IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

29 May 2026

CASE NO: AIFC-C/CFI/2025/0074

Gusar New Technologies Limited Liability Company

Claimant

v

Zhenis Operating Limited Liability Partnership

Defendant

JUDGMENT

Justice of the Court:

Justice Sir Rupert Jackson

Court

JUDGMENT

This judgment is in eight parts, namely:

Part 1: Introduction
Part 2: The facts
Part 3: The arbitration at the Astana International Arbitration Centre
Part 4: The present proceedings
Part 5: Who was the proper respondent to the arbitration?
Part 6: Did the Tribunal wrongly disregard GNT's entitlement to receive back the unused equipment?
Part 7: Did the Tribunal fail to give ZOL an opportunity to make submissions on the sanctions issue?
Part 8: Conclusion

PART 1. INTRODUCTION

1.1 This claim is an application to set aside an arbitration award. The principal issues concern who were the correct parties to the arbitration and whether the Tribunal properly dealt with issues concerning transfer of property and the consequences of international sanctions against Russia.

1.2 The Claimant is Gusar New Technologies Limited Liability Company ('GNT', referred to in some documents as 'Gusar') incorporated in the Russian Federation, with its registered office at: Russia, 117587, Moscow, Varshavskoye Shosse, 125Zh, Building 6, Office 43.

1.3 The Defendant is Zhenis Operating Limited Liability Partnership ('ZOL') incorporated in the Republic of Kazakhstan, with its registered office at: 13000, Republic of Kazakhstan, Mangystau Region, Aktau, Microdistrict 14, Building 70.

1.4 In this judgment I use the following abbreviations:

- (i) 'AIAC' means the AIFC International Arbitration Centre.
- (ii) 'AIFC' means the Astana International Financial Centre.
- (iii) 'The AIFC Court' means the Court of First Instance of the Astana International Financial Centre.
- (iv) 'The AIFC Arbitration Regulations' means the AIFC Arbitration Regulations adopted by the Resolution of the AIFC Management Council dated 5 December 2017.
- (v) 'The award' means the final award referred to in Part 3 below.
- (vi) 'The Civil Code' means the Civil Code of the Republic of Kazakhstan enforced by the Decree of the Supreme Council of the Republic of Kazakhstan dated December 27, 1994.
- (vii) 'The Contract' means Contract No. 59-21, referred to in Part 2 below.
- (viii) 'JV' means Joint Venture.
- (ix) 'KMG' means Joint Stock Company "National Company KazMunayGas".
- (x) 'Lukoil' means Limited Liability Partnership "Lukoil Kazakhstan Upstream".
- (xi) 'The Manufacturer' means Dril-Quip (Europe) Limited.
- (xii) 'SA 5' means Supplemental Agreement No. 5, referred to in Part 2 below.
- (xiii) 'SA 6' means Supplemental Agreement No. 6, referred to in Part 2 below.

1.5 After these introductory remarks, I must now turn to the facts.

PART 2. THE FACTS

2.1 On 30 January 2018, KMG and Lukoil entered into a Joint Venture Agreement for the exploration, development and production of the "Zhenis" field in the Kazakh sector of the Caspian Sea. Clause 4.1.1 of the JV agreement provided that the Partners agreed to appoint ZOL as operator of the Project following its registration as a legal entity, provided it assumed the operator's rights and obligations by signing an accession agreement (the Partners being participants in ZOL). Under clause 4.1.3 of the JV agreement, ZOL acts in the name of, on behalf of and at the expense of the Partners and does not hold title to any assets acquired or used for joint operations.

2.2 On 30 November 2018, KMG and Lukoil entered into a Joint Operating Agreement. Clause 4.1.3 of the Joint Operating Agreement defined ZOL's role in the same terms.

2.3 In 2020, ZOL and its participant, Lukoil, approached GNT requesting commercial proposals for the supply of subsea wellhead equipment and large-diameter casing pipes, as well as the provision of services for the installation and removal of wellhead equipment, including running tools, together with maintenance during the drilling of an exploration well.

2.4 GNT obtained a commercial proposal from the Manufacturer for the supply of equipment, the hire of tools, and the provision of related services. Among other terms, the proposal contained the following terms:

> "*BUY-BACK CONDITIONS*
>
> *DRIL-QUIP OFFERS THE RETURN OF ONE SET OF UNUSED/UNDAMAGED WELLHEAD EQUIPMENT AT THE PRICE OF 70% OF COST PROVIDED THAT THE EQUIPMENT PASSES INSPECTION AND IS RETURNED TO THE DRIL-QUIP FACILITY WITHIN 180 DAYS FROM SHIPMENT. ALL TRANSPORTATION COSTS ARE PAYABLE BY THE CUSTOMER.*"

2.5 On 1 October 2021, the Manufacturer issued a letter addressed "To whom it may concern", stating:

> "*Dril-Quip will be the supplier to Gusar and will support Gusar in providing Dril-Quip products and services for the Project, subject to compliance with US, EU and UK sanctions against Russia.*"

2.6 On 2 November 2021, GNT and ZOL entered into Contract No. 59-21, under which GNT undertook to supply and transfer title to goods to ZOL, to provide technical and engineering support, and to hire tools. ZOL undertook to accept and pay for the delivery of the goods, the services, and the hire.

2.7 Under sub-clause (14) of clause 4.4 of the Contract, GNT undertook to buy back unused Goods from ZOL under the following conditions:

> "*After completion of drilling of the well, the Seller shall purchase the goods unused by the Buyer (buy-back) that were supplied under this Contract, on the following terms:*
>
> *- the place of delivery of the buy-back goods is the Buyer's Production base;*
>
> *- within 30 working days of completion of the works (services) under the Contract, the Buyer determines the list of goods for buy-back and notifies the Seller in writing;*

- within 15 calendar days of receipt of the notice from the Buyer, the Seller shall arrange for its representatives to attend;

- payment for the buy-back goods must be made within 60 (sixty) calendar days of signing the acceptance certificate of the buy-back goods;

- the cost of the goods upon buy-back shall be 70% of the cost of the Goods supplied under this Contract (the initial cost);

- transport and customs clearance expenses from Aktau to the Seller's location are included in the buy-back cost;

- only goods unused by the Buyer under the Contract, as evidenced by the absence of such goods in the equipment deployment certificate signed on completion of works and drilling services, are eligible for buy-back;

- the parties shall conduct a visual inspection of the goods, which shall not have visual defects, damage to coating or corrosion, and is recorded in an certificate signed by the Parties. The inspection of the goods at shall take place at the Buyer's Production base in Aktau within 3 (three) calendar days after arrival the Seller's representatives."

2.8 On 23 November 2021, GNT informed ZOL that it had purchased the equipment from the Manufacturer and requested that ZOL sign an end-user statement. ZOL did so on 3 December 2021, confirming that it "will not export, re-route, transfer or otherwise use any Goods for any other project in violation of sanctions against Russia…".

2.9 On 3 December 2021, GNT entered into a contract with the Manufacturer for the purchase of the goods, which were subsequently delivered to ZOL.

2.10 Between 8 February 2022 and 20 October 2022, the Parties entered into four supplemental agreements to the Contract, addressing, inter alia, changes to bank details, prices, and payment terms.

2.11 On 1 December 2022, the Parties entered into Supplemental Agreement No. 5. According to clause 1.1 of SA 5 and its Schedule No. 1, the Parties amended the cost of the supplied goods in Schedule No. 1 (including transport and logistics costs), referring to an increase in freight and insurance costs for the Goods arising from EU sanctions against Russia, which necessitated changes to logistics in arranging the delivery route.

2.12 SA 5 contained an arbitration clause. The clause provided that disputes would be resolved by arbitration at the Astana International Arbitration Centre.

2.13 On 4 and 18 January 2023, ZOL compiled certificates confirming deployment of the casing string in the Zhenis structure well, together with attached pipe inventories.

2.14 As a result of Russia's invasion of Ukraine in February 2022, the sanctions against Russia imposed by the UK, the US and the EU were substantially increased. The Manufacturer believed that the supply of equipment and services to GNT would be a breach of the enhanced sanctions legislation.

2.15 On 6 March 2023, the Manufacturer wrote to ZOL stating that (i) due to sanctions, it could not hire equipment or provide services to GNT for use on the Project; and (ii) that ZOL must either contract directly with the Manufacturer or immediately return the hired equipment and personnel. On 12 March 2023, GNT wrote to the Manufacturer stating that it did not object to the Manufacturer contracting directly with ZOL.

2.16 On 26 March 2023, ZOL and the Manufacturer entered into an agreement for services and tool hire, pursuant to which services, hire and payment for services were made directly. The agreement provided that it would take effect from 6 March 2023 and applied from 1 April to 30 July 2023.

2.17 On 31 March 2023, the Parties entered into Supplemental Agreement No. 6 to the Contract. According to Clause 1.1 of SA 6, ZOL undertook to pay GNT USD 7,734,939.86 (including VAT of USD 828,743.54) for supplied goods, services, and hire. The Parties agreed at clause 3 of SA 6 that the Contract would remain in force until 31 May 2023 inclusive, and as to settlements, until full performance by both Parties. In clause 4 of SA 6 the Parties provided that "All other terms of the Contract not amended or supplemented by this Supplement Agreement shall be deemed fully performed by the Seller".

2.18 On 11 April 2023, the Manufacturer's representative informed Mr Allan Peachey, GNT's technical adviser, that it "declined the buy-back option as we think it will be difficult to sell this equipment due to its history, which may raise concerns with potential buyers".

2.19 On 12 April 2023, GNT wrote to ZOL stating it was impossible to perform the buy-back obligation due to unspecified sanctions and breaches of the End User Statement: "I hereby inform you that, in accordance with clause 4.4 of Contract No. 59-21 dated 02.11.2021, concluded between GNT LLC and Zhenis Operating LLP, GNT LLC is obliged to buy back the equipment. [...] [T]he buy-back of equipment by GNT LLC is not possible under the current conditions, as this would constitute a direct violation of sanctions restrictions, as well as a violation of the terms of the end-user agreement signed by Zhenis Operating LLP in preparation for the project".

2.20 On 14 April 2023, ZOL signed an "Certificate of Completion of Works (Rendered Services)" under the Contract and, on the same date, sent a letter to GNT requiring it to buy back the Unused Equipment, stating: "As of the date of completion of well drilling, a spare set of subsea wellhead equipment had not been used. Also, 14 pipes with a diameter of 30" (including a pipe with a shoe) and 26 pipes with a diameter of 20" (including a pipe with a shoe) had not been used".

2.21 In its letter of reply dated 18 April 2023, GNT again cited UK and EU sanctions prohibiting sale and supply of the goods to Russia or Russian entities. GNT also stated that the Contract did not determine the material terms of a buy-back agreement.

2.22 On 20 April 2023, GNT proposed that ZOL consider the possibility of selling the Unused Equipment at a reduced price – USD 70,000.

2.23 On 25 May 2023, ZOL sent to GNT a draft "Agreement to Sell Property" with amendments, stating in the cover letter "Attached: -a version of the buy-back agreement taking all comments into account […]".

2.24 On 26 May 2023, GNT by way of reply letter stated *inter alia*:

"*2. We cannot accept the draft agreement on the sale of property in its current version ...*

4. Since the planned transaction is a major transaction for us, after receiving the draft agreement from you, we will need to have it approved by our participants. In connection with the upcoming approval, we ask you to also send us the approval (Minutes of the meeting of participants on approval) for the conclusion of this transaction by your participants, or to provide constitutional documents directly indicating that this transaction is not subject to approval by management bodies"

2.25 On 2 June 2023, ZOL wrote to the Manufacturer requesting that it consider buying back the Unused Equipment and that it presents a commercial proposal.

2.26 On 3 and 12 July 2023, ZOL informed GNT it was suspending payments due to GNT's refusal to buy back the Unused Equipment and that the Project participants were considering the question of GNT's breach of the terms of the agreement in respect of the buy-back.

2.27 On 15 August 2023, ZOL repeated its demand that GNT buy back the Unused Equipment. It repeated the list of equipment indicated in its letter of 14 April 2023 but included a more detailed specification and a calculation of the buy-back price. ZOL stated that GNT's proposal to buy back the equipment at a substantially lower price demonstrated its *de facto* refusal to perform its obligations. ZOL reserved its right to sell the equipment to third parties and to claim from GNT the difference between the buy-back price under the Contract and the actual price of sale.

2.28 In a letter dated 23 August 2023 GNT replied as follows:

> "*[…] GNT LLC has not refused and does not refuse to comply with the Operator's requirements for the purchase of the Goods. To resolve this issue, it is necessary to continue negotiating the essential terms of the contract for the supply of the wellhead set and casing pipes, given that these terms are not specified in subclause 14) of clause 4.4 of the Contract. In its letter dated 20 April 2023, GNT LLC proposed considering the possibility of selling the equipment at a reduced price and then disposing of the equipment in the Republic of Kazakhstan, which is the most optimal option for both parties*".

2.29 On 31 August 2023, ZOL wrote to the Manufacturer seeking permission for GNT to buy back the goods, referring to the uncertainty of its obligations under the End User Statement.

2.30 On 12 September 2023, GNT sent a letter to ZOL, pointing out the lack of response to its previous letters and reconfirming that it did not refuse to comply with the buy-back requirements. At the same time, GNT referred to the failure to reach agreement on essential terms, the Manufacturer's prohibition on GNT's use of the Unused Equipment in violation of sanctions against Russia, and ZOL's failure to perform the actions provided for in subclause (14) of clause 4.4 of the Contract. GNT also noted:

> "*In addition we inform you that GNT LLC understands the narrow purpose of the equipment you are offering and is aware that it will not be possible to use the equipment in exploration drilling projects in deepwater areas of the Kazakh sector of the Caspian Sea in the near future. This means that the buyer (third party) will be forced either to store the equipment for an indefinite period of time with the possibility of further use, which will undoubtedly lead to wear and tear and loss of equipment performance, or to seek opportunities for use outside the territory of the Republic of Kazakhstan, which*

carries the same risks of export control violations. In view of the above, we again ask that you consider the proposal of GNT LLC to purchase the equipment for subsequent disposal in the territory of the Republic of Kazakhstan."

2.31 In its letter of 5 October 2023, ZOL pointed out the inconsistency of GNT's positions in its correspondence and concluded that GNT had de facto refused to fulfil its buy-back obligation. ZOL claimed that GNT owed USD 1,192,889.27 (excluding VAT) for the cost of the Unused Equipment, that this amount should be set off against its own debt to GNT, and that it should retain the security deposit. ZOL demanded payment of the remaining amount after the set-off and security deposit.

2.32 Having reached an impasse in negotiations, GNT commenced an arbitration at the Astana International Arbitration Centre.

PART 3. THE ARBITRATION AT THE ASTANA INTERNATIONAL ARBITRATION CENTRE

3.1 On 16 October 2023 GNT submitted a request for arbitration to the AIAC. A Tribunal was duly appointed comprising Mr Sergey Vataev, Mr Ilia Rachkov and Mr Drew Holiner (Chairman).

3.2 GNT claimed the following relief:

1) The outstanding amounts for Services rendered, hire and transportation of the Tools, in the sum of KZT 403,840,773.81;
2) The security deposit in the amount of USD 140,946.93, paid by GNT as a guarantee of performance of its obligations;
3) The default interest in the amount of KZT 732,308,558.94 for improper performance of monetary obligations under the Contract;
4) The costs for legal representation in the amount of RUB 3,220,000 and the costs of engaging arbitrators in the amount of USD 37,500.

3.3 ZOL resisted GNT's claims and claimed relief in its counterclaim as follows:

1) To dismiss the Claimant's claims in their entirety;
2) To declare that the Claimant breached its obligation at Clause 4.4(1) of the Contract to buy back the Unused Equipment, namely: (i) to take all necessary steps to accept the Equipment for buy-back and (ii) to pay the price of USD 1,192,889.27 (one million one hundred ninety two thousand eight hundred and eight nine U.S. dollars and twenty seven cents);
3) To recover from the Claimant in favour of the Respondent the amount of USD 613,831.98 (six hundred thirteen thousand eight hundred thirty-one U.S. dollars and ninety-eight cents), which is the Claimant's debt for payment of the price of the Equipment for buy-back after set-off of the Claimant's claims;
4) To recover from the Claimant in favour of the Respondent statutory interest calculated (i) at the base rate of the National Bank RK set at the date of this Counterclaim in the amount of 14,25%? [sic] (ii) on the amount of debt for payment of the Equipment price indicate in para. 3, denominated in tenge at the National Bank RK exchange rate on the date of issuance of the award? [sic] (iii) for the period from 6 October to the date the award is issued;
5) To order the Claimant to take all necessary steps to ensure acceptance of the Equipment for buy-back and listed in Exhibit R-12;

6) To recover from the Claimant the Respondent's costs of storage of the Equipment, which is calculated in the amount of (i) KZT 920,000 per month for the period from 6 October 2023 to 7 August 2024 (ii) KZT 3,248,000 per month for the period from 8 August 2024 to the date of the award is issued;
7) To recover from the Claimant expenses incurred by the Respondent in respect of this arbitration, including fees for the services of its legal representatives, fees and expenses of the arbitrators and the IAC, as well as the fees and expenses of any experts in an amount to be determined at the relevant time; and
8) To recover from the Claimant an amount in respect of the above claims from the date of issuance of the award until actual payment, as the rate determined by the Tribunal in accordance with Article 27.8 of the IAC Rules.

3.4 There was an oral hearing on 22 and 23 January 2025. The parties submitted skeleton arguments before the hearing and submissions on costs after the hearing. Both parties had a full opportunity to present their respective cases.

3.5 The Tribunal published its final award on 10 September 2025. The Tribunal allowed GNT's claims in respect of hire of tools, transportation services and interest (statutory interest, not default interest), but held (by a majority) that all of those claims were exceeded by the sums due to ZOL on its counterclaim. Therefore, by reason of set off, no sums were payable to GNT. The Tribunal by a majority dismissed GNT's claims for return of security deposit and arbitration costs.

3.6 Turning to the counterclaim, the Tribunal by a majority upheld ZOL's claim for breach of the buy-back obligations, statutory interest and (in part) arbitration costs. The Tribunal dismissed GNT's claim for the costs of storage.

3.7 The precise sums awarded in relation to the various heads of claim and counterclaim are not material to the issues before this Court. So, I do not set them out.

3.8 In relation to the claim for breach of buy-back obligations, the Tribunal awarded financial relief to ZOL but did not order that the equipment be transferred back to GNT. The majority of the Tribunal explained that part of its decision in paragraph 244 of its award as follows:

> "*Thus, according to the meaning of Article 468(4) CC RK, after payment the buyer could, in theory, claim that the seller again place the goods at its disposal at the agreed place of collection. However, both before and during the present proceedings, the Claimant consistently stated that it regarded the value of the Unused Equipment as equal to the cost of its disposal as scrap and that it had no interest in accepting it on any other terms (see paragraphs 261-264 below), and it requested that the Respondent's claim for an order that it accept the goods be dismissed. Therefore, for the reasons stated above, the Tribunal, by a majority, concludes that there are no grounds to impose upon the Claimant an obligation to accept the equipment and, accordingly, does not consider the hypothetical situation in which the Claimant might change its position after effecting payment for the goods. Consequently, the present award does not determine the future fate of the Unused Equipment, as this lies outside the scope of the claims and defences advanced by the Parties.*"

3.9 Mr Rachkov in his dissenting opinion stated that because of the sanctions legislation, it was impossible for GNT to buy back the unused equipment. Accordingly, under Article 374 of the Civil Code the buy-back obligation was terminated.

3.10 In paragraphs 171-172 of his dissenting opinion, Mr Rachkov dealt with the question of what should happen to the unused equipment in the circumstances as follows:

> "*171. I agree with the Arbitral Tribunal that, having included in its prayer for relief in the Counterclaim a request for an order compelling the Claimant to accept the equipment, the Respondent provided no detailed reasoning, limiting itself to a general reference to the Claimant's breach of its obligation to accept the goods (Counterclaim, paras. 41-46 and 69(5)).*
>
> *172. The Claimant, for its part, did not offer any separate comment on this claim, confining itself to the assertion that it was impossible to perform the obligation in kind after the expiry of the Contract (Claimant's Defence, para. 54).*"

3.11 GNT was aggrieved by the decision of the majority of the Tribunal. Accordingly, it commenced the present proceedings.

PART 4. THE PRESENT PROCEEDINGS

4.1 By a claim form issued in the AIFC Court on 10 December 2025, GNT applied for an order setting aside the award.

4.2 The grounds on which GNT's application is based are:

(i) ZOL was not a party to the arbitration agreement. The proper respondents in the arbitration should have been KMG and Lukoil.

(ii) Having found in favour of ZOL on the buy-back issue and ordered GNT to pay the price of the equipment, the Tribunal wrongly failed to order transfer of the equipment to GNT. Having recharacterised ZOL's claim as one for monetary compensation instead of for specific performance, the Tribunal failed to give GNT the opportunity to address "this fundamentally different claim".

(iii) Having spotted that there was a possible defence, namely that sanctions relieved GNT from its obligation to repurchase the unused equipment, the Tribunal wrongly failed to give GNT the opportunity to address that issue.

4.3 On 10 January 2026, ZOL served a defence, rejecting each of GNT's grounds of claim in forthright terms. ZOL further contended that GNT had waived it's right even to put forward its first ground of claim.

4.4 This case was listed for oral hearing on 27 May 2026. In relation to rules 27.23-27.24 of the AIFC Court Rules, the position of both parties was that it was appropriate for this matter to be heard in public, and the Court so ordered.

4.5 At the hearing on 27 May 2026, GNT was represented by Mr Farukh Iminov and ZOL was represented by Mr Kirill Sharapov. Counsel had served detailed skeleton arguments in advance. I am grateful to both counsel for their assistance before and during the hearing.

4.6 In his skeleton argument and oral presentation Mr Iminov treated what had been the first ground of GNT's application as the third ground. Mr Sharapov, on the other hand followed the sequence of grounds set out in the pleadings. In order to avoid confusion, I will deal with the three grounds in the

order set out in GNT's claim form. Thus, the first issue, to which I must now turn, is who was the proper respondent to the arbitration?

PART 5. WHO WAS THE PROPER RESPONDENT TO THE ARBITRATION?

5.1 Mr Iminov submits that KMG and Lukoil, not ZOL, ought to have been respondents to GNT's arbitration claim. He submits that ZOL acted solely in a representative capacity on behalf of KMG and Lukoil.

5.2 In support of this argument, Mr Iminov relies upon the following documentary evidence:

(i) The preamble of the Contract and all of its amendments stating that ZOL, as the operator, entered into the Contract on behalf of, at the expense of, and at the direction of KMG and Lukoil.

(ii) A letter from ZOL dated 29 July 2020, which identifies ZOL as acting in a representative capacity.

(iii) A letter from Lukoil dated 15 July 2021, which confirms ZOL's status as a mere representative.

(iv) Article 4.1.3 of the Joint Operating Agreement, as set out in Part 2 above.

(v) ZOL's own letter dated 12 October 2023 (adduced by ZOL in the current proceedings), which seeks:

> "*Approval of judicial prosecution and protection of the Partners' interests [KMG and Lukoil] in the International Arbitration Centre of the Astana International Financial Centre in the dispute proceedings initiated by Gusar New Technologies LLC under Contract No. 59-21 dated 2 November 2021" (emphasis added).*"

(vi) Resolution No. 127 dated 1 November 2023 (also adduced by ZOL), adopted by KMG and Lukoil, which mandates, *inter alia*:

> "*1. To approve judicial prosecution and protection of the Partners' [KMG and Lukoil] interests in the International Arbitration Centre of the Astana International Financial Centre in the dispute proceedings initiated by Gusar New Technologies LLC under Contract No. 59-21…*
>
> *2. The Operator shall ensure the Conlcusion of an agreement with Dentons Kazakhstan LLP for the representation of the interests of Zhenis Operating LLP and the Partners [KMG and Lukoil] in the arbitration proceedings before the IAC AIFC in the arbitration proceedings initiated by by Gusar New Technologies LLC…*" (emphasis added).

5.3 In his oral submissions, Mr Iminov said that GNT was unaware of the Joint Operating Agreement until it appeared as an attachment to ZOL's written closing submissions. He accepts that ZOL had the other documents before then.

5.4 Mr Sharapov submits that ZOL has waived the right to pursue this argument. ZOL was in possession of all the documents relied upon before or (in the case of the Joint Operating Agreement) during the arbitration but never sought to amend its claim to substitute KMG and Lukoil as respondents. Furthermore, says Mr Sharapov, ZOL was in fact the proper respondent. ZOL was defined in the Contract as the Buyer. Thus, ZOL was the party obliged to pay for the equipment and ZOL was the party entitled to enforce the buy-back provision against GNT.

5.5 I am bound to say that the proposition that the claimant has proceeded against the wrong respondent is a somewhat unusual ground for the claimant to advance on an application to set aside an arbitration award. It begs the question "Why didn't you proceed against the correct respondent?". Indeed, I took the liberty of putting that question to Mr Iminov. He explained that the significance of the documents upon which he now relies in relation to this issue was not appreciated at the time.

5.6 In my view, Mr Sharapov is correct on this issue. Article 12 of the AIFC Arbitration Regulations provides:

> "*A party who knows that any provision of these Regulations from which the parties may derogate, or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.*"

GNT launched this arbitration against ZOL and continued to prosecute it for seventeen months. Thereafter, GNT did not raise its concern about the identity of the respondent until after receipt of the award. This constitutes "undue delay". GNT has waived its right to pursue its first ground of challenge.

5.7 If I had needed to consider the substantive issue, I would have held that ZOL was a proper respondent to the arbitration, because it was named as the buyer in the Contract. I can see an argument that KMG and Lukoil could, and perhaps should, have been joined as second and third respondents. But it is too late to put that right now.

5.8 Mr Iminov said that ZOL is concerned that KMG and Lukoil might in the future bring a fresh claim against ZOL for breach of the buy-back provision. Mr Sharapov submitted that the claim for breach of the buy-back clause has been brought and determined. KMG and Lukoil cannot and will not bring such a claim again. Mr Iminov submitted in his reply that Mr Sharapov is acting for ZOL, not KMG or Lukoil and so he cannot give any binding commitment on behalf of those two companies.

5.9 I cannot make any decision about what companies who are not the parties to these proceedings may or may not do in the future. However, I have no reason to believe that either KMG or Lukoil would make such an outrageous claim against GNT as Mr Iminov and his clients fear. ZOL has succeeded in the counterclaim which it brought for their benefit against GNT for breach of the buy-back provision. That surely will satisfy them.

5.10 For the reasons set out above, I dismiss GNT's first ground of challenge to the award. I must now turn to the second ground of challenge, namely that the Tribunal wrongly disregarded GNT's entitlement to receive back the unused equipment.

PART 6. DID THE TRIBUNAL WRONGLY DISREGARD GNT'S ENTITLEMENT TO RECEIVE BACK THE UNUSED EQUIPMENT?

6.1 GNT contends that ZOL's buy-back claim, although presented in two separate parts (as set out in paragraphs 3.3 (3) and 3.3 (5) above) was in fact an indivisible whole. The Tribunal was not entitled to order GNT to pay the buy-back price without also ordering transfer back of the unused equipment to ZOL or at least ordering transfer of title to ZOL. If the Tribunal was minded to take that course, it should have

given ZOL the opportunity to make submissions about it.

6.2 Mr Iminov contends that the Tribunal wrongly treated ZOL's buy-back claim as a claim for monetary compensation, rather than a claim for specific performance of clause 4.4 (14) of the contract. As he put it in oral argument, the Tribunal "changed the nature of the remedy that ZOL was seeking".

6.3 Mr Iminov also submits that the Tribunal mis-states GNT's position in paragraph 244 of the award, which we have set out in Part 3 above. GNT was not asking the Tribunal to relieve it of "an obligation to accept the equipment", as stated in that paragraph. What the Tribunal has done, complains Mr Iminov, is to terminate GNT's title and thereby to vary the parties' rights and obligations under Article 268 of the Civil Code. Instead of doing a favour to GNT (as suggested in the award) the Tribunal was doing a disservice GNT.

6.4 Mr Sharapov submits that the buy-back claim contained two separate elements, as set out in Part 3 above. The Tribunal awarded part only of the relief claimed. It ordered GNT to pay the re-purchase price. It did not order GNT to accept delivery of the unused equipment.

6.5 Mr Sharapov also draws attention to Article 468 of the Civil Code. This provides as follows:

> "**Article 468. Inspection of the Goods (Sampling)**
> 1. The delivery contract may provide for the buyer's receipt of the goods at the location of the supplier.
> 2. If the period of sampling is not established by the contract, the selection of the goods of the buyer (recipient) should be carried out within a reasonable period after the supplier's notification on readiness of the goods.
> 3. When the delivery contract provides that the buyer chooses his selection of goods in the location of the supplier, the buyer shall be obliged to inspect the goods at the occasion of their transfer, unless another provision is provided by legislative acts or followed from the nature of the obligation.
> 4. If the buyer (recipient) does not make a choice of goods within the delivery contract period, and in absence of it - within a reasonable period after the notification of readiness of the goods, the supplier shall be given the right to withdraw from the contract or to require the buyer to pay for the goods."

6.6 Mr Sharapov submits that what has happened in this case is provided for in Article 468.4. GNT failed to inspect and purchase the equipment. The Tribunal exercised its power under article 468.4 to require GNT to pay for the equipment.

6.7 I have come to the conclusion that what the Tribunal did was perfectly lawful. Specific performance is not always an easy remedy to enforce, and it is often better to award financial compensation instead. That is permissible under English law and under Kazakhstan law: see Article 9 of the Civil Code. Also, Article 468.4 of the Civil Code specifically authorises what the Tribunal ordered in this case.

6.8 I do not accept that the Tribunal has deprived GNT of title to the equipment. The Tribunal has left open what will happen to the equipment in future. See paragraph 244 of the award, set out in Part 3 above.

6.9 Furthermore, there was good reason for the Tribunal to leave that matter open. Neither party made clear what it wanted in the event that the Tribunal ordered GNT to repurchase the equipment. See paragraphs 171-172 of the dissenting opinion set out above. Accordingly, the Tribunal has ordered GNT to pay for the unused equipment and left it for the parties to sort out what will happen next to the equipment.

6.10 If the equipment still exists and if GNT wishes to reclaim it (a matter which. Mr Iminov said is uncertain until GNT has inspected) it is entitled to do so, unless that would involve a breach of the sanctions legislation. That is a matter which I am not asked to decide and not in a position to decide.

6.11 GNT had every opportunity to make submissions to the Tribunal about what form of order the Tribunal should make if it found in favour of ZOL on the buy-back issue or if it ordered GNT to pay the purchase price.

6.12 I reject this ground of challenge to the Tribunal's award. I must turn next to the third ground of challenge, which is the alleged failure of the Tribunal to give GNT the opportunity to make submissions on the sanctions issue.

PART 7. DID THE TRIBUNAL FAIL TO GIVE ZOL AN OPPORTUNITY TO MAKE SUBMISSIONS ON THE SANCTIONS ISSUE?

7.1 In paragraphs 201-217 of the award the Tribunal considered whether the sanctions legislation made it unlawful and impossible to perform the buy-back obligation, with the result that the counterclaim failed on the grounds of illegality or impossibility of performance. The majority of the Tribunal concluded that the sanctions legislation did not have that effect. Mr Rachkov came to the opposite conclusion in his dissenting opinion. He considered that the buy-back obligation was terminated under Article 374 of the Civil Code, thus affording a defence to the counterclaim for failure to buy back the equipment.

7.2 It is not my function to weigh up the analysis of the majority and the dissenting analysis of Mr Rachkov, in order to determine which I prefer. The parties have entrusted their dispute to the Tribunal, not to me. Unless there is a specific ground to set aside the award, the parties are bound by the majority decision of their chosen Tribunal.

7.3 The function of the AIFC Court dealing with an application to set aside an arbitration award is set out in Article 44 of the AIFC Arbitration Regulations. Article provides:

> "**44. Application for setting aside as exclusive recourse against arbitral award**
>
> (1) Recourse to a court against an arbitral award made in the seat of the AIFC may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article.
>
> (2) Such application may only be made to the AIFC Court. An arbitral award may be set aside by the AIFC Court only if:
>
> (a) the party making the application furnishes proof that:
>
> (i) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication, under the law of the AIFC;

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or the arbitral proceedings or was otherwise unable to present his case;

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of these Regulations from which the parties cannot derogate, or, in the absence of such agreement, was not in accordance with these Regulations; or

(b) the AIFC Court finds that:

(i) the subject matter of the dispute is not capable of settlement by arbitration under AIFC law; or

(ii) the award is in conflict with the public policy of the Republic of Kazakhstan.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award, or such longer period as the parties to the arbitration have agreed in writing, or, if a request had been made under Article 43, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The AIFC Court, when asked to set aside an award, may, where appropriate and requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside."

7.4 GNT contends that it did not have an opportunity to address the issue set out in paragraph 7.1 above, and that this is a proper basis for setting aside the award.

7.5 This is a very difficult argument to maintain. As ZOL observes in paragraph 31 of its skeleton argument, during the arbitration GNT relied on sanctions in three principal respects: (i) as justification for the Manufacturer's initial refusal to engage directly with Zhenis; (ii) as an explanation for the Manufacturer's subsequent refusal to cooperate with GNT during the duration of the Contract; and (iii) as a motive for the parties' alleged "de facto" abandonment of the buy-back provision. So, the consequences of the sanctions regime were very much in the arena.

7.6 It was a matter for GNT to decide precisely how to formulate its lines of defence based upon the effect of the sanctions legislation. The fact that GNT chose not to formulate its arguments in the manner discussed in paragraphs 201-217 of the award cannot be a ground for setting aside the award.

7.7 This case does not come within, or remotely close to, any of the situations set out in Article 44 of the AIFC Arbitration Regulations which would justify the Court in setting aside the award.

7.8 This third ground of challenge to the award is rejected.

7.9 During the course of the hearing, I asked Mr Iminov what arguments GNT would wish to put to the Tribunal beyond those set out in Mr Rachkov's dissenting opinion. He was unable to identify any such arguments. In the course of their deliberations the Tribunal members considered all the arguments in Mr Rachkov's dissenting opinion, but the majority of the Tribunal did not find those arguments persuasive. It is therefore difficult to see what prejudice GNT has suffered as a result of the suggested loss of opportunity. I say this as a passing comment and hopefully reassurance for GNT, not as the basis of the Court's decision.

7.10 Having dealt with the three grounds of GNT's claim, I must now bring this judgment to a conclusion.

PART 8. CONCLUSION

8.1 Despite Mr Iminov's skilful presentation of his arguments, none of the three grounds of claim advanced can justify setting aside the award.

8.2 This arbitration claim is dismissed.

By order of the Court,

Justice Sir Rupert Jackson
Justice, AIFC Court

Representation:

The Claimant was represented by Mr Farukh Iminov, Senior Associate, Kinstellar Law Firm.

The Defendant was represented by Mr Kirill Sharapov, Partner, ALC Attorneys.