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PARIS COURT OF APPEAL

**International Commercial Chamber
Division 5 – 16**

JUDGEMENT OF 05 MARCH 2024

REFERRAL AFTER CASSATION

(no. 26/2024, 15 pages)

General directory entry number: **RG no. 22/07665 – Portalis no. 35L7-V-B7G-CFVGE**

On referral after a judgement of the French Court of Cassation handed down on 12 January 2022 reversing the Paris Court of Appeal's (Division 5 – Chamber 16) judgement of 28 January 2019, on appeal against a judgement handed down on 18 September 2018 by the Paris Commercial Court (1st Chamber), under RG no. 2015057268

Claimant to the action:

BUSINESS NETWORK INVESTMENT (BNI) Company

A simplified joint stock company,

Entered into the Register of Commerce and Companies (RCS) of BORDEAUX under no. 792 135 527,

having its registered office at: [Address 2],

represented by its legal representatives,

Represented by: Ms. Caroline HATET-SAIVAL from SELARL CAROLINE HATET AVOCAT, a counsel with right of audience at the Bar Council of PARIS, bar number: L0046

Assisted by: Ms. Maud MARIAN, litigator at the Bar Council of PARIS, bar number: R063

Respondent to the action:

THE STATE OF LIBYA

a legal entity under public international law,

residing [Address 3] (LIBYA),

acting through the Chairman of the Authority of the State Cases (formerly referred to as the State Litigation Department) on behalf of the State of Libya,

*Represented by: Ms. Carole SPORTES LEIBOVICI from SELARL HAUSSMANN ASSOCIES,
as counsel with right of audience and litigator at the Bar Council of PARIS, bar number: P0443*

ADDED PARTY:

THE PUBLIC PROSECUTOR – FINANCIAL AND COMMERCIAL DEPARTMENT
[Address 1]

The case was communicated to the Public Prosecutor, which gave its opinion on 1 December 2023.

COMPOSITION OF THE COURT:

The case was heard on 18 December 2023, in open court, before the Court composed of:

Mr. Daniel BARLOW, President of the Chamber
Ms. Hélène FILLIOL, President of the Chamber
Ms. Marie LAMBLING, Judge

who ruled on the case.

A report was presented at the hearing by Mr. Daniel BARLOW under the conditions provided for by Article 804 of the French Code of Civil Procedure.

Court Clerk at the hearing: Ms. Najma EL FARISSI

JUDGEMENT:

- adversarial
- judgement made available at the Clerk's office of the Court, the parties having been previously notified thereon under the conditions provided for in the second paragraph of Article 450 of the French Code of Civil Procedure.
- signed by Mr. Daniel BARLOW, President of the Chamber and by Ms. Najma EL FARISSI, Court Clerk to whom the minute of the judgement's original was handed down by the judge signatory.

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I/ FACTS AND PROCEEDINGS

1. The Court is seized on referral after *cassation*, of the appeal lodged against a judgement handed down by the Paris Commercial Court, on 5 June 2015, in a dispute between Business Network Investment & Debt, a company registered under French law whose sole shareholder is Mr. [I] [B], (hereinafter “BNI”) and the State of Libya.
2. The dispute underlying this ruling concerns the performance of a settlement agreement which BNI claims to have entered into with the State of Libya on 12 June 2014, for the payment of commissions arising from an agreement concluded on 15 June 2012 with the Libyan Asset Recovery & Management Office, for the localisation and recovery of assets frozen by the United Nations Security Council and the Council of the European Union following the 2011 revolution in Libya.
3. BNI’s objective is the recovery, for itself or on behalf of third parties of international debts. The company was established in March 2013 by Mr. [B], of French and Tunisian nationalities, who previously operated as an independent worker registered in the Register of Commerce and Companies (RCS) of Bordeaux under the trademark “BNI”.
4. Following the events known as the Libyan Spring, the United Nations Security Council and the Council of the European Union decided to freeze Libyan assets abroad, including those of the Libyan Economic and Social Development Fund (ESDF).
5. In this context, BNI claims to have been mandated in 2012 by the Libyan Government to work with the Libyan Investment Authority (LIA), the ESDF and the Libyan Claims Commission to locate the ESDF assets affected by these measures and obtain their return to the State of Libya. For this purpose, the company states to have signed the agreement of 15 June 2012 and the settlement agreement of 12 June 2014, granting it a payment of USD 80 million.
6. By written instrument dated 5 June 2015, BNI summoned the State of Libya before the Paris Commercial Court to seek its order to pay the above-mentioned sum.
7. By judgement dated 18 September 2018, the Court ruled its lack of jurisdiction and directed the parties to better lodge their claims.
8. On the BNI’s appeal, the Paris Court of Appeal, handed down a judgement on 28 January 2019, ruling as follows:

“Dismisses the judgement under appeal insofar as it asserted the Paris Commercial Court’s lack of jurisdiction,

And in a further hearing,

Finds inadmissible BNI’s action against the State of Libya,

Dismisses the Libyan State's counterclaim,

Orders BNI to pay to the State of Libya the sum of €10,000 pursuant to Article 700 of the French Code of Civil Procedure,

Orders BNI to pay the full costs, which may be recovered by Mr. Jean-Philippe Autier, in accordance with Article 699 of the French Code of Civil Procedure.”

9. By a decision dated 12 January 2022, the French Court of Cassation reversed and set aside this judgement in all its provisions on the grounds that:

5. Foreign states enjoy immunity from jurisdiction, when the act giving rise to the dispute involves, by its nature or purpose, the exercise of the sovereignty of those states. This is not the case with a commercial contract.

6. In recognising immunity from jurisdiction for the Libyan state, the judgement holds that the dispute concerned the implementation of Resolution No. 34 of 2012 by the Libyan Council of Ministers, authorising the Libyan Asset Recovery & Management Office to search for, trace, freeze, and recover assets and funds owned by Libya, and that it followed from United Nations Security Council Resolution 1970 of 2011 on the freezing of Libyan financial assets that states must ensure that no person could seize them. From this, it inferred that the sovereign nature of the acts in question arose not only from their author but also from the purpose pursued, namely the recovery of the Libyan people's assets held abroad.

7. By determining in this way, without examining the nature of the contract dated 15 June 2012, governed by private law, nor that of the settlement agreement dated 12 June 2014, as well as the purpose pursued by the latter, in its context, the Court of Appeal failed to provide a legal basis for its decision.”

10. BNI seized the Paris Court of Appeal, designated as the referral Court, by a declaration dated 7 April 2022.

11. While the appeal in cassation was pending, BNI seized the El Beïda Court of First Instance in Libya, to have the settlement agreement recognised as valid. This Court asserted its lack of jurisdiction on 24 January 2022. The appeal lodged by the Libyan State against this decision is ongoing.

12. In March 2023, the Libyan State lodged a complaint against BNI and Mr. [B] before the Public Prosecutor of the Paris Judicial Court on charges of forgery and use of forged public documents and attempt to pervert the course of justice due to the public authority status of the victim. On 28 June 2023, it lodged a complaint with a claim for criminal indemnification before the chief investigating judge of the Paris Judicial Court on the same charges.

13. The Public Prosecutor, an added party in the present proceedings, issued its written opinion on 1 December 2023, which was transmitted to the parties.

14. The case was closed on 12 December 2023 and the pleadings were heard on 18 December 2023.

II/ CLAIMS OF THE PARTIES AND OPINION OF THE PUBLIC PROSECUTOR

15. In accordance with its latest submission, notified electronically on 26 October 2022, BNI requests the Court to:

- RULE the inadmissibility of the State of Libya's request for a stay of proceedings,
- RULE that the State of Libya's request for a stay of proceedings is groundless and dismiss it,
- FIND the inadmissibility of the application for reversal brought by the State of Libya,
- QUASH the judgement handed on 18 September 2018 by the Paris Commercial Court,

And in a further hearing, to

- DISMISS the State of Libya of all claims and applications,
- RULE groundless the request of the Libyan State under the immunity from jurisdiction,
- RULE that BNI's claims are admissible,
- RULE that the Paris Commercial Court has jurisdiction,

Under the provisions of the Article 88 of the French Civil Code of Procedure, to

- DISCUSS the merits of the case,
- REFER the parties to conclude on the merits of the dispute,
- In the alternative, FIND that the Paris Commercial Court lacks jurisdiction for the benefit of the Bordeaux Commercial Court,
- In the further alternative, FIND that the Paris Commercial Court lacks jurisdiction for the benefit of the Bordeaux Court of first instance,
- ORDER the Libyan State to pay the sum of €20,000.00 pursuant to Article 700 of the French Code of Civil Procedure and to pay full costs.

16. In its latest submissions, notified electronically on 5 December 2023, the State of Libya requests the Court to:

- FIND ADMISSIBLE the State of Libya in its written submissions,

Granting,

In limine litis,

- On the request for a stay of proceedings asked by the State of Libya
- GRANT A STAY OF PROCEEDINGS in the present proceedings until the order of *nolle prosequi* provided for by Article 177 of the French Code of Criminal Procedure or the order terminating proceedings provided for by Article 179 of the French Code of Criminal Procedure becomes final, following the complaint with a claim for criminal indemnification brought by the State of Libya on 28 June 2023, registered under the prosecutor's office number 23 075 000 931 and investigation number 20f/23/77;
- In the alternative, on the jurisdiction of the Paris Commercial Court, to
- UPHOLD the judgement handed down by the Paris Commercial Court on 18 September 2018, insofar as it asserted the lack of the substantive jurisdiction of the Paris Commercial Court to rule on this dispute, if necessary, by substitution of grounds, and refer the parties to pursue their claims before the Libyan courts;

In a further alternative, to

- On the State of Libya's immunity from jurisdiction,
- FIND INADMISSIBLE the action brought by Business Network Investment & Debt due to the immunity from jurisdiction to which the State of Libya has not waived;

In any event,

- On the evocation request,
- DISMISS the evocation request of Business Network & Debt for failing to meet the conditions provided for in Article 88 of the French Code of Civil Procedure.
- If the Court does not find the action of Business Network Investment & Debt inadmissible and discusses the merits of the case, REFER the party to file on the merits;

In any event,

- ORDER Business Network Investment & Debt to pay the full costs of the proceedings and to pay the sum of €20,000.00 to the State of Libya pursuant to Article 700 of the French Code of Civil Procedure.

17. In its opinion dated 1 December 2023, the Public Prosecutor invites the Court to find inadmissible and, in the alternative, unfounded the request for a stay of proceedings by the State of Libya, to rule on the ground of inadmissibility based on special exemption from jurisdiction

raised by the State of Libya, to dismiss the said ground, to dismiss the plea regarding the denial of justice alleged by BNI, and not to uphold the request for discussion of the merits made by BNI by referring the case on the merits to first-instance court which has jurisdiction, namely the Paris Commercial Court.

III/ GROUND OF THE RULING

A. On the request for a stay of proceedings

18. The State of Libya requests the court to grant a stay of proceedings pending the *nolle prosequi* order or a final terminating proceedings order on the complaint with civil party lodged on its behalf before the chief investigating judge of the Paris Judicial Court on charges of forgery and use of forged public documents and attempted fraud in judgement.

19. It argues that this request is admissible because:

- procedural objections can be raised during the proceedings if their cause is disclosed after the conclusions on the merits;
- the judge has discretionary power to assess the request for a stay in the interest of the proper administration of justice at any stage of the proceedings;
- in this case, the State of Libya, which had understood that the case would end with the inadmissibility of BNI's claims, had no choice but to file a complaint, as this company continued to rely on the forgery and use it before French courts;
- the request for a stay thus does not reveal any dilatory intent on the part of Libya;
- the infringements in question are not time-barred, the State of Libya having filed its complaint within the limitation period, which restarts with each use of the fraudulent documents;
- the other arguments stated by BNI to oppose the stay are inoperative, the public action having been initiated, the deposit paid, the request for a stay not being premature and having a precise term;
- by considering the request for a stay inadmissible on the grounds that it was not raised in *limine litis*, the General Prosecutor's Office fails to consider the triggering event of the request for a stay, namely the criminal complaint filed on 16 March 2023, and the wording of the Article 910-4 of the French Code of Civil Procedure;
- the evidence provided making the commission of an offence plausible, the court can grant the request for a stay, even assuming it to be late, in the interest of proper administration of justice.

20. On the merits, it argues that:

- the stay meets the requirements of proper administration of justice, in particular so that all documents that may impact the civil procedure can be analysed and discussed;

- the production of forgery during the proceedings is governed by specific provisions, with the legislator inviting the judge to exercise a broad office enabling him to determine the existence of a forgery before any decision on the merits.
- the request for payment made by BNI and its action are based on the 2014 settlement agreement tainted with forgery, making the challenge to its authenticity, which is the subject of the ongoing criminal procedure, crucial for the outcome of the civil dispute;
- the assessment of the jurisdiction of the Commercial Court and Libya's immunity from jurisdiction rests on a document tainted with forgery;
- the arguments regarding the difficulty of investigations to be conducted by the investigating judge are groundless, a mutual assistance request can be made to the Libyan authorities, and the Court cannot dismiss a stay request for purely organisational reasons;
- contrary to the opinion of the General Prosecutor's Office, the stay request does not contradict the texts and case law, with no assessment being made on the seriousness of the filed complaint.

21. BNI argues for the inadmissibility of Libya's stay request, stating that:

- the new provisions of Article 4 of the French Code of Criminal Procedure exclude the automatic nature of the stay to avoid dilatory complaints that would unreasonably prolong the duration of proceedings;
- in this case, the criminal procedure is not yet initiated, the public action not having been implemented, and Libya's request would indefinitely postpone the outcome of the present proceedings;
- the event justifying the stay request depended solely on Libya, which deliberately delayed initiating it;
- the agreement argued as forgery was communicated to Libya since the introduction of the proceedings before the commercial court in 2015, making it possible for Libya to seize the criminal courts to decide on the authenticity of the agreement;
- the mandate to file a criminal complaint dates back to January 9, 2023, while the complaint was filed three months later, a week before the closure of the appeal procedure;
- the stay request is imprecise as it sets two distinct terms.

22. On the merits, it argues that the stay request is unfounded because:

- Libya's requests are inconsistent, contesting the validity of the June 15, 2012 contract not covered by the criminal complaint, while asking the court not to rule on the merits;
- the stay request is dilatory, with Libya waiting eight years to criminally denounce the grievances and letting the forgery offence, an instantaneous offence, be time-barred;
- all material investigations and verifications inherent to the offences of use of forgery and attempt to pervert the course of justice will have to be conducted in Libya, affecting the duration of any potential criminal procedure due to the difficulties of cooperation in criminal matters with this country;
- the stay request, if granted, would not purge the present proceedings of all grievances raised by Libya and would indefinitely prolong the present procedure, compromising its outcome, thus not being compliant with the interest of proper administration of justice;
- the assessment of the risk of conflicting decisions in criminal and civil matters must consider the probability of the criminal procedure leading to a decision;
- procedures are ongoing in Libya concerning this case and the validity and authenticity of the contract and agreement, including one leading the El Beida Court to assert its lack of jurisdiction and another initiated in Tripoli by Libya without immediate notification to BNI.

23. The Public Prosecutor is of the opinion that the stay request should be declared inadmissible for not being raised in limine litis. It also recommends, subsidiarily, dismissing this request as groundless.

THEREUPON:

24. According to Article 74 of the Code of Civil Procedure, procedural objections must be raised simultaneously and before any defence on the merits or ground of inadmissibility, failing which they will be inadmissible. This applies even if the rules alleged in support of the objection are of public order.

25. However, procedural objections may be raised during the proceedings if their cause becomes apparent after submissions on the merits

26. Pursuant to Articles 377 et seq. of the same code, a decision to stay proceedings suspends the course of the proceedings for the time or until the occurrence of the event it specifies. It does not divest the judge of jurisdiction, and the proceedings continue upon expiration of the stay, at the initiative of the parties or at the judge's discretion, except where a new stay is ordered if necessary.
27. Unless this measure is provided for by law, the judge has the discretionary power to decide whether to stay proceedings in the interest of the proper administration of justice.
28. In this case, the request for a stay of proceedings filed by Libya is based on a new element arising from the criminal complaint filed by that State before the chief investigating judge of the Paris Judicial Court on 28 June 2023, for forgery and use of forged public documents and attempt to pervert the course of justice.
29. It is undisputed that this complaint, which specifically targets BNI and its director, and concerns the agreement alleged by Libya in support of its action, was filed after the parties had submitted their arguments on the merits of the case, rendering the request for a stay of proceedings admissible.
30. However, it remains manifestly late. The factual elements alleged by Libya in support of this complaint have been known to the parties since the initiation of the present proceedings in 2015. They were discussed before the Commercial Court, with Libya arguing the fraudulent nature of the agreement and other contractual documents produced by BNI from the outset. The existence of a forgery was also raised before the court during the first appeal, and Libya cannot validly claim to have delayed filing its complaint based on previous judicial decisions, as its current procedural situation is no different from that at the time of its first appeal, the outcome of which it could not predict.
31. It is significant to note that, far from acting promptly upon the reversing of the first judgement, Libya waited more than a year to file a complaint with the public prosecutor and did not rely on its complaint with a claim for criminal indemnification, filed more than 18 months after the reversing judgement, until a week before the initially scheduled date for the closure of the present proceedings, causing an incident that resulted in a postponement of the hearing.
32. Thus, even though the present proceedings have been pending for over eight years, without Libya deeming it necessary to take criminal action during this time or to file a forgery incident with the civil judge, despite the consistent nature of its defence arguments, a decision to stay the proceedings would inevitably cause an unreasonable delay in resolving the matter. The court reiterates that, in accordance with Article 4 of the French Code of Criminal Procedure, the initiation of public prosecution and, a fortiori, the mere filing of a criminal complaint does not necessitate the suspension of civil proceedings other than those seeking compensation for damage caused by the offence, even if the criminal decision might influence the outcome of the civil trial.

33. It follows from all these considerations that the proper administration of justice does not warrant a stay of proceedings in the present case. Consequently, Libya's request for a stay will be dismissed.

B. On the Appeal

34. BNI seeks the quashing of the first-instance judgement in that it asserted its lack of jurisdiction on the grounds of jurisdictional immunity and claims the jurisdiction of this Court based on the jurisdiction clause included in the settlement agreement underpinning its claims.

35. It argues on the first point that:

- the Court could not assert its lack of jurisdiction on the grounds of jurisdictional immunity, as it is not a ground of lack of jurisdiction but a ground of inadmissibility;
- this ground of inadmissibility is groundless, as there is a clear, express, special, and valid waiver by Libya of its immunity from jurisdiction, stated in Article 5 of the agreement underpinning BNI's claims;
- This agreement is authentic, as it has not been declared forged, and the waiver clause it contains is valid and must be fully effective;
- in any event, the nature, purpose, and objective of the agreement pertain to the management acts of the Libyan State, not its sovereign acts;
- the nature of BNI's claim is purely commercial and seeks the performance of the agreement that falls under private law;
- this transaction does not inherently relate to the sovereign acts of the State, as it does not involve its regal activities;
- the 15 June 2012 contract is not the act giving rise to the dispute, which concerns the performance of the agreement it led to;
- the agreement's objective is to resolve the dispute between Libya and BNI regarding the amount and terms of its remuneration, which is not a sovereign activity, but a contractual matter involving a service;
- immunity from jurisdiction yields to Article 6, paragraph 1, of the European Convention on Human Rights when its application does not guarantee the parties their right of access to a court and to a fair trial;
- the claimant does not, in this case, have genuine and effective access to the Libyan courts, with the El Beïda Court of First Instance having asserted its lack of jurisdiction in favour of the Paris Commercial Court;
- if the application of immunity from jurisdiction results in a denial of justice, it must be set aside in favour of the jurisdictional privilege enjoyed by French nationals;
- this would be the case here if the Court of Appeal upheld Libya's ground of inadmissibility, in the absence of a jurisdiction asserting its jurisdiction.

36. Additionally, on the jurisdiction clause in favour of the Libyan courts and the ground of lack of jurisdiction, it argues that:

- the reasoning of the first judges contradicts the provisions of Article 122 of the French Code of Civil Procedure, as the existence of an inadmissibility based on immunity from jurisdiction precludes the examination of jurisdiction issues;
- BNI brought the case before the Paris Commercial Court based on the settlement agreement, which confers jurisdiction to the Commercial Court;
- therefore, the Paris Commercial Court has jurisdiction to hear all objections and defences related to the main and initial claim, including those concerning the validity of the agreement;
- the first judges erred in deriving their lack of jurisdiction from the relationships between the two agreements signed by the parties, as the question of interdependence and indivisibility between the contract and the agreement was not subjected to the parties' adversarial;
- the acts concluded by the parties do not constitute a group or chain of contracts but present an autonomous character, so the dispute over the contract does not deprive the action judge of his jurisdiction over the entire dispute and does not affect the validity of the agreement.

37. Libya seeks the upholding of the contested judgement in that it asserted the Paris Commercial Court's lack of jurisdiction and the inadmissibility of BNI's claims due to its immunity from jurisdiction.

38. It argues on the first point that:

- the jurisdiction clause inserted in Article 5 of the agreement and alleged by BNI to justify the jurisdiction of the Paris Commercial Court is not applicable, as the Commercial Court is substantively lacking of jurisdiction to rule on the dispute;
- the rules of substantive jurisdiction of the Commercial Court are of public order, and this clause must be deemed void, as Libya is not a trader, and the agreement is not a commercial act;
- therefore, the Court can only direct the parties to better lodge their claims before the Libyan Courts, where common law rules will apply, leading to these Courts' jurisdiction based on the defendant's domicile and the contract's place of performance.

39. On the immunity from jurisdiction, it argues that:

- the waiver stipulated in the agreement alleged by BNI, which is alleged to be forged, does not constitute a clear, express, and unequivocal waiver by Libya, as the act was not signed by the alleged signatory, its legalisation corresponds to that of a medical certificate, Libya had no financial or intellectual interest in concluding it, and it contains unusual clauses;

- assuming its validity, the agreement would necessarily be an act that, by its nature and purpose, pertains to the exercise of Libya's sovereignty;
- BNI's mission concerned the recovery of public funds, with the 2012 contract concluded under Resolution No. 34 of 2012 by the Libyan Council of Ministers authorising the recovery of public assets and funds belonging to the Libyan people, which is inherently and purposefully an exercise of state sovereignty;
- this recovery mission was entrusted to supplement the Ministry of Justice of Libya in tracking and tracing assets following a notice from the Libyan National Transitional Council on 19 May 2012;
- the recovery mission is referred to in the UN Security Council Resolution 1970 of 26 February 2011, demonstrating that the assets are recognised as public by the international community;
- the agreement is not an autonomous, detachable, or detached contract from the 2012 contract but constitutes an ancillary to that contract it aims to implement, as it specifies the absolute remuneration amount, with the remuneration modalities already set;
- due to its ancillary nature, the agreement shares the nature of its principal, which is an act that, by nature or purpose, pertains to the exercise of state sovereignty;
- the contracts cannot be qualified as “private acts” relating to the “financial engineering services provided by a private service provider” as argued by the public prosecutor, with the asset freeze under UN Resolution 1973 being an international public law sanction directly affecting state sovereignty;
- no denial of justice resulting from the granting of the immunity of jurisdiction justifies BNI's action being declared admissible, as the appellant does not demonstrate a lack of effective access to a judge in Libya and cannot allege its own wrongdoing.

40. The public prosecutor invites the Court to dismiss the ground of inadmissibility put forward by the State of Libya, given that the 2012 contract and the 2014 agreement are of a private law nature and constitute management acts, making the question of denial of justice irrelevant.

THEREUPON:

41. The Court notes, preliminarily, that while BNI concludes in the operative part of its pleadings the inadmissibility of the request for reversal formulated by the State of Libya, this claim is unsupported by any argument in the body of its writings. In accordance with Article 954, paragraph 3, of the French Code of Civil Procedure, this head of the request will therefore not be adjudicated.

(i) On the immunity from jurisdiction

42. The argument based on the immunity from jurisdiction of a State constitutes a ground of inadmissibility that deprives the seized forum of any power and must, as such, be examined before any other question, with the judge unable to rule on the grounds of lack of jurisdiction or on the merits before ruling on the alleged immunity.

43. Under the principles of international law, foreign States benefit from immunity from jurisdiction when the act giving rise to the dispute participates, by its nature or its purpose, in the exercise of the sovereignty of these States. This is not the case for a commercial contract.

44. In this instance, the claims submitted to the French judge by BNI are based on a settlement agreement dated 12 June 2014 between the Libyan State and BNI.

45. This act, which refers in its preamble to the “contract with Business Network Investment, by virtue of which all powers were conferred upon BNI to proceed with the investigations and recovery of the assets of the Economic and Social Development Fund (ESFD)”, stipulates in its Article 2 the commitment made by the Libyan State to “pay the amount of the debt representing eighty million US dollars (US\$80,000,000) in accordance with the rate agreed upon in the contract concluded between the parties on 15/06/2012”, with BNI committing, in Article 4, to waive “any action before judicial and non-judicial bodies” after the recovery of the debt amount.

46. According to its Article 5, this “settlement agreement is of a commercial nature for the parties and is subject to French law. Any dispute relating to its interpretation or performance will be submitted to the Paris Commercial Court. / In the event of a referral to the Paris Commercial Court, the Libyan State expressly and specifically waives its immunity from jurisdiction and enforcement”.

47. The contract of 15 June 2012 to which it refers aims at the recovery by BNI of Libyan assets frozen by a decision of the United Nations Security Council, in implementation of Resolution No. 34 of 2012 of the Libyan Council of Ministers authorising the Libyan Asset Recovery & Management Office to search for, trace, freeze, and recover assets and funds owned by Libya, with the contract specifically targeting the assets of the Economic and Social Development Fund.

48. Article 2.1 of this agreement invests BNI with a mission of “exclusive strategic advice, recovery manager, and investigator”, these services to be provided according to a “preliminary plan” established in consultation by the parties.

49. Its Article 3.1 provides for remuneration in favour of BNI calculated on the basis of a percentage of the recovered assets.

50. Article 6.1 subjects the contract to Libyan law and provides, in the event of a dispute concerning its interpretation, for the application of Libyan civil law.

51. It follows from these findings that the settlement agreement alleged by BNI in support of its claims is expressly qualified as a commercial contract. Acknowledging a commitment by the Libyan State to pay a debt linked to a service contract, in exchange for this company’s waiver of any judicial or extrajudicial action, it constitutes a transaction whose purpose is to end a dispute concerning this contract. It does not, as such, participate in the exercise of the

sovereignty of the Libyan State but resembles a management act escaping the benefit of state immunity from jurisdiction.

52. The contract of 15 June 2012 to which it refers, which does not constitute the basis of the claims brought before the French judge, is expressly subject to Libyan civil law and is analysed as a private law contract for the provision of a service related to asset recovery. It follows that, even assuming the principal-to-accessory link between the two acts, as asserted by the State of Libya, it cannot be validly relied upon to justify the alleged immunity from jurisdiction.

53. Libya cannot, under these conditions, rely on this ground of inadmissibility, which will be dismissed without it being necessary to rule on the existence of forgery, as the discussion relating to this State's waiver of its immunity from jurisdiction becomes irrelevant once this immunity is dismissed in consideration of the nature and purpose of the act serving as the basis for the action.

(ii) On jurisdiction

54. The State of Libya argues that the jurisdiction clause favouring the Paris Commercial Court alleged by the company BNI must be deemed void, for infringing upon the substantive jurisdiction of public order of this Court, as defined by Article L. 721-1 of the French Commercial Code, since Libya is not a trader and the disputed agreement cannot be qualified as a commercial act by nature.

55. In law, clauses extending international jurisdiction are generally lawful when they do not thwart the imperative territorial jurisdiction of a French court and are alleged in an international dispute.

56. They may be opposed to a non-merchant party, the principle according to which a jurisdiction clause in favour of the Commercial Court is inapplicable to a non-merchant defendant not applying in the international order, provided that no public order rule or the imperative jurisdiction of another Court is infringed.

57. It can be noted in this regard that the mandatory nature of the provisions founding the attribution jurisdiction of the Commercial Court is subject to adjustments, with the extension of this jurisdiction being admitted in the matter of mixed acts, when the action is brought by the non-merchant party or when, as a defendant, it does not rely upon the lack of jurisdiction of the consular jurisdiction, so that the jurisdiction rule alleged can be considered as not being of public order. It also appears that the quality of merchant referred to in Article L. 721-1, 1°, of the French Commercial Code is difficult to transpose in the international order, this notion being unknown to many foreign legislations, making the criterion of applicability based on the qualification of merchant less effective in this order.

58. In this case, it is undisputed that the dispute has an international character, opposing a French commercial company to a foreign State concerning a settlement agreement, expressly

qualified as commercial, containing in its Article 5 a jurisdiction clause in favour of the Paris Commercial Court.

59. If this settlement agreement, whose authenticity is moreover disputed, cannot be qualified as a commercial act by nature, and if the State of Libya does not have the quality of a merchant, this circumstance does not appear to be of a nature to render the disputed clause inapplicable to it, in consideration of the aforementioned developments, given that the dispute concerns an international commercial contract.

60. Consequently, the ground of lack of jurisdiction raised by the State of Libya will be dismissed.

61. As the respondent relies upon no other grounds for its ground of lack of jurisdiction based on the validity of this clause, it must be given effect and the Paris Commercial Court will be declared having jurisdiction to hear the dispute, with the appealed judgement being quashed on this point.

C. On the request for evocation

62. BNI asks the Court to review the merits of the case under Article 88 of the French Code of Civil Procedure, considering that it is in the interest of justice to provide a definitive solution to the matter.

63. The State of Libya opposes this, arguing that:

- the three conditions allowing the evocation of a case under Article 88 of the Code of Civil Procedure are not met due to the absence of a judgement ruling on jurisdiction, as the judges of the Commercial Court partially based their decision of lack of jurisdiction on Libya's immunity from jurisdiction, which actually constitutes a ground of inadmissibility;
- the financial stakes of the dispute and the parties' objections justify not granting the request for evocation as it does not meet the interest of the proper administration of justice.

64. The public prosecutor considers, for the same reasons, that there is no need for evocation.

THEREUPON:

65. Pursuant to Article 88 of the French Code of Civil Procedure, when the Court is acting as the appellate jurisdiction relative to the Court it deems having jurisdiction, it may examine the merits of the case if it deems it just to provide a definitive resolution to the matter, after having, if necessary, ordered an investigative measure itself.

66. Given the financial stakes of the present dispute, it does not appear to be in the interest of the proper administration of justice to deprive the parties of a two-tiered judicial review concerning the examination of the case on the merits.

67. Consequently, the request for evocation will be dismissed.

68. In these conditions, the case shall be referred back to the first instance judges seized.

D. On Costs and Expenses

69. The State of Libya, having failed in its claims, shall be ordered to pay the costs, with its claims relating to legal costs being dismissed.

70. Furthermore, it shall be ordered to pay BNI the sum of 20,000 euros pursuant to Article 700 of the French Code of Civil Procedure.

IV/ OPERATIVE PART

On these grounds, the court:

1) Declares the request for a stay of proceedings brought by the State of Libya admissible but groundless;

2) Dismisses the said request;

3) Quashes the judgement handed down by the Paris Commercial Court on 18 September 2018 under RG no. 2015057268 in all its provisions submitted to the Court;

And, in a further hearing:

4) Asserts the Paris Commercial Court jurisdiction to hear the claims brought by Business Network Investment & Debt company against the State of Libya;

5) Dismisses the request for evocation filed by this company;

6) Refers the case before this Court;

7) Orders the State of Libya to pay the costs;

8) Orders the State of Libya to pay to Business Network Investment & Debt the sum of twenty thousand euros (€20,000.00) pursuant to Article 700 of the French Code of Civil Procedure.

THE COURT CLERK,

THE PRESIDENT,