



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

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DATE: **13 May 2025**

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TITLE OF PROCEEDING: **SHAW-ALMEX INDUSTRIES LIMITED v.
FTI CONSULTING CANADA INC.**

BEFORE JUSTICE: **J. DIETRICH**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE J. DIETRICH

Introduction

[1] Shaw-Almex Industries Limited (“**SAIL**”) and Shaw Almex Fusion, LLC (“**Fusion**” and together with SAIL, the “**Applicants**”) seek three orders:

[2] First an Initial Order under the *Companies' Creditors Arrangement Act* (the “**Initial Order**”) which provides for:

- approval of the Amended DIP Term Sheet and DIP Lender's Charge
- approval of the Administration Charge
- approval for the Applicants to pay certain pre-filing obligations with the consent of the Monitor and DIP Lender;
- the appointment of FTI Consulting Canada Inc. ("FTI") as Monitor with certain enhanced powers; and
- the authorization for Fusion to act as foreign representative of the Applicants.

[3] Second, a sale and investment solicitation process (SISP) approval order (the “**SISP Approval Order**”) is sought.

[4] Third an order discharging FTI in its capacity as proposal trustee of SAIL and approving the fees and disbursements of the Proposal Trustee (the “**Discharge Order**”) is sought.

[5] No opposition to the relief sought by the Company was raised at the hearing.

[6] Terms used herein and not otherwise defined have the meaning provided to them in the factum of the Applicants filed on this motion.

Background

[7] SAIL filed a Notice of Intention to Make a Proposal under the Bankruptcy and Insolvency Act (the “**BIA**”) on March 29, 2025. FTI was appointed as Proposal Trustee under the NOI.

[8] On April 25, 2025, I granted an order, among other things, extending the stay period under the NOI proceeding until today, authorizing SAIL to borrow up to a maximum principal amount of \$1,000,000 under a debtor-in-possession credit facility (the “**DIP Facility**”) from RBC (in such capacity, the “**DIP Lender**”) and granting an Administration Charge in the amount of \$350,000 and a DIP Lender's Charge as security for the DIP Facility.

[9] The Applicants are in the business of providing conveyor belt vulcanizing equipment technology, services and expertise. The Business began over 67 years ago in Parry Sound, Ontario as a small, family-run operation. Since that time, the business has grown significantly. Its customers are in a diverse range of industries including mining, steel mills, ports, power generation, package handling, and aerospace.

[10] SAIL is the parent company of a global enterprise operating under the “Shaw Almex” name (the “**Almex Group**”). The Almex Group has 15 locations, plus exclusive distributors, across six continents worldwide. Through the Almex Group, the Company now services customers across 123 countries worldwide.

[11] SAIL manufactures the majority of the Business’ products and ships them to its subsidiaries or local distributors worldwide. The other principal manufacturing operations in the Almex Group are conducted by wholly owned subsidiaries in the United States, China, and Spain. The remaining companies within the Almex Group operate primarily as sales and distribution centres with limited ability to modify or finish machinery being shipped from North America to their local markets.

[12] SAIL operates a manufacturing facility in Parry Sound, has its head office in Stoney Creek, Ontario, and an office and manufacturing facility in Hamilton, Ontario. SAIL owns the real property from which it operates in Parry Sound, Ontario.

[13] SAIL currently employs approximately 80 employees across Canada, 35 of which are unionized.

[14] Fusion is an indirect subsidiary of SAIL and is the other principal manufacturing operation of the Almex Group. Specifically, Fusion primarily manufactures Almex presses and Fusion rubber products from a sales, manufacturing, and distribution facility located in Atlanta, Georgia. Fusion previously employed approximately 30 individuals, but after recent workforce reductions presently have only approximately 4 employees.

[15] The operations of the Applicants are functionally and operationally integrated such that the Fusion’s United States operations cannot operate independently of SAIL’s Canadian operations. Fusion’s financial statements show that Fusion has assets and does business in Canada, this includes loaning money to SAIL, purchasing inventory from SAIL in Canada and providing managements services to SAIL. SAIL is the largest customer of Fusion.

[16] As of December 31, 2024, the Applicants’ liabilities significantly exceed the book value of their assets by approximately \$32 million.

[17] The Applicants have several secured creditors, including RBC, Business Development Bank of Canada, BDC Capital Inc., two counterparties to agreements for the sale of future receipts, and various equipment financiers. All secured creditors have been served.

[18] The Applicants are current in their government remittances, property taxes, and wages except that Fusion has USD \$195,000 owed to its employees with respect to unpaid prior bonuses and \$134,000 for payroll accruing during the week of May 2, 2025 but which was unpaid due to lack of funds.

[19] The Applicants’ primary unsecured liabilities include approximately \$5.7 million in trade payables, \$2.1 million owed to Monex and Corpay for currency hedging transactions, \$270,541 owed by Fusion to its Georgia facility landlord, and numerous default judgments totaling over \$470,000. The Applicants are also involved in multiple ongoing lawsuits in Canada and the U.S., which represent contingent liabilities.

[20] The Company's financial and operational challenges in recent years include difficulties securing a reliable rubber supplier after a competitor purchased the Company's former rubber supplier in or around 2022, and quality control issues arising from a replacement rubber supplier. As well, the Company was faced with large losses arising from currency hedging transactions conducted under the supervision of its former Chief Financial Officer.

[21] The Applicants seek to increase the maximum borrowings under the DIP Facility and the DIP Lender’s Charge to the maximum amount of \$1,800,000. Specifically, the Applicants’ cash flow forecast (“**Cash Flow Forecast**”) demonstrates that the Applicants require this amount in interim financing to meet their ordinary course of business expenses and to fund the CCAA proceeding during the stay of proceedings.

[22] The proposed DIP Facility is to be provided by the DIP Lender pursuant to an amended and restated debtor-in-possession loan agreement to be appended to the supplemental report of FTI as the Proposal Trustee and proposed Monitor dated May 12, 2025 (the “**Amended DIP Term Sheet**”).

[23] In large part the terms of the Amended DIP Term Sheet are consistent with those previously approved. However, it is also a term of the Amended DIP Term Sheet that the Court grant the FTI as monitor enhanced powers to preserve, protect and exercise control of over the Applicants' business. As outlined in the report of FTI as the Proposal Trustee and proposed Monitor dated May 11, 2025, this follows certain concerns encountered by the Proposal Trustee during the NOI proceeding. The Proposal Trustee has not yet had an opportunity to investigate all of the concerns raised with respect to the conduct of Mr. Shaw, but those concerns are outlined in the report. Mr. Shaw takes issue with certain of the concerns identified in the report, but there is no opposition to the request for enhanced powers to be provided to the Monitor.

[24] The Applicants also seek approval of the SISP which was developed in consultation with the Monitor and the DIP Lender.

[25] The SISP was designed to be broad and flexible in order to widely expose the Applicants' Business and property to the market and to provide a structured and orderly process for interested parties to perform due diligence and submit offers. The SISP is intended to solicit a broad range of potential transactions, including a sale or recapitalization.

[26] The proposed SISP is a two-phase process, with a proposed deadline for submission of LOI's by May 22, 2025 and, if there are qualified bidders, with a binding offer deadline of June 12, 2025.

[27] The Monitor has already commenced the SISP by, among other things, compiling a list of known prospective bidders, preparing a virtual data room, and preparing and circulating a solicitation letter describing the SISP to approximately 70 prospective bidders.

Issues

[28] The issues to be determined today are:

- a. should the Applicants be granted protection under the CCAA, including a stay of proceedings
- b. should the Amended DIP Term Sheet and DIP Lender's Charge be approved;
- c. should the Administration Charge be approved;
- d. should the Applicants be permitted to pay certain pre-filing obligations with the consent of the Monitor and the DIP Lender;
- e. should FTI be appointed as Monitor with enhanced powers;
- f. should Fusion be authorized to act as foreign representative for the Applicants;
- g. should the SISP be approved; and
- h. should the Discharge Order be granted?

Analysis

Initial Order

[29] The Court may order that a NOI proceeding under the BIA be continued under the CCAA where the debtor satisfies a three-part test: (1) the debtor has not filed a proposal under the BIA; (2) the proposed continuation is consistent with the purposes of the CCAA; and (3) the debtor has provided the Court with the information that would otherwise form part of an initial CCAA application under section 10(2) of the CCAA see *(Re) Clothing for Modern Times Ltd.*, 2011 ONSC 7522 at para 9 and *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882 (“*Body Shop*”) at para 10.

[30] I am satisfied that with respect to SAIL, the conversion to a CCAA proceeding has met the above criteria will have the benefit of reducing administrative and legal costs, given the flexibility with respect to reporting and attendances.

[31] The Applicants have provided all of the information that would otherwise be filed on a CCAA Initial Order application, including but not limited to a cash flow forecast for the period ending May 30, 2025 and the Applicants most recent financial information, as well as a report demonstrating that the Proposal Trustee and proposed Monitor believe the cash flow analysis is reasonable and that they support the request for conversion.

[32] I am also satisfied that the Applicants qualify as a debtor company with liabilities that exceed \$5 million.

Stay of Proceedings

[33] I am satisfied that the stay of proceedings can and should be extended to and including May 30, 2025. Such period of time is appropriate and a stay of longer than 10 days has been authorized by this Court in previous cases on a conversion from a BIA proceeding, such as is this case, notwithstanding section 11.02(1) of the CCAA: see *Body Shop* at para 19-21. In this case, the extended stay requested is only 17 days.

Amended DIP Term Sheet and DIP Lender's Charge

[34] The Applicants seek approval of the Amended DIP Term Sheet and a DIP Lender’s Charge over the Applicants’ assets, property and undertakings in favour of the DIP Lender. The proposed DIP Lender’s Charge ranks behind the Administration Charge and BDC’s mortgage but above all other encumbrances.

[35] Section 11.2 of the CCAA permits the Court to grant the DIP Facility and the DIP Lender’s Charge on notice to those secured creditors that would be affected and in an amount that the Court considers appropriate having regard to the Applicants’ cash flow forecast.

[36] In determining whether the DIP Lender’s Charge is appropriate, the Court is required to consider the following factors under section 11.2(4) of the CCAA: (a) the period during which the company is expected to be subject to proceedings under the CCAA; (b) how the company’s business and financial affairs are to be managed during the proceedings; (c) whether the company’s management has the confidence of its major creditors; (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company; (e) the nature and value of the company’s property; (f) whether any creditor would be materially prejudiced as a result of the security or charge; and (g) the monitor’s report, if any: see *In Re Hudson’s Bay Company*, 2025 ONSC 1530 (“*Hudson’s Bay*”) at para 84.

[37] In this case, the Cash Flow Forecast demonstrates that further interim financing is required to provide the Applicants with the required liquidity for continued operations in the ordinary course. Ordinary course operations will preserve the value and going concern operations of the Applicants’ Business, which is in the best interests of the Applicants and their stakeholders during the proposed SISF. The Applicants are not able to obtain interim financing without a charge given that the DIP Facility requires the DIP Lender’s Charge. The DIP Lender is SAIL’s primary secured creditor, RBC and is already the DIP Lender to SAIL in the existing NOI Proceeding. Notice has been given to the registered secured creditors to be primed by the DIP Lender’s Charge and the proposed DIP Lender’s Charge does not secure any pre-filing obligations of the Applicants. Finally, the Proposal

Trustee and proposed Monitor supports this relief and believes the economic terms of the DIP Facility are reasonable in the circumstances.

[38] In the circumstances, the Initial DIP Facility and the DIP Lender's Charge are approved.

Administration Charge

[39] The Court granted an Administration Charge in the NOI Proceeding in the maximum amount of \$350,000. The Applicants seek to continue the Administration Charge in the same amount of \$350,000 in order to secure the fees and disbursements of the Monitor, its counsel, and the Applicants' counsel. Section 11.52 of the CCAA gives this Court jurisdiction to grant a priority charge for the fees and expenses of financial, legal and other advisors or experts. Courts have considered the following non-exhaustive factors in determining whether an administration charge is appropriate: (a) the size and complexity of the business being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge, and (f) the position of the Monitor: see *Hudson's Bay* at para 100.

[40] The quantum of the proposed Administration Charge is reasonable in the circumstances and not opposed by any person. The proposed Administration Charge is appropriate in the circumstances is approved.

Authorization to Pay Certain Pre-Filing Amounts

[41] The proposed Initial Order authorizes the Applicants to pay up to \$250,000 owing for goods or services supplied to the Applicants prior to the date of the Initial Order, if in the opinion of the Applicants and the Monitor, the payment is necessary or desirable to avoid disruption to the operations of the Business or the property of the Applicants during the CCAA proceedings.

[42] Courts have granted orders allowing CCAA applicants to pay pre-filing amounts to critical suppliers with the consent of the monitor. In doing so, Courts have considered the following criteria: (a) whether the goods and services concerned are integral to the business; (b) the applicant's need for the uninterrupted supply of the goods or services; (c) the Monitor's support and willingness to work with the applicant to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate; and (d) the effect on the applicant's ongoing operations and ability to restructure if it were unable to make pre-filing payments to its critical suppliers: see *Hudson's Bay* at para 114.

[43] The Applicants rely heavily on a small number of suppliers and contractors who provide specialized services and materials. To avoid disruption to the Business, the Applicants seek the flexibility to make pre-filing payments as necessary to maintain the Business and avoid impairing their restructuring efforts.

[44] In the circumstances, the approval to pay certain pre-filing creditors is appropriate and is approved.

Appointment of Monitor and Enhanced Monitor's Powers

[45] The firm currently acting in the capacity as Proposal Trustee, FTI, is qualified to act as Court-appointed Monitor, has consented to do so and is not affected by any restrictions as set out in section 11.7(2) of the CCAA.

[46] Section 23(1)(k) of the CCAA permits monitors to be granted enhanced powers depending on the applicable circumstances.

[47] In this case, the DIP Lender requires such powers as a term of advancing funds that are necessary to support a going concern sale process, which the Applicants and Timothy Shaw as their director do not object to and which FTI as the proposed Monitor consents to and supports.

[48] In the circumstances, including the concerns outlined above, the enhanced powers granted to the Monitor are appropriate.

Appointment of Fusion as Foreign Representative

[49] The Applicants may seek recognition of the CCAA proceedings in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code. Accordingly, the Applicants seek authorization for Fusion to act as the foreign representatives with respect to the CCAA proceedings.

[50] Section 56 of the CCAA grants the Court authority to appoint “any person or body” to act as a representative for the purpose of having CCAA proceedings recognized in any jurisdiction outside of Canada, including the U.S. In the circumstances the appointment of Fusion as Foreign Representative is appropriate and is approved.

SISP Approval Order

[51] I am satisfied that the proposed SISP should be approved. The factors set out in *Re Nortel Networks Corporation*, 2009 CanLII 39492 at para. 49, together with the additional factors identified in subsequent cases such as *CCM Master Qualified Fund v. blutip Power Technologies Inc.*, 2012 ONSC 1750 at para. 6 are satisfied.

[52] The broad flexibility afforded by the SISP is designed to solicit the highest value available for the property and Business. The SISP was developed by the Applicants, with the assistance of the Monitor and the DIP Lender. It is a condition of the Amended DIP Term Sheet that the SISP be commenced.

[53] FTI as Proposal Trustee and proposed Monitor is of the view that the SISP is an appropriate continuation of the efforts of SAIL and the during the NOI proceeding and the proposed SISP is typical in terms of duration and process of sales process typically granted in an NOI or CCAA proceeding and represents the best opportunity to identify a potential going concern transaction for the Applicants and maximize value for the benefit of their stakeholders.

Discharge Order

[54] It follows from all of the above that the SAIL NOI proceeding should be terminated and the conduct and fees of the Proposal Trustee and its counsel approved, and those parties be released from claims relating to this proceeding (other than claims arising from gross negligence or willful misconduct): see *Body Shop* at para 27 and 28.

[55] In this respect, as the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer* 2014 ONCA 851 at paras 33 and 45, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature is whether the fees are fair, reasonable, and proportionate given the value of the Applicants’ assets and liabilities, as well as the complexity of the business and the NOI Proceeding.

[56] In considering these guiding principles, the fees of the Proposal Trustee and its counsel are appropriate and are approved as are the releases sought by the Proposal Trustee and its counsel, together with counsel for the Company. The approval of the Proposal Trustee and its counsel fees is without prejudice to the rights of BDC to challenge the scope and quantum of those fees if any priority is sought for the Administration Charge in the NOI proceeding over the BDC mortgage.

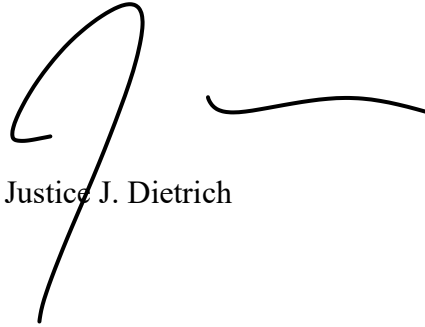
Disposition

[57] Orders to go in the form signed by me.

[58] Nothing in the relief sought today prevents BDC from bringing a motion to lift the stay to enforce its mortgage in the future.

[59] Counsel for Corpay requests that the Monitor provide certain reporting regarding hedging contracts and serve it with various motions. If Corpay wishes to have notice of matters in this proceeding, they should file a notice of appearance. Corpay has not yet discussed the requested reporting with the Monitor and that should occur prior to any order being made.

[60] A further hearing is scheduled before me in this matter on **May 30, 2025 at 10:00 a.m. for 2 hours** (virtually).

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line.

Justice J. Dietrich

May 13, 2025