

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR ) MONDAY, THE 14<sup>th</sup> DAY OF  
JUSTICE McEWEN ) MAY, 2018



IN THE MATTER OF THE PROPOSAL OF  
HB SOLAR CANADA INC.  
OF THE CITY OF CONCORD, IN THE PROVINCE OF ONTARIO

**ORDER**

**THIS MOTION**, made by HB Solar Canada Inc. (“**HB**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 1985, c B-3, as amended (the “**BIA**”) was originally heard on May 10, 2018 with certain relief granted by an Order of McEwen J, dated May 10, 2018 extending the time to file a Proposal and the stay of proceedings to and including June 22, 2018, as well as the approval of the Commercial List E-Service Protocol and aid and recognition provisions, with the balance of the relief requested by HB adjourned to this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Ingo Wolfert sworn May 8, 2018 and the Exhibits thereto (the “**Wolfert Affidavit**”), the First Report of Dodick Landau Inc. (the “**Proposal Trustee**”) dated May 8, 2018 (the “**First Report**”) and on being advised that the creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for HB, the Proposal Trustee and any other parties who signed the counsel slip;

**Proposal Trustee's Fees and Administration Charge:**

1. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to HB shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by HB as part of the costs of these proceedings. HB is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for HB on a bi-weekly basis.
2. **THIS COURT ORDERS** that the Proposal Trustee and the legal counsel for the Proposal Trustee shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
3. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and HB's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, but for the purposes of the Administration Charge specifically excluding the vehicles leased by Kennedy National Leasing Limited, in the amount of \$80,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, 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 8 to 11 hereof.

**Validity and Priority of Administration Charge:**

4. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
5. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on HB's current and future properties, assets and undertakings of every nature and kind whatsoever and wheresoever situated including all proceeds thereof, but for the purposes of the Administration Charge specifically excluding the vehicles leased by Kennedy National Leasing

Limited (the “**Property**”) and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any individual, firm, corporation, governmental body or agency (except statutory deemed trusts that, at law, rank in priority to all other charges), or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”).

6. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, HB shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, the Administration Charge, unless HB also obtains the prior written consent of the Proposal Trustee and the beneficiaries of the Administration Charge, or further Order of this Court.

7. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing or deemed 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 or other agreement (collectively, an “**Agreement**”) which binds HB, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by HB of any Agreement to which it is a party;
- (b) 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 the creation of the Administration Charge; and

- (c) the payments made by HB pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

**Enhanced Powers of the Proposal Trustee:**

8. **THIS COURT ORDERS** that, in addition to the powers and duties set out in the BIA and this Order (or any other Order of this Court in these proceedings), the Proposal Trustee is hereby fully and exclusively authorized and empowered, but not required, to take any and all actions and steps, and execute any and all documents and writings, on behalf, and in the name of HB in order to carry out its duties under this Order or any other Order of the Court, including to execute all documents relating to the SISP (as defined below) as well as to execute and deliver any documents on behalf of HB to implement transactions under the SISP approved by the Court.

9. **THIS COURT ORDERS** that the Proposal Trustee is authorized and empowered, but not required, to operate on behalf of HB any of HB's existing accounts at any financial institution ("**HB's Accounts**"), in such manner as the Proposal Trustee, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Proposal Trustee's powers and duties set out herein, including the ability to add or remove persons having signing authority with respect to any of HB's Accounts.

10. **THIS COURT ORDERS** that all employees of HB shall remain the employees of HB until such time as the Proposal Trustee, on HB's behalf, may terminate the employment of such employees. Nothing in this Order shall, in and of itself, cause the Proposal Trustee to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension or benefit amounts.

11. **THIS COURT ORDERS** that the enhancement of the Proposal Trustee's powers as set forth herein, the exercise by the Proposal Trustee of any of its powers, the performance by the Proposal Trustee of any of its duties, or the use or employment by the Proposal Trustee of any person in connection with its appointment and the performance of its powers and duties shall not constitute the Proposal Trustee the employer, successor employer or related employer of the

employees of HB within the meaning of any provincial, federal or municipal legislation or common law governing employment, pensions or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Proposal Trustee to liability to any individuals arising from or relating to their previous employment by HB.

12. **THIS COURT ORDERS** that the Proposal Trustee is not, and shall not be or be deemed to be, a director, officer or employee of HB.

13. **THIS COURT ORDERS** that HB shall continue to have the benefit of all of the protections and priorities as set out in the BIA, or this Order, and any such protections and priorities shall apply to the Proposal Trustee in fulfilling its duties and exercising any of its powers under this Order or any other Order of this Court.

14. **THIS COURT ORDERS** that HB its management and advisors shall cooperate fully with the Proposal Trustee and any directions it may provide pursuant to this Order or any other Order of this Court and shall provide the Proposal Trustee with such assistance as the Proposal Trustee may request from time to time to enable the Proposal Trustee to carry out its duties and powers as set out in this Order or any other Order of this Court.

15. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Proposal Trustee as a receiver, assignee, liquidator, administrator, receiver manager, agent of the creditors or legal representative of HB within the meaning of any relevant legislation and that any distribution made to creditors of HB by the Proposal Trustee will be deemed to have been made by HB itself.

16. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property, and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the business or Property of HB, or any part thereof.

17. **THIS COURT ORDERS** that nothing herein contained shall require the Proposal Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the

protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian *Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Proposal Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Proposal Trustee shall not, as a result of this Order or anything done in pursuance of the Proposal Trustee's duties and powers under this Order, be deemed to be in possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

18. **THIS COURT ORDERS** that the Proposal Trustee shall provide any creditor of HB with information provided by HB in response to reasonable requests for information made in writing by such creditor addressed to the Proposal Trustee. The Proposal Trustee shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Proposal Trustee has been advised by HB is confidential, the Proposal Trustee shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Proposal Trustee and HB may agree.

19. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the BIA or any applicable legislation.

**Sale and Investment Solicitation Process:**

20. **THIS COURT ORDERS** that the Two-Stage Sale and Investment Solicitation Process (the “**SISP**”), attached as **Schedule “A”** to this Order, is approved.

21. **THIS COURT ORDERS** that HB and the Proposal Trustee are authorized and directed to perform their obligations under and take such steps as they consider necessary or desirable in carrying out the SISP.

22. **THIS COURT ORDERS** that the Proposal Trustee shall have no personal or corporate liability in connection with the SISP, including, without limitation:

- (a) by advertising the SISP;
- (b) by exposing the Property to any and all parties;
- (c) by responding to any and all requests or inquiries regarding due diligence conducted in respect of HB or the Property;
- (d) through the disclosure of any and all information regarding HB or the Property arising from, incidental to or in connection with the SISP; and
- (e) pursuant to any and all offers received by HB in accordance with the SISP.

23. **THIS COURT ORDERS** that, in connection with the SISP and pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act (Canada)*, HB and the Proposal Trustee are authorized and permitted to disclose personal information of identifiable individuals to prospective investors, financiers, purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more investment, finance or sale transactions (each, a “**Transaction**”). Each prospective investor, financier, purchaser, or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to HB or the Proposal Trustee, as applicable; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by HB, and shall return all other personal information to HB or the Proposal Trustee, as applicable, or ensure that all other personal information is destroyed.

**General:**

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist HB, 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 HB 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 HB and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that each of HB and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

26. **THIS COURT ORDERS** that any interested party (including HB 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.



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## Schedule "A"

### HB Solar Canada Inc. ("HB") Sale and Investment Solicitation Process Summary

The purpose of the Sale and Investment Solicitation Process (the "SISP") is to identify one or more purchasers of, or investors in, the business and assets of HB with a projected completion date of a transaction or transactions by July 2018.

All capitalized terms used but not otherwise defined herein have the meaning given to them in the Order granted by the Ontario Superior Court of Justice (the "Court") on May 14, 2018 (the "May Order") in respect of the proposal proceedings commenced by HB under the *Bankruptcy and Insolvency Act* (the "BIA").

The SISP will be a Two Stage process. Initially HB and the Proposal Trustee will continue negotiating with an existing possible purchaser with the aim of having an executed agreement of purchase and sale in a form acceptable to HB and the Proposal Trustee executed, and a deposit paid, by May 20, 2018.

If such an agreement is not executed by May 20, 2018, the SISP would then expand to a Second Stage of a full sale process that would accommodate offers for the purchase of HB's assets for all possible purchasers.

The details of the expanded Second Stage of the SISP details are provided below.

- HB has compiled, and with the assistance of the Proposal Trustee, may continue to compile, a list of interested parties ("Interested Parties") and will distribute to them an interest solicitation letter detailing this opportunity. The Proposal Trustee will contact all parties identified as well as any additional parties that come to its attention. A confidentiality agreement ("CA") will be attached to the interest solicitation letter;
- HB, with the assistance of the Proposal Trustee, will prepare a confidential information memorandum ("CIM") which will be made available to Interested Parties that execute the CA. The CIM will provide an overview of HB's business, property and financial results;
- Interested Parties who execute the CA will have an opportunity to perform diligence, including reviewing information in a virtual data room;
- At the discretion of the Proposal Trustee, a notice will be published in trade publications;
- The Proposal Trustee, with the assistance of HB, will facilitate diligence efforts by, among other things, responding to questions and coordinating meetings between Interested Parties and HB's management and such other parties as the Proposal Trustee may arrange. All meetings with management will be convened in the presence of a representative of the Proposal Trustee;

## Schedule "A"

- Prospective investors shall be required to identify all material terms of their proposed investment to permit evaluation of such proposal but will not be required to submit the terms and structure of their proposed investment in a predetermined prescribed format;
- Parties interested in acquiring assets will be able to refer to a template asset purchase agreement ("APA") that will be posted in the data room. Interested Parties who wish to acquire assets will be encouraged to submit offers substantially in the form of the APA, with any changes black-lined against the APA;
- Interested Parties will be entitled to submit offers for HB's business and assets on an individual basis or *en bloc*. Subject to the value of the consideration to be paid, preference will be given to *en bloc* offers;
- The deadline for submission of offers ("Offer Deadline") will be 5:00 pm EST on June 29, 2018;
- Offers are to be submitted to the Proposal Trustee with a refundable cash deposit in the form of a wire transfer (to a bank account specified by the Proposal Trustee) or such other form of deposit as is acceptable to the Proposal Trustee, in an amount equal to 10% of the purchase price or investment amount. Offers are to be supported by evidence, satisfactory to the Proposal Trustee, of financing sufficient to close a transaction within the timelines detailed in these procedures. All offers are to be irrevocable until 10 days after Court approval of the Proposal;
- The Proposal Trustee will evaluate the offers and may seek clarification and/or a re-bidding of certain offers;
- HB's management, along with their respective legal counsel, will be consulted on a timely basis during the different phases of the SISP, provided that they confirm to the Proposal Trustee that they are not bidders in the SISP;
- Any offer submitted must be subject to the approval of the creditors of HB and the Court;
- Upon completion of definitive documentation, HB will make a Proposal to its creditors in which it will propose a sale of the assets to the successful bidder(s) and the Proposal Trustee will call a meeting of the creditors of HB to vote on HB's Proposal; and
- Following receipt of creditor approval of HB's Proposal, HB will apply to the Court for an order approving the Proposal including one or more offers ("Transaction"), with the Transaction projected to be completed as soon as possible following approval of the Proposal by the Court. The Proposal Trustee will provide its recommendation to the Court with respect to the Proposal and the Transaction.

## Schedule "A"

Other attributes of the SISP:

- The Proposal Trustee shall have the right to extend by up to two-weeks any deadline in the SISP in order to facilitate the SISP. Further extensions will require Court approval;
- HB's management and employees are required to assist and support the efforts of the Proposal Trustee as provided for herein;
- Any transaction will be consistent with insolvency principles, including without material representations and warranties and shall be on an "as is, where is" basis;
- The Proposal Trustee reserves the right to accept one or more offers, in consultation with HB management, and to take such steps as are necessary to finalize and complete an APA or investment agreement or to continue negotiations with a selected number of Interested Parties with a view to finalizing an agreement(s) with one or more of them;
- The Proposal Trustee shall be under no obligation to accept the highest offer, the best offer, or any offer, and the selection of any offer(s) shall be at the discretion of the Proposal Trustee after consultation with HB Management;
- The Proposal Trustee shall not be bound by the terms of any transaction(s) until approval of the Court is obtained;
- The Proposal Trustee may consider transactions involving a restructuring or investment in HB if, in the opinion of the Proposal Trustee, the resulting transaction is in the best interests of HB and maximizes value for the benefit of its stakeholders; and
- The Proposal Trustee reserves the right to apply to the Court at any time to modify or terminate the SISP if it considers it appropriate in the circumstances or to apply to the Court for advice and directions.

## Schedule "A"

### SUMMARY TIMELINE OF IMPORTANT DATES

<b>Sale Process Procedures</b>	<b>Date</b>
Court approval of Sale Process by	May 14, 2018
<b>STAGE 1</b>	
Due Diligence by existing interested party	May 14, 2018 to May 20, 2018
Executed APS and deposit paid	By May 20, 2018
<b>IF NO APS – STAGE 2</b>	
Begin marketing to interested parties, distributing CIM and provide access to on-line data room	By May 21, 2018
Solicitation of potential purchasers/investors	By June 1, 2018
Due diligence completed	By June 29, 2018
Deadline for submission of binding offers	By June 29, 2018
Identification of successful offer	By July 4, 2018
Hold meeting of creditors to vote on Proposal	By July 25, 2018
Obtain Court approval of Proposal	By July 30, 2018
Closing of Transaction	By July 31, 2018

**IN THE MATTER OF THE PROPOSAL OF HB SOLAR  
CANADA INC. OF THE CITY OF CONCORD, IN THE  
PROVINCE OF ONTARIO**

Court File No. 31-2364769

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT  
TORONTO**

**ORDER**

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