

**FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE**

**PARIS COURT OF APPEAL
Division 5 - 16
International Chamber**

(No. /2021, 5 pages)

JUDGMENT OF 02 FEBRUARY 2021

RULING ON AN APPEAL FOR AN EXEQUATUR ORDER

General Directory Entry Number: RG No 20/01789 - Portalis No. 35L7-V-B7E-CBLHG

Decision referred to the Court: – President of the Paris Court of First Instance- RG n° 19/03099

APPELANT:

SASU (A)

Registered in the Nanterre Registry of Trade and Companies under the number

Having its registered office at

Represented by its legal representatives.

Represented by , member of the Paris Bar and by trial counsel

RESPONDENT:

(B) LIMITED

Having its registered office at (IRLANDE)

Represented by its legal representatives.

Represented by , member of the Paris Bar; and by trial counsel Member of the Paris Bar

COURT COMPOSITION:

The Case was heard on 14 December 2020, in open court, before the Court composed of:

Mr François ANCEL, Preesident
Mrs Fabienne SCHALLER, Judge
Mrs Laure ALDEBERT, Judge

who ruled on the case, a report was presented at the hearing by M. François ANCEL in accordance with article 804 of the Code of Civil Procedure.

Clerk at the hearing : Mrs Clémentine GLEMET

JUDGMENT:

- ADVERSARIAL
- Judgment made available at the Clerk's office of the Court, the parties having been notified

in advance under the conditions provided for in the second paragraph of Article 450 of the Code of civil Procedure.

- Signed by François ANCEL, President, and by Clémentine GLEMET, Clerk to whom the minute was delivered by the signatory judge.

I - FACTS AND PROCEEDINGS

1. (A) is a French company, whose main purpose is the resale and distribution of food products.
2. (B) Limited (hereinafter “(B)”) is a company incorporated under Irish law, specialized in the manufacture and supply of the “(B)Energy” brand of beverages.
3. On 23 October 2010, the two companies entered into an agreement (“Letter Agreement”) providing for the sale of (B)’s products by (A) on the Reunion Island. The agreement included an arbitration clause in its article 15.
4. In 2012, the parties considered entering into a distribution contract, which, in the end, was not signed.
5. By letter dated January, 18 2016, (B) informed (A) that it was terminating the October 23, 2010 contract, effective as of July 31, 2016.
6. (A) presented to (B) an invoice No. 009-001, dated March 8, 2016 amounting to 74,840.97 euros, which corresponded to the marketing costs incurred for the promotion of (B)'s products in 2015.
7. It is in this context that (B) filed a request for arbitration before the London Court of International Arbitration (LCIA) on February 3, 2016, on the basis of Article 15 of the October 23, 2010 agreement.
8. On June 27, 2016, (A) informed the arbitral tribunal that it did not recognize its jurisdiction and therefore, did not intend to make any submissions in the arbitral proceedings.
9. The Arbitral Tribunal composed of _____ (sole arbitrator) rendered a partial final award on March 8, 2017, by which it held in substance that the parties were only bound by the October 23, 2010 “Letter agreement” for the relevant period, that it had jurisdiction to decide all disputes, controversies and claims between the parties arising out of the October 23, 2010 letter agreement, and that its termination was not wrongful. It also ordered (A) to pay (B)’s arbitration costs, further reserving the power to make one more award with respect to any outstanding issues, including the evaluation of interest and costs.
10. By its September 24, 2018 request, (B) asked the LCIA to fix the amount of the costs incurred by (B) in the arbitration proceedings that (A) had been ordered to pay. (A) intervened in the arbitration at this point, to contest the amount of the costs claimed.
11. By an award dated 21 June 2019, the arbitral tribunal fixed the amount of the recoverable costs at 84,500 GBP.
12. On March 26, 2019, (A) seized the commercial Court of Nanterre to obtain an order against (B) to pay various invoices in the context of their contractual relationship.

(B) challenged the jurisdiction of the court, and the validity of the writ of summons.

13. The two arbitral awards of March 8, 2017 and June 21, 2019 were exequated by orders dated November 22, 2019, notified to (A) on 18 December 2019.

14. On January 17, 2020, (A) appealed against these exequatur orders.

II - CLAIMS OF THE PARTIES

15. According to its latest submissions sent electronically on May 19, 2020, (A) asks the Court, on the basis of Articles 1520 and 1525 of the Code of Civil Procedure, as well as Article 4f of the Rome Convention to :

Find and rule that it was for the LCIA of London to first consider the question of its jurisdiction before examining the validity of the contracts submitted to it;

Find and rule that, by directly setting aside the draft distribution agreement between the parties by applying English law, it violated the above-mentioned provisions and its award shall therefore be set aside.

As a result,

Overturn the orders undertaken of the Paris Judicial Court of November 22, 2019;

Find that there is no reason for an exequatur of the arbitral awards of the LCIA of London dated March 8, 2017 and June 21, 2019;

Dismiss all of (B) LIMITED's claims;

Regarding articles 699 and 700 of the Code of civil Procedure,

Order (B) LIMITED to pay the amount of 3.500 euros, as unrecoverable costs, in addition of the costs of the proceedings to be recovered by the lawyer in charge

16. According to its latest submissions sent electronically on 16 October 2020, (B) LIMITED asks the Court, on the basis of articles 1520 and 1525 of the Code of Civil Procedure, as well as of the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to:

Dismiss the appeal of (A) as having no merits;

Uphold the exequatur orders issued on November 22, 2019 by the President of the Paris Court of First Instance, granting enforceability to the arbitral awards rendered of March 8, 2017 and June 21, 2019;

Dismiss (A) of all its claims;

Order (A) to pay all costs of the present proceedings, and to pay 7000 euros on the basis of article 700 of the Code of civil Procedure.

III - PLEAS OF THE PARTIES

17. (A) argues that the award should be overturned, since the judge directly applied

English law to reject the validity of the 2012 distribution contract, without addressing the question of its jurisdiction. It specifies that, in order to determine its jurisdiction, it should also have addressed the question of the law applicable to the distribution contract, which is, pursuant to article 4 of the Rome I Regulation of June 17, 2008, the Irish law, as (B) is a company incorporated under Irish law. It argues that the arbitral tribunal should have examined the validity of the distribution contract of 2012 with regard to Irish law, applied it if it was valid, examined the validity of the arbitration clause inserted therein and determined its jurisdiction, and otherwise, returned to the initial letter of agreement and rule for its jurisdiction. The tribunal having directly applied English law to reject the validity of the distribution agreement, (A) concludes that the tribunal clearly lacked jurisdiction.

18. **In response, (B)** argues that the arbitral tribunal ruled on (A)'s objection to its jurisdiction by considering if the relationship between (B) and (A) could exist beyond the terms of the October 21, 2010 contract, and/or, fall outside its jurisdiction, particularly in chapters 7 and 8 of the disputed award. (B) argues that in seeking to ascertain the common intention of the parties, the arbitral tribunal found that no agreement existed between the parties other than that of 2010, after having noted that Article 13 of the 2010 contract provides that the contract cannot be amended, modified or novated without a written agreement from (B) and that the draft distribution contract had not been signed by the parties. It concludes that the arbitrator duly ruled for its jurisdiction on the basis of the 2010 agreement.

IV - REASONS FOR THE DECISION

On the plea that the arbitral tribunal lacked jurisdiction;

19. Pursuant to Article 1525 of the Code of Civil Procedure, the decision ruling on a claim for recognition or exequatur of a foreign arbitral award is subject to appeal and the Court can only refuse the recognition or the exequatur of the award in the events specified in Article 1520 of the same Code.
20. According to Article 1520 of the Code of Civil Procedure, an action for setting aside is allowed if the arbitral tribunal has wrongly found itself competent or incompetent.
21. In this context, the setting aside judge examines the arbitral tribunal's decision on its jurisdiction, whether it has found itself competent or incompetent, by looking for all the legal and factual elements allowing to determine the scope of the arbitration agreement.
22. In the present case, it is common ground that the October 23, 2010 agreement includes an arbitration clause which provides that “ *Subject to the provisions of this paragraph, any dispute, controversy or claim arising out of this Letter agreement or relating to it, including any question concerning its existence, invalidity or termination, shall be submitted to and settled by arbitration in accordance with the Rules of the London Court of International Arbitration (“LCIA”) which Rules are deemed to be incorporated by reference in this paragraph. The Tribunal shall be composed by an arbitrator, appointed by the Vice President of the LCIA. The seat of the arbitration shall be London (...)*”.
23. This clause, which refers to the LCIA- London Court of international Arbitration, covers any dispute “*arising out of*” the letter of agreement of October 23, 2010, “*or related to it*”, being noted, on the one hand, that this agreement, subject to English

law, constitutes the only contract concluded in writing and signed governing the contractual relationship between the parties, unlike the subsequent draft distribution contract, which has not been signed by them, and on the other hand, that this agreement includes a clause stipulating that no modification, novation, or waiver of any of its provisions “*shall be effective unless signed in writing by the duly authorized representatives*” of both parties.

24. With regards to the aforementioned arbitration clause and these elements, the arbitral tribunal, which examined its jurisdiction in several paragraphs of Chapter 9 and Chapter 7 titled “Jurisdiction of the Tribunal”, did indeed have jurisdiction to rule the dispute between (B) and (A) regarding the termination of the agreement of October 23, 2010 and its consequences.

25. (A) should therefore be dismissed from its appeal against the exequatur orders of November 22, 2019 granting enforceability to the arbitral awards rendered on March 8, 2017 and June 21, 2019.

Costs of the proceedings

26. (A), the losing party, shall be ordered to pay the costs.

27. In addition, (A) shall be ordered to pay 7,000 euros to (B) pursuant to Article 700 of the Code of civil Procedure, as (B) was obliged to assume irrecoverable costs to assert its rights.

V - ON THESE GROUNDS, THE COURT HEREBY

1 - Dismisses (A)’s appeal against the November 22, 2019 exequatur orders granting enforceability to the March 8, 2017 and June 21, 2019 awards and accordingly confirm those orders;

2 - Orders (A) to pay (B) Limited the amount of 7,000 euros under Article 700 of the Code of Civil Procedure;

3 - Orders the (A) to pay the costs of the proceedings.

Clerk

Clémentine GLEMET

President

François ANCEL