IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

NS INVESTMENTS LTD

Claimant

and

AJAY SETHI

Defendant

ORDER WITH REASONS OF CHIEF JUSTICE ZAKI AZMI

UPON the Part 7 Claim dated 28 June 2020 (the "Claim")

AND UPON the Judgment of H.E. Deputy Chief Justice Ali Al Madhani dated 27 September 2023 (the "Judgment")

AND UPON the Order with Reasons of H.E. Deputy Chief Justice Ali Al Madhani dated 12 March 2024 refusing the Claimant's Appeal Notice dated 18 October 2023 (the "First Permission Application")

AND UPON the Claimant's renewed Appeal Notice dated 2 April 2024 seeking permission to appeal the Judgment (the "Second Permission Application")

AND UPON reviewing all relevant material added on to the Court file

AND UPON reviewing the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The Second Permission Application is dismissed.

2. The Claimant shall pay the Defendant's costs of the Second Permission Application to be assessed by the Registrar unless agreed by the parties.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 15 May 2024
At: 9am

SCHEDULE OF REASONS

1. The Claimant, NS Capital Investment Limited, is a Jebel Ali Free Zone (JAFZA) incorporated and registered company and governed by its free zone regulations. It gave a loan to the Defendant, an Indian national and resident of the UAE, which carries a high rate of interest. The Claimant now claims the repayment of that loan. The learned Judge dismissed the claim on three grounds; firstly, that the Claimant was in breach of the JAFZA regulations by trading with an individual based onshore in the UAE which is outside of the Investments Financial Free Zone. This is in breach of Article 14.1 (a) of JAFZA Regulations and Article 4.2(e) of the Claimant's own Articles of Association. I have read through both the regulations and the Articles of Association and I totally agree with the findings of the Judge on this issue.

2. On this issue alone, the claim can be dismissed. The loan agreement becomes illegal or at least voidable.

3. The second ground of dismissal of the claim was that the Claimant was operating in the capacity of a financial lender. This is not allowed by the laws of the Central Bank of UAE which requires any person who wishes to carry out banking business to first obtain a license from the Central Bank. Therefore, its act of lending money particularly with interest to the Defendant is in breach of these laws. Again, that is an illegal act which the common law does not recognise and no courts of common law will enforce such an agreement.

4. Again, with these two grounds, it is more than sufficient for the Court to dismiss the claim.

5. I have read through the submissions put in by both parties. First question is: merely because parties have agreed to go to the DIFC courts when the dispute arises, does it mean that that agreement is governed by the DIFC laws. The Claimant submitted that it is so, but the Defendant argued that because the Claimant is a JAFZA entity, it must be governed by the laws of JAFZA which is the JAFZA Regulations. I agree with that. But to me, even before that, the Articles of Association are the rules that govern what the Claimant can or cannot do. Its Articles of Association clearly limit what the Claimant can do (read through the Articles of Association). Article 4.1 (a) of the Claimant's AOA states what the Claimant can do, and they are, to carry on business of general trading, to own properties as permitted by JAFZA, to act as holding company, to do investment in shares and to purchase and sell real estate's properties as approved by the Regulation. At the same time, the company is prohibited from carrying on business with persons resident in the UAE. Remember that the Defendant is a resident of the UAE. It shall also not carry on any banking

business or any other business which are prohibited by the authority. Article 4.3 lists out the activities which the Claimant can do and it is very limited. At Article 4.4, it is clearly stated that if the company wishes to conduct trade or other business in the zone or elsewhere in the UAE, it must obtain appropriate license to conduct the trade or other business activity from the competent authorities. Now, let us look at the JAFZA Regulations. Again, the activities which a JAFZA entity is allowed to carry on are very limited. Article 14.1 in particular does not allow any offshore company to carry on commercial activity in the UAE, hold a leased property situated in the UAE except for that allowed in 14.2 which is to use is a place for its own business only. It cannot carry out banking business, insurance, reinsurance agent or insurance broker of any type or any other business which may be prohibited by the authority from time to time. Again, the Regulations permit very limited activities by the Claimant. Article 64 and 65 of the Central Bank and Organisation of Financial Institutions and Activities Law prohibit the carrying on or promoting financial activities without a license. The Claimant holds no such license. Article 65 lists down activities which amount to financial activities.

6. Is a one off loan with interest an act which is ultra vires all the legislations and the Articles of the company mentioned earlier? It must be remembered that this is not an act of an individual. It is an act of a company which as I said earlier, is limited by what is provided in its Articles and reading through the legislation of Jebel Ali as well as the banking laws of the UAE, it is clear that a free zone registered company is not allowed to even give what may be construed as a friendly loan, particularly a friendly loan with such high rates of interest. In the Defendant's submission, it was stated that the Claimant's witness acknowledged and confirmed that they were aware of the restrictions of undertaking a banking transaction under the JAFZA Regulations and under the Memorandum of Association and Articles of Association. I also agree with the submission of the Defendant that the facts of this case and the authority cited by the Claimants in Reuter & Ors. v Wellness United INC & Ors. are distinguishable.

7. The last ground given by the Judge for dismissing the claim relates to Sharia law which is applied to the UAE that loans with interest are prohibited as it is against Sharia laws unless the lender holds a special license to do, being an act against public policy. So even if this loan is intended to be a friendly loan, it is still illegal and unenforceable. As I said earlier, no common law courts will assist to enforce an illegal transaction.

8. This permission to appeal is made pursuant to Rule 44.19 of the Rules of the DIFC Courts. I do not think I need to go into much detail as it is very well established that permission will not be given to appeal unless there is real prospect of success at appeal if permission is granted. The other reason is that there is some compelling reason why the appeal should be heard. I do not see any compelling reason to allow this appeal to be heard.

9. The Second Permission Application is dismissed with cost which shall be determined by the Registrar unless agreed to by the parties.