IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 14

Suit No 4 of 2017 (Summons No 24 of 2023)

Between

Kiri Industries Ltd

… *Plaintiff*

And

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

… *Defendants*

GROUNDS OF DECISION

[Companies — Oppression — Minority shareholders]

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Kiri Industries Ltd
v
Senda International Capital Ltd and another

[2024] SGHC(I) 14

Singapore International Commercial Court — Suit No 4 of 2017 (Summons No 24 of 2023)
Kannan Ramesh JAD; Roger Giles IJ; Anselmo Reyes IJ
24, 25 January, 23 February 2024

20 May 2024

Kannan Ramesh JAD (delivering the grounds of decision of the court):

Introduction

1 The central question in the application before us, SIC/SUM 24/2023 ("SUM 24"), concerned the order this court should make in light of the purported inability of Senda International Capital Ltd ("Senda") to comply with an order to buy out (the "Buy-Out Order") the 37.57% shareholding held by Kiri Industries Ltd ("Kiri") in DyStar Global Holdings (Singapore) Pte Ltd ("DyStar") at the price of US$603.8m.

2 We briefly detail the procedural history of this suit.

3 In *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 (the "*Main Judgment*"), delivered on 3 July 2018, we held that Senda, the majority shareholder in DyStar, had

engaged in oppressive conduct against Kiri. We ordered Senda to buy out Kiri's shareholding at a valuation to be assessed. The findings of oppression were upheld on appeal in *Senda International Capital Ltd v Kiri Industries Ltd and others and another appeal* [2019] 2 SLR 1.

4 The valuation tranche of the proceedings was protracted, concluding on 3 March 2023 with our decision in *Kiri Industries Ltd v Senda International Capital Ltd and another* [2023] SGHC(I) 4 that Kiri's shareholding was valued at US$603.8m as of 3 July 2018 (at [5]).

5 Senda did not comply with the Buy-Out Order, for reasons it claimed were out of its control. As such, Kiri brought SUM 24 for substitute relief. Kiri initially argued for a staged process involving a partial buy-back of its shareholding by DyStar, with the balance to be purchased either by a further buy-back by DyStar or a buy-out by Senda. However, counsel for Kiri, Mr Dinesh Dhillon ("Mr Dhillon"), clarified at the hearing that Kiri had no fundamental objections to the alternative proposal by Senda and DyStar that the entire shareholding in DyStar be sold *en bloc*. The dispute then was over the terms of such a sale, the division of the proceeds of sale, and whether interest should accrue on the buy-out price.

6 In the circumstances, we considered that an *en bloc* sale of Kiri's and Senda's shareholdings in DyStar would be the appropriate order. On 23 February 2024, we ordered the *en bloc* sale and appointed Mr Matthew Stuart Becker, Mr Lim Loo Khoon and Mr Tan Wei Cheong of Deloitte & Touche LLP (the "Receivers") as joint and several receivers to conduct the sale and take all necessary steps in this regard. DyStar and Senda were directed to cooperate with and render all assistance that the Receivers may require for this

purpose including the provision of documents and information. The Receivers' costs and disbursements were ordered to be paid out from the proceeds of the *en bloc* sale, subject to assessment by the court in the event of dispute by the parties. After subsequently receiving the Receivers' views on the time required to carry out the *en bloc* sale and the parties' concurrence on the same, we ordered that 31 December 2025 would be the long-stop date for the *en bloc* sale to be executed.

7 As to the division of the proceeds of sale, Kiri argued that it should receive the US$603.8m (*ie*, the value of its shareholding as determined by the court) plus interest and legal costs in priority to Senda, with Senda receiving the balance of the proceeds of sale. It sought interest on the purchase price from 3 April 2023 (*ie*, one month from the date that this court determined the value of Kiri's shares), for its time value of money. We reserved our decision on those issues. Having considered the issues, we agree that Kiri should receive the US$603.8m in priority and so order, but we disagree that interest ought to be awarded and therefore dismiss Kiri's claim for interest.

8 We should add that in SUM 24, Kiri had also sought injunctive relief to restrain Senda from transferring, charging, or otherwise dealing with its shares in DyStar until full payment to Kiri of the purchase price, along with interest and costs. Mr Dhillon did not pursue this with any force at the hearing, and it was ultimately not consequential in light of our appointment of the Receivers.

9 We now give the full grounds for our decision.

The court's jurisdiction to order different relief

10 Before we determined the appropriate order to make and considered the merits of the parties' respective proposals, it was appropriate in our view to first establish the jurisdictional basis for ordering alternate relief. In other words, since we had already ordered Senda to buy out Kiri's shareholding at the price of US$603.8m, *ie*, the Buy-Out Order, did we have the jurisdiction to now order different relief, and if so, what was the basis of that jurisdiction?

There is jurisdiction if the Buy-Out Order has become ineffective

11 It was common ground between all the parties that the court *did* have the jurisdiction to order alternate relief, and that the basis of this was the court's inherent jurisdiction. We considered that the court had the inherent jurisdiction to order different relief for the purpose of giving effect to our original decision, *ie*, the Buy-Out Order.

12 The point is best illustrated by the decision of the Malaysian Federal Court (the "Federal Court") in *Stone World Sdn Bhd v Engareh (M) Sdn Bhd* [2020] 12 MLJ 237 ("*Stone World*"). The case arose out of an action in detinue in relation to marble stones filed by the respondent ("Engareh") against the appellant ("Stone World"). Engareh succeeded at trial and the court ordered that the marble stones be delivered up. As a result of Stone World not complying with the order and the marble stones being damaged by the passage of time and the environment, some four years later, Engareh obtained an order for damages to be assessed in place of the order for delivery up. Stone World subsequently challenged this order on the ground that the court was *functus officio* and accordingly had no jurisdiction to grant it. Stone World further contended that the alternate reliefs of damages and delivery up were mutually exclusive such

that any amendment of the original relief of delivery up amounted to an impermissible variation or material alteration as opposed to a consequential order.

13 The Federal Court rejected Stone World's arguments, holding that it was well within the court's inherent jurisdiction to make consequential orders to substitute relief, *as long as this was to give effect to the court's original judgment, as opposed to reopening, varying or altering it*:

> [36] From our case-law ***it is evident that liberty to apply for consequential orders in order to work out or give effect to the final judgment or order of the court is well within the inherent jurisdiction of the court***. To this extent the rule of functus officio is not transgressed. And in the instant appeal both the High Court and the Court of Appeal concluded on well-articulated grounds that the consequential order was required to give effect to the original judgment against Stone World for liability in detinue. There would be no reason to disagree with the courts below, with great respect.
>
> …
>
> [61] … the fact that these reliefs cannot be granted cumulatively after a finding on liability has been made, and are to that extent mutually exclusive, does not mean that the court is precluded from substituting the original relief with one of the other reliefs, particularly if this is to give effect to its final judgment and order for liability in detinue.
>
> [62] … it does not follow that one of these reliefs cannot be substituted for one of the other reliefs, where the original relief has become useless and ineffective.
>
> [63] It will be recalled that the effect of the consequential order was to substitute the delivery up portion of prayer (a) with damages to be assessed equivalent to the value of the marble stone. This is a recognised and accepted relief for a finding of detinue. It was not granted cumulatively with prayer (a) but in substitution of the same. The substitution in itself cannot amount to a variation calculated to infringe the functus officio rule.
>
> [64] ***Added to this is the irrefutable fact that the original judgment and the findings there are in no way impaired, reopened, varied or altered by the grant of the***

> ***consequential order. The finding of liability for detinue against Stone World is intact, meaning that the essence of the finding and judgment of the trial court remains intact.***
>
> [emphasis added in bold italics]

14 While *Stone World* concerned a different type of claim, the principle stated by the Federal Court should, in our judgment, apply equally to the context of minority oppression claims. Indeed, this would be consistent with the court's remit under s 216(2) of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") to make such order as it thinks fit "with a view to bringing to an end or remedying the matters complained of". If the court's original order, made on the basis of findings of oppression, has not been complied with or carried out, the court must surely have the jurisdiction to make orders for alternate or substitute relief to give effect, consistently with the basis of the original order, to its purpose of bringing the oppression to an end, rather than allowing it to remain. In our view, if we were satisfied that the Buy-Out Order would or could not be performed, it would be appropriate to exercise our inherent jurisdiction to order substitute relief to give effect to our original decision.

The Buy-Out Order has become ineffective

15 As mentioned, Senda had not complied with the Buy-Out Order, and all parties agreed that we should exercise our inherent jurisdiction to order substitute relief in this case (see [5] and [11] above). Where the parties differed was the reason for Senda's non-compliance.

16 On the one hand, Senda submitted that it simply could not afford the purchase price of US$603.8m for Kiri's shares. It offered the following reasons:

(a) First, Senda lacked the internal resources to perform the Buy-Out Order and needed financing. To support this point, Senda referred

to its audited financial statements for the financial year ended 31 December 2022 which showed that it had only US$161,703 in cash and US$71.5m in non-current assets, which comprised its shareholdings in DyStar and other subsidiaries.

(b) Secondly, Senda was unable to raise required financing to purchase Kiri's shares. Specifically:

(i) Senda had approached five financial institutions to obtain a loan for the required amount, but only one, United Overseas Bank Ltd ("UOB"), offered a loan and that too for only US$100m. The offer was conditional upon a corporate guarantee from Senda's parent company, Zhejiang Longsheng Group Co, Ltd ("Longsheng"), and a pledge over all the shares in DyStar.

(ii) Senda had engaged SAC Capital Pte Ltd ("SAC Capital"), a firm in Singapore involved in investment banking, to advise on raising the sum of US$603.8m through means other than debt financing. SAC Capital's preliminary assessment was that Senda would face difficulty in selling its 62.43% shareholding in DyStar to raise funding in view of the ongoing litigation between DyStar's shareholders (*ie*, Senda and Kiri). At the very least, this would result in a material reduction in the sale price.

17 On the other hand, Kiri contended that Senda did have the means to comply with the Buy-Out Order, whether by monetising its shareholdings in its subsidiaries (including DyStar) or by seeking financial assistance from its

parent, Longsheng. Senda, on Kiri's case, was simply dragging its feet. Further, Kiri asserted that Senda's attempts to raise financing were half-hearted.

18 While the true reason behind Senda's non-compliance with the Buy-Out Order was a deeply contested issue, we did not ultimately need to come to a conclusive view on the issue. Regardless of whether Senda's non-compliance was due to its inability (as Senda contended) or unwillingness (as Kiri contended) to perform, it was sufficiently clear to us that the Buy-Out Order had become ineffective, to use the words of the Federal Court in *Stone World*. This was sufficient to justify the exercise of our inherent jurisdiction to order substitute relief.

The appropriate relief

19 Having determined that it was appropriate that we should exercise our inherent jurisdiction to order substitute relief, the key question was what such relief should be.

20 Senda and DyStar submitted that Senda's and Kiri's shares in DyStar should be sold *en bloc*. Pertinently, their position was that the sale proceeds should be shared *pro rata* to their respective shareholdings.

21 Conversely, Kiri submitted that the court should order a staged buy-out of its shareholding, based on the buy-out price of US$603.8m in the following manner:

(a) DyStar would buy back 17.57% of Kiri's 37.57% shareholding (valued at US$282.37m) within one month of the court's determination of SUM 24.

(b) Senda and/or DyStar would thereafter purchase the remaining 20% of Kiri's shareholding (valued at US$321.43m) within four months of the court's determination of SUM 24.

22 As stated earlier (see [5] above), Kiri did not in fact have an objection in principle to an *en bloc* sale as suggested by Senda and DyStar. What Kiri did object to was Senda's proposal for the sale proceeds to be distributed *pro rata* rather than for Kiri to receive US$603.8m in priority to Senda. We address this issue below (see [52]–[61]).

The scope of the court's remedial powers for oppression

23 None of the parties contended that any of the reliefs proposed by the other parties were of the sort that the court lacked the power to order. Nevertheless, we think it appropriate to set out our views, particularly in respect of the proposal for an *en bloc* sale of Senda's and Kiri's shareholdings in DyStar.

24 The starting point is s 216 of the Companies Act, which sets out the court's remedial jurisdiction for oppression:

> **Personal remedies in cases of oppression or injustice**
>
> 216.—(1) …
>
> (2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, *make such order as it thinks fit and, without limiting the foregoing*, the order may —
>
> (*a*) direct or prohibit any act or cancel or vary any transaction or resolution;
>
> (*b*) regulate the conduct of the affairs of the company in future;

> (*c*) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;
>
> (*d*) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
>
> (*e*) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or
>
> (*f*) provide that the company be wound up.
>
> [emphasis added]

25 On a plain reading, s 216(2) provides the court with a wide discretion to "make such order as it thinks fit", so long as this is done with a view to bringing to an end or remedying the oppression. While some of the possible orders are listed in ss 216(2)(*a*) to (*f*), these orders are expressly qualified by the words "without limiting the foregoing". In other words, they are *non-exhaustive* examples of the orders which the court may make under s 216(2).

26 A case demonstrating the breadth of the court's remedial jurisdiction beyond what is expressly listed in s 216(2) is *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304, where the court made orders for the oppressing shareholder to pay compensation to the company, and for the controller of the oppressing shareholder to purchase assets owned by the company's subsidiary (at [75]).

27 With the above principles in mind, it was clear that it was within the court's power to order the staged buy-out sought by Kiri. This fell squarely within s 216(2)(*d*), which empowered the court to order that an oppressed party's shares be purchased by other shareholders or by the company itself.

28 On the other hand, the *en bloc* sale of shares proposed by Senda and DyStar was not something expressly listed in s 216(2). The parties also did not draw our attention to any case where a primary order for such a sale had actually been made. Of course, this in and of itself did not mean that we lacked power to make such an order in this case, provided that doing so was consistent with the remedial jurisdiction for oppression.

29 The English courts have considered the propriety of an *en bloc* sale in several cases.

30 The first is the decision of the English Court of Appeal in *Re Cumana Ltd* [1986] BCLC 430 ("*Re Cumana Ltd*"), which involved an appeal by the majority shareholder of a company against an order to buy out the minority's shareholding. The majority shareholder argued on appeal that there were more appropriate orders which could have been made, including an order for the sale of all the company's shares managed by an independent third party such as a receiver and manager of the company. Nicholls LJ was not persuaded that this was a satisfactory solution because it was unlikely that the majority shareholder would cooperate in any sale of his shares (*Re Cumana Ltd* at 444h):

> The possibility of a sale following sealed bids was not put before the judge, but I think that this possibility suffers from similar defects to the successive options formula. *Again, in the absence of co-operation from Mr Bolton (which the judge thought would not be forthcoming on a sale of the shares), I am not persuaded that entrusting sale of the shares in Cumana to an independent third party would be likely to provide a satisfactory solution.*
>
> [emphasis added]

31 The second case is *Re Regional Airports Ltd* [1999] 2 BCLC 30 ("*Re Regional Airports Ltd* ") where a proposed rights issue was held to be unfairly prejudicial to the minority shareholders. It was argued by the respondents that

an order for the sale of all the shares in the company should be made as a fallback relief in the event that an orthodox share buy-out order was defaulted upon (*Re Regional Airports Ltd* at 81). This alternative was rejected by Hart J, who observed that there would be enormous practical difficulties in the court supervising the sale in the open market (*Re Regional Airports Ltd* at 82):

> Moreover, there would be enormous practical difficulties (recognised by the Court of Appeal in that case [*ie*, *Re Cumana Ltd*]) in the way of the successful execution of any escape clause which sought to provide for the sale of his shares in default of his being willing to purchase those of the petitioners at the price fixed by the court.

32 It is apparent from the cases above that the English courts have, in the past, displayed a reluctance to make orders for *en bloc* sales, not because of a lack of jurisdiction, but because of concerns over the practical difficulties in overseeing such orders, particularly where one party was unwilling to cooperate. While concerns of practicality are always relevant, such concerns do not mean that the court should *never* make such an order – whether or not an order is appropriate is a question to be determined on the facts of each case, taking all circumstances into account. Furthermore, the objection that such an order should not be made because the oppressor would not likely cooperate is difficult to understand, given that an oppressor would be no more (or less) cooperative in the usual situation where it is ordered to purchase the minority's shares. In any event, as we will elaborate below, any concerns over cooperation may be addressed through further orders such as the appointment and empowerment of a receiver to effect such a sale or authorising a court officer to execute the necessary documents.

33 These points are illustrated in the more recent English case of *Otello Corporation ASA v Moore Frères & Company LLC* [2020] EWHC 3261 (Ch)

("*Otello*"). In that case, the court found the majority shareholder of a company liable for unfair prejudice (*ie*, the equivalent of oppression in England) when it acted to block the sale of the minority's shareholding to a third party. The court ordered the majority to buy out the minority's shareholding. Pertinently for present purposes, the court made a further order for the company's shares to be sold if the majority defaulted on the buy-out order. In making this order, the court noted that the parties were in effect agreed that such a direction should be made, since the majority had in fact sought such a sale over a buy-out order (*Otello* at [149]–[150]). We return to this case below in our discussion on the terms of the *en bloc* sale.

34 In the present case, the concerns over practicality were ameliorated as it was clear that both Kiri and Senda were agreeable to an *en bloc* sale. We were therefore satisfied that we had the power under s 216 of the Companies Act to order an *en bloc* sale of Kiri's and Senda's shareholdings in DyStar, if it were appropriate to make such an order.

An en bloc sale was preferable

35 In considering the possible reliefs to be ordered, our starting point remained the same as when we had originally made the Buy-Out Order, namely that DyStar was very much a viable company. We had observed then that it would be undesirable to wind up such a company (*Main Judgment* at [271]). That fact has not changed in the six years which have passed since our original order. Therefore, there would be a strong preference for orders which would address the oppression *without* leading to a winding up of DyStar. That was broadly the position of the parties as well, although Kiri had sought, in the alternative, an order for DyStar to be wound up. Such an order was acknowledged by all sides to be the proverbial nuclear option and was not

pursued with vigour by Kiri in argument. However, while we were of the view that it was not appropriate at this stage to consider winding up DyStar as a means of bringing the oppression to an end, we are cognisant and must caution that it is one of the options we must consider if the substitute relief we have ordered does not result in a successful outcome.

36 Having considered the merits of the parties' proposals, we were of the view that an *en bloc* sale was the preferable option. An *en bloc* sale would give effect to our original decision in so far as it would give Kiri an exit from DyStar through a purchase of its shares – the same result intended in the Buy-Out Order – with the difference being that the purchase would not be by Senda, the majority shareholder, but potentially by a third party. We were satisfied that such a sale would be feasible given that DyStar has a successful and viable business and is a market leader in the textile industry. It would allow Kiri to exit from its current situation whilst allowing DyStar to continue as a going concern with minimal risk of insolvency.

37 By contrast, we saw significant difficulties with Kiri's initial proposal for a staged buy-out. Given Senda's position as to its financial capabilities and its non-compliance with the Buy-Out Order thus far, Kiri's proposal would have likely resulted in DyStar being saddled with the burden of buying back Kiri's entire shareholding for US$603.8m. Senda and DyStar strongly opposed this, arguing that DyStar simply did not have sufficient liquid assets to pay out such a significant sum, as evidenced by DyStar's financial statements. There was also a risk of DyStar becoming insolvent as a result. Kiri disputed this position and submitted its own analysis of DyStar's financial statements showing that DyStar had at least US$421.8m in available cash to buy back Kiri's shares. The balance, Kiri suggested, could be made up by borrowing from Longsheng.

Notwithstanding Kiri's contestations, we did not think that Senda and DyStar's contention could be so easily dismissed. On Kiri's own case, DyStar would not be able to foot the entire bill of US$603.8m without external financing, of which there could never be any guarantees. There was no obligation on Longsheng's part to make up the shortfall by extending a loan. Further, we were concerned about the prejudicial impact of such a significant debt on DyStar's creditors. They would likely have entered into their respective dealings with DyStar with the expectation that the company would be borrowing substantial sums for the purpose of growing its business, not for financing a share buy-back on a massive scale. As DyStar's creditors were not before this court to provide their views on a potential share buy-back which could be highly prejudicial to them, it did not seem appropriate to grant such an order.

38 In short, an *en bloc* sale was, in our judgment, the best option for all parties. The parties were also broadly on the same page. Having established that this was the preferable option, what remained was for us to determine the terms of the sale, as to which the primary area of contention between the parties was who should have conduct of the *en bloc* sale, and then the issue of how the sale proceeds should be distributed. We also note the additional issue, unrelated to the terms of the sale, of whether Kiri is entitled to interest on the purchase price.

Who was to have conduct of the en bloc sale

39 On the first issue of conduct of the *en bloc* sale, Senda argued that the court should appoint an independent investment bank or financial advisor for this purpose. On the other hand, Kiri submitted that a receiver should be appointed instead. Kiri argued, relying on *Otello* (at [321]), that such an appointment would be essential to ensure that the sale process would be conducted effectively and transparently.

40 Much of the dispute on this issue flowed from Kiri's somewhat confusing position on the appointment of a receiver. Kiri had initially prayed for the appointment of a receiver and manager with broad-ranging powers to *manage and control DyStar* generally. As Senda rightly pointed out, it would not be appropriate to appoint a receiver and manager to run DyStar's business and operations when the purpose of such an appointment was really to facilitate an *en bloc* sale of the shares in DyStar (or to procure a share buy-back, as Kiri initially sought). A receiver appointed for the purpose of facilitating and executing an *en bloc* sale of the shares ought not to have control and management over the business of DyStar. Mr Dhillon conceded as much at the hearing, clarifying that Kiri was only seeking a receiver for the limited purpose of executing the *en bloc* sale. In other words, what Kiri sought was a receiver only *for the specific purpose of facilitating a sale of Kiri's and Senda's shares in DyStar*.

41 The distinction between a receiver for this purpose as opposed to a receiver and manager over DyStar is a matter of fundamental difference for two reasons. First, the appointment is as regards different underlying assets – the company in one case and its shares in the other. Accordingly, a receiver appointed to effect the sale of DyStar's shares has no relevance to DyStar's business, and *vice versa*. Second, a receiver *and manager* is quite different from a receiver in terms of powers. The distinction is described in the following terms in Thomas Robinson & Peter Walton, *Kerr & Hunter on Receivership and Administration* (Sweet & Maxwell, 21st Ed, 2020) at paras 2–1, 2–2 and 2–9:

> 2-1 **Overview** A court-appointed receiver is:
>
> (a) an impartial individual, independent from the parties to a dispute;

> (b) appointed by the court on the application of a party;
>
> (c) before proceedings, during proceedings, or after judgment;
>
> (d) to collect, protect, and receive assets of the respondent.
>
> 2-2 A receiver appointed by the court is not an agent for any of the parties, but is an officer of the court.
>
> …
>
> 2-9 **Court-appointed receivers distinguished from managers** A court-appointed receiver is also to be distinguished from a manager. A receiver properly so-called does not have authority to carry on a business. If a receiver is appointed over property which includes a business, his role is to cease trading, collect debts, and realise assets. In contrast, a manager has power to continue a business. … If it is necessary for a business to continue trading, a receiver and manager should be appointed. It is commonplace for the same person to be appointed to both roles.

42 It is apparent from the passage above that a court-appointed receiver is typically appointed for the limited purpose of collecting and realising assets. In the context of the present case, such a court-appointed receiver over the shares in DyStar would simply be tasked to hold Kiri's and Senda's shares and to take the necessary steps to realise the value of these shares through an *en bloc* sale. Such a receiver would have no power over DyStar and its affairs. Conversely, a receiver *and manager* appointed over DyStar would have the power to take control of and manage its business. However, the receiver and manager appointed over DyStar would have no power over shares in DyStar.

43 This disposed of much of Senda's objections, which focused primarily on the damaging effect that the appointment of a receiver and manager over DyStar would have on the company's reputation, business and operations. Nonetheless, counsel for Senda, Mr Toh Kian Sing SC ("Mr Toh"), continued

to express concerns over the appointment of any kind of receiver on the ground that it could possibly trigger certain financial covenants in DyStar's financing contracts. However, we found this contention to be speculative in the absence of evidence of any such covenants. Mr Toh also expressed concern that a receiver may not have the financial expertise to handle the sale. We address this point below (see [49]).

44 An important consideration, in our view, was that an appointee should owe duties and responsibilities to the court and fully understand and appreciate his or her role, which a receiver would. It is pertinent in this regard to note the statement of Steven Chong J (as he then was) in *Kao Chai-Chau Linda v Fong Wai Lyn Carolyn and others* [2016] 1 SLR 21 (at [24]) that court-appointed receivers act as officers of the court in the discharge of their role. While that statement was made in the context of receivers appointed for the purpose of preserving property pending the final resolution of an action, we see no reason why the case should be any different for a receiver who is appointed for the purpose of facilitating and executing an *en bloc* sale of shares. Any individual intending to be appointed as a receiver by the court, regardless of one's specific purpose or function, will necessarily have to undertake the responsibility of the office. We note that a receiver would typically be someone qualified to be appointed as a liquidator or a judicial manager under the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"). Indeed, the persons nominated by Kiri and Senda to be receivers reflect this. It was not apparent to us that an investment banker or a financial adviser would be willing to undertake the responsibility as officers of the court. Indeed, Mr Toh did not suggest that they would be.

45 In our judgment therefore, the appointment of an individual (or several individuals) qualified to be a liquidator or judicial manager as a receiver over Kiri's and Senda's respective shareholdings in DyStar was appropriate. Mr Toh's concern was addressed by the fact that a receiver would be able to appoint a financial adviser of the kind proposed by Senda to advise him or her on the process. In any event, it is apparent from their *curricula vitae* that the nominees of Kiri as well as those of Senda have experience in handling large financial transactions of the character of the *en bloc* sale.

46 Having concluded that it would be appropriate to order an *en bloc* sale of the shares and that a receiver should be appointed to have conduct of this sale, we directed at the hearing for the parties to submit nominees for appointment as a receiver.

47 Kiri nominated Mr Cosimo Borrelli ("Mr Borrelli") of Kroll Pte Ltd ("Kroll") to be the receiver, with Mr Matthew Stuart Becker, Mr Lim Loo Khoon and Mr Tan Wei Cheong of Deloitte & Touche LLP ("Deloitte") as alternate nominees. Senda, on the other hand, nominated Mr Joshua Taylor and Ms Chew Ee Ling of Alvarez and Marsal (SE Asia) Pte Ltd ("A&M"), with Mr Chee Yoh Chuang, Mr Ng Kian Kiat and Mr Gary Goh of RSM Corporate Advisory Pte Ltd ("RSM") as alternate nominees.

48 Predictably, each party raised strong objections to the other's nominees. Senda objected to Mr Borrelli's independence on the ground that a subsidiary of DyStar had appointed experts from Kroll to act as expert witnesses in separate proceedings. Kiri similarly objected to Senda's nomination of A&M on the ground that Kiri had engaged the financial advisory services of a related A&M entity. While we found the objections of both parties to be surprising and not of

significant weight, we nonetheless declined to consider these nominees on the basis that objections had been raised. In view of the parties' relationship, which could be described as tense at best, it would facilitate a smoother sale process if the appointed receiver was not someone who had been objected to on the basis of a conflict of interest.

49 This left the parties' alternative nominees to be considered. Senda objected to Deloitte on the grounds of a supposed lack of detail in their initial proposal (including a lack of clarity as to their intention to work with an investment banker), the proposed time-cost basis for their professional fees without a fee cap, and their prior merger and acquisition experience being limited to smaller deals. On closer scrutiny, we were unable to see any substance in these objections. First, it was neither desirable nor realistic to nitpick at the details of a putative receiver's proposed plan at this early stage, particularly for a transaction as complicated as this. Second, the objections to the fee structure were, in our view, inconsequential. Third, Deloitte had in fact been involved in the restructuring and liquidation of companies which were similar in size to DyStar – Senda's attempt to discount this experience did not hold water. It was pertinent to note Deloitte's experience with sale transactions involving companies in the chemicals and textiles industries, which was relevant to DyStar's business. On the other hand, we noted that the track record of Senda's alternate nominees from RSM did not show significant experience with these industries and lacked details as to the size of deals handled (something which Senda itself clearly regarded as important). In totality, Deloitte was, in our view, the most appropriate candidate for the appointment.

50 Therefore, on 23 February 2024, we ordered that Kiri's and Senda's shares in DyStar were to be sold *en bloc* and appointed Mr Matthew Stuart

Becker, Mr Lim Loo Khoon and Mr Tan Wei Cheong of Deloitte as joint and several receivers (the "Receivers") over the shares with conduct of the sale. Our full orders are set out in Annex A to these grounds of decision.

51 As for the issue relating to the distribution of the sale proceeds and the issue of Kiri's claim for interest, we reserved our decision to consider the parties' submissions further. We now address the first of these issues.

How the sale proceeds should be distributed

52 On the issue of distribution of the sale proceeds, as earlier noted (see [7] above), Kiri argues that it should be entitled to US$603.8m (*ie*, the value of its shareholding as determined by this court) plus interest and legal costs to be paid out in priority to any distribution to Senda.

53 Conversely, Senda contends that (a) we should not be fettered by the US$603.8m price, (b) Kiri is not entitled to priority, and (c) the proceeds of sale should instead be distributed in proportion to the parties' respective shareholdings. Mr Toh argued at the hearing that the remit of this court's exercise of inherent jurisdiction is to make a substitute order to give effect to our primary decision. That primary decision consists of our findings that (a) Senda had acted oppressively towards Kiri, (b) the Buy-Out Order should be made to remedy the oppression, and (c) in assessing the value of Kiri's shareholding, the loss caused to DyStar by Senda's acts of oppression (later ascertained to be US$55.95m) was to be notionally written back into DyStar. However, the valuation and the resultant valuation of US$603.8m itself, Mr Toh contended, *did not* form part of that primary decision. The suggestion, therefore, was that we were not bound to give effect to the final assessed value once we set aside the Buy-Out Order. Mr Toh further contended that we should not

proceed on the basis that Kiri was owed a debt of US$603.8m, because a buy-out order was not in the nature of a money judgment entitling Kiri to receive the sum of US$603.8m out of an asset pool. Ultimately, Mr Toh argued, allowing Kiri to be paid this sum in priority could prejudice Senda, if the full valuation of US$1.607bn could not be realised in an *en bloc* sale, because it would be receiving less than its proportion of DyStar's value. In short, accepting Senda's submission meant that Kiri would not receive US$603.8m in the event the proceeds from the *en bloc* sale did not achieve a minimum price of US$1.607bn.

54 We are not persuaded by Mr Toh's arguments. While we agree with the basic premise that the purpose of ordering substitute relief is to give effect to our primary decision, we disagree with Mr Toh's characterisation of that decision. Specifically, Mr Toh urges us to draw distinctions between findings which fall within our primary decision which must be given effect to, and findings which only go towards relief, which may presumably be disregarded as a result of setting aside of the Buy-Out Order. With respect, we find this to be artificial and contrived, requiring an extremely strained reading of our decision in the *Main Judgment*. We set out the material portions here:

> 278 In our judgment, the circumstances of the present case are such that a buy-out order is appropriate. It is obvious that there is no residual goodwill or trust left between the parties. A buy-out would be the most expeditious means to bring to an end the matters about which complaints have been made. …
>
> 279 As for how the valuation is to be carried out, the court has an unfettered discretion, subject only to the overriding requirement of fairness. The court is not bound to fix a value as at the date proceedings were instituted or as at the date when a buy-out order is made (*Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 at [18]). *In our judgment, as DyStar remains a going concern, valuing its shares as of the date of this decision would be a sensible choice given that it would best reflect the value of Kiri's shares (see Profinance Trust SA v Gladstone [2002] 1 WLR 1024 at [60]). But we would add that, since various*

> *oppressive acts by Senda have caused loss to DyStar, such loss should be written back into DyStar's value.* …
>
> …
>
> 281 For the foregoing reasons, we order and direct in respect of Kiri's claims in Suit 4 that:
>
> (a) Senda purchases Kiri's 37.57% shareholding in DyStar based on a valuation to be assessed.
>
> (b) Kiri's shareholding be valued as at the date of this judgment and shall take into consideration and incorporate all of the following: (i) the Special Incentive Payment to Ruan; (ii) the Longsheng Fees for 2015 and 2016 (if the valuer ascertains that it has been paid out as of the date of this judgment); (iii) the licence fees that Longsheng has obtained from the Patent; (iv) the benefit that Longsheng has obtained from its commercial use of the Patent for its own production; and (v) the loss to DyStar, directly or by impact through subsidiaries, from the Related Party Loans, the Cash-pooling Agreement and the Longsheng Financing Concept.
>
> [emphasis added]

55 As Mr Dhillon rightly pointed out at the hearing, our orders were not merely that there was oppression and that Kiri should exit the company. We ordered at [281(a)] and [281(b)] of the *Main Judgment* that Senda should purchase Kiri's shares *at their value as at the date of our judgment* (*ie*, 3 July 2018) and that this value was to be assessed. Consequent upon our order for Kiri's shares to be purchased at that value, we further directed that the loss caused by Senda's oppressive acts was to be written back into the value of DyStar as a notional repayment for the purpose of valuing Kiri's shares. Thus, the value to be written back was *to be assessed and taken into account as part of the same valuation of DyStar and by extension Kiri's shares*. We cannot, on the one hand, treat our determination of the value of the loss caused by Senda's oppressive acts as being part of our primary decision, without giving the same treatment to the actual assessed value of DyStar (and consequently Kiri's shareholding). Senda cannot have it both ways.

56 Taking a step back and looking at the present situation from a commonsensical view, we had ordered that Senda purchase Kiri's shares at a value to be assessed. After the completion of the valuation exercise, the Buy-Out Order as it stood was for Kiri's shares to be purchased at the price of US$603.8m. In other words, the object and purpose of our decision was that Kiri should exit DyStar at the price of US$603.8m. The decision was made when, as recorded at [280] of the *Main Judgment*, Senda had submitted that a buy-out order would impose an onerous financial burden on it but there was no evidence to suggest that Senda would not be able to raise funds to purchase Kiri's shares. If Senda is unable or unwilling to perform the Buy-Out Order, it remains that Kiri should exit DyStar at the price of US$603.8m. That is the *substantive* result which should be given effect to in the exercise of our inherent jurisdiction to order substitute relief, regardless of whether our decision can be regarded as a money judgment creating a debt in favour of DyStar. Mr Toh's arguments in this respect are therefore beside the point.

57 Furthermore, the exercise of this jurisdiction is a result of Senda's purportedly inability to achieve this substantive result because it cannot afford the US$603.8m purchase price. In the circumstances, we are doing no more than to *facilitate* the achievement of that result through the different mechanism of an *en bloc* sale. Given that it is Senda's non-compliance which has prompted this exercise, we do not see why we should go further to order that Kiri should not be entitled to its exit at the assessed price, depending on the sale price, to Senda's potential benefit and Kiri's potential corresponding loss. Senda has no real answer to this, beyond speculation that it may not be possible to achieve the price of US$1.607bn (*ie*, the full assessed value of DyStar) in an *en bloc* sale and a general complaint that Senda would be hard done by in that event. That, in our view, is irrelevant. Our order was for the value of Kiri's shares to be

realised as at the date of judgment (*ie*, 3 July 2018), and not the present day. Senda should not be seen as complaining that the value of DyStar had or could have deteriorated since the date of the valuation, as that is a complaint that is not pertinent to the order we had made. By the same token, Kiri would have no complaint if the value of DyStar had in fact increased after the date of judgment. In essence, it is Senda which will ride the upside or downside in terms of DyStar's present-day value, with Kiri's recovery being limited to the sum of US$603.8m.

58 For completeness, we address Senda's reliance on the decision of the New South Wales Court of Appeal in *Snell v Glatis (No 2)* [2020] NSWCA 166 ("*Snell (No 2)*"). In this case, the appellant, Mr Snell, had been found liable for oppressive conduct against the respondents, Mr Glatis and a group of related entities, in respect of the subject group of companies. The judge at first instance had ordered the appellant to purchase the respondents' interests for A$66m. The appellant appealed against this order, contending that it had not been shown that he could obtain the funds required to comply with the order, and raising a new argument that a winding up order should have been made instead. In response, the respondents submitted, among others, that if the buy-out order could not be complied with, they could "apply to obtain a judgment in the amount of $66 million and proceed to execute that in the usual way" (*Snell (No 2)* at [43]). The court rejected this suggestion, stating as follows (*Snell (No 2)* at [47]):

> Thirdly, the course proposed by the Glatis interests could easily lead to injustice and delay. They contend that in the event that Mr Snell cannot, or does not, comply, then they can obtain execution of the obligation to pay $66 million. (I shall pass over the details underlying that contention, which as presently advised I regard as not free from complexity.) It was not made clear whether they would oppose Mr Snell advancing a defence of hardship to their application to enforce the orders. If such a defence were available and made out, then the resolution of the

> remedy for years of oppression is not advanced. If such a defence were not available, then the ultimate result is that by executing the judgment upon Mr Snell's assets, including his shares in the companies, the Glatis interests will obtain in liquid form the benefit of their minority share in the companies' assets, but at a price reflecting the assessment in 2019 following a trial. It is quite possible that the values of the assets will have, in the very different economic circumstances of 2020, materially altered. Many parcels of real property may be worth materially less in 2020 than they were in 2019. It is also quite possible that the $66 million proves to be an unduly generous valuation of the Glatis interests. If the practical reality is that in order to meet the obligation to pay $66 million, Mr Snell will have to realise all or some of the value in the companies, then there is much to be said in support of a liquidator doing so independently of the parties and their sharing the price actually realised.

Ultimately, the court set aside the buy-out order made at first instance and instead made a winding up order.

59 Mr Toh relied on [47] of *Snell (No 2)* quoted above, arguing that the court had essentially decided that the parties should share the price actually realised in the event of a winding up, rather than giving priority to the respondents. However, as we pointed out to Mr Toh at the hearing, it is not entirely clear what the court meant by the words "sharing the price actually realised" in this context. Mr Toh's position, in our view, reads too much into these words. Indeed, as the company was placed in solvent liquidation by the court, that would naturally result in proceeds from the realisation of the assets of the company being shared *pro rata* to the parties' respective equity. Perhaps this was what the court had in mind when it said, "sharing the price actually realised". This would not support Mr Toh's position given that DyStar has not been placed in liquidation.

60 Mr Toh then referred to a subsequent judgment of the court in respect of the same matter in *Snell v Glatis (No 3)* [2020] NSWCA 267 ("*Snell (No 3)*"),

where the court appeared to endorse, in the context of a dispute between the respondents and a different shareholder, a distribution of surplus assets in the liquidation according to allotted shares. We do not see how this decision, relating to a separate dispute in a different context, is relevant to the matters at hand. In so far as Mr Toh seeks to make the general point that there must be *pro rata* sharing between shareholders where a company is wound up, this again does not assist us, as we are not presently concerned with a winding up. Ultimately, we do not find any assistance in *Snell (No 2*) and *Snell (No 3)*.

61 Therefore, it is our view that Kiri should be paid US$603.8m from the proceeds of the *en bloc* sale in priority to Senda. We note Mr Toh's further argument that a reserve price of US$1.607bn should be set for the *en bloc* sale in the event we grant priority to Kiri, so as to ensure that Senda will not be prejudiced. However, for the same reasons explained in [57] above, we are not inclined to order any reserve price for the sale.

62 It remains for us to determine if the same priority should be accorded to an award of interest on the buy-out price (assuming interest or a relief that is a proxy for it is awarded) and for Kiri's legal costs. Having considered the issue, we are of the view that such priority should be granted for the former, but not the latter. An award of interest would be inextricably connected to the buy-out price itself and should accordingly be given the same treatment. However, the same cannot be said for Kiri's legal costs. The latter constitutes a separate debt owed by Senda to Kiri which may be enforced in the usual manner, as evidenced by the enforcement proceedings that Kiri has already commenced, including an examination of judgment debtor application in SIC/SUM 21/2023. We therefore see little reason to grant the same priority for Kiri's costs, and we accordingly

decline to do so. That said, for the reasons set out below (see [67]–[83]), we have declined to award interest or relief that is a proxy for interest in this case.

The long stop date for the en bloc sale

63 As mentioned earlier (see [5] above), we had also reserved our decision on the long-stop date for the *en bloc* sale to be carried out and invited the Receivers' views on this. The Receivers subsequently proposed 31 December 2025 as the long-stop date, and all the parties were agreeable to this. This being the case, on 18 April 2024, we ordered that the long-stop date be 31 December 2025, with liberty granted only to the Receivers to apply for an extension of time, such application to be made within a reasonable time before the expiry of the long-stop date.

Whether there should be part payment to Kiri

64 Lastly, we address Kiri's submission that it should be entitled to some form of payment in advance of the *en bloc* sale, whether by way of a partial buy-back or an advance to serve as part payment for Kiri's shares. This was raised by Kiri, both at the hearing and subsequently by way of Allen & Gledhill LLP's letter to the court dated 15 April 2024. This submission was borne out of a concern on Kiri's part that the acts of oppression will remain unremedied until the completion of the *en bloc* sale which will take time. Essentially, this was a complaint that Kiri has been kept out of its money due to the lengthy proceedings.

65 We are not persuaded that such an order should be made. In our judgment, both the share buy-back and the advance payment mechanisms proposed by Kiri are at odds with our order for an *en bloc* sale as they would

effectively amount to an intermediate sale of a substantial portion of Kiri's shares to DyStar or Senda. More significantly, they would likely further complicate and delay the final completion of the sale process. We observe that what Kiri is essentially asking for is to be put in funds ahead of actual realisation through completion of the sale. This is akin to an interim payment (albeit at the post-liability stage of proceedings) for which the mitigation of hardship or prejudice is the touchstone (*American International Assurance Co Ltd v Wong Cherng Yaw and Others* [2009] SGHC 89 at [33]). Kiri has not shown such hardship or prejudice. There is no evidence of Kiri being in dire financial straits of the sort that would persuade this court to grant the advance being sought, not least when it could further complicate the sale process.

66 Specifically on the point of prejudice, we also add that the protracted timeframe of these proceedings, which has kept Kiri out of its money, cannot be blamed on Senda alone. It is simply a result of the litigation process, to which both Kiri and Senda have contributed. The answer to this, if the claim has merit, lies in Kiri's claim for interest, to which we now turn.

Whether Kiri is entitled to interest on the purchase price of its shares

67 Kiri contends that Senda should pay interest on the purchase price of US$603.8m from 3 April 2023 (*ie*, one month from the date that this court determined the final value of Kiri's shares) until the date that Kiri receives the purchase price. Senda, on the other hand, argues that the court has no power to award post-judgment interest for delay in compliance with a buy-out order in an oppression case.

The court's power to award post-judgment interest on a buy-out order

68 We will first address the question as to our power to award post-judgment interest in oppression cases.

69 Kiri argues that this power is to be found in s 216(2) of the Companies Act itself. Kiri relies primarily on the English High Court case of *Estera Trust (Jersey) Limited v Jasminder Singh* [2019] EWHC 873 (Ch) ("*Estera Trust*"), where the court ordered interest to be paid in respect of a buy-out order pursuant to s 996 of the Companies Act 2006 (c 46) (UK), which is the English equivalent of s 216(2) (albeit with substantial differences in wording).

70 Senda argues that the court is only permitted to award post-judgment interest in certain situations prescribed in the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"). The material provisions are s 18 and para 6 of the First Schedule to the SCJA:

> **Powers of General Division**
>
> **18**.—(1) The General Division has the powers that are vested in it by any written law for the time being in force in Singapore.
>
> (2) Without limiting subsection (1), the General Division has the powers set out in the First Schedule.
>
> …
>
> **Interest**
>
> 6. Power to direct interest to be paid on *damages, or debts (whether the debts are paid before or after commencement of proceedings) or judgment debts, or on sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the court.*
>
> [emphasis added]

71 It should be noted that the court is also empowered to order interest on debts and damages, but only pre-judgment interest, pursuant to s 12(1) of the Civil Law Act 1909 (2020 Rev Ed) ("CLA"):

> **Power of courts of record to award interest on debts and damages**
>
> **12**.—(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

72 On the basis of the SCJA provisions quoted at [70] above, Senda argues that the court cannot order interest on a buy-out order, as such an order does not fall under any of the categories listed in para 6 of the First Schedule to the SCJA. Since the category of "debt or damages" under s 12(1) of the CLA is also covered in para 6 of the First Schedule, it may equally be said on Senda's behalf that the court has no such power under s 12(1) of the CLA to order interest on a buy-out order.

73 In support of its contention, Senda relies on the decision of the Court of Appeal in *Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd and others* [1999] 1 SLR(R) 773 ("*Yeo Hung Khiang*"). In *Yeo Hung Khiang*, the trial judge had made an order for the respondents to purchase the petitioner's shares in a company on the basis that there had been oppression. The shares were valued at $3.46 by an independent valuer, whose assessment was accepted by the trial judge. The trial judge declined to grant pre-judgment interest on the purchase price of the shares, but exercised his discretion to increase the value of the shares from $3.46 per share to $4.67 per share (representing an increase

of 5% per year for seven years) to account for the following (*Yeo Hung Khiang* at [12]):

> … for some seven years the petitioner was denied the benefit of his shareholding while the respondents seemingly plundered the company or siphoned off its profits to the respondent's other entities. To take no account of that would be tantamount to sanctioning wrongdoings and rewarding the oppressor. That would be to turn justice on its head.

74 The Court of Appeal dismissed the petitioner's appeal against the trial judge's decision not to grant pre-judgment interest. The Court of Appeal held, on the basis of the SCJA and CLA provisions quoted above, that the court did not have the statutory power to grant pre-judgment interest in an oppression action since this was not one for debt or damages (*Yeo Hung Khiang* at [41]).

75 It is clear on the authority of *Yeo Hung Khiang* that the court does not have the power to make an award of judgment interest in respect of a buy-out order. While the court's decision strictly related to pre-judgment interest, the same analysis must apply to the SCJA so far as it empowers the court to award post-judgment interest. We would add that *Estera Trust* does not support Kiri's position – it was expressly acknowledged by the court in *Estera Trust* that interest in that case was awarded "not as judgment interest but as a matter of discretion…as being a fair and equitable basis on which the [oppressed shareholders] should be bought out" (at [141]). Therefore, we agree that this court does not have the power to award *post-judgment interest* in this case. That does not mean, however, that the court has no power to account for interest at all.

76 In fact, the Court of Appeal in *Yeo Hung Khiang* expressly recognised two ways in which an oppressed shareholder may be compensated for being kept out of his money (at [23]):

> (a) First, the court may calculate an interest factor separately from the value of the shareholding. This interest factor may then be added to the value of the shareholding to arrive at a fair price at which the minority's shares should be purchased. This was in line with the Australian case of *Coombs v Dynasty* (1994) 14 ACSR 60 (see *Yeo Hung Khiang* at [20]).
>
> (b) Second, the court may exercise its discretion to enhance the value of the shares to arrive at what the court believes to be a fair assessment. This was the order which the trial judge in *Yeo Hung Khiang* had made and which the Court of Appeal upheld.

77 While either alternative is permissible under the court's discretionary power in s 216(2) of the Companies Act, we are respectfully of the view that the former is more conceptually sound, having regard to the purpose of compensating the oppressed shareholder for being kept out of his money. Given that the valuation exercise is essentially a question of how much the shares are worth at a particular date, it is somewhat contradictory to say that after accounting for the time value of money and subsequent delay, the value of the shares *as of that date* has increased. It is preferable, in our view, that the interest factor be calculated separately and added to the purchase price.

78 Notwithstanding their conceptual distinctions, the result is the same in either alternative – the purchaser is made to buy out the oppressed shareholder's shares at a higher price. This is, of course, not the same as an order for judgment

interest, which would essentially create a debt owed by the purchaser which is independent of the obligation to purchase the shares.

79 We observe that much of the disagreement on this issue appears to have sprung from Kiri's infelicitous use of the term "post-judgment interest" to cover all situations where the court accounts for interest to compensate a party for being kept out of its money. We reiterate that while the court does not have the power to award judgment interest in respect of a buy-out order, the court nonetheless has the discretion under s 216(2) of the Companies Act to account for this interest by making adjustments to the *purchase price* of the shares (whether by adding a separate interest factor, or by enhancing the value of the shares directly).

Whether this court should account for interest in this case

80 Having established that we have the discretion to account for interest through an adjustment to the purchase price of the shares, we turn to the issue of whether we should exercise that discretion in this case. In light of all the circumstances, we are not inclined to do so.

81 As a starting point, we note that interest forms no part of our original decision, because Kiri did not ask for it in the first tranche of these proceedings resulting in the *Main Judgment*. In ordering substitute relief to give effect to that original decision, we are therefore not obliged to give effect to any award of interest (there being none in the *Main Judgment* to begin with).

82 We find Kiri's case for an award of interest to be problematic as it is fundamentally based on Senda's failure to complete the Buy-Out Order within *one month* from this court's final judgment on valuation on 3 March 2023. We

do not think that it was reasonable to expect completion within such a short time, considering the very substantial purchase price for Kiri's shares. Notably, Kiri did not offer any alternative dates from which interest should run. More significantly, it is illogical to award interest for delay in completing a Buy-Out Order *which we are now setting aside* in favour of substitute relief. It bears repeating that an award of interest was never part of our original decision which we must now give effect to in making our new orders. It seems to us that Kiri is seeking to raise an issue which it should properly have done in the first tranche of these proceedings that resulted in the *Main Judgment* being issued. We had made this same point in our oral judgment issued on 17 March 2021 in relation to Kiri's belated attempt to seek pre-judgment interest. The same obstacle applies to Kiri's attempt now.

83 The real question, then, is whether Kiri should be entitled to interest for the time that will be required to complete the *en bloc* sale. Bearing in mind that what is now envisioned is a sale to a third party, through a process managed and controlled by court-appointed receivers, there is a possibility of delay due to factors entirely out of Kiri's or Senda's control. That being the case, we do not think it is fair for Senda alone to bear the consequence of such delay. We therefore decline to make any order accounting for interest in the present circumstances.

Conclusion

84 In summary, further to our prior orders, *inter alia*, that the shareholdings of Kiri and Senda are to be sold *en bloc* and that this sale is to be managed by the Receivers, we make the following orders:

(a) The *en bloc* sale shall be conducted without a reserve price.

(b) Any proceeds of the sale, after deducting the remuneration for the Receivers and the expenses of the sale, shall be distributed in the following manner:

(i) Kiri shall receive US$603.8m in priority; and

(ii) Senda shall receive the balance of the proceeds of sale.

85 The parties are to file submissions on costs not exceeding 10 pages each within 14 days from the date of these grounds. In the event the parties are of the view that they require more than 10 pages for their submissions, they are to write in with reasons within two days.

Kannan Ramesh
Judge of the Appellate Division

Roger Giles
International Judge

Anselmo Reyes
International Judge

Dhillon Dinesh Singh, Loong Tse Chuan, Lim Dao Kai, Mak Sushan Melissa (Mai Sushan), Dhivya Rajendra Naidu, Chee Yi Wen Serene and Jung Sol (Allen & Gledhill LLP) for the plaintiff;
Toh Kian Sing SC, Cheng Wai Yuen Mark, Soh Yu Xian Priscilla, Lim Wee Teck Darren, Liu Yulin and Mao Zhi Chao @ Mao Zhihong (Rajah & Tann Singapore LLP) for the first defendant;
Jimmy Yim Wing Kuen SC, Manoj Belani, Sia Tian Wa Jeremy Marc, Chloe Shobhana Ajit and Samuel Wittberger (Drew & Napier LLC) for the second defendant.

Annex A: Orders for SUM 24 made on 23 February 2024

IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

Case No.: SIC/S 4/2017
Sub Case No.: SIC/SUM 24/2023
Doc No.: SIC/ORC 11/2024
Filed: 01-March-2024 12:05 PM

Between

KIRI INDUSTRIES LIMITED
(India Registration No. L24231GJ1998PLC034094)

...Plaintiff(s)

And

1. SENDA INTERNATIONAL CAPITAL LIMITED
(Hong Kong SAR Registration No. 1665167)

2. DYSTAR GLOBAL HOLDINGS (SINGAPORE) PTE. LTD.
(Singapore UEN No. 200922409R)

...Defendant(s)

Counterclaim of 1st Defendant

Between

SENDA INTERNATIONAL CAPITAL LIMITED
(Hong Kong SAR Registration No. 1665167)

...Plaintiff(s) in Counterclaim

And

1. KIRI INDUSTRIES LIMITED
(India Registration No. L24231GJ1998PLC034094)
2. PRAVINCHANDRA AMRUTLAL KIRI
(India Passport No. F3100431)
3. MANISHKUMAR PRAVINCHANDRA KIRI
(India Passport No. Z1734708)
4. KIRI INTERNATIONAL (MAURITIUS) PRIVATE LIMITED
(Mauritius Registration No. T09UF3015F)
5. MUKHERJEE AMITAVA
(India Passport No. Z2707622)

...Defendant(s) in Counterclaim

ORDER OF COURT

Before: The Honourable Judge of the Appellate Division Kannan Ramesh, The Honourable International Judge Anselmo Reyes and The Honourable International Judge Roger Giles in Chambers

Date of Order : 23-February-2024

UPON THE APPLICATION of the Plaintiff made by way of SIC/SUM 24/2023 ("**SUM 24**") filed on 22 July 2023, **AND UPON READING** the 37th affidavit filed by Manish Pravinchandra Kiri on 22 July 2023, the 1st affidavit filed by Derrick Tan on 23 October 2023, the 1st affidavit filed by Ng Siew Boon on 23 October 2023, the 1st affidavit filed by Ni Yan on 24 October 2023, the 1st affidavit filed by Ruan Wei Xiang on 1 November 2023, the 1st affidavit filed by Tam Kin Man on 4 December 2023, the 1st affidavit filed by Zheng Yu on 7 December 2023, the 2nd affidavit filed by Tam Kin Man on 11 December 2023, the 38th

affidavit filed by Manish Pravinchandra Kiri on 15 December 2023, the 1st affidavit filed by Peter Euschen on 2 January 2024, the 2nd affidavit filed by Ni Yan on 15 January 2024, the 2nd affidavit filed by Ng Siew Boon on 24 January 2024 and the Plaintiff's and Defendants' written submissions filed on 15 January 2024,

AND UPON HEARING counsel for the Plaintiff and counsel for the 1st Defendant and counsel for the 2nd Defendant on 24 and 25 January 2024, and without prejudice to the determination of other issues raised by the parties in SUM 24 including, but not limited to, any interest or enhancement in value relating to the realization of Kiri Industries Limited's ("**Kiri**") shares in DyStar Global Holdings (Singapore) Pte Ltd ("**DyStar**"); the distribution of the proceeds of sale of the respective shareholdings (collectively, the "**Shares**") of Kiri and Senda International Capital Limited ("**Senda**") in DyStar; and the costs of SUM 24,

It is ordered that:

1. The Shares are to be sold *en bloc* within such period as the court may determine. For the avoidance of doubt, the *en bloc* sale of the Shares will not be subject to a reserve price and "*en bloc* sale" in this context shall mean the execution of a binding and enforceable sale and purchase agreement for the Shares.

2. Mr Matthew Stuart Becker, Mr Lim Loo Khoon and Mr Tan Wei Cheong of Deloitte & Touche LLP are appointed as joint and several receivers (collectively, the "**Receivers**") over the Shares to manage and control the Shares to the extent necessary for the purpose of the *en bloc* sale. The Receivers shall have conduct of the *en bloc* sale and shall be empowered to:

   (a) execute all documents necessary for the purposes of the *en bloc* sale;

   (b) give such directions to the Board of Directors and Company Secretary of DyStar as may be necessary to facilitate the *en bloc* sale; and

   (c) engage such professionals and advisors as may be appropriate in the Receivers' judgment to advise and assist the Receivers with the *en bloc* sale.

3. The Receivers' costs and disbursements will be subject to assessment by the court in the event they are disputed by any or both of Kiri and Senda, and shall be paid from the proceeds of sale, subject to any interim payments ordered by the court which shall be borne and paid by Kiri and Senda equally.

4. Within two weeks of the Receivers' appointment, the Receivers shall notify the court and the parties as to how much time they require to advise on the estimated period required to enter into an *en bloc* sale. The court shall then fix the time within which the Receivers shall notify the court and the parties as to the estimated period they require to enter into an *en bloc* sale, and following notification and after hearing from the parties the court shall fix the long-stop date by which the *en bloc* sale is to have been entered into.

5. DyStar, Kiri and Senda shall cooperate with the Receivers and render all such assistance as the Receivers may require for the purpose of the *en bloc* sale including, but not limited to, the provision of information and documents; the procuring of all necessary approvals; and the execution of all necessary documents for this purpose.

6. There shall be liberty to apply.

TAN BOON HENG
REGISTRAR
SUPREME COURT
SINGAPORE