

Bankruptcy Court File No. BK-24-03137745-0032  
Estate No. 32-3137745

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
DATEC COATING CORPORATION OF THE CITY OF MISSISSAUGA IN THE PROVINCE  
OF ONTARIO**

**FACTUM OF THE APPLICANT  
(RE: APPROVAL OF STALKING HORSE, SISP, STAY EXTENSION, DIP FACILITY, AND  
ADMINISTRATION CHARGE)**

October 22, 2024

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**TO: THE SERVICE LIST**

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**PART I – OVERVIEW**

1. On October 4, 2024, Datec Coating Corporation (the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”). Dodick Landau Inc. was appointed as Proposal Trustee under the NOI (in such capacity, the “**Proposal Trustee**”).
  
2. This factum is filed in support of the Company’s motion seeking an order (“**SISP Approval Order**”), found at Tab 3 of the Company’s Motion Record that, among other things:
  - (a) abridges the notice periods and service requirements pursuant to section 6 of the *Bankruptcy and Insolvency General Rules* (the “**Bankruptcy Rules**”);
  - (b) extends the time to file a proposal pursuant to s. 50.4(9) of the BIA for 45 days, from November 3, 2024 up to and including December 18, 2024;
  - (c) approves the sale and investment solicitation process (“**SISP**”) in the form attached as Schedule “A” to the SISP Approval Order;
  - (d) approves the Stalking Horse Asset Purchase Agreement (the “**Stalking Horse Agreement**”) between the Company and Urecka Canada Corporation (“**Urecka**”, and in its capacity as the stalking horse bidder, the “**Stalking Horse Bidder**”) and authorizes the Company to execute the Stalking Horse Agreement for purposes of constituting the “stalking horse” bid in respect of the SISP;
  - (e) authorizes the Company to obtain and borrow up to \$125,000<sup>1</sup> under a credit facility (the “**DIP Facility**”) from Urecka (in its capacity as lender under the DIP Facility, the “**DIP Lender**”) to finance the Company’s working capital requirements

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<sup>1</sup> All currency is in CAD unless otherwise expressly indicated herein.

and pay the costs and expenses of this proceeding, as more fully described in the commitment letter between the Company and DIP Lender dated October 21, 2024 (the “**Commitment Letter**”); and

- (f) grants the following charges over the Company’s current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the “**Property**”) ranking in priority to all Encumbrances (as defined in the SISP Approval Order) and have the following order of priority:
- (i) a first-ranking priority charge (“**Administration Charge**”), in the maximum amount of \$75,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company, in connection with this proceeding; and
  - (ii) a second-ranking charge (the “**DIP Lender’s Charge**”) in the maximum amount of \$125,000 as security for the Company’s obligations under the DIP Facility to the DIP Lender.

3. The Company’s requested relief is intended to preserve the going-concern operations of the Company and maximize the value of the Company’s assets for the benefit of its stakeholders through the implementation of the SISP with the Stalking Horse Bid (as defined herein).

4. The Proposal Trustee is supportive of the requested relief. The Company is presently unaware of any opposition to the requested relief.

## PART II – FACTS

### A. Background of the Company

5. The Company is in the business of developing and manufacturing custom heating, coating, and thermal solutions for customers across Canada and the United States (the “**Business**”). The Company both leverages its own patented thick film heating technology and develops new technology to provide application-specific, high performance heating solution for its clients.<sup>2</sup>

6. The Company has led the heating technology industry for over 20 years and has created heating solutions for a wide variety of industries that include, among others, commercial food service, medical and precision devices, electronics, automotive, and appliances.<sup>3</sup>

7. The Company’s principal assets are its intellectual property, equipment in its technology lab, inventory, manufacturing equipment, and brand goodwill. The Company’s state-of-the-art technology lab is located at the Company’s head office located at 130 Matheson Blvd East, Unit #2 in Mississauga, Ontario pursuant to a lease agreement (the “**Leased Premises**”).<sup>4</sup>

8. The Company employs specialized research scientists and engineers, which includes 9 full-time employees, 3 specialized contractors, and two students.<sup>5</sup>

9. The Company has approximately \$800,000 in liabilities of which approximately \$455,000 is secured debt.<sup>6</sup>

10. Pursuant to the Ontario Personal Property Security Registry Report for the Company, the

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<sup>2</sup> Affidavit of Dominic Talalla sworn October 21, 2024, Motion Record of Datec Coating Corporation, Tab 2 (“**Talalla Affidavit**”) at [para. 5](#).

<sup>3</sup> *Ibid* at [para. 6](#).

<sup>4</sup> *Ibid* at [paras. 8-9](#).

<sup>5</sup> *Ibid* at [para. 10](#).

<sup>6</sup> *Ibid* at [para. 24](#).

Company is indebted to the following secured creditors:

- (a) Western Ontario Community Futures Development Corporation Association (“**WOCFDCA**”) in the approximate amount of \$435,000 pursuant to a promissory note and loan agreement; and
- (b) De Lage Laden Financial Services Inc. (“**De Lage**”) in the approximate amount of \$22,000 pursuant to an equipment lease.<sup>7</sup>

11. The Company is also indebted to RBC in the approximate amount of \$225,000 pursuant to the RBC Loan (as defined below). The Company signed a general security agreement but there is no registration in favour of RBC in the Ontario Personal Property Security Registry.<sup>8</sup>

12. The remainder of the Company’s obligations are for trade payables and operating costs. The Company’s primary trade payable are related to the purchaser of supplies to produce the Company’s products. The Company’s primary operating costs are lease payments to the landlord.<sup>9</sup>

## **B. The Company’s Financial Difficulties and the NOI Proceeding**

13. In and around 2020, the Company began experiencing cash flow pressures due to increasing debt servicing requirements, increasing rent payments for the Leased Premises, and decreasing revenues caused by extrinsic conditions including high interest rates, the effects of COVID-19 on the Company’s customers in the food service industry, and the rising cost of labour and material.<sup>10</sup>

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<sup>7</sup> *Ibid* at paras. [26-27](#).

<sup>8</sup> *Ibid* at [para. 28](#).

<sup>9</sup> *Ibid* at [para. 29](#).

<sup>10</sup> *Ibid* at [para. 12](#).

14. In response to the Company's cash flow pressures, the Company implemented an operational restructuring process to decrease the Company's operating costs and enhance the Company's market position. The process included, among other things, decreasing the number of employees, modifying the employment structure of the Business, scaling its operations in the kitchen appliance industry, increasing the price of their products, trying to obtain payment on delivery from the Company's customers, and reducing the number of suppliers.<sup>11</sup>

15. In addition to the above, to sustain the Company's operations, in 2021, the Company obtained a fixed rate loan from the Royal Bank of Canada ("**RBC**") pursuant to the Highly Affected Sectors Credit Availability Program (HASCAP) in the principal amount of \$250,000 (the "**RBC Loan**").<sup>12</sup>

16. Although the RBC Loan and decreased operating costs temporarily sustained the Business, the Company determined it required a long-term solution to restructure its Business. Accordingly, in and around March 30, 2022, the Company retained an investment banker, XL Business Consulting & Financing Inc. ("**XL**"), to conduct a marketing and sale process for the Company (the "**Pre-Filing Sale Process**").<sup>13</sup>

17. During the Pre-Filing Sale Process, XL contacted over 30 parties that may be interested in a strategic investment in or purchase of the Business. Although the Pre-Filing Sale Process lasted over a year and a half until approximately November 2023, it did not generate an offer from any of the parties. As such, the Company terminated the Pre-Filing Sale Process to preserve the Company's cash flow and resources for the day-to-day operations of the Business.<sup>14</sup>

18. After the completion of the Pre-Filing Sale Process, the Company was approached by a

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<sup>11</sup> *Ibid* at [para. 13.](#)

<sup>12</sup> *Ibid* at [para. 14.](#)

<sup>13</sup> *Ibid* at [para. 16.](#)

<sup>14</sup> *Ibid* at [paras. 18-19.](#)

company affiliated to Urecka (“**Ekagrata**”) who was interested in exploring a strategic transaction with the Company.<sup>15</sup> As noted above, Urecka has ultimately become the proposed Stalking Horse Bidder and DIP Lender.

19. During the Company’s negotiations with Ekagrata, the Company’s cash flow pressures continued to mount. As a result, in September 2024, the Company was unable to make its debt service payment to WOCFDCA or its monthly lease payment to De Lage. Accordingly,

- (a) on September 25, 2024, WOCFDCA delivered a demand to the Company and issued a Notice of Intention to Enforce Security under section 244 of the BIA;<sup>16</sup> and
- (b) on September 26, 2024, De Lage delivered a demand letter to the Company.<sup>17</sup>

20. In order to preserve its ongoing operations and value, the Company filed the NOI on October 4, 2024. The primary objectives of this NOI proceeding is to restructure the Company’s balance sheet and implement a long-term solution to the Company’s liquidity challenges in the interest of stakeholders.<sup>18</sup>

### **C. Sale Efforts and the SISP**

21. To complement the Company’s prior and ongoing operational restructuring efforts, the Company has determined that a sale and investment solicitation process is critical to developing a value-maximizing solution for its stakeholders. Accordingly, the Company – in consultation with the Proposal Trustee and Urecka – developed the SISP.<sup>19</sup>

22. The SISP is intended to widely expose the Company’s Business to the market and provide

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<sup>15</sup> *Ibid* at [para. 20.](#)

<sup>16</sup> *Ibid* at [para. 21.](#)

<sup>17</sup> *Ibid* at [para. 22.](#)

<sup>18</sup> *Ibid* at [para. 23.](#)

<sup>19</sup> *Ibid* at [para. 42.](#)

a structured and orderly process for interested parties to perform due diligence and submit offers for a potential transaction.<sup>20</sup>

23. The SISP is a transparent and objective process that will be implemented and supervised by the Proposal Trustee as an officer of this Court.

24. The SISP involves a stalking horse bid in the form of the Stalking Horse Agreement (the “**Stalking Horse Bid**”). The Stalking Horse Bid is intended to promote efficiency and stimulate market interest by setting a “floor” price that bidders must bet against, providing an objective basis for the minimum valuation of the Company, and supplying a form of agreement for other bidders to use. It also provides comfort to stakeholders that value will be realized through the SISP and that the Business will emerge as a going-concern.<sup>21</sup>

25. The SISP contemplates a 30-day, single phase sale process that will be managed the Proposal Trustee. The key terms of the SISP are as follows:

- (a) **Commencement of the SISP:** the Proposal Trustee, with the assistance of the Company, will commence the SISP on October 31, 2024 by providing a list of known interested parties, including those who have already expressed an interest in the sale process, with a teaser detailing the opportunity and a non-disclosure agreement (“**NDA**”) to be executed by any interested parties. The Proposal Trustee will also advertise the opportunity in *Insolvency Insider* and any other national newspaper it deems appropriate.
- (b) **Due Diligence:** parties who execute an NDA will be granted access to an electronic data room to perform due diligence.

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<sup>20</sup> *Ibid* at [para. 43](#).

<sup>21</sup> *Ibid* at [paras. 45-46](#) and [58](#).

- (c) **Bid Deadline:** all interested parties must submit a bid by December 2, 2024 (the “**Bid Deadline**”).
- (d) **Review of Bids:** the Proposal Trustee, in consultation with the Company, will review all bids to determine if it is a bid that meets the qualifying criteria in the SISP (“**Qualified Bid**”). To be a Qualified Bid, it must, among other things:
- (i) provide for cash consideration sufficient to pay in full on closing of the transaction: (i) a minimum incremental amount of \$20,000 in excess of the aggregate Purchase Price (as defined herein) contemplated by the Stalking Horse Agreement; and (ii) a Break Fee (as defined herein) in the amount of \$10,000 (the “**Consideration Value**”);
  - (ii) be accompanied by a deposit of at least 10% of the Consideration Value, to be retained by the Proposal Trustee in trust;
  - (iii) contain an executed binding transaction document(s), including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement;
  - (iv) state it is not conditional upon any condition or contingency relating to due diligence, financing or any other material conditions precedent to the bidder’s obligation to complete the transaction;
  - (v) be submitted by the Bid Deadline;
  - (vi) provide evidence satisfactory to the Proposal Trustee of the financial ability of the bidder to consummate the transaction; and
  - (vii) acknowledge the offer is expressly made on an “as is, where is” basis.

- (e) **Selection of the Highest or Otherwise Best Bid (“Successful Bid”)**: in the event that the Proposal Trustee, in consultation with the Company, determines that there are no Qualified Bids, the Proposal Trustee shall promptly declare the Stalking Horse Bid as the Successful Bid. If the Proposal Trustee receives one or more Qualified Bids which are superior to the Stalking Horse Bid, it may proceed with an auction to select the highest or otherwise best bid in the SISP in accordance with the procedure delineated in the SISP. The Proposal Trustee must select the Successful Bid on or by December 3, 2024.
- (f) **Court Approval of a Successful Bid**: the Company will seek this Court’s approval of the Successful Bid on or by December 13, 2024, subject to Court availability.
- (g) **Closing of the Transaction Contemplated in the Successful Bid**: the transaction will close no later than December 27, 2024.<sup>22</sup>

26. The SISP provides that the Proposal Trustee may extend the SISP deadlines up to seven days or for a longer period with the consent of the Stalking Horse Bidder or by Court order. The ability to extend deadlines provides the Proposal Trustee and the Company with the necessary flexibility to maximize the Company’s success in the SISP.<sup>23</sup>

#### **D. The Stalking Horse Agreement**

27. The Company seeks this Court’s approval of the Stalking Horse Agreement for purposes of constituting the “Stalking Horse Bid” in the SISP. For clarity, the Company does not seek the Court’s approval of the transaction contemplated in the Stalking Horse Agreement at this time. A separate motion will be brought upon the conclusion of the SISP for an approval and vesting order

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<sup>22</sup> *Ibid* at [paras. 49 and 53](#).

<sup>23</sup> *Ibid* at [para. 50](#).

with respect to the Successful Bid.<sup>24</sup>

28. The principal terms of the Stalking Horse Agreement are as follows:

- (a) **Purchaser:** Urecka.
- (b) **Purchased Assets:** the purchased assets include all of the Company's assets, properties and undertakings other than the excluded assets ("**Excluded Assets**"). The purchased assets include, amongst other things, intellectual property, the Company's software and technology, certain contracts ("**Assumed Contracts**"), and the Company's receivables.
- (c) **Excluded Assets:** the Excluded Assets include, among other things, the Purchase Price, all cash in the Company's bank accounts except for customer deposits, and the Scientific Research and Experimental Development credits.
- (d) **As Is, Where Is:** the assets are being purchased on an "as is, where is basis" as of the closing date.
- (e) **Purchase Price:** the total sum of \$300,000 (the "**Purchase Price**") plus the cash sum required to pay the cure costs for all of the Assumed Contracts, if any. The Purchase Price will be comprised of a credit bid of all outstanding amounts owed by the Company to Urecka pursuant to the DIP Facility as of the time of closing, with the remainder to be paid in cash.
- (f) **Deposit:** given Urecka is providing the DIP Facility, Urecka is not required to provide any deposit under the Stalking Horse Agreement.

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<sup>24</sup> *Ibid* at [para. 55](#).

- (g) **Break Fee:** the Stalking Horse Bidder is entitled to a break fee of \$10,000 (the “**Break Fee**”).
- (h) **Conditions to Closing:** the conditions to closing include, among other things, the Stalking Horse Bidder being chosen as the Successful Bid and the granting of the Approval and Vesting Order and Assignment Order (both as defined in the Stalking Horse Agreement) by the Court.<sup>25</sup>

29. While the Company is optimistic that the SISF will result in a competitive bidding process in furtherance of a value maximizing transaction, the Stalking Horse Agreement assures the preservation and continuity of the Company as a going concern, and the continued employment of the Company’s employees.

#### **E. Acute Liquidity Crisis and Need for Interim Financing**

30. The Company has limited cash on hand and requires interim financing. Specifically, the Company presently has \$16,400 of cash on hand.<sup>26</sup>

31. With the assistance of the Proposal Trustee, the Company has prepared a 13-week cash flow statement for the period ending the week of January 10, 2025 (the “**Cash Flow Forecast**”) appended to the First Report of the Proposal Trustee, to be filed (“**First Report**”).<sup>27</sup>

32. The Cash Flow Forecast demonstrates that the Company requires access to emergency, interim financing in the approximate amount of \$125,000 throughout the next 13 weeks to preserve the going-concern nature of the Business.<sup>28</sup>

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<sup>25</sup> *Ibid* at [para. 56.](#)

<sup>26</sup> *Ibid* at [para. 30.](#)

<sup>27</sup> *Ibid* at [para. 31.](#)

<sup>28</sup> *Ibid* at [para. 32.](#)

33. The key terms and conditions of the Commitment Letter for the DIP Facility are as follows:
- (a) a maximum loan amount of \$125,000;
  - (b) interest accruing at a rate of 14% per annum;
  - (c) borrowing under the DIP Facility is subject to a finance fee of 5% on each advance;
  - (d) a maturity date of the earlier of (i) January 15th, 2025; (ii) the closing of the transaction contemplated by the Stalking Horse Agreement; (iii) the closing of any transaction resulting from the SISP; (iv) the implementation of a proposal; (v) the date on which the proceedings are terminated or are converted into a bankruptcy proceeding under the BIA; and (vi) the occurrence of an Event of Default (as defined in the Commitment Letter); and
  - (e) advances under the DIP Facility are conditional upon Court approval of the Commitment Letter, Court approval of the SISP and Stalking Horse Agreement, and the granting of a super-priority DIP Lender's Charge in favour of the DIP Lender over all of the Property of the Company, subordinate only to the Administration Charge.<sup>29</sup>
34. There is no reasonable prospect that the Company's financial condition will improve without an operational and financial restructuring and without interim financing being made available. Without the interim financing, the Company will be forced to shut down operations, which would be detrimental to the Company's stakeholders including employees, customers and suppliers.<sup>30</sup>

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<sup>29</sup> *Ibid* at [para. 66.](#)

<sup>30</sup> *Ibid* at [para. 33.](#)

### **PART III – ISSUES**

35. The issues to be determined are whether the Court should:
- (a) extend the time to file the proposal for 45 days pursuant to section 50.4(9) of the BIA;
  - (b) approve the DIP Facility and DIP Lender's Charge;
  - (c) approve the SISP;
  - (d) approve the Stalking Horse Bid; and
  - (e) approve the Administration Charge.

### **PART IV – LAW & ARGUMENT**

#### **A. The Court Should Approve the Stay Extension**

36. Pursuant to section 69 of the BIA, a debtor that files an NOI is automatically given the benefit of an initial 30-day stay of proceedings, which may be extended in increments of 45 days on sufficient cause.<sup>31</sup>

37. The current stay of proceedings is set to expire on November 3, 2024. Despite diligent efforts, the Company is not yet in a position to deliver a proposal to its creditors. Accordingly, the Company seeks a 45-day extension of the time to file a proposal up to and including December 18, 2024 to enable it to continue its restructuring efforts and avoid a deemed bankruptcy.

38. Pursuant to section 50.4(9) of the BIA, the Court has the authority to extend the period

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<sup>31</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“BIA”), [s. 50.4\(9\)](#).

for filing a proposal and the stay of proceedings for a period of 45 days where it is satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted (collectively, the “**Section 50.4(9) Factors**”).<sup>32</sup>

39. The Company submits that each of the Section 50.4(9) Factors are met in this case.

(i) **The Company has acted in good faith and with due diligence**

40. In *Re H&H Fisheries Limited*, the court noted that “the converse of good faith is bad faith, and bad faith requires some motivation or conduct which is unacceptable”.<sup>33</sup> In this case, there is no evidence that the Company has acted with bad faith or conducted itself in an unacceptable manner.

41. In contrast, the Company has submitted evidence confirming that the Company has acted in good faith and with due diligence since the filing of the NOI. Specifically, the Company has taken numerous steps to implement a restructuring that will result in its Business emerging as a going concern including, among others:

- (a) continued to operate the Business in the normal course, with the oversight of the Proposal Trustee;

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<sup>32</sup> *Ibid*, [s. 50.4\(9\)](#). See for example, *Colossus Minerals Inc. (Re)*, 2014 ONSC 514 (“**Colossus**”), at [paras. 37-43](#); *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at [para. 41](#); *Chester Basin Seafood Group Inc (re)*, 2023 NSSC 388 (“**Chester Basin**”), at [paras. 14](#) and [20-21](#).

<sup>33</sup> *Re H&H Fisheries Limited*, 2005 NSSC 346 (“**H&H Fisheries**”), [para 17](#).

- (b) negotiated the Commitment Letter for the DIP Facility;
- (c) developed the SISP with a view to canvassing the market for a transaction and developing a viable proposal;
- (d) negotiated the Stalking Horse Agreement;
- (e) engaged with employees and vendors to address any questions about the NOI proceeding; and
- (f) with the assistance of the Proposal Trustee, continued to assess various restructuring options with a view to closing a transaction and developing a proposal.<sup>34</sup>

**(ii) The Company will be likely to make a viable proposal**

42. The test for whether an insolvent person would likely be able to make a viable proposal if granted an extension is whether the insolvent person might (not certainly will) be able to present a proposal that seems reasonable on its face to a reasonable creditor.<sup>35</sup>

43. In the context of a first extension, courts have stated that this factor is not a difficult standard to meet.<sup>36</sup> As such, this factor is often met even in circumstances where major creditors believe no viable proposal is possible given this factor is examined on an objective, not a subjective, basis.<sup>37</sup>

44. The Company submits that the evidence before the Court satisfies this requirement. The

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<sup>34</sup> *Talalla Affidavit*, *supra* note 2, at [para. 35](#).

<sup>35</sup> *H&H Fisheries*, *supra* note 33, at [para. 22](#); *Nautican v. Dumont*, 2020 PESC 15 (“*Nautican*”), [paras 16-17](#); *Andover Mining Corp. (Re)*, 2013 BCSC 1833, [para 35](#).

<sup>36</sup> *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131, [para. 24](#) cited in at *T & C Steel Ltd., Re*, 2022 SKKB 236, [paras. 8](#) and [20](#).

<sup>37</sup> *Nautican*, *supra* note 35, at [paras. 16-19](#).

Company has advised it will use the extension of the time to maximize realization for its creditors and stakeholders by preserving the going concern of the Business while implementing the SISP and developing a proposal for the benefit of its general body of creditors.<sup>38</sup>

**(iii) No creditor is materially prejudiced**

45. In considering this factor, courts consider whether there is a significant concern that would be unreasonable for a creditor to accept.<sup>39</sup>

46. The Company submits that there is no evidence of any material prejudice to any creditor if the requested extension is granted. The extension of the stay of proceedings will assist in the likelihood of a greater net recovery to creditors by allowing the Company to continue its Business as a going concern and implement the SISP.

47. Conversely, if the extension is not granted, the Company will be deemed to have made an assignment in bankruptcy and its efforts to successfully restructure its Business will be terminated. In such circumstances, the Company would lose the majority of its going concern enterprise value to the detriment of its creditors.<sup>40</sup>

**B. The Court Should Approve the DIP Facility and Grant the DIP Lender's Charge**

48. Subsections 50.6(1) and (3) of the BIA provide that, on notice to affected secured creditors, the Court may grant a priority charge in favour of an interim lender who agrees to lend to the debtor an amount approved by the Court. Subsection 50.6(5) provides that, in deciding whether to grant the charge, the Court is to consider, among other things, the criteria reproduced

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<sup>38</sup> *Talalla Affidavit*, *supra* note 2, at [paras. 35-36](#).

<sup>39</sup> *H&H Fisheries*, *supra* note 33, at [para. 37](#).

<sup>40</sup> *Talalla Affidavit*, *supra* note 2, at [para. 38](#).

below.<sup>41</sup>

- (a) **The period during which the debtor is expected to be subject to proceedings under the BIA:** The proposed restructuring strategy is anticipated to require an additional period of approximately 10 weeks, considering, among other things, (i) the 30-day due diligence period in the SISP, and any extension thereof by the Proposal Trustee; (ii) the time to select Successful Bids and hold any auction; (iii) the time to prepare and bring a motion for an approval and vesting order, subject to Court availability; (iv) the time to complete the transaction(s) approved, if any; and (v) the time to finalize the administration of this NOI proceeding. The Cash Flow Forecast shows that the Company will require approximately \$125,000 of interim financing over the next 13-week period.<sup>42</sup> The DIP Facility and the DIP Lender's Charge are therefore commensurate with the Company's financing needs during the expected duration of these proceedings.
- (b) **How the debtor's business and financial affairs are to be managed during the proceedings:** The Company's restructuring plan is laid out above, in the Affidavit of Dominic Talalla sworn October 21, 2024, and the First Report. The Company otherwise intends to continue to operate its Business in the ordinary course while implementing a restructuring.
- (c) **Whether the debtor's management has the confidence of its major creditor:** There is no evidence that any person has any concern about the Company's management.

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<sup>41</sup> BIA, *supra* note 31, [s. 50.6](#).

<sup>42</sup> *Talalla Affidavit*, *supra* note 2, at [paras. 63-64](#) and [67](#).

- (d) **Whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor:** The Company has limited cash on hand and requires interim financing. The DIP Facility will enable the Company to pursue its restructuring plan, implement the SISP, and complete the transaction(s) contemplated in the Successful Bid(s). Without the financing, the Company will be bankrupt and be unable to file a proposal.<sup>43</sup>
- (e) **The nature and value of the debtor's property:** The Company's principal assets are its intellectual property, equipment in its technology lab, inventory, manufacturing equipment, and brand goodwill, which have limited value in a liquidation. The DIP Lender is willing to provide the DIP Facility on the basis of a DIP Lender's Charge over the Company's Property.<sup>44</sup>
- (f) **Whether any creditor would be materially prejudiced as a result of the security or charge:** There is no indication that any creditor would be materially prejudiced.
- (g) **The report of the Proposal Trustee:** The Proposal Trustee supports the approval of the DIP Facility and the DIP Lender's Charge for the reasons set out in the First Report.

49. The Company and the Proposal Trustee are of the view that the Commitment Letter is likely the best and only interim financing arrangement available to the Company in the circumstances.<sup>45</sup> The DIP Facility is expected to provide sufficient liquidity to allow the Company

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<sup>43</sup> *Ibid* at [para. 69.](#)

<sup>44</sup> *Ibid* at [para. 68.](#)

<sup>45</sup> *Ibid* at [para. 65.](#)

to operate and meet its obligations as set out in the Cash Flow Forecast.<sup>46</sup>

50. In accordance with subsection 50.6(1), the Company's secured creditors and RBC have been served with the motion materials and the SISP Approval Order expressly provides that the DIP Lender's Charge will not secure any obligation that exists before the order is made.

51. For those reasons, the Court should approve the DIP Facility and grant the DIP Lender's Charge.

### **C. The Court Should Approve the SISP**

52. Pursuant to subsection 65.13 of the BIA, the Court is authorized to approve a sale of assets in a proposal proceeding under the BIA.<sup>47</sup>

53. Though this section only addresses the approval of the sale of assets rather than approval of a sale process, the non-exhaustive factors set out in subsection 65.13(4) of BIA provide useful guidance for this Court to consider in determining whether to approve a sale process:

- (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;

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<sup>46</sup> *Ibid* at [para. 67](#).

<sup>47</sup> BIA, *supra* note 31, [s. 65.13\(1\)](#).

- (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.<sup>48</sup>

54. In *Nortel Networks Inc. (Re)*,<sup>49</sup> the Court stated that there are four factors to be considered in determining if a proposed sale process should be approved: (a) Is a sale transaction warranted at this time?; (b) Will the sale benefit the whole 'economic community? (c) Do any of the debtors' creditors have a bona fide reason to object to the sale of the business?; and (d) Is there a better alternative?<sup>50</sup>

55. While *Nortel* was decided in the context of a proceeding under the *Companies' Creditors Arrangement Act*, courts have applied the same criteria in the context of approving a sale process in an NOI proceeding under the BIA.<sup>51</sup>

56. The above-noted factors support the approval of the SISP. The Company is suffering an acute liquidity crisis. The Company requires a long-term solution in the form of a transaction. Without such a transaction, the Company will be forced to cease operations to the detriment of its stakeholders including its over employees, customers, and suppliers. There is no alternative to successfully restructure the Business without completing a transaction.

57. A going concern sale or investment transaction is necessary to preserve and maximize

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<sup>48</sup> *Ibid*, s. 65.13(4). See for example, *Dataxbusiness Services Limited v KPMG Inc*, [Endorsement of Cavanagh J.](#) (17 Aug 2023) ("*Dataxbusiness*"); *Danier Leather Inc. (Re)*, 2016 ONSC 1044 ("*Danier Leather*"), [para. 21](#).

<sup>49</sup> [2009 CanLII 39492 \(ON SC\)](#) [Morawetz J.] ("*Nortel*").

<sup>50</sup> *Ibid*, *Nortel*, [para. 49](#).

<sup>51</sup> See for example *Mustang*, *supra* note 32, at [paras. 37-38](#); *Dataxbusiness*, *supra* note 48.

the value of the Company for the benefit of the whole ‘economic community’. In particular, since the Company’s primary assets – intellectual property, goodwill, software, and inventory – require an operating Business to retain its value, a shut down of operations or piecemeal liquidation process would result in an immediate and irreparable destruction of value of the Company.

58. The Company developed the SISP, in consultation with the Proposal Trustee, and in accordance with prevailing sale process terms often used in insolvency matters.<sup>52</sup> The SISP is a fair, transparent and reasonable process to find a value-maximizing transaction. It will be implemented and supervised by the Proposal Trustee as an officer of this Court to ensure all bidders are treated in a fair and even-handed manner.<sup>53</sup>

59. The Proposal Trustee is also supportive of the SISP. The Proposal Trustee is of the view that the SISP terms are reasonable and the timeline of the SISP is sufficient to canvass the broader market.<sup>54</sup>

#### **D. The Court Should Approve the Stalking Horse Bid**

60. The Company seeks this Court’s approval of the Stalking Horse Bid, in the form of the Stalking Horse Agreement, as the “Stalking Horse Bid” in the SISP. As referenced above, the Company is only requesting that the Court approve the agreement for purposes of the SISP and not the transaction contemplated therein. The Company will bring a separate motion for an approval and vesting order upon completion of the SISP.

61. Courts frequently approve the use of stalking horse bids in sale processes in NOI proceedings.<sup>55</sup> In doing so, courts recognize the benefits provided by stalking horse bids including

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<sup>52</sup> *Talalla Affidavit*, *supra* note 2, at [para. 44](#).

<sup>53</sup> *Ibid* at [para. 49](#).

<sup>54</sup> *Ibid* at [para. 47](#).

<sup>55</sup> *Parlay Entertainment Inc. (Re)*, 2011 ONSC 3492 [Morawetz J.], [paras. 15-16](#). BIA, *supra* note 31, [s. 65.13](#).

that they establish a baseline price, provide transactional structure, and provide certainty that a business will continue as a going concern.<sup>56</sup>

62. In considering whether to approve a sale process with a stalking horse bid, Courts consider the three factors outlined by Justice Brown in *CCM Master Qualified Fund v. blutip Power Technologies*: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the proposal trustee; and (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assts up for sale.<sup>57</sup>

63. In addition, courts consider various non-exhaustive criteria including:

- (a) Has there been some control exercised at the first stage of the competition (namely that to become the stalking horse bidder) and to what extent? In other words, some assurances should exist that the horse chosen is indeed the right one.
- (b) Is there a need for stability within a very short time frame for the debtor to continue operations and the restructuring contemplated to be successful?
- (c) Are the economic incentives for the stalking horse bidder, in terms of break up fee, topping fee and overbid increments protection, fair and reasonable?
- (d) Are the timelines contemplated reasonable to ensure a fair process at the second stage of the competition, namely that to become the successful over bidder?<sup>58</sup>

64. The Company submits that the above-noted factors support the approval of the Stalking

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<sup>56</sup> *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 [Brown J.] (“*CCM*”), [para. 7](#); *Danier Leather*, *supra* note 48, at [para. 20](#);

<sup>57</sup> *CCM*, *supra*, [para. 6](#).

<sup>58</sup> *Boutique Euphoria inc. (Arrangement relatif à)*, 2007 QCCS 7129, [para. 37](#).

Horse Agreement for the following reasons:

- (a) the SISP, with the inclusion of the Stalking Horse Bid, is a fair and transparent process that will be controlled by the Proposal Trustee;<sup>59</sup>
- (b) the inclusion of the Stalking Horse Bid will stimulate competition and increase the efficacy of the process, thereby increasing the possibility that the SISP will result in the best possible transaction for the Company and its stakeholders;<sup>60</sup>
- (c) the Stalking Horse Agreement terms are commercially fair and reasonable in the circumstances;
- (d) the Stalking Horse Bid represents a satisfactory monetization of the Company if it constitutes the Successful Bid at the conclusion of the SISP. It also provides comfort to stakeholders that a reasonable transaction will result from the SISP;<sup>61</sup>
- (e) the economic incentives for the Stalking Horse Bidder are fair and reasonable. The Break Fee equals only 3% of the Purchase Price under the Stalking Horse Agreement. The Break Fee is only payable if the Stalking Horse Agreement is not a Successful Bid at the conclusion of the SISP;<sup>62</sup> and
- (f) given the Company's prior sale efforts during the Pre-Filing Sale Process, the timeline of the SISP balances the limitations of the Company's financial position with the need for sufficient flexibility to allow interested parties a reasonable opportunity to formulate bids to maximize the Company's success in the SISP.

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<sup>59</sup> *Talalla Affidavit*, *supra* note 2, at [para. 62](#).

<sup>60</sup> *Ibid* at [para. 58](#)

<sup>61</sup> *Ibid* at [para. 57](#).

<sup>62</sup> *Ibid* at [paras. 59-60](#).

### E. The Court Should Approve the Administration Charge

65. The Company is seeking a first-ranking Administration Charge on all of its Property, in the maximum amount of CAD \$75,000 to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee, counsel to the Company, and, in the event of a bankruptcy, the trustee in bankruptcy and its counsel. The SISP Approval Order contemplates that the Administration Charge will rank in priority to all other security interests, trusts, liens, charges and encumbrances in favour of any person.

66. Section 64.2 of the BIA authorizes this Court to grant a super-priority charge on a debtor's Property to secure professional fees.<sup>63</sup>

67. Administration charges are routinely granted in insolvency proceedings where: (a) the debtor has limited means to obtain professional assistance; (b) the involvement of professional advisors is critical to the success of the proceedings under the BIA; and (c) the quantum of the proposed charge is commensurate with the complexity of the debtor's business.<sup>64</sup>

68. The Administration Charge recognizes the value that insolvency professionals bring to such proceedings and allow them to be properly compensated for their efforts.

69. The Company submits that it is appropriate for this Court to grant the Administration Charge given the evidence that, among other things:

- (a) the Company has and will continue to rely on the expertise, knowledge, and continued participation of its advisors and professionals during the NOI proceeding

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<sup>63</sup> BIA, *supra* note 31, [s. 64.2](#).

<sup>64</sup> *Colossus*, *supra* note 32, [paras. 11-15](#); *Mustang*, *supra* note 32, at [para. 33](#); *Chester Basin*, *supra* note 32, [paras. 10-13](#).

in order to implement the SISP, and assist with the Company's restructuring;<sup>65</sup>

- (b) the quantum of the proposed Administration Charge is reflective of the complexity of the Company's Business and is both reasonable and appropriate in the circumstances of the NOI proceeding;<sup>66</sup> and
- (c) the roles of the beneficiaries of the Administration Charge are not duplicative.

#### **PART V – RELIEF REQUESTED**

70. Based on the foregoing, the Company respectfully requests that this Court grant the SISP Approval Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22<sup>ND</sup> DAY OF OCTOBER, 2024.**

/s/ Reconstruct

**RECONSTRUCT LLP**

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<sup>65</sup> *Talalla Affidavit*, *supra* note 2, at [paras. 72-73](#).

<sup>66</sup> *Ibid* at [para. 74](#).

**SCHEDULE "A"****List of Authorities**

1. <i>Colossus Minerals Inc. (Re)</i> , <a href="#">2014 ONSC 514</a>
2. <i>Mustang GP Ltd. (Re)</i> , <a href="#">2015 ONSC 6562</a>
3. <i>Chester Basin Seafood Group Inc (re)</i> , <a href="#">2023 NSSC 388</a>
4. <i>Re H&amp;H Fisheries Limited</i> , <a href="#">2005 NSSC 346</a>
5. <i>Nautican v. Dumont</i> , <a href="#">2020 PESC 15</a>
6. <i>Andover Mining Corp. (Re)</i> , <a href="#">2013 BCSC 1833</a>
7. <i>Scotian Distribution Services Limited (Re)</i> , <a href="#">2020 NSSC 131</a>
8. <i>T &amp; C Steel Ltd., Re</i> , <a href="#">2022 SKKB 236</a>
9. <i>Datataxbusiness Services Limited v KPMG Inc</i> , <a href="#">Endorsement of Cavanagh J.</a> (17 Aug 2023)
10. <i>Danier Leather Inc. (Re)</i> , <a href="#">2016 ONSC 1044</a>
11. <i>Nortel Networks Corporation (Re)</i> , <a href="#">2009 CanLII 39492 (ON SC)</a>
12. <i>Parlay Entertainment Inc. (Re)</i> , <a href="#">2011 ONSC 3492</a>
13. <i>CCM Master Qualified Fund v. blutip Power Technologies</i> , <a href="#">2012 ONSC 1750</a>
14. <i>Boutique Euphoria inc. (Arrangement relatif à)</i> , <a href="#">2007 QCCS 7129</a>

**SCHEDULE "B"****Statutory Authorities****[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)****Notice of intention**

**50.4 (1)** Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

**Certain things to be filed**

**(2)** Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

**Creditors may obtain statement**

**(3)** Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

**Exception**

**(4)** The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

**Trustee protected**

**(5)** If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

**Trustee to notify creditors**

**(6)** Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

**Trustee to monitor and report**

**(7)** Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

**(a)** shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

**(b)** shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

**(i)** with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

**(ii)** with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

**(c)** shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

**Where assignment deemed to have been made**

**(8)** Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

**(a)** the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

**(b)** the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

**(b.1)** the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

### **Extension of time for filing proposal**

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

### **Court may not extend time**

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

### **Court may terminate period for making proposal**

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

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### **Order- interim financing**

**50.6 (1)** On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who

are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

**(3)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

**(5)** In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

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### **Court may order security or charge to cover certain costs**

**64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

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### **Restriction on disposition of assets**

**65.13 (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.

### **Individuals**

**(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.

### **Notice to secured creditors**

**(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.

### **Factors to be considered**

**(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.

### **Additional factors — related persons**

**(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.

### **Related persons**

(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).

### **Assets may be disposed of free and clear**

(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.

### **Restriction — employers**

(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.

### **Restriction — intellectual property**

(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.

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[Rules of Civil Procedure, RRO 1990, Reg 194](#)

**General Principle**

**1.04 (1)** These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

**Effect of Non-Compliance**

**2.01 (1)** A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or

(b) only where and as necessary in the interest of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part.

(2) The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

**Court May Dispense with Compliance**

**2.03** The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

**Extension or Abridgment**

**General Powers of Court**

**3.02 (1)** Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED AND

Bankruptcy Court File No. BK-24-03137745-0032 <sup>E234</sup>  
Estate No. 32-3137745

AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF DATEC COATING CORPORATION OF  
THE CITY OF MISSISSAUGA IN THE PROVINCE OF ONTARIO

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at *Toronto*

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