Claim No: CFI 047/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF FIRST INSTANCE

BEFORE H.E. JUSTICE ANDREW MORAN

BETWEEN

STATE BANK OF INDIA (DIFC BRANCH)

Claimant

and

(1) NMC HEALTHCARE LLC
(2) NMC SPECIALITY HOSPITAL LLC, ABU DHABI
(3) NEW MEDICAL CENTRE LLC DUBAI
(4) NEW MEDICAL CENTRE SPECIALITY HOSPITAL LLC, AL AIN
(5) MR. B.R SHETTY

Defendants

Hearing : **29 September 2025**

Counsel : Ms Zoe O'Sullivan KC instructed by Kochhar & Co. Legal Consultants for the Claimant
Mr David Berkley KC instructed by MR B.R. Shetty for the Fifth Defendant

Judgment : **8 October 2025**

JUDGMENT OF H.E. JUSTICE ANDREW MORAN

UPON Claimant's claim dated 7 June 2020 (the "Claim")

AND UPON the Case Management Order of H.E. Chief Justice Wayne Martin dated 2 April 2025 (the "Order")

AND UPON the trial having been listed on 29 September 2025 before H.E. Justice Andrew Moran (the "Trial")

IT IS HEREBY ORDERED THAT:

1. There shall be judgment for the Claimant against the Fifth Defendant for the sum of USD 45,997,554.59 inclusive of interest to the date hereof

2. The Fifth Defendant shall pay post judgment interest on the said judgment sum at the rate of 9% per annum until payment in full, from the date hereof, which shall accrue at the daily rate of USD 11,341.86.

3. Determination of the Claimant's claim for costs shall be adjourned.

4. A proper and accurate Statement of Costs shall be prepared and filed by the Claimant's lawyers and served upon the Fifth Defendant within seven days of this Judgment

5. The Fifth Defendant shall with seven days from service of the Statement of Costs upon him, respond to the amounts claimed.

6. The Court will then proceed to summarily assess the costs to which the Claimant is entitled pursuant to this Judgment and Order.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 8 October 2025
At: 3pm

SCHEDULE OF REASONS

A: Introduction:

1. In this matter, which came on for trial before me on 29 September 2025 (the "Trial"), the Claimant, The State Bank of India Dubai Branch Bank, (the "Bank") claims against the Fifth Defendant, Mr Shetty, under a Personal Guarantee dated 25 December 2018, which it contends was given by him in respect of the indebtedness of the First Defendant ("NMC Healthcare") under a Facility Agreement for USD 50 million also dated 25 December 2018. The Personal Guarantee is expressly governed by Dubai International Financial Centre ("DIFC") law at clause 20.1 thereof.

This Court has jurisdiction in the matter by agreement of the Parties contained in Clause 20.2.1 of that Personal Guarantee.

2. The sole issue in the Trial has been whether the signature on the Personal Guarantee is that of Mr Shetty. Whilst questions were asked of the Bank's witness, Mr Anantha Shenoy, by Mr David Berkley KC appearing for Mr Shetty, concerning certain aspects of compliance with requirements of the contractual documentation to test his knowledge and recollection of the transaction and the signing of the guarantee, there is no pleaded defence or suggestion that liability of the principal debtor and guarantor for their claimed indebtedness, does not arise for any reason whatsoever other than the defence that Mr Shetty did not sign the guarantee and thus is not bound by its terms.

B: The relevant background facts as I find them to be:

3. There is no dispute as to the facts recited in this section of the judgment apart from the dispositive issue of whether Mr Shetty signed certain documents including his alleged Personal Guarantee, the related issue of his presence when they were signed, his receipt of demands and his reaction or non-reaction to them as explained below. Otherwise, I am satisfied that the facts stated in this section are all proved to be true by the evidence of Mr Shenoy in his first witness statement and the documents produced by the Bank in the bundle before the court, the meaning and effect of which documents, is not in issue. In those circumstances, it is not necessary to refer to any of those documents in any more detail than follows. What follows is substantially taken from the Claimant's Updated Skeleton Argument, which cannot be improved for its brevity and accuracy.

4. The Bank is an Indian bank headquartered in Mumbai, India. Its DIFC branch is a foreign recognised company with commercial licence no. CL0233 and its registered address is Unit 709-710, Level 7, Gate Precinct Buildings 3, PO Box 482033 Dubai International Financial Centre, Dubai, United Arab Emirates.

5. NMC Healthcare LLC, the First Defendant ("NMC Healthcare"), was formerly in the business of healthcare distribution in the UAE. Each of the First to Fourth Defendants went into administration in the ADGM following the collapse of the NMC Healthcare group in April 2020, and the claims against them were stayed.

6. NMC Healthcare was party to a facility agreement with the Bank in 2016. In late 2018, NMC Healthcare approached the Bank for a new five year term loan in the sum of USD 50,000,000 for the general purposes of capital expenditure and refurbishment of its existing healthcare facilities.

7. The Bank issued a Sanction Letter on 11 December 2018, confirming that it was willing to advance the loan upon the terms set out in the letter. The Sanction Letter is signed by the authorised representatives of NMC Healthcare and the other Defendants and appears to be signed by Mr Shetty in his capacity as a personal guarantor.

8. On 25 December 2018, the Bank and NMC Healthcare entered into a Facility Agreement for a term loan of USD 50,000,000 (the "Facility Agreement"). It was signed on behalf of NMC Healthcare by Mr Suresh Kumar and initialled and stamped by the First Defendant on every page. One of the conditions precedent of the Facility Agreement was that Mr Shetty would provide a personal guarantee of the loan (the "Personal Guarantee"). The Second, Third and Fourth Defendants also provided corporate guarantees, all of which have proved to be worthless.

9. It was also a condition precedent that NMC Health plc, the English parent company of NMC Healthcare, would provide a Corporate Guarantee, which it did. NMC Health plc has not been joined as a defendant because it went into administration in England before the Bank commenced this claim.

10. A meeting took place at the offices of NMC Healthcare in Abu Dhabi on 25 December 2018 which was attended for the Bank by Mr Anantha Shenoy, the Bank's CEO, and Mr Iqbal Mahmood, Vice President (Syndicate) DIFC Branch. It is at this meeting that the Bank alleges Mr Shetty signed the Sanction Letter, his Personal Guarantee and the Corporate Guarantee of NMC Health plc., all of which Mr Shetty denies. My findings on this one and only issue on which this case turns, are rendered separately below, after reviewing the evidence.

11. On 26 and 27 December 2018, NMC Healthcare submitted two utilisation requests signed by an authorised signatory for the amount of USD 25 million each. The amounts requested were paid to it by SWIFT transfer on 28 December 2018.

12. By clauses 6 and 8.2 of the Facility Agreement, the loan was repayable in 20 quarterly instalments of USD 2.5 million each, and interest was payable at monthly intervals pursuant to the Repayment Schedule in Schedule 2. NMC Healthcare made the quarterly repayments of principal due for the quarters ending March 2019, June 2019, September 2019 and December 2019, and monthly payments of interest on their due dates until 30 January 2020.

13. In December 2019, Muddy Waters Capital published a report alleging that NMC Health had overpaid for assets, had inflated cash balances and understated debt. This caused an immediate fall in the market price of NMC Health plc, the parent company of NMC Healthcare, which materially altered the risk profile of the borrower. The Bank formed the view that this was a Material Adverse Event as defined in the Facility Agreement. Accordingly, on 28 January 2020, the Bank wrote to NMC Healthcare indicating that it intended to make changes to the terms of the Facility Agreement pursuant to clause 7.5, including a requirement for NMC Healthcare to provide additional cash collateral of USD 2 million. NMC Healthcare agreed to the changes in an email dated 13 February 2020

14. In February 2020, the shares of NMC Health plc, which were listed on the London Stock Exchange, were suspended and the credit rating agency S & P downgraded its rating from CCC to D because of missed payments. Mr Shetty resigned as joint non-executive chairman of the group on 16 February 2020.

15. NMC Healthcare failed to pay the interest payment of USD 210,654.70 due on 27 February 2020.

16. On 1 March 2020, the Bank wrote to NMC Healthcare to inform it that it was in default of its obligations to provide additional cash collateral and to make the interest payment due on 27 February 2020 and requested it to make both payments immediately.

17. The interest payment due in March 2020 of USD 241,025.028 was not paid by NMC Healthcare. NMC Healthcare also defaulted on the

repayment of principal in the sum of USD 2,500,000 which was due to be paid in respect of March 2020. This was a third Event of Default. As at 30 March 2020, the account was classified by the Bank as a high risk account.

18. On 14 April 2020, the Bank exercised its right under clause 21.17(g) of the Facility Agreement to appropriate the full amount of the Cash Collateral of USD 6,198,966.77 and apply it towards the sums due from NMC Healthcare.

19. On 15 April 2020, the Bank wrote to NMC Healthcare advising it of the occurrence of various Events of Default and reserving its rights to take action under the Facility Agreement.

20. On 20 April 2020, the Bank received a letter from the Joint Administrators of NMC Health plc, advising it of their appointment on 9 April 2020, and inviting it to submit a claim for any money owed to it.

21. On 23 April 2020 the Bank sent a notice to Mr Shetty at his home in Abu Dhabi stating that Events of Default had occurred under the Facility Agreement and demanding payment from him under the Personal Guarantee of the sum of USD 30,792,944.45 plus accrued interest within five days of receipt of the notice. Mr Shetty positively denied receiving this notice in his written evidence, but it was clear from his evidence before me that he did receive it, for reasons explained below.

22. On 3 May 2020, the Bank sent NMC Healthcare a notice that it was exercising its right under clause 21.17 to accelerate repayment of the Facility Agreement and declare all outstanding sums to be immediately due and payable in the sum of USD 31,439,784.42, being the amount due plus accrued interest as at 30 April 2020. The Bank demanded payment of the sum due within 7 days.

23. On 19 May 2020, the Bank sent each of the guarantors, including Mr Shetty, a Recall and Demand Notice for payment under the guarantees, and on 28 May 2020, the Bank sent a Final Notice to NMC Health and each of the guarantors, including Mr Shetty, reiterating that all sums due under the Facility Agreement were immediately due and payable and demanding payment of the sum of USD 31,439,784.42 within 3 working days

24. The claim was issued on 7 May 2020. The Bank experienced difficulty in serving the proceedings on Mr Shetty during the COVID pandemic. However, on 14 October 2022, Mr Shetty served a Defence disputing liability. The Bank served its Reply on 4 November 2022.

25. On 19 March 2024, the Bank issued an application for immediate judgment supported by the First Witness Statement of Mr Anantha Shenoy, its CEO at the date of the Facility Agreement. On 17 February 2025, the Bank advised the Registry that in view of the exchange of expert handwriting evidence it did not intend to pursue its application for immediate judgment and would proceed to trial.

26. As Mr Shenoy explained in his Second Witness Statement, and as I find to be the case, the Bank is an Admitted Group Creditor in the restructuring of the NMC Group. In respect of its loan to NMC Healthcare, it has been allocated an entitlement of USD 2.46 million, repayable on 25 March 2027. It has received interest of approximately USD 35,000 on this sum.

27. As Mr Shenoy explained further in his Third Witness Statement, and as I also find to be the case, this entitlement is not to a cash sum, and its receipt is contingent upon the future performance of the salvaged assets of the former NMC Healthcare Group. It is not certain that this sum or any sum will be received by the Bank. However, in order to avoid double recovery, the Bank has given an undertaking to the Court which has been confirmed in writing and is Annex 1 hereto, that in the event that it recovers any judgment sum plus costs in full against Mr Shetty, it will return to Mr Shetty any sum received pursuant to its entitlement in the restructuring.

C: The witness evidence on the issue of signature by Mr Shetty:

28. In dealing with the witness evidence, I explain first why it is necessary to recite in this Judgment, certain matters that were put at the Trial before me on 29 September 2025, by Mr David Berkley KC, counsel for Mr Shetty, to the Bank's witness Mr Anantha Shenoy who was, at the material time, the CEO of the Bank. It is because these were matters not contained in his witness statement, which counsel for the Bank, Ms Zoe O'Sullivan, correctly suggested he should verify along with his witness statement, when he came to give his oral evidence on oath. He accordingly did so verify as true, the matters that had been put in cross-examination on his behalf, which so far as material, are recited below.

29. Mr Shenoy first confirmed that Mr Shetty had signed the Sanction Letter but does not say that he was present to witness Mr Shetty signing it. He averred that he travelled to the offices of NMC in Abu Dhabi on 25 December 2018, that Mr Shetty signed his Personal Guarantee in his presence and that he signed it on behalf of the Bank. He also gave evidence that Mr Shetty signed the Corporate Guarantee of NMC Health Plc.

30. It was put to Mr Shenoy by Mr Berkley KC (Transcript page 21), *"on very specific instructions which I have confirmed with Dr Shetty before I ask you this now and that is that Dr Shetty says that he has never met you at any time"*. Mr Shenoy rejected the suggestion, referring to photographs taken at a meeting of 13 January 2019, showing them together on that day.

31. What transpired at that meeting was relied on by the Bank as corroboration of Mr Shetty's knowledge of the granting of the facility to NMC and, inferentially, of the requirement and his signing of his Personal Guarantee of payment by NMC, of the liabilities arising under it. Mr Shenoy produced in evidence a Visit Report of the meeting which took place on 13 January 2019, which he prepared the following day.

32. Rather than narrate its contents, the story it tells contemporaneously of warm appreciation for the grant of the facility by the Bank, and its significance, meaning and effect, is best appreciated by seeing it in its original form. It was not suggested it was a false document, fabricated for the litigation; and it refers to a photo session and "few pics" enclosed, taken at the time.

33. Mr Shenoy also produced copies of the photographs referred to in it as the "few pics", on which he had appended the time and date. It was clear from the evidence before me, that these were taken on the date on their face in Mr Shetty's personal office, and that Mr Shetty was present with Mr Shenoy, Mr Binay Shetty (Mr Shetty's son), the Chairman of SBI Mr Rajanish Kumar and Mr Shamsher Sing Mann, the Regional Head of the Bank. They all appear in one photograph and four of them in the other. Mr Shetty and Mr Shenoy are no more than a few feet apart in two photographs, separated by only one person.

34. It was suggested to Mr Shenoy by Mr Berkley KC, that Mr Shetty attended this meeting because of the Chairman's interest in networking and obtaining various opportunities to promote the Bank's activities both in the UAE but also in particular in India. It was put that the meeting was for promotional purposes and specifically put that Mr Shetty denied that he thanked the State bank of India for extending the loan to NMC Healthcare. Mr Shenoy denied these suggestions and confirmed that Mr Shetty did thank the Bank for extending the loan at the meeting.

35. Concerning receipt of the Bank notices of default by NMC and demands under his personal guarantee in April 2020, which Mr Shenoy had said from the Bank's records had been sent, it was put to Mr Shenoy that Mr Shetty was then living on Kada Road in Mangalore, India and did not receive them at his Abu Dhabi address in Electra Street.

36. It was put specifically as follows (Transcript page 51):

> "**DAVID BERKLEY KC**: Yes because what Dr. Shetty says is that he had not lived in Electra street since sometime in 2017 and he has no knowledge of having received any documents at all that might have been sent by post or delivered by courier or otherwise in connection with any of the demand letters upon which you're relying.
>
> **ANANTHA SHENOY**: It was sent by. Because I'm not aware. Because it's sent by our legal team and the credit department."

37. As to Mr Shetty's knowledge of the facility, NMC's breach of its repayment obligations under it, his liability under the Personal Guarantee signed by him, and the demands being made for payment under these instruments, the Bank relied on an email sent by Mr Shetty from his email address, chairman@brsholding.com, on 14 May 2020 reproduced below:

38. In relation to this compelling (on its face) piece of evidence that Mr Shetty had signed the Personal Guarantee, that he had received demand documents and that there were discussions going on between a Mr Bitar (who, as Mr Shetty explained in re-examination, is his second daughter's husband - his son-in-law) of MGR Credit with Mr Iqbal Mahmood of the Bank; and that he had sent this email, it was put by Mr Berkley KC to Mr Shenoy as follows (Transcript pages 52 and 53):

> "**DAVID BERKLEY KC**: Yes, yes. And just, just to. just for the purposes of really putting my case, just for his Excellence's note, Dr. Shetty does not accept that that is his... Even though it came from an address chairman@brsholdings.com on 14 May 2020. He denies composing that email or having knowledge of its contents. It refers to. the email itself refers to ongoing discussions with Mr. Bittar. Do you know who Mr. Bittar is?
>
> **ANANTHA SHENOY**: I don't remember correctly but he was appointed by Dr. Shetty to negotiate on behalf of him when the account turned non performing. That's the only response I can give because I don't remember and I have not spoken to him."

And later it was put:

> "**DAVID BERKLEY KC**: Right. So what I want to suggest to you that from your own evidence it's at least a possibility. I mean, maybe you can't assist us but I want to at least put my case that although Dr. Shetty didn't compose, he says he didn't compose this email and didn't know of its contents at the time, that this was a document that was being sent by somebody else perhaps Mr. Bittar and, and that it doesn't represent the words of Dr. Shetty. But I suppose you can't assist us on that, can you?"

39. Mr Shetty's written evidence in his statement of 22 April 2024, taken by Baker Tilly his then lawyers, apparently signed by him, was presented to him at the Trial to verify on the oath he had chosen to take. Surprisingly, when he was taken to the signature page, he immediately and vigorously denied that the signature on the copy statement at page 590 of the Trial Bundle, was his signature. This obviously caused considerable consternation for his counsel; but he dealt with it with commendable calm; and Mr Shetty eventually realised that it was his signature on his own witness statement that he was being asked to confirm as his own signature, and he did so (at Transcript pages 59 and 61). Ms O'Sullivan, unsurprisingly, and as she was perfectly entitled to do, made much of this denial, suggesting it demonstrated Mr Shetty's normal dishonest response when presented with a signature he was alleged to have applied to a document, which was to falsely deny it was his signature. In re-examination, Mr Shetty was asked more about his initial denial that it was his signature on his own statement, and explained as follows:

> "**DAVID BERKLEY KC**: Do you want to add anything to what you've already said about why you initially said it was not your signature and then you later acknowledged that it was your signature?
>
> **DR. DR. B. R. SHETTY**: Misunderstanding was initially, we thought we'll deny all the signature which is wrongly put by them. Deny it. That's the main concept. But now 'that she told me that, I'm lying, you can say it's a signature looks like mine, but I've not signed. The clarification for that is I've not signed. It looks like mine. I can't say don't look. There are some signatures not at all looking like mine. Others are looking like mine. In the meantime, I have not signed. It's all fabricated by them, are duplicated, scanned by them."

40. The key features of this witness statement, which Mr Shetty eventually verified on oath at the start of his evidence before me, were as follows:

a) He had no knowledge of the 2018 loan facility and neither signed it nor authorized anyone to sign it, nor of any and all of the documents relied on by the Claimant. He did not recall meeting Mr Shenoy and other members of the Bank, and the photographs do not prove that they were taken at time of "availing of the Disputed Facility Agreement".

b) He ceased being part of the day to day operations of the NMC Group since 2017 at the latest, having stepped down then as CEO. He could not possibly have known of the arrangements made by the Borrower.

c) He could not exclude the possibility of his signatures being forged by representatives of the Borrower and that he was the victim of a fraud.

d) He did not recall receiving any notices or letters sent in April and May 2020 concerning the indebtedness; and specifically with reference to the email dated 14 May 2020, (vide infra) as to which he says, *"which the Claimant purportedly claims to have been sent by me in no way amounts to any sort of acceptance and acknowledgement of the facility."* but does not deny sending.

e) That there was a need for expert evidence from a document examiner which he would rely on, and he needed access to the originals (which he and his expert have since had the opportunity to do).

41. Mr Shenoy was cross examined at some length on matters that were irrelevant to the central issue I have to decide; and all that needs to be mentioned about those matters, is that the evidence he gave or was unable to give, did not have any adverse impact on my view of his quality as a witness or his honesty and accuracy in recounting events that took place nearly seven years ago (and in relation to one document, the 2016 Facility Agreement, nine years ago). He did not pretend to remember everything that took place seven years ago but did remember the key event of him travelling to Abu Dhabi, with his Vice President to get Mr Shetty's signature on the documents - even if his evidence was understandably uncertain about whether his Vice President took them printed; or they were printed at NMC. As to the Personal Guarantee, the critical document he said, *"I'm not aware who carried it or how it is [sic] printed, but I was present when the signature was taken"*. Thus, on the critical evidence he gave, of being present with Mr Shetty on 25 December 2018 when his signature was taken, plainly meaning that he saw him apply his signature to his Personal Guarantee, he could not be shaken or undermined, as seen at pages 48-50 of the Transcript. Likewise, his evidence of the thankful meeting that took place on 13 January 2019, of Mr Shetty with the Chairman of the Bank of India itself and what transpired, was only reinforced in its strength, by his responses to Mr Berkley's skilful efforts to undermine it.

42. After dealing with the signature on his statement, Mr Shetty began his oral evidence by verifying the matters put in cross-examination of Mr Shenoy by Mr Berkely on his behalf, at the request of Ms O'Sullivan KC, for reasons explained above.

43. It must be recorded that Mr Shetty's evidence under cross examination was at times incoherent and non-sensical. He did not answer questions asked and made assertions that were inconsistent with his own evidence elsewhere and/or with incontrovertible, undisputed facts. For example, agreeing that there was a facility agreement between the Bank and NMC in one sentence and then asserting it was all fabricated (see Transcript page 68-71). It is difficult to do so, but the key features of his oral evidence under a brief examination in chief and in cross examination may be extracted and summarised as follows:

(a) He maintained his position and evidence that he had never met Mr Shenoy and saw him for the first time on camera at the Trial. With reference to the photographs showing them together he conceded, *"But maybe when I was taking the photo with the Chairman, he must have come and stood there"*. (Transcript page 63)

(b) He eventually admitted giving his expert witness instructions that the signature on the 2016 NMC facility agreement, was not his signature because *"Doesn't look like my signature"* (Transcript page 67).

(c) He *"never never"* knew of the 2018 facility agreement (Transcript page 71)

(d) He denied the Bank wanted him to give a Personal Guarantee in relation to that facility or asked for him to give a personal guarantee (Transcript page 73).

(e) His signature on the Sanction Letter (Bundle page 125) is probably scanned "This is what they do" but then accepted if it was in pen and ink, it must be his signature (Transcript page 73-74). This acceptance that it was his signature on this document, was re-confirmed in re-examination (Transcript page 99) but he then immediately went on to add in an attempt to undermine his own confirmation of his acceptance it was his signature, *"It's also possible, Mr Berkley, it can also be signed by my team people* (referring to NMC people)" and he then went on to elaborate in his evidence about there being a competition amongst them to copy his signature and a prize for the winner, which evidence is summarised at particular k. below.

(f) He then gave the following evidence (Transcript page 78 and see also page 80) which is impossible to summarise:

> "**DR. B. R. SHETTY**: What Anantha Shenoy also told is what I found out from him. He said he has gone to the document with the boss to the other office. There they signed. What Shenoy, Prasanth Manghat and Suresh Kumar all signed there. And they only come to scan signature also mine there only, then they come for a photograph here and they claim the photo is with us. That's it.
>
> **H.E. JUSTICE ANDREW MORAN**: That's important. I want to know what you're saying. You said they signed the documents in the corporate office.
>
> **DR. B. R. SHETTY**: Yes, absolutely.
>
> **H.E. JUSTICE ANDREW MORAN**: You've just said it. They scanned your signature onto the documents there. That's what you're saying?
>
> **DR. B. R. SHETTY**: It's possible, yes. Or taken my signature first and taken there.
>
> **H.E. JUSTICE ANDREW MORAN**: And then they come to your office in a different building and take the photograph? That's your case?
>
> **DR. B. R. SHETTY**: Yes, sir. Absolutely correct."

(g) He vigorously denied, saying "No, no, no", that it was his signature on the Personal Guarantee (Transcript page 81-82). He did not know if Mr Shenoy was lying and when it was put to him, he, Mr Shetty, was lying he said, *"I don't Lie"*. He followed this up in re-examination with a declaration that he could not lie on oath having touched the holy Quran. In relation to the Corporate Guarantee, he denied it was his signature upon it; and in relation to Mr Shenoy's evidence that he had also signed that document, he said, *"He's again lying maybe*"

(h) Regarding the meeting of 13 January 2019 and the record of him thanking the Chairman for the $50m loan to NMC in Mr Shenoy's report (supra) - he said that was wrongly stated. Mr Shetty's evidence was that they (meaning the representatives of the Bank and NMC) must have signed a document in the corporate office and only the Chairman came to my office maybe with other people. He said that he, Mr

Shetty, "thanked him (The Chairman of the Bank) *for the service what he has given to Indian government and service in UAE also"* (Transcript page 84).

(i) The meeting report is a false report written by Mr Shenoy *"it is a false report to stabilize (sic) himself he did it."* There followed a passage of almost incomprehensible evidence which I attempted to understand (Transcript page 86) as follows:

> **"H.E. JUSTICE ANDREW MORAN**: Well, I understood on the back of that. It's very difficult to understand the evidence, I accept Ms. O'Sullivan. But he said the whole thing is fabricated. It's all fabricated. And then I thought he attempted to justify that answer by saying, in effect, no bank would have lent 50 million to the company in the state it was in. That was the implication as I understood it. If I'm wrong, that should be corrected.
>
> **DR. B. R. SHETTY**: Yes.
>
> **H.E. JUSTICE ANDREW MORAN**: Is that what you're saying, Dr. Shetty?
>
> **DR. B. R. SHETTY**: Absolutely correct, sir, Your Lord."

(j) Upon being questioned about his signature on a Power of Attorney at page 229 of the Trial Bundle (TB), he asserted that the document and signature had been fabricated by Suresh Kumar, the Treasurer and CEO of NMC and Prasnath Mangat. It was not his signature. He went on to assert that there was a competition between employees of NMC as to who can copy his signature and there was a prize for that (Transcript page 89 - in which, as far as I distinctly heard it, the word "prize" is wrongly transcribed as "price"). This error of transcription is also apparent from re-examination on this entirely new part of Mr Shetty's case and evidence, when I asked him what the prize in the competition was and he responded that it was the suffering he is being caused now. He went on to allege in re-examination that this loan of $50m was a scam between the bankers and management in which they both looted and made money from NMC.

(k) When asked about paragraph 6 of his statement (TB page 586) in which he said he did not recall receiving the notices and letters sent on 23 April and 19 and 28 May, and was it is his positive evidence that he did not receive them; or was it his case that he could not remember receiving them? he said he didn't receive them (Transcript page 91). There followed a passage of evidence which was confused and unclear about what notices and demands he had received from the Bank (and how and where) but when his attention was directed to the email of 14 May 2020 (supra 37-38), he then accepted (contrary to what had been carefully put to Mr Shenoy on specific instructions by Mr Berkley K.C) that it was an email that he had sent; and that he was aware that there were discussions between the Bank and himself about his personal guarantee (Transcript page 94).

(l) He next described what he did when he was in Mangalore. He said he went to State Bank of India branch. *"Told the manager, I am here. I am B.R. Shetty. The Litigation going on in Abu Dhabi. And if there is anything, I am here. This is my address. I gave them my address. I didn't receive any call back or anything"*. In re-examination, he elaborated on this new piece of evidence concerning his knowledge of the Bank pursuing him after he had moved to Mangalore India, thus:

> "**DR. DR. B. R. SHETTY**: When I came to Mangalore, I heard there's a letter that B.R. Shetty, my son-in-law told me. Then you know, I got my own reputation. I didn't want anybody to search for me. I said I am B.R. Shetty. I'm the one who started NMC. I went to SBI Branch Manager, branch to tell that my name is so and so. I understand your bank has given some money to them and they are taking care of it. That's all what I told him, came back. If you are searching for me, if you need any help from me, I'm here only. This is my house number. I gave that number and came. Otherwise I don't have one rupee borrowing from India at all."

(m) When Ms O'Sullivan concluded her examination, she put her case once more and Mr Shetty responded thus:

> "**ZOE O'SULLIVAN KC**: Right. Okay. But you've accepted this as your email. That's fine. All right. I'm just going to conclude here. Dr. Shetty, I've put my case to you. But this is. the position is this. You did sign the personal guarantee.
>
> **DR. DR. B. R. SHETTY**: I don't know.
>
> **ZOE O'SULLIVAN KC**: You don't know?
>
> **DR. DR. B. R. SHETTY**: No.
>
> **ZOE O'SULLIVAN KC**: Are you not sure?
>
> **DR. DR. B. R. SHETTY**: No. No. No. No. It used to be very small one that I did not know anything. This 50 million, impossible.
>
> **ZOE O'SULLIVAN KC**: Right. Okay, I put my case. You did sign the sanction letter?
>
> **DR. DR. B. R. SHETTY**: I wrote that one letter what you call.
>
> **ZOE O'SULLIVAN KC**: You cannot talk to the lady in the room, I'm afraid.
>
> **DR. DR. B. R. SHETTY**: Yes, yes, yes. There's one based letter was there
>
> **ZOE O'SULLIVAN KC**: Right
>
> H.E. JUSTICE ANDREW MORAN: Sorry, sorry. Did you sign the sanctions letter?
>
> **DR. DR. B. R. SHETTY**: No, not sanction letter.

ZOE O'SULLIVAN KC: Okay. Well, I'm suggesting you did and your Expert says you did. Right. And you signed the corporate guarantee of NMC Health Plc.

DR. DR. B. R. SHETTY: I have not signed. But we don't know what they say.

ZOE O'SULLIVAN KC: Yes. And your evidence of this Court has been dishonest, Dr. Shetty.

DR. DR. B. R. SHETTY: Who?

ZOE O'SULLIVAN KC: You have told lies to the Court today.

DR. DR. B. R. SHETTY: I'm sorry, I don't accept that. I touched Quran, that I know."

D: Findings on the factual evidence concerning Mr Shetty signing his Personal Guarantee:

44. It is unfortunate and regrettable that I am bound to find that there is overwhelming witness and documentary evidence before me, which satisfies me that Mr Shetty has come before this Court and lied on oath in his multiple denials that he signed the Personal Guarantee, the Corporate Guarantee and the Facility Sanction letter. I am satisfied on the balance of probabilities that he did sign all of those documents intending to be bound by them and materially in this case, is bound by the terms of his Personal Guarantee of NMC's outstanding liabilities under the facility agreement, to discharge that liability to the Bank. This finding is for all of the following reasons.

45. First, I found Mr Shenoy, the Bank's witness to Mr Shetty's signatures on the Personal Guarantee and Corporate Guarantee on 25 December 2018 in Abu Dhabi, to be an honest, accurate and reliable witness, who told me the truth of what occurred in his presence. I reject all of Mr Berkely's criticisms of him as a witness, to be lacking in foundation and am satisfied that he was doing his best to give all the evidence he could remember about events that occurred a considerable time ago. He was measured and careful in not pretending to say he witnessed the signing of the Facility Sanction Letter but adamant and clear in his recounting of the special trip to Abu Dhabi to document a substantial transaction. This transaction was with the then apparently thriving corporate creation of a star of the Indian business community in the Emirates and beyond, which was intending to invest substantially in its business. It must be remembered that it was not until a year later in December 2019, that Muddy Waters Capital published a report alleging that NMC Health had overpaid for assets, had inflated cash balances and understated debt, which began the fall and (with subsequent developments led to) the collapse of NMC. I am satisfied that Mr Shenoy was present to watch and did watch Mr Shetty sign his personal guarantee on 25 December 2018, which signature and guarantee he acknowledged on behalf of his employer, the Bank.

46. Secondly, I found Mr Shetty's attempts to bolster his evidence that he did not sign the documents by: (i) stating he had never met Mr Shenoy, and (ii) when confronted with the photographs and the report of the meeting in January 2019, suggesting he had probably sidled into the photograph, and (iii) maintaining that he had no direct dealings with Mr Shenoy at that meeting or earlier on 25 December 2018, when signing the documents; all to be false and discreditable manoeuvring, designed to evade his liability under the guarantee.

47. Thirdly, I am entirely satisfied that Mr Shenoy's report of the January meeting is true and accurate in all of its details. I found Mr Shetty's evidence about the purpose of that meeting being for networking and business development (even if there was some such discussion about those activities at it) for the Bank in the UAE and also in India; and what else transpired at the meeting, to be false and untrue. That includes particularly his evidence that his recorded thanking of the Chairman of the Bank was not for the NMC facility, but for his service to the Indian Government and service in the UAE. This piece of evidence was, in my judgment, a transparently false and belated invention, to obscure his close involvement in procuring the facility for NMC and his guarantee given under it, and the damning effect of the report of 14 January 2019 and its contents towards proving those facts. I find the report to be compelling evidence of all of those facts. Whilst it may be true that Mr Shetty formally stepped back from his role as an executive in NMC in 2017, there is abundant evidence of his very active support for and close involvement in this borrowing by it in 2018.

48. Fourthly, I found Mr Shetty's initial efforts to deny knowledge of the facility and of receiving notices of default and being chased to pay up on his guarantee, to be a futile series of lies carried into the hearing before me, by what he instructed Mr Berkley KC to put on his behalf (see paragraph 38 supra), from which he was forced to resile when confronted with his email of 14 May 2020. It turns out and I so find, that he was fully aware of and had admitted he had signed the Personal Guarantee back in May 2020. Moreover, his son-in-law was then engaged in negotiations with the Bank about his liability under it. This email was obviously a holding email asking for the opportunity to review the documents he had signed before proceeding further; and in no word or sentence did it contain the slightest query or denial about him actually signing the guarantee. I am satisfied that the denial of signing any of the relevant documents is nothing other than recent fabrication and a devised and futile strategy of lying which Mr Shetty has embarked upon and maintained before me. It was apparent in his pavlovian reaction to deny his own signature on his witness statement which he then passed off as a misunderstanding (as it probably was) and his garbled explanation that *"we thought we'll deny all the signature which is wrongly put by them"* (supra 39). This strategy of false denial of signing documents was even more apparent in his unfounded (by reference to any pleaded case or evidence put before me), dishonest and deluded inventions that the managers of NMC were engaged in a competition to copy his signature (in which the prize was his suffering) and that they were in collusion with Bankers including the Claimant to loot NMC.

49. Fifthly, it follows that I reject all of Mr Shetty's written evidence summarised at 40 above as false and contrived to evade liability under his guarantee.

50. Sixthly, I find that Mr Shetty's oral evidence summarised at 43 above, was an incredible parade of lies, of confusing and inconsistent inventions and denials, disproved by the truthful evidence of Mr Shenoy (as I find it to be), the documents referred to, the lack of any contemporaneous supporting evidence, (when and where it might have been expected); and eventually by his own partial admissions, when confronted with evidence that made it impossible for him to maintain his previously claimed ignorance of the facility and his Personal Guarantee. This claimed ignorance had been fabricated in support of his planned position and strategy of false denials of signing all the relevant documents, to defend the Bank's case against him.

E: The Expert Handwriting Evidence:

51. By reason of my findings on the dispositive issue in this case, based on the witness evidence of fact before me, set out in the previous section of this Judgment, it is not strictly necessary for me to make findings on the expert evidence and issues before me. However, bearing in mind what is at stake in this Trial, and the important support it provides for the dispositive factual findings I have made on the witness evidence, I will deal with the expert evidence and my findings upon it, as shortly as possible, in this section of the Judgment. I have directed myself in reaching my conclusions (as I have in the past directed juries in forgery cases) and followed my self-direction, that I should not engage in any amateur assessment of the likelihood of Mr Shetty's questioned signatures being his signatures by virtue of their superficial appearance to me. I have based my conclusions entirely upon my assessment of the expert evidence led before me.

52. Both expert witnesses, Ms Ellen Radley for the Bank and Mrs Elizabeth Briggs for Mr Shetty are eminently well-qualified as experts in document examination and handwriting to opine as to the authorship of the three important signatures in question in this case. It is not necessary for this assessment of and findings on their evidence to dwell on what Mrs Briggs was instructed was a fourth questioned signature on the 2016 Facility Agreement, which both experts agreed was Mr Shetty's signature (in fact there are two of them at TB pages 695 and 696).

53. On the three questioned signatures on the Personal Guarantee (TB 391/649), the Corporate Guarantee (TB 234/660) and the Facility Sanction Letter (TB 125/667) respectively Q1, Q2 and Q3 for Ms Radley and Q4, Q3 and Q2 for Mrs Briggs, their opinions as to authorship were as follows taken from their joint report at TB/881:

Document	Ms Radley	Mrs Briggs
Personal Guarantee dated 25th December 2018 (Q1 of Ms Radley's report, Q4 of Mrs Briggs' report)	Very strong evidence to support the proposition that Dr Shetty wrote the questioned signature	Inconclusive as to whether the questioned signature was written by Dr Shetty
Corporate Guarantee dated 25th December 2018 (Q2 of Ms Radley's report, Q3 of Mrs Briggs' report)	Very strong evidence to support the proposition that Dr Shetty wrote the questioned signature	Inconclusive as to whether the questioned signature was written by Dr Shetty
Sanction Letter dated 11th December 2018 (Q3 of Ms Radley's report, Q2 of Mrs Briggs' report)	Very strong evidence to support the proposition that Dr Shetty wrote the questioned signature	Very strong evidence to support the proposition that Dr Shetty wrote the questioned signature

54. Both experts employed a very similar technique and approach in their examination and in reaching their conclusions; and a similar scale of grading for forming and expressing their opinions as to the authorship of the questioned signatures. Two of the signatures (on Q1/Q4 and Q2/Q3) were in an abbreviated form of the signature known to have been previously used by Mr Shetty in documents he undoubtedly signed; and the other, the signature Q3/Q2 on the Facility Sanction Letter, was in the longer form of signature that is also shown to have been used by Mr Shetty previously, in documents he undoubtedly signed.

55. It is sufficient to concentrate for present purposes on the Personal Guarantee signature as to which, Ms Radley opined thus (TB/612):

> I note a number of significant similarities between the questioned signature on Q1 and the known signatures of Dr Shetty together with a lack of significant differences. These similarities are subtle in nature and I would not expect an individual simulating a genuine signature of Dr Shetty to appreciate these, much less successfully replicate them whilst also writing fluently.

56. She illustrated and described these eleven significant similarities in compelling graphic form thus at TB/613-614:

57. In reaching and expressing her opinion on the questioned signatures, Mrs Briggs also produced a graphic illustration of the questioned signatures on the Personal Guarantee and the Corporate Guarantee and pointed (with an orange arrow) to features of the known longer form signature of Mr Shetty that cannot be matched in the questioned short form signatures thus:

58. Before reaching her inconclusive view on authorship, she made a number of important reservations set out below (TB/736) which demonstrate her very, and as I find, unjustifiably over-cautious approach. This finding is in light of the concessions she made at the experts meeting and in their joint report, dealt with below.

> 6.16. As shown above, there are a number of similarities between the questioned signatures on items Q3 and Q4 and the known signatures of Dr Shetty but the abbreviated nature of the middle of the signatures is not matched closely. As described above, the known signatures in item BS9 show a degree of abbreviation and it is therefore possible that Dr Shetty might produce further natural signatures that do not contain the more complex looped feature found in the bulk of the known signatures and perhaps other variations. I also note that the elongated final flourish found in the known signatures is not present in these two questioned signatures.
>
> 6.17. The questioned signatures on items Q3 and Q4 appear to be fluently and naturally written and I have found none of the features often associated with non-genuine signatures such as hesitations, unexpected pen lifts or tracing guidelines. Whilst they do not easily fall within the range of variation found in the known signatures, it is possible that they are more abbreviated versions written by Dr Shetty.
>
> 6.18. I have considered whether the appearance of the questioned signatures on items Q3 and Q4 could be due to another writer attempting to copy a signature of Dr Shetty. If this is true, on the basis of the known signatures available, the writer(s) has produced relatively fluent signatures with some subtle similarities but without the more obvious feature of the elongated final flourish.

59. The concessions in the joint report are found in the section from paragraph 53-82 of it at TB/888-892. It is not necessary to recite or summarise them all, and sufficient for me to conclude that taken together with the rest of her evidence, if she had been asked the question (which of course is ultimately not for her but for me) is it more likely than not that Mr Shetty signed the Personal Guarantee and the Corporate Guarantee, her answer would and ought to have been resoundingly in the affirmative. She agreed that Mr Shetty can and does sign in an abbreviated form,

without the terminal flourish that she relied on to reach her inconclusive view. She agreed the eleven points of similarity identified by Ms Radley in the Personal and Corporate Guarantee signatures with known abbreviated forms of Mr Shetty's signature. She agreed these include subtle features it would not be expected a forger to appreciate much less replicate. She agreed it would not be expected that a forger could copy subtle micro detail and at the same time make clear errors in not copying the macro structures of the terminal flourish. Mrs Briggs also agreed, tellingly, that there are differences in features between the questioned signatures on the guarantees one to the other, although written on the same date by someone. These features of difference are features of similarity with the known signatures of Mr Shetty presented - i.e. each of the questioned signatures on the guarantees bears a differing combination of similarities relative to the known signatures. The experts then go on to illustrate examples of such features at paragraphs 69-74 taken from Appendix C of Ms Radley's report and Mrs Briggs finally agreed with paragraphs 8-12 of Ms Radley's report in which she had opined thus:

> (v) Of particular importance, subtle similarities are found in *differing combinations* when considering all of the signatures in the name of Dr Shetty on the questioned documents together. I consider this to be an important observation. *If* the signatures on these questioned documents are simulations (and I am of the opinion that the evidence very strongly does not support this proposition), the following would have to have occurred:
>
> (a) The writer would have to be able to appreciate (i.e. recognise) the *presence and nature* of subtle detail of construction found in the genuine signatures of Dr Shetty.
>
> (b) The writer would have to be aware of the *range* of subtle features of construction found within Dr Shetty's genuine signatures i.e. the writer would have to appreciate the importance of features to be examined by an expert in forensic document examination.
>
> (c) The writer would have to be capable of reproducing these variations whilst also writing *fluently, at speed, and with a variation of pen pressure which correlates with the known signatures.*
>
> (d) The writer would have to have practised and be proficient at writing signatures of Dr Shetty with slightly different forms i.e. not just simulating a single master signature.

60. In view of all of those important concessions, all manifestly unavoidable, proper and in compliance with her duty as an expert, I find it very surprising that Mrs Briggs felt able to adhere to her original opinion without the slightest movement up her scale of expressions of opinion, on the authorship of a document towards accepting that Mr Shetty was the author of questioned documents (See her Appendix A Conclusion Scale at TB/739-741).

61. The Position on the scale she has taken and maintained is at e:

> (e) The evidence is inconclusive. I consider that a reliable opinion as to whether the questioned document/signature was written by the author of the specimens cannot be expressed.
>
> The expert is unable to offer any reliable indication as to whether or not the questioned and specimen handwritings/signatures were written by the same individual. The reasons for the limitations will be outlined in the report.

62. She was not even willing it seems to move to d: which is that:

> (d) In my opinion, there is some limited evidence to show that the questioned document/signature was written by the author of the specimens. However, the possibility that another person with a similar style of writing was responsible, or that the signature is an attempt to copy a genuine signature, cannot be excluded.
>
> This phrase is used to indicate that the strength of the evidence is weak and the reasons for the limitations will be explained in the body of the report. The expert considers it more likely that the questioned and specimen handwritings were written by the same individual, or that the signature in question is genuine, rather than an alternative proposition.

63. In fact, her proper conclusion ought in my judgment to have been at least at level c., from the evidence she has given, and the concessions she has made, namely that:

> **(c) In my opinion, there is strong evidence that the questioned document/signature was written by the author of the specimens. I therefore consider it unlikely that another writer was responsible.**
>
> The expert cannot completely exclude the possibility that some other person was responsible, and the reasons for the limitations will be explained in the body of the report. The expert's opinion provides strong evidence to support the view that the questioned and specimen handwritings were made by the same individual, or that the signature in question is genuine, rather than an alternative proposition.

64. For all of these reasons, I am unable to accept the evidence of Mrs Briggs. I conclude she has exhibited a degree of caution which is excessive and unwarranted on the features of the handwriting evidence she has identified, and the concessions she has made. Regrettably, I find it illogical that she found the evidence that Mr Shetty signed the questioned documents inconclusive from the outset; and a fortiori so, when she adhered to that view without any movement at the experts' joint meeting, having regard to the reservations she had expressed in her report, tending to suggest Mr Shetty was the author, and the important further concessions she was obliged to make at the experts' meeting. I strongly prefer the evidence of Ms Radley and unhesitatingly accept her opinion that Mr Shetty was the author of all the questioned signatures and in particular, his signature on the Personal Guarantee.

65. Mr Berkley KC faced an unenviable task and duty of trying to undermine Ms Radley's evidence, especially in the face of the concessions made by Mrs Briggs at the experts' meeting. Despite his skilful endeavours, he was completely unable to move her in her opinions, which were, on all issues and detail, reinforced and reiterated convincingly. His carefully crafted suggestion that because of her much more extensive exposure to Mr Shetty's signatures and her prior conclusions in other cases, that signatures he had disputed were in truth his signatures, she was sub-

consciously biased in giving her opinion in this case, was also convincingly refuted to my satisfaction. I am satisfied that although she could not unsee that which she had previously seen of Mr Shetty's handwriting, she relied principally and properly on the materials submitted for her examination and comparison in this case in reaching her conclusions and there was no operative sub-conscious bias in reaching her conclusions and opinion. She frankly admitted before me that she had an advantage over Mrs Briggs in her having seen many more forms of Mr Shetty's signatures, his abbreviated signature in particular. It was an advantage that Mrs Briggs conceded had enured for Ms Radley's benefit, and as I find, one that might have overcome the excess of caution she, Mrs Briggs, has exhibited in her evidence. I found Ms Radley to be an impressive expert witness, fully cognisant of her duty owed to the Court (enhanced by her additional qualification as a solicitor and officer of the court), who was highly skilled and balanced in her approach, but appropriately forceful in the expression of opinions genuinely held.

F: Conclusion, Judgment and Orders:

66. For all of the foregoing reasons, I am satisfied that Mr Shetty signed his Personal Guarantee on 25 December 2018 and is bound by its terms. The Claimant is therefore entitled to Judgment against him on its claim, for the whole amount now claimed as principal and interest, as calculated and set forth in its updated claim and interest calculation until the date of Trial, the 29 September 2025. This is the amount of USD 45,945,333.26. In addition, the Bank is entitled to further pre-judgment interest accruing at the daily rate of USD 5,802.37 to the date hereof, being in total, USD 52,221.33. Accordingly, there shall be judgment for the Claimant against the fifth Defendant Dr Shetty in the total amount of USD 45,997,554.59.

67. The Claimant is also entitled to post judgment interest from the date hereof pursuant to Practice Direction 4 of 2017, accruing at the rate of 9% per annum on that total judgment sum (which includes interest to the date hereof) of USD 45,997,554.59, being at a daily rate of USD 11,341.86 until payment in full.

68. It was submitted by Mr Berkely KC on behalf of the Defendant, that in the event the Claimant prevails in its claim under the Personal Guarantee, but there may be a measure of recovery by it of some of NMC's indebtedness for reasons explained in paragraph 27 above, there should not be a full and final judgment in the amounts stated but an order for a substantial interim payment to abide the outcome of the recovery. In my judgment, it is unnecessary, unfair and inappropriate, in view of the maximum amount of the comparatively small recovery in prospect, and the uncertainty that it will be achieved, to refuse to make an order for judgment in full for the Claimant as sought. This is particularly the case, where the Claimant, a respected Branch of the State Bank of India, has given an undertaking to this Court, that if it successfully enforces the judgment against Mr Shetty, together with all outstanding interest and costs, it will pay over the full amount of any recovery it makes, pursuant to the scheme described in paragraph 27 above to Mr Shetty. Accordingly, there will be an immediately effective order for judgment in the sums calculated and stated above.

G: Costs:

69. At the conclusion of her submissions, Ms O'Sullivan KC asked the Court to make a summary assessment of costs and informed me that there was a Statement of Costs before the Court. The Claimant has prevailed, it is entitled to its costs in principle, but I am quite unable to make a summary assessment on the basis of the Statement(s) of Costs before the Court. The first contained an egregious error in one of the rates claimed. The Second, supposedly a correction, did not correct the error properly; and in neither of them do their components add up to the total amount claimed. That is to say nothing of other unsatisfactory features of roughly estimated periods of time spent and lack of basic detail being evident.

70. Accordingly, I direct that a proper and accurate statement of costs shall be prepared and filed by the Claimant's lawyers within seven days of this Judgment, which shall be served upon Mr Shetty, who shall have seven days within which to respond to the amounts claimed.