

**FEDERAL COURT OF AUSTRALIA**

**China Sichuan Changhong Electric Company Limited v CTA International Pty  
Limited [2009] FCA 397**

*International Arbitration Act 1974 (Cth)*

**CHINA SICHUAN CHANGHONG ELECTRIC COMPANY LIMITED v CTA  
INTERNATIONAL PTY LIMITED  
NSD 173 of 2009**

**EMMETT J  
27 MARCH 2009  
SYDNEY**

**IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY**

**NSD 173 of 2009**

**BETWEEN: CHINA SICHUAN CHANGHONG ELECTRIC COMPANY  
LIMITED  
Applicant**

**AND: CTA INTERNATIONAL PTY LIMITED  
Respondent**

**JUDGE: EMMETT J**

**DATE OF ORDER: 27 MARCH 2009**

**WHERE MADE: SYDNEY**

**THE COURT DIRECTS THAT:**

1. Judgment be entered for the applicant against the respondent in the sum of \$1,829,430.08.

**THE COURT ORDERS THAT:**

2. The respondent to pay the applicant's costs of the proceeding.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.  
The text of entered orders can be located using eSearch on the Court's website.

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**NSD 173 of 2009**

**BETWEEN: CHINA SICHUAN CHANGHONG ELECTRIC COMPANY  
LIMITED  
Applicant**

**AND: CTA INTERNATIONAL PTY LIMITED  
Respondent**

**JUDGE: EMMETT J**

**DATE: 27 MARCH 2009**

**PLACE: SYDNEY**

**REASONS FOR JUDGMENT**

1           The applicant seeks the entry of judgment against the respondent of an amount calculated in accordance with an award made in favour of the applicant against the respondent by the Mianyang Arbitration Commission (the **Commission**) in the Peoples Republic of China on 5 March 2003. The award arises out of an exclusive Sales Agreement made on 21 April 1998 between the applicant and the respondent (the **Sales Agreement**). By the Sales Agreement, the respondent agreed to sell the applicant's products in Australia and New Zealand. The respondent agreed to purchase exclusively from the applicant and the applicant agreed to sell exclusively to the respondent. The Sales Agreement provided for payment of the price for goods sold and delivered by the applicant to the respondent by a letter of credit.

2           Clause 14 of the Sales Agreement provided that all disputes arising in connection with the Sales Agreement were to be settled amicably through negotiation. It also provided that, in case no settlement could be reached, the case under dispute was to be submitted for arbitration to an arbitration body where the dispute arose in accordance with that body's rules and procedures for arbitration. The decision of the arbitration was to be accepted as final and binding upon both parties.

3           It appears that a dispute arose between the applicant and the respondent concerning  
the non-payment of the price for goods sold and delivered by the applicant to the respondent.  
The respondent disputed the claim on the basis of non-delivery and other deficiencies.

4           The matter was referred to the Commission for arbitration. On 5 March 2003 an  
award was made by the Commission that the respondent pay the applicant the amount  
outstanding in the sum of \$US905,570, together with interest of \$US57,357 amounting  
\$US962,927 in total. The Commission also ordered the respondent to pay part of the  
arbitration fee, which had been borne by the applicant, in the sum of RMB 141,900.80.

5           Section 8(1) of the *International Arbitration Act 1974* (Cth) (the **Act**) provides that a  
foreign award is binding by virtue of the Act for all purposes on the parties to the arbitration  
agreement in pursuance of which it was made. Foreign award is defined in s 3(1) as an  
arbitral award made in pursuance of an arbitration agreement in a country other than  
Australia, being an arbitral award in relation to which the *Convention on the Recognition and  
Enforcement of Foreign Arbitral Awards*, adopted in 1958 by the United Nations Conference  
on International Commercial Arbitration (the **Convention**), applies.

6           Both Australia and the Peoples Republic of China are parties to the Convention.  
Article IV of the Convention provides that, to obtain the recognition and enforcement of an  
award, the party applying for recognition and enforcement must, at the time of the  
application, supply the duly authenticated original award or a duly certified copy and the  
original agreement containing the relevant arbitral clause or a duly certified copy thereof.

7           Section 9(1) of the Act provides that, in any proceedings in which a person seeks the  
enforcement of a foreign award by virtue of Part 2 of the Act, which includes section 8, that  
person must produce to the court the duly authenticated original award or a duly certified  
copy and the original arbitration agreement under which the award purports to have been  
made, or a duly certified copy. Court is defined in section 3(1) as any court in Australia.

8           Under the terms of the award of 5 March 2003 interest is payable on the award from  
the date that is 45 days after the date in which the award is made. Accordingly, interest  
began to run on the award made by the Commission on 19 April 2003.

9           This proceeding was commenced by application filed on 2 March 2009 joining the  
respondent as a party. The originating process and affidavits in support were served on the

respondent more than five working days prior to the return date shown in the application, which is today. The originating process was served at the registered office of the respondent as shown in the records maintained by Australian Securities and Investments Commission. The address at which the process was served is also shown as the address of an Australian resident director of the respondent.

10           There is evidence before me that the amount of the award has not been paid by the respondent to the applicant. Interest in accordance with the terms of the award has been calculated and the amount of the award and interest has been converted into Australian currency, which amounts to \$A1,829,430.08 as at today. In the circumstances it seems to me to be appropriate to direct the entry of judgment in that sum against the respondent in favour of the applicant. I also propose to order the respondent to pay the applicant's costs of the proceeding.

I certify that the preceding thirteen (10) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Emmett.

Associate:

Dated:     23 April 2009

Solicitor for the Applicant:     Hunt and Hunt

Date of Hearing:                    27 March 2009

Date of Judgment:                 27 March 2009