

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

THE HONOURABLE MADAM) MONDAY, THE 4th
)
JUSTICE CONWAY) DAY OF MAY, 2020

**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**

ORDER
**(SALE PROCESS APPROVAL, EXTENSION OF TIME TO FILE A PROPOSAL AND
ADMINISTRATIVE CHARGE)**

THIS MOTION, made by Ferrex Engineering Ltd. (the “**Company**”), pursuant to Sections 50.4(9) and 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), for an order, *inter alia*, approving a sale process (the “**Sale Process**”) in respect of the Company’s assets, as set out in the First Report of MNP Ltd., in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”) (the “**First Report**”), was heard this day by Zoom videoconference call due to the COVID-19 crisis.

ON READING the First Report, the affidavit of Thomas H. Clarkson sworn April 28, 2020 and on hearing the submissions of counsel for the Company, the Proposal Trustee, 1199541 Ontario Inc., and no one else appearing although duly served as appears from the Affidavit of Service of Kyle Armagon sworn May 1st, 2020,

SERVICE

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

APPROVAL OF SALE PROCESS

2. **THIS COURT ORDERS** that the Sale Process, as set out in the First Report, be and are hereby approved and that the Proposal Trustee is authorized to conduct the Sale Process in accordance with the terms thereof.

3. **THE COURT ORDERS** that the Company and the Proposal Trustee (including its respective affiliates, partners, directors, employees, advisors, legal counsel, agents and controlling persons) shall have no personal or corporate liability in connection with the Sale Process, subject to the provisions of the BIA.

4. **THIS COURT FURTHER ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Proposal Trustee and the Company be and are hereby authorized and permitted to disclose and transfer to each Prospective Offeror, as defined in the Sale Process (the “**Offerors**”), if requested by such Offerors, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Company’s records pertaining to the Company’s past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale pursuant to the Sale Process (a “**Sale**”). Each Offeror to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Proposal Trustee, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Proposal Trustee. The Successful Offeror(s), as defined in the Sale Process, shall maintain and protect the privacy of such information and, upon the closing of the transaction(s) contemplated in the Successful Offer(s), as defined in the Sale Process, shall be entitled to use the personal information provided to it that is related to the applicable business and/or assets of the Company acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by

the Company, and shall return all other personal information to the Proposal Trustee, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Proposal Trustee.

ADMINISTRATION CHARGE

5. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed the amount of \$100,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 7 hereof.

PRIORITY OF ADMINISTRATION CHARGE

6. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

7. **THIS COURT ORDERS** that the Administration Charge shall rank in priority as against all other validly perfected security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, granted by the Company or to which the Company is subject (together, the “**Encumbrances**”) as of the date of this Order.

8. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by further order of this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Administration Charge.

9. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge (the “**Chargees**”) thereunder shall not otherwise be limited or impaired in

any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application for a bankruptcy order issued pursuant to the BIA, or any bankruptcy order made pursuant to such an application; (c) the filing of any assignment 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 documents, lease, sublease, offer to lease or other agreement (together, the “**Agreements**”) which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) 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 Administration Charge; and
- (c) the granting of the Administration Charge, does not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct or other challengeable or voidable transaction under any applicable law.

10. **THIS COURT ORDERS** that the Administration Charge created by this Order over leases of real property in Canada shall only be a charge in the Company’s interest in such real property leases.

EXTENSION OF TIME TO FILE PROPOSAL

11. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to June 18, 2020.

APPROVAL OF REPORT AND ACTIVITIES

12. **THIS COURT ORDERS** that the Proposal Trustee’s activities as set out in the First Report are hereby approved.

GENERAL

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Company, the Proposal Trustee, 1199541 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 Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Company or, at the Company's option and with its consent, the Proposal Trustee, in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that each of the Company and the Proposal Trustee shall be at liberty and are hereby authorize 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.



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Court File No. 31-2636073
Estate File No. 31-2636073

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

PROCEEDING COMMENCED AT TORONTO

ORDER
(SALE PROCESS APPROVAL, EXTENSION OF
TIME TO FILE A PROPOSAL AND
ADMINISTRATIVE CHARGE)

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