat said that "*Dr Shetty would have told: okey, take it from Guide. Send this transfer letter*".

656. I find Mr Manghat's explanation in cross-examination no more convincing that his written evidence. He was vague about when Dr Shetty made his promises, he did not explain why his brother received the same amount as he did on 25 March 2015, and his evidence did not explain why the payments were said in NMCH's internal record to be an incentive in relation to Travelex. I consider ADCB's submission much more probable: that both transfers were a reward for facilitating unlawful payments from the NMC Group (and possibly from UAE Exchange) to Dr Shetty to fund the Travelex acquisition.

657. The second GGCM Manghat payment was by way of a transfer on 7 September 2015 of AED 1,836,500. Mr Manghat explained the payment on the basis of Dr Shetty's promise. However, no documentary record supports this explanation. More importantly it was one of four payments made from GGCM on 7 September 2015, the others being a payment of AED 2 million to Dr Shetty, of AED 918,250 to Mr Bassadiq, and of AED 1,285,550 to Mr Krishnamoorthy. I infer that they were connected with the payment of the second instalment of the price for the Travelex acquisition.

658. The third GGCM Manghat payment was by way of a transfer of AED 750,000 on 29 May 2016, and it was recorded in NMCH's records as "*Transfer to Prasanth Manghat (as per mail from Suresh K on 26.05.16) One off Bonus*". In an email of 26 May 2016, Mt Krishnamoorthy gave instructions for the transfer of AED 1.75 million by NMCH to GGCM, and by a further email later that day, he gave instructions to Ms D'Mello that, upon receipt of this money from NMCH, GGCM should make payments of AED 750,000 to Mr Manghat, and of AED 500,000 each to Mr Roy Cherry, who worked for the Bin Buttis, and himself. It was put to Mr Manghat in cross-examination that the payment was "*because of your involvement in operating and concealing the loan recycling scheme*", a suggestion that Mr Manghat denied. The payment was clearly funded by NMCH. Although I cannot tell

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from the evidence why this payment was made, I am satisfied that there was no proper reason for NMCH to make it, and I cannot accept that Mr Manghat was unaware of the source of the money. It was not lawful, as Mr Manghat knew.

659. Next, on 3 October 2016 GGCM transferred AED 1.5 million to an account of Mr Manghat at Noor Bank and AED 750,000 to his account at Baroda. Mr Bezant gave unchallenged evidence that these were funded by a transfer into GGCM's account on 27 September 2016 of AED 2,254,133 which was described in the NMC Group's internal records as being by way of a cheque for "*Everest Summit General Contracting*", presumably Apex Everest Summit General Contracting ("**Everest**"), one of the Sham Suppliers, received from "*SK",* presumably Mr Krishnamoorthy.

660. When he was cross-examined, Mr Manghat denied that he was involved in directing that these payments be made, and he said that they were made by Dr Shetty. This evidence is inconsistent with WhatsApp exchanges between Mr Manghat and Ms D'Mello on 3 October 2016, which show that Ms D'Mello sought confirmation from Mr Manghat about what transfers should be made.

661. The other seven GGCM Manghat payments, totalling AED 45 million, were made between 3 May 2018 and 11 December 2019, after Mr Manghat claims that Dr Shetty had entered into the Commitment. Mr Manghat's case was that these payments were made by Dr Shetty by way of part payment of what was payable under the Commitment.

662. I must therefore return to Mr Manghat's case that Dr Shetty gave the Commitment to pay both Mr Prasanth Manghat and Mr Promoth Manghat US$ 40 million. I cannot tell whether the Commitment is genuine, and I should make clear that I have not taken it into account when assessing the case against Dr Shetty. However, even if Dr Shetty did give the Commitment, it is clear that payment under it was contingent upon the completion of the proposed sale by Dr Shetty of all his shares in NMC plc, UAE Exchange and Travelex for US$ 2 billion. That proposed sale did not materialise. When he was cross-examined, Mr Manghat was reluctant to accept that the condition for the payments was not fulfilled: he said "*Those things happened actually. … But in a different manner*". I cannot accept that anything happened to fulfil the condition stipulated in the Commitment for the payments.

663. There is another reason that I cannot accept either that any payments were made by GGCM (or by Dr Shetty through GGCM) under the Commitment, or that Mr Manghat believed that any payments had been so made. In 2020, Mr Prasanth Manghat and Mr Promoth Manghat brought proceedings against Dr Shetty in the Dubai Courts, in which they claimed US$ 80 million under the Commitment. (It appears from the material before me that Dr Shetty never received notice of the proceedings because the Court was given the wrong address for service, but that does not matter for present purposes.) The proceedings were dismissed by a judgment dated 29 September 2021, and an appeal was dismissed on 22 August 2022, but Mr Wandowicz rightly made it clear that he did not rely upon the decision of the Dubai Court in these proceedings. However, he submitted, and

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I accept, that the claim in the Dubai proceedings for the full amount of US$ 80 million, including the full amount of US$40 million to which Mr Manghat claims to have been entitled, is inconsistent with his argument that payments by GGCM had already been made by way of part fulfilment of the Commitment.

664. The case that Mr Manghat now advances is also inconsistent with what he must have told Ms D'Mello in September 2018. The background was that Baroda's Compliance Department had queried why GGCM was paying AED 18 million to a Mr Jagannath Rout. On 24 September 2018, Ms D'Mello sent an email to Baroda, copied to Mr Manghat, attaching a letter on GGCM letterhead dated 17 September 2018, which read "*Further to the Investment Advisory Agreement and in recognition of achievement towards the incessant growth of company, a one-time incentive of AED 40 million each was awarded to Mr Prasanth Manghat and Mr Jagannath Rao* (sic). *This is for your information"*. It was signed, probably electronically, in the name of Dr Shetty. I accept Mr Wandowicz's submission that the letter was written at the direction of Mr Manghat.

665. The letter is not referred to in Mr Manghat's Defence or in his witness statements. In cross-examination, he said that he had had no recollection of it, but he cannot have forgotten about receiving such a large amount. It is inconsistent with Mr Manghat's case that he had no "*role*" in GGCM that he should receive this incentive. Moreover, it is inconsistent with his case that GGCM was making payments to him under the Commitment and in order to discharge Dr Shetty's promise.

666. I should refer specifically to the GGCM Manghat payments of AED 8 million on 21 January 2019 and of AED 5 million on 29 January 2019. The payment on 21 January 2019 was discussed in a WhatsApp exchange with Mr Suresh Kumar. Mr Manghat was clearly involved in arranging the payment. At the same time as the payment on 29 January 2019, GGCM made similar payments to Mr Shenoy and Mr Suresh Kumar, as is clear from the instructions that Ms D'Mello sent Baroda giving instructions for them to be made. Ms D'Mello described the payments to Baroda as being "*towards Annual Bonus"*. There was no reason that GGCM should pay any of them an annual bonus. However, the fact the payments were being made to Mr Shenoy and Mr Suresh Kumar as well as to Mr Manghat, and the description of the payment as being towards an annual bonus, are both inconsistent with Mr Manghat's explanation for the payment of AED 5 million.

667. I reject Mr Manghat's case about why he was being paid the GGCM Manghat payments.

668. I cannot tell whether Dr Shetty allowed Mr Manghat to receive the payments because he was involved facilitating the fraud on the NMC Group or whether Mr Manghat was simply arranging the payments for himself. Whatever the explanation, I conclude that, as Mr Manghat knew, the NMC Group was providing GGCM with funds to make some of the payments, and that, as Mr Manghat knew, there was no legitimate reason for the NMC Group to do so.

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Payments for benefit of Dr Shetty

669. As I said at paras. 177ff above, before the IPO Dr Shetty and other shareholders received benefits and payments from the NMC Group, and Mr Manghat was kept informed about what funds were transferred to them. I conclude that he also knew that NMC Group funds were being so used after the IPO and until 2020. The net dissipations to Dr Shetty alone exceeded AED 2.6 billion, and it is implausible that dissipations on this scale were not known to Mr Manghat as the CFO of NMC plc or thereafter, when he was still closely involved with the NMC Group's finances. However, the ADCB and the JA Claimants do not rely only on this general proposition but upon more specific evidence, including the following.

670. The documentary evidence shows that NMCH's Finance Department continued to monitor funds that were expended outside the group. For example, on 3 November 2012, Mr Veerachan sent Mr Suresh Kumar an email headed "*Non NMC Healthcare Fund transfers"* and listed transfers to UAE Exchange, Neopharma and Dr B R Shetty. Mr Manghat was kept appraised of information of this kind, as is shown by an email sent on 28 September 2014 by Mr Praveen Kumar to Ms D'Mello. It was headed "*Fund Transfers 2013-2014* and attached a spreadsheet (the "**September 2014 Spreadsheet**"), which comprised a summary of all transfers, and separately listed (i) "*payments to Dr Shetty*" from the NMC Group and also from Nexgen and FFT; (ii) transfers to "*BRS UAE companies*", including GGCM and DHE; *(iii) "BRS UK companies*", which listed payments to BRS Ventures & Holdings and NNMC (both in fact incorporated in the BVI); (iv) payments to "*BRS other";* (v) payments to KBBO, which included payments to, among other companies, Infinite and Centurion; (vi) payments to UAE Exchange; (vii) payments to NMC plc, which included, among other things, payments to Mr Basaddiq; and (viii) a list of payments to "*NMCH others"*, which include payments to, among others FFT and Modular Concepts. The payments to Dr Shetty in the first list totalled some AED 1,290 million, and the payments in the "*KBBO"* list totalled some AED 94 million.

671. I find that the September 2014 spreadsheet was sent to Ms D'Mello because she was Mr Manghat's Personal Assistant: in his cross-examination in another context, he accepted that she was *"a postbox for getting to me"*. However, Mr Manghat was unwilling to accept this when he was asked about the September 2014 Spreadsheet. In my judgment, there was no other reason that it should be sent to her. In any case, the Finance Department would not have sent such a document to Ms D'Mello if they had expected it to be kept secret from Mr Manghat.

672. The payments listed on the September 2014 Spreadsheet including payments connected with the acquisition of Travelex and the Dubai Hills Villas.

673. Mr Manghat's pleading denied that he knew about the Travelex acquisition, and his written evidence was that he had discovered only later that NMC Group funds were used for this purpose. When he was first cross-examined, Mr Manghat maintained his denial

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that he was involved in the transfer of funds from the NMC Group for this purpose (or any illegitimate purpose). However, later in his cross-examination, when asked about his signature on instructions to Baroda to make transfers of the funds used for the acquisition, Mr Manghat changed his evidence: he said that he knew of some of the payments from the NMC Group for this purpose, but not all of them. To avoid misunderstanding about this change of evidence, I intervened in the cross-examination and asked "*did you know at the time, that is to say back in 2014, that Dr Shetty was arranging some payments for Travelex out of the NMC companies?* Mr Manghat replied, "*If you ask me like a yes or no, Your Honour, yes, I knew. But some of them, I didn't know*".

674. Mr Manghat sought to justify this use of the NMC Group's money on the basis that "*Dr Shetty and the shareholders also used to bring money back into the company also*", and a claim that "*most of the shareholders, most of the directors knew this situation*". Had he believed that the payments from the NMC Group were proper for these or any other reasons, he would not have denied any contemporaneous knowledge. I cannot accept that Mr Manghat, a chartered accountant, did consider that the payments were legitimate or proper.

675. I also conclude that Mr Manghat knew that NMC Group funds were being used to support Dr Shetty's purchase of the Dubai Hills Villas. This is clear from an email exchange on 14 August 2014 that Mr Manghat had with his secretary, Ms Ruelle D'Silva. She wrote to Mr Suresh Kumar asking for funds to be transferred to Dr Shetty's account to cover cheques issued for the purpose, and she copied it to Mr Manghat (and Mr Udayakumar Nair). Mr Manghat asked what the cheques were for ("*What's this. For what. Who directed. Pl[ea]s[e]*") and she replied that they were for the Dubai Hills Villas. Shortly afterwards, Ms D'Silva sent Mr Manghat an email about these payments, writing that she understood from Ms D'Mello that "*Sir knows about this and we just need to pay instalments*". No response is in evidence. I cannot accept Mr Manghat's suggestion that Ms D'Silvo's email does not refer to him because "*Nobody used to call me 'Sir' in the office to be honest, I'm telling you*".

676. In my judgment, Mr Manghat was aware that the purchase of the Dubai Hills Villas was to be funded in part by the NMC Group event before these emails. After the exchanges, he signed the instructions for the transfer of the required funds from NMCH.

677. Mr Manghat had WhatsApp and email exchanges with Ms D'Mello on 31 May 2015 and 1 June 2015 about further payments by the NMC Group relating to the Dubai Hills Villas. On 17 October 2015, Ms D'Mello told him by WhatsApp that a further payment instalment in the sum of some AED 9.2 million was due. When asked about this in cross-examination, Mr Manghat said that he did not respond to it because "*I don't want to be party to that maybe*" and that he did not want "*to ask too many questions because this is not related to my business*". I cannot accept that explanation, but in any case, it would not assist Mr Manghat if he had shut-eye knowledge, rather than actual knowledge.

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Further, he went on to sign the transfer request for the payment to be funded by the NMC Group and, despite Mr Manghat's evidence, I find that he knew its purpose.

678. Mr Manghat continued to facilitate payments by the NMC Group to Dr Shetty or for his benefit after he ceased to be the CFO of NMC plc and became its Deputy CEO and then its CEO. I have already referred to the exchange between Mr Manghat and Mr Binay Shetty that shows that Dr Shetty was using NMC Group funds for the plane and for his investment in the Oman Cement City: see para. 508 above. Other WhatsApp exchanges with Mr Binay Shetty further illustrate that after October 2014 Mr Manghat knew that the NMC Group was continuing to provide financial support for Dr Shetty. On 4 October 2015, Mr Binay Shetty asked Mr Manghat to make payments to BRS Ventures & Holdings for staff costs and other expenses of another company of Dr Shetty referred to as BRS Catering, and Mr Manghat replied thar he could provide AED 500,000 "*tomorrow or so*". There were similar requests on 8 November 2015, on 10 April 2015, and on 8 May 2015, when Mr Binay Shetty asked for "*2 m for real estate funding*" and "*2.5 for Foodsters*", a food company of his sister, Ms Reema Shetty. On 7 July 2017, after Dr Shetty had agreed to dispose of some of his shares in NMC plc to the Bin Buttis, Mr Manghat wrote that Dr Shetty's office staff might have to be taken off the NMC Group payroll.

679. In his witness statement, Mr Manghat said that he had learned only afterwards that "*Dr Shetty's personal staff in his own office were paid by NMC*" and that this should have been discovered by EY as auditor. That evidence was misleading. In cross-examination, Mr Manghat did not deny that he knew about these payments, but he sought to justify them on the basis that the private office sometimes worked for the NMC Group while Dr Shetty was the CEO of NMC plc.I might have accepted that explanation if Mr Manghat's evidence about this had been consistent, but in the circumstances, I am unable to do so.

Payments for benefit of Bin Buttis

680. Mr Manghat also knew that the NMC Group was conferring illegitimate benefits on the Bin Buttis. They were recorded in the September 2014 spreadsheet. Further, on 14 August 2019 in a WhatsApp group to which Mr Manghat belonged, there was discussion of payments by the NMC Group to Emirates Hospital Group LLC ("**Emirates HG**"), an interest of the Bin Buttis.

681. When he was asked about the Emirates HG payments, Mr Manghat responded that the NMC Group was "*managing*" the company. He also said "*It is very difficult for me to say that this is a completely unlawful payment*". I am not persuaded by these explanations.

Conclusion about Mr Manghat's involvement with misappropriations

682. I therefore conclude that, throughout the Relevant Period, Mr Manghat knew of and facilitated unlawful misappropriations from the NMC Group for the benefit of Dr Shetty, of the Bin Buttis and of himself.

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Mr Manghat's knowledge of the Undisclosed Debt

683. I also conclude that Mr Manghat knew that the NMC Group was disguising the misappropriations by producing false financial statements that did not disclose its true borrowing obligations and through the Sham Suppliers Scheme.

684. Mr Manghat signed audit representation letters for the years ended 31 December 2015, 31 December 2016, 31 December 2017 and 31 December 2018, and approved the Directors' Reports and Directors' Statements in NMC plc's annual reports and accounts for those years. He did not suggest that he was unaware of the debts that they reported.

685. NMCH's Finance Department monitored the borrowings of the NMC Group and kept Mr Manghat informed of them: see para. 211 above, where I described the spreadsheets of 20 August 2013, 25 November 2015 and 8 August 2016. (ADCB's pleaded case against Mr Manghat refers in particular, to the spreadsheets of November 2015 and August 2016, but not that of August 2013.)

686. When he was cross-examined, Mr Manghat accepted that, if he had opened the spreadsheet that he was sent in November 2015, he would have known that "*this is a huge gap*". He suggested that he might not have looked at it because he opened emails on his blackberry and so could not open spreadsheets; and that he might not have opened them on his laptop. The subject line of Mr Krishnamoorthy's email said "*Total Exposure as on date - Pl. have a look it*". I cannot accept that Mr Manghat, who clearly liked to engage with financial details, would not have done so. Of the August 2016 spreadsheet, Mr Manghat said in cross-examination, "*... it looks I think I have not done proper exercise at that time. I should have looked at it a little more. Because I was more a Blackberry guy, and my laptop was in the office .... I should have done a little more care*". Again, I find that evidence incredible.

687. I add only that, even if Mr Manghat did not open the spreadsheets, Mr Krishnamoorthy and Mr Suresh Kumar clearly were not operating on the basis that the undisclosed facilities (those not reported in the financial statements) were to be concealed from Mr Manghat. They knew that he was well aware of them.

688. On 6 October 2016, Mr Krishnamoorthy sent Mr Manghat and copied to Mr Suresh Kumar an email with the subject line "*Bank position*". He wrote that "*The situation looks grave with the undisclosed bank liabilities standing close to US$ 2 billion mark*", and he provided a statement of the position as at 30 September 2016 giving a total for *"Liabilities disclosed in the books"* of AED 4.078 billion and *"Undisclosed Liabilities to the banks"* of AED 6.922 billion. His anxiety is evident from his email. He referred to "*having issues in meeting the coverage ratio"* for the 2015 Syndicated Facilities, and the difficulties in obtaining further facilities, and the need for at least US$ 500 million "*to manage this situation*". He asked for a discussion about the position. Mr Krishnamoorthy was

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obviously writing on the understanding that Mr Manghat was already aware that some of the bank borrowings were not "*disclosed in the books*".

689. In cross-examination Mr Manghat acknowledged that he was likely to have read the email "*at the time*". He said that, in response to Mr Krishnamoorthy's concerns, he put in place a plan to raise "*non-bank borrowing money*" *and to "bring money from shareholders"*.

690. Mr Manghat also said that there was nothing improper about the "*undisclosed bank liabilities*", claiming that he had consulted Clyde & Co for legal advice and was advised, "*They call it like off-balance sheet liability or something like that. Something like that. … this is not written as unaccounted or something, for someone to get really scared. He says that this is the problem. Unaccounted is not undisclosed*". Mr Manghat put forward a similar explanation in re-examination (four weeks after he had first given this evidence), when he said that this was "*off the book accounting*" or "*off balance sheet liabilities*" governed by "*certain accounting … regulations*"; and he referred again to consulting Clyde & Co and needing to obtain "*a legal opinion which has to be given to the auditors*".

691. Although some of the language was rather confused, the thrust of what Mr Manghat was saying is clear enough. I reject his evidence: it was untruthful. It is inconsistent with any sensible reading of Mr Krishnamoorthy's email. Nothing corroborates the evidence about raising "*non-bank borrowing*" or money from shareholders, nor the evidence that he or anyone else sought or obtained or provided to EY legal advice about the proper accounting treatment of the NMC Group's bank borrowings. It was not put to any of the accounting experts that there were accounting regulations that justified, or might conceivably be thought to justify, the NMC Group's accounting treatment of its borrowings, and no relevant regulation was identified. If advice of the kind described had been obtained, there would have been no need for the subterfuge in March 2019.

692. I should refer to one further piece of evidence that Mr Manghat was aware that the NMC Group was not disclosing all its borrowings to EY or it its financial statements: a WhatsApp exchange on12 December 2018 between Mr Ghosh and Mr Suresh Kumar about a question raised by EY and a facility with AHB bank. Mr Ghosh asked whether "*we [are] showing this time*". Mr Suresh Kumar replied "*No*" and reminded Mr Ghosh "*PM wasn't very keen on showing*". "*PM*", of course, refers to Mr Manghat.

Mr Manghat's involvement with the Sham Suppliers Scheme

693. It is alleged in the JA Action that Mr Manghat was involved in the Sham Suppliers Scheme, which was used to help disguise the NMC Group's true financial position. ADCB did not rely on this in its pleaded case, although Mr Pillai submitted that his involvement with it confirms his central role in the Loan Recycling Scheme. However that might be, in assessing ADCB's claim, I shall not take account of the evidence about his involvement with the Sham Suppliers Scheme (or about the Sham Suppliers Scheme itself).

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694. I have described the nature and scale of the Sham Suppliers Scheme at paras. 216ff above. The JA Claimants argue that Mr Manghat knew about it and facilitated it. In Mr Manghat's Defence to their claims, he admitted that "*the NMC Group used supply-chain financing from around 2013, as was commonplace in the industry*", but he said that he "*has no knowledge of any non-genuine supply-chain financing*".

695. When Mr Manghat was first cross-examined, he appeared to maintain his pleaded position. However, when he was asked about a request by Mr Praveen Kumar on 16 March 2016 to EIB to remit funds to the account of Everest at Baroda on the basis of an invoice from Everest where there was no genuine sale, Mr Manghat agreed that apparently in that case supply-chain financing was being used as a device for obtaining finance by misrepresenting Everest as a real supplier.

696. Everest was a company of a Dr Dinesh Acharya, who was a director of several of Sham Suppliers. Email exchanges between Dr Acharya and Mr Manghat demonstrate that Mr Manghat was closely involved in arranging with Dr Acharya to use his companies in the scheme. For example, by an email to Mr Manghat of 2 January 2015, Dr Acharya wrote that the Baroda account for Everest was opened and that its "*licence, stamp, letterhead etc all ready*". He told Mr Manghat to "*start using this company*" and that he would have two more companies ready later in the month. This is not information that would have been provided to Mr Manghat by a supplier engaging in genuine, arms-length sales. On 14 January 2015, Dr Acharya sent Mr Manghat another email in which he said that he had four companies "*for our purpose*" and listed Everest and three other Sham Supplier companies. It referred to a company called Apex Capital Commercial Brokerage LLC, saying that it "*mainly can be used for parking and distribution of commission and payments*" and that its "*documents and stamp are left in your office*". Mr Manghat could not explain what "*our purpose*" refers to or why a genuine suppliers might provide the NMC Group with its letterhead or stamp. I conclude that Dr Acharya and Mr Manghat were engaged in setting up Sham Suppliers to assist the NMC Group and that Dr Acharya was to receive commission for his assistance. I shall not set out in detail subsequent email exchanges with Dr Acharya that are in evidence. They corroborate this conclusion.

697. Mr Manghat's involvement in setting up Sham Supplier arrangements is also illustrated by his dealings with FFT and its registered manager, Mr Vijayakumar Madavana Viswanathan. FFT was a Sham Supplier. Mr Manghat pleaded that he had "*no knowledge of FFT or its business*". However, when Mr Manghat was shown in cross-examination an email of 11 December 2013 in which he sent Mr Suresh Kumar a copy of FFT's trade licence, he agreed that he knew of the company. Mr Manghat remained involved with FFT, and, for example, on 12 October 2014 he sent to Mr Vajayakumar a request from Baroda for "know your customer" documentation. He also directed payments for Mr Vajayakumar: for example, on 9 March 2016 he signed a transfer request for a payment of 80 lakhs (about AED 438 ,000) and he received in copy Ms D'Mello's email under cover of which she sent the request to Baroda. I accept the JA Claimants' submission that Mr

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Vajayakumar was, like Dr Acharya, being paid for his assistance with the Sham Suppliers Scheme and Mr Manghat was arranging the payments.

698. When Mr Manghat's cross-examination resumed after the break because of his illness, Mr Manghat gave a new explanation for the Sham Suppliers Scheme. He said that, after the financial difficulties in 2009, 2010 and 2011, banks were reluctant to make large overdraft facilities available, but they would provide what was called a "*trust receipt facility*" or a "*bill discounting facility*". Before Mr Manghat left Neopharma, he said, the NMC Group had arrangements with Neopharma and others for them to provide invoices that they might discount. This, he said, was a common market practice in the UAE. He specifically confirmed that he meant by this evidence that it became a common practice for banks, including international banks, to discount invoices knowing that they were not for any genuine supply. He initially said that he did not know whether Baroda followed this practice, but then he said that it "*definitely*" would have done so.

699. In re-examination, Mr Manghat repeated this evidence about bank practices: he said "*this was something, like, widely accepted, or widely tolerated market practices, the whole thing, and there was no intention to defraud, or to do any illegitimate business within the company …. We never believed that what we are doing is part of a large scam, or a fraud or something, because it was widely used*". He confirmed that the accepted practice that he was describing might involve creating an invoice where there was no real transaction.

700. I reject this evidence as dishonest. I cannot accept that there was any such common practice in the UAE (or elsewhere), nor that Mr Manghat believed that there was. It was not put to any of the banking witnesses, neither to the expert witnesses nor to the bankers from ADCB and Baroda who gave evidence of fact, that there had been any such a practice on the part of banks. Nor can I accept that, if there had been, it would have been acceptable to the banks' regulators.

Conclusion

701. Having made these findings about Mr Manghat's involvement in the fraud, it is not necessary for me to examine the contention that he was aware of the undisclosed related party transactions and the Undisclosed Securities. With that qualification, I conclude that all five limbs of the case that he was a party to the fraud are proved: see para. 628 above. Thus, I accept ADCB's contention that Mr Manghat was party to a scheme whereby money and assets were extracted from the NMC Group, while the false appearance of a successful and growing business was maintained, when it was, in reality, balance sheet insolvent: see para. 203.

702. It is true, as Mr Hennessey argued, that the amount that Mr Manghat received through misappropriations from the NMC Group are dwarfed by those received by Dr Shetty and the Bin Buttis. That said, the benefits to him would be regarded as very substantial by most businessmen, and he also received substantial reported remuneration as a senior

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executive of an apparently successful listed company. His rewards were enough to answer any argument that he had no motive for participating in dishonesty.

ADCB's claim: liability

703. As I have explained, in the ADCB Action, ADCB claim in respect of monies advanced under the so-called Core Facilities. I shall next consider (i) ADCB's procedures for granting facilities, and (ii) the requirements for advancing monies under them.

ADCB's procedures for credit decisions

704. It was the responsibility of ADCB's Business Unit to prepare credit proposals and the accompanying documentation. Proposals were then analysed and checked by the Business Risk Division, and the Investment Banking Group would advise on structuring proposed transactions and pricing.

705. The analysis of the Business Risk Division, in particular, would involve consideration of the customer's (or proposed customer's) financial information. It included a so-called Moody Risk Analysis by a dedicated team, whereby the financial data for recent years was compared to examine changes over time. ADCB's software was used to produce a Moody Risk Analysis rating (or "**MRA Rating**") to measure credit risk.

706. The Investment Banking Group's remit covered consideration of how the borrowing would be repaid, and leverage rations. Their work too necessarily required consideration of the customer's financial data.

707. The analysis and memoranda of the Business Risk Division and the Investment Banking Group, to which on the customer's annual financial statements and other financial information was crucial, were (in Mr Zo'Mot's words) "*the information basis of ADCB's decision making further up the chain*".

708. The proposal, including the MRA Rating, would be assessed by the Credit Group, which had authority to sanction credit within stipulated limits. In such cases, the Credit Group might sanction or refuse the proposal or might seek further information or refer it for consideration by a more senior body. If the facility exceeded the authority of the Credit Group, the proposal would be considered by a more senior body: the Management Risk & Credit Committee ("**MRCC**"), or for larger proposals the Board Risk & Credit Committee ("**BRCC**"), or, if the proposed exposure to the borrower (or borrower group) would exceed 10% of ADCB's capital fund, ADCB's Board of Directors. Those bodies similarly might sanction or refuse the proposal, might seek further information or might refer it elsewhere.

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Compliance Certificates: 2015 and 2017

709. Before ADCB entered into the Core Facilities in respect of which it claims, ADCB had earlier in the Relevant Period entered into syndicated facility agreements with NMCH, under which it was both a lender in the syndicate and the agent bank. They included what were referred to as:

a. the "**2015 Syndicated Facilities**", whereby under an agreement dated 14 May 2015 NMCH was provided with various facilities totalling US$ 425 million and AED 1,469.2 million;

b. the "**2017 Intercreditor Agreement**", whereby NMC plc and NMCH entered into an agreement dated 8 March 2017 with ADCB and other banks about the ranking and priorities in respect of a security package for a US$ 575 million bridging facility under an agreement of 13 December 2016; and

c. the "**2017 Syndicated Facilities**", whereby under an agreement dated 8 May 2017 NMCH was provided with a US$ 250 million facility.

710. Under these three agreements, in order to demonstrate its compliance with their requirements, NMCH was obliged to provide to ADCB, as agent bank, Compliance Certificates signed by two senior officers of the NMC Group, namely:

a. Quarterly Compliance Certificates, that confirmed that NMCH was not in default of its obligations, and provided stipulated financial information, including information relating to its debts. These required a statement of (inter alia) the exact amount of NMCH's "*Borrowings*" (sc. the aggregate of the NMC Group's total outstanding principal, capital or nominal amount of Financial Indebtedness) and its "*Total Net Debt*" (sc. the aggregate of the NMC Group's total borrowings, less any obligations to others in the NMC Group and after deducting cash that it held); and

b. Monthly Coverage Ration Compliance Certificates, confirming that NMCH was not in default of its obligations and information about the value of its receivables and the "*coverage ratio*". They were designed to provide information about whether it could meet its debt obligations from its earnings. These certificates required the statement "*We confirm that no Default is continuing",* and the term *"Default"* was defined to include *"Insolvency*" where *"the value of the assets of the Company or any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities)"*. There was no challenge to the expert evidence that there was a Default (as defined) at all relevant times when certificates were provided by the NMC Group under the 2015 Syndicated Facilities, the 2017 Intercreditor Agreement or the 2017 Syndicated Facilities.

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711. Mr El Khaldi explained the importance of certificates of this kind to ADCB's lending decisions. The following evidence was not challenged, and I accept it: "*...the compliance and other certificates from NMC entities were a vital part of the way in which we perceived the financial condition of our borrower. ADCB relied on these certificates. If they had not been provided, or they had been supplied in a form that suggested that NMC was in financial difficulty or in default, it would have immediately set alarm bells ringing. I would have been notified. It would have called into question ADCB's decision to lend and it would have affected all decision-making about our relationship with NMC*".

The Core Facilities

712. I have listed the Core Facilities at para. 339 above.

713. The 2018 Syndicated Loan: as Mr Zo'Mot explained, the 2018 Syndicated Loan was the largest syndication arrangement that ADCB had been involved in, and they replaced and increased the NMC Group's existing borrowing, including the 2015 Syndicated Facilities, and the 2017 Syndicated Facilities. Although its origins were in the ADCB's previous syndicated arrangements with the NMC Group, I do not accept Mr Manghar's description of it as "*simply a continuation of the credit that ADCB and others extended to NMC*".

714. It appears that NMCH approached ADCB's Investment Banking Group for the facility. On 10 February 2018, Mr Avinash Ravikumar of the Investment Banking Group sent an email to Mr El Khaldi and Mr Ali Ahmed, a Senior Relationships Manager at ADCB, and copied it to Mr Zo'Mot, Mr Nobilli and Mr Le Jeune. He attached a financial model and a presentation, which reflected the NMC Group's published financial statements. Mr El Khaldi proceeded to draft a proposal with the assistance of the Business Risk Division.

715. The proposal went to the Credit Group, which adopted the financial assessment of the "*NMC/KBBO Group*" (as ADCB grouped facilities and accounts for regulatory purposes) from the Risk Assessment Note ("**RAN**") for ADCB's 2018 annual review, which had recently been completed. The RAN had reviewed the financial information of the NMC Group and recommended renewal of its facilities. The Credit Group recommended the proposal be accepted with ADCB's participation in the syndicate of US$ 850 million "*to maintain our relationship with the NMC Group*", but that its participation be sold down to US$ 650 million within 90 days.

716. The proposal next was considered at a meeting of the MRCC on 19 February 2018, which Mr Zo'Mot attended. The MRCC decided to approve the proposal, waiving the requirement that US$ 200 million be sold down within 90 days, but it required the Business Unit to "*explore potential sell down and report back on the subject within 6 months*". I accept Mr Zo'Mot's explanation that the MRCC's purpose was to allow ADCB, if so advised, to sell down its participation "*in an orderly fashion ... rather than in a rushed fashion*". On 22 February 2018, Mr Zo'Mot presented the matter to the BRCC, who adopted the proposal as recommended by the MRCC.

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717. In the event, ADCB was allocated participation of only US$ 650 million in the 2018 Syndicated Loan, and it executed the 2018 Syndicated Facilities Agreement on 26 February 2018 accordingly. In November 2018, at NMCH's request, ADCB agreed to make amendments to the agreement, and an Amendment and Restatement Agreement was executed by Mr Shenoy on 29 November 2018.

718. I should refer to some of the terms of the 2018 Syndicated Facilities Agreement:

a. Clause 18.11 set out representations that the NMC Group's financial statements complied with Generally Accepted Accounting Principles and fairly represented NMCH's financial condition and operations.

b. Clause 19 provided for NMCH to provide financial information to ADCB including audited annual financial statements of NMC plc and its half-yearly and quarterly statements, and certificates (the "**Compliance Certificates**") to verify that information.

c. Clause 20 contained covenants about NMC plc's EBITDA (earnings before interest, tax, depreciation and amortisation).

719. Clause 4 of the 2018 Syndicated Facilities Agreement:

a. required NMCH to provide a certificate about the NMC Group's financial position as a condition precedent to utilising the facilities (the "**CP Certificates**"): clause 4.1; and

b. provided that the syndicated banks were not obliged to respond to a request by NMCH to use the facilities unless, at the time of the request and when it proposed to use the funds, no "*Default*", such as insolvency or breach of a financial covenant, was continuing or would result from the proposed loan: clause 4.2.

720. The Sukuk Offering: on 2 May 2018, Mr Manghat opened discussions with Mr Zo'Mot that led to the Sukuk Offering. His proposal was to use the funding to repay part of the 2018 Syndicated Loan, which were to fall due in February 2019. On 21 May 2018, Mr Zo'Mot sent the Investment Business Group a summary of the proposal that had been provided by Mr Shenoy: it said that the NMC Group was "*looking at an issue size of USD 350-500 mn with a tenor (long 7-10-year)*". It proposed that ADCB should act as "*soft underwriter*" of 10% of the offering (that is to say, should commit to buying certificates not otherwise subscribed). ADCB was also sent a draft of the Offering Circular that incorporated the NMC Group's financial statements for 2016 and 2017.

721. Mr Zo'Mot presented the proposal to the Credit Group, and on 11 June 2018 the Credit Group recommended its acceptance. It recorded its recommendation as follows: "*Given that the request is in line with recently approved BRCC prudential limit for the Group of USD 850M, We recommend request subject to standby limit to be utilized by obligor –*

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[NMCH] and if limits remains unutilized by 31.12.2018, unutilized portion of unadvised standby limit to be reduced".

722. On 18 June 2018, the proposal was accepted by the MRCC. It did not have to go to the BRCC.

723. Mr Zo'Mot gave evidence that the recommendation of the proposal relied heavily on the NMC Group's annual accounts and financial statements; that the MRCC relied on the same matters as had informed the recently concluded 2018 annual review of NMC in January 2018 and the decision by the MRCC and the BRCC to approve the 2018 Syndicated Loan; and that ADCB's consideration of the Sukuk Offering proposal "*was only further reinforced"* by Mr Manghat signing the 2018 Syndicated Loan and certificates that it required.

724. By November 2018, the NMC Group had reduced the proposed Sukuk Offering to between US$ 300 million and US$ 400 million, with a shortened tenor of 5 years. On 1 November 2018, the Business Unit proposed the ADCB subscribe to 10% of the revised offering (rather than underwrite it). The Credit Group had authority to accept this proposal, and it did so.

725. On 20 November 2018, Sukuk offering certificates with a face value of US$ 400 million were issued with NMCH as the obligor, and on 22 November 2018 they were admitted on the International Securities Market of the London Stock Exchange. ADCB bought certificates with a face value of US$ 30 million. The Offering Circular dated 20 November 2018 was based on the NMC Group's annual financial statements for 2016 and 2017 and its interim statements for 2018.

726. The Club Facility: in December 2018, the NMC Group proposed to ADCB's Investment Business Group another syndicated facility, the purpose being to refinance some of the 2018 Syndicated Loan with the US$ 250 million 5 year term loan. Mr Ravikumar and Mr Le Jeune prepared a presentation for the Credit Group. After a meeting on 8 January 2019 with Mr Udayakumar Nair and Mr Praveen Kumar, Mr El Khaldi and Mr Ahmed wrote a memorandum that proposed that US$ 180 million from the standby limit be so allocated.

727. The Credit Group had authority to accept the proposal, and it did so on 17 January 2019. I accept Mr Zo'Mot's evidence that the Club Facility was proposed and accepted "*in the continued belief that NMC was operating properly and legitimately and that its accounts were accurately and honestly prepared"*.

728. After ADCB had merged with UNB and acquired AHB on 1 May 2019, Mr Ahmad and Mr El Khaldi presented a credit application and memorandum proposing renewal of NMCH's facilities until July 2020. This initiated ADCB's annual review of its exposure to the NMC Group, and it was considered by the Credit Group on 17 July 2019. The material for the review included the MRA Rating, an analysis of NMC's financial statements and other

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financial information. The Credit Group supported the renewal of the NMC Group's existing facilities until 31 July 2020. However, it observed that, following the merger with UNB and the acquisition of AHB, "*ADCB Group became highly concentrated on KBBO Group with a total exposure of AED 5.4 Bn … exceeding the Approved Group cap of AED 3.8 Bn as well as 10% of ADCB's capital fund*".

729. On 29 July 2019, the MRCC endorsed the recommendation of the Credit Group but on the basis that the Business Unit should present an interim review after 6 months, and that in the meanwhile "*no further deals [were] to be entertained*". On 1 September 2019 and 4 September 2019 respectively, the BRCC and the Board agreed with the MRCC.

730. These decisions provided the context for the four other Core Facilities:

a. The Bilateral Facility was a facility for working capital provided by ADCB to NMCH, which was renewed annually. The final iteration of it on 4 November 2019 was a product of the 2019 annual review.

b. After ADCB's merger with UNB, the UNB Facility was renewed by ADCB on 29 August 2019, its limits being renewed to 31 July 2020.

c. When AHB was acquired by ADCB, it was providing a Murabaha facility for AED 200 million to NMCH. ADCB did not offer identical facilities, and ADCB proposed to replace it was an comparable arrangement for facilities of AED 200 million. On 8 October 2019, Mr Ahmed and Mr El Khalid proposed that the facilities inherited from AHB be extended for three months to allow ADCB time to prepare documentation for the new arrangement. The proposal was approved by the Credit Group, and ADCB and NMCH entered into a Murabaha Facility Agreement on 11 November 2019.

d. The Ijarah leasing finance arrangement for AED 84 million was another facility that AHB was providing to NMCH under an agreement dated 3 October 2018. Mr El Khaldi explained that ADCB already offered a similar produce when it acquired AHB, and so it "*could be onboarded without any conversion process*".

Mr Manghat's representations

731. ADCB's case under article 282 of the Civil Code is that Mr Manghat is liable for his "*knowing participation in the Loan Recycling Scheme during the Relevant Period*". Its case under the CCL 2015 is similarly that he "*used his control of NMCH and Al Zahra to perpetrate*" the scheme. I shall return to the cases under article 282 and the CCL 2015, but I need next to explain further ADCB's claim under article 285 that alleges deception on Mr Manghat's part.

732. ADCB's case under article 285 of the Civil Code is that "*[b]y implied and express representations over time Mr Manghat endorsed the honesty, accuracy and legitimacy of*

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the NMC Group's financial statements and other financial information; its true debt levels; and the propriety of its operations". Thus, the representations are said to have been made both impliedly and expressly.

733. Before describing ADCB's case under article 285 further, I sound a note of caution about the emphasis on "*representations"*. The concept is familiar to the common law, not least in the context of fraud claims, and, as Mr Pillai observed, ADCB's case was originally formulated by reference to representations when in was proceeding against Mr Manghat and others in England. The basic concept of UAE law that underlies article 285 is, as I understand it, a more general principle of deception: that, if a person deceives another, he should be liable to make good any harm that results. That said, in view of how ADCB presented its case, it is convenient to consider what it says about representations.

734. ADCB says that Mr Manghat is liable under article 285 because he failed to inform ADCB of the true financial position of the NMC Group when he ought to have done so. As I have said, silence, or a failure to speak when there is a duty to do so, can constitute deceit: see para. 305. Mr Manghat does not contend that he informed ADCB of the true financial position of the NMC Group's financial position, or that it was mis-stating its indebtedness in its financial statements: his case is that he did not know that it was doing so. I also find that ADCB was not otherwise aware that the financial statements did not properly represent the NMC Group's financial position. Understandably, it supposed that they did.

735. The argument about whether Mr Manghat's failure to inform ADCB of the true financial position amount to deception under article 285 of the Civil Code is essentially one of UAE law, to which I shall return: see para. 771. However, the context of the argument is this.

736. First, as I have concluded, Mr Manghat was, throughout the Relevant Period aware of the NMC Group's true financial position, and knew that it was mis-stated in the financial statements.

737. Secondly, throughout the Relevant Period, Mr Manghat actively engaged with ADCB on behalf of the NMC Group, in particular in discussing potential new facilities. He engaged particularly with Mr Zo'Mot, and, although Mr Manghat challenged Mr Zo'Mot's evidence about how frequently they met and how formal their meetings were, I conclude that Mr Manghat played a leading role in negotiations with ADCB about transactions and in its relationship with the NMC Group more generally. I accept Mr Zo'Mot's evidence that, "*Certainly from my perspective Mr Manghat ran NMC from October 2014 onward;, taking the lead on all NMC financing requests to ADCB, managing all key meetings, and providing key updates to ADCB in relation to NMC*". In an email to Mr Zo'Mot dated 22 June 2016, Mr Manghat wrote, "*You have been my long and trusted banking partner and aware of our Group's acquisition strategy*". Furthermore, in 2018, Mr Manghat participated in "roadshows" for the Sukuk Offering, and on 27 June 2019, Mr Manghat, with Mr Shenoy, made a presentation to ADCB's Board of Directors. At both, he deployed the NMC plc's financial statements to describe the NMC Group's position and outlook.

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738. Coming to ADCB's case that Mr Manghat endorsed the NMC Group's financial statements and other financial information by express and implied representations, ADCB alleges that, through the Compliance Certificates, Mr Manghat made both implied representations and, in the case of six certificates, which expressly certified the level of "*Borrowings*" or "*Total Net Debt*" of the NMC Group, express representations.

739. ADCB introduced the allegations about express representations by an amendment made with the Court's permission early in the trial, the amended pleading being filed on 3 April 2026. In his Post-Hearing Submissions, Mr Manghat denied that he had had "*sufficient time to respond to the specific allegations which were introduced after the trial had commenced*". I do not accept that: the Post-Hearing Submissions were presented over six months after the allegations were introduced.

740. Mr Manghat was a co-signatory on six certificates relating to the use of the 2015 Syndicated Facilities, eight certificates relating to use of the 2018 Syndicated Loan and four certificates under the Club Facility. ADCB contends that he made implied representations about the NMC Group's financial position by signing each of these certificates, and also that he made express representations in four certificates under the 2015 Syndicates Facilities, one under the 2018 Syndicated Loan, and one under the Club Facility.

741. ADCB's case about the express representations is this:

a. By the four certificates provided to ADCB under the 2015 Syndicated Facilities, Mr Manghat represented that the levels of "*Borrowings*" (as defined in the agreement of 14 May 2015) stated in the certificates were correct.

b. By a certificate of 27 March 2018 provided to ADCB under the 2018 Syndicated Loan and by a certificate of 15 May 2019 provided to ADCB under the Club Facility, he represented that the levels of Total Net Debt (as defined) stated in the certificate were correct.

742. The implied representations that ADCB pleads are that Mr Manghat (and his co-signatory, whether Mr Krishmnamoothry, Mr Suresh Kumar or Mr Shenoy) represented (i) that NMCH was carrying on its business properly and legitimately; and (ii) that the signatory honestly believed that the certificate was based on genuine financial records of the NMC Group.

743. I accept that the second representation was implicit in the certificates, but I am not persuaded that the certificates involved the signatories in making the first of the representations. I confine myself to two problems that I see with ADCB's allegation here. First, the meaning of the alleged representation is vague: why does it refer only to NMCH, whereas otherwise certificates related to the position of the NMC Group? What does "*properly*" mean (assuming that it is not tautologous with "*legitimately*")? Would the representation be belied if any incidental aspect of NMCH's business was not carried on

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"*properly*"? Further, given that the second implied representation is qualified by reference to the signatory's belief, I do not understand why the first implied representation is not similarly qualified.

744. Mr Manghat did not dispute that, if he made the express representations and the second category of implied representations, they were untrue. The issues between ADCB and Mr Manghat on this point, as I understand it, are (i) whether Mr Manghat did in fact sign the certificates as ADCB alleges, and (ii) whether the certificates were of any real importance.

745. In his Defence, Mr Manghat admitted signing six Compliance Certificates. When he was cross-examined, at first he appeared to accept that, where his signature appeared on a certificate, he had either signed it himself or authorised that it be signed in his name. Later in his cross-examination, he appeared to question his signatures: he said that, at some times each year, he had been in India and could not have signed them. I am not persuaded: even if he was not in the UAE, that does not mean that he did not authorise the certificates be signed electronically in his name. There would have been no reason for anyone to use his signature otherwise: other certificates were presented that had two other signatories.

746. Mr Manghat sought to belittle the importance of Compliance Certificates, and so implicitly of any misrepresentations in them. To give the flavour of his evidence about this, I cite this answer from his cross-examination: "*Compliance certificates, by nature, is not considered to be extremely serious by the company or the bank. It was just a document …. So in the whole thing, if you look at it, compliance certificate, I'm not saying it is not there. And legally, yes. I'm bound that I have signed it. … But in practical – in a country like the UAE, culturally, these certificates are all just like a paper that moves, from one office to another office. But the entire thing is done in a completely different fashion*". If Mr Manghat was seeking to argue that misrepresentations in certificates of this kind, particularly deceitful misrepresentations, would normally have been regarded as unimportant by ADCB and other banks conducting business in the UAE, I reject that evidence. No such suggestion was put to the ADCB witnesses, the Baroda witnesses or the expert banking witnesses.

747. Next, ADCB's argument that Mr Manghat made implied representations in or through NMC plc's financial statements for the years 2015, 2016, 2017 and 2018 (the **"Accounts Representations***")*. The Accounts Representations that ADCB alleges are these:

a. Each set of accounts had been honestly prepared;

b. Each set of accounts was not materially misstated;

c. Mr Manghat was not aware of any matters that prevented each set of accounts from giving a true and fair view; and

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d. Mr Manghat was not aware of any reason to suppose that false information had been supplied to EY for their work on the accounts.

748. I accept ADCB's case with regard to the third and fourth of the Accounts Representations, which are confined to Mr Manghat's knowledge. I need not deal with the first and second of the Accounts Representations, and I say no more about them.

749. Mr Manghat pleads that he did not make the Accounts Representations because anything that he did in connection with the Core Facilities was done in his capacity as CEO of NMC plc, on its behalf and in the course of his employment. This is irrelevant: it is no defence in UAE (or ADGM) law for an employee who is guilty of deceit to show that he was acting in the course of his employment.

750. Finally, with regard to representations that ADCB alleges were made by Mr Manghat, I refer to the CP Certificates in respect of the 2018 Syndicated Loan. By certificates dated 26 February 2018, Mr Manghat signed certificates about, inter alia, the amount of NMC plc's indebtedness and the amount of its Total Net Debt in relation to its EBITDA. (One of the CP Certificates stated that Mr Manghat signed it as Dr Shetty's attorney. The reason for this is obscure, but it cannot affect whether Mr Manghat is liable under article 285 in respect of what he certified.)

751. ADCB pleads that, in signing the CP Certificates, Mr Manghat impliedly represented to ADCB (i) that NMC plc was carrying on its business properly and legitimately, and (ii) that he honestly believed the certificates were based on genuine financial records of the NMC Group. For reasons that I have explained (see para. 743 above) I am not persuaded that Mr Manghat made the former representation, but I accept that he made the latter.

752. ADCB further alleges that Mr Manghat made representations by signing the 2018 Syndicated Facilities Agreement and the Club Facilities agreement, and also that he is liable in respect of representations made by third parties, including other executives of NMCH and solicitors who conducted negotiations relating to the Core Facilities. As I see it, these contentions add nothing to ADCB's case under article 285 of the Civil Code, and I say nothing about them.

Mr Manghat's case about why ADCB provided the Core Facilities

753. Mr Manghat argued that, when deciding to provide the Core Facilities, ADCB did not rely on the NMC Group's financial information or any representations that he made. He argued that it practised what he called "name lending", which I understand to be extending credit on the basis of the customer's reputation and which he describes as a says was a common practice. He pleaded that ADCB relied upon the fact that "*the Principal Shareholders were well-known high net worth individuals within the UAE and customers of ADCB in their own right*". He also pleaded that ADCB relied upon information available from the CBUAE, reports from the Etihad Credit Bureau, EY, ADCB's

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"*own personal and external advisers*", "*market analysis and rating agencies*" and "*other market participants*".

754. These allegations have no support in the documentary or other evidence. I conclude that, in so far as ADCB had regard for any of these matters when considering and deciding upon proposals for the Core Facilities, they were of pretty peripheral importance. The NMC Group's financial information and the representations about it made by Mr Manghat and other NMC executives were clearly central to ADCB's lending decisions.

755. Further, Mr Manghat denies that "*ADCB relied at all or to any material extent on the apparent integrity or accuracy of NMC plc's audited financial statements*", and he pleads that "*ADCB knew or ought to have known that the Financial Statements were materially misstated …*". In support of this contention, Mr Manghat's relies on these allegations:

a. That loans were made by AHB to NMCH that were undisclosed in the books of the NMC Group;

b. That guarantees are said to have been given by the NMC Group to AHB to support personal borrowing of Dr Shetty;

c. That as of 30 June 2019, the NMC Group had borrowings that had been extended by AHB and UNB of some AED 418 million, which is said to have been "*unaccounted for in the accounts*"; and

d. That ADCB made a loan of US$5 million to Dr Shetty on 17 December 2019, after the publication of the First Muddy Waters Report.

756. I make two preliminary observations about this contention. First, many of the points relied upon in support of it were not put to ADCB's witnesses. Secondly, it would be beside the point if ADCB ought to have known that financial information was misleading: that does not answer the contention that Mr Magnhat's misrepresentations led ADCB to provide the Core Facilities or otherwise answer the claim in deceit.

757. Mr Manghat does not allege that ADCB entered into a loan to NMCH that was not disclosed. However, he pleads that an example of such a loan is a facility provided by AHB in connection with its sale of the Al Maryah Tower to Dr Shetty and KBBAM (or a special purpose vehicle owned by them) for AED 500 million. On 23 July 2018, AHB's Board Credit Investment Committee ("**AHB BCIC**") approved a loan of AED 475 million to KBBAM and Dr Shetty for this purpose. The security for the loan was to include a guarantee provided by NMCH. However, on 26 December 2018, AHB BCIC approved a proposal to waive the requirement for security from NMCH because it was said that article 153 of CCL 2015 prohibited company guarantees in support of loans to directors. Neither with nor without a guarantee from NMCH does this arrangement exemplify a loan to NMCH.

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758. With regard to guarantees given by the NMC Group in support of lending to Dr Shetty, Mr El Khaldi explained that, at around the time that ADCB acquired AHB, it was arranged by a facility letter dated 26 March 2019 that ADCB would provide a Murabaha facility for AED 475 million to Dr Shetty and KBBAM. It was supported by a guarantee dated 1 May 2019 provided by NMCH and signed by Mr Suresh Kumar and by a guarantee dated 1 May 2019 and provided by UAE Exchange. Mr Manghat's argument, as it appears, is that, because ADCB pleads that the guarantee provided by NMCH was an undeclared collateral benefit, therefore it is to be inferred that ADCB knew that it was "*improper*" for NMC to guarantee this facility. I do not accept that: the fact that ADCB now complains about the Undeclared Securities is not a reason for inferring that it knew this (or ought to have known this) contemporaneously, and there is no evidence that it did so.

759. Mr Manghat also pleads that he "*has become aware of a guarantee given in favour of personal borrowing to Dr Shetty by [AHB]*". He does not plead, and did not state, who is said to have given the guarantee. All that he says about it is that he recalls that it was given "*in relation to the financing of a hospital*" and that "*the provision of a guarantee for its construction was discussed by the Board*". No witness of ADCB (and no other witness) was asked about this allegation, and it was apparently not pursued at trial.

760. No evidence was put forward to support the allegation that ADCB knew or ought to have known about AED 418 million of Undisclosed Debt. Again, this allegation was not pursued in cross-examination of any witness or otherwise at trial.

761. There is no evidence that ADCB granted Dr Shetty a facility of US$ 5 million in December 2019 after the publication of the First Muddy Waters Report. However, ADCB accepts that it agreed to provide him with a facility of AED 40 million (the equivalent of about US$ 11 million) in the wake of the First Muddy Waters Report. Mr Zo'Mot gave evidence that Mr Nobili and he recommended that this facility be provided, and it was approved on 18 December 2019. Its purpose was to provide Dr Shetty with short-term personal finance to cover margin calls relating to facilities that he had obtained against his shares in NMC plc when their value had dropped after the report. Mr Zo'Mot explained that he recommended the facility because Dr Shetty was a long-standing customer of ADCB in good standing, the funding was relatively modest and was short-term, and Dr Shetty had a satisfactory account history. It was granted at a time when ADCB was being assured by Mr Manghat that the Muddy Waters Report was "*short seller noise*". I accept Mr Zo'Mot's evidence about the decision to grant Dr Shetty the facility, and I do not think that it has any relevance to ADCB's claims.

762. To my mind, neither the decision to provide this facility to Dr Shetty nor the other matters that Mr Manghat pleaded support the contention that ADCB knew or ought to have known that the NMC Group's financial information was materially misstated. I reject the allegation.

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ADCB's case under article 282 of the Civil Code

763. As I said at para. 291 above, there are three elements to liability under article 282 of the Civil Code: (i) a harmful act; (ii) harm suffered; and (iii) a causal link between the harmful act and the harm.

764. As I have also explained at para. 293 above, a harmful act occurs when a person does something that, as it is put, "*goes beyond the limit*". I have concluded that Mr Manghat knowingly participated in the fraud, or, as ADCB puts it, the Loan Recycling Scheme. As ADCB submits, this conduct constituted a harmful act for the purposes of article 282.

765. I accept ADCB's submission that it suffered harm, which constitutes not only its loss by way of being unable to recover what is owing from NMCH (or from the guarantors of, or other security for, the facilities that it provided to NMCH), but also the loss of profit or return that it was entitled to receive under the terms of the facilities: see para. 296 above.

766. The causal link: I do not need to decide whether the harm that ADCB suffered is direct harm from Mr Manghat's act, or whether UAE law would regard it as harm by causation. If it is not direct harm, Mr Manghat is liable for it under article 283(1) of the Civil Code: his conduct clearly constitutes wrongdoing, both because he acted dishonestly in perpetrating the fraud, and because, having been appointed a director of NMC plc on 26 June 2014, he acted in breach of his duties under sections 171 to 175 of the UK Companies Act 2006 and his common law duties under English law.

767. In his Defence to the ADCB claim, Mr Manghat refers to article 284 of the Civil Code, which provides that "*[i]f [the same harm is caused by] a direct actor and an indirect actor, judgment shall be against the main actor*". This point was not pursued at trial and, in my judgment, article 284 does not assist Mr Manghat. I cannot regard him as a "*indirect actor*". He was central to the Loan Recycling Scheme.

768. I have explained at paras. 327ff above that Mr Manghat is not assisted by article 287 or article 290 of the Civil Code.

ADCB's case under article 285 of the Civil Code

769. The elements of a claim under article 285 of the Civil Code are (i) a deception; (ii) harm suffered; and (iii) a causal link.

770. I have concluded that Mr Manghat made representations to ADCB about NMC plc's financial statements and the NMC Group's financial position. Those representations were false, Mr Manghat knew them to be false when he made them, and they were dishonest. That is enough to establish that he was guilty of deception.

771. ADCB also argues that Mr Manghat is liable for deception by his silence. I have explained that there may be deception for the purposes of article 285 when a person who is under

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a legal, commercial or moral obligation to speak fails to do so. ADCB presented its case that Mr Manghat is so liable as follows: "*Despite engaging with ADCB over a number of years …, Mr Manghat never revealed the true position to it. UAE law did not permit Mr Manghat to remain silent in these circumstances. Mr Manghat's failure to disclose the Loan Recycling Scheme was a betrayal of the good faith on which all commercial relationships depend. There can be on doubt that Mr Manghat deliberately refrained from revealing what he was doing to ADCB because he was intent on preserving the public picture of the NMC Group's success so as to continue to benefit personally from his corrupt conduct*". I accept that submission, and ADCB's contention that Mr Manghat's silence was a deception under article 285.

772. With regard to harm, the observations that I made in respect of the case under article 282 apply equally here.

773. There is a clear causal link between Mr Manghat's deception and the harm that ADCB suffered. But for the deceptions, ADCB would not have entered into any of the Core Facilities, nor would it have advanced funds under them. Mr Hennessey argued that it is fatal to a claim based upon a misrepresentation that there was no evidence from the persons in ADCB who made the decisions to enter into the Core Facilities: as it was put in his Post-Hearing Submissions, that *"[n]one of ADCB's witnesses was responsible for final lending decisions or able to give specific evidence as to the decisions made in respect of the Core Facilities relied upon by ADCB"*.

774. I am not impressed by that argument. Reliance is not an ingredient of a claim under article 285 and further, as in English law (see *Credit Suisse Life (Bermuda) Ltd v Ivanishvili [2025] UKPC 53*), UAE law does not require that anyone in ADCB was consciously aware that, or to have consciously thought about whether, Mr Manghat was representing that the accounts and certificates were accurate or honest. It is enough, in the circumstances of this case, that there was a causative link between the representations and ADCB's understanding about the NMC Group finances and financial information. That understanding was flawed because of the misrepresentations, the resulting analysis and recommendations were similarly flawed, and the flawed analysis and recommendations fed into the decisions to extend Core Facilities. All these matters are proved by the documents in evidence, and confirmed by Mr Zo'Mot's evidence.

ADCB's case under the CCL 2015

775. Mr Manghat is also liable to ADCB under article 84 of CCL 2015. I have found that, from 1 July 2015 when CCL 2015 came into force, he was a manager of NMCH, and he operated the Loan Recycling Scheme fraudulently (within the meaning of article 84). ADCB also argued (i) that before 1 July 2015 Mr Manghat's conduct similarly makes him liable under CCL 1984, and (ii) Mr Manghat was liable under CCL 2015 as a manager of Al Zahra after its acquisition in February 2017. However, as I see it, any liability for ADCB's losses relating to the Core Facilities arises from his conduct after I July 2015, and the claim in

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respect of Al Zahra adds nothing to the claim in respect of NMCH. I therefore say nothing about those arguments in this judgment, but I permit ADCB to make further submissions about them, if so advised, when I have handed down this judgment.

Mr Manghat's defences

776. It remains to refer to other arguments that Mr Manghat pleads in answer to ADCB's claim. First, he relies on article 291 of the Civil Code, which provides as follows: "*If a number of persons are responsible for a harmful act, each of them shall be responsible in proportion to his share in it, and the judge may make an order against them in equal shares or by way of joint or several liability as between them*". Mr Manghat did not develop any specific argument about how article 291 applies in this case.

777. I shall assume, without deciding, that article 291 is not to be regarded as a procedural provision, but a matter of substantive law. However, as I understand it, the purpose of article 291 is to enable the Court to do justice by apportioning liability where two or more parties to the proceedings have been held to be liable for harm. It has no application where, as here, there is only one defendant in the proceedings. Further, even if article 291 had any application, I would have seen no reason to reduce Mr Manghat's liability given the nature of his wrongdoing and his part in the fraudulent scheme.

778. Other points raised by Mr Manghat concern the DOCA's. There are three:

a. First, it is said that the provisions of the DOCA arrangements, and in particular clause 13 of the NMCH DOCA (see para. 135 above), "*are characterised as a settlement of the claims (or 'accord') under article 722 of the … Civil Code*"; and that the effect of this is that "*a party loses the right to claim in respect of any of the settled matters and such claims can no longer be heard in Court because they are extinguished by Article 730 and 741 of the … Civil Code*".

b. It is said to be an abuse of rights under article 106 of the Civil Code to bring a claim that has been extinguished under the DOCAs.

c. Mr Manghat argues that, because ADCB has sought to recover its debt arising out of the Core Facilities from NMCH, with whom it has settled, and from Dr Shetty, therefore "*a UAE Court may consider ADCB's claim to amount to a plea that they are jointly liable*"; and under article 455 of the Civil Code, where a creditor has settled with one person who had a joint liability, he can pursue others jointly liable only for the balance of the claim.

779. Article 722 of the Civil Code provides that, "*An accord is a contract whereby a dispute is removed and litigation between two opposing parties ceases by mutual consent*". Neither the NMCH DOCA nor clause 13 of it is an accord within the meaning of article 722. Although, as I said in *NMC Healthcare Limited v Noor Capital PSC (cit. sup.)* at para. 55, *"[i]n some ways, the position of the creditor, whether or not it votes for the DOCA, is*

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comparable to that of a contracting party...", the arrangements reached under a DOCA are not contractual but come about through a statutory process. Further, a DOCA does not take effect by mutual consent: as I said in the *Noor Capital* case, it is binding upon creditors whether or not they consent to the DOCA arrangement. In any case, even if the NMCH DOCA arrangement is to be regarded as an "*accord*", Mr Manghat was not a party to it and it did not extinguish any liabilities that he has.

780. Article 106 of the Civil Code provides that:

> *"(1) A person shall be liable for an unlawful exercise of his rights.*
>
> *(2) The exercise of a right shall be unlawful:*
>
> *(a) if there is an intentional infringement [of another's rights];*
>
> *(b) if the interests which such exercise of rights is designed to bring about are contrary to the rules of Islamic shari'a, the law, public order, or morals;*
>
> *(c) if the interests desired are disproportionate to the harm that will be suffered by others; or*
>
> *(d) if it exceeds the bounds of custom or practice".*

781. I cannot understand how any question of abuse of rights is engaged by these proceedings, and Mr Manghat has not attempted, either in his submissions on UAE law or elsewhere, to explain this plea.

782. Nor did Mr Manghat develop or explain that article 455 of the Civil Code applies to the claim against him, and I see nothing in this point. Article 455 concerns joint liabilities, and it provides that "*If the share of one of the jointly liable obligors in an obligation becomes extinguished for any reason other than satisfaction, the obligation shall not become extinguished with regard to the other obligors save to the extent of the share of that obligor*". Mr Manghat's pleaded case is that NMCH's debt arising out of the Core Facilities "*had been settled and extinguished*" and its claim against Dr Shetty "*was dismissed in part due to ADCB's delay and conduct in bringing the joinder application*".

783. The decision to refuse the joinder application of 3 May 2024 (see para. 22 above) was procedural: it did not extinguish any claim against Dr Shetty. ADCB's claim against NMCH in debt could not be said to give rise to a joint liability with Mr Manghat, and Mr Manghat did not explain on what basis UAE Court "*may consider*" it to do so.

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ADCB's claim: quantum

Introduction

784. Article 292 of the Civil Code provides as follows: "*In all cases, compensation shall be assessed on the basis of the amount of harm suffered by the victim, together with loss of profit, provided that that is a natural result of the harmful act*".

785. ADCB pursues claims for these heads of compensation:

a. Unpaid debts;

b. Costs incurred in respect of the administration of NMC plc; and

c. Loss of profit.

786. It says that these heads of damage are all the natural result of Mr Manghat's wrongdoing. In its pleaded case, it also claimed US$ 5 million in respect of loans that it made to the Joint Administrators of NMC plc pursuant to a Deed of Funding dated 9 April 2020, but it abandoned that claim in the course of its closing submissions.

787. Further, as a result of corporate income tax being introduced in the UAE, ADCB has been subject to tax for tax periods commencing on and after 1 June 2023, and it contends that it is entitled to have its compensation increased in order for it to cover the full loss after tax.

788. ADCB acknowledges that it must give credit in the assessment of its damages in respect of:

a. The net recovery from a pledge of shares in the sum of US$19,521,279;

b. Recoveries from the administration in the sum of US$5,292,824; and

c. Receipt of cash from Exit Instruments in the sum of US$5,139,620.

789. Mr Manghat contends that ADCB should also give credit for the value of the Exit Instruments that it has received under the DOCA arrangements.

790. Questions as to what heads of damage are recoverable and matters should be brought into account to offset the amount of recoverable damages are matters of substantive law, and are therefore governed by the *lex causae,* UAE law. As such, it governs in particular (i) any issue between ADCB and Mr Manghat as to whether the heads of damage for which ADCB claims are the "*natural result of [Mr Manghat's] harmful act*"; and (ii) whether the value of Exit Instruments should be deducted from ADCB's compensation. Procedural questions about the assessment of damages under

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recoverable heads and enforcement of a judgment for damages are governed by the *lex fori*, and so by ADGM law.

Exit Instruments

791. The Exit Instruments that ADCB holds fall into three categories:

a. Exit Instruments that ADCB received in respect of its claims against NMCH and other companies that were put into administration (the "**Creditor Exit Instruments**");

b. Exit Instruments that ADCB received because it chose to convert AFF funding that it provided to the JAs into further Exit Instruments (the "**AFF Exit Instruments**"); and

c. Exit Instruments that ADCB bought from third parties (the "**Purchased Exit Instruments**").

792. ADCB's contentions are (i) that the value of none of the Exit Instruments is to be brought into account in assessing its compensation, and (ii) in the alternative, that only the value of the Creditor Exit Instruments should be brought into account.

793. I consider the second question straightforward. ADCB's interests in the AFF Exit Instruments and the Purchased Exit Instruments are unconnected with the losses that it suffered as a result of Mr Manghat's wrongdoing. It holds them as a result of separate commercial decisions that ADCB subsequently made. I see no case for bring them into account when assessing ADCB's compensation.

794. ADCB's submission on the first question is based on article 42 of the Civil Code:

> *"(1) No harm shall be done, nor harm done in return.*
>
> *(2) Harm shall be removed.*
>
> *(3) Harm may not be averted by causing similar harm (to another)".*

795. ADCB's argument is that UAE law does not regard harm as having been "*removed*" by receiving a promise or prosect of future payment, and therefore it is not "*removed*" by receipt of an instrument such as the Exit Instruments that bring the prospect of financial receipts in the future.

796. ADCB illustrates its argument by reference to the position where a creditor with a claim against two debtors obtains judgment against one of them. The claim against the other is not reduced by the prospect of recovery under the judgment against the first. These were the circumstances considered by the Dubai Court of Cassation's judgment in case

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445/2008/75, where claimants, having obtained judgment against a corporate entity, then made a claim against its shareholders and mangers for mismanagement. The defendants contended that judgment against them would risk double recovery. The Court of Cassation said this: "*This ground for challenge is rejected. This is since it is settled in the jurisprudence of this Court that if there are multiple sources for a debt and its object remains the same, such that the source of one of the liable party's obligation is the contract and the source of another's obligation is the harmful act, then each of them shall be liable vis-à-vis the harmed party to pay full compensation. The creditor may claim the entire debt from any debtor. However, this does not mean the [the creditor] would receive compensation twice. This is because the creditor's right in this respect is limited to receiving the compensation once such that if payment s received from one of the debtors, the liability of the other debtors shall be discharged in respect of this debt, and the creditor shall not be entitled to have recourse enforce it against them*".

797. ADCB contends that the position with regard to the Exit Instruments is analogous. If payment is received under the Creditor Exit Instruments, then it constitutes compensation that is to be brought into account in assessing damages recoverable from Mr Manghat. But unless and until payment is received, ADCB is entitled to judgment to compensation assessed without regard to them.

798. I am persuaded by ADCB's argument. At the hearing, I expressed concern that ADCB would be overcompensated if, after it had entered judgment against Mr Manghat and enforced it, it were to receive payments under the Creditor Exit Instruments or sell them. However, this could, if appropriate, be handled under the ADGM procedural regime by a stay of execution in respect of an appropriate amount of ADCB's judgment. If, after I have issued this judgment, Mr Manghat applies for a partial stay of the judgment against him, I shall consider whether to exercise my discretion to order one.

The claim for unpaid debts

799. ADCB pleads three alternative cases about the compensation that it is entitled to receive in respect of the monies outstanding under the Core Facilities.

a. Its primary case is that it is entitled to compensation in the total amount of US$1,022,293,332, being the sums by way of principal and interest or, in the case of the Islamic facilities, profit payments. (I shall refer to interest and profit payments together as ADCB's "return".)

b. ADCB's first alternative case is that it is entitled to compensation in the sum of US$ 965,111,653, being the amount outstanding as of 22 March 2022 by way of principal and return that had fallen due.

c. ADCB's second alternative case is that it is entitled to compensation in the sum of US$ 958,348,763, being the total amount of sums payable by way of return (as in

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ADCB's primary case) but discounting back to 22 March 2022 payments that were to fall due at a later date.

800. The factual basis for these calculations is supported by evidence of Mr Zo'Mot, which I accept. The calculations of the loss on the basis of the evidence of fact were reviewed by Mr Taylor, and his reasoning in support of them is explained in his reports. I also accept his evidence about this and his conclusions.

801. ADCB submits that UAE law does not stipulate exactly how this part of ADCB's claim is to be calculated, that all three methods of assessment are reasonable, but that its primary case most closely reflects decisions of the UAE Courts. I agree that ADCB's primary claim is the appropriate way to present the loss. The case law establishes that the loss of an opportunity to obtain a future benefit is not mere potential harm, but, if a claimant shows a reasonable expectation that it will obtain it, it is regarded as harm actually suffered. ADCB cited in support of this proposition judgments of the Dubai Court of Cassation in cases 216 & 239/2006 (15/1/2006), 46 & 49/2006 (8/5/06) and 130/1012 (14/10/12).

802. Further, I see no rational basis for assessing damages by reference to 22 March 2022, as is done in the two alternative calculations pleaded by ADCB. This date was used only because (as I was told by Mr Ralston, who presented this part of ADCB's argument) that is when ADCB decided that it was not "*going to be paid*". This is not relevant for the purpose of assessing its compensation.

803. In accepting ADCB's primary case about the basis for calculating this head of damages, I recognise that, in principle, any payments under the facilities that have not yet fallen due should be discounted to the date of the judgment. I was told by Mr Ralston, and it was not disputed, that this would make negligible difference to the sum to be awarded because the obligations under the facilities have fallen due apart from a small sum under the Murabaha Facility. However, if Mr Manghat is so advised, I give permission for him to make submissions about this when I determine what order to make following this judgment.

Costs in relation to the administration of NMC plc

804. ADCB's claim in respect of costs that it incurred is pleaded as *"[t]he advisory and profession fees and disbursements incurred in relation to the English administration*". It is said that they "*would have been avoided had the Loan Recycling Scheme not been perpetuated*". In support of this claim, ADCB relies on two invoices of A&M Europe, one for £315,000 dated 3 April 2020 in respect of a "*retainer*" and the other for £380,961.61 dated 30 April 2020 for "*Legal Fees*".

805. ADCB's pleaded claim is in the sum of US$ 949,291.70, which is said to be the equivalent of the total of the two invoices, £695,961.66 converted at an appropriate rate of exchange.

806. There is scant evidence about the circumstances in which these costs were expended. Mr Zo'Mot gave evidence that they are legal costs incurred by "*ADCB Group Finance*", that they were for services provided to "*ADCB Group Legal*", and that they are outstanding.

807. Understandably, in view of the (relatively) small sum involved, the trial did not focus on this claim, and I did not engage with Mr Ralston about it when he presented ADCB's oral submissions. I shall therefore permit ADCB to present further submissions about it after I have handed down this judgment, if it is advised to pursue it. However, as matters stand, it seems to me that I simply do not have enough evidence about the costs incurred in respect of the administration of NMC plc and the circumstances in which they were incurred to be satisfied that the claim is within the proviso to article 292 and otherwise to uphold it.

808. This part of ADCB's case faces a further difficulty. English (and so ADGM) law places restrictions on what legal costs may be recovered as damages: see *Musst Holdings Ltd v Astra Asset Management UK Ltd [2026] EWHC 1599 (Ch)*. No reference was made to these restrictions at the trial. It seems to me distinctly arguable that the questions whether these restrictions apply to ADCB's claim go to quantification of a head of damages, and so are to be regarded as procedural and governed by the *lex fori*, ADGM law. In any case, nothing before me suggests that in this respect UAE law differs from ADGM law. If this head of damages is pursued by ADCB, therefore, I should need to be satisfied that these legal costs are of a kind that are recoverable and in an amount that is recoverable.

Loss of profit

809. ADCB's claim for loss of profits is made on the basis that, if the NMC Group and in particular NMCH had met its obligations in respect of the Core Facilities, it would have deployed the money on other lending and investment and earned profits therefrom. Evidence of Mr Zo'Mot and Mr Le Jeune, which I accept, supports the contention that the moneys would have been so used (and, even in the absence of such evidence, I would have inferred this). Understandably, ADCB does not identify a specific alternative transaction or specific alternative transactions that it might have entered: the lost profit is calculated on the basis of the rate of return calculated by reference to ADCB's earnings of net interest margin. Mr Taylor reviewed the claim made on this basis, by reference to the information in ADCB's financial statements about its performance. Further, he confirms the evidence of Mr Zo'Mot and Me Le Jeune that in and after March 2020 there was a market for lending in the UAE and the funds that ADCB would have had available could have been placed in the market.

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810. Mr Taylor calculated this head of claim, by assessing the lost profits by way of capital returns together with fees and commission and reducing the claim to take account of (i) saved costs by way of staff expenses, general administrative expenses and an allowance for credit loss, and (ii) saved tax. The reduction for tax is required because ADCB has been required to pay corporate tax at a rate of 9% for periods since 1 June 2023. (The rate has increased from the original rate of 9% to 15%, but ADCB is content for its compensation to be assessed on the basis of the 9% rate.)

811. Mr Taylor's calculations produce an assessment of ADCB's loss of profit in the sum of US$ 168,988,980. This is on the basis that (i) he calculated what he called Historical Loss of Profits, meaning losses to 31 December 2025, to be US$ 163,819,911, (ii) his assessment of the "*Projected Loss of Profits*" thereafter at US$ 9,453,775 and (iii) an allowance for profit on the recoveries that ADCB has made in the sum of US$ 4,284,706.

812. I do not propose to explain in detail Mr Taylor's calculations of these figures. It suffices to say that they were fully supported by cogent reasoning in his reports, and nothing in his cross-examination (or in the evidence more generally) materially challenged them.

Is the compensation claimed by ADCB "a natural result of the harmful act"?

813. I revert to the question whether the compensation that ADCB claims is "*a natural result of the harmful act*", so that the proviso to article 292 is satisfied. Mr Manghat pleads that "*Harm is only a natural result of a harmful act if it is directly caused*". In his submissions he explained this plea: "*The reference to 'directly caused' is to the concept that Article 292 does not permit recovery of 'consequential loss'*"; and that the requirement operates "*in a similar manner to the principle of remoteness*". However, he did not argue that UAE law has a distinction between direct loss (or loss directly caused) and consequential loss as it might be understood in English law. He accepts that "*losses that would be within either limb of the rule in Hadley v Baxendale [(1854) 9 Ex Ch 341] are considered to be direct and therefore recoverable*".

814. I do not consider it helpful introduce English concepts of remoteness or causation of damages into the interpretation and application of the proviso in article 292. Its origin is, as is explained in ADCB's submissions, in Egyptian law, where the concept is expressed in terms of the "*normal result*" (rather than natural result). The concept is explained by Dr El-Sanhouri, who says that the concept covers damage which could not have been avoided "*by exerting reasonable effort*" on the part of the claimant. He illustrates it by an example of a buyer of a diseased cow. If the diseased cow infects and kills the rest of the buyer's stock, the question is whether the buyer could have avoided their death by making reasonable efforts. If not, he is entitled to compensation. On the other hand, if the buyer claims for "*the inability to cultivate his land, the inability to repay debts, the seizure of his land and its sale at a depreciated price – these are all damages that the farmer could have avoided by exerting reasonable effort, as he could have resorted to other livestock, whether by purchase or lease, to cultivate his land. In this way, the chain*

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of successive damages that befell him die to the death of the livestock would have been halted. Consequently, these damages are considered indirect damages, and there is no ground for compensation for them".

815. Applying this guidance, I am satisfied that the claims for unpaid debts and loss of profit are covered by the proviso to article 292 and are recoverable.

Conclusion about quantum

816. In my judgment, therefore, ADCB has established its claim to damages by way of:

a. Monies outstanding in the sum of US$ 1,022,293,322, subject to any adjustment that Mr Manghat persuades me is proper: see para. 803 above.

b. Loss of profit in the sum of US$ 168,988,980.

817. Against this, ADCB acknowledges that it must give credit for:

a. US$ 19,521,279, in respect of recovery from security by way of a pledge of shares;

b. US$ 5,292,824, in respect of recoveries from the ADGM administration; and

c. US$ 5,139,620 by way of sums received in respect of the Creditor Exit Instruments.

818. I shall determine the claim about costs in relation to NMC plc's administration at or after a future hearing.

The Insolvency Claims

819. In my judgment, the JA Claimants have proved the conditions for declaring that Dr Shetty and Mr Manghat are liable to make contributions to the assets of NMCH both under section 251 of IR 2022 on the grounds of fraudulent trading and under section 252 of IR 2022 on the grounds of wrongful trading.

Fraudulent Trading

820. I identified the ingredients of a claim for fraudulent trading at para. 253 above, but I repeat them here for convenience. They are:

a. The business of the company was carried on fraudulently;

b. The defendant was party to the business being carried on fraudulently;

c. The defendant so acted knowingly;

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d. The defendant acted dishonestly; and

e. The Court should exercise its (discretionary) power to hold the defendant liable to make a contribution to the company's assets.

821. I have concluded that the relevant businesses of NMCH and the ADGM Companies were carried on fraudulently throughout the Relevant Period (or for such part of it as the particular ADGM Company was in the NMC Group.

822. I have concluded that Dr Shetty and Mr Manghat were both party to the business being carried on fraudulently.

823. For the same reasons, I conclude that they both did so knowingly.

824. In my judgment, Dr Shetty was dishonest. It seems likely that, before the listing of NMC plc, Dr Shetty and his partners in his various business enterprises had been accustomed to treating the funds of the businesses as assets that were available for their use as they saw fit. There is no dispute that Dr Shetty knew that this was not proper when NMC plc was listed: see para. 182 above. Taking this into account and judging Dr Shetty's conduct by the standards of ordinary decent people, it was dishonest.

825. I also find that Mr Manghat was dishonest. Given his qualifications as an accountant, he clearly knew that the five aspects of the fraud that the JA Claimants identified (see para. 628 above) and the fraud as a whole were unlawful and improper.

826. In view of the scale of Dr Shetty's participation in the fraudulent scheme throughout the Relevant Period and the benefits that he obtained as a result of it, the Court should certainly exercise its discretion to hold Dr Shetty liable to make a contribution. Further, in view of his central role in operating the fraud, the amount of the misappropriations and the distortion of the financial statements, it is equally clear that Mr Manghat should be held liable for a contribution.

827. I have explained that I do not determine any claim of Holding for fraudulent trading in this judgment: see para. 262 above.

Wrongful trading

828. With regard to the wrongful trading claim. The only controversial issue is about the so-called Knowledge Condition: see para. 277 above. As the Court of Appeal has explained (see para. 281 above), in this case the Knowledge Condition is to be interpreted as turning on whether Dr Shetty or, as the case might be, Mr Manghat knew or ought to have concluded that there was no reasonable prosect of NMCH and other companies being and remaining able to pay its debts as they fell due.

829. In Dr Shetty's case, he accepted that, if he is held to have known of the fraud, then the

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Court may order a contribution on the basis of wrongful trading.

830. I need therefore add only this: Mr Wandowicz submitted that, if I conclude that it had not been shown that Dr Shetty was aware of the fraud, then it is not open to the JA Claimants to argue that the Knowledge Condition is satisfied by reference to what Dr Shetty ought to have known. His argument was that the pleading against him does not sufficiently state the basis on which this is averred, and because, when he was cross-examined, the allegation was put to him only in general terms. It was said that, in the absence of a more specific allegation, Dr Shetty did not have a fair opportunity to engage with the contention against him.

831. I cannot accept that Mr Wandowicz's argument. Dr Shetty was a director of NMC plc, and until 2017 its CEO. On the face of it, it is unusual that an individual should be unaware of so many large payments into his personal bank account; and unusual that a director should be unaware that financial statements should so utterly misstate the true financial position of a company; and unusual that a signatory of major bank facilities should claim to be unaware of them. Without a credible explanation from Dr Shetty of how he was nevertheless unaware of these matters, the JA Claimants could not be expected to do more than contend in general terms that any director in Dr Shetty's position ought to have been aware of such matters.

832. In any case, I cannot accept that Dr Shetty did not understand what case in wrongful trading was being made against him by the JA Claimants *"in sufficient detail to enable that party properly to prepare to answer it"* (as it was put by Saville LJ in the *British Airways Pension Trustees* case (cit sup): see para. 29). Mr Wandowicz submitted that, had the case against Dr Shetty been pleaded with more particularity, other evidence might have been adduced. I am not persuaded: the specific example given was that "*an expert on UAE corporate governance might have been needed to decide the point whether a reasonably diligent person in Dr Shetty's position would have done or not have done something*". I cannot accept that expert evidence of this kind would have been permitted, especially given that NMC plc is an English company. Nor can I accept that Dr Shetty was prevented in this or any other respect from preparing and presenting his defence to the case against him because it was not pleaded more specifically.

833. Coming to the case against Mr Manghat, my findings about his involvement in the fraud establish that the Knowledge Condition is met. Any director who knows that such large borrowings have been concealed from the auditors and that the published accounts so utterly misstated the true financial position must be taken to have known that there was no reasonable prosect of obligations being satisfied as they fell due; and if he did not actually know this, he certainly ought to have known.

834. I therefore consider that it would be proper to declare Dr Shetty and Mr Manghat are liable to make a contribution to NMCH's assets on the basis of wrongful trading. However, in

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view of my conclusions about fraudulent trading, there is no need for me to do so. I shall order contributions on the basis of the fraudulent trading claims.

Contributions

835. These points about the proper approach to determining what contribution (if any) should be ordered against a person for fraudulent trading or wrongful trading are well-established and uncontroversial:

a. The Court has a very broad discretion as to what contribution should be ordered according to the circumstances of the case. In Re Produce Marketing Consortium Ltd (No 2) [1989] BCLC 520 597G/H Knox J said, "*Parliament has indeed chosen very wide words of discretion and it would be undesirable to seek to spell out limits on that discretion*...".

b. *"The nature of the inquiry is as to loss caused by the company's creditors generally through an insufficiency of assets with which to meet their debts"*: see *Re Tradestar Ltd [2018] EWHC 3595 (Ch)* at para. 21 per Fancourt J.

c. The purpose of an award of compensation is not to punish, and so it should be assessed by way of making a contribution that will prevent or mitigate a shortfall in assets of the company as a result of which it is unable to discharge its liabilities: *Morphitis v Bernasconi [2003] EWCA Civ 289* at para. 55 per Chadwick LJ.

d. The assessment of compensation does not engage questions of causation, contribution or mitigation such as fall to be considered when measuring damages for common law claims: *Bouchier v Booth [2023] EWHC 3195* at para. 64.

e. The Court is not required to make a calculate with precision that amount of any contribution, and some elements of it are typically "*broad-brush*", and inevitably so: *Re Bank of Credit and Commerce International SA Cit (cit sup)* at para. 122.

836. I also accept the JA Claimants' submission that I should be guided by this observation of Miles J in *London Capital & Finance plc v Thompson [2024] EWHC 3438 (Ch)*: *"I do not accept that the correct approach is to take the person who may be regarded as most responsible for the fraud and then apply, as it were, a sliding scale of culpability of the relevant defendant and then order anyone who is not at the 100% point to make a lesser contribution. The court has to take into account the extent of the culpability of the relevant defendant* ..." (at para. 30).

Diminution in the value of assets

837. A question that arose towards the end of the trial about whether contributions ordered on the basis of fraudulent trading and wrongful trading should be capped by the amount of any increase in the deficiency in the value of assets available to pay creditors as a

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result of the defendant's wrongful conduct (referred to as the Increased Net Deficiency or "**IND**"). Before their closing submissions, it appeared that the JA Claimants sought contributions in respect of both the fraudulent trading and the wrongful trading claims in the amount of the IND (and no greater amount). In particular:

a. Quinn Emanuel Urquhart & Sullivan UK LLP, the JA Claimants' solicitors, instructed Mr Bezant that, on the fraudulent trading claim, "*the objective is to quantify the diminution in the net assets available to the body of creditors between: (i) the date upon which Baroda acquired knowledge of the fraud (assuming the Court finds this to be the case) and (ii) 27 September 2020 (ie the Administration Date ...)*". (This instruction was directed to the claim against Baroda, but the inference was that this approach was to be adopted on the claims against the other defendants, mutatis mutandis.) Mr Bezant was also instructed that "*the relief sought in respect of the wrongful trading claim is substantially the same*".

b. During the trial, on 27 April 2026, I asked the parties to clarify the principles that they contended should govern the assessment of contributions. (I was concerned that, since the opening submissions had not engaged with this question, the closing submissions would lack focus.) In response, I received short notes from the JA Claimants on 6 May 2026, from Dr Shetty on 13 May 2026 and from Baroda on 15 May 2026. In their note, the JA Claimants said that their primary case was that "*once liability for fraudulent trading or wrongful trading is established, the defendant is liable for all the creditors' losses, i.e. the increase in the net deficiency to creditors between the date the knowledge condition is satisfied (the so-called 'Knowledge Date') to the date of administration. That is the starting point in wrongful trading cases, so a fortiori is the position in fraudulent trading cases"* (emphasis in original).

838. In their closing submissions, however, the JA Claimants argued that the amount of the contribution, at least in respect of fraudulent trading, need not be limited to the IND. (This change was apparently prompted by observations that I made in the course of the hearing when, on 22 May 2026, I suggested that there might be circumstances in which it would be unfair to recent creditors of an insolvent company if contributions were necessarily limited to the IND. As I put it, it would be little comfort to creditors at the time of liquidation or administration that others would have suffered loss in an earlier insolvency process.) The JA Claimants recognised that a line of first instance wrongful trading cases in the English Courts, well exemplified by the judgment of Snowden J in *Re Ralls Builders Ltd [2016] EWHC 243 (Ch)*, support the proposition that the Court should not order a contribution that exceeds the IND, but these authorities were powerfully criticised by Prof Gabriel Moss QC in an article entitled "*No Compensation for Wrongful Trading – Where Did it All Go Wrong?", 30 Insol Int 49*. For my part, I find his criticisms persuasive. However, as far as the wrongful trading claims are concerned, to my mind it would have been wrong for me to depart from a well-established and apparently consist approach in

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the English cases from *Re Produce Marketing Consortium Ltd (No 2) [1989] BCLC 520* to *Wright v Chappell* (cit sup).

839. The JA Claimants' more powerful point is that a more flexible approach should be adopted in fraudulent trading cases, and it would not be inconsistent with the English authorities to do so. I accept that there would be no inconsistency. Indeed, in *Morphitis v Bernasconi (cit sup)* Chadwick LJ suggested (at para. 53) that the appropriate order in a fraudulent trading case might be that a director why knowingly part to a misappropriation should contribute an amount equal to the assets that were misapplied. He did not indicate that this measure would be inappropriate if the amount misapplied exceeded the IND, and it is difficult to see why justice would require this. See too *Goode, Principles of Insolvency Law (5th Ed, 2018)* para. 14-56 fn 266.

840. In *Re Ralls Builders Ltd (cit sup),* Snowden J said this: "*In my judgment, the fact that any contribution to be made under section 214(1) must be distributed pari passu among the general body of unsecured creditors of the company is a significant pointer to the fact that the purpose of section 214 is not to provide differential redress for individual creditors, depending upon an assessment of the extent of their loss caused by the period of wrongful trading. So, for example, a creditor whose debt was incurred after the relevant date cannot claim to recover 100% of his loss in priority to a creditor whose debt was incurred prior to that date and who may only have been marginally disadvantaged (or not disadvantaged at all) by the continuation of trading*" (at para. 236). I recognise the force of this point, and that it would apply to claims of fraudulent trading as much as to claims of wrongful trading. This might well be a consideration that is relevant to deciding the appropriate contribution in any specific case. Equally, the IND might well be a relevant consideration when assessing the amount of contribution in a fraudulent trading case. But I cannot accept that it would invariably be wrong or contrary to an established practice to order that a defendant liable for fraudulent trading pay a contribution that exceeds the IND.

841. If necessary, therefore, I would conclude that the contribution in respect of fraudulent trading in a case such as this might properly exceed the IND. However, I need not decide the point. As I see it, the JA Claimants' argument in their closing submissions was directed, at least primarily, to their claim in fraudulent trading against Baroda. They say that, if Dr Shetty and Mr Manghat were knowingly party to fraudulent trading from April 2012 (as they plead and as I find), I should order contributions of US$ 5,397 million. Mr Bezant and Mr Grantham agreed that this represents the relevant IND after 30 April 2012, and their evidence about this was not challenged by Dr Shetty or Mr Manghat.

The Appropriate Contributions

842. As I have said, the JA Claimants submit that the appropriate amount to order as contributions from Dr Shetty and Mr Manghat is US$ 5,397 million, being the IND since 30 April 2026. I agree, subject only to:

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a. The observation that the order might properly be adjusted to reflect the JA Claimants' success on the Civil Claims;

b. The question of interest, to which I come at para. 856 below; and

c. The amount of the contribution ordered might properly be rounded to reflect the broad-brush nature of the exercise.

843. In his Note of 13 May 2026, Dr Shetty submitted that, unless it was established that the NMC Group was insolvent as a result of it taking on borrowings to fund the Unlawful Payments, it would not be right for the contribution to be measured by the full loss of the creditors. His argument was that there would then be no sufficient causal connection between the misappropriations and some of the loss. I cannot agree. It seems to me, in so far as I understand the submission, that it seeks to import into the assessment of the contribution an inappropriate requirement that the loss would not have occurred but for the knowing fraudulent trading on the defendant's part. That approach is inappropriate because, while there should be some causal nexus between the loss caused to creditors as a result of the fraudulent trading and the contribution ordered so that it is not unconnected and disproportionate to the defendant's responsibility (see *Morris v Bank of India (cit sup)* at para. 122), a generous approach is adopted to what nexus is sufficient, which is less restrictive than the approach to causation for common law negligence claims or even for common law deceit claims. Here, it is clear that the misappropriations themselves, together with the borrowing to finance and disguise them and the associated costs of servicing it, were a major reason that the NMC Group, which had a positive equity value at the time of the IPO, rapidly became hopelessly insolvent.

844. To my mind, it is right that Dr Shetty should bear the full consequences of the insolvency. I see no reason that his contribution should be limited to the amount of the misappropriations, still less to the amount of the misappropriations for his own benefit. Although Dr Shetty was not, apparently, involved in the day-to-day operation of the fraud, that does not mitigate his responsibility for it. It is nothing to the point that, for example, Dr Shetty has not been shown to have known about the Sham Suppliers Scheme: as Miles J put it in the *London Capital* case (cit sup), he was taking *, "the risk that he ... [was] part of a fraud, the details of which [he] do not know":* see para. 268 above. Indeed, Dr Shetty accepted in his Note of 13 May 2026 that, if I find (as, in effect, I have) that he was one of the principals who instigated the fraud and that the NMC Group became insolvent as a result of borrowings taken to fund the misappropriations, then "*it would be unrealistic to resist an order for the entire amount of the insolvency*".

845. In his Post-Hearing Submissions, Mr Manghat submitted that the Court should weigh these considerations when assessing his contribution:

a. "*Mr Manghat's actual (as opposed to nominal) role and decision-making authority (particularly in contrast with the principal shareholders)*";

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b. "*Mr Manghat's alleged … illegitimate financial gain (again, particularly in contrast with the principal shareholders)*"; and

c. "*The lack of a causal nexus between allegations specifically against Mr Manghat and the alleged losses*". Here he argued that his conduct "*cannot fairly be categorised as equivalent to that of the principal shareholders or indeed although now moot, Baroda*".

846. Although all these considerations adopt the "*sliding scale*" approach which Miles J rejected and which I too reject (see para. 836 above), I shall comment upon each of these points.

847. Mr Manghat submits that, notwithstanding his "*ostensible job title*", he had no oversight over financial transactions, and that he was "*subservient*" to Dr Shetty and the Bin Buttis. This is an unlikely submission from a man who was the CEO of a FTSE 100 company, it is inconsistent with the evidence, and I reject it. Undoubtedly Dr Shetty and the Bin Buttis had great authority and influence over the NMC Group and more generally in the UAE, but Mr Manghat was charged with making major decisions for the NMC Group, and in particular ran its financial and treasury arrangements. He had a leading role, indeed the leading role, in effecting the misappropriations and operating the fraud to finance them and disguise them. To give just two illustrations, I refer to the Sham Supplier Scheme, and the tricks devised in early 2019 to deceive EY.

848. Although the misappropriations for the direct benefit of Mr Manghat were relatively modest compared with those of Dr Shetty and the Bin Buttis, as I have said, they would be regarded as very substantial by most businessmen.

849. I find it difficult to understand Mr Manghat's submission about the "*lack of a causal nexus*" between his conduct and the losses. The JA Claimants have established the five aspects of his involvement in the fraud that they pleaded against him: see para. 628 above. The causal nexus between each aspect and the losses is also established.

850. I conclude that it is right that Mr Manghat too should bear the full consequences of the insolvency.

The argument that the Defendants are not connected with the ADGM

851. Despite the decision made on the preliminary issues that a claim can be brought for fraudulent or wrongful trading notwithstanding that the defendant has no connection with the ADGM (see para. 16 above), Baroda argued that, when assessing compensation, the Court should take into account that, throughout the Relevant Period, it had "*had no connection with the ADGM and could not have anticipated or predicted liability under [IR 2022, section 251]*". The point was adopted by Dr Shetty.

852. I do not accept that this answers the claims for fraudulent trading or that the contribution

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to be made by either Dr Shetty or Mr Manghat should be reduced on the basis of this consideration. In response to it, the JA Claimants advanced an argument of general principle and a contention specific to this case, and I am persuaded by both.

853. The general argument is that fraudulent conduct of the kind with which I am concerned would be actionable under any developed system of law, and liability of this kind is unsurprising and by no means peculiar to the ADGM. In *In Re Howard Holdings Inc [1998] BCC 549,* the defendant directors argued in answer to claims of wrongful trading under the s.214 of the UK Insolvency Act that "*it is inappropriate … for foreign directors of a foreign company to be judged in accordance with principles of English common law; principles with which the task that they were engaged had no connection at the time … a declaration under s.214 would be to impose on the directors a liability to the company which was alien to the duties which they undertook when they became directors" (*at p.554F). Chadwick J rejected that argument, saying "*For my part, I find it difficult to envisage any developed system of corporate law which does not impose some obligation on those charged with the responsibility [of] management of a company's affairs to pay regard to the question whether or not it is, from time to time, solvent and, if insolvent, to consider what should be done about it" (at p.555A).* This reasoning, which I would adopt, applies *a fortiori* to a claim of fraudulent trading.

854. The JA Claimants' specific point is that the ADGM fraudulent trading provision is materially the same as that in the UK Insolvency Act 1986, which has extra-territorial effect: *Bilta (UK) Ltd (In Liquidation) v Nazir [2015] UKSC 23.* As executives and officers of NMC plc, Dr Shetty and Mr Manghat were potentially liable in fraudulent trading in respect of the fraud. I see no reason that their contributions should be reduced because their liability is technically in respect of their involvement with NMCH rather than their involvement with NMC plc.

855. I add that Dr Shetty submitted a proof of debt and thereby submitted to the jurisdiction of the ADGM and its insolvency regime: see the judgment of the Court of Appeal on the Preliminary Issues, *[2024] ADGMCA 0001* at para. 106.

Interest

856. The JA Claimants ask for statutory interest in respect of contributions ordered on the Insolvency Claims. In my judgment, this is not appropriate, but that the amount of compensation ordered should be uplifted to include a quasi-interest element. This was the approach of Patten J in *Morris v Bank of India (loc cit)* at para. 135: "*It seems to me that I have jurisdiction to include an element of interest in the contribution which I order …*".

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The JA Claimants' Civil Claims

The fraud claims

857. I have concluded that Dr Shetty and Mr Manghat were parties to the fraud throughout the Relevant Period. NMCH, Holding and the ADGM companies suffered harm, and there was a causal link between that harm and the fraud and Dr Shetty's and Mr Manghat's participation in it. It follows that they are liable under article 282 of the Civil Code.

858. Dr Shetty and Mr Manghat are both also liable on the basis of my findings against them under article 285 of the Civil Code. The fraud involved deception, by way of participation in the production of misleading financial statements and concealing the true financial position of the NMC Group. There was a causal link between the deception and concealment and the harm suffered by NMCH, Holding and the ADGM Companies.

859. The JA Claimants have also proved their case that their fraudulent conduct means that they are both liable under the CCL 1984 and the CCL 2015.

The non-fraud claims

860. Had I not concluded that Dr Shetty and Mr Manghat knowingly participated in the fraud, I should still have concluded that they were liable under article 282. Their conduct was wrongful because they were in breach of their duties under the CCL 1984 or, later, the CCL 2015, and because it amounted to *taqseer* or *khataa jaseem* in that they grossly failed to act as a director should have done, and could reasonably be expected to have done, so as to protect the assets of the NMC Group and properly to present its financial position in the statements. The fraud could not have been perpetrated if either of them had fulfilled his duties.

861. Mr Manghat appeared to acknowledge at times when he was cross-examined that he had not been properly diligent, and Mr Hennessey did not advance any distinct argument in response to this part of the JA Claimants' case.

862. Mr Wandowicz submitted that, if the fraud allegations against Dr Shetty is rejected, then no alternative claim under the CCL 1984 or CCL 2015 should be accepted because:

    a. No claim is properly pleaded;

    b. No complaint short of fraud was properly put to Dr Shetty when he was cross-examined; and

    c. No complaint short of fraud was proved.

    I am not persuaded by any of these points.

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863. Although Mr Wandowicz cited plentiful authority in an attempt to support these complaints, the essential point in all of the cases that he cited was that a claimant must give a defendant proper notice of the case against him so as to give him a fair chance to answer it. I need refer to only two of them. In *Fowler v Lanning [1959] 1QB 426,* Diplock J made clear (at p.440) that his criticism of the Statement of Claim was fact-specific (in that, for example, it did not state the weapon with which the claimant was said to have been shot). Diplock J expressly declined to engage with the pleading requirements in a case of *res ipsa loquitur*. In *Standard Life Assurance Ltd v Building Design Partnership Ltd [2021] EWCA Civ 1793*, Coulson LJ said that the *"critical issue"* was whether or not the defendants "*knew the case they have to meet*" (at para. 62).

864. In my judgment, the nature of the JA Claimants' case is sufficiently explained in the Particulars of Claim. For example, in support of the case against Dr Shetty, the JA Claimants refer to his duties as a director or manager with regard to safeguarding its best interest of NMCH, Holding and the ADGM Companies, transacting payments on their accounts for the purpose of achieving their objectives, proper management of their affairs and supervision of their employees; and his responsibilities as a signatory on accounts.

865. Mr Wandowicz properly observed that Mr Thanki put this part of NMC's case to Dr Shetty in general terms. It was readily understandable that he did so, and to my mind it was appropriate given the time-limits on cross-examination that case management required. It was also practically inevitable, given the difficulty in conceiving how Dr Shetty could realistically have known as little as he claimed about the NMC Group's affairs, his own bank accounts and his business affairs generally. Dr Shetty's involvement in particular dealings were examined in detail when he was cross-examined, and it is unrealistic to suggest that more detailed cross-examination of the non-fraud case would have been useful.

866. The only submission that was advanced on behalf of Dr Shetty in answer to the substance of the non-fraud claims under article 282 was this "*as a diligent person, in relation to the financial aspects of NMC's business he reasonably placed reliance upon those who had the requisite qualifications, experience and reasonably appeared to him to be trustworthy and followed their advice"*. I cannot accept that a person in Dr Shetty's position, either as CEO of NMC plc or later, was entitled to abdicate (or delegate) responsibility in respect of financial matters, for example by way of entering into bank facilities and use of his aligning authority on accounts to the extent that this submission suggests: see *Madoff Securities International Ltd (in liquidation) v Raven, (cit sup)* at para. 90.

Unjust enrichment

867. As I have said, a claim for unjust enrichment under articles 318 and 319 of the Civil Code requires a claimant to show a gain on the part of the defendant, a corresponding loss on his part and that no lawful cause justified the gain or the impoverishment. Neither Dr

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Shetty nor Mr Manghat developed any submission of UAE law that disputed this, and they did not suggest that there is any other ingredient to a claim. No wrongdoing on the part of the defendant is required.

868. However Mr Wandowicz submitted that, if money from the NMC Group passed through Dr Shetty's bank account without him being aware of it, the JA Claimants' case in unjust enrichment should be rejected. He cited no judicial or other authority in support of this proposition, but he contended that otherwise the UAE law would work unjustly. The argument was that, in these circumstances, Dr Shetty would be in a position analogous to the following scenarios: (i) where a person had a suitcase stolen and a thief used it to store cash; or (ii) where fraudsters opened a bank account in the name of a victim of identity theft and used it to receive money that the fraudsters then withdrew. I am not impressed by these examples: in neither case could it realistically be said that the owner of the bag or the person in whose name the fraudsters opened the account received a benefit: that the cash in the suitcase or the money in the bank account came into what the Commentary terms the "*patrimony*" of the owner of the suitcase or the victim of identity theft. In Dr Shetty's case, when money was paid into his bank account, he was enriched by having the debt owed to him by the bank increased (or if the account were in debit, his debt to the bank reduced).

869. Another example given by Mr Wandowicz was a case where a fraudster gains access to a bank account through a banking application on a stolen mobile telephone and uses it to channel through the account money defrauded from another victim. This example might have come closer to the position of Dr Shetty, if indeed another (or others) had gained control of his bank accounts and he had not known that they were operating them. As I see it, in each case, a factual question would arise as to whether Dr Shetty or the owner of the stolen telephone had "*patrimony*" of the money transferred into the bank account, so as truly to have been enriched. Dr Shetty submitted that "*enrichment is an objective fact*" to be determined on the facts of the particular case. I do not understand the JA Claimants to dispute this, and I shall assess the case against Dr Shetty on this basis.

870. In view of my findings that Dr Shetty was well aware of the Direct Shetty Payments and the Indirect Shetty Payments, this argument will not assist him. I therefore need not, and shall not, engage with the question whether UAE law might conclude that, if funds pass through a person's bank account without his involvement or knowledge, he might be said to have had "*patrimony*" of the funds at any time, and not truly to have been enriched: see para. 315 above. Those were not the facts of this case.

871. No other answer was put forward by Dr Shetty to the unjust enrichment claim against him and I uphold it.

872. Mr Manghat advanced no distinct defence to the unjust enrichment claim against him, and the JA Claimants are entitled to judgment on it.

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Quantum of damages

873. The JA Claimants claim damages in respect of the Civil Claims by way of:

a. The total amount of the Unlawful Payments (sc. the Direct Shetty Payments, the Indirect Shetty Payments, the Direct Manghat Payments, the Manghat GGCM Payments and the payments to the Bin Buttis and their companies); and

b. Advisory and professional fees and disbursements that would not have been incurred but for the fraud.

874. In principle, the JA Claimants are entitled to recover the amount of the Unlawful Payments as damages. There is little dispute about the amount: Mr Bezant calculated them at US$ 1,589 million, and Mr Grantham at US$ 1,587 million. I invite further submissions about this difference if the JA Claimants are minded to press for judgment reflecting Mr Bezant's full amount, and about whether the sum awarded should be adjusted to reflect the findings in this Judgment.

875. I also invite further submissions about the claim for advisory and professional fees and disbursements. The JA Claimants' pleaded claim here is for US$ 278.7 million, and it is based on JA's trading account for NMCH to 19 August 2025, which was appended to their 10th Progress Report. The claim includes some US$ 109.5 million by way of "*Legal Fees/Disbursements*". This raises the same questions as ADCB's claim in respect of costs of NMC plc's administration: see para. 808 above.

Conclusions

876. In brief summary, I conclude:

a. That ADCB succeeds in its claim against Mr Manghat, and it is entitled to damages (at least) in respect of NMCH's outstanding liabilities and loss of profits.

b. That NMCH and its JAs succeed in their Insolvency Claims against both Dr Shetty and Mr Manghat, and have established that I should declare that Dr Shetty and Mr Manghat are liable to make contributions assessed on the basis that they were knowingly parties to fraudulent trading from 30 April 2012 and throughout the Relevant Period thereafter.

c. That the starting point for assessing the contributions that I order that Dr Shetty and Mr Manghat pay should be US$ 5,397 million, but I shall finally determine the amounts that I order against each of them after hearing any further relevant submissions that I permit.

d. That the JA Claimants succeed in their Civil Claims against Dr Shetty and Mr Manghat, and they are entitled to damages (provided that proper provision is

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made to avoid double recovery in view of contributions ordered in respect of the Insolvency Claims).

877. I shall conduct a further hearing, in particular in order:

a. To consider consequential matters, including claims for statutory interest and costs.

b. To consider the claims made by Dr Shetty and Baroda against the other Defendants: see para. 4 above.

c. To consider any applications or submissions about the various matters in respect of which I have said in this Judgment that I would entertain them: see paras. 262, 474,775, 798, 803, 807, 818, 874, and 875 above.

d. To settle the terms of the orders that I should make to give effect to my Judgment.

878. I should be grateful if the JA Claimants and ADCB would prepare draft orders for consideration at the further hearing.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
5 November 2026