4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS

CÂMARA DO MERCADO

SÃO PAULO/SP, DECEMBER 15TH, 2021.

CÂMARA DO MERCADO
ARBITRAGEM

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INTRODUCTION

In December 2018, the Chamber began an important and pioneering initiative: the publication of the summary of arbitral awards resulting from proceedings administered by the institution. The first publications, as well as this one, has two goals: (i) increase the level of transparency in arbitration; and (ii) reflect the specialized understanding of the application of corporate law.

The summary of arbitral awards here compiled are mostly prepared by arbitrators reflecting the understanding set forth in the awards and published after a certain period of time. The publication is made with the consent of the parties and the arbitrators of the proceedings to which they refer, while also respecting the confidentiality provided for in article 9.1 of the Arbitration Rules.

The Chamber appreciates the understanding and collaboration of all professionals involved in this project.

Therefore, in compliance with the provisions of article 7.10 of the Arbitration Rules, the 4th Edition of the Summary of Arbitral Awards is presented.

CÂMARA DO MERCADO
ARBITRAGEM

CORPORATION LAW

SUMMARY

(PUBLISHED IN THE 4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

BYLAWS. DUTY OF REIMBURSEMENT OF MEMBER OF THE BOARD OF DIRECTORS FOR EXPENSES INCURRED WITH DEFENSE IN LAWSUITS. EXISTENCE OF DEFAULT. ART 397 CIVIL CODE. SETTING OF THE EXCHANGE RATE. ART 406 OF THE CIVIL CODE AND ART 161, PARAGRAPH 1 OF THE BRAZILIAN TAX CODE. ALLOCATION OF COSTS. CLAIM FOR CLARIFICATIONS. GRANTED IN PART.

1. This is a divergence with respect to the extent of the duty of reimbursement established by the Bylaws. The Claimant claims full reimbursement for the amounts spent with his defense. The Respondent defends that the duty of reimbursement should be modulated, due to the principle of economy, applicable to the public administration.

2. During the arbitration, the Respondent deposited the undisputed amount that it understood to be due by way of reimbursement.

3. After a detailed analysis, the Single Arbitrator concluded and ordered the following: (i) that principles of the public administration should not apply to indemnification situations; (ii) full reimbursement for the amounts incurred by the Claimant; (iii) the payment of an amount corresponding to the foreign-exchange variation applicable to the undisputed amount, to reflect the exchange rate of the date of payment and guarantee the actual restoration of the assets; (iv) use of the Broad Consumer Price Index (IPCA), as from the date of actual payment of the undisputed amount, to calculate the adjustment for inflation; (v) the existence of default in the full reimbursement for the expenses; (vi) that the initial term for application of the interest rates should be the date of notice of the Request for Arbitration; (vii) application of an interest rate of 1% per month.

4. Arbitration claim granted.

5. The Respondent is ordered to fully pay the costs and fees of loss of suit.

6. The Respondent filed a Motion for Clarification, by means of which: (i) it claimed the existence of material error; (ii) it claimed the use of the U.S. dollar exchange rate set at the closing of the previous trading date for deposit of the amounts due; and (iii) it claimed the grant of additional term for compliance with the Final Award.

7. The Claimant pronounced on its agreement to all claims submitted by the counterparty.

8. Due to the convergence between the Parties, the Single Arbitrator granted the claims (i) and (ii), denying claim (iii) since she deemed the grant of additional term as unnecessary, due to the interruption in the term originally set forth in the Award.

9. Claim for Clarifications granted in part.

SUMMARY

PARTIAL ARBITRATION AWARD

(PUBLISHED IN THE 4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

PARTIAL AWARD. ACTION FOR DAMAGES BROUGHT BY MINORITY SHAREHOLDERS AGAINST CONTROLLING SHAREHOLDERS (ARTICLE 246 OF LAW 6.404/1976). LACK OF STANDING TO SUE OF THE MINORITY SHAREHOLDERS ACKNOWLEDGED IN PART. NEED TO POST BOND PURSUANT TO THE PROVISIONS OF ARTICLE 246. LACK OF SUBJECTIVE ARBITRABILITY OF INDIRECT CONTROLLING SHAREHOLDERS. CLAIM FOR DAMAGES RESULTING FROM CORPORATE TRANSACTION POTENTIALLY HARMFUL TO THE COMPANY DOES NOT BREACH THE LIMITS OF THE CLAIM AS DEFINED IN THE INSTRUMENT OF ARBITRATION.

1. The standing to sue of minority shareholders to bring the action for damages set forth in article 246 of the Corporation Law is exclusively conditional upon their capacity as shareholders at the time of institution of the arbitration. Inapplicability of the

requirement of contemporary ownership in the Brazilian law. Standing to sue of the claimants granted in part. Lack of standing to sue of association that does not present a specific authorization of its associates to act in the capacity as their representative in arbitration proceedings.

2. Need to post bond as set forth in article 246, paragraph 1 of the Corporation Law, because the claimants do not represent 5% or more of the company's capital stock. Amount of the bond set based on the potential total costs and expenses of the arbitration.

3. Lack of subjective arbitrability of the company's indirect controlling shareholders. The arbitration clause is binding only upon shareholders, managers and members of the fiscal council, as set forth in the text of the clause.

4. A claim for damages resulting from a corporate transaction potentially harmful to the company is part of the claim as defined in the Instrument of Arbitration. The respondents' allegation that the claim has been barred by the statute of limitations is a matter involved in the merits of the case: potential application of the limitation period set forth in article 287, II, b or limitation period set forth in article 288 of the Corporation Law.

SUMMARY

PARTIAL ARBITRATION AWARD

(PUBLISHED IN THE 4th EDITION OF SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

SHAREHOLDERS' AGREEMENT. LACK OF STANDING TO BE SUED OF PARTIES THAT ARE NOT SIGNATORIES TO THE SHAREHOLDERS' AGREEMENT. TACIT CONSENT NOT ACKNOWLEDGED. THE CLAIM FOR PIERCING OF THE CORPORATE VEIL TO HOLD INDIVIDUALS LIABLE EXCEEDS THE LIMITS OF THE ARBITRAL JURISDICTION. ACKNOWLEDGMENT OF THE EFFECTIVENESS AND VALIDITY OF THE EXERCISE OF PUT OPTION SET FORTH IN THE SHAREHOLDERS'

AGREEMENT. ALLOCATION OF COSTS. NO CLAIM FOR CLARIFICATIONS.

1. The claim involves a divergence with respect to the validity and effectiveness of a Put Option clause set forth in a Shareholders' Agreement, as well as to the extent of the liability for payment thereof.

2. The Claimant claims acknowledgment of the standing to be sued of all Respondents, in addition to the acknowledgment of the validity and effectiveness of sections of the Shareholders' Agreement that provide on Put Option, especially the section that establishes the form of calculation of the share sale price.

3. The Respondents defend that two defendant companies be dropped from the suit due to the fact that they are not signatories to the Shareholders' Agreement and that the members in the capacity as individuals be dropped from the suit because they have not granted the Put Option to the Claimant. In addition, they claim that the effectiveness and validity of the Put Option should be denied due to the future unbalance in the provision and abusive exercise of the Put Option by the Claimant.

4. The Arbitral Tribunal acknowledged the following: (i) the lack of standing to be sued of the companies that are not signatories to the Shareholders' Agreement; (ii) the standing to be sued of the members who are individuals, since they are signatories to the Agreement and are therefore subject to the Arbitration Clause; (iii) the validity and effectiveness of the sections of the Shareholders' Agreement that provide on the Put Option, including the section that provides on the form of calculation of the share sale price; (iv) the inexistence of subjection between the Sale Price and the future result of the company; (v) the inexistence of evidence in the case record able to prove any undue interference, conflict of interests, or intentional mismanagement of the Claimant to justify a review of what has been agreed under the Put Option; (vi) that there was intent by the Parties to unconditionally allocate the risk of purchase of the shares to the Respondents; and (vii) that the amount presented by the Claimant by way of Sale Price has not been subject to questioning or challenge by the Respondents.

5. Arbitral claim granted in part.

6. The Respondents are ordered to pay 70% of the costs relating to the proceeding.

7. The parties have not filed a Claim for Clarifications.

SUMMARY

PARTIAL ARBITRATION AWARD

(PUBLISHED IN THE 4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

CORPORATE LAW – JOINT-STOCK CORPORATION – CLAIM FOR PAYMENT OF SEVERANCE PACKAGE TO CHIEF EXECUTIVE OFFICER DISMISSED WITHOUT CAUSE – COUNTERCLAIM FOR DAMAGES AGAINST THE CHIEF EXECUTIVE OFFICER.

1. The dispute originates in the supposed right of the party to receive the payment of a severance package, due to his dismissal without cause and compliance with all objective criteria to receive the severance. In accordance with the Claimant, the severance package has been instituted as a form of indemnifying the members of the executive board dismissed without cause, provided they had worked for more than five (5) years for the Company and held office as officer at the time of their dismissal. The Claimant understands that he meets these requirements. The Respondent, in turn, understands that no payment is due, because the severance package has allegedly never been approved and/or ratified by the shareholders' meeting; and it has allegedly not been an integral part of the global remuneration amount authorized by the shareholders' meeting. The Respondent further understands that it is the creditor of amounts by way of indemnification for alleged damages supposedly caused by the Claimant during the period he was the Company's manager. The Claimant, in turn, understands that no indemnification would be due, because the action for the liability of manager would be conditional upon prior annulment of the resolution of the shareholders' meeting that approved his accounts and actual demonstration of loss to the Company.

2. When rendering the award, the Single Arbitrator decided that: (i) the Claimant is entitled to receive indemnification by way of severance package, especially because such payment is in accordance with the Bylaws and with the Law, and the global limits of remuneration have been approved by the Shareholders' Meeting year after year; (ii) it is

not possible to analyze the claims for the imputation of liability to the Respondent if no claim for the annulment of approval of accounts has been made.

3. The Claimant's claim was granted and the claim of the Respondent was dismissed without prejudice.

SUMMARY

(PUBLISHED IN THE 4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

FINANCIAL MARKET – PUBLICLY-HELD COMPANY– MINORITY SHAREHOLDER – CLAIM FOR DAMAGES AGAINST THE COMPANY DUE TO THE DEVALUATION OF SHARES – ALLEGED COMMISSION OF "INSIDER TRADING" AND VIOLATION OF THE DUTY OF "FULL DISCLOSURE" – CLAIM NOT BARRED BY THE STATUTE OF LIMITATIONS – VALID OCCURRENCE OF INTERRUPTION OF THE LIMITATION PERIOD – STANDING TO SUE – ALLEGED MERGER OF COMPANY DISGUISED AS MERGER OF SHARES TO THE DETRIMENT OF CREDITORS – CLAIM OF SIMULATED ACT – APPLICABILITY OF ART. 167 OF THE CIVIL CODE AND CLAIM FOR THE ACKNOWLEDGMENT OF SUCCESSION OF THE CONTROLLING COMPANY NOT DEMONSTRATED – NO APPLICATION OF THE THEORY OF APPEARANCE – NO APPLICABILITY OF THE CONSUMER PROTECTION CODE TO THE RELATIONSHIP BETWEEN INVESTOR SHAREHOLDER AND COMPANY WITH SHARES TRADED ON THE STOCK EXCHANGE – PRECEDENT OF THE SUPERIOR COURT OF JUSTICE (STJ) – ACKNOWLEDGMENT OF LACK OF STANDING TO BE SUED OF THE RESPONDENT – DISMISSAL OF THE ARBITRATION WITHOUT PREJUDICE.

1. The Claimant seeks reimbursement for damages it claims to have suffered, in the capacity as minority shareholder of a publicly-held company, as a result of abrupt devaluation of its shares that has allegedly been caused by the company's mismanagement by its managers and controlling shareholders at the time of the facts. It

claims the occurrence of manipulation of the securities market by a certain manager of the company so as to meet his own interests, by means of the use of privileged and relevant information even before the disclosure thereof, in a clear insider trading practice, as set forth in art. 27-D of Law 6.385/76 and in breach of the full disclosure mechanism set forth in art. 157, paragraph 4 of Law 6.404/76 ("Corporation Law"), in addition to the failure to comply with fiduciary duties set forth in the Corporation Law and in the rules of the Securities Commission (CVM).

2. The Respondent claimed, as a preliminary argument, its lack of standing to be sued, on the grounds that the Claimant had never been its shareholder, but rather a shareholder of a company controlled by it when its securities were traded on the stock exchange; currently, this company is its wholly-owned subsidiary and a closely-held corporation, with separate legal personality and assets, without any relationship of joint liability to the Respondent. In the same respect, the Respondent argued that the claim had been barred by the statute of limitations, because the alleged unlawful acts that had originated the arbitration supposedly occurred more than three years before, for which reason the limitation set forth in art. 287, II, b, No. 2 of the Corporation Law should apply.

3. The Claimant defended the standing to be sued of the Respondent from a twofold perspective, to wit: (i.) the merger of shares (art. 252, Corporation Law) that has allegedly resulted in the company in which it held a minority interest going private was allegedly a sham act to adversely affect creditors and, therefore, ineffective in relation to it; to confirm the claim, it listed facts that allegedly indicated that, in fact, the transaction carried out were a merger of companies (art. 227, Corporation Law) with the consequent succession by the Respondent to the obligations and liabilities of the merged company. (ii.) subsidiarily, the facts listed to indicate the simulation in the merger transaction were allegedly sufficient for application of the theory of appearance and consequent joint liability of the Respondent for the acts performed within the scope of its wholly-owned subsidiary. With respect to the allegation that the claim had been barred by the limitation period, the Claimant argued that the interruption of the limitation period was regular, due to the valid service of process in a previous claim in the Judicial Branch.

4. The Respondent, in turn, defended the legality of the transaction of merger of shares that had allegedly resulted in the going private process that is the subject matter of

the arbitration, indicating the elements for denial of the allegation of simulation, as well as of the application of the Theory of Appearance. In insisted in the acknowledgment that the claim has been barred by the limitation period, to the extent that the previous lawsuit had been brought against its wholly-owned subsidiary and not against itself, thus eliminating the possibility of interruption of the limitation period.

5. The Arbitral Tribunal understood that there was a valid interruption of the limitation period, able to result in application of art. 202, item I of the Civil Code and, as a consequence, it denied the Respondent's claim.

6. The preliminary argument of lack of standing to be sued of the Respondent was granted, because the Claimant has not proved the statutory requirements for acknowledgment of simulation in the corporate act of merger of shares, which, validly carried out, preserves the legal personality of the absorbed company, which therefore has standing to be sued for acts relating to its management and control. The requirements for application of the Theory of Appearance as violation of objective good faith have also not been demonstrated, to the extent that it was decided for no applicability of the Consumer Protection Code to the event discussed in the arbitration. Therefore, the joint liability between the Respondent and its wholly-owned subsidiary has not been acknowledged.

SUMMARY

PARTIAL ARBITRATION AWARD

(PUBLISHED IN THE 4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

CIVIL AND CORPORATE LAW. MEMORANDUM OF UNDERSTANDING AND RESPECTIVE AMENDMENT THAT CONTEMPLATED THE MAKING OF CONTRIBUTIONS BY THE RESPONDENTS. NONCOMPLIANCE WITH THE CONTRACTUAL OBLIGATIONS. COUNTERPOSED CLAIMS OF DECLARATION OF INVALIDITY OF THE COVENANTS. ACKNOWLEDGMENT OF INEFFECTIVENESS OF THE MEMORANDUM OF

UNDERSTANDING AND OF THE AMENDMENT THERETO IN A PARTIAL JUDGMENT.

1. Memorandum of Understanding and respective amendment that contemplated the restructuring of the Claimant's economic group, including with the making of contributions by the Respondents. The contributions contractually provided have not been made. Discussion on the existence or not of a circumstance able to justify the failure to make contributions.

2. Confession of nullity by e-mail. Inexistence. Nullity is a legal qualification and, as such, it is not subject to evidence. E-mail that proves only the non-availability of a due diligence report within the term agreed under the Memorandum of Understanding and the amendment thereto. Impossibility of application of the defense of non-performed contract, considering that the 1st Respondent was already in default at the time of noncompliance with the term relating to delivery of the due diligence report. Impossibility of termination by default, due to the provision of other remedies in the Memorandum of Understanding and in the amendment thereto.

3. Defective representation in the execution of the agreements. No nullity. Confirmation/ratification of the covenant by an internal body of the 1st Respondent, which cured a possible previous defect. A possible negligence in the analysis made by said body cannot prevent that the execution of the Memorandum of Understanding and of the amendment thereto be imputed to the 1st Respondent.

4. Nullity of the covenant due to violation of the legal regime relating to the RPPS, applicable to the 2nd Respondent. Non-occurrence. The Memorandum of Understanding and the amendment included, among their objectives, to cure the previous inapplicability of the applicable law to the 2nd Respondent.

5. Nullity of the covenant due to the violation of fiduciary duties of the managers of the 1st Respondent that have executed it. Non-occurrence. The fact that a manager acts with negligence neither renders his conduct imputable to the company nor annuls the covenants executed by him. A consequence of a possible negligence would be rather the possibility of holding the agent who has acted negligently liable.

6. Ineffectiveness and non-enforceability of the Memorandum of Understanding and of the amendment thereto due to violation of art. 29 of Supplementary Law No. 108/2001. Occurrence. Legal provision that requires third-party authorizations, which have not been obtained. Provision that applies to the specific case, due to the presence of all its requirements. Acknowledgment of ineffectiveness of the Memorandum of Understanding and of the amendment thereto.

7. Reimbursement for expenses incurred with the negotiation and implementation of the Memorandum of Understanding and of the amendment thereto. Applicability. Violation, during the negotiations, of the objective good faith, pursuant to which it was incumbent upon the 1st Respondent to obtain the authorizations to which it is legally subject. Need for return to the status quo ante. Applicability of reimbursement for reasonable expenses.

SUMMARY

(PUBLISHED IN THE 4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

COLLABORATION AGREEMENT – ISSUE OF DEBENTURES – CLAUSE ON ACCELERATION OF MATURITY – MERELY ONE-SIDED CONDITION – VALIDITY – COMPATIBILIZATION BETWEEN THE CLAUSE ON ACCELERATION OF MATURITY AND CALL OPTION – VERIFICATION OF THE EVENT OF ACCELERATION OF MATURITY IN THE SPECIFIC CASE – EXERCISE OF CALL OPTION SUBSEQUENT TO THE MATURITY – MOOTNESS – CLAIM FOR PECUNIARY AND MORAL DAMAGES – NO DEMONSTRATION OF CONTRACTUAL VIOLATION.

1. The Parties executed a Debenture Indenture that provided on the acceleration of maturity in certain events, including the "occurrence of any event that could affect the operational, legal or financial capacity of the Issuer, and on compliance with the obligations assumed under this Debenture Deed".

2. Said section does not represent a merely one-sided condition, pursuant to the provisions of Art. 122 of the Civil Code, since the event is not exclusively linked to the will of one of the Parties.

3. The parties have also executed an Option Agreement, by means of which the Claimants could acquire the Debentures, upon compliance with the events set forth in said Option Agreement.

4. Provision on the acceleration of maturity of the Debenture Indenture and the Option Agreement are compatible, establishing the allocation of risk between the Parties.

5. Verification of the event of acceleration of maturity in the specific case, due to the unfeasibility of the project.

6. Impossibility of exercising the Call Option subsequently to the acceleration of maturity of the Debentures.

7. There was no proof that the Respondent has violated obligations assumed under the transaction documents, or that it has committed a wrongful act, and therefore it is not possible to claim contractual or tort liability.

SUMMARY
(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

CORPORATE LAW – SHAREHOLDERS' AGREEMENT – PUT OPTION CLAUSE – THE ALLEGED PEREMPTION OF THE RIGHT TO SEEK A STATEMENT OF NULLITY IS NOT ESTABLISHED – ALLEGED NULLITY OF THE PUT OPTION – APPLICABILITY OF ARTICLE 1.008 OF THE CIVIL CODE – CLAIM PARTIALLY GRANTED – THE NULLITY OF THE PRICE OF THE PUT OPTION IS ACKNOWLEDGED – REQUEST FOR REVISION OF THE SALE AMOUNT

1. The dispute concerns the exercise of the put option stipulated in a shareholders' agreement, by the Defendant, a minority shareholder of the Company. The Defendant argues that the Plaintiff's right to seek the invalidation of the Put Option would have been

barred by peremption. In turn, the Plaintiff argues that it would be faced with a case of nullity due to the incompatibility between the *status socii* in the Company and the Put Option, which would shield the Defendant from the losses of the business activity. The Arbitral Tribunal found that, since the Plaintiff's annulment claim is based on the nullity of the Put Option, the provisions of article 169 of the Civil Code apply and, therefore, under the terms sought, there was no peremption.

2. The Plaintiff submits that the Defendant would have the intention of shielding itself from the business risks and from any economic failure of the Company. Therefore, the Put Option would be in complete disagreement with the essential characteristic of the corporate covenants, that is, subjecting the members to the losses and gains of the enterprise in proportion to their investments. It bases its arguments on article 1.008 of the Civil Code, which would prohibit an unconscionable partnership. In turn, the Defendant argues that, as it is a private equity fund, an essential condition for the completion of the deal would be the existence of security and exit mechanisms. It claims that article 1.008 of the Civil Code would be inapplicable to this case due to incompatibility with the Company's corporate type. It argues that the Put Option would not represent a risk avoidance, but rather a risk allocation and, in addition, it argues that the put right and the Company's results would be on different levels. The Arbitral Tribunal understands that article 1.008 of the Civil Code has application in the context of corporations, rendering the contractual stipulation that excludes shareholders from profit or loss sharing null and void. It emphasizes that, although the stipulation of a Put Option in the Shareholders' Agreement is not, *per se*, invalid, the *pricing* found in the present case is null, as it would allow the Defendant to recover all of its investment, plus interest and adjustment for inflation, minus any dividends and interest received, which, in the final part, as if during the period in which it was a shareholder, the Defendant had not shared in the Company's profits and losses, contrary to the rule of Art. 1008, of the Civil Code.

3. The Arbitral Tribunal also considered that the claim for revision of the sale amount should be granted due to the recognition of nullity of the Sale Amount pricing method, based on Article 1.008 of the Civil Code, and clarified that the criteria for determining the Put Option price would be set based on expert evidence to be produced.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

SOCIAL ACTION OF RESPONSIBILITY AGAINST THE CONTROLLING SHAREHOLDER - ART. 246, LAW 6.404/76 – UNANIMOUS PARTIAL ARBITRAL AWARD – PRELIMINARY ISSUES – VALID AND EFFECTIVE STATUTORY ARBITRATION CLAUSE – OBJECTIVE ARBITRABILITY – SUBJECTIVE ARBITRABILITY – STANDING OF THE PARTIES – ABSENCE OF IDENTITY OF THE ARBITRATION WITH A PENDING LAWSUIT – ABSENCE OF WAIVER OF THE ARBITRAL TRIBUNAL – ARBITRAL TRIBUNAL OF COMPETENT JURISDICTION – ABSENCE OF *LIS ALIBI PENDENS* – JOINDER OF CAM 85/17 AND CAM 97/17 ARBITRATIONS KEPT IN A SINGLE ARBITRATION – STATEMENT OF ABSENCE OF CONFLICT OF INTEREST OF THE ARBITRATORS IN RELATION TO THIRD-PARTY FUNDERS AND RELATED PARTIES – STRIKING OF THE FINANCING AGREEMENT FROM THE RECORD GRANTED – REQUEST TO ENTER THE FINANCING AGREEMENT IN THE DOCKET REJECTED – SECURITY POSTING SET UNDER ART. 246, PARAGRAPH 1, 'B', LAW 6.404/76 – DIVISION OF THE AWARD.

1. The statutory arbitration clause is effective in settling disputes between the parties to this Arbitration. Express consent of the shareholders who vote to include the statutory arbitration clause at the shareholders' meeting. Market Arbitration Chamber (CAM) Rules applicable to arbitration does not provide for an Instrument of Consent. 2. The statutory arbitration clause binds the Defendant to this arbitration. Autonomy of will of the shareholders, provided for in Art. 1, Law No. 9.307/96, and stated in the statutory arbitration clause. 3. Interpretation of the statutory arbitration clause concluding that the Defendant is bound by this Arbitration does not entail an offense against the constitutional precepts of legality and the non-obviation of jurisdiction. 4. The statutory arbitration clause covers the filed action based on Art. 246, Law No. 6.404/76, in which the shareholder acts as the company's extraordinary party with standing. Arbitral Tribunal recognizes its competent jurisdiction in the specific case. 5. The Defendant's procedural standing to be sued to answer for the action for damages provided for in Art. 246, Law

No. 6.404/76, based on this legal provision, as well as on Arts. 116 and 117, Law 6.404/76, and Art. 15, Law 13.303/16. 6. Procedural standing to sue of the Plaintiffs who meet the condition of shareholders provided for by law for extraordinary standing. Consent of co-owners of the shareholding co-ownership for one of the co-owners to initiate this Arbitration in representation of their interests. 7. The statement about identity between this arbitration and lawsuit No. 0013096-54.2016.4.02.5101 is held invalid. Absence of waiver of the arbitral tribunal by the parties' will, pursuant to Art. 337, paragraph 6, of the Code of Civil Procedure. Arbitral Tribunal of competent jurisdiction to decide this Arbitration. 8. Absence of *lis abili pendens* on CAM 97/17 Arbitration. The joinder of CAM 85/17 and CAM 97/17 Arbitrations was kept in a single arbitration. 9. Third Party Financing. The Arbitrators declared that there was no conflict of interest in relation to third party financiers and related parties. The Arbitrators reiterate declarations of impartiality, independence, diligence and description. The request for one of the Plaintiffs to confirm who the financing fund managers are has been granted. Irrelevance of the terms of the financing agreement to check for conflict of interests, absence of an argument capable of justifying an exceptionality in the specific case that would justify the disclosure of the content of the referred financing agreement. The request from one of the Plaintiffs for entering into the financing agreement in the docket has been denied. The request from another Plaintiff to strike the financing agreement from the records has been granted. 10. Security Posting. Requirement under Art. 246, paragraph 1, 'b', Law No. 6.404/76, so that the shareholder holding a stake of less than 5% in the capital will post sufficient security to ensure the payment of costs and attorney's fees payable in the event of insufficiency of the claim. Award against each of the Plaintiffs to pay 50% of the total amount of the security. 11. Division of any award between the Plaintiffs and possible division criteria will be determined in a Final Arbitral Award.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

CORPORATE LAW. PUBLICLY-HELD COMPANY. PUBLIC OFFERING OF SHARES (IPO). STATUTORY POISON PILL CLAUSE. VOLUNTARY IPO.

STATUTORY IPO. PRICE GUARANTEE TO SHAREHOLDERS. ADVERSE ARBITRAL AWARD.

1. Poison pill clause inserted in the company's bylaws provides that "any buying shareholder" that acquires or becomes the holder of company shares or rights over them in a number equal to or greater than a certain level of capital, must carry out an IPO to acquire all the remaining shares. For the Tribunal, there is no way to establish, in relation to the duty under the bylaws to carry out the IPO provided for in the company's bylaws, differentiated regimes, on the one hand, for shareholders who already had a percentage established as relevant in the bylaws or more before the date when the Special Shareholders' Meeting that included the poison pill is held and, on the other, for shareholders who became holders of an identical contingent of shares after that date, without carrying out the statutory IPO. It would mean giving a non-isonomic treatment to shares belonging to the same class or category of shares, which is prohibited by the principle of equality provided for in article 109, paragraph 1, of the Corporation Law.

2. Voluntary and statutory IPOs are not equivalent, but rather types of the same gender. In the case under analysis, all the requirements established by the bylaws to justify the performance of a poison pill IPO would have been considered when performing the voluntary IPO, which would make the statutory IPO, therefore, redundant and unnecessary.

3. The compulsory reopening of the public offering period with a view to granting another opportunity, for a third sale round, at a possibly different price, to shareholders who, in the two stages scheduled for the voluntary IPO, chose to stay with the company, would no longer be justified in the case of the record under the pretext of pressure to tender. That is why the Arbitral Tribunal does not deem inappropriate to discard the obligation to carry out this third stage, when the acquisition of the control shares is instrumentalized through a voluntary IPO, inspired by Article 5 of European Directive No. 2004/25/CE, which waives the subsequent IPO, since the buyer has already reached the level of relevant equity interest holding in the company's capital. Nor does it seem unreasonable to mention an alien legal provision for the adoption of an interpretation that seeks to give a rule of national law, or a clause that was agreed upon in the bylaws of the national company, if they both have the same reason to be. Nor is it necessary to speak of frustration of the expectations of those shareholders who, legitimately, would have relied

on compliance with the company's prerogative under the bylaws, imagining that they would surely be given a new chance to leave the company, through the determination of a new price, through a subsequent IPO. The Arbitral Tribunal understands that the plaintiff, in good faith, informed all the addressees, in a reasoned manner, that it would not make a supplementary offer and that, under the terms of the material fact disclosed, it explained in detail the reasons why it considered that there was no reason to carry out the statutory IPO.

4. In view of the fact that a statutory IPO would be unnecessary, there is no need to talk about the application of the provision of the Defendant's bylaws that determines that, in the event that the shareholder fails to comply with its obligations imposed by such provision, failing to carry out a statutory IPO as provided for, it will be up to the company's board of directors to call a Special Shareholders' Meeting, in which the defaulting shareholder will not be able to vote, in order to resolve on the suspension of such defaulting shareholder's essential rights under the terms of Art. 120 of the Corporation Law.

5. Plaintiff's claims granted. Considering that the Defendant has lost suit in all of its claims, the Arbitral Tribunal orders the Defendant to reimburse the expenses incurred by the Plaintiff with arbitrators' fees and administrative fees and charges for arbitration and to pay loss of suit fees. In relation to attorneys' fees, each party shall be responsible for the payment of the fees of their respective lawyers, as provided in the Terms of Reference, with the accumulation of the loss of suit set forth herein.

OPINION STATEMENT OF THE CO-ARBITRATOR. UNANIMOUS ARBITRAL AWARD. ADDITIONAL GROUNDS. LITERAL, SYSTEMATIC INTERPRETATION ATTENTIVE TO THE BUSINESS PRACTICE OF PROVISIONS OF THE BYLAWS.

1. Attention should be paid to the wording of the provisions of the bylaws. From a systematic interpretation, consistent with the reasoning of several provisions, it seems clear that the IPO is not considered if the buyer already held shares or rights in a number equal to or greater than the level established by the bylaws, in which case any new acquisitions would not have the result of taking such buyer to the aforementioned level, a position which that buyer already had previously. Otherwise, it should be established under the bylaws simply that, whenever there was an acquisition of shares equal to or

higher than a certain level, registration of the IPO should be requested, something that is clearly not provided in the excerpt of the bylaws which is the subject matter of the dispute in the case record.

2. The interpretation given to the rules of the bylaws is consistent with the uses and practices in force regarding the matter. In Brazil, especially in the companies listed on the Novo Mercado, the provision of IPOs was disseminated in the bylaws, to the point of justifying the attention of the CVM, which issued Guidance Opinion No. 36/2009 on the matter. The Structure of the statutory IPO, improperly called Brazilian poison pills by many, is based on exceeding a certain minimum percentage of shareholding. In other words, once this barrier has been exceeded, successive IPOs are not considered if new shares are acquired by the same shareholder. This is also the European experience, and it is worth highlighting Directive No. 2004/25/CE, which provides for a mandatory IPO modality when a shareholder or group of shareholders reaches a certain minimum shareholding.

3. An IPO not linked to a threshold, that is, a minimum percentage of shareholding, although theoretically possible, would be an exceptional and rare hypothesis. Uses and customs are crucial for the interpretation of corporate business, as taught by the old Commercial Code (Art. 131) and as established in Art. 113 of the current Civil Code. Therefore, when interpreting the bylaws, one must take into account the exceptionality that characterizes a statutory IPO with the structure defended by the defendant.

4. The combination of these factors – literal, systematic interpretation attentive to business practice –, which are added to the grounds already highlighted in the arbitral award, lead to the conclusion that the statutory IPO does not apply to this case. In fact, the plaintiff, before the acquisition of shares under the dispute, was already part of the Group of Shareholders holding shares and rights in excess of the level established by the bylaws, which removes the mandatory nature of the statutory IPO.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

CORPORATE LAW – FAMILY CLOSELY-HELD CORPORATION – PARTIAL DISSOLUTION REQUEST – ALLEGATION OF BREACH OF INTENTION TO BELONG TO A CORPORATION (*AFFECTIO SOCIETATIS*) DUE TO A CONFLICT BETWEEN SHAREHOLDERS AND FOR BREACH OF FIDUCIARY DUTIES – ABSENCE, IN THE SPECIFIC CASE, OF THE REQUIREMENTS FOR THE ACCEPTANCE OF THE REQUEST – COMPANY FORMED *INTUITU PECUNIAE* – IRRELEVANCE OF THE ACTIONS OF THE SHAREHOLDERS FOR THE DEVELOPMENT OF THE COMPANY'S ACTIVITIES – DIVERGENCE BETWEEN SHAREHOLDERS ARISING FROM THE DISSATISFACTION OF ONE OF THEM IN STAYING IN THE COMPANY – NO FIDUCIARY DUTIES VIOLATION – JUDGMENT FOR DEFENDANT BY MAJORITY OPINION.

1. The main claim concerns the possibility of partial dissolution of the Defendant to allow the Plaintiff's withdrawal from the company, through the determination and payment of the corporate assets payable to the Plaintiff. 2. Such claim is based on the breach of the intention to belong to a corporation (*affectio societatis*), originating (i) in serious disagreements between the Plaintiff and the other members, and (ii) in the breach of fiduciary duties, represented by acts such as the allegedly undue constitution of reserves and the failure to distribute the mandatory minimum dividend, among others. 3. Although it has alleged irregularities in the conduct of the company's affairs, the Plaintiff has not made requests for the annulment of the company's resolutions or to hold directors or other shareholders liable for any losses caused to the Defendant. 4. Legal possibility of the partial dissolution request based on the breach of intention to belong to a corporation (*affectio societatis*) supported by Art. 599, paragraph 2, of the Code of Civil Procedure, interpreted in the light of the significant case law construction of the Superior Court of Justice prior to its effectiveness, which allowed the equation of this hypothesis to being impossible to fulfill the business purpose in the event of serious and unavoidable divergence between the shareholders that may directly impact the company, compromising its proper operation. 5. Non-determination, however, in the specific case, of the requirements so that the request for partial dissolution can be accepted, inasmuch as the Defendant is a company formed mostly by members of the same family, but *intuito pecuniae*, not depending on the cooperation between members to accomplish its purpose.

6. The shareholder's own disagreement with its permanence in the company, and with the refusal to grant it the right to withdraw, cannot characterize, in itself, the breach of the intention to belong to a corporation (*affectio societatis*), under penalty of denying effect to the choice of the corporate type expressly adopted. 7. The divergences pointed out by the Plaintiff with the other members are not capable of constituting a breach of intention to belong to a corporation (*affectio societatis*) that could result in damage to the conduct of the company's affairs or for the company to fulfill its business purpose, nor is there any evidence that the Plaintiff's rights as a member are being disrespected or the conditions for the exercise of inspection by the management or the meeting are being repeatedly denied. 8. Claims filed by the Plaintiff dismissed by majority of opinions, with a dissenting opinion statement granting the partial dissolution request. 9. Contractual attorneys' fees incurred by the Defendant in a reasonable amount and compatible with the complexity and value of the claim, having been fully reimbursed. 10. Loss of suit fees determined in an amount equivalent to contractual attorneys' fees, also by majority vote.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

SHARE PURCHASE AGREEMENT AND OTHER COVENANTS – IMPOSSIBILITY OF INCLUSION OF A THIRD PARTY NOT SIGNATORY TO THE ARBITRATION AGREEMENT TO THE PROCEEDING – RECOGNITION OF GROUP OF COMPANIES WHICH DOES NOT CONSTITUTE AN AUTONOMOUS CLAIM AND DOES NOT ENTAIL AUTOMATIC CONSENT TO THE ARBITRATION AGREEMENT – PARTIAL INADMISSIBILITY OF THE CLAIMS BECAUSE OF THE EXISTENCE OF DISCHARGE GRANTED BY THE PARTIES – NON-EXISTENCE OF RESPONSIBILITY OF THE MINORITY MEMBERS FOR BUSINESS FAILURE – DISMISSAL OF CLAIMS FOR DAMAGES – IMPOSSIBILITY OF RECOGNITION OF THE CLAIM FILED AS A RESULT OF FAILURE TO PAY COSTS IN FULL BY THE PARTY THAT FILED IT.

1. Absence of interference from the third party not signatory to the contractual relationship that allowed the ratification of all terms of the Agreement to be inferred, notably consent to the arbitration clause, an independent and autonomous legal transaction in relation to the contractual instrument in which it is inserted. 2. The existence of an irrevocable discharge clause in a contractual instrument signed between the parties prevents the admission of claims inserted in the scope of such discharge. 3. The deterioration of the company and the frustration of the expectations of entrepreneurs is a risk attaching to the activity performed and does not, by itself, gives rise to holding members liable. 4. In view of the absence of conduct attributable to minority shareholders and, consequently, the impossibility of holding them liable for the unsuccess of the business, the claims for damages filed by the majority shareholder are rejected. 5. As provided in item 3 of the Table of Costs and Fees, attached to the Bylaws, the non-payment of administrative costs in full by the defendant prevents the processing of the claim filed.

SUMMARY
(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

PUBLICLY-HELD CORPORATION – CORPORATE LAW – VIOLATION OF THE ARTICLES OF ASSOCIATION AND SHAREHOLDERS' AGREEMENT – IRREGULARITY OF REPRESENTATION IN MEETING – CONFLICT AMONG MANAGING SHAREHOLDERS – VALIDITY OF CHANGE IN THE BYLAWS – PARTIALLY GRANTED.

1. The dispute is originated in the supposed irregularity of representation of a limited company in annual and special shareholders' meetings, of which the biggest asset is the interest of 58.6% in the voting capital of a publicly-held corporation. The Claimants, partners in a voting limited company, understand that the company was illegally represented in meetings of the publicly-held company, since it was represented by an attorney-in-fact not making part of the roll of officers, resulting therefore in two consequences: (i) the votes computed in the AGOE (Annual and Special Shareholders'

Meeting) of the publicly-held corporation in the capacity of shareholder would be defected; (ii) there would be no sufficient quorum for the installation of the meetings, since the equity interest of the company could not be computed by virtue of the irregularity. One of the votes disputed was in order to reduce the number of members of the Company's Board of Directors and increase the remuneration of the managers. Also, the Claimants claim that such vote, in addition to the representation irregularity, would violate the Shareholders' Agreement executed between the partners of the limited liability company. Lastly, the Claimants oppose to the vote that amended the Company's Bylaws as regards preferred shareholders.

2. By entering the award, the Arbitral Tribunal decided that the allegations of the Claimants were partially founded, but that the resolutions taken in the General Meeting were valid and effective.

3. In summary, the Arbitral Tribunal understood that (i) the articles of association of the shareholder company does not impede the appointment of attorney-in-fact not making part of the executive board; (ii) the articles in the articles of association are clear by permitting the appointment of an attorney-in-fact for the specific purpose of representation of the company in other companies of which it is a shareholder; (iii) the power of attorney granted complied with the requirements of the articles of association; (iv) as the power of attorney was duly granted, a failure in quorum does not apply; (v) the resolution taken at the AGOE regarding composition of the Company's board of directors, which counted with the favorable vote of the limited company, must be considered valid; (vi) even if the Shareholders' Agreement can be opposable, its violation does not prejudice the content of the vote given within the scope of a third party – the Company; (vii) the amendment to the Company's Bylaws regarding the preferred shareholders is valid and effective, since it is not included in the event of article 136, paragraph 1, of the Corporation Law.

4. Partially granted.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

AMENDMENT TO SHARE PURCHASE AGREEMENT – PAYMENT IN INSTALLMENTS – POSSIBILITY OF DISCOUNT BY VIRTUE OF CONTINGENCY OF LIABILITY OF SELLER – JOINT-STOCK CORPORATION – SINGLE ARBITRATOR – PARTIALLY GRANTED.

1. The dispute regards an amendment to equity interest purchase agreement. The Claimant sold one hundred percent of its shares to a company that subsequently became holder of the entire capital stock of the Respondent, this being a company merged into the Respondent. The Parties agreed that the amount for the sale of the shares would be paid in installments and that the buyer (now Respondent) could withhold, discount or deduct the amount to be paid for the redemption of the notes in the events evidencing existence of contingencies the liability of which could be attributed to the Claimant, on the terms contractually agreed upon. The Respondent, based on its contractual interpretation, defends that all possible risks of liability of the Claimant could be provisioned and deducted from the initial amount of the shares. The Claimant, in turn, understands that only actual risks and with effective chances of becoming a liability could be amounts discounted from the initial amount of sale of the shares.

2. By rendering the award, the Single Arbitrator decided that the Claimant's allegations were partially founded and determined that the Respondent should make a payment of part of the amount that had been withheld as provision.

3. In summary, the Single Arbitrator understood that (i) the inexistence of an express contractual condition determining an intrinsic assessment of the risks subject of provisioning does not mean that such criteria do not exist, nor that they cannot be applied within the scope of the contractual relation between the Parties; (ii) there are accounting criteria applicable to the provision of contingencies that may be concretized and there is an own methodology and prudence for such calculation; (iii) the Parties agreed the possibility of provisioning and withholding of price installments; (iv) although there exists stipulation of the Respondent's right to proceed with provision and withholding of amounts characterizing the Claimant's risks of liability, such prerogative must be used within the limits of reasonableness, under penalty of characterizing abuse of right pursuant to article 187 of the Civil Code; and (v) there is no legitimacy in provisioning risks that are, in a reasonable vision, remote to concretize.

4. Partially granted.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

PUBLICLY-HELD CORPORATION – CORPORATE ACTION PROVIDED FOR IN ARTICLE 246 OF THE CORPORATION LAW – MINORITY SHAREHOLDER – LIABILITY OF PARENT COMPANIES – ABUSE OF POWER – INDICATION OF PROFESSIONAL WHO SUPPOSEDLY DIT NOT COMPLY WITH THE LAW – NOT GRANTED.

1. The dispute lies on the claim that there would have been abuse of power by the Respondents (the Company's parent companies) upon appointment and election of a professional knowingly unskilled for the offices of Chief Executive Officer and Director of the Company. According to the Claimant (minority shareholder), the President elect was involved in a corporate scandal and investigation relating to his management in another company belonging to the same group and, therefore, was not reputable, a requirement established in article 147, paragraph 3 of the Corporation Law. The Respondents, in turn, allege that there was no evidence that the President elect would not be able to exercise the function, as well as that the Claimant was acting in manifest abuse, benefiting from the condition as minority shareholder to claim unfounded and untrue accusations in order to embarrass and cause losses to the Respondents.

2. By rendering the award, the Arbitral Tribunal decided to deny the Claimant's requests for compensation.

3. In summary, the Arbitral Tribunal decided, as regards the merits, that (i) article 117 of the Corporation Law – on the parent company liability – is clear in the sense that for existence of liability of the parent company for any damages incurred in the company, the characterization of abuse of power is indispensable; (ii) abuse of power is characterized not only when the parent company effectively knew the lack of skills of the manager, but also when it had to know, within a minimum standard of diligence expected from the activity; (iii) the inaptitude of the professional appointed, however, must be

unquestionable for characterization of liability (it cannot be deemed); (iv) there was not, *in casu*, characterization of the abusive act of control on the part of the Respondents, for lacking characterization of unquestionable technical and/or moral inaptitude of the manager; and (v) the Claimant acted in accordance with its procedural prerogative and defended its interests, so the request of the Respondents to sentence the Claimant for malicious litigation is not granted.

4. Not granted.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

PUBLICLY-HELD CORPORATION – PAYMENT OF MANDATORY MINIMUM DIVIDENDS – APPROVAL IN SHAREHOLDERS' MEETING – STOCK INVESTMENT FUND – INTERPRETATION OF ARTICLE 202 OF THE CORPORATION LAW – GRANTED.

1. The dispute concerns non-compliance with payment of mandatory minimum dividends. The Annual and Special Shareholders' Meeting of the Company approved, by majority of those present and with no dissenting vote, distribution of mandatory minimum dividends referring to the previous year. A subsequent Special Shareholders Meeting determined, with attendance of approximately 70% of the voting capital and approval of a little more than 50%, suspension of payments of dividends by virtue of a substantial change in the financial situation of the Company, with the Claimants having voted contrarily. The Claimants initiated the arbitration under the argument that, since the mandatory minimum dividends were declared, the amount would no longer be owned by the Company and would be owned by the shareholders. The Respondent Company, in turn, alleges that the suspension was approved by majority of the shareholders and is based on article 202 of Law No. 6.404/76 ("Corporation Law").

2. By rendering the award, the Arbitral Tribunal decided that the allegations of the Respondent are unfounded and determined that it made the payment of the amount equivalent to the dividends declared in the first AGOE, duly monetarily restated.

3. In short, the Arbitral Tribunal understood that: (i) the fact that the Claimants had not claimed annulation of the AGE (Special Shareholders Meeting) that suspended the payment of dividends does not impede analysis of the adverse judgment request, since the request for annulation is not a pre-requirement pursuant to the Corporation Law; (ii) paragraph 4 of article 202 of the Corporation Law is an exception to the general rule and was designed for application prior to the resolution for approval, for purposes of the Annual Shareholders' Meeting, of the accounts and balance sheet of the year ended and, as a logical consequence, in a time prior to the resolution allocating the net income ascertained; (iii) besides the literal interpretation of the rule, which admits possibility of suspension of payment of dividends only before the resolution, the systematic integration of the Corporation Law itself also permits concluding in this same sense, pursuant to its articles 131 and 132; and (iv) once the net income is declared and its allocation as payment of dividends is resolved, the amounts relating to such dividends no longer belong to the company and will be promptly included in the shareholders' equity.

4. Granted.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

Share Purchase Agreement. Payment in installments. Collection of balance of the agreed price – last installment. Business entered into for compliance with a previous agreement of Call and Put Option Granting. Legal and defined price upon exercise of the option, in compliance with what had been previously agreed. Matter alleged in a defense unable to affect the credit. Collection admitted.

Evidence in the arbitration. Granting exclusively of the pieces of evidence that are useful for resolution of the dispute. Motivation on the non-need for production of evidence, considering that the existing evidentiary content is sufficient for examination of the matter. The Arbitral Tribunal is entitled to make the decision in the appropriateness of the evidence and shall dismiss the extension of the evidentiary stage when it is delayed or useless for clarification of the dispute. Non-characterization due process infringement.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

[PUBLIC PROCEEDING] SUBJECTIVE ARBITRABILITY – FEDERAL GOVERNMENT – ALLEGED INEFFECTIVENESS OF THE ARBITRATION CLAUSE – ALLEGATION OF IRREGULARITY IN THE COMPLAINT AND VICES IN THE INDIVIDUALIZATION AND IDENTIFICATION – CLAIM FOR DISMISSAL OF ARBITRATION OR EXCLUSION OF THE FEDERAL GOVERNMENT – REQUEST FOR THE PRESENTATION OF THE FUNDING AGREEMENT – PRELIMINARY ARGUMENTS PARTIALLY ADMITTED – LEGITIMACY OF THE FEDERAL GOVERNMENT RATIFIED – TERM GRANTED FOR ADEQUACY OF FORMAL VICES – REQUEST FOR THE PRESENTATION OF THE FUNDING AGREEMENT – DISMISAL OF ALL OTHER PRELIMINARY ARGUMENTS.

1. Subjective arbitrability questioned by the Federal Government, arguing the ineffectiveness of the arbitration clause.

2. Express provision of the Petrobras Bylaws on the choice of arbitration for dispute resolution involving the Company, its shareholders, managers and members of the fiscal council.

3. Effectiveness of the arbitration clause, given that the subject-matter of the claim does not concern the resolution of the Federal Government passed at a shareholders' meeting and related to an inalienable right, but rather to the alleged losses suffered by the shareholders as a result of a significant loss of value of the shares held by them.

4. Arbitration clause adopted before the provision of use of arbitration by the public administration. Its effectiveness. Application of Precedent No. 485 of the Superior Court of Justice (STJ).

5. Alleged unconstitutionality of the Brazilian Arbitration Act. Dismissed. Constitutionality proclaimed by the Federal Supreme Court a long time ago.

6. Alleged irregularities in the complaint of the claimants, all of them domiciled abroad. Partially admitted. Need for demonstration of the powers of the subscribers of the powers of attorney and of indication of the place where the instrument was executed.

However, release of signature authentication, consulate certification and apostille, and of the Registry of Deeds and Documents and enrollment of the claimants with the National Corporate Taxpayers Register (CNPJ) and with the Brazilian Securities Commission (CVM).

7. Request for clarifications on the terms of the funding agreement. Information that they were being financed by law firms headquartered abroad, indicating their names and addresses. Non-need for insertion of the corresponding agreements because this is an issue unrelated to the proceeding and subject to confidentiality.

8. Preliminary arguments partially admitted, ratifying the standing to be sued of Respondent Federal Government, granting term for the Claimants to remedy the vices of the complaint pointed out, granting term for Respondent Petrobras to indicate those Claimants that it was unable to individually identify, dismissing the request for the presentation of the funding agreement, and ruling out all other preliminary arguments raised. Declaration that the Arbitrators have no conflict of interest regarding the revelation of the funding agreement. Unanimous votes.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

CORPORATION LAW. JOINT-STOCK COMPANY. CORPORATE CONFLICT. ALLEGATIONS OF VIOLATION OF FIDUCIARY OBLIGATIONS OF MEMBERS OF THE BOARD OF DIRECTORS AND OF THE FISCAL COUNCIL. OPPOSED CLAIMS. ALLEGATION OF ABUSE OF CONTROL POWER. DISMISSED.

1. The dispute concerns the alleged violation of fiduciary obligations by members of the Board of Directors and the Fiscal Council of a publicly-held company, due, among other things, to inappropriate and disproportional requests for information to the executive board. Violation of fiduciary obligations not characterized. Although some attitudes of said members may be seen as disrespectful and/or inconvenient, in this case they do not characterize violation of the obligations imposed by the corporation law.

2. Inexistence of wrongdoing and failure to demonstrate actual damages to the company in order to give rise to the obligation to indemnify for losses due to acts performed by the manager and member of the fiscal council.

3. The Respondents filed crossed claims against the individuals who, in their opinion, comprised the controlling group of the joint-stock company, arguing the performance of conducts that characterize abuse of control power. The facts brought to the case records are not sufficient to characterize abuse of control power, especially in a context of corporate conflict created.

4. The respondents in crossed claims, in turn, preliminarily claimed their exclusion from the arbitration proceeding and the adverse judgment of the respondents to make reimbursement of moral damages. Claims dismissed. The Tribunal has jurisdiction to analyze a potential abuse of control power, even in view of the inexistence of a claim for declaration of formation of control block, considering that this is an actual situation. However, as a result of non-characterization of abuse of control power, it is not incumbent upon the Tribunal to make a statement on the composition of the control group – because it is an instrumental concept, its definition would be solely appropriate if it were useful for imposition of civil penalties arising therefrom. No legal grounds for reimbursement of moral damages.

5. Dismissal of the claims made by the Claimant, the crossed claims made by the Respondents, and the claims made by the individuals who, in the opinion of the Respondents, would comprise the Company's controlling group.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

MERGER OPERATION. MERGER AGREEMENT. SECTION OF GUARANTEE OF MINIMUM PRICE OF THE SHARES ATTRIBUTED TO THE SHAREHOLDERS OF THE MERGED COMPANY. PRELIMINARY ARGUMENTS: ILLEGITIMACY OF ONE OF THE RESPONDENTS – ACKNOWLEDGED; EXCLUSION OF PARTIES FROM THE CASE AS RESPONDENTS – DISMISSED; STATUTE OF LIMITATIONS – DISMISSED.

MERITS: DECLARATION OF UNENFORCEABILITY OF AMOUNTS ARISING OUT OF THE SECTION OF GUARANTEE OF MINIMUM PRICE OF THE MERGER AGREEMENT; DECLARATION OF NULLITY OF DEBT ADMISSIONS BASED ON THE SECTION OF GUARANTEE OF MINIMUM PRICE; ADVERSE JUDGMENT OF THE SURVIVING COMPANY TO COMPLY WITH THE SECTION OF DONATION – DISMISSAL.

The Arbitral Tribunal preliminarily: (i) acknowledged that one of the respondents, a shareholder of the surviving company, legitimate party to the suit, considering that the request of the claimant, the surviving company, was not covered by the statutory arbitration clause, but rather only by the Merger Agreement, to which the respondent was not a party; (ii) dismissed the claim for exclusion of respondents, in consideration of due process, given that they are parties to the Merger Agreement, the legality of which was sub judice; and finally, (iii) dismissed the allegation of statute of limitations with grounds on article 286 of the Brazilian Corporation Law, given that the claimant's request did not relate to the annulment of a resolution of the shareholders' meeting. In the merits, the Arbitral Tribunal dismissed the claims: (i) the declaration of unenforceability of the amounts resulting from the Minimum Price Guarantee clause of the Merger Agreement, understanding that this was legal, since it did not violate the principles of the intangibility of the capital stock and the binding equity nor the rules related to trading with the own shares of Brazilian Corporation Law and CVM Instruction 390/2003, nor did it imply the disinterest of the shareholders benefiting from the clause or the unequal treatment between shareholders of the same class and type of shares; (ii) of declaration of nullity of the debt admissions based on the section of Guarantee of Minimum Price, considering the acknowledgement of legality thereof; (iii) of adverse judgment of the surviving company to make payment of the Guarantee of Minimum Price, because the conditions of the section were not complied with; and (iv) of adverse judgment of the surviving company to make donations established by a section of the Merger Agreement, given the incompatibility of the coercion with the legal procedure of donation.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

PRIVATELY-HELD COMPANY – INCREASE IN CAPITAL – SUBSCRIPTION OF SHARES – SHAREHOLDERS – PAYING IN CAPITAL AND SUBJECT TO THIRD PARTY RESOURCE CONDITIONED ON THE ACQUISITION OF RESOURCES BY THIRD PARTIES FOR THE SUBSCRIBING COMPANY – ART. 170, PARAGRAPH 5 OF LAW 6.404/1976 – LACK OF THE CONDITION OF PAYING UP RESOLVED IN A MEETING – ARTICLES 106 AND 107, I OF LAW 6.404/1976 – SUBSCRIPTION SLIP SIGNATURE – PAYING UP OBLIGATION – COMPLIANCE PROCEDURE – COMPLIANCE DERIVATIVES FROM THE ABSENCE OF TRANSACTION RESTATEMENT – OPERATIONALLOSS, LOSS OF PROFITS AND MORAL DAMAGES – DENIAL OF THE REQUEST – ABSENCE OF CAUSATION.

1. The controversy concerns the divergent positions of the Parties regarding the obligation to pay the subscribed capital in a privately held capital increase. The underwriting company claims that, apart from the resolution of the shareholders' meeting on the capital increase and the signature of the subscription slip, the relationship between the parties would have been conditioned on the payment to third party funds raised by the underwriting company. 2. In awarding the award, the Arbitral Tribunal ruled that the obligation to pay, as defined in Articles 106 and 107, I of Law 6.404/1976 is untenable, and upholds the request to order the Respondent to pay the subscribed capital. It further ruled that the alleged damage suffered by the Claimant as a result of the non-payment in the form of operational loss, loss of profit and moral damage is dependent on evidence of causal link and the dismissed the claim. 3. Partially granted judgment.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

BY-LAWS. STANDING TO BE SUED. PRELIMINARY DEFENSE DENIED. PUBLIC OFFERING OF SHARES FOR CANCELLATION OF THE REGISTRATION AND EXIT FROM THE NOVO MERCADO. DISMISSED. REQUEST FOR CLARIFICATION. DENIED.

1. The public offering of shares, known in the market as OPA, is a unilateral declaration of willingness whereby the tenderer expresses, for a certain period of time, its commitment to acquire a block of shares at a certain price and according to terms and conditions previously established.

2. CVM Instruction No. 361/2002, which governs the procedure applicable to public offering of shares of a publicly held company, expressly states that the OPA shall "always be addressed indistinctly to the holders of shares of the same type and class as those subject to the OPA, ensuring the apportionment between partial OPA acceptors", as well as "being carried out in such a way as to ensure equitable treatment to the recipients, to allow them adequate information about the subject company and the offeror and to provide them with the necessary elements to take a thoughtful and independent decision regarding the acceptance of the OPA" (article 4, sections I and II).

3. In this case, two types of takeover offers are discussed: for cancellation of registration as a publicly-held company and for exit from the Novo Mercado, which were performed jointly.

4. In order to prevent the minority shareholder from being compelled to remain a shareholder of a privately held company, Article 4, paragraph 4 of the Brazilian Corporation Law, introduced by Law No. 10.303/2001, makes the cancellation of the registration of a publicly-held company conditional upon prior carrying out, by the issuing company itself or by its controlling shareholder, of a public offering for the acquisition of all outstanding shares in the market.

5. The public offering for cancellation of registration as a publicly-held company is also more specifically regulated in CVM Instruction 361/2002, which establishes, in its article 16, the requirements that must be observed for a publicly-held Company going private.

6. The Offeror, pursuant to article 4, paragraph 4, of the Corporation Law and article 16, item I, of CVM Instruction 361/2002, is required to substantiate the amount proposed in the OPA for cancellation of registration in an independent appraisal report, based on the determination of the "fair price", the parameters listed in article 4, paragraph 4 of the Corporation Law, which may be adopted individually or cumulatively.

7. In this case, the OPA was conducted in accordance with those rules.

8. Article 24, section I, of CVM Instruction No. 361/2002, provides that minority shareholders may only contest the amount to be charged to the OPA by calling a special meeting to hold a new appraisal report.

9. In this case, as narrated by the Respondents and proven throughout this proceeding, the Claimants did nothing to ensure that the amount practiced in the OPA was, at the appropriate time, questioned and revised.

10. The Claimants took no action.

11. The price actually offered by the Offeror was higher than that indicated in the Valuation Report prepared by (...), as was even highlighted by the CVM when considering the Claimants' Complaint.

12. The fact that the Claimants sold the X-issued shares owned by them in the auction leads to the occurrence of logical preclusion and the figure of venire contra factum proprium.

13. Even shifting the issue of corporate area to the arena of civil law (second perspective of analysis), as far as civil liability is concerned, there is no way to accept the Claimants' plea, because to that end they would have had to show in the case file of this arbitration damage, the causal link between the act alleged to be unlawful and the fault of the agent.

14. The Claimants have not produced any evidence demonstrating what they claim.

15. The Claimants were given the opportunity by the Arbitral Tribunal to produce impartial and exempt evidence, but they did not comply with this burden. They have not been able to prove to the Claimants that the damage they claim to have been caused by the Respondents' unlawful conduct.

16. Art. 403 of the Civil Code provides: "Even if the non-performance results from the debtor's intent, the losses and damages include only the actual losses and the lost profits due to its direct and immediate effect, without prejudice to the provisions of the procedural law" (emphasis added).

17. In the absence of demonstration by the Claimants of the existence of an unlawful act committed by the Defendants and the causal link between the alleged damage and the conduct of the Defendants, there is no need to speak of a duty to indemnify.

18. Request by Claimants to disqualify Respondent 3 of the managerial duties performed in publicly-held companies for a period of not less than two (2) years, this Arbitral Tribunal has no jurisdiction to impose its administrative penalties.

19. On the merits, all of the Claimant's claims were rejected.

20. Submission of Clarification Request by the Claimants.

Legal provisions used: CVM Instructions (361/2002 and 491/2011), Law 6.404/76 (article 4), Law 6.385/76 (articles 9 and 11) and Civil Code (article 403).

The Claimants filed a Request for Clarification and so decided the Arbitral Tribunal:

"In their Request for Clarification, the Claimants submit that there are omissions in the Arbitral Award. The Arbitral Tribunal, however, does not glimpse any of the defects pointed out by the Claimants, leaving only their unconformity with the outcome of the decision.

The mere non-conformity of the Party (in the case of the Claimants) with the outcome of the Arbitral Award or with the way the Arbitral Tribunal assesses the evidence does not mean or prove the existence of defects in the Award granted.

It should be noted that the Arbitral Award is absolutely clear as to the reasons that led the Arbitral Tribunal to conclude, which resulted from the free conviction of these arbitrators in the light of the evidence produced in the arbitration records.

As provided in item (...) of the Award, this arbitration is Legal, and the arbitrators are bound by the governing legislation, in this case the Brazilian Corporation Law and the respective regulatory framework issued by CVM. In the same vein, the Arbitral Tribunal is bound by civil law with respect to civil liability.

The Claimants should have followed the legal dictates and objected in a timely and opportune manner to their nonconformity as to the price to be paid for the shares, as explained in (...) items of the Arbitral Award (items (...)) in which they clarified its reasons for deciding.

The decision was clear as to the existence of a legally provided procedure for shareholders to challenge irregularities in the OPA. In this sense, the fact that the Claimants alone did not hold the percentage to request the preparation of a new report did not deprive them of doing so: any shareholder is free to coordinate with others the form of the shareholding position.

Although the Brazilian Corporation Law has conferred rights to minority shareholders, it has not granted them indiscriminately, requiring them to exercise their shares – either separately or jointly – as a percentage. Thus, if the legislature did so, there is no way for the Court to rule differently.

Also on this matter, the other acts practiced by the Claimants were subject to examination by the Court, which considered that they were not the appropriate mechanisms provided by the Corporation Law to oppose a certain price set forth in the OPA. In fact, CVM has, on more than one occasion, already endorsed the understanding that shareholders must adopt the procedures provided for by law, not including questions about perfect and finished legal acts, over penalty of manifest insecurity in the Brazilian capital market.

Also on this point, the behavior of the Claimants was analyzed by the Court, including – as Respondents 1 and 2 rightly pointed out – the subject of questions by one of the arbitrators at the hearing. It is also worth mentioning that the investor, when acquiring shares in the securities market, knows the risks inherent in this and, thus, knows that the company may withdraw from the market and, consequently, see its shareholding position be valued or devalued.

With regard to the claim for damages that they claim to have suffered, the Arbitral Tribunal clarified that the Claimants have not proven the allegation and, as provided by applicable law, have not been able to establish the existence of the damage, the causal link between the alleged wrongful act and the Defendants' fault.

The Claimants alleged that the Respondents omitted information to be passed on to the valuation company in order to underestimate the real growth of the Company in the coming years, synergy gains, inconsistency of information disclosed to the market, among others. These are technical matters which are not proved by simple arguments and evaluations produced by the Claimants. They would have had to draw on consistent evidence, impartial and exempt studies that demonstrated the truth of what they claimed. The Arbitral Tribunal is bound by the evidence produced in the records.

Finally, the Claimant's request in seeking the reversal of the judgment in successive sums and reimbursement of expenses is totally unfounded. The Tribunal's decision was reasoned and took into account the total rejection of the claims. There is no way to seek that a private person be required to appear before a Court and, if it can prevent Plaintiff's claims, to have to pay the full amount it spent.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

SHARE PURCHASE PROMISE EXECUTED BY AND BETWEEN THE CORPORATION, PROVIDING FOR THE COMPANY'S PURCHASE OF ITS OWN SHARES – THE EXISTENCE OF ACCUMULATED LOSSES DOES NOT PREVENT THE REPURCHASE OF OWN SHARES, IN LIGHT OF THE SUFFICIENT BALANCE VERIFIED IN THE CAPITAL RESERVE ACCOUNT – INTERPRETATION OF ARTICLE 30 OF LAW NO. 6.404/1976 – IMPLEMENTATION OF NON-FORESEEABILITY THEORY IN CASE OF THE ECONOMIC CRISIS THAT AFFECTED THE COUNTRY, SUCH AS THE EVENT WAS NOT CHARACTERIZED AS THE UNFORESEEABLE FACT AT THE TIME OF EXECUTION OF THE PROMISE – LACK OF GROUNDS FOR ALLEGATION OF UNFEASABILITY OF USE OF THE COMPANY'S RESOURCES IN THE PURCHASE OF SHARES, BY FORCE OF THE INFRALEGAL RULES ISSUED BY A REGULATORY AGENCY WHICH PRESUMABLY PROVIDED FOR SPECIFIC ALLOCATION FOR RESOURCES ARISING FROM THE CAPITAL INCREASE – PRINCIPLES OF UNITY AND INDIVISIBILITY OF THE COMPANY'S ASSETS – INVALIDITY OF THE RESOLUTION APPROVED AT THE COMPANY'S SPECIAL SHAREHOLDERS MEETING THAT APPROVED THE DISSOLUTION, GIVEN THE LACK OF AN EVIDENTIARY ELEMENTS THAT EVIDENCE ITS ACTIVITY, CHARACTERIZING THE VIOLATION OF ARTICLE 117, PARAGRAPH "B", COUPLED WITH ARTICLE 116, SOLE PARAGRAPH, OF LAW No. 6.404/1976.

1. The dispute concerns the default by the Respondent Company, established as a corporation, of a commitment entered into in a Memorandum of Understanding signed with the Claimant, its shareholder, to acquire its own shares, upon payment of a certain price, immediately after the capital increase, subscribed and paid in with the resources of a new shareholder, which became a shareholder of the Respondent Company. The Respondent Company did not execute the promise to purchase the Claimant's shares, and a few months after the capital increase for the entry of a new shareholder, a Special Shareholders' Meeting was held that resolved on the dissolution of the Respondent Company. The Claimant appealed to the Judiciary, having obtained a preliminary

decision to suspend the effects of the resolution of the Special Shareholders' Meeting that approved the dissolution of the Respondent Company. Having furthered the opening of arbitration, the Claimant made the following requests: (i) judgment finding liability of the Respondent Company to comply with the obligation to acquire its shares; (ii) annul the resolution of the Special Shareholders' Meeting of the Respondent Company that resolved on its dissolution; and (iii) judgment of the Respondent Company to indemnify it for damages, in an amount corresponding to the commitment to buy and sell shares, in the event that such commitment is found to be unenforceable by the Respondent Company. The Respondent Company claimed that it was relieved of its obligation to fulfill that commitment by claiming, in summary, that: (i) the acquisition of own shares would be in disagreement with the provisions of letter "b" of paragraph 1 of article 30 of Law 6.404/1976, due to accumulated losses; (ii) the overcoming of the economic crisis projected over the Country, with unforeseeable adverse effects on the business of the Respondent Company, made the obligation excessively burdensome; and (iii) the resources available to the Respondent Company were derived from the capital increase and were linked to a specific destination, pursuant to a regulatory rule issued by a regulatory agency to which the Respondent Company was subordinated, and cannot be used to satisfy the obligation to its shareholder. 2. In making the award, the Sole Arbitrator decided that the Company's acquisition of its own shares, as provided for in the Memorandum of Understanding signed with the Claimant, constitutes a valid and enforceable obligation, as there is sufficient capital reserve to support such acquisition, according to the latest balance sheet presented by the Respondent Company in the course of the procedural instruction. According to the Sole Arbitrator, the existence of accumulated losses does not prevent the Company from acquiring its own shares, as long as there is sufficient balance in the referred reserve, in light of the provisions of letter "b" of paragraph 1 of article 30 of Law 6.404/1976. The Sole Arbitrator also understood that the economic crisis in the Country, with adverse effects on the Company's activities, was already projected when the Memorandum of Understanding was signed, not representing an uncertain and unpredictable event that could lead to its resolution. With respect to the alleged linking of resources that the Respondent Company had in cash, the Sole Arbitrator concluded that such resources are part of the equity, by reason of their unity and indivisibility, and may be used to satisfy any obligations of the Respondent Company,

including the commitment made to the Claimant. The Sole Arbitrator noted that the existence of special assets, which remain separate from the general assets of a natural or legal person, is only permitted in the circumstances provided for in the ordinary legislation, which is not the case of the regulatory rule invoked by the Respondent Company. With regard to the request for annulment of the Respondent Company's Special Shareholders' Meeting that approved its dissolution, the Sole Arbitrator considered that the alleged economic unfeasibility as a basis for the intended dissolution, which was in contradiction with evidence brought to the parties, was not demonstrated in the records showing good prospects for the business of the Respondent Company upon the increase of its capital, approved a few months before the Special Shareholders' Meeting in question, which was dissolved without management's account having been taken and the financial statement of the prior year approved, and without support in studies that validate the unfeasibility thesis. Accordingly, the Sole Arbitrator upheld the request made by the Claimant to annul the resolution of the Special Shareholders' Meeting which approved the dissolution of the Respondent Company, for breaching the provisions of article 117, paragraph 1, "b" coupled with article 116, sole paragraph of Law 6.404/1976. The sole arbitrator granted the request made by the Claimant to sentence the Respondent Company to the payment of damages if it adopts measures that make it impossible to comply with the Memorandum of Understanding, in particular the approval of the resolution by the Shareholders' Meetings giving another destination to the reserve of making the acquisition of the Claimant's shares unfeasible. 3. Granted.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

GENERAL MEETING. APPROVAL OF FINANCIAL STATEMENTS. NON-COMPLIANCE OF IMPAIRMENT RECOGNIZED BY THE AWARD OF PREVIOUS ARBITRAL PROCEEDING. PRECLUSIVE EFFECTIVENESS OF THE RECOGNIZED RES JUDICATA. ALLEGATION OF AUTOMATIC LOSS OF THE EFFECTIVENESS OF SUBSEQUENT RESOLUTIONS THAT APPROVED THE FINANCIAL STATEMENTS. NON-ADOPTION OF

APPROPRIATE INFORMATION MEASURES. NON-ADOPTION OF ADDITIONAL CARE IN FORMATION OF THE RESOLUTION. IMPOSSIBILITY OF VALIDATION OF THE RECOGNIZED QUESTIONED ACT. INVALIDITY OF RESOLUTIONS THAT APPROVED THE FINANCIAL STATEMENTS AND ACCOUNTS RECOGNIZED.

1. The controversy concerns the effects of the approval, at the shareholders' meeting, of financial statements that reflected an impairment considered illegal by judgment of another arbitral proceeding prior to this one. 2. The Arbitral Tribunal decided that it would not be possible to resume the issues that led to the recognition of the irregularity of the impairment because such recognition would be protected by the preclusive effectiveness of the res judicata. 3. The Arbitral Tribunal found that the approval of the financial statements, which were based on inadequate impairment would not have remedied the impairment, since the divergence had not even been adequately disclosed to shareholders and the necessary care had not been taken in forming the resolution. 4. The Arbitral Tribunal acknowledged the invalidity of the decisions taken at the meetings that approved the financial statements and accounts, taking into consideration, in particular, that the decisions taken were originally considered the unlawful impairment. 5. Partially granted judgment.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

CORPORATION LAW – LIMITED LIABILITY COMPANY – EXTRAJUDICIAL EXCLUSION OF MINORITY SHAREHOLDER – EXISTENCE OF JUST CAUSE – REFUSAL OF THE SHAREHOLDER IN ORDER TO GUARANTEE AMENDMENT OF BANK CREDIT NOTE – REQUEST FOR DECLARATION OF NULLITY OF SHAREHOLDERS MEETING HELD AFTER THE EXCLUSION IMPRACTICAL – CLAIM MADE BY THE RESPONDENT AFTER SIGNATURE OF THE ARBITRATION INSTRUMENT – IMPOSSIBILITY – STABILIZATION OF THE CLAIM – DENIAL JUDGMENT

1. Controversy over extrajudicial exclusion of a minority shareholder for just cause in a limited liability company. Claimant excluded from the corporate structure, at a special shareholders' meeting, for "undeniable conduct" consisting in refusal to sign a Bank Credit Note Amendment that would open revolving credit to the company. Allegation of the Claimant that being a minority shareholder, which does not exercise an administrative function, cannot assume joint liability for the fulfillment of obligations in excess of the amount of its equity interest. Request for annulment of its exclusion from the corporate board, in the absence of just cause, and declaration of nullity of meetings held after the exclusion.

2. The company, as it is a motor vehicle dealership, submits, according to Law No. 6.729/79, the sales quota set annually by the grantor, according to the market capacity of its area demarcated and its performance. Negative signature of the Amendment that prevented the concessionaire's credit increase, which was prevented from meeting the concessionaire's allocated sales quota.

3. It is customary in the market for banks to require collateral to be provided by all shareholders in Bank Credit Notes. In this case, the security interest was more weighted, which was restricted to property mortgage in an amount equivalent to interest of the Claimant, and the Respondent has offered the guarantee higher than the interest of the company.

4. The Claimant's conduct put at risk the regular business continuity of the concessionaire, and its own concession. In this case, there was a break in the ordinary relationship between the shareholders, and the existence of just cause. Thus, the existence of all legal requirements for shareholder exclusion has been proven, as per article 1.085 of the Civil Code. Consequently, the request for declaration of invalidity of meetings held after the exclusion of the shareholder.

5. The Respondent was also requested to include provision for payment of the shares paid of the shares settled in the relief granted, under the allegation that the consignment in payment would be the derived relief. However, this claim was not alleged at the time of execution of the Arbitration Instrument, at which time the claim stabilization occurred. In addition, consignment in payment is a special procedure of litigation jurisdiction, and the amount would be due by the concessionaire, not by the Respondent.

6. Claim DISMISSED.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

PUT OPTION CLAUSE PROVIDED FOR IN SHAREHOLDERS' AGREEMENT – EXERCISE OF THE PUT OPTION SUBJECT TO COMPLIANCE BY THE COMPANY AND THE CONTROLLING SHAREHOLDERS, OF THE DIFFERENT OBLIGATIONS PROVIDED IN THE SHAREHOLDERS' AGREEMENT, THAT PERMITTED TO THE MINORITY SHAREHOLDERS, SUBSCRIBER OF PREFERRED SHARES, TO HAVE KNOWLEDGE OF THE COMPANY'S ECONOMIC AND FINANCIAL SITUATION AND THE ACTS OF THE CONTROLLING ADMINISTRATORS OVER TIME – COMPLIANCE WITH THE COMPANIES AND THE CONTROLLING SHAREHOLDERS – LEGITIMATE EXERCISE OF THE PUT OPTION BY THE MINORITY SHAREHOLDER.

1. The controversy concerns the exercise of the put option provided for in the shareholders' agreement by a minority shareholder subscribing preferred shares, subject to compliance by the Company and the joint and several controlling-managing shareholders with the following obligations: (i) execution of the loans given by the company and its shareholders with remuneration exceeding the equivalent Long Term Interest Rate (TJLP) plus the spread of 2% per year; (ii) prior written approval of the minority shareholder, for the execution of agreements that have as their transactions the subject that may limit the controlling shareholders' management power over the Company's production, marketing and technological development process, or that substantially modify the nature of its activities; (iii) maintain an external audit service, contracted by an auditing company or independent auditor registered with CVM, to audit its financial statements; (iv) maintain a structured management and control information system capable of generating periodic reports, appropriate to the various administrative levels, especially for senior Management, and allowing the monitoring of projections and financial goals established by the Company; (v) submit audited semi-annual financial statements, in the form and within the terms established therein, while the minority

shareholder holds a shareholding equal to or greater than 10% of the Company's capital with a seat on the Board of Directors, or equal to or greater than 20% of the capital stock Company's social contribution; (vi) provide the minority shareholder with the clarifications requested by it and annually, until the end of the fiscal year, the Program Budget for the subsequent year and the Multi-annual Master Plan, as well as the respective revisions; (vii) provide annually to the minority shareholder, as soon as it is prepared, the Letter of Recommendation of the external auditors; (viii) provide the minority shareholder with annual financial statements in an analytical manner, accompanied by explanatory notes, reports from the Executive Board and external auditor's report, all published; (ix) provide annually to the minority shareholder, the minutes of the Annual Shareholders' Meeting, duly filed with the Company's Commercial Registry, (x) provide to the minority shareholder, by the 15th of the following month, the balance sheet of the previous month; (xi) present an Audit Report and Opinion, issued by auditors registered with the Securities Commission (CVM), within 90 days after the end of each fiscal year, on the financial statements of the Company and any company controlled by it, and contract a new company, an independent audit firm registered with the CVM, 4 years after contracting the former. 2. Obligations not fulfilled by the Company and its controlling shareholders. 3. Legitimate exercise of the put option by the minority shareholder. 4. Request granted in order to find the controlling shareholders, jointly and severally, liable to acquire all the shares of the minority shareholder at the amount stipulated in the Shareholders' Agreement, adjusted by IGPM + 12% p.a. from the base date provided for therein until the actual payment, plus a 10% contractual fine, costs of the arbitration proceeding and fees of 10% on the amount of the judgment.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

PURCHASE AND SALE OF SHARES – BUSINESS SUCCESSION – CONTRACTUAL INTERPRETATION ON CLAUSE OF REPRESENTATIONS AND WARRANTIES – CONTINGENCY CLAUSE – REBATES ON THE BUSINESS PRICE – PAYMENT IN INSTALLMENTS – LITERAL,

TELEOGICAL AND SYSTEMATIC INTERPRETATION – COUNTER-REQUEST REJECTED – CLAIM PARTIALLY GRANTED

1. The dispute concerns the parties' differing positions on price rebates by the Respondent in the installment payment of the price through promissory notes. The parties differ as to the interpretation and scope of the clause authorizing rebates. Price reductions were made by the Respondent due to tax debts and convictions and court settlements it had to pay.

2. In brief, the Claimant has claimed that the correct interpretation of the clause under discussion determines that it is the Respondent's responsibility to pay all tax debts, even prior to the base date, until the agreed maximum limit is reached, regardless of whether the tax debts are related in Exhibit I to the agreement, or have been subject to the Tax Amnesty and Installment Program - REFIS. Consequently, as long as the ceiling is not reached, the discounts made by the Respondent appear to be improper. In addition to the tax debts, it stated that the Respondent improperly discounted amounts relating to attorney's fees paid to the Respondent's lawyer. Accordingly, the Claimant claimed that the discounts made by the Respondent were improper and that he and his family were again included in the business health plan maintained by the Respondent.

3. In turn, the Respondent defends a different interpretation of the contractual clause that allows the execution of the rebates, and also filed a counter request for the Claimant to provide a security interest for the balance of REFIS installment payment, referring to part of it, whose installments shall expire after the due date, all promissory notes representing installments of the agreed price.

4. In short, the Arbitral Tribunal found that there is nothing in the contract between the parties that authorizes the interpretation advocated by the Claimant. The literal, teleological and systematic interpretation of the contract leads to the conclusion that the buyer has assumed responsibility only and solely for the tax debts set out in Exhibit I to the agreement. The new tax debts, unknown at the time of the conclusion of the agreement, must be borne by the sellers, by means of the proportional rebate in the installments of the price agreed with the due accountability by the Respondent on the executed rebates. Regarding the amounts discounted for the payment of attorney's fees to the Respondent's attorney for defending the Respondent's in lawsuits discussing rights when the Claimant was still a partner, the Arbitral Tribunal considered that these discounts are also due, as the sellers have agreed contractually to bear those expenses.

The Arbitral Tribunal rejected the request for inclusion of the Claimant in the Respondent's health plan because there is no contractual or legal obligation to support such request. Similarly, the Respondent's counterclaim was inferred because there was no contractual provision obliging the provision of security.

5. The claim was granted in part and the opposing request was rejected.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

LIMITED LIABILITY COMPANY – RESOLUTION AT THE MEETING FOR REMOVAL OF THE MANAGING PARTNER APPROVED BY 2/3 OF THE CAPITAL – FILING GRANTED BY THE REGISTRY OF COMMERCE – OPPOSITION OF THE SHAREHOLDER REMOVED FROM THE MANAGEMENT – JUDICIAL PROVISIONAL REMEDY FOR REINTEGRATION OF THE SHAREHOLDER IN THE MANAGEMENT UNTIL CONCLUSION OF THE ARBITRAL PROCEEDING – CONTRACT QUORUM QUALIFIED FOR THE MATTER – LEGAL QUORUM OF ART. 1.063, PARAGRAPH 1 OF THE CIVIL CODE – PREVALENCE OF THE QUORUM ESTABLISHED IN THE ARTICLES OF ASSOCIATION – INTERPRETATION OF THE FINAL PART OF ARTICLE 1.063, PARAGRAPH 1 OF THE CIVIL CODE – UNDERSTANDING THAT AMENDMENT OF THE ARTICLES OF ASSOCIATION TO OPERATE THE REMOVAL OF THE SHAREHOLDER FROM MANAGEMENT – REQUEST WITHOUT GROUNDS – MORAL DAMAGES ARISING FROM PUBLIC NOTICE FOR THE MEETING WHOSE AGENDA WAS FOR REMOVAL OF THE SHAREHOLDER FROM THE MANAGEMENT – ABSENCE OF UNLAWFUL ACTION – DENIAL.

1. The controversy concerns the divergent positions of the Parties regarding the dismissal of a shareholder from the management of the limited liability company. The dismissal of the position took place in a meeting with the approval of 2/3 of the capital. Such corporate resolution was anchored in a contractual clause establishing a qualified majority quorum for the matter. The removed shareholder objected on the grounds that the dismissal of a

manager depends on the amendment of the articles of association, with the approval of 3/4 of the share capital, according to the rationale of article 1.076, I of the Civil Code.

2. In awarding the judgment, the Arbitral Tribunal ruled that the final part of article 1.063, paragraph 1, of the Civil Code allows the contract to establish a qualified quorum for the matter, rejecting the request. It also decided that the alleged moral damage suffered by the Claimant as a result of the absence of an unlawful act in the public call of the meeting that decided to dismiss the member of the administration was denied.

3. Dismissed.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

SHAREHOLDERS' AGREEMENT – EXERCISE OF PUT OPTION – NULLITY OF THE CRITERIA USED FOR CALCULATING THE EXERCISE PRICE – APPLICATION OF THE PRINCIPLES OF REASONABILITY AND PROPORTIONALITY – UNJUST ENRICHMENT – EXONERATION OF THE SHAREHOLDER FROM BUSINESS RISK – ECONOMIC VALUE AT THE TIME OF THE OPTION – ABSENCE

1. In the event of non-compliance with obligations provided for in the Shareholders' Agreement, a condition for exercising the option to sell the shares of the Claimant to the Respondents is established.

2. The unequivocal expression of willingness of the holder of the put option generates for the other shareholder the irreversible obligation to buy its shares, at a price calculated by previously adjusted criteria, provided that it is strictly fair and fully remunerative.

3. The subscription of shares implies acceptance of the business risk by the subscriber; since risk is an essential element of the subscription of capital and a direct consequence of the principle of communion of scope, its suppression in relation to only one of the shareholder is null, either in its own bylaws or through the shareholders' agreements.

4. Although the buyer is in a position of subjection and cannot oppose the regular conclusion of the business, such subjection does not legitimize the adoption of an unfair or unrealistic share valuation criteria that exonerates the divesting shareholder from

business risks. In this case, there would be an unfair equity advantage that would constitute an unjust enrichment of the option holder at the expense of the other shareholder, the buyer of the shares.

5. Subjection is, therefore, relative to the extent that the stock option must be exercised regularly, as is the case with every purchase agreement, in which the inescapable rule of commutativity and fairness prevails, translated into fair and current prices.

6. The devaluation of the Company's shares resulted from the business risk assumption in question and its effects should be proportionally divided by its shareholders. The change in the factual situation of the company shall always be considered in the calculation of the acquisition price of the shares. The price that it fails to consider shall not be fair, current and remunerative.

7. Given the principles of relevance, materiality and neutrality, it should be concluded that the acts practiced by the buyer, although they had exercised the put option of the shares, were not decisive for the deterioration of the factual situation of the business justifying the attribution of the effects of business failure solely on this shareholder.

9. Although it is legitimate and lawful to exercise the put option, the shares had no positive value at the time of the option's exercise, and it is, therefore, impracticable to require any payment from the buyer.

10. The Arbitral Tribunal rejects, by majority, the request of the Claimant, concluding that the price calculation criteria provided for in the Shareholders' Agreement is null, since it does not correspond to a fair, real and remunerative value of the shares; If the Company's activities are suspended at the time of exercise of the option, with negative equity determined, nothing is due to the Claimant as consideration for the sale of its shares.

11. Separate divergent vote.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

SHARE SUBSCRIPTION AND INVESTMENT AGREEMENT AND OTHER COVENANTS. AMENDMENT TO THE SUBSCRIPTION AGREEMENT.

SHAREHOLDERS' AGREEMENT. INCLUSION OF PARTIES. PRELIMINARY ARGUMENT GRANTED. SUPPOSED CONTRACTUAL DEFAULT. DENIED. REQUESTS FOR CLARIFICATIONS. GRANTED IN PART.

1. Whenever the covenant on the non-payment of dividends by the company is set forth in the Bylaws, it may be invalid if it does not refer to the pre-operating period or to the period of implementation of a new venture by the company.

2. The right to the dividends is essential, i.e., it cannot be unilaterally or unreasonably prevented. It is an unwaivable prerogative, which is expressly set forth in article 109 of the Corporation law (LSA).

3. Sections (...) of the Subscription Agreement and Article (...) of the Bylaws, which authorize conversion of the class A preferred shares into common shares (Article (...) of the Bylaws), are perfectly valid and effective.

4. With respect to the delay in the completion of the construction of (...) and its relation to the execution of the 2nd Amendment with the company R, and Claimants' claim that it has resulted from Respondents' resistance to approve the execution of the 2nd Amendment, such statement is not compatible with the evidence collected in this arbitration.

5. According to the contractual provisions, the Respondents managed the company. The delays in the completion of the works have not been caused by Respondents. The evidence shows that such delays have been caused by the management of the works, change in projects, purchase of assets, delays caused by third parties; finally, activities that were under the supervision and responsibility of Claimants.

6. Claimants' allegation that Respondents have allegedly intentionally caused the implementation of the agreed condition precedent, aiming at assuming the company's control, cannot be accepted.

7. The facts claimed by Claimants are not in any way unpredictable and extraordinary events. On the contrary, they are part of the business, and they are an ordinary and predictable risk incurred by those who engage in business activities.

8. There is no excessive burden, since the applicable requirements have not been met.

9. It is necessary to preserve the economic rationality of the Agreement, by means of which the Parties, under equivalent conditions and with expertise in the market in which they operate, have consensually agreed on a given allocation of risks.

10. The business agreed by the Parties, reflected in the corporate formation elected, has observed: i) the economic rationality; ii) the reciprocity; and iii) the respective allocation and assumption of risks inherent in the business activities in which they have engaged. Therefore, there is no room to claim a breach of the statutory provisions claimed by Claimants.

11. All claims made by Claimants are denied and the counterclaims made by Respondents are granted, so as to acknowledge and grant effectiveness to the provisions of the Subscription Agreement, Amendment, Shareholders' Agreement and Bylaws, upon acknowledgment of Respondents' right in the conversion of preferred shares into common shares.

12. Decision in Requests for Clarifications.

Statutory provisions used: Law 6.404/76 (articles 17, 19, 109, 111) and Civil Code (122, 129, 157, 478 and 479).

The Parties have submitted Requests for Clarification and the Arbitral Tribunal has decided as follows:

a) Request for Clarifications of Claimant 2

"Claimant 2 alleges material error in three passages of the Award (...), because Claimant 2 has allegedly not participated in the management of company X.

The indications made by Claimant 2 do not fall under the legal concept of material error. But even if they were admitted, they shall not be granted, as explained below.

Claimant 2 has been a claimant in the arbitration in the capacity as Party. It has claimed that all claims made by Claimant 1 be granted and that the claims made by Respondents be denied. In the capacity as shareholder of the company X, the members of Claimant 2 composed the Board of Directors (Mr. C) and engaged in the activity as officer (Mr. E).

Irrespective of the fact that Claimant 2 was not directly leading the conduction of business of the company X, its shareholders were informed, knew and resolved in the management of the company X, both in the capacity as member of the Board and in the actual management, in the capacity as Officer, as noted in the proofs produced in this arbitration.

Therefore, when they were parties to the proceedings as claimants, when the Arbitral Award referred to the Claimants, it has made it generically, without the intention of identifying specific characteristics that do not change the conclusions and verifications made in the Award.

Finally, it is in the context of and in the capacity as claimants in the arbitration (capacity as Party) and of the facts (their members participated in the resolutions and management of the company X) that the Award generically refers to both Claimants. The specific characteristics indicated by Claimant 2 neither affect nor change their claims and the adverse award contained in the Arbitral Award."

b) Claim for Clarifications of Respondents

"Respondents are right in indicating the typo in item (...) of the Arbitral Award, once where it reads 'Claimants' for the second time, it should read 'Respondents'.

[...]

Respondents also indicate two omissions in the Arbitral Award.

With respect to the first, they claim that Arbitral Tribunal confirms the joint liability with respect to the order that Claimants pay the arbitration costs in full and that they reimburse the amounts advanced and paid by Respondents, as provided in items (...) of the Arbitral Award.

The Arbitral Tribunal notes that there is no such omission.

First, because both Claimants are liable for the adverse award established in the Arbitral Award, i.e. 50% to Claimant 1 and 50% to Claimant 2. Second, because there is a prohibition to supplement the Award as requested, pursuant to the case law (STJ – Resp No. 129.045, Reporting Justice Sálvio de Figueiredo Teixeira, 4th Panel, unanimous vote, trial date February 19, 1998), which prevent any reference to joint liability.

With respect to the second omission mentioned, Respondents request the following confirmations: [...]

The Arbitral Tribunal explains that the aforementioned omissions (confirmations) are not necessary, because by accepting the Counterclaim, made by Respondents, the Arbitral Award (...) has made it in the strict terms claimed by Respondents.

In addition, it is a logical corollary of the decision. Enforcement of the Award shall observe the regular procedures (Law and Agreement) and be made within 30 days.

Therefore, there is nothing to be supplemented in the Arbitral Award rendered in this specific respect. All elements required, as well as the term for compliance with the provisions of the Arbitral Award by Claimants, as well as by Respondent 1, are perfectly defined in the Award.

As a consequence, the Tribunal denies the claims for rectification of the Arbitral Award made by Respondents with respect to the aforementioned items and grants only the claim relating to material error in item (...) of the Arbitral Award, as explained."

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

PROMISE TO SUBSCRIBE SHARES AND OTHER COVENANTS. SHAREHOLDERS' AGREEMENT AND OTHER COVENANTS. INTEREST IN THE SUIT. STANDING TO BE SUED. LEGAL POSSIBILITY OF THE CLAIM. NO CLAIM IN EXCESS OF THE CAUSE OF ACTION. NON-OCCURRENCE OF PRECLUSION TO SUBMIT DOCUMENTS. PRELIMINARY ARGUMENTS DENIED. SUPPOSED NONCOMPLIANCE WITH PROVISIONS OF THE SHAREHOLDERS' AGREEMENT. DENIED. REQUEST FOR CLARIFICATIONS. DENIED.

1. With the Terms of Reference executed on (...), that the arbitral claim is stabilized, on which occasion the limits of the conflict are defined, in which the Parties have submitted their arguments, submitted documents and explained their claims.

2. There was no claim in excess of the cause of action and preclusion for purposes of submission of documents by Claimant. Preliminary arguments denied.

3. Based on the evidence produced, there were sufficient elements to prove that the Company was facing delicate financial conditions and that Chapter 11 bankruptcy seemed to be inevitable.

4. In view of the nature of the activities in which it engages and with the expert technical personnel, Claimant was able to evaluate the then current situation in light of the facts, there was no denial of provision of information by the Respondents that could be deemed a breach of the contractual obligation assumed.

5. The duty to notify set forth in Section (...) of the Shareholders' Agreement has become, specifically in the case of the claim for reorganization, a mere formality, the essence of which was already being met by the information and by the previous knowledge of the

financial aspects of the company Y by Claimant. The notice was not essential for adoption of these measures.

6. The Corporation Law grants the shareholders' meeting, in article 122, IX, the sovereign power to "authorize the managers to file for bankruptcy and reorganization." In that article, Law No. 6.404/1976 provided on the main duties of the shareholders' meeting, listing matters to be exclusively resolved upon by that body. In addition to granting exclusive powers for the shareholders' meeting to resolve on the filing for bankruptcy or reorganization – currently understood as Judicial reorganization – the sole paragraph of article 122 of the Corporation Law authorizes, in urgent cases, the filing for bankruptcy and the submission of a claim for Chapter 11 bankruptcy without prior resolution by the shareholders' meeting, in order to respond to emergency situations that are incompatible with the terms and publicity required for such meeting to be held.

7. In the case under analysis, the provision contained in Section (...) of the Shareholders' Agreement could not prevent the shareholders' meeting of the company Y to sovereignly decide on the claim for Judicial reorganization. In view of that, even if Claimant opposed to it – which has not occurred in practice – this could not result in a disregard of the meeting's decision.

8. Even in view of all information made available to Claimant, of the conduction of a shareholders' meeting to ratify the claim for Chapter 11 bankruptcy, Claimant has not challenged that claim, and only now, in the arbitration proceedings, it claims noncompliance with a formal notice provision set forth in the Shareholders' Agreement.

9. The literal interpretation is not the only interpretation that should guide the analysis. It is essential to analyze also the actual intent of the Parties, which shall prevail over the limited significance of the words (article 112 of the Civil Code).

10. The most appropriate interpretation of the Shareholders' Agreement will be the interpretation in which the business will of the Parties is sought, as determined by means of analysis of the circumstances under which the will has been issued, considering the economic and social elements at the time of execution thereof.

11. The purpose of Section (...) of the Shareholders' Agreement that there were no change in the shareholding structure has been preserved. Section not breached.

12. In the merits, all claims of Claimant have been denied.

13. The Parties have submitted Requests for Clarification.

Statutory provisions used: Law 9.307/96 (articles 5, 21 and 30), Law 6.404/76 (article 122), Civil Code (article 112) and Code of Civil Procedure (article 20).

The Parties have submitted Requests for Clarification and the Arbitral Tribunal has decided as follows:

Omission with respect to analysis of the information provided by Respondents

Claimant argues that the Arbitral Tribunal has not analyzed the information with respect to the financial statements of the Company during the negotiation phase. However, the Arbitral Tribunal notes that in items (...) of the Arbitral Award, there is a detailed analysis of the proofs produced to show the reason that led it to conclude that there was no failure by Respondents to provide information so as to justify a breach of the provisions of Section (...) of the Shareholders' Agreement (item (...) of the Arbitral Award).

Please note that the proofs have been analyzed as deemed applicable by the Arbitral Tribunal (freedom of judgment, article 21, paragraph 2 of Law No. 9.307/96). The Superior Court of Justice has explained in this respect: "Denial of the theses contained in the appeal does not imply omission, obscurity or inconsistency, because the judge shall analyze the issue according to what he or she understands to be relevant for the case. The Tribunal is not required to try the issue submitted to it for analysis in the terms claimed by the parties, but rather in accordance with its freedom of judgment, as provided in article 131 of the Brazilian Code of Civil Procedure (CPC). The appealed appellate decision has presented sufficient grounds to resolve the dispute, which denies, even if implicitly, the other arguments claimed by the parties and not expressly addressed. We note, actually, unacceptance of the outcome of the trial by the appellant, as well as an attempt to grant the motion for clarification the effect of substantially changing the judgment, which is not permitted in the context of article 535 of the CPC." (Superior Court of Justice (STJ) – Third Panel, Special Appeal (REsp) 1.297.974-RJ, unanimous trial, June 12, 2012). (emphasis added)

Inconsistency claimed with respect to the urgency in the claim for Judicial reorganization

The aforementioned inconsistency alleged by Claimant has not occurred. The issues have been analyzed within the scope proposed by the Parties. Claimant has explained the reasons that have caused the breach of the Shareholders' Agreement, indicating two different situations. The first referred to the information provided by Respondents with respect to the financial conditions of the Company. The second referred to the Claim for

Chapter 11 bankruptcy urgently made in view of the Company's situation, in noncompliance with the provisions of the Shareholders' Agreement.

The Arbitral Tribunal has separately analyzed the proposed issues, as usual. The first has proved that there has been no omission of information on the financial conditions of the Company so as to justify the breach of the provision of Section (...), item (...) of the Shareholders' Agreement. The second has proven that the filing for judicial reorganization of the Company was necessary and urgent and, as analyzed in detail in items (...) of the Award, no breach of the Shareholders' Agreement has been confirmed (...).

Therefore, there is no inconsistence, because although separate (individualized in their due contexts), the premises are not inconsistent, but consequent. If Claimant knew the financial conditions of the Company and this situation has been subsequently aggravated, the urgency to bring the judicial reorganization proceedings was obviously reasonable.

Costs of Loss of Suit

With respect to the amounts of the fees of loss of suit established in the Arbitral Award appealed by Respondents, the Arbitral Tribunal notes, as stressed in item (...) of the Arbitral Award, that the arbitration proceedings are governed by specific rules set forth in Law No. 9.307/96. Facilitating a faster and more informal access to Justice is one of the main reasons of the Arbitration Law. In this respect, the Parties may bring their claim without counsel and appoint their representatives in the arbitration (article 21, paragraph 3).

In case the Parties choose to be represented by lawyers in the arbitration proceedings, they may establish, limit or exclude the fixation of reimbursement separately from the fees incurred for their defense (costs), as well as the fixation of fees of loss of suit, also based, in this respect, on the principle of the autonomy of will.

Another important issue is that the purpose of the order to pay fees of loss of suit in the arbitration is to render the costs of the arbitration proceedings reasonable to all litigators. As a result of these premises that structure the arbitration, the issue involving the fees of loss of suit receive a specific treatment in the arbitration proceedings, which is not so strict as the treatment granted to this matter in lawsuits, even if there is a provision setting forth that the rules of the CPC shall apply.

To establish the fees of loss of suit, the arbitrator shall objectively analyze all components of the claim, considering the aforementioned specific characteristics and principles of the arbitration. As a consequence, we note, in the case at issue, the existence of the following objective criteria: a) Claimant has advanced all costs of the proceeding, including the portion for which Respondents would be liable, even though the final award has ordered it to assume all costs incurred in the arbitration proceedings; b) the peculiar characteristics of Claimant, since it is a government body; c) the Arbitral Award has denied Claimant's claims, but they are not punitive claims; d) item 4 of article 20 of the CPC authorizes the establishment of fees of loss of suit not only in view of the amount in controversy, but granting other references that must be analyzed according to a decision in equity (letters "a" through "c" of paragraph 3 of article 20 of the CPC).

Therefore, taking into consideration the specific characteristics of the arbitration, the reasons explained above and based on the principles of prudence and reasonability inherent in the decision in equity, the Arbitral Tribunal established the amount of R$ (...) by way of fees of loss of suit, noting the complexity of the case and the work of the counsel.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

CIVIL AND CORPORATE LAW – LIMITED-LIABILITY COMPANY – DISPOSAL OF CONTROL – PRELIMINARY AGREEMENT – PROVISORY FIXATION OF THE PRICE – AGREEMENT WITH RESPECT TO THE CONDUCTION OF A DUE DILIGENCE TO DEFINE THE COMPANY'S ASSETS AND LIABILITIES – FINAL AGREEMENT EXECUTED BEFORE COMPLETION OF THE DUE DILIGENCE – CLAIM, BY BUYER, OF CONTRACTUAL PROVISIONS ESTABLISHING THE POSSIBILITY OF WITHHOLDING THE PRICE – CONSTRUAL – BUSINESS CONTEXT – RESPONSIBILITY FOR UNDISCLOSED LIABILITIES – INEXISTENCE – CONTRACTUAL GOOD FAITH.

1. Although the preliminary agreement establishes that fixation of the price for the acquisition of shares of a business company shall be conditional upon the conduction of a tax, accounting and legal due diligence, execution of the final agreement before the end of said due diligence shall be understood as a relativization of the importance of its indications for completion of the business. In addition, the parties have already been granted access to the outcome of the due diligence before execution of the final agreement, and they have executed an amendment ratifying the price after completion of the due diligence.

2. If the price has been fixed with the information on the amount of the existing assets and liabilities, the parties have already reflected therein the value of the company's shareholders' equity. Admitting: (i) a price deduction as a result of a new understanding on the shareholders' equity; or (ii) the liability of seller for all debts of the companies resulting from facts occurred before execution of the final agreement would imply disregarding the agreed economic balance.

3. The market value of a company goes beyond its tangible assets, and it shall also be composed of the power of the trademark, of the perception of perpetuity of the company, of its ability to innovate, among other elements. These "assets" are not included in the companies' balance sheets, but it is based on them that the contracting parties establish the price for the universality being sold.

4. The allegation that the final agreement has been signed due to the pressure by one of the parties, resulting from the risk of expiry of the preliminary agreement, cannot be accepted because the parties were of age, capable and, especially, conscious of the agreement they were executing.

5. Inclusion, in the final agreement, of a section establishing the liability of seller for 'any and all debts, of any kind', shall be construed in accordance with the contractual instruments executed, as well as upon analysis of all business circumstances claimed, in addition to the intention of the parties when drafting it. If the parties fail to reach a consensus with respect to the meaning of their manifestations of will, the interpreter may extract from them the meaning consistent with the contractual 'whole', based especially on the principle of good faith.

6. In view of the business context in question, the liability of the seller may only refer to hidden liabilities of the company that had not been ascertained at the time the final price

was fixed. For the price withholding to be admitted, therefore, the hidden liabilities must be duly identified and proved by buyer. It is not sufficient, for such identification, to make reference to the liabilities indicated by the due diligence, the conclusions of which were known to them at the time the final contract price was determined.

7. Even in the event of hidden liabilities, the existence of a provision granting seller the right to submit administrative or judicial defense until the final level of jurisdiction with respect to the debts identified implies the obligation of buyer to notify seller of the existence of the liabilities, allowing it to exercise its right of defense. This obligation implies a condition precedent for the exercise of the withholding right. Lack of proof of notices in this respect.

8. The good faith arises as a source of accessory contractual duties, and it shall guide the behavior of the parties irrespective of any contractual provision. Buyer has engaged in inconsistent conducts that have affected the balance of the previously established contractual relationship, seeking to obtain an undue benefit to the detriment of seller. There is a clear breach of the lateral duties of information and protection.

9. The Tribunal grants claimant's claim, for the total amount set forth in the share purchase agreement to be paid by buyer, upon deduction of the installments already paid.

CAPITAL MARKETS

SUMMARY
(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

PARTIAL AWARD. DECISION ON THE APPLICATION OF THE CODE OF CONSUMER PROTECTION; ON APPLICABLE LIMITATION PERIOD AND ITS INITIAL COUNTING TERM. BROKERAGE AGREEMENT BETWEEN AN INDIVIDUAL INVESTOR AND A SECURITIES BROKER. CHARACTERIZATION OF THE CONSUMER RELATIONSHIP. APPLICATION OF THE PROVISIONS OF LAW No. 8.078, OF 1990, TO CONDUCT THE ARBITRATION. REVERSAL OF BURDEN OF PROOF MUST BE DETERMINED WHEN DECIDING ON EVIDENCE. LIMITATION. APPLICATION OF THE CODE OF CONSUMER PROTECTION TO THE ARBITRATION ATTRACTS THE STATUTE OF LIMITATIONS RULE PROVIDED FOR IN THE CONSUMER LAW. RESPONSIBILITY OF THE SERVICE PROVIDER FOR A SERVICE FACT. FIVE-YEAR PERIOD OF LIMITATION. INITIAL COUNTING TERM CORRESPONDING TO THE DATE OF ACKNOWLEDGEMENT OF THE DAMAGE AND NOT TO THE DATE OF OCCURRENCE OF THE WRONGDOING.

The relationship between the Parties, conducted under the terms of the brokerage agreement, was a consumer relationship and, for this reason, the rules provided for in Law No. 8.078, of 1990, which aim to facilitate the protection of consumer rights, apply to conducting the arbitration.

The decision on reversing the burden of proof under the provisions of the Code of Consumer Protection will be made at an appropriate time, as the reversal does not automatically fall on all the evidence that is necessary.

The application to the specific case of the Code of Consumer Protection, and the search for the Defendant being held liable based on Art. 14 of this law, due to alleged damage

suffered as a result of the service rendered, attracts the application of a limitation period of five (5) years, pursuant to the application of Art. 27 of Law No. 8.078 of 1990.
Consequently, the initial milestone for counting the limitation period must be the date on which the Plaintiff became aware of the alleged damage that the Plaintiff claims to have suffered, in view of the provisions of Art. 27 of Law No. 8.078 of 1990.
Continuation of the arbitration, as it is not possible, at this moment, to form a conviction about the effects of the limitation on the Plaintiff's claims, given the impossibility of determining the initial term of counting of the limitation period.

SUMMARY
(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

Corporation. Arbitration and Jurisdiction. Offering of primary and secondary distribution of shares. Indemnification Agreement between parent company and controlled company. Arbitration Clause provided for in the By-Laws and Prospectus. Dispute involving only the Indemnification Agreement between company and shareholder with election of the state jurisdiction. Matter unrelated to the By-Laws and the Prospectus. Option of the parties to the jurisdiction of the State, in the Agreement, to settle disputes concerning this matter. Non-application of Arbitration Clauses and prevalence of choice for State jurisdiction.

SUMMARY
(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

ASSET INTERMEDIATION AGREEMENT – LOSS OF MARGIN CALL – LACK OF RESOURCES FOR COVERING NEGATIVE BALANCE – FORCED SETTLEMENT OF ASSET DATA – REASONABLE ACTION OF RESPONDENT – NON-EXISTENCE OF UNLAWFULNESS. 1. The dispute concerns the divergent positions of the Parties regarding the Respondent's acting as a broker agent of Claimant, in the forced settlement of shares and the "options box" given as collateral for the

positions taken by the Claimant in the capital market to hedge negative balance in the margin account. 2. By issuing a judgment, the Arbitral Tribunal dismissed the Claimant's claim for compensation as a result of the Respondent's performance in the settlement of assets pledged as collateral for recomposition of the margin account. 3. In short, the Arbitral Tribunal found: (i) that the Respondent, as an intermediary agent, was required to immediately settle the position in the volume required to remedy the Claimant's default crisis, if necessary by settling the assets pledged as collateral. (ii) that, considering the circumstance, there was no possibility of postponing the settlement in the expectation of better execution conditions or less severe means to settle the assets; (iii) that the Claimant was exposed to market financial and liquidity risk when the composition of assets given as collateral was made; (iv) that there was no "loss of a chance" of settling positions on more favorable terms because there is no evidence in the file that this was the form adopted by other market participants in similar situations and with better results. 4. Dismissed.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

EQUITY INTEREST PURCHASE AGREEMENT – COMPANY'S GOING PUBLIC AND THE INITIAL PUBLIC OFFERING AS AN ESSENTIAL CAUSE OF CONTRACTING – NON-EXECUTION DUE TO LOAN DEFAULT OF THE CONTRACTUAL OBLIGATIONS BY THE PARTIES – BREACH OF OBJECTIVE GOOD FAITH – IMPOSSIBILITY OF PARTIAL DISSOLUTION OF THE COMPANY – EVENT OF UNJUST ENRICHMENT – CONTRACTUAL TERMINATION THROUGH OFFSETTING OF FAULT – NO LOSSES ARISING FROM LOSS OF A CHANCE.'

1. The dispute concerns the Parties' differing positions on: (i) to whom responsibility shall be attributed for the non-implementation of the Company's IPO process before the Brazilian Securities Commission (CVM) ("IPO") and for the initial public offering of distribution of its shares ("Public Offering"), provided for in a shareholding purchase agreement ("Agreement"); and (ii) the manner in which the transaction executed between

the Parties was terminated, which led the Claimants and part of the Respondents to become shareholders of the Company. 2. In rendering its award, the Arbitral Tribunal partially upheld the claims of the Parties. 3. In summary, the Arbitral Tribunal found: (i) the essential cause of the contracting rested on the consolidation of the business activity explored by the Respondents into a single company designed to have its shares admitted to trading on the securities market; (ii) the contractual provision related to the structuring and implementation of the company's going public and IPO shall be essentially attributed to the Claimants (acquirers of the equity interest); (iii) although the company's going public and IPO were the main cause of the contracts signed by the Parties, the Claimants were not bound to produce this determined result, but rather to take the necessary measures to achieve it (middle obligation); (iv) thus, the non-fulfillment of the company's going public and IPO does not, in itself, characterize the default of the obligations assumed by the Claimants, but only the emptying of the essential cause that led the Parties to associate; (v) on the other hand, the Claimants' compensation – consisting of a certain percentage interest in the Company's capital stock – depended on the effective achievement of the results provided for in the agreements; (vi) as a result of the legal duty of cooperation and loyalty that emanates from the principle of objective good faith, the Parties shall have behaved in accordance with the common interest, which, in this case, was the carrying out of the IPO; (vii) the unfeasibility of the IPO resulted from the mutual default of obligations by the Parties, which contributed to their conduct so that the agreed common objective was not achieved; (viii) the partial dissolution of the Company does not constitute an adequate solution for the termination of the corporate relationship between the Parties, since it would primarily benefit the Claimants, which is not compatible with the fact that their conduct contributed to the non-accomplishment of the purpose in question that led the Parties to associate; (ix) allowing the Claimants to receive the Company's assets in proportion to their interest in the capital would constitute an event of unjust enrichment (prohibited by Article 884 of the Civil Code), since their role in the transaction was, without contributing their own resources, to assist the Respondents in the consolidation of their business activity, with the creation of the Company, idealized to have the shares traded in the securities market, which did not occur; (x) partial dissolution is a principle typically developed for limited liability companies and applicable under Brazilian case law only to private limited liability companies; (xi) In this

sense, the partial dissolution could not be ordered by the Arbitral Tribunal since the corporate type and characteristics of the Company do not authorize, according to Brazilian case law, the granting of this request; (xii) it makes no sense to keep the Parties bound by contracts that have already lost their purpose or to the corporate relationship in a Company that can no longer fulfill its purpose; (xiii) as both Parties are no longer interested in maintaining the contractual bond, the contractual resolution should be decreed; (xiv) In view of the fact that both parties contributed to the non-performance of contractual obligations and the loss of the subject of the legal transaction entered into by them, the contractual termination shall be made by offsetting the fault, sharing any losses between the parties; (xv) the contractual termination, by virtue of concurrent fault, shall result in the termination of the business, rendering ineffective all contracts signed by the Parties; (xvi) the Claimants and the Respondents shall each bear the emerging damages that they may have suffered as a result of both contributing to contractual default with similar degrees of culpability; (xvii) There is no need to speak of indemnification of either Party for the loss of a chance given that the obtaining of equity gains from the Public Offering does not constitute a concrete and real probability, due to the nature of the capital market as such a risky market.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

FINANCIAL MARKET – DAY TRADING TRANSACTION – BRAZILIAN DEPOSITARY RECEIPTS ("BDRs") – FINANCIAL LOSS WITH CONSUMPTION OF THE GUARANTEE MARGIN – REQUEST FOR COMPENSATION FOR PROPERTY DAMAGES AND LOST PROFIT – CLEAR KNOWLEDGE IN RESPECT OF THE INVESTIGATION RISK – IMPOSSIBILITY OF RESPONSIBILITY OF THE RESPONDENT FOR THE NEGATIVE RESULT – APPLICATION FOR DECLARATION OF RESPONSIBILITY FOR CLAIMS BY CVM PENALTY – FAILURE OF LEGAL INTEREST – DISMISSAL.

1. Dispute over an asset intermediation contract, by order and account of the client, entered into between the Parties. The Claimant's allegation that the Respondent has caused its losses in day trading transaction, performed without its order, which resulted in the "illegal settlement" of BDRs owned by it. Administrative proceeding filed by CVM, against the Claimant, due to a lack of communication of material fact. Claim for compensation for property damages and lost profits, as well as declaration of liability of the Respondent for any penalty imposed by CVM.

2. Day trading transaction that consists of the same day buying and selling of securities in a stock exchange environment. High risk investment. BDRs offered as a guarantee margin, according to stock exchange requirements, and consumed in view of the negative result of transactions at the end of the period. Result that is not surprising in light of the circumstances mentioned. Risk inherent to the Respondent's performance, and it is impossible to be held responsible for the loss.

3. Finding of unequivocal knowledge of the situation by the Claimant. Submission of copies of Asset Trading Notices (ANAs) periodically submitted by the stock exchange with information on the transactions. In addition, the Claimant had access to the Investor Electronic Channel (IEC), where it could obtain information on its investments. Intense communication about the situation between the Parties during the period. Non-occurrence of "illegal settlement". Improper indemnification claimed.

4. Request for declaration of responsibility of the Defendant for sanction of CVM. Absence of legal interest. Administrative proceeding opened by CVM filed prior to the filing of the present arbitration proceeding, prior to the execution and fulfillment of the Consent Decree signed between the Petitioner and the government agency. In addition, no causality has been demonstrated between alleged damages and the Respondent's conduct.

5. Claim DISMISSED by unanimous vote.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

CIVIL LIABILITY – CHURNING – EXCESSIVE "TURNOVER" IN THE CUSTOMER'S PORTFOLIO WITH PURPOSE TO GENERATE BROKERAGE REVENUE AND BIGGEST COMMITTEES – DUTY OF LOYALTY OF BROKERS AND THE MANAGERS OF SECURITIES PORTFOLIOS – ABSENCE OF ELEMENTS CHARACTERIZING CHURNING – NON-LIABILITY OF PRINCIPLE OF THE INVESTOR'S BEST INTEREST – NON-CHARACTERIZATION OF FRAUDULENT TRANSACTION

1. Arbitral Proceeding between investors in the securities market and the securities broker. Main claim of indemnification nature, which sought the judgment of respondent to judgment of the defendant to reimbursement of amounts spent by the claimants with (i) brokerage fees, (ii) market trading fees (CBLC and BM&FBOVESPA), (iii) income tax on capital gains and (iv) other losses.

2. Necessary evidence of wrongdoing for characterization of civil liability.

3. Churning is the realization by the broker of "turnover" on the client's portfolio, without its knowledge, to benefit him, but to earn gains from brokerage fees or commissions. Characterization of an unlawful practice, as upon contracting the broker, the investor shall give him the orders to perform the transactions and it can only act to his benefit.

4. Duty of loyalty that the brokerage house and securities portfolio managers must observe in relation to their clients. Article 4, sole paragraph, of CVM Instruction No. 387/2003. Articles 14 and 16 of CVM Instruction No. 306/1999. Letter "c" of section II of CVM Instruction No. 08/1979.

5. No standards defining requirements for characterization of churning. Application of BM&FBOVESPA Analysis Report No. 01/2011 Market Supervision ("BSM"). Indicators for churning characterization: (i) excessive turnover in the client's portfolio, (ii) significant expenses to the client with the payment of brokerage fees and commissions and (iii) control of the client's account by the broker.

6. Evidence analysis to verify that (i) the client has not delegated management powers to the broker – even if this practice is not supported by law; (ii) the broker did not go beyond the mandate that the client gave it; and (iii) the client was unaware of the broker's operations and excessive turnover.

7. Examination of records of conversations between investor and broker revealed that investor (i) was qualified, (ii) was aware of the various types of market (stocks,

currencies, precious metals, etc.), (iii) was able to take risks, (iv) encouraged the broker to take turnover with the portfolio to earn profits from day trade operations, and (v) transmit information about his schedule so that the broker could contact him.

8. Granting of discounts on the brokerage rate justified by the volume of buy and sell transactions.

9. Evidence of testimony that demonstrated the making of margin calls by the exchange and the investor's knowledge of the amount that was traded daily in his portfolio.

10. Indemnification request denied due to non-characterization of the churning practice.

11. Additional request for a judgment for moral damages allegedly suffered when the investor sought a new brokerage firm and was aware of the turnover of its portfolio. Request not granted. Not characterized due to the lack of illegal practice.

12. Request by the Respondent for a judgment in bad faith litigation not accepted, since the circumstances provided for in Articles 79 and 80 of the Code of Civil Procedure (CPC) were not verified. Code of Civil Procedure (CPC) is automatically inapplicable to arbitration, but use of concepts as basis for the reasoning of the decision

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

TRANSACTION FOR THE ACQUISITION OF CONTROL - OBLIGATION TO MAKE A PUBLIC OFFERING OF SHARES (OPA) PURSUANT TO THE RULES ON THE DISPOSAL OF CONTROL (TAG ALONG) AND ON ACQUISITION IN EXCESS OF 20% OF THE CAPITAL STOCK (POISON PILL) – INAPPLICABILITY OF THE OPA PURSUANT TO THE POISON PILL RULES – NO CHANGE IN THE DISPERSION OF SHARES – MAINTENANCE OF THE CORE AND LEVEL OF THE CONTROL AFTER THE TRANSACTION – INEXISTENCE OF ADDITIONAL OBLIGATION OF THE CONTROLLING SHAREHOLDER – PROVISION OF THE BYLAWS THAT EXCLUDES OPA FROM THE POISON PILL FOR THOSE THAT WERE SHAREHOLDERS ON

THE DATE OF INSERTION THEREOF – NO PROOF OF NEW MORE ADVANTAGEOUS APPRAISAL.

1. The dispute relates to divergent positions of the Parties with respect to the applicability of a provision of the Company's Bylaws to the transaction for the acquisition of control, with the consequent obligation to carry out a Public Offering of Shares ("OPA") by the acquirer, both pursuant to the applicable rules in the event of disposal of control (tag along), and in accordance with the applicable rules in the event of purchase of shares in excess of 20% of the Company's capital stock (poison pill).

2. Claimants have alleged that the transfer of the Company's control to Respondent has not observed the procedure set forth in the Bylaws, since the OPA should jointly contemplate the rules relating to the tag along and to the poison pill, and therefore the resulting losses should be indemnified (loss of chance, loss of profits and payment of interest and adjustment for inflation). In their answer, the Respondents claimed that the poison pill rule does not apply to that transaction for the acquisition of control because: (i) the disposal has been indirectly made; (ii) the change in the final controlling shareholder of the Company has not resulted in variation of the capital stock dispersion; (iii) the OPA relating to the poison pill rule would not be applicable, in view of the rule of the Company's Bylaws that establishes that it shall not apply to the current shareholders of the Company and their successors on the date of the Special Shareholders' Meeting that approved the insertion of that rule; and (iv) the Claimants have suffered no loss, since application of the poison pill rule would not result in the payment of a different price than that offered.

3. When it rendered the award, the Arbitral Tribunal decided that the poison pill rule does not apply to the transaction. In short, the Arbitral Tribunal understood: (i) that the Claimants have opted for disposal of their equity interest for the price of the OPA pursuant to the tag along rules and have not reserved their right to discuss the applicability of the poison pill rule; (ii) that in this specific case, on account of the Company's accession to the Novo Mercado, it was ensured that in the event of disposal of its control, the acquirer would be required to offer to the non-controlling shareholders the same price per share paid to the controlling shareholders, and that it is not possible to infer from the law or from the Company's Bylaws any additional obligation of the controlling shareholder to place the economic interest of the non-controlling shareholders on a higher level than that

of its own interests; (iii) that the transaction does not fall under the event set forth in the poison pill rule, since the purpose thereof is to avoid concentration of the outstanding shares of the companies in the hands of small groups of investors, and that the core of the control of the Company in question has been protected and maintained on the same level existing before the transaction (the dispersion of shares has not been affected), this power has only "changed hands" and, for that purpose, the OPA was carried out due to the disposal of control; (iv) that the poison pill rule does not have the purpose of discouraging changes in the control of companies and encouraging management stability, because this would be contrary to the principles of free initiative and autonomy of will; (v) that even if one admits that the transaction fell under the poison pill rule, the Company's Bylaws contains an exception to the applicability thereof to the Company's shareholders and their successors on the date of the Special Shareholders' Meeting that approved the inclusion of that rule; (vi) and that the occurrence of a direct or indirect acquisition does not change the applicability of the poison pill rule to the transaction. For those reasons, the Arbitral Tribunal understood that the other claims linked to the joint applicability of the poison pill and tag along rules should be also denied. Thus, with respect to the loss of chance, the Tribunal understood that in addition to the inapplicability of the poison pill rule, the Claimants have not presented any evidence that a new appraisal due to joint application of the rules would result in a higher offering price than that presented by the acquirer of the control. Similarly, the Arbitral Tribunal understood that the claim for loss of profits cannot be granted, since it is a logical consequence of the claims previously denied, as well as the claim for the payment of interest and adjustment for inflation.

INVESTMENT FUND

SUMMARY

(PUBLISHED IN THE 4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

DECISION ON THE PARTIES' CLAIMS FOR CLARIFICATION. PARAMETERS FOR THE DETERMINATION OF INDEMNIFICATION DUE BY THE FORMER MANAGERS AND ADMINISTRATORS TO AN EQUITY FUND BY THE CONTRACTING OF REAL PROPERTY AND FINANCIAL ADMINISTRATION OF VENTURES UNDER DIFFERENT CONDITIONS THAN THOSE INFORMED TO THE SHAREHOLDERS OF SAID FUND. CLAIM GRANTED IN PART. INEXISTENCE OF OMISSION, OBSCURITY OR INCONSISTENCY IN RELATION TO THE OTHER MATTERS.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

CIVIL LIABILITY FOR VIOLATIONS AND MISAPPROPRIATION ACTS COMMITTED IN AN EQUITY INVESTMENT FUND BY ITS MANAGER. CONTRACTUAL JOINT AND SEVERAL LIABILITY OF THE MANAGER FOR ACTS COMMITTED DURING THE PERIOD THE MANAGER MANAGED THE EQUITY INVESTMENT FUND. NOT TIME-BARRED BY THE STATUTE OF LIMITATION. EXEMPTION FROM CIVIL LIABILITY OF THE MANAGER AND ADMINISTRATOR NOT APPLICABLE IN VIEW OF THE APPROVAL OF THE ACCOUNTS OF THE EQUITY INVESTMENT FUND OR APPROVAL OF INVESTMENTS BY THE INVESTMENT COMMITTEE. ANALYSIS OF THE SITUATION OF EACH OF THE 28 SPES THAT SHOWS DIFFERENT FAILURES IN THE INFORMATION, MONITORING AND SUPERVISION OF THE INVESTMENTS, COMBINED WITH THE ENGAGEMENT OF REAL ESTATE AND FINANCIAL MANAGEMENT UNDER CONDITIONS OTHER THAN THOSE

INFORMED TO THE SHAREHOLDERS OF THE FUND. VIOLATIONS TO SECTION 7.4 OF THE MANAGEMENT CONTRACT COMBINED WITH ARTICLES 9, I, III, AND PARAGRAPH 2, AND 40, PARAGRAPH 3, OF THE EQUITY INVESTMENT FUND BYLAWS, ARTICLES 9, PARAGRAPH 3, AND 10 OF CVM INSTRUCTION 391/2003, AND ARTICLES 65, XV, 65-A, AND 119-A OF CVM INSTRUCTION 409/2004. SETTLEMENT PARAMETERS.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

CLAIM BASED ON ARBITRATION CLAUSE CONTAINED IN THE INVESTMENT FUND BYLAWS. ALLEGED DECISION ON SUBMISSION OF COMPANIES CONTROLLED BY THE FUND TO COURT-SUPERVISED REORGANIZATION IN DISAGREEMENT WITH THE BYLAWS. LOSSES AND DAMAGES. PRELIMINARY ARGUMENTS: OBJECTION TO THE ARBITRABILITY OF THE PLAINTIFF'S CLAIMS AS A RESULT OF THE ALLEGED WAIVER OF THE ARBITRATION CLAUSE, PRECLUSION AND ASSUMED ABSENCE OF JURISDICTION OF THE ARBITRAL TRIBUNAL DUE TO THE EXISTENCE OF COURT WITH EXCLUSIVE JURISDICTION OVER THE COURT-SUPERVISED REORGANIZATION. REQUEST FOR INTERLOCUTORY RELIEF FILED BY THE MANAGER FOR PAYMENT OF EXPENSES OF THE FUND. DECISION ON THE EXTENSION OF THE JURISDICTION OF THE ARBITRAL TRIBUNAL: PARTIALLY ACCEPTED OBJECTIONS. DECISION ON THE REQUEST FOR INTERLOCUTORY RELIEF: DENIAL.

In compliance with Law No. 9.307, of 1996, and the arbitration clause contained in the Fund's Bylaws, the Arbitral Tribunal decided to partially accept the preliminary argument of lack of jurisdiction of the Arbitral Tribunal to assess and adjudicate the claims filed by the Plaintiffs in this Arbitration. The Tribunal declared that the tacit waiver of the arbitration clause did not occur in the context of the court-supervised reorganization, since the claims filed in the arbitration do not correspond to the claims filed before the court

that supervised the reorganization. The Tribunal recognized that the court that supervised the reorganization has already ruled on the conditions for processing the court-supervised reorganization petition of the investees of the Fund, which is why this matter will not be discussed again in the arbitration. Accordingly, it declared that it has no jurisdiction to adjudicate certain declaratory claims filed by the Plaintiff and has jurisdiction to assess and adjudicate provisional remedies or interlocutory reliefs filed by the Parties and to determine and quantify any losses and damages suffered by either party in the context of the relationship maintained among them under the Fund. In addition, the Arbitral Tribunal rejected the claims for reversal of the sides of the arbitration, which became moot due to the continuity of the procedure for determining losses and damages, and for the granting of interlocutory relief, as the minimum requirements and supporting documents for the right have not been submitted. Finally, the Tribunal dismissed the intention of one of the Defendants to include third parties in the proceeding, based on the limitation imposed by item 6.1 of the Market Arbitration Chamber (CAM) Arbitration Rules.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

EQUITY INVESTMENT FUND. SPECIAL CALL FOR PAYMENT WITH GROUNDS ON ARTICLE 15 OF CVM INSTRUCTION No. 555/2014, RESULTING FROM RE-VALUATION OF ASSETS AND LIABILITIES OF INVESTEES WHICH RESULTED IN NEGATIVE NET WORTH IN THE FUND. CALL FOR PAYMENT BASED ON A RESOLUTION OF THE SHAREHOLDERS' MEETING NOT OBJECTED TO. GRANTING OF THE CLAIM FOR ADVERSE JUDGMENT.

CLAIM FOR REESTABLISHMENT OF POLITICAL RIGHTS OF THE DEFAULTING SHAREHOLDER. HYPOTHESIS NOT ESTABLISHED IN THE FUND BYLAWS. IMPOSSIBILITY OF IMPOSITION OF THE PENALTY OF SUSPENSION OF THE POLITICAL RIGHTS. CLAIM GRANTED.

1. The provisions of article 15 of Instruction No. 555/2014 apply to equity investment funds in case of identification of negative net worth by the fund.

2. The call for payment was approved at a shareholders' meeting, with the Respondent's consent, the validity of which was not objected to. Need to make the contribution established by the administrator in compliance with the resolution of the shareholders and with article 15 of CVM Instruction No. 555/2014.

3. The re-valuation of assets and liabilities held by the Fund investees was based on an impairment adjustment, which resulted in the ascertainment of negative net worth. Liabilities of the investees guaranteed by the own fund were also acknowledged.

4. Considering that the approval of the fund's accounts is a matter of exclusive authority of the shareholders' meeting and considering that there is no request for annulment of the resolution of the shareholders' agreement which approved them, the Arbitral Tribunal does not have jurisdiction to annul said resolution. Furthermore, no elements were submitted which enabled the incidental acknowledgement of any errors in the accounting bookkeeping of the fund.

5. The bylaws do not provide for suspension of the political rights of the shareholder in case of non-compliance with the special call for payment, but rather for the events of default on amounts established in the subscription slip. Accordingly, it is crucial to reestablish the political rights of the shareholder which were suspended as a result of non-compliance with the special call for payment.

6. Granting of the claim for the Respondent to be sentenced to pay the amount of the special call for payment and determination of reestablishment of the political rights of the Respondent as a fund shareholder.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

SPECIAL CALL FOR PAYMENT IN AN INVESTMENT FUND WITH NEGATIVE NET WORTH. DEFAULT. APPLICATION OF ARTICLE 15 OF CVM INSTRUCTION No. 555/2014. VALID VALUATION OF THE ASSETS AND STUDIES OF THE FUND LIABILITIES. REQUIREMENT FOR CONTRIBUTION. DILUTION OF THE EQUITY INTEREST OF THE FUND SHAREHOLDER. IMPOSSIBILITY. ARTICLE 1.316 OF THE CIVIL CODE IS

NOT APPLICABLE TO THE FUND IN VIEW OF ITS ECONOMIC RATIONALITY. OFFSET AGAINST FEES DUE TO THE RESPONDENT. IMPOSSIBILITY. ABSENCE OF MINIMUM DOCUMENTS AND INFORMATION ON THE DEBT. DOUBTS ON THE EXISTENCE, LIQUIDITY AND ENFORCEABILITY OF THE ALLEGED CREDIT.

1. The Arbitral Tribunal found that the Respondent was required to make the contribution of funds to the Fund, which had a negative public net worth, in response to the call for payment made by the Administrator. In that regard, it found that article 15 of CVM Instruction No. 555/2014 would cover the obligation for the shareholders to make contribution to investment funds in case of negative net worth. Furthermore, the Tribunal understood that the call for payment was supported by valid valuations prepared, which indicated the need for contribution of funds by the shareholders.

2. The Tribunal ruled out the allegations of the Respondent in relation to the alleged lack of reliability of the valuation of the properties held by the invested SPEs of the Fund.

3. The Tribunal ruled out the Respondent's claim for its equity interest to be diluted among the other shareholders of the Fund, as provided for by article 1.316 of the Civil Code. This is so because the Tribunal found that said provision is incompatible with the economic rationality of the collective investment vehicles.

4. It is concluded from the case records that amounts are owed to the Respondent in relation to real estate and financial management fees of the SPEs invested in the Fund. However, the Tribunal dismissed the Respondent's claim for offset of said amounts against the debt for non-compliance with the call for payment, because it concluded that, in view of the insufficiency of the documents and information contained in the case records, it is not possible to determine whether the alleged credit was properly established and whether it is clear and enforceable.

ENGENEERING AND CONSTRUCTION

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

PUBLIC-PRIVATE PARTNERSHIP. CONCESSION AGREEMENT – SERVICE PROVISION OF MAINTENANCE OF DAMS, INSPECTION AND MAINTENANCE OF TUNNELS AND DAMS INTERCONNECTION CANALS, CIVIL AND ELECTROMECHANICAL MAINTENANCE. PRELIMINARY ARGUMENTS: INARBITRABILITY. FAILURE TO EXHAUST OF PRIOR DISPUTE RESOLUTION STEPS. NON-SUIT OF THE ALLEGATIONS. ILLEGITIMACY OF THE PARTIES. LACK OF PROCEDURAL INTEREST: DISMISSED. DECLARATION OF BINDING POWER OF TECHNICAL REPORT: DISMISSED. The Arbitral Tribunal dismissed the preliminary arguments that (i) the arbitration clause did not meet the requirements of article 10, item III of the Brazilian Arbitration Act, which would motivate dismissal of the proceeding; (ii) inarbitrability of the dispute because there was a public interest of a primary nature; (iii) that there would be non-compliance with the previous stages of dispute resolution; (iv) defective pleading of complaint; (v) lack of procedural interest; and (vi) lack of right of action. The Tribunal also dismissed the claim for declaration of binding power of the Technical Report.

COMMERCIAL CONTRACTS IN GENERAL

SUMMARY

PARTIAL ARBITRATION AWARD

(PUBLISHED IN THE 4th EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 10.12.2021)

CONTRACTUAL LAW - REIMBURSEMENT FOR TAX ON CAPITAL GAIN IN CORPORATE TRANSACTION – CONTRACTUAL INSTRUMENT THAT GUARANTEES THE REIMBURSEMENT FOR A PORTION OF THE TAX INCURRED – SATISFACTION OF THE CONDITIONS PRECEDENT – CASE FOUND FOR PLAINTIFF.

1. Agreement for the Setoff of tax cost that is ancillary to a Merger Agreement and Indemnification Agreement entered into between the Parties in a given context of corporate restructuring.

2. Merger of company in consideration for the increase in the equity interest of the Respondents into the Claimant upon the issue of new shares that eliminates the beneficial nature of the covenant.

3. Delay of works that does not interfere in the satisfaction of the condition precedent, in the lack of the definition of a specific date for completion of the works, in the Setoff Agreement.

4. Claim of double jeopardy in the reimbursement for tax cost not proved.

5. Satisfaction of the conditions precedent by Claimant.

6. Literal construal of the Setoff Agreement that does not prevail over the context in which the Agreements have been executed.

7. Claim considered valid.

SUMMARY

(PUBLISHED IN THE 3rd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 08.12.2020)

ARBITRATOR JURISDICTION. DENIAL OF EXPERT EVIDENCE. NON-BREACH OF ADVERSARY PROCEEDING AND DUE PROCESS OF LAW. LEASE AGREEMENT. REAL ESTATE CREDIT NOTE. REAL ESTATE CREDIT NOTES (CCI) NOT CONNECTED. EXPRESSIVE DEFAULT. SUBSTANTIAL PERFORMANCE NOT APPLICABLE TO THE SPECIFIC CASE.

1. Allegation of removal of the Arbitrator's jurisdiction due to actions taken in court. Denied – absence of allegation in the arbitration of defect in the arbitration clause (Art. 20 of Law No. 9307/96) – compliance with the principle of *Kompetenz-Kompetenz* and *pacta sunt servanda*;

2. The denial of the expert evidence does not mean violation of adversary proceeding and due process of law. The arbitrator must manage the proceeding on a speedy and cost-effective basis, avoiding waste of costs and time. (Art. 5, item LXXVIII Federal Constitution/88), avoiding the development of procedural acts that, in the judgment of the judge, are not useful for the action. Sufficient documentary evidence for the outcome of the action.

Merits:

3. There should be no discount on amounts payable under a Real Estate Credit Note ("Real Estate Credit Note") due to the amounts paid under another Real Estate Credit Note. The Real Estate Credit Notes are not interconnected, but independent, and the discharge of one of them has no consequence with respect to the other.

4. Excess in the charging of amounts by the Plaintiff could not justify the suspension of any and all payments, leaving the Defendants in arrears with regard to the performance of their obligations. The Theory of substantial default is inapplicable to the specific case, given that the default is not insignificant.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

PARTIAL GUARANTEE – VALIDITY – LEGAL, STATUTORY AND REGULATORY VIOLATIONS NOT OCCURRED – THEORY OF THE ULTRA VIRES SOCIETATIS ACT NOT APPLICABLE TO THE RELEVANT CASE – TIMELINESS OF THE MOTIONS TO STAY EXECUTION ALREADY DECIDED BY A DECISION ON THE ARBITRABILITY OF THE DISPUTE – DEFECTIVE PLEADING OF COMPLAINT OF THE EXECUTION OF AN EXTRAJUDICIAL EXECUTION INSTRUMENT AND EXCESSIVE EXECUTION – NON-OCCURRENCE – CONTINUATION WITH THE EXECUTION OF AN EXTRAJUDICIAL EXECUTION INSTRUMENT AGAINST THE CLAIMANT IN THE AMOUNT OF THE PARTIAL GUARANTEE.

1. The litigation is related to the partial guarantee agreement entered into by and between the parties, the subject-matter of the execution of an extrajudicial execution instrument filed by the Respondent against the Claimant, of other full guarantors and of the principal debtor. When the Claimant was notified of the decision which dismissed its defense of prior execution, the Claimant set up the arbitration proceeding claiming: (i) acknowledgement of nullity of the partial guarantee agreement in view of alleged statutory and regulatory violations; (ii) subsidiarily, acknowledgement of ineffectiveness of the partial guarantee agreement due to application of the theory of the ultra vires societatis act; and (iii) also subsidiarily, acknowledgement of ineffectiveness of the complaint of execution of an extrajudicial execution instrument and of excessive execution due to the alleged impossibility to calculate the amount of the execution credit.

2. The Respondent, in turn, claimed: (i) acknowledgement of untimeliness of the motions to stay execution filed by the Claimant in this arbitration proceeding; and (ii) acknowledgement of legitimacy of the state court to prosecute the execution of an extrajudicial execution instrument of the partial guarantee agreement against the Claimant.

3. In a preliminary decision, the Arbitral Tribunal decided on the arbitrability of the dispute, by acknowledging the timeliness of set up of this arbitration and its capacity to handle the matters of merits, which in a legal proceeding would be ordinarily discussed via motions to stay execution.

4. The arbitration proceeding continued with the decision of the main issues relating to the validity and effectiveness of the partial guarantee agreement, and the defective pleading of complaint of the execution of an extrajudicial execution instrument and the excessive execution, which was the subject-matter of discussion between the parties with a long evidentiary stage.

5. At the end, the Arbitral Tribunal understood that the partial guarantee agreement was valid and effective in relation to the Parties, that the alleged defective pleading of complaint and excessive execution did not exist, and that the execution of an extrajudicial execution instrument could proceed against the Claimant in the amount of the partial guarantee.

6. In view of the result of the arbitration, the Arbitral Tribunal sentenced to Claimant to pay all administrative costs and arbitrators fees, and to pay loss of suit fees, as requested by the Parties.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

JURISDICTION OF THE ARBITRAL TRIBUNAL; PRELIMINARY ARGUMENT OF LACK OF STANDING TO SUE; PRELIMINARY ARGUMENT OF DEFECTIVE PLEADING OF COMPLAINT AND STATUTE OF LIMITATIONS.

Jurisdiction of the Arbitral Tribunal: Contractual instrument entered into by and between an Individual Claimant and the Respondent, with a section of jurisdiction, and another Contractual Instrument entered into by and between a Legal Entity Claimant and the Respondent, with an arbitration clause, which supported the setup of the arbitration proceeding. Court judgment which dismissed the action with grounds on article 267, VII of the CPC (Code of Civil Procedure). Acknowledgement, by the Arbitral Tribunal, of its

jurisdiction to decide on the jurisdiction (article 8, sole paragraph of Law No. 9.307/96). Distinct legal relationships entered into with different parties under different conditions. The resolution of disputes by arbitration requires the insertion of an arbitration clause in the agreement or an arbitration agreement (article 3 of Law 9.307/96). The Agreement entered into with the Individual Claimant and the Respondent has a section of jurisdiction, which was not modified in the several amendments. Absence of jurisdiction of the Arbitral Tribunal to examine the dispute relating to this agreement. **Preliminary argument of standing to sue:** Legal Entity under the legal regime of EIRELI, regulated by articles 980-A et seq of the Civil Code, is governed by the rules of a limited-liability company. Considering that it was wound-up, its liquidator has rights and obligations to represent it in any acts required for its liquidation. Acknowledgement of the standing to sue of the Individual Claimant, as liquidator, to represent the wound-up Legal Entity Claimant in the arbitration. **Statute of Limitations**: Claim not heard, because it has grounds on the Agreement with a section of jurisdiction, on which the Arbitral Tribunal does not have jurisdiction. **Preliminary argument of defective pleading of complaint**: Claim linked with the Agreement entered into by and between the Legal Entity Claimant and the Respondent. Allegation that the Legal Entity Claimant is unable to determine its claim, to be ascertained in the course of the proceeding. Answer on an allegation of lack of assets. Acknowledgement by the Arbitral Tribunal that it is a generic claim, and that the expert evidence is not sufficient to investigate facts but rather to demonstrate them. Preliminary argument of defective pleading of complaint admitted.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

NON-COMMERCIAL LEASE AGREEMENT. HOTEL SEGMENT. AUDIT, DUE DILIGENCE. AMENDMENT TO AGREEMENT. RELINQUISHMENT BY THE LESSEE. EXPRESS SECTION OF TERMINATION WITHOUT PENALTIES. POSSIBILITY. ABSENCE OF CONTRACTUAL BREACH. NON-APPLICATION OF THE PENALTY CLAUSE. MORAL AND PROPERTY DAMAGES NOT APPLICABLE. CLAIMS DISMISSED.

1. The express provision of section of relinquishment of the legal business without penalties contained in the Non-Commercial Lease Agreement is lawful, and the exercise thereof by the Lessee does not result in moral or property damages to the lessee or in imposition of a contractual fine.

2. The requirement for audit (due diligence) to identify contingencies and irregularities in a company is an ordinary market practice, as well as the right to relinquishment of the agreement after the study of its results.

NON-COMMERCIAL LEASE AGREEMENT. HOTEL SEGMENT. TERMINATION ESTABLISHED IN THE AGREEMENT DURING THE DUE DILIGENCE PERIOD. COMMITMENT DEPOSIT TO PRESERVE EXCLUSIVITY DURING DUE DILIGENCE. REFUND DETERMINED IN VIEW OF THE ABSENCE OF PROVISION ON THE CONTRARY. CLAIM GRANTED. LOSS OF SUIT FEES, NON-APPLICATION OF THE CODE OF CIVIL PROCEDURE TO THE ARBITRATION IF NOT AGREED UPON BETWEEN THE PARTIES. AMOUNT UNDUE. CLAIM DISMISSED.

1. Procedural laws not applicable to the arbitration, which prevents the adverse judgment of the Parties to make payment of loss of suit fees in the absence of contractual provision or insertion of authorization for that purpose in the Terms of Reference.

NON-COMMERCIAL LEASE AGREEMENT. HOTEL SEGMENT. IRREGULARITY IN THE REPRESENTATION OF THE PARTY – LEGAL ENTITY. VICE REMEDIED BY THE EXECUTION OF THE TERMS OF REFERENCE. PRELIMINARY ARGUMENT DISMISSED.

1. The execution of the Terms of Reference stabilizes the dispute between the Parties to the Arbitration Proceeding and remediates any irregularities of representation by power of attorney occurred in previous phases, in the presence of ratification of the acts performed.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

SUGARCANE PURCHASE AGREEMENT. ALLEGED VIOLATION OF THE RIGHT OF FIRST REFUSAL. LIQUIDITY OF EXECUTION INSTRUMENT. DEMONSTRATION OF THE QUANTITY OF SUGARCANE ACTUALLY DELIVERED VERIFIED. PENALTY CLAUSE. NATURE. POSSIBILITY OF EQUITABLE REDUCTION.

1. Dismissal of the allegation of violation of the right of first refusal, in view of the inexistence of conventional or legal requirement for submission of a written proposal of a third party to enable the party entitled to the right of first refusal to exercise its right. Communication with sufficient characteristics of the proposal for making the informed decision by the holder of the right to the exercise of first refusal, which did not exercise it satisfactorily.

2. The agreement entered into by and between the Parties is valid as a legal, clear and enforceable extrajudicial execution instrument, provided that there is no evidence of the quantity of sugarcane actually delivered. Arithmetic calculations, however complex they may be, do not rebut the liquidity of the execution instrument. Dismissal of the allegation that the execution via was inappropriate for satisfaction of the credit of the Respondent.

3. Penalty clause in case of default. Possibility of accumulation with compliance with the main obligation.

4. However, determination of the need for equitable reduction in the penalty clause. Equitable decrease based on partial compliance with the obligation.

SUMMARY

(PUBLISHED IN THE 2nd EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.03.2019)

1. Civil and Commercial. Agreements, Allegation of failure in representations made by the sellers which affected the EBITDA amount for calculation of the sale price. Allegation of accounting failures. Right to the claimed indemnity. Admission of peremption allegations. Non-exercise of the right within the term established in the agreement. Principle of objective good faith. Prohibition of abusive exercise of right.

2. The dispute that is the subject-matter of this arbitration results from the identification by the Claimant of violations of the representations and warranties provided by the Respondents which directly affected the calculation of the EBITDA of 2011, used as the basis for determination of the purchase price of the shares representing the entire capital stock of the Companies purchased by the Claimant from the Respondents by means of the Share Assignment Agreement.

3. Events of the accrual period of 2011 which were only assessed in 2012, which should have negatively affected the EBITDA of the Companies of 2011. Besides, there is another group of irregularities arising out of the record, in 2012, of events which, due to the nature of the previous provisions, belonged to years 2009, 2010 or 2011.

4. The Respondents affirmed that, if the failures pointed out by the Claimant existed, its right was barred by peremption. In the merits, they affirm that there are no accounting failures in the merged Companies.

5. The evidentiary stage demonstrated that the Claimants had been already aware of the irregularities since September 2012 and did not claim indemnity within the period of ninety (90) days established in the Agreement. The objective good faith requires a more careful attitude from the Parties. Omissive conduct of the Claimant that is incompatible with the obligations inherent to the objective good faith.

6. Admission of preemption allegations. Claims dismissed.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

UNILATERAL TERMINATION OF THE AGREEMENT FOR NON-COMPLIANCE. DIVERGENCE AS TO THE SUBJECT OF THE AGREEMENTS. CHANGE OF THE CONTRACTUAL SUBJECT MATTER BY THE PARTIES IN THE COURSE OF ITS IMPLEMENTATION. BREACH OF OBJECTIVE GOOD FAITH. LACK OF JUST CAUSE. ABSENCE OF

EVIDENCE. DISMISSED. 1. This is a disagreement as to the just cause for unilateral termination of agreement due to non-performance. 2. The parties disagree on the interpretation of the contractual subject matter and its possible modification in the course of the execution of the agreements. 3. After a thorough examination of the evidence, the Arbitral Tribunal concluded that there was no breach of contract capable of justifying the claimant's unilateral termination of agreements. 4. Application of the concept of contextual objective good faith, according to which the interpreter shall pay attention to all the circumstances of the case when interpreting a statement of will. From this perspective, the legitimate expectation of the principals arising from the economic objectives of the agreement and not from the subjective reasons of either party. 4. Arbitral claim dismissed.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

SHARE PURCHASE AGREEMENT – DELAY IN THE BEGINNING OF THE TRANSACTIONS – BUSINESS RISK – ADJUSTMENT IN THE PURCHASE PRICE – INDEMNIFICATION FOR MISSING INFORMATION – INDEMNIFICATION FOR DELAY IN THE BEGINNING OF THE TRANSACTIONS – PARTIALLY GRANTED JUDGMENT

1. The controversy concerns the parties' divergent positions regarding the application of the price adjustment clause to the occurrence of external facts (rainfall indices above the historical average and delay in obtaining authorizations from responsible agencies) that delayed the start of commercial transaction – which the Respondent imputes as exclusionary of liability, pursuant to art. 393 of the Brazilian Civil Code; the obligation to pay compensation on the grounds that the Respondent did not make any statements and information due to it; the allegation that the Respondent's failure to comply with its obligation to bear the full costs of setting up the ventures also entails the Claimant's right to indemnification.

2. In rendering its judgment, the Arbitral Tribunal decided that the economic transaction, entered into between the parties, clearly shows that the Respondent assumed all costs,

expenses and risks of the transaction, from the pre-contractual phase (management presentation and Binding Proposal) to the commencement of commercial transaction.

3. In summary, the Arbitral Tribunal found: (i) the price adjustment shall be applied in accordance with the exact terms of the contractual clause, without any deduction based on allegations of acts of God or force majeure, either because the Respondent contractually assumed all costs, expenses and construction risks of the undertakings, either by Risk Theory, which, even in the event of accidental default of the obligation, would result in loss of the right to the consideration, under penalty of unjust enrichment, further considering that the Claimant paid the full price in advance. Accordingly, the Court states that the suppression of any day of delay in applying the price adjustment factor due to the non-commercial start-up of the projects on the estimated date of the contract would mean transferring from the Respondent (who assumed the construction risks) to the Claimant the burden of loss of revenue, which was frustrated by the delay in entering the commercial transaction. It also understood that (ii) by not providing additional information, as provided for in the contractual clauses, the Respondent breached the agreement and shall indemnify the Claimant; and (iii) as a result of the delay in the commencement of business operation of the ventures, the Respondent shall indemnify the Claimant for the losses it has obtained, such as: increased financing rates and reimbursement for the payment of the fine resulting from the delay.

4. Partially granted judgment.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

PARTIES – UNFAIR COMPETITION – CONTRACTUAL GOOD FAITH – CONFIDENTIALITY AGREEMENT – OBLIGATION NOT TO HIRE FORMER EMPLOYEES – INDEMNIFICATION FOR LOSS OF PROFITS – INDEMNIFICATION FOR MORAL DAMAGES OF LEGAL ENTITY – CONSTRUAL OF THE REASONABILITY OF THE LOSS OF PROFITS AND OF THE OBJECTIVITY OF MORAL DAMAGES OF THE LEGAL ENTITY – CONTRACTUAL GOOD FAITH

1. The dispute originates from an agreement entered into between the parties, pursuant to which Claimant should provide privileged information to Respondent and obtain, in consideration, Strategic Settlement analysis. In addition, the Parties agreed not to hire former employees of one another for up to three months after their dismissal. This having been said, the information provided by Claimant, as well as the hiring of two of its trustful employees, have allegedly been used by Respondent to promote unfair competition. Thus, Respondent claims indemnification, by way of losses and damages due to (i) unfair competition; (ii) pecuniary damage represented by the drop in the sales revenue of its former employees hired outside the established period, by Respondent, and increase in the sales revenue of Respondent during the same time; (iii) loss of profits resulting from the unfair competition; and (iv) moral damages resulting from the harm to its image and reputation in the market.

2. A preliminary hearing was held, during which the Parties were granted the opportunity to settle the dispute, which didn't happened.

3. With respect to Claimant's claim for (i) indemnification for loss of profits, the Arbitral Tribunal decided that there were unequivocal evidence with respect to the migration of a relevant portion of the clients of Claimant to Respondent, which was new in the market, during the period of the dispute in question. Therefore, the Tribunal understood that such migration could not have been caused by change, but rather due to causation, as a result of the hiring of former employees of Claimant by Respondent. In addition, based on the calculations on the global volume negotiated by these clients, the Tribunal noted that the increase in the percentage of sales revenue of Respondent during the same period was quite relevant. For that reason, with respect to Claimant's claim for indemnification due to loss of profits, and after verification of specific data, the Tribunal resolved to adopt an average amount, resulting from the division of the global amount of the market movement on the stock exchange by the total number of orders carried out, finally reaching the amount corresponding to the loss of profits of Claimant in the period of the dispute. (ii) The claim for payment of moral damages made by Claimant was denied by the Arbitral Tribunal, because it understands that irrespective of the financial impacts, Claimant has stood tall during the adversities it faced in the market, recomposing its team in levels very similar to those of the time of the first adverse event. This having been said, the Party that has suffered moral damages was Respondent itself, by publicly exposing its action plans

to the market, revealing its conducts based on unfair competition, and not on the contractual good faith and on the ethical and professional principles.

4. Therefore, the Tribunal orders Respondent to (i) pay to Claimant indemnification for pecuniary damages suffered as a result of the facts discussed; (ii) pay to Claimant an amount corresponding to the loss of profits suffered by it; (iii) pay the total amount of costs resulting from the proceedings.

SUMMARY

(PUBLISHED IN THE 1st EDITION OF THE SUMMARY OF ARBITRAL AWARDS – 12.06.2018)

PRELIMINARY ARGUMENT OF LACK OF NEGOTIATIONS BEFORE INSTITUTION OF THE ARBITRATION, DUE TO NONCOMPLIANCE WITH CONTRACTUAL PROVISION AND, AS A CONSEQUENCE, LACK OF JURISDICTION OF THE ARBITRAL TRIBUNAL – EXISTENCE OF PEREMPTION TO OBTAIN CONTRACTUAL TERMINATION OR PRICE REDUCTION – SUBSIDIARY CLAIM FOR ACKNOWLEDGMENT OF LIABILITY FOR CONTRACTUAL GUARANTEES - PECUNIARY DAMAGES AND LOSS OF PROFITS.

Preliminary Argument: A condition of prior negotiations is not a mandatory preliminary act. The request for arbitration reveals that there are neither conditions to enter into negotiations nor any impediment for them to commence after institution of the proceedings. Contractual provision governing negotiations prior to institution of the arbitration does not affect the investiture of the arbitrators, whose duties are to analyze the preliminary argument claimed, which relates to the conduct of the Parties before institution of the arbitration proceedings. The Arbitral Tribunal has competent jurisdiction. Preliminary argument denied. Merits: (i) Pursuant to the head provision of article 445 of the Civil Code, the peremption term for return or deduction of the price for movable property is 30 days as from the date of delivery of the thing; in those cases in which the defect, due to its nature, cannot be noted immediately or in the short term set forth in the head provision, the term of paragraph 1 of article 445 is 180 days as from the time the interested party becomes aware of it, which term has not been observed.

Existence of peremption; (ii) Subsidiary claim for acknowledgment of liability for untrue statements. Although the nonconformities may have not been under the control of and known to the Party that has provided the representations, it is liable for the effects of the occurrence thereof, which it has the duty to indemnify, even if it has not acted intentionally or in bad faith, or even with fault in vigilando. It is a matter of strict liability, resulting from the contractual guarantee; (iii) Pecuniary Damages: since the alleged damages suffered have been offset against the return of its property by the adversary party, the claim for obtainment thereof cannot be granted; and (iv) Loss of Profits and Projection of Profits: differentiation: the first result from expectations generated in view of the results obtained in previous fiscal years, which allow one to expect that they remain equal or similar during a certain period in the future, provided the same conditions are maintained. The projection of profits is designed to guide the value of the business. If this projection is not met for reasons attributable to seller, the price may be reduced, because one of the elements of the assets has a value below that informed by seller. Acknowledgment that the transaction has been carried out based on projection of profits, which has assisted in the determination of the price of the shares, and not loss of profits. Claim denied.

CÂMARA DO MERCADO
ARBITRAGEM

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