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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 25 JANUARY 2022

(No. 13/2022, 13 pages)

Case number: 20/12332 - Portalis No. 35L7-V-B7E-CCJID

Decision on appeal before the Court: Arbitration Award No. [...]/DDA handed down on 9 March 2020 in Paris under the aegis of the ICC.

CLAIMANTS IN THIS ACTION:

AMT Cameroun
A Cameroonian Company
Registered office: 678, avenue du Général de Gaulle, BP 15651 Bonanjo, Douala, Cameroon
Represented by its legal representatives

AMT SA Advance Maritime Transports
A Swiss Company
Registered office: 23, avenue Perdtemps, 1260 Nyon, Switzerland
Represented by its legal representatives

Privinvest
A Lebanese Company
Registered office: Marfaa 157, Saad Zaghloul Street Solidere, Beirut, Lebanon
Represented by its legal representatives

Represented by [M L]*, Esquire, Barrister-at-Law admitted to the Paris Law Society (Law Society Membership* [...]*)*

Represented by trial barristers [O P], Esquire, and [Q R], Esquire, Barristers-at-Law, admitted to the Paris Law Society (Law Society Membership [...])

RESPONDENTS IN THIS ACTION:

[A Z]
[Address 1]

Navitrans
Registered office: 28, rue de la Gare, 1260 Nyon, Switzerland

Represented by [E F], Esquire, Barrister-at-Law, admitted to the Paris Law Society (Law Society Membership [...])

Represented by trial barristers [G H], Esquire, Barrister-at-Law admitted to the Paris Law Society (Law Society Membership [...]) and [I J], Esquire, Barrister-at-Law, admitted to the Paris Law Society (Law Society Membership [...]).

MEMBERS OF THE BENCH:

The case was heard on 30 November 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 Court Registry, 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 decision was given by the justice who signed it.

I. STATEMENT OF FACTS AND PROCEEDINGS

1. AMT Cameroun (hereinafter "AMT Cameroun") is a Cameroonian public limited company whose business is transport, logistics, customs transit, international transit commission, maritime consignment, storage and warehousing, port handling and stevedoring services.

2. AMT SA, formerly Necotrans Suisse (hereinafter "AMT Suisse"), is a Swiss company whose corporate purpose is to provide services in the area of air and maritime shipping, transit and commercial representation in the oil field. It has a 90% stake in AMT Cameroun.

3. Necotrans Holding is a French company that went into bankruptcy proceedings on 29 June 2017 and then all its assets were sold off on 25 August 2017. Necotrans Suisse, a 100% subsidiary of Necotrans Holding, subsequently became AMT Suisse. Necotrans Holding also owned one (1) share in AMT Cameroun.

4. Privinvest is a Lebanese public limited company, the holding company of an industrial group specialised in the design and manufacture of military and commercial ships as well as super yachts.

5. [A Z] is an AMT Cameroun shareholder who owns a 10% stake in the company (1,500 shares).

6. Navitrans SA is a Swiss company that provides commercial representation in the field of maritime shipping, transport, freighting, storage and customs formalities services, doing business in particular on the African continent. It was involved as a third-party funder of the arbitration involving [A Z] versus AMT Cameroun and Privinvest.

7. AMT Cameroun, Privinvest and Navitrans have competing businesses in the same sector.

8. In a judgment dated [...] August 2017, the Commercial Court of Paris approved the planned sale of all the assets of Necotrans Holding and set "*the effective date and the date possession is taken in all of the planned sales*" at 26 August 2017.

9. In a judgment dated [...] November 2017, the Commercial Court of Paris corrected clerical errors in the operative part of the [...] August 2017 judgment, in particular as they related to substitutions.

10. The sales agreements following the approval of the planned sale of the assets of Necotrans Holding were entered into on 20 October 2017.

11. [A Z], who asserted her right of first refusal in respect of the shares of AMT Cameroun and considered that her right of first refusal was violated, brought, on 17 August 2018, arbitration proceedings on the basis of Article 40 of the Articles of Association of AMT Cameroun.

12. Prior to that, she had entered into a funding agreement on 28 May 2018 with Navitrans SA so that she could finance the arbitration proceedings, in exchange for which, if she was successful in her claims relating to the exercising of her right of first refusal and if the disputed shares were transferred to her, she agreed to sell them to Navitrans at the price that she paid for them, plus EUR 200,000.00.

13. The Arbitral Tribunal in ICC arbitration case number [...]/DDA, the seat of which was in Paris, was comprised of [B K], Esquire, and Professors [C D] (co-arbitrators) and [D C] (President).

14. At the request of AMT Cameroun, AMT Suisse and Privinvest were brought into the arbitration proceedings.

15. A partial award on jurisdiction ratione personae was handed down on 9 March 2020 pursuant to which the Arbitral Tribunal found that (i) it had jurisdiction over Privinvest and (ii) it did not have jurisdiction over Navitrans, the third-party funder of [A Z].

16. This award is the subject of the present application to vacate pursuant to a notice filed on 21 August 2020 by AMT Cameroun, AMT Suisse and Privinvest (Case No. 20/12332).

17. The final award on jurisdiction ratione materiae and on the merits of the dispute relating to right of first refusal was rendered on 31 March 2021. It was the subject of an application to vacate on 13 April 2021 (Case No. 20/07383).

18. The parties gave notice of their agreement on the protocol of the International Commercial Chamber of the Court of Appeal of Paris.

19. The pretrial phase ended on 16 November 2021.

20. Professor [E Y] gave testimony at the hearing on his legal opinion and answered the questions of the Court and of the barristers. He in particular indicated that under French law a judgment approving a planned sale and setting the effective date does not necessarily imply the transfer of ownership of assets; such transfer occurs pursuant to agreements entered into by virtue of a proposal and the buyer is the party who acquires ownership of an asset or is engaged in the process to acquire ownership. With respect to substitution, it should be noted that French legal opinion is in agreement about the fact that a substitution in a sale process results in effectuating one single transfer and simplifies the circulation of the assets; in the case in point, Privinvest substituted in the place and stead of AMT Suisse in the execution of the planned sale and never acquired ownership of the AMT Cameroun share.

II. CLAIMS OF THE PARTIES

21. In their latest pleadings submitted through the Barristers' Virtual Private Network (RPVA) on 5 November 2021, AMT Cameroun, AMT Suisse and Privinvest, by virtue of Articles 1520(1) of France's Rules of Civil Procedure, sought the following remedy from the Court:

- FIND AND RULE that in the Award handed down on 9 March 2020, the Arbitral Tribunal constituted under the aegis of the ICC and composed of Professor [D C], [B K] and [C D] wrongly found that it had jurisdiction over Privinvest;
- FIND AND RULE that in the Award handed down on 9 March 2020, the Arbitral Tribunal constituted under the aegis of the ICC and composed of Professor [D C], [B K] and [C D] wrongly found that it did not have jurisdiction over Navitrans.

Consequently:

- VACATE the award dated 9 March 2020 which is the subject of this application;
- ORDER [A Z] to pay the sum of EUR 100,000.00 to the Claimants by virtue of Article 700 of France's Rules of Civil Procedure and all costs.

22. In their latest pleadings submitted through the Barristers' Virtual Private Network (RPVA) on 15 November 2021, [A Z] and Navitrans, by virtue of Articles 1520(1) of France's Rules of Civil Procedure, sought the following remedy from the Court:

- DISMISS all the claims, pleas and submissions of the Claimants;
- REJECT the action to vacate;

Consequently:

- ORDER the Claimants to pay to the Respondents the sum of EUR 100,000.00 (subject to adjustment) on the basis of Article 700 of France's Rules of Civil Procedure;
- ORDER the Claimants to pay all costs of the action to vacate, to be paid to [...], Esquire.

III. GROUNDS OF THE DECISION

The ground to vacate the award based on the fact that the arbitral tribunal wrongly found that it had jurisdiction over Privinvest (1520(1) of France's Rules of Civil Procedure)

- As a preliminary matter, the scope of the review and Article 1466 of France's Rules of Civil Procedure

23. [A Z] and Navitrans maintain that the review by the court adjudicating the action to vacate brought by virtue of Article 1520(1) of France's Rules of Civil Procedure is limited to determining the existence and scope of the arbitration agreement and the court can examine whether the decision of the Arbitral Tribunal was well-founded, in particular with respect to the determination and application of legal rules. They also invoke the application of Article 1466 of France's Rules of Civil Procedure, and criticising the *Schooner* ruling, they ask the court to dismiss the action to vacate on grounds that the Claimants have based their action on new arguments that were not raised before the Arbitral Tribunal.

24. ATM Cameroun, ATM Suisse and Privinvest maintain that the review by the court adjudicating the action to vacate brought by virtue of Article 1520(1) of France's Rules of Civil Procedure is on the contrary a full review of the award. They indicate that the condition to be able

to present new grounds and new evidence is that the question of jurisdiction had been raised before the arbitrators, which is the case here, maintaining that the Court is required to exercise an extensive review of jurisdiction and it cannot stop at the designations retained by the arbitrators.

Wherefore:

25. Under Article 1520(1) of France's Rules of Civil Procedure, action to vacate is available if the tribunal wrongly found that it had or lacked jurisdiction. Under Article 1466 of the same rules, a party who, with full knowledge of the facts and with no legitimate grounds, fails to invoke an irregularity in a timely manner before the arbitral tribunal is deemed to have waived its right to invoke it.

26. As a result, when jurisdiction was debated before the arbitrators, the parties are not deprived of the right to invoke on this question, before the court adjudicating the annulment, new grounds and arguments and to produce, to this end, new evidence.

27. The court adjudicating the action to vacate reviews the decision of the arbitral tribunal regarding its jurisdiction by seeking all legal or factual information making it possible to examine the scope of the arbitration clause but that does not give it to power to revise decision on the merits.

28. As [A Z] and Navitrans did not however address the admissibility of the grounds to vacate on the basis of Article 1466 of France's Rules of Civil Procedure in their pleadings, the motion to dismiss on this basis shall be treated as part of the examination of jurisdiction on the basis of Article 1520(1) of France's Rules of Civil Procedure in the reasoning hereinafter.

- The legal or factual information making it possible to examine the scope of the arbitration clause as regards the jurisdiction of the arbitral tribunal

29. AMT Cameroun, AMT Suisse and Privinvest maintain that the Arbitral Tribunal wrongly found that it had jurisdiction over Privinvest on grounds that the arbitration clause included in the Articles of Association of AMT Cameroun is not binding and enforceable on it. They point out that Privinvest is not a party to the Articles of Association and that:

- the 25 August 2017 commercial court judgment did not have as an effect to transfer ownership of the single share of AMT Cameroun, owned by Necotrans Holding, to Privinvest;
- Privinvest was never in the position as a buyer, which is required in the Articles of Association of AMT Cameroun.

30. The Claimants point out first of all that under French law a judgment approving a planned sale does not, except in case of an exception, transfer ownership and that, pursuant to Article L.642-8 of France's Business Code, the transfer of ownership of the shares sold occurs only upon completion on the sale. Proof of this is that if Privinvest had been the owner of the shares starting from 26 August 2017, the right of substitution granted by the commercial court on 7 November 2017 would have served no purpose. They consider that it was on 20 October 2017 that the single share of AMT Cameroun owned by Necotrans Holding was, by virtue of the planned sale, sold to AMT Suisse, substituted by Privinvest. They point out that between 226 August 2017 and 20 October 2017, Privinvest was merely the guarantor of the execution of the planned sale and manager of the assets of Necotrans Holding, which that latter fully owned. They maintain moreover that the guarantee with regard to the right of first refusal is only meaningful insofar as Privinvest has not yet become a shareholder.

31. They dispute that the immediate "*effect*" ordered in the judgment of the commercial court on 25 August 2017 transferred ownership of the single share of AMT Cameroun to Privinvest and they maintain that the Arbitral Tribunal confused the substitution in the right to acquire with the succession of a right of ownership, thereby distorting the clear terms of the sales

agreement. They maintain that the effective date of the judgment is the starting point from which the directors must take action to effectuate the sales agreements.

32. They produced in court the legal opinion of Professor [E Y] and maintained that the Arbitral Tribunal had confused the term "*assignee*" as defined in the French law of companies in difficulty (the beneficiary of the assets included in the planned sale and ensuring the continuity of the business), which was attributed to Privinvest before AMT Suisse and the terms "*buyer*" as defined in property law and in Article 1 of the Articles of Association of AMT Cameroun (those who own shares after entering into sales agreements) which only ever involved AMT Suisse.

33. In response, [A Z] and Navitrans maintain first of all that, under cover of a "misrepresentation of the facts", the Claimants in actual fact intend to have the award revised, by arguing evidence that they did not feel the need to present to the Arbitral Tribunal in order to call into question the determination by the Arbitral Tribunal of the status as buyer and therefore of shareholder of Privinvest.

34. In any case, they maintain that the Arbitral Tribunal rightly found that it had jurisdiction over Privinvest by ruling that the arbitration clause contained in Article 40 of the Articles of Association of AMT Cameroun is binding and enforceable on Privinvest on grounds that:

- Privinvest was declared to be the buyer of the single share of AMT Cameroun owned by Necotrans Holding and by it, a shareholder, in the 7 November 2017 commercial court judgment.
- Privinvest having been authorised to substitute in the place and stead of AMT Suisse in the 7 November 2017 judgment, this shows that it was necessarily buyer before that.

The judgment approving the planned sale necessarily effectuated the transfer of the single share to Privinvest and not to AMT Suisse.

35. The maintain that in any case Privinvest is bound by the arbitration clause contained in the Articles of Association, be it as a shareholder or as a guarantor.

Wherefore:

36. According to the principles laid out above, it is not up to the Court to substitute the arbitrators or to examine the relevance of their reasoning in the determination of their own jurisdiction, but to determine the scope of the arbitration agreement.

37. In the case in point, the arbitration agreement is the result of the arbitration clause contained in the Articles of Association of AMT Cameroun (hereinafter the "Articles of Association"), a company governed by the OHADA Uniform Act on commercial companies and economic interest groups (the "Uniform Act").

38. Article 40 of the Articles of Association hold that:

"*Any disputes that may arise during the course of the existence of the Company, or after its dissolution during the course of the liquidation process, either between the Shareholders and the Company or between the Shareholders themselves, relating to the corporate affairs or the performance of the provisions of the Articles of Association (the "Dispute") shall be resolved exclusively in accordance with the provisions of this Article.*

Failing an out-of-court agreement between the parties within a period of thirty (30) days after the first notification addressed by either of the parties to the other party in view of an out-of-court settlement, the Dispute shall be resolved definitively according to the version of the Arbitration Rules of the International Chamber of Commerce (the "Rules") in effect on the date of the registration of the Company with the RCCM by one or more arbitrators appointed in accordance with the Rules.

The seat of the Arbitral Tribunal shall be in Paris; the language of the arbitration shall be French".

39. The validity of said clause was not contested, only its enforceability on Privinvest is in debate.

a) The scope of the clause defined in the Articles of Association of AMT Cameroun

40. The examination of the scope of the arbitration clause with respect to the status as a buyer or as a shareholder as defined in the Articles of Association must be based on the will of the parties and French law is not intended to apply. It is well-established in fact that by virtue of a material rule of international arbitration law, the arbitration clause is examined, subject to the mandatory rules of French law and of international public policy, based on the common will of the parties in light of all of the circumstances of the case with no need to refer to any state law. Yet, in the case in point, French corporate law governing share sales, which is not mandatory law, is not intended to govern the Articles of Association or the interpretation of the status as a shareholder that the founders of AMT Cameroun intended to give to it. Furthermore, even assuming that statutory or contractual provisions must apply, it should be noted that the arbitration agreement stemming from the arbitration clause contained in the Articles of Association of the Cameroonian company AMT Cameroun, a company governed by the OHADA Uniform Act and not by French law.

41. Under Article 1 of the Articles of Association "*a Public Limited Company is hereby formed with a Board of Directors, Chairman of the Board of Directors and a Chief Executive Officer (the "Company"), that exists and will exist between the owners of shares created hereinafter, those that may be created in the future, their buyers and those who may become so in the future (the "Shareholders")*".

42. The definition of "shareholders" therefore encompasses, according to the Articles of Association:

- owners of shares;
- buyers of shares;
- and those who may become so in the future.

43. Under Article 12 of the Articles of Association "*possession of one Share automatically implies acceptance of the Articles of Association and shareholder resolutions lawfully passed at General Shareholder Meetings.*

The rights and obligations attached to the shares follow them regardless of the owner into whose hands they may pass".

44. Under Article 14.2 of the Articles of Association, "*in the context of the Articles of Association, the following definitions have been agreed:*

"Shares" or "Securities": means (i) capital securities, (ii) all securities that give access, immediately or in the future, to a portion of the capital of the Company and (iii) bonds, warrants and rights associated with capital securities and/or the securities referred to in Article 744 of the Uniform Act….".
…

"*Transfer" means any operation, for valuable consideration or without consideration, resulting in the transfer of ownership, of bare ownership or of beneficial ownership of Shares or Securities issued by the Company, regardless of the legal nature and for any reason whatsoever, namely in particular: sale, transfer, inheritance, exchange, gift, contribution to a Company, merger or any like operation, court-ordered sale, liquidation, transfer of all assets as well as any creation of sureties on the Shares and Securities, including any security pledge, creation of surety or security or placed in escrow as well as any act that may have as an effect,*

immediately or in the future, to restrict the possession or the free disposal of said Shares or Securities".

"*Third Parties" refers to any individual or entity that does not have the status as a Shareholder of the Company*" (terms underlined by the Court).

45. As a result, the status as a Shareholder as defined in the Articles of Association includes owners, buyers and "*those who may become so in the future*", automatic acceptance of the Articles of Association resulting from the "*possession*" of securities and not the immediate ownership of the securities.

46. The Articles of Association grants the status as "*Shareholder*" to a buyer of a share, regardless of whether the transfer involves full ownership, bare ownership or beneficial ownership of securities, and access to the capital of the company can be immediate or "*in the future*".

b) The factual and legal factors used to establish jurisdiction

47. The status as buyer of Privinvest on the date of the 25 August 2017 commercial court judgment can therefore only be examined by applying the criteria based on the will of the parties as contained in the Articles of Association, in light of the factual circumstances of the case and not the application of principles of French law, given that it has not been alleged that this law was mandatory, or even pursuant to the OHADA Uniform Act and rules relating to the registration of securities in a securities account for purposes of transfer of ownership.

48. Yet, it is very clear based on:

- the decision of the board of directors of AMT Cameroun dated 9 August 2017 that approved as a new shareholder "*the proposed buyer in favour of which the Commercial Court of Paris shall order the sale of the equity investment*"; and
- the terms of the 25 August 2017 judgment of the Commercial Court of Paris that approved the planned sale to Privinvest and that set as at 26 August 2017 the date it took effect and the date on which possession of the sold shares was taken;

that Privinvest had acquired the status as the "*buyer*" of the shares sold by the effect of the 26 August 2017 judgment (the 25 August judgment implied the Transfer as defined in the Articles of Association), this status as buyer not being subject to any condition other than those set out in the Articles of Association and fulfilled in the case in point, and no French law provisions can be binding on it and specifically Article L.642-8 of France's Business Code or the OHADA law, or even a judge-made distinction of French case law which distinguishes that status as transferee as defined in bankruptcy proceedings and buyer as defined in property law, inapplicable in the case in point.

49. As a result, the status of Privinvest as a Shareholder as defined in the Articles of Association was a given on the date of judgment and sufficient to establish the jurisdiction of the Arbitral Tribunal over it, even if the sales agreements had not been executed on that date, the date of "*the effective date and date possession is taken*" as set in the decision of the commercial court are, moreover, sufficient to establish a "*Transfer*" as defined in said Articles of Association, with no need to require that there be an immediate transfer of ownership, the rules governing the ownership of the shares and the effects in relation to the transfer of ownership of a judgment approving the planned sale, based on French law, are not applicable for purposes of examining the scope of the arbitration clause.

50. The fact that the Arbitral Tribunal had added, in determining its jurisdiction, after noting in §134:

- "*if one follows the timeline, this share incontrovertibly belonged to Necotrans Holding until 25 August 2017, the date on which the Commercial Court of Paris attributed (p. 50) to Privinvest, a Lebanese company…all the AMT Cameroun securities owned by Necotrans Holding, i.e., one share*"; and
- indicating in §136 that "*the tribunal must therefore examine precisely what happened to the single AMT Cameroun share between 25 August and 20 October 2017. The question is to determine whether the play of the right of substitution could have 'removed' Privinvest's status as an AMT shareholder in favour of Necotrans Suisse (now AMT Suisse)*");
- that (§142): "*for there to be substitution, which is to say replacement, of a person or of a company by another one, it is rationally necessary that the person or the company replaced had himself/herself/itself first been in the position that, after the substitution, will be that of the substitute. If Privinvest could be substituted by Necotrans Suisse as an AMT Cameroun shareholder it is because it had been one itself*"

is a superabundant reasoning in support of its decision.

51. In effect, the regularity of the substitution by the effect of the judgment transferring ownership or the disassociation of the possession of the shares for purposes of managing the property that remained in the hands of Necotrans Holding until the sales agreement, have no effect on the definition of buyer determined by the Arbitral Tribunal, fulfilling, on the date of the 25 August 2017 commercial court judgment the requirements both in law and in fact as set out in the Articles of Association for Privinvest to qualify as a shareholder and for the arbitration clause to be binding and enforceable on it, without the Arbitral Tribunal being subject to a claim of distortion, which, moreover, is not provided for in Article 1520 of France's Rules of Civil Procedure.

52. In any case, it is not up to the Court to examine the relevance or the usefulness of this reasoning.

53. The first ground should be rejected, the Privinvest's status as a shareholder being a given to justify the jurisdiction of the Arbitral Tribunal and it is not necessary to rule on the extension of the arbitration clause to Privinvest as an indirect shareholder or as a guarantor, these grounds alleged by the Respondents being subsidiary given the status as a direct shareholder determined.

The ground to vacate the award based on the fact that the arbitral tribunal wrongly found that it did not have jurisdiction over Navitrans (1520(1) of France's Rules of Civil Procedure)

54. AMT Cameroun, ATM Suisse and Privinvest consider that the arbitration clause contained in the Articles of Association of AMT Cameroun was binding and enforceable on Navitrans from the day of the signing of the funding agreement on 28 May 2018, which it transferred to it by the irrevocable transfer of the rights provided for in said agreement and, at very least, Navitrans accepted it by playing an eminently active role in the dispute.

55. They indicate that [A Z] irrevocably undertook to sell to it all of the AMT Cameroun shares that she would manage to acquire at the end of the arbitration proceedings, for which Navitrans would bear all costs, and [A Z] would forfeit the status as an AMT Cameroun shareholder on 28 May 2018 if the Arbitral Tribunal were to find that she had validly exercised her right of first refusal in August 2017, which would make Navitrans the owner starting on that date.

56. They maintain that Article 1 of the Articles of Association provides that the status of shareholder is held by buyers and "*those who may become so in the future*", which is precisely the case of the underlying dispute, the final award having found that [A Z] had validly exercised her right of first refusal, which takes effect retroactively on the when it was exercised.

57. They point out the well-established case law, which makes it possible to transfer an arbitration clause as an accessory to a right of action, itself accessory to the substantive rights and obligations contained in the contract transferred and they maintain that the international arbitration clause is binding any party that is a successor-in-interest to one of the parties to the contract. They indicate that it is of little relevance that the sale to a future, random or conditional or even invalid claim, the principle being the effectiveness of the international arbitration clause, to the extent that it has been accepted, regardless of the forms of such acceptance.

58. Subsidiarily, they point out that the arbitration clause must be extended to Navitrans, because of its intervention in the dispute, by entering into the fund agreement, Navitrans expressed its clear, unequivocal and definitive willingness to be a shareholder of AMT Cameroun, to be bound by the arbitration clause contained in the Articles of Association. More precisely, if Navitrans acts as a particularly interested third-party funder, its involvement in the dispute and its interest in the outcome thereof justify it being bound. Proof of this, they contend, is that in actual fact, Navitrans, which is directly responsible for the arbitration proceedings, having found a means to circumvent the refusal of its offer in the bankruptcy proceedings of Necotrans Holding in order to obtain the shares of its competitor.

59. [A Z] and Navitrans point out that the theory of the "transfer" of the arbitration clause was made for the first time before the Court, as the ground was not raised before the Arbitral Tribunal, only the extension of the clause was invoked. They dispute that the arbitration clause was transferred to Navitrans on the day of the signing of the funding agreement, on the grounds that:

- The arbitration clause as an accessory to a right of action cannot be transferred to Navitrans to the extent that the dispute sale of the shares had still not taken place on the date of the partial award, the sale of the AMT Cameroun shares to Navitrans being uncertain and future in that it depended on a decision favourable to [A Z] and that she honours her commitment to Navitrans.

- The acceptance in advance of the arbitration clause is not supported by any case law.

- The Claimants cannot claim the retroactive nature of the right of first refusal, the obligation to transfer the shares to Navitrans arising only on the day where the condition precedent is satisfied, which is the day of the final award, and on the condition that the shares be transferred to [A Z].

- The Arbitral Tribunal could not find, in its partial award, that the arbitration clause would be transferred to Navitrans without prejudging the merits of the dispute.

- Lastly, the Articles of Association, which define shareholders as "*those who may become so in the future*" does not refer to a perspective buyer.

60. Subsidiarily, [A Z] and Navitrans maintain that the arbitration clause cannot be extended to third-party funder as it is not involved in the corporate affairs of AMT Cameroun or in the dispute since its role was limited to funding the arbitration proceedings in exchange for an

incentive as a function of the outcome of the proceedings and nor is it the sole beneficiary of the arbitration proceedings, [A Z] being paid EUR 200,000 in exchange for the shares maintaining the fruit of their dividends and the associated interests, which amounts to EUR 2 million.

Wherefore:

61. Reference should be made to the grounds enunciated above concerning the scope and limits of the examination by the Court of an application to vacate based on Article 1520(1) of France's Rules of Civil Procedure.

62. With respect to the arbitration clause contained in Article 4 of the Articles of Association, applicable in this case:

"*Any disputes that may arise during the course of the existence of the Company, or after its dissolution during the course of the liquidation process, either between the Shareholders and the Company or between the Shareholders themselves, relating to the corporate affairs or the performance of the provisions of the Articles of Association (the "Dispute") shall be resolved exclusively in accordance with the provisions of this Article*" reference should also be made to the other relevant articles of the Articles of Association recalled above.

63. As indicated in relation to Privinvest, the examination of the scope of this clause in order to rule on the jurisdiction of the Arbitral Tribunal over Navitrans must be done with regard to the will of the parties and French law is not intended to apply, pursuant to the application of the material rule of international arbitration law according to which the arbitration clause is examined subject to the mandatory rules of French law and international public policy based on the will of the parties in light of all of the circumstances of the case with no need to refer to any state law.

64. In the case in point, the definition of "*shareholders*" liable to be concerned by the arbitration clause is limited, according to Article 1 of the Articles of Association, to:

- *owners of shares;*
- *buyers of shares;*
- *and those who may become so in the future.*

only this latter category being considered when examining the jurisdiction of the Arbitral Tribunal over Navitrans, the latter, in its capacity as third-party funder being neither an owner or buyer of shares but only the beneficiary, potentially, if the Arbitral Tribunal were to find that [A Z] had validly exercised her right of first refusal, of an irrevocable sale of the AMT Cameroun shares that [A Z] would manage to recover after the arbitration proceedings.

65. Yet, based on the foregoing paragraph, the category of buyers "*who may become so in the future*", a paragraph drafted in the future tense and not in the conditional, includes future buyers who are not shareholders on the date on which the Articles of Association were drafted or even on the date on which the buyers accepted the Articles of Association, but who may become so, thereby precluding any vagary about the reality of the future sale that shall confer on them such status. The Articles of Association thus permit the arbitration clause to evolve as a function of the evolution of the shareholdership and to recognise the status as a shareholder of future buyers for future sales, which permits the arbitration clause to be found to be binding on them in case of disputes between shareholders. That does not means that the status as a shareholder can be

attributed to them in advance of a hypothetical transfer but only "*in the future*", which is to say once the sale will have been completed.

66. Yet, no evidence produced in court indicates that on the date on which the funding agreement was signed by [A Z] and Navitrans, *i.e.*, on 28 May 2018, or even on the date on which the partial award on jurisdiction was rendered, Navitrans could claim the status as a future shareholder within the meaning of the Articles of Association, such status, even assuming it possible, could produce effects only on the date on which the sale occurs, which is to say "*in the future*".

67. To contend that Navitrans already had the status as a shareholder, the Claimants maintain principally that the arbitration clause, if not binding on it by the effect of the Articles of Association, would have been transferred to it by the effect of the irrevocable sale to which [A Z] had committed herself by entering into the funding agreement.

68. Yet, whilst it is well-established that the arbitration clause can be transferred with the substantive rights to which it is attached, this French case law is not applicable give the abovementioned material rule. In the case in point, the examination of the transfer of the arbitration clause is a result of the Articles of Association and specifically Article 12 which provides that "*possession of one Share automatically implies acceptance of the Articles of Association and shareholder resolutions lawfully passed at General Shareholder Meetings. The rights and obligations attached to the shares follow them regardless of the owner into whose hands they may pass*". In can be inferred from this that there must be "*possession*" for there to be acceptance of the Articles of Association, and that the transfer of the rights associated with the share, generating the transfer of the clause, follows in the case in point the transfer of shares, which means that it did occur or that it can occur "*in the future*" for certain according to the Article 1 of the Articles of Association recalled above, which is not the case either in connection with the funding agreement entered into on 28 May 2018, which subjects the sale to vagary, or on the date of the partial award, which does not make it possible to have any certainty about the outcome of the dispute relating to the right of first refusal exercised by [A Z] and about the possibility of a "*future*" possession or sale.

69. Consequently, this ground of appeal shall be rejected, the Arbitral Tribunal having by its own grounds and the reasoning of which is not subject to the review of the Court, rejected the premise that Navitrans had the status as a shareholder and found that it did not have jurisdiction over it.

70. With respect, subsidiarily, to the alleged acceptance of the arbitration clause outside of any sale, such a configuration is not contemplated in the Articles of Association and must be precluded.

71. With regard, lastly, to the involvement of Navitrans, the third-party funder, to the extent that the arbitration clause is extended to it, it is up to the Claimants not only establish the reality of it but also to provide proof of such involvement is not inherent in the role of a third-party funder necessarily participating in the proceedings, only exceptional circumstances could permit such an extension.

72. In any case in the case in point, the fact that Navitrans had officially been disclosed to be the third-party funder of the arbitration for the benefit of [A Z] instead of being concealed as is often the case, may not constitute any such circumstances. The further fact that Navitrans had an interest in the out of the dispute in a form other than monetary, *i.e.*, the sale of the shares of a competing company, and that it be an occasional third-party funder, does not either constitute an exceptional circumstance that would justify extending the arbitration clause to it.

73. Lastly, no inferences may be drawn from the favourable out of the final award for [A Z] to infer therefrom the particular interest of Navitrans, as a third-party-funder, to be a party to the dispute, the parties having separate interests.

74. Consequently, the ground to vacate based on the lack of jurisdiction of the Arbitral Tribunal over Navitrans shall be rejected.

Expenses and Court Costs

75. AMT Cameroun, AMT Suisse and Privinvest, the losing parties, will be ordered to pay costs, which will be recovered in accordance with Article 699 of France's Rules of Civil Procedure.

76. It is only fair to order them to pay to [A Z] the sum of EUR 100,000.00 by virtue of Article 700 of France's Rules of Civil Procedure.

IV. DECISION

On these grounds, the Court:

1. Rejects the application to vacate the Partial Arbitration Award handed down on 9 March 2020 (arbitration in Paris CCI Case No. [...]/DDA).

2. Orders AMT Cameroun, AMT Suisse and Privinvest to pay to [A Z] the sum of EUR 100,000.00 by virtue of Article 700 of France's Rules of Civil Procedure.

3. Orders AMT Cameroun, AMT Suisse and Privinvest to pay court costs, which will be recovered in accordance with Article 699 of France's Rules of Civil Procedure.

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 2022-1243

Signed and stamped *ne varietur* in
Paris, France
on 13 May 2022