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THE REPUBLIC OF FRANCE
IN THE NAME OF THE PEOPLE OF FRANCE

COURT OF APPEAL OF PARIS
International Commercial Chamber

Section 5 - Chamber 16

RULING OF 16 NOVEMBER 2021

(No. /2021, 11 pages)

Case number: **19/20295 - Portalis No. 35L7-V-B7D-CA5R7**

Decision on appeal before the Court: Arbitration Award No. (...) handed down on (...) by the International Court of Arbitration of the International Chamber of Commerce of Paris

CLAIMANT IN THIS ACTION:

Afcons Infrastructure Limited
An Indian Company
Afcons House, 16 Shah Industrial Estate, Veera Desai Road, Azad Nagar, P.O. Box 11978, Andheri (West) Mumbai 400053, India
Represented by its legal representatives

Represented by (...), Esquire, Barrister-at-Law of (...), member of the Paris Law Society (Law Society Membership (...)) and by (...), Esquire and (...), Esquire, of (...), Barristers-at-Law admitted to the Paris Law Society (Law Society Membership (...)), replaced by (...), Barrister-at-Law admitted to the Paris Law Society (Law Society Membership (...))

RESPONDENT IN THIS ACTION:

Jordan Phosphate Mines Company plc
A Jordanian Company
Registered office: Al Shareef Al Radi Street 7, P.O Box 30, 11118 Amman, Jordan
Represented by its legal representatives

Represented by (...), Esquire, Barrister-at-Law admitted to the Paris Law Society (Law Society Membership (...)) and (...), Esquire, and (...), Barristers-at-Law of (...), admitted to the Paris Law Society (Law Society Membership (...))

MEMBERS OF THE BENCH:

The case was heard on 20 September 2021, at a trial hearing open to the public, before the following panel of justices who also took part in the deliberations:

Lord Justice of Appeal François Ancel, Presiding Justice
Lord Justice of Appeal Fabienne Schaller, Associate Justice
Lord Justice of Appeal Laure Aldebert, Associate Justice

Clerk: at the appellate trial hearing: Najma El Farissi

RULING:

The ruling was handed down after adversarial proceedings and made available at the Administrative Office of the Court, the parties having previously been notified as required by virtue of the second paragraph of Article 450 of France's Rules of Civil Procedure. The official

copy of the ruling was signed by Lord Justice of Appeal François Ancel, the Presiding Justice and Najma El Farissi, the clerk to whom the official copy of the ruling was given by the justice who signed it.

I. STATEMENT OF FACTS AND PROCEEDINGS

1. **Afcons Infrastructure Limited** (hereinafter "**Alcons**") is an Indian public company that provides infrastructure services and is involved in the construction of infrastructure projects such as buildings, ports, jettys, industrial project, bridges, viaducts, tunnels, roads and motorway projects.

2. **Jordan Phosphate Mines Company Plc** (hereinafter "**JMPC**") is a Jordanian company that operates phosphate mines and manufactures different types of phosphate fertilizers.

3. On 20 April 2010, JPMC entered into an agreement with Afcons to build a new terminal in Aqaba in Jordan.

4. Afcons considers that it sustained damage in the execution of the project and took it upon itself to advance and complete the project on time, which JPMC disputed, alleging that Afcons failed to properly perform its obligations.

5. On the basis of the arbitration clause contained in the agreement, Afcons filed a request for arbitration with the ICC International Court of Arbitration on 21 November 2016.

6. On (...), the Arbitral Tribunal, composed of (...) (President), (...) and (...), the co-arbitrators, handed down its final award (No. (...)), in which it, among other things, ordered Afcons to pay to JPMC various amounts; ordered it to perform certain works (counterclaims C3, C4, C5 and C6) within periods of time ranging from four to six months starting from the Award, failing which Afcons would have to pay certain amounts to JPMC set out in the Award, plus 3% annual interest between the date of the Award and the final payment.

7. On 29 October 2019, Afcons filed notice with the Court of Appeal of Paris of an application for the annulment of the (...) arbitration award.

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II. CLAIMS OF THE PARTIES

8. In its legal brief served electronically on 30 April 2021, Afcons Infrastructure Limited asked the Court, based on Articles 16, 1520(3)(4) and (5) of France's Rules of Civil Procedure, to:

- ANNUL the Arbitration Award handed down by the Tribunal on (...) pursuant to the ICC Rules in Case No. (...) on the basis of Article 1520(3)(4) and (5) of France's Rules of Civil Procedure;
- ORDER JPMC to pay EUR 10,000.00 by virtue of Article 700 of France's Rules of Civil Procedure, plus all court costs, to be paid to (...), Barrister-at-Law of (...), in accordance with Article 699 of France's Rules of Civil Procedure.

9. In its legal brief served electronically on 17 August 2021, JPMC asked to court to:

- FIND that the principle of due process was upheld;
- FIND that the principle of equality was upheld;
- FIND that the Arbitral Tribunal complied with its mission and, in particular, with its obligation to state the reasons upon which its decisions are based;

Consequently:

- DISMISS the application for the annulment of the Arbitration Award handed down on (...) under the aegis of the International Court of Arbitration of the International Chamber of Commerce of Paris in case No. (...);
- DISMISS all the claims, pleas and submissions of Afcons Infrastructure Limited;
- ORDER Afcons Infrastructure Limited to pay EUR 10,000.00 to it by virtue of Article 700 of France's Rules of Civil Procedure
- ORDER Afcons Infrastructure Limited to pay all court costs.

10. The Parties entered into a procedural protocol applicable in the International Commercial Chamber.

11. The pretrial phase ended on 31 August 2021.

III. DEFENCES OF THE PARTIES AND GROUNDS FOR THE DECISION

The failure to uphold the adversarial principle

12. Afcons alleges that the Arbitral Tribunal raised the issue of safety standards and guarantees ex officio without inviting the Parties to argue their respective positions.

13. It maintains that this violation occurred when the Tribunal examined Claim 20 relating to the modification of the stability of the gradients of the land-based terminal.

14. It explains that the question raised was to whether it had, as JPMC wrongly claimed, represented the impact of the cohesion values that it had selected.

15. The Parties delivered oral arguments on this specific point, as summarised by the Tribunal in paragraphs 1476 to 1517 of the Award.

16. However, according to it, in its award and with no explanation, the Tribunal decided to raise ex officio the issue that called in reference to "*safety standards*" or "*safety guarantees*" that the Parties never argued and to treat it in an exclusive manner, completely ignoring the question that was put to it by the Parties regarding the cohesion values.

17. It claims that the Tribunal took the unexplainable decision to use ex officio such "*generic terminology*" that it is at the heart of its conclusion that its Claim 20 was dismissed when the Parties had not been given an opportunity to deliver oral arguments on this question.

18. In support of the same ground of appeal based on a violation of the principle of due process, the Claimant also alleges that the Tribunal ignored its argument concerning the penalty clause.

19. In this regard, it maintains that it was up to the Tribunal to verify whether JPMC had suffered damages less then the lumpsum amount provided for in the penalty clause and not to verify the validity of the penalty clause, which is all it did (Award, paragraphs 2157-2159; 2165-2166).

20. In response to the two arguments, JPMC maintains that the Arbitral Tribunal did not violate the due process principle.

21. It disputes the fact that the Tribunal raised the issue of "*safety standards*" ex officio, which covers notions such as safety factors cohesion values that were argued by the Parties and envisaged together by the Tribunal.

22. It contends, with respect to the application of the penalty clause, that each Party detailed in its written submissions and during the hearings, all of its arguments concerning the application of the penalty clause and that after the analysis, the Arbitral Tribunal ruled based on Jordanian law, rightly finding that it was right.

Wherefore:

23. The due process principle ensures that the proceedings and the trial are fair. It prohibits a decision being rendered until or unless each party has had an opportunity to put forward their factual and legal claims, to know the claims of the opposing party and to discuss them. It also prohibits written submission or documents being brought to the attention of the Arbitral Tribunal without also being communicated to the other party and the factual and legal defences be raised sue sponte without the parties being called on the comment on them.

The first part of the ground of appeal

24. Afcons alleges that the Arbitral Tribunal raised ex officio the issue of "*safety standards or guarantees*" during the examination of its Claim 20 relating to the "*modification of the stability of the gradients at the land-based terminal*".

25. Afcons was in charge of the construction of the gradients, which it was to design and build.

26. It was forced to do embankment remediation work, which it asked JPMC to take into account and JPMC contested this on grounds that Afcons had incorrectly done the gradient stability calculations (§ 1474 and 1475 of the Award).

27. The Arbitral Tribunal dismissed Afcons' claim.

28. According to Afcons, the fundamental question to address its claim was whether or not it had correctly represented the impact of the cohesion values selected, which it maintains the Tribunal ignored, raising sue sponte the question that it called "*safety standards*" or "*safety guarantees*" on which the Tribunal based itself to dismiss its claim.

29. In this regard, Afcons points to paragraph 1522 in the Award, in which the Tribunal indicates "*JPMC approved on 22 February 2011 the safety standards proposed in the reports after Afcons ensured it that they correspond to safety guarantees close to those provided for in the Employer's Requirements*".

30. However, the question of safety standards, about which it is not contested that the terminology encompasses the notion of "*safety factors*" was debated by Afcons and JPMC throughout the arbitration proceedings as explicitly reflected in Afcons' Statement of Defence and Reply and in JPMC's Response to Claimant's Reply so that question was addressed during the proceedings. For instance, Afcons' Rejoinder states that "*In any case, JPMC had accepted that Afcons build the gradients using the current cohesion values as recommended by the technical experts and applying the Safety Factors specified in International Standards. Afcons therefore built the gradients. After the gradients were built, JPMC withdrew its approvals. This withdrawal of approval, which led among other things to additional costs and time for Afcons, is not authorised by law*".

31. It is furthermore established that by using the disputed term "*safety standards*", the Arbitral Tribunal conformed to the analysis of the claims set out by the Parties.

32. Based on the discussions during the proceedings, the notion of "*safety standards*" was intrinsically related associated with that of "*cohesion values*" and indissociable from it in order to determine whether the calculations performed by Afcons were accurate.

33. According to its argumentation set out in its Statement of Claim, Afcons explained that "*given JPMC's insistence about modifying the stability of the gradients above and beyond the Safety Factor specified in international engineering standards, Afcons proposed an alternative– namely using the Incomat geotextile concrete mattress system (the "Incomat System")—to increase the stability of the gradients in order to meet JPMC's new demands*".

34. It repeated the same argumentation Claimant's Reply as follows: "*In any case, JPMC had accepted that Afcons build the gradients using the current cohesion values as recommended by the technical experts and applying the Safety Factors specified in International Standards. Afcons therefore built the gradients. After the gradients were built, JPMC withdrew its approvals. This withdrawal of approval, which led among other things to additional costs and time for Afcons, is not authorised by law*".

35. JPMC indicated in its Response to Claimant's Reply that "*In point of fact, JPMC "dealt with" the question of the Stability of the Gradients only after the gradients had been built and subject to significant precipitations, which made JPMC suspect (and later confirm) that the Claimant had not applied the appropriate cohesion values as part of its analysis of the Stability of the Gradients and therefore had not met the Safety Factors required under the Agreement.*

It should also be underscored that, separately and independently of the contractual requirement to adhere to a little higher Safety Factors, the Claimant's Calculations of the Stability of the Gradients based on currently applicable international standards, once again because of the Claimant's arbitrary use of cohesion values higher than those applicable to the kinds of soil in question".

36. Clearly based on these excerpts from the statements, the gradients were supposed to meet a level of safety and, in this regard, the soil cohesion values constituted one of the variables making it possible conform to the safety factors.

37. In other words, while, as Afcons noted, the notions are not synonymous, "*the cohesion value*" making reference to a physical characteristic of the soil and the "*safety coefficient*" to a contractual requirement, the soil cohesion values were part of the determination of the conformity to the safety factors of the gradients.

38. Based on the excerpts from the statements, since the Parties discussed the soil cohesion values and the safety values, the Arbitral Tribunal mentioning the "*safety standards*" to which the two notions refer, did not raise this question sue sponte so the claim that the adversarial principle was violated on this account will be dismissed.

The second part

39. Afcons' application is based on an examination of JPMC's counterclaim seeking the lumpsum amount provided for in the penalty clause because of the late acceptance of the project.

40. Based on the proceedings, each of the Parties argued its position summed up in the Award in paragraphs 2117 to 2153.

41. JPMC claimed that the application of the penalty clause was justified by the delay and that it constituted a true estimation of the harm that the project owner would sustain in case of a delay of the Project and that, in order to challenge it, it was up to Afcons to show that the amount of the penalty clause had been grossly exaggerated.

42. For its part, Afcons contested JPMC's counterclaim on grounds that it did not suffer any harm and that it therefore fell to the Arbitral Tribunal to reduce the amount of the indemnity to zero.

43. The Tribunal responded that "*the Tribunal finds the lumpsum damages-interest clause valid and enforceable as is. It is not necessary for JPMC to prove its actual harm. The Tribunal will apply the clause that it considers as a prior estimation of the harm sustained*".

44. In its decision, after verifying that the penalty clause was applicable in particular based on Article 364 of Jordan's Civil Code, the Arbitral Tribunal found in favour of JPMC's position according to which the penalty clause must be applied whenever any contractual breach is found with no need to verify the scope of damage actually caused by said breach.

45. In light of the foregoing, the question of the estimation of the damages actually sustained in order to rule on JPMC's claim and to thwart the claim was addressed during the proceedings and did not elude the parties or the Tribunal.

46. This question was argued adversarially and adjudicated by the Arbitral Tribunal in favour of the analysis put forward by JPMC so the claim alleged by Afcons of a violation of the adversarial principle is not justified, as, in this way, Afcons is in actual fact criticising the legal reasons that formed the basis of the decision, which the judge adjudicating on the application for annulment is not permitted to.

47. This ground will be dismissed in full.

The failure to comply with the principle of equality which constitutes a violation of the adversarial principle and international public policy (Articles 1520(4) and 1520(5) of France's Rules of Civil Procedure)

48. Afcons maintains that the Tribunal failed to uphold the principle of equality between the Parties when it denied it the opportunity to lay out its position on exhibits R-507 and R-508 which are excerpts of notes on the calculations of the main jetty that it wanted to complete by handing over documents in their entirety.

49. It claims that JPMC relied on these very limited excerpts from these documents to suggest that the calculations that it had done several months apart were the same when they were difference and thereby gave a partial and truncated view of the situation that the Tribunal took into account.

50. It infers therefrom that by depriving it of the opportunity to put forward its position, it was unable to argue, on equal footing with JPMC, its position and JPMC was given a decisive advantage that constitutes a violation of the principle of equality between the Parties.

51. It adds that other decisions by the Tribunal ran counter to the principle of equality between the Parties but without expounding on them.

52. In response, JPMC retorted that Afcons was largely able to react to exhibits R-507 and R-508 before and during the hearings and that the decision of the Arbitral Tribunal to disregard these exhibits produced late in the proceedings after the hearing was justified by the procedural rules, which clearly prohibited the production of any new documents in support of the post-hearing briefs.

53. It points out that the Arbitral Tribunal finally partly granted Afcons' claim number 5 and that they did not, in any case, have a determinative effect on the Tribunal's decision.

54. With respect to the other claims, it underscores that JPMC, in its written submissions, did not go as far as to claim a breach in equality and the Respondent does not present them as "real claims" in support of its ground for appeal.

55. Moreover, it maintains in their regard that the decisions taken by the Arbitral Tribunal conform with the procedural rules and with the principle of equality.

Wherefore:

56. Based on Article 1520(5) of France's Rules of Civil Procedure, action for annulment is available if the recognition and the enforcement of the award is contrary to international public policy.

57. International public policy in relation to which the judge adjudicating the annulment performs a review means the conception it has in the French legal system, which is to say the values and principles of which it cannot allow the violation, even in an international context.

58. However, the review performed by the judge adjudicating the action for annulment in the defence of international public policy only centres on examining whether the enforcement of the measures taken by the arbitrators clash (in a plain, effective and concrete manner) with the principles and values included in international public policy.

59. The equality of arms, which is one factor in a fair trial protected by international public policy, implies the obligation to give each party a reasonable opportunity to present their case on conditions that do not place them in a situation substantially disadvantageous compared to the other side.

60. In the case in point, in support of claim number 5, JPMC produced on 21 August 2018 in support of its Response to Claimant's Reply documents R 507 (149 pages) and R 5508 (167 pages) which are excerpts from calculation notes from Afcons.

61. On 9 October 2018, Afcons submitted its rejoinder on JPMC's counterclaims.

62. An initial hearing was held in Paris from 22 October to 2 November 2018 and a second hearing was held on 13 and 14 December 2018, also in Paris.

63. The Parties concurrently submitted their post-hearing briefs on 28 March 2019.

64. Afcons enclosed with its post-hearing brief all of the calculation notes, which in fact included 3,565 pages (exhibit R 507) and 4,686 pages (exhibit R 508).

65. According to communication 97 dated 2 April 2019, the Arbitral Tribunal found these documents inadmissible and disregarded them for the following reasons:

"*Afcons is well aware of the procedural rules. Afcons had the time to present its proof, just like JPMC, including on the expenses and costs paid in connection with the bank guarantees and securities (Schedule 1) and the calculations of the main jetty design plan (Schedule 2). With respect to the documents mentioned by JPMC in its Response to Claimant's Reply in paragraphs 473-474, namely exhibits R 507 and R 508—which, according to Afcons, were*

presented to the Tribunal out of context—the Tribunal noted that they were documents prepared by Afcons and Proes in 2011 concerning the jetty calculation notes. During the November-December 20188 hearings, Afcons had an opportunity to put questions to the witnesses and experts about the calculations of the main jetty.

- Decision: The Tribunal disregards the Schedule 1 documents as being inadmissible at this stage and dismisses Afcons' motion for the Schedule 2 documents to be admitted into evidence".

66. Afcons criticises the Arbitral Tribunal for not allowing it to react to the two exhibits R 507 and R 508.

67. It alleges that JPMC deliberately produced only excerpts knowing full well that it could not respond to them and thereby gave the Tribunal a partial portrayal of the facts by intentionally producing very limited excerpts of the calculations, suggesting that it had fraudulently delayed the project.

68. However, it is uncontested that, on the one hand, during the arbitration proceedings, Afcons did not express any reservations whatsoever during the production of the disputed exhibits nor did it raise any issues or express any criticisms.

69. These exhibits were properly produced according to the procedural rules agreed at the case management conference held on 22 April 2017 on which the Parties were in agreement.

70. Exhibits R 507 and R 508 were produced more than two months before the written phase, the hearings having begun on 22 October 2018.

71. These calculation notes come from Afcons itself, which there had them in its possession and had knowledge of them since the beginning of the arbitration proceedings.

72. Afcons had an opportunity to express an opinion with respect to these disputed exhibits, which were discussed during the hearings during the questioning of Mr (...) the Afcons employee who was the source of these documents.

73. On the other hand, it is established that after the hearing, Afcons made no motion to be authorised to produce all the note, the production of which was prohibited by virtue of the procedural schedule based on communication number 9 issued by the Tribunal on 17 December 2018, which recalled that "*the Parties shall deliver to the Tribunal on Thursday, 14 March 2019, their post hearing briefs of no more than 200 pages. These briefs may, and the Tribunal encourages the Parties to do so, make reference to documents in the casefile and to the [hearing] transcripts but they must not be accompanied by any other documents/exhibits/schedules. The post hearing brief will therefore contain only the respective observations of the Parties and the hearing transcript*".

74. As per the procedural rules established and accepted, the Parties' briefs were not to be accompanied by any other documents/exhibits/schedules not already produced in the casefile, about which the president of the Tribunal had also taken care to remind the Parties at the end of the hearing and to which they made no remarks or comments whatsoever about the procedure, according to the hearing transcript produced.

75. In light of the foregoing, Afcons did indeed have an opportunity to discuss, both before and during the hearing, exhibits R 507 and R 508 produced in a fully transparent manner as part of the arbitration proceedings by JPMC as excerpts of documents, which, moreover, the Claimant was aware of and could produce since the beginning of the proceedings.

76. Not having expressed any criticism or made any motions in this regard, the Tribunal did not violate the quality of arms by disregarding the late production of all the calculation notes that

Afcons enclosed with its post hearing brief in violation of the procedural rules agreed.

77. Afcons expressed two other criticisms, which are "*that it was denied the possibility of submitting a technical expert's report in response to the report filed JPMC with its Response to Claimant's Reply; it was denied the possibility to submit additional documents in response to the submission by JPMC's quantum expert with JPMC's Response to Claimant's Reply, truncated versions of Afcons' financial statements*".

78. In addition to the fact that the alleged claims in the procedural conduct appear only in the introduction of these written submissions and are not expounded on in the body of the grounds, Afcons failed to explain how the Tribunal's decisions do not uphold the principle of equality between the Parties.

79. It mere said "*that they also raised numerous questions regarding the upholding of the principle of equality*" (§ 106 of their written submissions) without actually provide evidence of a situation that created a clear disadvantage to its detriment that gave the other side a decisive advantage constituting a violation of the principle of equality.

80. This ground for appeal will therefore be dismissed in full.

The failure by the Arbitral Tribunal to comply with its mission

81. Afcons alleges that the Arbitral Tribunal failed to state the reasons on which its decision was based with respect to two points: (i) the determination of the date on which the project was supposed to be received and (ii) the release of the retention payment, which JPMC disputes, asserting that in actual fact the Claimant is seeking to call into question the pertinence of the reasons upon which its decisions are based and that, in any case, the award does indeed state the reasons upon which it is based.

Wherefore:

82. According to Article 1520(3) of France's Rules of Civil Procedure, action for annulment is available if the Tribunal ruled without complying with the mission entrusted to it.

83. The Parties having chosen Paris, France, as the seat of the arbitration, French law is applicable to the proceedings.

84. According to Article 1482 of France's Rules of Civil Procedure, rendered applicable in matters of international arbitration by Article 1506(4) of France's Rules of Civil Procedure, "*an arbitration award must state succinctly the respective claims and arguments of the parties. It must state the reasons upon which it is based*".

85. Moreover, Article 32 of the 2012 ICC Rules, applicable to the arbitration case, specifies that "*The award shall state the reasons upon which it is based*".

86. It is therefore, in the case in point, up to the Arbitral Tribunal to state the reasons upon which its award is based as part of the mission that was entrusted to it, limited primarily by the subject matter of the dispute, as it is determined by the claims of the parties.

87. However, the review of the judge adjudicating on the application for annulment relates only to the existence, and not the pertinence, of the grounds of the award.

The criticism relating to the determination of the date of project acceptance

88. In the case in point, based on the award, the project acceptance date is a question that was debated by the Parties who were not in agreement about the date to be used.

89. Each of them in turn stated its position.

90. Afcons maintains that the project acceptance took place on 14 December 2012 and, for its part, JPMC contends that it never took place.

91. According to § 324 of the award, the Tribunal decided that "*Considering the possible acceptance dates, for example the date of the first loading of the ship, December 2012, or the TGBE done in August-September 2014 or the certificate of conditional acceptance issued on 11 May 2015 or the October 2016 notice of arbitration, the Tribunal decides that the project was accepted by JPMC on 11 May 2015, which is the date on which JPMC issued the certificate of conditional acceptance. The reason is that on this date JPMC must have considered that the project was operational, even though not completely compliant with the Employer's Requirements, but at least in a satisfactory manner*".

92. Contrary to what Afcons contends, this statement clearly constitutes a reason upon which its decision is based as it presents the reason that justified the acceptance date.

93. The claim based on the fact the Tribunal used the functional criteria of the project which, according to it, has no rationale connection to the rest of the section relating to the Project Acceptance to set the acceptance date as at 11 May 2015 calls into question not the existence but the content of the reason on which the decision was based, which is not within the discretion of the judge adjudicating on the application for annulment.

94. The same applies to the alleged breach "*of failing to examine the observations presented by the parties concerning the acceptance date in relation to the relevant contractual provisions, the performance guarantee tests and the uninterrupted commercial operation of the project since December 2012*", which in actual fact criticises the pertinent and compelling nature of the reason on which the decision was based, bearing in mind that the arbitrators are not required to follow the parties in the detail of their argumentation.

95. In light of these findings, the ground for appeal on this account will be dismissed.

<u>The criticism relating to the release of the Retention Payment</u>

96. In the case in point, the Tribunal adjudicated the question of whether the Retention Payment should be released.

97. Based on the award, in the statement of Afcons' claims (page 27 - D) and in its Claimant's Reply, the company asked for the release of the retention payment in its claim number 1 in which it was seeking payment of certain "*provisional payment certificates*" and alleged that JPMC retained at the same time the value of these certificates and kept the retention payments, which JPMC disputed in its Response to Claimant's Reply.

98. According to the excerpt of the award (paragraph D, pages 618-619), the Tribunal ruled as follows with respect to the claim: "*orders JPMC to release said Retention Payments immediately or, in the event of any or all of said Retention Payments has already been paid by JPMC, to pay the amount of the Retention Payment(s) in question, in addition to the lost revenue and the general expenses applicable, finance expenses and interest. The Tribunal decides that JPMC will immediately release the three Retention Payments that exceed the total amount of the rectification obligations in connection with JPMC's counterclaims C.1, C.2, C.3, C.4, C.5 and C.6. Consequently, JPMC may retain the amounts in retention corresponding, in a constant fashion, to Afcons' other obligations concerning the rectification works. The Parties are ordered to arrange together a practical solution with the banks and to share any bank costs or expenses on an equal basis*".

99. It can be inferred from the foregoing that contrary to what Afcons maintains, this question was indeed discussed by and between the Parties and the Tribunal stated the reasons on which its decision was based, indicating in the award the for which it decided the way it did.

100. Although the reason on which the decision was based is not especially detailed, the justification of this decision is explicitly the result of the consideration of JPMC's counterclaims C.1, C.2, C.3, C.4, C.5 and C.6 on which the Tribunal had earlier ruled; according to what had been decided, summed up on page 622 of the award, repair work still needed to be done in connection with these claims, which Afcons was ordered to do, so JPMC was entitled to withhold the payments corresponding to the value of said works.

101. The remaining claims that Afcons made against the Arbitral Tribunal in its written submissions "*having adopted a position in flagrant contradiction with the terms of the Employer's Requirements and went beyond the terms of the Retention Payments themselves*" relate to the pertinence of the reasoning of the Tribunal that lead it to its decision the review of which by the judge adjudicating the application for annulment is prohibited.

102. In light of the foregoing, the claim based on the lack of a reason on which the decision was based on this account will also be dismissed.

103. Consequently, Afcons' application for annulment will also be dismissed.

Expenses and Court Costs

104. Afcons, the losing part, will be ordered to pay costs.

105. In addition, it must be ordered to pay to JMPC, which had to undertake unrecoverable expenses to assert its rights, compensation by virtue of Article 700 of France's Rules of Civil Procedure that it is only fair to set at EUR 30,000.00.

IV. DECISION

On these grounds, the Court:

1. Rejects the action for the annulment of the Arbitration Award handed down on (...) under the aegis of the International Court of Arbitration of the International Chamber of Commerce of Paris in case No. (...).

2. Orders Afcons Infrastructure Limited to pay to Jordan Phosphate Mines Company the amount of EUR 30,000.00 by virtue of Article 700 of France's Rules of Civil Procedure.

3. Orders Afcons Infrastructure Limited to pay court costs.

The Clerk	**The Presiding Justice**
Najma El Farissi	**François Ancel**

I, Granville Wesley Fields,
sworn translator,
French/English, certify that
the preceding is an exact
translation of the original
and of the attached copy
in French

This document is assigned
the number 2022-662

Signed and stamped *ne varietur* in
Paris, France
on 4 March 2022