

SUPREME COURT OF SINGAPORE

9 January 2020

Case summary

Singapore International Commercial Court Suit No 3 of 2017

DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others

Decision of Kannan Ramesh J, Roger Giles IJ and Anselmo Reyes IJ

Outcome: The Court decided the bases of assessment of damages for breaches of non-compete and non-solicitation provisions in an agreement governing a joint venture in the dye industry. Damages were ordered in relation to (1) FOTL, in respect of price reductions for the delivery of dyes up to and including the January 2016 delivery; (2) Hayleys, for the period 2012 to 2018 on the basis of an average of DyStar’s 2009 level of sales, discounted by 25%; and (3) Brandix, in respect of foregone price increases of 10% for a particular group of dyes for deliveries in 2014. The parties were directed to provide an agreed statement of the damages calculated in conformity with the Court’s reasons.

Background

DyStar Global Holdings (Singapore) Pte Ltd (“DyStar”) became a joint venture company in the dye industry. In *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 and *Senda International Capital Ltd v Kiri Industries Ltd and others and another appeal* [2019] 2 SLR 1, it was held that Kiri Industries Limited (“Kiri”) had breached non-compete and non-solicitation provisions in the agreement governing the conduct of the joint venture (the “SSSA”), and interlocutory judgment was entered in favour of DyStar for damages to be assessed. The breaches related to three customers to which DyStar sold dyes: FOTL in Morocco; Hayleys in Sri Lanka; and Brandix also in Sri Lanka.

The Court’s decision

Kiri solicited FOTL’s business over the period February – June 2015, its last approach being on 30 June 2015. No business was done between Kiri and FOTL (at [5] and [12]). DyStar claimed damages in respect of FOTL on the basis that it had to reduce its prices for a particular dye in order to retain FOTL’s significant purchases of that dye. It was held that the price reductions up to and including the January 2016 delivery were caused by Kiri’s breaches of the SSSA, but that FOTL’s conduct thereafter in continuing to represent to DyStar, incorrectly, that competing offers were being received from Kiri broke the chain of causation for the price reductions for subsequent deliveries (at [30], [31], [38] and [39]). Damages were to be calculated on the reductions for the deliveries up to and including the January 2016 delivery (at [41]).

Over the period 2012 to 2018, Kiri sold significant quantities of dyes to Hayleys (at [46]). DyStar claimed damages in respect of Hayleys on the basis that it lost sales it would otherwise have made to Hayleys, although it did not claim that it lost all the sales made by Kiri (at [43]). It was held that Kiri’s breaches of the SSSA had caused DyStar to lose sales (at [52]), but not to the extent for which DyStar contended. Damages were to be calculated on the basis that, but for the breaches, DyStar would have made sales to Hayleys over the period on average at its 2009 level of sales, discounted by 25% (at [59]).

Kiri promoted its dyes to Brandix, and sold small quantities to it. DyStar claimed damages in respect of Brandix on the basis that it was unable to increase its prices lest it lose the business to Kiri (at **[66]**). It was held that Kiri's breaches of the SSSA had caused DyStar to be unable to increase prices on an occasion in September 2013 (at **[75]**), but that there had been increases thereafter, and the extent and duration of the inability caused thereafter was not clear; however, it was accepted that a loss had been suffered and that damages should be assessed even if with estimation (at **[78]** and **[79]**). Damages were to be calculated on the basis that DyStar would otherwise have been able to increase its prices by 10% for a particular group of dyes for deliveries in 2014 (at **[79]** and **[80]**).

This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.