

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO B+H ARCHITECTS CORP.
(the "Applicant")**

**FACTUM OF THE APPLICANT
(CCAA Application)**

October 16, 2025

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PART I. INTRODUCTION

1. B+H Architects Corp. ("**BHA**") is a leading architecture and design firm with a long and rich history that is headquartered in Toronto.¹ It operates under the 70-year old "B+H" brand.²
2. B+H has been consistently recognized as one of the top architecture firms in the world.³ BHA has played an important role in many of Toronto's most recognizable buildings including Ripley's Aquarium of Canada, Brookfield Place, MaRS Convergence Centre, CFL Mosaic Stadium, Mount Sinai Hospital, Toronto Eaton Centre, First Canadian Place (Canada's Tallest Completed Building), the Toronto-Dominion Towers, Metro Toronto Convention Centre, Pearson Airport Terminal 3 and the Royal Ontario Museum.⁴ BHA also completes work

¹ Any capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit of Patrick Fejér, sworn October 16, 2025 ("**Fejér Affidavit**"), Application Record of B+H Architects Corp. dated October 16, 2025 ("**Application Record**"), Tab 2. All dollar references are in Canadian dollars unless otherwise noted.

² Fejér Affidavit at para. 6, Application Record, Tab 2.

³ Fejér Affidavit at para. 50-51, Application Record, Tab 2.

⁴ Fejér Affidavit at para. 7, Application Record, Tab 2.

internationally, including in the United States, China, Singapore, Kingdom of Saudi Arabia, India, Qatar, Vietnam, Brazil and the United Arab Emirates (“UAE”).⁵

3. BHA works closely with B+H International Corp. (“**BHI**”), which delivers services to BHA (and other entities) for essential business functions such as finance/accounting, legal, human resources, IT and administrative support, as well as certain architectural support services including design and technical support pursuant to an agreement between the parties.⁶ BHA traditionally relied on flexible payment terms from BHI as a form of indirect financing.⁷

4. Unfortunately, BHA has experienced a number of challenges more recently which have resulted in a severe liquidity crunch and balance sheet insolvency that has necessitated the commencement of these proceedings.⁸ BHA requires the breathing space and funding sought in these proceedings to pursue a going transaction and ensure the continuation of its more than 70-year-old business.

5. Surbana Jurong Holding (Canada) Ltd. (“**SJHC**”) of the Surbana Jurong Group (“**SJ**”) and current 49% shareholder of BHA and 100% owner of BHI is the proposed DIP Lender and Stalking Horse Bidder.⁹

6. BHA’s financial performance has suffered in recent years due to challenges in the post-COVID private real estate and construction market and other factors that have led to a slow-down in new builds and customer/client payment constraints.¹⁰

⁵ Fejér Affidavit at para. 9, Application Record, Tab 2.

⁶ Fejér Affidavit at para. 12, Application Record, Tab 2.

⁷ Fejér Affidavit at para. 21, Application Record, Tab 2.

⁸ Fejér Affidavit at para. 102-105, Application Record, Tab 2.

⁹ Fejér Affidavit at para. 14, Application Record, Tab 2.

¹⁰ Fejér Affidavit at para. 17, Application Record, Tab 2.

7. Additionally, BHA has become subject to a large arbitral award of more than \$25 million relating to work it performed in the UAE. BHA has exhausted its appeals in the UAE and cannot pay the award. Threats have been made to enforce the award against BHA's assets in Canada.¹¹

8. In light of the challenges faced by BHA, SJ advised it was no longer willing to accommodate BHA as it had in the past. As a result, BHI began to require payment for monthly service fees and past-due amounts.¹²

9. While SJ was not willing to provide ongoing financial support to BHA outside a formal proceeding, SJHC has agreed to: (i) provide DIP financing to fund these proceedings, including a sale process for the business and assets of BHA, and (ii) act as a stalking horse bid in the sale process whereby SJHC (and its designates) would acquire the shares of BHA through a reverse vesting order structure if selected as the successful bidder.¹³

10. This financing and clear, viable path forward provides critical continuity and certainty that is required to stabilize the BHA business. Since BHA is a services business, uncertainty or delay can quickly lead to a loss of its key "assets"; specifically its employees and clients, its certificate of practice and its reputation.¹⁴

11. The DIP financing and proposed stalking horse transaction with SJHC are vital to preventing such a loss and allowing the BHA business to continue uninterrupted for the benefit of its clients, employees, suppliers and other stakeholders.

¹¹ Fejér Affidavit at para. 18, Application Record, Tab 2.

¹² Fejér Affidavit at para. 20, Application Record, Tab 2.

¹³ Fejér Affidavit at para. 24, Application Record, Tab 2.

¹⁴ Fejér Affidavit at paras. 23(b), 93, Application Record, Tab 2.

12. The timing for this is critical. Without additional financing, BHA is projected to exhaust its existing cash reserves to be able to satisfy amounts payable the end of this week. BHA is accordingly cashflow insolvent. It is also balance sheet insolvent due to the arbitral award, among other things.

13. Given all of these circumstances, BHA determined that it was necessary and appropriate to seek relief under the *Companies' Creditors Arrangement Act* (Canada).¹⁵ The relief sought is designed to provide operational stability, immediate financing, and a stay of the potential enforcement of the arbitral award and other litigation. This, in turn, will allow BHA to conduct a sale process with the benefit of a viable path forward secured in the stalking horse bid for the benefit of its stakeholders.

14. On this initial application, BHA seeks an order (the “**Initial Order**”) granting relief that is reasonably necessary for its continued operation in the ordinary course of business during the initial 10-day stay period. BHA is not seeking approval of the stalking horse bid or a sale process at the initial CCAA hearing but will seek such relief at the comeback hearing that has been scheduled for October 27, 2025.

PART II. THE FACTS

A. BHA's Business and Key Relationships

15. BHA is an architecture and design firm that is licensed by the Ontario Association of Architects and is based in Toronto.¹⁶ BHA is part of the larger B+H brand. BHA provides architectural, interior design, planning, and consulting services. Its project work includes both

¹⁵ *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [CCAA].

¹⁶ Fejér Affidavit at paras. 6, 31, Application Record, Tab 2.

private sector (e.g. residential, commercial and mixed use) and public sector (e.g. healthcare, transportation, aviation) work.¹⁷ B+H has been consistently recognized as among the top 100 architecture firms in the world and the top 4 architecture firms in Canada.¹⁸

16. BHA's 28 employees are all licensed architects.¹⁹ For work such as administration, accounting, human resource and design support on its projects, BHA relies on personnel employed by BHI, provided pursuant to a services agreement between the parties.²⁰ BHI is the registered owner of the B+H trademark, and BHA operates out of premises leased by BHI in Toronto.²¹

17. 49% of the shares of BHA are held by SJHC.²² SJHC is a subsidiary of SJ, a large, multinational urban and infrastructure consultancy firm based in Singapore.²³ While SJHC holds only 49% of the shares of BHA, there are various operational restrictions imposed pursuant to a Relationship Agreement between the shareholders of BHA and BHI (including SJHC). This includes that BHA is required to seek SJHC consent before taking corporate steps such as making investments, incurring indebtedness over \$50,000 or instituting insolvency proceedings.²⁴

B. The Arbitral Award and Other Litigation

18. In March 2017, BHA was retained under a consulting agreement by Al Sadiyaat Development & Investment Sole Proprietorship Company LLC ("SDIC") to provide

¹⁷ Fejér Affidavit at para. 8, Application Record, Tab 2.

¹⁸ Fejér Affidavit at para. 51, Application Record, Tab 2.

¹⁹ Fejér Affidavit at para. 55, Application Record, Tab 2.

²⁰ Fejér Affidavit at para. 58, Application Record, Tab 2.

²¹ Fejér Affidavit at paras. 68, 78, Application Record, Tab 2.

²² Fejér Affidavit at para. 14, Application Record, Tab 2. The other 51% of the shares of BHA are owned by the two directors of BHA.

²³ Fejér Affidavit at para. 14, Application Record, Tab 2.

²⁴ Fejér Affidavit at para. 47, Application Record, Tab 2.

architectural services in relation to a project in the UAE, which included BHA hiring sub-consultants where necessary.²⁵

19. Allegations were raised in respect of the project in 2021. BHA denies responsibility for any of the alleged issues and asserts, among other things, that the structural design sub-consultant (the “**UAE Sub-Consultant**”) was wholly responsible for any damages.²⁶

20. Pursuant to the contract between BHA and SDIC, disputes were required to be adjudicated in a confidential arbitration in the UAE. In June 2024, an arbitral award was granted in favour of SDIC in the approximate amount of \$25 million, which accrues interest at a rate of 9% per annum until it is paid (the “**Arbitral Award**”).²⁷

21. BHA’s position remains that it was not the cause of any damages and is seeking separate recourse against the UAE Sub-Consultant pursuant to a confidential arbitration.²⁸

22. BHA has exhausted its rights of appeal in the UAE and the Arbitral Award is now enforceable in the UAE. SDIC has advised that it is preparing to file legal proceedings against BHA in Canada to enforce the Arbitral Award.²⁹

23. BHA is also a defendant in three other proceedings in Canada which are all in various early stages³⁰ and is subject to another judgment in the UAE, which is subject to an appeal.³¹ The contingent amounts asserted in these other proceedings equals approximately \$3,800,000.³²

²⁵ Fejér Affidavit at para. 79, Application Record, Tab 2.

²⁶ Fejér Affidavit at para. 80, Application Record, Tab 2.

²⁷ Fejér Affidavit at para. 82, Application Record, Tab 2.

²⁸ Fejér Affidavit at para. 83, Application Record, Tab 2.

²⁹ Fejér Affidavit at paras. 83 and 84, Application Record, Tab 2.

³⁰ Fejér Affidavit at para. 86, Application Record, Tab 2.

³¹ Fejér Affidavit at para. 87, Application Record, Tab 2.

³² Fejér Affidavit at para. 19, Application Record, Tab 2.

C. Financing Issues

24. In recent years, BHA's sole source of financing was provided indirectly from SJ. SJ financed BHI and BHI would not require regular cash payments from BHA for costs accrued and payable by BHA pursuant to the services agreement.³³

25. As noted above, BHA's financial performance has materially deteriorated in recent years due to macroeconomic factors beyond its control. Due to these challenges, and the Arbitral Award issued against BHA, SJ advised it was no longer willing to provide the favourable non-contractual accommodations it had extended in the past, which meant that BHA no longer had access to the indirect financing provided through such accommodations.³⁴

26. BHA has no other sources of financing and there are numerous challenges to obtaining financing from a party other than SJHC given the restrictions in the Relationship Agreement and, critically, since BHA has minimal "hard" assets that could serve as collateral.³⁵

D. Agreements Reached With SJ on Funding and Stalking Horse Arrangement

27. While SJ was not willing to provide ongoing financial support outside of a formal restructuring proceeding, after BHA approached SJ to support a CCAA filing, SJ agreed to provide support as follows (in each case through SJHC):

- (a) providing \$6,000,000 (plus interest, fees and expenses) in debtor-in-possession financing (the "**DIP Facility**") pursuant to a commitment letter dated October 16, 2025 (the "**Commitment Letter**"), with up to \$1,700,000 available upon the

³³ Fejér Affidavit at para. 16, Application Record, Tab 2.

³⁴ Fejér Affidavit at para. 20, Application Record, Tab 2.

³⁵ Fejér Affidavit at para. 23(c), Application Record, Tab 2.

issuance of an initial order in these proceedings and up to \$4,300,000 additional availability following the comeback hearing;³⁶ and

- (b) entering into an Investment Agreement dated October 16, 2025 whereby SJHC would acquire the shares of BHA through a reverse vesting order structure, which would be marketed as a “stalking horse bid” in a sale and investment solicitation process that would be conducted under the supervision of this Court.³⁷

PART III. ISSUES AND THE LAW

28. The issues before this Court and the position of BHA on each are as follows:

- (a) Does BHA meet the criteria for protection under the CCAA? ***Yes. BHA is an insolvent company with total claims against it of more than \$5 million.***
- (b) Should the Court grant an initial order staying all proceedings in respect of the Applicants? ***Yes. It is appropriate to grant a stay of proceedings with respect to BHA to provide the necessary breathing space to maximize value for all BHA stakeholders.***
- (c) Should KSV Restructuring Inc. (“KSV”) be appointed as Monitor? ***Yes. KSV meets all of the statutory requirements and is very experienced in similar matters.***
- (d) Should the DIP Facility be approved and the DIP Lender’s Charge be granted? ***Yes. The DIP Facility is required to fund BHA operations for the first 10 days,***

³⁶ Fejér Affidavit at paras. 116-117, Application Record, Tab 2.

³⁷ Fejér Affidavit at para. 24, Application Record, Tab 2.

and if approved, thereafter, to allow it to conduct a sale process. The terms of the DIP Facility and the size of the DIP Lender's Charge are reasonable and appropriate.

- (e) Should the Court grant the other priority charges sought? *Yes. The quantum and priority of the Administration Charge and Directors' Charge are appropriate and necessary during the initial 10-day stay period.*
- (f) Should the Court authorize payments of pre-filing amounts to critical suppliers with the approval of the Monitor? *Yes, the ability to make these payments where appropriate will ensure BHA can continue regular business operations.*
- (g) Should the Court grant the other relief sought in the proposed Initial Order? *Yes. The relief sought is reasonably necessary for the continued operation of BHA during the initial 10-day stay period.*

A. BHA Meets the Criteria for Protection Under the CCAA

(i) *BHA is a Debtor Company and Meets the CCAA Technical Requirements*

29. The CCAA applies to a debtor company or affiliated debtor companies where the total of claims against the debtor or its affiliates exceeds \$5 million.³⁸

30. A “debtor company” includes a company that is insolvent.³⁹ A “company” includes a corporation incorporated in Canada and those that have assets in Canada.⁴⁰

³⁸ CCAA, s. 3.

³⁹ CCAA, s. 2 “debtor company”; s. 3.

⁴⁰ CCAA, s. 2, “company”.

31. BHA qualifies as a “company” because it is incorporated in Ontario. BHA has total liabilities against it of more than \$5 million.⁴¹

32. As outlined below, BHA is insolvent.

33. BHA also meets the technical requirements in section 10(2) of the CCAA.⁴² A cash flow forecast will be appended to the Pre-Filing Report of the Monitor, together the prescribed representations of BHA regarding preparation of the cash flow.⁴³ BHA has filed copies of its unaudited balance sheet and statement of comprehensive income for the year ending December 31, 2024, as well as its unaudited balance sheet and statement of comprehensive income for the period ending June 30, 2025.⁴⁴

(ii) The Tests for Insolvency

34. The CCAA does not define “insolvent,” so CCAA courts have taken guidance from the *Bankruptcy and Insolvency Act* (the “BIA”).⁴⁵ The BIA defines an “insolvent person” as a person who:

- (a) is for any reason unable to meet his obligations as they generally become due (the “**liquidity test**”);
- (b) has ceased paying his current obligations in the ordinary course of business as they generally become due; or

⁴¹ Fejér Affidavit at para. 96, Application Record, Tab 2.

⁴² CCAA, s. 10(2).

⁴³ Fejér Affidavit at para. 89, Application Record, Tab 2.

⁴⁴ See Exhibits “F” and “G” to the Fejér Affidavit, Application Record, Tabs 2, F and G.

⁴⁵ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“BIA”). See e.g. *Sandvine Corporation et al., Re*, [2024 ONSC 6199](#) at para. [25](#) [*Sandvine*]; *Target Canada Co., Re*, [2015 ONSC 303](#) at para. [26](#) [*Target*]; *Re Just Energy Corp.*, [2021 ONSC 1793](#) at paras. [49-50](#).

- (c) has property that in aggregate is not, at fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due (the “**balance sheet test**”).⁴⁶

35. The tests for insolvency are disjunctive. A company satisfying any one of these tests at the time of its application for an initial order is considered insolvent for purposes of the CCAA.⁴⁷

36. A company is also insolvent for the purposes of the CCAA if, at the time of filing, there is a “looming liquidity crisis” in the sense that it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring (the “**looming liquidity crisis test**”).⁴⁸

37. For the purposes of the balance sheet test, all obligations due and accruing due must be considered. In valuing liabilities due and accruing due, this Court held in *Stelco* that the Court should consider all obligations of “whatever nature or kind,” leaving “nothing in limbo,” and taking into account all liabilities, whether contingent or unliquidated.⁴⁹

(iii) BHA is Insolvent

38. BHA is insolvent under the liquidity test *and* the balance sheet test.

39. With respect to the liquidity test, BHA is expected to require additional financing in respect of amounts due October 17, 2025 in order to meet payroll and make subcontractor payments.⁵⁰ BHA will not be able to continue operating next week without additional financing.

⁴⁶ BIA, s. 2, “insolvent person”.

⁴⁷ *Cinram International Inc., Re*, [2012 ONSC 3767](#) at para. [51](#).

⁴⁸ *Stelco Inc., Re*, [2004 CanLII 24933](#) (ON SC) at paras. [26](#), [40](#) [*Stelco*]; *Sandvine* at para. [25](#); *Target* at para. [26](#).

⁴⁹ *Stelco* at paras. [50](#) and [56](#). See also *Union of Canada Life Insurance, Re*, [2012 ONSC 957](#) at para. [16](#); *Re 4519922 Canada Inc.*, [2015 ONSC 124](#) at paras. [31-32](#).

⁵⁰ Fejér Affidavit at para. 100, Application Record, Tab 2.

40. SJ has indicated that it will not provide any further funding to BHA outside of a formal proceeding.⁵¹ There is no reasonable prospect of BHA obtaining additional funding from other sources.⁵² Accordingly, BHA is facing a liquidity crisis.

41. BHA is insolvent on the balance sheet test as well. The financial statements show a net book value of assets of \$16.6 million and total liabilities of \$38 million.⁵³ On the face of the value attributed to the assets and liabilities, it is clear that BHA is insolvent. Further, the realizable value of BHA's assets is likely significantly lower in light of the majority of that value being in BHA's client contracts, the value of which would rapidly dissipate if BHA is unable to access the further financing and support from SJ to stabilize its operations.⁵⁴ Accordingly, the assets of BHA at fair valuation are insufficient to satisfy in full its obligations due and accruing due.

B. The Court Should Grant an Initial Order Staying Proceedings

(i) *Jurisdiction*

42. A CCAA application may be made to a court in the province in which the Applicants' head office or chief place of business in Canada is situated.⁵⁵ BHA's registered head office is in Toronto, Ontario.⁵⁶

43. Accordingly, this court has jurisdiction to grant the Initial Order sought by BHA.

⁵¹ Fejér Affidavit at para. 24, Application Record, Tab 2.

⁵² Fejér Affidavit at paras. 23(c) & 120, Application Record, Tab 2.

⁵³ Fejér Affidavit at paras. 92 & 96, Application Record, Tab 2.

⁵⁴ Fejér Affidavit at paras. 92-95, Application Record, Tab 2.

⁵⁵ CCAA, s. 9(1).

⁵⁶ Fejér Affidavit at para. 29, Application Record, Tab 2.

(ii) Scope of Initial Order

44. On an initial application, the Court may stay proceedings “on any terms that it may impose.”⁵⁷ The initial stay period may not be more than 10 days and the other relief granted during that period must be “limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.”⁵⁸

45. First day orders should allow debtor companies to stabilize their operations and maintain the *status quo* during the initial 10-day stay period.⁵⁹ Whether particular relief is necessary to stabilize a debtor company’s operations during the initial stay period is an inherently factual determination, based on all of the circumstances of the particular debtor.⁶⁰

46. All of the relief requested in the proposed Initial Order meets these criteria. The relief sought by BHA is critical to allow BHA to properly respond to its current circumstances.

(iii) Appropriate to Stay Proceedings Against BHA

47. The CCAA stay of proceedings has been described as “the engine that drives a broad and flexible statutory scheme.”⁶¹ The purpose of stay orders is to maintain the *status quo* and provide the debtor company with an essential respite from the burden of dealing with litigation and other claims against it while it attempts to carry on as a going concern, restructure its financial affairs and negotiate an acceptable restructuring arrangement.⁶²

⁵⁷ CCAA, s. 11.02.

⁵⁸ CCAA, s. 11.001.

⁵⁹ *Lydian International Limited (Re)*, [2019 ONSC 7473](#) at paras. 26-30 [*Lydian*].

⁶⁰ *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#) at para. 16 [*Boreal*].

⁶¹ *Nortel Networks Corp., Re*, [2010 ONSC 1304](#) at para. 34.

⁶² *Comstock Canada Ltd. (Re)*, [2013 ONSC 6043](#) at para. 17 [*Comstock*]; *Redstone Investment Corporation (Re)*, [2014 ONSC 2004](#) at para. 50 [*Redstone*].

48. The stay maintains a level playing field among the creditors of a company so that no creditor will have an advantage over other creditors, and prevents aggressive creditors from taking actions that would undermine the company's financial position, prejudice other creditors and impair the prospects of a viable restructuring.⁶³

49. It is necessary and appropriate to grant a stay of proceedings against BHA. Without a stay of proceedings, BHA would remain subject to the continued threat of enforcement action against its assets by litigation claimants including SDIC. The stay of proceedings would provide BHA the breathing space to focus its efforts on conducting a court-supervised sale process to maintain stability and seek the most beneficial outcome for its stakeholders in the circumstances.⁶⁴

D. KSV Should be Appointed as Monitor

50. Upon the granting of an initial order, section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs.⁶⁵ KSV has consented to act as monitor in these CCAA proceedings and is a trustee within the meaning of subsection 2(1) of the BIA.⁶⁶ KSV is very experienced in similar matters, and is not subject to any of the restrictions as to who may be appointed as monitor set out in section 11.7(2) of the CCAA.⁶⁷ Accordingly, KSV should be appointed as monitor of BHA (in such capacity, the "**Monitor**").

⁶³ *Comstock* at para. 17; *Redstone* at para. 50.

⁶⁴ Fejér Affidavit at para. 106, Application Record, Tab 2.

⁶⁵ CCAA, s. 11.7.

⁶⁶ Consent of Monitor, Application Record, Tab 3.

⁶⁷ Pre-Filing Report of the Monitor at para. 1.4.1

E. Approval of DIP Facility and DIP Lender's Charge

(i) Jurisdiction to Approve DIP Financing

51. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the Commitment Letter and the DIP Lender's Charge.⁶⁸ Section 11.2(2) further authorizes the Court to order that the DIP Lender's Charge ranks in priority to any other claims against the company, provided it is on notice to the secured creditors who are likely to be affected by the charge.⁶⁹

52. Section 11.2(4) sets out the following non-exhaustive list of criteria to be considered by the Court in deciding whether to grant the DIP Lender's Charge:

- (a) the period during which the Applicant is expected to be subject to proceedings under the CCAA;
- (b) how the Applicant's business and financial affairs are to be managed during the proceedings;
- (c) whether the Applicant's management has the confidence of its major creditors;
- (d) whether the DIP Facility would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicant;
- (e) the nature and value of the Applicant's property;

⁶⁸ CCAA, s. 11.2(1).

⁶⁹ CCAA, s. 11.2(2).

- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report.⁷⁰

53. Overall, the Court must determine whether the proposed DIP Facility and DIP Lender's Charge "will best serve the interests of the stakeholders of the Applicants as a whole by enhancing the prospects of a successful restructuring."⁷¹ Even where it can be established that some creditors may be potentially prejudiced, where the benefits of financing to all stakeholders outweigh the potential prejudice to those creditors, it will be appropriate to approve the DIP financing.⁷²

(ii) *Commitment Letter and DIP Lender's Charge Should be Approved*

54. The criteria militate in favour of approval of the Commitment Letter and DIP Lender's Charge:

- (a) BHA is expected to run out of cash to fund amounts due by the end of this week;⁷³
- (b) BHA's ability to seek alternative DIP financing options was limited due to the lack of hard assets to secure any such loans and restrictions in the Relationship Agreement;⁷⁴
- (c) the terms of the DIP Term Sheet are reasonable in the circumstances;⁷⁵

⁷⁰ CCAA, s. 11.2(4); *In Re Hudson's Bay Company*, [2025 ONSC 1530](#) at para. [84](#) [*HBC Initial Order*].

⁷¹ *HBC Initial Order* at para. [87](#).

⁷² *Pride Group Holdings Inc. et al.*, [2024 ONSC 2026](#) at para. [27](#).

⁷³ Fejér Affidavit at para. 100, Application Record, Tab 2.

⁷⁴ Fejér Affidavit at paras. 23(c) & 120, Application Record, Tab 2.

- (d) BHA has no material existing secured creditors.⁷⁶ BHA's other secured creditors – which are financiers of office equipment and its old corporate credit card provider – will not be primed in the first 10 days;⁷⁷
- (e) BHA's management has the confidence of SJHC, as demonstrated by the various assistance that SJHC is providing to BHA as detailed above;⁷⁸
- (f) the DIP Facility is necessary to fund BHA's operations and expenses in the first 10 days, including expenses related to preparing for the sale process, which will allow BHA to stabilize its business and pursue a value-maximizing outcome for the benefit of its stakeholders;⁷⁹
- (g) the maximum amount of the DIP Facility during the initial stay period (\$1,700,000) is limited to what is reasonably necessary for the continued operation of BHA in the ordinary course of business during that period;⁸⁰
- (h) the Monitor is of the view that the Commitment Letter and the amount and priority of the DIP Lender's Charge are appropriate in the circumstances;⁸¹ and
- (i) the interest rate proposed is reasonable and there are no additional lender fees.⁸²

55. Accordingly, the Commitment Letter and the DIP Lender's Charge should be approved by this Court.

⁷⁵ Fejér Affidavit at para. 118, 121, Application Record, Tab 2.

⁷⁶ Fejér Affidavit at para. 74, Application Record, Tab 2.

⁷⁷ Fejér Affidavit at paras. 73, 137, Application Record, Tab 2.

⁷⁸ Fejér Affidavit at para. 24, Application Record, Tab 2.

⁷⁹ Fejér Affidavit at para. 100, Application Record, Tab 2.

⁸⁰ Fejér Affidavit at para. 116, Application Record, Tab 2.

⁸¹ Pre-Filing Report of the Monitor at para. 6.1.1.

⁸² Fejér Affidavit at paras. 117, 119, Application Record, Tab 2.

G. The Priority Charges Should be Approved

56. BHA is seeking approval of certain priority court-ordered charges on its assets, property and undertaking in connection with the administrative costs of the CCAA proceedings and the indemnification of its directors and officers. Granting the Charges with the priority sought is appropriate and important to the restructuring. CCAA Courts have acknowledged the importance of priority charges to ensure the willingness of professionals and directors and officers to participate in the CCAA proceedings.⁸³

(i) *Administration Charge*

57. BHA is seeking an Administration Charge of \$500,000 to secure the professional fees and disbursements of the Monitor, legal counsel to the Monitor and legal counsel to BHA. The Administration Charge is to rank in priority to the Directors' Charge.⁸⁴ BHA will request that the maximum amount of the Administration Charge be increased to \$750,000 in the Amended and Restated Initial Order.

58. Section 11.52 of the CCAA expressly provides this Court with the jurisdiction to grant an administration charge in respect of the fees and expenses of the monitor and any financial, legal or other experts engaged by the company for the CCAA proceeding.⁸⁵

59. The requested Administration Charge in the Initial Order is limited to what is reasonably necessary to cover the fees and disbursements of the professionals for the initial stay period. Administration Charges of \$500,000 or more have been granted during the initial 10-day stay period in the following recent CCAA proceedings:

⁸³ See e.g. [*Timminco Ltd., Re*, 2012 ONSC 506](#) at para. 66.

⁸⁴ Draft Initial Order at paras. 35 & 37, Application Record, Tab 4.

⁸⁵ CCAA, s. 11.52(1).

CCAA Proceedings	Administration Charge (Initial Order)
<i>STS Renewables Ltd.</i> ⁸⁶	\$1,000,000
<i>Re Aleafia Health Inc.</i> ⁸⁷	\$500,000
<i>Fire & Flower Holdings Corp.</i> ⁸⁸	\$600,000

60. BHA submits that the Administration Charge is warranted and necessary⁸⁹ and that it is appropriate to grant the Administration Charge in the amount of \$500,000 given that the CCAA will require the extensive involvement of the professional advisors from the very outset; there is no unwarranted duplication of roles; and the proposed Monitor is supportive of the Administration Charge.⁹⁰

(ii) Directors' Charge

61. BHA is seeking a Directors' Charge in a reasonable amount of \$460,000 to indemnify current or future directors and officers of BHA. The Directors' Charge is to rank subordinate to the Administration Charge.⁹¹ BHA will request that the amount of the Directors' Charge be increased to \$650,000 in the Amended and Restated Initial Order.

62. Jurisdiction to grant a charge relating to directors' and officers' indemnification on a priority basis is provided in section 11.51 of the CCAA.⁹² An insolvency creates new risks and potential liabilities for directors and officers. A directors' charge is intended to keep them in

⁸⁶ [*STS Renewables Ltd., Re* \(Court File No. CV-25-00743275-00CL\)](#), initial order dated May 15, 2025 at para. 29 [*STS Initial Order*].

⁸⁷ [*Re Aleafia Health Inc* \(Court File No. CV-23-00703350-00CL\)](#), initial order dated July 25, 2023 at para. 18.

⁸⁸ [*Fire & Flower Holdings Corp.* \(Court File No. CV-23-00700581-00CL\)](#), initial order dated June 5, 2023 at para. 39 [*Fire & Flower Initial Order*].

⁸⁹ See the non-exhaustive list of factors in *Lydian* at paras. 46-48.

⁹⁰ Fejér Affidavit at para. 123, Application Record, Tab 2; Pre-Filing Report of the Monitor at para. 7.1.4.

⁹¹ Draft Initial Order at paras. 17–18, Application Record, Tab 4.

⁹² CCAA, s. 11.51.

place during a restructuring to avoid disruption and to retain experienced management at a critical time.⁹³

63. BHA has been advised that SJ maintains a directors' and officers' insurance policy that provides coverage for BHA directors and officers (the “**D&O Insurance**”) and has reviewed certain excerpts of same. However, it is uncertain whether all claims for which the directors and officers may be personally liable will be covered by the D&O Insurance given the likely exclusions provided for under the D&O Insurance and potential coverage positions that may be taken by the insurer, among other things.⁹⁴

64. As such, it is uncertain whether all claims for which the directors and officers may be personally liable will be covered by the D&O Insurance.

65. The size of the Directors' Charge has been reviewed with the proposed Monitor who is supportive of it.⁹⁵ Directors' Charges of more than \$460,000 have been granted during the initial 10-day stay period in the following other recent CCAA proceedings:

CCAA Proceedings	Employees	Directors' Charge (Initial Order)
<i>Synaptive Medical Inc.</i> ⁹⁶	40	\$1,100,000
<i>STS Renewables Ltd.</i> ⁹⁷	105	\$1,100,000
<i>Re Aleafia Health Inc.</i> ⁹⁸	151	\$835,000

⁹³ *Lydian* at paras. 52-53.

⁹⁴ Fejér Affidavit at paras. 72 & 125, Application Record, Tab 2.

⁹⁵ Pre-Filing Report of the Monitor at para. 7.2.4-7.2.5.

⁹⁶ *Synaptive Medical Inc., Re* (Court File No. CV-25-00739279-00CL), initial order dated March 19, 2025 at para. 19.

⁹⁷ *STS Renewables Ltd., Re* (Court File No. CV-25-00743275-00CL), initial order dated May 15, 2025 at para. 29.

⁹⁸ *Re Aleafia Health Inc* (Court File No. CV-23-00703350-00CL), initial order dated July 25, 2023 at para. 18.

I. Payment of Pre-filing Amounts is Appropriate

66. The proposed Initial Order also provides BHA with the authority to pay certain suppliers for amounts owing for goods or services actually supplied to BHA prior to the date of the Initial Order. Payment of these pre-filing amounts are subject to the approval of the Monitor and to be made in consultation with the DIP Lender and can only be made if, in the opinion of the BHA following consultation with the Monitor, the third party supplier is critical to the Business, ongoing operations of BHA or preservation of the Property and the payment is required to ensure ongoing supply.

67. The ability to pay certain critical suppliers for pre-filing amounts, subject to obtaining the approval of the Monitor, is facilitative and practical in nature and has been granted on multiple occasions, including during the initial 10-day stay period.⁹⁹ The Applicant wants to ensure it has the ability to pay any subcontractors necessary in order to prevent any disruptions to servicing projects. The Monitor is supportive of the relief sought and it is appropriately limited to only key suppliers required to preserve the business operations or property.¹⁰⁰ Accordingly, it is appropriate to authorize the payment of pre-filing amounts to critical suppliers as requested in the draft Initial Order.

J. The Other Relief Sought Should be Granted

68. The other relief sought in the proposed Initial Order is appropriate and is reasonably necessary for the continued operations of BHA in the ordinary course of business during the

⁹⁹ *HBC Initial Order* at para. [113](#); *Boreal* at paras. [20-22](#).

¹⁰⁰ Pre-Filing Report of the Monitor at para. 8.0.4.

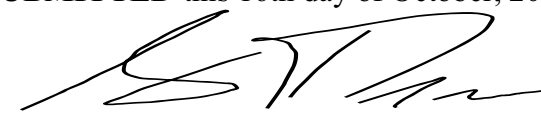
initial 10-day stay period, including relief related to (i) cash management, (ii) continued payment of employee, professional and operating expenses in the ordinary course of business, (iii) certain restructuring steps such as terminating employees and pursuing refinancing and asset sale opportunities, subject to the approval of the Court, and (iv) service and notice. Similar relief has been granted during the initial 10-day stay period in other recent CCAA proceedings.¹⁰¹

PART IV. ORDER REQUESTED

69. For the reasons set out above, BHA requests that this Court grant the proposed Initial Order. BHA meets all of the qualifications required to obtain the requested relief under the CCAA, and the relief is appropriate and reasonably necessary for the continued operations of BHA in the ordinary course of business during the initial 10-day stay period.

70. The balance of the relief sought by BHA in the Notice of Application should be reserved to be heard by the Court at the comeback hearing. BHA intends to file a separate factum with respect to that relief prior to the comeback hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of October, 2025.

A handwritten signature in black ink, appearing to read 'BTD', is written over a horizontal line.

McCarthy Tétrault LLP

Lawyers for the Applicant

¹⁰¹ See e.g. [*STS Initial Order*](#), [*Fire & Flower Initial Order*](#).

SCHEDULE “A”
LIST OF AUTHORITIES

Jurisprudence

1. *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, [2024 ONSC 6199](#)
2. *Target Canada Co.*, *Re*, [2015 ONSC 303](#)
3. *Re Just Energy Corp.*, [2021 ONSC 1793](#)
4. *Cinram International Inc.*, *Re*, [2012 ONSC 3767](#)
5. *Stelco Inc.*, *Re*, [2004 CanLII 24933](#) (ON SC)
6. *Union of Canada Life Insurance*, *Re*, [2012 ONSC 957](#)
7. *Re 4519922 Canada Inc.*, [2015 ONSC 124](#)
8. *Lydian International Limited (Re)*, [2019 ONSC 7473](#)
9. *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#)
10. *Nortel Networks Corp.*, *Re*, [2010 ONSC 1304](#)
11. *Comstock Canada Ltd. (Re)*, [2013 ONSC 6043](#)
12. *Redstone Investment Corporation (Re)*, [2014 ONSC 2004](#)
13. *In Re Hudson’s Bay Company*, [2025 ONSC 1530](#)
14. *Pride Group Holdings Inc. et al.*, [2024 ONSC 2026](#)
15. [Timminco Ltd., Re, 2012 ONSC 506](#)
16. [STS Renewables Ltd., Re \(Court File No. CV-25-00743275-00CL\)](#)
17. [Re Aleafia Health Inc \(Court File No. CV-23-00703350-00CL\)](#)
18. [Fire & Flower Holdings Corp. \(Court File No. CV-23-00700581-00CL\)](#)
19. [Synaptive Medical Inc., Re \(Court File No. CV-25-00739279-00CL\)](#)

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

s. 2 (“company”)

“**company**” means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, railway or telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies.

s. 2 (“debtor company”)

“**debtor company**” means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
- (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent.

s. 3(1)

s. 3(1)

Application. – This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

s. 9(1)

Jurisdiction of court to receive applications. – Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

s. 10(2)

Documents that must accompany initial application. – An initial application must be accompanied by

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

s. 11

General power of court. – Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

s. 11.001

Relief reasonably necessary. – 11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

s. 11.02

Stays, etc. — initial application. – A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

s. 11.2(1)

Interim financing. – On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the

company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

s. 11.51(1)

Security or charge relating to director's indemnification. – On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge -- in an amount that the court considers appropriate -- in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

s. 11.51(2)

Priority. – The court may order that the security or charge rank in priority over the claim of any secured creditors of the company

s. 11.51(3)

Restriction. – indemnification insurance. – The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

s. 11.51(4)

Negligence, misconduct or fault. – The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

s. 11.52(1)

Court may order security or charge to cover certain costs. – On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge – in an amount that the court considers appropriate – in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceeding under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

s. 11.52(2)

Priority. – The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

s. 11.7(1)

Court to appoint monitor. – When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3, as amended

s. 2 (“insolvent person”)

“insolvent person” means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO B+H ARCHITECTS CORP.

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

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