Unofficial Translation

Case on Application of Ukraine Kryukovskiy Car Building Works for Recognition and Enforcement of a Foreign Arbitral Award against Shenyang Changcheng Economic and Trade Company

Civil Ruling by the Shenyang Intermediate People's Court, Liaoning Province

(2002) Shen Min Zi No. 16

Claimant: Ukraine Kryukovskiy Car Building Works

Legal Representative: Bolihejik, General Manager

Attorney: Hu Jianming, Attorney at law at Beijing Lide Law Firm

Attorney: Hu Jianjun, Attorney at law at Beijing Lide Law Firm

Respondent: Sheyang Changcheng Economic and Trade Company

Legal Representative: Zhou Fengqiang, Board Chairman

After accepting the application of Ukraine Kryukovskiy Railway Car Building Works for recognition and enforcement of a foreign arbitral award against Shenyang Changcheng Economic and Trade Company, this court appointed a panel under the applicable laws to review the case. The panel consisted of Cao Yan acting as the presiding judge, Yang Yi, the associate judge acting as the lead judge and Xia Tingting, the associate judge acting as the reviewing judge. The trial of the case has been by now concluded.

The Claimant claimed as follows in the application:

On 25 November 1996, the Claimant and the Respondent entered into the Contract 804/0210908/676350 for the sale and purchase of automatous ferries and spare parts (the "Subject Contract") in Kremenchug City. In the course of the performance of the Subject Contract, the Respondent failed to pay the consideration under the Subject Contract. In accordance with the "arbitration clause" contained in the Subject Contract, the Claimant submitted the dispute to the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (the "Ukrainian Arbitration Court") for arbitration. The Ukrainian Arbitration Court rendered a final award (the "Award") on 29 March 1999 which was worded to the effect that immediately after its receipt of the award, the Respondent shall pay the Claimant the consideration in an amount of US$1,723,280.00 together with the arbitration fee in

the amount of US$,22,616.4. Pursuant to the applicable provisions in the "Circular on the Implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Entered by China" of the Supreme People's Court, the Claimant applied to this Court for the recognition and the enforcement of the arbitral award.

The Respondent Shenyang Changcheng Economic and Trade Company did not raise any objection to the arbitration proceedings under the aegis of the Ukrainian Arbitration Court and admitted that (i) it knew the arbitral tribunal had heard the dispute, (ii) it once submitted by letter written defenses against the causes of the claims submitted by the Claimant to Ukrainian Arbitration Court, (iii) it had several negotiations for settlement with the Claimant after its receipt of the award, and (iv) it still maintains a cooperative relationship with the Claimant to date. The Respondent mainly raised objections to the substantive issues in the award by asserting that the failure of the Respondent to pay the Claimant the consideration under the Subject Contract resulted from the Claimant's own delay in the delivery of the contractual equipment. The default of the Claimant caused substantial economic losses to the Respondent and it was the Claimant who committed a default at first.

After inquiry, this court confirmed the following facts:

On 25 November 1996 the Claimant and the Respondent entered into the Contract 804/0210908/676350 for the sale and purchase of automatous ferries and spare parts in Kremenchug City. It was agreed in Article 9 of the Subject Contract that "In the event any dispute arises from the performance of this contract upon which the parties fail to reach agreement, such dispute may be referred to the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry for resolution". In the course of the performance of the Subject Contract, the Respondent refused to pay the Claimant the consideration after its receipt of the equipment (which is now in the custody of Xinjiang Urumqi Customs Office) on grounds that the Claimant's delay in the delivery of the equipment under the Subject Contract resulted in the Respondent's failure to perform the contract between the Respondent and the negotiated Chinese buyer. As a result, the Claimant and the Respondent had a dispute. In accordance with the "arbitration clause" set forth in Article 9 of the Subject Contract, the Claimant referred the dispute to the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry for arbitration. The Ukrainian Arbitration Court notified the Respondent of the hearing date pursuant to its arbitration proceedings. The Respondent failed to be present at the hearing but wrote a letter to submit its defenses in respect to the dispute between the parties. On 29 March 1999, the Ukrainian Arbitration Court rendered the Award AC No. 264K/98 which was worded to the effect that immediately after its receipt of the award, the Respondent was to pay the Claimant the consideration in an amount of US$1,723,280.00 together with the arbitration fee in an amount of US$,22,616.4. After receiving the award, the Respondent failed to comply with it. In May 1999, the Claimant submitted an application for the recognition and enforcement of the award to the Ministry of Justice of Ukraine (the "Application"), who then forwarded the Application to the Ministry of Foreign Affairs of Ukraine on 24 May 1999. On 14 June 1999, the Ministry of Foreign Affairs of Ukraine forwarded the Application to the Chinese Embassy in Ukraine. The Ministry of Justice of the People's Republic of China (the "PRC" or "China") forwarded the Application to the Supreme People's Court of the PRC prior to 25 August 1999 and wrote to the Chinese Embassy

in Ukraine suggesting that the Claimant submit the Application directly to a competent intermediate people's court in the PRC. On 17 June 2002, the Claimant submitted the Application to this court in which the Claimant applied for the recognition and enforcement of the Award AC No. 264K/98 rendered by the International Commercial Arbitration Court of the Ukraine Chamber of Commerce and Industry.

The facts described above were evidenced by the Subject Contract entered into by and between the Claimant and the Respondent, the Award AC No. 264K/98 rendered by the Ukrainian Arbitration Court, the letter from the Ministry of Justice of Ukraine regarding the forwarding of the Application to the Ministry of Foreign Affairs of Ukraine, the letter from the Ministry of Foreign Affairs of Ukraine regarding the forwarding of the Application to the Chinese Embassy in Ukraine, the letter from the Ministry of Justice of the PRC to the Chinese Embassy in Ukraine stating that it had already forwarded the Application to the Supreme People's Court of the PRC and suggesting that the Claimant submit the Application directly to a competent court in the PRC, and the notes containing the statements of both the Claimant and the Respondent. Among such facts, the evidence formed in Ukraine was all notarized by the notary public office and certified by the Chinese Embassy in Ukraine and all the evidence written in a foreign language was accompanied with a Chinese translation acceptable to both the Claimant and the Respondent.

After reviewing this case, we hold that it is one that is intended for an application for the recognition and enforcement of a foreign arbitral award and shall be governed by the applicable provisions in the Civil Procedure Law of the PRC and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The evidence submitted by the Claimant proved that after the Ukrainian Arbitration Court rendered the Award AC No. 264K/98 on 29 March 1999, the Claimant submitted an application for the recognition and enforcement of the award to the Ministry of Justice of Ukraine in May 1999, which was then forwarded through the Ministry of Justice of the PRC to the Supreme People's Court of the PRC prior to 25 August 1999. As such, it should be determined that the Claimant submitted the application for the recognition and enforcement to a PRC court within six months of the date of the award and so the application does not exceed the six-month limit specified under the Civil Procedure Law of the PRC. Both the award and the Subject Contract submitted by the Claimant to this court were notarized and certified pursuant to applicable laws and so the application of the Claimant complies with Article IV of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in terms of document submission. As both China and Ukraine are Contracting States to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the subject matter of the arbitration conducted in Ukraine is the dispute arising under the Contract 804/0210908/676350 for the sale and purchase of automatous ferries and spare parts executed by and between the Claimant and the Respondent in Kremenchug City on 25 November 1996, the recognition and enforcement of the award resulting from such arbitration complies with the reservations made by China when acceding to the Convention on the Recognition and Enforcement of Foreign Arbitral Award. Although the Respondent failed to be present at the arbitration hearing after it received the notice of the hearing date from the arbitral tribunal, it did submit, by letter, its defenses in respect of the dispute. The Ukrainian Arbitration Court served the award on both the Claimant and the Respondent, which means that there do not exist any of the circumstances set out in Section 1(b) of Article V of the Convention on the Recognition and Enforcement of Foreign

Arbitral Awards under which the recognition and enforcement of a foreign arbitral award may be refused.

Based on the foregoing, with respect to the award rendered by the Ukrainian Arbitration Court, there do not exist any of the circumstances described in Sections 1 and 2 of Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards under which the recognition and enforcement of a foreign arbitral award may be refused, the award complies with the Decision of National People's Congress Concerning China's Accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards promulgated on 2 December 1986, and it does not violate any provision of the reservations made by China when joining the Convention. The award therefore should be recognized and enforced. In accordance with Article 269 of the Civil Procedure Law of the PRC and Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, we hereby rule as follows:

The validity of the award rendered by the International Arbitration Court of the Ukrainian Chamber of Commerce and Industry on 29 March 1999 with respect to the dispute between Ukraine Kryukovskiy Car Building Works and Shenyang Changcheng Economic and Trade Company shall be recognized. The Respondent Shenyang Changcheng Economic and Trade Company shall perform the payment obligation imposed on it under the award, otherwise, the Court will enforce it.

The application fee in this case in the amount of RMB16,957.00 shall be borne by the Respondent Shenyang Changcheng Economic and Trade Company.

This ruling shall be final.

Presiding Judge: Cao Yan
Associate Judge: Yang Yi
Associate Judge: Xia Tingting
April 22, 2003
Clerk: Xiao Jianbo