4A_446/2014[1]

Judgment of November 4, 2014

First Civil Law Court

Federal Judge Klett (Mrs.), Presiding
Federal Judge Hohl (Mrs.)
Federal Judge Kiss (Mrs.)
Clerk of the Court: Mr. Carruzzo

A._____ SA,
Represented by Mrs. Clarisse von Wunschheim,
Appellant

*v.*

B._____,
Represented by Mr. Paolo Michele Patocchi and Mr. Paolo Marzolini,
Respondent,

C._____, Limited,
Represented by Mr. Eric Bechenit,

D._____,
Represented by Mrs. Tetiana Bersheda,

Facts:

A.
In a contract of April 2013, governed by Swiss law (hereafter: the Contract), the limited liability company under New York law B._____ promised to the Swiss law company A._____ SA (hereafter: A._____) to construct a Turkish hammam in a chalet belonging to D._____ in Gstaad. The total price of the hammam, some 31 million US dollars (USD), was payable in several installments, according to the progress of the works. An arbitration clause inserted in the aforesaid Contract entrusted a sole arbitrator deciding under the aegis of the Swiss Chamber's Arbitration Institution (SCAI) with deciding the disputes which may arise from the performance of this agreement. The seat of the arbitration was in Geneva.

After paying the first three installments, A._____ demanded that the construction work be suspended, which provoked a dispute between the parties as to the payment of the balance of the price of the work.

B.
B.a. On December 10, 2013, B._____ invoked the aforesaid arbitration clause and introduced arbitral proceedings in the SCAI against A._____, D._____, and C._____ Limited (hereafter: C._____), a Cypriot company to which D._____ had entrusted the management of his personal investments. From these three Defendants taken jointly and severally, the Claimant sought payment of USD 13'872'642 for unpaid installments and USD 511'734 for the reimbursement of expenses caused by the suspension of work, with interest.

[1] Translator's Note: Quote as A._____ SA *v.* B._____ , 4A_446/2014.
The original decision is in French. The full text is available on the website of the Federal Tribunal, www.bger.ch.

In a letter of January 18, 2014, C._____ informed the SCAI that it refused to participate in the arbitration: first, because it was merely a Monégasque administrative branch of the eponymous Cypriot company and second, because it had not signed the Contract.

On February 10, 2014, Mr. Daniel Peregrina, acting on behalf of E._____, one of the three directors of B._____, wrote to SCAI to complain that the arbitral proceedings had been initiated by the two other directors of the Claimant – F._____ and G._____ – unbeknownst to him and without his consent as he did not agree with this method and consequently considered that the proceedings should be annulled.

On February 11, 2014, Mrs. Tetiana Bersheda, at the time in charge of representing both A._____ and D._____, upon receiving a copy of the aforesaid letter, requested that the SCAI stay the arbitration proceedings until the issue of the powers of representation of the three directors of B._____ was resolved. In her letter, counsel referred to the Operating Agreement they had entered into on January 8, 2013, with a view to regulating the organization, management, and representation of the aforesaid company.

Invited by the SCAI to state his views as to the letters from these two lawyers, B._____ did so in a letter from counsel of February 17, 2014, in which he sought to refute E._____'s argument with the help of a legal opinion and firmly opposed any stay of the pending arbitral proceedings.

On February 26, 2014, A._____ filed its answer to the arbitration request. In its submissions, it renewed a request for the arbitration proceedings to be stayed. If the request was not granted, it submitted that all the Claimant's submissions should be rejected and counterclaimed for the payment of USD 8'954'211 by B._____, with interest, for the reimbursement of the amounts paid pursuant to the Contract, claiming to have terminated it for fraud the previous day. The Respondent also sought an order that the Claimant should cancel the contractor's legal mortgage of CHF 12'983'406, which it had provisionally registered on the plot on which the Respondent's chalet lies.

In its answer of the same day, D._____ submitted that he was not a party to the Contract or to the arbitration clause it contained so his involvement in the arbitral proceedings was not justified.

On March 26, 2014, the SCAI appointed a Geneva lawyer as sole arbitrator (hereafter: the Arbitrator).

B.b. On May 1, 2014, the Arbitrator held a preliminary hearing. A._____ confirmed its request for a stay of the arbitration. Moreover, it sought its bifurcation so that the issues concerning the Arbitrator's jurisdiction would be dealt with first and the merits addressed, as the case may be, but only at a subsequent stage. B._____ opposed both requests.

In Procedural Order No. 1, dated May 2, 2014, the Arbitrator set forth the specific rules to commence the arbitration. In a letter of the same day, he sent the procedural order to the parties and informed them that, as things stood, he rejected the request for a stay. He invited them to submit by May 23, 2014, some short explanations concerning any development in the organization of B._____ which could impact the arbitration and to state their views as to the possibility of bifurcating the proceedings.

On May 12, 2014, after an exchange of correspondence with the parties concerning the scope of the briefs to be filed by May 23, 2014, the Arbitrator issued Procedural Order No. 2. In its operative part, he rejected A._____'s request of February 26, 2014, seeking a stay of the arbitration proceedings whilst reserving expressly the right of the parties to submit a similar request at a later stage in the arbitration. Moreover, he authorized the parties to submit documentary evidence in support of their short comments as to the organization of B._____. In the reasons of his procedural order, the Arbitrator referred to his letter of May 6, 2014, in which he advised the parties that he did not expect the filing of observations dealing exhaustively with the issue of B._____'s organization but the mere summary of

two pages at most which would enable him to understand how the management of the company had evolved during the previous weeks.

On May 23, 3014, B._____ submitted to the Arbitrator its observations within the meaning of Procedural Order No. 2. It argued, with evidentiary support, that its decision to initiate the arbitration was validly taken by a majority of its directors on December 6, 2013, pursuant to the Operating Agreement. As to E._____, the third director, he had been dismissed for cause as of March 18, 2014, during an *ad hoc* meeting of the two other members of the company. B._____ added that the dismissed director did not challenge this step before the New York arbitral tribunal entrusted with resolving all disputes concerning the Operating Agreement.

On May 23, 2914, also, A._____ filed a brief accompanied by two legal opinions. On this basis, it argued that E._____'s dismissal was void. In its view, this meant that he had never lost the authority to commit B._____ by his sole signature and that he validly did so to request the annulment of the arbitration procedure introduced by the two other directors. Hence, A._____ submitted that the proceedings should be closed or at the very least stayed until the issue of the powers of representation of the three directors of B._____ was definitively clarified. Moreover, it repeated its request that the proceedings be bifurcated to enable the Arbitrator to decide first as to his jurisdiction concerning the other two defendants. In a submission of the same day, D._____ also sought bifurcation of the proceedings for the same reason.

B._____ and A._____ supplemented their respective argument by way of letters of June 2, and 10, 2014, with additional legal opinions.

On June 5, 2014, the Arbitrator issued Procedural Order No. 3 rejecting the request for bifurcation submitted by A._____ and D._____ whilst specifically reserving his right to reconsider his decision after reviewing the first detailed briefs of the parties as to jurisdiction and the merits. He emphasized in his procedural order that, contrary to the other two Defendants, A._____ did not challenge his jurisdiction. In the Arbitrator's view, bifurcation was not appropriate in view of the close connection *prima facie* between the facts concerning his jurisdiction as to D._____ and C._____ on the one hand and those concerning the Claimant's case on the merits on the other hand, to the extent that it was aimed at these two joint Defendants, the issue of jurisdiction and the substantive issues appearing in his view to require the filing of substantial briefs and the gathering of evidence.

B.c. On June 18, 2014, the Arbitrator issued Procedural Order No. 4 entitled as follows: "PROCEDURAL ORDER NO. 4 *regarding the application of Respondent 1* [i.e. A._____] *for the discontinuation or, alternatively, the stay of the proceedings until the dispute with respect to B.*_____*'s management is resolved.*"[2] After describing in detail the history of the arbitration proceedings, he rejected A._____'s main and alternate requests for the reasons summarized hereafter. There is a dispute concerning the Operating Agreement between F._____ and G._____ against E._____. The dispute concerns the internal organization of B._____ and is between individuals who are not parties to the arbitration. The Operating Agreement is governed by New York law; it contains an arbitration clause submitting all disputes to an arbitral tribunal sitting in Westchester County (New York State) and applying the rules of the American Arbitration Association (AAA). Thus, the Arbitrator has no jurisdiction on this dispute. Moreover, A._____ did not explain what the impact would be on the arbitration of a possible arbitral procedure initiated in the United States pursuant to the Operating Agreement. Furthermore, according to the case law of the Federal Tribunal, the stay of an arbitration is justified only in extraordinary circumstances, a principle which applies *a fortiori* to a request that pending arbitration proceedings should be closed. In the case at hand, there is no legal rule that could justify either of the two measures. Neither is there any imperative reason to do so. Also, without being an expert on New York law, the Arbitrator considers *prima facie* on the basis of the documents presently in his possession that F._____ and G._____ had the power to initiate the arbitral procedure on behalf of B._____. Thus, by way of his discretionary authority and after weighing the opposing

[2] Translator's Note: In English in the original text.

interests of the parties and duly taking into account the requirements of efficiency and celerity applying to arbitral tribunals in general, he decided that the ongoing arbitral proceedings would not be closed or stayed. However, the decision was taken without prejudice to the right of the parties to request a stay of the arbitral proceedings should the circumstances change.

C.
On July 18, 2014, A._____ (hereafter: the Appellant) filed a civil law appeal to the Federal Tribunal with a view to obtaining the annulment of Procedural Order No. 4. Invoking Art. 190(2)(b) PILA,[3] it complains that the Arbitrator wrongly accepted jurisdiction to decide B._____'s request.

In its answer of August 19, 2014, D._____ submits that the appeal should be upheld and the decision annulled.

At the outset of its answer of September 4, 2014, B._____ (hereafter: the Respondent) submits that the matter is not capable of appeal.

As to C._____, it did not submit an answer within a time limit it had been given to do so.

In his letter of July 29, 2014, the Arbitrator informed the Federal Tribunal that he had no observations as to the appeal brief.

In a reply of September 25, 2014, and a rejoinder of October 13, 2014, the Appellant and the Respondent maintained their initial submissions.

A stay of enforcement was granted by decision of the deciding judge of October 1, 2014.

Reasons:

1. According to Art. 54(1) LTF,[4] the Federal Tribunal issues its judgment in an official language,[5] as a rule in the language of the decision under appeal. When the decision is in another language (here English), the Federal Tribunal resorts to the official language chosen by the parties. In the Arbitral Tribunal, they used English while in the briefs sent to the Federal Tribunal they used French. In accordance with its practice, the Federal Tribunal shall consequently issue its judgment in French.

2. In the field of international arbitration, a civil law appeal is admissible against decisions of arbitral tribunals pursuant to the requirements of Art. 190-192 PILA (Art. 77(1)(a) LTF).

The seat of the arbitration was set in Geneva. At least one of the parties did not have its domicile in Switzerland at the decisive time. Therefore, the provisions of Chapter 12 PILA are applicable (Art. 176(1) PILA).

The Appellant is directly affected by the decision under appeal, which rejected its submissions that the arbitral proceedings should be closed or, in the alternative, stayed. It therefore has a personal and legally protected interest to ensure that the decision was not issued in violation of the rights arising from Art. 190(2) PILA, which gives it standing to appeal (Art. 76(1) LTF). Filed in the legally prescribed format (Art. 42(1) LTF) and in a timely manner (Art. 100(1) LTF), the appeal is therefore admissible in these respects.

3. However, the Respondent argues that the matter is not capable of appeal in view of its subject matter. According to the Respondent, the Federal Tribunal is not seized of an appeal against an arbitral award.

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[3] 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.

[4] Translator's Note: LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173. 110.

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

3.1. A civil law appeal within the meaning of Art. 77 LTF in connection with Art. 190-192 PILA is admissible only against an *award*. The decision appealed may be a *final award* putting an end to the proceeding on meritorious or procedural grounds, a *partial award* dealing with part of a claim in dispute or with one of the various claims at hand and also an interlocutory award addressing one or several preliminary issues as to the merits or procedure (as to these concepts, see ATF 130 III 755 at 1.2.1, p. 757). However, a mere procedural order, which can be modified or rescinded during the proceedings may not be appealed (4A_600/2008[6] of February 20, 2009, at 2.3). The same applies to a decision concerning provisional measures according to Art. 183 PILA (ATF 136 III 200[7] at 2.3 and references).

The decisions of the arbitral tribunal concerning a provisional stay of the arbitration are procedural orders that cannot be appealed; however, they may be referred to the Federal Tribunal when the arbitral tribunal implicitly decided as to its jurisdiction when issuing them (ATF 136 III 597[8] at 4.2); in other words, when by doing so, it issued an interlocutory decision as to its jurisdiction (or as to the regularity of its composition if it was challenged) within the meaning of Art. 190(3) PILA (judgments 4A_596/2012[9] of April 15, 2013, at 3.3; 4A_428/2011[10] of February 13, 2012, at 5.1.1; 4A_614/2010[11] of April 6, 2011, at 2.1 and 4A_210/2008[12] of October 29, 2008, at 2.1).

3.2. Considering its title (Procedural Order No. 4), the decision under appeal – in which the Arbitrator rejected the Appellant's request to close the proceedings or to stay them – appears to be a mere procedural order which could be modified or rescinded during the proceedings; as such, it cannot be deferred to the Federal Tribunal (ATF 122 III 492 at 1b/bb). However, the essential factor to decide if the matter is capable of appeal is not the denomination of the decision under appeal but its contents (ATF 136 III 200[13] at 2.3.3, p. 205, 597 at 4; 4A_596/2012, previously cited, at 3.1). Therefore, the object of the decision under appeal and its scope must be examined further.

3.3.
3.3.1. According to the Appellant, when he refused to close the arbitral proceedings or in any event to stay them provisionally, the Arbitrator would have implicitly accepted jurisdiction as to the Respondent's claims for payment contained in the request for arbitration of December 10, 2013. To justify his refusal, he indeed held *prima facie* that F._____ and G._____ had the power to initiate the arbitration proceedings on behalf of B._____. By doing so, he decided as to the Respondent's standing as a party in the arbitration, an issue of jurisdiction *ratione personae* broadly speaking. That he reserved the rights of the parties to seek a stay of

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[6] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/case-struck-by-cas-because-of-late-payment-of-advance-on-fees

[7] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/decision-on-provisional-measures-characterized-as-interlocutory-

[8] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/procedural-order-of-the-arbitral-tribunal-directing-payment-of-t

[9] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/order-produce-document-not-appealable-award

[10] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/dismissal-of-an-appeal-to-set-aside-a-cas-award-on-the-grounds-o

[11] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/decision-of-the-arbitral-tribunal-not-capable-of-appeal-procedur

[12] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/admissibility-of-appeal-against-interlocutory-decision-procedura

[13] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/decision-on-provisional-measures-characterized-as-interlocutory-

the proceedings should the circumstances change does not alter the nature of his decision at all because such a faculty cannot apply to a decision concerning the Arbitrator's jurisdiction which cannot be taken provisionally or be revisited later on, except in the event of a change in circumstances expressly reserved in the award under appeal.

3.3.2. The argument calls for the following remarks.

As a preliminary observation, it must be conceded to the Appellant that deciding whether or not the arbitral institution in charge of constituting the arbitral tribunal or appointing the sole arbitrator pursuant to the arbitration clause contained in the contract was seized by individuals who had the power to retain counsel to that effect on behalf of the claimant company, is indeed addressing an issue concerning jurisdiction *ratione personae* broadly speaking (judgments 4A_118/2014[14] of July 23, 2014, at 3.1 and 4A_538/2012[15] of January 17, 2013, at 4.3.3) It is also agreed that the power of representation of the individuals acting on behalf of the company pursuant to its organization is governed by the law of the state in which the company is organized (Art. 154 and 155(i) PILA; aforesaid judgment 4A_118/2014, *ibid*.; 4P.161/1992 of December 22, 1992 at 4a). Applied to the case at hand, these principles indeed require to classify in the category of personal jurisdiction *lato sensu*, the issue of the validity of the filing of the arbitration request by two individuals who, claiming to act on behalf of the Respondent, issued a power of attorney to do so to a lawyer and also that of the power of E._____, the third director, to terminate the pending arbitral proceedings on his own, the answer to both questions depending from the interpretation of the operating agreement of January 8, 2013, and, as the case may be, from the application of the pertinent provisions of New York law. In this respect, the Respondent wrongly argues that the Appellant did not challenge the Arbitrator's jurisdiction to decide these issues, albeit, as a preliminary matter. Indeed, it appears from the various requests submitted to the SCAI and to the Arbitrator that whilst not challenging the Arbitrator's jurisdiction *per se* to decide the dispute concerning the performance of the Contract it had concluded with the Respondent – in other words, it admitted being bound by the arbitration clause inserted in the Contract, which explains that it submitted a counterclaim to the Arbitrator, should he refuse to terminate or to stay the arbitral proceedings initiated by the Respondent – the Appellant always maintained a challenge to the Arbitrator's jurisdiction to decide the dispute between two of the three directors of the Respondent and the third one as to their respective powers to act in the latter's name.

This being so, the only issue to resolve in the case at hand from the point of view of the admissibility of the appeal is to determine whether or not the Arbitrator answered the aforesaid questions once and for all in his decision of June 18, 2014. Assuming this to be so and if the matter were capable of appeal in this regard, one would still have to examine the second ground of inadmissibility alternatively invoked by the Respondent, namely foreclosure and, should that be rejected, to also but only then review whether the answers given by the Arbitrator to the issues of jurisdiction before front of him were accurate or not.

That the Arbitrator qualified the decision under appeal as a procedural order is certainly not decisive as was emphasized above (see 3.2.). Yet, the rest of the title of the decision (see B.c. above) more or less reveals its nature, at least with regard to the Appellant's alternate request. Indeed, the Arbitrator saw there a request to stay the arbitral proceedings, "*until the dispute concerning the management of B._____ is resolved.*" Thus, his mission as he described it at this stage of the proceedings at least was not to determine whether the individuals who introduced the request for arbitration on behalf of the Respondent had the power to do so – he himself considered that he had no jurisdiction to decide definitively in the dispute concerning the management of this American company, which had to be submitted to the Arbitral Tribunal anticipated in the arbitration clause inserted in the Operating Agreement (decision

[14] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/proceedings-federal-tribunal-stayed-when-there-preliminary-issue-be-determined-foreign-court

[15] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/alleged-lack-authority-representatives-creates-jurisdictional-issue

under appeal n. 21) – but only to decide if it was appropriate or not to stay the arbitral proceedings until this matter was resolved.

Then the very text of the decision under appeal shows that, in its author's mind, the decision was merely a procedural order issued on the basis of the situation as it was at the time and susceptible to modification during the arbitration if necessary. With reference to a precedent (judgment 4P.64/2004 of June 2, 2004, at 3.2.) and to a work of jurisprudence (Berger and Kellerhals, *International and Domestic Arbitration in Switzerland*, 2nd ed., 2010, n. 1071 to 1073), the Arbitrator insists that the right to obtain a stay of a pending arbitral procedure is granted only exceptionally and that the need for diligence must normally prevail (decision under appeal n. 23, 24 and 26). He also takes care to use only wording such as "*prima facie*" or "*based on the documents currently before him*" [adverb emphasized by this Court] apt to confirm the provisional nature of the decision he issued after weighing the interests in the exercise of his discretionary power (decision under appeal n. 21). Moreover, the Arbitrator expressly reserves the right of the parties to apply for a stay of the proceedings should the circumstances change (decision under appeal n. 27). His opinion must be understood in this context that at first sight and on the basis of the documents in his possession, it appears to him, although he is not an expert of New York law, that F._____ and G._____ had the authority to initiate the arbitral procedure in the Respondent's name (decision under appeal n. 25). Such an opinion, the very wording of which shows that it is not at all final, is the very opposite of the settled decision an arbitrator would make on this jurisdictional issue after a full review of the arguments submitted by the parties and the evidence they would submit. That it is not reasoned at all is revealing in this respect; a Swiss lawyer specializing in international arbitration entrusted to decide alone a dispute of some importance would hardly have believed that he could definitively settle a crucial issue concerning his jurisdiction without stating even briefly the reasons for his conviction even though the parties submitted various contradictory legal opinions with their respective briefs and he himself did not feel he was qualified to interfere in the conflict between two of the three managers of the Respondent and the third manager and when he had just determined that the Appellant did not explain what impact on the pending arbitration the initiation of another arbitration in New York would have in respect to this agreement.

The context in which the decision under appeal was issued confirms the foregoing analysis. It is doubtlessly unnecessary to arbitrate here the somewhat paltry conflict between the parties as to how many requests for a stay the Appellant filed before the one that produced the decision under appeal. Indeed, no matter what the Respondent says, there is nothing to be concluded from this disputed circumstance. The history of the proceedings as summarized in the first part of this judgment (see B. above) demonstrates indeed that it is in Procedural Order No. 4 of June 18, 2014, that the Arbitrator addressed the issue of the impact of the argument based on the alleged lack of power of representation of the directors of F._____ and G._____ on the conduct of the pending arbitration for the first time. Yet another circumstance appears more enlightening. It is the fact that in Procedural Order No. 3 of June 5, 2014, the Arbitrator rejected for the time being the motions to bifurcate based on the challenge of his jurisdiction as to the other defendants, D._____ and C._____, holding that the matter should be addressed with the merits (see B.b. last par. above). In this respect, it is hardly likely that after refusing a few days before to issue an interlocutory decision as to his jurisdiction concerning these two joint defendants, the Arbitrator would have changed his mind unexpectedly and chosen the opposite solution in his decision of June 18, 2014, as to the other pending jurisdictional issue: namely that he would have deemed it necessary to settle immediately and definitively the issue of the powers of representation of the two aforesaid directors. This is even less likely given that he had invited the parties to confine themselves to a mere two-page summary of their arguments in this respect.

3.3.3. Pursuant to this review, it appears that in the decision under appeal, the Arbitrator did not intend to decide once and for all the issue as to whether or not the arbitration request had been validly introduced by the Respondent's two directors who had retained counsel for this purpose or that of the validity of the withdrawal of the request carried out by the third director *pendente lite*; that he instead opined as to the opportunity if not to close, at least to stay, the pending arbitral proceedings until the issue of the powers of representation would be decided by the Arbitral Tribunal having jurisdiction pursuant to the Operating Agreement or by him as

a preliminary issue; finally, he reached the conclusion that such a provisional stay was not justified in the case at hand on the basis of the explanations of the parties insofar as these explanations did not justify *prima facie* to immediately rule out the validity of the initiation of the arbitration by the Respondent. In short, the Arbitrator applied the principle of celerity and simply held that it was more convenient to let the procedure follow its course and to decide later on all issues concerning his jurisdiction so that he could do so knowingly after thoroughly investigating the issues in dispute.

Involving a procedural order *stricto sensu*, the matter is therefore not capable of appeal. Therefore, there is no reason to review the second inadmissibility argument invoked by the Respondent in the alternative should Procedural Order No. 4 be considered a decision as to the Arbitrator's jurisdiction or the merits of the decision under appeal.

4.
The Appellant loses and shall pay the costs of the federal proceedings (Art. 66(1) LTF) and compensate Respondent B (Art. 68(1) and (2) LTF). The amounts it must pay in this respect will be calculated pursuant to the amount in dispute (USD 14'384'376; see B.a. first par. above) and taking into account the nature of the decision under appeal. As to the other two parties to the federal proceedings, they are not entitled to compensation: D._____ because he wrongly submitted that the appeal should be admitted; C._____ because she did not file an answer.

Therefore the Federal Tribunal pronounces:

1.
The matter is not capable of appeal.

2.
The judicial costs, set at CHF 40'000 shall be borne by the Appellant.

3.
The Appellant shall pay to the Respondent an amount of CHF 50'000 for the federal proceedings.

4.
This judgment shall be notified in writing to the representatives of the parties and to the sole Arbitrator.

Lausanne, November 4, 2014

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

| Presiding Judge: | Clerk: |
|---|---|
| Klett (Mrs.) | Carruzzo |

***Title:*** ***Different between a mere procedural order and an award***

***Keywords:*** ***Appeal against interlocutory and partial awards***

***Stars:*** ***