

IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

17 October 2025

CASE No: AIFC-C/CFI/2025/0012

ELEKTROMETAL SPÓŁKA AKCYJNA JOINT STOCK COMPANY

Claimant

v

QARMET JOINT STOCK COMPANY

Defendant

ORDER AND JUDGMENT

Justice of the Court:

Justice Andrew Spink KC

ORDER

1. The Defendant's application dated 26 June 2025 (the "Application") for a declaration that this Court has no jurisdiction together with an order setting aside the Claimant's Claim Form is dismissed. This Court has jurisdiction to deal with the Claimant's claim herein (the "Claim") and the Claim will proceed pursuant to the directions set out below.
2. The Defendant will file with the Court and serve on the Defendant by 17:00 Astana time on Friday 14 November 2025 a full Defence to the Claim Form herein providing full particulars of any defence it proposes to advance on the merits of claim.
3. Thereafter, within 14 days of the date of filing and service of the Defendant's Defence pursuant to paragraph 2 of this Order (above), the parties will submit to the Court an agreed list of proposed directions for the further progress of these proceedings down to trial.
4. Failing agreement as to such directions, the Claimant will by the same date file with the Court and serve on the Claimant an application for directions supported by any necessary evidence and a draft order setting out the directions for which it contends.
5. Within 7 days of such application being filed, the Defendant will file with the Court and serve on the Claimant, any evidence upon which it intends to rely in relation to the Claimant's proposed directions, together with a draft order setting out the alternative directions for which it contends.
6. Thereafter the Court will consider the parties' representations as to directions and make an order on paper or list the matter for a case management hearing if it considers it appropriate to do so.

JUDGMENT

1. I make the above Order for the following reasons.
2. The Defendant's application for a declaration that this Court has no jurisdiction to deal with the Claimant's claim in these proceedings (the "Claim") together with an order setting aside the Claimant's Claim Form is founded on Article 9 of the "Contract for Investment Purchase no. R12573" (the "Contract") [Document 1] between the Claimant (referred to in the Contract as the "Buyer") and Arcelormittal Temirtau JSC (referred to in the Contract as the "Seller"). In essence, the Claimant claims that, in breach of the terms of the Contract, the Defendant has failed to pay sums due to the Claimant thereunder for work completed by the Claimant on behalf of the Defendant. I treat it as common ground for the purposes of determining the Application that, as alleged in paragraph 1 of the Claim Form, Arcelormittal Temirtau JSC and the Defendant are the same entity following a name change, such that

the Defendant is the proper party against which any claim by the Claimant for breach of the terms of the Contract should be brought.

3. So far as it is material, Article 9 states as follows (adopting the version of the English translation as it appears in Document 1; note that lettered sub-paragraph identification and some coloured text has been inserted for ease of reference to parts of this Judgment):

“9 - Arbitration

(a) In the event of a dispute arising from or in connection with this Contract, if such a dispute cannot be resolved through negotiations, the parties submit the dispute for settlement through intermediate litigation or (pre-) judicial mediation to arbitration or a court at the choice of the party initiator of the dispute, from the list below:

- Kazakhstan International Arbitration, in accordance with the Regulations for intermediate litigation, or*
- Astana International Financial Centre Court, in accordance with the Astana International Financial Centre Court Rules.*

(b) If the dispute is not resolved within 30 days from the date of appointment of the mediator/ judge or any other period which is agreed by the parties in writing, the dispute is transferred for final settlement to the agency in which the intermediate litigation (Kazakhstan International Arbitration) or (pre-) judicial mediation (Astana International Financial Centre Court) was carried out in accordance with the Regulations of the said agency.

(c) The language of intermediate and arbitration litigation in Kazakhstan International Arbitration shall be Russian.

The language of (pre-) judicial mediation and court litigation at the Astana International Financial Centre Court shall be English.

The law applicable to this contract will be the substantive law of the Republic of Kazakhstan.

As per this clause, during the litigation

(i) the arbitral panel will include a sole arbitrator; and

(ii) the venue for litigation shall be Astana city”

4. The Defendant relies on two alternative over-arching arguments in support of the Application [Application paragraph 20]:

(a) Argument 1 - “The pre-trial dispute resolution procedure provided for in the Contract has not been followed” [paragraph 20 of the Application]. More particularly the Defendant argues as follows:

(1) Article 9 provides a mandatory framework within which the Claimant must operate, whereby the Claimant must initiate and pursue two separate dispute resolution stages before, as a matter of jurisdiction, any court or arbitral process (such as the issuing of the Claim Form) can be initiated or pursued by the Claimant.

(2) These two stages are: (i) “negotiations” [Application paragraphs 12 and 13], presumably as provided for in the phrase “if such a dispute cannot be resolved through negotiations” in the part of Article 9 labelled “(a)” and in blue text above (hereafter referred to in this judgment as “**Article**

9 Stage 1"); and (ii) "conciliation/mediation" [Application paragraph 15], presumably as provided for in the phrase "*intermediate litigation or (pre-) judicial mediation*" in the part of Article 9 labelled "(a)" and in red text above ("**Article 9 Stage 2**").

(3) The Claimant has "failed to meet [these] requirements" [Application paragraph 15] by failing to initiate or pursue either of these two stages, "thereby grossly violating the procedure established by the Contract and [the Defendant's] rights to resolve the dispute in accordance with the procedure established by the Contract" [Application paragraph 19] and, accordingly, it is not open to the Claimant to initiate either court or arbitral proceedings to resolve the dispute ("**Article 9 Stage 3**").

(b) Argument 2 - In the alternative, even if (contrary to the Defendant's arguments summarised above) the "pre-trial dispute resolution procedure" referred to above had been complied with by the Claimant, this Court still does not have jurisdiction to deal with the Claim because, in that event, the only course open to the Claimant under Article 9 is to initiate arbitral proceedings [Application paragraphs 17 to 18], presumably based upon its interpretation of the part of Article 9 labelled "(b)" and in green text above.

5. I do not agree with the Defendant that the fact that neither Article 9 Stage 1 nor Article 9 Stage 2 have taken place prevents the Claimant from invoking the jurisdiction of this Court in respect of the Claim through the issuing of the Claim Form. On a correct construction of Article 9 the opposite is the case.
6. As to Argument 1, to the extent that any of the Article 9 Stages 1 and 2 are "mandatory requirements" in the sense contended for by the Defendant, namely each of these stages must be initiated and pursued before the Claimant can initiate Article 9 Stage 3:
 - (a) Such "mandatory requirements" fall on each of the parties, not solely on the Claimant (or whichever party initiates the dispute).
 - (b) If one of the parties fails to initiate or pursue either of these two stages (it being open to either of them to do so at any stage), the other party seeking resolution of the dispute may (indeed must as a matter of jurisdiction) initiate Article 9 Stage 3 if it wishes the dispute to be resolved through litigation or arbitration.
 - (c) It is relevant that, prior to issuing proceedings in this Court through the issuing of the Claim Form, the Claimant wrote to the Defendant on 20 March 2024 seeking voluntary payment of the contractual sums alleged to be due to it, to which the Defendant appears to have sent no response. The basis of the claim was set out in detail and the Defendant was invited to "*voluntarily pay the debt of USD 629,011.88 ... otherwise we will be forced to apply to the IFCA Court/KIAC for*

protection of violated rights...". That was and should have been treated by the Defendant as an opportunity to enter into negotiations (if it did not wish to pay, voluntarily, the amount sought).

- (d) In this respect I accept the Claimant's submission at paragraph 2.3 of its response to the Application: *"The claim can serve as a starting point for negotiations. The parties can use it as a basic document for discussing the terms of the settlement, finding mutually acceptable solutions and formulating the terms of the settlement agreement. The Claimant is open to negotiations and does not refuse to engage in constructive dialogue with the Defendant."* It is to be noted that the Defendant does not assert in the Application any equivalent willingness to negotiate or engage in constructive dialogue with the Claimant.
- (e) In these circumstances, the "requirements" of Article 9 Stage 1 were met to the extent possible, even though no negotiations took place, because the Defendant declined to take the opportunity presented to it, as identified in sub-paragraph (c), did not seek to negotiate and did not pay the amount claimed or any amount, a stance which the Defendant has since maintained following the issuing of the Claim Form and in its presentation of the Application.
- (f) Similarly, in view of the Defendant's failure to enter into negotiations following the 20 March 2025 claim for voluntary payment of the contractual sums alleged to be due, the Claimant was entitled to conclude that the Defendant would equally fail to engage in any attempt to mediate the dispute in accordance with Article 9, it being open to the Defendant to communicate to the Claimant at any time a positive intention to engage in mediation and to seek to require the Claimant to do so, which the Defendant failed to do prior to the issue of the Claim Form and continues to fail to do, including in its presentation of the Application.
- (g) Were the position otherwise, a contractual clause (in this case Article 9) objectively intended to identify for jurisdictional purposes the court or arbitral institution for the resolution of any disputes arising under the Contract, where there has been no prior settlement, would be frustrated by one party's failure to engage with any "pre-trial resolution procedure" identified in that clause (in this case Article 9 Stages 1 and/or 2) which, on the Defendant's case, would prevent the Claimant from being able to litigate or arbitrate the dispute at all.
- (h) It was and remains open to the Defendant at any stage to seek to negotiate or have the matter referred to mediation, once it knows there is a dispute. If it does not do so, Article 9 does not prevent the Claimant from initiating Article 9 Stage 3. To do so is not a "failure" by the Claimant to observe Article 9 resulting in the Claimant being unable to litigate or arbitrate the dispute, so long as it then follows the process identified in Article 9 Stage 3.
- (i) Argument 1 of the Defendant's application therefore fails.

7. As to Argument 2, the Defendant's case that the only option available to the Claimant at Article 9 Stage 3 is to submit the dispute to arbitration is incorrect. Similarly, the Defendant is wrong that the only form of mediation permitted at Article 9 Stage 2 is a form of mediation conducted by an arbitration court ("Kazakhstan International Arbitration Court") or an arbitration centre ("International Arbitration Centre of the IAC") [Application paragraph 17]. The correct construction and effect of Article 9 is that:
- (a) At Article 9 Stage 2, the "*party initiator*" of the dispute is given the choice of where any mediation should take place, the options being "*Kazakhstan International Arbitration*" (which the Defendant states is intended to be a reference to the "Kazakhstan International Arbitration Court") or this Court ("*Astana International Financial Centre Court*") [see the orange text in the part of Article 9 labelled "(b)" above]. There is no reference in Article 9 to the "International Arbitration Centre of the AIFC".
 - (b) The effect of Article 9 is that, in circumstances where the Defendant has failed to enter into negotiations or offer to do so, or to participate in any form of mediation or offer to do so, or to seek to require the Claimant to do so, the Claimant is entitled to proceed to Article 9 Stage 3, for the reasons given above. Further, the Claimant may select whether to do so through "*Kazakhstan International Arbitration*" or this Court and it has selected this Court, which accordingly has jurisdiction to deal with dispute initiated by the Claim Form. It is evident from the Claimant's choice of this Court for Article 9 Stage 3 that, had the Defendant sought a mediation of this dispute at Article 9 Stage 2, the Claimant would have chosen mediation through this Court rather than through "*Kazakhstan International Arbitration*".
 - (c) Argument 2 of the Defendant's application therefore fails.
8. Finally, it is necessary to state that it is irrelevant to the outcome of the Application whether or not "*the present dispute ... arises out of a previous dispute, which was resolved by a settlement agreement*" [Application paragraph 22]. It is correct that the Claimant seeks to rely on this alleged fact as an alternative basis for challenging the Application but, given its irrelevance to the issues raised for determination on the Application, I need say no more about it.

By the Court,

Justice Andrew Spink KC

Representation:

The Claimant was represented by Mr. Omar Shuremov, Lawyer, “MG Partners Karaganda” LLP, Karaganda, Republic of Kazakhstan.

The Defendant was represented by Mr. Sergei Vataev, Partner, Legit Law Firm, Almaty, Republic of Kazakhstan.