

**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
(Comeback Hearing)
(Returnable October 27, 2025)**

October 21, 2025

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PART I. INTRODUCTION

1. On this motion, B+H Architects Corp. (“**BHA**”) seeks approval of, among other things:
 - (a) a sale and investment solicitation process (“**SISP**”);
 - (b) a Stalking Horse Agreement with its 49% shareholder, Surbana Jurong Holding (Canada) Ltd. (“**SJHC**”) of the Surbana Jurong Group (“**SJ**”), for purposes of acting as a stalking horse bid in the SISP;
 - (c) a Key Employee Incentive Plan (“**KERP**”) to incentivize key employees to continue to support the Business and the SISP during the process; and
 - (d) an extension of the stay of proceedings to December 17, 2025.¹
2. BHA commenced these proceedings due to a severe liquidity crunch and balance sheet insolvency caused by deteriorating macroeconomic conditions, a large arbitral award being made against it and the withdrawal of its traditional financing method.
3. In the lead-up to these CCAA Proceedings, SJHC agreed to provide limited DIP financing to BHA and to act as stalking horse bidder in a SISP.
4. The Stalking Horse Agreement provides for SJHC to acquire the shares of BHA through a reverse vesting order structure for, among other things, a credit bid of the \$6 million of DIP financing to be provided in these proceedings and cash consideration sufficient to satisfy all of the Charges and fund a wind-down of the “ResidualCo”. SJHC is the only secured financier of

¹ Any capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit of Patrick Fejér, sworn October 20, 2025 (“**Second Fejér Affidavit**”), Motion Record of B+H Architects Corp. dated October 20, 2025 (“**Comeback Motion Record**”), Tab 2 or, if not defined therein, in the Affidavit of Patrick Fejér, sworn October 16, 2025 (“**First Fejér Affidavit**”), Exhibit “A” to the Fejér Comeback Affidavit, Comeback Motion Record, Tab 2A.

BHA and a sensible purchaser of the business, particularly given its ownership of BHI. The Stalking Horse Agreement does not contain any break fee or expense reimbursement.

5. Through the proposed SISP, BHA and the Monitor would seek higher and better bids in the market while simultaneously working with BHA to seek to address various conditions precedent to the Stalking Horse Agreement.

6. The relief sought by BHA on this motion takes the form of two orders:

- (a) an Amended and Restated Initial Order approving, among other things: (i) an extension of the stay of proceedings to December 17, 2025; (ii) the KERP and KERP Charge; and (iii) appropriate increases to the amount that can be borrowed under the DIP Facility and the various Charges; and
- (b) a Sale and Investment Solicitation Process Order (“**SISP Order**”), among other things: (i) approving the SISP for the Property and Business of BHA; and (ii) authorizing and approving BHA’s execution of the Stalking Horse Agreement for the purposes of acting as the stalking horse bid in the SISP.

7. Neither of these orders finally approve the transaction set out in the Stalking Horse Agreement or provide for a vesting of any assets free and clear of liens or claims. If the SISP is approved, such approval and vesting order will be sought at a later date, after a further canvassing of the market in the court-supervised process.

8. Approval of the SISP and the other relief sought on this motion will help BHA to complete a broad canvassing of the market and provide it the best chance to achieve a value-

maximizing outcome for its stakeholders. The relief sought by BHA on this motion is reasonable and appropriate in the circumstances and supported by the Monitor and SJHC.

PART II. THE FACTS

A. BHA's Business and Key Relationships

9. BHA is a leading architecture and design firm that is licensed by the Ontario Association of Architects (“OAA”) and the Alberta Association of Architects (“AAA”) and is based in Toronto.² BHA is part of the larger “B+H” brand. BHA provides architectural, interior design, planning, and consulting services. Its project work includes both private sector (e.g. residential, commercial and mixed use) and public sector (e.g. healthcare, transportation, aviation) work.³ B+H has been consistently recognized as among the top 100 architecture firms in the world and the top 4 architecture firms in Canada.⁴

10. BHA's 28 employees are all Ontario licensed architects.⁵ For work such as administration, accounting, human resource and design support on its projects, BHA relies on personnel employed by B+H International Corp. (“BHI”), provided pursuant to a services agreement between the parties.⁶ BHI is the registered owner of the B+H trademark, and BHA operates out of premises leased by BHI in Toronto.⁷

² First Fejér Affidavit at paras. 6, 31, Comeback Motion Record, Tab 2A.

³ First Fejér Affidavit at para. 8, Comeback Motion Record, Tab 2A.

⁴ First Fejér Affidavit at para. 51, Comeback Motion Record, Tab 2A.

⁵ First Fejér Affidavit at para. 55, Comeback Motion Record, Tab 2A.

⁶ First Fejér Affidavit at para. 58, Comeback Motion Record, Tab 2A.

⁷ First Fejér Affidavit at paras. 68, 78, Comeback Motion Record, Tab 2A.

11. 49% of the shares of BHA are held by SJHC.⁸ SJHC is a subsidiary of SJ, a large, multinational urban and infrastructure consultancy firm based in Singapore.⁹ 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.¹⁰

B. The Arbitral Award and Other Litigation

12. In March 2017, BHA was retained under a consulting agreement by Al Sadiyaat Development & Investment Sole Proprietorship Company LLC (“SDIC”) to provide architectural services in relation to a project in the United Arab Emirates (“UAE”), which included BHA hiring sub-consultants where necessary.¹¹

13. 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.¹²

14. 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

⁸ First Fejér Affidavit at para. 14, Comeback Motion Record, Tab 2A. The other 51% of the shares of BHA are owned by the two directors of BHA.

⁹ First Fejér Affidavit at para. 14, Comeback Motion Record, Tab 2A.

¹⁰ First Fejér Affidavit at para. 47, Comeback Motion Record, Tab 2A.

¹¹ First Fejér Affidavit at para. 79, Comeback Motion Record, Tab 2A.

¹² First Fejér Affidavit at para. 80, Comeback Motion Record, Tab 2A.

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**”).¹³

15. BHA’s position remains that it was not the cause of any damages. BHA is seeking separate recourse against the UAE Sub-Consultant pursuant to a confidential arbitration.¹⁴

16. BHA has exhausted its rights of appeal in the UAE and the Arbitral Award is now enforceable in the UAE. SDIC advised that it is preparing to file legal proceedings against BHA in Canada to enforce the Arbitral Award.¹⁵

C. **Financing Issues**

17. 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.¹⁶

18. 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.¹⁷ 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.¹⁸

¹³ First Fejér Affidavit at para. 82, Comeback Motion Record, Tab 2A.

¹⁴ First Fejér Affidavit at para. 83, Comeback Motion Record, Tab 2A.

¹⁵ First Fejér Affidavit at paras. 83 and 84, Comeback Motion Record, Tab 2A.

¹⁶ First Fejér Affidavit at para. 16, Comeback Motion Record, Tab 2A.

¹⁷ First Fejér Affidavit at para. 17, Comeback Motion Record, Tab 2A.

¹⁸ First Fejér Affidavit at para. 20, Comeback Motion Record, Tab 2A.

19. 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.¹⁹

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

20. 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 limited DIP financing and to act as a stalking horse bidder in a SISF.

(i) *DIP Facility*

21. BHA entered into a commitment letter with SJHC dated October 16, 2025 (the “**Commitment Letter**”), pursuant to which SJHC (in such capacity, the “**DIP Lender**”) agreed to provide up to \$6,000,000 (plus interest, fees and expenses) in debtor-in-possession financing (the “**DIP Facility**”), with up to \$1,700,000 available upon the issuance of the Initial Order and up to \$4,300,000 additional availability following the comeback hearing.²⁰

22. On October 17, 2025, the Court approved the terms of the DIP Facility in the Initial Order. BHA now seeks approval for additional availability under the DIP Facility in the amount of \$4,300,000, which amount is required to satisfy BHA’s costs during the proposed stay extension and shortly thereafter.²¹

¹⁹ First Fejér Affidavit at para. 23(c), Comeback Motion Record, Tab 2A.

²⁰ First Fejér Affidavit at paras. 116-117, Comeback Motion Record, Tab 2A.

²¹ Second Fejér Affidavit at para. 22, Comeback Motion Record, Tab 2.

(ii) Stalking Horse Agreement

23. BHA also entered into an Investment Agreement dated October 16, 2025 (the “**Stalking Horse Agreement**”), subject to Court approval. The Stalking Horse Agreement contemplates that, if selected as the Successful Bidder under the SISP, SJHC (and its designates) (in such capacity, the “**Stalking Horse Bidder**”) would acquire the shares of BHA through a reverse vesting order structure, subject to court approval.²² All Excluded Assets and Excluded Liabilities would be vested out to a newly-created “**ResidualCo**”.²³

24. The Purchase Price includes:

- (a) all amounts outstanding under the DIP Facility as at Closing, including all accrued interest and fees thereon (the “**Credit Bid Amount**”); and
- (b) to the extent not funded as part of the DIP Facility, cash consideration sufficient to satisfy (i) any unpaid amounts secured by the Charges and (ii) the Administrative Wind-Down Amount in the amount of \$100,000 plus HST, which cash consideration amount may be increased by the Purchaser in its sole discretion in any auction conducted pursuant to the SISP (the “**Cash Consideration**”).²⁴

25. The Administrative Wind-down Amount would be used to satisfy costs incurred by the Monitor and its professional advisors, and professional advisors of BHA and ResidualCo to: (a)

²² Second Fejér Affidavit at paras. 13 & 25, Comeback Motion Record, Tab 2.

²³ Second Fejér Affidavit at para. 28, Comeback Motion Record, Tab 2.

²⁴ Second Fejér Affidavit at para. 43(b)(i), Comeback Motion Record, Tab 2.

administer ResidualCo and the Excluded Assets and Excluded Liabilities; and (b) wind-down and/or dissolve ResidualCo, including if appropriate, bankrupting ResidualCo.²⁵

26. At least three Business Days prior to the Phase 1 Bid Deadline in the SISP, the Stalking Horse Bidder would advise BHA which employees, if any, it does not wish to retain post-Closing, who will be terminated by BHA on or before Closing (the “**Terminated Employees**”). The Stalking Horse Bidder would advance an amount equivalent to the amount the Terminated Employees would be entitled to under the *Wage Earner Protection Program Act* (“**WEPPA**”)²⁶ and any amounts payable under section 36(7) of the CCAA, to the Monitor on or before Closing, which would be paid to the Terminated Employees in exchange for an assignment of their claims under WEPPA, if any.²⁷

27. The Stalking Horse Agreement contains certain conditions precedent, including the issuance of a reverse vesting order and that the Certificates of Practice of BHA from the OAA and AAA must remain in good standing.²⁸

28. The Stalking Horse Agreement does not include any break fee or expense reimbursement amounts.²⁹

E. Commencement of CCAA Proceedings

29. On October 17, 2025, BHA commenced these CCAA Proceedings and obtained an Initial Order which, among other things: (a) granted a stay of proceedings until October 27,

²⁵ Second Fejér Affidavit at para. 28, Comeback Motion Record, Tab 2.

²⁶ SC 2005, c. 47, s. 1.

²⁷ Second Fejér Affidavit at para. 28, Comeback Motion Record, Tab 2.

²⁸ Second Fejér Affidavit at para. 28, Comeback Motion Record, Tab 2.

²⁹ Second Fejér Affidavit at para. 29(d), Comeback Motion Record, Tab 2.

2025; (b) appointed KSV Restructuring Inc. as the “**Monitor**”; (c) approved the DIP Facility and the Commitment Letter with advances up to \$1,700,000 for the initial 10-day stay period and granted the DIP Lender’s Charge; and (d) granted an Administration Charge (to the maximum amount of \$500,000) and a Directors’ Charge (to the maximum amount of \$460,000).³⁰

PART III. ISSUES AND THE LAW

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

- (a) Should the stay of proceedings be extended? *Yes. The stay of proceedings should be extended to December 17, 2025 to provide BHA with the breathing space to conduct the SISP.*
- (b) Should the Stalking Horse Agreement be approved? *Yes. The terms of the Stalking Horse Agreement are reasonable for the purposes of acting as a stalking horse bid in the SISP.*
- (c) Should the SISP be approved? *Yes. The SISP will provide a flexible and efficient process for canvassing the market.*
- (d) Should the KERP be approved, the KERP Charge be granted and the confidential KERP be sealed? *Yes. The KERP terms are reasonable and will facilitate the stability of the business and the effective conduct of the SISP.*

³⁰ Second Fejér Affidavit at para. 15, Comeback Motion Record, Tab 2.

- (e) Should the increase to the maximum amount of the Administration Charge, Directors' Charge and DIP Lender's Charge be approved? ***Yes. The amount of the Administration Charge, the Directors' Charge and the DIP Lender's Charge are appropriate in the circumstances of this proceeding.***

A. Stay Extension

31. Sections 11.02(2) and 11.02(3) of the CCAA provide that the Court may grant or extend a stay of proceedings for any period that the Court considers necessary, if the Court is satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.³¹

32. Since the granting of the Initial Order, BHA has acted in good faith and with due diligence to stabilize the business and advance its restructuring objectives.³²

33. The requested extension of the Stay Period to December 17, 2025 – the date for approval of any Successful Bid(s) pursuant to the SISP – is reasonable and appropriate.³³ This Court has granted stay extensions from the comeback hearing to the date for approval of a Successful Bid in a SISP on multiple occasions.³⁴

³¹ *Hudson's Bay Company, Re*, [2025 ONSC 1897](#) at para. 17 [*HBC Comeback*].

³² Second Fejér Affidavit at para. 16, Comeback Motion Record, Tab 2.

³³ Second Fejér Affidavit at para. 17, Comeback Motion Record, Tab 2.

³⁴ See e.g. [Eastern Meat Solutions Inc. et al. Re](#) (Court File No. CV-24-00720622-00CL), Endorsement of Justice Penny dated May 31, 2024 at para. 3; [ClearPier Acquisition Corp. et al. Re](#) (Court File No. CV-25-00740088-00CL), Endorsement of Justice Conway dated April 10, 2025 at para. 4; [Li-Cycle Holdings Corp. et al. Re](#) (Court File No. CV-25-00743053-00CL), Endorsement of Justice Conway dated May 22, 2025 at para. 6.

B. **Approval of SISP and Stalking Horse Agreement**

(i) ***Test for Approval of Stalking Horse Sale Process***

34. Approval of sale processes including stalking horse agreements with a credit bid have become common features in CCAA proceedings.³⁵ Courts widely recognize that a stalking horse bid is “a reasonable and useful element of a sales process”³⁶ that “maximizes value of a business for the benefit of its stakeholders and enhances the fairness of the sale process.”³⁷

35. In *Validus Power Corp.*, Justice Osborne distilled various lists of factors to be considered in approving a stalking horse bid sale process from cases such as *Brainhunter*,³⁸ *CCM*,³⁹ and *Freshlocal*,⁴⁰ into the following question:

[T]aking into account the support for and opposition to the terms of the proposed SISP and stalking horse agreement, while recognizing whether and how those parties supporting or opposing it are economically affected by the outcome, will the proposed process (including its stalking horse bid component and all other material terms), if approved and approved at this time, likely result in the best recovery on the assets being sold pursuant to a fair and

³⁵ Between January 1, 2023 and May 31, 2023, there were 57 cases involving a sale process with a stalking horse credit bid: Jessica L Cameron, Anthony Mersich & Kaitlyn Wong, “Saddle Up: The Rise of Stalking Horse Credit Bids in Canadian Insolvency Proceedings”, (2023) Ann Rev Ins Law 11.

³⁶ *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#) at para. 7 [*CCM*]; *Cannapièce Group Inc. v. Marzili*, [2022 ONSC 6379](#) at para. 4 [*Cannapièce*].

³⁷ *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) at para. 20 [*Danier*].

³⁸ In *Brainhunter Inc. (Re)*, [2009 CanLII 72333](#) (ON SC), the Court indicated that the factors that are applied by the Court in exercising its general statutory discretion to approve a sale process could also be applied to considering whether to approve a stalking horse sale process: (i) Is a sale transaction warranted at this time?; (ii) Will the sale benefit the whole “economic community”?; (iii) Do any of the debtors’ creditors have a bona fide reason to object to a sale of the business?; and (iv) Is there a better viable alternative?: para. 13.

³⁹ In *CCM*, the Court set out the following factors to be considered in approving a sale process including a stalking horse credit bid: (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale: para. 6.

⁴⁰ In *Freshlocal Solutions Inc., Re*, [2022 BCSC 1616](#), the Court set out the following factors to be considered in approving a stalking horse bid: (i) how did the stalking horse agreement arise?; (ii) what are the stability benefits?; (iii) does the timing support approval?; (iv) who supports or objects to the stalking horse agreement?; (v) what is the true cost of the stalking horse agreement?; and (vi) is there an alternative?: paras. 24-32 [*Freshlocal*].

transparent process?⁴¹

36. Stalking horse agreements have been recognized as having the following benefits, among others:

- (a) they provide stability for the debtor's business during the restructuring process, since the debtor's employees, suppliers and customers will have comfort that the sales process will result in a successful sale and therefore a continuation of the debtor's business;⁴²
- (b) they establish a baseline price and transactional structure for superior bids from interested parties;⁴³ and
- (c) they can provide a reasonable estimate of the value of the debtor's business and assets to other bidders due to the considerable due diligence that the stalking horse bidder would have already undertaken.⁴⁴

37. Courts have approved stalking horse agreements in cases where, as here, the stalking horse bidder is a significant shareholder or related entity of the debtor. For example:

- (a) in *Fire & Flower Holdings Corp.*, the Court approved a stalking horse agreement with an entity that held 35.7% of the shares of the debtor;⁴⁵ and

⁴¹ *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, [2023 ONSC 6367](#) at para. [37](#) [*Validus*].

⁴² *Stelco Inc. (Re)*, [2004 CanLII 45462 \(ON SC\)](#) at para. [7](#); *Cannapiece* at [para. 4](#)

⁴³ *Danier* at para. [20](#); *Vallidus* at para. [42](#).

⁴⁴ *Freshlocal* at para. [25](#).

⁴⁵ *Fire & Flower Holdings Corp., et al. (Court File No. CV-23-00700581-00CL)*, Order (Re: SISP Approval Order) dated June 21, 2023; Endorsement of Osborne J. dated June 25, 2023 at para. [6](#)).

(b) in *BZAM Ltd.*, the Court approved a stalking horse agreement with a company controlled by the debtor's largest shareholder and current chairman of its board of directors.⁴⁶

(ii) *Stalking Horse Agreement Should be Approved*

38. The Applicants are only seeking approval of the Stalking Horse Agreement for the sole purpose of it acting as the Stalking Horse Bid in the SISP. Approval of the Stalking Horse Agreement would be sought at a separate hearing at the conclusion of the SISP if it is selected as the Successful Bid.

39. The Stalking Horse Agreement is the product of significant negotiation and provides valuable consideration. The following factors militate in favour of approving the Stalking Horse Agreement to act as the Stalking Horse Bid in the SISP:

- (a) the Stalking Horse Agreement provides certainty for clients and existing projects, which are critical BHA "assets";
- (b) the Stalking Horse Bidder is BHA's only secured financier and a sensible purchaser of the business;

⁴⁶ [*BZAM Ltd. Plan of Arrangement* \(Court File No. CV-24-00715773-00CL\)](#), SISP Approval Order dated March 8, 2024; Factum of the Applicants (Returnable March 8, 2024) at para. 26. See also [*Trichome Financial Corp.* \(Court File No. CV-22-00689857-00CL\)](#), Stalking Horse and SISP Approval Order dated January 10, 2023, where the Court approved a stalking horse agreement with a related party to the debtor that was controlled by a director of one of the debtors and the chairman of another of the debtors: Motion Record of the Applicants returnable January 9, 2023, Tab 2, Affidavit of Michael Ruscetta (sworn January 1, 2023) at para. 33.

- (c) any further advances under the DIP Facility are conditional on the Stalking Horse Agreement being approved for the purposes of acting as a stalking horse bid in the SISP;⁴⁷
- (d) there are no break fee or expense reimbursement amounts provided for in the Stalking Horse Agreement;
- (e) the Stalking Horse Agreement helps to ensure BHA's business will be preserved as a going concern; and
- (f) BHA has limited liquidity and limited alternative options in the circumstances and available timeframe.⁴⁸

40. The terms of the Stalking Horse Agreement are reasonable for the purposes of acting as a stalking horse bid in the SISP and will not unduly impede a further robust canvassing of the market in the SISP.⁴⁹ Without the Stalking Horse Bid and the DIP Facility provided by SJHC, BHA would be unable to complete any restructuring process at all in which case the value of BHA's assets could dissipate leaving no realistic prospect of a going-concern solution.⁵⁰ Approval of the Stalking Horse Agreement is supported by the Monitor and should be granted by the Court.

⁴⁷ Commitment Letter dated October 16, 2025 at para. 12(b), Exhibit "C" to the Second Fejér Affidavit, Comeback Motion Record, Tab 2C.

⁴⁸ Second Fejér Affidavit at paras. 29 & 32, Comeback Motion Record, Tab 2.

⁴⁹ Second Fejér Affidavit at para. 31, Comeback Motion Record, Tab 2.

⁵⁰ Second Fejér Affidavit at para. 32, Comeback Motion Record, Tab 2.

(iii) Terms of the SISP are Appropriate

41. The SISP contemplates a two-phase stalking horse sale process conducted by BHA and the Monitor for all of BHA's Business and Property. The SISP provides for the following milestones (the "**SISP Milestones**"):

Milestone	Deadline
Teaser Letter and NDA sent to Known Potential Bidders	Commencing by October 21, 2025
Phase 1 Bid Deadline	November 17, 2025 at 5:00 p.m. (prevailing Eastern Time)
Phase 2 Bid Deadline (if applicable)	December 5, 2025 at 5:00 p.m. (prevailing Eastern Time)
Selection of Successful Bid(s) and Back-Up Bidder(s) or designation of Auction	December 8, 2025 at 5:00 p.m. (prevailing Eastern Time)
Auction Date (if designated)	December 10, 2025
Approval of Successful Bid(s)	December 17, 2025 at 5:00 p.m. (prevailing Eastern Time)
Closing – Successful Bid(s)	December 19, 2025 at 5:00 p.m. (prevailing Eastern Time)
Outside Date – Closing	December 31, 2025

42. The SISP Milestones strike a reasonable balance between the need to move quickly given BHA's available liquidity and the need to seek the highest price. The SISP Milestones take into account the relatively discrete pool of parties who may be interested and capable of completing a transaction and the liquidity constraints facing BHA.⁵¹

⁵¹ Second Fejér Affidavit at paras. 54-55, Comeback Motion Record, Tab 2.

43. The SISP provides for nearly seven full weeks from the commencement of the process on October 21, 2025 to the submission of binding bids on December 5, 2025 if it proceeds to Phase 2. Even if the time is only counted from the date of court approval, the SISP would run for six full weeks if it proceeds to Phase 2.

44. SISPs providing for 3-5 week bid periods have been approved in other recent cases where, as here, there was no pre-filing marketing process conducted.⁵² In the course of approving a sale process with a stalking horse bid which required bids to be submitted within approximately 30 days of the sale process being approved, the Court in *CCM* noted that the debtor – like BHA – did not have adequate liquidity to support a lengthier sale process:

Given the financial circumstances of Blutip and the lack of funding available to the Receiver to support the company's operations during a lengthy sales process, I accept the Receiver's recommendation that a quick sales process is required in order to optimize the prospects of securing the best price for the assets. Accordingly, the timeframe proposed by the Receiver for the submission of qualifying bids and the conduct of the auction is reasonable. The marketing, bid solicitation and bidding procedures proposed by the Receiver are likely to result in a fair, transparent and commercially efficacious process in the circumstances.⁵³

45. Similarly, in the course of approving a sale process with a stalking horse bid which required bids to be submitted within 35 days of the sale process commencing, Justice Osborne

⁵² See e.g. *iSpan Systems LP*, [2023 ONSC 6212](#) at paras. 43-45, reflecting a start date of November 2, 2023 and a Bid Deadline of December 1, 2023; *Re Field Trip Health & Wellness Ltd. et al.* (Court File No. CV-23-00696599-00CL) SISP Order dated March 31, 2023 at p. 8, reflecting a start date of March 31, 2023 and a Bid Deadline of April 24, 2023; *Firm Mortgage Fund Inc. v. Stateview Homes (Hampton Heights) Inc. et al.* (Court File No. CV-23-00700356-00CL), Sale Approval Order dated June 15, 2023 at p. 6 which provided for a 30-day sale process; *Kingsett Mortgage Corporation and Dorr Capital Corporation v. Stateview Homes (Minu Towns) Inc. et al.* (Court File No. CV-23-00698576-00CL), Sale Process Approval Order dated June 5, 2023, which approved a 4-5 week process set out in the First Report of the Receiver, [s. 5.2](#).

⁵³ *CCM* at para. 14.

in *Validus Power Corp.* made the following observations which are apt in the present circumstances facing BHA as well:

The challenge in this particular proceeding, as is often the case, is one of stability and time: the former is required, and the latter is lacking.

If recovery here is to be maximized, the business must be stabilized, and stabilized in a manner that is apparent to those inside such as employees, and to those outside the business such as potential bidders, future debt lenders or equity investors, and regulators.⁵⁴

46. The SISP is fair, reasonable and recommended by the Monitor and provides the best opportunity to seek higher and better bids for the benefit of stakeholders.⁵⁵

C. KERP and KERP Charge

(i) *Jurisdiction to Approve a KERP and KERP Charge*

47. The jurisdiction to approve a KERP and grant a KERP charge is grounded in the court's general power under section 11 of the CCAA to make any order it sees fit in a CCAA proceeding.⁵⁶ Courts have frequently recognized the importance and utility of KERPs in restructuring proceedings.⁵⁷ A company able to retain the critical skills and knowledge of its employees has a greater chance of successfully restructuring for the benefit of all stakeholders.⁵⁸

48. The courts have developed the following list of factors to be considered when deciding whether to approve a KERP and grant a KERP charge:

⁵⁴ *Validus* at paras. [43-44](#).

⁵⁵ Second Fejér Affidavit at paras. 56-57, Comeback Motion Record, Tab 2.

⁵⁶ CCAA, s. 11; *Cinram International Inc. (Re)*, [2012 ONSC 3767](#) at para. [91](#) [*Cinram*].

⁵⁷ See e.g. *Cinram* at paras. [90-93](#); *Timminco Ltd., Re*, [2012 ONSC 506](#) at paras. [71-75](#) [*Timminco*]; *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#) at para. [13](#) [*Bridging*].

⁵⁸ *Timminco* at para. [72](#).

- (a) whether the Monitor supports the KERP (to which great weight is attributed);
- (b) whether the employees to which the KERP applies would consider other employment options if the KERP were not secured by the KERP charge;
- (c) whether the continued employment of the employees to which the KERP applies is important for the stability of the business and to enhance the effectiveness of the marketing process;
- (d) the employees' history with the debtor and any special knowledge and skills they possess;
- (e) the difficulty in finding a replacement to fulfill the responsibilities of the employees to which the KERP applies;
- (f) whether the KERP was approved by the board of directors, including the independent directors;
- (g) whether the KERP is supported or consented to by secured creditors of the debtor; and
- (h) whether the payments under the KERP are payable upon the completion of the restructuring process.⁵⁹

⁵⁹ *Cinram* at para. [91](#); *Aralez Pharmaceuticals Inc.*, *Re*, [2018 ONSC 6980](#) at para. [29](#).

(ii) KERP and KERP Charge Should be Approved

49. BHA has established a KERP to incentivize 11 key employees (the “**KERP Employees**”) to continue in their roles during these CCAA Proceedings until the consummation of a transaction in the SISP, their termination without cause, or the termination of the CCAA Proceedings or the termination of all or substantially all of the employees of BHA.⁶⁰ The factors to be considered by the Court militate in favour of approving the KERP:

- (a) the Monitor supports the KERP;⁶¹
- (b) without the KERP and KERP Charge, the KERP Employees will likely consider other employment options;⁶²
- (c) the KERP Employees occupy key roles with the Applicants and could not be readily or easily replaced in the near term due to their (i) relationships with key clients, (ii) institutional knowledge of the operations and processes of BHA, and (iii) important roles in ensuring the stability of the business and efficient conduct of the SISP;⁶³
- (d) the KERP was approved by the board of directors;⁶⁴
- (e) the DIP Lender has consented to the KERP;⁶⁵ and

⁶⁰ Second Fejér Affidavit at paras. 58-59, Comeback Motion Record, Tab 2.

⁶¹ Second Fejér Affidavit at paras. 61 & 67, Comeback Motion Record, Tab 2.

⁶² Second Fejér Affidavit at para. 64, Comeback Motion Record, Tab 2.

⁶³ Second Fejér Affidavit at para. 62, Comeback Motion Record, Tab 2.

⁶⁴ Second Fejér Affidavit at para. 61, Comeback Motion Record, Tab 2.

⁶⁵ Second Fejér Affidavit at para. 67, Comeback Motion Record, Tab 2.

- (f) the KERP is designed to incentivize the KERP Employees to remain in their roles over the long term in order to achieve a successful restructuring.⁶⁶

50. The aggregate of the KERP Incentive Payments is \$200,000 (the “**KERP Funds**”). The Amended and Restated Initial Order would approve BHA paying to the Monitor the KERP Funds, for the benefit of participants in the KERP.⁶⁷ The KERP Charge would apply to the KERP Funds held by the Monitor. This approach has been approved in other recent cases.⁶⁸ The amount of the KERP Charge is reasonable having regard to the importance of the ongoing employment of the KERP Employees and the scope and complexity of these CCAA Proceedings.

51. KERP charges in excess of the \$200,000 being sought in this case have been granted in other CCAA proceedings. For example:

- (a) in *STS Renewables Inc.*, a KERP for three employees was secured by a charge of \$280,000;⁶⁹ and

- (b) in *Mastermind GP Inc.*, a KERP for six employees was secured by a charge of \$286,000.⁷⁰

52. Accordingly, it is appropriate for the Court to approve the KERP and grant the KERP Charge sought.

⁶⁶ Second Fejér Affidavit at paras. 58 & 63, Comeback Motion Record, Tab 2.

⁶⁷ Second Fejér Affidavit at paras. 59-60, Comeback Motion Record, Tab 2.

⁶⁸ See e.g. *Li-Cycle Holdings Inc., Re* (Court File No. CV-25-00743053-00CL), Amended and Restated Initial Order dated May 22, 2025 at paras. 55-60.

⁶⁹ *STS Renewables Ltd., Re* (Court File No. CV-25-00743275-00CL), Amended and Restated Initial Order dated May 23, 2025 at para. 41 [*STS A&R Initial Order*].

⁷⁰ *Mastermind GP Inc., Re* (Court File No. CV-23-0071259-00CL), Amended and Restated Initial Order dated November 30, 2023 at para. 21.

(iii) The Confidential KERP Should be Sealed

53. The Applicants seek an order sealing Confidential Exhibit “1” to the Second Fejér Affidavit, which includes Schedule “A” to the KERP containing the names and compensation details of the individual KERP Employees, pending further order of the Court.

54. In order to grant the requested sealing order, the Court must be satisfied that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁷¹

55. Courts have recognized in numerous cases that it would be detrimental to the operations of the company to disclose the identities of KERP beneficiaries and the quantum of payments.⁷² In this case, the sealing order is proportional as BHA has publicly disclosed the aggregate amount of the KERP and number of KERP Employees to balance the principle of court openness while minimizing risks to retention and privacy. The salutary effects of granting this order outweigh any deleterious effects. The three factors of *Sherman Estate* have been satisfied and the sealing order should be granted.

⁷¹ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

⁷² See e.g. *Bridging* at [paras. 23–28](#); *Li-Cycle Holdings Inc., Re* (Court File No. CV-25-00743053-00CL), Endorsement of Conway J. dated May 22, 2025 at para. 11.

D. Increase to Other Charges

56. The Applicants are seeking to increase the maximum amount of:

(a) the Administration Charge from \$500,000 to \$750,000 to secure the professional fees and disbursements of the Monitor, legal counsel to the Monitor and legal counsel to BHA;⁷³

(b) the Directors' Charge from \$460,000 to \$650,000 to protect the directors and officers of BHA and incentivize them to stay in their role with BHA;⁷⁴ and

(c) the DIP Lender's Charge to secure the additional availability of up to \$4,300,000 under the DIP Facility.⁷⁵

57. The amount of the proposed increase to the Administration Charge and the Directors' Charge has been reviewed with the Monitor and SJHC who are each supportive.⁷⁶ The proposed increases to the Administration Charge and the Directors' Charge are consistent with recent precedents.⁷⁷ Accordingly, the proposed increases to the Administration Charge and the Directors' Charge should be approved.

58. The additional availability of \$4,300,000 under the DIP Facility is necessary for BHA to continue its operations and fund the SISF and these CCAA Proceedings, which will allow

⁷³ Second Fejér Affidavit at para. 70, Comeback Motion Record, Tab 2.

⁷⁴ Second Fejér Affidavit at para. 72, Comeback Motion Record, Tab 2.

⁷⁵ Second Fejér Affidavit at paras. 21 & 24, Comeback Motion Record, Tab 2.

⁷⁶ Second Fejér Affidavit at paras. 70 & 72, Comeback Motion Record, Tab 2.

⁷⁷ See e.g. [*STS A&R Initial Order*](#) at para. 42, where an Administration Charge of \$1,200,000 was approved and a Directors' Charge of \$1,700,000 was approved (the debtors had 105 employees at the time of filing); [*Synaptive Medical Inc., Re \(Court File No. CV-25-00739279-00CL\)*](#), Amended and Restated Initial Order dated March 26, 2025 at para. 19, where an Administration Charge of \$500,000 was approved and a Directors' Charge of \$1,100,000 was approved (Synaptive had 40 employees at the time of filing).

BHA to pursue a value-maximizing transaction for the benefit of its stakeholders.⁷⁸ Accordingly, the increase to the maximum amount available to be drawn under the DIP Facility and the corresponding increase to the DIP Lender's Charge should be approved.

PART IV. ORDER REQUESTED

59. For the reasons set out above, the Applicants request that this Court grant the proposed Amended and Restated Order and the proposed SISP Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of October, 2025.



McCarthy Tétrault LLP

Lawyer for the Applicant

⁷⁸ Second Fejér Affidavit at paras. 22-23, Comeback Motion Record, Tab 2.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Hudson’s Bay Company, Re*, [2025 ONSC 1897](#)
2. [*Eastern Meat Solutions Inc. et al, Re* \(Court File No. CV-24-00720622-00CL\)](#), Endorsement of Justice Penny dated May 31, 2024
3. [*ClearPier Acquisition Corp. et al, Re* \(Court File No. CV-25-00740088-00CL\)](#), Endorsement of Justice Conway dated April 10, 2025
4. [*Li-Cycle Holdings Corp. et al., Re* \(Court File No. CV-25-00743053-00CL\)](#), Endorsement of Justice Conway dated May 22, 2025
5. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#)
6. *Cannapiece Group Inc. v. Marzili*, [2022 ONSC 6379](#)
7. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
8. *Brainhunter Inc. (Re)*, [2009 CanLII 72333](#) (ON SC)
9. *Freshlocal Solutions Inc., Re*, [2022 BCSC 1616](#)
10. *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, [2023 ONSC 6367](#)
11. *Stelco Inc. (Re)*, [2004 CanLII 45462](#) (ON SC)
12. [*Fire & Flower Holdings Corp., et al.* \(Court File No. CV-23-00700581-00CL\)](#), Order (Re: SISP Approval Order) dated June 21, 2023
13. [*BZAM Ltd. Plan of Arrangement* \(Court File No. CV-24-00715773-00CL\)](#), SISP Approval Order dated March 8, 2024
14. [*Trichome Financial Corp.* \(Court File No. CV-22-00689857-00CL\)](#), Stalking Horse and SISP Approval Order dated January 10, 2023
15. *iSpan Systems LP*, [2023 ONSC 6212](#)
16. [*Re Field Trip Health & Wellness Ltd. et al.* \(Court File No. CV-23-00696599-00CL\)](#), SISP Order dated March 31, 2023
17. [*Firm Mortgage Fund Inc. v. Stateview Homes \(Hampton Heights\) Inc. et al.* \(Court File No. CV-23-00700356-00CL\)](#), Sale Approval Order dated June 15, 2023
18. [*Kingsett Mortgage Corporation and Dorr Capital Corporation v. Stateview Homes \(Minu Towns\) Inc. et al* \(Court File No. CV-23-00698576-00CL\)](#), Sale Process Approval Order dated June 5, 2023

19. *Cinram International Inc. (Re)*, [2012 ONSC 3767](#)
20. *Timminco Ltd., Re*, [2012 ONSC 506](#)
21. *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#)
22. *Aralez Pharmaceuticals Inc., Re*, [2018 ONSC 6980](#)
23. [Li-Cycle Holdings Inc., Re \(Court File No. CV-25-00743053-00CL\)](#), Amended and Restated Initial Order dated May 22, 2025
24. [STS Renewables Ltd., Re \(Court File No. CV-25-00743275-00CL\)](#), Amended and Restated Initial Order dated May 23, 2025
25. [Mastermind GP Inc., Re \(Court File No. CV-23-0071259-00CL\)](#), Amended and Restated Initial Order dated November 30, 2023
26. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
27. [Synaptive Medical Inc., Re \(Court File No. CV-25-00739279-00CL\)](#), Amended and Restated Initial Order dated March 26, 2025

**SCHEDULE “B”
RELEVANT STATUTES**

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

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. 11.02

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (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.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

s. 11.2

Interim financing

11.2 (1) 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. 11.52(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.

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. CL-25-00753537-0000

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

Proceeding Commenced at Toronto

**FACTUM
(Comeback Hearing)
(Returnable October 27, 2025)**

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