محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar

Neutral Citation: [2022] QIC (F) 4

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

5 April 2022

CASE Nos: CTFIC0008/2021 and CTFIC0022/2021

IN THE MATTERS OF:

(1) **AL RAZZAH GULF for SERVICES W.L.L.**

Claimant

For an order that ANAS Tec Gulf Engineering LLC be wound up

and

(2) **ANAS INTERNATIONAL ENTERPRISE S.p.A**

Applicant

For appointment of an Administrator of ANAS Tec Gulf Engineering LLC

ORDER

Before:

Justice Arthur Hamilton
Justice Rashid Al Anezi
Justice Ali Malek QC

ORDER

1. The Application by the Applicant for an Administration Order is dismissed.

2. ANAS Tec Gulf Engineering LLC is ordered to be wound up by the Court under the provisions of the Insolvency Regulations 2005.

3. Joanne Rolls and Steven Parker are identified as the persons who are to act as Liquidators of ANAS Tec Gulf Engineering LLC under Article 83 of the Insolvency Regulations 2005.

4. Parties are at liberty to apply to the Court within 21 days of the issue of this judgment for any order as to costs which they respectively seek.

JUDGMENT

1. These cases each relate to ANAS Tec Gulf Engineering LLC ("ATG"), a company established in the Qatar Financial Centre ("the QFC") in 2017. In the first the Claimant seeks an order that ATG be wound up by the Court compulsorily. In the second the Applicant seeks the appointment by the Court of an Administrator of ATG. The Court by Order dated 17 October 2021 directed that the two cases be managed and heard alongside each other.

2. The Claimant is a company established in Qatar but outside the QFC. The Applicant is a company established in Italy. By a Shareholders' Agreement dated 9 March 2017 the Claimant, the Applicant and Tecnositaf Gulf Integrated System W.L.L., another company established in Qatar outside the QFC ("Tecnositaf"), agreed to collaborate to form ATG. The business of ATG was to include carrying out consultancy services in the field of civil engineering with emphasis on roads, tunnels and related transportation consultancy services. The geographical areas for its activity were to include Qatar and India. The capital share structure of ATG was to be 51% to the Claimant, 4% to Tecnositaf and 45% to the Applicant. ATG was in due course established on these bases.

3. A primary function of the Applicant was to provide finance for the projects to be undertaken by ATG. In furtherance of that function the Applicant entered into two Shareholder Loan Agreements with ATG. The first, dated 28 July 2017, involved the advance to ATG by the Applicant of 1,850,000 euros on certain terms and conditions. The second, dated 24 April 2018, involved the advance to ATG by the Applicant of 4,000,000 euros on certain terms and conditions, including a term that that advance be used exclusively for the purposes of a specific project to be carried out in India. The Claimant is a company with contacts in the construction sector in Qatar.

4. In the course of 2018 difficulties began to emerge among the shareholders, including difficulties in relation to finance and to attendance at meetings of ATG. Ultimately, in March 2021 the Claimant filed a claim form with the Court in which it sought, on various grounds, an order that ATG be wound up compulsorily. Some delay occurred by reason of the Court's requirement that it be satisfied that the claim form had been duly served in Italy on the Applicant as an interested party. In the event the Applicant, in October 2021, filed and served its application for the appointment of an Administrator. It was plain from the terms of that application that it had, in fact, received the claim form.

5. The Court having directed that the two cases be managed and heard together, in due course they came on for a virtual hearing on 17 March 2022. Tecnositaf took no part in either case; nor did ATG. The parties to the cases had filed and served a substantial number of documents; and their written and oral arguments extended widely. The Court finds it unnecessary to enter into any detailed consideration of the difficulties between the parties which resulted in these cases being initiated. It will concentrate on what, as it sees it, is important for the disposal of them.

6. The Court may wind up a company "if……(2) the Company is unable to pay its debts; (3) the Company ….suspends its business for a whole year" (QFC Insolvency Regulations, Article 77). These are included among the grounds on which the Claimant relies. Each of the cited grounds is here satisfied. A company is deemed unable to pay its debts if a creditor to whom the company is indebted in a sum exceeding US$2,000 then due has served a written demand which the company has

neglected to pay (Article 78(1)(A)). The Applicant has so served at least one qualifying demand on ATG and payment has not been made, though the Applicant maintains that, on the information made available to it, it cannot properly be satisfied that ATG is "balance sheet insolvent" (as envisaged by Article 78(2)). It is undisputed that ATG has suspended its business for longer than a year (and that it had so suspended it at the date when the claim form was filed).

7. The Court "may make an Administration Order in relation to the Company if, and only if, it is satisfied" of two matters, which are cumulative. The first is "that the Company is or is likely to become unable to pay its debts (within the meaning given to that expression by Article 78)". It is not disputed that that requirement is met. The second is "that the making of an order under this Article 8 would be likely to achieve one or more of the purposes set out in Article 7". Among the purposes set out in Article 7 are:

   (A) rescuing the Company, or the whole or any part of its undertaking, as a going concern;

   (B) achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up without first being in administration.

8. It is accepted by the parties that the appropriate course for the Court to take is either to make an order winding up ATG or to appoint an Administrator of it, the Court having jurisdiction under Part 3, Section 4 and Part 2, Section 2 respectively of the Regulations. At least one ground for making a winding up order is satisfied. There would be no justification for the Court declining to make such an order except in circumstances where it was satisfied that it could and should appoint an Administrator. It is for the Applicant to satisfy the Court that it could and should do so.

9. Article 11 of the Regulations envisages that a report may be prepared by an independent person to the effect that the appointment of an Administrator for the Company is expedient. In a witness statement filed with the Application Federica Ribechi, an employee of the Applicant, states that, against an unsuccessful attempt by the Applicant in August 2019 to obtain financial information from ATG, she does not believe that it would be possible to obtain an independent report to support the application. As to whether that belief is well-founded the Court expresses no view. However, the fact remains that the Court does not have the benefit of such a report and must proceed on the basis of the documents before it and of the parties' submissions.

10. The Court has no documentary material before it as to what assets, if any, ATG currently has. As to liabilities, the documents indicate that, although some repayments were made in respect of the first loan referred to above, there remained outstanding as at October 2021 a sum in excess of 1,680,000 euros (including interest) and that in respect of the second loan there remained outstanding at the same time a sum in excess of 4,227,000 euros (including interest). These loans, it appears, remain outstanding with interest on them continuing to accrue. There are also certain outstanding judgments against ATG pronounced in the local Qatari courts. According to the Claimant, the offices of ATG have long been closed and its employees' contracts terminated; there are continuing liabilities to the QFC Authority.

11. A company in financial difficulties may potentially be capable of being rescued, in whole or in part, as a going concern if an Administration Order is made. An example might be where a project (or projects) was actively being pursued which, if allowed to continue, would be likely to result in the company emerging from its financial difficulties and its debts being paid without the need for liquidation. In the present case there is no suggestion that any project, whether in Qatar or in India or elsewhere, is actively being pursued by ATG. So far as appears from the documents, ATG has not been commercially active since in or about 2019. In the Minutes of an Extraordinary General Assembly of ATG held in December of that year it is recorded that the Assembly resolved to approve an agreement exiting from the Indian project, that project having earlier been suspended; there is nothing to

suggest that any other project was then being carried on or was in contemplation. There is no suggestion that there is any specific project now available to ATG. Its capacity to pursue any of the activities for which it was established is heavily dependent on financial support from the Applicant.

12. It was suggested in argument that the Applicant, notwithstanding the substantial outstanding debts owed to it, might in certain circumstances provide additional funds to ATG. But, this suggestion is clearly conditional. In particular, it is conditional on the Applicant having fuller information than it presently has as to the financial state of the company and on it making commercial decisions in light of that information. On the face of the material before the Court the financial state of ATG is dire. The situation is further complicated by the breakdown of relations between the Applicant and the Claimant as principal shareholders. The prospects of any reconciliation seem remote. Even if the Applicant did provide further funds, it is unrealistic to suppose that, against the background of what has occurred, the Claimant would be likely to co-operate with it in carrying forward the business for which ATG was established. There is no suggestion that any company with contacts in the construction sector in Qatar (or elsewhere) is standing by to take the Claimant's place in ATG. In these circumstances the Court is not satisfied that the making of an Administration Order is likely to achieve the purpose of rescuing ATG, or the whole or any part of its undertaking, as a going concern.

13. Little was said about the purpose set out in Article 7(1)(B). There is no suggestion that the making of an Administration Order would be likely to enhance the prospects of any specific debts owed to ATG, if there are any, being more fully or more quickly recovered. Nor, except in the conditional circumstances referred to above, is there any prospect of it earning profits in the future. In these circumstances the Court is not satisfied that the making of an Administration Order would be likely to achieve the purpose of achieving a better result for ATG's creditors as a whole than would be likely if it were wound up without first being in administration.

14. In these circumstances, as the Court is not satisfied that the making of an Administration Order would achieve either of the purposes relied on, it has no power to make an Administration Order. Accordingly, no question of the exercise of such a power arises. The application must be dismissed.

15. It is evident that the Applicant regards itself as having wrongly been denied access to financial information about the affairs of ATG. In particular, it has a concern about the fate of the funds which it advanced for use exclusively on the Indian project. Its desire for fuller information was highlighted by a request that the Court should, using its power under Article 9(2) of the Regulations or otherwise, make a direction for specific disclosure to the Applicant of certain financial information relating to ATG. There are several aspects to this request.

16. First, it is requested that, on an Administration Order being made, there be attached to it directions for specific disclosure of that financial information to the Applicant. That, it was said, would "give comfort" to the Administrator, the implication being that, without such directions, the Administrator would, or might, be uncomfortable about disclosing that information to the Applicant. However, as the Court has decided, for the reasons expressed above, that it has no power in the circumstances to make an Administration Order, no question arises as to any directions being attached to it.

17. Secondly, it was submitted in argument that, if the Court were to order that ATG be wound up, like directions should be attached to that Order, in that case directing specific disclosure by the liquidator of that financial information to all the shareholders of ATG. No specific provision of the Regulations was referred to in that regard. In our view the attachment of such directions, even if lawful, would not be appropriate. Under Article 83(1) of the Regulations, where the Court orders that a company be wound up, it is required to identify the person who is to act as liquidator. It is then the responsibility of that person to "summon meetings of the Company's creditors and contributories for the purpose of choosing a person to be Liquidator of the Company in his place". The person so chosen may, obviously, be different from the person earlier identified by the Court. It would be inappropriate to attach to the winding-up order directions upon the person subsequently to be

chosen by the creditors and contributories, not least because that officeholder will not have had an opportunity of commenting on its appropriateness. That chosen liquidator will have the general functions of such an officeholder under Article 88 of the Regulations (including the getting in of the assets of ATG) and the powers set out in Schedule 1, including powers to recover documents and to obtain information from, among others, directors and former directors of the company. Articles 146, 147 and 147A (COOPERATION WITH OFFICEHOLDER) may also become of relevance. Further, under Article 95 certain persons, including the liquidator and any creditor, may apply to the Court to determine any question arising in the winding up of a company by the Court. If a question arises as to the disclosure to the Applicant or to others of financial information which is not otherwise provided to it or them in the course of the winding up, it will be open to a qualified person at that stage to apply to the Court to determine that question.

18. Thirdly, there was a request that an order be made by the Court directly against ATG for disclosure to the Applicant of the financial information sought. No legislative basis for that request was identified. Assuming, without deciding, that the Court has power to make such an order, there is, given that the company is no longer operational and its business premises closed and that it is to be wound up, no justification or advantage in making it.

19. Accordingly, the requests for disclosure are refused.

20. In the whole circumstances the appropriate orders to make are to dismiss the application for an Administration Order and to grant the claim for a winding-up order. Joanne Rolls and Steven Parker are identified by the Court under Article 83(1) of the Regulations as the persons to act as Liquidators of ATG. They are on the Register of Official Liquidators issued by the QFC. The fact that they earlier indicated their willingness to act as Joint Administrators in the event that an Administration Order was made is not a bar from acting as Liquidators.

21. No submissions, in writing or orally, have as yet been made as to costs. Any application for costs should be made within 21 days of the issue of this judgment.

By the Court,

[signed]

Justice Arthur Hamilton

A signed copy of this Order has been filed with the Registry of the Court

Representation:

For the Claimant: Mr. Rahul Kumar, International Law Chambers LLC, QFC, Doha, Qatar.

For the Applicant: Mr. Paul Fisher of 4 New Square, London, instructed by Dentons, QFC, Doha, Qatar.

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