Claim No: ENF 221/2019

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

FAL OIL COMPANY

Applicant

and

SHARJAH ELECTRICITY AND WATER AUTHORITY

Respondent

ORDER WITH REASONS OF H.E. JUSTICE OMAR AL MUHAIRI

UPON considering the Applicant's application dated 19 November 2019 (the **"Application"**)

AND UPON considering the Applicant's oral submissions at a hearing on 18 February 2020.

IT IS HEREBY ORDERED THAT:

1. The Applicant is to serve the Application, skeleton argument, this order and its corresponding judgment on the Respondent within 14 days from the date of issue of this order.

2. The matter is to be listed, for an oral hearing, on the first available date within 60 days, with representatives from both parties to attend.

3. The Respondent is to file and serve a skeleton argument no later than 28 days before the hearing.

4. The Applicant is to file and serve any skeleton argument in response no later than 14 days before the hearing.

5. Costs in the case.

Issued by:
Nour Hineidi
Deputy Registrar
Date of issue: 4 June 2020
At:1.30pm

SCHEDULE OF REASONS

1. I have been asked to determine theApplication, for ratification and enforcement of a Sharjah Court of First Instance judgment dated 31 July 2016, (the **"Judgment"**). Although the matter was initiated using the P45 form, it was later brought to an oral hearing before me in order to hear submissions on behalf of the Applicant. The Application was made without notice, as such the Respondent has played no role in the proceedings before this Court so far.

2. In dealing with the Application I have had particular regard to Article 24 of Law 10 of 2004, (the **"DIFC Courts Law"**). In addition to Article 7 of Law 12 of 2004 as amended, (the **"JAL"**).

3. The relevant facts are as follows:

(a) The Judgment relates to a contractual dispute between the parties and determined that AED 478,147,713.11, plus interest accruing at a rate of 1% per annum, was due and owing to the Applicant. The matter was taken to appeal before the Sharjah Federal Appeal Court and later the Union Supreme Court. On both occasions the Judgment was upheld.

(b) On 19 November 2019, the Applicant made the Application as the Judgment had not been satisfied. On 29 January 2020 the Registry wrote to the Applicant stating that the Application will not be accepted as there is no link between the parties and the DIFC. The matter was then brought for an oral hearing before myself on 18 February 2020.

Procedure

4. Notwithstanding the above, in my view the Applicant has not used the correct procedure in seeking ratification of the Judgment. The Application is not merely one of enforcement, the Applicant is seeking ratification of the Judgment, which although is linked to enforcement is not one of the same. As such, the Applicant should have issued a Part 8 claim for ratification, rather than a standalone application for enforcement. However, in accordance with the overriding objective, I have dealt with the Application as though it were made under Part 8.

Judgment

5. The Courts jurisdiction to ratify judgments made by an external court is set out under Article 24 of the DIFC Courts Law, which states:

> **"Ratification of Judgments**
>
> (1) Pursuant to Article 7(4) of the Judicial Authority Law, the Court of First Instance has jurisdiction to ratify any judgment, order or award of any recognised:
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> (a) Foreign court;
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> (b) Courts of Dubai or the United Arab Emirates;
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> (c) Arbitral Award;
>
> (d) Foreign Arbitral Award; or
>
> (e) orders for the purposes of any subsequent application for enforcement in the courts of Dubai;
>
> (2) Where the UAE has entered into an applicable treaty for the mutual enforcement of judgments, orders or awards, the Court of First Instance shall comply with the terms of such treaty."

6. As noted in DNB Bank Asa v Gulf Eyadah Corp [2015] DIFC CA 007, reference in Article 24 to Article 7(4) of the JAL should include to Article 7(6) of the JAL, taking into account the amendments made in 2011. The Applicant in this case is seeking to rely upon Article 7(6), which states:

> "The judgments, decisions, orders and ratified Arbitral Awards rendered outside DIFC by any court other than Dubai Courts shall be executed within DIFC in accordance with the procedure prescribed in the Rules of the Courts."

7. As confirmed in DNB Bank Asa v Gulf Eyadah Corp [2015] DIFC CA 007, assets being located within the DIFC is not a prerequisite for ratification to take place. The Applicant has made no positive submissions on the Respondent's assets. However, DNB predates Decree 19 of 2016, establishing the Joint Judicial Committee, which the Court is now bound by.

8. In considering the exact wording of Article 24 of the DIFC Courts Law, in my view, some form of connection with the DIFC is required. In addition, Article 7(6) of the JAL must also be satisfied for Article 24 of the DIFC Courts Law to apply.

9. In support of the Application, the Applicant relies heavily on DNB Bank Asa v Gulf Eyadah Corp [2015] DIFC CA 007. In that case there was a reciprocal agreement between the Courts and the English Commercial Court. In the present case, the Judgment is that of the Sharjah Court of First Instance, a Court of one of the United Arab Emirates. The Judgment was upheld by the Union Supreme Court, which is the highest federal Court in the United Arab Emirates, but its judgments are not binding on the Courts. There is no reciprocal agreement in place between the Sharjah Courts or the Ministry of Justice and the DIFC Courts.

10. I must also consider this matter with the background and practicalities of enforcement of judgments within the rest of the UAE. All courts of the UAE, including this Court, must comply with the provisions of Federal Law No. 11 of 1992, as amended, (the **"Civil Procedures Code"**). In particular, this case engages Articles 219 and 220 the Civil Procedures Code which relate to execution of judgments. In the UAE each court has jurisdiction to the hear the application for enforcement of its own judgments. Therefore, it is for the originating UAE court to determine that a judgment is enforceable and for its respective procedures to be undertaken. This is so in relation to all other UAE courts, save for that of the Dubai Courts, in which the Courts have its own procedures and a reciprocal agreement in place. As in the case of the Dubai courts, the Courts will give or receive a legal deputation order asking either court to transfer the matter to be transferred to the other court, for enforcement purposes.

11. Under the usual procedures for enforcement of the Judgment, the Courts would require a letter from the Sharjah Courts requesting transfer of the matter to the Courts and certifying that the Judgment is executory, a translation of the judgment and some connection with an asset in the DIFC. The executory seal alone is not enough.

12. As stated above, the Courts do not have a memorandum of understanding with the Sharjah Courts or the Ministry of Justice, only a collaboration agreement, which does not deal with enforcement. While I recognise that enforcement and ratification are two separate actions, I am concerned that to grant the Application would have no practical effect, as no under the Civil Procedures Code, it would appear that it is for the Sharjah Courts to decide upon the enforceability of the Judgment. I am not yet persuaded that this Court has jurisdiction to ratify the Judgment.

13. I further recognise that there is a lacuna in both the DIFC Law and Procedure on the ratification of judgments, particularly where there is no reciprocal agreement or treaty in place. While I am not yet persuaded that this Court does have jurisdiction to ratify the Judgment, I have not satisfied that it does not. I, therefore, consider that the most appropriate way to proceed would be for the Respondent to be served with the proceedings. The matter is then to be listed for a full hearing and the Court shall hear full arguments from both parties on the matter.