Company Application Nos.1150 and 1151 of 2016

T.S.SIVAGNANAM,J.

Company Application No.1150 of 2016 has been filed for convening a meeting of the Unsecured Creditors of the applicant Company to be held at the registered Office or such other place as the Court may direct for considering and if though fit, approving, with or without modification, the Scheme of Amalgamation of Hinduja Foundries Limited with Ashok Leyland Limited and for a direction as to the date, method of convening, holding and conducting the said meeting and as to notices and advertisements to be issued and that a Chairman be appointed for the said meeting, who shall report the results thereof to the Court.

2. Company Application No.1151 of 2016 has been filed for convening a meeting of the Equity Shareholders of the applicant Company to be held at the registered Office or such other place as the Court may direct for considering and if though fit, approving, with or without modification, the Scheme of Amalgamation of Hinduja Foundries Limited with Ashok Leyland Limited and for a direction as to the date, method of convening, holding and conducting the said meeting and as to notices and advertisements to be issued and that a Chairman be appointed for the said meeting, who shall report the results thereof to the Court.

3. The applicant has contended that the Transferor Company as on 31.10.2016 has 9,688 equity shareholders and as they are widespread and geographically located at different parts of the country, the meeting of the equity shareholders has to be held to consider the Scheme of Amalgamation with or without modifications.

4. It is further stated that the Transferor Company has 1 (one) 10% Redeemable Non-Convertible Cumulative Preference Shareholders, 1 (one) 6% Redeemable Non-Convertible Cumulative Preference Shareholders and 1 (one) 9% Redeemable Non-Convertible Cumulative Preference Shareholders.

5. All the Preference Shareholders of the Transferor Company have given their consent by way of affidavits approving the proposed Scheme of Amalgamation. The Consent Affidavits are appended in page Nos.193 to 195 of the Paper Book. Insofar as the Creditors are concerned, it is submitted that the Transferor Company has four Secured Creditors and the No Objection Certificate obtained from Three Secured Creditors have been filed vide page Nos.212 to 214 of the Paper Book. The Transferor Company undertakes to file the consent from the remaining Secured Creditors, being State Bank of India, at the time of final hearing.

6. As on 31.10.2016, the Transferor Company has a total of 729 Unsecured Creditors at an outstanding value of Rs.42,51,48,616.64, which has been duly certified by an independent Chartered Accountant. The No Objection Certificates of the Unsecured Creditors to the extent and value of Rs.31,88,07,648/- which is equal to 74.99% has been produced before this Court.

7. So far as the Transferee Company is concerned, it is stated that as on 31.10.2016, there are 5,03,878 equity shareholders and they are widespread and geographically located at different parts of the country and a meeting has to be convened to consider the Scheme of Amalgamation.

8. The Transferee Company has two Secured Creditors and their No Objection Certificate has been filed vide page Nos.449 to 451 of Paper Book II. As on 30.10.2016, the Transferee Company has 4000 Unsecured Creditors at an outstanding value of Rs.3699,14,11,000/- and the same has been duly certified by an Independent Chartered Accountant which is marked and annexed at Page Nos.301 to 448 of Paper Book II. The No Objection Certificates of the Unsecured Creditors to the tune of Rs.3083,01,61,000/-, which is equal to 83.34% of the total value of Unsecured Creditors have been received and

produced before this Court, which are appended vide Page Nos.1A to 158 of the separate Paper Book.

9. Further, the applicant Company submits that since the Transferor and Transferee Company have shareholders located in different parts of the country and wherever, email identifications are registered with the Transferor or Transferee Company, the applicants may be permitted to send notice through email and in respect of shareholders who have not registered their email identification with the Transferor/Transferee Company, the applicant seeks permission to discharge physical notices to such of them.

10. Considering the above factors, the application in **Company Application Nos.1151 of 2016** is allowed, subject to the following conditions:

> 10.1. That the meeting of the equity shareholders of the applicant Company - Ashok Leyland Limited shall be held on **23.01.2017 at 11.30 a.m. at Image Auditorium, 3 Thandavarayan Street, MRC Nagar, Raja Annamalai Puram, Chennai 600 028** for considering the Scheme of Amalgamation.
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> 10.2. **Mr. Justice K.Venkataraman, Former Judge, High Court of Madras is appointed as the Chairperson** and

the Managing Director/Director of the applicant/Transferee Company is appointed as the Alternate Chairperson to convene the meeting of its equity shareholders.

10.3. The quorum for the meeting shall be 500 in number and 25% in value. In case the quorum, as mentioned above, with respect to the equity shareholders of the applicant/Transferee is not in place, at the designated time, when, the meeting is called to order, then, the meeting shall be adjourned by half-hour, and thereafter, the persons present for voting shall be deemed to constitute the quorum. For the purposes of computing the quorum, any valid instrument of proxy filed shall be considered, if filed in the prescribed format, and is, duly signed by the person entitled to attend the meeting and, furthermore, is deposited with the registered office of the applicant, at least 48 hours before the meeting so convened. The Chairperson and/or alternate Chairperson, so appointed, shall ensure that proxy registers are properly maintained.

10.4. The Chairperson and/or Alternate Chairperson shall also ensure that notices convening the aforementioned meeting of the equity shareholders of the applicant/Transferee Company, along with the scheme, and an explanatory statement as required under Section 393 of the Act is sent to them by ordinary post at their registered or last known address at least 21, clear days, before the date appointed for the said meeting, in their presence or in the presence of their authorised representative.

10.5. It is made clear that the notices to the equity shareholders will be dispatched via e-mail at the registered e-mail addresses available with the depository participant. In respect of shareholders who have not registered their e-mail identification with the Transferee Company, notices shall be dispatched by post.

10.6. The notice with respect to the meetings referred to above, shall be separately published in the Business Standard [(English), All India edition] and in Dinamani [(Tamil), Tamil Nadu edition] in terms of the Company Court Rules, 1959, at least 21, clear days, before the date appointed for the said meetings.

10.7. The Chairperson and/or Alternate Chairpersons shall be entitled to issue suitable directions to the management of the applicant/Transferee Company so as to ensure that the aforementioned meeting is conducted in a just, free and fair manner. The Chairperson of the meeting will file his report within two weeks of holding the aforesaid meeting.

10.8. For his efforts, **the Chairperson shall be paid a remuneration of Rs.2,00,000/- (Rupees Two Lakhs only).** The said remuneration will be borne by the applicant

Company. In addition thereto, the applicant shall also reimburse incidental expenses, if any, incurred by the learned Chairperson, albeit, on actual basis.

11. The Company Petition shall be presented within a period of one week from the date of convening the meeting.

12. As far as Company Application No.1150 of 2016 is concerned, the applicant Company has filed an affidavit on 09.12.2016 seeking to dispense with the meeting of the Unsecured Creditors, based on the consents received from them. Hence, taking on record the said affidavit and the consents of the Unsecured Creditors produced before this Court, this Court dispenses with the convening and holding of the meeting of the Unsecured Creditors of the Applicant Company,i.e. the Transferee Company.

aeb **12.12.2016**

T.S.SIVAGNANAM,J.

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12.12.2016