



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-23-02975175-0031 DATE: 17 August 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **Datataxbusiness Services Limited v. KPMG Inc.**

BEFORE JUSTICE: **P. Cavanagh**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jason Wadden	Lawyers for the Datatax Companies	jwadden@tyrllp.com
Naveed Manzoor	Representative of the Datatax companies	naveed@faanadvisors.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Aiden Nelms	Lawyers for the Proposal Trustee (KMPG Inc.)	NelmsA@bennettjones.com
Pritesh Patel	The proposal Trustee (KPMG Inc.)	pritchpatel@kpmg.ca
Elizabeth Pillon	Counsel for Fiera Private Debt Fund VI L.P.	lpillon@stikeman.com
Leanne Williams	Counsel for Fiera FP Business Financing Fund, L.P.	lwilliams@tgf.ca
Sam Babe	Counsel for 2872802 Ontario Inc., and Steven J. Ibbotson	sbabe@airdberlis.com
Jacob Murad		Jacob.murad@icloud.com
Nicholas Williams	Counsel for Bank of Montreal	Nicholas.williams@dentons.com
George Benchetrit	Counsel for KSV Advisory Inc.	george@chaitons.com

ENDORSEMENT OF JUSTICE P. CAVANAGH:

Datatax Business Services Limited (the “Company”), through its subsidiaries, carries on the business of providing certain bookkeeping, income tax and consulting services.

As of August 14, 2023, the Company has liabilities totaling approximately \$33,886,840.14 including (i) \$31,929,010 (as of July 15) plus accumulating interest owed to Fiera Private Debt Fund VI L.P. (“Fiera”) under a loan agreement, (ii) \$1,633,531.84 owed to Bank of Montreal, and (iii) an additional liability of \$3,500,000 owed to Steven Ibbotson.

The purpose of the Fiera loan agreement was to finance the sale of the Company from the previous owner, Mr. Ibbotson, to the Murad Holding Companies (997322 Ontario Inc., 2394419 Ontario Limited and 2774118 Ontario Inc.). Each of the Murad Holding Companies was controlled by members of the Murad family. The sale closed in June 2022.

The obligations of the Company to Fiera under the Fiera loan agreement are secured by, among other things, three securities pledge agreements granted by the Murad Holding Companies which, by their terms, provide certain rights to Fiera upon the occurrence and continuance of the default under the Fiera loan agreement.

Following the closing of the sale in June 2022, it was determined that a number of defaults had quickly arisen under the Fiera loan agreement. As a result, Fiera issued demands and section 244 BIA notices to the Company and the Murad Holding Companies. Subsequently, on October 21, 2022, Fiera passed a shareholder resolution naming Brent Houlden as the sole Director of the Company. By order dated November 7, 2022, Fiera’s exercise of its right to appoint Mr. Houlden as sole director of the Company was confirmed to be valid and enforceable.

Since the November 2022 Order, operational changes necessary to regularize the Company’s business were made and refinancing and/or sale of the Company was pursued. However, the defaults under the Fiera loan agreement have not been cured or resolved and, at present, the Fiera debt is due and owing.

The Company has maintained a persistently negative cash flow business since the granting of the November 2022 Order. In order to ensure continuity of the Companies’ business, and to facilitate an orderly restructuring process under the BIA through the filing of an NOI, the Company was able to secure interim financing from an affiliate of Fiera. The interim facility contemplated that the Company would enter into a Stalking Horse Asset Purchase Agreement (“Stalking Horse APA”) with Mr. Ibbotson and proceed with filing for NOI proceedings for approval of the Stalking Horse APA and a public Sales Solicitation Process (“SSP”) to determine whether or not a superior bid to the Stalking Horse APA could be obtained.

As part of the Stalking Horse APA, the Stalking Horse Bidder has paid a non-refundable deposit, a refundable deposit and has offered DIP financing.

On August 14, 2023, the Company filed an NOI under the BIA and commenced proposal proceedings. KPMG was appointed as Proposal Trustee.

The Company has brought a motion for certain relief including (a) approving the SSP and authorizing and directing KPMG as Proposal Trustee, in consultation with the Company and its advisors, to carry out the SSP to take such steps and execute such documentation as may be necessary or incidental to the SSP; (b) authority for the Company and the Proposal Trustee to immediately commence the SSP; (c) approving the Stalking Horse APA; (d) approving the DIP facility and the DIP charge; (e) approving the Administration charge; (f) approving the D&O charge; (g) extending the stay of proceedings to the Company’s subsidiaries; and (h) extending the time for the Company to file a proposal and the corresponding stay of proceedings under the BIA until October 28, 2023.

At the hearing of this motion, Jacob Murad requested an adjournment to allow him to provide additional information to the Court concerning the status of refinancing efforts that have been underway for a number of months. I was provided with a copy of a non-binding letter of intent dated July 14, 2023 from a prospective investor regarding the proposed acquisition of the Company’s assets by an entity to be invested in by the investor. I was informed by counsel for Fiera that she responded to this letter and advised that the proposed terms were not acceptable to Fiera. In the circumstances, there would be no useful purpose served by an adjournment. If the investor wishes to make a bid for the

assets of the Company that is superior to the Stalking Horse APA, it may do so through the Court-approved process. I declined to grant the requested adjournment.

I am satisfied that the SSP should be approved. In reaching this conclusion, I have considered the factors set out in subsection 65.13 (4) of the BIA as well as the factors set out in *Nortel Networks Inc. (Re)*, 2009 CarswellOnt 4467, at para. 49. In this respect, I accept the Company's submissions made in paragraph 33-39 of its factum.

I am satisfied the DIP Facility and the DIP Charge should be approved. In this respect, I accept the submissions made at paras. 40-42 of the Company's factum.

I am satisfied that the Administration Charge should be approved. In this respect, I accept the submissions made at paras. 43-46 of the Company's factum.

I am satisfied that the D&O Charge should be approved. In this respect, I accept the submissions made at paras. 47-51 of the Company's factum.

I am satisfied that the Company's request for an extension of the proposal period under section 50.4(9) should be granted.

Order to issue in form of Order signed by me today.