



IN THE COURT OF APPEAL
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

5 May 2023

CASE No: AIFC-C/CA/2023/0013

Joint Stock Company “Center for Ground-based Space Infrastructure”

Appellant/Defendant

v

Joint Stock Company Kazakh-Russian Joint Venture “Baiterek”

Respondent/Claimant

JUDGMENT

Justice of the Court:

Justice Sir Stephen Richards

ORDER

(1) The required extension of time is granted.

(2) Permission to appeal is granted.

JUDGMENT

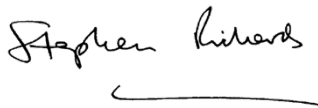
1. By a judgment and order dated 8 November 2022 in Case No. AIFC-C/CFI/2022/0015 the Court of First Instance (“the CFI”) of the Astana International Financial Centre gave judgment in favour of the Claimant against the Defendant in the sum of 13,684,550,338.70 tenge. The claim related to default by the Defendant in providing an environmental impact assessment under a contract between the parties. The Court stated that the Defendant had not provided any substantial reasons as to why the sum should not be paid. The only objection made to the claim was an argument on jurisdiction which the Court readily dismissed.
2. By an appellant’s notice issued on 29 March 2023, far outside the time limit laid down by Rule 29.10 of the AIFC Court Rules, the Defendant has applied for an extension of time and for permission to appeal against the CFI’s judgment. The grounds of appeal rely on arguments that were not raised before the CFI.
3. At first sight such an application looks unpromising. Behind the application, however, lie factual circumstances that make this an unusual case. In summary, the Defendant explains that an analysis initiated immediately following the CFI’s judgment found that the company did not have the assets needed to meet the judgment. Execution of the judgment would result in paralysis of its business and inevitable bankruptcy, with serious social and economic implications for a company with over 10,000 employees. Measures to enforce the judgment have resulted already in prohibitions on the removal and disposal of the company’s property, threatening among other things the completion of work aimed at the development of the Baiterek space rocket complex to the benefit of the Claimant. All this has led to further discussions between the parties and to the identification of a basis upon which the size of the financial award might be challenged, namely that the sum awarded is a penalty disproportionate to the loss incurred by the Claimant through the Defendant’s default: reliance is placed on article 333 of the Civil Code of the Russian Federation, the substantive law of which governs the contract, and on article 297 of the Civil Code of the Republic of Kazakhstan.
4. The Defendant states that in the course of the parties’ attempts to achieve an out-of-court settlement, the AIFC Court’s Registry advised that approval could not be given to a settlement directly modifying the CFI’s judgment and the procedure for its enforcement. That led to consideration of an appeal, though the deadline for an appeal had been missed. The parties signed a memorandum dated 24 March 2023 on co-operation for settling disputes in connection with the performance of the contract. Under that memorandum the Claimant agreed not to oppose the applications for an extension of time and permission to appeal. In written observations pursuant to

Rule 29.13 of the AIFC Court Rules the Claimant has confirmed the memorandum as regards the procedural position but reserves to any substantive appeal its submissions on the merits.

5. In the unusual circumstances described above, I take the view that the Court should not stand in the way of further discussions between the parties with a view to settlement of the dispute. An effective settlement is possible in principle within the framework of an appeal, though the decision whether to modify the CFI’s judgment is ultimately a matter for the appeal Court. Accordingly:
 - (1) I grant an extension of time, despite the length of the extension required. I take into account the stated reasons for the delay and the fact that the respondent does not oppose the application (though it is to be noted that by Rule 29.11 of the AIFC Court Rules the parties cannot by themselves agree to extend the time for appeal – the decision is for the Court).
 - (2) I also grant permission to appeal. I do so not on the basis that an appeal would have a real prospect of success – it is difficult to form a judgment on that issue on the limited material at present before the Court, and the prospect of success is also adversely affected by the failure to raise the arguments before the CFI – but on the basis that there is in the circumstances described some other compelling reason why an appeal should be heard (see Rule 29.6 of the AIFC Court Rules).

6. It is to be hoped that the parties are able now to reach a settlement of the dispute; but in the absence of a settlement the appeal will proceed to a full hearing in accordance with the procedure laid down in Part 29 of the AIFC Court Rules.

By the Court,




Representation:

The Appellant/Defendant was represented by Mr Maxim Dragunikhin, Executive Director of the Joint Stock Company Center for Ground-based Space Infrastructure.

The Respondent/Claimant was represented by Mr Alexandr Tsoy, Executive Director of JSC Kazakh-Russian Joint Venture “Baiterek”.