Solvadis Commodity Chemicals GmbH *v* Affert Resources Pte Ltd [2013] SGHC 217

Case Number	: Originating Summons No 681 of 2013 (Summons No 4122 of 2013)
Decision Date	: 23 October 2013
Tribunal/Court	: High Court
Coram	: Andrew Ang J
Counsel Name(s)	: Dominic Darren Chan Wai Kit and Noel John Geno-Oehlers (Characterist LLC) for the plaintiff; Daniel Chia Hsiung Wen and Stephany Aw Shu Hui (Stamford Law Corporation) for the defendant.
Parties	: Solvadis Commodity Chemicals GmbH — Affert Resources Pte Ltd

Civil Procedure – Mareva injunctions

23 October 2013

Andrew Ang J:

Introduction

1 This was an application by Affert Resources Pte Ltd ("the Defendant") in Summons No 4122 of 2013 ("SUM 4122/2013") to set aside a worldwide Mareva injunction ordered in Originating Summons No 681 of 2013 ("OS 681/2013") against its assets. After hearing the parties, I dismissed the application. I now set out the grounds for my decision.

Factual background

2 Solvadis Commodity Chemicals GmbH ("the Plaintiff") is a German company engaged in the business of exporting sulphur while the Defendant is a Singapore exempt private company engaged in the manufacture of and trade in fertilisers and mineral ores. Under a solid sulphur agreement dated 1 March 2012, the Plaintiff agreed to sell and deliver in the year 2012 up to an aggregate of 100 metric tonnes of solid sulphur to the Defendant ("the Contract"). Pursuant thereto in July 2012, by way of Addendum No 9, the Defendant placed an order to purchase 26.43 metric tonnes of solid sulphur ("the Cargo") from the Plaintiff at the price of US$5,761,740 ("the Purchase Price"). Under the Contract, payment for the Cargo was to be made under an irrevocable and confirmed letter of credit (issued by a first class bank acceptable to the Plaintiff) which had to be in perfect order at least five clear working days before the first day of the mutually agreed laycan.

3 The Cargo was to be shipped from Gdańsk, Poland to Dakar, Senegal. Before shipment, samples of the Cargo were drawn by a neutral and independent surveyor at the port of loading in Gdańsk as required under the Contract. Subsequent analysis of a sample by an independent laboratory as provided under the Contract showed that the Cargo met the specifications stipulated under the Contract. Prior to this shipment of sulphur, 24 other trades worth approximately US$40m had been made between the parties.

4 In breach of the Contract, the Defendant failed to furnish a letter of credit for the purchase of the Cargo despite repeated reminders by the Plaintiff. One day before the Cargo arrived in Senegal on 19 September 2012, the Defendant requested for a last minute waiver because its credit lines were

exhausted and it was unable to furnish a letter of credit as required under the Contract. The Defendant asked the Plaintiff to grant it the option of paying for the Cargo with a bill of exchange "this 1 time as an exception keeping our relationship with [the Plaintiff] in mind". The Plaintiff replied on the same day stating its concern that no money might be received under the bill of exchange because the Defendant's credit lines had been exhausted. The Plaintiff then suggested that the Defendant could "avalise" the bill of exchange through the Defendant's bank. (As "avalisation" is a concept foreign to the common law, I should briefly explain that an "aval" is an endorsement on a bill of exchange in effect guaranteeing payment. In this case, the Defendant's bank would have guaranteed payment on the bill of exchange if the bill had been "avalised" by them.) The Plaintiff's suggestion was accepted by the Defendant.

5 The Plaintiff requested that the Defendant send over the wording of the bill of exchange for the Plaintiff's review and comfort. By way of an e-mail of 20 September 2012, the Defendant sent a draft of the bill of exchange to the Plaintiff. It further requested the Plaintiff to send the bill of exchange to the Defendant's bank, adding that the process might be completed in about a week's time. Meanwhile, it asked the Plaintiff to allow discharge of the Cargo upon arrival.

6 In response, by an e-mail of the following day, the Plaintiff required certain amendments to the draft bill of exchange including, in particular, the following: "Under field 'per aval' name of bank must be inserted." The Plaintiff ended the e-mail by adding the following:

> Please confirm the above ***otherwise [Plaintiff] will not allow discharging*** . [emphasis in bold italics]

7 The Defendant replied on the same day agreeing to the Plaintiff's amendments and told the Plaintiff to prepare the bill of exchange and send the shipping documents to the Defendant's bank in Hong Kong through the Plaintiff's banking channels. It was only after this reply from the Defendant that the Plaintiff gave instructions to commence discharge of the Cargo.

8 However, on 8 October 2012, after the Cargo had been discharged, the Defendant's bank informed the Plaintiff that they were unable to "avalise" the bill of exchange. On 9 and 10 October 2012, Ranjit Pendurthi ("Pendurthi") and S M Sundaram ("Sundaram") from the Archean Group assured the Plaintiff that payment would be made for the Cargo. (The Archean Group is a conglomerate based in India engaged in, *inter alia*, the export of minerals and the production of industrial chemicals and fertilisers. The Plaintiff alleged that the Defendant was controlled and beneficially owned by the Archean Group because the sole shareholder and director of the Defendant, Ampajalam Syam Kumar ("Kumar"), was a nominee of the Archean Group. This allegation was denied by the Defendant who maintained that the Archean Group was merely its business partner. Nothing actually turned on this factual dispute and there was therefore no need for me to express a concluded view on the truth or otherwise of the Plaintiff's allegations.)

9 In spite of the assurances given by Pendurthi and Sundaram, payment for the Cargo was never made by the Defendant. Instead, on 18 October 2012, the Defendant alleged that the Cargo supplied by the Plaintiff was of an inferior quality which caused damage to its factory as well as production losses ("the Defendant's Claim"). On 7 December 2012, the Defendant demanded compensation of US$14.97m for the damage and losses caused by the Cargo. This amount was subsequently revised in May 2013 to US$22.4m. Attempts by the parties to settle the dispute proved unsuccessful and the Plaintiff commenced arbitration under the rules of the International Chamber of Commerce to recover the sums owed to it under the Contract.

10 In order to prevent dissipation of the Defendant's assets pending arbitration of the dispute, the

Plaintiff applied for a Mareva injunction in OS 681/2013.

11 At an *ex parte* hearing on 2 August 2013, I granted the Plaintiff's application for a worldwide Mareva injunction in OS 681/2013 after making slight amendments to the orders prayed for.

12 On 7 August 2013, the Defendant filed SUM 4122/2013 praying for a discharge of the Mareva injunction. At the hearing on 20 August 2013, I dismissed the Defendant's application.

The issues

13 The two main issues that arose for determination were:

(a) Whether there was a real risk of dissipation of assets.

(b) Whether the Plaintiff had breached its duty of full and frank disclosure in the *ex parte* application on 2 August 2013.

The law

The International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA")

14 Section 12A of the IAA empowers the High Court to order interim measures in aid of arbitration. The relevant subsections are as follows:

> **Court-ordered interim measures**
>
> **12A.—(1)** This section shall apply in relation to an arbitration —
>
> (*a*) to which this Part applies; and
>
> (*b*) irrespective of whether the place of arbitration is in the territory of Singapore.
>
> (2) Subject to subsections (3) to (6), for the purpose of and in relation to an arbitration referred to in subsection (1), the High Court or a Judge thereof shall have the same power of making an order in respect of any of the matters set out in section 12(1)(*c*) to (*i*) as it has for the purpose of and in relation to an action or a matter in the court.
>
> (3) The High Court or a Judge thereof may refuse to make an order under subsection (2) if, in the opinion of the High Court or Judge, the fact that the place of arbitration is outside Singapore or likely to be outside Singapore when it is designated or determined makes it inappropriate to make such order.
>
> (4) If the case is one of urgency, the High Court or a Judge thereof may, on the application of a party or proposed party to the arbitral proceedings, make such orders under subsection (2) as the High Court or Judge thinks necessary for the purpose of preserving evidence or assets.
>
> …
>
> (6) In every case, the High Court or a Judge thereof shall make an order under subsection (2) only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

The powers conferred under s 12A of the IAA include the power to grant a Mareva injunction (*Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 at [34]).

15 At the hearing of the *ex parte* application, the Plaintiff had submitted that the requirements of appropriateness (s 12A(3) of the IAA), urgency (s 12A(4) of the IAA) and the inability of the arbitral tribunal to act effectively for the time being (s 12A(6) of the IAA) were satisfied. The Defendant made no submissions to the contrary at the hearing of SUM 4122/2013. I was satisfied that the requirements under s 12A of the IAA were fulfilled and need say no more about them.

The law on Mareva injunctions

16 To obtain a Mareva injunction, an applicant must show that it has a good arguable case and that there is a real risk of dissipation of assets: *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 ("*Guan Chong Cocoa*") at [17]. While there is no need to show an *intention* to dissipate assets, a mere assertion that there is a risk of dissipation will not suffice (*Guan Chong Cocoa* at [18]):

> 18 … There must be some "solid evidence" to substantiate the alleged risk. In the words of Mustill J in *The Niedersachsen*, whose judgment was upheld on appeal, (at 406):
>
> > It is not enough for the plaintiff to assert a risk that the assets will be dissipated. He must demonstrate this by solid evidence. This evidence may take a number of different forms. ***It may consist of direct evidence that the defendant has previously acted in a way which shows that his probity is not to be relied on.*** Or the plaintiff may show what type of company the defendant is (where it is incorporated, what are its corporate structure and assets, and so on) so as to raise an inference that the company is not to be relied on. Or, again, the plaintiff may be able to found his case on the fact that inquiries about the characteristics of the defendant have led to a blank wall. Precisely what form the evidence may take will depend on the particular circumstances of the case. But the evidence must always be there.
>
> [emphasis added in bold italics]

17 It should be noted that the Defendant did not argue that the Plaintiff did not have a good arguable case. It centred on the second requirement of a real risk of dissipation of assets, which will be addressed below.

18 With regard to the court's role in an application for the discharge of an *ex parte* Mareva injunction, the Court of Appeal in *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah (trading as Sin Kwang Wah)* [2000] 1 SLR(R) 786 ("*Tay Long Kee Impex*") has laid down the following principles:

> (a) An applicant for an *ex parte* interlocutory injunction has a duty to make full and frank disclosure. The duty to disclose applies not only to material facts known to the applicant but also such additional facts which he would have known if he had made proper inquiries. The extent of the inquiries which an applicant should make would have to depend on the facts and circumstances prevailing in that particular case (at [21]).
>
> (b) Once material non-disclosure is established, the court has a discretion to:
>
> > (i) discharge the interlocutory injunction without looking into the merits;

(ii) continue the *ex parte* injunction; or

(iii) issue a fresh injunction (at [25] and [33]).

These principles will be elaborated upon and discussed below with reference to the facts of the present case.

The facts

Parties' submissions

19 Counsel for the Defendant, Mr Daniel Chia ("Mr Chia"), argued that there were two egregious instances of the Plaintiff's failure to provide full and frank disclosure. First, certain paragraphs of the first affidavit of Jallal E Al Banyahyati ("Banyahyati") in support of the application for the injunction created the false impression that the Defendant had dishonestly induced the Plaintiff to release the Cargo upon the security of "avalisation". Banyahyati's affidavit also failed to recount certain telephone discussions which would have shown that the Defendant did not dishonestly induce the Plaintiff to release the Cargo upon the security of "avalisation". Mr Chia pointed out that it was the Plaintiff who first suggested "avalisation" as an alternative security arrangement and that this suggestion was subsequently accepted by the Defendant.

20 Second, Mr Chia contended that the Plaintiff failed to disclose details of the settlement negotiations between the parties which would have shown that the Defendant was not trying to evade its liabilities. During these negotiations, the Defendant had offered "security" for payment of the Cargo in the form of future trades. On the authority of *Gulf Interstate Oil Corporation LLC v Ant Trade & Transport Ltd of Malta* [1999] 1 Lloyd's Rep 867 ("*Gulf Interstate Oil*"), this offer of security was a material fact that should have been disclosed notwithstanding the "without prejudice" nature of the negotiations.

21 Mr Chia also argued that there was no real risk of dissipation of assets because the mere refusal to pay a contractual claim did not constitute evidence of a risk of dissipation of assets. According to him, the real motive for OS 681/2013 was for the Plaintiff to use the Mareva injunction to achieve a more advantageous position in the settlement negotiations.

22 In response, counsel for the Plaintiff, Mr Dominic Chan ("Mr Chan"), argued that whether the Plaintiff or Defendant suggested "avalisation" was not a material fact. Ultimately, the Defendant agreed to provide security by "avalisation" and this was disclosed at the *ex parte* hearing. Mr Chan also submitted that the Defendant's alleged offer of security in the form of a future trade involving phosphoric acid was not real security akin to the club guarantee provided in *Gulf Interstate Oil* and that the non-disclosure of the same was immaterial.

My decision

Lack of probity establishing a real risk of dissipation of assets

23 In my judgment, the Defendant's seeming lack of commercial morality on the facts lent credence to the Plaintiff's contention that there was a real risk of dissipation of assets. The series of events that transpired in this case strongly suggested that the Defendant had no real intention to pay for the Cargo. It began when the Defendant failed to open a letter of credit for the Cargo despite the Plaintiff's many reminders to do so. As late as 18 September 2012, the Plaintiff had sent an e-mail saying that it would not allow the Cargo to be discharged until it received a copy of the letter of

credit. This was followed by yet another reminder on 19 September 2012, the eve of the Cargo's arrival in Dakar. The Defendant then asked the Plaintiff, in view of their relationship, to accept a bill of exchange instead. Naturally, the Plaintiff was concerned about the Defendant's ability to pay under the bill and the Plaintiff thus suggested "avalising" the bill so that payment under the bill would be guaranteed by the Defendant's bank. This suggestion was accepted by the Defendant.

24 By its e-mail of 20 September 2012, the Defendant asked the Plaintiff to release the Cargo to the Defendant's consignee upon the Cargo's arrival in Dakar representing that the process of "avalisation" might be completed in about a week after the Cargo's arrival. Relying on the Defendant's agreement to "avalise" the bill of exchange, the Plaintiff released the Cargo to the Defendant's consignee. It was about two and a half weeks later that the Plaintiff was informed that the Defendant's bank was unable to "avalise" the bill. The Defendant then unequivocally assured the Plaintiff that payment for the Cargo would be made, only to resile subsequently from such assurance, alleging that loss and damage had been caused by the alleged inferior quality of the Cargo. Up to the hearing of the application, no payment had been made by the Defendant for the Cargo.

25 Mr Chia argued that the Defendant did not understand the concept of "avalisation" but agreed to it anyway since it gave comfort to the Plaintiff. He also argued that it was unreasonable for the Plaintiff to expect "avalisation" to take place since it knew that the Defendant's credit lines were exhausted. I was unable to accept these arguments.

26 It was not unreasonable for the Plaintiff to ask for an alternative way to secure payment for the Cargo rather than to accept without question the Defendant's word that the latter's credit lines had been exhausted. *Per contra*, it was disingenuous on the part of the Defendant to agree to "avalisation" when it knew its credit lines were exhausted. Thus the Defendant's e-mail of 20 September 2012 stating that the process might be completed in about a week's time was misleading to say the least. Contrary to Mr Chia's submission that the Defendant did not understand the concept of "avalisation", the evidence of the Defendant's Kumar in his affidavit of 12 August 2013 showed otherwise. He averred as follows:

> 18. … The Plaintiff's Mr. Dow[se] suggested to Mr. Ranjit Pendurthi that the Defendant could get its bankers to "avalise" the bill of exchange ***so that the bank could guarantee performance of the bill at the requisite date*** . … [emphasis added in bold italics]

27 Therefore, it is clear beyond doubt that when the Defendant informed the Plaintiff that the process might take a week, it would have known that the Defendant's bankers would not "avalise" the bill of exchange since they had declined to issue the letter of credit in the first place. Kumar's belief on "hindsight" that the bank did not "avalise" the bill of exchange because avalisation was not recognised by banks in Hong Kong was a red herring. (Incidentally, as a matter of fact, the bank's position, communicated some two and a half weeks after the discharge of the Cargo, was as follows: "*For the present*, we are not in a position to avalise the bill" [emphasis added]. There was no suggestion that the concept of "avalisation" was not recognised.)

28 As I noted earlier, it was in reliance upon the Defendant's said e-mail of 20 September 2012 and its agreement to the Plaintiff's required amendments to the bill of exchange that the Plaintiff agreed to the discharge of the Cargo. Whether the suggestion to "avalise" originated from the Plaintiff is not material. Of much greater significance is that the Defendant agreed to "avalisation" when it knew or ought to have known that there was no prospect of its bankers agreeing to "avalise" the bill of exchange and that, in reliance upon its agreement so to do, the Plaintiff released the Cargo. As held by Ralph Gibson LJ in *Brink's-MAT Ltd v Elcombe* [1988] 3 All ER 188 ("*Brink's-MAT*") (at 192) and accepted with approval in *Tay Long Kee Impex* at [21], "material facts are those which it is material

for the judge to know in dealing with the application".

29 After failing to provide the alternative security as agreed, the Defendant initially sought to reassure the Plaintiff as to payment but later refused to pay for the Cargo. Instead, on 18 October 2012, by way of an e-mail, the Defendant alleged that the Cargo was of an inferior quality, causing damage and losses which it later quantified at US$22.4m (approximately four times the Purchase Price). The e-mail was sent almost a month after discharge of the Cargo when, by the terms of the Contract, the claim had to be lodged with the Plaintiff immediately after discovery of the non-conformity but, in any event, not later than 15 days after completion of discharge of the Cargo.

30 In my view, the Defendant's Claim was obviously lacking in merit. The unexplained lateness of the claim raised doubts as to its veracity. Moreover, if there were indeed any merit in the Defendant's Claim, it would not have offered to pay 60% of the Purchase Price to settle the dispute with the Plaintiff. Given that the quantum of the Defendant's Claim (*viz*, US$22.4m) was almost four times the Plaintiff's claim for the Purchase Price of US$5.7m, it was surprising that the Defendant would have offered to pay anything at all if its claim was genuine.

31 In addition, the Defendant's Claim as to the inferior quality of the solid sulphur was not substantiated by any cogent evidence. The only evidence given by the Defendant was an internal laboratory report generated by the Defendant's consignee ("the Defendant's report"). Little weight could be accorded to the Defendant's report. There was cogent evidence in the form of an independent report of Lab7 Sp z o o ("the Lab7 Report") establishing that the Cargo met the specifications in the Contract. It should be noted that in the absence of dispute, the findings of the Lab7 Report were final and binding on the parties under cl 8 of the Contract. If requested by either party, an "umpire analysis" could be made using a sample drawn and kept by the surveyor at the loading port, the results of such analysis being final and binding. It does not appear that any umpire analysis was requested by the Defendant. In any event, given the extremely large quantum of damages sought, it was surprising that neither the Defendant nor its consignee set aside any sample for joint inspection and/or analysis if the quality was allegedly inferior.

32 The Defendant admitted that its consignee had blended the Cargo with sulphur from other sources. This admission belied the reliability of the findings in the Defendant's report based on an analysis of *blended* sulphur samples (and not samples of the Cargo). Tellingly, Sundaram from the Archean Group even joked during a settlement meeting that at the rate the consignee was blending different batches of sulphur, there would be no more sulphur left for analysis to determine if the Cargo was indeed of poor quality. This flippant attitude only served to reinforce my view that the Defendant's Claim had little merit.

33 I also noted that the Defendant's order for the Cargo was the 25th transaction between the parties and the largest order in the series of transactions. The second largest trade was for a significantly smaller amount of US$3,493,218.30. In the totality of the circumstances, there were grounds for suspicion that the Defendant's sudden failure to pay for the largest order in the series of transactions might not have been purely coincidental.

34 On the totality of those facts, it was clear to me that the Defendant had acted in a way which demonstrated that its probity was not to be relied on (*Guan Chong Cocoa* ([16] *supra*) at [18]). To summarise, the Defendant:

(a) failed in its contractual obligation to provide a letter of credit and waited until the eve of the Cargo's arrival in Dakar before breaking the news to the Plaintiff that it was unable to provide a letter of credit;

(b) failed to provide an "avalised" bill of exchange after agreeing to do so;

(c) belatedly raised a questionable claim alleging that the inferior quality of the Cargo caused damage amounting to US$22.4m in order to justify withholding payment for the Cargo; and

(d) offered to settle the dispute with the Plaintiff for 60% of the Purchase Price notwithstanding that the Defendant's Claim for US$22.4m against the Plaintiff far exceeded the Purchase Price.

I was therefore satisfied that the Defendant's lack of probity established a real risk of dissipation of the Defendant's assets.

The alleged breach of the Plaintiff's duty of full and frank disclosure

35 At the *ex parte* hearing on 2 August 2013, I granted the Plaintiff's application for a worldwide Mareva injunction in OS 681/2013 because the Plaintiff was able to show that it had a good arguable case and that there was a real risk of dissipation of assets.

36 As is often the case in such circumstances, the Defendant sought to set aside the injunction on the basis that full and frank disclosure had not been made by the Plaintiff. Specifically, Mr Chia's submissions centred on the misleading impression created by Banyahyati's affidavit that the Defendant had dishonestly induced the Plaintiff to release the Cargo upon the security of "avalisation" when it was the Plaintiff who had in fact suggested "avalisation" as an alternative security arrangement. Mr Chia also contended that the Plaintiff should have disclosed the Defendant's offer of security in the settlement negotiations because this fact would have shown that the Defendant was not trying to evade its liabilities.

37 I was unable to accept Mr Chia's submissions. With regard to the Defendant's offer of "security" in the settlement negotiations, this would not have affected my decision to grant the Mareva injunction in OS 681/2013 in the least. I could not see how the Defendant's inchoate offer of a future trade involving phosphoric acid constituted a material fact. In any case, an offer of a future trade could hardly be regarded as "security" and therefore *Gulf Interstate Oil* ([20] *supra*) was plainly distinguishable.

38 As for the failure in the main text of Banyahyati's affidavit to mention the Plaintiff as the party who suggested "avalisation" ("the Omission"), I have already stated (at [28] above) that this was not material. Even if it was material, I was satisfied that there was no intention on the part of the Plaintiff to mislead this court in the *ex parte* application. To elaborate, where the failure to disclose material facts is deliberate, such suppression may be sufficient in itself to warrant discharging the *ex parte* injunction (see *Tay Long Kee Impex* at [35]). Indeed, once suppression is established, it must be a special case for the court to exercise its discretion *not* to discharge the *ex parte* injunction (see *Tay Long Kee Impex* at [35]). Where the non-disclosure of a material fact is not deliberate, it may be out of all proportion to discharge the injunction purely on account of such non-disclosure. In *Brink's-MAT* at 195 (approved in *Tay Long Kee Impex* at [30]), it was observed that to discharge an injunction based on a material but innocent non-disclosure would be a punishment out of all proportion to the offence.

39 On the full facts and arguments presented, I was of the opinion that the injunction granted in OS 681/2013 should be continued. Although it was easy for Mr Chia to quibble about the language in Banyahyati's affidavit, not every suggestion of inaccuracy would necessarily result in the discharge of an injunction; a *locus poenitentiae* may sometimes be afforded (see the observations in *Brink's-MAT*

at 193 as endorsed by the Court of Appeal in *Tay Long Kee Impex* at [27]). Ultimately, the Defendant's complaints had no bearing on the decision-making process or the outcome of the application. It is apposite to cite the following observations of the Court of Appeal in *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 (at [88]):

> That said, we think it necessary to add, that parties should not meticulously attempt to dissect the factual matrix in painstaking efforts to "invent" missing material facts. We note that, unfortunately, all too often, in setting aside applications, much unnecessary time is unhelpfully expended in dubiously making out a case of the alleged failure of a claimant to place all the material facts before the court. In many instances, these complaints amount to no more than factual peccadilloes that have no material bearing on the decision-making process or the outcome of the original application. This should be discouraged. What is material is, in the final analysis, essentially a matter of *common sense*. … [emphasis in original]

Conclusion

40 In the result, I dismissed the Defendant's application and ordered costs of S$6,000 to the Plaintiff.

41 I would like to add the following postscript. The Defendant argued during the hearing of this application that there was no evidence that it would move assets outside jurisdiction or evade enforcement because it had been operating in Singapore for the past four years and had paid Singapore taxes amounting to S$1.8m. Furthermore, the Defendant had reported substantial revenues of S$129m in its 2011 audited financial statements. Against this backdrop, one would not have expected the bulk of the Defendant's cash resources, amounting to approximately US$2m, to be in its account with the Hong Kong branch of the Bank of India, leaving only approximately S$1,000 in its Singapore bank account. This state of affairs would have raised the question whether moneys might have been transferred out of Singapore in anticipation of litigation. However, the state of the Defendant's bank accounts was not considered in reaching my decision because information as to the moneys in the Defendant's bank accounts was only mentioned to me after I had made my decision at the hearing of this application.

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