UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AMADEUS IT GROUP, S.A.,	
Petitioner,	CIVIL ACTION NO.
v.	1:22-CV-4109-SEG
EBIX, INC.,	
Respondent.	

ORDER

This case is before the Court on the Petition to Confirm Foreign Arbitration Award of Petitioner Amadeus IT Group, S.A. ("Amadeus"). (Doc. 1.) Amadeus asks the Court to confirm an arbitration award rendered in Paris, France, in its favor and against Respondent Ebix, Inc. ("Ebix") on February 17, 2022. Ebix opposes confirmation of the award, primarily on the grounds that the arbitral tribunal exceeded its authority by awarding costs and fees to Amadeus. (Doc. 24.) Having considered the parties' positions and the applicable law, the Court finds Ebix's position to be without merit, and it confirms the award.

I. Background

This is an action under 9 U.S.C. § 207 to confirm an arbitral award rendered in international commercial arbitration proceedings between

Amadeus IT Group, S.A.; Ebix, Inc.; and non-party EbixCash Private Limited ("EbixCash"). Amadeus is a Spanish entity with its principal place of business in Madrid. (Doc. 1-1 ¶ 1.) Ebix is a Delaware corporation with its principal place of business in Johns Creek, Georgia. (*Id.* ¶ 2.) EbixCash is based in India. (*Id.* ¶ 9.)

On October 1, 2019, these three entities entered an agreement (the "Global Agreement") under which Ebix was to serve as a guarantor in the event of EbixCash's "default or failure to perform" certain obligations. (Doc. 1-1 at 5, 20; *see also* Doc. 1 ¶ 11; Doc. 24 at 2.) Paragraph 9.4 of the Global Agreement is an arbitration clause, which the Court reprints here in full:

> **9.4. Arbitration.** As between the Parties, any question concerning the existence, validity, or termination of this Agreement, and any other dispute arising out of or relating to this Agreement, that cannot be resolved by agreement between the Parties shall be finally settled by arbitration according to the ICC Rules and the following:
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> 9.4.1 The number of arbitrators shall be three. Each Party shall nominate one arbitrator, who shall be a lawyer in good standing in England and Wales, for confirmation by the ICC. If a Party fails to nominate an arbitrator within the time period specified by the ICC Rules, the ICC Court of Arbitration shall appoint an arbitrator for that Party. The arbitrators nominated by (or on behalf of) the Parties shall, within 21 days after their confirmation by the ICC Court of Arbitration, agree on a third arbitrator who shall act as the chairman failing which the third arbitrator shall be appointed by the President of the ICC Court of Arbitration (or his designee) within 21 days of a request by a Party.

> 9.4.2 Any expert called by a Party to offer testimony must provide to the other Party, at least 30 days prior to the date of such hearing: (i) any documentation that will be relied upon to formulate the opinion of the expert; and (ii) any exhibits, reports or calculations the expert intends to present at any hearing.
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> 9.4.3 No paper discovery will be permitted and no depositions may be ordered unless otherwise agreed in writing by the Parties.
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> 9.4.4 The language of the arbitration shall be English.
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> 9.4.5 The decision of the arbitrators shall be final, conclusive and binding on the Parties. Any court or authority of competent jurisdiction may enforce any award rendered by the arbitrators.
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> 9.4.6 The place of the arbitration shall be Paris, France.
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> 9.4.7 Any monetary award shall be denominated in Euro.
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> 9.4.8 The arbitrators shall be strictly bound to follow the terms and conditions of this Agreement including, but not limited to, all warranty disclaimers and limitations of liability provided herein.

(Doc. 1-1 at 15-16.)

This clause was put to work when Amadeus commenced arbitration proceedings under the Global Agreement against Ebix and EbixCash on September 8, 2020. (Doc. 1 ¶ 18.) The final arbitration award ("the Award") indicates that Ebix and EbixCash answered in the arbitral proceedings on November 5, 2020, that the matter was litigated through about the end of 2021, and that the arbitral tribunal rendered the Award on February 17, 2022. (Doc. 1-1 at 2, 70–75.) The tribunal found that Ebix was liable "on a joint and several

basis with [EbixCash]": (1) to pay Amadeus €12,061,814, "plus interest on such amount at 2% per annum above the three-month Euribor rate from 14 June 2020 until full payment," (2) to pay Amadeus €465,045 for Amadeus' "legal and other costs incurred in this arbitration," and (3) to pay Amadeus €187,335 in compensation of the amount it paid to the International Chamber of Commerce ("ICC") for the costs of the arbitration. (Doc. 1-1 at 156–57.) The tribunal ordered payment of the award within 14 days of the date of its award. (*Id.* at 157.)[1]

Amadeus prays that this Court enter judgment confirming the Award pursuant to 9 U.S.C. § 201, *et seq.*, and granting Amadeus other just and proper relief, including the fees and costs it incurred in litigating this confirmation action. (Doc. 1 at 8.)

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[1] Along with its petition, Amadeus filed both the Global Agreement and the Award as attachments to an authenticating declaration of Jayne Bentham, Amadeus' counsel in the arbitration proceeding. (Doc. 1-1 at 2–3; *see generally* Doc. 1-1.) Although Ebix's response to the Amadeus' petition contains the generic assertion that Ebix "objects to each and every assertion of fact and law that Amadeus sets forth in the Petition," Ebix does not actually dispute the authenticity of the Global Agreement or the Award. (Doc. 24 at 2.) On the contrary, Ebix acknowledges that it was "party to the [Global] Agreement solely as EbixCash's guarantor" and that Amadeus obtained the Award "in Paris, France, on February 17, 2022 against Ebix and EbixCash Private Limited, formerly Ebix Software India Private Limited." (*Id.* at 2, 1.)

II. Legal Standard

The United States is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also called the New York Convention. *See* Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 4739. Chapter 2 of the Federal Arbitration Act ("FAA") implements the Convention. 9 U.S.C. §§ 201 *et seq.*; *see Corporacion AIC, SA v. Hidroelectrica Santa Rita S.A.*, 66 F.4th 876, 880 (11th Cir. 2023). Under the FAA, federal district courts have original jurisdiction over actions "falling under the Convention." 9 U.S.C. § 203.

One of the actions "falling under the Convention" is an action for "confirmation" of "an arbitral award falling under the Convention."[2] 9 U.S.C. § 207. On this score, the FAA provides as follows:

> Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

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[2] The other cause of action under the Convention—not relevant here—is "an action to compel arbitration pursuant to an arbitration agreement falling under the Convention." *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1290–91 (11th Cir. 2004) (citing 9 U.S.C. § 206).

Id. To confirm an arbitral award falling under the Convention is to recognize the validity of the award and to enforce it by converting the award to a legal judgment. *See Corporacion AIC*, 66 F.4th at 882; *see also LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 875 (D.C. Cir. 2021) ("Confirmation [under 9 U.S.C. § 207] is the process by which an arbitration award is converted to a legal judgment").

To establish a "prima facie case for confirmation of the award," the party seeking confirmation need only meet the prerequisites of Article IV of the Convention; that is, the party must provide the Court with the original arbitration agreement and arbitral award or certified copies thereof. *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1292 n.3 (11th Cir. 2004) (citation omitted); New York Convention, art. IV. Once this has been done, "the award is presumed to be confirmable." *Czarina*, 358 F.3d at 1292 n.3. The district court then "must confirm the arbitral award unless a party 'successfully assert[s] one of the seven defenses against enforcement of the award enumerated in Article V of the [Convention].'" *Cvoro v. Carnival Corp.*, 941 F.3d 487, 495 (11th Cir. 2019) (quoting *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1441 (11th Cir. 1998)); *see* 9 U.S.C § 207. The party opposing enforcement of the award has the burden of proving any of the enumerated defenses. *See id.*

"Confirmation under the Convention is a summary proceeding in nature, which is not intended to involve complex factual determinations, other than a determination of the limited statutory conditions for confirmations or grounds for refusal to confirm." *Chelsea Football Club Ltd. v. Mutu*, 849 F. Supp. 2d 1341, 1344 (S.D. Fla. 2012) (quoting *Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007)). "The Federal Arbitration Act presumes that arbitration awards will be confirmed, and judicial review of an arbitration award is narrowly limited." *AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc.*, 508 F.3d 995, 999 (11th Cir. 2007) (citation omitted). The Supreme Court has said that there is an "emphatic federal policy in favor of arbitral dispute resolution" that "applies with special force in the field of international commerce." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985).

III. Discussion

Ebix's opposition to Amadeus' petition raises only one of the seven defenses to recognition and enforcement permitted by Article V of the Convention. Specifically, Ebix argues that this Court should refuse to confirm the Award in whole or in part because "it contains decisions on matters beyond

the scope of the submission to arbitration." New York Convention, art. V(1)(c).[3] The Award exceeds the scope of the arbitrable issues, according to Ebix, because the arbitral tribunal awarded certain costs and fees to Amadeus without the Global Agreement's explicit authorization of fee or cost shifting. Ebix also argues that Amadeus is not entitled to recover attorney fees and costs in *this* action, a matter that the Court considers at the conclusion of its order.[4]

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[3] Article V(1)(c) of the New York Convention provides in full:

> 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
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> . . .
>
> (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.

[4] A footnote in Ebix's opposition also asserts that "Amadeus failed to name an indispensable party to this action" because it did not name EbixCash as a defendant. (Doc. 24 at 1 n.1.) Ebix explains that because "Ebix is party to the Agreement solely as EbixCash's guarantor," and "only a portion of the underlying Arbitration Award pertains to Ebix . . the Court cannot provide complete relief without the addition of EbixCash as a party to this matter." (*Id.*) Ebix cites no authority in support of this position, and its argument is without merit. First, while it is true that some portion of the arbitral award pertains only to EbixCash, Amadeus' petition seeks a judgment only in the amount for which the arbitral tribunal found Ebix itself liable "on a joint and several basis" with EbixCash. (Doc. 1-1 at 156–57.) Second, the absence of other parties to an arbitral award is not one of the enumerated grounds for

A. Whether the Award Contains Decisions on Matters Beyond the Scope of the Submission to Arbitration

Ebix contends that the Award decided matters beyond the scope of the submission to arbitration because "it imposes on Ebix 'legal and other costs incurred in this Arbitration' and the 'ICC [ ] costs of this Arbitration.'" (Doc. 24 at 2–3) (quoting Doc. 1-1 at 156) (alteration in original). The Global Agreement's arbitration clause contains no reference to fee or cost shifting, and one of its terms provides in part that "arbitrators shall be strictly bound to follow the terms and conditions of this Agreement[.]" (Doc. 1-1 at 16.) Thus, Ebix's argument is, in essence, that because no term in the arbitration agreement expressly authorizes fee or cost shifting, such matters should be considered "beyond the scope of the submission to arbitration" under Article V(1)(c) of the New York Convention.

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refusing confirmation under Article V of the Convention. *See* New York Convention, art. V. Finally, Chapter 2 of the FAA provides that a party to an arbitral award may apply for "an order confirming the award *as against any other party* to the arbitration." 9 U.S.C. § 207. By its terms, then, the FAA allows confirmation actions against "any other party." It does not indicate that all parties to an award must be joined in the confirmation action. A contrary rule would likely present a serious impediment to enforcement of arbitral awards under the Convention; international commercial arbitration can be expected to involve parties of diverse nationality who might not all be subject to personal jurisdiction in the courts of a single country.

Amadeus responds that, although the Global Agreement contains no explicit reference to the award of the costs or fees of arbitration, the agreement does provide for arbitration "according to the ICC Rules[.]"[5] (Doc. 1-1 at 15.) Article 38 of the ICC Rules of Arbitration provides, in relevant part, that "[t]he final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties." Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"), art. 38, ¶ 4 (March 1, 2017).[6] The same article defines "costs of arbitration" as follows:

> The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scales in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.

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[5] In its reply to Ebix, Amadeus also argues that the award of fees and costs was not beyond the scope of the matters submitted to arbitration (1) because English law, which governed the Global Agreement (*see* Doc. 1-1 at 20), authorizes such awards, and (2) because Ebix waived the issue by failing to contest the tribunal's authority to award fees and costs during the arbitration proceedings themselves. (*See* Doc. 28 at 8–10.) Because the Court agrees that the ICC Rules authorized the tribunal to award fees and costs, the Court has no occasion to reach these other arguments.

[6] These rules are available at https://library.iccwbo.org/content/dr/RULES/RULE_ARB_2017_EN_38.htm?l1=Rules&l2=Arbitration+Rules.

Id. ¶ 1.

It is established that incorporating arbitral rules into an arbitration agreement can represent agreement to those rules. For example, in *Terminix*, the parties' arbitration agreement provided that their "arbitration shall be conducted in accordance with the Commercial Arbitration Rules then in force of the American Arbitration Association [AAA]." *Terminix Intern. Co., LP v. Palmer Ranch Ltd. Partn.,* 432 F.3d 1327, 1332 (11th Cir. 2005). The Eleventh Circuit held that, by including this term, the parties had "incorporat[ed] the AAA Rules . . . into their agreement." *Id.* One of the AAA Rules of Arbitration grants the arbitrator "the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement." *Id.* Thus, the fact that the parties incorporated this rule into their agreement showed that they had "clearly and unmistakably agreed" that the arbitrator would have the power to decide whether their arbitration agreement was valid. *See id.*[7] In other words, a clear rule,

[7] Normally, the question of whether a dispute is arbitrable is one for a court, rather than an arbitrator, "unless there is clear and unmistakable evidence" that the parties agreed to submit the issue of arbitrability to the arbitrator. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 939 (1995) (quotations and alterations omitted). Thus, in *Terminix*, the Eleventh Circuit held that incorporation of the above-quoted rule constituted such clear and unmistakable evidence. *See also Contec Corp. v. Remote Sol., Co., Ltd.*, 398 F.3d 205 (2d Cir. 2005) ("[W]hen, as here, parties explicitly incorporate rules

incorporated into an arbitration agreement by reference to a specific body of rules that shall govern the arbitration, can indicate agreement to submit even the issue of arbitrability itself to the arbitrator.

What holds for this most fundamental issue should also hold for the question of fee and cost shifting. Although no reported decision of the Eleventh Circuit has addressed an argument like Ebix's in the context of international arbitration, the court did reject a comparable argument. *Fowler v. Ritz-Carlton Hotel Co., LLC*, 579 F. App'x 693, 699 (11th Cir. 2014). There, the plaintiffs—the losing parties in an arbitration with their employer—contended "that the arbitrator exceeded her authority by awarding costs and attorney's fees." *Id.* The Eleventh Circuit rejected the argument because "the AAA rules (which were incorporated by the agreement) explicitly allow the arbitrator to award attorney's fees and costs)," and because the arbitration agreements authorized the arbitrator to award "whatever remedies are allowed by law." *Id.* While the latter language does not appear in the Global Agreement's arbitration clause, the clause does not limit the parties' remedies. And, like the *Fowler*

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that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator."); *Apollo Computer, Inc. v. Berg*, 886 F.2d 469 (1st Cir. 1989) (holding the same with respect to an agreement that incorporated the ICC Rules of Arbitration).

agreement, the Global Agreement incorporates the ICC Rules, which allow fee and cost shifting.

District courts around the country, faced with challenges to arbitral awards of fees and costs, have also rejected such challenges where incorporated rules of arbitration explicitly permit such awards. In *ESCO Corp. v. Bradken Resources Pty Ltd.,* for example, the District of Oregon considered a challenge to the award of fees and costs by an arbitral tribunal constituted under the ICC Rules to hear an antitrust dispute. *See ESCO Corp. v. Bradken Resources Pty Ltd.*, No. CV-10-788-AC, 2011 WL 1625815, at *12–*13 (D. Or. Jan. 31, 2011), *report and recommendation adopted*, No. CV-10-788-AC, 2011 WL 1630355 (D. Or. Apr. 27, 2011). The plaintiffs contended that the award of fees and costs violated public policy, for U.S. antitrust law generally does not permit the award of fees and costs to a prevailing party. *See id.* The court rejected this argument, reasoning that the parties had agreed to arbitrate pursuant to the ICC Rules, which "provide[ ] the arbitrator the authority to award attorneys fees and costs." *Id.* at *12. Other district courts, faced with comparable arguments, have reached comparable conclusions. *See F. Hoffmann-La Roche Ltd. v. Qiagen Gaithersburg, Inc.*, 730 F. Supp. 2d 318, 330–31 (S.D.N.Y. 2010); *Willbros W. Africa, Inc. v. HFG Engr. US, Inc.*, No. CV-H-08-2646, 2009 WL 411565, at *5–*6 (S.D. Tex. Feb. 12, 2009).

As noted above, Ebix points to language in the Global Agreement's arbitration clause providing that "arbitrators shall be strictly bound to follow the terms and conditions of this Agreement." But this does not undercut the parties' clear choice to incorporate the ICC Rules. (Doc. 1-1 at 16.) If anything, it affirms it, for one of the terms of the agreement was that the parties would arbitrate their disputes "according to the ICC Rules[.]" (Doc. 1-1 at 15.) Nor is there any ambiguity in Article 38 of the ICC Rules: the arbitral tribunal was empowered to allocate the "costs of arbitration," including the parties' legal costs, among the parties as part of its final award. *See* ICC Rules, art. 38. The Court therefore has little doubt that the parties agreed to Article 38 along with the rest of the ICC Rules when they agreed to arbitrate "according to" those rules. To the extent that any doubt might exist, the Supreme Court has said that "any doubts concerning the scope of arbitrable issues—that is, doubts over whether an issue falls within the ambit of what the parties agreed to arbitrate—should be resolved in favor of arbitration." *JPay, Inc. v. Kobel*, 904 F.3d 923, 929 (11th Cir. 2018) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983)).

Ebix, in prior briefing in opposition to Amadeus' motion for default judgment,[8] offered two cases in support of its position that the matter of fee or cost shifting was beyond the scope of the submission to arbitration, despite Article 38 of the ICC Rules. (*See* Doc. 17 at 14–15 & n.1.) Neither compels a different result. *Parsons & Whittemore Overseas Co., Inc. v. Societe Generale De L'Industrie Du Papier (RAKTA)*, 508 F.2d 969, 976-77 (2d Cir. 1974), supports Amadeus' position, not Ebix's. In that case, the Second Circuit *rejected* an attack on an ICC arbitral tribunal's award of fees on grounds similar to those advanced by Ebix here. *See id.* (reasoning, in part, that "contrary to Overseas' representations, these guidelines [contained in the Guide to ICC Arbitration] do not require, as a pre-condition to an award of

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[8] Ebix's opposition to Amadeus' confirmation petition contains no case citations at all in support of Ebix's position regarding the award of fees and costs. (*See* Doc. 24.) While previously in default, Ebix filed this opposition brief as an attachment to its motion for leave to file opposition out of time. (Doc. 13.) That filing concludes as follows: "Ebix respectfully requests the opportunity to more fully set forth the relevant facts and its defenses in this matter. Ebix reserves all rights and defenses." (Doc. 24 at 5.) Similarly, Ebix's motion for leave to file opposition out of time suggested that its opposition "may be supplemented as Ebix's investigation into this matter continues." (Doc. 13 at 1.) The Court subsequently found that Ebix had shown good cause to set aside its default, and it directed the Clerk to file Ebix's proposed opposition on the docket. (Doc. 23.) Since then, however, Ebix has taken no action at all to supplement its briefing or to "more fully set forth the relevant facts and defenses in this matter," as it suggested it would like to do. More than two months have now passed since the Court set aside Ebix's default, and about six weeks have passed since Amadeus filed its reply to Ebix's opposition. (Doc. 28.)

expenses, express authority for such an award in the arbitration clause"). And *Ceco Concrete Const., a Div. of Robertson-Ceco Corp. v. J.T. Schrimsher Const. Co., Inc.*, 792 F. Supp. 109, 111 (N.D. Ga. 1992), simply says that "[i]n proceedings under the Federal Arbitration Act, an arbitration award lawfully may include an award of attorneys fees if the underlying agreement between the parties so provides." *Id.* It does not say that the agreement must so provide. Ebix has shown the Court no authority to this effect.

Thus, this Court finds that the arbitral tribunal did not decide matters "beyond the scope of the submission to arbitration," New York Convention, art. V(1)(c), when it awarded Amadeus €465,045 for its "legal and other costs incurred in this arbitration" and, in addition, €187,335 in compensation of the "amount Amadeus has paid to the ICC for costs of the arbitration." (Doc. 1-1 at 156.)

This being the only ground on which Ebix challenged the confirmation of the Award, the Court finds that the Award should be confirmed. Judgment will be entered accordingly.

B. Amadeus' Request for Attorney Fees

Ebix also opposes Amadeus' request that this Court award attorney fees and litigation costs to Amadeus in this confirmation action. Absent a statutory authorization or the parties' agreement to the contrary, "[t]he general rule in

our legal system is that each party must pay its own attorney fees and expenses." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550 (2010). As Ebix points out, neither the FAA nor the New York Convention specifically authorize the award of attorney fees to a party that successfully applies to confirm an arbitral award. *See Menke v. Monchecourt*, 17 F.3d 1007, 1009 (7th Cir. 1994); *Bamberger Rosenheim, Ltd. v. OA Dev., Inc.*, No. 1:15-CV-04460-ELR, 2018 WL 6137615, at *2 (N.D. Ga. Aug. 23, 2018); *Shop Teks Equip. Specialists, Inc. v. NorAm, Inc.*, No. 1:12-CV-02378-CC, 2014 WL 12699274, at *3 (N.D. Ga. Oct. 27, 2014). Nor does the Global Agreement contemplate the award of such fees. (*See* Doc. 1-1 at 5–55.)

Nevertheless, courts have sometimes awarded attorney fees as a sanction in confirmation actions. In *Hercules Steel*, the Eleventh Circuit provided "notice" that it was "exasperated by those who attempt to salvage arbitration losses through litigation that has no sound basis in the law applicable to arbitration awards." *B.L. Harbert Intern., LLC v. Hercules Steel Co.*, 441 F.3d 905, 914 (11th Cir. 2006), *abrogated on other grounds by Frazier v. CitiFinancial Corp.*, 604 F.3d 1313 (11th Cir. 2010). The Circuit suggested that "it may be that we can and should insist that if a party on the short end of an arbitration award attacks that award in court without any real legal basis for doing so, that party should pay sanctions." *Id.* at 913. In unpublished

decisions, the Eleventh Circuit has since affirmed attorney fee awards rendered by district courts pursuant to *Hercules Steel*. *See, e.g., Inversiones y Procesadora Tropical INPROTSA, S.A. v. Del Monte Int'l GmbH*, 783 F. App'x 972, 973 (11th Cir. 2019) ("*Hercules Steel* held that courts have inherent authority to sanction parties who pursue frivolous challenges to arbitration awards in the court system."); *see also Bamberger Rosenheim*, 2018 WL 6137615 at *2 ("[B]ecause a court may, in the exercise of its inherent equitable powers, award attorney's fees when opposing counsel acts in bad faith, attorney's fees and costs may be proper when a party opposing confirmation of arbitration award refuses to abide by an arbitrator's decision without justification.").

Amadeus has taken the position that it is entitled to attorney fees on this basis—essentially as a sanction for what it characterizes as Ebix's bad faith conduct—rather than as a matter of statutory or contractual right. The Court expresses no opinion as to whether Amadeus might be entitled to attorney fees on this basis, but the Court declines to make the requisite finding of bad faith based solely on the petition and the related briefing. If Amadeus wishes to seek fees and costs from Ebix, it may do so by a separate, well-supported motion, pursuant to Rule 54 of the Federal Rules of Civil Procedure and Local Rule 54.2 of this Court. *Cf. Inversiones y Procesadora Tropical INPROTSA*,

783 F. App'x 972 (affirming, under *Hercules Steel*, an appeal from a district court's grant of a motion for attorney fees by petitioner in confirmation action); *see also Inversiones y Procesadora Tropical Inprotsa, S.A. v. Del Monte Int'l GMBH*, No. 16-24275-CV, 2018 WL 8369147 (S.D. Fla. Sept. 4, 2018), *report and recommendation adopted*, No. 16-24275-CIV, 2018 WL 8369103 (S.D. Fla. Sept. 25, 2018), *aff'd*, 783 F. App'x 972 (11th Cir. 2019) (granting post-judgment motion for attorney fees pursuant to *Hercules Steel*). Setting forth the attorney fees request in a separate motion will also ensure that Ebix has the opportunity to respond directly to the precise legal and factual arguments advanced by Amadeus on this score, as well as to properly contest the amount of fees sought.[9] Any such motion should comply with the timing and other requirements of Rule 54(d) of the Federal Rules of Civil Procedure and Local Rule 54.2.

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[9] Consolidation of the sanctions request into a separate motion is further justified by the state of the record in this case. At present, the ostensible factual and legal grounds for Amadeus' request for attorney fees are spread between its briefing on the motion for default judgment—which the Court has since denied—and its reply to Ebix's opposition to the petition for confirmation. This reply memorandum, which contains Amadeus' first citation to *Hercules Steel*, does not cite any of the factual matter attached to the motion for default judgment.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Amadeus' petition (Doc. 1) and **ORDERS** that the arbitration award (Doc. 1-1 at 57–157) handed down on February 17, 2022, is confirmed.

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, the Court will issue a separate final judgment in this action conforming to its order.

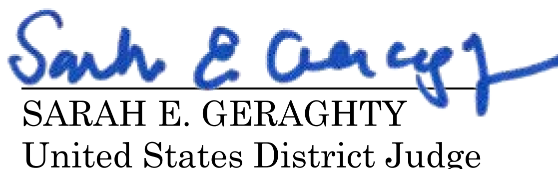
Before it does so, however, the Court requires clarification on one matter. In particular, the Court is concerned that there may be a discrepancy between the award language requested in Amadeus' briefing and the value set forth in the arbitral award itself. In its reply memorandum, Amadeus calculates the total amount of the award by adding the three Euro-denominated components together—the main award, the award of the costs of arbitration paid to the ICC, and the award of legal and other costs. (Doc. 28 at 15–16.) Then, converting the total amount to dollars, it states the total award as follows: "US $14,456,038.58, plus interest on such amount at 2% per annum above the three-month Euribor from the date of the Award (February 17, 2022) until the date of full payment."[10] (*Id.* at 16.) However, neither Amadeus' petition nor

[10] Amadeus correctly states that the proper exchange rate is that in effect on February 17, 2022, the day the Award was handed down. *See EGI-VSR, LLC v. Coderch Mitjans*, 963 F.3d 1112, 1123 (11th Cir. 2020).

the Award itself indicates that the stated interest rate is to be applied to the costs and fees portion of the award. (*See* Doc. 1 ¶ 25; Doc. 1-1 at 156-57.) It is, therefore, unclear to the Court whether the judgment should indicate that the specified rate of interest is applicable to the total sum of the award—as Amadeus reply brief suggests—or whether the judgment should separate the main award from the costs-and-fees components and indicate that the interest rate is applicable only to the former. If the components of the award do need to be separated, Amadeus will need to supply the Court with separate Euro-to-dollar conversions for each component of the award.

Thus, Amadeus is **DIRECTED** to file **within seven days** a notice on the docket (1) addressing the concerns described in the preceding paragraph and (2) proposing language for the judgment. The notice should not exceed three pages. Ebix may respond to this notice **within seven days** of Amadeus' filing of the notice. Any response should not exceed three pages. Once this matter is resolved, the Court will direct the entry of judgment accordingly.

SO ORDERED this 21st day of June, 2023.



SARAH E. GERAGHTY
United States District Judge