

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

[2025] SGHC(I) 7

Originating Application No 2 of 2023

Between

W. Power Group EOOD

...Claimant

And

Mingyang Wind Power
(International) Co Ltd

...Defendant

JUDGMENT

[Civil Procedure — Costs — Scales]

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W Power Group EOOD
v
Mingyang Wind Power (International) Co Ltd

[2025] SGHC(I) 7

Singapore International Commercial Court — Originating Application No 2 of 2023 (Summons No 15 of 2024)

Thomas Bathurst IJ

28 May, 26 November 2024

11 March 2025

Judgment without an oral hearing.

Thomas Bathurst IJ:

Introduction

1 By judgment dated 15 October 2024 (see [2024] SGHC(I) 29) I ordered the Statement of Claim filed by the Claimant (“W Power”) be struck out, refused W Power’s application for leave to file an amended statement of claim, ordered its claim to be dismissed in its entirety and ordered it pay the Defendant’s (“Mingyang”) costs of the proceedings.

2 I also directed that if the parties were unable to agree on the quantum of costs payable within 14 days then within a further 14 days each party file their

submissions on the question of costs together with a schedule showing the costs incurred by them in the proceedings.

3 The parties were unable to agree on the costs payable and in accordance with my directions filed submissions and, in the case of Mingyang, provided a schedule of the costs which it said it incurred.

4 The proceedings were commenced on 17 June 2022 (as HC/OC 85/2022) in the General Division of the High Court and transferred to the Singapore International Commercial Court (“SICC”) by an order of the Registrar made on 7 March 2023. In making the transfer order Deputy Registrar Phang Hsiao Chung also ordered that the costs scale in the General Division of the High Court and Order 21 of the Rules of Court 2021 (“ROC”) are to continue to apply to the assessment of costs that were incurred in respect of the proceedings before its transfer to the SICC.

5 The disputed amount claimed by Mingyang for costs is \$226,240. Of that amount, \$54,285 is claimed in respect of the pre-transfer period and \$171,955 in the post-transfer period. Mingyang has also claimed RMB104,606.50, of which RMB99,154.50 was incurred in the pre-transfer period whilst RMB5,452 was incurred in the post-transfer period. It is also claimed €7,240 in respect of Bulgarian counsel’s fees, of which €6,640 related to work done in the pre-transfer period and €600 to work in the post-transfer period. In addition, it has claimed disbursements in an amount of \$10,189.80.

6 It is convenient to deal with the claim for pre-transfer costs and post-transfer costs separately.

Pre-transfer costs

The parties' submissions

Mingyang's case

7 As I indicated Mingyang has claimed \$54,285 in respect of pre-transfer costs. The Schedule of Costs it provided states that of that amount \$35,710 was incurred in reviewing W Power's pleadings and preparing Mingyang's defence whilst \$18,575 was incurred in relation to work done in preparation for and attendance at pre-trial conferences and engaging with the Claimant on dispute resolution options. It should be noted it involved the attendance at four case management conferences.

8 In its written submissions Mingyang pointed out that Appendix G of the Supreme Court Practice Directions 2021 ("Appendix G") provides that party-and-party costs which are settled at the pleading stage range from \$5,000 to \$14,000, and costs for pre-trial work involving pleadings, production of documents and affidavits of evidence-in-chief, range between \$25,000 and \$70,000. It pointed out that the court must decide whether there are factors which justify a higher assessment of costs.

9 In support of its contention that a higher amount of costs should be awarded than what is suggested in the guidelines in Appendix G, Mingyang referred to O 21 r 2(2)(b) of the ROC which require the court assessing costs to take into account the complexity of the case and the difficulty or novelty of the questions involved. It submitted the case required a consideration of Bulgarian regulations and the process for approval and connection of a wind powered plant as well as the need to investigate matters that had taken place ten years before the claim was made.

10 Mingyang pointed out that the work done pre-transfer was not limited to pleadings only. It submitted the amount offered by W Power for pre-transfer costs namely the sum of \$10,000 was unreasonable when considered against the level of effort expended for the work carried out.

11 Mingyang also pointed out that its claim for costs was less than the amount estimated by it in the Case Management Plan of 24 April 2023.

W Power's case

12 W Power pointed out in its submissions that all pleadings in the suit had been filed prior to its transfer to the SICC and the case did not proceed to the production of documents and the filing of affidavits of evidence-in-chief. It submitted that the amount that should be ordered to be paid in accordance with Appendix G is \$10,000. It submitted referring to the decision of the Court of Appeal in *CBX and another v CBZ and others* [2022] 1 SLR 88 (“*CBX*”) and to the decision of the SICC in *Kiri Industries Ltd v Senda International Capital Ltd and another* [2022] 3 SLR 174 (“*Kiri Industries (SICC)*”) that Appendix G was the starting point for assessing pre-transfer costs unless the party seeking to depart from it could show compelling justification for doing so.

13 W Power submitted the reasons given by Mingyang to justify the departure from Appendix G were not sufficient to warrant such departure to allow what it submitted was the very high amount of costs claimed. It submitted this was for four reasons. First, although the matter was important it was a breach of contract claim; second, the case stopped at the pleading stage and was far from trial; third, Mingyang’s agreement to mediate was not sincere at all; and, fourth, the costs claimed were not reasonable and proportionate.

14 It should be noted that W Power’s submission on this question encompassed not only the work done in relation to the pre-transfer costs but also the amount claimed by Mingyang in respect of the suit post-transfer, excluding the costs of the strike out application. As will be seen, these costs totalled \$48,060.

Consideration

15 In *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 (“*Kiri Industries (CA)*”), the Court of Appeal pointed out at [47]:

[C]osts [under the relevant Rules of Court] are assessed at such a level as would enable a litigant with reasonable merits to pursue justice ... which requires the application of an objective standard ... shaped by the normative question of what ought to be the amount of costs a successful party can recover for the particular work done ... irrespective of the level of costs ... actually incurred.

[emphasis in original omitted]

The Court of Appeal stated that access to justice considerations required that the level of costs be tailored to the attributes of the case itself and what is generally accepted to be recoverable (at [48]). The Court of Appeal stated at [49] the effect of Appendix G means that even catering for the specificities of individual cases, the level of recoverable costs will generally remain within the range set out therein.

16 The Court of Appeal did not express any disagreement with the approach taken to pre-transfer costs by the SICC in that case, namely, that Appendix G was the starting point for the assessment but a consideration of the complexity of the case warranted an uplift from the costs arrived at based on Appendix G (see *Kiri Industries (SICC)* at [39]–[41]; see also *CBX* at [29], and *DBX and*

another v DBZ [2024] SGHC(I) 5 at [13]). That is the approach I propose to take in the present case.

17 As I indicated Appendix G indicates a range of costs where matters are settled at the pleading stage of between \$5,000 and \$14,000. There are a number of matters which I think justify an uplift from that range. First, the amount claimed was substantial. Second, the claim related to events which had occurred ten years prior to the commencement of the proceedings. It also involved the investigation of Bulgarian regulations relating to wind power plants at that time. Third, and relatedly, this involved instructing and liaising with Bulgarian counsel. I deal with Mingyang's claim for Bulgarian counsel's costs below. Fourth, although the case did not go past the pleading stage, in the pre-transfer period it was necessary for Mingyang's lawyers to prepare for and attend at four case management hearings.

18 It seems to me that in those circumstances an uplift of 50% on the maximum amount suggested in Appendix G for costs where matters are settled at the pleading stage is appropriate. I would award costs in the pre-transfer period of \$21,000.

Post-transfer costs

19 Leaving aside foreign counsel's costs, Mingyang's claim for post-transfer costs was divided into five components. First, an amount of \$30,665, for preparation of case management documents and for attendance at case management conferences. The second component, an amount of \$17,395, was said to be incurred for the preparation and issue of two requests for particulars and preparing and serving one set of particulars of the Defence. The third component was an amount of \$6,317.17 being the costs of \$6,000 awarded by

me on the security of costs application with a component for interest. This amount is not in dispute. Fourth, there was an amount of \$1,895 dealing with W Power's request to register a Malaysian lawyer as a co-counsel in the suit and finally, \$121,910 being costs incurred in respect of Mingyang's application to strike out the Statement of Claim and W Power's application for leave to amend its Statement of Claim (in SIC/SUM 15/2024 ("SUM 15")).

20 Mingyang, in its Costs Schedule, set out the hourly rate charged by lawyers engaged to conduct the proceedings. It is unnecessary to set these out as none of them were challenged as being unreasonable.

21 It also does not appear to be in dispute that the matters to be considered in exercising the cost discretion were those set out in O 22 rr 3(1)–(2) of the Singapore International Commercial Court Rules 2021 ("SICC Rules"). These Rules provide as follows:

(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.

(2) In considering proportionality and reasonableness, the Court may have regard to all relevant circumstances, including

- (a) the complexity of the case and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the counsel;
- (c) the urgency and importance of the action to the parties;
- (d) the number of counsel involved in the case for each party;

- (e) the conduct of the 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;
 - (iii) the manner in which a party has pursued or contested a particular allegation or issue; and
 - (iv) whether the conduct of the parties, including conduct in respect of alternative dispute resolution, facilitated the smooth and efficient disposal of the case;
- (f) the amount or value of the claim;
- (g) the stage at which the proceedings were concluded;
- (h) the existence of any offer to settle, the date the offer was made, the terms of the offer and the extent to which the claimant's judgment is more favourable than the terms of the offer to settle;
- (i) the existence of an agreement as to the amount of, basis for, or mechanics for, the determination of a costs award; and
- (j) the estimates provided in a costs schedule.

The parties' submissions

Mingyang's case

22 Referring to O 22 r 3(1) of the SICC Rules and *Kiri Industries (SICC)* at [77], Mingyang submitted the policy underlying a costs award in the SICC is a commercial one of “ensuring that a successful litigant is not generally out of

pocket for prosecuting their claim in a sensible manner”. It submitted the correct approach was as follows:

- (a) first, to make subjective enquiry into what costs were in fact incurred; and
- (b) second, to identify any aspect of costs which were unreasonably incurred.

It submitted the tests for proportionality and reasonableness was governed by the circumstances set out in O 22 r 3(2) of the SICC Rules.

23 In relation to W Power’s offer of \$20,000 in respect of post-transfer costs, Mingyang submitted it was an incorrect approach to base the costs award on the guidelines in Appendix G. In relation to W Power’s submission that SUM 15 did not involve complex issues, Mingyang submitted that SUM 15 raised a host of issues arising from W Power’s failure to properly plead its case, and application to amend and join additional parties. It also submitted that having regard to the myriad of issues raised, it could not be said that much work was not required to be carried out in respect of SUM 15 referring to the many authorities cited in the submissions and in the application for leave to amend.

24 Mingyang also submitted that in the assessment of post-transfer costs the burden is on the losing party to identify any aspect of costs which were unreasonably incurred.

25 Mingyang submitted its costs of \$121,910 in respect of SUM 15 were reasonable and proportionate having regard to the complexity and importance of the issues, the work to be done in responding to W Power’s assertions and the issues raised. It also pointed to the need to react to W Power’s ever-evolving

case including what it described as unreasonable arguments. It also referred to the late application for leave to amend.

26 In relation to the amount claimed post-transfer other than in respect of SUM 15, Mingyang submitted that the matters in the suit were not transparent and the claim related to matters that took place more than ten years previously. It also referred to what it described as unreasonable steps taken by W Power in relation to the application for security for costs including an application to raise further arguments after the decision was delivered and the refusal to comply with the security order prior to an “unless order” being made. It also referred to the large amount claimed by W Power of €37.5m and the fact the costs claimed were consistent with its previous estimates.

W Power’s case

27 In relation to SUM 15, W Power contended that Appendix G continued to be relevant and should remain one of the factors to be taken into account. It submitted the reasons given by Mingyang in its claim for costs did not justify the amount claimed. W Power submitted SUM 15 did not involve complex law, the summons was not a trial, and the claim revolved around when a cause of action was deemed to have accrued and the alleged lack of standing for itself to bring a claim under Annex 3 of the Joint Venture Agreement. It submitted the fact that Mingyang filed three rounds of submissions with bundles of authorities and attended a half-day hearing did not make the matter complex.

28 W Power made no specific submissions of post-transfer costs claimed by Mingyang save to say they were disproportionate having regard to the range of costs set out in Appendix G and the particular matters in issue.

Consideration

29 The submissions made by W Power placed considerable reliance on Appendix G. However, it must be remembered that, as was pointed out by the Court of Appeal in *Kiri Industries (CA)* at [59], there is no discernible relationship between the quantum of costs that may be ordered under the Rules of Court and those ordered under the SICC Rules.

30 As was pointed out in *Kiri Industries (CA)* at [32] the successful party’s entitlement to costs in the SICC regime is “whatever costs that had in fact been sensibly and reasonably incurred”. It was pointed out in that case at [100] that:

- (a) the starting point for the assessment is what costs were in fact incurred by the successful party to the extent that such costs are reasonable;
- (b) it is for the trial court to assess costs and it is within the court’s discretion to determine the manner in which costs are to be assessed;
- (c) the legal burden is on the successful party to establish its claimed costs are indeed reasonable costs and it must provide information to show how the claimed costs have been incurred and thereby allowing the unsuccessful party or the court to assess whether they are reasonable; and
- (d) upon the successful party providing a sufficient breakdown of its claimed costs, the evidential burden shifts to the unsuccessful party to adduce evidence in rebuttal.

31 In the present case Mingyang has provided a detailed schedule of costs it incurred including the time spent on each task by the lawyers employed to carry them out and their respective hourly rates. Apart from a reference back to Appendix G and a general assertion that the amount claimed was disproportionate to the work involved, W Power has not challenged the basis on which the costs were assessed or submitted that any of the particular amounts claimed were unreasonable. Further, it did not supply a schedule of costs notwithstanding the direction I made on 15 October 2024.

32 In the present case I am of the view the costs incurred in relation to SUM 15 were reasonable and proportionate to the issues involved. SUM 15 involved not only an application to strike out the Statement of Claim, which was contested until the date of the hearing, but also an application to amend the Statement of Claim which involved consideration of what could only be described as a complex pleading including a claim to join as claimant a person who had not consented to joinder. It seems to me that the costs were reasonable and proportionate. I would award costs for SUM 15 of \$121,910.

33 However, I have some hesitation in relation to the balance of post-transfer costs incurred. An amount of \$30,665 is claimed in respect of preparation of case management documents and preparation for and attendance at two case management conferences. The amount claimed also included work done in seeking to have W Power comply with a security order and resisting W Power's application to present further arguments on the security question post-judgment.

34 That claim must be considered in conjunction with the further amount of \$17,395 which is claimed in respect of the preparation and issue of two

requests for further and better particulars, and the preparation and service of a Statement of Further and Better Particulars of its defence.

35 In my opinion, the amounts of \$30,665 and \$17,395 taken together are in excess of what is reasonable and proportionate having regard to the matters involved. Without seeking to apportion the amount between the two claims I would allow \$37,000 in respect of work done post-transfer to the SICC separate to the work done in respect of SUM 15.

Foreign Counsel's Fees

36 I do not propose to set out the parties' submissions on this issue. I have taken them into account.

37 In the pre-transfer period an amount of RMB99,154.50 is claimed in respect of Hong Kong counsel's fees involving consideration of Mingyang's litigation strategy preparing for and attending a without prejudice meeting between the parties and coordinating with Singapore counsel. The work undertaken was said to have occupied 43.10 hours.

38 Whilst I accept that Mingyang was not a Singapore-based company and was brought to this court, I am unable to conclude that amount was reasonably incurred for the purpose of the proceedings. I would allow RMB50,000.

39 However, I would allow the amount of RMB5,452 claimed for Hong Kong counsel in respect of the post-transfer period. This work which occupied 2.90 hours and involved reviewing W Power's witness statements and submissions seems to me to have been reasonably incurred.

40 I would allow the Bulgarian counsel's fees. To understand W Power's claim it was necessary to investigate the relevant Bulgarian regulatory regime and the changes to it which rendered Project 2 unprofitable. It was also appropriate to seek their input on the Bulgarian regulations in responding to W Power's request for further and better particulars.

Other costs claimed

41 As I indicated I have already allowed the costs of \$6,000 in respect of the security application. I would also allow the amount of \$1,895 claimed for dealing with W Power's application to register a Malaysian lawyer as co-counsel in the suit. I would also allow the disbursements claimed.

Conclusion

42 As a result I order that W Power pay Mingyang's costs of the proceedings in the following amounts:

- (a) Costs in the pre-transfer period of \$21,000.
- (b) Costs in the post-transfer period of \$177,401.97, comprising:
 - (i) SUM 15 – \$121,910;
 - (ii) balance of work in the period – \$45,212.17; and
 - (iii) disbursements – \$10,189.80.
- (c) Foreign counsel's fees in the following amounts:
 - (i) Hong Kong counsel – RMB55,452; and
 - (ii) Bulgarian counsel – €7,240.

43 I would also order W Power pay Mingyang's costs of this assessment in an amount of \$5,000 and disbursements of \$270.

Thomas Bathurst
International Judge

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