4A_232/2013[1]

Judgment of September 30, 2013

First Civil Law Court

Federal Judge Klett (Mrs.), Presiding
Federal Judge Kolly
Federal Judge Niquille (Mrs.)
Clerk of the Court: Carruzzo

X._____ SA
Represented by Mr. Pascal Dévaud,
Appellant

v.

Z._____ Ltd.,
Represented by Mr. Rodolphe Gautier and Mr. Luca Beffa,
Respondent

Facts:

A.
A.a.
In a contract of July 1, 1997, entitled *Distribution Agreement* (hereafter: the Distribution Agreement), Z._____ Ltd. (hereafter: Z._____), a company incorporated in [name of place omitted], (United Kingdom), entrusted the Greek company X._____ SA (hereafter: X._____), which specialized in the sale of electrical appliances, with distributing such products bearing the trademark Z._____ on Greek territory on an exclusive basis.

Art. 21.2 of the Distribution Agreement stated that:

> *This Agreement shall be governed by, and construed, in accordance with the laws of England and Wales except for those matters, if any, which can only be governed by the laws of the Territory* [i.e. Greece].[2]

An arbitration clause, worded as follows, was included in the Distribution Agreement:

> *ARTICLE 22- RESOLUTION OF DISPUTES*
>
> *22.1 Any dispute arising from or in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules.*
>
> *The Arbitration proceedings shall be held in Geneva, Switzerland in the English language.*[3]

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[1] Translator's Note: Quote as X._____SA *v.* Z._____ Ltd., 4A_232/2013. The original decision is in French. The full text is available on the website of the Federal Tribunal, www.bger.ch.
[2] Translator's Note: In English in the original text.
[3] Translator's Note: In English in the original text.

A.b.
On November 20, 2003, Z._____ wrote to X._____ to advise it that, pursuant to a reorganization of the A.Z._____ Group of companies, of which it was a member, the invoices concerning the orders made pursuant to the Distribution Agreement would henceforth be sent by the Italian company B.Z._____ S.r.l., which subsequently changed its name to become C.Z._____ Group S.r.l. (hereafter: C.Z._____).

From 2004, X._____ sent its orders to C.Z._____, received invoices from it, and paid them to the Italian company.

In a registered letter of March 17, 2010, Z._____ terminated the Distribution Agreement as of July 1, 2010, invoking the relevant provision of the aforesaid contract. Challenging the grounds for this unilateral termination of their contractual relationship, X._____ suspended its payments with open invoices amounting to EUR 1'074'895.83. Hence Z._____ stopped delivering the products.

A.c.
On July 7, 2010, X._____ seized the Court of First Instance of Thessaloniki (Greece) with a suit seeking damages against Z._____ and one of its subsidiaries, the Greek company D.Z._____ SA. Claiming that the termination in dispute was illegal and that unlawful acts had been committed throughout the performance of the Distribution Agreement, it sought the payment of EUR 1'256'042 from Z._____ only and the payment of EUR 5'711'926 from the two Respondents taken jointly and separately. The matter still appears to be pending.
B.
B.a.
On December 22, 2010, Z._____ relied on the arbitration clause in the Distribution Agreement and filed an arbitration request against X._____ in the Court of Arbitration of the International Chamber of Commerce (ICC). Claiming to have rightly terminated the aforesaid contract, it stated its intent to seek from the Respondent, on the one hand, payment of the unpaid invoices issued by C.Z._____ and, on the other hand, damages as a consequence of its being taken to the Greek courts by X._____ in breach of the arbitration clause.

A three-member arbitral tribunal was appointed to decide the dispute.

In a letter of February 11, 2011, counsel for X._____ challenged the jurisdiction of the Arbitral Tribunal to address the two submissions made by Z._____. In a subsequent answer to the request for arbitration dated March 7, 2011, it made a number of counter claims with a view to obtaining the payment of several amounts on various grounds (compensation for customer base, advertising expenses, etc.).

B.b.
On February 25, 2013, the Arbitral Tribunal issued its final award. Admitting jurisdiction as to both claims made by Z._____, it found that the claimant had properly terminated the Distribution Agreement. Then, it rejected all counter claims by the Respondent and ordered it to pay EUR 1'074'895.83 to Z._____ for the unpaid invoices that the claimant had sent through C.Z._____, as well as the costs of the Claimant in connection with the arbitration, and indeed, in connection with the Greek procedure. Moreover, in the long paragraph number 7 of the operative part of the award, the Arbitral Tribunal substantially upheld the right for Z._____ to seek compensation from X._____ for the amounts it could be ordered to pay to the latter and/or the legal and procedural costs it may have to pay should the Greek claim or any other action initiated in a state court by X._____ be upheld in connection with the termination of the Distribution Agreement on the basis of the grounds address in the award, and even for the costs it may not be able to recover should it prevail in the state courts.

The reasons adopted by the arbitrators in support of the award will be mentioned hereunder to the extent necessary for this judgment.

C.

On April 25, 2013, X._____ (hereafter: the Appellant) filed a civil law appeal with the Federal Tribunal. Invoking Art. 190(2)(b), (c) and (e) PILA,[4] it sought the annulment of the February 25, 2013, award. The Appellant attached to its brief two legal opinions issued by law professors of the University of Athens on April 22 and 24, 2013.

In their respective answers of June 10, 2013, Z._____ (hereafter: the Respondent) and the Arbitral Tribunal submit that the appeal should be rejected.

The request for a stay of enforcement contained in the appeal brief was rejected by decision of the presiding judge of June 19, 2013.

The Appellant and the Respondent maintained their submissions in their subsequent briefs (reply of June 25, 2013, and rejoinder of July 11, 2013).

Reasons:

1.
According to Art. 54(1) LTF,[5] the Federal Tribunal issues its decision in an official language,[6] as a rule, in the language of the decision under appeal. When the decision is issued in another language (here, English), the Federal Tribunal resorts to the official language chosen by the parties. Before the Arbitral Tribunal they used English, while in the briefs submitted to the Federal Tribunal, they used French. In accordance with its practice, the Federal Tribunal shall consequently issue its decision in French.

2.
In the field of international arbitration, a civil law appeal is admissible against the decisions of arbitral tribunals pursuant to the requirements of Art. 190 to 192 PILA (Art. 77(1)(a) LTF). The seat of the arbitration was set in Geneva. At least one of the parties (in this case, both) did not have its domicile in Switzerland at the decisive time. The provisions of Chapter 12 PILA are accordingly applicable (Art. 176(1) PILA).

The Appellant is directly affected by the award under appeal, as the Arbitral Tribunal ordered it to pay an amount of money to the Respondent and rejected its counter claims. Consequently, it has an interest worthy of protection to obtain the annulment of the award, which gives it standing to appeal (Art. 76(1) LTF).

Filed within 30 days of the notification of the final award (Art. 100(1) LTF) when the suspension of the time limit during the Easter recess is taken into account (Art. 46(a) LTF), the appeal meets the formal requirements at Art. 42(1) LTF and is consequently admissible.

3.
In a first group of arguments, the Appellant relies on Art. 190(1)(b) PILA to argue that the Arbitral Tribunal was wrong to accept jurisdiction as to the Respondent's submissions concerning, one the one hand, the unpaid invoices of C.Z._____ and on the other hand, the alleged breach of the arbitration clause resulting from its recourse to the Greek courts.

3.1. Seized for lack of jurisdiction, the Federal Tribunal freely reviews the legal issues, including the preliminary issues, which determine the jurisdiction of the arbitral tribunal or the lack thereof. However, this does not turn the Federal Tribunal into a court of appeal. Thus, it does not behoove this court to itself research the legal arguments in the award under appeal, which may justify admitting an argument based on Art. 190(2)(b) PILA. Instead, it falls to the Appellant to point them out, in order to comply with the requirements of Art. 42(2) LTF.

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[4] Translator's Note: PILA is the most commonly used English abbreviation for the Federal Statute on International Private Law of December 18, 1987, RS 291.

[5] Translator's Note: LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173.110.

[6] Translator's Note: The official languages of Switzerland are German, French, and Italian.

Moreover, even when deciding the jurisdiction of the arbitrators, the Federal Tribunal is bound by the factual findings of the award under appeal (see Art. 105(1) LTF). It may not rectify or supplement *ex officio* the factual findings of the arbitrators, even though the facts may have been established in a blatantly inaccurate manner or in violation of the law (see Art. 77(2) LTF, which rules out the application of Art. 105(2) LTF). However, the Court retains the ability to review the factual findings on which the award is based if one of the grievances at Art. 190(2) PILA is raised against such factual findings or when some new facts or evidence are exceptionally taken into account in the framework of a civil law appeal (judgment 4A_240/2012 of August 20, 2012, at 2.3[7] and the precedents quoted).

3.2. According to Art. 190(2)(b) PILA, the award may be appealed when the arbitral tribunal wrongly accepted or denied jurisdiction. The arbitral tribunal has jurisdiction over when the matter may be submitted to arbitration pursuant to Art. 177 PILA, when the arbitration agreement is formally and materially valid pursuant to 178 PILA, and when the matter falls within the arbitration agreement, all these conditions being inseparable (ATF 133 III 139 at 5 p. 141).

When reviewing if it has jurisdiction to decide the dispute at hand, the arbitral tribunal must determine, among other issues, the objective or *ratione materiae* (scope) and the subjective or *ratione personae* (scope of the arbitration agreement). It must determine which disputes are covered by the agreement and which parties it binds. These jurisdictional issues must be resolved in light of Art. 178(2) PILA. The provision quoted provides three alternate connections *in favorem validitatis* with no hierarchy among them, namely the law chosen by the parties, the law governing the substance of the dispute (*lex causae*), and Swiss law (ATF 134 III 565 at 3.2 p. 567[8]).

3.3.
3.3.1. At Chapter 12 of the award under appeal (p. 59 to 61, n 269 to 277) the Arbitral Tribunal deals with its jurisdiction as to the Respondent's submission that the Appellant should be ordered to pay EUR 1'074'895.83 for the unpaid invoices issued by C.Z._____. Its position may be summarized as follows.

From its conclusion of July 1, 1997, and until its termination, which took effect on July 1, 2010, the Distribution Agreement always bound its two signatories only, i.e., the parties in this dispute. It imposed upon the Respondent an obligation to deliver goods to the Appellant, which for its part, had to pay the price to the Respondent or to the third party it would designate for this purpose. The possibility that payment should be made to a third party, as instructed by the Respondent, did not change the fact that the latter remained the creditor of the obligation to pay. This took place when the Respondent sent the November 20, 2003, letter to the Appellant informing it that, as a consequence of an internal administrative reorganization of the group of companies to which it belonged, the orders made pursuant to the Distribution Agreement would hence forth be sent to C.Z._____, which would carry them out, invoice the goods ordered and receive payment.

The unpaid invoices amounted to EUR 1'074'895.83. The Appellant does not dispute this amount as such. However, it takes the view that only C.Z._____ could seek payment. Yet, this Italian company was not bound by the arbitration clause. Hence, according to the Appellant, the Arbitral Tribunal had no jurisdiction to issue an award in favor of a party that does not have standing to act with regard to the claim submitted to the arbitrators. It is not so. While the arguments developed in the appeal might have been upheld, if, pursuant to a novation of the contract, the Distribution Agreement had been substituted with a similar contract concluded by the Appellant with C.Z._____, this is not what the Appellant argues, as it claims that the aforesaid contract always bound its signatories and acknowledges

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[7] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/federal-tribunal-reaffirms-that-arbitration-clauses-must-be-inte.

[8] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/extension-of-arbitration-clause-to-non-signatories-case-of-a-gua.

that the Respondent, and not the Italian company, was entitled to terminate it by complying with proper notice. Therefore, the Appellant contradicts itself totally when, on the one hand, it acknowledges that the Distribution Agreement never had any other party than the Respondent and itself, while claiming, on the other hand, that C.Z._____ acted in its own name, as a principal, when it dealt with it with a view to securing performance of the contract at issue. Moreover, the Appellant puts forward in the arbitral procedure an argument which is not compatible with the point of view it adopts in the Court of First Instance of Thessaloniki, where it argues that, on the basis on the aforesaid letter of December 20, 2003, C.Z._____ acted as a direct (or at least an indirect) agent for the Respondent in the performance of the Distribution Agreement.

Thus, the jurisdiction of the Arbitral Tribunal to decide the claim concerning the payment of the outstanding invoices is not debatable, as it was introduced by the party that held the claims.

3.3.2. In substance, the Appellant argues against this that the unpaid invoices were claims that C.Z._____ had against it, as the Italian company was not acting on behalf of the Respondent and had no powers to do so when it was delivering the goods, sending the corresponding invoices and receiving payment. In other words, the Respondent would have no title to the claims in the dispute pursuant to Swiss, Greek, and English law. From this lack of standing, the Appellant deduces an absence of an arbitration agreement which could bind the parties to the Distribution Agreement with regard to these claims, and consequently, the lack of jurisdiction of the Arbitral Tribunal. The Appellant also argues in the alternative that the aforesaid claims are not covered by the arbitration clause inserted into the Distribution Agreement because they do not arise from it, but from the sales contract with C.Z._____.

It must be stated at the outset that the reasons in support of this grievance are essentially contained in the Appellant's reply, the length of which is not in proportion to the appeal brief. Yet, such a brief is not meant to allow a party to invoke some grievances that were not submitted in a timely manner, namely before the non-extendible (Art. 47(1) LTF) time limit to appeal expired, pursuant to Art. 100(1) LTF or to supplement, after the time limit, a group of arguments, albeit existing, would be insufficient for the Federal Tribunal to find in favor of the admissibility of the grievance considered (judgment 4A_12/2012 of May 2, 2012, at 4). From this point of view, the admissibility of the argument is very debatable, particularly because it is very much of an appellate nature and relies in part on allegations departing from the factual findings in the award at issue. Be that as it may, the Appellant's explanations in support of this grievance are not such as to establish a violation of Art. 190(2)(b) PILA by the Arbitral Tribunal. As to the legal opinion purporting to support them, which was attached to the appeal brief, its production was indeed admissible (judgment 4A_146/2012 of January 10, 2013[9] at 2.6); however, the Appellant's mere reference to it in its brief without the slightest indication as to which parts of the document would be pertinent would not appear admissible in view of the requirement that grounds should be provided in support of an appeal. Moreover, Greek law, which is analyzed by the author of the legal opinion, is in any event inapplicable in deciding the issue at hand, as the *lex causae* within the meaning of Art. 187(1) PILA is, in this case, the English law as chosen by the parties (see the aforesaid after 21.2 of the Distribution Agreement) and the parties did not choose a specific law for the arbitration clause (see Art. 178(2) PILA).

In support of its argument, the Appellant quotes the judgment published at ATF 128 III 50 at 2. It is wrong. In this precedent, the same circumstance – namely, a valid assignment of the claim in dispute carrying that of the arbitration clause – determined both the assignee's standing to sue and its capacity to be a party to an arbitral proceeding initiated pursuant the aforesaid clause. The situation is different here. Indeed, the Appellant does not dispute that the Respondent is indeed the party with which it signed the Distribution Agreement which contained the arbitration clause and that the Respondent took it to arbitration on the basis of that agreement with a view to obtaining payment of the claims allegedly arising from the

[9] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/federal-tribunal-will-not-review-decision-foreign-court-appointing-arbitrator-when-party-failed-do.

contract at issue. However, it disputes that the Respondent had standing to submit the claim to the arbitrators because that belongs to a third party, namely the company C.Z._____. This is no reason to dispute the jurisdiction of the arbitrators appointed pursuant to the arbitration clause contained in the Distribution Agreement to determine the actual owner of the claim arising from this contract. In other words, if they were persuaded that the Respondent had no standing to claim, they would have had the jurisdiction to find as much in their award and consequently to reject the claim.

In the alternative the Appellant, if one understands it well, seeks to demonstrate that the claims in dispute do not arise from the Distribution Agreement but from a separate contract with C.Z._____ that did not contain an arbitration clause. Such a demonstration, had it been made, would indeed cause the Arbitral Tribunal to lose jurisdiction over the merits of these claims. However, that was far from shown. In this respect the Appellant merely points out a number of circumstances which the arbitrators allegedly did not take into account (reply p. 4, ch. 3) and which consequently are not mentioned in the factual findings in the award under appeal. It then compares these with the rules of Swiss, English and Greek law concerning representation in order to draw the aforesaid conclusion. Such an approach is bound to fail. The factual findings of the arbitrators must be used to draw the necessary legal consequences. Yet these consequences, as they appear from the reasons of the Arbitral Tribunal summarized above (see 3.3.1) are not open to criticism. In substance, they showed that there was no novation of the Distribution Agreement; that the Appellant and C.Z._____ never entered into a separate contract in connection with the orders pursuant to which the unpaid invoices were issued; that the Italian company was a mere auxiliary of the Respondent, the assistance of which was requested pursuant to an internal reorganization of the group of companies to which it belonged; that C.Z._____ therefore acted in the name and on behalf of the Respondent, at least implicitly; that the Appellant could not but know this and that it adopted in the Greek courts a position incompatible with its present arguments, according to which it was legally bound to C.Z._____ as a principal party to the contract, pursuant to which the claims in dispute arose and not as a mere auxiliary acting in the name and on behalf of the Respondent.

Consequently, the Arbitral Tribunal was right to accept jurisdiction to address the claim concerning the unpaid invoices issued by C.Z._____.

3.4
3.4.1. At Chapter 12 of the award (n. 278 to 299), the Arbitral Tribunal sets forth the reasons for which it acknowledged the Respondent's right to be compensated for the costs and the damage it may sustain as a consequence of the Appellant introducing proceedings in the Greek courts and/or other state courts in breach of the arbitration agreement.

Addressing the issue under English law and in particular on the basis of two precedents from English courts, the arbitrators found that the Respondent's claims, in this respect, fell within the scope of the arbitration clause at Art. 22.1 of the Distribution Agreement; this clause encompassing also the disputes arising from its very breach. They therefore accepted the jurisdiction and treated the claim based on the breach of the arbitration agreement as a contractual claim within the meaning of English law. The Arbitral Tribunal took care to state in this respect that it did not at all intend to impinge on the exclusive jurisdiction of the Greek courts to award costs in their own proceedings, but merely to address the Respondent's claim for damages in connection with the harm it could suffer as a consequence of the Appellant resorting to the state courts.

The arbitrators then explained why, in their view, the fact that the Appellant seized the state courts, Greek or otherwise, was a breach of the arbitration agreement. Finally, they stated the various manners in which such a breach could take place and the consequences that could be drawn for the Appellant and the Respondent, while introducing the qualifications and precisions necessary to understand their decisions in the corresponding section of the operative part of the award.

3.4.2. In this respect as well, the Appellant argues a violation of Art. 190(2)(b) PILA. However, again, it does so in an unsatisfactory manner as to the requirement to submit

reasons and, in any event, fails to establish the alleged breach. As a preliminary, the Appellant recalls that it raised a jurisdictional defense at the outset of the arbitral proceedings as to the Respondent's claim in connection with the introduction of the "Greek claim" in accordance with Art. 186(2) PILA. The issue is not in dispute and requires no examination.

The Appellant then seeks to demonstrate that the Arbitral Tribunal asserted a competence which in fact belongs to the state courts, namely the power to adjudicate the costs of proceedings in the state courts. It does so in vain, as the Arbitral Tribunal clearly and convincingly explained that it did not intend to challenge the exclusive jurisdiction of the state courts to decide this issue (see award n. 292).

It is furthermore argued that the Arbitral Tribunal ordered the Appellant to compensate the Respondent "for a hypothetical and future breach of contract," even though the amount of damages, as the case may be, will be known only subsequently and such a finding does not correspond to any interest of the parties. This grievance is not sufficiently developed to be admissible. Indeed, the Appellant does not demonstrate how the arbitrators violated English law by deciding that the arbitration clause in dispute empowered them to issue such an order. One does not see that either the interest of one party or both parties would be a decisive criterion to determine the substantive jurisdiction of an arbitral tribunal. Moreover, it is inaccurate to allege a hypothetical breach of the contract in connection with the proceedings introduced by the Appellant in the Court of First Instance of Thessaloniki, which is apparently still pending, as the very introduction of this proceeding is indeed a breach of the arbitration clause and it cannot be denied that the Respondent will have an interest to be compensated for this breach, as it could undergo financial harm. Similarly, the Respondent can doubtlessly claim an interest to dissuade the Claimant by way of an order to compensate it, should the Claimant again seize a state court in violation of the arbitration clause.

Moreover, the mere reference, without any further explanation by the Appellant as to one of the two legal opinions attached to the appeal, is insufficient to substantiate the grievance as has already been pointed out in connection with the previous argument.

Finally, the argument submitted for the first time in the Reply, in connection with the amounts that the Appellant could seek from the Respondent in a state criminal court in case of fraud or a criminal offense to its detriment in connection with the Distribution Agreement (reply n. 1 p. 10), is inadmissible.

3.5. This being so, both parts of the argument that the Arbitral Tribunal did not have jurisdiction appear unfounded to the extent that they are admissible.

4.

4.1. It is further argued that the Arbitral Tribunal acted *ultra petita* when deciding the Respondent's right to possible compensation for breach of the arbitration agreement in connection with the future and hypothetical proceedings that the Appellant could bring in state courts other than the Greek courts. Indeed, according to the Appellant, the arbitrators were, with regard to this issue, merely seized of a submission concerning the request made in the Court of First Instance of Thessaloniki as shown by the Terms of Reference of July 25, 2011, which could not be altered pursuant to Art. 19 of the ICC Rules of Arbitration (1998 version).

4.2. According to Art. 190(2)(c) first premise PILA, the award may be appealed when the Arbitral Tribunal decided beyond the scope of the submissions of which it was seized.

The Appellant's arguments grounded in this provision are without any basis. Indeed, it appears from the references given by the Respondent in its answer (p. 14) and its rejoinder (p. 7 to 9) that it made submissions seeking compensation for the harm it may suffer as a consequence of the Appellant initiating proceedings in Greece or any other future legal proceedings and that it did so in several written submissions included in the record of the arbitration before and after the execution of the Terms of Reference. Consequently, the arbitrators did not decide *ultra petita* when they issued an award, the operative part of which

certainly falls within the scope of the submissions they were presented with. That these may have been in violation of the rule invoked by the Appellant is a different issue, which has no impact as to whether or not the Arbitral Tribunal decided beyond the submissions before it.

5.
In a last group of arguments, the Appellant claims that the Arbitral Tribunal violated procedural and substantive public policy within the meaning of Art. 190(2)(e) PILA.

5.1.
5.1.1. Procedural public policy guarantees to the parties the right to an independent judgment as to the submissions and the factual allegations submitted to the Arbitral Tribunal in a manner consistent with applicable procedural law. Procedural public policy is violated when some fundamental and generally recognized principles are violated, which leads to an insufferable contradiction with the sense of justice, such that the decision appears incompatible with the values recognized in the rule of law (ATF 132 III 389 at 2.2.1). It must be stated however that any violation, even arbitrary, of a procedural rule does not constitute a violation of procedural public policy. Only the violation of a rule essential to ensure the fairness of the proceedings can be taken into account in this respect (ATF 129 III 445 at 4.2.1 and the references).

Moreover, procedural public policy is only an alternate guarantee and thus constitutes a precautionary norm for procedural violations, which the legislator would not have had in mind when adopting the other letters of Art. 190(2) PILA (ATF 138 III 270 at 2.3[10]).

5.1.2. An award is contrary to substantive public policy when it violates some fundamental principles of substantive law to such a degree that it is no longer consistent with the determining legal order and system of values; amongst such principles are, in particular, the sanctity of contracts, the compliance with the rules of good faith, the prohibition of abuse of rights, the prohibition of discriminatory or confiscatory measures and the protection of incapable persons (ATF 132 III 389 at 2.2.1).

The rule of *pacta sunt servanda* within the restrictive meaning given by the case law on 190(2)(e) PILA is violated only if the arbitral tribunal refuses to apply a contractual provision while admitting that it binds the party or, conversely, it imposes upon them compliance with a clause that it considers does not bind them. In other words, the arbitral tribunal must have applied or refused to apply a contractual provision in a manner that contradicts the results of its interpretation as to the existence or the contents of the legal instrument in dispute. However, the process of interpretation itself and the legal consequences logically drawn therefrom are not governed by the principle of sanctity of contract, so they cannot be open to an argument that public policy was violated. The Federal Tribunal has emphasized many times that almost all contractual disputes fall outside the scope of protection of the principle of *pacta sunt servanda* (judgment 4A_550/2012[11] of February 19, 2013, at 4.1).

5.2
5.2.1. In a first argument, the Appellant claims a violation of the principle of *pacta sunt servanda* because to accept jurisdiction with regard to the claims concerning the unpaid invoices issued by C.Z._____, the Arbitral Tribunal created a new contract *ex nihilo* purporting to bind the parties to this dispute and not the Italian company.

The argument is devoid of any basis. Indeed, even if the Arbitral Tribunal had acted as the Appellant claims, it could not be found in violation of the principle at issue, as the operative part of its award merely draws the logical conclusions as to jurisdiction and the merits that the

[10] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/an-international-arbitral-tribunal-seating-in-switzerland-is-gen.

[11] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/no-review-how-pacta-sunt-servanda-was-applied-arbitration.

recognition of the existence of a contractual relationship between the Appellant and the Respondent as to the invoices in dispute implied.

5.2.2. The Appellant then states that the Arbitral Tribunal did not grasp the significance of a Greek presidential decree providing for compensation for loss of customers in favor of the agent/distributor at the time the contract was terminated and of a Greek law concerning the abuse of a situation of economic dependence. It overlooked that the pertinent provisions of the decree and of the law are mandatory and therefore applicable, irrespective of the law chosen by the contracting parties. As submitted, the argument does not appear admissible for lack of supporting reasons. Indeed, it is not clear what the Appellant specifically claims the Arbitral Tribunal violated and it does not explain in what framework the grievance was raised, except by mere reference to a long section of the award under appeal. It is not the role of the Federal Tribunal to itself research where the argument should be connected (see Art. 77(3) LTF).

5.2.3. Finally, the Appellant argues again the "Greek claim" but this time as a violation of procedural public policy.

One does not see anything in its argument that would justify another solution than the one adopted in the same respect above (see 3.4 above).

Hence, this last argument fails as well.

6.
In conclusion, the appeal cannot but be rejected to the extent that the matter is capable of appeal. Consequently, the Appellant shall pay the judicial costs (Art. 66(1) LTF) and compensate the Respondent for the federal judicial proceedings (Art. 68(1) and (2) LTF).

Therefore the Federal Tribunal pronounces:

1.
The appeal is rejected to the extent that the matter is capable of appeal.

2.
The judicial costs set at CHF 14'000 shall be borne by the Appellant.

3.
The Appellant shall pay to the Respondent an amount of CHF 16'000 for the federal judicial proceedings.

4.
This judgment shall be notified to the representatives of the parties and to the Arbitral Tribunal

Lausanne, September 30, 2013

In the name of the First Civil Law Court of the Swiss Federal Tribunal

The Presiding Judge:	The Clerk:
Klett (Mrs.)	Carruzzo