SUPREME COURT OF SINGAPORE

12 February 2020

Case summary

Senda International Capital Ltd v Kiri Industries Ltd
[2020] SGCA(I) 01
Civil Appeal No 23 of 2019

Decision of the Court of Appeal (delivered by Judge of Appeal Judith Prakash):

Outcome: CoA dismisses appeal against SICC's decision that no minority discount should be factored into the valuation of the first respondent's shares in the sixth respondent. CoA allows appeal in part, awarding 50% of the costs of SICC Suit No 3 of 2017 to the sixth respondent.

Pertinent and significant points of the judgment

- CoA emphasises that the appellate court would not disturb a trial judge's exercise of discretion unless the judge erred in some way, such as by exercising the discretion while under a mistake of law or misapprehension of the facts or by taking into account irrelevant factors or failing to take into account relevant factors: at **[32]**

Introduction

1 Senda International Capital Ltd ("Senda") was ordered by the Singapore International Commercial Court ("the SICC") to buy out Kiri Industries Ltd's ("Kiri") shares in DyStar Global Holdings (Singapore) Pte Ltd ("DyStar"). This was Senda's appeal against the SICC's decision that no minority discount should be factored into the valuation of Kiri's shares in DyStar.

Background to the appeal

2 DyStar was the joint venture company between Senda, the appellant, and Kiri, the first respondent. In *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 ("the *Main Judgment*") and *Senda International Capital Ltd v Kiri Industries Ltd and others and another appeal* [2019] 2 SLR 1 ("the *CA Judgment*"), it was held that Kiri had breached the non-compete and non-solicitation clause in the agreement governing the conduct of the joint venture, and that Senda had engaged in oppressive conduct. Senda was thus ordered to buy out Kiri's shares in DyStar.

3 In *Kiri Industries Ltd v Senda International Capital Ltd and another* [2019] 4 SLR 1, the three-judge coram ("the Judges") considering the issue of whether in the valuation of Kiri's shares for the purposes of the buy-out a minority discount should be applied held, *inter alia*, that no minority discount should be applied as: (a) Senda's oppressive conduct was directed at worsening Kiri's position as a shareholder so as to compel it to sell out; and (b) Senda's oppressive conduct was entirely responsible for the breakdown in the parties' relationship. In relation to costs, DyStar was awarded 10% of the costs of its claim in SICC Suit No 3 of 2017 ("Suit 3"), and Kiri was awarded full costs on its claim in SICC Suit No 4 of 2017 ("Suit 4"). These decisions were made before the *CA Judgment* was released.

4 On appeal, Senda submitted that the Judges had erred in disallowing further evidence on whether a minority discount should be awarded. Senda argued that the Court of Appeal (in

the *CA Judgment*), found instances of Kiri's breach of the non-compete and non-solicitation clause in relation to four more customers of DyStar, and that contributed to the breakdown in the parties' relationship. In response, Kiri argued that all the relevant information were before the Judges and adopted the Judges' reasoning for their decision not to order a minority discount.

5 As regards to costs, Senda submitted that there should be a discount of a third of the amount of costs awarded to Kiri in Suit 4. Kiri's submission was that the Judges' costs orders for Suit 4 were correct since it had succeeded on its claim for minority oppression. Further, DyStar submitted that its costs in Suit 3 should be adjusted from 10% to 70% in the light of the *CA Judgment*, which held that Kiri had breached the non-compete and non-solicitation clause in relation to four more customers of DyStar. Kiri agreed to an increase in DyStar's costs, but argued that it should be minimal.

The court's decision

6 The Court of Appeal held that as the issues on appeal related to the Judges' exercise of discretion, the court would not disturb the Judges' decisions unless they had erred in some way, such as by exercising the discretion while under a mistake of law or misapprehension of the facts or by taking into account irrelevant factors or failing to take into account mandatory relevant factors. An appellate court would not upset the decision of a lower court just because they were inclined to exercise the discretion differently: at **[32]**.

7 The matters on which Senda sought to adduce further evidence were within the issues canvassed at trial and were dealt with in the *Main Judgment*: at **[34]**. The Court of Appeal found no error in the assessment of the facts by the Judges. The Judges were aware of Kiri's breach of the non-compete and non-solicitation clause in relation to FOTL, one of DyStar's customers, and held that it did not justify the imposition of a minority discount: at **[36]**–**[37]**.

8 The Court of Appeal held that the four additional instances of breach on Kiri's part established on appeal made no difference to the overall circumstances of the case to justify an order of a minority discount. This was because Senda's oppressive conduct was entirely responsible for the breakdown in the parties' relationship, and was directed at worsening the position of Kiri as shareholder so as to compel it to sell out. There was no evidence that Kiri's competitive conduct contributed to the breakdown in the parties' relationship. Kiri's misconduct would also be accounted for in the damages that Kiri would have to pay to DyStar for its breach of the non-compete and non-solicitation clause: at **[38]**–**[39]** and **[46]**.

9 The Court of Appeal rejected Senda's submission that a minority discount should be applied for Kiri's lack of management participation. It was Senda's position in the trial that Kiri was only expected to play a limited role in DyStar's management. Further, Kiri played an active role in management up to 2012, provided critical support to DyStar, and it was Senda that excluded Kiri from management. In any event, after the buy-out, full ownership of DyStar (and hence its value) would be credited to Senda: at **[42]**–**[44]**

10 The Court of Appeal held that there was no reason to interfere with the Judges' decision that Kiri was entitled to its full costs in Suit 4, as Kiri had succeeded on the fundamental issue in the suit, *ie*, that it was oppressed by Senda. The Court of Appeal awarded 50% of the costs of DyStar's claim in Suit 3 to account for the fact that four more instances of breach of the non-compete and non-solicitation clause by Kiri were established on appeal: at **[49]**–**[50]**

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.