

CITATION: *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1685
COURT FILE NO.: CV-24-00715773-00CL
DATE: 20240308

ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD HOLDING CORP., AND FINAL BELL CORP.

RE: BZAM Ltd. et al., Applicants

BEFORE: Peter J. Osborne J.

COUNSEL: *Sean Zweig, Mike Shakra, Andrew Froh and Jamie Ernst*, for the Applicants
Joseph Bellissimo and Natalie Levine, for Cortland Credit Lending Corp.
Harvey Chaiton, for Stone Pine Capital
Alex Macfarlane, R. Bevan Brooksbank and Nick Hollard, for Ontario Cannabis Retail Corp.
Tevia Jeffries, for Pure Sunfarms Corp.
Claude Lapointe, for Landlord of 9430-6347 Quebec Inc.
Kevin Dias and Kelly Smith Wayland, for His Majesty the King, in the Right of Canada, as Represented by the Minister of National Revenue
Jennifer J. Quick, Representative from CannaPiece Corp., a creditor
Andrew Winton, for Final Bell Holdings International
Maria Konyukhova and Philip Yang, for the Monitor
Jeffrey Rosenberg and Kamran Hamidi, for FTI Consulting Canada Inc., Monitor

HEARD: March 8, 2024

ENDORSEMENT

1. The Applicants seek at this comeback hearing an amended and restated Initial Order (the “ARIO”) that:
 - a. extends the stay of proceedings to and including May 25, 2024;
 - b. increases the maximum principal amount that the Applicants can borrow under the DIP Loan to \$41 million; and
 - c. increases the quantum of each of the Administration Charge, the DIP Lender’s Charge and the Directors’ Charge to a maximum amount of \$1 million, \$41 million plus interest fees and expenses, and \$12,900,000 respectively.

2. The Applicants also seek a SISP Approval Order that:
 - a. authorizes and approves the Stalking Horse Purchase Agreement;
 - b. grants a Court-ordered charge (the “Bid Protections Charge”) in favour of the Stalking Horse Purchaser;
 - c. approves the SISP including the Stalking Horse Bid; and
 - d. authorizes and directs the Applicants and the Monitor to undertake the SISP.
3. Defined terms in this Endorsement have the meaning given to them in my earlier Endorsement made in this proceeding, the motion materials, and/or the First Report of the Monitor dated March 6, 2024, unless otherwise stated.
4. The Applicants rely on the Affidavit of Matthew Milich sworn March 1, 2024 together with Exhibits thereto, together with the First Report.
5. For the reasons that follow, I am satisfied that the relief should be granted.
6. I observe at the outset that the relief sought today is unopposed by any party. It is strongly supported by Cortland as senior secured creditor and DIP Lender, as well as by Stone Pine, a secured creditor and the proposed Stalking Horse Bidder. It is recommended by the Monitor. The Service List has been served with the motion materials and the First Report.
7. With respect to the proposed stay extension, I am satisfied that the Applicants have acted in good faith and with due diligence since the granting of the Initial Order and continue to do so. It is just, convenient and necessary as well as in the best interests of the Applicants and their stakeholders that the proposed extension until May 25, 2024 be granted as such will allow the Monitor, with the assistance of the Applicants, to complete the SISP all with a view to preserving and maximizing value for the stakeholders.
8. I observe that the cash flow forecast projects that the Applicants should have sufficient liquidity to fund their obligations and costs of these proceedings through the end of the extended stay period.
9. I am also satisfied that the increases to the maximum quantum permitted in each of the charges, and the priority of each of those charges, should be approved. In the Initial Order, the Administration Charge, the DIP Lenders’ Charge and the Directors’ Charge were each limited to only what was reasonably necessary during the initial 10 day period.
10. The basis for the proposed increased quantum of each charge is set out in the motion materials and in the First Report.
11. The increased quantum of the Directors’ Charge is particularly large. I am satisfied, however, that it is appropriate in that it reflects potential exposure for excise tax obligations. Those obligations are significant given the nature of the business of the Applicants (in the cannabis sector) but also as a result of the timing of the filing for creditor protection on February 28. The result of that date was that there were excise tax obligations for both January, due but not yet paid, and February, accrued but not yet due. I am satisfied that the quantum, while large, is appropriate.

12. I also recognize that the priority of the charges is somewhat atypical in that both the Directors' Charge and the Bid Protections Charge (described below) are subordinate to the DIP Lender's Charge in favour of Cortland. Such was the condition of DIP financing to enable the continuation of the business as a going concern and, as noted above, the relative priority of the charges has the support of all of these parties.

13. The Applicants seek approval for the proposed SISP including the Stalking Horse Bid. The proposed Stalking Horse Bidder (1000816625 Ontario Inc.) is a company related to the largest shareholder of BZAM, Bassam Alghanim, the current Chairman and the individual that ultimately controls Stone Pine.

14. The mechanics of the proposed SISP are fully set out in the motion materials and the First Report. The timelines and key dates are relatively tight. I am satisfied, however, that they are appropriate, achievable, and are accretive to maximizing value for all stakeholders. The Monitor, with the assistance of the Applicants, is already well along in preparatory work.

15. I am satisfied that the factors identified by the Court to be considered in a determination of whether to approve a sales process as contemplated by ss. 11 and 36(3) of the CCAA are met here: *Nortel Networks Corporation (Re)*, 2009 CanLII at paras. 47 – 48.

16. Given that, as noted above, the Stalking Horse Purchaser is a related party contemplated in s. 36(5) of the CCAA, I have also considered the factors referred to in that subsection and am satisfied that they have been met here.

17. I am further satisfied as to the fairness, transparency and integrity of the proposed process; the commercial efficacy of the proposed process in light of the specific circumstances of this case; and whether the sales process will optimize the chances, in the particular circumstances of securing the best possible price for the assets.

18. The Stalking Horse Purchase Agreement will serve as the basis for the Stalking Horse Bid as part of the SISP. It is contemplated to be structured as a reverse vesting transaction. While such structures remain the exception and not the norm, I am satisfied given the critical importance of maintaining the cannabis licences and regulatory permits that are so central to asset value in this case, that such a structure is appropriate here.

19. I also recognize that the Stalking Horse Purchase Agreement is the product of significant efforts and negotiations among the Stalking Horse Purchaser, the Company, the Monitor and the senior creditors of the Company, Stone Pine and Cortland.

20. If the Stalking Horse Bid is not the Successful Bid, the Stalking Horse Purchaser will be entitled to the payment of Bid Protections up to the maximum amount of \$850,000 comprised of a break fee of \$750,000 and an expense reimbursement of \$100,000. These amounts are not insignificant, but I am satisfied are appropriate here and I observe that the maximum amount of the Bid Protections in the aggregate is approximately 2% of the purchase price and therefore within the range of such fees previously approved by this Court (see, for example, *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at paras. 12 -14). The amount is also recommended and fully supported by the Monitor.

21. I also note that the Stalking Horse Bid is not a traditional credit bid in the circumstances of this case, but rather contemplates a bid that includes the Stone Pine indebtedness, but also either the assumption or payout of the Cortland Debt, at the option of Cortland. In particular, the subscription price includes the assumption of the Stone Pine Debt, and the Cash Consideration as fully described in the affidavit of Mr. Milich.

22. I observe again that the Stalking Horse Agreement is not being approved today as a purchase agreement, but rather only as a stalking horse bid. I am satisfied that it will facilitate potential transactions and also provide a floor or a minimum by establishing a baseline price and deal structure. It provides for the preservation and continuity of the core business of the Applicants as a going concern, including but not limited to the continued employment of employees as well as supplier and customer relationships.

23. For all of these reasons, the motion is granted and the relief sought is approved.

24. I observe one additional point in conclusion. Counsel for Final Bell Holdings International Ltd. appeared today in Court and made brief submissions to the effect that while Final Bell was specifically not opposing any of the relief sought (particularly including approval of the SISP and the timelines therein), it wished to advise the Court that it was in the process of investigating whether it would be bringing a motion to seek certain relief which could have an impact on the sales process approved today.

25. Final Bell was a company acquired by the Applicants very shortly prior to filing for creditor protection in this proceeding. The acquisition purchase price was satisfied by the issuance of equity and unsecured debt.

26. Final Bell apparently takes the position that financial disclosure provided to it in the course of due diligence was inconsistent with the financial state of the company as disclosed in this Application. Final Bell may seek rescission of its transaction. That issue is for another day. However, it is obviously imperative for potential bidders in the SISP to have clarity and certainty as to the assets and business on which they are bidding, with the result that, if Final Bell pursues a claim, and specifically pursues a claim seeking rescission, that may well have to be determined before bids are finalized.

27. I have implored the parties to continue the discussions I understand they are having, and I have specifically directed the Court-appointed Monitor to coordinate those discussions with a view to ensuring that all matters proceed on an expedited but fair basis and that the sales process is not undermined by outstanding issues.

28. Orders to go in the form signed by me today which orders are effective immediately and without the necessity of issuing and entering.

Osborne J.