

**CITATION:** Springer Aerospace Holdings Limited, 2023 ONSC 2202  
**COURT FILE NO.:** CV-22-00690657-00CL  
**DATE:** 20230411

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED (the “CCAA”)**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SPRINGER AEROSPACE HOLDINGS LIMITED AND 1138969 ONTARIO INC.**

**BEFORE:** Penny J.

**COUNSEL:** *Sharon Kour and Joel Turgeon*, counsel for the Applicant Debtors

*Ian Aversa and Matilda Lici*, counsel for Monitor, MNP Ltd.

*Haddon Murray and Katherine Yurkovich*, counsel for Caisse Desjardins Ontario Credit Union Inc.

*Vern DaRe*, counsel for the DIP Lender

**HEARD:** April 11, 2023

**ENDORSEMENT**

[1] Earlier today, I issued the following order, with reasons to follow:

- (a) approving the transaction contemplated in the share purchase agreement (“SPA”) under which the purchaser will acquire all the issued and outstanding shares of Springer Aerospace Holdings Limited (“Hold Co”);
- (b) adding a new corporation, 1000488910 Ontario Inc. (“Residual Co”), as an Applicant in this proceeding, and vesting all liabilities of the Applicants in Residual Co except: liabilities associated with existing and ongoing customer contracts; liabilities in connection with current employees of 1138969 Ontario Inc. (which is the operating company); and liabilities in respect of a vehicle and certain leased equipment;
- (c) vesting the purchased shares in the Purchaser upon delivery of a certificate by the Monitor confirming that the proposed transaction has closed;
- (d) approving the distribution by the Monitor of the proceeds of the proposed transaction in payment of the amounts due to the Applicants’ counsel, the Monitor,

and the Monitor's counsel as of the closing date, the amounts due under the DIP facility, the amounts outstanding under the key employee retention plan, payables of the Applicants which, by operation of law, rank in priority to the security interest held by Caisse Desjardins Ontario Credit Union Inc. and then the amounts due to Desjardins;

- (e) authorizing the Monitor to assign Residual Co into bankruptcy, to act as bankruptcy trustee, and to withhold a \$20,000 reserve from the proceeds to pay the costs of the bankruptcy;
- (f) extending the stay period until the later of the bankruptcy of Residual Co and April 30, 2023;
- (g) discharging the Monitor and terminating this CCAA proceeding and all court-ordered charges upon the CCAA termination date;
- (h) granting limited releases in favour of all of the Applicants' current directors, officers, employees, independent contractors, and advisors, including the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel, as well as Residual Co's sole director and officer; and,
- (i) sealing certain confidential exhibits.

[2] These are the reasons for my April 11, 2023 order.

### **Background**

[3] Springer operates an aircraft maintenance, repair and overhaul businesses. The business is located in Echo Bay (a community of about 1,600), near Sault Ste. Marie, Ontario. Springer currently has about 60 employees and eight contractors. Springer is the only aerospace business of its kind in Northern Ontario. Springer's primary secured creditor, Desjardins, delivered demands and notices under s. 244 of the BIA for amounts advanced by Desjardins under a line of credit and two term loans. This application followed. The initial order was issued on November 23, 2022.

[4] On December 22, 2022, the Applicants obtained an order approving a sale and investment solicitation process. The process contemplated by this order was subsequently extended by further orders of the court. The purpose of the SISP was to solicit interest for refinancing, sale or investment transactions, including the Applicants' assets (whether *en bloc* or piecemeal) or the Applicants' business. The Applicants conducted the SISP in accordance with the SISP order and with the assistance of the Monitor. The SISP was broadly advertised. 350 potential bidders were contacted; 12 conducted due diligence. While there were a number of parties that expressed interest to the Monitor and Applicants about the purchase of the business, only one viable transaction resulted from the SISP, being the proposed transaction.

[5] The key terms of the proposed transaction are:

(a) the Purchaser will purchase all the issued and outstanding shares of Hold Co. Since Hold Co holds title to the lands and buildings comprising the Applicants' facilities and owns all the issued and outstanding shares of the operating company, the Purchaser effectively acquires, through the purchased shares, all of the Applicants' assets and going-concern business;

(b) the purchase price is \$5.5 million, payable in cash. The Purchaser paid a 10% (\$550,000) deposit. The purchase price will be adjusted up or down, depending on whether the balance owing under the DIP facility as of the closing date is more or less than \$500,000, on a dollar-for-dollar basis;

(c) the Applicants must seek and obtain court approval and a reverse vesting order ("RVO"), vesting all liabilities of the Applicants, other than identified continuing liabilities, in Residual Co.;

(d) The Monitor shall distribute the proceeds to creditors. Assuming a closing date of April 21, 2023, the Applicants estimate the following amounts for priority payables, with the balance of the proceeds to be distributed to Desjardins (subject to the bankruptcy reserve):

- i. approximately \$270,000 in outstanding and accrued professional fees;
- ii. approximately \$500,000 under the DIP facility;
- iii. \$70,000 under the KERP charge;
- iv. \$6,730.10 for HST accrued after the Initial Order (subject to tax refunds currently under audit);
- v. approximately \$260 in source deductions; and
- vi. approximately \$10,000 in property taxes.

(e) The SPA also has the following closing conditions:

- i. the Court grant sale approval and the RVO;
- ii. the shareholders of the Purchaser execute a unanimous shareholder agreement;
- iii. the federal and provincial development corporations agree to release their security interest in the property municipally known as 421 Lakeview Road, Echo Bay, Ontario; and
- iv. Desjardins agree to release any guarantee given in respect of the Applicants' obligations to Desjardins (including personal guarantees), except any guarantee by Export Development Canada.

## Analysis

- [6] The Applicants operate in a highly regulated industry. Their business requires numerous licenses and certifications, in Canada as well as in other jurisdictions where the customers' planes are operated. None of the Applicants' licenses and certifications are transferable. A purchaser of assets alone would need to invest substantial time (estimated at 2-3 years) before it could obtain the necessary licences to operate this business. This would involve time the Applicants do not have and risks which no viable purchaser would undertake in the present circumstances. The Purchaser could therefore not viably acquire the Applicants' business as a going-concern except in a share transaction and "reverse" vesting structure. I am satisfied the RVO structure is necessary and reasonable in the circumstances of this case.
- [7] The proposed transaction is the only viable transaction to emerge from the SISP. The SISP was a Court-approved, transparent, and commercially reasonable process. It was broadly advertised and extensive efforts were made to market the business and assets. The SISP was conducted under the supervision of the Monitor and in accordance with the SISP order of the court. The proposed transaction allows the Applicants to continue as a going-concern, which is in the interest of all stakeholders, including employees, suppliers, customers, and the Northern Ontario economy. A going-concern sale preserves existing economic relationships and business opportunities including customer and employee contracts which will not need to be assigned or renegotiated, since they form part of the continued liabilities.
- [8] The \$5.5 million consideration for the share transfer is fully payable in cash and allows the repayment of all priority payables. The proposed transaction is also expected to lend substantial recovery for Desjardins, the primary secured lender and most significant creditor of the Applicants. The proposed transaction was negotiated in consultation with the Monitor, Desjardins, and other key stakeholders. Further, the proposed transaction is not conditional on further due diligence or financing.
- [9] The proposed transaction will not cause prejudice to any creditor as compared to any other potentially viable transaction. The priority payables will be paid in full. Desjardins consents to the proposed transaction. The federal and provincial development corporations have consented to subordinate their interest. The evidence supports the conclusion that the proposed transaction will produce a more favourable result than a liquidation which, at this point, is the only other viable alternative. The Monitor is unambiguously of the view that the proposed transaction will produce a result more favourable than a liquidation. No one has advanced evidence supporting, or taken, a contrary view.
- [10] I am satisfied that the requirements for an RVO are met: *Harte Gold Corp. (Re)*, 2022 ONSC 653; *Just Energy Group Inc. et. al. v Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354.
- [11] The extension sought is necessary and appropriate for the orderly implementation of the proposed transaction. This should be done under a stay of proceedings to preserve the status quo. The continued stay will allow the parties and professionals to devote their attention to

closing. The Applicants are acting in good faith and with due diligence to implement the proposed transaction.

- [12] It is appropriate to terminate the CCAA proceedings after the implementation of the proposed transaction, the distribution, and the bankruptcy of Residual Co. Upon the vesting of the vested liabilities, the Applicants will be solvent and will not require further CCAA relief.
- [13] The release sought is directly connected to the CCAA proceeding and the proposed transaction. It is a necessary element to the transaction which will make funds available to creditors. It is also directly tied to the success of the proposed transaction, being conditional on the delivery of the Monitor's certificate confirming that closing has occurred. The release is also properly limited in scope. It is limited to the CCAA period, excluding any claims and liabilities that pre-date the Initial Order or post-date the Monitor's certificate. It is further restricted to claims or liabilities that relate to the Applicants or the CCAA proceedings, such as acts done in connection with the SPA or the restructuring steps. The release excludes any liability for gross negligence or wilful misconduct, and any claim against directors that relate to contractual rights, or that are based on misrepresentations or wrongful or oppressive conduct.
- [14] The released parties have contributed and continue to contribute to the restructuring efforts and the proposed transaction. The proposed release does not cause any prejudice and there are no known objections to the release nor any known pending or extant claims against the released parties.
- [15] The court has jurisdiction to grant sealing orders under s. 137(2) of the *Courts of Justice Act* and may do so if the *Sherman Estate* test is met. The information sought to be sealed is valuation information, which is extremely useful, among other things, in assessing the strength of the proposed transaction. Valuation information is regularly sealed in connection with approval and vesting orders. As noted by this Court in numerous cases, there is a public interest in maximizing recovery in an insolvency that goes beyond each individual case. The relief sought meets the *Sherman Estate* test and is appropriate in the circumstances.
- [16] The Monitor's activities since the initial order have been reported to the court and stakeholders in previous Monitor's reports. Those activities are appropriate and in the best interest of stakeholders. The Applicants also seek approval of the Monitor's and its counsel's fees described in the Fourth Report. These are reasonable in the circumstances and are approved.
- [17] Needless to say, the Monitor's report provides critical information and analysis for the assistance of the court. The Monitor, in its Fourth Report, supports the relief sought by the Applicants, which support is well documented and analyzed by the Monitor in that Report.

**Conclusion**

[18] For these reasons, the order approving the proposed transaction and the use of the RVO structure is granted.

A handwritten signature in blue ink, appearing to read "Penny J.", is written above a horizontal line.

Penny J.

**Date:** April 11, 2023