



**Russian
Arbitration
Center**

at Russian
Institute
of Modern
Arbitration

Kadashevskaya nab., 14, bldg., 3,
Moscow, 119017, Russia
+ 7 (495) 797-94-77
www.centerarbitr.ru

ARBITRAL AWARD

CASE No. [case number]

08 April, 2021

Claimant: [Claimant name]

Respondent: [Respondent name]

Arbitral Tribunal: Sole Arbitrator Daria Zhdan-Pushkina

Seat of arbitration – Moscow, Russian Federation

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I. CASE SUMMARY

Moscow, Russian Federation

Case No. [case number]

08.04.2021

1. The Arbitral Tribunal represented by the Sole Arbitrator Daria Zhdan-Pushkina (hereinafter referred to as the **Arbitral Tribunal**, the **Sole Arbitrator, D. Zhdan-Pushkina**) considered the case initiated under the claim of

[Claimant name], [OGRN], [INN], Russian Federation, [address]; postal address: the Russian Federation, [address] (hereinafter referred to as the **Claimant, the Freight Forwarder**) against

[Respondent name], [BIN], the Republic of Kazakhstan, [address] (hereinafter referred to as the **Respondent, the Client, jointly the Parties**),

for the recovery of debt for services rendered under the freight forwarding contract No. [Contract number] (hereinafter referred to as the **Contract**) in the amount of RUB 225,360.00 (Two hundred twenty-five thousand three hundred sixty), as well as for the recovery of the costs associated with payment of the registration fee.

2. The case was considered by the Sole Arbitrator Daria Zhdan-Pushkina and administered by the Russian Arbitration Center at the Russian Institute of Modern Arbitration (hereinafter referred to as the **RAC**) in accordance with the expedited procedure of arbitration under the rules of international commercial arbitration in accordance with Paragraph 6 of Article 5 of the Arbitration Rules of the RAC.
3. In accordance with the clause 5.17 of the Contract, the parties expressly agreed to hold no oral hearings.

II. COMMENCEMENT OF ARBITRATION, CONSTITUTION OF THE ARBITRAL TRIBUNAL

4. On 17 December 2020, the RAC received Statement of Claim of 19 November 2020 for the recovery of debt for services rendered under the Contract, as well as costs associated with payment of the registration fee (hereinafter referred to as the **Claim**). The Claim was uploaded to the Online Arbitration System of the RAC (hereinafter referred to as **ESAC**) by the Claimant's counsel, [Claimant's counsel 1].
5. Taking into account that the filed Claim met the requirements established by Articles 10, 27 of the RAC's Arbitration Rules (hereinafter referred to as **Arbitration Rules**), RAC Executive Administrator issued a Notice of arbitration on 18 December 2020.
 - 5.1. Notice of Arbitration (No. 460/20 of 18 January 2020) was uploaded to ESAC on 18 December 2020, sent to the Parties via e-mail (to the following e-mail addresses: [e-mail address]; [e-mail address]; [e-mail address]; [e-mail address]) on 18 December 2020; and sent via Russian Post (tracking numbers: No.No. [number], [number], [number]) 18 December 2020 and courier service Major Express (consignment notes No.No. [number], [number]) on 18 December 2020. Notice of Arbitration (in English) was uploaded to ESAC on 13 January 2021, sent to the Parties via e-mail (to the following e-mail addresses: [e-mail address]; [e-mail address]; [e-mail address]) on 13 January 2021; and sent via Russian Post (tracking numbers: No.No. [number], [number], [number]) on 13 January 2021 and courier service Major Express (consignment notes No.No. [number], [number]) on 13 January 2021.
6. Since the value of the claim did not exceed USD 500,000 for international commercial arbitration and absent otherwise agreement between the Parties, the dispute shall be resolved by a sole arbitrator, as it follows from Paragraph 1 of Article 14 of the Arbitration Rules.
7. On 21 December 2020, Administrative Office of the RAC ("Administrative office") received the response of [Respondent's former employee] to the Notice of arbitration sent from the e-mail [e-mail address], where [Respondent's former employee] requested not to send her any information on the case, because she did not have any relationship with the Respondent.
8. Based on the Order of the Board of the RAC on the Constitution of the Arbitral Tribunal of 31 December 2020, the Arbitral Tribunal was constituted. The Board of the RAC appointed Ms Daria Zhdan-Pushkina as a Sole Arbitrator.

9. On 31 December 2020, Executive Administrator informed the Parties of constitution of the Arbitral tribunal.
 - 9.1. Notice of Constitution of Arbitral Tribunal (No. 470/20 of 31 December 2020) was uploaded to ESAC on 31 December 2020, sent to the Parties via e-mail (to the following e-mail addresses: [e-mail address]; [e-mail address]; [e-mail address]) on 31 December 2020; and sent via Russian Post (tracking numbers: No.No. [number], [number], [number]) on 11 January 2021 and courier service Major Express (consignment notes No.No. [number], [number]) on 12 January 2021. Notice of Constitution of Arbitral Tribunal (in English) was uploaded to ESAC on 13 January 2021, sent to the Parties via e-mail (to the following e-mail addresses: [e-mail address]; [e-mail address]; [e-mail address]) on 13 January 2021; and sent via Russian Post (tracking numbers: No.No. [number], [number], [number]) on 13 January 2021 and courier service Major Express (consignment notes No.No. [number], [number]) on 13 January 2021.
10. On 11 January 2021, Ms Zhdan-Pushkina accepted the appointment as the Sole Arbitrator, confirmed her independence and impartiality, as well as the absence of conflicts of interest in relation to the Parties by signing the Declaration of the Arbitrator. Also, the Arbitral Tribunal submitted a Request for the appointment of an assistant to the Arbitral Tribunal dated 11 January 2021 to the Executive Administrator.
11. In accordance with Paragraph 1 of Article 40 of the Arbitration Rules, on 12 January 2021, the Executive Administrator notified the Parties of the appointment of an arbitral tribunal's assistant – Konstantin Tsymbalov, Junior Legal Counsel of the Administrative Office of the RAC.
 - 11.1. Notice of the Appointment of Assistant of Arbitral Tribunal (No. 4/21 of 12 January 2021) along with the Assistant Request, Biographical information of K. Tsymbalov, Declaration of the Arbitrator, Arbitrator's Biographical Information, Order on the timetable of arbitration proceedings No. 1 on 13 January 2021, Notice of Arbitration (in English), Notice of Constitution of Arbitral Tribunal (in English) were uploaded to ESAC on 13 January 2021, sent to the Parties via e-mail (to the following e-mail addresses: [e-mail address]; [e-mail address]; [e-mail address]) on 13 January 2021; and sent via Russian Post (tracking numbers: No.No. [number], [number], [number]) on 13 January 2021 and courier service Major Express (consignment notes No.No. [number], [number]) on 13 January 2021.

12. All documents within the framework of the arbitration of this dispute shall be uploaded to the ESAC in accordance with Paragraph 6 of Article 6 of the Arbitration Rules.
 - 12.1. On 17 December 2020, the Claimant's counsel, [Claimant's counsel 1], using the e-mail address [e-mail address], uploaded the Claim to the ESAC, confirming her power of attorney.
 - 12.2. On 31 December 2020, an invitation was sent to the Respondent's representative Director-General [Respondent's Director-General], to the email address [e-mail address], to confirm her power and to get access to the case file in the ESAC. The information on the Respondent's Director-General can be found on official public source of information of Republic of Kazakhstan by searching the BIN (Business Identification Number – [number]) at: <https://stat.gov.kz/jur-search/bin>.
 - 12.3. Thus, the Parties were given the opportunity to study the case files and use the ESAC in order to promptly exchange procedural documents in accordance with Article 6 of the Arbitration Rules.
13. During the course of the arbitration, no challenge was made to the Arbitral Tribunal and the assistant to the Arbitral Tribunal.

III. POSITIONS OF THE PARTIES AND COURSE OF THE ARBITRAL PROCEEDINGS

14. On 17 December 2020, the Claimant submitted the Claim against the Respondent to the RAC via the ESAC. The Claim concerned the recovery of debt for services rendered under the Contract in the amount of RUB 225 360 (Two hundred twenty-five thousand three hundred sixty), as well as costs associated with payment of the registration fee.
15. In accordance with the Claimant's arguments, the Parties have entered into the Contract, under the terms of which the Claimant, as a Freight Forwarder, undertook the obligations to provide freight forwarding services: information services, payment and financial services, and also services for the provision of railway rolling stock to the Client (hereinafter referred to as **the Respondent**, hereinafter referred to as the **Cars**), for the implementation of domestic and/or international railway transportation of goods of the Respondent.
16. In accordance with the Claimant's arguments, on 20 February 2020 and 27 February 2020 the Claimant received applications from the Respondent for the provision of three fitting platforms No.No. [platform 1], [platform 2], [platform 3] for the transportation of 8 20ft high high-capacity containers during the period of 24-25 February 2020, 9 20ft high high-capacity containers on 06 March 2020, from the departure station [departure station] to the destination station [destination station].
17. As the Claimant further states, the Claimant delivered to the Client three fitting platforms No. [platform 1], [platform 2], [platform 3] for the transportation of high-capacity containers No. [container 1], [container 2], [container 3], [container 4], [container 5], [container 6], [container 7], [container 8] from the station [departure] of the West Siberian Railway to station [destination] railway.
18. The Claimant also alleges that according to the clauses 4.1, 4.5 of the Contract, the payment for the Claimant's services shall be made by the Respondent by 100 % prepayment.
19. In accordance with the Claimant's arguments, the following invoices were issued for the dispatch of the platforms to the Respondent: No. [number] dated 16.03.2020, No. [number] dated 06 April 2020 for a total amount of RUB 225,350.00 (including VAT) that have not been paid by the Respondent.
20. The Claimant states that on 20 July 2020, for the purpose of amicable settlement of the dispute, the Claimant sent a complaint to the Client at the address indicated in the Contract

(international shipment number [number]), the requirements of which have not been fulfilled by the Respondent yet.

21. The Claimant refers to Articles 309, 310 of the Civil Code of the Russian Federation (hereinafter referred to as the **CC of the RF**) and states that the obligation shall be performed in a proper manner according to the terms of the obligation and the requirements of the law.
22. In accordance with the Claimant's arguments, unilateral refusal to fulfill an obligation and unilateral change of its conditions are not allowed. Article 307 of the CC of the RF determines that when establishing, fulfilling obligations and after its termination, the parties shall act in good faith, taking into account the rights and legitimate interests of each other.
23. In accordance with the Claimant's arguments, the legal relationship between the Parties is qualified as based on a Forwarding contract, wherefore in this case, the rules of Chapter 41 "Transportation forwarding" of the CC of the RF, the Federal Law "On shipping and forwarding activities" No. 87-FZ dated 30 June 2003 (hereinafter – **Law on shipping**) shall apply.
24. The Claimant refers to Paragraph 1 of Article 801 of the CC of the RF and states that under the Forwarding contract, one party (Freight Forwarder) undertakes, for a fee and at the expense of the other party (the Client-consignor or consignee), to perform or organize performance of services specified in the Forwarding contract related to the carriage of goods. Also, the Claimant states that by virtue of Paragraph 2 of Article 5 of Law on shipping in the manner prescribed by the Forwarding contract, the client is obliged to pay the remuneration due to the Freight Forwarder, as well as reimburse the costs incurred by him in the client's interests.
25. The Claimant alleges in the Claim that in confirmation of the fact of the provision of services, scope and cost thereof, the Claimant presented the following: the forwarding Contract with annexes, applications for the transport and forwarding services, acceptance certificates for the service performed, invoices, *correspondence with the Respondent, in which the Respondent guaranteed to pay the debt to the Claimant.*
26. In accordance with the Claimant's arguments, the Respondent didn't have any objections over extended periods to the quality or quantity of the services rendered.
27. Therefore, guided by Articles 309, 310, 801 of the CC of the RF, Article 10 of the Arbitration Rules, the Claimant seeks to recover the debt for the services rendered under the Contract

from the Respondent in favor of the Claimant, as well as the registration fee paid by the Claimant.

28. On 13 January 2021, by virtue of the Order on Timetable of Arbitration Proceedings (hereinafter referred to as the **Order**) No. 1 the Parties were ordered the following:

28.1. No later than 7 business days from the date of receipt of the Order No. 1, the Claimant shall submit the Claim with all attachments in English. In addition, the Arbitral Tribunal invited the Claimant to provide additional evidence in support of its Claim.

28.2. No later than 7 business days from the date of receipt of the Order No. 1, the Respondent was invited to express its position on the possibility of holding arbitration in Russian language.

28.3. The RAC shall ensure the availability of documents drafted by the Administrative Office of the RAC in the language of arbitration.

28.4. No later than 10 business days from the date of receipt of the Order No. 1, both Parties shall inform the Arbitral Tribunal and the RAC about any comments, suggestions or remarks on the draft Timetable of Arbitration Proceedings attached to the Order. In the absence of any remarks, suggestions or comments within the specified period, the Timetable was considered agreed.

28.5. Both Parties were invited to discuss the possibility of settling the dispute amicably and in that case to notify the Arbitral Tribunal and the RAC of the need to provide time and / or space for additional discussion of this issue.

28.6. The Timetable of Arbitration Proceedings included the following deadlines: date of submission of a response to the claim by the Respondent (the Statement of Defence) – no later than 20 days from the date the Respondent receives the Claim with attachments in English; date of submission of a response to the Statement of Defence or additional written statements by the Claimant (the Response to the Statement) – no later than 10 days from the date the Claimant receives the Statement of Defence; date of submission of a response to the Claimant's Response to the Statement or additional written statements by the Respondent (the Objection to Response) – no later than 10 days from the date the Claimant receives the Response to the Statement.

28.7. Order on Timetable of Arbitration Proceedings No. 1 was uploaded to ESAC on 13 January 2021, sent to the Parties via e-mail (to the following e-mail addresses: [e-mail address]; [e-mail address]; [e-mail address]) on 13 January 2021; and sent

via Russian Post (tracking numbers: No.No. [number], [number], [number]) on 13 January 2021 and courier service Major Express (consignment notes No.No. [number], [number]) on 13 January 2021 along with the documents drafted by the Administrative Office required in the Order No. 1: Notice of Arbitration, Arbitrator's Declaration with annexes, Notice of the Appointment of Assistant of Arbitral Tribunal, the biographical information of K. Tsymbalov, as well as the request of D. Zhdan-Pushkina about the assistant.

29. Neither of the Parties expressed its position on the draft Timetable of Arbitration Proceedings or the language of the arbitration within specified period of time.
30. On 25 January 2021, the Claimant sent an application in Russian for extension of the deadline for translating the documents and submitting case files until 08 February 2021 to the email address my.support@centerarbitr.ru.
31. On 26 January 2021, the Administrative Office confirmed to the Parties the receipt of the Claimant's application via email.
32. On 27 January 2021, the Arbitral Tribunal issued Order No. 2. By virtue of the Order No. 2 the Parties were ordered the following:
 - 32.1. No later than 08 February 2021, the Claimant shall submit the Claim with all attachments in English. In addition, the Arbitral Tribunal invited the Claimant to provide additional evidence in support of its Claim.
 - 32.2. To make amendments to the Timetable of Arbitration Proceedings for the case No. [case number].
 - 32.3. Both Parties should conduct all subsequent correspondence with the other Party, the Arbitral Tribunal and the Administrative Office in English, since the Parties have chosen English as the language of arbitration, and the Arbitral Tribunal determined that administration of arbitration is also to be carried out in English.
 - 32.4. Order on Timetable of Arbitration Proceedings No. 2 was uploaded to ESAC on 13 January 2021, sent to the Parties via e-mail (to the following e-mail addresses: [e-mail address]; [e-mail address]; [e-mail address]) on 27 January 2021; and sent via Russian Post (tracking numbers: No.No. [number], [number], [number]) on 28 January 2021 and courier service Major Express (consignment notes No.No. [number], [number]) on 28 January 2021.

33. On 08 February 2021, the Claimant submitted the Claim with annexes translated into English. The annexes included the following documents:
- proof of payment of the registration fee under the RAC Arbitration Rules – payment order No. [number] dated 11 December 2020 in the amount of RUB 36,856.20 (equivalent to USD 500.00);
 - proof of sending a copy of the claim and documents attached to the address of [Respondent name] dated 19 November 2020;
 - copy of power of attorney of the signatory of Claim;
 - the Contract dated 20 February 2020 with Annex to the Contract (the form of Application pursuant to clause 2.1. of the Contract) and Appendix No. 1 to the Contract dated 20 February 2020;
 - transportation orders dated 20 February 2020, dated 27 February 2020;
 - acceptance certificates for services rendered dated 19 March 2020, dated 28 March 2020;
 - invoices for payment dated 16 March 2020, dated 06 April 2020;
 - VAT invoices dated 19 March 2020, dated 28 March 2020;
 - railway consignment notes No. [note 1], [note 2];
 - copy of the letter before claim dated 15 April 2020 and proof of its submission to the Respondent with the shipment tracking, which was not mentioned in the list of annexes to the Claim.
34. In the list of annexes the Claimant mentioned a copy of the letter before claim dated 20 July 2020 and proof of its submission to the Respondent with the shipment tracking, but did not submit these documents to the RAC.
35. On 08 February 2021, the Arbitral Tribunal confirmed the receipt of the translation of the Statement of Claim and of its attachments. In addition, the Sole Arbitrator requested the Claimant to demonstrate the proof of the receipt of the translated Statement of Claim and of its attachments by the Respondent, and invited the Claimant to check whether all necessary documents justifying the Statement of Claim were disclosed.

36. Later on 08 February 2021, the Arbitral Tribunal informed the Claimant and Administrative Office of the e-mail delivery failure to the Claimant's e-mail address [e-mail address].
37. On 09 February 2021, the Claimant informed that it did not send a copy of the Statement of Claim in English and the documents attached to the Claim in translation to the Respondent. Regarding the contact information, the Claimant clarified that the representative of the Claimant is [Claimant's counsel 1], whose e-mail address is [e-mail address].
38. On 09 February 2021, in response to the Claimant's message, D. Zhdan-Pushkina asked the Claimant to send the Statement of Claim with all exhibits in English to the Respondent via regular mail or courier in order to fix the delivery of the parcel and the list of the papers sent.
39. On 11 February 2021, the Claimant attached the proof of sending the Claim and its annexes translated into English to the Respondent's postal address.
40. On 16 February 2021, the Sole Arbitrator asked the Administrative Office to inform the Parties and the Arbitral Tribunal whether the Respondent has received the parcels from the Claimant with the Statement of Claim. Also, the Arbitral Tribunal asked the Claimant to send the mail delivery reports as soon as possible.
41. On 16 February 2021, the Claimant informed that the letters were prepared for sending on 15 February 2021, and that this information was officially provided by EMS website.
42. On 20 February 2021, the Claimant informed that the parcel to the Respondent was handed over to the post of Kazakhstan for delivery.
43. On 20 February 2021, in response to the Claimant's message, D. Zhdan-Pushkina asked the Claimant to send all correspondence in English and to inform the Arbitral Tribunal of the date when the Statement of Claim would be delivered to the Respondent.
44. On 03 March 2021, the Claimant notified that on 25 February 2021 the delivery of the items by courier did not take place with no reasons specifying this failure.
45. On 09 March 2021 the Sole Arbitrator submitted a request to the Board of the RAC to extend the term of arbitration for 30 days, till 10 April 2021, in accordance with Article 26 of the Arbitration Rules.
46. Based on the Order of the Board of the RAC on Extension of the Term of Arbitration of 11 March 2021, the term of arbitration was extended till 10 April 2021 (inclusively).

47. On 15 March 2021, the Claimant attached the proof of receipt of the Claim with annexes by the Respondent ([number]).
48. On 15 March 2021, the Administrative Office uploaded to ESAC the proofs of receipt of the Claim with annexes by the Respondent ([number]; [number]) and sent to the Parties via e-mail (to the following e-mail addresses: [e-mail address]; [e-mail address]) the proofs of receipt of the Claim with annexes by the Respondent and the Order of the Board of the RAC on Extension of the Term of Arbitration of 11 March 2021 with the Request on Extension of Term of Arbitration of the Sole Arbitrator.

IV. REASONING FOR THE AWARD

V. A. ON THE ARBITRAL TRIBUNAL'S JURISDICTION

49. [Claimant name] (the Claimant) is a company registered in the Russian Federation. [Respondent name] (the Respondent) is a company registered in the Republic of Kazakhstan.
50. The Parties entered into the Freight Forwarding Contract No. [Contract number] on 20 February 2020 (the Contract). The Contract was signed by the representatives of the Parties, and in particular by [Claimant's Director, Operations], the Director, Operations, on behalf of the Claimant, and by [Respondent's Sales Director], the Sales Director, on behalf of the Respondent.
51. The Contract was signed by [Respondent's Sales Director] on each and every page.
52. There is no evidence in the case at hand that the Respondent had ever questioned the validity of the Contract.
53. The Parties agreed on the arbitration clause in the Contract.
54. Clause 5.17 of the Contract states as follows:

“All disputes hereunder shall be resolved by the Parties through negotiations. The Party that received the claim shall consider it in writing and respond on the merits of the claim (confirm consent to its full or partial satisfaction, or report a complete refusal to satisfy it) no later than one month from the date of claim receipt. In the event that, through negotiation, the Parties cannot reach mutual agreement, any dispute, disagreement or claim arising from this Contract and arising in connection herewith, including those related to its violation, conclusion, change, termination or invalidity, shall be resolved by arbitration administered by the Arbitration Center under the autonomous non-profit organization ‘Institute of Modern Arbitration’ (according to the provisions of the Arbitration Rules of the Arbitration Center under the autonomous non-profit organization ‘Institute of Modern Arbitration’ (hereinafter referred to as the ‘Arbitration Rules’)). The place of arbitration is Moscow. The language of arbitration is English. If the cost of claims is less than US dollars 34 thousand,

the Parties agree to consider the dispute under the accelerated procedure¹ according to Chapter 7 of the Arbitration Rules, while by agreement of the Parties, oral hearings under the accelerated procedure are not held” (“the Arbitration agreement”).

55. As it follows from Paragraph 1 of Article 1 (Scope of Application) of the Law of the Russian Federation on International Commercial Arbitration (in force 14 August 1993) (hereinafter referred to as the Law on ICA), this law applies to international commercial arbitration if the place of arbitration is in the territory of the Russian Federation.
56. The Parties agreed that the place of arbitration is Moscow, Russia. Therefore, the Arbitral Tribunal concluded that the Law of the Russian Federation on ICA applies to the arbitration procedure and to the Arbitration agreement agreed between the Parties.
57. In accordance with Paragraph 2 of Article 7 of the Law on ICA the arbitration agreement shall be in writing. It also states that

“an agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract”.

58. The Arbitration agreement made between the Parties is a part of the Contract. The Contract was signed by the authorized representatives of the Parties.
59. Therefore, the Arbitration agreement was made in writing, and the requirement to the writing form of the arbitration agreement has been complied.
60. The Parties agreed that the Arbitration Rules of the Russian Arbitration Center under the autonomous non-profit organization ‘Russian Institute of Modern Arbitration’ (“the Arbitration Rules”) should be applied to the arbitration commenced between the Parties.

¹ In accordance with the official translation of the Arbitration Rules of the RAC the term “ускоренная процедура” should be translated as “the expedited procedure”.

61. The Arbitral Tribunal was constituted in accordance with Article 14 of the Arbitration Rules. As it follows from Paragraph 1 of Article 14 of the Arbitration Rules if the value of the claim is under five hundred thousand (500,000) US Dollars for international commercial arbitration, the dispute shall be resolved by a Sole arbitrator, unless the Parties agreed otherwise.
62. Based on the Order of the Board of the RAC on the Constitution of the Arbitral Tribunal of 31 December 2020, the Arbitral Tribunal was constituted. The Board of the RAC appointed Ms Daria Zhdan-Pushkina as a Sole Arbitrator.
63. On 11 January 2021, Ms Zhdan-Pushkina accepted the appointment as the Sole Arbitrator, confirmed her independence and impartiality, as well as the absence of conflicts of interest in relation to the Parties by signing the Declaration of the Arbitrator.
64. There is no evidence in the case at hand that the Respondent had ever questioned the validity of the Arbitration agreement or the jurisdiction of the Arbitral Tribunal.
65. Therefore, considering all mentioned before, the Arbitral Tribunal concludes that it has jurisdiction to consider the case at hand.

VI. B. ON THE SUBSTANCE OF THE CLAIMS

Validity of the Contract and law applicable to the Contract.

66. The Claimant states that the Parties have entered into the Contract. In accordance with the Contract, the Claimant undertook the obligations to provide freight forwarding services: information services, payment and financial services, and also services for the provision of railway rolling stock to the Respondent (hereinafter referred to as the Cars), for the implementation of domestic and/or international railway transportation of goods of the Respondent.
67. The Parties are registered in different countries, the Claimant is registered in Russia, and the Respondent is registered in Kazakhstan.
68. The Parties had not agreed on the law applicable to the interpretation of the Contract obligations.
69. However, the Parties agreed that they are liable for non-fulfilment or improper fulfillment of their obligations under the Contract in accordance with the current legislation of the Russian Federation (see Clause 5.1 of the Contract).
70. The Arbitral Tribunal believes that the law applicable to the Contract is the Russian law.
71. *“For international commercial arbitration, the Arbitral Tribunal shall decide the dispute in accordance with the rules of law chosen by the Parties as applicable to the merits of the dispute. Unless the Parties specify otherwise, the Arbitral Tribunal shall apply the law determined in accordance with the choice of law rules it deems applicable”*. This provision is envisaged in Article 23 of the Arbitration Rules.
72. In accordance with Article 1211 of the Civil Code of the Russian Federation (hereinafter referred to as the CC of the RF) in the absence of an agreement between the parties on the applicable law, the law of the country shall be applied where the place of residence or main place of business of the party carrying out the performance which is decisive for the content of the contract is located (at the time of entering the contract).
73. The party that carries out the performance that is decisive for the content of the contract is the party that is, in particular, the freight forwarder in the contract of transport forwarding (see Paragraph 2 of Article 1211 of the CC of the RF).
74. The Claimant is a freight forwarder in the Contract, having the place of business in the Russian Federation.

75. Therefore, in the opinion of the Arbitral Tribunal, the Russian law shall be applied to the Contract.
76. In accordance with paragraph 1 Article 802 the CC of the RF the contract of freight forwarding shall be concluded in writing.
77. The Contract was signed by the representatives of the Parties, and in particular by [Claimant's Director, Operations], the Director, Operations, on behalf of the Claimant, and by [Respondent's Sales Director], the Sales Director, on behalf of the Respondent.
78. The Contract was signed by [Respondent's Sales Director] on each and every page.
79. There is no evidence in the case at hand that the Respondent had ever questioned the validity of the Contract.
80. Thus, the Arbitral Tribunal considers that the Contract was concluded in a proper form.

Performance of the Contract by the Claimant.

81. In accordance with paragraph 1 Article 801 of the CC of the RF:

“Under the forwarding contract one party (forwarding agent) shall undertake to perform or organize the performance of the services of cargo carriage for reward and at the expense of the other party (consignor or consignee as a client).

The forwarding contract may provide for the forwarder's obligation to organize the carriage of cargo by transport and along the route, chosen by the forwarding agent or the client, the obligation of the forwarding agent to conclude a contract (contracts) of the carriage of cargo on behalf of the client or on his own behalf, to ensure the dispatch and receipt of cargo, and also other obligations for carriage.

The forwarding contract may provide as additional services such operations necessary for the delivery of cargo as the receipt of documents required for export or import, the performance of customs and other formalities, the inspection of the quantity and condition of cargo, its loading and unloading, the payment of duties, fees and other expenses to be incurred by the client, the storage of cargo, its receipt in the point of destination, and also the fulfilment of other operations and the provision of services, specified by the contract”.

82. On 20 February 2020, the Claimant received application No. [number] from the Respondent for the provision of three fitting platforms No.No. [platform 1], [platform 4], [platform 2] for

the transportation of eight 20ft empty containers during the period of [period], from the station [departure station] to the station [destination station].

83. 27 February 2020 the Claimant received applications No. [number] from the Respondent for the provision of three fitting platforms No.No. [platform 1], [platform 4], [platform 2] for the transportation of nine 20ft loaded containers on 06 March 2020, from the station [destination station] to the station [departure station].
84. In accordance with the Clauses 4.1, 4.5 of the Contract, the payment for the Claimant's services shall be made by the Respondent by 100 % prepayment.
85. Clause 4.6 of the Contract provides that in the event of a debt to the Claimant, the Respondent shall settle the debt within three banking days.
86. As it follows from the Claimant's arguments, the following invoices were issued for the dispatch of the platforms to the Respondent: No. [number] dated 16 March 2020, No. [number] dated 06 April 2020 in a total amount of RUB 225,350.00 (including VAT).
87. On 16 March 2020, the Claimant invoiced the Respondent for the amount of RUB 129,600.00 for the provision of the railway cars №№ [platform 1], [platform 2], [platform 3] (Route [departure – destination]).
88. On 6 April 2020 the Claimant invoiced the Respondent for the amount of RUB 95,760.00 for the provision of the three railway cars №№ [platform 3], [platform 1], [platform 2] (Route [destination – city]).
89. There is no evidence in the case at hand that the above-mentioned invoices have been sent to the Respondent or have been ever accepted by the Respondent.
90. Also, there is no evidence that the above invoices have been paid by the Respondent fully or partially.
91. The numbers of the fitting platforms mentioned in the applications dated 20 February 2020 and 27 February 2020 differ from the numbers of the railway cars mentioned in the invoices issued by the Claimant.
92. The Claimant states that the railway car № [platform 3] was delivered to the Respondent. However, this number is absent in the applications signed by the Respondent.

93. The Claimant states that it has received the application for delivering of the fitting platform № [platform 4]. However, the fitting platform with such number is absent in the invoices issued by the Claimant.
94. The route pointed out in the applications signed by the Respondent differs from the Route pointed out in the invoice dated 6 April 2020. The Respondent's applications provide for the route [departure – destination] and back. However, the invoice dated 6 April 2020 was issued in relation to the route [destination – city].
95. Thus, the information presented in the Claimant's evidences of the Claim looks contradictory and not persuasive.
96. The Claimant submitted to the case materials two railway consignment notes that were not signed either by the Claimant or by the Respondent. The Arbitral Tribunal cannot consider the documents, which were not signed by the Parties in paper or electronic format.
97. The Claimant submitted two acceptance certificates in confirmation of the fact that the transportation services were rendered to the Respondent.
98. In accordance with the Acceptance certificate No. [number] of 19 March 2020, the Claimant provided the Respondent with the freight forwarding services, the provision of railway rolling stock and information services on the amount of RUB 129,600.00.
99. In accordance with the Acceptance certificate No. [number] of 28 March 2020, the Claimant provided the Respondent with the freight forwarding services, the provision of railway rolling stock and information services on the amount of RUB 95,760.00.
100. However, the acceptance certificates were not signed by the Respondent.
101. In addition, there is no evidence in the case materials that those acceptance certificates have any reference or relation to the applications signed by the Respondent.
102. Clause 4.10 of the Contract provides the following:

“Upon completion of the carriage, the Forwarder provides the Client with certificates of work performed (services rendered), including corrective acts and other corrective documents provided for by the current legislation, further acts and invoices in the form and within the time frame established by the current legislation of the Russian Federation. The certificates received in electronic form shall be signed by the Client and sent electronically to the Freight Forwarder within 5 (Five) days from the date of their receipt, or a motivated refusal to sign this

certificate is provided. In the absence of a reasoned refusal or failure to return the signed certificate within the specified period, it will be considered accepted by the Client, and the works and services listed in it will be deemed performed efficiently and on time and payable in full. The originals of the above documents are exchanged by the Parties by postal mail as follows: the Freight Forwarder sends the originals to the Client by postal mail within the first 5 working days of the month following the month of the provision of services, and no later than 5 days after receipt the Client shall return the original signed by it to the Freight Forwarder. Until the Parties receive the originals, duly executed electronic copies of documents are legally binding”.

103. There is no evidence in the case materials that the acceptance certificates have been sent to the Respondent, or have been ever accepted by the Respondent.
104. Therefore, the Arbitral Tribunal cannot consider the acceptance certificates as evidence of the performance of the Claimant obligations under the Contract.
105. The Arbitral Tribunal considered the case materials and did not find any documents that clearly support the fact that the transportation services were rendered to the Respondent and that the fitting platforms were delivered to the Respondent. There is no correspondence with the Respondent, which might support the allegations of the Claimant related to the fact of rendering transportation services.
106. On 15 April 2020, the Claimant issued a notification to the Respondent where the Claimant requested the Respondent to pay the debt in the amount of RUB 225,360.00 for the services provided in accordance with the Contract.
107. There is no evidence in the case materials that the above notification has been ever sent to the Respondent or has been accepted by the Respondent.
108. The Claimant states that it provided the Arbitral Tribunal with *“the correspondence with the Respondent, where the Respondent guaranteed to pay the debt to the Claimant”*. However, there is no such correspondence in the case materials.
109. In the list of annexes to the Claim the Claimant states that it provided the Arbitral Tribunal with *“the copy of the letter before claim dated 20 July 2020 and proof of its submission to the Respondent with the shipment tracking”*. However, the Claimant did not submit these documents to the case materials.

110. Thus, the Arbitral Tribunal considers that there is no evidence in the case materials that the Contract was performed by the Claimant fully or partially.
111. Therefore, there is no evidence in the case materials that the Claimant is entitled for payment for the transportation services.
112. The Arbitral Tribunal invited the Claimant to provide additional evidence in support of its Claim in the Order on the timetable of arbitral proceedings № 1 dated 13 January 2021 and in the Order on the timetable of arbitral proceedings № 2 dated 27 January 2021.
113. On 08 February 2021, the Arbitral Tribunal confirmed the receipt of the translation of the Statement of Claim and of its attachments. In addition, the Sole Arbitrator requested the Claimant to demonstrate the proof of the receipt of the translated Statement of Claim and of its attachments by the Respondent, and invited the Claimant to check whether all necessary documents justifying the Statement of Claim were disclosed.
114. However, the Claimant has not used this opportunity to revise its Claim and to provide further evidences.
115. Therefore, bearing in mind the above considerations, the Arbitral Tribunal fully rejects the Claim.

VII. ALLOCATION OF THE ARBITRATION COSTS AND FEES

116. In accordance with Articles 4 and 12 of the Rules on Arbitration Fees and Arbitration Costs the Claimant paid the arbitration fee in the amount of RUB 150,041.85, which is equivalent to USD 2,000.00 as of the date of the respective payment orders (by payment order No. [number] of 11.12.2020 the Claimant paid RUB 36,856.20 – equivalent to USD 500.00 at the official exchange rate of the Central Bank of the Russian Federation as of the date of the payment order; and by payment order No. [number] of 24.12.2020, the Claimant paid RUB 113,185.65 – equivalent to USD 1,500.00 at the official exchange rate of the Central Bank of the Russian Federation as of the date of the payment order).
117. In accordance with Paragraph 1 of Article 13 of the Arbitration Rules the arbitration fee and arbitration costs shall be paid by the Party against which the arbitral award is rendered.
118. Considering that the Claim is denied, the claim of the Claimant to collect the arbitration fee from the Respondent either is denied.

VIII. RESOLUTIONS

For the foregoing reasons and, guided by Articles 52, 53 of the Arbitration Rules, the Arbitral Tribunal has

AWARDED:

The claim of the [Claimant name], [OGRN], [INN], Russian Federation, [address]; postal address: the Russian Federation, [address], against the [Respondent name], [BIN], the Republic of Kazakhstan, [address], for the recovery of debt for services rendered under the freight forwarding contract No. [Contract number] in the amount of RUB 225,360.00 (Two hundred twenty-five thousand three hundred sixty) as well the claim for recovering the costs associated with payment of the arbitration fee are dismissed.

The arbitral award shall be binding on the Parties from the date of its issuance.

This arbitral award is made in three copies, one of which is intended for the Claimant, one for the Respondent, and one for keeping in the files of the RAC.

Sole Arbitrator

D. Zhdan-Pushkina