



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-24-00720622-00CL

DATE: May 31, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: EASTERN MEAT SOLUTIONS INC. et al  
BEFORE Justice PENNY  
JUSTICE:

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

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**ENDORSEMENT OF JUSTICE PENNY:**

[1] I issued an Initial Order in this matter on May 21 and set the comeback date for today, May 31, 2024. As part of the Comeback Hearing, the Applicants seek the following additional relief:

(a) an amended and restated initial order (the “ARIO”) that, among other things:

(i) extends the stay of proceedings until September 30, 2024;

(ii) approves the DIP Credit Agreement pursuant to which the Bank of Montreal (the “DIP Lender”) will make available to the Applicants a revolving credit facility in the principal amount of \$3,350,000 (the “DIP Facility”) and approves the corresponding charge in favour of the DIP Lender (the “DIP Lender’s Charge”);

(iii) increases the Administration Charge from \$500,000 to \$750,000; and

(iv) increases the Directors’ Charge from \$600,000 to \$750,000; and

(b) an order (the “SISP Approval Order”) approving the proposed sale and investment solicitation process in respect of the business and/or the assets of Sierra Foods (the “SISP”).

### ***Stay Extension***

[2] Section 11.02(2) of the CCAA provides that the Court may extend the stay of proceedings for any period it considers necessary provided the Court is satisfied that: (i) circumstances exist to make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.

[3] The stay extension is sought to September 30, 2024. This stay extension is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants’ business, to enable the Applicants and the Monitor to carry out the SISP and to pursue a restructuring of the Cold Storage Business. The Applicants have been working with the Monitor in good faith and with due diligence toward the goal of a successful restructuring. The proposed stay extension date is reasonable as it aligns with the maturity date of the DIP Facility and the outside date for Court approval of a transaction in the SISP. Subject to Court approval of the DIP Facility and the DIP Lender’s Charge, the Applicants will have sufficient liquidity to fund their business operations during the proposed extension of the stay. No party will be materially prejudiced by the stay extension. The Monitor supports the proposed extension to the Stay Period.

[4] The stay is extended to September 30, 2024.

### ***Administration Charge Increase***

[5] The Applicants seek to increase the Administration Charge to \$750,000. This was forecast at the initial order hearing and reflects the extensive involvement of the professionals both prior to and following the commencement of the CCAA proceedings.

[6] An increase to the Administration Charge is appropriate and necessary in the circumstances. The amount is reasonable given the complexity of these CCAA proceedings, the fees and disbursements for services that have been delivered to date, and the anticipated work required from the professionals through the forecast stay extension period, especially given what is sought to be accomplished during that period of time. The proposed increase is supported by the Monitor.

[7] The increase is approved.

### ***Directors’ Charge Increase***

[8] The Initial Order granted the Directors' Charge in the amount of \$600,000. The quantum of the Directors' Charge was intended to secure any indemnity obligations to the Applicants' directors and officers in respect of any liabilities they may incur during the first ten days of the CCAA proceedings. As indicated at the time, the Applicants now seek to increase the Directors' Charge to \$750,000. The Monitor has worked with the Applicants to size the proposed Directors' Charge based on the liabilities that the directors and officers may face. Such amounts generally represent the maximum potential exposure for payroll (including the lag between the earning and payment of wages and salaries) and vacation pay. The Applicants in this case are typically in an HST receivable position.

[9] While the D&Os are the beneficiaries of insurance coverage for certain liabilities, there is no certainty that the policy will cover liabilities that may be faced by the D&Os during the CCAA proceedings. The Directors' Charge will provide the D&Os with the assurances necessary to continue to provide services to the Applicants during the CCAA proceedings and specifically, over the proposed extension to the stay extension. The proposed Directors' Charge would apply only to the extent that the D&Os do not have coverage under the relevant insurance policies maintained by the Applicants. The Directors' Charge will continue to rank behind both the Administration Charge and the DIP Lender's Charge.

[10] The continued participation of the D&Os is important to the overall success of the proposed restructuring effort. The terms of the Charge are reasonable and are supported by the Monitor. The Directors' Charge increase is approved.

### ***DIP Facility and Lender's Charge***

[11] On the evidence, there is no question that the Applicants require additional financing for there to be any attempt at successful restructuring.

[12] The DIP Lender (the Bank of Montreal, already the senior secured lender) has agreed to make available to the Applicants a revolving DIP Facility in the maximum principal amount of \$3,350,000. The DIP Facility and the DIP Credit Agreement are conditional upon, among other things, the granting of a DIP Lender's Charge that ranks in priority to all other security interests and charges, save and except for the Administration Charge.

[13] Section 11.2(1) of the CCAA provides the Court with the express statutory authority to approve the DIP Credit Agreement and the DIP Lender's Charge. Section 11.2(2) further provides the Court with the express statutory authority to order that the DIP Lender's Charge rank in priority to the claim of any secured creditor of the debtor company. The factors to be considered are set out in s. 11.2(4).

[14] The proposed DIP Facility and DIP Lender's Charge satisfy the applicable factors for the following reasons:

(a) the Applicants are in a liquidity crisis and require the DIP Facility in order to carry out a successful restructuring and continue operating in the ordinary course;

(b) the quantum of the DIP Facility and the DIP Lender's Charge are reasonable and appropriate having regard to the cash flow forecast prepared by the Monitor as well as the total assets and liabilities of the Applicants;

(c) the DIP Credit Agreement was negotiated by sophisticated arm's length parties with counsel under the supervision of the Monitor and contains terms and conditions that are reasonable and competitive having regard to the terms and conditions of DIP financing approved in other recent CCAA proceedings;

(d) the secured creditors who are likely to be affected by the DIP Lender's Charge were served with the Initial Order and the Application Record of the Applicants on May 22, 2024 (together with notice of the Comeback Hearing). All registered secured creditors were served with the Motion Record of the Applicants in connection with the Comeback Hearing on May 28, 2024. The Applicants are unaware of any opposition to any of the charges

contemplated under the Initial Order or the proposed ARIQ (including the DIP Lender's Charge) and no one appeared today to raise any objection. In any event, the primary secured creditor of the Applicants that is most likely to be affected by the DIP Lender's Charge is the Bank of Montreal, which is providing the DIP Facility and supports the priority and quantum of the proposed DIP Lender's Charge; and

(e) the Monitor participated in, and supervised, the negotiation of the DIP Credit Agreement. It compared the terms against other recent, similar transactions. The Monitor supports and recommends approval of the DIP Facility and the DIP Lender's Charge.

[15] I agree with and accept the Monitor's recommendation in the circumstances. The DIP Facility and Lender's Charge are reasonable and are approved.

### ***Sale and Investment Solicitation Process***

[16] The proposed SISP is solely in respect of the business and/or assets of Sierra Foods which operated the Processing Business. The SISP strategy was highlighted in the original application for the Initial Order. The Applicants proposed, if the Initial Order were granted, to take steps to wind down the Trading Business (Eastern Meat), market and sell the Processing Business (Sierra Foods) on a going concern basis and focus on restructuring and continuing to operate the Cold Storage Business.

[17] The Applicants are of the view that the timing of the SISP is critical to maximizing value. It is particularly important for the Applicants to launch the SISP and bring Sierra Foods' business and assets to market as soon as possible in June 2024 to avoid any slowdown in business activity during the peak summer months.

[18] The CCAA court has jurisdiction to approve a sale process in relation to a CCAA debtor's business or assets prior to the development of a plan of compromise or arrangement. The key factors to be considered are (*Nortel* at paras. 48-49):

- (a) whether a sale transaction is warranted at this time;
- (b) whether a sale will benefit the whole "economic community";
- (c) whether any creditors have a bona fide reason to object to the sale; and
- (d) whether there is a better viable alternative.

[19] Although these considerations apply at the sale approval stage and not the sale *process* approval stage, the *Nortel* criteria may nonetheless be taken into account because these factors will ultimately apply if approval of a sale under s. 36 of the CCAA is sought. The court may also consider additional factors in determining whether to approve a sale process, such as:

- (a) whether the proposed SISP is likely to satisfy the requirements that the sale process is fair and provides a platform in which the highest and best offer can be obtained;
- (b) whether the Monitor supports the SISP; and
- (c) the extent to which creditors were consulted.

[20] My consideration of all these factors leads me to the conclusion that the proposed SISP should be approved. I come to this conclusion for the following reasons.

[21] The marketing process contemplated in the SISP was specifically designed to reach as many interested parties as possible across North America who may be interested in evaluating and completing a transaction. The proposed two-phase process will allow the Monitor and the Applicants to gauge market interest in Phase 1 and

then, if necessary, focus their efforts on detailed due diligence and negotiations with any parties who demonstrate significant interest and potential to complete a transaction in Phase 2. The SISP is flexible and will allow interested parties to propose, and the Monitor and the Applicants to consider, a wide variety of different transaction structures to maximize value for stakeholders. The SISP is designed to engender competitive tension between potential bidders with a view to optimizing the ability of the Applicants and the Monitor to securing the highest and best value for the benefit of stakeholders.

[22] In the circumstances, the SISP appears to represent the best path forward to maximize the value of Sierra Foods for the benefit of its stakeholders. There will be no restructuring of Sierra Foods in this proceeding. However, any going concern transaction resulting from the SISP will benefit the “economic community” as a whole. A going concern transaction (as opposed to a liquidation or bankruptcy) will maximize value for the creditors of Sierra Foods (including the Bank of Montreal). It will also preserve the business of Sierra Foods for the benefit of many employees, suppliers, and other parties with whom the business transacts on a go-forward basis.

[23] There is no evidence of any opposition to the SISP. The DIP Lender (who is the primary economic stakeholder of Sierra Foods) supports the SISP and was consulted by the Applicants and the Monitor during the development of the SISP. The proposed SISP appears to have been designed to maximize value for the broader economic community.

[24] A going concern sale through the SISP represents the best option to preserve the business of Sierra Foods and maximize value for its stakeholders and the economic community. There is no viable alternative in the circumstances.

[25] The proposed SISP is consistent with other sale processes that have been approved by this court. The SISP will be carried out by the Monitor and the Applicants under court supervision and any transaction will be subject to court approval. In the circumstances, there is at least a reasonable prospect that the SISP will satisfy the fairness requirements at the sale approval stage of this proceeding.

[26] The Monitor actively participated in the development of the SISP and recommends that it be approved by the court.

[27] Finally, the Monitor and the Applicants consulted with the DIP Lender throughout the development of the SISP. The DIP Lender is the most significant economic stakeholder in this proceeding and supports the proposed SISP. Although no other creditors were consulted, the Applicants are unaware of any opposition to the SISP and none was raised at the Comeback Hearing.

[28] The SISP is approved.

### ***Conclusion***

[29] For the forgoing reasons, the motion is granted. Orders to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read "Penny J.", followed by a large, stylized number "3".

Penny J.