

CITATION: In Re Synaptive Medical Inc., 2025 ONSC 1750
COURT FILE NO.: CV-25-00739279-00CL
DATE: 20250319

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SYNAPTIVE MEDICAL INC.

RE: Synaptive Medical Inc., Applicant

BEFORE: Peter J. Osborne J.

COUNSEL: *Adam Slavens and Mike Noel*, for the Applicant
Stephen Brown-Okruhlik and Spencer Klug, for the Proposed Monitor
Jennifer Caruso, for Export Development Canada, the DIP Lender
Maya Poliak, for BDC Capital Inc., Secured Creditor

HEARD: March 19, 2025

ENDORSEMENT

1. The Applicant, Synaptive Medical Inc. (“Synaptive”) bring this Application pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “*CCAA*”).

2. Today, Synaptive seeks an Initial Order:

- a. declaring that Synaptive is a “debtor company” to which the *CCAA* applies;
- b. appointing Richter Inc. as Monitor over the assets, business and affairs of Synaptive;
- c. providing for a stay of proceedings for seven days;
- d. authorizing Synaptive to continue to utilize its cash management system and maintain current banking arrangements;
- e. authorizing Synaptive to enter into the DIP Term Sheet and approving its authority to borrow under the DIP Financing Facility with Export Development Canada (“EDC” or the “DIP Lender”) up to an initial maximum amount of \$1 million; and
- f. granting the following charges over the Property of Synaptive:
 - i. and Administration Charge up to a maximum of \$250,000;
 - ii. a DIP Lenders Charge; and

iii. a Directors' Charge up to a maximum of \$1,100,000.

3. Synaptive relies on the affidavit of Magnes Momsen sworn March 18, 2025, together with the Pre-Filing Report of the Proposed Monitor. Mr. Momsen is the Chief Financial Officer of Synaptive and has held that position since January 2022.

4. Defined terms in this Endorsement have the meaning given to them in the Application materials and/or the Pre-Filing Report, unless otherwise stated.

5. The relief sought today is strongly supported by EDC and is recommended by the Proposed Monitor.

6. Synaptive is a Canadian-grown medical device company based in Toronto, Ontario, which develops neurosurgical devices to provide neurosurgery solutions from pre-operative planning and diagnosis to surgical interventions and post-operative care.

7. Its products include a next-generation robotic digital microscope to provide surgeons with hands-free 3D optics during brain and spine surgery, a software solution designed to assist surgeons in creating pre-operative surgery plans of the brain, a complementary software and hardware solution that tracks a surgeon's instruments in real time during surgical procedures by providing an interactive map of the patient's brain, and an innovative MRI platform that is said to be preferable to other MRI systems, as it employs a novel superconducting magnet to operate at a lower magnetic field strength.

8. Synaptive is in a liquidity crisis. Sales have not adequately supported its cost structure. Today, Synaptive is in default of approximately USD \$103 million of secured debt. It cannot meet its payroll obligations or working capital needs. It is insolvent and cannot meet its obligations generally as they come due.

9. Restructuring, cost-cutting and recapitalization efforts undertaken in 2023 and 2024 have not been successful in yielding a lead investor or securing a long-term financing solution.

10. Subsection 9(1) of the *CCAA* provides that an application for a stay of proceedings under the *CCAA* may be made to the court that has jurisdiction in the province in which the head office or chief place of business of the company in Canada is situated.

11. Synaptive maintains its head office in Toronto where many of its remaining employees work. I am satisfied that this Court has jurisdiction and is the appropriate forum.

12. I am also satisfied that Synaptive is a "debtor company" to which the *CCAA* applies as total claims against it exceed \$5 million. Synaptive is an *OBCA* company.

13. The term "insolvent" is not defined in the *CCAA* and therefore a determination of whether a company is insolvent requires consideration of the definition of "insolvent person" in the *BIA*, as:

a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- a) who is for any reason unable to meet his obligations as they generally become due,
- b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

14. Each of the above factors is disjunctive.

15. Courts have also considered the expanded concept of insolvency adopted in *Stelco Inc., Re*, 2004 CarswellOnt 1211 at para. 26 (“*Stelco*”), in which this court held that a debtor is insolvent where there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured. This approach to the insolvency criteria has been applied in other cases, including *Target Canada Co. (Re)*, 2015 ONSC 303 (“*Target*”) at para. 26; *Just Energy Corp. (Re)*, 2021 ONSC 1793 (“*Just Energy*”) at paras. 48 to 51; and *Nordstrom* at para. 26.

16. I am satisfied that the Applicant here is insolvent in that it is unable to meet its obligations as they generally become due, and it meets the “insolvent person” test set out in the *Bankruptcy and Insolvency Act*. As is clear from its balance sheet dated December 31, 2024, it is insolvent on a balance sheet basis and is also generally unable to meet its obligations as they come due. It will immediately run out of liquidity.

17. Section 11.02(1) of the *CCAA* provides that the Court may order a stay of proceedings on an initial *CCAA* application for a period of not more than 10 days. Section 11.001 of the *CCAA* provides that relief granted on an initial *CCAA* application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that initial 10-day period.

18. This provision is intended to “limit the decisions that can be taken at the outset of a *CCAA* proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players”. See: *Lydian International Limited (Re)*, 2019 ONSC 7473 (“*Lydian*”) at para 25. Whether any particular relief is necessary to stabilize a debtor company’s operations during the initial stay period is inherently a factual determination, based on all of the circumstances of a particular debtor: *Boreal Capital Partners Ltd et al. (Re)*, 2021 ONSC 7802 at para 16.

19. In *Lydian*, the Chief Justice observed that the Initial Stay Period preserves the status quo and allows for operations to be stabilized and negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing.

20. The relief requested in this first-day Application meets these criteria. Each aspect of the relief sought by the Applicants in the Initial Stay Period is interdependent, and collectively the relief is critical to allow the Applicants to properly respond to their current circumstances.
21. A stay of proceedings is clearly necessary here if any form of restructuring process is to be successful. The Applicant is in a liquidity crisis and absent a stay of proceedings, there is a significant risk that individual creditors will seek to enforce their rights on a haphazard basis without regard for the survival of the Company or maximization of its value.
22. A stay of proceedings is necessary to provide the Applicant with the breathing space necessary to develop an orderly restructuring process while maintaining business operations in the ordinary course.
23. The projected cash flow as set out in the forecast appended to the Pre-Filing Report shows that, if the DIP Facility is approved, there should be sufficient liquidity to fund operations through the proposed stay period.
24. I am also satisfied that the stability of the Applicant will be maintained if its current cash management system is maintained.
25. The Applicant seeks approval of the DIP Facility and approval of an interim financing charge (the DIP Charge) to secure the proposed DIP Facility pursuant to section 11.2 of the *CCAA*.
26. Section 11.2(4) of the *CCAA* sets out a non-exhaustive list of criteria that the Court must consider in deciding whether to grant a DIP lender's charge. Those criteria apply to the period during which the Applicant is expected to be subject to *CCAA* proceedings, how the Applicant's business and financial affairs are to be managed during the proceedings, whether the Applicant's management has the confidence of its major creditors, whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicant, the nature and value of the Applicant's property, whether any creditor would be materially prejudiced as a result of the security or charge, and whether the Monitor supports the charge.
27. When an application for interim financing is made at the same time as an initial application, the applicant must additionally satisfy the Court that the terms of the loan are "limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period: s. 11.2(5).
28. It is important that an applicant meet the criteria in section 11.2(1) as well as those in section 11.2(4). See *CanWest Publishing Inc., Re*, 2010 ONSC 222 ("*CanWest IP*") at paras. 42-44.
29. When considering the s. 11.2(4) factors, the Court "must determine which proposal is most appropriate and most importantly, which will best serve the interests of the stakeholders of the [Applicants] as a whole by enhancing the prospects of a successful restructuring." The Court is to make an "independent determination" when selecting a DIP proposal, having regard to the factors in subsection 11.2(4): *Crystallex (Re)*, 2012 ONCA 404 at para 85.
30. I am satisfied that the relief proposed today is appropriate. Synaptive is not seeking approval to draw down the full amount of the DIP Financing Facility, but rather only an

appropriately sized Initial Amount of \$1 million and a corresponding DIP Lenders' Charge. This quantum was determined by Synaptive and is agreed by the Proposed Monitor, in consultation with the DIP Lender.

31. Pursuant to section 11.7 of the *CCAA*, the Court shall appoint a person to monitor the business and financial affairs of the company when an order is made on the initial application. The person appointed must be a trustee within the meaning of subsection 2 (1) of the *BIA*.

32. The Applicant proposes to have Richter appointed as the Monitor.

33. Richter is a "trustee" within the meaning of subsection 2(1) of the *BIA*, is established and qualified, and has consented to act as Monitor. The involvement of Richter as the court-appointed Monitor will lend stability and assurance to the Applicant's stakeholders. Richter is not subject to any of the restrictions set out in s. 11.7(2) of the *CCAA*.

34. I am satisfied that Richter should be appointed as Monitor in these *CCAA* Proceedings.

35. I am also satisfied that the proposed Charges are appropriate.

36. The Court has jurisdiction to grant an administration charge under s. 11.52 of the *CCAA*. It is to consider: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected by the charge, and the position of the Monitor. See *CanWest Publishing Inc.*, 2010 ONSC 222 at para. 54.

37. The proposed Administration Charge sought for the initial stay period meets this test and is appropriate. It is supported by the Proposed Monitor.

38. The proposed quantum of \$250,000 is appropriate, fair and reasonable.

39. Section 11.2(4) of the *CCAA* sets out a non-exhaustive list of criteria that the Court must consider in deciding whether to grant a DIP lender's charge. Those criteria apply to the period during which the Applicant is expected to be subject to *CCAA* proceedings, how the Applicant's business and financial affairs are to be managed during the proceedings, whether the Applicant's management has the confidence of its major creditors, whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicant, the nature and value of the Applicant's property, whether any creditor would be materially prejudiced as a result of the security or charge, and whether the Monitor supports the charge.

40. When an application for interim financing is made at the same time as an initial application, the applicant must additionally satisfy the Court that the terms of the loan are "limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period: s. 11.2(5).

41. It is important that an applicant meet the criteria in section 11.2(1) as well as those in section 11.2(4). See *CanWest Publishing Inc., Re*, 2010 ONSC 222 ("*CanWest IP*") at paras. 42-44.

42. When considering the s. 11.2(4) factors, the Court “must determine which proposal is most appropriate and most importantly, which will best serve the interests of the stakeholders of the [Applicant] as a whole by enhancing the prospects of a successful restructuring.” The Court is to make an “independent determination” when selecting a DIP proposal, having regard to the factors in subsection 11.2(4): *Crystallex (Re)*, 2012 ONCA 404 at para 85.

43. The proposed DIP Lender’s Charge here satisfies the factors in section 11.2(4) of the *CCAA*. It is a condition of the DIP Facility and is appropriate.

44. The Court has jurisdiction to grant a directors’ charge under section 11.51 of the *CCAA*, provided notice is given to the secured creditors who are likely to be affected by it.

45. The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred.

46. Such a charge may not be made if “the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost” and the court shall declare that the charge does not apply in respect of a specific obligation or liability incurred by a director or officer “if, in its opinion, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct”: *CCAA*, s 11.51; see also *Laurentian University of Sudbury*, 2021 ONSC 1098, supra at para 81; and *Jaguar Mining Inc, Re*, 2014 ONSC 494 at para 45.

47. The Applicant here seeks a Directors’ Charge in the amount of \$1,100,000 to secure the indemnity of its directors and officers for liabilities they may incur during the *CCAA* proceedings.

48. I am satisfied that the proposed Directors’ Charge is appropriate here. The directors and officers have advised that they are prepared to continue to serve, conditional upon the granting of the Directors’ Charge. It will apply only to the extent that the directors’ and officers’ respective insurance is insufficient or ineffective, and only in respect of obligations and liabilities incurred after the commencement of the *CCAA* Proceedings excluding wilful misconduct or gross negligence.

49. The Proposed Monitor supports the Applicants’ request for the Directors’ Charge. I am satisfied it is appropriate here.

50. For all of these reasons, the relief sought today is granted. The proposed form of Initial Order is appropriate and is generally consistent with the Model Order of the Commercial List.

51. Order to go in the form signed by me today. It has immediate effect without the necessity of issuing and entering.

52. The comeback hearing in this Application shall take place on March 26, 2025 commencing at 12 PM.

O'Brien J.