

CANADA / JUDGMENT

Soccer Express Trading Corp. (Re)

2020 BCSC 2109

COURT

Supreme Court of British Columbia

DECIDED

30 April 2020

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2020 BCSC 2109 Soccer Express Trading Corp. (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Soccer Express Trading Corp. (Re), 2020 BCSC 2109 Date: 20200430 Docket: S204288 Registry: Vancouver In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended And In The Matter of the Business Corporations Act, S.B.C. 2002, c. 57, as amended And In the Matter of the Canada Business Corporations Act, R.S.C. 1985, c. C-44, as amended And In the Matter of a Plan of Compromise and Arrangement of Soccer Express Trading Corp. and Kahunaverse Sports Group Inc. Petitioners Before: The Honourable Madam Justice Fitzpatrick Oral Reasons for Judgment In Chambers (Hearing proceeded via teleconference) Counsel for Petitioners, Soccer Express Trading Corp. and Kahunaverse Sports Group Inc.: C.J. Ramsay K.G. Mak N. Carlson (A/S) Counsel for Monitor, PricewaterhouseCoopers Inc.: V. Tickle Counsel for Greyrock Capital Incorporated: K.A. Robertson Counsel for adidas Canada Limited: R. Clark, Q.C. E. Bisceglia C. Fell Place and Date of Hearing: Vancouver, B.C. April 30, 2020 Place and Date of Judgment: Vancouver, B.C. April 30, 2020

- [1] THE COURT: The petitioners, Soccer Express Trading Corp. ("SX") and Kahunaverse Sports Group Inc. ("KSG"), (collectively, the "Petitioners"), seek an initial order pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "CCAA").
- [2] These proceedings follow from earlier proceedings under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the "BIA"). On March 11, 2020, the Petitioners filed Notices of Intention (NOIs) to make a proposal pursuant to the BIA. PricewaterhouseCoopers Inc. ("PwC") was appointed as the proposal trustee.
- [3] On March 30, 2020, Justice Myers granted orders in the BIA proceedings extending the stay of proceedings, granting an Administration Charge and approving Interim Financing and a related charge (the "BIA Orders").
- [4] The Petitioners seek to continue their insolvency proceedings under the CCAA pursuant to s. 11.6 of the CCAA and continue the same relief already granted in the BIA proceedings. However, the Petitioners' principal reason in transitioning the proceedings under the CCAA is to obtain relief under the critical supplier provisions under s. 11.4 of the CCAA.

- [5] adidas Canada Limited ("adidas") is the Petitioners' main supplier of the sporting equipment, apparel and accessories that it sells. Despite the BIA filings, the supply relationship between the Petitioners and adidas is in jeopardy due to adidas discontinuing supply to the Petitioners. In addition, adidas removed the Petitioners from various Internet based programs (B2B and MiTeam platforms) that are used in the supply relationship by both the Petitioners and their customers. Both of adidas' actions significantly and negatively affect the Petitioners' businesses and their viability.
- [6] Through its counsel, adidas has appeared on this ex parte application and with what it describes as very short notice. adidas objects to any relief being granted by the Court at this time, taking the position that an adjournment should be granted to allow it to file material in opposition to the relief sought by the Petitioners with respect to adidas.
- [7] I am satisfied that there is urgency. In addition, I am satisfied that it is important to reinstate the status quo with respect to the relationship between the Petitioners and adidas prior to the NOI filings on March 11, 2020. I have considered that s. 11.001 of the CCAA requires that any initial order include only relief that is "limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of the business" during the initial stay period, namely ten days from today.
- [8] I conclude that the Initial Order sought by the Petitioners under the CCAA, including in respect of the critical supplier provisions, are appropriate. Accordingly, I grant the Initial Order sought by the Petitioners, much of which was not controversial and follows from the Model Order. The Initial Order will include:
- a) I continue the BIA proceedings under the CCAA, in accordance with s. 11.6(a) of the CCAA. I am satisfied that the statutory requirements had been met (including that no BIA proposals had been filed) and that the continuation of the BIA proceedings under the CCAA is consistent with the purposes of the CCAA: *Clothing for Modern Times Ltd. (Re)*, 2011 ONSC 7522 at para. 9;
 - b) I continue the relief granted in the BIA Orders, including granting an Administration Charge of \$200,000 (increased from \$150,000) and approving the Interim Lender's Charge in favour of Greyrock Capital Incorporated in the amount of \$1.4 million;
 - c) I grant the critical supplier provision sought by the Petitioners with an amendment that such supply shall be on a cash on delivery basis. I am not satisfied that it is appropriate at this time to grant the 30-day financing arrangement that the Petitioners propose at this time given the present circumstances, including the short notice. The critical supplier provision will include, as set out at paragraph 25: Adidas is hereby deemed a critical supplier to the Petitioners in accordance with section 11.4 of the CCAA and shall, from the Order Date, continue to supply goods and services to the Petitioners on a cash on delivery (COD) basis in accordance with section 65.1 of the BIA and on terms and conditions that are consistent with the existing arrangements . . . as may be amended by the terms and conditions set out in this Order. . . . In addition, the critical supplier provision will include an order that adidas

will forthwith reinstate the Petitioners on the MiTeam and B2B systems, as they were previously. Finally, the Initial Order will provide that the Petitioners are entitled to all pricing, payment terms and discounts pursuant to the existing agreements between them.

- [9] I am seized of this matter. The matter is put over to May 8, 2020 at 10:00 a.m. At that hearing, there will be a consideration of the continuation of the Initial Order. The Petitioners will bear the onus to establish that the continuation of the critical supplier and other provisions are appropriate in the circumstances. By May 8, 2020, adidas can prepare and serve its materials and arguments as it wishes.
- [10] MR. RAMSAY: Thank you, My Lady. In terms of the order, I believe that what is very important to the companies is the immediate turning on of the MiTeam software. I am saying this for the benefit of adidas' counsel, that the pronouncement today of this order, that's the order that we're seeking, and the MiTeam software needs to be switched on immediately or as practically quickly as possible. That's very important to the Petitioners and will allow them over the next little while to be able to process orders from customers.
- [11] THE COURT: My intention is that access will be immediately restored to the MiTeam and B2B systems under the critical supplier provisions sought and granted in the Initial Order, as amended.
- [12] MR. BISCEGLIA: My Lady, I am not sure how long - if it is simply as easy as turning on a switch or if there is going to be a technical person that's going to say it's going to take us a day or two in order to do that. We are certainly going to proceed immediately, and as soon as we finish this call, we will communicate the ruling and advise them that they have to move immediately in order to do that. I can not undertake and I do not know the answer as to how long that will take.
- [13] THE COURT: Mr. Bisceglia, I would expect that communication will continue between yourself, Mr. Ramsay and Ms. Mak towards satisfying the Initial Order as soon as reasonably possible. I realize that these things do not necessarily happen immediately, particularly given that COVID-19 pandemic that we are facing.
- [14] MR. CLARK: My Lady, just so that Mr. Ramsay and perhaps the court are not taken by surprise, although we have been talking about this now for two hours, it's the position at adidas that the Initial Order has been made ex parte and various things will flow from that next Friday, May 8, 2020.
- [15] THE COURT: Noted.
- [16] THE COURT: Mr. Ramsay, I have dispensed with other counsels' approval of the Initial Order as to form, but I will expect that you will circulate the amended order to other counsel to make sure that they have no objection to the drafting of the amendment. Once that process is completed, and everybody is satisfied, you may submit the Initial Order through e-Order process. "Fitzpatrick J."

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