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**FRENCH REPUBLIC  
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**PARIS COURT OF APPEAL**

**Division 5 – Chamber 16  
International commercial chamber**

**DECISION DATED NOVEMBER 2, 2021**  
(no. /2021, 7 pages)



Registration no. on the general roll: **RG no. 20/01980 – Portalis no. 35L7-V-B7E-CBLXZ**

Decision deferred before the Court: Arbitral award dated – PARIS  
Arbitral Tribunal

**APPELLANT:**

**GOLDEN POWER INTERNATIONAL CREATION LIMITED**

A company governed under the laws of Hong Kong  
With its registered office located: Room 1211, Wing on Centre, No. 111 Connaught Road,  
Central, HONG KONG  
Represented by its legal representatives  
*Represented by Me* *attorney at the PARIS Bar, court registration:*  
*and assisted by Me* *from the firm*  
*attorney at the PARIS Bar, court registration:* *substituted by Me* *from*  
*the firm* *attorney at the PARIS Bar, court registration:*

**RESPONDENT:**

**SAS AIRBUS HELICOPTERS**

With its registered office located: Marseille Provence International Airport 13725  
MARIGNANE CEDEX  
*Represented by Me* *from the firm*  
*attorney at the PARIS Bar, court registration:* *and assisted by Me*  
*from the firm* *attorney at the*  
*PARIS Bar, court registration:*

**COMPOSITION OF THE COURT:**

In accordance with the provisions of Articles 805 and 907 of the French Code of Civil Procedure, the case was heard on June 29, 2021, in a public hearing, the attorneys, informed of the composition of the court's deliberation, not having objected thereto, before Mr. François ANCEL, President and Mrs. Fabienne SCHALLER, reporting magistrate.

These magistrates reported on the pleadings in the Court deliberation, composed of

Mr. François ANCEL, President  
Mrs. Fabienne SCHALLER, Judge  
Mrs. Laure ALDEBERT, Judge

**Court clerk**, during the discussions: Inès VILBOIS

**DECISION:**

- IN ADVERSARIAL PROCEEDINGS
- upon availability of the decision to the court registry, with the parties having been previously informed under the conditions provided in the second paragraph of Article 450 of the French Code of Civil Procedure
- signed by Mr. François ANCEL, President and Najma EL FARISSI, Court clerk, to whom the minutes of the decision were issued by the signatory magistrate.

**1 – THE FACTS AND PROCEEDINGS**

1. Golden Power International Creation Limited (hereinafter “Golden Power”) is a Hong-Kong based business consultancy and services company.

2. Airbus Helicopters (hereafter “Airbus”), which is part of the Airbus group, designs and manufactures helicopters for civil and military operations.

3. On June 17, 2009, Golden Power and Airbus entered into a consultancy services agreement under which Golden Power undertook to assist Airbus in the signing and implementation of a commercial agreement with a South Korean company called Korea Aerospace Industries (hereafter “Kai”).

4. In consideration, Golden Power was entitled to the payment of a remuneration based exclusively based on the results, amounting to % of the net amount of sales made by Airbus with Kai. Golden Power’s invoices were paid until May 2015.

5. In 2015, during the period of performance of the agreement, Airbus initiated an audit of its anti-corruption procedures and reviewed its existing anti-corruption and ethics policies, with the assistance of the law firm [redacted]. The purpose of this audit programme was, in particular, to assess the business relationships of each Airbus entity, including its relationship with Golden Power, to ensure that such relationships and any payments made in the context thereof duly complied with national and international anti-corruption laws. Airbus suspended its invoice payments to Golden Power.

6. On August 7, 2016 and March 16, 2017, the Airbus Group announced that the UK Serious Fraud Office and the National Financial Prosecution department had opened preliminary investigations into allegations of fraud and corruption in the Airbus group’s civil aviation business after discovering inconsistencies in the recourse to external consultants.

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7. On June 6, 2017, Airbus' legal and compliance department sent a letter to Golden Power informing it that Airbus was terminating the agreement and would not proceed with the payment of the amounts owed on the grounds that such payment was contrary to its internal policy and international standards, according to the audit procedure carried out.
8. Considering that Airbus had failed to comply with its obligation to pay the invoices due since May 2015, amounting to € and to ensure recognition of its due and faithful performance of the agreement, Golden Power initiated an arbitration procedure on March 8, 2018, on the basis of the arbitration clause stipulated in Article 11.2 of the agreement before the International Court of Arbitration of the International Chamber of Commerce (ICC).
9. In an award dated the Sole Arbitrator dismissed Golden Power's claims, declared that the costs of the arbitration proceedings, liquidated by the ICC at the amount of USD should be assumed equally by the parties, and ordered each party to assume its own legal expenses.
10. Golden Power filed an application for annulment of this arbitral Award by declaration dated January 20, 2020.
11. The closing order was pronounced on June 1, 2021.

## **II – THE PARTIES' CLAIMS**

**12. In its final submissions, communicated electronically on August 23, 2020, Golden Power requested of the Court as follows:**

- ACKNOWLEDGE that the arbitral proceedings did not respect the adversarial principle;
- ACKNOWLEDGE that the failure to respect the adversarial principle causes a definite grievance for Golden Power
- FURTHER ACKNOWLEDGE that the Award violates international public policy insofar as it is based on elements that were not discussed in the adversarial process;

Consequently,

- HOLD AND JUDGE that the Arbitrator failed to observe the principle of adversarial proceedings and that the Award violated international public policy;
- DECLARE admissible Golden Power's claim for the invalidity of the Award;
- ANNUL the Final Award (ICC case No. ) rendered in Paris on under the aegis of the International Court of Arbitration of the International Chamber of Commerce;
- ORDER Airbus to pay Golden Power the amount of 35,000 euros pursuant to Article 700 of the French Code of Civil Procedure and to pay all the costs.

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**13. In its latest submissions communicated electronically on November 23, 2020, Airbus Helicopter requested of the Court as follows:**

- DISMISS the action for annulment initiated by Golden Power;
- ORDER Golden Power to pay Airbus Helicopters the amount of 50,000 euros under Article 700 of the Code of Civil Procedure, as well as all the costs of the proceedings;
- DISMISS Golden Power of all its claims to the contrary.

**III/ GROUND OF THE DECISION**

**Concerning the breach of the adversarial principle (Article 1520 4° of the Code of Civil Procedure)**

14. Golden Power asserts that it was not able to discuss the opposing party's arguments as well as the legal and factual elements obtained by the arbitral tribunal, which characterizes a breach of the adversarial principle.

15. It states that the arbitrator violated the adversarial principle by acknowledging the confidential nature of certain elements due to the secrecy of the investigation but by nonetheless relying on these elements to characterize a set of evidence of corruption justifying the non-payment of the invoices, and by not enabling Golden Power, despite its requests, the production of such elements. Moreover, it established that it was unable to defend itself, as it only became aware of the corruption issues in its regard at a late stage, thereby reinforcing its difficulty in contradicting these allegations.

16. In response, Airbus states that the principle of adversarial proceedings was strictly respected by the arbitrator insofar as the parties to the arbitration proceedings had the opportunity to discuss the factual and legal elements produced in the discussions and that the sole arbitrator based his decision solely on the objective documents and elements submitted to the parties for discussion, without any reference to the firm's report or to elements drawn from a criminal investigation.

17. It asserts that Golden Power actually criticizes the method for the set of evidence used by the arbitrator in the absence of substantive evidence of a situation of active corruption, which results in requesting a review of the Award on the merits.

18. It added that Golden Power was able to discuss the red flags raised by Airbus throughout the arbitration proceedings. It also indicated that the complaint relating to the lack of communication of the Audit results is ill-founded in light of the Procedural Order no. 2, which recalls that Golden Power was able to request this production, which was refused, as it had no influence on the outcome of the Award.

**Accordingly,**

19. It results from Article 1520, 4° of the Code of Civil Procedure that an action for annulment is admissible if the adversarial principle has not been respected.

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20. The adversarial principle only requires that the parties were able to communicate their factual and legal claims and to discuss those of their opposing party and, accordingly, that nothing that served as a basis for the arbitrator's decision has been excluded from their adversarial discussion.

21. In this case, the parties filed several requests for the production of documents during the preparatory phase of the arbitration and, in particular, on January 4, 2019, Golden Power requested the production of Airbus' audit reports in its regard, as well as the documents relating to the existence of a criminal investigation against Golden Power, and, more generally, any compliance audit in its regard.

22. After discussion by the parties on these requests, the arbitrator, following procedure no. 2 rendered on February 1, 2019, accepted a part thereof and rejected two of these requests on the grounds that one was covered by the secrecy of documents exchanged between an attorney and his client ("legal privilege"), and it considered that the other was insufficiently precise, and accordingly, excessively extensive.

23. In its rejoinder submission dated March 18, 2019, Golden Power did not contest the refusal to produce such documents or the reasons retained by the arbitrator, but rather emphasized that since it had never been provided with the results of this audit and, furthermore, which had not been communicated as evidence by Airbus since the arbitrator had not been recipient thereof, Airbus had failed to comply with its burden of evidence, since discussions had been held between the parties on the burden of evidence for corruption, in the absence of formal evidence. It asserted that Airbus merely alleged in its defence submissions that Golden Power had not performed its obligations, in accordance with the compliance rules set out in the Agreement and applicable to the Airbus group, without providing further details, which, in its view, establishes that Airbus did not provide any evidence of fault or negligence on the part of Golden Power with regard to such compliance rules, requesting that the arbitrator dismiss Airbus' claims and order it to pay the outstanding invoices.

24. It evidently results that the parties were able to discuss the absence of production of such audits or criminal investigation reports, without this resulting in a breach of adversarial process, as the parties were able to discuss the consequences of the absence of production of such documents.

25. Golden Power also does not establish that such documents were communicated to the arbitrator, the latter having by no means based his decision on such documents as § 155, 156, 177 and 202 of the Award referred to by Golden Power in its submissions do not enable such allegation to be established.

26. Accordingly:

- § 155 of the Award recalls the existence (disclosed by Airbus) of an investigation by the U.K. Serious Fraud Office and the National Financial Public Prosecution department, for which the arbitrator states to be aware of the highly sensitive nature thereof, justifying the confidentiality of such an investigation, without, however, this paragraph inferring that the arbitrator would have received any information relating to this criminal investigation,

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-§ 156 acknowledges Airbus' refusal to disclose information concerning the pending investigation, with the arbitrator acknowledging that Airbus could have been more "transparent" when it notified Golden Power of its refusal to continue the contractual relationship, due to the lack of precision in the reasons therefor,

-§ 171 specifically takes into account the absence of *prima facie* evidence in assessing the burden of evidence, which establishes that the arbitrator did not have access to undisclosed evidence,

-§202, which concerns Mr. [A]'s testimonial, makes no reference to documents that were not produced, but only to his own statements during the "cross-examination".

27. On the contrary, it results from the Award that the arbitrator relied only on the set of evidence ("red flags") (§260), profusely discussed by the parties during the arbitral proceedings (§184 and §264), the accumulation of which enabled him to consider them to be sufficient to base the suspicion of corruption and to justify the refusal of payment by Airbus, a method criticized by Golden Power, which, in reality, amounts to requesting the judge deciding on the annulment to revise the Award under the aegis of a breach of the adversarial principle.

28. Finally, the breach of the adversarial principle cannot result from the mere allegation, incidentally, not justified by the detailed rendition in the Award by Golden Power's director, Mr. [A], in his testimonial, that he did not understand the questions.

29. Accordingly, this ground shall be dismissed.

#### **Concerning the breach of international public policy (Article 1520(5) of the Code of Civil Procedure)**

30. Golden Power asserts that by not respecting the adversarial principle the enforcement of the Award would breach the equality of arms, which is a component of international public policy, whereas, furthermore, Golden Power's representative, Mr. [A], had difficulty understanding English.

31. On the other hand, it states that to uphold Golden Power's claims would not entail a breach of international public policy insofar as there is no evidence of payment to third parties of any amount of money or even any indication that part of the contractual commissions was or was due to be allocated for the benefit of certain Kai employees for the purpose of obtaining a deed in breach of contractual obligations.

32. In response, AIRBUS asserts that insofar as the principle of adversarial proceedings was respected, the Court shall not accept the existence of a breach of international public policy on this count. It adds that Golden Power was at liberty to have any compliance study or audit carried out on its own activity, and to produce such evidence in the proceedings, and that the parties were placed in the same conditions to provide evidence throughout the arbitration proceedings and that, accordingly, there was no breach of international public policy due to a breach of the principle of the equality of arms.

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33. Airbus also argues that to uphold Golden Power's claims would entail a risk of breach of international public policy insofar as on the basis of a set of reliable, specific and consistent evidence that the sole arbitrator was able to judge that the evidence of breach by Golden Power of the anti-corruption laws had been provided, in the context of the performance of the agreement, and, accordingly, the latter could not assert the payment of its invoices.

**Accordingly,**

34. It results from Article 1520, 5° of the Code of Civil Procedure, that an action for annulment is admissible if the recognition or enforcement of the award is contrary to international public policy.

35. The international public policy for which the judge decides on the annulment shall include the vision of the French legal system, i.e., the values and principles that must be respected, even in an international context.

36. However, the review exercised by the judge deciding on the annulment in defence of international public policy only concerns examining whether the implementation of the provisions taken by the arbitral tribunal evidently, effectively and genuinely violate the principles and values in international public policy.

**Concerning the grievance of the non-compliance with the equality of arms**

37. Equality of arms, which constitutes an element of fair trial protected by international public policy, implies the obligation to offer each party a reasonable opportunity to present its cause in conditions that do not place it at a substantial disadvantage compared to the opposing party.

38. In this case, it does not result from this Award that this was Golden Power's situation.

39. Indeed, it is not contested that the refusal to pay by Airbus Helicopters followed an internal audit launched within the Airbus group, the purpose of which was to review its compliance procedures in order to strengthen its policies, procedures and practices relating to ethics and compliance, and in particular, the procedures relating to the use of intermediaries, in order to verify that any payment made complies with international standards, legislation and regulations relating to the combat against corruption.

40. In this context, the law firm [...] was asked to assist the Airbus group in the implementation of the international audit of Airbus helicopters' business partners, including Golden Power, whose manager Mr. [A] was interviewed by [...] by telephone on October 5, 2015, as indicated in Golden Power's submissions, and then extensively at the hearing, as results from the Award.

41. Similarly, it results from the Award (§90 and 155) that whilst Airbus group considered the withholding of payments due to its various co-contractors to be justified, citing the investigations launched by the UK Serious Fraud Office and the National

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prosecution department, this was not the position defended by most of Airbus' co-contracting companies, which, according to Golden Power, had apparently benefited from favourable decisions by several French courts that had ordered Airbus to pay the invoices, notwithstanding the said pending investigations, to which the press made reference according to the documents provided to the arbitrator by Golden Power, thereby sufficiently establishing that the parties had been able to exchange views on this point on an equal footing, even in the absence of any further information on the content of these investigations.

42. Moreover, it should be acknowledged that the arguments developed in support of this ground are identical to those developed in relation to the ground alleging failure to comply with the adversarial principle.

43. On the one hand, the alleged breach of the equality of arms principle by the arbitrator is based, according to Golden Power, on the failure to respect the adversarial process, which is not characterized in this case. At no time did the arbitrator base his decision on elements from the audit or the criminal investigations, which were not submitted to the discussions, but only on the elements produced by each of the parties and the "red flags".

44. On the other hand, Mr. (A)'s alleged difficulties of understanding were not established in support of the ground alleging a breach of the adversarial process. Moreover, even if they were established, it results from his extensive hearings recalled in the Award (§186 to 241), that they had no impact on his ability to present his cause, as he was assisted by an interpreter during the arbitration proceedings and by counsel, with a good command of English.

45. In light of these elements, it does not result that Golden Power was thereby placed in a substantially disadvantageous situation and that, in so doing, the inclusion of the Award in domestic law contravenes international public policy.

46. The ground was dismissed.

47. Consequently, the ground asserted by Airbus to oppose the annulment, based on the potential consequences of an annulment of such Award with regard to international public policy, has become irrelevant and shall be dismissed.

### Concerning the costs and expenses

48. Golden Power, as the unsuccessful party, should be ordered to pay all the costs.

49. In addition, it must be ordered to pay an indemnity to Airbus Helicopters, which had to incur unrecoverable costs in order to assert its rights, under Article 700 of the Code of Civil Procedure, equitably set at 35,000 euros.

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#### IV-OPERATIVE PROVISIONS

The Court, on these grounds:

- 1- Dismisses the action for annulment filed against the Award rendered on under the aegis of the International Chamber of Commerce;
- 2-Orders Golden Power to pay Airbus Helicopters the amount of 35,000 euros under Article 700 of the Code of Civil Procedure;
- 3-Orders Golden Power to pay the costs.

**The Court Clerk**

**Najma EL FARISSI**

**The President**

**François ANCEL**

Pour traduction certifiée conforme à l'original en langue française visé ne variatur sub numéro 00872 ; Ce jour, le 21 février 2022. Jane Kochanski

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