



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00711401-00CL

DATE: 12/15/2023

NO. ON LIST: 1

TITLE OF PROCEEDING: CONTRACT PHARMACEUTICALS LIMITED et al.

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

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ENDORSEMENT OF JUSTICE PENNY:

Overview

[1] Contract Pharmaceuticals Limited (“CPL”) is a company of nearly 300 employees whose headquarters are in Mississauga. CPL and its subsidiaries and affiliates are the Applicants. They are in the business of developing, manufacturing, packaging and testing non-sterile liquid and semi-solid pharmaceutical and regulated over-the-counter products.

[2] The Applicants have commenced these proceedings under the CCAA, with the support of their largest lender, in order to (i) obtain a stay of proceedings, ii) obtain urgently required interim debtor-in-possession financing in order to maintain operations in the normal course and fund these CCAA proceedings, (iii) continue the implementation of their restructuring efforts, and (iv) pursue a refinancing, sale and investment solicitation process with a view to identifying and completing a restructuring transaction.

[3] The issues to be considered on this application are whether:

(a) the Applicants are entitled to protection under the CCAA;

(b) the Court should grant the stay of proceedings;

(c) the Court should permit the Applicants to make payments to suppliers on account of pre-filing obligations with the consent of the Monitor and the DIP Lender;

(d) the Court should grant the Administration Charge and Directors’ Charge;

(e) the Court should approve the DIP term sheet and grant the DIP Lender’s Charge; and

(f) the Court should authorize CPL to act as foreign representative and to apply for foreign recognition of these CCAA proceedings, as determined necessary by the Applicants.

Analysis and Conclusions

[4] Each of the Applicants are “companies” under the CCAA.

[5] CPL and Glasshouse America are foreign corporations but they have funds on deposit in bank accounts in Ontario, where the business operations are principally located.

[6] The Applicants meet both the traditional test for insolvency under the BIA and the expanded test in Stelco based on a looming liquidity condition that would lead to the Applicants being unable to pay its debts as they generally become due if a stay of proceedings and ancillary protection are not granted by the court:

(a) the book value of the Applicants’ liabilities exceeds the book value of its assets;

(b) the vast majority of the Applicant's liabilities are its funded debt obligations, most of which have either matured, are in default or are payable on demand. The Applicants are not presently able to repay these debts, and there is no realistic prospect of refinancing them outside of a formal restructuring process given the Applicant's liquidity position and unsuccessful attempts to do so to date; and

(c) the Applicants have less than \$1.5 million of remaining cash on hand and, absent the DIP financing, will exhaust its cash resources in the near term.

[7] Each of the Applicants (other than CPL itself) are direct or indirect wholly-owned subsidiaries of CPL. The Applicants are therefore "affiliated companies" for the purpose of the CCAA. There are consolidated liabilities of over \$50 million, exceeding the \$5 million threshold under the CCAA.

[8] I am satisfied that the initial stay period (maximum 10 days under the CCAA) sought by the Applicants is necessary for them to preserve stability while pursuing their restructuring efforts, which they hope will enable CPL to continue as a going concern.

[9] Payment for certain pre-filing goods and services supplied to Applicants is likely to be necessary to preserve key vendor relationships and the timely supply of products. Any disruption to the provision of goods and services in this regard could jeopardize the value of the CPL business, and the viability of the SISP or any transaction in respect of the Applicants. The proposed Monitor supports this request. It is approved.

[10] The Applicants seek an Administration Charge in the maximum initial amount of CA\$375,000 to secure the fees and disbursements incurred both before and after the commencement of these proceedings by legal counsel for the Applicants, the proposed Monitor, legal counsel for the proposed Monitor and the Financial Advisor. It is appropriate for this Court to exercise its jurisdiction and grant the Administration Charge given that: (i) the beneficiaries of the Administration Charge will play a critical role in assisting the Applicants with maintaining stability and operations, implementing the SISP and other restructuring initiatives and advancing the overall progression of these CCAA proceedings; (ii) there is no unwarranted duplication of roles; (iii) the quantum of the proposed charge is reasonable having regard to administration charges granted in other CCAA proceedings of this nature; (iv) the amount of the Administration Charge has been determined with guidance from the proposed Monitor and is limited to what is necessary for the initial stay period; and (v) the proposed Monitor and the largest secured creditor (and DIP Lender) support the Administration Charge. The Administration Charge is approved.

[11] Although the directors and officers of the Applicants have insurance coverage under a D&O policy, the D&O policy has limits of coverage and is subject to various exclusions and limitations. It is therefore possible that the D&O policy would not provide sufficient coverage for potential liabilities that the directors and officers of the Applicants could incur in these CCAA proceedings. The value of indemnities in favour of the directors and officers is also uncertain given the financial circumstances of the Applicants. In light of these limitations, the continued service and involvement of the directors and officers in this proceeding is conditional upon the granting of the Directors' Charge. The amount of the Directors' Charge, \$1.801 million, has been determined based on the anticipated exposure to liabilities which potential engage D&O liability during the initial stay period, such as employee wages, vacation pay and HST. The Directors' Charge will apply only to the extent liabilities are not covered by the D&O policy and the related indemnity is subject to the usual carve-out pertaining to gross negligence or wilful misconduct. The Directors' Charge is necessary so that that Applicants can continue to benefit from the directors' and officers' experience and familiarity with the business as they guide restructuring efforts, including the implementation of the SISP and the eventual completion of a transaction. The proposed Monitor supports the Applicants' request for the Directors' Charge. It is approved. The Applicants will use best efforts to provide the secured creditors with more information about the terms and conditions of the D&O policy prior to the comeback date.

[12] The DIP Lender's Charge is proposed to be up to \$1.5 million during the initial stay period. I am satisfied that the DIP Lender's Charge is necessary and appropriate:

- (a) the DIP Loan is required to provide the Applicants with the necessary liquidity to fund its business and restructuring efforts during the initial stay period and preserve the value of the CPL Business. Without the DIP Loan, the Applicants will not be able to fund its business and restructuring efforts;
- (b) the amount of the DIP Loan to be made available to the Applicants pursuant to the Initial Order is limited to what is necessary to maintain operations during the initial stay period;
- (c) the Applicants have been unable to obtain incremental financing outside of the CCAA proceedings, and the DIP Lender has indicated that it is not prepared to advance additional funds without the security of a court-ordered priority charge under the CCAA;
- (d) the Applicants' largest secured creditor, Deerfield, is providing the DIP loan and supports these proceedings and the Applicants' restructuring efforts;
- (e) significantly, the Applicants have been able to obtain the DIP loan on a "junior" basis to the existing RBC/EDC security, with the result that the RBC's and EDC's collateral will not be impaired by the DIP Lender's Charge; and
- (f) the proposed Monitor is of the view that the DIP term sheet and the interim DIP Lender's Charge are appropriate and limited to what is reasonably necessary.

[13] Under s. 56 of the CCAA, this Court has jurisdiction to make an order that allows an applicant to act as a representative in respect of any proceeding under the CCAA for the purpose of having such proceeding recognized in a jurisdiction outside of Canada. While the Applicant's core business operations are in Canada, two of the Applicants are incorporated in the United States where they maintain certain limited residual commercial activities. Accordingly, authorizing CPL to seek recognition of these CCAA proceedings in the United States provides the Applicants with an additional safeguard to be used as needed, which is appropriate in the circumstances and in the best interests of stakeholders.

[14] Initial Order to issue in the form signed by me this day.

[15] The Initial Order has been made with limited notice due to the emergent circumstances of the Applicants. It conforms to the requirements of the CCAA that an initial order do only what is necessary for the initial stay period. All stakeholders will have the opportunity to raise issues, in respect of which they may have had little or no notice, at the comeback hearing which is scheduled before me at 10:00 AM on Friday December 22, 2023.



Penny J.