



IN THE COURT OF FIRST INSTANCE
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

26 April 2024

CASE No: AIFC-C/CFI/2024/0010

COMMERCIAL PROPERTIES LTD

Claimant

v

(1) DOSTYK PLAZA LIMITED LIABILITY PARTNERSHIP
(2) SHYMKENT PLAZA LIMITED LIABILITY PARTNERSHIP

Defendants

JUDGMENT AND ORDER

Justice of the Court:

Justice Andrew Spink KC

ORDER

- 1. The Court sanctions under section 124 of the AIFC Companies Regulations No. 2 of 2017 the proposed arrangement for a reconstruction involving the merger of the Claimant with the Defendants.**
- 2. Pursuant to section 126 of the AIFC Companies Regulations No. 2 of 2017 the Court orders that the Defendants be merged with the Claimant on the basis set out in the “Agreement on Merger” between them dated 16 January 2024.**

JUDGMENT

- By an application filed in Case Number AIFC-C/CFI/2024/0010 by Claim/Application Form dated 27 March 2024 (“the Claim Form”), the Claimant, “Commercial Properties Ltd” (with Business Identification Number (“BIN”) 240140900138) (“the Company”) seeks the following relief as against (but without opposition from) the Defendants, “Dostyk Plaza Limited Liability Partnership” (with BIN 041240005876) (“Defendant-1”) and Shymkent Plaza Limited Liability Partnership (with BIN 130940021526) (“Defendant-2”):
 - an order under section 124 of the AIFC Companies Regulations No. 2 of 2017 (“the AIFC Companies Regulations”) sanctioning an arrangement proposed between the Company and each of the Defendants for a reconstruction involving the merger of the Defendants with the Company; and
 - an order under section 126 of the AIFC Companies Regulations giving effect to the merger of the Defendants with the Company.
- References below to “Schedule No. x” are to the document at Schedule “No. x” listed in and filed with the Claim Form.
- The Company is a Private Company incorporated in the Astana International Financial Centre [*Schedule No. 5 (Company Certificate of Incorporation) and 6 (Certificate of state registration of a legal entity relating to the Company) and Claim Form Section 2 paragraph 1.1*] and is a “Company” within the meaning of the AIFC Companies Regulations (see the definitions in paragraph 4 of schedule 1 to those Regulations).
- The sole shareholder in the Company is Serik Karabekuly Tolbassy [*Schedule No. 6; 9 (Special Resolution No. 1 of the sole shareholder of the Company) and 27 (Articles of Association of the Company)*].
- The Defendants are each legal entities registered outside the AIFC and operating in accordance with the legislation of the Republic of Kazakhstan and the Company’s sole shareholder is also the sole member/participant of each of the Defendants [*Claim Form paragraphs 1.2, 1.4 and 1.6; Schedule No. 7 (Certificate of state registration of a legal entity relating to Defendant-1); 8 (Certificate of state registration of a legal entity relating to Defendant-2); 12 (Resolution No. 1 of the sole member/participant of Defendant-1); 28*

(Charter of Defendant-1); 15 (Resolution No. 1 of the sole member/participant of Defendant-2); 28 (Charter of Defendant-2) and 30 (Amendments to Charter of Defendant-2).

6. It is stated in the Claim Form, supported by a statement of truth signed by Arman Omirbekov, who states that they are duly authorised to sign that statement on behalf of the Company and who holds a relevant Power of Attorney from the Company [*Schedule No. 3 (Power of Attorney dated 16 March 2024)*], further it is confirmed in the documents filed with the Claim Form, that the Company's sole shareholder has agreed on behalf of the Company and the sole member/participant of each of the Defendants has agreed on behalf of each of the Defendants to the merger of the Defendants with the Company [*Claim Form Section 2 paragraphs 2.1, 2.2 2.3 and 2.4; Schedule No. 9, 12 & 15 (Special Resolutions No.1 of Claimant, Defendant-1 and Defendant-2); and 18 (Agreement on Merger dated 16 January 2024)*].
7. Although the following requirements are not addressed expressly in the Claim Form, it is to be noted:
 - (a) that, while Section 124(2) of the AIFC Companies Regulations empowers the Court to order a meeting of the shareholders of the Company, no such order is required in this case because the sole shareholder has already approved the proposed procedure, as indicated above;
 - (b) further, that the requirement under Section 124(3) that a majority representing three-quarters of the votes of the shareholders of the Company present and voting at the shareholders' meeting has been met, as indicated above;
 - (c) further that, under the "Agreement on Merger" dated 16 January 2024 [*Schedule No. 18*],
 1. the Company undertook to notify the creditors of the Company about the upcoming reorganisation of the Company and the Defendants; and
 2. each of the Defendants undertook to notify their creditors about the upcoming the reorganisation of the Company and the Defendants.
8. Documents filed in support of the application include:
 - (a) the various documents already referred to above;
 - (b) Confirmation that the Company has no debts recorded by the state revenue authorities [*Schedule No. 11*];
 - (c) Confirmation that each of the Defendants has no debts recorded by the state revenue authorities [*Schedule No's. 14 & 17*];
 - (d) Copies of sample notices of the Company's reorganisation by merger with the Defendants to one identified creditor of each of the total of 580 creditors of the Company and the Defendants

[Schedule No's. 19, 21 & 23]; together with, in each case, sample letters from the delivery company confirming delivery of such notices to the respective creditors *[Schedule No's. 19, 21 & 23]*;

(e) Financial statements for the Company as at 29 February 2024 *[Schedule No.10]*;

(f) Financial statements for each of the Defendants as at 31 December 2023 *[Schedule No's. 13 & 16]*.

9. The Agreement on Merger describes an agreement between the Company and the Defendants to carry out a reorganisation in the form of a merger between the Company and the Defendants involving a transfer of property from and all rights and obligations of each of the Defendants to the Company. The Merger Agreement expressly refers at "Background" paragraphs A, B and C to the Company and Defendants' respective "Resolutions No. 1" referred to above. Each of those "Resolutions No.1" makes it clear that the basis for the agreed merger is as set out in the Agreement on Merger.
10. I am satisfied that Section 124 of the AIFC Companies Regulations applies in this case, in that the matters summarised above constitute an arrangement proposed between the Company and its 100% Shareholders (Section 124(1)(b)).
11. There is no application for the Court to order that a meeting of shareholders be held to vote on the proposal (Section 124(2)), and I take the view that no such order is needed, for the reason set out in paragraph 7(a) above.
12. The Court has not been informed of any objection to the proposal. Moreover, the proposal appears adequately to protect the position of third parties by the transfer of all obligations of the Defendants to the Company in circumstances where:
- (a) all those creditors/contracting counterparties in respect of whom information has been provided to the Court have been notified of the proposed reorganisation *[Claim Form paragraph 2.4a]* and all of the assets and capital of the Defendants, which are broadly similar in value to the value of their respective liabilities *[Schedule No's 13 & 16]* are to be transferred to the Company which, under the Agreement on Merger, takes over all of the liabilities of the Defendants;
 - (b) the Company's own pre-merger liabilities do not exceed its own pre-merger assets *[Schedule No. 10]*; and
 - (c) each of the Company and the Defendants consent to the proposed reorganisation, and in particular to the transfer of all the obligations of each of the Defendants to the Company, the Company and the Defendants having first fully disclosed to each other all of their respective assets and liabilities.

13. In the circumstances I consider it appropriate for the Court to sanction the proposed arrangement by order under Section 124(3) of the AIFC Companies Regulations.
14. Section 126 of the AIFC Companies Regulations provides that if an application is made to the Court under Section 124 for the sanctioning of an arrangement between a Company and its shareholders, “the Court may make any orders as it considers appropriate to facilitate the ... arrangement, including a reconstruction of the Company, or an amalgamation of the Company with any other Company”. It provides further that “in this section Company may be taken to include a Body Corporate incorporated outside the AIFC”.
15. This raises the question of whether the Court has power to make an order under Section 126 where, as here, two of the entities to be involved in the amalgamation, namely each of the Defendants, is neither a “Company” in its primary sense of being a “Private Company or a Public Company” incorporated in the AIFC (as per paragraph 4 of Schedule 1 to the AIFC Companies Regulations) nor a “Body Corporate incorporated outside the AIFC” because it is a limited liability partnership rather than a body corporate. As to this, I respectfully agree with and adopt the approach to the making of the Section 126 part of the Order taken by Justice Sir Stephen Richards in AIFC Court Case No. AIFC-C/CFI/2021/0002 at [11] in his Judgment, where he said:

*“The amalgamation of the LLP with the Company is at the heart of the proposed arrangement and it is appropriate in my view for the amalgamation to take place to facilitate the arrangement. An amalgamation involving a limited partnership registered outside the AIFC does not fall within the express wording of the section, **but that wording is not exhaustive of the forms of amalgamation that may be ordered** (“including ... an amalgamation of the Company with any other Company”). I see no reason of principle why an order should not extend in an appropriate case to the amalgamation of a Company with a limited partnership, nor why a limited partnership registered outside the AIFC should be in any worse a position in that respect than a body corporate incorporated outside the AIFC.”* (emphasis added)

16. I therefore conclude that the Court should make an order under Section 126 of the AIFC Companies Regulations that the Defendants be merged with the Company on the basis set out in the Agreement on Merger between them dated 16 January 2024 [Schedule No. 18].

By the Court,

Justice Andrew Spink KC