IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHCR 5

Suit No 1090 of 2016

Between

Siva Industries and Holdings Ltd

… *Plaintiff*

And

Foreguard Shipping I Singapore Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure – Security for Costs]

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Siva Industries and Holdings Ltd
v
Foreguard Shipping I Singapore Pte Ltd

[2017] SGHCR 5

High Court — Suit No 1090 of 2016 (Summons No 301 of 2017)
Paul Tan AR
29 March 2017

27 April 2017

Paul Tan AR

1 The present application is brought by the Defendant for an order that the Plaintiff provide security for costs pursuant to O 23 r 1(1)(*a*) of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC") and s 388 of the Companies Act (Cap 50, 2006 Rev Ed). I heard the parties on 29 March 2017 on the issue of whether the Plaintiff should be made to provide security and reserved my decision. I now give my decision.

Introduction

2 The Plaintiff is a company incorporated in India. The Defendant is a company incorporated in Singapore. The Plaintiff's claim against the Defendant is pursuant to a deed of counter-guarantee dated 28 September 2012 that the parties entered into.

3 The law on how the Court will approach an application for security for costs pursuant to O 23 r 1(1)(*a*) of the ROC or under s 388 of the Companies Act is trite and is set out in *Creative Elegance (M) Sdn Bhd v Puay Kim Seng and another* [1999] 1 SLR(R) 112 at [13],

> … There is, of course, a difference in the wordings of the two provisions, but the difference lies in the condition to be satisfied before the respective provisions can be invoked. Under O 23 r 1(1)(*a*) the condition which has to be satisfied before the court proceeds to exercise its discretion is: if it appears to the court that the plaintiff is ordinarily resident out of the jurisdiction. On the other hand, under s 388 the condition is as follows: if it appears by credible testimony that there is reason to believe that the plaintiff company will be unable to pay the costs of the defendant if successful in his defence. Once the condition under the respective provision is satisfied, the court's discretion is invoked, and in exercise of that discretion the court decides whether or not to order security for costs against the plaintiff. In such an event, whether the discretion is one under O 23 r 1(1)(*a*) or under s 388 the same principles are applicable: the court considers all the circumstances and decide whether it is just to order the plaintiff to provide security for costs and the extent of such security. It is true that O 23 r 1(1)(*a*) spells out expressly that "if, having regard to all the circumstances of the case, it is just to do so", the court may order the plaintiff to give security for the defendant's costs, whereas s 388 is silent in that respect. However, such words are implicit in the latter provision. The making of an order for security for costs under s 388 is a matter of discretion and in exercising its discretion the court will have regard to all the relevant circumstances and considers whether it is just to make the order.

4 In considering whether the court should order security to be provided by the Plaintiff, I would need to determine:

(a) first, whether the court's discretion to order security for costs under O 23 r 1(1)(*a*) of the ROC and s 388 of the Companies Act has been invoked; and

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(b) secondly, whether it is just to order security for costs having regard to all the relevant circumstances.

5 There is no dispute that the Plaintiff is ordinarily resident outside of jurisdiction for the purposes of O 23 r 1(1)(*a*) of the ROC. This in itself is not conclusive but means that the Court's jurisdiction to order security under O 23 r 1(1)(*a*) of the ROC has been invoked. Turning to the Court's jurisdiction under s 388 of the Companies Act, the Plaintiff disputes that there is any reason to believe that it would be unable to pay the costs of the Defendant if the Defendant is successful in its defence such that the Court's jurisdiction under s 388 of the Companies Act is invoked. The Plaintiff also stresses that the Defence is co-extensive with the Counterclaim made by the Defendant.

6 I turn first to the question of whether the Plaintiff is impecunious because this is a threshold issue under s 388 of the Companies Act and a relevant factor as to whether the Court's discretion under O 23 r 1(1)(*a*) of the ROC should be exercised.

Is the Plaintiff impecunious?

7 The Defendant asserts that the Plaintiff is impecunious and relies on the Plaintiff's standalone financial statements as at 31 March 2016 (the "Standalone Accounts"), exhibited by the Plaintiff in the 5th affidavit of Shankar Varadharajan. The Defendant says that while the balance sheet appears to show a net asset position of INR 2,50,509 lakhs or approximately US$379m, the Plaintiff's true net asset value is a deficit of US$459m.

8 The Defendant highlights that the Plaintiff's auditors have qualified their opinion of the Standalone Accounts and thus the Plaintiff's net asset

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position stated in the balance sheet cannot be taken at face value. In their opinion, the Plaintiff's auditors issued the following qualifications:

(a) They were unable to comment on the completeness of interest and penal interest that may need to be included in the financial statements as of 31 March 2016 and stated that if such interest were included, the shareholders' funds would have been reduced by INR 45,060 lakhs (US$68m).

(b) The Plaintiff's non-current investment in several wholly owned overseas companies totalling INR 1,53,601 lakhs had been fully eroded and the Plaintiff had not provided for this permanent diminution in the value of the investments. The shareholders' funds should have been reduced by INR 1,53,601 lakhs (US$232m).

(c) The auditors noted that there were several trade receivables that were outstanding for more than six months amounting to INR 10,081 lakhs, but stated that they could not comment on the adjustments that may be necessary to the values of the receivables.

9 The Defendant further highlights that there were two major sources of liabilities that were not reflected in the balance sheet. The first is an arbitral award involving the Plaintiff wherein the liability apportioned to the Plaintiff amounted to INR 69,400 lakhs (the "NTT Docomo Award"). However, as the Plaintiff was appealing against the arbitral award in the Delhi High Court, the Plaintiff's auditors noted that no provision was made for it in the Standalone Accounts.

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10 The second is an arbitral award rendered by a tribunal on 14 October 2015 pursuant to arbitral proceedings brought by Masdar Energy Limited against the Plaintiff in London (the "Masdar Award"). The plaintiff in the arbitral proceedings filed High Court Originating Summons No 592 of 2016 ("OS 592") for leave to enforce the Masdar Award in Singapore and for judgment to be entered in accordance with the terms of the Masdar Award. Leave was granted on 14 June 2016 by the Singapore High Court and while, the Plaintiff applied to set aside the order giving leave to enforce the Masdar Award, it subsequently withdrew the application. As such, the order of court made on 14 June 2016 remains valid and binding on the Plaintiff in Singapore. There is no mention of the Masdar Award in the Standalone Accounts at all despite the award being rendered on 14 October 2015. The Defendant's counsel argues that this amounts to material non-disclosure by the Plaintiff and its directors to its auditors.

11 The Defendant's counsel submits that when one considers the auditors' qualifications to the Standalone accounts together with the NTT Docomo and Masdar awards, the Plaintiff's true net asset position is a deficit of US$459m, indicating that the Plaintiff is impecunious.

12 The Plaintiff's position is that even if its auditors' qualifications are accounted for and given full effect, it still has a net asset value of INR 41,767 lakhs or US$63m. Plaintiff's counsel submits that the Plaintiff does not recognise the NTT Docomo Award or the Masdar Award as a debt or liability. Counsel submits that given that the Plaintiff was appealing the NTT Docomo Award to the Delhi High Court, it is not a recognised debt or liability. Further, the Plaintiff did not take part in the arbitral proceedings leading to the Masdar

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Award and until leave has been given to enforce the Masdar Award in India, it was not a liability on the books of the Plaintiff.

13 I find the Plaintiff's argument untenable. While the NTT Docomo Award is being appealed before the Delhi High Court, there is no evidence before me stating that the award is not valid and binding on the Plaintiff. The Standalone Accounts do not explain why no provision has been made for the NTT Docomo Award save that it was being appealed.

14 The argument with regard to the Masdar Award is even more tenuous given that there is a valid and binding Singapore order of court giving leave to enforce the Masdar Award as if it were a Singapore judgment and for judgment to be entered against the Plaintiff in the terms of the Masdar Award. I do not see how simply because the Plaintiff refuses to recognise a valid Singapore order of court, there is no liability on the Plaintiff. This is especially when the Plaintiff applied to set aside the order giving leave to enforce the Masdar Award but then chose to withdraw the application. In my view, I do not see any reason why either the NTT Docomo Award or the Masdar Award should be discounted in considering the liabilities against the Plaintiff.

15 I note that the Defendant's counsel submits that there are several unexpired guarantees provided by the Plaintiff in respect of several other entities including subsidiaries and associate companies. These guarantees amounts to INR 201,532 lakhs or US$305m. However, as the Plaintiff's counsel points out, these are contingent liabilities that have not crystallised. There is no evidence before me to show that there is either a likelihood that these contingent liabilities have crystallised or are likely to crystallise. As

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such, I do not think that these unexpired guarantees should be included in considering the liabilities of the Plaintiff.

16 Given the Plaintiff's stated net asset value of INR 250,509 lakhs or US$379m, after providing for the qualifications by the Plaintiff's auditors and the NTT Docomo and Masdar Awards, it would appear that the Plaintiff's true net asset value is in fact a deficit of US$155m. In my view, based on the evidence before me, there is good reason to believe that the Plaintiff will be unable to pay the Defendant's costs in the event that the Defendant succeeds in his Defence.

Should the Court exercise its discretion to order security for costs?

Overlap between the Defence and Counterclaim

17 While the Plaintiff raises several reasons as to why the court should not exercise its discretion to order security, its main plank is that the Defendant's Defence substantially overlaps with its Counterclaim. It is not disputed before me that the Counterclaim not only subsumes the Defence but is also wider than the Defence.

18 The Plaintiff argues that the Court of Appeal's decision in *Jurong Town Corp v Wishing Star Ltd* [2004] 2 SLR(R) 427 ("*JTC*"), affirmed in the recent Court of Appeal decision of *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 ("*SIC*"), albeit in *obiter*, militates against the court ordering security to be provided where there is substantial overlap between the Defence and the Counterclaim.

19 The Defendant highlights that in situations where the Plaintiff is an impecunious corporation, the legislative intent and public policy under s 388

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of the Companies Act lean in favour of the court ordering security to be provided (see *Frantonios Marine Services Pte Ltd and another v Kay Swee Tuan* [2008] 4 SLR(R) 224 ("*Frantonios*") at [55] and *Ho Wing On Christopher and others v ECRC Land Pte Ltd (in liquidation)* [2006] 4 SLR(R) 817 ("*ECRC*") at [72]).

20 The Defendant submits that if an impecunious plaintiff was not ordered to provide security for costs, the defendant in that case would be in a "lose-lose" situation, a position noted by the English Court at first instance in *Autoweld Systems Ltd v Kito Enterprises LLC* [2010] EWCA Civ 1469 ("*Autoweld*") at [38].

21 The Defendant further submits that *JTC* was distinguishable because the plaintiff in that matter was not impecunious unlike in the present case. It also highlights that in *B J Crabtree (Insulation) Ltd v GPT Communication Systems Ltd* (1990) 59 BLR 43 ("*Crabtree*"), which was cited in both *JTC* and *SIC*, there were other factors militating against the ordering of security for costs. Defendant's Counsel highlighted that in *Crabtree*,

(a) the English Court of Appeal was not entirely satisfied that the plaintiff was impecunious;

(b) the plaintiff was a small company and there was a risk that the application for security was being brought to oppress the plaintiff;

(c) the ordering of security would cause serious burden to the plaintiff; and

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(d) the directors of the plaintiff had given undertakings not to seek repayment or to be paid from their current accounts with the plaintiff until the conclusion of the trial of the action or further action.

22 With respect to the attempts made by the Defendant's Counsel to distinguish *Crabtree*, while the aforementioned factors had indeed been mentioned by the court in *Crabtree*, they do not provide a complete picture. For example, while Bingham LJ (as he then was) states at 49 that he was "not entirely satisfied that the court is shown to have jurisdiction", he goes on to say that he was "unwilling to hold that it has not". In fact, he expressly stated that he "accordingly assume[d] in the defendant's favour that the court has jurisdiction to make an order for security if persuaded that that is the right order to make."

23 The real issue that appears to weigh on the English Court of Appeal's mind was the effect of an order for security in that case. This is reinforced by Parker LJ's observations at 55:

> … Here the situation is that, if the money is not paid into court and the plaintiff's claim is therefore stayed, the defendant will still raise issues on the counterclaim which are precisely the same as the issues which he would raise on the claim. …

Hence, while several other points were raised, the weighty factor in *Crabtree* was the issue of the claim being co-extensive with the counterclaim. This appears to also be the Court of Appeal's reading of the case as seen from its observations in *SIC* at [82].

24 The Plaintiff and Defendant's positions highlight the tension between two competing considerations when the court considers whether to order

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security for costs where the Plaintiff is an impecunious corporation but there is substantial overlap between the Defence and the Counterclaim. The following considerations pull in different directions:

(a) the express recognition that impecunious companies do not have an unfettered freedom to commence legal actions against defendants who cannot be compensated in costs if they win; and

(b) that it is often inappropriate to award security for costs where the Defence and Counterclaim substantially overlap.

25 There are two principles undergirding the factor to be considered at [24(b)] above,

(a) first, where the defence overlaps substantially with the counterclaim, the costs incurred by the defendant in defending itself may equally, and perhaps preferably, be regarded as costs necessary to prosecute its counterclaim (*Crabtree* at 53 cited with approval in *JTC* at [20]); and

(b) secondly, ordering security for costs in such a situation may result in a plaintiff succeeding in his defence to the counterclaim by relying on the same issues he raised in his main claim, and after having "incurred all the costs required to bring that claim to judgment in the prosecution of his defence of the … counterclaim" he may still be unable to secure judgment on his claim (*Dumrul v Standard Chartered Bank* [2010] CLC 661 ("*Dumrul*") at [18] cited with approval in *SIC* at [84]).

26 I propose to deal with the second principle first.

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27 In *SIC*, the Court of Appeal noted that the plaintiff was impecunious and there was no question that the court had jurisdiction to order security for costs under s 388 of the Companies Act. However, the Court of Appeal highlighted that where the Plaintiff is impecunious and the claim and counterclaim raise the same issues, ordering security for costs may give rise to an unfair result for the reasons at [25(b)] above. I should pause here to note that while the present case involved a situation where the Defence and the Counterclaim overlapped, the Court of Appeal in *SIC* noted at [82] that similar reasons apply.

28 However, while the Court of Appeal remarked that it would normally not be just to order security for costs in such situations, it went on to state at [83] that the prejudice of the plaintiff being limited in the continuing litigation may be offset by the possibility that there may be no continuing litigation at all (see also *Autoweld* at [60]).

29 This is a point that was considered by the English court in *Dumrul* at [15] where it had been conceded by the plaintiff's counsel that if the defendant withdrew or undertook to withdraw its counterclaim, the problem of a one-sided litigation presented by the defendant's counterclaim would be removed, and there would be no objection to an order for security on this basis. In fact in *Dumrul*, despite the English court noting that the claim and counterclaim substantially raised the same issues, the court eventually ordered that the plaintiff provide security for costs on condition that the defendant is prepared to undertake to consent to the dismissal of the counterclaim in the event of the plaintiff's claims being dismissed for failure to put up security (*Dumrul* at [72]). The English court, in reaching that decision, held at [20] that in such situations, a "security for costs order should only be made if the [defendant] is

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prepared to undertake to consent to the dismissal of the counterclaim in the event of the Claimant's claim being dismissed for failure to put up security (*Dumrul* at [20]).

30 During the hearing before me, the Defendant's Counsel adopted this position and informed me that the Defendant was willing to give an undertaking to discontinue the counterclaim against the Plaintiff if the Plaintiff's claim is struck out for failure to provide security for costs. I think this would address the prejudice that is highlighted by the Court of Appeal in *SIC* at [84]. If the counterclaim against the Plaintiff was discontinued on the Plaintiff's claim being struck out for failure to provide security for costs, there is no danger that the Plaintiff would incur all the costs required to bring that claim to judgment in the prosecution of his defence of the counterclaim and still be unable to secure judgment on his claim. In my view, that would be a reasonable solution to the tension between protecting defendants who face the likelihood that they will not recover their costs if successful in their defence and ensuring that a plaintiff will not be placed in a situation where it incurs all the costs required to prosecute its claim in defending a counterclaim and is still not able to enter judgment on their claim.

31 The Plaintiff's Counsel submits that the undertaking does not entirely negate the prejudice to the Plaintiff if its claim is struck out. He argues that if the Defendant succeeds in the counterclaim against the other defendants in counterclaim, those defendants in counterclaim may in turn sue the Plaintiff. However, I see no merit in this argument because of the following reasons:

(a) first, it is not clear to me on what basis the defendants in counterclaim would sue the Plaintiff;

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(b) secondly, the argument made by the Plaintiff's counsel is premised on the Defendant succeeding in its counterclaim, any cause of action that the defendants in counterclaim would have against the Plaintiff would be independent; and

(c) thirdly, if sued, the Plaintiff may well seek security for its costs from the defendants in counterclaim.

32 The Plaintiff's Counsel further submits that the undertaking does not completely deal with the issue of the overlap because even if the counterclaim is discontinued against the Plaintiff, the Defendant's Counsel has stated that the discontinuation would only be against the Plaintiff and there are other defendants in the counterclaim. The Plaintiff submits that if the Defendant proceeds with the counterclaim against the other defendants in counterclaim, it will be incurring the same set of costs as it would take to advance its defence as to prosecute the counterclaim so there are no additional costs to be considered. This deals with the principle stated at [25(a)] above.

33 In *JTC*, the Court of Appeal held that at [19] that where the defence and counterclaim are launched from the same platform, the time and work required for the trial of the counterclaim would be substantially the same. Costs incurred in defending the action could be regarded as costs necessary to prosecute the counterclaim. Indeed, granting security in this situation could amount to indirectly aiding JTC to pursue its counterclaim.

34 However, there are several distinguishing points to note. In *JTC*, there was no issue of the plaintiff being impecunious. As noted by the Court of Appeal at [22], the defendant's counsel had submitted that the plaintiff was not impecunious. As such the Court of Appeal did not have the opportunity to

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consider its decision in the light of the plaintiff being an impecunious corporation. In such a situation, the English court in *Autoweld* noted that the defendant was in a "lose/lose situation", where if no order for security were to be made, the defendant may find that in succeeding in its defence, it is at very serious risk of both not being able to recover any damages that may be awarded on the counterclaim, and of not recovering its own costs in the litigation (see *Autoweld* at [38]). This was further emphasised by the English Court of Appeal in *Autoweld* where it held at [59]:

> 59. A very material factor in this case was the financial situation of the claimant. The judge accepted, and was entitled to accept on the material before him, that if the defendant successfully defended the claim they would be at very serious risk of not recovering any damages on their counterclaim. The defendant had not begun the litigation nor was there anything in this case (in contrast to the *The Silver Fir*, *Petromin*, and *B J Crabtree*) to lead one to suppose that they were about to do so when the claimants brought their claim. The risk identified in the defendant's own submission to Judge Langan QC and accepted by the judge was a very good reason why they would not have taken that step. Faced with the reality of a claim, they responded to the proceedings by pleading the entirety of the claims which they considered open to them but that does not, in my judgment, amount on these facts to advancing a counterclaim with an independent vitality of its own. It must be borne in mind that the design of the rules is to protect a defendant (or a claimant placed in a similar position by a counterclaim) who is forced into litigation at the election of someone else against adverse costs consequences of that litigation.

35 I am of the view that while the fact that a Defence substantially overlaps with a Counterclaim remains a critical factor as held by the Court of Appeal in *JTC*, it also needs to be weighed in context of the entire factual matrix. As the English Court of Appeal in *Crabtree* held at 49,

> … It cannot be too firmly emphasised that there can be no rule of thumb as to the grant or refusal of an order for security …

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This is a point that is also stressed by the Court of Appeal in *SIC* at [76],

> Like in most matters involving the exercise of discretion, the appropriate decision often rests on a nuanced appreciation of the factual matrix in the totality of the instant case. …

36 Where a plaintiff is impecunious, the legislative intent and public policy articulated under s 388 of the Companies Act may weigh more in favour of ordering security for costs even though there may be a risk that this could amount to indirectly aiding a defendant in pursuing its counterclaim. It should be noted that before me there is no evidence that the Defendant intended to initiate legal proceedings against the Plaintiff until the Plaintiff brought the present action.

37 Further, where a defendant undertakes to discontinue its counterclaim if the plaintiff's claim is struck out for failure to provide security, the prejudice to the plaintiff is offset by the possibility that there may be no continuing litigation at all (see *Autoweld* at [60]).

Delay

38 The Plaintiff also submits that the application was made belatedly and for past costs. The Plaintiff asserts that the Defendant had failed to apply for security for costs at the earliest opportunity. However, I do not see how there has been any delay in the present matter given that the Plaintiff filed its Statement of Claim (Amendment No 1) on 6 December 2016 and the present application was filed on 20 January 2017. Further, the Defendant's Counsel had written to Plaintiff's Counsel as early as 23 December 2016 asking if the Plaintiff would provide security for costs and it was the Plaintiff's Counsel who, on 30 December 2016, sought an extension of time to reply within 14 days, and sent a reply only on 6 January 2017, two weeks before the

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Defendant filed this application. I do not see how there was any delay on the Defendant's part in filing this application.

The merits of the claim

39 Next, the Plaintiff submits that security for costs should not be ordered as the Defence and Counterclaim is weak and unsubstantiated by the contemporaneous documents available. However, as the Court in *Frantonios* held at [46], citing with approval, *Kufaan Publishing Limited v Al-Warrak Publishing Limited* 2000 WL 491488 at [33]:

> It is equally clear that, in the course of the balancing exercise, the court will not have regard to the merits of the action in the sense of the claimant company's prospects of success unless there appears to be a high degree of probability in one direction or the other.

The Court in *Frantonios* added at [49] that,

> … Unless the evidence was so plainly, clearly and overwhelmingly in favour of the plaintiffs, and unless I could readily discern from the available evidence before me that the plaintiffs would have a high degree of probability of succeeding in their claim against the defendant, then that factor could properly be weighed in the balance. …

40 Prior to hearing this application I heard Summons Nos 5834 of 2016 and 5931 of 2016, which were the Plaintiff's applications for summary judgment and for striking out of the defence respectively. After hearing parties over the course of what was essentially full day hearings in each application, I granted unconditional leave to defend and dismiss the striking out application. The issues raised are complex and involve questions of foreign law. I do not think that this would be an appropriate case to consider the weakness of the Defence as a factor.

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Difficulty in enforcing cost orders against the Plaintiff

41 The Defendant submits that given that the Plaintiff is resident outside of jurisdiction and in India, this is a factor that favours a grant of security for costs. This is a point noted in *Zhong Da Chemical Development Co Ltd v Lanco Industries Ltd* [2009] 3 SLR(R) 1017 ("*Zhong Da*") where the Court held at [19] that it agreed with the position taken by Professor Jeffrey Pinsler in his book, *Singapore Court Practice 2006* (LexisNexis, 2006) (at p 596), as follows:

> Ideally, the defendant should not be required to experience the inconvenience and expense of enforcing his judgment in a different jurisdiction. Nor should his entitlement to costs be delayed by the process of enforcement and lengthy procedures which might operate in the foreign jurisdiction. In these circumstances, the defendant would certainly be in a more unfavourable position than if the plaintiff had provided the necessary funds to cover the defendant's costs. There is also the risk that enforcement in the foreign forum might be successfully challenged so that the defendant is not only deprived of his costs, but incurs additional expense (on the process for reciprocal enforcement) without gain.
>
> Accordingly, the availability of the process for the enforcement of judgments in the plaintiff's jurisdiction – even when there exists a reciprocal arrangement for the enforcement of judgments between that jurisdiction and the jurisdiction of the suit – should never be a conclusive factor against the provision of security.

For completeness, I note that Professor Pinsler continues to take this position in the 2017 edition of his book (at pp 1053-1054).

42 The Defendant's Counsel further highlights that the Plaintiff's refusal to recognise the Singapore order giving leave to enforce the Masdar Award even as a debt is an indicator as to how it will force the Defendant to try and enforce any costs orders award in Singapore in India. In this respect, I note that there is no evidence before me that the Plaintiff has any assets within

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jurisdiction against which the Defendant may enforce any costs orders in its favour.

43 The Plaintiff argues that India is a Commonwealth country and there is a reciprocal arrangement for the enforcement of judgments between Singapore and India. However, it is the fact that the Defendant would be put to cost in trying to enforce cost orders awarded in Singapore in India, through an enforcement process that may well outstrip the value of the costs orders, that favours ordering security for costs. Further, Professor Pinsler highlights in *Singapore Court Practice 2017* (LexisNexis, 2017) (at 1054),

> ..There is also the risk that enforcement in the foreign forum might be successfully challenged so that the defendant is not only deprived of his costs, but incurs additional expense (on the process for reciprocal enforcement) without gain…

44 I agree with the decision in *Zhong Da* that the fact that a plaintiff has no assets within jurisdiction for a successful defendant to try and enforce any costs orders against is a factor in favour of ordering security for costs not withstanding that there is a reciprocal agreement between India and Singapore for the enforcement of orders.

Conclusion

45 Taking into consideration the factors stated above, in particular the fact that that the Plaintiff is ordinarily resident out of jurisdiction with no assets within jurisdiction coupled with there being reason to believe that the Plaintiff will not be able to pay the Defendant's costs if it is successful in its defence, I am of the view that it would be just in the present case to order that the Plaintiff provide security for the Defendant's costs. This order is made on the condition that the Defendant gives a written undertaking to discontinue its

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counterclaim against the Plaintiff if the Plaintiff's claim is struck out for failure to provide security, with such condition to apply to any future increase in security for costs as well.

46 I wish to record my gratitude to both sets of counsel for their assistance in arriving at this decision.

47 I will hear parties on the quantum of security and the mode such security will be provided as well as costs.

Paul Tan
Assistant Registrar

Samuel Chacko and Toh Fang Yi (Legis Point LLC) for the Plaintiff;
Calvin Liang and Stephanie Teh (Tan Kok Quan Partnership) for the Defendant.

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