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THE FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE

PARIS COURT OF APPEAL
Pole 1, Chamber 1

DECISION OF 23 JUNE 2020

(n° ,10 pages)

Registration number in the General Directory**: N° RG 17/22943 - Portalis N° 35L7-V-B7B-B4VAV**

Decision referred to the Court: Award rendered in Paris on 11 September 2017 by an arbitral tribunal constituted under the aegis of the ICC, and composed of Mr Mohamed S. Abdel Wahab, Mr Klaus Reichert, arbitrators, and Mr Bruno Leurent, Chairman,

APPLICANT IN THE ACTION FOR ANNULMENT:

KOUT FOOD GROUP COMPANY,
in the person of its legal representatives

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Near Sheraton roundabout - PO Box 26671 - Safat 13127
KUWAIT

Represented by Maître Luca DE MARIA for SELARL PELLERIN - DE MARIA - GUERRE, counsel registered at the Paris Bar, Court box No. L0018
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RESPONDENT IN THE ACTION FOR ANNULMENT:

KABAB-JI SAL COMPANY
in the person of its legal representatives

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9th Floor Metn P.O Box 6
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LEBANON

Represented by Maître Michel GUIZARD for SELARL GUIZARD ET ASSOCIES, counsel registered at the Paris Bar, Court box no. L0020
assisted by Maître Marianne KECSMAR, pleading counsel registered at the Paris Bar, Court box No.

COMPOSITION OF THE COURT:

In accordance with the provisions laid down by articles 805 and 907 of the civil procedure code, the case was argued on 25 February 2020, at a public hearing, the parties' counsel having made no objection to the same, before Mr Jean LECAROZ, appellate judge, acting as president during the hearing, and Mrs Marie-Catherine GAFFINEL, appellate judge, who were charged to report to the Chamber on the matter.

The following judges took account of the parties' oral argument in the deliberations of the court, composed of:

Mrs Anne BEAUVOIS, president of the Chamber
Mr Jean LECAROZ, appellate judge
Mrs Marie-Catherine GAFFINEL, appellate judge

Clerk of the Court, at the hearing: Mrs Melanie PATE

DECISION:

- after hearing both parties
- upon this judgment being made available to the Court registry, hand down having been postponed to today's date, without notice to the parties due to the ongoing public health emergency.
- signed by Mrs Anne BEAUVOIS, president of the chamber and by Melanie PATE, clerk.

On 16 July 2001, Al-Homaizi Foodstuff Co WWL (AHFC), a company registered under the laws of Kuwait, which operates in Kuwait the franchises Burger King, Pizza Hut and Taco Bell, and Kabab-JI, a company registered under the laws of Lebanon specialised in fast-food and ready meal platters, signed a franchise development agreement (the FDA) for a ten-year period. Pursuant to this contract, AHFC was to arrange, via an outlet system, the operation of the restaurant brand "Kabab-Ji" in Kuwait for ten years. For each creation of a franchise outlet, AHFC and Kabab-ji were to sign a specific agreement relating to the franchised outlet concerned (the FOAs).

The FDA and the FOAs (the Agreements) provided for the application of English law to the Agreements and contained an arbitration clause referring to the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) and specifying that the seat of arbitration would be in Paris (France).

By letter dated 2 October 2004, the president and counsel of AHFC informed Kabab-Ji of the restructuring of their group and the setting up of the Kuwaiti holding company Gulf and World Restaurants & Food, which became Kout Food Group (KFG). By letter dated 7 October 2004, Kabab-Ji consented to the creation and incorporation of KFG on the condition that this operation would not affect "[the] terms and conditions of already signed agreements" between them.

On 16 July 2011, the Agreements expired without the parties having agreed to renew or extend them.

On 27 March 2015, Kabab-Ji initiated arbitral proceedings before the ICC against KFG.

By award rendered in Paris on 11 September 2017, the arbitral tribunal constituted under the aegis of the ICC and composed of Mr Mohamed S. Abdel Wahab, Mr Klaus Reichert, arbitrators, and Mr Bruno Leurent, Chairman, ruled, by a majority constituted by Mr Leurent and Mr Wahab, that, notably:

- KFG is a party to the arbitration agreements contained in the Agreements,
- the applicability of the Agreements' substantive obligations extends to KFG,
- the Mark carve-out provision contained in Article 14.2 of the FDA does not limit the Tribunal's jurisdiction over Kabab-Ji's claims,
- KFG shall pay to Kabab-Ji all unpaid monthly License Fees between 2008 and 2011 in the sum of USD 892,945,
- KFG shall pay to Kabab-Ji USD 4,631,841 as compensation for Kabab-Ji's loss of chance claim,
- KFG shall pay to Kabab-Ji USD 1,490,645.19 as Kabab-Ji's reasonable costs of Arbitration, including its legal representatives' costs,
- KFG shall pay interest at the rate of 7% per annum on all sums awarded hereby, to be calculated as from the date of the award.

In his dissenting opinion rendered on 7 August 2017, Mr. Reichert, after recalling that the arbitral tribunal's ruling on the application of French law to the question of the validity and extension of the arbitration clause was unanimous, held that KFG did not become the co-contractor of Kabab-Ji, and so Kabab-Ji's claims should have been rejected by the arbitral tribunal.

The KFG company brought an action for annulment before this court by declaration of 13 December 2017.

Kabab-Ji obtained on 7 February 2018, an order giving leave to enforce the award in England, to which KFG objected. The London High Court, in a judgment of 29 March 2019, and then the London Court of Appeal, in a judgment of 20 January 2020, held that English law had been expressly designated by the parties as the law applicable to the arbitration agreements and, consequently, to disputes relating to the jurisdiction of arbitrators. The English courts added that under English law KFG had not become a party to the franchise agreement or to the arbitration agreement of the franchise agreement, both of which raised the same issue. Finally, the London Court of Appeal refused to admit the application for recognition and enforcement of the arbitral award in the United Kingdom and gave no leave to the parties to appeal to the English Supreme Court.

In its submissions filed on 6 February 2020, KFG asks the court to annul the award rendered on 11 September 2017 between the parties, to reject all of Kabab-Ji's claims and to order the latter to pay KFG the sum of EUR 200,000 under Article 700 of the Civil Procedure Code, in addition to the costs of the proceedings.

KFG argues that the arbitral tribunal wrongly upheld jurisdiction over KFG (Article 1520, 1° of the Civil Procedure Code), that it ruled without complying with the mandate entrusted to it (Article 1520, 3° of the Civil Procedure Code) and that it failed to comply with the principle of due process (Article 1520, 4° of the Civil Procedure Code).

In its submissions filed on 24 January 2020, Kabab-Ji asks the court to dismiss all of KFG's claims, to confirm the award and to order KFG to pay Kabab-Ji the sum of EUR 165,000 under Article 700 of the Civil Procedure Code, in addition to the costs of the proceedings.

AS TO WHICH,

On the first ground, alleging the lack of jurisdiction of the arbitral tribunal (Article 1520, 1° of the Civil Procedure Code):

KFG argues that the tribunal wrongly retained jurisdiction over KFG whereas KFG was not a party to the franchise agreements containing the arbitration agreements. Firstly, KFG argues that the tribunal should have applied English law to the arbitration agreement and, consequently, found that it had no jurisdiction over KFG. Secondly, assuming that French law was applicable, KFG considers that the conditions laid down by the French substantive rule for the transfer or extension of the arbitration clauses to KFG were not satisfied. Thirdly, assuming that French law was applicable and that the arbitration clause was extended or transferred, this clause would have remained manifestly ineffective and inapplicable in the absence of transfer of the agreements' substantive obligations to KFG which English law did not permit. Finally, in any case, KFG argues that it did not have the capacity to sign an arbitration agreement under Article 702 of the Kuwaiti Civil Code.

Kabab-Ji replies that the existence and validity of an arbitration clause is governed in French international arbitration law by substantive rules which are binding on the French judge, and therefore on the arbitrators when the seat of arbitration is in France. It adds that the arbitral tribunal, applying these substantive rules, rightly held that the arbitration clauses of the Agreements were extended to KFG, a non-signatory to the Agreements.

On the first limb of the first ground:

KFG argues that the arbitration clauses are governed by English law, which does not allow KFG, not being a signatory to the Agreements, to be bound by the arbitration clauses, as already held by the High Court of London in its judgment of 20 January 2020[1], which refused enforcement and recognition of the award. According to KFG, the parties had made an express choice, including for the arbitration clauses, to submit the arbitration clauses to English law.

The judge hearing annulment proceedings reviews the decision of the arbitral tribunal on its jurisdiction, and whether it has upheld its jurisdiction or not, by looking for all elements of law or fact that make it possible to assess the scope of the arbitration agreement and to deduce the consequences as to ensuring compliance with the mandate entrusted to the arbitrators.

In addition, the judge hearing the annulment proceedings is required to analyse the decision rendered by the arbitral tribunal in order to pronounce, if need be, its proper qualification in law, without being bound by the findings of the arbitrators or those proposed by the parties.

On 16 July 2001 Kabab-Ji and AHFC signed a Franchise Development Agreement (the FDA) to organise the operation of the Kabab-Ji franchise in Kuwait for a period of ten years. The FDA provided that each creation of a franchise had to be formalised by the signing of a franchise outlet agreement (FOA).

The FDA specified in its first article entitled "Content of the Agreement" that "This Agreement consists of the foregoing paragraphs, the terms of agreement set forth herein below, the documents stated in it, and any effective Exhibit(s), Schedule(s) or Amendment(s) to the Agreement or to its attachments which shall be signed later on by both Parties. It shall be construed as a whole and each of the documents mentioned is to be regarded as an integral part of this Agreement and shall be interpreted as complementing the others."

The FDA and the FOAs (the Agreements) contained an arbitration clause pursuant to which:

"[…] Except for those matters which specifically involve the Mark, any dispute, controversy or claim between LICENSOR and LICENSEE with respect to any issue arising out of or relating to this Agreement or the breach thereof, …shall, failing amicable settlement, on request of LICENSOR or LICENSEE, be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The arbitrator(s) shall apply the provisions contained in the Agreement. The arbitrator(s) shall also apply principles of law generally recognised in international transactions. The arbitrator(s) may have to take into consideration some mandatory provisions of some countries i.e. provisions that appear later on to have an influence on the Agreement. Under no circumstances shall the arbitrator(s) apply any rule(s) that contradict(s) the strict wording of the Agreement. […]

[1] **Translator's note**: this appears to be a reference to the judgment of the English Court of Appeal of 20 January 2020.

The arbitration shall be conducted in the English language, in Paris, France […]".

Articles 15 of the FDA and Article 27 of the FOAs provided that "[t]his Agreement shall be governed by and construed in accordance with the laws of England."

Pursuant to a substantive rule of international arbitration law, the arbitration clause is legally independent from the underlying contract in which it is included either directly or by reference, and its existence and validity are interpreted, subject to the mandatory rules of French law and international public policy, according to the common will of the parties, without the need to refer to any national law.

As the arbitral tribunal, which upheld its jurisdiction to hear the claims against K, rightly recalled, the arbitrators had primarily to "apply French law to determine whether it has jurisdiction over the Respondent, since the validity of the arbitral award in this case depends on the law prevailing at the seat of the arbitration. Any action by the losing Party to set aside the arbitral award would fall within the jurisdiction of the Court of Appeal of Paris and this Court would apply French law on this subject, i.e. the principles developed by the Cour de cassation itself. These courts consider as a substantive rule of international arbitration that the existence and the validity of an arbitration clause must be assessed, without any reference to any national law, but only as regards the will of the parties in the light of all circumstances of the case." (award, para 127)

The designation of English law as generally governing the Agreements and the prohibition on arbitrators not to apply a rule which would contradict the Agreements are not in themselves sufficient to establish the common will of the parties to submit the arbitration clauses to English law and thus to derogate from the substantive rules of international arbitration applicable at the seat of arbitration expressly designated by the parties.

On the contrary, the Agreements provide at Article 14.3 of the FDA and 26.3 of the FOAs that: "The arbitrator(s) shall also apply principles of law generally recognized in international transactions".

Contrary to KFG's assertion, no express provision was agreed between the parties which would designate English law as governing the arbitration clause, and so, applying the substantive law of the place of the seat of arbitration, in accordance with generally recognized principles of law, the arbitral tribunal did not apply a rule that would contradict the strict wording of the Agreements.

Likewise, KFG does not provide evidence of any circumstances such as to establish unequivocally the common will of the parties to designate English law as governing the validity, transfer or extension of the arbitration clause, the legal status of which is independent of that of the Agreements.

Finally, the powers of the judge making the decision to set aside the award, when hearing a case on the basis of Article 1520 1° of the Civil Procedure Code, cannot be limited by the existence of foreign decisions interpreting the Agreements and the arbitration clause and applying English law to them.

The first limb of the ground is therefore dismissed.

<u>On the second limb of the first ground</u>:

KFG avers that, assuming that the substantive rules of French law on international arbitration apply, it cannot be bound by the arbitration clause. It asserts that the arbitration clauses contained in the Agreements were not transferred to it, since AHFC's substantive rights were not transferred to it, as the English courts found. It adds that these clauses

could not be extended to it either, given that the strict terms of the Agreements prohibited such extension and that it did not enter into, perform or terminate the Agreements.

However, the arbitration clause inserted in an international contract has a validity and effectiveness of its own, such that the clause must be extended to the parties directly involved in the performance of the contract and in any disputes arising out of the contract, provided that it is established that their contractual situation and their activities give rise to a presumption that they accepted the arbitration clause, the existence and scope of which they were aware of, irrespective of the fact that they were not signatories to the contract containing the arbitration agreement.

The reference to the strict wording of the Agreements made by the arbitration clause cannot preclude the possibility of extension of the arbitration clause given that, pursuant to Article 14.3 of the FDA and 26.3 of the FOAs, the Agreements provide that "the arbitrator(s) shall also apply principles of law generally recognised in international transactions".

As the arbitral tribunal rightly held, "In the event where a party to the arbitration is non-signatory of the arbitration clause, the jurisprudence of the Cour de cassation and of the Court of Appeal of Paris is thus that this party should be deemed to have agreed to the [arbitration] clause if the arbitral tribunal finds that this party had the will to participate in the performance of the agreement" (award, para 129).

The arbitral tribunal ruled, by a majority of its members, that "This participation of the Respondent in the performance of the Franchise Agreements as from 2006 is more than sufficient under French law on international arbitration to make the Respondent a Party to the arbitration agreements contained in the FDA and the FOAs or to extend to the Respondent the effects of these arbitration clauses" (award, para 128[2]).

Between the date of its incorporation in 2005 and the date of KFG's decision not to renew the Franchise Agreements, this company participated in managing the operation of the Kabab-Ji restaurants in accordance with the Agreements.

Thus, in April 2006, Mr. Toufik El Chaar, Vice President of Organization Development at KFG, informed Mr. Khoueiri of Kabab-Ji himself of his decision to appoint Mr. Ziad Chamas as operation manager for Kabab-Ji in Kuwait. The organisational chart of KFG therefore included personnel in charge specifically of the performance of the Agreements.

Likewise, several documents establish that the operation of the Kabab-Ji restaurants in Kuwait in accordance with the agreements was assigned to KFG and no longer to AHFC. In 2006, the document entitled "Kabab-Ji Kuwait Situation Analysis, Recommended actions" was exchanged between Kabab-Ji and KFG. In the document, paragraph 3.1.b "Concept Knowledge and Differentiation" states "Operations Manager, multi Units managers and Field Trainers: an in depth program to be proposed by Kout Food Group, which will include trios[3] to Beirut". The same document at paragraph 3.2.b "High staff turnover" states: "Kout Food to assess reasons for such a high turnover and try to reduce it as much as possible". A similar document established in November 2008 stated again at paragraph 3.2: "Kout Food to assess reasons for such a high turnover [of personnel[4]] and try to reduce it as much as possible" (award, para 136).

On 6 January 2009, KFG sent an email to Kabab-Ji in which it presented itself as the Franchisee and anticipating a training program for its restaurant and district managers in order to meet Kabab-Ji's requirements.

[2] Translator's Note: The Court of Appeal mistakenly referred to paragraph 128 of the award, where the correct reference should have been to paragraph 143 of the award instead.

[3] **Translator's Note** : « trios » appears to contain a typographical error and should read "trips".

[4] **Translator's Note** : Here, the words « du personnel» were added by the Paris CA in translating Award, § 136.

KFG paid many royalty instalments to Kabab-Ji pursuant to the Agreements. The invoicing instructions made in performance of the Agreements were addressed to Kabab-Ji by KFG.

The active participation of KFG in the Agreements, and its willingness to present itself as Kabab-Ji's interlocutor in the context of new negotiations extending the geographical scope of the Agreements to other countries beyond Kuwait is again established as early as the email of 7 November 2006 sent by Mr. Khoueiri of Kabab-Ji to Mr. Zeine at KFG attaching a memorandum of understanding confirming "the intent of Kabab-Ji SAL to grant Koot Food Group Kabab-Ji Exclusive Franchise Agreement for the United Arab Emirates".

Regarding the Agreements themselves, when those expired on 16 July 2011, the discussions on their possible renewal were conducted on the Franchisee's side by KFG and not by AHFC, thus confirming KFG's participation in the performance of the Agreements. Likewise, on 10 October 2011, Mrs. Sula Al Naqeeb, Chief Innovation Officer of KFG, mentioned the Franchisee's agreement to discuss the renewal of the FDA as well as expansion plans and suggested a face-to-face meeting in Kuwait to that end.

The willingness not to renew the agreement but to enter into negotiation for their termination was expressed by Mrs. Fadwa Al H[o]maizi, Chairman and CEO of KFG, who wrote to Mr. Khoueiri at Kabab-Ji on 30 January 2012 expressly citing the FDA dated 16 July 2001 as follows:

"With reference to the Franchise Development Agreement dated July 16, 2001 between our affiliate At Homaizi Food Stuff Company (Licensee) and K-BOB SA (Licensor), please be noted that Kout Food Group does not wish to renew the said Agreement and consequently, we are hereby requesting to enter into a termination agreement with appropriate releases".

Mrs. Fadwa reiterated on 24 April 2013 the "position that Kout Food Group and its affiliate companies do not intend to proceed with the franchise relationship with K-BOB and its affiliate companies".

Having regard to the organisational chart of KFG, its involvement in the performance of the Agreements for several years and in their termination and renegotiation, the arbitral tribunal rightly, and without the need to reach a decision on the transfer of the arbitration clause from AHFC to KFG, found that the said clause extended to bind KFG.

This limb of the ground is therefore dismissed.

On the third limb of the ground:

KFG further avers that extending the arbitration clauses to it would render such clauses manifestly ineffective or inapplicable due to the lack of transfer to KFG of the substantive rights and obligations under the Agreements.

However, the issue of the transfer to KFG of the substantive rights and obligations under the Agreements determines the scope of that company's liability and is beyond the purview of the judges in annulment proceedings when reviewing an award, as this would otherwise amount to a revision on factual grounds; said issue is not contingent upon that of the extension of the arbitration clause, which allowed the arbitrators to find that they had jurisdiction over KFG and which constitutes the ground for annulment provided by Article 1520 1° of the Civil Procedure Code.

The ground invoked by KFG against the award, which is not included in those provided by Article 1520 of the Civil Procedure Code, shall be dismissed.

On the last limb of the ground:

KFG argues that under Article 702 of the Kuwaiti Civil Code pursuant to which "A special proxy must be made for each alienation which is not of the management activities, particularly […] arbitration", representatives of KFG could not commit the latter to arbitration proceedings without special proxy, of which Kabab-Ji was aware.

However, as recalled above, pursuant to a substantive rule of international arbitration, an arbitration clause is legally independent from the underlying contract in which it is included either directly or by reference, and its existence and validity are interpreted, subject to the mandatory rules of French law and international public policy, according to the common will of the parties, without the need to refer to any national law.

In international arbitration, the doctrine of separability of the arbitration clause is of general application, as an international substantive rule sanctioning the lawfulness of the arbitration clause, without any reference to a system of conflict of laws, the validity of the agreement having to be reviewed solely in the light of the requirements of international public policy, irrespective of any national law, even that governing the form or substance of the contract containing it.

As the arbitral tribunal rightly found, "Article 702 KCC, invoked by the Respondent, is neither applicable nor relevant. Kuwaiti law, and accordingly the KCC, governs neither the arbitration agreement nor the arbitral proceedings nor the merits of the dispute. That said, Article 702 KCC is not applicable, since, pursuant to the principles developed by French international arbitration law, the validity of the arbitration clause must be assessed only as regards the will of the parties, without any reference to national laws. […] Moreover, no evidence was adduced to suggest or prove that Article 702 KCC is of an overriding mandatory nature that applies irrespective of the governing law [and] legal principles" (award, para 147).

In consequence, the provisions of the Kuwaiti Civil Code, which do not form part of either the mandatory rules of French law or international public policy are inapplicable for the purpose of assessing the existence or effectiveness of the arbitration clause.

The first ground cannot be allowed on any of its limbs.

On the second ground, alleging the breach by the arbitral tribunal of its mandate (Article 1520, 3° of the Civil Procedure Code):

KFG considers, on the one hand, that the arbitral tribunal failed to comply with its mandate by attributing to [KFG] the rights and obligations of AHFC in the name of the doctrine of good faith in the performance of contracts, of novation in consideration of KFG's actions, whereas the strict terms of the Agreements, which were *intuitu personae* in nature, required the prior written and signed approval of Kabab-Ji and AFHC for the purpose of a contractual amendment,. KFG adds, on the other hand, that the arbitrators misapplied the principle of good faith in contractual matters provided by article 2 of the FDA and by the UNIDROIT principles while breaching the limitations on the powers of the arbitrators provided for in the Agreements, which prohibited them from contradicting the wording of the FDA. Finally, KFG submits that, should the court confirm that the arbitration clauses are governed by English law, the arbitral tribunal would have also breached its mandate by applying French law to said clauses.

Kabab-Ji replies that the judge hearing annulment proceedings cannot review the determination of the applicable rule of law, or any potential error of law. It adds that the tribunal complied with the choice of the parties and applied English law to the substantive rights and obligations of the parties as well as the contractual provisions, by

supplementing them with the doctrine of estoppel and good faith, as provided for by the parties.

However, the mandate of the arbitrator, defined by the arbitration agreement, is mainly delimited by the subject matter of the dispute, as determined by the claims of the parties.

Firstly, except for the question of its jurisdiction, in respect of which it was not required to refer to any national law in general and English law in particular, as held above, the arbitral tribunal applied English law as provided for by the arbitration clause. In considering that KFG was bound by the same rights and obligations as AFHC, it found that "This issue of a novation of the Franchise Agreements or of a transfer of the obligations thereunder, as the Claimant has broadly called it, is governed by English law" (award, para 150), that "English law admits that an agreement to novate may be inferred from the circumstances" while citing English case law references (award, para 189), and that "English law admits that a contract may be entered into or may be amended by a consistent conduct of the Parties, from which their mutual consent may be implied in the absence of express words" (award, para 193).

Secondly, the arbitral tribunal applied the strict wording of the Agreements. It thus relied on the principles of good faith and fair dealing provided for in Article 2 of the FDA and the FOAs, which provides "In carrying out their obligations under the Agreement, the Parties shall act in accordance with good faith and fair dealing. The provisions of the Agreement, as well as any statements made by the Parties in connection therewith, shall be interpreted in good faith". It also reached its decision by taking into account the principles of law generally recognized in international transactions as provided by Article 14 of the FDA and Article 26 of the FOAs when examining the dispute in light of the Unidroit principles (award, paras 204 et seq.).

Thirdly, in finding that the transfer of rights and obligations from AFHC to KFG and to hold that Article 24 of the FDA and Article 37 of the FOAs, which prohibited the amendment of the Agreements without a written document from the parties, did not apply here, the arbitral tribunal held that "the transfer / novation of the Agreements to KFG does not involve a modification or an amendment of the substantial rights and obligations under the Agreements" but only their transfer to another party. It added that "Articles 11.2 and 19 of the FDA and Articles 18 and 19 of the FOAs only require consent in writing from the Licensor. And that condition is, no doubt, fulfilled in the instant case by the numerous documents in writing in which the Claimant has accepted or recognized the Respondent as its Franchisee" (award, para 199).

Finally, under cover of the claim of misapplication of the principle of good faith in contractual matters provided for in Article 2 of the FDA and the Unidroit Principles, KFG criticises the substance of the reasons for the award, and effectively seeks to appeal the same.

This ground is therefore unfounded.

On the last ground, alleging a breach of the principle of due process by the arbitral tribunal (Article 1520, 4° of the Civil Procedure Code):

KFG contends that the arbitral tribunal rendered the award based on the legal mechanism of novation by addition of a party, which was relied upon by Kabab-Ji for the first time in its post-hearing brief, which prevented the parties from discussing this mechanism, unknown to the applicable law, and its effect on the agreements.

Kabab-Ji responds that the arbitral tribunal engaged in a simple additional reasoning based on elements fully debated during the arbitral proceedings. It states that these considerations are in any event superfluous within the arbitral award.

However, the principle of due process requires only that the parties have been given the opportunity to debate and contradict each other concerning the pleas in law and the documents produced.

In its post-hearing brief dated 6 February 2017, Kabab-Ji stated that "it is naturally open to the Tribunal to find that because there was some continuing (albeit very limited) involvement in the franchise operation on the part of AHFC ... the novation which in fact occurred added KFG as a further party to the franchise arrangements, in addition to AHFC" (award, para 154). As a result, as early as 6 February 2017, Kabab-Ji invited the arbitral tribunal to consider not only a novation by replacement of persons but also a novation by addition of party under English law.

On 27 March 2017, the arbitral tribunal issued procedural order No. 11 whereby it declared the proceedings closed under Articles 27 of the Rules (award, para 62).

KFG, which had almost two months to respond to this argument or to request additional time, was therefore given the opportunity to debate and contradict such argument, to challenge the existence of this mechanism in English law and to discuss its effects on the Agreements.

The ground is unfounded.

It follows from the foregoing that the action for annulment is dismissed.

Article 700 of the Civil Procedure Code

KFG, the unsuccessful party, cannot benefit from the provisions of Article 700 of the Civil Procedure Code, and on that basis shall be ordered to pay Kabab-Ji the sum of EUR 80,000.

FOR THESE REASONS,

[The Court[5]]

Dismisses the action for annulment of the award rendered in Paris between the parties on 11 September 2017,

Orders KOUT FOOD GROUP Company to pay Kabab-Ji the sum of EUR 80,000 pursuant to Article 700 of the Civil Procedure Code,

Orders KOUT FOOD GROUP Company to pay the costs of the proceedings,

Dismisses all other applications,

THE CLERK OF THE COURT THE PRESIDENT

[5] **Translator's Note:** "[The Court]" has been added by translator for sense; these words are not required in the formal French language used in the Paris CA decision.