

## SUPREME COURT OF SINGAPORE

7 June 2019

### Case summary

*DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others [2019] SGHC(I) 09*

*Suit No 3 of 2017 (Summons No 26 of 2019)*

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### Decision of the Singapore International Commercial Court (Anselmo Reyes IJ):

**Outcome: The Singapore International Commercial Court dismisses an application for stay of execution of its judgment for the payment of sums.**

### Background

1 This application arose from the orders issued by the Court in an earlier judgment, *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit [2018] 5 SLR 1* (“the Judgment”) (at **[1]**).

2 In the Judgment, the Court ordered (among other matters) that: (1) Senda International Capital Limited (“Senda”) purchase the 37.57% shareholding held by Kiri Industries Limited (“Kiri”) in DyStar Global Holdings (Singapore) Pte Ltd (“DyStar”) on the basis of a valuation to be assessed (“the buy-out order”), and (2) Kiri pay DyStar the sums of €1.7 million and S\$443,813 based on earlier agreements, with interest (“the payment order”) (at **[2]**).

3 In this application, Kiri sought a stay of execution of the payment order, pending the valuation and payment in the buy-out order. Kiri’s application was prompted by DyStar applying to wind up Kiri on account of its failure to comply with DyStar’s demands for payment of the sums in the payment order. Kiri initially attempted to have DyStar’s winding up application struck out as an abuse of process, but Kiri’s summons for doing so was rejected by Vinodh Coomaraswamy J (at **[3]**).

### The court’s decision

4 First, Kiri relied on the Oral Judgment of the Court dated 8 January 2019 (“the Oral Judgment”), which stated at [10]: “[A]ny sum that Kiri will have to pay DyStar will be factored in the ultimate valuation of Kiri’s shareholding.” Kiri submitted that the Court must have envisaged that the sums in the payment order were to be “factored in the ultimate valuation of Kiri’s shareholding”. The Court rejected this submission. The Oral Judgment was simply intended to convey the obvious point that a valuation of Kiri’s shares would have to take account of (“factor in”) any sums remaining due and owing by Kiri to DyStar. The Court did not have in mind or grant a stay of execution of the payment order (at **[4(a)], [6]–[7]**).

5 Second, Kiri submitted that a winding up order would be inconsistent with, and subvert, the buy-out order. It submitted that Kiri’s shares in DyStar being Kiri’s only asset in Singapore, DyStar is in effect attempting to seize the shares that the Court directed Senda to buy, and it

was unclear how the liquidator would value or sell these shares if seized. The Court likewise rejected this submission. If Kiri chooses not to comply with DyStar's demands, and execution is levied against its shares, this would be a situation that Kiri will have brought upon itself. This is so even if the shares are sold in part to meet the debt due to DyStar. The buy-out order does not give Kiri a licence to ignore its obligations to DyStar, including its debts. Further, Kiri's submissions as to what a liquidator may or may not do were highly speculative. For instance, even if a winding up order meant that the buy-out order can only be executed with leave of court under s 259 of the Companies Act (Cap 50, 2006 Rev Ed), it is unclear why the court would not give leave, since presumably the grant of leave would be favourable to Kiri's creditors. The liquidator may also be remiss in its duties to the company and the creditor if it sells the shares for a significantly lesser amount than the valuation under the buy-out order (at **[4(b)]**, **[8]**–**[12]**).

6 Third, Kiri submitted that any delay in payment would cause no prejudice to DyStar, since it was only a matter of time before DyStar will receive the sums due to it; on the other hand, there is the possibility of prejudice to Kiri. This is because DyStar and Senda are both controlled by Zhejiang Longsheng Group Co., Ltd ("Longsheng"), and while Longsheng would benefit indirectly from a payment now by Kiri to DyStar, there is a significant risk that Longsheng will later cause Senda not to comply with the buy-out order. The Court also rejected this submission. The absence of prejudice is not the starting point for a decision whether or not to grant a stay. The court does not normally deprive a party of the fruits of its victory in litigation in the absence of good reason. As for the argument that Longsheng controlled both DyStar and Senda, the Court had doubts that this was a case in which the court should look behind the corporate veil. In any case, the mere fact that Senda had said that the Court's order in (1) would be a significant burden on it did not mean that it would disobey the Court's order. There was therefore no good reason justifying the grant of a stay in the present circumstances (at **[4(c)]**, **[13]**–**[16]**).

7 There was therefore no good reason justifying the grant of a stay in the present circumstances. The Court dismissed the application for stay of execution (at **[17]**–**[18]**).

8 Counsel for both Kiri and DyStar sought to rely on the costs guidelines in Appendix G to the Supreme Court Practice Directions. Counsel for Kiri characterised the application as analogous to an application for stay of proceedings pending appeal, for which the costs guideline was \$2,000–\$6,000, whereas counsel for DyStar submitted that the application was more comparable to a "complex or lengthy application fixed for special hearing (duration of 3 hrs)", for which the costs guideline was \$4,000–\$15,000. The Court took the view that the present application could be dealt with in a relatively short hearing. The Court therefore ordered that Kiri pay DyStar \$5,000 for its costs, inclusive of disbursements (at **[19]**).

*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.*