SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00735458-00CL **DATE: January 29, 2025**

NO. ON LIST: 1

TITLE OF PROCEEDING: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

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For Defendant, Respondent:

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ENDORSEMENT OF JUSTICE OSBORNE:

[1] Joriki Topco Inc. and its wholly owned Canadian operating subsidiary, Joriki Inc. (together with Joriki Topco and its other subsidiaries, "Joriki" or the "Company") bring this Application for:

a. an initial order under the CCAA order and that the Applicants are parties to which the *CCAA* applies and continuing its NOI proceeding commenced under the *Bankruptcy and Insolvency Act* under the *CCAA*;

b. appointing Alvarez & Marsal Canada Inc. as the Court-appointed Monitor;

c. staying all proceedings until February 28, 2025;

d. approving a key employee retention plan ("KERP");

e. approving a DIP Financing Term Sheet;

f. authorizing the Applicants to continue to use their cash management system and maintain banking arrangements in place;

g. granting charges over the assets and property of the Applicants as follows and with these priorities:

i. first, an Administration Charge in the maximum amount of $700,000;

ii. second, a Directors' Charge in the maximum amount of $200,000;

iii. third, a KERP Charge in the maximum amount of $487,500; and

iv. fourth, a DIP Lenders' Charge in the maximum amount of $1,200,000 plus interest, fees and expenses;

h. an order that the Applicants meet the criteria in the *Wage Earners Protection Program Act* (Canada) ("*WEPPA*"); and

i. an order approving the auction and liquidation services agreement entered into between Joriki Inc. and Maynards Industries II Canada Ltd. dated January 22, 2025.

[2] The Applicants rely on the Affidavit of Michael Devon sworn January 22, 2025, together with exhibits thereto, the affidavit of Madelin Cummings sworn January 27, 2025, together with exhibits thereto, and the Pre-Filing Report of the Proposed Monitor (which is filed jointly, also as the First Proposal Trustee Report.

[3] The Service List, which includes the parties in the NOI Proceeding, has been served. The relief sought today is unopposed. It is supported by the Senior Lenders and recommended by the Proposed Monitor.

[4] Defined terms in this Endorsement have the meaning given to them in the Application materials and/or the Pre-Filing Report, unless otherwise stated.

[5] At the conclusion of the hearing yesterday, I granted the requested relief with reasons to follow. These are those reasons.

[6] Joriki was in the business of manufacturing and packaging consumer beverages, including juices and plant-based beverages, operating from 3 Production Facilities in Canada (Toronto and Pickering, Ontario and Delta, BC) and one in the United States (Pittson, Pennsylvania).

[7] Losses from operations, initially modest in 2022, grew significantly in 2023. As a result of a delay in the completion and commissioning of the Pennsylvania facility, and thereafter operational challenges, a turnaround plan was developed that resulted in additional financing being obtained from its controlling shareholder in early 2024. Covenant relief and other concessions from lenders were negotiated.

[8] Regrettably, things got worse. In the midst of these turnaround efforts, the Pickering, Ontario facility was implicated in July 2024 in a Canada wide recall of Silk and Great Value plant-based beverages as a result of a listeria monocytogenes outbreak. The impact on the Company and its business was severe. The Pickering facility was shut down. It had been the Company's largest production site by case volume. Production was paused at other facilities, key customers were lost and revenues were materially reduced at the same time as costs were significantly increased as a result of the product recall, a related regulatory investigation, a pending class action and the threat of additional litigation.

[9] The recall also resulted in default under the Senior Credit Agreement and the Subordinate Credit Agreement. Joriki does not have the ability to repay the significant secured debt obligations outstanding, which today total in excess of $209 million.

[10] In August, 2024, the company began reviewing and assessing its strategic options and undertook a Sale Process with the assistance and under the oversight of Alvarez & Marsal to solicit interest in transactions to maximize value. Operating losses continue to mount. A further key customer was lost in December 24 and the Senior Lenders advised that they were no longer prepared to fund the business of the Company as a going concern.

[11] Joriki Canada filed the NOI. Alvarez & Marsal was appointed Proposal Trustee. Joriki USA, Inc., the Company's US operating subsidiary, commenced Chapter 7 proceedings under the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

[12] Notwithstanding the shutdown of active business operations, however, the Applicants, together with the Proposed Monitor and the Senior Lenders, continue to believe that one or more value maximizing transactions can still be completed in respect of the Toronto and Delta facilities, including possible transactions that would preserve customer and supplier relationships and may result in employment for remaining and former employees, by a purchaser. Joriki Canada has recently entered into a letter of intent with the prospective purchaser for its Delta facility assets and is currently negotiating a transaction for the purchase and sale of its assets at the Toronto facility.

[13] As a result of all of the above, the Applicants ,with the support of the Senior Lenders bring this Application to maintain the status quo while they pursue these transactions on an expedited timeframe.

[14] I am satisfied that the relief sought today should be granted.

[15] The Court has the jurisdiction to permit the Company to continue the NOI proceeding under the CCAA pursuant to section 11.6(a) of the CCAA. The factors relevant to the decision as to whether such a conversion should be approved are met here:

a. it has not filed a proposal under the BIA;

b. the proposed continuation is consistent with the purposes of the CCAA; and

c. it has provided the Court with the information that would otherwise form part of an initial CCAA application under section 10(2) of the CCAA.

See: *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882 ("*The Body Shop*"); *Clothing for Modern Times Ltd.*, 2011 ONSC 7522 ("*Clothing*") at para. 9, followed with approval in *Re Comstock Canada, Ltd.*, 2013 ONSC 4756 at paras. 36-45; *Re Urbancorp. Toronto Management Inc.*, 2016ONSC 3288 at paras. 36-48; *Re Stantive Technologies Group Inc.*, Ct. File No. 31-BK-244835.

[16] Obviously, the Company must also be a company with liabilities that exceed $5 million, as required by section 3.1 of the CCAA.

[17] The Company has not filed a BIA proposal.

[18] The purposes of the CCAA have been set out by the Supreme Court of Canada:

a. to permit a company to carry on business and, where possible, avoid the adverse effects of bankruptcy or liquidation while a court-supervised attempt to reorganize the financial affairs of the debtor is made; and

b. to preserve the status quo while attempts are made to find a reorganization solution that is fair to all stakeholders.

See: *Century Services Inc. v. Canada (Attorney General),* 2010 SCC 60, at paras. 15, 69, 70 and 77.

[19] A sale of the debtor's business as a going concern satisfies the purposes of the CCAA: *Clothing*, at para. 12.

[20] The Applicants submit, and the Proposal Trustee/Proposed Monitor concurs, that there is a prospect that a transaction or transactions may be negotiated that would allow the Company to carry on business in Canada. Additional time is required, however, given the status of the potential transactions summarized above and set out more fully in the materials. If the proposed turn-key transactions in respect of the Delta and Toronto facilities are completed, they could maximize value and deliver incremental benefits to stakeholders.

[21] The company has provided all of the information that would otherwise be filed on a CCAA Initial Order application, including but not limited to a cash flow forecast for the proposed stay period and the Company's most recent financial information, as well as a report demonstrating that the Proposal Trustee and proposed Monitor believe the cash flow analysis is reasonable and that they support the request for conversion to a CCAA application.

[22] I am also satisfied that the company is a debtor company with liabilities that exceed $5 million. The firm currently acting in the capacity as Proposal Trustee, Alvarez & Marsal Canada Inc., is qualified to act as Court-appointed Monitor, has consented to do so and is not affected by any restrictions as set out in section 11.7(2) of the CCAA.

[23] I am further satisfied that the stay of proceedings can and should be extended. The current NOI stay expires on January 30, 2025 and the Applicants are requesting a further stay of proceedings for 30 days through and including February 28, 2025. Such a period of time is appropriate and required for the reasons set out above, and has been authorized by this Court in previous cases on a conversion from a BIA proceeding, such as is this case, notwithstanding section 11.02(1) of the CCAA. See: *The Body Shop*; *Re Cannmart Labs, Inc*., CV-24-00719639-00CL; *Re Medifocus Inc*., CV-20-00669781-00CL and *Re Tribalscale Inc*., CV-20-00645116-00CL.

[24] In my view, a comeback hearing within 10 days is both unnecessary and inefficient in that it will needlessly increase professional costs. Given that this is a transition proceeding, all affected parties are on notice. The usual considerations that may apply on an Initial Order application, and the imperative for very limited relief sought on what is usually an *ex parte* a basis, do not apply the circumstances. The affected parties are here. For greater certainty, those on notice of today's motion include all secured creditors, relevant governmental authorities, the Applicants' landlord and litigation claimants and other stakeholders.

[25] Moreover, the proposed order contains the usual comeback clause such that any party who seeks to have the order amended or vacated has the ability to do so. The basis for the proposed stay is fully set out in the materials and described above. Practically, nothing is going to have changed within the next 10 days. Moreover, the relief sought in the CCAA Initial Order is not new in the sense of being novel nor is it new even to the parties affected by this proceeding. Rather, it is simply an extension of the relief already granted in this NOI proceeding. Simply put, there is no utility in a hearing within that period of time.

[26] For these reasons, the motion to convert and continue is more analogous to a motion contemplated under section 11.02(2) than section 11.02(1) of the CCAA. Pursuant to section 11.02(2), the Court may grant an extension of the stay for any period of time the Court thinks necessary where the Court is satisfied that: a) circumstances exist that make the order appropriate; and b) the applicant has acted, and is acting, in good faith and with due diligence. Those requirements are met here for the reasons set out above.

[27] The Proposed Monitor supports the requested stay extension and, as demonstrated by the Cash Flow Forecast, the Applicants will have sufficient liquidity to continue operations while they work to complete the transactions and an orderly liquidation of the Pickering facility.

[28] Accordingly, I am satisfied that a continuation of creditor protection under the CCAA is appropriate here, and that the terms of the proposed Initial Order are appropriate.

[29] For the same reasons, I am satisfied that the proposed Charges should be approved, in the proposed order of priority. This is consistent with both sections 11.51 and 11.52 of the CCAA and the factors set out by Pepall, J. (as she then was) in *Re CanWest Publishing Inc*., 2010 ONSC 222 ("*CanWest*") at para. 54 in respect of an Administration Charge; and by Chief Justice Morawetz in respect of the Directors and Officers Charge as set out in *Re Jaguar Mining Inc*., 2015 ONSC 494 at para. 45.

[30] Finally with respect to the proposed Charges, the proposed quantum of each is appropriate, and also supported by the Proposed Monitor.

[31] With respect to the proposed DIP Loan and DIP Lenders' Charge, it is likely that the Applicants will be able to fund these proceedings and their ongoing expenses from cash on hand and realizations on certain other assets. However, to ensure that they will have sufficient liquidity to advance restructuring efforts and avoid a possible liquidity crunch necessitating an emergency motion for DIP financing, they have entered into the DIP Term Sheet with the DIP Lender.

[32] Those may be approved pursuant to section 11.2 of the CCAA where the factors set out in section 11.2(4) are considered and determined to have been satisfied. I am so satisfied here: see *CanWest*, at paras. 41 – 46.

[33] I am further satisfied that the KERP and the KERP Charge are appropriate, should be continued, and meet the factors set out in *Re Grant Forest Products Inc*., 2009, CanLII 42046 at paras. 8-12. The Applicants further seek a sealing order in respect of the confidential summary of the proposed KERP contained in the confidential appendix to the Pre-Filing Report of the Monitor. This is authorized, pursuant to section 137(2) of the *Courts of Justice Act*, and I am satisfied that the factors articulated by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* have been met here.

[34] In further addition, I am satisfied that *WEPPA* is applicable. Joriki Canada has terminated all of its employees in Canada, other than those retained to wind down the business operations, with the result that the Applicants meet the criteria prescribed by section 3.2 of the *WEPPA Regulations*.

[35] Finally, the Pickering liquidation should be approved. No bids were received for the Pickering facility as part of the Sale Process. The proposed liquidation is supported by the Proposed Monitor, and by the Senior Lenders, and will generate incremental value and ensure a timely exit from the Pickering facility to reduce ongoing expenses. To this end, I am further satisfied that the auction and liquidation services agreement with the proposed liquidator is appropriate and should be approved: see *DEL Equipment Inc.; Nordstrom Canada Retail et al*; and *Ted Baker Canada Inc. et al.*

[36] For all of these reasons, the requested relief is approved.

[37] Orders to go in the form signed by me which are effective immediately and without the necessity of issuing and entering.