Court File No. CV-25-00743485-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ARBAT CAPITAL GROUP LTD.

Applicant

and

THE SECOND CUP COFFEE COMPANY INC.

Respondent

FACTUM

May 21, 2025

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 6600
Toronto, ON Canada M5H 3S1

Gavin H. Finlayson LSO# 44126D
Email: gfinlayson@millerthomson.com
Tel: 416.595.8619

Larry Ellis LSO# 49313K
Email: lellis@millerthomson.com
Tel: 416.595.8639

Matthew Cressatti LSO# 77944T
Email: mcressatti@millerthomson.com
Tel: 416-597-4311

Lawyers for the Applicant

TO: THE SERVICE LIST

Court File No. CV-25-00743485-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ARBAT CAPITAL GROUP LTD.

Applicant

and

THE SECOND CUP COFFEE COMPANY INC.

Respondent

TABLE OF CONTENTS

Page No.

Court File No. CV-25-00743485-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ARBAT CAPITAL GROUP LTD.

Applicant

and

THE SECOND CUP COFFEE COMPANY INC.

Respondent

APPLICANT'S FACTUM

PART I - INTRODUCTION

1. This factum is filed by the Applicant, Arbat Capital Group Ltd. ("**Arbat**" or the "**Applicant**"), in support of its application for an initial order ("**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), in respect of The Second Cup Coffee Company ("**Second Cup**" or the "**Company**"), and granting the Company protection from its creditors and certain ancillary relief including, among other things:

(a) declaring that the Company is a debtor company to which the CCAA applies;

(b) appointing Grant Thornton Limited ("**GTL**" or the "**Proposed Monitor**") as monitor of the business and financial affairs of the Company;

(c) appointing Maxim Lojevsky, the current chairman of the Company's board of directors (the "**Board**"), as the Chief Restructuring Officer ("**CRO**") of the Company and approving an engagement letter between the proposed CRO and the Company (the "**CRO Engagement**");

(d) staying, for an initial period of not more than 10 days (the "**Initial Stay Period**"), all proceedings and remedies taken, or that may be taken, in respect of the Company and its current, former, and future directors, employees, and representatives (the "**Stay of Proceedings**");

(e) granting a charge (the "**Administration Charge**") in the maximum amount of $275,000 over the Company's assets, undertakings, and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof ("**Property**"), as security for the payment of the fees and disbursements of the Proposed Monitor and its counsel, the CRO, and of counsel to Arbat, in the priority set out in the Initial Order and discussed further below;

(f) approving, authorizing, and directing the Company to execute the draft DIP Term Sheet, which establishes a charge (the **"DIP Lender's Charge**") over the Property in the maximum amount of $200,000 in favour of Arbat, as the DIP Loan lender, to be used as the Proposed Monitor and CRO deem necessary; and

(g) granting a charge (the "**Directors' Charge**") in favour of the Company's directors, including Mr. Ragas, over the Property, in the amount of $100,000.

2. Arbat is Second Cup's largest creditor, being owed in excess of USD $3,715,198.61 and £832,745.20 on an unsecured basis as of March 31, 2025. Arbat is also a 40% shareholder of the Company. This application is supported by Park Investors LLC ("**Park**") and Svetlana Bortsova ("**Bortsova**" and, together with Arbat and Park, the "**Majority Group**"). The Company is indebted to Park in the amount of £624,558.89, and Bortsova in the amount of £624,558.89. The Majority Group holds 70% of the issued and outstanding shares of Second Cup.

3. A proceeding under the CCAA is necessary and urgently required. Second Cup is unable to repay the debts owing to the Applicant and the other members of the Majority Group, which have matured, come due, and been demanded upon. The Company has amassed a super-priority debt in excess of $400,000 owing to the Canada Revenue Agency for failing to remit payroll source deductions for several years. Critically, the Company does not have sufficient liquidity to honour its payroll obligations that are due on May 23, 2025.

4. The proposed proceeding is consented to by the Majority Group, but also by the Company's current management and CEO, Demetrios (Jim) Ragas. BMO, the Company's primary secured creditor, will not be primed by these proceedings, nor the proposed court-ordered charges, and has been advised of this filing.

5. The authorities and protections of the CCAA afford a court-supervised environment for the Company to stabilize operations, entertain discussions with stakeholders, obtain interim financing, explore restructuring options, and make important strategic decisions, all the while preserving value for stakeholders. The Company urgently requires relief under the CCAA and a stay of proceedings, as well as the other tools available under the CCAA to restructure its affairs.

6. The Proposed Monitor and CRO will oversee the process, ensuring professional management and impartiality. These measures, alongside interim financing, will allow the Company to maintain going concern operations and turn attention to pursuing a sale and investment solicitation process for which court approval will be sought.

PART I - SUMMARY OF FACTS

7. The full facts in support of this application are set out in the Affidavit of Alexey Golubovich, sworn May 19, 2025 (the "**Golubovich Affidavit**"), filed.

8. All capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Golubovich Affidavit.

PART II - ISSUES

9. The principal issues to be determined on this application are whether:

(a) Arbat, as a creditor of the Company, has standing to bring the within application;

(b) the Company is a debtor company to which the CCAA applies;

(c) GTL should be appointed as the monitor in these CCAA proceedings;

(d) the CRO should be appointed, and the CRO Engagement should be approved;

(e) the requested Stay of Proceedings should be granted;

(f) the Administration Charge should be approved;

(g) the DIP Term Sheet and DIP Lender's Charge should be approved; and

(h) the Directors' Charge should be approved.

PART II - LAW AND ARGUMENT

A. Arbat May Bring the Within Application

10. A proceeding under the CCAA is commenced by application. It is not required that the application be filed by the debtor company.[1]

11. It is well-settled that a creditor may bring an application for an initial order under the CCAA in respect of a debtor company.

12. In *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*,[2] creditors successfully sought and obtained an initial order under the CCAA. In granting the order, the Court held that the creditor-commenced application "complied with all the requirements of the CCAA", and "is also consistent with the purpose and policy of the CCAA".[3]

13. More recently, in *The Vancor Group Inc. v 1000370759 Ontario Inc.*, this Court granted an initial order under the CCAA sought by the debtor company's largest creditor. In granting the initial order, Justice Kimmel held that "An applicant in a 'creditor-driven' CCAA application is not required to meet a higher bar than a debtor applicant would have to meet in a typical 'debtor-driven' proceeding."[4]

14. As in *Vancor*, this application is precipitated by a unique set of circumstances. In particular, as described in the Golubovich Affidavit, the Company:[5]

---

[1] s 9(1), CCAA.
[2] *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 CanLII 21724 [*ATB Financial*].
[3] ATB Financial at para 17.
[4] *The Vancor Group Inc. v 1000370759 Ontario Inc.*, CV-24-00725021-00CL, Endorsement dated August 6, 2024, at para. 6 [*Vancor*].
[5] Golubovich Affidavit at paras 4 and 6.

(a) is unable to repay debts owed to the Majority Group that have matured, come due, and been demanded upon;

(b) owes more than $400,000 in unpaid source deductions to the CRA;

(c) has maxed out its line of credit with BMO, which continues to accrue interest, and it is unclear as to whether that debt may be serviced absent a proceeding;

(d) has been unable to pay its auditor for over one year, leading to the auditor's resignation; and

(e) does not have sufficient liquidity to pay payroll, which is due on May 23, 2025.

15. Second Cup is facing a liquidity crisis and, as indicated in the Cash Flow Forecast prepared by the Proposed Monitor, immediately requires interim financing.

B. Second Cup is a Debtor Company Entitled to Protection Under the CCAA

16. The CCAA applies in respect of a "debtor company" where the total claims against the debtor exceeds $5,000,000.[6] The phrase "debtor company" is defined under the CCAA as "any company that: (a) is bankrupt or insolvent…".[7] The term "company" is defined as "any company, corporation or legal person incorporated by or under an Act of Parliament or the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated…".[8]

---

[6] s 3(1), CCAA.
[7] s 2(1), CCAA.
[8] s 2(1), CCAA.

17. The insolvency of a debtor is determined as of the time the debtor files its CCAA application.[9] Although the term "insolvent" is not defined in the CCAA, courts have held that a company is insolvent under the CCAA if:[10]

(a) the company meets the definition of "insolvent person" under the BIA, which includes a person "…who is for any reason unable to meet [its] obligations as they generally become due…";[11] or

(b) the company faces a looming liquidity crisis such that it is reasonably foreseeable that the company will run out of cash unless its business is restructured.[12]

18. Under the BIA, an "insolvent person" is defined as,

> … a person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability 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.[13]

19. The test for "having assets or doing business in Canada" is disjunctive, such that either "having assets" in Canada or "doing business in Canada" is sufficient to qualify an incorporated company as a "company" within the meaning of the CCAA.[14] In order to meet

[9] *Stelco Inc., Re*, 48 CBR (4th) 299 (Ont Sup Ct J [Commercial List]) at para 4 [*Stelco*].
[10] *Stelco* at paras. 21–22, and 26.
[11] s 2, *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**").
[12] *Stelco*, at para 40.
[13] s 2, BIA.
[14] *Cinram International Inc. (Re)*, 2012 ONSC 3767 at para 46 [*Cinram*].

the threshold of the statutory requirements of the CCAA, the Company need only be in technical compliance with the plain words of the CCAA.[15]

20. Second Cup is a “debtor company” within the meaning of the CCAA, as:

(a) the Company was incorporated pursuant to the laws of the Province of Ontario;[16]

(b) the Company has debt in excess of $5 million dollars, owing to, among others, BMO, the members of the Majority Group, and the CRA; and

(c) the debt due to the CRA and to the Majority Group is due and owing, and the Company is unable to pay this indebtedness, rendering it insolvent.[17] The Company also does not have sufficient liquidity to meet its current obligations such as payroll as they come due.

C. GTL Should Be Appointed as Monitor

21. Upon the granting of an initial order under the CCAA, section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company’s business and financial affairs.[18]

22. GTL is a trustee within the meaning of subsection 2 of the BIA, and, subject to Court approval, has consented to act as monitor in these CCAA proceedings. GTL is not subject to any of the restrictions regarding who may be appointed as monitor as set out in section 11.7(2) of the CCAA.[19]

---

[15] *Cinram* at para 46.
[16] Golubovich Affidavit at para 19.
[17] Golubovich Affidavit at para 92.
[18] s 11.7, CCAA
[19] Golubovich Affidavit at para 101.

23. In preparation for this filing, GTL assisted in preparing a two-week Cash Flow Forecast, based on the limited information available to the Applicant.

24. Raymond Chabot Grant Thornton LLP ("**RCGT**") previously acted as the Company's auditor, until it resigned on March 7, 2025. As outlined in the Golubovich Affidavit, and as the Applicant understands will be indicated in the Pre-Filing Report of the Proposed Monitor (the "**Pre-Filing Report**"), GTL and RCGT are separate legal entities with separate partnerships, and the appointment of GTL is consistent with Section 11.7(2)(a)(iii) of the CCAA.[20]

25. For all of the reasons noted above and further set out in the Golubovich Affidavit, the Applicant submits that GTL ought to be appointed by the Court as monitor of the Company in these CCAA proceedings.

D. The Appointment of the CRO Should Be Approved

26. The Applicant seeks the appointment of Maxim Lojevsky, the current chairman of the Board, as chief restructuring officer ("**CRO**") of Second Cup pursuant to the terms and conditions outlined in the CRO Engagement.

27. The CRO Engagement provides that during the Initial Stay Period, and following the issuance by the Court of an Amended and Restated Initial Order, the CRO's role is proposed to be limited to review and reporting functions.[21]

---

[20] s 11.7(2)(a)(iii), CCAA; Golubovich Affidavit at para 103; Pre-Filing Report of the Proposed Monitor at para 16.
[21] An executed copy of the CRO Engagement will be filed as part of this initial application in due course.

28. Pursuant to section 11 of the CCAA, this Court has the jurisdiction to approve the engagement of a CRO.[22] Courts frequently appoint a chief restructuring officer in order to provide expertise to assist debtor companies in achieving the objectives of the CCAA and to assist the debtor company's management in dealing with a crisis situation.[23]

29. The proposed CRO is the current chairman of Second Cup's Board and has expertise in respect of the global coffee café landscape. Mr. Lojevsky holds a Bachelor of Science in Finance degree from Boston College and has over 20 yeas of experience in asset management, private equity, and capital markets. Mr. Lojevsky is therefore uniquely positioned to guide the Company through the restructuring process, subject to this Court's approval.[24]

30. The proposed CRO will provide the Company with the stable and independent management necessary to preserve the Company's going concern value during the CCAA proceedings. Due to the Company's current lack of a chief financial officer and the resignation of the director of finance, the appointment of the CRO is especially necessary.

31. The proposed CRO has consented to act in these proceedings.

32. The Proposed Monitor supports the appointment of the proposed CRO, pursuant to the terms of the CRO Engagement, which includes that the CRO's compensation will consist of a 2% success fee to be paid upon a successful restructuring or sale of the Company in a Court-supervised process.[25]

---

[22] s 11, CCAA.
[23] *Pascan Aviation Inc., Re*, 2015 QCCS 4227 at paras 57-58; *Pride Group Holdings Inc., Re*, 2024 ONSC 1830 at paras 44-45.
[24] Golubovich Affidavit at paras 108-109.
[25] Golubovich Affidavit at para 111.

33. The CRO Engagement provides the CRO with certain protections from liability in the execution of the CRO's duties. Similar to court-appointed monitors, the appointment of a CRO is often accompanied by certain protections from liability.[26]

34. Providing certain protections in the Initial Order will ensure that the CRO can assist with the management and supervision of the Company's day-to-day business and overall restructuring efforts.

E. The Requested Stay of Proceedings Should Be Granted

35. Pursuant to section 11.02 of the CCAA, a court may grant a stay of proceedings upon an initial application under the CCAA for a period of no more than ten days, provided the court is satisfied that circumstances exist that make the order appropriate.[27] A stay of proceedings is appropriate where it provides a debtor company with "breathing room" while the debtor company seeks to restore solvency and emerge from the CCAA on a going concern basis.[28]

36. Section 11.001 of the CCAA further provides:[29]

> An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

37. The purpose of section 11.001 "is to make the insolvency process fairer, more transparent and more accessible by limiting the decisions made at the outset of the proceedings to

---

[26] *ICR Commecial Real Estate (Regina) Ltd. v Bricore Land Group, Ltd.*, 2007 SKQB 121 at para 19.
[27] s 11.02, CCAA; *Re Lydian International Limited*, 2019 ONSC 7473 at para 22 [*Lydian*].
[28] *Target Canada Co.*, 2015 ONSC 303, at para 8.
[29] s 11.001, CCAA.

measures that are reasonably necessary to avoid the immediate liquidation of an insolvent company and to allow for broader participation in the restructuring process."[30] This section ensures that the relief granted on an initial application is limited to the relief reasonably necessary for the debtor to continue to operate in the ordinary course.[31]

38. It is appropriate for this Court to grant the requested stay of proceedings in favour of the Company. Given Second Cup's current liquidity crisis and financial distress, a stay of proceedings will allow the Company to maintain the *status quo* and provide the breathing room required to provide the Board and the CRO with the information needed to better understand the Company's financial position, and to formulate either a plan of arrangement or a sale and investment solicitation process.

39. The Cash Flow Forecast prepared by the Proposed Monitor indicates that the Company will have sufficient funds to continue operations through the proposed Initial Stay Period.[32]

F. Administration Charge Should Be Approved

40. Arbat seeks a super-priority charge (the "**Administration Charge**") on the Company's Property up to a maximum amount of $275,000 in favour of the Proposed Monitor, counsel to the Proposed Monitor, the CRO, and counsel to Arbat (collectively, the "**Professionals Group**"), to secure payment of their professional fees and disbursements, incurred both before and after the commencement of the CCAA proceedings, through to the Comeback Hearing.

---

[30] *Re Clover Leaf Holdings Company*, 2019 ONSC 6966 at para 13.
[31] *Lydian* at paras 30 and 32.
[32] Golubovich Affidavit at para 41.

41. Pursuant to section 11.52 of the CCAA, this Court has the jurisdiction to grant a super-priority charge for the fees and expenses of financial, legal, and other advisors or experts.[33] In determining whether to approve an administration charge, the Court considers: (a) the size and complexity of the businesses under CCAA protection; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge is fair and reasonable; (e) the position of secured creditors likely to be affected by the charge; and (f) the position of the monitor.[34]

42. The Applicant submits that it is appropriate for this Court to exercise its discretion to grant the Administration Charge. The Proposed Monitor and its counsel, counsel to Arbat, and the CRO, have been extensively involved in planning and preparing this initial application under the CCAA. It is contemplated that each of the aforementioned parties, (i) will have extensive involvement during the proposed CCAA proceedings; (ii) will continue to contribute to the Company's restructuring; and (iii) will ensure that there is no unnecessary duplication of roles among the parties.[35]

43. The quantum of the proposed Administration Charge is reasonable and appropriate, given the pre-filing services preformed by Arbat's counsel, and the Proposed Monitor and its counsel, and the work required to be completed by these professionals during the Initial Stay Period.[36]

---

[33] s 11.52, CCAA.
[34] *Canwest Global Communications Corp., Re*, 2010 ONSC 222, at para 54 [*Canwest*].
[35] Golubovich Affidavit at para 124.
[36] Golubovich Affidavit at para. 125.

44. The Applicant proposes that the Administration Charge rank in subordination to the Company's largest secured creditor, BMO, and in priority to all other security interests given by the Company, as well as the Directors' Charge and the DIP Lender's Charge.

45. The Applicant understands that the Proposed Monitor supports the granting of and the quantum of the Administration Charge and that the Pre-Filing Report will indicate the same.

G. The DIP Term Sheet and DIP Lender's Charge Should Be Approved

46. Arbat is seeking approval of the DIP Term Sheet and a third-ranking DIP Lender's Charge over the Property, in favour of Arbat, as DIP lender, to secure amounts advanced under the DIP Term Sheet.

47. Section 11.2(1) of the CCAA allows this Court to approve the DIP Term Sheet and the DIP Lender's Charge in an amount that the Court considers appropriate having regard to the Company's Cash Flow Forecast.[37]

48. Section 11.2(5) of the CCAA provides that a Court shall not grant an order for interim financing at the same time as granting an initial order under section 11.2 of the CCAA, unless it is satisfied that the terms of the loan are limited to those terms that are reasonably necessary for the Company's continued operations in the ordinary course of business during the initial stay of proceedings.[38] What is considered "reasonably necessary" depends on the facts of each case.[39] Substantial interim financing may be approved at the same time as an initial order if such funds are required to "keep the lights on" during the

[37] s 11.2(1), CCAA
[38] s 11.2(5), CCAA.
[39] *8440522 Canada Inc., Re*, 2013 ONSC 6167, at para 30.

initial stay period.[40]

49. In determining the appropriateness of the DIP Lender's Charge, a Court is required to consider the factors listed at section 11.2(4) of the CCAA: [41]

> (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

50. These factors favour the requested relief being sought in this case.

51. As illustrated by the Cash Flow Forecast, absent approval of the proposed interim financing to be made available under the DIP Loan, the Company will not be able to meet

---

[40] *Miniso International Hong Kong Limited v. Migu Investments Inc.*, 2019 BCSC 1234 at paras 73-90; *Mountain Equipment Co-Operative, Re,* 2020 BCSC 1586 at para 2; *Boreal Capital Partners et al., Re*, 2021 ONSC 7802 at para 26 [*Boreal*].
[41] s 11.2(4), CCAA.

its obligations as they become due, including payroll due on May 23, 2025. The Cash Flow Forecast also indicates that the Company's business is in serious jeopardy of running out of liquidity.[42] The failure to pay payroll on May 23, 2025 will have a catastrophic effect on the Company and likely preclude any going-concern restructuring.

52. Arbat has limited visibility into the Company's current cash needs or its expected cash in-flows during the Initial Stay Period. The proposed DIP Loan is critical to the Company's continued operations, given that the BMO Line of Credit is fully drawn, the Company is unable to meet its payroll obligations, and the Company's numerous other liquidity concerns. The Applicant is concerned that the Proposed Monitor will determine that the Company urgently requires cash to maintain supplier or other key relationships, but does not have the funds available to do so.[43]

53. The following additional factors support the approval of the DIP Term Sheet and the granting of the DIP Lender's Charge:

(a) the necessity of the DIP Loan is demonstrated and supported by the Cash Flow Forecast;

(b) if the Initial Order is granted, Arbat intends to return to court for the Comeback Hearing to request an extension of the Stay of Proceedings;

(c) Second Cup's business will be managed by the proposed CRO, in consultation with the Proposed Monitor;

[42] Golubovich Affidavit, at paras 41, 76 and 128.
[43] Golubovich Affidavit at para 128.

(d) No existing creditor will be materially prejudiced as a result of the DIP Loan and the DIP Lender's Charge, as the DIP Lender's Charge will rank subordinate to all existing secured creditors; and

(e) the terms of the DIP Loan have been considered by the Proposed Monitor and determined to be reasonable in the circumstances.[44]

54. Advances under the DIP Loan will accrue interest at 9% per annum. The Applicant understands that the Pre-Filing Report will confirm that the terms and conditions of the DIP Term Sheet are reasonable in the circumstances and that the Proposed Monitor is supportive of the DIP Term Sheet.

H. The Directors' Charge Should Be Approved

55. Arbat seeks a Directors' Charge on the Property in favour of the Company's directors in the amount of $100,000. The Directors' Charge is intended to rank below BMO's security interest and the Administration Charge, and above the DIP Lender's Charge.

56. Pursuant to section 11.51 of the CCAA, a Court may grant a Directors' Charge on a super-priority basis.[45]

57. The purpose of a Directors' Charge was described in *Canwest Global Communications Corp., Re*:[46]

> The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they incur during the restructuring…Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to

---

[44] Golubovich Affidavit at para 137;
[45] s 11.51, CCAA.
[46] *Canwest* at para 48.

keep the experienced board of directors supported by the experienced senior management.

58. In *Jaguar Mining Inc., Re*, the Court set out the following factors to be considered with respect to the approval of a directors' charge:[47]

(a) whether notice has been given to the secured creditors likely to be affected by the charge;

(b) whether the amount is appropriate;

(c) whether the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and

(d) whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.

59. To ensure the ongoing stability of Second Cup's business during these CCAA proceedings, the continued participation of the Company's directors is required. The directors have skills, knowledge, and expertise, as well as established relationships with various stakeholders that will contribute to a successful restructuring.[48]

60. The Company's D&O insurance policy has lapsed, with the result that there is a significant risk of personal exposure to the Board if the Director's Charge is not granted. Accordingly, the Directors' Charge is intended to protect the Board from any personal liability that may attach to them because of the Company's failure to meet certain obligations, as well as

[47] 2014 ONSC 494, at para 45.
[48] Golubovich Affidavit at para 142.

where the Majority Group's interests diverge from those of the Company and its stakeholders throughout these CCAA proceedings.[49]

61. The Applicant understands that the Pre-Filing Report will confirm that the Proposed Monitor is supportive of the requested Directors' Charge.

PART III - ORDER REQUESTED

62. The Applicant respectfully requests that this Honourable Court grant the Initial Order and provide the Company protection under the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of May, 2025.

Gavin Finlayson, Larry Ellis and
Matthew Cressatti

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 6600
Toronto, ON Canada M5H 3S1

Gavin H. Finlayson LSO# 44126D
Email: gfinlayson@millerthomson.com
Tel: 416.595.8619

Larry Ellis LSO# 49313K
Email: lellis@millerthomson.com
Tel: 416.595.8639

Matthew Cressatti LSO# 77944T
Email: mcressatti@millerthomson.com
Tel: 416-597-4311

Lawyers for the Applicant

[49] Golubovich Affidavit at paras 140 and 143.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 CanLII 21724.

2. *The Vancor Group Inc. v 1000370759 Ontario Inc.*, CV-24-00725021-00CL, Endorsement dated August 6, 2024.

3. *Re Stelco Inc. (2004)*, 48 CBR (4th) 299 (Ont Sup Ct J [Commercial List]).

4. *Cinram International Inc. (Re)*, 2012 ONSC 3767.

5. *Pascan Aviation Inc., Re*, 2015 QCCS 4227.

6. *Pride Group Holdings Inc.*, Re, 2024 ONSC 1830.

7. *ICR Commercial Real Estate (Regina) Ltd. v Bricore Land Group, Ltd*., 2007 SKQB 121.

8. *Re Lydian International Limited*, 2019 ONSC 7473.

9. *Target Canada Co.*, 2015 ONSC 303.

10. *Clover Leaf Holdings Company, Re*, 2019 ONSC 6966.

11. *Canwest Publishing Inc., Re*, 2010 ONSC 222.

12. *8440522 Canada Inc., Re*, 2013 ONSC 6167.

13. *Miniso International Hong Kong Limited v Migu Investments Inc*, 2019 BCSC 1234.

14. *Mountain Equipment Co-Operative, Re*, 2020 BCSC 1586.

15. *Boreal Capital Partners et al., Re*, 2021 ONSC 7802.

16. *Jaguar Mining Inc. (Re)*, 2014 ONSC 494.

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date May 21, 2025

Gavin Finlayson, Larry Ellis and
Matthew Cressatti

SCHEDULE "B"
RELEVANT STATUTES

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

Interpretation

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;

…

trustee or ***licensed trustee*** means a person who is licensed or appointed under this Act.

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

Definitions

2(1) In this Act…

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

…

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;

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

> **(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> **(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.

Stays, etc. — other than initial application

(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

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section

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.

Security or charge relating to director's indemnification

11.51 (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, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of 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 — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

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.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

> **(a)** if the trustee is or, at any time during the two preceding years, was
>
> > **(i)** a director, an officer or an employee of the company,
> >
> > **(ii)** related to the company or to any director or officer of the company, or
> >
> > **(iii)** the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
>
> **(b)** if the trustee is
>
> > **(i)** the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or
> >
> > **(ii)** related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

ARBAT CAPITAL GROUP LTD. and THE SECOND CUP COFFEE COMPANY INC. Court File No. CV-25-00743485-CL
Applicant Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

FACTUM

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 6600
Toronto ON M5H 3S1

Gavin H. Finlayson LSO# 44126D
Email: gfinlayson@millerthomson.com
Tel: 416.595.8619

Larry Ellis LSO# 49313K
Email: lellis@millerthomson.com
Tel: 416.595.8639

Matthew Cressatti LSO# 77944T
Email: mcressatti@millerthomson.com
Tel: 416-597-4311

Lawyers for the Applicant