



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ENDORSEMENT

COURT FILE NO.: CV-24-00730120-00CL DATE: Friday 15th November 2024
REGISTRAR: Christopher Riley

NO. ON LIST: 1 of 1

TITLE OF PROCEEDING: RE: PLAN OF COMPROMISE OR ARRANGEMENT OF
NOYA HOLDINGS INC. and NOYA CANNABIS INC

BEFORE: Mr Justice Cavanagh, P.

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Dare, Vern (Counsel)	Noya Holdings Inc and Noya Cannabis Inc	vdare@foglers.com T: 416-941-8842

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
David Seifer (Counsel)	Lending Stream Inc.	dseifer@dickinsonwright.com T: 416-646-6867
Maria Naimark (Counsel)	Ignite International Canada Ltd.	dseifer@dickinsonwright.com T: 416-646-6867

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Phoenix, R. Graham (Counsel)	BDO Canada Ltd as Monitor	gphoenix@LN.law T: 416-748-4776 : (416) 558-4492

ENDORSEMENT OF JUSTICE CAVANAGH:

[1] On November 6, 2024, I granted an initial order under the *Companies’ Creditors Arrangement Act*, as amended (“*CCAA*”) granting, among other things, the Applicants and 2675383 Ontario Limited (the “Non-Applicant Stay Party”) protection from their creditors, an administration charge and a directors’ charge, and appointing BDO Canada Limited as monitor (the “Monitor”) of the Applicants.

[2] At this comeback hearing, the Applicants move for an Amended and Restated Initial Order (“ARIO”) and a Sales Process Approval Order.

[3] The background facts underlying this motion are more fully set out in the affidavit of Ziad Reda sworn October 28, 2024 in the affidavit of Mr. Reda sworn November 12, 2024. The background facts are summarized in my endorsement dated November 6, 2024 and in the Applicants’ factum at paragraphs 8-25.

[4] Defined terms used in this endorsement have the meanings given in the motion materials.

[5] I first address the relief sought in the requested ARIO.

[6] The Applicants seek an order extending the stay of proceedings to and including March 7, 2025.

[7] The Court may grant an extension of the stay of proceedings where it is satisfied that (a) circumstances exist that make the order appropriate; and (b) the Applicants have acted, and are acting, in good faith and with due diligence. A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to restore solvency and emerge from the *CCAA* on a going concern basis.

[8] I am satisfied that the requested extension of the stay of proceedings should be granted for the following reasons:

- a. I am satisfied on the motion materials before me that the Applicants have acted and continue to act in good faith and with due diligence to communicate with stakeholders and to develop the Stalking Horse Sales Process while continuing to operate in the ordinary course of business to preserve the value of their business.
- b. The Cash Flow Forecast appended to the Monitor’s First Report shows sufficient liquidity during the extended stay period to fund obligations and the costs of the *CCAA* proceedings.
- c. The extension of the stay in favour of the Applicants and the Non-Applicant Stay Party is required to complete the Stalking Horse Sales Process without having to incur costs during that process to return to Court to seek a further extension.
- d. The Monitor supports the requested extension.

[9] The Applicants seek approval of a DIP Loan and a DIP Lender’s Charge. Section 11.2 of the *CCAA* allows the Court to make such an order. In determining whether the DIP Lender’s Charge is appropriate, a court is required to consider the factors set out in section 11.2 (4) of the *CCAA*.

[10] In accordance with the DIP Term Sheet, the Applicants are seeking \$400,000 to be made available upon the issuance of the requested ARIO. Interest on the advance or advances will be at the rate of 12% per annum. The DIP Term Sheet includes a commitment fee in the amount of \$25,000, representing 6.25% of the total amount available under the DIP facility. As indicated in the Cash Flow Forecasts, with the DIP loan, the Applicants will have sufficient liquidity to meet payroll and finance their operations during the extended stay period.

[11] I am satisfied that the DIP Term Sheet should be approved and that the DIP Lender's Charge should be granted for the following reasons:

- a. The DIP loan is essential for the Applicants because it provides them with interim financing needed to preserve the enterprise value of their business pending determination of a sale process. I accept that the benefits of such new financing outweigh the potential prejudice to any particular creditors. I accept that the interest rate and commitment fee are within the range of reasonableness in the circumstances.
- b. The availability of the DIP loan is contingent on an order approving the DIP Term Sheet and the DIP Lender's Charge being granted to secure any advances made thereunder.
- c. The need for the DIP loan is shown and supported by the Cash Flow Forecast.
- d. The Applicants' business will be managed by its directors and senior management, in consultation with the Monitor.
- e. In the absence of the DIP loan by the Applicants will be unable to continue to carry on business or carry out the sale process and will be forced to shut down their operations to the detriment of stakeholders.
- f. The Monitor is supportive of the DIP loan, the DIP Term Sheet and the DIP Lender's Charge.
- g. The secured creditors have had notice of this motion and are supportive.

[12] The Applicants request an order approving payments to critical suppliers. The Court has jurisdiction to make such an order that will facilitate a restructuring of the business as a going concern.

[13] I am satisfied that an order granting approval to make payments to certain critical suppliers, with the consent of the Monitor, advances the goal of the Applicants to continue operating in the ordinary course of business throughout the sale process, to the benefit of their stakeholders. The amount is not expected to exceed \$110,000.

[14] The Applicants seek approval to increase the amount of the Administration Charge approved in the Initial Order from \$200,000 to \$400,000. The Applicants seek this increase in order to remain consistent with the projected fees and disbursements of the professional group during the extended stay period to secure the SISP Agent's outstanding work fee and expenses under the SISP Agent Agreement. I am satisfied that this increase should be approved.

[15] The Court has jurisdiction to grant an Administration charge pursuant to section 11.52 of the CCAA. I am satisfied that the requested increase in the Administration Charge should be approved for the following reasons:

- a. the cannabis industry is complex, highly regulated and subject to statutory and regulatory restrictions and requirements. Successful restructuring will require extensive input of the professional group including the SISP Agent regarding implementing the Stalking Horse Sales Process.
- b. The beneficiaries of the Administration Charge will have to contribute to the CCAA proceedings and assist the Applicants with achieving their objectives.
- c. The proposed beneficiaries of the Administration Charge are each performing unique functions without duplication of roles.
- d. The amount of the proposed increase to the Administration Charge is fair and reasonable in the circumstances.
- e. The Monitor, the DIP Lender and the Applicants' senior secured lender, Lending Stream, are supportive of the increase in the Administration Charge.

[16] The Applicants seek an increase in the amount of the Directors' Charge approved in the Initial Order from \$100,000 to \$200,000 in order to provide adequate protection for the remaining officer(s) and director(s) of the Applicants during the extended stay period. Pursuant to section 11.51 of the CCAA, a court may grant a director's charge on a super-priority basis.

[17] I am satisfied that the requested increase should be approved following reasons:

- a. The secured creditors who do not oppose.
- b. The amount of the requested increase is reasonable in the circumstances. Available insurance provides limited coverage and has exclusions that may expose the officers and directors to personal liability.
- c. The Monitor supports the requested increase.

[18] I now turn to the requested Sales Process Approval Order.

[19] The Applicants seek approval requested Stalking Horse Share Purchase Agreement. Stalking horse agreements or bids, including credit bid stalking horse bids, have been recognized as reasonable and useful components of a sales process. They have been approved and used in any insolvency proceedings to establish a baseline price and transactional structure for superior bids from interested parties.

[20] On November 11, 2024, the Applicants and the Stalking Horse purchaser finalized negotiations and entered into the Stalking Horse SPA. The Stalking Horse SPA is structured as a purchase of the retained assets of the Applicants by way of a share sale and reverse vesting order. The purchase price under the Stalking Horse SPA is approximately \$2.8 million subject to adjustments and will generally be satisfied by way of a credit bid. The Stalking Horse SPA contemplates that, in the event that the Stalking Horse Bid is not the successful bid, the Stalking Horse Bidder shall be entitled to a break fee in the amount of \$175,000 and, in addition, repayment of professional fees to a maximum of \$100,000 as well as repayment of all amounts advanced under the DIP Term Sheet in priority to claims against the Applicants.

[21] I am satisfied that the Stalking Horse SPA should be approved for the following reasons:

- a. The Stalking Horse SPA provides some certainty that the Applicants' business will continue as a going concern. If it is not approved in conjunction with the DIP Loan, the Applicants will not have sufficient funds to continue operating, to the detriment of their stakeholders.
- b. The baseline price and the Stalking Horse SPA will assist in allowing the Applicants to fairly canvass the market to obtain the best bids for their business.
- c. No better or other alternative has been identified.
- d. The break fee and expense reimbursements compensate a stalking horse bidder for the time and resources expended and risks taken in developing a stalking horse agreement. Bid protections reflect the price of stability. Bid protections are subject to the debtors' business judgment, provided that they lie within a range of reasonable alternatives.
- e. The Monitor is of the view that the break fee and expense reimbursements are reasonable in the circumstances.

[22] The Applicants seek approval of a sales process. The Stalking Horse Sales Process was developed in consultation with the Monitor and the SISP Agent and takes into account the current financial circumstances of the Applicants. Subject to approval, the Stalking Horse Sales Process will be administered by the Monitor and the SISP Agent in consultation with the Applicants. Under the proposed Stalking Horse Sales Process, the Monitor retains certain rights in connection with material decisions (for example, extending timelines).

[23] I have considered the factors in s. 36(3) of the CCAA. I am satisfied that the timeline established for the Stalking Horse Sales Process will adequately expose the Applicants' business to the market. The Monitor is supportive of the length and structure of the Stalking Horse Sales Process.

[24] The Applicants request approval of the SISP Agent Agreement. Under this agreement, the Applicants have retained Kronos Capital Partners Inc. as the sales agent to assist with the implementation of the Stalking Horse Sales Process pursuant to the sales agent agreement dated November 11, 2020 for the Stalking Horse SPA. There is generally a fixed work fee (\$60,000 plus HST) and success fee (\$150,000 plus HST that does not apply if the Stalking Horse Bid is the successful bid), as well as provision for legal and non-legal expenses (\$12,500) provided for under the SISP Agent Agreement. The SISP Agent has significant experience implementing the sales processes regarding cannabis companies.

[25] I approve the SISP Agent Agreement and authorize the Applicants, *nunc pro tunc*, to pay amounts due to the SISP Agent Agreement for the following reasons:

- a. The SISP Agent is expected to enhance the prospect of value maximizing actions.
- b. The SISP Agent has significant experience in the cannabis sector.
- c. The SISP Agent is familiar with, and well-positioned to solicit interest in, the business.
- d. The Applicants, exercising their business judgment, support retention of the SISP Agent on the terms proposed.
- e. The Monitor supports the SISP Agent's engagement and approval of the SISP Agent Agreement.

[26] I am satisfied that the requested Orders should be made. Orders to issue in forms of Orders signed by me today.

Cavanagh J.

Date: November 15, 2024