ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: **BK-24-00459813-0031** **DATE:** **April 3, 2024**

NO. ON LIST: **1**

TITLE OF PROCEEDING: GOFOR INDUSTRIES INC et al

BEFORE JUSTICE: **Justice W.D. Black**

PARTICIPANT INFORMATION

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Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE BLACK:

[1] This was a motion by Go-For Industries Inc. ("Go-For" or the "Company") for an order (the "AVO") approving the going-concern sale transaction (the "Transaction") contemplated by the asset purchase agreement between the Company as vendor and 1000826405 Ontario Inc. ("10008") as purchaser entered into as of March 20, 2024 subject to court approval (the "Sale Agreement"), and vesting in the purchaser all of the vendor's right, title and interest in and to the property described in the Sale Agreement (the "Purchased Assets").

[2] Go-For also seeks an order (the "Ancillary Order") extending the time for the Company to file a proposal and the corresponding stay of proceedings through June 4, 2024, approving the Second Report of the Proposal Trustee dated March 31, 2024, and authorizing and empowering the Company to enter into a factoring agreement dated March 28, 2024 (the "Factoring Agreement") between the Company and Avren FinServe, LLC ("Avren") pursuant to which the Company has agreed to sell designated invoices forming a portion of its accounts receivable to Avren in exchange for amounts to provide additional liquidity over and above amounts available under the DIP Term Sheets established in an order of the court dated March 25, 2024.

[3] Go-For is a privately held company carrying on business as a "tech-enabled last mile delivery facilitator analogous to Door-Dash or UberEats but for over-sized and bulky items." It operates through a proprietary technological platform that matches a retail partner who requires the delivery of freight with a delivery driver who will then deliver to an end customer.

[4] Go-For began to experience significant liquidity issues over the last few months, which had become acute in the early part of 2024.

[5] Go-For defaulted on obligations owing to its senior lender Trinity Capital Inc. ("Trinity"). As a consequence, it entered into a forbearance agreement with Trinity, pursuant to which Go-For agreed to commence a marketing and sale process (the Pre-NOI SISP") and engaged a financial advisor with significant industry experience, Onward Innovation Ltd. ("Onward").

[6] As a result of the Pre-NOI SISP, the Company received what it describes as a viable bid from 10008.

[7] The Company's ongoing liquidity challenges ultimately led to the Company filing, on March 20, 2024, a Notice of Intention to Make a Proposal ("NOI") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[8] KSV Restructuring Inc. ("KSV") was appointed as proposal trustee. The proceedings commenced on March 20 (the "NOI Proceedings") were commenced, it appears, to give the Company breathing room to obtain urgent financing necessary to continue ongoing operations, with a view to obtaining a going-concern sale of the business. KSV deposes that the Pre-NOI SISP was a robust process.

[9] The uncontroverted evidence before me is that Onward contacted 470 potentially interested strategic and financial parties by way of a targeted outreach of approximately 2700 emails and 1300 calls. It entered into non-disclosure agreements with five potentially interested strategic partners, circulated a confidential information memorandum to all parties that executed NDAs, established a virtual data room, arranged and oversaw audit and due diligence meetings, and took other steps to pursue a transaction.

[10] The court order of March 25, 2024 (the "Initial Order") established certain credit facilities and charges, involving Trinity as well as Avren FinServe LLC, ("Avren") another lender.

[11] The Company received only one binding expression of interest from a third party, and that expression of interest did not comply with the conditions set out in the agreement with Trinity pursuant to which the DIP Facility from Trinity was established.

[12] As such, given the lack of actionable offers from unrelated third parties, the Company and Trinity, with oversight from KSV, engaged in discussions with the Company's existing shareholders, 3Q Investment Partners LLC ("3Q") and 12BF Global Ventures ("12BF") to explore potential offers from them for the Company's business.

[13] On the date set as the deadline for bids (the "Bid Deadline") the Company received a non-binding expression of interest from 3Q, and a binding agreement from 12BF along with an offer for DIP financing (the "12BF Offer").

[14] On the day following the Bid Deadline, 3Q was told that its expression of interest did not comply with the requirements for an executable bid. 3Q requested and was given a three-day extension to submit a binding offer with interim financing, but on the last day of the extension 3Q advised the Company that it would not be submitting a definitive binding offer.

[15] Given that the 12BF Offer was the only compliant offer received by the Company, and the only offer that allowed the Company to access the interim capital that it needed immediately to operate and to pursue a going-concern solution to its ongoing financial difficulties, the company focused on the 12BF Offer, ultimately executing the Sale Agreement with 10008 (on March 20, 2024).

[16] As of today's hearing, the Sale Agreement has been finalized. It is described by the Company and by KSV, and by other interested parties as the best possible outcome for the Company in the current circumstances.

[17] It allows for the Company's business to continue as a going concern, is said to maximize value, was the best and only actionable offer for the Company following the Pre-NOI SISP, and among other results, will likely preserve the employment of no fewer than 90% of the Company's current employees.

[18] In advance of the hearing before me, no materials were filed opposing the relief sought.

[19] Counsel for the Company advised, on the morning of the hearing, that it appeared that a number of shareholders and unsecured creditors of the Company had indicated that they would attend, albeit without legal representation.

[20] That proved to be the case, and I heard from a handful of those individuals.

[21] The submissions that I received from Mr. Classen and Mr. Sweet, each of whom was affiliated with 3Q and each of whom had occupied significant roles relative to the Company (and its board of directors) were representative of the nature of the opposition to the relief sought.

[22] Their respective submissions, which I should note were articulate and measured, effectively expressed two major complaints in opposition to the relief sought.

[23] First, they asserted that there had been insufficient time and insufficient notice of the hearing to allow them to finalize a competing bid or bid, which they maintained would in fact offer more value for all parties.

[24] Second, they alleged that the Pre-NOI SISP had not in fact been as robust as represented by the Company, and that, to their knowledge, it had failed to reach various parties in the industry who would be logical bidders for the Company's business and assets.

[25] Ultimately, I did not accept these submissions.

[26] The only evidence before me showed that the Pre-NOI SISP had in fact been appropriately robust. As I mentioned in the brief oral decision that I provided to all attendees at the hearing at the conclusion of the submissions I heard, I put particular stock in the evidence from KSV, and the submissions on its behalf, that in fact the solicitation and sale process had been extensive and robust, and had yielded the best available offer.

[27] These representations from an experienced officer of the court are significant, and I rely on them.

[28] On the other hand, I had no evidence whatsoever from the parties in attendance who opposed the relief. While I was told that an expression of interest had been delivered to the Company earlier on the day of the hearing, there was no suggestion that it was a binding offer, and those who spoke in opposition to the motion asked for more time to solidify the competing bid or bids.

[29] With respect to the allegation about insufficient time, while it may be that notice of the motion was necessarily tight (though not outside of the time permitted under the Rules), it is clear to me that all interested stakeholders have had ample ongoing knowledge of the Company's plight and its efforts to find a viable way forward.

[30] It follows that all interested stakeholders have also had time to develop or arrange competing bids if they wished to do so. Indeed 3Q, which appears to be behind that expression of interest that materialized on the morning of the hearing, was invited to bid earlier on, asked for and received an extension of the time to bid, and failed to come up with a viable offer.

[31] The uncontroverted evidence of the Company, KSV, and Trinity was to the effect that if the orders sought by the Company today were not granted, it was likely that the only existing offer – that reflected in the Sale Agreement – would be lost, with a considerable attendant risk of bankruptcy. As the Company's counsel put it, if the orders were not approved today, there would "likely be no tomorrow."

[32] I am authorized under subsection 65.13(1) of the BIA to approve a sale of an insolvent company's assets outside the ordinary course of business, and pursuant to subsection 65.13(7) such sale may be authorized "free and clear of any security, charge or other restriction."

[33] The non-exhaustive list of factors I may consider under subsection 65.13 of the BIA, as set out in subsection 65.13(4) include: whether the process leading to the proposed sale was reasonable in the circumstances; whether the trustee approved the process leading to the sale; whether the trustee filed with the court a report stating that in their opinion the sale would be more beneficial to the creditors than a sale or disposition under a bankruptcy; the extent to which the creditors were consulted; the effects of the proposed sale on the creditors and other interested parties; and whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[34] These considerations largely dovetail with the principles set out in *Royal Bank of Canada v. Soundair Corp.*

[35] In my view, having regard to the factors set out in subsection 65.13 of the BIA and to the principles established in Soundair, the evidence before me satisfies the relevant considerations.

[36] As discussed in part above, the Transaction here is the result of a wide-ranging and transparent Pre-NOI SISP process wherein some 470 potential purchasers were contacted.

[37] The Transaction represents the highest and best offer – and indeed the only executable offer – available to the Company following the Pre-NOI SISP process.

[38] The Transaction allows the Company's business to continue as a going-concern, and includes conditional offers of employment to at least 90% of the Company's current employees.

[39] The Transaciton is largely subject to standard conditions and approvals, and notably is not conditional on financing. The Transaction involves the assumption of considerable debt of the Company, and the creditors holding such debts have advised of their consent to the Transaction.

[40] Finally, and again, significantly, the Proposal Trustee has advised it supports the Transaction and expresses the opinion that the Sale Agreement is the best offer for the Company's assets in the circumstances.

[41] I am satisfied that the Transaction is urgently required for a continuation of the Company's business as a going-concern and to avoid further default, and satisfied that the Transaction meets the requirements of subsection 65.13(5) of the BIA concerning the sale of an insolvent company's assets to a related party outside of the ordinary course of business.

[42] With respect to the Ancillary Order, I am persuaded that the Factoring Agreement will provide the Company with much-needed liquidity to allow it to operate in the ordinary course until completion of the Transaction. I find that the Factoring Charge is reasonable and necessary to support the Factoring Agreement, and I note that the DIP Lenders are agreeable to being primed by the Factoring Charge (solely in respect of the Factor Collateral).

[43] The automatic stay granted to the Company as a result of filing its NOI expires on April 20, and I accept that a further 45-day stay is warranted, inasmuch as the Company has acted in good faith and with due diligence, and in order to allow the Transaction to proceed.

[44] Again, having regard to my findings above, I grant the two orders sought in this motion.

W.D. BLACK J.

DATE: April 3, 2024