IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(I) 17

Suit No 1 of 2015

Between

(1) BCBC Singapore Pte Ltd
(2) Binderless Coal Briquetting Company Pty Limited

… *Plaintiffs*

And

(1) PT Bayan Resources TBK
(2) Bayan International Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Costs — Principles]

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BCBC Singapore Pte Ltd and another
v
PT Bayan Resources TBK and another

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Singapore International Commercial Court — Suit No 1 of 2015
Quentin Loh JAD, Vivian Ramsey IJ and Anselmo Reyes IJ
28 April 2022

19 December 2022 Judgment reserved.

Quentin Loh JAD, Vivian Ramsey IJ and Anselmo Reyes IJ:

Introduction

1 This judgment deals with the costs of a drawn-out litigation arising from a joint venture between Australian and Indonesian companies to exploit a new technology to upgrade coal for commercial sale that ended in a series of disputes. The assessment of costs raises the question of how costs should be awarded in a complex commercial dispute that was heard in the Singapore International Commercial Court ("SICC") in three tranches, in which the plaintiffs succeeded on issues of liability that took up the first two tranches, only to fail on issues of causation of loss and quantum in the third tranche. The main question is therefore how (if at all) the assessment of costs should reflect the fact that the plaintiffs won substantial battles in this litigation but ultimately lost the war and obtained nothing.

Background

2 The facts of this case have been comprehensively set out in our earlier judgments: see *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2016] 4 SLR 1 ("*First Judgment*"); *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2017] 5 SLR 77 ("*Second Judgment*") and *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2022] SGHC(I) 2 ("*Third Judgment*"). We will not rehearse them except to highlight salient points. Unless otherwise specified, the abbreviations defined in our earlier judgments have also been used here.

The parties

3 The second plaintiff, Binderless Coal Briquetting Company Pty Ltd (BCBC), is an Australian company that holds the exclusive worldwide licence of a technology for upgrading sub-bituminous coal into briquettes, known as the Binderless Coal Briquetting Process (the BCB Process). The first plaintiff, BCBC Singapore Pte Ltd (BCBCS), is a Singapore company. BCBC and BCBCS are indirect wholly-owned subsidiaries of White Energy Company Ltd (WEC), a public-listed company in Australia.

4 The first defendant, PT Bayan Resources TBK (BR), is a public-listed company in Indonesia that owns subsidiaries operating sub-bituminous coal mines in Tabang, Indonesia. The second defendant, Bayan International Pte Ltd (BI), is a Singapore company associated with BR.

The parties' cases in SIC 1

5 In June 2006, BCBC and BI executed a joint venture deed (referred to in the *First Judgment* (at [16]) as "the JV Deed"). Pursuant to the JV Deed, the

parties agreed to construct and commission a coal briquette processing plant in Tabang (referred to in the *First Judgment* (at [17]) as "the Tabang Plant") to exploit the BCB Process and upgrade sub-bituminous coal into briquettes for commercial sale. The joint venture company, PT Kaltim Supacoal (KSC), was incorporated in Indonesia in January 2007, with BCBCS and BI holding 51% and 49% of its shares respectively. In October 2008, BI sold its shares in KSC to BR, as part of BR's corporate restructuring. Then, in 2009, by way of a Deed of Novation, BCBCS and BR were substituted for BCBC and BI as the parties to the JV Deed. The identities of the parties to the JV Deed were thereafter aligned with the identities of the shareholders of KSC.

6 By November 2011, disagreements had arisen between BCBCS and BR in relation to the joint venture. In December 2011, the plaintiffs commenced an action in the High Court against the defendants for breach of their contractual obligations under the joint venture. On 4 March 2015, the action was transferred to the SICC and renumbered SIC/S 1/2015 ("SIC 1").

7 The gist of the plaintiffs' pleaded case was that BR was under an obligation to: (a) provide funding to KSC; and (b) procure the supply of coal by its Indonesian subsidiaries to KSC until the Tabang Plant was in a position to exploit the BCB Process on a commercial basis. The Tabang Plant would be in that position when it could produce approximately 1 million metric tonnes per annum ("MTPA") of upgraded coal briquettes. The parties referred to this benchmark production capacity as "nameplate capacity". BR acted in breach of those obligations and thereby wrongfully repudiated the JV Deed. The plaintiffs' case was that but for BR's breaches, the Tabang Plant would have achieved nameplate capacity by end-January 2012 or June 2012 at the latest. The plaintiffs sought to recover from the defendants the wasted expenditure that

they had incurred as a result of the joint venture as well as damages for the loss of a chance to expand the production capacity of the Tabang Plant to 3 MTPA.

8 The defendants denied that BR was under any obligation to provide funding or procure the supply of coal to KSC and, in any event, the performance of the coal supply obligation had been rendered illegal by legislation passed by the Indonesian government which put in place benchmark prices for the sale of minerals and coals in Indonesia (referred to in the *Third Judgment* (at [8(d)]) as "the HBA Regulations"), relieving BR of any performance obligations. The defendants further denied that the Tabang Plant could have achieved nameplate capacity by end-January 2012 or June 2012, or at all, and so the joint venture would not have made any profits enabling the plaintiffs to recoup its alleged wasted expenditure. The defendants pleaded that the plaintiffs' claim for damages for loss of a chance was flawed because there had never been an agreement between BR and BCBCS to expand the Tabang Plant's capacity to 3 MTPA.

9 The defendants also contended that KSC would have been starved of the funding needed for the Tabang Plant to achieve nameplate capacity or expand production capacity to 3 MTPA. The defendants pleaded that, by November 2011, BR had informed BCBCS that it wished to liquidate KSC. BR would thus not have consented to further funding being provided to KSC by BCBCS and/or WEC. The defendants also denied that BCBCS or WEC were financially able to provide gift funding to KSC and, even if they could, such funding would have amounted to breach of duties owed by BCBCS's and WEC's directors under the Companies Act (Cap 50, 2006 Rev Ed) and/or the Australian Corporations Act 2001 (Cth). The defendants additionally argued that the plaintiffs' claims were barred by the rule against reflective loss as its alleged loss simply mirrored any loss or damage suffered by the joint venture

company, KSC. Finally, the defendants counterclaimed that BCBCS had acted in breach of its implied obligations to use reasonable care and skill in providing technical assistance to KSC and procure that the Tabang Plant reach nameplate capacity within a reasonable period of time.

The proceedings

10 We will refer in this judgment to the three tranches of the litigation in SIC 1 as "Tranche 1", "Tranche 2" and "Tranche 3".

11 By agreement, the parties asked the court to decide in Tranche 1 issues concerning the parties' contractual obligations without going into whether or not those obligations had been breached, leaving those and further issues to be decided in later tranches. In Tranche 1 (as set out in the *First Judgment* ([2] above)) we held, *inter alia*, that: (a) BR did not owe the funding obligations alleged by the plaintiffs; and (b) BCBCS was not under any of the implied obligations pleaded by the defendants. We therefore dismissed the defendants' counterclaim. We found that there was insufficient evidence before the court to determine if BR owed the alleged coal supply obligation, but held that BR had not established that any such coal supply obligation had been made illegal by the HBA Regulations. There was no appeal against our decision in Tranche 1.

12 The extent of BR's coal supply obligation, whether BR had breached that obligation and the other alleged breaches of the parties' contractual obligations under the joint venture, were determined in Tranche 2. As set out in the *Second Judgment* ([2] above), we held that BR had breached its coal supply obligations and further, that this was a repudiation of the JV Deed. However, as it is not disputed that BCBCS did not purport to accept the breaches, BR's repudiatory conduct in this regard had no legal effect. We also held that BR had

wrongfully repudiated the JV Deed by issuing a notice to terminate the joint venture (referred to in the *Second Judgment* (at [64]) as "BR's Termination Notice") in February 2012. We found that BCBCS had, by way of a letter dated 2 March 2012, validly accepted the latter aspect of BR's repudiatory conduct and so that brought the joint venture to an end on that date.

13 Although it was agreed that questions of damages and quantum following from a finding of breach would be left to Tranche 3, we granted leave to the defendants to argue in Tranche 2 that even if BR had breached the JV Deed, BCBCS would only be entitled to nominal damages for a limited period because KSC would have not received the requisite funding. We considered it likely that BCBCS would have been prepared to fund KSC unilaterally and BR would not have objected to BCBCS funding KSC in that manner. But we were of the view that there was insufficient evidence before us as to whether, as a matter of fact, BCBCS was in a financial position to fund KSC unilaterally until June 2012, or whether BR would have objected to that funding and, if so, what the effect of that objection would have been. The defendants appealed against our decision in Tranche 2. The Court of Appeal dismissed the defendants' appeal but held that we ought to have determined the issue of BCBCS's ability to fund KSC unilaterally until June 2012 as part of Tranche 2. This issue was remitted to us for determination. After considering the parties' written submissions (see *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2019] 3 SLR 1), we found that BCBCS could have so funded KSC. The defendants' appeal against that decision was dismissed.

14 In Tranche 3, we dealt with damages and quantum. As set out in the *Third Judgment* ([2] above), we dismissed various preliminary legal objections raised by the defendants to the plaintiffs' claimed losses. We also found, on the basis of extensive expert evidence, that the Tabang Plant would have achieved

nameplate capacity by June 2012 at the latest. However, we found that BCBCS would not have recouped its wasted expenditure for two reasons. First, BR would have applied to wind up KSC before 2028. That would be long before 2037 which, on the evidence, was the earliest time when any positive return on the joint venture could be expected. It followed that the joint venture would never have had sufficient cash flow to enable BCBCS to recoup its wasted expenditure. Secondly, even if BR did not apply to wind up KSC, based on the evidence of the parties' quantum experts, BCBCS's likely cash flow from the joint venture would not have covered its alleged wasted expenditure. We dismissed the plaintiffs' claim for damages for the loss of a chance because BR was not contractually obliged to expand the production capacity of the Tabang Plant to 3 MTPA. We also held that, in any event, BCBCS's claim for damages for the loss of a chance would fail because the loss of a chance doctrine was inapplicable on the facts, since the contingency (the expansion of the Tabang Plant to 3 MTPA) would be based, not on the actions of an independent third party, but of BR itself (as the defendant against which the claim is made). The plaintiffs have appealed against our decision in Tranche 3.

The parties' submissions on costs

15 Following our decision in Tranche 3, the parties agreed that we should deal with the costs of SIC 1 by way of two rounds of written submissions limited to ten pages each without a further hearing. The parties each filed two rounds of written submissions in March and April 2022. The points raised by the parties in their submissions come under two broad categories: (a) the approach that we should adopt in the award of costs in this case; and (b) the appropriate quantum of costs and disbursements to be awarded.

How should costs be awarded in this case

16 The plaintiffs submit that we should adopt an "issue-based approach" in the assessment of costs. Applying this approach, the plaintiffs argue that they are entitled to the costs of the issues canvassed in Tranche 1 and Tranche 2, as well as the costs of the issue of whether the Tabang Plant could achieve nameplate capacity by June 2012 (in Tranche 3), all of which were issues the plaintiffs succeeded on. The plaintiffs accept that, applying an issue-based approach, the defendants are entitled to the costs of the issues in Tranche 3 on which they succeeded. In respect of the counterclaim (which had been dismissed in Tranche 1), the plaintiffs submit that they are entitled to costs from the defendants. In the round, the net result should be for there to be no order as to costs.

17 The plaintiffs argue that there are two reasons warranting the application of an issue-based approach. First, SIC 1 was a sufficiently exceptional case in which the plaintiffs succeeded on nearly all issues of liability but had their claim dismissed only because the defendants succeeded on narrow points of causation of loss and quantum raised in Tranche 3. The plaintiffs succeeded on issues of substantial commercial significance and value, namely, the fact that the Tabang Plant could have achieved a production capacity of 1 MTPA by June 2012 but for BR's breaches of its coal supply obligations. The plaintiffs' success on these issues, which formed a large part of their case in SIC 1, should be given greater weight than the issues of quantum on which the defendants succeeded. Secondly, the defendants' conduct of their defence led to SIC 1 being unnecessarily protracted and unreasonably added to its costs and complexity. The plaintiffs refer by way of example to the defendants' unsuccessful submissions that: (a) BR's coal supply obligations were tainted by illegality as a result of the HBA Regulations (see [8] above); (b) it was *ultra vires* WEC's

powers or a breach of the fiduciary duties owed by WEC's directors to provide gift funding to KSC (see [9] above); and (c) the plaintiffs' claim was barred by the rule against reflective loss, an argument which engaged questions of Indonesian law (see [59] above).

18 If the court is not minded to adopt an issue-based approach and costs are instead to follow the event with the defendants being entitled to their costs, the plaintiffs submit that a substantial discount to such costs should be applied. The justification for this would be similar to that relied on by the plaintiffs in support of an issue-based approach. But the plaintiffs submit that there are two further reasons justifying such a substantial reduction of the costs to which the defendants would otherwise have been entitled. First, at common law, a defendant bears the costs attributable to issues arising from a discrete head of defence that is unconnected with matters relied on by the plaintiff. Secondly, the defendants' conduct in SIC 1 amounted to a "kitchen sink approach" which unduly prolonged SIC 1, a circumstance that the court can take into account under para 152(3)(a) of the SICC Practice Directions (effective 31 August 2021) ("SICC PD 2021") in the award of costs.

19 The defendants argue that we should not adopt an issue-based approach to costs for three reasons. First, an issue-based approach ought not to be applied where (as here) an overall winner can be identified. The fact that SIC 1 had been trifurcated for case management reasons does not detract from the fact that it was a single proceeding that the plaintiffs commenced and in which they had ultimately failed. Secondly, there is nothing about the present case which warrants an issue-based approach because "[t]here was no point on which the entire case turned and which therefore made the other points completely unnecessary", this being the common thread in other cases where an issue-based approach has been adopted. Thirdly, the defendants had not unreasonably raised

those arguments upon which they did not succeed, and so should not be deprived of their costs in respect of the same.

The appropriate quantum of costs

20 The parties, following the guidance of the Court of Appeal in *CBX and another v CBZ and others* [2022] 1 SLR 88 ("*CBX*"), agree that for a case like SIC 1, which had been filed in the High Court and later transferred to the SICC, the assessment of costs should distinguish between costs: (a) pre-transfer ("Pre-Transfer Costs"); and (b) post-transfer ("Post-Transfer Costs"). Pre-Transfer Costs cover the period from 27 December 2011 when the action was commenced in the High Court until transfer to the SICC on 4 March 2015. Post-Transfer Costs will cover the period from 4 March 2015 until the conclusion of Tranche 3 on 7 February 2022 when the *Third Judgment* was delivered.

21 The defendants sought Pre-Transfer Costs of S$126,000 and Post-Transfer Costs of S$4,947,753.70. The defendants calculated their Pre-Transfer Costs using the tariff in Part IIIA(ii) of Appendix G of the Supreme Court Practice Directions for party-and-party costs in matters settled before trial ("Appendix G") and applying a three times uplift to the highest figure in the range (S$42,000). For Post-Transfer Costs, the defendants provided three tables setting out the total number of hours attributable to each lawyer on file and their hourly rates and the total costs incurred for each tranche without further breakdown. The defendants submit that these costs are lower than what had actually been incurred. The defendants also submit that the quantum of Post-Transfer Costs claimed was reasonable in view of the scale of the litigation and proportionate to the value of the plaintiffs' claims.

22 The defendants submit that the quantum of Post-Transfer Costs takes into account the costs of four interlocutory applications (namely, SIC/SUM 5/2016 ("SUM 5"), SIC/SUM 11/2016 ("SUM 11"), SIC/SUM 63/2019 ("SUM 63") and SIC/SUM 7/2020 ("SUM 7")) that had been reserved. The defendants also clarify that though they are entitled to the costs of the remittal proceedings that took place between Tranche 2 and Tranche 3 (see [13] above), given their overall success in SIC 1, they are not seeking to recover those costs. Finally, the defendants seek disbursements totalling S$3,221,410.33. In support of that claim, the defendants prepared an annex to their costs submissions providing a breakdown of their claimed disbursements. The sums in the breakdown correspond to those in the underlying invoices, pursuant to which those disbursements had been charged to the defendants, and which the defendants have also produced to the court in a bundle of documents accompanying their costs submissions.

23 The plaintiffs disagree with the uplift applied by the defendants in their calculation of Pre-Transfer Costs and argue that the defendants should be awarded no more than S$30,800 in Pre-Transfer Costs. As for Post-Transfer Costs, the plaintiffs argue that the quantum claimed by the defendants is exorbitant and out of line with previous costs awards made by the SICC. The plaintiffs argue that, having regard to those costs awards and taking into account the circumstances of this case, Post-Transfer Costs of no more than S$402,500 would be fair and reasonable. The plaintiffs contend that the defendants have not provided a sufficient breakdown of their claimed costs to allow them as well as the court to assess the reasonableness of those claimed costs and so the defendants have not discharged the burden of proving the reasonableness of the Post-Transfer Costs claimed. The plaintiffs add that the defendants are not entitled to the costs of the interlocutory applications.

24 Finally, on the defendants' disbursements, the plaintiffs advance no submission challenging the quantum claimed as unreasonable. However, they submit that the fees of the following experts should not be recoverable as disbursements: (a) the defendants' Indonesian law experts, Ms Arifidea Dwi Saraswati (S$89,643.22) (Indonesian law expert in Tranche 1) and Mr Soenardi Pardi (S$84,191.82) (Indonesian law expert in Tranche 3) (see also [17] above); (b) the defendants' Australian law expert in Tranche 3, Mr Allan Myers QC (S$43,027.60) (see also [9] and [17] above); and (c) the defendants' technical experts in Tranche 3, Mr John Kipling Alderman (S$81,427.32) and Mr Steve Laracy (S$447,655.12). According to the plaintiffs, the defendants' Indonesian and Australian law experts gave evidence on issues which the plaintiffs say the defendants unreasonably pursued and on which the defendants failed (see [17] above). As for the defendants' technical experts in Tranche 3, they gave evidence in support of the defendants' "unreasonable position" that the Tabang Plant would not have achieved nameplate capacity. The plaintiffs also submit that the disbursements sought should be proportionately reduced, having regard to the quantum of costs awarded to the defendants.

The issues before the court

25 The following issues arise for determination:

(a) What approach should we adopt in the award of costs in this case?

(b) Applying that approach, what is the quantum of costs (if any) that the defendants should recover?

(c) What is the quantum of disbursements that the defendants should recover?

Issue 1: How should we award costs in this case

Costs under O 110 r 46(1)

26 On costs before the SICC, O 110 r 46 of the Rules of Court (2014 Rev Ed) ("the ROC 2014") provides:

> **46**.—(1) The unsuccessful party in any application or proceedings in the Court must pay the reasonable costs of the application or proceedings to the successful party, unless the Court orders otherwise.
>
> …
>
> (3) For the purposes of paragraphs (1) and (2), the court may, in particular —
>
> (*a*) apportion costs between the parties if the court determines that apportionment is reasonable, taking into account the circumstances of the case;
>
> (*b*) take into account such circumstances as the court considers relevant, including the conduct of the case;
>
> …

27 As the Court of Appeal held recently in *Senda International Capital Ltd v Kiri Industries Ltd* [2022] SGCA(I) 10 ("*Kiri (Appeal)*"), endorsing the reasoning of the SICC in its previous decisions on this point (namely *Kiri Industries Ltd v Senda International Capital Ltd and another* [2022] 3 SLR 174 ("*Kiri*") and *Lao Holdings NV v Government of the Lao People's Democratic Republic and another matter* [2022] SGHC(I) 6 ("*Lao Holdings NV*")), the costs recovery scheme under O 110 r 46 differs from the costs regime under O 59 of the ROC 2014 that applies to proceedings in the High Court. In the latter, the underlying consideration is the policy of enhancing access to justice for all (see *Kiri (Appeal)* at [46]; *Lao Holdings NV* at [34]–[45]). In the SICC, given the nature of its subject matter jurisdiction (as delineated by the definitions in O 110 rr 1(2)(*a*) and 1(2)(*b*) of the ROC 2014 of a claim that is "international" and/or

"commercial" in nature), the parties to disputes will usually be companies or sophisticated individuals who are better-resourced and better-advised than the ordinary litigant (see *Kiri (Appeal)* at [51]–[52]; *Lao Holdings NV* at [56]). For these parties, the policy of enhancing access to justice is less relevant and the principal underlying consideration is a commercial one of ensuring that a successful litigant is not unfairly put out of pocket for sensibly prosecuting his claim or defence (see *Kiri (Appeal)* at [51]; *Lao Holdings NV* at [64]).

28 The Court of Appeal in *Kiri (Appeal)* has settled the considerations in the SICC when assessing costs, *viz*, the level of costs which a successful party had *in fact* reasonably incurred in the particular case (see *Kiri (Appeal)* at [52]–[53]). Here, the parties do not dispute these points of principle concerning what "reasonable costs" entails. Instead, their submissions deal with *how* we should award costs in this case (see [16]–[19] above) and raise the issue of whether the default entitlement of a "successful party" to "reasonable costs" under O 110 r 46(1) should apply for that purpose. This raises two questions. First, whether a "successful party" can be identified in SIC 1 for the purposes of O 110 r 46(1) so that the starting point in that rule applies here. Secondly, if a "successful party" can be so identified, then whether and to what extent the default entitlement of the "successful party" to "reasonable costs" under O 110 r 46(1) should be departed from in an exercise of discretion. We address each of these questions in turn.

Identifying the "successful party"

29 Under O 110 r 46(1), unless the court orders otherwise, the court must order the "unsuccessful party" to pay "reasonable costs" of the proceedings to the "successful party". Thus, the identification of the successful party is merely a starting point from which the court may depart in its exercise of discretion

(see [32] below). The provision in O 110 r 46(1) is similar to that in Rule 44.3(2) of the UK Civil Procedure Rules 1998 (No 3132) ("UK CPR"), which states that "the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but … the court may make a different order".

30 In determining the identity of the successful party, the court must look at the outcome of the litigation *overall*, in a realistic and commercially sensible way, asking which party in substance and reality won the litigation (see *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] SGHC 77 ("*Comfort Management*") at [28], citing *HLB Kidsons (A Firm) v Lloyds Underwriters subscribing to Lloyds Policy No 621/PKID00101 & Others* [2007] EWHC 2699 (Comm) at [10]). As the English Court of Appeal has held in the context of the UK CPR, the key is to identify who is to pay money to whom (see *A L Barnes Ltd v Time Talk (UK) Ltd* [2003] EWCA Civ 402 at [28]).

31 Applying these principles, it cannot seriously be disputed that the defendants are the overall "successful party" in SIC 1, even though they failed on significant aspects of their defence and also in their counterclaim against the plaintiffs. The identification of the "successful party" in SIC 1 does not turn on the outcome of the individual tranches or the individual issues therein. Instead, the ultimate result of SIC 1 is that the plaintiffs *failed* in their claims for damages against the defendants and obtained nothing by their litigation.

The court's discretion under O 110 r 46(1)

32 Nonetheless, under O 110 r 46(1), the court enjoys a discretion to depart from the starting point that a successful party is entitled to its "reasonable costs" as against an unsuccessful party. As a matter of principle, the burden is on the

unsuccessful party liable to pay costs (in this case, the plaintiffs) to establish whether and to what extent that discretion should be exercised in its favour (see generally *Comfort Management* at [27]). The plaintiffs have advanced two arguments to this end (see [17]–[18] above). First, that an issue-based approach should be adopted with the net result that no costs are awarded to the defendants. Secondly, in the alternative, even if the defendants are entitled to costs, such costs should be reduced substantially (see [17]–[18] above). We consider each of these arguments to determine if they justify us exercising our discretion under O 110 r 46(1) in the plaintiffs' favour and if so, the consequences of doing so.

(1) Whether an issue-based approach can be adopted where an overall winner in the litigation can be identified

33 Under an issue-based approach, rather than focussing on the ultimate outcome overall and ordering costs in that direction, the court considers each issue in the litigation independently and where the costs of each issue should fall (see *Khng Thian Huat and another v Riduan bin Yusof and another* [2005] 1 SLR(R) 130 ("*Khng Thian Huat*") at [19]; *Element Six Technologies Ltd v Ila Technologies Pte Ltd* [2020] SGHC 140 ("*Element Six*") at [19]; *Summit Property Ltd v Pitmans (a firm)* [2001] EWCA Civ 2020 at [27]). Such an approach has typically been applied by courts in cases where each party has prevailed on some issues so that it is not obvious whether there is an overall winner, for example in patent infringement cases where the claimant fails to establish its claim of infringement and the defendant *also* fails to establish its counterclaim of invalidity (see *Element Six* at [22]–[23]; see also *Comfort Management* ([30] above) at [84]).

34 The principal hurdle in the way of an issue-based approach here is the fact that there is a clear overall winner, namely, the defendants (see [31] above).

In general, a litigant should reasonably be able to expect that, if it succeeds overall, it will recover its costs from the losing party, regardless of whether it has prevailed on only some (but not all) grounds raised. As the Court of Appeal has emphasised in the context of the costs regime under O 59 of the ROC 2014, the general rule that a successful party is entitled to costs does not cease to apply merely because the latter has not won on every issue (see *Progress Software Corp (S) Pte Ltd v Central Provident Fund Board* [2003] 2 SLR(R) 156 at [50]). These considerations should equally apply to proceedings in the SICC, where the underlying consideration is a commercial one of ensuring that a successful party is not unfairly put out of pocket for sensibly prosecuting its claim or defence (see [27] above).

35 If an issue-based approach is adopted, the incidence of costs may depend on factors other than the overall outcome of the litigation and could potentially result in a successful party paying the losing party more than it receives in costs from the other. The adoption of an issue-based approach where there is an overall winner could run counter to the reasonable expectation of litigants.

36 The plaintiffs submit that the present case additionally warrants the adoption of an issue-based approach because the defendants acted unreasonably and protracted the hearing of SIC 1 unnecessarily. The plaintiffs rely on, among other authorities, the High Court's decision in *Khng Thian Huat* ([33] above), which considered O 59 r 6A of the ROC 2014, which in turn provides:

> **Costs due to unnecessary claims or issues**
>
> **6A.** In addition to and not in derogation of any other provision in this Order, *where a party has failed to establish any claim or issue which he has raised in any proceedings, and has thereby unnecessarily or unreasonably protracted, or added to the costs or complexity of those proceedings*, the Court may order that the costs of that party shall not be allowed in whole or in part, or that *any costs occasioned by that claim or issue to any other*

> *party shall be paid by him to that other party, regardless of the outcome of the cause or matter.*
>
> [emphasis added]

37 However, we note that there is no equivalent of O 59 r 6A in respect of costs for proceedings in the SICC under O 110 r 46. That being said, under O 110 r 46, the conduct of the successful party can still be relevant in the assessment of costs. Order 110 r 46(3)(*b*) provides that the court, in ordering "reasonable costs" under O 110 r 46(1), may take into account such circumstances that it considers relevant, including "the conduct of the case". Paragraph 152(3)(a) of the SICC PD 2021 (as well as para 152(3)(a) of the SICC Practice Directions (effective 1 August 2022) that is presently in force) elaborates on this:

> (3) In relation to [para 152(2)(b)(ii)] [which is a reference to O 110 r 46(3)(*b*)], the circumstances which the Court may take into consideration in ordering reasonable costs of any application or proceeding under Order 110, Rule 46(1) of the Rules of Court include:
>
> (a) the conduct of all parties, including in particular –
>
> (i) conduct before, as well as during the application or proceeding;
>
> (ii) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; and
>
> (iii) the manner in which a party has pursued or contested a particular allegation or issue;
>
> …

38 Thus, the conduct of the successful party is relevant to the costs that the successful party might be allowed to recover, as it is a factor that the court can consider in ordering "reasonable costs" to which a successful party is entitled under O 110 r 46(1). Given the specific ends to which the conduct of the parties is relevant for the purposes of O 110 r 46(1), we are not satisfied that the

conduct of the successful party (in this case, the defendants) can operate as a justification for the adoption of an issue-based approach, as the plaintiffs urge upon us.

39 In our view, an issue-based approach would not be appropriate here. We are fully cognisant that the plaintiffs succeeded on practically all issues of liability while the defendants only prevailed at the end due to narrow points of causation of loss and quantum. But in our view the situation is better catered for by discounting the overall costs claimed by the defendants to account for the outcome in Tranches 1 and 2 in particular. We turn next to this aspect.

(2) Whether costs should be reduced

40 A successful party is *prima facie* entitled to "reasonable costs" from the unsuccessful party under O 110 r 46(1), though the court has a discretion to order otherwise. In *Kiri (Appeal)* ([27] above) (at [54]), the Court of Appeal ruled that in assessing "reasonable costs", the court looks both at whether the costs claimed were reasonably incurred and whether the overall quantum of such costs is reasonable. In our view, the court's discretion under O 110 r 46(1) is sufficiently broad to allow it to look beyond the overall outcome of the litigation and make an order as to costs that properly takes into account the realities and circumstances of the case.

41 As noted above, the "international" and "commercial" nature of disputes before the SICC (see O 110 rr 1(2)(*a*) and 1(2)(*b*) of the ROC 2014) means that the parties who come before the SICC are generally commercially sophisticated and are better-resourced and better-advised than the run-of-the-mill litigant (see *Lao Holdings NV* ([27] above) at [56]). Further, "commercial" disputes before the SICC will generally involve larger amounts at stake, and as

a result, parties would be willing to spend more on legal representation in pursuit of their commercial objectives (see *Lao Holdings NV* at [65]–[66]). This means that, generally, parties in the SICC are likely to adopt a more liberal approach to raising different claims or issues in the litigation, as compared to the average litigant coming before the High Court.

42 Plainly, if such claims or issues were not pursued in a reasonable or sensible manner, then the successful party will have its costs reduced (see para 152(3)(a) of the SICC PD 2021; see also [37]–[38] above). However, even if those claims or issues on which the successful party failed have been reasonably pursued, it does not follow that the unsuccessful party should be required to compensate the successful party completely. Although the underlying policy of the SICC is that a successful party should be compensated for prosecuting a claim or maintaining a defence that is meritorious, that does not mean an unsuccessful party should be required to compensate the winning party for any and all expenses that the latter chooses to incur in the litigation. Put simply, an all-or-nothing effect of awarding the successful party the entirety of his claimed costs would not be appropriate in every case. Thus, in the context of O 110 r 46(1), there is a broad discretion to consider the circumstances of the case which, in the present case, include the fact that the defendants, whilst the successful party, failed on the majority of the issues and only succeeded on limited issues of causation of loss and quantum.

Whether and if so to what extent should the defendants' costs be reduced?

43 Having regard to the principles above, we are satisfied that SIC 1 is a case in which we should exercise our discretion under O 110 r 46(1) to reduce the costs to which the defendants would otherwise have been entitled, to take into account the reality that the defendants, whilst the successful party, failed

on the majority of the issues and succeeded only on limited issues of causation of loss and quantum.

44 We next turn to the question of the extent to which the defendants' costs should be so reduced. The starting point of this inquiry must be those issues on which the successful party failed, and which were determined in the unsuccessful party's favour. However, this inquiry is merely to identify the *measure* of the winning party's success in the litigation and therefore the extent to which its costs should be reduced. It is not a minute inquiry into how litigation in respect of those issues had been conducted, namely, whether it had been reasonable for the successful party to pursue those issues and the manner in which those issues had been pursued, which is an altogether different ground for adjusting the level of costs to which the successful party would otherwise have been entitled, as set out in O 110 r 46(3)(*b*) of the ROC 2014 and para 152(3)(a) of the SICC PD 2021.

45 In our view, there are at least two relevant considerations. The first consideration is the legal significance of those issues on which the overall winner failed. The legal significance of issues can be appreciated in terms of how crucial or central they had been *vis-à-vis* the case or defence (as the case may be) of the unsuccessful party. The question for the court is whether, in the light of the outcome of these issues, the overall outcome of the litigation might not properly reflect the realities of the case and the measure of the overall winner's success must be adjusted accordingly and not be based exclusively on the overall outcome of the litigation. The second consideration is the amount of resources that had been expended on those issues on which the successful party failed and on which the unsuccessful party prevailed. Even if an issue was legally significant, if the level of resources expended on that issue was not significant relative to the entire expense of the litigation, the extent to which the

court might reduce the successful party's costs on account of that issue should be correspondingly lower.

46 With these principles in mind, we turn to the facts of this case and look at the issues on which the defendants had failed and on which the plaintiffs had prevailed in the three tranches of SIC 1. For the avoidance of doubt, we do not deal with the remittal proceedings between Tranche 2 and Tranche 3, since the defendants have stated that they are not seeking costs for that part of SIC 1 (see [22] above).

47 In Tranche 1 and Tranche 2, the plaintiffs succeeded in establishing that BR was under an enforceable obligation to supply coal to KSC at the material time, and that BR was in breach of this obligation. The plaintiffs also succeeded in resisting the defendants' defence that BR's coal supply obligation was tainted by illegality under Indonesian law as a result of the HBA Regulations and hence unenforceable. These issues established the defendants' liability for breach of their contractual obligations under the joint venture and were crucial and critical parts of the plaintiffs' case in SIC 1. The plaintiffs also successfully defended themselves against the defendants' counterclaim for BCBCS's breach of its implied obligation under the joint venture.

48 In Tranche 3, the plaintiffs succeeded in resisting all preliminary legal objections that the defendants raised to the plaintiffs' claim for damages and, importantly, succeeded in proving that the Tabang Plant would have achieved a production capacity of 1 MTPA (or nameplate capacity) by June 2012. The latter is a crucial fact on which the plaintiffs' claim for wasted expenditure and damages for loss of a chance rested (see [7] above). The plaintiffs ultimately failed in their wasted expenditure claim because the defendants succeeded in proving that the wasted expenditure could not have been recovered in any event

because BR would have applied to liquidate KSC and put the joint venture to an end before any profits would have been generated and because KSC's likely cash flow from the joint venture would not have covered its wasted expenditure. The plaintiffs also failed on their loss of a chance claim because the defendants succeeded in establishing that the plaintiffs had no basis to claim for the loss of a chance in this case.

49 By any measure, the issues on which the plaintiffs succeeded were legally significant. These were issues that occupied a significant part of the proceedings and on which extensive resources were expended – the liability issues on which the plaintiffs succeeded occupied Tranche 1 and Tranche 2 and a significant part of Tranche 3 was spent on the issue pertaining to the Tabang Plant's production capacity. This far exceeded the resources that were expended on those issues on which the defendants succeeded and as a result of which they prevailed overall in SIC 1. That being said, since the defendants were the successful party in SIC 1, they should be awarded a significant proportion of their claimed costs to reflect their overall success. In our judgment, balancing these considerations, including the fact that the defendants had failed on their counterclaim, it would be appropriate in the circumstances of this case to reduce the costs to which the defendants would otherwise have been entitled to recover by 40%.

Issue 2: What is the quantum of the defendants' recoverable costs

50 On this issue, we assess the quantum of costs for the pre- and post-transfer periods separately before determining the quantum of such costs that the defendants should recover.

Pre-Transfer Costs

The parties' calculations

51 We begin by explaining in greater detail how the defendants arrived at their calculation of Pre-Transfer Costs (see [21] above). The defendants first arrive at a figure of S$42,000, which is the sum total of the highest tariffs in the costs ranges for torts/commercial claims in respect of work done for pleadings and discovery in matters settled before trial, as set out in Part IIIA(ii) of Appendix G (S$14,000 and S$28,000 respectively). It is not in dispute that, at the time when SIC 1 was transferred to the SICC, only work relating to pleadings and discovery had been undertaken. The defendants argue that the use of the highest tariff in each of the costs ranges is justified given the complexity of the matter and the scale of the litigation. To this figure of S$42,000, the defendants apply a three times uplift, arriving at a figure of S$126,000. The justification provided by the defendants for the three times uplift is the complexity and time-consuming nature of the work done during the discovery phase.

52 The plaintiffs agree that the highest tariff in the costs range for pleadings (S$14,000) should be adopted but they disagree with the defendants' methodology on two counts. First, for discovery, the mid-point figure of S$14,000 rather than S$28,000 should be adopted because discovery had not yet been completed before the conclusion of the pre-transfer period. Secondly, the plaintiffs argue that the fact that discovery was complex and time-consuming does not warrant an uplift of three times when compared with the 0.75 times uplift applied by the SICC in *Kiri* ([27] above) which also dealt with the assessment of Pre-Transfer Costs.

Our decision

(1) The tariff to be applied

53 On this issue, we do not agree with the parties that the appropriate tariff is to be identified by reference to the costs ranges for torts/commercial claims. This does not sufficiently reflect the complexity of SIC 1. In our view, the higher costs ranges in the construction, intellectual property, admiralty, and medical negligence category (up to S$18,000 for pleadings and up to S$35,000 for discovery in matters settled before trial) is more appropriate. To better reflect the level of complexity in SIC 1, we would use the highest tariff in each of the costs ranges, arriving at a figure of S$18,000 for pleadings-related work and S$35,000 for discovery-related work.

54 The plaintiffs argue that, because discovery work was not completed during the pre-transfer period, the highest tariff should not be applied and instead the mid-point tariff within the relevant costs range should be used. We reject this submission. In the context of Part IIIA(ii) of Appendix G, which sets out the costs ranges for work done in matters settled before trial, the selection of the appropriate tariff turns on the complexity of the work undertaken rather than the amount of work completed. It does not follow that, because discovery had not been completed, a lower tariff in the range should be adopted. In any case, the use of the highest tariff in the range can nevertheless be justified if the discovery-related work performed was of sufficient complexity.

55 In this case, the parties agreed that electronic discovery was to take place in two stages. The first stage concerned the discovery of documents from KSC's premises, and the second stage concerned the discovery of documents in the parties' possession. At the time when SIC 1 was transferred, implementation of the first stage of the discovery plan was underway, while the parties were still

finalising the discovery plan for the second stage. A significant portion of discovery work therefore remained to be done at the time SIC 1 was transferred to the SICC. However, it would appear that the discovery work that had been done up to that point was complicated. The first stage of the discovery plan involved more than 660 boxes of documents and hard drives containing approximately 30 terabytes of data. Its implementation took place in five phases. Even by November 2014 (that was about a year since the first stage of the discovery plan had commenced), the parties were only in phase three of five of implementing the first stage of the discovery plan. Thus, in our view, the complexity of the discovery-related work performed in the pre-transfer period justifies the use of the highest tariff of S$35,000.

(2) The uplift to be applied

56 We now turn to the issue of the appropriate uplift to be applied to the tariffs that we have identified, namely, S$18,000 for pleadings-related work and S$35,000 for discovery-related work.

57 The defendants argue that a three times uplift should be applied, and that such an uplift should be applied to the sum total of the appropriate tariff for both pleadings- and discovery-related work. We disagree with such an approach. First, the defendants' case is that an uplift is justified because of the complexity of the *discovery-related work* undertaken during the pre-transfer period (see [51] above). On that basis, the uplift should only be applied to the tariff for discovery-related work, and not to the sum total of the tariffs for discovery- and pleadings-related work. Secondly, an uplift is applied in the calculation of Pre-Transfer Costs to better reflect the complexity of the work undertaken in the pre-transfer period, in cases where such complexity renders the strict use of tariffs in Appendix G inappropriate. A party seeking an uplift must therefore

justify an uplift along those lines and it does not suffice to seek an uplift without justification, as the defendants have done in respect of pleadings-related work.

58 In our view, for pleadings-related work, a slight uplift of S$2,000 is justified. We consider an overall figure of S$20,000 (S$18,000 + S$2,000) as sufficiently reflective of the complexity of the pleadings-related work undertaken during the pre-transfer period, bearing in mind that during the pre-transfer period, two sets of amendments had been made to the Statement of Claim, Defence & Counterclaim and the Reply to Defence & Counterclaim.

59 We have alluded to the complexity of the discovery-related work in the pre-transfer period (see [54] above), and we are of the view that it far exceeds the complexity of the discovery-related work likely to be undertaken in the ordinary construction, intellectual property, admiralty or medical negligence suits in the High Court. Even the highest tariff might not appropriately reflect such complexity and we therefore agree with the defendants that a significant uplift should be applied. However, we are of the view that a two times uplift should be applied instead of a three times uplift, especially since we have already adopted a higher tariff of S$35,000 instead of the S$28,000 proposed by the defendants.

60 Accordingly, the sum total of the Pre-Transfer Costs is S$90,000, which is the sum of S$20,000 (S$18,000 + S$2,000) for pleadings-related work and S$70,000 (S$35,000 x 2) for discovery-related work.

Post-Transfer Costs

61 We now turn to Post-Transfer Costs. As the Court of Appeal has since explained in *Kiri (Appeal)* ([27] above), in the assessment of costs under O 110 r 46, the successful party claiming costs should particularise the costs

incurred which it seeks to recover from the unsuccessful party. In *Lao Holdings NV* ([27] above) (at [112]), it was cautioned that: "… parties do themselves no favours when submitting on costs without assisting the court with the relevant details". A successful party has the legal burden of proving that its claimed costs are "reasonable costs" and it should adduce evidence of information on its incurred costs and include a breakdown of such costs. Such evidence would typically include: (a) a breakdown of the claimed costs in terms of the number of hours claimed; (b) information identifying by whom those hours were incurred, their levels of seniority and corresponding hourly rates; and (c) some explanation as to the types of work those hours were incurred for (see *Kiri (Appeal)* at [73]). Once the successful party has adduced the requisite level of information in support of the contention that its claimed costs are "reasonable costs", the evidential burden shifts to the unsuccessful party to adduce evidence to show that the claimed costs are not "reasonable costs". The best evidence that the unsuccessful party can adduce to discharge its evidential burden will often be information as to the costs that it had correspondingly incurred for the matter, which might well be a sound proxy by which the trial court can determine what the appropriate level of costs in the particular case is (see *Kiri (Appeal)* at [75]).

62 Form 24 of the SICC PD 2021 provides a sample costs schedule which the parties may submit at the conclusion of proceedings for the assessment of costs. The costs schedule in Form 24 is divided into sections corresponding to work done at each stage of the proceeding, for example, commencement of proceedings/pleadings, attendance of case management conferences and interlocutory hearings, disclosure, affidavits, preparation for hearings and attendance at hearings. In each section, the claiming party is to identify the lawyers involved for the work done, the number of hours spent by a lawyer and his or her corresponding hourly rate, and the costs incurred at each stage.

63 The particularisation of costs is important, especially in the context of a complex dispute like SIC 1 where the claimed costs run into significant amounts. Particularisation is necessary so that the court can scrutinise those claimed costs. It also supplies the minimum level of information required for the unsuccessful-paying party to challenge the reasonableness of the costs claimed, for instance, by attacking a particular segment of claimed costs as unreasonable because it exceeds the level of costs that it had incurred at the corresponding stage of the proceeding (see also *Kiri (Appeal)* at [89]).

64 In this case, the defendants did not substantiate their costs submissions with any costs schedule like that in Form 24. All they have done is to set out the costs incurred by its lawyers at each tranche of the proceeding, which in turn is calculated by reference to the hourly rate of each lawyer multiplied by the total number of hours attributable to each lawyer for that tranche. The level of particularisation provided falls short of the required standards. We accept that the defendants would not have had the benefit of the Court of Appeal's guidance in *Kiri (Appeal)* at the time when their costs submissions were filed, but the need for sufficient particularisation in costs claims was something which had already been said in *Lao Holdings NV* (at [113]), a decision of the SICC that was published by the time the defendants filed their second round of costs submissions. Indeed, in an even earlier decision, the SICC had already emphasised that a party claiming costs should provide a sufficient breakdown of those costs so that the paying party can "make appropriate comments on the reasonableness of the costs and understand the work carried out for those costs" (see *CPIT Investments Ltd v Qilin World Capital Ltd and another* [2018] 4 SLR 38 at [41]). In any case, it is trite that a party claiming costs should assist the court with the relevant details, especially where the quantum of claimed costs is as significant as that claimed by the defendants in SIC 1. Viewed against these

standards, the level of information provided by the defendants is insufficient. The insufficient level of particularisation by the defendants also means that the plaintiffs would not have been able to compare the defendants' claimed costs and their own incurred costs at each stage of the proceeding, for the purposes of challenging the reasonableness of the defendants' costs.

65 While the burden is on the defendants to establish that its claimed costs are "reasonable costs", whether that burden is discharged will also depend on the evidence adduced by the plaintiffs as to the costs which it had incurred and which would show that the defendants' claimed costs are unreasonable. In determining if the defendants have discharged their burden, the court must consider the information provided by the defendants against what the plaintiffs have provided. In other words, whether the defendants' burden has been discharged may ultimately depend upon the evidence the plaintiffs provide of their own incurred costs. Where no such evidence is provided, it might be open to the court to conclude from the defendants' evidence alone that their claimed costs are "reasonable", even if those claimed costs are lacking in particularisation. Therefore, although the insufficient level of particularisation by the defendants is undesirable (especially so given the quantum of claimed costs in this case), it does not follow from that alone – without consideration of what the plaintiffs have provided on their own incurred costs – that the defendants necessarily failed to discharge its burden of proving that its claimed costs are reasonable. In this case, we must point out that the plaintiffs also did not provide in their costs submissions any evidence of information pertaining to their own incurred costs, and their main challenge to the quantum of the defendants' claimed costs is that they were exorbitant as compared to previous costs awards made by the SICC.

66 Faced with the insufficient particulars provided by the defendants, we were initially minded to direct the defendants to provide a better breakdown and a more detailed costs schedule. However, we ultimately decided against doing so. We note that the plaintiffs argued in their costs submissions that the insufficient level of particularisation prevented them from disputing the hours claimed by the defendants and the reasonableness of the claimed costs as a whole (see [23] above). However the plaintiffs' challenge was a general one and not mounted by reference to the level of costs which they themselves had incurred. Indeed, as we have said, the majority of the plaintiffs' submissions were directed at the point that the defendants' claimed costs were exorbitant in comparison with previous costs awards made by the SICC, but we do not see how that assists the plaintiffs given that costs awards are fact-sensitive and any such comparison is not justifiable when cases are different, especially for a case as complex as SIC 1. In these circumstances, we were doubtful that a further breakdown from the defendants would assist us. Directing the defendants to provide a further breakdown of their claimed costs could simply end up necessitating further rounds of submissions between the parties. That would only ramp up costs further and would be contrary to the procedure for the assessment of costs agreed between the parties. We also note the defendants' position that their claimed costs have been reduced and that the level of costs incurred is actually higher than what is claimed.

67 In these circumstances, we consider it appropriate to use the defendants' claimed costs for the post-transfer period as a starting point but subject it to a 10% discount for lack of particularisation. This produces a figure of S$4,452,978.33 (0.9 x S$4,947,753.70).

68 We now deal with the costs of the four interlocutory applications in dispute between the parties – SUM 5, SUM 11, SUM 63 and SUM 7 (see also

[22] above). These applications were filed during the post-transfer period. The plaintiffs argue that no order as to costs should be made for SUM 5 (which was its application for bifurcation) and that it should be awarded costs for SUM 11 and SUM 63 (both of which were the plaintiffs' applications to amend its Statement of Claim and were allowed) as well as for SUM 7 (which was the defendants' application for further and better particulars, that was dismissed in part). Given our determination that the defendants are the successful party entitled to costs in SIC 1, the costs of these applications, each of which had been reserved, should also be awarded to the defendants. We need not separately deal with the costs of these applications as they already form part of the defendants' claimed costs for the post-transfer period.

Conclusion on the quantum of costs that the defendants should recover

69 As we have stated earlier, a 40% reduction is to be applied to the costs that the defendants would otherwise have been entitled to reflect the relative success of the parties on the individual issues in SIC 1 that had been legally significant and to account for the defendants having failed in their counterclaim against the plaintiffs (see [49] above). We therefore apply a 40% discount to the quantum of costs for the post-transfer period. This produces a figure of S$2,671,787 (0.6 x S$4,452,978.33) for Post-Transfer Costs.

70 However, we do not apply the 40% discount to costs for the pre-transfer period. The application of the 40% discount is founded upon O 110 r 46 and the differing considerations underlying the costs regime in the SICC. The assessment of Pre-Transfer Costs, however, is governed by O 59 and Appendix G (see *CBX* ([20] above) at [28]). The reasons that we have explained as justifying the application of the 40% discount (see [40]–[42] above) are therefore inapplicable in the assessment of Pre-Transfer Costs. In any event, we

do not find any discount to costs for the pre-transfer period necessary because that would have been a stage where the defendants were still assessing the strengths and weaknesses of their case *generally* given the nature of the work that had been done up until then. It cannot be said by any measure that significant or considerable resources had been expended during that period on those legally significant issues upon which the plaintiffs succeeded. We therefore arrive at a figure of S$90,000 for Pre-Transfer Costs.

Issue 3: What is the quantum of the defendants' recoverable disbursements

71 The plaintiffs have not challenged the quantum of disbursements claimed by the defendants as being unreasonable. Their main argument is that the fees of the defendants' Indonesian law experts, Australian law experts and technical experts, who they said gave evidence in respect of issues that the defendants unreasonably pursued and failed on, should not be allowed. Given the approach taken in this case, that is, to reduce the Post-Transfer Costs to which the defendants would otherwise have been entitled by 40% to account for the measure of the defendants' success in SIC 1, we likewise apply a 40% discount to the defendants' claimed disbursements and so it is unnecessary for us to deal with the plaintiffs' argument on this point.

72 We therefore use the defendants' figure of S$3,221,410.33 (which the plaintiffs have not challenged as unreasonable) as a starting point, to which a 40% discount is to be applied. The amount of disbursements that the defendants are entitled to recover is therefore S$1,932,846.20 (0.6 x S$3,221,410.33).

Conclusion

73 For the reasons set out above, we award to the defendants costs of S$2,761,787 and disbursements of S$1,932,846.20. The defendants have also sought costs and disbursements of S$25,000 for work done in preparing its costs submissions. The plaintiffs argue that no order as to costs should be made, and that in the alternative, if we were minded to award anything, such costs should be proportionately reduced depending on the extent to which the defendants are allowed to recover their full costs. In our view, having regard to both the fact that the defendants have not provided sufficient particulars for their claimed costs, and also the realities of this case that have led us to apply a 40% discount to the costs that the defendants would otherwise have been entitled to recover for the post-transfer period, it is appropriate to make no order as to the costs and disbursements for the parties' submissions on costs.

74 For ease of reference, we summarise the sums that the defendants are entitled to recover from the plaintiffs in the following table:

Item	**Amount awarded (S$)**
Pre-Transfer Costs	90,000
Post-Transfer Costs	2,671,787
Sub-total (costs)	***2,761,787***
Disbursements	1,932,846.20
Total	***4,694,633.20***

75 The plaintiffs are to pay simple interest on the aforementioned sums at a rate of 5.33% per annum, calculated from the date of this judgment until the date of payment.

Quentin Loh
Judge of the Appellate Division

Vivian Ramsey
International Judge

Anselmo Reyes
International Judge

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