

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.**

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

NOVEMBER 14, 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**”). 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 amount of \$161,000 in favour of the employees entitled to participate in the

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 (the “**Chapter 11 Proceedings**”).

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 ARIO) 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 (as defined in the Sale Approval Order), and authorized BBB LP, with the assistance of the Consultant, to undertake the Liquidation Sale.

1.4 Since the granting of the ARIO and the Sale Approval Order, the Applicant has sought and obtained several assignment and/or approval and vesting orders in furtherance of the Orderly Wind-down (as defined in the ARIO). Such orders include:

(a) an assignment, approval and vesting order dated April 11, 2023, which, among other things, approved the Omnibus Assignment and Assumption of Leases, FF&E

and Trade Fixtures Agreement dated March 28, 2023, between BBB LP, BBBI and 11607987 Canada Inc., dba DKB Capital (“**DKB Capital**”), and the transactions contemplated therein;

- (b) an assignment, approval and vesting order dated April 28, 2023, which, among other things, approved the Omnibus Assignment and Assumption of Leases dated April 21, 2023, among BBB LP, BBBI and Canadian Tire Corporation Canada, Limited and the transactions contemplated therein;
- (c) an assignment, approval and vesting order dated April 28, 2023, which, among other things:
 - (i) approved the Omnibus Assignment and Assumption of Leases, FF&E and Trade Fixtures dated April 17, 2023, between BBB LP, BBBI and DKB Capital, and the transactions contemplated therein;
 - (ii) approved the Assignment and Assumption of Lease dated April 21, 2023, among BBB LP, BBBI and Winners Merchants International L.P. (“**Winners**”), and the transactions contemplated therein; and
 - (iii) extended the Stay Period to and including June 27, 2023;² and
- (d) an order dated May 15, 2023, which, among other things, approved the transactions contemplated by the:

² 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.

- (i) Assignment and Assumption of Lease Agreement dated May 5, 2023, between BBB LP and Winners; and
- (ii) Assignment and Assumption of Lease Agreement dated May 1, 2023, among BBB LP, BBBI and Giant Tiger Stores Limited.

1.5 On June 22, 2023, the Applicant sought and obtained an order (the “**Stay Extension Order**”), which extended the Stay Period up to and including August 22, 2023. The Stay Extension Order was intended to provide BBB Canada with time to implement and seek approval of a procedure for the solicitation, determination and resolution of claims against the current and former directors and officers of BBB Canada (the “**D&O Claims Process**”). The D&O Claims Process was approved pursuant to an order dated July 6, 2023 (the “**D&O Claims Procedure Order**”).

1.6 On August 22, 2023, the Applicant sought and obtained an order (the “**Second Stay Extension Order**”), which extended the stay of proceedings in favour of BBB Canada up to and including November 22, 2023. The Second Stay Extension Order was intended to afford BBB Canada the time and stability necessary to address the sole claim submitted pursuant to the D&O Claims Process and the Canada Revenue Agency’s (the “**CRA**”) then ongoing audit (as discussed below).

1.7 The purpose of this report (the “**Eighth 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 “**Third Stay Extension Order**”) extending the Stay Period until May 22, 2024;

- (b) the activities of the Monitor since August 18, 2023, being the date of the Seventh Report of the Monitor (the “**Seventh Report**”); and
- (c) the Monitor’s conclusions and recommendations in connection with the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this Eighth 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, as well as BBB Canada’s legal counsel and financial advisors.
- 2.2 Future oriented financial information referred to in this Eighth 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 Eighth Report should be read in conjunction with the Affidavit of Michael Goldberg, Plan Administrator of the Chapter 11 Debtors, and the sole officer of the Applicant, sworn on November 13, 2023 (the “**Initial Goldberg Affidavit**”), filed in support of the Applicant’s motion for the proposed Third Stay Extension Order.
- 2.4 The prior reports of the Monitor (collectively, 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 Eighth Report have the meanings given to them in the Prior Reports or the Initial Goldberg Affidavit, as applicable.

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

3.0 D&O CLAIMS PROCESS UPDATE

3.1 The D&O Claims Process is described in the Prior Reports.

3.2 As outlined in the Prior Reports and referenced above, one (1) Proof of Claim (as defined in the D&O Claims Procedure Order) was received by BBB Canada on or before the Claims Bar Date (as defined in the D&O Claims Procedure Order) in the amount of \$489,528.95 for outstanding provincial sales tax owing by BBB LP in the Province of British Columbia. Subsequent to filing its Seventh Report, the Monitor worked with BBB Canada to confirm the validity of the claim. The claim was reviewed by BBB Canada and was paid.

3.3 The Monitor understands that the CRA completed an audit of BBB Canada's GST/HST returns for the period from March 1, 2021 to February 28, 2023 (the "**CRA Audit**"), and that BBBI retained Deloitte to assist it in responding to the CRA Audit.

3.4 Deloitte submitted to the CRA that based on its review of BBB Canada's books and records, no additional amounts were owing by BBB Canada with respect to the 2021 and 2022 taxation years. The CRA did not accept Deloitte's position, and on November 1, 2023, BBB Canada received an assessment from the CRA advising that BBB Canada owed \$2,084,044.28 on account of unpaid GST/HST (the "**CRA Assessment**").

3.5 BBB Canada has advised the Monitor that it intends to appeal the CRA Assessment (the “**CRA Assessment Appeal**”). Deloitte has advised that a notice of objection for the CRA Assessment Appeal must be filed within 90 days following receipt of the Notice of Assessment. It is expected that Deloitte will assist BBB Canada in connection with the CRA Assessment Appeal.

4.0 DISTRIBUTION OF BBB CANADA CASH

4.1 Since late March 2023, BBB Canada has maintained a minimum cash balance of approximately \$6 million in its bank accounts (collectively, the “**Canadian Accounts**”). In accordance with paragraph 14 of the ARIO, sweep rights under the Amended Credit Agreement could continue to be exercised by the lenders thereunder (collectively, the “**Lenders**”) with respect to BBB Canada, subject to BBB Canada maintaining a minimum balance of \$6 million in its bank accounts (the “**Minimum Balance**”), unless decreased by BBB Canada with the consent of the Monitor.

4.2 Prior to the Plan Implementation Date in the Chapter 11 Proceedings of September 29, 2023, BBBI’s financial advisor (the “**Financial Advisor**”) notified the Monitor and BBB Canada that it intended to transfer almost all remaining cash in the Canadian Accounts, which in aggregate totaled approximately \$6.1 million on or about September 29, 2023 (the “**BBB Canada Cash**”), to BBBI’s U.S. based accounts. The Monitor and BBB Canada immediately advised the Financial Advisor that the BBB Canada Cash must be held in a segregated bank account in light of the Minimum Balance and other terms of the ARIO.

4.3 As described further in the Initial Goldberg Affidavit, notwithstanding the foregoing, substantially all of the BBB Canada Cash was inadvertently transferred to one of BBBI’s

U.S. concentration accounts, where, unbeknownst to the Monitor and BBB Canada, it was commingled with other funds, and then subsequently distributed to the Lenders (the “**Inadvertent Distribution**”) in accordance with the Chapter 11 Plan. As a result, BBB Canada no longer holds cash in an amount equal to the Minimum Balance.

- 4.4 Upon learning of the Inadvertent Distribution, BBB Canada and the Monitor contacted the Plan Administrator and counsel to the Lenders to remedy the situation. The Lenders advised the Monitor that they were unable to promptly return the BBB Canada Cash to BBB Canada. This prompted the Monitor and BBB Canada to consider alternative solutions with the Plan Administrator and the Lenders.
- 4.5 The Plan Administrator anticipates that the Chapter 11 Debtors will receive at least USD\$3 million in connection with continuing realization efforts in the Chapter 11 Proceedings. To ensure BBB Canada is able to pay any potential priority obligations, including those subject to the Charges (as defined in the ARIO) – which rank in priority to claims of the Lenders – the Plan Administrator has agreed, with the Lenders’ consent, to segregate CAD\$3 million that would otherwise be distributed to the Lenders (the “**Segregated Amount**”) and hold these funds in trust for the benefit of BBB Canada.
- 4.6 BBB Canada and the Plan Administrator, with the Monitor’s support, are in the process of finalizing an agreement (the “**Reimbursement Agreement**”), the terms of which will provide that the Plan Administrator will hold the Segregated Amount separate and apart from all other funds in its possession or under its control in trust for the benefit of BBB Canada and will agree to make applicable distributions or reimbursements therefrom for which the BBB Canada Cash would otherwise have been available. Further, pursuant to

the Reimbursement Agreement the Plan Administrator will advance \$100,000 to the Monitor’s counsel following execution of the Reimbursement Agreement as security for the professional fees that have been and are expected to be incurred in connection with the CCAA Proceedings for which the BBB Canada Cash would otherwise have been available.

5.0 CASH FLOW RESULTS RELATIVE TO FORECAST AND UPDATE ON THE CASH BALANCE

5.1 Cash receipts and disbursements for the thirteen (13)-week period August 13, 2023 to November 11, 2023 (the “**Reporting Period**”) are summarized in the table below:

Cash Flow Reporting	
For the period Aug. 13, 2023 to Nov. 11, 2023	
<i>(CAD \$000s, Unaudited)</i>	
	Actual
Interest and Other Income	\$ 165
Disbursements	
Bank Fees	7
Sales Tax Remittances	490
Total Disbursements	496
Net Cash Flow	(331)
Opening Cash Balance	6,862
Net Cash Flow	(331)
Transfer to BBBI	(250)
Cash Balance at Plan Administration Date	\$ 6,281
Inadvertent transfer to BBBI	(6,116)
Ending Cash Balance	\$ 165

5.2 During the Reporting Period, BBB Canada’s receipts comprised of interest and other income of approximately \$165,000.

5.3 During the Reporting Period, BBB Canada’s disbursements included approximately \$490,000 of Sales Tax Remittances to the Province of British Columbia and \$6,500 of bank

fees. \$250,000 was also swept to BBBI as the funds on hand at that time exceeded the Minimum Balance.

5.4 As discussed above, prior to the Plan Implementation Date, the cash balance was approximately \$6.3 million. \$6.1 million was subsequently transferred to BBBI, resulting in the remaining cash on hand of approximately \$165,000 as of November 11, 2023.

5.5 BBB Canada's only forecast cash receipts and disbursements through the proposed extension of the Stay Period (May 22, 2024) are professional fees (forecast to be less than \$165,000) and amounts that may become payable as a result of the CRA Audit and the CRA Assessment Appeal. As explained above, the Reimbursement Agreement is forecast to provide for sufficient liquidity for any potential priority payables and cash on hand is forecast to provide for sufficient liquidity for professional fees. Therefore, subject to finalization of the Reimbursement Agreement, BBB Canada is forecast to have sufficient liquidity to fund the CCAA Proceedings through the proposed extension of the Stay Period.

6.0 EXTENSION OF THE STAY PERIOD

6.1 The current Stay Period extends to November 22, 2023. BBB Canada is seeking an extension of the Stay Period to and including May 22, 2024.

6.2 The Monitor supports BBB Canada's request to extend the Stay Period to May 22, 2024 for the following reasons:

- (a) the extension of the Stay Period will enable BBB Canada, with the assistance of the Monitor, to complete certain steps necessary for the Orderly Wind-down, including pursuit of the CRA Assessment Appeal;

- (b) BBB Canada has acted, and continues to act, in good faith and with due diligence to advance the Orderly Wind-down and the CCAA Proceedings;
- (c) subject to the finalization of the Reimbursement Agreement, BBB Canada will have sufficient liquidity to fund its anticipated disbursements through the proposed extension of the Stay Period; and
- (d) the Monitor is not aware of any party that would be materially prejudiced by the proposed extension of the Stay Period.

7.0 ACTIVITIES OF THE MONITOR

7.1 Since the date of the Seventh Report, the Monitor has, among other things:

- (a) in consultation with BBB Canada, reviewed the single Proof of Claim received pursuant to the D&O Claims Process and assisted with the diligence required to confirm the validity of such claim;
- (b) reviewed correspondence with the CRA and discussed next steps regarding the CRA Audit with Deloitte and BBBI;
- (c) addressed the Inadvertent Distribution with BBB Canada, the Plan Administrator and the Lenders;
- (d) with the assistance of Bennett Jones LLP, counsel to the Monitor, prepared the Reimbursement Agreement, in consultation with BBB Canada, the Plan Administrator and their respective counsel;

- (e) responded to inquiries from BBB Canada's landlords, employees, and vendors, and their respective counsel;
- (f) coordinated the posting of Court-filed documents to the Case Website; and
- (g) with the assistance of counsel, prepared this Eighth Report.

8.0 CONCLUSIONS AND RECOMMENDATIONS

8.1 For the reasons set out in this Eighth Report, the Monitor is of the view that the relief requested by the Applicant is reasonable and appropriate in the circumstances. Accordingly, the Monitor respectfully recommends that the Court approve the proposed Third Stay Extension Order.

All of which is respectfully submitted to the Court this 14th day of November 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

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

Applicant

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COMMERCIAL LIST**
Proceeding commenced at Toronto

EIGHTH REPORT OF THE MONITOR

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