4A_174/2021[1]

Judgment of January 19, 2021

First Civil Law Court

Federal Judge Kiss, Presiding
Federal Judge Niquille,
Federal Judge May Canellas,
Clerk of the Court: Mr. Carruzzo

A._____,
Represented by Mr. Blaise Stucki,
Appellant

v.

B._____ Inc.,
Represented by Mr. Laurent Killias and Mr. Dario Marzorati,
Respondent

Facts:

A.

A.a. International arbitration proceedings are pending before an Arbitrator sitting in Lausanne, under the auspices of the International Chamber of Commerce, between B._____ Inc. (hereinafter, the Company or the Claimant), a company registered in Canada, and A._____ (hereinafter, the Defendant).

A.b. The request for arbitration was submitted on November 15, 2017. Attached to this document, the Claimant produced an unsigned contract, allegedly concluded between the Defendant and it, containing, in its Art. 32, an arbitration clause stating as follows:

> The Seller and the Buyer base their relations with regard to this Contract on the principles of good will and good faith. All dispute arising in connection with the present contract, if not amicably resolved between the parties, shall be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators

[1] Translator's Note: Quote as A._____ v. B._____ Inc., 4A_174/2021.
The decision was issued in French. The full text is available on the website of the Federal Tribunal, www.bger.ch.

> appointed in accordance with the said rules. The arbitration shall take place in Lausanne/Switzerland and the arbitrators shall have the powers of amicable compositeur. The decision of the Arbitration shall be final, binding and enforceable, on the parties.[2]

Before the Arbitrator, the Claimant alleged, among other things, the following facts: according to the contract concluded between the Defendant and the company, under its former business name, the latter decided to purchase twelve helicopters from it for the total price of USD 9'900'000. On April 17, 2001, a representative of the Claimant signed the contract containing the above-mentioned arbitration clause at the Defendant's armed forces officers' club. The contract was to be signed by the Head of State of the Defendant (hereinafter, His Majesty), who is also the Deputy Supreme Commander of the Defendant's armed forces. Representatives of the Defendant took the contract signed by the company with them so that His Majesty, who was not present that day, could sign it.

The Claimant never received back the contract signed by its co-contractor. Following the conclusion of the contract, the company, in accordance with Art.15 of said contract, requested a bank to issue a performance bond amounting to 10% of the sale price, *i.e*., USD 990,000. The Defendant received the original of the performance bond, issued on June 9, 2001, and accepted it. Section 1 of the performance bond contained a clear reference to the contract between the parties, confirming that it was entered into on April 17, 2001. After receiving the said guarantee, the Defendant fulfilled its obligation under Art. 4 of the contract, to open an irrevocable documentary credit in favor of the Claimant. In May 2002, representatives of the Defendant went to Russia to examine and test the first helicopters. Afterwards, however, the Defendant never accepted delivery of the helicopters and decided not to continue to perform its contractual obligations. The Claimant made several unsuccessful attempts to obtain reimbursement of the performance bond. After the arbitration request was submitted, the parties conducted settlement talks, in Lausanne, dated February 28 and March 1, 2018. On the second day of the negotiations, representatives of the Defendant showed the Claimant's lawyers a copy of the disputed contract with the signatures of both parties.

As part of its arbitration request, the Company demanded payment of USD 990'000 plus interest, as well as damages for the Defendant's premature breach of contract.

A.c. For its part, the Defendant claimed, principally, that the Arbitrator lacked jurisdiction and, in the alternative, that the arguments against the Company should be rejected. In short, it argued, among other things, that there was no arbitration agreement signed by both parties and that His Majesty had never signed the contract produced by the Claimant. It pointed out that the issuance of the performance bond and the opening of the documentary credit were not decisive, as such acts can be done even before the conclusion of a contract. It also disputed the allegation that a copy of the contract signed by both parties had been presented to the company's lawyers during the settlement talks, insisting that the Claimant's agents had a personal interest in their client's success in the case. During the course of the proceedings, the Defendant further argued that the Arbitrator should have declined jurisdiction due to alleged criminal conduct alleged against the Claimant's manager.

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

A.d. On June 6, 2018, the Arbitrator decided to limit the proceedings to the issue of his jurisdiction.

On August 8, 2018, the Arbitrator ordered the Defendant to produce a copy of the contract signed by the parties insofar as such a document existed and the Defendant possessed a copy.

After finding that the Defendant had failed to comply with this order, the Arbitrator, among other things, ordered a hearing of His Majesty and directed the Defendant to produce testimony from His Majesty.

On September 12, 2018, the Defendant indicated that the hearing of His Majesty, ordered by the Arbitrator, was contrary to law.

On October 26, 2018, the Arbitrator authorized the Claimant to seek judicial assistance for the purpose of obtaining, among other things, the testimony of His Majesty.

On September 3, 2020, the Claimant notified the Arbitrator that the Defendant had refused to comply with the request for judicial assistance to obtain His Majesty's testimony.

On November 16, 2020, the Arbitrator held a hearing via video conference.

B.
By an Award on Jurisdiction dated February 9, 2021, the Arbitrator asserted jurisdiction over the dispute between the parties. The reasons for this Award will be set out, to the extent appropriate, in the consideration of the sole grievance against the award.

C.
On March 18, 2021, the Defendant (hereinafter, the Appellant) submitted a civil appeal in which it requested the Federal Tribunal to annul the above-mentioned Award and to declare that the Arbitrator did not have jurisdiction to decide the dispute between the parties.

In its Answer, the Company (hereinafter, the Respondent) requested that the appeal be rejected insofar as it was admissible and requested security for costs.

The Arbitrator indicated that he would waive his right to respond to the appeal.

The request for security was declared moot by order dated June 2, 2021.

The Appellant voluntarily submitted a Reply, prompting the Respondent to submit a Rejoinder.

Reasons:

1.
According to Art. 54(1) LTF[3], the Federal Tribunal issues its judgment in an official language[4], as a rule, in the language of the award under appeal. When the decision was issued in another language (here, English), the Federal Tribunal uses the official language chosen by the parties. Before the Federal Tribunal, they used French (the Appellant) and German (the Respondent), respectively. Accordingly, this judgment shall be issued in the language of the appeal, in accordance with custom.

2.
In the field of international arbitration, a civil law appeal is admitted pursuant to the requirements of Art.190-192 PILA[5] (Art.77(1) LTF).

The seat of the arbitration is in Lausanne. Neither of the parties was based or had its head office in Switzerland at the relevant time. The provisions of Chapter 12 of the PILA are therefore applicable (Art. 176(1) PILA).

3.
Whether as to the subject of the appeal, the standing to appeal, the time appeals limit to do so or the ground for appeal raised in the Appeal Brief, none of these admissibility requirements raises any problems in this case. The matter is therefore capable of appeal. The admissibility – contested by the Respondent – of the Appellant's arguments against the Award is still to be examined.

4.
An appeal brief for an arbitration award must satisfy the requirement of giving reasons as it follows from Art. 77 LTF in connection with Art. 42(2) LTF and the case-law relating to this latter provision (ATF 140 III 86 at 2 and references). This requires that the appellant discusses the reasons for the remedy sought and indicates precisely why it considers that the author of the award has misapplied the law (Judgment 4A_522/2016[6] of December 2, 2016, 3.1). The appellant may not use the reply to put forward arguments of fact or of law that were not submitted in a timely manner, that is, before the expiry of the non-extendable time-limit for bringing an appeal (Art. 100(1) LTF in conjunction with Art. 47(1) LTF) or to supplement, outside of the prescribed period, an insufficiently reasoned submission (Judgment 4A_34/2015[7] of October 6, 2015, at 2.2 not published in ATF 141 III 495).

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

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

[5] Translator's Note: PILA is the most frequently used abbreviation for the Swiss Private International Law Act of December 18, 1987

[6] Translator's Note: The English translation of this decision is available here: https://www.swissarbitrationdecisions.com/atf-4a-522-2016

[7] Translator's Note: The English translation of this decision is available here: https://www.swissarbitrationdecisions.com/swiss-supreme-court-addresses-difference-between-treaty-claims-and-contract-claims

5.
Invoking the reasons of appeal provided by Art. 190(2)(b) PILA, the Appellant argues that the Arbitrator wrongly declared that he had jurisdiction to decide on the appeal submitted to him.

5.1. Seized of a plea of wrongful acceptance or denial of jurisdiction, the Federal Tribunal freely reviews the legal issues, including preliminary issues, determining the jurisdiction of the arbitral tribunal or the lack thereof (ATF 146 III 142[8] at 3.4.1; 133 III 139 at 5; Judgment 4A_618/2019 of September 17, 2020, at 4.1). However, the Federal Tribunal does not become a court of appeal, so that it does not have to investigate itself, in the award under appeal, what legal arguments could justify which legal arguments could justify upholding the grievance based on Art. 190(2)(b) PILA. Instead, the Appellant should draw the Court's attention to them, in order to comply with the requirements of Art. 77(3) LTF; ATF 142 III 239[9] at 3.1).

However, the Federal Tribunal retains the ability to review the facts underlying the award under appeal - even if it concerns the question of jurisdiction - if one of the grievances mentioned in Art.190 (2) PILA is raised against this fact or new facts or evidence (see Article 99(1) LTF) are exceptionally taken into consideration in the civil appeal proceedings (ATF 144 III 559[10] at 4.1; 142 III 220 at 3.1; 140 III 477[11] at 3.1; 138 III 29[12] at 2.2.1).

5.2. The arbitrator has jurisdiction if the case is arbitrable according to Art. 177 PILA, that the arbitration agreement is valid in form and substance according to Art. 178 PILA, and that the case is covered by this agreement, all these conditions being compulsory (ATF 133 III 139, para. 5; 120 II 155 at 3b/bb).

5.2.1. The arbitration agreement is an agreement by which two or more specific or determinable parties agree to entrust an arbitral tribunal or a sole arbitrator, instead of the state court that would normally have jurisdiction, with the task of rendering a binding award in respect of one or more existing (arbitration agreement) or future (arbitration clause) disputes arising from of a given legal relationship. It is important that the intent of the parties to exclude the state court which would normally have jurisdiction in favor of a private court of arbitration is apparent (ATF 142 III 239, at 3.3.1).

5.2.2. From a formal point of view, the arbitration agreement is valid if it is in writing, by telegram, telex, fax or any other means of communication which allows it to be proved by a text (see Art. 178(1)(a) PILA). Art. 178(1) PILA, in its new version which entered into force on January 1, 2021, (RO 2020 4184),

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[8] Translator's Note: The English translation of this decision is available here: https://www.swissarbitrationdecisions.com/atf-4a-306-2019

[9] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/unsigned-arbitration-clause-upheld

[10] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/atf-4a-396-2017-2

[11] Translator's Note: The English translation of this decision is available here: https://www.swissarbitrationdecisions.com/arbitration-clause-not-rescinded-subsequent-"showpiece"-contract

[12] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/jurisdiction-of-the-cas-upheld-a-pathological-clause-has-to-be-s

stipulates that an arbitration agreement is valid if it has been concluded in writing or by any other means which allows it to be proved by a text. Only the formulation of Art. 178(1) PILA, which is more concise, has been amended. The formal requirements of Art. 178(1) PILA remain unchanged. In the draft that it submitted to the legislature, the Federal Council decided not to include the rule proposed in the preliminary draft, according to which it was sufficient for one of the parties to comply with the formal requirements of Art. 178(1) PILA (Message on the Amendment of the Federal Act on Private International Law [Chapter 12: International Arbitration], FF 2018 7173). The case law under Art. 178(1)(a) PILA) thus remains valid.

The special form prescribed by Art. 178(1) PILA is intended to avoid any uncertainty as to the choice of the parties to opt for this type of private justice and any casual renunciation of the natural judge and the means of appeal that exist in state judicial proceedings (ATF 142 III 239 at 3.3.1).

The text must contain the essential elements of the arbitration agreement, *i.e*., the identity of the parties, their intention to have recourse to arbitration, and the subject matter of the arbitration proceedings (ATF 142 III 239). 3.3.1; 138 III 29 at 2.2.3 and the judgments cited).

Art. 178 (1) PILA is satisfied with a simplified written form. Unlike Art. 13 CO[13], applicable to contracts for which the law requires written form, it does not require that the arbitration agreement be signed. Thus, an arbitration clause concluded by electronic mail (email) is valid in form (ATF 142 III 239, at 3.3.1).

According to the case law, a given behavior can, depending on the circumstances, substitute for the observance of a formal requirement under the rules of good faith (ATF 129 III 727 at 5.3.1; 121 III 38 at 3). Thus, the problem will often shift from form to consent, which is a matter of substance in the sense of Art. 178(2) PILA (Judgment 4A_548/2009[14] of January 20, 2010, at (4.1) and the judgement cited).

5.2.3. As to the substance, the arbitration agreement is valid, according to Art. 178(2) PILA, if it meets the conditions of either the law chosen by the parties, or the law governing the subject-matter of the dispute and in particular the law applicable to the main contract, or Swiss law. The provision cited devotes three alternatives *in favorem validitatis*, without any hierarchy between them, namely the law chosen by the parties, the law governing the subject of the dispute (*lex causae*), and Swiss law as the law of the seat of the arbitration (ATF 129 III 727 at 5.3.2). It also regulates the question of the law applicable to the interpretation of the arbitration agreement.

The arbitration clause is considered a contract in itself, the fate of which is independent of the main contract, unless the parties have agreed otherwise (Art. 178(3) PILA). It follows that the two contracts are not necessarily governed by the same law. Furthermore, the invalidity of the main contract does not necessarily imply the invalidity of the arbitration agreement. The question of validity must therefore be considered separately for the two contracts. The unlawfulness of the main contract does not necessarily affect the arbitration clause (Judgment 4A_473/2018 of June 5, 2019, at 4.1.1 and 4.1.2).

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[13] Translator's Note: CO is the French abbreviation for Swiss Code of Obligations.

[14] Translator's Note: The English translation of this decision is available here: https://www.swissarbitrationdecisions.com/validity-of-an-arbitration-clause-by-reference

Under Swiss law, the interpretation of an arbitration agreement is governed by the general rules of interpretation of contracts. Like a judge, the arbitrator or arbitral tribunal will first endeavor to ascertain the real and common intention of the parties (see Art. 18(1) CO), if necessary, empirically, on the basis of indications, without dwelling on the inaccurate expressions and names they may have used. In this sense, not only the content of the declarations of intent, but also the general context, *i.e*., all the circumstances that make it possible to discover the will of the parties, be it the declarations made prior to the conclusion of the contract, the drafts of the contract, the correspondence exchanged, or even the attitude of the parties after the conclusion of the contract, constitute indications. This subjective interpretation is based on an assessment of the evidence. If it proves conclusive, the result, *i.e*., the finding of a common and real intention of the parties, is a matter of fact and therefore binding on the Federal Tribunal. Otherwise, the interpreting party must seek, by applying the principle of trust, the meaning that the parties could and should have given, according to the rules of good faith, to their mutual expressions of intent in the light of all the circumstances (ATF 142 III 239, at 5.2.1 and the judgments cited).

5.3.
5.3.1. In the Award under appeal, the Arbitrator considering whether the arbitration clause invoked by the Respondent met the formal requirements of Art. 178(1) PILA, found that the text in Art. 32 of the contract at issue contains all the elements of an arbitration agreement (Award, n. 102 *f.*). He then considers whether the said contract was actually signed by the two parties. In this respect, he pointed out that both of the Respondent's lawyers had testified under the threat of serious consequences for perjury, including criminal sanctions of up to five years imprisonment. Throughout the arbitration proceedings, both men consistently stated that they had seen the last page of the disputed contract signed by both parties. One of the two representatives stated that the signature of the company representative was on the right side while the signature of His Majesty, done in black ink, was on the left side. Both names of the signatories were written in Roman characters. The other lawyer testified that he saw the name and signature of the company representative on the right side. He said that he saw a signature on the left side for the Appellant. He noted, however, that due to his seated position he was unable to read the name of the person who signed the document on behalf of the Appellant. The Arbitrator finds that both testimonies are conclusive. He also noted that the Appellant had freely decided not to provide any counter-evidence, such as the testimony of His Majesty or his representatives who had taken part in the settlement discussions. After having assessed all the circumstances and the evidence available, the Arbitrator concluded that the contract at issue containing the arbitration clause had been validly signed by both parties. He emphasized that the fact that the Respondent had not received a countersigned copy of the contract was not decisive. The formal requirements of Art. 178(1) PILA are thus satisfied (Award, nn. 104-115).

In a subsidiary reasoning, the Arbitrator considers that the contract and the arbitration clause would still be valid, even if the parties had not signed the contract, as long as their subsequent behavior clearly shows that they considered themselves bound by the contract. By its conduct, the Appellant thus tacitly accepted the contract and the arbitration clause inserted in it (Award, nn.116-118).

5.3.2. In examining the substantive validity of the arbitration agreement in the light of Art. 178(2) PILA (Award, nn.119-124), the Arbitrator found that it contained all the essential elements and that the real and shared intent of the parties was to have recourse to arbitration in order to resolve their possible disputes, which was evident not only from the signature of the contract by both parties but also from the conduct adopted by them after the conclusion of the contract (such as the issuance of a performance bond as well as a letter of credit, use of the first helicopters by the Appellant for test purposes, and presentation of the contract signed by both parties during the settlement talks).

The Arbitrator also noted that the elements put forward by the Appellant to demonstrate that the Respondent's manager had committed criminal acts, which would affect the validity of the contract and the arbitration clause, were raised late in the arbitration proceedings and therefore did not have to be taken into consideration (Award, nn.64-67). In any event, the Federal Tribunal considers that the circumstances alleged by the Appellant are not relevant for the assessment of the question of its jurisdiction. The Appellant has not demonstrated the existence of any link between the reprehensible acts alleged against the Respondent's manager and the contract concluded by the parties. Nor has it established that the conclusion or performance of the contract was unlawful. Furthermore, it did not prove that the arbitration agreement itself had become invalid (Award, nn.68-72).

5.3.3. In addition, the Arbitrator considered that the Appellant could not submit an argument of lack of jurisdiction on the grounds of the absence of a written arbitration agreement without breaching the rules of good faith, since the parties had partially performed the contract and the Appellant had issued a letter of credit and accepted the performance bond (Award, n.126 f.).

5.4. In support of its argument of lack of jurisdiction, the Appellant argued that the Arbitrator had wrongly found that both parties had signed the disputed contract, even though it alleged that it had never signed the said document, that the Respondent had not produced any documents establishing the existence of a binding contract between the parties, and that the only evidence taken into consideration by the Arbitrator was the testimony of the Respondent's counsel. According to the Appellant, Art. 178(1) PILA requires the Claimant to prove the existence of an arbitration agreement by producing written proof of the agreement.

In the Appellant's view, the formal requirements of Art. 178(1) PILA had not been complied with in this case, contrary to the Arbitrator's opinion. Referring to two older case law decisions on Art. 16 CO (ATF 50 II II 267, at 2; judgment C.115/1980 of July 2, 1980 at 2, in SJ 1981 p.177), the Appellant argues that, in order for the written form to be respected, not only must each party express its will in writing, but also the expression of will as expressed in the deed must be communicated to the other party. In other words, each party must not only express its will in writing in the deed, but must also hand it over to the other party. In the present case, the Respondent acknowledged that it had not received a copy of the disputed contract signed by the Appellant.

The Appellant then argues against the alternative reasoning by which the Arbitrator admitted that the arbitration clause would comply with the formal requirements of Art.178(1) PILA even if the parties had

not signed the contract at issue. In this respect, it insists in particular on the fact that the Arbitrator could not find that the parties had started to perform the said contract.

The Appellant also considers that the Arbitrator ignored the facts establishing that the contract at issue never existed and that it was part of a swindle set up by the Respondent's manager.

Finally, the Appellant endeavors to show that the Arbitrator could not hold, without breaching the law, that invoking the formal error affecting the arbitration clause in this case constituted a misuse of powers.

5.5.
5.5.1. In the present case, the Arbitrator, after having analyzed the evidence at his disposal, found that the contract at issue had been signed by both parties. Moreover, it is clear from the passage in the Award under appeal devoted to the examination of the substantive validity of the arbitration agreement that the Arbitrator found the real and shared intent of the parties to resort to arbitration. In order to establish the existence of this real and shared intent of the parties to remove their possible disputes from the knowledge of the appropriate state courts in favor of a private jurisdiction, the Arbitrator first of all based himself on the text of Art. 32 of the contract at issue, signed by both parties, and found in it all the essential elements on which the validity of an arbitration agreement depends. The examination of the conduct of the parties after the signature of the contract by the Respondent, dated April 17, 2001, supported his analysis.

These findings are factual and therefore binding on the Federal Tribunal when an appeal in civil matters against an international arbitration award is brought before it. The Appellant therefore tries in vain to call them into question by proposing a different assessment of the evidence in the arbitration file. Moreover, it does so in a highly appellatory manner, mixing arguments of fact and law, leaving it to the Federal Tribunal to sort them out, which is not a permissible way of arguing in an appeal in international arbitration matters (see Art. 77(3) LTF). In any event, it forgets that, if the Federal Tribunal retains the power to review the facts underlying the award under appeal, it is only on condition that one of the grievances mentioned in Art. 190(2) PILA is raised against said factual situation, or if new facts or evidence are exceptionally taken into consideration in the course of the civil appeal proceedings. However, it is not possible to find in the Appeal Brief any such grievance, which would have been duly raised and reasoned.

The grievance under consideration thus appears to be inadmissible insofar as the Appellant bases its arguments on facts that differ from those found by the Arbitrator.

5.5.2. For the rest, the following remarks can be made regarding the arguments made by the Appellant.

It should be noted that the Appellant's allegation, which appears for the first time in its Reply, that Art. 178(1) PILA requires the production of a written document, to the exclusion of other means of proof, in order to establish the existence of an arbitration agreement, is inadmissible (see 4 above). Moreover, the Appellant's peremptory assertion, which is not supported by anything and which is contradicted by the Respondent, hardly seems convincing.

The Appellant is also mistaken when it maintains that the arbitration agreement does not comply with Art. 178(1) PILA, on the grounds that the contract containing the arbitration clause allegedly signed by it was not returned to the Respondent. By reasoning in this way, it clearly confuses the question of the form of the arbitration clause with that of consent to arbitration, which are governed respectively by Art. 178(1) PILA and by Art. 178(2) PILA.

The Appellant also cannot be followed when it appears to attempt to transpose the case law on Art. 13 and Art. 16(2) CO to international arbitration, as the formal requirements of Art. 178(1) PILA do not correspond to those laid down in the above-mentioned legal provisions. Contrary to what the Appellant seems to think, the formal validity of an arbitration agreement does not depend on whether the parties have addressed to each other a written document containing an arbitration clause. Under Art. 178(1) PILA, it is necessary and sufficient that the arbitration agreement is in writing or in any other way that can be proved by a text. This is undoubtedly the case here, since, according to the Award under appeal, the two parties signed the contract at issue, which at Art. 32 contains all the essential elements of an arbitration agreement. With regard to the consent of the parties to the arbitration, a question which relates to the material validity of the arbitration clause governed by Art. 178(2) PILA, the Arbitrator found that the signing of the contract at issue and the subsequent conduct of the parties showed their real and shared intention to have recourse to the method of dispute resolution provided for in Art. 32 of the contract at issue. The Appellant's attempt to show that it had not validly manifested to its co-contractor its intention to enter into the contract and to have recourse to arbitration is therefore in vain.

The Appellant's argument that the contract at issue and the arbitration clause contained therein do not exist, referring to the allegedly punishable acts of the Respondent's manager, is also in vain. In fact, the elements referred to by the Appellant were deemed inadmissible because they were raised late in the arbitration proceedings. The Appellant does not claim or demonstrate that the conclusion reached by the Arbitrator in this respect was erroneous, which ends any discussion.

Insofar as the principal reasoning of the Arbitrator concerning the formal and substantive validity of the arbitration clause withstands the arguments levelled at it by the Appellant, there is no need to dwell on the other considerations put forward by the Arbitrator.

6.
In view of the foregoing, the appeal must be rejected to the extent that it is admissible. The Appellant, who is unsuccessful, must pay the costs of the federal proceedings (Art. 66(1) LTF) and pay costs to the Respondent (Art. 68(1) and (2) LTF).

For these reasons, the Federal Tribunal pronounces:

1.
The appeal is rejected insofar as the matter is capable of appeal.

2.
The judicial costs, set at CHF 15’000, are to be borne by the Appellant.

3.
The Appellant shall pay the x a compensation of CHF 17’000 for the federal proceedings.

4.
This judgment shall be communicated to the parties' representatives and to the Arbitrator in Lausanne.

Lausanne, July 19, 2021

On behalf of the First Civil Law Court of the Swiss Federal Tribunal

The Presiding Judge:	The Clerk of the Court:
Kiss	Caruzzo