

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-064451-244

DATE: SEPTEMBER 20, 2024

BY THE HONOURABLE CHRISTIAN IMMER, J.S.C.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC
1985, C C-36 OF:**

**MEDXL INC.
LIEBEL-FLARSHEIM CANADA INC.
9431-0091 QUÉBEC INC.
9190-2395 QUÉBEC INC.**
Debtors/Applicants

-and-

FTI CONSULTING CANADA INC.
Monitor

REASONS FOR ISSUING THE
SECOND AMENDED AND RESTATED INITIAL ORDER

[1] Since an Initial First Day Order (**IFO**) was issued on July 26, 2024 pursuant to the *Companies' Creditors Arrangement Act (CCAA)*,¹ all proceedings taken or that might be taken in respect of the Debtors have been stayed.

¹ R.S.C. (1985), c. C-36.

[2] On August 6, 2024, the Court issued an *Amended and Restated Initial Order (ARIO)* authorizing, amongst other conclusions, the Debtors to enter into an interim lending facility and declaring that the Debtors assets are the subject of an Administration, an Interim Lender and a Director's charge. It also issued an *Order Approving a Sale and Investment Solicitation Process (SISP Order)*². It provided reasons for doing so on August 7th, 2024³.

[3] On September 18, 2024, the Debtors notified an application seeking the extension of the stay of proceedings to October 25th 2024, and asking the Court to issue a Second Amended and Restated Initial Order (**SARIO**). More particularly, the following amendments were sought to the ARIO: (i) modify certain conditions of the 4 million \$ Interim Facility authorized by the ARIO, (ii) authorize the Debtors to enter into a \$1,8 million Supplemental Interim Facility and (iii) to create a \$2,160,000 Supplemental Interim Lender Charge in favour of the Supplemental Interim Lender as security for all the Debtors' obligations under the Supplemental Interim Facility.

[4] They presented this Application before the undersigned on September 19th. At that time, one full juridical day had not elapsed since the Application was notified to the Distribution List.⁴ Nevertheless, the Monitor, the Secured Lenders and the Interim Lenders as well as certain other creditors were present at the hearing via their counsel. They either explicitly supported the Application or did not raise any contestation.

[5] Given the insufficient service delay of the Application, the Court rendered an order indicating that any interested party could advise the Debtors if they wished to contest the issuance of the SARIO. To do so, such interested party had to transmit, by 13:00 on September 20, 2024, a written statement setting out the issues it wished to raise and the conclusions it would seek. The Court extended the stay to September 23, 2024.

[6] It then set out to hear the Monitor's representative's testimony who summarized and explained certain elements of his Third Monitor's Report.

[7] Ultimately, no person manifested itself by September 20, 2024, at 13:00.

[8] The Court having read the Third Monitor's Report and heard the testimony of the Monitor's representative, Martin Franco, and the representations of the various attorneys, issued the requested SARIO.

[9] These are the Court's reasons for doing so.

[10] The context has already been provided by the Court in its reasons of August 7, 2024.

² *Arrangement relatif à MedXL Inc.*, 2024 QCCS 2945.

³ *Arrangement relatif à MedXL Inc.*, 2024 QCCS 2946.

⁴ Exhibit R-4. Appendix A thereto which comprises the details of the non-binding offers of Stage 1 of the SISP process was put under seal and filed as exhibit R-4.

[11] As the Court had explained, MedXL and LFC, together, run six production lines. On August 7th, Line 3 had been restarted allowing for new production and sales and the recall of 31 employees. Line 2 was also in the process of being restarted which would result in further recalls of employees. Since then, four lines are now running, resulting in the recall of a total of close to 100 employees. These employees were paid back pay, excluding vacation pay for the two first weeks of July. The fifth line is now being put into operation and this will lead to further increase in production. The employees who are being recalled to run line 5, will also be able to run line 6 for demonstration purposes for prospective buyers or investors.

[12] Hence, unequivocally, to date, the stay has benefited employees, clients, and suppliers.

[13] In parallel, the Monitor has been running the SISP process which was authorized by this Court on August 6, 2024⁵. As explained in the Court's August 7th reasons, steps 3 and 4 of the Phase 1 leading to the filing of non-binding LOIs allowed Vaxiron to make an offer by August 12, 2024. As a result of the approved R-17 interim financing term sheet, Vaxiron provided up to \$2 million of interim financing up until September 29, 2024.

[14] Vaxiron chose not to make an offer. Phase 1 has now run its course. It elicited a number of satisfactory bids. Phase 2 will now be rolled out. This should lead, by the October 10, 2024 deadline, to definitive offers by qualified bidders and, barring unforeseen consequences, a closing by November 7th, 2024.

[15] This evidences that circumstances exist that make an extension of the stay appropriate. The Debtors continue to be in good faith and are acting with diligence. Hence, the Court has indeed extended the stay to October 25, 2024.

[16] Vaxiron, even though it has a waning interest to do so, will extend its financing up to November 8th, 2024 to allow for closing to occur. Although the Phase 1 process appears promising, the cashflow projections demonstrates a net cash variation of close to \$3,7 million for the period extending from September 16 to October 27, 2024.

[17] This is, in no significant proportion, due to the professional fees which have and will be incurred. To date, close to \$1,5 million has been paid or will be paid. It is projected that a further \$1,7 million will be disbursed. The Court has already made its concern known at the number of professionals, both legal and financial, who are being paid by the Debtors and the financial pressure this exercises on them. In turn, these payments and the ensuing interim financing which will now be guaranteed by two charges, will inevitably have an effect on any possible distribution to unsecured creditors.

⁵ *Arrangement relatif à MedXL Inc.*, 2024 QCCS 2947.

[18] The Court relies on the Monitor to continue evaluating the reasonableness and added value of these services and to provide the Court with its opinion in upcoming reports.

[19] That having been said, and despite the existing cash on hand, additional interim financing is required. The interim lender Briva Finance (Équité) S.E.C. (**Briva**) is willing, subject to certain conditions being met, to provide a supplementary \$1,8 million financing. Possibly, this may be a very short-term financing if the milestones set out in the approved SISF process are met and closing occurs on November 8th, 2024. The Monitor explains that it would not be worth Briva's while to deploy all the efforts required to put into place the financing, for such a brief interest payment period. Hence, Briva insists that both for the initial Interim Facility and the Supplemental Interim Facility tranches, it be guaranteed a minimum three-month interest payment. The Monitor has explained why this is reasonable and the Court finds these explanations to be compelling.

[20] It is for these reasons that the Court has ordered that the Debtors be authorized to borrow and repay a maximum of \$1,8 million -the Supplemental Interim Facility– and that the Debtors' assets be subject to a charge for an aggregate amount of \$2,160,000 as security for all obligations of the Debtors to Briva with respect to all amounts owing (including principal, interest and the Supplemental Interim Lender Expenses) under or in connection with Supplemental Interim Facility. This charge will rank after the Administration Charge and the Interim Lender Charge, but before the Directors' Charge.

CHRISTIAN IMMER, J.S.C.

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Hearing date: September 19, 2024