

**In the name of God the most Merciful, the most Compassionate**

On behalf of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Ruler of Dubai, Court of Cassation

In the public session held on Tuesday, October 24, 2023 at the headquarters of the Court of Cassation in Dubai

Headed by Judge Abdel Qader Moussa Mohamed, Chairman of the Circuit, and the membership of Judge Ali Ahmed Shaltout, member of the Circuit, Judge Mahmoud Abdel Hamid Tantawi, member of the Circuit, Judge Mohamed Mohamed Morsi Hussein, member of the Circuit, Judge Ahmed Mohamed Ali Mohamed Amer, member of the Circuit, Judge Saad Mohamed Saeed Ali Zewail, member of the Circuit, and Judge Yahya Al-Tayeb Abu Shoura, member of the Chamber and Judge Mustafa Mahmoud Al-Sharqawi, member of the circuit

**Resolution No. 10 of 2023 General Assembly Decisions - Cassation  
Issued the following judgment**

After reviewing the papers and deliberation.

Whereas the facts - as shown by the previous rulings issued by the Court of Cassation regarding the lapse of the arbitration clause and all other papers - conclude that the Technical Office of the Court of Cassation submits to the General Secretariat of the Court a request to consider the order to reverse the principle of law approved by the Court of Cassation previous rulings regarding that the decision of the DIAC to close the case file for non-payment of arbitration costs entails the arbitration clause shall lapse because the purpose of the arbitration has expired because it cannot be continued and therefore the Respondent has the right to resort to the judiciary to claim what he claims to be that the decision of the DIAC to close the lawsuit file for non-payment of arbitration costs does not entail the lapse of the arbitration clause and does not deduce from it any waiver of the arbitration clause, which leads to the fact that it is not required by the purpose of the arbitration and therefore the Respondent is entitled to any resort to the judiciary to claim what he claims, and does not prevent any of the parties from re-submitting the lawsuit or the center and paying on the arbitration the share of the parties in the costs of arbitration and asking the arbitral tribunal to oblige the other party to pay them. It was considered that this matter should be referred before the arbitral tribunal to the General Assembly of the Court of Cassation for consideration. Whereas, by discussing this issue in the light of Federal Law No. (6) of 2018, this law after the stipulation of Article (45), paragraph 1, that the arbitration procedures shall end with the issuance of the judgment ending the entire dispute from its implementation. Article 54, paragraph 4 thereof, states that unless otherwise agreed by the parties, the arbitration agreement shall remain valid in accordance with the provisions of the annulment of the arbitral award, unless the annulment is based on the absence of the agreement itself, its lapse, its invalidity or the impossibility of the effect that the arbitration agreement remains the same even after the arbitral award is set aside, i.e. the exclusion of the jurisdiction of the state courts as long as the arbitration agreement is concluded. It is true and contrary to that, whether or not the arbitration agreement shall lapse before the arbitration itself begins without the clear will of the parties as long as it is not a judgment terminating the litigation shall be issued.

### **For these reasons**

The General Assembly of the Court of Cassation unanimously decided to reverse what the court had followed previous rulings of the fall of the arbitration clause with the issuance of the decision of the DIAC to close the case file for non-payment of arbitration costs and to adopt the principle that the decision not to conduct the arbitration file and close the case file for non-payment of arbitration costs as long as no arbitration award is issued ending the litigation does not result in the fall of the arbitration clause and does not deduce from it the waiver of the arbitration clause, which does not prevent either party from repeating introducing the Center either party may invoke the arbitration clause before the courts.

Signature

Judge / Abdul Qader Mousa Mohammed

Signature

Judge / Mahmoud Abdel Hamid Tantawi

Signature

Judge / Ahmed Mohamed Ali Mohamed Amer

Signature

Judge / Yahya Al-Tayeb Abu Shoura

Signature

Judge / Mustafa Mahmoud Al-Sharqawi

Signature

Judge / Ali Ahmed Shaltout

Signature

Judge / Mohamed Mohamed Al-Mursi Hussein

Signature

Judge / Saad Mohammed Saeed Ali Zewail

The body indicated in the issuance of this judgment is the one that heard the pleading, reserved the case for judgment, issued the judgment and signed it. The body formed is according to the minutes of the hearing of its pronouncement.

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This document was prepared by Galadari Advocates & Legal Consultants.