IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 8

Originating Application No 16 of 2023

Between

(1) Marketlend Pty Ltd
(2) Australian Executor Trustees Limited

… *Claimants*

And

QBE Insurance (Singapore) Pte Ltd

… *Defendant*

Counterclaim of Defendant

Between

(1) QBE Insurance (Singapore) Pte Ltd

… *Claimant in Counterclaim*

And

(1) Marketlend Pty Ltd
(2) Australian Executor Trustees Limited

… *Defendants in Counterclaim*

JUDGMENT

[Civil Procedure — Costs]

Marketlend Pty Ltd and another
v
QBE Insurance (Singapore) Pte Ltd

[2025] SGHC(I) 8

Singapore International Commercial Court — Originating Application 16 of 2023
Sir Henry Bernard Eder IJ
19 February 2025

11 March 2025 Judgment reserved.

Sir Henry Bernard Eder IJ:

Introduction

1 This Judgment (which has been prepared without an oral hearing on the basis of the parties' written submissions) deals with costs following my earlier Judgment dated 8 January 2025 where, following a trial, the Court rejected and dismissed the claimants' claims: SIC/OA 16/2023 (the "Suit"), *Marketlend Pty Ltd and another v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 (the "Judgment").

2 There is no dispute that, as the successful party, the defendant is, in principle, entitled to its costs. The only issue is the quantum of costs.

3 The Suit was transferred from the General Division of the High Court of Singapore (where it was docketed as HC/OC 405/2022) to the Singapore

International Commercial Court ("SICC") on or around 25 September 2023. It is common ground that the applicable principles are different in respect of the periods before and after transfer so it is necessary to consider separately the costs incurred before and after such transfer.

4 In summary the defendant claims a total of S$2,616,897.26 broken down as follows:

(a) Pre-Transfer: S$232,747.87 being S$206,127.99 in costs including GST (reflecting 75% of its legal fees) and reasonable disbursements amounting to S$26,619.88.

(b) Post-Transfer: S$2,348,149.39 being S$1,642,965.52 in costs including GST (reflecting 100% of its legal fees) and reasonable disbursements amounting to S$705,183.87.

(c) S$36,000 for the preparation of its costs submissions.

5 In broad terms, the claimants say that the defendant's claim is both disproportionate and unreasonable. In particular, the claimants submit that a claim in this amount is entirely without precedent and disproportionate to the amount claimed in the Suit *ie*, US$9,035,365.38. In support of that submission, the claimants draw attention to the fact that there are almost no cases in the Guide to the Assessment of Costs in the Singapore International Commercial Court (the "SICC Costs Guidelines") where costs above S$2m have been ordered; and in the two cases where costs of approximately S$5m and S$6m were awarded, these involved more than 20 and 17 days of trial respectively, Senior Counsel were appointed, and the quantum in dispute was in each case significantly larger (US$603.8m in *Kiri Industries Limited v Senda*

International Capital Limited & another [2024] SGHC(I) 14 and US$742m in *Ivanishvili, Bidzina and others v Credit Suisse Trust Ltd* [2024] 3 SLR 78).

6 In summary, the claimants say that on the basis of applicable costs precedents and guidelines, and bearing in mind the circumstances of the case, the quantum of the defendant's recoverable costs should be assessed as follows:

(a) Pre-transfer costs: S$35,000.

(b) Post-transfer costs and disbursements: S$1,141,563.66.

(c) Costs of the claimants' submissions on costs to be in the cause, fixed at S$10,000.

Pre-Transfer Costs

7 As to the applicable principles pre-transfer, the defendant submits in summary as follows:

(a) The Court must order costs of the proceedings in favour of the successful party unless it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs: O 21 r 3(2) of the Rules of Court 2021 ("ROC").

(b) The successful party is entitled to "a reasonable amount in respect of all costs reasonably incurred": O 21 r 22(2) of the ROC.

(c) In exercising its power to fix or assess costs, the Court must have regard to all relevant circumstances, including the following (O 21 r 2(2) of the ROC): efforts made by the parties at amicable resolution; complexity of the case and the difficulty or novelty of the questions involved; the skill, specialised knowledge and responsibility required of,

and the time and labour expended by, the solicitor; the urgency and importance of the action to the parties; the conduct of the parties; the principle of proportionality; and the stage at which the proceedings were concluded.

(d) Whether costs are a reasonable amount is also assessed objectively by considering whether the overall amount is in line with the level of costs "generally accepted as being likely to be incurred for the particular type of dispute". The Court is therefore also guided by costs precedents and the Costs Guidelines in Appendix G of the Supreme Court Practice Directions ("Appendix G"): see *DBX and DBY v DBZ* [2024] SGHC(I) 5 ("*DBX*") at [6].

(e) The objective standard is used for pre-transfer costs because costs awarded under O 21 of the ROC are assessed "at such a level as would enable a litigant with reasonable merits to pursue justice", and are "shaped by the normative question of what *ought* to be the amount of costs a successful party can recover for the particular work done in the context of the dispute in question…" [emphasis in original]: *DBX* at [5].

(f) The guidelines in Appendix G "represent the level of fees which members of the public and the legal profession would generally accept as reasonable … But *these are guides only, and the court may depart from Appendix G* or apply an uplift if, guided by the factors in O 21 r 2(2), the circumstances of the case so warrant" [emphasis added]: *DBX* at [6].

(g) The regard to costs precedents "tends to awarding the same levels of costs in *similar or comparable* cases" [emphasis added]: *DBX* at [6].

8 Here, the defendant submits that there is good reason to depart from Appendix G and that an award of 75% of the defendant's pre-transfer legal costs and all of its reasonable disbursements is reasonable in the circumstances for the following reasons:

(a) The defendant prevailed on most of its defences, and the claimants' claim was fully dismissed. The defences on which the defendant did not prevail, *ie*, the challenge to Marketlend's standing under the Power of Attorney, and avoidance based on Novita's non-disclosure of Fidelity's insolvency, were not very factually or legally complicated.

(b) The parties attempted mediation in good faith after the close of pleadings but were unable to bridge their differences.

(c) The Suit led to the first judgment on trade credit insurance in Singapore and engaged questions of broader significance, including not only questions on the scope of trade credit insurance coverage, but also the nature of pre- and post-contract disclosures, and the insured's obligations of cooperation in relation to claims thereunder. All of these were untested questions under Singapore law. There is no suitable costs precedent given the novelty of the case.

(d) The need for reconstruction of the actual sales chains for the underlying goods which Novita was alleged to have traded required specialised knowledge of industry practice of the ways in which different commodities can be traded. Further, considerable time and labour was expended by the solicitors in making various queries to identify the relevant parties that actually traded the goods and elicit responses from them. This intensive reconstruction exercise was underway from the time

that the Suit commenced. The number of solicitors at any point was generally three, save for brief periods reflecting changes in the legal team with departures of employees. The number of solicitors is identical to the claimants' legal team of three lawyers, which is commensurate with the nature and complexity of the matter.

(e) The Suit was of critical importance to the defendant, a factor which should also guide the proportionality of costs. Quite apart from the claim value of around US$9m, the Suit was the first among four then ongoing trade credit insurance litigations that companies in the defendant's corporate group were facing to have gone to trial. This made the Suit a critical test case for the defendant. The other ongoing litigations include a Malaysian suit that the claimants commenced against the defendant's sister company in December 2022. That suit concerns claims made under an identically worded trade credit insurance policy and has a claim value in excess of US$9m. The two other ongoing litigations are against the defendant in the High Court of Singapore. Like the Suit, they also relate to claims under trade credit insurance policies by financiers in relation to alleged trades conducted by their borrowers; and have a cumulative claim value in excess of US$13m.

(f) There is nothing in the defendant's pre-transfer conduct that is open to question. The claimants, on the other hand, provided general disclosure with documents which were not organised chronologically, were impossible to tally with their list of documents, omitted a number of attachments (in case of emails), and had attachments which could not be correlated with their cover emails. Instead of rectifying all these issues, the first claimant engaged in various rounds of correspondence with the defendant defending its position and/or providing partial

rectifications, before it was directed by the court on 15 September 2023 to file a revised list of documents with all email attachments corresponding with their cover emails. This delayed the defendant's review of the documents and specific disclosure.

(g) The circumstances of the case set out above justify a departure from Appendix G. Paragraph 3 of Appendix G expressly states that the precise amount of costs awarded remains in the Court's discretion and the Court may depart from the guidelines in Appendix G depending on the particular circumstances of each case. In *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2019] 1 SLR 214, the Court of Appeal departed from Appendix G in light of the complexity of the appeals (which engaged a contentious area of law), the fact that the appeals involved three rounds of submissions, and the number of appellants involved (at [28]−[29]). The test nature of this case on a number of issues and the critical need for extensive non-party evidence in particular justify a departure from Appendix G. Appendix G provides a range of S$25,000–70,000 for pre-trial work. Considering that some pre-trial work was conducted after the transfer of the Suit to the SICC, costs of S$50,000 with a multiplier of four should be used to assess the defendant's pre-transfer costs. The resultant figure of S$200,000 is close to 75% of the defendant's pre-transfer legal costs of S$206,127.99.

9 As stated above, the claimants accept that the defendant is entitled to an award of costs in its favour. However, as submitted by the claimants, Appendix G remains the starting point and, as stated in the SICC Costs Guidelines at [3(a)], it "continues to guide the assessment of pre-transfer costs". Thus, while the claimants accept that a departure from Appendix G may be appropriate in

certain cases, the burden is squarely on the defendant to show that such departure is warranted: *CBX and another v CBZ and others* [2022] 1 SLR 88 at [28].

10 Here, it is common ground that the relevant range under Appendix G for pre-trial work is S$25,000−75,000. In the circumstances, the claimants submit that no departure from Appendix G is warranted: the present Suit does not contain any novel or complex features and the defendant has not discharged its burden of justifying a departure from Appendix G. Thus, the claimants submit that the costs pre-transfer should be limited to S$35,000, being at the lower end of the range given that affidavits of evidence-in-chief ("AEICs") had not yet been filed at the relevant stage. In further support of that submission, the claimants rely on three main points.

11 First, the claimants submit that the way in which the defendant seeks to justify the pre-transfer costs claimed by a comparison of (a) a notional figure of S$50,000 increased by applying a "multiplier of four" with (b) the figure of 75% of its actual costs is irrelevant. I see much force in that submission. As made plain by the Court of Appeal in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96; [2022] SGCA(I) 10 ("*Senda*") at [47], Appendix G requires the application of an *objective* standard. Thus, the reference to the defendant's actual costs is, strictly speaking, irrelevant unless the defendant can show, as part of satisfying its legal burden on costs, how such costs were reasonably incurred on an *objective* level.

12 Second, the claimants submit that the utilisation of the base figure of S$50,000 and the application of the "multiplier of four" are both unexplained. The former admittedly falls mid-way within the range specified in Appendix G for pre-trial work but it is important to note that that range normally *includes*

the preparation of AEICs, which ordinarily constitutes a significant portion of the costs in any matter. In the present case, no AEICs were filed at the pre-trial stage. Parties had only exchanged their pleadings and completed general discovery at the stage of transfer on 7 September 2023. On this basis, the claimants submit that a figure of S$35,000 would more appropriately reflect the apportionment under the Appendix G range. As to the "multiplier of four", the claimants submit that there is no authority to support any such multiplier. The figure of "four" appears to have been plucked out of the air.

13 Third, the claimants dispute that the case involved any special features which might justify an uplift. In particular, the claimants submit that the case did not involve any novel points involving untested questions of Singapore law; that the Suit was neither of critical importance nor served as a test case; and that, in any event, there is no principled reason why the claimants should be made to subsidise the defendant's defence(s) in other litigation.

14 In considering these rival submissions, I bear in mind that, as stated above, Appendix G remains the starting point and that, although the range specified in Appendix G is only a guideline and the court has a discretion to allow an uplift in appropriate circumstances, the burden lies squarely on the defendant to show that such departure is warranted.

15 In this context, I confess that I was initially impressed by the defendant's complaints with regard to the claimants' discovery which, it is said, caused significant additional costs to the defendants and which I readily accept might, in appropriate circumstances, justify an uplift. According to the schedule submitted by the defendants, the legal fees incurred in respect of disclosure pre-transfer totals S$137,742 plus GST, though the defendants ultimately only claim 75% of this sum (amounting to approximately S$111,571.02 including GST).

That still seems a very high figure. However, I note that the claimants dispute that they were in any way at fault and on the basis of the material provided, I have found it quite impossible to identify whether the defendants' complaints are justified and, even on the assumption that those complaints were justified in whole or in part, what, if any, additional costs might have been incurred by the defendants pre-transfer as a result.

16 In my view, the defendant is on much stronger ground having regard to the fact that although the claim is presented by the claimants as one which was relatively simple, this is obviously not so because the defendant was facing a suit which was, as I have held, based upon a series of fictitious trades. This required careful investigation of matters which were entirely outside the defendant's knowledge. For that reason, it seems to me that, at least so far as the defendant is concerned, the present case was very much out of the norm.

17 Thus, I do not find the sum claimed in respect of the pleadings (S$42,094 plus GST) involving (a) the review of the Statement of Claim (16 pages), (b) the preparation of the original Defence (59 pages) and subsequent Amended Defences and Counterclaims (71 and 72 pages respectively), and (c) the review of the very substantial Reply and Defence to Counterclaim (98 pages) surprising from an objective point of view. I also note that there were eight case conferences pre-transfer. The costs of preparation and attendance at these case conferences will not have been insignificant although the costs claimed (S$74,643 plus GST) do, on their face and absent further explanation, seem very high.

18 Bearing all these matters in mind, I have reached the conclusion that the circumstances of the present case are very unusual and that there is justification for some uplift above the Appendix G range with regard to pre-transfer costs.

Doing the best I can, I would allow a figure of S$100,000 plus GST. This takes account of a significant proportion of the costs incurred for pleadings, preparing for and attending the eight case conferences and discovery pre-transfer. In my view, that is a figure which is justifiable and reasonable applying an objective standard.

Post-transfer costs

19 As stated above, the defendants claim S$2,348,149.39 for the post-transfer stage, being S$1,642,965.52 in costs (reflecting 100% of its legal fees) and reasonable disbursements amounting to S$705,183.87.

20 The applicable principles are not in dispute. In summary, costs are in the discretion of the Court: O 22 r 2(1) of the Singapore International Commercial Court Rules 2021 ("SICC Rules"). A successful party is entitled to costs, and the quantum of any costs award will generally reflect the costs incurred by the party, subject to the principles of proportionality and reasonableness: O 22 r 3(1) of the SICC Rules. In considering proportionality and reasonableness, the Court may have regard to all relevant circumstances: see O 22 r 3(2) of the SICC Rules). In that context, the defendant emphasises that the approach for post-transfer costs is a "subjective" one and that "[t]he policy of enhancing access to justice underlying the use of [Appendix G] is less relevant, and in the SICC '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' … Once the successful party has provided appropriate evidence of its incurred costs, and information in support of the claimed costs being reasonable, the unsuccessful party has the evidential burden of showing that the claimed costs are not reasonable" (*DBX* at [14]).

21 Although the claimants do not dispute the applicable principles, they emphasise (and I readily accept) that the post-transfer regime does not give a litigant licence to claim any and all costs and that ultimately, the costs claimed must be incurred in a "reasonable and sensible manner". In that context, the claimants rely in particular on the comments by the Court of Appeal in *Senda* at [52]:

> The commercial consideration underlying the SICC, however, is not a reason for the successful party to recover *whatever* costs it had incurred. Even in the SICC where access to justice concerns are superseded, there remains an overarching interest in directing litigants to pursue their proceedings in a reasonable and sensible manner… Therefore, even in the context of O 110 r 46, the indemnity principle is not an unlimited one that entails full restoration or compensation. The successful party is only entitled to recover "reasonable costs" from the unsuccessful party, and not whatever costs it had incurred…
>
> [emphasis in original]

22 Here, the defendant submits that it should be awarded its full legal costs and disbursements at the post-transfer stage as set out in the costs schedule. With regard to that schedule and in addition to the general matters referred to above in relation to pre-transfer costs, the defendant highlights a number of points *viz*:

(a) The defendant's applications for disclosure from and interrogatories against non-parties (*ie*, SIC/SUM 5/2023 ("SUM 5") and SIC/SUM 32/2023 ("SUM 32")), and its applications to have non-party evidence admitted (*ie*, SIC/SUM 43/2023 ("SUM 43"), SIC/SUM 45/2023 ("SUM 45") and SIC/SUM 47/2023 ("SUM 47")), entailed extensive work.

(b) SUM 5 in particular was voluminous, as it sought documents and information from seventeen non-parties in relation to the eight Alleged

Trades (as defined in the Judgment). Its preparation entailed considerable work in the identification of relevant non-parties and engagement with them to obtain the required information and documents voluntarily before resorting to a court order. Matters were also complicated by the fact that only one of the seventeen non-parties was based in Singapore, thus requiring the defendant to obtain leave to serve the majority of them in various jurisdictions, in most cases via official channels under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (in itself a laborious exercise). It also entailed coordination with local counsel in the respective jurisdictions to ensure proper service of SUM 5 and follow ups with the various non-parties. SUM 5 led to the identification of Indometal as a further intermediary in the trading chain for one of the bills of lading that Novita purportedly used for an Alleged Trade. This in turn prompted SUM 32.

(c) At an early stage, it made sense to cast the net wide and seek orders against as many parties as possible to reconstruct any potential sales chain. In interests of proportionality however, over time, the defendant narrowed down the trades.

(d) The applications to admit evidence from non-parties (*ie*, SUM 43 and 47) entailed complex legal issues, and strategic planning with evidence being led of the attempts to seek the attendance of non-party witnesses. This included the defendant's application seeking permission to adduce evidence from non-parties out of jurisdiction by video link pursuant to the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, again requiring advice from and coordination with foreign counsel from six

jurisdictions. Domestically, the defendant also subpoenaed Viant's Ms Samantha Lim. The defendant kept the claimant apprised of evidence from non-parties, even though the formal admission of such evidence took place, as is customarily the case, during the trial. The timing of non-party witness statements was however out of the defendant's hands.

(e) The defendant conducted the case efficiently, whilst attempting its best to preserve the timetable despite the claimants' delays in filing witness statements and preparation of hearing bundles (with which the defendant lent considerable assistance); its eleventh-hour application to recuse me from hearing the case (which I rejected on the first day of the trial); and a further last-minute application made during the trial to admit evidence.

(f) The proceedings only concluded after a trial, with the defendant leading witness evidence from four lay witnesses, five non-parties, and (further to the parties' *express* agreement) three expert witnesses.

23 The claimants dispute that the defendant should be allowed 100% of its costs. As stated above, the claimants submit that the defendant should only be allowed S$1,141,563.66 for post-transfer costs which is approximately 50% of the amount claimed by the defendant. In support of that submission, the claimants rely on a number of points which overlap to a large extent and which I summarise and address below.

24 First, the claimants submit that account should be taken of the fact that the defendant did *not* prevail in all of its defences. In particular, the defendant failed in their defences in relation to standing and avoidance based on Novita's

non-disclosure of Fidelity's insolvency. In principle, I agree that account can and should be taken of these matters. However, in the overall scheme of the litigation, these points were relatively minor.

25 Second, the claimants submit that account should be taken of the confusion caused by the defendant's pleaded case relating to a "genuine physical trade" which, as I said in my Judgment at [95]−[97], caused "much unnecessary debate and confusion in the course of the trial". I agree although to be clear, my criticism of the defendant's pleaded case was not so much directed at the use of the phrase "genuine physical trade" as such but at the definition of that phrase in para 3.2 of the Defence where it was pleaded that that phrase means "...a trade where transmission and title to and possession of the underlying Goods can be demonstrated..." As a result, the claimants submit that the experts spent considerable time and effort giving evidence on physical possession in dealing with the defendant's definition and premise of "genuine physical trade", which was ultimately a red herring. As submitted by the claimants, if the defendant had pleaded its case properly, *both* parties would not have incurred the heightened expert costs and time at trial cross-examining the experts on an issue which was not actually in contention. Thus, the claimants submit that the fees associated with adducing this evidence were not reasonably and sensibly incurred. I agree. More generally, I also accept that much of the very extensive expert evidence adduced by the defendant was either inadmissible or irrelevant.

26 Third, in relation to the Sujana trades, the claimants submit that none of these costs should be awarded. In that context, the claimants draw attention to what I said in my Judgment with regard to this part of the case *viz* that while they raise "potential suspicions.....it is difficult, if not impossible, to assess their probative value without performing what would, in effect, be a mini-trial with

regard to each supposed connection and alleged propriety". In the event, none of the evidence led by the defendant on the Sujana allegations was dispositive, and the defendant failed to prove this defence on a balance of probabilities. On this basis, the claimants submit that the significant disbursements incurred by the expert services firm J S Held (of which Mr Vickers is the Managing Director) on this issue (S$109,625.91) should not be borne by the claimants, or at least significantly discounted.

27 Finally, the claimants submit that even looking just at the defendant's legal costs, these figures are at worst clearly inflated and at best reflect a considerable degree of inefficiency. In that context, the claimants cite by way of example, the defendant's Pre-Case Conference Questionnaire which is a short document requiring only brief responses but which the defendant's counsel apparently incurred time-costs of approximately 19 hours by a senior partner, 33 hours by a junior partner and more than 23 hours by an associate, incurring costs exceeding S$50,000. In addition, the claimants cite what they say are other similar instances of unusual and/or inefficient staffing include the defendant's lead counsel spending more than 81 hours on two disclosure applications (SUM 5 and SUM 32) which were almost identical in nature and which were not seriously contested, and incurring total costs (across the entire legal team) of more than S$203,000. Thus, the claimants submit that such staffing which resulted in the defendant's exorbitant legal costs, if indeed accurate, cannot be deemed to be reasonably and sensibly incurred.

28 In the circumstances, the claimants submit that the defendant's post-transfer costs should be as follows:

(a) 50% of the defendant's legal fees to be awarded, being S$821,482.76;

(b) 40% of its fees incurred on experts to be awarded, being S$183,651.37; and

(c) 100% of the fees incurred by J S Held billed as disbursements to be excluded, being S$109,625.91.

In addition, the claimants confirm that they do not dispute the other disbursements post-transfer (*eg*, the lay witness travel and accommodation costs, e-litigation fees etc.). This brings the total post-transfer costs claim to S$1,141,563.66 (comprising of S$821,482.76 in legal fees and S$320,080.90 in disbursements).

29 The exercise that the Court is required to perform in assessing costs is particularly difficult in a case of this kind. In light of the authorities cited above, it is plain that the defendant is only entitled to its reasonable costs; and that the general approach is that once the successful party has provided appropriate evidence of its incurred costs, and information in support of the claimed costs being reasonable, the unsuccessful party has the evidential burden of showing that the claimed costs are not reasonable.

30 The main difficulty in the present case is that although the defendant has provided a detailed costs schedule containing a breakdown of its costs, the information provided by the defendant to show that the costs claimed are reasonable is very limited indeed. That difficulty is exacerbated here for a number of reasons including:

(a) the fact that, as I have stated at least so far as the defendant is concerned, the present case falls outside of the norm in that the defendant had no knowledge itself of the circumstances giving rise to

the claim and thus was required to carry out intensive investigations with third parties to try to piece together a rather difficult jigsaw;

(b) the original insured, Novita, did not participate in the trial and was obstructive almost from the outset. The result was that documents that one might normally have expected to have been provided at least on discovery if not before were never provided to the defendant. Indeed, the failure to provide such documents was one of the grounds which resulted in the dismissal of the Suit;

(c) the amounts claimed by the defendant are very large indeed. Where the amounts involved are relatively small, it is much easier for the Court to make an appropriate estimate or, at the very least, identify an appropriate ballpark or range;

(d) although the claimants have (as referred to above) pointed to a number of individual items of costs which seem, on their face, unreasonably high, there has been no attempt by the claimants to provide a comprehensive (or at least more extensive) analysis; and

(e) the claimants have not provided any figure(s) for their own costs which might have provided some basis of comparison with regard to the reasonableness of the costs claimed by the defendant.

31 In light of the above and bearing everything I have said in mind, my observations and conclusions with regard to the defendants' claim for post-transfer costs are as follows:

(a) Stage 4: Case Management Conferences ("CMC")/Interlocutory hearings

(i) Sum claimed: S$462,507 plus GST

(ii) Sum allowed: S$437,146 plus GST

Reasons: Given the explanations provided by the defendant with regard to the non-party disclosure applications (SUM 5 and SUM 32), the application seeking to adduce evidence by video link (SUM 45) and the application to admit evidence from non-party witnesses (SUM 43 and SUM 47), I would allow the sums claimed in respect of these items in full as well as the amounts claimed for preparation, attendance at and follow ups from case conferences and/or interlocutory hearings and considering/dealing with SUM 17. However, I am unpersuaded that the amount claimed in respect of preparation of the Pre-Case Conference Questionnaire (S$50,721.87 plus GST) is reasonable. I would allow 50% of that item.

(b) Stage 5: Disclosure

(i) Sum claimed: S$34,605 plus GST

(ii) Sum allowed: S$34,605 plus GST

Reasons: The sum claimed appears reasonable in the circumstances.

(c) Stage 6: Witness Statements

(i) Sum claimed: S$175,523 plus GST

(ii) Sum allowed: S$150,000 plus GST

Reasons: The sum claimed is a single global figure which is stated to include costs in respect of the statement of Mr Vickers and many other witnesses. For the reasons given by the claimants and summarised

above, I agree that the costs incurred by the defendant's counsel in assisting with the preparation of Mr Vickers' statement should be reduced. The difficulty is that the defendant's costs schedule does not specify what those particular costs were but given the size of Mr Vickers' witness statement (4220 pages), it is reasonable to assume that such costs would not be insignificant. The sum allowed is my best attempt to take account of that factor. I would allow 100% of the other costs included in the total figure and claimed under this head.

(d) Stage 7: Expert Evidence

(i) Sum claimed: S$192,757 plus GST

(ii) Sum allowed: S$25,000 plus GST

Reasons: in my view, much of the expert evidence adduced by the defendant was inadmissible or irrelevant.

(e) Stage 8: Preparation for Trial:

(i) Sum claimed: S$394,624 plus GST

(ii) Sum allowed: S$250,000 plus GST

Reasons: I have no doubt that this was an important case involving a significant sum of money which required careful and intensive preparation in advance of the trial including preparation of the opening written submissions. However, the sum claimed seems to me unreasonably high given that, at the rates charged by the respective lawyers, the amounts claimed represent approximately 160 hours for Mr Bhinder, 350 hours for Ms Kaur and 110 hours for Mr Vedam. From the information provided by the defendant, it is impossible to know how

much of that time was spent considering the evidence of Mr Vickers or the expert evidence much of which was, as I have said, inadmissible or irrelevant. However, doing the best I can, it seems to me that a reasonable figure to allow for costs under this head would be as stated above.

(f) Stage 9: Trial attendance

(i) Sum claimed: S$249,734 plus GST

(ii) Sum allowed: S$150,000 plus GST

Reasons: This was a seven-day trial spread over two weeks. I recognise that attendance by counsel at trial requires intense work and often involves long hours. Even so, I find it difficult to understand how the figures for the defendant's counsel as set out in the costs schedule have been calculated. On the basis of those figures, it would seem that during this period, Mr Bhinder and Ms Kaur each worked in excess of 130 hours. On any view, that seems a very large figure over a relatively short period. At the very least, the figures claimed are, in my view, unreasonable and should be discounted having regard to the points already mentioned − in particular that: (a) the defendant's definition of "genuine physical trade" gave rise to confusion; (b) the evidence concerning the Sujana trades was ultimately unnecessary and irrelevant; and (c) much of the expert evidence was inadmissible or irrelevant − all of which caused wasted time and effort. In my view, having regard to the nature of the issues arising, a reasonable figure for attendance of the defendant's three counsel at trial is as set out above.

32 With regard to disbursements, given what I have said with regard to the expert evidence, I agree with the figure suggested by the claimants and would allow 40% of the figure claimed by the defendant for the experts' disbursements *viz* S$183,651.37. With regard to the sum claimed in respect of Mr Vickers (J S Held) *viz* S$109,625.91, I would disallow the entirety of that claim for the reasons given by the claimants. As to the other disbursements (*eg*, the lay witness travel and accommodation costs, e-litigation fees *etc*), the claimants confirm that these are agreed. This brings the total post-transfer disbursements to S$320,080.90.

33 For these reasons, it is my conclusion that the defendant's post-transfer costs should be assessed in the sum of S$437,146 + S$34,605 + S$150,000 + S$25,000 + S$250,000 + S$150,000 = S$1,046,751 plus GST. Including post-transfer disbursements of S$320,080.90, this figure becomes S$1,366,831.90.

Conclusion

34 For all these reasons, it is my conclusion that the defendant's recoverable costs should be assessed as follows:

(a) Pre-Transfer: S$100,000

(b) Post-Transfer: S$1,366,831.90

35 In addition, I would allow the sum of S$10,000 for preparation of the costs submissions. Accordingly, the total amount payable by the claimants to the defendant is S$1,476,831.90 plus GST where applicable. This figure represents just under 15% of the claim amount and, having regard to all the circumstances, I am satisfied that it is proportionate and reasonable.

Sir Henry Bernard Eder
International Judge

Sandosham Paul Rabindranath, Alisa Toh Qian Wen (Dai Qianwen) and Choo Ian Ming (Cavenagh Law LLP) for the claimants;
Baldev Singh Bhinder, Ramandeep Kaur and Vedam Rakesh (Blackstone & Gold LLC) for the defendant.

Annex: Summary of sums awarded

Stage	Component	Defendant's claimed sum (S$)	Claimants' preferred sum (S$)	Sum awarded (S$)
1−3	**Pre-transfer costs and disbursements**	232,747.87 including GST	35,000	100,000 plus GST
Post-transfer costs				
4	CMC/Interlocutory hearings	462,507 plus GST	821,482.76 (50% of the defendants' legal fees)	437,146 plus GST
5	Disclosure	34,605 plus GST		34,605 plus GST
6	Witness Statements	175,523 plus GST		150,000 plus GST
7	Expert Evidence	192,757 plus GST		25,000 plus GST
8	Preparation for trial	394,624 plus GST		250,000 plus GST
9	Trial attendance	249,734 plus GST		150,000 plus GST
Sub-total				1,046,751
Post-transfer disbursements				
N/A	Court fees	32,167.90	Agreed	32,167.90
N/A	Experts	459,128.43	183,651.37	183,651.37
N/A	Others	213,887.54	104,261.63	104,261.63
Sub-total				320,080.90

N/A	Costs submissions	36,000	10,000	10,000