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**PARIS COURT OF APPEAL**

**Division 5 - 16**

**JUDGMENT OF 29 JUNE 2021**

(No , 11 pages)

General Directory Entry Number: **RG No 20/01301 – Portalis No 35L7-V-B7E-CBJ4A**

Decision referred to the Court: Judgment of the Paris Arbitral Tribunal dated ( ) - RG No ( )

**CLAIMANT IN THIS ACTION:**

**COMPAGNIE MEDITERRANEENNE DE REPARATION TUNISIE (C.M.R.T), a company under Tunisian law**

Having its registered office at Al Badr, rue du Lac Malaren, les Berges du Lac  
1053 TUNIS (TUNISIE)

Registered under the number 421 131 368

Represented by its legal representatives,

*Represented by Counsel ( ), member of the PARIS Bar, (mailing box: ) replaced at the hearing by  
Counsel ( ), member of the MARSEILLE Bar*

**RESPONDENT IN THIS ACTION:**

**Public limited company SOFEMA**

Having its registered office at 49 avenue Georges Pompidou  
92300 LEVALLOIS PERRET

Registered under the number 562 074 476

Represented by its legal representatives,

*Represented by Counsel ( ), member of the PARIS Bar, (mailing box: )*

*Trial counsel: ( ), member of the PARIS Bar, (mailing box: ) and Counsel ( ), member of the  
PARIS Bar, (mailing box: )*

**COMPOSITION OF THE COURT:**

In accordance with the provisions of Articles 805 and 907 of the Code of Civil Procedure, the case was heard on 03 May 2021, in open Court, the lawyers, informed of the composition of the court for the deliberation, not having objected, before Mrs. Fabienne SCHALLER, Judge acting as President, in charge of the report and Mrs. Laure ALDEBERT, Judge.

The judges reported the oral arguments in the Court deliberation, composed of:

Mr. François ANCEL, President

Mrs. Fabienne SCHALLER, Judge

Mrs. Laure ALDEBERT, Judge

**Clerk** at the hearing: Mrs. Yulia TREFILOVA-PIETREMONT

**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 Inès VILBOIS, Clerk in charge to whom the minute of the decision was delivered by the signatory judge.

**I – STATEMENT OF FACTS AND PROCEEDINGS**

1-COMPAGNIE MEDITERRANEENNE DE REPARATION TUNISIE (hereinafter "CMRT") is a ship repair company under Tunisian law.

2-Sofema is a company under French law which presents itself as the market leader in the field of marketing and maintenance of land, air and naval equipment, particularly in the military sector.

3-By a contract issued on 1 and 2 August 2012, Sofema entrusted CMRT with the execution of careening and repair works in the context of the refurbishment and upgrading of a patrol boat that Sofema had acquired from the French authorities in order to resell it to the Republic of Cameroon (ship named "Grebe" and then "Dipikar"). The work carried out in Bizerte, Tunisia, lasted two years.

4-The company Marine Propulsion Service ("MPS"), represented by Mr. (A), intervened at the request of Sofema to coordinate the work.

5-At the beginning of November 2014, the ship Dipikar left Bizerte for Toulon and then, on 11 December 2014, it left Toulon and suffered a major damage consisting in a sudden and definitive shutdown of all electrical production ("black-out").

6-Several expertises have been commissioned to find out the causes of this event.

7-Sofema mandated several companies to refurbish the ship, including Cegelec, IMS, Nexeya Systems and Tarvos International, in order to deliver it to the State of Cameroon.

8-On 18 April 2016, Sofema filed a letter to CMRT claiming the sum of €2,462,654 to seek compensation for the damage it considered it had suffered as a result of CMRT's defective execution of its assignment.

9-The parties tried to reach an amicable agreement, but without success.

10-On 3 November 2016, Sofema filed a request for arbitration to the Secretariat of the International Court of Arbitration of the Paris International Commercial Chamber, summoning the contractual liability of CMRT and requesting that it be ordered to pay various sums in compensation.

11-On 16 February 2018, the Arbitral Tribunal issued a partial award in which it:

- Dismissed the objection of inadmissibility of Sofema's request for arbitration raised by CMRT;
- Declared that the proceedings shall continue on merits;

- Ordered CMRT to pay the arbitration proceedings' costs relating to this procedural issue
- Ordered that they be attached to the proceedings' costs on the merits;
- Dismissed any further or contrary claims of the Parties at this stage.

12-This award was appealed by CMRT to the Paris Court of Appeal under number RG 20/01304.

13-On 11 September 2019, CMRT lodged a complaint against Sofema with the Public Prosecutor at the Paris Court of First Instance for attempted judgment fraud and witness tampering in relation to the arbitration proceedings, that has been closed without action.

14-On 29 October 2019, Sofema lodged a complaint in Paris against unknown person for slanderous denunciation and acts of intimidation committed against an arbitrator in order to influencing his behavior in the exercise of their duties.

15-On ( ), the Arbitral Tribunal made its final Award in which, after having found that Sofema had failed to immediately declare its links with Mr. (A),:

- Excluded from the debates the technical non-compliance Sheets made by Mr. (A) during the repair works of the ship Dipikar in Bizerte, Mr. (A)'s statements at his hearing before the Tribunal on 19 January 2019, Mr. (A)'s certifications of 20 March 2019 and 11 June 2019.
- Held CMRT liable and ordered it to pay to Sofema in principal the total sum of 1,662,385.68 euros and 307,500 US dollars to Sofema, with interests.

16-On ( ), CMRT filed an action to set aside this Award, registered under No. ( )

17-On 7 April 2021, CMRT lodged a civil action with its complaint before the doyen of the investigating judges of the Paris Court of First Instance for attempted judgment fraud (arbitral decision) and witness tampering, acts committed in Paris during 2016 to date (from 2016 until now?).

18-The pre-trial phase was closed by Order dated 3 May 2021.

## **II – CLAIMS OF THE PARTIES**

19-Under the terms of its last submissions, notified electronically on 13 April 2021, CMRT asks the Court, pursuant to Article 4 of the Code of Criminal Procedure and Article 1520, 4° and 5° of the Code of Civil Procedure, to:

*AS A LIMINARY POINT,*

ORDER a stay of proceedings pending the outcome of the criminal proceedings against Sofema following the criminal complaint filed by CMRT in France on 11 September 2019.

*PRINCIPALLY,*

RECOGNISE that the Award violates the fundamental principle of adversarial proceedings,

*Accordingly,*

SET ASIDE the award made by the Arbitral Tribunal of the ICC of PARIS on ( ) under the number ( ).

RECOGNISE that the Arbitral Award violates the fundamental principle of international public policy.

*Accordingly,*

SET ASIDE the award made by the Arbitral Tribunal of the ICC of PARIS on ( ) under number ( ).

***IN ANY CASE,***

ORDER Sofema to pay CMRT the sum of €30,000 pursuant to Article 700 of the Code of Civil Procedure.

ORDER Sofema to pay all expenses and costs of the proceedings pursuant to Article 695 of the Code of Civil Procedure.

ORDER the provisional enforcement of the forthcoming decision.

20-Under the terms of its last submissions, notified electronically on 6 April 2021, Sofema asks the Court, pursuant to Article 1520 of the Code of Civil Procedure, to:

FIND inadmissible, and secondarily unfounded, the request for a stay of proceedings made by CMRT;

DISMISS CMRT's claims and demands;

UPHOLD the award made on ( ) by the Arbitral Tribunal composed of Mr. (B), Mr. (C) and Mr. (D) in arbitration number ( )

ORDER CMRT to pay Sofema the sum of €100,000 pursuant to Article 700 of the Code of Civil Procedure and to pay all costs of proceedings.

21-The Court refers, for a further statement of the facts, claims and pleas of the parties, to the decisions referred to and to the aforementioned pleadings, pursuant to Article 455 of the Code of Civil Procedure.

**III – REASONS FOR THE DECISION**

***On the request for a stay of proceedings***

22-CMRT requests a stay of proceedings pending the outcome of the criminal proceedings following its filing on 7 April 2021 of a civil action with its complaint for witness tampering and attempted judgment fraud, its first complaint issued on 11 September 2019 having been closed without action. It concludes that the Court has jurisdiction on the basis that the requested stay of proceedings is optional and must be qualified as a procedural issue and not as a preliminary objection, for which the pre-trial judge is not exclusively competent. It argues in addition that Article 4 of the Code of Criminal Procedure is applicable in international arbitration if the disclosed facts have a direct impact on the ground for setting aside the award and if the forthcoming criminal decision is likely to influence the civil decision, which is the case here according to it on the ground that the criminal proceedings will reveal the extent and impact of the fraudulent pact between Sofema and MPS, which was carrying out the work for Sofema. It argues that Mr. (A), the legal representative of MPS, was "bribed" to give false testimony and that Sofema engaged in fraudulent means designed to mislead the Arbitral Tribunal's perceptions, by lying about MPS's status as project manager. It also indicates that it would be appropriate to wait for the outcome of the criminal proceedings initiated after CMRT's complaint issued on 14 March 2018 against TARVOS INTERNATIONAL in Tunisia for VAT fraud insofar as it was ordered to refund false invoices by the Paris Arbitral Tribunal.

23- Sofema replies that the request for a stay of proceedings shall be dismissed on the ground that CMRT has no evidence of ongoing criminal proceedings, its complaint issued on 11 September 2019 having been closed without further action on 5 March 2021. In addition, it argues that the request for a stay of proceedings is a preliminary objection, whether the stay of proceedings is compulsory or optional, and therefore falls within the exclusive jurisdiction of the pre-trial judge, so that the application before the Court is inadmissible. It also argues that the request for a stay of proceedings can only be granted if the disclosed facts have a direct impact on the ground for setting aside the award and if the forthcoming criminal decision is likely to influence the civil decision,

which CMRT has not demonstrated here. It further emphasizes that the Arbitral Tribunal has already taken into account the facts alleged by CMRT in its complaint in reaching its decision.

## **THEREUPON,**

24-Pursuant to Article 73 of the Code of Civil Procedure, a preliminary objection is any plea seeking either to have the proceedings declared irregular or extinguished, or to suspend their progress.

25-Pursuant to Article 789 of the same Code, formerly Article 771, *“when the request is presented after its appointment, the pre-trial judge has until its divestment exclusive jurisdiction, to the exclusion of any other court formation, to:*

*1° Rule on preliminary objections, requests made pursuant to Article 47 and other procedural issues ending the proceedings;*

*26-The parties are no longer entitled to raise these objections and procedural issues subsequently unless they arise or are revealed after the judge has been divested of jurisdiction”.*

27-A request for a stay of proceedings, whether from the claimant or the defendant, is a preliminary objection, and as such must be brought before the pre-trial judge that has exclusive jurisdiction to rule on preliminary objections, pursuant to Article 789, to which Article 907 of the Code of Civil Procedure refers.

28-In the present case, this request is based on a complaint filed with the Public Prosecutor at the Paris Court of First Instance for attempted fraud and witness tampering on 11 September 2019, i.e. before the award was made. Moreover, the civil action made with the complaint was filed on 7 April 2021, before the closure of the pre-trial phase ordered on 3 May 2021. It was therefore up to CMRT, if necessary, after 7 April 2021, to request this stay of proceedings before the pre-trial Judge.

29-The claim of CMRT before the Court is therefore inadmissible.

30-If the request for a stay of proceedings submitted by CMRT is thus inadmissible, the judge, who is responsible for ensuring the effective conduct of the proceedings pursuant to Article 3 of the Code of Civil Procedure, has the power to automatically order a stay of proceedings in the interests of the proper administration of justice, unless an exception is provided for in a text reserving this power to the parties.

31-In the case of an action to set aside an arbitration award, and in accordance with Article 4(3) of the Code of Criminal Procedure, the initiation of the public prosecution does not require the stay of the proceedings, even if the forthcoming decision in the criminal proceedings is likely to have an influence, directly or not, on the outcome of the civil proceedings, as long as the action is not a civil action filed to compensate damages directly caused by a criminal offence.

**32-In the present case**, under the terms of the civil action filed with the criminal complaint on 7 April 2021, following its complaint closed without further action on 11 September 2019, CMRT argues that Sofema was guilty of attempted judgment fraud and witness tampering. It argues that the settlement agreement concluded between Sofema and MPS on 29 February 2016, as well as the assistance-consulting contract of 24 February 2016 attached to this agreement, establish that Sofema lied by stating that MPS was not the project manager of the works entrusted to CMRT and that to support this lie, it used the testimony of Mr. (A) as a witness, paid for this purpose, so that

they would “join forces” to have CMRT condemned in the arbitration proceedings.

33- CMRT relies on these same facts in the present proceedings in support of its action to set aside based on Article 1520 (5°) of the Code of Civil Procedure in respect of Sofema's breach of its duty of loyalty, and in particular the counsel's duty towards the arbitration institution.

34- The action to set aside, which is thus not based on fraud, does not directly seek compensation for the damage caused by the offences complained of, especially since only the attempt and not the judgment fraud is alleged; consequently, the stay of proceedings is not necessary.

35- Moreover, the Arbitral Tribunal was seized with these facts, as set out in paragraphs 168 et seq. of the final award, assessed and responded to them (§196), in particular with regard to the duty of loyalty, which it recalled to be binding on it as on the parties. It noted that Mr. (A) was a witness interested in winning the case without the community of interest with Sofema having been revealed, constituting in its view a breach of Sofema's duty of loyalty prescribed by Article 1464 (3) of the Code of Civil Procedure. It therefore excluded from the proceedings the technical non-conformity sheets drawn up by Mr. (A), the statements from his hearing before the Arbitral Tribunal on 19 January 2019 and his certifications of 20 March and 11 June 2019. However, it considered that the spontaneous non-communication of the settlement-agreement by Sofema did not constitute a breach of the duty of loyalty.

36-The Arbitral Tribunal also held CMRT liable, regardless of the role played by MPS. Thus, after analyzing the contractual relationship between Sofema and CMRT, it concluded (§265 of the final award) that the “Contract is a service contract, and more specifically a ship repair contract, placing on CMRT, in its capacity as works contractor, a mitigated obligation to achieve a result, giving rise to a presumption of fault and liability in the event of a breakdown or disorder affecting the components of the Dipikar on which CMRT intervened, from which CMRT can only be exonerated by proving that it carried out the work requested in accordance with the usual practice or that an extraneous cause intervened”.

37-Similarly, the criminal proceedings issued in Tunisia against Tarvos International, invoked in the submissions of CMRT in support of its application for a stay of proceedings, are no more likely to justify such a stay being ordered ex officio by the Court, since there is no evidence to suggest that the alleged fact that Tarvos invoiced VAT to a French company in contravention of Tunisian tax legislation had any bearing on the dispute before the Court.

38- In these circumstances, there is no reason to stay the proceedings for the proper administration of justice.

**On the ground for setting aside the award due to an infringement of the principle of adversarial proceedings (Article 1520, 4° of the Code of Civil Procedure)**

39- CMRT argues that the Arbitral Tribunal based its decision on technical expert assessments which were not carried out following the adversarial principle or by independent experts, who were commissioned by Sofema, and without relying on analysis reports on the engines that were essential. The company claims to have been deprived of a technical debate, in violation of the principle of equality of arms. It adds that Sofema concealed information and, to refrain from producing the expert reports on the cooling liquid of the DIPIKAR before the Tribunal, it falsely claimed that they did not exist. The company thus considers that Sofema did not comply with the adversarial process and that the award was made without relying on essential documents, violating the principle of adversarial proceedings.

40- In response, Sofema emphasises that the Arbitral Tribunal is required to fulfil its obligation to comply with the principle of adversarial proceedings, not the parties, and that CMRT reproached Sofema instead of the arbitrators for having violated it. The company argues that all the elements on which the Arbitral Tribunal based its decision were discussed by the parties during the arbitral proceedings, were the subject of written exchanges and then oral arguments in the respect of the adversarial process. It adds that the authors of the three expert assessments produced by Sofema were questioned by the Tribunal. It also emphasises that the alleged facts are all directed against acts of Sofema which preceded the arbitral proceedings and which, by their very nature, could not violate any applicable procedural rule insofar as the production of an expert assessment by a party is not contrary to the principle of adversarial proceedings as long as it has been discussed between the parties during the court hearing. Moreover, the company states that CMRT was always informed of the expert assessments carried out, that it even participated in most of them, and that the Tribunal relied on many other pieces of evidence. It adds that CMRT had not asked the Arbitral Tribunal to appoint an independent expert. Finally, it states that the Arbitral Tribunal found that CMRT did not establish the existence or relevance of a report on cooling liquids on which the Tribunal could have relied to make its award, and that there was therefore no violation of the principle of adversarial proceedings.

## **THEREUPON,**

41- Pursuant to Article 1520, 2° of the Code of Civil Procedure, an action to set aside may be brought before the Court if the principle of adversarial proceedings has not been complied with.

42- The principle of adversarial proceedings only requires that the parties have had the opportunity to communicate their factual and legal claims during the arbitral proceedings and to discuss those of their opponent so that nothing that served as a basis for the arbitrators' decision escaped their adversarial debate.

43- In this case, the Arbitral Tribunal expressly recalled in the final award that CMRT bore the burden of proof that it has committed no fault and that it had performed its obligation in accordance with the best practices in ship repair. The Tribunal analysed the report of Mr. ( Y ), expert at the Court of Aix-en-Provence, dated 9 October 2018, filed by CMRT, as well as the report of Mr. ( Z ), dated 3 June 2019, also filed by CMRT, and stated that it was examining the various evidence submitted. In this respect, the Tribunal analysed the three expert reports dating from before its referral and drawn up ex-parte (3 January 2015 – report drawn up by Mr. ( X ), 12 December 2014 - Tarvos International report and 14 April 2016 - Leblond report), but delivered to CMRT, which has been informed and invited to comment, the Tribunal having noted that CMRT was not kept out of the operations and the experts' findings.

44- In this regard, the Tribunal held that CMRT was liable by finding that it had failed to produce proof of compliance with its contractual obligations, but also by relying on bailiff's reports, e-mail exchanges, letters from CMRT and expert reports submitted to the debates and debated by both parties (§321).

45- The Arbitral Tribunal thus ruled that the disputed expert reports constituted evidence admissible and opposable to CMRT, on the ground that they were submitted to the adversarial debate during the arbitral proceedings and that CMRT has been informed of the experts' visits, did not object to them and did not request a judicial expertise before the state courts.

46- Thus, it appears that CMRT was able to discuss the relevance of the expert reports produced by Sofema, that the Arbitral Tribunal did not exclusively base its decision on these expert reports and

that the ground alleging an infringement of the principle of adversarial proceedings aimed in fact to the award reviewing, which is prohibited to the judge setting aside.

47- This ground shall therefore be dismissed.

***On the ground for setting aside the award due to an infringement of international public policy (Article 1520-5 of the Code of Civil Procedure)***

48- Pursuant to Article 1520, 5° of the Code of Civil Procedure, an action to set aside may be brought before the Court if recognition or enforcement of an award leads to an infringement of international public policy.

49- International public policy, in light of which the judge setting aside carries out its control, is understood following the conception of the French legal system, i.e. the values and principles which it cannot disregard even in an international context.

50- The control exercised by the judge setting aside in defence of international public policy is only concerned with examining whether the enforcement of the provisions made by the Arbitral Tribunal clearly, effectively and concretely violates the principles and values included in international public policy.

**On the ground alleging non-compliance with the Incoterm**

51- CMRT argues that the arbitral award is contrary to international public policy as it does not apply the EXW Incoterm, although neither the parties nor the Tribunal can derogate from them, as Incoterms are indisputably part of international public policy. CMRT states that the Arbitral Tribunal exceeded its powers by ruling that even if the ship had been taken over in Bizerte, it had not been delivered and that the action was not time-barred, and thus violated international public policy.

52- Sofema argues that the ground alleging non-compliance with the Incoterm is unfounded as these terms are not part of French international public policy, that they are contractual rules and that they only apply if the parties provided for it in their contract. Sofema adds that, presuming that an Incoterm is a public policy rule, the arbitrators' assessment of its application is not likely to constitute an infringement of international public policy under Article 1520, 5° of the Code of Civil Procedure and that the judge setting aside does not have the power to review the arbitrators' assessment of applicable rules, even if they are of public policy. The company also argues that Incoterms apply to international sales, which is not the subject of the contract, that the parties did not agree on the application of the EXW Incoterm and that the application of this Incoterm do not affect the question of the starting point of the contractual limitation period.

**THEREUPON,**

53- Incoterms, short for "International Commercial Terms", developed by the International Commercial Chamber, are substantive rules of international trade which define and codify the content of certain terms and clauses frequently used in international trade, including international sales and freight transport, and can thus be described as customary practices of international trade. The EXW Incoterm, which stands for Ex Works, refers to a sale in which the goods are placed at the disposal of the buyer at the seller's premises, the buyer having to organise and pay for the



transport, bearing the risks until final destination of the goods and assuming the formalities and costs of export and import, as well as the duties and taxes related to these two operations.

54- Incoterms are standard contractual clauses which can only apply on the agreement of the parties, so that they cannot be considered as part of international public policy.

55- This ground shall therefore be dismissed.

### **On the ground alleging fraudulent collaboration between Sofema and Tarvos International**

56- CMRT claims to have been ordered to compensate Sofema on the basis of false invoices related to fictitious services provided by Tarvos whose acts of VAT fraud were identified by the Tunisian public prosecutor. CMRT adds that there are serious, precise and concordant evidence that the award would give effect to a contract tainted by corruption in light of VAT fraud, false invoices, use of a straw man and unclear and close links between Sofema and Tarvos International, which was responsible for monitoring the repair work of the Dipikar.

57- In response, Sofema argues that the ground alleging fraudulent collaboration between Sofema and Tarvos International is unfounded on the ground that the decision of the Arbitral Tribunal was not surprised by fraud. Sofema states that the Tribunal examined CMRT's grounds on the alleged false invoices and dismissed them. It adds that the invoices issued by Tarvos International correspond to actual coordination services for the ship's repair work in Saint Mandrier. The company adds that CMRT did not indicate the contract affected by the alleged corruption or how it was tainted by corruption. It also emphasises that the award does not enforce a contract but orders CMRT to compensate Sofema for the damage suffered.

### **THEREUPON,**

58- The Arbitral Tribunal ordered CMRT to compensate Sofema for the damage resulting from the immobilisation in the amount of €157,423.80, corresponding to part of the invoices sent by Tarvos International to Sofema for its intervention, and not the sum of €352,396 as claimed by CMRT. However, the Arbitral Tribunal noted that the uncertainties as to the adequacy between the amount paid by Sofema and the costs incurred by Tarvos International are irrelevant to the actual damage suffered by Sofema (§443), thus dismissing the ground alleging compensation to Sofema on the basis of false invoices. The Tribunal therefore does not incur the grievance relating to infringement of international public policy.

59- Furthermore, it is clear from the documents produced by CMRT that Sofema entered into a service contract with Tarvos International on 30 April 2015 for the coordination of the repair work of the Dipikar ship, which provided in its Article 5 for monthly fixed-fees of €33,170 plus Tunisian taxes of 9%.

60- On 21 March 2018, CMRT filed a criminal complaint with the Tunis Public Prosecutor's Office, which led to a report from the Brigade of Investigation and Fight against Tax Evasion of the Tunis Directorate General for Taxes dated 20 January 2020. According to this report, Tarvos International issued eleven invoices under the service contract between 22 December 2014 and 26 November 2015 with a total VAT amount of €28,791.95 even though it was not subject to VAT and did not pay the collected VAT to the Tunisian Tax Office, which constitutes an offence under Article 92 of the Tunisian Code of tax rights and procedures.

61- In addition, CMRT produces a series of invoices entitled “Tarvos invoices” and issued during the same period by a French company called Altim and addressed to Tarvos, some of which show a VAT at a rate of 20%.

62- As the report of the Tunisian tax brigade does not precisely identify the disputed invoices, it is not possible to reconcile them with the invoices issued by Altim.

63- While CMRT did submit to the Arbitral Tribunal its challenges to the invoices issued by Tarvos, describing them as “false invoices”, the Arbitral Tribunal, which made its award on ( ), was not aware of the Tunisian brigade’s investigation report.

64- Nevertheless, the documents submitted to the Court by CMRT do not show that the invoices subject of the Tunisian criminal proceedings are those that the Arbitral Tribunal orderde to pay, nor that the services invoiced were not provided, as only breaches of Tunisian VAT regulations are covered by the Tunisian procedure. CMRT therefore fails to prove that the invoices on which its order to pay was based are false invoices.

65- CMRT also maintains the existence of fraudulent collusion between Sofema and Tarvos, a claim that is not corroborated by any evidence whatsoever.

66- Thus, all the elements submitted to the Court by CMRT do not constitute evidence of fraudulent award or acts of corruption leading to an infringement of international public policy.

67- This ground shall therefore be dismissed.

### **On the ground alleging a breach from Sofema and its counsels of their duty of loyalty towards the arbitral institution**

68- CMRT argues that Sofema and its counsels breached their duty of loyalty towards the arbitral institution. It recalls that the question of whether CMRT or MPS was the project manager on the site was a key issue in the debates, as it determined whether CMRT could be held liable. CMRT maintains that the settlement agreement concluded between Sofema and MPS on 29 February 2016 led to fraudulent collusion between these two companies so as to shift liability onto CMRT. It states that, during the hearings before the Arbitral Tribunal, Sofema and its counsels tried to conceal the contractual commitment made by “witness (A)” to assist Sofema in the arbitration proceedings against CMRT, in all disloyalty. The company adds that Sofema and its counsels have produced false documents on this issue during the arbitration proceedings, which constitutes a criminal offence and a serious ethical misconduct that undermines the fairness and equity of the proceedings.

69- Sofema argues that the Arbitral Tribunal drew all the consequences by removing the contentious documents from the proceedings. It adds that disloyalty is a ground for setting aside an award under Article 1520 of the Code of Civil Procedure only in the presence of procedural fraud, whereas in this case, the Tribunal’s decision was not surprised by fraud insofar as it was aware of the 29 February 2016 agreement and the alleged community of interest between Sofema and Mr. (A). Sofema adds that the serious allegations of disregard for the ethical rules by its counsels are unfounded because they were not mentioned in the complaint lodged by CMRT, and that the counsels, who are not parties to the present proceedings, are not subject to any disciplinary action.

**THEREUPON,**

70- As explained above, the Arbitral Tribunal found that Sofema had breached its duty of loyalty, and therefore dismissed the evidence produced under unfair conditions, namely Mr. (A)'s declarations and statements, including the twelve technical non-conformity sheets that CMRT described as false documents. The Tribunal based its decision on objective documents and elements submitted to the debates. It follows that the award was not surprised by fraud, as maintained by CMRT.

71- This ground shall therefore be dismissed.

### ***Costs and expenses of the proceedings***

72- CMRT, the losing party, shall be ordered to pay the costs of the proceedings.

73- In addition, it shall be ordered to pay to Sofema, which had to incur unrecoverable costs in order to assert its rights, damages under Article 700 of the Code of Civil Procedure, which it is fair to set at the sum of €40,000.

### **IV- OPERATIVE PART**

#### **For these reasons, the Court:**

- 1- Finds that there is no need to stay the proceedings,
- 2- Dismisses the action to set aside the award,
- 3- Orders COMPAGNIE MEDITERRANEENNE DE REPARATION TUNISIE to pay to Sofema the sum of €40,000 under Article 700 of the Code of Civil Procedure;
- 4- Orders COMPAGNIE MEDITERRANEENNE DE REPARATION TUNISIE to pay the costs of the proceedings.

The Clerk

Inès VILBOIS

The President

François ANCEL