

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

[2023] SGHC(I) 20

Originating Application No 2 of 2023 (Summons No 13 of 2023)

Between

(1) W. Power Group EOOD

... Claimant

And

(1) Ming Yang Wind Power
(International) Co. Ltd

... Defendant

JUDGMENT

[Civil Procedure — Costs — Quantum of costs for application for security]

[Civil Procedure — Rules of court — Non-compliance]

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W Power Group EOOD
v
Ming Yang Wind Power (International) Co Ltd

[2023] SGHC(I) 20

Singapore International Commercial Court — Originating Application No 2 of 2023 (Summons No 13 of 2023)
Thomas Bathurst JJ
4 September 2023

10 November 2023

Judgment reserved.

Thomas Bathurst JJ:

1 By a judgment delivered on 29 September 2023 in SIC/OA 2/2023 (SIC/SUM 13/2023) (“**the Judgment**”)¹ I ordered the claimant, W. Power Group EOOD (“**the Claimant**”), to provide security for the defendant’s costs up to the commencement of trial in the amount of \$70,000. The defendant is Ming Yang Wind Power (International) Co. Ltd (“**the Defendant**”). SIC/SUM 13/2023 (“**SUM 13**”) is the Defendant’s application for the Claimant to provide security for the Defendant’s costs up to the commencement of the trial and the salient background facts are set out at [2]–[7] of the Judgment. I further ordered the security be provided by 6 October 2023.

¹ See *W Power Group EOOD v Ming Yang Wind Power (International) Co Ltd* [2023] SGHC(I) 15.

2 The Claimant failed to provide that security and did not seek any extension of time to do so.

3 On 13 October 2023, the Claimant’s lawyers wrote to the Court indicating that they wished to make further arguments in respect of SUM 13 pursuant to O 21 r 15 of the Singapore International Commercial Court Rules 2021 (“**SICC Rules**”) and s 29B of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (“**the SCJA**”). The Claimant’s letter stated that it wished to make further arguments “on the issue of lack of evidence from the face of the materials before the Court that the Claimant has a good chance of succeeding hence the Court’s finding that the parties’ respective [cases] were not evenly balanced.”² On 20 October 2023, I rejected the request for further arguments. I noted that the Claimant had ample opportunity to adduce any arguments on the issues raised in the request and in fact did so. There was nothing in the request that seemed to raise any new arguments or anything that could not have been raised at the hearing. I also directed the Claimant to provide its written submissions as to the quantum of the Defendant’s costs in respect of SUM 13 within seven days and also to provide submissions as to why I should not exercise my power under O 1 r 11(6) of the **SICC Rules** to dismiss the proceedings in SIC/OA 2/2023 if the security was not supplied by 6 November 2023.

Costs of SUM 13

4 The Claimant filed submissions on 27 October 2023. It submitted that the costs of the Defendant in respect of SUM 13 should be fixed at \$2,000. The submissions, whilst acknowledging that the Defendant had filed a supporting

² Claimant’s letter dated 13 October 2023; Claimant’s letter dated 14 October 2023.

witness statement 119 pages long, a reply witness statement of 22 pages and that the Court had been referred to in excess of 15 authorities, stated the matter was relatively simple.³

5 It was not disputed that the Court ordered at the time of the transfer of the proceedings from the General Division of the High Court to the Singapore International Commercial Court (“**the SICC**”) on 7 March 2023 that the costs incurred post-transfer would be determined on the SICC regime of costs (*ie*, pursuant to O 22 of the SICC Rules). Where costs in the SICC are concerned, the principal underlying consideration is a commercial one of ensuring that a successful litigant is not unfairly put out of pocket for sensibly prosecuting its claim or mounting its defence (*BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2023] SGCA(I) 8 at [6]). As observed by the Court of Appeal in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 (at [56]), O 22 r 3(1) of the SICC Rules makes clear the subjective basis on which costs are assessed in proceedings in the SICC. Order 22 r 3(1) provides:

3.—(1) Without affecting the scope of the Court’s discretion in Rule 2(1), and subject to any provisions to the contrary in these Rules, a successful 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.

[emphasis added]

Order 22 r 3(2) further provides an illustrative list of “all relevant circumstances” which a Court may have regard to in considering “proportionality and reasonableness” for the purposes of O 22 r 3(1).

³ Claimant’s written submissions dated 27 October 2023 at paras 9, 10 and 11.

6 Although I agree the matter was not particularly complex, it seems to me in all the circumstances the Defendant's submission that costs should be affixed at \$6,000 inclusive of disbursements should be accepted. I note in that regard that Appendix G of the Supreme Court Practice Directions 2021 states the cost range for applications on normal list listings lasting 45 minutes or longer is between \$4,000 and \$11,000. Having regard to the work done by the Defendant in this matter and taking into account that the matter was heard in the SICC where a different cost regime applies in any event, I am of the view that the sum of \$6,000 is reasonable.

Discretion under O 1 r 11(6) of the SICC Rules

7 The Claimant in its submission submits that I should not exercise my discretion to exercise my power under O 1 r 11(6) of the SICC Rules to make an order dismissing the proceedings unless the security is paid because it intended to file a request for further arguments and may appeal if the Court rejects its request.⁴ I note that I have rejected the request yet no application for permission to appeal against the security order or my rejection of the application for further arguments has been filed. Even if an application for permission to appeal had been made, it would not operate as a stay of the proceedings (see O 21 r 6(1) of the SICC Rules).

8 In all the circumstances, I am of the view it is appropriate that I exercise my power to dismiss the proceedings unless security is provided within seven days of the making of Order 1 below.

⁴ Claimant's written submissions dated 27 October 2023 at para 13.

Conclusion

9 I make the following orders:

- (1) Order that unless the Claimant provides security in accordance with Order 1 of the Judgment of 29 September 2023 on or before 17 November 2023 the proceedings are dismissed.
- (2) Order that the Claimant pay the Defendant's costs of the application in SUM 13 assessed in the amount of \$6,000 inclusive of disbursements.

Thomas Bathurst
International Judge

Han Wah Teng (CTLC Law Corporation) for the claimant;
William Ong Boon Hwee, Ivan Lim Jun Rui and Wong Pei Ting
(Allen & Gledhill LLP) for the defendant.
