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Case No. [PI6380-23]

ARBITRAL AWARD

13 May 2024

Claimant: [Claimant]

Respondent: [Respondent]

Arbitral Tribunal: Oleynik Oxana Mikhailovna

Dedov Dmitry Ivanovich

Dozhdev Dmitry Vadimovich

Assistant to the Arbitral Tribunal: Drobyshevskaya Margarita Sergeevna

Seat of arbitration - Moscow, Russian Federation

Language of Arbitration: Russian

English Text: RAC – Ekaterina Petrenko

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I. INTRODUCTION

1 This is an award rendered by the arbitral tribunal, comprising Oleynik Oxana Mikhailovna, Dedov Dmitry Ivanovich, and Dozhdev Dmitry Vadimovich (**Arbitral Tribunal**), in Case No. [PI6380-23] administered by the Russian Arbitration Center at the Russian Institute of Modern Arbitration (**RAC**).

2 The dispute was heard according to the RAC Arbitration Rules as amended on 1 November 2021 (**Arbitration Rules**) in the standard procedure according to the Law of the Russian Federation No. 5338-I of 7 July 1993 "On International Commercial Arbitration" (**Law on ICA**).

II. THE PARTIES AND SUBJECT OF THE DISPUTE

3 The Claimant in this case is:

[Claimant] ([OGRN], [INN], [address]; [address]) (**Claimant**, **Assignor**).

4 The Claimant is represented by:

a) [Name], acting under power of attorney No. [No] of 10 December 2022, [e-mail] (**Claimant's representative [Name]**);

b) [Name], acting under power of attorney No. [No] of 9 December 2022, [e-mail] (**Claimant's representative [Name]**).

5 The Respondent in this case is:

[Respondent] ([address], [e-mail], [e-mail], [e-mail], [e-mail], [e-mail], [e-mail] (**Respondent**, **Assignee**, and jointly with the Claimant – **Parties**).

6 The Respondent is represented by:

a) [Name], acting under power of attorney No. [No] of 11 September 2023, [e-mail] (**Respondent's representative [Name]**).

b) [Name], acting under power of attorney No. [No] of 11 September 2023 (**Respondent's representative [Name]**);

c) [Name], acting under power of attorney No. [No] of 7 August 2023, [e-mail] (**Respondent's representative [Name]**).

7 In the present case, the Claimant seeks to recover interest from the Respondent amounting to USD 733,600.29 from 1 June 2022 to 25 July 2023.

III. PROCEDURAL HISTORY

A. Use of the OAS

8 During arbitration, the Parties' representatives were invited to join the Online Arbitration System of the RAC (**OAS**)[1]:

a) On 11 September 2023, the Claimant's representative [Name] ([e-mail]) was granted access by uploading the Request for Arbitration;

b) On 11 October 2023, the Claimant's representative [Name] ([e-mail]) was invited to join the OAS. On the same day, he confirmed his powers as the Claimant's representative and was granted access to the case file.

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[1] Pursuant to Paragraph 4 of Article 5 of the Arbitration Rules, all documents of the present arbitration shall be uploaded to the OAS.

c) On 28 February 2024, an invitation to join the OAS was sent to the representative [Name] ([e-mail]). On 29 February 2024, he confirmed his powers as the Respondent's representative and gained access to the case file.

d) Other Parties' representatives did not avail themselves of the opportunity to join the OAS and have not requested an invitation to join the OAS.

B. Commencement of arbitration

9 On 11 September 2023, the Claimant emailed and uploaded to the OAS a Request for Arbitration (**Request for Arbitration**[2]).

10 On 18 September 2023, the RAC Executive Administrator sent[3] the Parties a Notice on Commencement of Arbitration, in which she stated the number assigned to the arbitration – [PI6380-23] – and, under Paragraph 3 of Article 9 of the Arbitration Rules, preliminarily determined:

a) The seat of arbitration shall be the Russian Federation;

b) The rules of international commercial arbitration of the Arbitration Rules shall apply to the dispute;

c) The dispute shall be heard in the standard procedure.

C. Constitution of the Arbitral Tribunal

11 Under Paragraph 1 of Article 16 of the Arbitration Rules, three arbitrators resolve the dispute if the claim value equals or exceeds USD 500,000 for international commercial arbitration unless the Parties agree on a different number of arbitrators.

12 On 11 September 2023, the Claimant designated Dozhdev Dmitry Vadimovich as an arbitrator (**Arbitrator Dozhdev D.V.**).

13 On 20 October 2023, the Respondent designated Dedov Dmitry Ivanovich as arbitrator (**Arbitrator Dedov D.I.**).

14 On 26 October 2023, pursuant to Paragraph 3 of Article 16 of the Arbitration Rules, the two co-arbitrators selected Oleynik Oxana Mikhailovna as the presiding arbitrator of the Arbitral Tribunal (**Presiding arbitrator of the Arbitral Tribunal Oleynik O.M.**).

15 On 13 November 2023, the RAC Executive Administrator notified[4] the Parties of the constitution of the Arbitral Tribunal and the appointment of the Assistant to the Arbitral Tribunal. Drobyshevskaya Margarita Sergeevna, RAC Case Counsel (**Assistant to the Arbitral Tribunal**), was appointed as the Assistant to the Arbitral Tribunal. The following documents were attached to the Notice:

declaration of Arbitrator Dozhdev D.V. of 26 October 2023 and a CV;

declaration of Arbitrator Dedov D.I. of 26 October 2023 and a CV;

declaration of the Presiding arbitrator of the Arbitral Tribunal Oleynik O.M. of 2 November 2023 and a CV; and also

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2 Under Paragraph 2 of Article 11 of the Arbitration Rules, the first procedural document of the Claimant is treated as a Request for Arbitration.

3 The Notice on Commencement of Arbitration (Ref. No. 384/23 of 18 September 2023) was, on 18 September 2023, uploaded to the OAS and sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]); and, on 20 September 2023, sent to the Parties by the Russian Post (Tracking Nos. [No], [No], [No]).

4 The Notice of Constitution of the Arbitral Tribunal and Appointment of Assistant to the Arbitral Tribunal (Ref. No. 462/23 of 13 November 2023) was, on 13 November 2023, uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 20 November 2024, sent to the Parties by the Russian Post (Tracking Nos. [No], [No], [No]).

declaration of the Assistant to the Arbitral Tribunal of 13 November 2023 and a CV.

16 During the arbitration, the Parties did not challenge the Arbitral Tribunal or the Assistant to Arbitral Tribunal.

D. Procedural Schedule

17 On 17 November 2023, the Arbitral Tribunal issued[5] Procedural Order No. 1 (**PO No. 1**), to which was attached a Draft Procedural Schedule (**Draft Schedule**).

18 The Arbitral Tribunal invited the Parties to provide their remarks, proposals, or comments on the Draft Schedule. The Arbitral Tribunal also invited each Party to communicate its views on certain issues no later than 27 November 2023[6].

19 On 23 November 2023, the Claimant indicated that it:

a) requests an in-person hearing at the RAC office, with the option to utilize videoconferencing (**VC**), specifying that the hearing should not exceed 40 minutes;

b) requests that the [e-mail] address as the Claimant's address be deemed outdated;

c) requests that the e-mail addresses [e-mail], [e-mail] be considered as the up-to-date addresses of the Claimant's representatives;

d) confirms that it is willing to participate in the hearing on 19 February 2024 at 13:00 Moscow time or on 28 March 2024 at 13:00 Moscow time;

e) agrees with the Draft Schedule in other matters.

20 On 27 November 2023, Respondent stated that it:

a) requests a hearing with the VC and duration not exceeding 40 minutes;

b) confirms that it is ready to participate in the hearing on 19 February 2024 at 13:00 Moscow time or on 28 March 2024 at 13:00 Moscow time;

c) notes that it seeks to settle the dispute amicably.

21 On 8 December 2023, the Arbitral Tribunal issued[7] Procedural Order No. 2 (**PO No. 2**), in which, among other things, it stipulated certain procedural matters and confirmed the Procedural Schedule, taking into account the positions of the Parties set forth above.

1.	First stage of document exchange	Date of submission of the request for arbitration	Claimant	11 September 2023
		Date of submission of the answer to the request for arbitration	Respondent	5 October 2023

5 On 17 November 2023, PO No. 1 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 20 November 2024, sent to the Parties by the Russian Post (Tracking Nos. [No], [No], [No]).

6 PO No. 1, paras. 3–4.

7 On 8 December 2023, PO No. 2 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]), and, on 11 December 2023, sent to the Parties by the Russian Post (Tracking Nos. [No], [No], [No]).

2.	Second stage of document exchange	Time limit for filing a claim and evidence, or request to treat a request for arbitration as claim	Claimant	no later than **18 December 2023** (35 days from the date of constitution of the Arbitral Tribunal)
		Time limit for filing a response and evidence	Respondent	no later than **22 January 2024** (35 days from the date of filing the claim)
3.	* In case of a counterclaim	Time limit for filing a counterclaim and evidence	Respondent	no later than **22 January 2024** (simultaneously with filing the response)
		Time limit for filing a response to a counterclaim and evidence	Claimant	no later than **26 February 2024** (35 days from the date of filing of the counterclaim, together with the filing of the Claimant's additional written submissions on the main claim)
4.	Time limits for filing additional written submissions and evidence		Claimant	a) in the absence of a counterclaim – no later than 1 February 2023 (10 days from the date of filing the response); b) if there is a counterclaim: i. on matters related to the main claim – no later than **26 February 2024** (simultaneously with the filing of the Claimant's response to the counterclaim); ii. on issues related to the counterclaim – no later **than 20 March 2024** (10 days from the date of filing the Respondent's additional written submissions on the counterclaim).
			Respondent	a) in the absence of a counterclaim – no later than **12 February 2024** (10 days from the date of filing the Claimant's additional written submissions); b) if there is a counterclaim – no later than **7 March 2023** (both on the main claim (first working day after the expiration of 10 days from the date of filing the Claimant's additional written submissions on the main claim) and on the counterclaim (10 days from the date of filing the Claimant's response to the counterclaim))
5.	Date and place of the hearing		Parties and Arbitral Tribunal	If there is no counterclaim – **19 February 2024 at 13:00** Moscow time If there is a counterclaim – **28 March 2024 at 13:00** Moscow time at the RAC premises (Moscow, Kadashevskaya embankment, 14, bldg. 3) with the option to participate via VC.

6.	Time limit for filing by the Parties procedural documents following the hearing	Parties	The Parties and the Arbitral Tribunal will discuss the necessity and timing of filing additional procedural documents following the hearing at the end of the hearing
7.	Time limit for filing an application on reimbursement of the Parties' costs	Parties	7 days after the end of the hearing (Article 16 of the Rules on Arbitration Fees and Arbitration Costs of the Arbitration Rules)

E. Hearing

22 On 19 February 2024 at 13:00 Moscow time, a hearing was held at the RAC office (Russia, Moscow, Kadashevskaya embankment, 14, bldg. 3) with the VC. The hearing was attended by the Claimant's representative [Name], the Respondent's representative [Name], the Respondent's representative [Name], and the Assistant to the Arbitral Tribunal. During the hearing, the Parties presented their positions as outlined in the written documents, and responded to each other's questions and the questions of the Arbitral Tribunal.

IV. EXCHANGE OF LEGAL POSITIONS BY THE PARTIES ON THE MERITS OF THE DISPUTE DURING THE ARBITRATION

23 During the arbitration, the Parties submitted their written positions. For the avoidance of doubt, the Arbitral Tribunal has reviewed and taken into account all written positions and evidence submitted by the Parties in reaching this award.

Date	Event
11 September 2023	The Claimant emailed and uploaded to the OAS a Request for Arbitration.
5 October 2023	The Respondent emailed an Answer to the Request for Arbitration (**Answer to the Request**).
11 December 2023	The Claimant emailed and uploaded to the OAS a Claim (**Claim**).

A. Claimant's position as outlined in the Request for Arbitration and Claim

24 The Claimant and the Respondent entered into a contract of assignment No. [No] of 10 September 2021 (**Contract**), under which the Claimant assigned its claim against the [Company] to the Respondent for a fee.

25 The Contract price was set at USD 58,142,317.80, payable by 10 November 2021.

26 The Respondent did not fully fulfill its obligation to pay the price, which led the Claimant to initiate arbitration with the RAC. By Arbitral Award No. [PI6621-22] of 18 October 2022, the [Claimant's] claims were partially upheld. The [Respondent] was charged the debt under the Contract of USD 13,142,317.80, interest for the use of the other person's means from 11 November 2021 to 31 May 2022 of USD 375,832.21, and arbitration fee of USD 71,733.48. Arbitral Award No. [PI6621-22] of 18 October 2022 was not fully executed by the [Respondent] until 25 July 2023. Thus, the [Claimant] filed a Claim to recover interest for the use of the other person's means from 1 June 2022 to 25 July 2023, amounting to USD 733,600.29.

27 Pursuant to Paragraph 4 of Article 454 of the Civil Code of the Russian Federation (**Civil Code**), the provisions governing the sale and purchase of goods are also applicable to the sale of property rights.

28 The Parties made a transaction for the sale and purchase of property rights, structured as a compensatory assignment of the claim against the debtor. In cases where a contract of sale requires the buyer to pay for the goods in full or in part before the seller delivers the goods (prepayment), the buyer shall pay within the time frame stipulated in the contract (Paragraph 1 of Article 487 of the Civil Code).

29 Pursuant to Clause 3.1 of the Contract, the price of the assigned rights was set at USD 58,142,317.80, payable by the Respondent to the Claimant by direct bank transfer no later than 10 November 2021.

30 The Respondent paid only USD 45,000,000, as stipulated by Arbitral Award No. [PI6621-22] of 18 October 2022. Arbitral Award No. [PI6621-22] of 18 October 2022 awarded the Claimant a debt under the Contract amounting to USD 13,142,317.80, interest for the use of the other person's means from 11 November 2021 to 31 May 2022 of USD 375,832.21, and USD 71,733.48 in arbitration fee.

31 As follows from Paragraph 1 of Article 395 of the Civil Code, in cases of illegal retention of monies, evasion of their return, other delay in their payment, interest on the debt amount is payable. The interest rate shall be determined by the discount rate of the Bank of Russia in effect during the relevant periods. These rules apply unless another interest rate is established by law or contract. For pecuniary obligations denominated in foreign currency, the interest amount payable for a breach shall be determined, taking into account similar indicators and calculated based on average interest rates in the debt currency. The sources of information on average interest rates on short-term loans denominated in foreign currency include the official website of the Bank of Russia and the official publication of the Bank of Russia "Bulletin of the Bank of Russia." If the average rate in the respective foreign currency for a certain period is not published, the interest amount to be charged shall be determined based on the latest published rate for each of the delay periods.

32 The [Respondent] complied with Arbitral Award No. [PI6621-22] of 18 October 2022 only on 25 July 2023, and therefore, it is owed interest of USD 733,600.29 from 1 June 2022 to 25 July 2023. The Claimant's calculation is based on the weighted average rate published by the Bank of Russia for loans granted by credit organizations to non-financial organizations in US dollars (from 180 days to 1 year) as of the relevant months of delay.

33 Thus, the Claimant seeks to recover from the Respondent:

- interest of USD 733,600.29 from 1 June 2022 to 25 July 2023;
- registration and arbitration fees of USD 28,917.20.

B. Respondent's position as outlined in the Answer to the Request

34 There is a Contract between the Claimant and the Respondent, under which the Claimant assigned its claim for USD 58,142,317.80 against the [Company] to the Respondent for a fee.

35 A contract No. [No] of 21 October 2019 was entered into between [Claimant] and [Company], under which the supplier undertook to transfer the goods ([goods]) into the possession of the buyer, and the buyer undertook to accept and pay for them. However, [Company] defaulted on payment for the delivered [goods] for two years.

36 Under the Contract, the [Respondent] partially paid the [Claimant] the amount of USD 45,000,000, leaving an outstanding balance of USD 13,142,317.80 and interest of USD 375,832.21.

37 Upon transfer of the pledged [products] by the State Enforcement Officer of the Bureau of Enforcement, as per the transfer certificate of 23 September 2021, 7,015 pieces of [size] [products] were found and transferred, and the remaining 2,327 pieces were not found in storage.

38 Because the [Respondent] has not yet received 2,327 items of the [products], it has incurred a loss amounting to USD 19,310,236.

39 Under Clause 4.2 of the Contract, the Assignor is responsible for the validity of the rights transferred under the Contract. The Respondent, therefore, invited the Claimant to discuss this issue between the Parties' respective experts.

V. REASONING OF THE AWARD

40 The Arbitral Tribunal has thoroughly analyzed all the arguments of the Parties presented in this arbitration, both during the written stage and the hearings. In arriving at its decision, the Arbitral Tribunal has considered and taken into account all arguments raised by the Parties, including those not elaborated upon below.

A. Jurisdiction of the Arbitral Tribunal

41 Under Paragraph 1 of Article 23 of the Arbitration Rules, in the absence of the parties' agreement on the seat of arbitration or the procedure for its determination, the seat of arbitration shall be determined by the Arbitral Tribunal. Pursuant to Paragraph 6 of Article 23 of the Arbitration Rules, the law applicable to the arbitral procedure shall be the law of the seat of arbitration.

42 In Clauses 5.2 and 5.3 of the Contract, the Parties provided for the dispute resolution procedure. However, they did not agree on the seat of arbitration or the procedure for its determination, thus, the seat of arbitration shall be determined by the Arbitral Tribunal.

43 The Arbitral Tribunal in PO No. 2 determined that the seat of arbitration for the present dispute shall be Moscow, Russian Federation, and the law applicable to the arbitral procedure shall be the law of the Russian Federation.

44 The Arbitral Tribunal finds its jurisdiction to hear the present dispute based on 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 <...>".*

45 Pursuant to Paragraphs 1 and 2 of Article 7 of the Law on ICA:

> "*1. An arbitration agreement is an agreement of the parties 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.*
>
> *2. The arbitration agreement shall be concluded in writing".*

46 The Arbitral Tribunal finds that the present dispute relates to civil law relations arising from a contract of assignment and that one of the Parties to the dispute, the Respondent, is a legal entity registered and having a commercial enterprise outside the territory of the Russian Federation, namely in the Republic of Uzbekistan.

47 In terms of the subject matter of the dispute and its subjects, the present dispute falls within the category of disputes which, under Paragraph 3 of Article 1 of the Law on ICA, may be resolved in arbitration.

48 In Clauses 5.2 and 5.3 of the Contract, the Parties specified the following dispute resolution procedure, which includes an arbitration agreement:

"*5.2. In case of disputes arising from this Contract, the Parties have established a mandatory claim procedure. Resort to the court is possible after 15 working days from the date of sending the claim letter.*

5.3. Any dispute, controversy, or claim arising out of or in connection with this Contract, including those related to its breach, conclusion, amendment, termination, or invalidity, shall settled by arbitration administered by the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration" in accordance with the Arbitration Rules.

The Parties agree that for the purposes of sending written submissions, notifications, and other written documents, the following e-mail addresses shall be used:

Assignor: [e-mail], shall be copied: [e-mail];

Assignee: [e-mail].

In the event of a change in the specified e-mail address, the Party shall immediately notify the other Party of such a change and, if the arbitration has already commenced, also notify the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration." Otherwise, the Party shall bear all negative consequences with respect to sending written submissions, notifications, and other written documents to an incorrect e-mail address.

The Parties shall execute the arbitral award voluntarily."

49 The Claimant sent a claim letter to the Respondent on 17 August 2023. The Request for Arbitration was filed on 11 September 2023, more than 15 working days after the claim letter.

50 Thus, the Arbitral Tribunal finds that the Claimant complied with the mandatory pre-arbitration claim procedure stipulated in the Contract.

51 During the arbitration, neither Party raised any objections to the jurisdiction of the Arbitral Tribunal.

52 In view of the above, and in accordance with Article 74 of the Arbitration Rules, the Arbitral Tribunal finds jurisdiction to hear the present dispute.

B. Conclusions of the Arbitral Tribunal on the merits

53 The Arbitral Tribunal, having examined the case file and heard the explanations of the Claimant's and Respondent's representatives during the hearing on 19 February 2024, reached the following conclusions.

54 According to Paragraphs 2 and 3 of Article 24 of the Arbitration Rules:

"*2. For arbitration of international commercial disputes, the Arbitral Tribunal shall decide the dispute in accordance with the law chosen by the Parties as applicable to the merits of the dispute. <...>*

3. Any designation of the law or legal system of any state shall be construed as directly referring to the substantive law of that state and not to the choice of law rules."

55 In Clause 5.1 of the Contract, the Parties agreed that:

"In all other matters not provided for by the terms of this Contract, the Parties shall be governed by the substantive law of the Russian Federation."

56 Thus, according to the Parties' agreement, the Arbitral Tribunal shall primarily be guided by the Contract and, secondarily, by the substantive law of the Russian Federation in resolving the present dispute.

57 The Parties have entered into a civil contract, which, by its legal nature, is a contract of assignment.

58 The Arbitral Tribunal finds that the arbitral award in Case No. [PI6621-22] issued by the Arbitral Tribunal appointed by the Russian Arbitration Center on 18 October 2022 pertains to the Contract concluded between the Parties. The Contract contains all material terms and conditions, which complies with the requirements of Chapter 24 of the Civil Code and which was not disputed by the Respondent but, on the contrary, was partially performed.

59 By this award, the claims of [Claimant] against [Respondent] were partially satisfied. The Respondent was ordered to pay the Claimant:

> *"- debt under the contract of assignment No. [No] of 10 September 2021 of 13,142,317.80 (thirteen million one hundred forty-two thousand three hundred seventeen and eighty cents) US dollars;*
>
> *- interest for the use of funds of 375,832.21 (three hundred seventy-five thousand eight hundred thirty-two and twenty-one cents) US dollars;*
>
> *- arbitration fee of 71,733.48 (seventy-one thousand seven hundred thirty-three point and forty-eight cents) US dollars."*

60 According to Paragraph 3 of the operative part, *"an [a]rbitral award shall be binding on the Parties from the date of its adoption and shall be immediately enforceable."*

61 Based on the documents submitted and the oral statements of the Claimant and the Respondent, the Arbitral Tribunal concludes that Award No. [PI6621-22] of 18 October 2022 was fully executed by the [Respondent] on 25 July 2023. Therefore, Respondent defaulted on its pecuniary obligation.

62 Therefore, the Arbitral Tribunal finds that the Claimant's claim for interest for the use of the funds from 1 June 2022 to 25 July 2023, amounting to USD 733,600.29, is justified.

63 According to Paragraph 1 of Article 395 of the Civil Code, in cases of illegal retention of monies, evasion of their return, other delay in their payment, interest on the debt amount is payable. The interest rate shall be determined by the discount rate of the Bank of Russia in effect during the relevant periods. These rules apply unless another interest rate is established by law or contract.

64

65 Pursuant to Clauses 1.1 and 1.4 of the Contract and the Arbitral Award of 18 October 2022 in Case No. [PI6621-22], the Respondent's pecuniary obligation is denominated in US dollars.

66 Pursuant to Article 317.1 of the Civil Code, where the law or a contract provides that interest shall accrue on the amount of a pecuniary obligation for the period of use of funds, the interest rate shall be determined by the discount rate of the Bank of Russia in effect during the relevant periods (legal interest), unless another interest rate is established by law or contract.

67 Based on the interpretation of Articles 317.1 and 395 of the Civil Code in their interrelation, if the performance of the pecuniary obligation is delayed, the debt under which is denominated in foreign currency, interest for wrongful withholding of funds shall be calculated in foreign currency.

68 The amount of interest payable for the breach of a pecuniary obligation, the debt under which is denominated in foreign currency, shall be calculated based on average interest rates in the debt currency. The Claimant's calculation utilizes the weighted average rate published by the Bank of

Russia for loans granted by credit organizations to non-financial organizations in US dollars (from 180 days to 1 year) as of the relevant months of delay.

69 The sources of information for determining average rates on short-term loans in foreign currency include the official website of the Bank of Russia and the official publication of the Bank of Russia "Bulletin of the Bank of Russia." If the average rate in the respective foreign currency for a given period is not published, the amount of interest to be charged shall be determined based on the latest published rate for each of the periods of delay.

70 Based on the weighted average rate published by the Bank of Russia for loans granted by credit organizations to non-financial organizations in US dollars (from 91 to 180 days) for the respective month of delay, the calculation of interest is as follows:

Weighted average interest rates for loans granted by credit organizations to non-financial organizations in US dollars (91 to 180 days)				
July 2022	3,44	4,13	5,83	6,05
July 2022	3,71	-	7,64	7,12
August 2022	4,55	-	6,31	7,37
September 2022	-	-	5,62	6,9
October 2022	4,96	-	6,2	6,1
November 2022	5,51	-	5,01	-
December 2022	-	5,37	-	6,56
January 2023	5,4	-	6,55	6,25
February 2023	5,72	7,03	-	6,2
March 2023	-	-	-	5,02
April 2023	-	-	-	-
May 2023	-	-	-	7,16

71 The Arbitral Tribunal considers it necessary to emphasize that, pursuant to Article 35 of the Law of the Russian Federation of 7 July 1993 No. 5338-I (as amended on 30 December 2021) "On International Commercial Arbitration" (referred to above as the **Law on ICA**), an arbitral award – regardless of the country in which it was adopted – is recognized as binding and, upon submission of a written motion to the competent court, is enforceable subject to Articles 35 and 36, and procedural legislation of the Russian Federation. This binding effect arises from the moment the arbitral award enters into force, and if the parties fail to comply with the established requirements, they should resort to enforcement, which serves as a logical consequence of its binding effect but involves recourse to state coercion.

72 The binding effect of the award on the parties is also evidenced by the language of Section 34 of the Law on ICA, which states that in an arbitration agreement providing for arbitration administered by a permanent arbitral institution, the parties by express agreement may provide that the award shall be final. A final award shall not be set aside. But even if this is not provided for, this rule contains an exhaustive list of grounds for challenging arbitral awards.

73 The Arbitral Tribunal considers it appropriate to additionally note that the introduction of this rule in 2015 has been regarded in Russian legal literature as an advantage of the new wording of the rule.[8]

74 In cases where damage is caused by the untimely execution of a judicial act and a non-transfer of funds to the entitled party, the latter could use judicial remedies according to the rules provided for by the substantive law, in particular by filing an independent claim. Liability for non-fulfillment of pecuniary obligations is established by Article 395 of the Civil Code, which allows for the charging of interest for the use of the other person's means at the standard bank interest rate on the day of fulfillment of the pecuniary obligation.

75 It appears that this approach also extends to the arbitral awards, whose binding effect on the Parties to the dispute arises not only from Articles 34 and 35 of the Law on ICA but also from the arbitration clause. In the present case, Clause 5.3 of the Contract concluded by the Parties provides for this obligation, under which the Parties shall voluntarily execute the arbitral award.

76 Consequently, the Respondent had an obligation to pay the specified amount from the moment the arbitral award entered into force, and failure to do so would give rise to statutory interest.

77 Therefore, it is justified to calculate the relevant interest from the moment when the arbitral award became binding on the parties pursuant to Article 35 of the Law on ICA and the arbitration clause. A different interpretation of the period for calculating interest on an unexecuted award would directly conflict with the applicable law (Articles 34 and 35 of the Law on ICA).

78 The Arbitral Tribunal takes into account the Respondent's assertions that the [Respondent] partially paid the [Claimant] under the Contract amount of USD 45,000,000, leaving an outstanding balance of USD 13,142,317.80 and interest of USD 375,832.21.

79 Also noteworthy is the Respondent's argument that when the pledged [products] were handed over by the State Enforcement Officer of the Bureau of Enforcement, as per the transfer certificate of 23 September 2021, 7,015 [size] [products] were found and handed over, while the remaining 2,327 [size] [products] were not found at the storage locations. In the reasonable opinion of the Respondent, the [Respondent] has still not received the [products] in the quantity of 2,327 pieces, then it suffers a loss of USD 19,310,236.

80 However, the Arbitral Tribunal finds it necessary to note that the Respondent, in this context, has not made any counterclaims or provided supporting documents to substantiate this assertion. Moreover, the Respondent has not even submitted its written objections to the claims.

81 Therefore, the Arbitral Tribunal finds no basis for granting the Respondent's requests for a reduction of the recovery amount, as stated at the hearing.

82 Consequently, the Arbitral Tribunal has every reason to find the Claimant's claims to be well-founded and valid. Since the Arbitral Tribunal's award entered into force, the Respondent has incurred a debt, which it undertook to pay voluntarily.

83 The Arbitral Tribunal considers it necessary to emphasize that, pursuant to Article 395 of the Civil Code, as of 1 August 2016, the interest rate shall be determined by the discount rate of the Bank of Russia in effect during the relevant periods. These rules apply unless a different amount of interest is established by law or contract. According to the clarification of the Supreme Court of the Russian Federation in Review of Judicial Practice No. 1 (2017), approved by the Presidium of the Supreme Court of the Russian Federation on 16 February 2017 (as amended on 26 April 2017),

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[8] See: Khlestova I.O. International treaties on protection of foreign investor // Journal of Foreign Legislation and Comparative Law. 2017. N 4. P. 99 - 105; Ilin D.V., Borisova A.D. Prejudiciality of arbitral awards in Russia // Bulletin of Economic Justice of the Russian Federation. 2021. N 6. P. 167 – 192.

the discount rate of the Bank of Russia represents the interest rate on short-term loans granted by the Bank of Russia to commercial banks on an auction basis. For obligations denominated in foreign currency, the discount rate applied in court practice is the weighted average interest rate officially published by the Central Bank of Russia on loans granted by credit institutions to non-financial organizations in US dollars.[9]

84 Considering the current weighted average rate for loans granted by credit organizations to non-financial organizations in US dollars (from 91 to 180 days) for the relevant period of delay, the Arbitral Tribunal concludes that the Claimant's claim to recover from the Respondent interest for the use of funds, amounting to USD 733,600.29, shall be granted in full.

VI. ALLOCATION OF THE ARBITRATION FEE AND ARBITRATION COSTS

A. Allocation of the arbitration fee

85 Pursuant to Paragraphs 1 and 2 of Article 17 of the Rules on Arbitration Fees and Arbitration Costs (**Rules**), with the claim value of USD 733,600.29, the arbitration fee amounted to USD 28,917.20.

86 On 11 August 2023, the Claimant paid USD 48,639.70 (payment order No. [No] of 11 August 2023), which amounted to USD 500 on the payment date.

87 On 29 September 2023, the Claimant paid RUB 2,756,519.55 (payment order No. [No] of 29 September 2023), which amounted to USD 28,417.20 on the payment date.

88 Thus, the Claimant paid the arbitration fee in full.

89 Pursuant to Paragraphs 1 and 2 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.*
>
> *If the claims subject to monetary evaluation are partially satisfied, the Respondent shall pay the arbitration fee and the arbitration costs are calculated proportionately to the satisfied claims or the value of the awarded property. The remaining costs shall be borne by the Claimant."*

90 The Claim amounts to USD 733,600.29.

91 The Arbitral Tribunal upheld the Claimant's claims in the amount sought.

92 In view of the above, the Claimant shall recover from the Respondent arbitration fee of USD 28,917.20.

B. Allocation of the arbitration costs

93 On 20 February 2024, the Claimant filed an application for arbitration costs under Article 16 of the Arbitration Rules (**Application for Costs**).

94 The Claimant submitted that it incurred arbitration costs of USD 36,680 for legal services. The Claimant and [Law Firm] (**Service Provider**) entered into a legal services agreement No. [No] of 5 December 2022 (Contract No. [No]) and Specification No. 3 of 15 August 2023 to Contract No. [No] (**Specification**). Pursuant to Clause 1 and Clause 2 of the Specification, the [Law Firm] undertook to provide legal services for the recovery of monies from the Respondent in favor of the Claimant under the Contract. The [Law Firm] undertook to perform the following actions: carrying out pre-arbitration actions to resolve the dispute, initiating RAC proceedings, preparing and filing a claim, representing the [Claimant] in arbitration, preparing and filing the necessary procedural

[9] See.: https://www.cbr.ru/statistics/bank_sector/int_rat/

(and other) documents, ensuring the participation of the [Claimant's] representative in the arbitration, and performing other actions not expressly provided for in the Specification but necessary to fulfill the instruction. According to Clause 3 of the Specification, the price for the services outlined in Clauses 1 and 2 of the Specification is 5 (five) % of the claim value. The claim value, as well as the price of services under this Specification, are denominated in US dollars. Payment shall be made by the Client no later than the hearing date or within 5 (five) working days from the date of receipt of the invoice for payment from the Service Provider in rubles at the exchange rate of the Central Bank of the Russian Federation on the payment date. The [Law Firm] performed all actions outlined in the Specification, thereby meeting its obligations to provide legal services. Pursuant to the Specification, for the legal services, the Claimant paid USD 36,680 (RUB 3,368,093.32 at the exchange rate of the Central Bank of the Russian Federation as of the payment date) confirmed by payment order No. [No] of 16 February 2024. Thus, the Claimant requested to recover USD 36,680 in arbitration costs from the Respondent.

95 On 28 February 2024, the Assistant to the Arbitral Tribunal, on behalf of the Arbitral Tribunal, sent an e-mail to the Parties in which the Arbitral Tribunal invited the Respondent to comment on the Application for Costs by 11 March 2024.

96 On 11 March 2024, the Respondent sent a response to the Application for Costs requesting the Arbitral Tribunal to reduce the Claimant's reimbursable expenses, taking into account the scope of the claim, the complexity of the case, the amount of services rendered, the time spent on the preparation of procedural documents and the duration of the dispute resolution process.

97 The Respondent pointed out that, according to the Specification, the legal services included the following:

"carrying out pre-arbitration actions to resolve the dispute, initiating RAC proceedings, preparing and filing a claim, representing the [Claimant] in arbitration, preparing and filing the necessary procedural (and other) documents, ensuring the participation of the [Claimant's] representative in the arbitration, and performing other actions not expressly provided for in the Specification but necessary to fulfill the instruction."

The Respondent noted that the price of the services was set at a fixed rate of 5% of the claim value, meaning it did not depend on the scope of the services performed and the complexity of the case.

In addition, judicial practice and explanations of the Supreme and Constitutional Courts of the Russian Federation note that:

- representation costs incurred by the party in whose favor a judicial act is adopted shall be recovered by the commercial court from the opposing party within reasonable limits;
- courts should be able to assess the representation costs based on the principles of reasonableness and fairness, taking into account that the losing party, which bears the burden of reimbursing court costs, could not have been a party to the legal services agreement and could in no way affect the remuneration of the representative of the other party, determined as a result of a free agreement without its participation (Resolution of the Constitutional Court of the Russian Federation No. 21-П of 28 April 2020);
- to achieve the objective of legal proceedings – a fair public trial – and to maintain the necessary balance of procedural rights and obligations of the parties, the court has the right to reduce the court costs, including the representation costs, if the asserted costs are clearly unreasonable based on the available evidence (paragraph 11 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 1 of 21 January 2016).

The Respondent contends that the Claimant's legal costs are overstated and do not reflect the complexity of the case and the actual volume of services rendered.

98 The Arbitral Tribunal considers it possible to take into account the Respondent's arguments that the asserted costs are clearly excessive and do not correspond to the scope of the sought claims, the complexity of the case, the amount of services rendered, the time spent on the preparation of procedural documents and the duration of the dispute resolution process. According to the time agreed by the Parties, the hearing should have lasted 40 minutes. In reality, the hearing lasted 44 minutes.

99 In view of the above, the Arbitral Tribunal considers that the Claimant's claims for reimbursement of arbitration costs in the amount equivalent to USD 1000 are justified.

100 The Parties have not submitted any applications for reimbursement of other arbitration costs in this case.

VII. OPERATIVE PART OF THE AWARD

101 Based on the above and guided by Articles 50 and 55 of the Arbitration Rules, the Arbitral Tribunal

AWARDS:

1. The claims of [Claimant] ([address], [INN]) against [Respondent] ([address], [INN]) are upheld in full.
2. To recover from [Respondent] in favor of [Claimant]:
   - interest for the use of funds of USD 733,600.29;
   - arbitration fee of USD 28,917.20;
3. To recover from [Respondent] in favor of [Claimant] arbitration costs in an amount equivalent to USD 1,000.
4. To dismiss the claim for the remaining part of the arbitration costs.

102 The Parties have undertaken to voluntarily comply with the arbitral award.

103 The present 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 RAC files.

Presiding Arbitrator

Oleynik Oxana Mikhailovna

Arbitrator

Dedov Dmitry Ivanovich

Arbitrator

Dozhdev Dmitry Vadimovich