SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00701377-00CL **DATE:** **June 30, 2023**

NO. ON LIST: **1**

TITLE OF PROCEEDING: **SWARMIO MEDIA HOLDINGS INC, CCAA**

BEFORE: **Mr Justice KOEHNEN**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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Name of Person Appearing	Name of Party	Contact Info

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Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT

[1] This is a comeback application arising out of an initial CCAA order that Steele J. granted on June 21, 2023.

[2] The relief sought today takes the form of orders to:

a. Extend the stay of proceedings to August 31, 2023.

b. Increase the borrowing limit under the court-approved DIP Term Sheet dated June 20, 2023 between the Company and Triaxcess Ltd. and increase the DIP Lender's Charge both from $135,000 to $1,500,000.

c. Increase the Administration Charge as defined in the Initial Order from $100,000 to $300,000; and

d. Approve a sale and investment solicitation process ("SISP") in respect of the Applicants' business and assets.

[3] A representative of the senior secured creditor of the applicant appeared in court today (Stephen Singh). It does not oppose any of the relief sought. No other stakeholder appeared. Neither the applicant nor the Monitor is aware of any opposition to the relief sought.

[4] The increase in the DIP loan is required to fund the company through to the completion of the SISP process.

[5] Applicant's counsel advised both in its factum and in oral submissions that the DIP lender intends to bid in the SISP process. A principal of the DIP lender is also a former director of the applicant and has a business relationship with the applicant through a corporation with which he is affiliated, Westbridge, which is also a large customer of the applicant. Westbridge and the DIP lender have confirmed to the Monitor that they will work with any successful bidder in the SISP process and that Westbridge will continue to be a customer of the applicant even if the DIP lender is not the successful bidder.

[6] The applicant also advises that the DIP lender had no input into or involvement with the design or development of the SISP and will have no involvement in the SISP other than as a potential bidder.

[7] This SISP is relatively short and foresees a bid deadline of August 14, 2023, an auction date of August 18, 2023, if needed, and court approval by August 28, 2023. The applicant advises that this is appropriate because the applicant engaged in significant pre-filing efforts to sell the company before seeking into CCAA protection.

[8] Finally I note that the Monitor supports all of the relief sought.

The Test to Approve a SSSP

[9] When considering whether to approve a SISP the Court should consider, among other things,

a. whether a transaction is warranted at this time;

b. whether the sale will benefit the whole economic community;

c. whether creditors have a bona fide reason to object to a sale of the business; and

d. whether there is a better viable alternative.[1]

[10] I am satisfied that all four factors point to approving the SISP.

[11] With respect to the SISP being warranted at this time, the Applicants are insolvent, face a liquidity crisis, and cannot continue to operate in the ordinary course. The SISP provides an opportunity for the Applicants to continue as a going concern and maintain employment for their employees.

[12] With respect to economic benefit, a SISP is likely to generate superior returns than a sale of assets in a bankruptcy.

[13] With respect any bona fide reason for creditors to object, no creditors have appeared before me to object to the proposal. The principal secured creditor appeared and does not object. The SISP was developed in consultation with the Monitor and was developed with a view to preserving financial resources while still providing adequate exposure in an effort to maximize overall return.

Test for the Increased DIP

[14] 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

[15] Section 11.2(4) of the CCAA requires the court to consider the following factors when considering whether it is appropriate to increase a DIP loan:

> (a) the period during which the company is expected to be subject to proceedings under the CCAA;
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> (b) how the company's business and financial affairs are to be managed during the proceedings;
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> (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, if any.

[16] These factors all point to approving the increased DIP financing. The period under which the company will be under CCAA protection is relatively short and is likely to be shorter with the SISP and the increased DIP than without it. The company will be managed under the supervision of the monitor during the SISP process. The major secured creditor supports the increased DIP and the SISP. The purpose of increasing the DIP is to

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[1] 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.

complete the SISP and obtain a better price for corporate assets. No creditor objects to the increased DIP. The monitor supports the purpose and terms of the increased DIP.

The Test for an Increased Administration Charge

[17] The Applicants seek to increase the Administration Charge from $100,000 to $300,000. A court may grant an administration charge in a CCAA proceeding under section 11.52 of the CCAA.

[18] 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.[2]

[19] Here too, the factors point to approving the increased administration charge. The purpose of the administration charge is to provide security for the professional fees and disbursements of the beneficiaries of the Administration Charge during the Extended Stay Period; principally the Monitor and counsel for the Monitor and counsel for the Company. The applicant will require the help of those parties during the SISP. The amount of the charge is proportionate to what would amount to modest fees to oversee the SISP. Creditors do not object to the increased charge and the Monitor supports the increased charge. The role of corporate counsel on the one hand and the Monitor and its counsel on the other, are separate and distinct. As a result, there should not be any unwarranted duplication in the services provided.

The Test For Extending the Stay

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

[21] Under ss. 11.02 (2) and (3) of the CCAA, the court may extend the stay of proceedings if it 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.

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

[22] The development and implementation of a SISP that will resolve the CCAA in relatively short order make it appropriate to extend the stay to permit that to occur. I am satisfied that the applicant is acting in good faith and with due diligence to advance and resolve the CCAA proceedings.

[23] For the reasons set out above, I grant the relief requested.

[24] I have set a 1 hour appointment for a motion to approve any sale under the SISP for **10 AM on August 25, 2023**. I set that date without the benefit of input from counsel. If that date is inconvenient counsel can seek a short case conference to change the date.

Mr. Justice KOEHNEN

Date: June 30, 2023