

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-11-056311-190

DATE: May 8, 2019

PRESIDING: THE HONOURABLE J. BRIAN RIORDAN, J.S.C.

IN THE MATTER OF THE NOTICE OF INTENTION OF:

BIOMOD CONCEPTS INC.

PETITIONER/Debtor

and

RICHTER ADVISORY GROUP INC.

IMPLEADED PARTY/Trustee

JUDGMENT ON A MOTION FOR

- (i) **AN EXTENSION OF THE DELAY TO FILE A PROPOSAL,**
 - (ii) **THE APPOINTMENT OF AN INTERIM RECEIVER,**
 - (iii) **THE APPROVAL OF AN INTERIM FINANCING, AND**
 - (iv) **THE GRANTING OF A SUPER-PRIORITY CHARGE**
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[1] **ON READING** the motion of Motion Biomod Concepts Inc. (the "**Petitioner**") for (i) an extension of the delay to file a proposal, (ii) the appointment of an interim receiver, (iii) the approval of an interim financing and (iv) the granting of super-priority charges as well as the Exhibits and Affidavit in support thereof;

[2] **GIVEN** the representations of counsel;

[3] **GIVEN** the provisions of the *Bankruptcy and Insolvency Act*;

FOR THESE REASONS, THE COURT:

[4] **GRANTS** the Motion;

[5] **SHORTEN AND WAIVES** the delay for filing and presentation of the Motion;

EXTENSION OF DELAY

[6] **GRANTS** an extension of forty-five (45) days from May 8, 2019, to allow Biomod Concepts Inc. to file its proposal;

APPOINTMENT OF AN INTERIM RECEIVER

[7] **APPOINTS** Richter Advisory Group Inc. (Gilles Robillard, CPA, Ca, CIRP, LIT) as interim receiver pursuant to section 47.1 of the *Bankruptcy and Insolvency Act* (hereinafter referred to in such capacity as the "**Interim Receiver**"), without security, of Biomod Concepts Inc.;

[8] **ORDERS** that Biomod Concepts Inc. and its respective principals, officers, directors, employees agents, servants and all other persons having notice of this Order shall allow the Interim Receiver immediate, continuous and unrestricted access to the assets, property and undertaking (the "**Property**") of Biomod Concepts Inc., including all books, documents, contracts, orders, corporate and accounting records and any other papers and records of any kind relating thereto in their possession or control;

[9] **ORDERS** that, without limiting the powers herein above set out, the Interim Receiver is authorized and empowered to do all or any of the following acts or things if, in its opinion, it is necessary or desirable:

- a) to take possession and manage all or such portion or the Property as the Interim Receiver in its discretion deems appropriate for the purpose of exercising its powers hereunder;
- b) to carry on all or part of the business of Biomod Concepts Inc. for such period of time and in such manner as the Interim Receiver in its discretion deems appropriate;
- c) to do all necessary acts to solicit in the name of Biomod Concepts Inc. offers for the purchasing of the Property in whole and/or in part of for Investments in Biomod Concepts Inc. and to disclose any information that the Interim Receiver deem necessary to maximize the value of the Property or business of Biomod Concepts Inc.;
- d) to receive and collect in trust all moneys now or hereinafter owing or payable to Biomod Concepts Inc.;

- e) to control the receipts and disbursements of Biomod Concepts Inc.;
- f) to open bank accounts and to place funds collected in the exercise of its powers on deposit in such accounts (including the Interim Financing) and/or to invest such funds in term deposits or other instruments, with the power to draw funds by way of checks, wire transfers or other mode of payment from the said bank accounts;
- g) to apply, from time to time, to this Honorable Court for advice and direction in the discharge of its powers and duties hereunder;
- h) to take such other steps as the Interim Receiver deems necessary or desirable to maintain, protect, preserve or secure the Property.

[10] **ORDERS** that the Interim Receiver shall be entitled to be indemnified out of the Property from and against all liabilities arising from the due and proper performance of its duties as Interim Receiver and that the Interim Receiver shall have no personal or corporate liability as a result of its appointment or as a result of the performance of its duties, save and except for liability arising as a result of the gross negligence or willful misconduct of the Interim Receiver;

[11] **ORDERS** that nothing in the order to be rendered hereunder shall vest in the Interim Receiver the ownership or possession of, or require the Interim Receiver to enter into possession of any of the Property, provided that the Interim Receiver may and is hereby authorized, if it deems appropriate, to enter into possession of any or all of the Property at its discretion;

[12] **ORDERS AND DECLARES** that the Interim Receiver is not the successor employer of the employees of Biomod Concepts Inc. and that the Interim Receiver shall not be liable to any of the employees for any obligation of Biomod Concepts Inc. of any nature whatsoever;

APPROVAL OF THE INTERIM FINANCING

[13] **ORDERS** that Petitioner be and is hereby authorized to borrow from Franbeau Inc.

(the "**Interim Lender**") an amount of CDN\$400,000.00 on the terms and conditions as set forth in the Interim Financing Term Sheet (R-4) (the "**Interim Financing Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioner and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**");

[14] **ORDERS** that Petitioner is hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the Interim Lender in connection with the Interim Facility and the Interim Financing Term Sheet, and

Petitioner is hereby authorized to perform all of its obligations under the Interim Financing Documents;

[15] **ORDERS** that Petitioner shall pay to the Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other reasonably required advisers to or agents of the Interim Lender (the "**Interim Lender Expenses**")) under the Interim Financing Documents and shall perform all of its other obligations to the Interim Lender pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and the Order;

[16] **DECLARES** that all of the Property of Petitioner is hereby subject to a charge and security for an aggregate amount of CDN\$500,000.00 together with interest thereon at the rate of twenty percent (20%) per annum (such charge and security is referred to herein as the "**Interim Lender Charge**") in favour of the Interim Lender as security for all obligations of Petitioner to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lender Charge shall have the priority established by paragraphs 22 and 23 of this Order;

[17] **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to any proposal or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any proposal;

[18] **ORDERS** that the Interim Lender may notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate;

[19] **ORDERS** that the Interim Lender shall not take any enforcement steps under the Interim Financing Documents or the Interim Lender Charge without providing at least five (5) business days written notice (the "**Notice Period**") of a default thereunder to the Petitioner, Richter Advisory Group Inc. , in its capacities as a trustee and interim receiver, and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lender shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Lender Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA;

[20] **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 13 to 20 hereof unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party

original notice
may be ordered by the court,
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at least seven (7) days prior to the hearing of said motion or (b) the Interim Lender applies for or consents to such order;

BIA CHARGES

[21] **DECLARES** that Richter Advisory Group Inc., both in its capacities as trustee to Biomod's Notice of intention and as Interim Receiver ("**Richter**"), Richter's legal counsel, if any, the Petitioner's legal counsel and Richter and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of ~~the~~ Order and directly related to these proceedings and Petitioner's restructuring pursuant to the BIA, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of CDN\$75,000.00 (the "**Administration Charge**"), having the priority established by paragraphs 22 and 23 hereof;

[22] **DECLARES** that the priorities of the Administration Charge and the Interim Lender Charge (collectively, the "**BIA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:

- a) first, the Administration Charge;
- b) second, the Interim Lender Charge.

[23] **DECLARES** that each of the BIA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances. Notwithstanding the foregoing, the Interim Lender Charge shall take rank immediately following the hypothec granted in favour of Investissement Québec registered at the *Register of Personal and Movable Real Rights* under numbers 16-1092796-0001 and 17-0923675-0001 (with respect only to the Petitioner's research tax credits for the financial year ending on April 30, 2019);

[24] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the BIA Charges unless the Petitioner obtains the prior written consent of ~~the Monitor~~ Richter and the prior approval of the Court;

[25] **DECLARES** that each of the BIA Charges shall attach, as of April 8, 2019, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent;

[26] **DECLARES** that the BIA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in

respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sublease, offer to lease or other arrangement which bind the Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- a) the creation of any of the BIA Charges shall not create or be deemed to constitute a breach by the Petitioner of any Third-Party Agreement to which it is a party; and
- b) any of the beneficiaries of the BIA Charges shall not have liability to any person whatsoever as a result of any breach of any Third-Party Agreement caused by or resulting from the creation of the BIA Charges.

[27] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioner pursuant to the Order and the granting of the BIA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law;

[28] **DECLARES** that the BIA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes;

COME BACK CLAUSE

[29] **ORDERS** that liberty be reserved to any interested persons to apply for such further or other order as may be advised upon 7-day notice to the Interim Receiver and to Biomod Concepts Inc. or such other notice as may be ordered by this Court;

[30] **ORDERS** the provisional execution notwithstanding appeal;

[31] **THE WHOLE WITHOUT COSTS**, save in the event of contestation.

COPIE CERTIFIÉE CONFORME
AU DOCUMENT LÉgal PAR LA COUR

Personne désignée par le greffier



J. BRIAN RIORDAN, J.S.C.