

CITATION: MJardin Group, Inc. (Re), 2022 ONSC 3338
COURT FILE NO.: 22-00678813-00CL
DATE: 2022-06-03

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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 INVOLVING MJARDIN GROUP, INC., GROWFORCE
HOLDINGS INC., 8586985 CANADA CORPORATION AND HIGHGRADE
MMJ CORPORATION

BETWEEN

PRICEWATERHOUSECOOPERS INC., IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER AND MANAGER OF BRIDGING FINANCE
INC. AND CERTAIN RELATED ENTITIES AND INVESTMENT FUNDS

APPLICANT

- and -

MJARDIN GROUP, INC., GROWFORCE HOLDINGS INC., 8586985
CANADA CORPORATION AND HIGHGRADE MMJ CORPORATION

RESPONDENTS

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Rebecca Kennedy and Adam Driedger*, for the Applicant

Chris Armstrong and Andrew Harmes, for KSV Restructuring Inc., Proposed
Court-appointed Monitor

Aiden Nelms, for the Proposed CRO

HEARD and
DETERMINED: June 2, 2022

REASONS: June 3, 2022

ENDORSEMENT

[1] PricewaterhouseCoopers Inc. ("PwC"), court-appointed receiver and manager of Bridging Finance Inc. ("BFI") and certain related entities and investment funds (in such capacity, the "Bridging Receiver") brings this creditor initiated application for an initial order (the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") in respect of MJardin Group, Inc. ("MJar"), and together with its direct and indirect subsidiaries, (the "MJar Group"), Growforce Holdings Inc. ("Growforce"), 8586985 Canada Corporation ("858") and Highgrade MMJ Corporation ("Highgrade" and, together with MJar, Growforce and 858, the "Respondents"). All capitalized terms are as defined in the Affidavit of Graham Page, sworn June 1, 2022.

[2] By orders dated April 30, 2021, May 3, 2021 and May 14, 2021, PwC was appointed as the Bridging Receiver pursuant to s. 129 of the *Securities Act (Ontario)*.

[3] One group of loans within Bridging's portfolio are those made by Bridging to certain entities in the MJar Group, in respect of which each of the Respondents is either a borrower or guarantor. The Respondents are in the cannabis cultivation and cannabis management services businesses, and their business represents the core remaining business of the MJar Group.

[4] Pursuant to the Canadian Loan Agreement among Growforce, as borrower, BFI, as agent, the Bridging investment funds from time to time acting as lenders (the "Lenders"), and each of MJar, Highgrade, and 858 as obligors, the Lenders made available to Growforce a revolving demand loan (the "Canadian Loan"). The total amount outstanding under the Canadian Loan Agreement is approximately \$135 million. The obligations of the Respondents under the Canadian Loan Agreement are secured.

[5] Pursuant to the U.S. Loan Agreement, the Lenders made available to the U.S. Borrowers certain demand loans (the "U.S. Loans" and together with the Canadian Loan, the "Loans"). The U.S. borrowers are indirect subsidiaries of MJar and no relief is being sought in respect of the U.S. Borrowers at this time. The total amount outstanding under the U.S. Loan Agreement is approximately \$44 million.

[6] The Respondents and other entities in the MJar Group are indebted to Bridging in the amount of approximately \$178 million under the Loans.

[7] The Respondents are in default of their obligations to Bridging under the Loan Agreements and the Loans are past maturity.

[8] On March 23, 2022, the Bridging Receiver sought and obtained the Receivership Order appointing KSV Restructuring Inc. ("KSV") as receiver and manager of MJar (in such capacity, the "MJar Receiver").

[9] The principal mandate of the MJar Receiver was to review and consider available options to monetize and maximize the value of the MJar Group. The MJar Receiver filed a report dated June 1, 2022 with respect to its activities. The MJar Receiver determined that the best path for the MJar Group would be to develop and implement an operational restructuring of the Respondents'

business and, ultimately implement a restructuring transaction that will preserve and maximize value for the benefit of Bridging and other stakeholders of the Respondent.

[10] The Bridging Receiver and the MJar Receiver are of the view that the CCAA provides the most appropriate forum to achieve such a result. As a result, the Bridging Receiver brought this creditor initiated application for the Initial Order. The Initial Order contemplates the appointment of KSV as the monitor of the Respondents.

[11] The Bridging Receiver has advised that, at the Comeback Hearing, it will seek the appointment of Howards Capital Corp. ("HCC") to act as chief restructuring officer of the Respondents (in such capacity, the "CRO"). It is proposed that the CRO will lead the restructuring efforts on behalf of the Respondents.

[12] MJar is a corporation incorporated under the laws of Ontario. MJar is the parent company of the MJar Group and is the direct parent company of Growforce.

[13] Growforce is a corporation incorporated under the laws of Ontario and is a borrower under the Canadian Loan Agreement and is a guarantor of the U.S. Loans. Growforce is wholly owned by MJar and is the direct parent company of Highgrade and 858.

[14] Each of Highgrade and 858 are corporations incorporated under the laws of Canada. Highgrade and 858 each hold cannabis licenses under the *Cannabis Act*. Each of Highgrade and 858 is a guarantor of the Loans.

[15] The Respondents employ approximately 75 employees, who are primarily located in Ontario.

[16] According to the most recent financial statements, the Respondents are stated to have total assets with a book value of \$85.9 million and total liabilities of \$208.2 million.

[17] After the granting of the Receivership Order, the Bridging Receiver, on behalf of the Lenders, advanced approximately \$2.54 million to the MJar Receiver.

[18] The Bridging Receiver understands that the Respondents have arrears on excise taxes and HST, which, as at March 22, 2022, totalled approximately \$650,615 and \$325,920, respectively.

[19] As noted above, the Bridging Receiver, in consultation with the MJar Receiver, determined that the best available option to maximize the value of the Respondents' business and assets and to pursue certain operational restructuring initiatives under the CCAA.

[20] The MJar Receiver supports the filing of this application and also consents to its appointment as monitor. Counsel has indicated that an order will be sought discharging the MJar Receiver immediately following the granting of the Initial Order.

[21] It is well-established that creditors may bring an application for an initial order under the CCAA in respect of a debtor company. (*Miniso International Hong Kong Limited v. Migu Investments Inc.*, 2019 BCSC 1234 (“*Miniso*”).

[22] Counsel to the Applicant submits that the Lenders are the senior secured creditors of the Respondents and are the primary stakeholders with an economic interest in the Respondents, which justifies bringing this application.

[23] In order to qualify for CCAA protection, each of the Respondents must be a “debtor company” whose liabilities exceed \$5 million. A “debtor company” is defined in the CCAA to include a “company” that is “insolvent” or that has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (“BIA”).

[24] Each of the Respondents is a corporation incorporated under the laws of Ontario or Canada and therefore constitutes a “company” and having reviewed the record and hearing submissions, I am satisfied that each of the Respondents is a “debtor company” to which the CCAA applies.

[25] I am also satisfied that it is appropriate to grant a stay of proceedings pursuant to the CCAA.

[26] I am also satisfied that it is appropriate to appoint KSV as Monitor. In arriving at this conclusion, I have taken into account that the Receivership Order provides that KSV is authorized and empowered to act as Monitor of MJar and any of its subsidiaries in any CCAA proceeding.

[27] The Bridging Receiver also requests an order that grants a super-priority administration charge, pursuant to s. 11.52 of the CCAA, in favour of the Monitor and the Monitor’s independent legal counsel in the amount of \$100,000 (the “Administration Charge”). The only creditors who are likely to be impacted by the Administration Charge are the Lenders. The Bridging Receiver, on behalf of the Lenders, is of the view that the priority and quantum of the Administration Charge are reasonable and appropriate in the circumstances.

[28] I am satisfied that it is appropriate to grant the Administration Charge.

[29] The Bridging Receiver also requests that the DIP Term Sheet and the DIP Lender’s Charge be approved. The statutory authority to approve same is set out in s. 11.2 of the CCAA and s. 11.2(2) provides the court with the express statutory authority to order that the DIP Lender’s Charge rank in priority to the claim of any secured creditor of the debtor company.

[30] The Bridging Receiver requests that the court grant a super-priority charge in favour of the DIP Lender in the amount of \$250,000 (the “DIP Lender’s Charge”). I am satisfied that this amount is required to ensure that the Respondents can continue operating their business through the Initial Stay Period and the DIP Lender’s Charge will not initially prime any secured creditor of the Respondents who did not received notice of the application for the Initial Order.

[31] In my view, it is appropriate to approve the DIP Term Sheet and the DIP Lender’s Charge. In arriving at this conclusion, I have taken into account that the record establishes that the Respondents have urgent liquidity needs and without the DIP Financing, the Respondents would

be unable to continue in business and make payroll in the near term. The record also establishes that the quantum of the DIP Financing is reasonable and appropriate having regard to the cash flow forecast and that the amounts involved amount to what is reasonably necessary in the circumstances and, finally, the only creditors likely to be impacted by the DIP Lender's Charge are the Lenders, who are providing the DIP Financing.

[32] The Bridging Receiver also requests that the court grant a super-priority charge in favour of the Respondents' directors and officers in the initial amount of \$355,000 (the "Directors' Charge") to secure the indemnity provided to the Respondents' directors and officers in respect of any liabilities they may incur during the CCAA proceedings. The authority to grant such a charge is set out in s. 11.51 of the CCAA. The Bridging Receiver submits that the Respondents will benefit from the active and committed involvement of the current and future directors and officers and that the directors and officers cannot be certain whether the existing insurance will respond to any claims made against them. Further, the only creditors who are likely to be impacted by the Directors' Charge are the Lenders, who consent to, and seek approval of, the Directors' Charge.

[33] In the circumstances, I am satisfied that it is appropriate to grant the Directors Charge in the requested amount.

[34] In the result, the Initial Order is granted. A Comeback Hearing has been scheduled for Thursday, June 9 commencing at 10:45 AM.



Chief Justice G.B. Morawetz

Date: June 3, 2022