



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00708635-00CL

DATE: November 9, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: Re Ignite Services et al

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Applicant:

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ENDORSEMENT OF JUSTICE CONWAY:

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants dated November 7, 2023.
- [2] This is the comeback motion in the CCAA proceedings for Ignite Holdings Inc., Ignite Services Inc, and Ignite Insurance Corporation. I granted the initial order on October 30, 2023. On this motion, the Applicants seek two orders: (i) an Approval and Reverse Vesting Order pursuant to which the Applicants' business will be sold as a going concern to Southampton; and (ii) an Amended and Restated Initial Order. Stephen Livingstone, President and Secretary of the Applicants, has sworn a second affidavit dated November 1, 2023 and the Monitor has filed its First Report dated November 2, 2023. All factual references in this Endorsement come from those materials.
- [3] In my endorsement dated October 30, 2023, I reviewed in detail the background and financial circumstances of the Applicants. In particular, I reviewed the Applicants' ongoing losses since 2018, the funding by its ultimate parent Primary, the secured debt owed to Aviva, the interests of CRA, and the unsecured debt to employees and trade creditors.
- [4] I also reviewed the pre-filing sales processes undertaken by the Applicants that failed to generate any investment in the business, following which KPMG CF was engaged to conduct a sales process. That resulted in the going concern transaction with Southampton pursuant to the ROFR held by Aviva (the "**Transaction**").
- [5] The Transaction is structured as a reverse vesting transaction whereby the Purchaser will acquire the shares of Ignite Services, assume responsibility for the Retained Liabilities, and pay the Capital Contribution to the Monitor for the benefit of Residual Co. The Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities will be vested out to Residual Co. There are two reasons for the reverse vesting transaction. First, the business is highly regulated and this structure facilitates the continuity of these licenses for the purchaser. Second, the Applicants have over \$62 million dollars in tax losses that the purchaser seeks to preserve by the use of this structure.
- [6] The Transaction contemplates a going concern sale that will preserve jobs for the employees and provide for the continuity of contracts with suppliers, and an ongoing business for customers. The purchase price will satisfy most of the Applicants' secured liabilities and the outstanding Priority Source Deductions.
- [7] The Monitor supports the Transaction, as does the secured creditor Aviva, and the largest unsecured creditor Primary. No other stakeholder attended today to oppose the motion. Mr. Park, counsel for the CRA, attended today. He said that CRA is not opposing the motion in terms of recovery for amounts owed to CRA. However, he made it clear that he was not providing an advance ruling on the use of the reverse vesting structure for the preservation and use of tax losses. I also wish to make it clear that any approval by the court of a reverse vesting structure is not to be construed as an endorsement of the use or efficacy of that structure for tax purposes. That is a matter for CRA and the parties.

- [8] Although the sales process that led to the Transaction was conducted prior to the CCAA filing, the same principles apply as they would to a post-filing sales process: see *Karrys Bros, Ltd. (Re)*, 2014 ONSC 7465, at paras. 15-16.
- [9] I am satisfied that both the Transaction and the reverse vesting structure should be approved. The *Harte Gold* considerations are met in this case. The structure is required to maintain the licenses and tax losses; the Transaction is the most favourable alternative (indeed the only other alternative, according to the Monitor, would be a bankruptcy in which all stakeholders would be worse off); and the consideration paid in the Transaction reflects the value of the licenses and tax losses that are the reason for the use of the reverse vesting structure.
- [10] In addition, the considerations under s. 36(3) of the CCAA and the *Soundair* factors support the approval of the Transaction. The sale process broadly canvassed the market. Over 48 potential bidders were contacted. KMPG CF has extensive experience in marketing these businesses and administered the process. The Transaction is the best offer arising out of the sale process and as noted, the business will continue as a going concern. The Monitor supports the Transaction as do the largest stakeholders.
- [11] I reviewed the proposed Releases with counsel today. They are overly broad. I have required that they be more restricted to apply only to matters that have arisen during the CCAA proceedings and not anything that may have occurred during the pre-filing period. Counsel has now made these revisions. They have also removed, at my direction, the unnecessary references to declaratory language from the orders.
- [12] With respect to the remainder of the relief sought today, it is acceptable to me. The stay extension is granted to January 31, 2024 and I am satisfied that the Applicants are acting in good faith and with due diligence. The pre-filing payments to Tri-Quest, a critical supplier, are approved. The increase in the DIP is warranted. The priority of the charges is also acceptable. The DIP Lender's Charge has priority but ranks behind the CRA Priority Payables.
- [13] The Applicants seek a sealing order for the Confidential Appendices to the Monitor's Report, which set out the purchase price and the confidential summary of bids. This order meets the test in *Sierra Club/Sherman Estates*. The order protects the public interest in preserving value for stakeholders of an insolvent company should the business have to be remarketed. It is appropriately tailored and time limited. **I direct counsel for the Applicants to file a hard copy of the Confidential Appendices with the Commercial List office in a sealed envelope with a copy of the order and this Endorsement.**
- [14] I have signed the two orders and they are attached to this endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

