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

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

August 17, 2023

GARDINER ROBERTS LLP
Bay Adelaide Centre, East Tower
22 Adelaide St. W., Suite 3600
Toronto, ON M5H 4E3

Chris Besant
cbesant@grllp.com

Tel: 416-865-4022

Lawyers for the Applicants

TO: THE SERVICE LIST

TABLE OF CONTENTS

Page No.

PART I - OVERVIEW

1. The QSG Group (variously referred to below as the **"Group"** and **"QSG"**) seeks protection from their creditors and certain other ancillary relief pursuant to an order (the **"Initial Order"**) 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 Application Record. Except where specified, the defined terms in the Affidavits of John Pacione filed in support of the Application 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, as the Court requested the QSG Group and Waygar to provide further guidance in their application materials so as to permit a more orderly consideration of the matter. As a result, an Interim CCAA Order was made in both proceedings, providing for a general CCAA stay of proceedings against the Group, and an interim funding structure for critical payments backed by $1.5 Million in DIP Finance from Waygar. Additional materials were accordingly prepared and filed by both sides.

3. The parties also used the 2 weeks to conduct negotiations between Waygar, the QSG Group and Ironbridge (the potential buyer of QSG's business referenced in QSG's CCAA Application), to try to present the court with a consensus solution on the return date of August 18, 2023.

4. The Applicants request an Initial CCAA order for 10 days. The Order sought has been customized to reflect the fact that the QSG Group proposes to use the CCAA process to complete a sale of its business on a going concern basis to Ironbridge within the next 6 weeks (i.e. by September 30, 2023). As required by the CCAA, the QSG Group proposes to return to the Court within ten (10) days (the **"Comeback Hearing"**) to seek certain additional relief pursuant to a more fulsome order (the **"ARIO"**). After definitive documentation is settled with respect to the Sale Agreement discussed below, the QSG Group proposes to return to court subsequent to the ARIO to seek a Sale and Vesting Order in respect of that sale. This factum is being filed in respect of both the relief sought on August 18, 2023 in respect of the Initial Order, the relief to be sought at the Comeback Hearing in the form of the ARIO, and the relief to be sought in connection with the AVO.

5. The QSG Group provides distribution and coordinated installation services for developers and end users of various floor covering alternatives, and comprises by far the largest distribution and installation platform in Canada in terms of market share.

6. Since 2020, the Group has faced a string of challenges, including high financing costs, a construction halt during the early phases of the Covid pandemic in 2020-21, labour and supply chain challenges during the remainder of the pandemic, followed by a debilitating strike in the industry in mid-2022. The Group suffered a net loss for the fiscal year ending May 31, 2023, although it still had positive EBITDA of $1.4 million from operating activities.

7. Although the Group began to recover later in 2022 with the benefit of additional financial support from its lender, by February 2023, QSG and Waygar jointly concluded that the hill to climb was too steep to recover the lost working capital from the challenges, and that the company needed to be recapitalized.

8. Accordingly, QSG retained a financial advisor recommended by Waygar, namely the corporate finance division of Alvarez & Marsal Canada Securities ULC (**"A&M"**), to conduct an SISP.

9. The SISP was successful in finding a buyer. Specifically, the QSG Group has negotiated the terms of a letter of intent (the **"Ironbridge LOI"**) with Ironbridge Equity Partners Management Limited (**"Ironbridge"**), providing the framework for a going concern transaction with the Applicants. Ironbridge has completed most of its due diligence and the parties are negotiating a definitive acquisition agreement (the **"Acquisition Agreement"**), which is scheduled to be finalized before the Comeback Date, with a proposed closing date 4 weeks from now.

10. To protect ongoing operations which helps protect stakeholders, to protect the going concern value which drives the value in the sale transaction, and to complete the transaction, the QSG Group requires CCAA protection and interim finance. Hence, the Applicants have commenced these proceedings to obtain the flexibility and breathing space afforded by the CCAA to finalize the definitive documentation needed to implement and close the sale to Ironbridge. Ironbridge has indicated in the Sale Agreement that it is willing to provide interim funding pending the closing of the transaction. The balance of the process to assess claims and distribute proceeds would need to be funded from the sales proceeds or a further Dip loan. Whether that would be accomplished by a plan or other procedure should be addressed at a later stage in the proceeding.

PART II - FACTS

A. Background of Business – Corporate Structure and Group Business and Operations

Overview of the Company and Business

11. Quality Rugs of Canada Limited (variously referred to herein as "**QRCL**" and the "**Company**"), which with various affiliates does business as the Quality Sterling Group of Companies (variously referred to below as the "**QSG Group**" or the "**Group**" or the "**Companies**").[1]

12. The Group consists of the Company and several affiliated entities. The principal operating subsidiaries which own the assets of the QSG Group business are QRCL and the following entities (collectively including QRCL, the "**QSG Opcos**"):

    (a) Malvern Contract Interiors Limited ("**Malvern**");
    (b) Weston Hardwood Design Centre Inc ("**Weston**");
    (c) Ontario Flooring Ltd. ("**Ontario FL**"); and
    (d) Timeline Floors Inc. ("**Timeline**").[2]

13. Certain holding companies of the QSG Opcos (variously herein the "**QSG Holdcos**" or "**holdcos**") are Group entities which may have liability to the Group's creditors under guarantees or arrangements. They are as follows:

    (a) Quality Commercial Carpet Corporation;
    (b) Joseph Douglas Pacione Holdings Ltd.;
    (c) John Anthony Pacione Holdings Ltd.;
    (d) Jopac Enterprises Limited;
    (e) Patjo Holdings Inc.;[3]

14. The Company was founded 58 years ago and is family-owned by various members of the Pacione family. It has grown to become the largest flooring contract business in Canada, serving virtually all of the largest residential and commercial developers and builders. Until its recent short-term difficulties, the Group has been a generational success story.[4]

---

[1] Affidavit of John Pacione, affirmed August 3, 2023 at para 4 ["**Initial Affidavit**"], Tab 2 of the Application Record dated August 3, 2023 ["**Application Record**"].
[2] Initial Affidavit at para 5, Tab 2 of Application Record.
[3] Initial Affidavit at para 6, Tab 2 of Application Record.
[4] Initial Affidavit at paras 7-9, Tab 2 of Application Record.

Employees and Installers

15. The Company employs approximately 128 people – 114 in Ontario, with a further 14 employed at other locations across Canada. The significant majority of the Group's installation work is performed by an extensive network of third-party installers who work on an almost exclusive basis with the Group owing to its large volume of work. The independent contract installers are remunerated based on production (i.e. piecework by job) and many are members of the Carpenters and Allied Workers of Local 27 - United Brotherhood Carpenters and Joiners of America ("**Local 27**") or Brick and Allied Craft Union of Canada ("**BACU**").[5]

The Applicant's Creditors

Waygar

16. As of August 1, 2023, the Company is indebted to Ninepoint Canadian Senior Debt Master Fund L.P., the agent for which is Waygar, in the amount of approximately $50,635,148 million in revolving working capital. The loan agreement was entered into on October 19, 2019 and was amended 5 times between then and August 15, 2022, and was further modified by an agreement defined below as the CAAA on February 14, 2023. As security for this debt, Waygar holds (among other things) general security interests ranking in first position over all of the Group's assets granted under GSAs with various group entities. It also holds limited recourse pledges of the shares of the operating companies held by holding companies in the Group. It holds no personal guarantees.[6]

17. Until the Summer of 2022, the revolving working capital loan had a stated limit of $40 million, which was increased to $50 million through the SOFA Loan (defined below). It was increased again on February 14, 2023 to $52.5 Million pursuant to a Credit Amending and Accommodation Agreement (**"CAAA"**) .[7]

18. In addition to the upper limit on lending, the loan is governed by a borrowing base. As discussed below, the current amount outstanding on the revolving working capital loan is offside the

[5] Initial Affidavit at paras 12-13, Tab 2 of Application Record.
[6] Initial Affidavit at paras 23 and 26 Tab 2 of Application Record.
[7] Initial Affidavit at para 24, Tab 2 of Application Record.

borrowing base calculation. Subject to the exception noted below, the Group is unable to draw beyond the current $51 million without Waygar's discretionary permission.[8]

19. The Waygar debt is guaranteed by the QSG Opcos which have given full guarantees, and the QSG Holdcos, which for the most part, have provided limited recourse guarantees with recourse only to a pledge of shares in one of the QSG Opcos.[9]

20. The Waygar loan documentation is attached to the affidavit of Don Rogers in the Waygar application.[10]

Mohawk

21. The Company is currently indebted to Mohawk Carpet Distribution, Inc. ("**Mohawk**"), one of the Group's suppliers, in the amount of approximately $2.7 million pursuant to a Loan Agreement dated November 21, 2016. As security for this debt, Mohawk holds a general security interest ranking behind Waygar over the Group's assets. There is an inter-creditor agreement between Mohawk and Waygar that gives Mohawk priority only over the inventory it has supplied, but there is only about an estimated $217,000 worth of such inventory which the Group currently holds.[11]

Related Party Loans

22. The Group is indebted to its holdco shareholders in the amount of approximately $11.9 million. These related party balances are unsecured, non-interest bearing and have no fixed repayment obligations with the exception of:

    (a) notes totalling $6.2 million payable to JoJohn Holdings Limited, a corporation owned by the shareholders of the QSG Group, which pays interest only and have maturity dates of May 31, 2023; and

    (b) a note for $1.0 million payable to Joseph R. Pacione which pays interest only and has a maturity date of May 31, 2023.[12]

---

[8] Initial Affidavit at para 25, Tab 2 of Application Record.
[9] Initial Affidavit at para 27, Tab 2 of Application Record.
[10] Waygar Application Record at Tab 2 ["**Waygar Application Record**"]
[11] Initial Affidavit at para 29, Tab 2 of Application Record. Supplement Affidavit.
[12] Initial Affidavit

There are, in theory, offsetting intercompany balances owing by other QSG Group entities, so that the net intercompany balance is approximately $4.5 million, but the offsetting balances are owed by entities with no assets of value.[13]

PPSA Registrations

23. A search of the Personal Property Security Registration System in Ontario shows that there are also registrations against the Group in respect of certain specific equipment and vehicles.[14]

Suppliers

24. As of June 30, 2023, there are amounts owing to trade creditors totalling approximately $21.3 million. Approximately $9.2 million of that is in arrears.[15] As of August 3, 2023, the amounts owing to the Group's largest 10 trade creditors total approximately $13.4 million.[16]

Payroll Accrual

25. The current amounts owing in respect of wages and source deductions is approximately $225,000, representing the prorated amount since the last weekly payroll before the filing. The accrued vacation pay is also an ordinary course amount of approximately $250,000.[17]

HST

26. The Group is current in its obligations to the Government of Canada in respect of H.S.T., having remitted the amounts outstanding as of August 3, 2023 since the Interim CCAA order was made on August 4, 2023.[18]

Financial Position of the Group

Balance Sheet and Income Statement

27. As of May 31, 2023, the Group's internal balance sheet and income statement demonstrates that the Group has total assets of $80.2 million, of which the current assets are $67.5 million. The Current Assets are in turn composed principally of $51 million in receivables from builders (AR $39.5 million + Holdback AR + Accrued Revenue) and $9.4 million in Inventory WIP and Goods

---

[13] Initial Affidavit at para 31, Tab 2 of Application Record.
[14] Initial Affidavit at para 32, Tab 2 of Application Record.
[15] Initial Affidavit at para 35 and Exhibit 'C', Tab 2 of Application Record.
[16] Initial Affidavit at para 37, Tab 2 of Application Record.
[17] Initial Affidavit at para 34, Tab 2 of Application Record.
[18] Initial Affidavit at para 38, Tab 2 of Application Record. Supplemental Affidavit

in-Transit.[19] Due to constraints on funding discussed below, these umbers have declined slightly since then.

28. The income statement to May 31, 2023 demonstrates that in the trailing 12 months, the Group's revenue was in excess of $134 million, the Group had a gross profit margin of 16.1%, the Group suffered a net loss of $6.5 million, and its EBITDA was $1.4 million.[20]

Cash Management System

29. The QSG Group operates a consolidated receipts account and a consolidated disbursements account at the Toronto-Dominion Bank. Receipts from its builder customers go into the receipts account. Each week funds are released from that account to the disbursements account to fund the week's expenditures. Pursuant to its loan arrangements with Waygar discussed below, the receipts account is a blocked account (the "**Blocked Account**") and funds cannot be transferred from there to the disbursements account or otherwise withdrawn or spent, unless Waygar consents to the release of the funds to the disbursement account.[21]

30. On August 4 an interim order was made permitting QSG to use those collections for critical payments pending this hearing. QSG is requesting that it be permitted to continue to use all funds in the Blocked Account as well as any further collections, to fund interim operations during the CCAA process until the sale is closed, and that Waygar be directed to permit same. That would reduce the level of interim finance required.

31. QSG is also requesting that the funds swept from the Blocked Account on August 3, 2023 be returned to the Blocked Account for use as working capital. There was over $6 million in that account on August 3, the day before the last hearing. Waygar swept those funds from the account. Waygar then agreed to provide up to $1.5 million back as a DIP loan under the Aug 4 Order. Any amount of the August 3 cash sweep that has not been returned or advanced to QSG is requested to be returned forthwith to the Blocked Account. The unreturned sum in question is estimated to be around $4 million, and its return would reduce the need for recourse to a DIP loan.

Financial Difficulties - Business Impacted by External Factors

<u>Covid 19 Pandemic Impacts 2020-2022</u>

---

[19] Initial Affidavit at paras 17-19 and Exhibit 'B', Tab 2 of Application Record.
[20] Initial Affidavit at para 20, Tab 2 of Application Record.
[21] Initial Affidavit at para 22, Tab 2 of Application Record.

32. The Covid-19 pandemic significantly impacted the construction industry, including the QSG Group. Without limiting the generality of the foregoing, the QSG Group has suffered financially as a result of the pandemic in the following respects:

a. supply chain disruption in materials led to higher prices, longer lead times and challenges in meeting project timelines;
b. shortages of skilled labourers due to a slowdown in immigration into Canada. Further, Covid-19 government programs exacerbated the pre-Covid-19 labour shortage; and
c. strict health and safety requirements, lockdowns, use of personal protective equipment, distancing, daily employee screening and quarantining contributed to production challenges and short-term cost increases. The Omicron Covid-19 variant resulted in site shutdowns in 2022 resulting in construction delays.[22]

Ontario Residential Construction Strike 2022

33. A further difficulty faced by the QSG Group in 2022 was the Ontario residential construction sector strike from May 1, 2022 to June 15, 2022. At various points during this 44-day strike, trades such as tilers, hardwood installers and carpet installers were on strike. In addition, low-rise framers, high-rise form workers, self-leveling workers, drywallers, railings installers, and operating engineers were also on strike at points during this period.[23]

Recovery of the Business and Need for Recapitalization

34. To assist the Group, on or about July 29, 2022, Waygar authorized an interest only over-advance of $10 million under its loan beyond the normal credit parameters of its loan (hereinafter the Secured Over Formula Advance or "**SOFA Advance**"). The Company's accounts receivable and gross operating profit started to recover in Q4 2022 with the end of the challenges noted above the additional liquidity. However, a consensus was reached between QSG and Waygar that QSG would not be able to fully recover without a further liquidity injection (via loan or equity), sale, or restructuring.[24] The SOFA amendment to the Waygar loan agreements is included in the Waygar loan documents attached to the affidavit of Don Rogers.[25]

[22] Initial Affidavit at paras 39-41, Tab 2 of Application Record.
[23] Initial Affidavit at paras 42-45, Tab 2 of Application Record.
[24] Initial Affidavit at para 46, Tab 2 of Application Record.
[25] Waygar Application Record at Tab 2.

35. As part of the SOFA arrangements, the Pacione Family injected another $1 million into the business personally to help support the liquidity of the QSG Group, bringing their overall investment in the business to over $10 million.[26]

B. SISP & Sale Agreement with Ironbridge

The Engagement of A&M, the CAAA, and the SISP

36. Given the consensus between QSG and Waygar that a further injection of capital into the business was required in some form, Waygar recommended that QSG engage the Corporate Finance Division of Alvarez & Marsal Canada Securities ULC (**"A&M"**), a highly respected financial advisory firm with a North American platform, to conduct a sales and investment solicitation process (**"SISP"**) to find a financing sale or restructuring transaction to recapitalize QSG's business. Accordingly, QSG engaged A&M in January 2023 under an agreement which Waygar approved, in recognition of which it was appended to the CAAA, as discussed below[27].

37. In order to provide a stable framework for A&M to pursue the SISP process, on February 14, 2023, Waygar and the QSG Group entered into a credit accommodation and amending agreement ("**CAAA**") that provided that Waygar would forbear from enforcement while the QSG Group conducted an out-of-court sales and investment solicitation process ("**SISP**") to seek additional financing by loan or equity injection, a sale transaction, or a restructuring transaction, which could either be implemented out of court or through a court restructuring process. Waygar committed to advance an additional $2.5 million to fund the SISP process (QSG had requested $5 million) and to allow the company to utilize 100% of its receivables collections to fund its operations, notwithstanding any credit restrictions to the contrary in its loan agreements.[28] A copy of the CAAA, including the A&M Agreement which contains the schedule for the SISP process, is attached the Don Rogers affidavit in the Waygar application.[29]

38. The engagement entitles A&M to a success fee and commits the QSG Group to seek protection of the payment of that fee from the resulting transaction proceeds. The success fee is defined in the agreement which Waygar approved, and QSG understands that fee to be customary in a transaction of this nature and risk profile.[30]

---

[26] Initial Affidavit at para 47, Tab 2 of Application Record.
[27] Waygar Application Record at Tab 2 Exhibit "N; Initial Affidavit at para 50"
[28] Initial Affidavit at paras 48-49, Tab 2 of Application Record.
[29] Waygar Application Record at Tab 2, Exhibit 'N'.
[30] Supplemental Affidavit

39. The conduct and results of the SISP process is summarized by A&M in its report on the SISP process which is appended to the Monitor's Pre-Filing Report.[31] As is apparent therefrom, the market was exhaustively canvassed, and the proposed deal being put forward for approval as discussed below is the best attainable option.

The Sale Agreement

40. The best offer which emerged through the SISP was determined by the Company with the assistance of A&M as financial advisor. The initial expression of interest of that proposed Purchaser, Ironbridge, was further negotiated by the QSG Group with the assistance of A&M and in consultation with Waygar. Those negotiations culminated on July, 25, 2023, when the QSG Group signed a letter of intent with the Purchaser (the "**Sale Agreement**") which contemplates the completion of the sale to the Purchaser within 6 weeks after an initial CCAA Order is obtained. The Purchaser is a reputable entity with the internal financial resources to fund the transaction without external borrowing.[32]

41. Key aspects of the Sale Agreement and transaction are:

(a) Purchased Assets: the business and assets of the QSG Group;
(b) Price: (the amount is in the unredacted Sale Agreement) paid 30% in cash and the remaining 70% by a split of accounts receivables collections where the Group receives 80 cents of each dollar collected until the Purchase Price is paid;
(c) Adjustment: the price is adjusted at Closing to the extent the business has deteriorated from its May 31 financial position, and in particular if AR and inventory levels have declined from the May 31 benchmark;
(d) Closing: no later than 6 weeks after the CCAA Initial Order is granted;
(e) DIP Financing: the Purchaser will extend up to $3 million in DIP financing to permit the QSG Group to implement the Sale Agreement through a CCAA process, conditional on the Group also being permitted to use the cash in its blocked accounts;
(f) Going Concern Deal: the Purchaser will recapitalize the business post closing and continue it as a going concern;
(g) The Purchaser will negotiate terms with management as to their future participation in the business;
(h) The Purchaser will assume most of the employees;
(i) Contracts with developers would be assumed, and protected by continuing operations to fulfill the contracts and to ensure there is a continuing entity standing behind the warranties that QSG offers with installations;
(j) No liabilities will be assumed, but the Purchaser has the option to assume some of the debts to suppliers to the extent needed to ensure the successful operation of the business going forward; and

---

[31] Pre-Filing Report to the Court of RSM Canada Limited ["**RSM Pre-Filing Report**"] at Exhibit 'E'.
[32] Initial Affidavit at para 54 and Exhibit 'D', Tab 2 of Application Record.

(k) The transaction is conditional on an approval and vesting order being issued.[33]

42. As it was desirable to try to obtain the support of Waygar as the senior lender to QSG, negotiations ensued behind the scenes between Ironbridge, Waygar and QSG both before the LOI was accepted by QSG, and thereafter, to try to refine and improve the terms and tailor them to Waygar outcome objectives in order to gain their support. Since the filing, offers which improve the deal have been made by Ironbridge and counter offers by Waygar as recently the date of swearing this affidavit. This negotiation process is not complete, and QSG believes additional time to see whether a consensus will be reached would greatly benefit the CCAA process. Accordingly a short adjournment of the hearing on similar terms to August 4, 2023 Interim CCAA Order is requested. If Dip Financing is not available from either Ironbridge or Waygar, QSG proposes that the cash to fund critical operations be used in the following order: (i) Cash in the blocked account plus additional collections, and then (ii) return of the August 3 sweep to the extent required to fund interim operations until the next return date.

Issues with Senior Lender

43. Since late April 2023, Waygar has pursued a course of action which has progressively restricted the Group's liquidity, despite the ongoing effort to finalize a deal with the best offer in the SISP process. This course of action was not consistent with the understanding behind the CAAA, which was that the SISP was being used to find the solution, that Waygar would inject $2.5 million to fund that process, and the company could use 100% of its cash flow to operate in the meantime. As those expectations were progressively undermined by Waygar, the Group began to experience business deterioration and loss of contracts, to the detriment of everyone, including Waygar.

Waygar Restrictions on QSG Liquidity since May 2023

44. Waygar's actions have impaired the QSG Group's cash flow and liquidity. Since late April 2023, Waygar has progressively restricted the QSG Group's access to its working capital as follows:

(a) At the end of April, Waygar failed to advance the final $250,000 installment it had committed under the CAAA to fund the SISP process (it only advanced $2.25 million to May 12, 2023 instead of the $2.5 Million it promised);

[33] Initial Affidavit at para 55 and Exhibit 'D', Tab 2 of Application Record.

(b) On June 29, 2023, with no advance notice, Waygar arbitrarily began withholding 15% of all QSG Group account receivables collections held in the Blocked Account, despite Waygar's commitment under the CAAA to allow the QSG Group to use 100% of those receipts to fund operations during the ongoing SISP process. As a result, as of August 2, 2023, there was over $6 million in cash trapped in the Blocked Account that Waygar is preventing the QSG Group from using; and

(c) On July 28, 2023, Waygar ceased permitting the withdrawal of any funds from the receipts account, which paralyzed QSG. [34]

45. On August 3, 2023, the day before the parties were scheduled to be in court, and after submitting its rights to the court by serving its own CCAA Application, Waygar swept over $6 million in cash from QSG's receipts account at its bank, including a large customer prepaid amount; n(a roughly $3 million advance payment by a builder to fund QSG to acquire supplies and services for the builder's project).[35]

C. Liquidation Analysis

46. The QSG Group engaged RSM Canada Limited as its proposed CCAA Monitor, and requested that they prepare a liquidation analysis of the Company to serve as a baseline for comparison with the outcome of the SISP.[36] In a nutshell, the price in the Sale Agreement produced through the SISP is vastly superior to what is obtainable through liquidation. A copy of RSM's liquidation analysis is a confidential appendix in the Monitor's Pre-Filing Report.[37]

D. Waygar's Going Concern Liquidation Approach is not Feasible

47. Waygar's proposed realization process proposes:

(a) handing over management of QSG to an accounting firm without providing evidence of any expertise in the construction business;

(b) collecting accounts receivables from builders while progressively winding down the business. Their cash flow shows a progressively declining payroll over 12 weeks, and dramatically declining payments to installers. This is evident from a comparison set out in

---

[34] Initial Affidavit at paras 67-68, Tab 2 of Application Record.
[35] Initial Affidavit
[36] Initial Affidavit at para 59, Tab 2 of Application Record.
[37] RSM Pre-Filing Report at Exhibit 'E'.

the RSM Pre-Filing Report. This is impractical and will result in set-offs, holdbacks, and contract terminations and migrations; and

(c) attempting to solicit buyers in a compressed timeframe to buy the contracts with the builders, even though many of those contracts are non-assignable.

48. In short, Waygar seeks to attempt an orderly wind down liquidation of the Group with little prospect of any benefit for other stakeholders. Waygar's proposed manner of proceeding in its application cannot meet any of the critical criteria of the builders and is likely to fail both as a receivables collection exercise and as a contract sale exercise.[38]

49. Waygar provided no outline of the potential realization from its plan until filing Fuller's Supplemental Pre Filing Report on August 16, 2023, despite initiating its CCAA Application process in early July. As the Fuller Supplemental report was just served, there has not been sufficient time to conduct an in depth analysis and an adjournment would serve the process to permit that to occur. But in the opinion of management, from an initial review, the assumptions behind the proposed realization process do not to be realistic for the construction industry and have no hope of producing anywhere near the realization offered by the Ironbridge deal..

E. Waygar's further SISP Proposal is Duplicative and Unnecessary

50. The bidders have been canvassed and the market has spoken. Ironbridge as a hybrid financial/strategic buyer is best possible option. Ironbridge knows and has a stake in the industry and has the internal resources to recapitalize the business and keep it running in the interim while the deal gets done, and to capitalize properly post closing.

F. Continuing Involvement of Company Management is Imperative

51. The flowing installation business depends on long-established trusted relationships with builders, suppliers, installers, and unions. An accounting firm will not be able to successfully step into the role of QSG management, which has a long-standing history of relationships with these groups. The logistics of what would be required to hire replacement firms to fulfill contracts is not realistic. Further, QSG does not have a contractual structure with its builders to allow Fuller to enforce

[38] Initial Affidavit at para 60, Tab 2 of Application Record. Supplemental Affidavit

solutions on the builders who do not wish to continue to deal with QSG after management is displaced.[39]

G. The QSG Group's CCAA Application

52. The QSG Group is filing this Application under the *Companies' Creditors Arrangement Act* (the "**Application**") to implement the going concern sale of the company to the successful bidder in the SISP process (the **"Purchaser"**), and the related interim (DIP) financing which will stabilize its interim operations, and to carry out a claims process and the distribution of the resulting proceeds via a plan, or otherwise.[40]

53. The Application is seeking the following at a high-level:

(a) Interim (DIP) Financing

(i) Approval of $3 million in DIP financing, which the Ironbridge has stated in the Sale Agreement it would be willing to provide to finance the CCAA process through to closing of the Sale Agreement. QSG understands a DIP Term Sheet is being finalized by Ironbridge to implement same. A short adjournment with interim access to cash flow as set out above will allow this to be finalized.[41]

Proposed Monitor Cash Flows of the Applicants

(ii) RSM is proposed as the Monitor in the Application (variously herein the **"proposed Monitor**" or the **"Monitor"**). The Monitor has assisted the Group in preparing a consolidated cash flow forecast (the "**Cash Flow Forecast**") which sets out projected cash flows of the Applicants for the period ending 13 weeks from the date of the Initial Order (the "**Cash Flow Period**"), a copy of which is appended to the proposed Monitor's Pre-Filing Report.[42]

(iii) As set out in the Cash Flow Forecast, the Group anticipates that the pending Sale Transaction will be closed within 6 weeks after filing, with its operations funded from its cash on hand, cash inflows backed by a $3 Million DIP. The DIP Loan will then be repaid forthwith after closing from the Closing proceeds. The Group is expected to have greatly reduced cash outflows after closing, which would need to be funded from the funds in the Blocked Account. That would provide sufficient liquidity to operate through the remaining 7 weeks of the Cash Flow Period, during which time the Company proposes to conduct the distribution of proceeds and wind down and completion of the CCAA proceeding. The Cash Flow Forecast

---

[39] Initial Affidavit
[40] Initial Affidavit at para 70, Tab 2 of Application Record.
[41] Initial Affidavit at para 74, Tab 2 of Application Record.
[42] Initial Affidavit at paras 82-86, Tab 2 of Application Record; RSM Pre-Filing Report at Exhibit 'B'.

does not include the Sales Proceeds, and it is not expected that remaining CCAA activities post sale closing would need recourse to those funds.[43]

(b) Administration Charge and D&O Charge

(i) Securing the fees and disbursement of counsel to the Company, the Monitor and its counsel in the amount of $750,000 (the "**Administration Charge**").

(ii) Securing the amount of $600,000 (the "**D&O Charge**") in respect of any amounts for unpaid wages, source deductions, vacation pay, or HST for which any directors of officers of the QSG Companies may become liable.[44] QSG has a D&O insurance policy for $1 million but the order sought ensures there is no duplication of coverage.

(c) SISP Proceeds Charge re Financial Advisor Success Fee

(i) Approving the A&M Agreement to conduct the SISP, and granting a charge to secure the A&M success fee promised to it in its engagement letter approved by Waygar (the "**SISP Proceeds Charge**").[45]

PART III – ISSUES

54. There principal issues facing the Court today are as follows

(a) Choice of Process – ie choosing between the CCAA based realization solutions proposed by QSG and Waygar, that is choosing between

(i) the QSG CCAA process directed at completing a going concern sale to Ironbridge within 6 weeks;

(ii) the Waygar CCAA process directed at a going concern liquidation of the company by collecting accounts receivable and selling off the companies contracts with its builders over the next 13 weeks, bringing a 55 year old business to an end.

(b) Negotiation Runway and Related Interim Funding: If CCAA protection is appropriate, whether to grant an Initial Order today, or to extend the Interim Order for a short period to permit the continuing negotiations between QSG, Ironbridge, and Waygar to try to reach a consensus on the terms of implementing the going concern sale to Ironbridge, and if the latter course is selected, to provide for the funding of interim operations by the Company

[43] Initial Affidavit at paras 83-86 Tab 2 of Application Record.
[44] Initial Affidavit at paras 87-89, Tab 2 of Application Record.
[45] Initial Affidavit at para 90, Tab 2 of Application Record.

(c) CCAA Eligibility and Stakeholder Issues with Initial Order: CCAA eligibility and the criteria for the forms of relief sought in an Initial Order need to be addressed before the Initial Order is made. But if the interim CCAA order made August 4 is rolled over on this hearing on similar terms for another short period to allow negotiations between Ironbridge Waygar and QSG to be complete,, those determinations can wait until that further return date. Similarly stakeholder issues with the Initial Order do not need to be addressed today. Those are for normally for the Comeback hearing 10 days after the Initial Order is granted.

Issue A – Choice of Process

55. A going concern solution for a business is obviously a preferable solution to a liquidation if equal or greater value is obtainable. As QSG has presented a bird which is nearly in hand, its incumbent on Waygar to establish the bird it wants to chase in the bush is more valuable. It has simply not done so. Waygar has not yet adequately addressed the following

(i) why its solution is certain to produce greater value:
(ii) why management's objections to the process are wrong:
(iii) whether it has experience in a construction related insolvency:
(iv) how risks and losses to all the other stakeholders would be mitigated if the process it wants to embark upon fails in the way management predicts.

56. Waygar objects that it's the fulcrum creditor and "its my party and I'll cry if I want to". But is it? Well for one, Waygar has not even tabled an opinion demonstrating its security is valid.

57. But more fundamentally, its not solely Waygar's party. The mere fact that a dominant secured creditor is unalterably opposed to any possible CCAA plan is not always determinative of a CCAA Application. Courts have allowed CCAA Applications despite unalterable opposition. For example, the "doomed to fail" argument was addressed in *Can-Pacific Farms Inc.*[46] There, the Court noted that the argument has been generally discredited by various court decisions and made the following comments:

> The example I gave is that, if the plan foolishly said "we will pay the bank twice as much as it is owed", I am quite confident that even the Bank would vote for such a plan.[47]

58. In short it is not possible for a creditor to say before a CCAA proceeding has been commenced that it will not vote in favour of any plan of compromise or arrangement. That determination cannot be made until such time as a plan is presented to the creditors. It is for this reason that the test for entry into CCAA proceedings, as is outlined in *Industrial Properties Regina Limited v Copper Sands*

---

[46] *Can-Pacific Farms Inc. (Re)*, 2012 BCSC 760 (CanLII)
[47] *Can-Pacific Farms Inc. (Re)*, 2012 BCSC 760 (CanLII), at para 8.

Land Corp.[48] does not fixate simply on whether the applicant's fulcrum creditor anticipates that it will be presented with a favourable proposal. Rather, the test is focused on whether the grant of an initial order is appropriate in the circumstances, which is assessed in large part by determining whether the grant of an initial order will usefully further an insolvent debtor's "efforts towards attempted reorganization."[49]

59. The "doomed to fail" argument was also raised in *Azure Dynamics Corporation*[50] by a creditor who claimed to hold a veto or blocking position with respect to the approval of any plan of compromise or arrangement. The Court dismissed the "doomed to fail" argument and reinforced the point that the interests of all stakeholders must be taken into account:

> There are, needless to say, many other stakeholders who are not before the court such as employees, other unsecured creditors, trade creditors, landlords and the general community that the Azure Group is part of. I conclude that the position of JCI as to how it may vote on any plan of arrangement is clearly not a controlling factor on this application and as such, it cannot be said that the plan is likely to fail for this reason.[51]

60. In *Re Pacific Shores Resort & Spa Ltd.*[52] two secured creditors opposed the initial CCAA application on the grounds that they would not support any plan. Despite their opposition, the CCAA order was granted as the statutory requirements of the CCAA had been met by the applicants. At the comeback hearing, the two secured creditors argued, among other things, that there was no plan that made any sense and they would not vote for any plan that required them to accept less than what they were owed. The Court readily dismissed both of these "doomed to fail" arguments and made the following statements:

(a) It is not a prerequisite that a draft plan be filed at the time of the stay. What is required, is that the debtor have a bona fide intention to do so while having the protections of the stay under the CCAA;[53] and

(b) A recalcitrant creditor should not necessarily prevent the granting of an order under the CCAA.[54]

---

[48] *Industrial Properties Regina Limited v Copper Sands Land Corp.*, 2018 SKCA 36 (CanLII), at paras 18 - 21.
[49] *Industrial Properties Regina Limited v Copper Sands Land Corp.*, 2018 SKCA 36 (CanLII), at para 21.
[50] *Azure Dynamics Corporation (Re)*, 2012 BCSC 781 (CanLII)
[51] *Azure Dynamics Corporation (Re)*, 2012 BCSC 781 (CanLII), at para 12.
[52] *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 (CanLII)
[53] *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 (CanLII), at para 37, quoting *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 (CanLII), at para 31.
[54] *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 (CanLII), at para 41, quoting *Hunters Trailer & Marine Ltd.* (Re), 2000 ABQB 952 (CanLII), at para 19.

61. Although Waygar may be the largest creditor in these proceedings, there are other creditors whose interests must be taken into account. There are builders and their end customers, suppliers, installers and employees amongst others, who would suffer serious losses if the QSG group is not given the opportunity to restructure as a going concern.

62. Similarly Waygar says that a sale cannot be approved over the objections of the fulcrum creditor. But that is not the law. The objections of a secured creditor who wanted to block a sale on the hope that it might do better were dismissed in *Re Port Capital Development (EV) Inc.*. In that case, the secured creditor did not support the sale unless it resulted in full repayment to it. But the court held that there was no evidence to suggest the availability of any sale transaction that would achieve that result.[55] The court held that the appointment of a receiver was of little utility and granted approval of the sale offer.[56]

> *Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1464 https://www.canlii.org/en/bc/bcsc/doc/2022/2022bcsc1464/2022bcsc1464.html?searchUrlHash=AAAAAQAjImZ1bGNydW0gY3JlZGl0b3IiIGNvbXBhbnkgY3JlZGl0b3IAAAAAAQ&resultIndex=5
>
> "[37] First, there is no reasonable prospect that fault could be found in Dunphy J.'s conclusion that, in seeking the highest and best price reasonably available, the Receiver was considering the shared interest of all of the parties. World Finance's argument that, as a fulcrum creditor, it had unique interests in the marketing strategy and list price that were not considered has no traction. Marketing strategy and list price are means to an end, namely, achieving the highest and best price reasonably available, the very thing that Dunphy J. considered.**"**

63. Similarly, in *B&M Handelman Investments Limited v. Drotos*, the court held that World Finance's argument that, as a fulcrum creditor, it had unique interests in the marketing strategy and list price that were not considered had no traction.[57] Although *B&M Handelman Investments Limited* was an application pursuant to the BIA, the principles therein are analogous to the matter at hand.

> **B&M Handelman Investments Limited v. Drotos, 2018 ONCA 581 (CanLII)** https://www.canlii.org/en/on/onca/doc/2018/2018onca581/2018onca581.html?searchUrlHash=AAAAAQAjImZ1bGNydW0gY3JlZGl0b3IiIGNvbXBhbnkgY3JlZGl0b3IAAAAAAQ&resultIndex=9
>
> "[49] In addition, the Petitioners' counsel advised the Court that 129's counsel has asked her to report to the Court that 129 did not support any sale unless it resulted in full repayment to it. There

---

[55] *Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1464 (CanLII), at para 49;
[56] *Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1464 (CanLII), at para 51.
[57] *B&M Handelman Investments Limited v. Drotos*, 2018 ONCA 581 (CanLII), at para 37.

> is no evidence before the Court to suggest the availability of any sale transaction that would achieve that result.
>
> [50] As a result of all of the above, by July 22, 2022, three potential paths had emerged: (1) appoint the receiver in the Receivership Proceeding who would then embark upon a sales process; (2) hear and consider Aviva's application for the SISP in this proceeding that, if approved, would result in further sale efforts; or (3) approve the Solterra Offer.
>
> [51] In my view, the appointment of a receiver is of little utility here. The Solterra Offer is sufficient to repay Domain. In that event, there is no need to turn to an entirely different process with a different professional to run that process, with the attendant delay and costs, all toward the same goal of achieving a sale of the Development. Domain supports the Solterra Offer. The Petitioners do not oppose a receivership, although that position appears to be driven by their simple wish to further delay any sale so that Mr. Reyes' can keep his hopes of a refinancing alive."

Issue B - Negotiation Runway and Interim Finance During that Process

Additional Negotiation Runway Would benefit the Process

64. As set out in the supplemental A&M report, there is not only a signed LOI with Ironbridge, but negotiations have been ongoing to adjust that to try to reach a consensus solution Waygar will support. Those negotiations are not over. As the upside of success is very significant to QSG and its stakeholders, it seems to make sense to allow a little more time for those negotiations to proceed. That can be achieved either by extending the current Interim CCAA Order or by granting an Initial CCAA Order, since neither prejudges whether the sale will be approved and hence allows further discussions to continue.

Interim Finance during a Short Adjournment

65. As long as the company is funded at a level that stops further contract loss, negotiation runway can be created. Such funding can be provided on an interim basis until the Ironbridge DIP Loan is approved, by

(i) Continuing the critical payments funding system in the August 4 Order
(ii) directing Waygar to permit the full use of QSG's operating cash flow.
(iii) It can also be enhanced by directing Waygar to return the cash sweep to the Receipts account to the extent it is needed to fund critical payments.

In order to preserve going concern value, critical payments should be interpreted to mean funding necessary to prevent contract loss during the interim period..

66. The courts power to grant this relief flows from s 11 of the CCAA (the CCAA Court's general Power) and the s 18.6 (the duty of a CCAA Applicant to act in good faith.

67. Waygar can also put this money in under the DIP Loan facility stablished in the August 4 Order, by raising the financing limit beyond $1.5 Million to the level required to support QSG's cash flow.

Why Waygar should be directed to cooperate in this interim funding system

68. From Feb through June, the status quo provided by the CAAA was that 100% of the Receipts were to be utilizable by QSG despite the Blocked Account Agreement, in order to facilitate the SISP and the conclusion of a transaction. There was no good faith reason for changing that policy. Doing so damaged the value of the company by triggering an accelerated loss of contracts in July and August. Waygar pulled $ 6 million in liquidity out of the Group at a time when QSG was trying to conclude a deal, further to a process which Waygar has asked it to conduct expressly for the purpose of finding the best available deal.

69. Allowing the company to use its cash flow going forward notwithstanding a blocked account agreement is reasonable. The fundamental logic of CCAA proceedings is that interim cash flow can be used to operate a company which files for CCAA protection. The particular structure of the operating lender's account management structure should not override that practical necessity, as its necessary for all stakeholders that a company has access to its own cash flow during a restructuring.

70. Waygar has a duty to act in good faith as a CCAA Applicant under s 18.6 of the CCAA and generally at law. The $ 6 million which Waygar swept on August 3 was accumulated by artificially restricting the company's access to its cash flow from June 29 onwards, in a way that intentionally underfunded the company while it was trying to conclude a going concern sale. Undermining the sale process which Waygar caused the company conduct to resolve its situation is not in good faith.

71. Similarly, asking the court for CCAA relief and then sabotaging the Company's competing CCAA filing by zeroing the company's working capital the day before the competing applications are in court, does not meet the standard of good faith either .

72. In 2019, the CCAA (s.18.6.1) was amended to mandate that "any interested person" in a CCAA proceeding shall act in good faith "with respect to the proceeding." If the court determines that such interested person has failed to do so, the court may make any order it thinks fit.

73. Whether or not the good faith standard was met under the CCA or generally, section 11 of the CCAA gives the court broad powers to design orders and remedies to facilitate restructuring. The *CCAA* is heralded for its broad discretion, which allows a supervising

judge to "make a variety of orders that respond to the circumstances" unique to each insolvent corporation.[58]

> Québec inc. v. Callidus Capital Corp. (SCC, 2020)
>
> [49] The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*, which we have explained above (see *Century Services*, at para. 59). Additionally, the court must keep in mind three "baseline considerations" (at para. 70), which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence (para. 69).
>
> [50] The first two considerations of appropriateness and good faith are widely understood in the *CCAA* context. Appropriateness "is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*" (para. 70). Further, the well-established requirement that parties must act in good faith in insolvency proceedings has recently been made express in s. 18.6 of the *CCAA*, which provides:
>
> Good faith
>
> **18.6 (1)** Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.
>
> Good faith — powers of court

---

[58] *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 48 [*Callidus*]
Canada v Canada North Group Inc, 2021 SCC 30 at para 138 [*Canada North*].
This discretion has been described as "the engine" driving the *CCAA*,[6] and it is accepted that *CCAA* courts may "sanction measures for which there is no explicit authority in the *CCAA*".[7] As a result, the *CCAA* provides a clear path should unique relief be required to implement a particular restructuring.

9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10 at para 48, citing *Re Stelco Inc* (2005), 2005 CanLII 8671 (ON CA), 253 DLR (4th) 109 at para 36, 2005 CarswellOnt 1188 (CA) [*Stelco*];
Canada v Canada North Group Inc, 2021 SCC 30 at para 138
Century Services Inc v Canada (Attorney General), 2010 SCC 60 at para 61.
The *CCAA* has been praised as a highly flexible statutory scheme. The skeletal structure and "broad-brush" provisions of the *CCAA* leave wide avenues of discretion for the supervising judge, allowing the statute to adapt and evolve to meet contemporary business and social needs

Clear Creek Contracting Ltd v Skeena Cellulose Inc, 2003 BCCA 344 at para 3 [*Skeena Cellulose*];
Century Services Inc v Canada (Attorney General), 2010 SCC 60 at para 58.
This judicial discretion has been described by the SCC as the most important feature of the *CCAA* and one that has led to the Canadian insolvency restructuring regime being "one of the most sophisticated systems in the developed world".

Century Services Inc v Canada (Attorney General), 2010 SCC 60 at para 21
As corporate insolvencies have become increasingly complex, courts have had to utilize section 11 of the *CCAA* to craft innovative solutions, for which there may be no express authority, to meet the policy objectives underlying the insolvency statute.

Century Services Inc v Canada (Attorney General), 2010 SCC 60 at para 61 [*Century Services*].

> **(2)** If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

See also *Re 9282-8797 Québec inc.*, 2020 QCCS 499 (CanLII)

74. The decision in Canada v. Canada North Group Inc., 2021 SCC 30 (CanLII) is of particular relevance. It notes the following:

> [20] The view underlying the entire *CCAA* regime is thus that debtor companies retain more value as going concerns than in liquidation scenarios (*Century Services*, at para. 18). The survival of a going-concern business is ordinarily the result with the greatest net benefit. It often enables creditors to maximize returns while simultaneously benefiting shareholders, employees, and other firms that do business with the debtor company (para. 60). Thus, this Court recently held that the *CCAA* embraces "the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress . . . and enhancement of the credit system generally" (*9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, at para. 42, quoting J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2nd ed. 2013), at p. 14
>
> [21] The most important feature of the *CCAA* — and the feature that enables it to be adapted so readily to each reorganization — is the broad discretionary power it vests in the supervising court (*Callidus Capital*, at paras. 47-48). Section 11 of the *CCAA* confers jurisdiction on the supervising court to "make any order that it considers appropriate in the circumstances". This power is vast. As the Chief Justice and Moldaver J. recently observed in their joint reasons, "On the plain wording of the provision, the jurisdiction granted by s. 11 is constrained only by restrictions set out in the *CCAA* itself, and the requirement that the order made be 'appropriate in the circumstances'" (*Callidus Capital*, at para. 67). Keeping in mind the centrality of judicial discretion in the *CCAA* regime, our jurisprudence has developed baseline requirements of appropriateness, good faith and due diligence in order to exercise this power. The supervising judge must be satisfied that the order is appropriate and that the applicant has acted in good faith and with due diligence (*Century Services*, at para. 69). The judge must also be satisfied as to appropriateness, which is assessed by considering whether the order would advance the policy and remedial objectives of the *CCAA* (para. 70). For instance, given that the purpose of the *CCAA* is to facilitate the survival of going concerns, when crafting an initial order, "[a] court must first of all provide the conditions under which the debtor can attempt to reorganize" (para. 60).
>
> [22] On review of a supervising judge's order, an appellate court should be cognizant that supervising judges have been given this broad discretion in order to fulfill their difficult role of continuously balancing conflicting and changing interests. Appellate courts should also recognize that orders are generally temporary or interim in nature and that the restructuring process is constantly evolving. These considerations require not only that supervising judges be endowed with a broad discretion, but that appellate courts exercise particular caution before interfering with orders made in accordance with that discretion (*Pacific National Lease Holding Corp., Re* (1992), 1992 CanLII 427 (BC CA), 72 B.C.L.R. (2d) 368 (C.A.), at paras. 30-31)."

75. In short the authority exists to make an order providing for the interim cash flow funding system that the company requests, and to direct Wayagr to facilitate it, both under s 11 and

18.6 of the CCAA and if necessary under the power to grant mandatory injunction pursuant to 101 of the Courts of Justice Act.

Issue C: CCAA Eligibility, Initial Order Issues, and Supplier Comeback Issues

76. As noted CCAA Eligibility and the appropriateness of relief sought as an Initial CCAA Order are issues that do not have to be addressed today if the Interim CCAA Order of August 4 is to be continued. Similarly Stakeholder issues can be deferred to the Comeback hearing and do not need to be addressed today.

77. But if an initial order is to be made today, the QSG Group has established a proper factual basis for the relief sought in this CCAA application**:**

(a) The QSG Group meets the criteria for protection under the CCAA and:
  (i) This Court has jurisdiction over the QSG Group;
  (ii) The QSG Group is insolvent;
  (iii) The QSG Group, as a debtor, can be granted CCAA protection when the senior lender is unalterably opposed;
(b) The relief being sought is reasonably necessary;
(c) The stay of proceedings should be granted;
(d) The QSG Group should be authorized to file a plan of compromise or arrangement with its creditors;
(e) The QSG Group should be permitted to continue to use the Cash Management System as requested;
(f) The QSG Group should be authorized to proceed with the Sale Transaction;
(g) RSM Canada Limited should be appointed as Monitor;
(h) The activities of the Monitor as described in its Pre-Filing Report should be approved;
(i) The DIP Agreement should be approved and the DIP Charge in favour of the Interim Lender should be granted;
(j) The Administration Charge should be granted;
(k) The SISP Proceeds Charge should be granted;
(l) The Directors' Charge should be granted; and
(m) The confidential appendices to the Pre-Filing Report should be sealed.

Each of these is reviewed below.

A. The Applicants meet the criteria for protection under the CCAA

i. The Applicants are either a "debtor group" or "affiliated debtor group" to which the CCAA applies

78. The CCAA applies to a “debtor company" or “affiliated debtor Group" where the total of claims against the debtor or its affiliates exceeds $5 million. The CCAA defines a “debtor company" as any company that is insolvent or bankrupt.[59] The CCAA defines “company” as:

> Any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated (...).[60]

The QSG Group, as Group incorporated by or under an Act of Parliament or of the legislature of a province, meet the CCAA definition of “company” and are therefore eligible for CCAA protection in this respect.[61]

ii. This Court has jurisdiction over the Applicants

79. Pursuant to subsection 9(1) of the CCAA, an application under the CCAA may be made to the court that has jurisdiction in the province where the debtor company has its “head office or chief place of business.”[62] The QSG Group’s chief place of business is in Ontario, and their registered head office is located in Vaughan, Ontario. Additionally, two of the operating entities of the QSG Group have their principal place of business located in Vaughan, Ontario and Ottawa, Ontario.[63]Accordingly, the Ontario court is the appropriate venue for these CCAA proceedings.

iii. The Applicants are insolvent

80. As set out above, the QSG Group is entitled to CCAA protection if they are, a “debtor company” which means, *inter alia*, a company that is insolvent.[64] The definition of "insolvent person" under section 2(1) of the BIA is the governing definition in applications under the CCAA. The BIA defines "insolvent person" as follows:

> ... "insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability to creditors provable as claims under this Act amount to one thousand dollars, and
>
> (a) who is for any reason unable to meet his obligations as they generally become due,

---

[59] *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (“CCAA”), s. 2(1) and s. 3(1).
[60] CCAA, s. 2(1).
[61] Initial Affidavit at para 70, Tab 2 of Application Record.
[62] CCAA, s. 9(1).
[63] Initial Affidavit at para 4, Tab 2 of Application Record.
[64] CCAA, s. 2(1) and s. 3(1).

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.[65]

81. A company satisfying either of the three parts of the above test is considered insolvent for the purposes of the CCAA.[66] In *Stelco*, Justice Farley expanded the definition of insolvent to reflect the "rescue" emphasis of the CCAA, adapting the definition to include a financially troubled corporation that is "reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring".[67]

82. The QSG Group insolvent it is unable or are expected to soon become unable to meet their obligations generally as they become due[68] without the Sale Transaction and additional financing provided by the DIP Loan[69]

83. Based on the foregoing, the QSG Group are debtor Group to which the CCAA applies and are eligible for protection under the CCAA.

B. The relief sought is reasonably necessary

84. Pursuant to s. 11.001 of the CCAA, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period. The purpose of s. 11.001 is to "limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players."[70]

85. The QSG Group has worked with its advisors and the Proposed Monitor to limit the relief sought on this initial application to only the relief that is reasonably necessary in the circumstances for the continued operation of its businesses and to protect the option of completing a going concern sale - which management believes is by far the best value maximization solution. In each case, the QSG Group considered whether the requested relief is necessary for the immediate stabilization of their

---

[65] *Stelco Inc., Re*, 2004 CanLII 24933 (ON SC), at para 22.
[66] *Stelco Inc., Re*, 2004 CanLII 24933 (ON SC), at para 28.
[67] *Stelco Inc., Re*, 2004 CanLII 24933 (ON SC), at paras 25-26.
[68] Initial Affidavit
[69] Initial Affidavit
[70] CCAA, s. 11.001, 11.02(1) and (3); *Lydian International Limited (Re)*, 2019 ONSC 7473, at paras 22-26.

businesses to protect them and the interests of its various stakeholders. In cases where immediate relief is necessary, the QSG Group has attempted to limit any authorizations from the Court to what is required within the proposed initial stay period and will only seek additional authorization on the Comeback Hearing.[71]

C. The stay of proceedings should be granted

86. Pursuant to section 11.02(1) of the CCAA, a Court may stay all proceedings for a period of not more than ten days if the Court satisfied that such an order is appropriate.[72] In exercising this discretion, the Court must be informed by the purpose behind the CCAA and should interpret it broadly and liberally.[73]

87. The purpose of the CCAA is to maintain the status quo for the debtor company for a period while it consults with its stakeholders with a view to continuing operations for the benefit of both the debtor company and its creditors and stakeholders. The Supreme Court of Canada has held that when exercising judicial discretion under the CCAA, the court must be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, and even other parties doing business with the insolvent company.[74]

88. The stay will allow for the stabilization of operations, the opportunity to enhance cash flow through Dip financing, and the orderly implementation of the Sale Transaction in a coordinated and court-supervised manner to the benefit of its creditors, employees and customers.[75]

D. The QSG Group should be authorized to file a plan of compromise or arrangement with its creditors

89. Despite the setbacks in their business, the QSG group wishes to continue their operations within the CCAA for the purpose of developing and presenting a plan to their creditors. Courts have held that this is consistent with the fundamental purpose of the CCAA.[76]

---

[71] Initial Affidavit
[72] CCAA, s. 11.02(1).
[73] *Stelco Inc., Re*, 2004 CanLII 24933 (ON SC),at paras 23-26; *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC), at para 47; *Sino-Forest Corporation (Re)*, 2012 ONSC 2063, at para 40.
[74] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 (CanLII), [2010] 3 SCR 379, at para 60; *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC), at para 47.
[75] Initial Affidavit
[76] *CCAA and Sharp-Rite Technologies*, 2000 BCSC 122 (CanLII), 2000 BCSC 122 at para 23; *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 (CanLII), at paras 27-29; *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 (CanLII), at para 53.

90. A viable plan of compromise can be made by the QSG Group, and one of the benefits could be to allow creditors distributions to proceed with less complexity and cost. Other potential distribution options may be possible as well, depending on stakeholder positions as they evolve.[77]

E. QSG Group should be permitted to continue to use the Cash Management System as requested

91. In 2019, the CCAA was amended to mandate that "any interested person" in a CCAA proceeding shall act in good faith "with respect to the proceeding."[78] If the court determines that such interested person has failed to do so, the court may make any order it thinks fit.

92. The good faith requirement relates to conduct within the proceedings, not that relating to past activities.[79]

93. Given that the amendment is a recent one, caselaw in the creditor context is scarce. However, as demonstrated in analogous cases, there is a fine line between acting in one's own interests and undermining the proceedings. The courts will sanction behaviour that, in the name of personal interest, completely disregards the interest of other stakeholders.[80]

94. From February through June, the status quo provided by the CAAA was that 100% of the Receipts should be utilizable, despite the Blocked Account Agreement, in order to facilitate the SISP and the conclusion of a transaction. There was no good faith reason for changing that policy. Doing so damaged the value of the Company by triggering an accelerated loss of contracts in July and August. Waygar pulled $6 million in liquidity out of the Group at a time when it was trying to conclude a deal which Waygar has asked it to seek. Waygar has already received a $6 million paydown from this.[81]

95. Allowing the Company to use its cash flow going forward is a fair balance. The fundamental logic of CCAA proceedings is that interim cash flow can be used to operate a company which files for CCAA protection. The particular structure of the operating lender's account management structure should not override that practical necessity, as its necessary for all stakeholders that a company has access to its own cash flow during a restructuring.

---

[77] Initial Affidavit
[78] CCAA, s.18.6.1; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 (CanLII), [2020] 1 SCR 521, at paras 49-50.
[79] *Muscletech Research and Development Inc.*, Re, 2006 CanLII 3282 (ON SC), at para 4.
[80] *Re 9282-8797 Québec inc.*, 2020 QCCS 499 (CanLII), at paras 131 and 159.
[81] Initial Affidavit

F. The QSG Group should be authorized to proceed with the Sale Transaction

96. The court has authority to approve the Sale Transaction pursuant to section 36 of the CCAA.[82] However this issue is for another day. The sale will be presented for consideration and approval once definitive documentation is completed. However the court should authrorize the CCAA filing so that the Sale Transaction can be finalized and brought forward t the court for consideration. Waygar can make it objections at that tme.

G. RSM Canada Limited should be appointed as Monitor

97. Pursuant to subsection 11.7(1) of the CCAA, the Court is required to appoint a monitor of the debtor company's business and financial affairs.[83] RSM is a highly qualified firm with extensive experience as a court officer in insolvency, including CCAA proceedings. As they have been involved in assisting the company to prepare for this filing for some time, they have gained valuable knowledge of the business that will facilitate the role and developed a good working relationship with management, which will be important to the success of this process. As well, they have experience in construction-related insolvency matters which is important in the present context. QSG also has experience working with Fuller for several months. Fuller does not share management's view of what is necessary to protect the receivables and the business as a going concern, and that would make for an unproductive relationship.[84]

98. Accordingly, RSM should be appointed as Monitor in the CCAA proceedings.

H. The activities of the Monitor as described in its Pre-Filing Report should be approved

99. Pursuant to sections 11, 11.8 and 23(1)(k) of the CCAA[85], the Court has the discretion to expand the role of the Monitor, which includes authorizing its pre-filing activities directed towards facilitating the ability of the company to file.

100. The activities of RSM are now standard activities of a proposed monitor in a pre-filing situation and there is no suggestion that this role has not been performed professionally.

I. DIP Financing

---

[82] CCAA, s. 36(1).
[83] CCAA, s. 11.7(1)
[84] Initial Affidavit
[85] CCAA, s. 11, s. 11.8, s. 23(1)(k)

101. Approval of Dip Financing will be sought once a Dip Term Sheet is tabled. In the meantime, approval I sought of the system for interim funding from cash flow as outlined above.

J. The Administration Charge Should be Granted

102. The QSG Group requests that this Court grant a super-priority Administration Charge on the Property in favour of the Proposed Monitor, counsel to the Proposed Monitor, and counsel to the QSG Group in the amount of $750,000.

103. This Court has the jurisdiction to grant the Administration Charge pursuant to section 11.52 of the CCAA.[86]

104. In *Canwest Publishing*, Justice Pepall identified six non-exhaustive factors that the Court may consider when determining whether to grant an administration charge:

(a) the size and complexity of the business being restructured;
(b) the proposed role of the beneficiaries of the charge;
(c) whether there is an unwarranted duplication of roles;
(d) whether the quantum of the proposed charge appears to be fair and reasonable;
(e) the position of the secured creditors likely to be affected by the charge; and
(f) the position of the monitor.[87]

105. The Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:

(a) the QSG Group is one of largest companies of its kind across the nation;
(b) the beneficiaries of the Administration Charge will provide essential legal and financial advice throughout these CCAA proceedings;
(c) there is no anticipated unwarranted duplication of roles;
(d) the QSG Group's advisors have engaged in a significant amount of work on a pre-filing basis in exploring strategic alternatives, conducting the Pre-Filing Strategic Process, and obtaining the DIP Agreement for the benefit of the QSG Group's stakeholders; and
(e) the Proposed Monitor is of the opinion that the proposed quantum of the Administration Charge is reasonable.[88]
(f)

K. The SISP proceeds charge should be granted and A&M's Agreement approved

106. The QSG Group seeks an order granting a charge to secure the A&M success fee promised to it in its engagement letter approved by Waygar (the **"SISP Proceeds Charge"**), which charge shall be limited to the cash proceeds resulting from the transaction with the Purchaser and not to other assets

---

[86] CCAA, s. 11.52.
[87] *Canwest Publishing Inc.*, 2010 ONSC 222 (CanLII), at para 54.
[88] Initial Affidavit

of the QSG Group. The success fee is only payable from the transaction proceeds if there is a successful closing of the sale transaction (or an alternative transaction if captured by the terms of the engagement letter).

107. Waygar introduced A&M and approved their agreement with the QSG Group to conduct the SISP, which is why it is annexed to the CAAA. A&M found a buyer as the agreement contemplates and its success fee was specified in the agreement. The amount of the fee is consistent with market practice in financial advisory work in M&A and distressed transactions.[89]

108. The SISP Charge is to be subordinate to the Administration Charge and the DIP Charge, which provides protection for the fee without affecting the administration and funding of the CCAA process.

109. The agreement engaging A&M which created the success fee was extensively negotiated with Waygar's involvement and has customary terms for an engagement of this nature and should be approved.

L. The Directors' Charge Should be Granted

110. The QSG Group requests that this Court grant a priority Directors' Charge in the amount of $600,000 over its property in respect of any amounts in respect of unpaid wages source deductions vacation pay or HST for which any directors of officers of the QSG Group may become liable. The Directors' Charge is to be subordinate to the Administration Charge, the DIP Charge, and the SISP Charge.

111. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[90]

112. In *Jaguar Mining Inc., Re*, Justice Morawetz (as he then was) held that the Court must be satisfied of the following factors in order to grant a Directors' Charge:

(a) notice has been given to the secured creditors likely to be affected by the charge;
(b) the amount is appropriate;
(c) the applicant could not obtain adequate indemnification insurance for the directors at a reasonable cost; and

---

[89] Initial Affidavit
[90] CCAA, s. 11.51(1).

(d) the charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or wilful misconduct.[91]

113. With respect to the QSG Group, the Directors' Charge is reasonable in the circumstances because:

(a) the QSG Group will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate an effective restructuring;
(b) The QSG Group cannot be certain whether the existing insurance will be applicable or respond to any claims made, and the QSG Group do not have sufficient funds available to satisfy any given indemnity should its directors and officers need to call upon such indemnities;
(c) the Directors' Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct;
(d) absent approval by this Court of the Directors' Charge in the amounts set out above, some or all of the QSG Group's directors and officers may have to resign; and
(e) the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.[92]

M. The Confidential Appendices to the Pre-Filing Report Should Be Sealed

114. Pursuant to section 137(2) of the Court of Justice Act, the Court has authority to make sealing orders.[93] The Supreme Court of Canada in *Sherman Estate v Donavan*[94] set out the test for a sealing order in a commercial context as follows:

(a) Court openness poses a serious risk to an important public interest;
(b) The order is necessary to prevent serious risk to the identified interest because reasonably alternative measures will not prevent the risk; and
(c) The benefits of the order outweigh its negative effects.[95]

115. The QSG Group seeks to seal the Supplemental Affidavit of John Pacione sworn August 17, 2023, and the confidential appendices to the Pre-Filing Reports pending court approval of a sale transaction, or further or alternative Order of the Court**,** in order to protect the going concern operations of the Group and in order to protect the integrity of the potential sale and the sale process.

PART VI – ORDER SOUGHT

---

[91] *Jaguar Mining Inc. (Re)*, 2014 ONSC 494 (CanLII), at para 45.
[92] Initial Affidavit
[93] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137(2).
[94] *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII)
[95] *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), at para 38.

116. For all of the foregoing reasons, the QSG Group requests an Order substantially in the form of the draft Initial Order in its Application Record subject to such amendments as may be further submitted to the court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of August, 2023.

CBesant

Chris Besant
Lawyer to the Applicants

Schedule "A" – List of Authorities

1. *Stelco Inc., Re*, 2004 CanLII 24933 (ON SC)
2. *Lydian International Limited (Re)*, 2019 ONSC 7473
3. *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC)
4. *CCAA and Sharp-Rite Technologies*, 2000 BCSC 122 (CanLII), 2000 BCSC 122
5. *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 (CanLII)
6. *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 (CanLII)
7. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 (CanLII), [2020] 1 SCR 521
8. *Muscletech Research and Development Inc.*, Re, 2006 CanLII 3282 (ON SC)
9. *Re 9282-8797 Québec inc.*, 2020 QCCS 499 (CanLII)
10. *Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1464 (CanLII)
11. *B&M Handelman Investments Limited v. Drotos*, 2018 ONCA 581 (CanLII)
12. *Hunters Trailer & Marine Ltd.* (Re), 2000 ABQB 952 (CanLII)
13. *Can-Pacific Farms Inc. (Re)*, 2012 BCSC 760 (CanLII)
14. *Sino-Forest Corporation (Re)*, 2012 ONSC 2063
15. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 (CanLII), [2010] 3 SCR 379
16. *Industrial Properties Regina Limited v Copper Sands Land Corp.*, 2018 SKCA 36 (CanLII)
17. *Azure Dynamics Corporation (Re)*, 2012 BCSC 781 (CanLII)
18. *Canwest Publishing Inc.*, 2010 ONSC 222 (CanLII)
19. *Jaguar Mining Inc. (Re)*, 2014 ONSC 494 (CanLII)
20. *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII)

Schedule "B" – Text of Statutes

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

Jurisdiction of Courts

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

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.

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.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

No personal liability in respect of matters before appointment

11.8 (1) Despite anything in federal or provincial law, if a monitor, in that position, carries on the business of a debtor company or continues the employment of a debtor company's employees, the monitor is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the company or a predecessor of the company or in respect of a pension plan for the benefit of those employees; and

(b) that exists before the monitor is appointed or that is calculated by reference to a period before the appointment.

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.

Good faith — powers of court

(2) If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

1997, c. 12, s. 125; 2005, c. 47, s. 131; 2019, c. 29, s. 140

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.

Courts Of Justice Act, R.S.O. 1990, C. C.43

Interlocutory Orders

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

Public Access

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE APPLICANT

GARDINER ROBERTS LLP
Lawyers
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3600
Toronto ON M5H 4E3

Chris Besant (24882O)

Tel: (416) 865-6600
Fax: (416) 865-6636

Lawyers for the Applicant

RCP-E 4C (May 1, 2016)