



Electronically issued : 24-Mar-2022
Délivré par voie électronique : 24-Mar-2022
Toronto

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF EVE & CO
INCORPORATED, NATURAL MEDCO LTD., and EVE & CO INTERNATIONAL
HOLDINGS LTD.

Applicants

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing

by video conference

at the following location

<https://millerthomson.zoom.us/j/85248626043?pwd=U09TcEIPQnFNQXpkV2dE WGVNRE4vQT09>

Meeting ID: 852 4862 6043

Passcode: 773939

on Friday March 25, 2022, at 10:00 a.m.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of

service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: March 23, 2022

Issued by _____
Local registrar

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APPLICATION

1. Eve & Co Incorporated (“**Eve & Co**”), Natural MedCo Ltd. (“**NMC**”), and Eve & Co International Holdings Ltd. (“**Eve International**”, collectively, the “**Applicants**” or the “**Eve Group**”) make application for an order, substantially in the form attached as Schedule “A” (“**Initial Order**”):

- (a) abridging the time for and validating service of this notice of application and application record and dispensing with service on any person other than those served;
- (b) declaring each of the Applicants to be a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”), applies;
- (c) authorizing the Applicants to carry on business in a manner consistent with the preservation of their business and property;
- (d) appointing BDO Canada Limited (“**BDO**”) as monitor of the Applicants with the rights and duties set out in the CCAA and the Initial Order (“**Proposed Monitor**”, and if appointed, the “**Monitor**”);
- (e) approving a debtor-in-possession (“**DIP**”) Term Sheet (“**DIP Term Sheet**”), dated March 22, 2022, between the Applicants and Deans Knight Private Credit GP Inc., as General Partner of Deans Knight Private Credit Limited Partnership, and DK Strategic Yield U.S. GP LLC, as General Partner of DK Strategic Yield Master Trust Limited Partnership (collectively, the “**DIP Lender**”), a DIP loan (“**DIP Loan**”) and the authority to borrow up to \$1,200,000;
- (f) staying for an initial period of not more than ten (10) days, all proceedings, rights and remedies taken or that might be taken in respect of the Applicants, including their respective businesses and property, their directors and officers, and the Monitor (“**Stay of Proceedings**”);

- (g) authorizing the Applicants to pay the reasonable fees and disbursements of the Monitor and its counsel and the Applicants' counsel;
- (h) granting the following charges over the Applicants' property (collectively, the "**Priority Charges**"):
 - (i) an Administration Charge in favour of counsel to the Applicants, the Monitor, and counsel to the Monitor (collectively, the "**Professional Group**") to secure payment of their professional fees and disbursements to a maximum amount of \$150,000 ("**Administration Charge**");
 - (ii) a DIP Lender's Charge to a maximum amount of \$1,200,000; and
 - (iii) a Directors' Charge in favour of the directors and officers of the Applicants to a maximum amount of \$150,000 ("**Directors' Charge**"), subject to the security held by Royal Bank of Canada ("**RBC**");
- (i) scheduling a comeback hearing on April 1, 2022 ("**Comeback Hearing**") to seek an amended and restated Initial Order ("**Amended and Restated Initial Order**"), including but not limited to the following relief:
 - (i) an extension of the Stay of Proceedings;
 - (ii) an increase in the amount of the Priority Charges;
 - (iii) approval to make payments to certain critical suppliers for pre-filing expenses or to honour cheques issued to providers of goods and services prior to the Initial Order, with the consent of the Monitor, which are necessary to facilitate the Applicants' ongoing operations and preserve value during the CCAA proceedings;
 - (iv) approval of the Sale Process (as defined below) and related bidding procedures;

(j) such further and other relief as this Court may deem just and equitable.

2. The grounds for the application are:

Background

- (a) The Eve Group is a licenced producers and distributor of cannabis flower, cannabis plants, and cannabis products, located in Strathroy, Ontario.
- (b) Eve & Co is a publicly traded company and is listed on the TSX Venture Exchange under the trading symbol “EVE” and posted for trading on the OTCQX Best Market in the United States under the symbol “EEVVF”.
- (c) Eve & Co is a holding company that owns NMC and Eve International.
- (d) The Eve Group’s operations are substantially conducted through NMC.
- (e) NMC holds four cannabis licenses: (i) a license from Health Canada for the cultivation, processing and sale of cannabis and cannabis extracts, edibles, and topicals; (ii) a cannabis license under the *Excise Act, 2001*, S.C. 2002, c. 22, as amended; (iii) a European Union Certificate of Good Manufacturing Practice issued by the Government of Upper Bavaria, Germany permitting it to export medical grade cannabis throughout the European Union; and (iv) a CUMCS-GA certificate as recognized by the Israeli Medical Cannabis Agency it to export medical-grade cannabis to Israel.
- (f) NMC owns approximately 32 acres of land in Strathroy, Ontario, on which the Eve Group operates one of the largest cannabis cultivation and processing facilities in the world at 1,000,000 square feet (“**Facility**”).
- (g) Eve International is a holding company that was incorporated to expand the Eve Group’s international partnerships, including in Romania and Portugal.

Urgent Need for Relief

- (h) The Applicants are insolvent, face an imminent liquidity crisis, and are in urgent need of relief under the CCAA. The Applicants have sufficient cash to sustain their operations for the week ending March 25, 2022, but will have insufficient funds thereafter without the ability to access the DIP Loan.
- (i) In the past year the Eve Group has faced significant financial and operational challenges including (i) a series of breached sales agreements that resulted in a loss of millions of dollars in expected annual revenue and the attendant spoilage of unsold inventory; (ii) investments in partnerships that did not come to fruition; (iii) the forced eviction of a leaseholder operating from the Facility for non-payment of rent and unacceptable operating practices; (iv) a breached share subscription; and (v) a global pandemic.
- (j) The Eve Group has made significant efforts to address these financial and operational challenges including, among other things, engaging with numerous credit unions to secure additional financing, negotiating a significant share subscription with an equity investor; engaging an investment bank to explore potential options for a sale of the businesses; and seeking to monetize its Facility through partial leases and/or a sale and lease-back arrangement. Such efforts have so far proved unsuccessful.

CCAA Applies

- (k) The Applicants are “debtor companies” to which the CCAA applies being Ontario corporations with their registered head offices in Ontario.
- (l) The current and contingent claims against the Applicants exceed \$5 million and the Applicants are insolvent.

Objective of the CCAA Proceeding

- (m) In consultation with their advisors, including the Proposed Monitor, the Applicants have determined that the CCAA process is the most beneficial way to maximize value for the Eve Group's stakeholders.
- (n) The stay of proceedings and the other relief set out in the Initial Order will provide breathing space to permit the Applicants to, among other things:
 - (i) continue operations in the ordinary course of business;
 - (ii) stabilize operations and protect the business;
 - (iii) manage liquidity issues;
 - (iv) prevent enforcement action by creditors; and
 - (v) identify and conclude a transaction with a potential purchaser or investor.
- (o) Absent the protection of the CCAA proceedings, the Applicants will not be able to continue operating.
- (p) An order under the CCAA is required to preserve the value of the Applicants' business for the benefit of Eve Group's stakeholders.

DIP Loan Urgently Needed

- (q) The Eve Group's cash position is critically low and financing is required to fund operations and restructuring costs during the initial 10-day stay of proceedings.
- (r) Unless the DIP Loan is approved and the DIP Lender's Charge is granted, the Applicants will likely cease operating and payroll obligations will not be met.
- (s) Under the DIP Term Sheet, if approved, the DIP Lender will provide an initial advance under the DIP Loan of \$1,200,000 to the Applicants.

- (t) The amount of the initial advance under the proposed DIP Loan is the amount estimated to be required to allow the Applicants to continue operations in the ordinary course during the initial 10-day stay of proceedings, including the payment of all pre-filing professional fees.
- (u) The proposed DIP Loan is conditional upon court approval of the DIP Loan and granting of the DIP Lender's Charge, which is proposed to have a second-ranking priority against the Applicants' property.

Stay of Proceedings

- (v) The Eve Group requires a stay of proceedings to allow it to maintain the status quo and continue to operate its business while it pursues court approval for a sale process with a view to preserving and maximizing value.
- (w) It is necessary and in the best interests of the Eve Group and their stakeholders that the Applicants be afforded the "breathing space" provided by the CCAA while they pursue a sale process for the benefit of their creditors and other stakeholders.

Priority Charges

- (x) The Eve Group is seeking the Administration Charge to secure the fees and disbursements of the Professional Group incurred in connection with services rendered to the Eve Group both before and after the commencement of these CCAA proceedings.
- (y) Similarly, the Eve Group will require the participation of its directors and officers during these CCAA proceedings and proposes to indemnify its directors and officers and to secure such indemnity by way of the Directors' Charge.
- (z) The granting of the Administration Charge and the Directors' Charge is appropriate in the circumstances and will facilitate the active involvement of the beneficiaries of the charges during the CCAA proceedings.

- (aa) The proposed Administration Charge will be a first-ranking charge on the Eve Group's property. The proposed Directors' Charge will be a fourth-ranking charge on the Eve Group's property, after the Administration Charge, the DIP Lender's Charge, and the security interests of the Eve Group's senior secured creditor, RBC.

Sales Process

- (bb) The Applicants intend to seek approval of a sale and investment solicitation process at the Comeback Hearing ("**Sale Process**").
- (cc) The purpose of the Sale Process is to solicit proposals for the sale of or acquisition of investment in the Applicants' business and assets, and to implement one or a combination of such proposals.
- (dd) The proposed Sale Process will identify the best opportunities in the circumstances for maximizing value for the Applicants' stakeholders.

Other Grounds

- (a) The provisions of the CCAA, including sections 9(1), 11, 11.02(1), 11.2, 11.03, 11.51, 11.52, and 11.7, and the statutory, inherent and equitable jurisdiction of this Court;
- (b) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14, 16, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended,
- (c) Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- (d) Such further and other grounds as counsel may advise and this Honourable Court may permit;

3. The following documentary evidence will be used at the hearing of the application:

- (a) the Affidavit of Melinda Rombouts sworn March 23, 2022 and the exhibits attached thereto;
- (b) the Consent of BDO to act as Monitor in the CCAA proceedings;
- (c) the pre-filing report of the Proposed Monitor, to be filed;
- (d) such further and other evidence as counsel may advise and this Court may permit.

March 23, 2022

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, C. C-36, AS AMENDED**
**AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF EVE & CO
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LTD.**

Court File No.:

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at TORONTO

NOTICE OF APPLICATION

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