

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF AYURCANN HOLDINGS CORP. and
AYURCANN INC.**

Applicants

**FACTUM OF THE APPLICANTS
(Returnable February 13, 2026)**

February 11, 2026

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSO# 573071)
Email: ZweigS@bennettjones.com

Jesse Mighton (LSO# 62291J)
Email: MightonJ@bennettjones.com

Jamie Ernst (LSO# 88724A)
Email: ErnstJ@bennettjones.com

Shawn Kirkman (LSO# 92214U)
Email: KirkmanS@bennettjones.com

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicants

TO: THE SERVICE LIST

TABLE OF CONTENTS

PART I:	OVERVIEW	1
PART II:	FACTS	3
B.	Sale Process Approval Order.....	3
1.	Sale Process	4
2.	Stalking Horse Purchase Agreement	7
C.	The Second ARIO.....	8
1.	Proposed DIP Financing	8
2.	The Stay Extension	11
PART III:	ISSUES	12
PART IV:	LAW AND ANALYSIS	12
A.	The Sale Process Approval Order.....	12
1.	The Sale Process Should be Approved.....	12
2.	The Stalking Horse Purchase Agreement Should be Approved as the Stalking Horse Bid.....	15
B.	The Proposed DIP Financing Should be Approved.....	18
1.	The Proposed DIP Financing Satisfies Subsection 11.2(4) of the CCAA.....	18
C.	The Stay of Proceedings Should be Extended.....	20
PART V:	RELIEF REQUESTED	23

PART I: OVERVIEW

1. On January 30, 2026, Ayurcann Holdings Corp. (“**Ayurcann Parent**”) and Ayurcann Inc. (“**Ayurcann**” and together with Ayurcann Parent, 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**”). An Amended and Restated Initial Order (the “**ARIO**”) was granted on February 9, 2026, among other things, extending the Stay of Proceedings and approving the KERP. As indicated in the Applicants’ previously filed materials, the purpose of these CCAA proceedings (the “**CCAA Proceedings**”) is to create a stabilized environment to conduct a sale process seeking a value maximizing transaction in respect of the Applicants’ business with a view to effecting a going-concern restructuring transaction.
2. Following concerted efforts, and with the assistance of Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed Monitor (in such capacity, the “**Monitor**”), the Applicants have finalized the terms of debtor-in-possession (“**DIP**”) financing and a stalking horse sale process, and seek two orders related to their approval.
3. First, 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 (as defined below) 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 (as defined below) (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.

4. Second, a Second Amended and Restated Initial Order (the “**Second ARIO**”), among other things:

- (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; and
- (c) granting the DIP Lender’s Charge (as defined below) up to a maximum amount of \$2,000,000, plus accrued and unpaid interest, fees and expenses in accordance with

the DIP Facility, with respect to the Applicants' Property ranking subordinate to the Administration Charge but in priority to all other charges and Encumbrances.

5. The relief being sought on this motion represents the logical next step in these CCAA Proceedings. 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. In each case, the requested relief is supported by the Monitor.

PART II: FACTS

6. The facts underlying this motion are more fully set out in the affidavits of Igal Sudman, sworn January 29, 2026, February 3, 2026 and February 8, 2026 (together, the "**Sudman Affidavits**"). All capitalized terms used but not defined herein have the meanings ascribed to them in the Sudman Affidavits or the ARIO, as applicable.

B. Sale Process Approval Order

7. The Applicants seek the proposed Sale Process Approval Order to pursue a value maximizing transaction for the benefit of their stakeholders. The proposed Sale Process Approval Order has two key aspects: (i) it approves the procedures for the Sale Process in which the Stalking Horse Purchase Agreement will serve as the Stalking Horse Bid; and (ii) it authorizes and approves the execution of the Stalking Horse Purchase Agreement, including the Bid Protections contemplated therein, solely for purposes of serving as the Stalking Horse Bid in the proposed Sale Process.¹

¹ Affidavit of Igal Sudman sworn February 8, 2026 at para 30 [*Sudman Affidavit*], Motion Record dated February 3, 2026 at Tab 2 [*Motion Record*].

1. Sale Process²

8. The proposed Sale Process provides for the Applicants and the Monitor to solicit interest in, and opportunities for, a sale of all or part of the Company's assets and business operations on a going-concern, cash-free, debt-free basis. The Sale Process is a single-phase process and was designed to be flexible to obtain the best offer for the Company to maximize value for the Applicants' many stakeholders.³

9. Key details of the Sale Process are summarized below:

- (a) *Notification Process* – as soon as reasonably practicable following the granting of the Sale Process Approval Order the Monitor and the Applicants will solicit interest from parties, including sending parties the Teaser Letter. Parties wishing to participate in the Sale Process that execute a non-disclosure agreement will then be given access to a confidential virtual data room and provided with due diligence information.
- (b) *Bid Deadline* – the Sale Process contemplates giving potential bidders until March 31, 2026 at 5:00 p.m. (Eastern Time) to submit a Qualified Bid.
- (c) *Qualified Bids* – in order to constitute a Qualified Bid, a bid (other than the Stalking Horse Bid) must conform with the Bid Requirements including that the bid, among other things:
 - (i) must be superior to the Stalking Horse Bid and provide for aggregate consideration, payable in cash in full on closing in an amount equal to or

² In this section capitalized terms not otherwise defined herein have the meanings ascribed to them in the Sale Process Approval Order and the Sale Process, as applicable.

³ *Sudman Affidavit*, *supra* note 1 at para 42, *Motion Record* at Tab 2.

greater than: (i) the Purchase Price under the Stalking Horse Bid (i.e., \$4,640,000); (ii) the amount of \$264,200 to satisfy the Bid Protections; and (iii) a minimum overbid amount of \$100,000 (collectively, the **“Consideration Value”**);

- (ii) provides a detailed schedule that identifies the Consideration Value and any material assumed or excluded liabilities;
- (iii) contains duly executed and binding transaction document(s) and the required cash deposit equal to 10% of the Consideration Value, which deposit shall be held by the Monitor in a trust account in accordance with the Sale Process;
- (iv) includes a letter stating that the bid is submitted in good faith, binding and irrevocable until the closing of a Successful Bid, and provides that the bid will serve as a Back-Up Bid if it is not selected as the Successful Bid;
- (v) provides written evidence of the Potential Bidder’s ability to fully fund and consummate the proposed transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full Consideration Value;
- (vi) provides details surrounding the Potential Bidder’s intended treatment of the Applicants’ employees;
- (vii) includes an acknowledgement that the Potential Bidder is making its bid on an “as is, where is” basis, which is not conditional upon: (i) approval from the Potential Bidder’s board of directors (or comparable governing body) or

- equityholder(s); (ii) the outcome of any due diligence by the Potential Bidder; or (iii) the Potential Bidder obtaining financing; and
- (viii) specifies any regulatory (including Health Canada) or other third-party approvals the Potential Bidder anticipates would be required to complete the proposed transaction (including the anticipated timing necessary to obtain such approvals).
- (d) *Review of the Qualified Bids* – following the Bid Deadline, if one or more Qualified Bids (other than the Stalking Horse Bid) are received by the Monitor on or before the Bid Deadline, the Monitor, and the Applicants shall review the Qualified Bids and determine which Qualified Bid (or combination of non-overlapping Qualified Bids) constitutes the best offer, and such Qualified Bid shall be designated as the “Lead Bid” therein. The Monitor shall then advise all Qualified Bidders of the Lead Bid and invite them to participate in the Auction in accordance with the Auction Procedures. If no Qualified Bids are received by the Bid Deadline then the Stalking Horse Bid shall be deemed to be the Successful Bid and will be executed in accordance with and subject to its terms, including obtaining Court approval thereof.
- (e) *Closing of the Successful Bid* – the Sale Process contemplates that if no Qualified Bids are received other than the Stalking Horse Bid, closing of the Stalking Horse Bid will occur as soon as possible following issuance of the Vesting Order (as defined below) but no later than May 1, 2026. If Qualified Bids are selected other than the Stalking Horse Bid, closing of the Successful Bid will occur as soon as possible but no later than May 15, 2026. The Sale Process is supported by the

Monitor and the DIP Lender (as defined below). Specifically, the Monitor agrees that interested parties will have sufficient time to formulate and submit Qualified Bids and that the Sale Process will ensure a value maximizing transaction is completed.⁴

2. Stalking Horse Purchase Agreement

10. The Stalking Horse Purchase Agreement between the Applicants and the Stalking Horse Bidder will, if approved, serve as the basis for the Stalking Horse Bid in the Sale Process.⁵ The Stalking Horse Bid is the product of significant negotiations among the Stalking Horse Bidder and the Applicants, in consultation with the Monitor.⁶

11. If selected as the Successful Bid in the Sale Process, the Stalking Horse Bid will be implemented as a reverse vesting transaction, pursuant to which the Stalking Horse Bidder will subscribe for and acquire 100% of the issued and outstanding shares of Ayurcann pursuant to an order of the Court (the “**Vesting Order**”).⁷

12. The Stalking Horse Purchase Agreement contemplates the full satisfaction of the DIP Facility on closing pursuant to a credit bid, plus an additional cash payment for total consideration payable equal to \$4,640,000 (the “**Purchase Price**”).⁸

13. If the Stalking Horse Bid is not selected as the Successful Bid in the Sale Process, the Stalking Horse Purchase Agreement provides that the Stalking Horse Bidder will be entitled to the payment of certain Bid Protections. The Bid Protections are comprised of: (i) a break fee in the

⁴ *Sudman Affidavit, ibid* at para 44, *Motion Record* at Tab 2.

⁵ *Sudman Affidavit, ibid* at para 31, *Motion Record* at Tab 2.

⁶ *Sudman Affidavit, ibid* at para 32, *Motion Record* at Tab 2.

⁷ *Sudman Affidavit, ibid* at para 33, *Motion Record* at Tab 2.

⁸ *Sudman Affidavit, ibid* at para 34, *Motion Record* at Tab 2.

amount of \$139,200, and (ii) an expense reimbursement for all actual documented out-of-pocket reasonable costs and expenses incurred in connection with negotiating, preparing and executing the Stalking Horse Purchase Agreement, up to the maximum amount of \$125,000 (collectively, the “**Bid Protections**”).⁹

14. The Bid Protections are proposed to be secured by the Bid Protections Charge over the Property in favour of the Stalking Horse Bidder in the aggregate maximum amount of \$264,200 (representing approximately 5.7% of the proposed Purchase Price), ranking subordinate to the Administration Charge, the DIP Lender’s Charge (if approved), the Directors’ Charge and the KERP Charge, but in priority to all other Encumbrances. The Bid Protections are an integral part of the Stalking Horse Purchase Agreement. Without the Bid Protections, the Stalking Horse Bidder would not have agreed to act as the Stalking Horse Bidder in the Sale Process.¹⁰

15. At this time, approval of the Stalking Horse Purchase Agreement is being sought solely for the purpose of approving it as the Stalking Horse Bid in the Sale Process. To the extent that the Stalking Horse Bid is the Successful Bid, the Applicants will seek Court approval of the transaction contemplated thereunder at a future motion.¹¹

C. The Second ARIQ

1. Proposed DIP Financing

16. On February 8, 2026, Ayurcann, as borrower, Ayurcann Parent, as guarantor, and Auxly (in such capacity, the “**DIP Lender**”), as lender, entered into a Debtor-in-Possession Facility Commitment Letter (the “**DIP Agreement**”), subject to approval of the Court. The proposed DIP

⁹ *Sudman Affidavit, ibid* at para 37, *Motion Record* at Tab 2.

¹⁰ *Sudman Affidavit, ibid* at para 38, *Motion Record* at Tab 2.

¹¹ *Sudman Affidavit, ibid* at para 39, *Motion Record* at Tab 2.

Facility consists of a non-revolving loan up to the maximum principal amount of \$2,000,000, accruing interest at a rate of 12% per annum.¹²

17. Pursuant to the DIP Agreement, the DIP Facility is to be used during the CCAA Proceedings to fund the following costs, fees and expenses:

- (a) the Applicants' working capital and restructuring expenses in the CCAA Proceedings, each in accordance with the Cash Flow Projections (as defined in the DIP Agreement);
- (b) the reasonable and documented professional fees associated with the CCAA Proceedings (including, without limitation, the legal fees and expenses of the Applicants, the Monitor and the Monitor's counsel);
- (c) the payment of interest, fees and other amounts payable under the DIP Agreement; and
- (d) such other costs and expenses as agreed to by the DIP Lender, in writing.¹³

18. The DIP Agreement contemplates a commitment fee in the amount of \$40,000 (an amount representing 2% of the maximum principal amount of the DIP Facility). The commitment fee will be added to the principal amount outstanding and will be payable on the DIP Termination Date (as defined below).¹⁴

19. Unless accelerated by an event of default, the DIP Facility shall terminate on the earliest to occur of (the "**DIP Termination Date**"):

¹² *Sudman Affidavit, ibid* at para 14, *Motion Record* at Tab 2.

¹³ *Sudman Affidavit, ibid* at para 15, *Motion Record* at Tab 2.

¹⁴ *Sudman Affidavit, ibid* at para 16, *Motion Record* at Tab 2.

- (a) the closing of a transaction pursuant to which substantially all of the assets or shares of Ayurcann are acquired;
- (b) the effective date under any plan of compromise or arrangement within the CCAA Proceedings;
- (c) unless otherwise consented to by the DIP Lender, May 15, 2026 (being the Outside Date for the closing of the Successful Bid under the Sale Process);
- (d) the termination, expiration or conversion of the CCAA Proceedings; and
- (e) payment in full of all amounts owing under the DIP Facility.¹⁵

20. Any advances made under the DIP Facility will be secured by a super-priority charge in favour of the DIP Lender (the “**DIP Lender’s Charge**”), if approved, which will rank subordinate to the Administration Charge but in priority to all other Encumbrances.¹⁶

21. As reflected in the Applicants’ cash flow forecast (the “**Revised Cash Flow Forecast**”) the Applicants will require interim financing during the CCAA Proceedings to maintain ordinary course operations while they conduct the Sale Process and implement a value maximizing transaction for the benefit of their stakeholders. The proposed DIP Facility, if approved, is expected to provide the Applicants with sufficient liquidity to operate their business during the Stay Period (as defined below). The Monitor, who was consulted throughout the DIP Facility negotiations, has advised that it supports the DIP Facility and believes it is appropriate in the circumstances.¹⁷

¹⁵ *Sudman Affidavit, ibid* at para 17, *Motion Record* at Tab 2.

¹⁶ *Sudman Affidavit, ibid* at para 18, *Motion Record* at Tab 2.

¹⁷ *Sudman Affidavit, ibid* at para 19, *Motion Record* at Tab 2. Second Report of the Monitor dated February 11, 2026 at para 5.4 [*Second Report*].

2. The Stay Extension

22. Pursuant to the ARIO, the Stay of Proceedings was extended to and including February 27, 2026.¹⁸ The Applicants are now seeking approval of the Second ARIO to, among other things, extend the Stay of Proceedings to and including April 30, 2026 (the “**Stay Period**”).

23. As previewed in prior materials filed in the CCAA Proceedings, and following negotiations with the DIP Lender and consultation with the Monitor, the Applicants now seek the proposed Second ARIO. Together with the proposed Sale Process Approval Order, the Second ARIO will enable the Applicants to pursue a value maximizing transaction for the benefit of their stakeholders. The proposed Second ARIO includes the approval of the DIP Facility, which is required to fund the Applicants’ liquidity needs during the Sale Process.

24. Since the granting of the Initial Order, the Applicants, with the assistance of the Monitor, have acted in good faith and with due diligence to, among other things, stabilize their business, continue operations in the ordinary course, develop the KERP, deploy a communications plan notifying key stakeholders of the CCAA Proceedings and finalize the Sale Process, the Stalking Horse Purchase Agreement and the DIP Agreement.¹⁹

25. The Revised Cash Flow Forecast demonstrates that the Applicants will, subject to the approval of the DIP Facility, have sufficient cash to support their ordinary course operations and the costs of these CCAA Proceedings throughout the proposed Stay Extension.²⁰

¹⁸ *Sudman Affidavit, ibid* at para 10, *Motion Record* at Tab 2.

¹⁹ *Sudman Affidavit, ibid* at para 11, *Motion Record* at Tab 2.

²⁰ *Sudman Affidavit, ibid* at paras 17-18, *Motion Record* at Tab 2.

PART III: ISSUES

26. The issues to be considered on this motion are whether this Court should:
- (a) approve the Sale Process;
 - (b) approve the Stalking Horse Purchase Agreement solely for the purposes of being the Stalking Horse Bid, including approval of the Bid Protections and the Bid Protections Charge;
 - (c) approve the proposed DIP Facility and grant the DIP Lender's Charge; and
 - (d) extend the Stay of Proceedings to and including April 30, 2026.

PART IV: LAW AND ANALYSIS

A. The Sale Process Approval Order

1. The Sale Process Should be Approved

27. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale process in relation to a CCAA debtor's business and assets, prior to or in the absence of a plan of compromise and arrangement.²¹

28. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sale process:

- (a) Is a sale warranted at this time?

²¹ [Nortel Networks Corp. Re 2009 CanLII 39492 \(ON SC\)](#) at paras 47-48 [*Nortel*]; [Companies' Creditors Arrangement Act, RSC 1985, c. C-36 s. 11, s. 36](#) [CCAA] See also: [BZAM Ltd. Plan of Arrangement, 2024 ONSC 1685](#), at para 15 [*BZAM 1685*].

- (b) Will the sale be of benefit to the whole “economic community”?
- (c) Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- (d) Is there a better viable alternative?²²

29. While not technically applicable at the sale process stage, the factors set out in subsection 36(3) of the CCAA have also been considered when deciding whether to approve a sale process:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in its opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

²² [Nortel](#), *ibid* at para 49; [Brainhunter Inc. Re](#), 2009 CanLII 72333 (ON SC), at para 13 [*Brainhunter*]; [Danier Leather Inc. Re](#), 2016 ONSC 1044, at para 23 [*Danier*].

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.²³
30. In consideration of the above criteria and factors, the Sale Process should be approved as:
- (a) a sale of the Applicants' Business will maximize value and allow the Applicants to continue as a going concern in the best interests of all stakeholders;
 - (b) the Sale Process contemplates marketing the opportunity broadly to known interested parties identified by the Applicants and the Monitor;
 - (c) the combination of the Stalking Horse Purchase Agreement and the Sale Process will benefit all of the Applicants' stakeholders:
 - (i) the Stalking Horse Purchase Agreement sets a floor for other transactions and may contribute to a higher valuation, increasing the potential consideration to be received, while also providing an outcome that benefits all stakeholders should the Sale Process not produce a better bid; and
 - (ii) the Sale Process timelines and criteria, which were developed in consultation with the Monitor, are reasonable in the circumstances and designed to avoid opportunistic buyers by limiting Qualified Bids to those offering consideration value greater than the Stalking Horse Bid;
 - (d) the Bid Protections are within the range of rates identified by the Monitor as reasonable;

²³ [*U.S. Steel Canada Inc. \(Re\)*, 2015 ONSC 2523](#) at para 8.

- (e) the proposed Sale Process is a fair, flexible and equitable process for canvassing the market for potential buyers of the Applicants' business;
- (f) the requirement to seek Court approval prior to the consummation of a transaction, including with respect to the Stalking Horse Bid, ensures any sale of the Applicants or their assets will not proceed without review and consideration by the Court;
- (g) the DIP Lender has been consulted and involved throughout the design of the Sale Process and is supportive of the Sale Process; and
- (h) the Monitor is supportive of the approval of the Sale Process and has advised that it supports the proposed Sale Process and agrees that interested parties will have sufficient time to formulate and submit Qualified Bids.²⁴

31. For the reasons set out above, the Applicants submit that the Sale Process should be approved.

2. The Stalking Horse Purchase Agreement Should be Approved as the Stalking Horse Bid

32. The Applicants are seeking approval of the Stalking Horse Purchase Agreement to serve as the Stalking Horse Bid in the Sale Process. 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.²⁵

²⁴ *Sudman Affidavit*, *supra* note 1 at para 42-46, 57, *Motion Record* at Tab 2; *Second Report*, *supra* note 17 at para 4.15.

²⁵ *Sudman Affidavit*, *ibid* at para 33, *Motion Record* at Tab 2.

33. Stalking horse agreements are frequently approved concurrently with sale processes under the CCAA.²⁶ Courts have widely recognized the benefits of including stalking horse bids within sales processes as they: (i) facilitate sales by establishing a baseline price and deal structure for superior bids from interested parties; and (ii) establish a deal structure by providing a template for competing bidders to use for the submission of competing offers.²⁷

34. In this case, the Stalking Horse Purchase Agreement is the product of extensive negotiations with the Stalking Horse Bidder and provides a Purchase Price that establishes a valuable baseline for the bids to be tendered in the Sale Process.²⁸ Furthermore, the Stalking Horse Purchase Agreement assures the Applicants' many stakeholders that there will be a value-maximizing outcome for the Applicants' Business.

35. The Bid Protections, which total \$264,200 (representing approximately 5.7% of the Purchase Price) are appropriate and were required by the Stalking Horse Bidder to agree for the Stalking Horse Purchase Agreement to serve as the Stalking Horse Bid in the Sale Process. Courts in comparable CCAA proceedings have approved similar transaction fees that range from 1% to 7.1% of the transaction value therein.²⁹ Approved fees tend to fall higher within the generally

²⁶ [*In the Matter of the Plan of Compromise or Arrangement Of Clover Leaf Holdings Company*, \(December 20, 2019\) Toronto, ONSC \[Commercial List\] CV-19-631523-00CL](#) at para 6 (Bidding Procedures, Stalking Horse Approval and Stay Extension Order); [*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) [*Loyalty One*]; [*Fire & Flower Holdings Corp., et al.*, 2023 ONSC 4048](#), at para 26 [*Fire & Flower*].

²⁷ [*Danier*](#), *supra* note 22 at para 20; [*CCM Master Qualified Fund Ltd. v. blutip Power Technologies*, 2012 ONSC 1750](#), at para 7 [CCM]; [*Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2023 ONSC 6367](#), at para 20 [*Validus*].

²⁸ [*Sudman Affidavit*](#), *supra* note 1 at para 32, *Motion Record* at Tab 2.

²⁹ [*CCM*](#), *supra* note 27 at para 13; [*LoyaltyOne*](#), *supra* note 26 at para 13; [*Fire and Flower*](#), *supra* note 26 at para 34; [*In the Matter of a Plan of Compromise or Arrangement of Noya Holdings Inc. et al.*, \(November 15, 2024\) Toronto, ONSC \[Commercial List\] CV-24-00730120-00CL](#) (Sales Process and Stalking Horse Purchase Agreement Order) [*Noya*] at paras 8-9 and para 13 of the Sale Process appended thereto at Schedule "A"; [*In the Matter of a Plan of Compromise or Arrangement of Noya Holdings Inc. et al.*, \(November 15, 2024\) Toronto, ONSC \[Commercial List\] CV-24-00730120-00CL](#) (Endorsement) at para 20.

accepted range where, as here, the amount of the purchase price is relatively low. Agreeing to such payments is a matter of business judgment and therefore judicial deference is appropriate provided the decision falls within a range of reasonableness.³⁰

36. The Bid Protections are within the range of transaction fees approved in similar proceedings and are supported by the Monitor.³¹ Thus, the Applicants submit that the Bid Protections are fair and reasonable in the circumstances and should be approved by the Court.

37. This Court has the jurisdiction to grant the Bid Protections Charge with such charges having been granted in other recent decisions.³² 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. The Bid Protections Charge is a condition of the Stalking Horse Purchase Agreement, which benefits all stakeholders generally and should thus be approved by this Court.

38. The Monitor supports the Stalking Horse Purchase Agreement, including the Bid Protections and the Bid Protections Charge.³³ The Applicants are not aware of any opposition to the approval of the Stalking Horse Bid, which relief has been previewed in prior materials.

³⁰ [BZAM Ltd. Plan of Arrangement, 2024 ONSC 1685](#), at para 20 [BZAM 1685]; [Danier](#), *supra* note 22 at para 44; [Brainhunter](#), *supra* note 22 at para 20.

³¹ [Sudman Affidavit](#), *supra* note 1 at para 37-38, *Motion Record* at Tab 2; [Second Report](#), *supra* note 17 at para 4.15.

³² See for example: [LoyaltyOne](#), *supra* note 26; [Validus](#), *supra* note 26 at paras 115-116; [Noya](#), *supra* note 29.

³³ [Second Report](#), *supra* note 17 at para 4.15.

B. The Proposed DIP Financing Should be Approved

1. The Proposed DIP Financing Satisfies Subsection 11.2(4) of the CCAA

39. 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.³⁴ A charge granted pursuant to subsection 11.2(1) of the CCAA may not secure an obligation that exists before the proposed order is made.³⁵ Each of the statutory prerequisites to approving the DIP Facility and granting the proposed DIP Lender’s Charge are satisfied in this case.

40. When determining whether to grant a charge securing DIP financing, subsection 11.2(4) directs Courts to consider the following non-exhaustive factors:

- (a) the period during which the applicants are expected to be subject to the CCAA proceedings;
- (b) how the applicants’ business and financial affairs are to be managed during the CCAA proceedings;
- (c) whether the applicants’ management has the confidence of their major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the applicants;
- (e) the nature and value of the applicants’ property;

³⁴ [CCAA](#), *supra* note 21, [s 11.2\(1\)](#); [Boreal Capital Partners Ltd et al. \(Re\)](#), 2021 ONSC 7802 at para 23 [*Boreal*]; [Re Just Energy Corp](#), 2021 ONSC 1793 at para 52 [*Just Energy*].

³⁵ [CCAA](#), *ibid*; [Boreal](#), *ibid*.

- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report, if any.³⁶

41. Having regard to the foregoing factors and the requirements of subsection 11.2(1) of the CCAA, the following considerations support the approval of the DIP Facility and the granting of the DIP Lender's Charge:

- (a) as reflected in the Revised Cash Flow Forecast, the Applicants require the additional liquidity under the proposed DIP Facility to satisfy their ordinary course obligations as they become due and implement the Sale Process;
- (b) the amount to be funded under the DIP Facility is appropriate having regard to the Revised Cash Flow Forecast;
- (c) the DIP Facility will preserve the value of the Applicants' Business by allowing them to maintain operations while a value-maximizing transaction is pursued, which is in the best interests of the Applicants and their stakeholders;
- (d) the DIP Facility is conditional on the granting of the DIP Lender's Charge, which does not secure any obligations incurred prior to these CCAA Proceedings; and
- (e) the Monitor is supportive of the DIP Facility and the DIP Lender's Charge.³⁷

³⁶ CCAA, *ibid*, s 11.2(4); *Just Energy*, *supra* note 34 at para 61.

³⁷ *Sudman Affidavit*, *supra* note 1 at para 19, *Motion Record* at Tab 2; *Second Report*, *supra* note 17 at para 5.4.

C. The Stay of Proceedings Should be Extended

42. The Stay of Proceedings is currently set to expire on February 27, 2026.³⁸ Subsection 11.02(2) of the CCAA expressly authorizes the Court to grant an extension of the Stay of Proceedings for “any period the court considers necessary”.³⁹ To grant such an extension, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.⁴⁰

43. The jurisdiction vested in Courts to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the CCAA”.⁴¹ These purposes include, among others, enabling the continuation of the applicants’ business, avoiding the social and economic costs of a liquidation and facilitating a value-maximizing restructuring.⁴² Accordingly, an extension of a stay of proceedings will be appropriate where it maintains the *status quo* and provides applicants with the breathing room to seek to restore solvency and arrange a “sale of assets in order to maximize recovery for stakeholders.”⁴³

44. Here, the proposed Stay Extension is appropriate given that:

- (a) since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize their Business and continue operations in the ordinary course, develop the KERP, finalize the terms of the

³⁸ *Sudman Affidavit*, *ibid* at para 10, *Motion Record* at Tab 2.

³⁹ *CCAA*, *supra* note 21, s 11.02(2); *Laurentian University of Sudbury*, 2021 ONSC 1098 at para 56.

⁴⁰ *CCAA*, *ibid*, s 11.02(2) and s 11.02(3).

⁴¹ *Canwest Global Communications Corp.*, 2011 ONSC 2215 at para 24 [*Canwest*].

⁴² *Canwest*, *ibid*; *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 15 [*Century Services*]; *Target Canada Co.*, 2015 ONSC 303 at para 8 [*Target*]; *Re Timminco Limited*, 2012 ONSC 2515 at para 15 [*Timminco*].

⁴³ *Century Services*, *ibid* at para 14; *Target*, *ibid* at para 8; *Canwest*, *supra* note 41 at paras 24-25; *Timminco*, *ibid*; *Re Clover Leaf Holdings Company*, 2019 ONSC 6966 at para 19.

proposed DIP Financing, Stalking Horse Purchase Agreement and Sale Process and deploy a communications plan to notify stakeholders of the CCAA Proceedings;

- (b) the Stay of Proceedings is necessary to prevent: (i) enforcement action particularly in connection with or related to any of Ayurcann's cannabis or excise licenses, which are required to operate the Business under the *Cannabis Act*, S.C. 2018, c. 16 and through the *Cannabis Regulations*, SOR/2018-144, and (ii) disruption to the Applicants' Business operations;
- (c) the proposed Stay Extension will enable the Applicants to complete the Sale Process with a view to achieving a value-maximizing outcome for the Applicants and their stakeholders;
- (d) provided that the proposed DIP Financing is approved, the Applicants are forecasted to have sufficient liquidity to support the Applicants' ordinary course operations and the costs of these CCAA Proceedings throughout the Stay Period; and
- (e) the Monitor is supportive of the proposed Stay Extension and does not believe that any creditor will be prejudiced by such extension.⁴⁴

45. This Court's jurisdiction to extend a stay of proceedings to non-applicant parties, including a non-applicant affiliate, is derived from section 11 and subsection 11.02(2) of the CCAA.⁴⁵ In

⁴⁴ *Sudman Affidavit*, *supra* note 1 at paras 16-19, *Motion Record* at Tab 2; *Second Report*, *supra* note 17 at para 9.2.

⁴⁵ *CCAA*, *supra* note 27, s 11, s 11.02(1); *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645 at para 42; *Re Chalice Brands Ltd.*, 2023 ONSC 3174 at para 35; *Lydian International Limited (Re)*, 2019 ONSC 7473, at para 39; *MPX International Corporation*, 2022 ONSC 4348, at para 52; *Target*, *supra* note 42 at paras 44-50; *Laurentian University of Sudbury*, 2021 ONSC 659 at para 39.

these proceedings, the Court previously found it had jurisdiction to extend the Stay of Proceedings to the Non-Applicant Stay Parties.⁴⁶

46. As was the case for the Initial Order and the ARIO, any proceedings commenced against the Non-Applicant Stay Parties will act as a distraction to the Applicants' good faith restructuring objectives and would severely strain the Applicants' limited financial and human resources and potentially jeopardize the Company's restructuring efforts.⁴⁷

47. Furthermore, the Sale Process contemplates an opportunity to purchase all or substantially all of the Applicants' Business, which includes the share interests of their affiliates the Non-Applicant Stay Parties. Continuing to extend the Stay of Proceedings to the Non-Applicant Stay Parties will preserve the marketability of the Business as a going concern during the Sale Process. Without this protection, potential claims or proceedings against the Non-Applicant Stay Parties could disrupt operations, diminish enterprise value, and undermine the Applicants' ability to conduct a value maximizing sale of the Business.⁴⁸

48. For the foregoing reasons the Applicants submit that the proposed Stay Extension, including with respect to the Non-Applicant Stay Parties, is in the best interests of the Applicants

⁴⁶ [*In the Matter of Ayurcann Holdings Corp. and Ayurcann Inc.*, \(January 30, 2026\) Toronto, ONSC \[Commercial List\] CV-26-00000039-000](#) (Endorsement of the Honourable Justice Kimmel) at paras 28- 30; [*In the Matter of Ayurcann Holdings Corp. and Ayurcann Inc.*, \(February 9, 2026\) Toronto, ONSC \[Commercial List\] CV-26-00000039-000](#) (Endorsement of the Honourable Justice Kimmel) at para 15.

⁴⁷ *Sudman Affidavit*, *supra* note 1 at paras 26-29, *Motion Record* at Tab 2.

⁴⁸ *Sudman Affidavit*, *ibid* at para 28, *Motion Record* at Tab 2.

and their stakeholders, consistent with the purposes of the CCAA, and appropriate in the circumstances.

PART V: RELIEF REQUESTED

49. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court,⁴⁹ and respectfully request that the proposed form of Sale Process Approval Order and the Second ARIO be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11TH DAY OF FEBRUARY 2026

Bennett Jones LLP

Bennett Jones LLP

⁴⁹ [In the Matter of a Plan of Compromise or Arrangement of Bzam Ltd. et al.](#), (March 8, 2024) Toronto, ONSC [Commercial List] CV-24-00715773-00CL (Amended and Restated Initial Order); [In the Matter of the Plan of Compromise or Arrangement of Indiva Limited et al.](#) (July 5, 2024) Toronto, ONSC [Commercial List] CV-24-00722044-00CL (Sale Process Approval Order); [In the Matter of a Plan of Compromise or Arrangement of Bzam Ltd. et al.](#), (March 8, 2024) Toronto, ONSC [Commercial List] CV-24-00715773-00CL (SISP Approval Order); [Noya](#), *supra* note 29.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*Boreal Capital Partners Ltd et al. \(Re\)*, 2021 ONSC 7802](#)
2. [*Brainhunter Inc, Re*, 2009 CanLII 72333 \(ON SC\)](#)
3. [*BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645](#)
4. [*BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1685](#)
5. [*Canwest Global Communications Corp*, 2011 ONSC 2215](#)
6. [*CCM Master Qualified Fund Ltd. v. blutip Power Technologies*, 2012 ONSC 1750](#)
7. [*Century Services Inc v Attorney General \(Canada\)*, 2010 SCC 60](#)
8. [*Danier Leather Inc., Re*, 2016 ONSC 1044](#)
9. [*JTI-Macdonald Corp., Re*, 2019 ONSC 1625](#)
10. [*Laurentian University of Sudbury*, 2021 ONSC 1098](#)
11. [*Laurentian University of Sudbury*, 2021 ONSC 659](#)
12. [*Lydian International Limited \(Re\)*, 2019 ONSC 7473](#)
13. [*MPX International Corporation*, 2022 ONSC 4348](#)
14. [*Nortel Networks Corp, Re* 2009 CanLII 39492 \(ON SC\)](#)
15. [*Re Chalice Brands Ltd.*, 2023 ONSC 3174](#)
16. [*Re Clover Leaf Holdings Company*, 2019 ONSC 6966](#)
17. [*Re Earth Boring Co. Ltd.*, 2025 ONSC 2422](#)
18. [*Re Just Energy Corp*, 2021 ONSC 1793](#)
19. [*Re Timminco Limited*, 2012 ONSC 2515](#)
20. [*U.S. Steel Canada Inc, \(Re\)*, 2015 ONSC 2523](#)
21. [*Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2023 ONSC 6367](#)

Endorsements and Orders

1. [*Clover Leaf Holdings Company*, \(December 20, 2019\) Toronto, ONSC CV-19-631523-00CL](#)
2. [*In the Matter of Ayurcann Holdings Corp. and Ayurcann Inc.*, \(January 30, 2026\) Toronto, ONSC \[Commercial List\] CV-26-00000039-000](#)
3. [*In the Matter of Ayurcann Holdings Corp. and Ayurcann Inc.*, \(February 9, 2026\) Toronto, ONSC \[Commercial List\] CV-26-00000039-000](#)
4. [*In the Matter of a Plan of Compromise or Arrangement of Bzam Ltd. et al*, \(March 8, 2024\) Toronto, ONSC \[Commercial List\] CV-24-00715773-00CL](#)
5. [*In the Matter of a Plan of Compromise or Arrangement of Bzam Ltd. et al*, \(March 8, 2024\) Toronto, ONSC \[Commercial List\] CV-24-00715773-00CL](#)
6. [*In the Matter of the Plan of Compromise or Arrangement of Indiva Limited et al.* \(July 5, 2024\) Toronto, ONCS \[Commercial List\] CV-24-00722044-00CL](#)
7. [*In the Matter of a Plan of Compromise or Arrangement of Noya Holdings Inc. et al*, \(November 15, 2024\) Toronto, ONSC \[Commercial List\] CV-24-00730120-00CL](#)
8. [*In the Matter of a Plan of Compromise or Arrangement of Noya Holdings Inc. et al*, \(November 15, 2024\) Toronto, ONSC \[Commercial List\] CV-24-00730120-00CL \(Endorsement\)](#)

9. [In the Matter of the Plan of Compromise or Arrangement of Loyalty OneCo \(March 20, 2023\) Toronto, ONSC \[Commercial List\] CV-23-00696017-00CL](#)

I certify that I am satisfied as to the authenticity of every authority.

Shawn Kirkman

Signature

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

Section 11

General power of court

Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 11.2

Interim financing

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

- (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 referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 36

Restriction on disposition of business assets

(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (3) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF AYURCANN HOLDINGS CORP. and AYURCANN INC.

Court File No.: CL-26-00000039-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings Commenced in Toronto

FACTUM OF THE APPLICANTS

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSO# 573071)

Email: ZweigS@bennettjones.com

Jesse Mighton (LSO# 62291J)

Email: MightonJ@bennettjones.com

Jamie Ernst (LSO# 88724A)

Email: ErnstJ@bennettjones.com

Shawn Kirkman (LSO# 92214U)

Email: KirkmanS@bennettjones.com

Lawyers for the Applicants