

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)

TUESDAY, THE 25th

JUSTICE HAINEY)

DAY OF JUNE, 2019



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

ORDER
**(Extension of Time to File a Proposal and Approval of
Debtor-in-Possession Financing)**

THIS MOTION made by OrbCare Inc. (“**OrbCare**”) for: **(i)** an order extending from June 27, 2019, to August 12, 2019, the time limit for MNP Ltd. in its capacity as proposal trustee (in such capacity, the “**Trustee**”) to file with the official receiver, on behalf of OrbCare, a proposal pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”); and **(ii)** an order authorizing OrbCare to obtain and borrow under a credit facility (the “**Credit Facility**”) from iGan Partners Inc. (the “**DIP Lender**”) on terms set out in the debtor-in-possession financing facility term sheet between OrbCare, the DIP Lender and certain guarantors dated June 11, 2019 (the “**DIP Term Sheet**”) and granting in favour of the DIP Lender a charge (the “**DIP Lender’s Charge**”) on OrbCare’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (“**Property**”); was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Olivier Giner sworn June 23, 2019 and the First Report dated June 24, 2019 (the “**First Report**”) of the Trustee and upon hearing the

submissions of counsel for OrbCare, the Trustee, the DIP Lender, and those other parties present, as indicated in the counsel slip, no other parties being present although duly served as appears from the affidavit of service of Brendan Bissell dated June 24, 2019.

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the First Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the period within which OrbCare may file a proposal be and is hereby extended to August 12, 2019.

DIP FINANCING

3. **THIS COURT ORDERS** that OrbCare is hereby authorized and empowered to obtain and borrow under the Credit Facility from the DIP Lender on the terms set out in the DIP Term Sheet, provided that borrowings under the Credit Facility shall not exceed the maximum principal amount of \$1,200,000 unless permitted by further Order of this Court.

4. **THIS COURT ORDERS** that OrbCare is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and OrbCare is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

5. **THIS COURT ORDERS** that notwithstanding any other provision of this Order, the DIP Term Sheet and the Definitive Documents, OrbCare shall not be authorized and

empowered to operate any form of draw on the Credit Facility without the written approval of the Trustee, who, in deciding whether to issue its approval, shall have regard to OrbCare's cashflow statement referred to in paragraph 50.4(2)(a) of the BIA;

6. **THIS COURT ORDERS** that pursuant to Section 50.6 of the BIA, the DIP Lender shall be entitled to the benefit of and is hereby granted the DIP Lender's Charge on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made.

7. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the provisions of Section 69 of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender will be entitled to exercise any and all of its rights and remedies against OrbCare or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to OrbCare and set off and/or consolidate any amounts owing by the DIP Lender to OrbCare against the obligations of OrbCare to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against OrbCare and for the appointment of a trustee in bankruptcy of OrbCare; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of OrbCare or the Property.

8. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by OrbCare under the BIA or any plan of arrangement or compromise filed by OrbCare under the *Companies' Creditors Arrangement Act* with respect to any advances made under the Definitive Documents or the Credit Facility.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the DIP Lender's Charge shall not be required, and that the DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that the DIP Lender's Charge shall constitute a charge on the Property and such DIP Lender's Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (each and any, a "**Person**").

11. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, OrbCare shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the DIP Lender's Charge, unless OrbCare also obtains the prior written consent of the Trustee and the DIP Lender, or further Order of this Court.

12. **THIS COURT ORDERS** that the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) any deemed or voluntary assignment for the general benefit of creditors pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) 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, sublease, offer to lease or

other agreement (each and any, an “**Agreement**”) which binds OrbCare, and notwithstanding any provision to the contrary in any Agreement:

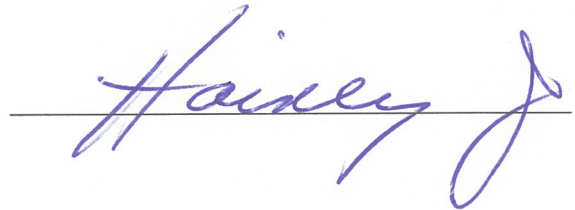
- (a) neither the creation of the DIP Lender’s Charge nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by OrbCare of any Agreement to which it is a party;
- (b) the DIP Lender shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from OrbCare entering into the DIP Term Sheet, the creation of the DIP Lender’s Charge, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by OrbCare pursuant to the DIP Term Sheet or the Definitive Documents, and the granting of the DIP Lender’s Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

13. **THIS COURT ORDERS** that the DIP Lender’s Charge created by this Order over leases of real property in Canada shall only be a charge in OrbCare’s interest in such real property leases.

14. **THIS COURT ORDERS THAT** the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial]) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established

in accordance with the Guide with the following URL: [<https://mnpdebt.ca/en/corporate/Engagements/orbcare-inc>].

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or elsewhere, to give effect to this Order and to assist OrbCare, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to OrbCare and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist OrbCare and the Trustee and their respective agents in carrying out the terms of this Order.

A handwritten signature in blue ink, reading "Hainey J.", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J" at the end.

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

Estate No. 31-2516167

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced in TORONTO

ORDER

**(Extension of Time to File a Proposal and Approval of
DIP Financing)**

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