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

LUVYA

Claimant

and

LOMASH

Defendant

Hearing : **12 December 2021**
Judgment : **19 December 2021**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON this claim being filed on 27 October 2021

AND UPON a Hearing being held before SCT Judge Nassir Al Nasser on 12 December 2021 with the Claimant's and the Defendant's representatives in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 133,218.75, plus 9% post judgment interest per annum from the date of this Judgment until the date of full payment.

2. The Defendant shall pay the Claimant the Court fees in the sum of AED 6,665.45.

Issued by:
Nassir Al Nasser
SCT Registrar
Date of issue: 19 December 2021
At: 10am

THE REASONS

The Parties

1. The Claimant is Luvya (the "Claimant"), a company registered in Sharjah, UAE.

2. The Defendant is Lomash (the "Defendant"), a company registered in Dubai, UAE.

Background and the Preceding History

3. The underlying dispute is in regard to the alleged non-payment of invoices issued to the Defendant by the Claimant pursuant to a purchase order in the total amount of AED 133,218.75 (the "Invoices"). The Claimant filed its claim with the DIFC Courts Small Claims Tribunal (the "SCT") on 27 October 2021 seeking recovery of this sum (the "Claim").

4. On 3 November 2021, the Defendant filed an Acknowledgment of Service setting out its intention to defend all of the Claim.

5. Thereafter, in accordance with the Rules of the DIFC Courts, a Consultation was held before SCT Judge Hayley Norton with both parties' representatives in attendance. However, the parties failed to reach a settlement.

6. Thereafter, a Hearing was then held before me on 12 December 2021, at which the Claimant's and the Defendant's representatives attended.

The Claim

7. The Claimant's case is that it entered into a credit agreement with the Defendant (the "Agreement") dated 21 October 2020, and pursuant to the Agreement, the Claimant granted the Defendant a credit facility with a credit limit amounting to AED 200,000, and a credit period of 60 days from

the date of each invoice.

8. Pursuant to the terms of the Agreement, the credit was to be utilised to pay invoices issued by the Claimant to the Defendant in relation to cargo shipment and freight services provided by the Claimant to the Defendant from time to time.

9. The Defendant engaged the Claimant to provide cargo shipment and freight services between the period of 31 October 2020 and 27 April 2021. However, the Claimant contends that the Defendant failed to settle the invoices related to such services and failed to honour its commitments under the Agreement despite the lapse of the agreed credit term and the numerous reminders provided by the Claimant.

10. The Claimant therefore submits that it is entitled to the sums owed to it pursuant to the Invoices and statement of account, in the amount of AED 133,218.75.

The Defence

11. The Defendant submits that the Agreement was a credit facility granted to the Defendant by the Claimant for payment of ongoing shipments. The Defendant alleges that all payments were made on a timely basis provided that the containers being handled by the Claimant were released on time.

12. The Defendant alleges that during October 2020, a container under the care of the Claimant was stuck in Lohendra Port. The Defendant alleges that no efforts were made by the Claimant to transport and deliver the container on a timely basis.

13. The Defendant adds that since no efforts were made by the Claimant for shipment of this container and due to the urgency of the delivery, the Defendant had no choice but to air transport the product to the customer.

14. The Defendant argues that due to this issue, it was agreed between the parties that the costs incurred by the Defendant to air transport the products would be equally shared between the Claimant and the Defendant. The Defendant submits that out of the total amount of AED 227,377 incurred by the Defendant to air transport the products, 50% of the cost (i.e. AED 114,669) would be paid by the Claimant to the Defendant by providing discounted offers for all upcoming shipments.

15. The Defendant also alleges that it was verbally agreed in a meeting that a discount of USD 1,000 would be provided by the Claimant to the Defendant on all future shipments.

16. The Defendant alleges that on 14 March 2021 the Claimant sent a letter claiming the full amount of the air transport in the sum of AED 227,377 to be paid up front by the Defendant and the adjustment of AED 114,669 would be paid by the Claimant by way of the Defendant providing discounted offers for all upcoming shipments. However, the Defendant adds that the value of the discount was not stated in this letter and it was later communicated to the Defendant that the Claimant would only offer a discount of USD 100 per container for each future shipment. The Defendant rejected this offer.

17. The Defendant also adds that there is a separate dispute (not related to the above) which relates to the Claimant withholding a shipment in Italy which led the Defendant to incur additional cost of storage and demurrage to the sum of AED 56,292.97.

18. Therefore, based on the above facts, the Defendant rejects the claim and the remedies sought by the Claimant.

Finding

19. The case before me is a case related to the Agreement as defined in paragraph 7 of this Judgment.

20. The parties are both companies registered outside the jurisdiction of the DIFC, however, by virtue of the Agreement, I note that the parties have agreed to opt-in to the jurisdiction of the DIFC Courts pursuant to the following clause:

> "any dispute arising out of or in connection with this application for a credit facility, including any question regarding its existence, validity, termination, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre (DIFC). This contract shall be governed by and construed in accordance with the Laws of the Dubai International Financial Centre (DIFC)."

21. Pursuant to a purchase order, the Defendant received services from the Claimant, following which the Claimant issued Invoices for such services. However, the Defendant failed to pay the Invoices arguing that its basis for non-payment relates to technicalities of a particular shipment.

22. At the hearing, the Defendant did not deny that the Invoices have been issued but sought to argue that due to the Claimant's actions for one of the shipments, it had incurred damages. Therefore, the Defendant requests that the Court reject the Claimant's claim.

23. I find that there are two matters running in parallel - the Claimant's claim for non-payment of the Invoices and the Defendant's attempt to argue a claim for damages. If the Defendant wished to bring an action related to damages, it should have sought legal advice to understand the options available to it in this regard.

24. The Claim before me is clear, the parties entered into the Agreement and the Invoices were issued pursuant to that Agreement, and the Defendant is liable to pay.

25. Therefore, I find that pursuant to the Agreement and evidence provided by the Claimant, the Defendant is liable to pay the Claimant the sum of AED 133,218.75, plus 9% post Judgment interest per annum from the date of this Judgment until the date of full payment.

26. I also find that the Defendant is liable to pay the Claimant the Court fees.

Conclusion

27. In light of the above, I find that the Defendant is liable to pay the Claimant pursuant to the invoices issued the sum of AED 133,218.75 plus 9% post Judgment interest per annum from the date of this Judgment until the date of full payment.

28. I also find that the Defendant shall pay the Claimant the Court fees in the sum of AED 6,665.45.