

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA(I) 3

Civil Appeal from the Singapore International Commercial Court No 2
of 2022

Between

Crédit Agricole Corporate &
Investment Bank, Singapore
Branch

... Appellant

And

PPT Energy Trading Co Ltd

... Respondent

In the matter of SIC/S 1/2021

Between

Crédit Agricole Corporate &
Investment Bank, Singapore
Branch

... Plaintiff

And

PPT Energy Trading Co Ltd

... Defendant

Civil Appeal from the Singapore International Commercial Court No 3
of 2022

Between

Crédit Agricole Corporate &
Investment Bank, Singapore
Branch

... Appellant

And

PPT Energy Trading Co Ltd

... Respondent

In the matter of SIC/S 2/2021

Between

PPT Energy Trading Co Ltd

... Plaintiff

And

Crédit Agricole Corporate &
Investment Bank, Singapore
Branch

... Defendant

JUDGMENT

[Civil Procedure — Costs]

[Civil Procedure — Damages — Interest]

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**Crédit Agricole Corporate & Investment Bank,
Singapore Branch**
v
PPT Energy Trading Co Ltd and another appeal

[2024] SGCA(I) 3

Court of Appeal — Civil Appeal Nos 2 and 3 of 2022
Judith Prakash SJ, Jonathan Hugh Mance IJ and Bernard Rix IJ
4 December 2023

7 June 2024

Judgment reserved.

The Court:

Introduction

1 CA/CAS 2/2022 and CA/CAS 3/2022 (the “Appeals”) arose out of two cases heard by the Singapore International Commercial Court (“SICC”), SIC/S 1/2021 (“SIC 1”) and SIC/S 2/2021 (“SIC 2”). Crédit Agricole Corporate & Investment Bank, Singapore Branch (“CACIB”) was the plaintiff in SIC 1 and the defendant in SIC 2. PPT Energy Trading Co Ltd (“PPT”) was the defendant in SIC 1 and the plaintiff in SIC 2. The Judge in the SICC (the “Judge”) dismissed CACIB’s claim in SIC 1 and allowed PPT’s claim in SIC 2. Dissatisfied, CACIB filed the Appeals.

2 This is the third judgment issued in respect of the Appeals. The first was our decision on liability issued on 24 October 2023 in *Crédit Agricole Corporate & Investment Bank, Singapore Branch v PPT Energy Trading Co*

Ltd and another appeal [2023] SGCA(I) 7 (the “Liability Judgment”). The second was our judgment issued on 10 May 2024 in respect of a post-appeal application for leave to serve interrogatories filed by PPT (the “Interrogatories Judgment”). This third judgment deals with the question of interest payable on the sums awarded and dealt with in the Liability Judgment, as well as with the question of the costs of the SICC proceedings and the Appeals. At the time the costs submissions were filed, PPT had also raised a question of the quantum of damages payable under the Liability Judgment but that has since been dealt with in the Interrogatories Judgment.

3 The underlying facts that led to the SICC proceedings and the Appeals are complex and are set out in detail in the Liability Judgment and summarised in the Interrogatories Judgment. We will not repeat them here save as may be necessary to understand the arguments made by the parties with regard to the issues of costs and interest and the reasons for our decision. References in this judgment to Zenrock, TOTSA and ING are to be understood as references to Zenrock Commodities Trading Pte Ltd which was the fraudster behind the whole transaction, Totsa Oil Trading SA which had agreed to buy a consignment of oil from Zenrock, and ING Bank NV, which, like CACIB, had provided financing to Zenrock and received an assignment of the sale contract with TOTSA and its receivables.

The court proceedings

4 On 28 May 2020, CACIB commenced HC/S 451/2020 (“Suit 451”) in the General Division of the High Court (“GDHC”) against PPT seeking, essentially, a permanent injunction to restrain payment under or pursuant to CACIB’s letter of credit dated 3 April 2020 in favour of PPT (the “Credit”).

Concurrently, CACIB filed and obtained, *ex parte*, an interim injunction to the same effect.

5 PPT commenced HC/S 555/2020 in the GDHC (“Suit 555”) on 24 June 2020, claiming against CACIB the sum of US\$23,662,732.50 pursuant to the terms of the Credit (the “LC Sum”). On 21 July 2020, Suit 451 and Suit 555 were ordered to be heard together. The prayers sought in Suit 555 mirrored those in PPT’s counterclaim in its Defence and Counterclaim in Suit 451 filed on 14 August 2020.

6 Following a series of hearings in regard to the interim injunction, the parties came to an agreement on 9 November 2020 that the interim injunction to restrain payment under the Credit was to be discharged and CACIB was to pay the LC Sum into a bank account held by PPT in the Bank of China Limited (“BOC”). The arrangement was for BOC to issue a banker’s guarantee to CACIB as a form of security (the “BOC Guarantee”) for the repayment of the LC Sum in the event that CACIB succeeded in its claim against PPT. CACIB paid US\$23,662,732.50 into the designated BOC bank account on 18 November 2020.

7 In the meantime, there was a dispute as to whether CACIB or ING was entitled to the proceeds of Zenrock’s sale of the oil to TOTSA. This was a sum of US\$16,517,443.06 (the “Receivables”). Interpleader proceedings were started by CACIB to resolve this question. Pending resolution of the interpleader, TOTSA remitted the Receivables to CACIB’s solicitors to hold as escrow agent. On 23 November 2020, a settlement agreement was entered into between CACIB, ING and the escrow agent (the “Settlement Agreement”). Under the settlement, CACIB received US\$6,197,532.75 from the Receivables.

8 On 19 November 2020, CACIB filed its Defence and Counterclaim (Amendment No. 1) to Suit 555, adding an alternative counterclaim for the sum of US\$23,662,732.50 under the letter of indemnity issued by PPT to CACIB dated 9 April 2020 (the “LOI”).

9 Suits 451 and 555 were transferred to the SICC pursuant to an Order of Court dated 9 February 2021 and renumbered as SIC 1 and SIC 2 respectively. The order also provided that: (a) the costs scale in the GDHC and O 59 of the Rules of Court (Cap 322, 2014 Rev Ed) (“ROC 2014”) were to continue to apply to the assessment of costs incurred in respect of all proceedings in Suits 451 and 555 before their transfer to the SICC; and (b) O 110 r 46 of the ROC 2014 would apply to the assessment of costs incurred in respect of all proceedings in Suits 451 and 555 after their transfer to the SICC.

10 The trial of SIC 1 and SIC 2 took place before the Judge over eight working days in December 2021. There were two main disputes before the SICC. The first was whether PPT was entitled to payment under the Credit even though the issue of the Credit had been procured by the fraud of CACIB’s customer, Zenrock. This was the “Credit dispute”. The second dispute was whether PPT had breached any of the warranties it had given to CACIB under the LOI. This was the “LOI dispute”. On 13 January 2022, the Judge delivered his decision in *Crédit Agricole Corporate & Investment Bank, Singapore Branch v PPT Energy Trading Co Ltd* [2022] SGHC(I) 1. He found that CACIB’s claims for an injunction, declaration and an order for reimbursement of the LC Sum paid to PPT all failed, that CACIB was liable under the Credit and, therefore, that PPT was entitled to retain the LC Sum. The Judge also dismissed CACIB’s claim for breach of the warranties given in the LOI, finding

that (a) the obligation by PPT to give the warranties therein only arose if CACIB first made payment by the due date provided in the sale contract between PPT and Zenrock, which CACIB had failed to do; (b) in any event, none of the warranties set out in the LOI had been breached; (c) the indemnity provided in the LOI by PPT consequent upon any breach of warranty also did not operate since CACIB had not made payment under the Credit by the due date; and (d) if the express indemnity in the LOI had operated independently of any breach of warranty, CACIB had not discharged its burden of proof in establishing any loss for which PPT would be liable to indemnify it. The Judge then reserved for future determination all questions of further relief, including damages, interest and costs.

11 The Judge dealt with the reserved issues on 30 March 2022. He then ordered that:

(a) PPT was entitled to payment of US\$23,662,732.50, representing the sum due under the Credit, on 5 June 2020 from CACIB and was entitled to interest at the rate of 5.33% per annum and pro rata on the said sum of US\$23,662,732.50 from 5 June 2020 to 18 November 2020 (the “Interest”);

(b) CACIB was to pay PPT the Interest forthwith;

(c) CACIB was to pay PPT the Recoverable Costs, as defined in para 14 of the court’s Minute Sheet dated 30 March 2022 and in the amounts set out below, forthwith;

| Item | Amount awarded |
|--------------------|----------------|
| Pre-transfer costs | S\$61,000.00 |

| | |
|--|---|
| Work done by PPT’s lawyers post-transfer | US\$780,000.00 |
| Mr Collett KC’s fees | £170,000.00 |
| Costs of the BOC Guarantee | US\$237,061.34 up to November 2022 but to be prorated at US\$324.15 <i>per day</i> if the litigation terminates earlier |
| Travel expenses for PPT’s witnesses | S\$40,714.23 and ¥136,400 |
| Travel expenses for Mr Collett KC | £11,242.98 |
| Wang Jing & Co’s fees | US\$12,639.32 |
| Mr Driscoll’s fees | US\$50,000 |
| Miscellaneous expenditure | US\$29,182.01, S\$45,946.55 and ¥2,423,720 |

(d) CACIB was to pay interest on each of the total sums ordered at the judgment rate of 5.33% per annum and pro rata until full payment.

12 The Appeals were heard on 19 and 20 October 2022. By the Liability Judgment, we allowed the Appeals in part, finding that (a) in respect of the Credit dispute, CACIB was not entitled to rely on Zenrock’s fraud to set aside and avoid liability to pay the LC Sum to PPT; but (b) in respect of the LOI dispute, PPT had breached the warranty of marketable title given in the LOI, such that CACIB was entitled to damages. Crucially, we found that what CACIB was entitled to claim under the LOI was loss which it would have avoided if it had unquestionable security over the Receivables payable by

TOTSA to Zenrock to which it was entitled under the LOI, and which it would have had in the absence of fraud, in return for making payment under the Credit.

13 Accordingly, we also set aside the orders on interest and costs made by the Judge on 30 March 2022 and ordered that parties file written submissions on: (a) the principal amounts and periods for which interest would be payable to either party, if any, and the rate applicable thereto; and (b) the costs to be awarded for the Appeals and the trial. At that stage, there also remained some uncertainty on PPT’s part as to the amount of CACIB’s recovery in the settlement of the interpleader proceedings. We gave the parties leave to refer any outstanding dispute on this matter to us. This issue has now been resolved and we explain the resolution below. As stated in [9] of the Interrogatories Judgment, the amount of damages which PPT has to pay CACIB for breach of warranty is US\$10,319,910.31. This was derived by deducting from the Receivables of US\$16,517,443.06 the sum of US\$6,197,532.75 received by CACIB under the Settlement Agreement with ING and the escrow agent.

The parties’ cases

14 It should be noted in relation to the claims for costs put forward by the parties that both were represented by local and foreign counsel. In the case of CACIB, its local lawyers were from the firm of PK Wong & Nair LLC (“PKWN”), while its foreign lawyers were Mayer Brown and English counsel. PPT was represented by the local firm of Wee Swee Teow LLP (“WST”) and by English counsel.

CACIB’s submissions

15 CACIB submits that it is entitled to interest as follows:

| | Principal amount | Interest period | Remarks | Interest Calculation |
|---|---|-------------------------------------|--|-----------------------------|
| 1 | US\$16,517,532.06 (Note: This is slightly inaccurate, the correct figure should be US\$16,517,443.06) | 18 November 2020 to 9 December 2020 | 18 November 2020 being the date the LC Sum was paid and thus the date that CACIB was entitled to the Receivables payable by TOTSA; 9 December 2020 being the date US\$6,197,532.75 was received by CACIB in settlement proceedings | US\$53,064.27 |
| 2 | US\$10,319,470.81 (Note: This is also slightly inaccurate, the correct figure should be US\$10,319,910.31) | 10 December 2020 onwards (running) | The net loss suffered by CACIB after receipt of US\$6,197,532.75 | Running |
| 3 | US\$1,983,971.30 | 15 April 2022 onwards (running) | 14 April 2022 being the date when CACIB paid the sum of US\$1,983,971.30 to PPT as interest and costs | Running |

16 As regards costs, CACIB contends that it is entitled to rely on the full indemnity provided by the LOI for damages, costs and expenses (including

reasonable legal fees) incurred by CACIB in connection with prosecuting the LOI claim from the inception of the dispute. As such, CACIB's case is that it is entitled to the full amount of pre-transfer and post-transfer costs as set out below:

| S/N | Item | Amount |
|-----|--|----------------|
| 1 | PKWN's Pre-transfer Costs | S\$93,000 |
| 2 | Mayer Brown's Pre-transfer Costs (as disbursements) | US\$952,544.66 |
| 3 | Pre-transfer disbursements | S\$10,367 |
| 4 | PKWN's Post-transfer Costs | S\$441,139.50 |
| 5 | Ms Sara Masters KC's Costs | £112,540 |
| 6 | Mayer Brown's Post-transfer Costs | US\$681,900.45 |
| 7 | Post-transfer disbursements | S\$84,250.75 |
| 8 | PKWN's costs for the Appeals | S\$149,417 |
| 9 | Mr David Joseph KC's, Mr Bibek Mukherjee's and Mr Andrew Onslow KC's costs for the Appeals | £390,862.50 |
| 10 | Mayer Brown's costs for the Appeals | US\$179,682.70 |
| 11 | Disbursements for the Appeals | S\$18,445.30 |
| 12 | Ms Catherine Jago's expert costs | £75,132.50 |
| 13 | Costs of the submissions on interest and costs (PKWN) | S\$13,642.50 |
| 14 | Costs of the submissions on interest and costs (Mayer Brown) | US\$22,576.40 |

PPT's submissions

17 As regards interest, PPT contends that it is entitled to interest on the sum “locked up” by BOC (US\$23,662,732.50) in exchange for the BOC Guarantee given to CACIB, from 18 November 2020 to the date when the BOC Guarantee is discharged, at the default rate of 5.33% per annum. PPT further claims interest on the loan that it had to take (“PPT Loan”) due to CACIB’s failure to pay the LC Sum, in the sum of US\$23,487,896.05 for the period from 14 May 2020 to 30 November 2022, amounting to US\$382,985.08.

18 In respect of costs, PPT submits that it should be awarded costs of the Appeals for the Credit dispute, sub-issue 4 of the LOI dispute, as well as costs up to the date of CACIB’s amendment on 20 October 2022 for sub-issue 3 of the LOI dispute. For context, the “sub-issues” in relation to the LOI dispute were:

- (a) What is the true construction and effect of the LOI? In particular, was payment by the due date of the sale contract a condition of that contract?
- (b) If the LOI was effective at all, was there a breach of the Warranty? In particular, was there a marketable title, free and clear of any lien and encumbrance that was passed under the sale by PPT?
- (c) If there was a breach of the Warranty, what damages were incurred?
- (d) What was the quantum of any loss to be indemnified under the Indemnity in the absence of the bills of lading?

PPT’s case is that while CACIB generally succeeded on the LOI dispute, PPT succeeded on sub-issue 4 of the LOI Dispute, and CACIB succeeded on sub-issue 3 only because in the Appeals CACIB presented an alternative claim at the hearing itself. CACIB initially argued that under sub-issue 3, it should be

put in the same position “as if it had been provided the original bills”, but changed its position on appeal where it asserted that it should be put in the same position as it would have been in, either if “the warranties had been true” or if the original bills had been presented.

19 PPT also claims costs incidental to the proceedings, referring to the fees payable to BOC for the BOC Guarantee, and disbursements.

20 In the alternative, PPT’s case is that no order as to costs for the Appeals should be made.

21 PPT further submits that CACIB should not be awarded any costs for the trial and the Appeals.

22 As regards costs of the trial, PPT submits that the court should make orders in the same terms as the Judge did.

23 Finally, PPT contends that it should be awarded: (a) additional pre-appeal costs for work done by WST in relation to effecting the Judge’s costs order; and (b) disbursements between 18 February 2022 and 27 April 2022.

24 A summary table of PPT’s claimed costs is as follows:

| S/N | Item | Amount |
|--------------------------------|-----------------------------|----------------|
| Relating to the Appeals | | |
| 1 | WST’s legal fees | US\$545,587.50 |
| 2 | English Counsel’ legal fees | £114,827.48 |
| | Mr Michael Collett KC | £112,957.48 |

| | | |
|------------------------------------|--|----------------|
| | Ms Fiona Peterson | £1,870 |
| 3 | English solicitor Mr Edward Gray's legal fees (as disbursements) | £1,461.50 |
| 4 | Travel expenses for Mr Collett KC | £7,853.35 |
| 5 | Miscellaneous expenses | US\$4,687.97 |
| 6 | Costs of procuring the BOC Guarantee | US\$128,187.94 |
| Pre-appeal costs | | |
| 7 | Same terms as the Judge's Costs Order at para 3 | |
| 8 | Interest paid on PPT's Loan | US\$382,985.08 |
| Additional pre-appeal costs | | |
| 9 | WST's legal fees | US\$3,100 |
| 10 | Miscellaneous expenses | US\$1,827.25 |

25 On the basis of the foregoing, we have to determine:

- (a) the principal amounts and periods for which interest is payable to either party, if any, and the rate applicable thereto; and
- (b) the costs to be awarded for the Appeals and the trial below.

The quantum of damages that CACIB is entitled to claim under the LOI

26 Firstly, we explain and reiterate our decision on the quantum of damages. In our decision on liability, we gave judgment in favour of CACIB in

the sum of US\$10,319,470.81, subject only to the matter raised at [74] of the Liability Judgment:

74. ... What CACIB is entitled to claim under the LOI is loss which it would have avoided if it had unquestionable security over the receivable payable by TOTSA to which it was entitled under the LOI, and which it would have had in the absence of fraud, in return for making payment under the letter of credit. This is *subject only to a degree of uncertainty raised by PPT as to the amount of CACIB's recovery in the settlement*. If any uncertainty remains, and the parties cannot eliminate it to their own satisfaction, any outstanding dispute may be referred back to this court. [emphasis added]

The sum of US\$10,319,470.81 was derived by taking the net difference between the price payable by TOTSA to Zenrock and caught by the interpleader proceedings, namely US\$16,517,532.06, and the recovery of US\$6,197,532.75 obtained by CACIB in the settlement of those proceedings. It is this latter amount of CACIB's alleged recovery that we observed was subject to "a degree of uncertainty raised by PPT", which had to be resolved to determine whether the judgment sum of US\$10,319,470.81 in favour of CACIB was accurate and, if not, what the quantum of damages should be.

27 It is clear now that the quantum of damages that CACIB is entitled to be paid under the LOI is the sum of US\$10,319,910.31 as stated in [9] of the Interrogatories Judgment. The slight variation in the figure from that given in [74] of the Liability Judgment arises from minor discrepancies in the numbers derived from the oral submissions at the hearing of the Appeals. As elaborated upon in [9] of the Interrogatories Judgment, this was attributable to a clerical error in the Liability Judgment, which was remedied by recourse to O 16 r 3(5) of the Singapore International Commercial Court Rules 2021.

28 The affidavit filed by CACIB on 10 November 2023 to address the element of uncertainty in respect of CACIB’s recoveries in its settlement with ING and the escrow agent (the “Affidavit”) provided documentary support for the position which counsel informed us of at the hearing of the Appeals. We admitted the Affidavit, and set out our reasons for doing so, at [15] of the Interrogatories Judgment. The Affidavit appended documents proving that (a) the Receivables payable by TOTSA to Zenrock was US\$16,517,443.06 and this amount was transferred to Mayer Brown as escrow agent on 17 June 2020; and (b) by way of the Settlement Agreement, the balance of the Receivables in the sum of US\$6,197,532.75 was to be distributed, and was in fact distributed, to CACIB. The appended documents included the Settlement Agreement, the release notice of the monies by the escrow agent, and the SWIFT message reflecting the distribution to CACIB. Any degree of uncertainty raised by PPT as to the amount of CACIB’s recovery in the settlement was resolved by the Affidavit.

The interest payable

Interest payable to PPT

29 In the Liability Judgment, we rejected CACIB’s appeal in relation to the Credit dispute and found that CACIB was liable to pay PPT the LC Sum of US\$23,662,732.50. The due date for payment under the Credit was 5 June 2020, but CACIB paid the LC Sum into the designated BOC bank account only on 18 November 2020. In the interim, on 17 June 2020, after exchanges between ING and CACIB, TOTSA transferred the Receivables to Mayer Brown as escrow agent. As such, notwithstanding that CACIB only became entitled to the Receivables on 18 November 2020 when the LC Sum was paid to PPT, PPT

had already become liable in damages to CACIB for the sum of US\$16,517,443.06 as of 17 June 2020.

30 Accordingly, PPT is entitled to interest at the rate of 5.33% per annum and pro rata on:

(a) The principal amount of US\$23,662,732.50 from 5 June 2020 (being the date the LC Sum was due) to 17 June 2020 (being the date that PPT became liable in damages to CACIB for the sum of US\$16,517,443.06), amounting to US\$41,464.89; and

(b) The principal amount of US\$7,145,289.44 (ie, US\$23,662,732.50 less US\$16,517,443.06) from 17 June 2020 to 18 November 2020 (being the date the LC Sum was paid), amounting to US\$160,684.84.

31 We do not accept PPT’s submissions that (a) PPT should be granted post-judgment interest until the BOC Guarantee is discharged; or (b) PPT should be paid interest on the PPT Loan (see [17] above). We affirm and reiterate the views of the Judge that once CACIB made payment under the Credit on 18 November 2020, there was “no outstanding debt post 18 November 2020” and the arrangement between BOC and PPT as to how the LC Sum was to be managed was “a matter for negotiation between PPT and BOC”. It suffices to say that having paid out the LC Sum on 18 November 2020, CACIB thereafter no longer owed any liability to PPT as regards the LC Sum on which interest could accrue and attach. With respect to the PPT Loan, there is no basis for PPT’s claim for interest as that was an arrangement which had nothing to do with CACIB.

Interest payable to CACIB

32 CACIB is entitled to interest at the rate of 5.33% per annum and pro rata on:

(a) The principal amount of US\$16,517,443.06 from 18 November 2020 (being the date the LC Sum was paid and thus the date when CACIB was entitled to the Receivables) to 9 December 2020 (being the date US\$6,197,532.75 was paid to CACIB pursuant to the Settlement Agreement), amounting to US\$50,651.98; and

(b) The principal amount of US\$10,319,910.31 from 9 December 2020 (being the date US\$6,197,532.75 was paid to CACIB pursuant to the Settlement Agreement) to the date that such sum is paid to CACIB.

33 As we ordered that the orders made by the Judge on 30 March 2022 be set aside in their entirety, CACIB is also entitled to a refund of all costs, fees and interest paid to PPT subsequent to the Judge's decision of 30 March 2022, with interest. Accordingly, CACIB should be awarded interest based on the principal amount of US\$1,983,971.30 that it paid to PPT to discharge its obligations pursuant to the 30 March 2022 orders, at a rate of 5.33% per annum and pro rata from 14 April 2022 (being the date when CACIB paid the sum of US\$1,983,971.30 to PPT as interest and costs) to the date that such sum is repaid.

The costs of the trial below and the Appeals

To whom should costs be awarded?

34 For the reasons below, we are of the view that a single award of costs should be made in favour of CACIB as the successful party.

35 As provided for in the Order of Court dated 9 February 2021, (a) the costs scale in the GDHC and O 59 of the ROC 2014 were to continue to apply to the assessment of costs incurred in respect of all proceedings in Suits 451 and 555 before their transfer to the SICC; and (b) O 110 r 46 of the ROC 2014 would apply to the assessment of costs incurred in respect of all proceedings in Suits 451 and 555 after their transfer to the SICC. Under both O 59 and O 110 r 46 of the ROC 2014, the successful party in the litigation is entitled to recover costs.

36 Order 59 r 3(2) of the ROC 2014 provides:

When costs to follow the event (O. 59, r. 3)

3.—

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, *order the costs to follow the event*, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

[emphasis added]

An order for costs to follow the event simply means that the successful party in the litigation is entitled to recover its costs of the litigation from the unsuccessful party: *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 (“*Comfort Management*”) at [26].

37 Similarly, O 110 r 46(1)–(2) of the ROC 2014 provides:

Costs (O. 110, r. 46)

46.—(1) The unsuccessful party in any application or proceedings in the Court must pay the reasonable costs of the application or proceedings to the successful party, unless the Court orders otherwise.

(2) The unsuccessful party in any appeal from the Court to the Court of Appeal, or in any application to the Court of Appeal, must pay the reasonable costs of the appeal or application to the successful party, unless the Court of Appeal orders otherwise.

38 In determining the identity of the successful party, the court must look at the outcome of the litigation *overall*, in a realistic and commercially sensible way, asking which party in substance and reality won the litigation: *Comfort Management* at [28]; *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2022] SGHC(I) 17 (“*BCBC*”) at [30]. In commercial litigation, where the dispute is ultimately about money, the event is typically in favour of the party whom the court has found is entitled to receive money: *Comfort Management* at [29]; *BCBC* at [30].

39 In our view, CACIB is the overall successful party. This is because CACIB succeeded in obtaining judgment for a substantial amount of damages (*viz*, US\$10,319,910.31) against PPT, which resisted CACIB’s claim vigorously. This must be reflected in the costs order. We acknowledge that PPT is, in the ultimate analysis, a beneficiary under the whole transaction to the tune of US\$13,342,822.19 having succeeded completely on the Credit dispute, but this fact is to be accounted for by applying an overall discount to the quantum of costs to be awarded to CACIB. We therefore decline to adopt an issue-based approach to determining costs in the present case.

40 The net result is that a single award of costs is to be made in favour of CACIB as the successful party after applying an overall discount, and PPT is not entitled to costs in relation to the Credit dispute.

Effect of contractual indemnity clause under the LOI

41 The LOI contains an indemnity clause, which states:

We further agree to protect, *indemnify* and save you harmless from and *against any and all damages, costs and expenses (including reasonable legal fees) which you may suffer or incur by reason of* the original bills of lading and other documents remaining outstanding or *breach of warranties given above* including, but without prejudice to the generality of the foregoing, any claims and demands which may be made by a holder or transferee of the original bills of lading, or by any third party claiming an interest in or lien on the shipment or the proceeds thereof. [emphasis added]

42 There are two possible legal bases upon which a beneficiary of an indemnity in relation to costs may assert its entitlement to be fully indemnified against all costs incurred. The beneficiary may assert its entitlement by directly invoking its contractual rights under the agreement; alternatively, it may rely on the court’s statutory discretion to award costs and urge the court to consider the costs agreement between the parties as a relevant factor in deciding whether it should be fully indemnified in respect of costs: *Telemedia Pacific Group Ltd v Credit Agricole (Suisse) SA (Yeh Mao-Yuan, third party)* [2015] 4 SLR 1019 (“*Telemedia*”) at [23]–[24].

43 Under the court’s exercise of its statutory discretion to award costs, the court has the power to override the parties’ agreement as to costs in order to preserve the integrity of the administration of justice. In situations where the claim for costs on the basis of a contractual provision is manifestly unjust, the

court can and should intervene to disallow the claim in the exercise of its discretion. However, situations warranting the court’s intervention should be limited and the court must exercise its discretion judiciously in order not to unduly unravel the commercial arrangement entered by the parties. The court will tend to exercise its discretion to uphold the contractual bargain entered by the parties unless it would be manifestly unjust to do so: *Telemedia* at [29]; *Abani Trading Pte Ltd v BNP Paribas and another appeal* [2014] 3 SLR 909 (“*Abani Trading*”) at [93].

44 The question that remains is whether a similar discretion exists when a court is asked to directly enforce a contractual agreement on costs between two commercial parties: *Telemedia* at [35]. On one view, a court ordinarily cannot disregard a contractual right purely on the grounds of hardship or unfairness: *Telemedia* at [35]. Indeed, it has even been said that a contractual agreement on costs does oust the statutory discretion of a tribunal in awarding costs: *United Overseas Bank Ltd v Sin Leong Ironbed & Furniture Manufacturing Co (Pte) Ltd and others* [1988] 1 SLR(R) 76 at [16]. On another view, contractual agreements on costs cannot oust the court’s discretion on the same as costs ultimately fall to be decided in the discretion of the courts: *NSL Oilchem Waste Management Pte Ltd v Prosper Marine Pte Ltd and other suits* [2020] SGHC 204 (“*NSL Oilchem*”) at [199].

45 In the present case, CACIB asserts its entitlement to a full indemnity in respect of costs by directly invoking its contractual rights under the LOI. So much is clear from CACIB’s Defence and Counterclaim (Amendment No. 2) in SIC 2, where CACIB pleads its entitlement to full costs under contract (see *Telemedia* at [30]–[31]). In SIC 2, CACIB specifically prayed for:

(5) An order that PPT reimburse Crédit Agricole for any and all damages, costs and expenses (including reasonable legal fees) suffered or incurred by Crédit Agricole by reason of the indemnity granted by PPT under the LOI.

CACIB also pleaded:

60. Under the LOI, PPT agreed to “**protect, indemnify and save [Crédit Agricole] harmless from and against any and all damages, costs and expenses (including reasonable legal fees) which you may suffer or incur by reason of the original bills of lading and other documents remaining outstanding or breach of warranties given above** including, but without prejudice to the generality of the foregoing, any claims and demands which may be made by a holder or transferee of the original bills of lading, or by any third party claiming an interest in or lien on the shipment or the proceeds thereof.” **(emphasis added)**

61. In the event that payment is to be made / released to PPT under the LC, causing Crédit Agricole to suffer losses arising from PPT’s breaches of the LOI Representation and Warranties, PPT is liable to indemnify Crédit Agricole for any and all such losses arising from PPT’s breaches of the LOI Representation and Warranties, in accordance with the express indemnity under the LOI referred to in paragraph [60] above.

[emphasis in original]

46 We prefer to leave for another occasion the consideration of whether the court retains a discretion in awarding costs where a party asserts its entitlement to full costs by directly invoking its contractual rights. This issue does not arise squarely in the present case because the LOI does not indemnify CACIB against any and all legal fees of any amount; the indemnity only applies insofar as the legal costs are “reasonable”. It suffices to say that the court will have regard to the indemnity clause in the LOI in assessing costs. However, in respect of legal costs incurred, the indemnity only extends to “reasonable legal fees”. What is reasonable falls to the court to decide.

Costs of the trial below

Pre-transfer costs

47 To recapitulate, CACIB has claimed the following:

| S/N | Item | Amount |
|-----|--|----------------|
| 1 | PKWN’s Pre-transfer Costs | S\$93,000 |
| 2 | Mayer Brown’s Pre-transfer Costs (as disbursements) | US\$952,544.66 |
| 3 | Pre-transfer disbursements | S\$10,367 |

48 Having regard to the fact that CACIB is entitled to an indemnity in respect of costs under the LOI, we accept that the pre-transfer costs should not be awarded on the standard basis per Appendix G of the Supreme Court Practice Directions. However, the legal fees claimed by CACIB must be “reasonable” based on the wording of the contractual indemnity clause itself. We are of the view that Mayer Brown’s legal fees of close to US\$1m, incurred over a period of less than ten months from the time CACIB discovered the fraud at the end of April 2020 till the transfer of Suits 451 and 555, are unreasonable. While CACIB provides some breakdown of Mayer Brown’s work in Annex E of its submissions in terms of the general nature of the work undertaken, there are no details of the solicitors who worked on the file, their rates or the hours worked. Since PKWN was instructed before Suit 451 was commenced on 28 May 2020, for most of the period there were two firms on board and the difference in the work done by each of them has not been clearly explained. There must have been a substantial overlap. Further, for most of the pre-transfer period, the LOI claim, which is the basis for the indemnity, was not pursued. Instead, it was the Credit dispute that was governed by Singapore law that was the focus of the

litigation. Therefore, we are of the view that the costs claimed for Mayer Brown's pre-transfer legal fees must be significantly reduced.

49 In our judgment, based on the amount of work done and the period of the same, the pre-transfer costs and disbursements should be awarded in the following amounts, prior to applying a general discount:

| S/N | Item | Amount |
|-----|--|-------------|
| 1 | PKWN's Pre-transfer Costs | S\$93,000 |
| 2 | Mayer Brown's Pre-transfer Costs (as disbursements) | US\$250,000 |
| 3 | Pre-transfer disbursements | S\$10,367 |

Post-transfer costs

50 CACIB claims the following:

| S/N | Item | Amount |
|-----|-----------------------------------|----------------|
| 1 | PKWN's Post-transfer Costs | S\$441,139.50 |
| 2 | Mayer Brown's Post-transfer Costs | US\$681,900.45 |
| 3 | Ms Masters KC's Costs | £112,540 |
| 4 | Ms Catherine Jago's expert costs | £75,132.50 |
| 5 | Post-transfer disbursements | S\$84,250.75 |

51 We allow items (4)–(5) above in full as reasonable disbursements and award the full sum of Ms Masters KC's costs and the full sum of PKWN's post-transfer fees. However, Mayer Brown's post-transfer costs should be halved. With English King's Counsel and Singapore counsel on board, the work and

time required of Mayer Brown should have been substantially reduced. The full amount claimed for Mayer Brown’s post-transfer legal fees is, in our view, not reasonable.

52 Accordingly, the post-transfer costs and disbursements are to be awarded in the following amounts, prior to applying a general discount:

| S/N | Item | Amount |
|-----|-----------------------------------|---------------|
| 1 | PKWN’s Post-transfer Costs | S\$441,139.50 |
| 2 | Mayer Brown’s Post-transfer Costs | US\$340,000 |
| 3 | Ms Masters KC’s Costs | £112,540 |
| 4 | Ms Catherine Jago’s expert costs | £75,132.50 |
| 5 | Post-transfer disbursements | S\$84,250.75 |

Costs of the Appeals

53 CACIB’s costs sought for the Appeals are itemised as follows:

| S/N | Item | Amount |
|-----|--|----------------|
| 1 | PKWN’s costs for the Appeals | S\$149,417 |
| 2 | Mr Joseph KC / Mr Mukherjee / Mr Onslow KC costs for the Appeals | £390,862.50 |
| 3 | Mayer Brown’s costs for the Appeals | US\$179,682.70 |
| 4 | Disbursements for the Appeals | S\$18,445.30 |
| 5 | Costs of these submissions (PKWN) | S\$13,642.50 |

| | | |
|---|--|---------------|
| 6 | Costs of these submissions (Mayer Brown) | US\$22,576.40 |
|---|--|---------------|

54 We compare the above with PPT’s costs claim for the Appeals. PPT has asked, mainly, for the following:

| S/N | Item | Amount |
|-----|---|--|
| 1 | WST’s legal fees | US\$545,587.50 |
| 2 | English Counsel’ legal fees Mr Collett KC Ms Peterson | £114,827.48 - £112,957.48 - £1,870 |
| 3 | English solicitor Mr Gray’s legal fees | £1,461.50 |
| 4 | Travel expenses for Mr Collett KC | £7,853.35 |
| 5 | Miscellaneous expenses | US\$4,687.97 |

55 As far as the Appeals are concerned, CACIB’s legal fees (excluding the English King’s Counsel’s fees) are modest compared to PPT’s and are reasonable. We therefore allow in full the costs claimed for PKWN’s and Mayer Brown’s legal fees. We also award in full the disbursements sought. As regards the legal fees of English counsel, we do not think it reasonable for PPT to bear the full costs of CACIB’s change of English counsel (and three of them as well) for the Appeals. Accordingly, we award reduced costs of £200,000 for the legal fees of English counsel collectively. Finally, with respect to the costs of the submissions relating to interest and costs, it appears to us that Mayer Brown’s involvement was not necessary or reasonable given that the work could have been done by PKWN alone. We therefore award S\$13,000 for this item.

56 In summary, the costs of the Appeals are to be awarded in the following amounts, prior to applying a general discount:

| S/N | Item | Amount |
|-----|--|----------------|
| 1 | PKWN's costs for the Appeals | S\$149,417 |
| 2 | Mr Joseph KC / Mr Mukherjee / Mr Onslow KC costs for the Appeals | £200,000 |
| 3 | Mayer Brown's costs for the Appeals | US\$179,682.70 |
| 4 | Disbursements for the Appeals | S\$18,445.30 |
| 5 | Costs of these submissions (PKWN) | S\$13,000 |

Overall discount

57 As alluded to above at [39], an overall discount to the quantum of costs to be awarded to CACIB is necessary to account for the fact that CACIB was unsuccessful in respect of the Credit dispute, although it is the overall successful party. We note that the Credit dispute and the LOI dispute were of similar complexity and covered overlapping factual ground (*viz*, the financing arrangement between CACIB, PPT and Zenrock for Zenrock's purchase of goods from PPT). Accordingly, and solely for the purpose of determining the overall discount to be applied, it is assumed that the work done in relation to each dispute would result in similar costs incurred vis-à-vis each dispute for each party.

58 We are of the view that a two-third discount should be applied to the quantum of costs to be awarded to CACIB. This is because CACIB succeeded

on the LOI dispute but did not succeed on the Credit dispute – the latter translates to a double recovery discount, given that CACIB ought to bear its own costs incurred for the Credit dispute, as well as PPT’s costs incurred for the same. The net result is that the quantum of costs to be awarded to CACIB would be divided into three parts, with two parts corresponding to the discount for the Credit dispute and one part corresponding to the costs that CACIB is entitled to for being the overall successful party.

59 This generous discount also takes into account the fact that CACIB only succeeded in its LOI damages claim by virtue of CACIB’s late amendment to its case during the hearing of the Appeals. At the hearing of the Appeals, ACIB argued that it should be put in the same position as it would have been in if either “the warranties had been true” or the original bills had been presented. CACIB’s initial argument was that it should be put in the same position “as if it had been provided the original bills”, which would have caused CACIB to lose the argument on the damages to be awarded in the LOI dispute.

60 Applying the overall two-third discount to the quantum of costs to be awarded to CACIB, CACIB is entitled to costs and disbursements in the sum of S\$269,873.18, US\$256,560.90 and £129,224.17. The breakdown is as follows:

| S/N | Item | Amount |
|--|--|-------------|
| Costs of the trial below (pre-transfer costs) | | |
| 1 | PKWN’s Pre-transfer Costs | S\$93,000 |
| 2 | Mayer Brown’s Pre-transfer Costs (as disbursements) | US\$250,000 |
| 3 | Pre-transfer disbursements | S\$10,367 |

| Costs of the trial below (post-transfer costs) | | |
|---|--|--|
| 4 | PKWN's Post-transfer Costs | S\$441,139.50 |
| 5 | Mayer Brown's Post-transfer Costs | US\$340,000 |
| 6 | Ms Masters KC's Costs | £112,540 |
| 7 | Ms Catherine Jago's expert costs | £75,132.50 |
| 8 | Post-transfer disbursements | S\$84,250.75 |
| Costs of the Appeals | | |
| 9 | PKWN's costs for the Appeals | S\$149,417 |
| 10 | Mr Joseph KC / Mr Mukherjee / Mr Onslow KC costs for the Appeals | £200,000 |
| 11 | Mayer Brown's costs for the Appeals | US\$179,682.70 |
| 12 | Disbursements for the Appeals | S\$18,445.30 |
| 13 | Costs of these submissions (PKWN) | S\$13,000 |
| | | |
| | Total Amount: | S\$809,619.55 US\$769,682.70 £387,672.50 |
| | Sum that CACIB is entitled to after overall two-third discount: | S\$269,873.18 US\$256,560.90 £129,224.17 |

Conclusion

61 For the reasons above, we make the following orders:

(a) PPT is entitled to interest at the rate of 5.33% per annum and pro rata on:

(i) The principal amount of US\$23,662,732.50 from 5 June 2020 to 17 June 2020, amounting to US\$41,464.89; and

(ii) The principal amount of US\$7,145,289.44 from 17 June 2020 to 18 November 2020, amounting to US\$160,684.84.

(b) CACIB is entitled to a refund of all costs, fees and interest paid to PPT subsequent to the Judge’s decision of 30 March 2022, in the sum of US\$1,983,971.30.

(c) CACIB is entitled to interest at the rate of 5.33% per annum and pro rata on:

(i) The principal amount of US\$16,517,443.06 from 18 November 2020 to 9 December 2020, amounting to US\$50,651.98;

(ii) The principal amount of US\$10,319,910.31 from 9 December 2020 to the date that such sum is paid to CACIB; and

(iii) The principal amount of US\$1,983,971.30 from 14 April 2022 to the date that such sum is repaid.

(d) CACIB is entitled to costs and disbursements in the sum of S\$269,873.18, US\$256,560.90 and £129,224.17.

Judith Prakash
Senior Judge

Jonathan Hugh Mance
International Judge

Bernard Rix
International Judge

Nair Suresh Sukumaran, Tan Tse Hsien Bryan (Chen Shixian) and
Alex Chia Yao Wei (PK Wong & Nair LLC) for the appellant;
Giam Chin Toon SC, Lee Wei Yuen Arvin (Li Weiyun) and
Wan Hui Ting Monique (Wen Huiting) (Wee Swee Teow LLP)
for the respondent.
