

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
XIWANG IOVATE HOLDINGS COMPANY LIMITED, IOVATE HEALTH SCIENCES
INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A. INC., IOVATE HEALTH
SCIENCES AUSTRALIA PTY LTD, AND NORTHERN INNOVATIONS HOLDING CORP.

Applicants

**FACTUM OF THE MONITOR
(RETURNABLE APRIL 16, 2026)**

April 14, 2026

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PART I - NATURE OF THE MOTION

1. On September 5, 2025, Iovate Health Sciences International Inc. (“**Iovate International**”), Iovate Health Sciences U.S.A. Inc. (“**Iovate USA**”), and Northern Innovations Holding Corp. (“**Northern Innovations**,” and collectively, the “**NOI Applicants**”) each filed a notice of intention to make a proposal (each an “**NOI**”) pursuant to s. 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), commencing the “**Proposal Proceedings**.” KSV Restructuring Inc. (“**KSV**”) consented to act as proposal trustee (the “**Proposal Trustee**”).
2. On October 31, 2025, this Court granted an order (the “**Initial Order**”) granting the NOI Applicants, Xiwang Iovate Holdings Company Limited (“**Iovate Holdings**”), and Iovate Health Sciences Australia PTY Ltd (“**Iovate Australia**,” and collectively, the “**Applicants**”) protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**,” and such proceedings, the “**CCAA Proceedings**”). By the same order, this Court appointed KSV as the monitor of the Applicants (the “**Monitor**”).
3. On November 28, 2025, this Court granted an order (the “**SISP Order**”) and an Amended and Restated Initial Order (the “**ARIO**”) approving a sale and investment solicitation process (the “**SISP**”) and granting the Monitor certain powers, which were subsequently expanded by order dated December 12, 2025 (the “**Enhanced Monitor Powers Order**”).
4. The extensive SISP generated multiple offers. The Monitor, in consultation with the Sales Agent and Administrative Agent (each as defined below) ultimately selected the bid submitted by 1001542267 Ontario Inc. (the “**Purchaser**”) as the successful bid (the “**Successful Bid**”). Iovate Holdings and the Purchaser subsequently entered into a Subscription Agreement dated April 2, 2026 (the “**Subscription Agreement**”).

5. The Monitor now seeks:

- (a) an approval and reverse vesting order (the “**ARVO**”): (i) approving the Subscription Agreement and the transactions contemplated therein (the “**Transactions**”); (ii) sealing the Confidential Appendices (as defined below); and (iii) granting the Releases (as defined below); and
- (b) an order (the “**Distribution, Stay Extension and Ancillary Relief Order**”): (i) authorizing and empowering the Monitor to retain amounts to fund the Administrative Reserve (as defined below); (ii) authorizing and empowering the Monitor to make one or more distributions or payments, as applicable, at such times as it deems appropriate, to the Administrative Agent and the parties owed the Priority Amounts (as defined below); (iii) approving the reports filed by the Proposal Trustee and the Monitor from the commencement of the Proposal Proceedings and CCAA Proceedings, respectively, and their activities described therein; and (iv) extending the Stay Period (as defined below) to June 26, 2026.

6. The ARVO should be approved. The extensive marketing efforts undertaken in accordance with the Court-approved SISF have generated the best possible recovery available in the circumstances. The Transactions’ reverse vesting structure—designed to preserve key licences, contracts, and tax attributes—will achieve a going-concern outcome that is at least as favourable to stakeholders as any other alternative. Further, granting the Distribution, Stay Extension and Ancillary Relief Order would permit the Monitor to make distributions to key economic stakeholders, make payments in respect of certain Court-ordered charges, and attend to closing-related matters, all in pursuit of an orderly, value-maximizing restructuring.

PART II - THE FACTS

A. Background¹

7. The Applicants are part of a group of companies engaged in the development, production, and sale of health and nutrition products in Canada, the United States and internationally.²

8. On June 30, 2021, Iovate International entered into an Amended and Restated Credit Agreement (the “**Credit Agreement**”) with HSBC Bank Canada (now Royal Bank of Canada), as administrative agent (the “**Administrative Agent**”), and a syndicate of lenders (the “**Lenders**”).³ The Credit Agreement provided for a revolving credit facility and a term loan facility.⁴ As security for the obligations under the Credit Agreement, the NOI Applicants and related affiliates granted the Lenders a comprehensive security package.⁵

9. The NOI Applicants commenced the Proposal Proceedings after receiving demand letters from the Lenders, among other issues.⁶ On September 5, 2025, the NOI Applicants each filed an NOI under the BIA. KSV consented to act as Proposal Trustee.⁷

¹ The facts underlying this motion are more fully set out in the Fourth Report of the Monitor dated April 9, 2026 (the “**Fourth Report**”). Capitalized terms used but not otherwise defined herein are as defined in the Fourth Report. Unless otherwise noted, all currency references herein are in US Dollars.

² Fourth Report at para. 2.0(1).

³ Affidavit of Wesley Parris sworn October 29, 2025 at para. 98 (the “**October 29 Parris Affidavit**”); Fourth Report at para. 6.0(1).

⁴ Fourth Report at para. 6.1(1).

⁵ Fourth Report at para. 6.1(3). This security package included: (i) a multi-party Group Guarantee by Iovate International, Iovate USA, Northern Innovations and certain of their affiliates; (ii) a Canadian general security agreement granted by Iovate International, Iovate USA, Northern Innovations, Iovate Holdings and certain of their affiliates creating a first priority lien over all present and after-acquired real and personal property; (iii) a US general security agreement granted by Iovate USA and Iovate International (the “**US Security Agreement**”); and (iv) specific security over intellectual property, including trademarks and patents held by Northern Innovations (collectively, the “**Security Documents**”).

⁶ October 29 Parris Affidavit at paras. 151, 153.

⁷ Fourth Report at para. 1.0(1). This Court subsequently extended the time for the NOI Applicants to file a proposal to November 4, 2025, by order granted October 3, 2025: Fourth Report at para. 1.0(2).

B. The CCAA Proceedings

10. On October 31, 2025, this Court granted the Initial Order under the CCAA, which included a stay of proceedings in favour of the Applicants and five related foreign entities to and including December 12, 2025 (the “**Stay Period**”).⁸ By the same order, the Court granted certain charges on the Property (as defined in the Initial Order), authorized Iovate International to continue to act as the foreign representative of the NOI Applicants in proceedings (the “**Chapter 15 Proceedings**”) before the United States Bankruptcy Court for the Southern District of New York (the “**New York Court**”), and appointed KSV as Monitor of the Applicants.⁹

11. On November 28, 2025, this Court granted: (a) the SISP Order, approving the SISP and authorizing and empowering the Monitor and the Sales Agent to implement it;¹⁰ and (b) the ARIO, which authorized the Monitor to perform certain functions in connection with a letter agreement dated November 11, 2025 (the “**Engagement Letter**”) between the Applicants and Origin Merchant Partners (the “**Sales Agent**”).¹¹ The ARIO also granted a Sales Agent Charge ranking subordinate to the Administrative Professionals Charge and Directors’ Charge (each as defined in the ARIO), in the maximum amount of CA \$1.75 million in respect of a fee if a transaction is agreed to by the Applicants.¹²

⁸ Fourth Report at para. 1.0(3).

⁹ Fourth Report at para. 1.0(3). On November 12, 2025, the New York Court entered an order recognizing and enforcing the Initial Order with respect to Iovate International, Iovate USA, Northern Innovations, Muscletech LLC, XP Sports LLC, and SimpleVita Nutrition LLC: Fourth Report at para. 1.0(4).

¹⁰ Fourth Report at para. 1.0(5).

¹¹ The Engagement Letter provided that the following fees be payable to the Sales Agent: (i) if a transaction is agreed to by the Applicants during the term of the Sales Agent’s engagement, a transaction fee calculated based on the value of the transaction; and (ii) a monthly work fee starting in November 2025 to be credited against any transaction fee: Fourth Report at para. 6.3(1). The amounts of these fees were sealed pursuant to the ARIO, pending further order of the Court: Fourth Report at para. 6.3(3).

¹² Fourth Report at para. 1.0(5).

12. On December 12, 2025, this Court granted the Enhanced Monitor Powers Order, which permitted the Monitor to more directly supervise and, where appropriate, manage the Applicants' business, and to exercise any powers that may be properly exercised by a board of directors or any officers of the Applicants.¹³ On January 29, 2026, the Court granted an order extending the Stay Period to April 17, 2026, to allow for the continued implementation of the Court-approved SISP.¹⁴

13. On February 2, 2026, the Court granted an order approving incentive payments to employees, a key employee retention plan (“**KERP**”), and a charge on the Property (the “**KERP Charge**”) in the amount of US \$257,000, ranking subordinate to the Sales Agent Charge, to secure half of the payment to be made to key employees under the KERP (the “**KERP Payment**”).¹⁵ On the same date, this Court also granted an order authorizing the Applicants to make certain principal payments to the Administrative Agent on behalf of the Lenders, subject to certain conditions.¹⁶

C. The SISP

14. The Court-approved SISP involved an extensive marketing process to solicit interest in an investment in or acquisition of the Applicants' business.¹⁷ It began on November 13, 2025 and proceeded in two phases, in accordance with the SISP Order. At Phase 1, the Sales Agent sent an interest solicitation letter outlining the acquisition opportunity to 196 potential buyers, comprised of 160 financial sponsors and 36 strategic buyers.¹⁸ Each of the 61 potential buyers who ultimately executed non-disclosure agreements (the “**Potential Bidders**”) was provided with a confidential

¹³ Fourth Report at para. 1.0(6).

¹⁴ Fourth Report at para. 1.0(8).

¹⁵ Fourth Report at paras. 1.0(9), 6.4(2).

¹⁶ Fourth Report at para. 1.0(9).

¹⁷ Fourth Report at para. 3.1(1).

¹⁸ Fourth Report at paras. 3.1(1)-(3).

information memorandum and access to a virtual data room. Ten Potential Bidders submitted a letter of intent (the “**LOIs**”) by the applicable February 4, 2026 deadline. The seven LOIs that satisfied the Phase 1 bid requirements (submitted by the “**Phase 1 Qualified Bidders**”) advanced to Phase 2.¹⁹

15. During Phase 2, the Monitor and the Sales Agent worked closely together and with the Applicants’ management to address extensive due diligence requests from Phase 1 Qualified Bidders.²⁰ On or around March 20, 2026, the Sales Agent received four offers, including two in the form of definitive documents as required by the SISP.²¹ After consulting with the Administrative Agent, the Monitor and the Sales Agent engaged with each of these interested parties and requested that they improve their bids.²²

16. On April 1, 2026, the Monitor, in consultation with the Sales Agent and the Administrative Agent, selected the bid submitted by the Purchaser as the Successful Bid.²³ Iovate Holdings and the Purchaser entered into the Subscription Agreement.²⁴ In consultation with the Sales Agent and the Administrative Agent, the Monitor considered whether to identify and advance a back-up bidder, but ultimately determined that proceeding without one was appropriate in light of the

¹⁹ A summary of these LOIs is included in Confidential Appendix “1” to the Fourth Report.

²⁰ Fourth Report at para. 3.1(5).

²¹ Fourth Report at para. 3.2(1). A summary of these offers is included in Confidential Appendix “1” to the Fourth Report.

²² Fourth Report at para. 3.2(2).

²³ Fourth Report at paras. 3.2(4)-(5). As discussed below, the Monitor understands that the beneficial ownership of the Purchaser has changed following execution of the Subscription Agreement on April 2, 2026.

²⁴ Fourth Report at paras. 1.1(1), 3.2(4).

additional time and professional fees required to negotiate commercially feasible terms and finalize definitive agreements.²⁵

D. The Transactions

17. Pursuant to the Subscription Agreement:

- (a) at Closing, the Purchaser will subscribe for and acquire 100 common shares in the capital of Iovate Holdings, free and clear of all Encumbrances (other than Permitted Encumbrances);
- (b) the Existing Shares and all related plans, agreements, options, and rights will be terminated and cancelled for no consideration;
- (c) the Excluded Assets, Excluded Contracts, and Excluded Liabilities will be transferred to and vested in an entity to be formed (“**Residual Co.**”) pursuant to the ARVO; and
- (d) Iovate Holdings, Iovate International, Iovate USA, Northern Innovations, and Iovate Australia will retain the Retained Assets, Retained Liabilities, and Retained Contracts.²⁶

18. The Monitor has served the motion record on the service list to the CCAA Proceedings, and on the Applicants’ known contractual counterparties requiring notice of a change of control.²⁷

²⁵ Fourth Report at para. 3.2(6).

²⁶ The key terms of the Subscription Agreement and the Transactions are set out in more detail at para. 4.1(2) of the Fourth Report. Capitalized terms not otherwise defined are as defined in the Subscription Agreement.

²⁷ Fourth Report at para. 4.1(5).

PART III - THE ISSUES

19. The issues to be considered on this motion are whether this Court should grant:
- (a) the proposed ARVO; and
 - (b) the proposed Distribution, Stay Extension and Ancillary Relief Order.

PART IV - THE LAW

A. The ARVO should be granted

(a) The Transactions should be approved

20. In transactions effected by way of a reverse vesting order (“RVO”): (a) the purchaser becomes the sole shareholder of the debtor company; (b) the debtor company retains the desired assets; and (c) the liabilities not desired by the purchaser are vested out and transferred, together with any excluded assets, to a newly incorporated entity (here, Residual Co.), where they are often then addressed through a bankruptcy or similar process.²⁸ The debtor company, now holding only those desired assets and liabilities, may exit the insolvency proceeding on a going-concern basis.

21. CCAA courts have confirmed their jurisdiction to approve an RVO by virtue of s. 11 of the CCAA, which gives a CCAA court the authority to make any order that it considers appropriate in the circumstances.²⁹ While the “jurisprudence suggests” that RVOs “should be resorted to only sparingly and where necessary to accomplish the objectives of the CCAA,”³⁰ RVOs have been recognized as appropriate when the circumstances justify their use.³¹

²⁸ *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#) at para. 27 [*Just Energy*], citing *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#) at para. 85 [*Blackrock Metals*], leave to appeal ref’d [2022 QCCA 1073](#), leave to appeal ref’d [2023 CanLII 36969](#) (SCC).

²⁹ *Just Energy* at para. 29; *Harte Gold Corp (Re)*, [2022 ONSC 653](#) [*Harte Gold*] at paras. 36-37.

³⁰ *Re Voxtur Analytics Corporation*, [2026 ONSC 712](#) at para. 24.

³¹ *Blackrock Metals* at paras. 86, 96, 99.

22. In deciding whether to grant an RVO, courts have considered the factors in s. 36 of the CCAA,³² which addresses court approval of an asset sale outside the ordinary course of business. These include: (a) whether the process leading to the proposed disposition was reasonable in the circumstances; (b) whether the monitor approved the process leading to the proposed disposition; (c) whether the monitor filed with the court a report stating that in their opinion the disposition would be more beneficial to the creditors than a disposition under a bankruptcy; (d) the extent to which the creditors were consulted; (e) the effects of the proposed 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.

23. These factors largely correspond to the *Soundair* criteria for approving an asset sale, which remain relevant in evaluating an RVO. These principles are: (a) whether sufficient effort had been made to obtain the best price and that the debtor had not acted improvidently; (b) the interests of all parties; (c) the integrity and efficacy of the process for obtaining offers; and (d) whether there was any unfairness in the working out of the process.³³

24. In the RVO context, the court asks additional questions, namely: (a) why the RVO is necessary; (b) whether the RVO structure produces an economic result at least as favourable as any other viable alternative; (c) whether any stakeholder is worse off under the RVO structure than they would have been under any other viable alternative; and (d) whether the consideration reflects

³² *Just Energy* at para. 31; *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#) at para. 10 [*Acerus*]; *Re B+H Architects Corp.*, [2026 ONSC 26](#) at para. 17 [*B+H Architects*].

³³ *Just Energy* at para. 32, citing *Harte Gold and Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (ONCA).

the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure.³⁴

(i) The process was reasonable

25. The process leading to the Transactions was reasonable in the circumstances and demonstrates that the Monitor, with the assistance of the Applicants and the Sales Agent, made sufficient efforts to obtain the best price and did not act improvidently.

26. The SISP was conducted in accordance with the SISP Order.³⁵ This Court's approval of the SISP and recognition that it "represents the best path forward to monetize the assets of the Applicants for the benefit of all stakeholders" is evidence of its fairness, integrity, and efficacy.³⁶ The Monitor was involved in the development of the SISP and supported its approval.³⁷ There was no unfairness in the working out of the process. To the contrary, Monitor and the Sales Agent canvassed the market extensively through the two-phase SISP, reached out to 196 potential buyers, and provided access to confidential information regarding the acquisition opportunity.³⁸ Further, the Monitor consulted with the Administrative Agent (on behalf of the Lenders) in developing the SISP, reviewing the offers received, and selecting the Successful Bid.³⁹

³⁴ *Acerus* at para. 12; *Harte Gold* at para. 38.

³⁵ Fourth Report at para. 3.1(1).

³⁶ *Iovate Health Sciences International Inc. et. al* (28 November 2025), Toronto BK-25-03268936-0031 (ONSC) ([Endorsement](#)) at para. 2.

³⁷ First Report of the Monitor dated November 25, 2025 at paras. 3.2(2), 3.9(1).

³⁸ Fourth Report at para. 3.1(3).

³⁹ First Report of the Monitor dated November 25, 2025 at paras. 3.2(2), 3.9(1); Fourth Report at paras. 3.2(3)-(4).

(ii) The RVO structure is necessary and appropriate

27. Parties seeking court approval of an RVO must address why a reverse vesting structure is “necessary” in the circumstances.⁴⁰ RVOs “may be appropriate in circumstances where there are assets that are difficult to transfer to the purchaser through a typical asset sale,”⁴¹ often with reference to the delay, costs, uncertainty, and risk that would otherwise be involved.⁴² RVOs have accordingly been most commonly employed in circumstances where: (a) the debtor operated in a highly-regulated environment in which its existing permits, licenses, or other rights would difficult or impossible to transfer to a purchaser under a traditional asset sale; (b) the debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and/or (c) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.⁴³

28. All three of these circumstances justify the use of an RVO structure here:⁴⁴

- (a) **Licences:** The RVO structure is required to preserve certain key licences that cannot be transferred. Iovate International possesses two forms of licenses to sell its products in Canada: (i) a Natural Health Products Site License, which is required to import goods into Canada (the “**Site License**”); and (ii) 25 Natural Health Product Licenses (the “**Product Licenses**”), which are required to sell 34 of Iovate

⁴⁰ *Harte Gold* at para. 38; *Acerus* at para. 12.

⁴¹ *B+H Architects* at para. 25.

⁴² See, e.g., *Harte Gold* at para. 71; *Blackrock Metals* at paras. 115-117.

⁴³ *Just Energy* at para. 34; *B+H Architects* at para. 25. RVOs are often granted to preserve Health Canada licenses in particular: see, e.g., *Contract Pharmaceuticals Limited (Re)* (17 April 2024), Toronto CV-23-711401-00CL (ONSC) ([Endorsement](#)) at paras. 8, 33, 38 (involving a pharmaceutical business); *Atlas Global Brands Inc et al v. The Attorney General of Canada et al (Re)* (29 October 2024), Toronto CV-24-00722386-00CL (ONSC) ([Endorsement](#)) at para. 17 (in the cannabis context).

⁴⁴ Fourth Report at para. 4.2(3).

International's products in Canada. New applications for Site Licences and Product Licences can take 35-95 and 60-310 days (respectively) to be granted.

- (b) **Tax losses:** As of December 31, 2025, Iovate International had approximately US \$114 million in non-capital losses available to be carried forward (the "**Tax Losses**"). The value of the Tax Losses cannot be realized by way of an asset sale.
- (c) **Contracts:** The Subscription Agreement provides that significant contracts will remain with the Applicants. An RVO would mitigate the substantial delays and costs associated with seeking consents to assignment from contract counterparties or (if consents are not obtained) court approval of assignments.

29. The RVO structure would reduce potential costs, delay, and execution risk, ensuring the uninterrupted continuation of the Applicants' operations.⁴⁵ The Monitor also understands that the Purchaser is not prepared to acquire the business under an alternative structure.⁴⁶

(iii) The Transactions are in the best interest of stakeholders

30. The RVO structure produces an economic result that is at least as favourable as any other viable alternative. It would permit the Transactions to be completed more efficiently, without exposure to the risks, costs, or delays of applying for new Health Canada licenses or assigning contracts. In addition, the reverse vesting structure would preserve the value of the Tax Losses. The Transactions represent the best economic outcome from the extensive SISP.⁴⁷

⁴⁵ Fourth Report at para. 4.5(1).

⁴⁶ Fourth Report at para. 4.2(3).

⁴⁷ Fourth Report at para. 4.2(3).

31. In particular, the Transactions achieve a superior result to a liquidation of the Applicants' business. The Applicants' primary assets include inventory and accounts receivable, which would likely be realized at discounted values in a liquidation. The Applicants' intellectual property would also likely be materially impaired in a liquidation due to market factors and the negative connotation commonly associated with distressed or forced sales. Further, any liquidation would involve significant complexity and cost, given the geographic scope of the Applicants' operations across multiple continents.⁴⁸

32. No stakeholder is worse off under an RVO structure than they would have been under any other viable alternative. The Transactions provide the best available outcome for the Applicants' key stakeholders, including the Lenders, suppliers, customers, and employees (a substantial portion of whom would remain employed).⁴⁹ The Applicants' creditors would not suffer any material prejudice or impairment to their rights because the Transactions are structured as an RVO rather than an asset sale.⁵⁰ The Transactions represent the best recovery available for the Lenders, who support the Transactions through the Administrative Agent,⁵¹ and the SISP demonstrated that there would be no amounts available for distribution to any subordinate creditors under any other viable alternative. The Monitor is not aware of any opposition to the RVO structure.⁵²

33. In addition, because the Subscription Agreement provides that any amounts required to cure the Applicants' monetary defaults under any Retained Contract are Retained Liabilities, the

⁴⁸ Fourth Report at para. 4.5(1).

⁴⁹ Fourth Report at paras. 4.2(3), 4.5(1).

⁵⁰ Fourth Report at paras. 4.2(3), 4.5(1).

⁵¹ Fourth Report at para. 4.5(1).

⁵² Fourth Report at para. 4.2(3).

RVO would not waive the monetary default amounts that would otherwise be payable pursuant to an assignment of retained or assumed contracts in an asset sale structure.⁵³

(iv) The consideration is fair and reasonable

34. The consideration is fair and reasonable. The Transactions—the result of a comprehensive SISP that canvassed the market broadly—represent the best recovery available in the circumstances.⁵⁴ The consideration also reflects the importance and value of the intangible assets being preserved under the RVO structure. The consideration being paid by the Purchaser is directly attributable to the importance and value of the Site License, the Product Licenses, and the Tax Losses being preserved through the proposed ARVO.⁵⁵

(v) The requirements for a related-party transaction are satisfied

35. Subsection 36(4) imposes additional criteria that apply where the proposed sale is to a person who is related to the debtor company. The court must be satisfied that: (a) good faith efforts were made to sell 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.⁵⁶ This provision requires that the court be “satisfied, overall, that sufficient safeguards were adopted to ensure that a related party transaction is in the best interests of the stakeholders of the Applicants and that the risk to the estate associated with a related party transaction have been mitigated.”⁵⁷

⁵³ Fourth Report at para. 4.2(3).

⁵⁴ Fourth Report at para. 4.5(1).

⁵⁵ Fourth Report at para. 4.2(3).

⁵⁶ CCAA, s. 36(4).

⁵⁷ *Target Canada Co. (Re)*, [2015 ONSC 2066](#) at para. 15.

36. Although the Monitor has been advised by the Purchaser's counsel that the Purchaser is not related to Iovate Holdings for the purposes of s. 36 of the CCAA, the Monitor still considered the Transactions on the basis that they did constitute a sale to a related party, and concluded that the additional factors in subsection 36(4) of the CCAA were satisfied. The Monitor and the Sales Agent contacted a substantial number of potentially interested parties through the comprehensive SISP, including both financial sponsors and strategic buyers unrelated to the Applicants. The SISP was designed to, and in fact did, solicit interest from parties that were not related to the Applicants, as evidenced by the number of LOIs and offers received during the two-phase SISP. The consideration to be received under the Transactions is superior to any other executable transaction that was received in accordance with the SISP.⁵⁸

(b) Facilitating the cancellation of shares is appropriate

37. The proposed ARVO grants relief to facilitate the cancellation of the shares of Iovate Holdings, which is incorporated in British Columbia, and the re-issuance of shares to the Purchaser.⁵⁹ Similar relief has been granted in other orders involving entities incorporated under the *Business Corporations Act* (British Columbia).⁶⁰ This Court has recognized the appropriateness of cancelling existing shares and issuing new ones to a purchaser in the context of an RVO where, as here, “the existing shareholders have no economic interest in the company,” as

⁵⁸ Fourth Report at para. 4.3(1).

⁵⁹ Draft Approval and Reverse Vesting Order (the “**Draft ARVO**”) at paras. 4, 6, Tab 3 to the Motion Record of the Monitor dated April 9, 2026 (the “**Motion Record**”).

⁶⁰ See, e.g., *Good Natured Products Inc. et al (Re)* (31 October 2024), Vancouver S-244212 (BCSC) ([Approval and Reverse Vesting Order](#)) at paras. 25, 27; *1265056 B.C. Ltd. et al (Re)* (8 April 2026), Vancouver S258144 (BCSC) ([Approval and Reverse Vesting Order](#)) at paras. 23, 25 (a receivership), amended by *1265056 B.C. Ltd. et al (Re)* (9 April 2026), Vancouver S258144 (BCSC) ([Slip Order](#)); *Myra Falls Mine Ltd. (Re)* (10 July 2025), Vancouver S-238572 (BCSC) ([Reverse Vesting Order](#)) at paras. 6, 8.

“there is no entitlement to recovery unless all creditors are paid in full.”⁶¹ Granting this relief is therefore an appropriate exercise of this Court’s expansive jurisdiction under s. 11 of the CCAA.

(c) Residual Co. should be added as an Applicant

38. The proposed ARVO provides that, as of the Effective Time (as defined therein), Residual Co. “shall be a company to which the CCAA applies” and “shall be added as an Applicant in these CCAA Proceedings.”⁶² This step is typical in RVO transactions.

39. The CCAA applies to a “debtor company” or affiliated debtor companies where the total claims against the debtor/affiliated debtors exceed \$5 million.⁶³ A “debtor company” means, *inter alia*, a company that is insolvent.⁶⁴ Whether a company is insolvent is evaluated by reference to the definition of “insolvent person” in the BIA and the expanded concept of insolvency adopted by this Court in *Stelco*.⁶⁵

40. Upon the transfer of the excluded contracts, assets, and liabilities to Residual Co., the realizable value of its assets will be insufficient to satisfy all of its obligations (which will include amounts outstanding under the Credit Agreement). Residual Co. will therefore become “insolvent” under the BIA test and face the kind of imminent liquidity crisis that satisfies the expanded *Stelco* test, making it a “debtor company” to which the CCAA applies.

⁶¹ *Just Energy* at para. 64.

⁶² Draft ARVO at paras. 20(a)-(b).

⁶³ CCAA, s. 3(1).

⁶⁴ CCAA, s. 2(1).

⁶⁵ *Re Just Energy Corp.*, [2021 ONSC 1793](#) at paras. 49-50; *Laurentian University of Sudbury*, [2021 ONSC 659](#) at paras. 30-32, citing *Stelco Inc., Re*, [2004 CanLII 24933](#) (ONSC) at para. 26 (“a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring”).

(d) The Releases should be approved

41. Third party releases (*i.e.*, releases in favour of parties other than the CCAA debtor company) have been granted in cases involving RVOs. As the Québec Superior Court noted in *Blackrock Metals*, it “is now commonplace for third-party releases, in favor of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction.”⁶⁶

42. The same test for granting third party releases in a CCAA plan applies to a release in an RVO.⁶⁷ The court must ask: (a) whether the parties to be released were necessary to the restructuring of the debtor; (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (c) whether the restructuring could succeed without the releases; (d) whether the parties being released contributed to the restructuring; and (e) whether the releases benefit the debtors as well as the creditors generally.⁶⁸ It is not necessary for each of these factors to apply in order for the proposed release to be granted.⁶⁹

43. The proposed ARVO includes releases (the “**Releases**”) in favour of the current and former directors, officers, employees, consultants, legal counsel and advisors to Residual Co., the Monitor, the Monitor's legal counsel, the Sales Agent and the Purchaser and their respective current directors, officers, partners, employees, consultants, legal counsel, advisors, and assignees (collectively, the “**Released Parties**”). The Releases are limited to claims arising in connection with or relating to the Subscription Agreement, the completion of the Transactions, and the

⁶⁶ *Blackrock Metals* at para. 128.

⁶⁷ See *Harte Gold* at para. 80, citing the factors set out in *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para. 54 [*Lydian International*], a plan sanction decision.

⁶⁸ *Blackrock Metals* at para. 130, citing *Harte Gold* at paras. 78-86 and *Lydian International* at para. 54.

⁶⁹ *Harte Gold* at para. 80.

proposed ARVO. The proposed Releases do not release: (i) fraud or wilful misconduct; (ii) any claim against Residual Co. in respect of the Excluded Assets, Excluded Contracts or Excluded Liabilities transferred pursuant to the Subscription Agreement; (iii) any claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA; (iv) the parties' respective obligations under the Subscription Agreement; or (v) the Purchaser from any liability or obligation to any Debt Financing Source in relation to Debt Financing provided in connection with the Subscription Agreement and the Transactions.⁷⁰

44. The proposed Releases are being sought to achieve certainty and finality for the Released Parties, who have each contributed to the Transactions and the successful restructuring of the Applicants. The Releases are essential to the consummation of the Transactions and the orderly wind-down of these CCAA Proceedings to the benefit of stakeholders.⁷¹ The proposed Releases are rationally connected to the restructuring, as they are limited in scope to claims relating to the Subscription Agreement, the Transactions, and the ARVO.⁷² Additionally, neither the Applicants nor the Monitor have received any indication that stakeholders intend to assert a claim against any of the Released Parties in respect of claims covered by the Releases.⁷³ Finally, the proposed Releases are consistent with releases granted in numerous RVO transactions in favour of the current and former directors of Residual Co., the monitor and its counsel, advisors of the debtor company, and the purchaser of the business and its directors and officers.⁷⁴

⁷⁰ Fourth Report at para. 4.4(1).

⁷¹ Fourth Report at para. 4.4(2).

⁷² Fourth Report at para. 4.4(3).

⁷³ Fourth Report at para. 4.4(4).

⁷⁴ See, e.g., *Comark Holdings Inc. et al (Re)* (21 March 2025), Toronto CV-25-00734339-00CL (ONSC) ([Approval and Reverse Vesting Order](#)) at para. 23; *Chesswood Group Limited et al (Re)* (7 March 2025), Toronto CV-24-

(e) The Confidential Appendices should be sealed

45. The Monitor requests that Confidential Appendices “1” and “2” to the Fourth Report (the “**Confidential Appendices**”) be filed with the Court on a confidential basis and remain sealed until the Closing (as defined in the Subscription Agreement) of the Transactions pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.⁷⁵ Confidential Appendix “1,” a summary of the Phase 1 LOIs and Phase 2 bids submitted, discloses the structure, strategy, and results of Phase 1 and Phase 2 bid submissions of the SISP. Confidential Appendix “2,” an unredacted version of the Subscription Agreement, contains commercially sensitive financial information, including the purchase price and deposit.⁷⁶

46. Each of the factors that courts consider in granting a sealing order support this relief:⁷⁷

(a) **Serious risk to an important public interest:** This Court has recognized the public’s interest in maintaining the confidentiality of bid information, given the legitimate risk to the commercial interests of SISP participants, the debtor company, and the debtor’s stakeholders should the transaction fail to close.⁷⁸ The disclosure of the Confidential Appendices could pose a serious risk to the objective of maximizing value in these CCAA Proceedings, as it would undermine the integrity of any subsequent sale process if the Transactions were not to close.⁷⁹

00730212-00CL (ONSC) ([Approval and Reverse Vesting Order](#)) at para. 21; *Noya Holdings Inc. et al (Re)* (5 March 2025), Toronto CV-24-00730120-00CL (ONSC) ([Approval and Reverse Vesting Order](#)) at para. 19.

⁷⁵ Fourth Report at para. 5.0(1).

⁷⁶ Fourth Report at paras. 5.0(1)-(2).

⁷⁷ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para. 38.

⁷⁸ *Just Energy* at para. 72.

⁷⁹ Fourth Report at para. 5.0(2).

- (b) **Lack of a reasonable alternative to prevent this risk:** There is no reasonable alternative to the sealing order that would protect the confidentiality of the Confidential Appendices.
- (c) **Proportionality:** CCAA courts have approved sealing orders where the information over which confidentiality is sought to be maintained is “discrete, proportional, and limited.”⁸⁰ The terms of the Subscription Agreement have been for the most part made public through a selectively redacted version attached as Appendix “A” to the Fourth Report. In the circumstances, stakeholders will not be prejudiced by the sealing, and the salutary effects of sealing such information from the public record outweigh any deleterious effects that may exist.⁸¹

47. Finally, the Monitor supports the proposed sealing order. CCAA courts have referred to the support of the monitor as a relevant factor in applying the *Sherman Estate* test.⁸²

B. The Distribution, Stay Extension and Ancillary Relief Order should be granted

(a) The proposed distributions and payments should be authorized

48. The Applicants seek authorization to make one or more distributions to the Administrative Agent, on behalf of the Lenders, in an amount not to exceed the full amount of Iovate International’s “Indebtedness” (as defined in the Credit Agreement), subject to the Monitor retaining a reserve in an amount to be agreed to by the Monitor and the Administrative Agent, acting reasonably (the “**Administrative Reserve**”) for payments of: (i) any amounts secured by the Administrative Professionals Charge, Directors’ Charge, Sales Agent Charge, and KERP

⁸⁰ *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#) at para. 63 [*Original Traders*].

⁸¹ Fourth Report at paras. 5.0(3)-(4).

⁸² *Original Traders* at paras. 60, 64.

Charge, or as otherwise ordered by the Court (collectively, the “**Priority Amounts**”); (ii) any amounts to facilitate the ongoing administration of these CCAA Proceedings and any bankruptcy proceedings of Residual Co.; and (iii) such other amounts that the Monitor and Administrative Agent determine, acting reasonably, are necessary and prudent to be held back by the Monitor.⁸³ The Monitor intends to make these distributions to the Administrative Agent and payments to the parties owed the Priority Amounts on or shortly after Closing.⁸⁴ The Administrative Agent consents to the proposed distribution and payment scheme.⁸⁵

49. Courts may authorize a distribution of available cash to creditors during pending CCAA proceedings under s. 11 in the absence of a plan, with reference to facts like the validity of a secured creditor’s security, the amount outstanding, and the effect on stakeholders.⁸⁶

50. The proposed distribution to the Administrative Agent is reasonable and appropriate in light of these factors. The Lenders are the Applicants’ only secured creditors.⁸⁷ The Monitor has received opinions from its Canadian⁸⁸ and US⁸⁹ counsel as to the respective validity of the security

⁸³ Fourth Report at para. 6.0(1).

⁸⁴ Fourth Report at para. 6.0(2).

⁸⁵ Fourth Report at para. 6.5(1).

⁸⁶ See, e.g., *Hudson’s Bay Company, Re*, [2025 ONSC 2903](#) at paras. 17-23; *In the Matter of BZAM Ltd.* (15 October 2024), Toronto CV-24-00715773-00CL (ONSC) ([Endorsement](#)) at para. 16.

⁸⁷ October 29 Parris Affidavit at para. 109.

⁸⁸ The Monitor’s Canadian counsel, Osler, Hoskin & Harcourt LLP delivered an opinion to the Monitor which confirms, subject to the standard qualifications and assumptions customary in rendering security opinions of this nature, that the security granted by the NOI Applicants and Iovate Holdings under the Security Documents constitutes valid and enforceable security perfected by registration in the Province of Ontario: Fourth Report at para. 6.1(4).

⁸⁹ The Monitor’s US counsel, Cole Schotz P.C., delivered an opinion to the Monitor which confirms, subject to the standard qualifications and assumptions customary in rendering security opinions of this nature, that (i) the US Security Agreement is sufficient to create a valid security interest in the personal property (subject to certain exclusions) of Iovate USA and Iovate International under the laws of the State of New York, (ii) the Administrative Agent was properly granted liens on, and duly perfected such liens on, substantially all of the assets of (a) Iovate USA which can be perfected through the filing of a Uniform Commercial Code (“UCC”)-1

granted by the applicable Security Documents and the US Security Agreement. As of August 31, 2025, approximately US \$100,606,023 of principal was owing under the term loan facility, US \$14,000,000 was owing under the revolving loan facility, and an additional US \$1,179,465 of default interest had accrued month-to-date, for a total amount owing of US \$115,785,488.⁹⁰ The distributions would not exceed the full amount of the Indebtedness under the Credit Agreement.⁹¹

51. The proposed payments to the parties owed the Priority Amounts are necessary to resolve certain Court-ordered charges. On Closing, the Monitor intends to make payment of the amounts then owing to the beneficiaries of the Administrative Professionals Charge,⁹² and will pay an amount not to exceed the total owing to the Sales Agent under the Court-approved Engagement Letter.⁹³ The Monitor also intends to make the KERP Payment in accordance with the Court-approved KERP, which contemplates that the KERP Payment is to be paid at the earlier of: (i) two weeks following the closing of a successful transaction resulting from the SISP; and (ii) September 30, 2026.⁹⁴ Upon payment of the KERP Payment and all amounts owing to the Sales Agent under the Engagement Letter, the KERP Charge and the Sales Agent Charge will be automatically released and terminated without any further action.⁹⁵

financing statement, and (b) Iovate International located in the US in accordance with the UCC: Fourth Report at para. 6.1(4).

⁹⁰ Fourth Report at para. 6.1(2).

⁹¹ Fourth Report at para. 6.0(1).

⁹² Fourth Report at para. 6.2(1).

⁹³ Fourth Report at para. 6.3(4); Draft Distribution, Stay Extension and Ancillary Relief Order at para. 4, Tab 5 to the Motion Record.

⁹⁴ Fourth Report at para. 6.4(1).

⁹⁵ Fourth Report at paras. 6.3(5), 6.4(3).

(b) The activities and reports of the Monitor should be approved

52. The Monitor seeks the approval of reports filed by the Proposal Trustee and the Monitor from the commencement of the Proposal Proceedings and CCAA Proceedings, respectively, and the activities of the Proposal Trustee or Monitor, as applicable, described therein.⁹⁶

53. This Court has noted that requests to approve a monitor's reports and activities are "not unusual," and there are "good policy and practical reasons" for the court to do so, including: (a) allowing the monitor to move forward with next steps in the CCAA proceeding; (b) allowing the monitor to bring its activities before the Court; (c) enabling the Court to satisfy itself that a monitor's activities have been conducted in a prudent and diligent manner; (d) providing protection for a monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps.⁹⁷

54. From the commencement of the Proposal Proceedings to the Third Report of the Monitor dated January 23, 2026, the Monitor has engaged in various activities, including working to resolve garnishment and warehouse lien issues, assisting the NOI Applicants with stabilizing their business, preparing cash flow forecasts, engaging with creditors, negotiating the Engagement Letter, developing the SISP, corresponding with counsel, assisting with the design of the KERP, addressing issues regarding the Chapter 15 Proceedings, and preparing reports.⁹⁸ Since the Third Report, the Monitor has engaged in further activities in the exercise of its enhanced powers, including assisting the Applicants in the operation of their day-to-day business, facilitating the

⁹⁶ Fourth Report at para. 1.1(1).

⁹⁷ *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras. 13-14, citing *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at paras. 2, 12, 22.

⁹⁸ A more fulsome list of these activities is set out in the Fourth Report at para. 9.0(1).

SISP, negotiating the terms of the Subscription Agreement, corresponding with the Administrative Agent, and preparing the Fourth Report.⁹⁹

55. The reports and the applicable activities described therein should be approved. The activities of the Monitor have been carried out in accordance with the orders of this Court, and the Monitor has acted reasonably and in good faith throughout. Further, the Distribution, Stay Extension and Ancillary Relief Order is properly limited such that “only KSV, in its capacity as Monitor and in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.”¹⁰⁰

(c) The Stay Period should be extended

56. This Court is authorized to extend a CCAA stay pursuant to subsection 11.02(2) of the CCAA, provided that the two considerations outlined in subsection 11.02(3) are satisfied. These are: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted, and is acting, in good faith and with due diligence. Both of the subsection 11.02(3) factors are satisfied.

57. The current Stay Period is set to expire on April 17, 2026. The Monitor is requesting an extension of the Stay Period to and including June 26, 2026.¹⁰¹ The stay extension is necessary and appropriate in the circumstances to allow the Applicants the necessary time to obtain a recognition order of the ARVO from the New York Court and close the Transactions.¹⁰²

⁹⁹ A more fulsome list of these activities is set out in the Fourth Report at para. 9.0(2).

¹⁰⁰ Draft Distribution, Stay Extension and Ancillary Relief Order at para. 11.

¹⁰¹ Fourth Report at para. 8.0(1).

¹⁰² Fourth Report at para. 8.0(2). Although the Transactions are anticipated to close on or before May 29, 2026, the Applicants will require additional time to attend to post-closing administrative matters, including certain of the proposed distributions, prior to returning to Court.

58. The Applicants are acting in good faith and with due diligence. The Monitor forecasts that the Applicants will have sufficient liquidity to fund their operations and the costs of these CCAA Proceedings through the proposed extension period. The Monitor is not aware of any party opposed to an extension of the Stay of Proceedings as of the date of this Fourth Report—in fact, the Administrative Agent, on behalf of Lenders, supports the extension of the Stay Period. The Monitor does not believe that any creditor will be materially prejudiced by the proposed extension of the stay of proceedings.¹⁰³

PART V - RELIEF REQUESTED

59. The Monitor requests that this Court grant the proposed ARVO and the Distribution, Stay Extension and Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of April 14, 2026



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¹⁰³ Fourth Report at para. 8.0(2).

SCHEDULE “A”

LIST OF AUTHORITIES

1. *1265056 B.C. Ltd. et al (Re)* (8 April 2026), Vancouver S258144 (BCSC) ([Approval and Reverse Vesting Order](#))
2. *1265056 B.C. Ltd. et al (Re)* (9 April 2026), Vancouver S258144 (BCSC) ([Slip Order](#))
3. *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#)
4. *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#), leave to appeal ref'd [2022 QCCA 1073](#), leave to appeal ref'd [2023 CanLII 36969](#) (SCC)
5. *Atlas Global Brands Inc et al v. The Attorney General of Canada et al (Re)* (29 October 2024), Toronto CV-24-00722386-00CL (ONSC) ([Endorsement](#))
6. *Chesswood Group Limited et al (Re)* (7 March 2025), Toronto CV-24-00730212-00CL (ONSC) ([Approval and Reverse Vesting Order](#))
7. *Comark Holdings Inc. et al (Re)* (21 March 2025), Toronto CV-25-00734339-00CL (ONSC) ([Approval and Reverse Vesting Order](#))
8. *Contract Pharmaceuticals Limited (Re)* (17 April 2024), Toronto CV-23-711401-00CL (ONSC) ([Endorsement](#))
9. *Good Natured Products Inc. et al (Re)* (31 October 2024), Vancouver S-244212 (BCSC) ([Approval and Reverse Vesting Order](#))
10. *Harte Gold Corp (Re)*, [2022 ONSC 653](#)
11. *Hudson's Bay Company, Re*, [2025 ONSC 2903](#)
12. *In the Matter of BZAM Ltd.* (15 October 2024), Toronto CV-24-00715773-00CL (ONSC) ([Endorsement](#))
13. *Iovate Health Sciences International Inc. et. al* (28 November 2025), Toronto BK-25-03268936-0031 (ONSC) ([Endorsement](#))
14. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#)
15. *Laurentian University of Sudbury*, [2021 ONSC 659](#)
16. *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
17. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
18. *Myra Falls Mine Ltd. (Re)* (10 July 2025), Vancouver S-238572 (BCSC) ([Reverse Vesting Order](#))
19. *Noya Holdings Inc. et al (Re)* (5 March 2025), Toronto CV-24-00730120-00CL (ONSC) ([Approval and Reverse Vesting Order](#))
20. *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#)

LIST OF AUTHORITIES

21. *Re B+H Architects Corp.*, [2026 ONSC 26](#)
22. *Re Just Energy Corp.*, [2021 ONSC 1793](#)
23. *Re Voxtur Analytics Corporation*, [2026 ONSC 712](#)
24. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (ONCA)
25. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
26. *Stelco Inc., Re*, [2004 CanLII 24933](#) (ONSC)
27. *Target Canada Co. (Re)*, [2015 ONSC 2066](#)
28. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)

I certify that I am satisfied as to the authenticity of every authority.

Date April 14, 2026


Signature

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Definitions

2 In this Act, [...]

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

Notice of intention

50.4 (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).

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

Definitions

2 (1) In this Act, [...]

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or
- (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

- (a) relate to contractual rights of one or more creditors; or
- (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this

Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction on disposition of business assets

36 (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.

Courts of Justice Act, R.S.O. 1990, c. C.43

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF XIWANG IOVATE HOLDINGS COMPANY LIMITED, IOVATE HEALTH SCIENCES INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A. INC., IOVATE HEALTH SCIENCES AUSTRALIA PTY LTD, and NORTHERN INNOVATIONS HOLDING CORP.

Court File No.: BK-25-03268936-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

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