Claim No. CFI 055/2020

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

NS INVESTMENTS LTD

Claimant

and

AJAY SETHI

Defendant

AMENDED ORDER WITH REASONS OF H.E. DEPUTY CHIEF JUSTICE ALI AL MEDHANI

UPON the Part 7 Claim dated 28 June 2020 (the "Claim")

AND UPON the Judgment of H.E. Deputy Chief Justice Ali Al Madhani dated 27 September 2023 (the "Judgment")

AND UPON the Order with Reasons of H.E. Deputy Chief Justice Ali Al Madhani dated 12 March 2024 refusing the Claimant's Appeal Notice dated 18 October 2023 (the "First Permission Application")

AND UPON the Order with Reasons of H.E Chief Justice Zaki Azmi dated 15 May 2024 refusing the Claimant's second Appeal Notice (the "Second Permission Application")

AND UPON the Defendant's Application No. CFI-055-2020/8 dated 12 December 2024 seeking an order for the Claimant to pay 50% of the Defendant's legal costs on account (the "Costs Application")

AND UPON reviewing all relevant material added on to the Court file

AND PURSUANT TO The Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The Costs Application is granted.

2. The Claimant shall pay 50% of the Defendant's legal costs on account within 7 days from the date of issue of this Order.

3. The Claimant shall also pay the Defendant the costs of the Costs Application to be assessed by the Registrar if not agreed.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 7 February 2025
At: 10am

SCHEDULE OF REASONS

1. The Defendant of the Part 7 Claim has submitted this Costs Application seeking an order for the Claimant of the Part 7 Claim to pay 50% of the Defendant's costs on account within 7 days of issue of the sought order, pursuant to Rule 38.14 of the Rules of the DIFC Courts (the "RDC").

2. As the case has concluded, I see no reason to rehash the procedural or factual background.

3. The costs value sought amounts to USD 445,450; half of M.B. Kemp LLP's submitted legal fees.

4. For reference, RDC 38.14 reads:

> "Where the Court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed."

5. In accordance with the witness statement of Salah Mattoo dated 21 November 2024, the Defendant has repeatedly attempted to reach amicable resolution for payment of costs with the Claimant in August 2024 and September 2024, which was refused. This submission forms the basis of necessitating the Costs Application.

6. In support of engaging RDC 38, the Defendant submits that as it has been successful in every application within these proceedings up to and including in the Court of Appeal, and it is the entitled party in proceedings, and the Claimant has failed to cover the costs as directed, the Court should permit the Costs Application.

7. I find this to be a straightforward matter; the Claimant has facilitated unnecessary delay in paying owed costs to the entitled party. As the

Defendant has succeeded on every application made, their entitlement is not contestable.

8. I also find that the request for 50% within 7 days of the date of issue of this Order is reasonable and proportionate on account of the Claimant's behaviour and avoidance in amicable resolution. The Defendant has shown that it has made several attempts to claim its costs, only to be met with refusal.

9. It is also within the Court's power to order costs on account to be paid before assessment, as per RDC 38.14, on which the Defendant relies.

10. On review of M.B. Kemp LLC's Legal Fee breakdown, I also concur that the amount accumulated and subsequently sought is fair, reasonable and proportionate in accordance with the precedent set in *China State Construction Engineering Corporation (Middle East) et al* [2024] CA 009 2024 by H.E. Chief Justice Wayne Martin at [48-49], whereby quantum amounts must be proportionate and necessary in balance with the work taken for the relevant applications and/or case processes.

11. In this instance, the breakdown of costs on the record is in line with the expected expenditure in regard to the value of the case, the number of applications made and defended, and the average costs of engaging counsel.

12. Therefore, I order that the Claimant in the Claim must pay 50% of the Defendant's costs on account within 7 days from the date of issue of this Order, amounting to USD 445,450.00 only, pursuant to RDC 38.14 by way of interim payment. The amount on account stands until the final assessment of cost by the Court if not agreed by the parties.