

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ORBCARE INC., A
CORPORATION INCORPORATED UNDER THE CANADA
*BUSINESS CORPORATIONS ACT***

**FACTUM OF ORBCARE INC., PARISCRIBE INC. and ORBCARE US, INC.
(Motions for Extension of Time to File a Proposal, procedural consolidation and an
Amended DIP Term Sheet returnable July 30, 2019)**

DATE: July 29, 2019

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TO: THE SERVICE LIST

PART I – INTRODUCTION

1. These are motions by three companies that are part of the same corporate group, OrbCare Inc. (“**OrbCare**”), Pariscribe Inc. (“**Pariscribe**”) and OrbCare US Inc. (“**OrbCare US**”, and with OrbCare and Pariscribe the “**Companies**”) for similar relief:

- a) all three of the Companies have filed Notices of Intention to Make a Proposal (“**NOI**”), so they seek an extension of time to make a proposal to a common date of September 26, 2019, which is the maximum time permitted for OrbCare. OrbCare previously received approval for an extension on June 25, 2019 and filed its NOI on May 28. Pariscribe filed its NOI on July 26, 2019 and OrbCare US filed its NOI on July 29, 2019;
- b) the Companies also seek an order that their estates be procedurally consolidated and that further Court filings be done under this Estate Number with a revised style of cause to reflect the consolidation; and
- c) the Companies also seek authorization to enter into a DIP Loan Term Sheet, which is an Amended and Restated version of a similar document already approved by the Court in the case of OrbCare on June 25, 2019.

PART II – FACTS

The Companies

2. The Companies operate under the same management and control from Toronto. They conduct the same business, with the distinction that OrbCare US sells to American clients. Some employees and assets of OrbCare are used to conduct the business of OrbCare US. OrbCare and Pariscribe sell the same products but to different customers, some of which deal with Pariscribe for legacy reasons.

Affidavit of Olivier Giner sworn July 29, 2019 (the “**Giner Affidavit**”), paras. 5-11; Motion Record of OrbCare, Tab 2.

3. OrbCare filed an NOI on May 28, 2019. The principal reason was a large amount of priority payables owing to Canada Revenue Agency, which had garnished OrbCare’s accounts in the past, as well as incomplete financial records.

Giner Affidavit paras. 17-21; Motion Record of OrbCare, Tab 2.

4. Pariscribe and OrbCare US did not initially file NOI’s because it was not known whether their financial position warranted it. Subsequent review proved that it did, so they filed NOI’s on July 26 and July 29, 2019, respectively.

Giner Affidavit paras. 22-25; Motion Record of OrbCare, Tab 2.

Prior NOI extension and activities during NOI protection

5. OrbCare was previously granted an extension of time to file a proposal on June 25, 2019, which expires on August 12, 2019.

Giner Affidavit para. 26; Motion Record of OrbCare, Tab 2.

6. Since filing its NOI, OrbCare has undertaken steps to attempt to create more reliable financial records. It engaged a bookkeeper to help reconstruct records, and it engaged MNP LLP to assist with a forensic investigation, including into the Companies' use and control of funds and whether transactions done by or with the previous CEO might warrant a request for repayment. That process had started before the first extension request by OrbCare. It has now progressed further, but remains ongoing.

Giner Affidavit paras. 27-31; Motion Record of OrbCare, Tab 2.

7. The Companies offer software services to clients. As such, the Companies believe that stakeholders will do better if the Companies remain as going concerns. The Companies also have the support of a venture capital investor in preference shares, iGan Partners Inc. ("**iGan**") which offered the initial DIP Loan Term Sheet and remains prepared to advance funds in a circumstance where the Companies otherwise have no lending facilities.

Giner Affidavit para. 32; Motion Record of OrbCare, Tab 2.

8. The Companies have begun exploring whether value for stakeholders (including customers, suppliers and employees in addition to creditors) might be preserved or enhanced through a sales process to solicit interest in investment and/or purchase of the Companies' assets. This may include a stalking horse offer from a potential purchaser of the Companies' assets.

Giner Affidavit paras. 33-35; Motion Record of OrbCare, Tab 2.

The DIP Loan facilities

9. The initial DIP Loan Term Sheet was offered by iGan to OrbCare, with Pariscribe and OrbCare US as guarantors. It was approved by the Court on June 25, 2019 and the usual charge was granted in favour of that lender.

Giner Affidavit paras. 36-37; Motion Record of OrbCare, Tab 2.

10. No funds have yet been drawn under that initial DIP Loan Term Sheet. With the filing of NOI's by Pariscribe and OrbCare US, iGan has requested that the DIP Loan Term Sheet be changed to add them as principal borrowers rather than guarantors, and also that the usual charge be granted for those companies as well.

Giner Affidavit paras. 38-41; Motion Record of OrbCare, Tab 2.

11. iGan requires that the obligations of the Companies be cross-guaranteed, which the Companies believe is appropriate because most borrowing is expected to be done by OrbCare, which provides the central management for the other two. If OrbCare cannot meet its post-filing liabilities and goes bankrupt, the other two would functionally end as well.

Giner Affidavit paras. 41-42; Motion Record of OrbCare, Tab 2.

12. The new DIP Loan Term Sheet is for the same amount as the prior one - \$1.2 million. The previous order of the Court dated June 25, 2019 limited the ability of OrbCare to access all that funding by requiring that the Proposal Trustee also approve any draw requests. The Orders sought for Pariscribe and OrbCare US have the same term.

June 25, 2019 Order, para. 5, Exhibit "F" to the Giner Affidavit; Motion Record of OrbCare, Tab 2(F).

13. The new DIP Loan Term Sheet does contain a new provision added in the morning of July 29, 2019, namely a requirement that the Companies institute a sales process acceptable to iGan by August 15, 2019. This provision has not yet been considered or approved by the boards of directors of the Companies, which will meet on Wednesday July 31, 2019 at 4:00pm to consider it.

14. The new DIP Loan Term Sheet would, if approved by the Court, not change OrbCare's payment obligations, because it was already a principal borrower under the existing facility.

OrbCare would only seek approval to sign the new version, particularly with regard to the August 15, 2019 deadline requested by iGan.

15. The new DIP Loan Term Sheet could impact the rights of creditors of Pariscribe and OrbCare US. There are no known secured creditors of OrbCare US, and the only two possible secured creditors of Pariscribe are two employees who have registered PPSA financing statements against Pariscribe. It is not known if there is any current debt owing to those employees, but they were involved in the decision-making process to approve the first DIP Loan Term Sheet, which included a grant of security by Pariscribe as (then) a guarantor, and they are being served with this motion as well.

Giner Affidavit paras. 44; Motion Record of OrbCare, Tab 2.

PART III – ISSUES AND THE LAW

16. The issues on this motion are:

- a) should the NOI's for the Companies be extended;
- b) should the estates of the Companies be procedurally consolidated; and
- c) should the new DIP Loan Term Sheet be approved.

a) NOI extension

17. The Companies have been acting in good faith and have taken reasonable steps to attempt to regularize their business. They intend to review opportunities to enhance value for stakeholders through a sale and investment solicitation process, which may involve a stalking horse offer. The

Companies believe that these steps will generate more for stakeholders than a liquidation, which will then permit a proposal to creditors. The Proposal Trustee supports the Companies, and the Court has authority to extend the NOI's pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act* (the "**BIA**").

b) Procedural consolidation

18. The Companies have an intertwined relationship, and procedural consolidation will reduce the administrative and professional costs of BIA and Court filings. The proposed orders make it clear that this would be without prejudice to any arguments for or against substantive consolidation.

c) The new DIP Loan Term Sheet

19. If approved by the boards of directors of the Companies regarding the August 15, 2019 sales process deadline imposed by iGan (scheduled to be considered on July 31, 2019 at 4:00pm), the new DIP Loan Term Sheet will provide funding to permit the going concern operation of the Companies.

20. The Proposal Trustee is supportive of the proposed DIP Loan Term Sheet. To the extent that there are cross-guarantees among the Companies, vis-à-vis creditors other than iGan as the DIP Lender these arrangements should not affect any arguments regarding allocation of the burden of the DIP borrowing.

21. The statutory tests for permitting a DIP loan facility in section 50.6(5) of the BIA are met, because the position of creditors will not be prejudiced if the lending is permitted. Rather, the

position of creditors will be enhanced because the Companies value lies in being a going concern, whereas they will offer much less value in a liquidation scenario.

PART IV – ORDER REQUESTED

22. The Companies accordingly orders in the form attached to their Motion Records.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of July, 2019.



R. Brendan Bissell

Lawyers for OrbCare Inc., Pariscribe Inc.
and OrbCare US, Inc.

SCHEDULE A – AUTHORITIES

[N/A]

SCHEDULE B – STATUTES AND REGULATIONS**Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-3, ss. 50.4(9) and 50.6(5)****Extension of time for filing proposal**

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Factors to be considered

(5) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

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CORPORATIONS ACT**

Estate File No. **31-2516167**

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COMMERCIAL LIST
Proceeding commenced in TORONTO**

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