IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 25

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*

JUDGMENT

[Civil Procedure — Costs]

Kiri Industries Ltd
v
Senda International Capital Ltd and another

[2024] SGHC(I) 25

Singapore International Commercial Court — Suit No 4 of 2017 (Summons No 24 of 2023)
Kannan Ramesh JAD, Anselmo Reyes IJ and Roger Giles IJ
3 June 2024

29 August 2024

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

Introduction

1 In SIC/SUM 24/2023 ("SUM 24"), we ordered an *en bloc* sale of the shareholdings of Kiri Industries Ltd ("Kiri") and Senda International Capital Ltd ("Senda") in DyStar Global Holdings (Singapore) Pte Ltd ("DyStar"). The sale was to be managed by court-appointed receivers. Out of the proceeds of sale, after deducting the remuneration of the receivers and the expenses of the sale, Kiri was to receive US$603.8m in priority, with Senda receiving the balance. This was to be in substitution of our previous order for Senda to buy out Kiri's shareholding for US$603.8m (the "Buy-Out Order"). The full grounds of our decision were issued in *Kiri Industries Ltd v Senda International Capital Ltd and another* [2024] SGHC(I) 14 (the "GD"). In this judgment, we address the costs of SUM 24.

2 Each of Kiri, Senda and DyStar was represented and had made substantive submissions in the proceedings. None contests the general rule that costs should follow the event, but each contends to have been the successful party entitled to costs.

3 Given the parties' disparate positions, it is necessary for us to determine who was the successful party in SUM 24. The court must ask itself which party in substance and reality succeeded, taking a realistic and commercially sensible view of the outcome, as opposed to a technical one: *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 ("*Comfort Management*") at [28].

4 As DyStar's role in SUM 24 was a limited one (something which DyStar itself did not necessarily appreciate, as we explain below), we will address the issue of costs as between Kiri and Senda separately from costs as between Kiri and DyStar.

Costs as between Kiri and Senda

5 Kiri submits that it has substantially succeeded as the applicant in SUM 24, having obtained substitute relief in light of Senda's failure to comply with the Buy-Out Order. However, recognising the fact that it did not prevail on all the issues raised in SUM 24, Kiri submits that it should receive 50% of its costs.

6 Senda submits that it is the successful party as Kiri had either abandoned or failed in all of its substantive prayers in SUM 24. The order for an *en bloc* sale was ultimately in line with Senda's proposal, which Kiri had initially objected to. Senda, however, acknowledges that it did not succeed on some of the issues, namely the appointment of receivers to manage the sale (as opposed

to an investment banker as Senda sought), and Kiri's entitlement to a priority in the distribution of the sale proceeds (which Senda opposed in favour of a ratable sharing). In light of this, Senda contends that it should be entitled to 70% of its costs.

7 In our judgment, Kiri is the successful party. The event in these proceedings is not to be determined by a technical reading of Kiri's prayers, or a comparison of the parties' proposals for relief. The fundamental question is whether it was necessary for Kiri to bring SUM 24 for substitute relief. In our view, that must be answered in the positive. It must be remembered that our order was premised upon Senda's failure to comply with the Buy-Out Order. As we stated in the GD at [18], it is irrelevant whether this failure was a matter of inability or unwillingness. Given that we have granted Kiri's request for substitute relief, although not in the terms initially prayed for, it is difficult to arrive at any conclusion other than that Kiri has prevailed.

8 We accept, however, that neither party completely succeeded on all of the issues contested at the hearing, of which there were four: (a) who should have conduct of the sale, (b) whether Kiri should have priority in the distribution of the sale proceeds, (c) whether Kiri was entitled to post-judgment interest, and (d) whether Kiri should receive an interim payment of the sale proceeds. These issues, of course, were not all of the same weight. The most significant issue was that of priority, as evidenced by the significant amount of time spent by both parties' counsel on the issue in written and oral submissions. Of the four issues as highlighted, Kiri succeeded on the issues of priority and in the appointment of receivers to conduct the sale, but was unsuccessful in its claims for post-judgment interest and for an interim payment. As regards the appointment of receivers, we noted in [40] of the GD that Kiri had initially sought the appointment of a receiver *and manager* to manage and control

DyStar generally, but later agreed that a receiver appointed to facilitate an *en bloc* sale of shares ought *not* to have control and management over the business of DyStar. This confusing position, which was conceded at the hearing, led to some wasted time and costs on the part of both parties. Taking these circumstances into consideration, we are of the view that Kiri should be entitled to only 40% of its costs as against Senda.

Costs as between Kiri and DyStar

9 We now address costs as between Kiri and DyStar.

10 Kiri takes the position that DyStar should be jointly and severally liable for Kiri's costs because DyStar aligned itself with Senda with respect to the issues of priority and of the appointment of receivers to conduct the *en bloc* sale. These, Kiri submits, were properly matters in dispute between the shareholders, and that by taking a substantive position on them, DyStar went beyond the protection of the company's interests.

11 DyStar argues that it prevailed over Kiri in respect of the prayers sought specifically against it, for substantially the same reasons raised by Senda. As such, DyStar submits it should be entitled to its full costs from Kiri.

12 In this respect, we do not agree completely with either of Kiri or DyStar. The starting point is that Kiri's application in SUM 24 was necessitated by the non-compliance of *Senda* and not DyStar. DyStar was involved substantially in these proceedings because Kiri had chosen to involve it by way of its claimed relief for DyStar to buy back part of Kiri's shareholding, together with a potential further buy-back (GD at [5]). DyStar's interests were further implicated by Kiri's arguments for the appointment of a receiver and manager over DyStar (which Kiri later conceded was not what it was seeking), as well as

for an advance part payment of the sale proceeds. These were therefore matters which were proper for DyStar to take a position and make submissions on. Indeed, much of DyStar's submissions were directed at showing that the company was not in a position to afford the staged buy-out sought by Kiri. On these matters, we are of the view that DyStar substantially succeeded and should be entitled to costs.

13 We turn then to the matters which were *not* appropriate for DyStar to make submissions on. These were the issues of the court's jurisdiction to order substitute relief and of priority in the distribution of the sale proceeds. We note that Mr Jimmy Yim SC ("Mr Yim"), counsel for DyStar, had gone so far as to provide further authorities on the latter issue on the second day of the hearing. When queried by the court on why DyStar's counsel was addressing this point, Mr Yim took the position that it was consistent with his role in assisting the court that he should be permitted to submit on these matters. Mr Yim argued that these issues were part of a "roadmap" proposed by the court for all parties to address at a case management conference on 24 August 2023, and that no limits had been set as to what he could or could not submit on. This was an erroneous view of the matter. As we impressed upon Mr Yim at the hearing, DyStar was the company in a litigation between the shareholders. DyStar's role was necessarily a narrowly circumscribed one. It was not open to DyStar to participate in the general debate between Kiri and Senda. In particular, DyStar had no interest in the matters of jurisdiction and priority, which were properly the province of Kiri and Senda. It is therefore not proper for Kiri to be made liable for costs incurred by DyStar in addressing these matters. In our judgment, DyStar should be entitled to only 50% of its costs and disbursements as claimed.

Conclusion

14 In summary, we are of the view that Senda should pay 40% of Kiri's costs and disbursements, and that Kiri should pay 50% of DyStar's costs and disbursements.

15 We note that none of the parties raised any challenge with respect to the quantum of costs and disbursements claimed to be incurred by the other parties. We therefore proceed on the basis of the sums as claimed. The sums incurred by Kiri and DyStar respectively were as follows:

(a) Kiri incurred costs of S$900,125 and disbursements of S$42,634.52 and US$16,037.95.

(b) DyStar incurred costs of S$251,410 and disbursements of S$16,253.81 and US$2,447.14.

16 Applying the appropriate reductions as we have determined above, we order Senda to pay Kiri costs in the sum of S$360,050, and disbursements in the sum of S$17,053.81 and US$6,415.18.

17 We also order Kiri to pay DyStar costs in the sum of S$125,705, and disbursements in the sum of S$8,126.91 and US$1,223.57.

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 Zhichao @ 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.
