

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

No. : 500-11-053313-173

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
AMENDED:

JAVA-U GROUP INC.

- and -

JAVA-U FOOD SERVICES INC.

- and -

CAFÉ JAVA-U INC.

- and -

JAVA-U RTA INC.

Applicants/Debtors

- and -

RAYMOND CHABOT INC.

Monitor

APPLICATION FOR THE ISSUANCE OF A SANCTION ORDER
(Section 6 of the *Companies' Creditors Arrangement Act*)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE APPLICANTS RESPECTFULLY SUBMIT THE FOLLOWING:

1. ORDER SOUGHT

1. For the reasons set forth hereinafter, the Applicants, Java-U Group Inc. ("**Java-U Group**"), Java-U Food Services Inc. ("**Java-U Food**"), Café Java-U Inc. ("**Café Java-U**") and Java-U RTA Inc. ("**Java-U RTA**", together with Java-U Group, Java-U Food and Café Java-U, "**Java-U**" or the "**Company**"), hereby seek the issuance by this Court of an order (the "**Sanction Order**") sanctioning their Plan of Arrangement and Compromise filed on March 9, 2018 and amended on March 21, 2018 (the "**Plan**"), and extending the Stay Period (as defined below) until August 31, 2018. A copy of the Plan (together with blacklined version thereof highlighting the amendments made on March 21, 2018) as well as a copy of the draft Sanction Order are communicated herewith as **Exhibit R-1** and **R-2**, respectively.
2. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

2. **BACKGROUND**

3. On October 6, 2017, this Court rendered the following orders pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of java-U Group Inc. ("**Java-U Group**"), Java-U Food Services Inc. ("**Java-U Food**"), Café Java-U Inc. ("**Café Java-U**") and Java-U RTA Inc. ("**Java-U RTA**", together with Java-U Group, Java-U Food and Café Java-U, "**Java-U**" or the "**Company**"), as appears from the Court record:
 - (a) an initial order (the "**Initial Order**") approving, *inter alia*:
 - (i) a stay of all proceedings against the Company, its assets and its directors and officers until November 6, 2017 (the "**Stay Period**");
 - (ii) the appointment of Raymond Chabot Inc., as monitor to the Company (the "**Monitor**");
 - (iii) the terms and conditions of an interim financing (the "**DIP Financing**") offered by 3070352 Canada Inc. to the Company, as part of these proceedings initiated under the CCAA (the "**CCAA Proceedings**"); and
 - (iv) a solicitation process to be conducted in respect of the Company's assets (the "**Solicitation Process**"); and
 - (b) a claims procedure order (the "**Claims Procedure Order**") providing for, *inter alia*, the procedure for the filing, review, determination and adjudication, if necessary, of all claims against the Company (the "**Claims Process**").
4. On November 6, 2017, this Court rendered another order in the context of the CCAA Proceedings extending the Stay Period until December 22, 2017, and amending the Initial Order so to authorize the Company to increase the amount which it can borrow from 3070352 Canada Inc., from time to time, as part of the DIP Financing.
5. On December 21, 2017 and February 23 2018, this Court issued orders extending the Stay Period (now until March 15, 2018) in order to allow the Monitor and the Company, respectively, to finalize the review and determination of the claims filed against the Company in the context of the Claims Process, and, in parallel, finalize a plan of arrangement a compromise.
6. On March 15, 2018, this Court issued an order:
 - (a) authorizing the Company to convene, hold and conduct a meeting of its creditors to consider and vote on the Plan on April 25, 2018 (the "**Creditors' Meeting**");
 - (b) amending the Initial Order so as to authorize the Company to increase the amount which it can borrow from 3070352 Canada Inc., from time to time, by an additional amount of \$300,000, and to increase the DIP charge already approved by this Court in the Initial Order accordingly; and
 - (c) extending the Stay Period until May 31, 2018.
7. As will be further discussed below, on April 25, 2018, the Creditors' Meeting was duly held at the offices of the Monitor, where the Plan was overwhelmingly approved by the required majority of creditors of the Company.
8. Accordingly, as previously mentioned, the Company hereby seeks the issuance of an order sanctioning the Plan, so as to allow it to emerge from these proceedings initiated under the aegis

of the CCAA, for the benefit of all of its creditors and other stakeholders, including its franchisees as well as its employees.

9. Below is a detailed description of the Company's restructuring efforts undertaken as part of these proceedings.

3. THE COMPANY'S RESTRUCTURING EFFORTS

3.1. The Claims Process

10. As previously mentioned, on October 6, 2017, in addition to granting creditor protection the Company pursuant to the CCAA, this Court also authorized the Company, with the assistance of the Monitor, to establish a procedure for the purpose of identifying, establishing and adjudicating all claims of any person against the Company, and their directors and officers, as appears from the Court record.
11. On October 6 and 13, 2017, respectively, the Monitor published, on its website, the Claims Procedure Order, as well as the notices, instructions and forms relating to the Claims Procedure Order, in addition to sending these to all known creditors, to advised them of the CCAA Proceedings and that this Court had established a claims bar date of November 15, 2017 (the "**Claims Bar Date**").
12. On October 14, 2017, the Monitor published in The Globe and Mail the notices relating to the Initial Order and the Claims Procedure Order.
13. As at the Claims Bar Date, a total of eighty-three (83) persons or entities filed a claim with the Monitor, all of which amount to more than \$17,000,000.
14. The Monitor, in consultation with its legal counsels and the Company, reviewed each of these claims, in order to assess the validity and quantum thereof.
15. In March and April 2018, after its review and analysis of the above-mentioned claims, the Monitor proceeded to disallow or partially disallow some of them.
16. No appeal has been filed in respect of any Notice of disallowance or partial disallowance issued by the Monitor, except for one of them, which, ultimately, was settled without any admission whatsoever, given the limited estimated recovery for this creditor in any event.

3.2. The Solicitation Process

17. Concurrently with the above, the Company, with the authorization of this Court, also conducted a solicitation process (the "**Solicitation Process**") in order to secure one or several offer(s) to either finance the operations of the Company going forward or purchase its assets, as a going concern, substantially in accordance with the process further described in the Company's *Application for the Issuance of an Initial Order and a Claims Procedure Order* dated October 4, 2017.
18. By October 13, 2017, the Monitor, with the assistance of the Company, prepared a list of approximately forty-eight (48) prospective investors and/or purchasers across Canada, each of which were identified and selected for their involvement in the coffee market, and/or their experience as franchisors in the catering business.
19. On October 20, 2017, after having established a virtual data room (the "**Dataroom**") allowing all potentially interested parties willing to sign a non-disclosure agreement (each an "**NDA**") to have access to the Company's business and financial documents, the Monitor officially launched the

Solicitation Process, and sent to all Prospective Investors and Purchasers a copy of the "teaser" (the "**Teaser**").

20. The Teaser was also posted on the Monitor's website, and transmitted by email, on October 23, 2017, to 3,894 potential interested parties, all of whom were found on Raymond Chabot Inc.'s standard list of potential purchasers (together with the forty-eight (48) prospective investors and/or purchasers identified by the Company and the Monitor, the "**Prospective Investors and Purchasers**").
21. Pursuant to the Teaser, all Prospective Investor or Purchaser were invited to submit an offer in respect of the financing of the operations of the Company or the purchase of its assets by no later than December 1, 2017, at 10:00AM (the "**Bid Deadline**").
22. In addition to the Prospective Investors and Purchasers to whom the Monitor initially sent the Teaser, eight (8) additional interested parties also communicated directly with the Monitor to obtain a copy of the Teaser, as well as additional information regarding the Company's business and assets.
23. In total, fifteen (15) Prospective Investors and Purchasers signed an NDA and gained access to the Dataroom, with each of whom the Company and/or the Monitor followed up with to inquire about their potential interest in the Company or its assets.
24. At the Bid Deadline, despite the initial indications of interest made in respect of the Company or its assets, only one offer was submitted to the Monitor¹, being an offer by 3070352 Canada Inc., Bryan Cytrynbaum and Allan Cytrynbaum (the "**Sponsors**") to sponsor a plan of arrangement and compromise in respect of the Company, which would allow it to continue its operations as a going concern while providing certain recoveries to its creditors (the "**Sponsors' Offer**").
25. No other offer was submitted to the Company in the context of the Solicitation Process, except for two (2) other offers which were submitted *after* the Bid Deadline, including one which was submitted more than two (2) months after the Bid Deadline.
26. Despite being invalid on the basis that these offers were submitted *after* the Bid Deadline, the Monitor, together with the Company, nonetheless reviewed each of these offers to determine whether any of them were superior to the Sponsors' Offer. However, such review allowed the Monitor and the Company to confirm that:
 - (a) The consideration offered in each of these offers was significantly less than what was offered in the Sponsors' Offer;
 - (b) Given the secured claims against the Company, neither of these offers would allow any recovery to the unsecured creditors of the Company; and
 - (c) One of these offers remained conditional upon a satisfactory due diligence by its offeror.
27. Accordingly, it was clear that the Sponsors' Offer remained, under the circumstances, the best offer to the Company's creditors and stakeholders, as it was the only one which guaranteed the

¹ On December 1, 2017 at 7:30PM, the Monitor received a second offer to purchase a portion of the Company's assets. In addition to being invalid on the basis that such offer was submitted *after* the Bid Deadline, this offer provided a consideration which was substantially less than what was offered in the Sponsors' Offer.

continued operations of the Company, the preservation of jobs for its employees, as well as a recovery to its unsecured creditors.

28. The terms and conditions of the Sponsors' Offer were ultimately incorporated in the Company's Plan, which is further described below.

3.3. The Plan

29. Based on the Sponsors' Offer and the Monitor's determination of the claims filed against the Company in the context of the Claims Process, the Company prepared a plan of arrangement and compromise (i.e. the Plan) which incorporates the terms and conditions of the Sponsors' Offer.

30. Pursuant to the Plan (and the Sponsors' Offer), as it was initially submitted on March 9, 2018, it was proposed that in exchange for the release of all claims against the Company and the Sponsors², the issuance of a number of common shares of Java-U Group, representing 100% of the equity of the recapitalized Java-U Group, the Sponsors would make the following contribution for the benefit of the Company's creditors and other stakeholders:

- (a) Debt Forgiveness: Each of the Sponsors would release their respective claims against the Company, up to the following amount:
- (i) 3070352 Canada Inc.: \$6,137,758.02;
 - (ii) Brian Cytrynbaum: \$853,025.00;
 - (iii) Allan Cytrynbaum: \$170,000.00;
- (b) Waiver of Plan Distribution: Each of the Sponsors would postpone the balance of their respective claims, including, for 3070352 Canada Inc., its claim against the Company with respect to the DIP Facility (which, to date, exceeds \$500,000), and would waive their right to any of the Sponsors' Cash Contribution (as defined below) or any Litigation Proceeds (as defined below) to be distributed to the Company's creditors as part of the Plan;
- (c) Cash Contribution: The Sponsors would also contribute an additional \$50,000 in cash (the "**Sponsors' Cash Contribution**") to be remitted to the Monitor and distributed to the Company's creditors as part of the Plan.
- (d) Exit Financing: The Sponsors would also fund the recapitalized Debtors' on-going operations by providing them with exit financing in the form of a line of credit, for a period of at least twelve (12) months following the Plan Implementation Date, up to an amount of at least \$500,000, bearing interest at a rate of 7.5% and secured by a first ranking hypothec over the universality of the Debtors' assets (the "**Exit Financing**").

The Exit Financing would be used fund the Company's ongoing operations, and to finance the reasonable fees and expenses to be incurred in connection with the pursuit by the Company of any and all claims or causes of actions which it may have against third parties (collectively, the "**Litigation Claims**"). Fifty percent (50%) of all net proceeds

² Including a claim filed against the Company and its directors in an amount of \$2,500,000 by one of its shareholders, 126217 Canada Inc. for the reimbursement of its equity investment (the "**Shareholders' Claim**").

collected before December 31, 2018 (after payment or reimbursement of reasonable fees and expenses incurred or to be incurred) resulting from the adjudication or settlement of these Litigation Claims (the "**Litigation Proceeds**") would also be remitted to the Monitor and distributed to the Company's creditors as part of the Plan.

31. On March 21, 2018, the Plan, as it was initially proposed, was amended so as to confirm the Sponsors' acceptance that the Litigation Proceeds to be distributed to the Company's creditors as part of the Plan would include fifty percent (50%) of all net proceeds collected before December 31, 2019, instead of 2018.
32. As appears from the Monitor's Fourth and Fifth Report, respectively dated March 12 and 22, 2018, copies of which are communicated herewith as **Exhibit R-3** and **R-4**, respectively:
 - (a) The Monitor was and remains of the view that the Plan is fair and reasonable and represents the best available alternative to the Company's creditors and stakeholders in the circumstances; and
 - (b) In a bankruptcy context, the Company's unsecured creditors' recovery would be nil, whereas under the Plan, such creditors would benefit from a dividend equivalent to 5.2% to 31.5% of their claim, based on the amount of proven claims estimated as of May 10, 2018³.

3.4. The Creditors' Meeting

33. On or about March 22, 2018, the Monitor proceeded with the issuance of all meeting materials to the Company's creditors, advising them of, *inter alia*, the Creditors' Meeting which would take place on April 25, 2018, at 10AM, at its offices located in Montreal.
34. At the Creditors' Meeting⁴, the Plan was approved by:
 - (a) 94.12% of the Company's creditors having voted either in person or by proxy at the Creditors' Meeting, in number; and
 - (b) 93.24% of the Company's creditors having voted either in person or by proxy at the Creditors' Meeting, in value.

as appears from a copy of the minutes of the Creditors' Meeting which is communicated herewith as **Exhibit R-5**.

4. GROUNDS FOR THIS APPLICATION

4.1. The Sanction of the Plan Is Appropriate

35. Considering the above, the Company respectfully submits that the Plan should be sanctioned by this Court. Indeed, it is submitted that:

³ As of the date of the Fifth Report, the estimated dividend was 5.2% to 34.8%.

⁴ As previously discussed with this Court, although the Company had agreed that 126217 Canada Inc. could be present at the Creditors' Meeting, 126217 Canada Inc. was not, however, entitled to vote on the Plan on the basis of its Shareholders' Claim, given that such claim constituted an equity claim in accordance with Section 6(8) of the CCAA.

- (a) The Company is and has been in strict compliance with all statutory requirements;
 - (b) All material filed and procedures carried out by the Company were authorized by this Court in accordance with the CCAA; and
 - (c) the Plan is fair and reasonable.
36. Since the issuance of the Initial Order, the Company and its representatives have acted, and continue to act, in good faith and with due diligence, and, as such, has complied with all statutory requirements and strictly adhered to orders of this Court.
37. In addition, throughout these proceedings, the Monitor has also filed reports to the Court to provide this Court with updates with respect to these proceedings and the efforts of the Company to emerge from these CCAA proceedings. The latter has cooperated with the Monitor, when needed, in order to provide the Monitor with access to the information and internal resources required to carry out its duties.
38. Nothing has been done and no step taken by the Company that was not authorized by the CCAA or the orders of this Court.
39. Moreover, the Company also respectfully submits that the Plan is fair and reasonable, as reflected by the vote in favour thereof by its creditors.
40. In fact, if the Plan is implemented, it is estimated that the Company's creditors will obtain a recovery corresponding to approximately 5.2% to 31.5% of their claim, whereas if the Plan is not implemented, there will be no such recovery, and the Company may likely be forced to file for bankruptcy, to the detriment of its creditors and stakeholders, which include its employees, its franchisees and its franchisees' employees.
41. As appeared in the Monitor's Fourth and Fifth Reports (R-3 and R-4), the Monitor recommended that the Company's creditors vote for the resolution to approve the Plan. It is expected that the Monitor will also file, in advance of the hearing on the present Application, a supplemental report recommending the sanction of the Plan by this Court.
42. In light of the foregoing, and as will be further demonstrated to this Court, the Company respectfully submits that the terms and conditions set forth in the Plan - including the releases proposed therein in favour of the Sponsors - fair and reasonable in the circumstances, and should therefore should be approved by this Court.

4.2. Extension of the Stay Period

43. Given the expiry of the Stay Period which is to occur on May, 31, 2018, the Company also requests an extension of same until August 31, 2018, in order to allow it to implement the Plan, should it be approved by this Court.

WHEREFORE, MAY THIS COURT:

GRANT the present *Application for the Issuance of a Sanction Order* (the "**Application**");

ISSUE an order substantially in the form of the draft Order filed as Exhibit R-2 in support of the Application;

WITHOUT COSTS, save and except in case of contestation.

Montreal, May 14, 2018

Stikeman Elliott LLP

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AFFIDAVIT

I, the undersigned, **LOU VAROUTSOS**, having my principal place of business at 4098 Sainte-Catherine Street West, Suite 400, Montreal, Québec H3Z 1P2,; solemnly declare the following:

1. I am the President and Chief Executive Officer of Java-U Global;
2. All the facts alleged in the *Application for the Issuance of a Sanction Order* are true.

AND I HAVE SIGNED



LOU VAROUTSOS

Solemnly declared before me at Montreal,
on the 14th day of May, 2018



**Commissioner of Oaths for the Province
of Quebec**



NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the *Application for the Issuance of a Sanction Order* will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting in practice in and for the District of Montreal, in the Montreal Courthouse, 1 Rue Notre-Dame Est, Montréal, QC H2Y 1B6, on **May 22, 2018**, at a time and in room of the Montreal Courthouse to be determined by the Court, and announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, May 14, 2018



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- and -

RAYMOND CHABOT INC.

Monitor

List of Exhibits

(In support of the *Application for the Issuance of a Sanction Order*)

EXHIBITS	DESCRIPTION
Exhibit R-1	Amended Plan of Arrangement of Compromise dated March 21, 2018 (together with a blacklined version highlighting the changes made to the version submitted on March 9, 2018)
Exhibit R-2	Draft Sanction Order
Exhibit R-3	Monitor's Fourth Report dated March 12, 2018
Exhibit R-4	Monitor's Firth Report dated March 22, 2018
Exhibit R-5	Minutes of the Creditors Meeting dated April 25, 2018

Montreal, May 14, 2018



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APPLICATION FOR THE ISSUANCE OF A
SANCTION ORDER (Section 6 of the *Companies'*
Creditors Arrangement Act) Affidavit, Notice of
Presentation and Exhibits R-1 to R-5

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