

**IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

CA(CAA)/No.204/230/HDB/2017

U/Ss 230 to 232 of the Companies Act, 2013

In the matter of

1. S & P Capital IQ (India) Private Limited
D.No.2-91/5, Survey #12p, Kondapur Village,
Serilingampally Mandal,
Hyderabad,
Telangana – 500 081. ... Applicant No.1/Transferor Company
2. SNL Financial (India) Private Limited
D.No.2-91/5, Survey #12p, Kondapur Village,
Serilingampally Mandal,
Hyderabad,
Telangana – 500 081. ... Applicant No.2/Transferee Company

Date of Pronouncement of Order: 19.12.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittalana, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Parties Present:

For Applicants : Mrs. Tara Sharma, Advocate for the Applicants.

Per: **Ravikumar Duraisamy, Member (Technical)**

ORDER

1. The present Company Application bearing CA(CAA)No.204/230/HDB/2017, is filed by S & P Capital IQ (India) Private Limited (Transferor Company) and SNL Financial (India) Private Limited (Transferee Company), under Sections 230 to 232 of the Companies Act, 2013, by inter-alia seeking the following reliefs:-
 - a) To dispense with the meeting of the **Equity Shareholders** of both the Applicant Companies or alternatively, if the Applicant Companies' prayer for dispensation of the said meeting is rejected, direct that the meeting of

the Equity Shareholders of the Applicant Companies' be held on such date and time as this Bench may deem fit for the purpose of considering, and if thought fit, approving, with or without modification(s), the Scheme, and that a Chairman be appointed for the meeting and necessary directions may be given with regard to issue of notice, convening, holding and conducting of the meeting, and pass orders dispensing with publication of notice of the meeting in the newspapers, if the said meeting is not convened; and

- b) To dispense with the meeting of the **Creditors** of both the Applicant Companies or alternatively, if the Applicant Companies' prayer for dispensation of the said meeting is rejected, direct that the meeting of the Creditors of the Applicant Companies' be held on such date and time as this Bench may deem fit for the purpose of considering, and if thought fit, approving, with or without modification(s), the Scheme, and that a Chairman be appointed for the meeting and necessary directions may be given with regard to issue of notice, convening, holding and conducting of the meeting, and pass orders dispensing with publication of notice of the meeting in the newspapers, if the said meeting is not convened;

2. When the case was posted for the first time on 21.11.2017, Counsel for the Applicant Companies, agreed to amend the prayer by seeking direction to conduct meeting instead of conditional prayer and posted the matter on 04.12.2017. During the hearing held on 04.12.2017, Counsel for the Applicant Companies appeared and sought time to file application amending the prayer and to file affidavit pertaining urgency in the case and posted the case on 15.12.2017. Accordingly, the Applicant Companies filed an Affidavit dated 14.12.2017 stating the following:-

- a) The Transferor Company is a wholly owned subsidiary of the Transferee Company and both the companies and their respective shareholders are private and unlisted companies, being part of the same group with no public interest involved and all the shareholders of both the Companies have already consented to the composite Scheme of Arrangement



(Scheme) through the consent letters expressing their approval to the Scheme.

- b) Holding shareholders' meetings after a normal notice period, would lead to considerable purposeless delay which would adversely impact the desired merger objective i.e. simplification of group structure in India by eliminating multiple companies at the earliest in order to minimise business complexities and maximise operational efficiencies through avoidance of costs of operating both the entities including cost of various statutory compliances.
- c) Lapse of time on account of holding shareholders' meetings coupled with additional cost of operating both the Transferor Company and the Transferee Company would defeat the main purpose behind the Companies' strategic decision of entering into the scheme and reduce the effectiveness thereof.
- d) Furthermore, convening the shareholders' meeting upon shorter notice, for which the written consents from both shareholders have already been obtained. The Transferee Company proposes to file an Advance Pricing Agreement (APA) with the Indian Tax authorities, to be made effective from 01.04.2018 for upto five years and with a role back for the past four years i.e. till financial year 2014-15, to address the transfer pricing of the inter-company services to be provided by the Transferee Company and to achieve tax certainty and a delay in the conclusion of such shareholders' meeting may adversely impact such application.
- e) The Income Tax Act, 1961 read with Rules made there under provides that the APA application may be filed at the any time "(i) before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or (ii) before undertaking the transaction in respect of remaining transactions."
- f) Accordingly, if the APA application is filed anytime on or after 01.04.2018, the Transferee Company will lose out on one year of the roll back period i.e. financial year 2014-2015 from the ambit of APA which would lead to tax uncertainty and needlessly increased costs to the Transferee Company.



g) It is further submitted that 96.69% of total unsecured creditors in value of the Transferee Company outstanding as on 30th September, 2017 and 97.78% of total unsecured creditors in value of the Transferor Company outstanding as on 30th September, 2017, have already given their consent in writing to the Scheme and the same were attached to the joint Application. That all the Unsecured Creditors of Applicant Companies outstanding as on 30.09.2017 have already been paid off by the Applicant Companies as on 30.11.2017. Therefore, there is no requirement to convene the meetings of the unsecured creditors of the Applicant Companies.

h) The Applicant Companies do not have any Secured Creditors.

i) In view of the above, it is submitted that the Applicant Companies be allowed to amend the 1st Prayer made in the paragraph pertaining to the reliefs sought in the Company Application No.204/230/HDB/2017 to amend 1st Prayer and replace the same with the following prayer:

“To direct that the meeting of the Equity Shareholders of the Applicant Companies be held at a shorter notice on 22.12.2017 at 10 AM and 11 AM respectively at the registered office of the Applicant Companies for the purpose of obtaining the approval of the shareholders of the Applicant Companies to the Scheme of Arrangement, that the quorum for the said meeting be fixed as two (2) members present in person or through proxy, that a Chairman be appointed for convening the said meetings, that the publication of notice of the meetings of the Equity Shareholders of the Applicant Companies be carried out in Andhra Prabha (Telugu Daily) and Business Standard (English daily) Hyderabad editions and that the Chairman shall file his reports on the result of the meeting with the Hon’ble Bench within three (3) days from the date of such meetings.”

The Affidavit filed by the Applicant Companies taken on record.



3. Brief facts leading to the filing of present case are as follows:

I) In respect of 1st Applicant/Transferor Company:

- (a) S & P Capital IQ (India) Private Limited, the Transferor Company was incorporated as a Private Limited Company on 09.11.1994, under the Companies Act, 1956 with Corporate Identity Number U72200TG1994PTC018719.
- (b) The Authorised share capital as on 31.03.2017 is Rs.1,20,00,000/- divided into 1,20,000 equity shares of Rs.100/- each. The issued, subscribed and paid up share capital is Rs.71,75,000/- divided into 71,750/- equity shares of Rs.100/- each.
- (c) The main objects of Company as set out in its Memorandum, in brief, are to render consultancy and other services in the field of computers and software development, to develop programmes and systems including projects those based on CD-ROM, etc.



II) In respect of 2nd Applicant/Transferee Company:

- (a) SNL Financial (India) Private Limited, the Transferee Company was originally incorporated as a Private Company on 24.09.2004 under the Companies Act, 1956 with Corporate Identity Number U67110TG2004PTC119619.
- (b) The Authorised share capital as on 31.03.2017 is Rs.65,00,00,000/- divided into 65,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.60,68,100/- divided into 6,06,810 equity shares of Rs.10/- each.
- (c) The main objects of Company, as set out in its Memorandum, in brief, are to act as a financial information provider by gathering, collating, organizing, arranging, storing and transmitting all types of financial, marketing, industrial and commercial information etc.

4. The Applicant Companies propose the Scheme of Arrangement for the following reasons:

(i) To act as s financial information provider by gathering, collating, organizing, arranging, storing and transmitting all types of financial, marketing, industrial and commercial information (including corporate, financial, market and data relating to mergers and acquisitions, for all sectors) in written, electronic or any other medium through database, web applications and analytical models and to act as consultants, counsellors on all matters of finance, trade and industry.

(ii) To provide business process outsourcing services for all finance related activities as mentioned above and to provide-financial, commercial and industrial information tailored specifically to the requirements of its customers.

5. It is further stated that the Board of Directors of the both the Applicant Companies, in their respective Board Meetings held on 27.09.2017 approved the Scheme of Arrangement with appointed date as 01.04.2017, subject to the approval of their shareholders, creditors etc.

6. It is stated that no Investigation or Proceedings have been instituted or/are pending in relation to the Applicant Companies.

7. Hence, the Applicant Companies prayed this Bench to dispense with the convening of meetings of the Unsecured Creditors as they have given their consent letters as stated supra.

8. Further prayed to conduct the meeting of the Equity Shareholders of the Applicant Companies.

9. We have heard Mrs. Tara Sharma, Learned Counsel for the Applicant Companies and have carefully perused all materials on record and the provisions of Companies Act, 2013, with relevant Rules.



10. As stated supra, all the Un-Secured Creditors of the Applicant Companies have given their consent to the Scheme of Arrangement. Further, there are no Secured Creditors in both the Applicant Companies.
11. In view of above facts and circumstances of the case, we hereby dispose of the Company Application bearing CA(CAA)No.204/230/HDB/2017 with the following directions:

i) Ordered to convene meeting of the Equity Shareholders of the Applicant No.1/Transferor Company at the registered office of the Transferor Company for consideration of the proposed Scheme of Arrangement.

ii) Ordered to convene meeting of the Equity Shareholders of the Applicant No.2/Transferee Company at the Registered Office of the Transferee Company for consideration of the proposed Scheme.

iii) Shri S.S. Reddy, Practicing Company Secretary (Mobile No. 9866253999) as Chairperson for convening and conducting meetings of the Equity Shareholders of both the Applicant Companies.

iv) The applicant Companies have failed to convince the Bench for conducting meeting of the shareholders on 22.12.2017 with such a shorter notice period.

v) Therefore, Chairperson is directed to conduct shareholders meeting in accordance with law after issuing necessary notice to the shareholders of both the Applicant Companies, newspaper publication etc.

vi) Dispensed with meetings of Secured/Unsecured Creditors of all the above two Applicant Companies for consideration of the Scheme of Arrangement.

vii) The equity shareholders be permitted to exercise their vote at the meetings either in person or through proxy and Quorum for the said meeting is fixed as two (2) members present in person or through proxy.



- viii) It is ordered that notices be sent to all shareholders involved in the scheme individually at the address registered with the Company, through standard mode of communication exist in the Company, and such notice shall be accompanied by a statement disclosing the details of Scheme of Arrangement in question along with material documents, if any and also inform about the meeting to all concerned Statutory Authorities. It can also be put on Company's website.
- ix) That the advertisement be directed to be published one in Business Standard (English daily) and Andhra Prabha (Telugu Daily) Hyderabad editions.
- x) One week time is granted to the Chairperson of the meetings to file his report in the Registry of this Bench.
- xi) Fee for Chairperson is fixed at Rs.1,00,000/- (Rupees One Lakh only) for each meeting which is agreed to be paid by both the Applicant Companies.
- xii) The Applicant Companies are directed to communicate this Order to the Registrar of Companies, Hyderabad, Regional Director (SER), Ministry of Corporate Affairs, Income Tax Department and all other concerned authorities within three weeks from the date of receipt of copy of this order.


RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)


RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)


Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CA(CAD)/No. 204/230/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 19.12.2017
प्रति तैयार किया गया तारीख
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