

Court File No: BK-25-03268936-0031

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

Court No.: 31-3268936
Estate No.: 31-3268936

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE
HEALTH SCIENCES INTERNATIONAL INC.**

Court No.: 31-3268942
Estate No.: 31-3268942

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE
HEALTH SCIENCES U.S.A. INC.**

Court No.: 31-3268971
Estate No.: 31-3268971

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
NORTHERN INNOVATIONS HOLDING CORP.**

**FACTUM OF
IOVATE HEALTH SCIENCES INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A.
INC., AND NORTHERN INNOVATIONS HOLDING CORP.
(Returnable October 3, 2025)**

September 30, 2025

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Innovations Holding Corp.

TO: THE SERVICE LIST

PART I – OVERVIEW

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 together with Iovate International and Iovate USA, the “**NOI Applicants**”) each filed a Notice of Intention to Make a Proposal (each an “**NOI**”, collectively the “**NOIs**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), commencing the “**NOI Proceedings**.”

2. As the 30-day period for filing a proposal under s. 50.4(8) of the BIA is set to expire on October 5, 2025 (the “**NOI Stay**”), the NOI Applicants seek an order extending this period to November 4, 2025 (the “**Extension**”).

3. The NOI Stay has provided the NOI Applicants with the breathing room necessary to work diligently to preserve their enterprise value, protect their relationships with key customers, and consider restructuring options for the benefit of NOI Applicants, their creditors and other stakeholders. The NOI Applicants require the Extension to preserve the *status quo* and pursue a restructuring plan.

PART II – SUMMARY OF FACTS

A. The Iovate Group

4. The NOI Applicants are part of a group of companies (the “**Iovate Group**”) engaged in the development, production, and sale of health and nutrition products in Canada, the United States,

and elsewhere.¹ The Iovate Group's key brands include MuscleTech™, Hydroxycut™, Six Star®, and Purely Inspired®, which are sold in over 90 countries worldwide.²

5. The Iovate Group manufactures and distributes its products through third-party co-manufacturers and a network of international distribution partners. Its products are shipped from facilities in Canada, the United States, Belgium, and Australia, and sold through retail, online, and distributor channels globally.³

B. Background to the NOI Proceedings

6. The Iovate Group are in default under their syndicated credit agreement, with approximately USD \$115,785,488 owing to their secured lenders (the “**Lenders**”) as of August 31, 2025.⁴ On August 27, 2025, the Lenders issued demand letters requiring immediate repayment and delivered notices of intention to enforce security, citing prejudice to their collateral as a result of Orgain, Inc.'s (“**Orgain**”) efforts to enforce the Judgement (as defined below).⁵

7. Iovate International and Iovate USA are jointly and severally liable under a judgment in favour of Orgain in the amount of USD \$12.5 million (the “**Judgment**”), which Orgain has sought to enforce through garnishments against major customers.⁶ On June 27, 2025, Orgain obtained a writ of garnishment against Walmart Inc. (“**Walmart**”). Orgain subsequently served the garnishment on Walmart in early August, and Walmart consequently began withholding payments to Iovate USA. As of September 26, 2025, Walmart is holding approximately USD \$13.2 million

¹ Affidavit of Wesley Parris sworn September 6, 2025 (the “**September 6 Parris Affidavit**”) at para 4.

² September 6 Parris Affidavit at para 13.

³ September 6 Parris Affidavit at para 15.

⁴ September 6 Parris Affidavit at para 25.

⁵ September 6 Parris Affidavit at paras 33-34.

⁶ September 6 Parris Affidavit at paras 26 and 28.

owing to Iovate USA.⁷ On August 25, 2025, Iovate International and Iovate USA were unsuccessful before the Circuit Court of Benton County, Arkansas in seeking an order quashing Orgain's writ of garnishment issued to Walmart.⁸

8. In the circumstances, the NOI Applicants determined that it was necessary to commence the NOI Proceedings under the BIA, as the NOI Stay would allow them to stabilize operations, pursue an orderly restructuring under court supervision, and seek recognition of the NOI Proceedings in the United States.⁹

C. Update on the NOI Proceedings

9. On September 5, 2025, the NOI Applicants each filed an NOI pursuant to section 50.4 of the BIA. KSV Restructuring Inc. was appointed as the NOI Applicants' proposal trustee (the **"Proposal Trustee"**).

10. On September 9, 2025, this Court granted an order (the **"September 9 Order"**), among other things: (a) approving administrative consolidation of the NOI Proceedings under one title of proceedings; (b) granting a charge over the assets, undertakings, and properties of the NOI Applicants to secure payment of the fees and disbursements of certain administrative professionals; (c) authorizing Iovate International to act as foreign representative for the purpose of having the NOI Proceedings recognized in a jurisdiction outside of Canada; and (d) authorizing Iovate International, as foreign representative, to apply for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*.¹⁰

⁷ Affidavit of Wesley Parris sworn September 29, 2025 (the **"September 29 Parris Affidavit"**) at para 7.

⁸ September 6 Parris Affidavit at para 32.

⁹ September 6 Parris Affidavit at para 36.

¹⁰ September 29 Parris Affidavit at para 5.

11. On September 10, 2025, the United States Bankruptcy Court for the Southern District of New York (the “**New York Court**”) entered an order (the “**Provisional Order**”) provisionally recognizing Iovate International as foreign representative of the NOI Applicants with full authority to administer their assets and affairs in the United States (the “**Chapter 15 Proceedings**”). The Provisional Order also provided that section 362 of the *United States Bankruptcy Code* applies with respect to the NOI Applicants and the property of each NOI Applicant that is within the territorial jurisdiction of the United States. The Provisional Order was extended pursuant to an order granted by the New York Court on September 19, 2025.¹¹

12. Despite the initiation of the NOI Proceedings, the NOI Applicants continue to face liquidity and business interruption issues. This is a result of various factors including, among others:¹²

- (a) the failure to receive approximately USD \$13.2 million (as of September 26, 2025) in receivables being held by Walmart as a result of Orgain’s enforcement efforts, which represent a critical component of the NOI Applicants’ cash flows and are required for working capital; and
- (b) the filing of a Motion for Relief from Stay or Adequate Protection under the Chapter 15 Proceedings by one of the NOI Applicants’ main third party logistics providers.

13. The NOI Applicants require the Extension to preserve the *status quo* and explore their restructuring options.¹³

¹¹ September 29 Parris Affidavit at para 6.

¹² September 29 Parris Affidavit at para 7.

¹³ September 29 Parris Affidavit at para 8.

14. The Extension is needed to, among other actions:¹⁴
- (a) obtain final recognition of the NOI Proceedings as a “foreign main proceeding” pursuant to Chapter 15 of the *United States Bankruptcy Code*, and related relief;
 - (b) continue to engage with suppliers, creditors, customers and employees to ensure the NOI Applicants’ Business continues to operate in the ordinary course and without interruption;
 - (c) continue to engage with the Lenders and other key stakeholders regarding the NOI Applicants’ restructuring options; and
 - (d) engage with the parties taking enforcement steps against the NOI Applicants, which are impacting the NOI Applicants’ liquidity and business, and to seek the appropriate judicial relief if consensual resolutions with these parties cannot be achieved.

PART III – ISSUES

15. The issue to be determined on this motion is whether this Court should grant the Extension.

PART IV – LAW AND ARGUMENT

A. The Extension should be granted

16. The NOI Applicants filed NOIs on September 5, 2025, triggering an automatic stay of proceedings under s. 69(1) of the BIA.¹⁵ By operation of section 50.4(8) of the BIA, the NOI

¹⁴ September 29 Parris Affidavit at para 9.

¹⁵ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 69(1) [*BIA*].

Applicants are required to file a proposal within 30 days unless they obtain an extension of time from the Court under section 50.4(9) before the expiry of the 30-day period.¹⁶ The NOI Applicants' 30-day period currently expires on October 5, 2025.

17. Pursuant to section 50.4(9) of the BIA, a debtor in a proposal proceeding may, before the expiry of the time to file a proposal, apply to the court for an order extending the time to file a proposal by a maximum of 45 days. The court may extend the time if it is satisfied that:¹⁷

- (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.

18. As a whole, "section 50.4(9) is intended to permit the insolvent person to continue efforts as part of an overall attempt to maximize the chances of a viable proposal for the benefit of all stakeholders."¹⁸ Matters considered under this provision "should be judged on a rehabilitation basis rather than on a liquidation basis."¹⁹

19. The NOI Applicants have satisfied these requirements.

¹⁶ BIA, ss. 50.4(8) and 50.4(9).

¹⁷ BIA, s. 50.4(9).

¹⁸ *2806401 Ontario Inc. o/a Allied Track Services Inc.*, [2022 ONSC 5509](#) at [para 38](#) [*Allied Track*].

¹⁹ *Dynamic Transport Corp. and Dynamic Transport Inc.*, [2016 NBCA 70](#) at [para 7](#).

a) The NOI Applicants are acting in good faith

20. The NOI Applicants have complied with all their obligations under the BIA and have been acting in good faith and with due diligence since commencing these NOI Proceedings.²⁰

21. Since the filing of the NOIs, the NOI Applicants:²¹

- (a) took all steps necessary to obtain the September 9 Order, the Provisional Order and the Extension Order;
- (b) worked with KPMG, in its capacity as financial advisor to the Iovate Entities (the “**Financial Advisor**”), and the Proposal Trustee to evaluate their financial position, including preparing projected cash flows which show that the NOI Applicants have sufficient liquidity to operate to the end of the Extension;
- (c) worked with their counsel, the Financial Advisor, the Proposal Trustee and the Proposal Trustee’s counsel in considering various restructuring options, including a sale and investment solicitation process;
- (d) continued to consider and plan restructuring steps that would improve their liquidity position;
- (e) worked with their counsel, the Proposal Trustee and the Proposal Trustee’s counsel to engage in discussions with Orgain and Walmart regarding the release of the funds owing by Walmart to Iovate USA; and

²⁰ September 29 Parris Affidavit at para 10.

²¹ September 29 Parris Affidavit at para 10.

- (f) took steps to ensure that their suppliers continued to supply goods and services required for the continued operation of the NOI Applicants' business in the ordinary course.

b) The Extension will support a restructuring

22. Under section 50.4(9) of the BIA, the Court looks to whether the insolvent person would likely to be able to make a viable proposal if the extension being applied for were granted.²² “[A]t least on a first extension,” this element “will not likely be a difficult standard to meet.”²³

23. The NOI Applicants are at an early stage of the NOI Proceedings and a definitive restructuring plan has not yet been formulated. The Extension is required to provide the NOI Applicants: (a) continued breathing room while they organize their affairs and stabilize operations; and (b) an opportunity to fully evaluate their restructuring options and commence certain restructuring initiatives.²⁴

24. The NOI Applicants expect that the Extension will:²⁵

- (a) provide the NOI Applicants with additional time to complete the Chapter 15 recognition process;
- (b) give the NOI Applicants an opportunity to address their disputes with Orgain and one of their main third party logistics providers, which threaten the NOI Applicants' business and impact their cash flows;

²² BIA, s. 50.4(9).

²³ *Scotian Distribution Services Limited (Re)*, [2020 NSSC 131](#) at [para 24](#) (Registrar).

²⁴ September 29 Parris Affidavit at para 11.

²⁵ September 29 Parris Affidavit at para 12.

- (c) allow the NOI Applicants' management to focus on restructuring efforts, which is in the interests of all stakeholders, including the Lenders, creditors, employees, customers and suppliers; and
- (d) assess whether their restructuring efforts would be more properly advanced under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36.

25. The NOI Applicants are therefore requesting the Extension of 30 days (i.e. until November 4, 2025) to preserve their business as they continue working toward a going-concern restructuring solution. The NOI Applicants are of the view that, if the Extension is granted, the likelihood of viable restructuring plans for the NOI Applicants will be enhanced.

26. If the Extension is not granted, the NOI Applicants will be assigned into bankruptcy pursuant to s. 50.4(8)(a), with the result that any going-concern restructuring will have been eliminated entirely.²⁶ This will be to the detriment of all stakeholders as a going concern restructuring will maximize recovery for stakeholders over a liquidation in bankruptcy.

c) No creditor is prejudiced by the Extension

27. There is no evidence that, and the NOI Applicants are not aware of, any creditors that would be materially prejudiced if the Extension is granted. Indeed, the opposite is true. The Extension will preserve the *status quo* and allow the NOI Applicants to continue to operate as a going concern while exploring their restructuring options.²⁷ Furthermore, the NOI Applicants' creditors will benefit from the orderly process provided by these proceedings rather than a bankruptcy.

²⁶ See *Allied Track* at [para 33](#).

²⁷ September 29 Parris Affidavit at para 8.

28. The NOI Applicants have been engaging in discussions with stakeholders throughout these NOI Proceedings and are not aware of any opposition to the Extension.²⁸

29. The Lenders, as the NOI Applicants' primary secured creditors, are supportive of the Extension.²⁹

30. The Proposal Trustee supports the proposed Extension and is of the view that the length of the Extension is appropriate in the circumstances. The NOI Applicants are projected to have sufficient funding during and beyond the requested Extension.³⁰

PART IV – ORDERS REQUESTED

31. For the above reasons, the NOI Applicants request an order approving the Extension.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of September, 2025.



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²⁸ September 29 Parris Affidavit at para 14.

²⁹ September 29 Parris Affidavit at para 15.

³⁰ September 29 Parris Affidavit at para 16.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *2806401 Ontario Inc. o/a Allied Track Services Inc.*, [2022 ONSC 5509](#)
2. *Dynamic Transport Corp. and Dynamic Transport Inc.*, [2016 NBCA 70](#)
3. *Scotian Distribution Services Limited (Re)*, [2020 NSSC 131](#)

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

Date September 30, 2025



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

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

Who may make a proposal

Section 50(1)

Subject to subsection (1.1), a proposal may be made by

- (a) an insolvent person;
- (b) a receiver, within the meaning of subsection 243(2), but only in relation to an insolvent person;
- (c) a liquidator of an insolvent person’s property;
- (d) a bankrupt; and
- (e) a trustee of the estate of a bankrupt.

Notice of intention

Section 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).

Where assignment deemed to have been made

Section 50.4(8)

(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

Section 50.4(9)

(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.

Bankruptcy and Insolvency General Rules, CRC, c. 368

Section 3

Where these Rules do not provide for a matter in respect of which rules are required, the practice shall be determined by the court, and in the case of proceedings in the Superior Court, by the rules of procedure of that court.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Rule 1.04(1)

These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

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FACTUM OF THE IOVATE ENTITIES
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