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Case No. [PI3647-23]

**ORDER FOR TERMINATION OF ARBITRATION
BOARD OF THE RUSSIAN ARBITRATION CENTER**

04 August 2023

Claimant: [Claimant]

Respondent: [Respondent]

Seat of arbitration - Moscow, Russian Federation

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CASE INFORMATION

1. Subcommittee on international arbitration of the Board of the Russian Arbitration Center at the Russian Institute of Modern Arbitration (hereinafter referred to as the **RAC**)

represented by the President of the subcommittee Francis Xavier and members: Timur Aitkulov, Anton Asoskov, Olga Boltenko, Mohamed Abdel Wahab, Mikhail Ivanov, Andrey Panov, Islambek Rustambekov and Shamlan Al Sawalehi, (hereinafter referred to as the **Board**)

considered the termination of the arbitration under the Claim of [Claimant] ([OGRN], [INN] [address], [Russia]) (hereinafter referred to as the **Claimant**) against [Respondent] (registration number [No], [address], [Switzerland]) (hereinafter referred to as the **Respondent**, together with the Claimant as the **Parties**) in case No. [PI3647-23].

2. The dispute between the Parties arose out of the Framework Agreement on legal assistance dated 11 March 2019 no. [No]. The Claimant provided legal assistance under Assignment dated 11 March 2019 no. 1 on issues related to the debt recovery from [Joint Stock Company] and its subsidiaries controlled by [Person], the ultimate beneficial owner of [Company]. The Respondent allegedly failed to repay legal services provided by the Claimant. The Claimant sought from the Respondent a sum owed totaling 46 960,78 USD (a debt and penalties) and penalty from 30 May 2023 on the total debt in the amount of the key rate of the Russian Central Bank plus 8,75% per annum.
3. The Claimant requested for granting emergency interim measures to seize the Respondent's claims against [Third Party 1], the Third Party¹, and prohibit the Third Party from making payments to the Respondent under the Trilateral Financing and Agency Agreement dated 30 November 2021 in the amount of 51 286,01 USD:
 - 45 618,77 USD as a principal debt;
 - 1 342,01 USD as a penalty;
 - 4 325,23 USD of arbitration fee.
4. The RAC administered the case in accordance with the Arbitration Rules on International Commercial Arbitration within the expedited arbitration procedure.

¹ [Third Party 1] and the Claimant are different legal entities.

COURSE OF THE PROCEEDINGS

5. On 29 May 2023, the Claimant submitted via the Online Arbitration System of the RAC (hereinafter referred to as the OAS) and filed by e-mail to the Respondent the Request for the emergency interim measures and the Claim.

Exchange of Written Documents in the OAS

6. Under Article 5(5) of the Arbitration Rules, the Parties shall upload all documents to the OAS.
7. On 29 May 2023, the representative of the Claimant [Name], using the e-mail address [e-mail], gained access to the OAS by uploading the Claim and the Emergency Request with exhibits.
8. On 1 June 2023, the representative of the Respondent [Name] was invited to the OAS via the e-mail address [e-mail], however, he never joined the OAS.
9. Therefore, the Parties had an opportunity to use the OAS for familiarizing themselves with the case file and sending the documents in accordance with Article 5 of the Arbitration Rules.

I. Request for Emergency Interim Measures

10. The Executive Administrator accepted the Request for emergency interim measures (hereinafter referred to as the **Emergency Request**) as the Request met requirements of Article 47 (2)(3) of the RAC Arbitration Rules (as amended on 1 November 2021) (hereinafter referred to as the **Arbitration Rules**).
11. On 30 May 2023, the Administrative office notified the Parties of the appointment of the emergency arbitrator – **Mr. Alexey Anischenko, Partner, head of the Dispute Resolution and Commercial & Regulatory Practice Groups at Sorainen Law Firm** (hereinafter referred to as the **Emergency Arbitrator**).
12. On 31 May 2023, the Emergency Arbitrator sent an e-mail to the Parties suggesting they comment on the proposed schedule for the emergency proceedings. On 31 May 2023, the Claimant confirmed the receipt of the e-mail, accepted the proposed schedule.
13. On 1 June 2023, the Respondent sent a letter, in which the Respondent expressed hope for reaching an amicable settlement between the Parties.
14. On 2 June 2023, the Emergency Arbitrator sent to the Parties a letter, in which he:
 - a) summarized the communication between the Parties that was held on 1 June 2023;
 - b) informed the Parties of the decision not to hold an oral hearing;
 - c) invited the Claimant to clarify 5 additional questions regarding the Emergency Request (if Claimant maintains it) by 3 June 2023 13:00 Moscow time.
15. On 2 June 2023, the Claimant sent to the Emergency Arbitrator a letter, by which he advised about the withdrawal of claims and asked the Emergency Arbitrator to stop working on the Emergency Request.

II. Claim

16. On 1 June 2023, the Executive Administrator in accordance with Article 9(2) of the Arbitration Rules informed the Parties of the commencement of arbitration, the date of the commencement – 29 May 2023, the case number – [PI3647-23] and seat of arbitration (preliminary determined) – the Russian Federation.
17. According to Article 9(3) of the Arbitration Rules, the arbitration shall be administered in accordance with the Arbitration Rules on International Commercial Arbitration within the expedited arbitration procedure.
18. On 2 June 2023, the Claimant notified the Administrative Office by e-mail that the Parties reached an agreement to the effect that:
 - the Claimant withdraws its claim;
 - the Respondent pays the agreed sum to the Claimant (35,000 US\$); and
 - the Parties continue their cooperation.
19. On 5 June 2023, the Administrative Office informed the Parties that the Claimant withdrew the claims in full and suggested the Respondent submit the reasoned objections against the termination of the arbitration if the Respondent had a legitimate interest in having the dispute resolved on the merits by 8 June 2023.
20. On 5 June 2023, the Respondent confirmed by e-mail that the settlement was reached. In the same e-mail the Respondent also stated that it never was formally represented in the proceedings and never acknowledged (the validity of) any arbitration but did not object to the termination of the arbitration.
21. On 5 June 2023, the Claimant submitted the Waiver of Claim by e-mail and uploaded the Waiver of Claim (hereinafter referred to as the Waiver) to the OAS. The Waiver in details outlined and anchored the Parties' settlement agreement; by the Waiver the Claimant also requested for a refund of the arbitration fee (except for the registration fee) and a partial refund of the special arbitration fee for the Emergency Interim Measures.

III. The Claimant's Request Regarding Arbitration Fees' Reduction and Refund

22. On 8 June 2023, the Claimant submitted by e-mail the Request for the reduction of the special arbitration fee (hereinafter referred to as the **Request for reduction**) and the Request for Arbitration fee refund (hereinafter referred to as the **Request for refund**).
23. The Claimant alleged the following arguments to support the Request for reduction:
 - a) only 4 days passed since the appointment of the Emergency arbitrator until the moment of a complete waiver of all claims;
 - b) the Emergency Arbitrator submitted only two emails to the Parties (the introductory one of 31 May 2023, the other one of 2 June 202 – with formal questions).
24. The Claimant referred to Article 5(3) of the Rules on Arbitration Fees and Arbitration Costs (Appendix No. 1 to the Arbitration Rules) and the current hourly rates for the sole arbitrator, Executive

Administrator and another employee of the Administrative Office and requested to refund the special fee in the amount of 4 000 USD.

25. On 8 June 2023, the Emergency arbitrator submitted his position on the number of hours spent on the case.
26. The Request for reduction and the Emergency arbitrator's position were submitted to the Board for resolving a matter of the special arbitration fee decrease.
27. The Board held the voting session in the electronic system from 13 June to 20 June 2023.
28. On 20 June 2023, the Board ordered not to grant the Request for reduction.

TERMINATION OF ARBITRATION AND ALLOCATION OF THE ARBITRATION FEES AND COSTS

29. This termination shall not prevent the Parties from filing the identical claims with the RAC again. In this event, arbitration shall commence from the outset and shall be treated as a new arbitration. No circumstances ascertained in the course of the terminated arbitration may be taken into consideration. Such circumstances shall have no preclusive effect for the purposes of the new arbitration.²
30. Under Article 55(2)(1) of the Arbitration Rules, the arbitration shall terminate without an arbitral award being rendered in case the Claimant waived its claims and the waiver was accepted by the Arbitral Tribunal pursuant to Article 30 of the Arbitration Rules.
31. In accordance with Article 36 (2)(1) of Law of the Russian Federation no. 5338-1 dated 7 July 1993 “On International Commercial Arbitration”, the arbitral tribunal renders an order to terminate arbitration in case the claimant withdraws its claims, and provided that the respondent does not raise any objections against the termination of the arbitration and the arbitral tribunal does not recognize the respondent’s legitimate interest in having the dispute resolved on the merits.
32. Under Article 55(3) of the Arbitration Rules, an order to terminate the arbitration shall be rendered by the Arbitral Tribunal, and prior to the constitution of the Arbitral Tribunal – by the Board.
33. Based on these provisions and taking into account that the Respondent did not raise reasoned objections to the termination of the arbitration and, thus, did not have his legitimate interest in resolving the dispute on the merits; the Board accepts the withdrawal of the claims and terminates the arbitration.
34. When filing the Claim, the Claimant paid an arbitration fee amounting to 4 325,23 USD by payment order no. [No] dated 29 May 2023.
35. In accordance with Article 2(3) of the Rules on Arbitration Fees and Arbitration Costs (Appendix No. 1 to the Arbitration Rules), after the Claim is received by the RAC, the registration fee shall not be refunded, if the arbitration is terminated prior to the constitution of the Arbitral Tribunal.
36. Thus, the registration fee amounting to 500 USD shall not be refunded to the Claimant. According to the Order of the Board dated 20 June 2023 the special fee was not decreased and, thus, shall not be reimbursed to the Claimant.
37. Under Article 8(2) of the Rules on Arbitration Fees and Arbitration Costs, if the arbitration is terminated prior to the constitution of the Arbitral Tribunal, the arbitration fee shall be refunded excluding the amount of the registration fee.
38. In the Request for refund, the Claimant asked for reimbursement of the remaining part of the arbitration fee in accordance with Article 13 of the Rules on Arbitration Fees and Arbitration Costs.
39. Thus, the remaining part of the arbitration fee amounting to 3 825,23 USD shall be transferred to the Claimant’s account in accordance with Article 13 of the Rules on Arbitration Fees and Arbitration Costs.
40. Claims regarding the allocation of other arbitration costs were not introduced.

² Article 55 (4) of the Arbitration Rules

RESOLUTIONS

Based on the stated and referring to Article 36 (2)(1) of Law of the Russian Federation No. 5338-1 dated 7 July 1993 "On International Commercial Arbitration", Article 30 (2), Article 55 of the Arbitration Rules, the Board

ORDERED:

1. To accept the withdrawal of the claims filed by [Claimant] ([OGRN], [INN], [address]) against [Respondent] (registration number [No], [address]) in case No. [PI3647-23].
2. To terminate the arbitration in case No. [PI3647-23].

This Order is done in three original copies, the one of them should be stored for records of the RAC, and the other two original copies should be submitted to the Claimant and to the Respondent accordingly.

**President of Subcommittee on International
Arbitration**

Francis Xavier