

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 425/2015

Reserved on 3rd August, 2016
Date of pronouncement: 29th August, 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:

Ambassador Infrastructure Private Limited

Petitioner/Transferor Company No. 1

Crossings Developers Private Limited

Petitioner/Transferor Company No. 2

Crossings Constructions Private Limited

Petitioner/Transferor Company No. 3

Crossings Promoters Private Limited

Petitioner/Transferor Company No. 4

Crossings Real Estate Private Limited

Petitioner/Transferor Company No. 5

Innovation Promoters Private Limited

Petitioner/Transferor Company No. 6

New Capital Infrastructure Private Limited

Petitioner/Transferor Company No. 7

Amazon Infrastructure Private Limited

Petitioner/Transferor Company No. 8

WITH

Crossings Infrastructure Private Limited

Non-Petitioner/Transferee Company

**Through Mr. Rajeev Kumar and
Mr. Ajeet Singh, Advocates for the
petitioners**

**Ms. Aparna Mudiam, Asstt. Registrar
of Companies for the Regional Director**

**Mr. Sanjay Katyal, Advocate for the
Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner/transferor companies seeking sanction of the Scheme of Amalgamation of Ambassador Infrastructure Private Limited (hereinafter referred to as the petitioner/transferor company no. 1); Crossings Developers Private Limited (hereinafter referred to as the petitioner/transferor company no. 2); Crossings Constructions Private Limited (hereinafter referred to as the petitioner/transferor company no. 3); Crossings Promoters Private Limited (hereinafter referred to as the petitioner/transferor company no.4); Crossings Real Estate Private Limited (hereinafter referred to as the petitioner/transferor company no. 5); Innovation Promoters Private Limited (hereinafter referred to as the petitioner/transferor company no.6); New Capital Infrastructure Private Limited (hereinafter referred to as the petitioner/transferor company no. 7); and Amazon Infrastructure Private Limited (hereinafter referred to as the petitioner/transferor company no. 8) with Crossings Infrastructure Private Limited (hereinafter referred to as the transferee company).

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

3. The petitioner/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 petitioner/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 petitioner/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 petitioner/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 petitioner/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 petitioner/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 petitioner/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 petitioner/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 petitioner/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 petitioner/transferor companies and the transferee company have been filed on record. The audited balance sheets, as on 31st March, 2014, of petitioner/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 petition and the accompanying affidavit. It is submitted by the petitioners 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 petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner/transferor companies.

16. The Board of Directors of the petitioner/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 petitioner/transferor companies and the transferee company have been placed on record.

17. The petitioner/transferor companies had earlier filed CA (M) No. 64/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their 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 the Scheme of Amalgamation. Vide order dated 14th May, 2015, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders of the transferor companies, there being no secured or unsecured creditor of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. Vide said order, this Court also dispensed with the requirement of the transferee company

having to approach this Court under Section 391 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation.

18. The petitioner/transferor companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 10th July, 2016, notice in the petition was directed to be issued to the Official Liquidator and the Regional Director, Northern Region. Citations were also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi) Delhi editions. An affidavit has been filed by the petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 27th August, 2015. Copies of the newspaper clippings containing the publications have been filed along with the affidavit of service.

19. 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 2nd December, 2015 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 companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

20. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 3rd December, 2015. Relying on Clause 12.2 of the Scheme, he has stated that all the employees of the transferor companies, as on effective date, shall become the employees of the transferee company without any break or interruption in their service. He has further submitted that in Clause 13.7 of the Scheme, it has been stated that the transferee company shall abide by the Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 11.1 of the Scheme, it has been stated that upon this scheme becoming effective, the transferor companies shall stand dissolved without the process of winding up. The Regional Director in para 8.1 of his report has made the following observations:

(1) The Board of Directors of the transferor companies and the transferee company have approved the proposed Scheme in their Board meetings held on 27.02.2015. Accordingly, in terms of provisions of Section 117(3) read with 179(3) of the Companies Act, 2013, the companies are required to file such resolution (e-form MGT-14) with the ROC within 30 days of passing such resolutions whereas none of the companies have filed the said resolution as yet thereby prima facie violating the provisions of Section 117(3) of the Companies Act, 2013;

(2) In para 17.4 of the Scheme it is provided that if the Scheme fails to take effect by 30.09.2015 or such later date as may be agreed by the respective Board of Directors of the petitioner companies, the Scheme shall become null and void. The Regional Director has submitted that the petitioner companies have not enclosed the Board Resolutions, if any, extending the period of the proposed Scheme of Amalgamation with the petition, and hence, it may be treated as null and void to this extent.

Further, the Regional Director in para 8.3 of his report has submitted that the transferee company has violated the provisions of Section 383A of the Companies Act.

21. In response to the aforesaid observations, the petitioner companies in the affidavit dated 4th December, 2015 of Mr. Manoj Gaur, Director of the petitioner companies, have submitted that although the petitioner companies have not filed the requisite e-Form MGT-14 within the statutory period of 30 days but the same have been duly filed along with penalty. Copies of the said forms have also been placed on record along with the affidavit. With regard to the second observation of the Regional Director, the petitioner companies have submitted that the Board of Directors of the petitioner companies in their respective Board meetings held on 21st September, 2015 have extended the period of the Scheme till 31st March, 2016. Thereafter, the Board of Directors of the petitioner companies in their respective Board meetings held on 19th

March, 2016 have extended the period of the Scheme till 31st July, 2016, which was further extended to 31st March, 2017 vide Board Resolutions dated 6th May, 2016. The petitioner companies have moved an application viz. CA No. 2763/2016 for bringing on record the aforesaid Board Resolutions relating to extension of the validity of the Scheme. The said application was allowed by this Court by a separate order dated 3rd August, 2016, and the documents were taken on record. So far as the violation of Section 383A of the Act is concerned, the petitioner companies have submitted that the transferee company had a whole time company secretary who resigned on 1st October, 2015 and the transferee company is in the process of appointing a Company Secretary and is desirous of filling the same within the statutory period. Since, the transferee company is not the subject matter of dissolution and will remain in existence even after the sanction of the Scheme, therefore, in case of any default by the company, the ROC would be at liberty to take appropriate action, as permissible in law, against the petitioner company. In view of the aforesaid, the observations made by the Regional Director stand satisfied.

22. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 4th December, 2015 of Mr. Manoj Gaur, Director of the petitioner companies have submitted that neither the petitioner companies nor their counsel

have received any objection pursuant to the citations published in the newspapers on 27th August, 2015.

23. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Official Liquidator and the Regional Director, Northern Region, 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, 2014, the transferor companies no. 1 to 8 shall stand dissolved without undergoing the process of winding up.

24. Learned counsel for the Official Liquidator prays that costs of at least Rs.2,00,000/- should be paid by the petitioners keeping in view the fact that the matter has involved examination of extensive records and

also prioritized hearings. Learned counsel for the petitioner companies states that the same is acceptable to him. As already directed vide order dated 03.08.2016, the petitioners shall deposit a sum of Rs.2,00,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi.

25. The petition is allowed in the above terms.

Dasti.

SUDERSHAN KUMAR MISRA, J.

August 29, 2016