



Neutral Citation Number: [2020] EWHC 2222 (Comm)

Case No: CL-2019-000646

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/08/2020

Before :

MR CHRISTOPHER HANCOCK QC
SITTING AS A JUDGE OF THE HIGH COURT

Between :

(1) KfW

Claimant

(a German public law institution)

(2) KfW IPEX-BANK GmbH

**(a limited liability company incorporated in
Germany)**

- and -

SANJAY SINGAL

Defendant

Jonathan Davies-Jones QC (instructed by Clifford Chance LLP) for the Claimants
The Defendant did not appear and was not represented.

Hearing date: 29 July 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 18 August 2020 at 10:30 am.

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CHRISTOPHER HANCOCK QC ON COSTS

Mr Christopher Hancock QC sitting as a Deputy Judge of the High Court :

1. The Claimants applied in this matter for summary judgment in respect of claims under three Guarantee and Indemnity Agreements (“**the Guarantees**”). I have today given judgment in their favour, and it is now necessary for me to address issues of costs.
2. Dealing first with the issue of principle, then under CPR Part 44, the general principle is that costs follow the event, and in this case there can be no doubt, in my judgment, that the Claimants have been the successful party. Whilst Mr Singal did not actively defend the claims, his conduct forced the Claimants to incur considerable expense in establishing their entitlement to judgment.
3. Moreover, and in any event, then, under the terms of the Guarantees, the Claimants have a contractual right to all their costs in any event. That is because the Guarantees guaranteed BPSL’s liabilities under the Facility Agreements, and those liabilities include the costs of enforcing rights under both the Facility Agreements and the Guarantees themselves. Thus, clause 10.3 of Facility Agreements 1 and 2 refer to BPSL paying “all costs and expenses, including legal fees, arising in connection with the ... enforcement of ...the Loan Documents or any security or other document relating to the Loan Documents.”, and Clause 17.2 of Facility Agreement 3 refers to BPSL paying “all costs and expenses (including legal fees) ...in connection with the enforcement of ...any rights under the Finance Documents” (and the term “Finance Documents” includes the Guarantees).
4. Where a party has a contractual entitlement to costs:
 - i) Whilst the fact of the contractual right does not take the issue of costs outside the Court’s normal discretionary regime, the Court will normally exercise that discretion in line with the contractual right, unless it has a particular reason not to do so;
 - ii) This approach is underlined by the provisions of CPR Part 44.5, which provides that:

“44.5

(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which –

(a) have been reasonably incurred; and

(b) are reasonable in amount,

and the court will assess them accordingly.

(2) The presumptions in paragraph (1) are rebuttable. Practice Direction 44 – General rules about costs sets out circumstances where the court may order otherwise.

(3) Paragraph (1) does not apply where the contract is between a solicitor and client.”

5. Thus, in *Bank of Baroda v Panessar* [1987] 1 Ch 335 at 355E-F, to which I was referred, the Court regarded a contractual entitlement to “*all costs*” as the same as saying that such costs should be assessed on an indemnity basis.
6. The Claimants invited me therefore to assess the costs of the Application and the other costs of the Action on a summary basis, and in a manner which reflects the Claimants’ express contractual entitlement to “*all*” their costs. The Claimants’ are not seeking interest on costs as they would have been entitled to do (under CPR 44.4.2(6)(g)).
7. The Claimants’ costs Schedule was filed at Court before the Hearing and updated thereafter. The Claimants’ costs of the Application are £200,691.33 and their other costs of the action are £166,983.97. There is in my judgment no reason to depart from the presumption in CPR 44.5 that the Claimants’ costs have been reasonably incurred and are reasonable in amount. In any event, I hold that they were reasonably incurred and were reasonable in amount bearing in mind inter alia: (i) the sums at stake; (ii) the detailed work involved in proving quantum; (iii) the additional costs of serving Mr Singal with documents at different addresses (some in India) to ensure he was fully aware of all the steps in the action; and (iv) the need to consider points of German and Indian, as well as English, law and to liaise with German and Indian lawyers.
8. The Claimants invited me to award them all of the costs of the Application (£200,691.33) and of the Action (£166,983.97.). For the reasons set out above, I so order. For reasons of simplicity, I order that all the costs awarded be payable to the Second Claimant (KfW IPEX).