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**PARIS COURT OF APPEAL**

**International Commercial Chamber  
DIVISION 5 - 16**

**JUDGMENT OF 5 SEPTEMBER 2023**

(no. 65 /2023, 8 pages)

General directory entry number: **No. RG 21/16897 No. Portalis 35L7-V-B7F-CEMHU**

Decision referred to the Court: Order of 12 February 2018 – Paris *Tribunal de Grande Instance* (RG no. 18/00398)

**APPELLANT**

**STATE OF LIBYA**

acting through the Supreme Judicial Council, Litigation Department, International Litigation Section,

having its registered office at: [address] (LIBYA),

*Represented, as counsel with right of audience, by Matthieu BOCCON GIBOD, of SELARL LEXAVOUE PARIS VERSAILLES, of the PARIS Bar, locker: C2477*

*Represented, as trial counsel, by Olivier LOIZON and Max DE CASTELNAU, of AARPI VIGUIE SCHMIDT & ASSOCIES, of the PARIS Bar, locker: P0145*

**RESPONDENT**

**Company [K] COMMUNICATIONS GROUP EASYMEDIA**

sole proprietorship under Swiss law,

having its registered office at: [address] (SWITZERLAND),

in the person of its legal representative,

*Represented, as counsel with right of audience and trial counsel, by David MOTTE SURANITI, of the PARIS Bar, locker: L0245*

**COURT COMPOSITION:**

Pursuant to the provisions of Articles 805 and 907 of the French Code of Civil Procedure, the case was heard on 16 May 2023, in open court, the lawyers having no objection, before Daniel BARLOW, President, and Laure ALDEBERT, Judge,

who gave a report of the pleadings in the deliberation of the Court, composed of:

Mr Daniel Barlow, President

Ms. Fabienne SCHALLER, President

Ms. Laure ALDEBERT, Judge

**Clerk** at the hearing: Ms. Najma EL FARISSI

## **JUDGMENT:**

- contradictory

- judgment made available at the Clerk's office of the Court, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.

- signed by Daniel BARLOW, President, and by Najma EL FARISSI, Clerk to whom the minute was delivered by the signatory judge.

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## **I/ FACTS AND PROCEDURE**

1. The Court is seized of the appeal lodged by the State of Libya against an order of the delegate of the President of the Paris Tribunal de Grande Instance dated 12 February 2018 granting exequatur in France to an "arbitration judgment" rendered in Geneva on 27 March 2017 by Mr [V] [R], sole arbitrator, in a dispute between the State of Libya and the Swiss company [K] Communications Group Easymedia (hereinafter "[K]").

2. The dispute that gave rise to this decision concerns [K]'s claim for payment of receivables relating to services it says it provided to various Libyan entities between 2008 and 2010 in the field of communication and audiovisual production.

3. A "mediation memorandum of understanding" dated 24 March 2017, concluded under the supervision of Mr [R], between "the State of Libya [...] represented by its representative Mr [Y] [N]", and "Mr [H] [C] [...] representing the Swiss company that is the subject of this memorandum", provides for the reimbursement by the State of Libya of a total sum of 20,485,053.95 Swiss francs (CHF) to the company [K], as well as the "priority" payment of the mediator's fees and expenses by the same State.

4. On 24 March 2017, Mr [C] and Mr [N] co-signed a request for arbitration with a view to the homologation of this memorandum.

5. In the aforementioned "arbitration judgment", Mr [R], as sole arbitrator, ratified the mediation memorandum of understanding and ruled as follows:

"Thus I can confirm the compensation agreements with both parties:

[K] Communications Group Easymedia [city] - Switzerland:

The Libyan State will compensate first:

- Fees and expenses of the mediator and arbitrator, Mr [V] [E] [R], Chairman of GENEVACCORD Alternative Dispute Resolution, [address], for a total amount of CHF 447,308.10 (including 8% VAT), see invoice.

The Libyan State will then immediately compensate the party [K] Communications GROUP Easymedia [city] - Switzerland:

- The amount of USD 20,840,000.00 (twenty million eight hundred and forty thousand US dollars), i.e. CHF 20,708,708 (twenty million seven hundred and eight thousand seven hundred and eight

Swiss francs), less half of the fees and expenses of the Mediator Arbitrator to be borne by the company [K] Communications Group Easymedia [city] - Switzerland.

- The final amount to be compensated to the company [K] Communications Group Easymedia [city] - Switzerland (designated as the company responsible for receiving the balance) CHF 20,708,708.00, less half of 447,308.10 (50% of the fees and expenses of the Mediator Arbitrator including VAT), i.e. CHF 20,708,708.00 - CHF 223,654.05 = CHF 20,485,053.95 to be compensated.

Having listened carefully to all the parties and participants, checked all the documents, and bearing in mind that the mediation procedure is confidential, in my capacity as Arbitrator-Judge, I hereby confirm the agreement of the parties.

I invite the first party, the State of Libya (Ministry of Finance), with its registered office in Tripoli, Libya, represented by its representative Mr [Y] [N], to pay the fees and expenses of the Mediator Arbitrator, see the 2 invoices attached and to compensate as soon as possible the company [K] Communications Group Easymedia, [city] - Switzerland according to this arbitration judgment, with a deadline within 21 days from today, Monday 27 March 2017.”

6. This judgment was granted exequatur by order of the delegate of the President of the Paris Tribunal de Grande Instance on 12 February 2018.

7. By order dated 20 May 2021, the enforcement judge of the Paris court of justice authorised company [K] to seize the partnership rights of National Oil Corporation, which was presented as an emanation of the State of Lybia, in Mabruk Oil Operations, in execution of the “arbitration judgment”.

8. The seizure was carried out on 2 July 2021 for a total amount of 19,036,789.03 euros.

9. By declaration of 24 September 2021, the State of Libya appealed against the order of exequatur.

10. At the request of the State of Libya, the pre-trial judge, in a decision dated 15 February 2022, suspended enforcement of the arbitral award pending the Court’s judgment on the merits.

11. By order dated 17 January 2023, the pre-trial judge dismissed [K]’s claim that the State of Libya should be declared precluded from proceeding because of the lateness of its appeal.

12. Closing was declared on 11 April 2023 and the case was called for oral argument on 16 May 2023.

## **II/ CLAIMS OF THE PARTIES**

13. According to its latest submissions, sent electronically on 17 March 2023, the State of Libya asks the Court to:

- OVERTURN the order of the President of the Paris *Tribunal de Grande Instance* dated 12 February 2018 granting exequatur to the ad hoc arbitral award rendered in [city] on 27 March 2017 by the arbitral tribunal composed of Mr [V] [E] [R], arbitrator;
- DISMISS the application for exequatur of the ad hoc arbitral award rendered in [city] on 27 March 2017;

- ORDER company [K] to pay the State of Libya the sum of 50,000 euros pursuant to the provisions of Article 700 of the Code of Civil Procedure, as well as all costs, which will be awarded to Selarl Lexavoue Paris Versailles;
- DISMISS company [K] of any further or contrary claims.

14. According to its latest submissions, sent electronically on 7 April 2023, company [K] asks the Court, on the basis of Article 1520 of the French Code of Civil Procedure, Article 1315 of the French Civil Code and the principle of estoppel, to:

- DECLARE the plea relating to the lack of jurisdiction of the Arbitral Tribunal inadmissible and ill-founded and to hold that the Arbitral Tribunal had jurisdiction;
- DECLARE the plea relating to the irregular constitution of the arbitral tribunal inadmissible and ill-founded and to hold that the tribunal was duly constituted;
- DECLARE the plea relating to the breach of the arbitral tribunal's terms of reference inadmissible and ill-founded and hold that the arbitral tribunal fulfilled its terms of reference;
- DECLARE that the plea alleging disregard of the adversarial principle is unfounded and to hold that the arbitration award was made adversarially,
- DECLARE that the plea relating to international public policy is unfounded and to hold that the arbitration award complies with international public policy;
- Consequently, DISMISS the request to overturn and confirm the exequatur order of the Paris *Tribunal de Grande Instance* dated 12 February 2018;
- ORDER the State of Lybia to pay the sum of 50,000 euros to [K] Communications Group Easymedia under Article 700 of the Code of Civil Procedure and to pay all costs.

### **III/ REASONS FOR THE DECISION**

15. Under Article 1525 of the Code of Civil Procedure, the court hearing an appeal against a decision which rules on an application for recognition or exequatur of an arbitration award made abroad may refuse to recognise or to grant exequatur to the award only in the cases provided for in Article 1520 of said Code, which provides for the the action for annulment in the following case:

- 1° The arbitral tribunal has wrongly declared itself competent or incompetent; or
- 2° The arbitral tribunal was irregularly constituted; or
- 3° The arbitral tribunal ruled without complying with the terms of reference given to it; or
- 4° The adversarial principle was not complied with; or
- 5° Recognition or enforcement of the award is contrary to international public policy.

16. In the matter at hand, the State of Libya relies on five grounds for reversal which take up each of the aforementioned cases.

### **A. The plea that the Arbitral Tribunal lacked jurisdiction**

17. The State of Libya submits that there is no arbitration agreement on which to base the jurisdiction of the Sole Arbitrator. It argues that:

- the arbitration agreement brought forward by the respondent is not enforceable against the State of Libya, since Mr [Y] [N], the alleged representative of said State, who signed the request for arbitration purporting to constitute the settlement, could not derive any power to sign either from his functions or from any mandate;
- Mr [N], a Swiss national, did not hold any official position within the State of Libya and could not therefore, in his capacity as such, conclude an arbitration clause for that State;
- the mandate allegedly given to Mr [N] on 11 August 2015 by Mr [Z] [W] [D] in his capacity as Finance Minister of the National Salvation Government is inoperative;
- this alleged mandate was never attached to the request for arbitration or given to Mr [Y] [N] and therefore cannot have the effect of binding the State of Libya to an arbitration agreement;
- company [K], which was personally mandated by Mr [Z] [W] [D], must have been aware that Mr [D] had been suspended from office on 4 August 2015, i.e. seven days before granting the mandate to company [K], and that he was no longer a minister when the mediation agreement and the request for arbitration were concluded in March 2017;
- the mandate brought forward was special and did not authorise its holder to sign any arbitration agreement;
- company [K] cannot therefore claim to have believed, legitimately and in good faith, in Mr [Y] [N]'s ability to sign an arbitration clause in the name and on behalf of the State of Libya;
- this question does not concern the admissibility of the action, but the jurisdiction of the arbitral tribunal, the State of Libya challenging the possibility for an alleged representative to sign an arbitration clause in its name and on its behalf, and thus the very enforceability of the clause against it;
- not having been duly seized under a valid arbitration clause, the arbitral tribunal did not have jurisdiction to render the award to which the order under appeal granted exequatur.

18. Company [K] replies that the arbitral tribunal had jurisdiction to rule since:

- the authority to act in arbitration is an issue of admissibility of the action and not of jurisdiction of the arbitral tribunal and cannot constitute one of the cases listed exhaustively in Article 1520 of the Code of Civil Procedure;
- the challenge to the ability of Mr [Z] [W] [D] to bind the State of Libya in the arbitration proceedings is therefore inadmissible;
- the commitment of a company to arbitration is assessed in particular according to a substantive rule deduced from the principle of validity of the arbitration agreement, based on the common will

of the parties, the requirement of good faith and the legitimate belief in the powers of the signatory to sign an arbitration clause on behalf of the company;

- these principles are established by Mr [Z] [W] [D]'s power of attorney dated 11 August 2015, the mediation memorandum of understanding and the request for arbitration, which reflect the parties' willingness to submit to arbitration and which therefore constitute an arbitration clause;

- company [K] was acting in good faith and could legitimately believe in the powers given by Mr [Z] [W] [D] to Mr [N] to bind the State of Libya, as Mr [Z] had provided his diplomatic passport;

- the Libyan State repeatedly invokes the lack of authority of its administrations to sign agreements in an attempt to evade its obligations.

ON THIS MATTER:

19. Article 1520, 1°, of the French Code of Civil Procedure, to which the abovementioned Article 1525 refers, provides for the possibility of an action for annulment when the Arbitral Tribunal has wrongly declared itself competent or incompetent.

20. For this text to apply, the annulment judge reviews the decision of the arbitral tribunal with regard to its jurisdiction, whether it has declared itself competent or incompetent, by seeking all the elements of law or fact making it possible to assess the scope of the arbitration agreement. This review is exclusive of any review of the merits of the award.

21. By virtue of a substantive rule of international arbitration law, the arbitration clause is legally independent of the primary agreement which contains it, directly or by reference. Subject to the mandatory rules of French law and international public policy, its existence and effectiveness are determined by the common will of the parties, which alone gives the arbitrator his jurisdictional power, without the need to refer to State law.

22. To challenge the jurisdiction of the arbitral tribunal, the State of Libya submits in this case that the mandate brought forward by the respondent as the basis of the arbitration agreement attached to the award at issue is unenforceable.

23. Contrary to what company [K] maintains, this defence does not call into question the authority of a party to the arbitration to act, but relates to the existence and validity of the consent of the State of Libya to the arbitration in the circumstances invoked.

24. As such, it is admissible before the judge hearing the appeal against an order of exequatur.

25. On the merits, it appears from the exhibits submitted to the proceedings that the "arbitration judgment" at issue was rendered on the basis of a "request for arbitration" signed in [city] on 24 March 2017, by Mr [Y] [N] and Mr [H] [C], on behalf of "the State of Libya (Ministry of Finance), represented by Mr [Y] [N]", of the first part, and "Swiss Company(ies), represented by Mr [H] [C]", of the other part.

26. This document, which contains no identification of the "Swiss companies" so designated, states that:

"the two abovementioned parties jointly confirm the request to conclude the mediation agreement finalised on Friday 24 March 2017, by an Arbitrator-Judge. [...]"

The two abovementioned parties appoint by mutual agreement:

Mr. [V] [E] [R], as Arbitrator-Judge, [...].

The arbitration will take place in [city] on Friday 24 March 2017.”

27. Although it is common ground that Mr [N] holds no official position within the State of Libya, company [K] nonetheless invokes a mandate (a “power of attorney”) conferring upon him the authority to represent said State in the arbitration proceedings.

28. Signed by Mr [W] [S] [A], this document, on headed paper of the Libyan Ministry of Finance, reads as follows:

*[Document in English:]*

“We, the undersigned Mr [W] [S] [A]

Hereby designate as our authorized representative

J.C.G Easymedia, [address] (Mr. [Y] [N] & Mr. [O] [K]) domiciled in [city], Switzerland -  
To negotiate arrangement with Swiss companies that still have open invoices with the former Libyan regime (before 2011) and to sign on our behalf all documents related

- To present an arrangement agreement to the Libyan government.”

Free translation:

*[Translation into French of the English document]*

29. It follows from this wording that:

- the “power” thus granted is not given directly to Mr [N] but to the company J.C.G Easymedia, the party opposed to the State of Libya in the dispute to which the mediation protocol and the “arbitration judgment” which is the subject of these proceedings relate;

- the sole purpose of this mandate is to negotiate an “arrangement with Swiss companies”, without identifying them, and it provides that the agreement resulting from this arrangement must be presented to the Libyan government;

- it contains no mandate to settle, and the reference to the signing of documents relating to the arrangement cannot be interpreted as granting company J.C.G Easymédia or Mr [N] the power to enter into an arbitration agreement in the name and on behalf of the State of Libya, to which the “arrangement agreement” was to be presented.

30. It thus appears that, irrespective of whether or not Mr [A] had the power to bind Libya, and of the belief that the respondent company might have had in the existence of such power, the consent of the State to the arbitration is lacking, since Mr [N] could not, in any event, have validly signed in the name and on behalf of Libya the request for arbitration brought forward to justify the jurisdiction of the arbitrator, who therefore had no jurisdictional power.

31. This circumstance, which affects not the admissibility of the request for arbitration but the jurisdiction of the arbitral tribunal, constitutes grounds for annulment of the award within the meaning of article 1520, 1°, of the abovementioned Code of Civil Procedure.

32. In these circumstances, the order under appeal should be overturned and the application for exequatur of the “arbitration judgment” should be dismissed.

## **B. Costs and expenses**

33. Company [K], the losing party, will be ordered to pay all costs.

34. It will also be ordered to pay the State of Libya the sum of 50,000 euros under Article 700 of the Code of Civil Procedure.

## **IV/ DECISION**

On these grounds, the Court hereby:

**1) Overturns the order of the President of the Paris *Tribunal de Grande Instance* dated 12 February 2018 granting exequatur to the “arbitration judgment” rendered in Geneva on 27 March 2017 by Mr [V] [E] [R];**

**2) Dismisses the application for exequatur of the “arbitration judgment” rendered in Geneva on 27 March 2017 by Mr [V] [E] [R];**

**3) Orders company [K] Communications Group Easymedia to pay the State of Libya the sum of fifty thousand euros (EUR 50,000.00) pursuant to Article 700 of the Code of Civil Procedure;**

**4) Orders company [K] Communications Group Easymedia to pay all costs.**

THE CLERK,

THE PRESIDENT,