

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-050409-164

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C., c. C-36, as amended)

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED:

7098961 CANADA INC.,

Petitioner

-and-

RICHTER ADVISORY GROUP INC.

Monitor

APPLICATION FOR THE ISSUANCE OF (I) A CLAIMS AND MEETING
PROCEDURE ORDER (II) AN ORDER APPROVING AN ASSET PURCHASE
AGREEMENT AND (III) AN ORDER APPROVING AN INCREASE OF THE DIP
FACILITY

(Sections 4, 5, 9, 10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985,
c. C-36)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING
IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF
MONTRÉAL, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. On March 24, 2016, the Honourable Justice Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") in respect of 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc., the "Company" or the "Petitioner") as appears from the Court record.
2. Pursuant to the Initial Order, Richter Advisory Group Inc. (the "Monitor") was appointed as Monitor to the Company and a stay of proceedings (the "Stay of Proceedings") was issued from the date of the Initial Order until April 22, 2016 (the "Stay Period").

3. On April 20, 2016, the Stay of Proceedings was extended temporarily to April 25, 2016, as appears from the Court record.
4. As exposed to this Court during the hearing on the initial CCAA application, the Company used the initial CCAA Stay Period to conduct an expedited sale and solicitation process with the assistance of the Monitor. This process has now been completed and the Company and Gestion Optifer Inc. ("**Optifer**"), an affiliate of 9523669 Canada Inc., the Company's DIP lender (the "**DIP Lender**"), are in the process of finalizing an agreement in connection with a restructuring of the Company's business and assets. The key business terms of this agreement are as follows:
 - a) the sale of all or substantially all of the assets of the Company to Optifer or one of its affiliates in consideration of the assumption of: i) the full amount owing (currently about \$1,150,000, and expected to be higher by the time of closing) under the Amended DIP Facility (as defined hereinafter) at closing, ii) a significant portion of the pre-filing senior secured facility held by 9523669 Canada Inc. (the "**DIP Lender**"), and iii) the Company's obligations under certain contracts to be assumed by Optifer; and
 - b) the compromise of any and all claims against the Company through the CCAA Plan (as defined hereinafter) pursuant to which the Company's creditors will be offered a distribution equal to a pro-rata share of a basket amount of \$310,000.
5. For the reasons set forth herein, the Company hereby seeks the issuance by this Court of the following orders, all of which are required to proceed with the implementation of the transactions contemplated in the Offer:
 - a) an order establishing a process for the treatment of claims against the Company and setting out the procedure for the calling and holding of a meeting of creditors to consider, and if deemed acceptable, approve the CCAA Plan (the "**C&M Procedure Order**");
 - b) an approval and vesting order in connection with the sale of all or substantially all of the assets of the Company to Optifer or one of its affiliates (the "**Approval and Vesting Order**"), the whole upon the terms and conditions set forth in the APA (as defined hereinafter); and
 - c) an order approving an increase of the existing DIP Facility (as defined in the Initial Order) from \$1,150,000 to \$3,150,000 in order to provide the Company with sufficient liquidity while the Company completes the various steps leading to the above mentioned restructuring transactions (the "**DIP Increase Order**").

II. THE SALE AND SOLICITATION PROCESS

A. The Sale Process

6. Immediately following the issuance of the Initial Order, the Company, with the Monitor's assistance, launched a sale and solicitation process for all or substantially all of the Company's business and/or assets (the "**Sale Process**"), with the following timeline (the "**Timeline**"):

March 29, 2016	Transmittal of teasers to potential purchasers and non-disclosure agreements
March 31, 2016	Due diligence, including management presentations, data room and site visits
April 18, 2016	Submittal of binding offers
April 25, 2016	Court approval

7. In accordance with the Timeline, on March 29, 2016, the Monitor sent out the teasers to approximately 428 potential purchasers, including strategic buyers, financial sponsors and liquidators, and each of these parties was informed that the deadline to submit a bid was April 18, 2016 (the "**Bid Deadline**").
8. As of April 19 2016, 33 interested parties executed a Non-Disclosure Agreement, following which access to a virtual data room containing relevant information in connection with the Company's assets and business was provided to them.
9. As at the Bid Deadline, the Monitor had received a total of six formal offers.

B. The Retained Offer

10. The Monitor and the Petitioner, in consultation with their respective advisors, reviewed the offers that were submitted by the Bid Deadline, and determined that the offer submitted by Optifer (the "**Offer**") was by far the best offer submitted to the Company and that its acceptance was in the best interest of both the Company and its stakeholders. A copy of the Offer is communicated, under confidential seal, as **Exhibit R-1**.
11. The Offer provides for the following restructuring transactions:
- a) Sale of Assets. Optifer or an affiliate shall acquire all or substantially all of the assets of the Company in consideration of the assumption of: i) the full amount owing under the Amended DIP Facility (as defined hereinafter) at closing, ii) a significant portion of the pre-filing senior secured facility held by 9523669 Canada Inc. (the "**DIP Lender**"), and iii) of the Company's obligations under certain contracts to be assumed by Optifer; and

- b) CCAA Plan. The Company shall submit and Optifer or an affiliate shall sponsor the CCAA Plan (as defined hereinafter) pursuant to which any and all claims against the Company will be compromised in return for a distribution equal to a pro-rata share of a basket amount of \$310,000.
12. The amounts of secured debt to be assumed pursuant to the Offer in consideration for the sale of all or substantially all of the Company's assets far exceeds the amount offered by any other bidder in the context of the Sale Process.
 13. It should also be noted that the Offer is the only proposal received that provides some recovery beyond the amounts owed under the DIP Facility (as defined in the Initial Order). Only one offer had the potential of slightly exceeding the amounts currently outstanding under the DIP Facility but the purchase price contained in such offer was strictly based on an earn-out formula with no amount whatsoever being paid at closing.
 14. It should also be noted that the Offer was the only bid received which provides for some recovery for the Company's creditors generally. All other offers would have only benefited the DIP Lender.
 15. On or around April 21, 2016, the Company and Optifer executed an Amended Offer which includes minor modifications and clarifications to the Offer which were requested by the Company and the Monitor (the "**Amended Offer**"). The Amended Offer includes an Asset Purchase Agreement in connection with the sale of all or substantially all of the Company's assets to Optifer or an entity designated by it (the "**APA**"), which APA is scheduled to be finalized and executed in the coming days. A copy of the Amended Offer is communicated, under confidential seal, as **Exhibit R-2**.
 16. Following the execution of the Amended Offer, the Company finalized a Plan of Compromise under the CCAA incorporating the terms and conditions set out in the Offer (the "**CCAA Plan**"). A copy of the CCAA Plan is communicated as **Exhibit R-3**.
 17. While the Amended Offer provides that the transactions contemplated in the APA and in the CCAA Plan are to be implemented concurrently on the Plan Implementation Date (as defined in the CCAA Plan), the Amended Offer also provides that the transactions contemplated in the APA shall close within ten days following the date upon which the CCAA Plan fails to obtain approval of the Company's creditors or approval of this Court.
 18. Moreover, the closing of the APA is conditional upon, *inter alia*, the issuance of an approval and vesting order made by this Court approving the sales and transactions contemplated therein free and clear of all liens.
 19. The Petitioner submits that the sale of all or substantially all of its assets pursuant to the Amended Offer and the APA and the implementation of the CCAA Plan are fair and reasonable in the circumstances.

20. It is the opinion of both the Petitioner and the Monitor, that the transactions contemplated by the Amended Offer are the best offers that the Petitioner can expect to receive in the current circumstances and following extensive sale efforts, in that the alternative is a liquidation, which would result in a significantly reduced recovery for the Company's stakeholders.
21. The Petitioner understands that the Monitor will be filing in advance of the hearing on this Application a report describing in further detail the Sale Process undertaken as well as its recommendation to have the Amended Offer approved by this Court.
22. As a result of the foregoing, the Company hereby requests the issuance of:
 - a) the C&M Procedure Order in order to submit the CCAA Plan to its creditor and to the Court for approval;
 - b) the Approval and Vesting Order in order to proceed with the transactions contemplated in the APA; and
 - c) the DIP Increase Order in order to secure sufficient liquidity to implement the above restructuring transactions.

III. THE C&M PROCEDURE ORDER

A. Filing of the CCAA Plan

23. The Company hereby requests authorization from this Court to file the CCAA Plan (Exhibit R-3) and related schedules and appendices provided that revised or amended versions thereof may be filed with this Court and posted on the Monitor's website at <https://www.richter.ca/en/folder/insolvency-cases/0-9/7098961-canada-inc> (the "Monitor's Website").
24. The purpose of the CCAA Plan is to provide for a coordinated restructuring and compromise of the Petitioner's debt obligations and to reorganize and simplify the Petitioner's corporate and capital structure.
25. For the purpose of voting on and receiving distributions pursuant to the CCAA Plan, the Affected Creditors Class shall be the only class of Affected Claims, as set out in the Plan.
26. The treatment offered to the Affected Creditors and the terms and conditions of the Petitioner's liquidation and compromise pursuant to the CCAA, and its implementation, are detailed in the CCAA Plan.

B. Claims Packages

27. The C&M Procedure Order provides that the Monitor shall send a claims document package (the "Claims Package") to each Known Creditor as soon as possible and no later than April 30, 2016.

28. The Claims Package will include French and English versions of the following Schedules to the C&M Procedure Order (Exhibit R-3):
- a) a copy of the Notice of the Claims Process (Schedule "B");
 - b) a copy of the Proof of Claim Form (Schedule "C"); and
 - c) a copy of the Creditors' Instructions (Schedule "D").
29. Moreover, pursuant to the C&M Procedure Order, the mailing of the Claims Package to known creditors will be supplemented by the placement, in widely distributed French and English-language newspapers, of the Notice of the Claims Process and Creditors Meetings, as well as the posting of the French and English versions of the Claims Package on the Monitor's website.

C. Claims Bar Date

30. As discussed above, the proposed C&M Procedure Order establishes the Claims Bar Date and outlines a procedure for the filing of Claims (including Restructuring Claims) against the Petitioner, its directors or officers. The Claims Bar Date does not apply to certain Claims designated as Excluded Claims which i) cannot be compromised under the CCAA, ii) relate to the sale of goods or the rendering of services after the filing of these CCAA proceedings or iii) are secured by CCAA Charges (as such term is defined in the Initial Order).

D. Review and Determination of Claims

31. The C&M Procedure Order provides for the review of all claims by the Monitor and the Petitioner and a determination on such claims by the Monitor.
32. It also provides that the Monitor shall send, where applicable, a Notice of Revision or Disallowance to the creditors whose claims are disallowed in whole or in part.
33. Upon receiving a Notice of Revision or Disallowance, a creditor whose claim has been disallowed in whole or in part will have the opportunity to file, within ten (10) calendar days from the receipt of the Notice of Revision or Disallowance, a motion before this Court to appeal said Notice of Revision or Disallowance, failing which, the creditor will be deemed to have accepted the Monitor's determination of its claim.

E. The Creditors' Meeting

34. The Petitioner also requests from this Court that it be authorized to convene, hold and conduct a meeting of the Affected Creditors on May 25, 2016, in Montreal, Québec (the "Creditors' Meeting"), to consider, and, if thought advisable, adopt a resolution approving the CCAA Plan, with or without variation (the "Resolution").
35. The Petitioner requests that the Petitioner and the Monitor be authorized to proceed, in accordance with the terms and proposed forms of documents set out

in, and attached as Schedules to, the C&M Procedure Order, including, *inter alia*, in connection with (i) the publication and transmission of the applicable Meeting Materials, (ii) the filing of a Monitor's report on the CCAA Plan, (iii) the procedure to be followed at the Creditors' Meeting, (iv) the voting procedure, including the procedure for determining the Voting Claims, and (v) the notice of the Sanction Hearing (as defined below).

36. The Meeting Materials will include French and English versions of the following Schedules to the C&M Procedure Order (Exhibit R-4):
- a) a copy of the Notice of the Creditors' Meeting (Schedule "E");
 - b) a copy of the CCAA Plan (Schedule "F");
 - c) a copy of the form of proxy for Creditors (Schedule "G"); and
 - d) a copy of the C&M Procedure Order (in English only) to be rendered by this Court, if deemed appropriate.

F. The Sanction Hearing

37. The Petitioner requests that this Court hold a hearing (the "**Sanction Hearing**") on or about June 3, 2016 to consider and if determined to be appropriate to grant the Sanction Order.
38. The Petitioner requests that this Court order that the publication and mailing by the Monitor of the notice of the Creditors' Meeting and the C&M Procedure constitutes good and sufficient service of notice of the Sanction Hearing upon all Persons who are entitled to receive such service and no other form of service need be made and no other materials need be served on such Persons in respect of the Sanction Hearing.
39. The Petitioner requests this Court to order that any Person intending to object to the motion seeking the Sanction Order shall (i) file with the Court, before 4:30 p.m. (Montréal Time) on June 2, 2016, a written notice containing a description of its proposed grounds of contestation and (ii) effect service of same, within the same delay, upon counsel to the Petitioner and the Monitor, and upon those Persons listed on the Service List.

G. Proposed CCAA Timeline

40. In view of the foregoing, the Petitioner proposes the following timeline:

Proposed Date (2016)	Event
April 30	Deadline for: <ul style="list-style-type: none">▪ Mailing the Claims Package and Meetings Materials to the Creditors;▪ Posting the Claims Package and Meetings Materials on Monitor's Website;
April 30	Deadline for: <ul style="list-style-type: none">▪ Publicizing the Notice to Creditors (short form) regarding the Claims Process in the Designated Newspapers.
May 30	Claims Bar Date for all Claims, excluding Restructuring Claims
May 30	Voting Record Date for Affected Creditors
May 30	Deadline for receiving Proxies at Monitor's office (Proxies may also be deposited with the Chair before the beginning of the Creditors' Meeting)
May 31	Creditors' Meeting
May 31	Filing in Court of the Motion for the issuance of a Sanction Order
June 1	Filing in Court the Monitor's Report on the results of the vote at the Creditors' Meetings
June 2	Deadline for Affected Creditors to file objection to Motion for Sanction Order
June 3	Hearing on the motion for the Sanction Order
By June 6	Implementation of the CCAA Plan

41. The Petitioner submits that it is appropriate for this Court to issue the C&M Procedure Order in accordance with the terms and conditions set out in the proposed draft thereof communicated as **Exhibit R-4**.

IV. THE APPROVAL AND VESTING ORDER

42. The Company hereby request this Court's authorization to complete the transactions contemplated in the APA. As appears from the APA the transactions contemplated therein are subject to certain conditions including the issuance of the Approval and Vesting Order.
43. The Amended Offer provides for the issuance of an order including customary approval and vesting provisions authorizing the Company to complete the transactions contemplated in the APA in the event of a failed CCAA Plan.
44. In addition, the failure to obtain creditor or court approval in respect of the CCAA Plan constitutes an event of default under the existing DIP Facility as well as the proposed Amended DIP Facility.
45. The Company respectfully submits that the issuance of the Approval and Vesting Order communicated as **Exhibit R-5**, will allow the Company to meet the conditions set forth in the Amended Offer and in the Amended DIP Facility and provide much-needed liquidity and stability to its business and operations by allowing the transactions contemplated in the APA to be completed in a timely manner and that regardless of the outcome of the CCAA Plan. A copy of the draft Approval and Vesting Order compared with the model vesting order is communicated as **Exhibit R-6**.

V. INTERIM FUNDING

46. In order to maintain the Company's operations until the implementation of the CCAA Plan, an amended Commitment Letter amongst the Company and the DIP Lender was entered into in order to cause an additional maximum amount of \$2,000,000 to be provided to the Company by the DIP Lender (the "**Amended DIP Facility**"). A copy of the Amended DIP Facility is communicated herewith as **Exhibit R-7**.
47. Under the Amended DIP Facility, the maturity date of the DIP financing has been extended to June 15, 2016.
48. The Amended DIP Facility is subject to the issuance by this Court of the DIP Order increasing the value of the first priority charge guaranteeing the DIP Facility (the "**DIP Charge**") to \$4,000,000.
49. The Amended DIP Facility will provide the Petitioner with the required flexibility to run a Claims Process and present the CCAA Plan to the Company's creditors.
50. The Petitioner submits that it is appropriate for this Court to issue the DIP Increase Order in accordance with the terms and conditions set out in the proposed draft thereof communicated as **Exhibit R-8**.

VI. CONCLUSION

51. The Petitioner submits that it is appropriate for this Court to issue the (i) C&M Procedure Order, (ii) the DIP Increase Order and (iii) the Approval and Vesting Order in order to implement the transactions contemplated in the Amended Offer.
52. The Monitor supports this Application, as will appear from the Monitor's Report which shall be filed with this Court prior to the hearing on this Motion.
53. It is in the best interest of the Petitioner and all of its stakeholders that the present Application be granted in accordance with its conclusions.
54. The Petitioner submits that the notices given of the presentation of the present Application are proper and sufficient.
55. The present Application is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

GRANT this *Application for the Issuance of (i) a Claims and Meeting Procedure Order, (ii) an Order Approving an Asset Purchase Agreement and (iii) an Order Approving an Increase of the DIP Facility (the "Application")*;

ISSUE an order substantially in the form of the draft Claims and Meeting Procedure Order communicated as Exhibit R-4;

ISSUE an order substantially in the form of the draft Approval and Vesting Order communicated as Exhibit R-6;

ISSUE an order substantially in the form of the draft Order Approving an Increase of the DIP Facility communicated as Exhibit R-8;

THE WHOLE, without costs save in case of contestation.

MONTREAL, April 21, 2016

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioner

AFFIDAVIT

I, the undersigned, Yona Shtern, business person, having my principal place of business at 905 Hodge, in the city and district of Montréal, Province of Quebec, solemnly declare the following:

1. I am a the Chief Executive Officer of 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc.); and
2. All the factual allegations contained in the *Application for the Issuance of (i) a Claims and Meeting Procedure Order, (ii) an Order Approving an Asset Purchase Agreement and (iii) an Order Approving an Increase of the DIP Facility* are true.

AND I HAVE SIGNED:

Yona Shtern

Solemnly declared before me in Montreal,
on the 22nd day of April, 2016
