

(1999) 05 GUJ CK 0021

In the Gujarat High Court

Case No : Company Application No. 360 of 1998 in Company Petition No. 139 of 1996

Textile Labour Association, Bhadra, Ahmedabad

APPELLANT

Vs

Official Liquidator, Ahmedabad and Others

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Companies Act, 1956 — Section 528, 529, 529(1), 529(2)

Payment of Bonus Act, 1965 — Section 25

Workmens Compensation Act, 1923 — Section 529(3)(6)

Citation : (1999) 2 LLJ 859

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Judgement

M.S. Shah, J.—This Company Application has been filed by Textile Labour Association to direct the Official Liquidator in-charge of the Assets of the Jubilee Mills Limited (in liquidation) (hereinafter referred to as "the Company") to pay ex-workmen of the Company an amount of Rs. 27,54,37,370-07. The applicant has also prayed for an interim direction that the Official Liquidator be directed to disburse an amount of Rs. 4 Crores and odd amount lying with the Official ! Liquidator to the Workmen of the Company.

2. Apart from the Official Liquidator, all the secured creditors of the Company i.e. Punjab National Bank, State Bank of India and Bank of India are joined as party respondent. Industrial Development Bank of India (IDBI), Industrial Investment Bank of India (IIBI) and the Industrial Credit and Investment Corporation of India (ICICI) are also joined as respondents though there is some dispute about their status as secured creditors. That dispute is the subject matter of another application. That dispute is not being adjudicated by this Court at this stage since with consent of the learned counsel for the parties, the only controversy which is being resolved is about that scope of the expressions "workmen" and "workmen"s dues" as defined by sub-section (3) of Section 529 of the Companies Act 1956 (hereinafter referred to as "the Act").

3. Facts

Before delineating the contours of the controversy, a few facts leading to filing of this application may be stated.

3.1 Jubilee Mills Ltd., a Company registered under the Act was engaged in the business of manufacturing textiles. At the instance of some of its creditors, the Company was ordered to be wound up as per the order passed by this Court on September 5, 1989 in Company Petition No. 139/1986. The Official Liquidator (respondent No. I herein) was appointed as the Liquidator of the Company. The Official Liquidator took over possession of the assets of the Company. In Company Application No. 200/1996, this Court appointed a sale committee for disposing of the plants and machineries of the Company by public auction. The auction was held and the sale was confirmed by this Court and an amount of Rs. 4.23 Crores (approx.) is lying with the Official Liquidator as per his report dated February 15, 1999. The land and buildings of the Company are yet to be disposed of. Those assets could not be offered for sale earlier in view of the prohibitions contained in the Urban Land (Ceiling, & Regulation) Act, 1976 (hereinafter to be referred to as "the U.L.C. Act") which has very recently been repealed.

3.2 The Textile Labour Association, a representative Union of the workmen who were employed in the Company submitted the details of the workmen's dues on August 11, 1998. At the time of filing of the present application in October 1998 the verification of dues was yet to be undertaken by the Chartered Accountant but as per the details submitted by the applicant, the sum total of the dues of the workmen worked out to Rs. 27.54 Crores including interest. The application came to be filed on the eve of Diwali for an order of disbursement by way of interim relief.

3.3 The applicant union has prayed that the amounts already realized by sale of plant and machineries of the Company be disbursed to the workmen in view of the priority accorded to them by the provisions of Sections 529 and 529-A of the Act. The secured creditors have contested the claim of the applicant Union both as regards the different heads under which the amounts are claimed as also the quantum of the amounts claimed. The claims made by the applicant Union under the different heads as stated in Annexure "C" to the application may be summarized as under :

Wages/salary	Rs. 13,29,17,861/-	Wages lieu of unclaimed Privilege leave	Rs. 72,38,945/-	Gratuity	Rs. 5,78,65,491/-	Retrenchment Compensation	Rs. 56,28,322/-	Bonus	Rs. 1,10,72,064/-	Notice Pay	Rs. 44,94,619/-
----- Total Rs. 27,01,17,302/- -----											

At the hearing of this application, it was stated that the claim for salary included the claim for ad hoc interim relief awarded by the Industrial Tribunal. An affidavit was also filed in support of the said claim.

The claims are made on behalf of all the categories of employees, workers, clerks, supervisors, semi clerks and officers. Substantial claims are made on behalf of the category called "workers".

3.4 Since these claims made in the present application are not peculiar to workmen of the Company in question alone, but the controversy about admissibility of the claims of workmen under the aforesaid different heads for the purposes of priority under Sections 529 and 529-A has been raging in a large number of other Companies in liquidation, the Court has permitted the other learned advocates to intervene.

4. Statutory Provision and the Underlying Object

Before the Official Liquidator or for the matter, workers can enforce their charge against realization of security, the extent of their proportion in the security has to be determined with reference to the total amount due to the secured creditors and total amount, due to the workers on the relevant date is to say - as on the date of winding up. Security by way of *pari passu* charge in favour of the workers is created *ex hypothesi* simultaneously with making of winding up order by operation of statute and rights of secured creditors are made subject to workmen's portion in such security in respective ratio as on that date though such determination may take place at a later date after the Official Liquidator has received relevant information about existing dues to the secured creditors and the claims of the workers to be satisfied from realisation of the company's assets.

5. The statutory provisions having a bearing on the present controversy are as under :

Chapter V of the Act contains provisions applicable to every mode of winding up. Section 528 of the Act provides that in every winding up, all debts payable on a contingency and all claims against the Company shall be admissible to proof against the Company, a just estimate being made, so far as possible, of the value of such debts or claims.

Section 529(1) provides for application of insolvency rules in winding up of insolvent Companies with regard to debts provable and the respective rights secured and unsecured creditors, provided that the security of every creditor shall be deemed to be subject to a *pari passu* charge shall be deemed to be subject extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security

(a) the liquidator shall be entitled to represent the workmen and enforce such charge

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues and

(c) so much of the debt due to such secured - creditor as could not be realised

by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purposes of Section 529-A.

(The aforesaid proviso was inserted by Act 35 of 1985)

Sub-section (2) of Section 529 reads as under :

"(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the Company, may come in under the winding up, and make such claims against the Company as they respectively are entitled to make by virtue of this Section :

Proviso to this sub-section provides for sharing of expenses incurred by the Liquidator for the preservation of the security.

Sub-section (3) of Section 529 which is the most relevant provision falling for consideration in the present order reads as under :

"(3) For the purposes of this Section, Section 529-A and Section 530 -

(a) "workmen", in relation to a company, means the employees of the Company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947).

(b) "workmen's dues" in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely :

(i) all wages or salary including wages payable for time or piece-work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947) :

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case, of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution :

(iii) (subject to certain exceptions), all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1923 in respect of the death or disablement of any workman of the company :

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company :

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of -

- (i) the amount of workmen's dues : and
- (ii) the amounts of debts due to the secured creditors.

Illustration - The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the : company to its secured creditors is Rs. 3,00,000, The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000."

Section 529-A providing for overriding preferential payments reads as under :

"529-A. Overriding preferential payments - (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company -

- (a) workmen's dues : and
 - (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of Section 529 pari passu with such dues shall be paid in priority to all other debts.
- (2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

Section 530 provides for preferential payments, subject to the provisions of Section 529-A in the following terms :-

"530 Preferential payments - (1) In a winding up, subject to the provisions of Section 529-A, there shall be paid in priority to all other debts -

- (a) all revenues, taxes due from the Company to the Central or State Government or to a local authority at the relevant date
 - (b) all wages or salary (including wages payable for time or piece-work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months, next before the relevant date, subject to the limit specified in sub-section (2) :
- (Rs. 20,000 in case of one claimant vide GSR 30(1) dated February 17, 1997)
- (c) all accrued holiday remuneration becoming payable to any employee or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of, the winding up order of resolution :
 - (d) all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act 1948 (XXXIV of 1948),

or any other law for the time being in force :

(e) all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1923 in respect of the death or disablement of any employee of the company :

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund, or any other fund for the welfare of the employees maintained by the company : and

(g)

(2) the sum to which priority is to be given under clause (b) of sub-section (1), shall not, in the case of any once claimant, exceed such sum as may be notified by the Central Government in the Official Gazette.

Sub-section (3), deals with debts in the nature of weekly payments under the Workmen's Compensation Act and as to how they are converted into lump sum amount.

Sub-section (4) provides that where any payment has been made to any employee of the Company - (i) on account of wages or salary or (ii) on account of accrued holiday remuneration to a workman or to his heirs out of money advanced by some person for that purpose, the latter shall in a winding up have a right of priority in respect of such advance to some extent to which the employee or his heir would have been entitled to priority.

Sub-section (5) provides that the foregoing debts shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Sub-sections (6) and (7) are not relevant for the purposes of the present discussion.

Sub-section (8) of Section 530 reads as under :

"(8) For the purposes of this Section -

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period :

(b) the expression "accrued holiday remuneration" included, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday :

(bb) the expression "employee" does not include a workman : and

(c) the expression "the relevant date" means -

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up, voluntarily before that date; and

(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

6. Contours of Controversy

In view of the aforesaid statutory provisions, the applicant Union has, for the purposes of Sections 529 and 529-A of the Act, claimed priority for sums under the heads enumerated hereinafter in respect of a number of workmen and have also claimed interest on such amounts.

(1) Unpaid wages/salary for the period of illegal closure

All wages or salary referred to in sub-clause (i) of clause (b) of Section 529(3) include all wages or salary till the date of making of winding up order which is deemed to be notice of discharge to the officers and employees of the Company (except when the business of the Company is continued) as provided in Section 445(3) of the Act.

While according to the workmen, this claim would include all wages and salary of the workmen for the entire period upto the date of winding up order including the period of illegal closure, according to the secured creditors what is covered by sub-clause (i) is only wages or salary in respect of services actually rendered till the date of closure and, therefore, wages or salary during the period of closure (whether legal or illegal) is not admissible for the purposes of priority.

(2) Ad-hoc interim relief

According to the workmen, ad-hoc interim relief payable to the workmen under the award of Industrial Tribunal is also covered by sub-clause (i) of Section 529(3)(b) as a part of wages payable to the workmen.

According to the secured creditors, wages or salary would not include such ad-hoc interim relief as it did not form part of the wages payable under the contract, of employment between the Company and the workmen.

(3) Retrenchment Compensation

Though there is no direct controversy about the claim under this head, the decision on the question of admissibility of the claim for unpaid wages during the period of illegal closure is going to have its fall out on this claim in the matter of calculation of length of service for the purpose of computation of retrenchment compensation.

(4) Accrued holiday remuneration :

According to the workmen, this would also include wages in lieu of unclaimed privilege leave for the entire period upto the date of winding up order (including the period of illegal closure), whereas according to the secured creditors the claim for unclaimed privilege leave would be admissible for the priority purposes. Only for the period during which the Company was carry in on its manufacturing operations or its business activities that is to say, upto the date of closure.

Compensation under the Workmen's Compensation Act, 1923 :

There is no controversy about interpretation of the provisions of sub-clause (iii) of Section 529(3)(6).

(6) Gratuity :

According to the workmen, the amount of gratuity payable to the workmen under the" Payment of Gratuity Act, 1972 would be admissible for the purposes of priority irrespective of the fact whether the Company had maintained any gratuity fund or not.

According to the secured creditors, the" claim for gratuity would be admissible for the purposes of priority only if the Company had maintained a separate gratuity fund and not otherwise.

(7) Bonus According to Mr. Vasavada for the Textile Labour Association, bonus payable to the workmen under the provisions of Payment of Bonus Act, 1965 is part of all wages or salary admissible for the purpose of priority claim u/s 529(3) (b)(i). According to Dr. Mukul Sinha, the claim for bonus is admissible for priority even if such claim is de hors the provisions of the Payment of Bonus Act, 1965.

On the other hand, according to the secured creditors claim for bonus whether under the Payment of Bonus Act, 1965, or otherwise, would not fall within the definition, of all wages or salary as referred to in sub-clause (i) of Section 529(3) (b) of the Act.

(8) Notice pay :

According to the workmen, the wages/salary payable to the workmen in lieu of notice pay for retrenchment of the workmen payable to them under the provisions of Sections 25-F 25-FF and 25-FFF and similar other provisions of the Industrial Disputes Act 1947 or under any other provisions of law would be admissible for the purposes of priority.

According to the secured creditors, this claim would not be admissible as what is admissible would be only retrenchment compensation payable to workmen under the provisions of the Industrial Disputes Act, 1947.

(9) who are the employees excluded from the definition of workmen u/s 529(3) (a) ?

(10) Whether interest on dues of workmen/employees or on dues of secured creditors is admissible for the purposes of priority under Sections 529 529-A and

530 of the Act.

Discussion

7. Preliminary Objection

7.1 Before discussing the aforesaid issues, the Court would like to deal with the preliminary objection raised by Mr. R. M. Desai, learned Counsel for State Bank of India, one of the secured creditors. According to Mr. Desai, in view of the provisions of Section 528 read with Rules 147 to 179 of the Companies (Court) Rules, 1959 it's the Official Liquidator who has to decide whether the claims lodged by the workmen are admissible by deciding both the questions whether the claims fall within the definition of "workmen's dues" as per the provisions of Section 529(3) of the Act and also on the question of quantum of the claims of each individual workman. Mr. Desai has submitted that mere arithmetical verification of such claims by Chartered Accountants appointed by the Official Liquidator would not mean that the Official Liquidator has decided the claims of the workmen. The Official Liquidator must first issue notice to the secured creditors to show cause as to why the claims lodged by the workmen should not be accepted. The workmen must justify their claims for priority. The secured creditors would then point out as to how the aforesaid claims made on behalf of the workmen under the aforesaid heads are not admissible for the purposes of priority payments. It would be then for the Official Liquidator to give his decision on the aforesaid controversies and only thereafter the aggrieved party has to bring the matter before this Court by taking out appropriate proceedings and, therefore, the present stage is premature for the purpose of deciding the aforesaid questions. The entire exercise being undertaken by this Court to decide the aforesaid questions at this stage must not be pursued any further.

None of the other secured creditors has, however, raised such an objection. On the contrary, the learned counsel for the other secured creditors and for the Financial Institutions have requested the Court to decide the questions involved in interpreting the provisions of Section 529(3).

7.2 A perusal of the relevant provisions of the Act, particularly Sections 528 to 530 and 448 to 463 does not support Mr. Desai's contention that the Court cannot decide any such question without the Official Liquidator first deciding the same. Section 448(1) provides for an Official Liquidator to be attached to each High Court. Section 451(1) provides - "The Liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Court may impose".

Section 457(1) provides - "The Liquidator in a winding up by the Court shall have power, with the sanction of the Court, -

(a) to (d)

(e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2)

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this Section shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of any of the powers conferred by this Section.

It is thus clear that the Official Liquidator acts as the Officer or agent of the Court under the supervision and control of the Court. Rules 147 to 179 of the Companies (Court) Rules are, therefore, required to be read in light of the aforesaid provisions of the Act which confer jurisdiction on the Court to give necessary Directions to the Liquidator in all matters and things as may be necessary for winding up the affairs of the Company and distributing its assets and any creditor or contributory also has been given the right to apply to the Court with respect to not only exercise, but also with regard to proposed exercise of any of the powers conferred by Section 457 of the Act. It bears repetition that the workmen's representatives as well as secured Creditors except State Bank of India) have requested the Court to decide the controversy regarding interpretation of the provisions of Section 529(3) of the Act for determination of the ratio of the workmen's dues and dues of the secured creditors.

7.3 There is another reason why the preliminary objection of Mr. Desai deserves to be rejected. Determination of the claims of the workmen and of the secured creditors must be done expeditiously. In ICICI Ltd. v. Textile Labour Association, O.J. Appeal Nos. 80 and 81. of 1998 decided on November 3 & 4, 1998 a Division Bench of this Court has made the following pertinent observations :-

"We are told that in most of cases, no notice is issued by Official Liquidator inviting claims after order for winding up is made. Reason given is that since details about assets of the Company and realisation are uncertain, the process is not started promptly. It is a sad commentary on the affairs of Liquidator's Office. Lodging of claim and proving of debt need not await realisation. That is stage prior to stage of realization and distribution. Only if this preliminary process of winding up is attended to, the object of winding up viz. realisation of company's assets for distribution among outstanding claims can be expeditiously fulfilled. If realisation continues to lie idle with the Official Liquidator for want of proof of debts, that too due to want of commencement of such process, it not only burdens the company with unnecessary and avoidable heavy cost of winding up, but, acts to great disadvantage of interest of claimants large number of whom may be workmen or petty unsecured creditors who are made to wait return of their dues indefinitely. We want to emphasise that admitting proof of claims and its determination is first step in process of winding up and liquidator must start this process without delay in all cases in terms of Rule 147 and other relevant rules of the Company (Court) Rules. That will ensure prompt distribution of realisation in his hands without increasing the burden of winding up and give immediate relief to creditors amongst whom workmen stand first in queue. Workmen and for that matter agencies representing them will serve this object

well by lodging the claim in proper manner before the liquidator for their admittance and not adopt practice of making applications for ad-hoc payments de hors proof of such claims, which invariably results in delay in disbursement of realisation, which has to wait until verification of the claim. No disbursement may be possible in the absence of lodging of claim. That will also result in speedy completion of winding up process."

The Division Bench has thus emphasized on the need for quick lodging of the claims by the workmen and expeditious determination of such claims by the Official Liquidator. But in practice what has been happening all these years is that workmen lodge their claims under all possible heads, the Chartered Accountants verify them, but the secured creditors dispute admissibility of claims under various heads and for one reason or another no progress is made in the matter of determination of ratio of workers' dues and the dues of secured creditors.

The Court is informed that in the last about 40 years since the establishment of this Court although the number of Companies ordered to be wound up runs into more than 300, the number of Companies actually dissolved u/s 481 of the Act does not even run into double digits. This Court had, therefore, an occasion to suggest to the learned counsel for the secured creditors as well as the learned counsel for the workers' representatives to come forward with suitable schemes for expeditious determination of the ratio of the workers' dues and the dues of the secured creditors so that the Court can take up the initiative and formulate appropriate schemes by broad consensus of all the interests involved in this exercise.

The application for formulating the scheme for, expeditious determination of dues of the secured creditors filed in the matter of Nutan Mills Ltd. (in liquidation) is pending consideration of this Court. Similarly the questions raised about scope of the expression "workmen's dues" arise not merely in the case of the Company at hand but also in a large number of such Companies in liquidation. Hence, at the hearing of this application, the Official Liquidator, workers' representatives as also the learned counsel for all the secured creditors (other than State Bank of India being represented by Mr. R. M. Desai) requested this Court to first decide the aforesaid questions rather than the Official Liquidator deciding these questions and then requiring the Court to decide whether the views of the Official Liquidator on these questions are correct or not. Hence, this Court has thought it fit to decide the aforesaid questions at this stage. Subject to the right of appeal of the affected parties, the controversies are intended to be resolved so that the persons/professionals who are in charge of preparation/verification of the workmen's claim in case of different Companies in liquidation can all have the correct basis for determining/verifying the workman's claims and every now and then these issues are not agitated time and again.

7.4 It is for the above reasons and in view of the joint request coming from all parties (except State Bank of India) that the Court has undertaken this exercise. Hence, the preliminary objection of Mr. R. M. Desai for State Bank of India is

overruled.

Discussion on Merits

8. Wages payable to workmen during the period of illegal closure.

All the parties and interveners have argued at length on this particular question. According to Mr. D. B. Vasavada for the applicant-Textile Labour Association, in the instant case closure of the textile mill from March 9, 1987 onwards was clearly illegal. The closure was in flagrant violation of the provisions of Sections 25-O, 25-FFA and 25-FFF of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act"). The emphasis was laid on the provisions of sub-section (6) of Section 25-O of the I.D. Act providing that where the closure is illegal on account of no application for permission having been made as required by sub-section (1) or where permission sought has been refused, the workmen are entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. Mr. Vasavada, therefore, submitted that in view of the undisputed fact in the instant case that closure of the mill of the Jubilee Mills Ltd. from March 9, 1987 was without obtaining any permission u/s 25-O of the I.D. Act, the necessary consequences must follow and, therefore, the workmen are entitled to all the benefits under all the laws from the date of closure (March 9, 1987) till the date of winding up order (September 5, 1989). Mr. Vasavada also relied on the decisions of this Court in *Dhinant S. Vasavada v. Regional Provident Fund Commissioner and others*, 26 (1) GLR 499 and *Mohansing Vikranish v. Continental Textiles Mills Ltd.* 38 (2) GLR 1534.

9. Mr. Girish Patel, learned Senior Counsel with Mr. Shalin Mehta appearing for the Official Liquidator and Dr. Mukul Sinha for the interveners also supported the aforesaid submissions of Mr. Vasavada and further added that expression "all wages or salary in respect of services rendered to the Company mean all wages or salary payable to workmen in respect of services offered to the Company and that since during the period of illegal closure it is the employer who refused to accept services being offered by the workmen, the workmen cannot be deprived of their right to get wages under the contract of employment.

Mr. Patel further submitted that in any view of the matter, even if the words "in respect of services rendered to the Company" are not interpreted as aforesaid, the statutory fiction contained in sub-section (6) of Section 25-O of the I.D. Act must be given its full force and effect and thereupon the statutory fiction must also be read into the provisions of sub-clause (i) of Section 529(3)(b) of the Act. The result of incorporation of the aforesaid statutory fiction of the I.D. Act into the Companies Act would be that there was no closure of the mill in the eye of law and the Company's mill must be deemed to have continued its operations and in that view of the matter the wages payable to the workmen during the period of closure would automatically rank for priority.

10. On the other hand, Mr. M. J. Thakore with Mr. M. B. Buch, Mr. R. M. Desai and Mr. P. G. Desai for the secured creditors and Financial Institutions vehemently

opposed the above submissions.

10.1 The learned counsel contended that while the workmen may be entitled to get wages for the period of illegal closure in view of sub-section (6) of Section 25-O of the I.D. Act, the said wages do not attain the priority status for the purposes of Sections 529 529-A and 530 because the legislative intent was to give priority to the workmen's dues only in so far as the workmen had actually rendered services to the Company and not to accord any priority to workmen's dues for the period when actual services were not rendered to the Company. In support of the said contention, the learned counsel referred to the following extract from the Statement of Objects and Reasons for the Amendment Act 25 of 1985 by which proviso to sub-section (1) and sub-section (3) were added to Section 529 of the Act.

"The resources of the companies constitutes a major segment of the material resources of the community and common good demands that the ownership and control of the resources of every company are so distributed that in the unfortunate event of its liquidation, workers whose labour and effort constitute an invisible but easily perceivable part of the capital of the company are not deprived of their legitimate right to participate in the product of their labour and effort. It is accordingly proposed to amend Section 529 and 530 of the Companies Act and also to incorporate a new Section in the Act, namely Section 529-A (vide clauses 4, 5 and 6 of the Bill),"

(as quoted in 58 Company Cases 186 Statutes)

It was, therefore, submitted that during" the period of closure, no labour or effort went into the creation of assets of the Company nor into the workers participating in the manufacturing of any product and, therefore, the Legislature did not intend to give any priority to give wages for the period of closure. The legality or illegality of closure may have relevance to the workers' right to get wages for that period but not for the purposes of priority under Sections 529 529-A and 530 of the Act.

10.2 It was further submitted that words "services rendered" must be given a natural and literal meaning as found in the dictionary. According to WEBSTER'S DICTIONARY, "to, render" means "to do service for others". As per the OXFORD DICTIONARY "render" in the aforesaid context means "act of performing a service". In light of the aforesaid definitions, the words "service rendered" in Sections 529 529-A and 530 would only mean the actual work done by the workmen and, therefore, only wages and salary for the services actually rendered or the work actually done by the workmen fall within the clause "workmen's dues" as defined by Section 529(3)(b)(i) of the Act.

10.3 Further reliance was placed on sub-section 8(a) of Section 530 which reads as under -

"(a) any remuneration in respect of a period of holiday or of absence from work

through sickness or other good cause should be deemed to be wages in respect of services rendered to the company during that period.

The only exceptions of actual services rendered are contained in the aforesaid provisions of the Companies Act which do not make any reference to the period of closure whether legal or illegal. Hence, there is no scope for bringing any fiction contained in sub-section (6) of Section 25-O of the I.D. Act into Section 529(3)(b)(i) of the Act. In any case, Section 25-O(6) does not create a fiction that the workers shall be deemed to be rendering services to the Company. Reliance is placed on the decision of the Hon'ble Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, (para 31) for explaining the scope of deeming fiction and on the decision of this Court in *CIT v. Bai Vina* (6) GLR 583.

10.4 While amending Section 529 of the

Act in 1985, the Legislature was conscious of the provisions of the I.D. Act. While referring to the provisions for payment of Compensation under the I.D. Act, the Legislature has not made any reference to the provisions of Section of the I.D. Act and, therefore, the legislative intent was not to give priority to the workmen for the benefit which the workmen are entitled to u/s 25-O of the I.D. Act, but to limit the priority to wages and salary for the services actually rendered and to compensation payable under the I.D. Act.

10.5 In the alternative, if under Sections 529(3)(b)(i) of the Act wages and salary were to include the wages for the period of illegal - closure, the question whether the closure is legal or illegal is to be decided first by the Industrial Tribunal and it is only thereafter that the distribution could be effected under Sections 529 and 529-A. This would delay the distribution process and, therefore, the Legislature would not have intended to give any cause for such delay.

10.6 The Court has to interpret Section 529(3)(b)(i) as it stands. The Court cannot fill in the gaps and introduce words which the Legislature has not written. Reliance is placed on the decisions in AIR 1939 47 (Privy Council) , *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, , *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, , *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, (Paras 62 to 67, 78 to 81) and in *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, (Para 10).

11. Having heard the learned counsel for the parties this Court is of the view that the contentions urged on behalf of the secured creditors cannot be accepted and the submissions made on behalf of the workmen deserve to be accepted. Sub-clause (i) of Section 529(3)(b) of the Act includes wages or salary payable to the workmen for the period. of illegal closure and the fiction contained in sub-section (6) of Section 25-O of the I.D. Act is not limited to the workmen having a right to get wages for the period of illegal closure but it also confers upon the workmen

the right to get priority under Sections 529 and 529-A of the Act in respect of their claim for unpaid wages during the period of illegal closure.

11.1 Section 25-O of the I.D. Act lays down the procedure for closing down an undertaking. Sub-section (1) provides that an employer who intends to close down an undertaking of an industrial establishment to which Chapter V of the I.D. Act applies (there is no dispute about the said Chapter being applicable to Jubilee Mills Ltd. at the relevant time) shall apply for prior permission atleast 90 days before the date on which the intended closure is to be effected to the appropriate Government stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen.

Sub-section (2) provides that upon receiving such application, the appropriate Government may make such inquiry as it thinks fit and after giving the reasonable opportunity of being heard to the employer, the workmen and persons interested may grant or refuse to grant such permission after considering all the relevant factors.

Sub-section (3) provides for deemed permission if the appropriate Government does not communicate the order granting or refusing to grant such permission to the employer within a period of 60 days from the date on which such application is made to the employer.

Sub-sections (4) and (5) are from relevant for the purposes of the present discussion as admittedly the Company had not made any application for permission for closure u/s 25-O of the I.D. Act.

Sub-section (6) is now required to be quoted :-

"(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under an law for the time being in force as if the undertaking had not been closed down.

Sub-section (7) is not relevant for the present purpose.

Sub-section (8) reads as under :-

"(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this Section, shall be entitled to receive compensation which shall be equivalent to fifteen days" average pay for every completed year of continuous service or any part thereof in excess of six months."

11.2 A bare perusal of the aforesaid provisions of the I.D. Act makes it clear that the Legislature provided for prior permission for closure as a condition precedent

and that too a mandatory, condition for any closure to be legal closure. In absence of such permission closure shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. The benefits are not restricted to the benefits under any Labour Legislation like the Payment of Wages Act or the Payment of Bonus Act, but the language is unambiguous and all pervasive to take within its sweep even the provisions of Section 529(3)(b)(i) of the Companies Act. The fact that sub-section (3) was inserted in Section 529 of the Act in 1985 after substitution of Section 25-O of the I.D. Act by Act 46 of 1982 makes no difference because the words used in sub-section (6) of Section 25-O of the I.D. Act are "under any law for the time being in force".

11.3 Before proceeding further it is necessary to refer to a few decisions cited by the learned counsel for the parties on the scope of legal fiction. In the case of *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , Mr. Justice N. H. BHAGWATI observed as under :

"A legal fiction pre-supposes the correctness of the state of facts on which it is based. All the consequences which flow from that state of facts have got to be worked out to their logical extent. But due regard must be had in this behalf to the purpose for which the legal fiction has been created."

In *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, also, the Apex, Court observed as under :-

"When a statute enacts that something shall be deemed to have been done, which infact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

In *CIT, Gujarat v. Bai Vina*, 6 GLR 583, a Division Bench of this Court observed that legal fictions are created only for some definite purpose and they are limited to the purpose for which they are created and should not be extended beyond their legitimate field.

11.4 Hence, the question is what was the purpose for which the legislature enacted Section 25-O of the Industrial Disputes Act and particularly sub-section (6) thereof and whether Sections 529 and 529-A of the Companies Act fall within the field covered by Section 25-O(6) of the Industrial Disputes Act. Under subsection (2) of Section 25-O of the Industrial Disputes Act, the Government may grant or refuse to grant the employer permission to close down an undertaking of an industrial establishment, after giving an opportunity of - hearing to the employer, workmen and persons interested in such closure, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors. Absence of any such application of the employer under sub-section (1) or refusal of such

permission by the Government under sub-section (2) would clearly indicate an absence of genuine and adequate reasons for closure and will also indicate the interests of the general public in having the activities of the undertaking continued. In other words, whatever may be the reasons for closure, if they are not found by an independent statutory authority to be genuine and adequate, the employer is bound to continue all activities of the undertaking and even if the employer cannot in fact continue the activities of the undertaking, the employer is bound to pay wages to the workmen and to give the workmen all the benefits available to them under any law in force. The legislature thus creates a fiction that the actual closure of the undertaking has to be ignored and the undertaking is to be treated as continuing its activities. The logical conclusion would be that the workmen continued to render services. The logical consequence would be that the workmen would be entitled to be paid wages which are given priority u/s 529(3)(b)(i) of the Companies Act. Sub-section (6) of Section 25-O of the Industrial Disputes Act is a part of the legislative scheme for giving protection to workmen who would otherwise be deprived of wages in spite of absence of genuine and adequate reasons for closure of the undertaking. The fiction is created through the Industrial Disputes Act, 1947 which has been specifically enacted to make provisions for settlement of industrial disputes and for certain other purposes for conferring considerable benefits to workmen. It is also pertinent to note that even when an undertaking is permitted to be closed down under sub-section (2) or sub-section (3) of Section 25-O, its workmen are entitled to receive retrenchment compensation. This also indicates the legislative intent that where the closure is without permission, there would be no question of retrenchment and the workmen would continue to be entitled to be paid wages for the entire period of illegal closure. The Court would also like to take judicial notice of the fact, that most of the companies are ordered to be wound up on the ground of their inability to pay their debts. In almost all such cases there is a period of actual closure without permission under sub-sections (2) or (3) of Section 25-O of the Industrial Disputes Act, when the workmen are ready and willing to offer their services, but the employer has no work to offer. Wages is what the employer is bound to give the workmen when they offer their services. There is nothing in the provisions of Section 25-O of the Industrial Disputes Act or Section 529(3)(b)(i) of the Companies Act which can indicate even the slightest intention that Legislature did not intend the legal fiction to be carried to its logical conclusion.

11.5 Reference is also required to be made to sub-section 8(a) of Section 530 of the Companies Act which provides that even where the workmen had not offered their services during the period of holiday or of absence from work through sickness or other good cause any remuneration in respect of such period shall be deemed to be wages in respect of services rendered to the Company during that period. This provision which is a part of the scheme providing for preferential treatment to the dues of the employees more than supports the view being taken by this Court that when the statutory fiction contained in Section 25-I(6) of the

Industrial Disputes Act is read into Section 529(3)(b)(i) of the Companies Act, unpaid wages for the period of illegal closure do get the priority under Sections 529 529-A and 530 of the Companies Act. It would be inconceivable to hold that, the legislature which gives preferential treatment to the wages during the period of holiday or absence on account of sickness or other good cause, did not intend to give priority to the wages denied to workmen for the period of illegal closure i.e. closure in absence of genuine and adequate reasons as contemplated by sub-section (2) of Section 25-O of the Industrial Disputes Act.

11.6 In view of the above discussion, it is not necessary to treat the argument of Mr. Patel that the words "services rendered" in Section 529(3)(b)(i) mean "services offered" as an independent argument, by itself since it is treated as a supplemental argument as a part of the main argument about applicability of the legal fiction contained in Section 25-O(6) of the Industrial Disputes Act into the provisions of Section 529(3)(b)(i) of the Companies Act.

11.7 In view of the aforesaid reasoning, the authorities cited by the learned counsel for the secured creditors and Financial Institutions, for contending that the Court must go only for literal construction of statutory provisions and that when the meaning of the words of the statute is clear, the Court should not look to the purpose underlying the statutory provisions, are not relevant because the Apex Court itself has laid down in the case of the State of Bombay v. Pandurang V. Chaphalkar (supra) and Bengal Immunity Co. Ltd. v. State of Bihar (supra) that while applying the legal fiction the Courts have to ascertain for what purpose the statutory fiction is created, and thereafter, within that field, the fiction is required to be taken to its logical conclusion. The purpose of creating a legal fiction in sub-section (6) of Section 25-O of the Industrial Disputes Act is to give the workmen of the undertaking, which is illegally closed, all the benefits under any law for the time being in force as if the undertaking was not closed down.

11.8 Reliance placed by the learned counsel for the secured creditors and Financial Institutions on the decision in case of Ex Parte in Fox Re. Smith, 1886 (Vol. 19) Queen's Bench Division, Page 4 does not carry their case any further. In that case, the controversy was whether the words "services rendered to the Bankrupt, during the four months before the date of the receiving order" in Section 40(b) of the Bankruptcy Act, 1883 would mean "services rendered to the bankrupt during the four months immediately before the date of receiving order" and not really the words "services rendered to be bankrupt, but all that is required is that they should be rendered before the date of the receiving order and during the four months which may not be immediately prior to the four months before the date of the receiving order". The Court was thus only concerned with the words "during the four months before the date of receiving order" and not really the words "services rendered to be bankrupt." In any case the Court was not concerned with the situation where a statutory fiction was created by labour legislation, unlike in the instant case.

11.9 The inescapable conclusion is that the expression "all wages or

salary in respect of services rendered to the Company" in Section 529(3) (b)(i) of the Companies Act includes all wages or salary payable by the Company to the workmen for the period of illegal closure.

12. Ad-Hoc claim

12.1. On behalf of the workmen, it is submitted that ad-hoc interim relief was granted by the award of the Industrial Court. Reliance is placed on the affidavit filed on behalf of the workmen with a copy of the award. It is, therefore, submitted that since the interim relief payable was not paid by the Company it was required to be included in the workmen's dues as that was a part of wages or salary.

12.2 On behalf of the secured creditors, it has been submitted that such claim is not to be entertained as it does not fall in any of the sub-clauses of Section 529 and 530 of the Companies Act.

12.3 Now there can be no dispute that wages even as defined by the I. D. Act means remuneration in terms of money which would, if the terms of employment (expressed or implied) were fulfilled, be payable to a workman in respect of his employment and includes such allowances (including Dearness Allowance) as the workman is for the time being entitled to hoe interim relief was awarded by the Industrial Court as an interim relief during pendency of the reference before the Industrial Court for deciding the dispute regarding conditions of service including dearness allowance or wages payable to the workman. Although it was termed as an ad-hoc interim relief because the final relief was to be determined by the Industrial Court later on, it was intended to be paid as non-refundable relief which was to form a part of the remuneration payable to the workmen. Since the workmen were entitled to get Dearness Allowance on such rate as may be determined by the Industrial Court, ad-hoc interim relief would certainly form a part of such allowances as contemplated by sub-clause (i) of clause (rr) of Section 9 of the Industrial Disputes Act.

13. Retrenchment Compensation

13.1 Generally, it is true that the textile mills in Ahmedabad are governed by the Bombay Industrial Relations Act, 1946. However, as held by a Division Bench of this Court in D.S. Vasavada, Textile Labour Association, Ahmedabad Vs. Regional Provident Fund Commissioner, Gujarat State, Ahmedabad, . Section 120-A of the Bombay Industrial Relations Act, 1946 provides that nothing in the said Act shall affect any of the provisions of the Industrial Disputes Act, 1947. Hence, termination of services by reason of the closure can be effected only after complying with the provisions of the Industrial Disputes Act such as Sections 25-FFF and 25-O of the Industrial Disputes Act. Hence, the workmen's claim for retrenchment compensation under the provisions of the Industrial Disputes Act would certainly survive for the priority under Sections 529 and 529-A of the Companies Act.

13.2 It is clarified that there is no dispute about the fact that the retrenchment compensation payable in any of the provisions of the I. D. Act does fall within the definition of "workmen's dues" u/s 520(3)(b)(i) of the Companies Act and, therefore, there cannot be any controversy. Hence, it is not necessary to make reference to the decisions cited by the learned Counsel for the applicant-Union in that behalf. The workmen who are discharged by reason of winding up are entitled to retrenchment compensation under the Industrial Disputes Act even if the winding up order is due to inability to pay the debts (vide in the matter of *In Re: Shree Madhav Mills Ltd.*, . This is so because financial inability does not amount to unavoidable circumstances within the meaning of Section 25-FFF of the I.D. Act and also because Section 25-B of the Act also makes it clear that even when an undertaking is permitted to be closed down or is deemed to have been permitted to be closed down u/s 25-O of the Act, every workman-employee therein shall be entitled to receive compensation which will be equivalent to 15 days of average pay for every completed period of service or any part in excess of six months. It is inconceivable to believe that the Legislature which requires the employer to pay the closure compensation to its workmen even in the case of legal closure did not intend such closure compensation to be paid where the undertaking is illegally closed, whether on account of financial inability to pay its debts or otherwise. Hence, retrenchment compensation payable to the workmen under the provisions of the Industrial Disputes Act, even in case of illegal closure is covered by the provisions of Section 529(3)(b)(i) of the Act, and the period of such closure will have to be included in the length of service for computing the amount of retrenchment compensation.

14. Unclaimed privilege leave or accrued holiday remuneration

14.1 In respect of the claim under this head, on behalf of the workmen strong reliance has been placed on the decision of this Court in *Textile Labour Association, Bhadra, Ahmedabad Vs. Official Liquidator and Another*, .

14.2 On behalf of the secured creditors, this claim is also resisted on the same grounds on which the claim for wages during the period of illegal closure was resisted.

14.3 Having heard the learned counsel for the parties, since the objections raised on behalf of the secured creditors with reference to the claim for wages during the period of illegal closure have been rejected, at first blush the claim of the workers under this head would have been required to be upheld in its entirety. However, it is required to be noted that in *Textile Labour association v. Official Liquidator & Ors.* (supra) the only question that falls for consideration of the learned single Judge of this Court, was whether the claim for unclaimed privilege leave was includible in the workmen's dues for the purpose of overriding preferential payments under Sections 529 and 529-A of the Act, and the Court, answered the question in the affirmative by referring to the definition of wages under the I.D. Act as well as under the Payment of Wages Act. Section 2(rr) of the I.D. Act and Section 2(vi) of the Payment of Wages Act. In so far as the same

are relevant for the present purpose they read as under :

Industrial Disputes, Act.

"2(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment and includes

xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx

Payment of Wages Act

"2(vi) "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes -

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period."

This Court then observed that while trying to determine what are the workmen's dues for the purpose of Sections 529 and 529-A of the Companies Act, the word "wages" will have to be understood in the same manner in which it is understood under the labour laws. The Court, therefore, held that the workmen's dues for the purpose of Sections 529 and 529-A of the Companies Act will include wages payable to workmen for the unavailed privilege leave with a clarification that the extent of wages payable would depend upon the leave standing to the credit of the workmen and which was not lapsed.

14.4 However, in the aforesaid decision, this Court does not appear to have been concerned with the question whether unclaimed privilege leave would be admissible for the period of closure also. In this case we are not, directly concerned with legal closure i.e. closure for which permission or deemed permission is obtained under sub-section (2) or (3) of Section 25-O of the I.D. Act. However, as far as the period of illegal closure is concerned while the unpaid wages of the workmen would certainly be entitled to priority under Sections 529 and 529-A of the Act, it cannot be said that the same priority will be available to the wages in lieu of unclaimed privilege leave during the period of illegal closure. The fiction that during the period of illegal closure the workmen had rendered services to the Company cannot be extended to mean that during the period of illegal closure the Company is not only deemed to have been carrying on its business operations but also that the workmen must be deemed to have not availed of the privilege leave or that the employer must be deemed to have refused to grant the privilege leave. Suppose privilege leave available to a workman is one month's leave in a year and the undertaking remained illegally closed for one full year. Did the Legislature intend that the workmen's dues should be given priority not only for the unpaid wages for the period of 12

months of illegal closure, but also that even though actually the workmen could not render services on account of illegal closure, the workmen should be paid the 13th month's wages by way of wages in lieu of unclaimed privilege leave ? The answer must be in the negative. While the priority for 12 month's wages is in view of legislative fiction contained in Section 25-O(6) of the I.D. Act read with Section 529(3)(b)(i) of the Companies Act, there cannot be any fiction that the workmen would not have availed of one month's privilege leave or that the employer would have, refused to grant one month's privilege leave even if applied for. Any such fiction would not only be unwarranted by the provisions of sub-section (6) of Section 25-O of the I.D. Act, but, would also run counter to the letter and spirit of the provisions of Sections 529 529-A and 530 of the Companies Act which intended to ensure that the workers/employees get priority/preference for their legitimate dues. The overriding priority given to the workmen's dues is only for their legitimate dues which cannot include any fiction of unavailed/refused privilege leave. This reasoning will apply with greater force to such claim for the period of legal closure.

14.5 In view of the above discussion, the wages in lieu of unclaimed privilege leave/holiday remuneration during the period of closure (whether legal or illegal) would not qualify for priority under Sections 529 529-A and 530 of the Act.

The Court would, of course, hasten to add that if under a contract of employment or any statutory provision the workman is entitled to get wages in lieu of unavailed/refused privilege leave during the period when the Company was carrying on its manufacturing or business activities (i.e. for the period prior to the date of closure), the claim for such pre-closure unclaimed/refused privilege leave would fall within the definition of workmen's dues u/s 529(3)(b)(ii) for the purposes of priority under Sections 529 529-A and 530 of the Companies Act.

15. Compensation under the Workmen's Compensation Act.

There is no controversy about the interpretation of this clause.

16 Gratuity

16.1 As regards claim under the head of gratuity, the learned Counsel for the workmen as also Mr. Girish Patel for the Official Liquidator and Dr. Mukul Sinha for the intervenor submitted that the employer's liability to pay gratuity is by virtue of the provisions of the Payment of Gratuity Act, 1972, and therefore the workmen are entitled to get priority for gratuity also, irrespective of the fact whether any gratuity fund is maintained or not. The learned counsel submitted that the Payment of Gratuity Act does not provide for constitution of any fund unlike the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act 1952. However, the provisions of the Gratuity Act, do contain penal provisions for non-payment of gratuity to workmen of a large number of establishments covered by the said Act, and further provide for the recovery of gratuity amounts from the assets of the Company through the procedure for recovery of land revenue.

16.2 On the other hand, the learned counsel for the secured creditors submitted that when the provisions of said clause (iv) of Section 529(3)(b) specifically read as under :

"(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company."

The claim for priority for gratuity cannot be entertained in absence of the gratuity fund maintained by the company which has gone in liquidation.

16.3 This Court is of the view that since the Payment of Gratuity Act casts a statutory duty on the employers governed by the said Act to pay gratuity to the eligible employees and non-payment of gratuity can be visited not only by prosecution and payment of interest !but there is also a statutory remedy provided by Section 8 of the Act under which the amount of gratuity can be recovered through the Collector as arrears of land revenue and the provisions of the Land Revenue Code empower the Collector to attach the property of the Company and the dues can be recovered by selling the assets of the Company, it would not make any difference in principle whether the amount of gratuity is deposited as a gratuity fund in the bank accounts of the Company or the amount of gratuity payable to the workmen is mixed up with the assets of the Company generally without any separate entity of the gratuity amount. Hence the claim of the secured creditors on the assets of the Company must be subjected to all the charges in favour of the workmen which are statutorily imposed on the assets of the Company either in the form of a direct charge or in the form of a liability to be charged to the provisions of the Land Revenue Code. Hence, the claim for gratuity is also covered by the statutory priority under Sections 529 529-A and 530 of the Companies Act.

17. Bonus

17.1 As far as the claim under this head is concerned, on behalf of the workmen, reliance is placed on the definition under the Payment of Wages Act and the reference is also made to the decisions of this Court in Textile Labour Association, Bhadra, Ahmedabad Vs. Official Liquidator and Another, , Bala Subrahmanya Rajaram Vs. B.C. Patil and Others, , Junior Labour Inspector (Central) Vs. Authority under Payment of Wages Act and Others, and D.P. Kelkar Vs. Ambadas Keshav Bajaj and Others, . It is vehemently contended that the concept of bonus as incorporated in the Payment of Bonus Act is to give the workmen right to get bonus as a statutory right irrespective of the fact whether the Company makes any profit or not and without being linked with productivity of the workmen and, therefore, it falls within the definition of wages.

17.2 On the other hand, on behalf of the secured creditors, it has been submitted that when bonus is expressly excluded from the definition of wages by the provisions of the I.D. Act, that definition must be preferred and not the definition under the Payment of Wages Act.

17.3 The Court is of the view that there is considerable substance in the contention urged on behalf of the secured creditors. In this connection, the definition of the term "wages" under the I.D. Act is required to be contrasted with the definition of wages under the Payment of Wages Act, 1972.

Definition of wages under I.D. Act	Definition of wages (relevant portion) under Payment of Wages Act
all remuneration (whether by way of salary, terms of money, which would, allowances of otherwise) expressed or implied, were fulfilled, be payable to a workman which would, if the terms of in respect of his employment, employment, express or implied, or of work done in such employment and includes - person employed in respect of his employment or of work done in such employment and includes - (i) such allowances (including (a) any remuneration payable dearness allowance) as the workman under any award or settlement is for the time being entitled to; between the parties or order of a Court; (ii) (b) (iii) (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name); (iv) (d) but does not include - (e) (a) any bonus; but does not include - (b) (1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court; (C) (2) (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon; (4) (5) (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).	"Wages means all remuneration capable of being expressed in (whether by way of salary, terms of money, which would, allowances of otherwise) expressed or implied, were fulfilled, be payable to a workman which would, if the terms of in respect of his employment, employment, express or implied, or of work done in such employment and includes - person employed in respect of his employment or of work done in such employment and includes - (i) such allowances (including (a) any remuneration payable dearness allowance) as the workman under any award or settlement is for the time being entitled to; between the parties or order of a Court; (ii) (b) (iii) (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name); (iv) (d) but does not include - (e) (a) any bonus; but does not include - (b) (1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court; (C) (2) (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon; (4) (5) (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

17.4 The wide definition of term "wages" in the Payment of Wages Act, 1972 was with a definite purpose. The said Act was enacted for the purpose of enabling the workman to recover all his dues from the employer by approaching the one and same authority (except when any specific rights are conferred on a workman under a separate enactment with a separate authority constituted under the said Act such as the Provident Fund Act or the Payment of Gratuity Act) and, therefore, "bonus" payable under the terms of employment or under a settlement/award or a Court order was also included in the definition of wages. Hence wide definition of "wages" under the Payment of Wages Act cannot be applied for all purposes irrespective of the underlying object or scheme of the provisions of the other statutes. Relevant provisions of Sections 529 and 529-A have been enacted to give priority to the workmen's dues and the said provisions expressly refer to the provisions of the I.D. Act which contain a narrow definition of "wages". The Court must, therefore, proceed on the footing that the

legislature preferred the narrow definition of wages under the Industrial Disputes Act, and, not the wider definition of wages under the Payment of Wages Act. In view of the fact that the Legislature referred to the provisions of the Industrial Disputes Act regarding payment of compensation and specifically provided for gratuity, provident fund and pension, and also claims under the Workmen's Compensation but did not include claim for bonus for the purpose of priority payment, this Court would not be justified in reading "bonus" as a part of the "wages" covered by the provisions of Section 529(3)(b)(i) of the Companies Act.

17.5 The definition of "workmen's dues" in Section 529(3)(b) is not an inclusive definition. All the items which are required to be included in "workmen's dues" are specifically enumerated. The Legislature has referred only to the provisions of the Industrial Disputes Act in the relevant sub-clauses of Section 529(3)(b) and has not, made any reference to the Payment of Wages Act. If the Legislature had intended that the wages as defined by the Payment of Wages Act were intended to be covered, the Legislature would not have provided for separate sub-clauses for accrued holiday remuneration and gratuity as all these items are already covered by the definition of "wages" in Section 2(vi)(b) and (d) under the Payment of Wages Act. The very fact 45 that the Legislature has, made, separate provisions for these items indicates that the Legislature was adopting the narrower definition of "wages", under the Industrial Disputes Act and, therefore, gratuity, pension, 50 provident fund which are specifically excluded from the definition of "wages" under the Industrial Disputes Act, are separately provided for in Section 529(3)(b) and 530 of the Companies Act.

17.6 Moreover, when the Legislature has given the workmen's dues [as defined in Section 529(3)(b)] alongwith the dues of the secured creditors overriding priority even over the dues mentioned in Section 530(1) of the Act, including dues payable to the employees [i.e. other than workmen - see Section 530(8) (bb)], the Legislature must be treated to have consciously accepted the narrower definition of the term "wages" under the I.D. Act. The exclusion of "any bonus" from the definition of wages under the I.D. Act would also indicate that bonus is excluded whether payable under the provisions of the Payment of Bonus Act, 1965 or by the terms of the contract of the employment de hors the provisions of the Payment of Bonus Act.

17.7 The following pertinent observations made by the Division Bench (Coram : Hon"ble the Chief Justice MR. KOTWAL & Hon"ble MR. Justice PALEKAR) in case reported in D.P. Kelkar Vs. Ambadas Keshav Bajaj and Others, would go to show that bonus is not a part of the wages, as ordinarily understood.

"When a payment, whether called bonus or not, is such that it can hardly be called remuneration, it would not be included under the definition of "wages". By Payment of Bonus Act, a term of the employment has been introduced binding on the employer and in favour of the employee to pay bonus. The expression "term of employment" or "under the terms of employment" used in Section 2(vi) cannot be read to imply merely contractual terms of employment. The bonus

payable under the Payment of Bonus Act, 1965 amounts to wages "within the definition in Section 2(vi)."

17.8 In none of the cases cited at the Bar, the Court was concerned with the question whether "bonus" would fall within the definition of "workmen's dues" for the purpose of priority u/s 529(3)(b) of the Companies Act. The earlier decisions which interpreted the term "wages" in Section 530(1) of the Companies Act, 1956 or in Section 230 of the Indian Companies Act, 1913 cannot be considered to be relevant after the amendments made in the Companies Act in 1985, inter alia, inserting sub-section (3) in Section 529 and inserting Section 529-A in the Act as discussed above. Section 529(3)(a) inserting definition of "workmen" with reference to the I.D. Act and clause (i) in Section 529(3)(b) making specific reference to compensation payable under the I.D. Act, must be held to be crucial in determining the legislative intent of referring to,,the Industrial Disputes Act as the guiding statute and, therefore, relying on the narrower definition of "wages" under the I.D. Act and not the wider definition of "wages" under the Payment of Wages Act.

17.9 The Court, therefore, holds that the expression "all wages or salary" in Section 529(3)(b) does not include bonus payable to the workmen under the Payment of Bonus Act or otherwise.

18. Notice Pay

18.1 The aforesaid reasoning will equally apply to the claim for notice pay. It is required to be noted that under the provisions of Sections 25-F 25-FFA 25-FFF of the I.D. Act before retrenching the workmen, the employer is required to give one months notice or wages in lieu of notice and retrenchment compensation as per the formula contained in the aforesaid provisions of the I.D. Act. In sub-clause (i) of Section 529(3)(b) of the Act, the Legislature has specifically provided for compensation payable to a workman under the provisions of the I. D. Act but has not made any reference to "notice pay or wages in lieu of notice". So also, the notice pay is not provided for in any other sub-clause of clause (b) and, therefore, notice pay is also not included in the definition of "wages or salary".

18.2 u/s 445(3) of the Companies Act, the Order of Winding up constitutes discharge of officers and staff of the Company except when the business of the Company is continued. This provision, therefore, contemplates the automatic discharge without giving any notice under Sections 25-F 25-FFA and 25-FFF of the I.D. Act, and therefore, the Companies Act could not have intended to make payment of wages in lieu of notice as a part of the "workmen's dues" qualifying for priority under Sections 529 and 529-A of the Companies Act.

18.3 The learned counsel for the applicant-Union has, of course, relied on the decision of the Kerala High Court in State of Kerala v. Official Liquidator, 1979 Company Cases 335. The Kerala case was concerned with the provisions of Section 530(1) prior to amendment of Sections 529 and 530 and insertion of

Section 529-A in 1985. This Court is not in a position to agree with the view taken therein for the reasons already given in paras 18.1, 18.2 and paras 17.4 to 17.8 hereinabove. Moreover, the Kerala High Court, while adopting the wider definition of wages, appears to have been influenced by the provision that u/s 230(1)(b) of the 1913 Act. Preference was limited to Wages for only two months immediately prior to the date of winding up order, which period is now increased to four months subject to the limit of Rs. 20,000 as per notification dated February 17, 1997 u/s 530(2). However, now the material difference is that priority for workmen's dues under Sections 529 and 529-A is for an unlimited amount, whereas preferential payment of wages of employees other than workmen [see Section 530(8)(bb)] is confined by Section 530(1) of the present Act to the period of four months before the date of winding up order subject to the aforesaid limit u/s 530(2).

19. Definition of Workmen u/s 529(3)(a)

19.1 Section 529(3)(a) provides that, for the purpose of Sections 529 529-A and 530, "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947. Section 530(8)(bb) provides that the expression "employee" does not include a, workman.

Section 2(s) of the Industrial. Disputes Act, 1947 in so far as the same is relevant reads as under :

"(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operation, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment had led to that dispute, but does not include any such person -

(i)

(ii)

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

19.2 The controversy whether all the employees of the Company for whom the claims for priority are being made should be given the benefit of ad-hoc distributions from out of sale proceeds of the assets of the Company "in liquidation was raised in a few applications filed by the Textile Labour Association

earlier. In Company Application No. 159/1996 in Company Petition No. 98 of 1993 in the matter of Aruna Mills Ltd. (in liquidation), a formula was evolved for the purpose of being followed in all textile mills where the Textile Labour Association appears as a representative union. As per the formula, the following 11 categories of the employees were excluded for the grant of benefit of ad-hoc distribution :

- (i) Manager
- (ii) Factory Manager
- (iii) Secretary
- (iv) Spinning Master/Manager
- (v) Weaving Master/Manager
- (vi) Processing Master/Manager
- (vii) Printing Master/Manager
- (viii) Sales Manager
- (ix) Sales Executive
- (x) Doctor
- (xi) Administrative Officers and other Officers drawing the basic wages exceeding Rs. 2000/-

There can be no controversy for exclusion of the first 9 categories as they would fall under exclusionary clause (iii) in Section 2(s) of the Industrial Disputes Act. As far as category (x) i.e. Doctor is concerned, there is no claim on behalf of the Textile Labour Association that the said category be included in the definition of workmen. However, there is some scope for controversy regarding category (xi) whether it would fall within the exclusion clause (iv) of the definition of workmen under the Industrial Disputes Act.

19.3 It is also pertinent to note that the definition of "employee" under the Bombay Industrial Relations Act, 1946 (BIR Act) is different from the definition of "workmen" under the Industrial Disputes Act.

Section 2(13) of the Bombay Industrial Relations Act, 1946 in so far as the same is relevant for the present discussion, defines "employees" as under :

"2(13) "employee" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and includes -

(a)

(b)

but does not include

(i)

(ii) a person who being employed primarily in a managerial, administrative or supervisory capacity draws basic pay (excluding allowances) exceeding one thousand rupees per month, and

[The words "one thousand" were substituted for "five hundred" by Gujarat Act No. 22 of 1981]

(iii) irrespective of the pay drawn, any other person or class of persons employed in any capacity specified in clause (ii) or in a technical capacity, which the State Government may, by notification in the Official Gazette, specify in this behalf."

19.4 Mr. Vasavada appearing for the Textile Labour Association has submitted that the figures "one thousand rupees" were substituted for the words "five hundred rupees" in the year 1981. A number of employees whose basic wages were less than Rs. 1000/- as on the date of commencement of the aforesaid Act No. 22 of 1981 were thereafter given higher basic wages between Rs. 1000 and Rs. 2000 in view of the award of the Industrial Tribunal. None of those categories of employees have been considered to be persons employed in a managerial or administrative or supervisory capacity and, therefore category (xi) i.e. administrative officers and other officers drawing the basic wages exceeding Rs. 2000/- has been evolved to give a practicable workable formula that employees who were drawing basic wages of Rs. 2000/- or less are to be treated as "workmen" under the Industrial Disputes Act without holding any further inquiry. Mr. Vasavada has pleaded that in the past such a practice has been followed for determination of the claims of the workmen and that there is no reason to depart from such practice.

19.5 In this connection, this Court would like to make a brief reference to the decisions having a bearing on the question of definition of "workmen" under the I. D. Act. In National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, , the question was whether the employee would be a workman, where the employee was working under company as an Internal Auditor on a month salary and his duties were mainly reporting and checking up on behalf of the management but he had no independent right or authority to take decision and his decision did not bind the company. It was held that a checker on behalf of the management or employer is not a supervisor and that the Internal Auditor was a workman. The Courts have laid down that in order to decide whether an employee is a workman, Court has to decide as to whether the work performed by him is of a supervisory or managerial nature. Label by which the post was advertised is of no consequence. The criteria is primary and basic duties and not incidental duties. Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, . The Apex Court has also observed that sometimes the high-sounding nomenclatures are adopted not only to inflate the ego of the employee but primarily for avoiding the application of the Industrial Disputes Act.

19.6 In view of the above discussion, the Court would proceed on the basis that a person employed in a textile mill in the State of Gujarat and drawing monthly basic pay of Rs. 2000/- or less (excluding allowances) cannot be said to be a person employed in a supervisory capacity or a person who exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

19.7 Hence, this Court would adopt the definition of "workman" as worked out by the Textile Labour Association as recorded in the order dated September 15, 1998 in Company Application No. 159 of 1996 whereby only the aforesaid 11 categories of employees are excluded from the definition of "workmen" for the purpose of determining the ratio of workmen's dues and the dues of the secured creditors of each textile Company in liquidation in the State of Gujarat and for the purpose of payment on priority basis u/S. 529 and 529-A of the Companies Act. The Court finds that working out of such rough and ready formula for finding out as to which employees of textile mills in liquidation would fall within the definition of "workmen" under the I.D. Act as required by sub-clause (a) of Section 529(3) of the Companies Act would be more conducive to expeditious consideration of the claims for workmen's dues. Otherwise, the entire exercise of working out the dues of workmen running into thousands of employees in each textile mill under liquidation and a large number of textile mills being in liquidation, the process of determining the ratio and ultimate distribution of sale proceeds will be delayed if the Official Liquidator is required to undertake inquiries into the nature of duties and functions of a number of individual employees drawing salary exceeding Rs. 1800 per month. Looking to the fact that the number of employees admittedly falling within the definition of workmen under the I.D. Act is always much larger than the number of employees working in a supervisory capacity and drawing salary in excess of Rs. 1600/- per month, it appears to the Court that in any case adoption of such a rough and ready formula will not significantly alter the ratio of workmen's dues and the dues of the secured creditors.

20. Interest

20.1 In the instant case the workmen have also claimed interest on their dues. In view of the definition of relevant date as contained in Section 530(8)(c)(i) of the Act, for determination of the dues of the secured creditors as well as the workmen's dues for the purpose of determination of ratio as well as for the purpose of priority payment u/S. 529 529-A and also for the purpose of preferential payment u/S. 530 of the Act, the relevant date would mean the date of the first appointment of a provisional liquidator and if no such appointment is made, the date of winding up order. Similar view is taken in the decision of the Division Bench of this Court in the case of ICICI v. Textile Labour Association rendered in OJ Appeal Nos. 80 and 81 of 1998, decided on November 3-4, 1998, as also in the case of Kerala Financial Corporation v. Official Liquidator reported in 87 Company Cases 183 and in the case of Anthony Raj v. Shanmugam

reported in 80 Company Cases 531. The dues of the workmen as well as the dues of the secured creditors are first required to be determined as on the aforesaid relevant date which is generally the date of winding up order and, therefore, no interest is to be calculated for the period after the date of winding up order either on the dues of the secured creditors or on the dues of the workmen. The question of payment of interest thereon after the relevant date would arise only if there is surplus.

20.2 As far as charging interest prior to the relevant date (generally, the date of winding up order) is concerned, the debts will carry interest only as per the terms of the contract. In the facts of the instant case, no contract or statutory provision is brought to the notice of this Court on the basis of which the workmen will be entitled to claim interest which can be considered for the payment of priority u/S. 529 529-A and 530 of the Act, whereas secured creditors have relied upon the contracts providing for payment of interest.

21. Conclusions

In view of the above discussion, the Court reaches the following conclusions

A) Scope of the Expression "Workmen"

For the purpose of Section 529(3)(a) of the Companies Act, 1956, in respect of a textile Company in liquidation in the State of Gujarat, the expression "workmen" shall include all employees of the Company except those falling in the following eleven categories.

(i) Manager

(ii) Factory Manager

(iii) Secretary

(iv) Spinning Master/Manager

(v) Weaving Master/Manager

(vi) Processing Master/Manager

(vii) Printing Master/Manager

(viii) Sales Manager

(ix) Sales Executive

(x) Doctor

(xi) Administrative Officers and other Officers drawing the basic wages exceeding Rs. 2000/-

B. Scope of the expression "Workmen's Dues"

1) For the purposes of priority under Sections 529 529-A and 530 of the

Companies Act, 1956 (hereinafter referred to as "the priority under the Act"), the wages/salary payable to the workmen u/s 529(3)(b)(i) includes not only the unpaid wages/salary for the period upto the date of closure, but also for the period of illegal closure.

2) Ad-hoc interim relief as awarded by the Industrial Court is a part of the wages/salary covered by the expression workmen's dues as defined by Section 529(3)(b)(i) of the Companies Act.

3) Retrenchment Compensation payable to the workmen under any of the provisions of the Industrial Disputes Act is covered by the expression "workmen's dues" as defined in Section 529(3)(b)(i) of the Companies Act. For computing such compensation, the period of illegal closure is to be included in the length of service for which compensation is payable under the Industrial Disputes Act.

4) The claim for accrued holiday remuneration becoming payable to any workman on the termination of his employment before, or by the effect, of the winding up order as mentioned in clause (ii) of Section 529(3)(b) includes such claim for the period immediately prior to the date of closure but it does not include such claim for the period of closure, whether closure is legal or illegal.

5) Compensation under Workmen's Compensation Act, 1923 is admissible for the purpose of priority under the Act as per the provisions of Section 529(3)(b)(iii).

6) The claim for gratuity under the Payment of Gratuity Act, 1972 is covered by the provisions of Section 529(3)(b)(iv) of the Companies Act, irrespective of the fact whether the Company had established or maintained a gratuity fund and the qualifying period for the purpose of computing gratuity, pension and provident fund shall include the period of illegal closure.

7) The claim for notice pay under the provisions of the Industrial Disputes Act, 1947 or under any other law is not admissible for the purposes of priority under the Act.

8) The claim for bonus, whether under the Payment of Bonus Act, 1965 or otherwise, is not admissible for the purposes of priority under the Act.

c) Relevant date for computing Workmen's Dues and calculation of Interest

The relevant date for computation of the workmen's dues as well as the dues of the secured creditors for the purpose, of determining the ratio of the respective dues under Sections 529 and 529-A of the Companies Act is the date of first appointment of provisional liquidator and if no such appointment is made the date of winding up order as contemplated in Section 530(8)(c)(i) of the Act. Hence, in the first instance the Official Liquidator shall compute the dues of the workmen as covered by the claim for priority u/S 529 and 529-A of the Companies Act and the dues of the secured creditors as on the aforesaid relevant

date.

As far as the claim for interest is concerned. -

i) No interest shall be awarded for the subsequent period after the relevant date (as defined above).

ii) As far as the claim for interest for the period prior to the relevant date (as defined above) is concerned, the claim for interest shall not be allowed unless the debts carry interest as per the terms of the respective contracts.

iii) It is only if the company is left with surplus assets/funds realised after distribution of the dues of secured creditors and the workers dues both on pari passu as on the relevant date as aforesaid as Per the provisions of Section 529 and 529-A of the Act and after distribution of preferential dues u/S 530 of the Act that the question of awarding any interest on the dues of the secured creditors or on the workmen's dues for the further period after the relevant date will arise. Since that eventuality has not arisen in the instant case so far, the question about rate of interest is not considered at present.

22. ORDER

In view of the above conclusions, the following order is passed :

22.1 The applicant-Textile Labour Association shall resubmit before the Official Liquidator the claims for dues of workmen of the Jubilee Mills Ltd. (in liquidation) strictly in accordance with the principles laid down in this judgment within a period of two months from today and a copy of the summary of the same shall be given to the secured creditors and to the Financial Institutions (whose claim for being considered as secured creditors is yet to be decided).

If the secured creditors or the Financial Institutions require, within one week from the date of receiving the copy of the summary, any details of the claims submitted for the workmen's dues, the same shall be supplied by the Official Liquidator to the secured creditors/Financial Institutions at their costs.

22.2 Within one month from the date of receipt of the summary of claims for workmen's dues, the objections, if any, on behalf of the secured creditors or Financial Institutions shall be submitted to the Official Liquidator with a copy to the Textile Labour Association.

22.3 The Official Liquidator shall thereafter submit the claims as well as objections for verification to the concerned Chartered Accountants who had earlier verified the claims of workmen's dues.

22.4 The Chartered Accountants shall submit their verification report within two months from the date of receipt of the instructions from the Official Liquidator along with the aforesaid material and the report shall be placed before the Court.

23. In order to see that the ratio between the workmen's dues and the dues of the secured creditors over the security realised can be determined expeditiously,

the secured creditors or the parties claiming to be secured creditors shall submit before the Official Liquidator their claims as on the date of winding up order (i.e. September 5, 1989) within six weeks from today. It is clarified that while submitting the claims in this manner, the secured creditors or the parties claiming to be secured creditors shall not be treated as having submitted to the winding up proceedings. A copy of the claims furnished by the secured creditors or parties claiming to be secured creditors shall also be served upon the Textile Labour Association. This direction is given without, prejudice to the contentions of the secured creditors and the Financial Institutions that since the Official Liquidator already looks after the interests of the workmen, workmen's representatives have no right to lodge objections against the claim of secured creditors or parties claiming to be secured creditors. This contention will be considered on the next date of hearing.

24. Subject to the directions which may be given hereafter, after determining the workmen's dues as qualifying for priority under Sections 529 and 529-A of the Companies Act, 1956 and after determining the dues of the secured creditors (subject to the clarifications made in this order), the Official Liquidator shall determine the ratio of the workmen's dues and the dues of the secured creditors as on September 5, 1989.

25. Since the above exercise is likely to take some time and the workmen are awaiting payment of their dues since the date of winding up order which was passed as far back as on September 5, 1989, in the facts and circumstances of the case and particularly in view of the fact that the substantial portion of the workmen's dues are in respect of unpaid wages for the period of illegal closure, for gratuity and for retrenchment compensation which in principle, are all upheld by this order, whereas the claims of the secured creditors and even Financial Institutions taken together are only about Rs. 10 crores (that is, if the Financial Institutions succeed in establishing their claims as secured creditors), the workmen's dues will in any case not be less than the dues of the secured creditors. Looking at it differently, all the dues covered by the priority under Sections 529 and 529-A are not likely to be more than Rs. 30 crores as on September 5, 1989. Hence, if the workmen are paid 10% of their revised claims (out of the funds of Rs. 4.23 crores lying with the Official Liquidator as on February 15, 1999) there will be no possibility of recovery of any amount from the gross block of workmen's dues. Similarly the secured creditors can be paid 10% of their dues, but there is inter se dispute amongst the secured creditors and Financial Institutions as to which creditor can be paid out of sale proceeds of which assets of the Company in liquidation. Hence, there will be no interim payment to secured creditors or to Financial Institutions but 10% of their respective claims can be safely deposited with them out of the aforesaid amount of Rs. 4.23 crores lying with the Official Liquidator.

25.1 Accordingly, within one month from the date the Textile Labour Association submits the revised claims for dues of workmen of Jubilee Mills Ltd., the Official

Liquidator shall disburse 10% of the dues of the workmen as computed in the revised claims. The Official Liquidator shall make the above payments by A/c Payee Cheques in favour of the individual workmen or in case of death in favour of the legal representatives of the deceased workmen after proper identification and in presence of the authorised representative of the Textile Labour Association.

25.2 After receiving the particulars of claims of the secured creditors and financial institutions as on the date of winding up order the Official Liquidator shall deposit with each of the secured creditors and with IIBI, IDBI and ICICI (who claim to be secured creditors and which claim is being contented by the workmen's representatives and no opinion is presently expressed by the Official Liquidator on their claim for status as secured creditors), 10% of their respective claims as on the relevant date. It is made clear that the aforesaid deposit will be treated as deposit of the amount realised from sale of the security and no Bank or Financial Institution shall appropriate such amount towards its dues till the Court decides the controversy as to which secured creditor is entitled to get the amount realised from the sale of a particular security.

26. The Official Liquidator is authorised to encash the Fixed Deposit Receipts prematurely and to incur the necessary expenses for carrying out the aforesaid directions.