

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC(I) 17

Originating Application No 3 of 2022

Between

CYW

... Applicant

And

CYX

... Respondent

JUDGMENT

[Civil Procedure — Costs]

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**CYW
v
CYX**

[2023] SGHC(I) 17

Singapore International Commercial Court — Originating Application No 3 of 2022

Thomas Bathurst JJ

15 March 2023

31 October 2023

Judgment reserved.

Introduction

1 These proceedings arose out of an arbitration between CYW as claimant and CYX as respondent in which CYW claimed it was not liable on a certain bills of exchange accepted by it and that a security deed between it and CYX (the “Security Deed”) was invalid. It also claimed consequential damages arising from CYX’s alleged failure to practise prudential banking or conduct due diligence as required by Indonesian law.

2 CYX by counterclaim sought to enforce the Security Deed and counterclaimed for the amount unpaid on the accepted Bills.

3 The facts giving rise to the arbitration are summarised in *CYW v CYX* [2023] SGHC (1) 10 at [4]–[16] (the “Setting Aside Judgment”) and it is unnecessary to repeat them.

4 CYW was unsuccessful in the arbitration and brought SIC/OA 3/2022 (“OA 3”) seeking orders setting aside the award on the ground that it was denied natural justice. It relied in support of the application on s 24(b) of the International Arbitration Act 1994 (2020 Rev Ed) and Art 34(2)(a)(ii) of the UNCITAL Model Law on International Commercial Arbitration as enacted under the First Schedule to the IAA. The grounds of CYW’s application are set out in more detail in the Setting Aside Judgment at [17]–[60] but they essentially arose out of the refusal of the arbitral tribunal (the “Tribunal”) to grant extensions of time to file expert evidence and provide translations of Indonesian documents relevant to the proceedings. It should be noted that although the arbitration proceedings undoubtedly were complex, the proceedings to set aside the award involved relatively narrow issues.

5 I dismissed CYW’s application, the reasons for which are set out in the Setting Aside Judgment. Accordingly, I ordered that CYW pay the costs of CYX (Setting Aside Judgment at [103]). This is my judgment on the quantum of costs.

The costs claimed

6 CYX has claimed a total of S\$218,744.10 in costs (inclusive of Goods and Services Tax (“GST”) and disbursements). The claim is made up as follows:

- (a) Costs of S\$23,443.70 for work done prior to the transfer of the proceedings to the Singapore International Commercial Court (the “SICC”), comprising costs of S\$21,910 plus GST at 7% of S\$1533.70.
- (b) Costs of S\$173,377.80 for work done subsequent to the transfer of the proceedings to the SICC, comprising the following:

- (i) costs of S\$40,500 plus GST at 7% of S\$2,835 for the period between 7 October 2022 and 31 December 2022;
 - (ii) costs of S\$2,960 plus GST at 8% of S\$236.80 for the period between 1 January 2023 and 26 January 2023; and
 - (iii) costs of S\$117,450 plus GST at 8% of S\$9,396 for the period between 27 January 2023 and 16 March 2023 (including the date of the hearing of OA 3 on 15 March 2023).
- (c) Costs of S\$16,383.60 for work done in preparing submissions on costs comprising costs of S\$15,170 plus GST at 8% of S\$1,213.60.
- (d) Disbursements totalling S\$5,539.01 comprising: (i) S\$5,359.01 for the period up to the Setting Aside Judgment; and (ii) S\$180 in respect of the submissions on costs. The disbursements have been itemised and it was not contended by CYW that any of them were unreasonably incurred.

7 CYX also provided detailed schedules supporting the costs summary which I have set out above. The schedule also included the time spent by the various counsel engaged in the matter and their hourly charge out rate.

8 In opposing the application, CYW filed a costs schedule stating that its total costs were S\$84,800 inclusive of GST amounting to S\$6,173. Although made up somewhat differently to the schedule furnished by CYX, it would appear that CYW's costs in the pre-transfer period totalled S\$12,519 (inclusive of GST at 7% of S\$819) and its costs from then up to the time of the case management conference on 29 November 2022 totalled S\$11,718 (inclusive of

GST at 8% of S\$868), whilst its costs from then up to the conclusion of the hearing on 15 March 2023 totalled S\$50,087 inclusive of GST at 8% of S\$3,710.

9 In respect of the costs of this application, CYW stated that its costs were S\$10,476 inclusive of GST at 8% of S\$776.

The relevant rules

10 The power of the court to fix or assess costs is contained in O 21 r 2(1) of the Rules of Court 2021 (the “ROC 2021”). O 21 r 2(2) further provides as follows:

Powers of Court (O. 21, r. 2)

...

(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.

11 Appendix G to the Supreme Court Practice Directions 2021 (“Appendix G”) provides guidelines for the assessment of costs. The guidelines suggest a range of costs of between S\$13,000 and S\$40,000 for originating applications concerning arbitration.

12 By contrast, the following rules apply to proceedings commenced in the SICC or to costs incurred on the transfer of a case from the General Division of the High Court (the “General Division”) to the SICC. Order 22 r 2(2)(a) of the Singapore International Commercial Court Rules 2021 (the “SICC Rules”) confers upon the court the power to determine all issues relating to the costs of or incidental to the proceedings. Order 22 r 3 of the SICC Rules provides as follows:

Entitlement to costs and assessment of costs

3.—(1) Without affecting the scope of the Court’s discretion in Rule 2(1), and subject to any provisions to the contrary in these Rules, a successful party is entitled to costs and the quantum of any costs award will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness.

(2) In considering proportionality and reasonableness, the Court may have regard to all relevant circumstances, including —

- (a) the complexity of the case and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the counsel;
- (c) the urgency and importance of the action to the parties;
- (d) the number of counsel involved in the case for each party;
- (e) the conduct of the 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;
 - (iii) the manner in which a party has pursued or contested a particular allegation or issue; and
 - (iv) whether the conduct of the parties, including conduct in respect of alternative dispute resolution, facilitated the smooth and efficient disposal of the case;
- (f) the amount or value of the claim;
- (g) the stage at which the proceedings were concluded;
- (h) the existence of any offer to settle, the date the offer was made, the terms of the offer and the extent to which the claimant's judgment is more favourable than the terms of the offer to settle;
- (i) the existence of an agreement as to the amount of, basis for, or mechanics for, the determination of a costs award; and
- (j) the estimates provided in a costs schedule.
- (3) If the defendant pays the amount claimed within the time and in the manner required by the endorsement on the Originating Application, the costs allowed are to be fixed at \$10,000.
- (4) The party who discontinues any application, action or appeal wholly or partly must pay any other party the costs of the matter discontinued, unless the parties otherwise agree or the Court otherwise directs.
- (5) In the case of any proceedings transferred to the Court from the General Division, the Court will assess —
- (a) costs up to the date of transfer taking into account the circumstances of the case including that the General Division costs regime as set out in the domestic Rules of Court would have applied to those costs; and
 - (b) costs after the date of transfer taking into account the circumstances of the case and in this

regard, the Court is not precluded from taking into account the General Division costs regime as set out in the domestic Rules of Court.

13 The manner in which these provisions are to be applied in assessing costs was explained by the Court of Appeal in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 (“*Senda*”). The court pointed out at [27] that costs awarded in the General Division are assessed at such a level as would enable a litigant with reasonable means to pursue justice, which requires the application of an objective standard. It stated at [49] that the effect of Appendix G was that even catering for the specificities of individual cases, the level of recoverable costs would generally remain within the ranges set out therein, which represent the level of fees which members of the public and the legal profession would generally regard as reasonable.

14 The court further stated that in contrast to the cases in the General Division, parties who come before the SICC would generally be better resourced and also more willing to incur greater expense on litigation in part because of the amount in stake and also because the cost of such litigation is generally seen as part of the necessary expense entailed in the pursuit of commercial objectives. It stated that the policy of enhancing access to justice is therefore less relevant in the SICC and the “ordinary expectation stemming from the indemnity principle that one may vindicate its legal rights through litigation at the unsuccessful party’s expense, is not in the SICC subject to the limitation that is imposed by access to justice considerations in the High Court” (see *Senda* at [51]). In those circumstances the court stated at [52] that an award of costs in the SICC is generally intended to restore or compensate the other party for the expense it had incurred in the legal proceedings as long as this has been incurred in sensibly mounting the claim or defence. The court emphasised that the

determination of the level of recoverable costs included consideration of whether the costs were reasonably incurred and whether they were reasonable in amount. The court set out the factors that should be considered in the exercise of the discretion to award costs in the following terms (at [70]):

In our judgment, the factors which the trial court should consider in the exercise of its discretion as to how to determine questions of costs include: (a) the complexity of the issues in the substantive proceeding; (b) the amount of costs claimed by the successful party; and (c) the nature and extent of the differences in the respective positions on costs taken by the parties. In its exercise of discretion, the trial court should be guided by the need to maintain a measure of proportionality between, on the one hand, the nature of the inquiry into ‘reasonable costs’, the corresponding level of detail involved in such an inquiry, and the expense associated with such an inquiry, and on the other, the amount of costs claimed by the successful party. This stands to reason since a costs claim in the millions of dollars must warrant more scrutiny than one in the thousands of dollars, and depending on the circumstances, more may have to be done in order for the trial court to satisfy itself that such claimed costs are ‘reasonable costs’.

15 The court summarised the relevant principles in the following manner (at [100]):

For the benefit of the parties and counsel, we summarise the points of principle that we have set out in this judgment pertaining to the assessment of ‘reasonable costs’ under O 110 r 46 [of the Rules of Court (2014 Rev Ed)] for proceedings in the SICC:

(a) The starting point for the assessment of ‘reasonable costs’ is just what costs were in fact incurred by the successful party, to the extent that such costs are ‘reasonable’. This is an open-ended inquiry to be undertaken with due regard to the specific facts of the case at hand.

(b) For proceedings in the SICC, it is for the trial court that heard the matter to assess costs and it is also

within the trial court's discretion to determine the manner in which costs are to be assessed. In our view, the trial court should, before rendering a decision on the substantive matter, first consider directing the parties to file their respective costs schedules containing a suitable breakdown of their incurred costs based on the principles that we have set out in this judgment. The parties can then be invited to address the court on the appropriate costs orders after a decision on the merits has been rendered. Such an approach would encourage the parties to communicate with each other on matters of costs, and also help narrow the issues dividing them. It will also assist the court in crystalising the issues for resolution in the assessment of costs and in determining the level of detail that will be required in undertaking the assessment of costs and deciding whether a separate process of assessment is required.

(c) When costs come to be assessed by the trial court, the legal burden is on the successful party to establish that its claimed costs are indeed 'reasonable costs', and it must provide information to show how the claimed costs had been incurred and thereby allow the unsuccessful party and/or the court to assess whether they are reasonable. This will typically include: (i) a breakdown of the claimed costs in terms of the number of hours claimed; (ii) by whom those hours were incurred, their levels of seniority and corresponding hourly rates; and (iii) some explanation as to what work those hours were incurred for. This level of information will also apply to claims for expert fees.

(d) Upon the successful party providing a sufficient breakdown of its claimed costs, the evidential burden shifts to the unsuccessful party to adduce evidence in rebuttal. Since the inquiry on 'reasonable costs' under O 110 r 46 is one about what is an appropriate level of costs to be incurred for the particular matter, the best evidence which the unsuccessful party can adduce to show that the claimed costs are not reasonable will often be evidence of its own incurred costs. However, it may also adduce other types of admissible evidence and point to flaws evident on the face of the costs claim.

16 The court, referring to its decision in *CBX and another v CBZ and others* [2022] 1 SLR 88 (“*CBX*”), also stated at [14] that in respect of cases transferred to the SICC from the General Division, pre-transfer costs should be assessed in accordance with O 59 of the Rules of Court (2014 Rev Ed) then in force and Appendix G, unless the parties had at the time of the transfer consented to its disapplication, or the Registrar handling the transfer of the matter to the SICC had made an order to this effect.

The parties’ submissions

CYX’s submissions

17 CYX points out that the Court of Appeal in *Senda* stated at [51]–[52] that in the SICC, parties are better resourced and more willing to incur greater expense in litigation due to the amounts at stake and the pursuit of commercial objectives and accordingly, the policy of enhancing access to justice is less relevant and the principal underlying consideration is a commercial one of ensuring that a successful litigant is not unfairly put out of pocket.

18 CYX highlights that O 22 r 3(2)(i) of the SICC Rules states when considering proportionality and reasonableness, the court may have regard to the existence of an agreement as to the amount of, basis for, or mechanics for, the determination of a costs award. In that context, CYX refers to clause 14.2 of the Security Deed, which provided for indemnity for costs in its favour. That provision is in the following terms:

14.2 Indemnity for exercise of rights or proceedings

To the extent permitted by law, the Grantor [*ie*, CYW] must indemnify the Security Agent [*ie*, CYX], each Finance Party, each Authorised Representative and agent of the Security Agent, each Receiver and Attorney of the Grantor and any other

person appointed under this document or the Corporations Act by or on behalf of the Security Agent as secured party under this document against, and must pay each of them on demand the amount of all losses, liabilities, costs, expenses and Taxes that they each incur:

- (a) (directly or indirectly) in the exercise or attempted exercise of any of the powers, rights, discretions or remedies (express or implied) vested in them under this document or the Corporations Act; and
- (b) in connection with all proceedings, expenses, claims and demands in relation to anything done or omitted in any way relating to Secured Property,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants except to the extent that any such losses, liabilities, costs, expenses and Taxes are a direct and foreseeable result of the fraud, gross negligence or wilful misconduct on that person.

19 In relation to pre-transfer costs, CYX refers to O 22 r 3(5) of the SICC Rules which it summarises as stating that the court is to assess costs taking into account the circumstances of the case including the costs regime in the General Division. CYX points out that the Court of Appeal in *CBX* referred to the decision in *Sheila Kazzaz and another v Standard Chartered Bank and others* [2021] 3 SLR 1 (“*Sheila Kazzaz*”), and observed at [33] that although the court in *Sheila Kazzaz* concluded that Appendix G continued to be relevant for pre-transfer costs, its relevance was outweighed by various complexities, including the presence of a contractual term entitling the defendants to costs on a full indemnity basis and the fact that the transactions in question in *Sheila Kazzaz* involved several jurisdictions. CYX submits that in the present case, the relevance of Appendix G is similarly outweighed by the contractual indemnity in clause 14.2 of the Security Deed, and the full legal costs and disbursements CYX had incurred in the pre-transfer period should thus be awarded to it.

20 So far as post-transfer costs were concerned, CYX, referring to *Kiri Industries Ltd v Senda International Capital Ltd and another* [2022] 3 SLR 174 (from which the appeal in *Senda* was brought) at [56], submits that the court has a wide discretion in assessing what are reasonable costs and there is no rule that it must apply Appendix G in relation to those costs.

21 CYX contends that in the present case, the relevant circumstances include: (a) the contractual indemnity in clause 14.2 of the Security Deed; (b) the fact that the value of the claim made by CYW in the arbitration was US\$100m; and (c) CYX's counterclaim for damages in excess of US\$8m and costs in excess of S\$2.4m, plus interest. It submits that its full legal costs and disbursements incurred post-transfer should be awarded. It also submits that it is entitled to its costs and disbursements in respect of its submissions on costs.

CYW's submissions

22 CYW submits that the quantum of any costs will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness.

23 In relation to O 22 r 3(2)(a) of the SICC Rules, CYW accepts that the setting aside of an arbitral award for breach of natural justice is a relatively complex area of law.

24 In relation to O 22 r 3(2)(b) of the SICC Rules, CYW notes that the case involved one set of affidavits, one set of written submissions and a hearing. CYW submits that although the affidavits amounted to about 1,000 pages each for both parties, they involved documents that had already been perused before

which formed part of the documents in the arbitration, and the hours spent by CYX's counsel in this regard should thus be reduced.

25 In dealing with the costs schedule presented by CYX, CYW submits that the estimates provided by CYX “are not reasonable and proportionate even under the SICC [R]ules as they are not reasonable”. It submits that the costs to be applied should be those provided in Appendix G.

26 CYW points out that the costs guidelines in Appendix G for arbitration proceedings range from S\$13,000 to S\$40,000 per day. It points out that the hearing of OA 3 took no more than three and a half hours, of which its counsel occupied two hours of hearing time, whilst counsel for CYX occupied one and a half hours. CYW submits that as the hearing took only a half day, costs assessed in accordance with Appendix G could not be more than S\$20,000. It also contends that even if the full amount stipulated in Appendix G were awarded, it would be a fraction of the amount being claimed by CYX as costs.

27 Further, CYW submits that the retention by CYX of five counsel including two partners was “rather redundant for a matter that is not very complex”. CYW argues that the choice of the number of lawyers was the prerogative of CYX and that the costs of the involvement of that number of lawyers was “[CYX's] counsels [*sic*] call and it will be unfair under natural justice to impose on the opponents to pay for all the numbers of lawyers even if it was on [an] indemnity basis” [emphasis in original omitted].

Consideration

Pre-transfer costs

28 As I indicated above at [6(a)], the amount claimed by CYX for pre-transfer costs amounted to S\$23,443.70 inclusive of GST. The actual costs amounted to S\$21,910. The work done involved: (a) reviewing the originating application and the affidavit of Mr A (the legal manager of CYW); (b) preparation for and attending two case conferences including preparing a pre-case conference questionnaire; and (c) reviewing CYW's pre-case conference questionnaire. It also included "[c]onducting case analysis, documentation review and legal research".

29 The work was said to occupy 4.3 hours of the time of lead counsel at a charge out rate of S\$800 per hour, 12.4 hours of a partner's time at a charge out rate of S\$500 per hour, 14.9 hours of a senior associate's time at a charge out rate of S\$400 per hour and 18 hours of an associate's time at a charge out rate of S\$300 per hour.

30 It should be noted that whilst it is correct as stated in the costs schedule provided by CYX that Mr A's affidavit occupied 1,067 pages, some 330 of these pages comprised the Articles of Association of CYW and documents pertaining to the Security Deed. Having regard to the issues in the proceedings, these documents would not have seemed to require detailed analysis.

31 The principal basis on which CYX contends that it is entitled to the whole of the pre-transfer costs notwithstanding the range stipulated in Appendix G is clause 14.2 of the Security Deed to which I have referred at [18] above. In *Sheila Kazzaz*, the court was dealing with a situation where the

Registrar on the application to transfer the proceedings to the SICC stated that Appendix G should continue to be relevant. It was in that context that the court made the following remarks (at [10]–[11]):

10 How then should I give effect to the Registrar’s direction that ‘Appendix G shall continue to be relevant’ to these proceedings? The Plaintiffs calculate (and I accept) that, if Appendix G were to be strictly adhered to and on the premise (as I have held) that Clause 14.1 applies, the Defendants should only recover S\$512,400 in legal fees. Nevertheless, Appendix G is only a guideline. The Registrar’s direction does not require me to apply Appendix G to the strict letter. I must simply pay heed to Appendix G. The difficulty is that the S\$1.1m sought by the Defendants is more than twice the amount suggested by Appendix G. I doubt that I would be paying sufficient heed to the Registrar’s direction if, without more, I was simply to allow S\$1.1m to the Defendants as representing their ‘reasonable costs’ within the terms of O 110 r 46(1) of the Rules of Court. It seems to me that, if they are to be awarded the S\$1.1m claimed, the Defendants must point to one or more special factors justifying a significant departure from the S\$512,400 indicated by Appendix G.

11 The Defendants have put forward the following as special factors: (a) Clause 14.1; (b) the need to deal with questions of DIFC law; (c) the fact that the Plaintiffs’ allegations spanned events and issues involving Singapore, Dubai, the UK, Guernsey, the Cayman Islands, Jersey, France and Iraq; and (d) the fact that one of the four Defendants was no longer employed by the first defendant. I do not find factor (d) to be a compelling basis for departing from Appendix G. However, in my view, the fact that Clause 14.1 entitles the Defendants to a ‘full indemnity’ (that is, factor (a)) and the complexities arising from factors (b) and (c) sufficiently justify a departure from the S\$512,400 posited by Appendix G to the extent of the S\$1.1m claimed by the Defendants.

32 As was pointed out in *CBX* at [38], the conclusion of the court in *Sheila Kazzaz* was that although Appendix G continued to be relevant under the Registrar’s transfer order, its relevance was outweighed by a contractual term which entitled the defendants in that case to costs on an indemnity basis and various complexities of the case. In my view, it is not authority for the

proposition that in circumstances which include a contractual indemnity for costs, Appendix G can be disregarded in the assessment of pre-transfer costs. That is, in my opinion, contrary to the approach which the Court of Appeal in *Senda* stated should be taken in relation to pre-transfer costs (at [14]).

33 I accept that a contractual clause providing for indemnity costs is a relevant factor in assessing the quantum of pre-transfer costs. However, as stated in *Senda* at [49], the level of recoverable costs should generally remain within the ranges set out in Appendix G.

34 In the present case, the pre-transfer work carried out on behalf of CYX involved considering CYW's application to set aside the arbitral award made in the arbitration between the parties and an affidavit which although lengthy, contained documents which had only limited relevance to the proceedings. Although it also involved preparation for two case conferences and I accept some legal research and analysis, the case was still at a preliminary stage at those points in time.

35 In these circumstances I am not prepared to allow the amount claimed by CYX for pre-transfer costs. It seems to me that taking into account the complexity of the matter, clause 14.2 of the Security Deed and the range suggested in Appendix G, the appropriate order for costs in respect of the pre-transfer period is S\$10,000 together with GST at 7%, making a total of S\$10,700.

36 This is slightly less than the pre-transfer costs said to have been incurred by CYW of S\$12,519 inclusive of GST. However, it must be remembered that the costs of CYW in the pre-transfer period included the work involved in the

preparation of the application and supporting affidavit. The preparation of the affidavit in response on behalf of CYX took place in the post-transfer period.

Post-transfer costs

37 The question before me is in effect whether the costs claimed were proportionate to the issues involved, reasonably incurred and reasonable in amount. It is convenient to deal with them by reference to the five periods referred to in the costs schedule supplied by CYX, whilst recognising that in considering the amounts claimed in the later periods, regard has to be had to whether what was claimed in these periods was reasonably incurred having regard to the work done in the earlier periods.

38 I have set out the relevant charge out rates for the services provided by those involved on behalf of CYX at [29] above. The hourly rates seem to me to be reasonable. It was not contended to the contrary and the hourly rates are somewhat less than those disclosed in the costs schedule supplied by CYW. The differences in the amounts claimed in the parties' respective schedules is due to the far greater time spent in preparation for the hearing by the representatives of CYX compared to those of CYW.

39 For the period between 7 October 2022 and 31 December 2022, the work carried out by the legal representatives of CYX involved preparation of the affidavit of Mr B (filed on behalf of CYX), preparation of CYX's case management bundle, reviewing the case management bundle supplied by CYW and preparation of a draft joint case management bundle. The total amount claimed was S\$40,500 plus GST at 7% of S\$2,835 (totalling S\$43,335).

40 The work done in this period involved 21.7 hours of work by lead counsel at S\$800 per hour, 10.6 hours of work done by a partner at S\$500 per hour, 31.8 hours of work done by a senior associate at S\$400 per hour and 20.1 hours of work done by two associates at S\$300 per hour.

41 By contrast, the costs schedule supplied by CYW for the same period disclosed total costs of S\$11,718 inclusive of GST at 8% of S\$868. It involved an aggregate of 6.2 hours of work by lead counsel and co-counsel for CYW at S\$850 per hour and 13.95 hours of work by an associate at S\$400 per hour.

42 The affidavit of Mr B was lengthy, although it must be remembered that of the 1,093 pages, the affidavit itself comprised about 37 pages, the balance being annexures. The annexures, which mainly comprised documents brought into existence in connection with the arbitration, were certainly relevant to the issues for determination in the proceedings, namely, whether in the circumstances which confronted the Tribunal, its orders in relation to the production of expert evidence and translation of Indonesian documents denied CYW natural justice.

43 In comparing the work done by the representatives of CYX and CYW over the period, it must be remembered that the supporting affidavit filed by CYW was prepared in the pre-transfer period whilst that filed on behalf of CYX was prepared in the post-transfer period.

44 In all the circumstances and having regard to the issues involved in the proceedings, the significance of the proceedings to the parties and clause 14.2 of the Security Deed, I am of the view that CYX should be awarded the amount

claimed in the period between 7 October 2022 and 31 December 2022, being S\$43,335.

45 The next claim is for the period between 1 January 2023 and 26 January 2023 involving consenting to the sealing application filed by CYW, SIC/SUM 1/2023. The amount claimed is S\$2,960 plus GST at 8% of S\$236.80 (totalling S\$3,196.80). I regard this claim as reasonable and these costs should be allowed.

46 The next claim is for the period from 27 January 2023 up to 16 March 2023, including the hearing on 15 March 2023. The total amount claimed was S\$117,450 exclusive of GST. The work said to be done in the period included the preparation of written submissions and bundles of authorities, reviewing CYW's written submissions and bundles of authorities, attending the hearing, and conducting case analysis, documentation review and legal research.

47 The time spent totalled 228.1 hours. Assuming that seven hours was spent per day on average, that is a little over 32 days. Of these 228.1 hours, 69.8 hours was spent by lead counsel at S\$800 per hour, 29.4 hours by a partner at S\$500 per hour, 82.4 hours by a senior associate at S\$400 per hour and 46.5 hours at S\$300 per hour by an associate.

48 By contrast, the costs schedule supplied on behalf of CYW reflects that the costs incurred on CYW's behalf over the same period totalled S\$50,087 inclusive of GST at 8% of S\$3,710.

49 The hearing of OA 3 took three hours. Nevertheless, it must be said that the hearing was able to proceed quickly having regard to the high quality of the written submissions. After taking into account the importance of the litigation to the parties, the complexity of the litigation, clause 14.2 of the Security Deed,

as well as the costs said to have been incurred by CYW over the same period, I am of the view that the costs claimed are disproportionate to what was involved in the proceedings and to a not insignificant extent unreasonably incurred. This is particularly the case where S\$40,500 plus GST at 7% of S\$2,835 was also claimed by CYX as post-transfer costs for the period between 7 October 2022 and 31 December 2022, which I have awarded in full (see [39] and [44] above).

50 In all the circumstances the costs for this period should be reduced by approximately 25% from S\$117,450 to S\$88,500. There will be a corresponding reduction in GST. In sum, the costs awarded to CYX for the period between 27 January 2023 and 16 March 2023 would be S\$88,500 plus GST at 8% of S\$7,080, totalling S\$95,580.

51 So far as the post-judgment costs are concerned, the amount claimed is S\$15,170 plus GST at 8% of S\$1,213.60 (totalling S\$16,383.60). The costs of CYW, by contrast, amounted to S\$10,476 inclusive of GST at 8% of S\$776. Having regard to the fact that CYX had the carriage of the costs application, I do not regard the amount claimed by it as being unreasonable.

52 As I indicated at [6(d)] above, it was not contended by CYW that any of CYX's disbursements were unreasonably incurred, and I therefore regard the disbursements claimed by CYX as having been properly incurred.

Conclusion

53 In the result, I order that CYW is to pay CYX its costs of the proceedings in an amount of S\$174,734.41 inclusive of GST and disbursements. This amount is made up as follows:

- (a) pre-transfer costs of S\$10,000 plus GST at 7% totalling S\$10,700 (see [35] above);
- (b) costs for the period between 7 October 2022 and 31 December 2022 of S\$40,500 plus GST at 7% totalling S\$43,335 (see [39] and [44] above);
- (c) costs for the period between 1 January 2023 to 26 January 2023 of S\$2,960 plus GST at 8% totalling S\$3,196.80 (see [45] above);
- (d) costs for the period between 27 January 2023 and 16 March 2023 of S\$88,500 plus GST at 8% totalling S\$95,580 (see [50] above);
- (e) post-judgment costs up to 5 July 2023 of S\$15,170 plus GST at 8% totalling S\$16,383.60 (see [51] above);
- (f) disbursements of S\$5,539.01 (see [6(d)] and [52] above).

Thomas Bathurst
International Judge

Suhaimi bin Lazim, Mohamed Hashim H Sirajudeen (Mirandah Law LLP) and Abdul Rohim bin Sarip (A. Rohim Noor Lila LLP) for the applicant;
Herman Jeremiah, Aw Sze Min, Lee Qiu Li and Tan Yi Xi Joie (Dentons Rodyk & Davidson LLP) for the respondent.
