

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-060795-222

DATE: March 2nd, 2022

PRESIDING: **ME VINCENT-MICHEL AUBÉ**, Registrar

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:
193641 CANADA INC.

Debtor / Petitioner

and

RAYMOND CHABOT INC.

Trustee

**ORDER APPROVING A DIP FINANCING AND DIP CHARGE, AN ADMINISTRATION
CHARGE AND GRANTING ANCILLARY RELIEF**

- [1] **CONSIDERING** the Application for an Order Approving a DIP Financing and DIP Charge, an Administration Charge and Ancillary Relief, pursuant to sections 50.6 and 64.2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended ("**BIA**"), as well as the exhibits and the affidavit of Ms. Ragaa Boulos, filed in support thereof (the "**Application**") by the Debtor / Petitioner 193641 Canada Inc. (the "**Petitioner**");
- [2] **CONSIDERING** the Notice of intention to make a proposal filed by the Petitioner on February 25, 2022 in accordance with the BIA (the "**NOI**");

- [3] **CONSIDERING** the representations of counsel and the absence of contestation;
- [4] **CONSIDERING** the provisions of the BIA;
- [5] **CONSIDERING** that the next pay is due as of March 4th, 2022, and the debtor won't meet his obligations without the availability of this DIP financing;

THE COURT HEREBY:

- [6] **GRANTS** the Application.

Definitions

- [7] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.

Service

- [8] **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Petitioner.

DIP Financing and DIP Charge

- [9] **APPROVES** and **RATIFIES** the execution by the Petitioner of the DIP Loan Term Sheet dated February 25, 2022 entered into between the Petitioner and 9146-8249 Québec Inc. (the "**DIP Lender**"), with such amendments the Petitioner and the DIP Lender may agree in writing with the consent of the Trustee and the Royal Bank of Canada (the "**DIP Agreement**").
- [10] **AUTHORIZES** the Petitioner to borrow from the DIP Lender a principal amount of \$175,000, on the terms and conditions as set forth in the DIP Agreement.
- [11] **ORDERS** the Petitioner to perform all of its obligations to the DIP Lender pursuant to the DIP Agreement and this Order.
- [12] **ORDERS** that the DIP Lender is granted a charge (the "**DIP Charge**"), in the aggregate amount of \$220,000, on all assets, rights, undertakings and properties of the Petitioner, of every nature and kind whatsoever, and wherever situated, regardless of whose possession it may be in and including all proceeds thereof (the "**Property**") as security for all obligations of the Petitioner to the DIP Lender under the DIP Agreement from and after the date of this Order, which DIP Charge shall not secure any obligations that exist before the date of this Order. The DIP Charge shall have the priority set out in paragraphs [20] and following of this Order.
- [13] **AUTHORIZES** the DIP Lender to take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge.

- [14] **DECLARES** that the rights of the DIP Lender under this Order, including without limitation the DIP Charge, shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or manager of the Petitioner or the Property.
- [15] **ORDERS** and **DECLARES** that all claims of the DIP Lender pursuant to the DIP Agreement are not claims that may be compromised or arranged pursuant to any proposal under the BIA filed by the Petitioner or any plan of arrangement or compromise of the Petitioner under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") (in each case, a "**Proposal**") without the consent of the DIP Lender.
- [16] **ORDERS** and **DECLARES** that the DIP Lender shall be treated as unaffected in these proceedings and in any Proposal, and shall not be subject to any applicable stay of proceedings and, for greater certainty, that nothing herein shall prevent the DIP Lender from enforcing any rights or remedies in accordance with the DIP Agreement or impose any conditions upon such enforcement.
- [17] **ORDERS** and **DECLARES** that the payments made by the Petitioner to the DIP Lender pursuant to this Order or the DIP Agreement shall not constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

Administration Charge

- [18] **ORDERS** that the Trustee, counsel to the Trustee, and counsel to the Petitioner are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed the aggregate amount of \$100,000, as security for their professional fees and disbursements, at the standard rates and charges, incurred both before and after the date of this Order. The Administration Charge shall have the priority set out in paragraphs [20] and following of this Order.
- [19] **ORDERS** that the Trustee, counsel to the Trustee and counsel to the Petitioner shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Petitioner. The Petitioner is hereby authorized and directed to pay the accounts of the Trustee, counsel to the Trustee and counsel to the Petitioner on a weekly basis or on such other basis as such persons may agree.

Priority of court-ordered charges

- [20] **DECLARES** that the priorities of the Administration Charge and the DIP Charge (collectively, the "**NOI Charges**"), as between them with respect to any Property to which they apply, shall be as follows:

- (a) First, the Administration Charge;
- (b) Second, the DIP Charge;

provided, however, that the NOI Charges shall rank after and be subordinated to the RBC Security over the assets of the Petitioner in order to guarantee all present and future indebtedness secured under the RBC Security, but in priority to any other security, prior claims, hypothecs, liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, taxes, obligations, liabilities, financial, monetary or other claims, whether or not such claims have attached or been registered, published, perfected or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law or otherwise), including, without limitation the Administration Charge, the DIP Charge and any other charges hereafter granted by the Court in these proceedings (all of the foregoing, collectively “**Encumbrances**”).

- [21] **ORDERS and DECLARES** that each of the NOI Charges shall constitute a charge on the Property and that such Charges shall rank in priority to other Encumbrances in favour of any person other than the RBC Security, which shall rank senior to and ahead of the NOI Charges.
- [22] **ORDERS** that the filing, registration or perfection of the NOI Charges shall not be required, and that the NOI Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, published, recorded or perfected subsequent to the NOI Charges coming into existence.
- [23] **ORDERS** that except as may be approved or ordered by this Court, the Petitioner shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the NOI Charges, unless the Petitioner also obtains the prior written consent of the Trustee and the beneficiaries of the NOI Charges.
- [24] **ORDERS and DECLARES** that notwithstanding:
 - (a) The pendency of these proceedings;
 - (b) Any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
 - (c) The filing of any assignment for the general benefit of creditors made pursuant to the BIA;
 - (d) The provisions of any federal or provincial statute; or

- (e) Any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Petitioner is a party;

the NOI Charges shall be binding on any trustee in bankruptcy that may be appointed in respect to the Petitioner and shall not be void or voidable by any person, including any creditor of the Petitioner, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

General

- [25] **ORDERS** that **Exhibit P-3, Exhibit P-4, and Exhibit P-5**, filed in support of the Application be kept confidential and under seal until further order of this Court.
- [26] **ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Trustee or any of the director and officers, employees, legal counsel or financial advisors of the Petitioner or of the Trustee in relation to the business of the Petitioner or the Property, without first obtaining leave of this Court, upon five (5) business days' written notice to the Petitioner's counsel, the Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.
- [27] **DECLARES** that the NOI, this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [28] **DECLARES** that this Order and its effects shall survive the filing by the Petitioner of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Petitioner pursuant to the terms of the CCAA or the bankruptcy of the Petitioner, unless this Court orders otherwise.
- [29] **DECLARES** that, except as otherwise specified herein or in the BIA, the Petitioner and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

- [30] **DECLARES** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [31] **DECLARES** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on the Petitioner's counsel and the Trustee and has filed such response with this Court, or appears on the service list prepared by the Petitioner, the Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.
- [32] **DECLARES** that the Petitioner or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [33] **DECLARES** that the Petitioner and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [34] **ORDERS** and **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to the Petitioner, the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- [35] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [36] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere, to give effect to this Order and to assist, the Petitioner, the Trustee and their respective agents in carrying out the terms of this Order.
- [37] **ORDERS** that each of the Petitioner and the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the 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 of Canada.
- [38] **ORDERS** provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

[39] **THE WHOLE** without costs.

M^e VINCENT-MICHEL AUBÉ
Registraire

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ME JULIEN MORISSETTE
ME ILIA KRAVTSOV
(OSLER, HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONER

Mtre VINCENT-MICHEL AUBÉ, Registrar

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR


Personne désignée par le greffier

Hearing date: March 2, 2022