IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(I) 12

Originating Summons No 2 of 2022

Between

CNA

… *Plaintiff*

And

(1) CNB
(2) CNC

… *Defendants*

Originating Summons No 3 of 2022

Between

(1) CND
(2) CNE

… *Plaintiffs*

And

(1) CNB
(2) CNC

… *Defendants*

Originating Summons No 4 of 2022

Between

Version No 2: 02 Aug 2023 (15:53 hrs)

(1) CND
(2) CNE

… *Plaintiffs*

And

(1) CNB
(2) CNC

… *Defendants*

Originating Summons No 5 of 2022

CNA

… *Plaintiff*

And

(1) CNB
(2) CNC

… *Defendants*

JUDGMENT

[Arbitration — Costs — Awarded]

TABLE OF CONTENTS

Version No 2: 02 Aug 2023 (15:53 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

CNA
v
CNB and another and other matters

[2023] SGHC(I) 12

Singapore International Commercial Court — Originating Summonses Nos 2, 3, 4 and 5 of 2022
Philip Jeyaretnam J, Simon Thorley IJ and Yuko Miyazaki IJ
13 June 2023

2 August 2023 Judgment reserved.

Simon Thorley IJ (delivering the judgment of the court):

Introduction

1 By its judgment on the substantive issues raised in these originating summonses (*CNA v CNB and another and other matters* [2023] SGHC(I) 6) (the "Substantive Judgment"), the Court found in favour of the Defendants to all the summonses (CNB and CNC) and directed that the parties should seek to agree on an appropriate order as to costs.

Background

2 Whilst a measure of agreement has been reached between the Defendants and the Plaintiffs to the summonses, CNA in SIC/OSes 2/2022 and 5/2022 and CND and CNE in SIC/OSes 3/2022 and 4/2022, the parties were

unable to reach full agreement and filed written submissions and, subsequently, reply written submissions in support of their respective contentions.

3 The summonses were commenced in the High Court and were all transferred to the Singapore International Commercial Court on 4 January 2022 by order of Deputy Registrar Phang Hsiao Chung. By that order the learned Deputy Registrar directed that costs incurred prior to the date of transfer should be assessed on the basis of the costs regime under O 59 r 7 of the Rules of Court (Cap 322, 2014 Rev Ed) ("ROC 2014") but that the approach to costs after transfer should be reserved to this Court.

Parties' positions on costs

4 The parties are agreed that:

(a) The Plaintiffs should pay the Defendants' costs and disbursements, when assessed, in equal proportions so that the costs should be assessed as a unitary whole with CNA paying 50% and CND and CNE paying the other 50%.

(b) The costs incurred post-transfer should be assessed on the basis set out in O 110 r 46 ROC 2014 ("Rule 46").

(c) This court should assess costs on the basis of the written submissions alone without the need for an oral hearing.

5 Annex A to the Defendants' Reply Submissions sets out their (revised) Costs Schedule which demonstrates that:

(a) Pre-transfer, the Defendants' counsel's fees amounted to S$266,127.

Version No 2: 02 Aug 2023 (15:53 hrs)

(b) Pre-transfer, the Defendants' disbursements amounted to S$19,553 and KRW139,742,050.

(c) Post-transfer, the fees were S$921,903.

(d) Post-transfer, the disbursements were S$48,324 and KRW195,085,126.

6 The sums claimed in South Korean Won relate primarily to fees and disbursements incurred by Professor Kwon, the Defendants' Korean law expert and by KL Partners ("KL"), a Korean law firm which acted as Korean Counsel to the Defendants.

7 The Defendants contend that this schedule is an accurate reflection of the fees incurred pre- and post- transfer.[1] In the main, although CNA and CND/CNE filed separate submissions on costs, the same points were taken and we shall therefore refer to them together as the Plaintiffs save where it is necessary to distinguish between the two sets of Plaintiffs. Whilst the Plaintiffs do not contest that these were the sums that the Defendants actually incurred, they assert that a disproportionately large amount of those fees have been incorrectly allocated to the post-transfer stage and that the sums claimed differ significantly from those projected in Defendants' Case Management Costs Plan ("CMP"),[2] so that this renders any excess over the projected fees unreasonable.

8 Accordingly, before we can address the sums that should be awarded for fees pre- and post- transfer, it is first necessary to decide what the total sums are

---

1 Defendants' Reply Costs Submissions ("DRCS") at para 2.

2 CNA's Reply Submissions on Costs ("CNARSC") at para 9 and CND/CNE's Supplementary Submissions on Costs ("CNDSSC") at para 5.

Version No 2: 02 Aug 2023 (15:53 hrs)

that should be assigned to pre- and post- transfer so that any appropriate reductions in those fees can then be assessed.

Our decision

Division of costs pre- and post- transfer

9 The Plaintiffs rely, and rely heavily, on the Defendants' CMP which was dated 7 March 2022 (*ie*, some two months after transfer). This estimated that the Defendants would incur additional fees of S$350,000. Even allowing for an additional sum for the two-month period between January and March 2022, this is, they submit, in sharp contrast to the sum of S$921,903 actually claimed.

10 Further, in the CMP, the Defendants stated that the fees actually incurred prior to 7 March 2022 were approximately S$850,000 which again was in sharp contrast to the figure now claimed as being S$266,127.

11 Relying on the observation in *BLG and another v BLI and others* [2018] SGHC 86 at [18] that the purpose of requiring costs estimates is "to restrain a litigant from claiming excessive costs when he wins a case", the Plaintiffs submit that the Defendants should be held to the sums specified in the CMP both to form the basis for determining the ratio of the costs incurred pre- and post- transfer and also to form the starting point for assessing the sums to be awarded pre-and post- transfer.

12 In response, the Defendants assert that there was an error in the costs stated as having been incurred prior to 7 March 2022 as these had inadvertently included costs attributable to a striking out application of approximately

Version No 2: 02 Aug 2023 (15:53 hrs)

S$400,000 which should not have been included.[3] This serves to reduce the sums prior to 7 March 2022 to some S$450,000 – in contrast to the sum of S$266,127 actually incurred prior to 4 January 2022.

13 In any event, say the Defendants, since the Defendants have now provided a detailed costs schedule it is no longer appropriate to rely on estimates. So far as concerns pre-transfer costs, Appendix G of the Supreme Court Practice Directions 2013 ("Appendix G") will serve to act as a regulator on any costs incurred above any estimate in the CMP and, in the case of post-transfer costs, Rule 46 proceeds on the basis of the costs actually incurred with the burden being placed at the outset on the successful party to demonstrate that its claimed costs are reasonable: *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 ("*Senda*") at [72]–[73]. Once done, the evidential burden to show the extent to which the claimed costs are unreasonable will transfer to the losing party: *Senda* at [75].

14 In our judgment, the correct approach in the SICC where there is a significant difference between the costs actually incurred as set out in an appropriately detailed costs schedule and the anticipated future costs set out in a CMP is as follows:

(a) The detailed costs schedule will be accepted as being accurate both as to the costs incurred and the date on which they were incurred. The burden will then be on the paying party to demonstrate that the detailed costs statement is inaccurate.

(b) In so far as it is suggested by the paying party that the costs incurred are excessive, rather than inaccurate:

---

3 DRCS at para 2.

Version No 2: 02 Aug 2023 (15:53 hrs)

(i) in the case of an award of pre-transfer costs, any excess will be moderated both by reference to Appendix G and, if appropriate, by reference to the costs estimated in the CMP.

(ii) In the case of post-transfer costs, where reasonableness is the test, one of the factors that the court may take into account in the circumstances of any given case is the contrast between the costs actually incurred and the costs estimated in the CMP.

15 In the present case the Costs Schedule shows that pre-transfer costs were S$266,127 and that post-transfer costs were S$921,903. For the reasons given it is these figures rather than the figures estimated in the CMP that form the basis of the assessment of both pre- and post- transfer costs. The Plaintiffs' contention that a disproportionately large amount of fees had been incorrectly allocated to the post-transfer stage was based on the figure of S$850,000 originally stated in the CMP as being attributable to the pre-transfer stage.

16 This has now been reduced to the figure of S$450,000 due to the erroneous inclusion of the striking out costs (see [12] above). This was a figure assessed as at 7 March 2022 whereas the figure of S$266,127 in the Costs Schedule were for pre-transfer costs assessed up to 4th January 2022, which suggests that the roughly the same amount of fees were incurred in the intervening period as had been incurred in the entire period from the commencement of the litigation until the date of transfer.

17 The Plaintiffs point to this as being an anomaly which serves to demonstrate that the Costs Schedule is inaccurate. This, they say, should be taken in conjunction with the fact that the ratio between the fees incurred pre- and post-transfer if the Costs Schedule is correct is 22/78% which they say

Version No 2: 02 Aug 2023 (15:53 hrs)

"beggars belief".[4] They back this up with a brief analysis of the amount of work which they claim the Defendants would have had to do pre-and post- transfer.[5] The Defendants' response to this is to maintain its position that the Costs Schedule is accurate and to contend that the mere fact that the volume of documents produced prior to transfer exceeds those produced subsequently does not provide a rational basis for concluding that the time spent in preparing the documents was in proportion.[6]

18 It is a feature of the litigation process which leads to an oral hearing, in this case a three-day hearing involving two different sets of Plaintiffs, separately represented, that the fees incurred would be likely to be back-loaded, more being spent later in the proceedings than in the former.

19 In assessing whether this was a case where fees were significantly back-loaded, the Court might have been assisted by being provided with a Costs Statement by each set of Plaintiffs which would serve to demonstrate the balance between the pre-transfer and post-transfer fees incurred by them: *Senda* at [75] and [90]. The Plaintiffs were asked by the Defendants to do this but declined, claiming for various reasons that their costs would not be comparable. Be that as it may, it is for the Plaintiffs to demonstrate that the Defendants' Costs Schedule is inaccurate. This is a means by which they might have sought to do so but they have elected not to.

20 Taking all this into account, whilst we accept that the Plaintiffs' submissions do raise some concerns as to the accuracy of the Costs Schedule,

---

4 CNDSSC at para 11.

5 CNDSSC at paras 11 to 12 and CNARSC at paras 14 to 15.

6 DRCS at para 3.

Version No 2: 02 Aug 2023 (15:53 hrs)

these are not sufficient for us to cease to place reliance on the Schedule as being an accurate analysis of when the fees were incurred.

21 We shall therefore proceed on the basis that the correct division of fees pre- and post- transfer is 22/78%.

Assessment of pre-transfer costs

22 Under Order 59 of the ROC 2014 the court applies an objective standard, based on what ought to be recoverable by a successful party in litigation of the nature in question regardless of the level of costs actually incurred. The underlying policy consideration is to ensure that litigants with meritorious claims are not deterred or prevented from seeking justice by the possibility, if the claim fails, of having to pay large sums by way of costs.

23 With this in mind, Appendix G sets out guidelines as to the appropriate sums to be awarded in various cases unless a party successfully invites the court to depart from it.

24 In the present case the Plaintiffs assert that, if Appendix G is to be applied, the total award for pre-transfer costs should be S$50,000 with each set of Plaintiffs paying S$25,000. The Defendants accept that this would be the appropriate figure if Appendix G is applied but contend that on the facts of this case the court should depart from Appendix G.

25 Paragraphs 2 and 3 of Appendix G read as follows:

> 2. The Costs Guidelines have been approved for publication by the Judges of the Supreme Court. They are intended to provide a general indication on the quantum and methodology of party-and-party costs awards in specified types of proceedings in the

Version No 2: 02 Aug 2023 (15:53 hrs)

> Supreme Court, taking into account past awards made, internal practices and general feedback.
>
> 3. The Costs Guidelines serve only as a guide for parties and counsel. The fundamental governing principle is that the precise amount of costs awarded remains at the discretion of the Court. The Court may depart from the Costs Guidelines depending on the particular circumstances of each case. See in particular Order 21, Rule 2(2) of the Rules of Court 2021, which is reproduced below:
>
> "(2) In exercising its power to fix or assess costs, the Court must have regard to all relevant circumstances, including —
>
> (*a*) efforts made by the parties at amicable resolution;
> (*b*) the complexity of the case and the difficulty or novelty of the questions involved;
> (*c*) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
> (*d*) the urgency and importance of the action to the parties;
> (*e*) the number of solicitors involved in the case for each party;
> (*f*) the conduct of the parties;
> (*g*) the principle of proportionality; and
> (*h*) the stage at which the proceedings were concluded."
>
> Nothing in these Costs Guidelines is intended to guide or influence the charging of costs payable to a solicitor by his own client.

26 Part IV(B) of Appendix G provides that the daily tariff for an Originating Summons for an arbitration matter should fall within the range between S$13,000 and S$40,000. Hence, at the top end of the range, had the matter proceeded in the High Court the maximum sum that could have been awarded under Appendix G would have been S$120,000. Based on the division of 22/78 between pre- and post- transfer costs this reduces the maximum amount for pre-transfer costs to S$26,400.

27 However, in their written submissions both sets of Plaintiffs invited the Court to work on the basis that the correct division between pre- and post-

Version No 2: 02 Aug 2023 (15:53 hrs)

transfer costs was in the ratio of 55/45(for CNA) and 56/44 (for CND/CNE).[7] Had the Court accepted these ratios, the maximum amount that would have been payable under Appendix G would have been of the order of S$66,000. The Plaintiffs based their assertion that the correct award of pre-transfer costs would be S$50,000 on the basis of a limited discount to this figure because this case did not merit being considered to be at the highest end of Appendix G.

28 We have not accepted this higher ratio of costs which will, of course, benefit the Defendants when it comes to assessing post-transfer costs and it is not therefore surprising that having argued for a lower ratio the Defendants were prepared to accept the Plaintiffs' assertion that pre-transfer costs should be S$50,000. On the ratio that we have considered to be appropriate however, such an award would constitute an increase of almost 100% on the maximum Appendix G award.

29 In the Defendants' Costs Submissions ("DCS"),[8] the Defendants put forward the following reasons for contending that this is a complex case justifying a departure from Appendix G:

(a) The complexity of the case is demonstrated by the fact that a three-judge coram was constituted to hear the cases over three days.

(b) The issues were complex requiring the consideration of some 20 interlocking agreements between the parties.

(c) The factual matrix was complicated due to the long history of disputes between the parties.

---

7 CNA's Written Submissions on Costs ("CNACS") at para 18 and CND/CNE's Written Submissions on Costs ("CNDCS") at para 15.

8 Defendants' Costs Submissions ("DCS") at paras 9 to 15.

Version No 2: 02 Aug 2023 (15:53 hrs)

(d) Complex issues of both Singapore and Korean law arose which required submissions from both Singaporean and Korean counsel.

30 As is clear from the Substantive Judgment, the matters raised, both factually and legally, were exceedingly complex and the arguments were wide ranging. Extensive written submissions were provided notwithstanding which three full days were required for oral arguments. In consequence we are satisfied that this is a case where, under paragraph 3 of Appendix G it would be appropriate to depart from a strict application of the guidelines. The actual fees incurred pre-transfer were S$266,127 and Appendix G would suggest that only S$26,400 should be awarded. Even having regard to the contention that these fees were in excess of those which should have been incurred, it can be seen that Appendix G would serve to give a very limited return to a party that was wholly successful.

31 Applying the objective standard required by Order 59, we do not consider in the circumstances of this case that a return of less than 12% by way of an award over the costs actually incurred would be seen to be objectively reasonable. A figure of around 25% would seem to us to be more appropriate which leads to a conclusion that an award of S$50,000, as suggested by all parties would constitute a proper award for pre-transfer fees although for the reasons given, we reach this figure for different reasons from those proposed by any of the parties.

32 Each set of Plaintiffs shall therefore pay S$25,000 to the Defendants in relation to pre-transfer costs. We shall consider the question of pre-transfer disbursements after deciding the question of post-transfer costs.

Version No 2: 02 Aug 2023 (15:53 hrs)

Assessment of post-transfer costs

33 The correct approach to assessing post-transfer costs pursuant to Rule 46 has now been considered in a number of cases, particularly in *Senda, Lao Holding NV v Government of Lao PDR* [2022] SGHC(I) 6 and *CBX v CBZ* [2022] 1 SLR 88. All the parties accepted that the starting point was a subjective enquiry into what costs were actually incurred by the successful party and then to apply a test of reasonableness to reach an appropriate award. The test of reasonableness is to be guided by the considerations outlined in Paragraph 152(3) of the Singapore International Commercial Court Practice Directions Part XXIII Costs which state:

> (3) In relation to sub-paragraph (2)(b)(ii) above, the circumstances which the Court may take into consideration in ordering reasonable costs of any application or proceeding under Order 110, Rule 46(1) of the Rules of Court include:
>
> (a) the conduct of all parties, including in particular –
>
> (i) conduct before, as well as during the application or proceeding;
>
> (ii) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; and
>
> (iii) the manner in which a party has pursued or contested a particular allegation or issue;
>
> (b) the amount or value of any claim involved;
>
> (c) the complexity or difficulty of the subject matter involved;
>
> (d) the skill, expertise and specialised knowledge involved;
>
> (e) the novelty of any questions raised;
>
> (f) the time and effort expended on the application or proceeding.

34 In a case such as the present, these considerations mandate a similar approach to those that have been considered in [25] above in relation to any

Version No 2: 02 Aug 2023 (15:53 hrs)

departure from Appendix G. In our judgment, the Defendants did not act unreasonably in the manner in which they defended any of the claims made against them. These were high value claims of significant complexity which raised questions both of Singapore and Korean law and the manner in which the Korean law aspects were addressed by having Korean law experts addressing the Court was both proportionate and helpful. It is not surprising that the matters raised require three days of oral hearings.

35 In such a case it is understandable that the costs incurred will be high and the correct approach is to have regard as a starting point to the sums actually incurred and then seek to identify any aspect of costs which could be said to be unreasonably incurred, the burden being on the losing party to do this.

36 As indicated above at [9], the Plaintiffs' primary contention is that the magnitude of fees incurred post-transfer (S$921,903) was almost three times higher than the sum estimated in the CMP (S$350,000). This is a factor which merits serious consideration in the case of an application to set aside an arbitral award where there is unlikely to be any oral evidence, and the route to and likely costs involved in a substantive hearing will be relatively clear from the outset. In these circumstances, experienced solicitors should be well able to assess future costs with a greater degree of accuracy than in the case of a witness trial.

37 This contention would however carry far greater weight had the Plaintiffs themselves filed Costs Schedules showing that the fees that they had incurred more nearly reflected the sum projected by the Defendants in the CMP. The Defendants requested that they should do this but the Plaintiffs declined to do so. Without seeing any Costs Schedules from the Plaintiffs, it is impossible to assess what weight, if any, should properly be attributed to the suggestion

Version No 2: 02 Aug 2023 (15:53 hrs)

that the costs they had incurred did not properly reflect the costs that the Defendants should reasonably have incurred.

38 In *Senda*, the learned Sundaresh Menon CJ observed (at [75]):

> 75 Once the successful party has adduced the requisite level of information in support of the contention that its claimed costs are "reasonable costs", the evidential burden shifts to the unsuccessful party to adduce evidence to show that the claimed costs are not "reasonable costs". An inquiry into "reasonable costs" under O 110 r 46 is a subjective one concerning the question of what level of incurred costs can be said to be appropriate in the particular case, and against that yardstick, whether and to what extent the successful party's claimed costs can be said to be "reasonable costs" (see [52] above). ***Hence, the best evidence that the unsuccessful party can adduce to discharge its evidential burden will often be information as to the costs that it had correspondingly incurred for the matter, which might well be a sound proxy by which the trial court can determine what the appropriate level of costs in the particular case is.*** The court may of course do so in other or additional ways as well (see, for example, [79] below).
>
> [emphasis added]

39 We have accordingly been denied this "best evidence" and can therefore only conclude that the provision of Costs Schedules would not have supported the Plaintiffs' case.

40 Further, having made the submission that the better view of what constituted reasonable costs was the sum of S$350,000 quoted in Defendants' CMP, the Plaintiffs went on to submit that even these figures should be reduced by 70% on the basis that such a reduction was in line with reductions which had been made in other equivalent cases. This is not a logically sound submission unless the Plaintiffs were able to demonstrate that there were elements of unreasonableness in the figure in the CMP. The purpose of referring us to that

Version No 2: 02 Aug 2023 (15:53 hrs)

figure was to indicate what a reasonable figure might have been, not to indicate that even that figure would necessarily be unreasonably high.

41 We therefore reject the Plaintiffs' assertion that the figure in the CMP represents a reasonable figure for post-transfer costs – far less that there should be any deduction from that figure.

42 The starting point must be the sums actually incurred. In their Reply Costs Submissions, the Defendants submitted that "they should be compensated 70% of their actual post-transfer fees, which amounts to S$645,332".[9] Whilst this deduction equates to that in *Senda* at first instance, it has to be remembered that a discount of this magnitude in *Senda* was justified in part by the fact that the successful party has acted unreasonably in pursuing a particular argument: *Kiri Industries Ltd v Senda International Capital Ltd and another* [2022] 3 SLR 174 at [90]–[93].

43 There can be no justification under Rule 46 for applying a deduction in one case on the basis that this equates to a deduction given in a previous case unless the factual matrix is also equivalent. It should not become the norm that a 30% discount is appropriate regardless of the facts.

44 We therefore decline to make a deduction of 30% on the basis that this equates to deductions in other cases. Had it not been for the Defendants' concession that they should be compensated for 70% of their post-transfer fees we would have approached the matter afresh. However we have concluded that it would be appropriate, where one party has made a concession of this nature

---

9 DRCS at para 6.

Version No 2: 02 Aug 2023 (15:53 hrs)

so that the other parties have not had an opportunity to consider a different figure, to accept the concession.

45 70% of the Defendants' post-transfer fees amounts to S$645,332.10 so each set of the Plaintiffs will pay S$322,666.05 in respect of the Defendants' post-transfer fees.

Disbursements

46 In the normal course of events, it is usual for the losing party to pay the winning parties' disbursements in full as they relate to unavoidable charges incurred in the course of litigation such as filing fees, translation fees, searches and photocopying. These "normal" disbursements are claimed in Singapore dollars in relation both to pre-transfer disbursements (S$19,553) and post-transfer disbursements (S$48,324).

47 In the present case however, substantial sums were incurred both pre- and post- transfer in relation to the Korean law aspects of the case. Pre-transfer these were KRW30,000,000 for the fees of the Defendants' Korean law expert, Professor Kwon, KRW85,683,400 in respect of the professional fees of the Korean counsel retained by the Defendants, KL, together with KRW24,058,650 in relation to translation and notary fees. In the case of post-transfer, these sums were KRW35,000,000 for Professor Kwon and KRW150,992,600 in fees for KL, plus KRW7,438,026 in relation to disbursements of the Korean lawyers and KRW1,654,500 for notary fees.

48 The parties did not deal separately with any issues over disbursements in their initial written submissions. The Defendants rolled up the disbursements together with the charges for Counsel's fees and submitted that overall a

Version No 2: 02 Aug 2023 (15:53 hrs)

recovery of 70% of the total would be appropriate.[10] The Plaintiffs did not discuss the matter directly but it appears that they were contemplating reasonable disbursements being allowed in full in the normal way.[11]

49 Having received the Defendants' Costs Schedule, based on the Defendants' overall submission of 70% of all costs and disbursements, the Plaintiffs purported to accept that submission in relation to the disbursements incurred in Singapore dollars, the "normal" disbursements, and also in relation to Professor Kwon's fees and disbursements together with translation and notary fees, both pre-and post-transfer. However they objected to any sums being awarded in relation to KL fees and disbursements.[12]

50 For their part, the Defendants contended that either all disbursements should be discounted by 70% or that all disbursements other than those relating to KL should be paid in full with KL's fees being discounted by 50%.[13]

51 Dealing first with the "normal" pre-and post- transfer disbursements charged in Singapore dollars, we see no reason why these should not be paid in full in the normal way. Equally, it is conventional for expert's fees and attendant costs to be allowed in full unless they are unreasonably incurred. There is no such contention here and the Plaintiffs have not provided their own costs schedules which might serve to demonstrate that in some way excessive sums were incurred. Accordingly, each set of Plaintiffs will pay 50% of S$67,877 in relation to "normal" disbursements and KRW90,713,150 in relation to Professor Kwon's fees and attendant costs.

---

10 DCS at paras 17 and 20.

11 CNACS at paras 4 and 28 and CNDCS at para 3.

12 CNARSC at para 18 and CNDSSC at paras 22 to 23.

13 DRCS at para 17.

Version No 2: 02 Aug 2023 (15:53 hrs)

52 This leaves KL's fees which in total amount to KRW85,683,400 pre-transfer and KRW150,992,600 post-transfer together with disbursements of KRW7,438,026.[14] These are substantial sums of money. The Defendants contend in their Reply Costs Submissions that KL supported and assisted Professor Kwon in preparing his affidavits and written submissions without which Professor Kwon's fees would have been significantly higher.[15] Further, they submit that having a representative of KL present at the hearing was reasonable since the Plaintiffs were also each represented by two Korean counsel.

53 For their part, the Plaintiffs contend that any assistance provided to Professor Kwon constituted (in effect) a luxury rather than a necessity, that Professor Kwon did not have the benefit of their assistance in the underlying arbitration and that all submissions made at the hearings were made by Prof Kwon without input from KL Partners. Finally, they contend that if the Defendants are to recover anything in relation to KL's fees, they should be classified as legal costs and not disbursements.[16]

54 First, we accept the submission that in so far as any payment of KL's fees is justified, this should be on the basis that they constitute counsel's fees and should not be treated as disbursements. The purpose of engaging KL was for them to assist Professor Kwon prepare his report and submissions. Had this not been done, the Defendants' Singapore Counsel would have had to perform that role.

---

14 These disbursements are said to relate also to Professor Kwon but since no breakdown is provided between the two we are unable to allocate any specific sum in relation to Professor Kwon.

15 Defendants' Reply Costs Submissions at para 19.

16 CNARSC at paras 19 to 23 and CNDSSC at paras 17 and 20 to 21.

Version No 2: 02 Aug 2023 (15:53 hrs)

55 We do not accept that the involvement of KL was a luxury. In some respects it must have taken the burden of preparing Professor Kwon's reports and submissions off Singapore Counsel and reduced the overall costs owing to the absence of any language barrier but, having regard to Professor Kwon's command of the English language, this would not have been ideal. Doing the best we can on the information available to us, we have concluded that only 25% of KL's fees and disbursements should be taken into account.

56 Dealing first with the pre-transfer fees, these amounted to KRW85,683,400, 25% of which is KRW21,420,850. (This equates roughly to S$22,000). However any allowance in relation to the fees incurred pre-transfer falls to be assessed on the basis of the uplift to the Appendix G award considered in [31] above, which in turn was 25% of fees incurred. This leads to a figure of KRW5,355,212 to be paid by each set of Plaintiffs in equal shares.

57 In relation to post-transfer fees, the sum involved is KRW150,992,600, 25% of which is KRW37,748,150 (equating approximately to S$40,000). For the reasons given in [44] above the Plaintiffs should pay in equal shares 70% of this sum, which is KRW26,423,705.

58 This leaves the sum of KRW7,438,026 claimed by way of disbursements. By parity of reasoning with [51] above, 25% of these should be paid in full, KRW1,859,506, again in equal parts.

Conclusion

59 Each set of Plaintiffs, CNA and CND/CNE shall pay the Defendants the following sums by way of costs:

(a) Pre-transfer costs:

Version No 2: 02 Aug 2023 (15:53 hrs)

(i) Fees owing to the Defendants' Singaporean counsel: S$25,000.

(ii) Fees owing to the Defendants' Korean counsel, KL: KRW2,677,606.

(b) Post-transfer costs:

(i) Fees owing to the Defendants' Singaporean counsel: S$322,666.05.

(ii) Fees owing to the Defendants' Korean counsel, KL: KRW13,211,852.50.

(c) Disbursements:

(i) "Normal" disbursements in Singapore dollars for the entire period (including pre- and post- transfer): S$33,938.50.

Version No 2: 02 Aug 2023 (15:53 hrs)

(ii) Professor Kwon's fees and attendant costs for the entire period (including pre- and post- transfer): KRW45,356,575.

(iii) Disbursements of Korean counsel and Professor Kwon post-transfer (to be divided equally): KRW929,753.25.

Philip Jeyaretnam
Judge of the High Court

Simon Thorley
International Judge

Yuko Miyazaki
International Judge

Cavinder Bull SC, Tan Yuan Kheng (Chen Yuanqing), Lea Woon Yee, Tan Jui Yang, Benedict and Kenneth Sean Teo Hao Jin (Drew & Napier LLC), Junwoo Kim (alias Junu Kim) and Han Gil Lee (Bae, Kim & Lee LLC) (Korean law) for the plaintiff in SIC/OS 2/2022 and SIC/OS 5/2022;
Toby Landau KC (Duxton Hill Chambers) (instructed), Rachel Low Tze-Lynn (Rachel Low LLC) (instructed), Zhuo Jiaxiang and Alston Yeong (Providence Law LLC), Sunyoung Kim and Yoo Lim Oh (Lee & Ko) (instructed), Ing Loong Yang and Chi Ho Kwan (Akin Gump Strauss Hauer & Feld LLP) (instructing) (Korean law) for the plaintiffs in SIC/OS 3/2022 and SIC/OS 4/2022;
Chan Hock Keng, Chen Chi and Tang Xi-Rui, Charlotte (WongPartnership LLP), Prof Kwon Young Joon (Seoul National University) (instructed), Lee Eun Ngyung (KL Partners) (instructing) (Korean law) for the defendants in SIC/OS 2 to 5/2022.

Version No 2: 02 Aug 2023 (15:53 hrs)