

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 SANCTION OF PETITIONER'S AMENDED PLAN OF
COMPROMISE AND TO APPROVE A REORGANIZATION**

(Sections 6, 9, 10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985,
c. C-36 and Section 191 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44)

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, and was extended again on several occasions, most recently, until August 5, 2016, as appears from the Court record.

4. On May 24, 2016, the Court issued an Approval and Vesting Order (the "**Vesting Order**") authorizing the *Asset Purchase Agreement* executed by the Company with 9721444 Canada Inc. (the "**Purchaser**") for the sale of all or substantially all of the assets of the Company (the "**Sale**"). The Sale was completed on May 25, 2016, as evidenced by the Monitor's Certificate filed into the court record.
5. On May 24, 2016, the Court also issued an order (the "**Original C&M Procedure 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 a CCAA plan (the "**Original Plan**").
6. Thereafter, it became apparent to the Company, the Purchaser, as plan sponsor (the "**Sponsor**"), and the Monitor that the Original Plan and the Original C&M Procedure Order would need to be amended in order to:
 - (a) create a separate class for the pre-filing customers; and
 - (b) provide a stream-lined and user-friendly process for the pre-filing customers to file claims and vote on the plan.
7. Accordingly, on June 13, 2016, the Court issued an amended order (the "**Amended C&M Procedure 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 amended CCAA plan (the "**Amended Plan**") filed therewith, and (iii) an order extending the Stay Period until August 5, 2016.
8. A copy of the Amended Plan is hereby communicated as **Exhibit R-1**.
9. For the reasons set forth herein, the Company hereby seeks the issuance by this Court of the following orders:
 - a) an order sanctioning the Amended Plan (the "**Sanction Order**"); and
 - b) an order extending the Stay Period until September 30, 2016.

II. CLAIMS PROCEDURE

10. The Amended C&M Procedure Order established a procedure for the filing with the Monitor of Proofs of Claim and set July 18, 2016 as the bar date for the filing of such Proofs of Claim (the "**Claims Bar Date**").
11. In accordance with the Amended C&M Procedure Order, the Monitor notified the Affected Creditors of the Claims Process and made the claims materials available in the manner described in the Monitor's Report, a copy of which is communicated as **Exhibit R-2**.

12. The Monitor, prior to the Claims Bar Date, received Proofs of Claim from the Affected Creditors, including the Affected Customers which filed claims using online survey software as described in the Monitor's Report.

III. CREDITORS' MEETINGS

13. In accordance with the Amended C&M Procedure Order, the Monitor publicized and gave the requisite notices in order to properly convene and hold meetings of the Affected Creditors Classes on August 3, 2016.
14. In accordance with the foregoing notices, the meetings of the Affected Creditors Classes were convened and held on August 3, 2016 (the "**Creditors' Meetings**").
15. A total of 86 Creditors were present at the Creditors' Meetings in person or by proxy.
16. At the Creditors' Meetings:
 - (a) the Amended Plan and the Monitor's Updated Report on the Amended Plan (a copy of which is annexed to the Monitor's Report) was tabled and distributed to all Affected Creditors present at such Creditors' Meetings;
 - (b) the provisions of the Amended Plan and the Updated Report were summarized and explained by the Monitor and the Monitor's legal counsel to those Affected Creditors present at such Creditors' Meetings; and
 - (c) the Monitor conducted and tabulated the results of the voting on the Amended Plan by the Affected Creditors.
17. As is more fully detailed in the Monitor's Report, the results of such votes were as follows:
 - (a) Affected Customers:
 - (i) 61.29% of the Affected Customers voted to approve the Amended Plan; and
 - (ii) 88.06% in value of the Proofs of Claim of the Affected Customers voted to approve the Amended Plan.
 - (b) Affected Non-Customer Creditors:
 - (i) 81% of the Affected Non-Customer Creditors voted to approve the Amended Plan; and
 - (ii) 91.54% in value of the Proofs of Claim of the Affected Non-Customer Creditors voted to approve the Amended Plan.

18. Accordingly, the Amended Plan has been approved by the Required Majorities of each of the Affected Creditors Classes at the Creditors' Meetings.

IV. THE AMENDED PLAN

19. The Amended Plan has been submitted in conjunction with the acquisition by the Purchaser/Sponsor of the Petitioner's assets pursuant to the Sale. As a result of the Sale, the Purchaser has assumed a portion of the Petitioner's secured debt as well as certain post-filing obligations, including obligations to the Petitioner's employees.
20. The Amended Plan provides that on the Implementation Date, the Sponsor, in consideration for the issuance of the New Equity, will remit the Basket Amount of \$310,000 to the Monitor, to be held in trust and thereafter distributed as follows:
 - (i) First to pay \$68,000 of the Monitor and the Debtor's outstanding professional fees and disbursements;
 - (ii) Second to pay Employee Pre-Filing Priority Claims and Government Priority Claims in full;
 - (iii) Third, the remaining balance (if any) to pay amounts payable in respect of Customer Claims as explained further below; and
 - (iv) Finally, the remaining balance (if any), shall be distributed to and shared by the Affected Non-Customer Claims on a *pro-rata* basis.
21. Pursuant to the Amended Plan, Affected Customers have the option of either receiving payment of \$5.00 by cheque or a store credit of \$15.00 to be issued by the Purchaser.
22. Implementation of the Amended Plan is conditional upon:
 - (a) the Affected Creditors' approval of the Amended Plan by the Required Majorities, which occurred at the Creditors' Meetings;
 - (b) this Court's sanction of the Amended Plan as requested by the present Motion; and
 - (c) all conditions contained in the Revised Term Sheet submitted by Gestion Optifer Inc. dated April 20, 2016 having been met to the Sponsor's satisfaction.
23. Pursuant to the Amended Plan:
 - (a) in accordance with the requirements of the CCAA, all Government Priority Claims described in Section 6(3) CCAA, if any, will be paid in full within 6 months immediately following the Sanction Date;

- (b) in accordance with the requirements of the CCAA, all Section 6(5) Claims, if any, will be paid in such amounts as required under the CCAA immediately after the Sanction Date; and
- (c) in accordance with the requirements of the CCAA, all Section 19(2) Claims, if any, will be paid as and when they become due.

V. PROPOSED REORGANIZATION

- 24. A key component of the Amended Plan is a reorganization of the Petitioner pursuant to Section 191 of the *Canada Business Corporations Act* ("**CBCA**") in order to issue the New Equity to the Sponsor in consideration for the Sponsor's funding of the Basket Amount.
- 25. In particular, the reorganization consists of:
 - (a) the release, discharge and cancellation of all Equity Claims and Equity Interests;
 - (b) creation of the New Equity consisting of common shares having the rights, privileges and restrictions set forth in the Articles of Reorganization; a draft copy of which is communicated herewith as **Exhibit R-3**.
- 26. The Petitioner accordingly requests that this Court approve the Articles of Reorganization pursuant to Section 191 CBCA.

VI. FAIRNESS OF THE PLAN

- 27. As a result of the Sale, the Petitioner has no assets to satisfy amounts owing to its creditors.
- 28. The Plan provides a recovery for the Petitioner's unsecured creditors as opposed to a bankruptcy which would result in no recovery whatsoever.
- 29. The Plan has been accepted by substantial majority of both classes of Affected Creditors.
- 30. As the Petitioner's issued and outstanding shares have no value whatsoever, no current shareholder will be prejudiced as a result of the cancellation of its shares pursuant to the reorganization.
- 31. The Monitor supports the present Application for sanction of the Plan.
- 32. It is submitted that the Amended Plan is fair and reasonable and should be sanctioned by this Court.

VII. EXTENSION OF THE STAY PERIOD

33. As set forth above, implementation of the Amended Plan is to occur upon occurrence of the Conditions Precedent (being the Plan Implementation Date under the Amended Plan).
34. Petitioner accordingly seeks that the current Stay Period be extended until September 30, 2016, or such later date as may be ordered by this Court.
35. The present Motion is well founded in fact and in law.

WHEREFORE Petitioner prays for Judgment of this Court:

- (A) **GRANTING** the present Motion;
- (B) **ORDERING** that the Stay Period, as defined in the Initial Order, shall be and remain in full force and effect up until September 30, 2016, or such later date as ordered by this Court, the whole subject to all other terms of the Initial Order and any subsequent Orders or judgments of this Court;
- (C) **ISSUING** the *Sanction Order* in the form of the Draft Order produced herewith as Exhibit R-4;

THE WHOLE without costs, save and except in the event of contestation.

MONTREAL, August 4, 2016

[Sgd] Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioner

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TRUE COPY


STIKEMAN ELLIOTT LLP

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-and-

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Monitor

ATTESTATION OF AUTHENTICITY

I, the undersigned, **Nathalie Nouvet**, associate, practicing at 1155 boulevard René-Lévesque West, Suite 4000, in Montréal, District of Montréal, Province of Quebec, H3B 3V2, solemnly affirm as follows:

1. On August 4, 2016, at 11:39 a.m., I received an affidavit signed by Benoit Gingues, accountant for Richter Advisory Group Inc., in support of the *Application for the Sanction of Petitioner's Amended Plan of Compromise and to Approve a Reorganization*.
2. The above-mentioned affidavit was sent to me from Toronto, Ontario via email by Vlad Calina.
3. The copy of this affidavit joined to the present attestation is a true copy of the Affidavit received by email on August 4, 2016 from Benoit Gingues.

Montréal, this 4th day of August, 2016.

NATHALIE NOUVET
STIKEMAN ELLIOTT LLP
1155 René-Lévesque Blvd. W., Suite 4000
Montréal, Québec H3B 3V2
Telephone: (514) 397-3128
Fax: (514) 397-3583
nnouvet@stikeman.com

Attorneys for Ritcher Advisory Group inc.
Our file: 137950-1006

SOLEMNLY AFFIRMED before me in
Montréal, this 4th day of August, 2016.

Commissioner of Oaths
Province of Québec



AFFIDAVIT

I, the undersigned, **BENOIT GINGUES**, business person, having my principal place of business at 1981 McGill College Avenue, 11th Floor, in the city and district of Montréal, Province of Quebec, solemnly declare the following:

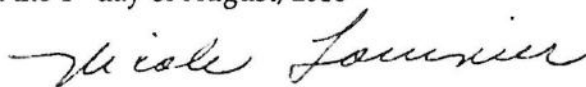
1. I am a duly authorized representative of Richter Advisory Group Inc. which was appointed monitor to the business and affairs of 7098961 Canada Inc. (formerly known as Beyond the Rack Enterprises Inc.); and
2. All the factual allegations contained in the *Application for the Sanction of Petitioner's Amended Plan of Compromise and to Approve a Reorganization* are true.

AND I HAVE SIGNED:



BENOIT GINGUES

Solemnly declared before me in Montreal,
on the 4th day of August, 2016



Commissioner of Oaths for Québec



TRUE COPY


STIKEMAN ELLIOTT LLP

NOTICE OF PRESENTATION

To: Service List

TAKE NOTICE that the *Application for the Issuance of an Amended Claims and Meeting Procedure Order* will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting Commercial Division in and for the District of Montréal, at the Montréal Court House, 1 Notre-Dame Street East, Montréal, Quebec on August 5, 2016 at 9:00 a.m., in room 16.12.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, August 4, 2016

[Sgd] *Stikeman Elliott LLP*

STIKEMAN ELLIOTT LLP

Attorneys for the Petitioner

TRUE COPY


STIKEMAN ELLIOTT LLP

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**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE SANCTION
OF PETITIONER'S AMENDED PLAN OF COMPROMISE AND TO APPROVE A
REORGANIZATION**

Exhibit R-1: Amended CCAA Plan
Exhibit R-2: Monitor's Report
Exhibit R-3: Draft Articles of Reorganization
Exhibit R-4: Draft Sanction Order

MONTRÉAL, August 4, 2016

[S] *Stikeman Elliott LLP*

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BS0350

File: 137950-1006

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and Section 191 of the *Canada Business Corporations Act*,
R.S.C. 1985, c. C-44) AND AFFIDAVIT AND NOTICE
OF PRESENTATION

COPY

Mtre Nathalie Nouvet

514-397-3128

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