

Court File Number: CV-20-00642970-00CL

**Superior Court of Justice  
Commercial List**

**FILE/DIRECTION/ORDER**

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 GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY, LUCKY OLDKO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDCO, LLC, GNC HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

---

Counsel	Telephone No:	Email/Facsimile No:
As per counsel slip		

**June 29, 2020**

**Conway J. - Endorsement on Application**

[1] This is an application by GNC Holdings, Inc., (“**GNC Holdings**”) as the foreign representative of itself and the other debtors in possession<sup>1</sup> that filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (collectively, the “**Debtors**” or “**GNC**”).

---

<sup>1</sup> In addition to GNC Holdings, Inc., the other Debtors are: General Nutrition Centres Company, GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC China Holdco, LLC, GNC Headquarters LLC, Gustine

[2] This application seeks orders pursuant to sections 46 to 49 of the *Companies' Creditors Arrangement Act*, RSC 1985, C. C-36, as amended (the “**CCAA**”) for the following:

- a. recognition of the cases commenced by the Debtors in the United States (the “**Chapter 11 Cases**”) as foreign main proceedings pursuant to Part IV of the CCAA;
- b. recognition of certain first day orders granted by the U.S. Court (as defined below);
- c. the appointment of FTI Consulting Canada Inc. (“**FTI Canada**”) as information officer in respect of these proceedings; and
- d. the granting of an administration charge and DIP charge.

[3] This relief is contained in three draft orders submitted to me - an Initial Recognition Order, a Supplementary Recognition Order, and a Consulting Agreement Approval Order.

[4] All of the relief sought today is unopposed. Further, it is supported and recommended by FTI Canada in its Pre-Filing Report to the court.

[5] GNC is a global health and wellness brand with a diversified business. The company sells an assortment of performance and nutritional supplements, vitamins, herbs and greens, health and beauty, food and drink, and other general merchandise, featuring GNC-branded products as well as nationally recognized third-party brands, many of which are exclusive to GNC.

[6] GNC evolved from a single health-food store opened in downtown Pittsburgh, Pennsylvania in 1935. Over the following decades, the store expanded and the company changed its name to General Nutrition Centers, or GNC. By the time that the company's founder passed away in 1984, GNC had more than 1,000 locations across the United States.

[7] GNC Canada Holdings, Inc. is the holding company for the company's Canadian operating entity. It is a Nevada corporation. It is the parent of General Nutrition Centres Company (“**GNC Canada**”), an unlimited liability corporation organized pursuant to the laws of Nova Scotia. GNC Canada operates the company-owned stores located in Canada, most of which are located in Ontario. GNC Canada has a small regional office in Mississauga, Ontario. Of the 173 stores in Canada, 13 Canadian stores have closed permanently and a number of the remainder are temporarily closed due to the COVID-19 pandemic.

[8] GNC operates as a consolidated business and all executive management and senior management decision-making for the broader corporate group, including GNC Canada, is centralized in Pittsburgh. The regional head responsible for GNC Canada operations is in Pittsburgh.

[9] On June 23, 2020, each of the Debtors filed voluntary petitions for relief (the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for

the District of Delaware (the "**U.S. Court**"). The hearing took place on June 25, 2020 and various first day orders were granted by the U.S. Court that day (the "**First Day Orders**").

[10] The motions for final orders and additional relief (including the 3 US omnibus lease rejection orders) are scheduled to be heard by the U.S. Court on July 22, 2020. The Applicant has a return date scheduled in this court on July 27, 2020 to seek additional orders arising from the July 22 hearing.

### **Recognition of the Chapter 11 Cases as Foreign Main Proceedings**

[11] Part IV of the CCAA establishes a process for addressing the administration of cross-border and multi-national insolvencies in a coordinated and cooperative manner with foreign courts.

[12] Pursuant to Section 46(1) of the CCAA, a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative. Section 47 of the CCAA provides that the Court shall make an order recognizing a foreign insolvency proceeding if (i) the application for recognition of a foreign proceeding relates to a "foreign proceeding" within the meaning of the CCAA; and (ii) the applicant is a "foreign representative" within the meaning of the CCAA in respect of that foreign proceeding

[13] Both such requirements are met in this case. Canadian courts have recognized insolvency proceedings commenced under the Bankruptcy Code to be a "foreign proceeding" for purposes of the CCAA: *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238 at para 27; *Payless Holdings LLC (Re)*, 2017 ONSC 2242 at para 22; *Zochem Inc. (Re)*, 2016 ONSC 958 at para 20. In addition, the U.S. Court has issued now an order declaring GNC Holdings to be the foreign representative for purposes of the Chapter 11 Cases. I therefore grant an order recognizing the Chapter 11 Cases as a foreign proceeding.

[14] Pursuant to section 47(2) of the CCAA, I specify that the Chapter 11 Cases are to be recognized as foreign main proceedings. There is no question that the Debtors' COMI (centre of its main interests) is in the United States. GNC Canada's registered office is in Nova Scotia but its principal operations and the management of GNC Canada all take place in Pittsburgh, Pennsylvania. The record establishes that the center of GNC's corporate, banking, strategic and management functions is in Pittsburgh and that oversight of cash management and accounting functions, the seat of treasury management functions, and decision-making around pricing decisions and new business development initiatives all happen in the U.S. No serious management, financial or executive decision making occurs in Canada.

[15] On making the order recognizing the Chapter 11 Cases as foreign main proceedings, I am required to grant the relief set out in section 48(1) of the CCAA. The Initial Recognition Order includes this relief. In addition, I have broad discretion under section 49 of the CCAA to make any order that I consider appropriate. The Supplemental Order includes the broader stay of proceedings typically granted in Part IV and other CCAA proceedings. Given the nature of the ongoing litigation in the United States and Canada, I consider it appropriate to grant this broad stay of proceedings to preserve the *status quo* while the Debtors attempt to restructure their business.

### **Recognition of First Day Orders**

[16] Section 49 of the CCAA provides that the court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company's property or the interests of a creditor or creditors. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the Court considers appropriate.

[17] I consider it appropriate to recognize the First Day Orders. I wish to highlight three of those orders.

[18] The first is the Interim DIP Order and DIP Charge. As part of their restructuring efforts, the Debtors have negotiated debtor-in-possession financing and a pre-arranged standalone plan of reorganization with certain of their secured lenders, the details of which are set out in a restructuring support agreement. There are two credit agreements in issue that will provide for US\$100 million in “new money” loans together with a “roll-up” on a dollar-for-dollar basis of certain prepetition loans into postpetition debt facilities. Recognition of the Interim DIP Order is a condition of the plan as set out in the restructuring support agreement.<sup>2</sup> Under the Interim DIP Order, the maximum of “new money” that can be borrowed by the Debtors at this time under the DIP term facility is US\$30 million.

[19] As set out in the affidavit evidence of Tricia Toliva, the Executive Vice-President and CFO of GNC Holdings, the Debtors attempted to secure financing within and outside of their existing capital structure and do not have the ability to continue business in the ordinary course without the DIP financing. She states that among other things, the Debtors need such liquidity to pay vendors and other participants in the Debtors' supply chain, to execute on certain initiatives, and to pay fees and costs related to their restructurings

[20] FTI Canada states in its pre-filing report that its understanding is that the roll up requirement and DIP charge was a condition of securing this DIP financing and that it would have been a condition of any other DIP financing obtained by the Debtors.

[21] This court has previously held that there is no impediment to granting approval of interim DIP financing including a full roll-up provision in foreign recognition proceedings under Part IV of the CCAA: see *Hartford Computer Hardware, Inc. (Re)*, 2012 ONSC 964, at para 10-14. In that case, Morawetz J. (as he then was) emphasized the importance of comity in foreign recognition proceedings. See also *Hollander Sleep Products, LLC et al, Re*, 2019 ONSC 3238.

[22] I am satisfied that the Interim DIP Order should be recognized and the DIP Charge granted.<sup>3</sup>

[23] With respect to the Interim Cash Management Order, Ms. Tolivar's evidence is that cash management for GNC Canada and the Debtors is done centrally in the US. There will be a transfer of excess funds from Canada to the United States but it will be subject to there being at all times

---

<sup>2</sup> In addition, the Debtors, a significant majority of the Supporting Secured Lenders, and Harbin Pharmaceutical Group Holding Co., Ltd., an affiliate of GNC's largest shareholder have reached an agreement in principle for the sale of the Debtors' business. The sale transaction contemplates a US\$760 million purchase price for a going-concern sale of the Debtors' business, which would be executed through a section 363 auction process, at which higher and better bids may be presented. If the sale transaction is timely consummated, it would be implemented instead of the standalone plan transaction.

<sup>3</sup> I note that the DIP Charge does not apply to existing purchase money security interests and is not opposed by any creditors.

sufficient funding available to settle post-filing debts, prior payables, sales taxes, professional fees and other items. There will be consultation with FTI Canada before any excess funds are transferred. FTI Canada has done a cash flow analysis and determined that there will be sufficient liquidity to fund the obligations of GNC Canada from now to the week ending September 19, 2020. Considering these factors, I am satisfied that the Interim Cash Management Order should be recognized.

[24] The U.S. Court has granted the Interim Store Closing Order, which provides, among other things, for the conduct of store closing or similarly themed sales at certain stores in accordance with the Canadian Store Closing Procedures and Canadian Sale Guidelines. To assist with these closures, the Debtors entered into the Consulting Agreement and have engaged the Consultant to manage these closings, sell the store inventory and prepare the stores for turnover to the landlords, in accordance with Canadian Sale Guidelines. According to FTI Canada, the agreement and guidelines are similar to those that have been used in other Canadian insolvencies. FTI Canada also notes that there is a historical relationship between the Consultant and the Debtors that would be beneficial in managing this process. I am satisfied that the Interim Store Closing Order should be recognized and that Consulting Agreement approved.

#### **Appointment of FTI Canada as Information Officer**

[25] Pursuant to section 49, I appoint FTI Canada as Information Officer in the proceeding. I am satisfied that its involvement will help facilitate these proceedings and the dissemination of information concerning developments in the Chapter 11 Cases to affected creditors, stakeholders and this court.

#### **Administration Charge**

[26] The Debtors seek to grant Canadian counsel to the Debtors, FTI Canada (the Information Officer) and its legal counsel an administration charge with respect to their fees and disbursements in the maximum amount of CDN\$250,000 on the Debtors' property in Canada, as well as retainers in the amount of CDN\$350,000 for the Information Officer and CDN\$100,000 for its counsel.

[27] Section 11.52 of the CCAA provides that the jurisdiction to grant an administration charge. Considering the factors set out in *Canwest Publishing Inc.*, 2010 ONSC 222, at para. 54, I consider the amount of the administration charge to be reasonable, having regard to the size and complexity of these proceedings and the roles that will be required of FTI Canada and its legal counsel.

#### **Orders**

[28] I have signed the three requested orders today. The orders are effective from today's date and are enforceable without the need for entry and filing.

[29] Finally, I make the following endorsement with respect to the Canadian landlords. I am satisfied that GNC Canada will give its Canadian landlords at least 30 days' notice prior to the effective date of a lease rejection and continue to pay rent during that time period, as set out in para. 110 of the affidavit of Ms. Tolivar dated June 24, 2020. I am advised that it is on the assurance that such notice will be provided that counsel for landlords is not objecting to this proceeding.

  
Justice Conway

---

Released: June 29, 2020