

**ONTARIO
SUPERIOR COURT OF JUSTICE
(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. (the "Applicants")

FACTUM OF THE APPLICANTS (MOVING PARTIES)
(Motion Seeking Approval of a Sale and Investment Solicitation Process)
(returnable December 22, 2022)

December 20, 2022

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PART I - OVERVIEW

1. On November 23, 2022, the Applicants obtained an Initial Order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), which Order was amended and restated pursuant to an Amended and Restated Initial Order dated December 2, 2022 (the "**ARIO**"). Pursuant to the ARIO, among other things, the Court appointed MNP Ltd. as monitor of the Applicants (the "**Monitor**") and approved the Applicants' engagement of Cedar Croft Consulting Inc. as their Chief Restructuring Officer (in such capacity, the "**CRO**").
2. This factum is filed in support of the Applicants' motion seeking approval of a sale and investment solicitation process, substantially in the form attached as Schedule "A" to the draft Order provided at Tab 3 of the Applicants' Motion Record (the "**SISP**"), and certain related relief.
3. The Applicants, with the assistance of its professional advisors and the Monitor, developed the SISP to seek to identify a potential going-concern sale or other restructuring transaction that would maximize the value of the Applicants' business for the benefit of its stakeholders.
4. The Applicants believe that, in the circumstances, implementing the SISP is a critical step towards a successful restructuring of the Applicants and to maximize the Applicants' value for all stakeholders.
5. Additionally, the Monitor seeks approval of the Pre-Filing Report of the then-Proposed Monitor dated November 22, 2022 (the "**Pre-Filing Report**") and the First Report of the Monitor dated December 1, 2022 (the "**First Report**") and the actions, conduct and activities described therein, provided, however, that only the Monitor, in its personal capacity and only with respect to

its own personal liability, shall be entitled to rely upon or utilize in any way such approval. The Applicants support the Monitor's requested relief.

PART II - FACTS

6. The relevant facts are described in further detail in the Affidavit of Patrick Walsh sworn on December 18, 2022.¹

7. A primary objective of these CCAA proceedings is to provide the Applicants with sufficient breathing room to explore value-maximizing restructuring solutions, including through a sale and investment solicitation process.²

8. Pursuant to the ARIO, the Applicants were authorized to pursue all avenues of refinancing, restructuring, sale and reorganization of their business or property, in whole or in part, subject to prior approval of the Court before any material refinancing, restructuring, sale or reorganization.³

9. Accordingly, the Applicants developed the SISP to solicit offers, in the form of a refinancing, sale or investment in the Applicants' business or assets, that will maximize value for all stakeholders.⁴

10. The material terms of the SISP are summarized in the Walsh Affidavit⁵ and the Second Report of the Monitor dated December 19, 2022.⁶

¹ The Affidavit of Patrick Walsh sworn on December 18, 2022, Motion Record, **Tab 2** (page 10) [**“Walsh Affidavit”**].

² Walsh Affidavit at para 7.

³ Walsh Affidavit at para 6; see the ARIO, a copy of which is attached as Exhibit “A” to the Walsh Affidavit (page 25 of Motion Record), at para 11.

⁴ Walsh Affidavit at paras 8-9.

⁵ Walsh Affidavit at paras 14-28.

⁶ Second Report of the Monitor dated December 19, 2022 at paras 25-28.

PART III - ISSUES

11. The issues on this motion are:
 - a. Should the Court approve the SISP?
 - b. Should the Court approve the Pre-Filing Report of the then-Proposed Monitor and the First Report of the Monitor?

PART IV – LAW & ARGUMENT

A. The Court Should Approve the SISP

12. The remedial nature of the CCAA gives the Court broad powers to facilitate a restructuring and “make any order that it considers appropriate in the circumstances”,⁷ including an order approving a sale process in relation to a debtor’s business and assets.⁸

13. The Court in *Nortel* identified a number of factors that the Court should consider in determining whether to authorize and approve a sale process under the CCAA, which factors are also applicable to the approval of a sale and investment solicitation process:

- a. Is a sale transaction warranted at this time?
- b. Will the sale benefit the whole “economic community”?
- c. Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?

⁷ CCAA, s. 11.

⁸ *Nortel Networks Corp. (Re)*, [2009 CanLII 39492 \(ON SC\)](#) [“*Nortel*”] at para 48.

- d. Is there a better viable alternative? ⁹

14. Courts have also held that the *Nortel* criteria for approving a sales process should be evaluated in light of the considerations that may ultimately apply when seeking approval for a concluded sale under section 36 of the CCAA.¹⁰ The Court is entitled to consider whether the proposed SISP is likely to satisfy the s. 36 requirements that the process was fair and that the best price has been obtained, that the Monitor supports the SISP, that other creditors were consulted, and other relevant factors.¹¹

15. The Applicants submit that the SISP satisfies both the requirements of *Nortel* and the relevant considerations in section 36(3) of the CCAA. The SISP is appropriate, fair and reasonable for the following reasons:

- a. although the Applicants are in the process of evaluating a number of strategic initiatives to improve their operations and financial position, the Applicants require a comprehensive restructuring transaction to complement those efforts and to sustain the Applicants for the long-term;¹²
- b. the SISP represents the culmination of consultations between the Applicants, the CRO, the Monitor and the Applicants' primary secured creditor, Caisse Desjardins Ontario Credit Union Inc. ("**Desjardins**");¹³

⁹ *Nortel*, *supra* at para 49.

¹⁰ *Brainhunter Inc., (Re)*, [2009 CanLII 72333 \(ON SC\)](#) at paras 16-17.

¹¹ CCAA, s. 36(3).

¹² Walsh Affidavit at para 8.

¹³ Walsh Affidavit at para 8.

- c. the Applicants, the CRO and the Monitor are of the view that the SISP provides a fair and reasonable process that will adequately canvass the market to attempt to maximize value for stakeholders;¹⁴
- d. the Applicants are not aware of any creditors that would be prejudiced by the granting of the SISP, especially since Desjardins, the Applicants' main secured creditor, has been consulted;¹⁵
- e. the SISP expressly requires the approval of the Monitor for all material decisions in the SISP and consultation with key stakeholders throughout the SISP;¹⁶
- f. the Applicants do not believe that there is any *bona fide* reason for their creditors to object to the SISP given that the SISP's purpose is to solicit offers that will maximize value for all stakeholders;¹⁷
- g. the terms of the SISP are fair, transparent and objective;
- h. the timelines under the SISP are fair and reasonable in the circumstances and provide sufficient time to allow interested parties to fully participate in the SISP;¹⁸
and
- i. the Applicants will continue the ongoing operation of their business while they conduct the SISP so as to preserve the Applicants' going-concern value.¹⁹

¹⁴ Walsh Affidavit at paras 9 and 29; Second Report of the Monitor dated December 19, 2022 at paras 29-30.

¹⁵ Walsh Affidavit at para 12.

¹⁶ Walsh Affidavit at paras 27-28.

¹⁷ Walsh Affidavit at paras 9 and 12.

¹⁸ Walsh Affidavit at para 17; Second Report of the Monitor dated December 19, 2022 at para 31.

¹⁹ Walsh Affidavit at para 9.

16. The primary purpose of financial restructurings is “to permit the debtor to carry on business, and, where possible, avoid the social and economic costs of liquidating its assets.”²⁰ The SISP aligns with that purpose and is in the best interests of all stakeholders, including customers, suppliers, creditors, employees, contractors, and the Northern Ontario communities.

17. Based on the above, the Applicants submit that the SISP is the best opportunity to identify potential value-maximizing transactions for the benefit of the Applicants and their stakeholders.

B. The Court Should Approve the Pre-Filing Report and the First Report

18. The Monitor seeks approval of its Pre-Filing Report and its First Report and the actions, conduct and activities described therein, provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

19. The Applicants support the Monitor’s requested relief.

20. It is well established that there are good policy and practical reasons for the Court to approve a monitor’s activities and provide a level of protection for monitors during a CCAA process.²¹ Accordingly, the Court routinely approves monitor’s reports, together with the monitor’s activities set out in those reports.²²

²⁰ See *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#) at para 15 and *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#) at para 41.

²¹ *Laurentian University of Sudbury*, [2022 ONSC 5850](#) at para 17 citing *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at paras 22 and 23 [“*Target*”].

²² *Target*, *supra* at [paras 5](#) and [21-25](#).

21. In these circumstances, it is appropriate to approve the Monitor's reports and its activities therein because, *inter alia*:

- a. the Monitor's activities in the Pre-Filing Report and the First Report are appropriate, timely, commercially reasonable and in the best interest of the Applicants and their stakeholders; and
- b. the requested relief is appropriately limited to the benefit of the Monitor.

PART V - RELIEF REQUESTED

22. For the reasons above, the Applicants submit that this Honourable Court should grant the relief requested and issue an Order substantially in the form of the draft Order at **Tab 3** of the Applicants' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of December, 2022.

Reconstruct LLP

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Lawyers for the Applicants

SCHEDULE A – LIST OF AUTHORITIES

- 1 *Nortel Networks Corp. (Re)*, [2009 CanLII 39492 \(ON SC\)](#)
- 2 *Brainhunter Inc., (Re)*, (2009), [2009 CanLII 72333 \(ON SC\)](#)
- 3 *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#)
- 4 *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#)
- 5 *Laurentian University of Sudbury*, [2022 ONSC 5850](#)
- 6 *Target Canada Co. (Re)*, [2015 ONSC 7574](#)

SCHEDULE B – RELEVANT STATUTES

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36:

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (3)** In deciding whether to grant the authorization, the court is to consider, among other things,
- (a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b)** whether the monitor approved the process leading to the proposed sale or disposition;
 - (c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d)** the extent to which the creditors were consulted;
 - (e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

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Proceedings commenced at Toronto

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