

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF FERREX ENGINEERING LTD., OF THE CITY OF
AJAX, IN THE PROVINCE OF ONTARIO

NOTICE OF MOTION

FERREX ENGINEERING LTD. (the “**Company**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on Wednesday, June 17, 2020 at 11:00 a.m. or as soon after that time as the motion can be heard via Zoom videoconference call on account of the COVID-19 pandemic, for an Order, *inter alia*, pursuant to Section 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

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

THE MOTION IS FOR:

1. Orders substantially in the form attached at Tabs 2 and 3 of the Motion Record, among other things:
 - (a) validating and abridging the time and manner of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;

- (b) approving the Asset Purchase Agreement dated June 8, 2020 (the “**APA**”) entered into by the Company and 1199541 Ontario Inc. (“**1199541**”) and the transaction (the “**Transaction**”) contemplated therein pursuant to which MSC Inc., as a permitted assignee under the terms of the APA (the “**Purchaser**”), has agreed to purchase all of the Company’s right, title and interest in and to the Purchased Assets (as defined in the APA) and vesting the Purchased Assets in the Purchaser free and clear of any and all liens, charges, security interests, encumbrances, estates, rights and claims;
- (c) sealing the unredacted APA included as an appendix to the Second Report of MNP Ltd. (“**MNP**”), in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”) dated June ♦, 2020 (the “**Second Report**”), until closing of the Transaction or further order of this Court;
- (d) approving the Second Report and the activities of the Proposal Trustee set out therein;
- (e) approving the fees and disbursements of the Proposal Trustee and its counsel, Fogler, Rubinoff LLP, as set out in the Second Report; and
- (f) such other and further relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- 2. the Company is a corporation incorporated pursuant to the *Business Corporations Act* (Ontario) and its registered office address is located at the leased premises municipally known as 230 Westney Road South, Suite 300, Ajax, Ontario;
- 3. the Company is a multi-disciplinary professional services company that delivers an array of technical and strategic services, including engineering, automation systems and process control, information technology, project management and commissioning to the manufacturing industry;

4. the Company's sole secured creditor is 1199541 which is owed approximately CDN\$1,757,000. 1199541 holds a general security interest in all of the Company's presently and after acquired property and it registered its security interest under the *Personal Property Security Act* (Ontario) on December 8, 2011;
5. the Company filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the BIA (the "**NOI**") on April 2, 2020 and MNP was appointed as Proposal Trustee in respect of the NOI proceedings (the "**NOI Proceedings**");
6. the NOI Proceedings were prompted by a judgment (the "**Micro Fines Judgment**") being entered against the Company in the amount of US\$538,874.39 by Micro Fines Recycling Oswego, LLC ("**Micro Fines**") in the U.S. District Court for the Northern District of New York (the ("**U.S. Court**");
7. in light of the cost associated with defending the Micro Fines litigation and the Company's distressed financial situation at that time, the Company did not file a defence and on the U.S. Court granted the Micro Fines Judgment;
8. on March 10, 2020, Micro Fines filed a motion before the U.S. Court seeking, *inter alia*, an order directing the Company to bring into the State of New York certain funds held in the Company's Canadian bank accounts with the Royal Bank of Canada ("**RBC**") so that Micro Fines and/or the U.S. Court may attach the funds for purposes of satisfying the Micro Fines Judgment (the "**Micro Fines Execution Motion**");
9. if Micro Fines was successful on the Micro Fines Execution Motion, the Company would be forced to cease operations as it would not have the necessary liquidity to continue meeting its obligations to creditors;
10. further in that regard, the funds held in the Company's RBC account are subject to 1199541's prior-ranking security interest;
11. in addition to the NOI Proceedings, the Company also commenced proceedings under Chapter 15 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Chapter 15 Proceedings**"), for recognition of the NOI Proceedings and was granted an Order on April

22, 2020 temporarily staying all proceedings against the Company, including all efforts, such as the Micro Fines Execution Motion, to execute on the Company's assets;

12. pursuant to an Order of the U.S. Court dated May 4, 2020, the temporary stay of proceedings was continued to May 20, 2020 and pursuant to a further Order dated May 22, 2020, the NOI Proceedings were recognized as "foreign main proceedings" and the stay of proceedings was continued;
13. the principal purpose of the NOI Proceedings and the Chapter 15 Proceedings has been to create a stabilized environment to allow the Company to continue operating as a going concern business while it works with the Proposal Trustee to restructure its affairs including by way of a going concern transaction in respect of the Company's assets and, in conjunction with the Proposal Trustee, run the a sale process to solicit bids for the Company's assets;

Sale Process

14. pursuant to the Order of Honourable Madam Justice Conway dated May 4, 2020 (the "**Sale Process Approval Order**"), a sale process was approved pursuant to which the Proposal Trustee sought bids on an *en bloc* basis for the Company's assets (the "**Sale Process**");
15. as part of the Sale Process, the Proposal Trustee advertised the opportunity and reached out to various parties to solicit interest in the Company's assets. Further in that regard, the Proposal Trustee established a data room containing information pertinent to the Company's business and assets and those parties who executed non-disclosure agreements ("**NDAs**") were provided access to the data room;
16. parties executed NDAs and accessed the data room;
17. the deadline for the submission of bids to the Proposal Trustee under the Sale Process was June 8, 2020 (the "**Bid Deadline**") and the only offer submitted by the Bid Deadline was the APA submitted by 1199541;

The APA

18. the APA contemplates the sale of substantially all of the Company's assets on an "as is, where is" basis;
19. the Proposal Trustee recommends that the Court issue an order authorizing the Company to complete the Transaction and vesting title to the Purchased Assets in the Purchaser free and clear of all claims and encumbrances for the following reasons:
 - (a) the Sale Process was carried out in accordance with the Sale Process Approval Order;
 - (b) in the Proposal Trustee's view, the duration of the Sale Process was sufficient to allow interested parties to perform their due diligence and submit offers;
 - (c) the Proposal Trustee does not believe that further time spend marketing the Company's business and assets will result in a superior transaction, in the circumstances; and
 - (d) the Company's business requires the stability of a completed transaction and a timely exit from the NOI Proceedings in order to continue to operate as a going-concern.

Sealing Order

20. the Company requests that the APA, attached as a confidential appendix to the Third Report, be sealed until closing of the Transaction or further order of this Court as it includes information of a sensitive financial nature that, if made public, would be prejudicial in the event that the Transaction does not close;

Professional Fees

21. taking into account the overall value of their services to date, the fees and disbursements of the Proposal Trustee and its counsel are fair and reasonable in the circumstances;

22. the Proposal Trustee has reviewed the bills of its counsel and is of the opinion that the services have been duly authorized and rendered and the charges are reasonable;
23. such further and other grounds as set out in the Second Report; and
24. Rules 1.04, 1.05, 2.01, 2.03, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

AND FURTHER TAKE NOTICE that the following materials will be filed in support of the Company's motion, namely:

- (a) the Second Report;
- (b) the Affidavit of Sheldon Title
- (c) the Affidavit of Maurice Fleming; and
- (d) such further and other material as counsel may advise and this Honourable Court may permit.

June 12, 2020

WALKER HEAD
800-1315 Pickering Parkway
Pickering, ON L1V 7G5

KYLE C. ARMAGON 49497F
Tel: 905-839-4484
Fax: 905-420-1073

Lawyers for Ferrex Engineering Ltd.