

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

Argument heard on 18.04.2017

Order passed on 24.04.2017

**TP (HC)/CAA/73/2017**

**[Connected with CA Nos. 1143 to 1147 and 1150 & 1151 of 2016]**

**Under Sections 391 to 394 of the Companies Act, 1956 and the Corresponding  
Sections 230 to 232 of the Companies Act, 2013**

**In the matter of Scheme of Amalgamation of**

**M/s Hinduja Foundries Limited  
(Transferor Company)**

**With**

**M/s Ashok Leyland Limited  
(Transferee Company)**

**Represented by: Counsel P. H. Arvindh Pandian**

**CORAM**

**ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ**

**MEMBERS (JUDICIAL)**

**ORDER**

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL): ORAL**

1. Under consideration are Company Applications which have been transferred from the Hon'ble High Court of Madras to this Tribunal and renumbered as TP(HC)/CAA/73/2017. The Petitioner/Transferor Company has prayed for the sanction to the Scheme of Amalgamation (hereinafter referred to as 'Scheme') by virtue of which M/s Hinduja Foundries Limited (hereinafter referred as 'Transferor Company') having registered office at Kathivakkam High Road, Ennore, Chennai-600057 proposed to be amalgamated with M/s Ashok Leyland Limited (hereinafter referred as 'Transferee Company') as a going concern.

2. At the outset, it is necessary to know the details of the scheme which needs determination. Both the Transferor Company and the Transferee Company are Public Listed Companies. The Board of Directors of the Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation in their board resolutions dated 14<sup>th</sup> September, 2016. The Hon'ble Madras High Court vide its order dated 12.12.2016, passed in CA No. 1147 and in CA No. 1150 of 2016 dispensed with the meeting of the unsecured creditors of the Transferor Company, in CA Nos. 1144 to 1146 of 2016 dispensed with holding the meeting of Redeemable Non-Convertible Cumulative Preference Shareholders of the Transferor Company and in CA No. 1143 and CA No. 1151 of 2016 directed for convening the meeting of the equity shareholders of the Transferor Company as well as the Transferee Company. All the orders were complied with by respective companies.
3. Learned Counsel for the Petitioner Company submitted that the Transferor Company is engaged in the business grey iron castings and supply of automotive component whereas the Transferee Company is engaged in the business of manufacture and sale of commercial & defence vehicles and power stations. The main objects of both the companies are common and the rational of the said Scheme is that the companies would benefit due to the administrative and operational costs that will considerably be reduced; also it will strengthen, consolidate and stabilize the business of these companies and will facilitate further expansion and growth of their business. These combined resources will enhance its capability to expand and improve its efficiency of operations. The learned counsel further submits that no investigation proceedings are pending against the Petitioner Companies under section 235 to 251 or any other

provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

4. To dispose of this petition as per the provisions of the Companies Act, 2013, the notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objection to the scheme under reference.
5. The Regional Director, Southern Region (In short, 'RD') in its report affidavit dated 29.03.2017 submitted that the Transferor Company is regular in filing its statutory returns and no investigation is pending against the company, therefore, RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits.
6. The BSE vide its Observation Letter dated 07.11.2016 has given 'No Adverse Observation' with limited reference to those matters having a bearing on listing requirements within the provisions of Listing Agreement whereas the NSE in its Observation Letter dated 10.11.2016 also conveyed 'No Objection' in terms of regulation 94 of SEBI (LODR) Regulations, 2015. However, both the stock exchanges have directed the companies to duly comply with various provisions as required under SEBI Circular.
7. With regard to the observations made by the BSE & NSE, the counsel submitted that the Petitioner Company undertakes to comply with the relevant provisions as required under the SEBI Circulars.
8. It is also pertinent to mention herein that the Competition Commission of India, pursuant to a notice filed under sub-section (2) of section 6 of the Competition Act, 2002, is of the opinion that the proposed combination is not likely to have any

appreciable adverse effect on competition in India and therefore, the Commission approved the same under sub-section (1) of Section 31 of the Act.

9. The Official Liquidator (In short, 'OL') in its report dated 6<sup>th</sup> April, 2017 submitted that M/s Arun & Balu, Chartered Accountants scrutinized the books and accounts of the Transferor Company. The Auditor observed that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principle, has no unclaimed dividend as per Section 124 of the Companies Act, 2013, has obtained NOC from all 4 Creditors and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest and submitted that the petition may be decided appropriately.
10. The OL further submits that Haribhakti & Co. LLP, the valuers appointed by the management of both the companies to carry out the relative valuation of equity shares has opined in their report dated 14.09.2016 that the share exchange ratio in the event of merger of HFL with ALL would be 100 equity shares of INR 10/- each fully paid-up of the Transferor Company for 40 equity shares of INR 1/- each fully paid up of the Transferee Company.
11. The OL in its report has prayed that the Petitioner Company should be directed by this Tribunal to deposit within stipulated period remuneration/fee payable to the Auditor who have investigated into the affairs of the Transferor Company. In view of the submissions of the OL, the Petitioner Company is directed to deposit Rs.30,000/- within 2 weeks of receipt of this Order to the OL for making payment to the Auditor.
12. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of amalgamation will not cost any additional burden on the stakeholders and

also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1<sup>st</sup> October, 2016.

13. We do not feel that any modification is required in the said Scheme of amalgamation as the same appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made. Taking into consideration all the above, the Company Petition is allowed and the scheme of amalgamation annexed with the petition is hereby sanctioned which shall be binding on the Transferor Company, the Transferee Company and all creditors.
14. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
15. The Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
16. The Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
17. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14<sup>th</sup> December, 2016. Accordingly, the Company Petition stands disposed of.

  
(ANANTHA PADMANABHA SWAMY)  
MEMBER (JUDICIAL)

  
(CH. MOHD. SHARIEF TARIQ)  
MEMBER (JUDICIAL)