



# Kiri Industries Limited

*Future Full of Colours.....*

March 17, 2021

To, BSE Limited 1st Floor, Rotunda Building, B.S. Marg, Fort, Mumbai - 400 001 <b>Scrip Code: 532967</b>	To, National Stock Exchange of India Limited Exchange Plaza, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051 <b>Scrip ID - KIRIINDUS</b>
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Dear Sir/Madam,

**Sub: Updates on Court case in Singapore in Compliance with Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.**

We are pleased to inform you that the valuation hearing at Singapore International Commercial Court ("SICC") has completed yesterday i.e. March 16, 2021 and SICC has reserved the final judgement.

We had requested SICC vide our letter dated January 25, 2021 to provide clarification about pre-judgement interest amount on value of our stake in DyStar. Our request for Interest has been declined by SICC. The copy of this judgement, dated March 17, 2021, is enclosed herewith, which is under review for appeal at an appropriate time.

We wish to further clarify that the final judgement on valuation of our stake in DyStar is awaited.

You are requested to kindly note the above.

Thanking You,

Yours faithfully,

**For Kiri Industries Limited**

*Suresh Gondalia*

**Suresh Gondalia**  
**Company Secretary**



**DYES**

Plot No : 299/1/A & B, Phase-II, Nr. Water Tank, GIDC, Vatva,  
Ahmedabad 382 416, Gujarat, India.  
Phone : +91-79-25894477  
Fax : +91-79-25834960  
Email : [engage@kiriindustries.com](mailto:engage@kiriindustries.com) Web : [www.kiriindustries.com](http://www.kiriindustries.com)

**INTERMEDIATES**

Plot No : 396/399/403/404, EPC Canal Road, Village : Dudhwada,  
Tal. : Padra, Dist. : Vadodara 391460. Gujarat, India.  
Phone : +91-2662-273444  
Fax : +91-2662-273444  
Email : [intermediates@kiriindustries.com](mailto:intermediates@kiriindustries.com) Web : [www.kiriindustries.com](http://www.kiriindustries.com)

**CHEMICALS**

Plot No : 552-A, 566, 567, 569-71, Village : Dudhwada, Tal. : Padra,  
Dist. : Vadodara 391 460 Gujarat, India.  
Phone : +91-2662-273724, 25  
Fax : +91-2662-273726  
Email : [intermediates@kiriindustries.com](mailto:intermediates@kiriindustries.com) Web : [www.kiriindustries.com](http://www.kiriindustries.com)

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE  
REPUBLIC OF SINGAPORE**

Suit No 4 of 2017

Between

Kiri Industries Ltd

*... Plaintiff*

And

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

*... Defendants*

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**ORAL JUDGMENT**

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**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**Kiri Industries Ltd**  
**v**  
**Senda International Capital Ltd and another**

Singapore International Commercial Court — Suit No 4 of 2017  
Kannan Ramesh J, Roger Giles JJ and Anselmo Reyes JJ  
16 March 2021

17 March 2021

Judgment reserved.

**Kannan Ramesh J (delivering the judgment of the court):**

**Introduction**

1 We adopt all the abbreviations and terms of reference used in our Judgment dated 21 December 2020 (“the Valuation Judgment”), as well as our earlier Judgment dated 3 July 2018 (“the Main Judgment”) where appropriate.

2 In the Valuation Judgment, we provided an interim valuation of DyStar. We found DyStar’s equity value as at the valuation date to be US\$1,636m, subject to adjustments to be made in light of the various risk events and transactions that affected DyStar’s valuation. The parties’ experts were ordered to provide their views on nine outstanding issues, and a revised valuation of DyStar.

3 On 25 January 2021, the parties’ experts provided their joint expert report (“the Joint Expert Report”) addressing those issues. This was accompanied by a letter from Kiri, seeking clarification on the issues of (a) pre-

judgment interest; and (b) the relief it is entitled to if Senda fails to comply with the buy-out order. This judgment addresses those issues. These are brief grounds which we may supplement if the need arises.

### **Pre-judgment interest**

4 On the issue of pre-judgment interest, Kiri has queried whether it is “entitled to pre-judgment interest on the amount payable to it pursuant to the buy-out order, and if so, the date on which such interest should run”. At paragraphs 773 to 779 of its closing written submissions in the valuation proceedings, Kiri clarified that it was “not seeking interest *qua* interest but an adjustment to the final purchase price as an element of compensation for the oppression”. Kiri submitted that the adjustment to the value of the shares ought to run from the date of the Writ of Summons (*ie*, 26 June 2015), and proposed that the statutory default interest rate of 5.33% be used as a proxy for the rate of adjustment. In substance, Kiri seeks an enhancement in the value of DyStar’s shares *as at the date of valuation* we have arrived at in the Valuation Judgment. Notably, Kiri did not state a cut-off date for the adjustment.

5 Pre-judgment interest cannot be awarded in an oppression claim. The judgment of the Court of Appeal in *Yeo Hung Kiang v Dickson Investment (Singapore) Pte Ltd and others* [1999] 1 SLR(R) 773 (“*Yeo*”) at [41] makes this clear. This explains Kiri’s clarification noted above. The Court of Appeal nonetheless accepted that the court has in an oppression claim the discretion to enhance or adjust the value of the shares to arrive at a fair and equitable result.

6 In our view, there is no basis to make an adjustment to the value of DyStar’s shares in the present case. This is for four reasons.

7 First, the cases relied on by Kiri, where the court made a discretionary enhancement to share value, are readily distinguishable and do not provide a concrete basis for an adjustment of DyStar's value in the present case. The first case is *Yeo*. In *Yeo*, the court ordered the shares to be valued as at 1 October 1990 – this was the valuation date in that case. The order was made on 7 July 1995. On 11 April 1998, following the submission of the valuation report valuing the shares as at 1 October 1990, the court ordered the defendant to purchase the plaintiff's shares. There was therefore a significant interval of slightly more than seven years between the valuation date and the date of the buy-out order, *ie*, 1 October 1990 and 11 April 1998. Recognising this, the court awarded an enhancement in the value of the shares stated in the valuation report and explained as follows:

... 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.

A similar approach was taken in the other case relied on by Kiri, *Lim Ah Sia v Tiong Tuang Yeong and others* [2014] 4 SLR 140 ("*Lim*"). In *Lim*, there was again a gap of two years between the valuation date and the date of the buy-out order. The High Court made a discretionary adjustment to the share value to account for the interval. The key consideration in both cases was the significant interval between the valuation date and the date of the buy-out order.

8 In the present case, the valuation date and the date of the buy-out order are the same, as *per* the Main Judgment. As such, both *Yeo* and *Lim* do not assist Kiri. There is no interval between the valuation date and date of the buy-out order that warrants an uplift of the sort awarded in those cases. It is important to note that in both *Yeo* and *Lim*, the discretionary adjustment was made to take

into account *post valuation date* events relevant to the value of the shares. The court was of the view that the adjustment was necessary in order to update the valuation to reflect the value of the shares as at *the date of the buy-out order* so that the party being bought out was not being prejudiced by events that impacted the value of the shares in the interval. This consideration does not arise here as the valuation date and the date of the buy-out order coincide. In making the buy-out order in the Main Judgment, we had considered the date of valuation and had decided that they should coincide.

9 This is important. As noted above, Kiri seeks an adjustment in the value of DyStar's shares *post-Writ*. Insofar as Kiri seeks an adjustment for the period *post-Writ* and *pre-valuation date*, the Main Judgment has taken this period and the events that occurred in this period into account by ordering that the valuation date and the buy-out date be the same. We note that this order was not challenged on appeal.

10 This leads us to our second reason. There is an evidential difficulty with Kiri's argument. Even if we are minded to discretionarily enhance the value of DyStar's shares on account of events *post-Writ* and *pre-valuation date*, we do not have any evidential basis to do so. The adjustments that we ordered to be taken into account in the Main Judgment and made in the Valuation Judgment relate to pre-valuation date events that had been pleaded and found to be true in the course of trial. These include, *inter alia*, Senda's oppressive acts and the Five Risk Events. However, Kiri has neither pleaded nor adduced any new evidence at trial pertaining to the relevant period for which it now seeks a discretionary adjustment. To illustrate, in its written closing submissions, Kiri made a vague reference to "all benefits of its shareholding in DyStar (such as dividends)" as justification for an enhancement. However, there is no evidentiary basis for identifying, or even roughly quantifying, such benefits and

dividends. These issues should have been pleaded and canvassed at trial, but they were not. We add that as regards the specific point on dividends, we do not accept Kiri's implied suggestion that the dividends that it did not receive in the relevant period would *not* have contributed to DyStar's valuation. The monies that were not paid out as dividends were left with DyStar to be used as working capital. As such, they would have contributed to its valuation. Kiri has not proven otherwise. We therefore have serious concerns that any enhancement made on the basis of such "dividends" would be a form of double compensation.

11 In contrast, in previous cases where the court awarded a discretionary enhancement to share value, there was a clear evidential basis. In *Yeo*, the Court of Appeal found that the discretionary adjustment made by the judge below was grounded in the evidence adduced at trial. The court noted at [73] that:

In this case, the learned judge had considered all the relevant factors including the projections of the merchant bankers when the company sought listing on the SES in 1990 as well as the economy of Singapore. He was of the view that it was "abundantly clear" that Yeo had suffered unjustly under Poon's oppression and decided to make an adjustment to the share price. In our view, the learned judge did not err in doing so.

12 It is therefore clear to us that there is no basis to impose a discretionary adjustment *pegged to the statutory default interest rate of 5.33%*. This is an arbitrary figure, and Kiri has not substantiated the application of this rate of enhancement.

13 The third reason is that Kiri has not provided a cut-off date for the enhancement it seeks. As noted earlier, while Kiri has asked for the enhancement to begin running from the date of the Writ, it does not say when the uplift should cease. Insofar as Kiri seeks an enhancement for the period *after* the date of the buy-out order, it is effectively a back-door attempt to seek post-

judgment interest, which we cannot award for the same reasons as pre-judgment interest. Such interest is only awardable on “debts or damages”: *Yeo* at [41] and *Lim* at [95].

14 Fourth and finally, if the uplift Kiri seeks is treated as an enhancement in the value of DyStar’s shares, the point is *res judicata*. As noted above, it ought to have been canvassed, and tested at trial, before the Main Judgment was released. This ties in with the point we have made on the dearth of evidence supporting Kiri’s argument. Also, as noted above, Kiri ought to have challenged the valuation date on appeal, but did not do so.

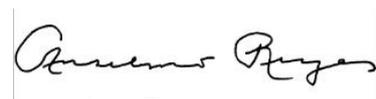
15 For these cumulative reasons, we decline to impose any discretionary enhancement on DyStar’s share value.

**Second issue in Kiri’s letter**

16 On the second issue Kiri raises in its letter dated 25 January 2021, this is a question that will be dealt with in the enforcement stage. We simply note that it is open to Kiri to apply for the appropriate relief if Senda fails to perform the buy-out order that was ordered in the Main Judgment.

  
Kannan Ramesh  
Judge

  
Roger Giles  
International Judge

  
Anselmo Reyes  
International Judge

Certified True Copy  
  
Manager, Judge's Chambers  
Supreme Court Singapore

*Kiri Industries Ltd v Senda International Capital Ltd*

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

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