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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 **SHANGHAI LAN CAI ASSET**
22 **MANAGEMENT CO, LTD.,**

23 Petitioner,

24 v.

25 **JIA YUETING,**

26 Respondent.

Civil Case No. 2:18-cv-10255

PETITION TO CONFIRM
ARBITRATION AWARD

1 principal place of business in Shanghai, People’s Republic of China. (First Kang
2 Decl. ¶ 4.)

3 5. Respondent Jia Yueting is a Chinese citizen who lives in California.
4 His permanent address is 7 Marguerite Drive, Rancho Palos Verdes, California.
5 (*Id.*)

6 **JURISDICTION AND VENUE**

7 6. This proceeding arises under Article III of the New York Convention.
8 Chapter 2 of the Federal Arbitration Act, codified at 9 U.S.C. § 201 *et seq.*, applies
9 the New York Convention to award-recognition actions brought in the courts of the
10 United States.

11 7. This Court has jurisdiction over the subject matter of this proceeding
12 under 9 U.S.C. § 203, which provides that “[t]he district courts of the United
13 States . . . have original jurisdiction over” any “action or proceeding falling under
14 the [New York] Convention.” This proceeding “fall[s] under the Convention”
15 because it arises out of a commercial contract between SLC and Jia, neither of whom
16 are citizens of the United States. See 9 U.S.C. § 202 (providing that an “arbitral
17 award arising out of a legal relationship . . . which is considered as commercial . . .
18 falls under the Convention” unless the relationship is “entirely between citizens of
19 the United States”). In addition, the Final Award was made in the People’s Republic
20 of China, which is a party to the New York Convention.

21 8. 28 U.S.C. § 1331 also gives the Court subject-matter jurisdiction over
22 this proceeding, because it is a “civil action[] arising under the . . . laws, or treaties
23 of the United States.”

24 9. The Court has personal jurisdiction over Jia because he is a resident of
25 California.

26 10. Venue in this District is proper under 28 U.S.C. § 1391(b)(1) because
27 the sole Respondent, Jia, resides within this District.
28

BACKGROUND

1
2 11. The Final Award resolved a dispute between SLC and the Arbitration
3 Respondents that arose under two related agreements. The first of those
4 agreements (the “Loan Contract”) set forth the terms under which SLC—acting as
5 an agent of investor-users of Lancai.cn, an internet-based financing platform—
6 extended a ¥50 million loan to LeTV. (First Kang Decl. Ex. 1 at 2; *see generally*
7 First Kang Decl. Ex. 2.) Under the second agreement (the “Guarantee”), Jia and
8 TV Plus guaranteed the loan to LeTV, assuming joint and several liability for any
9 failure by LeTV to perform its obligations under the Loan Contract. (First Kang
10 Decl. Ex. 1 at 2; *see generally* First Kang Decl. Ex. 3.)

11 12. The Loan Contract provided for a term of 12 months, running from
12 the date on which SLC disbursed the loan funds to LeTV. (First Kang Decl. Ex. 2
13 art. 2(I).) LeTV was to repay the ¥50 million principal in a single lump-sum
14 payment at the conclusion of the 12-month term, while settling outstanding interest
15 on each of five dates (the “Interest Settlement Dates”) over the course of the term.
16 (*Id.* art. 3(II), (IV).) The Loan Contract provided for an annual interest rate of 7.5
17 percent. (*Id.* art. 3(III).) In the event of a default by LeTV, an additional “0.05
18 percent per day” would accrue under the Loan Contract until the default was cured.
19 (*Id.* art. 3(VII).)

20 13. The parties executed the Loan Contract and the Guarantee on
21 December 1, 2016. SLC disbursed the loan funds to LeTV’s nominated recipient
22 on December 2, 2016. Under the terms governing the Interest Settlement Dates,
23 LeTV was required to pay all interest outstanding on the loan as of December 15,
24 2016, March 15, 2017, June 15, 2017, and September 15, 2017. (*See* First Kang
25 Decl. Ex. 2 art. 3(IV).) The principal, together with any remaining interest, was
26 due by December 2, 2017. (*See id.* art. 3(II).)

27 14. LeTV made the interest payments required on the first two Interest
28 Settlement Dates. To this day—more than one year after the date on which LeTV

1 was required to repay the loan principal and all remaining interest—neither LeTV
2 nor its guarantors, Jia and TV Plus, have made any additional payments to SLC.

3 **THE ARBITRATION AND THE FINAL AWARD**

4 15. Article 13 of the Loan Contract provided for arbitration in the event of
5 a dispute between the parties:

6 (I) The Contract shall be governed by the laws of the People’s
7 Republic of China.

8 (II) Any dispute arising from the performance of the [Loan]
9 Contract may be resolved through consultation, failing which
10 either Party may bring such dispute for arbitration by the
11 Beijing Arbitration Commission.

12 (First Kang Decl. Ex. 2 art. 13.)

13 16. Article 11 of the Guarantee contained a nearly identical arbitration
14 provision:

15 Any dispute arising from or in connection with this [Guarantee] shall
16 be settled through negotiation by the parties hereto, failing which,
17 shall be submitted to Beijing Arbitration Commission for arbitration
18 in accordance with the prevailing rules of arbitration of such
19 commission. The arbitration award shall be final, binding upon each
20 party.

21 (First Kang Decl. Ex. 3 art. 11.3.)

22 17. When LeTV failed to make the payment due on June 15, 2017, SLC
23 referred the matter to arbitration before the Beijing Arbitration Commission,
24 consistent with the arbitration clauses in both the Loan Contract and the Guarantee.
25 On June 28, 2017, the Beijing Arbitration Commission accepted SLC’s request for
26 arbitration against Jia and the other two Arbitration Respondents.

27 18. The Tribunal was duly appointed by the Director of the Beijing
28 Arbitration Commission in accordance with the Commission’s rules. (First Kang

1 Decl. Ex. 1 at 1.) Mr. Wu Shengchun, a senior economist specializing in guaranty
2 law, loan contracts, and international finance, was appointed as chief arbitrator.
3 (First Kang Decl. ¶ 8.) He was joined on the Tribunal by Ms. Kang Le, an
4 arbitrator specializing in investment and financing disputes, and Mr. Han Xu, who
5 specializes in finance, loan contracts, and the law of corporations. (*Id.* ¶ 8.) The
6 Arbitration was conducted in Beijing under the Beijing Arbitration Commission
7 rules. (First Kang Decl. Ex. 1 at 1.)

8 19. The Tribunal scheduled its first hearing for October 27, 2017. (*Id.*)
9 Despite receiving the Commission’s written notice advising him of the hearing, Jia
10 (along with the other two Arbitration Respondents) failed to appear. (*Id.*) But
11 despite his absence, Jia was able to present his case to the Tribunal: the Tribunal
12 set a second hearing for December 1, 2017, at which Jia appeared and was
13 represented by counsel. Jia’s counsel produced evidence and made oral arguments
14 on his behalf. (*Id.*)

15 20. On January 22, 2018, after hearing all parties’ oral presentations,
16 examining the evidence, and engaging in panel discussions, the Tribunal issued the
17 16-page Final Award. (*Id.* at 1–2.) The Tribunal unanimously found that LeTV
18 defaulted on its obligations under the Loan Contract by failing to repay both the
19 principal and any interest accrued after March 15, 2017. (*Id.* at 15–16.) The
20 Tribunal also found LeTV liable for post-default interest at an annual rate of 16.5
21 percent—less than the post-default rate provided by the Loan Contract—to be
22 calculated from December 2, 2017, and for SLC’s and the Tribunal’s costs and
23 expenses, calculated at ¥1,446,575.34 and ¥319,740, respectively. (*Id.* at 16–18.)

24 21. In addition, the Tribunal concluded that the Guarantee rendered Jia
25 and TV Plus jointly and severally liable for the amounts awarded against LeTV.
26 (*Id.* at 19–20.) The Tribunal summarized the Guarantee’s legal effect: “When
27 [LeTV] has not performed or has not fully performed [its] debts under the Loan
28 Contract, [SLC] has the right to directly request [TV Plus] and [Jia] to assume the

1 liability of providing guarantee.” (*Id.* at 19.) The Tribunal further explained that
2 the Guarantee covered not only liabilities for LeTV’s “failure . . . to pay the
3 principal, interest, penalty interest . . . as well as other amounts . . . on time and in
4 full in accordance with the Loan Contract,” but also extended to “all the expenses
5 paid by [SLC] for realization of [its] rights and interests, including but not limited
6 to legal fees, litigation fees, travel expenses, etc.” (*Id.*)

7 22. In reaching this conclusion, the Tribunal rejected two arguments Jia
8 raised in an attempt to avoid liability under the Guarantee. First, contrary to Jia’s
9 argument that conditions precedent to his obligation under the Guarantee remained
10 unsatisfied, the Tribunal concluded that “once the Loan Contract expires and
11 [LeTV] has failed to perform . . . the conditions for [TV Plus] and [Jia] to be held
12 liable for providing guarantee have been met.” (*Id.* at 20.) Jia also contended that
13 the Guarantee provisions imposing joint and several liability upon him personally
14 were invalid under Chinese law. (*Id.*) The Tribunal dismissed this argument as
15 “without factual and legal basis.” (*Id.*)

16 23. The Tribunal therefore ordered Jia and the other Arbitration
17 Respondents to compensate SLC for:

- 18 a. ¥50 million, representing the principal disbursed to LeTV under
19 the Loan Contract;
- 20 b. principal interest at an annual rate of 7.5 percent to be
21 calculated from March 15, 2017;
- 22 c. post-default interest at an annual rate of 16.5 percent to be
23 calculated from December 2, 2017;
- 24 d. ¥507,028, representing SLC’s arbitration costs; and
- 25 e. ¥319,740, representing arbitration expenses disbursed by SLC
26 to the Beijing Arbitration Commission.

27 (*Id.* at 21–22.)
28

1 24. The Tribunal ordered the Arbitration Respondents to pay these
2 amounts “in full within 10 days from the date of service of this Award.”
3 Otherwise, the Arbitration Respondents must pay 200% of the payable interest
4 (i.e., 48 percent per annum) according to the Civil Procedure Law of the People’s
5 Republic of China. (*Id.* at 22.) To date, neither Jia nor either of the other
6 Arbitration Respondents has paid SLC any part of what it is owed under the Final
7 Award. (First Kang Decl. ¶ 10.)

8 25. As of December 10, 2018, interest has accrued on the Final Award in
9 the amount of \$3,650,246.89 and interest continues to accrue at a rate of \$9,557.18
10 per day. (First Kang Decl. ¶ 10.)

11 26. Jia has not applied to set aside the Final Award in the People’s
12 Republic of China, and his time for doing so expired several months ago. (First
13 Kang Decl. ¶ 11.)

14 **BASIS FOR CONFIRMATION OF THE FINAL AWARD**

15 27. The Final Award is a well-reasoned award, issued by respected jurists
16 in a proceeding in which all parties bound by the Final Award actively
17 participated. There is no reason why the Final Award should not be confirmed.

18 28. Under the New York Convention, as incorporated into United States
19 law through the Federal Arbitration Act, an arbitral award must be confirmed
20 unless one of a limited number of grounds for refusal or deferral applies: “Within
21 three years after an arbitral award falling under the Convention is made, any party
22 to the arbitration may apply to any court having jurisdiction under this chapter for
23 an order confirming the award as against any other party to the arbitration. The
24 court shall confirm the award unless it finds one of the grounds for refusal or
25 deferral of recognition or enforcement of the award specified in the said
26 Convention.” 9 U.S.C. § 207.

27 29. The party opposing confirmation has the burden of showing that such
28 a ground applies. *See Polimaster Ltd. v. RAE Systems, Inc.*, 623 F.3d 832, 836 (9th

1 Cir. 2010) (“As the party seeking to avoid enforcement of the award, [the
2 respondent] has the burden of showing the existence of a New York Convention
3 defense. [That] burden is substantial because the public policy in favor of
4 international arbitration is strong, and the New York Convention defenses are
5 interpreted narrowly.” (internal citations omitted)). Jia cannot meet that burden
6 here.

7 30. The grounds on which a court can refuse or defer confirmation are:

- 8 • the lack of a valid arbitration agreement between the parties;
- 9 • that the award resolves a dispute outside the scope of the
10 parties’ arbitration agreement;
- 11 • that the award resolves a dispute that, under the laws of the
12 country where confirmation is sought, cannot be resolved
13 through arbitration;
- 14 • that the award debtor had no notice of the arbitration
15 proceedings or was unable to meaningfully participate;
- 16 • that the tribunal was composed and/or the arbitration used
17 procedures inconsistent with the parties’ arbitration agreement;
- 18 • that the award is not yet binding or has been set aside by a
19 competent authority of the country in which, or under the law
20 of which, the award was made; or
- 21 • that confirming the award would contravene the public policy
22 of the country where confirmation is sought.

23 *See* New York Convention art. V.

24 31. As explained further in the accompanying Memorandum, none of
25 these grounds applies here. The plain language of Article 13 of the Loan Contract
26 and Article 11 of the Guarantee makes clear that SLC, Jia, and the other
27 Arbitration Respondents agreed that certain disputes could be resolved by
28 arbitration. (First Kang Decl. Ex. 2 art. 13(II); Ex. 3 art. 11.3.) The Arbitration

1 concerned precisely such a dispute, one “arising from the performance of the”
2 Loan Contract—and, by extension, “arising from or in connection with” the
3 Guarantee, which made Jia liable for LeTV’s failure to perform under the Loan
4 Contract. (*Id.*) Nothing in the laws of the United States prohibits resolving this
5 type of dispute through arbitration; to the contrary, the United States has long
6 favored arbitration for the resolution of international commercial disputes. *See*
7 *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631
8 (1985) (endorsing “emphatic federal policy in favor of arbitral dispute resolution,”
9 which “applies with special force in the field of international commerce”). Jia had
10 notice of the Arbitration and actively participated in it, presenting his case, with the
11 assistance of counsel, through evidence and argument submitted to the Tribunal.
12 The Tribunal was composed by and followed the procedures of the Beijing
13 Arbitration Commission, as contemplated by the parties’ agreements to arbitrate.
14 The Final Award is binding on the parties and has not been set aside in the
15 People’s Republic of China—the seat of the arbitration—or, as far as SLC is
16 aware, in any other jurisdiction. Finally, confirming the Final Award would offend
17 no public policy of the United States.

18 32. Accordingly, the New York Convention requires confirmation of the
19 Final Award.

20 **COUNT I**

21 **(CONFIRMATION OF FINAL AWARD UNDER 9 U.S.C. § 207)**

22 33. SLC incorporates each and every allegation in the preceding
23 paragraphs as if set forth fully herein.

24 34. The United States is a contracting party to the New York Convention,
25 as is the People’s Republic of China.

26 35. The Final Award is governed by the New York Convention (made
27 applicable in this proceeding by Chapter 2 of the Federal Arbitration Act, 9 U.S.C.
28 § 201 et seq.) because the Final Award arises out of a commercial contract between

1 SLC and Jia, neither of whom are citizens of the United States. *See* 9 U.S.C.
2 § 202.

3 36. Article IV of the New York Convention provides that a party applying
4 for confirmation of an award “shall, at the time of the application, supply: (a) [t]he
5 duly authenticated original award or a duly certified copy thereof; [and] (b) [t]he
6 original agreement [to arbitrate] or a duly certified copy thereof.” A duly
7 authenticated copy of the Final Award is attached as Exhibit 1 to the First Kang
8 Declaration, and a duly authenticated copy of the Loan Contract (which sets forth
9 the parties’ agreement to arbitrate in Article 13) is attached as Exhibit 2 to the First
10 Kang Declaration.

11 37. The Final Award arose out of a legal relationship that is commercial
12 within the meaning of 9 U.S.C. § 202.

13 38. Under the Guarantee, the Final Award is “final [and] binding upon
14 each party.” (First Kang Decl. Ex. 3 art. 11.3.) Article 50 of the Beijing
15 Arbitration Commission Rules likewise provides that the Final Award is “legally
16 binding from the date on which it [was] made,” and Jia was required to “perform
17 the award in accordance with the time limit for performance specified in the
18 award”; in this case, “within 10 days from the date of service of [the] Award.”
19 (First Kang Decl. Ex. 1 at 21.)

20 39. Neither Jia nor the other Arbitration Respondents has paid SLC the
21 amounts it is owed under the Final Award. Article 50 of the Beijing Arbitration
22 Commission Rules authorizes judicial relief under these circumstances: “Where
23 any party fails to perform the award, the other party may apply to the competent
24 court for enforcement.”

25 40. 9 U.S.C. § 207 provides that, in an action to confirm an award
26 governed by the New York Convention, the “court shall confirm the award unless
27 it finds one of the grounds for refusal or deferral of recognition or enforcement of
28 the award specified in the said Convention.” 9 U.S.C. § 207 (emphasis added).

1 The party resisting confirmation has the burden of proving that one of the
2 Convention’s limited, enumerated grounds for refusing or deferring recognition
3 applies. *Ministry of Def. of Islamic Republic of Iran v. Gould, Inc.*, 969 F.2d 764,
4 770 (9th Cir. 1992). That burden is a heavy one, for judicial review of an
5 arbitration award under the New York Convention “is quite circumscribed”; “the
6 district court has little discretion” in view of Congress’s command that “[t]he
7 court shall confirm the award unless it finds one of the grounds for refusal or
8 deferral of recognition or enforcement of the award specified in the [New York]
9 Convention.”” *Id.* (quoting 9 U.S.C. § 207) (emphasis in original).

10 41. As explained in the accompanying Memorandum, none of the New
11 York Convention’s enumerated grounds for refusing or deferring recognition apply
12 to the Final Award.

13 42. Under 9 U.S.C. § 207 and Article III of the New York Convention,
14 SLC is entitled to an order confirming the Final Award. Petitioners respectfully
15 request that the Court confirm the Final Award by entering judgment in favor of
16 SLC and against Jia in the amount of the Final Award, with interest as provided
17 therein, plus the costs of this proceeding.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioner Shanghai Lan Cai Asset Management Co,
21 Ltd. respectfully requests:

- 22 a. an order of this Court, under 9 U.S.C. § 207 and Article III of
23 the New York Convention, confirming the Final Award and
24 entering judgment thereon;
- 25 b. a judgment in favor of SLC and against Jia that conforms to the
26 Final Award, including (1) ¥50 million plus interest at an
27 annual rate of 7.5 percent to be calculated from March 15,
28 2017, combined with post-default interest at an annual rate of

1 16.5 percent to be calculated from December 2, 2017, and
2 doubled (for a total annual rate of 48 percent), under the Civil
3 Procedure Law of the People’s Republic of China, from
4 December 12, 2017; (2) ¥507,028 for costs incurred by SLC
5 during the Arbitration; and (3) ¥319,740 for arbitration
6 expenses disbursed by SLC to the Beijing Arbitration
7 Commission;

- 8 c. an award of post-judgment compound interest under 28 U.S.C.
9 § 1961;
- 10 d. an award of costs incurred by SLC in bringing this proceeding,
11 including reasonable attorneys’ fees;
- 12 e. an order of this Court retaining jurisdiction over the matter for
13 any further proceedings as may be necessary to enforce the
14 Final Award and any further awards or judgments which may
15 be obtained by SLC against Jia; and
- 16 f. any other relief that this Court, in the interests of justice, deems
17 necessary and proper.

18
19 Dated: December 10, 2018

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20
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