



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00703933-00CL

DATE: 25 August 2023

CV-23-00703292-00CL

NO. ON LIST: 1

TITLE OF PROCEEDING: WAYGAR CAPITAL INC., AS AGENT FOR NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P. v. QUALITY RUGS OF CANADA LIMITED et al

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE PENNY:

- [1] These proceedings began with competing applications by the senior secured creditor, Waygar, and the debtor, Quality Rugs, for an initial order under the CCAA. I made an interim order to stabilize the situation while the parties had discussions about the path forward. There have been several attendances, documented in prior endorsements, while discussions were ongoing.
- [2] The principal economic parties have, as of today reached an agreement which can form the basis for an initial order under the CCAA. Under the terms of that agreement, the proposed purchaser has improved its original offer and the principal secured creditor has agreed to withdraw its application for a creditor-driven CCAA process. That leaves the debtor's application, as amended due to recent events, as the application before the court for determination today. The intention behind the proposed transaction is that the debtor will carry on business as a going concern.
- [3] I am satisfied that the court has jurisdiction to make an initial order under the CCAA. The debtor is insolvent and its obligations exceed the statutory threshold. The proposed Monitor, RSM, is qualified to fulfill that role and consents to do so.
- [4] Under the proposed initial order, the debtor and the proposed purchaser will have 30 days to negotiate a definitive purchase agreement and seek court approval of same.
- [5] The proposed priority charges are appropriate in the circumstances. The D&O charge is sized to reflect the level of exposure to employee wages and benefits etc. and is otherwise appropriate. The administration charge is likewise appropriately sized to reflect the large amount of effort that has already gone into the applications and proposed transaction. The restructuring could not be accomplished without the advice and direction of the professionals involved. A separate charge deals with the compensation for A&M. A&M conducted a pre-filing SISP on the debtor's behalf which led to the proposed purchaser's offer. Compensation is capped at \$950,00, to be determined if and when the proposed transaction closes. The cap was contractually agreed between arms' length parties and the proposed Monitor advises that the payment formula reflects the current market rate for such services.
- [6] A sealing order is appropriate, under the *Sherman Estate* test, to maintain the confidentiality of the proposed purchaser's offer until the transaction closes. It is in the public interest that the debtor/Monitor's ability to maximize value be preserved in the event the proposed transaction does not close.

- [7] The proposed purchaser will advance DIP financing. There is no fee (and no break fee for the proposed transaction either). The interest rate is within the range of what is reasonable in the circumstances. This priority financing will take out the interim financing advanced by Waygar (and secured by my first interim order) and provide the debtor with access to the cash necessary to conduct operations, consistent with the proposed transaction, until the comeback date. I am satisfied that the amount sought for the initial period, \$3.5 million, is justified on the evidence. The come back hearing will take place before me on Tuesday September 5, 2023 at 10:00 AM, by videoconference. Increases to the DIP loan will likely be sought at that time.
- [8] The debtor is also proposing a lien/trust claims charge, without precise value at this point as it is unknown, to secure certain construction-related claims, to be resolved in a future, ultimately court supervised, process within these proceedings.
- [9] It is appropriate to extend the stay, as revised by the initial order, until the come back date.
- [10] The proposed Monitor is supportive of the various steps proposed and the specific amounts involved in the proposed charges, as well as their relative ranking, as set out in its second supplemental prefiling report of today's date.
- [11] Order to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read "Penny J.", with a stylized flourish at the end.

Penny J.