



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00708635-00CL DATE: 29 November 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: **IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF IGNITE HOLDINGS INC., IGNITE
SERVICES INC., and IGNITE INSURANCE CORPORATION**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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For Defendant, Respondent, Responding Party, Defence:

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ENDORSEMENT OF JUSTICE KIMMEL:

1. This motion is brought by the Applicants seeking an order (the "Priority Claims Order") approving the Priority Claims Procedure to resolve claims against the Purchased Shares that may rank in priority to the Senior Secured Obligations owing to the Applicants' first-ranking secured creditor, Aviva (the "Priority Claims"), but excluding any indebtedness, liability, obligation, or claim secured by a court ordered charge pursuant to the Initial Order or any other Order within these CCAA Proceedings.
2. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the affidavit of Stephen Livingstone sworn November 22, 2023 (the "Third Livingstone Affidavit") filed in support of this motion.
3. The Applicants also seek approval and authorization for the Monitor to enter into and execute the Reimbursement Agreement, which implements the provisions of the DIP Facility Agreement requiring its repayment to the DIP Lender from proceeds of the Transactions under the Purchase Agreement upon closing (defined in the Reimbursement Agreement as the "Distribution"), but gives further assurances from the DIP Lender that these amounts will be paid back if it turns out, contrary to current expectations, that there are not be sufficient proceeds from the Transactions to satisfy the Priority Claims once they are determined in accordance with the Priority Claims Order.
4. The Applicants sought and obtained protection under the CCAA on October 30, 2023, pursuant to the Initial Order, which was amended and restated on November 9, 2023 (the "ARIO"). A reverse vesting order in respect of a share purchase transaction was also granted by the Court on November 9, 2023 (the "RVO").
5. The DIP Facility Agreement and DIP Charge approved under the ARIO did not prime the priority claims of the Canada Revenue Agency ("CRA") or any other priority claims, but it does provide that the DIP Loan will be repaid on the closing of the Transactions presently scheduled to occur on December 1, 2023.
6. The CRA is the only known priority creditor, although the Priority Claims Process provides for a brief solicitation period and the opportunity for other persons who assert Priority Claims to file a proof of claim and have their asserted claim assessed by the Monitor.
7. The CRA has been consulted about the proposed orders sought by this motion and does not oppose them, subject to the court's inclusion of the following language in this endorsement which arises out of paragraph 9 of the proposed order dealing with objections arising from the Priority Claims Process:

The CRA reserves the right to argue, if necessary, that the objection and appeal process provided under the Income Tax Act must be followed to adjudicate a disputed priority tax claim. The Monitor and the Applicants reserve the right to respond.

8. No other party on the CCAA service list opposes the relief sought by this motion.
9. The Claims Process achieves the objectives of certainty, fairness and efficiency that are the overarching considerations in the court's exercise of its discretion under s. 11 of the CCAA in considering whether to approve a claims process. See *Re Timminco Ltd*, 2014 ONSC 3393 at para. 41; *Re Toys "R" Us (Canada) Ltd*, 2018 ONSC 609 at para. 8; *Re Nortel Networks Corp.*, 2018 ONSC 278 at para. 126 citing *BA Energy Inc. (Re)*, 2010 ABQB 507; and *Re ScoZine Ltd.*, 2009 NSSC 136 at paras. 23, 25 and 28-30.
10. The Monitor and its counsel worked with the Applicants and their counsel in designing the proposed Priority Claims Procedure, in consultation with CRA, Aviva and the DIP Lender. Overall, the Monitor is of the view that the Priority Claims Procedure will afford a fair and reasonable opportunity for all Priority Claimants with Priority Claims against the Purchased Shares to file and prove their Priority

Claims. The CRA, Aviva and the DIP Lender are agreeable to the proposed Priority Claims Order. The Monitor recommends the approval of the Priority Claims Order.

11. Relying upon the broad discretion and jurisdiction under s. 11 of the CCAA, this court has previously authorized the execution of a reimbursement agreement authorizing the monitor to make interim distributions. See for example, *Re Timminco Ltd.*, Order issued August 28, 2012 [Court File No. CV-12-9539-00CL]. The proposed distribution in this case is in accordance with the court's previous approval of the DIP Facility Agreement (which called for its repayment upon closing of the Transactions).
12. Furthermore, the Monitor and the Applicants expect that there will be sufficient proceeds from the Transactions to repay in full both the obligations under the DIP Facility Agreement and the Priority Claims based on information in the Applicants' books and records and the Notice of Assessment received from the CRA earlier this year. However, the proposed Reimbursement Agreement provides additional assurances to the Monitor and the stakeholders that the stakeholders will not be prejudiced should there be a shortfall in proceeds relative to the amount of the Priority Claims as a result of the repayment of the DIP Facility.
13. For the reasons set out in this Second Report, the Monitor is of the view that the Applicants are acting with due diligence and in good faith and that the relief requested by the Applicants is appropriate and reasonable. Further, the Monitor is of the view that granting the relief requested is a necessary step in these CCAA Proceedings. The court shares those views.
14. On the basis of the referenced authorities and for these and the more fulsome the reasons and authorities detailed in the Applicants' Factum and further details contained in the Monitor's Second Report, I have signed the requested order.
15. Order to go in the form signed by me today with immediate effect and without the necessity of formal issuance and entry.

A handwritten signature in black ink that reads "Kimmel J." with a stylized, cursive script.

KIMMEL J.