

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **COMPANY APPLICATION (M) No.212/2010**

**Date of Decision: 06 December, 2010**

Infinity India Private Limited..... Transferor Company No. 1.  
Infinity Technologies Pvt. Limited .....Transferor Company No. 2.

**AND**

Excelsoft Technologies Pvt. Ltd. .... Transferee Company  
Through Mr. Ashish Wad and Mr.  
Sameer Abhyankar, Advocates  
for for the applicants.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER (ORAL)**

1. This joint first motion under Sections 391 and 393 of the Companies Act, 1956 (Act for short) read with Company (Court) Rules, 1959 (Rules for short) has been filed by Infinity India Private Limited (transferor company No.1) and Infinity Technologies Pvt. Limited (transferor company No.2) in respect of the scheme of amalgamation (annexure-K). The scheme envisages amalgamation of the two transferor companies as well as Huper LDT Private Limited with the Excelsoft Technologies Pvt. Ltd (transferee company).

2. Registered office of the two transferor companies are located in the National Capital Territory of Delhi and this Court has jurisdiction to decide the present joint application made on behalf of the two transferor companies. Registered office of Huper LDT Private Limited and the transferee company is located in the State of Karnataka.

3. Learned counsel for the two transferor companies states at bar

that no proceedings under Section 235 to 251 of the Act are pending against the said transferor companies and transferee company.

4. Along with the application, the two transferor companies have enclosed their Articles and Memorandum of Association. Details with regard to the date of incorporation, authorized, subscribed and paid up share capital of the said companies have been mentioned. Balance sheets for the year ending 31<sup>st</sup> March, 2010 of the two transferor companies have been placed on record. Copy of the resolutions passed by the Board of Directors of the two transferor companies and the transferee company approving the scheme of amalgamation have been placed on record.

5. The two transferor companies are step down subsidiaries of the transferee company. The shares of the two transferor companies are held by M/s. Infinity PTE, Singapore, which is a subsidiary of the transferee company. No objection certificates/consents of the shareholders of the two transferor companies have been placed on record.

6. It is stated in the application that the two transferor companies do not have any secured creditors. The transferor company no.2 does not have any unsecured creditors. It is stated that transferor company No.1 has sundry creditors to the extent of Rs.3,29,248.20/- as on 31<sup>st</sup> March, 2010. It is stated that these sundry creditors are trade creditors. Transferor company No.1 has enclosed no objection certificates/consent letters from 9 trade creditors to whom Rs.1,39,655/- was due and payable as on 31<sup>st</sup> March, 2010. My attention is also drawn to the balance sheet for the year ending 31<sup>st</sup> March, 2010, which shows that the transferor company No.1 had

accumulated reserve of more than Rs.6,59,47,850.29/-. My attention is also drawn to the balance sheet of the transferee company enclosed at page 154 onwards. It is pointed out that the transferee company is a profit making company and as per the balance sheet for the year 2009-2010, earning per share basic was Rs.235/- .

7. Learned counsel for the transferor company No.1 submits that they shall procure no objection/consent from all the trade creditors as on the date of filing of the second motion. He further states that the trade creditors who are not ready and willing to give no objection/consent, will be paid off and a certificate of the statutory auditor will be filed stating that the trade creditors have been paid off or have furnished no objection certificates/consents. In view of the said statement and subject to the affidavit/consents being filed, the need and requirement to convene and hold meeting of the unsecured creditors of the transferor company No.1 is dispensed with.

8. It is clarified that at this stage it has not been examined whether meetings of the shareholders and the creditors of the transferee company is required to be held. This will be examined at the time of second motion. However, the transferee company is at liberty to move an appropriate application before the jurisdictional

High Court. This order is subject to order(s) that may be passed by the Karnataka High Court.

The application is disposed of.

DASTI.

**SANJIV KHANNA, J.**

**DECEMBER 06, 2010**

**NA**