

MINUTES OF THE FIRST MEETING OF CREDITORS

In the matter of the bankruptcy of  
KMW Energy Inc.  
of the City of London  
in the Province of Ontario

Minutes of the first meeting of creditors held at Via Conference call:

Toll free number: +1 (877) 252-9279, Conference ID: 942 911 742#, on July 17, 2020 11:00 AM.

Present:

Sheldon Title  
Akhil Kapoor  
Eric Rosen  
Mario Leveille  
Thomas Lambert  
Jake Decrow  
Tyler Knox  
Joe Whelan/Ashley Carter  
Hina Bhatt  
Luc Alvarez (for part of the meeting)

Representing

Trustee  
Trustee  
Bankrupt Corporation  
2751602 Ontario Inc.  
Counsel to 2751602 Ontario Inc.  
Trask-Decrow Machinery, Inc.  
Schust Development Inc.  
Scheuch GmbH  
Franklin Empire  
Luc Alvarez

Sheldon Title acted as the Chairperson of the meeting. The Chairperson informed the meeting that pursuant to section 105(1) of the Bankruptcy and Insolvency Act, he would act as Chairperson and would decide any questions or disputes arising at the meeting and from such discussion any creditor may appeal to the court. The Chairperson examined the proofs of claim and established the quorum. The Chairperson declared the meeting legally constituted and called the meeting to order.

The Chairperson advised that the main purpose of the meeting is:

1. To consider the affairs of the Bankrupt
2. Affirm the appointment of the Trustee or substitute another in place thereof;
3. To appoint Inspectors; and
4. To give such further directions to the Trustee.

The Chairperson tabled the following documents:

- statement of affairs

- Trustee's preliminary report (available for downloading from the Trustee's website)
- Trustee's affidavit calling first meeting of creditors
- Trustee's proof of publication

The Trustee presented the Preliminary Report and there was a general discussion.

### **Question Period and Discussion**

The Trustee summarized the contents of the Preliminary Report. Following the Trustee's report, the Chairperson asked if there were any questions. There were initially no questions raised.

After the formal part of the meeting, Luc Alvarez asked the Trustee to provide information concerning the purchase price in respect of 2751602 Ontario Inc.'s purchase of KMW's assets. The Trustee detailed for the meeting the particulars of 2751602 Ontario Inc.'s secured claim against KMW's assets and then advised that the purchase price consisted of the aggregate of the following:

- a. the amount of \$500M;
- b. any and all amounts secured by the DIP Charge;
- c. any and all amounts secured by the Administration Charge at Closing;
- d. any and all amounts secured by the D&O Charge; and
- e. any and all other amounts and claims which rank in priority to the Secured Indebtedness (as defined above), if any, including, without limitation, on account of unremitted source deductions.

Accordingly, the Trustee advised that the purchase price did not result in there being a distribution to KMW's unsecured creditors. The Trustee advised that further particulars concerning the transaction with 2751602 Ontario Inc. could be found in the Proposal Trustee's reports which could be found on the Trustee's website.

Luc Alvarez also asked for a listing of the Excluded Assets, as such term was defined in the Trustee's Preliminary Report. The Trustee advised Luc Alvarez that he would send the list of excluded assets to him via email but noted that 2751602 Ontario Inc. had the discretion to acquire all of KMW's assets if it was inclined to and excluded these assets.

### **Appointment of Trustee**

It was moved by: Mario Leveille  
seconded by: Tyler Knox  
that MNP Ltd. be affirmed as Trustee. Carried unanimously.

**Appointment of Inspectors**

Prior to voting on the appointment of Inspectors, the Trustee briefly reviewed the role of the Inspector. The Trustee then asked whether anyone wished to put forward nominees.

It was moved by: Mario Leveille  
seconded by: Hina Bhatt

That there be three (3) Inspectors, and those Inspectors are:

	Name
1.	Mario Leveille: <a href="mailto:mario.levaille@norarc.com">mario.levaille@norarc.com</a>
2.	Hina Bhatt: <a href="mailto:Hina.bhatt@franklinempire.com">Hina.bhatt@franklinempire.com</a>
3.	Tyson Knox: <a href="mailto:tknox@schust.com">tknox@schust.com</a>

**Other Directions**

The Trustee asked if there any issues that the Creditors wished to address. The Creditors did not have any further directions to provide with respect to the administration of the estate.

At this point, Thomas Lambert asked the Trustee if the issue of the “s.38 claim” was going to be addressed at the creditors meeting or a subsequent Inspectors meeting. The Trustee advised that it preferred to address it at the Inspectors meeting. It then explained to the attendees that notwithstanding the Trustee authorized Loopstra Nixon LLP to issue and serve a Notice of Action on behalf of the estate in respect of the Warranty Claim, naming, among others, Chola as defendants therein, for the purpose of preserving the Warranty Claim, that the creditors would then likely ask the Trustee to prosecute the claim. The Trustee advised that regardless of the merits of the Warranty Claim, it did not have the funds to litigate the claim and was not inclined to litigate a claim governed by Indian law. Accordingly, the Trustee explained that the purpose of s. 38 is to ensure that the bankrupt’s assets are preserved for the benefit of creditors. It provides the mechanism for creditors to proceed with an action when the trustee refuses or fails to act; thereby ensuring that assets of the bankrupt, which may otherwise go unrecovered, are available to creditors willing to finance the litigation.

**Adjournment**

There being no further business

It was moved by: Mario Leveille

seconded by: Tyson Knox

that the meeting be adjourned at approximately 11:45 A.M.



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Chairperson

July 19, 2020  
Date