

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

2 August 2024

CASE No: AIFC-C/CFI/2024/0005

BONDHOLDERS (138) OF THE BONDS

Claimants

v

(1) LIMITED LIABILITY PARTNERSHIP NEF QAZAQSTAN

(2) TIMUR GAYRIMENKUL GELİŞTİRME YAPI VE YATIRIM A.Ş.

Defendants

CLARIFICATION ORDER

Justice of the Court

Justice Tom Montagu-Smith KC

ORDER

1. The Claimants' entitlement to payment under paragraph 2 of the Court's Order of 25 June 2024 ("the Order") shall be divided between them in accordance with the schedule filed by the Claimants on 10 July 2024 ("the Schedule"). Each Claimant shall individually be entitled to the sum set out against their name in the column entitled "Total Debt" in the Schedule.
2. The Schedule shall not be published on the website of the AIFC Court.
3. The First Defendant shall pay the sums due pursuant to paragraph 2 of the Order by making payment to the account of Astana International Exchange Central Securities Depository Limited identified by the Claimants in their Response to Directions dated 15 July 2024.
4. The First Defendant shall pay the sums due pursuant to paragraph 3 of the Order by making payment to the account of Ms. Guldana Mirasheva identified by the Claimants in their Response to Directions dated 15 July 2024.

REASONS

1. On 25 June 2024, I gave judgment for the Claimants. By paragraph 2 of the Order, I ordered the First Defendant to pay the Claimants, in total, KZT 1,888,333,956.03 in respect of the principal debt and penalty. The Claimants were jointly represented and no particular order was sought determining the Claimants' individual entitlement between themselves. By paragraph 4 of the Order, I directed that the Claimants should each be entitled to their individual share of the total sum in proportion to their ownership of the Bonds which were the subject of the proceedings. In my reasons, I made clear that, for each Bond held by an individual Claimant, they would be entitled to 1/3,560,328 of the total sum ordered. I gave permission for any party to apply to the Court for further clarification.
2. On 10 July 2024, the Claimants' representatives wrote to the Court seeking clarification. They provided a schedule ("*the Schedule*") which sets out what the Claimants say is their individual entitlement to the total sum ordered. The details set out in the Schedule appear to be consistent with the terms of my decision. The First Defendant has confirmed that it does not dispute the terms of the Schedule.
3. In the circumstances, I clarify that the Claimants' individual entitlement to their part of the total sum ordered by paragraph 2 of the Order is as set out in the Schedule.
4. The Claimants further request that payment of those amounts should be made to an account held by Astana International Exchange Central Securities Depository Limited. Again, the First Defendant takes no objection to this course.
5. I am happy to direct that payment be made in that way. I clarify, however, that this is not to say that Astana International Exchange Central Securities Depository Limited is itself entitled to any payment. Rather, the Claimants have, by their lawyers, directed that the First Defendant's obligation to pay under paragraph 2 of the Order will be satisfied if payment is made to that entity. It will then be for the Claimants' lawyers to supervise the distribution of those monies and any disagreements which arise will be a matter between the Claimants, their lawyers and Astana International Exchange Central Securities Depository Limited.

6. The Claimants further asked for a direction that the sums due in respect of costs under paragraph 3 of the Order be paid to the Claimants' lawyers. The First Defendant does not object in principle. However, it requires as a condition that the Claimants' lawyers provide information about their tax status. That is not, in my view, an appropriate condition. It has not been argued that the sums awarded in respect of costs are not due because the arrangements between the Claimants and their lawyers are void or otherwise affected by tax considerations. The direction of a single means of payment is simply a convenient way for the First Defendant to pay, rather than making 138 individual payments, with the sums then being remitted on to the Claimants' lawyers, pursuant to the terms of their retainer.
7. I am therefore content to direct that the payments of costs be made to the Claimants' lawyers.
8. Once again, I make clear that this does not confer on the Claimants' lawyers a direct right to receive those funds from the First Defendant. The right belongs to the Claimants and it is the Claimants who will need to pursue execution if the money is not paid. The designation of a single account for payment is intended to simplify things, not to change the party who is owed those sums. The accurate legal analysis is that each individual Claimant owes its lawyers its share of the total costs and the First Defendant owes each individual Claimant that share.
9. I asked the Claimants to provide a schedule similar to the Schedule, providing a breakdown of their individual entitlement to costs. They declined to do so. I do however clarify that each individual Claimant is entitled to a sum equal to 1% of the amount identified in the Schedule as their entitlement under paragraph 2 of the Order.

By Order of the Court,

Tom Montagu-Smith KC,
Justice, AIFC Court

Representation:

The Claimant was represented by Ms. Guldana Mirasheva, Legal representative, Astana, Republic Kazakhstan.

The First Defendant was represented by Mr. Rauan Batykov, Associate Partner at the International Law Firm ILF A&A, Almaty, Republic of Kazakhstan.

The Second Defendant was not represented.