



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

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DATE: 18 June 2025

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TITLE OF PROCEEDING: **SYNAPTIVE MEDICAL INC.
v. BDC CAPITAL INC. ET AL.**

BEFORE JUSTICE: **J. DIETRICH**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE J. DIETRICH

Introduction

[1] Synaptive Medical Inc. seeks two orders.

[2] First, an Approval and Reverse Vesting Order is sought, which would approve the subscription agreement between Synaptive and 1001253954 Ontario Inc. (the “**Purchaser**”) dated June 12, 2025 (the “**Subscription Agreement**”) and the transaction contemplated thereby (the “**Transaction**”) through a reverse vesting structure is sought. The Approval and Reverse Vesting Order sought also provides for releases in favour of, among others Synaptive, the Purchaser, Export Development Canada in its capacity as a DIP Lender and the Monitor along with their current and former directors, officers and employees.

[3] As well, a Stay Extension and Termination Order is sought, which:

- a. extends the Stay Period from June 20, 2025 to September 30, 2025;
- b. approves the Pre-Filing Report of the Proposed Monitor dated March 18, 2025, the First Report of the Monitor dated March 24, 2025, the Second Report of the Monitor dated April 22, 2025, and the Third Report of the Monitor dated June 14, 2025 (the “**Third Report**”, and collectively, the “**Reports**”);
- c. approves the fees and disbursements of the Monitor and its Counsel as set out in the Third Report including the estimated fees to completion of the proceeding;
- d. orders that Synaptive meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222;
- e. upon the filing of a certificate of the Monitor in the form appended to the proposed Stay Extension and Termination Order (the “**Termination Certificate**”), terminates this CCAA proceeding and discharges the Monitor (the “**CCAA Termination Time**”);
- f. releases the Monitor, its counsel and their representatives for any actions up to and including the CCAA Termination Time;
- g. terminates the Court-ordered charges approved in this CCAA proceeding effective as at the CCAA Termination Time; and
- h. authorizes ResidualCo to assign itself into bankruptcy.

[4] There is no opposition to the relief sought by Synaptive with the exception of the declaration sought in respect of the Wage Earner Protection Program. The Attorney General of Canada representing Employment and Social Development Canada filed an *aide memoire* indicating it had not been served with the material with sufficient time to properly respond and intended to take a position on that relief. In the circumstances, Synaptive has advised they are not proceeding at this time with the requested relief regarding the Wage Earner Protection Program. Rather, following closing of the Transaction, counsel will schedule a 9:30 appointment with the Commercial List Office to set a schedule for that relief.

[5] Terms used but not otherwise defined herein have the meaning provided to them in the factum of Synaptive filed on this motion.

Background

[6] Synaptive is a Toronto-based medical technology company.

[7] On March 19, 2025, Justice Osborne granted an initial order under the CCAA that, among other things, provided Synaptive a stay of proceedings until March 26, 2025 (the “**Stay Period**”), authorized Synaptive to make an initial draw under a debtor in possession facility term agreement dated March 18, 2025 (the “**DIP Term Sheet**”) with Export Development Canada (in such capacity, the “**DIP Lender**”) and granted a charge in favour of the DIP Lender to secure Synaptive’s obligations under the DIP Term Sheet.

[8] On March 26, 2025, Justice Osborne granted an amended and restated initial order that, among other things, extended the Stay Period up to and including June 20, 2025, and authorized Synaptive to borrow up to the maximum principal amount under the DIP Term Sheet. That same day, Justice Osborne also granted an order (the “**SISP Order**”) that, among other things, approved a sale and investment solicitation process (the “**SISP**”) in respect of Synaptive and/or its assets.

[9] On April 25, 2025, Justice Osborne granted an order that, among other things, approved a key employee retention plan in favour of certain of Synaptive’s key employees and granted a corresponding charge in favour of those employees.

[10] In accordance with the SISP Order, the Monitor commenced the SISP on March 26, 2025. Its initial efforts included, among other things, distributing a teaser letter to 228 potential bidders, including more than 79 strategic companies, and published an advertisement in The Globe and Mail (National Edition) and the Canada Newswire. Twenty-four of those potential bidders executed non-disclosure agreements and were provided access to a data room.

[11] As contemplated by the SISP Order, the Monitor, based on feedback from potential bidders requesting more time for diligence activities and bid formulation, extended certain of the SISP milestones.

[12] Six parties submitted LOIs by the first phase deadline, three of which were determined to meet the qualification criteria under the SISP. By the second phase deadline on May 27, 2025, the Monitor received one bid from the Purchaser that was determined to meet the qualification criteria under the SISP.

[13] Following discussions and negotiations between the Monitor, the Purchaser, Synaptive and the DIP Lender, on June 2, 2025, the Monitor designated the Purchaser to be the “Successful Bidder” under the SISP. On June 12, 2025, Synaptive and the Purchaser entered into the Subscription Agreement which provides for, among other things, the acquisition of Synaptive’s shares and, through that equity interest, substantially all of Synaptive’s assets through a reverse vesting structure.

[14] The key terms of the Subscription Agreement are set out in the material. They include that the Excluded Assets, Excluded Liabilities, Excluded Contracts and Subsidiary Equity shall be transferred to ResidualCo. Synaptive will issue the Subscribed Shares to the Purchaser free and clear of all Encumbrances. All Equity Interests of Synaptive (other than the Subscribed Shares) will be cancelled for no consideration and, as a result, the Purchaser will be the sole owner of 100% of the issued and outstanding shares in the equity of Synaptive. The consideration provided by the Purchaser includes cash consideration in an amount equal to the United States dollar equivalent of C\$9,610,000, being an amount contemplated to satisfy amounts owing under the CCAA Charges, cash consideration in a minimum amount equal to US\$22,500,000 and a maximum amount of up to US\$50,000,000, in each case less the Cash Consideration, to be injected into Synaptive for working capital purposes. The consideration also includes the Senior Rollover Note to be issued to Export Development Canada and the Junior Rollover Notes to be issued to holders of the second ranking EDC Convertible Notes.

[15] Under the Subscription Agreement, the Purchaser has agreed to offer employment to at least 90% of the existing employees of Synaptive.

[16] The Subscription Agreement is conditional on the Purchaser raising equity in the amount of at least US\$22,500,000 as well as on the granting of the proposed Approval and Reverse Vesting Order. As noted below, the financing condition has not yet been satisfied and the Purchaser remains engaged in the process to do so.

[17] The Outside Closing Date under the Subscription Agreement is June 25, 2025. The Monitor advises that Synaptive's next payroll is due at that time and absent closing of the Transaction, Synaptive currently does not have sufficient funds to satisfy that payroll obligation.

The Issues

[18] The issues to be decided on this motion are whether the Court should grant the requested Approval and Reverse Vesting Order and the Stay Extension and Termination Order.

Analysis

Approval and Reverse Vesting Order

The Sale Approval Factors

[19] The prevailing test for the approval of a sale transaction is the test set out in *Royal Bank of Canada v Soundair Corp.*, [1991] 4 OR (3d) 1, 83 DLR (4th) 76 (Ont. C.A.), which has been codified through the six factors set out in section 36(3) of the CCAA which references the following factors:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[20] I am satisfied that those factors are satisfied. The process leading to the Subscription Agreement and Transaction was reasonable in the circumstances. The Monitor extensively canvassed the market during the SISP. The Monitor supported the process leading to the proposed Transaction.

[21] The Monitor notes in its Third Report that the Subscription Agreement arose from a process that was conducted in a commercially reasonable manner in accordance with the terms of the SISP Order. The Third Report also concludes that a liquidation of Synaptive's assets or a bankruptcy scenario would produce worse overall recoveries than the Subscription Agreement provides for stakeholders and the Monitor further notes that it supports the approval of the Subscription Agreement and the Transaction, and recommends that this Court grant the Approval and Reverse Vesting Order.

[22] The Monitor provided regular updates to the DIP Lender—Synaptive's first-ranking senior secured creditor and DIP lender—regarding the SISP and its market outreach activities. The DIP Lender was also consulted during the Subscription Agreement negotiations with the Purchaser. Those negotiations resulted in the Subscription Agreement providing for the issuance of new promissory notes in an aggregate principal amount of US\$20 million to Synaptive's first- and second-ranking secured creditors.

[23] The Subscription Agreement was the only qualified bid that resulted from the SISP and prior to the commencement of this CCAA proceeding, Synaptive pursued a Pre-Filing Process that unsuccessfully resolved Synaptive's liquidity issue.

Is the Reverse Vesting Structure Appropriate?

[24] Reverse Vesting Orders are an unusual or extraordinary measure. Approval of the use of a reverse vesting structure must be preceded an analysis to insure the structure is fair and reasonable to all parties having regard to the objectives and statutory constraints of the CCAA see *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314 at para 12.

[25] This includes an analysis of the following factors from *Harte Gold Corp. (Re)*, 2022 ONSC 653, para 71 (a) Why is the reverse vesting structure necessary in this case? (b) Does the reverse vesting structure produce an economic result at least as favourable as any other viable alternative? (c) Is any stakeholder worse off under the reverse vesting structure than they would have been under any other viable alternative? and (d) does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the reverse vesting structure?

Why is the Reverse Vesting Structure Necessary in this Case?

[26] Synaptive's business is highly regulated. Among other things, Synaptive holds various licenses and regulatory clearances to sell its devices and systems in numerous jurisdictions, including Canada, the United States and the European Union. Under an asset purchase structure, Synaptive would need to incur considerable time, effort, cost and risk to transfer these licenses, clearances and intellectual property registrations to a different entity, to the extent that such transfers are even possible.

Does the Reverse Vesting structure produce an economic result at least as favourable as any other viable alternative?

[27] A reverse vesting structure allows for a more advantageous transfer of Synaptive's business to the Purchaser than an asset purchase structure would. Without a reverse vesting structure, there would be substantial delay, cost and risk associated with transferring Synaptive's licenses, clearances and intellectual property, along with the loss of any tax attributes in Synaptive. The Purchaser has insisted on a reverse vesting structure, and no other bids materialized under the SISP. The Subscription Agreement represents the best and only viable outcome for Synaptive, its creditors and its other stakeholders, including the medical patients who benefit from Synaptive's neurosurgery tools and systems.

Is any stakeholder worse off under the reverse vesting structure than they would have been under any other viable alternative?

[28] As there is no viable going-concern alternative to the Subscription Agreement and the Transaction, the only realistic alternative is a liquidation, which would produce a worse, or no better, result for all stakeholders. Amendments have also been made to the proposed form of order to address concerns raised by Canada Revenue Agency and contractual counterparties to ensure their treatment is consistent with that in a non-reverse vesting structure.

Does the consideration to be paid for the debtor's business reflect the importance and value of the licenses, permits and other intangible assets being preserved under the reverse vesting structure?

[29] The aggregate value under the Transaction is expected to consist of at least US\$22,500,000 of cash consideration, along with new promissory notes in an aggregate principal amount of \$20 million, representing recoveries to Synaptive's first- and second-ranking secured creditors. This was the highest and only qualified offer that materialized in the SISP.

Are the Proposed Releases Appropriate?

[30] The proposed Approval and Reverse Vesting Order includes releases in favour of, among others: (i) Synaptive and its directors, officers, employees and representatives; (ii) the director of ResidualCo and its representatives; (iii) the Purchaser and its directors, officers, employees and representatives; (iv) the Monitor and its representatives; and (v) the DIP Lender and its directors, officers, employees and representatives (collectively, the “**Released Parties**”).

[31] The released claims cover, among other things, any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of, among other things, this CCAA proceeding, the Subscription Agreement, the completion of the Transaction and/or the Applicant’s or Purchaser’s assets, business or affairs (collectively, the “**Released Claims**”). The Released Claims do not release claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA, claims for gross negligence or wilful misconduct or any obligation of any Released Party in connection with the Subscription Agreement or Transaction.

[32] When determining if a release is appropriate in the circumstances of a sale transaction the Court is to consider those factors that are applicable to the approval of releases in connection with a plan see *Re Green Relief Inc.*, 2020 ONSC 6837. As set out in *Lydian International Limited (Re)*, 2020 ONSC 4006, para 54 these factors are (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor; b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it; c) whether the plan could succeed without the releases; d) whether the parties being released were contributing to the plan; and e) whether the release benefitted the debtors as well as the creditors generally.

[33] Here, the Released Parties each made significant contributions to Synaptive’s restructuring, both prior to and throughout this CCAA proceeding. In particular, Synaptive’s management and employees, the Purchaser, the Monitor, the DIP Lender and the parties’ counsel each provided substantial time, energy, expertise and, in the case of the DIP Lender, funding in this CCAA proceeding.

[34] Synaptive is not aware of any statutory liabilities in respect of the Released Parties and, to date, no person has indicated to Synaptive that they intend to assert a claim against any of the Released Parties, save for Synaptive itself, in respect of any claims covered by the release. The release is designed to allow Synaptive and the Released Parties to move forward with the Subscription Agreement and the Transaction and work to conclude this CCAA proceeding. The release also carves out claims that are not permitted to be released under section 5.1(2) of the CCAA.

[35] In the circumstances, the proposed Releases, with the amendments discussed during the hearing, are approved.

Limited Sealing Order

[36] A limited sealing order with respect to the Confidential Bid Summary attached to the Third Report is also sought. The limited sealing order being sought is necessary to preserve the Applicant's ability to maximize the value of its assets in the event of the Transaction does not close. I am satisfied that the requested sealing order for the Confidential Bid Summary attached to the Third Report meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in insolvency proceedings to maximize the realization of assets. I direct counsel for the Monitor to file a hard copy of the Confidential Bid Summary attached to the Third Report with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.

Stay Extension and Termination Order

[37] Synaptive seeks an extension of the Stay period from June 20, 2025 to September 30, 2025. Section 11.02(2) of the CCAA provides this Court the authority to grant an extension of the Stay Period for any period it

considers necessary. The Court must be satisfied that appropriate circumstances exist for the extension and that Synaptive has acted, and is acting, in good faith and with due diligence.

[38] Here, the requested extension of the Stay Period will permit Synaptive and the Purchaser, with the Monitor's assistance, to close the Transaction and for all post-closing matters, including ResidualCo's anticipated assignment in bankruptcy, to be completed. The Monitor is supportive of the proposed extension of the Stay Period. However, the Monitor has confirmed that if the Transaction does not close as anticipated by June 25, 2025, Synaptive will not have sufficient liquidity to pay payroll or other ongoing obligations. I am satisfied that the extension of the Stay Period is appropriate in the circumstances, provided however, that should the Transaction not close as expected or other circumstances arise which impact Synaptive's cash flow, that the Monitor will report to the stakeholders and the Court as appropriate and in accordance with the Monitor's duties under the CCAA. If such circumstances arise, further relief may be sought from the Court.

[39] Synaptive also seeks approval of the Reports and the activities of the Monitor as set out therein. The request to approve the Reports is not unusual and there are good policy and practical reasons for doing so: see *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras. 13-14, citing *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras. 2, 12, 22.

[40] No opposition to the approval of the Reports has been raised and the approval of the Reports is appropriate in the circumstances as the Monitor has acted reasonably and in good faith. The draft order provided contains the typical language that only the Monitor is entitled to rely on the approval.

[41] The Applicants also seek approval of the fees and disbursements of the Monitor and its legal counsel, including the fees to complete. In this respect, as the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer* 2014 ONCA 851 at paras 33 and 45, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Applicants' assets and liabilities, as well as the complexity of the Applicants' business and the proceeding. In considering these guiding principles, the fees of the Monitor and its counsel as set out in the Reports are appropriate and are approved.

[42] I am not prepared at this time to provide for the Termination of the CCAA proceedings and the release of the Monitor requested in connection therewith. The transaction has not closed and substantial activities still remain to be completed. The Applicants or the Monitor may return to Court at the appropriate time to request this relief. At that time the fees to complete can be addressed.

[43] Synaptive seeks the authority for ResidualCo to file an assignment into bankruptcy following closing of the Transaction. In the circumstances, that relief is granted.

Disposition

[44] Orders to go in the forms signed by me this day.

June 18, 2025


Justice J. Dietrich