



SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00740088-00CL

DATE: April 10, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: RE CLEARPIER ACQUISITION CORP

BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant:**

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**ENDORSEMENT OF JUSTICE CONWAY:**

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants dated April 7, 2025. All factual references are from the Affidavit of Jignesh Shah sworn March 31, 2025 and the First Report of the Monitor dated April 9, 2025.
- [2] On April 2, 2025, this court granted the Initial Order pursuant to the CCAA. This is the comeback motion. The Applicants seek two orders today: (i) the ARIO, which will extend the Stay of Proceedings until and including August 7, 2025 and increase the Administration Charge from \$500,000 to \$600,000; and (ii) the SISP Order authorizing the Monitor to conduct a SISP with the assistance of the Monitor and KPMG as Sale Advisor, and approving KPMG's appointment and the Sale Advisor Completion Fee Charge.
- [3] After receiving the motion materials, CRA and RBC requested certain amendments to the orders, described below. Those amendments were made to the draft orders and the motion is now proceeding on an unopposed basis. The Monitor recommends both the ARIO and SISP Order.
- [4] With respect to the ARIO, I am satisfied that the Stay of Proceedings should be extended to August 7, 2025. This will enable the Applicants to pursue the SISP. The extension date ties into the milestone dates in the SISP. The Applicants are acting in good faith and with due diligence. No creditor will suffer material prejudice from the extension according to the projected cash flow in the Cash Flow Forecast.
- [5] The increased Administration Charge reflects the work estimated to be done by the professionals in this CCAA proceeding, including KPMG for its Work Fee. It is satisfactory to me.
- [6] The ARIO incorporates changes in paragraph 7 requested by CRA with respect to the continued remittances and payments to be made by the Applicants. The ARIO also includes changes in paragraphs 4 and 21(a) requested by RBC, the senior secured creditor of CPP and MQ, to protect its security. Both sets of changes are satisfactory to me.
- [7] ARIO to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.
- [8] With respect to the SISP Order, the sales process applies not only to the assets of the CPAC Group but to two affiliates, CPP and MQ. The shares of those companies are owned by the ultimate indirect owners of the CPAC Group, Mr. Shah and Mr. Abraham. The two companies are not Applicants or Non-Applicant Stay Parties.

- [9] The Monitor supports the inclusion of the CPP and MQ in the SISP for the reasons set out in paragraph 18 of the First Report. In particular, the Monitor refers to the Applicants' belief that doing so will preserve enterprise value and maximize recovery for creditors since the CPP and MQ businesses are closely aligned with those of the CPAC Group. In addition, certain entities in the CPAC Group rely on CPP's and MQ's respective sales teams. RBC does not oppose their inclusion in the SISP but has required certain protections with respect to its security on the assets of those two companies. I accept the Monitor's recommendation and pursuant to the broad powers in s. 11 of the CCAA, include CPP and MQ in the SISP.
- [10] I further reviewed with counsel the protections in the SISP Order that are designed to ensure the integrity of the sale process if EDC or a Related Bidder seeks to acquire the assets.
- [11] The factors to be considered in determining whether to approve a sale process are set out in *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC) at paras 47-48, namely (a) Is a sale warranted at this time? (b) will the sale be of benefit to the whole "economic community"? (c) Do any of the debtors' creditors have a bona fide reason to object to a sale of the business? (d) Is there a better viable alternative?
- [12] While s. 36 of the CCAA applies to a sale approval, the *Nortel* criteria should be evaluated in light of the considerations that may ultimately apply when seeking approval for a sale including whether the proposed solicitation process is likely to satisfy the requirement that it is reasonable in the circumstances, whether the monitor approved the solicitation process and the extent to which the creditors were consulted: see *Tacora Resources Inc. (Re)*, 2023 ONSC 6126, at para. 165.
- [13] Taking those considerations into account, I am satisfied that the SISP Procedures should be approved. I note that they are the result of extensive discussions among the Applicants, the Monitor, KPMG, EDC, RBC, and their professional advisors. The SISP will be run by the Monitor with the assistance of the Sale Advisor. The procedures and timelines are supported as reasonable by the Monitor, the Sale Advisor, EDC and RBC. I am satisfied that the SISP Procedures constitute an efficient and transparent process for canvassing the market for these assets of these companies.
- [14] I further approve the appointment of KPMG as Sale Advisor and the terms of the KPMG Engagement Letter. KPMG will be of assistance in maximizing value for stakeholders given that it is an investment banking firm with a global reach. KPMG will be entitled to a completion fee of 2.5% of the transaction value (and not less than \$1 million). There will be no completion fee or minimum charge if a transaction does not occur. The fee is secured by the Sales Advisor's Completion Fee Charge, which is approved.
- [15] SISP Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

