

1.5. In summary the following documents have been filed by the parties:

- Request for Arbitration by [REDACTED] dated 5 April 2023 with Exhibits;
- Statement of defence by [REDACTED] dated 26 July 2023 with Exhibits;
- Reply by [REDACTED] to questions of the Arbitral Tribunal dated 11 September 2023 with Exhibit;
- Reply by [REDACTED] to questions of the Arbitral Tribunal dated 27 September 2023 with Exhibits;
- Pleading notes by [REDACTED];
- Pleading notes by [REDACTED].

2. The facts

- 2.1. [REDACTED] and [REDACTED] entered into a buy and sale agreement on 10 January 2022 for the delivery of 44,000.00 kg of Cheddar white cheese for the total amount of USD 241,582.34. After expediting the cheese, [REDACTED] sent two invoices to AI [REDACTED] on 3 February 2022 for the total amount of USD 241,582.34. Pursuant to the agreement, payment of the purchase price was due on 4 May 2022, as is mentioned on [REDACTED]'s invoices.
- 2.2. On 4 May 2022, [REDACTED] issued a request to QNB Alahli Bank (the Bank) for the transfer of USD 241,579.94 to [REDACTED] as beneficiary. According to AI [REDACTED] the Bank did not carry out AI [REDACTED]'s request because it was unable to source US dollars in [REDACTED].
- 2.3. On 22 November 2022 the agent of [REDACTED] Maged Sharkawy, sent an email to [REDACTED] representatives ([REDACTED]), stating that the invoices had not yet been paid and requesting a response. [REDACTED] responded on behalf of AI [REDACTED] by email of 8 December 2022, mentioning currency unavailability at the Bank and the issues caused by new exchange rates. AI [REDACTED] proposed a settlement plan that would settle the amount of USD 241,582.34 in March 2023. This email was forwarded to [REDACTED] on 9 December 2022.
- 2.4. By email of 14 December 2022 [REDACTED] counsel sent a notice of default to [REDACTED] demanding payment of the full outstanding amount of USD 241,582.34 before 28 December 2022.
- 2.5. By email of 19 December 2022 the insurance company of [REDACTED] (Allianz Trade) proposed an alternative payment plan concerning the outstanding debts of [REDACTED] and its affiliated companies.
- 2.6. On 23 January 2023 [REDACTED] received a partial payment of USD 99,967.00. It is established between [REDACTED] and [REDACTED] that an amount of USD 141,615.34 is still outstanding (the outstanding amount), following partial payment on 23 January 2023.
- 2.7. On 23 February 2023 Allianz Trade sent an e-mail referring to the settlement plan and the missed payment deadlines. Allianz Trade requested the outstanding payments to be settled within seven days. [REDACTED] ([REDACTED]) replied by stating that 'other moves will be made' and requested 'understanding for the global situation that [REDACTED] was trying to deal with'.
- 2.8. On 5 July 2023 [REDACTED] made another request to the Bank, for payment of USD 141,615.34.
- 2.9. On 15 July 2023 a proposal was made by the counsel of AI [REDACTED] to the counsel of [REDACTED] to pay the outstanding amount to [REDACTED] in three tranches of up to USD 50,000, subject to the waiving of interest and other costs including legal fees. This proposal was rejected. No further payments have been made by [REDACTED] following this proposal.

MPC ARBITRATION

Arbitral judgment rendered by Mr. [REDACTED] (domiciled in [REDACTED]), Mr. F. [REDACTED] (domiciled in [REDACTED] The Netherlands) and Mr. P. [REDACTED] (domiciled in [REDACTED] The Netherlands) in the arbitral proceedings between:

[REDACTED] B.V.

a company with limited liability under Dutch law, with registered office in [REDACTED], The Netherlands;
represented by Mr. [REDACTED];
applicant;
hereafter also called "[REDACTED]"

and

AL [REDACTED]

a company with limited liability under foreign law, with registered office in [REDACTED], Egypt;
represented by [REDACTED];
defendant;
hereafter also called "Al [REDACTED]"

1. Procedure

- 1.1. On 6 April 2023, [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 by [REDACTED] of several invoices issued by [REDACTED]. The request for arbitration was transmitted to [REDACTED] by a registered letter of 6 April 2023. In the same letter both parties were informed that Mr. [REDACTED] had 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, following the listing procedure outlined in the Arbitration Regulations. [REDACTED] complied with this request and submitted a list of preferred persons in a letter dated 12 April 2023. [REDACTED] has not provided a list of preferred persons.
- 1.2. By letter of 14 April 2023 parties were advised that the arbitration proceedings shall be conducted in the English language in accordance with article 8.7 of the Arbitration Regulations and that the place of arbitration shall be The Hague. In the same letter, [REDACTED] was allowed to elucidate its filed claim within three weeks. Each party was requested to advise Mr. B. [REDACTED] whether they wanted to have an immediate hearing without any further exchange of statements. [REDACTED] informed the Arbitral Tribunal that it did not require an immediate hearing and did not wish to file an additional statement of claim. By email of 9 June 2023 [REDACTED] was invited to respond to [REDACTED] request for arbitration as per 30 June 2023. By letter/email of 27 June 2023, [REDACTED] counsel asked for an extension for the defense until 30 July 2023. The request was granted. Al [REDACTED] filed its statement of defense on 26 July 2023.
- 1.3. By letter and email of 6 September 2023 parties were informed that a hearing would take place on 5 October 2023 in The Hague, The Netherlands. Parties were advised that Mr. F. [REDACTED] and Mr. [REDACTED] had been appointed as arbitrator and Mr. [REDACTED] appointed as third arbitrator and Chairman of the Arbitral Tribunal. In the same letter parties were asked to provide the Arbitral Tribunal with additional information and to answer several questions of the Arbitral Tribunal. By email of 11 September 2023 [REDACTED] submitted its response and filed one additional Exhibit. By email of 27 September 2023 [REDACTED] also submitted its response and resubmitted Exhibit 4 to the statement of defence.
- 1.4. Both [REDACTED] and [REDACTED] were represented at the hearing

3. The claim of [REDACTED]

3.1. [REDACTED] claims payment of the outstanding amount (USD 141,615.34) including interest, extrajudicial costs, costs of legal assistance and costs of the procedure. It argues that [REDACTED] intentionally left [REDACTED] invoices unpaid, despite several notices of default.

4. Defence of AI [REDACTED]

4.1. [REDACTED] disputes [REDACTED] claims, asserting that the failure to make the payment is attributed to the Bank's non-compliance with its transfer request. According to [REDACTED] the Bank is unable to comply with AI [REDACTED] request for payment due to the severe shortage of US dollars caused by the ongoing conflict between Russia and Ukraine. [REDACTED] contends that these circumstances, beyond its control, qualify as a force majeure situation. In addition, [REDACTED] states that in all reasonableness and fairness it can not be held to pay the outstanding amount. According to [REDACTED] was aware of the reason why the outstanding amount could not be transferred to [REDACTED] and that [REDACTED] already requested the Bank to [REDACTED] its payment obligations. In [REDACTED] opinion it was therefore unnecessary and unreasonable for [REDACTED] to commence arbitration proceedings against [REDACTED]. By starting arbitration proceedings [REDACTED] did not act in good faith and for that reason [REDACTED] should bear the costs of the arbitration.

4.2. For the same reasons [REDACTED] states that no compensation for extrajudicial costs should be rewarded. As regard to the request for compensation of costs of legal assistance [REDACTED] has pointed out that under Article 17(7) of the Arbitration Regulations such costs of legal assistance shall be to the account of the party that requested legal assistance, except in special circumstances to be determined by the arbitrators. [REDACTED] has objected for said reasons against payment of any interest and costs of the proceedings.

5. Competence of the Arbitral Tribunal

5.1. 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.

5.2. 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 implied agreed to their including at the time of the formation of the contract and the other party had the reasonable opportunity to take notice of the terms.

5.3. The Arbitral Tribunal considers that MPC Conditions are included in the agreement between parties. Furthermore [REDACTED] has not objected to the jurisdiction of the Arbitral Tribunal. Therefore, the Arbitral Tribunal considers both parties accepted the competence of the Arbitral Tribunal.

- 5.4. 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.
6. **Considerations of the Arbitral Tribunal on the claim**
- 6.1. The Arbitral Tribunal will hereinafter assess whether the claim of [REDACTED] can be allowed. It needs to assess if [REDACTED] is in default by not paying the outstanding amount and if it can rely on its defence that there is a situation of force majeure.
- 6.2. With reference to the [REDACTED] claim the Arbitral Tribunal needs to establish what parties have contractually agreed. Based on the facts presented by the parties, the Arbitral Tribunal considers that the parties have agreed to buy and sell Cheddar white cheese for a price of USD 241,582,34. The cheese was to be delivered in February 2022 and paid on 4 May 2022. The outstanding amount of USD 141,615,34, resulting from an initial payment of USD 99,967.00 made on 23 January 2023, is not disputed. In the view of the Arbitral Tribunal this means that it is [REDACTED] responsibility as a buyer to arrange for the payment of the invoices.
- 6.3. [REDACTED] has claimed that there is a situation of force majeure. In accordance with Dutch law, force majeure is recognised when a party's failure cannot be ascribed to their fault and is not legally or generally accepted as its responsibility (Article 6:75 of the Dutch Civil Code ("DCC")). When evaluating a party's plea of force majeure, all circumstances of the case are to be considered. When force majeure is invoked, the failure typically results from an inability to fulfil the obligation. However, there may be exceptional cases where this is not the case.
- 6.4. The Arbitral Tribunal considers the following circumstances presented by [REDACTED] [REDACTED] provided evidence that it issued a request to the Bank for the transfer of USD 241,582,34 on 4 May 2022. [REDACTED] has stated that it is no longer able to fulfil its obligations because the Bank is unwilling and unable to secure the payment. To substantiate its statement [REDACTED] refers to two news articles and [REDACTED]'s letter. The articles state that Russia's invasion of Ukraine (in February 2022) resulted in an outflow of 20 billion US dollars leading to an extreme shortage of foreign currency. [REDACTED] letter endorses these statements and states that it is up to the Bank to decide whether to make payments in a foreign currency or not. [REDACTED] letter further argues that the government and Egyptian banks have not been officially acknowledging or communicating on this matter, which made it impossible to evidence the situation. The evidence put forth by [REDACTED] ultimately relies on two news articles describing the general economic situation of Egypt since March 2022, complemented by a statement from a legal representative.
- 6.5. In consideration of the evidence presented, the Arbitral Tribunal, contrary to [REDACTED] claim, deems it has not been established that [REDACTED] diligently made every effort to settle the outstanding invoices. The sole documented payment request, issued on May 4, 2022, is supplemented by only one additional request, supported by evidence, dated 5 July 2023. It is noteworthy that this latter request exceeds the original payment deadline by over a year.
- 6.6. Furthermore, the Arbitral Tribunal finds that there is no overarching incapacity on the part of [REDACTED] to meet its payment obligations towards [REDACTED]. In the course of the hearing, [REDACTED] was specifically questioned about payments to other foreign creditors within the stipulated timeframe when it should have settled its dues to [REDACTED]. [REDACTED] affirmed that other creditors had indeed been paid in US dollars. Additionally, the indication that an initial payment of USD 99,967.00 was executed underscores the absence of a fundamental inability to make payments through the banking system in Egypt.

- 6.7. The Arbitral Tribunal also holds the view that ██████ had the option to proactively fulfil the invoice in smaller amounts. ██████ had suggested that the Bank might be more amenable to transferring these smaller sums. Even though the request to pay USD 50,000 in three instalments was declined, such proactive measures could still reasonably have been anticipated if ██████ genuinely intended to settle the outstanding invoices.
- 6.8. The Arbitral Tribunal concludes that given the circumstances presented in the matter there is no situation of force majeure. ██████ has not provided a reasonable explanation as to why the outstanding amount is not yet paid.
- 6.9. Furthermore, ██████ has not provided evidence to demonstrate that it fulfilled its obligation to inform ██████ about the payment issues in accordance with the MPC Conditions. The only mention of currency unavailability is contained in an email forwarded to ██████ on 9 December 2022, seven months after the payment was due. Even if the situation aligns with ██████ claims, this brief comment falls significantly short of ensuring that ██████ would be adequately informed. The only other reference that could potentially contribute to informing ██████ about currency unavailability is the mention of a 'global situation' in the email to Allianz on 23 February 2023. Once again, this remark does not meet the standard to assert that ██████ was sufficiently informed. Consequently, the Arbitral Tribunal concludes that ██████ could not rely on ██████ to fulfil its obligations and, therefore, cannot be accused of 'not acting in good faith' by initiating an arbitral procedure. In light of the preceding discussion, the assertion that it would have been unreasonable for ██████ to initiate arbitration proceedings in these circumstances cannot prevail. This stance is unaffected by ██████ awareness that arbitration costs would be substantial and would necessitate ██████ to incur expensive legal assistance in a jurisdiction outside its own.
- 6.10. Considering the aforementioned, the Arbitral Tribunal comes to the conclusion that the claim of ██████ for payment of the uncontested outstanding amount of USD 141,615.34 is to be granted. The Arbitral Tribunal is also of the opinion that – since no situation of force majeure is applicable in the given situation – the interest period in all reasonableness and fairness shall commence after the notice of default from the counsel of ██████ dated 9 December 2023. The Arbitral Tribunal finds that given the fact that ██████ waited to send a notice of default whilst continuing discussions with ██████ it is reasonable and fair that ██████ should be entitled to statutory commercial interest as from 28 December 2022, being the day against which ██████ was summoned to pay as per the notice of default of 9 December 2022. Hence, the claim for payment of statutory commercial interest, shall be allowed as from 28 December 2022 until final and full payment.
- 6.11. ██████ has claimed the extra judicial costs pursuant to Article 6:96 DCC jo. "Besluit van 27 maart 2012, houdende regels ter normering van de vergoeding voor buitengerechtelijke incassokosten". The Arbitral Tribunal is of the opinion that given the nature of the procedure such costs should be denied pursuant to article 20 of the Arbitration Regulations.
- 6.12. ██████ has further claimed compensation for its legal fees in connection with the preparation of drafting the petition for arbitration and its appearance at the hearing. This is separate from the compensation for arbitration costs. The Arbitral Tribunal considers that such a request is to be denied pursuant to article 17(7) of the Arbitrations Regulations. The Arbitral Tribunal is of the opinion that there are no specific circumstances that would allow such legal fees to be compensated under the Arbitrations Regulations.
- 6.13. 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 men, taking into account the views brought forward by the parties, that ██████ should be awarded payment of USD 141,615.34 to be increased with

contractual interest pursuant to article 8(3) MPC-Conditions, as from 28 December 2022 and further by the costs of the arbitration proceedings.

- 6.14. [REDACTED] is ordered, as being the party which is denied its claims, to assume the costs of these arbitral proceedings. The costs of these proceedings are set at an amount of EUR 18,500 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 17,500) and administration fees (EUR 750) paid by [REDACTED] of EUR 18,500. As a result, [REDACTED] is ordered to pay to [REDACTED] the amount of EUR 18,500.--.

7. Decision

- 7.1. The Arbitral Tribunal, giving judgement, acting as reasonable men with due care and in all fairness:
1. orders [REDACTED] to pay USD 141,615.34 to [REDACTED] increased with contractual interest pursuant to article 8(3) MPC-Conditions, as from 28 December 2022 until the day of full payment;
 2. orders [REDACTED] to pay the costs of these proceedings, amounting to EUR 18,500 --;
 3. Rejects all other claims.

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

- By Mr. Mr. [REDACTED] (domiciled in [REDACTED]), Mr. F. [REDACTED] (domiciled in [REDACTED] The Netherlands), Mr. P van [REDACTED] (domiciled in [REDACTED] The Netherlands) and Mr. B [REDACTED] (domiciled in [REDACTED] The Netherlands),
- 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: ~~December 2023~~ 11 January 2024

