



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: TBA

DATE RELEASED:

NO. ON LIST: 4

TITLE OF PROCEEDING: In the Matter of the CCAA of 2675970 Ontario Limited et al.

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Sharon Kour	Counsel for Applicant	skour@reconllp.com
Caitlin Fell	Counsel for Applicant	cfell@reconllp.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Kyle Plunkett Samantha Hans	Counsel BMO	kplunkett@airdberlis.com shans@airdberlis.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Josh Nevsky	Proposed Monitor	jnevsky@alvarezandmarsal.com
Rania Hammad Lee Nicholson	Counsel for Proposed Monitor	rhammad@stikeman.com leenicholson@stikeman.com
Andrew Williams	Affiant	awilliams@tyosmoke.ca
Martino Calvaruso	Counsel for DIP Lender (TS Investments Corp.)	mcalvaruso@osler.com

ENDORSEMENT

All defined terms used in this endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants.

[1] The Applicants bring this application for an initial order pursuant to the *Companies' Creditors Arrangement Act*, as amended (the "CCAA").

[2] The Applicants primary third-party lender is Bank of Montreal ("BMO"). The Applicants have consulted with BMO in respect of this application. BMO supports the relief sought by the Applicants on this motion for an Initial Order but reserves its rights with respect to the comeback hearing.

[3] The Applicants own, operate, and franchise retail dispensaries in Canada selling cannabis products and accessories directly to consumers under the brand name "Tokyo Smoke"; they also maintained an online platform for direct-to-consumer cannabis sales and deliveries (the "Business"). The Applicants have 61 corporate retail locations and 29 franchised retail locations across Canada. The Applicants employ approximately 474 employees, not including those employees employed by franchisees.

[4] The Applicants have historically relied on financing to fund their working capital needs but can no longer sustain their operations without effecting an operational restructuring to streamline operations. In their materials, the Applicants explain that their insolvency has been brought on by changes in the licensing regime that have devalued cannabis retail licenses and saturated the market, downward price pressures on retail cannabis due to lack of product differentiation between retailers and the grey market and increased operating costs due to the general inflationary environment. The Applicants explain that these factors have suppressed revenues that made it challenging for the Applicants to continue to operate the Business without restructuring.

[5] The Applicants seek *CCAA* protection to allow them to effect an operational restructuring that would right-size their operations and allow their business to continue as a viable going concern. If granted the stay of proceedings and protections of the *CCAA*, the Applicants intend to, among other things:

- a. maintain operations for the benefit of most of their employees and other stakeholders;
- b. disclaim unfavourable leases and unprofitable franchise agreements;

- c. streamline the remaining operations with a view to generating positive cash flow and achieving long-term viability of the Business; and
- d. conduct a court-approved sale and investment solicitation process (“SISP”) with a court-approved stalking horse bid in order to maximize realization for their stakeholders.

[6] The facts in support of this application are set out in the Affidavit of Andrew Williams sworn August 20, 2024 and summarized in the Applicants’ Factum.

Application of the CCAA

[7] I am satisfied that the Applicants are “debtor companies” as that term is defined under the *CCAA*. Pursuant to section 2 of the *CCAA*, a “debtor company” is defined as a company that is insolvent within the meaning of the *Bankruptcy and Insolvency Act*.

[8] In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 53-59 of their Factum.

Is the relief sought reasonably necessary?

[9] Pursuant to section 11.001 of the *CCAA*, the relief sought on an initial application is limited to what is reasonably necessary to continue the operations in the ordinary course during the initial stay period. The Applicants advise that they have worked closely with the Proposed Monitor to determine the necessary relief, including the size of the proposed charges, and have carefully considered whether the relief is necessary to protect the Applicants’ assets and operations, as well as in the interests of its creditors and stakeholders.

[10] I am satisfied that the Applicants seek only the relief necessary to maintain the Business during the initial stay period.

Do the Applicants require the protection of a stay of proceedings?

[11] Under the *CCAA*, section 11.02, a Court may grant an Order staying all proceedings in respect of a debtor company for a period of not more than 10 days if the Court is satisfied that circumstances exist that make the order appropriate.

[12] A key purpose of the *CCAA* is to maintain the *status quo* to allow the debtor company the breathing room to deal with its liquidity issues, consult with stakeholders, and develop a viable restructuring plan with a view to continuing operations for the benefit of all stakeholders. The interests to be considered include those of employees, directors, and other parties doing business with the insolvent company.

[13] I am satisfied that the Applicants require the protection of a stay of proceedings to effect an operational restructuring, maintain the profitable segments of the Business, disclaim unfavourable leases and Franchise Agreements, and to negotiate and finalize a stalking horse agreement and SISP to be conducted with the approval of the Court. Without the protection of the *CCAA*, the Applicants would have to cease operating, which would be detrimental to the Applicants' landlords, franchisees, suppliers, customers, and hundreds of employees.

Should the stay be extended to the Non-Applicant Entities?

[14] This Court has the authority to extend the stay of proceedings to the Non-Applicant Entities pursuant to section 11 and 11.02 (1) of the *CCAA*.

[15] In *Re JTI-Macdonald Corp.*, 2019 ONSC 1625, Hainey J., at para. 15, set out a number of factors that courts have considered in deciding whether to extend a stay of proceedings to non-applicant third parties. These factors are set out in the Applicants' Factum at paragraph 66.

[16] Here, the Non-Applicant Entities are direct subsidiaries of ParentCo, and their shares are assets of ParentCo. They hold, among other things, intellectual property used by the Applicants and are guarantors of certain of the Applicants' obligations to its secured creditors, BMO and TS Investments. While they are not Applicants under the *CCAA* and do not need to compromise any claims or effect a restructuring pursuant to the *CCAA*, I am satisfied that it would be disruptive to the *CCAA* proceeding if any party were to take steps against the Non-Applicant Entities. I am satisfied that the stay of proceedings should be extended over the Non-Applicant Entities during the *CCAA* proceeding.

Should the DIP Term Sheet and the DIP Lender's Charge be approved?

[17] The Applicants are seeking approval of the DIP Facility and a DIP Lender's Charge over the Applicants' assets, property and undertaking in favour of the DIP Lender, to secure amounts borrowed by the Applicants under the terms of the DIP Facility. The proposed DIP Lender's Charge is to rank behind the Administration Charge and the existing security held by BMO, but above other liens, charges, and encumbrances.

[18] The Applicants are seeking to secure only the amount to be advanced under the DIP Facility and the initial 10-day stay period in accordance with section 11.2 (5) of the *CCAA*, which provides that a charge may be granted to secure the amount "reasonably necessary for the continued operations of the debtor company in the ordinary course of business" during the initial 10-day stay period.

[19] I have considered the factors set out in section 11.2 (4) of the *CCAA*. I am satisfied that these factors favour approval of the DIP Facility and the DIP Lender's Charge. The Monitor supports the Applicants' request for approval of the DIP Facility and the DIP Lender's Charge. I am satisfied that the DIP Facility and the DIP Lender's Charge are reasonably necessary in the circumstances.

Should the Administration Charge of the Directors' Charge be approved?

[20] The Applicants request that this Court grant a super-priority administration charge (the "Administration Charge") to a maximum of \$400,000 for the initial 10-day stay period to secure the fees and disbursements of the Proposed Monitor, its counsel, and the Applicants' counsel. If the Initial Order granted, the Applicants anticipate seeking increases in the Administration Charge to a maximum amount of \$850,000 at the comeback hearing.

[21] Section 11.52 of the *CCAA* gives this Court jurisdiction to grant a priority charge for the fees and expenses of financial, legal, and other advisors or experts. The Proposed Monitor, its counsel, and the Applicants' counsel are essential to the *CCAA* proceedings.

[22] I am satisfied that the requested Administration Charge should be approved and granted.

[23] The Applicants propose a super-priority charge in favour of the directors of \$2.25 million to secure the Applicants' indemnity of their directors and officers ("Directors' Charge"). The Directors' Charge is proposed to rank behind the Administration Charge, BMO's existing security, and the DIP Lender's Charge. The Directors' Charge is intended to encourage directors and officers to continue to occupy their positions during the restructuring and provide reassurance that the company will hold directors harmless for any personal liability that they may incur by continuing to act as a director after the insolvency filing.

[24] Pursuant to section 11.51 of the *CCAA*, the Court is authorized to grant the Directors' Charge in the amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.

[25] The Proposed Monitor is of the view that the charge is required, and it is reasonable in the circumstances.

[26] I accept that the Directors Charge and the Administration Charge are appropriately sized to reflect the Applicants' needs during the initial stay period.

Payment of Pre-Filing Obligations with approval of the Monitor

[27] The requested Initial Order authorizes the Applicant to pay, with the consent of the Monitor, amounts owing for essential goods or services supplied to the Applicants prior to the date of the Initial Order, if in the opinion of the Monitor, the payment is necessary and appropriate up to the maximum amount of \$330,000 during the initial 10-day stay period.

[28] The court is empowered to grant such relief pursuant to its general jurisdiction under section 11 of the *CCAA*.

[29] The Applicants rely heavily on a small number of suppliers and contractors who provide highly regulated and specialized services and materials. To avoid disruption to the Business, the

Applicants seek the flexibility to make pre-filing payments as necessary to maintain the Business and avoid impairing their restructuring efforts. No payments of pre-filing amounts will be made without the consent of the Monitor.

[30] I am satisfied that the requested relief in this respect should be granted.

Disposition

[31] I grant the Applicants' motion for an Initial Order. Order to issue in form of Order signed by me today.

[32] The comeback hearing will be held on Friday, September 6, 2024 8:30 a.m. by Zoom.