Court File No.: CV-23-00701377-00CL

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 SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.

Applicants

FACTUM OF THE APPLICANTS

June 28, 2023

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(as of June 27, 2023)

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FACTUM OF THE APPLICANTS

PART I - INTRODUCTION

1. On June 21, 2023, Swarmio Media Holdings Inc. ("**Swarmio Parent**"), Swarmio Inc. ("**Swarmio OpCo**") and Swarmio Media Inc. ("**Swarmio Media**", together with Swarmio Parent and Swarmio OpCo, the "**Swarmio Group**", the "**Company**" or the "**Applicants**") brought an application pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c-C. 36, as amended (the "**CCAA**").

2. This factum is filed in support of the comeback motion of the Applicants, further to the Initial Order of Madam Justice Steele dated June 21, 2023.

3. The Applicants seek the following orders:

   (a) an amended and restated Initial Order (the "**Amended and Restated Initial Order**"), substantially in the form attached at **Tab** "**3**" of the Applicants' motion record, among other things:

(i) increasing the borrowing limit under the court-approved DIP Term Sheet dated June 20, 2023 (the "**DIP Term Sheet**") between the Company and Triaxcess Ltd. (the "**DIP Lender**"), together with a corresponding increase to the Court-ordered DIP Lender's Charge granted in favour of the DIP Lender, to a maximum amount of $1,500,000 (from $135,000 currently);

(ii) increasing the Administration Charge (as defined in the Initial Order) from $100,000 to $300,000; and

(iii) extending the stay of proceedings up to and including August 31, 2023 (the "**Extended Stay Period**"); and

(b) an Order (the "**SISP Order**"), substantially in the form attached at **Tab** "**5**" of the Applicants' motion record, among other things, approving a sale and investment solicitation process ("**SISP**") in respect of the Applicants' business and assets.

PART II - SUMMARY OF FACTS

A. Background To CCAA Proceedings

4. The facts underlying this motion are set out in the affidavits of Vijai Karthigesu dated June 20, 2023 ("**First Karthigesu Affidavit**") and June 26, 2023 (the "**Second Karthigesu Affidavit**"), filed. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Karthigesu Affidavit. Mr. Karthigesu is a director and Chief Executive Officer of the Company.

5. The Swarmio Group is an early stage, pre-revenue technology and media company focused on the gaming sector. The Company is insolvent and unable to raise the capital necessary to fund its development. It has exhausted its liquidity and has not made payroll.[1]

6. Before bringing its application under the CCAA, the Company pursued numerous strategic alternatives over the last year and a half with no success. The Company required the breathing room afforded by the CCAA to obtain interim financing, develop and implement a sale process, and identify a value-maximizing transaction for the going-concern sale of the business.[2]

7. On June 21, 2023, Justice Steele granted the Initial Order which, among other things:

(a) granted a stay of proceedings in favour of the Company up to and including July 1, 2023;

(b) appointed Grant Thornton Limited as the monitor of the Company (in such capacity, the "**Monitor**");

(c) granted an administration charge to secure the professional fees and disbursements of the Applicants' counsel, the Monitor and its counsel up to a maximum amount of $100,000 (the "**Administration Charge**");

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[1] Affidavit of Vijai Karthigesu sworn June 20, 2023 (the "**First Karthigesu Affidavit**"), Exhibit A to the Affidavit of Vijai Karthigesu sworn June 26, 2023 (the "**Second Karthigesu Affidavit**"), Tab 2A to the Motion Record.

[2] First Karthigesu Affidavit at para 6, Tab 2A to the Motion Record.

(d) granted a charge in favour of the current directors and officers of the Company in the amount of $100,000 (the "**Directors' Charge**"); and

(e) approved the DIP Term Sheet which provided for the DIP Financing to fund the Company's operations during the initial 10-day stay of proceedings, with a maximum borrowing limit thereunder of up to $135,000 until further order of the Court.

B. Activities Since Comeback Hearing

8. The Applicants have acted and continue to act in good faith and with due diligence in these CCAA proceedings.

9. Among other things, since the Initial Order, the Applicants have worked with the Monitor and their advisors to: prepare and implement a communications plan for stakeholders including employees and shareholders; design and develop the terms of the SISP; and prepare an updated cash flow forecast ("**Cash Flow Forecast**") for the proposed Extended Stay Period.[3]

C. Proposed Sale Process

10. All capitalized terms used in this section and not otherwise defined have the meanings given to them in the SISP. A summary of the SISP is provided in the Second Karthigesu Affidavit. At a high level, the SISP:[4]

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[3] A copy of the updated Cash Flow Forecast is appended to the Monitor's First Report dated June 26, 2023 (the "**First Report**") at Appendix "D".

[4] Second Karthigesu Affidavit at paras 13-24, Tab 2 to the Motion Record.

(a) provides for a two-phased process that will begin immediately following the issuance of the proposed SISP Order, whereby:

(i) Potential Bidders who wish to make a formal offer shall submit a Phase 1 Bid by the Phase 1 Bid Deadline (July 25, 2023), conditional upon confirmatory due diligence to be conducted during Phase 2 of the SISP; and

(ii) Any Phase 1 Qualified Bidder that wishes to participate in Phase 2 must submit a binding offer by the Phase 2 Bid Deadline (August 14, 2023);

(b) will be administered by the Monitor in consultation with the Applicants;

(c) is designed to provide transparency and ensure that Potential Bidders are aware of the timelines and requirements for submitting a qualified bid, as well as the assessment criteria that will be used to select the Successful Bid;

(d) permits the Monitor to modify or extend deadlines or dispense with other requirements as the circumstances may require;

(e) provides that the closing of any sale of or investment in the Applicants' business will be conditional upon court approval; and

(f) includes the following key milestones and deadlines:

Milestone	**Deadline**
Deadline to Publish Notice of SISP and deliver Teaser Letter and NDA to Known Potential Bidders	As soon as practicable following the issuance of the SISP Order

Phase 1 Due Diligence Period	July 3, 2023 to July 24, 2023
Phase 1 Bid Deadline	July 25, 2023
Phase 2 Due Diligence Period	July 26, 2023 to August 13, 2023
Phase 2 Bid Deadline	August 14, 2023
Auction Date	August 18, 2023
Sale Approval Motion	No later than August 28, 2023, subject to the availability of the Court
Closing	September 7, 2023

D. Additional DIP Funding Required

11. Prior to the issuance of the Initial Order, on June 20, 2023, the Company entered into the DIP Term Sheet with the DIP Lender. The Initial Order approved the DIP Term Sheet, with a borrowing limit of up to $135,000 pending further order of the Court.[5]

12. The Company now seeks approval to increase the borrowing limit under the DIP Term Sheet to the full principal amount of $1,500,000, and a corresponding increase to the DIP Lender's Charge.[6]

13. The Cash Flow Forecast demonstrates that access to the additional DIP Financing is necessary to fund the ongoing working capital requirements and the restructuring costs

[5] A copy of the DIP Term Sheet is attached as Exhibit "E" to the Second Karthigesu Affidavit, Tab 2E to the Motion Record.

[6] Second Karthigesu Affidavit at para 26, Tab 2 to the Motion Record.

required to implement the proposed SISP. The Company will utilize funds from the DIP Financing in accordance with the updated Cash Flow Forecast.[7]

E. Administration Charge

14. The Administration Charge granted in the Initial Order (up to a maximum of $100,000) was limited to the amount that was reasonably necessary during the initial 10-day stay of proceedings. It is expected that the Monitor, counsel for the Monitor and counsel for the Applicants will play a critical role in assisting the Applicants with the implementation of the SISP and the progression of these CCAA proceedings.[8]

15. Each proposed beneficiary of the Administration Charge performs a distinct function without role duplication.[9]

PART III - STATEMENT OF ISSUES

16. The issues to be addressed before this Honourable Court are whether:

(a) the SISP should be approved;

(b) the increase to the borrowing limit under the DIP Term Sheet and the DIP Lender's Charge should be approved;

(c) the Administration Charge should be increased; and

(d) the Extended Stay Period should be granted.

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[7] Second Karthigesu Affidavit at paras 26-28, Tab 2 to the Motion Record.
[8] Second Karthigesu Affidavit at paras 29-31, Tab 2 to the Motion Record.
[9] Second Karthigesu Affidavit at para 31, Tab 2 to the Motion Record.

PART IV - LAW AND ARGUMENT

(i) The SISP Should Be Approved

17. In exercising the broad powers to facilitate restructurings conferred by the remedial nature of the CCAA, the Court considers a number of factors in connection with the approval of a sale process:[10]

(a) whether a transaction is warranted at this time;

(c) whether the sale will benefit the whole economic community;

(d) whether creditors have a *bona fide* reason to object to a sale of the business; and

(e) whether there is a better viable alternative.

18. The Applicants are of the view that the proposed SISP should be approved for the following reasons:

(a) a transaction is warranted at this time, as the Applicants: are insolvent, are facing a liquidity crisis, and cannot continue to operate in the ordinary course. The SISP will provide the opportunity for the Applicants to continue as a going concern, maintaining employment for the Company's employees;

(b) the SISP will benefit the whole economic community because it is designed to canvass the market broadly to identify a bid that maximizes value for the Applicants' stakeholders;

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[10] *Nortel Networks Corp., Re,* 2009 CanLII 39492 (ON SC), at para 49; *Brainhunter Inc., Re* (2009), 183 ACWS (3d) 905 at para 13; *Danier Leather Inc., Re*, 2016 ONSC 1044,at para 23.

(c) the SISP was developed in consultation with the Monitor;

(d) the Monitor has reported on its view that the timeline of the SISP is structured to adequately expose the Company while managing financial resources;

(e) the SISP will be implemented by the Monitor, who will be the sole recipient of bids;

(f) the Monitor is of the view that the SISP is fair and reasonable in the circumstances.[11]

19. The SISP contemplates a Phase 1 Bid Deadline of July 25, 2023, and a Phase 2 Bid Deadline of August 14, 2023, which the Applicants submit is reasonable and necessary in the circumstances because:

(a) prior to initiating these CCAA proceedings, the Company made efforts to canvass the market for parties who may be interested in purchasing the Company's business. The Company is aware of parties, including the DIP Lender, who have expressed interest in participating in the SISP. As a result of these pre-CCAA sale efforts, the Applicants and Monitor will be prepared to commence the SISP immediately upon issuance of the proposed SISP Order, which allows the Monitor to leverage the entire duration of the SISP to broadly canvass the market.[12]

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[11] Monitor's First Report at paragraph 59.
[12] Second Karthigesu Affidavit at para 19, Tab 2 to the Motion Record.

(b) the time frame contemplated by the proposed SISP strikes an appropriate balance between providing sufficient time for interested parties to complete due diligence, while also maintaining a high degree of efficiency.[13] The Company has limited financial resources to fund an extended process. A longer period of exposure to the market is unlikely to maximize value in the circumstances, given the specialized nature of the Applicants' business and assets, and the efforts already undertaken to sell the business.

(c) the time frame contemplated by the SISP is similar to other sale processes recently approved by this Court, including in the following recent CCAA proceedings:

(i) *In Re: Field Trip Health*, Court File No. CV-23-00701377-00CL, Order of Justice McEwen dated March 31, 2023 (28 days between Issuance of SISP Order and Final Agreement Deadline);[14]

(ii) *In Re: Harte Golde*, Court File No. CV-21-00673304-00CL, Order of Justice Penny dated December 20, 2021 (25 days between issuance of SISP Order and Bid Deadline).[15]

20. It is respectfully submitted that the SISP is the best and only value-maximizing option now available to the Applicants, and should be approved.

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[13] Second Karthigesu Affidavit at para 19, Tab 2 to the Motion Record.

[14] *In Re: Field Trip Health*, Court File No. CV-23-00701377-00CL; Sale Process Approval Order of Justice McEwen dated March 31, 2023.

[15] *In Re: Harte Golde*, Court File No. CV-21-00673304-00CL, Order of Justice Penny dated December 20, 2021.

(ii) Increase to the DIP Financing and DIP Lender's Charge Should be Approved

21. The Applicants seek to increase the borrowing limit under the DIP Term Sheet to the principal amount of $1,500,000, and a corresponding increase to the DIP Lender's Charge.

22. Section 11.2 of the CCAA allows this Court to grant a DIP Lender's Charge in an amount that the Court considers appropriate having regard to the Applicants' cash flow forecast.

23. In determining whether an increased DIP Lender's Charge is appropriate, a Court is required to consider the following factors under section 11.2(4) of the CCAA: [16]

(a) the period during which the company is expected to be subject to proceedings under the CCAA;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

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[16] s. 11.2(4), CCAA.

(g) the Monitor's report, if any.

24. For the following reasons, the Applicants submit that it is appropriate for this Court to exercise its discretion to approve the increase in the borrowing limit under the DIP Financing and grant the DIP Lender's Charge:

(a) the Swarmio Group only intends to remain under CCAA protection as long as reasonably necessary to complete the SISP;

(b) the Applicants' business and affairs will be managed with the supervision of the Monitor;

(c) the Applicants will not have sufficient cash to fund operations through Extended Stay Period absent an increase in the borrowing limit under the DIP Term Sheet, which is contingent upon Court approval;[17]

(d) the additional DIP Financing will be used for working capital requirements, restructuring fees, including expenses related to the implementation of the SISP, and other costs and expenses as may be agreed to by the DIP Lender;

(e) no creditors will be materially prejudiced by the increase in the DIP Financing and/or the DIP Lender's Charge; and

(f) the Monitor supports the proposed increase to the borrowing limit under the DIP Financing and the DIP Lender's Charge.

[17] Cash Flow Forecast, Appendix "D" to the Monitor's First Report.

25. In the circumstances the Applicants respectfully request that the increase to the borrowing limit under the DIP Term Sheet and the increase to the DIP Lender's Charge be approved.

(iii) The Administration Charge Should be Increased

26. The Applicants seek to increase the Administration Charge from $100,000 to $300,000 to provide security for the professional fees and disbursements of the beneficiaries of the Administration Charge during the Extended Stay Period.

27. A court may grant an administration charge in a CCAA proceeding pursuant to section 11.52 of the CCAA.[18]

28. In deciding whether to grant an administration charge, courts have considered a number of factors including: (a) the size and complexity of the businesses being restructured; (b) the role of the beneficiaries of the charge; (c) whether there is unwarranted duplication of roles; (d) whether the amount of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.[19]

29. The Applicants submit that it is appropriate for this Court to exercise its discretion to increase the Administration Charge, given that:

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[18] Section 11.52, CCAA.

[19] *Canwest Publishing Inc., Re*, 2010 ONSC 222 at para 54; *Re Lydian International Limited*, 2019 ONSC 7473 at para 46.

(a) the Applicants will require extensive input from its counsel, the Monitor, and the Monitor's counsel in order to successfully implement the SISP;

(b) the amount of the Administration Charge is proportionate to the size and complexity of the Company's restructuring, and was developed in consultation with the Monitor;

(c) each of the beneficiaries of the Administration Charge plays a critical and distinct role in the restructuring and there is no unwarranted duplication of efforts;

(d) secured creditors who may be affected by the proposed increase to the Administration Charge have been provided with notice of the same; and

(e) the Monitor supports the increase of the Administration Charge.[20]

30. In the circumstances it is respectfully submitted that the increase to the Administration Charge be approved.

(iv) The Extended Stay Period Should be Granted

31. The Applicants seek to extend the stay of proceedings up to and including September 1, 2023.

[20] Monitor's First Report at para 44.

32. A court may grant an extension of the stay of proceedings where the court is satisfied that (a) circumstances exist that make the order appropriate; and (b) the debtor has acted, and is continuing to act, in good faith and with due diligence.[21]

33. The Applicants have acted in good faith and with due diligence since the issuance of the Initial Order. Among other things, the Applicants have worked with the Monitor and their advisors to: prepare and implement a communications plan for stakeholders including employees and shareholders; design and develop the terms of the SISP; and prepare an updated cash flow forecast for the proposed Extended Stay Period.[22]

34. The proposed Extended Stay Period is reasonable in light of the updated Cash Flow Forecast, and will provide the Applicants with a sufficient amount of time and the breathing room necessary to implement the SISP.

35. No creditor or other stakeholder will be materially prejudiced by the requested Extended Stay Period.

36. The Monitor supports the requested Extended Stay Period.

PART V - ORDER REQUESTED

37. The Applicants respectfully request that this Honourable Court grant the relief provided for in the draft Orders at **Tabs** “**3**” and “**5**” to the Motion Record.

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[21] s 11.02(2) and (3), CCAA.
[22] A copy of the updated Cash Flow Forecast is appended to the Monitor’s First Report at Appendix “D”.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of June, 2023

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Nortel Networks Corp., Re,* 2009 CanLII 39492 (ON SC)
2. *Brainhunter Inc., Re* (2009), 183 ACWS (3d) 905
3. *Danier Leather Inc., Re*, 2016 ONSC 1044
4. *In Re: Field Trip Health*, Court File No. CV-23-00701377-00CL; Sale Process Approval Order of Justice McEwen dated March 31, 2023
5. *In Re: Harte Golde*, Court File No. CV-21-00673304-00CL, Order of Justice Penny dated December 20, 2021
6. *Canwest Publishing Inc., Re*, 2010 ONSC 222
7. *Re Lydian International Limited*, 2019 ONSC 7473

SCHEDULE "B"
RELEVANT STATUTES

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

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.

Meaning of regulatory body

11.1 (1) In this section, regulatory body means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Priority — other orders

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

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

> **(a)** the period during which the company is expected to be subject to proceedings under this Act;
>
> **(b)** how the company's business and financial affairs are to be managed during the proceedings;
>
> **(c)** whether the company's management has the confidence of its major creditors;
>
> **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> **(e)** the nature and value of the company's property;
>
> **(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> **(g)** the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

> **(a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> **(b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

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.

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

Court File No.: CV-23-00701377-00CL

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

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