



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-25-03268936-0031

DATE: October 31, 2025

NO. ON LIST: 5

TITLE OF PROCEEDING: IOVATE HEALTH SCIENCES INTERNATIONAL INC et al.

BEFORE: JUSTICE JANE DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE: JANE DIETRICH

Introduction

1. Iovate Health Sciences International Inc. (“**Iovate International**”), Iovate Health Sciences U.S.A. Inc. (“**Iovate USA**”), and Northern Innovations Holding Corp. (“**Northern Innovations**”), Xiwang Iovate Holdings Company Limited (“**Xiwang Iovate**”) and Iovate Health Sciences Australia Pty Ltd (“**Iovate Australia**”, collectively, the “**Applicants**” or the “**Companies**”) seek an initial order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”).
2. Three of the five Applicants, Iovate International, Iovate USA and Northern Innovations each filed a Notice of Intention to Make a Proposal (each an “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), commencing the “NOI Proceedings.” on September 5, 2025. KSV Restructuring Inc. (“**KSV**”) was appointed as the proposal trustee (the “**Proposal Trustee**”) in the NOI Proceedings.
3. The Initial Order sought by the Applicants:
 - a. directs that the NOI Proceedings be taken up and continued under the CCAA;
 - b. appoints KSV as the monitor in the CCAA Proceedings;
 - c. grants a stay of proceedings (the “**Stay**”) until December 12, 2025;
 - d. extends the Stay to Infinity Insurance Co. Ltd., Iovate Health Sciences Europe Limited, Muscletech LLC, XP Sports LLC, and Simplevita Nutrition LLC (collectively, the “**Non-Applicant Stay Parties**”, and together with the Applicants, the “**Iovate Group**”);
 - e. orders that the orders of this Court granted on September 9, 2025 (the “**September 9 Order**”), October 3, 2025, and October 17, 2025, and the relief granted thereunder, shall continue in full force and effect in the CCAA Proceedings;
 - f. appoints Iovate International as the foreign representative of the Iovate Group in respect of these CCAA Proceedings and authorize it to apply for relief pursuant to the United States Bankruptcy Code in pending Chapter 15 proceedings (together, the “**Foreign Representative Relief**”); and
 - g. grants or continues (as applicable) the Administrative Professionals Charge and the Directors’ Charge (each as defined below).

4. KSV as Proposal Trustee and proposed Monitor filed a joint report dated October 30, 2025 (the “**Joint Report**”) in which it supports the relief requested by the Applicants.
5. No opposition to the relief requested was raised at the hearing
6. Counsel to Xiwang Foodstuffs (Qingdao) Co. Ltd., the parent company of the Applicants, raised a concern with respect to sealing of certain of the Applicants’ material related to foreign regulatory issues. In this regard, an urgent motion is scheduled for Monday, **November 3, 2025 at 11:30 am for 30 minutes** so that the matter can be addressed with the benefit of a proper motion record, including evidence, and legal argument.
7. Defined terms used but not otherwise defined herein have the meaning given to them in the factum of the Applicants filed for use at this hearing.

Background

8. The Iovate Group operates a Canadian-based health and wellness company that develops, markets, and sells performance nutrition and weight management products under key brands including MuscleTech™ and Hydroxycut™.
9. The Iovate Group’s parent company is Xiwang Iovate, which in turn is wholly owned by Xiwang Foodstuffs (Qingdao) Co. Ltd. Xiwang Iovate directly or indirectly owns the other members of the Iovate Group, which operate together as follows: (i) Iovate International is the principal Canadian operating entity; (ii) the Iovate Group conducts its U.S. operations through Iovate USA, which wholly owns the Delaware Entities; (iii) Northern Innovations holds the Iovate Group’s intellectual property portfolio; (iv) Iovate Australia facilitates distribution of the Iovate Group’s products in certain markets; (v) Infinity Insurance provides product liability insurance; and (vi) Iovate Europe holds key European Union product registrations.
10. In terms of secured debt, Iovate International entered into a Credit Agreement with RBC as Administrative Agent and various financial institutions as Lenders. Pursuant to the Credit Agreement, the Lenders agreed to make available to Iovate International a revolving credit facility totaling \$20,000,000 and a term credit facility in the amount of \$133,149,999.98 (together, the “**Loans**”). Iovate International’s obligations under the Loans were guaranteed by each of the other Applicants. The Loans are secured by various security agreements.
11. The Applicants also have significant unsecured debt. Including a judgment obtained in the United States District Court of Central District of California in favour of Orgain against Iovate International and Iovate USA in the amount of \$12.5 million. On June 27, 2025, Orgain obtained a writ of garnishment (the “**Writ**”) in Arkansas. Walmart was

served with the Writ in early August 2025 and as a result froze all payments to Iovate USA.

12. The lack of payments from Walmart led to severe liquidity problems for the Applicants. The Lenders also demanded repayment of the amounts owing under the Credit Agreement and issued notices under s. 244 of the BIA on August 27, 2025. This led to the NOI filings on September 5, 2025.
13. I granted an order in the NOI Proceedings on September 9, 2025 which granted a charge up to CAD \$750,000 (the “**Administrative Professionals’ Charge**”) over the assets of the NOI Applicants to secure the fees and disbursements of the Proposal Trustee, its counsel, KPMG LLP as financial advisor to the Iovate Group, and Canadian and U.S. counsel to the NOI Applicants; and (ii) authorized Iovate International to act as a foreign representative of the NOI Proceedings for the purpose of their recognition outside Canada, and to seek relief in such capacity pursuant to Chapter 15 of the United States Bankruptcy Code.
14. Proceedings under Chapter 15 of the United States Bankruptcy Code for recognition of Iovate International as foreign representative of the NOI Applicants and recognition of the NOI Proceedings as the “foreign main proceeding” were commenced on September 9, 2025.
15. On October 3, 2025, an order was made by this Court extending the time in which the NOI Applicants could file a proposal to November 4, 2025. On October 17, 2025 this Court granted an order approving a settlement with Kenco dated October 8, 2025.
16. On October 28, 2025, the New York Court ordered Iovate International, as foreign representative of the NOI Applicants, to take immediate possession of the receivables retained by Walmart as a result of service of the Writ, and ordered Walmart to turn over all sums owed to the NOI Applicants that it had retained as a result of service of the Writ and that were owed to the NOI Applicants in the ordinary course of business.

Issues

17. The issues to be decided today are whether the Court should:
 - a. continue the NOI Proceedings under the CCAA and add Xiwang Iovate and Iovate Australia as Applicants;
 - b. grant the Stay for the Applicants and the Non-Applicant Stay Parties to December 12, 2025;
 - c. appoint KSV as Monitor;

- d. continue the Administrative Professionals Charge with certain modifications as to its beneficiaries;
- e. grant the Directors' Charge; and
- f. grant the Foreign Representative Relief.

Analysis

18. Section 11.6(a) of the CCAA provides this Court with express authority to continue the NOI Proceedings under the CCAA. In considering whether to continue an NOI proceeding under the CCAA, courts consider whether: (a) the debtor has filed a proposal under the BIA; (b) the proposed continuation is consistent with the purposes of the CCAA; and (c) the debtor has provided the Court with the information that would otherwise form part of an initial CCAA application under s.10(2) of the CCAA see: *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882 [**Body Shop**] at para 10.
19. The NOI Applicants have not yet filed proposals under the BIA. The proposed continuance of the NOI Proceedings under the CCAA is consistent with the purposes of the CCAA. The Applicants intend to utilize the protection and flexibility afforded by the CCAA to preserve the going concern value of the Iovate Group and maximize value for the benefit of their stakeholders, including by returning before this Court to seek an order approving a sale and investment solicitation process to pursue a going concern transaction.
20. All of the Applicants are debtor companies as defined in the CCAA. I am satisfied that they are insolvent, together owe in excess of \$5 million and are incorporated in Canada or do business in Canada. Xiwang Iovate, Iovate International, and Northern Innovations were incorporated or continued under Canadian provincial legislation and have registered offices in Canada. Iovate USA and Iovate Australia have assets in Canada, including funds held in trust as a retainer by its Canadian counsel, Chaitons LLP. The Applicants are “insolvent,” as they are unable to meet their obligations under the Credit Agreement, the Credit Agreement is currently in default and the Lenders have delivered demand letters, and the Applicants are facing an imminent liquidity crisis as a consequence of Walmart withholding payments of the Applicants’ accounts receivable.
21. I am satisfied that Ontario is the proper forum for this proceeding. The Iovate Group’s business operations, including all finance, human resource, and payroll functions, are collectively managed from the Oakville Head Office.
22. I am satisfied that the stay of proceedings can and should be extended to and including December 12, 2025. Such period of time is appropriate and a stay of longer than 10 days has been authorized by this Court in previous cases on a conversion from a BIA

proceeding, such as is this case, notwithstanding section 11.02(1) of the CCAA: see *Body Shop* at para 19-21.

23. Due to the integration of the Iovate Group's business and operations, the Applicants seek to extend the Stay of Proceedings to the Non-Applicant Stay Parties and their respective directors, officers, and representatives. This Court's authority to extend a stay to non-filing affiliates is derived from its broad jurisdiction under sections 11 and 11.02(1) of the CCAA, and has been exercised on a number of occasions, including in respect of foreign non-applicants. As noted in *Laurentian University of Sudbury*, 2021 ONSC 659 at para 39: "It is well-established that it is appropriate for the Court to extend the protection of the stay of proceedings to third party entities where such parties are integrally and closely interrelated to the debtor companies' business or where doing so furthers the primary purpose of the CCAA, being the successful restructuring of an insolvent company". I am satisfied that the Non-Applicant Stay Parties are each directly wholly-owned by an Applicant and are intertwined with the Applicants' operations such that extending the Stay to the Non-Applicant Stay Parties is appropriate.
24. The firm currently acting in the capacity as Proposal Trustee, KSV, is qualified to act as Court-appointed Monitor, has consented to do so and is not affected by any restrictions as set out in section 11.7(2) of the CCAA.
25. Section 11.52 of the CCAA expressly provides the Court with the jurisdiction to grant an administration charge. The factors to be considered when granting an administration charge include: (a) the size and complexity of the business being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the monitor. The Court granted an Administration Professionals Charge in the NOI Proceeding in the maximum amount of \$750,000. The Applicants seek to continue the Administration Professionals Charge in the same amount in order to secure the fees and disbursements of the Monitor, its counsel, and the Applicants' counsel, the Lenders' counsel and Lender's financial advisor. The quantum of the proposed Administration Charge is reasonable in the circumstances and not opposed by any person. The proposed Administration Charge is appropriate in the circumstances is approved.
26. The proposed Initial Order also includes a charge in favour of the Iovate Group's present and former directors and officers (the "**Directors and Officers**") in the amount of CAD \$1,310,000 (the "**Directors' Charge**"), which would rank subordinate to the Administration Charge, but in priority to all other claims and encumbrances. The Directors' Charge would secure the indemnification obligations and potential liabilities that the Directors and Officers may face during the CCAA Proceedings, and is a condition to their continued involvement. Section 11.51 of the CCAA provides this Court with jurisdiction to grant the Directors' Charge. The purpose of such a charge is to

keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring. In determining whether to grant a directors' and officers' charge, courts consider whether: (a) notice has been given to the secured creditors likely to be affected by the charge; (b) the amount is appropriate; (c) the applicant could obtain adequate indemnification insurance for the director at a reasonable cost; and (d) the charge applies in respect of any obligation incurred by a director or officer as a result of the directors' or officers' gross negligence or willful misconduct. I am advised by KSV's counsel that the quantum of the Directors' Charge in this case is based on potential payroll, vacation pay and sales taxes in the Applicants and is supported by Monitor and lender's counsel. In the future, it is helpful to have this specifically addressed in the material. The Directors' Charge is designed to exclude amounts covered by the Directors' and Officers' liability insurance policies, which may otherwise be insufficient to protect them against the potential liability that they could incur in connection with the CCAA Proceedings. In the circumstances, the Directors' Charge is appropriate.

27. The NOI Proceedings have already been recognized in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code. The intention of the Applicants is to seek recognition of the CCAA Proceedings as well. Accordingly, the Applicants seek authorization for Iovate International to act as the foreign representatives with respect to the CCAA proceedings.

28. Section 56 of the CCAA grants the Court authority to appoint "any person or body" to act as a representative for the purpose of having CCAA proceedings recognized in any jurisdiction outside of Canada, including the U.S. In the circumstances the appointment of Iovate International as Foreign Representative is appropriate and is approved.

Disposition

29. Order to go in the form signed by me this day.



Date: Oct 31, 2025

Jane O. Dietrich

