



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000039-0000

HEARING DATE: FEBRUARY 13, 2026

NO. ON LIST: 8

TITLE OF PROCEEDING: **Re: PLAN OF COMPROMISE OR ARRANGEMENT OF
AYURCANN HOLDINGS CORP. AND AYURCANN INC.**

BEFORE: **JUSTICE JESSICA KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE KIMMEL:

Prior Orders and Relief Sought by This Motion

- [1] On January 30, 2026, Ayurcann Holdings Corp. and Ayurcann Inc. (together, the "Applicants" or the "Company") sought and obtained an order (the "Initial Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").
- [2] An amended and restated Initial Order (the "ARIO") was granted on February 9, 2026, by which the Stay of Proceedings was extended to February 27, 2026, the Administration and Directors' Charges were increased, a KERP was approved (with a corresponding sealing order in respect of certain confidential and personal/private information pertaining to the affected employees). The ARIO also authorized the Applicants to pay up to \$300,000 in the aggregate, with the consent of the Monitor, for amounts owing for goods and services supplied prior to the commencement of the CCAA Proceedings ("Critical Supplier Payments").
- [3] It was contemplated when the Applicants obtained the ARIO that they would return on February 13, 2026 for a Second ARIO to include DIP financing, and for an order seeking approval of a Sale Process and Stalking Horse Agreement with the DIP Lender.
- [4] This motion seeks a Second Amended and Restated Initial Order (the "Second ARIO"):
- (a) extending the Stay of Proceedings in favour of the Applicants and the Non- Applicant Stay Parties to and including April 30, 2026 (the "Stay Extension");
 - (b) approving Ayurcann's ability to borrow up to a principal amount of \$2,000,000 under a DIP credit facility (the "DIP Facility") to finance the Company's critically required working capital requirements and other general corporate purposes, post-filing and professional expenses and other costs incurred during these CCAA Proceedings;
 - (c) granting a DIP Lender's Charge up to a maximum amount of \$2,000,000, plus accrued and unpaid interest, fees and expenses in accordance with the DIP Facility, ranking subordinate to the Administration Charge but in priority to all other charges and Encumbrances; and
 - (d) an increase (from \$300,000 to \$800,000) to the maximum aggregate amount of Critical Supplier Payments that the Applicants are authorized to make to critical suppliers who actually supplied goods and/or services to the Applicants prior to the Filing Date, with the consent of the Monitor.
- [5] This motion also seeks an order (the "Sale Process Approval Order"), among other things:
- (a) authorizing and approving the Applicants' execution of an agreement of purchase and sale dated February 8, 2026 (the "Stalking Horse Purchase Agreement") between the Applicants and Auxly Cannabis Group Inc. ("Auxly", and in such capacity, the "Stalking Horse Bidder"), including the Bid Protections contemplated therein;
 - (b) granting a court-ordered charge over the Property in favour of the Stalking Horse Bidder as security for payment of the Bid Protections (the "Bid Protections Charge"), with the priority set out in the Second ARIO (i.e. subordinate to the Administration Charge, the DIP Lender's Charge, the Directors' Charge and the KERP Charge);

- (c) approving a sale process (the "Sale Process") in respect of the Applicants in which the Stalking Horse Purchase Agreement will serve as the "Stalking Horse Bid" and authorizing the Applicants and the Monitor to implement the Sale Process pursuant to its terms; and
- (d) authorizing and directing the Applicants and the Monitor to perform their respective obligations and do all things reasonably necessary to perform their obligations under the Sale Process.

- [6] The proposed Sale Process Approval Order and the Second ARIO will enable the Applicants to continue their ordinary course operations while pursuing a value maximizing transaction through the Sale Process. The Applicants have submitted and rely upon the affidavits of Igal Sudman, sworn January 29, 2026, February 3, 2026 and February 8, 2026 (together, the "Sudman Affidavits") in support of this motion. In each case, the requested relief is supported by the Monitor for reasons set out in the Monitor's Second Report dated February 11, 2026 and the Supplemental Report to the Second Report of the Monitor dated February 12, 2026. No stakeholder on the service list opposes this motion.
- [7] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Applicants' factum filed in support of this motion, or the Second ARIO, as applicable.

Sale Process and Stalking Horse

- [8] The Sale Process contemplates a single-phase process administered by the Monitor and the Applicants over approximately 46 days. Pursuant to the Bidding Procedures, the Sale Process is intended to solicit interest in, and opportunities for, higher and better offers than that set out in the Stalking Horse Bid in contemplation of a sale of all or part of Ayurcann's assets and business operations on a going-concern basis. If Qualified Bids other than the Stalking Horse Bid are received, the Sale Process provides for an Auction in order to determine the highest or otherwise best bid. The Monitor's Second Report provides a detailed summary of the Sale Process.
- [9] The Monitor has experience running similar sale processes in the context of restructuring proceedings involving other cannabis companies. The Monitor provides its detailed reasons for supporting and recommending the approval of the Sale Process and Stalking Horse Agreement in its Second Report.
- [10] The Monitor explains that the Sale Process timeline was negotiated among the Applicants, the Monitor, and the proposed DIP Lender. The Sale Process milestones were developed to balance the time required to administer a commercially reasonable marketing process designed to maximize opportunities for value maximizing sale of all or part of the Applicants' assets and business with the available financial resources of the Applicants.
- [11] The Sale Process provides the flexibility for the Monitor to modify, amend, vary or supplement the Bidding Procedures and the Auction Procedures, in order to give effect to the substance of the Sale Process without the need for obtaining an order of the Court. Specifically, the Monitor may extend the milestones and deadlines in the Sale Process, in consultation with the Applicants and in accordance with the Sale Process and DIP Facility. The Sale Process also contemplates that there will be updated schedules to the Stalking Horse Agreement, which will be finalized and provided to interested bidders who have signed non-disclosure agreements well in advance of the Bid Deadline.
- [12] The factors that the court looks to for approval of sales processes, and sales, under the CCAA, are derived from *Nortel Networks Corp, Re* 2009 CanLII 39492 (ON SC) at paras 47-48 and *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1685, at para 15, with regard to s. 36(3) of the CCAA. The proposed Sale Process satisfies the applicable factors for, among other reasons, those summarized in paragraph 30 of the Applicants' factum. The Monitor is ready to proceed, and is anxious to do so given the Company's limited liquidity.

- [13] The Sale Process is approved for all of the reasons articulated.
- [14] The Stalking Horse Purchase Agreement was selected based on pre-filing negotiations with prospective DIP lenders. The Applicants, in consultation with the Monitor, determined that Auxly (an arm's length third-party) provided the most favourable bid and the Applicants continued to advance the proposed Auxly transaction from that time. After the CCAA Initial Order, those negotiations continued, resulting in the Applicants signing the Stalking Horse Purchase Agreement (subject to court approval) on February 8, 2026, with the Stalking Horse Bidder, as purchaser, to acquire substantially all of the assets or shares of Ayurcann on certain terms and conditions.
- [15] The Purchase Price under the Stalking Horse Purchase Agreement is \$4,640,000, to be comprised of: (i) a credit-bid in the full amount outstanding under the DIP Facility, inclusive of interest, fees and costs; and (ii) a cash payment for the remaining balance of the Purchase Price. The Stalking Horse Bidder also agreed to assume certain Retained Liabilities, which include, among other things, certain employer liabilities of Retained Employees, Cure Costs, liabilities required by Applicable Law to maintain the retained Permits and Licenses, trade payables and other liabilities relating to the Business incurred in the ordinary course after the Filing Date, and certain tax obligations.
- [16] The Stalking Horse Purchase Agreement includes certain termination rights in favour of the Stalking Horse Bidder if the Stalking Horse Bidder is not the Successful Bid (as defined in the Sale Process) and the transaction contemplated by the Successful Bid is closed. In such case, the Stalking Horse Bidder is entitled to: (i) a break fee of \$139,200 (the "Break Fee"); and (ii) an expense reimbursement for the Stalking Horse Bidder's legal and other costs up to a maximum amount of \$125,000 (together with the Break Fee, the "Bid Protections"). The maximum amount of the Bid Protections is equal to approximately 5.7% of the Purchase Price.
- [17] The Monitor describes in the Second Report the Stalking Horse Purchase Agreement (including the Bid Protections and corresponding Bid Protections Charge contemplated by that agreement) and the Monitor's rationale for supporting it and recommending that the court approve it.
- [18] A stalking horse transaction is a beneficial mechanism well-suited to supporting a sale process, and sale processes with stalking horse transactions have been approved by this court: see *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at paras. 14-17; *Danier Leather Inc. (Re)*, 2016 ONSC 1044, at para. 20; *Validus Power Corp, et al. and Macquarie Equipment Finance Limited*, 2023 ONSC 6367, at para. 65. In this case, the Stalking Horse Purchase Agreement is the product of extensive negotiations with the arm's length Stalking Horse Bidder and provides a Purchase Price that establishes a valuable baseline for the bids to be tendered in the Sale Process.
- [19] Courts in comparable CCAA proceedings have approved transaction fees similar to the Bid Protections in this case, that range from 1% to 7.1% of the transaction value therein: see *CCM*, at para 13; *In the Matter of the Plan of Compromise or Arrangement of Loyalty OneCo* (March 20, 2023) Toronto, ONSC [Commercial List] CV-23-00696017-00CL at paras. 13-14 (Endorsement); *Fire & Flower Holdings Corp, et al.* 2023 ONSC 4048, at paras. 34.
- [20] The Monitor has compared the Bid Protection (5.7% of the Purchase Price) to other stalking horse break fees and expense reimbursements approved by this court in similar proceedings, and based on the Monitor's review, the Bid Protections appear to be reasonable in the circumstances and typical for a transaction of this size and complexity. The Monitor does not believe the creditors of the Applicants would be materially prejudiced by the Stalking Horse Purchase Agreement, the Sale Process, the Bidding Procedures or the Auction Procedures.

[21] The proposed Second ARIO also contemplates a charge as security for payment of the Bid Protections over the Property of Ayurcann. The Bid Protections Charge is a requirement of the Stalking Horse Bidder to enter into the Stalking Horse Purchase Agreement which is a key feature of the Sale Process.

[22] Such charges have been granted in other recent decisions: see for example: *Loyalty OneCo*; *Validus*, at paras 115-116. While the Bid Protections Charge is over the Property, the Bid Protections are only payable out of the proceeds of an alternative transaction to that contemplated by the Stalking Horse Purchase Agreement.

[23] If the Stalking Horse Purchase Agreement is ultimately designated as the Successful Bid, the Applicants will return to court to seek approval of the transaction contemplated therein. The approval of the Stalking Horse Bid as part of the Sale Process is not a pre-approval of the transaction or its contemplated structure.

[24] The Stalking Horse Agreement and the Bid Protections Charge required under it are reasonable and appropriate in the circumstances and they are approved.

DIP Financing

[25] The Updated Cash Flow Forecast indicates that interim financing is required to fund the Applicants' operations during the CCAA Proceedings and through the course of the Sale Process. Accordingly, on February 8, 2026, at the same time the Stalking Horse Purchase Agreement was executed, the Applicants entered into the DIP Facility with Auxly (in such capacity, the "DIP Lender").

[26] The Monitor describes the DIP Facility and its rationale for supporting it and recommending that the court approve it in the Second Report. The Monitor has reviewed comparable DIP financing facilities and is of the view that the terms of the DIP Facility, including the interest rate and fees charged, are reasonable and within market parameters.

[27] The Monitor notes that these comparable DIP loans: (a) range in size from \$0.4 million to \$31.0 million; (b) have interest rates in the range of 8% to 20%, with an average rate of 12%; and (c) have incremental fees that average 1.9%. In comparison, the proposed DIP Facility contemplates an interest rate of 12% and a commitment fee of 2%, which are approximately the averages in the ranges of comparable DIP loans.

[28] The Applicants have no other financing alternatives.

[29] The requested Second ARIO contemplates that borrowings under the DIP Facility will be secured by way of a court-ordered priority charge (the "DIP Lender's Charge"), subordinate only to the Administration Charge. The proposed Second ARIO seeks the granting of the DIP Lender's Charge up to a maximum amount of \$2,000,000 plus accrued and unpaid interest, fees and expenses in accordance with the DIP Agreement.

[30] The DIP Lender's Charge is a condition of the DIP Facility, without which, the Applicants would have to cease going concern operations in the near term and not have the liquidity to fund their operations until the end of the Sale Process. The Monitor believes that the Charges are reasonable in the circumstances.

[31] Subsection 11.2(1) of the CCAA authorizes this Court to approve DIP financing and grant a corresponding charge in an amount it considers appropriate, having regard to the debtor company's cash flow statement, where the secured creditors likely to be affected by the charge are given notice thereof. Having considered the non-exhaustive factors set out in subsection 11.2(4) of the CCAA and the relevant factors outline in paragraph 41 of the Applicants' factum, I am satisfied that the DIP Facility and DIP Lenders Charge should be approved.

Other Provisions of the Second ARIO

- [32] The proposed Stay extension to April 30, 2026 will provide the Applicants with the time and stability necessary to implement the proposed Sale Process and pursue a value maximizing going concern sale transaction and return to court to seek approval of the Successful Bid in the Sale Process. The target bid deadline is March 31, 2026 so this builds in some additional time if the Monitor should decide to extend the Bid Deadline or conduct an auction, both as are provided for under the Sale Process.
- [33] The Monitor is of the view that the Applicants' have acted and continue to act in good faith and with due diligence to advance their restructuring efforts and the CCAA Proceedings. The Monitor is not aware of any party that would be materially prejudiced by the proposed Stay extension.
- [34] The Applicants provided an Updated Cash Flow Forecast that disclosed that projected payments to critical suppliers previously reflected as post-filing claims were in fact pre-filing claims. This was reported in the Supplemental Report to the Second Report of the Monitor and is what led to the request to increase to the maximum aggregate amount the Critical Supplier Payments. These payments do not require an increase in the DIP Financing, although an additional \$100,000 draw is forecast for these payments, under the DIP Facility.
- [35] The Monitor explains that the critical suppliers are considered by the Applicants to be vital to maintaining ongoing operations and preserving the going-concern value of the Applicants' business. The critical suppliers play a key role in the Applicants' sales and trading functions, support important customer relationships, and are not easily replaceable. The Monitor is satisfied with the Applicants' assessment that the goods and services provided by these suppliers are critical to the business, including that such goods and services are required to achieve the Applicants' sales forecast. Further, the Monitor is of the view that any prospective purchaser of the Applicants' business would also view these suppliers as critical.
- [36] In consultation with the Monitor, and with the support of the DIP Lender, the Applicants have prepared a revised cash flow forecast (the "Revised Cash Flow Forecast"), which reflects these increased disbursements and reclassifies certain disbursements in the "Sale and Marketing" line item as pre-filing obligations. Before any Critical Supplier Payments are made for goods and/or services supplied to the Applicants prior to the Filing Date, the Monitor will work closely with the Applicants to ensure that only critical suppliers are paid. The Monitor has set out in its Supplemental Report to the Second Report the criteria it will apply in determining whether to consent to the payment of any pre-filing debt to a supplier.
- [37] Like many of the other provisions in the Second ARIO the court has already been satisfied about the rationale and jurisdiction for granting the authorization to make Critical Supplier Payments. This endorsement is to approve the increased maximum amount of those payments, based on updated information about the crucial suppliers and amounts outstanding to them. In this instance, the same applies to the extension of the Stay of Proceedings and for its application to continue to be extended to the Non-Applicant Stay Parties.
- [38] The Monitor's powers are expanded in the Second ARIO to reflect the additional oversight it will have in connection with the DIP Facility and required reporting, for the benefit of all stakeholders. It also includes the provisions relating to the approval of the DIP Financing and DIP Charges discussed above, and other provisions that have become customary for DIP Financing approval.
- [39] The Second ARIO re-orders the priorities of various permitted charges to accord with what has been agreed.
- [40] All of these amendments to the ARIO, reflected in the Second ARIO, are reasonable and appropriate in the circumstances.

Orders

[41] The parties were advised at the conclusion of the hearing on February 13, 2026 that the two requested orders would be signed that day, but that their release may be delayed until after the weekend to be accompanied by this endorsement. The Sale Process Approval Order and Second ARIO dated and signed on February 13, 2026 are effective as of that date.

Date: Feb 17, 2026

A rectangular box containing a handwritten signature in cursive script that reads "Kimmel J.".

JUSTICE KIMMEL