



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

15 January 2024

CASE No: AIFC-C/CFI/2023/0029

GENERAL CONTRACTORS GROUP LTD

Claimant

v

BI CONSTRUCTION & ENGINEERING LLP

Defendant

JUDGMENT AND ORDER

Justice of the Court:

Justice Andrew Spink KC

ORDER

- 1. The Court sanctions under section 124 of the AIFC Companies Regulations 2017 the proposed arrangement for a reconstruction involving the amalgamation of the Claimant with the Defendant.**
- 2. Pursuant to section 126 of the AIFC Companies Regulations 2017 the Court orders that the Defendant be amalgamated with the Claimant on the basis set out in the Merger Agreement between them dated 28 July 2023.**

JUDGMENT

- By an application filed in Case Number AIFC-C/CFI/2023/0029 by Claim/Application Form dated 20 September 2023 (“the Claim Form”), the Claimant, “General Contractors Group Ltd” (with Business Identification Number (“BIN”) 230640900342) (“the Company”) seeks the following relief as against (but without opposition from) the Defendant, “BI Construction & Engineering LLP” (with BIN 170840021153) (“the LLP”):
 - an order under section 124 of the AIFC Companies Regulations 2017 (“the AIFC Companies Regulations”) sanctioning an arrangement proposed between the Company and the LLP for a reconstruction involving the merger of the LLP with the Company; and
 - an order under section 126 of the AIFC Companies Regulations giving effect to the merger of the LLP with the Company.
- References below to “Document x” are to a document numbered “x” listed in and filed with the Claim Form.
- The Company is a Private Company incorporated in the Astana International Financial Centre [*Documents 3 (Company Certificate of Incorporation) and 5 (Certificate of state registration of a legal entity relating to the Company) and Claim Form Section 2 paragraph 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 Shareholders are a Private Company, “BI Group Ltd”, and a Limited Liability Partnership, “BI Capital”, and who are the “Founders” and sole shareholders in the Company [*Documents 1 (Articles of Association for the Company) and 5*].
- The LLP is a legal entity registered outside the AIFC and operating in accordance with the legislation of the Republic of Kazakhstan and the Company Founders and Shareholders are also the sole Founders of and Shareholders of in the LLP [*Document 4 (Certificate of state re-registration of a legal entity relating to the LLP)*].

6. It is stated in the Claim Form, supported by a statement of truth signed by Abiltusupova Aigerim Abilkhazievna, 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 [*Document 8*], further it is confirmed in the documents filed with the Claim Form, that the Company Shareholders have agreed on behalf of the Company and the LLP Shareholders have agreed on behalf of the LLP to the merger of the LLP with the Company [*Claim Form Section 2 paragraphs 3 and 4 and Documents 10 (EGM minutes – Company) and 11 (EGM minutes - LLP)*].
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 Shareholders have 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 (Document 10 as listed in the Claim Form);
 - (c) further that, under the “Agreement on merger of [the LLP] with [the Company]” dated 28 July February 2023 (Document 13 as listed in the Claim Form) (“the Merger Agreement”),
 1. the Company undertook to notify the creditors of the Company about the upcoming the reorganization of the Company and LLP; and
 2. the LLP undertook to notify the creditors of the LLP about the upcoming the reorganization of the Company and LLP.
8. Documents filed in support of the application include:
 - (a) the various documents already referred to above;
 - (b) the Charter of the LLP [*Document 2*];
 - (c) the Merger Agreement [*Document 13*]
 - (d) Confirmation that the Company has no debts recorded by the state revenue authorities [*Document 6*];
 - (e) Confirmation that the LLP has no debts recorded by the state revenue authorities [*Document 7*];
 - (f) Copies of notices to 13 identified creditors of the LLP of the Company’s reorganization by merger with the LLP [*Document 9*];
 - (g) Financial reporting data for the LLP as at 1 August 2023 [*Document 14*];

- (h) Financial reporting data for the Company as at 1 August 2023 *[Document 15]*;
 - (i) Certificate of assets, capital and liabilities to be transferred from the LLP to the Company under the Merger Agreement *[Document 16]*.
9. The Merger Agreement describes an agreement between the LLP and the Company to carry out a reorganization in the form of a merger between the Company and the LLP involving a transfer of property from and all rights and obligations of the LLP to the Company. The Merger Agreement expressly refers at clause 1.1 to the EGM minutes for the Company and the LLP *[Documents 10 and 11]* referred to above and states that the decisions of the Company and the LLP as recorded in those documents is the basis of the reorganization forming the subject matter of the Merger Agreement.
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 LLP 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 *[Document 14]* and all of the assets and capital of the LLP, which are broadly similar in value to the value of its liabilities *[Documents 14 and 16]*;
 - (b) the Company has no separate liabilities of its own *[Document 15]*;
 - (c) the share capital of the Company post-reorganisation and merger will be equal to the sum of the equal prior capitals of the Company and the LLP (clause 3.1 of the Merger Agreement), and
 - (d) each of the Company and the LLP consent to the proposed reorganisation, and in particular to the transfer of all the LLP's obligations to the Company, the Company and the LLP 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, one of the entities to be involved in the amalgamation, namely the LLP, 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 LLP be amalgamated with the Company on the basis set out in the Merger Agreement between them dated 28 July 2023 [Document 13].

By the Court,

Justice Andrew Spink KC