

Court File No. CV-23-00706033-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 21st
)
JUSTICE CAVANAGH) DAY OF SEPTEMBER, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BIOSTEEL SPORTS NUTRITION INC.

(the "**Applicant**")

SISP APPROVAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*, approving the Sale and Investment Solicitation Process in respect of the assets and/or business of the Applicant and its affiliates, BioSteel Sports Nutrition USA LLC and BioSteel Manufacturing LLC (collectively, together with the Applicant, the "**BioSteel Entities**"), in the form attached hereto as **Schedule "A"** (the "**SISP**") and certain related relief, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Sarah Eskandari sworn September 13, 2023 and the Exhibits thereto (the "**Initial Eskandari Affidavit**"), the pre-filing report of KSV Restructuring Inc. ("**KSV**") as the proposed Monitor dated September 13, 2023, the affidavit of Sarah Eskandari sworn September 15, 2023 and the Exhibits thereto (the "**Second Eskandari Affidavit**") and the first report of KSV as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**") dated September 19, 2023, and on hearing the submissions of counsel for the

Applicant, the Monitor, and the other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Stephanie Fernandes sworn September 15, 2023,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP, the Amended and Restated Initial Order of this Court dated September 21, 2023 (the “**ARIO**”), the Initial Eskandari Affidavit or the Second Eskandari Affidavit, as applicable.

SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP is hereby approved and the Applicant is hereby authorized and directed to implement the SISP pursuant to the terms thereof. The Applicant, the Monitor and the Financial Advisor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder, subject to prior approval of the Court being obtained before completion of any transaction(s) under the SISP.

4. **THIS COURT ORDERS** that the Applicant, the Monitor and the Financial Advisor and their respective affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Applicant, the Monitor or the Financial Advisor, as

applicable, in performing their obligations under the SISP, as determined by this Court in a final order that is not subject to appeal or other review.

5. **THIS COURT ORDERS** that in overseeing the SISP, the Monitor shall have all of the benefits and protections granted to it under the CCAA, the ARIO and any other Order of this Court in the within proceeding.

PIPEDA

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions the Monitor, the Applicant, the Financial Advisor and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants that are party to a non-disclosure agreement with the Applicant (each, a “**SISP Participant**”) and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the SISP (a “**Transaction**”). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Monitor, the Financial Advisor or the Applicant, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Monitor, the Financial Advisor or the Applicant. Any bidder with a Successful Bid shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Monitor, the Financial Advisor or the Applicant, or ensure that

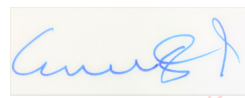
all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor, the Financial Advisor or the Applicant.

GENERAL

7. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the BioSteel Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the BioSteel Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the BioSteel Entities and the Monitor and their respective agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.



Digitally signed by
Peter Cavanagh

SCHEDULE "A"
SALE AND INVESTMENT SOLICITATION PROCESS

Sale and Investment Solicitation Process

1. On September 14, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Initial Order**”), among other things, granting BioSteel Sports Nutrition Inc. (the “**Applicant**”) relief pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”).
2. On September 21, 2023, the Court granted: (i) an order amending and restating the Initial Order (the “**ARIO**”), and (ii) an order (the “**SISP Approval Order**”) that, among other things, authorized the Applicant to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof. Capitalized terms that are not otherwise defined herein have the meanings ascribed to them in the ARIO or the SISP Approval Order, as applicable. Copies of the ARIO and the SISP Approval Order can be found at www.ksvadvisory.com/experience/case/biosteel.
3. This SISP sets out the manner in which: (a) binding bids for executable transactions involving the business and/or assets of the Applicant and/or the equity or all or substantially all of the assets of each of its affiliates, BioSteel Sports Nutrition USA LLC and BioSteel Manufacturing LLC (together with the Applicant, “**BioSteel**”), will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought.
4. The SISP shall be conducted by the Applicant with the assistance of Greenhill & Co. Canada Ltd. (the “**Financial Advisor**”) under the oversight of KSV Restructuring Inc., in its capacity as Court-appointed monitor (in such capacity, the “**Monitor**”) of the Applicant and the Monitor shall be entitled to receive all information in relation to the SISP.
5. Parties who wish to have their bids considered must participate in the SISP.
6. The Applicant and the Financial Advisor will (under the oversight of the Monitor):
 - a) In accordance with Section 7 below, disseminate marketing materials and a process letter to potentially interested parties identified by the Applicant and the Financial Advisor in consultation with the Monitor;
 - b) solicit interest from parties with a view to such interested parties entering into non-disclosure agreements (each an “**NDA**”) (parties shall only obtain access to the virtual data room and be permitted to participate in the SISP if they execute an NDA, in form and substance satisfactory to the Applicant; provided that those parties that have already executed a NDA with the Applicant shall not be required to execute a further agreement unless such agreement has expired or will expire during the SISP);
 - c) provide applicable parties who have entered into an NDA with the Applicant access to a virtual data room containing, among other things, diligence information; and
 - d) request that such parties submit a binding offer meeting at least the requirements set forth in Section 8 below, as determined by the Applicant in consultation with

the Financial Advisor and Monitor (each a “**Qualified Bid**”), by the Qualified Bid Deadline (as defined below).

7. The SISP shall be conducted subject to the terms hereof and the following key milestones, which milestones may be extended by the Applicant, in consultation with the Monitor:
 - a) the Court issues the SISP Approval Order approving the SISP by no later than September 21, 2023;¹
 - b) the Applicant and Financial Advisor commence solicitation process by no later than September 25, 2023;
 - c) deadline to submit a Qualified Bid – 5:00 p.m. Eastern Time on October 16, 2023 (the “**Qualified Bid Deadline**”);
 - d) deadline to select a Qualified Bid as the successful bid(s) (the “**Successful Bid**”) – by no later than 5:00 p.m. Eastern Time on October 23, 2023 (the “**Definitive Agreement Deadline**”);
 - e) Transaction Order (as defined below) hearing by no later than November 3, 2023, subject to Court availability; and
 - f) closing of the Successful Bid as soon thereafter as possible and, in any event, by no later than November 15, 2023 (the “**Outside Date**”).

8. In order to constitute a Qualified Bid, a bid must comply with the following:
 - a) it provides for aggregate consideration, payable in full on closing (the “**Consideration Value**”), and provides a detailed sources schedule that identifies, with specificity, the composition of the Consideration Value and any assumptions that could reduce the net consideration payable including details of any material liabilities that are being assumed or being excluded;
 - b) as part of the Consideration Value, it provides cash consideration sufficient to pay:
 - (i) any obligations in connection with applicable charges granted by the Court in the Applicant’s CCAA proceeding and any obligations in priority thereto; and (ii) an amount of \$2 million to fund a wind-up of the Applicant’s CCAA proceeding and any further proceedings or wind-up costs;

¹ To the extent any dates would fall on a non-business day, they shall be deemed to be the first business day thereafter.

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- c) it contemplates closing of the proposed transaction by not later than the Outside Date;
- d) it contains:
 - i. duly executed binding definitive transaction document(s);
 - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of each of its equityholder(s);
 - iii. a redline to the form of asset purchase agreement available in the virtual data room;
 - iv. evidence of authorization and approval from the bidder's board of directors (or equivalent governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);
 - v. disclosure of any past or current connections or agreements with BioSteel or any of their affiliates, any known, potential, prospective bidder, or any current or former officer, manager, director, member or known current or former equity security holder of BioSteel or any of their affiliates; and
 - vi. such other information reasonably requested by the Applicant or the Monitor;
- e) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until closing of the Successful Bid; provided, that if such bid is not selected as the Successful Bid or as the next-highest or otherwise best Qualified Bid as compared to the Successful Bid (such bid, the "**Back-Up Bid**") it shall only remain irrevocable until selection of the Successful Bid;
- f) it provides that the bid will serve as a Back-Up Bid if it is not selected as the Successful Bid and if selected as the Back-Up Bid it will remain irrevocable until the earlier of: (i) closing of the Successful Bid; or (ii) closing of the Back-Up Bid;
- g) it provides written evidence of a bidder's ability to fully fund and consummate the transaction (including financing required, if any, prior to the closing of the transaction to finance this CCAA proceeding) and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the bidder in connection with the Successful Bid;
- h) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- i) it is not conditional upon:
 - i. approval from the bidder's board of directors (or equivalent governing body) or equityholder(s);

- ii. the outcome of any unperformed due diligence by the bidder; or
 - iii. the bidder obtaining financing;
- j) it includes acknowledgments and representations that the bidder: (i) has had an opportunity to conduct any and all required due diligence prior to making its bid, and has relied solely upon its own independent review, investigation and inspection in making its bid; (ii) is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including the Applicant, the Financial Advisor, the Monitor and their respective employees, officers, directors, agents, advisors and other representatives, regarding the proposed transactions, this SISP, or any information (or the completeness of any information) provided in connection therewith, except as expressly stated in the proposed transaction documents; (iii) is making its bid on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Applicant, the Financial Advisor, the Monitor or any of their respective employees, officers, directors, agents, advisors and other representatives, except to the extent set forth in the proposed transactions documents; (iv) is bound by this SISP and the SISP Approval Order; and (v) is subject to the exclusive jurisdiction of the Court with respect to any disputes or other controversies arising under or in connection with the SISP or its bid;
- k) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals);
- l) it is accompanied by a cash deposit (the “**Deposit**”) paid by wire transfer of immediately available funds in an amount equal to at least 10% of the Consideration Value, which Deposit shall be retained by the Monitor in an interest-bearing trust account in accordance with the terms hereof;
- m) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
- n) it is received by the Applicant, with a copy to the Financial Advisor and the Monitor, by the Qualified Bid Deadline at the email addresses specified on Schedule “A” hereto.
9. The Applicant, in consultation with the Monitor, may in its sole discretion waive compliance with any one or more of the requirements specified in Section 8 above and deem a non-compliant bid to be a Qualified Bid.
10. Following selection of a Successful Bid, if any, the Applicant, with the assistance of its advisors, and in consultation with the Monitor, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the milestones set out in Section 7. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Applicant in

consultation with the Monitor, the Applicant shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize the Applicant to complete the transactions contemplated thereby, as applicable, and authorizing the Applicant to: (a) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (b) undertake such other actions as may be necessary to give effect to such Successful Bid; and (c) implement the transaction(s) contemplated in such Successful Bid (each, a “**Transaction Order**”). If the Successful Bid is not consummated in accordance with its terms, the Applicant shall be authorized, but not required, to elect that the Back-Up Bid (if any) is the Successful Bid.

11. In the event that: (a) no Qualified Bid is received by the Qualified Bid Deadline; (b) the Applicant, in consultation with the Monitor, determines that no Qualified Bid should be accepted; (c) definitive agreement(s) with respect to the Successful Bid have not been finalized before the Definitive Agreement Deadline; or (d) the Qualified Bids, in aggregate, do not provide for the timely repayment of the secured loan and credit facility provided to the Applicant by Canopy Growth Corporation (“**Canopy**”), and its wholly-owned affiliate 11065220 Canada Inc., in full in cash and Canopy does not consent to any Qualified Bid(s) being selected as the Successful Bid, the SISP shall terminate.
12. The highest Qualified Bid may not necessarily be accepted by the Applicant. The Applicant, with the written consent of the Monitor and Canopy, reserves the right not to accept any Qualified Bid or to otherwise terminate the SISP. The Applicant, with the written consent of the Monitor and Canopy, reserve the right to deal with one or more Qualified Bidders to the exclusion of others, to accept a Qualified Bid for different parts of BioSteel or to accept multiple Qualified Bids and enter into definitive agreements in respect of all such bids.
13. If a Successful Bid is selected and a Transaction Order authorizing the consummation of the transaction contemplated thereunder is granted by the Court, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to a Transaction Order or such earlier date as may be determined by the Applicant, in consultation with the Monitor; provided, the Deposit in respect of the Back-Up Bid shall not be returned to the applicable bidder until the closing of the Successful Bid.
14. The Applicant shall be permitted, in its discretion, to provide general updates and information in respect of the SISP to legal counsel to any creditor (each a “**Creditor**”) on a confidential basis, upon: (a) irrevocable confirmation in writing from such counsel that the applicable Creditor will not submit any bid in the SISP; and (b) counsel to such Creditor entering into confidentiality arrangements with the Applicant, in form and substance satisfactory to the Applicant and the Monitor.
15. Any amendments to this SISP may only be made by the Applicant with the written consent of the Monitor, or by further order of the Court.

16. The Applicant, with the written consent of the Monitor and Canopy, may at any time prior to the Qualified Bid Deadline bring a motion in the CCAA proceeding for approval of a 'stalking horse' bid in the SISP.

SCHEDULE "A": E-MAIL ADDRESSES FOR DELIVERY OF BIDS

To the counsel for the Applicant:

rjacobs@cassels.com; skukulowicz@cassels.com; nlevine@cassels.com;
jbornstein@cassels.com

with a copy to the Financial Advisor:

michael.nessim@greenhill.com; usman.masood@greenhill.com

and with a copy to the Monitor and legal counsel to the Monitor:

ngoldstein@ksvadvisory.com; rgraham@ksvadvisory.com; zweigs@bennettjones.com;
mightonj@bennettjones.com

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BIOSTEEL SPORTS NUTRITION
INC.

Court File No. CV-23-00706033-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

SISP APPROVAL ORDER

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