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

**[2025] SGHC(I) 21**

Originating Application No 10 of 2024 (Summonses Nos 25, 46, 51 and 1177 of 2024 and 17 and 18 of 2025)

Between

DKB

… *Claimant*

And

DKC

… *Defendant*

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# JUDGMENT

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[Civil Procedure — Costs — Principles — Defendant successfully obtained stay of proceedings in favour of arbitration despite having no intention to commence arbitration — Whether defendant is entitled to costs]

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# DKB
# v
# DKC

**[2025] SGHC(I) 21**

Singapore International Commercial Court — Originating Application No 10 of 2024 (Summonses No 25, 46, 51 and 1177 of 2024 and 17 and 18 of 2025)
Thomas Bathurst IJ
28 May 2025

4 August 2025 Judgment reserved.

**Thomas Bathurst IJ:**

1 This judgment deals with the question of the costs of the Defendant's application to stay the enforcement of an arbitral award (HC/SUM 1177/2024, or the "Stay Application") in SIC/OA 10/2024, along with the costs of various other related applications, which I set out in greater detail below. This judgment should be read in conjunction with my grounds of decision of 16 April 2025 concerning the Stay Application (*DKB v DKC* [2025] SGHC(I) 11) and my grounds of decision of 2 May 2025 (*DKB v DKC* [2025] SGHC(I) 14) concerning SIC/SUM 17/2025 ("SUM 17", or the "Variation Application").

## Background

2 By an originating application dated 21 December 2023, the claimant ("DKB" or "Claimant"), as the assignee of a final award (the "Award") arising from the Swiss-seated arbitration between [B] and the defendant ("DKC" or

"Defendant"), sought leave to enforce the Award pursuant to s 29 of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA"). The Claimant also sought orders that within 14 days after service of the order granting leave, it be at liberty to enter judgment against the Defendant in an amount of US$315,913,988.82.

3 Leave was granted on 22 December 2023. On 24 April 2024, the Defendant filed the Stay Application to stay the enforcement of the Award pursuant to s 6 of the IAA, on the basis that the Claimant, the Defendant and two other parties had entered into a stay and settlement deed in respect of the Award (the "Settlement Deed") under which any dispute arising in respect of the Settlement Deed would be settled by way of arbitration. On the same day, the Defendant also applied in HC/SUM 1133/2024 to set aside the enforcement order.

4 Prior to the hearing of the Stay Application, the Claimant filed several interlocutory applications. The ones relevant to this judgment are:

(a) SIC/SUM 25/2024 ("SUM 25"), which was an application for leave to file affidavits in relation to expert opinion on US and English law;

(b) SIC/SUM 46/2024 ("SUM 46"), which was an application under O 16 r 8 of the Singapore International Commercial Court Rules 2021 (the "SICC Rules") for an order that Mr Roderick Cordara KC appear at the hearing of the Stay Application to make submissions on the Claimant's behalf on English law; and

(c) SIC/SUM 51/2024 ("SUM 51"), which was an application for leave to adduce further evidence in the Stay Application, namely, a transaction record.

I granted SUM 25 and SUM 51 but left the question of costs to be resolved after the Stay Application was heard. I dismissed SUM 46 on 18 October 2024 and ordered the Claimant to bear the Defendant's costs for that application, but without determining the quantum of those costs. The reasons for my dismissal of SUM 46 are reported as *DKB v DKC* [2025] 3 SLR 114.

5 Following the determination of these interlocutory applications, I heard the Stay Application on 5 February 2025. The Defendant's position was that an unconditional stay should be granted; the Claimant's primary position was that a stay should not be granted because there was no dispute referable to arbitration given that there was an "unarguable" breach of the Settlement Deed. The Claimant's alternative position was that if a stay was to be granted, it should be subject to: (a) a condition that the Defendant promptly commence an arbitration in the Arbitration Institute of the Stockholm Chamber of Commerce (the "Stockholm Institute") and (b) that security be provided. The quantum of security that the Claimant sought was US$315,913,988.82, but counsel for the Claimant eventually sought only US$15m in his oral submissions.

6 On 19 February 2025, I made orders on the Stay Application granting a stay of all proceedings in SIC/OA 10/2024 subject to the following conditions:

(a) that the Defendant within 10 days of the making of these orders commences an arbitration in accordance with the Rules for Expedited Arbitration of the Stockholm Institute pursuant to clause 6.2 of the Settlement Deed seeking orders that in the events which have happened

the Claimant is not entitled to enforce the arbitration award, the subject of these proceedings; and

(b) that the Defendant diligently prosecute the arbitration referred to in clause (2)(a) and comply with all directions of the arbitrator or of the Board of the Stockholm Institute.

On 16 April 2025 I published my reasons for making these orders (see *DKB v DKC* [2025] SGHC(I) 11).

7 The Defendant did not comply with these orders. Instead, on 6 March 2025, it made the Variation Application, seeking an extension of the deadline to commence the stipulated arbitration mentioned in [6(a)] above. Around the same time, the Claimant applied in SIC/SUM 18/2025 ("SUM 18") to lift the stay. On 1 April 2025 I ordered that the time for compliance with Order 2(a) of the orders made by me on 19 February 2025 (see [6(a)] above) be varied by substituting the words "by 12 April 2025" for the words "within 10 days of the making of these orders", while ordering that SUM 18 be stood over until the conclusion of the contemplated arbitration. I ordered the Defendant to pay the costs of the Variation Application. On 2 May 2025 I published my reasons for making the orders in the Variation Application (see *DKB v DKC* [2025] SGHC(I) 14).

8 Once again, the Defendant failed to commence arbitration before the new deadline of 12 April 2025. On 13 May 2025, I made orders in respect of SUM 18 lifting the stay of proceedings. I ordered the Defendant to pay the Claimant's costs of SUM 18. At this hearing, I also asked the parties for written submissions setting out their positions on their entitlement to costs regarding all

other outstanding summonses in relation to the stay, and the appropriate quantum of all costs which should be ordered.

9 The following issues arise from the parties' written submissions:

(a) Which party should be entitled to the costs of the Stay Application, SUM 25 and SUM 51 (being the applications in which I have not yet determined the parties' entitlement to costs)?

(b) What is the appropriate quantum of costs for each of the applications considered in this judgment (the Stay Application and SUMs 17, 18, 25, 46 and 51)?

10 I now summarise the parties' submissions on these issues.

## The costs of the Stay Application

### *The parties' submissions*

*The Defendant*

11 The Defendant's primary submission is that as it was the successful party in the Stay Application, it should have its costs, with the result that costs for SUM 25 and SUM 51 also ought to be awarded to it.[1] It refers to O 22 r 2(1) of the SICC Rules which provides that costs are at the discretion of the court and the court has power to determine all issues relating to the costs of the proceedings including by whom and to what extent the costs should be paid.[2]

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1 Defendant's Costs Submissions dated 27 May 2025 ("DCS") at para 2.

2 DCS at para 6.

12 The Defendant, referring to O 22 r 3(1) of the SICC Rules, states that the starting point is that the successful party is entitled to its costs.[3] It submits that the following principles can be derived from the authorities including *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501, *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties* [2011] 1 SLR 582 and *Low Leong Meng v Koh Poh Seng* [2012] 1 SLR 1076:[4]

(a) costs are in the discretion of the court;

(b) costs should follow the event except where it appears to the court that in the circumstances of the case some other order should be made;

(c) the general rule does not cease to apply because the successful party raised issues or allegations in which it failed, but the successful party can be deprived of its costs in whole or in part where it caused a significant increase in the length of the proceedings; and

(d) where the successful party raised issues or made allegations improperly or unreasonably, the court could not only deprive him of his costs, but also order him to pay the whole or part of the unsuccessful party's costs.

13 The Defendant submits that the court, in exercising its discretion, is entitled to take into account the parties' conduct before and during the hearing. It submits that this is consistent with O 22 r 3(2)(*b*) of the SICC Rules which states that for the purposes of determining the reasonableness of the quantum of

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3 DCS at para 9.

4 DCS at para 15.

costs, the court can take into account the parties' conduct before, as well as during, the application or proceeding.[5]

14 The Defendant emphasises that the Claimant's primary case was that no stay should be granted as there was no dispute referable to arbitration because the Defendant was unarguably in breach of the Settlement Deed.[6] The Defendant also submits that in the Claimant's alternative case, namely, that a stay should be granted subject to conditions, the Claimant pressed for two conditions, one of which (*ie*, the provision of security in the sum of close to US$316m) was not granted. The Defendant observes that this alternative case was raised for the first time in the Claimant's submissions of 25 October 2024, some six months after the Stay Application was first brought.[7]

15 The Defendant submits that its failure to comply with the conditions imposed by the orders is a not a relevant factor in determining the entitlement to costs or its quantum.[8] It submits that the relevant principle is that the court is entitled to take into account the conduct of the parties before and during but not after the hearing.[9] It justifies this on the basis that the assessment concerns the manner in which the proceedings in question were prosecuted and conducted which logically terminates at the point of final hearing. It submits that what happens after is properly the subject of the usual mechanisms aimed at ensuring

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5 DCS at paras 16–17

6 DCS at para 25.

7 DCS at paras 38–41.

8 DCS at para 63.

9 DCS at paras 64–67.

compliance with the court's orders. It submits that was recognised by the costs orders in SUM 17 and SUM 18.[10]

16 The Defendant further submits it would be wrong in principle, as well as a logical fallacy, for a party's post-hearing conduct to retrospectively colour its prior success in the proceedings.[11]

17 The Defendant advances an alternative position to its primary submission; however, its alternative position shifted in the course of its written submissions. At the outset, the Defendant's alternative position was that if it were not considered to be the successful party in the Stay Application, the Claimant ought not to be awarded its costs of the application.[12] Later in its written submissions, however, it contends that if it were not the successful party, the Claimant should not be entitled to its costs but should instead be ordered to pay the Defendant's costs for the Stay Application, SUM 25 and SUM 51.[13]

18 In that context, it submits that having regard to the principles laid down by the Court of Appeal in *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732, the Claimant's contention that the Defendant was inarguably in breach of the Settlement Deed and that there was therefore no dispute referable to arbitration, was unreasonably pursued by the Claimant.[14] It submits that the Claimant's insistence in maintaining that unreasonable approach manifested itself in its applications in SUM 25, SUM 46 and SUM 51,

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10 DCS at paras 68–69.

11 DCS at paras 70–71.

12 DCS at para 5.

13 DCS at paras 51–62.

14 DCS at para 55.

significantly increasing the costs of the proceedings. In particular, the Defendant was forced to incur costs in opposing the three summonses and engaging an English law expert.[15]

19 As for quantum, the Defendant seeks pre-transfer costs for the Stay Application of $23,000 and post-transfer costs of $220,000 for the Stay Application and SUMs 25, 46 and 51. It also seeks disbursements for all the applications amounting to $36,974.22. For SUM 17 and SUM 18, it submits that it should pay costs of $20,000 all-in to the Claimant.[16]

*The Claimant*

20 In its written submissions, the Claimant contends that whilst costs would as a general rule follow the event, it is trite that the court retains a discretion to depart from the general rule if justified by the circumstances.[17] It submits that the rules governing costs are very much underpinned by considerations of fairness and common sense and the costs orders made must reflect the overall justice of the case.[18]

21 In its submissions the Claimant refers to what it describes as the Defendant's impropriety in bringing the Stay Application, evidenced by the following matters:[19] first, that the Defendant failed to cooperate in the framing of issues for the arbitration; second, that the Defendant applied at the last minute for an extension of time to comply with the conditions imposed on the stay;

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15 DCS at paras 59–60.

16 DCS at paras 73–75.

17 Applicant's Written Submissions on Costs dated 27 May 2025 ("CCS") at para 69.

18 CCS at para 54.

19 CCS at para 65.

third, that the Defendant allowed the 12 April deadline to lapse and failed to comply with directions to justify that failure; and finally, that the Defendant applied for a further 49-day extension of the deadline to comply with the conditions at the hearing of SUM 18. The Claimant noted that by that time some 83 days had elapsed since the imposition of the stay.

22 In that context, the Claimant made the following submission:[20]

> 72. Here, such an award is reasonable as it is clear from the Defendant's impropriety (as set out in paragraph 65 above) that the Stay Application was an unnecessary and wasted application, invoked *mala fide*, given that the Defendant never genuinely intended to avail itself of the remedy that it ostensibly sought. Rather, it is apparent that [the] Defendant was simply making use of the Stay Application as a convenient — yet effective — means of delaying the [Claimant's] enforcement of the [Award]. Despite the Defendant's submissions to the contrary, these delays have occasioned prejudice upon the [Claimant] in that more costs will now have to be incurred because of the Defendant's failure to consolidate the Contemplated SCC Arbitration with the [[D] arbitration]. We reiterate that whilst it is the Defendant who consistently insisted that the [Claimant] was exerting improper pressure on them for an undefined collateral purpose, it is the Defendant whom, through its conduct, had clearly used the Stay Application for the collateral purpose of delaying the [Claimant's] enforcement of the [Award].

23 In these circumstances, the Claimant submits the Defendant should pay its costs of the Stay Application; alternatively, no order as to costs should be made in respect of the Stay Application.[21] For SUM 25 and SUM 51, the Claimant argues that the Defendant should bear its costs as it succeeded in those applications. As for quantum, the Claimant claims:[22]

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20 CCS at para 72.

21 CCS at paras 74–75.

22 CCS at paras 74, 76, 78, 80, 82.

(a) For the Stay Application, costs of $208,000 and disbursements of $3,262,03.

(b) For SUM 25, costs of $139,100 and disbursements of $25,046.20.

(c) For SUM 17, costs of $68,375 and disbursements of $706.15.

(d) For SUM 18, costs of $28,375 and disbursements of $578.79.

(e) For the costs submissions, costs of $10,000 and disbursements of $100.

For completeness, the Claimants do not appear to have made submissions on the entitlement and quantum of costs for SUM 51 and the quantum of costs for SUM 46.

***Consideration***

24 I accept the Defendant's submission that as a general rule the successful party is entitled to recover its costs provided they are reasonable and proportionate to the issues involved.

25 I also accept that as a general rule the fact that the successful party has failed on a particular issue does not deprive it of its costs, at least when the issue had not caused a significant increase in the cost or length of the proceedings.

26 In the present case, I am of the view that the Defendant can properly be described as the successful party in the Stay Application. It obtained a stay notwithstanding the Claimant's opposition. The fact that conditions were imposed does not alter that fact. The situation may have been different if the

Claimant had indicated from the outset that it consented to a stay subject to the condition I ultimately imposed; however, it did not do so. Although, in the letter from the lawyers for the Claimant to the lawyers for the Defendant dated 31 October 2024, it indicated that its client would consent to a stay on the conditions set out in its written submissions of 25 October 2024,[23] its primary position at the hearing was that no stay should be granted and, in any event, one of the conditions for which it sought namely, security, was not granted.

27 I also agree with the Defendant that as a general rule the parties' subsequent conduct is irrelevant. To the extent they raise issues between the parties, they would generally be decided in subsequent curial proceedings.

28 However, these matters are subject to the general discretion of the court in awarding costs. As was pointed out by the Court of Appeal in *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2024] 1 SLR 1 at [25] the rules governing costs are very much underpinned by considerations of justice and common sense, and any costs orders must not only reflect the overall justice of the case, but also be workable and not leave the parties to indulge in expensive satellite costs litigation.

29 The Claimant essentially submitted that the Stay Application was not brought *bona fide* but for an improper collateral purpose. I am not prepared to accept that submission. Had I been prepared to do so, I would have had no hesitation in awarding the Claimant its costs.

30 However, the events following the grant of the stay which I summarised in my grounds on the Variation Application (*DKB v DKC* [2025] SGHC(I) 14

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[23] Applicant's Bundle of Authorities on costs in SUM 1177, SUM 25, SUM 17 and SUM 18 dated 27 May 2025 at p 230.

at [14]−[25]), and the events subsequent to the grant of the Variation Application summarised by the Claimant in its written submissions, lead inevitably to the conclusion that the Defendant at no time had any intention of commencing an arbitration pursuant to its contractual rights under the Settlement Deed. The right to bring such proceedings provided the very foundation for the Stay Application. Whilst it is true, as the Defendant indeed submitted at the hearing of the Stay Application, that the Claimant could have commenced such proceedings, the Claimant was not the one seeking the stay.

31 In these circumstances, where the Defendant sought a stay based on a contractual right which it had no intention of enforcing, the interests of fairness and justice require that no order should be made in its favour for the costs of the Stay Application.

32 Equally, it does not seem to me appropriate that the Claimant should have its costs. The Claimant's primary position was that a stay should not be granted as the Defendant had no arguable defence to its claim. That contention being rejected absent any finding of improper or collateral purpose, it seems to me just and fair that the Claimant should bear its own costs.

33 In the circumstances, I would not make any order for costs on the Stay Application.

**Costs of SUM 25 and SUM 51**

34 These interlocutory applications were linked to the Stay Application. Although the Claimant was successful in these applications, that success had no bearing on the outcome of the proceedings. In the circumstances, there should be no order as to costs for these applications.

**Costs of SUM 46**

35 I have already ordered that the Claimant pay the Defendant's costs of this application (*DKB v DKC* [2025] 3 SLR 114 at [32]). In a schedule attached to its submissions, the Defendant assessed the costs of this application at $25,820.[24] The schedule sets out the work done, the amount of time spent, and the rates charged by each of those persons involved in the application. Having considered these matters I am of the view that the amount claimed is reasonable and proportionate to the issues involved. I would order the Claimant pay the Defendant's costs of this application in an amount of $25,820 (all-in).

**Costs of SUM 17 and SUM 18**

36 I have ordered that the Defendant pay the Claimant's costs of these applications (see *DKB v DKC* [2025] SGHC(I) 14 at [65] for SUM 17). In respect of SUM 17, the Claimant claims an amount of $68,375 and in respect of SUM 18 it claims $28,375. The total amount claimed in respect of these two interrelated applications is $96,750. The Claimant also claims disbursements of $706.15 in respect of SUM 17 and $578.79 in respect of SUM 18, for a total amount of $1,284.94.

37 The Claimant has set out the work done in respect of these applications, the time spent and the charge-out rate of each of those persons who carried it out. I have considered these matters but I am of the view that the total amount claimed is more than what is reasonable and proportionate to the issues involved. In all the circumstances, I would order the Defendant to pay the Claimant's costs of SUM 17 and SUM 18 assessed in the sum of $70,000. I

[24] CWS at Annex A p 2.

would also order the Defendant to pay the Claimant's disbursements in respect of these summonses in an amount of $1,284.94.

**Costs of these costs proceedings**

38 As each party has had partial success in these costs proceedings, I would make no order in respect of these costs.

**Conclusion**

39 I would make the following orders:

(a) Order that the Claimant pay the Defendant's costs of SUM 46 in an amount of $25,820 (all-in).

(b) Order that the Defendant pay the Claimant's costs of SUM 17 and SUM 18 assessed in an amount of $70,000 together with disbursements of $1,284.94.

(c) No further or other order as to costs.

Thomas Bathurst
International Judge

Ang Cheng Ann Alfonso, James Ch'ng Chin Leong and Lee Wei Cong Terence (A.Ang, Seah & Hoe) for the claimant;
Chong Yee Leong, KarLuis Quek and Liew Pei Jun Annette (Allen & Gledhill LLP) for the defendant.