

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 27TH
)
JUSTICE CAVANAGH) DAY OF MAY, 2021
)

B E T W E E N :

MIDCAP FUNDING IV TRUST

Applicant

- and -

AVAD CANADA LTD.

Respondent

APPLICATION UNDER SECTION 243 (1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended
and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**ORDER
(approval of auction agreement and sealing)**

THIS MOTION made by MNP Ltd. in its capacity as the court appointed receiver (the “**Receiver**”) of AVAD Canada Ltd. (the “**Debtor**”) for an order, *inter alia*, (i) approving the Auction Agreement dated May 20, 2021 (the “**Auction Agreement**”) between the Receiver and Infinity Asset Solutions Inc. (the “**Auctioneer**”) as appended in redacted form as Appendix “2” to the first report dated May 20, 2021 (the “**First Report**”) of the Receiver and appended in unredacted form (excluding Exhibit A) as Confidential Appendix "3" to the confidential first report dated May 21, 2021 (the “**Confidential First Report**”), (ii) approving the transactions contemplated by the Auction Agreement (the

"**Transactions**"), (iii) vesting in each purchaser (each, a "**Purchaser**") of assets described in the Auction Agreement all of the Debtor's right, title and interest in such assets, and, (iii) sealing the Confidential First Report, was heard this by videoconference due to COVID-19.

ON READING the First Report and the Confidential First Report and upon hearing the submissions of counsel for the Receiver as well as those other parties present, as indicated in the counsel slip, no other parties being present although duly served as appears from the affidavit of service, filed:

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the First Report is abridged and validated so that the motion is properly returnable today, and that further service thereof is dispensed with.

THE AUCTION AGREEMENT

2. **THIS COURT ORDERS AND DECLARES** that the Transactions are hereby approved, and Auction Agreement is hereby authorized and approved with such minor amendments as the Receiver and the Auctioneer may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of any assets of the Debtor sold to any Purchaser in accordance with the Auction Agreement (each a "**Specified Auction Asset**" and, collectively, the "**Specified Auction Assets** ").

3. **THIS COURT ORDERS** that the Auctioneer is hereby authorized to market and sell the Specified Auction Assets in accordance with the Auction Agreement.

4. **THIS COURT ORDERS** that all Sales shall be conducted in accordance with the Auction Agreement and all exhibits attached thereto, subject to any variation thereto agreed to in writing by the Receiver and the Auctioneer.

5. **THIS COURT ORDERS** that the Auctioneer is hereby permitted to sell the Specific Auction Assets and that upon the Auctioneer completing the sale of any of the Specified Auction Assets to a Purchaser and delivering a bill of sale or similar conveyance document to such Purchaser (a "**Bill of Sale** "), all of the Debtor's right, title and interest in and to the Specified Auction Assets described in such Bill of Sale shall vest absolutely in such Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Madam Justice Dietrich dated March 17, 2021 and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of the Claims, the net proceeds from the sale of each Specified Auction Asset,

including, without limitation, any net minimum guarantee amount payable to the Receiver under the terms of the Auction Agreement, (the "**Proceeds**"), shall stand in the place and stead of that Specified Auction Asset, and that, from and after the delivery of the Bill of Sale in respect of that Specified Auction Asset, all Claims shall attach to the Proceeds with the same priority as they had with respect to each Specified Auction Asset immediately prior to the completion of the sale thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the sale and vesting of title to each Specified Auction Asset in a Purchaser pursuant to this Order shall be binding on the trustee in bankruptcy of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation.

SEALING

8. **THIS COURT ORDERS** that the Confidential First Report be and hereby is sealed pending the completion of the Transactions as evidenced by the filing of a Receiver's certificate in respect of its discharge.

MISCELLANEOUS

9. **THIS COURT 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 Company, the Receiver and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Company and to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Company and the Receiver and their respective agents in carrying out the terms of this Order.

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- and -

AVAD CANADA LTD.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

ORDER
(approval of auction agreement and sealing)

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