



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

19 June 2023

CASE No: AIFC-C/SCC/2023/0014

AURORA GEOPHYSICS LTD

Claimant

v

METEOR MINING COMPANY KZ (CONDUIT 23) LTD

Defendant

JUDGMENT

Justice of the Court:

Justice Patricia Edwards

ORDER

UPON the commencement of a Claim on 24 April 2023;

AND UPON the filing of a Defence on 8 May 2023;

IT IS ORDERED that:

1. The Defendant shall, by 4pm on 30 June 2023, pay the Claimant:
 - (1) KZT 14,093,888 indexed as of the date of payment as provided in clause 2.1 of the Agreement dated 1 September 2021;
 - (2) KZT 5,877,760 indexed as of the date of payment as provided in clause 2.1 of the Agreement dated 22 October 2021; and
 - (3) KZT 1,997,165.

JUDGMENT

1. The Claimant and the Defendant entered into two Geophysical Survey Agreements, dated 1 September 2021 and 22 October 2021 (“the Agreements”). In the first Agreement, the Claimant agreed to carry out a geophysical survey in return for a total sum of 14,093,888 tenge. In the second Agreement, the Claimant agreed to carry out a geophysical survey of a second site, in return for a total sum of 5,877,760 tenge.

Jurisdiction

2. Clause 11.4 of each Agreement provides that:

“11.4 All disputes and disagreements that may arise between the Parties will be resolved through negotiations. Unresolved disputes are resolved in the Specialized Interdistrict Economic Court of Nur-Sultan in the manner prescribed by the legislation of the Republic of Kazakhstan.”

11.6 The applicable law under the Agreement is the law of the Republic of Kazakhstan. In everything that is not regulated by the Agreement, the Parties are guided by the legislation of the Republic of Kazakhstan.”

3. However, both parties are members of the AIFC and in the claim and defence both agree that the dispute should be resolved by the AIFC Court. Pursuant to Article 13.4 of the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre, Constitutional Statute No. 438-V ZRK of 7 December 2015 (as amended), the AIFC Court has exclusive jurisdiction in relation to *“disputes transferred to the AIFC Court by agreement of the parties”*. This court therefore has jurisdiction over this claim.
4. The Claimant claims 19,971,648 tenge plus penalties amounting to 1,997,165 tenge. The total sums claimed are equivalent to approximately US\$49,000. As this is less than US\$150,000, it is appropriate that the claim be determined in the Small Claims Court pursuant to Rule 28.1(1) of the AIFC Court Rules.

Payment terms

5. Clause 1.2 of each Agreement provided that:

“1.2 The works are considered completed after the signing of the Certificate of Completion of the Works by the authorized representatives of the Parties.”

6. On 14 April 2022, certificates of performance of the surveys were signed by the parties under both Agreements.

7. Pursuant to clause 3 of each agreement:

“3.1.1 The Client makes an advance payment to the Contractor in the amount of 40% of the Total amount of the Agreement. Payment of the advance payment is made no later than 5 (five) business days from the date of the signing of the Agreement.

3.1.2 Subsequent payments are made monthly upon completion of field and processing works, no later than 5 (five) working days from the date of signing by the parties of the Certificate of Completion.”

8. Accordingly, the first 40% under each Agreement was due by 8 September and 29 October 2021 respectively. The remaining sums fell due by 21 April 2022 under both Agreements, being five working days from signing of the certificates of completion.
9. On 16 June 2022, the Claimant sent the Defendant a pre-trial claim, saying that the services had been performed and accepted in full, and asking for payment of the sums due under the Agreements by 26 June 2022.
10. Various discussions appear to have followed about potential investors being sought by the Defendant, and timings for making payments. No resolution was reached, and this claim was commenced on 24 April 2023.
11. On 8 May 2023, the Defendant filed its Defence. The document refers to various challenges faced by the Defendant, including due to Covid-19 and difficulties in securing investors. However, no substantive defence to the claim has been raised.
12. It follows, therefore, that the Defendant is liable to pay the cost of works claimed under the Agreements. The total sum due in this respect is KZT 19,971,648.
13. It should be noted that this sum may fall to be adjusted in line with changes in exchange rates. Clause 2.1 of the first Agreement provides:

“The total cost of the Works to be performed by the Contractor under the Agreement is 14 093 888 ... tenge ... on the basis that 1 US dollar is equal to 425.74 at the rate of the National Bank of the Republic of Kazakhstan as of 31.08.2021. If the US dollar exchange rate set by the National Bank of the Republic of Kazakhstan changes, the cost of the services provided by the Contractor will be indexed as of the date of the Client pays for the Contractor’s services.”

14. Clause 2.1 of the second Agreement is in materially identical terms, save that the passage underlined above is replaced with the following: *“on the basis that 1 US dollar is equal to 425.71 at the rate of the National Bank of the Republic of Kazakhstan as of 22.10.2021”*.
15. Accordingly, the cost of works under each Agreement should be adjusted pursuant to these clauses at the date of payment.

Penalty

16. In addition, the Defendant is liable to pay an additional sum for late payment under each Agreement. Clause 6.3 of each Agreement provides:

“6.3 For violation by the Client of the terms of payments stipulated by the terms of the Agreement, the Client shall pay to the Contractor, at his request, a penalty in the amount of 0.1 (one tenth)% of the Total amount of the Agreement for each day of delay, but not more than 10 (ten)% of the Total amount of the Agreement.”

17. The delay in payment under each Agreement has been more than 100 days, and accordingly the maximum penalty of 10% has been reached. The total penalty due under both Agreements is therefore KZT 1,997,165.

By the AIFC Court,

Patricia Edwards,
Justice, AIFC Court

Representation:

The Claimant was represented by Omarov Nariman Maidanovich, legal counsel, Aurora Geophysics LTD, Astana, Kazakhstan.

The Defendant was not represented.