

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

[2024] SGHC(I) 26

Originating Application No 1 of 2024

In the matter of Section 8 of the International Arbitration Act 1994

And

In the matter of Articles 6 and 34 of the UNCITRAL Model Law on
International Commercial Arbitration as set out and modified in the First
Schedule to the International Arbitration Act 1994

And

In the matter of Order 23 of the Singapore International Commercial Court
Rules 2021

Between

Pertamina International
Marketing & Distribution Pte
Ltd

... Claimant

And

P-H-O-E-N-I-X
Petroleum Philippines, Inc
(a.k.a. Phoenix Petroleum
Philippines, Inc)

... Defendant

Originating Application No 23 of 2023 (Summons No 21 of 2024)

In the matter of Section 19 of International Arbitration Act 1994

And

In the matter of Order 23, Rule 10 of the Singapore International Commercial
Court Rules 2021

Between

Pertamina International
Marketing & Distribution Pte
Ltd

... Claimant

And

- (1) P-H-O-E-N-I-X
Petroleum Philippines, Inc
(a.k.a. Phoenix Petroleum
Philippines, Inc)
- (2) Udenna Corporation

... Defendants

JUDGMENT

[Civil Procedure — Costs]

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Pertamina International Marketing & Distribution Pte Ltd
v
P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as
Phoenix Petroleum Philippines, Inc) and another matter

[2024] SGHC(I) 26

Singapore International Commercial Court — Originating Application No 1 of 2024, Originating Application No 23 of 2023 (Summons No 21 of 2024)
Sir Henry Bernard Eder IJ
27 August 2024

6 September 2024

Sir Henry Bernard Eder IJ:

Introduction

1 This judgment follows on from my previous decision dated 28 June 2024 in *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc) and another matter* [2024] SGHC(I) 19 (“GD”) where I had dealt with the substantive issues raised in SIC/OA 1/2024 (“OA 1”) and SIC/SUM 21/2024 (“SUM 21”) in SIC/OA 23/2023 (“OA 23”). In this judgment, I address the outstanding issue of costs on which the parties have been unable to come to an agreement.

2 By way of recap, OA 1 was the application by the claimant, Pertamina International Marketing & Distribution Pte Ltd (“PIMD”), for various

declarations as to the validity of the Final Award signed and dated 28 November 2023 (“Final Award”), a permanent anti-suit injunction, and a mandatory injunction to prevent the defendant, P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc) (“Phoenix”), from pursuing proceedings in the Philippines seeking to declare the Final Award as void; SUM 21 was Phoenix's application filed in OA 23 to set aside SIC/ORC 69/2023, which is the court's order allowing PIMD to enforce the Final Award against Phoenix and Udenna Corporation in Singapore. At the conclusion of the hearing on 25 June 2024 and for the reasons set out in my GD, I found that PIMD succeeded in full in both OA 1 and SUM 21 and accordingly ordered Phoenix to pay PIMD its costs of and incidental to OA 1 and SUM 21.

Parties’ positions on costs

3 PIMD now seeks costs in the sum of **\$424,795.52** as its costs of OA 1 and SUM 21, comprising:

Description	Costs
Singapore counsel fees	290,878.78
Arbitration counsel fees	80,341.87
Expert fees – ACCRALAW	37,076.15
Disbursements	16,498.71
Total	424,795.52

4 I do not propose to set out the principles applicable to an award of costs which are now well established and were agreed between the parties: see O 22 r 3(1) of the Singapore International Commercial Court Rules 2021 (“SICC Rules”); *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96.

5 Phoenix accepts that, as the successful party in these applications, PIMD is entitled to an award of costs in its favour; and that the quantum of costs will generally reflect the costs PIMD incurred although the quantum of costs that PIMD is entitled to remains “subject to principles of proportionality and reasonableness”: O 22 r 3(1) of the SICC Rules.

6 Here, Phoenix contends that the sum claimed by PIMD is neither proportionate nor reasonable. In summary, Phoenix submits that a discount of approximately 41% ought to be applied to the costs sought by PIMD such that it is awarded \$250,000 (all in) — an amount which Phoenix in fact proposed to pay on 16 July 2024 but which was rejected by PIMD. In support of that submission, Phoenix relies upon a number of points as set out in its written submissions dated 27th August 2024 which I deal with below.

7 First, Phoenix submits that the amount claimed of \$81,708.57 under the head which PIMD refers to as “Stage 6 of Section A” of PIMD’s costs schedule as part of the costs incurred by its Singapore counsel is disproportionately high and unreasonable. Those costs concerned work done in relation “...to preparing written submissions and accompanying bundles, reviewing Defendant’s written submissions and accompanying bundles and preparing for hearing (including research)”. In broad terms, Phoenix’s main complaint with regard to this part of PIMD’s claim is that this work was duplicative of work already done in respect of SIC/SUM 8/2024 (“SUM 8”) (involving an application by Phoenix to, among

other things, set aside an interim ASI I had earlier granted against it by way of SIC/ORC 5/2024) in respect of which Phoenix was unsuccessful and I previously awarded costs against Phoenix in the sum of \$205,880.41 in my judgment in *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc)* [2024] SGHC(I) 20. On this basis, Phoenix submitted that “to fully claim its costs in respect of such duplicative work would be tantamount to double-dipping”.

8 In further support of its objections to this part of PIMD’s claim, Phoenix refers to a number of other matters including by way of a “check” with previous cost awards where much lower costs awards were made by the SICC. Its submissions are as follows:

- (a) the excessive costs claimed in respect of the preparation of the bundles which should, according to Phoenix, be “heavily discounted”;
- (b) the excessive time spent by Singapore counsel totalling 110.77 hours which is equivalent to some \$134,401.27 which includes time spent for preparations in the getting up and drafting of the 1st Witness Statement of Mohammad Fitrawan Nur dated 12 January 2024;
- (c) the overall excessive time spent by PIMD’s Singapore counsel of 247.84 hours when compared with Phoenix’s Counsel who spent only 163 hours; and
- (d) the disparity between the costs claimed in respect of PIMD’s Singapore counsel (\$290,878.78) and Phoenix’s Singapore counsel (\$133,825), which is more than double.

9 In summary, PIMD made plain that it does not seek to recover its costs incurred in respect of the applicability of estoppel and *res judicata* on which PIMD was not ultimately successful. However, PIMD submitted that the rest of its costs were entirely reasonable, proportionate and justifiable having regard to a number of factors which I would summarise as follows:

- (a) The significant amount at stake *viz*, a sum in excess of US\$142m together with interest at the daily rate of approximately US\$18,000 which continues to grow.
- (b) The complexity of the issues.
- (c) The urgent need to stop Phoenix from pursuing the proceedings in the Philippines.
- (d) The correlative need to understand properly the steps being taken by Phoenix in the Philippines and to obtain local legal advice in relation thereto having regard, in particular, to the fact, according to PIMD, that Phoenix had recently divested itself of its key asset in Singapore *viz*, certain shares in PNX Petroleum Singapore Pte Ltd valued at approximately US\$52m.
- (e) Phoenix's conduct — where it had acted in breach of ORC 5 and in contempt of court — in attempting impermissibly to set aside the Final Award in the Philippines, thus usurping the supervisory jurisdiction of this court.
- (f) Several untenable arguments raised by Phoenix which escalated PIMD's costs.

(g) PIMD's Singapore counsel's efforts to reduce costs by working closely with PIMD's arbitration counsel who were far more familiar with the conduct of the arbitration, the nuanced facts of the underlying dispute and the proceedings in the Philippines.

Costs payable by Phoenix

10 As to these submissions, my observations and conclusions are as follows:

(a) Although reference to other cases in the SICC often provides a useful cross-check in at least certain circumstances, each case ultimately turns on its own facts.

(b) I readily accept the matters relied upon by PIMD which, in my view, point strongly in favour of a significant costs award in its favour.

(c) When compared with the overall amount at stake and the issues involved, I also readily accept that the costs claimed could not be said to be disproportionate.

(d) However, it is still necessary to consider whether the costs incurred were reasonable having regard to all the circumstances.

(e) I do not accept that the costs claimed in the preparation of the bundles could be said to be excessive in all the circumstances.

(f) I accept that some of the work which was the subject of PIMD's current claim for costs was possibly duplicative of the work done in relation to SUM 8 – although by how much is an issue which is rather

difficult, if not impossible, to determine. What is certainly clear is that the main issues which I had to address at the most recent hearing including the substantive merits of PIMD's case as to why the arbitration agreement in the MOU applied to disputes under the Sale Contracts (as defined in the GD at [33]) were not issues which I had to address in respect of SUM 8. However, at most, I would allow a discount of perhaps 7.5% to allow for such duplicative work.

(g) I note the disparity between PIMD's costs and Phoenix's costs which I accept is a potentially relevant factor to be taken into account in assessing costs. Having looked carefully at the parties' costs schedules, it seems to me that such disparity can probably be explained by at least three factors. First, it appears that the hourly rates charged by PIMD's counsel are significantly higher than the rates charged by Phoenix's counsel. Second, in its capacity as claimant, PIMD has the general carriage of the proceedings, and it is not unusual for the claimant's costs to be somewhat higher than the defendant's costs. Third, there seems to me to be some duplication of work within PIMD's counsel team.

(h) Bearing all these matters in mind, I would discount PIMD's costs by approximately 25%. I recognise that such a discount is somewhat broad-brush. However, that is the nature of the present kind of assessment.

11 Accordingly, I would award PIMD costs in the sum of \$319,000 together with interest at the judgment rate from the date of this judgment until payment.

Sir Henry Bernard Eder
International Judge

Daniel Chia Hsiung Wen, Ker Yanguang (Ke Yanguang), Charlene
Wee Swee Ting and Chan Kit Munn Claudia (Prolegis LLC) for the
claimant;
Liew Yik Wee, Wong Wan Chee and Ng Tse Jun Russell (Rev Law
LLC) for the defendant.
