IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE

IN THE COURT OF FIRST INSTANCE

BETWEEN

UNION BANK OF INDIA (DIFC BRANCH)

Claimant

and

(1) VELOCITY INDUSTRIES LLC
(2) VELOCITY VENTURE LTD.
(3) UMAKU TRADE INVEST LIMITED
(4) VIJEY KAPOOR
(5) RAVI KUCHIMANCHI
(6) RAJINDER MAKHIJANI
(7) PARAG GUPTA
(8) DEVIKA SWATI

Defendants

ORDER OF JUSTICE LORD ANGUS GLENNIE

UPON the Part 7 Claim Form dated 17 March 2020 (the "Claim")

AND UPON hearing Counsel for the Claimant and Counsel for the Defendants at the Trial held before me from 30 May to 3 June 2022 and from 12 to 16 September 2022

AND UPON reviewing all relevant material filed onto the Court file

AND UPON reviewing the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The Claimants shall pay 90% of the costs incurred by the Fifth, Sixth, Seventh and Eighth Defendants in resisting the Claimants' claims against them, such costs to be assessed by the Registrar on the standard basis if not agreed.

2. That there be no order in respect of the costs incurred by the Defendants or any of them in making or resisting claims as between themselves.

3. That the Defendants' applications for an interim payment on account of costs are refused *in hoc statu,* with liberty to the Defendants to renew such applications if circumstances change.

Issued By:
Delvin Sumo
Assistant Registrar
Date of issue: 27 September 2023
At: 2pm

SCHEDULE OF REASONS

1. General rules about costs are set out in RDC Part 38. The general rule (RDC 38.7(1)) is that the unsuccessful party will be ordered to pay the costs of the successful party. But the Court must have regard to all the circumstances, including (i) the conduct of the parties and (ii) whether a party has succeeded on part of his case even if he has not been wholly successful (RDC 38.8(1) and (2)).

2. In this case the Claimants have been unsuccessful (except as regards D1, against whom no costs order is sought). But they were successful in respect of two matters which were raised at or just before the beginning of the trial. These were the VCR issue and the conflict of interest issue. They occupied a significant amount of time and led to lengthy written submissions. The VCR issue also led to (no doubt expensive) expert evidence being obtained and adduced. I consider that in respect of their success on these two issues the Claimants should be entitled to a discount of 10%.

3. The Defendants brought claims amongst themselves. They were all contingent upon a finding of liability to the Claimant, so in the result I did not have to decide them. I consider it would be unfair to the Claimants to make them pay the expenses of these claims and cross-claims. Nor, since I have not had to adjudicate on them, would it be right to make one defendant liable for the costs of the others in this regard. Of course if the Claimants are given permission to appeal and do appeal successfully, these matters will be open for reconsideration. But unless and until that happens, I consider that the fair course is to make no order as regards these costs.

4. I have ordered costs to be assessed on the standard basis. I do not think the case falls within the category of case justifying an order for costs

on an indemnity basis.

5. I have declined *in hoc statu* to make any order for an interim payment on account of costs. This is for a number of reasons. While some Defendants have put in a quantified claim, supported by vouching, others have not. There has been no proper opportunity for even a quick assessment of the likely costs. And while the Claimant is a Bank and presumably good for the money, that is not necessarily true of the Defendants - if it were successful on an appeal, would the Bank be able to recover any payment made by it on account of costs. The better course is to wait until there has been a proper opportunity to consider the costs claimed by the various parties and see what happens 4 of 4 with the proposed appeal. I have made my order in hoc statu so that matters can be re-visited once more is known.