Supreme Court
Commercial Chamber
Public Hearing on 27 June 2006 **Reject**

No. of the Reference: 03-19863

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President : Mr. TRICOT

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

[The Court] recognises Mr. X..., in his capacity as judicial administrator in the judicial rescue of SAS Isa Daisytek, in that he associates himself with the reference made by the Procurator General at the Court of Appeal of Versailles;

Whereas, according to the judgment referred (Versailles, 4 September 2003), that on 16 May 2003, the High Court of Justice in Leeds (United Kingdom) opened main insolvency proceedings in respect of SAS Isa Daisytek (the company), with its statutory seat [located] in France, subsidiary of a company [formed] under British law, and appointed Messrs. Y..., Z... and A..., administrators in proceedings; that on 23 May 2003, on a declaration of the state of cessation of payments, the Commercial Court of Pontoise opened judicial rescue proceedings in respect of the same company; that the English administrators brought proceedings objecting to the judgment, believing, on the basis of Council Regulation (CE) no. 1346/2000 of 29 May 2000 relative to insolvency proceedings, that the proceedings opened in England prevented the opening of another [set of] main proceedings in France; that the proceedings in objection were rejected by the [Commercial] Court; that the Court of Appeal overruled the judgment, declaring that the proceedings in objection were well founded and holding that the company could not be the subject of judicial rescue proceedings in France;

On the first ground [of reference]:

Whereas the Procurator General at the Court of Appeal of Versailles raises objections to the judgment having stated thus, therefore, according to this ground:

1. According to the terms of the combined provisions of Articles 3(1) and 16(1) of Community Regulation no. 1346/2000 of 29 May 2000 relative to insolvency proceedings, a judgment opening main insolvency proceedings may not be recognised in all [other] member states unless it has been made by a competent court of the member state on whose territory the centre of the debtor's main interests is situated, which is presumed to be, for a legal entity, its statutory seat; that according to Article 26 of the above Regulation, any member state may refuse to recognise a judgment opening main insolvency proceedings where this recognition has an effect manifestly contrary to its public order, in particular to its fundamental principles; that furthermore, the Regulation does not have as its object the resolution of difficulties arising from the insolvency of international groups of companies, the

opening of main insolvency proceedings in respect of each of the companies forming part of such a group requiring the determination of an individual centre of its main interests, without it being possible to take into account the sole fact of its membership of the group, which is not a criterion of international jurisdiction provided for in the Regulation; that therefore, the judgment which opens in England main insolvency proceedings of a company which has its seat in France, even where this is a subsidiary enjoying legal personality and not an establishment of a company with its seat in England, with the sole reason [given] being that significant acts of management, in the occurrence not set out, were carried out at the seat of the parent company, is incapable of receiving recognition in France; that in deciding the contrary, the Court of Appeal breached the abovementioned Articles;

2. That, in light of the same texts, the judgment which recognises in France such a judgment opening proceedings lacks legal basis, where it fails to find that the French subsidiary was fictional;

3. That, in light of the same texts, the judgment recognised the judgment of the High Court of Justice in Leeds, without setting out the nature of the acts found by the English judge to reverse the simple presumption according to which the centre of its main interests was situated at its statutory seat, and without looking to see if third parties could have had knowledge of these acts; that in abstaining from doing this, the Court of Appeal deprived its judgment of [proper] legal bases;

Whereas, however, in terms of Article 3, paragraph 1 of Regulation no. 1346/2000 of 29 May 2000 relative to insolvency proceedings, the courts of the member state on whose territory the centre of the debtor's main interests is situated have jurisdiction to open proceedings, this centre being, for companies and legal entities, presumed, until proof to the contrary [is brought], to be the location of the statutory seat; that according to Article 16, paragraph 1 of the Regulation, the judgment opening insolvency proceedings made by a court in the member state that has jurisdiction by virtue of Article 3 is to be recognised in all other member states from the moment it has effect in the state of the opening [of proceedings]; that the Court of Justice of the European Communities has held in law (ECJ, 2 May 2006, Eurofood IFSC Ltd, case no. C-341/04) that this Article must be interpreted in the sense that main insolvency proceedings opened by the court of a member state must be recognised by the courts of other member states, without [the latter] being able to verify the exercise of jurisdiction by the court in the state of the opening [of proceedings]; that the [European Court of Justice] has indicated, in the same judgment (paragraph 43), that if an interested party considers that the centre of main interests is situated in a member state other than that in which main insolvency proceedings have been opened and intends challenging the jurisdiction assumed by the court which has opened these proceedings, it is open to him to use, before the courts of the member state where proceedings have been opened, those remedies provided by the national law of this member state against the judgment opening [proceedings];

Whereas, having noted that the High Court of Justice in Leeds declared it had jurisdiction to open main insolvency proceedings in respect of the company, it having found, while examining its jurisdiction under Article 3, paragraph 1, that the centre of main interests of the company was located in Bradford (United Kingdom), the Court of Appeal, which was not obliged to verify the reasons which permitted the Court in

Leeds to reverse the presumption set out in Article 3 of the Regulation, has legally justified its decision; that the ground [of reference] has no basis;

And on the second ground [of reference]:

Whereas the Procurator General raises similar objections to the judgment, therefore, according to this ground, that according to Article 26 of the Regulation, any member state may refuse to recognise a judgment opening main insolvency proceedings where the recognition has an effect manifestly contrary to its public order, in particular to its fundamental principles; that the hearing of representatives of the workforce constituted such a principle whose breach was of a nature to prevent the recognition in France of the judgment opening proceedings; that in deciding the contrary, the Court of Appeal breached the abovementioned Article 26;

Whereas, however, having indicated that resort by a judge of one member state to the public order clause so as not to recognise a judgment emanating from a court in another member state is not acceptable except under the hypothesis that the recognition or enforcement of the judgment would infringe in an unacceptable manner the legal order of the state required [to recognise the judgment], inasmuch as [the judgment] would breach a fundamental principle, the Court of Justice of the European Communities (abovementioned Eurofood judgment), which has indicated that the breach must constitute a clear breach of a rule of law considered as essential to the legal order of the state required [to recognise the judgment] or of a right recognised as fundamental in this legal order (paragraphs 63 and 64 of the abovementioned Eurofood judgment), has held in law that Article 26 of Regulation no. 1346/2000 must be interpreted in the sense that a member state may refuse to recognise insolvency proceedings opened in another member state where the judgment opening [proceedings] has been made in manifest breach of a fundamental right to be heard enjoyed by a person affected by such proceedings;

Whereas the omission to hear representatives of the workforce prior to the judgment opening proceedings does not constitute a manifest breach of a fundamental right to be heard enjoyed by a person affected by such proceedings, the Court of Appeal rejected for good cause the ground drawn from the offence caused to public order based on Article 26 of the Regulation; that the objection has no basis;

FOR THESE REASONS:

REJECTS the reference;

Leaves the costs to be borne by the Public Treasury;

Thus made and judged by the Supreme Court, Commercial, Financial and Economic Chamber, and pronounced by its President in its public hearing on the Twenty-Seventh June Two Thousand and Six.