

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[COMMERCIAL LIST]**

**IN THE MATTER OF THE BRANKRUPTCY OF
KMW ENERGY INC.
OF THE CITY OF LONDON IN THE PROVINCE OF ONTARIO**

**MOTION RECORD OF 2751602 ONTARIO INC.
(returnable August 4, 2020 @ 12:00noon via “ZOOM”)**

July 30, 2020

LOOPSTRA NIXON LLP
135 Queens Plate Drive – Suite 600
Toronto, ON M9W 6V7

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*Lawyers for the Applicant, 2751602 Ontario
Inc.*

TO: WEISZ FELL KOUR LLP
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Toronto, ON M5X 1C9

Caitlin Fell
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*Lawyers for MNP Ltd., trustee in bankruptcy
of the bankrupt estate of KMW Energy Inc.*

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[COMMERCIAL LIST]

IN THE MATTER OF THE BRANKRUPTCY OF
KMW ENERGY INC.
OF THE CITY OF LONDON IN THE PROVINCE OF ONTARIO

NOTICE OF MOTION

2751602 Ontario Inc. (“**275Co.**”), a creditor in these proceedings, will make a motion (the “**Motion**”), without notice, to a judge of the Commercial List on Tuesday, August 4, 2020 at 12:00 noon, or as soon after that time as the Motion can be heard, which motion shall be heard virtually by “Zoom” and may be attended online by accessing the direct videoconference link at <https://us02web.zoom.us/j/6261459407>, which link shall be emailed to the members of the Service List.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order, if necessary, abridging the time for giving notice of this motion and validating the manner of service thereof;
2. an Order directing the within proceeding be listed on, and to be heard by a Judge presiding over, the Commercial List;
3. an Order pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”), substantially in the form attached hereto as Appendix “A” (the “**MT Draft Order**”), including:
 - (a) authorizing 275Co. to commence and continue a claim of the bankrupt estate of KMW Energy Inc. (the “**Bankrupt**”) against Miller Thomson LLP for, *inter alia*, negligence, breach of fiduciary obligations and breach of contract in respect of legal

services provided regarding the negotiation and execution of an agreement for Standard General Conditions for Procurement Contracts between the Bankrupt, as seller, and Robbins Lumber Inc., as the buyer, for the Georges River Project in Seasmont, Maine, United States (collectively, the “**MT Claim**”);

(b) authorizing 275Co. and MNP Ltd., in its capacity as trustee in bankruptcy of the Bankrupt’s estate (in such capacity, the “**Trustee**”), to execute an assignment substantially in the form attached as Schedule “A” to the MT Draft Order; and

(c) granting other relief ancillary to the foregoing;

4. an Order pursuant to section 38 of the *BIA*, substantially in the form attached hereto as Appendix “B” (the “**Chola Draft Order**”), including:

(a) authorizing 275Co. to continue prosecuting the claims advanced by the Bankrupt against Chola Turbo Machinery International Private Limited also known as Chola Turbo Machinery International Pvt. Ltd. and Buffalo Turbines Inc. in the court proceeding identified by file number CV-20-00643727-0000, including but not limited to claims for: (i) breach of contract, (ii) breach of guarantee, (iii) breach of warranty, (iv) negligence, (v) negligent misrepresentation, (vi) unjust enrichment, (vii) a claim under the *Sales of Goods Act*, R.S.O. 1990, c. S. 1 and (viii) a claim for contribution and indemnity for all amounts that KMW Energy Inc. is required to pay Georges River Energy, LLC (collectively, the “**Chola Claims**”);

(b) authorizing 275Co. and the Trustee to execute an assignment substantially in the form attached hereto as Schedule “A” of the Chola Draft Order; and

(c) granting other relief ancillary to the foregoing;

THE GROUNDS FOR THE MOTION ARE:

1. On June 26, 2020, the Bankrupt was deemed bankrupt and MNP Ltd. was appointed as trustee of the Bankrupt’s estate;

2. 275Co. is a creditor of the Bankrupt in the amount of \$2,324,479.24 in respect of a debt initially owed by the Bankrupt to 462673 Ontario Inc. o/a Nor-Arc (“Nor-Arc”) which was assigned by Nor-Arc to 275Co. on April 20, 2020;
3. the Trustee has confirmed that it does not have funding to, and therefore does not intend to, pursue the MT Claim or the Chola Claims;
4. 275Co. wishes to pursue the MT Claim and Chola Claims in its own name, at its own risk and for its own benefit to the extent of its debt and any related costs, subject to any other creditors of the Bankrupt also seeking to participate in prosecuting the claims;
5. The matter is urgent as:
 - (a) the Bankrupt issued a notice of action in respect of the Chola Claims on July 9, 2020 and therefore the time to issue a statement of claim in respect of the Chola Claims is about to expire; and
 - (b) there may be a limitation period expiring in respect of the MT Claims;
6. section 38 of the *BIA*;
7. the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368;
8. Rules 1.04, 2.02 and 16.08 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
9. such other grounds as counsel may advise and this Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. the Affidavit of Mario Leveille, sworn July 23, 2020;
2. such further and other evidence as counsel may advise and this Honourable Court deems appropriate.

Date: July 30, 2020

LOOPSTRA NIXON LLP
135 Queens Plate Drive, Suite 600
Toronto, ON M9W 6V7

Thomas P. Lambert (LSO No.: 70354T)
t. 416.748.5145
f. 416.746.8319
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Lawyers for 2751602 Ontario Inc.

TO: WEISZ FELL KOUR LLP
100 King Street West – Suite 5600
Toronto, ON M5X 1C9

Caitlin Fell
Tel: (416) 613 8282
Fax: (416) 613 8290
Email: cfell@wfkllaw.ca

Lawyers for MNP Ltd., Trustee

TAB 1A

Appendix "A"

Court File No.: 35-2638322

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[COMMERCIAL LIST]

THE HONOURABLE) _____DAY, THE __th
)
JUSTICE) DAY OF AUGUST, 2020
)

IN THE MATTER OF THE BRANKRUPTCY OF
KMW ENERGY INC.
OF THE CITY OF LONDON IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION made by 2751602 Ontario Inc. ("**275Co.**"), a creditor of in above noted bankruptcy, for an Order pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**") was heard this day at 393 University Avenue, Toronto, Ontario.

UPON READING the Notice of Motion and the Affidavit of Mario Leveille sworn July 23, 2020, and upon hearing submissions of counsel for 275Co. and MNP Ltd. (the "**Trustee**"), in its capacity as trustee in bankruptcy of the estate of KMW Energy Inc. (the "**Bankrupt**") acknowledging that it does not intend to pursue a claim of the bankrupt estate against Miller Thomson LLP for, *inter alia*, negligence, breach of fiduciary obligations and breach of contract in respect of legal services relating to the negotiation and execution of an agreement for Standard General Conditions for Procurement Contracts between KMW Energy Inc. (the "**Bankrupt**") and Robbins Lumber Inc. for the Georges River Project in Seasmont, Maine, United States (collectively, the "**MT Claim**"),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged such that this motion is properly returnable today, and service upon those parties described in the affidavit of service of [REDACTED], sworn August [REDACTED], 2020, is hereby validated and further service of the Notice of Motion and Motion Record is hereby dispensed with.

JURISDICTION

2. **THIS COURT ORDERS** that the within proceeding be and hereby directed to be listed on, and to be heard by a judge presiding over, the Commercial List.

COMMENCEMENT AND CONTINUATION OF MT CLAIM

3. **THIS COURT ORDERS** that 275Co. be authorized, pursuant to section 38 of the *BIA*, to commence and continue the MT Claim in its own name and at its own expense.
4. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, 275Co. shall have the sole right to control the commencing and continuing prosecution of the MT Claim including the sole right to retain and instruct counsel and to make all decisions with respect to the prosecution of the MT Claim.

ASSIGNMENT BY TRUSTEE

5. **THIS COURT ORDERS AND DIRECTS** the Trustee to:
 - (a) execute an assignment substantially in the form appended hereto as Schedule "A" assigning all its right, title and interest in the MT Claim to 275Co., for the benefit of 275Co. and any Participating Creditor (*as hereinafter defined*);
 - (b) post a copy of this Order on its website as set out in paragraph 5 below.

NOTICE TO CREDITORS

6. **THIS COURT ORDERS AND DIRECTS** the Trustee to provide 275Co. with a list of the names and addresses of all creditors who have filed claims against the Bankrupt's estate within two days of the date of this Order.
7. **THIS COURT ORDERS** that notice (the "**Notice**") of the making of this Order upon the other creditors of the Bankrupt shall be deemed to be sufficiently served on the date of mailing or posting described below, as applicable (the "**Date of Service**") by:
 - (a) mailing, within 7 days of the date of this Order, a letter substantially in the form appended hereto as Schedule "B" (the "**Notice Letter**") in a prepaid addressed envelope by regular registered mail to each of the said creditors who have proved claims against the bankrupt estate at their place of business or address as shown in their proof of claim; and,
 - (b) posting a copy of this order at: <https://mnpdebt.ca/en/corporate/engagements/kmw-energy-inc>.

CREDITOR OPTION TO PARTICIPATE

8. **THIS COURT ORDERS** that, subject to the terms of this Order, all creditors of the Bankrupt shall be entitled to participate in the MT Claim by delivering written notice confirming such participation, by email or fax, to 275Co's solicitors, Loopstra Nixon LLP ("**Litigation Counsel**") within ten (10) days of the Date of Service, directed as follows:

LOOPSTRA NIXON LLP
135 Queens Plate Drive, Suite 600
Toronto, Ontario M9W 6V7

Michael B. McWilliams
t. (416) 746-4710
f. (416) 746-8319
e. mmcwilliams@loonix.com

RE: MT CLAIM PARTICIPATION

9. **THIS COURT ORDERS** that, subject to the terms of this Order, all creditors electing to participate in the MT Claim by satisfying the requirements of Paragraph 8 hereof (each a

“Participating Creditor”; and, collectively, with 275Co, the **“Participating Creditors”**) shall:

- (a) in addition to any dividends to which they may be entitled to out of the Bankrupt’s other assets, be entitled to share in all Benefits (*as defined below*) derived from the MT Claim on a *pro rata* basis among the Participating Creditors based on the proven claims of the Participating Creditors in the estate of the Bankrupt (a **“Pro Rata Share”**); and
- (b) shall be obligated to fund their *Pro Rata* share of the all costs of the MT Claim (including, without limitation, any existing or future monetary retainer required by counsel to 275Co.) as required by the terms of this order.

10. **THIS COURT ORDERS** that if any creditor or creditors fail to participate in MT Claim as provided for in paragraph 8 within ten (10) days of the Date of Service, they shall thereafter be excluded from participating in the Benefits.

BENEFITS OF MT CLAIM

11. **THIS COURT ORDERS** that, subject to the terms of this Order, in addition to any dividends to which they may be entitled to out of the Bankrupt’s other assets, all benefits derived from the MT Claim (including any costs payable by Miller Thomson, the **“Benefits”**) shall vest exclusively in Participating Creditors (including 275Co.) up to the amount of such Participating Creditor’s proven claim free and clear of any and all of the estates, titles, rights, benefits, interests, claims, liens, hypothecs, security interests, trusts or deemed trusts (whether statutory or otherwise), assignments, executions, judgments, options, agreements, rights of distress, legal, equitable or contractual set-offs, options, adverse claims, levies, agreements, taxes, disputes, debts, charges, mortgages, encumbrances, claims provable or any other rights or claims howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, by or of any and all other persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities and tribunals and all other natural persons or corporations, whether acting in their

capacity as principals or as agents, trustees, executors, administrators or other legal representatives, provided that:

(a) the Benefits shall be applied by 275Co as follows:

- i. first, to pay or reimburse 275Co. for the actual costs of bringing the Motion;
- ii. second, to pay or reimburse 275Co. for the legal fees and costs incurred prior to the date of this Order with respect to determining the viability of the MT Claims;
- iii. third, to pay or reimburse 275Co. and any Participating Creditor for the costs of commencing and continuing the MT Claim;
(items i, ii, and iii are defined herein as “Costs”);
and
- iv. fourth, the remaining balance of the Benefits (if any) shall be distributed to the each Participating Creditor on account of its *Pro Rata* Share of such balance, up to the amount of such Participating Creditor’s proven claim of in the estate of the Bankrupt, after deducting the amount of any dividend distribution to such creditor by the Trustee from the Bankrupt’s estate;

(b) that the total amount recovered by 275Co. and any Participating Creditor shall not exceed the aggregate of the amount of their respective proven claims in the estate of the Bankrupt together with the costs of bringing this Motion, the costs incurred prior to the date of this Order relating to determining the viability of the MT Claim, and costs of commencing and prosecuting the MT Claim; and

(c) nothing in this order or any action taken pursuant to this order shall be determinative of the standing of any party other than 275Co. as a creditor of the Bankrupt and, in the event that the claim of a Participating Creditor is subsequently determined to be invalid, then that party shall only be entitled to have their costs of commencing and continuing the MT Claim reimbursed out of the Benefits and, for greater certainty, they shall not be entitled to any other share of the Benefits or any recourse against 275 Co. or any other Participating Creditor.

SURPLUS BENEFIT REMITTED TO TRUSTEE

12. **THIS COURT ORDERS** that in the event there is a surplus after paying or reimbursing the Costs and any Participating Creditor, if any, entitled to participate in the MT Claim as determined by paragraph 8 hereof, such surplus shall be remitted to the Trustee for the benefit of the Bankrupt's estate

FUNDING OF COSTS

13. **THIS COURT ORDERS** that Litigation Counsel shall invoice the Participating Creditors their *Pro Rata* share of the Costs on a regular basis (each an "**Invoice**"), and a Participating Creditor shall fund its *Pro Rata* Share of the Costs by paying the Invoice delivered to such Participating Creditor within thirty (30) days of the date of such Invoice.

14. **THIS COURT ORDERS** that if a Participating Creditor at any time fails to pay its *Pro Rata* Share of the costs and expenses in accordance with paragraph 13 of this Order, Litigation Counsel shall send a written notice of default to such Participating Creditor (a "**Notice of Default**"). Notwithstanding any other provision of this Order, if a Participating Creditor fails at any time to pay the amount outstanding set out in the Notice of Default within ten (10) days after receiving a Notice of Default, such Participating Creditor shall be deemed to be a non-participating creditor and shall not be entitled to any Benefits of the MT Claim, including, without limitation, reimbursement of costs and expenses paid prior to a Notice of Default.


GENERAL

15. **THIS COURT ORDERS AND DECLARES** that Litigation Counsel and the Trustee shall incur no liability or obligation in carrying out the provisions of this Order and making the distributions Litigation Counsel is directed to make in accordance with this Order and that Litigation Counsel shall be and is hereby released from any liability in making each such distribution as directed hereunder, and no action or other proceeding shall be commenced against Litigation Counsel as a result of or relating in any way to the making of distributions in accordance with this Order

16. **THIS COURT ORDERS AND DECLARES** that this order is effective from today's date and is enforceable without the need for entry or filing.

SCHEDULE "A"

Assignment Agreement

This Assignment made this  day of July, 2020


B E T W E E N:

MNP Ltd.,
in its capacity as trustee in bankruptcy of the estate
of KMW ENERGY INC.
(the "Assignor")

- and -

2751602 ONTARIO INC.
(the "Assignee")

WHEREAS MNP Ltd. was appointed trustee in bankruptcy (the "**Trustee**") of the bankrupt estate of KMW Energy Inc. (the "**Bankrupt**") on June 26, 2020;

AND WHEREAS the Assignee obtained an order on  (the "**Order**") authorizing it to commence and continue a claim of the bankrupt estate against Miller Thomson LLP for, *inter alia*, negligence, breach of obligations and breach of contract in respect of legal services relating to the negotiation and execution of an agreement for Standard General Conditions for Procurement Contracts between the Bankrupt, as seller, and Robbins Lumber Inc., as the buyer, for the Georges River Project in Seasmont, Maine, United States (collectively, the "**MT Claim**");

AND WHEREAS the Order orders and directs the Assignor to execute this assignment assigning all of its right, title and interest in the MT Claim to the Assignee;

NOW THEREFORE pursuant to the Order and the directions contained therein, the Assignor agrees with Assignee as follows:

1. The Assignor hereby assigns absolutely to the Assignee and such other creditors who notify the Assignee's solicitors of their agreement to contribute to the costs and expenses described in paragraph 6 of the Order, all of the estate, right, title, interest, claim and demand whatsoever both at law and in equity, including any document in support thereof

and any and all rights, claims, demands and causes of action which the Assignor has in the MT Claim but without recourse of any kind whatsoever to the Assignor.

2. The Assignor represents and warrants to the Assignee that it has not previously pledged, assigned or encumbered the MT Claim.
3. Subject to the representation and warranty in paragraph 2 hereof, the Assignor makes no representation or warranty of any kind whatsoever with respect to the MT Claim. Without limiting the foregoing, the Assignor makes no representation or warranty of any kind whatsoever with respect to the validity, enforceability, existence, collectability, value or any other matter whatsoever with respect to the MT Claim.
4. Until such time as the Assignor is discharged as Trustee of the Bankrupt, the Assignor agrees to execute and deliver to the Assignee, at the Assignee's expense, all such further documents and instruments as the Assignee may reasonably require to more fully vest it with the Assignor's rights in the MT Claim.

**MNP Ltd., in its capacity as trustee in
bankruptcy of the estate of KMW Energy Inc.
and not in its personal capacity**

Name:

Position:

SCHEDULE "B"

NOTICE LETTER

[See Attached]



SENT BY [INSERT METHOD OF DELIVERY]

[INSERT DATE]

To: **Attached List of Creditors**

Dear Sirs and Madams,

RE: **In the Matter of the Bankruptcy of KMW Energy Inc. (the "Bankrupt"), of the City of London in the Province of Ontario (Estate No.: 35-2638322)**

We are the solicitors for 2751602 Ontario Inc. ("**275Co.**"), a creditor of the above noted bankrupt estate. We have been instructed by our client to commence and continue a court proceeding against Miller Thomson LLP in respect of legal advice provided to the Bankrupt in relation to an agreement for Standard General Conditions For Procurement Contracts between the Bankrupt, as seller, and Robbins Lumber Inc., as buyer, for use by Georges River Energy, LLC (the "**MT Claim**").

On **[DATE]**, the Ontario Superior Court of Justice issued an order pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, authorizing 275Co. and any other creditor who chooses to join with it to commence and continue the MT Claim at its own expense and risk (the "**Order**"). Pursuant to the Order, MNP Ltd. in its capacity as trustee in bankruptcy of the Bankrupt (in such capacity, the "**Trustee**") has executed an assignment in favour of 275Co. assigning all of its right, title and interest in the subject matter of the MT Claim. A copy of the Order is enclosed.

If you wish to join in the MT Claim, you must complete and return this form to us within 10 days from the date of this letter, together with your retainer cheque made out to this firm in trust. The cheque should be in the amount of 25% of your claim against the Bankrupt or \$5,000.00, whichever is less. Such amount shall be held in trust, as security for payment of your final invoice. Nothing herein or in the Order restricts us from requesting and increase to such retainer amount, should the circumstances require the same.

If you fail to join the MT Claim within 10 days then you will be excluded from participating in the benefits, if any, of the MT Claim.

If we are successful in recovering money from the MT Claim, the money recovered will be applied in the following order:

- (i) first, to pay or reimburse 275Co. for the actual costs of bringing the section 38 motion;



- (ii) second, to pay or reimburse 275Co. for the legal fees and costs incurred prior to the date of the Order to determine the viability of the MT Claim;
- (iii) third, to pay and reimburse 275Co. and any Participating Creditor for the actual costs of commencing and continuing the MT Claim;
- (iv) fourth, to 275Co. and any participating creditor on a pro rata basis, up to the amount of each of their respective proven claim after deducting the amount of any dividend distribution to them by the Trustee from the Bankrupt's estate; and
- (v) fifth, if there is any surplus remaining after items (i) – (iv) are fully paid then such surplus shall be paid to the Trustee for the benefit of the Bankrupt's estate.

In the course of commencing and continuing the MT Claim you will continue to be responsible for a *pro rata* share of the costs of the action, which will be invoiced monthly. Per the Order, if you fail to stay current on your obligation to contribute to costs, you will forfeit your chance to participate in this claim. Additionally, if the action is unsuccessful, you will be liable on a *pro rata* basis for any costs awarded against the plaintiff.

If you wish to join the MT Claim, please return this executed agreement together with your email address, which we will be exclusively using to communicate with you, and your retainer cheque to this firm within 10 days from the date of this letter.

Yours truly,

LOOPSTRA NIXON LLP

Per:

Michael B. McWilliams

MBM/tpj
Enclosure

[] [name of addressee] agrees to join in the proposed litigation described in this letter agreement and to be bound by the terms and conditions set out in this letter agreement and in the Order.

The amount of the addressee's claim against the Bankrupt is \$_____ and I enclose the addressee's retainer cheque payable to Loopstra Nixon LLP in trust for \$_____. The addressee undertakes to forward to Loopstra Nixon LLP confirmation of its claim once accepted by the Trustee; and, hereby authorizes the Trustee to release such information to Loopstra Nixon LLP, upon Loopstra Nixon LLP's written request to the Trustee.

The addressee acknowledges and agrees that in the event its claim is disallowed in whole or part by the Trustee of the Bankrupt, the final amount of the proven claim admitted by the Trustee shall be used to calculate its Pro Rata Share of any entitlements or obligations under the Order.



LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

The addressee hereby authorizes and directs Loopstra Nixon LPP to communicate with the addressee, for the purposes of these proceedings, solely via the email address below, or such other email address as the addressee may direct in writing.

Signature of Creditor or Authorized Signing Officer

EMAIL: _____

TAB 1B

Appendix "B"

Court File No.: 35-2638322

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[COMMERCIAL LIST]

THE HONOURABLE) _____DAY, THE __th
)
JUSTICE) DAY OF AUGUST, 2020
)



IN THE MATTER OF THE BRANKRUPTCY OF
KMW ENERGY INC.
OF THE CITY OF LONDON IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION made by 2751602 Ontario Inc. ("**275Co.**"), a creditor in the above noted bankruptcy, for an Order pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**") was heard this day at 393 University Avenue, Toronto, Ontario.

UPON READING the Notice of Motion and the Affidavit of Mario Leveille sworn July 23, 2020, and upon hearing submissions of counsel for 275Co. and MNP Ltd. (the "**Trustee**"), in its capacity as trustee in bankruptcy of the estate of KMW Energy Inc. (the "**Bankrupt**") acknowledging that it does not intend to continue the claims advanced by the Bankrupt against Chola Turbo Machinery International Private Limited also known as Chola Turbo Machinery International Pvt. Ltd. and Buffalo Turbines Inc. (collectively, the "**Defendants**") in the court proceeding identified by file number CV-20-00643727 (collectively, the "**Chola Claims**");

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged so that this motion is properly returnable today, and service upon those parties described in the affidavit of service of , sworn August , 2020, is

hereby validated and further service of the Notice of Motion and Motion Record is hereby dispensed with.

JURISDICTION

2. **THIS COURT ORDERS** that the within proceeding be and hereby directed to be listed on, and to be heard by a judge presiding over, the Commercial List.

CONTINUATION OF CHOLA CLAIM

3. **THIS COURT ORDERS** that 275Co. be authorized, pursuant to section 38 of the *BIA*, to continue the Chola Claims brought by the Bankrupt against Chola Turbo Machinery International Private Limited also known as Chola Turbo Machinery International Pvt. Ltd. and Buffalo Turbines Inc. as set out in the Notice of Action attached as Schedule "A".
4. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, 275Co. shall have the sole right to control the commencing and continuing prosecution of the MT Claim including the sole right to retain and instruct counsel and to make all decisions with respect to the prosecution of the Chola Claims.

ASSIGNMENT BY TRUSTEE

5. **THIS COURT ORDERS AND DIRECTS** the Trustee to:
 - (a) execute an assignment substantially in the form appended hereto as Schedule "B" assigning all of its right, title and interest in the Chola Claims to 275Co., for the benefit of 275Co. and any Participating Creditor (*as hereinafter defined*);
 - (b) post a copy of this Order on its website as set out in paragraph 5 below.

NOTICE TO CREDITORS

6. **THIS COURT ORDERS AND DIRECTS** the Trustee to provide 275Co. with a list of the names and addresses of all creditors who have filed claims against the Bankrupt's estate within two days of the date of this Order.
7. **THIS COURT ORDERS** that notice (the "**Notice**") of the making of this Order upon the other creditors of the Bankrupt shall be deemed to be sufficiently served on the date of mailing or posting described below, as applicable (the "**Date of Service**") by:
 - (a) mailing, within 7 days of the date of this order, a letter substantially in the form appended hereto as Schedule "C" (the "**Notice Letter**") in a prepaid addressed envelope by regular registered mail to each of the said creditors who have filed claims against the bankrupt estate at their place of business or address as shown in their proof of claim; and,
 - (b) posting a copy of this order at: <https://mnpdebt.ca/en/corporate/engagements/kmw-energy-inc>.

CREDITOR OPTION TO PARTICIPATE

8. **THIS COURT ORDERS** that, subject to the terms of this Order, all creditors of the Bankrupt shall be entitled to participate in the Chola Claims by delivering written notice confirming such participation, by email or fax, to 275Co.'s solicitors, Loopstra Nixon LLP ("**Litigation Counsel**") within ten (10) days of the Date of Service, directed as follows:

LOOPSTRA NIXON LLP
135 Queens Plate Drive, Suite 600
Toronto, Ontario M9W 6V7

Michael B. McWilliams
LSO No.: 47320R
t. (416) 746-4710
f. (416) 746-8319
e. mmcwilliams@loonix.com

RE: CHOLA CLAIMS PARTICIPATION

9. **THIS COURT ORDERS** that, subject to the terms of this Order, all creditors electing to participate in the Chola Claims by satisfying the requirements of paragraph 8 hereof (each a

“Participating Creditor”; and, collectively, with 275Co., the **“Participating Creditors”**) shall:

- (a) in addition to any dividends to which they may be entitled to out of the Bankrupt’s other assets, be entitled to share in all Benefits (*as defined below*) derived from the Chola Claims on a pro rata basis among the Participating Creditors based on the proven claims of the Participating Creditors in the estate of the Bankrupt (a **“Pro Rata Share”**); and
- (b) shall be obligated to fund their Pro Rata Share of all costs of the Chola Claims (including, without limitation, any existing or future monetary retainer required by counsel to 275Co.) as required by the terms of this order.

10. **THIS COURT ORDERS** that if any creditor or creditors fail to participate in the Chola Claims as provided for in paragraph 8 within ten (10) days of the Date of Service, they shall thereafter be excluded from participating in the Benefits.

BENEFITS OF THE CHOLA CLAIMS

11. **THIS COURT ORDERS** that, subject to the terms of this Order, in addition to any dividends to which they may be entitled to out of the Bankrupt’s other assets, all benefits derived from the Chola Claims (including any costs payable by the Defendants, the **“Benefits”**) shall vest exclusively in Participating Creditors (including 275Co.) up to the amount of such Participating Creditor’s proven claim free and clear of any and all of the estates, titles, rights, benefits, interests, claims, liens, hypothecs, security interests, trusts or deemed trusts (whether statutory or otherwise), assignments, executions, judgments, options, agreements, rights of distress, legal, equitable or contractual set-offs, options, adverse claims, levies, agreements, taxes, disputes, debts, charges, mortgages, encumbrances, claims provable or any other rights or claims howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, by or of any and all other persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities and tribunals and all other natural persons or corporations, whether acting in their

capacity as principals or as agents, trustees, executors, administrators or other legal representatives, provided that:

- (a) the Benefits shall be applied by 275Co. as follows:
 - i. first, to pay or reimburse 275Co. for the actual costs of bringing the Motion,
 - ii. second, to pay or reimburse 275Co. and any Participating Creditor for the actual costs of commencing and continuing the Chola Claims, and
 - iii. third, to 275Co. and any Participating Creditor up to the amount of each of their respective proven claim after deducting the amount of any dividend distribution to them by the Trustee from the Bankrupt's estate.(items i., ii, and iii are defined herein as "**Costs**")
- (b) that the total amount recovered by 275Co. and any Participating Creditor shall not exceed the amount of their respective proven claims in the estate of the Bankrupt together with the costs of bringing this Motion, and the costs of commencing and prosecuting the Chola Claims; and,
- (c) nothing in this order or any action taken pursuant to this order shall be determinative of the standing of any party other than 275Co. as a creditor of the Bankrupt and, in the event that the claim of a Participating Creditor is subsequently determined to be invalid, then that party shall only be entitled to have their costs of continuing the Chola Claims reimbursed out of the Benefits and, for greater certainty, they shall not be entitled to any other share of the Benefits or any recourse against 275Co. or any other Participating Creditor.

SURPLUS BENEFIT REMITTED TO TRUSTEE

12. **THIS COURT ORDERS** that in the event there is a surplus after paying or reimbursing the Costs and any Participating Creditor, if any, entitled to participate in the Chola Claims as determined by paragraph 8 hereof, such surplus shall be paid to the Trustee for the benefit of the Bankrupt's estate.

FUNDING OF COSTS

13. **THIS COURT ORDERS** that Litigation Counsel shall invoice the Participating Creditors their *pro rata* share of the Costs on a regular basis (each an "**Invoice**"), and a Participating

Creditor shall fund its *pro rata* share (based on the aggregate amount of the proven claims of 275Co. and Participating Creditors (the “**Pro Rata Share**”) of Costs by paying the Invoice delivered to such Participating Creditor within thirty (30) days of the date of such Invoice.

14. **THIS COURT ORDERS** that if a Participating Creditor at any time fails to pay its *pro rata* share of the costs and expenses in accordance with paragraph 13 of this Order, Litigation Counsel shall send a notice of default to such Participating Creditor (a “**Notice of Default**”). Notwithstanding any other provision of this Order, if a Participating Creditor fails at any time to pay the amount outstanding set out in the Notice of Default within ten (10) days after receiving a Notice of Default, such Participating Creditor shall be deemed to be a non-participating creditor and shall not be entitled to any Benefits of the Proceeding, including, without limitation, reimbursement of costs and expenses paid prior to a Notice of Default.

GENERAL

15. **THIS COURT ORDERS AND DECLARES** that Litigation Counsel and the Trustee shall incur no liability or obligation in carrying out the provisions of this Order and making the distributions Litigation Counsel is directed to make in accordance with this Order and Litigation Counsel shall be and is hereby released from any liability in making each such distribution as directed hereunder, and no action or other proceeding shall be commenced against Litigation Counsel as a result of or relating in any way to the making of distributions in accordance with this Order.
16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in India, to give effect to this Order and to assist 275Co., the Trustee and Litigation Counsel and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to 275Co., the Trustee and Litigation counsel as may be necessary or desirable to give effect to this Order.
17. **THIS COURT ORDERS AND DECLARES** that this order is effective from today’s date and is enforceable without the need for entry or filing.

SCHEDULE "A"

Notice of Action

[See Attached]



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued
Délivré par voie électronique : 09-Jul-2020
Toronto

KMW ENERGY INC.

Plaintiff

- and -

**CHOLA TURBO MACHINERY INTERNATIONAL PRIVATE LIMITED also known as
CHOLA TURBO MACHINERY INTERNATIONAL PVT. LTD.
and BUFFALO TURBINES INC.**

Defendants

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim

and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____

Issued by _____
Local Registrar

Address of Court Office:

330 University Avenue
Toronto, Ontario
M5G 1E6

TO: CHOLA TURBO MACHINERY INTERNATIONAL PRIVATE LIMITED
No.45/7,
5th Floor, Tradecentre,
Dickenson Road,
Bangalore – 560 042,
India.

AND TO: BUFFALO TURBINES INC.
380 Wellington St Tower B, 6th Floor
London, ON
N6A 5B5

CLAIM

1. The Plaintiff, KMW Energy Inc. (“KMW”) claims against the Defendants for:
 - a. damages in an as yet unascertained amount for breach of contract, breach of guarantee, breach of warranty, negligence, negligent misrepresentation, unjust enrichment and pursuant to the *Sales of Goods Act*, R.S.O. 1990, c. S. 1 (“*Sale of Goods Act*”) and for contribution and indemnity for all amounts that KMW is required to pay to George River Energy LLC (“GRE”), the full particulars of which KMW undertakes to provide before trial;
 - b. prejudgment and postjudgment interest on the above amounts in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - c. its costs of this action, together with harmonized sales tax, on a substantial indemnity scale; and,
 - d. such further and other relief as this Honourable Court deems just.

The Parties

2. KMW is a corporation incorporated pursuant to the laws of the province of Ontario with its registered head office in London, Ontario.
3. The Defendant, Buffalo Turbines Inc. (“Buffalo Turbines”), is a corporation incorporated pursuant to the laws of Canada, with its registered head office in London, Ontario.
4. The Defendant, Chola Turbo Machinery International Private Limited (“Chola”), is a corporation operating in India, with its corporate head office in Bangalore, India.

Background

5. In 2016, KMW was awarded a contract by GRE to supply an 8.5-megawatt multistage controlled extraction condensing turbine and accessories (“Turbine”).
6. KMW approached Buffalo Turbines to supply the Turbine.
7. Buffalo Turbines advised KMW that Chola would be the manufacturer of the Turbine.
8. It was agreed between KMW, Buffalo Turbines and Chola that, as a condition of KMW ordering the Turbine from Buffalo Turbines, Chola would be required to provide KMW directly with a corporate guarantee in the amount of \$392,370.00 USD (“Corporate Guarantee”), a performance guarantee in the amount of \$196,185.00 USD (“Performance Guarantee”) as well as a global commercial warranty (“Warranty”) with respect to the Turbine.
9. KMW purchased the Turbine from Buffalo Turbines and Chola delivered the Corporate Guarantee, the Performance Guarantee and the Warranty to KMW.
10. The Turbine was delivered to the construction site in Sears Mont, Maine, United States of America, in or around March of 2018.
11. GRE has alleged that the Turbine cannot perform as required.
12. Chola and Buffalo Turbines were notified of the alleged issues with the Turbine and KMW attempted to fix the alleged issues with the Turbine with the assistance of Buffalo Turbines and Chola.
13. Buffalo Turbines represented to KMW that Buffalo Turbines and Chola would be responsible for the costs associated with attempting to fix the alleged issues with the Turbine.

14. As of the date of this pleading, Buffalo Turbines and Chola have not compensated KMW for the costs incurred by KMW in its attempts to fix the alleged issues with the Turbine.
15. GRE is not satisfied with the Turbine and has demanded that KMW replace the Turbine, which is estimated to cost in excess of \$5,000,000.00 USD.
16. KMW denies any liability to GRE whatsoever.
17. KMW made demand to Chola pursuant to the Performance Guarantee, the Corporation Guarantee and the Warranty.
18. KMW issued a legal notice to Chola with respect to the Performance Guarantee on or about June 19, 2020.
19. As of the date of this pleading, Chola has not indemnified or agreed to indemnify KMW pursuant to the Corporate Guarantee, the Performance Guarantee or the Warranty.
20. As a result of the breaches of contract, breaches of warranty, breaches of guarantee, negligence, negligent misrepresentation, unjust enrichment and breaches of the *Sales of Goods Act*, by Buffalo Turbines and Chola, KMW has suffered or will suffer damages in an as yet unascertained amount, the full particulars of which KMW undertakes to advise before trial.
21. KMW also claims full contribution and indemnity from Buffalo Turbines and Chola for any amounts it pays to GRE on account of GRE's claims.
22. Chola may, without a court order, be served outside Ontario pursuant to sections 17.02(f) and 17.02(g) of the *Rules of Civil Procedure* because the proceeding consists of claims against it in respect of a contract that was made in Ontario, in respect of a contract where a breach of the contract has been committed in Ontario and in respect of a tort committed in Ontario.

23. KMW proposes that this action be tried at Toronto.

DATE: July 8, 2020

LOOPSTRA NIXON LLP

Barristers and Solicitors

135 Queens Plate Drive

Suite 600

Toronto, Ontario

M9W 6V7

Michael B. McWilliams

LSO# 47320R

Tel: (416) 746-4710

Fax: (416) 746-8319

Email: mmcwilliams@loonix.com

Lawyers for the Plaintiff

KMW ENERGY INC. vs

(Plaintiff)

CHOLA TURBO MACHINERY INTERNATIONAL ET AL
(Defendants)

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

NOTICE OF ACTION

LOOPSTRA NIXON LLP
Barristers and Solicitors
135 Queens Plate Drive
Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams

LSO#47320R

Tel: (416) 746-4710


Fax: (416) 746-8319

Email: mmcwilliams@loonix.com

Lawyers for the Plaintiff

SCHEDULE "B"

Assignment Agreement

This Assignment made this  day of July, 2020


B E T W E E N:

MNP Ltd.,
in its capacity as trustee in bankruptcy of the estate
of KMW ENERGY INC.
(the "Assignor")

- and -

2751602 ONTARIO INC.
(the "Assignee")

WHEREAS MNP Ltd. was appointed trustee in bankruptcy (the "**Trustee**") of the bankrupt estate of KMW Energy Inc. (the "**Bankrupt**") on June 26, 2020;

AND WHEREAS the Assignee obtained an order on  (the "**Order**") to continue prosecuting the claims advanced against Chola Turbo Machinery International Private Limited also known as Chola Turbo Machinery International Pvt. Ltd. and Buffalo Turbines Inc. in the court proceeding identified by file number CV-20-00643727-0000, including but not limited to claims for: (i) breach of contract, (ii) breach of guarantee, (iii) breach of warranty, (iv) negligence, (v) negligent misrepresentation, (vi) unjust enrichment, (vii) a claim under the Sales of Goods Act, R.S.O. 1990, c. S. 1 and (viii) a claim for contribution and indemnity for all amounts that KMW Energy Inc. is required to pay Georges River Energy LLC (collectively, the "**Chola Claims**");

AND WHEREAS the Order orders and directs the Assignor to execute this assignment assigning all of its right, title and interest in the subject matter of the Chola Claims to the Assignee;

NOW THEREFORE pursuant to the Order and the directions contained therein, the Assignor agrees with Assignee as follows:

1. The Assignor hereby assigns absolutely to the Assignee and such other creditors who notify the Assignee's solicitors of their agreement to contribute to the expenses and costs outlined in section 6 of the Order, all of the estate, right, title, interest, claim and demand whatsoever both at law and in equity, including any document in support thereof and any and all rights,

claims, demands and causes of action which the Assignor has in the Chola Claims but without recourse of any kind whatsoever to the Assignor.

2. The Assignor represents and warrants to the Assignee that it has not previously pledged, assigned or encumbered the Chola Claims.
3. Subject to the representation and warranty in paragraph 2 hereof, the Assignor makes no representation or warranty of any kind whatsoever with respect to the Chola Claims. Without limiting the foregoing, the Assignor makes no representation or warranty of any kind whatsoever with respect to the validity, enforceability, existence, collectability, value or any other matter whatsoever with respect to the Chola Claims.
4. Until such time as the Assignor is discharged as Trustee of the Bankrupt, the Assignor agrees to execute and deliver to the Assignee at the Assignee's expense all such further documents and instruments as the Assignee may reasonably require to more fully vest it with the Assignor's rights in the Chola Claims.

**MNP Ltd., in its capacity as trustee in
bankruptcy of the estate of KMW Energy Inc.
and not in its personal capacity**

Name:

Position:

SCHEDULE "C"

NOTICE LETTER

[See Attached]



Michael B. McWilliams
*Michael B. McWilliams Professional Corporation
Tel: (416) 748-4766
Email: mmcwilliams@loonix.com

SENT BY [INSERT METHOD OF DELIVERY]

[INSERT DATE]

To: **Attached List of Creditors**

Dear Sirs and Madams,

RE: **In the Matter of the Bankruptcy of KMW Energy Inc. (the "Bankrupt"), of the City of London in the Province of Ontario (Estate No.: 35-2638322)**

We are the solicitors for 2751602 Ontario Inc. ("**275Co.**"), a creditor of the above noted bankrupt estate. We have been instructed by our client to continue the court proceeding brought by the Bankrupt against Chola Turbo Machinery International Private Limited also known as Chola Turbo Machinery International Pvt. Ltd. and Buffalo Turbines Inc. (the "**Chola Claims**"). A copy of the issued Notice of Action in respect of the Chola Claims is enclosed.

On **[DATE]**, the Ontario Superior Court of Justice issued an order pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, authorizing 275Co. and any other creditor who chooses to join with it to continue the Chola Claims at their own expense and risk (the "**Order**"). Pursuant to the Order, MNP Ltd. in its capacity as trustee in bankruptcy of the Bankrupt (in such capacity, the "**Trustee**") has executed an assignment in favour of 275Co. assigning all of its right, title and interest in the subject matter of the Chola Claims. A copy of the Order is enclosed.

If you wish to join in the Chola Claims, you must complete and return this form to us within 10 days from the date of this letter, together with your retainer cheque made out to this firm in trust. The cheque should be in the amount of 25% of your claim against the Bankrupt or \$5,000.00, whichever is less. If you fail to join the Chola Claims within 10 days then you will be excluded from participating in the benefits, if any, of the Chola Claims.

If we are successful in recovering money from the Chola Claims, the money recovered will be applied in the following order:

- (i) first, to pay or reimburse 275Co. for the actual costs of bringing the section 38 motion;
- (ii) second, to pay or reimburse 275Co. and any participating creditor for the actual costs of commencing and continuing the Chola Claims;



LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

(iii) third, to 275Co. and any participating creditor up to the amount of each of their respective proven claim after deducting the amount of any dividend distribution to them by the Trustee from the Bankrupt's estate; and

(iv) fourth, if there is any surplus remaining after items (i) – (iii) are fully paid then such surplus shall be paid to the Trustee for the benefit of the Bankrupt's estate.

In the course of continuing the Chola Claims you will continue to be responsible for a *pro rata* share of the costs of the action. If the action is unsuccessful, you will be liable on a *pro rata* basis for any costs awarded against the plaintiff.

If you wish to join the Chola Claims, please return this executed agreement with your email address, which we will be exclusively using to communicate with you, and your retainer cheque to this firm within 10 days from the date of this letter.

Yours truly,

LOOPSTRA NIXON LLP

Per:

Michael B. McWilliams

MBM/tpl
Enclosure

[] [name of addressee] agrees to join in the proposed litigation described in this letter agreement and to be bound by the terms and conditions set out in this letter agreement and in the Order.

The amount of the addressee's claim against the Bankrupt is \$_____ and I enclose the addressee's retainer cheque payable to Loopstra Nixon LLP in trust for \$_____. The addressee undertakes to forward to Loopstra Nixon LLP confirmation of its claim once accepted by the Trustee; and, hereby authorizes the Trustee to release such information to Loopstra Nixon LLP, upon Loopstra Nixon LLP's written request to the Trustee.

The addressee acknowledges and agrees that in the event its claim is disallowed in whole or part by the Trustee of the Bankrupt, the final amount of the proven claim admitted by the Trustee shall be used to calculate its Pro Rata Share of any entitlements or obligations under the Order.

The addressee hereby authorizes and directs Loopstra Nixon LPP to communicate with the addressee, for the purposes of these proceedings, solely via the email address below, or such other email address as the addressee may direct in writing.

Signature of Creditor or Authorized Signing Officer

EMAIL: _____

**IN THE MATTER OF THE BRANKRUPTCY OF KMW
ENERGY INC. OF THE CITY OF LONDON IN THE
PROVINCE OF ONTARIO**

Court File No.: 35-2638322

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[Commercial List]

Proceedings commenced at Toronto

NOTICE OF MOTION
(returnable August 4, 2020 @ 12:00noon via
“ZOOM”)

LOOPSTRA NIXON LLP
135 Queens Plate Drive, Suite 600
Toronto, ON M9W 6V7

Thomas P. Lambert
LSO No.: 70354T

t. 416.748.5145

f. 416.746.8319

e. tlambert@loonix.com

Lawyers for 2751602 Ontario Inc.

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[COMMERCIAL LIST]**

**IN THE MATTER OF THE BRANKRUPTCY OF
KMW ENERGY INC.
OF THE CITY OF LONDON IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF MARIO LEVEILLE
(sworn July 23, 2020)**

I, **MARIO LEVEILLE**, of the City of Earlton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the president of 2751602 Ontario Inc., a creditor of the Estate of KMW Energy Inc. (the "**Bankrupt**"). As such, I have personal knowledge of the matters to which I hereinafter depose, except where my knowledge is based upon information provided to me by others. In such circumstances, I have stated the source of my information and verily believe it to be true.

2. I swear this affidavit in support of a motion (the "**Motion**") brought by 275Co. for orders pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**"), authorizing 275Co. to:
 - (i) commence and continue a claim against Miller Thomson LLP for, *inter alia*, negligence, breach of fiduciary obligations and breach of contract in respect of legal services provided during the negotiation and execution of an agreement for Standard General Conditions for Procurement Contracts between KMW Energy Inc. (the "**Bankrupt**"), as seller, and Robbins Lumber Inc., as the buyer, for the

Georges River Project in Seasmont, Maine, United States (collectively, the “**MT Claim**”); and

- (a) continue prosecuting the claims made by the Bankrupt against Chola Turbo Machinery International Private Limited also known as Chola Turbo Machinery International Pvt. Ltd. (“**Chola**”) and Buffalo Turbines Inc. in the court proceeding identified by file number CV-20-00643727-0000, including but not limited to claims for: (i) breach of contract, (ii) breach of guarantee, (iii) breach of warranty, (iv) negligence, (v) negligent misrepresentation, (vi) unjust enrichment, (vii) a claim under the Sales of Goods Act, R.S.O. 1990, c. S. 1 and (viii) a claim for contribution and indemnity for all amounts that KMW Energy Inc. is required to pay Georges River Energy LLC (collectively, the “**Chola Claims**”);

Background

3. The Bankrupt is a company which carried on business as a designer, developer and supplier of components of biomass combustion system boilers and heaters.
4. On April 11, 2020, the Bankrupt filed a Notice of Intention to Make a Proposal (an “**NOI**”) pursuant to s. 50.4 of the *BIA* (the “**NOI Proceedings**”) and MNP Ltd. was named proposal trustee in the NOI Proceedings. A copy of the certificate of filing of the NOI is attached hereto and marked as Exhibit “A”.
5. On June 26, 2020, the Bankrupt was deemed to have filed an assignment in bankruptcy, having failed to file a proposal within the timelines following the filing of a notice of intention to make a proposal under the *BIA*, and MNP Ltd. was appointed trustee of the Bankrupt’s estate (in such capacity, the “**Trustee**”). Attached hereto and marked as Exhibit “B” is a copy of the Notice of Bankruptcy I received from the Trustee advising me of the Bankrupt’s bankruptcy.
6. 275Co. is a corporation incorporated pursuant to the laws of the Province of Ontario and is the purchaser of a debt (the “**Debt**”) initially owed by the Bankrupt to 462673 Ontario Inc. o/a Nor-Arc Steel Fabricators (“**Nor-Arc**”). Attached hereto and marked as Exhibit “C” is a

copy of the Assignment of Indebtedness between Nor-Arc, as assignor, and 275Co, as assignee.

7. By reason of its acquisition of the Debt, 275Co. has a provable claim in the Bankrupt's estate in the amount of \$2,324,479.24. Attached hereto and marked as Exhibit "D" is a copy of 275Co.'s proof of claim dated July 15, 2020, as filed with the Trustee.
8. Based on my review of the affidavit of Eric Rosen ("**Mr. Rosen**"), sworn April 24, 2020 (the "**Rosen Affidavit**") and filed in the NOI Proceedings, I understand the Bankrupt's financial troubles at the time of the NOI were largely attributable to a problematic contract (the "**GRE Contract**") the Bankrupt had with one of its customers, Georges River Energy, LLC ("**GRE**"). Both claims which 275Co. seeks to have assigned to it through the section 38 orders relate to this problematic contract. Attached hereto and marked as Exhibit "E" is a copy of Rosen Affidavit, without exhibits (the "**Rosen Affidavit**").

The Chola Claims

9. In the Rosen Affidavit, Mr. Rosen provides the following information regarding the GRE Contract which, as hereinafter explained, is the basis for the Chola Claims:

29. At GRE's request, KMW sought out new suppliers of turbines to reduce the cost of the GRE Project. As a result, KMW contracted with a company Buffalo Turbine based in Brampton, Ontario for the supply of a turbine manufactured in India to be used for the GRE Project. KMW had no existing relationship with this manufacturer.
 30. The turbine was delivered in April 2018 and the biomass energy system was assembled through the spring, summer and fall of 2018. The turbine did not function as required by GRE. From July 2018 to March 2020, KMW spent approximately US\$1.688 million of its working capital in attempting to repair the turbine.
 31. Notwithstanding the significant time and money expended by KMW, the turbine still does not function properly.
10. The turbine, which as Mr. Rosen attests did not function as required, was supplied by Chola and, as a result, the Bankrupt's estate may have claims against Chola for: (i) breach of contract, (ii) breach of guarantee, (iii) breach of warranty, (iv) negligence, (v) negligent misrepresentation, (vi) unjust enrichment, (vii) a claim under the Sales of Goods Act,

R.S.O. 1990, c. S. 1 and (viii) a claim for contribution and indemnity for all amounts that KMW Energy Inc. is required to pay Georges River Energy LLC (as hereinbefore defined, collectively, the “**Chola Claims**”).

11. On July 7, 2020, the Trustee and 275Co. entered into an agreement regarding the preservation of potential estate claims against Chola as the Chola Claims had to be commenced by or before July 10, 2020 in order to come within certain warranty deadlines and limitation periods. Pursuant to the Agreement, 275Co. was authorized to issue and serve a notice of action in respect of the Chola Claims and to seek a section 38 Order with respect to the same. Attached hereto and marked as Exhibit “F” is a copy of the Agreement.
12. On July 9, 2020, 275Co. issued a notice of action (the “**Notice of Action**”) in the name of the Bankrupt against, among others, Chola in respect of the Chola Claims. Attached hereto and marked as Exhibit “G” is a copy of the Notice of Action.
13. The Notice of Action sets out the materials facts in support of the Bankrupt’s claims against Chola and so I will not repeat or restate the same.
14. I’m advised by Thomas Lambert (“**Mr. Lambert**”), a lawyer at Loopstra Nixon LLP, lawyers for 275Co., that a statement of claim must be issued within thirty (30) days of the issuance of the Notice of Action pursuant to the *Rules of Civil Procedure* (Ontario) and, as a result, the statement of claim must be issued on or before August 7, 2020.
15. I’m advised by the Trustee and verily believe that the Trustee does not intend to prosecute the Chola claims and, as such, 275Co. wishes to pursue the Chola Claims in its own name and at its own risk and for its own benefit to the extent of the Debt and any related costs.

The MT Claim

16. I was previously advised by Mr. Rosen that the Bankrupt retained a lawyer at Miller Thomson LLP to negotiate and give advice on an agreement for Standard General

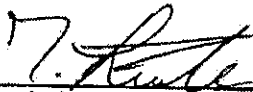
Conditions For Procurement Contracts (the “**Procurement Contract**”) between KMW, as seller, and Robbins Lumber Inc., as buyer, for use by GRE.

17. I’m advised by Mr. Rosen that the Bankrupt entered into the Procurement Contract with Robbins Lumber Inc. based on the advice and recommendations given by the lawyer the Bankrupt retained at Miller Thomson.
18. Pursuant to the Procurement Contract, KMW is liable for all claims, costs, losses and damages including professional fees arising out of or relating to non-conforming goods or special services (the “**Liability Clause**”).
19. I’m advised by Mr. Rosen that the Bankrupt supplied by a turbine from India - manufactured by Chola - for the GRE project, all in accordance with the Procurement Contract and that the turbine did not function properly and needs to be removed and replaced thereby creating a significant liability for the Bankrupt.
20. I’m further advised by Mr. Rosen that the Bankrupt’s lawyer at Miller Thomson LLP failed to, among other things:
 - (i) draw the Bankrupt’s attention to the Liability Clause during the negotiation of the Procurement Contract;
 - (ii) advise of the risk of agreeing to the Procurement Contract; and
 - (iii) obtain the Bankrupt’s instruction with respect to the terms contained in the Procurement Contract.
21. By reason of the foregoing, the Bankrupt’s estate may have a claim against Miller Thomson LLP.
22. I’m advised by Mr. Lambert that there may be an upcoming limitation period for the Bankrupt to pursue the MT Claim depending on when the claim was discovered.

23. I'm advised by the Trustee and verily believe that the Trustee does not intend to prosecute the MT Claim and, as such, 275Co. wishes to pursue the MT Claim in its own name and at its own risk and for its own benefit to the extent of the Debt and any related costs.

24. I swear this affidavit in support of the Motion and for no other reason or improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on July
23, 2020



Commissioner for Taking Affidavits
(or as may be)



MARIO LEVEILLE

TAB 2A



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

In the Matter of the Notice of Intention to make a
proposal of:

KMW Energy Inc.
Insolvent Person

MNP LTD / MNP LTÉE
Licensed Insolvency Trustee

Date of the Notice of Intention: April 11, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

This is Exhibit ^{"A"} referred to in the
affidavit of *Marc Leveillé*
sworn before me, this *23rd*
day of *July*, 20 *20*
M. Kute
A COMMISSIONER, ETC.

E-File/Dépôt Electronique

Date: April 14, 2020, 12:42

Official Receiver

Federal Building - London, 451 Talbot Street, Suite 303, London, Ontario, Canada, N6A5C9, (877)376-9902

Canada

TAB 2B

Original Amended

District of: Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

FORM 68

Notice of Bankruptcy, First Meeting of Creditors
(Subsection 102(1) of the Act)

In the matter of the bankruptcy of

KMW Energy Inc.
of the City of London
in the Province of Ontario

Take notice that:

1. KMW Energy Inc. was deemed to have filed an assignment on the 26th day of June 2020 and the undersigned, MNP Ltd., was appointed as trustee of the estate of the bankrupt by the official receiver, subject to affirmation by the creditors of the trustee's appointment or substitution of another trustee by the creditors.

2. The first meeting of creditors of the bankrupt will be held via conference call on the 17th day of July 2020 at 11:00 AM

To join the call coordinate details are as follows: Toll free number: +1 (877) 252-9279, Conference ID: 942 911 742#.


3. To be entitled to vote at the meeting, a creditor must file with the trustee, before the meeting, a proof of claim and, where necessary, a proxy.

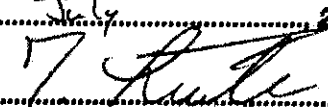
4. Enclosed with this notice are a proof of claim form, proxy form and list of creditors with claims amounting to \$25 or more showing the amounts of their claims.

5. Creditors must prove their claims against the estate of the bankrupt to share in any distribution of the proceeds realized from the estate.

Dated at the City of Toronto in the Province of Ontario, this 3rd day of July 2020.

MNP Ltd. - Licensed Insolvency Trustee


300 - 111 Richmond Street West
Toronto ON M5H 2G4
Phone: (416) 596-1711 Fax: (416) 323-5242

This is Exhibit ^{"B"} referred to in the
affidavit of Mario Leveille
sworn before me, this 23rd
day of July, 2020.

A COMMISSIONER, ETC.

TAB 2C

ASSIGNMENT OF INDEBTEDNESS AND SECURITY

THIS ASSIGNMENT made on the 20th day of April 2020.

BETWEEN:

**462673 ONTARIO INC. o/a NOR-ARC
STEEL FABRICATORS**, a company incorporated
pursuant to the laws of the Province of Ontario
(hereinafter called the "Assignor")

-and-

2751602 ONTARIO INC., a company incorporated pursuant
to the laws of the Province of Ontario

(hereinafter called the "Assignee")

-and-

KMW ENERGY INC., a company incorporated pursuant
to the laws of the Province of Ontario

(hereinafter called the "Debtor")

WHEREAS

- A. The Assignor provided steel fabrication services (the "Services") to the Debtor from or about April 2010 to and including December 2019;
- B. On April 9, 2020, the Assignor made demand on the Debtor for the total principal amount owing on account of the Services and provided the Debtor with notice of its intention to enforce its Security (*as hereinafter defined*);
- C. The outstanding indebtedness owing by the Debtor to the Assignor as at April 9, 2020 is the amount of \$2,784,782.77, with interest continuing to accrue, as set forth in the invoice statement attached as Schedule "A", which amount is hereinafter referred to as the "Indebtedness" and the interest rates applicable to each part of the Indebtedness are set forth on Schedule "A".

This is Exhibit "C" referred to in the
affidavit of *Mario Levesque*
sworn before me, this *23rd*
day of *July* 20 *20*
[Signature]
A COMMISSIONER, ETC.

D. As security for payment of the Indebtedness, the Assignor received the signed security instrument listed in Schedule "B" (the "Security") and registration thereof, in respect of which are set out therein.

E. The Debtor has agreed to consent to the assignment of the Indebtedness and the Security by the Assignor to the Assignee.

F. The Assignee has offered to purchase from the Assignor the Indebtedness and the Security in accordance with the agreements set out below.

NOW THEREFORE THIS ASSIGNMENT WITNESSES that in consideration of the sum of \$30,000 ("Purchase Price") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. The parties hereto acknowledge and agree that each the recitals above are true and correct.
2. The Assignor hereby unconditionally and irrevocably transfers, assigns and sets over to the Assignee, without recourse to the Assignor, and without any representation or warranty whatsoever except as expressly set out herein, all of the Assignor's right, title and interest in, to and under:
 - (a) the Indebtedness; and
 - (b) the Security, together with the full benefit of all covenants and agreements contained therein.
3. The Assignor represents and warrants to the Assignee that,
 - (a) it holds no security against the Debtor's property other than the Security;
 - (b) the Assignor has not previously sold, conveyed, assigned, released, discharged or encumbered the Indebtedness or the Security, either in whole or in part;
 - (c) the Assignor has the legal right and authority to convey to the Assignee all of its right, title and interest in, to and under the Indebtedness and the Security in accordance with the provisions hereof;
 - (d) the books and records of the Assignor as at April 9, 2020 disclose that the Indebtedness is in the amount set forth on Schedule "A" hereto and that this amount is due and owing by the Debtor to the Assignor and the interest rates applicable to each part of the Indebtedness are as set forth on Schedule "A"; and

- (e) the Security has been delivered to and is held by the Assignor.
4. The Assignee acknowledges having received from the Assignor photostatic copies of the Security, and if an original of the Security is available, the Assignor covenants to deliver same to the Assignee following receipt of the Purchase Price.
 5. The Assignee acknowledges that the Assignor makes no other representations or warranties and the Assignee accepts the Indebtedness and Security in their present state without any recourse to the Assignor or claims for indemnity against the Assignor for any matter or thing whatsoever, save and except in respect of the representations and warranties expressly given by the Assignor in this Agreement. The Assignee hereby acknowledges that except for the representations and warranties expressly set out in this Agreement, it is accepting the Indebtedness and the Security on an "as is, where is" basis without recourse to the Assignor and without any other or further representation or warranty of any nature or kind whatsoever, including, without limitation, the collectability of the Indebtedness, the priority of the Security in relation to other creditors of the Debtor, the validity, enforceability or priority of the Security, any deficiency in the Security or the assets charged thereby, the location of the assets charged by the Security, any failure on the part of the Assignor to appropriately draft, have executed or register or perfect all or any portion of the Security, the existence or nature of any claims, charges, liens or interests against the assets charged by the Security, whether any of the assets charged by the Security constitute fixtures on the premises where they are or may be situate or the condition, merchantability, description, fitness for any particular purpose or use, suitability, durability, marketability, condition, quantity or quality thereof.
 6. By its acceptance of this assignment, the Assignee covenants and agrees with the Assignor that it will not bring, take or commence any suits, actions or proceedings in connection with the Indebtedness or the Security in the name of the Assignor, and will not use the Assignor's name in any such suits, actions or proceedings other than for purposes of describing the Indebtedness and the Security.
 7. The Assignee agrees to indemnify the Assignor from and to all costs, charges, damages, assessments and claims of any kind made by any third party or incurred by the Assignor in relation to the assigned Security and/or the assigned Indebtedness and this Agreement, or otherwise in connection with them.
 8. The Assignor appoints Loopstra Nixon LLP as its agent for registering such documents and filing such statements as may be required as a result of this assignment transaction, and this shall be good and sufficient authorization for it to do so.
 9. The Assignor covenants and agrees that it will not, at any time hereafter, accept payment of the Indebtedness or any part thereof, or do any act by which the Assignee may be prevented or hindered from obtaining payment of the Indebtedness or enforcing the Security. Further,

if after the date of this Agreement the Assignor should receive any such payment of the Indebtedness, the Assignor will promptly remit such payment to the Assignee.

10. The Purchase Price shall be wired to the solicitors for the Assignee, who shall confirm the receipt of the same to the Assignor and shall forthwith following completion of the assignment contemplated hereby, release and pay the Purchase Price to the Assignor in accordance the Assignor's directions.
11. The Assignor will from time to time, at the cost of the Assignee, execute, acknowledge and deliver all such further documents and do all such further acts and things as may be reasonably necessary to give effect to this assignment for the purpose of better transferring and assigning of the Indebtedness and the Security pursuant to this Assignment.
12. The Debtor hereby consents to the assignment of the Indebtedness and Security by the Assignor to the Assignee as contemplated hereby.
13. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and may not be amended or modified in any respect except by written instrument signed by all of the parties. The recitals and Schedule each form an integral part of this Agreement.
14. This Agreement will be governed exclusively by the laws of Ontario and the laws of Canada applicable therein.
15. This Agreement will be binding upon the Assignor and the Assignee and their respective successors and assigns, and for the benefit of the Assignor, the Assignee and their respective successors and assigns.
16. The Assignee acknowledges, covenants and agrees that it has been provided with a reasonable opportunity to seek legal advice with respect to the execution and delivery of this Agreement and has either done so or decided to execute and deliver the same without obtaining such legal advice.
17. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall be deemed to constitute an original, and such counterparts shall together constitute one and the same instrument. To the extent this Agreement is delivered by facsimile, email or other electronic transmission, the receipt by each party of the other parties' signature(s) shall serve to confirm the execution thereof by each such party.

[EXECUTIONS ON SEPARATE PAGE]

IN WITNESS WHEREOF the Assignor, the Assignee and the Debtor have executed this assignment on the date first above written.

**462673 ONTARIO INC. o/a NOR-ARC
STEEL FABRICATORS**

Per: 
Name: Mario Leveille
Title: President

I have authority to bind the corporation.

2751602 ONTARIO INC.

Per: 
Name: Mario Leveille
Title: President

I have authority to bind the corporation.

KMW ENERGY INC.

Per: _____
Name: Eric Rosen
Title: Authorized Signing Officer

I have authority to bind the corporation.

SCHEDULE "A"

INVOICE STATEMENT

as at April 9, 2020

[See Attached]

KMW ENERGY INC. OUTSTANDING INVOICES UP TO April 9, 2020									
DATE	INVOICE #	PO#	INVOICE AMOUNT	PAID DATE	INTEREST	Interest paid	Accumulated Interest charges	Payments	TOTAL BALANCE OWING
30/04/10	34194	602377			-	-	-	-	62,322.73
30/04/10	34556	602377			-	-	-	-	83,810.77
30/04/10	34557	602444			-	-	-	-	88,535.77
30/04/10	34558	602445			-	-	-	-	89,354.77
30/04/10	34560	602446			-	-	-	-	89,781.57
30/04/10	34562	602388			-	-	-	-	104,726.77
30/04/10	34566	602389			-	-	-	-	114,537.97
30/04/10	34569	602434			-	-	-	-	115,581.67
30/04/10	34584	602396			-	-	-	-	124,183.27
27/05/10	34875	602466			-	-	-	-	124,435.27
28/05/10	34880	602435			-	-	-	-	126,442.87
28/05/10	35081	602447			-	-	-	-	155,527.87
28/05/10	35082	602454			-	-	-	-	156,224.02
28/05/10	35084	602457			-	-	-	-	164,834.02
31/05/10	Int.				408.27		408.27		165,242.29
28/06/10	35344	602456			-	-	408.27	-	210,690.49
30/06/10	35349	602473			-	-	408.27	-	214,094.59
30/06/10	35353	602481			-	-	408.27	-	230,495.59
30/06/10	35354	602492			-	-	408.27	-	239,443.69
30/06/10	35367	602482			-	-	408.27	-	244,903.69
30/06/10	35371	602440			-	-	408.27	-	293,856.89
30/06/10	35372	602482			-	-	408.27	-	299,318.89
30/06/10	Int.				561.37		969.64		299,880.26
22/07/10	35613	602486			-	-	969.64	-	502,140.26
31/07/10	Int.				985.91		1,955.55		303,126.17
30/08/10	36214	602503			-	-	1,955.55	-	307,447.29
31/08/10	Int.				996.58		2,952.13		308,443.87
09/09/10	36361	602510			-	-	2,952.13	-	308,792.02
30/09/10	Int.				1,014.06		3,966.19		309,746.08
31/10/10	Int.				1,018.34		4,984.54		310,764.43
30/11/10	Int.				1,021.69		6,006.23		311,786.12
30/12/10	37524	602520	120,317.88		-	-	6,006.23	-	432,104.00
31/12/10	Int.				1,025.05		7,031.28		433,129.05
30/01/11	Int.				1,423.99		8,455.26		434,553.03
28/02/11	38134	602595			-	-	8,455.26	-	449,130.03
28/02/11	38135	602596			-	-	8,455.26	-	449,685.65
28/02/11	Int.				1,428.67		9,883.93		451,094.32
11/03/11	38243	602604			-	-	9,883.93	-	461,929.89
11/03/11	38244	602605			-	-	9,883.93	-	470,930.62
30/03/11	Int.				1,483.05		11,366.98		472,413.67
29/04/11	38840	602610			-	-	11,366.98	-	476,115.55
30/04/11	Int.				1,553.14		12,920.12		477,668.69
31/05/11	Int.				1,570.42		14,490.54		479,239.11
30/06/11	39615	602617	39,550.00		-	-	14,490.54	-	518,789.11
30/06/11	39616	602614			-	-	14,490.54	-	533,958.23
30/06/11	39617	602615			-	-	14,490.54	-	538,731.35
30/06/11	39618	602619	1,902.92		-	-	14,490.54	-	540,834.27
30/06/11	Int.				1,575.58		16,066.12		542,209.85
31/07/11	Int.				1,782.61		17,848.73		543,992.46
31/08/11	Int.				1,848.08		19,696.81		545,840.54
30/09/11	Int.				1,854.36		21,551.18		547,694.91
28/10/11	40838	602651	6,016.12		-	-	21,551.18	-	553,711.03
28/10/11	40845	602646	5,837.02		-	-	21,551.18	-	559,548.05
31/10/11	Int.				1,800.64		23,351.82		561,348.69
30/11/11	Int.				1,907.05		25,258.86		563,255.73
31/12/11	Int.				1,851.80		27,110.66		565,107.53
11/01/12	41551	602689	12,210.78		-	-	27,110.66	-	577,318.31
11/01/12	41552	602690	13,039.07		-	-	27,110.66	-	590,357.38
31/01/12	Int.				1,919.82		29,030.48		592,277.20
28/02/12	Int.				2,012.12		31,042.60		594,289.32
30/03/12	42309	602697	1,233.96		-	-	31,042.60	-	595,523.28
30/03/12	Int.				1,823.57		32,866.17		597,346.85
30/04/12	42631	602709	7,711.12		-	-	32,866.17	-	605,057.97
30/04/12	Int.				2,029.34		34,895.52		607,087.32
31/05/12	Int.				1,995.90		36,891.42		609,083.22
30/06/12	Int.				2,069.21		38,960.63		611,152.43
31/07/12	Int.				2,008.27		40,969.90		613,161.70
31/08/12	Int.				2,083.07		43,052.97		615,244.77
28/09/12	44272	602723	1,356.00		-	-	43,052.97	-	616,600.77
30/09/12	Int.				2,080.15		45,143.12		618,690.92
30/10/12	44611	602712	34,907.96		-	-	45,143.12	-	653,598.88
31/10/12	Int.				2,034.05		47,177.17		655,632.93
28/11/12	44867	602739	2,938.00		-	-	47,177.17	-	658,570.93
30/11/12	44992	602722	82,291.12		-	-	47,177.17	-	740,862.05
30/11/12	45311	602767	5,281.62		-	-	47,177.17	-	746,143.67
30/11/12	Int.				2,227.36		49,404.53		748,371.03
31/12/12	Int.				2,460.40		51,864.92		750,831.42
30/01/13	45518	602764	3,044.22		-	-	51,864.92	-	753,875.64
31/01/13	Int.				2,550.77		54,415.69		756,426.41

DATE	INVOICE #	PO#	INVOICE AMOUNT	PAID DATE	INTEREST	Interest paid	Accumulated Interest charges	Payments	TOTAL BALANCE OWING
28/02/13	Int.				2,569.78		56,985.47	-	758,996.19
31/03/13	Int.				2,328.97		59,314.45	-	761,325.17
30/04/13	46366	602772	7,711.12				59,314.45	-	769,036.29
30/04/13	Int.				2,586.42		61,900.87	-	771,622.71
01/05/13							61,900.87	-	771,622.71
30/05/13	Int.				2,536.84		64,437.71	-	774,159.55
28/06/13	47069	602780	378.00	03/05/16			64,437.71	-	774,537.55
30/06/13	Int.				2,630.02		67,067.73	-	777,167.57
30/07/13	47380	602783	23,314.16				67,067.73	-	800,481.73
31/07/13	Int.				2,555.07		69,622.80	-	803,036.80
05/01/13	47835	602617	32,384.67	03/05/16			69,622.80	-	835,421.47
31/08/13	Int.				2,728.13		72,350.93	-	838,149.60
09/12/13	48015	602809	3,661.20				72,350.93	-	841,810.80
30/09/13	Int.				2,847.41		75,198.34	-	844,658.21
31/10/13	Int.				2,776.96		77,975.30	-	847,435.17
30/11/13	Int.				2,878.96		80,854.25	-	850,314.12
13/12/13	49092	602827	719.74	03/05/16			80,854.25	-	851,033.86
31/12/13	Int.				2,795.55		83,649.81	-	853,829.42
31/01/14	Int.				2,900.68		86,550.49	-	856,730.10
29/02/14	Int.				2,910.54		89,461.02	-	859,640.63
31/03/14	Int.				2,732.01		92,193.03	-	862,372.64
30/04/14	Int.				2,929.70		95,122.74	-	865,302.35
26/05/14	50341		2,825.00				95,122.74	-	868,127.35
31/05/14	Int.				2,844.83		97,967.57	-	870,972.18
30/06/14	Int.				2,958.92		100,926.48	-	873,931.09
31/07/14	Int.				2,873.20		103,799.68	-	876,804.29
31/08/14	Int.				2,978.73		106,778.42	-	879,783.03
30/09/14	Int.				2,968.85		109,767.27	-	882,771.88
30/10/14	52224		91,014.72				109,767.27	-	973,786.60
31/10/14	Int.				2,902.16		112,669.53	-	976,688.06
30/11/14	52573	Paid 12/08/15					112,669.53	-	1,001,862.36
30/11/14	52574	Paid 08/08/19					112,669.53	-	1,174,159.96
30/11/14	52575		45,787.60				112,669.53	-	1,219,957.56
30/11/14	52577						112,669.53	-	1,252,334.66
30/11/14	52580						112,669.53	-	1,386,682.26
30/11/14	Int.				3,318.07		115,987.60	-	1,390,000.33
29/12/14	52759	Paid 02/10/15					115,987.60	-	1,443,979.03
30/12/14	52767		38,420.00				115,987.60	-	1,482,399.03
30/12/14	52768	Paid 12/08/15					115,987.60	-	1,499,123.03
30/12/14	52769	Paid 12/08/15					115,987.60	-	1,515,847.03
31/12/14	Int.				4,569.86		120,557.46	-	1,520,416.89
01/14/15	52894	Paid 06/08/19					120,557.46	-	1,522,590.39
01/22/15	52961	Paid 13/08/15					120,557.46	-	1,534,354.89
01/30/15	53054	Paid 08/08/19					120,557.46	-	1,536,886.09
01/30/15	53073	Paid 12/08/15					120,557.46	-	1,545,113.19
31/01/15	Int.				5,165.25		125,722.71	-	1,550,278.44
27/02/15	53332	Paid 06/08/19					125,722.71	-	1,557,676.38
27/02/15	53333	Paid 06/08/19					125,722.71	-	1,571,617.84
27/02/15	53335						125,722.71	-	1,582,671.64
27/02/15	53336		13,537.05				125,722.71	-	1,596,208.69
27/02/15	53337						125,722.71	-	1,601,111.89
27/02/15	53341		924.48				125,722.71	-	1,602,036.37
27/02/15	53344		25,493.00				125,722.71	-	1,627,529.37
27/02/15	53399		7,954.73				125,722.71	-	1,635,484.10
27/02/15	53400		4,471.00				125,722.71	-	1,639,955.10
27/02/15	53401	Paid 06/08/19					125,722.71	-	1,642,178.87
27/02/15	53402		17,802.63				125,722.71	-	1,660,081.50
27/02/15	53403		4,999.36				125,722.71	-	1,665,080.86
27/02/15	53405		34,709.48				125,722.71	-	1,699,790.34
28/02/15	Int.				5,266.70		130,989.41	-	1,705,027.04
30/03/15	Int.				5,231.86		136,221.28	-	1,710,258.91
29/04/15	53991		348.04				136,221.28	-	1,710,806.95
30/04/15	54033		58,429.20				136,221.28	-	1,769,036.15
30/04/15	Int.				5,810.19		142,031.47	-	1,774,846.34
29/05/15	54428		3,126.06				142,031.47	-	1,777,972.40
31/05/15	Int.				5,835.11		147,866.58	-	1,783,807.51
30/06/15	Int.				6,060.06		153,926.64	-	1,789,867.57
31/07/15	Int.				5,884.50		159,811.14	-	1,795,752.07
12/08/15	Payment				2,656.73		162,467.87	-	1,719,795.70
31/08/15	Int.				3,739.10		166,206.97	-	1,723,534.80
30/09/15	Int.				5,855.30		172,062.26	-	1,729,390.09
02/10/15	Payment				426.42		172,488.68	-	1,675,837.82
31/10/15	Int.				5,306.62		177,795.31	-	1,681,144.44
30/11/15	Int.				5,711.29		183,506.59	-	1,686,855.72
31/12/15	Int.				5,545.83		189,052.42	-	1,692,401.55
31/01/16	Int.				5,749.53		194,801.95	-	1,698,151.08
29/02/16	Int.				5,396.86		200,198.81	-	1,703,547.94
31/03/16	Int.				5,787.40		205,986.21	-	1,709,335.34
30/04/16	Int.				5,807.06		211,793.27	-	1,715,142.40

DATE	INVOICE #	PO#	INVOICE AMOUNT	PAID DATE	INTEREST	Interest paid	Accumulated Interest charges	Payments	TOTAL BALANCE OWING
03/05/16	Payment	ck # 18060			939.80		212,733.07	35,923.40	1,682,158.80
31/05/16	Int.				4,608.65		217,341.72		1,686,767.45
30/08/16	Int.				5,730.39		223,072.11		1,692,497.84
31/07/16	Int.				5,564.38		228,636.49		1,698,062.22
31/08/16	Int.				5,768.76		234,405.25		1,703,830.98
30/09/16	Int.				5,788.36		240,193.61		1,709,619.34
31/10/16	Int.				5,620.67		245,814.27		1,715,240.00
30/11/16	Int.				5,827.12		251,641.39		1,721,067.12
31/12/16	Int.				5,658.30		257,299.69		1,726,725.42
30/01/17	Payment	ck # 18539			5,676.91		262,976.60	38,538.54	1,475,865.79
31/01/17	Int.				189.23		263,165.83		1,476,055.02
23/02/17	Payment	Wire transf.			4,185.53		267,351.35	3,070.40	1,573,000.14
28/02/17	Int.				752.33		268,103.68		1,573,752.47
31/03/17	Int.				4,666.99		272,770.68		1,578,419.47
30/04/17	Int.				4,531.79		277,302.47		1,582,951.26
31/05/17	Int.				4,698.25		282,000.71		1,587,649.50
30/06/17	Int.				4,562.14		286,562.85		1,592,211.64
31/07/17	Int.				4,729.71		291,292.55		1,596,941.34
31/08/17	Int.				4,745.77		296,038.33		1,601,687.12
30/09/17	Int.				5,184.32		301,222.65		1,606,871.44
31/10/17	Int.				5,376.95		306,599.60		1,612,248.39
30/11/17	Int.				5,223.38		311,822.98		1,617,471.77
30/11/17	2925	603464			-		311,822.98		1,746,846.40
31/12/17	Int.				6,676.30		318,499.28		1,753,522.70
31/01/18	Int.				6,701.82		325,201.10		1,760,224.52
28/02/18	Int.				6,076.39		331,277.49		1,766,300.91
09/03/18	payment				1,959.87		333,237.36		1,688,260.78
31/03/18	Int.				4,370.98		337,608.34		1,692,631.76
06/04/18	payment				1,252.08		338,860.42		1,603,883.84
30/04/18	Int.				4,745.74		343,606.16		1,608,629.58
02/05/18	payment				396.65		344,002.81		1,449,651.60
31/05/18	Int.				5,540.45		349,543.26		1,455,192.05
19/06/18	5000	603697	1,600.08		-		349,543.26		1,456,792.13
30/06/18	Int.				5,382.22		354,925.48		1,462,174.35
09/07/18	5272	603751	739.02		-		354,925.48		1,462,913.37
20/07/2018	5478	603678	35,436.00		-		354,925.48		1,499,349.37
31/07/18	Int.				6,209.23		361,134.71		1,505,558.60
30/08/2018	5885	603678	5,100.28		-		361,134.71		1,510,658.88
31/08/18	Int.				6,393.47		367,528.18		1,517,052.35
30/09/18	Int.				6,234.46		373,762.64		1,523,286.81
31/10/18	Int.				7,115.63		380,878.27		1,530,402.44
26/11/18	Settlement		113,000.00		-		380,878.27	113,000.00	1,530,402.44
30/11/18	Int.				6,918.26		387,796.52		1,537,320.69
31/12/18	Int.				7,181.18		394,977.71		1,544,501.88
31/01/19	Int.				7,214.73		402,192.44		1,551,716.61
28/02/19	Int.				6,546.97		408,739.40		1,558,263.57
31/03/19	Int.				7,279.01		416,018.42		1,565,542.59
30/04/19	Int.				7,077.11		423,095.53		1,572,619.70
31/05/19	Int.				7,346.07		430,441.60		1,579,965.77
30/06/19	Int.				7,142.31		437,583.91		1,587,108.08
04/07/19	9331	1890053	318,931.18		-		437,583.91		1,905,039.26
04/07/19	9332	1890067	28,973.70		-		437,583.91		1,935,012.96
04/07/19	9334	1890052	40,038.89		-		437,583.91		1,975,051.85
31/07/19	Int.				7,413.75		444,997.66		1,982,465.60
08/08/19	Payment	CK # 19966			2,152.38		447,150.04		1,784,052.51
08/08/19	Pmt. Interest				-		447,150.04		1,764,052.51
31/08/19	Int.				5,914.26		453,064.30		1,769,966.77
05/09/19	Payment	CK # 19967			1,333.54		454,397.83		1,588,613.60
05/09/19	Pmt. Interest				-		454,397.83		1,568,613.60
30/09/19	Int.				5,909.16		460,306.99		1,574,522.76
03/10/19	10341		2,983.20		8,541.25		468,848.24		1,586,047.21
31/10/19	Int.				6,643.19		475,491.43		1,592,690.40
26/11/2019	10999	603907	5,247.72		6,239.86		481,731.29		1,604,177.98
30/11/19	Int.				966.90		482,698.19		1,605,144.88

SCHEDULE "B"
SECURITY

NO.	DOCUMENT	PPSA REGISTRATION DETAILS
1.	General Security Agreement by and between 462673 Ontario Inc. o/a Nor-Arc Steel Fabricators, dated April 12, 2011	File No. 668920896 Reg. No. 20200302 1732 1590 8404 -and- File No. 760541184 Reg. No. 20200302 1706 1590 8391

TAB 2D

This is Exhibit "D" referred to in the affidavit of Marc Lavoie sworn before me, this 23rd day of July, 2020

MNP Ltd.
300 - 111 Richmond Street West
Toronto ON M5H 2G4
Phone: (416) 598-1711 Fax: (416) 323-6242

A COMMISSIONER, ETC.

District of: Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

FORM 31
Proof of Claim
(Sections 60.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 61(f)(e) and 66.14(b) of the Act)

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

All notices or correspondence regarding this claim must be forwarded to the following address:

2751602 Ontario Inc., 331577 Hwy 11 North, P.O. Box 280,
Eggleton, Ontario, P0S 1E0 c/o Marc Lavoie

In the matter of the bankruptcy of KMW Energy Inc. of the City of London in the Province of Ontario and the claim of 2751602 Ontario Inc. creditor.

I, Marc Lavoie (name of creditor or representative of the creditor), of the city of Eggleton in the province of Ontario do hereby certify:

1. That I am a creditor of the above named debtor (or I am President (position/title) of 2751602 Ontario Inc. creditor).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy, namely the 28th day of June 2020, and still is, indebted to the creditor in the sum of \$ 2,324,479.29 as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

A. UNSECURED CLAIM OF \$ 2,324,479.29
(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

Regarding the amount of \$ _____, I claim a right to a priority under section 136 of the Act.

Regarding the amount of \$ 2,324,479.29, I do not claim a right to a priority.
(Set out on an attached sheet details to support priority claim.)

B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ _____

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

C. SECURED CLAIM OF \$ _____

That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$ _____

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$ _____
(Attach a copy of sales agreement and delivery receipts.)

- E. CLAIM BY WAGE EARNER OF \$ _____
- That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ _____
- That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ _____
- F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ _____
- That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ _____
- That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ _____
- G. CLAIM AGAINST DIRECTOR \$ _____

(To be completed when a proposal provides for the compromise of claims against directors.)
 That I hereby make a claim under subsection 80(13) of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

- H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$ _____

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

5. That, to the best of my knowledge, I _____ (am/am not) (or the above-named creditor is not (is/is not)) related to the debtor within the meaning of section 4 of the Act, and has not (have/has/have not/has not) dealt with the debtor in a non-arm's-length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: *(Provide details of payments, credits and transfers at undervalue.)*

7. *(Applicable only in the case of the bankruptcy of an individual.)*

- Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 86 of the Act, I request to be informed, pursuant to paragraph 88(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.
- I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Enoch this 15th day of July, 2020

[Signature]
 Witness

[Signature]

Creditor
 Phone Number: 705-563-2656 ext 288
 Fax Number: 705-563-8020
 E-mail Address: maria.lamaille@corcor.com

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.
WARNING: A trustee may, pursuant to subsection 128(2) of the Act, release a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.
 Subsection 20(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

KMW ENERGY INC. OUTSTANDING INVOICES UP TO April 9, 2020

DATE	INVOICE #	PO#	INVOICE AMOUNT	PAID DATE	INTEREST	Interest paid	Accumulated Interest charges	Payments	TOTAL BALANCE OWING
30/04/10	34194	602377	62,322.73	30/01/17	-	-	-	-	62,322.73
30/04/10	34556	602377	21,488.04	30/01/17	-	-	-	-	83,810.77
30/04/10	34557	602444	4,725.00	30/01/17	-	-	-	-	88,535.77
30/04/10	34558	602445	819.00	30/01/17	-	-	-	-	89,354.77
30/04/10	34560	602446	496.80	30/01/17	-	-	-	-	89,791.57
30/04/10	34562	602388	14,935.20	30/01/17	-	-	-	-	104,726.77
30/04/10	34566	602389	9,811.20	30/01/17	-	-	-	-	114,537.97
30/04/10	34569	602434	1,043.70	30/01/17	-	-	-	-	115,581.67
30/04/10	34584	602396	8,601.60	30/01/17	-	-	-	-	124,183.27
27/05/10	34875	602466	252.00	30/01/17	-	-	-	-	124,435.27
28/05/10	34880	602455	2,007.60	30/01/17	-	-	-	-	126,442.87
28/05/10	35081	602447	29,085.00	30/01/17	-	-	-	-	155,527.87
28/05/10	35082	602454	696.15	30/01/17	-	-	-	-	156,224.02
28/05/10	35084	602457	8,610.00	30/01/17	-	-	-	-	164,834.02
31/05/10	int.				408.27	-	408.27	-	165,242.29
28/06/10	35344	602456	45,448.20	30/01/17	-	-	408.27	-	210,690.49
30/06/10	35349	602473	3,404.10	30/01/17	-	-	408.27	-	214,094.59
30/06/10	35353	602481	16,401.00	30/01/17	-	-	408.27	-	230,495.59
30/06/10	35354	602492	8,948.10	30/01/17	-	-	408.27	-	239,443.69
30/06/10	35367	602482	5,460.00	30/01/17	-	-	408.27	-	244,903.69
30/06/10	35371	602440	48,955.20	23/02/17	-	-	408.27	-	293,858.89
30/06/10	35372	602482	5,460.00	30/01/17	-	-	408.27	-	299,318.89
30/06/10	int.				561.37	-	969.64	-	299,880.26
23/07/10	35613	602486	2,260.00	30/01/17	-	-	969.64	-	302,140.26
31/07/10	int.				985.91	-	1,955.55	-	303,126.17
30/08/10	36214	602503	4,321.12	30/01/17	-	-	1,955.55	-	307,447.29
31/08/10	int.				996.58	-	2,952.13	-	308,443.87
09/09/10	36361	602510	288.15	23/02/17	-	-	2,952.13	-	308,732.02
30/09/10	int.				1,014.06	-	3,966.19	-	309,746.08
31/10/10	int.				1,018.34	-	4,984.54	-	310,764.43
30/11/10	int.				1,021.69	-	6,006.23	-	311,786.12
30/12/10	37524	602520	120,317.88		-	-	6,006.23	-	432,104.00
31/12/10	int.				1,025.05	-	7,031.28	-	433,129.05
30/01/11	int.				1,423.99	-	8,455.26	-	434,553.03
28/02/11	38134	602595	14,577.00	23/02/17	-	-	8,455.26	-	449,130.03
28/02/11	38135	602596	535.62	23/02/17	-	-	8,455.26	-	449,665.65
28/02/11	int.				1,428.67	-	9,883.93	-	451,094.32
11/03/11	38243	602604	10,835.57	23/02/17	-	-	9,883.93	-	461,929.89
11/03/11	38244	602605	3,200.73	23/02/17	-	-	9,883.93	-	470,930.62
30/03/11	int.				1,483.05	-	11,366.98	-	472,413.67
29/04/11	38840	602610	3,701.88	23/02/17	-	-	11,366.98	-	476,115.55
30/04/11	int.				1,553.14	-	12,920.12	-	477,668.69
31/05/11	int.				1,570.42	-	14,490.54	-	479,239.11
30/06/11	39615	602617	39,550.00		-	-	14,490.54	-	518,789.11
30/06/11	39616	602614	15,169.12	23/02/17	-	-	14,490.54	-	533,958.23
30/06/11	39617	602615	4,723.12	23/02/17	-	-	14,490.54	-	538,731.35
30/06/11	39618	602619	1,902.92		-	-	14,490.54	-	540,634.27
30/06/11	int.				1,575.58	-	16,066.12	-	542,209.85
31/07/11	int.				1,782.61	-	17,848.73	-	543,992.46
31/08/11	int.				1,848.08	-	19,696.81	-	545,840.54
30/09/11	int.				1,854.36	-	21,551.18	-	547,694.91
28/10/11	40838	602651	6,016.12		-	-	21,551.18	-	553,711.03
28/10/11	40845	602646	5,837.02		-	-	21,551.18	-	559,548.05
31/10/11	int.				1,800.64	-	23,351.82	-	561,348.69
30/11/11	int.				1,907.05	-	25,258.86	-	563,255.73
31/12/11	int.				1,851.80	-	27,110.66	-	565,107.53
11/01/12	41551	602689	12,210.78		-	-	27,110.66	-	577,318.31
11/01/12	41552	602690	13,039.07		-	-	27,110.66	-	590,357.38
31/01/12	int.				1,919.82	-	29,030.48	-	592,277.20
28/02/12	int.				2,012.12	-	31,042.60	-	594,289.32
30/03/12	42309	602697	1,233.96		-	-	31,042.60	-	595,523.28
30/03/12	int.				1,823.57	-	32,866.17	-	597,346.85
30/04/12	42631	602709	7,711.12		-	-	32,866.17	-	605,057.97
30/04/12	int.				2,029.34	-	34,895.52	-	607,087.32
31/05/12	int.				1,995.90	-	36,891.42	-	609,083.22
30/06/12	int.				2,069.21	-	38,960.63	-	611,152.43
31/07/12	int.				2,009.27	-	40,969.90	-	613,161.70
31/08/12	int.				2,083.07	-	43,052.97	-	615,244.77
28/09/12	44272	602723	1,356.00		-	-	43,052.97	-	616,600.77
30/09/12	int.				2,090.15	-	45,143.12	-	618,690.92
30/10/12	44611	602712	34,907.96		-	-	45,143.12	-	653,598.88
31/10/12	int.				2,034.05	-	47,177.17	-	655,632.93
28/11/12	44867	602739	2,938.00		-	-	47,177.17	-	658,570.93
30/11/12	44992	602722	82,291.12		-	-	47,177.17	-	740,862.05
30/11/12	45311	602767	5,281.62		-	-	47,177.17	-	746,143.67
30/11/12	int.				2,227.36	-	49,404.53	-	748,371.03
31/12/12	int.				2,460.40	-	51,864.92	-	750,831.42
30/01/13	45518	602764	3,044.22		-	-	51,864.92	-	753,875.64
31/01/13	int.				2,550.77	-	54,415.69	-	756,426.41

DATE	INVOICE #	PO#	INVOICE AMOUNT	PAID DATE	INTEREST	Interest paid	Accumulated Interest charges	Payments	TOTAL BALANCE OWING
28/02/13	int.				2,569.78		56,985.47	-	758,996.19
31/03/13	int.				2,328.97		59,314.45	-	761,325.17
30/04/13	46366	602772	7,711.12		-		59,314.45	-	769,036.29
30/04/13	int.				2,586.42		61,900.87	-	771,622.71
01/05/13					-		61,900.87	-	771,622.71
30/05/13	int.				2,536.84		64,437.71	-	774,159.55
28/06/13	47069	602780	378.00	03/05/16	-		64,437.71	-	774,537.55
30/06/13	int.				2,630.02		67,067.73	-	777,167.57
30/07/13	47380	6027.83	23,314.16		-		67,067.73	-	800,481.73
31/07/13	int.				2,555.07		69,622.80	-	803,036.80
05/01/13	47835	602617	32,384.67	03/05/16	-		69,622.80	-	835,421.47
31/08/15	int.				2,728.13		72,350.93	-	838,149.60
09/22/13	48015	602809	3,661.20		-		72,350.93	-	841,810.80
30/09/13	int.				2,847.41		75,198.34	-	844,658.21
31/10/13	int.				2,776.96		77,975.30	-	847,435.17
30/11/13	int.				2,878.96		80,854.25	-	850,314.12
13/12/13	48092	602827	719.74	03/05/16	-		80,854.25	-	851,033.86
31/12/13	int.				2,795.55		83,649.81	-	853,829.42
31/01/14	int.				2,900.68		86,550.49	-	856,730.10
29/02/14	int.				2,910.54		89,461.02	-	859,640.63
31/03/14	int.				2,732.01		92,193.03	-	862,372.64
30/04/14	int.				2,929.70		95,122.74	-	865,302.35
28/05/14	50341		2,825.00		-		95,122.74	-	868,127.35
31/05/14	int.				2,844.83		97,967.57	-	870,972.18
30/06/14	int.				2,958.92		100,926.48	-	873,931.09
31/07/14	int.				2,873.20		103,799.68	-	876,804.29
31/08/14	int.				2,978.73		106,778.42	-	879,783.03
30/09/14	int.				2,988.85		109,767.27	-	882,771.88
30/10/14	52224		91,014.72		-		109,767.27	-	973,786.60
31/10/14	int.				2,902.26		112,669.53	-	976,688.86
30/11/14	52573	Paid 12/08/15			-		112,669.53	-	1,001,862.36
30/11/14	52574	Paid 06/08/19			-		112,669.53	-	1,174,159.96
30/11/14	52575		45,797.60		-		112,669.53	-	1,219,957.56
30/11/14	52577		32,377.30	05/09/19	-		112,669.53	-	1,252,334.66
30/11/14	52580		134,347.80	05/09/19	-		112,669.53	-	1,386,682.26
30/11/14	int.				3,318.07		115,987.60	-	1,390,000.33
29/12/14	52759	Paid 02/10/15	53,878.70	02/10/15	-		115,987.60	-	1,443,979.03
30/12/14	52767		38,420.00		-		115,987.60	-	1,482,399.03
30/12/14	52768	Paid 12/08/15			-		115,987.60	-	1,499,123.03
30/12/14	52769	Paid 12/08/15			-		115,987.60	-	1,515,847.03
31/12/14	int.				4,569.86		120,557.46	-	1,520,416.89
01/14/15	52894	Paid 06/08/19			-		120,557.46	-	1,522,590.39
01/22/15	52961	Paid 12/08/15			-		120,557.46	-	1,534,354.89
01/30/15	53054	Paid 06/08/19			-		120,557.46	-	1,536,886.09
01/30/15	53073	Paid 12/08/15			-		120,557.46	-	1,545,113.19
31/01/15	int.				5,165.25		125,722.71	-	1,550,278.44
27/02/15	53332	Paid 06/08/19			-		125,722.71	-	1,557,676.39
27/02/15	53333	Paid 06/08/19			-		125,722.71	-	1,571,617.84
27/02/15	53335		11,053.80	05/08/19	-		125,722.71	-	1,582,671.64
27/02/15	53336		13,532.05		-		125,722.71	-	1,596,203.69
27/02/15	53337		4,806.20	05/08/19	-		125,722.71	-	1,601,111.89
27/02/15	53341		924.48		-		125,722.71	-	1,602,036.37
27/02/15	53344		25,493.00		-		125,722.71	-	1,627,529.37
27/02/15	53399		7,954.73		-		125,722.71	-	1,635,484.10
27/02/15	53400		4,471.00		-		125,722.71	-	1,639,955.10
27/02/15	53401	Paid 06/08/19			-		125,722.71	-	1,642,178.87
27/02/15	53402		17,902.63		-		125,722.71	-	1,660,081.50
27/02/15	53403		4,969.36		-		125,722.71	-	1,665,050.86
27/02/15	53405		34,709.48		-		125,722.71	-	1,699,760.34
28/02/15	int.				5,266.70		130,989.41	-	1,705,027.04
30/03/15	int.				5,231.86		136,221.28	-	1,710,258.91
29/04/15	53991		348.04		-		136,221.28	-	1,710,606.95
30/04/15	54033		58,429.20		-		136,221.28	-	1,769,036.15
30/04/15	int.				5,810.19		142,031.47	-	1,774,846.34
29/05/15	54428		3,126.06		-		142,031.47	-	1,777,972.40
31/05/15	int.				5,835.11		147,866.58	-	1,783,807.51
30/06/15	int.				6,060.06		153,926.64	-	1,789,867.57
31/07/15	int.				5,884.50		159,811.14	-	1,795,752.07
12/08/15	Payment				2,656.73		162,467.87		1,719,795.70
31/08/15	int.				3,739.10		166,206.97	-	1,723,534.80
30/09/15	int.				5,855.30		172,062.26	-	1,729,390.09
02/10/15	Payment				426.42		172,488.69	53,978.70	1,675,837.82
31/10/15	int.				5,306.62		177,795.31	-	1,681,144.44
30/11/15	int.				5,711.29		183,506.59	-	1,686,855.72
31/12/15	int.				5,545.83		189,052.42	-	1,692,401.55
31/01/16	int.				5,749.53		194,801.95	-	1,698,151.08
29/02/16	int.				5,396.86		200,198.81	-	1,703,547.94
31/03/16	int.				5,787.40		205,986.21	-	1,709,335.34
30/04/16	int.				5,807.06		211,793.27	-	1,715,142.40

DATE	INVOICE #	PO#	INVOICE AMOUNT	PAID DATE	INTEREST	Interest paid	Accumulated Interest charges	Payments	TOTAL BALANCE OWING
03/05/16	Payment	ck # 18060			939.80		212,733.07	33,923.40	1,682,158.80
31/05/16	int.				4,608.65		217,341.72		1,686,767.45
30/06/16	int.				5,730.39		223,072.11		1,692,497.84
31/07/16	int.				5,564.38		228,636.49		1,698,062.22
31/08/16	int.				5,768.76		234,405.25		1,703,830.98
30/09/16	int.				5,788.36		240,193.61		1,709,619.34
31/10/16	int.				5,620.67		245,814.27		1,715,240.00
30/11/16	int.				5,827.12		251,641.39		1,721,067.12
31/12/16	int.				5,658.30		257,299.69		1,726,725.42
30/01/17	Payment	ck # 18539			5,676.91		262,976.60	256,536.54	1,475,865.79
31/01/17	int.				189.23		263,165.83		1,476,055.02
23/02/17	Payment	Wire transf.			4,185.53		267,351.35	107,240.40	1,373,000.14
28/02/17	int.				752.33		268,103.68		1,373,752.47
31/03/17	int.				4,666.99		272,770.68		1,378,419.47
30/04/17	int.				4,531.79		277,302.47		1,382,951.26
31/05/17	int.				4,698.25		282,000.71		1,387,649.50
30/06/17	int.				4,562.14		286,562.85		1,392,211.64
31/07/17	int.				4,729.71		291,292.55		1,396,941.34
31/08/17	int.				4,745.77		296,038.33		1,401,687.12
30/09/17	int.				5,184.32		301,222.65		1,406,871.44
31/10/17	int.				5,376.95		306,599.60		1,412,248.39
30/11/17	int.				5,223.38		311,822.98		1,417,471.77
30/11/17	2925	603464	529,374.83	3 pmts	-		311,822.98		1,746,846.40
31/12/17	int.				6,676.30		318,499.28		1,753,522.70
31/01/18	int.				6,701.82		325,201.10		1,760,224.52
28/02/18	int.				6,076.39		331,277.49		1,766,300.91
09/03/18	payment		-		1,959.87		333,237.36	80,000.00	1,688,260.78
31/03/18	int.				4,370.98		337,608.34		1,692,631.76
06/04/18	payment		-		1,252.08		338,860.42	90,000.00	1,603,883.84
30/04/18	int.				4,745.74		343,606.16		1,608,629.58
02/05/18	payment		-		396.65		344,002.81	159,374.61	1,449,651.60
31/05/18	int.				5,540.45		349,543.26		1,455,192.05
19/06/18	5000	603697	1,600.08		-		349,543.26		1,456,792.13
30/06/18	int.				5,382.22		354,925.48		1,462,174.35
09/07/18	5272	603751	739.02		-		354,925.48		1,462,913.37
20/07/2018	5478	603678	36,436.00		-		354,925.48		1,499,349.37
31/07/18	int.				6,209.23		361,134.71		1,505,558.60
30/08/2018	5885	603678	5,100.28		-		361,134.71		1,510,658.88
31/08/18	int.				6,393.47		367,528.18		1,517,052.35
30/09/18	int.				6,234.46		373,762.64		1,523,286.81
31/10/18	int.				7,115.63		380,878.27		1,530,402.44
26/11/18	Settlement		113,000.00		-		380,878.27	113,000.00	1,530,402.44
30/11/18	int.				6,918.26		387,796.52		1,537,320.69
31/12/18	int.				7,181.18		394,977.71		1,544,501.88
31/01/19	int.				7,214.73		402,192.44		1,551,716.61
28/02/19	int.				6,546.97		408,739.40		1,558,263.57
31/03/19	int.				7,279.01		416,018.42		1,565,542.59
30/04/19	int.				7,077.11		423,095.53		1,572,619.70
31/05/19	int.				7,346.07		430,441.60		1,579,965.77
30/06/19	int.				7,142.31		437,583.91		1,587,108.08
04/07/19	9331	1890053	318,931.18		-		437,583.91		1,906,039.26
04/07/19	9332	1890067	28,973.70		-		437,583.91		1,935,012.96
04/07/19	9334	1890052	40,038.89		-		437,583.91		1,975,051.85
31/07/19	int.				7,413.75		444,997.66		1,982,465.60
09/08/19	Payment	CK # 19966			2,152.38		447,150.04		1,784,052.51
09/08/19	Pmt. interest				-		447,150.04		1,764,052.51
31/08/19	int.				5,914.26		453,064.30		1,769,966.77
05/09/19	Payment	CK # 19967			1,333.54		454,397.83	182,446.70	1,588,613.60
05/09/19	Pmt. interest				-	20,000.00	454,397.83		1,568,613.60
30/09/19	int.				5,909.16		460,306.99		1,574,522.76
03/10/19	10341		2,983.20		8,541.25		468,848.24		1,586,047.21
31/10/19	int.				6,643.19		475,491.43		1,592,690.40
26/11/2019	10999	603907	5,247.72		6,239.86		481,731.29		1,604,177.98
30/11/19	int.				966.90		482,698.19		1,605,144.88

DATE	INVOICE #	PO#	INVOICE AMOUNT	PAID DATE	INTEREST	Interest paid	Accumulated Interest charges	Payments	TOTAL BALANCE OWING
11/12/19	11154	1890054	315,620.17		2,902.45		485,600.64	-	1,923,667.50
31/12/19	int.				5,507.49		491,108.13	-	1,929,174.99
31/01/20	int.				9,011.63		500,119.76	-	1,938,186.62
03/02/20	11672		1,174.00		876.17		500,995.92	-	1,940,236.78
29/02/20	int.				7,601.48		508,597.40	-	1,947,838.26
17/03/20	12122		531,862.30		4,989.67		513,587.07	-	2,484,690.23
24/03/20	12187		98,511.14		2,620.84		516,207.90	-	2,585,822.20
24/03/20	12188		10,875.12				516,207.90	-	2,596,697.32
24/03/20	12189		43,329.85				516,207.90	-	2,640,027.17
24/03/20	12190		138,057.75				516,207.90	-	2,778,084.92
04/09/20	int.				6,697.85		522,905.75	-	2,784,782.77
04/30/20	int.				8,812.12		531,717.87	-	2,793,594.89
05/31/20	int.				13,049.53		544,767.41	-	2,806,644.43
06/24/20	int.				10,150.06		554,917.46	-	2,816,794.48
06/25/20	Payment for KMW assets						554,917.46	500,000.00	2,316,794.48
06/30/20	int.				1,745.53		556,662.99	-	2,318,540.01
07/17/20	int.				5,939.27		562,602.27	-	2,324,479.29
		Totals	3,657,795.96		562,602.27	40,000.00		1,855,918.94	
PRINCIPAL									1,801,877.02
INTEREST									522,602.27
TOTAL									2,324,479.29

Notes :

- INTEREST 4% annual
- INTEREST 4.5 % annual From Sept 2017 to June 2018
- INTEREST 5% annual From July 2018 to Sept 2018
- INTEREST 5.5 % annual From Oct 2018 to present

TAB 2E

This is Exhibit "E" referred to in the
affidavit of Maria Lerville
sworn before me, this 23rd
day of July 20 20

Estate File Number: 35-2638322
Court File No.: 35-2638322

.....
17 [Signature]
.....

A COMMISSIONER, ETC. ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.

AFFIDAVIT OF ERIC BERTIL ROSEN
(sworn April 24, 2020)

I, ERIC BERTIL ROSEN, of the City of London, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I am the Chief Executive Officer and a director of KMW Energy Inc. ("KMW" or the "Company"). The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me by others, which I verily believe to be true.
2. On April 11, 2020 (the "Filing Date"), KMW filed a Notice of Intention to Make a Proposal ("NOI") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). MNP Ltd. was named proposal trustee in the NOI proceeding (the "Proposal Trustee"). A copy of the certificate of filing of the NOI is attached hereto and marked as Exhibit "A".
3. This affidavit is made in support of KMW's motion for an order, among other things:

- (a) authorizing the Company to enter into an interim financing term sheet dated April 24, 2020 (the “DIP Term Sheet”) with 2751602 Ontario Inc. (“2751”), approving the DIP Term Sheet, and granting 2751 in its capacity as lender under the DIP Term Sheet (the “DIP Lender”) a second ranking charge on the Company’s property, assets and undertakings (collectively, the “Property”) as security for the Company’s obligations to the DIP Lender under the DIP Term Sheet;
- (b) authorizing the Company to execute a stalking horse asset purchase agreement dated April 24, 2020 (the “Stalking Horse Agreement”) between the Company and 2751, in its capacity as stalking horse bidder (the “Stalking Horse Bidder”), and approving the Stalking Horse Agreement;
- (c) authorizing the Proposal Trustee to conduct a sale process as described below (the “Sale Process”);
- (d) approving a first ranking charge over the Property in an amount not to exceed \$150,000 in favour of the Company’s legal counsel, the Proposal Trustee, and the Proposal Trustee’s legal counsel (collectively, the “Administrative Professionals”) to secure payment of their reasonable fees and disbursements;
- (e) approving a third ranking charge over the Property in an amount not to exceed \$50,000 in favour of the Company’s directors and officers to indemnify them against obligations and liabilities that they may incur after the Filing Date; and
- (f) approving an extension of the time for the Company to make a proposal to its creditors.

BUSINESS AND OPERATIONS

4. KMW is an Ontario corporation that carries on business in London, Ontario. I am the sole member of the board of directors. Gerry Higgins and I are the only officers of KMW. A copy of the Corporation Profile Report for KMW is attached hereto and marked as **Exhibit "B"**.

5. For approximately 33 years, KMW has been a leading designer, developer and supplier of the components of biomass combustion system boilers and heaters. Biomass is an environmentally friendly, sustainable energy source that comes from a number of resources, including plant materials, residues from forest industries, by-products from wood remanufacturing, and agricultural residues and waste products. Biomass can produce electricity, heat, liquid fuels, gaseous fuels, and a variety of useful chemicals, including those currently manufactured from fossil fuels.

6. KMW custom designs and supplies the components of complete biomass boiler systems including fuel handling, combustion systems, heat recovery boilers, and emission control systems. KMW also supplies complete Combined Heat and Power (CHP) plants including steam turbines, Organic Rankine Cycle (ORC) turbines, condensers and cooling systems.

7. KMW has supplied boiler systems to sawmills, hospitals, schools, pulp and paper mills, power utility plants, cogeneration facilities, district heating systems and greenhouses to customers in North, Central, and South America, as well as Europe and Australia. KMW works closely with its customer's project management teams, engineering staff and professional advisors to evaluate and implement biomass energy projects.

8. KMW purchases all components from third party suppliers across the globe. KMW manages the assembly and installation of the components on site for its customers. Once assembly

is complete, KMW provides training and support to its customers in the operation of the turbines and boilers.

9. KMW carries on business from a leased facility located at 275 Colborne Street, London, Ontario (the "Premises"). KMW is current in all payments to its landlord under its lease for the Premises, other than for April 2020.

10. As of April 11, 2020, the Company employed 12 non-unionized employees and one independent contractor project manager. KMW does not have an employer-sponsored pension plan for its employees.

11. KMW currently has six (6) ongoing projects at various stages of completion. KMW's assets are primarily comprised of contracts, accounts receivable, work-in-progress, proprietary engineering designs and software code, and goodwill.

SECURED CREDITORS

12. KMW has no operating lender. KMW has two secured creditors, 2751, which is a party related to 462673 Ontario Inc. c.o.b. as Nor-Arc Steel Fabricators ("Nor-Arc") that took an assignment of the debt and security owed by KMW to Nor-Arc, and Liberty Mutual Insurance Company ("Liberty Mutual"). Attached hereto and marked as Exhibit "C" is a copy of a search result obtained by the Company's legal counsel, Chaitons LLP ("Chaitons"), from the Ontario Personal Property Security Registration System in respect of registrations under the *Personal Property Security Act* (Ontario) current as of April 24, 2020.

Nor-Arc and 2751

13. Nor-Arc carries on business in Earlton, Ontario as a fabricator of mining and industrial equipment. KMW and its predecessors have been a customer of Nor-Arc for over 30 years. Nor-Arc primarily supplies combustion chambers and fabrication services to KMW.

14. As at March 24, 2020, KMW was indebted to Nor-Arc in the amount of \$2,778,084.92 (the "Secured Indebtedness"). This amount represents the sum of outstanding invoices and interest owed by KMW to Nor-Arc from the period of April 2010 to March 2020. KMW has acknowledged that the Secured Indebtedness was owing to Nor-Arc in an Acknowledgement of Debt and Security dated April 9, 2020 that I executed on behalf of KMW, a copy of which is attached hereto and marked as Exhibit "D".

15. KMW historically paid its invoices to Nor-Arc in a timely manner. However, KMW's business was negatively impacted by the Great Recession of 2008-2010 and, as a result, by April 2011, KMW owed approximately \$538,075 to Nor-Arc in unpaid invoices. At that time, Nor-Arc requested that KMW provide security for payment of the outstanding amount.

16. Pursuant to a general security agreement dated April 12, 2011 (the "GSA"), KMW granted to Nor-Arc a security interest in all of its property, assets and undertaking as security for payment of all present and future debts, liabilities and obligations of KMW to Nor-Arc. A copy of the GSA is attached hereto and marked as Exhibit "E".

17. By early 2019, KMW owed Nor-Arc approximately \$1.0 million. However, as is described in greater detail below, KMW's indebtedness to Nor-Arc has increased during the past two years in connection with the GRE Project (as defined below) and other projects.

18. As noted above, the Secured Indebtedness and the GSA have been assigned by Nor-Arc to 2751 pursuant to an assignment agreement dated April 20, 2020, a copy of which is attached hereto and marked as **Exhibit "F"**.

Liberty Mutual

19. Liberty Mutual is a secured creditor of the Company as it issued a performance bond in connection with a contract dated December 6, 2016 between KMW and Georges River Energy, LLC ("**GRE**") (the "**GRE Contract**") for the design and supply of a complete biomass energy system to generate 8.5MW of electric power, including turbine, generation and cooling tower (the "**GRE Project**"). A copy of the GRE Contract is attached hereto and marked as **Exhibit "G"**.

20. GRE carries on business in Searsmont, Maine and is a subsidiary of Robbins Lumber, Inc. ("**Robbins Lumber**"). Robbins Lumber owns and manages 30,000 acres of forest and operates mills on a 40-acre site in Searsmont.

21. KMW was required to obtain a performance bond with respect to its obligations under the GRE Contract. On December 13, 2016, Liberty Mutual, as surety, issued a Performance Bond for Procurement Contracts in the amount of \$6,412,500 in favour of GRE (the "**Performance Bond**"). A copy of the Performance Bond is attached hereto and marked as **Exhibit "H"**.

22. In connection with the Performance Bond, KMW, myself, Gerry and Nor-Arc (collectively, the "**Indemnitors**") executed two agreements in favour of Liberty Mutual: an Indemnity and Security Agreement dated December 16, 2016 (the "**Indemnity and Security Agreement**"); and a General Indemnity Agreement dated December 16, 2016 (collectively, the "**Indemnity Agreements**"). Copies of the Indemnity Agreements are collectively attached hereto and marked as **Exhibit "I"**.

23. Pursuant to the Indemnity Agreements, each of the Indemnitors agreed to indemnify Liberty Mutual with respect to any liabilities it may incur in connection with the Performance Bond.

24. Pursuant to the Indemnity and Security Agreement, the Company granted to Liberty Mutual a security interest in all of its property, assets and undertaking as security for its obligations to Liberty Mutual.

25. Nor-Arc executed the Indemnity Agreements as it was to supply components to KMW with respect to the GRE Contract and was to receive a share of KMW's net profits from the GRE Contract.

OTHER CREDITORS

Government Remittances and Amounts Owed to Employees

26. As at April 6, 2020, KMW was current with respect to all amounts owed for government remittances and all amounts owed to its employees, excluding certain employee expense reports.

Unsecured Creditors

27. As at April 6, 2020, KMW owed its trade creditors approximately \$4.3 million. This amount does not include any claims that parties may have in relation to the Performance Bond and the Indemnity Agreements (as defined below).

FINANCIAL DIFFICULTIES

28. KMW's financial difficulties are primarily attributable to the GRE Contract.

29. At GRE's request, KMW sought out new suppliers of turbines to reduce the cost of the GRE Project. As a result, KMW contracted with a company Buffalo Turbine based in Brampton,

Ontario for the supply of a turbine manufactured in India to be used for the GRE Project. KMW had no existing relationship with this manufacturer.

30. The turbine was delivered in April 2018 and the biomass energy system was assembled through the spring, summer and fall of 2018. The turbine did not function as required by GRE. From July 2018 to March 2020, KMW spent approximately US\$1.688 million of its working capital in attempting to repair the turbine.

31. Notwithstanding the significant time and money expended by KMW, the turbine still does not function properly. As a result, GRE has threatened litigation against KMW and has not paid to KMW the remaining US\$2,463,907 million owed to it under the GRE Contract. GRE has also notified Liberty Mutual that it may declare KMW to be in default under the GRE Contract and make a demand under the Performance Bond. GRE has not done so to date.

32. GRE and KMW have engaged in settlement discussions in an effort to resolve the issues related to the GRE Project. Notwithstanding their efforts, the parties have been unable to come to terms on an agreeable settlement.

33. As a result of the issues related to the GRE Project, the Company has faced a liquidity crisis and it was anticipated that, without receiving interim financing and protection from its creditors, it would be unable to meet its post-filing obligations by April 30, 2020.

34. On April 9, 2020, Nor-Arc demanded payment from KMW and served a Notice of Intention to Enforce Security ("NITES") pursuant to section 244(1) of the BIA. KMW agreed to waive the 10-day period under section 244 of the BIA. A copy of Nor-Arc's demand letter, NITES,

and the waiver I executed on behalf of the Company are attached hereto and marked as **Exhibit "J"**.

35. On April 11, 2020, KMW commenced the NOI proceeding under the BIA for the purpose of conducting a process for the sale of KMW's business as a going concern. Prior to the filing, Nor-Arc had agreed to act as DIP Lender during the NOI proceeding and agreed to have a party related to it act as a stalking horse bidder in the sale process to be conducted by the Proposal Trustee.

DIP LOAN

36. KMW, with the assistance of the Proposal Trustee, prepared a cash flow forecast for the time period commencing April 6, 2020 through to July 3, 2020 (the "Cash Flow"). The Cash Flow demonstrates that KMW will require additional funds to enable it to carry on business during the NOI proceeding and fund the Sale Process, working capital and the costs of the proceeding. A copy of the Cash Flow is attached hereto and marked as **Exhibit "K"**.

37. Nor-Arc, in its capacity as the proposed DIP Lender, has offered to make available to KMW a debtor-in possession loan in the maximum amount of \$500,000 (the "DIP Loan") pursuant to the terms of the DIP Term Sheet, substantially in the form attached hereto and marked as **Exhibit "L"**, to fund the cash shortfall anticipated in the Cash Flow.

38. It is a fundamental term of the DIP Term Sheet that the Court grant an order on terms acceptable to the DIP Lender which, among other things, grants the DIP Lender a second ranking charge over the Property in priority to all other claims and encumbrances (the "DIP Charge").

39. KMW believes that the terms of the DIP Term Sheet are reasonable in the circumstances and should be approved. In the absence of the DIP Loan, KMW will not be able to conduct the Sale Process and will be forced to immediately shut down its business and file for bankruptcy. I believe that the DIP Loan enhances the Company's prospects of making a viable proposal to its creditors, and no creditor will be materially prejudiced as a result of the granting of the DIP Charge.

SALE PROCESS AND STALKING HORSE AGREEMENT

40. KMW, in consultation with the Proposal Trustee, and subject to the approval of the Court, developed the Sale Process. The Sale Process will be administered by the Proposal Trustee. As part of the Sale Process, KMW will enter into the Stalking Horse Agreement, substantially in the form attached hereto and marked as Exhibit "M" which establishes the floor price for KMW's business and assets.

41. The Stalking Horse Bidder is prepared to purchase the business and assets of KMW on a going-concern basis pursuant to the terms of the Stalking Horse Agreement for a purchase price equal to: (i) \$500,000; (ii) any amounts ranking in priority to the Stalking Horse Bidder's security; (iii) any amounts secured by the DIP Charge, the Administration Charge and the D&O Charge (each as defined below); and (iv) an amount of the Secured Indebtedness to be cancelled by the Stalking Horse Bidder as it deems appropriate.

42. It is anticipated that, if a sale of KMW's business and assets is completed pursuant to the Stalking Horse Agreement, the Stalking Horse Bidder will offer employment to most, if not all, of KMW's employees.

43. The following is a summary of the Sale Process and material milestones. All terms not otherwise defined herein, shall have the meaning assigned to such terms in the Stalking Horse Agreement:

- (a) The Sale Process will be commenced immediately following the date of the order approving same (the "Sale Process Approval Date").
- (b) within five (5) business days after the Sale Process Approval Date, the Proposal Trustee will contact parties identified by the Company who may be interested in purchasing the business and/or assets of the Company and any other parties identified by the Company and the Proposal Trustee as potentially interested in purchasing the assets of the Company. The Proposal Trustee will provide a teaser summary of KMW's assets in order to solicit interest. The Proposal Trustee will obtain a Non-disclosure Agreement ("NDA") from interested parties who wish to receive a Confidential Information Memorandum ("CIM") and undertake due diligence. Following the execution of an NDA, the Proposal Trustee will provide access to an electronic data room ("Data Room") and a template asset and purchase agreement to prospective purchasers.
- (c) Within seven (7) business days of the Sale Process Approval Date, or as soon thereafter as is practical, the Proposal Trustee shall (a) publish a notice advertising the opportunity in the National Post and/or such other trade publications or other publications as the Proposal Trustee may deem appropriate or advisable, and (b) post the opportunity on its website.

- (d) The Bid deadline for prospective purchasers will be May 29, 2020, subject to the Proposal Trustee, in its discretion, extending the date for no more than 10 days not to surpass June 8, 2020 (the "Bid Deadline").
- (e) A Qualified Bid must be accompanied by a cash deposit of 10% of the purchase price and must be equal to or greater than the sum of the indebtedness owed to the Stalking Horse Bidder, the DIP Loan, the amounts secured by the Administration Charge and the D&O Charge, and any other priority payable amounts.
- (f) If no Qualified Bid is received by the Bid Deadline (other than the Stalking Horse Bid), the Auction will not be held.
- (g) If more than one Qualified Bid is received by the Bid Deadline, the Proposal Trustee shall extend invitations to all bidders who submitted Qualified Bids and to the Stalking Horse Bidder to attend an Auction. The Auction shall be held at 10:00 a.m. on the second (2nd) Business Day after the Bid Deadline by teleconference, video conference or other form of electronic telecommunications, as the Proposal Trustee may deem fit.
- (h) The Proposal Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid and subsequently continue in multiples of \$50,000, or such other amount as the Proposal Trustee determines to facilitate the Auction. Additional consideration in excess of the amount set forth in the highest Qualified Bid must be comprised only of cash consideration (which, for clarity, may be satisfied by way of credit bid by the Stalking Horse Bidder).

The format and other procedures for the Auction shall be determined by the Proposal Trustee in its sole discretion.

- (i) The Winning Bid shall be either:
 - (i) in the event that no other Qualified Bid is received by the Bid Deadline, the Stalking Horse Bid;
 - (ii) in the event that multiple Qualified Bids are received, following the conclusion of the Auction (if applicable), the party submitting the highest and best offer through the Auction, which the Proposal Trustee is satisfied, acting reasonably, is capable of being completed as required by the Sales Process Order.
- (j) As soon as practicable after determination of the Winning Bid, the Company will make a motion to the Court for an approval and vesting order in respect of the Winning Bid and the underlying purchase agreement.

ADMINISTRATION CHARGE

44. In order to protect the fees and expenses of each of the Administrative Professionals, KMW seeks a first ranking charge on the Property in an amount of \$150,000 (the "Administration Charge"), ranking in priority to all claims and encumbrances.

45. I believe that no creditor will be materially prejudiced as a result of the granting of the Administration Charge

D&O CHARGE

46. As part of the NOI proceeding, KMW is seeking a third ranking charge on the Property in favour of their directors and officers in the amount not to exceed \$50,000 (the "D&O Charge") ranking in priority to all other claims and encumbrances, with the exception of the Administration Charge and the DIP Charge, as security for the possible liabilities that may be incurred by the directors and officers of the Company after the Filing Date, including wages, vacation pay, and source deductions.

47. The Company does not have an existing insurance policy with respect to directors and officers liabilities.

48. There is a risk that without the D&O Charge, KMW's directors and officers might resign from their positions, which would jeopardize the NOI proceeding. The Company, in consultation with the Proposal Trustee, believes that the quantum of the proposed D&O Charge is reasonable given the circumstances.

49. I believe that no creditor will be materially prejudiced as a result of the granting of the D&O Charge

STAY EXTENSION

50. I have been advised by Sam Rappos, a partner at Chaitons, that under the BIA, the period for KMW to file a proposal will expire on May 11, 2020. The Company is acting in good faith and with due diligence in seeking to preserve its business on a going concern basis for the benefit of all of its stakeholders.

51. In order to commence and advance the Sale Process, KMW is seeking an extension of time to file a proposal for 45 days or until June 25, 2020.

52. Without the extension, KMW will not be in a position to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. The extension is supported by the Proposal Trustee. If the extension applied for is granted, KMW would likely be able to make a viable proposal to its creditors following the completion of the Sale Process.

53. This affidavit is sworn in support of KMW's motion and for no other or improper reason.

Sworn before me)
via video conference call)
on the 24th day of April, 2020)



SAM RAPPOS
A commissioner, etc.



ERIC BERTIL ROSEN

TAB 2F

and providing a further 30 days for the Estate to commence a full proceeding in respect of the claim.

- H. The Trustee has agreed to authorize 275Co, through counsel, to issue and serve of Notice of Action, and such other steps as are contemplated herein, subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 275Co and the Trustee (collectively, the "Parties") hereby acknowledge and agree as follows:

1. **Recitals** – The Parties agree that, to the best of the Parties' respective knowledge, the recitals to this Agreement are true and correct.
2. **Waiver of Security Interest** – Notwithstanding that 275Co is a secured creditor, 275Co hereby waives its Security such that from and after the date hereof, 275Co shall constitute an unsecured creditor with a unsecured deficiency claim in the Estate and 275Co acknowledges and agrees that the recovery of any proceeds from the pursuit of the Claim as well as other claims held by the Estate will be shared pro-rata as between all unsecured creditors, including 275Co, subject to and in accordance with, the provisions of the BIA.
3. **Undertaking re: Section 38 Assignment** – 275Co hereby undertakes to, as soon as possible but not later than forty-five (45) days after the date hereof, seek, obtain and proceed with a Section 38 Assignment of the Claim.
4. **Authorization to Preserve Claim** – The Trustee hereby authorizes 275Co to issue and serve the Notice of Action, which Notice of Action shall be satisfactory to the Trustee in all respects, on behalf of the Estate by or before July 10, 2020, and to take such other steps in Canada or India, on behalf of the Estate, as Loopstra Nixon LLP may, acting reasonably and with the consent of the Trustee, deem to be necessary to preserve the Claim for the Estate in advance of a Section 38 Assignment of the Claim, including but not limited to making demand on CTMI under the Warranty and/or making demand on BTI (collectively, "Claim Preservation Steps").
5. **Costs** – It is expressly agreed by the Parties that the costs of issuing and serving the Notice of Action and any Claim Preservation Steps shall be borne solely by 275Co, without recourse to the Trustee or the Estate (except insofar as such costs may be paid through any recovery following a Section 38 Assignment of the Claim).
6. **Indemnity** – 275Co and 462673 Ontario Inc. o/a as Nor-Arc Steel Fabricators hereby covenant and agree to indemnify, defend and save the Trustee harmless from and against any and all actions, causes of action, suits, demands, debts, dues, accounts, bonds, covenants, contracts, complaints, costs, claims, damages, losses or other liabilities arising from, related to or in any way connected with the Claim, the Notice of Action and Claim Preservation Steps.

7. **Release** – 275Co hereby hereby releases and forever discharges the Trustee from any and all actions, causes of action, suits, demands, debts, dues, accounts, bonds, covenants, contracts, complaints or claims which 275Co now has or may have in the future against the Trustee related to or in any way connected with the issuance and service of the Notice of Action by 275Co and any Claim Preservation Steps taken by 275Co as contemplated hereby.
8. **Governing Law** – This Agreement shall be governed by and interpreted and enforced in accordance with the laws in force in the Province of Ontario.
9. **Successors, Assigns, etc.** – This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and assigns.
10. **Entire Agreement** – This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.
11. **Execution & Delivery** – This Agreement, and any documents that may be required to be executed in connection herewith to consummate the transaction contemplated herein, may be executed counterparts, each of which so executed shall be deemed to be an original, and may be transmitted by e-mail, facsimile transmission or electronic transmission, and such counterparts together shall constitute and be deemed an original.

[Executions on separate page.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

2751602 ONTARIO INC.

Per: 
Name: Mario Leveille
Title: Authorized Signing Authority

I have authority to bind the Company.

462273 ONTARIO INC. o/a Nor-Arc Steel Fabricators

Per: 
Name: Mario Leveille
Title: Authorized Signing Authority

I have authority to bind the Company.

MNP LTD., solely in its capacity as the trustee of the bankruptcy estate of KMW Energy Inc. and not in its personal or corporate capacities.

Per: 
Name: Sheldon Title
Title: Authorized Singing Officer

I have authority to bind the Company.

SCHEDULE "A"

Notice of Action

[see attached]

TAB 2G



Electronically issued
Délivré par voie électronique : 09-Jul-2020
Toronto

Court File No./N° du dossier du greffe: CV-20-00643727-0000

This is Exhibit "6" referred to in the
affidavit of Maria Lemay
Court File No.
sworn before me, this 23rd
day of July 20 20
[Signature]
A COMMISSIONER, ETC.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

KMW ENERGY INC.

Plaintiff

- and -

**CHOLA TURBO MACHINERY INTERNATIONAL PRIVATE LIMITED also known as
CHOLA TURBO MACHINERY INTERNATIONAL PVT. LTD.
and BUFFALO TURBINES INC.**

Defendants

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim

and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____

Issued by _____
Local Registrar

Address of Court Office:

330 University Avenue
Toronto, Ontario
M5G 1E6

TO: CHOLA TURBO MACHINERY INTERNATIONAL PRIVATE LIMITED
No.45/7,
5th Floor, Tradecentre,
Dickenson Road,
Bangalore – 560 042,
India.

AND TO: BUFFALO TURBINES INC.
380 Wellington St Tower B, 6th Floor
London, ON
N6A 5B5

CLAIM

1. The Plaintiff, KMW Energy Inc. ("KMW") claims against the Defendants for:
 - a. damages in an as yet unascertained amount for breach of contract, breach of guarantee, breach of warranty, negligence, negligent misrepresentation, unjust enrichment and pursuant to the *Sales of Goods Act*, R.S.O. 1990, c. S. 1 ("*Sale of Goods Act*") and for contribution and indemnity for all amounts that KMW is required to pay to George River Energy LLC ("GRE"), the full particulars of which KMW undertakes to provide before trial;
 - b. prejudgment and postjudgment interest on the above amounts in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - c. its costs of this action, together with harmonized sales tax, on a substantial indemnity scale; and,
 - d. such further and other relief as this Honourable Court deems just.

The Parties

2. KMW is a corporation incorporated pursuant to the laws of the province of Ontario with its registered head office in London, Ontario.
3. The Defendant, Buffalo Turbines Inc. ("Buffalo Turbines"), is a corporation incorporated pursuant to the laws of Canada, with its registered head office in London, Ontario.
4. The Defendant, Chola Turbo Machinery International Private Limited ("Chola"), is a corporation operating in India, with its corporate head office in Bangalore, India.

Background

5. In 2016, KMW was awarded a contract by GRE to supply an 8.5-megawatt multistage controlled extraction condensing turbine and accessories ("Turbine").
6. KMW approached Buffalo Turbines to supply the Turbine.
7. Buffalo Turbines advised KMW that Chola would be the manufacturer of the Turbine.
8. It was agreed between KMW, Buffalo Turbines and Chola that, as a condition of KMW ordering the Turbine from Buffalo Turbines, Chola would be required to provide KMW directly with a corporate guarantee in the amount of \$392,370.00 USD ("Corporate Guarantee"), a performance guarantee in the amount of \$196,185.00 USD ("Performance Guarantee") as well as a global commercial warranty ("Warranty") with respect to the Turbine.
9. KMW purchased the Turbine from Buffalo Turbines and Chola delivered the Corporate Guarantee, the Performance Guarantee and the Warranty to KMW.
10. The Turbine was delivered to the construction site in Sears Mont, Maine, United States of America, in or around March of 2018.
11. GRE has alleged that the Turbine cannot perform as required.
12. Chola and Buffalo Turbines were notified of the alleged issues with the Turbine and KMW attempted to fix the alleged issues with the Turbine with the assistance of Buffalo Turbines and Chola.
13. Buffalo Turbines represented to KMW that Buffalo Turbines and Chola would be responsible for the costs associated with attempting to fix the alleged issues with the Turbine.

14. As of the date of this pleading, Buffalo Turbines and Chola have not compensated KMW for the costs incurred by KMW in its attempts to fix the alleged issues with the Turbine.
15. GRE is not satisfied with the Turbine and has demanded that KMW replace the Turbine, which is estimated to cost in excess of \$5,000,000.00 USD.
16. KMW denies any liability to GRE whatsoever.
17. KMW made demand to Chola pursuant to the Performance Guarantee, the Corporation Guarantee and the Warranty.
18. KMW issued a legal notice to Chola with respect to the Performance Guarantee on or about June 19, 2020.
19. As of the date of this pleading, Chola has not indemnified or agreed to indemnify KMW pursuant to the Corporate Guarantee, the Performance Guarantee or the Warranty.
20. As a result of the breaches of contract, breaches of warranty, breaches of guarantee, negligence, negligent misrepresentation, unjust enrichment and breaches of the *Sales of Goods Act*, by Buffalo Turbines and Chola, KMW has suffered or will suffer damages in an as yet unascertained amount, the full particulars of which KMW undertakes to advise before trial.
21. KMW also claims full contribution and indemnity from Buffalo Turbines and Chola for any amounts it pays to GRE on account of GRE's claims.
22. Chola may, without a court order, be served outside Ontario pursuant to sections 17.02(f) and 17.02(g) of the *Rules of Civil Procedure* because the proceeding consists of claims against it in respect of a contract that was made in Ontario, in respect of a contract where a breach of the contract has been committed in Ontario and in respect of a tort committed in Ontario.

23. KMW proposes that this action be tried at Toronto.

DATE: July 8, 2020

LOOPSTRA NIXON LLP
Barristers and Solicitors
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Suite 600
Toronto, Ontario
M9W 6V7

Michael B. McWilliams
LSO# 47320R
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Lawyers for the Plaintiff

KMW ENERGY INC. vs (Plaintiff)

CHOLA TURBO MACHINERY INTERNATIONAL ET AL
(Defendants)

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

NOTICE OF ACTION

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Email: mmcwilliams@loonix.com

Lawyers for the Plaintiff

**IN THE MATTER OF THE BRANKRUPTCY OF KMW
ENERGY INC. OF THE CITY OF LONDON IN THE
PROVINCE OF ONTARIO**

Court File No.: 35-2638322

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[Commercial List]**

Proceedings commenced at Toronto

AFFIDAVIT OF M. LEVEILLE
(sworn July 23, 2020)

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135 Queens Plate Drive, Suite 600
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Thomas P. Lambert
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Lawyers for 2751602 Ontario Inc.

IN THE MATTER OF THE BRANKRUPTCY OF KMW
ENERGY INC. OF THE CITY OF LONDON IN THE
PROVINCE OF ONTARIO

Court File No.: 35-2638322

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
[Commercial List]

Proceedings commenced at Toronto

MOTION RECORD
(returnable August 4, 2020 @ 12:00noon via
"ZOOM")

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