

MB



COURT FILE NUMBER

25-2958981

25-2958977

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PROCEEDING

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF OGEN HOLDINGS LTD. AND OGEN LTD.

DOCUMENT

ORDER (STAY EXTENSION AND MISCELLANEOUS RELIEF)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500 Bankers Hall East
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Calgary, Alberta T2P 4K7

ENTERED

Attention: Michael Selnes
Telephone No.: 403-298-3311
Email: selnesm@bennettjones.com
Fax No.: 403-265-7219
Client File No.: 96017.1

DATE ON WHICH ORDER WAS PRONOUNCED:

July 21, 2023

I hereby certify this to be a true copy of the original Order

Dated this 24th day of July 2023

LOCATION WHERE ORDER WAS PRONOUNCED:

Calgary, Alberta

John George
for Clerk of the Court

NAME OF JUSTICE WHO MADE THIS ORDER:

Justice E.J Sidnell

UPON the application of the Applicants, OGEN Holdings Ltd. and OGEN Ltd. (collectively, "OGEN" or the "Applicants"); AND UPON having reviewed the Affidavit of Darren Brisebois.

sworn July 10, 2023 (the "**Brisebois Affidavit**"), and the First Report of KSV Restructuring Inc. (the "**Proposal Trustee**"), dated July 12, 2023; AND UPON having reviewed the affidavit of service of Alyssa Webster, sworn July 20, 2023; AND UPON having heard counsel for OGEN, counsel for the Proposal Trustee, counsel for ConnectFirst Credit Union ("**CFCU**") and counsel for any other interested parties:

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of this Application and its supporting materials is deemed good and sufficient, and the time for service of this Application and its supporting materials is abridged to the time actually given.

CONSOLIDATION OF ESTATES

2. OGEN Holdings Ltd. and OGEN Ltd. are hereby permitted to consolidate the proceedings in Estate Nos. 25-2958977 and 25-2958981 and such consolidation is hereby ordered and the proceedings shall continue under Estate No. 25-2958977.
3. OGEN Holdings Ltd. and OGEN Ltd. are hereby permitted to file a joint proposal to their creditors.

EXTENSION AND STAY

4. The Applicants are granted an extension of 45 days, to Monday, September 5, 2023, to file a joint proposal to their creditors, under section 50.4 of the *Bankruptcy and Insolvency Act*, RSA 1985, c. B-3, as amended (the "**BIA**").
5. The stay of proceedings in the within matter is extended by 45 days to and including Monday, September 5, 2023 (the "**Proposal Extension Date**").
6. Nothing in this Order shall prevent any party from taking an action against OGEN:
 - (a) where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law;

- (b) to file any registration or preserve or perfect a security interest; or
- (c) prevent the registration of a claim for lien;

provided that no further steps shall be taken by such party except in accordance with further Order of this Court, and notice in writing of such action be given to OGEN and the Proposal Trustee at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

- 7. Until and including the Proposal Extension Date, no individual, firm, corporation, governmental body, or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, or take any further action to issue or enforce any garnishee summons, except with the written consent of the Applicants and the Proposal Trustee, or leave of this Court.

CONTINUATION OF SERVICES

- 8. Until and including the Proposal Extension Date, all Persons having:
 - (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with the Applicants, including without limitation all purchase orders, supply agreements, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicants;

are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. Without limiting the foregoing, the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet

addresses and domain names. The obligations set-out herein apply provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Proposal Trustee or as may be ordered by this Court.

INTERIM FINANCING AND INTERIM LENDERS' CHARGE

9. OGEN is hereby authorized and empowered to obtain and borrow under a credit facility (the "**Interim Loan Facility**") pursuant to the Interim Financing Term Sheet (the "**Term Sheet**") among the Applicants and G. Edwards Holdings Ltd. and Hawksworth Holdings Ltd. (in such capacity, the "**Interim Lenders**"), in order to finance the Applicants' working capital requirements and other general corporate purposes and permitted capital expenditures set forth in the Term Sheet, provided that borrowings under the Interim Loan Facility shall not exceed the principal amount of \$500,000 unless permitted by further order of this Court.
10. The Applicants are hereby authorized and empowered to execute and deliver the Term Sheet and such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the "**Interim Financing Credit Documentation**"), as are contemplated by the Term Sheet or as may be required by the Interim Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lenders under and pursuant to the Term Sheet and the Interim Financing Credit Documentation as and when the same become due and are to be performed.
11. The Interim Lenders shall be entitled to the benefits of and is hereby granted a charge (the "**Interim Lenders' Charge**") on all the property, assets and undertaking of the Applicants (the "**Property**") to secure all obligations under the Term Sheet, which Interim Lenders' Charge shall be in the aggregate amount of the obligations outstanding at any given time under the Term Sheet and the Interim Financing Credit Documentation.

The Interim Lenders' Charge shall have the priority set out in paragraphs 15 and 17 hereof.

12. Notwithstanding any other provision of this Order:
 - (a) the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Interim Financing Credit Documentation;
 - (b) upon the occurrence of an event of default under the Term Sheet or the Interim Financing Credit Documentation or the Interim Lenders' Charge, the Interim Lender, upon 5 days notice to the Applicants and the Proposal Trustee, may exercise any and all of their rights and remedies against the Applicants or the Property under or pursuant to the Term Sheet or the Interim Financing Credit Documentation, and the Interim Lenders' Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under the Term Sheet, the Interim Financing Credit Documentation or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
 - (c) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.
13. The Interim Lenders shall be treated as unaffected in any Proposal filed by the Applicants under the BIA, with respect to any advances made under the Term Sheet or the Interim Financing Credit Documentation.
14. OGEN or the Proposal Trustee shall provide CFCU with copies of weekly cash flow reports provided to the Interim Lenders.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

15. The Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and/or officers of the Applicants after the commencement of the within proceedings by the Applicants' filings of the Notices of Intention to Make Proposals to their Creditors on June 26, 2023, except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
16. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$50,000.00 as security for the indemnity provided in paragraph 8 of this Order. The D&O Charge shall have the priority set out in paragraphs 17 and 19 hereof.

ADMINISTRATION CHARGE

17. The Proposal Trustee, counsel to the Proposal Trustee, and the Applicant's counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000.00 as security for their professional fees and disbursements incurred at the normal rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 17 and 19 hereof.
18. The priorities of the Interim Lenders' Charge, the D&O Charge and the Administration Charge (collectively, the "**Charges**") shall be as follows:

- First – Administration Charge;
- Second – D&O Charge; and
- Third - Interim Lenders' Charge.

19. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
20. Each of the Charges shall constitute a charge on the Property and the Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person.
21. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Proposal Trustee and the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**"), or further order of this Court.
22. The Charges, the Term Sheet and the Interim Financing Credit Documentation shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
 - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA, or any bankruptcy or receivership order made in respect of the Applicants;
 - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - (d) the provisions of any federal or provincial statutes; or
 - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, licence, permit or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement;

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Term Sheet and the Interim Financing Credit Documentation, shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Term Sheet, or the execution, delivery or performance of the Interim Financing Credit Documentation; and
- (iii) the payments made by the Applicants pursuant to this Order, including the Term Sheet and the Interim Financing Credit Documentation, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION


23. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property.

GENERAL

24. The Applicants or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.
25. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Proposal Trustee, as an officer of

this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

26. Any interested party (including the Applicants and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
27. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Daylight Time on the date of this Order.



J.C.K.B.A.