



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00715773-00CL

DATE: OCT 15, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: In the Matter of BZAM LTD.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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Joseph Bellissimo	Cortland, DIP Lender	jbellissimo@cassels.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Maria Konyukhova	Monitor	mkonyukhova@stikeman.com
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ENDORSEMENT OF JUSTICE OSBORNE:

[1] The Applicants seek two orders. They seek an approval and vesting order:

- a. approving the share Purchase Agreement dated August 23, 2024, among BZAM Holdings Inc. as vendor, BZAM Management Inc. as target, 1000912353 Ontario Inc. as Purchaser and Wyld Canada Inc. as an interested third-party (the “Transaction”);
- b. authorizing and directing, BZAM Holdings and BZAM Management to perform their obligations under the Purchase Agreement;
- c. approving the addition of 1000912353 as an Applicant in these CCAA Proceedings and vesting all Excluded Assets, Excluded Contracts and Excluded Liabilities out of BZAM Management and into Residual Co., and discharging all Encumbrances against BZAM Management and the Retained Assets other than the Permitted Encumbrances;
- d. vesting in the Purchaser all of the right, title and interest of BZAM Holdings in and to the Purchase Shares, free and clear of Encumbrances; and
- e. removing BZAM Management as an Applicant in these CCAA Proceedings.

[2] The Applicants also seek an ancillary order:

- a. approving a stay extension through to and including December 2, 2024;
- b. approving an amendment to the DIP Agreement to extend the maturity date to December 2 and reduce the maximum principal borrowing amount from \$41 million-\$37 million;
- c. authorizing and directing the Applicants to distribute the Cash Consideration to Cortland as DIP Lender, and further as partial repayment of the indebtedness which shall be so applied in accordance with the terms of the DIP Loan; and
- d. approving the Sixth Report of the Monitor dated October 11, 2024.

[3] Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Sixth Report unless otherwise stated. The Applicants rely on the sixth Report and the Affidavit of Matthew Milich sworn October 8, 2024, together with exhibits thereto.

[4] The Service List has been served with the motion materials. The relief sought today by the Applicants is supported by Cortland, Wyld, Stone Pine, and the respective stakeholders of each, and is recommended by the Court-appointed Monitor. It is unopposed. In the case of Final Bell, its non-opposition is on the basis, agreed to by all parties, that approval of the relief sought on this motion is without prejudice to its position on the threshold motion, but it does not object to any of the relief sought here.

[5] The context of and background to this motion and the relief sought is fully set out in the affidavit of Mr. Milich and in the Sixth Report.

- [6] For the reasons set out below, I am satisfied that the motion should be granted, and the relief approved.
- [7] This Court approved a SISP by order dated March 8, 2024 which included the Stalking Horse Purchase Agreement. No bids were received in respect of the business or assets of BZAM Management, and the Monitor and the Applicants determined that none of the bids received constituted a Qualified Bid as defined in the SISP.
- [8] The Transaction for which approval is sought today is effectively a spin-making it off from the original Stalking Horse Purchase Agreement. Instead of acquiring the entire business of the Applicants in a single transaction, the Stalking Horse Purchaser has elected to complete the Stalking Horse Bid through two separate agreements. The Transaction does not materially change the consideration being paid as contemplated under the Original Stalking Horse Purchase Agreement or materially alter the economics of the Stalking Horse Bid.
- [9] It is important to note that the Purchaser under the Purchase Agreement, the numbered company, is 100% owned and controlled by Mr. Bassam Alghanim, BZAM's largest shareholder, its current Chairman and the controller of Stone Pine Capital, a secured creditor of the Applicants. He also ultimately controls the Stalking Horse Purchaser. Accordingly, the related party factors set out in section 36(4) of the *CCAA* are engaged.
- [10] The Purchase Agreement contemplates a reverse vesting transaction, pursuant to which the Purchaser will acquire all of the shares of BZAM Management owned by BZAM Holdings for purchase price of \$1 million (the "Cash Consideration") and the assumption of Assumed Liabilities as defined in the Purchase Agreement. EXCLUDED Assets, Excluded Liabilities and Excluded Contracts will vest in Residual Co., which entity will in turn be added as an Applicant in these *CCAA* Proceedings and BZAM Management will be removed as such.
- [11] The primary purpose of the reverse vesting structure is to preserve certain cannabis in excise licenses, as well as permitting the Stalking Horse Purchaser to efficiently maintain key and material contracts, including employment and supplier agreements vital to the ongoing operations of the business.
- [12] The Transaction will result in a number of employees maintaining their employment in a number of suppliers maintaining their business relationships with BZAM Management and the Wyld brand (which is owned by BZAM Management's joint venture). CLAIMS and Encumbrances will attached to the Proceeds with the same priorities they had with respect to the Purchased Shares and Retained Assets.
- [13] Given that the SISP did not yield any bids for BZAM Management, the only viable alternative to the transaction would be the Stalking Horse Purchase Agreement as originally structured, and that contemplated liquidating BZAM Management. That would, as the Monitor recommends and the Applicants submit, clearly be a less desirable or worse result for the Applicants, BZAM Management, Cortland, Wyld and each of their stakeholders.
- [14] This Court has the jurisdiction to approve the Transaction pursuant to the discretion inherent in section 11 of the *CCAA*. I am further satisfied that the Soundair factors, as well as the factors enumerated in subsection 36(3) of the *CCAA* have been satisfied here. I am satisfied that the factors set out by Penny, J. in *Harte Gold* have been satisfied here, such that the reverse vesting structure of the Transaction is also appropriate.
- [15] Finally with respect to the Transaction, I am further satisfied that the factors set out in subsections 36(4)(a) and (b), applicable to a related party transaction, have been met. In particular, sufficient safeguards were

adopted to ensure that the related party transaction is in the best interests of all stakeholders, and that the risks associated with such a transaction have been mitigated.

- [16] The proposed ancillary order and in particular, the proposed distribution of the Cash Consideration to Cortland as DIP Lender as partial satisfaction of the indebtedness owing by the Applicants, is appropriate. It will be insufficient to repay in full the secured debt of the DIP Lender with the result that it is proposed that once the Cash Consideration is paid to BZAM Holdings, the DIP Lender will be the only creditor that will receive any proceeds from the Cash Distribution. The Monitor supports the Cash Distribution and does not believe that any stakeholder will be materially prejudiced by same. I am satisfied that this Court has the jurisdiction to authorize distributions such as the Cash Distribution, absent a plan of compromise or arrangement, pursuant to the discretion granted in section 11 of the *CCAA*.
- [17] The DIP Amendment will reduce the maximum principal amount available, as agreed by the Applicants and Cortland, from \$41 million-\$37 million, with a corresponding reduction to the DIP Lender's Charge. The maturity date under the DIP Loan would be extended to December 2, 2024.
- [18] The revised and extended consolidated cash flow forecast reflects that, even with the DIP Amendment, there should be sufficient liquidity to fund the obligations of the Applicants and the cost of the *CCAA* Proceedings through the proposed stay extension to and including December 2, 2024.
- [19] For all of the same reasons, the stay period currently set to expire today, is extended pursuant to subsection 11.02(2) of the *CCAA*.
- [20] Finally, I am satisfied that the Sixth Report and the activities of the Monitor and its counsel described therein are appropriate and they are approved.
- [21] For all of these reasons, both orders are approved, and they have immediate effect without the necessity of issuing and entering.

Owen, J.