

Our File: 254177

March 6, 2025

Mr. Raffi A. Balmanoukian
Registrar in Bankruptcy,
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water St
Halifax, NS B3J 1S7



Mr. Registrar:

Re: Motryx Inc. – NOI Proceeding (Court No.:45907)

We are counsel to BDO Canada Limited (the "**Proposal Trustee**") in its capacity as Proposal Trustee for Motryx Inc. ("**Motryx**").

The Proposal Trustee has scheduled a Motion to be heard before the Registrar in Bankruptcy on **Thursday, March 13, 2025 at 10:00 a.m.** The Proposal Trustee is seeking:

1. An Order abridging time (if required) pursuant to Rule 6 of the *Bankruptcy and Insolvency General Rules, R. S. C. 1978, c. 368*, as am.; and
2. An Order pursuant to section 65.13 of the *Bankruptcy and Insolvency Act, R. S. C. 1985, c. B-3*, as am (the "**BIA**") approving the sale by Motryx of all of its property, assets and undertakings of every kind and description and wheresoever situate, other than excluded assets (collectively, the "**Purchased Assets**"), on the terms and conditions set out in the Stalking Horse Asset Purchase Agreement (the "**Stalking Horse Agreement**") appended to the Sale and Investment Solicitation Process Order issue herein on December 20, 2024, and also providing that:
 - (i) The Purchased Assets shall vest in the Purchaser free and clear of all liens, claims, or encumbrances; and
 - (ii) that the monies payable to Motryx pursuant to the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets for the purpose of determining the nature and priority of any claims thereto

The Affidavit the Stephen Kingston sworn on March 6, 2025 and the Sixth Report of the Proposal Trustee (the "**Sixth Report**") dated March 6, 2025 have been filed in support.

Please accept the following as the Proposal Trustee's Pre-Hearing Memorandum.

Facts

On September 27, 2024, Motryx filed a Notice of Intension to Make a Proposal (the "NOI") pursuant to BIA s. 50.4. BDO Canada Limited was named as Proposal Trustee.

The initial statutory Stay of Proceedings was extended by Orders of this Honourable Court dated October 22, 2024; December 5, 2024; January 16, 2025; and February 21, 2025.

On December 20, 2024, this Honourable Court issued a Sale and Investment Solicitation Process Order (the "SISP Order") which, *inter alia*, approved and accepted the Stalking Horse Agreement between Motryx and Aerocom GMBH & Co. (the "Purchaser") dated December 13, 2024.

The Proposal Trustee thereafter conducted a Sale and Investment Solicitation Process (the "Sale Process") as regards the Purchased Assets in accordance with the SISP Order. The conduct of the Sale Process by the Proposal Trustee is described in detail in the Sixth Report.

At the conclusion of the Sale Process, the Proposal Trustee designated the Stalking Horse Agreement as being the Successful Bid.

The Proposal Trustee now seeks an Order approving the sale of the Purchased Assets to the Purchaser in accordance with the terms of the Stalking Horse Agreement, and for the vesting of such Purchased Assets in the Purchaser free and clear of all liens, charges and encumbrances upon the completion of the sale transaction.

Issues

1. Should this Honourable Court abridge the time requirements for the hearing of this Motion (if required)?
2. Should this Honourable Court exercise its discretion so as to grant the Sale Approval Vesting Order in the form submitted?

Law and Argument

1. **Service and Notice**

Service of the Motion Pleadings will be effected pursuant to the BIA and, in particular, Rule 6 of the ***Bankruptcy and Insolvency General Rules***.

Rule 6 states:

- (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.
- (2) Unless otherwise provided for in these Rules, every notice or other document given or sent pursuant to the Act or Rules

- (a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or
 - (b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or courier.
- (3) ...
- (4) The court may, on an *ex parte* application, exempt any person from the application of subs. (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

(emphasis added)

An Affidavit of Service will be filed in advance of the Motion hearing date.

The Proposal Trustee will make its best efforts to complete service on interested parties within the timelines stated in Rule 6, but will seek to abridge time if required.

2. Jurisdiction – BIA s. 65.13

This Honourable Court possesses the jurisdiction to issue a Sale Approval and Vesting Order in the context of an NOI proceeding pursuant to BIA s. 65.13, which states:

(1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee 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.

(5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

(6) For the purpose of subsection (5), a person who is related to the insolvent person includes

(a) a director or officer of the insolvent person;

(b) a person who has or has had, directly or indirectly, control in fact of the insolvent person; and

(c) a person who is related to a person described in paragraph (a) or (b).

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

(9) If, on the day on which a notice of intention is filed under section 50.4 or a copy of the proposal is filed under subsection 62(1), the insolvent person is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (7), that sale or disposition does not affect the other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property."

3. Relevant Factors (BIA s. 65.13(4))

As regards the specific requirements of BIA s. 65.13(4), the Proposal Trustee submits:

- (a) The Sale Process was reasonable in the circumstances, as it was conducted in accordance with the SISP Order previously issued by this Honourable Court;
- (b) The Sale Process was conducted by the Proposal Trustee in accordance with the SISP Order and the approval of the Court;
- (c) The Sixth Report states that the proposed sale, in the opinion of the Proposal Trustee, would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) Consultations with creditors during the Sale Process were limited, as the senior secured creditor (being Aerocom as DIP Lender) was a related party to Motryx as defined in BIA s. 65.13(6);
- (e) The Stalking Horse Agreement specifically provides for a cash payment which will be sufficient to pay out the secured charge of the Royal Bank of Canada.

As confirmed in the Kingston Affidavit, there are no other registered PPSA charges against Motryx, and it owns no real property in Nova Scotia.

The Proposal Trustee recently became aware of a deemed trust claim being advanced by Canada Revenue Agency, but the proposed increased DIP funding (if approved by the Court) would allow Motryx to fully pay the CRA claim in advance of closing; and

- (f) The Purchased Assets were exposed to the market in accordance with the approved Sale Process. All interested parties were aware of the terms of the Stalking Horse Agreement and had the opportunity to submit Qualified Bids if they chose to do so. As it transpired, no other party did so, and the Proposal Trustee submits that the purchase price as set out therein is reasonable and fair in the circumstances.

4. Additional Relevant Factors (BIA s. 65.13(5))

Aerocom is a related party within the meaning of BIA s. 63.15(6), as its principal is a Director of Motryx.

This being the case, the additional factors set out in BIA s. 65.13(5) require consideration by the Court. As regards to those factors, the Proposal Trustee submits:

- (a) Good-faith efforts were made to sell the assets to persons who were not related to the insolvent person, as set out in the Sixth Report and in accordance with the approved Sale Process; and
- (b) The Stalking Horse Agreement is the only offer received as regards the Purchased Assets, notwithstanding the exposure of such assets to the market in accordance with Sale Process approved by this Honourable Court.

4. BIA s. 65.13 (8)

As set out in the Sixth Report, Motryx can and will make the payments required by the section.

Draft Sale Approval and Vesting Order

The draft Order authorizes and approves the completion of the sale of the Purchased Assets by Motryx in accordance with the Stalking Horse Purchase Agreement, and authorizes Motryx and the Proposal Trustee to take such additional steps and execute such additional documents as may be necessary or desirable for that purpose.

The draft Order also vests title in the Purchaser free and clear of all liens, charges or encumbrances – with creditors' claims attaching to the net sale proceeds with the same priority as they had as regards the Purchased Assets immediately prior to the closing of the sale transaction.

The Proposal Trustee submits that the granting of the Sale Approval Vesting Order will assist the Proposal Trustee and Motryx in completing the sale transaction, and that it will not cause any prejudice to any stakeholder.

Conclusion

It is respectfully submitted that the issuance of the Proposed Sale Approval Vesting Order:

- (iii) will facilitate the completion of the sale transaction;
- (iv) is in the best interests of stakeholders;
- (v) satisfies the statutory requirements set out in BIA s. 65.13; and
- (vi) will not operate the prejudice of any party.

All of which is respectfully submitted.

Yours very truly,

McINNES COOPER



Stephen Kingston

cc. Service List
cc. BDO Canada Limited