

Split ICC panel sides with Libyan state entity

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08 March 2022



A refinery in a Libyan port town on the Mediterranean coast has produced a series of arbitrations (Credit: Shutterstock)

A divided ICC tribunal has ruled that Libya's national oil company can buy out its Emirati partner in a refinery venture – as a dissenting arbitrator complains of due process violations and says the award “deprives a bona fide investor of its investment”.

In an [award](#) on 21 February, tribunal chair **Hilary Heilbron QC** of the UK formed a majority with Argentina's **Horacio Grigera Naón** in rejecting claims brought by the UAE's Trasta Energy against Libya's National Oil Corporation (NOC) under a shareholders' agreement.

The majority found that NOC had validly triggered a call-option that would allow it to purchase Trasta's 50% stake in the Libyan Emirates Oil Refining Company (LERCO) – a joint venture that operates Libya's biggest refinery.

It also held that NOC can commence an expert procedure to determine the purchase price. NOC maintains the shares are worth only US\$1 because the refinery is unprofitable and has large liabilities.

Swiss arbitrator **Charles Poncet**, who was appointed by Trasta, refused to sign the award. In a [dissenting opinion](#), he said that the majority decision would have “drastic and deadly consequences” for the claimant.

Trasta, which is part of Dubai's Al Ghurair Group, was represented by Derains & Gharavi in Paris and Jordanian firm Bakr & Odeh. NOC used Curtis Mallet-Prevost Colt & Mosle. The arbitration was seated in Paris.

This is one of a series of ICC cases that have been filed over the Ra's Lanuf refinery in recent years. Trasta acquired its stake in 2008, investing US\$175 million in the project. However, the refinery closed down in 2013 in the wake of the revolution that ousted Mu'ammar Gaddafi and remains out of operation.

The latest ICC case arose after NOC sought to trigger a procedure to allow it to buy Trasta out of the venture because of shareholder deadlock. Trasta filed for arbitration in 2019, seeking a declaration that no shareholder deadlock had arisen and that it had not caused an event of default.

NOC brought a counterclaim to enforce the call option. The state entity also alleged that Trasta had improperly sought to replace NOC-nominated directors of the joint venture to influence board resolutions.

The state entity originally alleged fraud, corruption and conspiracy but its claim “ended up principally as an allegation of misconduct”, the tribunal observed, as there was “insufficient evidence” of fraud.

In its award, the majority held that NOC had validly appointed certain directors despite the absence of approval from Libya’s ministry of oil, and that the state entity had lawfully triggered the procedure to resolve a deadlock.

It found Trasta had committed an event of default by failing to hold shareholder meetings without justification for a 12-month period in 2018 and 2019, depriving NOC of its fundamental right to participate in the management of the joint venture. Trasta could not “benefit” from its own misconduct, it said.

Trasta also asked the tribunal to defer the expert determination on the value of its shares; or to set out the criteria that the experts should follow to determine the fair market value. However, the tribunal said it lacked jurisdiction to grant such relief.

The tribunal similarly declined jurisdiction over NOC’s counterclaim for a declaration that Trasta must transfer the shares once the expert process is completed.

It ordered Trasta to pay over US\$5.3 million for NOC’s legal, arbitration and other costs.

In his dissent, which he said was only his third in the past 35 years as an arbitrator, Poncet said the majority had failed to recognise the ICC case “as what it essentially is”: an attempt by NOC to take away Trasta’s shares “at a trifling cost to itself”.

He said the tribunal had not observed due process when it refused to allow Trasta to introduce new evidence last year. He also said the majority’s findings on the board appointments were reached with “ease – bordering on flippancy”.

He concluded that the award “embodies an injustice so conspicuous in my view that one cannot but abstain from participating in it”.

Poncet also says that his co-arbitrators would not commit to refrain from “answering” his dissent in the final award – and as a result he sent the opinion to the ICC secretariat, requesting that it be released only once the award was scrutinised and signed. Poncet eventually issued the dissent without the institution’s authorisation.

Last year, a French court [upheld the award](#) of another ICC tribunal that required LERCO to pay US\$116 million to NOC. At the same time, it annulled the tribunal’s decision to decline jurisdiction over other claims by LERCO worth US\$91 million plus interest.

Trasta has also brought a claim against Libya under the OIC Investment Agreement, [alleging](#) NOC has applied discriminatory crude oil prices to LERCO and permitted the “misuse” and looting of the refinery including to provide Gaddafi’s troops with crude during the revolution.

The UAE company also argues that, following the award by the Reiner tribunal, Libya has “redoubled its efforts to drive [its] investment into the ground”.

The OIC case is before a Paris-seated tribunal chaired by Switzerland’s **Pierre Tercier** of Peter & Kim and including **Laurent Aynès** of Darrois Villey Maillot Brochier in Paris and Argentine academic **Marcelo Kohen**.

Trasta is again represented by Derains & Gharavi in Paris and Jordanian firm Bakr & Odeh, while Eversheds Sutherland is acting for the state.

Trasta Energy Limited v. National Oil Corporation (ICC case no.24722/AYZ)

Tribunal

- **Hilary Heilbron QC** (UK) (chair)
- **Horacio Grigera Naón** (Argentine) (appointed by NOC)
- **Charles Poncet** (Switzerland) (appointed by Trasta)

Counsel to Trasta Energy

- Derains & Gharavi

Partners **Hamid Gharavi** and **Nada Sader**, senior counsel **Thomas Bevilacqua** and associate **Alexia Descombes** in Paris

- Bakr & Odeh



Partners **Aiman Odeh** and **Firas Bakr** in Amman

Counsel to NOC

- Curtis Mallet-Prevost Colt Mosle

Partners **Joseph Pizzurro**, **Matias Vega** and **Robert García** and counsel **Mohannad El-Murtadi** in New York

Documents

Dissenting opinion by Charles Poncet	
ICC majority award	

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