

**CELESTIAL ASIA SECURITIES HOLDINGS LTD:
FROM HEAVEN TO A FINANCIAL HELL**

No sooner had the ink dried on one legal claim, filed against a company within the group, under the umbrella of [Celestial Asia Securities Holdings Ltd](#), when along comes another legal claim.

But, this time, the claim is quite substantial and may, to some people, be considered somewhat of a shocker.

Hongkong Oxygen and Acetylene Company Ltd has lain a Claim against Transtech Photonics Ltd in the High Court of The Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) for a little more than \$HK33 million.

Transtech Photonics is a 46.25-percent associated company of Celestial Asia Securities Holdings Ltd (Code: 1049, Main Board, The Stock Exchange of Hongkong Ltd).

The claim of \$HK33 million may be weighed against the fact that, during the past 5 Financial Years, Celestial Asia Securities Holdings has suffered, in aggregate, Losses Attributable to Shareholders of about \$HK854 million, on a consolidated basis.

And the losses are continuing, with the company's listed subsidiary, quoted on The Growth Enterprise Market of The Stock Exchange of Hongkong Ltd, having announced a Loss Attributable to Shareholders for the first quarter of this Year, also.

CASH Financial Services Group Ltd (Code: 8122, The Growth Enterprise Market), owned as to 50.08 percent by Celestial Asia Securities Holdings, announced, recently, that it had lost about \$HK10.14 million for the 3-month period, ended March 31, 2003.

The case against Transtech Photonics is laid out in High Court Action Number 2660, with the Plaintiff to the Action, Hongkong Oxygen, alleging that this is not the first time that it has had to resort to the rough stuff in order to obtain that which is rightfully its.

According to the Statement of Claim, attached to the Writ of Summons, Hongkong Oxygen entered into a Gaseous Hydrogen Purchase Agreement ('the GH Agreement'), dated March 8, 2001, with Transtech Photonics, whereby it was agreed that Hongkong Oxygen would sell to Transtech Photonics gaseous hydrogen '*subject to and upon the terms and conditions therein contained.*' (Paragraph 2 of the Statement of Claim)

Some of the express terms of this Agreement were:

'3. It was an express term of the GH Agreement that:-

- (a) the GH Agreement is for a fixed term of 10 years commencing from 1st April 2001 and thereafter renewable on terms to be mutually agreed (Clause 1);*
- (b) the Plaintiff shall invest, install and run a dedicated hydrogen production plant ("Plant") of 600 M³ per hour design capacity at the Plaintiff's premises in Tai Po for the supply of gaseous hydrogen to the Defendant (Clause 2.1);*

- (c) *the Defendant agrees to purchase and accept from the Plaintiff gaseous hydrogen in the amount of the Defendant's Requirements (which is defined therein as the volume of gaseous hydrogen that the Defendant needs to put into the production process of optical fibres) up to the Plant capacity which is expected to reach its maximum capacity of 1.25 million M³ per quarter at the flow rate of 598 M³ per hour in the third quarter of the Year 2005 (Clause 2.1);*
- (d) *the 10 years term of the GH Agreement is divided into two stages, Stage One being the initial period from the commencement date of the GH Agreement to the commissioning date of the Plant and Stage Two commences on the calendar day after the successful commissioning of the Plant (Clause 2.1);*
- (e) *the Plaintiff shall supply gaseous hydrogen by manifold tube trailers for initial supplies (Stage One) before the completion of the hydrogen pipeline and for emergency backup purpose (Clause 3.1);*
- (f) *the Defendant shall pay the Plaintiff a monthly charge (exempted for Stage One) and the price of the gaseous hydrogen supplied according to the scale as set out in Clause 4.1 therein within 20 days from the date of the respective invoices issued by the Plaintiff (Clause 9.1);*
- (g) *in case of early termination of the GH Agreement by the Defendant, the Defendant is liable to immediately pay to the Plaintiff compensation being liquidated damages according to a sliding scale (Clause 4.3), which compensation shall vary annually in accordance with a formula prescribed in Clause 5.1;*
- (h) *pursuant to Clause 5.1, the aforesaid formula stipulated that the compensation figure as per the sliding scale shall be:-*

$$C = C_o \times \frac{CPI}{CPI_o}$$

Where,

C = Current Monthly Charge or Current Compensation Charge

CPI = latest available, at the time of invoicing, twelve-month moving average of the New Consumer Price Index B [Based period: Oct '94 – Sept '95 = 100] as published by the Hong Kong Government Census and Statistics Department

CPI_o = base twelve-month moving average of the New Consumer Price Index B [Base Period: Oct '94 – Sept '95 = 100] as published by the Hong Kong Government Census and Statistics Department as of August 2000 which is 109.0.'

On the same date, March 8, 2001, there was a purported second agreement for the supply by Hongkong Oxygen of liquid oxygen and liquid nitrogen (known as 'the LO and LN Agreement').

The express terms of this LO and LN Agreement are laid out in Paragraph 5 as follows:

'5. It was an express term of the LO & LN Agreement that:-

- (a) *the LO and LN Agreement is for a fixed term of 9 years commencing from 1st April 2001 and thereafter renewable on terms to be mutually agreed (Clause 1);*
- (b) *the Plaintiff agrees to sell and deliver to the Defendant and the Defendant agrees to purchase and accept from the Plaintiff liquid oxygen and liquid nitrogen in the amount of the Defendant's Total Requirements (which is defined therein as the total volume of oxygen and nitrogen gases that the Defendant needs to put into the production process of optical fibres) (Clause 2);*
- (c) *the Plaintiff shall supply and install at the Defendant's premises in Tai Po suitable size containers for liquid oxygen and liquid nitrogen respectively with vaporizers and necessary accessories ("Equipment") (Clause 3.1); and*

- (d) *the Defendant shall pay to the Plaintiff a monthly charge of HK\$20,000.00 for the Equipment together with the price of the gases supplied according to the scale as set out in Clause 4.1 (B) therein within 20 days from the date of the respective invoices issued by the Plaintiff (Clauses 4.1 and 9.1).'*

At Paragraph 7, it is attested that there was, also, a further agreement, dated August 31, 2001, whereby Hongkong Oxygen agreed to sell certain gaseous products to Transtech Photonics ('the GP Agreement').

The express terms of this GP Agreement are spelled out at Paragraph 8 of the Statement of Claim, as follows:

'8. It was an express term of the GP Agreement that:-

- (a) *the GP Agreement is for a fixed term of 3 years commencing from 1st September 2001 (Clause 2);*
- (b) *the Plaintiff agrees to supply and the Defendant agrees to purchase and accept from the Plaintiff various gaseous products in the amount of all of the Defendant's Requirements as defined in Clause 4 therein during the term (Clause 1);*
- (c) *the Plaintiff agrees to provide and reserve dedicated population of pallets fitted with stainless steel cylinder valves and manifolds under the special request made by the Defendant and the Defendant agrees to pay monthly charges for the total numbers of the said dedicated pallets in circulation, which as at the date of the GP Agreement and at the date of this Writ, amounted to 8 pallets per each of argon, nitrogen and helium supplies, making a total of 24 pallets, over the fixed term of 3 years (Clause 4). The respective monthly charges are:-*

<u>Product</u>	<u>Monthly Charge per pallet</u> <u>(HK\$)</u>
Argon Pallet	1,900
Nitrogen Pallet	1,130
Helium Pallet	1,900

The Plaintiff further avers that the said dedicated pallets were specifically manufactured with stainless steel cylinder valves and manifolds at the Defendant's request for the supplies of argon, nitrogen and helium and it was agreed that the Plaintiff shall recover the costs by way of the said monthly charges.

- (d) *the Plaintiff shall render to the Defendant invoices for the goods delivered under the GP Agreement on a monthly basis and the Defendant shall pay all invoices within 30 days from the end of the respective months (Clause 11.1).'*

Then, at Paragraph 11, it is alleged that Transtech Photonics ... [CLICK TO ORDER FULL ARTICLE](#)

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