13, 1980

No. 30 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

BETWEEN:

MALAYAN PLANT (PTE) LIMITED

Appellants

- and -

MOSCOW NARODNY BANK LIMITED

Respondents

CASE FOR THE APPELLANTS

RECORD

1. This is an appeal from the judgment dated the 14th day of April 1978 of the Court of Appeal of the Republic of Singapore (Chua, Choor Singh and Rajah, JJ.), whereby the Court of Appeal dismissed the Appellants' appeal from an order of the Honourable Chief Justice Wee Chong Jin dated the 12th day of May 1977 winding up the Appellants upon the Respondents' petition. pp. 87-100 pp. 82-83

2. The relevant provisions of the Companies Act (Cap.185) are set out in the Appendix to this case.

3. The Appellants were incorporated on the 9th day of February 1972 under the said Companies Act. Their registered office is at 215 Upper Bukit Timah Road, 7¼ m.s., Singapore 21. The nominal capital of the company is $10,000,000.00 divided into 10,000,000 shares of $1.00 each. The amount of the capital paid up or credited as fully paid up is $1,770,000.00. pp.7 93 (11.3 to 15

pp. 2 (l. 32) to 3 (l. 15)

4. The objects of the Appellants are to carry on the business of importers and exporters of machineries, plants, ironfounders, mechanical engineers, agricultural implements, and other machinery, toolmakers, brass-founders, metal-workers, mill-wrights, iron and steel converters, smiths, electrical engineers and water supply engineers and to buy, sell, manufacture, repair, convert, alter, let on hire, act as agents and deal in machinery, implements and hardware of all kinds, together with any other business connected with the Appellants' objects which can also be conveniently carried out.

pp.5 (l. 25) to 6 (l. 15)

5. The Respondents are a bank wholly owned by the Soviet Government incorporated in the United Kingdom, whose registered offices are at 24/32 King William Street, London. The Respondents have a place of business at MNB Building, 48/56 Robinson Road, Singapore.

pp. 8-58
65-72
75-79

6. From incorporation in 1972 until the date of the Petition herein the Appellants traded profitably and widely in their above-mentioned business. The Appellants traded in Singapore, Indonesia and South-East Asia generally. They have trade links also with Europe and the United States of America. The range of goods dealt in by the Appellants is wide. Examples include goods and tractor vehicles and their spare parts; materials for the construction of factories and processing plants; electrical motors; cranes; cement; and sheet aluminium.

7. From 1972, soon after the Appellants' incorporation, the Respondents were well aware of the Appellants' business activities and provided the Appellants with the following banking facilities to assist them in their above-mentioned trading activities:

(a) An overdraft facility;

(b) Credit facilities for the acquisition of goods, whereby the goods and their proceeds of sale were held on trust for the Respondents. A trust receipt in a standard form was issued in respect of each such transaction,

pp. 60 (ll. 9-20)
65-68

showing, inter alia, the rate of interest payable by the Appellants on sums outstanding under the arrangement. This note of interest is the subject of dispute between the parties;

(c) The Respondents accepted bills of exchange on the Appellants' behalf. pp. 69-70

Moreover, by a letter dated the 17th day of December 1975 to Perusahaan Negara Perkebunan, V, a state-owned corporation in Indonesia, the Respondents described the Appellants as, "a well-respected business firm", going on to say that: "Their business has expanded at a steady pace and we have handled their transactions to our satisfaction", and that they, "... would consider the Company good for their commitments."

8. By a letter dated the 9th December 1976 and delivered on the 11th December 1976, the Respondents demanded the immediate repayment of all sums that they claimed were outstanding under the above facilities. These totalled $8,092,088.56. There was no prior warning either that the Respondents thought the Appellants' level of credit was too high or that a sudden demand of this nature, effectively ending the banking relationship between the parties, was contemplated. pp. 8-14 65

9. There had been no change for the worse in the Appellants' solvency, profitability, or prospects prior to this demand. The Appellants were extensively committed under their existing contractual obligations and, although their assets exceeded their liabilities, could not raise the sum claimed forthwith. The Appellants also disputed the amount of the sum claimed.

10. On the 27th day of January 1977 the Respondents caused a notice of demand to be served by their solicitors, Messrs. Lee and Lee, at the Appellants' registered office, in the following terms: pp. 3-4 15-16

" 25th January 1977

TAKE NOTICE that we, Messrs. Lee &

Lee of 18th Floor, UIC Building, Shenton Way, Singapore, Solicitors for the Moscow Narodny Bank Limited of Nos. 48/56 Robinson Road, Singapore, hereby require you to pay to our clients or to us the sum of Singapore Dollars Eight million ninety-two thousand and eighty-eight dollars and Cents Fifty-six (S$8,092,088.56) together with interest thereon until date of payment full particulars whereof are annexed hereto and short particulars whereof are as follows :

	Outstanding as at 4/12/76
Inward Bills Negotiated	402,243.45
Trust Receipts	6,322,122.57
Overdraft	1,367,722.54
	S$ 8,092,088.56

AND FURTHER TAKE NOTICE that in the event of your failure and/or refusal to make payment of the full amount now due from you to our client or to us within three weeks from the date of receipt hereof, we shall on behalf of our clients petition for you to be wound up by the Court upon the ground provided for in Section 218(1)(e) read with Section 218(2)(a) of the Singapore Companies Act (Cap.185), namely that you are unable to pay your debts.

Dated this 25th day of January 1977

sd. Lee & Lee

Solicitors for the Moscow Narodny Bank, Limited."

p. 62 (l 34) The interest demanded on the outstanding trust receipts was 14 per cent.

11. On the 21st day of February 1977 the Respondents presented a petition (No.25 of
pp. 2-4 1977) for the winding up of the Appellants founded on Sections 218(1)(e) and 218(2)(a) of the Companies Act (Cap.185). The said

petition alleged that the Appellants had neglected to pay or satisfy the sums demanded by the Respondents and were insolvent and unable to pay their debts, and that in the circumstances it was just and equitable that the Appellants should be wound up.

12. The said petition was purportedly verified by an affidavit sworn on the 23rd day of February 1977 by Kong Yuk Min, who was the Deputy Manager of the Respondents in Singapore. He was at no material time a director or secretary of the Respondents. — p.5, pp.7

13. On the 17th day of March 1977, Yap Cheng Hai, the Chairman and Managing Director of the Appellants, swore an affidavit on their behalf in reply to the Respondents' petition. In the said affidavit he deposed to the fact that : — pp.8-14

(i) The Appellants disputed that they owed the Respondents the said sum of S$8,092,088.56; — pp. 8 (11.21-25)

(ii) The demand dated the 25th day of January 1977 and the Respondents' petition represented the first and only formal steps taken by the Respondents to recover the sum claimed; — pp.8 (1.25) to 9 (1.5)

(iii) There was an issue between the Appellants and the Respondents as to the true rate of interest to be levied on the Trust Receipts. In particular, the Appellants denied that rates as high as 14% were ever agreed upon. Nowhere among the Trust Receipts relied upon by the Respondents did such an interest rate appear. — p. 9 (11.5 to 15)

(iv) The Appellants' present and past financial position was a sound and solvent one. This was confirmed by the Respondents in the said letter dated the 17th December 1975. The Appellants' future business prospects were extremely good. — pp.9 (1.16) to 13 (1.20), p. 20

(v) In particular, as at 31st December 1976 the Appellants' assets and liabilities were valued as follows:

p. 9 (11.31-39)

A. Stock in hand: S$10,368,660.96

Trade Debtors: S$ 6,271,932.23

Total: S$16,640,593.19

pp. 9 (1.40) to 10 (1.7)

B. Trade Creditors: S$ 4,324,428.44

Other Creditors: S$ 894,893.64

Total: S$ 6,219,422.08

pp. 37 93 (11.25-30)

The Appellants' overall balance at the above date was:

Assets: S$18,665,916.99

Liabilities: S$17,183,039.81

Net Current Assets: S$ 1,482,877.18

(vi) In retrospect, the Appellants' financial position had always been sound. In each of the four years of trading prior to 1977 the Appellants had made a profit:

pp. 10 (11.12-36) 31-45

1973: S$105,348.65

1974: S$ 91,227.12

1975: S$23,656.54

1976: S$ 52,210.40/51,587.97

The net current assets for each of the years 1973 - 1975 were as follows :

pp. 10 (1.36) to 11 (1.2)

1973: S$1,957.300.00

1974: S$1,455,861.00

1975: S$1,407,548.73

(vii) In the six months immediately proceeding March 1977 the Appellants' turnover had been vigorous and healthy: p. 11 (11.18 to 21)

	Sales	Purchases
	S$	S$
September 1976	342,912.00	225,038.77
October 1976	314,885.65	149,336.96
November 1976	249,499.96	146,321.29
December 1976	1,285,885.50	115,315.22
January 1977	183,559.99	109,789.92
February 1977	582,195.73	61,766.43
	S$2,958,938.85	S$807,567.59

The above figures represented a high margin of profitability.

(viii) At the date of the said affidavit the Appellants also had in hand 29 letters of credit issued by Bank Negara Indonesia, Singapore Branch in the Appellants' favour to the value of S$2,484,437.78. Shipment of the goods concerned would take from three to six months to complete. pp. 11 (11. 22 to 35) 46-48

(ix) The Appellants' tax position was in order. The Appellants had paid the sums of S$52,210.40 and S$52,000.00 as tax to the Comptroller of Income Tax for the years 1973 and 1974 respectively. Provision had also been made for the 1975 payment. p. 10 (1.43) to 11 (1.18)

(x) The Appellants' future business prospects were particularly good at the date of the affidavit. The Appellants had been recently appointed pp. 11 (1.22) to 12 (1.19) 49-53

to the profitable position of sole agents in Singapore for the "Terex Division" of the General Motors Overseas Distribution Corporation for the year 1977. At the date of the said affidavit the Appellants were also negotiating, thus far successfully, with a number of parties in connection with the supply of off - shore equipment, in particular for the Indonesian market. This was another venture which would lead to substantial profits.

p.12 (11.20-41) (xi) In November and December 1976 he, Yap Cheng Hai, had demonstrated to the Respondents' General Manager, officers and solicitors, the Appellants' solvency and ability to pay any sums due to the Respondents if given the reasonable time required to realise assets. The Appellants' suggestion that a figure representing any sums which may be due to the Respondents and a schedule of repayment be agreed between the parties had been rejected by the Respondents, who at all times insisted on repayment of the sums which they claimed to be due within three weeks.

pp. 12(1.46) to 13 (1.20) (xii) There was no reason to believe that if the Appellants were to be wound up the highly specialised assets of the Appellants would realise their full value if sold on the open market, nor that all of the Appellants' debtors would fulfil their obligations to the Appellants, particularly the Indonesian debtors.

p. 13 (11.22-42) (xiii) The present petition was brought after attempts had been made by trade representatives of the Union of Soviet Socialist Republics to induce the Appellants to purchase Soviet made equipment. These approaches had been rejected and indeed the Appellants had agreed to become the Terex sole agent. The presentation of the petition followed soon after, it was suggested, in order to bring pressure to bear on the Appellants.

(xiv) The Respondents had not disclosed that they were, in fact, secured creditors to the following extent: pp.13 (1.43) to 14 (1.25) 54-58

(a) The value of the Appellants' pledge of goods held on trust for the Respondents as at the 28th February 1977 was S$1,805,694.36. The Respondents were refusing to allow these goods to be removed by the Appellants.

(b) A mortgage existed in the Respondents' favour of the Appellants' property known as Lot 738 Mukim X No. 215 Upper Bukit Road, Singapore to secure overdraft facilities with the Respondents up to S$1,200,000.00. The property was valued on the 1st May 1974 at S$1,800,000.00.

(xv) In the above circumstances to grant the petition would be to wind-up a healthy and successful business and would be neither just nor equitable.

14. On the 28th day of April 1977, Kong Yuk Min, the Deputy Manager of the Respondents' branch in Singapore affirmed in an affidavit made on behalf of the Respondents that : pp. 59-64

(1) On the 9th day of December 1976 a demand in terms similar to that of the 25th day of January 1977 had been sent to the Appellants. pp. 59 (1.35) to 60 (1.20) 65-66

(2) The balance of outstanding trust receipts claimed by the Respondents from the Appellants was to be reduced by two payments made by the Appellants of S$58,474.54 and S$54,887.88 respectively. pp. 62 (1.41) to 64 (1.12)

(3) The Respondents were entitled to levy interest on sums outstanding on the said Trust Receipts at 14 per cent by reason of an oral agreement between the parties and their practice in prior dealings with the Appellants. p. 62 (11.34-40)

pp. 62 (1.4) to 63 (1.35)

(4) On the 11th day of December 1976 at the said meeting between the parties, although the Respondents had served the said demand dated the 9th day of December 1976, the Respondents had invited the Appellants to submit a schedule of proposals for repayment of sums outstanding. No schedule was submitted at the next meeting between the parties six days later on the 17th day of December 1976.

(5) That the Respondents were not unwilling to agree a figure for any sums owed by the Appellants and that in fact the Respondents had given the Appellants the Respondents' figures for the debt outstanding on the 11th day of December 1976 which were the correct ones.

pp. 63 (1.35) to 64 (1.30)

(6) The Respondents denied that the petition herein was brought to bring pressure on the Appellants to buy Russian made equipment.

(7) The Respondents denied that they had refused to grant the Appellants permission to remove goods subject to the said pledge from their place of storage. The deponent, however, added that on the 7th day of December 1976 they had written to the Appellants (inter alia) in the following terms:

p. 79 (11.1-9)

> "Please be informed that the goods, presently stored in the godown at No.15 Link Road, Singapore, are now to be considered under our full control and we demand the return of the key to the said godown. In case our demand is not complied with, we will have to change the lock."

15. On the 21st day of April 1977, Wilson Sung, an Executive Director of Deekes Wills (Pte) Limited swore an affidavit in which he deposed that :

pp. 59-60

RECORD

(1) He acted on behalf of Deekes & Evans Limited of London, a British company, who were creditors of the Appellants opposed to the petition. pp. 59 (11.15-24)

(2) The Appellants had been trading for a number of years with the said Deekes & Evans Limited and had maintained at all times a satisfactory business account making punctual and regular payment of their bills. The Appellants had been trading on a large scale with South East Asia. pp. 59 (11.25-34)

(3) During the trade recession of 1974 the Appellants had at all times made every effort to liquidate or reduce their accounts with the said company and had kept Deekes & Evans informed of the Appellants' prevailing position. p. 59 (11.35-44)

(4) The Appellants were still actively trading on a large scale and in an area of expanding trade. p. 60 (11.1-8)

(5) The Appellants had the capability and trading capacity to generate the funds necessary to pay their debts. p. 60 (11.9-15)

(6) The best means of securing the payment of debts and the protection of the best interests of the Appellants' creditors lay in permitting the Appellants to continue to trade so that the necessary funds would continue to be generated by them.

16. On the 12th day of May 1977 the Honourable Chief Justice Wee Chong Jin heard argument on the Respondents' petition. In addition to counsel for the Appellants and the Respondents, counsel was also heard on behalf of the Official Receiver, Hongvestco Limited, Yap Cheng Yan and Yap Cheng Hai (the contributories), Deekes and Evans Limited, (the opposing creditors), and Executive Decisions Inc. (Pte.) Limited (a supporting creditor). pp. 80-81 93 (11. 30-47)

17. On the 12th day of May 1977, the learned

Chief Justice ordered that the Appellants be wound up, subject to the production of an affidavit sworn by a director, secretary or principal officer of the Respondents, in accordance with Rule 26 of the Companies (Winding-up) Rules 1969, verifying the petition. The learned Chief Justice also appointed the Official Receiver to be the Provisional Liquidator of the Appellants and allowed costs to the Respondents to be paid out of the proceeds received by the Official Receiver.

pp.84 to 85 (l.10)

18. On the 13th day of May 1977, Victor Vladimirovitch Gerashchenko, the Deputy Chairman, Director and Managing Director (Singapore Branch) of the Respondents affirmed the contents of the Respondents' said petition and the affidavit of Kong Yuk Min on behalf of the Respondents.

pp. 85 (l.12) to 86 (l.25)

19. On the 19th day of May 1977 the Appellants gave notice of their intention to appeal to the Court of Appeal against the whole of the decision of the learned Chief Justice.

pp. 87-90

20. The grounds upon which the Appellants appealed were (inter alia) that the learned Chief Justice erred as follows :

(i) in making a winding-up order when it was not just and equitable to do so;

(ii) in making a winding-up order when, on the evidence, the Appellants were solvent and trading profitably;

(iii) in making a winding-up order when, on the evidence, the Appellants were, taking into account their contingent and prospective liabilities, able to pay their debts;

(iv) in holding that the Appellants were indebted to the Respondents in the sum of S$8,092,088.56 and interest;

(v) in holding that the Respondents were creditors of the Appellants when the alleged debt to them was disputed by the Appellants;

(vi) in holding that the demand under hand served upon the Appellants by the Respondents purportedly pursuant to Section 218(2)(a) of the Companies Act (Cap.185) was a good and valid demand when the alleged debt to the Respondents from the Appellants was disputed by the Appellants;

(vii) in making a winding-up order when the alleged debt from the Appellants to the Respondents was disputed by the Appellants;

(viii) in having no or no sufficient regard to the opposing creditor or to the interests of the creditors generally.

21. On the 22nd and 23rd days of March 1978 the Appellants' appeal was heard in the Court of Appeal of The Republic of Singapore before the Honourable Mr. Justice F.A. Chua, the Honourable Mr. Justice Choor Singh and the Honourable Mr. Justice A.P. Rajah. p. 91 (ll.19-29)

22. It was argued on behalf of the Appellants that -

(1) the Respondents had been the Appellants' bankers from soon after the Appellants' incorporation;

(2) the Respondents had provided the Appellants with loans and credits and had obtained from them a mortgage, trust receipts and pledge;

(3) the Respondents were aware of the nature of the Appellants' business and as their bankers owed them a duty to warn them against incurring imprudent debts;

(4) the Respondents' financial support had enabled the Appellants to trade successfully, to have assets exceeding their liabilities and to have good prospects for the future;

(5) there was no possibility of the Appellants being able to replace the Respondents by an alternative source of finance at short notice;

(6) the Respondents' satisfaction with

the Appellants was shown by their said letter to the Perusehaan Negara Perkebunan, V, dated the 17th December 1975;

(7) the Respondents' sudden change of attitude and demand for repayment of all loans and advances in December, 1976, had put the Appellants in an impossible situation;

(8) on a winding up a liquidator was unlikely to be able to sell the Appellants' stock to best advantage and his prospects, unlike those of the Appellants, of getting in debts from Indonesian debtors were slight;

(9) the Appellants thought that the reason for the Respondents' sudden action might have been their refusal to buy Russian goods, but this was denied by the Respondents;

(10) the learned Chief Justice did not give any reasons for the orders which he made. Passages in Buckley on the Companies Act (13th Edition) p.460 and McPherson on The Law of Company Liquidation, pp. 58-9 were cited to him. In the light of those passages he may have thought that, since the Appellants had failed to comply with a notice of demand, he had no alternative but to make a winding-up order;

(11) even on a narrow view of a Court's discretion when dealing with an application for a winding-up, an order should have been refused in this case, because the Respondents could recover their money by enforcing the mortgage, pledge and trust receipts which they held and a winding-up was not in the interests of the creditors as a class;

(12) in the light of Re: LHF Wools Ltd. (1970) 1 Ch. 27 C.A. and other cases it is clear that a Court has wide discretion to decide whether or not a company should be wound up;

(13) in this case it was neither just nor equitable that a winding-up order

should be made. A customer of a Bank is entitled to expect that it will not blow hot and cold with him. The effect of an order would be to bring to an end a profit-making business, result in loss of economic opportunities and because of probable losses by the Liquidator result in the contributories getting nothing.

It was argued on behalf of the Respondents that :-

(1) a prudent banker keeps close supervision over his customer. The Respondents were right to demand payment of sums outstanding in December, 1976, and when the Appellants failed to make any response serve a notice of demand and bring proceedings for winding-up;

(2) since there was a large undisputed debt due to the Respondents, they had a prima facie right to a winding-up order. A Court had a discretion to refuse such an order, but the discretion is closely regulated;

(3) in each of the reported cases in which a winding-up order had been refused there had been a special feature to justify refusal. There was no such feature in the present case;

(4) the learned Chief Justice was aware that he had a discretion whether or not to make a winding-up order. The Appellants had failed to show that he had exercised his discretion wrongly;

(5) a secured creditor might enforce his security or wind-up. The filing of a petition benefitted unsecured creditors. The Appellants were not commercially solvent as shown by their failure to meet a demand for payment. Future profitability should not be taken into account. There was no evidence that a Liquidator would not be able to get in assets.

23. On the 14th day of April 1978 the Court of Appeal dismissed the Appellants' appeal and

pp. 91 (l.30) to 92 (l.10)

awarded the Respondents costs out of the Appellants' assets. The Court of Appeal also ordered that the auction of the Appellants' assets be stayed for one month, and that the sum of S$500 paid by the Appellants into Court as security for the costs of the appeal be paid out to the Respondents' solicitors.

pp. 92-100

24. The Judgment of the Court was delivered by the Honourable Mr. Justice A.P. Rajah.

pp. 92 (1.25) to 96 (1.47)
pp. 92 (1.12) to 96 (13)
pp. 96 (1.4) to 97 (1.19)
pp. 97 (11. 20-49)
pp. 97 (1.50) to 99 (1.12)

After setting out the history of the case, the Court of Appeal referred to Buckley on the Companies Act (1957, 13th ed.) and summarized the decision of In Re: L.H.F. Wools Ltd. (1970) 1 Ch. 27, ("the Wools Case"). The Court held that the issues in the present case and in the Wools Case were entirely different. The distinction was said to lie in the absence in this case of a bona fide cross-claim overtopping the petitioning creditor's debt. Such a claim had existed in the Wools Case.

pp. 98 (1.15) to 100 (1.18)

The Court of Appeal referred to the decision in In Re: P. & J. Macrae Ltd. (1961) 1 W.L.R. 229. That was a case where the majority in number and value of creditors were opposed to the making of a winding-up order, but the learned County Court Judge, in the exercise of his discretion, had made a winding-up order and, by a majority, the English Court of Appeal had refused to interfere with that exercise of discretion. The Court pointed out that the issue on which the County Court Judge had had to exercise his discretion in the Macrae Case was different from that in this case. The Court held that in the present case the question of whether a majority of creditors opposed the petition had not even been put in issue.

pp. 97 (1.50) to 98 (1.18)
99 (11.13-25)

The Court of Appeal held that where a debt was due and owing on which a winding-up petition could properly be founded the onus of persuading a judge not to make a winding-up order, in his discretion, was firmly on the debtor company. This was a matter entirely within the discretion of the judge, whose decision could not be interfered with on appeal unless he had erred in principle.

The Court of Appeal concluded that they should

not interfere with the exercise of his discretion by the learned Chief Justice and dismissed the appeal.

25. On the 23rd day of May 1978, the Court of Appeal of The Republic of Singapore (Wee Chong Jin C.J., Chua and D'Cotta J.J.) made an Order granting leave to the Appellants to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council against the said decision of the Court of Appeal. pp. 101 - 102

26. The Appellants respectfully submit that the Order of the Court of Appeal was wrong and ought to be set aside, and this appeal ought to be allowed with costs for the following (among other)

R E A S O N S

BECAUSE the Court in the exercise of its powers under Section 218 of the Companies Act, has a general inherent discretion to grant or refuse a winding-up order, based upon a full consideration of the interests of all the parties and all the surrounding circumstances: the two decisions cited in the Court of Appeal were examples of the operation of this general inherent discretion, and not definitive of it;

BECAUSE the Respondents, having been the Appellants' bankers from soon after the Appellants' incorporation, and being fully aware (a) of the nature of the Appellants' business and (b) that there was no possibility of the Appellants being able to replace the Respondents with an alternative source of finance at short notice, owed the Appellants a duty to advise and/or to warn them against incurring debts;

BECAUSE, on the evidence before it, the Court of Appeal of the Republic of Singapore failed to hold that in the exercise of the said general discretion the learned Chief Justice failed in his duty to consider and give weight to the evidence that:

(i) there was a bona fide dispute as to the amount due from the Appellants to the Respondents;

(ii) the Appellants' assets exceeded their liabilites;

(iii) the Appellants had been making profits prior to the Petition;

(iv) the future earning prospects of the Appellants were good;

(v) the Respondents were secured creditors of the Appellants up to S$1,200,000.00 under a legal mortgage;

(vi) the Respondents held goods under pledge and the Trust Receipts against which they could recover;

(vii) That the Respondents' general behaviour was not that of good and reasonable banker vis-a-vis his customer in that they had facilitated the Appellants becoming indebted to them and had then, without warning or reason, demanded a lump sum repayment of all moneys within three weeks;

(viii) the Respondents' sudden change of attitude and their demand for repayment of all loans and advances in December 1976 had put the Appellants in an impossible position;

(ix) the Respondents were in breach of their aforesaid duty to warn and/or advise the Appellants;

(x) on a winding-up, the liquidator was unlikely to be able to sell the Appellants' stock to the best advantage and generally would have difficulty in getting in the assets, whereas the Appellants would be much better able to raise the necessary monies and in particular in respect of the debts owed by Indonesian debtors;

(xi) there were opposing creditors.

BECAUSE on the evidence it was calear that the reasonable interests of all the parties would be best protected by the stay or dismissal of the winding-up petition, whether or not upon terms.

BECAUSE it was not, in the circumstances,

just and equitable to wind-up the Appellants.

BECAUSE the decision of the Court of Appeal of the Republic of Singapore was wrong.

John Newey

Ian Glick

No. 30 of 1978

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