IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA(I) 1

Court of Appeal / Civil Appeal No 4 of 2024

Between

Kiri Industries Limited

… *Appellant*

And

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

… *Respondents*

Court of Appeal / Civil Appeal No 5 of 2024

Between

Senda International Capital Limited

… *Appellant*

And

Kiri Industries Limited

… *Respondent*

In the matter of Suit No 4 of 2017 (Summons No 24 of 2023)

Between

Kiri Industries Limited

… *Plaintiff*

And

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

… *Defendants*

JUDGMENT

[Companies — Oppression — Minority shareholders — Exercise of remedial discretion to bring to an end or remedy oppressive conduct complained of — Whether minority shareholder should be paid out of net proceeds of *en bloc* sale of total equity of company in priority to majority shareholder — Section 216(2) Companies Act 1967]
[Companies — Oppression — Minority shareholders — Exercise of remedial discretion to bring to an end or remedy oppressive conduct complained of — Whether minority shareholder should receive discretionary enhancement in economic value from *en bloc* sale of total equity of company to account for interest on purchase price — Whether economic value to be received by minority shareholder from *en bloc* sale of total equity of company should be set at quantum at least as high as economic value minority shareholder would have received from prior buy-out order based on valuation rendered by court but-for subsequent non-implementation of buy-out order by majority shareholder — Section 216(2) Companies Act 1967]

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

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Court of Appeal — Civil Appeals Nos 4 and 5 of 2024
Judith Prakash SJ, Robert French IJ and Bernard Rix IJ
12 November 2024

31 January 2025 Judgment reserved.

Robert French IJ (delivering the judgment of the court):

Introduction

1 These appeals concern the orders (the "Orders") made by the Singapore International Commercial Court (the "SICC") against a majority shareholder, Senda International Capital Ltd ("Senda"), for oppression of a minority shareholder, Kiri Industries Ltd ("Kiri"), in the conduct of the affairs of a Singapore-incorporated private company, *viz*, DyStar Global Holdings (Singapore) Pte Ltd ("DyStar"), in which they are both members. CA/CAS 4/2024 ("CAS 4") and CA/CAS 5/2024 ("CAS 5") are Kiri's and Senda's respective appeals against the Orders of the SICC (collectively, the "Appeals").

2 While DyStar is nominally the second respondent in CAS 4, and is represented in the Appeals before us, it has taken no position on the Appeals

(*ie*, it filed no written submissions and abstained from making oral submissions at the hearing before us on 12 November 2024). Thus, subsequent references to the "parties" should be read as referring to Kiri and Senda – to the exclusion of DyStar.

3 The oppression proceedings were commenced by Kiri on 26 June 2015.[1] A brief chronology of events is set out in the judgment under appeal (see *Kiri Industries Ltd v Senda International Capital Ltd and another* [2024] SGHC(I) 14 (the "Judgment") at [3]–[4]). A more extensive chronology may be found in the SICC's prior decisions (see *Kiri Industries Ltd v Senda International Capital Ltd and another* [2023] 3 SLR 140 at [1]–[5] and *Kiri Industries Ltd v Senda International Capital Ltd and another* [2023] SGHC(I) 4 (the "Valuation") at [2]–[4]). There is no need to restate that history here.

4 The Orders that form the subject of the Appeals by both Senda and Kiri were issued on two successive occasions. The first set of Orders, made on 23 February 2024 and extracted as SIC/ORC 11/2024 on 1 March 2024,[2] required that Kiri's and Senda's total shareholding in DyStar be sold via an *en bloc* sale and that receivers be appointed over the shares to manage and control them to the extent necessary for the sale. There was to be no reserve price. The receivers' costs and disbursements were to be paid from the proceeds of the sale. These were interim orders made without prejudice to the determination of other issues raised by the parties, including the distribution of the proceeds of sale and whether there should be any interest or enhancement of the value to be received by Kiri from the sale of its shares in DyStar. The

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1 Writ of Summons in HC/S 364/2015 filed 26 June 2015.

2 Joint Core Bundle of Documents dated 5 November 2024 ("JCBD") Vol 1 at pp 346–348.

en bloc sale order was substituted for the "Buy-out Order" previously made by the SICC at a fixed valuation of Kiri's shares in DyStar at US$603.8m (see the Valuation at [5], rendered on 3 March 2023).

5 On 20 May 2024, the SICC delivered the Judgment presently under appeal, which both set out its reasoning supporting the Orders made on 23 February 2024 and extracted on 1 March 2024[3] and made the following additional Orders (see the Judgment at [84(a)]–[84(b)]):

> (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.

6 The SICC also rejected a claim by Kiri that it was entitled to interest or payment in the nature of interest on the purchase price of US$603.8m running from 3 April 2023 – *ie*, one month from the date that the SICC determined the final value of Kiri's shares in its Valuation (see at [4] above) – until the date Kiri receives the purchase price (see the Judgment at [7] and [67]). Nor was Kiri entitled to any adjustment to the sum of the purchase price (*viz*, US$603.8m) to account for interest thereon (see the Judgment at [80]–[83]).

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[3] SIC/ORC 11/2024 in SIC/4/2017 (SIC/SUM 24/2023) dated 23 February 2024 and filed 1 March 2024.

The reasoning of the SICC in its Judgment below

The reasoning of the SICC on the Priority Order

7 The Judgment set out the reasoning which led to the substitution of an *en bloc* sale for a buy-out at the valuation of US$603.8m previously determined by the SICC. In explaining its conclusion, the SICC said (see the Judgment at [36]):

> … 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.

8 The SICC also explained its decision to appoint receivers of the shares in DyStar for the purposes of managing the *en bloc* sale. Neither the decision to order an *en bloc* sale nor the decision to appoint receivers of the shares for the purpose of managing the sale is in issue in the Appeals. What is in issue in Senda's appeal in CAS 5 is the SICC's decision on the distribution of the net sale proceeds – specifically, the payment of the purchase price of US$603.8m to Kiri out of the net sale proceeds in priority to Senda (see the Judgment at [84(b)(i)]).

9 Before the SICC, Kiri had argued that it should be entitled to US$603.8m plus interest and legal costs to be paid out in priority to any distribution to Senda. Senda had contended that Kiri was not entitled to priority payment and that instead of a fixed sum of US$603.8m, the net proceeds of sale should be distributed in proportion to the parties' respective shareholdings in DyStar (see the Judgment at [52]–[53]).

10 Senda had submitted that the SICC should draw a distinction between findings which fell within its primary decision, which must be given effect, and findings which went only towards the relief, which might be disregarded as a result of the Buy-out Order having been set aside. The SICC rejected this submission as "artificial and contrived", requiring an extremely strained reading of its decision in *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 (the "Main Judgment") rendered on 3 July 2018, in which the Buy-out Order had been made (see the Judgment at [54]; see also the Main Judgment at [281]).

11 The SICC referred to two paragraphs from the Main Judgment in which it had said (see the Judgment at [54]; see also the Main Judgment at [278]–[279]):

> 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 … 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 … 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. …

12 The SICC pointed out that its findings in the Main Judgment were not merely that there had been oppression of Kiri by Senda and that Kiri should exit DyStar. It had also ordered that Senda should purchase Kiri's shares "at their value as at the date of our [Main Judgment] (*ie*, 3 July 2018) and that this value was to be assessed" [emphasis in original omitted] (see the Judgment at [55]).

13 The purpose of the SICC's Main Judgment in relation to the Buy-out Order (at [281(a)]) was that Kiri should exit DyStar at the price of US$603.8m, which was ultimately found to be the value of Kiri's shares in the Valuation (at [5]).

14 If Senda were unable or unwilling to perform the Buy-out Order, Kiri should still be able to exit DyStar at the price of US$603.8m. The SICC said (see the Judgment at [56]):

> … 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. …
>
> [emphasis in original]

15 In substituting the buy-out of Kiri by Senda with the mechanism of an *en bloc* sale, the SICC said that it was doing no more than to facilitate the achievement of the substantive result of the Buy-out Order through a different mechanism (see the Judgment at [57]):

> … 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 [the Main 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.

16 Consistent with that reasoning, the SICC ordered that Kiri be paid US$603.8m from the proceeds of the *en bloc* sale in priority to Senda (the "Priority Order") (see the Judgment at [61] and [84(b)]). The SICC declined to give the same priority to Kiri's legal costs on the basis that they constituted a separate debt from the buy-out price (see the Judgment at [62]).

The reasoning of the SICC on an upward adjustment of the value to be received by Kiri from the en bloc sale to account for interest on the purchase price of Kiri's shares

17 The SICC then considered whether Kiri was entitled to interest on the purchase price of its shares. Kiri had submitted that Senda should pay interest from 3 April 2023 (*ie*, one month from the date that the SICC determined the final value of Kiri's shares in its Valuation at [5]) until the date that Kiri receives the purchase price of US$603.8m. Senda contended that the SICC had no power to award post-judgment interest for delay in compliance with a buy-out order in an oppression action instituted under s 216(1) of the Companies Act 1967 (2020 Rev Ed) (the "Companies Act") (see the Judgment at [67]).

18 Kiri argued that the relevant powers were to be found in s 216(2) of the Companies Act. It referred to the case of *Estera Trust (Jersey) Ltd (a company incorporated under the Laws of Jersey) and another v Singh and others* [2019] EWHC 873 (Ch) ("*Estera Trust*"), where the English High Court Chancery Division ordered interest to be paid on the purchase price in respect of a buy-out order pursuant to s 996 of the Companies Act 2006 (c 46) (UK) ("Companies Act 2006 (UK)"), the UK equivalent of s 216(2) of the Companies Act (see the Judgment at [69]).

19 The SICC referred to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA") which provides for the award of post-judgment interest.

Section 18 of the SCJA and para 6 of the First Schedule to the SCJA were said to be relevant (see the Judgment at [70]). Section 18 of the SCJA reads as follows:

> **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.
>
> [Section 18(3) omitted]

20 Paragraph 6 of the First Schedule under the heading "Interest" provides:

> 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.

21 The SICC also noted that it was 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) (the "Civil Law Act") (see the Judgment at [71]). That section provides that:

> **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.

22 Senda contended that the SICC could not order interest on the purchase price in a buy-out order as it did not fall under any of the categories listed in para 6 of the First Schedule to the SCJA. Nor did the SICC have power under

s 12(1) of the Civil Law Act to order post-judgment interest (see the Judgment at [72]).

23 Senda cited *Yeo Hung Khiang v Dickson Investment (Singapore) Pte Ltd and others* [1999] 1 SLR(R) 773 ("*Yeo Hung Khiang*") (see the Judgment at [73]). There, the trial judge had made an order for the respondents to purchase the petitioner's shares in a company as a remedy for oppression. The trial judge declined to grant pre-judgment interest on the purchase price of the shares but exercised his discretion to increase their value by an amount representing an increase of 5% per year over a period of seven years to account for the denial to the petitioner of the benefit of his shareholding. On appeal, the trial judge's decision not to grant pre-judgment interest was upheld. This Court remarked that it had no statutory power under the SCJA or the Civil Law Act to grant pre-judgment interest in an oppression action which was not one for debt or damages (see *Yeo Hung Khiang* at [41]).

24 The SICC concluded on the authority of *Yeo Hung Khiang* that it did not have the power to make an award of pre-judgment interest in respect of a buy-out order. The same analysis was applicable to the SCJA in so far as it empowered the SICC to award post-judgment interest. The SICC added, however, that the decision in *Estera Trust* did not support Kiri's position, for it was expressly acknowledged by Fancourt J in that case that interest was being 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" (see the Judgment at [75], relying on *Estera Trust* at [141]).

25 Although the SICC held that it did not have the power to award post-judgment interest, that did not mean that it had no power to account for interest (see the Judgment at [75]). The SICC referred to two ways, set out in *Yeo Hung*

Khiang (at [23]), in which an oppressed shareholder may be compensated for being kept out of its money (see the Judgment at [76]):

> (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 said to be in line with the Australian case of *Coombs v Dynasty Pty Ltd and others* (1994) 14 ACSR 60.
>
> (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 made by the trial judge in *Yeo Hung Khiang* and upheld by this Court.

The SICC was of the view that the first option was conceptually more sound, having regard to the purpose of compensating the oppressed shareholder for being kept out of its money (see the Judgment at [77]). The SICC concluded that, while it does not have the power to award judgment interest in respect of a buy-out order, it has the discretion under s 216(2) of the Companies Act to account for that interest by making adjustments to the purchase price of the shares (see the Judgment at [79]).

26 The SICC then considered whether it should account for interest in the case that was before it. The SICC noted that interest formed no part of its original decision because Kiri did not ask for it in the first tranche of the proceedings resulting in the Main Judgment. In ordering substitute relief to give effect to its original decision, the SICC was not obliged to award any interest in

favour of Kiri, there being none awarded in the Main Judgment to begin with (see the Judgment at [81]).

27 The SICC observed further that Kiri's case for an award of interest was problematic as it was fundamentally based on Senda's failure to complete the Buy-out Order within one month of the Valuation being issued. It was not reasonable to expect completion within such a short period of time, considering the very substantial purchase price for Kiri's shares. Kiri did not offer any alternative dates from which interest should run. Moreover, it was illogical to award interest for delay in completing a buy-out order that was being set aside in favour of substitute relief (*viz,* the order for an *en bloc* sale). Kiri was seeking to raise an issue which it should properly have done in the first tranche that resulted in the Main Judgment being issued (see the Judgment at [82]).

28 Hence, the SICC concluded as such on Kiri's claim for interest (see the Judgment at [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.

Issues to be decided

29 In Senda's appeal in CAS 5, Senda challenges the SICC's decision to make the Priority Order for the purchase price in the original Buy-out Order (*ie*,

US$603.8m) to be paid out of the net sale proceeds to Kiri in priority to Senda.[4] In Kiri's appeal in CAS 4, Kiri challenges the SICC's decision to decline to make an order for payment of an amount analogous to interest on the purchase price in the original Buy-out Order.[5]

30 We hence proceed to consider the following two issues:

(a) first of all, whether the SICC erred in making the Priority Order (*ie*, CAS 5); and

(b) secondly, whether adjustments should be made to the value to be received by Kiri from the net sale proceeds of the *en bloc* sale to account for interest on the purchase price (*ie*, CAS 4).

CAS 5

Senda's submissions on the Priority Order

31 Accepting that the SICC has the power to order substitute relief where the originally ordered relief is unworkable, Senda submits that the substituted relief ordered by the SICC in the form of the Priority Order was wrong as a matter of law, principle and policy. It sets out the following key contentions:[6]

(a) The Priority Order unfairly penalises Senda as it did not wilfully refuse to comply with the Buy-out Order, and there is no reason for Senda to bear the risk of receiving less than its rightful share of the sale

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4 Written Submissions of Senda International Capital Ltd dated 29 August 2024 ("SWS") at paras 10(a) and 11.

5 Written Submissions of Kiri Industries Ltd dated 29 August 2024 ("KWS") at para 2.

6 SWS at para 13.

proceeds from the receivers' *en bloc* sale. Kiri was being elevated to the position of a secured creditor over Senda's shares.

(b) The primary decision in the Main Judgment covered only the finding of minority oppression and not the consequential orders made with a view to bringing to an end or remedying the oppression. It was not part of the primary decision that Kiri was to receive the buy-out sum of US$603.8m for the sale of its 37.57% shareholding in DyStar. The SICC erred in holding to the contrary.

(c) The Priority Order does not, in any case, appropriately or fairly facilitate the achievement of the primary decision in the Main Judgment.

32 In elaboration of its argument on unfairness, Senda argues that the Priority Order would place it in a significantly worse position than under the Buy-out Order. It might ultimately get little or no value for its shares in DyStar despite being a majority shareholder which had heavily invested in DyStar since 2010. If the net sale proceeds do not exceed US$603.8m, Senda would effectively be stripped of its majority shares in DyStar, receiving nothing in return. This would disproportionately penalise Senda for the oppressive acts.[7]

33 Senda also submits that the Priority Order requires it to bear 100% of the costs of the sale controlled by the joint and several receivers. Senda could only receive the balance proceeds of the *en bloc* sale after deducting the receivers' costs and expenses and after payment of the sum of US$603.8m to Kiri. This is said to be grossly unfair as Senda would bear the costs of the sale

[7] SWS at para 17.

of Kiri's shares in DyStar, a liability having no connection at all with Senda's oppressive conduct.[8]

34 According to Senda, the Priority Order would only have been justified if there had been wilful defaults on its part that necessitated the making of the substituted order for the *en bloc* sale. Senda had not wilfully refused to comply with the Buy-out Order nor did the SICC make any finding to that effect. It had found – in the Judgment at [18] – that Senda's non-compliance was relevant only to the issue of whether the exercise of the SICC's inherent jurisdiction to order substituted relief was justified in the circumstances.[9]

35 In its submissions, Senda refers to the evidence adduced before the SICC of its unsuccessful attempts to raise finance to enable it to comply with the Buy-out Order. It is therefore submitted that there was no basis to warrant the imposition of the Priority Order on account of Senda's financial inability.[10] The fact that the Buy-out Order could not be implemented was not due to Senda's oppressive conduct nor any other fault on its part. The Priority Order treated Kiri as having a right of appropriation over the proceeds of sale of Senda's assets to satisfy an order which was made to remedy Senda's oppressive conduct in relation to DyStar's affairs. Senda might have its own creditors who might well be prejudiced by the Priority Order.[11]

36 Senda does accept that, in the *en bloc* sale, credit should be given to Kiri for the financial impact of the oppressive conduct on the price realised for the

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8 SWS at para 18.

9 SWS at paras 19–20.

10 SWS at paras 22–24.

11 SWS at paras 26–27.

shares in DyStar. This, however, is said not to justify the Priority Order which was directed at a completely different objective of ensuring that Kiri received the purchase price under the original Buy-out Order.[12]

37 Moreover, Senda submits that there is a distinction between the primary or main orders of the SICC and the consequential orders for relief. The SICC is said to have erred in rejecting that distinction.[13]

38 The SICC, it is said, has a residual inherent jurisdiction to make ancillary orders to give effect to its primary decision through the dispensing of procedural justice. This is done by substituting the original relief with other remedies to give effect to the final judgment and finding of liability. *Stone World Sdn Bhd v Engareh (M) Sdn Bhd* [2020] 12 MLJ 237 ("*Stone World*"), a decision of the Federal Court of Malaysia, is cited by Senda, and the SICC itself had cited *Stone World* at [36] and [64] for the proposition that it was "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" [emphasis in original omitted] (see the Judgment at [13]).[14] In Senda's view, it stands to reason that, after the Buy-out Order was set aside, the SICC was thereafter only bound by its primary decision, *viz*, the finding of liability for oppression. The buy-out sum had not been determined at the time of the Main Judgment but only later (in the Valuation at [5]). The finding of minority oppression was therefore the "main order", whereas the orders for a

12 SWS at para 28.

13 SWS at para 33.

14 SWS at paras 34–38.

buy-out were consequential orders for relief that were ancillary to the primary decision in the Main Judgment.[15]

39 Senda argues that the Priority Order was inconsistent with the primary decision. A consequential order had thereby become part of the primary decision.[16] Senda submits three grounds in support of its proposition that the Priority Order did not fairly or appropriately give effect to the object and purpose of the primary decision in the Main Judgment, *viz*, that the Priority Order:

(a) reached beyond the proper purpose of consequential orders under s 216(2) of the Companies Act – specifically to fairly bring an end to or remedy the oppression without penalising the oppressive party.[17]

(b) ignored the context and important features of the Buy-out Order. Only select features thereof, largely favourable to Kiri, were captured in the Priority Order, thus giving Kiri an unwarranted advantage.[18]

(c) contemplated that Senda was to pay, and Kiri was to receive, US$603.8m in exchange for Kiri's shares in DyStar. The Priority Order only purported to give effect to Kiri's purported right to receive US$603.8m for its shares in DyStar. It ignored Senda's right to receive Kiri's 37.57% shareholding in DyStar but placed the burden on Senda to use its share of the net proceeds of the *en bloc* sale to make good any

15 SWS at paras 40–43.

16 SWS at para 50.

17 SWS at para 64.

18 SWS at para 69.

shortfall that Kiri might suffer without receiving any part of Kiri's shareholding in DyStar or, in fact, anything at all.[19]

40 Finally, Senda proposes that the receivers withhold a sum from Senda's proceeds of the *en bloc* sale and pay it to DyStar at the completion of the sale. The amount could be determined by valuing the impact of the oppressive acts on DyStar, with an adjustment to account for the opportunity costs to DyStar for being kept out of this sum up to the date of completion of the sale.[20]

Kiri's submissions on the Priority Order

41 Kiri submits that it was common ground in the proceedings below that the SICC had the power to order alternate relief if the Buy-out Order became ineffective (see the Judgment at [11] and [14]). In the exercise of that power, the SICC had substituted the Buy-out Order with its order for the *en bloc* sale of Kiri's and Senda's shareholdings in DyStar and made the Priority Order.[21]

42 Kiri refers to the SICC's reliance on *Stone World*. In that case, the Federal Court of Malaysia, in an action for detinue, substituted an order for delivery up of goods with an order for damages to be assessed in light of the defendant's non-compliance with the order for delivery up and the deterioration of the goods with the passage of time. The Federal Court rejected the defendant's argument that the trial court was *functus officio*. It was within the court's "inherent jurisdiction" to make consequential orders to substitute relief in order to give effect to the court's original judgment provided that "the essence of the finding and judgment of the trial court remains intact" (see *Stone World*

19 SWS at para 76.

20 SWS at para 78.

21 KWS at para 74.

at [64] (*per* Nallini Pathmanathan FCJ)). Relief of this kind would not amount to reopening, varying or altering the original judgment and findings.[22]

43 The approach taken by the SICC is said by Kiri to be consistent with the broad discretion conferred on the court by s 216(2) of the Companies Act to make such order as it thinks fit "with a view to bringing to an end or remedying the matters complained of".[23]

44 Kiri also refers to *Re Dinglis Properties Ltd (No 3)* [2021] 1 All ER 685 at [54], in which it was said that the power of the court under s 996 of the Companies Act 2006 (UK), substantially the same as s 216 of the Companies Act, was "a very broad one, which in principle is to be exercised at all points (even after trial) until the Court's Order is carried into full effect". Kiri rejects Senda's attempt to draw a distinction between findings which fall within the SICC's primary decision in the Main Judgment and findings going only towards consequential relief.[24]

45 The SICC had rightly disagreed with Senda's characterisation of its primary decision as excluding the price at which Kiri should divest its shareholding in DyStar and exit the company, reiterating that the Main Judgment had ordered Senda to purchase Kiri's shares based on a valuation to be assessed, with the date of valuation being the date of the Main Judgment, *ie*, 3 July 2018. Hence, the SICC's Valuation at [5] related back to the Buy-out Order rendered in the Main Judgment.[25]

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22 KWS at para 75.

23 KWS at para 76.

24 KWS at paras 76–77.

25 KWS at para 78.

46 Given that the object and purpose of the Main Judgment was that "Kiri should exit DyStar at the price of US$603.8m" (see the Judgment at [56]), the SICC was fully entitled to make the Priority Order to give effect to the substantive result of its original decision. Senda's proposal for the *pro rata* distribution of the proceeds of the *en bloc* sale based on the parties' respective shareholdings in DyStar would be tantamount to reopening, varying or altering the Main Judgment.[26]

47 Kiri further submits that, in any event, the SICC retained the power to make the Priority Order as a fresh order upon setting aside the Buy-out Order, even if the former could not be said to have formed part of the Main Judgment.[27]

48 In support of the Priority Order, Kiri submits that it would be unfair to expose it to a potential shortfall from the net proceeds of the *en bloc* sale when the *en bloc* sale order had been necessitated by Senda's default in complying with the Buy-out Order. Kiri points to the SICC's observation that "[g]iven that it is Senda's non-compliance which had 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" (see the Judgment at [57]).[28]

49 Kiri further submits that impecuniosity is not a sufficient reason to deprive the oppressed minority shareholder of the assessed value of its shareholding, citing the English Court of Appeal Civil Division decision in *Re Cumana Ltd* [1986] BCLC 430 (at 436–437 (*per* Lawton LJ)) and the English High Court Chancery Division case of *Re Ghyll Beck Driving Range Ltd* [1993]

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26 KWS at para 81.

27 KWS at para 82.

28 KWS at para 85.

BCLC 1126 (at 1134 (*per* Vinelott J)) to derive such a proposition.[29] Further, it is said to be unfair to expose Kiri to the risk of fluctuations in the market price of the shares in DyStar, when DyStar's business operations were under the control of Senda.[30]

50 Kiri relies upon the reasoning by the SICC in *DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and another* [2022] 3 SLR 1 at [76] to the effect that the Main Judgment effected a "clean break" between the parties in DyStar on 3 July 2018. It reasons therefrom that any fluctuations in DyStar's share price should not affect the amount which Kiri should receive for its shares, the date of valuation for which had already been fixed in the Main Judgment, with Senda being presumed to have bought out Kiri's interest in DyStar upon the parties' "clean break" on 3 July 2018 (*ie*, the date of valuation in the SICC's Main Judgment).[31]

51 Kiri also refers to *Otello Corporation ASA v Moore Frères & Co LLC and another* [2020] EWHC 3261 (Ch), in which the English High Court Chancery Division (Business and Property Courts) had ordered (at [324]) that, in the event that the majority shareholder failed to effect the buy-out that was ordered there (at [324(1)]), an *en bloc* sale would be conducted by a receiver and its net proceeds would be applied in satisfaction of the majority shareholder's obligation to purchase the minority shareholding (at [324(3)]).[32]

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29 KWS at para 87.

30 KWS at para 88.

31 KWS at para 88.

32 KWS at para 95.

52 In the proceedings before the SICC below, Senda had relied upon *Snell v Glatis (No 2)* [2020] NSWCA 166 ("*Snell*"), a decision of the New South Wales Court of Appeal (see the Judgment at [58]). In that case, the relevant company had been placed in solvent liquidation by the court, which – in the words of the SICC below – "would naturally result in proceeds from the realisation of the assets of the company being shared *pro rata* to the parties' respective equity" (Judgment at [59]). Kiri agrees with the SICC's reasoning that Senda's reliance on *Snell* was misplaced and contends that the distribution of the proceeds of a solvent liquidation cannot be extended by analogy to the distribution of the proceeds of an *en bloc* sale.[33]

Consideration and conclusions

53 The starting point in considering the respective submissions of the parties must be s 216 of the Companies Act. The relevant parts of s 216 provide as follows:

> **Personal remedies in cases of oppression or injustice**
>
> **216.**—(1) Any member or holder of a debenture of a company … may apply to the Court for an order under this section on the ground —
>
> (*a*) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including the applicant or in disregard of his, her or their interests as members, shareholders or holders of debentures of the company; or
>
> [Section 216(1)(*b*) omitted]
>
> (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,

[33] KWS at paras 96–101.

> 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;
>
> [Sections 216(2)(*b*) and 216(2)(*c*) omitted]
>
> (*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
>
> [Section 216(2)(*f*) omitted]

54 It is useful to recall the discussion of the remedial operation of s 216 of the Companies Act in the judgment of this Court in *Kiri Industries Ltd v Senda International Capital Ltd and another and other appeals and other matters* [2024] 2 SLR 1 (the "Valuation Appeal Judgment"). This Court was there concerned with the approach of the SICC to valuing Kiri's shares that were the subject of the original Buy-out Order. In considering the application of a discount for lack of marketability in the valuation process, this Court referred (at [218]) to the description of the history and purpose of s 216 in *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373. That discussion had already been summarised in *Senda International Capital Ltd v Kiri Industries Ltd and others and another appeal* [2019] 2 SLR 1, referred to in the Valuation Appeal Judgment as the "Main Appeal Judgment". In the Main Appeal Judgment, this Court set out a number of propositions relating to s 216, which were quoted from its earlier decision in *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*"), including the proposition that (see the Main Appeal Judgment at [36(g)]):

> Commercial fairness is the touchstone by which the court determines whether to grant relief under s 216 of the Companies Act. It involves "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect" ([*Over & Over*] at [77] and [81]).

55 Relevant to the kind of relief to be granted in exercise of the remedial discretion in s 216(2), this Court observed in the Valuation Appeal Judgment at [219] that:

> … That rubric of fairness necessarily informs the shaping of particular relief – and in the case of a buyout order, the approach to valuation. That approach is not confined to "a fair market value", which might inform a sale and purchase between willing but not anxious parties. A fair market value approach may be an answer to the question – what is fair? – for the purposes of s 216 of the Companies Act, but the question must be posed before the fair market value answer can be given.

56 In this case, the SICC had assessed the value of US$603.8m as the value of Kiri's shares in DyStar at the date of valuation in the Main Judgment, *viz*, 3 July 2018. That figure reflected the application of the fairness rubric which had been discussed in the Valuation Appeal Judgment and earlier judgments of this Court. The SICC imposed an obligation on Senda to acquire Kiri's shares at that assessed value. That order is not open to attack on the basis of any alleged unfairness inconsistent with the principle informing the formulation of relief under s 216(2) of the Companies Act.

57 The buy-out obligation imposed on Senda was not discharged and, according to Senda, it could not discharge it as it did not have access to sufficient funds. The SICC therefore substituted an *en bloc* sale order. In so doing, it was varying the form of relief which could be ordered pursuant to the remedial powers under s 216(2) which had been enlivened by its finding of oppression. The SICC was not revisiting its primary decision when it decided to substitute

the *en bloc* sale order for the Buy-out Order. That was simply the substitution of a new remedy in circumstances where the earlier remedy was not performed nor evidently capable of being performed. The Priority Order preserved the position and entitlement of Kiri as against Senda in relation to the disposition of the former's shares in DyStar. There is nothing in that course adopted by the SICC that involved a revisiting of its primary decision. That limb of Senda's argument must be rejected.

58 Senda argues that the new remedy is unfair to it and in that sense invokes the application of the fairness principle underlying the grant of relief under s 216(2). However, in our opinion, there is nothing unfair in holding Senda to the financial obligation imposed on it by the original Buy-out Order, the monetary quantum of which was determined by the previous order of the SICC (see the Valuation at [5]). In our opinion, Senda's appeal in CAS 5 should be dismissed.

CAS 4

Kiri's submissions on a discretionary adjustment to account for interest

59 In CAS 4, Kiri appeals against the decision of the SICC that no interest on the purchase price of US$603.8m should be imposed from 3 April 2023 until the date that Kiri receives the purchase price.[34]

60 Kiri identifies the following grounds in its appeal against the SICC's exercise of discretion to decline to account for interest in its Orders below:[35]

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34 KWS at paras 2 and 106.

35 KWS at para 9.

(a) The SICC wrongly took into account matters it ought not to have, namely, the erroneous factual premise that Kiri ought to have raised the issue of interest at the liability tranche of the proceedings. This issue was logically deferred by the SICC to the enforcement of the Buy-out Order, and enforcement was the very purpose of Kiri's summons for substitute relief in SIC/SUM 24/2023.[36]

(b) The SICC failed to take into account matters that it should have, namely, that any additional time required by Senda to pay to Kiri the purchase price of the Buy-out Order, beyond the mere arrangement of the mechanics of payment, is an indulgence for which Senda ought to pay interest to Kiri, and that the SICC was at liberty to fix an appropriate date from which interest would start running.

(c) The SICC erred in applying the principles for exercising its discretion. In weighing the balance of justice, the SICC ought not to have placed the burden of bearing the consequences of the receivers' delay in effecting the *en bloc* sale fully on Kiri.

61 Kiri asserts that significant injustice has been caused to it because of Senda's delay in paying the purchase price in the Buy-out Order. Although Senda was adjudged to have acted oppressively against Kiri on 3 July 2018 (in the Main Judgment; see at [10] above) and the quantum of the purchase price was determined on 3 March 2023 (in the Valuation; see at [4] above), Senda has still not complied with the Buy-out Order.[37]

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36 JCBD Vol 2 at pp 342–345.

37 KWS at para 10.

62 Kiri submits that its inability to use the purchase price has delayed its own business plans and that it has had to borrow moneys to fund its operations. It invokes the fairness principle under s 216(2) of the Companies Act, which it maintains dictates that it should be awarded interest for being kept out of the purchase price that was due to it.[38]

63 Kiri disclaims any claim for interest on a debt under the SCJA. Nor did it make a claim for interest on "debt or damages" under s 12(1) of the Civil Law Act. Kiri points out that the SICC had accepted that it had the power, in the interests of effecting justice, to make orders recognising an interest factor in its Orders for substitute relief below.[39]

64 Kiri refers to the observation by this Court in the Valuation Appeal Judgment at [323],[40] in which it was said that:

> … In our view, it is open to a court to order a discretionary enhancement of the value of the shares to be purchased under a buyout order, particularly where the innocent minority shareholder is to receive the value of the shares as at the buyout date and has to wait for a significant period before he receives payment for the value of those shares (*ie*, where there is a delay in the execution of the buyout order). This may occur where there are protracted valuation proceedings before a final figure is adjudged and an enforceable judgment is delivered. Such a discretion is not directed towards penalising the oppressing party. Its proper purpose is to ensure that the minority shareholder is not unfairly disadvantaged by delays between the making of a buyout order and the adjudgment of a final valuation figure and the delivery [of] an enforceable judgment.

38 KWS at paras 11–12.

39 KWS at paras 13–14.

40 KWS at para 14.

65 Kiri submits that the purpose of an award reflecting an interest factor is to compensate it for being kept out of the purchase price because it is deprived of the benefit of the use of the purchase price until its shares are purchased.[41]

66 The SICC is said to have erred in assuming that Kiri had not raised the issue of interest at the liability tranche. Interest had not formed any part of its original decision in its Main Judgment. It saw that as an obstacle to Kiri's claim for interest. However, Kiri says that it had raised the question of interest at the liability tranche but that it was deferred twice by the SICC, first to the valuation stage and then to the enforcement stage. The SICC therefore declined to consider Kiri's claim for interest on the erroneous premise that Kiri had not sought interest at the liability tranche of the proceedings.[42]

67 Kiri sets out a chronology of relevant events, which includes the following:[43]

(a) The Main Judgment on liability was issued on 3 July 2018 and a Case Management Conference ("CMC") was fixed for parties to address the SICC on "any other questions relevant to the valuation of Kiri's shareholding".[44]

(b) The solicitors for DyStar wrote to the SICC Registry on 3 July 2018 to seek clarification on whether interest at a statutory rate of 5.33% per annum was granted on the sums due to DyStar in the Main Judgment. In its letter dated 18 July 2018 to the SICC Registry, Kiri did not object

41 KWS at para 16.

42 KWS at paras 18–23.

43 KWS at para 20.

44 Bundle of Documents of Kiri Industries Ltd dated 29 August 2024 ("KBOD") at p 20.

to DyStar's request and took the position that it "should be entitled to interest on the amount payable to it pursuant to the buy-out order made by the Court in SIC 4, and will make the necessary submissions at the [CMC]".[45]

(c) The SICC granted interest as sought by DyStar in relation to its claim against Kiri and indicated that Kiri's request for interest would be dealt with at the CMC held on 11 September 2018. The parties were directed at that CMC to file written submissions on the issue of whether Kiri was entitled to interest on the amount payable to it pursuant to the Buy-out Order.[46]

(d) Kiri, in its submissions dated 9 October 2018, sought an award of "interest or the equivalent of interest on the purchase price of its shares in DyStar from the date of the buyout order, *i.e.*, 3 July 2018, until the date on which Senda pays the said purchase price at the rate of 5.33% per annum".[47]

(e) Senda submitted on 9 October 2018 that Kiri's interest claim should only be considered after the quantum of the purchase price for the Buy-out Order was arrived at.[48]

(f) In its oral judgment dated 8 January 2019, the SICC said (at [9]) that:[49]

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45 KBOD at p 15.

46 KBOD at pp 16–17.

47 KBOD at p 22.

48 KBOD at p 27.

49 Bundle of Authorities of Kiri Industries Ltd dated 29 August 2024 ("KBOA") Vol 1 at p 261.

> We reserve our ruling on the Interest Issue until our decision on the valuation of Kiri's shares in DyStar, at which time we will address the power to award interest based on the submissions received at the CMC, and may invite further submissions on whether, if there be power, interest should be awarded.

68 Kiri says that it subsequently raised the issue of interest at the end of the valuation tranche and that it was again deferred by the SICC to the enforcement stage, leaving it open to Kiri to apply for the appropriate relief *if* Senda failed to perform the Buy-out Order.[50]

69 In its decision dated 21 December 2020 (reported as *Kiri Industries Ltd v Senda International Capital Ltd and another* [2021] 3 SLR 215), the SICC only determined issues relevant to the valuation of Kiri's shares in DyStar for the purposes of the Buy-out Order. It did not address issues of pre-judgment interest nor alternative relief, including a winding-up order.[51]

70 The SICC issued a further oral judgment on 17 March 2021. The SICC (at [4]–[15]) rejected Kiri's claim for pre-judgment interest.[52] As for the issue of the relief that Kiri was entitled to if Senda failed to comply with the Buy-out Order, the SICC held (at [16]) that that was "a question that will be dealt with in the enforcement stage".[53] Kiri points out that the Valuation Appeal Judgment did not disturb the findings of the SICC on the issue of discretionary enhancement. However, this Court did observe that the SICC had not been asked to consider the different issue of whether discretionary enhancement should be granted in the context of a delay between the making of the Buy-out

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50 KWS at para 21.

51 KWS at para 21(d).

52 KBOA Vol 2 at pp 530–534.

53 KBOA Vol 2 at p 534.

Order and its completion (see the Valuation Appeal Judgment at [325]). The possibility of such interest was left open.[54]

71 Kiri submits that the appropriate time for it to have raised the issue of interest if Senda delayed in its completion of the Buy-out Order was always at the enforcement stage. There is a conceptual inconsistency between the SICC's emphasis on Kiri's purported failure to seek interest at the liability stage, and the holding by the SICC that its discretion to account for interest under s 216(2) of the Companies Act was to compensate a party for being kept out of its money (see the Judgment at [79]). Any order for post-judgment interest can logically only be made after the quantum of the purchase price was determined in the Valuation on 3 March 2023.[55]

72 Kiri submits that the approach of dealing with interest subsequent to the liability stage is consistent with case law and refers to the practice adopted by the English High Court Chancery Division in cases such as *Estera Trust*, *Re Southern Counties Fresh Foods Ltd* [2010] EWHC 3334 (Ch) and *Wells v Hornshaw and others* [2024] EWHC 970 (Ch).[56] Kiri points out that its original statement of claim in its oppression action had included a prayer for "[s]uch other orders or reliefs as this Honourable Court deems fit",[57] and this prayer covered any interest due to Kiri in the event of a delay in receiving the purchase price from Senda.[58]

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54 KWS at paras 22–23.

55 KWS at paras 27–28.

56 KWS at para 31.

57 KWS at para 32; KBOD at p 7.

58 KWS at para 32.

73 Kiri also submits that it should be entitled to interest in circumstances in which Senda was effectively seeking an indulgence. Kiri submits that a period of one month following the final valuation of the purchase price by the SICC on 3 March 2023 was a reasonable period for Senda to comply with the Buy-out Order, and that if the SICC disagreed with the one-month timeline, it was at liberty to fix an alternative date from which interest should run.[59]

74 As to the rate of interest, Kiri's primary submission is that this Court is not fettered by the statutory interest rate of 5.33% per annum as Kiri's case for interest is not made on any statutory bases provided for in relation to debts under the SCJA or "debt or damages" under s 12(1) of the Civil Law Act. Instead, Kiri submits that the appropriate rate of interest should compensate it for being kept out of its moneys and that an appropriate proxy would be the rate at which it would have had to borrow moneys in lieu of the purchase price being withheld.[60] Kiri cites the decision of the English High Court Queen's Bench Division in *Tate & Lyle Food and Distribution Ltd and another v Greater London Council and another* [1982] 1 WLR 149, in which it was held (at 155) that "in commercial cases … the rate at which a commercial borrower can borrow money would be the safest guide".[61] Kiri also refers to the decision of this Court in *Tatung Electronics (S) Pte Ltd v Binatone International Ltd* [1991] 2 SLR(R) 231,[62] in which the High Court's award of interest at a rate of 17% on a judgment sum was upheld. The successful respondent had incurred losses in the UK and the interest rate of 17% was the rate that UK banks were charging on pound sterling loans at the material time. Kiri's contends that interest should be ordered

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59 KWS at paras 48 and 52.

60 KWS at para 63.

61 KWS at para 64.

62 KWS at para 65.

on the purchase price at a rate which would compensate it for its costs of borrowing in India. It refers to evidence of borrowing costs in India which it had adduced before the SICC, but which was not considered by the SICC as it had decided not to award interest at all. Kiri submits that, as its business and borrowings are in India, the appropriate interest rate should be the prime lending rate of the State Bank of India, which stood at 14.85% per annum at the relevant date.[63]

75 Kiri submits, in the alternative, that if the prime lending rate of the State Bank of India is not adopted by the Court, it should use the USD prime lending rate, given that the purchase price of US$603.8m was denominated in USD (see the Valuation at [5]). Evidence before the SICC showed that the Bank of America's prime rate was 8% as of 23 March 2023 and 8.2% as of 4 May 2023.[64]

76 Kiri submits, in the further alternative, that following the recent High Court General Division precedent of *Ayaz Ahmed and others v Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and others and other suits* [2022] SGHC 161, this Court should award interest at the rate of 5.33% as an appropriate interest rate for the Court to consider as a proxy for the cost of borrowing.[65]

77 Assuming interest is to run from 3 March 2024 to 3 March 2026, Kiri calculates that the total interest would be as follows: (a) on the application of the prime lending rate of the State Bank of India at 14.85% per annum, total interest would amount to about US$179.33m; (b) applying the USD prime lending rate of 8% per annum, the total interest would be about US$96.61m;

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63 KWS at para 67.

64 KWS at para 69.

65 KWS at para 69.

and (c) based on the statutory interest rate of 5.33%, the amount would be about US$64.37m.[66]

Senda's submissions on a discretionary adjustment to account for interest

78 Senda submits that the Court has no power to award post-judgment interest on the assessed value of Kiri's shares in DyStar. The Court's power to award interest is prescribed in s 18(2) of, read with para 6 of the First Schedule to, the SCJA (the text of which was reproduced at [19]–[20] above).[67]

79 Senda also points to the Court's power to order *pre*-judgment interest on "debts or damages" pursuant to s 12(1) of the Civil Law Act.[68] On that basis, it is said by Senda that the Court can only order interest to be paid on:[69]

> (a) damages or debts;
>
> (b) judgment debts;
>
> (c) sums found due on taking accounts between parties; or
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> (d) sums found due and unpaid by receivers or other persons liable to account to the Court.

The Court's jurisdiction to award interest is said not to extend to the imposition of interest on the assessed value of shares in a minority oppression claim or a buy-out order rendered under s 216(2) of the Companies Act.[70]

80 Senda refers again to *Yeo Hung Khiang* in which an appellant's request for pre-judgment interest, in respect of the period before a buy-out order was

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66 KWS at para 70.

67 SWS at paras 85–86.

68 SWS at para 87.

69 SWS at para 88.

70 SWS at para 89.

made, was denied. This Court held at [37] that the exercise of discretion under s 216(2) of the Companies Act can only arise where there is power or jurisdiction to exercise the discretion in the first place. Hence, this Court concluded at [39]–[41] that the Singapore courts did not have any jurisdiction to award pre-judgment interest on the purchase price of a buy-out order in an oppression case instituted under s 216 of the Companies Act.[71]

81 Senda seeks to extend the reasoning of the Court of Appeal in *Yeo Hung Khiang* beyond the award of pre-judgment interest to post-judgment interest. It relies upon the following passage at [16] of the decision in *Yeo Hung Khiang*:[72]

> It was clear that there was really only one main issue in the appeal. That was whether s 216(2) of the [Companies] Act empowered the court to award or impose interest on the purchase price of Yeo's shares in the company, by way of damages or otherwise, and whether such interest could be given for the period prior to the order for the purchase of shares. If Yeo failed to satisfy the court on this issue, the other two issues would not arise at all.

82 Senda submits that the Buy-out Order is clearly not an award of damages. Accordingly, the Court does not have jurisdiction or power under the SCJA nor under s 216 of the Companies Act to award interest.[73]

83 Senda also submits that it was an abuse of process for Kiri to have attempted to seek an award of post-judgment interest from the SICC below after having failed in its previous attempt before the SICC.[74]

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71 SWS at para 90.

72 SWS at para 91.

73 SWS at para 92.

74 SWS at para 93.

84 In the valuation tranche, Kiri had sought an order for adjustments to be made to the value of its shares from the date of the filing of its writ of summons (*viz*, 26 June 2015), and had proposed that the statutory default interest rate of 5.33% be applied as a proxy for that adjustment.[75] The SICC (in its oral judgment dated 17 March 2021) dismissed that application as a backdoor attempt to seek post-judgment interest which it could not award on the same basis that it could not award pre-judgment interest.[76] Although the SICC held that it had the discretion to enhance or adjust the value of the shares, it declined to do so because it had already ordered the assessed impact of the pre-valuation date events, such as Senda's acts of oppression, to be taken into account in the valuation.[77] There was no evidentiary basis for further adjustments.[78]

85 Senda argues that this Court did not interfere on appeal, in its Valuation Appeal Judgment, with the SICC's decision on its lack of power to award post-judgment interest.[79] While this Court agreed that it was open to it to order a discretionary enhancement of value to the shares, it declined to do so. This was because Kiri had only invited the SICC to consider the issue of discretionary enhancement where there had been a delay between the valuation date and the buy-out date, and not in the context of a delay between the making of a buy-out order and its completion. Hence, the latter was not an issue which arose for consideration on appeal and so Kiri's application for discretionary enhancement was dismissed (see the Valuation Appeal Judgment at [323]–[325]).

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75 SWS at para 94.

76 KBOA Vol 2 at pp 533–534.

77 KBOA Vol 2 at pp 531–532.

78 KBOA Vol 2 at pp 532–533.

79 SWS at para 95.

86 Senda anticipates an argument that Kiri's application for interest in the proceedings below was different from the earlier orders sought in the valuation tranche in that it is now seeking post-judgment interest for a different time period, namely, for late completion of the Buy-out Order after the final value of the price had been determined, whereas in the valuation tranche, it had sought "pre-judgment interest on the amount payable to it pursuant to the buyout order" (see the Valuation Appeal Judgment at [317]). However, Senda highlights that no cut-off date had been stated by Kiri for which such interest or enhancement should cease. Absent a cut-off date, Kiri's previous application for interest or enhancement was from the date of the writ (see at [84] above) "onwards for an indefinite period".[80] That period extended to and included the period after the determination of the quantum of the purchase price up to the completion of the Buy-out Order.[81]

87 Senda goes on to contend that there is no basis for a discretionary enhancement to be made on the value of Kiri's shares. In Senda's view, the factors weighing against discretionary enhancement in the value of Kiri's shares from 3 April 2023 to completion of the *en bloc* sale are that:[82]

> (a) While the Buy-out Order was made in the Main Judgment on 3 July 2018, Kiri's shares were only valued at US$603.8m on 3 March 2023 in the Valuation at [5]. It is significant that the SICC held in the Judgment at [66] that the valuation tranche had taken more time "simply [as] a result of the litigation process, to which both Kiri and Senda have contributed".

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80 SWS at para 98.

81 SWS at paras 96–100.

82 SWS at para 103.

(b) The critical fact in the present case is that Senda did not wilfully refuse to comply with the Buy-out Order. Despite its best reasonable endeavours, it was unable to muster the financial resources to carry out the Buy-out Order for reasons beyond its control. The delay was clearly not attributable to Senda.

(c) The *en bloc* sale is being conducted through a process managed and controlled by court-appointed independent receivers. There is a possibility of delay due to factors entirely out of either of the parties' control. On that basis, it is highly inappropriate for Senda alone to bear the consequence of any delay in completion of the *en bloc* sale. Senda refers to the analysis of the SICC in its Judgment below (at [83]), which reasoned to the same effect.

88 Senda refers to its alternative proposal in CAS 5 to address the impact of its oppressive conduct *vis-à-vis* the value of DyStar (see at [40] above).[83]

89 Finally, Senda submits that the interest rates proffered by Kiri – *viz*, the State Bank of India's benchmark prime lending rate at 14.85% and the USD prime lending rate at 8% or 8.2% – are inappropriate for various reasons and should therefore be rejected by this Court.[84] Senda purports to reserve the right to propose a fair interest rate if the Court was minded to "impose a post-judgment interest" against Senda and/or DyStar.[85]

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83 SWS at para 104.

84 SWS at paras 105–110.

85 SWS at para 111.

Consideration and conclusions

90 In the opinion of this Court, the claim for a buy-out remedy brought in these proceedings is not in the nature of a claim for debt or damages within the meaning of para 6 of the First Schedule to (read with s 18(2) of) the SCJA or s 12(1) of the Civil Law Act. It has not been argued by Kiri that the purchase price in the Buy-out Order is a judgment debt on which interest may run (see at [63] above), and the Court does not consider that to be so.

91 It follows that the Buy-out Order and the Valuation did not enliven a power on the part of the SICC to award post-judgment interest running from the date of the Buy-out Order until completion. Nor did the substituted *en bloc* sale order enliven such a power under the provisions already mentioned at [90] above.

92 The question for this Court then reduces to the availability of a discretionary enhancement of the amount payable to Kiri in respect of its shares under the substituted *en bloc* sale order, having regard to the delay in the implementation of the sale of the shares pursuant to the Buy-out Order.

93 The principle of "fairness" underpinning the remedial discretion to formulate relief under s 216(2) of the Companies Act (see at [54]–[55] above) allows the Court to make orders enhancing the amount to be paid for the shares of the oppressed shareholder, taking into account any period of delay in their realisation.

94 Having regard to Kiri's submissions in relation to the way in which the issue was approached below (see at [67]–[71] above), this Court does not consider that Kiri is precluded from asserting a claim for discretionary enhancement of the value to be received by Kiri from the *en bloc* sale for its

shareholding, calculated by reference to an appropriate interest rate. The Court finds, however, that the calculation in this case should not be informed by the higher interest rates applicable to commercial borrowings whether in India or in the United States.

95 Fairness operates in more than one direction in this case. The reference rate is not required to be fully compensatory. External factors have impinged on the timeframe for realisation of the shares (see at [87] above; see also the Judgment at [66] and [83]); hence, as a matter of fairness, those factors can be taken into account in selecting, as we do, a reference rate of 5.33% to run from six months following the date of the Valuation rendered on 3 March 2023 (see at [4] above). The Court will thus order a discretionary enhancement of the sum to be paid to Kiri following the *en bloc* sale, calculated at 5.33% per annum on US$603.8m running from 3 September 2023 until the date of payment. That sum, as with the Valuation figure, will be paid to Kiri in priority as against Senda out of the net proceeds of the *en bloc* sale. The Court, having accepted the lowest reference rate debated by the parties, does not need to hear further from Senda in relation to the appropriate rate (see at [89] above).

Costs

CAS 4

96 With Kiri having succeeded on CAS 4, the costs should follow the event. Senda shall be liable to reimburse Kiri's costs to be fixed at S$90,000.00, and Kiri's disbursements of S$4,837.40 (comprising Electronic Filing System ("EFS") charges of S$4,112.40, photocopying/printing charges of S$710.00 and transport charges of S$15.00).[86]

[86] KWS at para 104.

97 There remains a question whether there should be a variation of the costs order made by the SICC in its costs judgment delivered on 29 August 2024 (see *Kiri Industries Ltd v Senda International Capital Ltd and another* [2024] SGHC(I) 25 at [16]). If Kiri seeks a variation of the costs order, it should make a written submission in that respect within 14 days of this judgment. Senda will have 14 days to respond.

CAS 5

98 With Senda having failed on CAS 5, it should be liable to pay Kiri's costs thereof, fixed at S$60,000.00, and Kiri's disbursements of S$2,538.60 (comprising EFS charges of S$1,913.60, photocopying/printing charges of S$610.00 and transport charges of S$15.00).[87]

99 The usual consequential orders shall apply.

Judith Prakash
Senior Judge

Robert French
International Judge

Bernard Rix
International Judge

[87] KWS at para 105.

Dhillon Dinesh Singh, Loong Tse Chuan, Lim Dao Kai, Mak Sushan Melissa (Mai Sushan), Dhivya Rajendra Naidu, Chee Yi Wen Serene, Jung Sol and Bryan Wong Shi-Wen (Allen & Gledhill LLP) for the appellant in CA/CAS 4/2024 and the respondent in CA/CAS 5/2024;
Lee Eng Beng SC, Cheng Wai Yuen Mark, Soh Yu Xian Priscilla and Lim Wee Teck Darren (Rajah & Tann Singapore LLP) for the first respondent in CA/CAS 4/2024 and the appellant in CA/CAS 5/2024;
Jimmy Yim Wing Kuen SC, Manoj Belani, Chloe Shobhana Ajit and Adam Tan Ern-Ming (Drew & Napier LLC) for the second respondent in CA/CAS 4/2024;
Soon Wen Qi Andrea and Lim Jingzhen Jerrick (WongPartnership LLP) for the joint and several receivers of the *en bloc* sale of the total shareholding of the second respondent in CA/CAS 4/2024, Mr Matthew Stuart Becker, Mr Lim Loo Khoon and Mr Tan Wei Cheong of Deloitte & Touche LLP (watching brief).
