Aptiva Technologies FZE v Liberty Steel Group Holdings (EMEA) Ltd [2024] DIFC CFI 076

FEBRUARY 02, 2026 COURT OF FIRST INSTANCE - JUDGMENTS

Claim No: CFI 076/2024

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

APTIVA TECHNOLOGIES FZE

Claimant

and

LIBERTY STEEL GROUP HOLDINGS (EMEA) LTD

Defendant

Hearing :	27 January 2026
Counsel :	Sethu Nandakumar Menon instructed by Menons Legal FZE for the Claimant
Judgment :	2 February 2026

JUDGEMENT OF H.E. JUSTICE ROGER STEWART

UPON the Part 7 Claim Form filed on 24 October 2024, as amended on 29 April 2025 (the "Claim")

AND UPON the Claimant's Amended Particulars of Claim dated 26 May 2025

AND UPON the Defendant's Defence dated 23 June 2025 (the "Defence")

AND UPON the Claimant's Reply to Defence dated 10 July 2025

AND UPON the Case Management Order of H.E. Justice Roger Stewart dated 16 October 2025

AND UPON the Order of H.E. Justice Roger Stewart dated 19 December 2025, following the Pre-Trial Review held on 19 December 2025

AND UPON hearing Counsel for the Claimant at the Trial before H.E. Justice Roger Stewart on 27 January 2026 but at which the Defendant did not appear

AND UPON review of the Claimant's Statement of Costs dated 28 January 2026

AND PURSUANT TO the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. There be judgment for the Claimant in the sum of USD 476,768.68 plus interest of USD 66,029.74.

2. The Defendant shall pay to the Claimant:

   (a) The total judgment sum of USD 542,798.42 (being the principal sum plus interest as set out above);

   (b) The Court fees of USD 23,838.43; and

   (c) The costs of the action to be assessed on a summary basis.

3. The Defendant shall make an interim payment in respect of the costs of the action set out in 2(c) above of USD 25,000.

4. The Defendant is to make any submissions in respect of the total sum payable by way of costs within 7 days of the date of this Judgment.

5. The Claimant may reply to any such submissions 7 days thereafter.

SCHEDULE OF REASONS

Introduction

1. This is the Trial of the Claim relating to sums due under a purchase agreement dated 13 February 2024 for the supply of software for a three year period (the "Agreement").

2. The Claimant, Aptiva Solutions FZE ("Aptiva") is incorporated in the Ras Al Khaimah Economic Zone and, amongst other things, is a supplier and re-seller of software.

3. The Defendant, Liberty Steel Group Holdings (EMEA) Ltd ("Liberty Steel") is a company incorporated in the DIFC in Dubai and is a part of the corporate group known as the Gupta Family Group Alliance.

The Non-Appearance of Liberty Steel at Trial

4. The Claim was, until very recently, fully defended by Liberty Steel with the following material points being taken in the Defence:

(a) The existence of a binding agreement was not admitted (paragraph 8.2);

(b) The Agreement was terminated on 12 March 2024, alternatively 4 April 2024, alternatively 9 May 2024 when it is said that Liberty Steel informed Aptiva that it did not wish to proceed with the procurement (paragraph 8.2);

(c) That no admissions were made as to whether Aptiva was obliged to pay Opentext (the supplier of software to Aptiva) for licence fees for three years and, whether it had done so prior to 12 March 2024 (paragraphs 8.3 and 8.4);

(d) That if Aptiva had not paid the licence fees to Opentext, Aptiva had suffered no loss (paragraph 8.5);

(e) That Aptiva failed to take reasonable steps to mitigate its loss (paragraph 8.7);

(f) That it is denied that Liberty Steel gained access to the software at any time before 4 April 2024 and did not, in fact, ever access the same;

(g) That Liberty Steel had alleged that the software was not fit for purpose as a further reason why the contract could be terminated (paragraph 23); and

(h) Averred that the claimed interest rate of 18% is an unenforceable penalty (paragraph 27).

The Defendant appeared at the Case Management Conference and the Pre-Trial Review, produced documents and served two witness statements in support of its case.

6. On 23 January 2026, the parties exchanged skeleton arguments in advance of the Trial and filed them with the Court. Liberty Steel's lawyers also sent a letter to the Court which materially stated

> "We refer to the Defendant's Skeleton Argument in which we remind the Court of the Defendant's precarious financial situation. The Defendant is part of a group of companies which face immense challenges and which has been involved in numerous pieces of costly litigation arising from the collapse of its main financier, Greensill Capital.
>
> As a result, whilst the Defendant was able to instruct James Weale of Searle Court for the Pre-Trial Review and to draft the Skeleton Argument, it has not been possible for the Defendant to fund representation at the Trial. Accordingly, and with no disrespect to the Court or Claimant intended, the Defendant relies upon the Skeleton Argument for its submissions at trial and will not be in a position to assist the Court with oral submissions from a legal representative. For the avoidance of doubt, the Defendant's witnesses will also not be in a position to give oral evidence at trial."

7. Liberty Steel's skeleton argument:

(a) Invited the Court to read the pleadings and the witness statements (including those served by Liberty Steel);

(b) Reiterated that neither Liberty Steel nor the Liberty Steel's witnesses would attend the Trial;

(c) Set out a factual history based, at least in part, on statements made in Liberty Steel's witness statements;

(d) Set out what was said to be the legal framework for resolution of the dispute;

(e) Asserted that the evidence showed that Liberty Steel did not wish to proceed with the purchase of the software on 12 March, 4 and 5 April and 9 May 2024;

(f) Asserted that there was no dispute but that the principles of mitigation of loss were engaged;

(g) Stated that Liberty Steel were misled as to whether payment to Opentext had been made by March 2024 with no payment actually being made, as demonstrated by the documents, until 21 June 2024;

(Asserts that as no repudiatory breach has been alleged, it was not open for Aptiva to claim the sums identified in the second and third invoices; and

(i) Further asserts that there is no evidence of mitigation in seeking to reduce sums payable to Opentext.

5. The matter accordingly proceeded to Trial on 27 January 2026. At the Trial:

(a) The evidence of the Claimant's witnesses was heard;

(b) Aptiva's Counsel made submissions both as to the case generally and as to what weight, if any, should be given to the witness statements which had been filed on behalf of Liberty Steel;

(c) Aptiva's counsel pointed out that the contractual interest rate of 18% in the Agreement with Liberty Steel was the same as that provided for in Aptiva's agreement with Opentext; and

(d) I drew the attention of Aptiva's counsel to the English Court of Appeal decision in *Interoffice Telephones v Freeman* [1958] 1 QB 190.

The Issues

9. I consider the following issues arise:

(a) The appropriate approach to the evidence and submissions filed by Liberty Steel given its absence from the hearing and the non-attendance of its factual witnesses;

(b) Whether the Claimant has established the existence of a binding contract;

(c) The appropriate legal framework for assessing the sums due to Aptiva given the alleged cancellation and the applicable law relating to debt, repudiation, damages and mitigation;

(d) Whether the software was fit for purpose;

(e) Whether the claimed interest is penal or otherwise unenforceable; and

(f) Costs.

The Appropriate Approach to the evidence and submissions filed by Liberty Steel given its absence from the hearing and the non-attendance of its factual witnesses

10. RDC 29.41 provides that if a party has served a witness statement and he wishes to rely at trial on the evidence of the witness who made the statement, he must call the witness to give oral evidence unless the Court orders otherwise or he puts the statement in as hearsay evidence.

11. In the present case:

(a) Liberty Steel has not applied to put the witness statements it served in as hearsay evidence;

(b) No application has been made to excuse the giving of oral evidence; and

(c) Aptiva has not sought to put either witness statement in as hearsay evidence as it could have done pursuant to RDC 29.48.

12. In the circumstances, I consider that I should pay no attention at all to the two witness statements which have been served and, accordingly, I disregard them.

13. So far as documents are concerned, RDC 29.122 provides that all documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents unless the Court orders otherwise or a party gives written notice of objection to the admissibility of particular documents. As I have not been invited to order otherwise (and in any event see no reason to make such an order) and there has been no written notice of objection to the admissibility of particular documents, I consider that the documents in the agreed trial bundle are admissible as evidence of their contents.

14. So far as the written submissions are concerned, I consider that I can and should take account of them insofar as they rely upon matters which are established by evidence. I thus disregard points which are only made by reference to Liberty Steel's witness statements. This includes specifically allegations which are made to the effect that Liberty Steel was misled as to when Aptiva paid Opentext. For reasons which appear below, I consider such allegations (which are not pleaded) to be irrelevant to the resolution of the dispute in any event.

Has Aptiva established the existence of a binding Agreement?

15. This is formally in issue on the pleadings and the non-admission is maintained in Liberty Steel's skeleton argument.

16. I consider that there is no doubt but that a binding contract between the parties was concluded.

17. Following discussions between the parties, on 13 February 2024, Aptiva sent a quotation to Liberty Steel which:

(a) Identified the contract duration as 3 years;

(b) Stated that it was valid till 14 February 2024;

(c) Identified the software in question with a total price of USD 454,065.41 plus VAT of USD 22,703.27 with initial maintenance at 12 months and Renewal maintenance at 24 months included for nothing;

(d) Identified the payment schedule with three invoice dates of 13 February 2024, 2025 and 2026 respectively with amounts due of USD 147,577.85, 158,646.19 and 170,544.64 respectively;

(e) Stated that the payment term was immediately upon receipt of invoice;

(f) Contained 3 notes:

(i) The first being that delivery of the license was contingent upon receipt of the first year payment and the subsequent two years invoices would be generated year on year in advance as per invoice dates mentioned in the payment schedule table;

(ii) The second being that purchase orders cannot be cancelled within three years of the Agreement; and

(iii) Provided that Liberty Steel should pay all amounts to Aptiva upon receipt of invoice without deduction, set-off or counterclaim and that any overdue amounts would be charged at an interest rate of 1.5% per month (18%) per annum or the maximum rate allowed by law unless until fully paid.

18. On the same day, Liberty Steel sent an unsigned Purchase Order stating that a signed version would be sent the following day. Aptiva responded stating:

(a) That the purchase order needed to be for three years; and

(b) That the payment schedule and invoice date needed to be added and the quotation referred to.

19. On 15 February, Liberty Steel responded with a signed purchase order under cover of an email which stated “Please find attached and let me know if all is in order”. This purchase order identified the software, the quotation number, the invoice and payment schedule and had three additional notes:

(a) The seller should deliver the goods or services to the Buyer as specified in the PO agreement;

(b) The Buyer might reject any goods or services which did not confirm to specifications, samples or warranties; and

(c) Where any items on an invoice are disputed the Buyer might withhold the payment for the item or items so disputed until such time as the dispute is resolved.

20. The above terms were plainly acceptable to Aptiva as it issued three invoices as set out in the documents. The first invoice was already due and the second and third invoices would have become due for payment in February 2025 and 2026 respectively.

21. At the latest by the time of the issue of the three invoices, the parties had thus concluded an agreement upon all essential terms. The formal analysis is, I consider that the purchase order of 15 February 2024 constituted a counter-offer which was accepted by the issue of the invoices. The

contract was on the terms originally provided in the quotation save as modified by the purchase order. It follows that there were express terms of the Agreement:

(a) That it was for a three year period;

(b) For payment in three tranches as set out in the payment schedule;

(c) That the Agreement was not cancellable; and

(d) For the payment of interest on outstanding sums at 18% per year.

The appropriate legal framework for assessing the sums due to Aptiva given the alleged cancellation and the applicable law relating to debt, repudiation, damages and mitigation

22. As set out above, the Agreement was for the supply of software for a three year period. Aptiva was obliged to supply the software for that period (and maintain it) whilst Liberty Steel was required to pay the agreed price in three annual installments.

23. The Agreement made it plain by an express term that it was not cancellable during its period although even absent such a term, it appears unlikely that there would have been a right to cancel within the three year period. There can be no question of any such right representing a penalty. Parties are entirely free to agree fixed or minimum periods for agreements and do so commonly and in a wide variety of situations.

24. The first payment of USD 147,577.78 became immediately due and payable upon conclusion of the Agreement. Aptiva is entitled to sue upon the same as a debt. No question of mitigation can or does arise in relation to a sum due as a debt.

25. There is a dispute on the pleadings as to whether Liberty Steel purported to terminate or cancel the Agreement in March and April 2024. Insofar as this depends upon oral evidence from Liberty Steel's witnesses, I would not have been prepared to find that this took place. However, I consider that such a dispute is irrelevant to the resolution of this dispute:

(a) Any such cancellation or termination could only have been a repudiatory breach of the Agreement given the absence of any right to cancel the Agreement for three years;

(b) The earliest that it is said that the cancellation (that is repudiation) took place was on 12 March 2024;

(c) By that time, as set out in the witness statement of Neelofar Shaik as supported by the documents she exhibits, Aptiva had entered into a binding agreement with OpenText for the supply of software which Aptiva was to supply to Liberty Steel for a total price of USD 377,915.44 on 29 February 2024;

(d) It is clear that Aptiva did not, at least initially, accept Liberty Steel's repudiatory breach and continued to press for performance;

(e) That stance continued up to and including the initial issue of proceedings in October 2024 where only payment of the first invoice was sought;

(f) It appears that that stance only changed on 12 February 2025 when it amended these proceedings to seek payment of all three invoices;

(g) In respect of the sums due under the second and third invoices, that date was before the invoices fell due for payment. It follows that Aptiva must have accepted the repudiation as bringing the Agreement to an end by that date;

(h) It follows that the monies sought in respect of the second and third payments must have been claims for damages;

(i) This was, I consider, apparent on a fair reading of the Amended Particulars;

(j) In principle, Aptiva had an obligation to mitigate any damages it claims to have suffered (as distinct from debts which were due).

(k) However I do not consider it had any obligation to seek to avoid or reduce making payment to OpenText:

(i) OpenText was entitled to the benefit of its agreement with Aptiva;

(ii) OpenText could, no doubt, supply as much software as it had orders;

(iii) There was, accordingly, no legal basis upon which Aptiva could seek to cancel or bring to an end its own obligations to OpenText; and

(iv) Aptiva was acting as a re-seller of OpenText's software and had no obligation to reduce amounts due to OpenText – any more than OpenText would have been obliged to reduce the benefits of its own bargain with Aptiva;

(l) There is nothing to suggest that Aptiva received any other benefits or was relieved of any obligations as a result of the Agreement coming to an end in October 2024 with the exception of the early receipt of monies;

(m) The decision of the English Court of Appeal in *Interoffice Telephones v Freeman* shows that, insofar as money was received early, there should be discount for early receipt;

(n) However the time for payment of the second invoice has passed and the time for payment of the third invoice (13 February 2026) is so close as to make any discount negligible and de *minimis*; and

(o) It follows that the entire contractually agreed sum is now due to Aptiva even if Liberty Steel purported to cancel as early as 12 March.

Was the Software Fit for Purpose?

26. It is far from clear that a positive case to this effect was actually being made by Liberty Steel. The only basis for it appears to have been two articles in the Financial Times which do not even seem to refer to the correct software. Further I do not consider that the evidence establishes either that the software was sold for a particular defined purpose or that it was unfit for such purpose. The latter would almost certainly have required expert evidence but none has been tendered. Accordingly, there is no bar to sums being due to Aptiva.

Is the Claimed Interest Penal or otherwise Unenforceable?

27. No argument on this point is addressed in the skeleton argument of Liberty Steel. There is a dispute as to the correct principles between the High Court of Australia and the Supreme Court of the United Kingdom – see *Andrews v ANZ Banking Goup* (2012) 247 CLR 205 and *Cavendish Square v Talal El Makdessi* [2015] UKSC 67. A first instance judgment in the DIFC where one side chooses not to appear and provides no argument in support of an assertion is not the occasion upon which to consider the merits of the rival arguments in two such courts of high authority.

28. On the basis of the approach taken by either Court I do not consider the interest rate to be penal. The Supreme Court requires a clause to be “extravagant and unconscionable” in order for it to be penal. I do not consider that there is any basis for such a finding. Aptiva were acting as a re-seller of OpenText’s software. They were obliged to make a single payment to OpenText and were liable under their own contract with OpenText for the same rate of interest as that agreed with Liberty Steel. So far as their contract with Liberty Steel was concerned, although they sold, as one would expect, at a higher price than that agreed with OpenText, they were exposed to the risk of Liberty Steel not paying the second or third invoice. The agreed interest rate is, in any event, in respect of an unsecured debt and broadly equivalent to the rates charged on by, for example, credit card companies.

29. For the same essential reasons, I do not consider that the payment of the agreed rate of interest can be said to be *“in terrorem”* of Liberty Steel as required by the High Court of Australia. The agreed interest rate reflects, in my view, the risks taken on by Aptiva in relation to late payment of the price or part of it.

30. Accordingly, I consider that the contractually agreed interest is due on the first sum due which is claim ' as a debt. Although this is claimed from 13 February, the correct date is, I consider 15 February 2024 when the contract was formed. Interest is thus due from 15 February 2024 until 2 February 2026 amounting to USD 52,181.88.

31. However, in respect of the other sums due, they are not claimed under the contract but as an loss. No interest is due on the third sum as it would not have been due until 13 February 2026. In respect of the second sum, I consider it appropriate to award interest at a rate of 9% per annum under Article 118 of the DIFC Contract Law. This amounts to USD 13,847.85 making total interest USD 66,029.74.

Costs

32. Aptiva is entitled to the costs of the action including the court fees of USD 23,838.43. It has submitted a schedule of costs apart from the Court costs in the sum of approximately USD 45,000 and seeks an interim payment of USD 25,000. I consider such an interim payment to be reasonable. I also consider that this is a case where summary assessment should take place after Liberty Steel has been given the opportunity to make any submissions in relation to the claimed costs.

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DIFC Laws and Regulations Legal Database (https://www.difc.ae/business/laws-and-regulations/legal-database) ,

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