

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

THE HONOURABLE MR.) FRIDAY, THE 15TH
)
JUSTICE OSBORNE) DAY OF NOVEMBER, 2022
)

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

AVENA FOODS LIMITED

Applicant

- and -

WESTOAK NATURALS INC.

Respondent

**ORDER
(Approving SSP)**

THIS MOTION made by BDO Canada Limited, in its capacity as the receiver and manager (in such capacities, the “**Receiver**”), without security, of certain of the assets, undertakings and properties of the Respondents for an order, *inter alia*, approving the sale solicitation process (the “**SSP**”) and stalking horse agreement dated November 9, 2022 (the “**Stalking Horse Agreement**”), was heard this day via videoconference in light of the COVID-19 pandemic.

ON READING the Pre-Filing Report of the Receiver dated November 10, 2022 (the “**Pre-Filing Report**”) and the Appendices thereto and on hearing the submissions of counsel for the

Receiver, and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Alexander Overton sworn November 11, 2022.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated such that this Motion is properly returnable today, hereby dispenses with further service thereof, and authorizes substitute service via electronic mail.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Pre-Filing Report.

APPROVAL OF SSP AND STALKING HORSE AGREEMENT

3. **THIS COURT ORDERS** that the transaction provided for in the Stalking Horse Agreement is hereby approved, and the execution by the Receiver of the Stalking Horse Agreement with Avena Foods Limited (the “**Stalking Horse Bidder**”) as purchaser is hereby authorized, *nunc pro tunc*, provided that nothing herein approves the sale and the vesting of the Purchased Assets (as defined in the Stalking Horse Agreement) in and to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement and that the approval of the sale and vesting of such Purchased Assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the SSP.
4. **THIS COURT ORDERS** that that the SSP attached hereto as **Schedule “A”** (subject to any amendments thereto that may be made in accordance therewith and with this Order) be and is hereby approved and the Receiver is authorized and directed to carry out the SSP in accordance with its terms and this Order, and are hereby authorized and directed to take such steps as they

consider necessary or desirable in carrying out each of their obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SSP.

5. **THIS COURT ORDERS** that the Receiver, its affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SSP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Receiver, as determined by this Court.

GENERAL

6. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

7. **THIS COURT ORDERS** that this Order is and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

SCHEDULE “A”

Sale Solicitation Process

INTRODUCTION

By order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 15, 2022 (the “**Appointment Order**”), BDO Canada Limited (“**BDO**”) was appointed as receiver (in such capacity, the “**Receiver**”), without security, of certain of the assets and undertakings (the “**Property**”) of Westoak Naturals Inc. (the “**Company**”).

BDO, as proposed receiver of the Property, brought a motion on November 15, 2022 to the Court to approve the sale solicitation process (“**SSP**”) described herein (the “**Process Approval Order**”). The Process Approval Order (i) authorized the Receiver to enter into a fully binding and conditional purchase and sale agreement (the “**Stalking Horse Agreement**”) between the Receiver and Avena Foods Limited (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Purchaser made an offer to purchase the Property; and (ii) approved the transaction contemplated by the Stalking Horse Agreement.

THE OPPORTUNITY

The SSP may involve the sale of some or all of the Property, or some combination thereof (each, a “**Transaction**”). The Process Approval Order, the procedures in respect of the SSP as contained herein (the “**SSP Procedures**”) and any subsequent orders issued by the Court pertaining to the SSP Procedures shall exclusively govern the process for soliciting and selecting bids for the Transaction.

The purpose of these SSP Procedures is to determine whether a better Transaction than the Stalking Horse Agreement may be obtained by the Receiver in a formal marketing process approved by the Court. For the purposes of these SSP Procedures, a “**Superior Offer**” shall mean:

- a) a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to be a counterparty to a Transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
- b) an offer that provides for cash consideration in an amount equal to the purchase price in the Transaction, plus (i) the Break Fee and Expense Reimbursement (each as defined terms in the Stalking Horse Agreement) in the total amount of \$55,000; and (ii) an incremental increase of \$50,000.

Except to the extent otherwise set forth in a definitive sale agreement with a Successful Bidder (as defined below), any sale of the Property will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, or any of their respective agents, advisors or representatives, and, in the event of a sale, all of the right, title and interest of the Company in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to a Court order, except as otherwise provided in such Court order.

TIMELINE

The following table sets out the key milestones under the SSP:

Milestone	Deadline
Commencement of SSP	November 17, 2022
Distribution of the Teaser Letter and Bid Letter	November 17, 2022
Globe & Mail Advertisement	No later than November 23, 2022
Bid Deadline	December 9, 2022
Auction	No later than December 16, 2022
Sale Approval Hearing	No later than December 19, 2022
Outside Closing Date Deadline	December 21, 2022

The dates set out in the SSP may be extended by the Receiver in its sole discretion in consultation with the Stalking Horse Bidder.

SOLICITATION OF INTEREST

As soon as reasonably practicable:

1. the Receiver will prepare a list of potential bidders, including (i) parties that have approached the Receiver indicating an interest in the opportunity, and (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing all or part of the Property pursuant to the SSP (collectively, “**Known Potential Bidders**”);
2. the Receiver will arrange for a notice of the SSP (and such other relevant information which the Receiver considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition) and any other newspaper or journal as the Receiver considers appropriate, if any; and
3. the Receiver will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the SSP and inviting recipients of the Teaser Letter to express their interest pursuant to the SSP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver (an “**NDA**”).

The Receiver will publish the Notice and send the Teaser Letter and NDA to all Known Potential Bidders by no later than November 17, 2022 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

INTERESTED PARTIES

Delivery of Confidential Information Package

Any party who wishes to participate in the SSP must provide to the Receiver, on or before the Bid Deadline (as defined below), unless the Receiver confirms to such potential bidder that the below documents are already available to the Receiver, the following:

1. an NDA executed by it and a letter setting forth the identity of the potential bidder, the contact information for such potential bidder and full disclosure of the direct and indirect principals of the potential bidder; and
2. such form of financial disclosure and credit quality support or enhancement that allows the Receiver to make a reasonable determination as to the potential bidder's financial and other capabilities to consummate a transaction that would constitute a Superior Offer.

If the Receiver determines, exercising its reasonable business judgement that a bidder: (i) has delivered the documents contemplated in the immediately preceding paragraph; and (ii) has the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale pursuant to the SSP, then such bidder shall be deemed to be a **“Qualified Bidder”** with the approval of the Receiver.

At any time during the SSP, the Receiver may, in its reasonable business judgment eliminate a Qualified Bidder from the SSP, in which case such Qualified Bidder will be eliminated from the SSP and will no longer be a Qualified Bidder for the purposes of the SSP.

The Receiver will prepare and send to each Qualified Bidder a confidential information package providing additional information considered relevant to the potential Transaction (the **“Confidential Information Package”**).

The Receiver and its respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SSP, except to the extent expressly contemplated in any definitive sale agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver.

Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SSP and any Transaction they enter into with the Receiver.

Due Diligence

The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property and Business as they deem appropriate. Due diligence access may include, access to electronic data rooms, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver in its reasonable business judgment may agree.

The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from a Qualified Bidder and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property to any person other than to a Qualified Bidder. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Receiver determines such information to represent proprietary or sensitive competitive information.

FORMAL BINDING OFFERS

Qualified Bidders that wish to make a formal offer to purchase the Property (a “**Bidder**”) shall submit a binding offer (the “**Bid**”) that complies with all of the following requirements to the Receiver at the addresses specified in Schedule “A” hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Eastern Time) on December 9, 2022 (the “**Bid Deadline**”):

1. the Bid identifies or contains the following:
 - a. the purchase price in Canadian dollars, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
 - b. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - c. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
 - d. a description of the conditions and approvals required for a final and binding offer;
 - e. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
 - f. any other terms or conditions of the Transaction that the Bidder believes are material to the transaction;
2. such other information as reasonably requested by the Receiver if it has a reasonable prospect of resulting in a Superior Offer;
3. the Bid includes a letter stating that the Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder (as defined below), its offer shall remain irrevocable until the closing of the Transaction with the Successful Bidder;
4. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto;

5. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed Transaction, that will allow the Receiver to make a determination as to the Bidder's financial and other capabilities to consummate the proposed Transaction;
6. the Bid is not conditional on:
 - a. the outcome of any further due diligence by the Bidder, apart from, if applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld during the due diligence process prior to the Bid Deadline, or
 - b. obtaining financing;
7. the Bid fully discloses the identity of each entity or person that will be entering into the Transaction, that is participating in, or benefiting from, such bid, including any equity holders;
8. the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the Purchase Price offered upon the Bidder submits its Bid;
9. the Bid includes acknowledgments and representations from the Bidder that the Bidder:
 - a. has had an opportunity to conduct any and all due diligence regarding the Property, and Business prior to making its offer (apart from, to the extent applicable, the disclosure of any due diligence materials representing proprietary or sensitive competitive information withheld during the due diligence process prior to the Bid Deadline);
 - b. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
 - c. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business or the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
10. the Bid is received by the Bid Deadline;
11. the Bid constitutes, in the reasonable business judgment of the Receiver, a Superior Offer; and
12. the Bid contemplates closing the Transaction set out therein on or before December 12, 2022 (the "**Closing Date**").

A Bid that qualifies with the requirements set out above shall be considered a “**Qualified Bid**”. For greater certainty, the Stalking Horse Agreement shall be deemed to be a Qualified Bid.

The Receiver may waive strict compliance with any one or more of the non-material foregoing requirements and deem such non-compliant bids to be a Qualified Bid.

SELECTION OF SUCCESSFUL BIDDERS

Following the Bid Deadline, the Receiver will assess the Bids received and shall approve the disqualification of any Bids that are deemed not to be Qualified Bids. Only Bidders whose Bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days following the Bid Deadline, or at such later time as the Receiver deems appropriate.

If no Qualified Bids (either individually or in the aggregate), other than the Stalking Horse Agreement have been received by the Bid Deadline, then the Receiver may consider an extension, in consultation with the Stalking Horse Bidder, of the Bid Deadline for up to 7 business days to allow any party that submitted a Bid to consult with the Receiver and to revise such Bid such that it would provide for, or that might reasonably be expected to provide for, a Superior Offer.

Evaluation of Competing Bids

A Qualified Bid will be evaluated upon many factors, including, without limitation, items such as:

1. the Purchase Price and the net value provided by such Qualified Bid,
2. the identity, circumstances and ability of the Bidder to successfully complete such Transaction,
3. the proposed Transaction documents,
4. factors affecting the speed, certainty and value of the Transaction,
5. the assets included or excluded from the Bid,
6. the likelihood and timing of consummating such Transaction, and
7. whether the Transaction results in a Superior Offer.

each as determined by the Receiver.

Selection of Successful Bid

The Receiver shall:

1. first, review and evaluate each Qualified Bid, provided that the Receiver may contact any Bidder to clarify the terms of any Bid, and the applicable Bidder may amend, modify or vary such Bid for the purpose of clarification;
2. second, identify if any Qualified Bid is a Superior Offer; and
3. third, if one or more Qualified Bids are considered to be Superior Offers, those Qualified Bidders presenting a Superior Offer shall proceed to an auction with the Stalking Horse Bidder to be held on or before December 16, 2022 (the “**Auction**”), which shall proceed according to the Auction Procedures set out in **Schedule “B”** to this SSP to identify the “**Successful Bid**”, and the Bidder making such Successful Bid, the “**Successful Bidder**”.

If no Superior Offer is received by the Bid Deadline, the Auction will not be held and the Stalking Horse Bidder will be declared to be the Successful Bidder. The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.

Sale Approval Motion Hearing

At the hearing of the motion to approve any Transaction with a Successful Bidder (the “**Sale Approval Hearing**”), the Receiver shall seek, among other things, approval from the Court to consummate the Successful Bid. All Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

DEPOSIT

All deposits shall be held by the Receiver in a single noninterest-bearing account designated solely for such purpose. A deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Bidders not selected as the Successful Bidder shall be returned to such Bidder within three business days of Court approval of the Successful Bid.

CONFIDENTIALITY AND ACCESS TO INFORMATION

All discussions regarding a Transaction, Bid or Successful Bid should be directed through the Receiver. Under no circumstances should the management or former management or owners of the Company or its customers be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SSP at the discretion of the Receiver.

Participants and prospective participants in the SSP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Qualified Bidders, Bidders, Qualified Bids, the details of any Bids or Qualified Bids submitted

or the details of any confidential discussions or correspondence between the Receiver and such other Bidders or Qualified Bidders in connection with the SSP, except to the extent that the Receiver, with the consent of the applicable participants, is seeking to combine separate Bids into a single Bid.

Notwithstanding the foregoing, under no circumstances will the Receiver share any material information concerning any of the Bids with any person.

SUPERVISION OF THE SSP

This SSP does not, and will not be interpreted to, create any contractual or other legal relationship between the Receiver and any Qualified Bidder, Bidder, or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Receiver.

Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Qualified Bidder, Bidder, the Successful Bidder, the Receiver or any other creditor or other stakeholder of the Receiver, for any act or omission related to the process contemplated by this SSP Procedure, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Receiver. By submitting a Bid, each Bidder or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver in respect of the SSP for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct by the Receiver.

Participants in the SSP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Schedule "A"

Addresses of Receiver

To the Receiver

BDO Canada Limited
20 Wellington Street East, Suite 500
Toronto, ON M5E 1C5

Attention: Josie Parisi
Email: jparisi@bdo.ca

Schedule “B”

AUCTION PROCEDURES

1. On or before December 12, 2021, the Receiver will confirm those Qualified Bidders who present a Superior Offer (“**Superior Bidders**”) that their Bid will be advanced to the Auction.
2. Unless otherwise ordered by the Court, only the authorized representatives, professional advisors or agents of the Stalking Horse Bidder and each Superior Bidder shall be eligible to attend at the Auction and make any Subsequent Bid (as defined below) at the Auction.
3. The Auction, if any, shall be conducted by the Receiver, on or before December 16, 2022 at 10:00 a.m. (Eastern Time) via video conference.
4. At the Auction, all Superior Bidders and the Stalking Horse Bidder shall be permitted to increase their Superior Bids and the Stalking Horse Agreement in accordance with the procedures set forth herein (each, a “**Subsequent Bid**”). All Subsequent Bids presented during the Auction shall be made and received via video conference on an open basis. All participating Superior Bidders and the Stalking Horse Bidder shall be entitled to be present for all bidding with the understanding that the true identity of each participating Superior Bidder shall be fully disclosed to all other Superior Bidders and the Stalking Horse Bidder and that all material terms of each Subsequent Bid presented during the Auction will be fully disclosed to the Stalking Horse Bidder and all other participating Superior Bidders throughout the entire Auction.
5. All Superior Bidders and the Stalking Horse Bidder at the Auction must have at least one individual representative with authority to bind such Superior Bidder and the Stalking Horse Bidder present at the Auction.
6. The Auction shall be recorded by the Receiver for their exclusive use and shall not be recorded by any other party.
7. At least three (3) days prior to the Auction, the Receiver will advise the Stalking Horse Bidder and all other Superior Bidders which of the Superior Bid or of the Stalking Horse Bidder the Receiver has determined in its reasonable business judgment, after consultation with its advisors, constitutes the then highest or otherwise best offer (the “**Starting Bid**”).
8. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Superior Bidder or the Stalking Horse Bidder that (i) improves upon such Superior Bidder’s immediately prior Superior Bid or upon the Stalking Horse Agreement, as the case may be, and meets the overbid requirement set forth in paragraph 8 below, and (ii) the Receiver determines, in its reasonable business judgment, after consultation with its advisors, such Subsequent Bid is a higher or otherwise better offer than the then current leading Superior Bid.
9. Bidding at the Auction shall be in increments of \$50,000 and shall continue until such time

as the highest and best bid is determined by the Receiver's reasonable business judgment after consultation with its advisors. For the purpose of evaluating the value of the consideration provided by each bid (including any Subsequent Bid by the Stalking Horse Bidder) presented at the Auction, the value will: (i) be deemed to be the net consideration payable to the Receiver after considering, *inter alia*, any Break Fee and Expense Reimbursement due to the Stalking Horse Bidder under the Stalking Horse Agreement; and (ii) take into account any additional liabilities to be assumed by a Superior Bidder.

10. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the Subsequent Bid that the Receiver has determined in its reasonable business judgment, after consultation with its advisors, to be the then highest or best bid (the "**Leading Bid**"). A round of bidding will conclude after each participating Superior Bidder and the Stalking Horse Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
11. If no Superior Bidder or the Stalking Horse Bidder submits a Subsequent Bid (as determined by the Receiver) after a period of 30 minutes following the Receiver's acceptance of a Subsequent Bid as the Leading Bid, and the Receiver chooses not to adjourn the Auction further, the Receiver shall enter into a binding agreement of purchase and sale or investment substantially on the same terms as the Superior Bid or the Stalking Horse Agreement (as the case may be), as amended by the Leading Bid, with the Superior Bidder or the Stalking Horse Bidder (the Successful Bidder) that submitted the highest and best bid as determined by the Receiver (the "**Accepted Bid**"), whereupon the Auction will be concluded.
12. At the Auction, the Receiver, after consultation with its advisors, may employ and announce additional procedural rules that are fair and reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction; provided, however, that such rules are (a) not inconsistent with the Auction Procedures, the *Bankruptcy and Insolvency Act*, any order of the Courts entered in connection with the Auction Procedures and (b) disclosed to each Superior Bidder and the Stalking Horse Bidder at the Auction.

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

AVENA FOODS LIMITED

- and -

WESTOAK NATURALS INC.

Applicant

Respondent

Court File No. CV-22-00689769-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(approving SSP)**

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