Claim No. CFI-014-2018

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BEFORE H.E. JUSTICE SHAMLAN AL SAWALEHI

BETWEEN

NATIONAL CONTRACTING CO. LTD.

Claimant

and

DODSAL ENGINEERING & CONSTRUCTION PTE. LIMITED

Defendant

ORDER WITH REASONS OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON reviewing the Claimant's application (the "First Application") dated 19 March 2018, seeking Immediate Judgment pursuant to the Rules of the DIFC Courts ("RDC") Part 24, and other reliefs.

AND UPON reviewing the Claimant's application (the "Second Application") dated 25 June 2018, seeking De novo review of the order issued on 16 May 2018, and Judgment on admission pursuant to the Rules of the DIFC Courts ("RDC") Part 15, and PD 3/2015.

AND UPON hearing both parties' arguments at the Hearing on 31 July 2018 for the first application, and reading the documents submitted in the Court file for the second application.

IT IS HEREBY ORDERED THAT:

1. The Application for Immediate Judgment is granted.

2. The Application for Judgment on admission is granted.

3. The Defendant shall pay the Claimant KWD 18,840.770 as Judgment on admission.

4. The Defendant shall pay the Claimant KWD 1,169.420 as remains sum of the claimed amount.

5. All other Claimant's reliefs are denied.

6. The Defendant shall pay the Claimant the costs associated with the First and the Second Applications, to be assessed by the Court if not agreed by the parties within 30 days of the issuance of this Order.



Issued by:

Ayesha Bin Kalban

Assistant Registrar

Date: 9 August 2018

At: 2pm



SCHEDULE OF REASONS

1. The Claimant, National Contracting Co.Ltd, is a company from Kuwait. It is an exclusive agent for Aggreko Middle East Limited in Kuwait, a company in the business of supplying temporary power and cooling solutions.

2. The Defendant, Dodsal Engineering & Construction Pt. Limited is a company from Singapore with a branch in Dubai, doing business in Kuwait.

3. Both parties entered into 2 agreements, the GC-31 agreement and the EWTIP agreement, for hire of equipment. Both agreements are dated 24 February 2016 and both agreements are governed by the laws of the State of Kuwait.

4. The Claimant filed its claim form with particulars of claim requesting immediate Judgment dated 19 March 2018, seeking relief of:

a. an order for the payment by the Defendant of:

i. the overdue amounts due under the agreement between the parties, amounting to KWD 79,484.540 as of March 2018,

ii. overdue amounts that accrue from 4 March 2018 through a declaration of judgment, amounting to KWD 18,157.42

b. a declaration that the Defendant is liable to the Claimant for payment of hire charges for the Retained Equipment that accrue under the Agreements and Purchase Orders from the date of Judgment.

5. The Defendant denies that an amount of KWD 79,484.54 is outstanding to the Claimant and further submits the outstanding amount of KWD 60,643.77 to the Claimant is in process of payment as through the letter of Credit from Dubai Islamic Bank.

6. The Defendant admits liability for part of the claim for a specified amount of money, in the amount of KWD 18,840.77, however denies all other claims made by the Claimant.

7. The Claimant filed an application for De novo review of the Order issued by Judicial Officer Nasser Al Nasser on 16 May 2018, denying the Claimant's request for Default Judgment on Admission.

8. I find that the Defendant is liable for the amount KWD 18,840.77, as the Defendant admitted that amount in its Statement of Defence dated 23 April 2018. Therefore, I accept the application for Judgment on admission for this amount.

9. I find that the Defendant is liable for the amount KWD 1,169.42 as was stated in the witness statement of Bahrat Chauhan dated 26 July 2018. This amount consists of bank fees and charges deducted by bank transfer of KWD 60,43.77 as set out in the letter of Credit from Dubai Islamic Bank which was issued for the Defendant's benefit in full. Therefore, that amount has to be paid as remaining overdue amount that accrued prior to the date of this Claim.

10. As to the relief sought by the Claimant to be paid overdue amounts that accrue from 4 March 2018 through a declaration of Judgment, amounting to KWD 18,157.42, I find that clause 6 of each agreement set out the mechanics for payment by the Defendant and contract for payment with a 90 days payment period. The Defendant denies its liability towards this amount in its Statement of Defence and during the hearing as they say it is not relevant to the current claim.

11. I have noticed that on the date of the of Claimant's claim, 19 March 2018, the total amount overdue to the Claimant only amounts to KWD 79,484.540 that could be applied to the 90 days period. Therefore, all overdue amounts from 4 March 2018 onwards should not be part of this Claim and this particular relief is rejected, however this does not bar the Claimant from making a new claim for the amount of KWD 18,157.42.

12. As to the relief sought by the Claimant for a declaration that the Defendant is liable to the Claimant for payment of hire charges for the Retained Equipment that accrued under the Agreements and Purchase Orders from the date of Judgment. I find the Claimant failed to submit to me before and during the hearing the legal grounds and law authorities related to this relief, therefore it is rejected. Additionally, it is my view that parties to the underlying agreements can file any claim to approve liability and damages against the other party for retained equipment, under the Kuwait law which needs to be approved by expert witness.

13. Having heard the parties' submissions, and set out the reasoning for my findings, my decision thereon is reflected in the order made.

14. I find it appropriate to apply the default rules as to costs, pursuant to RDC 38.7. Thus, as this Application has been granted, the Defendant shall be responsible for the Claimant's costs as to both applications. The parties are free to agree on costs within 30 days of the issuance of this Order and should the parties fail to agree, such costs may be assessed by the Court.