

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**COMPANY APPLICATION NO. 270 OF 2016**  
**IN**  
**COMPANY PETITION NO. 95 OF 1999**

Patheja Brothers Unsecured Creditors Trust ....Applicant

In the Matter Between

Devi Construction Company Pvt. Ltd. ....Petitioner

V/s

Patheja Brothers Forgings and Stampings Ltd. ....Respondent

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None for Applicant.

Mr. Shanay Shah, Advocate for Official Liquidator.

Ms. Shruti Salian i/b Phoenix Legal for Ex-directors.

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**CORAM : K.R.SHRIRAM, J.**

**DATED : 12<sup>th</sup> JANUARY 2021.**

**P.C. :**

1. This is an application for grant of leave under Section 446 of the Companies Act, 1956, to institute execution proceedings at Pune and Satara against respondent. At the outset, I have to note respondent is non-existent because the company has been ordered to be wound up on 16<sup>th</sup> June, 2007.

2. Applicant is a private trust formed for consolidating unsecured creditors of the company in liquidation. Applicant has entered into a

compromise decree with company in liquidation on 25<sup>th</sup> April, 2007 in Civil Appeal No.704 of 2005 before the District Judge at Pune. It is this decree which applicant is seeking leave to execute. The decree has been signed by Ex-Directors of the company in liquidation.

3. The winding-up petition was lodged on 27<sup>th</sup> November, 1998 and was admitted on 9<sup>th</sup> November, 2000. The order of winding up was passed on 16<sup>th</sup> June, 2007. Under Section 441 (2) of the Companies Act, 1956 the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for winding up. Therefore, even though the final winding up order was passed on 16<sup>th</sup> June, 2007, the winding up of the company has commenced, in view of the provisions in Section 441 (2) of the Companies Act, 1956, at the time of presentation of the petition for winding up, i.e., on 27<sup>th</sup> November, 1998. Therefore, a consent decree of which execution is being sought will be non est. In fact, even the orders passed in Civil Appeal No.704 of 2005 and Special Civil Suit No.945 of 2004 will not be valid since, as stated by Shri.Shah, no leave under Section 446 of the Companies Act, 1956, was obtained for prosecuting the suit or the appeal.

4. Shri. Shah submits that parties are deemed to be aware that the petition has been lodged for winding up of respondent/company in liquidation and that the petition was admitted on 9<sup>th</sup> November, 2000

because admission of the petition would have been advertised. In any event Ex-Director(s) who have signed the compromise is/are deemed to be aware. In the circumstances, this application has no merit.

5. Application dismissed.

(K.R. SHRIRAM, J.)