THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE H.E. JUSTICE NASSIR AL NASSER

BETWEEN

LIKHIL

Claimant/Defendant in Counterclaim

and

(1) LAKSHIN
(2) LAABH

Defendants/Claimants in Counterclaim

Hearing : **19 December 2021**
Judgment : **28 December 2021**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON a Hearing having been listed before H.E Justice Nassir Al Nasser on 19 December 2021, with the Claimant's representative and the Defendants in attendance

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendants jointly and severally shall pay the Claimant the sum of AED 40,000.

2. The Defendants' Counterclaim shall be dismissed.

3. The Defendants shall pay the Claimant the Court fee in the sum of AED 2,000.

Issued by:
Nassir Al Nasser
SCT Registrar
Date of Issue: 28 December 2021
At: 10am

THE REASONS

Parties

1. The Claimant is lLikhil (the "Claimant"), a DIFC registered company, DIFC, Dubai UAE.

2. The First Defendant is Lakshin (the "First Defendant"), an individual who signed promissory note with the Claimant.

3. The Second Defendant is Laabh (the "Second Defendant"), an individual who signed promissory note with the Claimant.

Background and Procedural History

4. The underlying dispute arises in regard to the Claimant's claim filed on 2 November 2021, in connection with the Promissory Note dated 23 August 2021 ("Promissory Note").

5. On 9 November 2021, the Defendants filed an Acknowledgment of Service setting out their intention to defend all of the Claim.

6. On 14 December 2021, the Defendants filed a counterclaim seeking the sum of USD 9,450.

7. The parties met for a Consultation with SCT Judge Ayman Saey on 16 November 2021 but were unable to reach a settlement.

8. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 19 December 2021, at which the Claimant and the Defendants were in attendance.

Claim

9. The Claimant submits that pursuant to the promissory note, the Defendants (borrowers) jointly and severally, promise to pay the Claimant (Lender) a total principal amount of AED 40,000 in return of receiving the following from the Claimant: The Defendants each are being advanced AED 20,000 against a recoverable retainer fee of the Claimant. In the event the Claimant fails to achieve the closing of USD 100 million, or individually the Defendants to achieve USD 25 million each by 15 December 2021, and the Claimant needs to return the funds to the client "Lohit", the Defendants will pay back the amount immediately without claims for legal, compensation or others on first demand to the Claimant.

10. The Claimant submits that the Defendants failed to secure the USD 25 million. They have only secured USD 315,000 from Lohit. However, Lohit then decided to not continue and requested a refund of their payment.

11. Therefore, the Claimant filed a claim claiming the AED 40,000 from the Defendants pursuant to the promissory note.

Defence and Counterclaim

12. In response to the Claimant, the Defendants have not denied the Promissory note. However, the Defendant's allege that on 15 July 2021 the Claimant has issued a Head of Terms wherein the benefits to the Defendants were:

> "the Claimant to pay 3% of fees of any funds raised by the Defendants".

13. The Defendants allege that on 17 August 2021, they have raised initial funds of USD 315,000 paid to the Claimant.

14. The Defendants further allege that the Claimant has failed to pay them the 3% as per the Head of Terms.

15. The Defendants filed a counterclaim claiming the 3% of the USD 315,000 raised by them to the Claimant which calculates to USD 9,450.

16. During the course of the hearing, the Defendants proposed that the Claimant's claim would be settled in the event the Claimant pays them the 3%, which calculates to USD 9,450 as per the Head of Terms.

Discussion

17. In relation to the Claim, the Defendants failed to achieve the closing of USD 25 million each by 15 December 2021. Therefore, they are obliged to return the sum of AED 40,000 as per the Promissory Note.

18. As per Clause 4 of the promissory note:

> "Payment Terms - Due on Demand. Any payments received will be applied first to outstanding late fees, if any, next to interest, if any, and thereafter to the unpaid principal balance of the loan".

19. Since the Defendants have not denied the Promissory note and its payment terms, I find that the Defendants are therefore liable jointly and severally to pay the Claimant the total sum of AED 40,000 pursuant to their failure to achieve the closing of the USD 25 million each.

20. With reference to the Counterclaim, the Defendants claimed 3% of the USD 315,000 raised as per the Head of Terms.

21. The USD 315,000 was paid by Lohit, and by the efforts of the Defendants.

22. At the hearing, the Claimant confirmed that it has issued and accepted the Head of Terms. However, the Claimant's argument is that the money raised by the Defendants, with respect to Lohit, would be refunded following a letter sent by Lohit to the Claimant, notifying it of the termination of the Agreement, and seeking a full return of the USD 315,000.

23. The Claimant argues that the Defendants have failed to achieve their targets, and that the sum raised by them will also be returned as Lohit have terminated the Agreement with the Claimant. Therefore, the Claimant maintains that the Defendants are not entitled to the sums claimed.

24. As per the Head of Terms the following is stated:

> "The Parties will agree to the following:
>
> 1. Fund raising
>
> The following fund-raising targets have been established:
>
> Lomash USD 25 million
>
> Lohit USD 25 Million
>
> Lakshin USD 25 Million
>
> Lohajit USD 25 Million
>
> Likhil pays 3% of fess of any funds raised by Lakshin and Lohajit. Under special conditions, should a broker be used a fee of 4% can be discussed.
>
> After a first closing of USD 100 Million a second and final closing of USD 250 Million is envisioned within 3 to 6 months thereafter."

25. The Head of Terms does not provide the date in which the 3% is to be paid. The Claimant has not paid the Defendants during the fund raise of USD 315,000 therefore it is possible that the payment would be made upon achieving the targets. It does not add up to sign a promissory note for

a target to be achieved on a certain date and - if not achieved - the Defendants would return a sum of money back to the Claimant and receive a 3% on any fund raise prior to achieving the targets.

26. Therefore, I find that the Defendants would be entitled to 3% upon achieving the agreed targets.

27. The Defendants failed to achieve the targets, even the raised amount of USD 315,000 which was raised by them in an Agreement with Lohit (which was terminated), to which Lohit requested a refund of their sum paid.

28. If the Claimant has paid the Defendants the 3% prior to achieving the targets and Lohit then terminated the Agreement and requested for a refund, the Defendants would have been paid an extra amount without achieving any targets.

29. Therefore, I find that the 3% makes sense to be paid to the Defendants upon achieving the targets agreed upon between the Claimant and them. Since there was no target achieved, and since the sum of USD 315,000 will be paid back to Lohit, the Defendants are therefore not entitled to claim such amount at this stage.

30. I find that the Defendants' counterclaim should be dismissed on the basis that the they failed to achieve their target, as discussed above. And the sum raised by the Defendants will be paid back to Lohit as the Agreement is terminated.

Conclusion

31. In light of the aforementioned, I find that the Defendants jointly and severally shall pay the Claimant the sum of AED 40,000.

32. The Defendants' Counterclaim shall be dismissed.

33. The Defendants shall pay the Claimant the Court fee in the sum of AED 2,000.