Tribunali i Përhershëm i Arbitrazhit
Oda Ekonomike e Kosovës
*Permanent Tribunal of Arbitration*
*Kosova Chamber of Commerce*

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**SUMMARY OF THE ABRBITRATION CASE**
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## 1. STATMENT OF FACTS

On 22 April 2009, the claimant "Company A", in capacity of the seller and the respondent "Company B", in capacity of the buyer, have concluded a sale-purchase agreement. Based on this agreement, the seller was obliged to deliver to buyer central heating devices of type TEK/10 KW and TEK/ 20 KW, while the buyer was obliged to pay 260.00 EUR per each sold central heating device.

On 21 July 2011, the seller has delivered to buyer 100 electrical heating devices.

On 13 August 2010, the seller has sent to buyer a written note through which it have invited the buyer to pay the price, otherwise it will be obliged initiate the procedure in order to realize its claims.

The respondent declared that both of companies have concluded a verbal agreement through which they were agreed, that the respondent may fulfill its contractual obligations towards claimant, by paying fixed amount through bank transfers or alternatively it may fulfill its obligation by compensation of goods that are manufactured or traded by the respondent. Moreover, the respondent declared that one part of these obligations expressed in monetary value in amount of 5,470.00 EUR, have been fulfilled by compensating the claimant by respondent's manufactured goods, therefore the value of outstanding debt is 20,530.00 EUR.

On 21 July 2011, the claimant submitted the lawsuit with Permanent Tribunal of Arbitration, attached to Kosovo Chamber of Commerce, against respondent for compensation of debt in amount of 26,000.00 EUR. According to article 11 of the Sale-Purchase Agreement parties have been agreed that in case of any dispute in relation their contract, the competent for resolving their dispute will be arbitration attached to the Kosovo Chamber of Commerce.

***2.*** Legal Assessment

a) **Jurisdiction of the Permanent Tribunal of Arbitration attached to the Kosovo Chamber of Commerce**

The Arbitration Tribunal concluded that it has jurisdiction to decide over the statement of claim, based on Arbitration Rules 2011, in Kosovo. Based on article 10 of the Sale-Purchase Agreement the intention of the parties to settle any dispute that may arise from this agreement, competent to settle such disputes will be the Permanent Tribunal of Arbitration. Moreover, the Arbitral Tribunal confirmed that the language that it will be used in arbitration will be Albanian Language and place of arbitration for reviewing this case will be Prishtina.

**b)Form of Agreement**

The Arbitral Tribunal concluded that pursuant to article 8 of the Sale-Purchase Agreement, any amendment or modification of the agreement cannot be concluded without written amendment or supplement signed by both contracting parties.

The respondent stated that pursuant to article 69 of the Law on Obligational Relationships, *inter-alia that* the parties may terminate, supplement and amend the existing contract through an informal agreement, e.g. through oral agreement. Pursuant to this above-cited article, the respondent stated that it have existed an oral agreement between the parties, based on which parties have been agreed that the respondent to fulfill its contractual obligations by compensating claimant with its manufactured or traded goods instead of payments through bank transfers. The respondent, during its defense presented on 06 October 2011 declared that obligations stated in the statement of claim have been partially fulfilled with delivery of goods – water tube, in value of 5,470.00 EUR, which reduced total value of debt in amount of 26,000.00 to 20,540.00 EUR.

After interpretation of the Law on Obligational Relationships and Sale-Purchase Agreement signed by the contracting parties, the Arbitral Tribunal concluded that the agreement does not contain any provision which entails the respondent to fulfill its contractual obligations through compensation with other goods. Based on interpretation of the Arbitral Tribunal, the Law on Obligational Relationships gives full discretion to the parties to conclude a formal or non-formal contract. If parties agreed for a specific type of contract, then any amendment later amendment in that contract will not be valid, only for amendment parties are mutually agreed and signed the agreement in written. The agreement concluded between parties in this procedure, is special agreement based on article 454, chapter VII of the Law on Obligational Relationships. Therefore, the Arbitral Tribunal has decided that each amendment of the agreement should be conducted only in writing and with consent of parties and other types of amendment shall be considered as invalid, because the parties were agreed through their agreement.

**c) Issues of Payment**

After reviewing the whether the oral agreement had exist between parties, the Arbitral Tribunal came into conclusion that the respondent has not fulfilled its obligation by delivering its manufactured goods, as substituting method for payment that it was obliged to fulfill. Based on findings of the Arbitral Tribunal, the respondent has failed to prove that material goods have been delivered to claimant. The evidences indicate that material goods were delivered to the Company C, which the claimant does not have any business relations, and the abovementioned shipment does not have any link with the agreement between claimant and respondent. Furthermore, the respondent has failed to evidence that claimant somehow has benefited from shipment addressed to the Company C. Moreover, in case that the respondent will prove the link between shipment and claimant, based on article 307 of the Law on Obligational Relationships, the debtor is not entitled to fulfill its obligations by sending material goods and the creditor is not entitled to request such.

The Arbitral Tribunal has decided that the respondent has breach the agreement by not paying price determined in the agreement.

**d) Financial penalties**

The Arbitral Tribunal has reviewed claim presented by claimant regarding the payment of penalty interest by respondent. The Tribunal decided that interest should be paid from 21 July 2001 until last payment that should be done by the respondent. This conclusion has been based on analysis conducted by Tribunal in relation to the issue that from which date the interest should be paid. According to article 3 of the Sale-Purchase Agreement, the respondent was obliged to pay claimant in the end of month, in which respondent will resale each of electrical heating device. The term of payment has not been specified with the provisions of agreement, but it was depended on future occasion that will occur. This future occasion that was expected to occur, was resale of each electrical heating device from the respondent. The claimant has not managed to prove that respondent has been defaulted before date 21 July 2011. In absence of this evidence, the Arbitral Tribunal decided that the interest shall be calculated from the day of which the claimant submitted request for initiation of arbitration proceedings with the Permanent Tribunal of Arbitration. Also, the Arbitral Tribunal decided that the respondent is obliged to pay the procedural expenses.

## 3. Award

The Arbitral Tribunal decided that the respondent has breached the agreement by not paying price as agreed in the agreement. In addition, it decided that the respondent is obliged to pay for account of claimant penalty interest based on criteria determined by the European Central Bank in rate of 1.00% of principal debt in value of 26,000.00 EUR, estimated from 21 July 2011. Moreover, it decided that the respondent is obliged to pay procedural expenses in amount of 1,900.00 EUR.

This Award has been issued by the Arbitral Tribunal in Prishtina, on 16 January 2011.