IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 64/2015

Reserved on 20th April, 2015
Date of pronouncement: 14th May, 2015

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

And

Application under Section 391(1) of the Companies Act, 1956

Scheme of Amalgamation of:

Ambassador Infrastructure Private Limited
Applicant/Transferor Company No. 1

Crossings Developers Private Limited
Applicant/Transferor Company No. 2

Crossings Constructions Private Limited
Applicant/Transferor Company No. 3

Crossings Promoters Private Limited
Applicant/Transferor Company No. 4

Crossings Real Estate Private Limited
Applicant/Transferor Company No. 5

Innovation Promoters Private Limited
Applicant/Transferor Company No. 6

New Capital Infrastructure Private Limited
Applicant/Transferor Company No. 7

Amazon Infrastructure Private Limited
Applicant/Transferor Company No. 8

WITH

Crossings Infrastructure Private Limited
Non-Applicant/Transferee Company

Through Mr. Rajiv Kumar and Ms. Alka Srivastva, Advocates for the applicants

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Section 391(1) of the Companies Act, 1956 by the applicant/transferor companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Ambassador Infrastructure Private Limited (hereinafter referred to as the applicant/transferor company no. 1); Crossings Developers Private Limited (hereinafter referred to as the applicant/transferor company no. 2); Crossings Constructions Private Limited (hereinafter referred to as the applicant/transferor company no. 3); Crossings Promoters Private Limited (hereinafter referred to as the applicant/transferor company no. 4); Crossings Real Estate Private Limited (hereinafter referred to as the applicant/transferor company no. 5); Innovation Promoters Private Limited (hereinafter referred to as the applicant/transferor company no. 6); New Capital Infrastructure Private Limited (hereinafter referred to as the applicant/transferor company no.7); and Amazon Infrastructure Private Limited (hereinafter referred to as the applicant/transferor company no. 8) with Crossings Infrastructure Private Limited (hereinafter referred to as the transferee company) and to dispense with the requirement of the transferee company to approach this Court for seeking sanction of Scheme of Amalgamation.

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

3. The applicant/transferor company no. 1 was incorporated under the Companies Act, 1956 on 10th January, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The applicant/transferor company no. 2 was incorporated under the Companies Act, 1956 on 1st May, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The applicant/transferor company no. 3 was incorporated under the Companies Act, 1956 on 3rd May, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The applicant/transferor company no. 4 was incorporated under the Companies Act, 1956 on 23rd May, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The applicant/transferor company no. 5 was incorporated under the Companies Act, 1956 on 20th May, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The applicant/transferor company no. 6 was incorporated under the Companies Act, 1956 on 2nd June, 2005 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9. The applicant/transferor company no. 7 was incorporated under the Companies Act, 1956 on 10th January, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The applicant/transferor company no. 8 was incorporated under the Companies Act, 1956 on 10th January, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The present authorized share capital of the applicant/transferor companies no. 1 to 8 are Rs.1,00,000/- each divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the companies are Rs.1,00,000/- each divided into 10,000 equity shares of Rs.10/- each.

12. Copies of the Memorandum and Articles of Association of the applicant/transferor companies and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2014, of

applicant/transferor companies and the transferee company, along with the report of the auditors, have also been filed.

13. 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 application and the accompanying affidavit. It is submitted by the applicants that the transferor companies are wholly owned subsidiaries of the transferee company. It is claimed that the proposed amalgamation would enable pooling of physical and financial resources of these companies for their most beneficial utilization in the combined entity. It is further claimed that the proposed amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of resources and enhancement of overall business efficiency. It will enable these companies to combine their operational strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

14. So far as the share exchange ratio is concerned, the Scheme provides that since the transferor companies are wholly owned subsidiaries of the transferee company, no share would be issued by the transferee company to the transferor companies upon the Scheme

becoming finally effective, and the shares so held by the transferee company in the transferor companies shall stand cancelled.

15. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the applicant/transferor companies.

16. The Board of Directors of the applicant/transferor companies and the transferee company in their separate meetings held on 27th February, 2015 and 28th February, 2015 respectively have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the applicant/transferor companies and the transferee company have been placed on record.

17. The applicant/transferor companies no. 1 to 8 have 02 equity shareholders each. All the equity shareholders of each company have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the applicant/transferor companies no. 1 to 8 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of

Amalgamation is dispensed with. There is no secured or unsecured creditor of the applicant/transferor companies no. 1 to 8, as on 27th February, 2015.

18. The applicant also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders since applicant/transferor companies are wholly owned subsidiaries of the transferee company; no new shares will be issued by the transferee company in lieu of the shares of the transferor companies; the Scheme does not involve any restructuring or reorganization of the capital of the transferee company in any manner; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. It is further submitted that the transferee company has high positive net worth and the aggregate of its assets are sufficient to meet its liabilities towards its creditors. Therefore, the rights of the creditors of the transferee company will not be adversely affected. Learned counsel further submitted that the shareholders of the transferee company have given their consents/no objections to the proposed Scheme of Amalgamation, which are place on record.

19. The issue of holding and subsidiary companies has been considered by this Court in many cases, such as ***Auto Tools India Pvt. Ltd.*** [CA(M) 41/2010]; and ***Sharat Hardware Industries Pvt. Ltd.*** (1978), 48 Com.Cas 23 (Delhi) as well as by Bombay High Court in ***Mahaamba Investments Ltd. V. IDI Limited*** (2001) 105 Com Cas. 16 (Bom.) and Andhra Pradesh High Court in ***Andhra Bank Housing Finance Ltd.*** (2004) 118 Com.Cas. 295 (AP), wherein it has been held that there is no requirement to file a separate or joint application on behalf of the transferee company for Sanction of Scheme of Amalgamation.

20. In view of the aforesaid settled legal position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach this Court under Section 391 of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

21. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

May 14, 2015