IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 6

Originating Application No 23 of 2023 (Summons No 27 of 2024)

In the matter of Section 19 of the 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*

Originating Application No 4 of 2024 (Summons No 11 and 42 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

And

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

Between

Pertamina International Marketing & Distribution Pte. Ltd.

… *Claimant*

And

Udenna Corporation

… *Defendant*

JUDGMENT

[Civil Procedure — Costs]

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Singapore International Commercial Court — Originating Application No 23 of 2023 (Summons No 27 of 2024), Originating Application No 4 of 2024 (Summons No 11 and 42 of 2024)
Sir Henry Bernard Eder IJ

5 March 2025 Judgment without an oral hearing.

Introduction

1 This judgment on costs follows on from (i) my previous judgment, *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* [2025] 3 SLR 1 (the "Judgment") in relation to SIC/SUM 27/2024 ("SUM 27") filed in SIC/OA 23/2023 ("OA 23"); (ii) the withdrawal of SIC/OA 4/2024 ("OA 4"); (iii) my decision in relation to SIC/SUM 11/2024 ("SUM 11"), filed in OA 4; and (iv) the withdrawal of the application in SIC/SUM 42/2024 ("SUM 42"), filed in OA 4. For convenience, I adopt the same abbreviations as in my earlier Judgment.

2 In summary:

(a) SUM 27 was brought by Udenna to set aside the service of the originating papers in OA 23. I dismissed the application on 27 September 2024 pursuant to the Judgment. Udenna subsequently sought leave in CA/OAS 3/2024 ("OAS 3") from the Court of Appeal to appeal against such dismissal of SUM 27. This was, in turn, dismissed by the Court of Appeal on 27 November 2024: see *Udenna Corp v Pertamina International Marketing & Distribution Pte Ltd* [2025] 1 SLR 19.

(b) OA 4, SUM 11 and SUM 42: OA 4 was brought by PIMD on 8 March 2024, seeking orders to compel Udenna to withdraw a Comment filed in the Philippines Courts and to obtain a permanent anti-suit injunction restraining Udenna from pursuing, or continuing to pursue, the reliefs sought in the Comment. This Comment was filed by Udenna on 5 February 2024 in the Philippines Court to (i) join P-H-O-E-N-I-X Petroleum Philippines, Inc. ("Phoenix") in Phoenix's application under Civil Case No. RDVO-23-6338-SC (the “Philippines Proceedings") (ii) to declare the Final Award dated 28 November 2023 (Singapore International Arbitration Centre Award No. 145 of 2023) ("Final Award") void; and (ii) to obtain an injunction against PIMD to restrain it from enforcing the Final Award against Udenna.

(c) SUM 11 was PIMD's application in OA 4 for an interim anti-suit injunction against Udenna in respect of the same. The application was brought on an *ex parte* basis. I granted the interim anti-suit injunction on 15 March 2024 and the Order of Court was extracted as SIC/ORC 14/2024 ("ORC 14").

(d) SUM 42 was Udenna's application in OA 4 to set aside service of the originating papers in OA 4 on similar grounds raised by Udenna

in SUM 27. Given the overlap between SUM 27 and SUM 42, SUM 42 was stayed pending the decision in OAS 3.

(e) On 9 January 2025, PIMD notified the Court that the Philippines Proceedings had been discontinued and that the related appeal had also been fully resolved; and that therefore, OA 4 was no longer necessary. The parties agreed by consent to the withdrawal of OA 4 and SUM 42, subject to the Court's determination on the issues of costs.

3 In respect of SUM 27, PIMD succeeded in full in resisting Udenna's application to set aside service and the parties agree that Udenna, as the losing party, is to bear costs. However, the parties were unable to agree on the quantum.

4 In respect of OA 4, SUM 11, and SUM 42, the parties were unable to agree on which party was to bear costs. In summary, PIMD's position is that Udenna should bear costs as PIMD was the successful party in OA 4, SUM 11, and SUM 42. Udenna, on the other hand, argues that costs should be awarded in its favour, as PIMD had brought and discontinued OA 4.

5 This Judgment is delivered following receipt of the parties' written submissions without an oral hearing.

Relevant legal principles

6 The applicable principles are not in dispute. In broad terms, a successful party is entitled to costs and the quantum of the costs award will generally reflect the costs incurred by the party entitled to costs, subject to principles of

proportionality and reasonableness: see Order 22 Rule 3(1) of the SICC Rules and *Senda International Capital Ltd v Kiri Industries* [2023] 1 SLR 96.

7 Given the nature of the various applications and the fact that the sums at stake are in excess of US$142 million, I do not consider that any of the costs claimed could be said to be disproportionate. However, it remains to consider whether the costs claimed are reasonable in all the circumstances. In addition to the amount or value of any claim involved, the considerations for reasonableness include: (i) the complexity of the case and novelty of the questions involved; (ii) the skill and specialised knowledge required of, and the time and labour expended by, the counsel; (iii) the urgency and importance of the action; (iv) the conduct of the parties.

SUM 27

8 PIMD claims costs in respect of SUM 27 totalling S$266,992.33.

9 In response, Udenna submits that the amount claimed is unreasonable and should be reduced to S$100,000. In support of that submission, Udenna makes a number of points as set out below.

10 First, Udenna draws attention to the fact that its own costs (S$109,852.42) are much less than those claimed by PIMD. I bear that well in mind but of itself, I do not find the fact of a significant disparity between the costs claimed by PIMD and Udenna's own costs surprising for the reasons given by PIMD.

(a) I agree with PIMD that the issues in dispute in SUM 27 were complex and novel. No Singapore court had previously decided the

question of the effect of the Certificate under the Hague Service Convention, given that Singapore had only recently acceded to the Hague Service Convention. I agree that this would have necessitated extensive research by PIMD into other jurisdictions for relevant cases and commentary which could assist the Court on this issue. Udenna itself acknowledged that the issue was a "question of general principle that [had] not been decided before" in its application for leave to appeal my decision in SUM 27.

(b) A number of foreign law issues, relating to whether service was valid under Philippine law, were put into issue by Udenna in SUM 27. I agree with PIMD that this necessitated the engagement of Philippines counsel to advise on foreign law issues. This, in turn, meant that PIMD's legal team had to incur costs in liaising with Philippines counsel to instruct counsel and to incorporate these points into PIMD's wider case in SUM 27.

(c) I agree with PIMD that the case advanced by Udenna was unsubstantiated. In large part, Udenna's case was based on a simple assertion that the service of the originating process in OA 23 was invalid as it was served on an individual who did not have authority to accept service at an address that was not its principal address. Udenna would not have had to expend significant costs in mounting such a case. In contrast, PIMD had to incur significant costs to conduct further investigations. A business intelligence and investigations firm ("JS Held") was engaged by PIMD to assist with verifying the above assertions, incurring substantial costs. Ultimately, JS Held's findings in

its first report were relied upon by PIMD and relied upon by the Court in dismissing SUM 27.

11 It remains to consider a number of specific matters relied upon by Udenna in support of its case that the costs claimed by PIMD were unreasonable.

12 First, Udenna disputes the amounts claimed by PIMD – S$56,706.13 – in respect of the legal fees of Herbert Smith Freehills ("HSF"), the legal team that represented it in the underlying arbitration ("Arbitration"). In this regard, it appears that most of the HSF team were not qualified to practise Singapore law and none was qualified to practise Philippines law. Despite this, PIMD contends that it was necessary for its Singapore legal team, Prolegis LLC ("Prolegis"), to work closely with HSF for its "knowledge and familiarity of the facts and Philippine proceedings". In response, Udenna points out that SUM 27 was an application to set aside service of the OA 23 papers; that the legal issues were confined to those of Singapore civil procedure, while its factual issues were confined solely to the facts surrounding the service of the OA 23 papers; that considerations of the Arbitration were therefore entirely irrelevant to the issue of service; that indeed, neither party sought to rely on the facts of the Arbitration to support its position or to advance their arguments; and that as for the Philippines Proceedings, PIMD has not explained how HSF could have contributed given that none of its team are qualified to practise Philippine law. In short, Udenna submits that PIMD has thus not provided a "cogent explanation" as to why HSF needed to be so heavily involved, if at all. In my view, it was plainly reasonable and indeed necessary to involve HSF to at least some extent in respect of SUM 27. However, looking at the costs schedule submitted by PIMD in support of the costs claimed, it seems to me that HSF's

involvement went beyond what was reasonably necessary and duplicated at least some of the work undertaken by Prolegis – for example, with regard to the reviewing of witness statements and taking instructions *re* preparation of the evidence of Mr Vickers and Ms Prodigalidad. In these circumstances and in the exercise of my discretion, I would reduce the amount claimed by S$20,000 in respect of this part of PIMD's claim.

13 Second, Udenna submits that PIMD's claim for JS Held's fees should be reduced by 50%, *ie*, from US$16,690.40 / S$21,697.52 to US$8,345.2 / S$10,848.76. This is on the basis that JS Held's 1st Report identified the wrong road, which led to JS Held reaching the incorrect conclusion that the building in question did not exist; that when this clear error was brought to PIMD's attention, it sought permission from the Court to correct this mistake and to file a second expert report resulting in wasted expenses. That there was an error in Mr Vickers' 1st Report is indisputable and regrettable – but it was not egregious and it arose in the context of the difficult investigations which Mr Vickers carried out which were necessitated by the obstructive position taken by Udenna. The error was corrected as soon as practicable. In these circumstances, I am unpersuaded that the amount claimed should be reduced and, in the exercise of my discretion, I decline to do so.

14 Third, Udenna submits that the Court should apply a 75% discount to the amounts claimed by PIMD regarding the preparation of Mr Vickers' and Ms Prodigalidad's statements – US$19,697.75 / S$25,607.08 – and allow only US$4,991.94 / S$6,401.77. This is on the basis that, according to Udenna, (i) there was a "fundamental error" in Mr Vickers'/JS Held's 1st Report; and (ii) the amounts claimed based on some 18.6 hours work are excessive. I do not accept that submission. As to (i), I do not propose to repeat what I have already

stated in the previous paragraph. As to (ii), I bear well in mind the main point made by Udenna in this context that Ms Prodigalidad's statement and accompanying materials should have been prepared entirely by Ms Prodigalidad as she were meant to provide an independent expert opinion on Philippine law, and Prolegis was not qualified to practise Philippine law. However, it was plainly necessary and is unsurprising that Prolegis would itself need to spend time in giving appropriate instructions to Ms Prodigalidad and reviewing the materials produced to ensure that they addressed the relevant issues appropriately; and I do not consider that the time spent in so doing was unreasonable or excessive. For these brief reasons, I reject this part of Udenna's case.

15 For all these reasons, I would allow the full amount of PIMD's claim in respect of SUM 27 less S$20,000, *ie*, S$246,992.33.

OA 4, SUM 11, AND SUM 42

16 The total amount claimed by PIMD in respect of these applications is S$107,996.43. That claim is disputed by Udenna on grounds set out below – and Udenna makes its own claim for costs in respect of OA 4 in the sum of S$75,354.10.

17 In respect of OA 4, PIMD accepts that although the starting assumption is that a party discontinuing an action ought to bear the costs of the action, this is subject to the Court's discretion. In exercising this discretion, PIMD submits (and I accept) that the Court may consider the likely outcome had the case been litigated to a conclusion (where such an outcome is readily discernible) as well as the reasons for which a particular matter is withdrawn. Where, for instance, the withdrawal follows what in effect is a surrender on the part of the party

against whom the action has been brought, then that party against whom the action was brought should normally bear the costs: *Karaha Bodas Co LLC v Perusahaan Pertambangan Minyak dan Gas Bumi Negara* [2006] SGHC 195 at [11(d)].

18 PIMD submits that the position in respect of OA 4 is exactly such a situation, *viz*, PIMD had filed OA 4 to restrain Udenna from progressing the Comment which was an attempt to impermissibly challenge the validity of the Final Award; the impermissibility of the Comment was recognised (at least on a *prima facie* basis) by this Court when I granted the interim anti-suit injunction to restrain Udenna from pursuing the reliefs it sought in the Comment; after ORC 14 was granted, the Philippines Proceedings and the Comment were withdrawn by Phoenix and Udenna. PIMD submits that this was precisely the prayer for relief sought in OA 4, *ie*, that the Comment be withdrawn; that given the withdrawal, an effective "surrender" on the part of Udenna, there was no more application for PIMD to injunct; and that, accordingly, there was no more need for OA 4. PIMD did not pursue OA 4 thereafter – PIMD would have pursued OA 4 had the Philippines Proceedings not been withdrawn.

19 In light of the above, PIMD submits that the Court should exercise its discretion to grant PIMD costs given that the outcome of the matter – had it been litigated to conclusion – is readily discernible. PIMD's application for an anti-suit injunction against Phoenix was granted: see *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] 6 SLR 105. For the same reasons its anti-suit application against Phoenix was granted, PIMD submits that it would have similarly succeeded in obtaining the anti-suit relief sought against Udenna in OA 4.

20 This analysis is disputed by Udenna. In summary, Udenna points out and submits that OA 4 was not confined to the Philippines but included other and much wider relief; that the withdrawal of the Philippines Proceedings did not amount to a "*surrender*" to OA 4 on Udenna's part; that in fact, Udenna continued to maintain the objections to OA 4 set out in its Defendant's Statement; that PIMD would not have succeeded in obtaining the wide-sweeping orders sought in OA 4; that, in the circumstances, the Court should reject PIMD's claim and allow Udenna's own claim for costs; and that, in any event, the costs claimed by PIMD are excessive and unreasonable.

21 As to these submissions, I readily accept (or at least am prepared to assume in Udenna's favour) that PIMD would not have been entitled to the entirety of the relief sought by OA 4 if only because (as PIMD readily accepted when it applied for the interim anti-suit injunction) any order that the Court in Singapore might make could not or at least should not restrict Udenna (or indeed any party) form resisting recognition or enforcement of an award on grounds contained in the New York Convention; and that, accordingly, any order that the Court might have made under OA 4 would have been suitably reformulated or qualified.

22 However, none of this detracts from what I consider to be the overriding point, *viz*, that although I accept that the relief sought by PIMD as formulated in OA 4 would have been "cut down" or qualified, the initiation and pursuit of OA 4 was, in my view, entirely reasonable at least until the Comment and the Philippines Proceedings were withdrawn – at which point OA 4 became (at least in large part) irrelevant and otiose. In these circumstances, I accept that PIMD is, in principle, entitled to its reasonable costs in respect of OA 4 – as to which

see further below – and that Udenna's own claim for the costs of OA 4 should be rejected.

23 PIMD argues, in respect of SUM 11, that it had successfully obtained the interim anti-suit injunction, and that Udenna has not suggested that SUM 11 was wrongly granted. I agree. On this basis, I accept that PIMD is, in principle, entitled to its reasonable costs in respect of SUM 11 – as to which, again, see further below.

24 PIMD argues, in respect of SUM 42, that the application related to almost identical issues with SUM 27, *viz*, setting aside service of originating process on Udenna on the basis that service was invalid. In SUM 42, Udenna had asserted that the service of the originating process in OA 4 was invalid, as it was served on an individual who did not have authority to accept service at an address which was not its principal address. It was in light of this overlap in issues that SUM 42 was held in abeyance pending the Court's determination of SUM 27 and OAS 3. Since Udenna's arguments in SUM 27 and OAS 3 were rejected, PIMD submits that SUM 42 would have been similarly dismissed had it progressed to a full hearing. I agree. On this basis, I accept that PIMD should also be entitled to its reasonable costs of SUM 42.

25 Finally, under this head, Udenna submits that the overall amount of costs claimed by PIMD in respect of OA 4, SUM 11, and SUM 42 is unreasonably excessive. In support of that submission, Udenna made the following points:

(a) The parties did not file any substantive response to each other in the three applications: (i) SUM 11 was obtained on an *ex parte* basis; (ii) PIMD did not file a response to SUM 42; and (iii) the parties did not fully ventilate or engage on their respective positions on OA 4. Shortly

after Udenna entered an appearance for OA 4 on 21 August 2024, the proceedings were stayed. Therefore, PIMD did not undertake complex or substantial work in relation to the three applications.

(b) There was also no urgency involved which justified increased costs. PIMD clearly did not consider OA 4 to be urgent: (i) PIMD itself proposed the stay of SUM 42 pending the resolution of SUM 27; and (ii) it had suggested as early as 13 September 2024 in a letter to Court that "*OA 4 may no longer be necessary*" depending on developments in the Philippines Proceedings.

(c) Much of PIMD's work for OA 4 would have overlapped with the work done for PIMD's earlier application for an anti-suit injunction in SIC/OA 1/2024 ("OA 1") against Phoenix, which was commenced about two months before OA 4. PIMD was awarded costs of S$319,000 for OA 1 and for SUM 21 in OA 23: see *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 at [11]. PIMD itself acknowledges these two applications were similar, but yet has not applied any reduction or discount for the costs of such work. Presumably, therefore, PIMD's claim for costs would include costs for which it has already been compensated for in OA 1.

26 In addition, Udenna disputes a number of individual amounts as claimed by PIMD. Udenna made the following contentions:

(a) Stage 1 to 3: Preparation of OA 4 and SUM 11 papers (39.09 hours; S$47,296.28). The matters set out in: (i) the only substantive

witness statement which PIMD relied on for OA 4 and SUM 11; (ii) the five-page memorandum from PIMD's Philippine law expert; and (iii) the 10-page submissions PIMD filed for SUM 11, would have contained a high degree of overlap with the factual matters and legal arguments PIMD relied on in OA 1. PIMD would have already recovered costs for such work. The time costs claimed by PIMD is thus excessive and should be discounted by at least 50% to account for the work in OA 1;

(b) Stage 5: Preparation of filing of originating process in OA 4 to be served out of jurisdiction in accordance with the Hague Convention on Service (9.83 hours; S$10,159.31). PIMD has not furnished an explanation as to why almost 10 hours were required to carry out this largely administrative task. PIMD should be familiar with the process as it would have done so in its previous applications. This should be discounted by 75%.

(c) Stage 6: Reviewing SUM 42 papers (14.21 hours; S$15,261.74). PIMD's claim is patently excessive given that it sought a stay for SUM 42 (which it obtained) just five days after it was filed and thus could not have incurred significant costs in reviewing it. The stay meant that PIMD did not file a response in SUM 42. This item should be discounted by 75%.

(d) Stage 7: Preparing and advising client on costs proposal (12.43 hours; S$12,162.02). PIMD's claim for this item is grossly disproportionate. PIMD only sent Udenna two short letters with its costs proposal – the latter was simply to inform Udenna that it would seek the Court's directions on costs. This item should be discounted by 75%.

27 I readily accept PIMD's submission that OA 4 and SUM 11 were filed on an urgent basis to restrain Udenna from pursuing the Comment in the Philippines Proceedings, where Udenna sought *inter alia* an urgent injunction to restrain PIMD from taking steps to enforce the Final Award against Udenna anywhere and to impermissibly void the Final Award; and that, if Udenna had been allowed to pursue and obtain such orders and given the amount at stake, PIMD's enforcement efforts would have been severely prejudiced and its enforcement proceedings in both Singapore and Philippines would have been delayed. Nevertheless, it seems to me that there is some force in at least some of the points advanced by Udenna as summarised in the previous paragraph. Having considered the schedule of costs submitted by PIMD and in the exercise of my discretion on the basis of the information provided, I would reduce the total amount claimed under this head and allow the sum of S$75,000.

Conclusion

28 For all these reasons, it is my conclusion that Udenna must pay PIMD's costs which I hereby assess and fix in the sum of S$246,992.33 plus S$75,000, *ie*, S$321,992.33.

Sir Henry Bernard Eder
International Judge

Daniel Chia Hsiung Wen, Ker Yanguang (Ke Yanguang), Charlene Wee Swee Ting, Chan Kit Munn Claudia and Damian Tan Yi Liang (Prolegis LLC) for the claimant;
Ng Kim Beng, Sim Daryl Larry, Jasmine Thng Khai Fang and Ho Linming (Rajah & Tann Singapore LLP) for the second defendant.
