THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE SMALL CLAIMS TRIBUNAL

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

KALILA PRODUCTS FACTORY

Claimant

and

KALYANI FZ LLC

Defendant

Hearing:**15 May 2019**

Further Submissions: **4 September 2019**

Judgment: **29 September 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON hearing the parties' submissions at the Hearing;

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's Claim is dismissed.

2. Each party shall bear their own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 29 September 2019

THE REASONS

Parties

1.The Claimant is Kalila Products Factory, a Sharjah-based

2.The Defendant is Kalyani Fz LLC, a software company that is located in Dubai.

Background

3. On 22 December 2016 following a number of meetings between the parties, they entered into an Engagement Agreement for the purchase of a Kalyani 8 ERP software solution ("Kalyani Solution") for the installation, implementation and testing of the Kalyani Solution.

4. The parties agreed that the project would cost AED 180,000. The Claimant was requested to pay the Defendant 25% of the amount upon signing of the Engagement Agreement, thereafter, a further 25% would be paid 90 days from signing the Engagement Agreement by way of post-dated cheques, a further 25% would be paid following a user acceptance test, and the remaining 25% would be paid 1 month after sign-off of the project. On 22 December 2016, the Claimant paid the Defendant the first 25%, and subsequently on 22 February 2017 the Claimant paid the second 25%.

5. The Claimant expressed its dissatisfaction of the Kalyani Software, stating that they had to buy new computers to accommodate the new system and stated that the system was faulty and the Defendant failed to provide proper training for the Claimant's employees.

6. On 4 July 2018, the Claimant sent an official termination notice, terminating the Defendant's services and requested the refund of the AED 90,000 that had been paid to the Defendant.

7. The parties went through extensive back and forth emails and phone calls trying to reach a solution but failed to do so. The Claimant proceeded to file a Claim through the DIFC Courts Small Claims Tribunal (the "SCT") against the Defendant on 8 February 2018 requesting that the Defendant refund the amount paid to the Defendant for the Kalyani Solution in the amount of AED 90,000.

8. On 5 August 2018, the Defendant filed an Acknowledgment of Service intending to defend the whole claim. Thereafter, the parties met for a series of Consultations before SCT Judge Ayesha Bin Kalban, however, the parties failed to reach an agreement and the case was listed before me for a hearing on 15 May 2019.

9. After the hearing I ordered that the parties file further expert evidence to support their claim. The Claimant's expert report was filed on 29 August 2019 and the Defendant's expert report was filed on 4 September 2019.

Particulars and Defence

10. The Claimant argued in the Claim Form and Particulars of Claim that they signed an Engagement Agreement for the Defendant to provide a Kalyani Solution by 22 December 2016. As per the Defendants requirements, the Claimant purchased new computers and a Server to ensure that the technological equipment was compatible with the Kalyani Solution, and paid AED 90,000 (50% of the agreed amount).

11. The Kalyani Solution was installed however the Defendant failed to provide proper training for the Claimant's employees, as was required by the Engagement Agreement. The Claimant argues that the system does not work properly and that the Defendant's representatives sent to the Claimant's office to train the Claimant's employees lacked knowledge of the system and were not very informative. The Claimant also argued that the reports produced from the Kalyani Solution were inaccurate and could not be relied upon.

12. On 4 July 2018, the Claimant sent an official notice terminating the Engagement Agreement with the Defendant, following which the Defendant did not reply. Therefore, the Claimant is requesting termination of the Engagement Agreement and a refund of the AED 90,000 paid to the Defendant.

13. The Claimant's expert report found a number of errors within the Kalyani Solution and an inappropriate reporting system. The report further explained that there had been a lack of training of the Claimant's team. It was also reported that the numbering is inaccurate within the reports and the number of days stated in a month is not reflected properly.

14. In reply, the Defendant states that the Claimant's issues with the Kalyani Software are due to user familiarity rather than technical glitches. The Defendant explained to the Court that the parties conducted a number of meetings specifically to clarify the Claimant's issues and concerns in respect of user familiarity with system or a lack of knowledge. The Defendant reaffirmed that the Claimant has been informed that a final session will be planned with the users to review and assist them on these points.

15. In support of the Defendant's argument that the issues surrounding this claim fall with the Claimant's lack of knowledge of the system, the Defendant submitted the below email which demonstrates the Claimant's acceptance that most of the issues with the system are related to user familiarity (even though a number of training sessions had been conducted and the training schedule had been delayed).

> "Dear Mr.Kino,

You have mentioned in the mail that, issues due to lack of user familiarity.

We accept that point, this is due to lack of user familiarity in some cases. This is due to improper training also. we need proper training. Anyway try to complete kimmoTrading & Contracting schedule as soon as possible. Rest of the divisions start after 27 th April.

For,

Accounts Dept.

kildi."



16. In the Defendant's expert report, it is submitted that the problems faced by the Claimant's employees were mainly due to learning and training difficulties. In addition, the problems and issues faced are not related to the Kalyani Solution system delivered or implemented in the Claimant's factory.

17. At the Hearing, the parties reiterated their arguments as submitted in their submissions.

Finding

18. First and foremost, the relevant Engagement Agreement falls under the DIFC Courts' jurisdiction as the Engagement Agreement at Clause 19.1, states that:

> "Any dispute or difference arising at any time between the parties hereto as to construction, meaning or effect of this agreement or any clause or anything contained herein, or the rights, duties, liabilities and obligations of the parties hereto, the same shall be referred for arbitration. The arbitral proceedings shall be referred to the court of Arbitration at DIFC, Dubai or Abu Dhabi court. The Language used in the Arbitration proceedings shall be English or Arabic languages". As the claim value is less than AED 500,000, this claim is properly before the Small Claims Tribunal of the DIFC Courts."

19. There is just one issue to be decided in this dispute: is the Claimant entitled, under the Engagement Agreement, to the refund of the amount paid? There is no dispute between the parties as to the existence and applicability of the Engagement Agreement.

20. It is the Courts view that after examining the expert reports of both parties the Claimant's employees lack the knowledge to work with the system. It is also observed in the hearing that the issues that the Claimant faced was heavily founded on the formatting of the reports and not due to a faulty Kalyani System. I am of the view that the Claimant's employees have received a number of training sessions and due to the Claimant's turnover of staff, the trained employees should have given a proper handover to the new employees replacing them in the Factory.

21. The Court is satisfied that the Defendant's submission is logical and that they performed their duty in accordance with the Engagement Agreement, as such the Claimant's claims are denied.

22. The Court is satisfied that the Engagement Agreement between the parties is the basis of this Claim and that the Defendant delivered their part of the agreement and that there are no issues with the Kalyani Solution provided, therefore the Claimant's claims are dismissed.

23. The Defendant shall be granted leave to pursue any intended action against the Claimant by filing a separate claim within the Small Claims Tribunal.

24. Each party shall bear their own costs.



Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 29 September 2019

At: 3pm