



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00706033-00CL DATE: 21 September 2023

NO. ON LIST: 6

TITLE OF PROCEEDING: **BIOSTEEL SPORTS NUTRITION INC.**

BEFORE JUSTICE: **CAVANAGH, J.**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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For Defendant, Respondent, Responding Party, Defence:

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ENDORSEMENT OF JUSTICE CAVANAGH:

1. On September 14, 2023, I granted an Initial Order in this application under the provisions of the *Companies' Creditors Arrangement Act* (the "CCAA").
2. In this endorsement, acronyms, other short forms, and defined terms, if not expressly defined, have the meanings assigned in the Applicant's materials.
3. At this comeback hearing, the Applicant seeks two orders which are needed to allow the Applicant to pursue a sale of the assets and/or business of the Applicant.
4. The Applicant seeks an Amended and Restated Initial Order which, along with customary restructuring relief: (i) extends the stay of proceedings until and including November 17, 2023; (ii) confirms pre-filing obligations may not be set off against post-filing obligations without further order of the court; (iii) increases the Administration Charge and the Directors' Charge to the maximum amounts of U.S. \$1 million and U.S. \$2.198 million, respectively; and (iv) approves the retention of the Financial Advisor and grants the Transaction Fee Charge to the maximum amount of U.S. \$2.5 million to secure payment of the Transaction Fee.
5. The Applicant seeks an order approving the sales and investment solicitation process ("SISP Approval Order") which, among other things, approves the SISP, authorizes the Applicant to implement the SISP pursuant to the terms thereof, and authorizes and directs the Applicant, the Financial Advisor and the Monitor to do all things reasonably necessary to perform their obligations under the SISP.
6. The relief sought by the Applicant at the comeback hearing is supported by Canopy Growth Corporation ("Canopy") (the Applicant's largest secured creditor) and the Monitor.
7. There is no opposition to the relief sought on this motion.

Amended and Restated Initial Order

8. With respect to the Amended and Restated Initial Order, subsection 11.02 (2) of the CCAA gives this Court discretion to grant a stay of proceedings for any period that it considers necessary, provided it is satisfied that such an extension is appropriate and that the debtor applicant has and continues to act in good faith and with due diligence and is working to advance the CCAA proceeding. I am satisfied that the requested Stay Extension is appropriate and necessary to, among other things, enable the Applicant to implement the SISP. The Applicant is seeking an extension of the stay of proceedings until November 17, 2023, to coincide with the outside date under the SISP. The Cash Flow Statement shows that the Applicant

will have sufficient funds to meet its ongoing obligations during the proposed stay period without the need for financing.

9. Sections 11 and 11.02 of the CCAA allow the Court to stay rights held by creditors if the exercise of those rights could jeopardize the restructuring process, including creditors' rights to effect pre-filing versus post-filing set off. I am satisfied that the requested order staying pre-filing/post-filing set-off, subject to further Order of the Court, is appropriate.
10. The CCAA authorizes the Court to grant a priority charge over a debtor applicant's assets for professional fees and disbursements on notice to the affected secured creditors. I am satisfied that the increase of the Administration Charge to U.S. \$1 million is fair and reasonable given the number of beneficiaries, the size and complexity of the Applicant's business, and the complexity of this CCAA Proceeding. The Monitor supports the increase in the Administration Charge.
11. In deciding whether to grant or increase a directors' charge, the Court must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the applicant could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (v) the charges not apply to obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct. Notice has been given to the Applicant's secured creditors. While insurance remains in place, the complexity of the overall enterprise and the exclusions and conditions of the insurance create risk that such insurance may not provide sufficient coverage. The increased amount of the Directors' Charge has been determined with guidance from the Monitor to reflect the potential obligations and liabilities that the Directors and Officers may face during the proposed Stay Extension. I am satisfied that the requested increase in the Directors' Charge is appropriate.
12. The Court has discretion under section 11 of the CCAA to approve agreements engaging financial advisors in complex CCAA proceedings, particularly where the assets to be sold are complicated. The CCAA authorizes the Court to grant a priority charge over a debtor applicant's assets to secure such fees and expenses. The factors to be considered are the same as those considered when granting an administration charge.
13. The Special Committee retained the Financial Advisor to capitalize on its expertise in distressed M&A situations and explore alternative strategies to maximize the value of the Applicant's brand. I am satisfied that the Transaction Fee Charge is necessary and reasonable in the circumstances as it is a condition to the retention of the Financial Advisor.

SISP Approval Order

14. The Court has jurisdiction to approve a sale process in relation to a debtor applicant's business and assets. Such court approval adds additional certainty that the process will be honoured, absent exceptional circumstances.
15. I am satisfied that a sale of the assets and/or business of the Applicant represents the best available outcome for stakeholders in the circumstances. Given the liquidity challenges facing the Applicant and the position of its secured creditor, Canopy, that it does not wish to remain a stakeholder of the Applicant, there is no realistic alternative option available to the Applicant. The SISP is designed to solicit the highest and best bid to the benefit of the Applicant's stakeholders, including lenders, suppliers and customers. It is expected that all distributable proceeds from a transaction under the SISP will, after satisfaction of priority amounts, flow to the benefit of Canopy which is likely to suffer a significant shortfall. Canopy supports the SISP.
16. I am satisfied that the SISP is fair, transparent and objective. It is designed to facilitate a process to market the Applicant's business to obtain the best possible price and achieve a going concern solution for the benefit of all stakeholders, without unduly prolonging the process. Although the SISP provides for an

abbreviated sale process, I am satisfied that it must be undertaken expeditiously to prevent any further uncertainty that would potentially erode value from the Applicant's business.

17. For these reasons, I grant the Applicant's motion.

18. Orders to issue in forms of Orders signed by me today.