CITATION: Contract Pharmaceuticals Limited
COURT FILE NO.: CV-23-711401-00CL
DATE: 20240417

RE: **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 CONTRACT PHARMACEUTICALS LIMITED, CPL CANADA HOLDCO LIMITED, CONTRACT PHARMACEUTICALS LIMITED CANADA, GLASSHOUSE PHARMACEUTICALS LIMITED CANADA, AND GLASSHOUSE PHARMACEUTICALS LLC

BEFORE: W.D. Black J.

COUNSEL: *Christopher Armstrong, Erik Axell and Jennifer Linde,* Counsel to the Applicants
Noah Goldstein and Ross Graham, Monitor, KSV Restructuring Inc.
Joseph J. Bellissimo and Stephanie Fernandes, Counsel to the Monitor
Jesse Mighton, Counsel to Deerfield Management Company
Cristian Delfino, Counsel to Royal Bank of Canada
Tracy C. Sandler and Hannah Davis, Counsel to Aterian
Mark Chesen, SSG Capital Advisors
Eli Ghali Benjelloun and Bobby Boursiquot, Neopharm Labs Inc.
Elizabeth Vanderbilt, OLSA USA, LLC
Sarah Robertson, Project Strategies
Romeo Saquilayan and Stephanie Magill, Apex Graphics
Steve De Freitas, Univar Solutions
Laura Culleton, Counsel to Export Development Canada
Sandra Roberts
Anjali Sandhu
Hannah Davis
Cameron Carvalho
Colby Linthwaite

HEARD: April 17, 2024

ENDORSEMENT

Overview

[1] The Applicants seek an order (the "ARVO"), in the nature of a reverse vesting order, approving an agreement for a share purchase transaction (the "Sale Agreement" and the "Transaction"), between Contract Pharmaceuticals Limited ("CPL") as seller, and AIP Elixer Buyer Inc. (the "Buyer"), an affiliate of Aterian Investment Partners IV, LP ("Aterian"). The

applicants seek certain related declarations. In this endorsement I will refer to various companies involved in the AVRO, and aspects of the AVRO itself, as those companies and steps are defined in the applicants' materials.

[2] The Applicants also seek an order (the "Ancillary Relief Order") extending the current stay period through June 17, 2024, expanding the powers of the monitor KSV Restructuring Inc. (the "Monitor") as they relate to residual companies and remaining Applicants (following the implementation of the ARVO), authorizing the applicants and the Monitor to make certain distributions from the net proceeds of the Transaction, and granting certain ancillary relief said to be necessary to advance these CCAA proceeding.

[3] Finally, in relation to employees whose employment will be terminated as part of the proposed arrangements, the Applicants seek an order (the "Terminated Employee Fund Order") approving the Terminated Employee Fund Escrow Agreement to be entered into between the Buyer, as depositor, and the Monitor, as escrow agent, pursuant to which the Terminated Employee Fund will be established.

Initial CCAA Order and SISP

[4] On December 15, 2023, the Applicants obtained an Initial Order (as amended and restated by order of this court dated December 22, 2023 (the "ARIO")) under the CCAA to continue the implementation of the Applicants' restructuring efforts and to pursue a refinancing, sale and investment solicitation process (the "SISP") in respect of the CPL business.

[5] At the time of granting the ARIO, the court also granted the SISP Approval Order approving the SISP to be undertaken by the Applicants with the assistance of the Financial Advisor and under the oversight of the Monitor and directing the applicants, the Financial Advisor and the Monitor to implement the SISP pursuant to its terms.

The Sale Agreement

[6] The Sale Agreement is the outcome and culmination of the SISP. The Applicants assert that the "going concern" Transaction encompassed in the ARVO provides significant benefits to the Applicants' stakeholders, including repayment of nearly $60 million of secured debt owed by the Applicants, the assumption of a substantial portion of stayed trade payables, and continued employment for the vast majority of CPL Canada's 279 employees. The applicants note that the Transaction is supported by the Monitor, and by Deerfield Private Design Fund III, LP ("Deerfield"), the Applicant's DIP Lender and largest secured creditor. In fact, no opposition to the Transaction or the ARVO has been expressed, including at the hearing before me. This tends to support the Applicant's submission that the relief sought is in the best interests of the Applicants and their stakeholders.

[7] The reverse vesting Transaction provides that all of the issued and outstanding shares of CPL Canada Holdco (the "CPL Shares"), will be sold, assigned and transferred to the Buyer, with the result that the Buyer will become the sole shareholder of CPL Canada Holdco, and that all Excluded Assets, Excluded Contracts and Excluded Liabilities (all as defined in the Sale Agreement), will be transferred and vested out to ResidualCo.

The Applicant's Business and Rationale for the RVO

[8] The specific impetus for the Transaction being structured as a reverse vesting transaction is that CPL Canada holds certain regulatory licences issued by (among others), Health Canada and the U.S. Food and Drug Administration (the "Regulatory Licences"), most of which are non-transferrable and all of which are critical to the operation of the CPL business. The reverse vesting structure allows CPL Canada to maintain all of its Regulatory Licences, enabling the CPL Business to continue without interruption as a going concern upon closing of the Transaction.

[9] The Applicants are in the business of developing, testing and manufacturing non-sterile liquid and semi-solid pharmaceutical and regulated over-the-counter products. Their core business is that of CPL Canada, based in Mississauga, Ontario.

[10] The Applicants acknowledge that beginning in 2016, they made certain strategic decisions that led to losses and inconsistent performance in their business lines, and have distracted from the core CPL business and created debt burden.

[11] As a result of challenging interest expenses arising from this debt burden, leading in turn to reduced availability of funding, and despite efforts to restructure, the Applicants began to struggle to meet ongoing working capital requirements.

[12] The Applicants accordingly began, with the assistance of advisors, to explore strategic alternatives. These efforts did not immediately yield a definitive transaction, and so, facing mounting liquidity challenges, the Applicants sought and received CCAA protection.

[13] Once the SISP Order was in place, the Applicants, with the assistance of a financial advisor and under the oversight of the Monitor, conducted the SISP with a view to identifying the best available restructuring transaction for the benefit of all concerned.

The SISP Process

[14] The SISP process in fact generated several submissions before the qualified bid deadline, including the Aterian Bid leading to the Sale Agreement. With input and assistance from the financial advisor and the Monitor, and following negotiations, the Applicants determined that the Aterian Bid was the best option.

[15] The consideration from the Buyer under the Sale Agreement consists of an amount equal to the aggregate amount of the Applicants' secured debt obligations (of approximately $57,516,345) less U.S.$8,000,000, to be the subject of the Deerfield earn-out, as well as a cash component to satisfy priority administrative obligations and wind-down costs. In connection with the proposed Terminated Employee Fund Order, the Buyer will also pay $500,000 to the Monitor for the purposes of establishing the Terminated Employee Fund.

[16] The Buyer has engaged in discussions with certain customers of the business, and on April 9, 2024, the Buyer, the Applicants and Deerfield reached an agreement in principle to waive a condition relative to the customers (and related matters).

[17] This waiver, and the conversion of repayment of U.S.$8,000,000 of the amounts owing to Deerfield to an earn-out under a separate agreement, were addressed in an amendment to the Sale Agreement on April 12, 2024.

Details and Results of the Proposed Transaction

[18] Following the Transaction, the Applicants comprising the Company (again, as defined in the Applicants' materials) will retain substantially all of the assets owned by them on closing, and will retain certain liabilities, including up to approximately $10.8 million of the Applicants' pre-filing trade payables, liabilities to continuing employees, and liabilities relating to retained contracts, permits and licences.

[19] The ARVO, as noted, will provide that upon completion of the Transaction, ResidualCo will be added as an Applicant in these proceedings and the Applicants comprising the Company will be released from the purview of these proceedings, save and except for the ARVO.

[20] The ARVO also provides for a release of all claims against the current and former directors, officers, shareholders, employees, legal counsel and advisors of each of the Applicants, and of the Monitor and its legal counsel, the Buyer, and Deerfield (and in each case –the current and former directors, officers, partners, employees, consultants, legal counsel and other advisors), with the exception that claims against current directors and officers of the Applicants are preserved to the extent necessary to maintain claims against any insurance policies that may be available to pay insured claims (and limited to those claims and any proceeds).

[21] With respect to the Ancillary relief sought, the Stay Extension Order currently in place, granted on April 10, 2024, will expire on May 3, 2024, whereas the Sale Agreement provides for an outside date of June 7, 2024. As such, the Applicants seek an extension of the stay period to June 17, 2024.

[22] It is contemplated that the vast majority of the Company's 279 employees will continue in their employment following the closing of the Transaction (the Sale Agreement confirms that not less than 250 employees will be retained). However, it is also contemplated that a small number of employees may be terminated prior to the closing of the Transaction.

[23] As a result of the reverse vesting feature of the Transaction, CPL Canada will emerge from these proceedings, meaning that there will be no triggering event as defined in and required by WEPPA. To address this, the Applicants seek a declaration that ResidualCo (which is expected to be bankrupted), is deemed to be the former employer of former employees of the Applicants who were or are terminated between June 15, 2023, (being six months prior to the commencement of the CCAA proceedings) and the closing date, solely for the purposes of termination pay and severance pay pursuant to WEPPA.

[24] Inasmuch as, upon closing of the Transaction, all then current directors and officers of the Remaining Applicants are expected to resign from these positions, with the result that the Remaining Applicants will have no directors or officers, the Ancillary Relief Order provides that the Monitor will be authorized and empowered to exercise any powers properly exercised by the boards of directors of each of the Remaining Applicants, effective as of the closing date.

[25] The Sale Agreement contemplates repayment in full of the Applicants' secured debt as part of the closing process (subject to the Deerfield earn-out). The Applicants therefore request authority that they and the Monitor may make certain distributions from the net proceeds of the Transaction to their secured creditors.

[26] The Applicants also seek approval of the Monitor's reports and activities in connection with these proceedings.

[27] Liabilities owing to Terminated Employees are Excluded Liabilities under the Sale Agreement, and so the Applicants seek approval of the Terminated Employee Fund Order under which the Buyer will fund and the Monitor will administer the Terminated Employee Fund in the amount of not less than $500,000. This Order also contemplates and provides for one-time Hardship Benefit payments for those employees facing termination of their employment in the circumstances of the CCAA proceedings.

Jurisdiction to Approve the Sale Agreement and Transaction

[28] Under section 36 of the CCAA this court has jurisdiction to approve a sale outside the ordinary course of business. I agree with Penny J.'s observation in *Harte Gold Corp (Re)*, 2022 ONSC 653 that, because the structure of a transaction employing an RVO "typically does not involve the debtor 'selling or otherwise disposing of assets outside the ordinary course of business as provided in s. 36(1)", but is instead "really a purchase of shares of the debtor and "vesting out" from the debtor to a new company, of unwanted assets, obligations and liabilities" (as here) it is not apt to say that jurisdiction to issue an RVO is founded in s. 36(1).

[29] I also agree, however, with Penny J.'s comments (and those of a number of other judges who have discussed the issue) that section 11 of the CCAA, as broadly interpreted in the relevant jurisprudence, does provide the jurisdiction to grant an RVO, so long as the discretion under s. 11 is exercised in accordance with the objects and purposes of the CCAA. It is in this way, again as observed by Penny J. that the analytical framework of s. 36 of the CCAA can be applied to an RVO transaction, even though s. 36 "may not support a standalone basis for the jurisdiction in an RVO situation".

[30] Finally, also from *Harte*, I echo Penny J.'s caution that "it would be wrong to regard employment of the RVO structure in an insolvency situation as the "norm" or something that is routine or ordinary course." Despite the increasing use of RVOs in recent years, I agree with Penny J. that such a structure should continue to be considered an unusual and extraordinary measure, and only available in limited circumstances.

Observations and Conclusions re Relief Sought

[31] That said, in my view the circumstances in this case justify the use of an RVO structure.

[32] By reference to s. 36(3) of the CCAA, and to the frequently cited principles in *Royal Bank of Canada v. Soundair Corp.* (1991), 83 DLR (4th) 76 (Ont. CA) as well as those enunciated in *Nortel Networks Corporation (Re),* (2009) OJ No 3169 (QL) ONSC), and the touchstones articulated in *Harte,* I note:

(a) The solicitation process leading to the Sale Agreement was reasonable. The Applicants and their Financial Advisor spent about three months on solicitation efforts, involving contacting 445 potentially interested parties, resulting in 11 LOIs being received from prospective bidders and several submissions being received before the Qualified Bid Deadline, including the successful Aterian Bid;

(b) The consideration under the Sale Agreement is fair and reasonable and will result in repayment in full of the Applicants' secured debt (subject to Deerfield's earn-out) totaling approximately $58 million and the retention of trade creditor liabilities of up to $10.8 million;

(c) The Transaction benefits the economic community, in that it results in the continuation of the CPL business as a going concern, in turn meaning that the vast majority of the Applicants' employees will keep their jobs, and that customer and supplier relationships will be preserved. Any terminated employees will have access to a hardship benefit and the arrangement to access WEPPA;

(d) The Transaction is supported by the Monitor, and the process leading to the Transaction included consultation with key stakeholders, who also support it;

(e) There is no better viable alternative available; and,

(f) The criteria in s. 36(7) are met, in that the Applicants have and will continue to pay all employee wages and compensation referred to in paragraph 6(5)(a) and do not owe any obligations of the type described in paragraph 6(6)(a).

[33] As noted above, where courts have determined reverse vesting orders to be appropriate, it is frequently in a setting where, as here, the debtor operates in a highly regulated environment in which its existing permits, licences or other rights are difficult or impossible to assign to a purchaser.

[34] The Transaction also appears to balance stakeholder interests. There is no evidence of creditors who will be materially disadvantaged by the reverse vesting structure of the transaction, and indeed the Transaction preserves creditors' rights to the extent they would have been available in an asset sale scenario.

[35] I am prepared to grant the releases sought for the various officers and directors and others.

[36] *In Lydian International Limited (Re)*, 2020 ONSC 4006, Morawetz CJ summarized certain non-exhaustive factors relevant to the approval of releases in CCAA proceedings. In my view the releases sought here are aligned with the *Lydian* factors. The released parties have been and will continue to be important in facilitating the CCAA proceedings and the Transaction, and the continued involvement of the Applicants, the Buyer, the Monitor and Deerfield and their respective professional advisors will continue to be critical in the restructuring effort.

[37] The releases are thus rationally connected to the purposes and benefits of the Transaction, and they are fair, reasonable and not unduly broad. As further evidence that that is the case, all

parties on the service list have been provided with notice of the proposed releases, and no stakeholder has objected.

Approval of Orders

[38] For all of these reasons, I approve the ARVO.

[39] I also approve the Ancillary Relief Order. I find that the debtor company has been acting in good faith and with due diligence, and that no creditor will be prejudiced by the extension sought. That extension will allow the necessary time for the Transaction to close, and I note that the Monitor's Fourth Report says that the Applicants are expected to have sufficient liquidity to continue operations during the contemplated extension.

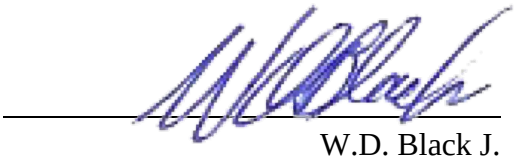
[40] I also approve the WEPPA declaration within the Ancillary Relief Order, in that it will assist the modest number of employees whose employment has been or will be terminated to access termination and severance pay.

[41] I agree that the Monitor's powers should be expanded in the fashion contemplated by the Ancillary Relief Order. Given the planned resignation of directors and officers, it will be important for the Monitor to have the necessary powers to, among other things, wind down the CCAA proceedings and assign or cause any of the Remaining Applicants to be assigned into bankruptcy.

[42] It is also appropriate that the Ancillary Relief Order authorize the Applicants and the Monitor to make the distributions contemplated from the net proceeds resulting from the closing of the Transaction, and I approve the proposed distributions.

[43] I am also approving the Monitor's activities and reports (including the most recent Fourth Report). I find that the Monitor's conduct and activities have been undertaken in good faith and to the benefit of all stakeholders.

[44] Finally, I also approve the Terminated Employee Fund Order. As noted, relatively few employees are expected to lose their positions, but for those who have, or will be terminated, I find that the Terminated Employee Fund is an appropriate mechanism.



W.D. Black J.

DATE: April 17, 2024