

SUPERIOR COURT
(Commercial Division)

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: [●]

DATE : March 28, 2024

IN THE PRESENCE OF THE HONOURABLE [●], S.C.J.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC (1985), C. 36 OF:

GOLI NUTRITION INC.

-and-

GOLI NUTRITION INC.

Applicants

and-

DELOITTE RESTRUCTURING INC.

Monitor

LIQUIDATION ORDER

ON READING the Application of Goli Nutrition Inc. ("**GOLI Canada**") and Goli Nutrition Inc. (GOLI USA) (collectively, the "**Applicants**") entitled *Application for the Issuance of (...), an Amended and Restated Initial Order and an Order Approving an Agency Agreement and Related Relief* pursuant to the *Companies' Creditors Arrangement Act*, RSC (1985), c. C-36, as amended (the "**CCAA**"), the exhibits and the sworn statement

filed in support thereof (the “**Application**”), and relying upon the submissions of counsels present at the hearing on the Application, including the respective counsel for the Applicants and Deloitte Restructuring Inc., as monitor to the Applicants (the “**Monitor**”);

GIVEN the initial order rendered by this Court on March 18th, 2024 with respect to the Applicants;

GIVEN the Reverse Vesting Order rendered by this Court on March 28, 2024 (the “**Reverse Vesting Order**”);

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

[1] **GRANTS** the Application.

SERVICE AND DEFINITIONS

[2] **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Applicants to interested parties, including the secured creditors who are likely to be affected by the charges created herein as well as all other parties to the Leases (as defined herein).

[3] **ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings (the “**Initial Order**”) rendered concurrently with this Order or in the *Agency Agreement* (the “**Agency Agreement**”) among Gordon Brothers Commercial & Industrial, LLC (on behalf of its contractual joint venture with Brandford Auctions, LLC) (the “**Agent**”) and GOLI Canada, with the intervention of GOLI USA, filed, *under seal*, as Exhibit R-[REDACTED] in support of the Application.

THE AGENCY AGREEMENT

[4] **ORDERS** that the Agency Agreement (including the transactions contemplated thereunder) is hereby approved, authorized and ratified and that the execution of the Agency Agreement by GOLI Canada, with the intervention of GOLI USA, is hereby approved, authorized and ratified with such minor non-material amendments as the Applicants and the Agent may agree to in writing, with the consent of the Monitor or further order of this Court. Subject to the provisions of this Order and the Initial Order, GOLI Canada, GOLI USA and/or the Monitor is hereby authorized and directed to take any or all actions as may be necessary or desirable to implement the transactions contemplated in the Agency Agreement. Without limiting the foregoing, the GOLI Canada, GOLI USA and/or the Monitor is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE SALE

- [5] **ORDERS** that notwithstanding the provisions of any applicable leases and subleases relating to the Premises to which the Applicants are a party (each a “**Lease**” and collectively, the “**Leases**”), the Applicants, with the assistance of the Agent, is authorized to conduct the Sale (as defined in the Agency Agreement) in accordance with this Order and the Agency Agreement and to advertise and promote the Sale, including within the Premises (as defined in the Agency Agreement). If there is a conflict between this Order and the Agency Agreement, the provisions of this Order shall prevail.
- [6] **ORDERS** that GOLI Canada with the assistance of the Agent, is authorized to market and sell the Assets (as defined in the Agency Agreement) in accordance with the Agency Agreement and this Order, and, upon the sale of such Assets in accordance with this Order, all rights, title and interest in and to such Assets shall vest absolutely and exclusively in and with the applicable purchaser thereof, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer or title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”), including without limiting the generality of the foregoing, all Encumbrances created by order of this Court, including the CCAA Charges (as defined in the Initial Order) and the Agent Charge (as defined below), and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the *Civil Code of Québec*, the *Ontario Personal Property Security Act*, or any other applicable legislation providing for a security interest in personal or movable property, in each case effective as of the applicable time and date of the sale of the Assets.
- [7] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the net proceeds from the sale of the Assets (the “**Net Proceeds**”) shall stand in the place and stead of the Assets sold in accordance with this Order, and that upon payment of the purchase price for the Assets by the applicable purchaser, all Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Assets sold immediately prior to their sale, as if such Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
- [8] **ORDERS** that subject to the terms of this Order, the Initial Order, or any greater restrictions in the Agency Agreement, and notwithstanding any provision in the Leases, the Agent shall have the right to enter and use the Premises and all related services and all facilities and all furniture, trade fixtures and equipment located at the Premises, and other assets of GOLI Canada as designated under the Agency Agreement or as otherwise agreed to by the Applicants, for the purpose of conducting the Sale and for such purposes, the Agent shall be entitled to the

benefit of the stay of proceedings ordered in the Initial Order in favour of the Applicants and its Property (as defined in the Initial Order), as such stay of proceedings may be extended by further Order of the Court (the “**Stay of Proceedings**”).

- [9] **ORDERS** that during the Sale Term (as defined in the Agency Agreement), the Agent shall have access to the Premises in accordance with the Agency Agreement on the basis that the Agent is assisting the Applicants and the Applicants have granted the right of access to the Premises to the Agent, and the Agent shall be entitled to carry out the Sale from and upon the premises in accordance with the Agency Agreement and this Order.
- [10] **ORDERS** that nothing in this Order shall amend or vary or be deemed to amend or vary the terms of the Leases, provided that in the event of a conflict between this Order and any Lease, the provisions of this Order shall govern. Nothing contained in this Order shall be construed to create or impose upon the Applicants or the Agent any additional restrictions not contained in the Agency Agreement.
- [11] **ORDERS** that, subject to and in accordance with the Agency Agreement and this Order, the Agent is authorized to advertise and promote the Sale, without further consent of any Person (as defined in the Initial Order) other than the Applicants as provided under the Agency Agreement.

AGENT’S CHARGE

- [12] **DECLARES** that notwithstanding anything to the contrary in the Initial Order or any Order of this Court, upon the initial payment on the Guaranteed Minimum referenced in Section 2(a) of the Agency Agreement, the Assets and all proceeds thereof including all proceeds from sales of the Assets (collectively, the “**Agent Collateral**”) are hereby subject to a charge and security in favour of the Agent (the “**Agent’s Charge**”), as security for all obligations of the Applicants to the Agent under or in connection with the Agency Agreement.
- [13] **DECLARES** that notwithstanding anything to the contrary in the Initial Order or any Order of this Court, the Agent’s Charge shall have priority over any and all other claims, hypothecs, mortgages, pledges, security interests, liens, charges (including, for greater certainty, the CCAA Charges, as defined in the Initial Order), guarantees, deemed trusts or other encumbrances of any kind or nature whatsoever, upon the Agent Collateral, and shall be unaffected for all purposes including following the implementation of the transactions contemplated by the Reverse Vesting Order including the transfer of the Agency Agreement and the Assets to ResidualCo (as defined in the Reverse Vesting Order).
- [14] **ORDERS** that the Applicants shall not grant any Encumbrances in or against any Agent Collateral that ranks in priority to, or *pari passu* with, the Agent’s Charge, unless the Applicants obtains the prior written consent of the Agent, or further order of the Court.

- [15] **DECLARES** that, upon the initial payment on the Guaranteed Minimum referenced in Section 2(a) of the Agency Agreement, the Agent's Charge shall immediately attach without any further act or formality (including notice or registration), to all present and future Agent Collateral, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

AGENT LIABILITY

- [16] **ORDERS** that the Agent shall act solely as an independent Agent to the Applicants and that it shall not be liable for any claims against the Applicants other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) and, for greater certainty:
- a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Premises, of the assets located therein or associated therewith, of any other property of the Applicants or of the Applicants' employees;
 - b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successor liabilities whatsoever; and
 - c) the Applicants shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring during and after the term of the Sale, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, its employees, agents or other representatives, or otherwise in accordance with the Agency Agreement.

AGENT AN UNAFFECTED CREDITOR

- [17] **ORDERS** that (i) the Agency Agreement shall not be repudiated, resiliated or disclaimed by the Applicants, (ii) the Agent shall not be affected by the Stay of Proceedings and shall be entitled to exercise its rights and remedies under the Agency Agreement and the Agent's Charge including in respect of claims of the Agent pursuant to the Agency Agreement (collectively, the "**Agent's Claims**"), and (iii) the Agent's Claims shall not be compromised, arranged or discharged pursuant to any proposal or plan of arrangement or compromise in respect of the Applicant (a "**Plan**") and, for greater certainty, the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

- [18] **ORDERS** that GOLI Canada is hereby authorized and directed, in accordance with the Agency Agreement, to remit all amounts that become due to the Agent thereunder.
- [19] **ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement. [NTD: No Funds are to be remitted as Agent will be holding all proceeds of realization and
- [20] **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
 - b) any application for a bankruptcy order, receivership order or interim receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”) in respect of the Applicants, or any order made pursuant to any such applications;
 - c) any assignment in bankruptcy made or deemed to have been made in respect of the Applicants;
 - d) the provisions of any federal or provincial statute; or
 - e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement which binds the Applicants,

the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent, the creation of the Agent’s Charge shall be binding on any trustee in bankruptcy, receiver, receiver and manager or interim receiver that may be appointed in respect of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

OTHER

- [21] **ORDERS** that the Applicants are authorized and permitted to transfer to the Agent personal information in the Applicants’ custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes.

[22] **ORDERS** that all payments to be made to GOLI Canada under the Agency Agreement are to be remitted in full to the Monitor, as directed by the Monitor.

GENERAL

[23] **ORDERS** that the unredacted copy of the Agency Agreement filed with this Court as Exhibit R-[●] be kept confidential and under seal until further order of this Court.

[24] **ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

[25] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

[26] **ORDERS** the provisional execution of this Order notwithstanding any appeal.

[27] **THE WHOLE** without costs.

The honourable [●], S.C.J.

