Neutral Citation Number: [2019] EWHC 1383 (Ch)

Case No: 6136 of 2015

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
Insolvency and Companies List (ChD)

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 07/06/2019

Before :

HHJ DAVID COOKE

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In the matter of MKG Convenience Ltd (in Liquidation)

Between :

Mustafa Hassanali Abdulali (1)	**Applicants**
Neil James Dingley (2)	
(Joint Liquidators of MKG Convenience Ltd)	
MKG Convenience Ltd (3)	
- and -	
NISA Retail Ltd	**Respondent**

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Reuben Comiskey (instructed by **Vicarage Court Solicitors Ltd**) for the **Applicants**
Steven Fennell (instructed by **Wilkin Chapman**) for the **Respondent**

Hearing date: 1 May 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ DAVID COOKE

HHJ David Cooke:

1. The Liquidators of MKG Convenience Ltd ("the Company") apply for orders

    i) Declaring that various payments totalling £162,307 taken by the Respondent by way of direct debits from the bank accounts of the Company after the date of presentation of the petition to wind it up are void pursuant to s 127 Insolvency Act 1986, and ordering that they be repaid to the liquidators.

    ii) Declaring that "the cancellation and retention of the value by the Respondent of the shares in it held by [the Company] to the value of £31,104…" and "the retention of and transactions relating to a security deposit in the sum of £25,000 held by the Respondent on behalf of [the Company]…" are similarly void and ordering that those amounts be paid to the liquidators either pursuant to s 127 or otherwise.

2. The Respondent ("NISA") accepts that the direct debit payments are prima facie void under s 127 but by its cross application seeks an order validating them; alternatively it resists an order for repayment on the basis that it has changed its position relying in good faith on their validity. In relation to the security deposit and shares, its position as it emerged at the hearing is that these are not separate items, because the cash security deposit it took in 2010 has since been applied to pay up the shares it issued to the Company in 2013 and 2014, and that those shares have since been transferred from the Company to another company called UR Local Express Ltd ("URL") and are in some way held as security against liabilities owed by URL to NISA. Accordingly, it says, there are no transactions by NISA in either the deposit or shares such as are pleaded, nor any others which could be liable to attack by the liquidators.

3. NISA is (or was at the material time) a members' organisation existing to support and promote small independent traders operating grocery and convenience stores trading under the NISA brand. It provides central purchasing of goods which it sells on to members, and charges them for central services such as marketing and the use of its brand. The Company was incorporated in 2010 and became a member of NISA. It operated a number of stores, some at least of which traded under the NISA brand. The liquidators do not at present have a full picture of what the business consisted of or what happened to it.

4. It is not in dispute however that three stores were run by the Company under the aegis of NISA, at Solihull, Selly Oak and Northfield, or that goods were supplied by NISA for delivery to those stores. The Company had a number of bank accounts at HSBC, three of which appear to have been used for the purposes of these stores. On joining the NISA organisation, it was required to pay a cash deposit of £25,000, which NISA says is held as security for any sums owed to it (this was not disputed although there does not appear to be any document setting out the terms on which it was held). The Company also gave NISA a direct debit authority in respect of the three accounts, principally at least for the purpose of taking payment for goods supplied.

5. A winding up petition was presented against the Company on 16 March 2015. The petition debt was some £98,000 due in respect of a Default Costs Certificate arising from litigation in this court. The petition was advertised on 7 April 2015 and a compulsory winding up order was made at the first hearing on 7 May 2015. The Secretary of State appointed the present Liquidators by notice dated 14 May 2015.

6. The liquidators were subsequently provided by the OR with a Director's Preliminary Information Questionnaire completed (but not apparently dated or signed) by the sole registered director, a Mr Nanthakumar who gave an address in Sydenham, London. In that document he said the majority shareholder was Mr Kathiravelu Komaleswaran, named Mr Komaleswaran as a person who could give more information about the affairs of the Company and said that Mr Komaleswaran had acted as a director throughout the Company's existence. The liquidators established from the Companies Register that Mr Komaleswaran had been a registered director only for a few months in 2013 so it would appear that according to Mr Nathankumar Mr Komaleswaran had acted as a de facto director at all other times from 2010 until liquidation.

7. Mr Nathankumar stated that the Company operated two shops, being those at Selly Oak and Northfield. He made no mention of any others. When the liquidators went to those shops they appeared to be occupied by traders calling themselves Sandhu News, who provided documents indicating they had bought the shops in 2014. They traded under the NISA brand.

8. Enquiries were then made with NISA, starting with an email sent on 4 June 2015. NISA at first confirmed only that it traded with those two shops, but that it was dealing with URL (not Sandhu News). URL is a company solely owned and controlled by Mr Komaleswaran. No mention was made of any previous trading with the Company.

9. In August 2015 the liquidators received information from other sources that the Company had operated the Solihull shop and three others, in addition to the two disclosed by the director. They were not receiving any cooperation from the director or Mr Komalswaran, so made further enquiries of NISA, which were, in my view, answered in an unforthcoming way by Mr Derek Chapman the Group Credit Controller. The threat of an application under s236 Insolvency Act 1986 produced small amounts of further information given in a minimal and grudging way by Mr Chapman. On 21 August 2015 he said in an email "We trade with UR Local Express Ltd from 1/6/15. Contact K Komaleswaran… Previously MKG Convenience Stores Ltd. We trade at Kettering, Solihull [Northfield] and Selly Oak… We have security." Eventually in 2016 the liquidators did make an application to court under s 236, which produced some of the further information they considered Mr Chapman had not provided voluntarily.

10. The liquidators have not been able to locate any assets that are admitted to belong to the Company at any of the stores. They have no information about how or when the operations at the three shops relevant to this application were transferred, as they apparently have been, to either Sandhu News or URL, or what if any connection there is between those two entities. No consideration can be traced as coming to the Company in respect of any such transfer.

11. Against that background, I come to the direct debit payments in issue. It appears that the general system operated by NISA was that a payment was taken from each account on a weekly basis. The table attached to the liquidators' first witness statement shows payments beginning on 18 March 2015 (two days after presentation of the petition) and continuing weekly thereafter until 13 May 2015 in the case of the accounts apparently relating to the stores at Selly Oak and Solihull, and 20 May 2015 on the account that appears to relate to Northfield. There are 28 payments in all, totalling £162,307.36.

12. Mr Chapman filed a witness statement and gave oral evidence in which he gave considerably more detail in cross examination. He explained to Mr Comiskey that a payment was taken on Wednesday in each week, in respect of invoices from the seven day period ending on the Wednesday two weeks previously, such that the member received between two and three weeks credit. Each direct debit request was notified to the member with a schedule detailing the invoices it related to. The invoices to the Company showed a code identifying the store to which the goods had been delivered. It would be simple, he said, to identify what each payment related to by looking at the schedule and the relevant invoices, which would show that what had been drawn from each account related to goods delivered to the corresponding store. All the invoices had, he said, been provided to the liquidators in response to order made under s 236.

13. This came as a surprise to Mr Comiskey and the liquidators. Mr Chapman had previously maintained in a witness statement in the s 236 application that it was "impossible to provide a statement of the invoices received (sic) and payments received from MKG divided by stores as requested" and the liquidators had made clear in their own evidence that they had been unable to do so themselves from the documents provided to them. Mr Chapman maintained that what he had meant by saying a reconciliation was impossible was only that the NISA computer system maintained separate legers for each store and could not produce a <u>combined</u> single statement reconciling all the payments taken from the three bank accounts. But that simply does not sit with what he had previously said; he was denying the ability to produce separate statements for each store, when he now says goods were invoiced and payments takes on separate ledgers for each store.

14. This was, it seems to me, a continuation of the obstructive and unwilling approach Mr Chapman has shown towards the liquidators from the start. Given that it is part of NISA's argument in support of a validation order that the payments were taken by it in good faith for supplies in the ordinary course of business that benefitted the Company, one might think it would be in its interest to put forward the reconciliation itself, but it has not done so. At the least if he wanted the liquidators to do the work for themselves he could have directed them to the schedules that might have enabled them to do so. In these circumstances I see no reason to assume in NISA's favour that if the exercise were now done it would necessarily demonstrate what Mr Chapman asserts.

15. Mr Chapman's evidence was that he or a member of his team would receive and check a weekly electronic report from the London Gazette of winding up petitions presented. He described this as a "sense check", explaining that they would look through the list of names to see if there was any that they recognised. If there were, further enquiries would be made. He said he assumed from the fact no action had in fact been taken by NISA that they must have missed the notice of the petition against the Company that was gazetted on 7 April 2015. The directors had not informed NISA of any petition and had continued to order goods, and no payments had been refused by the bank (as it might have if aware itself of a petition) so NISA had assumed everything was normal and continued to make supplies and take payment.

16. Asked what would have been done if the notice had been seen, he was non-committal, saying "lots of petitions end up being dismissed". Strikingly, he did not say that further deliveries would be stopped immediately. He gave the impression that the only thing regarded as really important was that the bank continued to make payments under the direct debits, which reflected what he said in his witness statement at para 11: "If the direct debit is not paid then the relevant member either

needs to make a separate arrangement for the goods to be paid or the account is put on stop".

17. Mr Chapman was not however challenged on the statement in his witness statement that NISA had no knowledge of the petition "until the liquidators notified NISA of their appointment". He does not put a date on that, but it appears to have been on 4 June 2015 when the liquidator wrote enquiring about the alleged transfer of ownership of two stores to Sandhu News. Possibly Mr Chapman was being very careful with his words and intending to refer specifically to the existence of a petition while omitting any statement as to whether or when his contact at MKG, apparently Mr Komaleswaran, began to discuss a transfer of business and membership to URL and what he was told about the reasons.

18. If he was intending to indicate he had known nothing of any transfer of business to URL until 4 June, that would not sit easily with his email saying that trading had been transferred to URL from 1 June, which presumably must have resulted from a request made either then or (more likely) earlier, or with the fact that no payments were taken from two of the three accounts after 13 May, when there had previously been a weekly payment from each. Mr Chapman had not said that supplies to those stores had ceased two weeks before 13 May (such that there was no balance to pay) or if not how else NISA had been paid for deliveries since the end of April.

19. His witness statement was very uninformative about what discussions had been had with those representing MKG and when. In his statement made on 19 January 2017 in response to a disclosure application he gave contradictory evidence about the timing of changes in the identity of the customer NISA supplied at the three stores:

    i) At para 11 he said that accounts with the Company at these stores had been closed on the following dates:

        a) Solihull 23 June 2015

        b) Northfield 15 December 2010

        c) Selly Oak 9 May 2012

    ii) However in para 13 he said the period of trading with the Company at each store was:

        a) Solihull 1 February 2011 to 23 June 2015

        b) Northfield 15 December 2010 to 23 June 2015

        c) Selly Oak 9 May 2012 to 23 June 2015

    iii) At para 14 in response to a question about his previous reference to URL having "[taken] over" business at the three stores he said that "it is my understanding that [URL] started to trade some of the stores that were previously traded by MKG. They did also apply to become members of NISA but the stock transfer form transferring the shares from MKG to [URL] was never validly executed". He said that these stores included the three now in issue and as to the date of transfer "As stated above the share transfer to [URL] … was never executed. NISA supplied the premises mentioned above from 23 May 2015".

iv) At para 16 (incorrectly numbered 12) he was asked whether there had been any trade at these premises after 7 May 2015 (the date of the winding up order) he said "NISA traded with [URL] at the premises listed… above".

20. Mr Chapman may have carelessly given the dates of opening two of the accounts rather than closing them. But his other answers indicate NISA continued to supply the Company until 23 June 2015, though this is contradicted by his statement that it supplied URL at these addresses from 23 May 2015 (or possibly 7 May 2015; either of which would be inconsistent with his oral evidence that trading with URL began on 1 June 2015). His answer at para 14 suggests the attempted share transfer was submitted on or before 23 May 2015, and if so NISA must have been told about a transfer of business no later than that date.

21. At a later point in his cross examination Mr Chapman was being asked about emails indicating the security deposit had been applied against liabilities for stock delivered in 2016, a year after the liquidation. Mr Comiskey put it to him that any such stock would have been delivered to URL, not the Company. Mr Chapman said "Yes. We supplied as far as we know to MKG up to early 2014 (sic)… at some point we converted to URL… we converted the shares to URL and used it to clear the debt, but it's all the same people." Mr Comiskey put it to him he had said NISA had traded with URL from 1 June 2015 and he said "yes, but we may have transferred the account before". In other answers he said he was totally confused about when the business transfer had occurred and "we have been led up the garden path by these people".

22. I am left with the strong impression that Mr Chapman was aware of a proposed transfer of business to be conducted under the name URL before 1 June 2015, and possibly as early as 2014. He has not given a full account of what he was told and when, and indeed in my view has sought to avoid doing so as far as possible.

23. Mr Fennell sought to suggest that any reference to URL would not have indicated a change of purchaser because URL was a trading name used by the Company. This was based on the bank statements disclosed by the liquidator for the shops at Solihull and Selly Oak which were headed "MKG Convenience Ltd T/A UR Local Express Solihull [Selly Oak]", but these statements had not been seen by Mr Chapman until disclosure in these proceedings and there was no evidence from him that he had been told at any time, or understood, that "UR Local" was just a trading name used by the Company. Nor was there any other evidence that the Company in fact used "UR Local" as a trading name or style at any time.

24. The statements in question were computer generated duplicates printed by the bank in August 2015 and by themselves can only show that as at that date the bank had been told to designate the account in its computer system in that way- they give no indication when that instruction was given, which may have been recent or long standing.

25. Mr Chapman volunteered the information, in the context of saying he was confused about who he was dealing with, that only one of the Company's bank accounts was "set up" in NISA's accounts system as an account of the Company (that relating to Northfield) and the others were at all times recorded as accounts of a Mr Puspakanth Pooniah, who had at one time been a registered director of the Company. So, far from being led to believe by these bank statements that the Company traded using the name URL, NISA did not know the name used by the bank on the accounts and did not, it

seems, regard it as important to ascertain that the accounts from which it was paid were held by the entity it regarded as its member.

26. In relation to the cash deposit and shares, the information given by Mr Chapman in emails responding to enquiries from the liquidator, in his witness statement and in his answers in cross examination was confused and contradictory. It was not until his oral evidence that he put forward the explanation that the cash bond had been applied to pay up the shares, with the result that the two items were not separate.

27. On 20 August 2015 after a series of email enquiries to Mr Chapman had produced either no, or evasive, replies, the liquidator's assistant asked Mr Chapman for the name of NISA's solicitors "whom I may contact for further information regarding this matter". Mr Chapman fobbed this off, replying "our solicitors… will have no knowledge of this account as we were paid in full". Clearly at that point he did not consider NISA had any outstanding claim against the Company. Pressed for more information and having been warned the liquidators could make an application under s236 he sent the email I referred to above, including the statement "we have security". Asked what the security consisted of he answered (but not until 9 September) "we have a cash bond". The liquidator suggested that any such bond would now be repayable to the Company if NISA was no longer trading with them. Mr Chapman did not reply until a month later when he avoided the point and said "What is happening with this now please? We are going legal with the new owners now for default in payments."

28. In these exchanges therefore Mr Chapman seems to have confirmed that a cash bond had been taken and that it was still held, but that nothing was outstanding from the Company to NISA. He had avoided saying how much the bond was for (and was not directly asked) and sidestepped the suggestion that the bond should be repaid. He had made no reference to the shares. He does not appear to have been pressed further as the correspondence provided does not resume until May 2016.

29. In May 2016 the liquidators wrote indicating they would seek return of payments made after commencement of the winding up (then said to be £156,197). On 21 June 2016 they requested further information and threatened an application under s 236 if it was not provided voluntarily. Mr Chapman replied refusing to provide any further information, saying it was "confidential" and citing "legal advice". On 22 July however he forwarded a copy email to one of his colleagues asking for input and saying "the bond was up front against stock as security and has been used for this purpose". That was apparently inconsistent with it having been still held the previous September, unless further liabilities had arisen and been paid from the bond in the meantime.

30. The liquidators warned again about an application to court for information. Mr Chapman sent an email on 12 August 2016 in which he said:

> "… when the business was transferred in 2015 the share transfer was signed but not by the correct person and therefore we have not repaid the money until we receive the original share transfer back….
>
> We closed the account once cleared as no orders were being placed….

> I also attach a copy of the share transfer form.
>
> We had a cash bond of £25k from MKG which was used against their debt…"

31. In this email he repeated a complaint that he was being asked for information about a matter NISA had no interest in because it was not owed any money by the Company. If he really thought that was an answer he must have ignored the liquidators' explanations that they needed and were entitled to information to investigate the affairs of the Company for the benefit of its creditors, and that they would be seeking repayment of £156,000 from NISA itself.

32. By this stage he had still not made any link between the cash bond and the shares, and had stated again that the bond had been used to discharge unspecified debt of the Company, contrary to his statement in August before that nothing was outstanding. He also seems to be stating clearly that no valid transfer of any shares in NISA held by the Company had by then taken place.

33. The share transfer form he provided is exhibited to a witness statement of Mr Dingley. It states it is for 141 shares registered in the name of the Company. The transferee is named as URL. The signature is a squiggle, but appears to show a first initial "K." followed by a long surname which may also begin with a K. It appears therefore to be a signature of Mr Komaleswaran, whom Mr Chapman said was his contact at the time.

34. The form bears a stamped date of 21 July 2015. Mr Chapman accepted in cross examination that the annual returns of NISA showed that prior to that date the Company had been recorded as a member holding 141 shares, and that on 21 July 2015 those shares had been transferred to URL. The date he said was probably the date of a quarterly board meeting approving the transfer; a number of transfers by other members were also recorded on the same day. The form itself he said was probably lodged beforehand but he could not say when. There is a handwritten date of "1/6/15" noted in a box for "Stamp of Buying Broker (if any)" which he could not explain, but may perhaps be the date on which the form was lodged with NISA.

35. Mr Chapman maintained in his oral evidence that this transfer had been executed by the authorised director of the Company (he appeared to accept it was signed by Mr Komaleswaran) and that that made it valid and proper for NISA to register. He was unable to give any coherent explanation how this transfer can have been delivered and acted upon by 21 July 2015 and yet in his two witness statements made after that date he could say that the transfer had never been validly executed or completed. He attempted to suggest there must have been two transfer documents, but in my view was trying to paper over an impossible gap in his evidence. If there had been two transfers, he would have referred to the second in his witness statement in 2017.

36. In his second witness statement Mr Chapman exhibited an statement addressed to URL which gave credit for the cash deposit paid on 16 December 2010 but debited:

    i) Two invoices stated to be dated in 2013 and 2014 which he said were for the cost of shares issued to the Company, totalling £24,917

ii) Three invoices dated May 2016 which he explained as being for various termination charges made when URL itself was expelled from membership in May 2016.

37. The deposit and debits for shares must have been transactions with the Company. The later debits must have been liabilities of URL. In the body of his witness statement Mr Chapman referred to all these debits as being liabilities of the Company and said that because they were unpaid "NISA terminated the membership of MKG and MKG had no entitlement to the value of shares sought by the liquidator." He also said that because the transfer of membership to URL "did not complete… so far as NISA is concerned the liability for [these] items stayed with the member being MKG." If as it appears Mr Chapman was seeking to fix liability for termination charges incurred by URL's actions on the Company, that makes his reversal of the position at the hearing, at which he maintained the transfer had been validly executed and registered, all the more surprising. Mr Chapman sought to explain the reason the statement was addressed to URL as being because at the time it was printed (6 June 2016) the accounting system had been amended to designate URL as the member in place of the Company. But that must have happened before May 2016 when URL was expelled (the statement itself notes URL is "NLM", ie no longer a member, at 11 May 2016).

38. I conclude from this documentation and from Mr Chapman's inconsistent statements and evidence that he was prepared to treat the benefit of the deposit and responsibility for the shares issued as in some way transferred to URL as long as it appeared to suit NISA to do so, but when it came to resisting possible claims by the liquidators he effectively reversed his position and sought to treat them all (and also URL's liabilities) as being attributable to the Company.

39. I consider the likely explanation is Mr Chapman's view, noted above, that differences between the entities NISA was dealing with did not matter as "it's all the same people". He showed a similar lack of appreciation of the nature of shares, maintaining at several points that the deposit and shares were just the same, both were available as security for anything owed to NISA and that if necessary to satisfy any such debt NISA would simply "cancel" the member's shares. The Articles however do not provide that the shares are redeemable, only for a lien on transfer. Mr Chapman, in my view, was prepared to chop and change his answers to the liquidators' questions, and his evidence to the court, as from time to time appeared to him expedient for his purposes, which were primarily to avoid providing any information so far as he could and secondly to avoid or defeat any claim against NISA.

The Law on validation orders

40. By s 127 Insolvency Act 1986 "In a winding up by the court, any disposition of the company's property … made after the commencement of the winding up is, unless the court otherwise orders, void" and it is accepted that in this case by s 129(2) "the winding up … is deemed to commence at the time of presentation of the petition for winding up." In consequence, counsel are agreed that the starting point is that unless the court makes a validation order, any such disposition after 16 March 2015 is void (no transactions on that day itself are in issue).

41. Nor is it disputed that each of the payments from the Company's bank accounts to NISA effected by way of its calling for payment under its direct debit authority constituted a disposition of the Company's property to NISA.

42. S 127 does not however specifically provide a remedy for the liquidators in relation to any such void disposition, that being left to the general law. In the case of a void disposition of property other than money, the company remains the owner of the property and may recover it by asserting its rights as owner. In the case of a disposition of money, including payments out of a bank account, the remedy is a restitutionary one against the person to whom payment has been made, see *Hollicourt (Contracts) Ltd v Bank of Ireland* [2001] Ch 555, in which the argument that such a transfer also constituted a disposition in favour of the bank giving rise to a remedy against the bank as well as the payee was rejected by the Court of Appeal. It is this which leads the respondent to argue that if the court does not make a validation order it is nevertheless entitled to raise a defence of change of position to the restitutionary claim against it.

43. Dealing first with the question whether a validation order should be made, counsel are agreed that the relevant principles are now set out in the judgment of Sales LJ (with whom Patten LJ and Etherton C agreed) in *Express Electrical Contractors Ltd v Beavis* [2016] EWCA Civ 765, and that that case represents a substantial change in emphasis as to the approach to be taken by the court in the exercise of its discretion.

44. In that case, a regular supplier to a company had placed a credit stop on its supplies as a result of delays in payment. It pressed for payment and received an amount of £30,000, after which it resumed normal supplies on credit. Unknown to the supplier, the £30,000 was paid a week after a petition had been presented by another creditor. The Court of Appeal dismissed a second appeal against the order of the District Judge refusing a validation order.

45. In the course of his judgment Sales LJ said:

> "19 The principles governing the exercise of the court's discretion in deciding whether to make a validation order were examined in the judgment of Buckley LJ in *In re Gray's Inn Construction Co. Ltd* [1980] 1 WLR 711, CA. ...
>
> 20 Buckley LJ explained the principles to be applied in deciding whether a validation order should be made at pp. 717D-719E. As he emphasised, "It is a basic concept of our law governing liquidation of insolvent estates [of individuals and companies] … that the free assets of the insolvent at the commencement of the liquidation shall be distributed rateably amongst the insolvent's unsecured creditors as at that date" (717D, this is the *pari passu* principle); "It may sometimes be beneficial to the company and its creditors that the company should be enabled to complete a particular contract or project, or to continue to carry on its business generally in its ordinary course with a view to the sale of the business as a going concern", in which case a validation order may be sought (717G); "In considering whether to make a validating order the court must always … do its best to ensure that the interests of the unsecured creditors will not be prejudiced" (717G); and "Since the policy of the law is to procure so far as practicable rateable payments of the unsecured creditors' claims, it is … clear that the court should not validate any transaction or series of transactions which might result in one or more pre-

liquidation creditors being paid in full at the expense of other creditors, who will only receive a dividend, in the absence of special circumstances making such a course desirable in the interests of the unsecured creditors as a body" (718A-B; and see also p. 720E). Thus, the policy of the law in favour of distribution of the assets of an insolvent company in the course of the liquidation process on a *pari passu* basis between its unsecured creditors is a strong one, and it needs to be shown that special circumstances exist which makes a particular transaction one in the interests of the creditors as a whole before a validation order will be made to override the usual application of the *pari passu* principle…

24 As Buckley LJ pointed out, there may be circumstances in which a validation order is not sought in advance of a transaction, but only retrospectively. That will be so where, in a case like the present one, the parties are "unaware at the time when the transaction is entered into that a petition has been presented" (p. 718E). However, in my judgment the same governing principles apply in such a case. The court has to look to see whether the transaction in issue, for which validation is sought retrospectively, was one which could properly be regarded as being for the benefit of the general body of creditors, despite the departure from the application of the *pari passu* principle which will be the consequence of making the validation order which is sought. (There may be other exceptional circumstances which might possibly justify the making of a validation order in a retrospective application case, for example if a director of the company who knows about the winding up petition suppresses that information and deceives someone into dealing with the company: the merits in such a case would need to be argued out between the person dealing with the company and its liquidator and I express no view on what the result should be)...

33 However, Mr Knox sought to rely on another passage in the judgment of Buckley LJ, at p. 718F-G:

"A disposition carried out in good faith in the ordinary course of business at a time when the parties are unaware that a petition has been presented may, it seems, normally be validated by the court … unless there is any ground for thinking that the transaction may involve an attempt to prefer the disponee, in which case the transaction would probably not be validated."

34 It should be noted, though, that in the same paragraph Buckley LJ again emphasised the strength of the presumption that the *pari passu* principle should be applied, absent very good reason to depart from it, at 718H-719A as follows:

"In a number of cases reference has been made to the relevance of the policy of ensuring rateable distribution of the assets: *In*

re Civil Service and General Store Ltd (1888) 58 LT 220; *In re Liverpool Civil Service Association*, L.R. 9 Ch. App. 511 and *In re J. Leslie Engineers Co. Ltd*[1976] 1 WLR 292. In the last mentioned case Oliver J said, at p. 304:

'I think that in exercising discretion the court must keep in view the evident purpose of the section which, as Chitty J said in *in re Civil Service and General Store Ltd*, 58 L.T. 220, 221, is to ensure that the creditors are paid pari passu.'"

35 Buckley LJ continued thus at p. 719A-E:

"But although that policy might disincline the court to ratify any transaction which involved preferring a pre-liquidation creditor, it has no relevance to a transaction which is entirely post-liquidation, as for instance a sale of an asset at its full market value after presentation of a petition. Such a transaction involves no dissipation of the company's assets, for it does not reduce the value of those assets. It cannot harm the creditors and there would seem to be no reason why the court should not in the exercise of its discretion validate it. A fortiori, the court would be inclined to validate a transaction which would increase, or has increased, the value of the company's assets, or which would preserve, or has preserved, the value of the company's assets from harm which would result from the company's business being paralysed: ... the court can in appropriate circumstances validate payment in full of an unsecured pre-liquidation debt which constitutes a necessary part of a transaction which as a whole is beneficial to the general body of unsecured creditors. But we have been referred to no case in which the court has validated payment in full of an unsecured pre-liquidation debt where there was no such special circumstance, and in my opinion it would not normally be right to do so, because such a payment would prefer the creditor whose debt is paid over the other creditors of equal degree."

36 I confess that I have difficulty in following some of Buckley LJ's reasoning in these passages. First, I do not see why Buckley LJ appears to accept the bald proposition that a disposition carried out in good faith in the ordinary course of business at a time when the parties are unaware that a petition has been presented should normally be validated by the court (p. 718F-G). Validation on that basis could well prejudice the interests of the body of unsecured creditors, unless the making of such a validation order depends upon a more searching inquiry whether it is in the circumstances in their overall interest that the transaction in question should be validated. The transaction might be part of a course of trading by the company at a loss, which would not be in the interests of the general body of creditors. It is not easy to square this proposition with

> the reasoning of Oliver J in the *J. Leslie Engineers* case, which Buckley LJ cited with approval…
>
> 40 In view of the muted language used by Buckley LJ at p. 718G ("may, it seems …") and the qualifications he enters, I do not think that Buckley LJ intended to lay down any binding rule at p. 718F-G. Such a rule would not be consistent with the emphasis he gave elsewhere in his judgment to the importance of the *pari passu* principle in the exercise of discretion under section 127 of the 1986 Act and with his statement of the basic principle governing such exercise…
>
> 42 In addition, I think it can be said that by qualifying the proposition at p. 718F-G in the way he does, by referring to "*any* ground for *thinking* that the transaction *may* involve an attempt to prefer the disponee" (p.718G), and by stating that the *pari passu* principle "might disincline the court to ratify any transaction which involved preferring a pre-liquidation creditor" (p. 719A), Buckley LJ sought to emphasise how easily the approach suggested by that proposition could be displaced. I think that he was seeking, in effect, to emphasise how strong the presumption in favour of application of the *pari passu* principle is and thus how strong the reasons will need to be to justify departing from it in any given case.
>
> 43 As to the passage at p. 719A-B, set out above, it is difficult to see why it should always be assumed that a post-liquidation transaction should always be validated, as involving no dissipation of the company's assets. No doubt it often will be appropriate to validate such a transaction, if it is carried out at full value (e.g. if there is sale of an asset at full market value), but whether that is so will depend upon examination of the particular facts…
>
> 56 In my judgment, the time has come to recognise that the statement by Buckley LJ at p. 718F-H cannot be taken at face value and applied as a rule in itself. The true position is that, save in exceptional circumstances, a validation order should only be made in relation to dispositions occurring after presentation of winding up petition if there is some special circumstance which shows that the disposition in question will be (in a prospective application case) or has been (in a retrospective application case) for the benefit of the general body of unsecured creditors, such that it is appropriate to disapply the usual *pari passu* principle."

46. Sales LJ also expressly disapproved as misleading one of the propositions stated by Fox LJ in *Denny v John Hudson & Co Ltd* [1992] BCC 503, frequently cited since in support of validation applications, that "A disposition carried out in good faith in the ordinary course of business at a time when the parties were unaware that a petition had been presented would usually be validated by the court unless there is ground for thinking that the transaction may involve an attempt to prefer the disponee – in which case the transaction would not be validated", see para 55.

47. This judgment therefore makes clear that the starting point for the court is the strong legislative policy of ensuring that the assets of the company at the commencement of the winding up (ie, normally as in this case the time of presentation of the petition) should be made available for distribution among its creditors at that date. It is not sufficient for an applicant for a validation order to show (a) that a disposition to him was in the ordinary course of business and/ or (b) that he was unaware of the presentation of a petition and/or (c) that he acted in good faith, though no doubt all of these will be relevant matters to consider in the exercise of the court's discretion. He must demonstrate the special circumstances referred to by Sales LJ, ie that the transaction will be or has been beneficial for creditors generally, or other "exceptional circumstances", the possible example given being where a director of the company aware of the petition has deceived a person into entering into a transaction, in which case the merits would have to be argued between the liquidator and the innocent party.

48. In his skeleton Mr Fennell noted that there was no evidence before the court as to the effect of the payments in issue on the interests of the creditors in general. He cast blame for that on the liquidators, saying that NISA was not in a position to know any detail of the Company's finances, and invited the court to assume there must have been some such benefit because the payments ensured the continued supply of stock to the Company, which was presumably sold at a profit. If payments had not been made NISA would have stopped supply. He points out that the directors must have known of the existence of the petition but did not inform NISA, which he submits amounts to "inducing" NISA to continue to supply. Insofar as the later payments were made after the winding up order, he submits that the court should not allow recovery of payments that were "made or permitted" by the liquidators themselves.

49. In my view there is nothing in the last point. The liquidator's evidence is that at the time they were appointed they had no information what bank accounts the Company held, were not aware what payments might be being made from them and were in no position to stop any such payments being made.

50. It is of course for the applicant to show that the circumstances make a validation order appropriate. That may present difficulties in situations where it has genuinely acted in routine transactions in innocent ignorance of the financial position of the company, in that it may not have had any reason to enquire about their benefit to the company or its creditors, and is unlikely to have access to the company's internal financial information that might show any such benefit. In such cases, it seems to me, the court may in principle make findings based on inference, but only if satisfied it is appropriate on all the facts of the case. Given the legislative policy, as Sales LJ makes clear, it is not to be automatically assumed for instance that transactions in the ordinary course of business, or even sales of assets at full value, are necessarily for the benefit of creditors.

51. In the present case, I accept that on the balance of probabilities NISA was not in fact aware of the presentation of the winding up petition until contacted by the liquidator on 4 June 2015. The directors of the Company must have been aware of it, so I proceed on the basis they withheld that information from NISA. But NISA's ignorance was not solely due to the actions of the directors; at least from the date of advertisement it could have found out about the petition, and indeed on the evidence had systems in place which were intended to do so but which either failed or were ignored. If the advertisement was not noticed that must be due to NISA's carelessness;

it has not been suggested there was any difficulty in identifying the Company as the subject of the Gazette notice if it had been read. If it was ignored NISA must have taken its own decision to take payments as long as they were made and it must be taken to assume the risk of subsequent challenge.

52. I am not however satisfied that NISA was unaware of the intention to transfer business to URL until it was contacted by the liquidators on 4 June. It must have been aware of such an intention at least by 20 May, because it did not draw on the direct debit for two of the accounts on that day, despite the fact supplies had been made to the relevant shops in the three weeks beforehand that NISA might have expected the Company to pay for. It is curious, and unexplained by Mr Chapman's evidence, how it came to cease drawing on two accounts but made one further drawing on the third. It is unexplained how and from what source it was paid for supplies made before 13 (or 20) May but not due for payment until after the last payments from the Company's accounts. Presumably payment came from URL, and presumably at some point NISA was told by the directors or individuals behind the Company and URL that the business was being transferred and URL would pay in future, but what they said and when has not been disclosed by Mr Chapman.

53. The way in which the business was operated and transferred suggests the directors of the Company, who knew about the petition and may well have been motivated to avoid payment of the judgment debt that had led to it, may have run down the assets of the Company as long as they could, obtaining supplies at its expense while its accounts remained unfrozen but intending that the benefits of trading be passed to "Sandhu News" or URL. I do not suggest NISA was party to any such intention, but without a full explanation from it of what it was told about the intended business transfer and when, I am not able to conclude that it acted in innocence and good faith throughout.

54. NISA seems to have had a casual attitude to the detail of who it was dealing with and where its payments came from, as exemplified by Mr Chapman's remarks that there was no difference between the Company and URL because the same people behind them, his apparent willingness to disregard petitions because many ended up being dismissed and NISA's willingness to accept payments from accounts it regarded as personal accounts of connected individuals without ensuring those accounts in fact belonged to the entity it was supplying. In these circumstances it seems to me quite possible NISA was aware at some point of an intention to transfer the business to URL but failed to make any enquiry as to when this was to occur and whether it remained appropriate for the Company to continue to pay for supplies made. No doubt of course many such transfers are perfectly properly made and in such cases there may be no cause for a supplier to enquire further about them, or nothing suspicious may be revealed if it does, but I cannot be confident that was or would have been the case here.

55. The lack of clarity on these issues is in my view due to the deficiencies in Mr Chapman's evidence. As noted above he has throughout adopted an obstructive and evasive attitude to the liquidators' enquiries. His evidence to the court, both written and oral, was in my view in many respects inaccurate and in others incomplete and lacking in candour. I have no doubt he could have given a much fuller picture of the relevant events, but has chosen not to.

56. In relation to the payments themselves, I am not satisfied that they in fact produced any benefit for the Company or its creditors in the period after presentation. Given

that on Mr Chapman's evidence payments were taken weekly for supplies up to Wednesday two weeks before, the first two payments after presentation of the petition (18 and 25 March) must have been wholly for pre-petition supplies, and the next (1 April 2015) is likely to have been mainly for pre petition supplies. Those supplies cannot have added to the Company's assets at the date of the petition.

57. The next payment on 8 April was after the date of advertisement and so at a time when, but for its own carelessness, NISA could have been aware that it was at risk under s 127, or was actually so aware but decided to ignore it. It and later payments may have been for post petition supplies, but I cannot be confident they were wholly for that purpose since Mr Chapman has not, as noted above, put forward the reconciliation that would have demonstrated it. To the extent they were, whether any benefit from those deliveries in fact flowed to the Company to the advantage of its creditors depends on whether the stocks delivered were either sold at a profit, the proceeds being paid into the Company's accounts such that they became available to the liquidators, or remained in the Company's possession at the date of the winding up order such that they came into the liquidators control.

58. I cannot be satisfied on any of these points, because (a) there is no evidence from which it can be found that any trading by the Company at this time was profitable (b) even if it were assumed the items of stock themselves were sold at a gross profit, ie for a price exceeding cost, there is no evidence the proceeds were paid into the Company's bank accounts, and good grounds to suspect they may not have been since the directors were in the process of transferring the business to URL or Sandhu News and not apparently scrupulous about how they did it, and (c) to the extent stocks were unsold, they were apparently at some point transferred to URL and or Sandhu News without any payment and so not made available to the liquidators or otherwise producing any benefit for creditors. NISA may not have been involved in or responsible for any such acts by the directors, but for the reasons given above I cannot be satisfied they were unaware of circumstances that would have raised concerns.

59. This is not a case in which the Company entered into some special transaction for the benefit of creditors (such as a bona fide sale of an asset at full value) or in order to preserve its business as a going concern. Insofar as the motives of the directors may be inferred, they were not seeking to benefit the Company itself but URL and/ or Sandhu News. Nor is it a case in which the supplier was persuaded by the payments to make further supplies for the benefit of the Company and its creditors notwithstanding the known risk of insolvency. Apart from the question whether there was, or could have been assumed to be, any such benefit in fact, at the highest on Mr Chapman's evidence NISA simply continued to supply and take payments in the ordinary course of dealing. I am not satisfied that it did in fact continue to act in the normal course, for the reasons given above, but even if it had, in the light of *Express Electrical* that would not be sufficient on its own to justify a validation order.

60. Mr Chapman argued that the payments must have benefitted the Company because if they had not been taken NISA would have refused to supply further and it would have entered into winding up sooner. I do not consider either point is established; for the reasons above it has not been shown that any further supplies in fact benefitted the Company or its creditors, and in any event the winding up order was made at the first hearing, so the Company was not enabled to continue trading for any longer than would otherwise have been the case.

61. For all these reasons, I am not satisfied that any special circumstances have been shown that would justify disapplying the normal provisions of the statute by making a validation order in respect of any of the direct debit payments, and I decline to do so.

Change of position defence

62. Mr Fennell submits that NISA has changed its position in good faith in reliance on the validity of the payments, by continuing to make supplies, and that this gives a defence to the equitable remedy of restitution on which the liquidator relies to recover the payments rendered void by s 127. He relies on dicta of Mr Nicholas Warren QC in *Rose v AIB Group (UK) Plc* [2003] EWHC 1737 (Ch), in which he said:

> "41. It seems to me that the question of validation of a disposition is distinct from the question of actual recovery if the disposition is not validated. I do not see why the defence should not be available where, for instance, a creditor did not know and could not have known (because it had not yet been advertised) of the existence of the petition. After all, in other cases where payments can be treated as void or ultra vires, it is commonplace that restitution is available subject to restitutionary defences. The purpose behind the discretion conferred on the court to validate a disposition is not the same as the purpose of the change of position defence, albeit that both are based on an overarching concept of fairness. The former is directed principally at achieving a pari passu distribution of assets whilst permitting transactions which are, or are likely to be, of benefit to the company to take place; the latter is an inherent qualification to the right of restitution and which, in its very nature, will be detrimental to the company and distort the pari passu distribution of assets."

These observations were obiter, because on the facts the judge held the defence was not available to the defendant bank, which had known of the liquidation at the time it was said to have acted to its detriment (by releasing a charge) and to have taken its own risk that a claim might be made to recover payments previously made to it.

63. Neither counsel could find a case in which a defence of change of position had actually been allowed against a liquidator's claim under s 127. Both referred to the more recent decision of HHJ Paul Matthews in *Officeserve Technologies Ltd v Annabel's (Berkeley Square) Ltd* [2018] EWHC 2168 (Ch) in which he referred to *Rose v AIB* and said:

> "40. … the deputy judge's view that, in principle, change of position was a defence to a restitutionary claim in respect of payments made void by section 127, was endorsed (albeit *obiter*) in *Clark v Meerson* [2018] BPIR 661, [47], and also cited with apparent approval in *Re D'Eye* [2016] BPIR 883, [55].
>
> 41. However, in the present case, Mr Passfield, for the applicants, argued that the claim in respect of payments made void under section 127 should not be regarded as a restitutionary claim in the sense of one based on the principle

> of unjust enrichment. Accordingly, the defence of change of position was not relevant in this context. Certainly, when dealing with purported transfers of property rights, there is much to be said for this. But in the context of payments of money, where the appropriate claim outside the insolvency context was the old claim in money had and received, and now in unjust enrichment, and this kind of claim is ordinarily subject to the defence of change position (as shown by *Lipkin Gorman*), in my judgment there would have to be some good policy reason why that defence should not apply to the claim for money paid even in the insolvency context. The reasoning of Mr Nicholas Warren QC in *Rose* is compelling, even if in that case the defence failed on the facts. I therefore conclude that in principle it would be open to any of the respondents in the present case to defend the claim brought against them by showing a change of position in good faith in reliance on the payment. However, and as I have said, the burden of doing so lies on them: *Philip Collins Ltd v Davis* [2000] 3 All ER 808, 827d. ”

This too is strictly obiter since in the result HHJ Matthews held that none of the various defendants had made out any of the potential defences on the facts, see his judgment at para 99.

64. Mr Comiskey submits that I should despite these dicta hold that the defence of change of position is not available in a claim for recovery of payments invalidated by insolvency legislation. Contrary to HHJ Matthews' view, he submits that the reasoning of Mr Warren QC is not compelling, and in any event his view that the defence should in principle be available cannot survive the policy approach to s 127 set out in *Express Electrical*. If such a defence was allowed, ex hypothesi it must be in a case in which a validation order has been refused, and it would undermine the policy imperative if circumstances (such as receipt in good faith in the ordinary course of business) that were held in *Express Electrical* not to be sufficient to justify a validation order achieved the same effective result by a different route. Although that case was cited to HHJ Matthews, it does not appear to have been argued that its effect was to exclude the possibility of raising a change of position defence. Since the defence could only apply to restitutionary claims for return of money and not proprietary claims to other forms of asset, its existence would create an unjustifiable distinction between the two. The possibility of exceptional justification for retaining the benefit of a disposition despite an absence of benefit to creditors would be better catered for by the potential for making a validation order in such exceptional circumstances that was recognised by Sales LJ.

65. I agree with these submissions to a certain extent though not entirely. Mr Comiskey criticised Mr Warren QC's statement that the purpose of a validation order was to achieve a pari passu distribution, since the order inevitably resulted in a departure from such distribution. But that I think is to misread the passage quoted; the point being made was that allowing validation of some dispositions notwithstanding the general principle of pari passu distribution had the purpose of "permitting transactions which are, or are likely to be, for the benefit of the company…".

66. On the other hand, I do have doubts about the statement that the purpose of a change of position defence is "an inherent qualification to the right of restitution which in its very nature will be detrimental to the company and distort the pari passu distribution of assets". No doubt the *effect* of allowing such a defence in an insolvency case is to distort the pari passu distribution, but that can hardly be put forward as a *purpose* for the existence or availability of a particular defence. Nor is in fact a difference of principle, unless it be on the basis that departing from pari passu by making a validation order benefits the creditors (because that is the general condition of making the order) but allowing the defence would (or might) disadvantage them, but that difference is hardly a good reason in itself for permitting the defence.

67. In my view, the resolution is to be found by stepping back and considering the reason why change of position is recognised as a defence to restitutionary claims at all, which is that in the circumstances in which the defence is held to be made out, the court necessarily finds that it would be inequitable to allow the claim to restitution to proceed (see per Lord Goff in *Lipkin Gorman v Karpnale* [1991]2 AC 548 at 577-80, including the following: "… why do we feel that it would be unjust to allow restitution in cases such as these? The answer must be that, where an innocent defendant's position is so changed that he will suffer an injustice if called upon to repay or to repay in full, the injustice of requiring him so to repay outweighs the injustice of denying the plaintiff restitution").

68. In other words, the strength of the equitable claim of the person seeking restitution is not such as to make it unconscionable for the defendant to retain the benefit he has received. A balance is being struck between the equities in favour of the claimant and those in favour of the defendant. In striking that balance, the court is bound to have regard to the nature of the equitable claim being asserted, and in the context of a claim being made to give effect to the legislative policy to preserve and where necessary return assets for the benefit of creditors in insolvency that requires the court to recognise the strength imparted by that policy to the claim. If it is to be denied, it must be because the circumstances of the defendant are such as to outweigh the policy imperative and show that that enforcement of the policy would be unjust on the particular facts.

69. Looked at in this way, the result would be that although the defence is in principle as a matter of jurisprudence available, the circumstances in which it can succeed are constrained in the same way and for the same reasons as the exercise of the court's discretion to validate. That seems to me a more satisfactory approach than to hold that a form of defence is available against some claimants but not others. It is not easy to think of circumstances in which the court would decline to make a validation order, but nevertheless find it inequitable to order repayment of a benefit received, particularly when one takes account of the availability of "exceptional circumstances" as justification for a validation order.

70. On that basis, and for the same reasons as lead me to refuse a validation order, in my judgment NISA has not shown that by reason of any change in its position it is unjust to require it to repay any of the sums sought by the liquidators.

71. If I am wrong as to the principle and the defence of change of position is available without these constraints, then in my view the position is as follows:

    i) Only the first three sets of payments (18 and 25 March and 1 April 2015) were made before advertisement on 7 April. The defence could only be available to

the extent that supplies were made after 18 March but on or before 7 April. NISA has not identified what supplies were made in that period, and an enquiry would be necessary to establish their value.

ii) I am not however satisfied that NISA has shown that it acted in good faith in this period, given the difficulties referred to above with Mr Chapman's evidence. I cannot be satisfied, for instance, that on the balance of probabilities he or NISA were not aware at this time that the business was being or had been transferred to URL but had been advised by the directors to continue to draw payment from the Company's accounts for the time being. It is for NISA to show that it acted in good faith, and not having done so the defence is not made out.

iii) After 7 April the liquidators position is stronger in that NISA should be taken to have notice of the petition by virtue of the advertisement, or not to have acted in good faith because it either failed to operate its own system of checking the Gazette or was willing to ignore the results as long as the direct debits were met. I note that in the passage in *Rose* cited above the judge said that the defence should be available where the recipient "did not know and could not have known (because it had not yet been advertised) of the existence of the petition", and at para 45 he said there would be strong arguments to hold that since advertisement is notice to all the world it would be contrary to policy if a creditor were thereafter able to rely on his own actual ignorance of the petition. I agree, and would hold the defence ceases to be available at that point.

The cash deposit and shares

72. I can deal with these briefly. I am far from satisfied that I have been given a full or accurate account by Mr Chapman of NISA's dealings with the cash deposit and the shares. Given the inconsistencies in his evidence, it seems to me entirely possible for instance that as at the date the liquidators were appointed NISA had not internally allocated the deposit to pay the subscription price of the shares and only initially considered whether it had been necessary to use it against outstanding amounts due for stock. That would explain why Mr Chapman said that nothing was outstanding from the Company and the deposit was still held. At some time later he may have realised there was still a balance outstanding to pay for the shares and produced the statement referred to above setting the deposit against that balance (and other items).

73. But even if this is so it does not in my view avail the liquidators. To the extent the debt represented by the cash deposit was outstanding at the date of presentation of the petition, NISA would have been entitled to apply it by way of either contractual entitlement (it was not disputed that the deposit was held against any sum becoming due to NISA) or insolvency set off (at the time pursuant to Insolvency Rules 1986 R 4.90) against any sum due to NISA at that date. It is not disputed that the Company must have been indebted to NISA at that date for sums in excess of £25,000. The payments made on 18 and 25 March totalling over £33,500 would, on Mr Chapman's evidence, have been for supplies made no later than 11 March, and the petition was presented on 16 March. Those payments being void, the original debts remain outstanding. In addition the invoices for issue of the shares were dated in 2013 and 2014 and amounted to £24,917 which, on the best position for the liquidators, must have been outstanding at the date of presentation. It was not suggested the amounts of these invoices were false, so whatever my doubts about Mr Chapman's evidence in

relation to payments for goods, it would be unrealistic to conclude that NISA was owed less than £25,000 in total. The result, as Mr Comiskey accepted, is that no part of the deposit could ever be recovered by the liquidators.

74. In relation to the shares, although the liquidators' pleaded case appears to envisage they may have been in some way cancelled and that such cancellation would constitute a void transaction, on the evidence at trial that is not the case and what has happened is that a transfer to URL, apparently signed by Mr Komaleswaran, has been registered in the books of NISA. That transfer is not, it seems to me, a disposition in favour of NISA itself. It may be liable to be declared void under s127 as a disposition in favour of URL, or under the general law as having been made without proper authority (if Mr Komaleswaran ever had any authority on behalf of the Company to deliver such a transfer on the face of it that authority would have come to an end on the making of the winding up order). But any declaration to that effect would have to be sought in an application against URL as the beneficiary of the disposition, and not NISA which for these purposes is only the keeper of the share register. If the liquidators succeed they may then seek an order for rectification of the share register, of course.

75. It follows that no order can be made in the present application in relation to the shares.

76. I will list a hearing at which this judgment will be handed down and invite counsel to agree the order resulting. If there are matters arising that can be dealt with in 30 minutes I will take them at the handing down; in any other event there need be no attendance and counsel should agree a time estimate and provide dates of availability for a later hearing.