

**FEDERAL ARBITRATION COURT
OF POVOLZHISKY AREA**

420066, Republic of Tatarstan, Kazan, Inzhenernaya str., 2

DECISION

**OF CASSATIONAL JURISDICTION OF VERIFICATION OF
LEGALITY AND VALIDITY OF DECISIONS (JUDGEMENTS,
RESOLUTIONS) OF ARBITRATION COURTS IN FORCE**

June 15, 1999

Case No. A65-3877/98-C1-11k

The board of judges of Federal Arbitration court of Povolzhsky area on examination of disputes arising from administrative/civil and other legal relationships, consisting of:

Presiding judge Shamsutdinova S.S.,
Judges Vladimirskaia T.V., Sagadeev R.R.,

with participation of:
from the plaintiff's party

- Mineeva A.A., power of attorney dd. 31.12.98; Bukharaeva A.V.,
power of attorney dd. 31.12.98, prosecutor Borisova Y.A.,

from the defendant's party

- LLC "Firm Social Economic Development "TAN" – founder
Shashurin S.P.; Kamalov A.A., power of attorney dd. 14.05.99;
Kazan Administration – Kiryushin A.Y., power of attorney £3848
dd. 14.09.98,

after examination at a session of the appeal of LLC "Firm Social Economic Development "TAN" and the company founder Shashurin S.P.

at the decision of Higher Arbitration Court of Republic of Tatarstan dd. 11.01.99 (Sotova G.I., Yushkov A.Y., Gasimov N.G.)

and resolution of court of appeal of the same court dd. 19.03.99 (Prokofyev V.V., Petrushkin V.A., Khasanshin I.A.)

concerning the suit of LLC Commercial bank "Energobank" and Deputy Prosecutor of Republic of Tatarstan against LLC "Firm Social Economic Development "TAN", Kazan city administration, State Registration Chamber of Ministry of Justice of Republic of Tatarstan, to declare invalidity of decision of founders meeting of Association of Social Economic Development "TAN" dated 04.01.1996, Memorandum dated 04.01.1996 and Directive of Deputy Head of Kazan city administration concerning registration of LLC "Firm Social Economic Development "TAN" No.126p dated 07.02.1996.

following of the report of judge Sagadeev R.R.

FOUND THAT:

LLC Commercial bank "Energobank" presented at the court's session a petition of non-examination of appeals of Shashurin S.P. and LLC "Firm SED "TAN", reasoning that the appeals had been filed by unauthorized persons.

In the bank's opinion, Shashurin S.P. is not the person in case, and the appeal of LLC "Firm SED "TAN" was signed by the company's representative Sergeeva G.I., on the basis of the power of attorney issued by the president of "Firm SED "TAN" who was dismissed at the moment.

After discussing the petition, hearing to the explanations of Shashurin S.P., the parties' representatives, the board of judges finds no grounds for satisfying the petition.

As it follows from the case papers, Shashurin S.P. is the founder of LLC "Firm SED "TAN" and is the owner of 80% of shares in the company's stock capital. Decision of declaration of invalidity of the company's constituent documents and its state registration affect substantially the legal rights and interests of Shashurin S.P., as the founder, and in accordance with Art176, s.5 of Arbitration Code of Procedure of the RF he has the right to make an appeal concerning the judicial acts on this case.

The appeal of representatives of Sergeeva G.I. was made on the basis of the power of attorney dated 01.01.1999 issued by Petrenko A.A., President of LLC "Firm SED "TAN".

Actually, according to Minutes No.11 dated 29.12.1998 the general meeting of members adopted a decision to dismiss Petrenko A.A. from the position of president. However, as Shashurin S.P. explained in the session, the order of dismissal of Petrenko A.A. was has not been till now issued and, therefore, he was authorized to issue the power of attorney as of 01.01.1999.

In compliance with Article 140 of Arbitration Code of Procedure of the Russian Federation, the board of judges

DECIDED:

To dismiss a petition of LLC Commercial bank "Energobank" concerning filing appels against Shashurin S.P. and LLC "Firm SED "TAN".

Presiding	<i>Signature</i>	Shamsutdinova S.S.,
Judges	<i>Signature</i>	Vladimirskaia T.V.
	<i>Signature</i>	Sagadeev R.R.

True copy
16.04.2002

Performer: Faskhieva L.S.

Seal:

FEDERAL ARBITRATION COURT OF POVOLZHSKY AREA, KAZAN

**FEDERAL ARBITRATION COURT
OF POVOLZHISKY AREA**

420066, Republic of Tatarstan, Kazan, Inzhenernaya str., 2

**RESOLUTION
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LEGALITY AND VALIDITY OF DECISIONS (JUDGEMENTS,
RESOLUTIONS) OF ARBITRATION COURTS IN FORCE**

June 15, 1999

Case No. A65-3877/98-C1-11k

The board of judges of Federal Arbitration court of Povolzhsky area on examination of disputes arising from administrative/civil and other legal relationships, consisting of:

Presiding judge Shamsutdinova S.S.,
Judges Vladimirskaia T.V., Sagadeev R.R.,

with participation of:

from the plaintiff's party - Mineeva A.A., power of attorney dd. 31.12.98; Bukharaeva A.V.,
power of attorney dd. 31.12.98, prosecutor Borisova Y.A.,

from the defendant's party - LLC "Firm Social Economic Development "TAN" – founder
Shashurin S.P.; Kamalov A.A., power of attorney dd. 14.05.99;
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following of the report of judge Sagadeev R.R.

FOUND THAT:

LLC Commercial bank "Energobank" brought a suit at the court's session at the Higher Arbitration Court of Republic of Tatarstan against Head of Kazan city administration, LLC "Firm Social Economic Development "TAN" (referred hereinafter as LLC "Firm SED "TAN"), to declare invalidity of decision of founders meeting of Association of Social Economic Development "TAN" dated 04.01.1996 of reorganization of ASED "TAN" into LLC "Firm SED "TAN", Memorandum dated 04.01.1996 concerning declaration of the company as assignee of ASED "TAN" and Directive of Deputy Head of Kazan city administration concerning registration of LLC "Firm Social Economic Development "TAN" No.126p dated 07.02.1996.

Deputy Prosecutor of Republic of Tatarstan brought a suit against LLC "Firm SED "TAN", State Registration Chamber of Ministry of Justice of Republic of Tatarstan, to declare invalidity of Directive of Deputy Head of Kazan city administration No.126p dated 07.02.1996, state registration of LLC "Firm Social Economic Development "TAN", Memorandum of LLC "Firm SED "TAN".

By resolution of the Arbitration Court dated 11.01.1999 Minutes of the meeting dated 04.01.1996 of ASED "TAN", Memorandum dated 04.01.1996 and state registration of LLC "Firm SED "TAN" were declared invalid.

By decision of court of appeal dated 19.03.1999 the resolution was changed. The decision of founders meeting of Association of Social Economic Development "TAN" dated 04.01.1996 of reorganization of ASED "TAN" into LLC "Firm SED "TAN", Directive of Deputy Head of Kazan city No.126p dated 07.02.1996, state registration of LLC "Firm SED "TAN") were declared invalid.

As for the requirements concerning declaration of invalidity of Memorandum of LLC "Firm SED "TAN", the court proceedings were dismissed for the reason of the dispute being the jurisdiction of the Arbitration Court.

The suit against the State Registration Chamber Ministry of Justice of Republic of Tatarstan was dismissed.

In his appeal Shashurin S.P., founder of LLC "Firm SED "TAN" asks to cancel the enforced court's acts, dismiss the case proceedings, with the statement that the founders of the company are natural persons only. He appealed the court many times with a declaration to involve him in the case proceedings. The enforced court's acts affect his legal rights directly.

LLC "Firm SED "TAN" asks to cancel the decision and resolution, and dismiss the suit. The appeal states absence of legal grounds for declaration of invalidity of the decisions of the Association's and Company's founders, as such decisions did not violate anybody's rights.

In the opinion of the appeal declarer courts have neither grounds for declaration of invalidity of state registration of LLC "Firm SED "TAN" because, even if it is acknowledged that by of the association's reorganization into a limited liability company some formal violations were admitted, they are removable which under Article 61 part 2 of the Civil Code of the RF hinders declaration of invalidity of state registration.

After examination of the case papers, discussion of the appeal's reasons, the board of judges considers the enforced court acts on the case are to be cancelled with dismissal of the case proceedings due to the dispute being out of the Arbitration Court's jurisdiction.

As it follows from the case papers, the subject of the dispute is the constituent documents concerning reorganization of ASED "TAN" into LLC "Firm SED "TAN" and subsequent registration of the company.

In compliance with the directive of Deputy of Kazan city administration No.126p dated 07.02.1996 registration of LLC "Firm SED "TAN" was effected on the ground of the company's declaration and its constituent documents, i.e. Memorandum dated 04.01.1996, the demand of which acknowledgement the court of appeal did not consider due to dismissal of proceedings in this part. However, without consideration of demands concerning invalidity of Memorandum

which served as the ground for **state** registration of the company, it is impossible to consider the matter of invalidity of **state registration** of LLC "Firm SED "TAN", as the stated claims are based right on invalidity of the founders' decisions.

Yet as it follows from Minutes No.1 of the constitutional meeting of ASED "TAN" and Memorandum dated 04.07.1996 , the decision of the company's reorganization was taken by 5 founders, natural persons, including Shashurin S.P. who has 80% of shares in the stock capital of the company. Declaration of invalidity of named documents and of registration of LLC "Firm SED "TAN" affects substantially the legal rights and interests of its founders whom the court was bound to involve in the case proceedings, even more so Shashurin S.P. made an appeal concerning it.

Yet the disputes involving natural persons (but entrepreneurs which do not include Shashurin S.P. and other founders) under the effective law are out of jurisdiction of Arbitration Courts.

Therefore, in compliance with Article 85 section 1 of the Arbitration Court of Procedure of the RF the case proceedings shall be dismissed.

In accordance with Article 1 section 5, Article 177 of the Arbitration Court of Procedure of the RF, the court of judges

MADE A RESOLUTION:

To cancel the decision dated 11.01.1999 and the resolution of the court of appeal of Higher Arbitration Court of Republic of Tatarstan dated 19.03.1999 on case A65-3877/98-C1-11k.

To dismiss the case proceedings.

The resolution shall take legal effect from the moment of its adoption and shall not be subject to any appeal.

Presiding	<i>Signature</i>	Shamsutdinova S.S.,
Judges	<i>Signature</i>	Vladimirskaia T.V.
	<i>Signature</i>	Sagadeev R.R.

True copy
16.04.2002

Performer: Faskhieva L.S.

Seal:
FEDERAL ARBITRATION COURT OF POVOLZHISKY AREA, KAZAN