

Arbitration and insolvency proceedings

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The contract for the purchase and sale of goods between a Swiss trader and an Italian company under extraordinary administration included an arbitration clause referring disputes to the London Court of International Arbitration. A dispute arose and three arbitral awards were granted. The Swiss trader sought recognition of such awards in Italy pursuant to Article 839 of the Italian Code of Civil Procedure.

The Italian company filed an objection, invoking Article 840, paragraph 5, no. 1, Italian Code of Civil Procedure. They argue that the fact that the extraordinary administration proceedings were pending precluded the submission of the dispute to arbitration, insofar as all disputes had to be submitted to the Court of Milan, as the court having declared its state of insolvency.

This argument was rejected by the Court of Appeal of Milan. Given that there is no absolute incompatibility between insolvency proceedings and arbitration, the Court noted that, just as a receiver who takes over a contract containing an arbitration clause is bound by such clause, the same must apply, a fortiori, if the contract containing

the arbitration clause was already entered into in the context of pending bankruptcy proceedings.

The Court of Appeal added that its conclusion does not violate the principle of equal treatment, since the arbitration decision can be enforced in accordance with such principle.



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