



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-24-00459813-0031

DATE: MARCH 25, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: THE PROPOSAL OF GO-FOR INDUSTRIES INC.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Responding Party:

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For Other:

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ENDORSEMENT OF JUSTICE STEELE:

- [1] This is a motion for urgent relief under the *Bankruptcy and Insolvency Act* by the applicant, Go-For Industries Inc. (“Go-For” or the “Company”). Go-For seeks an order, among other things, authorizing two DIP facilities and granting certain priority charges.
- [2] No person opposed the relief sought on the motion.

Background

- [3] The Company, incorporated under the *Canada Business Corporations Act*, is privately held. The Company has a US affiliate, which is not subject to these proceedings.
- [4] The Company carries on business as a tech-enabled delivery facilitator for oversized items.
- [5] The Company is in default of its obligations to its senior secured lender, Trinity Capital Inc. (“Trinity”). Trinity has refrained from enforcement on its secured debt and supports these NOI proceedings.
- [6] On March 20, 2024, the Company filed a notice of intention to make a proposal pursuant to s. 50.4 of the BIA, with KSV Restructuring Inc. acting as the proposal trustee.
- [7] Go-For employs 62 employees, none of whom are unionized. Go-For also engages approximately 240 drivers as independent contractors.
- [8] Go-For’s current liabilities exceed the net book value of its current assets such that, on a balance sheet test, the Company is insolvent.
- [9] Go-For’s secured obligations include approximately \$13 million outstanding under the Trinity loan agreement and approximately \$400,000 owing to the Ministry of Finance (Ontario) relating to outstanding Employer Health Tax amounts.

Analysis

Should the Court approve the DIP facilities and DIP Lenders’ charges?

- [10] The Company seeks the Court’s approval of a DIP charge in the amount of \$750,000 in favour of Trinity and DIP charge in the amount of \$750,000 in favour of Avren. Both the Trinity and Avren DIP loans are conditional on the court granting the proposed DIP lender charge.
- [11] Under s. 50.6(1) of the BIA, the Court has the jurisdiction to order a charge to secure interim financing advanced to a debtor “on notice to the secured creditors who are likely to be affected by the charge [...] in an amount that the court considers appropriate.” However, the charge is not permitted to “secure an obligation that exists before the order is made.”

[12] Section 50.6(5) of the BIA sets out a non-exclusive list for the court to consider when determining whether to make an order for a security or charge re interim financing under s. 50.6(1):

- a. The period during which the debtor is expected to be subject to proceedings under the Act;
- b. How the debtor's business and financial affairs are to be managed during the proceedings;
- c. Whether the debtor's management has the confidence of its major creditors;
- d. Whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- e. The nature and value of the debtor's property;
- f. Whether any creditor would be materially prejudiced as a result of the security or charge; and
- g. The proposal trustee's report.

[13] The Company submits that the approval of the DIP facilities and the DIP lenders' charge would increase the chances of a going concern outcome and is therefore consistent with the BIA's purposes. The Company submits that the factors set out in s. 50.6(1) of the BIA support the granting of the DIP facilities and charges for the following reasons:

- a. The Company faces an imminent liquidity crisis;
- b. The Company needs the DIP facilities to provide it with urgent liquidity to pursue its restructuring efforts, including the completion of a proposed transaction, which will preserve its business as a going-concern for the benefit of stakeholders;
- c. Without the DIP facilities, the Company will not be able to continue operations in the normal course;
- d. The quantum of the DIP facilities (\$1.5 million total) is reasonable and appropriate;
- e. Trinity, the senior secured lender and a DIP Lender, supports the DIP lenders' charges;
- f. The DIP lenders' charges do not secure any obligations that exist prior to the issuance of the initial order;
- g. CRA has been served with notice of this motion seeking the initial order; and
- h. The Proposal Trustee is supportive of the approval of the DIP facilities and charge.

[14] The Company urgently requires liquidity. Payroll is tomorrow and cash is needed to make payroll. The Company is working toward a going concern sale and wants to keep the business operating so it can pursue its restructuring efforts.

[15] I am satisfied that the DIP facilities and DIP Lenders' charge should be granted.

Should the Administration Charge be Granted?

[16] The Company seeks a first-ranking administration charge in the amount of \$300,000 to secure the fees of the Proposal Trustee, the Proposal Trustee's counsel and the Company's counsel. As noted above, the Company's senior secured creditor supports the motion. The motion was made on notice to the MOF and CRA.

[17] Under s. 64.2(1) of the BIA, a court may grant a charge in favour of, among others, the Proposal Trustee and other professionals in respect of their fees and expenses that will be incurred during NOI proceedings. The court may also order that such a charge rank in priority over the claims of any secured creditor: BIA, s. 64.2(2).

[18] The Proposal Trustee supports the administration charge sought. The Company states that the quantum of the administration charge is fair and reasonable in the circumstances given the complexity of the Company's business and operations and the processes that the Company intends to complete in these proceedings.

[19] I am satisfied that it is appropriate to grant the administration charge in the amount sought by the Company.

Should the Court grant the Directors and Officers Charge?

[20] The Company seeks a charge in the amount of \$625,000 to secure the indemnity of the Company's directors and officers.

[21] Under s. 64.1(1) of the BIA, the Court may grant a charge in favour of any director or officer to indemnify them against liabilities that they may incur after the commencement of the proposal proceedings. The court may order that the charge rank in priority over the claim of any secured creditor or person: BIA, s. 64.1(2).

[22] As noted above, the secured creditors have notice as is required.

[23] The Company states that its current insurance policy for directors and officers may not provide sufficient coverage against the potential liability that the directors and officers could incur during these proceedings. The liability could include unpaid vacation pay another other amounts owing to employees. Further, the directors of the Company have indicated that they will only continue to be involved in the Company's governance through these proceedings if the Court grants a directors' charge.

[24] The Proposal Trustee supports the granting of the requested charge. The Company notes that the quantum of the charge sought represents an estimate of the maximum potential exposure of the directors and officers of the Company from time to time.

[25] I am satisfied that it is appropriate to grant the directors and officers charge in the amount sought by the Company.

Should the Court grant the Expense Reimbursement Charge?

[26] The Company has negotiated an agreement for the sale of the business. Approval of that agreement is not being sought today. The Company intends to seek approval for the agreement at the next Court attendance.

[27] However, the proposed agreement includes a provision that provides that the proposed purchaser shall be reimbursed for documented, out-of-pocket expenses incurred in the negotiation, diligence and preparation of the agreement (up to \$70,000). The proposed expense reimbursement is only payable if the transaction agreement is finalized and: (i) the Proposed Transaction is not approved by the Court; and (ii) the Company's assets are purchased or assumed or otherwise transferred to a third party. The relevant provision in the proposed agreement provides:

Solely in the event that this Agreement is not consummated because the Proposal Company's assets are purchased or assumed or otherwise transferred to a third party, the Proposal Company agrees to reimburse I2BF Venture Capital or the Purchaser, as applicable, for documented, out-of-pocket expenses incurred in the negotiation, diligence and preparation of this Agreement in an amount not to exceed \$70,000 (the "Expense Reimbursement") in the event the Transaction is not approved by the Court, and the Purchaser shall be granted a priority charge by the Court in the Avren DIP Approval Order as security for such amount to rank in priority to all other Claims except the BIA Charges, the Trinity DIP Charge, the Avren DIP Charge, and the Factor Charge. For greater certainty, if the Transaction is approved by the Court and is not consummated, the Purchaser shall not be entitled to the Expense Reimbursement.

[28] The Company asks that the expense reimbursement be secured by an expense reimbursement charge. As noted, the proposed agreement requires this charge in the Avren DIP Approval Order, which is being addressed by the Court today.

[29] The Company notes that agreeing to such payments is a matter of business judgement and should be given deference provided the decision falls within a range of reasonableness.

[30] I accept the Company's submission that the Court has authority under s. 64.2(1)(c) of the BIA to grant the requested charge, because the purchaser and its advisors are necessary parties to the successful outcome of these proceedings.

[31] I am satisfied that it is appropriate in the circumstances to grant this charge.

Should the Court Authorize the payments (max \$125,000) to Critical Suppliers?

- [32] The Company relies upon certain vendors whose products and/or services are essential to the Company's ongoing operations and/or may be necessary to implement the contemplated transaction.
- [33] The Company seeks to include in the Order a provision to allow the Company to pay, with the consent of the Proposal Trustee, the Trinity DIP Lender and the Avren DIP Lender, amounts owing for goods or services supplied to the Company prior to the date of the order to the maximum amount of \$125,000 if, in the opinion of the Company and the Proposal Trustee, the supplier is critical to the Company's business.
- [34] The Company submits that the Court has authority to make this order under s. 183(1) of the BIA.
- [35] The Company points the Court to *1732427 Ontario Inc. v. 1787930 Ontario Inc.*, 2019 ONCA 947, at para. 13, where the Court of Appeal addressed a submission by the respondent that the parties could not enter into an agreement for payment of past debts in order to secure future supplies. In rejecting this submission, the Court of Appeal stated:

[...] This would undermine the first stage of the BIA process that serves to encourage a debtor's successful reorganization as a going concern. Creditors and debtors alike benefit from the latter's continued operation. The goal of the stay and preference provisions under ss. 69, 95, 96 and 97 of the BIA is to give the debtor some breathing room to reorganize. Legitimate agreements with key suppliers also form a vital part of that process.

- [36] The Proposal Trustee will oversee any payments to these critical suppliers, and payments may only be made if expressly authorized by the Proposal Trustee. The Proposal Trustee will have to agree that a proposed payment is to a supplier that is essential to the Company's business operations.
- [37] The DIP Lenders have consented to this proposed provision in the Order.
- [38] Order attached.
- [39] **The next appearance is scheduled for April 3, 2024 at 11 am (60 minutes).**

