

13/80

No. 30 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

MALAYAN PLANT (PTE) LIMITED

Appellants
(Respondents)

- and -

MOSCOW NARODNY BANK LIMITED

Respondents
(Petitioners)

IN THE MATTER OF COMPANIES WINDING-UP NO. 25 OF 1977

IN THE MATTER OF THE COMPANIES ACT (CAP.185)

AND

IN THE MATTER OF MALAYAN PLANT (PTE) LIMITED

AND

IN THE MATTER OF PETITION NO. 25 OF 1977 PRESENTED
AGAINST THE ABOVE-NAMED COMPANY ON THE 21ST DAY OF
FEBRUARY 1977

RECORD OF PROCEEDINGS

KINGSFORD DORMAN,
13/14 Old Square,
Lincoln's Inn,
London, WC2A 3UB

Solicitors for the
Appellants

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD

Solicitors for the
Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

MALAYAN PLANT (PTE) LIMITED Appellants
(Respondents)

- and -

MOSCOW NARODNY BANK LIMITED Respondents
(Petitioners)

IN THE MATTER OF COMPANIES WINDING-UP NO.25 OF 1977
IN THE MATTER OF THE COMPANIES ACT (Cap.185)

AND

IN THE MATTER OF MALAYAN PLANT (PTE) LIMITED

AND

IN THE MATTER OF PETITION NO. 25 OF 1977 PRESENTED
AGAINST THE ABOVE-NAMED COMPANY ON 21ST DAY OF
FEBRUARY 1977

RECORD OF PROCEEDINGS

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DOCUMENTS TRANSMITTED TO THE
JUDICIAL COMMITTEE BUT NOT
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Description of Document	Date
Following exhibits to Affidavit of Yap Cheng Hai	
"CHY 11" - Bundle of Inland Revenue Department Receipts and Notices of Assessments for years 1974 and 1975	
"CHY 12" - Bundle of Letters of Credit, apart from first page of bundle.	
Following exhibits to Affidavit of Kong Yuk Min	
"KYM 3" to "KYM 34" - Trust Receipts	
"KYM 36" to "KYM 39" - Documents relating to Inward Bills negotiated	
Certificate for Security for Costs	19th May 1977

No. 30 of 1978
IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

MALAYAN PLANT (PTE) LIMITED Appellants
(Respondents)

- and -

10 MOSCOW NARODNY BANK LIMITED Respondents
(Petitioners)

IN THE MATTER OF COMPANIES WINDING-UP NO.25 OF 1977
IN THE MATTER OF THE COMPANIES ACT (Cap.185)

AND

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AND

IN THE MATTER OF PETITION NO.25 OF 1977 PRESENTED
AGAINST THE ABOVE-NAMED COMPANY ON 21ST DAY OF
FEBRUARY 1977

RECORD OF PROCEEDINGS

In the High
Court of the
Republic of
Singapore

No. 1

PETITION TO WIND UP
21st February 1977

No.1

Petition to
Wind Up
21st February
1977

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Companies Winding Up)
No.25 of 1977

Let this Petition stand
for hearing on Friday,
the 25th day of March
1977 at 10.30 a.m.

IN THE MATTER OF THE
COMPANIES ACT
(CHAPTER 185)

10

AND

Dated the 21st day of
February 1977

(Sgd)

IN THE MATTER OF
MALAYAN PLANT (PTE)
LTD.

ASST. REGISTRAR

P E T I T I O N

The humble Petition of MOSCOW NARODNY
BANK LIMITED of MNB Building, 48/56 Robinson
Road, Singapore 1, a Creditor, showeth as
follows :-

20

1. Malayan Plant (Pte) Ltd. (hereinafter
called "the Company") was on and from the 9th
day of February, 1972 incorporated under the
Companies Act.

2. The Registered Office of the Company is
at 215 Upper Bukit Timah Road, 7 $\frac{3}{4}$ m.s.,
Singapore 21.

3. 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 is \$1,770,000.00.

30

4. The objects for which the Company was
established are as follows :-

To carry on the business of importers and
exporters of machineries, plants, iron founders,
mechanical engineers, agricultural implements
and other machinery, tool-makers, brass-founders,
metal-workers, mill-wrights, iron and steel

convertors, 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 and to carry on any other business which may seem to the Company capable of being conveniently carried on in connection with the above, and other objects set forth in the memorandum of association thereof.

In the High Court of the Republic of Singapore

No.1

Petition to Wind Up

21st February 1977

(continued)

10

5. The Company is indebted to your Petitioners in the sum of (S\$8,092,088.56) together with interest thereon until date of payment in respect of loans and advances made by the Petitioners.

20

6. On the 27th day of January, 1977, your Petitioners had through their Solicitors, Messrs. Lee & Lee served at the Registered Office of the Company aforesaid a notice of demand dated the 25th day of January, 1977 requiring the Company to pay the said sum together with interest thereon to your Petitioners, which demand was in the following terms :-

30

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 :-

40

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

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 clients or to us within three weeks from the date of receipt hereof, we shall on behalf of

In the High
Court of the
Republic of
Singapore

No.1

Petition to
Wind Up

21st February
1977

(continued)

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

10

7. Over three weeks have now elapsed since
your Petitioners served the said demand, but
the Company has neglected to pay or satisfy
the said sum or any parts thereof or to make
any offer to your Petitioners to secure or
compound the same.

8. The Company is insolvent and unable to
pay its debt.

9. In the circumstances, it is just and
equitable that the Company should be wound up. 20

Your Petitioners therefore, humbly pray
as follows :-

(a) That Malayan Plant (Pte) Ltd. may
be wound up by the Court under the
provisions of the Companies Act
(Chapter 185); or

(b) That such other order may be made
in the premises as shall be just.

Dated the 21st day of February, 1977

(Sgd)

SOLICITORS FOR THE PETITIONERS

30

Note:- It is intended to serve this Petition
on :

(1) Malayan Plant (Pte) Ltd.,
215 Upper Bukit Timah Road,
7 $\frac{3}{4}$ m.s., Singapore 21.

(2) The Official Receiver,
Supreme Court Building,
Singapore 6.

(3) The Registrar of Companies,
3rd Floor, Colombo Court,
Singapore 6.

In the High
Court of the
Republic of
Singapore

The address for service of the
Petitioners is care of Messrs. Lee & Lee
of 18th Floor, U.I.C. Building, No.5 Shenton
Way, Singapore 1, Advocates & Solicitors.

No.1

Petition to
Wind Up

21st February
1977

(continued)

This is the exhibit marked "A"
referred to in the Affidavit of Kong
Yuk Min affirmed before me this 23rd
day of February, 1977

10

Sd. P.Athiselam
COMMISSIONER FOR OATHS

No. 2

AFFIDAVIT OF KONG YUK MIN
23rd February 1977

No.2

Affidavit of
Kong Yuk Min
23rd February
1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Companies Winding Up)
No.25 of 1977)

20

IN THE MATTER OF THE COMPANIES ACT
(CHAPTER 185)

AND

IN THE MATTER OF MALAYAN PLANT (PTE)
LTD.

AFFIDAVIT VERIFYING PETITION

I, KONG YUK MIN of MNB Building, 48/56
Robinson Road, Singapore, do affirm and say
as follows :-

30

1. I am the Deputy Manager of Moscow Narodny
Bank Limited, the Petitioners in the above
matter, a company incorporated in the United
Kingdom and having a place of business at
MNB Building, 48/56 Robinson Road, Singapore,
and am duly authorised by the said Petitioners
to make this affidavit on their behalf.

In the High Court of the Republic of Singapore

No.2

Affidavit of Wong Yuk Min

23rd February 1977

(continued)

2. Such of the statements in the Petition now produced and shown to me marked with the letter "A" as relate to the acts and deeds of the said Petitioners are true and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

AFFIRMED by KONG YUK MIN }
on the 23rd day of }
February 1977 at Singa- }
pore }

Sd. Kong Yuk Min

10

Before me,

Sd. P.Athiselam

COMMISSIONER FOR OATHS

No.3

Affidavit of Lee Swee Yan

16th March 1977

No. 3

AFFIDAVIT OF LEE SWEE
YAN - 16th March 1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Companies Winding Up }
No.25 of 1977 }

IN THE MATTER of the COMPANIES ACT
(CHAPTER 185)

20

AND

IN THE MATTER of MALAYAN PLANT (PTE)
LTD.

A F F I D A V I T

I, Lee Swee Yan of care of Room 501A, 5th Floor, Tat Lee Building, 63 Market Street, Singapore do solemnly and sincerely affirm and say as follows :-

1. I am a Solicitor's Clerk in the firm of M/s. B. Mohan Singapore & Co. and have been duly authorised to make this affidavit.

30

2. On the 9th day of March, 1977 I was instructed to cause a search to be made at the Registry of Companies, Singapore in respect of Moscow Narodny Bank Limited and in particular to ascertain if one Kong Yuk Min is a Director or Secretary of the Bank.

In the High Court of the Republic of Singapore

No.3

Affidavit of Lee Swee Yan

16th March 1977

(continued)

10 3. On the 9th day of March, 1977 I duly make a search at the Registry of Companies in respect of the Bank. Kong Yuk Min does not appear anywhere in the Registry of Companies file as a Director or Secretary of the Bank. Neither does it appear in any capacity.

4. The search also revealed that the Moscow Narodny Bank Limited was incorporated in the United Kingdom and having its registered address at 24/32 King William Street, London.

20 AFFIRMED by the abovenamed)
LEE SWEE YAN this 16th day) Sd. Lee Swee Yan
of March, 1977)

Before me,

Sd. Said b. Mohammed

COMMISSIONER FOR OATHS

In the High Court of the Republic of Singapore

No.4

Affidavit of Yap Cheng Hai and exhibits thereto
17th March 1977

No. 4

AFFIDAVIT OF YAP CHENG HAI
AND EXHIBITS THERETO -
17th March 1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Companies Winding Up }
No.25 of 1977

In the Matter of the Companies Act (Chapter 185)

And

10

In the Matter of Malayan Plant (Pte) Ltd.

A F F I D A V I T

I, Yap Cheng Hai of care of No.215 Upper Bukit Timah Road, Singapore do solemnly and sincerely affirm and say as follows :-

1. I am the Chairman and Managing Director of the Respondent Company, Malayan Plant (Pte) Ltd. and have been duly authorised to make this affidavit on behalf of the Respondent Company.

20

2. It is denied that the Respondent Company owes the Petitioner the sum of \$8,092,088.56 as alleged by the Petitioner in paragraph 5 of the Petition.

3. I humbly crave leave to point out that prior to the filing of the Petition herein the Petitioner has not taken any action against the Respondent Company.

4. No demand for payment of the sum of \$8,092,088.56 was made by the Petitioner prior to the filing of the Petition except for a letter dated 21st January, 1977 and written by the Petitioner's Solicitors making a demand for payment of the said sum within three weeks of the said letter.

30

5. I humbly crave leave to refer to the said

letter a copy of which is attached hereto together with a list of the Trust Receipts alleged as outstanding which was enclosed with the said letter and marked "CHY-1".

In the High Court of the Republic of Singapore

6. The Trust Receipts alleged as outstanding are disputed.

No.4

Affidavit of Yap Cheng Hai and exhibits thereto

10

7. I wish to point out that the interest rates of the Trust Receipts vary from 8½% to 14%. The Respondent Company dispute the interest rates. No agreement was ever made between the Petitioner and the Respondent Company for interest rates as high as 14%.

17th March 1977

(continued)

8. In the circumstances, I humbly submit that as the alleged debt is disputed and as it has not been proved, the Petitioner is not entitled to bring this Petition.

20

9. The Respondent Company denies that the Respondent Company is insolvent. In fact it is solvent and the Petitioner was of this view on the 17th of December, 1975 where by a letter of the same date and written by the Petitioner to Perusahaan Negara Perkebunan, V., Indonesia which is a State-owned Corporation in Indonesia, the Petitioner informed the said Corporation that the Respondent Company's net worth is in the region of Singapore dollars 8 figures. I humbly crave leave to refer to the said letter a copy of which is attached hereto and marked "CHY-2".

30

10. As at 31st December, 1976 the assets of the Respondent Company are as follows :-

(1) Stock-in-hand	\$10,368,660.96
(2) Trade Debtors	<u>\$ 6,271,932.23</u>

Total	<u><u>\$16,640,593.19</u></u>
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11. Attached hereto and marked "CHY-3" and "CHY-4" are copies of the list of Stock-in-hand and list of Trade Debtors as at 31st December, 1976 respectively.

40

12. As at 31st December, 1976 the Trade Creditors of the Respondent Company stand at \$4,324,428.44. Other Creditors amount to \$894,893.64. Attached hereto and marked "CHY-5" and "CHY-6" are copies of the lists of Trade Creditors and other creditors respectively.

In the High Court of the Republic of Singapore

No.4

Affidavit of Yap Cheng Hai and exhibits thereto

17th March 1977

(continued)

13. Attached hereto and marked "CHY-7" "CHY-8", "CHY-9" and "CHY-10" are copies of the Balance Sheets of the Respondent Company as at 31st December, 1973, 31st December, 1975 and 31st December, 1976 respectively.

14. The position of the Respondent Company as reflected by the Balance Sheets is a healthy one and cannot be said to be insolvent.

10

15. The Balance Sheets also show that the Respondent Company is a profit-making Company.

16. (a) For the year ended 31st December, 1973 the Respondent Company made a profit of \$105,348.65

(b) For the year ended 31st December, 1974 the Respondent Company made a profit of: \$ 91,227.12

(c) For the year ended 31st December, 1975 the Respondent Company made a profit of: \$ 23,656.54

20

(d) For the year ended 31st December, 1976 the Respondent Company made a profit of: \$ 52,210.40

(e) For the year ended 31st December, 1976 the Respondent Company made a gross profit of \$893.828.26. The net profit before taxation was \$51,587.97. A sum of \$145,806.11 was brought forward as unappropriated profit. These are all shown in the exhibit "CHY-10" to which I humbly crave leave to refer to.

30

17. In the above Balance Sheets the Net Current Assets of the Respondent Company for the years ended 31st December, 1973, 31st December, 1974, 31st December, 1975 and 31st December, 1976 are \$1,957,300.00, \$1,455,861.00, \$1,407,548.73 and \$1,482,877.18 respectively.

40

18. The Respondent Company paid the sums of \$52,210.40 as tax to the Comptroller of Income Tax for the year 1973 and \$52,000.00

for 1974. Provision for taxation is also made in the Balance Sheets for the year 1975.

In the High Court of the Republic of Singapore

19. I humbly crave leave to refer to a Bundle of Inland Revenue Department's Receipts & Notices of Assessments for the years 1974 and 1975 which are attached hereto as a Bundle and marked as a Bundle as "CHY-11".

No.4

Affidavit of Yap Cheng Hai and exhibits thereto

20. In the past 6 months, i.e. from September, 1976 to February, 1977 the business done by the Respondent Company are as follows:

17th March 1977
(continued)

<u>Sales</u>	<u>Purchases</u>
September, 1976 - S\$342,912.02	S\$225,038.77
October, 1976 - 314,885.65	149,335.96
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
Total: <u>\$2,958,938.85</u>	<u>\$807,567.59</u>

21. The profitability of the Respondent Company's transactions as reflected in the last 6 months' figures is very high.

22. At the present moment the Respondent Company has in hand 29 irrevocable Letters of Credit issued by Bank Negara Indonesia, Singapore Branch in favour of the Respondent Company totalling U.S.\$2,484,437.78. Copies of the Letters of Credit are attached hereto as a Bundle and marked "CHY-12".

23. The Respondent Company is in the process of shipping the goods in respect of the above-mentioned Letters of Credit and the monies will be payable once the goods are shipped. It will require from 3 to 6 months to complete all the shipments.

24. The Respondent Company has also been recently appointed the sole-agents in Singapore for the "TEREX DIVISION" of the General Motor Overseas Distribution Corporation of the United States of America for a period of 1 year from 1st January, 1977. Attached hereto and marked "CHY-13" is a copy of the General Motor Overseas Distribution Corporation's letter dated 25th February, 1977 together with a copy of the Dealer Sales & Service Agreement dated 1st January, 1977.

In the High Court of the Republic of Singapore

No.4

Affidavit of Yap Cheng Hai and exhibits thereto

17th March 1977

(continued)

25. As the sole-agents for the products of the General Motor Overseas Distribution Corporation the Respondent Company expects to make a substantial profit.

26. At the present moment the Respondent Company is negotiating with several parties for the supply of off-shore equipment and other products particularly to the Indonesian market and the said negotiations although are successful so far will require another 3 to 6 months to finalise and have the Agreements signed. Our project also show that substantial profits will be earned from these contracts.

10

27. If the Petition is allowed the Respondent Company would not be able to take advantage of these contracts and it would not be in the interest of the Company, its shareholders or its creditors.

28. It is denied that the Respondent Company was unable to satisfy any part of the alleged debt or made any offer to the Petitioner.

20

29. Sometime in November and December, 1976 I was asked to attend 2 meetings at the Petitioner's office with the Petitioner's General Manager, other officers and their Solicitors. At the said meeting, I produced to the Petitioner's General Manager documentary evidence in support of the Respondent Company's solvency and ability to pay any sum which is proved to be due to them if given time.

30

30. The Petitioner's General Manager insisted that the sum referred to in the Petition must be paid within three weeks. I stated that nobody can pay such a large sum in three weeks and in any event the sum is disputed. I suggested that we work out together the exact sum due to the Petitioner if at all whereupon we will put forward a Schedule of Repayment. This was refused.

40

31. The Respondent Company is a profit-making organisation and it would not be just and equitable to wind it up.

32. Although the assets of the Respondent Company amount to \$16,640,593.19 realisation on a winding-up would not be anywhere in the region of the amount shown as the stocks of

the Respondent Company are of a highly technical and specialised nature and cannot be sold profitably on the open market i.e. the market for these goods is rather specialised. Further, the Debtors of the Respondent Company will not fulfill their obligations fully if the Respondent Company is wound up. A large number of the Company's Debtors are Indonesian and in the event of a winding-up these debts would not be recovered. In the circumstances, the amount which will be realised after winding-up will not be beneficial to the Company's shareholders nor to its creditors.

10

20

30

40

33. I further verily believe that the Petition is misconceived and an abuse of the process of Court and brought primarily to bring pressure on the Directors of the Respondent Company as there are alternative and more suitable remedies available to the Petitioner.

33. (a) Some time after the Respondent Company became a customer of the Petitioner, an officer from the Russian Embassy approached me with a proposal that the Respondent Company purchase from Russia, Russian made equipment of the nature the Respondent Company deals in and to market them. Some pamphlets and catalogues were handed to me. As we were dealing mainly in American made equipment, which were of very high quality, it would not do us much good to deal in Russia-made equipment which are of inferior quality. We were also agents and representatives of several U.S. made goods and it would be a conflict of interest to market Russian-made goods. After the Respondent Company was appointed agents for the "TEREX DIVISION" this action was brought to bring pressure on the Respondent Company.

34. The Petitioner has not made a full disclosure of all the facts in respect of this matter.

35. Sometime on or about the 6th November, 1974 the Respondent Company was asked to pledge their goods with the Petitioner. The total value of the goods pledged with the Petitioner amount to S\$1,805,694.36.

36. Attached hereto as a Bundle and marked "CHY-14" are letters between the Petitioner and

In the High Court of the Republic of Singapore

No.4

Affidavit of Yap Cheng Hai and exhibits thereto

17th March 1977

(continued)

In the High Court of the Republic of Singapore

No.4

Affidavit of Yap Cheng Hai and exhibits thereto

17th March 1977

(continued)

the Respondent Company in respect of the Pledge of Goods and a Stock List as at 28th February, 1977.

37. The said goods under the terms and conditions of the Pledge were to be held as trust by us for the Petitioner and the goods were not to be removed from the store except with the Petitioner's prior permission. The Petitioner has since refused any such permission.

10

38. The Petitioner has also not disclosed the fact that the property of the Respondent Company known as Lot 738 Mukim X, No.215 Upper Bukit Timah Road, Singapore, is presently mortgaged to the Petitioner to secure overdraft facilities for the Respondent Company up to a limit of S\$1.2 million.

39. The said property was by a valuation report made by Messrs. Lai Pang Foe, Chartered Surveyors dated 21st May, 1974 valued at S\$1.8 million.

20

40. Under the terms of the said mortgage the Petitioner has alternative and more suitable remedies.

41. I humbly submit that it is not just and equitable in all the circumstances of this case to allow the Petitioner to succeed. The Respondent Company is a profitable entity and it would not be fair and would not be in the interests of other creditors and the shareholders to wind-up a profit-making company.

30

42. I humbly pray that the Petition may be dismissed.

AFFIRMED at Singapore }
this 17th day of March } Sd. Yap Cheng Hai
1977 }

Before me,

Sd. Mohamed Yatim Dohon

COMMISSIONER FOR OATHS

40

EXHIBIT "CHY-1" to
Affidavit of Yap Cheng Hai

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY-1" to
Affidavit of
Yap Cheng Hai

LEE & LEE
Advocates &
Solicitors
Notaries Public
Commissioners for
Oaths

U.I.C. Building,
18th Floor,
No.5 Shenton Way,
Singapore 1.

Telephone: 2200666 (Seven
lines)

Cable Address: "KYLEGAL"

Telex: RS 23089

10

A.R. REGISTERED

Our reference: AA/SG/ps/2492/76

25th January, 1977

Messrs. Malayan Plant (Pte.) Ltd.,
215 Upper Bukit Timah Road, 7 $\frac{3}{4}$ m.s.,
Singapore 21.

20

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 :-

30

Outstanding as at
4/12/76

Inward Bills Negotiated
Trust Receipts
Overdraft

402,243.45

6,322,122.57

1,367,722.54

S\$8,092,088.56

40

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
clients 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)

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY-1" to
Affidavit of
Yap Cheng Hai
(continued)

of the Singapore Companies Act (Cap.185),
namely that you are unable to pay your
debts.

Dated this 25th day of January, 1977.

(Sgd)

Solicitors for the Moscow
Narodny Bank, Limited

Encl:

c.c. to:
Clients (Attn: Mr. Ovseitchik)

This is the Exhibit marked "CHY 1" referred
to in the Affidavit of Yap Cheng Hai and
sworn on the 17th day of March, 1977

10

Before me,
Sd. Mohamed Yatim Dohon
A Commissioner for Oaths

MALAYAN PLANT PTE LTDTRUST RECEIPTS OUTSTANDINGIn the High
Court of the
Republic of
Singapore

<u>Doc.Ref.</u>	<u>Outstanding Amount as at 4.12.76</u> S\$	<u>Value Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	No.4 Exhibit "CHY-1" to Affidavit of Yap Cheng Hai (continued)
13341113	240,718.23	7. 5.74	13. 9.74	14%	
13341491	36,998.71	16. 5.74	20. 9.74	14%	
13341614	595,667.78	21. 5.74	26. 9.74	14%	
10 13341206	41,142.45	9. 5.74	30. 9.74	14%	
13341457	82,602.73	15. 5.74	30. 9.74	14%	
13341715	70,957.49	22. 5.74	9.10.74	14%	
13341424	52,935.27	14. 5.74	31.10.74	14%	
13341797	71,886.59	24. 5.74	31.10.74	14%	
13342025	15,327.60	3. 6.74	31.10.74	14%	
13342059	20,296.17	4. 6.74	31.10.74	14%	
13342367	10,585.10	13. 6.74	31.10.74	14%	
13342390	122,249.87	14. 6.74	31.10.74	14%	
13341508	87,207.31	16. 5.74	4.11.74	14%	
20 13341509	724,544.69	16. 5.74	4.11.74	14%	
13341510	964,054.88	16. 5.74	4.11.74	14%	
13341511	277,873.22	16. 5.74	4.11.74	14%	
13343320	608,315.75	22. 7.74	23.11.74	14%	
13342636	30,811.91	24. 6.74	2.12.74	14%	
13342693	29,334.10	26. 6.74	2.12.74	14%	
13342692	24,895.55	26. 6.74	12.12.74	14%	
13342366	39,815.05	13. 6.74	13.12.74	14%	
13342584	46,068.49	20. 6.74	13.12.74	14%	
16305866	41,187.29	21. 8.74	20.12.74	14%	
30 13342498	366,664.73	20. 6.74	10. 1.75	14%	
13344601	661,597.04	18. 9.74	2. 1.75	14%	
13344773	48,059.96	12. 9.74	5. 2.75	14%	
13344693	36,962.46	11. 9.74	8. 2.75	14%	
13346562	605,968.45	11.12.74	12. 3.75	14%	
13447489	43,642.50	27. 1.75	4. 6.75	14%	
13448142	13,359.36	27. 2.75	23. 8.75	14%	

In the High Court of the Republic of Singapore	<u>Doc.Ref.</u>	<u>Outstanding Amount as at 4.12.76</u> S\$	<u>Value Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
No.4	13449087	76,970.34	8. 4.75	23. 8.75	14%
Exhibit	13556023	39,501.84	14. 1.76	18. 5.76	8 $\frac{1}{4}$ %
"CHY-1" to	13559259	58,474.54	28. 6.76	30.10.76	8 $\frac{1}{4}$ %
Affidavit of Yap Cheng Hai	13560034	135,445.12	13. 8.76	22.12.76	8 $\frac{1}{4}$ %
(continued)		<u>S\$ 6,322,122.57</u>			

MALAYAN PLANT PTE LTD

10

INWARD BILLS NEGOTIATED

<u>Doc.Ref.</u>	<u>Outstanding Amount as at 4.11.76</u> S\$	<u>Value Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
13343028	99,380.90	8. 7.74	22. 7.74	9 $\frac{3}{4}$ %
13345471	155,856.16	18.10.74	1.11.74	
13346418	21,378.21	3.12.74	17.12.74	
13449350	87,156.92	17. 4.75	1. 5.75	9%
13449354	38,471.26	17. 4.75	1. 5.75	
	<u>S\$ 402,243.45</u>			

20

MALAYAN PLANT PTE LTD

BANKERS GUARANTEE OUTSTANDING

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY-1" to
Affidavit of
Yap Cheng Hai

(continued)

<u>Doc.Ref.</u>	<u>Outstanding Amount as at 4.12.76</u> S \$	<u>Value Date</u>	<u>Maturity Date</u>	<u>Benefi- ciary</u>
75/1602	8,400.00	5. 1.76	7.11.76	Comptroller of Customs & Excise
10 75/1603	8,700.00	5. 1.76	7.11.76	Comptroller of Customs & Excise
75/1651	20,000.00	5. 1.76	20.12.76	Comptroller of Customs & Excise
76/1713	73,552.00	12. 1.76	6. 1.77	Housing & Development Board
20 76/1711	126,000.00	7. 4.76	6. 1.77	Comptroller of Customs & Excise

S\$236,652.00

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 2" to
Affidavit of
Yap Cheng Hai

EXHIBIT "CHY 2"
to Affidavit of
Yap Cheng Hai

MOSCOW NARODNY BANK LIMITED
MNB BUILDING P.O.BOX No.3883
48/56 Robinson Road, Singapore 1
Telephone No.2209422 (14 lines)
Telex RS 21726
Telegram NARODNY SINGAPORE

Our ref: Inf Dept 17th December 1975 10

PRIVATE & CONFIDENTIAL

Perusahaan, Negara Perkebunan, V
Sci. Karana Galarg
Medan
Indonesia

Dear Sirs

This is to certify that Malayan Plant Pte
Ltd. of 215 Upper Bukit Timah Road, Singapore
is a valued customer of the Bank and has
maintained a satisfactory account with us since 20
2nd October 1972.

The Company is a well-respected business firm
and we extend to them credit facilities of not
less than Singapore Dollars low eight figures.
Their business has expanded at a steady pace
and we have handled their transactions to our
satisfaction.

We estimate their net worth to be in the region
of Singapore Dollars low eight figures and
would consider the Company good for their
commitments. 30

Yours faithfully
for MOSCOW NARODNY BANK LTD

Sgd.

Authorised Signatures

KCT/hjt

This information is CONFIDENTIAL
and is given as a matter of
business courtesy. No
responsibility is assumed by
this bank or its officers. 40

This is the Exhibit marked "CHY 2" referred to in the Affidavit of Yap Cheng Hai and sworn on the 17th day of March 1977

Before me,
Sd. Mohamed Yatim Dohon
A Commissioner for Oaths

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 2" to
Affidavit of
Yap Cheng Hai
(continued)

EXHIBIT "CHY 3"
to Affidavit of
Yap Cheng Hai

Exhibit
"CHY 3" to
Affidavit of
Yap Cheng Hai

MALAYAN PLANT PTE LTD
STOCK AS AT 31.12.76

	<u>S</u>
Mitsui Spare Parts	3,572.32
Ducati Diesel Engine Spare Parts	15,089.98
Forklift Spare Parts	28,335.00
Electric Motor	335,307.59
Automotive, Power Master Heavy Duty, Polyflex Belts & Defroster Hoses	106,425.32
Komatsu Tractors Parts	175,040.56
Caterpillar Spare Parts	977,542.96
Terex Parts	60,406.82
Fire Bricks (Stored at O.T.S. M'sia)	449,634.10
Spare Parts & Misc.from Siong Wah & Thailand	5,276,951.95
Heavy Equipment (Cat., Terex, Komatsu, Henley Forklift, Hymac	1,322,614.00
Hymac Spare Parts	2,202.75
Shetland Glass Fibre Boats	37,866.69
Pegas Bicycles	358.11
Miscellaneous Equipment	817,788.24
Used Equipment	77,914.57
High Compression Cement Pump & Pipe Assy.	56,000.00
Swith Cement Suction Pump C/W Truck Body	180,600.00
Cement Mixing Plant C/W Weighing Cyclone Assy.	135,450.00

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 3" to
Affidavit of
Yap Cheng Hai
(continued)

Ice Plant C/W Capacity of 48 tons
per 24 hours

309,560.00

S\$10,368,660.96

SUBJECT TO AUDIT

I certify the Balance of Amount of Stock
as at 31st December 1976.

MALAYAN PLANT(PTE) LTD.

Sgd.

Financial Manager

This is the Exhibit marked "CHY 3"
referred to in the Affidavit of
Yap Cheng Hai and sworn on the 17th
day of March 1977

10

Before me

Sd. Mohamed Yatim Dohon

A Commissioner for Oaths

EXHIBIT "CHY 4"
to Affidavit of
Yap Cheng Hai

In the High
Court of the
Republic of
Singapore

No. 4

MALAYAN PLANT PTE LTD
SCHEDULE OF TRADE DEBTORS
AT 31ST DECEMBER 1976

Exhibit
"CHY 4" to
Affidavit of
Yap Cheng Hai

This is the Exhibit marked "CHY 4" referred
to in the Affidavit of Yap Cheng Hai and
sworn on the 17th day of March 1977

10

Before me,
Sd. Mohamed Yatim Dohon
A Commissioner for Oaths

	Amco Air International	7,331.80
	Bau Mining Sdn Bhd	5,496.23
	B.C.Systems Pte Ltd	405.00
	Borneo Timber Pte Ltd	860.40
	Ban Huat Seng Construction Co	3,199.90
	Bovis South East Asia Bhd	1,769.25
	Belspac Co	3,657.73
20	Buil Tec Pte Ltd	32.40
	Cash Sale	1,090.59
	Cel Tractors Pte Ltd	9,516.07
	Chong Brothers Sdn Bhd	127,352.19
	Comfort Piling & Engrg Pte Ltd	154.83
	Chee Hwa Co	154.46
	Chang Chuang Pte Ltd	27.90
	Central Motor Pte Ltd	7.70
	G.V.Lawi	318,547.05
	C.V.Bengawan	114,282.22
30	Daya Bersama Sdn Bhd	2,215.00
	Diethelm Singapore Pte Ltd	3,885.80
	Eng Kiat Auto Supply	127.75
	East Ocean Offshore Engrg Pte Ltd	750.00
	Everlasting Metal Works Co	2,500.00
	Evan Lim & Co	55.80
	Eng Hup Leong Construction Co	44.10
	Eng Hup Heng Construction Co	27.90

In the High Court of the Republic of Singapore No.4 Exhibit "CHY 4" to Affidavit of Yap Cheng Hai (continued)	Ferro Industries Pte Ltd	30,735.29	
	Gim Seng General Contractor Co	3,028.57	
	General Diesel Supplies (S)Pte Ltd	34.86	
	Hock Lian Seng Engrg Pte Ltd	622.95	
	Hinly Electrical Engrg Works	1,557.50	
	H.P.Marine Electrical	3,905.00	
	Housing & Development Board	36,776.00	
	Hargill Construction Equipment (S)	71,400.00	
	Huat Tian Construction Co	27.90	
	Hoe Hong Construction	27.90	10
	Hargill Engrg (S)	3,550.00	
	International Goodwood (Pte) Ltd	24,622.33	
	Intra-Ocean Bldg Construction Co	27.90	
	International Bechtel Inc	23,409.85	
	Jacob & Co	52,051.16	
	Jamco Enterprises	602.29	
	Johore Mining & Stevedoring Co Sdn Bhd	9,399.71	
	J.A.S. International	11,912.19	
	Koh Chiang Sia Engrg Co	284.05	
	Kim Seng Ho Bldg Contractor	163,396.51	20
	Kings Machinery (S) Pte Ltd	1,631.86	
	Lam Hai Engrg Co	211.33	
	Lim Hong Seng Contractor	213.23	
	Leck Soon Auto Trading Co	253.57	
	Leng Ai Machinery Agency	633.15	
	Morgan Equipment Pte Ltd	1,079.12	
	Magnolia Dairies (S) Pte Ltd	988.50	
	Mandarin Engrg	2,235.30	
	Marine Drilling S.E.A. Inc	614.36	
	Nan Fong Engrg Sdn Bhd	3,626.50	30
	North Borneo Trading Co	360.00	
	Oh Construction Pte Ltd	309.27	
Ong Teng Chong Bldg Contractor	1,000.00		
Offshore Logistics Far East Pte Ltd	345.24		
Oei Leck Pte Ltd	72,000.00		
Pastimaya Sdn Bhd	1,500.00		
Pertisa Trading Co Ltd	8,330.63		

P.T.Great Indoplant	743,321.06	In the High Court of the Republic of Singapore
P.T. Pamostang	11,465.99	
Patco (S) Pte Ltd	2,070.45	No.4
P.T Asatri	35,729.73	
Pan Malaysia Cement Works (S)	42.44	Exhibit "CHY 4" to Affidavit of Yap Cheng Hai
P.T. Chim Rimba	26,099.57	
P.T.Baiduri Enterprises	126,750.00	(continued)
P.T. Machimex	5,710.93	
P.T.Srigunting	295,131.50	
Ramunia Granite Industries Sdn Bhd	519.94	
Skt Fortuna Leong Bersaudara	772.62	
Skt Pembangunan Kermajuan	685.83	
Sim Construction	785.00	
Sim Hoe Development	2,140.18	
Sin Chin Seng Engrg	3,093.00	
S'pore Tractor Spares Suppliers	3,650.82	
Seaco Shipping & Trading Co	79,996.82	
Sing Teck Seng Pte Ltd	3,000.00	
See's Engrg Co	1,239.17	
Seng Yip Machinery Import & Export	512.40	
Seenly Hardware & Engrg Co	238.10	
Sincere Metalware Industries	304.35	
Stewart Engrg Services	2,680.68	
Southern Engrg	13.59	
Skt Perusahaan Serbaguna Sdn Bhd	8,956.00	
Soon Guan Construction Pte Ltd	44.10	
Sin Chye Huat Shipyard	160.00	
Siong Wah Co Ltd	10,164.00	
Shoreline Diesel Maintenance Inc.	347.28	
Siong Wah Co Ltd	534,051.42	
Tai Kheng Hang A/C - 1	91,177.08	
Tay & Fong Co	800.82	
Thaitradco Ltd Partnership A	27,533.30	
Thaitradco Ltd Partnership B	73,668.00	
Thiess Engrg	4,122.61	
Thiess Petrosea International	1,939.99	

In the High Court of the Republic of Singapore	Tat Guan Co	2.40	
No. 4	Toh Teck Huat Contractor	7,539.73	
Exhibit "CHY 4" to Affidavit of Yap Cheng Hai (continued)	Teng Construction Sdn Bhd	655.29	
	Tienly Pte Ltd	251.60	
	Teo Teck Huat (S) Pte Ltd	307.00	
	Tan Chew Loke Construction	781.25	
	Tai Cheong Motor Pte Ltd	390.47	
	Teck Leong Builders	16.20	
	Union Contractors	384.40	
	Uniway Construction Co	565.34	10
	Utama Nissin Biscuit & Confectionery	20,034.00	
	Yau Huat	2,517.55	
	Yulian Bearing Corpn	1,500.00	
	Yen Lee Industrial Suppliers Pte Ltd	45.80	
	Yin Choon Tong Hardware & Machinery Sdn Bhd	115.50	
	Yap Siok Huay - Other Debtors	6,684.99	
	Amco Thai Enterprise Ltd	534,441.63	
	Amco Thai Mining Co. Ltd	809,196.39	
	Amco Metal Industry Co Ltd	375.00	20
	Amco Metals Processing Sdn Bhd	53,516.18	
	Superior Enterprises Ltd	86,787.05	
	Skt Malayan Plant Sdn Bhd - Kuala Lumpur	631,381.90	
	Skt Malayan Plant Sdn Bhd - Sandakan	365,915.45	
	Amco Engrg Sdn Bhd	249.14	
	Skt Malayan Plant Machinery	25,889.09	
	Thwaites Engrg Co. Ltd	32.46	
	Hymac Ltd	749.84	
	Autruckco Pte Ltd	486,491.72	30
		<u>\$6,271,932.23</u>	

SUBJECT TO AUDIT

I certify the Balance of Trade Debtors at 31/12/76

MALAYAN PLANT (PTE) LTD
Sd.
Financial Manager

EXHIBIT "CHY 5" to
Affidavit of Yap
Cheng Hai

In the High
Court of the
Republic of
Singapore

No.4

MALAYAN PLANT PTE LTD
SCHEDULE OF TRADE CREDITORS
AT 31ST DECEMBER 1976

Exhibit
"CHY 5" to
Affidavit of
Yap Cheng Hai

	Cheng Tiong Pte Ltd	950.00
	Cortina Transport Co	166.00
	Central Canvas Co	480.00
10	Cel Tractors	3,005.93
	General Motors Overseas Distribution Corp. - S'pore	75,506.59
	Hiap Seng Guan Trading Co	419.70
	International Goodwood Pte Ltd	38,000.00
	Kian Ann Engrg Co Pte Ltd	1,665.29
	Kim Hock Transport Co	8,483.75
	Kian Huat Tyre & Battery Co	146.00
	Lam Kok Trading Co	162,559.22
	Lee Seng Hardware Machinery Pte Ltd	216.00
20	Rilair Singapore Pte Ltd	1,732.77
	Sinion Trading Co Pte Ltd	71,500.00
	SLS Bearings (S) Pte Ltd	1,854.63
	Seaworthy Engrg Pte Ltd	3,459.00
	S'pore Tractor Spares Suppliers	216.78
	San Hup Machinery Co	2,000.00
	Tan Brothers Crane Service	150.00
	Yew Choon Pte Ltd	4,300.00
	Ong Tiong Kang	789.80
	Morgan Equipment Pte Ltd	1,771.82
30	Multi-Corpn (S) Pte Ltd	635.76
	Kim Huat Engrg Co	238.61
	F.E. Zuellig Trading	425.00
	Eng Kiat Auto Supply	51.20
	CKS Bearing Pte Ltd	1,311.00
	Chee Hwa Co	403.38
	Bristol Commerical	220.00

EXHIBIT "CHY 6" to
Affidavit of Yap
Cheng Hai

In the High
Court of the
Republic of
Singapore

No.4

MALAYAN PLANT PTE LTD
SCHEDULE OF OTHER CREDITORS
AT 31ST DECEMBER 1976

Exhibit
"CHY 6" to
Affidavit of
Yap Cheng Hai

	Chew Khek Han	12,098.49
	Diners Club (M) Sdn Bhd	129.00
	Inch Roy Crdit Corpn Ltd	8,950.80
10	Liang Brothers Pte Ltd	443.95
	Mou Seng Timber	522.77
	Olivetti (S) Pte Ltd	100.00
	Tembilahan Project	360.85
	P.T. Pabrik ES Bulan Penuh	10,000.00
	P.T. Unesia	550,035.73
	Mihama Pte Ltd	5,532.08
	Ban Joo Seng Chan	412.80
	Enterprise Syndicate Engrg Works	27.00
	Loong Hua Pte Ltd	55.34
20	VIP Indonesia	108,117.13
	Rank Xerox Ltd	318.16
	Siong Wah Co Ltd	80,000.00
	Soh Brothers Furniture	4,816.73
	Supreme Printing Co Pte Ltd	306.00
	The American Insurance Co	13,514.36
	Tiong Wah Motor Co	726.20
	Unique Advertising Pte Ltd	495.00
	Wing Gard & Co	226.75
	Wong Kee Construction	700.00
30	Yew Huat Tyre & Co	100.00
	Kim Joo Guan Trading Co	76.00
	Executive Decision Inc	12,362.40
	Tan Ah Tee Transport	45.00
	Tat Beng & Co Battery Service	1,000.00
	Supreme Car Care Centre	185.80

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 6" to
Affidavit of
Yap Cheng Hai
(continued)

General Printing & Publishing Services	250.00	
Bock Wan Chek Co	235.00	
Chang Clinic	22.00	
Chelliah & Co	1,230.00	
Diamond Security	930.00	
Liew, Kei, Cheong & Peattie	3,013.00	
Newgen Co	1,380.00	
Starlight Typewriter Co	34.00	
Today's Air-Conditioning	90.00	
Wong Dispensary	12.00	10
Chai Cheong Co	50.00	
Siakson Tours & Travel	15,591.00	
Hock Cheong Trading Co	720.90	
Kim Service Station	337.60	
Shook Lin & Bok	200.00	
Malayan Railway	9,000.00	
Kwee Kee	139.80	
Mdm Lee Fong Lin	50,000.00	
	<u>894,893.64</u>	

SUBJECT TO AUDIT

20

I CERTIFIED THE BALANCE OF OTHER CREDITORS
AT 31ST DECEMBER 1976

MALAYAN PLANT (PTE) LTD

Sd.

FINANCIAL MANAGER

This is the Exhibit marked "CHY 6" referred
to in the Affidavit of Yap Cheng Hai and
sworn on the 17th day of March 1977

Before me,

Sd. Mohamed Yatim Dohon

30

A Commissioner for Oaths

EXHIBIT "CHY 7"
to Affidavit of
Yap Cheng Hai

In the High
Court of the
Republic of
Singapore

No.4
Exhibit
"CHY 7" to
Affidavit of
Yap Cheng Hai

MALAYAN PLANT (PTE) LTD
(Incorporated in the Republic of Singapore)
BALANCE SHEET AS AT 31ST DECEMBER 1973

<u>1972</u>				
\$		\$	\$	\$
63,399.76	FIXED ASSETS (NOTE 1)			182,141.48
	CURRENT ASSETS			
261,598.09	Debtors - Trade	3,085,856.65		
287,708.57	- Others	<u>463,502.68</u>		
549,306.66			3,549,359.33	
29,485.63	Cash & Bank Balances		8,591.58	
1,000.00	Deposits		364,897.60	
1,382,186.64	Stock (Note 2)		5,890,866.89	
2,700.00	Hire Purchase Interest		5,593.16	
	Suspense Account			
<u>1,964,678.93</u>				9,819,308.56
-	AMOUNT OWING BY ASSOCIATED COMPANIES			1,754,806.31
	INTANGIBLE ASSET			
4,400.00	Preliminary Expenses			<u>7,460.00</u>
<u>2,032,478.69</u>				<u>11,763,716.35</u>
	SHARE CAPITAL			
	Authorised:			
1,000,000.00	10,000,000 shares of \$1 each		<u>10,000,000.00</u>	
	Issued & Paid Up:			
2.00	1,770,000 shares of \$ each			1,770,000.00
	LESS/ADD			
(20,394.40)	PROFIT & LOSS ACCOUNT			<u>194,973.25</u>
<u>(20,392.40)</u>				1,964,973.25
-	AMOUNT OWING TO ASSOCIATED COMPANIES			2,507,093.98
-	AMOUNT OWING TO HOLDING COMPANY			487,250.36
	CURRENT LIABILITIES			
-	Bank Overdrafts(Unsecured)	1,396,382.90		
245,650.02	Creditors - Trade	460,654.39		
	Others	<u>143,316.51</u>		

In the High Court of the Republic of Singapore	<u>1972</u>		
No.4	\$		\$
	1,566,716.80		603,970.90
	480,799.29	Bills Payable	4,581,342.68
	-	Provision for	
Exhibit "CHY 7" to Affidavit of Yap Cheng Hai	5,355.00	Taxation	143,500.00
(continued)		Accrued Expenses	79,202.28
	<u>2,052,871.09</u>		<u>6,804,398.76</u>
	<u>2,032,478.09</u>		<u>11,763,716.35</u>

The attached Notes form an integral part of the Accounts

SINGAPORE, 23 JULY 1975
 LWCP/KAW/BWC/JA

LIEW, WONG, KUCK, CHEONG & PEATTIE
Public Accountants, Singapore

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 7" to
Affidavit of
Yap Cheng
Hai

(continued)

MALAYAN PLANT (PTE) LTD

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED
31ST DECEMBER 1973

	($\$20,394.40$) Trading Loss/Profit for the year before Taxation	$\$105,348.65$
	After Charging:	
	Directors'	
10	$\$2,640.00$ Remuneration	$\$42,100.00$
	$1,800.00$ Audit Fees	$4,000.00$
	Depreciation on	
	$7,093.87$ Fixed Assets	$26,043.11$
	Add:	
	- Profit on Sale of Property	$253,519.00$
	<u>($\\$20,394.40$)</u>	<u>$\\$358,867.65$</u>
	- Less: Provision for Taxation	$143,500.00$
	<u>($\\$20,394.40$)</u>	<u>$\\$215,367.65$</u>
	- Balance Brought Forward	$(20,394.40)$
20	<u>($\\$20,394.40$)</u> Balance Carried Forward	<u><u>($\\$194,973.25$)</u></u>

LWKCP/KAW/BWC/Tml

This is the Affidavit marked "CHY 7" referred
to in the Affidavit of Yap Cheng Hai and sworn
on the 17th day of March 1977

Before me,
Sd. Mohamed Yatim Dohon
A Commissioner for Oaths

In the High
Court of the
Republic of
Singapore

EXHIBIT "CHY 8" to
Affidavit of
Yap Cheng Hai

No.4

Exhibit
"CHY 8" to
Affidavit of
Yap Cheng Hai

LIEW, KEI, CHEONG & PEATTIE
Public Accountants, Singapore

MALAYAN PLANT (PTE) LTD

(Incorporated in the Republic of Singapore)

BALANCE SHEET AS AT 31ST DECEMBER 1974

1973		
\$		\$
182,141.48	FIXED ASSETS (Note 1)	1,200,801.86
-	INVESTMENT (Note 2)	66,726.00
1,754,806.31	AMOUNT OWING BY ASSOCIATED COMPANIES	3,925,834.28
	CURRENT ASSETS	
5,890,866.89	Stock (Note 3)	\$11,604,207.51
3,085,856.65	Trade Debtors	4,271,452.58
828,400.28	Other Debtors, Deposit & Prepayment	2,127,547.65
8,591.58	Cash & Bank Balances	5,851.63
5,593.16	Hire Purchase Interest in Suspense	-
9,819,308.56		18,009,059.37
	INTANGIBLE ASSET	
7,460.00	Preliminary Expenses	7,460.00
<u>11,763,716.35</u>		<u>\$23,209,881.51</u>
	REPRESENTED BY -	
1,770,000.00	SHARE CAPITAL	1,770,000.00
194,973.25	PROFIT AND LOSS UNAPPROPRIATION ACCOUNT	175,754.37
<u>1,964,973.25</u>		<u>\$1,945,754.37</u>
487,250.36	AMOUNT OWING TO HOLDING COMPANY	785,094.49
2,507,093.98	AMOUNT OWING TO ASSOCIATED COMPANIES	4,427,273.34
	CURRENT LIABILITIES	
460,654.39	Trade Creditors	\$ 752,797.84
4,581,342.68	Bills payable	12,063,169.33

1973	CURRENT LIABILITIES (cont'd)	
\$		
222,518.79	Other Creditors & Accruals	\$ 901,598.11
1,396,382.90	Bank Overdraft (Note 5)	2,150,694.03
143,500.00	Provision for Taxation	183,500.00
		<hr/>
<u>6,894,398.76</u>		16,051,759.31
<u>11,763,716.35</u>		<u>\$23,209,881.51</u>

In the High Court of the Republic of Singapore
 No.4
 Exhibit "CHY 8" to Affidavit of Yap Cheng Hai
 (continued)

The Attached Notes on the Account form an integral part of the Accounts

SINGAPORE: 2 January 1976

LKCP/KAM/WSL/JT

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 8" to
Affidavit of
Yap Cheng Hai
(continued)

LIEW, KEI, CHEONG & PEATTIE
Public Accountants, Singapore

MALAYAN PLANT (PTE.) LTD

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED
31ST DECEMBER 1974

1973		
\$105,348.65	Net Profit Before Taxation	\$ 91,227.12
	After Accounting For :-	
\$42,100.00	Directors' Remuneration	\$78,500.00
4,000.00	Auditors' Remuneration	5,500.00
26,043.11	Depreciation on Fixed Assets	30,162.47
\$ -	Dividend Received-Gross	\$1,115.00
	Add: Exceptional Item -	
253,519.00	Profit on Sale of Property	-
\$358,867.65		\$ 91,227.12
143,500.00	Less: Provision for Taxation	\$40,000.00
-	Tax Deducted At Sources	446.00
		40,446.00
\$215,367.65		\$50,781.12
(20,394.40)	Balance As At 1.1.1974	194,973.25
-	Less: Prior Year Adjustment - Advisory Fee	70,000.00
		124,973.25
\$194,973.25	Balance As At 31.12.1974	\$175,754.37

The Attached Notes on the Accounts form an
integral part of the Accounts

SINGAPORE: 2 January 1976

LKCP/KAW/WSL/JT

This is the Exhibit marked "CHY 8"
referred to in the Affidavit of
Yap Cheng Hai and sworn on the
17th day of March 1977

Before me,
Sd Mohamed Yatim Dohon
A Commissioner for Oaths

EXHIBIT "CHY 9"
to Affidavit of
Yap Cheng Hai

In the High
Court of the
Republic of
Singapore

No.4

MALAYAN PLANT (PTE.) LTD

(Incorporated in the Republic of Singapore)

Exhibit
"CHY 9" to
Affidavit of
Yap Cheng Hai

BALANCE SHEET AS AT 31ST DECEMBER 1975

\$		\$	\$
1974			
1,770,000.00	SHARE CAPITAL (note 6)		1,770,000.00
175,754.37	UNAPPROPRIATED PROFIT		128,858.63
<u>1,945,754.37</u>			<u>1,898,858.63</u>
REPRESENTED BY :			
1,200,801.86	FIXED ASSETS (Note 2)		1,220,657.87
66,726.00	INVESTMENT at cost (Note 3)		66,726.00
(785,094.49)	AMOUNT OWING TO HOLDING COMPANY		(785,094.49)
CURRENT ASSETS			
11,604,207.51	Stock (Note 10)	10,982,578.70	
	Trade Debtors (Less provision for doubtful debts \$100,000.00; 1974 \$ Nil)	6,487,254.84	
8,197,286.86	Amounts Owing by Directors (Note 11)	17,128.34	
-	Other Debtors, Deposit and Prepayment	1,990,066.72	
2,127,547.65	Cash & Bank Balances	<u>1,110.00</u>	
5,851.63			
21,934,893.65		19,478,138.60	
DEDUCT: CURRENT LIABILITIES			
5,180,071.18	Trade Creditors	543,923.92	
12,063,169.33	Bills Payable	10,011,052.33	
901,598.11	Other Creditors & Accruals	5,408,475.97	
2,150,694.03	Bank Overdraft (Note 4)	1,888,507.53	
183,500.00	Provision for Taxation	<u>235,577.60</u>	
20,479,032.65		<u>18,087,537.35</u>	
<u>1,455,861.00</u>	NET CURRENT ASSETS		1,390,601.25
	INTANGIBLE ASSETS at cost		

In the High Court of the Republic of Singapore	§ 1974		§
	7,460.00	Preliminary Expenses (Note 5)	5,968.00

No.4	<u>1,945,754.37</u>		<u>1,898,858.63</u>
------	---------------------	--	---------------------

Exhibit "CHY 9" to Affidavit of Yap Cheng Hai
(continued)

The attached Notes form an integral part of these Accounts

SINGAPORE, 22 DECEMBER 1976

This is the Exhibit, marked "CHY9" referred to in the Affidavit of Yap Cheng Hai and sworn on the 17th day of March 1977

Before me,
Sd. Mohamed Yatim Dohon
A Commissioner for Oaths

10

No portion of the Company's share in unquoted investment has been taken into accounts of the Company.

Name of Company	Percentage <u>1975</u>	Ownership <u>1974</u>	
Autruckoo (Pte.)Ltd. (incorporated in Singapore)	50%	50%	20

4. BANK OVERDRAFTS

	1975	1974
Secured	\$1,204,667.36	\$1,238,459.96
Unsecured	<u>683,840.17</u>	<u>912,234.07</u>
	<u>\$1,888,507.53</u>	<u>\$2,150,694.03</u>

5. PRELIMINARY EXPENSES

Preliminary expenses are to be written off over a period of five years commencing from this financial year.

6. SHARE CAPITAL

30

Authorised	1975	1974
10,000,000 shares of \$1 each	<u>\$10,000,000.00</u>	<u>\$10,000,000.00</u>

Issued and Fully Paid

1,770,000 shares of
\$1.00 each \$1,770,000.00 \$1,770,000.00

In the High
Court of the
Republic of
Singapore

No.4

7. CONTINGENT LIABILITIES

As at 31st December 1975, there are
contingent liabilities amounting to \$15,052,404.96
(1974 \$2,607,180.70) in respect of the following:

Exhibit
"CHY 9" to
Affidavit of
Yap Cheng Hai
(continued)

	1975	1974
Bankers' Guarantee	\$ 993,458.50	\$ 729,738.00
10 Bills Discounted	-	200,948.07
Letter of Credit Indemnity	-	1,676,494.63
Inwards Bills for Collection	71,531.46	-
Performance Bond	987,415.00	-
Letter of Guarantee	13,000,000.00	-
	<u>\$15,052,404.96</u>	<u>\$2,607,180.70</u>

8. LITIGATION

20 At the date of this Report, there is claim
filed by a Company amounting to approximately
\$630,000.00 which the Company is disputing on
the basis that the goods supplied were not in
accordance with specifications. The Company has
referred the matter to its solicitors and the
outcome of this matter is yet to be known.

9. HOLDING COMPANY (ILLEGIBLE)

The holding company in Hongvestee Limited,
incorporated in Hongkong holding about 71% of the
Company Equity. (illegible)

In the High
Court of the
Republic of
Singapore

EXHIBIT "CHY 10"
to Affidavit of
Yap Cheng Hai

No.4

MALAYAN PLANT PTE LTD

Exhibit
"CHY 10" to
Affidavit of
Yap Cheng Hai

BALANCE SHEET AS AT 31ST DECEMBER 1976

	\$	\$	
SHARE CAPITAL		1,770,000.00	
UNAPPROPRIATED PROFIT		<u>196,124.08</u>	
		<u><u>1,966,124.08</u></u>	
REPRESENTED BY :			10
FIXED ASSET		1,213,865.39	
INVESTMENT - AT COST		50,000.00	
AMOUNT OWING TO HOLDING COMPANY		(785,094.49)	
CURRENT ASSETS			
Stock	10,368,660.96		
Trade Debtors (Less provisions for doubtful debts \$100,000)	6,171,932.23		
Other Debtors, Deposits & Prepayments	2,082,945.46		20
Amount Owing by Director	193.11		
Cash & Bank Balances	<u>42,185.23</u>		
		<u><u>18,665,916.99</u></u>	
DEDUCT CURRENT LIABILITIES			
Trade Creditors	4,324,428.44		
Bills Payable	9,674,494.23		30
Other Creditors & Accruals	942,599.47		
Bank Overdrafts	2,115,360.99		
Provision for Taxation	<u>126,156.68</u>		
		<u><u>17,183,039.81</u></u>	

NET CURRENT ASSETS	\$ 1,482,877.18
INTANGIBLE ASSETS - AT COST	
Preliminary Expenses less written off	4,476.00
	<u>1,966,124.08</u>

In the High
Court of the
Republic of
Singapore
No.4
Exhibit
"CHY 10" to
Affidavit of
Yap Cheng Hai
(continued)

SUBJECT TO AUDIT

(Sgd)

(Sgd)

MANAGING DIRECTOR

FINANCIAL MANAGER

This is the Exhibit marked "CHY 10" referred to
in the Affidavit of Yap Cheng Hai and sworn
on the 17th day of March 1977

Before me,
Sd. Mohamed Yatim Dohon
A Commissioner for Oaths

In the High
Court of the
Republic of
Singapore

MALAYAN PLANT PTE LTD

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED
31ST DECEMBER 1976

No.4		₹	₹	
Exhibit	SALES		5,820,642.96	
"CHY 10" to	LESS: Cost of Goods Sold			
Affidavit of	Stock as at 1st			
Yap Cheng Hai	January 1976	10,906,302.48		
(continued)	Purchases	<u>4,389,173.18</u>		
		15,295,475.66		10
	Stock as at 31st December			
	1976	<u>10,368,660.96</u>	<u>4,926,814.70</u>	
	GROSS PROFIT		893,828.26	
	ADD:			
	Sundry Income	4,938.29		
	Claim	17,968.43		
	Interest Received	<u>571.50</u>	<u>23,478.22</u>	
			917,306.48	
	LESS:			
	General and administrative			20
	expenses	636,338.37		
	Financial expenses	<u>229,380.14</u>	<u>865,718.51</u>	
	NET PROFIT BEFORE TAXATION		51,587.97	
	ADD:			
	Profit on Sale of investment		<u>222.00</u>	
			51,809.97	
	LESS:			
	Preliminary expenses written off		<u>1,492.00</u>	
			50,317.97	30
	ADD:			
	Unappropriated profit brought forward		<u>145,806.11</u>	
	UNAPPROPRIATED PROFIT CARRIED FORWARD		<u><u>196,124.08</u></u>	

SUBJECT TO AUDIT

(Sgd)
MANAGING DIRECTOR

(Sgd)
FINANCIAL MANAGER

MALAYAN PLANT PTE LTD
GENERAL AND ADMINISTRATIVE EXPENSES
31ST DECEMBER 1976

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 10" to
Affidavit of
Yap Cheng Hai
(continued)

	Commission	9,774.09
	Delivery expenses	12,523.97
	Packing charges	449.20
	Entertainment and refreshment	15,879.90
	Advertisement	16,426.64
	Travelling expenses	16,827.84
10	Transport charges	10,974.55
	Vehicles maintenance	32,676.20
	Gifts and donations and subscription	2,700.63
	Insurance	19,350.24
	Postages and revenues	1,549.80
	Telephone and telegrams	12,346.13
	Printing and stationery	9,595.74
	Upkeep of premises	7,294.00
	Rent and rates	25,797.25
	Water and light	18,020.53
20	Office equipment maintenance	2,865.80
	Legal expenses	38,551.25
	Professional fees	181.40
	Analysis and survey charges	103.00
	Salaries and wages	189,458.71
	C.P.F. and payroll tax	37,971.09
	Newspapers and periodicals	722.05
	Medical welfare and education	950.45
	Sundry expenses	7,916.12
	Directors' remuneration	49,500.00
30	Secretarial fees	900.00
	Accountancy fees	2,000.00
	Security charges	11,250.00
	Audit fee	5,000.00
	Depreciation on fixed assets	25,116.87
	Property tax	40,320.00

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 10" to
Affidavit of
Yap Cheng Hai
(continued)

Bad debts	2,760.00
Loss in difference of exchange	8,584.42
	<u>636.338.37</u>

MALAYAN PLANT PTE LTD

FINANCIAL EXPENSES

31ST DECEMBER 1976

Bank charges	1,813.72
Bank overdraft interest	215,153.33
Interest	12,413.09
	<u>229,380.14</u>

10

MALAYAN PLANT PTE LTD

SCHEDULE OF OTHER DEBTORS

AT 31ST DECEMBER 1976

Benny Wong	1,000.00
Cheng Kok Tin	450.00
Cheong Kwong Wai	25,592.40
Concrete Innovators	85,030.17
Hauw Lie Khim	20,000.00
Hai Wan Shipping Co	15,639.09
Jimary Thema	17,702.30
Kermin Tsang	11,000.00
Ooi Thean Chuan	5,000.00
P.T. Indoraya Quarry Industry	1,204,283.02
Roslan Suradinata	15,500.00
Weng Hong Loong	5,000.00
Deh Cheong Enterprise Co	11,250.00
Lancing Enterprise Co	172,424.50

20

Goh Seng Heng	1,000.00	In the High Court of the Republic of Singapore No.4 Exhibit "CHY 10" to Affidavit of Yap Cheng Hai (continued)
Superior Enterprise	100.00	
Mrs. Shao	300.00	
Wong Kok Wai	300.00	
Wiramex Pte Ltd	3,690.00	
Khan Hong	10,040.38	
	<u>\$1,605,301.86</u>	

SUBJECT TO AUDIT

10 I CERTIFIED THE BALANCE OF THE OTHER DEBTORS
AT 31ST DECEMBER 1976

MALAYAN PLANT (PTE) LTD

(Sgd)

FINANCIAL MANAGER

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 12" to
Affidavit of
Yap Cheng Hai
(First page
only)

EXHIBIT "CHY 12"
to Affidavit of
Yap Cheng Hai
(First page only)

This is the Exhibit marked "CHY 12"
referred to in the Affidavit of Yap Cheng
Hai and sworn on the 17th day of March
1977

Before me,
Sd. Mohamed Yatim Dohon
A Commissioner for Oaths

10

BANK PEMBANGUNAN INDONEISA

Cable Address: BAPINDO
DOCUMENTARY CREDIT

No. 9803/0425/77

Jakarta, January 4, 1977

This is a confirmation of
the credit OPENED BY CABLE
under today's date.

To BANK NEGARA INDONESIA 1946

P.O.Box 2260
Malacca Street
Singapore 1.

20

THIS CREDIT IS
RESTRICTED TO
BANK NEGARA
INDONESIA 1946
ONLY

When presenting documents for
negotiation, please also
submit extra copies of invoices
and photocopy of original Bill
of Lading for our records.

Dear Sirs,

We hereby open with you our IRREVOCABLE CREDIT
on the following terms and conditions:

30

IN FAVOUR OF: MALAYAN PLANT (PTE) LTD 215 Up
Bukit Timah Road, Singapore-21.

FOR ACCOUNT OF: PT. PERKEBUNAN V, Sungei Karang
Galang PO Box 214 Jl.K.L. Yos
Sudarso No.1F Medan, on behalf
of Bank Pembangunan Indonesia.

FOR A TOTAL AMOUNT OF: U.S.\$83,640.00 CIF (Say
US Dollars Eighty three thousand
six hundred forty only).

40

AVAILABLE AGAINST: drafts at sight, drawn on
you for full invoice value. Drafts should refer
to this credit, to the order of Bank Pembangunan
Indonesia, accompanied by:

- a. Signed commercial invoices and packing lists in 6 (six) fold and four copies.
- b. Full set of clean "on board" marine Bills of Lading to our order at least three negotiable and 4 (four) non negotiable copies, to be dated not later than January 30, 1978 and Notify PT. PERKEBUNAN V/MEDAN.
- c. Certificate of Origin, Insurance Policies, Manufacturer's Test Certificate and or Warrantee's, Inspection Report Issued by Superintending Coy of Indonesia Ltd and or Their Correspondence in Malaysia at the Port of Loading Third Party Shipping Document and Stale B/L Acceptable.

In the High Court of the Republic of Singapore

No.4

Exhibit "CHY 12" to Affidavit of Yap Cheng Hai (First page only)

(continued)

10

COVERING SHIPMENTS(S) FROM: Kelang Port
TO Belawan/Delie Medan.

OF: Order No.PTP-V/PKS/017/76: Materials & Equipments for the construction of piping c/w valves, motors and lagging. Packed in standard export packing.

20

PART SHIPMENTS: Allowed TRANSHIPMENT: Allowed

EXPIRY DATE: February 29, 1978 IMPORT REFERENCE: -

Invoices and Bills of Lading must show amount of actual freight prepaid.

Shipping documents must show marks on cases, packages, etcetera contain application number 9803/00407/77 and credit number 9803/0425/77

All charges outside Indonesia if any are for our Account.

30

OTHER TERMS:

Invoices to be countersigned by Indonesian Embassy Singapore.

Shipment within 12 months after receipt letter of credit for 100% of invoice value subject to shipping space being available at the time of shipment.

PAYMENTS:

For your payments under this credit you are authorized to debit our US Dollar Account with you.

40

Subject to Uniform Customs and Practice for Documentary Credits (1974 Revision) International Chamber of Commerce, Publication No.290

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 12" to
Affidavit of
Yap Cheng Hai
(First page
only)

(continued)

Unless expressly stated otherwise, this credit is subject to the Uniform Customs and Practice for Documentary Credits as fixed by the International Chamber of Commerce, revision 1962 Brochure 222.

Two sets of documents are to be forwarded to us by first available airmail; the remaining set(s) by first available ordinary mail.

PLEASE ADVISE BENEFICIARIES OF THIS CREDIT WITHOUT ADDING YOUR CONFIRMATION AND ACKNOWLEDGE RECEIPT.

10

Yours faithfully,
BANK PEMBANGUNAN INDONESIA

(Sgd)

THIS CREDIT IS VALID ONLY
WHEN USED IN CONNECTION WITH
OUR LETTER OF ADVICE
NO. M/0007/77 DATED 6.1.77
BANK NEGARA INDONESIA 1946
SINGAPORE BRANCH

20

EXHIBIT "CHY 13"
to Affidavit of
Yap Cheng Hai

In the High
Court of the
Republic of
Singapore

No.4

TEREX GM

GENERAL MOTORS OVERSEAS DISTRIBUTION
CORPORATION
(Incorporated in the State of Delaware
U.S.A. with limited liability)

Exhibit
"CHY 13" to
Affidavit of
Yap Cheng Hai

10 MAIL TO: CABLE:
15 BENOI SECTOR "EARTHKING" SINGAPORE
JURONG TOWN TELEX: RS 21608
SINGAPORE 22 TEL: 654696

February 25, 1977

Mr. C.H. Yap
Chairman
Malayan Plant (Pte) Ltd
MP House
215 Upper Bukit Timah Road
SINGAPORE 21

20 Dear Peter,

Attached is a signed copy of the formal Dealer
Franchise Agreement which is duly executed by
our Vice President, Mr. W.B. Eline.

Very truly yours,

(Sgd)

Edward T. Monahan
Regional Manager
TEREX Products

30 ETM/ml
Encl.

This is the Exhibit marked "CHY 13" referred
to in the Affidavit of Yap Cheng Hai and
sworn on the 17th day of March 1977

Before me,
Sd. Mohamed Yatim Dohon
A Commissioner for Oaths

In the High
Court of the
Republic of
Singapore

No.4

Exhibit "CHY 13"
to Affidavit of
Yap Cheng Hai
(continued)

TEREX DIVISION
General Motors Overseas Distribution
Corporation

TEREX DEALER SALES AND SERVICE AGREEMENT

AGREEMENT, effective JANUARY 1, 1977 by and
between TEREX Division, General Motors
Overseas Distribution Corporation, having a
principal place of business at Hudson, Ohio,
United States of America (hereinafter called
TEREX), and

10

MALAYAN PLANT (PRIVATE) LIMITED

having a principal place of business at
MP HOUSE, 215 UPPER BUKIT TIMAH ROAD,
SINGAPORE 21 (hereinafter called Dealer).

GENERAL PURPOSE OF AGREEMENT

TEREX is in the business of marketing
earthmoving and construction equipment,
principally by means of authorized dealers.

A TEREX Dealer is part of a marketing
system designed to fulfill the need for
(a) the sale, rental and leasing of TEREX
Products by knowledgeable presentation and
effective demonstration of their qualities,
features, applications and operations, and
(b) the rendering of prompt, efficient and
courteous service to users of TEREX Products.
TEREX selects dealers on the basis of their
qualifications to sell and service TEREX
Products, the integrity and ability of the
individuals owning and operating such dealers,
and the undertaking by such dealers to use
their best efforts to promote TEREX Products.

20

30

The purpose of this Agreement is to
authorize Dealer to sell and service TEREX
Products and to set forth the respective
obligations of TEREX and Dealer. In entering
into this Agreement, TEREX and Dealer recognize
that the success of TEREX and its dealers
depends upon how well TEREX and each Dealer
fulfill their respective obligations.

40

NOW THEREFORE, in consideration of the
foregoing and the mutual promises hereinafter
contained, TEREX and Dealer agree:

FIRST: Subject to the other provisions and for the term of this Agreement, TEREX hereby authorizes Dealer to sell and service TEREX Products and to establish TEREX Dealership Operations at the locations approved by TEREX hereunder for that purpose. In connection therewith, TEREX grants Dealer a nonexclusive privilege of buying the following Products:

10

- (1) TEREX Machines, Attachments, Options and Special Equipment, and
- (2) TEREX Parts marketed for use in connection with Machines, Attachments, Options and Special Equipment.

20

SECOND: TEREX expressly reserves the right to grant authority to sell and service TEREX Products to dealers selected and approved by TEREX. Accordingly, this Agreement and the authority conferred upon Dealer hereunder are not transferable, assignable, or saleable by Dealer, and no property right or interest, direct or indirect, in this Agreement or such authority is sold, conveyed, or transferred by TEREX to Dealer hereunder.

30

Dealer shall not, without the prior written consent of TEREX, transfer or assign, or attempt to transfer or assign, any right of Dealer under this Agreement, or transfer or delegate, or attempt to transfer or delegate, any obligation or responsibility of Dealer under this Agreement.

THIRD: TEREX has elected Dealer to become a party to this Agreement in substantial reliance upon the qualification, character and reputation of the principal owners and management of Dealer. Both Dealer and TEREX recognize that any change in ownership or management may be detrimental to the interests of TEREX and users of TEREX Products and that TEREX is the sole judge of whether any such change is acceptable.

40

Concurrently with the execution of this Agreement, TEREX had endorsed its approval of the principal ownership, financial interests and active management of Dealer as represented by Dealer on a "Dealer Statement of Ownership, Financial Interests and Active Management" form supplied by TEREX. If Dealer makes any change in such ownership, financial interests or active management without the prior written approval of

In the High Court of the Republic of Singapore

No.4

Exhibit
"CHY 13" to
Affidavit of
Yap Cheng Hai
(continued)

In the High Court of the Republic of Singapore

No.4

Exhibit "CHY 13" to Affidavit of Yap Cheng Hai (continued)

TEREX and TEREX determines that such change is unacceptable, TEREX may terminate this Agreement under Section 18.

If Dealer is a corporation, the acquisition of a substantial number of shares of stock of Dealer (as defined in the Dealer Statement of Ownership, Financial Interests and Active Management) by a person or entity, or by a number of persons or entities acting in concert, shall be deemed to constitute a change in such ownership of Dealer even if the preceding owners of such shares of stock are not named in the "Dealer Statement of Ownership, Financial Interests and Active Management." 10

The approval by TEREX of a change in the ownership, financial interests or active management of Dealer shall be evidenced by the execution of a new and revised "Dealer Statement of Ownership, Financial Interests and Active Management" form. 20

FOURTH: Dealer shall actively and aggressively promote the sale and use of TEREX Products and provide prompt and efficient service thereon in Dealer's Area of Sales and Service Responsibility.

FIFTH: The additional provisions set forth in the attached "Additional Provisions Applicable to TEREX Dealer Sales and Service Agreement," bearing Form Number ODC 733 USA 6-76, are hereby made a part of this Agreement with the same force and effect as if set forth at length herein. 30

SIXTH: This Agreement shall govern all relations and transactions between the parties for a term commencing on the effective date hereof and expiring DECEMBER 31, 1977. Unless sooner terminated as hereinafter provided, this Agreement shall automatically terminate at the expiration date without notice or action. 40

In the event TEREX offers to TEREX dealers generally a new and superseding form of TEREX Dealer Sales and Service Agreement effective during the term of this Agreement, TEREX may, at its discretion, terminate this Agreement by prior written notice to Dealer, provided

TEREX offers Dealer the new and superseding form of TEREX Dealer Sales and Service Agreement for a period of not less than the then unexpired term of this Agreement.

In the High Court of the Republic of Singapore

No.4

Exhibit "CHY 13" to Affidavit of Yap Cheng Hai (continued)

10 SEVENTH; This Agreement is not valid until and unless it bears the signature of a Vice President, or the facsimile signature of a Vice President and the signature of either a Director of Sales or a Regional Manager, of TEREX Division, General Motors Overseas Distribution Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate effective as of the day and year first above written.

TEREX DIVISION
General Motors Overseas
Distribution Corporation

20 MALAYAN PLANT (PRIVATE) LIMITED
Dealer

By (Sgd)
PETER C H YAP
Title CHAIRMAN AND MANAGING
DIRECTOR

By (Sgd) S.B.Eline
Vice President

This 29th day of NOVEMBER
1976

This 3rd day of February
1977

at SINGAPORE

at Hudson, Ohio, U.S.A.

By (Sgd)

30 ALEX T C CHEW
EXECUTIVE DIRECTOR

This 29th day of NOVEMBER 1976
at SINGAPORE

In the High
Court of the
Republic of
Singapore

EXHIBIT "CHY 14"
to Affidavit of
Yap Cheng Hai

No.4

Exhibit
"CHY 14" to
Affidavit of
Yap Cheng Hai

MALAYAN PLANT (PTE) LTD

November 6, 1974

Moscow Narodny Bank Ltd.
I.C.B. Bldg
2 Shenton Way
Singapore 1.

Dear Sirs,

10

We thank you for your letter of 5th November,
and hereby confirm our acceptance of the terms
and conditions stated therein.

We have received the set of keys to the store
and enclose herewith a copy of the Insurance
policy with your Bank named as beneficiary,
for your retention.

Thank you,

Yours faithfully,
MALAYAN PLANT (PTE) LTD

20

(Sgd)

Director

Encl.

This is the Exhibit marked "CHY 14" referred
to in the Affidavit of Yap Cheng Hai and
sworn on the 17th day of March 1977

Before me,

Sd. Mohamed Yatim Dohon
A Commissioners for Oaths

MOSCOW NARODNY BANK LIMITED
(Incorporated in London in 1919 with
Limited Liability)

I.C.B. BUILDING, P.O. BOX No. 3883,
2 SHENTON WAY, SINGAPORE 1.

PRIVATE & CONFIDENTIAL

Telephone: 913711 (7 lines)
Telex: RS 21726
Telegram: NARODNY SINGAPORE

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 14" to
Affidavit of
Yap Cheng Hai
(continued)

10 Our ref. Inf Dept.

7th March 1975

Messrs. Malayan Plant (Pte) Ltd
215 Upper Bukit Timah Road
Singapore 21

Attention: Mr. Peter Yap

Dear Sirs

Re: Pledge of Goods

We refer to our letter dated 5th and 7th November
1974 and yours of 6th November 1974.

20 We have up-to-date not received the Insurance
Policy nor any Stock List which is to be
submitted every fortnightly as agreed upon.
Could you please forward to us the relevant
documents without any further delay.

Your co-operation in this matter would be
greatly appreciated.

Yours faithfully,
for MOSCOW NARODNY BANK LTD

(Sgd)

30 Authorised Signatures

In the High
Court of the
Republic of
Singapore

No.4

Exhibit
"CHY 14" to
Affidavit of
Yap Cheng Hai
(continued)

MOSCOW NARODNY BANK LIMITED
(Incorporated in London in 1919
with Limited Liability)

I.C.B. BUILDING, P.O. BOX No. 3883,
2 SHENTON WAY, SINGAPORE 1.

Telephone No. 913711 (7 lines)
Telex: RS 21726
Telegram: NARODNY SINGAPORE

Our ref: Inf Dept

5th November 1974 10

Messrs. Malayan Plant (Pte) Ltd
215 Upper Bukit Timah Road
Singapore 21

Dear Sirs

Re: Pledge of Goods

You may store the goods under our trust receipts, in the premises of No.21 Link Road, Jurong. We hereby hand you one set of keys to No.21 Link Road, Jurong upon you holding in trust for us the goods stored therein and on the following conditions :- 20

1. You are to insure the goods stored therein and to name us as the beneficiary;
2. To display a large sign board with our name on it, at the entrance of the store;
3. To give us a stock list every fortnight;
4. Our officers will inspect goods at any time we think fit.

Kindly acknowledge receipt of this letter and the keys, and confirm your agreement with the above terms. 30

Yours faithfully,
for MOSCOW NARODNY BANK LTD
(Sgd)

Authorised Signatures

In the High Court of the
 Republic of Singapore
 No.4
 Exhibit "CHY 14" to Affidavit
 of Yap Cheng Hai (continued)

MALAYAN PLANT PTE LTD/AMCO PTE LTD
 STOCK LIST AS AT 28 FEBRUARY 1977
 AT 15 LINK ROAD, JURONG

Date	Reference	Products	In	Out	Balance
20-11-74	IBN 3/44645	Tapioca Pelletting Plant and spare parts for pellet- ing press colli	31 cases	-	S\$1,056,794.51
20-11-74	IBN 3/44964	1 pellet of Parco 'O' Rings	17 boxes	-	21,185.07
11-11-74	IBN 3/43028	Parts for English Generator Sets	4 cases	-	99,626.82
11-11-74	IBN 3/45280	Caslake Mark 5 Centralizers (Oilwell Equipment)	3 crates	-	5,261.93
19-11-74	IBC 3/6708	Auto Parts (Belts) 8256 - 1000 Pcs 11M 710 - 100 Pcs 3054 - 50 Pcs	1150 Pcs	-	5,439.68
5-1-77			100 Pcs	1050 Pcs	

In the High Court of the
 Republic of Singapore
 No. 4
 Exhibit "CHY 14" to Affidavit
 of Yap Cheng Hai (continued)

Date	Reference	Products	In	Out	Balance
21-1-75	IBN 3/45471	Aluminium Sheets	48 cases	-	S\$160,369.48
29-4-75				2 cases (S\$14,935.60)	48 cases 46 cases 155,433.88
7-1-77				46 cases	
7-2-75	IBN 3/46418	Three Phase Asynchronous Electric Motors	196 Pcs	-	196 Pcs 22,988.07
17-5-75				17 Pcs	179 Pcs 21,258.07
5-7-75	IBN 4/49350 IBN 4/49354	Three Phase Asynchronous Electric Motors	485 Pcs	-	485 Pcs 131,993.76
16-8-75 to					
31.-8-75				39 Pcs	446 Pcs 125,343.09
4-1-77				144 Pcs	302 Pcs

No. 5

AFFIDAVIT OF WILSON SUNG
21st April 1977

In the High
Court of the
Republic of
Singapore.

No.5

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Companies Winding Up)
No.25 of 1977

In the matter of the
Companies Act (Chapter 185)

Affidavit of
Wilson Sung

21st April
1977

And

In the matter of Malayan
Plant (Pte) Ltd.

10

A F F I D A V I T

I, WILSON SUNG care of 905/6, 9th Floor,
Tunas Building, Anson Road, Singapore, make oath
and say as follows :-

1. I am the Executive Director of Deekes Wills
(Pte) Limited and have been duly authorised to
make this affidavit on behalf of Deekes & Evans
Limited of Nos. 25-35 City Road, London, E.C.1.
England, (hereinafter referred to as "the Creditor")
in support of their intention to oppose the
winding up of the abovenamed company, Malayan
Plant (Pte) Ltd. (hereinafter referred to as
"Respondent Company").

20

2. The Respondent Company has for the better
part of the last ten years immediately preceding
the presentation of this petition for winding up,
been trading with the Creditor.

3. For the better part of the said ten years,
the Respondent Company has maintained a satisfactory
business account with the Creditor in making
punctual and regular payment of their bills with
the Creditor and has been trading actively within
the South East Asian region on a large scale.

30

4. Despite liquidity problems in late 1974
coinciding with one of the longest and most
severe logging trade depressions experienced in
South East Asia coupled in its later stages with
the tight financial situation caused by world-wide
trade depressions resulting from the Middle East
oil crisis, the Respondent Company has at all times
made every effort to liquidate or reduce its
accounts with the Creditor and kept the Creditor
constantly informed of its prevailing situation.

40

In the High Court of the Republic of Singapore

No.5

Affidavit of Wilson Sung

21st April 1977

(continued)

5. The Respondent Company appears to be still actively trading on a large scale and I am instructed by the Creditor and verily believe that the better expectation of recovery of debts lies in permitting the Respondent Company to continue trading in a region of expanding trade so that it can generate the necessary funds needed to settle its debts.

6. I am instructed and verily believe that the Respondent Company has the capability and trading capacity to overcome its present difficulties and generate the necessary funds to settle its debts and the winding up of the Respondent Company would not be in the best interests of all its creditors.

10

7. I accordingly, on behalf of the Creditor, oppose the petition for winding up of the Respondent Company.

SWORN by the abovenamed)
WILSON SUNG this 21st)
day of April 1977)

Sd. Wilson Sung

20

Before me,
Sd. N.Sivanandon
A Commissioner for Oaths

No. 6

AFFIDAVIT OF KONG YUK MIN
AND EXHIBITS THERETO -
28th April 1977

In the High
Court of the
Republic of
Singapore

No.6

Affidavit of
Kong Yuk Min
and exhibits
thereto

28th April
1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Companies Winding Up)
No.25 of 1977) In the Matter of The
Companies Act (Cap.185)

And

10

In the Matter of Malayan
Plant (Pte) Ltd.

A F F I D A V I T

I, KONG YUK MIN of MNB Building, No.50
Robinson Road, Singapore, do affirm and say
as follows :-

1. I am the Deputy Manager of Moscow Narodny
Bank Limited, the Petitioners in the above
matter, a Company incorporated in the United
Kingdom and having a place of business at MNB
20 Building, 50 Robinson Road, Singapore, and am
duly authorised to make this affidavit on
behalf of the Petitioners.

2. I have read what purports to be a copy
of an affidavit of Yap Cheng Hai (hereinafter
called the "said Affidavit") affirmed and filed
herein on behalf of the Company on the 17th day
of March 1977 and crave leave to refer thereto.

3. I depose to the several facts hereinafter
set out from information obtained from the
30 books of accounts, registers and other books,
records and papers of the Petitioners which I
verily believe to have been kept in the ordinary
course of business and from information
received by me from other officers of the
Petitioners which I verily believe to be true
and also from personal knowledge acquired during
the course of my duties as Deputy Manager of the
Petitioners to the best of my knowledge.

4. As regards paragraphs 3 and 4 of the said
40 Affidavit, it is untrue that no demand was made
for payment of the sum of \$8,092,088.56 prior
to the Petitioners' Solicitors' letter of

In the High Court of the Republic of Singapore

No.6

Affidavit of Kong Yuk Min and exhibits thereto

28th April 1977

(continued)

25th January 1977 (and not 21st January 1977). Annexed hereto and marked "KYM 1" is a copy of a similar demand dated 9th December 1976 which was handed to the Company's Managing Director, Yap Cheng Hai at a meeting at the Petitioners' premises on 11th December 1976. Receipt thereof was acknowledged by the said Yap Cheng Hai by endorsement thereon.

5. As regards paragraphs 5 to 8 of the said Affidavit, annexed hereto and marked "KYM 2 to KYM 33" are true copies of Trust Receipts evidencing the debt duly executed by the Company and arranged in the same order as was listed in the Petitioners' Solicitors' demand notice of 25th January 1977 referred to in the said Affidavit and annexed thereto as exhibit "CHY 1". 10

The sum of \$58,474.54 in respect of the Trust Receipt (Document Ref. 13559259) listed No.33 in the list accompanying "CHY 1" has been fully paid and the Trust Receipt has since been cancelled and returned to the Company. 20

As regards the Trust Receipt (Document Ref. 13560034) a true copy whereof is annexed hereto and marked "KYM 34" listed No.34 in the list accompanying "CHY 1" a total of \$54,887.88 has been paid after the filing of the Petition herein. The balance owing on this Trust Receipt is now \$80,557.24.

Also annexed hereto and marked "KYM 35" to KYM 39" are true copies of documents in relation to Inward Bills Negotiated referred to in the list accompanying "CHY 1". 30

6. Further it is denied that no agreement was made between the Petitioners and the Company regarding interest rates. By oral agreement between the Petitioners and the Company and as established by practice in the course of dealings between them it was agreed that interest for overdue debts would be 14%. 40

7. As regards paragraphs 29 and 30 of the said Affidavit, there were indeed two meetings at the Petitioners' office. At the first meeting on the 11th day of December 1976, at which were present the Petitioners' General Manager, Deputy Manager, other officers and their Solicitors and the Company's Managing

Director, Yap Cheng Hai, the Company was asked to explain why it had failed to honour its obligations to the Petitioners, principally in respect of the various Trust Receipts aforementioned. The said Yap Cheng Hai expressed optimism that the Company's coal mine in Indonesia would yield profits soon and asked for time to pay. He further promised to submit concrete proposals for repayment on a Schedule to be furnished to the Bank subsequently. At the end of the meeting your Petitioners' Solicitors served their letter of demand dated 9th December 1976 on the said Yap Cheng Hai who acknowledged receipt by endorsement on a copy thereof. It was made clear to him that if the Company's proposals for repayment were subsequently submitted to the Petitioners and were found satisfactory, the Petitioners would withhold proceedings to wind up the Company.

In the High Court of the Republic of Singapore

No.6

Affidavit of Kong Yuk Min and exhibits thereto

28th April 1977

(continued)

The second meeting was on the 17th December 1976 at which were present the said Yap Cheng Hai and two officers of the Petitioners. At this meeting, the Company was to have submitted a Schedule of Repayment as promised. However apart from vague promises to repay, no concrete proposals were submitted. It is denied that the Petitioners at any time refused to ascertain together with the Company the exact sum owed to the Petitioners. In fact the sum owing and full particulars thereof were given to the Company at the first meeting of 11th December 1976 and vide "KYM 1" which was handed to the said Yap Cheng Hai at the said first meeting.

8. As regards paragraph 33(a) of the said Affidavit, the Petitioners are not aware of any approaches having been made by any official of the Embassy of the U.S.S.R. to the Company. The Petitioners strenuously deny that this winding up petition was brought to bring pressure on the Company to buy Russian made equipment. These allegations are frivolous and made with intent to embarrass the Petitioners.

9. As regards paragraphs 34 to 37 of the said Affidavit, I deny that the Petitioners failed to disclose all material facts and in fact the truth of the matter is that the Company itself made only a partial disclosure of the facts in the said Affidavit. It was the Company which first suggested to the Petitioners that in order to avoid the high cost of godown charges the Company would itself obtain godown space to store

In the High Court of the Republic of Singapore

No.6

Affidavit of Kong Yuk Min and exhibits thereto

28th April 1977

(continued)

goods which were ordered by the Company through Letters of Credit established by the Petitioners. The Company has failed to disclose the existence of its letters dated 23rd October 1974 written to the Petitioners. A true copy of the said letter of 23rd October 1974 is annexed hereto and marked "KYM 40". It was in response to this letter of 23rd October 1974 that the Petitioners on 5th November 1974 sent their letter in reply which same was included in the bundle of correspondence referred to as exhibit "CHY 14" in the said Affidavit.

10

10. It is not true that the Petitioners refused to grant permission for goods to be removed from the store. In fact the Company held one key to the store at 15 Link Road, Jurong, Singapore, while the Petitioners held a second key to the same lock. Security guards at the store were employed by the Company and the latter had full and free access to the store. It was only on 7th December 1976 after the Company's Managing Director had been avoiding the Petitioners despite numerous requests for a meeting that the Petitioners wrote to the Company demanding the key. A true copy of the Petitioners' letter of 7th December 1976 is annexed hereto and marked "KYM 41". Incidentally, the key has still not been handed to the Petitioners.

20

11. In the circumstances the Petitioners pray that the Company be wound up.

30

AFFIRMED at Singapore
this 28th day of April
1977

} Sd. Kong Yuk Min

Before me,

Sd. Kirpal Singh

A Commissioner for Oaths

EXHIBIT "KYM 1"
to Affidavit of
Kong Yuk Min

In the High
Court of the
Republic of
Singapore

No.6

LEE & LEE
Advocates &
Solicitors

U.I.C Building, 18th Floor,
5 Shenton Way
Singapore 1

Telephone: 2200666 (Seven
lines)

Cable Address: "KYLEGAL"
Telex RS 23089

Exhibit
"KYM 1" to
Affidavit of
Kong Yuk Min

10

Our reference: AA/CC/Misc/76 9th December, 1976

BY HAND

This is the Exhibit marked
"KYM 1" referred to in the
Affidavit of Kong Yuk Min
and sworn before me this
28th day of April 1977

Sd Kirpal Singh
A Commissioners for Oaths

20 M/s MALAYAN PLANT (PTE) LTD
215 Upper Bukit Timah Road, 7 $\frac{3}{4}$ m.s.
Singapore 21

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
30 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	<u>1,367,722.54</u>
	<u>S\$ 8,092,088.56</u>

40 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 Clients
or to us within three weeks from the date of

In the High
Court of the
Republic of
Singapore

No.6

Exhibit
"KYM 1" to
Affidavit of
Kong Yuk Min
(continued)

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 9th day of December, 1976.

(Sgd)

LEE & LEE

Solicitors for the Moscow
Narodny Bank, Limited

10

Encl;

c.c. to:
Clients (Attn: Mr. Ovseitchik)

(Sgd)

MALAYAN PLANT PTE LTD

TRUST RECEIPTS OUTSTANDING

In the High
Court of the
Republic of
Singapore

	<u>Doc.Ref.</u>	<u>Outstanding Amount as at 4.12.76</u>	<u>Value Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>No.6 Exhibit</u>
		S\$				"KYM 1" to
	13341113	240,718.23	7. 5.74	13. 9.74	14%	Affidavit of
	13341491	36,998.71	16. 5.74	20. 9.74	14%	Kong Yuk Min
	13341614	595,667.78	21. 5.74	26. 9.74	14%	(continued)
10	13341206	41,142.45	9. 5.74	30. 9.74	14%	
	13341457	82,602.73	15. 5.74	30. 9.74	14%	
	13341715	70,957.49	22. 5.74	9.10.74	14%	
	13341424	52,935.27	14. 5.74	31.10.74	14%	
	13341797	71,886.59	24. 5.74	31.10.74	14%	
	13342025	15,327.60	3. 6.74	31.10.74	14%	
	13342059	20,296.17	4. 6.74	31.10.74	14%	
	13342367	10,585.10	13. 6.74	31.10.74	14%	
	13342390	122,249.87	14. 6.74	31.10.74	14%	
	13341508	87,207.31	16. 5.74	4.11.74	14%	
20	13341509	724,544.69	16. 5.74	4.11.74	14%	
	13341510	964,054.88	16. 5.74	4.11.74	14%	
	13341511	277,873.22	16. 5.74	4.11.74	14%	
	13343320	608,315.75	22. 7.74	23.11.74	14%	
	13342636	30,811.91	24. 6.74	2.12.74	14%	
	13342693	29,334.10	26. 6.74	2.12.74	14%	
	13342692	24,895.55	26. 6.74	12.12.74	14%	
	13342366	39,815.05	13. 6.74	13.12.74	14%	
	13342584	46,068.49	20. 6.74	13.12.74	14%	
	16305866	41,187.29	21. 8.74	20.12.74	14%	
30	13342498	366,664.73	20. 6.74	10. 1.75	14%	
	13344601	661,597.04	18. 9.74	22. 1.75	14%	
	13344773	48,059.96	12. 9.74	5. 2.75	14%	
	13344693	36,962.46	11. 9.74	8. 2.75	14%	
	13346562	605,968.45	11.12.74	12. 3.75	14%	
	13447489	43,642.50	27. 1.75	4. 6.75	14%	
	13448142	13,359.36	27. 2.75	5. 7.75	14%	
	13449087	76,970.34	8. 4.75	23. 8.75	14%	

In the High Court of the Republic of Singapore	<u>Doc.Ref.</u>	Outstanding Amount as at 4.12.76 S\$	<u>Value Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
No. 6	13556023	39,501.84	14. 1 76	18. 5.76	8 $\frac{1}{4}$ %
Exhibit "KYM 1" to	13559259	58,474.54	28. 6.76	30.10.76	8 $\frac{1}{4}$ %
Affidavit of Kong Yuk Min	13560034	135,445.12	13. 8.76	22.12.76	8 $\frac{1}{4}$ %
(continued)		<u>S\$ 6,322,122.57</u>			

MALAYAN PLANT PTE LTD

INWARD BILLS NEGOTIATED

<u>Doc.Ref.</u>	Outstanding Amount as at 4.11.76 S\$	<u>Value Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
13343028	99,380.90	8. 7.74	22. 7.74	9 $\frac{3}{4}$ %
13345471	155,856.16	18.10.74	1.11.74	
13346418	21,378.21	3.12.74	17.12.74	
13449350	87,156.92	17. 4.75	1. 5.75	9%
13449354	38,471.26	17. 4.75	1. 5.75	
	<u>S\$ 402,243.45</u>			

/ML

In the High Court of the Republic of Singapore

No.6

Exhibit "KYM 2" to Affidavit of Kong Yuk Min (continued)

Debit our A/C with you
Enclose our cheque
X Under Trust Receipts upon arrival of goods

Documents received:

- 3 Invoices
- 3/3 b/lading
- 1 nn b/lading insurance cert of origin
- 3 pkg list
- wt list

10

for MALAYAN PLANT (PTE) LTD
(Sgd)

Director
Authorised Signatures.

This is the Exhibit marked "KYM 2" referred to in the Affidavit of Kong Yuk Min sworn before me this 28th day of April 1977

Sd. Kirpal Singh
A Commissioner for Oaths

BILL OF EXCHANGE

20

No. 41954-BJ-2-0861 Tokyo, Apr.25,1974

At ----- sight of this FIRST of Exchange (SECOND of the same tenor and rate being unpaid)

Pay to THE GUNMA BANK LTD or order

THE SUM OF US\$99,237.30

Value received and charge the same to account of for MALAYAN PLANT (PTE) LTD (Sgd)

Director

Drawn under Moscow Narodny Bank Ltd., Singapore irrevocable

30

L/C No. 3/20014 dated Apr. 1, 1974

To: M/s Malayan Plant Pte Ltd.,
215 Upper Bukit Timah Road,
Singapore 21

C. ITOH & CO.LTD.
(Sgd)

P.P. Manager

TRUST RECEIPT

Moscow Narodny Bank Limited
P.O. Box 3883 I.C.B. Building
2 Shenton Way, Singapore 1.

In the High
Court of the
Republic of
Singapore

No.6

Dear Sirs,

Exhibit
"KYM 2" to
Affidavit of
Kong Yuk Min
(continued)

10

We acknowledge having received from you as your Agents and Trustees the documents/goods of which particulars are set out in the Schedule* at the foot hereof and which are at present pledged to you pursuant to and upon the terms of our general letter of hypothecation to you dated

We agree to hold the said goods and the proceeds of sale when received as your Agents and Bailees and upon trust for you and subject to your directions.

20

We understand that until you shall otherwise direct we are permitted to take delivery of the said goods and either to warehouse them in your name at our expense or to realise them by sale for your account, receiving payment and accounting to you therefor.

We undertake to remit the proceeds of all such sales to you immediately and specifically as received by us, such remittance to be applied by you at your complete discretion in and towards repayment of any debt, account or liability of ours to you whatsoever.

30

We undertake to keep the above-mentioned goods and their cash proceeds and our records thereof separate and readily distinguishable from all other transactions and also as your Agents at our expense to insure and throughout keep insured the said goods for their full value against fire (also if customary against theft, pilferage and other risks) and to hold the relative Policy or Policies and all monies recovered thereunder on your behalf, and subject to your directions.

40

You are authorised if you shall think fit so to do to apply for and to receive direct from the buyers the proceeds of the sale of any of the said goods.

It is also understood that you may without

In the High Court of the Republic of Singapore

No.6

Exhibit "KYM 2" to Affidavit of Kong Yuk Min

(continued)

notice to us at any time cancel this Trust Receipt and resume the possession of the said goods, or documents of title thereto.

Yours faithfully,
for MALAYAN PLANT (PTE) LTD

(Sgd)

Directors

Accepted on: 14 Mar.1974
Due on: 18 Sep. 1974
TR for 120 days @ 9 $\frac{3}{4}$ % p.a.
LC 3/20014
IBN 3/41113

10

Malayan Plant Private Limited

PARTICULARS OF DOCUMENTS/GOODS

MARKS	QUANTITY AND DESCRIPTION	SHIP	VALUE
MPL (4) SINGAPORE	C/No.42-51	10 units Isuzu Diesel Trucks Model TWD20 Standard Chassis-Cab, built up with Power take off complete without body	"Gyosei Maru" BL No: 20 YS-4 dd \$240718.23 19/4/1974

EXHIBIT "KYM 35"
to Affidavit of
Kong Yuk Min

In the High
Court of the
Republic of
Singapore

No.6

MOSCOW NARODNY BANK LIMITED
(Incorporated in London in 1919
with Limited Liability)

2 SHENTON WAY, SINGAPORE 1

Exhibit
"KYM 35" to
Affidavit of
Kong Yuk Min

Date 8-7-74

10 Malayan Plant Pte Ltd
215 Upper Bukit Timah Road
Singapore 21

Drawer: Hongkong Industrial &
Commercial Bank Ltd,
Hongkong

L/Credit
2/15076

Covering Shipment of: 4 cases for English
Generator sets

20 Per ss "Chung Ryong" from Hong Kong to Singapore
Form E

Reference Tenor
sight

Shipping guarantee issued:
to: Date:

	Foreign Amount	Rate	Local Amount
Draft amount	\$200137.95	49.65	\$99368.49
Corr.charges	25.00	49.65	12.41
Sub-total	\$200162.95	49.65	\$99380.90

30 Handling/Cable charges 5.50
Postages 1.50
Stamp duty 0.00
9 days interest @ 9.75% p.a.
from 29-6-74 to 8-7-74 238.92
Amount Payable \$99626.82

Duplicate Documents attached

Discrepancy(ies) Certificate of U.K. origin
not submitted.

40 This is the Exhibit marked "KYM 35" referred to
in the Affidavit of Kong Yuk Min and sworn before
me this 28th day of April 1977

Sd. Kirpal Singh
A Commissioner for Oaths

In the High
Court of the
Republic of
Singapore

No.6

Exhibit
"KYM 35" to
Affidavit of
Kong Yuk Min
(continued)

Drawn under Moscow Narodny Bank
Limited, Singapore
L/C No. 2/15076 dated 5th September
1973

ORIGINAL

No.054/74

EXCHANGE for HK\$200,137.95 Hongkong, 27th June,
1974

At ----- sight of this FIRST of Exchange
(Second of the same tenor and date unpaid) pay
to the order HONGKONG INDUSTRIAL & COMMERCIAL 10
BANK LIMITED the sum of Hong Kong Dollars
Two hundred thousand One hundred and thirty-
seven and Cents Ninety-five Only

Value received 98 Items of Parts for English
Generator Sets.

To Malayan Plant (Pte) Ltd.
215 Upper Bukit Timah Road,
Singapore.

Drawn under Moscow Narodny Bank
Limited, Singapore 20
L/C No.2/15076 dated 5th September
1973

DUPLICATE

No. 054/74

EXCHANGE for HK\$200,137.95 Hongkong, 27th June,
1974

At ----- sight of this SECOND of Exchange
(First of the same tenor and date unpaid) pay
to the order of HONGKONG INDUSTRIAL & COMMERCIAL 30
BANK LIMITED the sum of Hong Kong Dollars
Two hundred thousand One hundred thirty-seven
and Cents Ninety-five Only

Value received 98 Items of Parts for English
Generator Sets

To Malayan Plant (Pte) Ltd
215 Upper Bukit Timah Road,
Singapore.

TRUST RECEIPT

Moscow Narodny Bank Limited
P.O. Box No. 3883, I.C.B. Building
2 Shenton Way, Singapore 1

In the High
Court of the
Republic of
Singapore

No.6

Dear Sirs,

Exhibit
"KYM 35" to
Affidavit of
Kong Yuk Min
(continued)

10 We acknowledge having received from you
as your Agents and Trustees the documents/
goods of which particulars are set out in the
Schedule* at the foot hereof and which are at
present pledged to you pursuant to and upon the
terms of our general letter of hypothecation
to you dated

We agree to hold the said goods and the
proceeds of sale when received as your Agents
and Bailees and upon trust for you and subject
to your directions.

20 We understand that until you shall otherwise
direct we are permitted to take delivery of the
said goods and either to warehouse them in your
name at our expense or to realise them by sale
for your account, receiving payment and
accounting to you therefor.

We undertake to remit the proceeds of all
such sales to you immediately and specifically
as received by us, such remittance to be applied
by you at your complete discretion in and
towards repayment of any debt, account or
liability of ours to you whatsoever.

30 We undertake to keep the above-mentioned
goods and their cash proceeds and our records
thereof separate and readily distinguishable
from all other transactions and also as your
Agents at our expense to insure and throughout
keep insured the said goods for their full
value against fire (also if customary against
theft, pilferage and other risks) and to hold
the relative Policy or Policies and all monies
recovered thereunder on your behalf, and subject
to your directions.

40 You are authorised if you shall think fit
so to do to apply for and to receive direct
from the buyers the proceeds of the sale of
any of the said goods.

It is also understood that you may without

EXHIBIT "KYM 40"
to Affidavit of
Kong Yuk Min

In the High
Court of the
Republic of
Singapore

No.6

Exhibit
"KYM 40" to
Affidavit of
Kong Yuk Min

This is the Exhibit marked "KYM 40" referred
to in the Affidavit of Kong Yuk Min sworn
before me this 28th day of April 1977
Before me
Sd. Kirpal Singh
A Commissioners for Oaths

10 MALAYAN PLANT (PTE) LTD
MP House, 215 Upper Bukit Timah Road, 7 $\frac{3}{4}$ m.s.
Singapore 21

October 23, 1974

The Manager,
Moscow Narodny Bank Ltd.
I.C.B. Bldg.
Shenton Way,
Singapore 1.

Dear Sir,

20 Further to our discussion at your office on the
21st October, we hereby confirm the following :-

1. In order to avoid the high cost of godown
charges, we have leased the store at 21 Link Road,
Jurong, with a total covered area of 14,000 sq.feet,
for the purpose of storing all the goods ordered
by us through letters of credit established by
your Bank. We will undertake to provide proper
security, and insurance coverage with Moscow
30 Narodny Bank named as the beneficiary in the
Policy. At the same time our storekeeper will
compile weekly records on movements of goods
from the store for your reference. Further any
payments received for the sale of the goods will
be made direct to you against that particular
account.

2. All incoming letters of credit received
by us through your Bank will be presented to you
for negotiation and funds from this source will
be utilized for retiring our matured Trust Receipt
40 account.

3. We shall like to utilize incoming letters
of credit established in our favour for backing
letters of credit which we will request your
Bank to establish in the favour of our supplier

In the High Court of the Republic of Singapore

No.6

Exhibit "KYM 40" to Affidavit of Kong Yuk Min (continued)

relating to that particular deal.

We sincerely hope that the abovementioned will meet with your approval.

Yours faithfully,
for MALAYAN PLANT (PTE) LTD.

(Sgd)

Peter C.H. Yap
Managing Director

Exhibit "KYM 41" to Affidavit of Kong Yuk Min

EXHIBIT "KYM 41"
to Affidavit of
Kong Yuk Min

10

MOSCOW NARODNY BANK LIMITED
(Incorporated in London in 1919
with Limited Liability)

MNB BUILDING, P.O. BOX 3883
48/56 ROBINSON ROAD SINGAPORE 1

Telephone No.2209422 (14 lines)
Telex: RS 21726
Telegram NARODNY SINGAPORE

Our ref. CR REV/CKG/ML 7th December 1976

20

REGISTERED MAIL

The Managing Director,
Malayan Plant Pte Ltd.
MP House, 215 Bukit Timah Road,
Singapore.

Dear Sir,

Permit us to express our disappointment in not having had the privilege of meeting your Mr. Peter Yap Cheng Hai, despite our numerous attempts to do so. A meeting would have inter alia cleared our doubts on where the proceeds received from your sales were channelled to, since it was not used to reduce any of your liabilities. Under such circumstances, we have no alternative, but to hand the matter to our solicitors, as we deem that you have

30

been evading the issue.

Please also 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 other key to the said godown. In case our demand is not complied with, we will have to change the lock.

10 Further please inform us of the whereabouts of all the products held by you in trust for us under our Trust Receipts.

Kindly note that any further delay in complying with our above requirements will not be tolerated and may force us reluctantly to take action on the guarantees executed.

Yours faithfully,
for MOSCOW NARODNY BANK LTD

(Sgd)

Authorised Signatures

20 This is the Exhibit marked "KYM 41" referred to in the Affidavit of Kong Yuk Min and sworn before me this 28th day of April 1977

Before me,
Sd. Kirpal Singh
A Commissioner for Oaths

In the High
Court of the
Republic of
Singapore

No.6

Exhibit
"KYM 41" to
Affidavit of
Kong Yuk Min

(continued)

In the High
Court of the
Republic of
Singapore

No. 7

RECORD OF PROCEEDINGS
12th May 1977

No.7

Record of
Proceedings
12th May 1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Companies Winding Up)
No.25 of 1977)

In the Matter of the
Companies Act (Chapter 185)

And

In the Matter of Malayan
Plant (Pte) Ltd. 10

C.W. Up No. 25/77

12/5/77

Coram: Wee, C.J.

Lai for Pet.Cr. and on behalf of
Tan Jin Hwee representing a supporting creditor
Mohan Singh for Resp. Co.
Lee Kim San for Deekes, opposing creditor.
Kassim for Official Receiver.
Suppiah for all contributors except for 1 share.

Lai:

20

Stat. Notice S.218(1)(e) and (2)(a) of Act.
Claim for just over \$8 million - Inward
Bills (\$402,243) Trust Receipts (\$6 million)
and overdraft (\$1,367,722). Bare denial
of deft. - Yap's affidavit paras. 2 to 8.
But see Kong's affidavit of 28.4.77 paras.
4 to 6.

Law: McPherson p.61 et. Re Gt. Britain
Mutual Life Assurance Society (1880)
16 Ch. 247, 253 "prima facie case that
there is something which ought to be tried."
Facts: e.g. 1st Trust Receipt 7/5/74 and
signed acknowledgment for 10 Units Diesel
Trucks. Buckley on Cos. Act p.460 -
commercial insolvency. Facts - para.9
irrelevant. Deekes opposition - see
Wallace p.638. Petitioners are owed plus
interest over \$10,000,000 (\$10 million).
Deekes received \$1.8 million. Ask for
winding up and appointment of Official
Receiver as Prov. Liquidator and costs.

30

40

Mohan Singh:

Some preliminary objection re deponent.
2nd preliminary objection - Form 2 of Rules -
footnote (a).

On Debt. (1974) 1 W.L.R. 826 Re Bryant
Investment Co.Ltd. Beneficial to petitioners
to delay winding up order.

Lee:

10 Submit more beneficial to all creditors
if no winding up.

Suppiah:

Associate with Mohan Singh.

Lai:

Apologise for failing to apply to court
for leave to file affidavit in reply out of
time. Now ask for leave.

Court:

Leave to file affidavit in reply out of time.

20 Winding up order subject to production of
affidavit by director or secretary or principal
officer. O.R. appointed Prov. Liquidator. Costs
to petitioners out of Co.'s assets.

Intld: W.C.J.

Certified true copy
(Sgd)
Private Secretary to
the Hon. the Chief Justice
Supreme Court,
Singapore 6.

In the High
Court of the
Republic of
Singapore

No. 7

Record of
Proceedings

12th May 1977

(continued)

In the High
Court of the
Republic of
Singapore

No. 8

FORMAL ORDER - 12th
May 1977

No.8

Formal Order
12th May 1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Companies Winding Up)
No. 25 of 1977)

IN THE MATTER OF THE
COMPANIES ACT (CHAPTER 185)

AND

IN THE MATTER OF MALAYAN
PLANT (PTE) LTD. 10

ORDER FOR WINDING UP

BEFORE THE HONOURABLE THE CHIEF JUSTICE

IN OPEN COURT

Upon the Petition of Moscow Naroday
Bank Limited, a Creditor of the above named
Company, on the 21st day of February, 1977
preferred unto the Court, and upon hearing
Mr. Lai Kew Chai of Counsel for the Petitioners,
Mr. B.Mohan Singh of Counsel for the Company, 20
Mr. M.H.Kassim for the Official Receiver, Mr.
P.Suppiah of Counsel for Hongvestee Ltd. Yap
Cheng Yan and Yap Cheng Hai, the Contributories,
Mr. Lee Kim San of Counsel for Deekes & Evans
Limited, the Opposing Creditors, and Mr. Lai
Kew Chai mentioning for Mr. Tan Jin Hwee of
Counsel for Executive Decisions Inc.Pte.Ltd.,
the Supporting Creditors, and upon reading the
said Petition, the Affidavits of Kong Yuk Min
filed the 23rd day of February, 1977 and the 30
29th day of April, 1977, an Affidavit of Lee
Swee Yan filed the 17th day of March, 1977,
the Affidavits of Yap Cheng Hai filed the 17th
day of March, 1977 and the 9th day of May, 1977
an Affidavit of A.Malik b. Kassim filed the
23rd day of March, 1977, an Affidavit of Jimmy
Goh filed the 23rd day of March, 1977 and an
Affidavit of Wilson Sung filed the 21st day
of April, 1977, the "Government Gazette",
the "Straits Times" and the "Sin Chew Jit Poh" 40
newspapers all of the 4th day of March, 1977,
this Court doth order :-

(1) that the said Malayan Plant (Pte.)Ltd.

be wound up by the Court under the provisions of the Companies Act (Chapter 185);

In the High Court of the Republic of Singapore

(2) that the Official Receiver be appointed the Provisional Liquidator of the Company;

No. 8

Formal Order

(3) that the costs of the winding up proceedings be taxed and paid out of the proceeds received by the Official Receiver; and

12th May
1977

(continued)

10

(4) that this Order is subject to the Petitioners filing an Affidavit verifying the Petition in accordance with Rule 26 of The Companies (Winding-Up) Rules, 1969.

Dated the 12th day of May, 1977

(Sgd)

ASST. REGISTRAR

20 Note:- It will be the duty of such of the persons as are liable to make out or concur in making out a statement of affairs as the Provisional Liquidator may require, to attend on him at such time and place as he may appoint and to give him all information he may require.

In the High
Court of the
Republic of
Singapore

No. 9

Affidavit of
Victor
Vladimirovitch
Gerashchenko
13th May 1977

No. 9

AFFIDAVIT OF VICTOR
VLADIMIROVITCH GERASHCHENKO
13th May 1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Companies Winding Up)
No. 25 of 1977)

IN THE MATTER OF THE
COMPANIES ACT (CHAPTER 185)

AND

10

IN THE MATTER OF MALAYAN
PLANT (PTE) LTD.

AFFIDAVIT VERIFYING PETITION

I, VICTOR VLADIMIROVITCH GERASHCHENKO of
MNB Building, No.50 Robinson Road, Singapore,
do affirm and say as follows :-

1. I am the Deputy Chairman, Director and
Managing Director (Singapore Branch) of Moscow
Narodny Bank Limited, the Petitioners in the
above matter, a company incorporated in the
United Kingdom and having a place of business
at MNB Building, No.50 Robinson Road, Singapore,
and am duly authorised by the said Petitioners
to make this affidavit on their behalf.

20

2. I depose to this affidavit from information
obtained from the books of accounts, registers
and other books, records and papers of the
Petitioners which I verily believe to have
been kept in the ordinary course of business
and from information received by me from other
officers of the Petitioners which I verily
believe to be true and also from personal
knowledge acquired during the course of my
duties as the Deputy Chairman, Director and
Managing Director (Singapore Branch) of the
Petitioners.

30

3. Such of the statements in the Petition
now produced and shown to me marked with the
letter "B" as relates to the acts and deeds
of the Petitioners are true and such of the
statements as relates to the acts and deeds
of any persons or person I believe to be true.

40

4. I also crave leave to refer to the affidavit of Kong Yuk Min affirmed and filed herein on the 29th day of April 1977 and would respectfully confirm that the contents of that affidavit are true and correct.

In the High Court of the Republic of Singapore

No.9

AFFIRMED by VICTOR VLADIMIROVITCH)
GERASHCHENKO on the 13th day of)
May, 1977, at Singapore

Affidavit of
Victor
Vladimirovitch
Gerashchenko

Sd.V.V.Gerashchenko

13th May 1977
(continued)

10

Before me,
Sd. Lee Hui Huan
COMMISSIONER FOR OATHS

No. 10

NOTICE OF APPEAL
19th May 1977

In the Court
of Appeal of
the Republic
of Singapore

No.10

IN THE COURT OF APPEAL OF SINGAPORE
CIVIL APPEAL NO. 26 OF 1977

Notice of
Appeal

19th May 1977

Between

Malayan Plant (Pte) Ltd

Appellants

And

Moscow Narodny Bank Limited

Respondents

20

In the Matter of Companies Winding-Up No.25 of 1977

In the Matter of the Companies
Act (Cap.185)

And

In the Matter of Malayan Plant
(Pte) Ltd.

And

In the Matter of Petition No.25 of 1977
presented against the abovenamed Company
on the 21st day of February, 1977

30

NOTICE OF APPEAL

Take Notice that Malayan Plant (Pte) Ltd.

In the Court
of Appeal of
the Republic
of Singapore

No.10

Notice of
Appeal
19th May 1977
(continued)

the abovenamed appellants being dissatisfied
with the decision of the Honourable The
Chief Justice Mr. Wee Chong Jin given at
Singapore on the 12th day of May, 1977 appeal
to the Court of Appeal against the whole of
the said decision.

Dated the 19th day of May, 1977

(Sgd)

Solicitors for the Appellants

- To: 10
- 1) The Registrar,
Supreme Court,
Singapore.
 - 2) The abovenamed Respondents
and their Solicitors,
M/s Lee & Lee,
Singapore.
 - 3) The Official Receiver,
High Court Building,
Singapore. 20

The address for service of the abovenamed
Appellants is care of B. Mohan Singh & Co.
Room 501A, 5th Floor, Tat Lee Building,
63 Market Street, Singapore 1.

No. 11
PETITION OF APPEAL
11th July 1977

In the Court
of Appeal of
the Republic
of Singapore

No.11

Petition of
Appeal

11th July 1977

IN THE COURT OF APPEAL OF SINGAPORE
CIVIL APPEAL NO. 26 OF 1977

Between

Malayan Plant (Pte) Ltd Appellants

And

Moscow Narodny Bank Limited Respondents

10 In the Matter of Companies Winding-Up No.25 of 1977

In the Matter of the Companies
Act (Cap.185)

And

In the Matter of Malayan Plant
(Pte) Ltd.

And

20 In the Matter of Petition No.25
of 1977 presented against the
abovenamed Company on the 21st
day of February, 1977

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE COURT
OF APPEAL

The Petition of the abovenamed Appellants
showeth :-

30 1. The appeal arises from a Petition in
Companies Winding-Up No.25 of 1977 filed by
the Respondents on the 21st day of February,
1977 praying that the Appellant-Company be
wound up by the Court under the provisions of
the Companies Act (Cap.185) or such Order
as may be in the premises just on the ground
that the Appellants were indebted to the
Respondents in the sum of \$8,092,088.56 together
with interest thereon until date of payment in
respect of loans and advances made by the
Respondents and that the Appellants have
neglected to pay or satisfy the said sum or any

In the Court
of Appeal of
the Republic
of Singapore

No.11

Petition of
Appeal

11th July 1977

(continued)

part thereof or to make any offer to secure and compound the same despite the expiry of a Notice under Section 218(1)(e) read with Section 218(2)(a) of the Companies Act (Cap.185) and that the Appellants were insolvent and unable to pay its debt and that in the circumstances it was just and equitable that the Appellant-Company should be wound up.

2. By an oral Judgment made the 12th day of May, 1977 the Learned Chief Justice ordered that the Appellant-Company be wound up subject to the production of an affidavit by Director or Secretary or Principal Officer, appointed the Official Receiver the Provisional Liquidator and allowed costs to the Respondents to be paid out of the Appellant-Company's assets. 10

3. Your Petitioners are dissatisfied with the said judgment on the following grounds:- 20

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

(ii) The Learned Chief Justice erred in making a winding-up order when, on the evidence, the Appellants was solvent and trading profitably;

(iii) The Learned Chief Justice erred in making a winding-up order when, on the evidence, the Appellants was, taking into account the contingent and prospective liabilities of the Appellants, able to pay its debts; 30

(iv) The Learned Chief Justice erred in holding that the Appellants were indebted to the Respondents in the sum of \$8,092,088.56 and interest;

(v) The Learned Chief Justice erred in holding that the Respondents were creditors of the Appellants when the alleged debt to them was disputed by the Appellants. 40

(vi) The Learned Chief Justice erred in holding that the demand under hand

served upon the Appellants by the Respondents purported 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 were disputed by the Appellants.

In the Court
of Appeal of
the Republic
of Singapore

No.11

Petition of
Appeal

11th July 1977

(continued)

- 10 (vii) The Learned Chief Justice erred in making a winding-up order when the alleged debt from the Appellants to the Respondents were disputed by the Appellants;
- (viii) The petition herein was not in Form 2 or 3 set out in the First Schedule to the Companies (Winding-up) Rules, 1969 in that the Respondents, being a foreign company, were not properly or sufficiently identified or described therein contrary to Rule 22 of the said Rules and/or to the Rules of the Supreme Court;
- 20 (ix) Accordingly the Learned Chief Justice erred in failing to dismiss the petition for the reasons set out in the foregoing paragraph;
- (x) The petition herein, which was presented by a corporation, was not verified by an affidavit made by a director, secretary or other principal officer of the Respondents contrary to Rule 26 of the said Rules;
- 30 (xi) Accordingly, the Learned Chief Justice erred in failing to dismiss the petition for the reasons set out in the foregoing paragraph;
- (xii) The Learned Chief Justice erred in making a winding-up order subject to the production of an affidavit sworn by a director, secretary or other principal officer when the substance of the petition was disputed by evidence filed on behalf of the Appellants;
- 40 (xiii) The Learned Chief Justice erred in having no or no sufficient regard to the opposing creditor or to the

In the Court
of Appeal of
the Republic
of Singapore

No.11

Petition of
Appeal

11th July 1977

(continued)

interests of the creditors
generally;

(xiv) The Learned Chief Justice was wrong in fact and in law in making a finding of fact that the Appellants were indebted to the Respondents in the sum of \$8,092,088.56 when there was no evidence before the Court to warrant such a finding;

10

(xv) The Learned Chief Justice was wrong in fact and in law in making an Order for the Appellant-Company to be wound up in view of the foregoing grounds and should have dismissed the petition.

4. Your Petitioners pray that such judgment may be reversed or that such order may be made thereon as may be just.

Dated this 11th day of July, 1977

20

(Sgd)

Solicitors for the
Appellants

To: The Registry,
Supreme Court,
Singapore.

The abovenamed Respondents
and to their Solicitors,
M/s Lee & Lee,
Singapore.

30

The Official Receiver,
High Court Building,
Singapore.

No. 12
FORMAL ORDER - 14th
April 1978

In the Court
of Appeal of
the Republic
of Singapore

No.12

Formal Order
14th April
1978

IN THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

Civil Appeal No. 26 of 1977

Between

Malayan Plant (Pte) Ltd. Appellants

And

10 Moscow Narodny Bank Ltd Respondents

(In the Matter of Companies Winding
Up No.25 of 1977)

O R D E R

CORAM: THE HONOURABLE MR. JUSTICE F.A.CHUA;
THE HONOURABLE MR. JUSTICE CHOOR SINGH;
THE HONOURABLE MR. JUSTICE A.P. RAJAH

IN OPEN COURT

This 14th day of April, 1978

20 THIS APPEAL coming on for hearing on the
22nd and 23rd days of March, 1978 in the presence
of Mr. John Newey, Q.C. and Mr. Mohan Singh,
Counsel for the Appellants; and Mr. Lai Kew Chai
and Miss Deborah Barker of Counsel for the
Respondents and Mr. H. Kassim for O.A.; and
Mrs. Guneratnam for contributaries And Upon
Reading the Record of Appeal And Upon Hearing
Counsel for the Appellants and for the
Respondents

30 IT WAS ORDERED that this Appeal do stand
adjourned for judgment and the same coming up
for judgment this day IT IS ORDERED that:

1. This Appeal be dismissed.
2. Costs of the Respondents be paid out
of the assets of the Appellants

In the Court
of Appeal of
the Republic
of Singapore

No.12

Formal Order

14th April
1978

(continued)

3. The auction of the Assets of the Appellants by the Official Receiver be stayed for one (1) month from the date hereof.
4. The sum of \$500-00 paid into Court as security of costs of this Appeal be paid out to Messrs. Lee & Lee to account of the costs herein.

Given under my hand and the seal of
the Court this 20th day of May, 1978.

10

Sd. Low Wee Ping
ASSISTANT REGISTRAR

No.13

Ground of
Judgment

14th April
1978

No. 13

FOUNDATIONS OF JUDGMENT
14th April 1978

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE
Civil Appeal No.26 of 1977

Between

Malayan Plant (Pte) Ltd Appellants

And

20

Moscow Narodny Bank Ltd Respondents

Coram: Chua J.
 Choor Singh J.
 A.P.Rajah J.

J U D G M E N T

This appeal arises out of a winding-up order made by the learned Chief Justice on a winding-up petition, under the Companies Act (Cap.185) (hereinafter referred to as "the Act") brought by a creditor, the Moscow Narodny Bank Ltd. of Nos.48/56 Robinson Road, Singapore, a banking corporation incorporated in the United Kingdom (hereinafter referred to as "the Bank"), against Malayan Plant 30

(Pte) Ltd. (hereinafter referred to as "the Company").

In the Court
of Appeal of
the Republic
of Singapore

No.13

Grounds of
Judgment

14th April 1978

(continued)

10 The Company was incorporated on the 9th February 1972 under the Act and its registered office was at 215 Upper Bukit Timah Road, 7¼ m.s. Singapore 21. The nominal capital of the Company was \$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 was \$1,770,000.00. The Bank averred that the Company was indebted to the Bank in the sum of \$8,092,088.96 together with interest thereon until date of payment in respect of loans and advances made by the Bank.

20 On the 27th January 1977 the Bank caused a statutory demand under section 218 (2)(a) of the Act to be made on the Company in respect of the said debt. The Bank then went on to present a petition for the winding-up of the Company on the 21st February 1977 founded on section 218(1)(e) of the Act - "the company is unable to pay its debt".

It was claimed by the Company that, as at 31st December 1976, and this was not challenged by the Bank, its current assets totalled \$8,665,916.99 and its current liabilities totalled \$17,183,039.81.

30 The petition came on for hearing before the learned Chief Justice in the usual way on Friday, 12th May 1977. Present at the hearing, beside counsel for the Bank and the Company, were counsel representing a supporting creditor in the sum of \$12,362.40, counsel for Deekes & Evans Limited, an English company, an opposing creditor in the sum of \$1,795,793.58, counsel for all contributories except for 1 share and the
40 Official Receiver, on whom the petition had been served. After hearing arguments of counsel for both the Bank and the Company the learned Chief Justice made a winding-up order against the Company and appointed the Official Receiver provisional liquidator.

Against this order the Company now appeals. The Petition of Appeal set out a number of grounds of appeal. At the hearing

In the Court
of Appeal of
the Republic
of Singapore

No.13

Grounds of
Judgment

14th April 1978

(continued)

of the appeal, Mr. John Newey, Q.C. appearing for the company informed the Court that he did not challenge the statutory notice of demand nor any of the debts in respect of which the demand had been made. This having been done the appeal proceeded on the issue of whether the learned Chief Justice had exercised his discretion according to, as it was put by Mr. Newey, the Buckley concept or the modern concept as propounded by the Court of Appeal in the case of In re L.H.F. Wools Ltd. (1970) 1 Chancery page 27 (hereinafter referred to as "the Wools Case"). Mr. Newey submitted that the learned Chief Justice was wrong in that he had based his decision on the Buckley concept rather than on the said modern concept, which he should have done. On the question of discretion both counsel were agreed that a judge had discretion as to whether or not he will make the winding-up order, but they were not agreed as to the matters which the judge could take into consideration in exercising discretion. Mr. Lai Kew Chai, counsel for the Bank, clearly and quite understandably, held a narrow and restricted view while Mr. Newey, again quite understandably, took a more generous and extended view and submitted that on the modern concept the learned Chief Justice should have taken into consideration the following matters:-

(1) That the Bank was a secured creditor of the Company up to \$1.2 million under a legal mortgage;

(2) The Bank's rights to recoup itself under the Trust Receipts, such as they were, at the date of the petition;

(3) That the Company was solvent;

(4) That the Company had been making profits prior to the presentation of the petition;

(5) The future earning prospects of the company;

(6) That the Bank's general behaviour in this matter was not that of a good and reasonable banker, vis-a-vis its customer, in that it had made it too easy for the Company to become

indebted to it in the sum of over
\$8 million and, worse still, to
ask the Company to pay off the
debt in three weeks, in one lump
sum; and

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(7) That the Official Receiver as
liquidator would have difficulty
in getting in the assets whereas
the Company has a better chance of
recovering the debts due and
owing to it.

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10

It therefore becomes necessary to examine
both the Buckley concept and the Wools Case.

The Buckley concept, as we understand
it, is set out at page 450 of Buckley on
The Companies Act (13th Edition 1957). It
is this :-

20

" A creditor who cannot obtain payment
of his debt is entitled as between
himself and the company ex debito
justitiae to an order if he brings his
case within the Act. He is not bound
to give time. And, notwithstanding a
voluntary winding up, on proving his
judgment and that it remains unsatisfied
he will be so entitled.

30

'It is not a discretionary matter
with the Court, when a debt is established
and not satisfied, to say whether the
company shall be wound up or not; that
is to say, if there be a valid debt
established, valid both at law and in
equity. One does not like to say
positively that no case could occur in
which it would be right to refuse it,
but ordinarily speaking, it is the duty
of the Court to direct a winding up.'

40

As between himself and the company
the unpaid creditor who proves insolvency
is entitled to a winding up order, an
order equivalent to equitable execution
by virtue of which he by the hands of a
liquidator seizes his debtor's assets and
administers them for payment of himself
and other creditors. It is no defence
in the company's mouth to say there are

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no assets or that the debenture-
holders as secured creditors will
sweep them all away. "

And now for the Wools Case.

" A company bought wool from a
Belgian merchant. It paid for the
wool by accepting a bill of exchange
drawn by the merchant on a Belgian
bank and payable to the bank. The
wool was never delivered and the bill 10
was dishonoured on presentation. The
merchant was made bankrupt and convicted
for fraud. In an action by the bank
against the company on the bill, the
company counterclaimed, pursuant to
the Belgian civil code, damages against
the bank for negligently giving credit
to the merchant at a time when it should
have realised that he was insolvent.
that counterclaim was not a cause of 20
action known to English law. At the
trial the company abandoned its
counterclaim and submitted to judgment
for the amount of the bill and interest,
taking the view that it would be cheaper
and easier to prosecute its claim
against the bank in Belgium. The judge
refused a stay of execution (partly
on the ground that the matter would be
better dealt with by the companies 30
court in the event of a petition to
wind up), and the bank presented a
petition to wind up the company. There
were no supporting or opposing creditors.
The company had ceased trading after
the merchant's bankruptcy and, apart
from its claim in Belgium against the
bank, had no assets. After the
petition the company instituted an
action in Belgium against the bank which 40
could not be brought to trial until
after an appeal by the merchant against
his conviction had been finally concluded.
A director of the company deposed that
another creditor of the merchant in
Belgium, who was making a like claim
against the bank, had agreed to finance
the company's action in Belgium. On
the hearing of the petition the company
sought to have the petition adjourned 50
or dismissed, but Plowman J. refused and

made a winding-up order. " (Page 27)

10 The company appealed against the winding-up order made by Plowman J. on the ground that the company had a cross-claim in Belgium against the bank (Banque de Bruxelles) which, if it were successful, would overtop the bank's debt and wipe it out altogether. As Harman L.J. said, "This is the kind of case which is always
10 troublesome and depends in the ultimate resort on the discretionary views of the judge who tries it and, therefore, one has to find, if this court is going to upset what he decided, that he exercised his judgment on some wrong principle - that is to say, either that he took too much account of something put to him or that he took no account of something else which ought to have taken into account." (Page 36A)

20 It will be noted immediately that the issues in the instant case and that in the Wools Case are entirely different. In the instant case the learned Chief Justice had to exercise his discretion on the direct question of whether he should exercise his discretion in favour of the petitioning creditor on the debtor Company's inability to pay its debt (Section 218(1)(e) of the Act), there being no cross claim by the
30 Company against the petitioning creditor whereas in the Wools Case what the Court was called upon to do was to exercise its discretion in favour of the debtor company on its cross-claim, which, if successful, would overtop the petitioning creditor's debt and wipe it out altogether. It was in these circumstances that Harman L.J. said, "The Bank has a judgment debt: it is, therefore, entitled ex debito justitiae to a winding-up order. This is not, in the
40 ordinary case, there being no other circumstances, a discretionary matter, but where there is in fact a cross claim such as in the present case, or where there are for instance competing creditors on one side or the other, it always comes down in the end to a matter for the discretion of the judge." (Page 37 C-D)

In our judgment, where a debt is due

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and owing on which a winding-up petition can properly be founded the onus of persuading a judge not to make the winding-up order is firmly on the debtor company and this is a matter entirely within the discretion of the judge, whose decision could not be interfered with on appeal unless he had erred in principle. In the Wools Case there was a bona fide cross-claim overtopping the debt due and as the Court of Appeal was of the view that the learned judge in exercising his discretion had erred in principle allowed the appeal, discharged the winding-up order and stood the petition over with leave to either party to restore. 10

To quote Harman L.J. again :-

"The company appeals on the ground that according to modern practice if there is a genuine cross claim, it is just as if there was a disputed debt; and, as everybody knows, a disputed debt is never good subject-matter for a petition. 20

The main support for that proposition is In re Portman Provincial Cinemas Ltd. (1964) 108 Sol. J 581, a case in which I myself was one of the judges and the majority, consisting of myself and Russell L.J. decided, Lord Denning M.R. dissenting, that the petition should be rejected. The difference was on what was the right view of the facts about the cross claim in that case. We all agreed on what the law was, and Lord Denning M.R. stated it like this: 30

'As I understand the law on the matter, it is this: if this is a genuine cross claim with substance in it, then let it be tried out in the Queen's Bench Division: this petition must be rejected. But if there is no substance in the cross claim, then let the court do justice to the petitioners in this case and not give heed to so insubstantial a cross claim.' 40

I used much the same language myself, and so did Russell L.J. The majority

decided in that case that, shadowy as the cross claim was and improbable as the events said to support it seemed to be, there was just enough to make the principle work, namely, that it was right to have the matter tried out before the axe fell." (Page 36 B-E)

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10 Mr. Newey relied yet again very strongly
on the case of In re P. & J. Macrae Ltd.
(1961) 1 W.L.R. 229. Here again the
petition was presented by an unsatisfied
judgment creditor which gave him a prima facie
right to a winding-up order. The onus of
preventing such an order being made shifted
to the debtor company. In this case, the
majority of creditors, both in number and
value, opposed the making of the winding-up
order but filed no evidence as to the grounds
of opposition. The county court judge held
20 that the bare fact of a majority both in
number and value of creditors was not in
itself sufficient to deprive the petitioning
creditor of his right, and in the exercise of
his discretion made the winding-up order.
The debtor company appealed to the Court of
Appeal where it was held (Upjohn L.J.
dissenting) that the county court judge had
exercised his discretion on the correct
principles and, accordingly, there was no
30 ground for interfering with the order made.
Here again in the instant case and the county
court case, as indeed also in the Wools Case,
the issues are different. The matter of the
exercise of the discretion in the county
court case again arose on the issue of whether
the debtor company and its supporting
creditors had raised an issue on which the
petitioner should be denied his prima facie
right to the winding-up order. Upjohn L.J.
40 in his dissenting judgment has this to say,

"Where a creditor has proved his right
against the company to a winding-up
order ex debito justitiae, but other
creditors of the company have expressed
conflicting views as to the desirability
of winding it up, the judge has
conferred on him a discretion by section
346 of the Companies Act, 1948 (Our
section 289 of the Act), which leaving
50 out immaterial words, provides:
"The court may have regard to the wishes

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of the creditors as proved to it by
'any sufficient evidence.' The
discretion is permissive and not
mandatory, and is in terms complete
and unfettered. However, it is a
discretion which must be exercised
judicially, and the court is not
entitled arbitrarily to disregard
the wishes of the creditors as proved
to it." (Page 237)

10

In the instant case the question of a
majority of creditors opposing the
petition was not put in issue by creditors
of the Company. The law which the learned
Chief Justice had to administer in the
instant case is set out in Sections 218 and
221 of the Act.

In these circumstances we are of the
view that we should not interfere with
the learned Chief Justice's exercise of
his discretion. We accordingly dismiss the
appeal, the costs of the respondent to come
out of the assets of the Company.

20

(Sd) F.A. Chua
JUDGE

(Sd) CHOOR SINGH J.
JUDGE

(Sd) A.P. Rajah
JUDGE

Certified true copy.30

SINGAPORE
14th April, 1978

Sd.

Private Secretary to
Judge Court No.3
Supreme Court, Singapore.

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ORDER GRANTING LEAVE TO
APPEAL TO JUDICIAL COMMITTEE
23rd May 1978

In the Court
of Appeal of
the Republic of
Singapore

No.14

Order granting
leave to
appeal to
Judicial
Committee

23rd May 1978

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 26 OF 1977

Between

MALAYAN PLANT (PTE) LTD Appellants

And

10 MOSCOW NARODNY BANK LTD Respondents

IN THE MATTER OF COMPANIES WINDING-UP
No. 25 OF 1977

IN THE MATTER OF THE COMPANIES ACT (CAP.185)

And

IN THE MATTER OF MALAYAN PLANT (PTE) LTD.

And

IN THE MATTER OF PETITION NO.25 OF 1977
PRESENTED AGAINST THE ABOVENAMED COMPANY
ON THE 21ST DAY OF FEBRUARY, 1977

20 CORAM: THE HONOURABLE MR. JUSTICE WEE
CHONG JIN, CHIEF JUSTICE OF SINGAPORE
THE HONOURABLE MR. JUSTICE CHUA
THE HONOURABLE MR. JUSTICE D'COTTA
IN OPEN COURT

This 23rd day of May, 1978

30 UPON MOTION preferred unto the Court by
the abovenamed Appellants, Malayan Plant (Pte)
Ltd., coming on for hearing this day in the
presence of Counsel for the abovenamed Appellants
and for the Respondents and the Official Receiver
AND UPON READING the Notice of Motion dated 28th
day of April, 1978 and the Affidavit of Bachoo
Mohan Singh filed herein on the 28th day of
April, 1978 and the Affidavit of Mohd. Harith
Bin Mohd. Kassim filed herein on the 19th day of

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Order granting
leave to appeal
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Committee

23rd May 1978

(continued)

May, 1978 together with the exhibit
therein referred to, for leave to appeal
to the Judicial Committee of Her Britannic
Majesty's Privy Council AND UPON HEARING
what were alleged by Counsels aforesaid

IT IS ORDERED that the abovenamed
Appellants be granted leave to appeal to
the Judicial Committee of Her Britannic
Majesty's Privy Council

IT IS FURTHER ORDERED that there be
no order in respect of prayer 2 of the
motion.

10

Dated the 23rd day of May, 1978

Sd.

ASST. REGISTRAR

No. 30 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

MALAYAN PLANT (PTE) LIMITED

Appellants
(Respondents)

- and -

MOSCOW NARODNY BANK LIMITED

Respondents
(Petitioners)

IN THE MATTER OF COMPANIES WINDING-UP NO. 25 OF 1977

IN THE MATTER OF THE COMPANIES ACT (CAP.185)

AND

IN THE MATTER OF MALAYAN PLANT (PTE) LIMITED

AND

IN THE MATTER OF PETITION NO. 25 OF 1977 PRESENTED
AGAINST THE ABOVE-NAMED COMPANY ON THE 21ST DAY OF
FEBRUARY 1977

RECORD OF PROCEEDINGS

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Respondents