

Mukul Manchanda

From: Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>
Sent: October 7, 2021 3:49 PM
To: Jo-Anne Matich; Jo-Anne Matich; rtong@asia-hmi.com; Mukul Manchanda; kplunkett@airdberlis.com; mspence@airdberlis.com; Inguyen@llf.ca; Caitlin Fell; Shaun Parsons; Pat Corney
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: In the Matter of the Notice of Intention to Make a Proposal of Medifocus Inc. of the City of Toronto in the Province of Ontario
Attachments: Participation Information - All Parties - 06-OCT-2021 (00031944xF8677).DOCX; Medifocus Initial Order (00031769xF8677).pdf

Participants:

See attached slip

Endorsement:

The Applicant, Medifocus Inc., brings this motion for an initial order under the *Companies Creditors Arrangement Act* ("CCAA"). I have reviewed the motion materials and I also heard oral submissions from counsel for the Applicant.

The background facts are summarized in the Applicant's factum at paragraphs 2-30.

I am satisfied that the Court has authority to permit the Applicant to continue the NOI proceedings under the CCAA pursuant to section 11.6 (a) of the CCAA. The Applicant (i) has not filed a proposal under the BIA; (ii) has demonstrated that the proposed continuation is consistent with the purposes of the CCAA; and (iii) has demonstrated that the threshold requirements for a CCAA application are met. The Applicant has disclosed the documentary items required by section 10(2) of the CCAA.

Section 11.2(1) of the CCAA addresses the stay of proceedings that may be granted upon an initial application under the CCAA. The initial application 10-day stay period is customary but not mandatory. The language of section 11.2 is permissive and I am satisfied that the court has judicial discretion regarding the length of the stay period. I am satisfied that the customary 10 day stay period need not be ordered in this case for the following reasons. This is a BIA proposal conversion motion. The Applicant's creditors were given nine days' notice of this motion. The Applicant is unaware of any opposition to the proposed stay period, nor any of the other relief sought. In my view, the requested stay of proceedings is appropriate and will allow the Applicant to implement the proposed sale process and finalize a restructuring transaction that maximizes stakeholder benefit without the expense of returning to court for a stay extension motion. The proposed Monitor supports the extension to the stay of proceedings and, as shown by the CCAA cash flows, the Applicant will have sufficient liquidity to continue operations up to and including November 26, 2021.

The Applicant has secured a DIP commitment from Asset Profits Limited, the Applicant's sole secured creditor, that provides debtor-in-possession financing, up to a maximum of \$700,000, in order to continue operations during the restructuring proceedings. The DIP Term Sheet is conditional on court approval and the granting of a priority charge ("DIP Lender's Charge"). The proposed DIP Lenders' Charge will rank behind the Administration Charge. I have considered the factors in section 11.2 (4) of the CCAA and I am satisfied that the DIP Lender's Charge should be granted for the following reasons: (a) the proposed sale process has been fully developed and negotiated and the DIP financing is a necessary component of the next stages of the restructuring plan; (b) the notice requirements under section 11.2 (1) have been met; (c) the Applicant intends to use the DIP financing to operate as a going-concern, including to maintain regulatory approvals while carrying out the sale process; (d) the sole secured creditor is the DIP lender; (e) the amount

of the DIP loan is reasonably limited to what is necessary in the circumstances, having regard to the CCAA cash flow; and (f) the proposed Monitor is supportive of the relief.

The Applicant seeks approval of the proposed sale process and a stalking horse bid. Section 36 (3) of the CCAA sets out the factors the court is to consider in respect of a request for approval of the sale of assets outside the ordinary course of business. CCAA courts have also considered the *Soundair* principles. The factors to be considered in determining whether to authorize a stalking horse process are set out in *Re Brainhunter Inc.*, 62 CBR (5th) 41, at paras. 13-17. Having considered these factors, I am satisfied that the proposed sale process and the stalking horse bid should be approved. In this regard, I accept the submissions made at para. 63 of the Applicant's factum.

The proposed Monitor has consented to the appointment and is a "trustee" within the meaning of section 2 (1) of the BIA, without being subject to the restrictions set out in section 11.7 (2) of the CCAA.

I am satisfied that the requested Administration Charge is warranted and should be ordered pursuant to the authority conferred by section 11.52 of the CCAA. In this regard, I accept the submissions at para. 70 of the Applicant's factum.

Order to issue in form of attached order signed by me.

A handwritten signature in blue ink, appearing to read 'Cavanagh J.', is placed over a light grey rectangular background.

Cavanagh J.