

CANADA

**PROVINCE OF QUEBEC
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. 1985, c.
C-36, as amended)

**IN THE MATTER OF THE PLAN OF COMPROMISE
OF:**

**7098961 CANADA INC. (formerly known as
BEYOND THE RACK ENTERPRISES INC.)**

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Monitor

<p>REPORT OF THE MONITOR ON THE STATE OF THE DEBTOR'S AFFAIRS AND THE AMENDED PLAN OF COMPROMISE JUNE 15, 2016</p>

TABLE OF CONTENTS

EXECUTIVE SUMMARY 3

OUTLINE AND RESERVES 4

BACKGROUND INFORMATION 5

EVENTS LEADING TO CCAA FILING 5

SALE OF THE BUSINESS 7

PRESENT SITUATION 7

FINANCIAL INFORMATION 8

AMENDED PLAN OF COMPROMISE (SUMMARY) 9

VOTING ON THE AMENDED PLAN OF COMPROMISE 10

ESTIMATED DISTRIBUTION TO CREDITORS 10

MONITOR'S CONCLUSION AND RECOMMENDATION 11

EXECUTIVE SUMMARY

1. On March 24, 2016, 7098961 CANADA INC. (formerly known as BEYOND THE RACK ENTERPRISES INC.) (the “**Debtor**”) filed with the Quebec Superior Court, a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the “**CCAA**”). In this regard, the Honorable Justice Martin Castonguay, J.S.C., rendered the Initial Order appointing Richter Advisory Group Inc. (“**Richter**”) as monitor (the “**Monitor**”).
2. This Report of the Monitor on the State of the Debtor’s Financial Affairs and the Amended Plan of Compromise (the “**Monitor’s Report**” or the “**Report**”) is being presented to provide information on the Debtor and to assist the creditors and the Court in their review and assessment of the Amended Plan of Compromise (the “**Amended Plan**”) pursuant to the CCAA. The Amended Plan is being submitted to the creditors of the Debtor for their consideration and approval at a Meeting of Creditors to be held on **August 3, 2016 at 10:00 a.m. (EST), at 1981 McGill College (11th floor, suite 1), Montreal, Québec H3A 0G6.**
3. As set out in greater detail in this Monitor’s Report, the Amended Plan has been developed by the Debtor in a continuing effort to provide greater value to its creditors than would be achieved in a bankruptcy.
4. The Monitor implemented a formal accelerated process to solicit offers for the sale of the Debtor’s assets and business. On May 25, 2016, the Debtor sold its assets to 9721444 Canada Inc. (the “**Purchaser**” and “**Plan Sponsor**”). The Purchaser assumed part of the secured debt and certain post-filing obligations.
5. On June 13, 2016, the Debtor filed an Amended Plan of Compromise. Pursuant to the Amended Plan, the Basket Amount of \$310,000 will be 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. Notwithstanding the foregoing, the Monitor shall not be obliged to effect payment of any distribution to Affected Non-Customer creditors entitled to receive less than \$5.00.
- 6. Pursuant to the Amended Plan, customers having an unfulfilled order or a store credit dated prior to March 24, 2016 (“**Affected Customers**”) for which an amount is owing (“**Customer Claims**”) have the option of either receiving payment of \$5.00 by cheque or store credits of \$15.00 to be issued by the Purchaser.
- 7. **The Debtor and the Monitor believe that the Amended Plan is in the best interests of all the Debtor’s creditors and recommend that all Affected Creditors vote IN FAVOUR of the Amended Plan.** The only realistic alternative to the Amended Plan is a bankruptcy, which would result in no recovery to the unsecured creditors.
- 8. **To become effective, the Amended Plan must be voted upon and approved by the required majority (as defined in the Amended Plan) of Debtor’s Affected Creditors voting on the Amended Plan and thereafter be approved by the Court.**
- 9. The Proxy and Election Notice (and the French version) as well as the Amended Plan (in English only) can be obtained from the Monitor’s website at:
<http://www.richter.ca/en/folder/insolvency-cases/0-9/7098961-canada-inc>

OUTLINE AND RESERVES

- 10. As previously stated, the purpose of the Monitor’s Report is to provide useful information on the state of the Debtor’s financial affairs and the Amended Plan and assist the creditors and the Court in their review and assessment of the Amended Plan.
- 11. All amounts are stated in Canadian dollars unless otherwise noted. Capitalized terms used herein and not defined herein shall have the meaning ascribed to them in the Amended Plan or the Amended Claims and Meeting Procedure Order.
- 12. It should be noted that the Monitor has not conducted an audit or investigation of the books and records or the financial information of the Debtor and that accordingly, no opinion is expressed regarding the accuracy or completeness of the information contained herein. The present information emanates from the Debtor’s books and records that have been made available to the Monitor, as well as from discussions with its management.

BACKGROUND INFORMATION

13. The Debtor is a private corporation incorporated in December 2008, under the Canada Business Corporations Act (the "**CBCA**"), with its principal place of business in Montreal, Canada. Beyond the Rack USA Inc. is the wholly-owned subsidiary of 7098961 Canada Inc. and has not filed insolvency proceedings in Canada or the United States.
14. The Debtor's business activity was the online sale of designer brand apparel, accessories, beauty and home décor products, through its website, to customers primarily in Canada and the United States.
15. The Debtor leased a building which has approximately 180,000 square feet for administration and its main warehouse. The Debtor also carried out activities through a third party logistic, a smaller warehouse in Plattsburgh, New-York.
16. In December 2015, the Debtor provided employment to 230 employees and 76 contractual involved in merchandising, procurement, warehousing, marketing, information technology and administration. The Debtor implemented cost cutting measures that included reduction of management positions, pay cuts for certain management positions and the reduction of the number of employees in all departments, thereby reducing its headcount to 73 employees in Montreal and 70 contractual overseas.

EVENTS LEADING TO CCAA FILING

17. Since inception, the Debtor incurred significant financial losses as it engaged in aggressive and costly marketing campaigns aimed at increasing customer growth and establishing its e-commerce infrastructure. The financial losses were supported primarily through debt and private equity placements. Despite efforts deployed by management and financial advisers, the Debtor was not able to raise new sources of capital and relied upon its existing investor base and secured lenders to fund operations and support its growth.

18. The following financial information is submitted to assist the reader in assessing the present financial position of the Debtor.

Beyond the Rack Enterprises Inc.			
Statement of earnings			
For the year ended January 31,			
(In million)	<u>2016</u> (Unaudited)	<u>2015</u> (Audited)	<u>2014</u> (Audited)
Net Sales	\$ 96.0	\$ 133.1	\$ 131.6
Cost of sales	63.4	85.2	80.3
Gross margin	32.6	47.9	51.3
Expenses			
Shipping and handling	21.2	33.5	32.4
Marketing	5.2	16.8	6.4
General and administrative	23.3	27.0	23.5
Profit/(loss) from operations	\$ (17.1)	\$ (29.5)	\$ (11.0)

19. The fiscal 2016 decrease in net sales and operating loss as compared to fiscal 2015 is the result of the restructuring efforts put forward by management in an attempt to achieve profitability and positive cash flow. The Debtor discontinued unprofitable business lines to focus on luxury items, which explains the significant decrease in sales, shipping and handling costs. Numerous employee terminations and cuts in marketing spending were also undertaken by the Debtor.
20. The fiscal 2015 increase in operating losses are attributed to an aggressive marketing-driven customer growth expansion in the United States which failed to deliver the desired return.
21. Reported loss from operations exclude financial costs and other adjustments not related to the Debtor's operations.
22. Despite significant restructuring efforts including exiting unprofitable business lines, reduction in marketing activities and substantial employee terminations, the Debtor was not able to achieve sustainable profitability.
23. The financial position of the Debtor deteriorated rapidly and the continuation of the business activities were dependent upon securing new financing.
24. The Debtor obtained the Initial Order with the necessary reliefs to allow the continuation of the activities while a sale process is implemented under Court supervision, the whole with a view to execute a going concern sale providing transition employment to a significant number of employees and maximize the underlying value of the business for the benefit of all stakeholders (including the employees, the trade creditors, the suppliers, the customers and the shareholders).

SALE OF THE BUSINESS

25. Immediately after the issuance of the Initial Order, the Monitor implemented a formal accelerated process to solicit offers for the sale of the Debtor's assets and business.
26. The best offer received was from the Plan Sponsor and it envisioned an investment in the Debtor to fund the Amended Plan.
27. On May 24, 2016, the Court issued a Vesting Order authorizing and approving the execution by the Debtor of an asset purchase agreement between 7098961 Canada Inc. as the vendor and 9721444 Canada Inc. as the Purchaser. On May 25, 2016, the Monitor issued a certificate which was contemplated by the Vesting Order confirming the execution of the asset purchase agreement.

PRESENT SITUATION

28. Since the issuance of the Initial Order, the Stay Period has been extended on five (5) occasions by the Court. In this regard, on June 13, 2016, the Court granted an Order extending the Stay Period until August 5, 2016 in order to allow the Debtor additional time to:
 - File the Amended Plan of Compromise which funding is to be made by the Plan Sponsor;
 - Execute the claims process defined in the Amended Claims and Meeting Procedure Order; and
 - Hold the Creditors' Meeting to vote on the Amended Plan.
29. The Amended Plan is discussed further in this Report.
30. The Amended Claims and Meetings Procedure Order establishes the procedure for the review, determination and adjudication of all claims as well as a Claims Bar Date of July 18, 2016 for claims which arose up to and including March 24, 2016, the whole as posted on the Monitor's website.
31. The Meeting of Creditors will be held on August 3rd, 2016, as indicated on the Monitor's Website.

FINANCIAL INFORMATION

A) Assets

- 32. As mentioned above, all assets were sold pursuant to an order of the Court issued on May 24, 2016.
- 33. On or about May 25, 2016, the Debtor collected an amount of approximately \$441,000 relating to a duty drawback claim and the Debtor remitted the amount to the Purchaser. Even though, the Monitor believes that the duty drawback is not an asset that was part of the assets sold to the Purchaser, the latter is of no consequences considering that the Purchaser paid post-filing obligations of the Debtor for an amount well in excess of \$441,000.

B) Liabilities

- C) The Debtor's indebtedness was recently updated and is as follows:

7098961 Canada Inc. List of Creditors As of March 23, 2016 (000's)	
Secured creditors	\$0
Unsecured creditors	<u>22,972</u>
Total	<u>\$22,972</u>

- 34. The Debtor has provided us with a list of its creditors. We are currently unable to comment on whether the Debtor's records match those of the creditors. As proofs of claim are received, the Monitor will register the amounts claimed by the specific creditors and prior to paying any dividend, reconciliations will be done.

AMENDED PLAN OF COMPROMISE (SUMMARY)

35. Please note that the following is only a summary of the terms of the Amended Plan and **creditors are strongly invited to read the Amended Plan for complete details of its terms.**
36. The Amended Plan provides that on Implementation Date, the Plan Sponsor remit to the Monitor (to be held in trust) a Basket Amount of \$310,000 in return for New Equity to be distributed as indicated in paragraph 5 of this Report.
37. For the purpose of voting and receiving distributions under the Amended Plan, the Affected Creditors are divided into two (2) classes:
- (i) The Affected Customers Class; and
 - (ii) The Affected Non-Customer Creditors Class.
38. Affected Customers are customers having either an unfulfilled order or a store credit dated prior to March 24, 2016, for which an amount is owing.
39. The Amended Plan provides that the Affected Customers have the following options for the full and final settlement, release and discharge of a Customer Claim:
- Option A: Payment of \$5.00 by cheque; or
 - Option B: Store Credit of \$15.00 to be issued by the Purchaser.
40. By the Approval of the Amended Plan, all the creditors are deemed to have waived their remedies provided by Section 36.1 of the CCAA. These remedies relate to the recovery of certain amounts in the event that there were reviewable transactions, preferential treatments and/or asset disposals by the Debtor.
41. The Monitor will perform a summary analysis of the major transactions that occurred during the three-month period (with unrelated third parties) and 12-month period (for major transactions with related parties) prior to the issuance of the Initial Order and will report at the Meeting of Creditors.

VOTING ON THE AMENDED PLAN OF COMPROMISE

42. In order to be approved, the Amended Plan must receive an affirmative vote in the required majority in each of the Affected Creditors Classes. If the Amended Plan is approved by a majority in number of the Affected Creditors and thereafter sanctioned by the Court, the Amended Plan will be binding on the Debtor and all Persons affected by the Amended Plan.

ESTIMATED DISTRIBUTION TO CREDITORS

43. **In the event the creditors reject the Amended Plan, the only realistic alternative is bankruptcy, which would result in no recovery to the Affected Creditors.** The following data is to inform the creditors of the estimated distribution to creditors under the Amended Plan.
44. **As described previously in this Report, the Amended Plan provides for a Basket Amount of \$310,000 to be distributed to Affected Creditors.** The following table illustrates the estimated recovery under the Amended Plan based on the information available as of the date of this Report.

7098961 Canada Inc. Estimated Distribution per the Amended Plan		
Basket Amount		\$ 310,000
Less:		
Professional fees		(68,000)
Government Priority Claims		-
Available for Affected Claims	A	<u>\$ 242,000</u>
Estimated Affected Claims (Note 1)	B	<u>22,972,453</u>
Estimated distribution (in %)	A/B	<u>1.05%</u>
Note 1: The Debtor's best estimate of the Affected Claims.		

45. As shown in the above table, the recovery for Affected Creditors under the Amended Plan is estimated at 1.05%. **It is important to note that the final distribution under the Amended Plan will vary depending on the results of the Claims Process particularly with regards to the options offered to Affected Customers.**

MONITOR'S CONCLUSION AND RECOMMENDATION

46. The Monitor is of the opinion that if the Amended Plan is not approved by the creditors, the only realistic alternative is bankruptcy and the Affected Creditors would receive no distribution.
47. Consequently, the Monitor is of the view that the acceptance of the Amended Plan would be more advantageous for the creditors. **The Monitor therefore recommends to vote IN FAVOR of the Amended Plan.**
48. The creditors may remit their Voting Letter as well as their Proxy to the Monitor prior to the Meeting of Creditors or, alternatively, they may attend the Meeting of Creditors to obtain any additional clarification they may deem necessary and vote thereat.

Dated at Montreal, this 15th day of June 2016.

Richter Advisory Group Inc.
Monitor



Benoit Gingues, CPA, CA, CIRP