



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00746939-00CL

DATE: July 11, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING:

National Bank of Canada v. Axiom Real-Time Metrics Inc.

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE KIMMEL:

The Motions and Preceding Events

- [1] The applicant, National Bank of Canada (“NBC” or the "Applicant") seeks an order appointing KSV Restructuring Inc. ("KSV") as receiver and manager (the "Receiver"), without security, of all the assets, undertaking, and property (collectively, the "Property") of Axiom Real-Time Metrics Inc. ("Axiom" or the "Company") pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the "CJA").
- [2] Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Applicant’s factum.
- [3] The Applicant is a secured lender of the Company pursuant to an offer of financing dated as of January 29, 2024 (the "Offer of Financing"). Under the terms of the Offer of Financing, the Applicant has advanced funds to the Company and is currently owed \$10,405,079.53, inclusive of accrued interest and fees (collectively, the "Indebtedness"). The Company went into default shortly after the financing was advanced.
- [4] An affiliated company J2ASM Inc. ("J2ASM") is in receivership as a result of defaults under its loan from Business Development Bank of Canada ("BDC"), which also created cross-defaults under the Offer of Financing because the Company was a guarantor of the BDC Loan. On May 22, 2024, the Applicant sent a notice of default to the Company and reserved all of its rights and remedies under the Offer of Financing and the Security Documents. On October 4, 2024, the Applicant sent a further default notice as a result of the Company's failure to comply with various financial covenants. On May 20, 2025, the Applicant issued a demand for repayment and a notice of intention to enforce security pursuant to section 244 of the BIA .

- [5] Great Point Partners III L.P. ("GPP"), the Company's equity sponsor, has advanced several million dollars in recent months to support the Company. GPP advised in mid-May 2025 it that it was no longer prepared to continue to provide funding to support the Company's business and operations, except certain employee-related obligations.
- [6] As a condition of a short-term forbearance agreement between the Applicant and the Company (the "Forbearance Term Sheet"), SSG Advisors, LLC ("SSG") was recently engaged to conduct an expedited sale process (the "Sales Process") to determine whether a transaction could be completed for the sale of the Company's business as a going concern. Over the past several weeks, SSG has conducted a highly expedited but extensive canvassing of the market to assess interest in the business.
- [7] This receivership application is supported by the Affidavit of Sonia de Lorenzi sworn July 4, 2025 and a pre-filing report of KSV dated July 7, 2025 (the "Pre-filing Report"). In that report, KSV disclosed that KSV it was engaged by NBC on September 6, 2024 to provide financial advisory services in respect of NBC's loans to the Company (the "Advisory Mandate"). The Advisory Mandate included, among other things, reviewing the Company's financial information, preparing estimates of the realizable value of the Company's business and Assets, reviewing and assessing the Company's financial projections, monitoring the Company's financial performance, and considering the Company's restructuring options. KSV was also consulted about and provided input into the Sales Process that was conducted by SSG.
- [8] None of the Applicant, KSV or the Company are concerned about this Advisory Mandate having compromised KSV's ability to act independently and objectively as the court appointed Receiver, and no concerns were raised about his or any other aspect of the Appointment Order by any other stakeholder.
- [9] The Company is consenting to the appointment of the Receiver.
- [10] Two opportunities from the Sales Process were rejected. Subsequent discussions led to a now proposed transaction for the sale of substantially all the Assets of the Company (the "Transaction") to Sitero Canada Inc. (the "Purchaser"), pursuant to an asset purchase agreement dated July 6, 2025 (the "APA") to be entered into between the Receiver, the Purchaser, and Sitero LLC as guarantor of certain payment obligations of the Purchaser under the APA. The Transaction is reflected in an irrevocable offer from the Purchaser that the Receiver was expecting to confirm, and sign the APA, once appointed. The Transaction and the APA are subject to court approval. The Purchaser advised at the hearing that the other condition in the APA regarding consents to assignments of contracts is being waived.
- [11] The second motion before the court today is the Receiver's motion (contingent upon its appointment) for the court's approval of the Transaction and APA, a vesting order, approval of a proposed distribution to NBC and an order sealing Confidential Appendix

"1" to the Pre-Filing Report (the "Sale Approval and Ancillary Relief Motion"). KSV's motion seeks approval of the Transaction immediately on a "quick flip" basis upon its appointment, at the same hearing.

- [12] Andrew Schachter ("Schacter"), the founder, a former principal, current indirect shareholder and member of the board of directors of the Company delivered an affidavit and proposal for an alternative transaction (the "Potential Alternative Transaction") last night and requested that the court adjourn the Sale Approval and Ancillary Relief Motion so that his Potential Alternative Transaction can be considered. The proposed closing date under the Potential Alternative Transaction is August 15, 2025, but it contemplates funding of ongoing cash flow needs in the interim (albeit based on an estimate that those would require \$225,000 in funding for operations every week which is lower than what the Company's cash flow forecast projects).

The Receivership Application

- [13] Having regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto, including but not limited to the rights of BMO under its Security, I must be satisfied that it is just and convenient to appoint the Receiver under both s. 243 of the BIA and s. 101 of the CJA.
- [14] The appointment of a receiver becomes less extraordinary when dealing with a default where the lender has a contractual right to appoint a receiver: see *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866, at para. 27; *Bank of Montreal v. Sherco Properties Inc.*, 2013 ONSC 7023, at para. 42; and *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953, at paras. 43-44, and *C & K Mortgage et al. v 11282751 Canada Inc. et al.*, 2024 ONSC 1039 at para 17.
- [15] In evaluating whether the appointment of a receiver is appropriate, the court considers a range of non-exhaustive factors, including the following: (a) the need to stabilize and preserve the debtor's business; (b) the loss of confidence in the debtor's management; (c) the likelihood of maximizing return to the parties; and (d) the balance of convenience to the parties: see for example, *BCIMC Construction*, at para. 45.
- [16] While the proposal is to sell the business of the Company as soon as possible, there will still be other matters for the Receiver to attend to because of the nature of the proposed Transaction and also certain potential tax recoveries that the Company will need to pursue. It is expected that the Receiver will have a role beyond any sale transaction.
- [17] Having read the factum of the Applicant and heard the oral submissions of the participating parties, and being advised that no party or stakeholder is opposing the appointment of KSV as Receiver, I have determined that it is just and convenient to do so.

- [18] The proposed form of order does not deviate in any material respect from the Commercial List model order except to include paragraph 27 (discussed below). I have signed the requested order today, which shall have immediate effect without the necessity of formal issuance and entry.

The Sale Approval and Ancillary Relief Motion

- [19] The intention of the Receiver is to close the Transaction on July 15, 2025 given the Company's cash flow constraints and projections. Without funding, the Company does not have sufficient cash to support its employee payroll and other operational requirements starting at the end of the week of July 13, 2025. The Applicant, the Company and KSV all support the approval of the Transaction, the APA and the ancillary relief.
- [20] The Receiver is of the view that, if the Transaction is not completed, given the Company's lack of liquidity it is likely to result in an immediate discontinuation of the Company's business, resulting in the termination of all of the Company's employees as well as several ongoing clinical trials. Continuing uncertainty about the continuation of the Company's business will lead to risk of loss of employees and customers.
- [21] Although it is projected to result in a significant shortfall in the Applicant's recoveries, the Applicant is supportive of the Transaction in the absence of any other firm offer with firm financing, as it is concerned about the continued erosion of its security.
- [22] However, the Receiver's recommendation of the Transaction was predicated at least in part upon the lack of any alternative transactions arising from the Sales Process. Schachter raises in his affidavit filed in support of his Proposed Alternative Transaction and requested adjournment that he was excluded from participating in the Sales Process. None of the Receiver, the Company or SGG have had a chance to respond to this, but the court was advised that SSG confirmed that they were unable to state that they had had any interactions with Schachter during the Sales Process.
- [23] Part of the test for approval of a Transaction is that the court be satisfied that the Sales Process was fair and that it fully canvassed all potential transactions. While there is limited time available for this Company to complete a transaction because of its cash situation, I concluded that a brief adjournment should be granted to allow the Receiver to consider with SSG and the Company Schachter's allegations about the Sales Process and his opportunity to present a transaction, and to allow Schachter some (albeit limited) additional time to firm up the terms of and financing for his Proposed Alternative Transaction. After this, the Receiver, the Applicant and the Company will need to quickly consider what Schachter presents and the Receiver will need to provide an updated recommendation to the court.

[24] As it turns out, there is two hours of court time booked in the J2ASM receivership proceeding on Tuesday July 15, 2025 that is being adjourned by all parties on consent because it pertains to matters that the Receiver needs to first get up to speed on. That motion relates to entitlement as between the J2ASM Receiver and the Company to certain funds being held in trust pursuant to an earlier order of Mr. Justice Penny. Paragraph 27 has been added to the Appointment Order to address the manner in which the Trust Funds under that previous order of Penny J. will continue to be held pending the determination of that motion at a later date, to be scheduled. All participating and affected parties consent to the inclusion of this paragraph in the Appointment Order.

[25] Since there is no other available time next week, and time is of the essence for the Company in any event, the Receiver's Sale Approval and Ancillary Relief Motion is adjourned to a two hour hybrid hearing on July 15, 2025 commencing at 10:00 a.m., on the following terms:

- a. Schacter shall have 24 hours to present the further updated detailed terms of his Proposed Alternative Transaction and financing commitment(s) for both the Proposed Alternative Transaction and for any interim period to cover the weekly cash flow requirements of the Company if the closing is to take place after next week.
- b. The Receiver shall investigate with SSG the involvement of or engagement with Schacter or parties affiliated with him in the context of the Sales Process, or lack thereof and any rationale for that, and provide any further comments it deems appropriate regarding the fairness of that process from the perspective of both Schacter and the Purchaser (which says that it has relied upon the Sales Process and the lack of any other transactions coming out of it).
- c. The Purchaser will consider whether it is willing to extend the irrevocability deadline in its offer to July 15, 2025 from today. If the Purchaser is prepared to continue to pursue the Transaction the Receiver and the Company shall work with the Purchaser to attend to any remaining closing matters so that it can close on or shortly after that day, if it is approved.
- d. The Receiver shall provide a further supplementary report to the court by 5:30 p.m. on Monday July 14, 2025. All materials still relied upon for the Receiver's Sale Approval and Ancillary Relief Motion from today's appearance shall be re-uploaded into the July 15, 2025 hearing bundle. Any party that wishes to deliver a brief submission or supplementary submission regarding this motion and/or Schacter's Proposed Alternative Transaction, up to a maximum of five pages double spaced, shall do so by the same deadline and those shall also be uploaded into the Case Center hearing bundle.

[26] The presiding judge will be provided with a copy of this endorsement and made aware of the possibility of filings late in the day on July 14, 2025.

A handwritten signature in dark ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.