



HIGH COURT OF AUSTRALIA

13 March 2013

TCL AIR CONDITIONER (ZHONGSHAN) CO LTD v THE JUDGES OF THE FEDERAL COURT OF AUSTRALIA & ANOR

[2013] HCA 5

Today the High Court unanimously dismissed an application by TCL Air Conditioner (Zhongshan) Co Ltd ("TCL") for constitutional writs directed to the judges of the Federal Court of Australia. The High Court held that s 16(1) of the *International Arbitration Act* 1974 (Cth), which gives "the force of law in Australia" to the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law"), is not invalid.

TCL entered into a written distribution agreement with Castel Electronics Pty Ltd ("Castel"). The agreement provided for the submission of disputes to arbitration. Following an arbitration, awards were made which required TCL to pay Castel a sum of money ("the awards"). In default of payment, Castel applied to the Federal Court for enforcement of the awards in accordance with Art 35 of the Model Law.

In separate proceedings instituted in the High Court, TCL applied for an order restraining the judges of the Federal Court from enforcing the awards, and for an order quashing decisions of that Court in relation to the awards. TCL submitted that the Model Law provided for the exercise of the judicial power of the Commonwealth in a manner contrary to Ch III of the Constitution. Under the Model Law, the Federal Court has no power to refuse to enforce an arbitral award on the ground that an error of law is apparent on the face of the award. TCL argued that consequently, the jurisdiction conferred on the Federal Court under the Act requires that Court to act in a manner which substantially impairs its institutional integrity. Further, the Model Law was said to vest the judicial power of the Commonwealth in arbitral tribunals.

The High Court unanimously dismissed the application.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*