

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION NO.284 OF 2018
IN
COMPANY PETITION NO.657 OF 2016**

Ashok Commercial Enterprises & Anr.)....Applicants

IN THE MATTER BETWEEN :

Kishinchand R.Ludhani)....Petitioner
V/s.

Official Liquidator on behalf of Kamla)
Landmarc Construction Pvt. Ltd.)....Respondent

Mr.Sandeep Parikh a/w Mr.Abhishek Sawant I/by Amit S.Pradhan
for the applicants.

[Mr.Mahendhar Aithe-Company Prosecutor for OL present].

CORAM : K.R.SHRIRAM,J

DATE : 26.7.2018

P.C.:-

1. The application is filed for leave under Section 446 of the Companies Act, 1956, to permit the company to proceed with the Commercial Summary Suit No.472 of 2016 pending in this court. The Official Liquidator is appointed as provisional liquidator of the company. Actually the applicant wants to implead the Official Liquidator of Kamla Landmarc Construction Pvt. Ltd. as defendant no.5 in the commercial suit. The liquidator has filed an affidavit dated 11.7.2018 opposing the application.

2 It was asked to the applicants whether the applicants will pay the Liquidator the cost in defending the suit because if tomorrow, applicants do not get decree against Official Liquidator, the Official Liquidator would have unnecessarily spent money on the litigation which money could have been used to pay off the creditors. It was also suggested to the applicants that they may pay the legal expenses and claim the amount along with the decree from the Official Liquidator and naturally Official Liquidator would decide that claim in accordance with law.

3 Mr.Parikh for the applicants requested the application be stood over to today to enable him to take instructions in the matter. Today, Mr.Parikh states that the applicants are not ready to incur the legal costs.

In the circumstances, application dismissed.

(K.R.SHRIRAM,J)

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