

COURT FILE NUMBER

QBG 1076 of 2021

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

SASKATOON

**BRIEF OF LAW ON BEHALF OF THE APPLICANTS,
FIRESONG GROUP**

MLT AIKINS

MLT Aikins LLP
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BRIEF OF LAW ON BEHALF OF THE APPLICANTS, FIRESONG GROUP

I. INTRODUCTION

1. This Brief of Law is submitted on behalf of the Applicants, Canadian Development Strategies Inc., Crossroads One Inc., Oak and Ash Farm Ltd., 1143402 Alberta Ltd., 1216699 Alberta Ltd., 2061778 Alberta Ltd., Dean Runzer, and Lori Runzer (collectively, “**FireSong Group**”), in support of their Applications under section 50.4(9) of the *Bankruptcy and Insolvency Act*¹ (the “**BIA**”) to extend the period in which they are required to file proposals to their creditors under Division I of Part III of the BIA by 45 days from October 29, 2021 to December 13, 2021.
2. The facts relied upon by FireSong Group in support of these Applications are those set out in the Affidavit of Lori Runzer² and the First Report of the Proposal Trustee.
3. Briefly, FireSong Group is the developer, owner and operator of a luxury resort village at Fowler Lake, Saskatchewan.³ FireSong Group was set to become a premier Canadian travel destination for domestic and international travellers in 2019, receiving both local and international honours from prominent organizations in the hospitality industry.⁴ However, FireSong Group’s fortunes took a drastic turn for the worse with the emergence of the COVID-19 pandemic. With local lockdowns and international borders closed, FireSong Group was left without customers for its newly-built luxury cabins, without a means to finance subsequent stages of its development plan, and without a means to finance its operations.⁵
4. FireSong Group filed Notices of Intention to Make a Proposal to its creditors under section 50.4(1) of the BIA on September 29, 2021.⁶ FireSong Group has expended meaningful efforts towards developing a plan for restructuring and towards developing proposals to its creditors. FireSong Group has entered into an agreement to sell farm land located at Fort Saskatchewan, Alberta that is not directly related to the FireSong Resort or FireSong Group’s operations and expects to realize approximately \$1,960,000.00 in net sale proceeds immediately on the close of the sale.⁷ FireSong Group has also taken steps to engage the services of an expert in acquisitions and turnarounds in the Canadian hospitality industry to assist with developing an operating plan going forward and navigating the challenges in the hospitality industry arising from the COVID-19 pandemic.⁸

¹ RSC 1985, c. B-3 [**BIA**].

² Affidavit of Lori Runzer sworn October 21, 2021 [**Runzer Affidavit**].

³ Runzer Affidavit at para 7.

⁴ Runzer Affidavit para 24.

⁵ Runzer Affidavit at para 24.

⁶ Runzer Affidavit at para 3.

⁷ Runzer Affidavit at paras 16, 27, and Exhibit H.

⁸ Runzer Affidavit at para 27.

5. While FireSong Group has yet to develop proposals to its creditors, there is a strong likelihood that it will be able to develop viable proposals to continue operating as a going concern that will result in enhanced recovery for its stakeholders if it is provided with additional time to file proposals. It is the respectful position of FireSong Group, therefore, that it ought to be granted an order extending the period within which it is required to file proposals to its creditors by 45 days from October 29, 2021 to December 13, 2021.

II. ISSUES

6. FireSong Group respectfully submits that this Application raises the following three issues for determination:
 - (a) Has FireSong Group acted in good faith and with due diligence?
 - (b) Is FireSong Group likely to be able to make a viable proposal to its creditors if the 45-day extension is granted?
 - (c) Will a creditor of FireSong Group be materially prejudiced if the 45-day extension is granted?

III. ARGUMENT

A. **FireSong Group Should be Granted a 45-Day Extension to File Proposals to Its Creditors**

7. FireSong Group filed Notices of Intention to Make a Proposal to its creditors under section 50.4(1) of the BIA on September 29, 2021.⁹ FireSong Group will be deemed bankrupt under section 50.4(8) of the BIA on October 29, 2021 as a result of 30 days elapsing from the initial filing of the Notices of Intention to Make a Proposal if an extension of time is not granted for FireSong Group to make such proposals.
8. Section 50.4(9) of the BIA provides three necessary requirements that an insolvent person must satisfy the Court in order to obtain an extension of time to file a proposal to their creditors, which section reads as follows:¹⁰

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of

⁹ Runzer Affidavit at para 3.

¹⁰ *Supra* note 1.

the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

9. The extension of time for insolvent persons to file proposals to their creditors by 45 days following the initial 30-day period is relatively common in Saskatchewan. Recent Orders of this Court providing such extension under section 50.4(9) of the BIA include *Re D'amani Stucco Solutions Inc.*¹¹ and *Re 10110090 Saskatchewan Ltd.*¹²

10. As discussed in more detail below, FireSong Group meets all three requirements necessary to be granted an extension of time for filing proposals to creditors and, accordingly, FireSong Group respectfully submits that it ought to be granted an order for a 45-day extension from October 29, 2021 to December 13, 2021 to file proposals to its creditors.

a. FireSong Group is Acting in Good Faith and With Due Diligence

11. FireSong Group has acted and continues to act both in good faith and with due diligence.

12. FireSong Group has taken steps to engage the services of an expert in the Canadian hospitality industry to assist in its restructuring, Mr. Jon Zwickel,¹³ has negotiated the sale of the Farm Land located at Fort Saskatchewan,¹⁴ has filed its Projected Cash Flow Statement with the Proposal Trustee, and has communicated in a transparent and timely manner with the Proposal Trustee and its stakeholders.

13. There is nothing to suggest that FireSong Group is pursuing an extension of time to file proposals to its creditors to achieve an ulterior motive or to delay or frustrate creditor recovery. Rather, FireSong Group has taken tangible steps towards restructuring with a view to recovery and maximizing stakeholder interests and has made significant progress to that end. FireSong Group therefore meets the requirements of good faith and due diligence for an extension of time to file proposals under section 50.4(9)(a) of the BIA.

¹¹ (9 September 2020), QB No. 1033 of 2020, Judicial Centre of Saskatoon (unreported) (Elson J).

¹² (23 July 2020), QB No. 872 of 2020, Judicial Centre of Saskatoon (unreported) (Scherman J).

¹³ Runzer Affidavit at paras 16, 27, and Exhibit H.

¹⁴ Runzer Affidavit at para 27.

b. FireSong Group is Likely to Make Viable Proposals to Its Creditors if the 45-Day Extension is Granted

14. FireSong Group's progress in developing a plan for restructuring and in developing proposals to its creditors indicates that it is likely that FireSong Group will be able make viable proposals to its creditors if the 45-day extension is granted.
15. The requirement that an insolvent person prove that it is *likely* that they will be able to make a viable proposal to their creditors if the extension sought is granted must be interpreted in light of the ability for the Court to grant an insolvent person up to an aggregate of 5 months to file a proposal under section 50.4(9) of the BIA. That is, an insolvent person is not required to strictly prove that they will be able to make a viable proposal within the period of the extension, but that there is *some likelihood* a viable proposal will be advanced within the time frame of the extension applied for. Nor is an insolvent person require to prove their major creditors support the extension being granted. As discussed by Justice Moir of the Nova Scotia Supreme Court in *Re Kocken Technologies Systems Inc.*:¹⁵

[19] Next is the requirement that a viable proposal is likely to be made.

[20] Ms. Graham swears that the Bank of Montreal "has lost all confidence and trust in current management and ownership". "BMO will not engage in negotiations." She is of the view "that any proposal is doomed to fail". The Bank of Montreal is the primary secured creditor and its support will be necessary when the time comes for a vote.

[21] Such statements by a secured creditor with a veto are not determinative. They are forecasts rather than evidence of present fact. We must not assume intransigence in a world in which misunderstandings occur, they are sometimes corrected, and trust is sometimes restored in whole or in part. Nor may we, in this case, assume that the proposed terms will require a restoration of confidence or trust or a continuing relationship with the Bank of Montreal.

[22] I have some difficulty with the decision of Justice Penny in *NS United Kaiun Kaisha, Ltd. v. Cogent Fibre Inc.*, 2015 ONSC 5139 (Ont. S.C.J.), which suggests that s. 50.4(9)(b) requires at least a hint of what the insolvent will offer to the secured creditor and what the proposal will contain. It is in the nature of proposals that they are developed and, if an extension is needed, the proposal is developing.

[23] The requirement is "would likely be able to make a viable proposal", not "has settled on terms likely to be accepted". I think that is the point made by Justice Goodfellow in *H & H Fisheries Ltd., Re*, 2005 NSSC 346 (N.S. S.C.), when he says that s. 50.4(9)(b) means "that a reasonable level of effort dictated by the circumstances must have been made that gives some indication of the likelihood a viable proposal will be advanced within the time frame of the extension applied for."

[emphasis added].

¹⁵ 2017 NSSC 80, 50 CBR (6th) 168.

16. FireSong Group has exerted a level of effort in developing a proposal thus far that indicates a likelihood that a viable proposal will be advanced within the time frame of the 45-day extension sought. FireSong Group has secured significant financing for its proposal from the sale of the Farm Land at Fort Saskatchewan.¹⁶ It has also taken steps to retain the services of Mr. Jon Zwickel to assist in developing an operational plan.¹⁷ While the specific terms of FireSong Group's proposals may not be settled, the foundation of FireSong Group's proposals have been put in place.
17. FireSong Group has made significant progress in developing its restructuring plan and its proposals to its creditors since September 29, 2021. If FireSong Group's progress continues at a similar rate as it has thus far, there is a strong likelihood that it will advance viable proposals to its creditors before the 45-day extension elapses on December 13, 2021. Accordingly, FireSong Group meets the requirement of likely being able to make viable proposals to its creditors under section 50.4(9)(b) of the BIA.

c. No Creditor of FireSong Group Will Be Materially Prejudiced if the 45-Day Extension is Granted

18. The proposed 45-day extension of time for FireSong Group to file proposals to its creditors will not materially prejudice any of FireSong Group's creditors.
19. The focus of the requirement that an insolvent person show that none of its creditors will be materially prejudiced under section 50.4(9)(c) is on whether the *extension* will cause prejudice to the insolvent person's creditors, and not whether the eventual proposal might cause prejudice to the insolvent person's creditors.¹⁸ Second, the test is one of objective *material* prejudice. As discussed by Justice Steeves of the British Columbia Supreme Court in *Enirgi Group Corp. v Andover Mining Corp.*:¹⁹

[76] The third requirement under s. 50.4(9) is that no creditor should be materially prejudiced if an extension is granted. As emphasized in *Cantrail* at para. 21 the test is not prejudice but material prejudice. It is also an objective test: *Cumberland* at para. 11. In the subject case there is no evidence that the security in the first promissory note would be less if an extension was granted. Enirgi asserts that Andover is restructuring its assets but there is no evidence of that and, in the event it occurs, remedies are available on short notice. Unlike in *Cumberland*, the debtor here is not converting inventory into cash. It is true that the note (or notes) is non-interest bearing but Enirgi knew that when it became an assignee in March 2013 and the note had not been unpaid since October 2012. I conclude that there is some prejudice to Enirgi but not material prejudice.

¹⁶ Runzer Affidavit at paras 16, 27, and Exhibit H.

¹⁷ Runzer Affidavit at para 27.

¹⁸ *Re Scotian Distribution Services Ltd*, 2020 NSSC 131 at para 22, 78 CBR (6th) 258.

¹⁹ 2013 BCSC 1833, 6 CBR (6th) 32.

[emphasis added]

20. There is no evidence available to FireSong Group that indicates that a creditor of FireSong Group will be materially prejudiced by an extension of time for FireSong Group to file proposals to its creditors.²⁰ Allowing FireSong Group to develop and implement a restructuring plan to continue to operate as a going concern will result in a better financial outcome for the stakeholders than the alternative.²¹ Further, there is no immediate threat of depreciation or devaluation of FireSong Group's assets or erosion of FireSong Group's cash flows that would cause FireSong Group's creditors to be prejudiced if viable proposals are not developed.²²
21. FireSong Group's creditors stand to gain in the form of enhanced recovery from FireSong Group being provided with additional time to develop a restructuring plan and proposals to its creditors. There is no evidence that FireSong Group's creditors will be materially prejudiced by FireSong Group being provided with a 45-day extension to file proposals to its creditors. FireSong Group therefore respectfully submits that it meets the requirement for an extension of time to file proposals under section 50.4(9)(c) of the BIA.

IV. RELIEF REQUESTED

22. For all of the foregoing reasons, FireSong Group respectfully requests that this Honourable Court grant it an Order pursuant to section 50.4(9) of the BIA to extend the period in which it is required to file proposals to its creditors under Division I of Part III of the BIA by 45 days to December 13, 2021.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Saskatoon, Saskatchewan, this 22th day of October, 2021.

MLT AIKINS LLP

Per: 
Jeffrey M. Lee, Q.C., Dana Nowak and Shay
Brehm, Solicitors for FireSong Group

²⁰ Runzer Affidavit at para 28.

²¹ Runzer Affidavit at para 28.

²² Runzer Affidavit at para 28.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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File No:	153171.1

TABLE OF AUTHORITIES

JURISPRUDENCE

TAB

10110090 Saskatchewan Ltd., Re, (23 July 2020), QB No. 872 of 2020, Judicial Centre of Saskatoon (unreported) (Scherman J).

A

D'amani Stucco Solutions Inc. Re, (9 September 2020), QB No. 1033 of 2020, Judicial Centre of Saskatoon (unreported) (Elson J).

B

Kocken Technologies Systems Inc., Re, 2017 NSSC 80, 50 CBR (6th) 168.

CanLII

Scotian Distribution Services Ltd, Re, 2020 NSSC 131, 78 CBR (6th) 258.

CanLII

Enirgi Group Corp. v Andover Mining Corp., Re, 2013 BCSC 1833, 6 CBR (6th) 32.

CanLII

TAB A

Form 10-3
(Rule 10-3)

CANADA)
PROVINCE OF SASKATCHEWAN)

Court No.: Q.B. No. 872 of 2020
Estate No.: 23-2654754

**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY**

JUDICIAL CENTRE SASKATOON

APPLICANT 101100090 SASKATCHEWAN LTD.

**IN THE MATTER OF SECTION 50.4 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C.
B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 101100090
SASKATCHEWAN LTD.**

ORDER

(APPLICATION FOR FIRST EXTENSION, INTERIM FINANCING AND ADMINISTRATIVE CHARGE)

Order made this 23rd day of July, 2020.

Before the Honourable Mr. Justice B. J. Scherman on the 23rd day of July, 2020.

On the Application of Mike Russell and Kevin Hoy of the W Law Group LLP, lawyers for the Applicant, 101100090 SASKATCHEWAN LTD., and upon reading the Notice of Application dated July 20, 2020 (the "**Application**"), the Service List, the First Report of the Proposal Trustee, THE BOWRA GROUP INC. (the "**Proposal Trustee**") dated July 20, 2020, the affidavit of Ryan Kolibab sworn July 20, 2020, and this Order, all filed; and upon hearing from Mike Russell on behalf of the Applicant; and upon hearing representations from any other interested party represented by counsel at the application;

The Court hereby orders that:

SERVICE AND DRAFT ORDER

1. Service of the Applicant's Notice of Application and supporting materials by electronic transmission or facsimile upon those parties listed in the Service List established in these proceedings is hereby validated and declared to be timely and sufficient.
2. Queen's Bench Rule 10-4(2) is hereby waived.

EXTENSION OF TIME TO FILE PROPOSAL

3. Pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act* ("**BIA**"), the period within which the Applicant may file a proposal shall be and is hereby extended to 11:59 p.m. on September 9, 2020.
4. The stay of proceedings in the within matter is extended by 45 days to and including September 9, 2020.

INTERIM FINANCING

5. The Applicant is hereby authorized to obtain and borrow the following amounts from the respective lenders, namely:
 - a. the amount of \$75,000.00 from Bernie Kolibab and Patricia Kolibab (the "**Kolibab Facility**") pursuant to the terms of a Promissory Note dated July 23, 2020 (the "**Kolibab Promissory Note**"); and
 - b. the amount of \$75,000.00 from Specific Consulting Corp. (the "**SCC Facility**") pursuant to the terms of a Promissory Note dated July 23, 2020 (the "**SCC Promissory Note**"),

provided that the aggregate borrowings under the Kolibab Facility and the SCC Facility (collectively, the "**Interim Lending Facility**") shall not exceed the maximum principal amount of \$150,000.00 without further Order of this Court.

6. The Applicant is hereby authorized and empowered to execute and deliver Kolibab Promissory Note and the SCC Promissory Note (collectively, the "**Promissory Notes**"), and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liability and obligations under and pursuant to the Promissory Notes as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
7. Pursuant to Section 50.6 of the BIA, The Bernie Kolibab, Patricia Kolibab and Specific Consulting Corp. (collectively, the "**Interim Lenders**") shall be entitled, *pari passu*, to the benefits of a charge (the "**Interim Lender Charge**") on the Applicant's current and future assets, undertakings and property of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Promissory Notes and which charge shall not secure an obligation that exists before this Order is made. The Interim Lender Charge shall have the priority established by paragraphs 13 and 17 hereof.

8. Notwithstanding any other provisions of this Order or the provisions of Section 69 of the BIA:
 - a. upon the dates of demand set forth in the Promissory Notes, each of the Interim Lenders will be entitled to exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Promissory Notes, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicant against the obligations of the Applicant to the Interim Lenders under the Promissory Notes or the Interim Lender Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
 - b. the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.
9. The Interim Lenders shall be treated as unaffected in any proposal filed by the Applicant under the BIA with respect to any advances made under the Promissory Notes or the Interim Lender Charge.
10. The Interim Lender Charge created by this Order over leases of real property in Canada shall not be a charge in the Applicant's interest in such real property leases.

ADMINISTRATION CHARGE

11. The Applicant shall pay the reasonable fees and disbursements of the Proposal Trustee, counsel for the Proposal Trustee and the Applicant's legal counsel (collectively, the "**Professionals**"), which are directly related to these proceedings, as defined in the Application, whether incurred before or after this Order (collectively, the "**Professional Fees**").
12. The Professionals shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$50,000.00, as security for the payment of the Professional Fees. The Administration Charge shall have the priority set out in paragraphs 13 and 17 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

13. The priorities of the Administration Charge and the Interim Lender Charge (collectively the "**Charges**") as between them with respect to any Property to which they apply, shall be as

follows:

- a. First – Administration Charge; and
 - b. Second – Interim Lender Charge.
14. Notwithstanding paragraphs 13 and 17 hereof, the Charges shall not rank in priority to or equal with any security interest or charge in the property of the Applicant held by Affinity Credit Union 2013. Notwithstanding the foregoing, the Applicant shall have leave, on 7 days' notice, or in any application seeking a further extension of these proceedings pursuant to section 50.4(9) of the BIA, to apply to this Court for a further Order subordinating any security interest or in the Property of the Applicant held by Affinity Credit Union 2013 to the Charges, as ranked in paragraph 13 and 17 hereof.
15. If the persons sharing in the benefit of one of the Charges (the "**Chargees**") have claims that, in the aggregate, exceed the maximum authorized amount of that Charge, such Chargees shall share in the benefit of that Charge (as between themselves) on a *pro rata* basis to the maximum aggregate authorized amount of such Charge.
16. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any failure or delay to file, register, record or perfect the Charges.
17. Each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person.
18. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrance over any Property that purports to rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Proposal Trustee, the Interim Lenders and the beneficiaries of the Administration Charge, or further Order of this Court.
19. The Charges and the Promissory Notes shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees entitled to the benefit of the Charges and/or the Interim Lenders thereunder shall not otherwise be limited or impaired in any way by:
- a. the pendency of these proceedings and the declarations of insolvency made in this Order;

- b. any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications;
- c. the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- d. the provisions of any federal or provincial statutes; or
- e. any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
 - i. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Lender Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
 - ii. none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the entering into, execution, delivery or performance of the Interim Lender Documents; and
 - iii. the payments made by the Applicant pursuant to this Order and the Promissory Notes and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

20. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant, Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Applicant and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Proposal Trustee and its agents in carrying out the terms of this Order.

21. The Order and all other orders in these proceedings are declared to have full force and effect in all provinces and territories in Canada.

22. This Order shall be served on the Service List established in these proceedings.

ISSUED at Saskatoon, Saskatchewan, this 24th day of July, 2020.



Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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TAB B

**Form 10-3
(Rule 10-3)**

**CANADA
PROVINCE OF SASKATCHEWAN**

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**Court No.: Q.B. No. 1033 of 2020
Estate No.: 23-2664678**

**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY**

JUDICIAL CENTRE

SASKATOON

APPLICANT

D'AMANI STUCCO SOLUTIONS INC.

**IN THE MATTER OF SECTION 50.4 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C.
B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF D'AMANI
STUCCO SOLUTIONS INC.**

ORDER

(First Extension, Interim Financing Charge and Administrative Charge)

Order made this 9th day of September, 2020.

Before the Honourable Mr. Justice R.W. Elson on the 9th day of September, 2020.

On the Application of Mike Russell and Fraiba Jalal of the W Law Group LLP, lawyers for the Applicant, D'AMANI STUCCO SOLUTIONS INC., and upon reading the Notice of Application dated September 4, 2020 (the "**Application**"), the Service List, the First Report of the Proposal Trustee, THE BOWRA GROUP INC. (the "**Proposal Trustee**") dated September 4, 2020, the Affidavit of Tomas Sabau sworn September 4, 2020, Brief of Law dated September 4, 2020, and this Order, all filed; and upon hearing from Mike Russell on behalf of the Applicant; and upon hearing representations from any other interested party represented by counsel at the application;

The Court hereby orders that:

SERVICE AND WAIVER OF RULE 10-4(2)

1. Service of the Application and supporting materials upon all parties listed on the Service List established in these proceedings by electronic service shall be and is hereby deemed to be good, timely and sufficient.
2. Queen's Bench Rule 10-4(2) is hereby waived.

EXTENSION OF TIME TO FILE PROPOSAL

3. Pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act* ("**BIA**"), the period within which the Applicant may file a proposal shall be and is hereby extended to 11:59 p.m. on October 28, 2020.
4. The stay of proceedings in the within matter is extended by 45 days to and including October 28, 2020.

INTERIM FINANCING

5. The Applicant is hereby authorized to obtain and borrow the amount of up to \$200,000.00 from Adexmat Inc. (the "**Adexmat Facility**") pursuant to the terms of the loan and security documents (collectively, the "**Interim Financing Documents**") executed or to be executed between the Applicant and Adexmat Inc. in regard to the Adexmat Facility, provided that the aggregate borrowings under the Adexmat Facility shall not exceed the maximum principal amount of \$200,000.00 without further Order of this Court.
6. The Applicant is hereby authorized and empowered to execute and deliver promissory notes to Adexmat Inc. in accordance the Interim Financing Documents, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liability and obligations under and pursuant to the Interim Financing Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
7. Pursuant to Section 50.6 of the BIA, Adexmat Inc. shall be entitled to the benefits of a charge (the "**Interim Lender Charge**") on the Applicant's current and future assets, undertakings and property of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Interim Financing Documents and which charge shall not secure an obligation that exists before this Order is made. The Interim Lender Charge shall have the priority established by paragraphs 13 and 16 hereof.
8. Notwithstanding any other provisions of this Order or the provisions of Section 69 of the BIA:
 - a. upon the dates of demand set forth in the Interim Financing Documents, Adexmat Inc. shall be entitled to exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Interim Financing Documents, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by Adexmat Inc. to the Applicant against the obligations of the Applicant

to Adexmat Inc. under the Interim Financing Documents or the Interim Lender Charge, to make demands, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- b. the foregoing rights and remedies of Adexmat Inc. shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.
9. Adexmat Inc. shall be treated as unaffected in any proposal filed by the Applicant under the BIA with respect to any advances made under the Interim Financing Documents or the Interim Lender Charge.
 10. The Interim Lender Charge created by this Order over leases of real property in Canada shall not be a charge in the Applicant's interest in such real property leases.

ADMINISTRATION CHARGE

11. The Applicant shall pay the reasonable fees and disbursements of the Proposal Trustee, counsel for the Proposal Trustee (if any) and the Applicant's legal counsel (collectively, the "**Professionals**"), which are directly related to these proceedings, as defined in the Application, whether incurred before or after this Order (collectively, the "**Professional Fees**").
12. The Professionals shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$50,000.00, as security for the payment of the Professional Fees. The Administration Charge shall have the priority set out in paragraphs 13 and 16 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

13. The priorities of the Administration Charge and the Interim Lender Charge (collectively the "**Charges**") as between them with respect to any Property to which they apply, shall be as follows:
 - a. First – Administration Charge; and
 - b. Second – Interim Lender Charge.
14. If the persons sharing in the benefit of one of the Charges (the "**Chargees**") have claims that, in the aggregate, exceed the maximum authorized amount of that Charge, such Chargees shall

share in the benefit of that Charge (as between themselves) on a *pro rata* basis to the maximum aggregate authorized amount of such Charge.

15. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any failure or delay to file, register, record or perfect the Charges.
16. Each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person.
17. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrance over any Property that purports to rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Proposal Trustee, Adexmat Inc. and the beneficiaries of the Administration Charge, or further Order of this Court.
18. The Charges and the Loan Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees entitled to the benefit of the Charges and/or Adexmat Inc. thereunder shall not otherwise be limited or impaired in any way by:
 - a. the pendency of these proceedings and the declarations of insolvency made in this Order;
 - b. any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications;
 - c. the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - d. the provisions of any federal or provincial statutes; or
 - e. any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
 - i. neither the creation of the Charges nor the execution, delivery, perfection,

registration or performance of the Loan Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- ii. none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the entering into, execution, delivery or performance of the Loan Documents; and
- iii. the payments made by the Applicant pursuant to this Order and the Loan Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

19. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant, Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Applicant and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Proposal Trustee and its agents in carrying out the terms of this Order.

20. The Order and all other orders in these proceedings are declared to have full force and effect in all provinces and territories in Canada.

21. This Order shall be served on the Service List established in these proceedings.

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ISSUED at Saskatoon, Saskatchewan, this 9th day of September, 2020.


Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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