



# Russian Arbitration Center

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of Modern  
Arbitration

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**Case No. [PI6948-22]**

**ARBITRAL AWARD**  
**23 December 2022**

**Claimant:** [Claimant]

**Respondent:** [Respondent]

**Arbitral Tribunal:** Polubenina Inessa Ivanovna as a sole arbitrator

**Assistant to the Arbitral Tribunal:** Shirinyants Alina Tigranovna

**Seat of arbitration - Moscow, Russian Federation**

Language of Arbitration: Russian

English Text: RAC – Ekaterina Petrenko

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## CONTENTS

CASE SUMMARY .....	3
COMMENCEMENT OF ARBITRATION, CONSTITUTION OF THE ARBITRAL TRIBUNAL, AND OTHER PROCEDURAL ACTIONS .....	4
PROCEDURAL SCHEDULE .....	7
POSITIONS OF THE PARTIES AND COURSE OF ARBITRATION .....	8
Request for Arbitration .....	8
Claim .....	8
Hearing of 8 November 2022 .....	12
REASONING OF THE AWARD.....	13
A. JURISDICTION OF THE ARBITRAL TRIBUNAL .....	13
B. CONCLUSIONS OF THE ARBITRAL TRIBUNAL ON THE MERITS .....	15
ALLOCATION OF ARBITRATION FEE AND OTHER ARBITRATION COSTS .....	16
OPERATIVE PART OF THE AWARD .....	17

## CASE SUMMARY

1. The Arbitral Tribunal, comprising sole arbitrator Polubenina Inessa Ivanovna (hereinafter – Arbitral Tribunal), heard the claims of

**[Claimant]**, [OGRN], [IHH], [address] (hereinafter – Service Provider) to

**[Respondent]**, registration number [No], fiscal number [No], [address], **[branch in Russia]**: NZA [No], [INN], [address] (hereinafter – Respondent, Client, jointly with the Claimant – Parties)

on recovery of debt under the Contract of 17 March 2021 No. [No] for the provision of rental [equipment] services [at the site] located at [address] (hereinafter – Contract) amounting to RUB 15,649,488.53.

2. The hearing took place on 8 November 2022, at 11:30 Moscow time at the RAC office (119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3). The hearing was attended by:

**Polubenina Inessa Ivanovna**, the Arbitral Tribunal;

**[Name]**, the Claimant's representative by power of attorney of 1 January 2022 No. [No], identified by a passport of the Russian Federation;

**Shirinyants Alina Tigranovna**, RAC Case Counsel, Assistant to the Arbitral Tribunal.

3. The dispute was heard according to the rules of international commercial arbitration of the RAC Arbitration Rules as amended on 1 November 2021 (hereinafter – Arbitration Rules) in the standard procedure.

## COMMENCEMENT OF ARBITRATION, CONSTITUTION OF THE ARBITRAL TRIBUNAL, AND OTHER PROCEDURAL ACTIONS

4. On 18 May 2022, a Request for Arbitration (hereinafter – Request) on the recovery of RUB 11,571,516.81 contractual debt was submitted to the Russian Arbitration Center at the Russian Institute of Modern Arbitration (hereinafter – RAC) via the Online Arbitration System of the RAC (hereinafter – OAS).
5. On 24 May 2022, under Paragraph 4 of Article 9 of the Arbitration Rules, the Executive Administrator notified<sup>1</sup> the Parties of the suspension of the Request due to non-compliance with the requirements of the Arbitration Rules concerning the payment of the registration fee at the time of filing the Request. Additionally, the Executive Administrator
  - 5.1. established that the claim value was USD 182,105.87 at the official exchange rate of the Central Bank of the Russian Federation (hereinafter – Central Bank) on the date of filing the Notice, and suggested the Claimant pay the outstanding registration fee of USD 186.42.
  - 5.2. requested to inform about the known current e-mail addresses of the Respondent, as the Parties had not agreed on the e-mail addresses, to promptly exchange documents related to the case.
6. On 30 May 2022, the Claimant submitted a Motion on rectification of defects, attaching orders for payment of the registration fee of 27 May 2022 No. [No] and 30 May 2022 No. [No] and a copy of the Respondent's reply to the claim letter of 31 March 2022 No. [No] with the Respondent's e-mail address.
7. On 31 May 2022, via e-mail, the Respondent's representative requested the case communications to be sent to the following e-mail addresses: [e-mail] and [e-mail].
8. On 31 May 2022, the Executive Administrator, under Paragraph 5 of Article 9 of the Arbitration Rules, notified<sup>2</sup> the Parties of the commencement of the arbitration, and the commencement date – 18 May 2022, the number assigned to the arbitration – [PI6948-22] and the seat of arbitration – Moscow, the Russian Federation (agreed by the Parties in the arbitration agreement). The Parties were also informed that the rules of international commercial arbitration shall apply, and the dispute shall be heard in the standard procedure.

The Claimant's attention was additionally drawn to the need to pay the arbitration fee of USD 16,462.74 according to Article 7 of the Rules on Arbitration Fees and Arbitration Costs (hereinafter – Rules).
9. On 3 June 2022, the Claimant submitted a payment order of 2 June 2022 No. [No] confirming that the arbitration fee had been paid in full.
10. Pursuant to Paragraph 4 of Article 5 of the Arbitration Rules, all documents of the present arbitration shall be uploaded to the OAS.
  - 10.1. On 18 May 2022, [Name], the Claimant's representative, gained access to the OAS by uploading the Request.

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<sup>1</sup> On 24 May 2022, the Notice on Suspension (Ref. No. 136/22 of 24 May 2022) was uploaded to the OAS, sent to the Claimant by e-mail ([e-mail]), the Parties by the Russian Post (Tracking Nos. [No], [No]), and the Respondent by Major-express courier service (No. [No]).

<sup>2</sup> On 31 May 2022, the Notice on Commencement of Arbitration (Ref. No. 138/22 of 31 May 2022) was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 1 June 2022, by the Russian Post (Tracking Nos. [No], [No]).

- 10.2. On 31 May 2022, [Name], the Claimant's representative, was invited to confirm her powers and join the case file in OAS at the e-mail address [e-mail], and, on 27 June 2022, [Name] confirmed her powers and gained access to OAS.
- 10.3. On 31 May 2022, [Name], the Respondent's representative, was invited to confirm his powers and join the case file in OAS at the e-mail address [e-mail], and, on 28 June 2022, [Name] confirmed his powers and gained access to OAS.
- 10.4. On 31 May 2022, [Name], the Respondent's representative, was invited to confirm his powers and join the case file in OAS at the e-mail address [e-mail], but [Name] during the arbitration did not use such an opportunity.
- 10.5. Therefore, the Parties were allowed to familiarize themselves with the case file and use the OAS to promptly send procedural documents under Article 5 of the Arbitration Rules.
11. On 24 June 2022, the Respondent's representative notified via email that the Respondent's current address is [address].
12. In the Arbitration Agreement, the Parties stipulated that arbitration shall be conducted by a sole arbitrator appointed according to the Arbitration Rules. Pursuant to Article 15 of the Arbitration Rules, **Inessa Ivanovna Polubenina, a retired judge of the Supreme Arbitration Court of the Russian Federation**, has been appointed as the sole arbitrator based on the Order of the RAC Board of 15 June 2022.
13. On 27 June 2022, the Executive Administrator notified<sup>3</sup> the Parties of the constitution of the Arbitral Tribunal. On 28 June 2022, Polubenina I.I. accepted the appointment as a sole arbitrator, confirmed her independence and impartiality, and absence of conflict of interest with respect to the Parties by submitting the arbitrator's declaration.
14. On 28 June 2022, pursuant to Paragraph 1 of Article 38 of the Arbitration Rules, the Executive Administrator notified<sup>4</sup> the Parties of the appointment of Alina Tigranovna Shirinyants, RAC Case Counsel, as the assistant of the Arbitral Tribunal at the request of the Tribunal. On 28 June 2022, A.T. Shirinyants accepted the appointment as the assistant to the Arbitral Tribunal, confirmed her independence and impartiality, and absence of conflict of interest with respect to the Parties by signing the assistant's declaration.
15. During the arbitration, no challenges to the Arbitral Tribunal and the assistant were raised.
16. On 29 June 2022, the Claimant submitted a request for consolidation of arbitrations in Cases Nos. [PI6948-22] and [PI9972-22] since the Parties were identical; the arbitrations were based on the same arbitration agreement, and the dispute arose out of interconnected obligations. The Respondent did not object to the consolidation of arbitrations.

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<sup>3</sup> On 27 June 2022, the Notice of Constitution of the Arbitral Tribunal (Ref. No. /22 of 27 June 2022) was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 28 June 2022, by the Russian Post (Tracking Nos. [No], [No]).

<sup>4</sup> On 28 June 2022, the Notice of Appointment of Assistant to the Arbitral Tribunal (Ref. No. 163/22 of 28 June 2022) along with the assistant's declaration of 28 June 2023 and arbitrator's declaration of 28 June 2022 were uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 28 June 2022, by the Russian Post (Tracking Nos. [No], [No]).

17. On 13 July 2022, the RAC Board decided to consolidate arbitrations Nos. [PI6948-22] and [PI9972-22] with the continuation of arbitration No. [PI6948-22] (commenced earlier) and termination of arbitration No. [PI6948-22] (commenced later).<sup>5</sup>
18. On 15 July 2022, under Paragraph 2 of Article 9 of the Arbitration Rules, the Executive Administrator notified<sup>6</sup> the Parties that the claim value amounts to USD 258,523.76 and the arbitration fee amounts to USD 20,583.56. Thus, pursuant to Article 9 of the Rules, the Claimant was suggested to pay the USD 3,120.82 outstanding arbitration fee by 22 July 2022.
19. On 19 July 2022, the Claimant submitted a Notice of additional payment of the arbitration fee, attaching a payment order No. [No] of 19 July 2022.

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<sup>5</sup> On 18 July 2022, the Order of the RAC Board on consolidation of arbitrations was uploaded to the OAS and sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]).

<sup>6</sup> On 15 July 2022, the Notice regarding the requirement to pay an additional arbitration fee (Ref. No. 191/22 of 15 July 2022) was uploaded to the OAS and sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]).

## PROCEDURAL SCHEDULE

20. On 22 July 2022, by Procedural Order (hereinafter – PO) No. 1<sup>7</sup> the Parties were invited to (1) discuss the potential for an amicable settlement of the dispute and notify of its outcome, (2) provide their remarks, proposals, or comments on the draft Procedural Schedule no later than 26 July 2022, (3) indicate position on participation in the hearing via VC no later than 26 July 2022, (4) draw attention to the necessity of complying with the document exchange order set forth in Article 5 of the Arbitration Rules, and joining the OAS, (5) submit their objections or additions regarding the use of addresses specified in Clauses 3 – 4 of the draft Procedural Schedule no later than 26 July 2022).
21. On 26 July 2022, the Claimant submitted a letter indicating no objections to the proposed draft Procedural Schedule. The Claimant left the decision on the format of the hearing to the discretion of the Arbitral Tribunal.
22. The Respondent did not submit any comments or proposals to the draft Procedural Schedule within the specified time limit.
23. On 28 July 2022, by PO No. 2<sup>8</sup> the Arbitral Tribunal
- 23.1. confirmed the Procedural Schedule as proposed in PO No. 1 and highlighted the option for the Parties to participate in the hearing via VC:

First stage of the exchange of procedural documents	Date of submission of Request 1	<b>18 May 2022</b>
	Date of submission of Answer to Request 1	<b>20 June 2022 (not submitted)</b>
	Date of submission of Request 2	<b>28 June 2022</b>
	Date of submission of Answer to Request 2	<b>19 July 2022 (not submitted)</b>
Second stage of the exchange of procedural documents	Date of submission of the Claim ( <i>submitted in Case No. [PI6948-22] before consolidation of arbitrations</i> )	<b>10 June 2022</b>
	Time limit for submission of the Claim ( <i>considering consolidation of arbitrations</i> )	no later than <b>5 August 2022</b>
	Time limit for submission of the Response	no later than <b>19 August 2022</b>
* In case of a Counterclaim	Time limit for submission of the Counterclaim	no later than <b>19 August 2022</b>
	Time limit for submission of the Response to the Counterclaim	no later than <b>2 September 2022</b>
Time limits for submission by the Parties of additional written submissions and evidence		For the Claimant – no later than <b>2 September 2022</b>
		For the Respondent – no later than <b>16 September 2022</b>
<b>Date and place of the hearing</b>		<b>8 November 2022, at 11:00 Moscow time, at the RAC premises at 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3.</b>

<sup>7</sup> On 22 July 2022, PO No. 1 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 25 July 2022, by the Russian Post (Tracking Nos. [No], [No]).

<sup>8</sup> On 28 July 2022, PO No. 2 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]), and by the Russian Post (Tracking Nos. [No], [No]).

## POSITIONS OF THE PARTIES AND COURSE OF ARBITRATION

### Request for Arbitration

24. On 18 May 2022, the Claimant filed a Request with the RAC against the Respondent, stating the following.
- 24.1. On 17 March 2021, the Parties entered into a Contract under which the Respondent engaged the Claimant to perform services for the provision of equipment for temporary possession and use, including equipment maintenance services by the Claimant's qualified personnel, in exchange for a fee. The Respondent undertook to pay the price and make other payments due to the Claimant.
- 24.2. Under the Contract, services were rendered to the Respondent for the transfer of equipment for temporary possession and use. The transfer was confirmed by the equipment shipment certificates. Under Annex No. 2 to the Contract, payment for the services was to be made monthly within 14 calendar days after the Parties signed the respective certificate of services rendered. The price for rendered services was agreed upon by the Parties in the Contract, recorded in additional agreements to the Contract, and recorded again in the equipment shipment certificates.
- 24.3. The Claimant noted that as of the date of filing the Request the Respondent had not paid (not fully paid) the following invoices:

Invoice	Subject of Invoice	Debt, rubles
[No] of 31 December 2021	Equipment rental services, equipment delivery services. Period: December 2021	2,805,924.80
[No] of 31 January 2022	Rental services. Period: January 2022	4,068,742.40
[No] of 28 February 2022	Equipment rental services. Period: February 2022	4,696,849.61
	<b>Total debt under the Contract for the period from December 2021 to February 2022 (inclusive):</b>	<b>11,571,516.81</b>

- 24.4. The Claimant approached the Respondent, demanding to pay the debt, but it was not settled by the Respondent.
- 24.5. Therefore, and pursuant to Articles 309, 310, and 314 of the Civil Code of the Russian Federation (hereinafter – Civil Code) and Chapter 2 of the Arbitration Rules, the Claimant filed a Request for Arbitration.

### Claim

25. On 10 June 2022, the Claimant submitted a Claim (hereinafter – Claim) seeking to recover from the Respondent the debt of RUB 11,571,516.81 under the Contract. In addition to the arguments outlined in the Request, the Claimant stated the following.
- 25.1. Equipment transfer was confirmed by the following shipment certificates:

Name and quantity of the equipment	Details of the shipment certificate	Information about return of equipment to the Claimant
1) [confidential] 2) [confidential] 3) [confidential]	No. [No] of 3 December 2021	Equipment was not returned
4) [confidential]	No. [No] of 9 November 2021	Equipment was returned (return certificate [No] of 24 December 2022)
5) [confidential] 6) [confidential]	No. [No] of 27 October 2021	The equipment related to Clauses 6 and 7 was returned (return certificate [No] of 24 February 2022)



7) [confidential] 8) [confidential] 9) [confidential] 10) [confidential] 11) [confidential]		The rest of the equipment was not returned
12) [confidential] 13) [confidential]	No. [No] of 3 August 2021	Equipment was not returned
14) [confidential] 15) [confidential] 16) [confidential]	No. [No] of 23 July 2021	Equipment was not returned
17) [confidential] 18) [confidential]	No. [No] of 23 July 2021	Equipment was not returned
19) [confidential] 20) [confidential] 21) [confidential]	No. [No] of 6 April 2021	Equipment was not returned
22) [confidential] 23) [confidential] 24) [confidential]	No. [No] of 23 April 2021	Equipment was not returned

- 25.2. Shipping certificates were signed by a representative authorized by a power of attorney.
- 25.3. At the end of each month, the Claimant sent the Respondent certificates of services rendered. The Respondent was entitled to send its reasoned objections or sign the relevant certificates. The payment obligation arose after the certificates of services rendered were signed.
- 25.4. The Claimant sent the following work completion certificates to the Respondent:
- 25.4.1. work completion certificate No. [No] of 31 December 2021;
- 25.4.2. work completion certificate No. [No] of 31 January 2022;
- 25.4.3. work completion certificate No. [No] of 28 February 2022.
- 25.5. These certificates were signed by the Respondent. No objections to the documents were received from the Respondent. Under Clause 2.5 of Annex No. 2 to the Contract, the services under the Contract shall be deemed to have been performed by the Claimant only from the moment of signing the certificate of services rendered. After signing the certificates, the Claimant issued invoices for payment for the services rendered under the Contract. However, at the time of filing the Claim, the Respondent had not fulfilled its payment obligations, as confirmed by the following documents.

Invoice/Work completion certificate	Subject of invoice	Debt, rubles
[No] of 31 December 2021	Equipment rental services, equipment delivery services. Period: December 2021	2,805,924.80
[No] of 31 January 2022	Rental services. Period: January 2022	4,068,742.40
[No] of 28 February 2022	Equipment rental services. Period: February 2022	4,696,849.61
<b>Total debt under the Contract for the period from December 2021 to February 2022 (inclusive):</b>		<b>11,571,516.81</b>

25.6. The Claimant approached the Respondent, offering to settle the debt. In response to the claim letter, the Claimant received a letter by which the Respondent acknowledged its debt, but the Respondent has never paid it. The equipment was only partially returned.

25.7. The Claimant highlighted that at the time of filing the Claim, the Respondent continued to use the Claimant's equipment, did not pay the debt, and did not return the equipment.

26. On 5 August 2022, the Claimant submitted a Claim, taking into account the consolidation of arbitrations Nos. [PI6948-22] and [PI9972-22], and supplemented its position with the following arguments.

26.1. The equipment transfer was confirmed by the following shipment certificates:

Name and quantity of the equipment	Details of the shipment certificate	Information about return of equipment to the Claimant
1) [confidential] 2) [confidential] 3) [confidential]	No. [No] of 3 December 2021	return certificate No. [No] of 1 April 2022
4) [confidential]	No. [No] of 9 November 2021	return certificate No. [No] of 24 December 2022
5) [confidential] 6) [confidential] 7) [confidential] 8) [confidential] 9) [confidential] 10) [confidential] 11) [confidential]	No. [No] of 27 October 2021	return certificates Nos. [No] of 11 May 2022, [No] of 24 February 2022, [No] of 1 April 2022, [No] of 1 April 2022, [No] of 1 April 2022
12) [confidential] 13) [confidential]	No. [No] of 3 August 2021	return certificates Nos. [No] of 21 March 2022, [No] of 22 March 2022
14) [confidential] 15) [confidential] 16) [confidential]	No. [No] of 23 July 2021	return certificates Nos. [No] of 23 March 2022, [No] of 1 April 2022
17) [confidential] 18) [confidential]	No. [No] of 23 July 2021	return certificate No. [No] of 21 March 2022
19) [confidential] 20) [confidential] 21) [confidential]	No. [No] of 6 April 2021	return certificates Nos. [No] of 11 May 2022, [No] of 1 April 2022
22) [confidential] 23) [confidential] 24) [confidential]	No. [No] of 23 April 2021	return certificate No. [No] of 17 March 2022

26.2. The Claimant sent the following work completion certificates to the Respondent:

26.2.1. work completion certificate No. [No] of 31 December 2021;

26.2.2. work completion certificate No. [No] of 31 January 2022;

26.2.3. work completion certificate No. [No] of 28 February 2022;

26.2.4. work completion certificate No. [No] of 31 March 2022;

26.2.5. work completion certificate No. [No] of 11 April 2022.

26.3. These certificates were signed by the Respondent. No objections to the documents were received from the Respondent. Under Clause 2.5 of Annex No. 2 to the Contract, the services under the Contract shall be deemed to have been performed by the Claimant only from the moment of signing the certificate of services rendered. After signing the certificates, the Claimant issued invoices for payment for the services rendered under the Contract. However, at the time of filing the Claim, the Respondent had not fulfilled its payment obligations, as confirmed by the following documents.

Invoice/Work completion certificate	Subject of invoice	Debt, rubles
[No] of 31 December 2021	Equipment rental services, equipment delivery services. Period: December 2021	2,805,924.80
[No] of 31 January 2022	Rental services. Period: January 2022	4,068,742.40
[No] of 28 February 2022	Equipment rental services. Period: February 2022	4,696,849.61
[No] of 31 March 2022	Equipment rental and transportation services. Period: March 2022	2,830,128.00
[No] of 11 April 2022	Transportation services. Period: April 2022	32,640.00
	<b>Total debt under the Contract for the period from December 2021 to April 2022 (inclusive):</b>	<b>14,434,284.81</b>

26.4. Pursuant to Clause 10.8 of the Contract, in case of late payment or non-payment of invoices issued by the Contractor, the Contractor shall pay a forfeit of 0.1% of the unpaid amount for each day of delay, but not more than 10% of the unpaid amount.

26.5. In addition to the principal debt, the Claimant sought to recover a forfeit of RUB 1,215,203.72 according to the following calculation:

Number and date of the invoice	Date of payment of the invoice issued under the Contract	Forfeit date	Number of days of delay	Invoiced amount, rubles	Amount of forfeit, rubles (0,1 % per day)
[No] of 31 December 2021	18 February 2022	28 June 2022	130	2,805,924.80	364,770.22
[No] of 31 January 2022	21 March 2022	28 June 2022	99	4,068,742.40	402,805.50
[No] of 28 February 2022	18 April 2022	28 June 2022	71	4,696,849.61	333,476.32
[No] of 31 March 2022	19 May 2022	28 June 2022	40	2,830,128.00	113,205.12
[No] of 11 April 2022	30 May 2022	28 June 2022	29	32,640.00	946.56
<b>Total:</b>				<b>14,434,284.81</b>	<b>1,215,203.72</b>
<b>Maximum amount of forfeit</b>			<b>1,443,428.48</b>		

- 26.6. The Claimant also highlighted that the equipment was returned by the Respondent to the Claimant in full.
- 26.7. The Claimant re-sent a claim letter of 15 June 2022 No. [No] to the Respondent.
- 26.8. Therefore, the total amount of the Respondent's debt amounted to RUB 15,649,488.53.

### **Hearing of 8 November 2022**

27. On 8 November 2022, at 11:00 Moscow time, a hearing was held at the RAC office (119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3), during which the Claimant presented its position and answered the questions from the Arbitral Tribunal.
28. The Respondent's representative did not appear at the hearing, having been duly notified. The Respondent also failed to submit a Response and objections on the merits of the claims brought against it. Pursuant to Paragraph 6 of Article 37 of the Arbitration Rules, the absence of the Parties or their representatives duly notified of the time and venue of the hearing shall not be an obstacle to the arbitration and the adoption of the arbitral award based on available evidence, unless the Arbitral Tribunal decides that the Party failed to appear for a good cause. The Respondent has not shown such legitimate reasons. The evidence of proper notification is contained in the case file.

**REASONING OF THE AWARD**  
**A. JURISDICTION OF THE ARBITRAL TRIBUNAL**

29. In deciding the issue of its jurisdiction over the present dispute, the Arbitral Tribunal relied on Section 17 of the Contract and the following considerations.

30. Upon analyzing the case file, the Arbitral Tribunal found that Section 17 of the Contract contains the following arbitration clause:

*“17.1 If the settlement is not possible, any dispute, controversy, or claim arising out of and in connection with this Contract (including this arbitration clause), including those relating to its breach, conclusion, amendment, interpretation, termination, or invalidity, shall be referred to and settled by arbitration at the Russian Arbitration Center at the Autonomous Non-Profit Organization “Russian Institute of Modern Arbitration” in accordance with the provisions of its Arbitration Rules. The arbitration, including the adoption of the award or order, shall take place in Moscow, the Russian Federation, the seat of the proceedings. The arbitration shall be conducted in accordance with the laws of the Russian Federation, except for any provisions or principles relating to jurisdictions other than the Russian Federation. The arbitration shall be conducted in Russian. Written evidence shall be submitted by the parties in Russian.*

*17.2. The arbitration shall be conducted by a sole arbitrator appointed in accordance with the Arbitration Rules.*

*17.3. All decisions of the arbitrator shall be made in accordance with the Arbitration Rules, in writing, and shall be final and binding on the Parties, which expressly excludes any rights of appeal against any decision to the extent that such exclusion may be validly made.*

*17.4. An arbitration shall not entitle the Service Provider to any suspension or delay in the punctual and timely performance of the Services and any obligations under this Contract.”*

31. The Parties agreed that the arbitration shall be seated in Moscow and shall be conducted in Russian by a sole arbitrator. The Parties also determined that “the arbitration shall be conducted in accordance with the laws of the Russian Federation, except for any provisions or principles relating to jurisdictions other than the Russian Federation”. Thus, the law of the seat of arbitration, i.e., Russian law, shall apply as the law of the arbitration procedure.

32. The Contract is concluded between “[Respondent]”, a company incorporated under the laws of [foreign country], having its registered office at [address] and having, at the time of commencement of the arbitration, a representative office and branch at Russian Federation, [address],<sup>9</sup> and [Claimant], registered at [address].

33. Taking into account that branches and representative offices do not possess the legal personality (see, for example, Article 55 of the Civil Code), it is “[Respondent]” that is a party to the Contract and to this arbitration. According to settled practice, the term “place of business” is interpreted as the place of registration of an organization (legal entity).

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<sup>9</sup> During the arbitration, on 24 June 2022, the Respondent by e-mail informed about the Claimant’s current address [address]. This information is also confirmed by the State Register of Accredited Branches and Representative Offices of Foreign Legal Entities (URL: <https://service.nalog.ru/rafp/#>).

34. In view of the above, the Respondent's place of business is located outside the Russian Federation, namely in [foreign country].
35. In this regard, the Law of the Russian Federation "On International Commercial Arbitration" of 7 July 1993 No. 5338-1 (hereinafter – Law on ICA) applies to the jurisdiction of the Arbitral Tribunal.
36. Under Paragraph 3 of Article 1 of the Law on ICA, disputes arising out of civil law relationships in the course of carrying out foreign trade and other types of international economic relations may be referred to international commercial arbitration if the place of business of at least one party is abroad. The Parties did not argue that another law should apply.
37. The rules of international commercial arbitration shall apply to the dispute, and the dispute shall be heard in the standard procedure.
38. The Arbitral Tribunal finds that the present dispute involves civil law relations, including contractual obligations, which in terms of the subject matter of the dispute and its subjects, falls into the category of disputes that may be submitted to arbitration for resolution according to Paragraph 3 of Article 1 of the Law on ICA.
39. Section 16 of the Contract provides for a claim procedure for the settlement of disagreements. The Claimant complied with the claim procedure agreed by the Parties by sending a claim letter of 18 March 2022 No. [No] (sent by the Russian Post on 25 March 2022, Tracking No. [No]), in response to which the Respondent sent a letter of 31 March 2022 No. [No]. The Claimant also sent a claim letter of 15 June 2022 No. [No] to the Respondent (sent by the Russian Post on 17 June 2022, Tracking No. [No]).
40. Therefore, the Arbitral Tribunal finds jurisdiction to consider this dispute in its entirety.

## 5. CONCLUSIONS OF THE ARBITRAL TRIBUNAL ON THE MERITS

41. Based on the analysis of the case file and the positions of the Parties to arbitration, the Arbitral Tribunal has reached the following conclusions.
- 41.1. On 17 March 2021, the Parties entered into a Contract of 17 March 2021 No. [No] for the provision of equipment for temporary possession and use, along with equipment maintenance services by qualified personnel. Moreover, the parties agreed in the Contract that payment for the services shall be made in accordance with Annex No. 2 to the Contract, monthly, within 14 calendar days after the parties signed the certificates of services rendered. The price of rendered services was agreed upon by the Parties in the Contract, and confirmed in additional agreements to the Contract, and recorded in the equipment shipment certificates.
- 41.2. The Claimant has performed its contractual obligations in full, as evidenced by bilateral certificates of services rendered signed by the Respondent without objection (work completion certificate No. [No] of 31 December 2021, work completion certificate No. [No] of 31 January 2022, work completion certificate No. [No] of 28 February 2022, work completion certificate No. [No] of 31 March 2022, work completion certificate No. [No] of 11 April 2022).
- 41.3. Under Clause 2.5 of Annex No. 2 to the Contract, the services under the Contract shall be deemed to have been performed by the Claimant only from the moment of signing the certificate of services rendered. The Claimant fulfilled its contractual obligations and issued to the Respondent invoices for payment for the services rendered No. [No] of 31 December 2021, [No] of 31 March 2022, [No] of 28 February 2022, [No] of 31 March 2022, [No] of 11 April 2022, totaling RUB 14,434,284.81. However, the Respondent has not paid these invoices to date.
- 41.4. Pursuant to Clause 10.8 of the Contract, in case of late payment or non-payment of invoices issued by the Contractor, the Contractor shall pay a forfeit of 0.1% of the unpaid amount for each day of delay, but not more than 10% of the unpaid amount.
- 41.5. According to the Claimant's calculation provided in the case file, the forfeit amount is RUB 364,770.22 under invoice No. [No], RUB 402,806.50 under invoice No. [No], RUB 333,476.32 under invoice No. [No], RUB 113,205.12 under invoice No. [No], RUB 946.56 under invoice No. [No]. The total amount constitutes RUB 1,215,203.72. The Arbitral Tribunal has verified the Claimant's calculations and found them to be correct, with the claimed forfeit amount not exceeding 10%. The Claimant's claim letter was not satisfied, although the Respondent, in its reply, indicated the possibility of settling the dispute in a mutually beneficial way. However, no information about its further actions was provided to the Arbitral Tribunal. Moreover, during the arbitration, the Respondent did not challenge the claims made against it.
- 41.6. Under Article 309 of the Civil Code, obligations must be duly fulfilled according to the terms of the obligation and the requirements of the law. Under Article 310 of the Civil Code, unilateral refusal to fulfill obligations and unilateral change of its terms are not allowed.
- 41.7. To ensure the fulfillment of obligations, Article 330 of the Civil Code allows for the collection of forfeit in case of non-fulfillment.
- 41.8. Considering the above and taking into account Paragraph 6 of Article 28 and Paragraph 6 of Article 37 of the Arbitration Rules, the Arbitral Tribunal grants the claims in full.

## ALLOCATION OF ARBITRATION FEE AND OTHER ARBITRATION COSTS

42. Pursuant to Articles 4 and 13 of the Rules on Arbitration Fees and Arbitration Costs (hereinafter – Rules), with the claims valued at USD 258,253.76, the arbitration fee amounts to USD 20,583.56.
43. The Claimant paid an arbitration fee of USD 20,586.63 for consideration of the present dispute, which is confirmed by the following payment orders:
  - of 16 May 2022 No. [No] of RUB 20,000, equivalent to USD 313.58;
  - of 27 May 2022 No. [No] of RUB 11,567.27, equivalent to USD 186.42;
  - of 30 May 2022 № [No] of RUB 204.13, equivalent to USD 3.07;
  - of 2 June 2022 № [No] of RUB 1,012,018.95, equivalent to USD 16,462.74;
  - of 28 June 2022 № [No] of RUB 26,682.05, equivalent to USD 500;
  - of 19 July 2022 № [No] of RUB 176,518.57, equivalent to USD 3,120.82.
44. Therefore, the overpayment of the arbitration fee amounted to USD 3.07, equivalent to RUB 173.64, which is to be returned to the Claimant according to Paragraph 4 of Article 13 of the Rules.
45. Pursuant to Paragraph 1 of Article 15 of the Rules, the arbitration fee and arbitration costs shall be paid by the Party against which the arbitral award is rendered, unless the Parties agree otherwise.
46. Within the seven-day period after the closure of the hearings set forth in Paragraph 1 of Article 16 of the Rules, the Parties did not request reimbursement of the expenses they incurred during the arbitration, attaching documents confirming their amount, nor did they request that such expenses be borne by the Party against which the arbitral award will be made.
47. The Arbitral Tribunal found that the arbitration fee of USD 20,583.56 shall be recovered from the Respondent.



## OPERATIVE PART OF THE AWARD

Based on the above and guided by Articles 50 and 51 of the Arbitration Rules, the Arbitral Tribunal

### AWARDS:

1. To recover from [Respondent], registration number [No], fiscal number [No], [address], [branch in Russia]: NZA [No], [INN], [address] in favor of [Claimant], [OGRN], [INN], [address] the debt under the Contract No. [No] of 17 March 2021 for the provision of rental [equipment] services [at the site] located at [address] (hereinafter – Contract) amounting to RUB 15,649,488.53, as follows
  - 1.1. The contractual debt for the period from December 2021 to April 2022 (inclusive) of RUB 14,434,284 (fourteen million four hundred thirty-four thousand two hundred eighty-four) 81 kopecks;
  - 1.2. The contractual forfeit of RUB 1,215,203 (one million two hundred fifteen thousand two hundred and three) 72 kopecks.
2. To recover from [Respondent], registration number [No], fiscal number [No], [address], [branch in Russia]: NZA [No], [INN], [address] in favor of [Claimant], [OGRN], [INN], [address] the arbitration fee of USD 20,583 (twenty thousand five hundred eighty-three) 56 cents.

The arbitral award shall be binding upon the Parties from the date of its adoption and immediately enforceable.

Under Article 34 of the Law on ICA and the express agreement of the Parties, this arbitral award shall be final for the Parties and shall not be set aside.

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

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**Sole arbitrator**  
**Polubenina Inessa Ivanovna**