

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ZHONGSHAN FUCHENG INDUSTRIAL
INVESTMENT CO. LTD.,

Petitioner,

v.

THE FEDERAL REPUBLIC OF NIGERIA,

Respondent.

Civil Action No. _____

**DECLARATION OF HUSSEIN HAERI IN SUPPORT OF PETITION TO RECOGNIZE
AND ENFORCE FOREIGN ARBITRAL AWARD**

I, Hussein Haeri, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Solicitor-Advocate of the Senior Courts of England and Wales and am a partner at the law firm of Withers LLP, counsel for Petitioner Zhongshan Fucheng Industrial Investment Co. Ltd. (“**Petitioner**” or “**Zhongshan**”) in the above-captioned action against the Federal Republic of Nigeria (“**Respondent**” or “**Nigeria**”). I acted as lead counsel for Petitioner in the *ad hoc* arbitration proceeding *Zhongshan Fucheng Industrial Investment Co. Ltd. v. The Federal Republic of Nigeria* brought pursuant to the Agreement between the Government of the People’s Republic of China and the Government of the Federal Republic of Nigeria for the Reciprocal Promotion and Protection of Investments (the “**BIT**”), conducted under the rules of the United Nations Commission on International Trade Law and seated in London, United Kingdom (the “**Arbitration**”).

2. I respectfully submit this declaration in support of Petitioner’s Petition to Recognize and Enforce Foreign Arbitral Award and to submit to the Court the following information and exhibits attached hereto. The matters set forth below are based upon my personal

knowledge or, in the case of paragraph 13, information provided to me by Petitioner, which I believe to be true and correct.

3. Attached hereto as **Exhibit A** is a true and correct certified copy of the Final Award issued on March 26, 2021, in the Arbitration (the “**Award**”).

4. Attached hereto as **Exhibit B** is a true and correct copy of the BIT as on file with the United Nations Conference on Trade and Development.

5. On April 23, 2021, Respondent filed an arbitration claim form seeking to challenge the Award under the English 1996 Arbitration Act, on the purported basis that the Tribunal lacked jurisdiction to render it (the “**English Challenge**”). A true and correct copy of the English Challenge is attached as **Exhibit C**.

6. In summary, Respondent contended that:

- a. The arbitration agreement in the BIT was invalid. Nigeria gave no explanation as to the legal or factual basis for this assertion (which was made for the first time in the context of the English Challenge).
- b. Zhongshan failed to make a qualifying “*investment*” within the meaning given to that word by the BIT (the same argument which Nigeria had raised and that the Tribunal had rejected in the Arbitration).
- c. Local court proceedings initiated by Zhongshan’s local subsidiary (the “**Nigerian Proceedings**”) deprived the Tribunal of jurisdiction over the Arbitration under article 9(3) of the BIT (again, an argument which Nigeria had raised and that the Tribunal had rejected in the Arbitration).

7. On June 9, 2021, Zhongshan filed its response to the English Challenge. In summary, Zhongshan opposed the English Challenge on the basis that:

- a. Nigeria did not and could not identify any basis on which to suggest that the BIT or its arbitration agreement is invalid;
- b. There is significant evidence showing that Zhongshan made an investment in Nigeria;
- c. The Nigerian Proceedings are separate and distinct from Zhongshan's claim under the BIT.
- d. Moreover, Nigeria had a full opportunity to argue the above points before the Tribunal, both in writing and orally. The Tribunal considered the arguments made by Nigeria before it at length and rejected them.

8. On June 18, 2021, Zhongshan filed an application for security for costs and an application for security for the Award. Nigeria did not respond to those applications.

9. On October 11, 2021, four days before the hearing of Zhongshan's application for security for costs, Nigeria filed a notice to discontinue the English Challenge. A true and correct copy of Nigeria's notice of discontinuance of the English Challenge is attached as **Exhibit D**.

10. On November 3, 2021, the parties reached an agreement for Nigeria to pay Zhongshan's costs of, and arising from, the English Challenge in the sum of GBP 175,000. An order of the UK Court was issued to this effect on November 4, 2021 requiring Nigeria to pay the agreed sum by 4pm on December 1, 2021. In breach of this order, Nigeria only paid GBP 100,000 by the deadline. On December 2, 2021, Nigeria paid a further GBP 35,000. On December 3, 2021, Nigeria paid a further GBP 25,000. On December 7, 2021, Nigeria paid the remaining GBP 15,000 due.

11. On November 8, 2021, following the discontinuance of the English Challenge, Petitioner invited Respondent to pay the sums awarded in the Award. No response was

forthcoming. A true and correct copy of this November 8, 2021 correspondence is attached as **Exhibit E**. On November 26, 2021, Petitioner sent a second invitation for Respondent, which also received no answer. A true and correct copy of this November 26, 2021 correspondence is attached as **Exhibit F**.

12. On December 8, 2021, Petitioner commenced enforcement proceedings against Respondent in the English court. On December 21, 2021, the English court issued an order recognizing the Award. This order will be served on Nigeria by Petitioner's English counsel.

13. As of the date of this declaration, to the best of my knowledge, information and belief, Respondent has failed to pay the amounts it owes to Petitioner pursuant to the Award.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 20 day of January, 2022, in London, United Kingdom.



Hussein Haeri