

In Re: Navjivan Mills Ltd.

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Court : Gujarat

Decided On : Nov-13-1984

Reported in : [1986]59CompCas201(Guj)

Judge : B.K. Mehta and; D.H. Shukla, JJ.

Acts : [Companies Act, 1956](#) - Sections 434, 441, 536, 536(1) and 536(2)

Appellant : In Re: Navjivan Mills Ltd.

Advocate for Pet/Ap. : J.M. Thakore, Adv. for Company,; G.N. Shah, Adv. for Original Petitioning Creditors,;

Judgement :

B.K. Mehta, J.

1. The applicant company has taken out this summons for directions by this court under section 536(2) of the [Companies Act, 1956](#), in the matter of financial arrangement between the applicant company on the one hand and the Industrial Development Bank of India, the Industrial Credit and Investment Corporation of India Ltd., the Industrial Finance Corporation of India, the Industrial Reconstruction Corporation of India Ltd. and the Bank of India on the other, so as to ensure the said financing agencies that the dispositions of the proper ties in the favour may not be avoided in future also for the direction that not payment of any moneys which may be effects by the company at any time between the presenting of

winding up petitions which have been stayed and the date of the order of winding up, if at all made on one or more of such of the petitions and no disposition of any property or assets which may be effected by the company during the aforesaid period in favour of any person in the ordinary course of business may not be a voided in future in case the applicant-company is ordered to be wound up on the foresaid petition for winding up. The copies of this summons have been served upon the creditors who have filed the winding-up petition against the applicant-company and have also been published in two news papers, namely , 'Sandesh' dated June 23, 1984, and ' The Times of India' dated June 24, 1984, in pursuance of the direction issued by this court, vide its order dated June 21, 1984. Except one creditor, no other shareholder or creditor interested in opposing or supporting the directions as prayed for by the applicant-company, has filed appearance in this court in response to the aforesaid notice. M/s. Bharat Textile Traders of Ahmedabad has filed an affidavit of its partner, Shri Nalinbhai Babubhai Parikh, supporting the direction which have been sought for by the applicant company. As stated above, no other person has filed any appearance opposing the directions sought for. It should be recalled that the applicant-company has sought the amendment of the original direction prior to the order of this court directing the public notice as aforesaid.

2. We have heard the learned Advocate General at length, who has pointed out the legal position in this behalf and cited a number of Indian as well as English decisions and the present trend in the matter of granting permissions to the companies to enter into transaction for disposition of the properties of the company pending disposal of winding-up petitions which might have been filed by the creditors.

3. For the reasons which we will record and pronounce subsequently, we are of the opinion that the we must grant the direction as prayed for, except the directions at clause (iv) of prayer (A) subject to the condition that the applicant company shall not utilise and/or disburse the funds provided by the Industrial Development Bank of India, the Industrial Credit and Investment Corporation of India Ltd., Industrial Finance Corporation of India , the Industrial Reconstruction Corporation of India Ltd. and the Bank of India toward the satisfaction of past dues

of any one or more creditors of the applicant company. So far as clause (iv) of prayer (A) is concerned, we are of the opinion that we should not grant the direction in the general term in which it has been sought for. Instead, we should suitably modify the said direction so as to read and provide that no disposition of any property or assets which may be effected by the company pending final hearing and disposal of the winding-up petitions as aforesaid to or in favour of the Bank of India, as mentioned in the affidavit of Shri Jaidev Vyas, date June 29, 1984, shall be avoided if the winding-up order being made if at all against the company on such petition by the operation of s. 536(2) of the companies Act, there shall be no order as to costs.

B.K. Mehta, J.

4. By our order dated July 3, 1984, we have, for reasons to be recorded and pronounced subsequently - which are now recorded here under - granted the directions as prayed for by the applicant company in exercise of our power under section 536 of the [Companies Act, 1956](#), in the matter of financial arrangement between the applicant company on the one hand and the Industrial Development Bank of India, the Indian Credit and Investment Corporation of India Ltd., Industrial Finance Corporation of India, the Industrial Reconstruction Corporation of India Ltd. and the Bank of India on the other, so as to ensure the said institution that the dispositions of the properties in the favour by the applicant company as a security for the advance granted to it may not be avoided in future and no payment of monies made by the company at any time between the presentation of the winding-up petitions which have been stayed and the date of the order of winding-up, if at all made on one or more of such petitions, shall be avoided under the aforesaid section. The reason which weighed with us for granting the direction aforesaid are as under:

At the outset, it should be recalled that the Division Bench of this court consisting of myself and brother, R.J. Shah, J., allowed O.J. Appeals Nos. 3 and 4 1984 setting aside for admission and usual advertisement as well as the order appointing provisional liquidator for S.L. Talti J) for the reasons which we have separately recorded in our order of June 19, 1984. A few relevant facts extracted from the

said order of June 19, 1984, would indicate the background as to how the present company application was moved before us. The applicant company was incorporated as a public limited company by shares and is governed by the companies Act, 1956, having its registered office at Kalol, North Gujarat. The objects for which the company was incorporated are, inter alia, for carrying on business of spinning and weaving or manufacturing and dealing in cotton and other fibrous substance and for dyeing and colouring the said fabrics and the sale of yarn, cloth or other manufactured products.

5. A number of petitions were moved before the learned company judge of this court for winding up of the applicant company since it was unable to pay its debts as defined under section 434 of the [Companies Act, 1956](#). One of such company petitions was Company petitions No.105 of 1983 filed by M/s. J.K.Synthetics. An arrangement was arrived at between the applicant company and the said petitioning company on November 13, 1983, in the said company petitions for the repayment of the dues of the petitioning company, since at that time the applicant company was functioning. However, on account of labour and financial difficulties, the applicant company ceased to function with effect from January 13, 1984, with the result that it was unable to carry out the consent terms incorporation the arrangement aforesaid and making payment to the petitioning company accordingly, which, therefore, moved the learned company judge by company Application No. 34 of 1984 in Company Petition No. 105 of 1983 for appointment of provisional liquidator. By his order of March 26, 1984, the learned company judge admitted the petitions and directed usual advertisement and fixed the hearing on April 13, 1984. He also appointed the official liquidator as provisional of the applicant company and so restrained the applicant company from transferring or otherwise disposing of the properties of the company from, except for the benefit of the workers of the company. These orders were challenged in O.J. Appeals Nos. 3 and 4 of 1984, as stated above, which were allowed with the result that both the orders were set aside and the provisional liquidator who had applied his seals and taken possession of the properties of the company was directed to hand over the possession to the properties of the company was directed to hand over the possession to the managing director of the applicant company. The order of admissions of company petitions and the usual

advertisement also were set aside having regard to the fact that the applicant company was declared a relief undertaking by the Govt. of Gujarat, vide its resolution issued in the Industries, Mines and power Department dated April 19, 1984, in exercise of its power under section 3 of the Bombay Relief Undertaking (Special Provisions) Act, 1958, for a period of 12 months from the date of the said resolution. The State Government, almost simultaneously but on a day earlier, i.e., on April 18, 1984, announced a package deal so as to enable the sick units to recommence their activities and also with a view to prevent further closure of other marginal sick units formulated a package deal of concessions in terms of the recommendations made by the committee which was set up by the Government to study technical financial viability and other problems of each of such units and to make recommendations in that behalf in respect of each such unit. In view of the development, namely declaration of the applicant company as a relief undertaking while setting aside the orders of the learned single judge directing usual advertisement and admission of the petitions and also appointing provisional liquidator, the Division Bench stayed the proceedings of Company Petitions No. 105 of 1983 as well as Company Application No. 34 of 1983. It appears that after the provisional liquidator handed over the possession of the textile unit to the managing director of the applicant company, steps were taken for restoring the electric connection and cleaning of machinery as preliminaries for recommencing the working of the closed unit. However, the unit could not have started refunctioning without adequate working and other funds obtained from their bankers as well as other financial institutions. Bank of India, which are the bankers of the applicant company by their letter of May 24, 1984, informed the applicants company that necessary funds would be released only after permission under section 536 of the Companies Act is obtained from the court since, though at the relevant time, petitions for winding up filed against the applicant company were stayed, they were likely to pose insurmountable difficulties in future when the period of one year specified in the Government resolution declaring the applicant company as a relief undertaking would expire and the winding up order of the applicant company is made on any one or more of the winding up petitions rendering disposition of the properties made by the applicant company against the fresh advance during the period between the date of the filing of the winding-up

petitions and the date of the winding-up order as void. In these circumstances, a note was filed before one of us (B.K.Mehta J.) during vacation on May 25, 1984, by the learned advocate for the applicant company that unless the directions are granted under section 536(2) of the Companies Act so as to save the disposition of the properties made by the applicant company during the afore said period from the consequences prescribed under section 536(1) of the Companies Act, it would not be possible for the appellant company to recommence the textile unit as assured by the learned Advocate - General before the Division Bench in the course of the hearing of the O.J.Appeals that the applicant company would recommence its working within four weeks of the date the order allowing the appeals. It was also pointed out in the note that the Bank of India has expressed its willingness to release the funds only such directions being obtained under section 536(2) of the Companies Act. Incidentally in the note, a reference was made to the decision of the learned single judge of this court (Coram: D.A.Deasi J) in the case of R.C.Mehta and Co. v. Himbani Mfg. Co. Ltd. (1970) 40 Comp Cas 1230 that an application under section 536(2) is Commission of the learned advocate requires reconsideration and, therefore, it was prayed that Company Application No.95 of 1984 be placed before a Division Bench. In view of the note, I directed the office that the matter be placed immediately on the opening after vacation before Division Bench. It is in these circumstances that the present application came to be placed before us.

6. Two questions arise for our consideration. Firstly, whether the application under section 536(2) of the Companies Act, 1956, is competent at this stage when no winding-up order is made and, consequently, therefore, whether the decision of the single judge in R.C.Mehta and Co. v. Himanbhai Mfg. Co. Ltd. (1979) 40 Comp Cas 1230 (Guj), requires reconsideration. Secondly, whether, on the facts and in the circumstances of the case, the directions as prayed for should be issued.

7. Re: Question No.1 : Section 536 provides for avoidance of transfer, etc., after the commencement of winding-up. We read the relevant sub-section(2) of section 536 as under:

'(2) In the case of winding -up by or subject to the supervision of the court, any disposition of the property (including actionable claims) of the company , and any transfer of shares in the company or alternation in the status of its members, made after the commencement of the winding up shall, unless the court otherwise order, be void.'

8. In the case of winding -up by the court, the date of commencement of winding up is the date of the presentations of he petitions (see section 441). The purpose underlying sub-section (2) is to prevent improper disposition or transfer of property so as to reduce the assets of the company which would otherwise be available for distribution amongst the creditors of the company under winding-up. However, the court has been invested with discreation to uphold all such transaction which appear to be bona fide and in the ordinary course of the company's business. It should be noted that a disposition of the property of the company made after the commencement of the winding-up of a company is void and is not required to be annulled by the court. The jurisdiction of the court to pass an order upholding an impugned transaction under sub-section (2) after a winding-up order is made is beyond any dispute. There is a judicial conflict as to whether the court can exercise such jurisdiction before and order of winding-up is made. The learned company judge of this court an order of winding-up is made. the learned company judge of this court has no doubt preferred the view expressed in *Miles Aircraft Ltd., In re* (1948) Ch 188; (1948) 1 ALL ER 225; (1948) 18 Comp Cas 250 (ChD) and has thought fit to disagree with the view expressed in *A.I. Levy (Holding) Ltd., In re* (1964) 1 Ch 19; (1964) 34 Comp Cas 720 (Ch D). Before we deal with decision and consider the submission of the learned advocate, who appears on behalf of the applicant company, that this decision requires reconsideration, we would like to look at what is precisely the power of the court under aforesaid sub-section.

9. A Division Bench of the Bombay High Court, consisting of Martin C.J. and Patkar J. considered the object and scope of section 227 (2) of the Indian Companies Act, 1913, which is in pari materia with section 536 of the [Companies Act, 1956](#), in *Tulsidas Jasraj Parekh v. Industrial Bank of Western India* AIR 1931 Bom 2; 32 Bom LR 953; 127 IC 82, and held as under (headnote of AIR 1931 Bom 2):

'Section 227(2) intends to prevent any improper alienation and dissipation of the property of a company in extremes, during the period which must lapse before a winding-up petition can be heard. However, any bona fide transaction carried out and complete in the ordinary course of current business can be sanctioned. This power is given for the benefit and the interest of the company so as to ensure that a company which is made the subject of winding-up petition may nevertheless obtain money necessary for carrying out its business and so avoid its business being paralysed : but the court will not allow the assets of the company to be disposed of at the mere pleasures of the company and thus cause the fundamental principles of equity amongst its creditors to be violated .'

10. It should be noted that in *Tulsidas Jasraj's case*, AIR 1931 Bom 2; 32 Bom LR 935; 127 IC 82, the Bombay High Court was concerned with the three transactions entered into by and between Viramgam Spinning and Mfg. Co. and the petitioning creditors, namely, industrial Bank of Western India, and one Dungsahi Harilal, who became secured creditors as a result thereof and which transactions were sought to be impugned by the official liquidator after the winding-up order was made against the said company. Patkar J. in his concurring opinion referred to the decision in *In re Wiltshire Iron Co. : Ex parte Pearson* [1868] 3 Ch 443 and quoted with approval from the speech of Lord Cairns L.J. as under :

'This (s.153) is a wholesome and necessary provision to prevent during the period which must elapse before a petition can be heard , the improper alienation and dissipation of the property of a company in extremes. But where a company actually trading , which it is the interest of every one to preserve and ultimately to sell as a going concern, is made the object of a winding-up petition which may fail or may succeed if it were to be supposed that transactions in the ordinary course of its current trade bona fide entered into and completed would be avoided and would not in the discretion given to the court be maintained, the result would be that the presentation of a petition groundless or well founded would ipso facto paralyse the trade of the company and great injury without any counter-balance of advantage would be done to those interested in the assets of the company.'

11. To the same effect, the learned single judge of the Madras High Court ruled in *Andhra Bank Ltd. v. Provisional Liquidator, Godavari Sugars and Refineries Ltd.* : AIR1955 Mad247 , that the result of avoiding a bona fide transaction entered into and completed in the ordinary course of the company's current trade would be that the presentation of a petition groundless or well founded would ipso facto paralyse the trade of the company and great injury would be done to those interested in the assets of the company and the court should exercise the discretion to uphold the disposition, if made, for purposes of preserving the business as a going concern.

12. The Calcutta High Court has also in the matter of *J. Sen Gupta Pvt. Ltd.*'s case [1962] 32 Comp Cas 876 ; AIR Cal 405, taken the same view that a transaction which has been entered into for keeping the company going or keeping things going generally ought to be confirmed.

13. The Allahabad High Court in *Ram Lal v. Official Liquidator , Benares Bank Ltd.* [1942] 12 Comp Cas 170; AIR 1942 All 141, held that the court has discretion at any time to make an order in a proper case validating a disposition, notwithstanding that it is one made after the commencement of the winding up, and the reason why the court is given a discretion under section 227(2) is that a company may not be completely paralysed by the presentation of a petition. It should be noted that an extreme contention was advanced before the Allahabad High Court that the court can competently give directions upholding the transaction only before a winding-up order is made . This is not relevant for our purposes since we are concerned with the purpose underlying the power invested in the court under section 536(2) of the [Companies Act, 1956](#), corresponding to section 227(2) of the Indian Companies Act, 1913. The passage digested from the opinion of Cairns L.J. from *In re Wiltshire Iron Co.'s case* [1868] 3 Ch 443, by the Bombay High Court is relied upon by the learned author Pennington in his *Company Law* (fourth edition) to indicate the purpose of the provision and the occasions on which the court should give its approval to the disposition (See Pennington's *Company Law*, Fourth edition, p. 720), wherefrom the following passage at p. 722 is instructive. It reads as under :

`It has been held that the court's approval of a disposition of the company's property made after the presentation of a winding-up petition cannot be sought until after the winding-up order is made, because until then it is impossible to predict whether the disposition will be invalidated by the Companies Act, 1948, at all (Miles Aircraft Ltd., In re [1948] Ch 188; [1948] 1 All ER 225; [1948] 18 Comp Cas 250 (Ch D). This reasoning was not followed in another case (A. I. Levy (Holdings) Ltd., In re [1963] 2 All ER 556 ; [1964] 1 Ch 19; [1964] 34 Comp Cas 720 (Ch D), where the court permitted the company to dispose of a lease pending the hearing of the winding- up petition so that the provision contained in the lease for its forfeiture if a winding up order were made should not take effect. This latter decision is undoubtedly preferable, for, the protection of the interests of the company's creditors and shareholders should be the paramount consideration in construing the court's jurisdiction. The decision has been followed in a third case (Operator COnTrol Cabs ltd ., In re [1970] 3 All ER 675 (Vac Ct. Ch D), and the court exercised its powers there even more extensively by permitting the directors to carry on the company 's business in the ordinary way pending the hearing of a creditor's winding-up petition, and by authorising them to dispose of the company's assets and to pay its debts without it being necessary for the court's approval to be sought for each transaction.'

14. In Buckley on the Companies Acts, 14th edition, the following observation in the notes of section 227 of the companies Act, 1948, at page 571 is instructive. The observation is found under the caption of the topic 'when the application should be made '. It reads as under:

'In an early case (International Life Assurance Society, In re : Gibbs and West's case [1870] LR 10 Eq. 312, 324) it was argued that the sanction of the court should be obtained before the transaction is entered into and cannot be given afterwards, but Malins V.C. disagreed, `for it would be almost impossible that directions could from time to time be obtained ; but when the matter is brought before the court, it must have regard to all the surrounding circumstances. Vaisey J. agreed that the object of the section is that if a winding- up order is made, any transaction which has been entered into since the commencement of the winding up shall be subject to review by the liquidator and held that he has no jurisdiction

while the petition was pending (Miles Aircraft Ltd., In re [1948] 1 All ER 225 ; [1948] Ch 188; [1948] 18 Comp Cas 250). Roxburgh J. went to the other extreme and on the application made after the winding-up order refused to validate the transaction on the ground that the applicant ought to have applied before the transaction was entered into. Buckley J. held that he had jurisdiction to sanction and did sanction while the petition was pending a proposed transaction which on any possible view would be beneficial to the creditors, one of the objects of the section being to protect the interests of the creditors during the pendency of the petitions (A.I. Levy (Holdings) Ltd., In re [1964] 1 Ch 19; [1964] 34 Comp Cas 720 (Ch D)). Since this last decision, such orders have regularly been made, normally in one or two cases, the first being where the proposed transaction is not in the ordinary course of business (as in the case cited) and the second where it is necessary to persuade the company's bankers to unfreeze the account in order to enable the business to be carried on (Argentum Reductions (U.K.) Ltd., In re [1975] 1 All ER 608; [1975] 1 WLR 186 (Ch D) . '

15. In Palmer's Company Law, the 22nd edition, at page 927, the following principles have been digested :

'A disposition of the property of the company, the including things in action, and a transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, is void unless the court otherwise orders (section 227); but the practice of the court is to allow such payments or dispositions, pending the petition, if made honestly and in the ordinary course of business (see Oriental Bank Corporation, In re: Ex parte Guillemin [1885] 28 Ch 634). The exercise of the discretion of the court under this section is controlled only by the general principles of justice and fairness. Such an order may be made prior to the hearing of the winding-up order. (see Operator Control Cabs Ltd., In re [1970] 3 All ER (Vac Ct., Ch D)).

The court has jurisdiction under section 227 to authorise a disposition of the company's property for the benefit of creditors, notwithstanding that a winding-up order has not yet been made (see A. I. Levy (Holdings) Ltd., In re [1964] 1 Ch 19;

34 Comp Cas 720 (Ch D) and Douglas Griggs Engineering Ltd. [1963] 1 Ch 19.'

16. The passage, which have been cited above, clearly indicate the purpose and the object of this power. As the Bombay High Court has held in Tulsidas Jasraj Parekh's case AIR 1931 Bom 2; 32 Bom LR 953; 127 IC 82, that the purpose underlying the investments of this power in court is for the benefit and the interest of the company so as to ensure that a company which is made the subject of winding-up petition may nevertheless obtain the money necessary for carrying out its business and so as to avoid its business being paralysed. If that is the purpose and object of the section, it would hardly be proper and just to stultify the power and restrict its operation since otherwise it is bound to be counter-productive in the sense that the very purpose of the shareholders and creditors would be defeated. There is no inherent indication in the section so as to warrant the conclusion that this power can be exercised only after the winding-up order is made. It is difficult to spell out the limits on the jurisdiction of the court from the opening words in the section, namely, 'in the case of winding up ' so as to mean that only if the company is ordered to be wound up. It would be reading more than what the Legislature intended in the said wordings. The words ' in case of winding up ' are suffixed by the words ' by or subject to the supervision of the court'. It is in that context that where winding up is by or under the supervision of the court, as the case may be, that the disposition of the property after the commencement of the winding up would become void. It is in contradiction to a case of a voluntary winding up for which a provision is made in sub-section (1). The said words are not limiting the jurisdiction of th court as held by the Division Bench of the Bombay High Court in Kamani Metallic Oxides Ltd. v. Kamani Tubes Ltd. [1984] 56 Comp Cas 19. To hold that the order validating the transactions made before a winding-up order becomes otiose in case the winding-up petition is ultimately rejected for purposes of restricting the jurisdiction is, in our opinion, considering entirely extraneous circumstances which are not germane to the issue of jurisdiction. The trend and the development of law is in this behalf also indicates that after the Miles case [1948] Ch 188; 1 All ER 225; [1948] 18 Comp Cas 253 (Ch D), in a number of later decisions, the English courts have preferred the view of Buckley J. expressed in A. I. Levy (Holdings) Ltd's case [1963] 2 All ER 556; [1964] 1 Ch 19; [1964] 34 Comp Cas 720 (Ch D).

17. In *Argentum Reductions (U.K.) Ltd., In re* [1975] 1 All ER 608; [1975] 1 WLR 186 (Ch D), the court was required to exercise the power so as to persuade the company's bankers to unfreeze the account in order to enable the business to be carried on though winding-up petition was pending.

18. In *Operator Control Cobs Ltd., In re* [1970] 3 All ER 657 (Vac Ct., Ch D), the company sought an order that in the event of a winding-up order being made against the company, the payments made out of the company's bank account for the purpose of paying debts of the company incurred after the date of the application in that ordinary course of business and disposition of the company's property sold in the ordinary course of its business to its customers at full market price should not be voided by virtue of section 227 of the Companies Act, 1948, and an order to that effect was given having been regard to the advantage to the creditors of the company that the company continues in trading.

19. A Special Bench of the Rajasthan High Court in *B. Gopal Das v. Kota Biran Board (P) Ltd.* [1972] Tax LR 2285 has held that the court has power to validate transactions during the pendency of a winding-up petition. The Special Bench overruled the earlier decision of the Division Bench of Rajasthan High Court in *Ramesh Chandra v. Chopansni Ice Aerated Water and Oil Mills Ltd.* , since in the absence of any prohibition in the law, there is not reason why the court should be precluded from examining the propriety of a proposed disposition during the pendency of a winding-up petition, if the company has a genuine case requiring early consideration, and the High court has, therefore, jurisdiction under section 536(2) to authorise a disposition of a company's property during the pendency of a winding- up petition, notwithstanding that a winding-up order has not been made. The Division Bench of the Bombay High court has also taken the view that the court has such a jurisdiction to validate such transactions before a winding-up order is made. The Division Bench in *Kamani Metallic Oxides Ltd. v. Kumani Tubes Ltd.* [1984] 56 Comp cas 19 (Bom) held that even before a winding-up order is made, the jurisdiction of the High Court can be invoked under section 536(2) for permission for disposal of the assets of the company , and it is not proper to read any limitation in the opening words of the section, namely, 'in the case of winding up ' so as to mean the winding-up order is passed, because sometimes disposition

would be necessary in the interest of the company and particularly of the creditors of the company during the pendency of the application for winding up, and the directors on their own would be reluctant to enter into such transactions in apprehension of the consequences and, therefore, the company court must have jurisdiction to protect such transactions. The Division Bench was unable to persuade itself to hold that the order would become otiose if the application for winding up is ultimately rejected, and that subsequent event is a matter of no consequence while construing the jurisdiction of the court. In that view of the matter, therefore, we are of the opinion that the court can exercise the jurisdiction of giving directions validating the transactions before the winding-up order is made for the obvious reason that unless these transactions are saved from the consequences which may ensue, if at all, on an order of winding up being made, the company may find it difficult to keep itself going and may land itself in an unenviable position of its business being paralysed. If, therefore, the Legislature has invested this power in the court with that purpose and object in view, the said power must be capable of being exercised at a time when there is a possibility of ultimately such consequences ensuing otherwise, the power is virtually stultified. In that view of the matter, therefore, we are of the opinion that the view expressed by the learned single judge, with utmost respect to him, is not warranted by the section and if the earlier decision of the Bombay High Court in *Tulsidas Jasraj Parekh*' case AIR 1931 Bom 2; 32 BOM LR 953; 127 IC 82, which is binding on this court, had been shown to him, he would not have taken the aforesaid view.

Re : Question No. 2.:

It is well settled on the matter of principle and authority that if the company court is satisfied that a particular disposition of the property of a company which is the subject-matter of a winding-up petition, is necessary or expedient in the interest of the company and particularly its creditors and shareholders and the transactions are in the ordinary course of its current trade bona fide entered into and completed, and it is in the interest of every one to preserve the company as a going concern, and if such transactions are not maintained, and the presentation of the petition groundless or well- founded would result ipso facto into paralysing the trade of the company and a great injury without any counter-balance of

advantage would be done to those interested in the assets of the company, it would be in the discretion and duty of the court to validate such transactions. Applying this principles to the facts of this case we do no entertain any doubt that the disposition of the property intended by the company for securing the advance from the aforesaid financing agencies on security thereof and the payment of monies by the company in the ordinary course of business for carrying on its trade should be maintained. We should remind ourselves that the State Government has declared this company as a relief undertaking so as to put a moratorium on the liabilities as existing and the enforcement thereof as on the date of the notification. The State Government is very anxious to see that all sick units closed or on the verge of being closed are revived so as to maintain industrial peace in the State. It is with that anxiety in view that the State Government has announced a package deal of concessions of deferring payment of purchase tax on raw materials and the recovery of electricity duty for a period of 12 months and from observing power-cut as and when imposed on H.T. consumers by restricting it to 25% instead of 100% . The State Government has also taken necessary steps to ensure the advance from different financial institutions and unless these institutions are ensured that the transactions of disposition of the property of the company in their favour by way of security against the advance are saved from the consequence if at all they ensure, on some winding-up order being made in one or more of the winding-up petitions, it would not be possible for the company to revive its sick unit. The result of refusing the directions as prayed for would be to render the sizable number of workers who are as many as 2,000 without employment and render them destitute which would have far reaching repercussions on a large segment of community since it would affect as many as 8,000 to 10,000 members of families of such workers.

20. In *Burton and Deakin Ltd., In re* [1977] 1 WLR 390; [1977] 1 All ER 631 (CH D), the Chancery Court held that if, on an application under section 227 relating to a solvent company, its directors placed before the court evidence that they should considered that a particular disposition falling within their powers was necessary or expedient in the interest of the company, and if the court considered that the reasons given were such as an intelligent and honest man could reasonably hold, the court would normally sanction the disposition notwithstanding the opposition of

a contributory, unless the contributory had adduced compelling evidence which proved that the disposition was likely to injure the company . It further ruled that the court would not, except in the case of proven bad faith or other exceptional circumstances, interfere with the discretion conferred on the directors by a company's articles of association at the instance of a contributory, even if a winding-up petition has been presented. We should note here that there are no objections raised by any shareholder or creditor against the directions which have been sought for. As a matter of fact, as stated above, the directors are very much necessary in the interest of keeping the company as a going concern so as to ensure further and serve further the interest of the shareholders, creditors and the workers.

21. For the reasons aforesaid, we have exercised our discretion in issuing

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