



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00699872-00CL DATE: June 1, 2023

NO. ON LIST: 5

TITLE OF PROCEEDING: **IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CHALICE BRANDS LTD.**

BEFORE **MADAM JUSTICE KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

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For Other, Self-Represented:

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ENDORSEMENT OF JUSTICE KIMMEL :

Background – As Described in the Applicant’s Factum on this Motion

1. The Applicant, Chalice Brands Ltd. ("Chalice" or the "Applicant"), together with its direct and indirect subsidiaries (together, the "Chalice Group") forms a vertically integrated cannabis company operating primarily in the regulated adult-use market of Oregon. The Applicant is the ultimate parent of the Chalice Group.
2. On May 23, 2023, the Applicant was granted protection under the Companies' Creditors Arrangement Act 2 (the "CCAA") pursuant to an Initial Order (the "Initial Order") of this court. The stay of proceedings in the Initial Order was extended in favour of the direct and indirect subsidiaries of the Applicant (the "Non-Filing Affiliates"). KSV Restructuring Inc. was appointed as monitor within these CCAA proceedings (the "Monitor").
3. On the same day, certain of the Non-Filing Affiliates (the "Oregon Receivership Entities") were placed into receivership in the State of Oregon by order of the Circuit Court of the State of Oregon (the "Oregon Court" and the "Oregon Receivership"). Kenneth S. Eiler was appointed as receiver over the Oregon Receivership Entities (the "Oregon Receiver").
4. The Applicant, with the assistance of the Monitor, intends to work in a coordinated fashion with the Oregon Receiver to operate the business of the Chalice Group while it seeks to achieve a going concern transaction.
5. The stay of proceedings in the Initial Order was granted until June 2, 2023 and a come-back hearing was scheduled for today.
6. The background leading up to the Chalice Groups filing for CCAA protection on May 23, 2023, including the reason for the Oregon Receivership, is detailed in the court’s May 26, 2023 Reasons at: *Re Chalice Brands Ltd.*, 2023 ONSC 3174.
7. The court was directed to a point of clarification, in that there are five key employees who, contrary to the previous information provided, are employed by the Applicant.
8. The Monitor is satisfied with the breadth of the service list. All parties on it, including the Applicant’s creditors, the Oregon regulator and other stakeholders, were served with notice of this motion and no party has indicated any opposition to the orders sought.

The Orders Sought

9. The Applicant seeks an Amended and Restated Initial Order (the "ARIO"). The ARIO would, among other things:
 - a. authorize the engagement between the Applicant and Cardinal Advisory Services Inc. ("Cardinal Advisory"), pursuant to which Cardinal Advisory will act as the Chief Restructuring Officer (the "CRO") of the Chalice Group through the services of Scott Secord;
 - b. increase the Administration Charge by \$100,000, up to a maximum amount of \$500,000, to reflect the success fee provided under the engagement letter between the Applicant and Cardinal Advisory (the "CRO Engagement Letter"), which is payable upon the occurrence of a sale, transfer, or assumption, on a going concern basis, of all or substantially all of the Chalice Group's operations and assets;
 - c. grant the Applicant relief from certain securities disclosure and shareholder meeting requirements (the "Securities Relief", as defined more fully below); and
 - d. extend the stay of proceedings to July 28, 2023.
10. In addition, the Applicant also seeks an order (the "CCAA Court SISP Approval Order") approving an expedited sales and investment solicitation process (the "SISP"), soliciting transactions for the acquisition of or investment in all or substantially all of the property or the business of the Chalice

Group. The SISP will take place over approximately 30 days, with an outside transaction closing deadline of July 20, 2023. This accelerated timeline is necessary due to the dire financial situation of the Chalice Group.

11. The Monitor supports and recommends both proposed orders.

The ARIO

12. The proposed additions to the Initial Order are for the most party standard. The request to extend the stay of proceedings to July 28, 2023 and various other changes are all consistent with the Applicant's plan to look for a going concern transaction within the period in which the company is projected to have sufficient cash flow to do so, with the benefit of the breathing room that the stay affords. The additional authorizations that have been incorporated into the ARIO are in furtherance of the restructuring efforts.
13. The Authority for the stay extension and the other proposed amendments to the Initial Order in the ARIO can be found in s. 11 of the CCAA.

Appointment of Restructuring Officer

14. The engagement of a chief restructuring officer is appropriate where the proposed chief restructuring officer has expertise that will assist the Applicant and the Monitor in achieving the objectives of the CCAA. See *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107 at para 35; see also *Boreal Capital Partners Ltd. et al, Re*, 2021 ONSC 7802 at para 31. The experience and skills of a restructuring professional can be key to maximizing the value of a CCAA applicant's business and assets. For example, the appointment of a chief restructuring officer has been justified to "ensure that the SISP will be implemented by professionals who will enhance the likelihood that it generates maximum value for [...] stakeholders."(*Walter*, at para. 31).
15. Chief restructuring officers with background and knowledge of the company's affairs and business operations have been found to not only be appropriate, but essential, to the restructuring efforts. See *Re 8449522 Canada Inc.*, 2013 ONSC 6167, at paras. 48; also paras. 17, and 32; see also *Boreal*, at para 32; *Victorian Order of Nurses for Canada, Re*, 2015 ONSC 7371, at para 27.
16. The court is satisfied that the CRO possesses these characteristics. Mr. Secord has served on the Applicant's board for over three years and has developed familiarity with the Applicant's business, operations, and financial affairs. Moreover, Mr. Secord has prior restructuring experience, including experience acting as a chief restructuring officer, and has already been acting as CRO for the Applicant through Cardinal Advisory. Mr. Secord's experience and industry knowledge make him well-positioned to lead the Chalice Group through the restructuring process and into the proposed SISP. The Monitor recommends the appointment of the CRO and considers the success fee to be reasonable.
17. The ARIO also provides certain protections for the CRO similar to those granted to chief restructuring officers in other CCAA proceedings. CCAA courts have emphasized the importance of providing such protections to ensure that qualified professionals consent to take on such roles and provide necessary expertise in restructuring proceedings. *Collins & Aikman Automotive Canada Inc, Re.*, 2007 CanLII 45908 (Ont SCJ), at para. 23 and paras. 133-138; *ICR Commercial Real Estate (Regina) Ltd v. Bricore Land Group Ltd.*, 2007 SKQB 12,1 at para. 19, aff'd on this point 2007 SKCA 72 at paras 75-77.
18. The appointment of the CRO and related protective provisions in the ARIO (some of which include Mr. Secord personally in addition to the company through which he operates) are appropriate and are approved.

Increased Administrative Charge

19. The Applicant asks this Court to approve the fees and expenses contemplated under the CRO Engagement Letter and to increase the Administration Charge to a maximum amount of \$500,000. The proposed increase in the Administration Charge reflects the \$100,000 success fee provided under the

CRO Engagement Letter, which is only payable upon the occurrence of a sale, transfer, or assumption, on a going concern basis, of all or substantially all of the Chalice Groups operations and assets.

20. The ARIO provides for the inclusion of the CRO's success fee in the Administration Charge and a corresponding increase in the size of the charge. The CRO's monthly fees to the end of the stay period have already been paid (in accordance with what the CRO Engagement Letter provides for) quarterly, in advance.
21. Pursuant to s. 11.52 of the CCAA, this Court has authority to order a charge over the assets of a debtor company in an amount that the Court considers appropriate in respect of the fees and expenses of "any financial, legal or other experts engaged by the company for the purposes of proceedings under this Act." This would include the CRO, whose expertise will complement and support the Applicant's restructuring efforts.
22. The increased Administrative Charge flows from the court's approval of the appointment of the CRO pursuant to the CRO Engagement Letter and it is approved on that basis.

Relief from Reporting and other Statutory/Regulatory Obligations

23. The court has the authority under s. 11 of the CCAA to grant the Applicant relief from securities, regulatory and other reporting and disclosure and statutory requirements that would detract from its restructuring efforts. CCAA courts have held that stakeholders will not be prejudiced by such relief where, as here, detailed financial and operational information of the Applicant will be publicly available on the Monitor's website and available to all stakeholders. SEE *MPX International Corporation Re*, 2022 ONSC 4555, at para. 7.
24. The proposed language in the ARIO respecting the Securities Relief is consistent with similar provisions recently approved by this Court and the Ontario Securities Commission in the matter of a plan of compromise or arrangement of *Magna Gold Corp.*, Court File No. CV-23-00696874- 00CL (SCJ).
25. A similar rationale is applied to the Applicant's request to be relieved of its obligation to call an annual general meeting. This has been done in other cases. See *MPX International Corporation*, 2022 ONSC 4348, at para 72; and *Re Canwest Global Communications Corp.*, 2009 CanLII 55114 (Ont SCJ), at paras. 53 and 54.

SISP Approval

26. The SISP will be conducted by the Applicant and builds in extensive consultation with, and approval and consent rights to, both the Monitor and the Oregon Receiver. Concurrent SISP approval and proposed sale approval hearings will be held in both the CCAA Court and the Oregon Court to respect the integrity of both insolvency proceedings. The CRO would be empowered to act for the Applicant during the SISP.
27. Given the Applicant's significant liquidity constraints, the implementation of an accelerated SISP, with the consent of both the Monitor and the Oregon Receiver, is the best option to preserve the Chalice Group's business and assets while maximizing potential value for stakeholders. The Applicant's cash flow forecast simply does not support a longer staged process. However, the Applicant, the CRO, the Monitor and the Oregon Receiver are all satisfied that the SISP that they have developed will afford an opportunity for interested prospective purchasers to meaningfully participate in it. The marketing and solicitation efforts will be focused on prospective purchasers who are already in, or who have been identified as having an interest in being in, the Oregon cannabis market.
28. Subject to court approval in both jurisdictions, the SISP will be carried out by the Applicant with assistance from the CRO, the Monitor and the Oregon Receiver on an expedited basis in a single phase process that will span approximately 30 days. It will commence on Monday June 5, 2023, after the anticipated approval by the Oregon court, which, if granted after the scheduled hearing before the

Oregon Court on the afternoon of June 2, 2023 (pacific time), will be after the close of markets and normal business hours in Toronto (eastern time).

29. The Court may exercise its statutory discretion under s. 11 of the CCAA to approve a sale and investment solicitation process that is fair and reasonable. There are precedents for similarly expedited sales processes in real time insolvency matters. See *Arrangement relatif à Xebec Adsorption Inc.*, 2022 QCCS 3888 at para 12; *Re Port Capital Development (EV) Inc.*, 2022 BCSC 1464 at para 56; *Re Feronia Inc.*, 2020 BCSC 1372, at para 45; *In the matter of a plan of compromise or arrangement of Nexient Learning Inc.*
30. The factors to be considered in approving a SISP come from s. 36 of the CCAA and are often cited to in *Re Nortel Networks Corp.*, 2009 CanLII 39492 (SCJ), at para 49. In this case the following factors support the approval of the SISP:
 - a. A sale or investment transaction is warranted at this time in light of the Applicant's liquidity crisis and lack of funds to continue operating through a longer sale process;
 - b. There is no better viable alternative to the SISP. given the Chalice Group's dire financial circumstances;
 - c. The SISP is reasonable and fair in the circumstances and has the checks and balances of the oversight and need for consent and approval from both the Monitor and the Oregon Receiver, as well as the CCAA Court and the Oregon Court;
 - d. The SISP will benefit the whole "economic community" if it succeeds in identifying a going concern transaction before the Applicant runs out of cash to continue its operations;
 - e. The SISP was developed in consultation with the Monitor and the Oregon Receiver; and
 - f. The Monitor supports the approval of the SISP.
31. The SISP is approved.

Orders

32. The Amended and Restated Initial Order and the SISP Approval Order shall issue in the forms signed by me today.
33. A hearing has been scheduled for 90 minutes on July 19, 2023 (currently set to commence at 11:30 a.m.) to consider any sale transaction that might arise from the SISP, and/or any other relief that the Applicant may wish to seek at that time.



KIMMEL J.