

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
QUALITY RUGS OF CANADA LIMITED AND THE OTHER GROUP LISTED IN  
SCHEDULE "A" HERETO (THE "APPLICANTS")**

**FACTUM OF THE APPLICANT**

**(COMEBACK HEARING)**

September 4, 2023

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**TO: THE SERVICE LIST**

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### PART I – OVERVIEW

1. The QSG Group (variously referred to below as the “**Group**” and “**QSG**”) seeks an amended and restated initial CCAA order (the “**ARIO**”) made under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), substantially in the form of the draft order attached to the Motion Record. Except where specified, the defined terms in the affidavits of John Pacione filed in support of the Application and the CCAA Extension Motion will be used herein.
  
2. This application was originally returnable August 4, 2023 as competing CCAA applications were filed by the QSG Group and by Waygar, its senior lender. Waygar also launched a back-up receivership application. On that date, both applications were adjourned for 2 weeks to August 18, 2023. On August 18, the matter was further adjourned to August 23 to allow for negotiations to try to reach a consensus CCAA Initial Order, and then adjourned further on August 23, 2023 to August, 25, 2023, at which time an Initial CCAA Order was made in this application granting a 10 day stay of proceedings and a DIP financing authorization capped at \$3.5 Million..
  
3. The context of this proceeding is that the Applicants ran a SISP pre-filing and selected a successful bidder, Ironbridge, with which they signed an LOI dated August 25, 2023. The stay extension to October 31, 2023 is proposed to be used to complete definitive documentation re that sale transaction, to seek a sale approval and vesting order (AVO), and to close the transaction.
  
4. To facilitate same, Ironbridge has committed to provide up to \$7 million in DIP Financing, of which up to \$5 million is to be available until the AVO is obtained, upon which event the remaining \$2 million also becomes available. As the Initial Order capped the borrowings under that DIP facility at \$3.5 Million for the first 10 day CCAA stay period, an increase in the DIP

borrowing authority to \$ 7 million is sought to match the DIP Term Sheet so that the full amount of the Ironbridge DIP commitment is available to the Applicants as they proceed, while operating in the ordinary course, to complete the steps between now and October 31, 2023 required to close the sale transaction with Ironbridge.

5. The Initial Order obtained was customized to reflect the fact that the QSG Group proposed to use the CCAA process to complete a sale of its business on a going concern basis to Ironbridge. The ARIO continues that approach and reflects minor changes to the Initial Order to accommodate certain comments from stakeholders, the relief sought in this motion, to harmonize the order with the DIP Term Sheet, and certain ancillary matters.

### **PART II – FACTS**

6. The Facts are as stated in the affidavits of John Pacione dated August 3 and 17 , 2023 filed in support of the QSG’s CCAA Application heard August, 25, 2023, and in the affidavit of John Pacione Sworn September 2, 2023, filed in support of QSG’s CCAA Extension Motion.

### **PART III – ISSUES**

7. There principal issues facing the Court today are as follows:
  - (a) Should an extension of the CCAA Stay be granted to October 31, 2023?
  - (b) Should the DIP financing limit be raised from \$3.5 Million to \$7 Million?
  - (c) Should the ARIO be issued with the requested amendments to the Initial CCAA Order?
  - (d) What date should be set for the hearing of the proposed LRO and of other stakeholder issues?
  - (e) Dismissal of Waygar CCAA and adjournment of Waygar Receivership Application.

### **PART IV: LAW AND ANALYSIS**

- A. *The stay of proceedings should be extended to October 31, 2023*

8. Pursuant to section 11.02(2) of the CCAA, a Court may extend the initial 10 day stay for any period that the court considers necessary.<sup>1</sup> Further to s. 11.02(3), in order to exercise this discretion, a Court must be satisfied that:
- (i) that the circumstances exist that make such an order appropriate;
  - (ii) that the Applicant has acted and continues to act in good faith and with due diligence.
9. In the present case, the Applicants have signed an LOI dated August 25, 2023 with Ironbridge (the “Sale LOI”) that contemplates that QSG will sell its business and assets to Ironbridge pursuant to a sale and vesting order to be obtained on or about October 5, 2023, and that the transaction will then be closed within 10 business days thereafter. The October 31, 2023 date leaves room for flexibility as to the exact closing date and for a short period to return to court following closing to set the course for the proceeding in the post-closing period.
10. To ensure that the transaction stays on course, QSG has committed to Waygar that it can return its receivership application at any time after 60 days from the date of the Initial Order if the sale is not closed by then (and earlier if the Sale LOI is terminated for any other reason).
11. Since the Initial order was granted, the Applicants have done the following between the Initial Order and this Comeback hearing<sup>2</sup>:
- (a) Held a townhall meeting for the employees with a representative of Ironbridge on August 29, 2023 to explain the CCAA proceedings and answer any questions in respect of same;
  - (b) Established operating and communication procedures with the Monitor and Ironbridge as the DIP Lender to comply with the approval and other requirements of the Initial CCAA Order and the DIP Term Sheet (also referred to below as the DIP “Facility Agreement”) and to provide for smooth operational practices;
  - (c) Communicated with various secured and unsecured creditors, including suppliers and customers;
  - (d) Arranged the unblocking of its receipts account with Waygar and its bank so that the DIP Loan could be advanced pursuant to the DIP Loan Facility;
  - (e) requested, arranged the mechanics of, and received a drawdown of the DIP Facility in the amount of \$3,000,000 under the DIP Term Sheet (also referred from time to time to

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<sup>1</sup> CCAA, s. [11.02\(2\)](#).

<sup>2</sup> [Affidavit of John Pacione Sworn September 2, 2023, CCAA Extension Motion Record tab 2 \(“Extension Affidavit”\)](#)

below as the “DIP Facility Agreement”) and in accordance with the Cash Flow appended to the Dip Term Sheet ;

- (f) Arranged and effected as required the payout of the \$1.5 million in Interim Financing provided by Waygar between August 4, 2023 and August 25, 2023;
  - (g) Communicated with certain suppliers, the Monitor, QSG Counsel and the DIP Lender regarding the treatment of supplier liens registered between the Interim Order on August 4, 2023 and the Initial CCAA Order on August 25, 2023;
  - (h) Communicated with certain builders, the Monitor, Applicants’ Counsel, and the DIP Lender re builders facing critical installation needs and builders affected by supplier liens, in order to develop operational resolution plans for those situations;
  - (i) Worked with Applicants Counsel, the Monitor, the DIP Lender in the development of the proposed Lien Regularization Order discussed below to address stakeholder feedback about the existing Lien Notice provisions in the Initial CCAA Order;
  - (j) managed cash flow and made disbursements in accordance with the Initial Order and the DIP Term Sheet, in consultation with the Monitor and the DIP Lender; and
  - (k) continued discussions with Ironbridge regarding the proposed going concern transaction.
12. As there were only 5 business days in that period, the Applicants are acting not only in good faith but with due diligence.
13. As:
- (i) the completion of the sale transaction contemplated by the Sale LOI with Ironbridge continues to be in the interests of the stakeholders;
  - (ii) the extension of the CCAA Stay to October 31, 2023, provides for a period of protection which is the minimum reasonably necessary to properly implement that sale transaction and to allow for a short period of time post-closing for the orderly scheduling of a court appearance to provide for guidance as to the direction these proceedings will take post-closing;

the stay requested is appropriate and in good faith.

***B. Increase in the DIP Financing Limit from \$3.5 Million to \$7 Million***

14. The proposed Purchaser under the Sale LOI, Ironbridge has provided a DIP Finance facility pursuant to a DIP Term Sheet dated August 25, 2023 tabled with the court on that date and approved in the Initial Order. The DIP Term Sheet provides for a DIP Loan of up to \$ 5 million to facilitate operations while definitive sale documentation is finalized and an AVO is sought

(projected to be sought circa October 5, 2023), and if obtained provides for another \$2 million to facilitate operations and the closing of the sale transaction before the end of October.

15. The Initial Order authorized drawings of up to \$3.5 Million under that facility in accordance with the Cash Flow attached to that DIP Term Sheet. Accordingly an increase in the authority to draw under that DIP facility from \$3.5 Million to \$7 Million, under the terms set out in the DIP Term Sheet is hereby sought. The \$7 Million borrowing limit under the DIP Term Sheet is framed with reference to the QSG Cash Flow attached to the DIP Term Sheet.<sup>3</sup>
16. Section 11.02 (5) of the CCAA limits the borrowing authority of a CCAA applicant to the amount reasonably necessary in the initial 10 day stay period permitted to a CCAA applicant in an initial CCAA Order. As that stricture no longer applies at the Comeback Hearing and as the increase in the Applicants DIP borrowing limit sought is appropriate given its Cash Flow and the objective of completing a sale transaction before the end of October while operating throughout in the ordinary course, the increase sought is appropriate.

***C. Should the ARIO be issued with the requested amendments to the Initial Order?***

17. The amendments to the Initial CCAA Order sought in the proposed ARIO are not controversial. The changes of particular note are<sup>4</sup>:
  - (i) Stay Extension (Paragraph 14 )– the stay is extended until October 31 as requested above;
  - (ii) DIP Limit Increase (Paragraphs 39 and 45) – the DIP Borrowing approval limit is increased from \$3.5 Million to \$7 Million as requested above and the DIP Lender’s charge is adjusted accordingly;
  - (iii) Cash Management System Adjustment to Match DIP Term Sheet (Deletion of Former Paragraph 5A): As the Waygar DIP Loan has been paid out, the block on the Cash Management System used by Waygar was removed, and the system for approval of disbursements in the Initial Order tied to that is removed. Funding will be administered through a system implemented in accordance with the DIP Term Sheet, which remains subject to the usual Monitor oversight;
  - (iv) Lease Disclaimers (Paragraph 9) – Lease disclaimers would have to be done in accordance with the DIP Term Sheet as well as the CCAA;

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<sup>3</sup>Extension Affidavit

<sup>4</sup>ARIO and Redline, Tabs [3](#) and [4](#), QSG CCAA Extension Motion Record

- ( ) Borrowers Account and the Charges Created by the Initial Order (Paragraphs 27, 29, 38, 42, 47, 48) : With the exception of the DIP Lender’s Charge, the other Charges created by the order do not bind the “Borrowers Account” , an account being established into which the DIP Lender advances DIP loan proceeds. That is a requirement of the DIP Term Sheet. The priority of the Charges granted in the Initial Order is confirmed in the ARIO. Section 47 clarifies that the Charges take priority over all secured creditors in respect of all of the Applicants assets (except re the Borrowers Account in respect of which only the DIP Charge attaches as noted). Section 48, which refers to the intent to seek priority for the Charges over other secured at the Comeback Hearing, is deleted as that becomes superfluous once the ARIO issues.
- (i) Monitor Assistance with Plan Development and Creditors Meetings (Par 31 (f) and (g): these powers which were deleted from the model order in the Initial Order are requested to be restored to the order via the ARIO;
- (ii) Notice of the Comeback Hearing (par 52 of the Initial Order) is deleted as it becomes superfluous once the ARIO issues; and
- (iii) The Interim Lender Charge (par 56) in favour of Waygar is discharged as Waygar was paid in full before the Comeback hearing in respect of its \$1.5 Million interim lending facility (originally approved by the August 4, 2023 interim order).

***D. What date should be set for the hearing re the LRO and other stakeholder issues?***

18. As today’s hearing is a one hour appointment, there is realistically only time to deal with the foregoing. Hence the extension motion requests that a date be set for the hearing of any other stakeholder issues re the Initial Order or related stakeholder matters.
19. As well, QSG is intending to seek a Lien Regularization Order to replace paragraphs 18-21 of the Initial Order (as carried forward in the proposed ARIO) with a more comprehensive solution. The LRO may obviate the need to hear many of the other stakeholder concerns, so it is proposed that the same date be set to deal with that.

***E. Dismissal of the Waygar CCAA Application and Adjournment of Waygar’s Receivership***

20. Waygar has consented to the dismissal of its CCAA Application without costs as it consented on August 25, 2023 to the QSG CCAA Application proceeding. QSG has consented to Waygar’s Receivership Application (originally returnable August 4 and adjourned to August 25) being returnable if the Sale LOI transaction does not close within 60 days of the Initial Order (or earlier

if the SALE LOT transaction is terminated). To give effect to same QSG has agreed the Receivership Application should be adjourned sine die or to a date fixed by the Commercial List Office (with the intent that it not be returned before the 60 days or earlier termination of the LOT).

#### **PART V – ORDER SOUGHT**

21. For all of the foregoing reasons, the QSG Group requests an ARTO substantially in the form of in its CCAA Extension Motion Record, subject to such amendments as may be further submitted to the court.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4th day of September, 2023.

*CBesant*

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**Chris Besant**  
Lawyer to the Applicants

#### **Schedule “A” – List of Authorities**

1. *Sherman Estate v. Donovan*, [2021 SCC 25 \(CanLTT\)](#)

#### **Schedule “B” – Text of Statutes**

**Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36**

#### **Jurisdiction of Courts**

#### **Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

#### **Stays, etc. — other than initial application**



(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

### **Burden of proof on application**

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

### **Interim financing**

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

### **Priority — secured creditors**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Priority — other orders**

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

### **Factors to be considered**

- (4) In deciding whether to make an order, the court is to consider, among other things,
  - (a) the period during which the company is expected to be subject to proceedings under this Act;
  - (b) how the company's business and financial affairs are to be managed during the proceedings;
  - (c) whether the company's management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any

### **Security or charge relating to director's indemnification**

**11.51 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

### **Priority**

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Court may order security or charge to cover certain costs**

**11.52 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

### **Priority**

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **General**

#### ***Duty of Good Faith***

### **Good faith**

**18.6 (1)** Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

### ***Monitors***

#### **Duties and functions**

**23 (1)** The monitor shall

[...]

(k) carry out any other functions in relation to the company that the court may direct.

## **Obligations and Prohibitions**

### **Restriction on disposition of business assets**

**36 (1)** A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

### **Factors to be considered**

- (3)** In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - (b) whether the monitor approved the process leading to the proposed sale or disposition;
  - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
  - (d) the extent to which the creditors were consulted;
  - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
  - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**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 QUALITY RUGS OF CANADA  
LIMITED AND THE OTHER COMPANIES LISTED IN SCHEDULE "A"**

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Court File No.: CV-23-00703933-00CL

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***ONTARIO*  
SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT  
TORONTO

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**FACTUM OF THE APPLICANT**

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