

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

[2024] SGHC(I) 8

Originating Application No 1 of 2023

Between

Reliance Infrastructure
Limited

... Claimant

And

Shanghai Electric Group Co
Ltd

... Defendant

JUDGMENT

[Civil Procedure — Costs — Principles — Principles on assessment of costs for proceedings in Singapore International Commercial Court — Reasonableness and proportionality of costs — Disparity between quantum of costs estimates of parties]

[Civil Procedure — Costs — Principles — Principles on assessment of costs for proceedings in Singapore International Commercial Court — Reasonableness and proportionality of costs — Factors relevant to assessment of reasonableness and proportionality of costs awarded pursuant to Order 22 rule 3(2) of Singapore International Commercial Court Rules 2021]

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Reliance Infrastructure Ltd
v
Shanghai Electric Group Co Ltd

[2024] SGHC(I) 8

Singapore International Commercial Court — Originating Application No 1 of 2023

Philip Jeyaretnam J, Sir Vivian Ramsey IJ and Anselmo Reyes IJ

6 March 2024

16 April 2024

Judgment reserved.

Philip Jeyaretnam J (delivering the judgment of the court):

Introduction

1 In *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3 (“*Reliance Infrastructure (Merits)*”) at [143], we dismissed the application brought by the claimant, Reliance Infrastructure Limited (“Reliance Infrastructure”), in SIC/OA 1/2023 (“OA 1”), to set aside an arbitral award which had awarded damages to the defendant, Shanghai Electric Group Co Ltd (“Shanghai Electric”). Accordingly, we awarded costs to Shanghai Electric (see *Reliance Infrastructure (Merits)* at [143]).

2 However, Reliance Infrastructure and Shanghai Electric (“the Parties”) were unable to agree on the amount of costs. Having considered Parties’ submissions, we award costs to Shanghai Electric in the amount of US\$734,660.02, for the reasons which follow.

Factual background

3 On 12 March 2023,¹ Reliance Infrastructure applied in OA 1 to set aside an arbitral award rendered by a tribunal on 8 December 2022, following a Singapore-seated arbitration between Parties (“the Award”).² The Award held that Reliance Infrastructure was liable to Shanghai Electric under the guarantee obligations found within a purported guarantee letter said to have been executed between the Parties on 26 June 2008 (“the Guarantee Letter”) (see the Award at [6]–[7], [9(a)] and [9(d)]) (see also *Reliance Infrastructure (Merits)* at [23] and [32]).³

4 The Award ordered Reliance Infrastructure to pay over US\$146.309 million to Shanghai Electric (not including the post-award interest and any reimbursement for the final costs of the arbitration that may be applicable) (see the Award at [9(d)], [9(f)], [9(i)]–[9(l)] and [1208(c)]–[1208(g)]).⁴

5 In their OA 1, Reliance Infrastructure alleged that the signature of its former officer on the Guarantee Letter had been a forgery, and in the alternative, that its former officer had no authority to execute the arbitration agreement that was contained within the Guarantee Letter (see *Reliance Infrastructure (Merits)* at [38]–[39], [59] and [62]).⁵

¹ Case Management Bundle (“CMB”) Vol I at pp 5–7 (Reliance Infrastructure’s Originating Application No 1 of 2023 filed 12 March 2023).

² CMB Vol I at pp 68 and 344 (Final Award in SIAC Arbitration No 448 of 2019 dated 8 December 2022 in Singapore).

³ CMB Vol I at pp 75–76 (Final Award in SIAC Arbitration No 448 of 2019 dated 8 December 2022 at [6]–[7], [9(a)] and [9(d)]).

⁴ CMB Vol I at pp 76–78 and 343 (Final Award in SIAC Arbitration No 448 of 2019 dated 8 December 2022 at [9(d)], [9(f)], [9(i)]–[9(l)] and [1208(c)]–[1208(g)]).

⁵ CMB Vol I at pp 12–13 (Witness Statement of Mr Neeraj Parakh dated 12 March 2023 at para 5).

6 We dismissed OA 1 on 31 January 2024, following a 2-day hearing from 11–12 January 2024 (see *Reliance Infrastructure (Merits)* at [34]). We heard the evidence of three factual witnesses (two from Reliance Infrastructure and one from Shanghai Electric) and two handwriting experts (one from each party) (see *Reliance Infrastructure (Merits)* at [34(a)]–[34(e)]).

7 We awarded costs to Shanghai Electric and ordered that if Parties were unable to agree on the amount of costs within 14 days of our judgment, they were to file written submissions on costs within 7 days thereafter (see *Reliance Infrastructure (Merits)* at [143]). The deadline for Parties to file their costs submissions would have elapsed on 21 February 2024.

8 On 21 February 2024, Reliance Infrastructure wrote into court seeking an extension of time for Parties to agree on the amount of costs to 28 February 2024, and in the event of their being unable to agree, to file their submissions on costs by 6 March 2024. Shanghai Electric had no objections to that request.

9 Accordingly, on 22 February 2024, we allowed the extensions of time requested in Reliance Infrastructure’s letter (see O 1 r 5(10) of the Singapore International Commercial Court Rules 2021 (“SICC Rules 2021”). Thus, Parties filed their written submissions on costs on 6 March 2024.

Costs are awarded to Shanghai Electric in the amount of US\$734,660.02

Summary of Parties’ positions on costs

10 Reliance Infrastructure’s position is that Shanghai Electric should be awarded no more than S\$225,000 in costs, this being the sum that the former

had paid into court as security for the latter's costs in OA 1 (see this court's order dated 11 August 2023 on SIC/SUM 19/2023).⁶

11 In contrast, Shanghai Electric argues that it is entitled to be reimbursed for all the costs and disbursements it incurred in defending OA 1, which amount to US\$911,244.87 in total.⁷ Shanghai Electric also reserves their right to claim additional costs beyond that figure for reviewing Reliance Infrastructure's submissions on costs and preparing any reply submissions thereon.⁸

12 Having reviewed the costs incurred by Shanghai Electric, the details of which were particularised in their costs schedule, we find that they are generally reasonable and proportionate (see O 22 r 3(1), SICC Rules 2021), save that the costs claimed for Singapore counsel's fees in the amount of US\$726,584.85 should be moderated down to US\$550,000.⁹ The other costs claimed by Shanghai Electric for foreign law counsel, expert's fees, and all other disbursements, amounting to US\$184,660.02 in total,¹⁰ are granted in full. Accordingly, we award, in total, costs to Shanghai Electric coming to US\$734,660.02.

Breakdown of Parties' respective costs estimates

13 It is helpful to start with the information provided by Parties concerning their own costs. Those costs, once broken down into four categories (Singapore counsel, foreign counsel, experts, and all other disbursements) show that the

⁶ Reliance Infrastructure's Written Submissions dated 6 March 2024 ("CWS") at para 4.

⁷ Shanghai Electric's Written Submissions dated 6 March 2024 ("DWS") at para 4.

⁸ DWS at para 5.

⁹ DWS at p 18 (Annex A: Costs Schedule at p 5).

¹⁰ DWS at pp 19–21 (Annex A: Costs Schedule at pp 6–8).

principal disparity between Parties’ costs estimates lies in the fees charged for Singapore counsel:¹¹

Categories	Shanghai Electric	Reliance Infrastructure
Singapore Counsel (Professional Fees)	US\$726,584.85 (for six practitioners, 1,431.49 hours spent in total)	US\$270,000 (for four practitioners, work described but no estimate of hours given)
Foreign Counsel (Professional Fees)	US\$114,348.40 (Trilegal for Indian law; Fountain Court Chambers for English law)	US\$146,693.79 (Mr Harish Salve KC for both Indian and English law)
Experts’ Fees	US\$15,631.90	US\$18,092.85
All Other Disbursements	US\$54,679.72	US\$51,482.34

The costs claimed by Shanghai Electric in respect of foreign counsel’s fees and all of their disbursements are granted in full

14 We hold that the costs incurred by Shanghai Electric in respect of its foreign counsel, expert, and other disbursements were reasonably incurred and grant them in full. They generally match Reliance Infrastructure’s estimates of their own costs for the same categories. This is an indication of reasonableness and proportionality. Comparing the costs of the Parties is a relevant and useful exercise: see, for example, *Qilin World Capital Ltd v CPIT Investments Ltd and another appeal* [2019] 1 SLR 1 at [32], where our Court of Appeal granted the

¹¹ CWS at pp 13–16 (Annex A: Costs Schedule); DWS at pp 14–21 (Annex A: Costs Schedule).

costs claimed by Qilin with respect to the appeal in Civil Appeal No 145 of 2017 and assessed them to be reasonable, in the light of CPIT’s similar estimate in its own costs schedule.

The costs claimed by Shanghai Electric in respect of Singapore counsel’s fees are granted in part

15 We turn now to the costs incurred for Singapore counsel. There are two factors that we have considered, the first of which is, again, the comparison with Reliance Infrastructure’s own costs incurred in this category (see at [13] above), and the second is Shanghai Electric’s prior estimate of its own costs in respect of its application for security for costs of OA 1 in their SIC/SUM 19/2023 (“the SFC Application”).

16 Reliance Infrastructure has provided a figure of US\$270,000 for its costs for Singapore counsel. It has relied on the disparity in costs incurred to argue that Shanghai Electric’s costs are not reasonable and proportionate within the meaning of O 22 r 3(1) of the SICC Rules 2021.¹²

17 The question is whether the large disparity in costs for Singapore counsel between Parties – with costs for Shanghai Electric being more than 2.69 times that of Reliance Infrastructure for this category – justifies a reduction of the costs claimed by the former for Singapore counsel professional fees or if those costs should be granted in full as having been reasonably incurred.

18 The starting point is that Shanghai Electric, as the prevailing party in *Reliance Infrastructure (Merits)* at [96] and [141]–[143], is generally entitled to the costs that it subjectively incurred in defending OA 1: see O 22 r 3(1) of the

¹² CWS at paras 10–11 and 18.

SICC Rules 2021 and *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 (“*Senda v Kiri (Assessment of Costs)*”) at [52]. However, this is tempered by the objective yardstick requiring the court to assess the reasonableness of *both* the manner in which costs were incurred *and* the quantum of those costs (see *Senda v Kiri (Assessment of Costs)* at [52]–[54]). For completeness, we observe that while *Senda v Kiri (Assessment of Costs)* was decided on the basis of the old O 110 r 46 of the Rules of Court (2014 Rev Ed), the principles articulated by the Court of Appeal in that case remain applicable to the assessment of costs in the Singapore International Commercial Court (“the SICC”) under the new O 22 of the SICC Rules 2021, having regard, in particular, to the wording of O 22 r 3(1), which provides that the prevailing party is “entitled to costs and the quantum of any costs award will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness” (see also *Senda v Kiri (Assessment of Costs)* at [56]–[57], which held to the same effect).

19 Considering the estimated hours provided by Shanghai Electric and the hourly rates of their practitioners in their costs schedule,¹³ they have given sufficient particulars of their costs for Singapore counsel for this court to assess their reasonableness (see *Senda v Kiri (Assessment of Costs)* at [73]). The figures provided are reasonable and the evidential burden then shifts onto Reliance Infrastructure to prove the unreasonableness of the costs claimed (see *Senda v Kiri (Assessment of Costs)* at [75]), notwithstanding that the *legal* burden remains on Shanghai Electric to prove the reasonableness thereof (see *Senda v Kiri (Assessment of Costs)* at [78]).

¹³ DWS at pp 14 and 18 (Annex A: Costs Schedule at pp 1 and 5).

20 The extent of the disparity in quantum between the professional fees of Parties’ Singapore counsel does support the conclusion that the *quantum* of the costs claimed by Shanghai Electric therefor is unreasonable, even if the costs themselves (in terms of time and labour expended or hourly rates charged) were reasonably incurred. In assessing the objective reasonableness of the quantum, the court should consider “the nature and extent of the differences in the respective positions on costs taken by the parties” (see *Senda v Kiri (Assessment of Costs)* at [70]); “[h]ence, the best evidence that the unsuccessful party can adduce to discharge its evidential burden [of proving the objective unreasonableness of the costs claimed] 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 *Senda v Kiri (Assessment of Costs)* at [75]) (see also O 22 r 3(2)(j), SICC Rules 2021).

21 The large difference in costs for Singapore counsel between Parties is difficult to justify objectively given that the Parties here engaged with the same issues of fact and law and would have performed similar work in this proceeding (eg, reviewing and presenting the evidence of factual witnesses, reviewing the forensic reports of expert witnesses, etc). Moreover, the burden of proof was on Reliance Infrastructure to prove the grounds for its setting-aside application (ie, to prove forgery and/or absence of authority) and not on Shanghai Electric to disprove. Although Reliance Infrastructure has not provided a detailed breakdown of their professional fees with the hourly rates of their practitioners and the number of hours worked, that by itself does not render the quantum of the costs they actually incurred for Singapore counsel – US\$270,000 – irrelevant in the ‘reasonableness’ assessment. The extent of the disparity supports the conclusion that the *quantum* claimed by Shanghai Electric in

respect of Singapore counsel's fees is objectively unreasonable for the purposes of O 22 r 3(1) of the SICC Rules 2021.

22 However, that does not mean that Shanghai Electric should be limited to claiming the quantum of the Singapore counsel's fees incurred by Reliance Infrastructure in this case. There is no rule of law that one party's costs are an upper limit on the costs claimable by the other party. The test remains what is reasonable. In any litigation, even if the work to be undertaken is broadly similar on both sides, there will naturally be variance. So long as the subjectively incurred legal fees fall within the spectrum of 'reasonable' costs, a successful party should be entitled to reimbursement. This follows from the principle in *Senda v Kiri (Assessment of Costs)* at [52] that the purpose behind the objective yardstick is to ensure that parties "pursue their proceedings in a reasonable and sensible manner". There is logically no *one* exclusively reasonable and sensible manner of prosecuting the same claim even under the same circumstances. Case in point, Reliance Infrastructure hired four Singapore practitioners while Shanghai Electric hired six, which likely contributed to some extent to the difference in costs incurred. The decision of Shanghai Electric to engage a team of six Singapore practitioners was not an unreasonable or insensible manner of pursuing its claim just because Reliance Infrastructure chose to engage a team of four instead.

23 We would also take into account the fact that Shanghai Electric had estimated its own costs at S\$250,000 in the SFC Application. That application was filed on 15 June 2023 and Shanghai Electric's legal representative had estimated the total costs they would incur in defending OA 1 at S\$250,000. Reliance Infrastructure now cites the great disparity between the initial estimate of S\$250,000 in June 2023 and the costs Shanghai Electric is now claiming of

US\$911,244.87 to argue that Shanghai Electric’s current estimate cannot be reasonable and proportionate.¹⁴

24 We agree that prior estimates given by a party of its own costs are relevant and should be considered. However, it is important to note that the sum of S\$250,000 was only an estimate of the *minimum* amount Shanghai Electric might incur in the event of OA 1 proceeding to a full hearing on the merits. It was not an estimate of all costs that *would* be incurred by Shanghai Electric in that event. The supporting witness statement of Mr Tan Yi Fan thus stated at para 37 that “[t]he Defendant [Shanghai Electric] is therefore of the view that S\$250,000 is a reasonable indication of the *minimum amount of costs it would incur* in defending OA 1 [emphasis added]”.¹⁵ Likewise, Shanghai Electric’s written submissions in the SFC Application similarly stated at para 55 that “the sum of S\$250,000 is a very conservative estimate of the minimum costs that the Defendant [Shanghai Electric] would incur in OA 1. This quantum is entirely reasonable and not excessive”.¹⁶

25 We accept that Shanghai Electric’s SFC Application was not intended to indemnify them fully for all costs they would incur in this proceeding. This was a reasonable position for Shanghai Electric to take at that stage, since asking for a higher sum to fully indemnify *all of* Shanghai Electric’s expected or reasonably anticipated costs would heighten the prospect of Reliance Infrastructure successfully arguing that the sum sought was unreasonable, excessive, oppressive and/or would otherwise stifle its application in OA 1. For

¹⁴ CWS at para 20.

¹⁵ Witness Statement of Mr Tan Yi Fan in SIC/SUM 19/2023 in SIC/OA 1/2023 dated 15 June 2023 at para 37.

¹⁶ Shanghai Electric’s Written Submissions in SIC/SUM 19/2023 in SIC/OA 1/2023 dated 31 July 2023 at para 55.

these reasons, we would agree that the prior costs estimate of S\$250,000 was given on a conservative basis. Nonetheless, there is a great disparity between it and what is now claimed, which is over 4.88 times their earlier estimate. This supports our moderating the quantum now claimed by Shanghai Electric for the component of its Singapore counsel's costs.

26 We thus award to Shanghai Electric costs of US\$550,000 for Singapore counsel, which represents a reduction from the amount they claimed therefor (US\$726,584.85). This award is slightly more than twice the estimate given by Reliance Infrastructure for its own costs for the same – that is, US\$270,000. Nonetheless, the quantum of US\$550,000 for Singapore counsel is, in our view, reasonable and proportionate within the meaning of O 22 r 3(1), bearing in mind the following (see factors in O 22 rr 3(2)(a), 3(2)(b), 3(2)(c), 3(2)(e)(ii), 3(2)(f) and 3(2)(g)):

- (a) the quantum of the amount at stake, *viz*, an arbitral award which had awarded more than US\$146 million to Shanghai Electric (not including post-award interest thereon and any reimbursements for the final costs of the arbitration) (see at [4] above);
- (b) the importance to Shanghai Electric of fully responding to and rebutting the very serious allegation of forgery (see at [5] above), and thus obtaining the vindication that it did;
- (c) the voluminous factual record which had to be examined (*ie*, a Case Management Bundle spanning 14 volumes and over 7,000 pages);
- (d) the relative legal complexity of the issues raised (here, Reliance Infrastructure tendered a bundle of 72 legal authorities in total while

Shanghai Electric tendered 55 in total in its main and supplementary bundles);

(e) the extent of the time and effort expended by Shanghai Electric's Singapore practitioners here (1,431.49 hours expended by six practitioners, with 83.83 hours on the low end and 532.33 hours on the high end),¹⁷ the quantity of which is not unreasonable given the complexity and volume of the legal authorities, facts, and evidence engaged here (see at [(c)]–[(d)] above); and

(f) the proceedings here lasted for nearly a year from March 2023 to January 2024 (see at [3] and [6] above), albeit that there were only two Case Management Conferences and a 2-day hearing on the merits (see at [6] above), and featured five interlocutory applications in the interregnum, notwithstanding that three of them were granted by consent.

27 Awarding Shanghai Electric US\$550,000 in costs for its Singapore counsel's fees would strike the proper balance between the principle of reinstating the successful party into the position it was legitimately entitled to be in all along by reimbursing them for the costs they subjectively incurred to obtain what it was always entitled to obtain (see *Senda v Kiri (Assessment of Costs)* at [52]) against the yardstick of objective reasonableness which tempers that subjective element by requiring costs to have been both reasonably incurred and reasonable in their quantum (see *Senda v Kiri (Assessment of Costs)* at [54]).

28 Finally, there is Reliance Infrastructure's argument that the quantum of the costs claimed by Shanghai Electric here are significantly higher than costs

¹⁷ DWS at p 18 (Annex A: Costs Schedule at p 5).

awards in other SICC cases also involving setting-aside applications heard over two days or less,¹⁸ including the less than S\$180,000 awarded in both *DBX and another v DBZ* [2024] SGHC(I) 5 (“*DBX (Costs)*”) at [18] and *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2022] 4 SLR 158 at [128], [130] and [132].

29 We certainly accept that prior SICC costs awards in cases with “common features” with the present case should be taken into consideration in assessing the ‘reasonableness’ of costs at the objective stage. To the extent that the case at hand shares “common features” with other SICC cases, the costs awarded in those other cases are a relevant factor to be considered (see *Senda v Kiri (Assessment of Costs)* at [79]). However, “[a]ny reliance placed on previous costs awards is *not to determine the level of costs* that should be awarded, but *rather to provide a check* as to whether the costs claimed by the successful party are reasonable or not [emphasis added]”: *Senda v Kiri (Assessment of Costs)* at [79].

30 The number of days spent on the hearing of these other setting-aside applications by the SICC is only one dimension in the comparison. Other dimensions, especially what was at stake in the litigation, both financially and non-financially, would have to be considered to assess what costs were reasonable to incur in the present case. The more that is at stake, the more parties will demand of counsel. For example, in the former case of *DBX (Costs)*, the arbitral awards there had awarded less than HKD80 million (not including interest and costs) (see *DBX and another v DBZ* [2024] 3 SLR 141 at [1] and [23]), falling within the range of US\$10–10.5 million (at prevailing exchange rates), far below the more than US\$146 million award (not including post-award interest and any applicable reimbursements for the arbitration’s costs) at stake

¹⁸ CWS at para 23.

here. In addition, Reliance Infrastructure made a very serious accusation against Shanghai Electric, namely, that it had forged the signatures on the Guarantee Letter (see at [5] and [26(b)] above). Such an accusation strikes at the heart of a business party's trustworthiness and, if proved, would have had a devastating impact on its international commercial reputation.

31 Given all these considerations, we find that the amount of US\$550,000 in respect of Singapore counsel is a reasonable and proportionate quantum of costs under the circumstances (see O 22 rr 3(1) and 3(2), SICC Rules 2021).

Conclusion

32 For these reasons, we award costs in favour of Shanghai Electric in the following amounts:

- (a) US\$550,000 in respect of professional fees for Singapore counsel, a reduction from the US\$726,584.85 claimed for this component; and
- (b) US\$184,660.02 in respect of foreign counsel, expert's fees, and other disbursements, in the amounts claimed by Shanghai Electric therefor.

33 Consequently, we award to Shanghai Electric costs in the amount of US\$734,660.02, a reduction from the costs claimed by them of US\$911,244.87.

Philip Jeyaretnam
Judge of the High Court

Sir Vivian Ramsey
International Judge

Anselmo Reyes
International Judge

Vergis S Abraham SC, Asiyah binte Ahmad Arif, Ngo Wei Shing (Wu Weishen) and Liu Enning (Providence Law Asia LLC), Harish Salve KC (Blackstone Chambers) for the claimant; Cavinder Bull SC, Foo Yuet Min, Tay Hong Zhi Gerald, Tan Yi Fan and Tan Pei Han (Drew & Napier LLC), Nicholas Emmet Graham Leslie (Fountain Court Chambers), Ketan Gaur and Aayush Mitruka (Trilegal) for the defendant.
