IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 397

Suit 2355/1996

Between

Indian Bank

… Plaintiff

And

Sadeco-Sarl Pte Ltd
Habibullah Mohamed Yousuf
Kumarappan s/o
Maruthamuthu
Ramanathan Sridhar
Radhakrishnan Manikandan
Varatha Rajaloo Usha
Muthukrishna Varatha Raja

… Defendant

GROUNDS OF DECISION

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Indian Bank v Sadeco-Sarl Pte Ltd and Others

[1998] SGHC 397

Suit 2355/1996
Lai Siu Chiu J
30 November 1998

1 **Judgment :**

2 **GROUNDS OF DECISION**

3 The appeal

4 1. The second defendant filed an appeal by Registrar's Appeal No. 323/98 (the appeal) against the decision of the learned assistant registrar awarding final judgment to Indian Bank (the plaintiffs) in the sum of US$10,974,929.96 (as at 31 October 1996). I dismissed the appeal against which decision the second defendant has filed a notice of appeal in Civil Appeal No. 252 of 1998.

5 The background

6 2. According to the statement of claim (filed on 6 December 1996), the first defendant Sadeco-Sarl Pte Ltd (the company) at all material times had maintained an account with the plaintiffs at its Singapore Branch; the plaintiffs are incorporated in India and have their head office there. In consideration of

the plaintiffs' making advances and or granting banking facilities and or continuing to do so for the benefit of the company, at the request of the second to seventh defendants, the latter entered into various written and continuing guarantees. With regards to the second and third defendants, they executed a guarantee dated 14 October 1994 (the Guarantee), the fourth and fifth defendants executed a guarantee dated 23 February 1996 (the second guarantee) and, the sixth and seventh defendants executed a guarantee dated 7 August 1996 (the third guarantee).

7 3. All three (3) guarantees provided, inter alia:-

8 a. that the guarantor jointly and severally guarantee the due payment of all sums which shall from time to time and at any time be owing to the plaintiffs from [the company] or remain unpaid on the general balance of [the company's] account with the plaintiffs together with all interest thereon at the rate or rates being agreed between [the company] and the plaintiffs and all costs including solicitor and client costs charges and expenses which the plaintiffs may incur in enforcing or seeking to obtain payment of all or any moneys guaranteed;

9 b. that the guarantees shall be continuing guarantees up to the limit of US$10,000,000 only and interest thereon on daily balances at such rate or rates as the plaintiffs may from time to time stipulate with monthly rests as well after as before judgment from the date or dates of the monies advanced or facilities granted to the date of payment thereof;

10 c. that each of the guarantees shall be in addition to and not in substitution for any other guarantee or other security for the first defendants which the plaintiffs may at any time hold.

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11 4. The plaintiffs granted banking facilities to the company by their letter of offer dated 18 July 1994 (the letter of offer) which provided:-

> a. that the plaintiffs would grant banking and credit facilities to the limit of US$10,000,000;
>
> b. that interest on the credit facility in respect of purchase of foreign bills would be at 2.5% per annum above the plaintiffs' prime lending rate at monthly rests;
>
> c. that additional interest of 2% per annum will be charged over and above the stipulated rate for all overdues.

12 5. Throughout 1995-96, 112 foreign bills drawn by the company to the value of US$9,995,509 were purchased by the plaintiffs pursuant to the credit facilities granted by the plaintiffs to the company; all these bills were dishonoured upon presentation by the plaintiffs and not paid. By 31 October 1996, the sums together with interest due and outstanding from the company was US$10,974,929.96 (the sum). No payment of the sum was received by the plaintiffs despite the demands of their solicitors to the company and to all the other defendants as guarantors.

13 6. The plaintiffs obtained judgment in default of appearance for the sum against the company on 14 December 1996. Similarly, the plaintiffs obtained judgment in default of appearance against the third defendant. On 8 August 1997, the plaintiffs obtained summary judgment against the fifth to seventh defendants. The plaintiffs applied for and obtained, leave of court to effect substituted service on the fourth defendant by advertising notice of the writ in a daily newspaper in the Indian state of Tamilnadu where the fourth defendant was resident. On 13 February 1998, the plaintiffs also obtained judgment in default of appearance for the sum against the fourth defendant together with costs on an indemnity basis. The company itself was wound up on 9 May 1997 by order of court in Companies Winding Up no. 74 of 1997. In April 1998, the

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third defendant applied to set aside the default judgment dated 15 January 1997; his application was dismissed and his appeal therefrom to a judge in chambers was also dismissed on 16 June 1998.

14

15 The application

16 7. In so far as the second defendant was concerned, the writ of summons (with statement of claim attached) was served on his (former) solicitors in February 1998 on his instructions. In March 1998, the plaintiffs applied for summary judgment against him which they finally obtained on 18 July 1998.

17 The affidavits

18 8. I refer next to the affidavits filed by the plaintiffs to support and those filed by the second defendant to oppose, the application for summary judgment. The plaintiffs' affidavit filed (on 6 March 1998) as required by O 14 r 2(1) of the Rules of Court 1996 was affirmed by the plaintiffs' assistant credit managers M Nachiappan (Nachiappan) and Umayal Meyyappan (Meyyappan). I refer now to the second defendant's first affidavit filed (on 17 April 1998) to resist the plaintiffs' application in which he deposed:-

> a. he is an Indian national who graduated from the International Islamic University in mid-1991. Upon his graduation, he commenced looking for employment. In late 1991 or early 1992, Pakirisami Vijayagavan (Pakirisami) then employed by Mountamount (S'pore) Pte Ltd (Mountamount) which is the de-facto parent of the company and who is a nephew of the seventh defendant, approached him to join the company as a director; the second defendant agreed;
>
> b. after becoming a director (on 19 March 1992), he was given 500,000 shares (the shares) in the company (some time in 1993) to hold as nominee for the sixth and seventh defendants;

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c. on 14 October 1994, Pakirisami telephoned him and told the second defendant to sign a personal guarantee for loans to be given to the company by the plaintiffs, saying the Guarantee was merely 'cosmetic' and would under no circumstances be enforced against the second defendant as, there were 'certain arrangements' between the sixth and seventh defendants and the then chairman of the plaintiffs Gopalkrishnan;

d. he went to the plaintiffs' Singapore branch in the afternoon of 14 October 1994 and met Nachiappan who, upon the second defendant's inquiry as to the nature of the documents he was signing, repeated the assurances of Pakirisami that the Guarantee would not be enforced against the second defendant due to arrangements having been made between the chairman in India of the plaintiffs and the sixth/seventh defendants with regards to Mountamount. Hence, Nachiappan did not request the second defendant (whose salary from the company was $2,000 per month) for copies of his income tax documents or conduct any assessment of his creditworthiness;

e. in 1995, he told Pakirisami that he wanted to resign his directorship of the company and which he did on 26 September 1995. Pakirisami then arranged with the sixth and seventh defendants for the fourth defendant to replace the second defendant and to take over the shares. Pakirisami said he would also arrange for the Guarantee signed by the second defendant to be discharged;

f. on 3 June 1996 he instructed M/s Drew & Napier to write to the plaintiffs regarding his resignation as director and discharge as guarantor of the company. Nachiappan replied to say the second defendant would not be discharged from the Guarantee until the outstanding balances of the company had been settled.;

g. he pointed out that although he signed the Guarantee only on 14 October 1994, as early as 1992 large sums of money had been advanced by the plaintiffs to the company. This confirmed that there were certain arrangements between the plaintiffs and the sixth/seventh defendants and that the Guarantee which he signed was supposed to be a formality.

h. it had come to his knowledge that the Indian Central Bureau of Investigation had arrested Gopalkrishnan and the Bureau was in the midst of investigations into the accounts of the Singapore branch of the plaintiffs (and the MVR group of companies belonging to the seventh defendant) for doubtful transactions between the plaintiffs and certain Singapore companies including the company.

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19 9. I should add that by his same first affidavit, the second defendant applied for discovery of 34 documents from the plaintiffs pertaining to the grant of credit facilities to the company by the plaintiffs and 19 documents pertaining to the granting of credit facilities to Mountamount. The application for discovery was made under summons in chambers no. 2911 of 1998 (the discovery application). A separate affidavit was filed by the second defendant's counsel Steven Lam and the second defendant subsequently, in support of the discovery application. The discovery application was dismissed by the assistant registrar on 12 June 1998 against which decision the second defendant also appealed (Registrar's Appeal No. 258/98). This appeal was allowed in part on 11 September 1998.

20 10. In reply to the second defendant's first affidavit, the plaintiffs filed an affidavit by Nachiappan and Meyyappan which stated:-

> a. apart from being aware that the second defendant was a director and shareholder of the company and of his subsequent resignation, neither of them had any knowledge of the second defendant's background or the events leading to his directorship and his signing of the Guarantee. If indeed the second defendant had a complaint against Pakirisami, his right of redress was against that gentleman;
>
> b. Nachiappan could not recall meeting the second defendant on 14 October 1994. If indeed he said what was alleged by the second defendant, Nachiappan said he would be stark starring mad to have given those assurances let alone to have said that the Guarantee was merely cosmetic. However, he did witness the second defendant's signature on the Guarantee that day. Nachiappan said it was his and the plaintiffs' practice to explain to any person signing a document before the plaintiffs' officers, the nature of such document;
>
> c. as the second defendant was only a director of the company from October 1994, due to its oversight, the plaintiffs did not ask the second defendant to furnish a declaration of his assets and liabilities when he signed the Guarantee. The plaintiffs only rectified its omission on 12 December 1994 when it wrote to the company enclosing a form to be completed by the second and third defendants, particularising their assets and liabilities. The

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> completed form was never received by the plaintiffs despite repeated reminders (4) between 21 December 1994 and 3 July 1995;
>
> d. the account of the company was operated prior to and after, the execution of the Guarantee by the second defendant. Between March 1992 and April 1995, the plaintiffs discounted a total of 399 bills drawn by the company, to the value of US$56,114,739.66. During the same period, a total of 20 letters of credit were also issued by the plaintiffs at the request of the company. By the time of the second defendant's resignation, a total of 84 bills to the value of $6,639,328.20 had been discounted by the plaintiffs and on which there were outstanding sums;
>
> e. if indeed there were any shady dealings between the plaintiffs and the company (which they denied), the second defendant was in an equal if not better, position to obtain information of such dealings as, he was actively involved in the operation and management of the company; indeed between 4 January and 15 September 1995, the second defendant and another person were the only two directors of the company;
>
> f. apart from his bare allegation, the second defendant had not specified 'the unusual circumstances' between the company and the plaintiffs.

21 11. In his second affidavit filed on 11 June 1998, the second defendant alleged that the general manager of the plaintiffs' Singapore branch would receive and adhere to the instructions of the plaintiffs' main office in India. He contended that the plaintiffs' chairman Gopalkrishnan had entered into certain arrangements to disburse large sums of money to the MVR group of companies controlled by the seventh defendant without obtaining security for the same, in breach of general banking practice.

22 12. The second defendant contended that the plaintiffs had either misrepresented to him the nature of the Guarantee he signed or, negligently misstated the extent of his liabilities when he was signing, to the effect that there were certain arrangements between the plaintiffs' main office in India with the sixth/seventh defendants and Mountamount; he denied that Nachiappan had

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explained the Guarantee to him. He asserted that the Mountamont group controlled by the seventh defendant consisted of 10 companies. He further contended that the seventh defendant had close connections with Mr Moopanar, leader of the Tamil Maanila Congress, so did Gopalkrishnan.

23 13. According to the second defendant, at all material times before January 1996, the plaintiffs did not liaise with any directors of the company (save for the sixth and seventh defendants) on major matters concerning the banking facilities granted to the company; the plaintiffs also liaised with Mountamount. The company's business together with those of Mountamount and Nagova Exim Pte Ltd (Nagova Exim) were operated by the seventh defendant from High Street Centre #07-07, Singapore 0617. The day to day management of the company was carried out by the seventh defendant even though he was not a director of the company. The second defendant did not visit the office of the company as he was then working at his father's shop at Albert Complex. Whenever the second defendant's signature was required, the company's documents would be sent to Albert Complex by the seventh defendant. To the second defendant's recollection, the only documents he signed were the company's audited accounts. The plaintiffs were aware of this fact as all major correspondence was sent to the High Street Centre office. The sixth and seventh defendants have since fled Singapore and their whereabouts are unknown to him.

24 14. Starting from April 1992 up to October 1994, the plaintiffs had disbursed more than S$43m to the company. Yet the plaintiffs were seemingly not bothered by the fact that the guarantors were men of straw, including the second defendant. In disbursing such substantial sums to the company, the plaintiffs prejudiced the second defendant's position. The second defendant pointed out that the 112 foreign bills drawn by the company were to companies

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under the MVR group all of which are controlled by the seventh defendant. Indeed, between 1988 and December 1995, the plaintiffs had disbursed close to S$152m to the MVR group for political reasons, leading to tremendous losses for the plaintiffs in the fiscal years 1995-96. Documents exhibited in HMY-5 of the second defendant's affidavit, a first information report of the Superintendent of Police at Bangalore showed the true nature of the transactions between the plaintiffs and the MVR group of companies.

25 15. The second defendant contended that the plaintiffs' explanation that it was due to an oversight it did not obtain a list of his liabilities and assets is not credible as the Guarantee was to the limit of US$10m. He denied receiving the plaintiffs' request for a declaration of his assets and liabilities in December 1994. Even if the request was sent and he allegedly failed to respond, the plaintiffs still seemed not to be bothered; instead it went ahead to disburse close to US$22m to the company which, according to Nachiappan, was not unusual.

26 16. In his third affidavit filed on 6 July 1998 the second defendant went further to allege fraud on the part of the plaintiffs, the company, the sixth and seventh defendants. He repeated his earlier assertions that the documents of which he had asked for discovery, were essential to his defence as they would show that the transactions between the plaintiffs and the company were irregular and seemingly fraudulent. Therefore the Guarantee is unenforceable against him.

27 17. In response to the above affidavit of the second defendant, the plaintiffs filed a fourth affidavit by Nachiappan and Meyappan wherein they pointed out that the plaintiffs' accounts are audited yearly by external auditors whose reports are submitted to the regulatory authorities. So far, no action has been taken by the regulatory authorities of Singapore or the police, to investigate

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the company's accounts with the plaintiffs or those of Mountamount or Nagova. Although the second defendant said he was/is a man of straw, at the material time he owned half the entire shareholding of the company. Hence the plaintiffs had no doubt about his standing.

28 The second defendant's submissions

29 18. Before I give my reasons for dismissing the appeal, I will refer briefly to the arguments presented by his counsel on the second defendant's behalf.

30 19. On the principles enunciated in *Miles v Bull* [1968] 3 AER 632, counsel said the second defendant should be given unconditional leave to defend the action as, there are triable issues or 'some other reason' for trial. He pointed out that the plaintiffs had accepted the third defendant as a co-guarantor with the second defendant. Earlier, the plaintiffs had accepted the third defendant as a guarantor for S$29m without evidence that the third defendant is a person of substance. The plaintiffs gave a similar explanation that it was due to its oversight that it omitted to check on the third defendant's creditworthiness. Such an explanation is incredible. The plaintiffs' claim is intimately connected with the largest scandal in Indian banking history, it lost S$534m for 1995-96 fiscal year which loss wiped out its entire capital base compelling the Indian government to intervene and re-capitalise the plaintiffs. The plaintiffs' losses included those incurred on the facilities granted to the company, Mountamount and Nagova Exim. The MVR group was the biggest defaulter. The seventh defendant was/is an influential Indian industrialist who headed and controlled the MVR group of companies. The former head of the plaintiffs' Indian operations has since been arrested and charged in India. Investigations are also

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pending against other top officials of the plaintiffs, including MBN Rao the most senior person in the Singapore branch at the material time.

31 20. Counsel referred to Suit 2354/96 where, on exactly the same substratum of facts as this case, Lai Kew Chai J had struck out the plaintiffs' claim against one of the guarantors (the fifth defendant Ashok K Sharma) with costs on an indemnity basis. The principal debtor in Suit 2354/96 was Nagova Exim. Sharma relied on the same defence as the second defendant here and applied for discovery even before he filed his defence. The application was granted and the court ordered the plaintiffs to give full discovery (of documents relating to Nagova Exim, Mountamount and the company) with the observation that if it refused to comply with the order made, it would be inferred that the plaintiffs had something to hide. As the plaintiffs failed to comply with the peremptory order made, its action in Suit 2354/96 against the fifth defendant Sharma was dismissed.

32 21. The second defendant's allegation that the plaintiffs had assured him the Guarantee would be only cosmetic had also been raised by other guarantors with insubstantial means, such as the second and third defendants (Mari A J X Basil and R Vaidhiyanathan) in Suit 2354/96.

33 22. Before I revert to the arguments presented for the plaintiffs, I should point out that in Suit 2354/96, the plaintiffs obtained summary judgment against four (4) of the guarantors namely the second, third, sixth and seventh defendants. Although they appealed against the judgment, all four (4) defendants subsequently withdrew their appeal in Registrar's Appeal No. 232/97. The plaintiffs also obtained judgment in default of appearance separately against the fourth defendant who is another guarantor, in Suit

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2354/96. The sixth and seventh defendants in Suit 2354/96 are the sixth and seventh defendants in this suit.

34 23. I should also point out that the plaintiffs sued Mountamount in Suit 2353/96 together with its three (3) guarantors. The third and fourth defendants in Suit 2353/96 are the sixth and seventh defendants in this suit. I note from the file records that the plaintiffs obtained summary judgment against all four defendants in Suit 2353/96 on 14 August 1997.

35 The plaintiffs' submissions

36 24. Counsel for the plaintiffs pointed to the undisputed fact that his clients had suffered losses as it had discounted bills of the company and, it was not suggested that those transactions were other than genuine. Further, the second defendant had signed a letter dated 8 June 1993 (see p 37 of the plaintiffs' affidavit filed 28 May 1998) on the company's behalf as its director, applying for S$16.5m facility which is equivalent to US$10m pursuant to which the plaintiffs granted the facility which was used to discount genuine bills.

37 25. Counsel pointed out the distinction between this case and *Miles v Bull* (supra). In that case, the husband wanted to evict his wife (the defendant) who was in occupation of the former matrimonial home, a farmhouse, after the marriage broke up. The husband (with his brother) sold the farm house to the plaintiff, together with the land, completion taking place on the same day. The wife resisted the plaintiff's application for summary judgment, contending that she had fairly arguable prospects of establishing that the sale and purchase agreement was a sham, it was unusual for completion to take place on the same day that the contract was made. The plaintiff's appeal against the Master's decision in allowing the defendant unconditional leave to defend the claim was

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dismissed. Megarry J held that although the sale and purchase agreement was not a sham, the unusual speed with which the transaction was carried through suggested that the defendant's husband was seeking to enable the plaintiff to do what he himself could not – to evict the defendant from her home. Under such circumstances, it would not be just if the plaintiff was able to enforce the rights he claimed without being put to strict proof.

38 26. It was similarly submitted by counsel for the plaintiffs that *Concentrate Engineering Pte Ltd v United Malayan Banking Corp Bhd* [1990] 3 MLJ 1 relied on by the second defendant can also be distinguished. The relevant headnotes in that case read as follows:

> The plaintiffs were customers of the defendants who were bankers. Several cheques apparently drawn on the plaintiffs' account (the cheques) were paid out by the defendants who then proceeded to debit the plaintiffs' account. The plaintiffs started the present action claiming that the defendants had wrongly paid out on the cheques. Their application for summary judgment was dismissed and they appealed. The cheques were duplicate copies fraudulently printed with the same serial numbers as the genuine and unused cheques supplied by the defendants. The signatures on the cheques were declared by expert evidence to have been traced from genuine signatures.
>
> Held: (i) (applying *Miles v Bull*) the circumstances disclosed called for further investigation. The circumstances and audacity with which the fraud was carried out and the absence of an explanation by the directors of the plaintiffs constitute "some other reason' for a trial in terms of O 14 r 3(1).

39 The facts of that case were vastly different from the plaintiffs' case against the second defendant and his co-guarantors.

40 27. It was also pointed out by counsel for the plaintiffs that the second defendant is not an illiterate peasant but a university graduate – he personally applied for the facility on behalf of the company by his letter to the plaintiffs dated 8 June 1993 (at p 37 of exhibit **C** of the plaintiffs' affidavit filed 28 May

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1998) and he was told in the plaintiffs' letter of offer dated 18 July 1994 (exhibit **J** of the plaintiffs' 7th affidavit filed 6 March 1998) that his signing the Guarantee was one of the conditions for granting the facility. In 1992, (when the second defendant joined the company) $8m worth of bills were discounted, in 1993 it was $14m, in 1994 it was $26m and in 1995 $7m of bills were discounted, the total was $56m. The company had a long history of transactions with the plaintiffs and no problems were encountered throughout until 1995, when it defaulted just before the second defendant's resignation. Given that earlier transactions were honoured, the plaintiffs allowed the facilities. The facts here were completely different from those in *Miles v Bull.* This was not a situation where the plaintiffs handed over US$10m surreptitiously to someone or allowed the sum to be siphoned off. As for the allegation concerning Pakirisami's assurance to the second defendant that the Guarantee was 'cosmetic', it was for the latter to seek his own redress against the former, it had nothing to do with the plaintiffs.

41 28. Counsel pointed to several facts which touched on the second defendant's credibility and showed his lack of candour. One example he cited was the second defendant's omission to disclose that he initiated the loan facility in question by writing to the plaintiffs on 8 June 1993 requesting for US$16.5m. The second defendant's argument that he spent his time working at his father's shop and not at the company's office cannot be believed nor his assertion that he signed the Guarantee without knowledge of its implications. In his affidavit filed on 17 April 1998 the second defendant exhibited a letter (HMY-3) written by his solicitors to the plaintiffs on 3 June 1996 which had this heading

42 M/S Sadeco Sarl Pte Ltd

43 Personal continuing guarantee dated 14 October 1994

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44 and contained the following paragraph:-

> As our client is no longer a director (and shareholder) of the Company, we are instructed to write to you to request his release from the aforesaid Guarantee.

45 Such a letter hardly suggests that the second defendant was not aware of his obligations under the Guarantee, let alone that his signing of the same was merely 'cosmetic' as he alleged he had been led to believe by both Nachiappan and Pakirisami. It is also noteworthy that the second defendant asked to be released from the Guarantee, not that there was an understanding or special arrangement that he would not be liable. Furthermore, when the plaintiffs replied to his solicitor's said letter stating that the second defendant could not be released until the company's liabilities to the plaintiffs were *'adjusted along with accrued interest'*, the second defendant changed solicitors who merely wrote to the plaintiffs to say that [the company] had given collateral security in India through the plaintiffs' Muthialpet branch, Madras, *which security would be sufficient to cover all existing liabilities of the above company*. To this letter the plaintiffs' solicitors replied to say that the plaintiffs were *unable to release any of the guarantors…until such time as the outstanding amount due from the company to our clients have been fully repaid.…*Again, there was no protest from the second defendant to say he would not be liable due to the assurances given to him by Nachiappan and Pakirisami.

46 29. According to the joint (last) affidavit filed by Nachiappan and Meyyappan on 21 September 1998, the second defendant even called at the plaintiffs' office on 6 May 1996 to collect a copy of the Guarantee; yet he asked for a copy in his discovery application. The second defendant had also asked for and had been given, a list of the outstanding sums owed by the company. Obviously he knew the extent of his liabilities as the company's guarantor.

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47 30. Another example of the second defendant's lack of candour was his omission to disclose that the plaintiffs had requested (which repeated requests he ignored) for a list of his assets and liabilities. He had every opportunity then to inform the plaintiffs, as he repeatedly maintained in these proceedings, that he was/is a man of straw but he did not; no evidence was produced to support his contention that he earns $2,000 a month.

48 31. Contrary to the second defendant's contention that he had been prejudiced by the plaintiffs' disbursing large sums to the company, counsel pointed out that the plaintiffs (by their Madras branch) in fact helped to lessen his liability by taking a first charge on a piece of land belonging to the company in India. Even so, such collateral security was not worth $1m.

49 The decision

50 32. I dismissed the appeal because the second defendant had not made out a case under the *Miles v Bull* principle -- that there should be 'some other reason' for trial.

51 33. Much was made by counsel for the second defendant of personal relationships (between the seventh defendant and the chairman of the plaintiffs' head office as well as with some politician) being the non-commercial or political reasons for the large loans extended to the company and other companies in the MVR group. Copious documents (189 pages) were exhibited in the affidavit of Steven Lam filed on 17 April 1998 to support para 4 of the affidavit which stated:-

> Further from numerous newspaper reports, internet articles and other journals and articles given to me by the second defendant, it seems that this action has a very substantial connection with certain investigations in India, which involves

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> the seventh defendant, [MVR] who is an Indian industrialist and the controlling mind of the MVR group in India, and the previous Chairman and Managing Director of the Plaintiffs' Indian Head Office, Mr Goplakrishnan. Copies of these reports and articles are annexed hereto and exhibited as "**SLKK-1**".

52 My view is, until the charges (if any) preferred against the seventh defendant and Goplakrishnan are proved in a court of law, it is not for the second defendant to judge and convict them based on newspaper and other reports. Even if the close personal relationship between the two persons is true, it does not detract from the fact that the company and the plaintiffs had a history of legitimate business transactions in discounting bills. There was nothing untoward or sinister in those deals save that they may have lulled the plaintiffs into believing that there was no reason for the company not to honour the bills discounted in 1995, earlier bills discounted (which were substantial) having all been paid by the company. By comparison, the bills discounted in 1995-96 totalled US$9.9m. Due to the company's default, the interest charged on the discounted bills increased the outstanding sum to an excess of US$10m.

53 34. Counsel for the plaintiffs had also pointed out that the second defendant's allegation regarding the relationship between the seventh defendant and the plaintiffs' Gopalkrishnan only surfaced in the second defendant's affidavit filed on 8 June 1998, after the second defendant had conducted an inspection of the court file for Suit 2354/96 and seen the defences filed by the guarantors there against the plaintiffs' claim. I note further that the second defendant's solicitors filed a praecipe on 6 March 1996 to inspect the court files for Suit No. 2354/96 before filing the discovery application on 17 April 1998. The second defendant's counsel represented the fifth defendant (Sharma) in Suit 2354/96

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54 35. Consequently, the second defendant's allegations regarding pending criminal charges or investigations against Gopalkrishnan, even if true, were irrelevant and did not afford a defence to him on his obligations as the company's guarantor. Bad loans are not an uncommon feature of banks -- indeed it would be an exception for banks not to have bad loans. To suggest that the bad loans incurred by the plaintiffs on the company's account were more sinister than the exercise of poor commercial judgment (on hindsight) on the part of the plaintiffs, requires a greater degree of proof than mere allegations; the second defendant failed to discharge the burden.

55 36. I should add that notwithstanding the submission made by counsel for the second defendant, the same defence raised by the second and third defendants in Suit No 2354/96 (that the guarantees they signed were 'cosmetic') did not succeed as the plaintiffs obtained judgment against them. I rejected that defence too as I accepted the submissions of the plaintiffs set out in para 28 above.

56 37. I noted that the plaintiffs gave notice of inspection of the 112 discounted bills. Copies of these bills were exhibited in the plaintiffs' last affidavit filed on 21 September 1998. In the same affidavit (p 10 of exhibit IB-1), the plaintiffs set out details of bills they had discounted and which the three (3) companies paid -- 492 bills to the value of US$59,734,743.85 for Mountamount, 329 bills to the value of US$36,663,647.16 for Nagova Exim and 426 bills to the value of US$59,373,157.25 for the company. Details of the unpaid bills of all three (3) companies were also furnished in the same exhibit.

57 38. Some elaboration is called for on the 112 dishonoured bills. Counsel for the second defendant criticised those transactions -- the plaintiffs continued to discount the bills notwithstanding that the drawees defaulted in payments due

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under earlier bills. He said the plaintiffs' conduct is only explicable on the basis that the banking facilities granted by the plaintiffs to the company, Mountamount and to Nagova Exim were not granted in the ordinary course of banking business. The second defendant pointed out that the drawees of the 112 bills were Globenut (Europe) ARL (Globenut), Nutworld Trading ARL (Nutworld) and Hamilton Ventures Pte Ltd (Hamilton), three (3) Jersey companies which had the same two corporate shareholders (Juris Limited and Lively Limited); the bills related to shipments of Indian cashew kernels. The second defendant exhibited searches his counsel had conducted in the State of Jersey on Globenut, Nutworld and Hamilton and these showed the companies had paid-up capital of only US$1,000, US$1,000 and US$500,000 respectively. Such paid-up capital did not justify the value of the foreign bills which the plaintiffs were prepared to and did, purchase.

58 39. Nachiappan and Meyappan (in their last affidavit filed on 21 September 1998) pointed out that some of the bills were actually not purchased by the plaintiffs but were forwarded for collection. They said that it was not the plaintiffs' practice as bankers to conduct searches of drawees of bills. Instead, they would generally make credit inquiries of the drawees' bankers and in this case they checked with MeesPierson NV (formerly known as Bank Mees & Hope). Copies of the replies from the drawees' said bank were exhibited in the affidavit, all stating that the three companies were 'esteemed clients' of the said bank, active in cashew nuts and other food products. As late as 26 February 1996, the said bankers, in responding to the plaintiffs' inquiry dated 19 January 1996 on the three (3) companies) stated:

> the abovementioned companies have been clients of our bank for several years. To our knowledge the client is active in the trade of cashew nuts. The company till the present, has met its commitments towards our bank.

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59 40. The commercial nature of the 112 bills discounted, the prior substantial and uneventful dealings between the plaintiffs, the company and Mountamount as well as with Nagova Exim and, the favourable recommendations made to the plaintiffs by the drawees' bankers rendered the second defendant's argument untenable – I could not accept that the transactions were not made in the ordinary course of banking business.

60 41. Counsel for the second defendant made no submissions on the law; he grounded the appeal on the facts as disclosing triable issues. As I did not agree that the facts showed there should be 'some other reason for trial', I accordingly dismissed the appeal.

61 Lai Siu Chiu

62 Judge

Lai Siu Chiu J

T M Tan & Wong Khai Leng (Mallal & Namazie) for the plaintiffs
Harpreet Singh & Siraj Omar (Drew & Napier) for the second defendant

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