
BITTER EXPERIENCE OF CHINESE INVESTOR WITH IRANIAN CONTRACTOR

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The Tehran Times followed the story and it turned out that Sinopec was right and a series of unfortunate events had led to a bitter experience for the foreign company in Iran. Such unprofessional acts of misconduct in part of some Iranian companies are going to create an atmosphere of distrust among foreign investors reducing willingness for participation in Iranian projects. Sinopec's account of the events: A bitter experience As Sinopec Corporations legal manager told the Tehran Times, the National Iranian Oil Company (NIOC) awarded the first phase of Yadavaran oilfield development project to Sinopec in 2007 and four years after finalizing the deal, in 2011, the Chinese company signed two engineering, procurement, construction and commissioning (EPCC) deals, worth about \$190 million with an Iranian-based international company, called Khalkhal Dasht. As per the deals, the Iranian company was going to install wellhead facilities and construct pipelines for the field as a subcontractor. The parties agreed that the contracts would be executed under the Iranian law and in case of any conflict in the implementation, it would be settled in Singapore International Arbitration Centre based on the International Chamber of Commerce Court of Arbitration (ICC) rules. When months after signing the deals no significant progress was seen in the project, it had become evident for Sinopec that the Iranian company lacked professional capability in financial management, project implementation, and quality control and it also didnt have the skilled employees necessary for the execution of the projects, the legal manager told the Tehran Times. According to the official, despite two separate notices which Sinopec issued In June and July 2011, asking Khalkhal Dasht to make necessary amendments, the mentioned company not only didnt make any amendments but also violated the terms of the international arbitration clause in the contract, in August 2014 they filed in Tehran's Court of Justice against Sinopec without notifying the company or the ICC. According to the filed lawsuits, they had appealed for revocation of the international arbitration term in the contracts, asked for the release of the guarantees and claimed an extra payment for additional work done aside from their contractual obligations. Apparently, following the legal actions taken, in January 2015, the Iranian company stopped implementing the deals and left the projects incomplete; which had a very negative effect on the progress of the entire Yadavaran fields project. In late 2014, Tehran Court of Justice invited both parties to attend the first hearing session for the cases. Sinopec could not attend the hearing, because a person who had nothing to do with the company signed and received the court notice in place of Sinopec, in fact the company wasnt aware of the lawsuits at the first place, the legal manager said. He further explained that Khalkhal Dasht managed to mislead the judges in the hearing and also court of appeals in Tehran by providing unofficial and inaccurate translations of the contracts and claiming that Sinopec is an Iranian company. Consequently, in January 2015, Tehran Court of Appeals ruled in favor of

Khalkhal Dasht Company in two of its claims against Sinopec and later on, Khalkhal Dasht also managed to persuade the judges about the third claim (which was paying extra for works done in addition to the obligations) and once again based on inaccurate evidence, the court sentenced Sinopec to a payment of \$100 million in compensation for the additional works done beside the contractual obligations. According to the companys representative, in February 2015, Sinopec informed Ayatollah Sadegh Larijani, the head of Iranian Judiciary system who is also the countrys top judge, about the misconducts of the Tehran court and after presenting the related evidences, in March Larijani ordered to stop the enforcement of the Tehran courts rulings. However despite all these efforts, Tehran court went through with hearing of the third claim. Asked about whether Sinopec pursued this issue in any international arbitration, the official explained that in accordance with the condition for the referral of disputes to ICC, Sinopec filed a lawsuit against Khalkhal Dasht in the International Chamber of Commerce Court of Arbitration and in April 2017, the ICC confirmed the validity of the International arbitration terms in the contracts, stating that the arbitration term is binding for both parties. Sinopec has sent the original version and the correct translation of the international arbitration clause and terms of the governing law for prominent lawyers in Iran, which all confirmed the validity of international arbitration and its compliance with Iranian law, the manager said. How the story ends! What is important in this account is not just that Khalkhal Dasht actions has prevented the implementation of a very important oil project in the country, but also the fact that such contractual violations will not only result in financial damages to foreign investors, but also put the countrys investment environment at risk and consequently have a negative effect on Iranian markets status quo among the interested trade partners. In particular, the revocation of the contract terms regarding the condition of international arbitration in this case is very disturbing for foreign investors which could seriously undermine their confidence and trust. The Tehran Times and Sinopec hope that Irans judiciary system will put a stop on Khalkhal Dasht misconducts and make them amend for this types of activities which seriously threatens the countrys foreign investment environment.

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