

Court File No.: BK-24-00459813-0031  
Estate File No.: 31-459813

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS  
AMENDED, OF GO-FOR INDUSTRIES INC.**

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**FACTUM OF GO-FOR INDUSTRIES INC.**  
**(SALE APPROVAL, STAY EXTENSION AND FACTORING AGREEMENT)**

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April 1, 2024

**BENNETT JONES LLP**  
One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig** (LSO# 57307I)  
Tel: (416) 777-6254  
Email: zweigs@bennettjones.com

**Jesse Mighton** (LSO #62291J)  
Tel: (416) 777-6255  
Email: mightonj@bennettjones.com

**Aiden Nelms** (LSO#: 74170S)  
Tel: (416) 777-4642  
Email: nelmsa@bennettjones.com

**Milan Singh-Cheema** (LSO# 88258Q)  
Tel: (416) 777-5527  
Email: singhcheemam@bennettjones.com

Lawyers for Go-For Industries Inc.

**TO: THE SERVICE LIST**

## PART I: OVERVIEW

1. On March 20, 2024, Go-For Industries Inc. (“**Go-For**” or the “**Company**”) filed a notice of intention to make a proposal pursuant to Section 50.1(1) of the *Bankruptcy and Insolvency Act* c. B-3, as amended (the “**BIA**”) and KSV Restructuring Inc. (“**KSV**”) was appointed as the proposal trustee (in such capacity the “**Proposal Trustee**”). The proceedings commenced therein are hereinafter referred to as the “**NOI Proceedings**”.

2. On March 25, 2024, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted the Initial Order, which, among other things:

- (a) authorized and empowered the Company to obtain and borrow under a credit facility in an amount not to exceed \$750,000 (the “**Trinity DIP Facility**”) from Trinity Capital Inc. (“**Trinity**”), as lender (in such capacity, the “**Trinity DIP Lender**”), pursuant to an agreement dated March 20, 2024 (the “**Trinity DIP Term Sheet**”) in order to finance the Company’s working capital requirements and other general corporate purposes and capital expenditures, including providing financing for these NOI Proceedings;
- (b) authorized and empowered the Company to obtain and borrow under a credit facility in an amount not to exceed \$750,000 (the “**Avren DIP Facility**”, together with the Trinity DIP Facility, the “**DIP Facilities**”) from Avren FinServe, LLC (“**Avren**”), as lender (in such capacity, the “**Avren DIP Lender**”), pursuant to an agreement dated March 20, 2024 (the “**Avren DIP Term Sheet**”, together with the Trinity DIP Term Sheet, the “**DIP Term Sheets**” and each a “**DIP Term Sheet**”) in order to finance the Company’s working capital requirements and other general corporate purposes and capital expenditures, including providing financing for these NOI Proceedings;
- (c) granted the following priority charges (collectively, the “**Charges**”, each as defined below):
  - (i) First - the Administration Charge (to the maximum amount of CAD\$300,000);

- (ii) Second - the Trinity DIP Lender's Charge (to the maximum amount of \$750,000, plus interest, fees and expenses) and the Avren DIP Lender's Charge (to the maximum amount of \$750,000, plus interest, fees and expenses) on a *parri passu* and *pro rata* basis;
    - (iii) Third - the Directors' Charge (to the maximum amount of CAD\$625,000); and
    - (iv) Fourth - the Expense Reimbursement Charge (to the maximum amount of CAD\$70,000); and
  - (d) authorized the Company, with the consent of the Proposal Trustee and the DIP Lenders, and in accordance with the cashflows and DIP Facilities, to pay certain pre-filing arrears to vendors whose products and/or services are essential to the Company's ongoing operations and/or also may be critical to implementing the contemplated sale or other restructuring alternatives in these NOI Proceedings, up to an aggregate maximum amount of CAD\$125,000.
3. This factum is filed in support of the Company's motion for:
- (a) an order (the "**Approval and Vesting Order**") substantially in the form of the draft order attached as Tab 4 of the Motion Record, among other things, approving the sale going-concern transaction (the "**Transaction**") contemplated by the asset purchase agreement between the Company, as vendor (in such capacity, the "**Seller**"), and 1000826405 Ontario Inc., as purchaser (the "**Purchaser**"), entered into as of March 20, 2024 subject to Court approval (as may be amended from time to time, the "**Sale Agreement**"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all of the Vendor's right, title and interest in and to the property described in the Sale Agreement (the "**Purchased Assets**"); and
  - (b) an order (the "**Ancillary Order**"), substantially in the form of the draft order attached as Tab 3 of the Motion Record, among other things:
    - (i) extending the time for the Company to file a proposal, and the corresponding stay of proceedings, until and including June 4, 2024 (the "**Stay Period**");

- (ii) authorizing and empowering the Company to enter into a factoring agreement dated March 28, 2024 (the “**Factoring Agreement**”) between Avren and the Company pursuant to which the Company has agreed to sell designated invoices forming a portion of its accounts receivable and/or recurring revenues from the HD Contract (as defined below) to Avren for consideration of up to the Monetary Limit (as defined below) , with such amount to be used to provide additional liquidity over and above the amounts available under the DIP Term Sheets in order to finance the business pending the closing of the Transaction;
- (iii) granting the Factor Charge in favour of Avren solely on the Factoring Collateral (each as defined below); and
- (iv) approving the Second Report of the Proposal Trustee dated March 31, 2024 (the “**Second Report**”), and the actions, conduct and activities of the Proposal Trustee, as set out therein.

## **PART II: FACTS**

4. The facts with respect to this motion are briefly summarized below and more fully set out in the affidavits of Dillon McDonald sworn March 22, 2024 (the “**First Affidavit**”) and March 28, 2024 (the “**Second Affidavit**”) respectively.<sup>1</sup>

5. Capitalized terms not defined herein shall have the meanings ascribed to them in the Second Affidavit.

6. All references to monetary amounts herein are in United States dollars unless noted otherwise.

### **B. Pre-NOI SISP**

7. In accordance with its obligations under the Forbearance Agreement, the Company engaged Onward Innovation Ltd. (“**Onward**”) on February 5, 2024 as its financial advisor and, under the oversight of KSV, as financial advisor and proposed proposal trustee, commenced a robust sale and

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<sup>1</sup> Affidavit of Dillon McDonald sworn March 28, 2024 [Second Affidavit], Applicant’s Motion Record at Tab 2 [Motion Record].

investment solicitation process (the “**Pre-NOI SISP**”).<sup>2</sup> Onward has extensive industry experience in customs brokerage, freight brokerage, trucking, and last-mile delivery and extensive networks within the industry.<sup>3</sup> Onward provided regular updates to the Company and KSV as the Pre-NOI SISP progressed.<sup>4</sup> KSV’s involvement in the Pre-NOI SISP was intended to provide support to the Company to ensure that the marketing process utilized similar processes as a court-supervised process, as well as to provide KSV with insight into the process, knowing that any transaction would likely require court approval, given the Company’s liquidity position, and the likelihood that any prospective purchaser would want court approval for such transaction.

8. In connection with the Pre-NOI SISP, on February 28, 2024, Trinity advised the Company that it would be willing to support the Company’s ongoing efforts to restructure its business by extending further capital only under certain conditions.<sup>5</sup> Namely: (i) any such financing would be pursuant to a debtor-in-financing facility provided in the context of a court-supervised restructuring proceeding; (ii) such restructuring proceeding would be in furtherance of executing a restructuring transaction; and (iii) given the Company’s limited operating liquidity, the Company would be required to enter into a binding agreement of refinancing, recapitalization or sale of the business by no later than March 8, 2024 (the “**Trinity DIP Offer**”).<sup>6</sup>

9. The Pre-NOI SISP’s timeline, including the establishment of the Bid Deadline, was dictated by the requirements of the Trinity DIP Offer and the Company’s need for immediate funding.<sup>7</sup> It was also based on feedback from Onward as to its requirements to appropriately canvass the market and make this available to interested parties.<sup>8</sup>

10. Over the course of the Pre-NOI SISP, Onward undertook, among others, the following efforts to canvas the market:

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<sup>2</sup> *Ibid* at para 11, Motion Record at Tab 2.

<sup>3</sup> *Ibid* at para 11, Motion Record at Tab 2.

<sup>4</sup> Second Report of the Proposal Trustee dated March 31, 2024 at para 4.1.5 [Second Report].

<sup>5</sup> Second Affidavit at para 12, Motion Record at Tab 2.

<sup>6</sup> *Ibid* at para 12, Motion Record at Tab 2.

<sup>7</sup> *Ibid* at para 14, Motion Record at Tab 2.

<sup>8</sup> Second Report at para 4.1.7.

- (a) contacting over 470 potentially interested strategic and financial parties with a targeted outreach of approximately 2,700 emails and approximately 1,300 calls;
- (b) entering into non-disclosure agreements (“**NDA**”) with five potentially interested strategic parties;
- (c) circulating a confidential information memorandum to all parties that executed NDAs;
- (d) establishing a virtual data room containing information about the Company relevant to interested parties;
- (e) arranging for audit and diligence meetings with Company management;
- (f) facilitating due diligence and other information requests; and
- (g) engaging in discussions regarding potential expressions of interest by interested parties.<sup>9</sup>

11. Driven by the timeframe for the Company to enter into a definitive agreement set out in the Trinity DIP Offer, the Pre NOI-SISP established a bid submission deadline of March 5, 2024 (“**Bid Deadline**”) for parties to submit expressions of interest.<sup>10</sup>

12. At the Bid Deadline, the Company received only one binding expression of interest from a potentially interested third party, which only proposed an all-stock deal with no indication of consideration value, was subject to numerous conditions and did not provide for interim financing. As such, it did not fulfil the conditions set out in the Trinity DIP Offer.<sup>11</sup>

13. Given the lack of actionable offers from unrelated third parties, the Company and Trinity, with the oversight of KSV, engaged in discussions with the Company’s existing shareholders, 3Q Investment Partners LLC and I2BF Global Ventures (“**I2BF**”) to explore whether they would be interested in submitting an offer for the Company’s business.<sup>12</sup> 3Q and I2BF were advised that they

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<sup>9</sup> *Ibid* at para 13, Motion Record at Tab 2.

<sup>10</sup> *Ibid* at para 14, Motion Record at Tab 2.

<sup>11</sup> *Ibid* at para 15, Motion Record at Tab 2.

<sup>12</sup> *Ibid* at para 16, Motion Record at Tab 2.

could submit offers in the Pre NOI-SISP by the Bid Deadline, provided that such offers included committed interim financing sufficient to complete the transaction and contemplated a binding offer to purchase the business.<sup>13</sup> Both 3Q and I2BF expressed an interest in submitting an offer.<sup>14</sup>

14. On March 1, 2024, KSV sent an email (the “**March 1 Email**”) to representatives of both 3Q and I2BF reminding both parties that offers were due on the Bid Deadline.<sup>15</sup>

15. On the Bid Deadline, the Company received: (i) a non-binding expression of interest from 3Q; and (ii) a definitive binding agreement from I2BF along with an offer for DIP financing (the “**I2BF Offer**”).<sup>16</sup>

16. On March 6, 2024, 3Q was advised that its expression of interest did not comply with the requirements set forth in the March 1 Email and was not executable in its current form.<sup>17</sup> 3Q requested and was granted a three-day extension to March 8, 2024 to submit a binding offer in the form of a definitive transaction agreement, together with interim financing.<sup>18</sup> Notwithstanding the foregoing extension, on March 8, 2024, a representative of 3Q sent an email to the Company and KSV advising that it would not be submitting a definitive binding offer.<sup>19</sup>

17. Given that the I2BF Offer was the only offer received by the Company that complied with the Trinity DIP Proposal, and being the only offer available that allowed the Company to access the interim capital immediately needed to operate and to pursue a going-concern solution for its financial difficulties, the Company’s focus shifted towards finalizing the I2BF Offer for execution, ultimately executing the Sale Agreement with the Purchaser (an affiliate of I2BF) on March 20, 2024.<sup>20</sup>

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<sup>13</sup> *Ibid* at para 16, Motion Record at Tab 2.

<sup>14</sup> *Ibid* at para 16, Motion Record at Tab 2.

<sup>15</sup> *Ibid* at para 17, Motion Record at Tab 2.

<sup>16</sup> *Ibid* at para 18, Motion Record at Tab 2.

<sup>17</sup> *Ibid* at para 19, Motion Record at Tab 2.

<sup>18</sup> *Ibid* at para 19, Motion Record at Tab 2.

<sup>19</sup> *Ibid* at para 21, Motion Record at Tab 2.

<sup>20</sup> *Ibid* at para 21, Motion Record at Tab 2.



### C. Sale Agreement<sup>21</sup>

18. In the Company's last appearance before this Court, the Company advised the Court that it and the Purchaser were still working to finalize and complete certain schedules to the Sale Agreement.<sup>22</sup> The schedules to Sale Agreement have now been finalized for purposes of Court approval.<sup>23</sup> The Sale Agreement and its key terms are discussed and summarized in detail in the Second Affidavit and as such are not repeated herein. The Sale Agreement represents the best and only actionable offer available to the Company, and the only offer that complies with the terms of the DIP Term Sheets.<sup>24</sup>

19. The Sale Agreement is the product of the Company's and the Proposal Trustee's efforts to pursue a going-concern transaction that maximizes value for the Company's stakeholders and is also the result of the extensive Pre-NOI SISP and is the best and only offer available.<sup>25</sup> The Sale Agreement provides the best possible outcome for creditors and other stakeholders in the circumstances given that, among other things:

- (a) the Sale Agreement allows for the continuity of the Company's business as a going-concern;
- (b) the Sale Agreement is the product of a broad, transparent, and fair Pre NOI SISP, the efforts of the Company, the Purchaser, Trinity (as the Company's pre-filing secured creditor) and the Proposal Trustee to consummate a value maximizing transaction with a going concern result;
- (c) the Sale Agreement is the best and only actionable offer available to the Company and was the only binding offer received following the culmination of the Pre NOI SISP;
- (d) the only offer submitted in the Pre-NOI SISP was a non-binding expression of interest that was: (i) subject to a number of conditions, including the completion of due

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<sup>21</sup> Terms used in this section but not otherwise defined herein have the meanings ascribed to them in the Sale Agreement.

<sup>22</sup> *Ibid* at para 22, Motion Record at Tab 2.

<sup>23</sup> *Ibid* at para 22, Motion Record at Tab 2.

<sup>24</sup> *Ibid* at para 25, Motion Record at Tab 2.

<sup>25</sup> *Ibid* at para 22, Motion Record at Tab 2.

diligence and preparation of definitive documentation; (ii) in contemplation of an all-stock transaction and did not contemplate cash consideration; and (iii) did not provide any interim financing to provide the company with the liquidity necessary to consider it further;

- (e) the Company's two principal investment groups were given an equal opportunity to submit binding offers when it became apparent that a third party offer would be unlikely to emerge from the Pre-NOI SISP, particularly within the timeline required to address the Company's illiquidity;
- (f) the Transaction is the only executable offer that permits the Company to restructure its business as a going concern, and which is fully funded through to completion by way of the DIP Term sheets, and the Factoring Agreement (subject to this Court's approval thereof);
- (g) the Sale Agreement is supported by the Proposal Trustee and the DIP Lenders, as well as Trinity as the Company's ranking pre filing secured creditor;
- (h) with the exception of the ICA Notice Condition and the granting of the Approval and Vesting Order, the Transaction's closing is based on customary conditions and requisite approvals and is not predicated on onerous closing obligations; and
- (i) the Transaction is notably also not conditioned on any financing being obtained and the assumption of certain debt obligations that are included within the Assumed Liabilities (as defined in the Sale Agreement) have been consented to by the relevant debt holders.<sup>26</sup>

20. Notably, the Transaction will preserve many of the jobs at the Company following Closing, providing that no fewer than 90% of total current employees will be offered conditional offers of employment by the Purchaser by Closing.<sup>27</sup> The terms of these offers will be on terms and conditions of employment that are, in the aggregate, substantially similar to the terms and conditions of

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<sup>26</sup> *Ibid* at paras 15-16, 21 and 25, Motion Record at Tab 2.

<sup>27</sup> *Ibid* at para 26, Motion Record at Tab 2.

employment of such employees as in effect with the Company immediately prior to the Closing Date.<sup>28</sup>

21. An entity with an ownership interest in the Purchaser currently holds equity in the Company and its principal is a member of the board of directors.<sup>29</sup>

**D. Factoring Agreement<sup>30</sup>**

22. As contemplated by and in accordance with the DIP Term Sheets, on March 28, 2024, the Company and Avren entered into a Factoring Agreement, subject to and in accordance with its terms.<sup>31</sup>

23. Pursuant to the Factoring Agreement, the Company has agreed to sell certain designated future invoices forming accounts receivable and/or recurring revenues from the Home Depot Final Mile Statement of Work, by and between the Vendor and Home Depot, dated October 1, 2022 (the “**HD SOW**”) which is controlled by the Master Delivery Services Agreement, by and between the Vendor and Home Depot, dated November 27, 2018 (the “**HD MSA**”, and together with the HD SOW, the “**HD Contract**”) to obtain additional operating capital for its business and other purposes.<sup>32</sup>

24. While the Factoring Agreement is structured as a true sale of the Receivables to the Purchaser, until alternate arrangements in conformance with the HD Contract can be arranged, the Company will continue to collect the Receivables from Home Depot as the Purchaser’s agent for a period of time and remit them to the Purchaser.<sup>33</sup>

25. Accordingly, it is a condition of the Factoring Agreement that a first charge in favour of Avren (the “**Factor Charge**”) on those Receivables received by the Company (as defined in the Factoring Agreement, those receivables arising under the HD Contract) (the “**Factor Collateral**”) be granted to secure the Company’s obligations therein.<sup>34</sup> The Factor Charge is proposed to be secured against

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<sup>28</sup> *Ibid* at para 26, Motion Record at Tab 2.

<sup>29</sup> *Ibid* at para 28, Motion Record at Tab 2.

<sup>30</sup> Terms used in this section but not otherwise defined herein have the meanings ascribed to them in the Factoring Agreement.

<sup>31</sup> *Ibid* at para 29, Motion Record at Tab 2.

<sup>32</sup> *Ibid* at para 30, Motion Record at Tab 2.

<sup>33</sup> *Ibid* at para 32, Motion Record at Tab 2.

<sup>34</sup> *Ibid* at para 32, Motion Record at Tab 2.

only the Factor Collateral and in priority to all other interests and to a maximum amount of the Maximum Purchase Price or the Increased Maximum Purchase Price (each as defined in the Factoring Agreement), as the case may be (the “**Monetary Limit**”).<sup>35</sup>

26. The Factoring Agreement and its key terms are discussed and summarized in detail in the Second Affidavit and as such are not repeated herein.

### **PART III: ISSUES**

27. The issues to be considered on this Motion are whether:

- (a) the Court should grant the Approval and Vesting Order; and
- (b) the Court should grant the Ancillary Order.

### **PART IV: LAW AND ANALYSIS**

#### **A. THE APPROVAL AND VESTING ORDER SHOULD BE GRANTED**

##### **1. This Court has the Authority to Approve the Sale Agreement and Vest the Purchased Assets Free and Clear**

28. Subsection 65.13(1) of the BIA authorizes this Court to approve a sale of an insolvent company’s assets outside of the ordinary course of business.<sup>36</sup> Pursuant to subsection 65.13(7) of the BIA, any such sale may be authorized “free and clear of any security, charge or other restriction”.<sup>37</sup>

29. Subsection 65.13(4) of the BIA provides a non-exhaustive list of factors for the Court to consider in determining whether to approve a sale under section 65.13:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

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<sup>35</sup> *Ibid* at para 32, Motion Record at Tab 2.

<sup>36</sup> [Bankruptcy and Insolvency Act, RSC 1985, c. B-3](#) s 65.13(1) [BIA]; [Komtech Inc. Re, 2011 ONSC 3230](#) at para 23 [Komtech].

<sup>37</sup> [BIA](#), s 65.13(7).

- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.<sup>38</sup>

30. This Court has previously noted that the criteria in subsection 36(3) of the *Companies' Creditors Arrangement Act* – which are substantially identical to those contained in subsection 65.13(4) of the BIA – correspond to the principles articulated in *Royal Bank of Canada v Soundair Corp.*, for the approval of the sale of assets in an insolvency scenario:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.<sup>39</sup>

31. With respect to proposal proceedings, the Court has also noted that “[i]t is not necessary for [a] debtor to present its proposal under the BIA before an order approving a sale”.<sup>40</sup>

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<sup>38</sup> [BIA](#), s 65.13(4).

<sup>39</sup> [Harte Gold Corp \(Re\)](#), 2022 ONSC 653 at para 21 citing [Royal Bank v Soundair Corp](#), 1991 CanLII 2727 (Ont CA).

<sup>40</sup> [Komtech](#), *supra* note 36 at para 33; [OEL Projects Ltd \(Re\)](#), 2020 ABQB 365 at para 30 [OEL].

32. Courts have commonly approved sale transactions where a debtor company has conducted a sales process prior to making an insolvency filing.<sup>41</sup> In approving transactions of this nature, courts have held that the same principles that apply to the approval of a sale transaction resulting from a post-filing sales process apply to the approval of a sale transaction resulting from a pre-filing sales process.<sup>42</sup>

## **2. The Court should Approve the Transaction**

### **(a) The *Soundair* Principles are Satisfied**

33. The Company submits that the criteria provided in subsection 65.13(4) and the *Soundair* principles are satisfied given that, among other things:

- (a) the Transaction is the result of a broad, transparent, and fair Pre-NOI SISP undertaken with the assistance of Onward wherein over 470 potentially interested parties were contacted;
- (b) the Transaction contemplated by the Sale Agreement represents the highest and best offer available to the Company and was the only binding offer received following the culmination of the Pre-NOI SISP;
- (c) the Sale Agreement allows for the continuity of the Company's business as a going concern, including the provision of conditional offers of employment to 90% of the total current number of employees by the Purchaser upon Closing;
- (d) with the exception of the ICA Notice Condition and the granting of the Approval and Vesting Order, the Transaction's closing is based on customary conditions and requisite approvals and is not predicated on onerous closing obligations;

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<sup>41</sup> [Re Nelson Education Limited \(Re\)](#), 2015 ONSC 5557 [Nelson]; [Re Bloom Lake](#), 2015 QCCS 1920 [Bloom Lake]; [Mountain Equipment Co-Operative \(Re\)](#), 2020 BCSC 1586 [Mountain Equipment]; [Feronia Inc \(Re\)](#), 2020 BCSC 1372 at para 49 [Feronia].

<sup>42</sup> [Nelson](#) at paras 31-33; [Bloom Lake](#) at para 29; [Elleway Acquisitions Limited v 4358376 Canada Inc](#), 2013 ONSC 7009 at paras 27 and 31-32; [Mountain Equipment](#) at paras 103 and 159; [Sanjel Corporation \(Re\)](#), 2016 ABOB 257 at para 71 [Sanjel]; [Feronia](#) at para 38.

- (e) the Transaction is notably also not conditioned on any financing being obtained and the assumption of certain debt obligations that are included within the Assumed Liabilities (as defined in the Sale Agreement) have been consented to by the relevant debt holders; and
- (f) the consideration offered in the Transaction includes the assumption of considerable Debt of the Company, and the holders of such debts have indicated their consent to such treatment and their support for the Transaction.<sup>43</sup> The Proposal Trustee has indicated that it supports the Court's approval of the Sale Agreement and, as detailed in the Second Report, is of the opinion that the Sale Agreement is the best offer obtained for the Purchased Assets in the circumstances.<sup>44</sup>

34. Canadian courts have consistently held that so-called "pre-packaged" proceedings, where the terms of a restructuring transaction are negotiated among key stakeholders are not precluded by statute (and, in fact are regularly approved), and that "a sale process is only required to be reasonable, not perfect".<sup>45</sup>

35. Courts have also held that, with respect to the degree of consultation with other creditors, "the importance of that factor depends on the degree to which there was ever a realistic prospect of any recover to for them."<sup>46</sup> Here, there is no reasonable prospect for recovery beyond the DIP Lenders and assumption of Trinity's secured debt, and no indication or evidence that a different manner of sale process would have resulted in a better outcome for the Company's other creditors.

36. Accordingly, the timelines and terms of the Pre-NOI SISP were reasonable and appropriate in the circumstances and resulted in a fair and equitable process to appropriately canvass the market for the Purchased Assets.

37. Further, the approval of the Transaction is urgently required in order for the Company to access further funds under the DIP Term Sheets. Because the approval of the Transaction is a condition precedent to any subsequent draws under the DIP Term sheets, if the Transaction is not approved by April 3, 2024 the Company will be in default and may not have access to the liquidity

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<sup>43</sup> Second Affidavit, *supra* note 1 at paras 24-25, Motion Record at Tab 2.

<sup>44</sup> *Ibid*, at paras 13 and 25, Motion Record at Tab 2.

<sup>45</sup> *Sanjel*, *supra* note 42 at paras [69-70](#); *Feronia*, *supra* note 41 at para [52](#).

<sup>46</sup> *Feronia*, at para [62](#).

necessary to continue operating the business in the normal course.<sup>47</sup> Any disruption to the Company's normal course operations could cause retail partners to turn to the Company's competitors to provide last-mile delivery services, the result of which would be immediate and irreparable erosion to the value of the business.

**(a) The Additional Related Party Considerations are Satisfied**

38. A sale of an insolvent company's assets outside of the ordinary course of business to a related party is not precluded by section 65.13 of the BIA. However, where such a sale is proposed, subsection 65.13(5) of the BIA provides that in addition to considering the factors in subsection 65.13(4), courts must also be satisfied that:

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.<sup>48</sup>

39. The above criteria are satisfied in the present circumstances given that, among other things:

- (a) the Company, with the assistance of its financial advisor and at the direction of its senior secured creditor, Trinity, undertook the Pre-NOI SISF to canvas the market and elicit interest in the Purchased Assets.<sup>49</sup> It was only once it became apparent during the Pre-NOI SISF that an actionable expression of interest from unrelated third parties was unlikely that discussions with existing shareholders of the Company commenced;
- (b) the two existing majority investor groups, both having representatives on the Company's board of directors, were offered the same opportunity to submit a binding offer; and

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<sup>47</sup> Second Report, *supra* note 4 at para 4.3.1.

<sup>48</sup> *BIA*, *supra* note 36 s 65.13(5); *Edward Collins Contracting Limited (Re)*, 2023 NLSC 139 at para 63; See also: *Feronia*, *supra* note 41 at para 72, where the Supreme Court of British took a debtor's retention of third-party advisors for the execution of a sale process on its behalf, as evidence that such good faith efforts were made;

<sup>49</sup> Second Affidavit, *supra* note 1 at para 11, Motion Record at Tab 2.



- (c) as previously discussed, there are no other offers available to the Company and the Transaction represents the highest and best offer for the Purchased Assets in the circumstances.<sup>50</sup>

40. The Company thus submits that the Transaction satisfies the BIA criteria for sales related parties and the Court should approve the Transaction.

41. As set out in the Second Report, following the service of the Motion Record for this hearing, the Proposal Trustee was contacted by several of the Company's minority investors, and a strategic party expressing an interest in considering a transaction in respect of the Company's business and assets.<sup>51</sup> Those parties were not contacted by Onward during the Pre-Filing SISP, as the Company's management had previously spoken with certain of those parties and had indicated a preference to not consider a transaction. As of the date hereof, none of these parties have submitted an offer (or any kind of transaction agreement) for the Company to consider, nor have they provided confirmation they would be willing to advance the interim financing the Company would require to consider an alternative transaction. In the circumstances, without any formal offer having been presented, and having regard to the company's reliance on the financing under the DIP Term Sheets, with no alternative source of financing available, the Transaction is the best and only option available to maintain the Company as a going concern.<sup>52</sup>

## **B. ANCILLARY ORDER**

### **1. Factoring Agreement and Factoring Charge**

42. As contemplated by and in accordance with the DIP Term Sheets, on March 28, 2024, Go-For entered into the Factoring Agreement with Avren subject to and in accordance with the terms set out therein, including the Court's approval of the Factor Charge.<sup>53</sup>

43. The Factoring Agreement is being entered into as a supplement to the DIP Loan Facilities and its intended purpose is to provide the Company with liquidity to continue operating in the ordinary

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<sup>50</sup> *Ibid* at paras 15-16, Motion Record at Tab 2.

<sup>51</sup> Second Report, *supra* note 4 at para 4.3.2.

<sup>52</sup> *Ibid*, at para 4.1.7.

<sup>53</sup> *Ibid* at para 28, Motion Record at Tab 2.

course until the completion of the Transaction.<sup>54</sup> As such, the Factoring Agreement should be approved on the same basis as, and the Court should account for the same considerations as it otherwise would with ordinary debtor-in-possession interim financing.

44. Subsection 50.6(1) of the BIA expressly provides this Court with 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”.<sup>55</sup> Subsection 50.6(1) stipulates that such a charge may not “secure an obligation that exists before the order is made.”<sup>56</sup>

45. Subsection 50.6(5) of the BIA enumerates the following factors the Court is to consider in determining whether to grant a charge in favor of debtor-in-possession financing:

- (a) the period during which the debtor is expected to be subject to proceedings under the BIA;
- (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 on the debtor’s cash flow statement.<sup>57</sup>

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<sup>54</sup> *Ibid* at para 33, Motion Record at Tab 2.

<sup>55</sup> *BIA*, *supra* note 36 s.50.6(1).

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, s 50.6(5).

46. The above factors and criteria provided under subsection 50.6(1) of the BIA support the approval of the Factoring Agreement and Factoring Charge:

- (a) the Factoring Agreement is expected to provide the Company with the additional liquidity to operate in the ordinary course until the completion of the Transaction;
- (b) the Factor Charge is proposed to be secured against only the Factor Collateral, and not any other of the Company's property;
- (c) the DIP Lenders have been consulted and are agreeable to being primed by the Factor Charge solely in respect of the Factor Collateral; indeed, this relief is contemplated already in the DIP Term Sheets;
- (d) the Factoring Agreement will facilitate the Company's efforts to achieve a going concern outcome for the benefit of stakeholders; and
- (e) the Proposal Trustee is supportive of the approval of the Factoring Agreement.<sup>58</sup>

47. As a result of the foregoing, the Company submits that the Factoring Agreement and Factor Charge should be approved.

## **2. Stay Extension**

48. The automatic stay awarded to the Company as a result of filing the NOI expires on April 20, 2024. The Company is seeking an extension of time to file a proposal and a corresponding extension of the stay period until and including June 4, 2024.<sup>59</sup> The requested extension represents 45 days from the expiry of the initial 30-day statutory stay period under contemplated by section 50.4(8) of the BIA.<sup>60</sup>

49. Section 50.4(9) of the BIA provides that the Court may grant an extension or further extension not exceeding forty-five (45) days for any individual extension or five months in the aggregate following the expiry of the original 30 day period, where the Court is satisfied that: (a) the debtor has

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<sup>58</sup> Second Affidavit, *supra* note 1 at paras 32-34, Motion Record at Tab 2.

<sup>59</sup> *Ibid*, at para 40, Motion Record at Tab 2.

<sup>60</sup> [BIA](#), *supra* note 36 s 50.4(8).

acted in good faith and with due diligence; (b) the debtor will likely be able to make a viable proposal if the extension being applied for were granted; and (c) no creditor would be materially prejudiced by the extension.<sup>61</sup> These conditions are satisfied here.

**(a) The Company has Acted and is Acting in Good Faith and Due Diligence**

50. Prior to, and immediately following the commencement of NOI Proceedings, the Company has acted in good faith and with due diligence. Specifically, the Company:

- (a) took numerous steps to address its liquidity issues prior to undertaking the Pre-NOI SISP, including various revenue growth efforts, an expansion of gross margins and a reduction in operating expenses by 45%, as further detailed in the First Affidavit;
- (b) undertook the Pre-NOI SISP, by engaging a financial advisor who solicited expressions of interest from over 470 potentially interested parties and entered into non-disclosure agreements with five of them; and
- (c) since the granting of the Initial Order, worked with various stakeholders to expeditiously finalize the Sale Agreement and the Factoring Agreement with a view to providing a going-concern solution which will benefit the Company's stakeholders generally.<sup>62</sup>

51. For the foregoing reasons, the Company submits that it has been acting in good faith to keep its business operating as a going concern prior to and during the NOI Proceedings.

**(b) The Company is more Likely to Make a Viable Proposal if the Extension is Granted**

52. It is well established that the BIA proposal sections are intended to provide an insolvent person with the opportunity to put forward a plan – the purpose of the legislation is rehabilitation and not liquidation.<sup>63</sup> To this end, the BIA proposal provisions offer insolvent companies breathing room in the form of an automatic 30 day stay of proceedings while a going concern solution is advanced.

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<sup>61</sup> *Ibid*, s. 50.4(9).

<sup>62</sup> First Affidavit at para 10, First Motion Record at Tab 2; Second Affidavit, *supra* note 1 at paras 10 and 13, Motion Record at Tab 2.

<sup>63</sup> [\*In the Matter of the Proposal of Cogent Fibre Inc.\*, 2015 ONSC 5139](#) at para 8.

53. It is also well established within proposal proceedings that pursuing a going-concern sale of the debtor's business in the absence of a proposal may be (and frequently are) approved by Courts.<sup>64</sup>

54. The extension will allow the Company to implement the Transaction (should the Court approve the Transaction).<sup>65</sup> In-turn, the implementation of the Transaction will allow to the Company to restructure its business as a going concern and emerge from these NOI Proceedings with an improved financial position.<sup>66</sup>

**(c) No Creditor is Likely to be Materially Prejudiced by the Stay Extension**

55. The Company is not aware of a creditor who will be materially prejudiced if the Stay Extension is granted. Rather, the Company's major stakeholders including the DIP Lenders support the stay extension. Furthermore, the Proposal Trustee supports the Company's request for the proposed extension.<sup>67</sup>

56. As a result of the foregoing, the Company submits that the proposed stay extension contemplated by the Ancillary Order should be granted.

**PART V: ORDER SOUGHT**

57. For the above reasons, the Company requests that this Court grant the Approval and Vesting Order and Ancillary Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 1<sup>st</sup> day of April 2024.

*Bennett Jones LLP*

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**BENNETT JONES LLP**  
Counsel for the Applicant

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<sup>64</sup> *Komtech*, *supra* note 36 at para 33; *OEL*, *supra* note 40 at para 30. See also: *Wells Fargo Capital Finance Corporation Canada v. Whyte's Foods Inc.* (October 6, 2023) 23-02978830-0031 (Toronto) (ONSC)

<sup>65</sup> Second Affidavit, *supra* note 1 at para 35, Motion Record at Tab 2.

<sup>66</sup> *Ibid* at para 25, Motion Record at Tab 2.

<sup>67</sup> *Ibid* at para 25, Motion Record at Tab 2.

## SCHEDULE "A"

### LIST OF AUTHORITIES

#### *Cases Cited*

1. *Edward Collins Contracting Limited (Re)*, [2023 NLSC 139](#).
2. *Feronia Inc (Re)*, [2020 BCSC 1372](#).
3. *Harte Gold Corp (Re)*, [2022 ONSC 653](#).
4. *In the Matter of the Proposal of Cogent Fibre Inc.*, [2015 ONSC 5139](#).
5. *Komtech Inc, Re*, [2011 ONSC 3230](#).
6. *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#).
7. *OEL Projects Ltd (Re)*, [2020 ABQB 365](#).
8. *Wells Fargo Capital Finance Corporation Canada v. Whyte's Foods Inc.* [Endorsement of Cavanagh J.](#)
9. *Royal Bank v Soundair Corp*, [1991 CanLII 2727 \(Ont CA\)](#).
10. *Re Bloom Lake*, [2015 QCCS 1920](#).
11. *Re Nelson Education Limited (Re)*, [2015 ONSC 5557](#).
12. *Sanjel Corporation (Re)*, [2016 ABQB 257](#).

## SCHEDULE "B"

### RELEVANT LEGISLATION

#### **Bankruptcy and Insolvency Act, RSC 1985, c. B-3**

#### **Section 50.4**

##### **Notice of intention**

(1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

##### **Certain things to be filed**

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

##### **Creditors may obtain statement**

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

##### **Exception**

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

(a) such release would unduly prejudice the insolvent person; and

(b) non-release would not unduly prejudice the creditor or creditors in question.

### **Trustee protected**

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

### **Trustee to notify creditors**

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

### **Trustee to monitor and report**

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

(a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

(b) shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

(i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

(ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

(c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

### **Where assignment deemed to have been made**

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the



notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

### **Extension of time for filing proposal**

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

### **Court may not extend time**

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

### **Court may terminate period for making proposal**

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

(a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,

(b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,

(c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or

(d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

## **Section 50.6**

### **Order – interim financing**

(1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge – in an amount that the court considers appropriate – in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

### **Individuals**

(2) In the case of an individual,

- (a) they may not make an application under subsection (1) unless they are carrying on a business; and
- (b) only property acquired for or used in relation to the business may be subject to a security or charge.

### **Priority**

(3) The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

### **Priority – previous orders**

(4) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

### **Factors to be considered**

- (5) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the debtor is expected to be subject to proceedings under this 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 trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

### **Section 65.13**

#### **Restriction on disposition of assets**

(1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

#### **Individuals**

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

#### **Notice to secured creditors**

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

#### **Factors to be considered**

- (4) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - (b) whether the trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

#### **Additional factors — related persons**

(5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

#### **Related persons**

(6) For the purpose of subsection (5), a person who is related to the insolvent person includes

(a) a director or officer of the insolvent person;

(b) a person who has or has had, directly or indirectly, control in fact of the insolvent person; and

(c) a person who is related to a person described in paragraph (a) or (b).

#### **Assets may be disposed of free and clear**

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

#### **Restriction — employers**

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

#### **Restriction — intellectual property**

(9) If, on the day on which a notice of intention is filed under section 50.4 or a copy of the proposal is filed under subsection 62(1), the insolvent person is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (7), that sale or disposition does not affect the other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

### **Companies' Creditors Arrangement Act, RSC 1985, c C-36**

#### **Section 36**

##### **Restriction on disposition of business assets**

(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

##### **Notice to creditors**

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

##### **Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

##### **Additional factors — related persons**

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that:

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

**Related persons**

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

**Assets may be disposed of free and clear**

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

**Restriction — employers**

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

**Restriction — intellectual property**

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
UNDER THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS  
AMENDED, OF GO-FOR INDUSTRIES INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT TORONTO**

**FACTUM OF GO-FOR INDUSTRIES INC.**

**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig (LSO# 57307I)**

Tel: (416) 777-6254  
Email: zweigs@bennettjones.com

**Jesse Mighton (LSO #62291J)**

Tel: (416) 777-6255  
Email: mightonj@bennettjones.com

**Aiden Nelms (LSO#: 74170S)**

Tel: (416) 777-4642  
Email: nelmsa@bennettjones.com

**Milan Singh-Cheema (LSO# 88258Q)**

Tel: (416) 777-5527  
Email: singhcheemam@bennettjones.com

Lawyers for Go-For Industries Inc.