

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 212/2016

Reserved on 10th August, 2016
Date of pronouncement: 2nd September, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Petition under Sections 391 to 394 of the
Companies Act, 1956**

Scheme of Amalgamation of:

Supertech Precast Technologies Private Limited

Petitioner/Transferor Company

WITH

Supertech Township Project Limited

Non-Petitioner/Transferee Company

**Through Mr. Saurabh Kalia, Mr. Hemant
Sharma, Mr. Palash Aggarwal and
Mr. Gursat, Advocates for the petitioner
Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner/transferor company seeking sanction of the Scheme of Amalgamation of Supertech Precast Technologies Private Limited (hereinafter referred to as the petitioner/transferor company) with Supertech Township Project Limited (hereinafter referred to as the transferee company).

2. The registered offices of the petitioner/transferor company and the transferee company are situated at New Delhi, within the jurisdiction of this Court.

3. The petitioner/transferor company was originally incorporated under the Companies Act, 1956 on 26th November, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Supertech NorthEye Infra Private Limited. The company changed its name to Supertech Precast Technologies Private Limited and obtained the fresh certificate of incorporation on 12th January, 2011.

4. The present authorized share capital of the petitioner/transferor company is Rs.20,00,00,000/- divided into 2,00,00,000 equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the company is Rs.10,01,00,000/- divided into 1,00,10,000 equity shares of Rs.10/- each.

5. A copy of the Memorandum and Articles of Association of the petitioner/transferor company has been filed on record. The audited balance sheet, as on 31st March, 2015, of petitioner/transferor company, along with the report of the auditors, has also been filed.

6. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is claimed by the petitioner that the proposed amalgamation is expected to result in integration and synergy of operations, economies of scale, reduction in overheads, administrative, managerial and other expenditure, organizational efficiency and optimal utilization of resources. It is further claimed that the amalgamation will also consolidate the managerial expertise of the two companies thereby giving additional strength to the operations and management of the transferee company.

7. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor company is a wholly owned subsidiary of the transferee company, no shares of the transferee company shall be allotted in lieu or exchange of its holding in the transferor company and the entire issued, subscribed and paid-up share capital of the transferor company held by the transferee company shall stand cancelled.

8. It has been submitted by the petitioner that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or under Sections 206 to 229 of the Companies Act, 2013 are pending against the petitioner/transferor company and the transferee company.

9. The Board of Directors of the petitioner/transferor company and the transferee company in their separate meetings held on 28th November, 2015 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

10. The petitioner/transferor company had earlier filed CA (M) No. 29/2016 seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of Scheme of Amalgamation. Vide order dated 19th February, 2016, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditor of the petitioner/transferor company, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. Vide the said order, this Court also dispensed with the requirement of the transferee company to file a separate or joint application for obtaining sanction to the Scheme.

11. The petitioner/transferor company has thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 11th March, 2016, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and "Jansatta" (Hindi) Delhi editions. Affidavit of service has been filed by the petitioner showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 29th April, 2016. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

12. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 22nd July, 2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

13. In response to the notices issued in the petition, Mr. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 5th August, 2016 stating that he had no objection to the proposed Scheme of Amalgamation subject to compliance of Section 203 of the Companies Act, 2013. The Regional Director in para 10 of his report has stated that the transferor and transferee companies have not appointed the whole time Company Secretary, thereby prima facie violated the provisions of Section 203 of the Companies Act, 2013. He has further submitted that the transferor company is a loss making company.

14. In response to the aforesaid observation, the petitioner/transferor company in the affidavit dated 6th August, 2016 of Mr. Ram Kishor Arora, Director of the transferor and transferee companies, has submitted that the transferee company has appointed a whole time Company Secretary as per Board Resolution dated 1st March, 2016 and also filed the requisite form DIR-12 to ROC. A copy of the said form is also placed on record. With regard to the transferor company, it is submitted that in terms of the Scheme, the transferor company would amalgamated with the transferee company. However, if there is any violation of any provision of the Companies Act, 2013 or any other applicable law by the transferor company, the same would be continued and enforced by or against the transferee company, in terms of Clause 4 of the Scheme of

Amalgamation. In view thereof, the observation made by the Regional Director stands satisfied.

15. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner company, in the affidavit dated 8th August, 2016 of Mr. Ram Kishor Arora, Director of the transferor and transferee company, has submitted that neither the petitioner company nor its counsel have received any objection pursuant to the citations published in the newspapers on 29th April, 2016.

16. Considering the approval accorded by the equity shareholders and creditors of the petitioner company to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the

appointed date of Amalgamation i.e. 1st April, 2015, the transferor company shall stand dissolved without undergoing the process of winding up.

17. Learned counsel for the Official Liquidator prays that costs of at least Rs.2,00,000/- should be paid by the petitioner keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings. Learned counsel for the petitioner company states that the same is acceptable to him. As already directed vide order dated 10.08.2016, the petitioner shall deposit a sum of Rs.2,00,000/- by way of costs with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

18. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

September 02, 2016