

266C. Orders under sections 265D and 266

- (1) Without limiting sections 265D(3) and 266(3), an order under either of those sections with respect to a transaction at an undervalue entered into by a company, or an unfair preference given by a company, may do one or more of the following—
 - (a) require any property transferred as part of the transaction, or in connection with the giving of the unfair preference, to be vested in the company;
 - (b) require any property to be vested in the company if it represents in any person's hands the application of—
 - (i) the proceeds of sale of property so transferred; or
 - (ii) money so transferred;
 - (c) release or discharge (in whole or in part) any security given by the company;
 - (d) require a person to pay, in respect of benefits received by that person from the company, any sums to the liquidator that the court may direct;
 - (e) provide for a surety or guarantor whose obligations to a person were released or discharged (in whole or in part) under the transaction, or by the giving of the unfair preference, to be under any new or revived obligations to that person as the court thinks appropriate;
 - (f) provide—
 - (i) for security to be provided for the discharge of any obligation imposed by or arising under the order;
 - (ii) for such an obligation to be charged on any property; and
 - (iii) for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference;
 - (g) provide for the extent to which a person—
 - (i) whose property is vested by the order in the company; or
 - (ii) on whom obligations are imposed by the order,is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference.
- (2) An order under section 265D(3) or 266(3) may affect the property of, or impose an obligation on, any person whether or not that person is the person with whom the company entered into the transaction or, as the case may be, the person to whom the unfair preference was given.
- (3) Despite subsection (2)—
 - (a) the order must not prejudice—
 - (i) any interest in property which was acquired from a person other than the company and was acquired in good faith and for value; or
 - (ii) any interest deriving from such an interest; and
 - (b) the order must not require a person who received a benefit from the transaction or unfair preference in good faith and for value to pay a sum to the liquidator, except where that person was a party to the transaction or the payment is to be in respect of an unfair preference given to that person at a time when that person was a creditor of the company.

- (4) If a person (*third party*) has acquired an interest in property from a person other than the company, or has received a benefit from the transaction or unfair preference, then unless the contrary is shown, it is presumed for the purposes of subsection (3)(a) and (b) that the interest was acquired or the benefit was received otherwise than in good faith if, at the time of the acquisition or receipt—
- (a) the third party had notice of—
 - (i) the relevant circumstances; and
 - (ii) the relevant proceedings; or
 - (b) the third party—
 - (i) was connected with the company; or
 - (ii) was connected with, or was an associate of, the person with whom the company entered into the transaction or to whom the company gave the unfair preference.
- (5) For the purposes of subsection (4)(a)(i), the relevant circumstances are—
- (a) for a transaction at an undervalue—the fact that the company entered into the transaction at an undervalue; or
 - (b) for an unfair preference—the circumstances which amounted to the giving of the unfair preference by the company.
- (6) For the purposes of subsection (4)(a)(ii), a third party had notice of the relevant proceedings if—
- (a) in the case of the company going into liquidation on the making of a winding-up order on a petition—that party had notice of the fact that—
 - (i) the petition had been presented; or
 - (ii) the company had gone into liquidation;
 - (b) in the case of the company going into liquidation on the delivery of a winding-up statement to the Registrar under section 228A—that party had notice of the fact that—
 - (i) a resolution had been passed under section 228A(1)(a) in respect of the company; or
 - (ii) the company had gone into liquidation; or
 - (c) in any other case—that party had notice of the fact that the company had gone into liquidation.

(Added 14 of 2016 s. 90)