

(2008) 03 GUJ CK 0060

In the Gujarat High Court

Case No : Company Application No. 562 of 2007 in Company Petition No. 250 of 1996 and Company Application No. 77 of 2008 in Company Petition No. 205 of 1996

The State of Gujarat

APPELLANT

Vs

O.L. of Gstc Ltd. and Another

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Companies Act, 1956 — Section 391, 454, 457, 457(1), 457(2)
Industries (Development and Regulation) Act, 1951 — Section 18A
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20

Citation : (2009) 152 CompCas 456 : (2008) 84 SCL 457

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : S.N. Shelat and M.G. Nagarkar, for the Appellant; Official Liquidator and Nitin K. Mehta, for Respondent 1 and D.S. Vasavada, for Respondent 2, for the Respondent

Judgement

K.A. Puj, J.—Since common issue is involved in both these Company Applications they are heard together and are being disposed of by this common judgment and order.

2. Both these Company Applications are filed by State of Gujarat through the Secretary, Industries & Mines Department, Sachivalay, Gandhinagar.

3. Company Application No. 562 of 2007 is in relation to Priyalaxmi Mills, Vadodara a unit of Gujarat State Textile Corporation (in liquidation) and Company Application No. 77 of 2008 is in relation to Monogram Mills, Ahmedabad a unit Gujarat State Textile Corporation (in liquidation). The common prayers are made in both these applications. The applicant State of Gujarat has prayed for appropriate order or direction directing the Official Liquidator attached to this Court to transfer and hand over all immovable assets and properties belonging to and owned by GSTC in respect of its units, namely, Priyalaxmi Mills, Vadodara, particularly land admeasuring 64192 Sq.Mtrs., bearing City Survey No. 586 and

609 and all immovable assets and properties belonging to and owned by the GSTC in respect of the unit, viz. Monogram Mills Rakhial Char Rasta, Ahmedabad City, including land admeasuring about 1,47,034 Sq.Mtrs., to the applicant State Government free from all encumbrances, liabilities and charges u/s 457(1)(e) of the Companies Act, 1956. The applicant State of Gujarat has also prayed for the appropriate direction and/or order directing the Official Liquidator to give set off against the amount already paid by the Government which the Official Liquidator owes to the State Government to the tune of Rs. 826.79 crores for discharging the liabilities towards all the dues of the Gujarat State Textile Corporation (in liquidation).

4. In Company Application No. 562 of 2007 an affidavit is filed by Shri Rajesh Kantilal Shah Dy. Secretary to the Government of Gujarat in Industries & Mines Department, Gandhinagar, in support of judge's summons whereas in Company Application No. 77 of 2008 an affidavit is filed by Shri Kanubhai Atmaram Patel Under Secretary, Government of Gujarat to the Industries & Mines Department, Gandhinagar, in support of judge's summons.

5. The case of the applicant State Government in both these matters is that the GSTC Ltd., (in liquidation) is a company duly registered and incorporated under the provisions of the Companies Act, 1956, which was incorporated vide Certificate of incorporation No. 1546/68 dated 30.11.1968. This Company was wholly owned by the State Government and the main objectives for which the GSTC was incorporated are inter alia to take over and run as an unemployment relief or otherwise any textile mill in Gujarat State, which is closed or likely to be closed or has gone into liquidation or otherwise and to manage and control any textile mill in Gujarat which may be taken over by the Government of India under the Industries (Development and Regulation) Act, 1951 and the management of which may be entrusted to the Company, and to run textile mills taken over by the Central Government on payment of the reserve price or on reconstruction under the provisions of the Cotton Textile Companies (Management of undertaking and Liquidation or Reconstruction) Act, 1967 and entrusted to the GSTC for management, and to lend money to textile mill or Guarantee Loans secured by textile mills for scheduled Banks, Industrial Finance Corporation, Industrial Development Bank or any other Financial Institution for all or any one or more of the purpose of working finance, rehabilitation, expansion or modernization etc.

6. At the relevant time, there were 17 textile mills of GSTC as per the Annual Report & Accounts for the year 1994-95. On account of stringent crisis in the textile industry in the whole of the State of Gujarat and other relevant regions, GSTC could not do well and, therefore, GSTC approached by the Board of Industrial and Financial Reconstruction (BIFR) for revival of and reconstruction of the Company. After hearing all parties concerned, the BIFR found that it was not possible to meet the losses suffered by GSTC within a reasonable time and there was no likelihood of GSTC being revived in future and, therefore, an opinion was

forwarded by the BIFR to this Court u/s 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 for winding up of GSTC. This opinion was registered as Company Petition No. 205 of 1996 and after hearing the parties, this Court vide its order dated 6.2.1997 had passed an order to wind up the GSTC and the Official Liquidator attached to this Court was appointed to take charge of all the assets and properties of GSTC including possession thereof and the Gujarat Industrial Development Corporation (GIDC) was appointed as an agent of Official Liquidator u/s 457(2)(v) of the Companies Act, 1956 for the purpose of preservation, protection and disposal of the property and the said agent, the GIDC is to act under the instructions of the Official Liquidator.

7. So far as Priyalaxmi Mills, Vadodara is concerned, a report of the Chartered Accountant M/s.Suketu Trivedi & Co., was obtained on 22.6.2007 in relation to the liabilities and other issues on the take over of Priyalaxmi Mill, Vadodara, which contains certain facts relevant to this application and hence reproduced as under:

(i) Shri Keshariya Investment Ltd., purchased Textile Undertaking Priyalaxmi Mills Ltd., from Shri Sayaji Mills Ltd., at an aggregate price of Rs. 88.25 lacs with effect from 1.5.1973 by sale deed dated 26.5.1973. On 24.4.1975, Textile Undertaking was closed. The Gujarat State Textile Corporation Ltd., was appointed as authorized controller by the Central Government u/s 18A of the Industries Development Regulation Act, 1951 by a Notification dated 23.7.1977. The Textile Undertaking was thereafter managed by the Gujarat State Textile Corporation as authorised controller.

(ii) with effect from 1.1.1986 under the provisions of the Gujarat Sick Textile Undertaking Nationalization Ordinance, 1986 the Textile Undertaking was nationalized. The rights, title and interest of the owner stood transferred absolutely in the State Government and, thereafter, in GSTC free from any trust, charge line and encumbrances with effect from 1.1.1986 retrospectively. The Gujarat State Textile Undertaking Nationalization Ordinance, 1986 was repealed and substituted by the Gujarat Sick Textile Undertaking Nationalization Act, 1986.

(iii) The Textile Undertaking was managed by the GSTC as an owner of the undertaking. The winding up order against the GSTC Ltd., was passed on 6.2.1997 by this Court.

(iv) The period of management by the GSTC as authorised controller is post-take over management period. The period of management prior to that i.e. Management by private owner is pre-take over management period.

(v) The post-take over period is classified as period prior to nationalization that is, management by authorised controller and the post nationalization i.e. subsequent to the nationalization as the owner of the undertaking.

(vi) The liabilities of pre-take over management period i.e. till the appointment of the authorised controller and the period between the management as authorized

controller by the GSTC Ltd., is taken care of under the Nationalization Act. The compensation is paid under the said Act and liabilities prior to 1.1.1986 are to be discharged by the Commissioner of Payments appointed under the said Act, in order to priority.

(vii) The Official Liquidator is required to discharge its liabilities after 1.1.1986 when the GSTC owned the said undertaking. The statement of affairs of the GSTC in winding up provides break up of liabilities as on 6.2.1997. It is a statement of affairs certified u/s 454 of the Companies Act and is filed before this Court by the Directors of Company under winding up on 6.5.1997. The liabilities are for the period between 1.1.1986 and 5.2.1997 when the order for winding up was passed. Secured Creditors:

There are no secured creditors having any charge registered with the Registrar of Companies between the period from 1.1.1986 till 6.2.1997.

In the statement of affairs secured dues of Gujarat Electricity Board (GEB) are relating to the energy charges and to the extent of security deposit lodged with GEB. The security deposit is against electricity bills and cannot confer any right to the GEB over any asset of the undertaking except appropriation of outstanding dues against such deposit. The total outstanding dues of GEB are shown to be Rs. 15,34,908/-. The amount lodged as security deposit is Rs. 1,14,840/-. The GEB appropriated the said deposit and, therefore, the amount due is unsecured debt of Rs. 14,20,068/-. The State Government has negotiated with the various companies of the Ex.GEB and has stated in their communication dated 9.10.2007 to the effect that only the amount payable to the Board is Rs. 14,20,000/- in respect of this mill and the company does not object to the application for return of the assets preferred by the State Government. A copy of the letter from Principal Secretary, Energy and Petrochemicals Department, Gandhinagar is placed on the record of this application.

8. The preferential Creditors shown in the statement of affairs are as under:

Particulars	Amount
Dues relating to State Government. Deferred Sales Tax on Yarn	10,99,266
Deferred Sales Tax on Electricity Duty	27,33,381
Deferred Electricity Duty GEB	1,49,60,744
Unpaid Turnover Tax	496
Sales Tax Recovered to be paid	4,394
Baroda Municipal Corporation (Water Tax)	5,11,055
Unpaid Land Revenue	1,15,928
Baroda Municipal Corporation (Gas Octroi)	7,69,184
Sub Total (a)	2,01,94,448
Dues relating to Central Government Central Division Baroda (Income Tax TDS)	12
Central Excise Authority, Baroda	11,359
Textile Committee Cess	1,29,908
Sub Total (b)	1,41,279
Workers dues including salary deductions	6,15,461
Sub Total (c)	6,15,461
Total (a + b + c)	2,09,51,188

9. The municipal Commissioner, Vadodara has intimated to the State Government that they will negotiate amount due and payable to the State Government towards the dues of GSTC and this letter is placed on the record of this application. It is further stated that major parties relate to the dues of State

Government and dues relating to the Central Government would be settled and paid after due negotiation.

10. The unsecured creditors shown in the statement of affairs are as under:

Particulars Amount Dues relating to State Government. Gujarat Electricity Board (GEB) 14,20,088 Gujarat Industrial Investment Corp. (GIIC) 16,35,467 Sub Total (a) 30,55,535 Dues discharged by State Government (Covered under State Government Guarantee or otherwise) Cotton Corp. of India (CCI) 1,76,50,734 Bogaingaon Refinery (BRPL) 3,34,079 Oil & Natural Gas Corp. (ONGC) 1,67,58,286 Sub Total (b) 3,47,43,099 Other Creditors (Including Deposits and other old unclaimed Balances) Maharashtra Cotton Growers Fed. 47,94,336 Others 28,95,210 Sub Total (c) 76,89,546 Total (a + b + c) 4,54,88,180

11. Gujarat Industrial Investment Corporation (GIIC) has given no due certificate by letter dated 8.10.2007 so as to enable the State Government to approach this Court for return of the assets of Priyalaxmi Mills. The dues of CCI and BRPL have been settled and paid vide G.R. Dated 16.10.2006 & 21.12.2006 respectively. The settlement with ONGC and Maharashtra Cotton Growers Federation are underway. Relevant correspondence entered into between these parties are placed on the record of this application.

12. IN view of the aforesaid details, the amount remains due and payable as identified in the Statement of Affairs is as under:

a. ONGC Rs. 1,67,58,258

b. Workers dues Rs. 6,15,461

c. Dues of Maharashtra Cotton Growers Ltd Rs. 47,94,336

d. Other creditors Rs. 28,95,210

13. So far as Monogram Mill is concerned, it is located at Rakhial Char Rasta in Ahmedabad City. The Mill was established on various plots of land taken on lease bearing Survey Nos. 245 to 253. Manilal Mulchand obtained all the plots of different survey numbers except land of Survey No. 252 on permanent lease. The land of Survey No. 245 was taken on permanent lease on 25.8.1927 and land of other remaining survey numbers was taken on lease on 14.7.1927. Manilal Chunilal obtained the land of Survey No. 252 on permanent lease from Harmandas Khushaldas and Baldevdas Harmandas on 30.8.1918 who gave this plot to Ben Marsden on lease. Subsequently all the plots under different survey numbers were consolidated under a tripartite agreement executed on 19.11.1927 among Manilal Mulchand, Ben Marsden and Monogram Mills to construct a Mill on the entire land under different survey numbers. Under the said agreement, Monogram Mills was established as lessee and it was the responsibility of the Mill to pay lease rent as per terms of original lease deed. The total area of the land taken on lease was 37.45 Acres. As per the Valuation

Report of GITCO, the total area of the land taken on permanent lease by the Mills is 1,47,034 Sq.Mtrs. Prior to the closure of the Mills in the month of October, 1982 Board of Directors managed it. The other mill under the same management or associated with the same management group was Marsden Mills.

14. Before winding up of GSTC under an order of this Court, a voluntary retirement scheme (VRS) was announced by GSTC under an agreement executed with recognised union. All the employees who were on the roll at that time were entitled to the benefits of the scheme. Accordingly, almost all the employees tendered their voluntary resignations to the management and were paid their terminal benefits and other dues in terms of the VRS Agreement. The total amount spent on payment of terminal benefits to the employees of the Mill under the said VRS Agreement is Rs. 3,075.19 lacs. The said amount was paid by GSTC out of the funds provided by the State Government. The credit balance of GSTC in the books of Mills as on 6.2.1997 was Rs. 8,922.46 lacs which represents the total amount advanced to the Mills since its Nationalization by GSTC out of the funds provided by the State Government.

15. It is further stated that the period of management of Mills by its Board of Directors prior to the closure of the Mill in October, 1982 and, thereafter, till Nationalization with effect from 8.11.1985 is pre-nationalization period. The period of management by GSTC since nationalization on 8.11.1985 to its winding up on 6.2.1997 is post nationalization period. The period of management by Official Liquidator since its winding up on 6.2.1997 is post liquidation period. Thus, various stages of life tenure of the Mill can be summarized as under:

A Pre-Nationalization period Prior to the closure of Mills in October, 1982 and thereafter till nationalization on 8.11.85.

B Post-Nationalization Period Subsequent to nationalization on 8.11.1985 till its winding up on 6.2.1997.

C Post Liquidation Period Period subsequent to liquidation on 6.2.1997.

16. With regard to liabilities of pre-nationalisation period, compensation was fixed for each undertaking under the said Ordinance No. 18 of 1985 and liabilities prior to the appointed day i.e. 8.11.1985 were to be discharged out of the said compensation by Commissioner of Payments appointed under the Gujarat Closed Textile Undertakings (Nationalization Act, 1986 Gujarat Act 10 of 1986) Act in order of the priorities laid down in the Act. The liabilities created during the post nationalization period and remaining outstanding as on 6.2.1997 as well as the liabilities created by the Official Liquidator since 6.2.1997 and remaining outstanding till the date are to be discharged, out of the assets of the undertaking by the Official Liquidator. The category wise break up of liabilities as on 6.2.1997 for post nationalization period is given in the Statement of Affairs of the GSTC prepared upon its winding up as per statutory requirement u/s 454 of the Companies Act, 1956. It was prepared by GSTC and filed before this Court under the affidavit by the then Directors of the GSTC on 6.5.1997. The said

statement of affairs contains details of liabilities and assets of all the unit Mills of GSTC individually and consolidated as a whole of GSTC including Monogram Mills.

17. The Chartered Accountant appointed by the State Government had verified the affairs of GSTC under liquidation as on 6.2.1997 and according to the summary of statement and according to verification, total outstanding dues are Rs. 56,625,677. As stated earlier, approximately an amount of Rs. 56 crores is lying credited to the account of company with the Official Liquidator and hence the liabilities, if any, of all these units of the Company can be discharged from the said amount. The relevant break up of liabilities in respect of the Monogram Mills is determined by M/s.Suketu Trivedi & Co., in their report dated 16.8.2007 and relevant break up is as under: Post Nationalization period liabilities:

A. Secured Creditors List B : There are no secured creditors as on 6.2.1997 of post nationalization period having any charge registered with Registrar of Companies.

B. Preferential Creditors List C:

Particulars Amount Dues relating to State Government. Sales - tax 35,25,775
Deferred Electricity Duty GEB 1,73,64,523 Ahmedabad Muni.Corp.(Tax)
27,95,190 Others 1,63,308 Sub Total (a) 2,38,48,796 Dues relating to Central
Government Textile Committee Cess 4,12,086 Sub Total (b) 4,12,086 Workers
dues including salary Deductions: 2,36,049 Sub Total (c) 2,36,049 Total (a + b
+ c) 2,44,96,931

Thus, as stated above, total liability to preferential creditors as per Statement of Affairs drawn on 6.2.1997 from Audited Books of Account is Rs. 2,44,96,331/-. Out of total such dues, major portion relates to the dues of the State Government alone. Dues relating to Central Government and dues of workers including on account of deductions from salary aggregate to Rs. 6,48,135/- as against dues of Rs. 2,38,48,796/relating to State Government alone.

C Unsecured Creditors List: E

The break up of unsecured creditors listed in List: E of the Statement of Affairs as on 6.2.1997 drawn from the Audited Books of Accounts of GSTC, is as under:

Dues relating to State Government

Ahmedabad Municipal Corporation - interest 41,72,373 Gujarat Industrial
Investment Corporation (GIIC) 76,000 Gujarat Mineral Development Corpora
8,067 Sub Total (a) 42,56,440 Dues discharged by State Government (Covered
under State Govt. Guarantee or otherwise) Cotton Corp. of India (CCI)
1,35,16,002 Torrent Power Ltd., AEC 85,73,657 Sub Total (b) 2,20,89,659
Other Creditors (including deposits and other old unclaimed balances)
Maharashtra Cotton Growers Fed. 19,73,559 Gujarat Lease Finance Ltd., 1,563
Others 13,63,073 Majoor Mahajan Sangh 1,70,728 Sub Total (c) 36,18,285
Total (a + b + c) 2,99,64,384

18. It is further stated that dues of CCI which were covered under State Government, have already been paid at an agreed amount. In addition to that, the dues of net of security deposit of Torrent Power Ltd., (former AEC) have also been paid by the State Government at an agreed amount. Government orders and undertakings are placed on record. Thus, out of total dues of Rs. 2,99,64,384/-major portion has been discharged by State Government and out of remaining dues, Rs. 42,56,440/-relate to undertakings/ authorities owned/ controlled by State Government. Other outsider remaining dues aggregate to Rs. 36,18,285/-of which dues of Maharashtra Cotton Growers Federation are under verification, reconciliation and quantification under the instructions of the State Government and upon completion of that exercise, the same will be paid off by the State Government directly. Relevant communication received from GIIC and AMC are placed on the record of this application.

19. It is further stated that out of total post nationalization dues of Rs. 5,44,61,315/outstanding as on 6.2.1997, dues aggregating to Rs. 2,81,05,236/- are related to State Government and dues aggregating to Rs. 2,20,89,659/-have been directly settled by State Government. Thus, out of the total liabilities, the aggregate quantum of dues relating to State Government and dues directly discharged by the State Government works out to 92.17% of the total dues. Thus, the major stake in the form of liabilities is of the State Government.

20. In addition to the discharge of dues of post nationalization period covered under State Government guarantee or otherwise, State Government has directly discharged the pre-nationalization secured dues of Banks and Financial Institutions having charge on the assets of the undertaking duly registered in favour of respective Bank and Financial Institution with Registrar of Companies. However, such charges were released by virtue of the provisions contained in the Nationalization Act. The pre- nationalization dues comprised only of dues created under the management by private owner. The pre- nationalization dues of such secured creditors from subject matter undertakings have been paid since nationalization to winding up and thereafter as under:

Name of Bank/Institution	Amount	Bank of Baroda	103.81	Dena Bank	75.75
IDBI	52.92	Total	232.48		

21. Based on the above facts, Mr. S.N. Shelat, learned Senior Counsel appearing with Mr. M.G. Nagarkar, for the applicant State of Gujarat has submitted that the State Government has discharged almost entire liability of the Company in liquidation and still an ongoing process is initiated by the State Government to discharge the dues of remaining outside creditors. The State Government has undertaken to settle dues relating to State Government directly with respective department and respective institution. On the date of passing of the winding up order by this Court, balance with Bank of Monogram Mills was Rs. 72,557/- only. Official Liquidator sold the plant and machineries of the Mills in the year 1999 at a consideration of Rs. 445 lacs. The Sale Committee constituted for the liquidation proceedings had invited offers for sale of buildings of the Mills and the

highest offer of Rs. 400 lacs is under process of approval by this Court. The said amount which realized together with principal amount of Rs. 445 lacs already realized by sale of plant and machineries of the Mills in the year 1999 will be more than sufficient to discharge entire liabilities of the Mills stated in the Statement of Affairs. As per the available information, sizable balance approximately to the tune of more than Rs. 5,000 lacs is available with Official Liquidator for GSTC as a whole out of sale proceeds of the assets of some of the undertakings, which is in addition to the proposed sale proceeds. The balance available with the Official Liquidator is much in excess of the total liability of outside creditors appearing in the Statement of Affairs of GSTC as a whole. Thus, after payment to remaining creditors either by Official Liquidator or by the State Government directly, the surplus balance of sizable magnitude will have to be surrendered by the Official Liquidator to State Government as a sole shareholder of GSTC. On the other hand, as per available information, since winding up order of GSTC and handing over the affairs and assets of the undertaking to the Official Liquidator, none of the creditors as mentioned in the Statement of Affairs has been discharged by the Official Liquidator.

22. Mr. Shelat has further submitted that the liabilities relating to the period from the date of nationalization of the undertaking till the winding up of the company falls under the jurisdiction of the Official Liquidator. In respect of the liabilities prior to the date of nationalization vests with the Commissioner of Payments, appointed under the Nationalization Act and Official Liquidator has no obligation with regard to the liabilities of pre-nationalization period. Hence, the State Government is the major creditor of the Mill as well as the sole shareholder as the State Government holds all the equity shares of GSTC.

23. Mr. Shelat has further submitted that the State Government being the sole shareholder and the major creditor of Monogram Mills, Ahmedabad is justified in asking for balance assets remaining to be sold of the undertaking and held by the Official Liquidator for Priyalaxmi Mills and Monogram Mills on behalf of the State Government which is the owner being the sole equity shareholder of GSTC. So, the State Government, in all respect, justified and entitled to request for handing over the remaining property of the undertaking together with on hand balance lying with the Official Liquidator to the State Government as an absolute owner of the undertaking as surplus assets.

24. Mr. Shelat has further submitted that the State Government would treat its dues as discharged to that extent on this Court accepting the request of the State Government to return the remaining assets of Priyalaxmi Mills and Monograph Mills including land admeasuring 64,192 and 1,47,034 Sq.Mtrs., respectively as a creditor and as a sole contributory of the Company. He has further submitted that the Official Liquidator has sufficient funds in the account of GSTC which would be sufficient to discharge the liabilities of other remaining unsecured creditors, if any, and if there is any deficit in repayment of dues of the aforesaid creditors, the State Government shall make good the shortfall, if any.

25. Mr. Shelat has further submitted that ever since the winding up order has been passed the Official Liquidator has not taken any steps and thereupon the State Government itself has undertaken the task of discharging the dues, as the State Government was in need of surplus assets of the said Companies. The State Government is, therefore, now major creditor of the Company as well as the sole shareholder, as all the equity shares of GSTC are held by the State Government only.

26. Mr. Shelat has further submitted that the State Government has decided to set up an Information Technology Park in the land admeasuring 64,192 Sq.Mtrs. of Priyalaxmi and Health Institute in the land admeasuring 1,47,034 Sq.Mtrs., of Monogram Mills. It is the public purpose project and would provide better medical facilities to the area nearby. No useful purpose is served by selling the land at the instance of Official Liquidator. It is in public interest that the above surplus assets admeasuring 64,192 Sq.Mtrs., and 1,47,034 Sq.Mtrs., in the custody of the Official Liquidator be transferred in favour of the State Government.

27. The Official Liquidator has filed his report in Company Application No. 562 of 2007 and Company Application No. 77 of 2008 on 28.2.2008. Mr. Nitin Mehta, learned advocate appearing for the Official Liquidator has raised certain preliminary contentions. He has stated that the present application moved by the State Government are misconceived. The assets of the Company in liquidation on pick and choose basis cannot be transferred and handed over to the applicant without following the procedure of sale of assets by public auction or otherwise in accordance with the Companies (Court) Rules, 1959. The assets, in any case, cannot be transferred free from all encumbrances without following the due process known to law for satisfying the encumbrances, liabilities and charges etc. He has further submitted that the State Government has not given any amount to the Official Liquidator as claimed. The applicant might have given certain amount to the Company before the date of passing of the winding up order. The dues of the applicant, if any, against the company shall be claimed in liquidation after crystallization of the claim by following the procedure under the Companies (Court) Rules, 1959 and classification thereof for determining priorities of payment in accordance with the provisions of Sections 528 to 530 of the Companies Act, 1956. The assets of the Company chosen by the applicant, cannot be transferred and handed over to the applicant on the basis of exclusion of other various classes of the creditors.

28. He has further submitted that it is the duty of the Official Liquidator under direction of this Court to ensure that no creditor or group of creditors or class of creditors march over the legitimate rights of other creditors and classes of creditors, and the assets of the company are liquidated and the proceeds thereof are applied in discharging the dues of the company towards various classes of creditors, in accordance with their priorities fixed by the Companies Act, and by following the procedure prescribed under the Companies (Court) Rules, 1959.

The reliefs sought for by the applicant shall cause failure of the Official Liquidator in discharging his statutory duties and functions, unless the winding up order is revoked, stayed or recalled and the Official Liquidator is discharged, on an appropriate application seeking that relief. He has, therefore, submitted that the application deserves to be rejected.

29. Mr. Mehta further submitted that for the purpose of making proper submissions with respect to the submissions of the applicant claiming to be the only creditor of the company, it is necessary to ascertain claims against the company by inviting claims through advertisement in newspapers and adjudication thereof in accordance with the provisions of the Companies (Court) Rules, 1959 and classification of the claims and creditors in terms of Sections 529 529A and 530 of the Companies Act, 1956. He has further submitted that, in case it is found, after inviting claims through newspapers advertisement, that there are no secured creditors or workers ranking *pari passu* u/s 529A of the Companies Act, 1956, the statutory claims against the company as a whole e.g. Claims of Income Tax, Sales Tax, Customs & Excise, and all revenues taxes, cesses and rates dues to the Central or any State Government or a Local Authority shall have priority u/s 530 of the Companies Act, 1956 and, therefore, will have to be satisfied in full prior to making any payment to the applicant as an unsecured creditor. It is further submitted that if any occasion for payment to the applicant as contributory arises, it will arise only after satisfying dues of all the creditors in full. Therefore, the applicant neither as an unsecured creditor nor as a contributory can claim assets of the Company to the exclusion of other creditors, by way of set off.

30. Mr. Mehta further submitted that the applicant if so desirous, is rightfully entitled to propose a scheme u/s 391 of the Companies Act, 1956 for the company as a whole and if the scheme, after following the due procedure of law, is sanctioned by this Court for the Company as a whole, the assets and management of the company and its affairs, assets and effects together with liabilities may be handed to a duly constituted Board of Directors of the Company in accordance with the provisions of the Companies Act, 1956 in this regard by revoking, staying or recalling the winding up order and after discharging the Official Liquidator after payment of his expenses and Central Government fees. He has further submitted that only the chosen assets cannot be claimed by the applicant since it is neither permissible under any specific provision of the Companies Act, 1956 nor it is in the interest of beneficial winding up of the Company, on the contrary it is detrimental to the interest of other various classes or creditors. He has, therefore, submitted that the applications are misconceived and deserve to be rejected.

31. Mr. Mehta further submitted that the applicant in the past also moved a similar application being the Company Application No. 348 of 1997 which was disposed of by this Court vide order dated 22.7.1998 granting permission to withdraw the application with liberty to file appropriate application proposing a

scheme. The applicant instead of filing an application for scheme of revival of the Company, has moved the present similar application, which deserves to be rejected.

32. The applicant State of Gujarat has filed affidavit-in-reply to the report of the Official Liquidator. Mr. Shelat in rejoinder submitted that the Company is owned by the State Government and hence it had full financial backing of State Government. Till it's winding up order, it was fully capable of discharging its debts. This fact is substantiated with the fact that immediately before its winding up order passed on 6.2.1997, GSTC had disbursed during October to December, 1996 Rs. 218.10 crores to all most all the employees towards liberal terminal benefits. Thus, on the date of winding up order, GSTC had no employees except two directors who were from the State Government on deputation and some employees, less than 20 in number, who did not opt for retirement. GSTC had given few crore rupees by way of bank balance to Official Liquidator while handing over possession of assets in pursuance to the winding up order. Thus, GSTC was operationally a non viable company but not financially insolvent. Hence, at the point of winding up order and as on today even, the aggregate value of assets of GSTC is many times more than the outstanding liabilities.

33. Mr. Shelat has further submitted that the Official Liquidator has sought ten weeks time for proper submission after careful study of Statement of Affairs as on 6.2.1997 compiled in four volumes in order to defend the merits of the grounds and contents of the application. He has, however, submitted that this exercise of indepth study of the contents contained in four volumes of Statement of Affairs has already been completed by Official Liquidator way back in the year 1998 with assistance of Chartered Accountant appointed by him. The Chartered Accountant had submitted his observations contained in 60 pages to Official Liquidator along with his letter dated 7.4.1998. The said observations were redirected by Official Liquidator to Ex- Directors of GSTC alongwith his letter dated 4.6.1998. The observations/ remarks/ comments of the Chartered Accountant contained in 60 pages were replied by Ex- Director vide his letter dated 17.6.1998. Thereafter, there is no further comment from OL on the contents of Statement of Affairs. It can be made out that OL required almost two months time to simply redirect the comments to Ex-Director while Ex- Director required less than fifteen days to furnish the reply to the satisfaction of OL. In view of these facts, the ten weeks time sought by OL on the ground of study and scrutiny of Statement of Affairs is not tenable on the grounds of both facts and merits.

The Statement of Affairs which has been described by OL as voluminous was prepared and submitted by Ex-Directors within three months of the winding up order while OL required about one year for its examination and scrutiny. It is really discouraging that OL needs ten weeks time for study of Statement of Affairs which was filed before 11 years and lying in his office since then.

34. Mr. Shelat further submitted that the Official Liquidator's contention that

assets cannot be handed over on pick and choose basis but should be sold under auction has no substance or merits. The broad principles are laid down in the Companies Act, 1956 with regard to process of liquidation. The basic principle laid down in the Act is that the realization of assets should be distributed to the creditors in accordance with the priorities laid down therein and residual surplus, if any, should be passed on to owner / shareholder. However, it is nowhere laid down in the Act that all the assets should be first sold out and that too in auction and, thereafter, distribution process should be undertaken. There is no straight-jacket formula prescribed under the law for which respondent sought strict compliance. In the instant case, almost entire assets available with OL at present, both in terms of liquid asset and movable and immovable assets are surplus assets. After 11 years of winding up order and handover of sizable amount by way of bank balance to OL in pursuance of winding up order as well as realization of sizable amount by way of sale of part of the assets since winding up, not a single creditor including secured creditors are paid by OL. Since winding up, no payments are made by OL other than payments to workers in pursuance of Court orders, expenses and his own commission. On the other hand, since winding up, State Government has made payments to all secured as well as some of the Institutional unsecured creditors like Cotton Corporation of India, Bogaigaon Refinery and Torrent Power. In case of remaining institutional unsecured creditors, the process of determination of dues is ongoing and after settlement of dues of remaining institutions under category of unsecured creditors, there will remain unclaimed old balances and State Government's own dues. Thus, the assets presently remain with OL are almost in the form of surplus assets belonging to sole contributory i.e. State Government and hence it is prerogative of the owner to claim possession on pick and choose basis.

35. Mr. Shelat further submitted that the OL has raised repeatedly same contention and objection of pick and choose purely on theoretical grounds such as crystallization of liabilities and priorities laid down in the Act without looking at the factual aspect with regard to present status of liabilities, category of creditors, funds available with OL in the form of bank balance etc. In fact, the vital question raised with regard to bank balance available with OL has been conveniently overlooked and no information has been furnished in that respect. He has submitted that to the best of his information, the OL has rendered account so far from 6.2.1997 to 5.2.2004 only of which last period's accounts i.e. 6.2.2003 to 5.2.2004 were un-audited. According to the said accounts, balance available with OL on 6.2.2004 was Rs. 4627.70 lacs. The balance available with OL at present must be much more than that and the said balance alone is many times more than the remaining outsiders dues i.e. other than own dues of State Government. Hence, the objections and contentions raised by OL are quite contrary to the facts about status of outstanding outsiders dues and full protection to all such dues in the form of available on hand balance with OL in bank accounts.

36. Mr. Shelat has further submitted that there is no substance in the contention

and objection raised purely on theoretical ground of non compliance of all the provisions of Companies Act, 1956, with regard to sale of all the assets, crystallisation of liabilities, priority of liabilities etc. The theory is not substantiated by facts. Theory laid down in the Act is known to everybody but the corresponding facts are very important to determine the distribution of assets. In the present case, instead of selling the assets and distributing the proceeds among the creditors, State Government as owner and sole contributory opted to discharge the liabilities directly and claim residual assets on pick and choose basis and in phased manner. Considering the facts of the case, status of liabilities, discharge of liabilities directly by State Government, available balance with OL etc, it is the right of the State Government to claim possession of assets on pick and choose basis.

37. Mr. Shelat further submitted that the details of outstanding liabilities are given in Statement of Affairs as on 6.2.1997, which are available with OL and lying in his office for the last about 11 years. However, OL has so far not looked at that nor made payment to a single creditor out of that in spite of available funds. On account of failure of OL in discharge of statutory duties, the assets have remained idle and unutilized for about 11 years. In order to overcome the situation, State Government directly settled the dues of all the secured creditors and commenced the process of settlement of all institutional unsecured creditors. Thus, thereafter, the remaining dues will consist of old unclaimed credit balances and State Government's own dues. He has, therefore, submitted that looking to the facts and circumstances and in view of the factual aspects, the contention of OL to invite the claims is absolutely unwarranted and contrary to the facts of the case.

38. He has further submitted that there are no dues of secured creditors nor there are any workers dues other than sub-judice matters. As far as dues relating to rates and taxes are concerned, majority of such dues are State Government's own dues in the form of sales tax, professional tax, electricity duty, land revenue etc. OL should not cause any concern about such dues instead State Government is the appropriate person to express concern for such dues. In fact, State Government has already waived the dues of electricity duty due from GSTC Mills of Ahmedabad. The other creditors under direct control of State Government such as GEB, Municipal Corporation, GIIC, GMDC etc. have given consent to the settlement of dues as directed by State Government. Thus, on factual aspects, the objections and contentions of OL have no merits nor are substantiated.

39. Mr. Shelat has further submitted that the Company was ordered to be wound up on the ground of operational non viability only and as such there cannot be any scheme of revival or reconstruction for such a company under its name. Further, in case of most of the constituent units, assets other than land have been sold ad in the circumstances it is difficult to understand that how a revival scheme can be framed on vacant land in the name of company under liquidation.

On the contrary, State Government is functioning exactly with the same spirit of revival and reconstruction for the purpose of generating employment and in the interest of the public at large on different projects under different name and style instead of implementing any such project under the name of GSTC. He has, therefore, submitted that the State Government can be said to be in total conformity with the provisions of the Companies Act, 1956.

40. Mr. Shelat has further submitted with regard to the earlier application filed and withdrawn by the State Government that the ground of objection at that time was absence of any revival and reconstruction scheme. Possession of the assets under present applications is sought for revival and reconstruction only through and under different names and projects which will be by other than GSTC and will create further employment opportunities and will be of public interest. Hence, the prayer of the applicant is quite in consonance with the spirit of the law.

41. Mr. Shelat has further submitted that the possession of the assets to the contractor for demolition work cannot be a ground for objection. The GIDC, a State Government Undertaking is functioning as an Agent of OL. The demolition process in case of other units has so far been supervised by staff of GIDC working in Textile Cell of GIDC and not by staff of OL office. Hence, in case of grant of possession of assets to State Government, still the work of demolition will be supervised by the same staff of GIDC from Textile Cell of GIDC. The grant of possession of asset sought under the present application will neither in way result into obstruction to demolition work nor demolition contractor but will help the State Government to prepare and finalize the plans, drawings, designs and approval of the projects simultaneously with the demolition work and will make possible the implementation of the project immediately upon completion of demolition work.

42. Mr. Shelat has further submitted that the Company Application No. 250 of 2006 was filed by the State Government for taking over possession of the assets of Sarangpur Cotton Mills and Silver Cotton Mills. The said application was decided in favour of the State Government vide order dated 17.7.2006 and the possession of the assets of Mills were handed over to the State Government for public purposes. He has, therefore, submitted that the prayer sought for in the Company Application requires to be granted in the interest of justice by allowing the Company Application.

43. Mr. D.S. Vasavda, learned advocate appearing for the Textile Labour Association has supported this application and submitted that the workers dues have already been paid since long and instead of putting the land for auction sale if it is given to the State Government, the land will be used for public purpose and it would generate more employment. He has, therefore, submitted that the Court should allow this application.

44. Having heard learned advocates appearing for the respective parties and

having considered the various contentions raised and the report submitted by the Official Liquidator as well as the report of the Chartered Accountant, the Court is of the view that since the State Government has discharged the liability of the Mills Company towards secured creditors and labourers and there is still surplus fund with the Official Liquidator in the account of GSTC and since the State Government has undertaken to discharge the liabilities, if any, that may arise in future, there may not be any objection on the part of the Official Liquidator in handing over possession of the immovable properties in question to the State Government and even if the objections raised by the Official Liquidator in his report, they are not sustainable either on facts or in law.

45. Section 457 of the Act deals with power of Liquidator. Section 457(1)(e) states that the Liquidator in a winding up by the Court shall have power with the sanction of the Court to do all such other things as may be, for winding up the affairs of the Company and distributing its assets. Section 475 of the Act empowers the Court to adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto. It is true that the wordings of Section 457(1)(e) as to the distribution of assets amongst the members found are not as explicit as in Section 511. Section 511 of the Act deals with distribution of property of the Company voluntarily wound up. However, Section 457(1)(e) read with Section 475, the result is not different. In the case of a compulsory winding up by Court, the debts and liabilities will have to be paid first by the Liquidator and then the Court shall adjust the rights of the contributories between themselves and distribute the surplus amongst the persons entitled thereto. There is no dispute about the fact that the liabilities of secured creditors and workers of both the units of GSTC are almost settled by the State Government. There is adequate balance lying with the Official Liquidator to take care of and to satisfy the liabilities of remaining unsecured creditors, if any. The State Government has not only entered in the shoe of the secured creditor and becomes the secured creditor, but it is also the only shareholder/contributory. The Court is, therefore, of the view that there is no inhibition on the jurisdiction of this Court to entertain, decide and grant relief in these two applications preferred by the State Government being a secured creditor and sole contributory. These applications are certainly with respect to exercise or proposed exercise of any of the powers by the Liquidator u/s 457(1) or (2) of the Act.

46. Earlier, the State Government has filed Company Application No. 237 of 2004 and Company Application No. 250 of 2006 for taking over possession of the assets of New Jahangir Vakil Mills, Bhavnagar and Sarangpur Cotton Mills as well as Silver Cotton Mills, Ahmedabad and the said applications were decided in favour of the State Government vide order dated 23.12.2005 and 17.7.2006 respectively and the possession of the immovable assets of the Mills Companies were handed over to the State Government for public purposes. Even possession of immovable assets of New Swadeshi Mills, Ahmedabad and Bhalakia Mills, Ahmedabad was also handed over to the State Government under the order of

this Court. The State Government has decided to put the land of these Mills Companies into various public purposes, such as a Jems and Jewellery Park at Bhavnagar, Apparel Park at Ahmedabad, Health Institute and Hospital at Ahmedabad respectively. Similarly land of Priyalaxmi Mills, Vadodara and Monogram Mills, Ahmedabad will also be utilised in a larger public interest.

47. The Official Liquidator is, therefore, directed to hand over possession of the properties in question of Priyalaxmi Mill, Vadodara as well as Monogram Mill, Ahmedabad to the State Government as the State Government is the only secured creditor and sole shareholder/contributory of the Company in liquidation. The Court is further taking note of the fact that purpose for which the possession of the land is claimed by the State Government is also public purpose as on the land of Priyalaxmi Mill, Vadodara, the State Government has decided to develop the Information Technology Park whereas on the land of Monogram Mill, Ahmedabad, the State Government has decided to establish a health center. So far as surplus fund available with the Official Liquidator in GSTC Account is concerned, the Official Liquidator was earlier directed by this Court to return the amount of the funds available with him till this date. As per the say of the State Government the Official Liquidator is having funds of more than Rs. 60 crores as on today in GSTC account. A part of the said funds may be retained by him for discharging the liabilities or to meet with any exigency that may arise in future. The balance amount shall have to be handed over to the State Government and the appropriate order in this regard will be passed after submission of accounts before the Court under separate report.

48. With this observations and directions, both these applications are accordingly disposed off.