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

PARIS COURT OF APPEAL
International Commercial Chamber

SECTION 5 - CHAMBER 16

RULING OF 1ST MARCH 2022

(No. /2022, 7 pages)

Case number: 20/13575 - Portalis No. 35L7-V-B7E-CCMOO

Decision referred to the Court: Final Arbitration Award handed down on 21 August 2020 under the aegis of the ICC (Case No

CLAIMANTS IN THIS APPEAL:

COMPANY A
A Tunisian Company
Having its registered office at 62 avenue de Carthage 1000 Tunis Tunisia
Represented by its legal representatives

Represented by **ME [B]** Esq., Barrister-at-Law admitted to the Paris Law Society
[XXXXXX] and represented by
trial barrister **ME [C]** Esq., Barrister-at-Law admitted to the Paris Law Society
[XXXXXX]

RESPONDENTS IN THIS APPEAL:

S.N.C. Legrand
Having its registered office at 128 avenue du Maréchal de Lattre de Tassigny 87000 Limoges, France
Represented by its legal representatives

Represented by **ME [D]** Esq., Barrister-at-Law admitted to the Paris Law Society
[XXXXXX] and represented by trial barristers **ME [E]** Esq., and
ME [F] Barristers-at-Law admitted to the Paris Law Society [XXXXXX]

S.A.R.L. [G]
A Tunisian Company
Having its registered office at 28 rue 8600 Zone Industrielle Charguia I, 2035 Tunis Carthage Ariana,
Tunisia
Represented by its legal representatives
Not represented by counsel

MEMBERS OF THE BENCH:

Pursuant to the provisions of Articles 805 and 907 of the French Code of Civil Procedure, the case was heard at a public hearing on 25 January 2022, the barristers not being opposed thereto, before Lord Justice of Appeal Fabienne Schaller, Associate Justice and Lord Justice of Appeal Laure Aldebert, the justice charged with reporting to the Court.

The justices reported on the hearing during the deliberations of the Court before the following members of the bench:

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

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Visé NE VARIETUR sous le n° 2022-196

Fait à PARIS. le 27 juillet 2022



Clerk: at the appellate trial hearing: Najma El Farissi

RULING:

The ruling was handed down after adversarial proceedings and made available at the Clerk's Office, the parties having previously been notified as required by virtue of the second paragraph of Article 450 of the French Code 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 signatory justice.

I. STATEMENT OF FACTS AND PROCEEDINGS

1. An application for annulment has been filed with the Court against an arbitration award handed down in Paris on 21 August 2020 in a dispute concerning unpaid invoices involving the French company Legrand, which specialises in electrical and digital building infrastructure, and the Tunisian companies [G] and [A], referred to hereinafter respectively as [G] and [A].
2. The [H] group is a private family-owned group run by the [H] family, founded in 1976 and whose business spans across various sectors in industry, technology, international trade and services.
3. [A] is the holding company of the [H] Group that was founded in 2013, which has an equity interest in Loukilcom.
4. The dispute centres on invoices that the company [G] failed to pay to Legrand between March 2016 and February 2017 for goods delivered under a nonexclusive distribution agreement that Legrand had entered into with Sud Services, which is now company [G], on 18 January 2006.
5. There were negotiations to agree a payment schedule which did not result in the payment of the amount due, which totals about EUR 720,000.
6. Against this backdrop, on 21 February 2019 Legrand submitted a request for arbitration to the Secretariat of the ICC based on the arbitration clause of the 18 January 2006 distribution agreement, to obtain the payment of the amounts due, against company [G], the Group holding company, seeking to have the arbitration clause extended to it and to have it found jointly and severally liable for any award handed down against it.
7. During the proceedings, the company [G] notified the arbitral tribunal that it was the subject of a voluntary dissolution.
8. [A] disputed the jurisdiction of the arbitral tribunal.
9. In an award handed down on 20 August 2020, the arbitral tribunal, composed of a single arbitrator, dismissed the motion to dismiss for lack of jurisdiction brought by [A] and ordered both [A] and the company [G] jointly and severally to pay the unpaid invoices and the arbitration costs.
10. On 25 September 2020, [A] gave notice of appeal and brought an application for the annulment of the arbitration award with the Paris Court of Appeal.
11. The application filed by [A] is based on the lack of jurisdiction of the arbitral tribunal, a failure to observe the adversarial principle and a violation of international public policy.
12. The parties agreed to the procedural protocol of the International Commercial Chamber.
13. The pretrial judge ordered the end of the pretrial phase on 14 December 2021.



II. CLAIMS OF THE PARTIES

14. In its submissions filed electronically on 24 February 2021, [A] is seeking, in accordance with Article 6 of the EHRC and of Article 1520(1), (4) and (5) of the French Code of Civil Procedure, to have the Court find its application for annulment admissible, annul said award and order Legrand SNC to pay it €60,000 pursuant to the provisions of Article 700 of the French Code of Civil Procedure and pay all costs, to be paid to [...]

15. In its submissions filed electronically 21 May 2021, Legrand is seeking, in accordance with Articles 1518, 1519 and 1520 of the French Code of Civil Procedure, to have the Court dismiss the application for annulment, dismiss all the claims of [A] and order it to pay €90,000 pursuant to Article 700 of the French Code of Civil Procedure and pay all costs.

16. The company [G], which was dissolved during the arbitration proceedings, was not represented in Court and did not file any submissions.

17. It has made no claims and no claims have been made against it.

III. PLEAS OF THE PARTIES

18. [A] makes two arguments in support of its plea for annulment based on a lack of jurisdiction:

- on the one hand, the waiver by Legrand, which had previously taken the dispute to a court in Tunisia and the res judicata effect of the decision handed down on 5 June 2018 that dismissed the claim of Legrand so it could not rely on the arbitration clause;
- it adds in this regard that Legrand engaged in incoherent and disloyal conduct for which it should be estopped; and
- on the other hand, it is impossible to extend the arbitration clause to it since it is not a party to the distribution agreement and its execution is enforceable only on the company [G]

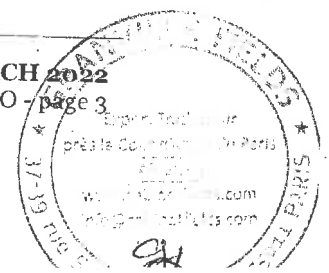
19. With respect to the plea based on the failure to observe the adversarial principle, it points out that the arbitral tribunal failed to give the defendants the possibility during the proceedings to express themselves in relation to documents produced on 17 January 2020, a translation of which was provided by Legrand on 17 February 2020, when they played a determinative role in the decision handed down.

20. Lastly, it maintains that by granting the claim of Legrand the award fails to account for the aforementioned Tunisian decision that dismissed it.

21. It infers therefrom, consequently, that the disregard by the award of the 5 June 2018 Tunisian decision, which had the effect of res judicata and the legal effects of which are in contradiction, is a violation of international public policy.

22. **In response**, Legrand disputes all the claims, arguing that the case that it brought in Tunisia in a local court for protective action was different from the one submitted to the arbitral tribunal so there is no resulting res judicata or any waiver to bring arbitration proceedings or any conduct constituting estoppel that could mislead Company [G]

23. It adds, with regard to estoppel, that the analysis according to which its conduct during the arbitration proceedings is based on a contradiction in relation to the previous proceedings in Tunisia is inadmissible on the basis of Article 1466 of the French Code of Civil Procedure, since [A], which was aware of it, failed to raise this alleged irregularity in due course during the arbitration.



24. Concerning the extension of the arbitration clause to [A], it maintains that it is because of the interference of [A] in the life of the distribution agreement that the arbitration clause was rightly extended to the Group holding company.

25. With respect to the second plea, it maintains that the proceedings complied with the adversarial principle and that [A] did not make any comments on the translation of the criticised documents that it produced when it could have done so. It infers therefrom that it cannot invoke its own failure to act in support of this plea.

26. Lastly, as it did in disputing the first plea, it concludes that there was no violation of international public policy, pointing out that there was no res judicata and that in France the 5 June 2018 Tunisian decision and the award handed down are not irreconcilable.

IV. GROUNDS OF THE DECISION

The ground for annulment of the award based on the lack of jurisdiction of the arbitral tribunal (Article 1520(1) of the French Code of Civil Procedure)

27. It should first be noted that pursuant to paragraph 3 under Article 954 of the French Code of Civil Procedure, the Court rules only on the remedies laid out in the prayer for relief contained in the submissions.

28. The ground of inadmissibility based on Article 1466 of the French Code of Civil Procedure asserted in the first plea by Legrand in its submissions but not reproduced in its prayer for relief will therefore not be examined.

The first plea

29. The parties to an arbitration agreement have the option to waive their right to benefit therefrom; this waiver can be implicit to the extent that it is clear and unequivocal. It can also be inferred from a lawsuit filed by one of the parties in court, provided that it involves a claim on the merits that should have been submitted to arbitration.

30. In this case, the distribution agreement signed on 18 January 2006 which governs the rights and obligations of the parties, Legrand and the company [B], contains the following clause:

Section 13: Consent to Jurisdiction-Arbitration

This agreement is governed by French law.

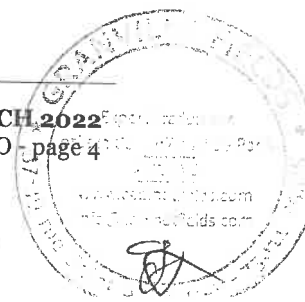
In the event of a dispute that may arise as a result of the interpretation and/or the execution hereof, the Parties shall endeavour to reach an out-of-court settlement.

If they are unable to do so, any dispute that may arise as a result of the interpretation and/or the execution hereof will be permanently settled according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these rules. The arbitration shall take place in Paris, France. The hearings will be conducted in French.

31. It is well-established that in 2017 Legrand brought a lawsuit in a Tunisian court seeking to seize the accounts of [A] in Tunisia before bringing a case in 2019 against both companies before the arbitral tribunal for the payment of unpaid invoices.

32. The claim that Legrand, the “seizing creditor”, brought against [A] “defendant in the seizure” was dismissed by the judgment handed down on 5 June 2018 by the Tunisian Court of First Instance, which “dismissed its petition” and “invalidated the seizure performed by the court bailiff” in Tunis. No appeal was filed against this decision.

33. Based on a reading of this decision, it settled a dispute related to the validity of the seizure of the accounts of [A] and was not related to the unpaid invoices.



34. The action pursuant to the request for arbitration was for an award of EUR 350,000, which is the amount that [A] had pledged to pay to Legrand to settle a part of the debt of [G], according to a pledge formalised in a letter dated 23 June 2017, the signing of which was in dispute.

35. Even though the source of the dispute resides in the failure to pay invoices for goods delivered under the distribution agreement, the claim of Legrand was not based on the distribution agreement but on a separate contractual pledge that is not the subject of the arbitration proceedings which centre on the full payment of invoices for a higher amount.

36. Based on the foregoing, Legrand brought in 2017 a specific action against [A] separate from the action brought pursuant to the distribution agreement, for which there can be no presumption that it waived its right to go to arbitration to rule on its rights and obligations under this agreement containing the arbitration clause.

37. Separately, based on the Statement of Claim of Legrand dated 13 September 2019 to the arbitrator, later confirmed during the arbitration hearing on 27 November 2019, Legrand is not seeking from the arbitrator an order for [A] to pay the amounts due on the basis of the 23 June 2017 pledge letter that was produced as an indication of its involvement in the contractual relationship in support of the extension of the arbitration clause and to have it found jointly and severally liable for any award handed down against it.

38. It therefore did not contradict itself or clash with the res judicata effect of a foreign judicial decision when Legrand sought arbitration before the arbitral tribunal so the arguments in support of this claim have no merit.

On the second claim

39. It should be noted that when it comes to international arbitration, the effect of the international arbitration clause extends to parties involved directly in the execution of the contract and in any disputes that may arise therefrom.

40. It is a given that in relation to this application for annulment based on a claim of lack of jurisdiction, the role of the appellate court is to perform a review in fact and in law to determine whether there are grounds for an appeal.

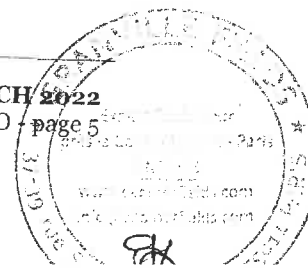
41. It is in light of these considerations that it is up to the appellate court to settle the question of the extension of the arbitration clause contained in the distribution agreement to an entity that is not a party thereto, namely [A].

42. In this case, based on exhibits produced, contractual relations between company [G] and Legrand were conducted and continued in consideration of the fact that company [G] belonged to the [H] group run by MM [I] and [J] [H] who hold positions as chief executives or co-chief executives of the various companies of the [H] group and who showed themselves to be very concerned about the proper execution of the distribution agreement.

43. Thus, it is established by emails from 2007 that the group intervened vis-à-vis Legrand in support of [G] for it to comply with its obligations as a distributor expressly recognising that "the [G] team has tried to keep the development of the Legrand business on course in Tunisia and when it has been in need of help of the group we have stepped in".

44. Moreover, based on communications, under the stewardship of MM [I] and [J] [H], the [H] Group carefully monitored the business of [G] and facilitated relations with Legrand so that, despite the late payment of invoices, goods could be delivered and not blocked and so that there was trust in its support and supervision in relation to the implementation of the distribution agreement.

45. Against this backdrop, in 2016, in spite of outstanding invoices, Legrand accepted to block goods according to email exchanges produced between the top leadership of



[G] and of the [H] Group and in 2017 a meeting was held at the corporate headquarters of [A] at the head of the group, specifically on 6 June 2017, which the chief financial officer of [A] and M. [JH] both attended, which gave rise to the 23 June 2017 pledge letter in which M. [JH], Deputy Chief Executive, indicates “Hereby attest to our support to the company [G] and we pledge to honour its debts” followed by the amount of outstanding invoices and a payment schedule as follows:

“We pledge to pay these unpaid invoices according to the following schedule:

End of September: EUR 175,000 paid by [A], our holding company

End of November: EUR 200,000 paid directly by [G]

End of December: EUR 200,000 paid directly by [G]”

“Also, once M. [K] has recovered, a meeting will be held between [G] and the Legrand regional office to review the inventory sleeping for years now and to find solutions mutually agreeable to all the parties”.

46. It is undisputed that, according to the award, this letter was emailed to Mr [IH], Chief Executive of [A] and to the group email address grp.[H]@gnet.tn, which is not the email address of [G] and [A] did not react and dispute its content (§378).

47. Even though the issue of whether Mr M [JH] has the authority to bind [A] to pay the amounts is in dispute, the holding of this meeting with Legrand at the corporate headquarters of [A] and what came out of it as reflected in the letter, which is not in dispute, undeniably constitute further proof, in addition to prior communications, of the involvement of [A] in the monitoring and executing of the distribution agreement with Legrand in Tunisia.

48. In light of the foregoing, [A], by its conduct, participated in the monitoring and the proper fulfilment of the obligations of [G] under the distribution agreement between the group, [G] and Legrand and in the effort to find a solution so that it could continue, implicating it directly in the execution of the agreement and any dispute that may arise as a result of it.

49. It follows from this that the effects of the clause, which provides that any disputes be settled by an arbitral tribunal, could be extended to include [A] even though it was not a party to the agreement.

50. The ground for the annulment of the award based on the lack of jurisdiction of the arbitral tribunal over [A] will consequently be dismissed.

The ground for annulment of the award based on the failure to observe the adversarial principle (Article 1520(4) of the French Code of Civil Procedure)

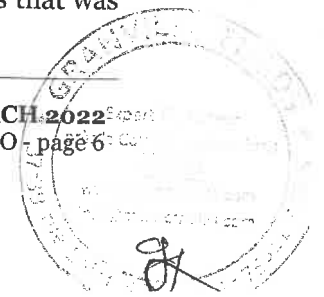
51. Based on Article 1520(4) of the French Code of Civil Procedure, action for annulment is available if the adversarial principle was not observed.

52. The adversarial principle requires only that the parties be given an opportunity to put forward their factual and legal claims and argue those of the opposing party so that nothing which served as a basis for the decision of the arbitrator was not subject to adversarial debate.

53. In this case, the documents criticised, produced by Legrand on 17 February 2020, are only the French translations of documents that [A] produced in Arabic on 17 January 2020 such as articles of association and minutes of [A] shareholder meetings, which caused no reaction on its part.

54. In fact, as pointed out in the award in §208, [A] made no comments when it could have asked for permission to do so.

55. [A] which does not dispute the contents of the documents or their translations that was necessary for the tribunal, has not provided evidence to support any claim.



56. Based on these facts and findings, the ground has no merit and consequently will be dismissed.

The ground for annulment based on a violation of international public policy (Article 1520(5) of the French Code of Civil Procedure)

57. Based on Article 1520(5) of the French Code of Civil Procedure, action for annulment is available if the recognition or the enforcement of an award is contrary to international public policy.

58. The 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 the violation of which it cannot countenance, even in an international context.

59. 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 arbitral tribunal clashes in a plain, effective and concrete manner with the principles and values enshrined in international public policy.

60. [A] maintains that the res judicata effect of the Tunisian decision and the legal consequences associated with the Tunisian decision that has the force of res judicata are irreconcilable with the award and consequently constitutes a violation of international public policy.

61. However, the claims alleged in support of this ground for annulment are the same as those put forward in support of a ground for annulment based on a lack of jurisdiction under Article 1520(1) of the French Code of Civil Procedure.

62. These claims having been dismissed on the grounds set out above, they are not any more indicative of a violation of international public policy.

63. Consequently, the ground for annulment of the award will consequently be dismissed.

Expenses and Court Costs

64. [A], the unsuccessful party, will be ordered to pay costs.

65. In addition, it must be ordered to pay to Legrand, which had to undertake unrecoverable expenses to assert its rights, compensation by virtue of Article 700 of the French Code of Civil Procedure that it is only fair to set at EUR 50,000.00.

IV. DECISION

On these grounds, the Court:

1. Rejects the application for the annulment of the Arbitration Award handed down on 21 August 2020 in Paris under the aegis of the International Chamber of Commerce International Court of Arbitration in Case No. 24283/DDA.

2. Orders [A] to pay to Legrand the sum of EUR 50,000.00 by virtue of Article 700 of the French Code of Civil Procedure.

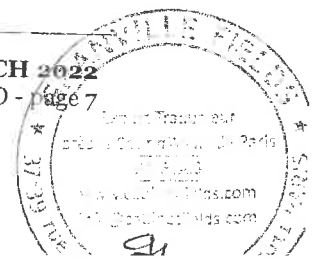
3. Orders [A] to pay all costs.

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 2022-1962

Signed and stamped *ne varietur* in
Paris, France
on 27 July 2022