GAD No.:	GAD 2026, 19	**Decision date:**	29 May 2026	**Res judicata:** No, complaint pending
Court:	Higher Regional Court of Frankfurt am Main (OLG Frankfurt)			
Case No. :	32 Sch 12/25 Case No.(s) other instances (pending): I ZB 46/26 (German Federal Court of Justice, BGH) Prior proceedings: 26 Sch 14/18 (OLG Frankfurt); I ZB 11/20 (BGH)			
Keywords:	Domestic arbitral award, application to have an arbitral award set aside, need for legal protection, public policy, right to be heard, révision au fond, causality, severe procedural error, remand to the arbitral tribunal			
Key legal provisions:	Section 1059(2) No 2 lit b, Section 1059(4) German Code of Civil Procedure (ZPO)			

In the interest of procedural efficiency, the Higher Regional Court of Frankfurt am Main confirms that a case may be suitable for remand even when several procedural deficiencies have been identified

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By order dated 29 May 2026, the Higher Regional Court of Frankfurt am Main (OLG Frankfurt) set aside an arbitral award due to breaches of the right to be heard – the second successful set-aside proceedings in a dispute spanning more than 20 years. The OLG Frankfurt held that these breaches were closely related, consequential errors and therefore not sufficiently grave to preclude remand to the same arbitral tribunal.

Facts

Since the contribution in kind of a business division to a company that became insolvent shortly thereafter, the parties have been in dispute for more than two decades. The insolvency administrator claims compensation for the difference between the alleged actual value of the contribution in kind and the nominal amount of the share acquired in return. On the opposing side are the contributing party and other entities.

Having been unsuccessful in a first arbitration, the insolvency administrator had the award set aside for a violation of the right to be heard (see OLG Frankfurt, 16 January 2020, 26 Sch 14/18, BeckRS 2020, 4606; upheld by the German Federal Court of Justice (BGH), 26 November 2020, I ZB 11/20, IHR 2023, 91).

In the ensuing second arbitration, the insolvency administrator argued for valuation at liquidation value ("Liquidationswert") of the business division, contending that it was not viable as a going concern. In the alternative, he put forward a negative going-concern value ("Fortführungswert"). By contrast, the respondents maintained that the going-concern value was decisive and positive. The second arbitral tribunal dismissed the claim. It held that the insolvency administrator had failed to present his case adequately and that his submissions on a negative going-concern value were precluded under the cut-off date set in Procedural Order No 1.

The insolvency administrator paid the costs awarded and then applied to have operative paragraphs 2 to 6 of the second award set aside – in substance the entirety of the arbitral tribunal's final ruling – alleging, among other things, violations of the right to be heard.

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Key findings

The OLG Frankfurt set aside operative paragraphs 2 to 6 of the award and remanded the matter to the same arbitral tribunal. The court reasoned that the award violated the applicant's right to be heard but that these violations could be remedied by the arbitral tribunal.

At the outset, the court confirmed the applicant's legitimate interest in legal protection ("Rechtsschutzbedürfnis"), holding that his payment of costs did not amount to a waiver. The court noted that a waiver requires an unambiguous declaration of intent, as waivers are never to be presumed. The court pointed out that the respondents had demanded payment. It further highlighted that the time between service of the award and payment had been too short to allow an adequate analysis of the award.

In substance, the OLG Frankfurt held that the arbitral tribunal had violated the applicant's right to be heard in several ways, so that recognition and enforcement of the award would be contrary to German (procedural) public policy.

According to the OLG Frankfurt, the arbitral tribunal breached the applicant's right to be heard by (i) disregarding his submission, made before the procedural cut-off date, that the going-concern value was (significantly) negative, (ii) holding that the applicant's submissions on a negative going-concern value in his post-hearing brief were precluded as belated, (iii) refraining from estimating the value of the contribution on the grounds that the applicant had allegedly not presented sufficient facts, and (iv) disregarding his request for the taking of evidence. In the court's view, each of these breaches was causal for the award, since it could not be ruled out that the arbitral tribunal would have decided differently absent the respective breach. This applied notwithstanding the general prohibition of a révision au fond, because the court could not exclude that the arbitral tribunal's reasoning was flawed due to a violation of the right to be heard.

On several points, the court rejected the applicant's objections to the award. Notably, the court held that, in light of the prohibition of a révision au fond, not every incorrect classification of party submissions as contested or uncontested violates German public policy. Rather, a breach of the right to be heard requires that the core of the submissions has not been taken into account and addressed in substance.

Regarding remand, the OLG Frankfurt acknowledged that a case must be suitable for remand, reiterating that serious procedural errors, in particular a manifest and serious violation of the right to be heard, preclude such a remand. The court followed a recent BGH ruling (see BGH, 18 December 2025, I ZB 42/25, SchiedsVZ 2026, 31, GAD 2026, 6) in holding that a matter can be suitable for remand despite several breaches. When exercising its discretion on remand, the court must weigh the severity of the error against procedural efficiency. Here, the court found that the breaches were closely related consequential errors, which appeared to result from the arbitral tribunal having 'lost sight' of parts of the submissions in this extensive and complex matter.

Comment

The ruling follows a nuanced approach taken by the BGH with regard to remand, favouring procedural efficiency through decision-making by the same tribunal. The dispute is set to continue: a complaint on points of law ("Rechtsbeschwerde") is pending before the BGH (I ZB 46/26).