

## MPC ARBITRATION

Arbitral judgment rendered by Mr. [REDACTED], Mr. [REDACTED] [REDACTED] ) and Mr. [REDACTED] 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 [REDACTED]; applicant; hereafter also called "[REDACTED]";

and

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

### 1. Procedure

- 1.1. By letter of 26 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 revolves around [REDACTED] claim against [REDACTED] for compensation for losses and damages incurred as a result of [REDACTED] alleged breach of contract.
- 1.2. The request for arbitration was transmitted to [REDACTED] by a registered letter of 2 May 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] has provided a list of preferred persons by e-mail of 9 May 2023. [REDACTED] was allowed to provide a list of preferred persons as per 8 June 2023, but failed to do so.
- 1.3. By letter of 2 June 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. [REDACTED] whether they wanted to have an immediate hearing without any further exchange of statements. [REDACTED] informed the Arbitral Tribunal it did not require an immediate hearing but requested to elucidate its claim.
- 1.4. By letter of 23 June 2023 [REDACTED] elucidated its claim. By email of 23 June 2023, [REDACTED] was invited to file its statement of defense per 14 July 2023. By email of 10 July 2023, [REDACTED] counsel asked for an extension for the defense to 21 July 2023. The request was granted, and [REDACTED] filed its statement of defense on 21 July 2023.
- 1.5. By letter and e-mail of 15 September 2023 parties were informed that an oral hearing would take place on 3 October 2023 in [REDACTED], The Netherlands. Parties are advised that Mr. [REDACTED] and Mr. [REDACTED] are appointed as arbitrator and that Mr. M. [REDACTED] is appointed as third arbitrator and Chairman of the Arbitral Tribunal.
- 1.6. In the same letter parties were asked to provide the Arbitral Tribunal with additional information and to answer several questions put by the Arbitral Tribunal. On 29 September 2023 [REDACTED] submitted its response and filed additional Exhibits. By email of 28 September 2023 [REDACTED] submitted Exhibit 8.
- 1.7. [REDACTED] en [REDACTED] were represented at the oral hearing.

- 1.8. After careful deliberation the Arbitral Tribunal has announced it would render judgement.
- 1.9. In summary, the following documents have been filed by the Parties:
- Request for Arbitration by [REDACTED] dated 26 April 2023 with Exhibits;
  - Additional information on the claim by [REDACTED] dated 23 June 2023 with Exhibit;
  - Statement of defense, including a counterclaim by [REDACTED] dated 21 July 2023 with Exhibits;
  - Response by [REDACTED] on questions of the Arbitral Tribunal dated 29 September 2023 with Exhibits;
  - Exhibit 8 by [REDACTED] dated 28 September 2023;
  - Pleading notes of [REDACTED].

## 2. The facts

- 2.1. On 13 October 2022 [REDACTED] and [REDACTED] entered into a buy and sale agreement for the sale by [REDACTED] to [REDACTED] of 22,000 kg of Mozzarella (Agreement no. 1).
- 2.2. On 4 November 2022 [REDACTED] and [REDACTED] entered into another buy and sale agreement for the sale by [REDACTED] to [REDACTED] of 21,000 kg of Mozzarella (Agreement no 2).
- 2.3. Another buy and sale agreement was finalized on 9 November 2022. This agreement involved [REDACTED] selling 126.000 kg of Mozzarella (Agreement no 3), for a price of EUR 4,500.00 per Metric Ton amounting to a total of EUR 567,000.
- 2.4. The shipment of Mozzarella under Agreement no. 1 was delivered at the factory of [REDACTED] end buyer [REDACTED] in [REDACTED] on 1 December 2022. The origin of said Mozzarella was [REDACTED]. By email of 6 December 2022 [REDACTED] formally reported in writing that a large part of the delivered products under Agreement no. 1 was of poor quality. [REDACTED] stated that the Mozzarella was too soft and sticky. Using the products was harmful to the machine in which [REDACTED] would process the Mozzarella, and also caused down-time of the production line, which meant [REDACTED] incurred a loss by not being able to use the production line. This complaint is hereinafter referred to as the "first complaint".
- 2.5. [REDACTED] received a second complaint related to the delivery of Mozzarella under Agreement no. 2 on 16 December 2022. [REDACTED] by email of 21 December 2022 [REDACTED] informed [REDACTED] that there were broken bags, and that the Mozzarella could not be processed. However, [REDACTED] managed to sell the Mozzarella, except for six blocks with broken bags. [REDACTED] stated in the email of 21 December 2022 that: "*our main customer cancelled any new order as a result.*" This complaint is hereinafter referred to as the "second complaint".
- 2.6. [REDACTED] stated in its letter of 28 December 2022 to [REDACTED] that the products in question were returned without requesting compensation for damages. It also stated that it deemed appropriate, at least for a period, not to continue with the type of product in question.
- 2.7. [REDACTED] took back 7.259,37 kilograms of Mozzarella from [REDACTED] which related to the first and (partially related to) the second complaint and issued a credit invoice on 19 January 2023 accordingly.
- 2.8. By letter of 10 February 2023 [REDACTED] requested termination of the Agreement no. 3 due to the occurrence of the first [REDACTED] and second complaint. [REDACTED] stated that: "*the non-compliance led our customer to cancel any subsequent purchase from [REDACTED] Srl of the same type of good.*"
- 2.9. By letter of 15 February 2023 [REDACTED] responded to request for termination and stated that first and second complaint had been dealt with, and a mutually acceptable solution had been found. The two complaints were therefore appropriately handled and resolved. Furthermore, [REDACTED] asserted that [REDACTED] did not register any complaints concerning the Mozzarella produced by either [REDACTED] or [REDACTED]. Throughout 2022, despite the total delivered quantity reaching 230 MT from these manufacturers, [REDACTED] did not receive any complaints from [REDACTED]. [REDACTED] demanded that [REDACTED] call off the goods in accordance with the terms of Agreement no. 3.

2.10. By letter of 24 March 2023 [REDACTED] issued a notice of default demanding payment of the outstanding amount pursuant to Agreement no. 3. [REDACTED] also held [REDACTED] liable for the losses and damages resulting from the termination of the Agreement no. 3.

2.11. By letter of 28 March 2023 [REDACTED] informed [REDACTED] that it would not comply with demands of [REDACTED] and offered to pay an amount of EUR 50.000 as settlement payment.

### 3. The claim of [REDACTED]

3.1. [REDACTED] claims payment of an amount of EUR 181,388.34 as compensation for the losses it suffered because of the fact that [REDACTED] refused to call off the products under Agreement no. 3 and [REDACTED] was forced to sell the products at a lower price than the original price it had agreed with [REDACTED]

### 4. Defense and counterclaim of [REDACTED]

4.1. [REDACTED] asserts that it has the right to terminate Agreement No. 3 due to non-conformities of the goods supplied under Agreements No. 1 and No. 2. [REDACTED] referred for this to the first and second complaints. According to [REDACTED] [REDACTED] terminated its relationship with [REDACTED] entirely due to these complaints, resulting in damages and losses for [REDACTED]. Because of [REDACTED]'s termination, [REDACTED] claims it was compelled to terminate Agreement No. 3, as the products related to Agreement No. 3 were intended for [REDACTED].

4.2. Additionally, [REDACTED] argues that the damages claimed by [REDACTED] should be calculated by considering the actual price at which the products associated with Agreement No. 3 were sold to third parties, rather than being calculated on the basis of the price index presented by [REDACTED]

4.3. Regarding the counterclaim, [REDACTED] contends that the termination of the entire business relationship with [REDACTED] was caused by [REDACTED] which led to a loss of EUR 50,000, which amount they counterclaimed.

### 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 impliedly 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 by the Arbitral Tribunal of the claim and counterclaim**

- 6.1. The Arbitral Tribunal will assess whether [REDACTED] claim can be allowed. It needs to be determined if [REDACTED] is in default by not calling off the products under Agreement No. 3 and requesting termination of Agreement No. 3.
- 6.2. Relevant to the assessment of [REDACTED] claim is the requirement of establishing what the parties have agreed upon. Based on the facts presented by the parties, the Arbitral Tribunal considers that the parties have agreed to three separate buying and selling agreements: Agreements No. 1, 2, and 3. [REDACTED] has argued that it was entitled to terminate Agreement No. 3 due to non-conformity of the products delivered under Agreements No. 1 and 2. The Arbitral Tribunal cannot follow [REDACTED] reasoning in this regard. It deems it was premature to assume that products to be delivered under Agreement No. 3 would be non-conforming due to the complaints related to the delivery of Mozzarella produced by [REDACTED] under Agreements No. 1 and No. 2. [REDACTED] does not contest that earlier deliveries of Mozzarella produced by either [REDACTED] or [REDACTED] were of good quality. Since the Mozzarella delivered under Agreements No. 1 and 2 was produced by [REDACTED] not by [REDACTED] or [REDACTED] the Arbitral Tribunal cannot follow [REDACTED] reasoning and finds [REDACTED] request for the termination of Agreement No. 3 premature.
- 6.3. [REDACTED] argument that the shortcomings under Agreements No. 1 and No. 2 also justify the termination of Agreement No. 3 is not convincing. Firstly, the Arbitral Tribunal views these as three separate agreements. It has not been established that these agreements are inherently linked or inseparable from each other. Therefore, a shortcoming under one of the Agreements does not automatically constitute a shortcoming under the other Agreement. Furthermore, the Arbitral Tribunal believes that the complaints under the first two agreements were settled between the parties. Additionally, [REDACTED] was not in default regarding the delivery under Agreement No. 3, and [REDACTED] had no objective grounds to anticipate a shortcoming under said agreement.
- 6.4. In relation to [REDACTED] argument that [REDACTED]'s termination justifies the termination of Agreement No. 3, the Arbitral Tribunal considers that it has not been established that part of said agreement was that the products under Agreement No. 3 were specifically intended for [REDACTED]. Furthermore, the Arbitral Tribunal considers that [REDACTED] initially sold the products to [REDACTED] but then, after the second complaint, sold the products to another customer. The Arbitral Tribunal is of the opinion that there is no justification for [REDACTED] to terminate Agreement No. 3 because of [REDACTED]'s alleged unwillingness to take delivery of Mozzarella from [REDACTED] and/or [REDACTED].
- 6.5. Contrary to [REDACTED] claim, the Arbitral Tribunal deems it has not been established that [REDACTED] was entitled to terminate Agreement No. 3. Given the above, the Arbitral Tribunal is of the opinion that the counterclaim of [REDACTED] is to be denied since [REDACTED] is not considered to be in default, and the shortcomings under Agreements No. 1 and No. 2 were settled between parties. Furthermore, the Arbitral Tribunal considers that damages claimed by [REDACTED] are not duly evidenced. The alleged termination of the relationship between [REDACTED] and [REDACTED] is not for the risk of [REDACTED]. The Arbitral Tribunal leaves open whether the entire relationship was terminated by [REDACTED] or if [REDACTED] announced a temporary stop in relation to specific products, as set out in the letter of [REDACTED] dated December 28, 2022.
- 6.6. Concerning the amount claimed by [REDACTED] the Arbitral Tribunal is of the opinion that [REDACTED] has evidenced the amount claimed from [REDACTED] as a result of [REDACTED] de facto and de iure terminating Agreement No. 3 by refusing to call off the products. The price difference calculated based on the price index and also evidenced by several sales contracts presented by [REDACTED] are, in the opinion of the Arbitral Tribunal, convincing. The Arbitral Tribunal also takes into account that [REDACTED] did not specifically object to the price differences presented by [REDACTED] but more generally objected to the method of calculating the damages. Therefore,

the Arbitral Tribunal is of the opinion that the amount of damages suffered by [REDACTED] can be set at EUR 181,388.34.

- 6.7. Considering the evidence presented 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 of parties brought forward, that [REDACTED] should be awarded payment of EUR 181,388.34. [REDACTED] has not demanded payment of any other kind.
- 6.8. [REDACTED] is ordered, as 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 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] therefore totalling EUR 15,750. As a result, [REDACTED] is ordered to pay to Interfood that amount of EUR 15,750.

## 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 EUR 181,388.34 (*one hundred eighty-one thousand three hundred eighty eight euro's and thirty four euro cents*) to [REDACTED]
  2. orders [REDACTED] to pay the costs of these proceedings, amounting to EUR 15,750.—(*fifteen thousand seven hundred fifty euro's*);
  3. Rejects all other claims.

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

- By Mr. Mr. [REDACTED] (domiciled in [REDACTED]), Mr. R. de [REDACTED] (domiciled in [REDACTED], The Netherlands), Mr. B. [REDACTED] (domiciled in [REDACTED]) 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/~~ 25 January 2024

A.M. [REDACTED]

[REDACTED]

R. [REDACTED]

[REDACTED]

B. [REDACTED]

[REDACTED]

B. [REDACTED] secretary

[REDACTED]