

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE) THURSDAY, THE 28th DAY
)
) OF MARCH, 2019

**IN THE MATTER OF THE PROPOSAL OF FT ENE CANADA INC., OF THE CITY
OF BRANTFORD, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION made by FT EnE Canada Inc. (“**Debtor**”) for an Order *inter alia*: (a) approving a sale and investment solicitation process, *nunc pro tunc*, with respect of all or part of the Debtor’s business and assets (“**SISP**”); (b) extending the deadline for the Debtor to file a proposal to and including May 10, 2019; and (c) granting a charge in respect of the fees and disbursements in favour of the Debtor’s counsel, MNP Ltd. in its capacity as proposal trustee for the Debtor (in such capacity, the “**Trustee**”), and Trustee’s counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Yoonjun Park, sworn March 22, 2019, the First Report of the Trustee, dated [March 26, 2019](#) (“**First Report**”), and on hearing the submissions of counsel for the Debtor and counsel for the Trustee, and those other parties present, no one

appearing for any other person on the service list, although duly served as appears in the affidavit of service of [Alexandra Teodorescu](#), filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service 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 THE SISP

2. **THIS COURT ORDERS** that the SISP, as described in the First Report, be and is hereby approved *nunc pro tunc*.

3. **THIS COURT ORDERS** that the Trustee and the Debtor be and are hereby authorized and directed to perform their obligations under and in accordance with the SISP, and to take such further steps as it considers necessary or desirable in carrying out the SISP.

4. **THIS COURT ORDERS** that in connection with the SISP and pursuant to clause 7(3)(c) of the *Personal Information and Electronic Documents Act* (Canada), the Trustee is authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a “**Transaction**”). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Trustee, as applicable; (ii) destroy all such information, or (iii) in the case of

such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The transacting party with respect to any of the Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Trustee, as applicable, or ensure that all other personal information is destroyed.

5. **THIS COURT ORDERS** that, pursuant to clause 3(c)(i) of the *Electronic Commerce Protection Regulations*, made under *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-Television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23, the Debtor and the Trustee are authorized and permitted to send, or cause to permit to be sent, commercial electronic messages to an electronic address of prospective purchasers or bidders and to their advisors but only to the extent desirable or required to provide information with respect to the SISP.

EXTENSION OF TIME TO FILE PROPOSAL

6. **THIS COURT ORDERS** that the time in which the Debtor is required to file a proposal be and is hereby extended to and including May 10, 2019.

ADMINISTRATION CHARGE

7. **THIS COURT ORDERS** that counsel to the Debtor, the Trustee and counsel to the Trustee (“**Administrative Parties**”) shall be entitled to the benefit of and are hereby granted a

charge (the “**Administration Charge**”) on all property, assets and undertakings of the Debtor (“**Property**”), as security for the fees and disbursements of the Administrative Parties, incurred at their standard rates and charges and on the terms set forth in their respective engagement letters, both before and after the making of this Order.

8. **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.

9. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, except that the Administration Charge shall be subordinate to the valid and enforceable security interests of the Royal Bank of Canada.

APPROVAL OF TRUSTEE REPORT

10. **THIS COURT ORDERS** that the First Report and the activities of the Trustee described therein be and are hereby approved, provided that only the Trustee, in its personal capacity and only with respect to its personal capacity, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

11. ~~10.~~ **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 Debtor, the Proposal Trustee 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 Debtor and the Proposal Trustee as may be necessary or desirable to give effect to this Order, or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

12. ~~11.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, the Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://mnpdebt.ca/en/corporate/engagements/ftenecanada>
