



Russian Arbitration Center

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Arbitration

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Case No. [PI8445-22]

ORDER FOR TERMINATION OF ARBITRATION

3 March 2023

Claimant: [Claimant]

Respondent: [Respondent]

Arbitral Tribunal: Alekhin Sergey Nikolayevich as a sole arbitrator

Assistant to the Arbitral Tribunal: Piskunovich Ekaterina Sergeevna

Seat of arbitration - Moscow, Russian Federation

Language of Arbitration: Russian

English Text: RAC – Ekaterina Petrenko

Proofreading: RAC – Elizaveta Mikaelyan

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I. CASE SUMMARY

- 1 The Arbitral Tribunal, comprising Alekhin Sergey Nikolayevich (hereinafter – **Arbitral Tribunal**), considered an Application of Withdrawal of Claims with respect to the Request for Arbitration of [Claimant], [INN], [OGRN], [address] (hereinafter – **Claimant, Service Provider**) to [Respondent], registration number [number], [address], represented by [Respondent's branch] in the Russian Federation, Moscow, [INN], [NZA], branch address: [address] (hereinafter – **Respondent, Contractor**, jointly with the Claimant – **Parties**)

on recovery of debt under Contract No. [No] of 20 August 2020 for the provision of services for the rental and operation of [equipment] (hereinafter – **Contract**) of RUB 1,963,061.73 (taking into account the application to amend the claims of 31 January 2023 [No]) (hereinafter – **Request for Arbitration**).
- 2 The dispute was heard in the standard procedure according to the rules of international commercial arbitration of the Arbitration Rules of the Russian Arbitration Center at the Russian Institute of Modern Arbitration (hereinafter – **RAC**) as amended on 1 November 2021 in force at the time of commencement of arbitration (hereinafter – **Arbitration Rules**).
- 3 The following duly authorized persons represented the Parties in this case:
 - 3.1 Representative of the Claimant:

[Name], powers of attorney No. [No] of 1 January 2022, valid until 31 December 2022, and No. [No] of 1 January 2023, valid until 31 December 2023;
 - 3.2 Representative of the Respondent:

[Name], power of attorney [No] of 17 May 2022, valid until 17 May 2023.
- 4 Piskunovich Ekaterina Sergeevna served as the assistant to the Arbitral Tribunal pursuant to Paragraph 1 of Article 38 of the Arbitration Rules and the Notice of the RAC Executive Administrator of the Appointment of Assistant to the Arbitral Tribunal (Ref. No. 26/23 of 31 January 2023).
- 5 Pursuant to Paragraph 4 of Article 5 of the Arbitration Rules, all documents of the present arbitration shall be uploaded to the Online Arbitration System of the RAC (hereinafter – **OAS**). As of the date of this Order, confirmed their powers and joined the OAS:
 - 5.1 on 28 December 2022, the Claimant's representative, [Name], joined at the e-mail address [e-mail] when uploaded the Request for Arbitration to the OAS;
 - 5.2 on 10 January 2023, the Respondent's representative, [Name], joined at the e-mail address [e-mail] based on an invitation of 30 December 2022;
 - 5.3 an invitation to join the OAS was also sent on 9 January 2023 to the Respondent's e-mail address [e-mail]. However, as of the date of this Order, the representative has not joined at this e-mail address.

II. COURSE OF ARBITRATION

A. COMMENCEMENT OF ARBITRATION

- 6 On 28 December 2022, the [Claimant] submitted a Request for Arbitration to the RAC via the OAS against [Respondent] to recover a debt of RUB 2,320,223.92 under the Contract. In the Request, the Claimant referred to the following:
- 6.1 On 20 August 2020, a Contract was concluded, under which (Clauses 2.1 and 2.2 of the Contract) the Respondent engaged the Claimant to provide for a fee the services of temporary possession and use of equipment along with its maintenance and operation by the Service Provider's qualified personnel. The Contractor shall pay the price and make other payments due to the Service Provider (Clause 4.1 of the Contract).
- 6.2 Under the Contract, the Respondent received services of transferring the equipment for temporary possession and use. The fact of transfer was confirmed by the equipment shipment certificates. The services shall be paid according to Annex 2 to the Contract: monthly within 14 calendar days after the Parties sign the relevant certificates of services rendered. The Parties agreed to the price of rendered services within the framework of the Contract (specified in the signed Additional Agreements to the Contract, repeatedly set out in the equipment shipment certificates).
- 6.3 The Claimant argued that, as of the date of the Request for Arbitration, the Respondent had not paid the following invoices: No. [No] of 31 July 2022 for RUB 1,057,741.39, No. [No] of 31 August 2022 for RUB 357,162.19, No. [No] of 30 September 2022 for RUB 357,162.19, No. [No] of 21 September 2022 for RUB 190,995.96 and No. [No] of 31 October 2022 for RUB 357,162.19. The total debt owed by the Respondent to the Claimant amounted to RUB 2,320,223.92.
- 7 On 9 January 2023, under Paragraph 2 of Article 9 of the Arbitration Rules, the RAC Executive Administrator notified¹ the Parties of the commencement of the arbitration, and the commencement date – 28 December 2022, the number assigned to the arbitration – [PI8445-22]. Additionally, pursuant to Paragraph 3 of Article 9 of the Arbitration Rules, the Executive Administrator preliminarily determined:
- seat of arbitration: according to Clause 17.1 of the Contract, the Russian Federation, Moscow;
 - language of arbitration: according to Clause 17.1 of the Contract, Russian;
 - language of administration of the arbitration: Russian;
 - rules of arbitration: rules of international commercial arbitration.

B. AMENDMENT OF CLAIMS

- 8 On 31 January 2023, the Claimant submitted an application via the OAS requesting a reduction of the claim, a recalculation of the claim value, and a determination of the arbitration fee.

¹ On 9 January 2023, the Notice on Commencement of Arbitration (Ref. No. 03/23 of 9 January 2023) was uploaded to the OAS, sent to the Parties by e-mail ([e-mail], [e-mail], [e-mail]), and, on 10 January 2023, by the Russian Post (Tracking Nos. [No], [No]).

- 8.1 In the application, the Claimant explained that after the RAC had sent the Notice on Commencement of Arbitration but before the constitution of the Arbitral Tribunal and confirmation of the Procedural Schedule, the Respondent partially repaid the debt, which is confirmed by payment order No. [No] of 26 January 2023.
- 8.2 The Claimant notified a reduction of the claim to RUB 1,963,061.73, taking into account that, as of 31 January 2023, the Respondent had not paid the following invoices: No. [No] of 31 July 2022 for RUB 1,057,741.39, No. [No] of 31 August 2022 for RUB 357,162.19, No. [No] of 30 September 2022 for RUB 357,162.19, No. [No] of 21 September 2022 for RUB 190,995.96.
- 8.3 The Claimant also requested the RAC to determine the arbitration fee based on the reduced claim value.
- 9 On the same day, the Administrative Office sent a letter to the Parties stating that since the reduction of the claim value occurred before the notice of the constitution of the Arbitral Tribunal, the arbitration fee was recalculated based on the reduced claim value. With the claim valued at RUB 1,963,061.73 (USD 28,069.96), the arbitration fee amounted to USD 4,806.98.
- 10 On 31 January 2023, the Claimant submitted an application via the OAS requesting a refund of the overpaid arbitration fee of USD 463.06 and indicating the account details for the refund.

B. CONSTITUTION OF THE ARBITRAL TRIBUNAL

- 11 As the Parties did not agree on the candidate for a sole arbitrator and the procedure for its selection, pursuant to Paragraph 2 of Article 15 of the Arbitration Rules, the RAC Board appointed Alekhin Sergey Nikolayevich as the sole arbitrator by an Order of 30 January 2023. On 31 January 2023, the case file was provided to the Arbitral Tribunal.
- 12 On 31 January 2023, the RAC Executive Administrator notified² the Parties of the constitution of the Arbitral Tribunal.
- 13 Arbitrator Alekhin S.N. accepted the powers of the sole arbitrator by submitting to the RAC the signed arbitrator's declaration with the CV of 31 January 2023.³
- 14 On 31 January 2023, pursuant to Paragraph 1 of Article 38 of the Arbitration Rules, the Executive Administrator notified⁴ the Parties of the appointment of Piskunovich Ekaterina Sergeevna, Legal Counsel of the RAC Administrative Office, as an assistant to the Arbitral Tribunal at the request of the Tribunal.
- 15 During the arbitration, the Parties did not challenge the Arbitral Tribunal or the assistant to the Arbitral Tribunal.

Г. APPLICATION OF WITHDRAWAL OF CLAIMS

- 16 On 1 February 2023, the Claimant submitted an application via the OAS withdrawing its claims. The Claimant informed that, on 31 January 2023, the Respondent voluntarily satisfied the claims and fully

² On 31 January 2023, the Notice of Constitution of the Arbitral Tribunal (Ref. No. 24/23 of 31 January 2023) was uploaded to the OAS and sent to the Parties by e-mail ([e-mail], [e-mail], [e-mail], [e-mail]).

³ On 31 January 2023, the declaration of arbitrator Alekhin S.N. along with his CV was uploaded to the OAS and sent to the Parties by e-mail ([e-mail], [e-mail], [e-mail], [e-mail]).

⁴ The Notice of Appointment of Assistant to the Arbitral Tribunal (Ref. No. 26/23 of 31 January 2023) with attachments was sent with the arbitrator's declaration (see, note No. 4).

repaid the debt (payment order No. [No] of 30 January 2023). In this regard, pursuant to Paragraph 2 of Article 30 of the Arbitration Rules, the Claimant withdrew its claims against the Respondent in full, requested to terminate the arbitration, refund the overpaid amount of the arbitration fee in accordance with Paragraph 3 of Article 8 and Article 13 of the Rules on Arbitration Fees and Arbitration Costs (Annex No. 1 to the Arbitration Rules, hereinafter – **Rules**), and recover the arbitration fee from the Respondent pursuant to Paragraph 5 of Article 15 of the Rules.

- 17 On the same day, on behalf of the Arbitral Tribunal, the Parties were sent an e-mail,⁵ in which the Respondent was invited to comment on the Claimant's application by 9 February 2023 and to inform about its reasoned objections (if any) to the termination of the arbitration due to the existence of a legitimate interest in having the dispute resolved on the merits.
- 18 On 1 February 2023, the Respondent sent a letter consenting to the termination of the arbitration.

⁵ On 1 February 2023, the letter was sent to the Parties by e-mail ([e-mail], [e-mail], [e-mail], [e-mail]) and uploaded to the OAS.

III. REASONING OF THE ORDER

A. JURISDICTION OF THE ARBITRAL TRIBUNAL

- 19 The Claimant is a legal entity established under Russian law and located in the territory of the Russian Federation. In turn, the Respondent is a legal entity established in a foreign state ([foreign state]), represented by a branch registered and located in the territory of the Russian Federation ([city]).
- 20 The Arbitration Agreement is contained in Clause 17 of the Contract. In particular, Clause 17(1) of the Contract provides as follows:
- [...] [A]ny 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 resolved by resorting to arbitration at the Russian Arbitration Center at the Autonomous Non-Profit Organization “Russian Institute of Modern Arbitration” in accordance with the Arbitration Rules. The arbitration, including the adoption of the award or order, shall take place in Moscow, 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 jurisdiction of the Russian Federation. The arbitration shall be conducted in Russian. Written evidence shall be submitted by the parties in Russian.
- 21 Therefore:
- 21.1 The seat of arbitration for the present dispute is Moscow, Russian Federation.
- 21.2 The law applicable to the arbitration procedure is the law of the Russian Federation, including the Law of the Russian Federation of 7 July 1993 No. 5338-I “On International Commercial Arbitration” (hereinafter – **Law on ICA**) and the Federal Law of 29 December 2015 No. 382-FZ “On Arbitration in the Russian Federation” (hereinafter – **Law on Arbitration**).
- 22 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 or any place where a substantial part of the obligations out of the relationship of the parties is to be performed, or the place with which the subject matter of the dispute is most closely connected are located abroad, as well as disputes arising out of the realization of foreign investments in the territory of the Russian Federation or Russian investments abroad.
- 23 Under Paragraphs 1 and 2 of Article 7 of the Law on ICA, an arbitration agreement is an agreement of the parties in writing to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship or a part thereof, regardless of whether or not the legal relationship is of a contractual nature. An arbitration agreement may be concluded as an arbitration clause in a contract or as a separate agreement.
- 24 Considering the wording of the Parties’ arbitration agreement in Clause 17 of the Contract and pursuant to Paragraphs 1 and 2 of Article 7 of the Law on ICA, the Arbitral Tribunal concludes that the Parties have agreed to resolve disputes regarding the Contract through arbitration in the RAC in accordance with the Arbitration Rules.

- 25 In light of the above and taking into account that the Parties have not raised challenges to the Arbitral Tribunal, the Tribunal, guided by Article 74 of the Arbitration Rules, finds jurisdiction to consider this dispute.

5. TERMINATION OF ARBITRATION

- 26 According to Subparagraph 1 of Paragraph 2 of Article 55 of the Arbitration Rules, the arbitration is terminated without an arbitral award being rendered when, in particular, the Claimant withdrew its claims, and the withdrawal was accepted by the Arbitral Tribunal pursuant to Article 30 of the Arbitration Rules.
- 27 Under Paragraph 2 of Article 30 of the Arbitration Rules, the Claimant may withdraw claims fully or partially at any stage of arbitration unless the Respondent advances reasoned objections against the termination of the arbitration due to the legitimate interest in having the dispute resolved on the merits.
- 28 On 1 February 2023, the Claimant submitted an Application of Withdrawal of Claims following the Respondent's full payment of the debt. On the same day, the Respondent consented in writing to the termination of the arbitration.
- 29 In light of the above and pursuant to Articles 30 and 55 of the Arbitration Rules, the Arbitral Tribunal accepts the Claimant's full withdrawal of its claims and terminates the arbitration without issuing an award.
- 30 Termination of the arbitration due to reasons specified in Subparagraph 1 of Paragraph 2 of Article 55 of the Arbitration Rules does not prevent the Claimant from filing identical claims with the RAC again. In this event, the arbitration shall commence from the outset and be treated as a new arbitration.

IV. ALLOCATION OF ARBITRATION FEE AND COSTS

- 32 According to Subparagraph 1 of Paragraph 1 of Article 17 of the Arbitration Rules, with the value of the initially asserted claims of RUB 2,320,223.92, which is equivalent to USD 33,177.05 at the official exchange rate of the Central Bank of the Russian Federation on the date of filing the Request for Arbitration, the arbitration fee amounted to USD 5,270.04.
- 33 The Claimant paid the arbitration fee in full by payment orders No. [No] of 28 December 2022 of RUB 34,967.30 (USD 500 at the official exchange rate of the Central Bank of the Russian Federation on the date of the payment order) and No. [No] of 11 January 2023 of RUB 332,039.62 (USD 4,770.04).
- 34 Since the Claimant amended the claim value before the constitution of the Arbitral Tribunal, the arbitration fee was recalculated based on the reduced claim value, and with a claim valued at RUB 1,963,061.73 (USD 28,069.96), the arbitration fee amounted to USD 4,806.98. The overpaid amount of the arbitration fee of USD 463.06 shall be refunded by the RAC in accordance with Paragraph 4 of Article 13 of the Rules.
- 35 According to Paragraph 3 of Article 8 of the Rules on Arbitration Fees and Arbitration Costs, if the arbitration is terminated after the constitution of the Arbitral Tribunal but before the first hearing, the arbitration fee shall be decreased by 50%.
- 36 Therefore, the arbitration fee shall be reduced to USD 2,403.49.
- 37 Thus, the Claimant should also be refunded a part of the arbitration fee of USD 2,403.49. The arbitration fee shall be refunded in accordance with Paragraph 4 of Article 13 of the Rules upon an application signed by an authorized person. The application shall contain the reason for the refund and account details for the transfer of monies.
- 38 Pursuant to Paragraph 5 of Article 15 of the Rules, if the arbitration is terminated due to the Claimant's withdrawal of claims, the arbitration fee and arbitration costs shall be borne by the Claimant. If the Respondent admits or voluntarily performs the Claimant's claims, the arbitration fee and arbitration costs shall be paid by the Respondent.
- 39 In the Application of Withdrawal of Claims of 1 February 2023, the Claimant requested to recover the remaining part of the arbitration fee from the Respondent since the Claim was withdrawn because the Respondent voluntarily satisfied the claims.
- 40 The Respondent's voluntary satisfaction of the claim is confirmed by payment order No. [No] of 30 January 2023. Additionally, in its letter of 1 February 2023, the Respondent did not address in any way the Claimant's request to recover the remaining part of the arbitration fee from the Respondent per Paragraph 5 of Article 15 of the Rules. The Arbitral Tribunal finds no basis for applying Paragraph 6 of Article 15 of the Rules (on a different allocation of the arbitration fee). Consequently, the Arbitral Tribunal grants the Claimant's request to recover the remaining part of the arbitration fee from the Respondent.
- 41 No claims for reimbursement of other expenses incurred in connection with the present arbitration have been made.

V. OPERATIVE PART OF THE ORDER

Based on the above and guided by Articles 30 and 55 of the Arbitration Rules and Paragraph 3 of Article 8 of the Rules, the Arbitral Tribunal

ORDERS:

1. To terminate the arbitration without issuing an award in Case No. [PI8445-22] in respect of the Claim filed by [Claimant] ([INN], [OGRN], [address]) against [Respondent] (registration number [No], [address]), represented by [Respondent's branch] in the Russian Federation, Moscow ([INN], [NZA], branch address: [address]), due to the Claimant's full withdrawal of the Claim and its acceptance by the Arbitral Tribunal.
2. The Russian Arbitration Center to refund the Claimant 50% of the arbitration fee paid, namely USD 2,403.49.
3. The Respondent to refund the Claimant 50% of the arbitration fee paid by the Claimant, namely USD 2,403.49.

The present order 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.

Sole arbitrator

Alekhin Sergey Nikolayevich