



NO. VLC-S-B-220121
ESTATE NO.: 11-2805685
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
VES-ARTEX SYSTEMS CANADA, ULC

NOTICE OF APPLICATION

Name of Applicant: MNP Ltd., in its capacity as the Proposal Trustee (in such capacity, the
“**Proposal Trustee**”) of VES-Artex Systems Canada, ULC

To: Service List attached as **Schedule “A”** hereto

TAKE NOTICE that an application will be made by the Proposal Trustee to the presiding judge by MS Teams at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on **Tuesday, May 10, 2022 at 9:45 a.m.** for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order approving the Amended Joint Proposal filed by VES-Artex Systems Canada, ULC and VES-Artex Systems USA, LLC, in the form attached hereto as **Schedule “B”**.
2. Such further and other relief as counsel may advise and this Court may allow.

Part 2: FACTUAL BASIS

3. VES-Artex Systems Canada, ULC, and VES-Artex Systems USA, LLC (collectively, the “**Companies**”) are primarily in the business of providing cattle-handling and ventilation equipment to the agricultural industry in British Columbia and elsewhere in Canada and the United States.
4. VES-Artex Systems Canada, ULC in a company registered in British Columbia. VES-Artex Systems USA, LLC is a corporation incorporated under the laws of the states of Delaware and is the parent company to VES-Artex Systems Canada, ULC.

5. The Companies' primary creditor is NewAG Holdings Ltd. ("**NewAG**") which is comprised of vendor takeback financing under which installment payments were due by the Companies to NewAG commencing on January 31, 2022. The Companies defaulted on that payment obligation.
6. On February 17, 2022, each of the Companies filed a Notice of Intention to Make a Proposal in these proceedings.
7. On March 18, 2022 the Companies filed a Joint Proposal to their creditors with the First Meeting of Creditors scheduled for April 7, 2022.
8. At that First Meeting of Creditors, the creditors agreed to adjourn that meeting to allow further discussion and negotiation. On April 13, 2022, the reconvened First Meeting of Creditors was held at which time the Companies put forward an Amended Joint Proposal.
9. In general terms, the Amended Joint Proposal contemplates that:
 - a) all unsecured creditors, with the exception of NewAG, would be paid in full on September 30, 2022;
 - b) NewAG will receive payment in the aggregate amount of US\$6 million, with those amounts to be paid over time;
 - c) preferred and secured creditors are unaffected by the Proposal.
10. The Amended Joint Proposal was approved by the requisite majority of creditors at the reconvened First Meeting of Creditors.

Part 3 LEGAL BASIS

Approval of the Proposal

1. Subsection 59(1) of the *BIA* provides that this Court must hear a proposal trustee's report on a proposal and hear any other affected person prior to approving a proposal:

59 (1) The court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms thereof and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, and any opposing, objecting or dissenting creditor and such further evidence as the court may require.

BIA, s 59(1)
2. Subsection 59(2) of the *BIA* provides that this Court may refuse to approve a proposal if its terms are unreasonable or not calculated to benefit the general body of creditors:

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in sections 198 to 200.

BIA, s 59(2)

3. Accordingly, before approving a proposal, this Court must be satisfied that:

- (a) its terms are reasonable;
- (b) its terms are calculated to benefit the general body of the Company's creditors; and
- (c) it is made in good faith.

Wiivv Wearables Inc (Re), 2021 BCSC 511 at para 49
Magnus One Energy Corp (Re), 2009 ABOS 200 at para 10

4. Further, this Court must be satisfied that the formalities of the BIA have been complied with and that the terms required by the BIA to be included in the proposal are included.

Wiivv at para 50

5. Where a proposal has been recommended by a proposal trustee and approved by a large majority of creditors, substantial deference will be given to those views.

Wiivv at para 52
Abou-Rached (In Bankruptcy), 2002 BCSC 1022 at para 65

The terms of the Proposal are reasonable

- 6. As outlined above, under the Amended Joint Proposal the Companies will repay all unsecured creditors, with the exception of NewAG, in full and within a reasonable time. NewAG will be repaid in an amount and manner that it was agreed to.
- 7. The Proposal Trustee has reviewed the Companies cash flow projections and believes they are reasonable and achievable based on the information provided by the Companies.

Form 40 Report

8. Accordingly, the terms of the Amended Joint Proposal are reasonable.

The Proposal is calculated for the benefit of the general body of creditors

- 9. The Proposal Trustee opines that the Amended Joint Proposal is of benefit to the general body of creditors.

Form 40 Report

The Company has acted in good faith and the formalities of the BIA have been satisfied

- 10. The Proposal Trustee believes that the Companies have acted, and continue to act, in good faith.

Proposal Report

- 11. The formalities of the *BIA* have been complied with and the terms required by the *BIA* to be included in the proposal are included in the Amended Joint Proposal.

Recommendation of the Proposal Trustee

- 12. Given the factors discussed above, the Amended Joint Proposal:

- (a) is reasonable;
- (b) is calculated for the benefit of the general body of creditors; and
- (c) was made in good faith.

- 13. The Amended Joint Proposal was supported at the Meeting by the requisite majority creditors and by the Proposal Trustee.

Form 40 Report

Part 4: MATERIAL TO BE RELIED ON

- 14. Trustee’s Report to Creditors dated March 28, 2022

- 15. Form 40 Report

The Applicant estimates that the application will take 15 minutes and be heard by a Microsoft Teams.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,

- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 20 day of April, 2022.



Lawson Lundell LLP
Solicitors for the MNP Ltd.

This Notice of Application is filed by William L. Roberts, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: wroberts@lawsonlundell.com; telephone number: 604-631-9163.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____
of Part 1 of this Notice of Application

with the following variations and additional terms:

Date:

Signature of Judge Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

NO. VLC-S-B-220121
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 VES-ARTEX SYSTEMS CANADA, ULC

SERVICE LIST

Secured Creditors:	
JIM PEPLINSKI LEASING INC. 81 The East Mall - Suite 101 Toronto ON M8Z 5W3 Email: info@jimpeplinski.ca	
Unsecured Creditors:	
KURITEC 2500 Raymond Weigel St Cadillac , Michigan 49601 USA Email: isaac@kuritec.com	MINISTRY OF FINANCE - PST - BRITISH COLUMBIA Station Provincial Government PO Box 9445 Victoria BC V8W 9V5 BC Health Tax Email: rmbtaxpayerinquiries@gov.bc.ca
LEVSKY HOLDING INC. Unit 3- 1201 Lamey's Mill Rd Vancouver BC V6H 3S6 Email: yoav@levskyholding.com	NEWAG HOLDINGS LTD Attn: Fergus McDonnell c/o Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver BC V6C 0A3 Email: fmcdonnell@fasken.com
PHASON ELECTRONIC CONTROL SYSTEMS 2 Terracon Place Winnipeg MB R2J4G7 Email: dweigelt@phason.ca	TOPCOOL HOLDINGS LTD Sunshine Plaza, 353 Lockhart Road Wan Chai, Hong Kong, HKG Hong Kong Email: tfd@topcool.co

SCHEDULE "B"

NO. VLC-S-B-220121
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ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
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)

TUESDAY, THE 10th DAY
DAY OF MAY, 2022

UPON THE APPLICATION of MNP Ltd. ("MNP"), in its capacity as Trustee under the Notice of Intention to make a Proposal (in such capacity, the "**Proposal Trustee**") of VES-Artex Systems Canada, ULC ("**VES-Artex Canada**"); **AND UPON READING** the materials filed; **AND UPON READING** the Amended Joint Proposal dated April 13, 2022 (the "**Amended Proposal**") attached hereto as **Schedule "A"**; **AND UPON** being satisfied that the Amended Proposal is made in good faith, and that its terms are reasonable and calculated to benefit the general body of creditors; **AND UPON HEARING** from counsel for the Proposal Trustee;

IT IS HEREBY ORDERED AND DECLARED THAT:

Definitions and Service

1. All capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Proposal or the Notice of Application for this Order, as applicable.
2. With respect to service of notice of this application and all accompanying materials, the dissemination of the Amended Proposal to VES-Artex Canada's creditors, as well as the Proposal Trustee's service of notice of the Creditors' Meeting, and all other matters of technical compliance under the *BIA*:
 - (a) Service of notice of this application and all supporting materials is abridged and is hereby deemed to be good and sufficient;

- (b) Proper notice of the Creditors' Meeting was given to the creditors of VES-Artex Canada in accordance with the provisions of the *BIA*;
- (c) The Creditors' Meeting was convened and held pursuant to the provisions of the *BIA*; and
- (d) The Creditor Package, the Proposal Trustee's Form 40 Report, and all other materials required by the *BIA* to be sent to VES-Artex Canada's creditors and the Office of the Superintendent of Bankruptcy were duly sent by the Proposal Trustee in accordance with the provisions of the *BIA*.

Approval of the Amended Proposal

- 3. The Amended Proposal is made in good faith and its terms are fair and reasonable and are calculated to benefit the general body of Creditors.
- 4. The Amended Proposal has been agreed to and approved by a majority in number and two-thirds in value of VES-Artex Canada's Proven Creditors present and voting either in person or by proxy at the Creditors' Meeting, as required by the *BIA*.
- 5. The Amended Proposal attached hereto is hereby approved and sanctioned, is effective in accordance with its terms and is binding upon and enures to the benefit of VES-Artex Canada, the Affected Creditors, and all other Persons and parties named or referred to in, affected by, or subject to the Amended Proposal, including their respective heirs, administrators, executors, legal representatives, successors and assigns, as provided in the Amended Proposal, and in this Order.
- 6. VES-Artex Canada and the Proposal Trustee are hereby authorized and directed to take all further actions or steps necessary or appropriate to implement and complete the Amended Proposal, and such steps and actions taken are hereby approved.
- 7. From and after the date of the Amended Proposal, each Affected Creditor of VES-Artex Canada and any other Person affected by the Amended Proposal shall hereby be deemed to have consented and agreed to all of the provisions of the Proposal.

General

8. VES-Artex Canada and the Proposal Trustee are hereby granted leave to apply to this Court for such further advice and direction or assistance as may be necessary to give effect to the terms of this Order and the Amended Proposal.
9. Pursuant to the *BIA*, this Order shall have full force and effect in all provinces and territories of Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.
10. This Court requests the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and the Proposal, and to assist VES-Artex Canada, 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 Proposal Trustee as an officer of this Court, as may be necessary or desirable to give effect to this Order and the Amended Proposal or to assist VES-Artex Canada, the Proposal Trustee, and their respective agents in carrying out the terms of this Order or the Amended Proposal.
11. Service of this Order shall be deemed good and sufficient by serving the same to the email address or other contact information provided by Affected Creditors on their respective Proof of Claim, and service on any other person is hereby dispensed with.

SCHEDULE "A"
Proposal

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Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456

Email: wroberts@lawsonlundell.com

Attention: William L. Roberts

File No. 26420-162271