

Qatar Court of Cassation, Second Civil Circuit – Petition 164 of 2014

Judgment of 24 June 2014¹²

Decision Rendered in the name of His Highness Sheikh Tamim Bin Hamad Al-Thani

Emir of the State of Qatar

The petition is filed by:

ABC LLP – represented by Law Firm

Vs.

XYZ LLP – represented by Law Firm

Facts:

On 14 May 2014, a petition was submitted to the court of cassation against the court of appeal judgment n. 38/2014 rendered on 26 March 2014. The petitioner requested the admission of the petition in its due form and to challenge the judgment as in its substance. The petitioner submitted a memorandum on the same day. The respondent has been notified on 25 May 2014 and the case is ready to be heard. The respondent submitted its statement of defense on 4 June 2014 requesting its dismissal. The Court decided to hear the case on 24 June 2014 where the counsels of the petitioner and the respondent insisted on the contents of their respective memorandums. The Court decided to pronounce the ruling as for today.

The Court:

After examining the documents and hearing the report presented by the assessor judge and the pleadings of the parties, and after deliberations, the Court [decides as follows]

Whereas the petition has been presented in due form,

¹ Unofficial translation of the judgment prepared by Minas Khatchadourian

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The facts – as indicated in the appealed judgment and all the documents submitted – state that the Respondent (XYZ) filed an action n. 2216 of 2013 against the Petitioner for annulment of ICC arbitral award no. XXX rendered in Paris on the basis that it was not issued in the name of the Emir, it did not include the arbitration agreement, and for the irregularity of its procedures. The [Court of First Instance] held that the award was invalid. Petitioner (ABC) appealed this judgment (appeal n. 38 of 2014), and on 26 March 2014 the Court of Appeal decided to uphold the appealed judgment. The Petitioner challenged this judgment by cassation. The Court reviewed the petition *in camera* and decided to hear the case.

Whereas the petition states that:

‘the appealed judgment is in breach of the law and its application in an erroneous way by upholding the first instance judgment which invalidated the arbitral award on the basis that it was not issued in the name of the Emir. The arbitrators appointed by the ICC of Paris applied [the ICC’s] rules as per the parties’ agreement in the deed of arbitration [i.e., arbitration agreement] and issued the award in a valid form according to these rules. In addition, the provisions of the [1958] New York Convention, to which Qatar adhered, do not stipulate that the award should take the form of the state judgments of the territory on which the arbitration is conducted; rather, this is a condition required only when enforcement is ordered.

Whereas, this is a valid reason for impugning the judgment, as Art. 190 of the Code of Civil and Commercial Procedural Law [CCCP] states ‘It may be agreed by virtue of a Special Arbitration Deed to arbitrate in a determined dispute. Likewise, it may be agreed to arbitrate all disputes arising out of the performance of a determined contract.’ Also, Art. 192(1) CCCP provides ‘The conclusion of an arbitration clause entails waiver, by the parties, of their right to resort to the Court originally having jurisdiction over the dispute’ and Art. 200 CCCP Procedural Law reads ‘The arbitrators shall decide the dispute on the basis of the arbitration deed...’ as it appears evident that arbitration is built on the consent of the parties and their acceptance of it as a means to settle all or some of the disputes which have arisen or which may arise between them in a legal relationship, whether contractual or non-contractual. The will of the parties is the source of arbitration and it determines its scope as to the matters submitted to arbitration, the applicable law, the composition of the arbitral tribunal, its powers authorities, its procedures, etc. Arbitration is an exceptional means to settle disputes as an out-of-court ordinary proceeding with and its accessory guarantees. It is based on the law, which authorizes the parties exceptionally to take their dispute out of court jurisdiction.

Whereas article 63 of the Constitution provides that “the judicial authority shall be held by the courts of law as prescribed in this Constitution; and court judgments shall be rendered in the

name of the Emir”, and Article 69 of the Code of Civil Procedure, which provides that “court judgments shall be pronounced and enforced in the name of His Highness the Emir of the State of Qatar”, denote that the legislator required the rendition and enforcement of court judgments in the name of the highest authority in the country: His Highness the Emir of the State of Qatar. Being a rule of public policy, its violations would entail annulment of the decision.

Whereas it is evidenced by the documents that the parties have agreed by virtue of Clause 18 of the contract to settle any dispute related to this contract according to the conciliation and arbitration rules of the ICC and the award has been rendered by the arbitrator in Paris. Furthermore, according to Arts. I and II [rectius Art. III] of the New York Convention – to which Qatar adhered by virtue of the Emiri Decree no. 29 of 2003 and which became applicable on 15 March 2003 – each signatory state shall recognize and enforce foreign arbitral awards according to its national or internal rules of procedure. The said Convention did not stipulate any provisions regarding the form of the award or any particular elements thereof. Any foreign award is subject to the Qatari procedural law at its enforcement phase only. This was confirmed by the legislator in Art. 204 CCCP Procedural Law, which states: ‘Arbitral awards are only enforceable upon leave to enforce granted by the President of the Court with whose clerk the award was registered upon request of the concerned party. (...) The enforcing judge has jurisdiction over all questions relating to the award’s enforcement’.

Whereas the said arbitral award – as previously established – is not subject to the provisions of the Qatari CCCP Procedural Law except in respect of its provisions on enforcement. Hence, the judgment [below] is vitiated vicious and should be annulled smashed for this reason and without examining the other arguments of the petition.”

Therefore and for these reasons:

The challenged judgment is smashed. The Court directs the Respondent to pay the legal expenses and the case to be referred to the Court of Appeal.

Vice-President of the Court

signature

Clerk of the Court

signature