

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) WEDNESDAY, THE 29<sup>TH</sup>  
 )  
JUSTICE HAINEY ) DAY OF APRIL, 2020  
 )



IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF DEL EQUIPMENT INC.

Applicant

**STAY EXTENSION AND DISTRIBUTION ORDER**

**THIS MOTION**, made by Del Equipment Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by videoconference in light of the COVID-19 crisis.

**ON READING** the affidavit of Douglas Lucky sworn April 20, 2020 (the "**Lucky Affidavit**"), and the Exhibits thereto, the Third Report (the "**Third Report**") of MNP Ltd. in its capacity as monitor of the Applicant (the "**Monitor**"), the affidavit of Sheldon Title sworn April 21, 2020 (the "**Title Affidavit**") and the affidavit of Jennifer Stam sworn April 18, 2020 (the "**Stam Affidavit**"), and on hearing the submissions of counsel for the Applicant, the Monitor, and those other parties present as indicated on the counsel sheet, and on reading the affidavit of service of Andrew Harnes sworn April 21, 2020:

**SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Applicant's Notice of Motion, the Motion Record and the Third Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meanings given to them in the Initial Order of this Court made in the within proceedings dated October 22, 2019 (as amended, the “**Initial Order**”) or the Lucky Affidavit, as applicable.

**EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including 11:59 p.m. (Toronto time) on September 18, 2020, and that all other terms of the Initial Order shall remain in full force and effect during the Stay Period.

**DISTRIBUTIONS TO SECURED CREDITOR**

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and directed to distribute to Diesel Equipment Limited (“**Diesel**”) the amount of \$9 million in respect of its secured claim against the Applicant under the Secured Credit Agreement (the “**Interim Distribution**”).
5. **THIS COURT ORDERS** that the Applicant is hereby authorized to make one or more further distributions, at such time(s) as the Applicant and Diesel may agree, with the consent of the Monitor, or upon further Order of this Court, to Diesel in respect of its secured claim against the Applicant (collectively, with the Interim Distribution, the “**Distributions**”), provided that in no circumstance shall the aggregate amount of the Distributions exceed the total amount of the secured indebtedness (including any costs and expenses) plus interest accrued thereon owed by the Applicant to Diesel under the Secured Credit Agreement from time to time. The Applicant is hereby authorized to take all necessary steps and actions to effect the Distributions in accordance with the provisions of this Order.
6. **THIS COURT ORDERS** that, notwithstanding:
- (a) the pendency of these proceedings;
  - (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or other

applicable legislation in respect of the Applicant and any bankruptcy or receivership order issued pursuant to any such application;

- (c) any assignment in bankruptcy made in respect of the Applicant; and
- (d) any provisions of any federal or provincial legislation,

the Distributions shall be made free and clear of all Encumbrances (including the Charges) and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicant or its property and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **APPROVAL OF MONITOR'S REPORTS, ACTIVITIES AND FEES**


- 7. **THIS COURT ORDERS** that the Pre-Filing Report of the Proposed Monitor dated October 21, 2019, the First Report of the Monitor dated November 14, 2019, the Second Report of the Monitor dated February 24, 2020 and the Third Report, and the activities and conduct of the Monitor described in each of the foregoing reports, be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.
- 8. **THIS COURT ORDERS** that the professional fees and disbursements of the Monitor in the amount of \$219,155.16 as set out in the Title Affidavit are hereby approved.
- 9. **THIS COURT ORDERS** that the professional fees and disbursements of Goldman, Sloan, Nash and Haber LLP, legal counsel to the Monitor, in the amount of \$51,968.08 as set out in the Stam Affidavit are hereby approved.

#### **GENERAL**

- 10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any

other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor 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 the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "Hainey J.", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 29 2020

PER / PAR: *RW*

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.  
1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL  
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<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b> Proceeding commenced at Toronto</p>	<p><b>STAY EXTENSION AND DISTRIBUTION ORDER</b></p> <p><b>GOODMANS LLP</b> Barristers &amp; Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p> <p><b>Christopher G. Armstrong</b> LSO#: 55148B carmstrong@goodmans.ca</p> <p><b>Andrew Harmes</b> LSO#: 73221A aharmes@goodmans.ca</p> <p>Tel: (416) 979-2211 Fax: (416) 979-1234</p> <p>Lawyers for Del Equipment Inc.</p>
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