

# Summary of the Constitutional Court Ruling No. 36/2546

Dated 9<sup>th</sup> October B.E. 2546 (2003) \*

**Re : The Central Intellectual Property and International Trade Court referred the objection of a defendant (Mr. Robru Wiriyapant 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 55/2546, 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. Thai Military Bank Limited (Public Company), as plaintiff, filed claims against Mr. Pakpean Wiriyapant, the first defendant, and Mr. Robru Wiriyapant, the second defendant, at the Central Intellectual Property and International Trade Court to enforce the repayment of debts under a guarantee of trustee receipt debts. Both defendants had guaranteed the debts of Thonburi Prakorb Rodyont Company Limited, the principal debtor, who had entered into a trustee receipt contract with the plaintiff. The plaintiff, however, did not instigate legal proceedings against Thonburi Prakorb Rodyont Company Limited in this case. The defendants denied the plaintiff's claims and additionally submitted in their reply that the plaintiff's failure to instigate legal proceedings against Thonburi Prakorb Rodyont Company Limited was a result of the application 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). The defendants filed a motion with the Central Intellectual Property and International Trade Court in objection that the effect 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), in reliance of which the court adjourned proceedings in relation to the debtor but not in relation to the guarantors constituted an unequal application of the law and a discrimination which was contrary to or inconsistent with section 30 paragraph one and paragraph three of the Constitution of the Kingdom of Thailand,

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B.E. 2540 (1997). The applicants therefore requested that the Central Intellectual Property and International Trade Court refer the objection to the Constitutional Court for a ruling.

## **2. Preliminary issue**

The preliminary issue which had to be considered was whether or not the Constitutional Court could assume jurisdiction under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). On this issue, it was necessary to determine initially 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 a provision of law which the Central Intellectual Property and International Trade Court was going to apply to a case.

The Constitutional Court held the following opinion. In this case, the plaintiff did not file claims against the principal debtor, Thonburi Prakorb Rodyont Company Limited, as a defendant in the case. The claim was filed against the applicants, who were guarantors, as a consequence of a Central Bankruptcy Court order to rehabilitate the business of Thonburi Prakorb Rodyont Company Limited which had been issued prior to the plaintiff's instigation of legal proceedings against both applicants. As the plaintiff did not take legal action against the principal debtor, the Central Intellectual Property and International Trade Court did not find it necessary to apply section 90/12(4) of the Bankruptcy Act, B.E. 2483 (1940), to the case. This application was therefore not in accordance with section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

## **3. Ruling of the Constitutional Court**

The Constitutional Court dismissed the application.

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