

MPC ARBITRATION

Arbitral judgment rendered by Mrs. C. [REDACTED] (domiciled in [REDACTED]), Mr. B. [REDACTED] (domiciled in [REDACTED]) and Mr. M. [REDACTED] (domiciled in [REDACTED]) in the arbitral proceedings between:

[REDACTED] B.V.

a company with limited liability under Dutch law, whose registered office is established at [REDACTED] 30 ([REDACTED]), [REDACTED], The Netherlands;
represented by Mr. [REDACTED];
applicant;
hereafter also called [REDACTED]

and

[REDACTED] [REDACTED]
a company under the law of [REDACTED] whose registered office is established in [REDACTED] and which has its actual office in [REDACTED], at [REDACTED];
not represented;
defendant;
hereafter also called "[REDACTED]"

1. Procedure

- 1.1. By email on 19 July 2024 [REDACTED] filed a request for arbitration under the MPC Arbitration Regulations (2018), hereafter also referred to as the "Arbitration Regulations" against [REDACTED]. The dispute pertains to the non-payment of two invoices by [REDACTED] from [REDACTED]. The request for arbitration was transmitted to [REDACTED] by a registered letter of 24 July 2024. In the same letter both parties were informed that Mr. B. [REDACTED] has been appointed as the secretary to the Arbitral Tribunal. Furthermore, the parties were requested to submit a list of preferred individuals to be appointed as arbitrators by 7 August 2024, following the listing procedure outlined in the Arbitration Regulations.
- 1.2. By letter and e-mail of 1 August 2024 parties were advised that the arbitration proceedings would be deemed to be opened and would continue in accordance with the MPC Arbitration Regulations. Again both parties are requested to provide the names of three potential arbitrators by 7 August 2024. In the same letter, [REDACTED] was allowed to elucidate its filed claim within three weeks. Each party was requested to advise Mr. B. [REDACTED] they wanted to have an immediate hearing without any further exchange of statements.
- 1.3. By email on 4 September 2024 parties were informed that since none of the parties had provided Mr. B. [REDACTED] with a list of preferred potential arbitrators, Mr. B. [REDACTED] would start the process of nominating arbitrators from the list while assuming that all persons on the list were equally acceptable as arbitrators to the parties. Since [REDACTED] forfeited the opportunity to file a statement of claim, [REDACTED] had a three week term to file its statement of defense. [REDACTED] did not file a statement of defense nor did it provide any other response.
- 1.4. By letter and email of 19 September 2024 parties were informed that Mrs. [REDACTED] and Mr. [REDACTED] are appointed as arbitrator and that Mr. [REDACTED] has been appointed as third arbitrator and Chairman of the Arbitral Tribunal.

- 1.5. By letter and email of 26 September 2024 parties were informed that an oral hearing would take place on 6 November 2024 at 11:00 AM (CET) the offices of [REDACTED]. In the same letter parties were asked to provide the Arbitral Tribunal with additional information and submit documents up to 24 October 2024.
- 1.6. By email of 4 October 2024 [REDACTED] informed the Arbitration Tribunal that [REDACTED] would participate digitally in the oral hearing. By email of 31 October 2024 the Arbitration Tribunal informed [REDACTED] that the oral hearing of 6 November 2024 would be held via video conferencing. Parties were allowed to submit their pleading notes 24 hours before the hearing on 5 November 2024 at 11:00 hours AM (CET).
- 1.7. [REDACTED] was represented at the oral hearing. [REDACTED] was not present nor represented at the hearing.
- 1.8. The following documents were filed in the proceedings:
 - Request for Arbitration of [REDACTED] dated 19 July 2024 with Exhibits;
 - An e-mail chain with correspondence from 22 November 2022 till 16 January 2023; and
 - The pleading notes of [REDACTED]

2. The facts

- 2.1. [REDACTED] and [REDACTED] entered into a buy and sale agreement on 18 November 2021 for the delivery of approx. 44.000 kg of frozen butter, 82% sweet cream unsalted, of Irish origin, commodity: 04051019 for the total amount of USD 275,000-. After expediting the butter, [REDACTED] sent two invoices to [REDACTED] on 31 December 2021 for USD 137,500- each, making a total amount of USD 275,000-. Pursuant to the agreement, payment of the purchase price was within 90 days from B/L date.
- 2.2. [REDACTED] = through the credit insurer Euler Hermes Services Italia S.R.L. – asked for payment by [REDACTED] on 7 July, 9 August and 20 October 2022. As the payment was not made, [REDACTED] counsel – Mr. [REDACTED] – also asked for payment by [REDACTED] by letter of 14 December 2022. [REDACTED] gave no substantial reaction to the request for payment.
- 2.3. It follows from the e-mail chain from 22 November 2022 till 16 January 2023 that [REDACTED] was aware of their overdue invoices.

3. The claim of [REDACTED]

- 3.1. [REDACTED] claims payment of the outstanding amount (USD 275,000-) increased with interest, as well as all judicial costs of this arbitration. It argues that [REDACTED] intentionally left [REDACTED] invoices unpaid, despite several notices of default.

4. Competence of the Arbitral Tribunal

- 4.1. First the Arbitral Tribunal will assess whether it has competence in the presented dispute. Based on the laws of the Netherlands, specifically article 1052 of the Dutch Code of Civil Procedure (DCCP), the Arbitral Tribunal shall have the power to decide on its own jurisdiction. The Arbitral Tribunal shall have jurisdiction if an agreement to arbitrate is proven in accordance with article 1021 DCCP. In this regard, a written document which provides for a choice for arbitration, and which was (implicitly) accepted by the opposing party suffices.

- 4.2. The Arbitral Tribunal considers that the Convention on the International Sale of Goods (CISG) in the given matter shall apply to the purchase agreement concluded between the parties, given the fact that both parties reside in a member state of the CISG. Whether the MPC Conditions, including the agreement for arbitration have become a part of the agreement is determined according to the rules of the CISG. Standard terms are included in the contract where the parties have expressly or by implication agreed to their inclusion at the time of the formation of the contract and the other party had the reasonable opportunity to take notice of the terms.
- 4.3. The Arbitral Tribunal considers that MPC Conditions are included in the agreement between parties by way of reference. The sales confirmation refers to the MPC conditions deposited on 15 November 2017 under number 53/2017 at registry of the District Court of The Hague. ██████ stated that the MPC Conditions were sent to ██████ by email of 18 November 2021. Therefore the Arbitral Tribunal considers that ██████ has had the opportunity to take notice of the MPC conditions, i.e. the agreement to arbitrate under the MPC Regulations. Furthermore, ██████ has not objected to the jurisdiction of the Arbitral Tribunal. In view of the above the Arbitral Tribunal is of the opinion that the parties have agreed to arbitration under the Arbitration Regulations and that the Arbitral Tribunal therefore has jurisdiction.

5. Considerations of the Arbitral Tribunal on the claim

- 5.1. The Arbitral Tribunal will hereinafter assess whether the claim of ██████ can be allowed. Since ██████ was not formally present or represented in the proceedings and has not notified the Arbitral Tribunal of its defence, the claim of ██████ is to be allowed, unless the Arbitral Tribunal considers that the claim is unjustified or unfounded.
- 5.2. The facts presented to the Arbitral Tribunal do not allow the Arbitral Tribunal to find the claim ██████ unjustified or unfounded. Based on the facts presented by ██████ the Arbitral Tribunal considers that the parties have agreed to buy and sell 44.000 kg of frozen butter, 82% sweet cream unsalted, from Irish origin, commodity: 04051019 for a price of USD 275.000,00 and therefore ██████ is obligated to pay the outstanding amount, increased with interest as per 31 March 2022.
- 5.3. ██████ has claimed compensation for all judicial costs of this arbitration, including the arbitrators' fees and disbursements and the administrative costs paid by ██████. The Arbitral Tribunal considers that the request for legal fees shall be denied pursuant to article 17(7) of the Arbitration Regulations which only allows compensation of legal fees in specific circumstances. The Arbitral Tribunal is of the opinion that there are no specific circumstances brought forward by ██████ that would allow such legal fees to be compensated under the Arbitration Regulations.
- 5.4. In view of the evidence provided and all the facts, the Arbitral Tribunal is of the opinion judging in all fairness and acting as good persons, that ██████ should be awarded payment of USD 275,000- to be increased with contractual statutory interest pursuant to article 6:119a Dutch Civil Code (DCC), as per 31 March 2022 until the day of full payment and further by the costs of the arbitration proceedings. Article 6:119 (3) DCC shall also apply for the calculation of interest. Article 6:119(3) DCC reads as follows: *"At the end of each year the amount on which the statutory interest is to be calculated, shall be increased with the unpaid statutory interest chargeable over that year"*.
- 5.5. ██████ is ordered, as being the losing party, to assume the costs of these arbitral proceedings. The costs of these proceeding are set at an amount of EUR 15,750-- for the costs of the arbitration proceedings, including the costs for the Arbitral Tribunal and

Administration costs. The amount of the order will be offset with the deposits (EUR 15,000-) and administration fees (EUR 750) paid by [REDACTED] of EUR 15,750-. As a result, [REDACTED] is ordered to pay to [REDACTED] the amount of EUR 15,750-.

- 5.6. [REDACTED] requests the Arbitration Tribunal to declare its award provisionally enforceable. Pursuant to article 1061i DCCP the Arbitration Tribunal in first instance may, if requested, declare its award provisionally enforceable notwithstanding arbitral appeal. As the Arbitration Tribunal sees no objections to this, the Arbitration Tribunal hereby grants the request.

6. Decision

- 6.1. The Arbitral Tribunal, giving judgement, acting as reasonable persons with due care and in all fairness:
1. orders [REDACTED] to pay USD 275,000- (*two hundred seventy-five thousand U.S. dollars and zero cents*) to [REDACTED] increased with contractual statutory interest pursuant article 6:119a Dutch Civil Code, as per 31 March 2022 until the day of full payment;
 2. orders [REDACTED] to pay the costs of these proceedings, amounting to EUR 15,750- (*fifteen thousand seven hundred fifty euros and zero cents*) which are setoff with the deposit made and administration costs paid by [REDACTED] and with the Arbitration Tribunal ordering [REDACTED] to pay an amount of EUR 15,750- (*fifteen thousand seven hundred fifty euros and zero cents*) to [REDACTED];
 3. grants this award provisionally enforceable notwithstanding any (arbitral) appeal;
 4. Rejects all other claims.

This arbitral judgement is drafted in four copies and duly signed:

- By Mrs. C. [REDACTED] (domiciled in [REDACTED]), Mr. B. [REDACTED] (domiciled in [REDACTED]), [REDACTED] (domiciled in [REDACTED]) and Mr. M. [REDACTED] (domiciled in [REDACTED]) and Mr. B. [REDACTED] (domiciled in [REDACTED]);
- Each party will receive one original copy;
- One original copy will be saved at the offices of the Body of Arbitration, being the office of the Dutch Dairy Trade Association (Gemzu);
- One original copy will be filed with the court registry of the Court of The Hague.

Date: 6 January 2025.

C. [REDACTED]

[REDACTED]

B. [REDACTED]

[REDACTED]

M. [REDACTED]

[REDACTED]

[REDACTED] secretary

[REDACTED]