

Estate No. 11-2674770  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
ELCO FINE FOODS LTD.**

ORDINARY ADMINISTRATION

**TRUSTEE'S PRELIMINARY REPORT TO CREDITORS**

**BACKGROUND**

Elco Fine Foods Ltd. (“**Elco**”, the “**Company**”) was incorporated in British Columbia on May 9, 2016 under its previous name 1074982 B.C. Ltd. The Company’s principal was David Dueck who passed away in the year prior to the Company’s bankruptcy, and Ryan Preddy was Elco’s Director at the time that the Company made an assignment in bankruptcy. Mr. Preddy resigned immediately afterward.

An organization chart provided by management indicates Elco is owned by National Importers Inc. (“**NII**”), an entity also controlled by Mr. Dueck.

Elco was in the business of importing and distributing food (dry goods) and represented various brands. Elco’s inventory was typically sold directly to stores. Elco operated from offices and warehouses located in Ontario and Richmond, BC, which were leased by National Importers Canada Ltd. (“**NICL**”), a company related by common control. We understand that Elco was acquired as an operating business to complement the existing operations of NICL, however, we are advised that Elco did not operate profitably as part of the National corporate group.

Grantham Holdings Ltd. (“**Grantham**”) and DCD Design & Manufacturing Ltd. (“**DCD**”) are companies related to Elco by common control. Elco guaranteed a secured debt owing by NII to HSBC Bank Canada (“**HSBC**”) of approximately \$11.5MM and a secured debt owing by NICL of approximately \$37,000 USD. Elco had granted security to HSBC, and in July 2019 HSBC made formal demand for repayment of the loans. We are advised that Grantham and DCD obtained financing and paid the secured indebtedness owing to HSBC.

Elco and NICL executed a general security agreement (“GSA”) dated August 26, 2019 with Grantham, which granted security over the assets owned by Elco and NICL to Grantham as security for obligations owing to Grantham. Elco, NICL, and DCD also executed a GSA dated August 26, 2019 which granted security over the assets owned by Elco and NICL to DCD as security for obligations owing to DCD. The Statement of Affairs reports that Grantham is owed approximately \$4,338,00 on a secured basis and that DCD is owed approximately \$2,956,000 on a secured basis. Grantham and DCD are Elco’s largest creditors.

We are also advised that management offered the business for sale, but a purchaser could not be secured. Accordingly, Elco wound up its operations which included the sale of existing inventory to various customers over the past year. As the leases for NICL’s two warehouses expired on August 31, 2020, Elco sold its remaining inventory to Grantham on September 1, 2020 for proceeds of \$643,520, which we are advised represents the cost of the inventory plus 5%. The sale proceeds were adjusted against the outstanding debt owing to Grantham.

We reviewed the Company’s financial information which was reported as part of Elco’s corporate income tax return for the fiscal year ending December 31, 2019. The Company reported a net loss from operations of approximately \$1,887,000. We also reviewed (management prepared) financial information for the current fiscal year to September 11, 2020, which reported a net loss of approximately \$806,700 and a retained deficit of approximately \$12,100,000.

The Company’s records indicate that Elco did not have any employees. We understand that Elco would retain NICL for the labor required, and NICL would invoice Elco for its services.

### **Assignment in Bankruptcy**

Ultimately Elco was unable to meet all of its obligations and made a voluntary assignment in bankruptcy pursuant to the provisions of the *Bankruptcy and Insolvency Act* (“BIA”) effective September 24, 2020. MNP Ltd. was appointed Licensed Insolvency Trustee (“Trustee”) of the Bankrupt Estate, subject to creditor affirmation at the First Meeting of Creditors.

### **Receivership Proceedings**

On October 1, 2020, DCD appointed MNP Ltd. as receiver over the assets, property, and undertakings of Elco (the “Receiver”) pursuant to the GSA executed between Elco, NICL, and DCD and registered in the Personal Property Registry of British Columbia on October 21, 2019 under base registration number 841640L.

## ASSETS

According to the Statement of Affairs filed in the bankruptcy, the assets of Elco include:

### Statement of Affairs

Cash	\$ 50,000
Accounts Receivable (trade)	74,000
Due from Related Party	1
GST Refund	19,108
Funds in Court	386,035
Registered Trademarks	<u>1</u>
Total Assets	<u>\$ 529,145</u>

### Cash on Deposit and Funds Held in Trust

The Company maintained two bank accounts with the Toronto-Dominion Bank (“TD”). Banking records indicate that at the date of bankruptcy, one account had no funds on hand, and the other account had a balance of \$55,271. As all of Elco’s assets are subject to the registered security interests of Grantham and DCD, the Trustee wrote to TD advising of the bankruptcy and requesting that the account be frozen to protect the funds on hand.

Prior to the bankruptcy, Elco provided the Trustee with funds totaling \$25,000 in respect of anticipated costs and fees to administer the bankruptcy proceedings. The Trustee deposited these funds into the bankruptcy trust account.

### Accounts Receivable

The Company’s Statement of Affairs reported total trade accounts receivable of \$123,500, of which \$74,000 is considered collectable.

The Company’s records also indicate a debt due by NICL, but as this company also filed an assignment in bankruptcy on September 24, 2020, there is no anticipated realization from this debt due to Elco.

### GST Refund

The Statement of Affairs reports an anticipated GST refund of approximately \$19,108.

### Funds in Court

The Statement of Affairs also reports funds paid into Court of approximately \$386,000. Locher Evers International Inc. obtained a judgment against Elco and subsequently obtained a Garnishing

Order After Judgment. On August 10, 2020, funds totaling \$386,035.11 representing the total judgment plus costs were garnished from Elco's bank account and paid into Court.

### **Registered Trademarks**

The Company's records indicate a number of trademarks owned by Elco which relate to its business.

### **PROVABLE CLAIMS**

It is the duty of the Trustee to examine and satisfy itself as to the validity and priority of all claims filed in the Estate. Claims filed with the Trustee to date are as follows:

	<b>Statement of Affairs</b>	<b>Filed</b>
Secured creditors	\$ 7,293,424	\$ 4,370,054
Preferred creditors	\$ Nil	\$ Nil
Unsecured creditors	<u>\$ 2,071,583</u>	<u>\$ Nil</u>
Total	<u>\$ 9,365,007</u>	<u>\$ 4,370,054</u>

As at the date of this report, there have been no significant differences between the claims listed on the Statement of Affairs and the claims filed to date with the Trustee.

### **SECURED CREDITORS**

#### ***Canada Revenue Agency ("CRA")***

CRA has a "deemed trust" claim or property claim equal to the amount of payroll deductions withheld from employees' compensation and not remitted to CRA. This claim comes in priority to the claims of all other creditors. As Elco did not have any employees, we do not anticipate that there is a debt owing to CRA in relation to payroll withholdings.

#### ***Claims of Wage Earners***

Pursuant to Section 81.3(1) of the BIA, claims of employees who are owed wages in the six-month period preceding the date of bankruptcy are secured, to the extent of \$2,000, over the Bankrupt's current assets (cash and accounts receivable).

As the Company did not have any employees, we do not anticipate that there are any claims under Section 81.3(1).

### ***DCD Design & Manufacturing Ltd. (“DCD”)***

As reported, Elco, NICL, and DCD executed a GSA dated August 26, 2019 which granted security over Elco’s assets to DCD, notice of which was registered in the Personal Property Registry on October 21, 2019. The Statement of Affairs reports that DCD is owed \$2,955,519.

The Trustee has obtained an independent legal opinion that the security held by DCD is valid and enforceable as against NICL and a Trustee.

### ***Grantham Holdings Ltd. (“Grantham”)***

Elco, NICL, and Grantham also executed a GSA dated August 26, 2019, which granted security over Elco’s assets to Grantham, notice of which was registered in the Personal Property Registry on October 21, 2019. The Statement of Affairs reports that Grantham is owed \$4,337,905.

The independent legal opinion obtained by the Trustee also reported that the security held by Grantham is valid and enforceable as against NICL and a Trustee.

## **PREFERRED CREDITORS**

### ***Employees***

We do not anticipate any preferred claims from employees.

### ***Landlords***

As reported, Elco operated from warehouses located in Ontario and British Columbia that were leased by NICL. As such, we do not anticipate any claims from Landlords.

## **UNSECURED CREDITORS**

The Statement of Affairs reports total claims of unsecured creditors of approximately \$8,835,862, including the estimated unsecured deficiency claims of secured creditors. Ultimately the amounts owing to unsecured creditors will be based on proofs of claim filed and admitted by the Trustee.

## **SALE OF ASSETS**

The Receiver, on behalf of DCD, will take steps to realize upon the various assets that are subject to the registered security.

## **OTHER MATTERS**

### ***Books and Records***

The Trustee has in its possession various records which are also available to the Receiver during the administration of the receivership.

### ***Insurance***

The Trustee confirmed that insurance coverage was in place as part of an overall policy insuring Grantham, DCD, NII, Elco, and others. The insurance policy is due to expiry on May 31, 2021.

### ***Legal Proceedings***

The Trustee has not commenced any legal proceedings, but as reported above, the Trustee obtained an independent legal review of the registered security held in favour of DCD and Grantham.

### ***Conservatory and Protective Measures***

The Trustee notified TD of the bankruptcy to protect the funds on deposit.

### ***Preferences, and Transactions at Under Value***

The Trustee will review the Company's books and records preceding the date of bankruptcy in order to ascertain whether or not any preferential payments and/or reviewable transactions have occurred within the last three months or, where related parties are involved, within the last twelve months.

### **Directive 5R – 3<sup>rd</sup> Party Guarantee**

As all of Elco's assets are subject to registered security interests, Grantham has indemnified the Trustee for its professional fees and the various costs incurred in administering the bankruptcy proceedings.

## ESTIMATED REALIZATION

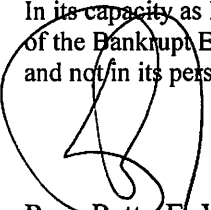
Given the estimated value of Eco's assets and the secured debt owing to Grantham and DCD, we do not anticipate that there will be any funds available for the claims of unsecured creditors.

This concludes the Trustee's Preliminary Report to Creditors.

DATED at the City of Vancouver, in the Province of British Columbia, this 14<sup>th</sup> day of October, 2020.

### **MNP Ltd.**

In its capacity as Licensed Insolvency Trustee  
of the Bankrupt Estate of Elco Fine Foods Ltd.  
and not in its personal or corporate capacity



Per: ~~Patty E.~~ Wood CPA, CGA, CIRP  
Senior Vice President