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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CO.APPL.(M) 29/2016

IN THE MATTER OF
SUPERTECH PRECAST TECHNOLOGIES PRIVATE LIMITED
.... Applicant / Transferor Company

WITH

SUPERTECH TOWNSHIP PROJECT LIMITED
.... Non- Applicant /Transferee
Company

Through: Mr. Harshit Agarwal and
Mr. Gursat Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
19.02.2016

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1. This is a first motion application filed by Supertech Precast Technologies Private Limited (applicant /transferor company)(hereafter referred to as the transferor company) under section 391 to 394 of the Companies Act, 1956(in short the Act) for approval of the scheme of amalgamation (hereafter referred to as the scheme) with Supertech Township Project Limited (non-applicant / transferee company) (hereinafter referred to as the transferee company). A copy of the scheme is enclosed with the application.

1.2 The registered office of the transferor company as also the transferee company are located in Delhi and, therefore, within the territorial jurisdiction of this Court.

2. The transferor company was incorporated on 26.11.2010 under the

name and style: Supertech NorthEye Infra Private Limited, in consonance with the provisions of the Act. Thereupon, the name of the transferor company was changed to its present name viz., Supertech Precast Technologies Private Limited, on 12.01.2011.

2.1 The details with respect to the authorized, issued, subscribed and paid-up capital of the transferor company are set out in paragraph 1.2.i of the scheme.

2.2 Copies of Memorandum and Articles of Association as well as the latest audited annual accounts as on 31.03.2015 have been filed by the transferor company.

3. The scheme has been approved by the Board of Directors (BOD) of the transferor company as also the transferee company. Copies of BOD resolution of even date i.e. 28.11.2015 of the transferor company as well as the transferee company have been filed.

4. The transferor company avers that there that there are no proceedings pending against it, under Sections 235 to 251 of the Act, as on date.

5. The position with regard to equity shareholders, secured and unsecured creditors of the transferor company, is as follows:

Company	No. of Shareholders	Consent given	No. of Secured Creditors	Consent given	No. of Unsecured Creditors	Consent given
Transferor Company	2	ALL	1	ALL	134	106 (79.10% in number and 98% in value)

6. As would be evident upon reading of the aforementioned table, it is clear that consents have been obtained from the shareholders, and the only

secured creditor of the transferor company.

7. In so far as the unsecured creditors of the transferor company are concerned, 106 out of 134 have given their consent. The percentage of consents in terms of value and number is as follows : 98% in value and 79.10% in number.

8. Accordingly, the prayer made for dispensing with the requirement of convening meetings of the shareholders and creditors (i.e. secured and unsecured) of the transferor company is allowed.

9. It is prayed, that the transferee company be exempted from filing any application or petition and / or to seek any consequential direction(s) from this Court for dispensing with the requirement of holding meetings of its shareholders and creditors to consider the scheme, given the fact, that the transferor company is a wholly owned subsidiary of the transferee company.

10. Having regard to the fact that the transferor company is a wholly owned subsidiary company of the transferee company, I am inclined to agree with the prayer made in this behalf by the transferor company. As per clause 9 of the scheme, in particular, clause 9.1 and 9.2, upon the scheme becoming effective, no shares in the transferee company will be allotted in lieu or in exchange of shares held by it in the transferor company. The entire share capital of the transferor company shall stand cancelled. Resultantly, the share certificates and / or the shares held in the electronic form by the transferee company in the transferor company shall be deemed to have been cancelled without any further application, act, instrument or deed of cancellation.

10.1 I am also told by the counsel for the transferor company that the interest of the creditors in the transferee company shall remain unaltered.

Therefore, in consonance with the aforesaid position obtaining on facts and in law as is reflected in the judgment dated **16.01.2013** passed in **CA 2332/2012 in Co.Appl.(M) No.179/2012**, passed in the matter of : ***eMeter India Pvt. Ltd.***, I am inclined to hold that the transferee company need not file a separate or a joint application (which it has not in the present case) for obtaining sanction of the scheme.

11. The application stands disposed of, in the aforesaid terms.

12. Dasti.

RAJIV SHAKDHER, J

FEBRUARY 19, 2016

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