AD HOC ARBITRATION

MOHAMED ABDULMOHSEN AL-KHARAFI & SONS CO. V. LIBYA AND OTHERS

JUDGMENT OF THE CAIRO COURT OF APPEAL

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Table of Contents

Judgment of the Cairo Court of Appeal 0
(1) — THE ARBITRAL DISPUTE'S BACKGROUND AND THE AWARD 1
(A)— The Arbitral Dispute — 1
(B)—The Arbitral Award — 3
(2) — THE COURSE OF THE ANNULMENT ACTION AT HAND 4
(3) — THE COURT 6
FOR THE ABOVE REASONS 14

Judgment of the Cairo Court of Appeal

(1) — The Arbitral Dispute's Background and the Award

(A)— The Arbitral Dispute —

• As per the challenged award, it was based upon a Libyan Ministerial Decree that was followed by a contract entered into in 08/06/2006, whereby the Libyan Government has tasked the Kuwaiti Company "Mohamed Abdul-Mohsen Al-Kharafi" with a "Joint" Touristic Investment Project in the Tajura beach area at the Libyan provenance of Tripoli. The Contract was labeled as a Land Lease Agreement for the purpose of this investment project as per the Libyan law concerning the promotion of foreign capital investments. The contract also stipulated that the Land area would be equal to 24 hectares (240,000 square meters) that are owned by the Libyan State and that **the investment value of the project will be USD 130 Million** while being executed within 7.5 years. Further, the usufruct period (Al-Kharafi Company's Concession) would be equal to 90 years starting from the date when Al-Kharafi Company assumes control over the land. The Contract also stated that Al-Kharafi Company would handle the financing and operating of the Project, a five-star hotel, a commercial shopping center, hotel apartments, restaurants, etc., and also affirmed that the Libyan Party must handover the Land free of any pending works and guaranteeing it being free of any physical or legal obstructions throughout the concession period.

• In addition, and as per the award, Al-Kharafi Company was surprised - in the early stages of the Project - that the land was full of problems as well as physical and legal obstructions and that the Libyan Authorities had failed to resolve the Land's obstruction which in turn rendered Al-Kharafi Company unable to assume a peaceful control over such Land. One time after the other, Al-Kharafi Company pleaded to the Libyan Party to provide security for its works and employees in addition to the necessity of having a clear project land in preparation for the commencement of the required path towards finishing the works. The Parties (Al-Kharafi Company and the relevant Libyan Authorities) have exchanged various meetings and correspondences and were brought into a series of disagreements. Generally, it was clear for the Claimant in Arbitration (i.e., Al-Kharafi Company) in an early stage that commencing this joint project would be a hard, rigid, and complex matter.

• During these disturbances and complexities, the local Libyan Authorities suggested - in January 2009 - to Al-Kharafi Company an alternative location to commence the Joint Project. Al-Kharafi Company refused such an offer and insisted on commencing the Project in accordance with its contractual terms, and the necessity that the Libyan Authorities must prepare the Contract's location and remove any legal and physical obstructions, in addition to guaranteeing secure access to the location in order for Al-Kharafi Company to commence the necessary construction works. After multiple meetings and correspondences, the parties were not able to remove the obstructions of the Project Land and the chain of problems was left unattended until the Project had faded and was killed in its cradle.

• In May 2010, and without any prior notice, the Contract (the Promised Project) was terminated when the Libyan Minister of Finance issued a decree canceling the previously obtained approval granted for Al-Kharafi Company regarding the Project. The Libyan Authorities claimed that the termination of the Contract and revocation of the investment license was the result of Al-Kharafi Company's failure to fulfill its contractual obligations. From its side, Al-Kharafi Company protested the termination decision and claimed that it is arbitrary, and added that it has pleaded to the relevant Libyan Authorities to revive the Project, on the condition that such authorities grant Al-Kharafi Company access to a land that is clear and to remove any constructions erected on it, in addition to guaranteeing the removal of any and all obstructions and resolving any issues. This is because Al-Kharafi Company's access to the Land was a key condition for the execution of the Investment Contract. Further, the Libyan state should guarantee that it would not interfere - nor would others interfere - with the Al-Kharafi Company's concession of the Project Land and without any impediments. Al-Kharafi Company has failed to realize this quest as the Libyan State insisted on its refusal by describing the disputed contract and its termination as administrative matters and that Al-Kharafi Company's slow pace in execution is the true cause behind the failure of the Project.

• Al-Kharafi Company claimed to have entered into the Contract in order to invest in the territory of the Libyan State - the host country of the investment - relying upon the applicable Libyan governmental guarantees and facilities that aimed towards the attraction of Arab and International Investments to its territory. Al-Kharafi Company also announced that its investments were affected and that it incurred financial and moral damages as a result of the Libyan Government's behavior. Al-Kharafi Company labeled this behavior as a violation of the contractual obligations, and, at the same time, a violation to the legislative texts, international treaties concerning Arab and Foreign investments that are applicable in the State of Libya whose different authorities have created many hardships and harassments that eventually led to the abolishment of the Joint Project and prevented its execution which deprived Al-Kharafi Company - without just cause from its future return on investment.

• Whereas, the disputed contract included an arbitration clause that states that; should any dispute arise between the parties regarding the interpretation or implementation of the terms of the contract, it shall be amicably settled first, and should that be inapplicable, the dispute shall be referred to arbitration as per the provisions of the Unified Agreement For The Investment of Arab Capital issued in 1980 (the "**Arab Unified Investment Treaty**"). Based on this clause and the fact the States of Libya and Kuwait are State Parties to the Arab Unified Investment Treaty and its annexes, Al-Kharafi Company attempted to refer the dispute to the arbitration mechanism that is stipulated under the Arab Unified Investment Treaty and its annexes regarding conciliation and arbitration as an internal arbitration system embedded within the domain of the Arab League operated or conducted under the supervision and sponsorship of the general secretary of the Arab League.

• Within the Arab Unified Investment Treaty and in resemblance to its judgments, AL-Kharafi Company was quick to procure the Secretary General's approval for commencing arbitral proceedings against the Libyan State and its governmental authorities. An ad hoc arbitral tribunal was formed comprising three members and both parties agreed to apply the Libyan law to the merits of the dispute including the foreign capital law and its amendments and that the arbitral proceedings would commence in accordance with the procedural rules applicable at the Cairo Regional Center of Commercial Arbitration ("**CRCICA**") and that its venue would be located in the Egyptian capital. In this arbitration - which was not assigned a case number in any of CRICCA's records - each party submitted its relief sought, evidence, defense, authorities, explanations, interpretations, perspectives, and comments.

(B)—The Arbitral Award —

On 22/03/2013, in Cairo, the Arbitral Award was rendered in favor of the Kuwaiti Company whereby the arbitral tribunal has reviewed various facts, explanations, reasoning, and results that were stipulated thoroughly in the award in addition to the long, discursive process for all of the disputed matters - most of which were raised in the annulment action at hand - between the arbitrating parties which could be summarized as follows:

• The disputed contract (the Contract dated 08/06/2006) could not be considered as an administrative contract but rather as a "BOT" contract that is governed by the conventional legal rules applicable to private civil contracts. In accordance with the International and Libyan standards, the Contract involves an Arab (foreign) investment touristic for profit project which is governed by the provisions of the Libyan Law aimed at attracting Arab and International Investments as well as the rules of the Arab Unified Investment Treaty which are considered as integral parts of the Contract. The Award also stated that Libya's agreement to the Arbitration, in accordance with the Arab Unified Investment Treaty' system, was recorded.

• Furthermore, the tribunal considered that the disputed Contract had governmental characteristics. Hence, it was admissible to claim its arbitral clause against the respondents of the arbitration; the State of Libya, the Libyan Ministry of Economy, and the Privatization & Investment board (formerly: the general Authority for proprietorship and Investment), the General Authority of Tourism, and finally the Libyan Ministry of Finance whose joinder to the proceedings as a Respondent (fourth Respondent) was accepted as it was tasked with the disbursement of the financial dues in the enforcement of the judgments rendered against the public authorities financed by the Libya State Treasury. The acceptance of such a joinder may pose a very obvious significance as it will later on ensue.

• The tribunal considered that the amicable efforts were exhausted by the parties, prior to filing the arbitration request, without a conciliatory result. This is because the Kuwaiti investor (The Claimant in the Arbitration) has exhausted all amicable means prior to recourse to arbitration. Concerning the scope of the arbitration clause, however, the tribunal decided that this clause extends to all disputes arising from the disputed Contract. Also, the tribunal affirmed its jurisdiction and competence over the case that it is undertaking, and proceeded to review and decide the merits of the arbitration case.

• The Court notes in here that within the Award's domain of drafting the award, understanding it, and its reflection of facts, it stated that the Claimant Company (i.e., Al-Kharafi Company) was not able to obtain the necessary licensing or issue the detailed drawings, maps, or designs, as well as the Project's timetable, with the cause of such that it was indeed not able to access a clear land in order to use it in terms of the usufruct stipulated under the Contract. Nevertheless, the investment hosting country "the Libyan State" - and its related entities - is bound in all cases to protect the foreign investor and preserve and guarantee its investments and their returns on its territory without obstructions or limitations. Hence, the Libyan State is solely responsible for the non-commencement of the Joint Project works and the non-fulfillment of its proposed developmental goal.

• Relying upon factual conclusions and legal authorities for its convenience, the arbitral tribunal added that; the Libyan Party (The Respondent in the arbitration) was not right in terminating and revoking the

Contract for the Project, and that the Claimant's (Kuwaiti Investor) investment was arbitrarily terminated in an order that is similar to expropriation, and other measures that are similar in effect, which are prohibited by virtue of the legislative texts of the Libyan law and the rules of the Arab Unified Investment Treaty. This is a matter that raises the liability of the Libyan authorities (the Respondent in the arbitration). Hence, the Arbitral Award found that the Claimant Company was entitled to direct material and moral damages that were incurred as a result of the illegal termination of the contractual relationship, in addition to its entitlement to damages for the loss of profit as set out in the wording of the Award; "...for the actual and certain opportunities should have the Contractual Project been executed... the net profit of Al-Kharafi Company for the duration of investment which is 83 years only".

• Accordingly, the wording of the Arbitral Award has obligated the Respondents in the arbitration - jointly and severally - with the following several financial obligations to be paid to the Kuwaiti Al-Kharafi Company: USD 30 million in moral damages, USD 5 million for loss and 'incurred' costs, USD 900 million for loss of profit, USD 1 million and 940 thousand against arbitration costs and fees, with a total USD Nine Hundred and Thirty-Six million and Nine hundred and Forty thousand (936,940,000.00) in addition to an annual interest rate of 4% for the total value of the awarded amount, in addition to rejecting the remaining concerns and reliefs.

• In the conclusion of this award and in a very noticeable way, the tribunal has relied upon the wording of article (8) of the Arab Unified Investment Treaty describing its award as a "final award that could not be challenged" and that it is effective in the sense that it may be directly enforced as if it were a final judgment that is enforceable without any exequaturs as per the tribunal's exact words themselves; "... a final decision accelerated in performance, effective in principle, rendered with a majority of votes, and not subject to any type of review". This is how the award established itself; an unchallengeable award that is not subject to any review or scrutiny whatsoever.

(2) — The Course of the Annulment Action at hand

Referrals: Whereas, the facts of the case at hand, its elements, the parties' submissions, their grounds, and defenses, were reviewed within the two Judgments that were issued by this Court in the hearing dated 05/02/2014 and the hearing dated 06/08/2018 as well as the two judgments issued by the Court of Cassation - as will be mentioned. The Court refers to the wording of these judgments and considers their holdings to be supplemental to this judgment's reasoning and an integral part thereof, and naturally, without such referrals containing any estimations, grounds, bases, or results that contradict the reasoning of the current judgment or contradicts its basis. In any case, and in brief words to the extent necessary to deliver out the holding, the Court presents the following basic elements:

• Considering that Egypt is the seat of arbitration, the Libyan Party has challenged the Arbitral Award before this court in the case at hand requesting its annulment. On 05/02/2014, and on the basis that the Arab Unified Investment Treaty, did not tackle any procedural system that leads to the annulment of awards within its domain or under its umbrella as it does not mention the word or term "annulment" in any way whatsoever. The Court decided to reject the case and stipulated in reasoning in its judgment that; "... The arbitration subject to this Arab Unified Investment Treaty and its annexes is a separate legal system that has nothing to do with any other national procedural system even in the country in which the arbitration took place." On such a basis, the challenged Arbitral Award, in accordance with

the text of the Arab Unified Investment Treaty, is always final, binding, effective, and unchallengeable before national courts. Hence, it falls - in nature - outside the annulment actions system set out under the Egyptian Arbitration Law no. 27 of 1994.

• Also, Libya has challenged the aforementioned judgment and had its challenge registered under case no. 6065 for the judicial year no. 84, and in 14/11/2015, the Court of Cassation issued its decision reversing the appeal judgment (that decided on a refusal), whereby it was stipulated in its reversing judgment that even if the Arab Unified Investment Treaty - specifically its annexes - explicitly prohibits the challenging of its arbitral awards through both ordinary and extraordinary means, it did not explicitly prohibit filing an original annulment action in that regard. As annulment actions for arbitral awards are not considered as a way of challenging in its ordinary degrees that are embodied under the Code of Civil and Commercial Procedures. As it is an original annulment lawsuit and is considered (an exceptional, special, and distinctive) legal tool used for challenging the arbitral award that is defective in its foundation which requires its removal and stopping it from having its effects in action.

• This means that every arbitral award rendered in Egypt is always - even if it were of international nature - subject to the system of annulment actions, its grounds, and reasons of procedural nature that are embodied in the Egyptian Arbitration Law, which aims - in principle and in contrary to ordinary means of challenging of judgments - at combatting or pursuing substantial violations that are apparent in the arbitral award whose annulment is sought. Hence, and according to the Court of Cassation, the annulment action at hand is admissible in form, and the Annulment Court - in such regard - must investigate and review any raised violation that is related to the Arbitral Award and must find a clear answer to it. Based on which, the reversing judgment brought the case to this Court (as a Court of Annulment) in order to decide on its subject - in another circuit - in accordance with the Egyptian Arbitration Law as the general arbitral policy for every arbitration that is conducted within the Egyptian territory.

• In the hearing dated 06/08/2018, the other circuit (Circuit 62 - with a different composition) rendered its judgment of non-territorial competence for reviewing the annulment action at hand. In such a judgment, it was stated that it based its (new) judgment on a new understanding of the lawsuit's circumstances, and legal grounds that are contrary to the understanding and grounds of the first judgment (the annulled judgment of 05/02/2014). The judgment based its decision on the grounds that; as long as the arbitral proceedings took place in accordance with the Arab Unified Investment Treaty, then its award is immune before the national judiciary of each of the contracting states of the Arab Unified Investment Treaty even if it was based upon an original annulment action. The judgment also emphasized that the original annulment action for the annulment of arbitral awards - in one way or another - is a dispute that arises from the application of the Arab Unified Investment Treaty which exclusively specifies the "Arab Court of Investment" as a special judicial body for the disputes that arise directly from the Arab Unified Investment Treaty itself, and that this Investment Court that is under the auspices of the Arab League is an independent special regional judicial body that is not related to the national procedural systems including any national arbitration system. In that regard, the annulment action is taken out of the Egyptian judiciary's competence and its international jurisdiction.

• For the second time, the Libyan State took the cassation route and challenged the aforementioned judgment (the judgment dated 06/08/2018) through challenge no. 18615 for the judicial year no. 88. On 10/12/2019, the Court of Cassation decided to completely reverse this judgment. In its judgment, it showcased the rule that stipulates that the subject of competence - in its different forms - is a matter that is always presented before the Court of Cassation even if no specific challenge in its regard was raised and that the

previous judgment (the judgment dated 14/11/2015) necessarily involves, and as a legal matter decided by a definitive and decisive judiciary, the competence of the Cairo Court of Appeal to review the arbitral award annulment action at hand. Hence, the second cassation judgment paired its reversing judgment with referral one more time to this Court in order to decide its subject with a new judgment, which means the review of the reasons on which the annulment action was based. Upon this 'second' referral, the judgment pointed out that, even if the law bounds the Court of Cassation - if the challenge is presented for a second time - to decide on its subject, this obligation does not take place in principle if the subject is being reviewed on one degree. As the Cairo Court of Appeal - before which the arbitral awards annulment actions are brought directly and on the first degree in principle - did not exhaust its competence with deciding the subject of the annulment action, as it held in its two judgments - stopping at the formalities - to refuse the actions, followed by non-competence and did not extend its review beyond so.

• The Libyan Party accelerated the annulment action - for the second time - as it was revived and underwent the proceedings once again, and it was reviewed before this circuit (first commercial circuit) in the session of 02/03/2020 in which the parties appeared and presented their submissions and various memorials in which they affirmed grounds of defense that, in essence, and content, do not stray from what was previously presented, factual evidence, and legal authorities on which they have relied throughout the various phases of annulment proceedings (pages after pages and papers after papers). Hence, the Court decided to render its judgment in today's session in extension, and upon deliberations, it issued this judgment.

(3) — The Court

1. Whereas, in the Egyptian Law, as per the provisions of the arbitral awards annulment action - which the main guarantee related to its parties' interest - and as per its nature, the annulment judge is not concerned with the end result of the arbitral award. Also, the award's errors related to a flaw in the estimation of elements of fact or a violation of the law, do not necessarily deem it null. Regardless, the parties may not argue the elements of the subject of the dispute or reclaim them before the court of annulment for its review. The judiciary cannot correct or realize the results that the arbitrator established or reverse the situation to its prior status or amend or correct any flaws in the arbitral award. Regardless of all of that, and regardless of its foundation and its autonomous, distinctive, and agreeable being, the arbitration system or route has its own whole arbitral frames, principles and rules (of justice) that is directed by instinct, and required by the truth which prevents it from being abused in a way that gets it out of its purpose and its logical and legitimate borders. Arbitration is a legal system and is not an absolute one. Hence, if the arbitral award crosses the disciplines of arbitration and its essential frame or if it disrupts it, it shall not deserve the prescribed for it, and hence, does not become immune. The arbitrator is not allowed to break free from any essential legal disciplines, waste any fundamental principles of justice, disassociate itself from the - must be observed - behavioral guarantees and duties, or invent something out of nothing.

2. Hence, and upon the challenge of an arbitral award, the annulment judge may not be deprived of exploring the reasoning of the award and reviewing with care, understanding, awareness, and persistence in order to locate and identify the prerequisites of the raised challenges in its regards which may cause it - depending on its clear existence and severe effects - to be annulled. From a public policy perspective, the judiciary is always entitled to audit and authenticate whether the

standards of the arbitral proceedings (procedural integrity) were maintained or substantially, dangerously, and obviously disregarded. Also, the judiciary has the discretion to determine whether the award included in its result or reasons actual and obvious aggression on these rules of public policy that is well established and firm, or not. Under the auspices of these rules, by default, the necessary initial rules that follow from the disciplines and standards of logic and are presumed by facts, such rules may not be set aside by the arbitrator, nor may it be wasted, or be ignored excessively. Hence, and within strict, and limited legal boundaries, the judiciary may lay its word regarding the arbitral award, annul it, or refuse its annulment action. In all cases, and despite the flexibility of the legal and formal disciplines of the arbitration - by analogy with the rough or rigid disciplines of the judiciary - the arbitrator may not exercise full, absolute, unchecked, a power that is unstoppable in wildness and direction when it comes to the scope of significance and implications of the public policy, its instructions, and prohibitions, and its modern balances that have become embedded. No award, even if it is arbitral, may be given immunity as it is - like any other - does not originate from a holy source. As arbitration is not sought for itself and it is not an advantage whereby the arbitrator is set free from all restrictions.

3. In the social responsibility, the awarding of compensation is necessarily tied to the occurrence of damage as the remedies are determined in accordance with the damage, or reasonably compatible with the damage and enough to remedy it. The compensation is measured with objective standards or a basis that takes into consideration the factual circumstances that ensue. The principle of equality or proportionality of compensation constitutes an established principle of the collective rules of public policy that may not be overthrown due to its firm connection with the interests and rights of individuals, and respect to their legitimate expectations. Hence, the judiciary is entitled to establish - without dwelling into the subject - whether the arbitral award respected this principle of proportionality or not, as the award could be annulled, or have its performance set aside if it includes - in a very conceivable way - a very aggravating, and utterly unjust remedy that exceeds the damage in an obvious way, inappropriate, and unexplainable. Generally, a remedy - whatever it is and in the context of balancing interests in spite of difference - must not contradict the requirements of justice and the spirit of fairness. Otherwise, it would descend into chaos and aggression. Hence, there is no remedy without restriction or ceiling or barrier, or else it would be a merely absurd, paternalistic arbitration that is prohibited under all laws.

4. As it is unimaginable that a cure is worse than the disease, and that damage may not be countered with another damage, each law works towards laying a legal rule for remedies. Article (9) of the Arab Unified Investment Treaty itself made sure that this rule is preserved and maintained, as it ruled in its essence on the necessity of the compensation awarded to the Arab investor being proportionate with the damages incurred; "... as a result of the hosting country, or any of its public or local authorities doing whereas remedying damages is the core of the right to remedy and the sought purpose of it; hence, straying from the objectively reasonable boundaries of such a right may be described as an unorthodox behavior, external behavior, malicious act, deviant judgment, and unlawful.

5. In application to an essential and collective legal rule, it is impermissible to exercise rights for objectives that are outside the scope it was made to protect. This means that it is not acceptable to exercise any right or use it in a way that contradicts its purpose becoming - in the light of the circumstances and the surrounding facts - contradicting its logical purposes, or exceeds its elements and requirements. This is when the law itself (the exercise of right) would be lawless. In other

words, one of the principles on which the law made its foundation is the existence of a principle that prohibits the abuse of rights, which makes it not permissible to exercise a right for purposes other than those which the right was created for. When the legal right is exercised or applied in a crooked manner, exceeding the logical objective boundaries - in a very inappropriate way (lemming) - this non-serious exercise (considering its intended purpose in the light of the raised individual case) becomes a prohibited act that lacks legitimacy that is not protected by law. As above all else, a right may not contradict itself, or its virtue, or its essence.

6. When talking about the law in general, there are higher governing principles that may not be manipulated in essence or meaning as they transcend, in place, any law even if it's written. In affirmation and consolidation of human rights and values of justice - by which nations flourish - its frames, and concepts, such injustice must parish. This contention is not only a religious, moral, or behavioral undertaking but above all else, a legal obligation that must be considered in its direction and affirmed in its meaning.

7. Through the force of the factual evidence, and logical scales, there are always -when settling every dispute - critical boundaries that are required by instinct and forced by facts, which may not be overruled or abolished. Its flagrant breach may not be omitted, or it would clash with the concept of the right to a fair trial which is guaranteed and protected - considering the importance of its related interests - by charters and constitutions. An impartial, integral, proportionate, just, and fair trial - in accordance with the legal guarantees and means and initial disciplines - that provides, in the end, a just, appropriate, and a balanced solution for the rights of the disputed parties.

8. Conclusively and in accordance with contemporary concepts, the understanding, interpretation, and application of the law are subject to minimum justice and equity standards; they must necessarily be taken into account and made effective without any prior impressions or prejudices. The law is not far from justice and conversely, they have together connections and kinships. There are always necessary and factual justice trends that fall within the limits and parameters of a logical mindset - as are all legal norms - that are alerted, oriented at a given time, and living reality. Ancient philosophers argued that the search for truth in the law meant the search for justice because it was justice that represented the truth and the essence of the law, so that the application of the legal rule or its understanding and interpretation, in practice, needed to be combined with equity.

9. If the rule of religion and morality is subjugated by the judiciary, it is a double-attribute rule and its positive part is considered as a purely legal rule or a binding legal duty, not as a religious rule nor a noble and required moral value. In any case, the principle of natural law based on sophisticated and flexible justice - which are included in the components of every rule of law - are the primary source or the criterion that is resorted to or referred to in determining the scope of the rules of international public policy which transcends regional legal and cultural boundaries. The flagrant violation of the concept of justice - in certain cases - is grossly unfair and unjust. Therefore, this act of injustice or conduct of law should be excluded since justice has precedence and transcends others, and it has always been the center of the lead. It was said, a long time ago, justice itself is the constant engine for ever-changing positive legislation. It was also said that the instinct of justice -the key to the rise of nations- makes the public careful towards the idea or appearance of justice and its public proclamation.

10. By returning to the arbitral award, the prominent issue which jumps to the eye is the massive

amount of the awarded compensation, about USD 1 billion. By looking into the overall picture or the framework of the arbitral dispute, its manifestation, and its factual elements, such compensation could be described as totally unjustifiable, contrary to the nature of things, which could not have been expected by reason nor law. Therefore, the compensation was based upon abstract theoretical data and perceptions, with no real bases. The court, in this paragraph, merely refers to the record of the arbitral award itself. In the statement of claim dated 23/8/2012 which is considered as a statement of claim or its key submission as issued by the counsel of the Claimant "Al Kharafi Company" (Mr./...) mentioned that his company previously offered the Libyan Privatization and Investment Board several options including... that the Board should pay the Al-Kharafi Company a compensation amounting to USD 5 million, which only represents part of the Al-Kharafi Company's losses, and the relationship between the parties ends." USD 5 million, or slightly more, was the compensation the Claimant in the arbitration initially claimed, yet during the arbitral proceedings, the compensation rose in a dramatically-driven pursuit. During the arbitration proceedings, Al-Kharafi Company raised the compensation more than once, starting from USD 55 million to reach about USD 1 billion and 144 million and settling in its final applications to demand more than USD 2 billion and $55 million in compensation for the termination of the project. Such behavior of the Claimant is - with its suggested references - is highly absurd. However, the arbitral award complied with the absurdness of Claimant's demands and took it in a serious manner with its impotent logic and untenable arguments and thus became an absurd and excessively harsh award which is harmful to reason, law, and the meaning of justice and equity.

11. This arbitral tribunal, however, has stated in its ruling - enthusiastically, without hesitation or embarrassment - that its personal conviction and discretion goes (the majority opinion) to that the value of the loss rate incurred due to missed, real and certain opportunities" because of the removal of the promised project - is more than USD 2 billion which is more than the Claimant demanded. This is the arbitral tribunal's resolution, however, the tribunal (the majority) did not hesitate to use clemency after hearing the oral advocacy presented by the respectful lawyer (Prof. Dr./...) presenting on behalf of the Libyan party"...The young state that returned strongly after the revolution" stated in accordance with the award. With the mercy that is above justice, the Arbitral Tribunal used its discretion to lessen the compensation for the loss of profit alone to be only USD 900 Million (and its interests). Accordingly, the aforementioned statement is the core of the contested arbitral award.

12. According to the premises and justifications mentioned in the arbitral award, which will be mentioned later, it is clear -with a legal sense that is hard to ignore- that the award's assessment of the above compensation is arbitrary, overstated and beyond reasonable limits and constitutes a clear and serious violation of the essence of the principle of proportionality and equivalence between the amount of compensation and incurred damages. Thus, disregarding, with arbitrariness, the rights and legal status of the arbitral proceedings and violating - rightfully and reasonably - the legitimate guarantees for a fair trial. The award emptied this rule of proportionality -even at its minimum -and deprived the content aimed to achieve justice. It is clear, and also arbitrarily, that the provisions have wiped out the content and the right to compensation in its origin, content, and essence, transcending its scope, requirements, purposes, and fair terms. Therefore, rendering such a flawed compensation, or the protection of its effects, is unjust.

13. One of the rules on which laws are based is that the compensation should - as much as possible - be equivalent to any harm suffered by the aggravated party (creditor of the obligation) to include the

loss incurred as well as the loss of profits provided that this is a natural consequence of the failure to fulfill the obligation (or the act of error). While the aggravated party may claim compensation for future material damages certain to occur, there is also a so-called compensation for the loss of gain, benefit, or profit. This is in fact a compensation for future material damage that is not precluded from calculating and considering it as an element of the awarded compensation. Deprivation of opportunity till it is missed has reportedly been an achieved damage even if benefiting from it is only probable. In other words, if the chance of earning or profiting is probable, the aggravated "missing out on profit" due to damage will certainly entitle the aggravated party to compensation. Here the compensation is due to "missing" a profiting opportunity, not for missing future eminent profit or loss. This "opportunity" is only the amount of damage caused by loss of opportunity, taking into account - as a loss- the overall situation to the probability of earning or succeeding or potential (uncertain) profit that is likely to be large, small, trivial, or even non-existent.

14. In this direction, it is important not to confuse compensation for future direct damage with compensation for the so-called potential loss of profits. There is a fundamental difference between the two, the latter is not a damage that will inevitably occur in the future, but rather a loss of opportunity. Both have their own governing scope and disciplines. The potential loss of profit due to missed opportunities is not due to the occurrence of certain or inevitable damage; it is only decided for the loss of the promise/hope of profit, considering it a compensation for the loss of the promise of profit. Therefore, it is necessary to take into consideration with caution the assessment of the compensation. The probability of success is only the amount of damage caused to the loss of profit, not more or less. It is logical and, in this case, the award of compensation for missed opportunity must have realistic justifications and sufficient evidence to show and enunciate its likelihood, that is the compensation is based upon reasonable grounds and support. This kind of compensation does not - and therefore should not be adjudged - on mere dreams, visions, and aspirations, or imaginary illusions, as this should not be compensated for.

15. In a scandalous appearance, the arbitral award violated the advanced legal considerations and assessed the loss of profits - the backbone of the body and core of the award - not by considering it a potential compensation for loss of the promise of profit but as an eminent compensation for actual damages that would inevitably have occurred in the future. This serious violation of the law, its understanding, interpretation, and application led the award and brought it to a pitfall and unacceptable excessiveness. It necessarily extends to, as a last resort, judicial control; the control of invalidity. The amount awarded to the Claimant for the loss of profits, in light of the circumstances surrounding the arbitral dispute, on every fair legal scale, is considered grossly unfair, artificially exaggerated, not adjusted or balanced at all. The relationship between cause and effect, which is the basis of any compensation, was missing. The damage in which the compensation was awarded is illusory, unreal, and an assault on the rights in question concerning the project. According to the due legal principles established generally and in the international domain, an arbitral award may be invalidated or, where appropriate, rejected its enforcement if it is defective by means of fraud and corruption or in cases where the arbitral tribunal found itself in breach of the most basic and fundamental concepts of established justice, minimum standards of fairness, whether substantive or procedural.

16. In order to safeguard and protect rights, in accordance with the realities of nature, there are always logical and control necessities, which are connected and subject to the vigilance of the human mind; just rules of the mind, high guidelines (positive and common human standards) that cannot be

changed, excluded, or evaded since that they do not exist or operate in a vacuum. It is the essence of the rule of law, which has a vital factual character because it is closely and continuously linked to the context of the unhidden, overlapping, and interacting legal reality. According to logic, the power of the surrounding and revealing conditions, and the obligations of fairness, many of these mental necessities were absent from the challenged award. The award of compensation included excessive and massive amounts of money; it was overtaken by reason and unapproved by law, which threatened its core since justice was starkly lost and thus was invalidating.

17. It is a well-established rule that no witness or expert is allowed to give his or her opinion on legal conclusions or to determine the law of the case. It is not difficult for the court to realize that the quantum of compensation for loss of profits has been established and is set on a convoluted basis. The arbitral tribunal (the majority) has drawn from the accounting expert reports of several financial firms whose findings were based on prepared and pre-equipped information and data provided by the Claimant alone, accompanied by good ambitious aspirations. These were reports without roots, separate from reality and law, that are drawn with pens on an empty painting. Just standard accounts, graphs, cash flows, revenues generated, and increased over the duration of the investment concession (contracts after contracts, and millions followed by millions of dollars) as these profits are direct damages (net future profits as "loss of profits"). Expert numbers based on the "imagined" argument that the existing tourism project agreed upon, is truly integrated and attractive to customers, a thriving, vibrant entity or a rich, fully developed entity that is exploited and generated for consecutive profits, and in the belief that these "imaginary or false" profits are ground for compensation for future damages that would inevitably occur.

18. This is easily perceptible, as the arbitral tribunal has relied upon on a world of abstract numbers and results -derived from deaf papers- without considering the physical reality and establishing its validity legally. The award has relied upon the results of experience that contradicts the ordinary logic of any reasonable person. There is a distinction between a deaf and a tangible and effective living reality that cannot be ignored. Like a judge, the arbitrator is obliged to understand the material reality of the arbitral proceeding legally, given that reality is perceived only as mixed with the law, and not disbanded from it. The arbitral award has drifted and was based, without foresight, on a gross breach of the law and a clear distortion of reality. It relied upon standard theoretical templates and profit figures generated by false assumptions and premises, faulty and untruthful, based on the artificial assumption that the disputed project had flourished and was becoming a popular one, and generated a flowing profit that must be protected, secured and confirmed, and then awarded.

19. The same provision, in its reasons and analysis, asserts that the disputed project did not start implementing any of its main steps, but merely based upon preparations and perceptions without impetus and that the investment contract remained purely passive, with no physical body or spirit. In the context of the apparent reality, the disputed project remained a mere troubled territory (legally and realistically), without peaceful delivery, licenses or financing, and in a state not more than tranquility. It is almost a little paper project, disabled with a low-beam. In other words, it was a wasteland not yielding crops, lacking profit or yield, and is disputed upon with a continuum of obstacles, complaints, objections, meetings, and mutual efforts as well as cordial, ill-conditioned, repetitive, and dull attempts were made. Consequently, the project could be considered strangled, sterile, unwelcomed, and failure. Profit has data, material tools, scientific basis, and the environment of a stable, healthy, and moderate investment climate, which could not be separated

from profit.

20. The indications available and important to everyone, reveal the need to exert certain distinct mental effort, whether the investment this arbitration is based upon is a long-term tourism activity in a country that was overtaken, isolated, twisted, and exhausted, and does not originally attract tourism, severed connections and it is unknown what will become of its fate, or what will the complicated circumstances lead to. These risks associated with reality and law lead logically and according to the nature of this and choke every tourism investment and make it useless, without any wellness or hope of earning any profit. These clear - and very important - facts cannot be overlooked and cannot be avoided in the foreseeable future, whether in terms of its nature or scope. Despite the multiple records and excessively repetitive details in the arbitral award, the latter has ignored these apparent pieces of evidence -with its synchronization and issuance- that was totally neglected, although it was logically and directly related to the solution adopted by the award since it's unimaginable that this solution would be attainable without it. This is what must be observed as per the rules of law and reason. In one sentence: according to the circumstances shown, it is not surprising to say that the Claimant in arbitration has actually escaped from an eminent evil "damage/harm" and escaped -unintentionally- from its "nets". The reality of life is based upon facts and truths, even if this reality is a tourism investment.

21. It is also clear that, despite the persistent attempts that the Claimant sought to start implementing the promised project, the project has been rewarded without developing and was lost without any hope, due to its collision with the opposite Libyan reality, heavy bureaucracy, lack of insight, stubbornness, corruption, or administrative paralysis, whatever the case may be. The project was lost, faltered, and frustrated. This simply means that the rules, standards, and the results of the purely computational pamphlets included in the expert reports, those related to the economic damage resulting from the loss of profit, cannot mean anything in the legal reality at hand. However, without vigilance - and with a flawed understanding to a flawed limit - the arbitral tribunal has relied upon these numbers - as a basis of its award - although it is based on hypothesis, specious, deceptive abstractions that contradict the conditions that accompanied the project and its surrounding circumstances; just a hollow meaningless drum. The arbitral award was succumbed to random consequences not explained by law nor reason, certainly deviating from the correct concept of the meaning of harm or profit arising from the missed opportunity, demolishing the award without reservation or precaution for the meaning of the idea of compensation, its purpose, and objective which has led to cruel punishment, contrary to the nature of things. In this case, the arbitral award could be described as a compensation for the lost profits, according to it as a material manifestation, only, an absurdity that has no meaning; has nothing but the skin of a bear, if this is even true

22. These realistic matters previously mentioned, which are strongly suggestive, are considered by the court as a vital point that is very important in terms of considering the compensation awarded as a compensation for lost profits that has exceeded the limits of the reasonable and intended purposes of it, to become unfair, unjust, bad, stormy and troublesome, devoid of all foundations and devoid of its existence, in itself wasting the legal intentions of the parties to arbitration, and related matters, due to its breach of the legal security guarantees, which is a goal that is targeted and guaranteed by every legislator. This unfair transgression was influential in the construction of the entire arbitral award and is inevitably connected to its predicate, easily recognizable by simply reading its paragraphs carefully, without the need for in-depth material scrutiny or review. And when the court

found that the compensation awarded was obscene or indecent, it is important then to annul the challenged arbitral award as it is not permissible for an award like this one to receive any form of legal protection.

23. There is no immunity for every free, authoritarian authority - throwing its net wherever it wants and desires - or is excessive in intensity, especially when it results in a hollow oversight of the concept of justice and its logical limits, as it is not correct - under the guise of or discretionary discretion - to violate justice values or the core legal doctrines from their intended purposes or to break into their structure and their boundaries It is clear, then, that the arbitral tribunal has failed to fulfill its duty to observe the legal principles and the fixed logical frameworks, and has instead violated the fundamental legal rules in its award, and did not adhere to the limits of vital restrictions and guarantees required by the consequences and requirements of the arbitral mandate entrusted to it. Such an arbitral mandate that is not complete without fully guaranteeing the right to a fair and complete trial. Hence, this challenged award is strongly stigmatized by a deviation and transgression manifested in the abuse of arbitral power.

24. It should be noted here that when talking about the elements of damages, legal scholars offer the following example: If a pregnant woman is pushed over, her fall might result in her injury and damages that deserve compensation for her, but the risk of miscarriage does not count as long as such did not actually happen. Every legal system, in the event of a compensation ruling, orders not to lose sight of the apparent circumstances and clear facts. Hence, it is not permissible to exclude such facts or marginalize them, whether related to time or space, disregarding the reality of the case. Also, considering that the market laws - and their risks - are ordered and obeyed, so the quantum of compensation does not stand in a vacuum as such quantum would be based primarily on such [market laws]. It is also illogical to compensate for damage that does not exist or is not fixed because it is neither a penalty nor a "civil" sanction applied to the violating contracting party, but rather it is in its basis and origin a tool for redress and a way to strike a balance between the legitimate interests of the parties involved in the private dispute.

25. Although each absolute is an absolute only in terms of amount, the arbitral tribunal acted that its award was final, a saying that is not acceptable and does not accept review, as if it was an inevitably free from all supervision or review. Therefore, its ruling came, in a clear and explicit manner that reveals itself,..., blatantly excessive and unjust to the limits that make it outside the legal restrictions and logical obligations, of all kinds, arbitrary, discriminatory and thus constitutes a clear and serious violation of the basic legal principles. Accordingly, it is not permissible for such an award that is, despite its material existence, to create rights or arrange obligations, and it is also unacceptable that such an award be invoked or granted immunity. Accordingly, and in compliance with the important, fundamental and influencing rules of public policy, and preserving and fixing them, the nullity of the arbitral award as a whole, as a result of such an excessive abuse, and all the above-mentioned reasons us is inevitable, and therefore the court decides to nullify it.

26. It remains for the court to record that S.R. Corporation for Financing (FINANCIERE CER) was not a party to the arbitral proceedings challenged in this judgment, so the court rules that it does not accept its joinder in the annulment lawsuit, and obligates it to pay the expenses and fees in relation to its request for joinder. The court adds that this paragraph complements the below holding of this judgment and forms one unit with it so that they are inseparable.

For the above reasons

The court ruled that the challenged arbitral award issued in Egypt "Cairo" on 22/3/2013 shall be null and void, and obligates the respondent company to pay the judicial expenses and the amount of EGP 100 in exchange for attorney fees.