IN THE COURT OF APPEAL

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

24 June 2022

CASE No: AIFC-C/CA/2022/0014

JSC Cengiz Insaat Sanayi ve Ticaret A.S.

Appellant

v

The Committee for Roads of the Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan

Respondent

JUDGMENT

Justice of the Court:

Justice Sir Stephen Richards

ORDER

The application for permission to appeal is refused.

JUDGMENT

1. By a judgment dated 16 November 2021 in Case No. AIFC-C/CFI/2021/0005 the Court of First Instance of the Astana International Financial Centre gave judgment for the claimant, JSC Cengiz Insaat Sanayi ve Ticaret A.S. ("Cengiz"), in the sum of 1,335,170,366 tenge and ordered the defendant, the Committee for Roads of the Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan ("the Committee"), to pay that sum to Cengiz within 28 days from the date of the order.

2. The Committee subsequently applied to the Court of First Instance for an extension of time for payment of the judgment debt. By a judgment dated 28 April 2022 in Case No. AIFC-C/CFI/2022/0001 the Court granted an extension of time for payment of the debt and ordered that the Committee must pay the debt on or before 30 September 2022.

3. Cengiz now applies for permission to appeal to the Court of Appeal against the decision of 28 April 2022. Rule 29.6 of the AIFC Court Rules provides that permission to appeal may be given where the Court considers that (1) the appeal would have a real prospect of success or (2) there is some other compelling reason why the appeal should be heard. By Rule 29.7 success on an appeal depends on establishing that the decision of the lower Court was (1) wrong or (2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.

4. In his reasons for granting an extension of time until 30 September 2022 for payment of the debt, the judge (Justice Sir Rupert Jackson) stated:

> "2. I have carefully considered the submissions of both parties.
>
> 3. The Committee for Roads is at fault in failing to take prompt steps to secure funds to meet the judgment dated 16 November 2021. On the other hand, the present position is that as a result of that fault the Committee is not currently able to pay the judgment debt.
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> 4. I do not accept that the Committee needs a year in order to secure the necessary funds. There are procedures which need to be followed, but if the Committee moves promptly, it will be able to secure the necessary funds by 30 September 2022."

5. Cengiz advances two main arguments in support of its application for permission to appeal. First, it submits that the extension granted by the Court is excessively long and contributes to the deliberate delaying of payment by the Committee: it maintains that the Committee is now in a position to pay the debt but intends to delay as long as possible and that the Court's order extending time for payment precludes earlier enforcement action. Secondly, it submits that the Court did not take into account the financial difficulties of Cengiz itself, which have been caused by the long-term

nonfulfilment of obligations by the Committee. It contends that in all the circumstances a fair and reasonable deadline for postponing the payment of the debt "could be June 30, 2022 or earlier" and that this time would allow the Committee to fulfil its obligations by paying.

6. Thus, the principle of an extension of time for payment is not now in issue. The only issue raised on this application concerns the date to which the extension should have been granted. As to that, the judge had to form a view on the material before him, balancing the competing considerations and exercising his discretion accordingly. Far from leaving matters out of account, he made clear that he had carefully considered the submissions of both parties. Notwithstanding the arguments advanced by Cengiz, it cannot be said that the judgment he made was an unreasonable one or that the decision was otherwise wrong. It is not contended that there was any procedural or other irregularity in the proceedings. In the circumstances there is no real prospect of success on an appeal; nor do the matters advanced provide any other compelling reason why an appeal should be heard.

7. Accordingly, the conditions for the grant of permission to appeal are not met and the application for permission must be refused.

8. It should be noted that the terms of the order of 28 April 2022 require payment *on or before* 30 September 2022; and on the information provided to the Court by the Committee it appears likely that payment will be made in practice at about the end of June 2022. There is, however, no basis for intervention by the Court to *require* payment to be made at an earlier date than 30 September 2022.

Representation:

The Appellant was represented by Mr. Daniyaz Yensibayev, Law Lab.

The Respondent was not represented.