SUPREME COURT OF SINGAPORE

12 March 2019

Media Summary

Singapore International Commercial Court Suit No 4 of 2017
Kiri Industries Ltd v Senda International Capital Ltd and another **[2019] SGHC(I) 02**

Background

1 This case arose out of directions issued by the Court at a case management conference held on 23 November 2018 ("the CMC"). The CMC was held pursuant to the Court's decision in an earlier judgment, *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 ("the Main Judgment"), in respect of Suit No 3 of 2017 ("Suit 3") and Suit No 4 of 2017 ("Suit 4") (at **[1]**).

2 In the Main Judgment, the Court held that Kiri Industries Limited ("Kiri") succeeded in its claim for minority oppression, and that Senda International Capital Limited ("Senda") purchase Kiri's 37.57% shareholding ("Kiri's shareholding") in DyStar Global Holdings (Singapore) Pte Ltd ("DyStar"). The purchase was to be based on a valuation to be assessed as of the date of the Main Judgment, and it was stipulated that the valuation of Kiri's shareholding should take into account losses arising from various oppressive acts by Senda. The Court also allowed in part DyStar's claims in Suit 3 and Senda's counterclaims in Suit 4. In particular, the Court entered interlocutory judgment with damages to be assessed for DyStar and Senda against Kiri for breaches of the Share Subscription and Shareholders Agreement ("the SSSA") (at **[2]**).

3 At the CMC, several issues were addressed, and the Court gave directions dealing with those issues. In relation to how the valuation of Kiri's shareholding would be conducted, it was common ground between the parties

that the court should undertake the valuation, with each party appointing its own independent expert(s) to assess the value of Kiri's shareholding, and the court then making the final determination. In relation to whether Kiri was entitled to interest on the amount payable to it by Kiri pursuant to the buy-out order, the Court reserved its ruling until after its decision on the valuation of Kiri's shareholding (at **[3]**–**[4]**).

4 The Court decided that a minority discount for lack of control should not be factored in the valuation of Kiri's shareholding. The Court also rejected Senda's submission that it was necessary for further evidence to be adduced before the Court could determine the issue of whether a minority discount ought to be factored in the valuation of Kiri's shareholding. The findings necessary to arrive at a determination on whether a minority discount ought to be given had already been made in the Main Judgment. On the basis of those findings, Senda's conduct fell within the situations in which the Court would not usually order a minority discount. In particular, it was clear that the common thread underpinning the findings of commercially unfair conduct was that they were designed to extract benefits or value out of DyStar. It was conduct that was directed at worsening the position of the minority as shareholders, and which compelled the minority shareholder to seek a buy-out. It was also clear that Senda's oppressive conduct was entirely responsible for the breakdown in the parties' relationship. It was not appropriate or necessary for Senda to adduce further evidence as the matters it sought to adduce evidence on were within the issues canvassed at trial, and were dealt with in the Main Judgment (at **[8]**–**[17]**).

5 The Court rejected Senda's submission that a 20% discount ought to be applied to the assessed fair value of Kiri's shareholding, pursuant to the termination provisions in the SSSA. In particular, Senda relied on cl 16 of the SSSA, contending that Kiri's breaches of the SSSA constituted "material breach[es]" of the SSSA, which gave Senda the right to buy-out Kiri's shares at a 20% discount. The Court rejected this submission as Senda had never sought to exercise the contractual right under cl 16 the SSSA to purchase Kiri's

shareholding at a 20% discount. The Court emphasised that the buy-out order was made as a result of the acts of oppression that had been found, and it was contrived to say that the valuation should also take on board a discount which had no connection to Kiri's cause of action for minority oppression and the relief that was ordered (at **[18]**–**[24]**).

6 The Court also set timelines for the parties to file and exchange the affidavit evidence of their expert witnesses and witnesses of fact, including any responsive affidavit evidence. The Court clarified that the evidence of the witnesses should relate to both the valuation of Kiri's shareholding and the assessment of the loss caused by the various acts of oppression by Senda that had been found in the Main Judgment. The Court did not accept Senda's submission that determination of the price at which Senda was to buy-out Kiri's shareholding ought to be in two stages namely, an assessment of the loss caused by Senda's acts of oppression as found by the Court, and the valuation of Kiri's shareholding. It held that the assessment of the loss caused by Senda's acts of oppression was very much intertwined with the valuation of Kiri's shareholding, and there was no useful purpose served in splitting the valuation exercise into two stages as Senda had suggested (at **[25]**–**[28]**).

7 On the matter of costs, the Court directed that (at **[29]**–**[33]**):

(a) Kiri was entitled to full costs on its claim in Suit 4. Although Kiri had abandoned or failed on various allegations of oppression, it had succeeded on the fundamental issue in the suit – *ie*, that it was being oppressed by Senda. Further, whether Kiri's claims were analysed in respect of the various categories of oppressive conduct alleged, or in respect of the individual allegations within those categories, Kiri had more than substantially succeeded in establishing the allegations of oppression.

(b) No order as to the costs of the counterclaim in Suit 4.

(c) In respect of Suit 3, while DyStar had succeeded in some respects in its claims against Kiri, it failed in establishing most of its allegations, in particular, as regards breaches of the non-compete and non-solicitation clauses in the SSSA. As such, the Court ordered that DyStar was entitled to, as against Kiri, 10% of the costs of its claim. However, as DyStar failed entirely in its claims against the other defendants to Suit 3, the other defendants were entitled to their costs against DyStar.

(d) All such costs were to be taxed if not agreed.

This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.