

CITATION: MPX International Corporation (Re), 2022 ONSC 7152
COURT FILE NO.: CV-22-00684542-00CL
DATE: 20221219

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

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 OF MPX INTERNATIONAL CORPORATION, BIOCANNABIS PRODUCTS LTD., CANVEDA INC., THE CING-X CORPORATION, SPARTAN WELLNESS CORPORATION, MPXI ALBERTA CORPORATION, MCLN INC., AND SALUS BIOPHARMA CORPORATION,

BEFORE: Penny, J.

COUNSEL: *Mike Shakra and Thomas Gray*, Counsel for the Applicants

Kyle Plunkett and Tamie Dolny, Counsel for the Monitor

Ari Sorek, Counsel for the Canveda Purchaser

Sara-Ann Wilson, Counsel for the DIP Lenders

Linc Rogers, Counsel for the Debenture Trustee

Edward Park, Counsel for the Canada Revenue Agency

Marc Kestenberg, Counsel for MPXI and certain directors in the Ninth Square Action

Vern DaRe, Counsel for Piya Jittallan

Philip Anisman, Counsel for Ninth Square Capital Corporation

HEARD: December 15, 2022

ENDORSEMENT

[1] On December 15, 2022, I issued orders approving two transactions and a CCAA termination order, with reasons to follow. These are the reasons.

[2] The applicants' motion is for:

- (a) an approval and reverse vesting order approving the Canveda sale transaction contemplated by an October 16, 2022 share purchase agreement among MPXI as vendor, Canveda as the purchased entity and 9453-5382 Quebec Inc. as Purchaser;
- (b) an approval and vesting order approving a December 7, 2022 sale transaction entered into between MPXI and Spartan as vendors and ReFlourish Capital Limited (a designated entity of the primary secured creditors, the Debentureholders) as purchaser; and
- (c) an order: a) extending the stay to enable these transaction to close and the applicant and Monitor to complete all necessary tasks; b) approving the fourth report of the Monitor and the fees, disbursements, activities, and fee accrual of the Monitor and its counsel; c) terminating the CCAA proceedings upon the Monitor's filing of the discharge certificate; d) discharging KSV as Monitor upon the filing of the discharge certificate; e) terminating the Administration Charge and the Directors' Charge upon the filing of the discharge certificate; and, f) approving the proposed releases.

[3] The applicants are in the cannabis business. MPXI is a public company listed on the CSX. It is principally a Canadian business but has subsidiaries which operate internationally as well. The primary secured debt of about \$20 million is held by a consortium of Debentureholders. The claims of unsecured creditors at the time of the filing totalled about \$2.6 million. As a result of a liquidity crisis, the applicants sought an initial order under the CCAA in July 2022. KSV was appointed Monitor. These proceedings, and ongoing operations since the filing, have been funded by a subset of Debentureholders through a DIP financing program, to the tune of about \$3 million.

[4] A sales and investment solicitation process was approved by the court in August 2022. Extensive efforts were made to solicit interest in this business. 179 potential bidders were approached. 15 parties executed nondisclosure agreements to engage in additional due diligence. Seven parties submitted offers. The Debentureholders also submitted a credit bid. The third party offers were insufficient to repay the Debentureholders, by a significant margin. The Debentureholders' credit bid was therefore the bid that realize the greatest value. Nevertheless, with the Debentureholders agreement, the applicants (with the assistance of the Monitor) continued post-SISP discussions with one bidder which had expressed interested in what is referred to as the Canveda business. The Canveda portion of the applicants' business is the actual licensed cannabis production and resale operation. The other business lines, proposed to be acquired by the Debentureholders through their credit bid, relate principally to cannabis-related management consulting and cannabis education.

The Canveda Transaction

[5] The Canveda transaction is structured as a share purchase under a reverse vesting order structure. Thus, all existing shares will be cancelled, new shares will be issued to the Purchaser and undesirable assets and liabilities will be "vested out" to another corporation (which will likely be put into bankruptcy). It is of some significance in the circumstances of this case that, although cannabis inventory potentially represents an asset in the hands of a licensed operator, it represents a significant liability if, for example, the inventory could not be sold and had to be destroyed (as

in an insolvency). This is because the destruction of cannabis products is subject to a highly regulated regime.

[6] Under the proposed transaction, the Purchaser will assume certain liabilities to CRA and certain other liabilities relating to the business which have arisen since the initial order. Significant unsecured debt will not be paid. The current shareholders, of course, stand behind the secured and unsecured creditors. The shareholders will, as a result of the applicants' insolvency and the enormous shortfall in repayment of even the secured debt, get nothing.

[7] As noted, production and sale of cannabis is a highly regulated business requiring various permits and licenses issued by government agencies. The Purchaser's offer is conditional on acquiring the Canveda permits and licences. The use of the RVO structure is, therefore, driven by the need to preserve these licences. On this basis, I find that the exceptional circumstances necessary for the threshold application of the RVO structure have been met.

[8] This transaction is the product of the court approved SISP. The SISP was a broad and transparent process which brought this opportunity to the attention of a substantial number of potentially interested parties. Although the price being paid for the Canveda business is modest, it is at least in cash and provides better value than any offer obtained during the SISP itself. It also produces greater value than a liquidation in bankruptcy, which would imperil ongoing operations and the permits and licences. Based on the results of the SISP, bankruptcy is the only remaining alternative to this transaction.

[9] The Canveda transaction has the additional benefit that it will preserve some of the jobs at Canveda as the Purchaser intends to continue to operate Canveda as a going concern. In this connection, the Purchaser has agreed to assume certain liabilities of the business as well.

[10] No stakeholder will be left in a worse position than they would have been in under any other realistic (i.e., bankruptcy) scenario. Given the significant extent of the shortfall in value between the secured debt and the bids received in the SISP, unsecured creditors and shareholders were never going to be "in the money" under any circumstance.

[11] This transaction has the support of the Debentureholders and the DIP lenders, who are the only creditors with any realizable economic interest in the applicants. The Monitor supports the transaction as well.

[12] There was a tendency in the material filed to downplay or even ignore the "negative" consequences of the process for some stakeholders. For example, the extent of the unsecured debt that would never be paid was nowhere apparent in the material filed. Likewise, there was no discussion of the proposed treatment of the of the shareholders, even though the orders sought contemplate the cancellation of existing shares and the issuance of new shares to the purchaser.

[13] Once all the facts and circumstances of this case are fully examined and understood, of course, it becomes clear, given the significant shortfall in payment of secured debt, that little if any pre-filing unsecured debt could ever have been paid and that the shareholders were never going to have any subsisting economic interest in the enterprise.

[14] However, this is no reason not to address these matters explicitly. The Monitor occupies a unique role in CCAA proceedings. The Monitor is the *court's* officer appointed to act independently and in the best interests of all stakeholders in the proceedings. Both the court and the Monitor must be concerned with *all* stakeholders, not only those who are acquiring interests or receiving some of the proceeds but also those being left behind, and why. Neither the applicant nor the Monitor should have any hesitation in dealing explicitly with the consequences of the sales approval process for those who will get no recovery. Indeed, in my view, they are required to do so. The questions that must be answered to obtain approval of a RVO cannot be answered without explicit examination of the effect of the proposed restructuring on *all* stakeholders in the context of the elements of the proposed restructuring and what is reasonably achievable by way of recovery in the circumstances. Such an examination may not change the ultimate result, but it is a part of the balance that must be weighed by the court in approving, or not approving, an RVO transaction: *Harte Gold Corp. (Re)*, 2022 ONSC 65 at para. 38; *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at para. 99.

[15] I am satisfied that the proposed transaction is reasonable and in the interests of those stakeholders with any realizable economic interest in this enterprise.

Debentureholders' Transaction

[16] The Debtholders' transaction is the result of a credit bid. This bid was made in compliance with the terms and conditions of the SISP. The evidence establishes that the Debentureholders had no inside information and received no favourable treatment.

[17] Again, the Debentureholders' credit bid must be viewed in the context of the SISP as a whole, which was broadly based, transparent and fair. The Debentureholders' debt far exceeded any of the other offers made in the sales process.

[18] This transaction will also preserve jobs for certain employees of the Sparta and Malta operations because the Debentureholders intend to continue to operate those businesses in some capacity.

Stay Extension

[19] The stay extension sought is tailored to the remaining requirements of the CCAA process, such as closing the above transactions and the filing of a discharge certificate by the Monitor. The discharge certificate is appropriate at this stage since the remaining steps are limited in number and clearly identified. The Monitor is supportive.

Releases

[20] The releases carve out certain pre-filing claims against directors and officers. These terms were negotiated with all affected parties. There is no opposition to the form of the releases sought. The releases recognize the significant contributions made by various individuals to the restructuring effort. The releases appear to comply with all statutory constraints. The form of the releases is supported by the Monitor.

Monitor's Report and Compensation

[21] The Monitor's report was of assistance to the court. The fees of the Monitor and its counsel appear reasonable. There is no opposition to the request for approval. It is granted on the usual terms.

A handwritten signature in blue ink, appearing to read "Penny J.", is written above a horizontal line.

Penny J.

Date: December 19, 2022