

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
ORBCARE INC.,
OF THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO

FIRST REPORT TO THE COURT
SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
ORBCARE INC.

JUNE 24, 2019

I. INTRODUCTION

1. On May 28, 2019, Orbcare Inc. (“**Orbcare**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), wherein MNP Ltd. was named as proposal trustee (the “**Proposal Trustee**”). A copy of the NOI is attached hereto and marked as **Exhibit “A”**.
2. Notice of the NOI as prescribed by the BIA was sent on June 3, 2019 to all of Orbcare’s known creditors. A copy of such notice is attached hereto and marked **Exhibit “B”**.
3. Information regarding the NOI proceeding has been posted to the Proposal Trustee’s website at <https://mnpdebt.ca/en/corporate/Engagements/orbcare-inc>.

4. The primary purpose of this proceeding is to provide stability to Orbcare's business while Orbcare, with the assistance of the Proposal Trustee, restructures the Company and works on formulating and presenting a viable proposal to its creditors.

II. RESTRICTIONS

5. In preparing this Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Giner Affidavit (as defined below), Orbcare's books and records, discussions with management of Orbcare and information from other third-party sources (collectively, the "**Information**"). Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
6. The Proposal Trustee also bases its report on the Company's cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals' Standards of professional Practice No. 99-5 (Trustee's Report on Cash Flow Statement). Certain of the information referred to in this report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by Chartered Professional Accountants Canada, has not been performed. Future oriented financial information referred to in this report was prepared based on estimates and assumptions provided by Orbcare's management. Readers are cautioned that, since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material.

III. PURPOSE OF THIS REPORT

7. The purpose of this Report is to:
 - a. Provide information to the Court with respect to the administration of Orbcare's proposal proceeding, including:
 - i. background information regarding the Company's operations and the circumstances leading to the filing of the NOI; and
 - ii. Orbcare's application seeking an order pursuant to section 50.6 of the BIA, authorizing the borrowing of interim financing and providing a charge in priority for such financing.
 - b. Provide the Court with the Proposal Trustee's recommendation for an order, *inter alia*:
 - i. approving interim financing (the "**DIP Loan**") from iGan Partners Inc. (the "**DIP Lender**") for the purpose of funding Orbcare's activities; and
 - ii. extending the time for filing a proposal to August 12, 2019.

IV. BACKGROUND INFORMATION

8. Orbcare is a federally incorporated company carrying on business out of its leased premises in Toronto, Ontario. Orbcare provides a range of software information technology solutions to clients in the healthcare sector in order to streamline clinic operations and patient care.
9. Orbcare has two wholly owned subsidiaries, Pariscribe Inc. ("**Pariscribe**") and Orbcare US, Inc. ("**Orbcare US**"), each of which operates in the same business as Orbcare.
10. The draft affidavit of Olivier Giner (the "**Giner Affidavit**"), filed separately in this proceeding, details the causes of Orbcare's financial difficulties, which include the following:
 - a. insufficient record keeping or controls on the use or release of Company funds;

- b. financial records that were dated and incomplete;
 - c. failure to maintain adequate customer records and to diligently track customer invoicing and accounts receivable; and
 - d. Orbcare's costs of operations were too high, notably due to an unnecessarily large number of employees.
11. Additional information in respect of Orbcare, including its assets and liabilities, is set out in the Giner affidavit. The Proposal Trustee has not repeated such details in this Report.
12. As also noted in the Giner Affidavit, Orbcare has retained Vizhenbooks, a service company providing bookkeeping services, to assist Orbcare in regularizing its financial statements. Orbcare has also retained MNP LLP to carry out a forensic review of Orbcare's financial records.

V. ASSETS

13. The assets of the Company consist primarily of its intellectual property (proprietary technology) and accounts receivable.

VI. CREDITORS

14. Orbcare's NOI lists creditors with claims of \$927,431.
15. A search of the Ontario *Personal Property Security Act* registry, with a file currency of May 23, 2019, and a review of the Company's records, indicate that there are no known secured creditors of the Company.
16. While Orbcare's records are incomplete, its records reflect that its largest creditor is Canada Revenue Agency for unpaid source deductions, HST and corporate taxes.

VII. CASH FLOW PROJECTIONS

17. To date, Orbcare has provided the Proposal Trustee with its full co-operation and unrestricted access to its premises, and books and records.

18. In accordance with the provisions of the BIA, the Company filed with the Official Receiver a projected cash flow statement dated June 7, 2019, which was reviewed by the Proposal Trustee for reasonableness and signed by the Proposal Trustee and the Company (the “**Cash Flow Projections**”). The Cash Flow Projections cover the period starting on June 3, 2019 and ending on September 1, 2019 (the “**Projection Period**”). A copy of the Cash Flow Projection, and related reports, is attached hereto as **Exhibit “C”**.
19. The Proposal Trustee has implemented procedures for monitoring the Company’s receipts and disbursements and has kept in close contact with Orbcare’s management to ensure that operations are continuing in the normal course of business and in accordance with the Cash Flow Projection.
20. The principal assumptions of the Cash Flow Projection are as follows:
 - a. Existing accounts receivable will be collected in approximately 60 days.
 - b. Operating expenses are assumed to be paid on a current basis.
 - c. The projections exclude any activity in Orbcare US, a 100% owned subsidiary incorporated under the laws of Delaware, but does include the activities of Pariscribe.
 - d. Other disbursements are based on management's best estimates.
 - e. Projected rent excludes payment of rent on 500 King Street West, Toronto (“**500 King**”), as this commercial lease was disclaimed on June 4, 2019. The Company assumes that the disclaimer will become final and conclusive.
 - f. The number of employees and associated payroll costs (i.e. wages, benefits, government remittances, etc.) are based on the “Actual” payroll costs prior to the NOI filing, adjusted to reflect the reduction of payroll arising from the recent termination of four (4) employees.

21. The Cash Flow Projections reflect that Orbcare is expected to require funding of approximately \$24,741 by the end of the Projection Period. The Company had \$288,220 in cash as at June 3, 2019, which means that during the Projection Period the Company is projected to have a \$312,961 decrease in its cash position.
22. Based on the Proposal Trustee’s review of the Cash Flow Projections, there are no material assumptions which seem unreasonable in Orbcare’s circumstances or are inconsistent with the purpose of the projections. Based on the Cash Flow Projections and the assumption that the DIP Loan will be available, Orbcare will have sufficient funding through to the end of the requested extension of the NOI.
23. A summary of the Company’s actual receipts and disbursements as compared to the those presented in the Cash Flow Projections up to the week ended June 16, 2019 (the “**Monitored Period**”) is as follows:

Orbcare Inc
Projected Cash Flow Variance Analysis - Cumulative Summary
For the Period from June 3 to June 16, 2019

	TOTAL		
	June 3, 2019 to June 16, 2019		
	(Forecast)	(Actual)	(Variance)
Receipts			
Collection of Receivables			
Orbcare	0	16,348	16,348
Pariscribe	0	11,167	11,167
Provincial Taxes	0	2,302	2,302
Funds from Loan	0	0	0
Total Receipts	0	29,817	29,817

Disbursements			
Payroll	84,177	60,654	23,523
Rent	0	0	0
SG&A	0	3,486	(3,486)
Technology	0	2,955	(2,955)
Advisors	0	1,500	(1,500)
Provincial Taxes	0	0	0
Repayment to Loan	0	0	0
Total Disbursements	84,177	68,594	15,583
Net Operating Cash Flows	(84,177)	(38,778)	45,400

24. As noted above, the Company had negative Net Operating Cash Flows of \$38,778 as compared to the projected negative Net Operating Cash Flows of \$84,177 (a positive variance of \$45,400) for the Monitored Period.

25. The positive variance is largely related to the timing differences in the following:

- a. Collection of Receivables – Receivables were collected on a shorter period of time than forecast in the Cash Flow Projections.
- b. Source Deductions – The Cash Flow Projections forecast that payroll source deductions would be paid at the same time as wages. However, the source deduction payments are made approximately 10 days after wages, and \$25,334 is scheduled to be paid on June 25, 2019.

VIII. INTERIM FINANCING

26. Prior to the NOI filing, Orbcare took steps to reduce its employee headcount, and has since taken further measures to reduce its overhead cost structure. For instance, as noted above, on June 4, 2019, Orbcare issued a Notice to Lessor to Disclaim or Resiliate a Lease by Commercial Tenant in respect of its utilizing space at 500 King.

27. Having reduced its cost base, Orbcare is focusing efforts at improving its sales and operations. Orbcare recognizes that it is going to take some time and significant expense to:
- a. restructure its operations;
 - b. grow its customer base;
 - c. repair its deficient bookkeeping;
 - d. prepare accurate and updated financial statements and tax filings;
 - e. have MNP LLP conduct its forensic review; and
 - f. develop a proposal to present to Orbcare's creditors.
28. For the foregoing reasons, Orbcare anticipates that it will require financing to fund its activities, including payment of the professional fees associated with administering the proposal proceeding and the accounting services associated with updating and reviewing Orbcare's financial records. Accordingly, Orbcare, Orbcare US and Pariscribe negotiated the terms of the DIP Loan with the DIP Lender.
29. As set out in the Giner Affidavit, the DIP Lender has agreed to provide interim financing in the maximum amount of \$1,200,000 in order to facilitate:
- a. the continued operation of Orbcare during these proceedings;
 - b. the payment of professional fees in connection with restructuring that Orbcare is responsible for as part of the proposal proceeding; and
 - c. such other amounts that the DIP Lender consents to in writing, as may be approved by the Proposal Trustee.
30. In order to preserve the value of the business, the DIP Lender has agreed to provide the DIP Loan to fund Orbcare's on-going cash flow shortfalls pursuant to an interim financing

agreement (the “**DIP Agreement**”). A summary of the DIP Agreement’s significant terms are as follows:

- a. Principal Amount: \$1,200,000 on a non-revolving basis;
- b. Term: Repayable on demand and in accordance with the terms of any court order within the BIA proceeding;
- c. Security and Priority: The DIP Loan is conditional on the DIP Lender being granted: (i) a General Security Agreement and the Court ordering a first ranking security charge in favour of the DIP Lender over all other security interests and encumbrances (the “**DIP Approval Order**”) in respect of Orbcare; and (ii) a General Security Agreement on the assets, property and undertakings of Pariscribe and Orbcare US;
- d. Interest: Shall accrue at the annual rate of 10% per annum and be payable quarterly in arrears;
- e. Drawdowns: Shall be in minimum increments of \$100,000, with a maximum of one drawdown per month;
- f. Plan Sponsor: The DIP Lender shall have a right of first refusal to provide funding necessary to complete the proposal that the Company must put forward in the BIA proceeding. The DIP Lender shall have the right to convert the amounts advanced into new capital of the Company on such terms as may acceptable to the Lender and the Company, and subject to any approvals that may be required;
- g. Expenses: Orbcare shall pay the DIP Lender a commitment fee in an amount of \$25,000, together with all costs and expenses of the DIP Lender incurred in connection with the DIP Loan, the term sheet and all security documents and/or any other documents related thereto (including the fees and expenses of its legal counsel); and
- h. Conditions: Prior to advancing any funds under or in respect of the DIP Loan, Orbcare shall have obtained the DIP Approval Order and the Lender shall be

provided with an acceptable initial 13-week cash flow for Orbcare and the guarantors under the DIP facility.

A copy of the DIP Agreement is attached hereto this Report as **Exhibit “D”**.

IX. INTERIM FINANCING RECOMMENDATION

31. The Proposal Trustee has considered the factors set out in subsection 50.6(5) of the BIA with respect to the granting of the Interim Financing Charge. The Proposal Trustee respectfully recommends that the Court make the order sought by the Company for the following reasons:
- a. Orbcare is considering its restructuring various options, which restructuring potentially will enhance the recoveries for the stakeholders;
 - b. for the reasons set out in paragraph 27, the Company is facing an imminent liquidity crisis. While it has liquidity to fund its short-term operations, it will require funding in order to: (i) sustain operations and (ii) present a viable proposal to its creditors;
 - c. under the terms of the proposed order, Orbcare will not be authorized or empowered to operate any form of draw on the DIP Loan without the written approval of the Proposal Trustee, who in deciding whether to issue its approval, shall have regard to the Cash Flow Projections, as may be revised from time to time to take into account its findings from its review of Orbcare’s financial records. Accordingly, no creditor of the Company appears to be materially prejudiced by the borrowings under the DIP Agreement, and the Interim Financing Charge, and the risks of material prejudice to certain creditors are outweighed by the potential benefits that would be derived from a successful restructuring; and
 - d. the terms of the borrowings appear to be reasonable in the circumstances and consistent with the terms of debtor in possession financing facilities in similar proceedings.

X. REQUEST FOR AN EXTENSION OF TIME FOR FILING A PROPOSAL

32. In order to allow Orbcare sufficient time to stabilize its operations by taking the measures identified in paragraph 27, including working towards filing a proposal to its creditors, Orbcare seeks a forty-five (45) day extension of the time for filing of a proposal to August 12, 2019.
33. The Proposal Trustee supports Orbcare's request for such an extension and has also considered:
- a. that Orbcare is acting in good faith and with due diligence;
 - b. that the extension should not adversely affect or prejudice creditors as Orbcare is projected to have sufficient funds to pay post-filing services and supplies in the amounts contemplated in the Cash Flow Projections; and
 - c. that creditors would not be prejudiced by an extension of time for Orbcare to file its proposal, which could result in greater recoveries than in a liquidation within a bankruptcy scenario.

XII. CONCLUSION AND RECOMMENDATION

34. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 7(b).

All of which is respectfully submitted on this 24th day of June, 2019.

MNP Ltd.,
in its capacity as Trustee under
the Notice of Intention to Make a Proposal of
Orbcare Inc.

Per:



Sheldon Title

Court No.: 31-2516167
Estate No.: 31-2516167

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