

Court File No.: CV-23-00694493-00CL

**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 BBB CANADA LTD.**

**SIXTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

JULY 4, 2023

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1.0 INTRODUCTION

1.1 On February 10, 2023, BBB Canada Ltd. (the “**Applicant**”) was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as monitor (in such capacity, the “**Monitor**”) in these CCAA proceedings (the “**CCAA Proceedings**”).

1.2 The Initial Order also extended a stay of proceedings and other benefits, restrictions and protections of the CCAA to Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”), a limited partnership formed under the laws of the Province of Ontario. The Applicant is the general partner of BBB LP, which, as described in the Pre-Filing Report (as defined below), was integral to the Applicant’s business. The Applicant is a wholly owned subsidiary of Bed Bath & Beyond Inc. (“**BBBI**”).¹

1.3 On February 21, 2023, the Court granted the following orders:

- (a) an amended and restated Initial Order (the “**ARIO**”), which, among other things:
 - (i) extended the Stay Period (as defined in the ARIO) and the Landlord Stay to and including May 1, 2023;
 - (ii) approved BBB Canada’s key employee retention plan (the “**KERP**”) and granted a charge over the Property (as defined in the ARIO) in the maximum

¹ BBBI and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on April 23, 2023.

amount of \$161,000 in favour of the employees entitled to participate in the KERP as security for the payments to be made in accordance with the KERP;

(iii) increased the amounts of the Administration Charge and the Directors' Charge (each as defined in the ARIIO) to \$1.25 million and \$8.25 million, respectively; and

(iv) declared that, pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (the "**WEPP Act**"), BBB Canada meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and that BBB Canada's former employees are eligible to receive payments under and in accordance with the WEPP Act following the termination of their employment; and

(b) an order (the "**Sale Approval Order**") which approved the Consulting Agreement between the Consultant and BBB LP and the Sale Guidelines (each as defined in the Sale Approval Order), and authorized BBB LP, with the assistance of the Consultant, to undertake the Liquidation Sale.

1.4 On April 11, 2023, the Court granted an assignment, approval and vesting order (the "**AAVO**"), which, among other things:

(a) approved the Omnibus Assignment and Assumption of Leases, FF&E and Trade Fixtures Agreement dated March 28, 2023 (the "**DKB Capital Agreement**"),

between BBB LP, BBBI and 11607987 Canada Inc., dba DKB Capital (“**DKB Capital**”), and the transactions contemplated therein;

- (b) assigned certain of the DKB Assumed Leases (as defined in the DKB Capital Agreement) to DKB Capital pursuant to section 11.3 of the CCAA on an unopposed basis, and vested BBB LP’s right, title and interest in and to the DKB Assumed Leases and the other purchased assets described in the DKB Capital Agreement in DKB Capital free and clear of all Encumbrances (as defined in the AAVO) other than permitted encumbrances identified in the DKB Capital agreement; and
- (c) directed that the unredacted copy of the DKB Capital Agreement be sealed until the earlier of the conditions enumerated under the AAVO or further order of the Court.

1.5 On April 28, 2023, the Applicant sought and obtained the following additional orders:

- (a) an assignment, approval and vesting order (the “**Second AAVO**”), which, among other things:
 - (i) approved the Omnibus Assignment and Assumption of Leases dated April 21, 2023 (the “**Canadian Tire Agreement**”), among BBB LP, BBBI and Canadian Tire Corporation Canada, Limited (“**Canadian Tire**”) and the transactions contemplated therein; and
 - (ii) vested BBB LP’s right, title and interest in and to certain Leases (as defined in the Canadian Tire Agreement) and the other purchased assets described in the Canadian Tire Agreement in Canadian Tire free and clear of all Encumbrances (as defined in the Second AAVO) other than permitted

encumbrances identified in, or pursuant to, the Canadian Tire Agreement;
and

- (b) an assignment, approval and vesting order (the “**Third AAVO**”), which, among other things:
- (i) approved the Omnibus Assignment and Assumption of Leases, FF&E and Trade Fixtures dated April 17, 2023 (the “**Second DKB Capital Agreement**”), between BBB LP, BBBI and DKB Capital, and the transactions contemplated therein;
 - (ii) approved the Assignment and Assumption of Lease dated April 21, 2023 (the “**Winners Collingwood Agreement**”), among BBB LP, BBBI and Winners Merchants International L.P. (“**Winners**”), and the transactions contemplated therein;
 - (iii) assigned all of the rights and obligations of BBB LP under the Leases described in the Second DKB Capital Agreement and the Winners Collingwood Agreement to DKB Capital and Winners, respectively, pursuant to section 11.3 of the CCAA on an unopposed basis;
 - (iv) vested BBB LP’s right, title and interest in and to certain Leases and the other purchased assets described in the Second DKB Capital Agreement and the Winners Collingwood Agreement in DKB Capital and Winners, respectively, free and clear of all Encumbrances (as defined in the Third AAVO) other than permitted encumbrances identified in, or pursuant to, the

Second DKB Capital Agreement and the Winners Collingwood Agreement, as applicable; and

- (v) extended the Stay Period to and including June 27, 2023 (the Applicant did not seek to extend the Landlord Stay as part of its motion, as such the Landlord Stay terminated on May 1, 2023).

1.6 On May 15, 2023, the Applicant sought and obtained an order (the “**Fourth AAVO**”), which, among other things:

- (a) approved the transaction contemplated by the Assignment and Assumption of Lease Agreement dated May 5, 2023, between BBB LP and Winners, and vested BBB LP’s right, title and interest in and to the Ottawa Trainyards Lease free and clear of all Encumbrances (as defined in the Fourth AAVO);
- (b) assigned all of the rights and obligations of BBB LP under the Ottawa Trainyards Lease to Winners pursuant to section 11.3 of the CCAA; and
- (c) approved the transaction contemplated by the Assignment and Assumption of Lease Agreement dated May 1, 2023, among BBB LP, BBBI and Giant Tiger Stores Limited, and vested BBB LP’s right, title and interest in and to the Colossus Lease free and clear of all Encumbrances (as defined in the Fourth AAVO).

1.7 On June 22, 2023, the Applicant sought and obtained an order (the “**Stay Extension Order**”), which extended the Stay Period in favour of BBB Canada up to and including August 22, 2023. As described in the Fifth Report (as defined below), the extension to the Stay Period granted under the Stay Extension Order was intended to, among other things,

afford BBB Canada time to formulate and implement a limited claims procedure with respect to the present and former directors and officers of BBB Canada.

1.8 The purpose of this report (the “**Sixth Report**”) is to provide the Court with information and, where applicable, the Monitor’s views on:

(a) the Applicant’s motion for an order (the “**D&O Claims Procedure Order**”), among other things:

(i) approving a procedure (the “**D&O Claims Process**”) for the solicitation, determination and resolution of D&O Claims (as defined below) against the Directors and Officers (each as defined in the D&O Claims Procedure Order);²

(ii) authorizing BBB Canada, the Monitor and any applicable Directors and Officers, to perform their respective obligations under the D&O Claims Procedure Order; and

(iii) establishing the Claims Bar Date (as defined below);

(b) the activities of the Monitor since June 20, 2023, being the date of the Fifth Report; and

² For ease of reference, “Director” is defined under the proposed D&O Claims Procedure Order as “anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of either of the BBB Entities, in such capacity”. The term “Officer” is defined under the proposed D&O Claims Procedure Order as “anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of either of the BBB Entities, in such capacity”. In each case, the “BBB Entities” refers to the Applicant and BBB LP.

(c) the Monitor's conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this Sixth Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by BBB Canada and has held discussions with management of BBB Canada and BBBI, as well as their legal counsel and financial advisors.
- 2.2 Future oriented financial information referred to in this Sixth Report was prepared based on BBB Canada's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
- 2.3 This Sixth Report should be read in conjunction with the Affidavit of Wade Haddad, the Senior Vice President, Real Estate and Store Development, of BBBI, and an officer of the Applicant, sworn on June 29, 2023 (the "**Sixth Haddad Affidavit**"), filed in support of the Applicant's motion for the proposed D&O Claims Procedure Order.
- 2.4 The Pre-Filing Report of the Proposed Monitor dated February 10, 2023 (the "**Pre-Filing Report**"), the First Report of the Monitor dated February 17, 2023 (the "**First Report**"), the Second Report of the Monitor dated April 7, 2023 (the "**Second Report**"), the Third Report of the Monitor dated April 24, 2023 (the "**Third Report**"), the Fourth Report of the Monitor dated May 11, 2023 (the "**Fourth Report**"), the Fifth Report of the Monitor dated June 20, 2023 (the "**Fifth Report**", and collectively with the Pre-Filing Report, First

Report, Second Report, Third Report, and Fourth Report, the “**Prior Reports**”), and other Court-filed materials in the CCAA Proceedings are available on the Monitor’s case website at www.alvarezandmarsal.com/BBBCanada (the “**Case Website**”).

2.5 Capitalized terms used and not defined in this Sixth Report have the meanings given to them in the Prior Reports, the proposed D&O Claims Procedure Order or the Sixth Haddad Affidavit, as applicable.

2.6 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

3.0 PROPOSED D&O CLAIMS PROCEDURE ORDER

Overview

3.1 BBB Canada has developed, in consultation with the Monitor, the proposed D&O Claims Process to govern the solicitation, determination and resolution of any D&O Claims.

3.2 Certain important dates incorporated in the proposed D&O Claims Process and D&O Claims Procedure Order are summarized in the table immediately below.

| Timing | Activity |
|--|---|
| As soon as practicable after the date of the D&O Claims Procedure Order, but no later than July 7, 2023 | BBB Canada to serve copies of the D&O Claims Procedure Order, the Notice to Claimants and the Proof of Claim (each as defined below) on the Service List, and the Monitor to post same on the Case Website |
| As soon as practicable after the date of the D&O Claims Procedure Order | Monitor to cause the Notice to Claimants to be published in the Globe and Mail (National Edition) |
| If claimant requests documents or information regarding the D&O Claims Process prior to the Claims Bar Date, or if BBB Canada or the Monitor becomes aware of any person having a D&O Claim | Monitor will send such claimant or person such documents or information, direct such claimant or person to the Monitor’s website, or otherwise respond to the request for documents or information, as the Monitor may consider appropriate in the circumstances, in consultation with BBB Canada |
| 5:00 p.m. (prevailing Toronto time) on August 7, 2023 or such later date as may be ordered by the Court (the “ Claims Bar Date ”) | Deadline for filing all D&O Claims in the form attached as Schedule “B” to the D&O Claims Procedure Order (each, a “ Proof of Claim ”) |
| 5:00 p.m. on the day which is fifteen (15) days after the date the Notice of Revision or Disallowance (as defined below) is deemed to be received (or such later date as BBB Canada, in consultation with the Monitor, may agree or the Court may order) | Deadline for filing a Notice of Dispute in the form attached as Schedule “D” to the D&O Claims Procedure Order (each, a “ Notice of Dispute ”) |
| Ten (10) Business Days after delivery of a Notice of Dispute | Deadline by which a claimant who has delivered a Notice of Dispute and intends to dispute a Notice of Revision or Disallowance must file a motion with the Court seeking determination of the disputed D&O Claim |
| Seven (7) Business Days from the filing of a motion to determine a disputed D&O Claim (or the first available date thereafter as the Court may schedule) | The date on which a motion seeking determination of a disputed D&O Claim is to be returnable |

3.3 As set out in greater detail in the proposed D&O Claims Procedure Order, the D&O Claims Process applies to the following claims in respect of the Directors and Officers (collectively, “**D&O Claims**”):

- (a) any right or claim of any person that may be asserted or made in whole or in part against one or more of the Directors or Officers that relates to a claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers that is based in whole or in part on facts existing prior to the Claims Bar Date or that relates to a time period prior to the Claims Bar Date; or

- (b) any right or claim of any person that may be asserted or made in whole or in part against one or more of the Directors or Officers in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, including any right or claim with respect to any Assessment, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any person to advance a claim for contribution or indemnity from any such Directors or Officers or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future,

which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof that is based in whole or in part on facts existing prior to the Claims Bar Date or that relates to a time period prior to the Claims Bar Date.

3.4 Notably, D&O Claims do not include, and the proposed D&O Claims Procedure Order does not apply to, the following claims:

- (a) any claim that cannot be compromised pursuant to subsections 5.1(2) or 19(2) of the CCAA; and
- (b) any claim against the Applicant or BBB LP other than any D&O Indemnity Claim (as described below).

Noticing Process

3.5 As referenced above, the proposed D&O Claims Procedure Order contemplates that notice of the D&O Claims Process and the D&O Claims Procedure Order will be given to all potential claimants as follows:

- (a) as soon as practicable after the date of the D&O Claims Procedure Order but no later than 5:00 p.m. on July 7, 2023, BBB Canada will serve on the Service List, and the Monitor will post on the Case Website, copies of:
 - (i) the D&O Claims Procedure Order;
 - (ii) the Notice to Claimants in the form attached as “Schedule A” to the D&O Claims Procedure Order (the “**Notice to Claimants**”); and
 - (iii) the Proof of Claim; and

(b) the Monitor will cause the Notice to Claimants to be published once in the Globe and Mail (National Edition), as soon as practicable after the date of the D&O Claims Procedure Order.

3.6 The proposed D&O Claims Procedure Order contemplates additional notice where any claimant requests documents or information regarding the D&O Claims Process prior to the Claims Bar Date or if BBB Canada or the Monitor become aware of any person having a D&O Claim. In each case, the proposed D&O Claims Procedure Order requires the Monitor to forthwith send, or cause to be sent, to such claimant or person, direct such claimant or person to the documents posted on the Case Website or otherwise respond to the requests for documents or information as the Monitor may consider appropriate in the circumstances, in consultation with BBB Canada.

Claims Bar Date

3.7 The proposed D&O Claims Procedure Order establishes a Claims Bar Date of August 7, 2023, or such later date as may be ordered by the Court. Any person that intends to assert a D&O Claim must deliver a completed Proof of Claim in accordance with the proposed D&O Claims Procedure Order, together with all relevant supporting documentation, so that such Proof of Claim is received by the Monitor by no later than 5:00 p.m. (prevailing Toronto time) on the Claims Bar Date.

3.8 The Claims Bar Date was selected by BBB Canada, in consultation with the Monitor. The Monitor believes that the Claims Bar Date is reasonable in the circumstances. Specifically, the Monitor is of the view that the proposed Claims Bar Date provides sufficient time for potential claimants to evaluate and submit a Proof of Claim, while simultaneously

recognizing the (i) narrow scope of D&O Claims that can properly be submitted and (ii) limited universe of potential claimants. Indeed, the Monitor is not aware of the existence of any D&O Claims and, subject to confirming that certain final sales tax remittances have been made, which the Monitor understands have been paid or will be paid in due course, is not currently aware of anything that may give rise to any potential D&O Claims. Accordingly, the Monitor believes that the proposed period during which Proofs of Claim may be filed strikes an appropriate balance between the interests of potential claimants and the need to conclude the CCAA Proceedings in a timely manner and distribute BBB Canada's remaining cash.

3.9 The proposed D&O Claims Procedure Order provides that any person who does not deliver a Proof of Claim to the Monitor on or before the Claims Bar Date:

- (a) will be forever barred, estopped and enjoined from asserting or enforcing such D&O Claim against any of the Directors or Officers (and the Directors and Officers will not have any liability whatsoever in respect of, and will be released and discharged from, any and all such un-asserted D&O Claims), and such un-asserted D&O Claims will be forever extinguished, barred and discharged as against the Directors and Officers without any further act or notification; and
- (b) will not be entitled to receive further notice with respect to, and will not be entitled to participate as a claimant or creditor in, the D&O Claims Process or the CCAA Proceedings in respect of such D&O Claim.

3.10 To the extent any D&O Claim is filed in accordance with the proposed D&O Claims Process, a corresponding D&O Indemnity Claim (being any existing or future right of any

Director or Officer against BBB Canada which arose or arises as a result of any person filing a D&O Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by BBB Canada) will be deemed to have been timely filed in respect of such D&O Claim. The proposed D&O Claims Procedure Order similarly preserves the rights of the Directors and Officers under the Directors' Charge and any applicable insurance policy.

Adjudication and Resolution of Claims

3.11 Pursuant to the proposed D&O Claims Procedure Order:

- (a) all Proofs of Claim received by the Claims Bar Date will be reviewed by BBB Canada, in consultation with the Monitor and any applicable Directors and Officers, and will be accepted, revised or disallowed in whole or in part;
- (b) BBB Canada, in consultation with the Monitor and any applicable Directors and Officers, will be entitled to attempt to consensually resolve the classification or amount of any asserted D&O Claim with any claimant prior to accepting, revising or disallowing such D&O Claim;
- (c) if BBB Canada, in consultation with the Monitor and applicable Directors and Officers, decide to revise or disallow a D&O Claim that has been filed in accordance with the D&O Claims Procedure Order, BBB Canada will send a Notice of Revision or Disallowance in the form attached as Schedule "C" to the D&O Claims Procedure Order (each, a "**Notice of Revision or Disallowance**") to the applicable claimant;

- (d) if a claimant disputes and intends to contest the revision or disallowance set forth in a Notice of Revision or Disallowance, the claimant must deliver a Notice of Dispute so as to be received by the Monitor by no later than 5:00 p.m. on the day that is fifteen (15) days after the date of the Notice of Revision or Disallowance is deemed to be received by the claimant (or such later date as BBB Canada, in consultation with the Monitor, may agree in writing or the Court may order). Failure to deliver a Notice of Dispute by the foregoing deadline will result in the deemed acceptance of the D&O Claim as set out in the applicable Notice of Revision or Disallowance and the extinguishment, discharge and release of any portion of such D&O Claim as against the Directors and Officers that is disallowed;
- (e) any claimant who delivers a Notice of Dispute and who intends to continue to dispute the Notice of Revision or Disallowance must, within ten (10) Business Days of delivery of its Notice of Dispute, file a motion with the Court seeking determination of the D&O Claim, which motion must be returnable within seven (7) Business Days of the filing of the motion or the first available date thereafter that the Court may schedule. Failure to file a motion in such manner will result in the deemed acceptance of the D&O Claim as set out in the applicable Notice of Revision or Disallowance and the extinguishment, discharge and release of any portion of such D&O Claim as against the Directors and Officers that is disallowed;
and
- (f) BBB Canada, in consultation with the Monitor and any applicable Directors and Officers, will be authorized to enter into settlement negotiations with any claimant

at any stage of the D&O Claims Process and to enter into agreements with claimants resolving the value of their respective D&O Claims.

Conclusion Regarding the D&O Claims Process

3.12 The Monitor and its counsel, Bennett Jones LLP (“**Bennett Jones**”), were consulted on the development, structure and timing of the proposed D&O Claims Process. The Monitor is of the view that the D&O Claims Process contemplated under the proposed D&O Claims Procedure Order provides an appropriate, efficient and reasonable process for the solicitation, determination and resolution of D&O Claims in respect of the Directors and Officers in the circumstances. Moreover, the proposed D&O Claims Process will facilitate the release of the Directors’ Charge, a distribution of BBB Canada’s remaining cash and the completion of the CCAA Proceedings. For these reasons, the Monitor supports its approval.

4.0 ACTIVITIES OF THE MONITOR

4.1 Since the date of the Fifth Report, the Monitor has, among other things:

- (a) assisted BBB Canada with the preparation of the proposed D&O Claims Process;
- (b) continued to engage in discussions with Service Canada and Bennett Jones on WEPP Act eligibility periods and the application of the WEPP Act in the CCAA Proceedings, and continued to respond to inquiries from former employees with respect to same and the completion of Proofs of Claim;

- (c) responded to inquiries from BBB Canada's landlords and vendors, and their respective counsel;
- (d) coordinated the posting of Court-filed documents to the Case Website; and
- (e) with the assistance of Bennett Jones, prepared this Sixth Report.

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 For the reasons set out in this Sixth Report, the Monitor is of the view that the relief requested by the Applicant pursuant to the proposed D&O Claims Procedure Order is reasonable and appropriate in the circumstances. Accordingly, the Monitor respectfully recommends that the Court approve the proposed D&O Claims Procedure Order.

All of which is respectfully submitted to the Court this 4th day of July 2023.

**Alvarez & Marsal Canada Inc., in its capacity as
Monitor of BBB Canada Ltd. and
Bed Bath & Beyond Canada L.P., and not in its
personal or corporate capacity**

Per:  _____

Alan J. Hutchens
Senior Vice-President

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

Court File No.: CV-23-00694493-00CL

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB
CANADA LTD.**

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced at Toronto

SIXTH REPORT OF THE MONITOR

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