Seraya Energy Pte Ltd *v* Denka Advantech Pte Ltd and another suit (YTL PowerSeraya Pte Ltd, third party)
[2019] SGHC 18

Case Number : Suit Nos 1328 and 1329 of 2014

Decision Date : 29 January 2019

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Thio Shen Yi SC, Chan Kah Keen Melvin, Koh Li Qun, Kelvin and Hannah Tjoa Kai Xuan (TSMP Law Corporation) for the plaintiff and third party; Tay Twan Lip Philip and Yip Li Ming (Rajah & Tann Singapore LLP) for the defendants.

Parties : Seraya Energy Pte Ltd — Denka Advantech Private Limited — YTL PowerSeraya Pte Limited

Contract – Breach

Contract – Formation

Contract – Discharge – Breach

Contract – Remedies – Damages

Contract – Remedies – Liquidated damages

Contract – Remedies – Mitigation of damage

29 January 2019 Judgment reserved.

Woo Bih Li J:

Introduction

1 I refer to my judgment dated 2 January 2019 in *Seraya Energy Pte Ltd v Denka Advantech Pte Ltd and another suit* [2019] SGHC 02 ("the Judgment"). In my present supplementary judgment on liability, I will use the same definitions as in the Judgment.

2 Pursuant to para 225 of the Judgment, the parties have agreed that the quantum of loss of profit for SE is $390,853.

3 As regards para 229 of the Judgment, there was some dispute between the parties as to whether SE was entitled to charge Denka at the contractual rates up to the respective dates of termination by SE for each of the three ERAs. I have informed the parties that SE is entitled to charge Denka for electricity supplied at the contractual rates up to the respective dates of termination for each of the three ERAs. Furthermore, the term "contractual rates" in para 229 includes contractual interest.

4 SE received a total of $1,850,000 pursuant to a call on three bank guarantees on 22 December 2014.

5 In the light of the above, the parties have agreed that after taking into account:

(a) the quantum of loss of profit as mentioned in para 2 above;

(b) the amounts payable by DSPL or DAPL to SE under the contractual rates, as mentioned in para 3 above; and

(c) the amounts received by SE under the three bank guarantees;

the nett position is as follows:

(i) DAPL is liable to pay SE $77,911.72;

(ii) SE is liable to pay DSPL $1,097.72.

6 Therefore, on SE's claims, I grant judgment as follows: DAPL is to pay SE $77,911.72 forthwith with interest thereon at 5.33% per annum from the date of the Writ of Summons to date of full payment. I make no order on SE's claim against DSPL.

7 I would mention that Denka disputed, as a matter of principle, that SE should be entitled to any interest on any amount that it might be found liable to pay SE even though the quantum of interest might not be large. Its main argument was that SE had conducted its case in such a manner that caused protracted delay and that SE was egregious in its endless rounds of frivolous applications and amendments and appeals.

8 On the other hand, SE was prepared to accept interest at the rate of 5.33% per annum from the date of the Writ of Summons on whatever sum was payable to it under my judgments and likewise to pay interest at the same rate from the date of the Writ of Summons on whatever sum was payable by it.

9 I was not persuaded that SE's conduct was such as to disentitle it from interest and hence I have allowed interest to SE at the rate of 5.33% per annum from the date of the Writ of summons to full payment.

10 As for Denka's counterclaims against SE, the first set of counterclaims was for a declaration of the validity of various defences. These counterclaims should not have been made in the first place. If any defence had been successful, it would mean that SE's claim would have been dismissed. Therefore, there was no need for any counterclaim to declare the validity of any defence. The tendency of some lawyers to throw in such a counterclaim which serves no useful purpose is to be discouraged.

11 The second set of counterclaims sought a rescission of the three ERAs and/or damages for misrepresentation and/or rectification of the three ERAs so that Denka's obligation to purchase electricity under the three ERAs would continue only if Denka was still enjoying the benefits under the Concession Offer and the SSA had been entered into. This set of counterclaims overlapped with the first set. If Denka had established its allegations in respect of liability, SE's claim would have been dismissed and it was likely that there would have been no need for the second set of counterclaims.

12 The next counterclaim was for damages in respect of contractual electricity charges which Denka was to pay SE because of SE's alleged delay in transferring Denka's account to MSSL for ERA 99 and ERA 101. However, the only financial effect of any alleged delay by SE to transfer any of

Denka's accounts to MSSL was that Denka might still be liable to pay SE the contractual rates in the meantime. Either Denka was so liable or not at all. There was no other damage to Denka. If Denka was not liable, SE's claim for payment under the contractual rates would fail. There was again no need for Denka to make a counterclaim for damages especially since Denka was also making a counterclaim for the return of money received by SE under the three bank guarantees which I will address below. The counterclaim in respect of contractual electricity charges fails. SE was not obliged to accept Denka's repudiation in the first place. In any event, SE did terminate and was entitled to terminate the three ERAs for the reasons and on the dates mentioned in the Judgment (see [45e], [48] and [121]–[144] of the Judgment). There was no undue delay in transferring Denka's account to MSSL for ERA 99 and ERA 101. As mentioned at [3] above, SE is entitled to charge Denka at contractual rates for the three ERAs up to the respective dates of termination by SE.

13 Denka's final counterclaim was for damages in respect of amounts which SE had received under various bank guarantees. In reality, this was a counterclaim for SE to repay Denka any amount which SE was not entitled to receive under the bank guarantees and not for damages as such. In the light of what I have said above, I grant judgment on part of this counterclaim as follows: SE is to pay DSPL $1,097.72 forthwith with interest thereon at 5.33% per annum from the date of the Writ of Summons to date of full payment.

14 Accordingly, save for this judgment in favour of DSPL, all the counterclaims of DSPL and DAPL against SE are dismissed.

15 Denka's claim against YTL as the third party is dismissed.

16 YTL's counterclaim against Denka is dismissed.

17 For the avoidance of doubt, the time to appeal to the Court of Appeal in respect of the Judgment and in respect of this supplementary judgment runs from the date of this supplementary judgment.

18 On the question of costs, parties are to file and exchange their written submissions by 14 February 2019. Each submission is limited to eight pages using the same font size and spacing as this supplementary judgment. The court may disregard the whole or part of any submission which fails to comply with this direction.