

## **Corte d'Appello di Milano [Court of Appeal of Milan], decision No. 2528, 10 June 2019**

Parties: Claimant: S.C. Elisolar Srl (Romania)  
Respondent: Toshiba Transmission & Distribution Europe SpA (Italy)

Subject matters: setting aside of award on ground of error of law

### **Headnote**

**The Court of Appeal of Milan rejected the request for setting aside of an award on the ground of an error of law applicable to the merits finding that the arbitration agreement did not so provide.**

### **Summary**

#### **Facts of the case**

In 2013 a Romanian company (Elisolar) and an Italian one (Toshiba) entered into a contract pursuant to which Elisolar assigned to Toshiba the construction and installation of a photovoltaic power station in Romania. The contract established a mechanical completion to be provided by Toshiba within a given deadline that the parties then agreed to postpone. Despite the new arrangements, Elisolar never paid the agreed amount. In accordance with the arbitration clause contained in the original contract, Toshiba initiated arbitration proceedings against Elisolar before the Milan Chamber of Arbitration. The final award was rendered in favor of Toshiba, thereby ordering Respondent to pay the agreed sum of money. Elisolar then challenged the award with the Court of Appeal of Milan – as Milan was the seat of the arbitration – alleging a violation of the rule of law by the arbitral tribunal.

#### **Arguments of the Parties**

Elisolar requested the Court to declare the nullity of the award pursuant to Article 829, Para. 3 of the Italian Code of Civil Procedure (ICCP), according to which an award can be set aside for a violation of the applicable rule of law related to the merits of the dispute (error of law) whenever such a ground for challenge is expressly agreed by the parties or provided by law (“opt-in solution”). Accordingly, Elisolar argued that the provision included in the arbitration agreement (which provided “[...] The decision made by Arbitration shall be final and binding for the Parties, *except for the refutations that may be allowed by the law.* [Emphasis added]” was to be interpreted as an expressed consent of the parties to the revision of the merits underlying the award. On the other hand, Toshiba objected to any such interpretation of the arbitration agreement, submitting that no consent to a revision of the award was ever agreed upon by the parties.

## **Judgment of the Court**

In its reasoning the Court referred to the Italian Supreme Court case law, according to which a narrow approach shall be applied to Article 829, Para. 3 ICCP, thus preventing any challenge to the set an arbitral award aside unless the parties have expressly and unequivocally agreed thereto. In the case at hand, the Court found that the arbitration agreement could not be interpreted in the sense of providing the unequivocal parties' consent to the review of the law applicable to the merits of the award. Consequently, lacking any such an agreement, the Court dismissed the challenge.