SCC Reinstates Quebec Superior Court Judgment in 9354-9186 Québec inc. v. Callidus Capital Corp.

Jan 31, 2020

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On January 23, 2020, the Supreme Court of Canada (the “SCC”) delivered its unanimous decision in 9354-9186 Québec inc. v. Callidus Capital Corp., with reasons to follow, to allow the appeal of the decision of the Quebec Court of Appeal (the “QCCA”) and reinstate the decision of the Quebec Superior Court (the “QCSC”).

The QCSC had dismissed an application by a creditor group to permit Callidus Capital Corp. (“Callidus”) to vote on its own plan in the Companies’ Creditors Arrangement Act (the “CCAA”) proceedings (the “CCAA Proceedings”) of its debtor, 9354-9186 Québec inc., formerly Bluberi Gaming Technologies inc. (“Bluberi”). The plan had been brought by Callidus to compromise litigation claims threatened against it by Bluberi. Callidus had previously been the winning bidder, through a credit bid, of all Bluberi’s assets other than the claims against Callidus. Callidus had excluded $3 million of its secured debt from its credit bid, so as to remain the ranking secured creditor in the CCAA Proceedings. Callidus’ vote in favour of the plan was required in order to cross the two thirds in value of claims voting threshold required under section 6(1) of the CCAA. Justice Michaud of the QCSC had held that allowing Callidus to vote on the plan would serve an improper purpose and give rise to a substantial injustice. He also approved, without any creditor vote, a litigation financing agreement (the “LFA”) to allow Bluberi to pursue its claims against Callidus.

Justice Shrager for a unanimous QCCA found that seeking a settlement of litigation for valuable consideration could not be considered an improper purpose, especially when it would result in employees and smaller creditors receiving full payment on their claims and other creditors receiving between 33% and 39%. Justice Shrager found that Justice Michaud’s reliance on improper purpose was not based in any statutory discretion and resembled an application of the doctrine of equitable subordination, despite the fact that equity should not be used to exclude CCAA voting rights. Justice Shrager also held that the LFA ought to be put to a vote of creditors, so that they could properly weigh their options as against the Callidus plan.

We await the reasons of the SCC and will report on them when they are released.

The Financial Services Group at Aird & Berlis regularly advises a broad range of stakeholders on proceedings initiated pursuant to the Companies’ Creditors Arrangement Act, including plans of arrangement. Details are available at our Financial Services webpage.

1Arrangement relatif à 9354-9186 Québec inc. (Bluberi Gaming Technologies Inc.) -and- Ernst & Young Inc., 2018 QCCS 1040 (QCSC); reversed Arrangement relatif à 9354-9186 Québec inc. (Bluberi Gaming Technologies Inc.), 2019 QCCA 171 (QCCA); reversed 9354-9186 Québec inc. v. Callidus Capital Corp., neutral citation to follow (SCC).
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