



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

7 February 2025

CASE No: AIFC-C/CFI/2024/0047

AOM SDF I B.V. BESLOTEN VENNOOTSCHAP

Claimant

v

- (1) ECO Product Company LLP
- (2) Mr. Azamat Talgatovich Kubiyev
- (3) Mr. Alibek Shokanovich Saimov
- (4) Mr. Asset Askarovich Tulegenov

Defendants

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JUDGMENT

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Justice of the Court:

Justice Sir Rupert Jackson

**JUDGMENT**

This judgment is in four parts, namely:

Part 1. Introduction

Part 2. The facts

Part 3. The present proceedings

Part 4. Decision.

**PART 1. INTRODUCTION**

1.1 There is before the Court today an arbitration claim brought by AOM SDF I B.V. BESLOTEN VENNOOTSCHAP. I will refer to that company as AOM. The Respondents to this arbitration claim are ECO Product Company LLP to which I shall refer as ECO; Mr. Azamat Talgatovich Kubiyeu to whom I will refer as Mr. Kubiyeu; Mr. Alibek Shokanovich Saimov to whom I will refer as Mr. Saimov; Mr. Asset Askarovich Tulegenov to whom I will refer as Mr. Tulegenov. The claim arises from an arbitration which was launched against four Parties under four different arbitration agreements, but in which the arbitrator only dealt with the claim against one Respondent ECO.

1.2 I now turn to some relevant legislative provisions. Article 6 of the International Arbitration Centre Rules 2022 of the Astana International Financial Centre includes the following:

“6.1. Where more than two parties are bound by the arbitration agreement, one or more parties may request an arbitration in the same Request against one or more respondents (whether or not jointly represented), and references in these Rules and any relevant arbitration agreement to ‘Claimant’ and ‘Respondent’ shall be interpreted to include the plural as applicable.

...

“6.8. Parties may make claims arising out of or in connection with more than one contract in a single arbitration.

“6.9 Any party may object to all of the claims being made being determined in a single arbitration. Any such objection should be made to the Tribunal as soon as practicable.

“6.10 At the request of a party the Tribunal may decide to consolidate a newly commenced arbitration with a pending arbitration, if:

(1) the parties agree to consolidate;

(2) all the claims are made under the same arbitration agreement; or

(3) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Registrar considers the arbitration agreements to be compatible.”

1.3 Article 26 of the AIFC Court Regulations is also relevant. Article 26(8) provides:

“The Court shall have jurisdiction in relation to any matter in respect of which jurisdiction is conferred on it by the AIFC Constitutional Statute or AIFC Regulations, including with regards to the Court’s authority to perform functions to facilitate effective arbitration.”

- 1.4 Having dealt with those introductory matters and set out some relevant provisions, I shall now turn to the facts.

## PART 2. THE FACTS

- 2.1 On 30 December 2021, AOM entered into a loan agreement with ECO, whereby AOM made available 4.1 billion tenge to ECO to enable ECO to purchase equipment to carry out construction works. Clause 14.2 of the loan agreement provided: “Disputes and disagreements that may arise during the execution of this Agreement shall, if possible, be resolved through negotiations between the Parties. Such disputes and disagreements must be settled within 30 calendar days from the date of sending the claim by the initiating party. Disputes and disagreements arising from or in connection with this Agreement that have not been settled within the above-mentioned period, including those relating to its existence, validity, interpretation, execution, violation or termination, are submitted for consideration and finally resolved within the framework arbitration proceedings conducted by the International Arbitration Center of the Astana International Financial Center (“IAC”), in accordance with the Rules of Arbitration and Mediation of the IAC, applicable to the Chamber of Filing to the Registrar MAI I Requests for arbitration, and forming an integral part of this Agreement.”
- 2.2 On 31 December 2024, 28 February 2022 and 1 April 2022, AOM and ECO entered into supplemental agreements which amended the terms of the loan agreement. On 29 July 2022, Mr. Kubiyeu, Mr. Saimov and Mr. Tulegenov entered into Guarantee agreements with AOM, whereby they guaranteed the performance of ECO’s obligations under the loan agreement. Clause 5.2 of each Guarantee agreement contained a provision for arbitration similar but not quite identical to clause 14.2 of the Loan agreement. Mr. Saimov admits to having signed the Guarantee agreement. Counsel told me that Mr. Kubiyeu and Mr. Tulegenov did not sign the Guarantee agreements which bear their names. I see in the Bundle what appear to be their signatures, but I am in no position to comment on whether those signatures are indeed valid.
- 2.3 On 21 November 2022 AOM and ECO entered into a fourth supplemental agreement which further amended the terms of the loan agreement. On 20 December 2022, ECO repaid the sum loaned namely 4.1 billion tenge to AOM. Although ECO repaid the principal sum to AOM, ECO failed to pay the remuneration to which AOM maintained it was entitled for having made that sum available.
- 2.4 On 7 April 2022 AOM served a Request for Arbitration in order to recover through arbitration the remuneration to which it maintained it was entitled. The Request for Arbitration named four Respondents namely ECO, Mr. Kubiyeu, Mr. Saimov and Mr. Tulegenov. On page 8 of the Request for Arbitration, the Claimant AOM requested the appointment of Mr. Vatayev as arbitrator, although in the end a different arbitrator, namely Mr. Zykov, was appointed. On page 9 of the Request for Arbitration, the Claimant listed the agreements upon which it relied including in the list the loan agreement which recorded the loan made by AOM to ECO, and the three Guarantee contracts, each of which contained an arbitration clause. So, the Request for Arbitration clearly sets out four contracts which contain arbitration clauses. In due course the Respondent served responses to the Request for Arbitration. Mr. Tulegenov and Mr. Kubiyeu objected to proceedings being brought against them at the same time as ECO. The Respondents raised a number of points by way of the defence to AOM’s

claim. Mr. Saimov did not actually serve a response to the Request for Arbitration, but I assume if he had done so he would have made the same sort of points as Mr. Kubiyev and Mr. Tulegenov. At a case management conference on the 24 April 2024, it was decided that all Parties would prepare and submit position papers concerning the claims against the three guarantors. AOM, Mr. Kubiyev and Mr. Tulegenov dully prepared and submitted their position papers. Mr. Saimov did not. On 7 June 2024, the arbitrator issued a determination of competence. He said he had jurisdiction over claims against ECO, but he was not competent to hear the claims against the three guarantors. The decision on competence included the following passages:

- 2.5 Paragraph 18: “As noted above, several independent contracts containing independent arbitration agreements were concluded between the Plaintiff and various Defendants. A loan Agreement was concluded between the Plaintiff and Defendant 1. A Guarantee Agreement was concluded between the Plaintiff and the Defendant (2) 1. A Guarantee Agreement 2 was concluded between the Plaintiff and the Defendant (3). A Guarantee Agreement was concluded between the Plaintiff and the Defendant (4) 3. Accordingly, the Defendants (2), (3) and (4) are not a party to the Loan Agreement, and therefore are not parties to the arbitration agreement contained in clause 14.2 of the Loan Agreement under which this arbitration is being conducted.”
- 2.6 Paragraph 27: “By virtue of the principle of autonomy of the arbitration agreement, enshrined in Article 5.7 of the Law "On Arbitration" and Article 7.2 of the IAC Rules, arbitration agreements concluded between the Plaintiff on the one hand and the Defendants (1) - (4) on the other, each is an independent agreement, independent of the Loan Agreement. As noted above, the Defendants (2), (3) and (4) are not parties to the Loan Agreement, and therefore are not parties to the arbitration agreement contained in clause 14.2 of the Loan Agreement. They are each parties to their own arbitration agreement within the framework of individual guarantee Agreements. Therefore, consideration of claims against Defendants (2) - (4) within the framework of the arbitration agreement contained in clause 14.2 of the Loan Agreement is possible only if they have their express consent to become a party to this arbitration agreement (arbitration proceedings), or if they do not object before they submit responses to the claims on the merits of the case. As noted above, the Defendants (2) - (4) did not express such consent.”
- 2.7 Paragraph 29: “Taking into account the fact that:
- a. The plaintiff initiated the present arbitration proceedings within the framework of paragraph 14.2 of the Loan Agreement (paragraph 22 of the Request for Arbitration);
  - b. Defendants (2), (3) and (4) are not parties to the Loan Agreement;
  - c. Defendants (2) and (4), prior to submitting feedback on the statement of claim, stated that the sole arbitrator did not have the authority to consider the dispute transferred to his resolution within the framework of the Loan Agreement;
  - d. The defendant (3) did not consent to the consideration of claims against himself within the framework of paragraph 14.2 of the Loan Agreement,

The sole arbitrator concludes that he did not have the competence to resolve claims against Defendants 2, 3 and 4 in the framework of these arbitration proceedings initiated on the basis of clause 14.2 of the Loan Agreement.

This conclusion is made without prejudice to the Plaintiff’s rights to make claims against Defendants (2), (3) and (4) within the framework of individual Guarantee Agreements 1, 2 and 3 on the basis of the arbitration agreements contained therein.”

- 2.8 I comment in passing that Mr. Zykov, the arbitrator who had been appointed by the Chairman of the International Arbitration Centre, appeared to have no doubt that the Second, Third and Fourth Respondents had signed their respective arbitration agreements. Certainly, that is implicit in the language which he used.
- 2.9 AOM was dismayed by the arbitrator's determination of competence. AOM made no secret of its dismay. By a document dated 25 June 2024, AOM attempted to appeal to the International Arbitration Centre against the determination of competence, in order to secure a finding that Mr. Zykov could deal with the claims against all four Respondents. By email dated 23 July 2024 the arbitrator informed the Claimant as follows:
- “Regarding the plaintiff's complaint against the arbitrator's determination of competence, I would like to inform you that the IAC Rules do not provide for the possibility of appealing the decision on competence, or the possibility of the arbitrator himself reviewing his decision.”
- 2.10 AOM accepted that advice and did not see to launch any challenge to determination of competence before the AIFC Court. Indeed, on looking at the Rules, I myself do not see what challenge AOM could have brought at that stage of the proceedings.
- 2.11 Thereafter, the arbitration proceeded against the ECO alone. On 4 November 2024 the arbitrator issued his award. The Award is very clear. I will not set it out. The reasoning within the award is plain. The arbitrator came to the following conclusion set out in paragraph 79 of this Award:
- 2.12 “Based on the foregoing, the arbitrator

**ORDERS:**

1. To recover from TOO "ECO Product Company" in favour of AOM SDF I B.V. BESLOTEN VENNOOTSCHAP the amount of the debt under the Loan Agreement in the amount of KZT 335,420,001.05 (three hundred thirty-five million four hundred twenty thousand one and five).
  2. To recover from TOO "ECO Product Company" in favour of AOM SDF I B.V. BESLOTEN VENNOOTSCHAP the arbitrator's fee in the amount of KZT 500,000 (five hundred thousand).”
- 2.13 AOM was aggrieved by the fact that the arbitrator had made no award against the three guarantors under the Guarantee agreements, despite the fact that those agreements contained arbitration clauses.
- 2.14 Accordingly, AOM commenced the present proceedings.

**PART 3. THE PRESENT PROCEEDINGS**

- 3.1 By a Claim Form issued in the AIFC Court dated 10 December 2024 AOM brought a claim against ECO, Mr. Kubiyev, Mr. Saimov and Mr. Tulegenov contending that the arbitrator fell into error and ought to have allowed the arbitration to proceed against all four Respondents rather than ECO alone. AOM are applying for an order that the award be set aside and that instead the arbitration should proceed against all four Respondents, so that AOM could have an award against all four Respondents.
- 3.2 On 7 January 2025 Mr. Kubiyev, Mr. Tulegenov and Mr. Saimov submitted their responses to the arbitration claim form. They maintain that the arbitrator's decision on jurisdiction and competence

dated 7 June 2024 was correct. They maintain that the arbitrator had appropriately exercised his discretion under Rule 6.9 of the Arbitration Rules, which I have previously quoted in Part 1 of this Judgment. They raise a number of other defences as well to the arbitration claim.

- 3.3 This matter came on for hearing before this Court today, Thursday 6 February 2025. All Parties have furnished skeleton arguments to the Court, for which I am grateful. Leaving aside the issue about signatures, the problem in this case is that the claims against the Second, Third and Fourth Respondents have not been determined by any arbitrator. I suggested in the course of argument that this case should go back to the International Arbitration Centre for the appointment of an arbitrator to deal with the claims against the Second, Third and Fourth Respondents.
- 3.4 Mr. Akhmetov for the Claimant, AOM, was inclined to agree with that proposal, but he pointed out that there would be problems if there was more than one award in existence for the same sum of money.
- 3.5 Counsel for Eco criticised the award made by the arbitrator, because he said that AOM had put up barriers which prevented the loan from being drawn down effectively. He was very critical of the award made by the arbitrator.
- 3.6 Counsel for Mr. Kubiyev and Mr. Tulegenov said that first of all they denied having signed the arbitration agreements, but if they were bound by the arbitration agreements, there should be three separate arbitrators appointed: one to deal with the claim against each guarantor.
- 3.7 Counsel for Mr. Saimov conceded that Mr. Saimov had signed his Guarantee agreement. He said that the arbitration award should not be set aside, and there could be separate claims brought against the three guarantors.
- 3.8 In his reply submissions, Mr. Akhmetov was critical of Mr. Kubiyev and Mr. Tulegenov for disputing their signatures at this late stage of the proceedings. He pointed to various signatures in the Bundle. He said that these were clearly signatures of Mr. Kubiyev and Mr. Tulegenov, and this point was very unmeritorious. As previously mentioned, I am in no position to decide about the signatures in the Bundle or to say whether or not they are valid signatures of Mr. Kubiyev and Mr. Tulegenov.
- 3.9 Mr. Akhmetov went on to criticise strongly the arbitrator's decision on competence. He said it was quite wrong. There should have been a single award against all four Respondents. The guarantors were liable for essentially the same debt as the borrower, ECO.
- 3.10 Having summarised the arguments of counsel for the various Parties, I must now come to a decision.

#### PART 4. DECISION

- 4.1 The first matter I must consider is the Claimant's criticisms of the determination of competence. The Claimant says that the arbitrator should have exercised his powers under Article 6 of the Arbitration Rules to consider the claims against all Respondents, because all four arbitration agreements were referred to in the Request for Arbitration. He submitted that the Loan agreement and the Guarantee agreements formed a series of transactions as envisaged by Rule 6.10 of the Arbitration Rules. I see the force of these criticisms. Nevertheless, the arbitrator had a discretion under the Rules as to

whether or not to consider these different arbitration claims together. He chose not to do so. I cannot say that that decision amounted to an error of law.

- 4.2 I turn next to the criticisms of the actual decision made by the arbitrator in his Award. I am referring now to the criticisms made by ECO. Those criticisms which Counsel argued before me today were all matters which the arbitrator considered in his Award (see paragraphs 55-74). The arbitrator held that despite certain barriers being put up by AOM, ECO had the benefit of the funds in the escrow account and earned interest upon them. That was part of the reasoning which led the arbitrator to make the financial award to which I have referred. I have come to the conclusion that the arbitrator made no error of law in arriving at his Award, which would enable this Court to set aside the Award. The arbitrator reached a decision he was entitled to reach in relation to competence in mid-2024, and he subsequently made an Award which he was entitled to make on the material before him on 4 November 2024. I therefore accept the submissions made by Counsel on behalf of Mr. Saimov that I should not set aside the arbitrator's Award.
- 4.3 On that basis the problem remains that AOM's claims against the Second, Third and Fourth Respondents have not been determined. I do not accept Counsel's submission that three separate arbitrations are needed before three separate arbitrators to determine these claims. All three claims under the Guarantee agreements are of a very similar nature and raise similar issues. In my view, the proper way forward is for this case to go back to the International Arbitration Centre, so that the Chairman in consultation with the Registrar can appoint a new arbitrator to deal with the claims against the Second, Third and Fourth Respondents, which Mr. Zykov declined to consider.
- 4.4 I have power to make such an Order because, as previously mentioned, the AIFC Court under Regulation 26.8 of the AIFC Court Regulations has power to make orders to facilitate effective arbitration, and that is precisely what I am doing in this case. Given the circumstances, I am making an Order to facilitate effective arbitration.
- 4.5 The new arbitrator will be able to consider the point about the validity of Mr. Kubiyev's and Mr. Tulegenov's signatures, if Mr. Kubiyev and Mr. Tulegenov wish to pursue that point any further. That would be a matter for the new arbitrator. That is not something which I can possibly decide at this hearing, because this Court deals with issues of law, rather than factual matters such as the analysis of signatures.
- 4.6 If the new arbitrator makes an Award against all or any of the Guarantors, the problem will arise which Mr. Akhmetov identified, namely that there will be two different Awards relating to the same sum of money. It will be a matter for the new arbitrator how to deal with that problem. One possible approach would be for him to make an Award which specifies the sum due from the Guarantors, but states that sum cannot be recovered from them to the extent that AOM makes recovery against ECO. As Mr. Akhmetov very fairly said in his submissions, the Claimant has no wish to recover the same sum of money twice over. So, what will happen in practice is that the Claimant will recover what it can from ECO and thereafter, if the arbitration against the Guarantors or any of them succeeds, the Claimant will set about recovering from the Guarantors whatever it cannot recover from ECO.

- 4.7 Let me now draw the threads together. The Claimant has a legitimate grievance, but I decline to set aside the arbitrator's Award. Instead, I direct that this matter be remitted to the AIFC International Arbitration Centre, so that the Chairman after consulting with the Registrar can appoint a new arbitrator to deal with the Claimant's claims against the Second, Third and Fourth Respondents.
- 4.8 This is a case in which each Party has had a measure of success. I assume that no Party is going to make an application for costs, but if anyone wishes to apply for costs, they should make such application now.
- 4.9 [There was no application for costs.]

By the Court,

Sir Rupert Jackson,  
Justice, AIFC Court

**Representation:**

The Claimant was represented by Mr. Murat Akhmetov, Investment Legal Adviser, AOM SDF I B.V., Astana, Republic of Kazakhstan.

The First, Second, and Fourth Defendants were represented by Mr. Azamat Karshigin, Lawyer, Aktobe, Republic of Kazakhstan.

The Third Defendant was represented by Mr. Nurzhan Rakhmetov, Lawyer, Astana, Republic of Kazakhstan.