



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

5 November 2024

CASE No: AIFC-C/CFI/2024/0017

CASE No: AIFC-C/CFI/2024/0025

LLP 'TEMIR ZAT'

Claimant

LLP 'BauProjekt'

Claimant

LLP 'MCI Group'

Claimant

v

LLP 'JOINT VENTURE ALAYGYR'

Defendant

JUDGMENT

Justice of the Court:

The Lord Faulks KC

ORDER

The applications are dismissed.

JUDGMENT

1. There are two applications before me this afternoon. They relate to an Arbitration Award issued on 4 March 2024. The Tribunal found against the Claimants, “The Consortium”, in their dispute with the Defendant, “Joint Venture “Alaygyr”. AIFC Court Case No. 25 of 2024 is an application by the Claimants to set aside the Award. AIFC Court Case No. 17 of 2024 is an application to set aside the execution orders made in connection with the enforcement of the Award by this Court.
2. The Defendant opposes these applications on a number of grounds. It submits that the Claimants relied on the wrong article of the AIFC Arbitration Regulations in making the application to set aside. It says the application is too late and that it is in breach of the AIFC Court Rules, in that there was a failure to give reasons and to provide documents and evidence in support of the application. It is further argued that in the amended application they have in effect put forward a new or additional application outside the relevant time limits.
3. The Claimants’ arguments for setting aside the Award and the execution orders is that the Award is invalid, and that the arbitral agreement itself is also invalid. I apprehend that the real reason for the challenge both to the Award and its consequences is apparent from what the Claimants described as the, and I quote the skeleton argument, “illegality, unreasonability and injustice of the Arbitration Award”. In the skeleton argument under this heading is set out what in effect is an appeal against the merits of the Tribunal’s decision. The Court has no jurisdiction to rule on the merits as the Claimants effectively acknowledged in paragraph 47 of the skeleton argument, which may be why they have been “forced to ask the AIFC Court for an objective assessment of the Arbitration Award and fair intervention in the matter of restoring justice”. I make it clear that I reject the arguments based on a challenge of the merits and will go on to consider the Claimants’ other arguments.
4. On the face of it an argument that the Award is invalid when the Claimants themselves initiated the arbitration proceedings is unusual. They participated in the proceedings, exchanged statements of case and defence, and never sought to challenge the Tribunal’s competence until after the Award had been issued. It is clear and effectively conceded that the AIFC Arbitration Regulations provided the Arbitration Law, and the law of the Republic of Kazakhstan does not in fact govern arbitration proceedings in the AIFC. A number of decisions of this Court have made that clear.
5. I can also see no force in the argument that the Award violates public policy. I find the basis of the public policy argument difficult to understand. It cannot sensibly be argued that it is contrary to public policy to enforce an Award because its enforcement would not be in the interests (presumably financial) of the Republic of Kazakhstan. There is no basis for saying that at various stages consent was not provided by the Claimants to participate in these proceedings. And nor do I understand why enforcement of this award is, in any way, offensive to the main principles of Kazakh Law. I note the normative resolution of the [Constitutional] Court of the Republic of Kazakhstan only recently published makes it clear that arbitration proceedings and respect for such proceedings are entirely consistent with the Constitution.
6. In my judgment, none of the reasons advanced by the Claimants provide any basis for challenging the Arbitration Award. The Tribunal plainly had jurisdiction, even if there was any force in the argument that, as the Claimants say, they were a state entity or quasi-state entity, and there was no jurisdiction.



The Claimants have clearly waived any objections they could have made. In these circumstances, I do not need to consider any of the perfectly respectable and powerful arguments about procedural shortcomings on the Claimants' part. It follows that I will dismiss both applications by the Claimants.

7. The Defendant may make an application for costs **by no later than 17:00 Astana time on Monday 25 November 2024**, and the Claimants may respond within 21 days thereafter.

By the Court,

The Lord Faulks KC,
Justice, AIFC Court

Representation:

The Claimants were represented by Ms. Vera Marinenko, Partner of LLP "Corporate Expert" Legal Company, Almaty, Republic of Kazakhstan.

The Defendant was represented by Mr. Alexander Korobeinikov, Partner at Baker McKenzie Kazakhstan B.V., Almaty, Kazakhstan.