

51A. Orders under sections 49 and 50

- (1) Without prejudice to the generality of section 49(2) or 50(2), an order under either of those sections with respect to a transaction or unfair preference entered into or given by a debtor who is subsequently adjudged bankrupt may (subject as follows)—
 - (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 trustee as part of the estate;
 - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
 - (c) release or discharge (in whole or in part) any security given by the debtor;
 - (d) require any person to pay, in respect of benefits received by him from the debtor, such sums to the trustee as the court may direct;
 - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference to be under such new or revived obligations to the person as the court thinks appropriate;
 - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and 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; and
 - (g) provide for the extent to which any person whose property is vested by the order in the trustee, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the unfair preference.
- (2) An order under section 49 or 50 may affect the property of, or impose an obligation on, any person whether or not he is the person with whom the debtor in question entered into the transaction or, as the case may be, the person to whom the unfair preference was given; but such an order—
 - (a) shall not prejudice any interest in property which was acquired from a person other than that debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and
 - (b) shall 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 trustee, except where he 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 he was a creditor of that debtor.
- (3) Where a person has acquired an interest in property from a person other than the debtor in question, or has received a benefit from the transaction or unfair preference, and at the time of that acquisition or receipt—
 - (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings; or
 - (b) he was an associate of either the debtor in question or the person with whom that debtor entered into the transaction or to whom that debtor gave the unfair preference,then, unless the contrary is shown, it shall be presumed for the purposes of subsection (2)(a) or (b) that the interest was acquired or the benefit was received otherwise than in good faith.
- (4) Any sums required to be paid to the trustee in accordance with an order under section 49 or 50 shall be comprised in the bankrupt's estate.

- (5) For the purposes of subsection (3)(a), the relevant surrounding circumstances are (as the case may require)—
 - (a) the fact that the debtor in question entered into the transaction at an undervalue; or
 - (b) the circumstances which amounted to the giving of the unfair preference by the debtor in question.
- (6) For the purposes of subsection (3)(a), a person has notice of the relevant proceedings if he has notice—
 - (a) of the fact that the petition on which the debtor in question is adjudged bankrupt has been presented; or
 - (b) of the fact that the debtor in question has been adjudged bankrupt.

(Added 76 of 1996 s. 36)