

In the name of His Highness

Sheikh Mohammed bin Zayed Al Nahyan

President of the United Arab Emirates / Ruler of the Emirate of Abu Dhabi

the Abu Dhabi Court of Cassation At the session held at AD23/06/2022 corresponding to 24 Dhu al-Qi'dah 1443 AH, on

Presided over by the judge : **Dr. Hussein Omar**
And the judge's membership : **Mufleh Muhammad Shteiwi Al-Zoubi**
And the judge's membership : **Hashim Ibrahim**
Case No. : **411-2022-Commercial-M R-Q-A Z Commercial Headquarters**
The restricted in : **17/05/2022**

The appeal has met all the formal requirements.

The facts, as evidenced by the appealed judgment and other documents, are as follows: The respondent filed petition No. 6/2021 with the Enforcement Department, requesting the enforcement of a foreign arbitration award issued on October 26, 2015, by the International Court of Arbitration of the International Chamber of Commerce, New York, in Arbitration Case No. RD/ZF/AGF/....., pursuant to its operative part and endorsed with the executory formula in favor of the applicant. This was based on the claim that the applicant is a company established under the laws of the State of Delaware, USA, and that the company—in whose favor the arbitration award was issued—had assigned to it all rights granted under the arbitration award sought to be enforced definitively, by way of an assignment of rights dated July 23, 2020. On the same date, the Dubai International Financial Centre Courts issued a freezing order against the respondent in favor of the applicant, based on the arbitration award sought to be enforced. The operative part of the order reads:

1. The present dispute falls within the jurisdiction and authority of the arbitration panel. 2. [Name Redacted] has breached the guarantee agreements, and all of its defenses have been rejected. 3. [Name Redacted] is liable for the amounts due under the terms of the lease agreements. 4. We have ordered [Name Redacted] to pay the shortfall under Lease Agreement 640-5397 in the amount of US\$24,165,886.55 (including fees and interest on the default amount up to August 2014), plus simple interest at a rate of 1.5% on the amount due from September 2014 until the date of payment. 5. We have

ordered [Name Redacted] to pay the shortfall under Lease Agreement 680-0179 in the amount of US\$7,573,468.29. 7. We hereby order the claimant to pay simple post-judgment interest on the amounts stated in paragraphs D and above at a rate of 1.5% per month from the date of the final award until the date of payment. 8. The International Chamber of Commerce has set the costs of this arbitration at US\$530,000 payable to the claimant, plus simple interest at a rate of 1.5% per month from the date of the final award until the date of payment. 9. The respondent shall pay the claimant the sum of US\$1,503,839.91 plus simple interest at a rate of 1.5% per month from the date of the final award until full payment. 10 - All other requests are rejected, on the grounds that between 2007 and 2008 the controller entered into three aircraft lease agreements with a company based in the United States of America called Leasing LLC, and to guarantee the obligations of this company, the respondent provided bonds to company, by which it undertook and guaranteed the performance of all the obligations of company arising from the three lease agreements. The terms of those agreements, as well as the terms of the bonds, stipulated that any dispute arising between the parties be referred to arbitration in the State of New York. The respondent breached its obligations, so company initiated arbitration proceedings until the aforementioned award was issued. After company was found entitled to the amounts and rights stipulated in the arbitration award, it transferred the aforementioned rights to the applicant, and the applicant submitted this petition. On November 25, 2021, the execution judge issued an order to enforce the judgment issued on October 26, 2015, by the International Court of Arbitration of the International Chamber of Commerce – New York, in Arbitration Case No./AGF/ZF/RD. The appellant challenged the aforementioned judgment in Appeal No. 217/2022 Commercial Abu Dhabi. On March 22, 2022, the court ruled to accept the appeal in form but to reject it on the merits, upholding the appealed judgment. The appellant challenged this ruling by way of cassation in Appeal No. 411/2022 Commercial. The appeal was presented to this court in chambers, which deemed it worthy of consideration and scheduled a hearing.

The appellant argues that the appealed judgment, based on its three grounds of appeal, is flawed due to a violation of the law, insufficient reasoning, and a breach of the right to defense. Specifically, the judgment upheld the validity of the arbitration award in question, despite its proven invalidity due to its contravention of public order and the fact that all pages of the arbitration panel were not signed. Furthermore, the appealed judgment erred in failing to declare the arbitration clause and the entire transaction containing that clause invalid, as they were issued by an unauthorized party. The judgment also erred in rejecting the objection concerning the lack of impartiality of one of the arbitration panel members and the panel's non-compliance with the provisions of the Arbitration Law and the Rules Governing Arbitration. Therefore, the appealed judgment must be overturned, and the request for enforcement of the arbitration award issued on 26/10/2015 by the International Court of Arbitration of the International Chamber of Commerce in New York in Arbitration Case No./AGF/ZF/RD must be dismissed.

This objection is unfounded. According to Articles 85 and 86 of the Regulations of the Civil Procedure Law, arbitral awards issued in a foreign country may be enforced by submitting a petition, containing the information specified in Article 16 of the same Regulations, to the enforcement judge. The judge shall issue an order within a maximum of five days from the date of submission, after verifying that the courts of the country in question do not have exclusive jurisdiction over the dispute in which the award or order was issued, that the foreign courts that issued it have jurisdiction according to the rules of international jurisdiction established in their law, that the award or order was issued by a court in accordance with the law of the country in which it was issued and duly ratified, that the parties to the case were properly represented, that the award has acquired the force of res judicata, that it does not conflict with a previous award or order issued by a court in the country, and that it does not contain anything contrary to public order. Furthermore, according to Article 88 of the same Regulations, the provisions of treaties between the United Arab Emirates and other foreign countries, or ratified agreements, shall be applicable with

regard to the enforcement of foreign court awards and arbitral awards. Furthermore, according to Article 3 of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which the United Arab Emirates is a party, each contracting state must recognize arbitral awards as binding and enforce them in accordance with the procedural rules applicable in the territory where the award is invoked. This means that the court before which a foreign award is submitted for recognition and enforcement does not have the authority to verify the validity and fairness of the award on its merits, as it is not an appellate body in this respect. It is also established that public order is one of the primary and fundamental principles that must be respected in all actions and judgments, as it relates to the higher interests of society and the social, political, economic, or moral foundations upon which the state is based. However, if a legal rule does not relate to public order in the aforementioned sense, or if its purpose is to protect private rights and interests, then there is no basis for invoking public order as a basis for applying that legal rule. Given the foregoing, and since the appealed judgment upheld the decision to ratify the arbitral award issued in Arbitration Case No./RD/ ZF/AGF dated 26/10/2015 in favor of the respondent against the appellant, issued by the International Chamber of Commerce (ICC) Court of Arbitration in New York. The execution judge of the Abu Dhabi Court of First Instance issued the decision ratifying the arbitration award issued by the ICC Court of Arbitration in New York, after verifying that the ICC Court of Arbitration in New York had jurisdiction to adjudicate the dispute between the parties based on their agreement, that the subject of the dispute concerned a commercial sales contract that was subject to settlement and therefore arbitration, and that the arbitration award sought to be enforced met all its formal requirements and had acquired the force of res judicata under US law, as the arbitration award had previously been challenged before the US courts and the request was dismissed by the Court of First Instance on 7/5/2019, a ruling upheld by the Court of Appeal on 22/4/2021. This award, i.e., the arbitration award sought to be enforced, does not conflict with a previous ruling issued by a court in the UAE between the parties, nor does it contain any violation of public order or morals. Since the challenged ruling reached this conclusion, it is in accordance with the law, and the objection raised against it is unfounded. The foregoing is unfounded and the appeal must be rejected.



دائرة القضاء
JUDICIAL DEPARTMENT

باسم صاحب السمو

الشيخ محمد بن زايد آل نهيان

رئيس دولة الإمارات العربية المتحدة / حاكم إمارة أبوظبي

محكمة النقض أبوظبي - قلم المحكمة التجارية

بالجلسة المنعقدة بـ محكمة النقض أبوظبي بتاريخ 24 ذو القعدة 1443 هـ الموافق 23/06/2022 م

برئاسة القاضي : د.حسين عمر
وعضوية القاضي : مفاح محمد شتيوي الزعبي
وعضوية القاضي : هاشم إبراهيم
نظرت القضية رقم : 411-2022-تجاري-م-رق-أ ظ تجاري المقر الرئيسي
المقيدة في : 17/05/2022
الموضوع : نقض الحكم

بعد سماع المرافعة ومطالعة الأوراق والمداولة،
صدر الحكم الآتي:

الأسباب

حيث ان الطعن قد استوفى أوضاعه الشكلية.

وحيث ان الوقائع على ما يبين من الحكم المطعون فيه وسائر الأوراق تتحصل في أن المطعون ضدها تقدمت بالعريضة رقم 6/2021 بطلب تنفيذ حكم التحكيم الأجنبي — أمام إدارة التنفيذ — الصادر بتاريخ 26/10/2015 من محكمة التحكيم الدولية التابعة لغرفة التجارة الدولية — نيويورك، في الدعوى التحكيمية رقم /RD/ ZF/AGF وفقا لمنطوقه وتذييله بالصيغة التنفيذية لصالح الطالبة، وذلك على سند أن الطالبة شركة قائمة بموجب قوانين ولاية ديلا وير الولايات المتحدة الأمريكية وقد تنازلت لها شركة — الصادر لصالحها حكم التحكيم — وأحالت لها كافة الحقوق المقضي بها بموجب حكم التحكيم المطلوب تنفيذه بصفة نهائية، بموجب حوالة حق بتاريخ 2020/7/23، وبذات التاريخ أصدرت محاكم مركز دبي العالمي أمر تجميد ضد المطلوب ضدها لصالح الطالبة استنادا الى حكم التحكيم المطلوب تنفيذه، وقد صدر منطوقه:

1 - يقع النزاع الحالي ضمن اختصاص هيئة التحكيم وصلاحياتها. 2 - انتهكت اتفاقيات الضمان وتم رفض جميع دفعوها. 3 - تكون مسؤولة عن تسديد المبالغ المستحقة بموجب شروط اتفاقيات الإيجار. 4 - أمرنا بتسديد العجز بموجب اتفاقية إيجار 640 - 5397 وقدره 24,165,886 /55 دولار أمريكي (بما في ذلك الرسوم والفوائد على مبلغ حالة الإخفاق حتى أغسطس 2014) بالإضافة الى الفائدة البسيطة بمعدل 1,5% على المبلغ المستحق من سبتمبر 2014 حتى تاريخ السداد. 5 - أمرنا بتسديد العجز بموجب اتفاقية إيجار 680 - 0179 وقدره 7573468 /29 دولار أمريكي. 7 - أمرنا بتسديد فائدة بسيطة لما بعد الحكم على المبالغ الواردة في الفقرات من د - وأعله بمعدل 1,5% شهريا من تاريخ الحكم النهائي وحتى تاريخ السداد. 8 - حددت غرفة التجارة الدولية تكاليف هذا التحكيم بمبلغ 530,000 دولار أمريكي لصالح المحتكم بالإضافة الى فائدة بسيطة بمعدل 1,5% شهريا من تاريخ الحكم النهائي وحتى تاريخ السداد. 9 - ينبغي على المحتكم ضده أن يسدد لصالح

نسخة رقمية غير رسمية

رقم الصفحة
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محكمة النقض أبوظبي – قلم المحكمة التجارية
ملحق الحكم رقم 411-2022-تجاري-م ر-ق-أ ظ 411-2022-تجاري-م ر-ق-أ ظ
التاريخ 23/06/2022 م:

الاتفاق المبرم بينهما وأن موضوع النزاع يتعلق بعقد بيع تجاري يجوز الصلح بشأنه وبالتالي قابل للتحكيم وأن حكم التحكيم المطلوب الأمر بتنفيذه مستوف لكافة شروطه الشكلية وأصبح حائزاً لقوة الأمر المقضي وفق أحكام القانون الأمريكي لكونه قد سبق الطعن بإبطال قرار التحكيم أما المحاكم الأمريكية وقضي برفض الطلب أمام محكمة أول درجة بتاريخ 2019/5/7 وايدت محكمة الاستئناف ذلك القضاء بتاريخ 2021/4/22 ، وهذا الحكم أي حكم التحكيم المراد تنفيذه لا يتعارض مع حكم صادر من محكمة من محاكم الدولة سبق صدوره بين الطرفين ولا يتضمن أي مخالفة للنظام العام والأداب ، وإذ انتهى الحكم المطعون فيه الى هذه النتيجة فإنه يكون قد أصاب صحيح القانون ويكون النعي عليه بما سلف غير قائم على أساس وتعين رفض الطعن .

فلهذه الأسباب

حكمت المحكمة : -
برفض الطعن وألزمت الطاعنة الرسم والمصاريف ومبلغ ألف درهم مقابل أتعاب المحاماة للمطعون ضدها وأمرت بمصادرة التأمين.

نسخة رقمية غير رسمية

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رقم المرجع
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محكمة النقض أبوظبي - قلم المحكمة التجارية
ملحق الحكم رقم 411-2022-تجاري-م ر-ق أ ظ
التاريخ 23/06/2022 م

نسخة رقمية غير رسمية

رقم الصفحة
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