



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

15 November 2024

CASE No: AIFC-C/CFI/2024/0038

BI DEVELOPMENT LTD

Claimant

v

BI-DEVELOPMENT LIMITED LIABILITY PARTNERSHIP

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 No. 2 of 2017 the proposed arrangement for a reconstruction involving the merger of the Claimant with the Defendant.**
- 2. Pursuant to section 126 of the AIFC Companies Regulations No. 2 of 2017 the Court orders that the Defendant be merged with the Claimant on the basis set out in the “Agreement on Merger” between them dated 16 January 2024.**

JUDGMENT

- By an application filed in Case Number AIFC-C/CFI/2024/0038 by Claim/Application Form dated 27 March 2024 (“the Claim Form”), the Claimant, “BI Development Ltd” (with Business Identification Number (“BIN”) 230940900501) (“the Company”) seeks the following relief as against (but without opposition from) the Defendant, “BI-Development Limited Liability Partnership” (with BIN 091240004107) (“the LLP”):
 - an order under section 124 of the AIFC Companies Regulations No. 2 of 2017 (“the AIFC Companies Regulations”) sanctioning an arrangement proposed between the Company and the Defendant 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 No. x” are to the document number “x” listed in Section 4 to and filed with the Claim Form.
- The Company (formerly known as “Residence Development Group Ltd”, its name having been changed to “BI Development Ltd” with effect from 22 August 2024) is a Private Company incorporated in the Astana International Financial Centre [*Document No. 3 (Company Certificate of Incorporation in the name of Residence Development Group Ltd showing the same BIN as referred to above for the Company) and 4 (Information about the registered legal entity, in the name of the Company) and Claim Form Section 2 paragraph 2*] 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 99% shareholder in the Company is a Private Company “BI Group Ltd” (BIN 211040900280) and the 1% shareholder is the LLP [*Document No. 1 paragraph 6.3 (Articles of Association of the Company)*].
- The LLP is a legal entity registered outside the AIFC and operating in accordance with the legislation of the Republic of Kazakhstan in which the Company is the 99% shareholder/participant with the 1% shareholder/participant being Garant Service NS LLP [*Claim Form paragraph 6; Document No. 2 (Articles of*



Association of the LLP) and 5 (Information about the registered legal entity), in both cases showing the 99% participant to be Residence Development Ltd].

6. It is stated in the Claim Form, supported by a statement of truth signed by Arzhan Saduakassov (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 [*Claim Form Section 2 paragraph 15; Document No. 27 (Power of Attorney dated 24 September 2024)*]) and the LLP [*Document No. 26 (Power of Attorney dated 24 September 2024)*]), further it is confirmed in the documents filed with the Claim Form, that the Company's shareholders have agreed on behalf of the Company and the shareholders/participants in the LLP have agreed on behalf of the LLP to the merger of the LLP with the Company [*Claim Form Section 2 paragraph 7; Document No. 9 (Minutes of the Extraordinary General Meeting of the shareholders of the Company dated 3 September 2024) and 10 ((Minutes of the Extraordinary General Meeting of the shareholders of the LLP dated 3 September 2024); and 11 (Amalgamation Agreement dated 3 September 2024)*].
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 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, as indicated above;
 - (c) further that, under the "Amalgamation Agreement" dated 3 September 2024 [*Document No. 11*], the LLP undertook to notify all known creditors of the LLP in writing about the decision on reorganization and publish the decision in the prescribed manner in the official press.
8. On 10 September 2024, the LLP sent a notice to all its known creditors [*Claim Form Section 2 paragraph 9; Documents Nos. 13-24*] and, on 1 September 2024, the LLP and the Company published a notice in the newspaper "Kazakhstanskaya Pravda" regarding the reorganization in the form of the merger of the LLP with the Company [*Claim Form Section 2 paragraph 9; Document No. 12*].
9. It is stated at Section 2 paragraph 9 of the Claim Form that, as at the date of the Claim Form, neither the LLP nor the Company has received any objections from creditors regarding the merger of the LLP with the Company.
10. According to a letter at *Document No. 8* dated 3 September 2024, the LLP's assets are sufficient to meet its liabilities as at that date. Further, according to paragraph 11 of Section 2 of the Claim Form, the rating agency Fitch Ratings has assigned the Company a Long-Term Issuer Default Rating of "BB" with Stable Outlook.

11. Documents filed in support of the application include:
 - (a) the various documents already referred to above;
 - (b) Confirmation that the Company has no debts recorded by the state revenue authorities [*Document No. 6*];
 - (c) Confirmation that each of the Defendants has no debts recorded by the state revenue authorities [*Document No. 7*].
12. The Amalgamation Agreement describes an agreement between the Company and the LLP 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 Amalgamation Agreement expressly refers at paragraph 1.1 to the fact that this reorganization will be *“In accordance with the transfer act approved by the general meeting of each of the Parties”*.
13. 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 by the Company and its 100% Shareholders (Section 124(1)(b)).
14. 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.
15. 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 Defendants 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 (see paragraphs 8 and 9 above) and all of the assets and capital of the LLP, which are broadly similar in value to the value of their respective liabilities (see paragraph 10 above) are to be transferred to the Company which, under the Agreement on Merger, takes over all of the liabilities of the LLP; and
 - (b) each of the Company and the LLP consent to the proposed reorganisation, and in particular to the transfer of all the obligations of the LLP to the Company, the Company and the LLP having first fully disclosed to each other all of their respective assets and liabilities.
16. 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.

17. 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”*.
18. This raises the question of whether the Court has power to make an order under Section 126 where, as here, two of the entities to be involved in the amalgamation, namely each of the Defendants, 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)

19. I therefore conclude that the Court should make an order under Section 126 of the AIFC Companies Regulations that the Defendants be merged with the Company on the basis set out in the Agreement on Merger between them dated 16 January 2024 [Schedule No. 18].

By the Court,

Justice Andrew Spink KC