

IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

8 November 2022

CASE No: AIFC-C/CFI/2022/0015

JSC “Kazakh-Russian Joint Venture “Baiterek”

Claimant

and

JSC “Center for the operation Ground – based space Infrastructure”

Defendant

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JUDGMENT AND ORDER

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Justice of the Court:

The Rt. Hon. The Lord Faulks KC

1. This is a claim by the Claimants arising out of a Contract in relation to an unmanned space station. The Parties agreed a Contract price in accordance with the documents filed at the Court, and in the event of a dispute that dispute is to be referred to this Court, the language to be used was Russian.
2. The Claimants have claimed the total of 13 684 550 338.7 tenge. That sum is made up of the maximum, which is permitted under the Contract in relation to default by the Defendants in providing an environmental impact assessment. The Contract provides for a daily rate, but the maximum that can be claimed is that sum which is contained in the Claimants' claim.
3. The Defendants have not provided any substantial reasons as to why this sum should not be paid, why there is any excuse for not paying it, or whether there is any contractual dispute which would otherwise mean that the sum was not payable.
4. The only objection made by the Defendants to this claim, and they have been given adequate notice in my view of the nature of the claim, is the argument that this Court does not have jurisdiction. The Contract seems to me plainly to give this Court jurisdiction.
5. However, the Contract does explicitly provide that the language of any proceedings should be in Russian and that the Contract should be governed by the substantive law of the Russian Federation. I have heard today, and it is apparent from the Contract, that the Parties specifically chose to have disputes, if there were any, determined by these means. I am perfectly satisfied that this Court does have jurisdiction.
6. The fact that the Parties stipulated that the proceedings should be conducted in Russian does not undermine the Court's jurisdiction. It was made clear to the Defendants that the Court can provide an interpreter, so that even if witnesses and advocates wish to speak in Russian there can be a simultaneous translation into English. So that provides no difficulty to either Party in conducting this dispute. So, I am not satisfied from the very brief response from the Defendants that there is any merit in the argument that this Court does not have jurisdiction.
7. Once the Court has decided that it has jurisdiction, the question that arises as to whether the Claimants, on the evidence that has been filed, and on the basis of what Mr. Ibrayev has told the Court, can establish their entitlement to the sum claimed.
8. I have received no evidence or argument that this sum is not payable in accordance with the Contract. I have looked to the Contract price, I have looked to the relevant terms in relation to what is payable at the daily rate in relation to environmental impact assessment, which was a crucial part of the Contract.
9. There has clearly been no payment. I have been given no reason as to why there had not been an environmental assessment, there may or may not be good reason for it. In the absence of any explanation, I conclude that the Claimants are entitled to the sum claimed which has been clearly set out before me by the Parties. I accordingly give judgment in favour of the Claimants against the Defendants in the sum of 13 684 550 338.7 tenge.

Representation:

The Claimant was represented by Mr. Yerden Ibrayev, Executive Director on legal issues, JSC “KazakhRussian Joint Venture “Baiterek”.

The Defendant was represented by Mr. Aleksei Velikiy, Head of Forensic Defense, JSC “Center for the operation Ground – based space Infrastructure”