



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE
NO.:

CV-24-00726584-00CL

DATE: September 18, 2024

NO. ON LIST: 1

TITLE OF
PROCEEDING:

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2675970 ONTARIO INC., et al

BEFORE: Justice Cavanagh

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE CAVANAGH:

[1] The Applicants move for (i) an order approving the sale and investment solicitation process including the Stalking Horse Agreement made with TS Investments Corp. (in such capacity, the “Stalking Horse Bidder”), and (ii) a Further Amended and Restated Initial Order providing for tolling of limitation periods of certain franchisees defined in the motion materials as the Rescission Claimants”.

[2] The part of the Applicants’ motion seeking the extension of the stay of proceedings to stay certain litigation proceedings that involve DAK Capital Inc., a related party, and the Applicants is adjourned at the request of Canopy Growth Corporation and with the consent of the Applicants to **October 18, 2024 at 10:00 for two hours**, in person.

[3] This Court, as part of its broad remedial powers under the *CCAA*, has the power to approve a sale and investment solicitation process in relation to a *CCAA* debtor and its business and assets. In *Nortel Networks Corporation (Re)*, 2009 CanLII 39492, at paras 47-48, the Court identified several factors to be considered in determining whether to approve a sales process:

- a. Is a sale warranted at this time?
- b. Will the sale be of benefit to the whole “economic community”?
- c. Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- d. Is there a better viable alternative?

[4] In other *CCAA* cases, courts have also considered the following factors:

- a. the fairness, transparency and integrity of the proposed process;
- b. the commercial efficacy of the proposed process in light of the specific circumstances; and
- c. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[5] I have considered these factors and I am satisfied that the SISP should be approved. In this respect, I accept the submissions made on behalf of the Applicants at paragraph 44 of their factum.

[6] The Applicants seek approval of the Stalking Horse Agreement solely for the purpose of approving it as the Stalking Horse Bid under the SISP. Stalking horse agreements have been recognized by *CCAA* courts as reasonable and useful elements in sales processes in insolvency proceedings.

[7] The Stalking Horse Agreement includes a credit bid of the obligations owed by the Applicants to TS Investments. I am satisfied that the proposed SISP provides a sufficient opportunity for interested parties to come forward with a superior offer. The Stalking Horse Bid serves to expedite and assist the sales process by providing a benchmark valuation of the Applicants’ assets from the outset of the SISP and a form of agreement for consideration and use by all potential bidders. The Stalking Horse Agreement contemplates payment of a break fee to the Stalking Horse Bidder if it is not selected as the successful bid. The maximum amount of the bid protections represents 1% of the credit bid consideration. The Monitor has reviewed comparable bids and considered the range of acceptable bid protections in the context of stalking horse bids by related parties. The Monitor has determined that the proposed break fee is reasonable under the circumstances.

[8] The terms of the Stalking Horse Agreement were negotiated extensively between the Applicants and the Stalking Horse Bidder, with oversight of the Monitor. I am satisfied that the Stalking Horse Agreement reflects the product of extensive, good-faith negotiations and should be approved.

[9] I am satisfied that tolling of the limitation periods for the Rescission Claimants is proper and that the requested Further Amended and Restated Initial Order should be granted.

[10] Orders to issue in forms of Orders signed by me today.

Date: September 18, 2024