

Summary of the Constitutional Court Ruling No. 35/2546

Dated 9th October B.E. 2546 (2003) *

Re : The Central Intellectual Property and International Trade Court referred the objection of a defendant (Lila Wisawalohakij Company Limited and others) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on whether or not section 90/12(4) of the Bankruptcy Act, B.E. 2483 (1940), as amended by the Bankruptcy Act (No. 4), B.E. 2541 (1998), was contrary to or inconsistent with section 30 paragraph one and paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Central Intellectual Property and International Trade Court referred an objection of the applicant, who was a defendant in Civil Case No. Gor Kor 229/2543, to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The application could be summarized as follows. Siam Commercial Bank Limited (Public Company), as plaintiff, filed claims against Thai Mui Import Partnership Limited, the first defendant, and others, a total of eleven defendants in the Central Intellectual Property and International Trade Court. The plaintiff filed claims against the first defendant in its capacity as the principal debtor and against the second to eleventh defendants in their capacity as guarantors in connection with the repayment of debts under a trustee receipt and guarantee contracts. During trial, the plaintiff withdrew claims against the first, eighth, ninth, tenth and eleventh defendants because the Central Bankruptcy Court had ordered the absolute receivership of such defendants' assets and the plaintiff had already filed an application with the receivers for repayment of debts from such defendants. The Central Intellectual Property and International Trade Court granted leave for such withdrawal of claims and ordered the disposal of the case in relation to the first, eighth, ninth, tenth and eleventh defendants from the case dockets. As for the fourth and fifth defendants, the Central Bankruptcy Court had issued orders of business rehabilitation. The Central Intellectual Property and International Trade Court therefore adjourned the case in relation to the fourth and fifth defendants. The legal proceedings continued in relation to the remaining defendants under section 90/12(4) of the Bankruptcy Act, B.E. 2483 (1940),

* Published in the Government Gazette, Vol. 121, Part 36a, dated 15th June B.E. 2547 (2004)

as amended by the Bankruptcy Act (No. 4), B.E. 2541 (1998). The second, third, sixth and seventh defendants filed a motion with the Central Intellectual Property and International Trade Court objecting that the Central Intellectual Property and International Trade Court's adjournment of proceedings in relation to the fourth and fifth defendants, who were guarantors and joint parties in the case, without adjourning the case in relation to the remaining defendants, who were also guarantors and joint debtors in the same case, in reliance of section 90/12(4) of the Bankruptcy Act, B.E. 2483 (1940), as amended by the Bankruptcy Act (No. 4), B.E. 2541 (1998), was an unequal application of the law and a form of discrimination. It was therefore contended that such an application of the law was contrary to or inconsistent with section 30 paragraph one and paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The applicants thus requested the Central Intellectual Property and International Trade Court to refer the objection to the Constitutional Court for a ruling.

2. Preliminary issue

The Constitutional Court issued an order accepting the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. The issue considered by the Constitutional Court

On the issue in the application which requested the Constitutional Court to rule on whether or not section 90/12(4) of the Bankruptcy Act, B.E. 2483 (1940), was contrary to or inconsistent with section 30 paragraph one and paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held that such issue had already been ruled by the Constitutional Court in Ruling No. 34/2546, dated 2nd October B.E. 2546 (2003); that section 90/12(4) of the Bankruptcy Act, B.E. 2483 (1940), as amended by the Bankruptcy Act (No. 4), B.E. 2541 (1998), was neither contrary to nor inconsistent with section 30 paragraph one and paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore did not have to reconsider this issue.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 90/12(4) of the Bankruptcy Act, B.E. 2483 (1940), as amended by the Bankruptcy Act (No. 4), B.E. 2541 (1998), was neither contrary to nor inconsistent with section 30 paragraph one and paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
