IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(I) 4

Suit No 4 of 2017

Between

Kiri Industries Ltd

… *Plaintiff*

And

(1) Senda International Capital Ltd
(2) DyStar Global Holdings (Singapore) Pte Ltd

… *Defendants*

JUDGMENT

[Companies — Shares — Valuation of shares]

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v
Senda International Capital Ltd and another

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27 February 2023

3 March 2023 Judgment reserved.

Kannan Ramesh JAD (delivering the judgment of the court):

Introduction

1 This is our decision on the valuation of Kiri Industries Ltd's ("Kiri") 37.57% shareholding in DyStar Global Holdings (Singapore) Pte Ltd ("DyStar") pursuant to a buy-out order at a price to be assessed as at the valuation date of 3 July 2018.

2 The factual backdrop and procedural history of the case can be found in the summary provided for in *Kiri Industries Ltd v Senda International Capital Ltd and another* [2023] SGHC(I) 3 ("*Kiri v Senda (Remitted Issue)*") at [1]–[5]. This matter concerns the longstanding litigation between Kiri and Senda International Capital Ltd ("Senda"). In gist, the Singapore International Commercial Court ("SICC") previously found that Senda was liable for oppressive conduct against Kiri and granted a buy-out order. Senda was ordered

to purchase Kiri's 37.57% shareholding in DyStar. In arriving at the value of Kiri's shareholding in DyStar for the purposes of the buy-out order, one of the issues raised was the compensation to be paid for Zhejiang Longsheng Group Co, Ltd's ("Longsheng") unauthorised use of DyStar's patent to produce certain dyes. The SICC previously found that the appropriate form of compensation was embedded in the concept of a notional licence fee, *ie*, how much Longsheng would have to pay DyStar to obtain its consent to produce the dyes using the patent (*Kiri Industries Ltd v Senda International Capital Ltd and another* [2021] 3 SLR 215 at [183]). The notional licence fee was to be assessed based on the quantity of infringing products produced by Longsheng falling within the scope of the patent (the "Related Products").

3 Kiri's shares in DyStar were eventually valued at US$481.6m by the SICC on 21 June 2021 (*Kiri Industries Ltd v Senda International Capital Ltd and another* [2021] 5 SLR 111 at [3]). Kiri and Senda both appealed to the Court of Appeal against various aspects of the SICC's decision. On appeal, the Court of Appeal remitted the issue on the value of the notional licence fee back to the SICC to be reassessed based on the best available evidence that was before it on the quantity of the Related Products (*Kiri Industries Ltd v Senda International Capital Ltd and another and other appeals and other matters* [2022] SGCA(I) 5 ("*Kiri v Senda (Valuation) (CA)*") at [292]).

4 In *Kiri v Senda (Remitted Issue)* at [38], the SICC, upon a robust review of the available evidence, found that the annual tonnage of the Related Products for the purposes of calculating the notional licence fee was 53,550 tonnes. Thus, based on this finding, the SICC invited the parties to submit their revised calculations on the following (at [39]):

(a) the notional licence fee based on 53,550 tonnes for the Related Products; and

(b) the valuation of Kiri's shareholding in Dystar taking into account the notional licence fee, and after adjusting for the fact that discount for lack of marketability is not a relevant adjustment as found by the Court of Appeal (*Kiri v Senda (Valuation) (CA)* at [245]).

The final valuation of Kiri's shares in DyStar

5 On 27 February 2023, pursuant to our directions, Kiri's valuation expert, Ms Harfouche, revised her calculations and arrived at the following figures (which were provided to Senda together with Ms Harfouche's updated model, and Senda did not have any comments on these):

(a) US$25.77m for the notional licence fee based on 53,550 tonnes for the Related Products; and

(b) US$603.8m for the valuation of Kiri's shareholding in DyStar based on the notional licence fee (without any discount for lack of marketability).

These were taken to be the parties' agreed calculations. Thus, based on the above, we adjudge the final valuation of Kiri's shares to be **US$603.8m** for the buy-out order.

6 We invite the parties' positions on costs and any consequential directions that they may wish to seek. The parties are to take note of the Court of Appeal's decision in *Senda International Capital Ltd v Kiri Industries Ltd* [2022] SGCA(I) 10 regarding the principles for the assessment of costs for SICC proceedings in this regard.

Kannan Ramesh
Judge of the Appellate Division

Roger Giles
International Judge

Anselmo Reyes
International Judge

Dinesh Dhillon Singh, Lim Dao Kai, Margaret Joan Ling Wei Wei and Dhivya Rajendra Naidu (Allen & Gledhill LLP) for the plaintiff;
Toh Kian Sing SC, Cheng Wai Yuen Mark, Chew Xiang, Soh Yu Xian Priscilla and Lim Wee Teck Darren (Rajah & Tann Singapore LLP) for the first defendant;
See Chern Yang, Audie Wong Cheng Siew and Teng Po Yew (Drew & Napier LLC) for the second defendant.