

(1985) 11 KAR CK 0030
In the Karnataka High Court
Case No : O.S.A. No. 18 of 1985

Hegde and Golay Limited

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 20-11-1985

Acts Referred:

Companies Act, 1956 — Section 433, 433 (e) 433 (f), 439 (1) (b), 441 (2)

Citation : (1987) ILR (Kar) 2673

Hon'ble Judges : Vithal Rao, J;Venkatachaliah, J

Bench : Division Bench

Advocate : Shekar Shetty, for the Appellant; S. G. Sundaraswamy and S. Ramaswamy Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

Venkatachaliah, J.—This appeal is by Hegde and Golay Limited ("Company"), a company incorporated under the Companies Act, 1956, (the "Act") and is directed against the order dated 26-7-1985 made by Bopanna, J., allowing a Creditor's winding-up petition brought by the State Bank of India (the "Bank") and ordering the winding-up of the Company on grounds that the Company is unable to pay its debts within the meaning of Section 433(e) of the Act and that it is also otherwise "Just and Equitable" that the Company be wound-up.

The Bank claimed that as on 31-3-1980 a sum of Rs. 2,93,62,036 09 (exclusive of interest accruing subsequent to 1-4-1980) stood due and owing by the Company and that the Company was in fact, and must also be deemed to be, unable to pay its debts ; and that in view of the several circumstances alleged by the Bank it was also, otherwise, just and equitable that the Company be wound-up.

This creditor's winding-up petition which was the unfortunate culmination of a greatly strained Banker Constituent relationship was pending for over 5 years.

2. We have heard Sri Shekhar Shetty, learned Counsel for the appellant. The

petitioning creditor having filed a Caveat, Sri S. G. Sundaraswamy and Sri S. Ramaswamy Iyengar, appeared for the Bank.

We have been taken through the order under appeal and the evidence on record. We are satisfied that the findings of the learned Company Judge that the petitioning-creditor has established the existence of a substantial part of the debt claimed by it and that the defence of the Company is not substantial nor in good faith do not call for interference. They are supportable even on the undisputed documentary evidence, leaving out altogether the other evidence which might admit of some debase on certain legal technicalities.

We will state the reasons that weigh with us for our inability to accept the several contentions which Sri Shekhar Shetty ably... and at great length presented at the hearing on admission.

3. We may, however, briefly set-out the circumstances leading-up to the winding-up petition :

The Company was incorporated in the year 1965 as a Private Limited Company with the object, in collaboration with Golay S.A. of Switzerland, of promoting an industry for the manufacture and sale of "Horological instruments" and "Printed Circuit-Boards". The Company has its registered offices and its factory-establishment in Bangalore. The share-capital of the Company is Rs. 50 lakhs consisting of 50 thousand shares of Rs. 100/-fully paid-up. The enterprise as conceived by the promoter Sri B.T. Shankar Hegde, the Chairman and Managing Director, envisaged the Company as the main coordinating unit and 18 ancillary units, each of which was a separate company. The shares of the Company were closely held between Sri B.T.S. Hegde and his wife Smt. Shaila S. Hegde. Between them they originally held 51 per cent of the shares and the Swiss collaborators 49 per cent. Upon the said Swiss Company having itself gone into liquidation, its share-holding also came into the hands of Sri Shankar Hegde.

The Company became a public company from 27-6-1974. The Banking relations of the company with the State Bank of India commenced in the year 1973, the Bank having in principle agreed to finance the Company's ventures and to look after its banking-requirements and transactions. The Bank provided funds, fairly on a large scale, both for the capital needs of the Company and also towards working capital. The working relationship between the Bank and the Company appeared to be (sic) fairly satisfactory till 1976, whereafter troubles started each party accusing the other of non-performance of its obligations.

Several attempts appeared to have been made to sort-out the differences ; but they failed. Matters came to a head in 1979. On 12-7-1979 (Exhibit-P. 98) the Bank called-up the accounts and demanded repayment of the sums found due under foot of the several accounts. This demand was followed-up by the statutory demand (Exhibit-P. 47) u/s 433(1)(a) of the Act. As the statutory demand was not complied with, the Bank, on 11-4-1980, filed the winding-up petition u/s 439 of the Act.

The Bank also alleged that in respect of monies advanced to the ancillary-companies similar defaults were made by those companies. Eighteen separate winding-up petitions were filed. They have been allowed by the Learned Company Judge, These orders are challenged in separate appeals before us.

4. The Bank claimed that as on 31-3-1980 the "Company" was due to the Bank under seven Cash Credit accounts and the amounts claimed are :

Sl. No.

Head of A/c

Limit sanctioned

Amount due

1.

Cash Credit A/c. No. 1

25,00,000-00

24,50,000-00

2.

Cash Credit A/c. No. 2

20,00,000-00

20,00,000-00

3.

Cash Credit A/c. No. 3

18,00,000-00

14,01,954-89

4.

Cash Credit A/c No. 4

5,00,000-00

5,00,000-00

5.

Cash Credit A/c. No. 5

25,00,000-00

25,00,000-00

6.

Cash Credit A/c. No, 6

77,00,000-00

1,68,62,365-84

7.

Cash Credit A/c. No. 7

40,00,000-00

36,47,715-36

Total

2,10,00,000-00

2,93,62,036-09

According to the Bank the limits sanctioned were secured by pronotes executed by the Company in favour of its two directors Sri B.T. Shankar Hegde and his wife Smt. Shaila S. Hegde which they, in turn, endorsed them in favour of the Bank. The Company's stocks, Book-debts, and some of its machinery had been pledged to the Bank by separate "Letters of Hypothecation". The loans were guaranteed by the two directors.

5. The Bank says that under the terms of the loan there were express conditions imposed on the Company that it should, at regular, specified intervals, submit to the Bank returns showing production, sales and other operating data ; submit periodic Stock-statements with lists of current Insurance Policies duly certified ; permit the Bank's officers to enter the Company's premises to inspect and check the correctness of these returns ; and to have a nominee of the Bank on its Board of Directors.

The Bank alleged that the Company, in open defiance of these obligations, refused to file these statements and even openly disowned its liability to so comply, refused permission to the officers of the Bank even to enter the premises of the Company ; virtually repudiated the request of the Bank to have its nominee on the Board of Directors, sold away Raw-material, spares and parts constituting part of Bank's security, opened bank-account else where without Bank's permission and diverted Company's funds.

The Bank alleged that the personal guarantees of the two directors were also of no value as the guarantors own financial worth was no where near even a fraction of the debt owing to the Bank.

6. The Company contested the Bank's claim. In a lengthy statement of objections it came out with its own tale of woe and cast serious aspersions on the probity of the conduct of the Bank in relation to its transactions with the Company. The Company alleged that the sanctioned-limits were released only in

dribblets and on Adhoc basis and the very manner in which even the sanctioned-limits were allowed to be operated on was such as to defeat the purpose of the sanction itself ; that the rate of interest of 15% charged was not permissible ; that the loans, having regard to the purpose for which they were advances, were intended to be term loans carrying lesser rates of interest at 1(sic)% and not "Cash Credits" as they were treated.

In relation to the several documents referred to and relied upon by the Bank, the Company denied due execution and accused the Bank of committing acts amounting to forgery. It was contended that signatures on all the material-documents had been obtained from Sri and Smt. Hegde, the two directors in blank-forms.

The Company categorically denied that it owed the sum of Rs. 2,93,62,036- 09 claimed by the Bank. It contended that the Company had large counter-claims towards Damages against the Bank. On these grounds it was urged that the debts were bona fide disputed. It was also urged that the debts were barred by time. It was contended that the Bank, as secured-creditor, could not maintain a winding-up petition without either giving up the security or valuing it as required by Section 9(2) of the Provincial Insolvency Act, 1920, and that the Bank having filed, subsequent to the institution of the winding-up petition, suits respecting part of the claims, the winding-up petition could not be permitted to be pursued. There were certain other defences.

7. Learned Company Judge framed 18 issues reflecting the points that arose for determination on the rival contentions.

On the side of the Bank, H.S. Bhat (P.W.1) an Officer in the Commercial and Institutional Section of the Bank and Sadashivan (P.W.2) who was Manager of the Rajajinagar Branch where the Company's Account was first opened and operated were examined.

A number of documents were produced in evidence. The documents consisted, apart from the correspondence, of the demand promissory notes which were Exhibits P-1, P-9, P-27 P-17, P-64, P-71, P-77, P-85 and P-88 ; Deeds of Hypothecation in Exhibits P-3, P-4..P-11, P-12, P-19. P-25, P-29, P-30, P-35, P-104 and P-105 ; Statement of Confirmation of Balances dated 27-5-1977 in Exhibits P-8, P-16, P-68, P-74, P-80 and P-92 ; documents styled "Revival letters" in Ext.P-6, P-7, P-14, P-15, P-21, P-69, P-70, P-71, P-81, P-82, P-83 and P-84 ; Letters of guarantee said to have been executed by the Managing Director Sri B.T. Shankar Hegde and his wife Smt. Shaila Hegde in Exhibits P-5, P-13, P-21, P-66, P-79, and P-90 ; Ledgers of the Bank in Exts P-110 and P-111; Resolutions of the Board of Directors authorising the borrowings in Exts.P-37, P-38, P-39, P-41, P 45, and P-46 ; and the Resolutions of the General Body of the Company in Ext. P-40. Several balance-sheets of the Company from the year 1974 to 1982 were also produced. The financial year of the Company was from 1st of July of each year to the 30th of June of the succeeding year. The balance-

sheets for the years 30-6-1974 to 30-6-1982 were at Exhibits P-135, P-136, P-137, P-127, P-128, P-129, P-131, P-130 and P-132 respectively.

8. On the side of the Company, Sri N. Srinivasan, a former Secretary of the "Company" was examined as R.W.I. Sri R. Doraiswamy (R.W.2) and P. Lakshminarayan (R.W.4) were examined as Experts of Valuation who spoke to Exhibits R. 4 and R 11 the Valuation Reports of the assets of the Company. Sri Prakash Chandra Setty, the Chartered Accountant of the Company gave evidence as R.W. 3. R.W. 5 was S.N. Chandrashekhar, a Deputy General Manager of the Karnataka State Financial Corporation.

Sri B. T. Shankar Hegde, Chairman and Managing Director of the Company tendered evidence as R.W.6.

A large number of documents were marked in evidence on the side of the Company.

9. On an appreciation of the evidence, the learned Company Judge, after a detailed discussion, recorded findings against the Company on all the material issues. Learned Judge elaborately considered and discussed the merits of the several defences taken by the Company. Learned Company Judge held that the Bank had established a substantial part of the debt claimed by it ; that the defence of the Company was not substantial nor bona-fide ; that in view of the several balance-sheets in which the debts had been acknowledged by the Company the debts were not barred by time and that there was no substance in the other defences urged by the Company. Learned Company Judge said :

"13.17 There may be dispute on the question of interest as to whether it should be 15% or 12%..... and therefore these amounts with 12% interest was admittedly due from HGL to the Bank. Therefore it cannot be said that there is a bona fide dispute....."

14) It should be noted that even the dispute regarding interest cropped up only after 1977 as is evident from the balance sheets of HGL. Without adding interest a sum of Rs. 2,54,50,857/- was due from HGL at on 30-6-1979 and a sum of Rs. 2.62,94,862/- was due from HGL as on 30-6-1980. Therefore, even assuming that there was a dispute regarding the rate of interest after 30-6-1977 that dispute by itself will not afford a defence to HGL for repudiating the entire debt due to the Bank....."

Learned Company Judge examined the question of solvency of the Company in much detail and held that the Company was irredeemably in debt and that it was just and equitable that a winding up order be made.

In regard to the value and worth of the guarantees furnished by Sri B.T. Shankar Hegde and Smt. Hegde, learned Company Judge noticed that out of Rs. 36.24 lakhs stated to be the wealth of Sri B.T. Shankar Hegde, R. 9.57 lakhs were the amounts due to him from the Company itself. So far as Smt. Hegde was concerned, it was noticed that out of her wealth, a sum of Rs. 2.4 lakhs

represented the value of the shares held by her in the Company and Rs. 3,19,000/-the value of other assets. The guarantors' assets were found to be nowhere near the debts guaranteed.

10. At the out-set, we must refer to the submissions of Sri Shekhar Shetty, that an appeal u/s 483 of the Act does not admit of being rejected in limine and that, unlike other First-Appeals, a Company Appeal would require to be admitted as a matter of course. He placed reliance upon *Golcha Investment (P) Ltd. Vs. Shanti Chandra Barna*, and *Shanta Genevieve Pommerat and Another Vs. Sakal Papers Private Limited and Others*, .

It is true that where a first appeal which is one on both facts and law, raises triable issues it should not be rejected in limine. In view of the serious effect our decision has on the Company we have examined the evidence on record carefully so as to reassure ourselves about the correctness of the winding up order. We had the records of the Company Court before us. As we have heard Sri Shetty at length on the various contentions raised by him, this point is more of form than of substance.

Even to the extent the contention of Sri Shetty goes, we do not think that the pronouncements of the Supreme Court in the two cases cited really support the contention. In those cases the point really turned on the specific Rule of Procedure, of the Bombay High Court viz, Rule 966-A, by which a certain class of appeals including Company-Appeals, were excluded from the operation of the Rule requiring their posting for admission.

The position is some what different here. Chapter VI-A of the High Court of Karnataka Rules, 1956, deals with Original Side Appeals Rule 6 of Chapter VI-A provides that Rules applicable to Regular Appeals and Provisions of Order XLI Rule II C.P.C. are attracted to Original Side Appeals. Pursuantly all Original Side Appeals are listed for admission. But, as stated earlier, the point made by Sri Shetty loses much of its edge as we have heard Sri Shetty and have considered the merits of his contentions.

11. Sri Shekhar Shetty urged substantially the same contentions taken by way of defence before the learned Company Judge. The contentions raised before us are these:

(a) Can a secured-creditor maintain a winding-up Petition without either giving-up the security or valuing it ?

(b) Has the Bank proved its debt of Rs. 2,93,62,036-09 or a substantial part of it ?

(c) Is the debt bonafide disputed by the Company ?

(d) Is the Company unable to pay its debt ?

Is the Company liable to be wound-up as an insolvent Company ?

Is the discretion to wind-up properly exercised ?

(e) Are the debts claimed by the Bank statute-barred ?

(f) Are the balance-sheets and Revival letters void on the ground that the authenticating Directors were themselves interested as creditors ?

(g) Is the winding-up not permissible in view of the subsequent suits filed by the Bank ?

(h) Is the Bank held to have relinquished its claims under Order II Rule 2 CrP.C ?

(i) Has the Bank, in relation to the loan-documents, committed acts of forgery and is disentitled to a winding-up order ?

(j) Should the winding-up order be refused, as all the assets are secured to the Bank and there is nothing to be administered in the winding-up ?

(k) Is the winding-up on the ground "Just and Equitable" justified ?

12. Re: Point (a) :

The contention is that the Bank which is a secured creditor cannot maintain a winding-up petition without making an election either to give-up the security or value it as required by Section 9(2) of the Provincial Insolvency Act, 1920. It is urged that by Section 529(1) of the Act, the Rules of Insolvency in Section 9(2) are attracted.

Section 9(2) of the Provincial Insolvency Act reads :

"If the petitioning creditor, is a secured creditor, he shall in his Petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or given an estimate of the value of the security. In the latter case, he may be admitted as a petitioning-creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor".

13. The contention is that a secured-creditor may stand outside insolvency; but if he brings-up a creditor's winding-up petition he must, in his petition, state that he is either willing to relinquish the security for the benefit of the body of creditors or give an estimate of the value of the security. Learned Company-Judge has taken the view, if we may say so with respect, quite rightly, that this rule of Insolvency Law is not attracted to the presentation of a winding-up petition.

14. Sri Shetty says that both in bankruptcy and winding-up the law is the same and the petitioning-creditor, if he is a secured creditor, must conform to the rule in Section 9(2). He relied upon M.K. Ranganathan and Another Vs. Government of Madras and Others, and Hansraj & Ors. -v.- Official Liquidators, Dehradun Mussorie Electric Trading Company Limited, AIR 1929 Allahabad 333. The observation in Ranganathan's case³ relied upon is this:

"Section 229 recognises the position of the secured creditor generally as outside the winding up but enables him in the event of his desiring to take the benefit of the winding up proceedings to prove his debt, to value the same and share in the distribution pro rata of the assets of the company just in the same way as he would be able to do in the case of insolvency under the Presidency Towns Insolvency Act or the Provincial Insolvency Act".

In Hansraj's case⁴ it was observed :

".....I am, therefore, of opinion that the rules contained in any Section of the Provincial Insolvency Act, the rules, if any, made under the Act and any appropriate established rules of practice in insolvency proceedings are imported into the Companies Act, unless there is something in the Companies Act itself already providing for the matter in question, or in conflict with the rule which it is proposed to import".

These observations, in our opinion, do not advance the contention of Sri Shetty any further. Section 529(1) of the "Act" attracts the rules of insolvency to winding-up in relation to "the respective rights of secured and unsecured creditors" and confines these Rules so attracted to matters that arise between these two classes of creditors. Sections 528 and 529 of the "Act" are in the chapter "Proof and Ranking of Claims" and deal with the question of proof of debts and the rights of secured and unsecured creditors. Section 529(2) itself, in so far it expressly envisages, and provides for, the contingency that if a secured-creditor proceeds to realise his security he should pay the expenses incurred by the Liquidator, by implication, rules out the construction contended for by Sri Shetty. The words "in winding-up of insolvent company" in Section 529(1) of the "Act" has obvious reference to a post winding-up stage.

The point to note is that this rule of insolvency is attracted to winding-up in the matter of proof of debts. That is after the stage of the winding-up order. A secured creditor is, u/s 439(2) of the "Act" as much a creditor entitled to present a winding up petition as any other. The law in regard to the right of a Secured Creditor to present a petition for adjudication under the Insolvency law is different from the right of a secured creditor to present a winding-up petition.

For this conclusion there is support both on principle and authority. In Palmer's Company Law, Volume-I, Twenty-third Edition, the position of law is stated thus :

"A debenture holder to whom the company is indebted in a sum presently payable can demand payment, and, if default is made, can Petition for the winding up of the company..... The holder of a mortgage debenture who applies for & winding-up order is not bound to give up his security".

(See para 46.17)

The Law is stated in Pennington's Company Law (Fourth Edition) thus :

"The creditor need not value his security in his Petition, and will be entitled to a

winding-up order although his debt is adequately covered by the value of his security.

(See page-677 F.N.)

In Buckley on the Companies Act the following passage occurs :

"The section therefore did not introduce into winding-up the bankruptcy rules as to :.....liability of secured creditor presenting Petition to value his security".

(See page-728)

The Statement in Halsbury's Laws of England, Fourth Edition, Volume VII, is this :

"The following bankruptcy rules do not apply in winding up namely those relating to.....(5) the necessity for a petitioning creditor who is a secured creditor to offer by his petition to surrender his security or to estimate its value at an amount less than his debt".

(vide para : 1277)

"A secured creditor need not prove at all, but may rely on his security. He may pursue the remedies which he possessed before the winding up. If a secured creditor of an insolvent company proves for his debt, the rules in bankruptcy applicable to proofs by secured creditors apply"

(vide para : 1299)

In Moor -v.- Anglo Italian Bank 1879(10) Ch. 681, George Jessel M.R. referred to the Rule in Bankruptcy that secured-creditor, to obtain adjudication, must give up the security or value it asserting it to be of less value than his debt, said that such a Rule had no application to winding-up and that there was also no mode of applying it to winding up. Learned Master of the Rolls observed ;

"..... That is quite true in bankruptcy to obtain adjudication, but there is no such Rules in winding-up

.....No such rule apply at all ; but the winding up is equally good whether it is obtained by a secured creditor or an unsecured creditor....."

15. Appellant's objection to the maintainability on this ground is not, therefore, one of substance at all. There is no merit in point-(a).

16. Re : POINT (b) : Has the Bank proved its debt ?

Issues 1 to 7 framed by the Learned Company Judge relate to this question.

Sri Shetty says that the Company had disputed the existence and the extent of the liability and it was up to the Bank to establish, by satisfactory evidence, the existence and extent of the debt. Sri Shetty contends that the Bank had virtually based its claim on the promissory-notes. The Chairman and Managing Director of

the Company (R.W.6) had averred that his and his wife's signatures were obtained to these and other documents, which were then in blank forms and the contents were later filled up, by the Bank. Learned Counsel says that the learned Company Judge had, virtually, upheld this contention of the Company Sri Shetty invited our attention to the following observations of the Learned Company Judge as to the unsatisfactory state of these documents.

"9.9)I have permitted the plea of forgery to be raised in the course of arguments, since, it cannot be disputed that most of these documents, were executed in one or more sets by the executants in blank form without the date or other material particulars being filled in....."

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"11.9He may be justified in saying that most of the cash credit documents were executed in blank form and the manner of execution was also highly irregular. The seals and rubber stamps might have been put either before or after the actual date of execution, the common seal would have been affixed to some documents though it was not required under law, the date of the documents were either put in rubber stamp or in ink throwing great doubt on the manner of execution of these documents."

xxx xxx xxx

"12.1 No doubt, it has been proved by the evidence of RW-6 that on 30-5-1977 he was in Bombay, but all the same Ex. P-8 bears the date 30-5-1977."

"12.2Further, in those documents there are discrepancies in the rate of interest, irregularities in the use of the common seal over-writings and variation in the shade of ink used for filling up the documents and so on and so forth".

(emphasis ours)

Sri Shekar Shetty says that despite these infirmities in the documents, Learned Company Judge, quite erroneously, relied upon the very documents for two reasons. First is what the Learned Company Judge said at Para-9.1.

"9.1) The contention of the Learned Counsel could have been upheld if at the stage of marking the documents as exhibits through PWs 1 and 2 HGL had taken any objection to the admissibility of the documents. No such objection had been raised as it is evident from the depositions of PWs 1 and 2. Therefore, the contents of the documents could be said to have been proved and it is open to this Court to rely upon these documents for a proper consideration of the competing contentions of the parties."

The second is at para-11.9. It was then observed :

"11.9)--But he and his wife knew what they were signing, they knew the contents thereof in some cases and in some cases they did not bother to know the contents. But all the same they signed them. Therefore, they are bound by

the said documents and they cannot deny the existence of the loan transactions merely on the ground that those documents did not come into existence in the proper manner on the dates mentioned therein."

Sri Shekar Shetty says that both these reasons are clearly erroneous and untenable. Counsel says that consistent with the finding that the documents on which the Bank relied were all filled-up later, there was no question of recording a finding as to the existence of the debt on the mere ground that the documents were not objected to at the time of marking.

On this aspect, the point made by Sri Shekar Shetty cannot be lightly brushed aside. It is one thing to say that these infirmities in the documents do not by themselves prove the charge of forgery, but an altogether different thing to say that the omission to object would substitute for proof of due execution. The marking of documents in evidence is distinct from admissibility and probative value. Sri Shekar Shetty may, perhaps, be right in his submission that the documents, if so vitiated, cannot shed their infirmities by reason alone that they were marked in evidence ; and that in the absence of proof of due execution, the documents cannot have any probative value.

Then again, Sri Shekar Shetty might also be right that the Accounts, which were disputed, had not also been proved in accordance with law. P.Ws. 1 and 2 had neither any personal knowledge about the transactions nor were the entries made by them or at their instance. The proper procedure, where accounts are disputed, is to call some person competent to speak to the facts to prove their general accuracy. (See: Dwaraka Doss -v- Baboo-Jankee Doss) 6 MIA 88 & (98), Section 34 of the Evidence Act makes the entries relevant. It is not sufficient merely to prove the correctness of the books. The entries themselves have to be proved unless they are admitted by the opposite party. (See: Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., . Even where such books of account are kept in the regular course of business, there has to be evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder.

17. In the present case, the Company did not accept the correctness of the accounts. It went to the length of saying that they were fraudulent. In adducing proof the Bank has not gone about the matter in a business-like manner. Sri Sundaraswamy, however, said that the transactions were spread over a several years and the entries were so numerous, that the task of proving each and every payment, with reference to vouchers and cheques, would, indeed, be a struggle with infinity. But the need for formal proof is not lessened by the difficulties of the task.

In the present case, in respect of the six accounts (the 7th was one in which the limits sanctioned were operated) there were 6 sets of loan documents. Learned Company Judge examined a few of these documents as illustrative cases and came to the conclusion that the documents could not have been executed on the

day and in the manner claimed. The contention of Sri Shetty that documents respecting which the learned Company Judge had, himself noticed these infirmities, could not be relied upon may have some force.

The second reason for placing reliance on the documents is that though the signature of both Sri Hegde and Smt. Hegde might have been obtained on blank-forms, both of them, admittedly, knew the nature, purport and purpose of the documents they were signing and that, therefore, the documents could be relied upon by the Court to sustain the Bank's claim. Sri Shetty says that the learned Company Judge was in error in taking this view.

There is, perhaps, some force in this too. So far as the documents are concerned, the defence of the Company is one of denial of due execution, though the signatures on all the documents were admitted. In those circumstances, the defence of non est factum may not be available to the Company, but, yet, the question of proof of due execution of the documents remains. If execution is denied, the party relying on the document must prove due execution, unless the circumstances themselves raise a presumption of due execution. "Execution" means completing a document by signing a document with knowledge of its content and effect. For a document to be so "completed" it must, first, be in existence. Where signature is admitted a presumption of due execution might arise under certain circumstances. But such a presumption will not survive the factual finding that what was signed was a blank-form.

18. But it must be mentioned that the two observations of the Learned Company Judge which Sri Shetty has pointed-out are amongst the several circumstances taken into account by the Learned Company Judge and are, indeed, only part of the ratiocination and must be read with their logical concomitants. Though we do not say that Sri Shetty has picked these observations and has quoted them out of their real context, it must, however, be emphasised that the Learned Company Judge's findings do not, in the ultimate analysis, wholly rest on these pieces of reasoning. If they had and the matter had ended with it, Sri Shetty might have been right.

19. But it is to be examined whether the evidence, excluding the documentary evidence to which Sri Shetty takes exception, could, taken independently, support the findings as to the existence and the extent of the debt.

In the present case, the question of the existence and extent of the debt and whether there is a bona fide dispute about it must all be resolved with reference to certain basic and admitted positions in the case. We must take note of the nature of the dispute raised and certain material admissions made by Company itself.

As to the nature of the dispute, it is relevant to advert to certain averments in the petition and the nature and kind of defence raised in relation thereto. In the petition the Bank averred that the Company was indebted to the Petitioner in a sum of Rs. 2,93,62,036-09 p. in seven different accounts and that the Company

had failed and neglected to pay the same inspite of repeated demands. It also averred that in respect of these accounts the Company had executed appropriate loan documents including, the Demand Promissory Notes and the two Directors had guaranteed the loan.

20. What is the Company's case against this ? In its statement of objections it adverted to its letter dated 18-8-1978 to the Bank. It contains what according to the Company, is a fair proposal to resolve the disputes and misunderstandings between them. What were these "fair" proposals ? In the said letter, the Company, inter-alia, proposed that the Bank should "give immediately Rs. 75 lakhs additional working capital" and to "merge into one Term Loan one Cash Credit I Loan of Rs. 25 lakhs, Cash Credit II Rs. 20 lakhs, Cash Credit III of 18 lakhs (Bridge Finance) totalling to Rs. 63 lakhs with a Moratorium of 2 years for interest and instalments - the same to be repaid in 6 annual instalments of Rs. 10 lakhs each and one final instalment falling due at the end of 24 months from the date of term loan agreement and that interest for the first two years to be paid in equal instalments along with interest for the 3rd and 4th year." It was also proposed that "the total working capital accommodation of Rs. 222 lakhs will bear interest at 12 1/2% per annum for the first two years and thereafter at normal rates." There were other areas of controversy referred to in the proposal. The points of controversy are clearly limited and identifiable in the proposals. The Company did not deny the borrowings or that substantial sums were due. Therefore, the nature, quality and scope of the defence pertain to specific and identifiable areas : that the loans should have been term-loans ; that interest charged is high ; that out of fresh sanctions substantial sums were unilaterally appropriated towards interest and principal due under other accounts ; that interest and other charges respecting the accounts of the ancillary Companies were debited to the Company on the ground that the Company was their guarantor. That apart, the Company claimed that it had substantial counter-claims by way of damages against the Bank.

21. Certain undisputed positions in the case fully support the finding of the Learned Company Judge that a substantial part of the debt was established and that the dispute of the Company is not substantial and in good faith.

They are:

- (i) That the relationship as between Banker and Constituent was not disputed;
- (ii) It was not denied that the Bank as the Company's sole banker, during the years 1973 to 1977, had advanced, from time to time, substantial sums under several accounts ;
- (iii) There are certain categoric admissions of R.W. 3, the Chartered Accountant of the Company, in regard to the transactions with the Bank and the nature and extent of the Liability in favour of the Bank ;
- (iv) The Statutory-Demand Ext. P. 47 u/s 434(1)(a) was not traversed ;

(v) While the Company disputed the correctness of the books of account of the Bank, the Company, however, did not produce its own books of account which, admittedly, the Company had correctly maintained :

(vi) The Company did not also produce the Minutes-Book of the Board of Directors. The explanation as to its loss was unsatisfactory and unacceptable ;

(vii) The Revival letters Exts. P-6, P-7, P-14, P-15, P-69, P-70, P-73, P-76, P-81, P-82, P-83 and P-84, not only acknowledge the liability but also constitute a promise to pay u/s 25(3) of the Contract Act ;

(viii) The pleadings and the evidence on the side of the Company show that the dispute was not in relation to the indebtedness ; but to its extent and pertain to certain limited areas ;

(ix) Certain admissions of R. W. 6 (Chairman of the Company) are themselves clinching ;

(x) Admittedly, the Balance-sheets of the Company as on 30-6-1977 (Ext. P. 127) showed a liability of Rs. 1,73,01,422-00 ;

(xi) that after 20-8-1979, admittedly, not a rupee was paid to the Bank.

22. The Balance Sheets of the Company (as on 30th June of each year) for the years 1974 to 1982 are at Exts. P. 135, P.136,P.137, P.127, P.128, P.129, P.131, P.130,and 132 respectively. In the respective Balance-Sheets for the years 1974 to 1977 the amounts shown as due are Rs. 46,46,818-00; Rs. 71,25,519-00, Rs. 1,22,60,285-00 and Rs. 1,73,01,422-00 respectively. There was no condition or rider added to these acknowledgments. They are categoric and unconditional.

23. Sri Shetty says that once the due execution of the primary documents viz., the pronotes is not proved, the "Balance-sheets" and "Revival letters" would not take the Bank any further. He says that the cause of action is the execution of the pronotes which, according to him, are in the nature of suit documents and if they are excluded, no action could be sustained on mere acknowledgments. He says acknowledgments merely furnish a fresh starting point for limitation and do not furnish a fresh cause of action.

Sri Sundaraswamy relying upon the decision in Hiralal and Others Vs. Badkulal and Others, urged that an acknowledgment also furnishes a fresh cause of action. A mere unilateral acknowledgment does not supply a fresh cause of action. Acknowledgment in a bilateral transaction can some times mean more than a mere acknowledgment and, under certain circumstances, yield a fresh cause of action also. But generally, unilateral acknowledgment is incapable of furnishing a fresh cause of action (See ; Jeevraj and Another Vs. Lalchand and Others, The case in Hiralal's case⁸ is a case of bilateral transaction and the latter is a case of unilateral transaction in which case there is only a fresh starting point of limitation and no fresh cause of action.

Sri Shetty is therefore right in his contention that the Balance sheets could at

best constitute acknowledgments and do not afford fresh causes of action. But this in itself would not advance his case.

24. The admissions implicit in the acknowledgment, though do not supply fresh cause of action, yet constitute evidence of the debt. Having regard to the transactions between a banker and constituent, such as those we are concerned with in the present case, the cause of action is not only the execution of the promissory notes. The promissory notes are evidence of, and some security for, the debt. The cause of action is the lending and borrowing on cash-credit accounts. The "cash credit" is an arrangement under which a banker allows the constituent to borrow money up to certain limits. This is a favoured and popular mode of borrowing in which commercial and industrial borrowers have the advantage that they need not borrow the whole of the amount and pay interest on the whole amount ; but can draw only such amounts as are required from time to time. They can put back any surplus amount to the banker. The amounts borrowed, subject to any specific terms to the contrary, are liable to be paid back by the borrowers when the account is called-up

25. In creditor's winding-up petition, the creditor must show a just debt due from the Company. The winding-up petition is not in the nature of a suit. Though such petition is a mode of recovery of a just debt, yet, the proceedings are not in the nature of a suit. In *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 the contention based on the Explanation to Section 3 of the Limitation Act, 1908, was this :

".... An argument however was addressed to their Lordships, founded upon the Explanation, to this effect : That the Explanation shows by its concluding sentence that a claim against a Company in compulsory liquidation (even though made by a proceeding not instituted by the presentation of a plaint) is considered to be a "suit instituted" within those words in Section 3, and that a claim similarly made by or on behalf of such a company must necessarily, or may similarly, be treated as a "suit instituted" within the section."

Repelling this contention, the Judicial Committee said :

" Their Lordships do not accept the view that a claim against such a company (not made by a proceeding instituted by the presentation of a plaint) is by virtue of the explanation to be considered to be a "suit instituted" within the section--"

To show the debt, the creditor, in a winding-up petition, may well rely upon the admissions implicit in an acknowledgment of the debt. Such an admission is implicit in every acknowledgment. In *Maniram Seth v. Seth Rupchand* ILR 33 Cal. 1047 the Judicial Committee observed :

" -- An unconditional acknowledgment has always been held to imply a promise to pay, because that is the natural inference, if nothing is said to the contrary. It is what every good honest man would mean to do "

26. But even if a higher standard of proof of the existence and extent of the debt

is necessary, we think even that is supplied by the Revival letters, Exts.P.6, P.7, P.14, P.15, P.21 P.69, P.70, P.75, P.76, P.81, P.82, P.83 and P.84, which, having regard to their terms, are not merely acknowledgments but constitute a fresh promise to pay within the meaning of Section 25(3) of the Contract Act.

All these "Revival letters" are in similar terms. Exhibit-P.6, for instance reads :

" With reference to my /our Cash Credit Account with you secured by a Demand Promissory Notice dated 14-1-76 for Rs. 5,00,000/- with interest made by me/us in favour of Sri B.T. Shanker Hegde & Smt. Shila S. Hegde and endorsed by the payees to you I/We acknowledge for the purpose of Section 18 of the Indian Limitation Act, 1963 and any like limitation law in order to preclude any question of limitation law that I am/we are liable to you for payment of the said promissory Note with interest in respect of all present and future indebtedness and liabilities secured thereby which Promissory Note is to remain in force with all relative securities agreements and obligations."

In *Chasemore -v.- Turner* (1874)10 LR QB 500 the letter from the defendant which was passed on at a time the claim was statute barred was to the effect ;

"The old account between us which has been standing over so long as not escaped our memory, and as soon as we can get our affairs arranged we will see you are paid ; perhaps, in the meantime, you will let your clerk send rue an account of how it stands."

This was held to constitute an express promise to pay. Pollock, B observed :

"On the whole, it seems to me that this document fairly and reasonably points to a promise made by the defendant to pay after they have had the opportunity of going through their accounts and arranging their affairs, and so forth. It was a matter in their own hands. A reasonable time having elapsed the promise is sufficient to take the case out of the statute."

If the language in the document can fairly and reasonably point to a promise by the debtor to pay the amount, it will be construed as a promise to pay within the meaning of Section 25(3) of the Contract Act.

27. However, Sri Shetty said that the revival letters also partake of the same vitiating elements generally noticed in the documents. Those vitiating factors are not manifest in these set of documents Indeed the observation of the learned Judge indicates he had excluded these documents from the category of those in respect of which he had observed the infirmities (see end of the sub-para 12.4). The claim of R.W.6 was that they were signed when they were all blank. There is no finding that it is so. The persons signing are not ignorant or illiterate persons. They are persons well versed and experienced in business and corporate management. In such cases, if signatures are admitted a presumption of due execution arises.

But Sri Shetty says, that the Bank had admitted that the Revival letters of

5-12-1978 had not been signed and returned to them. This admission is sought to be read in the following portions of the Bank's letter, Ext.P.97, dated 31-3-1979 :

"8. Again your company have not also forwarded to us so far, despite reminders, copies of the resolution passed by your Board relating to extended drawings in your Cash Credit accounts and execution of revival letters on 5-12-1978. We should request you to kindly do the needful in this regard early."

This is sought to be read as the Bank saying that the Revival letters of 5-12-1978 had not been returned at all. What the Bank was complaining about was that inspite of the execution of the Revival letters on 5-12-1978, the corresponding resolutions of the Board had not been forwarded to it by the Company. If the Company had not sent the Revival letters, advertence to the date of their execution as 5-12-1978 in Ext. P.97 would be unmeaning.

28. In Re: Tweeds Garages Ltd. 1962(1) All. ER 121 referring to the question whether it was necessary for the creditor to prove the precise quantum of the debt, it was observed :

".... Moreover, it seems to me that it would in many cases be quite unjust to refuse a winding-up order to a petitioner who is admittedly owed moneys which have not been paid merely because there is a dispute as to the precise amount owing. In my judgment, where there is no doubt (and there is none here) that the petitioner is a creditor for a sum which would otherwise entitle him to a winding-up order, a dispute as to the precise sum which is owed to him is not of itself a sufficient answer to his petition."

This statement was approved by the Supreme Court in Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd.,

"21.....Where however there is no doubt that the company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the Court will make a winding up order without requiring the creditor to quantify the debt precisely (See Re. Tweeds Garages Ltd. 1962 Ch. 406)...."

29. We have earlier referred to the areas of the dispute. Company filed a statement showing, what according to the Company, was the net effective working capital released. As against the sum of Rs. 2 crores and 93 lakhs and odd rupees claimed by the Bank, Company said Rs. 58.52 lakhs were to be treated as term-loans; the debit of interest of Rs. 145.62 had had to be reversed; and that Rs. 18.14 lakhs which according to the Company were unilateral debits had had also to be reversed. These sums aggregate to Rs. 222.28 lakhs (vide statement filed before the learned Company Judge on 14-12-1982). Apart altogether from the tenability of these claims, even according to that statement the existence of the debts of Rs. 58.52 lakhs plus Rs. 71.34 lakhs, in all Rs. 129.86 lakhs, would, virtually, be undisputed.

30. R.W.3, H. Prakashchandra Shetty, the Chartered Accountant of the Company

says :

".... In the course of the audit of the books of Hegde & Golay, I came to know that this Company had borrowed large sums of money from the State Bank of India. In the course of my audit I satiated myself that the debits shown in the Company's books regarding the principal and interest due to State Bank of India were in accordance with the documents executed by Hegde and Golay in favour of State Bank of India --..... Similarly, in any of the Balance Sheets prepared by my firm it has not been shown that the excessive sums were charged as advances from the State Bank. According to me, the amounts shown as due to State Bank in the Balance sheets namely. Exs. P. 123 and P. 127 to P 131 are correct....."

Sri B.T. Shankar Hegde (R.W. 6) says ;

"My company has maintained regular books of accounts regarding its business. Our books of accounts reflect faithfully and correctly the receipts and expenses pertaining to our business.

It also shows the amounts What the SBI says that it had lent, but it is not correct. The moneys appearing to have been paid by SBI also find a place in our books. The debit balance of the company accord with the debit balance against us in the books of the bank up to 1976. Subsequent to 1976 the debits in our books accord with the debit Balances against us in the bank, but there have been differences regarding interest payable."

As to the reasons for non -payment, R.W. 6 alleges :

"..... I have not paid that amount found to be due in Ext. P. 127 since my stand is that I have been cheated by the SBI and on the basis of the documents executed on blank forms they are fastening the liability on me"

31. In these facts and circumstances, a substantial part of the debit claimed by the Bank must be held to have been established. We, accordingly, hold that there is no merit in Point (b).

32. Re. POINT (c) Is the debt bona-fide disputed?

Sri Shetty's submission on the point is four-fold :

The first is that there was a Substantial dispute as to the rates of interest charged and appropriations made out of the sanctioned limits.

The second point is that, at all events, having regard to the nature and purpose of the advance, the sums advanced were not expected to be paid on demand and that the alleged inability to pay a debt must be viewed in the background of the nature of the debt and the purpose for which it was advanced. It was, he said, never contemplated by the parties that the advances were be amenable to repayment on demand.

The third is that the Company had large counter claims against the Bank for

damages.

The fourth is that the debts are time-barred and such a time-barred debt is a bona fide disputed debt. The fourth contention is the subject of Points (e) and (f) and will be separately dealt with.

33. In regard to the propriety and permissibility of the rates of interest charged, the Chartered Accountant of the Company himself says : (R.W. 3)

".....If, interest had been charged in excess of what was lawfully stipulated by the Bank it is for the Auditors to point out that excess interest had been charged on the outstanding due from the Company. I have not noted in any of the audit report that interest charged by the S.B.I, is in excess of the interest stipulated under the various transactions..... According to me, as on 31-3-1980 the Company should have debited Rs. 39.11 lakhs towards interest due to State Bank. For the year ended 30-6-81 the Company should have been debited interest at the rate of 15% on the loan amount of Rs. 3 and odd crores of rupees."

There is thus no merit in the first part of the first contention.

The second part is as to the unilateral appropriations. It is no doubt true that as higher limits were sanctioned from time to time, the sanctioned amounts were wholly or partially applied and appropriated towards interest accrued due in other accounts and in some cases transferred to other accounts where the Company had over-drawn. In some cases sums were appropriated by the Bank towards the liability of the Ancillary Companies whose loans the Company had guaranteed. It may be that for these transfers and appropriations there were no express consent or authority from the Company. As to the permissibility of such appropriations as a matter of regular banking practice R.W. 3 (Company's Chartered Accountant) says :

".....When further limits were sanctioned the excess debits were regularised by book adjustment. This is a very normal banking practice. The company had not taken any objection to such regularisation."

The second point is that the loans were not payable on demand. We have held in para 24 supra that sums due under a cash-credit are repayable when the account is called up.

The third contention on the point is that there were substantial counter-claims by the Company against the Bank for damages. These claims had not crystallised into decrees. The counter-claim actually urged in the suit was about 15 lakhs. A claim for damages for breach of contract is not a claim for a sum presently due and cannot be set against the dues to the Bank (see Union of India (UOI) Vs. Raman Iron Foundry,

34. The dispute raised by the Company must be in good faith and must be substantial. The defence must be one which is likely to succeed in point of law.

The Company must also adduce prima-facie proof of the facts on which the defence depends. By these standards the defence of the Company cannot be said to be either in good faith or one of substance.

35. There is no substance in the contention of the appellant-Company on Point (e).

Re : POINT (d) :

(1) Is the Company unable to pay its debt within the meaning of Section 433(e) ?

(2) Is the Company liable to be wound-up as an insolvent Company ?

(3) Is the discretion to wind-up properly exercised ?

We have held that the existence of debt is established and that the dispute in regard to a substantial part of it cannot be said to be in good faith or one of substance.

In order to show that the Company is unable to pay its debts within the meaning of Section 433(e) the Bank relies upon Ext. P. 47, the statutory demand, u/s 434(a). The Company has not traversed the notice in reply nor has it complied with it. The Bank says that the Company must be deemed to be unable to pay debts within the meaning of Section 433(e) of the Act.

Sri Shetty contends that on the Bank's own showing it was a "secured-creditor" and that having regard to the very scheme of Section 434(1)(a) of the Act, a secured creditor cannot invoke, and have the benefit of, Section 434(1)(a), Sri Shetty says that Section 434(1)(a) of the Act -- to the extent it enables compliance with the Statutory-demand by the Company furnishing security to the reasonable satisfaction of the creditor -- is available only to an un-secured creditor as the provisions in it as to the furnishment of security would be wholly inappropriate in the case of a "secured creditor". This point was not raised before the learned Company Judge. However, we have examined it for whatever it is worth. If this construction commended by Sri Shetty is correct, then a "secured creditor" cannot have the benefit of Section 434(1)(a); But, if a "secured-creditor" is, otherwise, entitled to invoke 434(1)(a) then the provision in it as to furnishment of security would, in his case, be inapplicable and this mode of compliance with the statutory-demand would be unavailable to the Company.

Section 439(1)(b) says "any creditor" can present a winding-up petition. Sub-section (2) of Section 439 says that a "secured-creditor" is deemed to be a "creditor" within the meaning of Section 439(1)(b). Having regard to the scheme of Part-VII it does not appear logical that the expression "creditor" in Section 434(1)(a) should be given a meaning different from what it connotes in Section 439.

In the case of the secured-creditor, therefore, the only way compliance could be shown to the statutory-demand is otherwise than by offering security. Indeed, winding-up petition is one of the means of recovery of a just debt. It is a mode of

equitable execution. Therefore, the Company must, in view of non-compliance with Ex.P.47 be deemed to be unable to pay its debts within the meaning of Section 433(e) of the Act.

35. Even assuming that a "secured-creditor" does not have the benefit of, and is out-side, Section 434(1)(a), the inability of the Company to pay its debts could be established independently of the deeming provision. The creditor can establish such inability to pay debts on the part of the Company by evidence aliunde. The Bank, in our opinion, has so established.

36. R.W.3, the Chartered Accountant of the Company says :

"The Company did not have liquid cash as on 30-6-1981 to repay the principal amount and the interest due thereon."

This position of the Company for the earlier year, having regard to its balance-sheet, is no better.

In this context and for the purposes of Section 433(e) the kinds of insolvency, relevant to winding-up, apparently, are two. Either of them satisfies the requirements of Section 433(e). One is "commercial insolvency" where the company is unable to meet the current demands upon it. A presumption of this kind of insolvency arises u/s 434(1)(a). In such a case it is not necessary for the creditor to show that the company is insolvent in a larger or more comprehensive sense. If the company is unable to meet its current-demands, its wealth, both actual or potential, would be of no avail to avert the consequences of such inability to pay debts. In this kind of insolvency the Company could be both wealthy and insolvent at the same time.

Then there is a second kind of insolvency, also relevant to winding-up, envisaged in Section 434(1)(c) of the Act, The standard is some what different here. The Company is unable to pay its debts in the sense that its assets are insufficient to meet its liabilities taking into account its contingent and prospective liabilities.

As to the first kind of insolvency Buckley on the Companies Act (XIV Edition) says ;

"Commercial insolvency. The particular indications of insolvency mentioned in paras (a), (b) and (c) are all instances of Commercial insolvency, that is of the company being unable to meet current demands upon it. In such a case it is useless to say that if its assets are realised there will be ample to pay twenty shillings in the pound ; this is not the test. A company may be at the same time insolvent and wealthy. It may have wealth locked up in investments not presently realisable ; but although this be so, yet if it have not assets available to meet its current liabilities it is commercially insolvent and may be wound up."

Referring to the nature of the second kind of insolvency contemplated by provision analogous to Section 433(1)(c) learned Author says:

"Paragraph (d), however, now recognises and, in conjunction with Section

222(e), expressly authorises a winding-up in the case of another kind of insolvency ; that is to say, if the existing and probable assets will be insufficient to meet the liabilities, taking into account not only liabilities presently due but also those which are contingent and prospective....."

37. Learned Company Judge has gone into this question elaborately and has, in substance, held that both the kinds of insolvency are established in this case. We are in respectful agreement fully with the learned Company Judge that the first kind of insolvency is established viz., the Company is unable to meet its current liabilities and current demands upon it including the debts; owing to the Bank. This is sufficient for the purposes of this case.

However, as regards the second kind of insolvency which takes into account larger issues of the financial stability of the Company the matter may, perhaps, bear further examination. We do not want to be understood to say that the finding of the learned Company Judge on this aspect is unsupportable. After a full consideration, the Bank may be entitled to have that finding also affirmed. But it is not necessary to go into these questions because, for the purposes of Section 433(e) of the "Act" it is not accessory to establish an insolvency in that larger sense.

38. We may, however, notice the case of the Company pertaining to its solvency. It has relied upon the Valuation-Reports Exhibits R-4 and R-11 spoken to by R.W-2 and R. W 4. The value of the Company's assets in 1980 if claimed to be Rs. 6.14 Crores. In reaching this figure the valuers have revalued and taken the appreciated value of the lands and buildings ; taken appreciated value of machinery and equipment at twice the cost of acquisition ; taken a sum of Rs. 50 lakhs as the capital-value of "Technology" in the form of "Trained Personnel" ; added 26 lakhs as the capital-value of "imported know-how" and "technology" ; and taken, further, a sum of Rs. 50 lakhs as potential-value of the import licences.

39. The Bank seriously disputes the correctness of this valuation both on principle and on facts. So far as the plant and machinery are concerned the Bank says that the valuers not only did not make requisite allowances for depreciation and obsolescence over the years, but, surprisingly, have also proceeded to estimate the value at double the cost of acquisition. So far as the value of the technology in the form of "trained-personnel" is concerned; Bank disputes the correctness of the addition of 50 lakhs on this account. A similar objection is taken to the addition of 26 lakhs towards the value or "imported Know-how" and "Technology" ; and of Rs. 50 lakhs towards prospective or potential gain from the exploitation of the Import Licences. Learned Company Judge has upheld these objections of the Bank to the valuation-reports.

40. The Bank also disputes the value of stock as on 30-4-1980 at Rs. 2,28,49,000/-. The existence of these items itself is disputed by the Bank. The method of valuation is also questioned. In regard to this item, learned Judge has

carefully examined the tenability of the Valuers' procedure and their dependence principally on the "Bin Cards"; without a careful corroborative examination and scrutiny of the "Stock-Registers". The learned Judge has pointed out certain basic infirmities in the valuation reports in this behalf. The items disputed by the Bank themselves account for more than half the valuation.

41. But it appears to us that it is not necessary to examine the question whether the Company is insolvent in this larger sense, which in turn depends on the correctness of the Valuation Reports Exhibits R- 4 and R-11. It is unnecessary to be gone into it as, even assuming that the Company was not insolvent in the larger sense, the finding that it was unable to repay its current liabilities and demands on which we entirely agree with the Learned Company Judge - would itself be sufficient to support the conclusion that the Company is unable to pay its debts. We, therefore, find no substance in the challenge to this finding.

The third point urged is that even if the existence of the debt and inability on the part of the Company are both established, a winding-up order is not made as a matter of course, unless the Court is satisfied that, having regard to all the circumstances, it is a proper exercise of discretion to make an order of winding-up. Sri Shetty says that an order of winding-up is an order of last resort and should not be made except with great circumspection and upon compelling considerations.

That a winding-up is a serious matter can not be gainsaid. The proposition may really mean nothing more than that, in view of its inexorable finality, the Court would require to be satisfied as to the existence of the conditions on which alone winding-up could be ordered. But the proposition that it is not sufficient for the petitioning-creditor to show the existence of the debt and the inability of the Company to pay the debt and that the creditor must go further and show something more, is beset with certain assumptive errors. The idea that there is a general undefined discretionary jurisdiction to refuse winding-up even where both the debt and the liability to pay are proved, is erroneous. The concept of such discretion appears more known than clearly understood. The area of discretion to refuse a winding-up in such cases is not an unchartered one.

The source of this discretion in the Court is the opening expression. "A company may be wound-up by the Court" occurring in Section 433 of the "Act" and its permissive-- not compelling-language. The circumstances in which winding-up is refused even where debt is proved and inability to pay established are well-recognized and constitute well-recognized exceptions. Apart from these well recognised exceptions, there appears to be no general discretion to refuse winding-up. If the Company is unable to pay its debts it, prima facie, raises a presumption of commercial insolvency. Therefore, the proof of the debt and of the inability on the part of the Company to pay the debt should, prima facie, entitle the creditor, "as between himself and the company" to a winding-up order *ex debito justitiae*. The expression "as between the creditor and the Company" would only mean that the matter is not conclusive as against the other creditors.

Their views on the matter, if offered, would have to be taken into account before a winding-up order is made. If a large body of other creditors opposes the winding-up that would be a relevant circumstance. Referring to this area of the operation of discretion to refuse a winding-up order, Palmer (23rd Edition) says :

"A basic question arises, does the Court have a discretion u/s 222(e) and 223 ? The general rule is that where a petitioning creditor can prove that his debt is unpaid and the company is insolvent it is the duty of the Court to direct a winding up and the creditor is entitled to an order *ex debito justitiae*. On the other hand, it has been said that the latter is a phrase which means no more than that in accordance with settled practice the Court can only exercise its discretion in one way namely by granting the order. These statements can be reconciled on the basis that although the matter is "a complete and unfettered judicial discretion" the discretion is exercised in accordance with certain established principles, but the principles do not bind the Court in an all or nothing way. In accordance with these principles the creditor has a *prima facie* right to a winding-up order which is subject to certain exceptions."

In accordance with these principles the creditor has a, *prima facie*, right to a winding-up order subject of course to certain well-recognized exceptions.

Referring to the limited scope of the discretion to refuse winding-up and exceptional considerations under which an order could be denied, Palmer says :

- (1) Where the petitioner's debt is less than ? 200 ;
- (2) the debt is bona fide disputed by the company ;
- (3) the company has paid or tendered payment of the petitioner's debt ;
- (4) the winding up is opposed by other creditors ; and
- (5) the company is in the process of being wound up voluntarily."

Having regard to these principles, we do not think that there is some general expansive discretionary jurisdiction to deny a winding-up order if the existence of a debt and inability to pay are both established. None of the recognised exceptions is attracted in the present case.

42. Therefore, we find no substance in contention (d) either.

43. Re. Point (e). The acknowledgment of liability contained in the balance-sheet of a company furnishes a fresh starting point of limitation. It is not necessary, as the law stands in India, that the acknowledgment should be addressed and communicated to the creditor.

We are in respectful agreement with the view taken by the Learned Company Judge on the point. The position of law that an acknowledgment of debts in the balance-sheets of a Company does furnish fresh starting point of limitation is too well settled to need any elaborate discussion. (See : *Jones-v.-Bellegrove Properties Ltd.* 1949(1) All. ER 498 In *Re. Campania de Electricidad* 1980 Ch. Dn.

146, Babulal Rukmanand Vs. Official Liquidator, Bharatpur Oil Mills (Private) Ltd., and Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff, We see no substance in this contention either).

43(a), But Sri. Shetty said that the debts should also be shown to be in time as on the date of passing of the order of winding-up and not merely on the date of filing of the winding-up petition. Learned Company Judge did not accept this contention. It was held that if the debt is in time, as on the date of presentation of the winding-up petition, there would be no impediment to the order of winding-up even if in the interregnum, the period of limitation for a suit for recovery of the debt runs out. The contention of the Bank is, of course, that, having regard to the balance-sheets and the suits filed by the Bank, a suit on the debt would not be statute-barred even as on the date of the winding-up order. On the legal position the Bank urges that it would be sufficient if the debt is alive as on the date of the filing of the petition.

44. Sri Shetty, relied on In the matter of In Re: Chanbali Steamer Service Co., Ltd. (In Liquidation), (In Liquidation) and in J.A. Dixit Vs. Official Liquidator, . They are not cases where petitioning-creditor's debt was alive on the date of presentation of winding-up petition but was statute-barred as on the date of making of the winding-up order.

The General Principle of adjudication is that in legal-proceedings matters are decided on the basis of sights and obligations of the parties as on the date of the commencement of the list ; though, however, it is open to the Court to, take note of subsequent events both of fact and law to mould relief. Supreme Court in Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others, held:

"The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when present cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation."

Again in Mohan Lal and Another Vs. Grain Chamber Ltd., Muzaffarnagar and Others, the Supreme Court observed :

".....Primarily, the circumstances existing as at the date of the petition must be taken into consideration for determining whether a case is made out for holding that it is just and equitable that the Company should be wound-up"

Again in Rameshwar and Others Vs. Jot Ram and Another, the Supreme Court observed :

"It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his

right. The Court's procedural delays cannot deprive him of legal justice or rights crystallised in the initial cause of action."

It is also to be pointed out that Section 441(2) relates the winding-up back to the date of filing of the winding-up petition.

45. Sri Shetty, however, invited our attention to the following passages in Palmer's Company Law (22nd Edition). Page 1166:

"A statute barred debt does not constitute a liability of the company for the purpose of winding-up."

"A winding-up order stops the limitation from running in the Company's favour so that a statute barred debt on the date of the order can be proved for."

These passages are really not on the point. What was referred to there was that if a debt was in time as on the date of the winding-up order, it could be proved in winding-up. The question here is whether a winding-up order could be made on a debt alive on the date of filing of the petition and not on the date of the order. A secured-creditor who moves for winding-up may not prove his debt in the winding-up of the Company. These are matters which arise at the post-winding-up stage. The two propositions are different. Indeed, the principle is "Nunc Pro Tunc", i.e., "now for then", if an order could have been made as on the date of the winding-up petition, the delay in the proceedings should not operate to deny the petitioner, the relief, on account of the delays in the procedure. Accordingly, we hold that there is no substance in contention (d) either.

46. POINT (f) :

This contention raises also a point bearing on the question of limitation.

Shri Shetty, contended that even if the acknowledgments in the balance-sheets could in law furnish a fresh starting point of limitation and the Revival Letters bring about a fresh cause of action, the balance-sheets and the Revival Letters in these cases are vitiated by a clear infirmity.

His contention is that the two directors i.e., B.T. Shanker Hegde and Smt. Shaila S. Hegde, who signed the balance-sheets and Revival Letters were themselves creditors of the Company respecting the same debts and the directors held a fiduciary capacity in relation to the Company and that in acknowledging and reviving the debts they were virtually acknowledging and reviving the debts of the Company in their own favour. Sri Shetty contends that in such a case, the acknowledgments and revivals are void, because of the conflict between duty and interest. He contends that even if the acknowledgments and revivals are other-wise valid, the circumstances that in respect of the same transaction the directors who authenticated the Balance-sheets and signed the Revival Letter are themselves in the position of creditors of the Company would vitiate the transactions.

In support of the proposition that the Directors were themselves in the position

of creditors of the Company, learned Counsel recalled that the Company had executed the promissory-notes in favour of the two directors who had, in turn, endorsed them in favour of the Bank. This, according to Shri Shetty, put the Directors in the position of creditors in relation to the Company in respect of the transaction. Sri Shetty relied upon two decisions: A.C.K. Krishnaswami Vs. Stressed Concrete Constructions Pvt. Ltd., and in Babulal Rukmanand -v.- Official Liquidator Bharatpur Oil Mills Pvt. Ltd.

47. These cases recognise a rule which Maugham, J , enunciated in *Re: Coliseum (Barrow) Limited* 1930(2) Ch. 44 and was restated in *Transplanters" Case* 1958 (2) All ER 711. The principle is that a director of a Company in his fiduciary capacity, as such director can not give to himself an acknowledgment of debt owing to him by the Company.

But, as held by the learned Company Judge the facts in the present case do not at all attract this principle. If the substance of the transaction is had in mind, Sri B.T. Shankar Hegde and his wife who authenticated the balance-sheets could, by no means, be called the creditors of the Company in respect of the same transaction. At the instance of the Bank the promissory notes were, first, executed by the Company in favour of the two Directors, who, in turn, endorsed them in favour of the Bank so as also to fasten the liability on the directors. The liability of the Company and the directors were joint and several. In fact, the two Directors by authenticating the balance sheets were not renewing and acknowledging any debt owing to themselves. If the substance of the transaction is what guides the matter, it becomes clear that the principle could have no application to this case.

Even so, the vitiating element could be in relation to, and to the extent of, the acknowledgment given by the Directors to themselves but can not affect a third-party like the Bank in relation to its rights as against the Company. The sweep of the principle stops-short where third-party rights or interests are concerned. We find really no substance in this point either.

48. Points (g) and (h) : *Re : Effect of filing of suits.*

Sri Shekhar Shetty stated that the Bank had, subsequent to the presentation of the winding-up petition, filed three suits in respect of portions of the debts on which the winding-up petition rests, and, therefore, the Bank should not be allowed to proceed with the winding-up petition and should be required to have the claims decided in the suits. Winding-up, Counsel says, is no substitute for the ordinary procedure for recovery of debts.

Secondly, it is urged that though liabilities are shown under several accounts, in substance all the accounts constituted one integrated transaction and that the Bank, in confining the suits only to a part of the whole-claim, bad split-up the cause of action and in respect of the rest of the claim, not included in the first-suit, there was a relinquishment under Order II Rule 2 of the Code of Civil Procedure. In view of the relinquishment, says Counsel, the debts to the extent

not included in the first-suit were not recoverable and no winding-up order could be based on such debt.

Learned Company Judge has rejected this defence. We respectfully agree with the view taken.

49. It is no doubt true that the Bank had, subsequent to filing of winding-up petition, instituted three suits. Sri Shekhar Shetty stated that the claim in the first suit was Rs.14 lakhs and that the Company would, if so directed, deposit this amount under protest, subject to the result of the suit. So far as the other two suits are concerned, Sri Shekhar Shetty's contention is that the claims in the subsequent suits and the entire rest of the Bank's claim were hit-at by Order II Rule 2 of the Code of Civil Procedure. Incur opinion, the sanctions of limits from time to time were distinct transactions giving rise to distinct causes of action. In some cases the sanctioned limits were operated, wholly or partially, in one account. In other cases the sanctioned limits were operated upon in one current account. That would not make the limits, sanctioned from time to time, one transaction.

The pendency of a suit is no bar to the maintainability of a winding-up petition. If the Company fails to show that the debt is bona-fide disputed it would not render the claim any the more disputed or any the less just, merely because the Creditor is driven to file suits for its recovery. Though a winding-up petition is a mode for recovery of a Just debt, (See) *Harinagar Sugar Mills Ltd. Vs. M.W. Pradhan*, , *Harinagar Sugar Mills Co. Ltd. v. M.W. Pradhan* (Now *G. V. Dalvi*) ; the proceedings in winding-up do not partake of the nature of a suit (See *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 Therefore, incidents of Order II Rule 2 C.P.C. are not attracted.

We see no substance in the contention in (g) and (h).

50. Re. Point (i)

The next contention is that the Bank had virtually forged material documents and that this conduct on the part of the Bank would disentitle it to the equitable relief of winding-up. Sri Shetty relied upon the pronouncement in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, to say that filling-up a signed blank-paper to make it a document amounts to making a false document and that even if a part of the document is so got up with a view to supporting any claim or title, then the ingredients of the offence of forgery are spelled out.

Learned Company Judge has examined this contention in some detail. Sri Shetty urged that the findings of the Learned Company Judge to the effect that most of these documents had been obtained in blank-forms would support his contention and that the Court should not act in aid of a party which had not come with clean hands. Though the Learned Judge observed that many of the documents did suffer from infirmities and imperfections of this kind he held that Sri B.T. Shankar Hegde and Smt. Shaila S. Hegde knew full well the nature of the documents. In

regard to this matter Learned Company Judge says this State Bank of India Vs. Hegde and Golay Limited, :

"In the instant case, when PWs 1 and 2 were examined no suggestion was put to them that the persons who got the documents in question executed by RW-6 and his wife committed forgery. It has come in the evidence of the Chartered Accountant RW-4 that copies of all these documents were with HGL when they audited the accounts of HGL. It has also come in the evidence of RW-1 that the documents executed during his time were executed by Sri and Smt Hegde in favour of the Bank and they were so executed in the normal course of business and though he had noticed the absence of dates in some documents, he had brought this to their notice.

.....

If the nature of cash credit transactions are understood in their proper perspective, in my view, despite the discrepancies in the various documents pointed out to me by the Learned Counsel, they have come into existence in the regular course of banking business and therefore, the plea of forgery must fail.

.....

The plea of forgery is also not sustainable since in my view HGL has ratified and adopted the accounts of the Bank regarding transactions in question by its own conduct as reflected in the balance sheets of HGL and the revival letters Exs. P-6, 7, 14, 15, 69,70 etc."

Sri Sundaraswamy says that the observations of the Company Judge that some of the documents were signed when they were blank -- Sri Sundaraswamy would not call them findings -- even to the extent they go, are not justified and that even if on account of insufficiency of evidence of due execution, some doubt is entertained, no charge of making of false documents could be placed at the door of Bank. He said that due execution of a document could be established with reference to the very contents of the documents and other intrinsic circumstances. Sri Sundaraswamy referred to the admission of RW-3 (Chartered Accountant of the Company) that copies of all these documents were with the Company and were available for Auditor's inspection.

In our opinion, this question, limited as it is to certain documents relied upon by the Bank, does not affect the inferences as to the existence and extent of the debt compelled by other indisputable material on record. We are satisfied as to the correctness of the finding as to the indebtedness of the Company to the Bank even, independently of these disputed documents.

51. In this view of the matter, it is not necessary to consider as to the effect of the observations of the Learned Company Judge as to certain infirmities in some of the documents.

52. Point (i)

The argument is that all the assets of the Company are secured to the Bank and that a winding up order ; in the circumstances, will not do good to any-body and will be to no purpose as there is virtually nothing to be administered in winding up. It is urged that the Company-Court should not take up on itself the administration of the mere equity of redemption when even on the Creditor's own showing the debts far out-weigh the value of the assets. Sri Shetty relied upon certain observations in *Karnatak Vegetable Oils and Refineries Ltd. Vs. Madras Industrial Investment Corporation Ltd. and Another*, There the Division Bench of the Madras High Court recalled the observations of Fry J. in "*In re Great Western (Forest of Dean) Coal Consumers' Co.*" (1882) 21 Ch. D. 769 (B), which are to this effect :

"I come to the same conclusion on another ground, viz., that, as matters now stand, it appears to me the petitioners would gain nothing if the company were wound up, -I mean, nothing beyond the realisation of their securities. In the winding up I should have to administer only the equity of redemption of the company's property after satisfying the securities. Now, so far as I can learn from the evidence before me, all the substantial property of the company is included either in the first or the second mortgage, or in the further charge, and whatever is not included in them is swept up by the debentures. I think, therefore, that at the present time, no practical good can result from a winding up order".

From the order of the Company Judge, apparently, this point was not urged before him. But it appears to us that the position is really different on the facts.

First, even a creditor who has full security for his debt can move for winding-up though he may not seek to prove his debt in winding-up: (See-Pennington, 4th Edition,)

Secondly, all the assets of the Company were not secured to the Bank. Karnataka State Financial Corporation was another secured creditor. It had supported the winding-up RW-3 refers to the existence of other debts to the extent of Rs. 74 lakhs.

Thirdly, the case, of the Bank is that the value of the security had itself greatly denuded over the years and its debt in a large measure remained unsecured.

The principle to which Sri Shetty appeals cannot, in our opinion, be invoked in the present case.

We, therefore, see no substance in the point urged.

53. Point (k) ; Re : "just and "Equitable" Ground

The next contention was that whether the finding of the Learned Company Judge on the "just and equitable" ground is justified. Learned Company Judge - has examined this matter at considerable length and has come to the conclusion that under the circumstances it is also "just and equitable" that the Company be

wound-up. Learned Judge observed :

"20.3-For the last 15 years HGL had not declared any dividends.There is no evidence to show that the working of HGL on this date are in any way better. The balance sheet discloses that he (i.e, Sri B.T. Shankar Hegde) had no formal education and technically not qualified in any trade. The company with whom he had collaboration, i.e., Golay S. A. has also gone into liquidation.

20.4 - He did not have any cash in the Bank----

XXX XXX XXX

"20.7) It is not in dispute that HGL and its 16 units which are the subject matters of the concerned Petitions are all managed by one single person R.W-6. Apart from huge amounts due to the Bank, there is the Income Tax arrears of Rs. 41 lakhs being the Latest demand, besides Rs. 7,39,923 for 1978-79, Rs. 2,18,239 for 1979-80 and Rs. 5,87,600 for 1980-81 which are under dispute. There is also a demand for Excise duties resulting in search and seizure of certain papers from HGL's office by the authorities concerned-----"

XXX XXX XXX

"23. The facts in this Petition and the other connected Petitions (which are disposed of today by a separate judgment) unfold the saga, or more appropriately, the exploits of one individual in his singular attempt to build, in his own words, "a multibillion dollar trade name export-oriented watch industry." He went about this by setting-up a parent-company, a number of ancillary companies to teed the parent company, a building company to take care of the works of the parent and ancillary companies, a selling company to handle the sales of the parent company, a registered society to consolidate the operations of the ancillary companies, and an assortment of other private companies and enterprises thrown in for good measure to crown the industrial complex envisaged by him, under his sole control. Very little of the money in this enterprise was his own. But he was the monarch of all he surveyed. Whether there was a proper appraisal of his project when he obtained finances from the petitioner Bank and other financing institutions is not clear from the record. How he sustained his credibility in the financial market when his foreign collaborator went into bankruptcy before his project took off is also not clear from the record. However, with no formal education and starting his life in a humble way, he made a bold bid to achieve industrial fame."

Sri Shetty urged that the considerations that learned Company Judge took as relevant were, by themselves, neither material nor conclusive. The circumstances that the Company had not declared dividend was not, by itself, decisive nor was the circumstance that the shares of the Company which were of a face value of Rs. 100/- had been shown to have been purchased, after the filing of the winding up petition, at Rs. 3/- per share. Sri Shetty pointed out that by no actuarial valuation could this value of Rs. 3/- per share be said to be the break-up value

and that, at ail events, they were all after the filing of the petition. Sri Shetty stated that the learned Company Judge had, in substance, persuaded himself to the view that the substratum of the Company had disappeared. Learned Counsel urged that the view of the Company Judge on the "just and equitable" ground was wholly unsupportable. He said that though Clause (f) of Section 433 is not ejusdem generis with earlier Clauses (a) to (e), the general principles where the "just and equitable" clause was attracted are fairly well-settled though however having regard to the nature of the concept it could not be exhaustive. He stated that the "just and equitable" clause was applied where the substratum of the Company had gone; or where the Company was formed for purposes of a fraud ; or where a full investigation was necessary; or where there was a complete dead-lock in the management on account of internal strife. Sri Shetty says that none of these generally accepted grounds for the attraction of "just and equitable" clause existed in the present case.

54. The classification of the grounds under which an order of winding up is made under "just and equitable" ground is convenient for identification. The words "just and equitable" have a wide sweep. In *Re. West Bourne Galleries* 1973 AC 360, Lord Wilberforce observed that :

"Illustrations may be used but general words should remain general and not be reduced to sum of particular instances".

It is true that a winding up order under this clause could be made on grounds other than and apart from those which are generally enumerated as relevant under this clause.

55. The point that the substratum of the Company has not disappeared in the sense that the purpose for which it was formed can yet be achieved, notwithstanding its present awkward financial predicament may be an arguable one. It is true, as contended by Sri Shekhar Shetty, that the circumstances that existed as on the date of presentation of the winding-up petition should generally guide the matter, and that, having regard to the state of affairs obtaining in 1980 the question whether the substratum of the Company had disappeared might bear examination. The affairs of the Company could, perhaps, have been managed -- or mismanaged -- better. The correctness of the finding of the learned Judge on the "just and Equitable" ground might bear further examination. The view of the learned Judge might be found supportable. But, we are unable to accept Sri Shetty's further contention that on this score alone the petition would require to be admitted. We are of the opinion that the order of winding-up is clearly supportable under Clause (e) of Section 433 of the "Act". We do not wish to be understood as having recorded a finding against the Bank under the ground available in Section 433(f). As stated earlier that finding on further examination, may be found fully justified. But, even without it the winding-up order can stand.

56. Before parting with the case we think that it will not be inappropriate to say

that Company's enterprise did initially show some promise and potentiality. A modern Technology in this field and in the field of Printed Circuit Boards is, perhaps, an area with potentialities. On account of circumstances which can only be called unfortunate the Company has found itself in the present mess. The winding-up order would put a final seal on all its ambitions and potentiality. The apprehension of the Bank expressed quite often during the hearing was that, with all the security, it may not be able to realise even a part of its just dues.

It appears to as that if Sri Hegde would put himself in a position to offer to the Bank terms which may be better than what the Bank would gain by its dissolution, then a way may, yet be found to rehabilitate the industry even after winding-up. We can only hope that, at least, now Sri Hegde will take an attitude which would not alienate him from his Bankers further and which will rescue and rehabilitate the industry from this impasse even at the post winding-up order stage.

57. In the result, for the foregoing reasons, we find no substance in the appeal. The appeal is, accordingly, rejected.

ORDER ON THE ORAL APPLICATION UNDER Article 134 OF THE CONSTITUTION OF INDIA FOR GRANT OF A CERTIFICATE OF FITNESS TO APPEAL TO THE SUPREME COURT FROM THE ORDER WHICH IS NOW PRONOUNCED.

At the conclusion of the pronouncement of this Order by dictation in Court, Sri Shekhar Shetty made an oral application under Article 134-A for grant of a Certificate of Fitness to appeal to the Supreme Court from the order. In our opinion, this appeal does not involve substantial question or questions of law of general importance needing to be decided by the Supreme Court.

We accordingly refuse the Certificate sought for and reject the oral application.