



No. S202352
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE TORONTO-DOMINION BANK

PETITIONER

AND:

DDK VENTILATION PRODUCTS LTD.

RESPONDENT

NOTICE OF APPLICATION

Name of applicant: MNP Ltd. (“**MNP**”), in its capacity as court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of DDK Ventilation Products Ltd. (the “**Debtor**”).

To: The Respondent and all parties on the Service List attached as Schedule “**A**” hereto.

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver , B.C. on May 14, 2020 at 11:30 a.m. for the orders set out in Part 1 below.

Part 1 ORDERS SOUGHT

1. An order substantially in the form attached as Schedule “**B**” hereto:
 - (a) approving the sale of certain assets of the Debtor (the “**Sale Assets**”) and vesting the Debtor’s interest in the Sale Assets to Pitt Meadows Plumbing & Mechanical Systems Ltd. (the “**Purchaser**”) free and clear of all encumbrances, upon payment by the Purchaser of the Purchase Price (as defined herein);
 - (b) authorizing the Receiver to make one or more interim distributions to The Toronto-Dominion Bank (“**TD**”) following the receipt of the Purchase Price, in such amounts as the Receiver deems appropriate; and
 - (c) approving the activities of the Receiver as described in the First Report of the Receiver.

Part 2 FACTUAL BASIS

1. The Debtor operated as a distributor of ventilation equipment, parts, and components to mechanical, sheet metal, and air conditioning contractors servicing commercial, light industrial and residential construction industries.
2. By order of the Supreme Court of British Columbia (the “**Court**”) dated March 2, 2020 (the “**Receivership Order**”), pursuant to s. 243(1) of the BIA and s. 39 of the *Law and Equity Act*, R.S.B.C 1996, c. 253, the Receiver was appointed as the receiver, without security, of all of the Property.
3. The Petitioner, TD, is a secured creditor of the Debtor . The outstanding balance owing to TD as of February 25, 2020 was \$1,747,710.05 and USD \$34,349.68 plus interest and expenses, including legal costs, which continue to accrue.
4. TD was the first in time to register a financing statement in the British Columbia Personal Property Registry to perfect its security interest in the Property, and the Receiver is unaware of any other creditors having a security interest in the assets by virtue of a security agreement which ranks in priority ahead of TD.
5. Pursuant to the Receivership Order, the Receiver is authorized to sell, convey and transfer the Property or any part or parts thereof out of the ordinary course of business and authorized to apply to this court for a vesting order to convey the Property to a purchaser free and clear of liens and encumbrances.
6. The Sale Assets include inventory for resale, forklifts and warehouse handling equipment, pallet racking and shelving, and office furniture and equipment. The Receiver has obtained an appraisal of the Sale Assets.
7. The Receiver offered the Sale Assets for sale and prepared an Invitation for Offers to Purchase and Invitation for Auction Proposals (“**Invitation for Offers**”). The offers were to be submitted on or before May 4, 2020.
8. The Receiver carried out various marketing and advertising activities in relation to the Invitation for Offers. Specifically, the Receiver:
 - (a) placed an online posting of the sales process with downloadable Invitation for Offers on MNP’s national website,
 - (b) conducted research of companies that were customers or competitors of DDK in Western Canada to determine prospective purchasers of the Sale Assets; and
 - (c) sent the Invitation for Offers directly to 36 parties, including those in related industries as well as appraisers and liquidators, all of whom were identified as possibly having an interest in acquiring the Sale Assets.
9. The Receiver received a total of four (4) Offers to Purchase or Auction Proposals. The highest and best offer was submitted by the Purchaser who submitted an outright

purchase offer in the amount of \$402,000, plus applicable taxes (the “**Purchase Price**”), which was accepted by the Receiver, subject to the Court’s approval.

10. The Receiver and the Purchaser executed an Asset Purchase Agreement dated May 8, 2020, a copy of which is attached to the Receiver’s First Report as Appendix “A”.
11. The material terms of the proposed transaction are as follows:
 - (a) Purchase Price: \$402,000 (plus applicable taxes);
 - (b) Conditions Precedent: court Approval only;
 - (c) Sale Assets are sold on an “as is where is” basis;
 - (d) Purchaser must take possession of the Sale Assets and remove from the premises of the Debtor by June 30, 2020; and
 - (e) Closing and payment of Purchase Price must occur on or before the seventh day following the issuance of an order approving the sale by this Court.
12. The Receiver is satisfied that the Purchase Price represents the present market value of the Sale Assets, and is consistent with the appraised value of the Sale Assets on a liquidation basis. The Receiver does not expect that a better price could be obtained by extending the sale process.
13. The Receiver recommends that the Court approve the proposed sale to the Purchaser.
14. The Receiver has also collected accounts receivable from the Debtor’s business operations, and as of May 8, 2020, held \$220,710.93 in its Receivership trust account. There may be further recoveries, but the Receiver considers it unlikely that the total recoveries will satisfy the indebtedness of the Debtor to TD.

Part 3 LEGAL BASIS

1. Pursuant to s. 247(b) of the *BIA*, a receiver has a duty to deal with the property of a company subject to receivership in a commercially reasonable manner.
2. The factors that the court will consider in deciding whether a receiver has sold assets in a commercially reasonable manner include:
 - (a) whether the receiver made sufficient effort to obtain the best price and has not acted improvidently;
 - (b) the interests of all parties;
 - (c) the efficacy and integrity of the process by which the offers have been obtained; and

- (d) whether there has been an unfairness in the working out of the process.

Royal Bank of Canada v. Soundair Corp., 1991 CanLii 2727 (O.N.C.A.), para 16

3. The Receiver has satisfied the requirements of the *Soundair* test: the Receiver has conducted a commercially reasonable and sound sales process and the Receiver is satisfied that the Purchase Price is consistent with the market value of the Tangible Assets and that a better price would not be obtained by extending the sales process. The process has been fair to the interests of all parties.
4. Given that:
- (a) there is no apparent dispute as to the validity or enforceability of TD's security, and counsel for the Receiver has provided its opinion that it is valid and enforceable as against a trustee;
 - (b) there does not appear to be any creditor with a prior-ranking security interest in the Property; and
 - (c) TD is likely to suffer a shortfall on the recovery of its indebtedness from the Debtor;

there is no reason that the Receiver should continue to hold funds that are otherwise subject to TD's security interest.

5. The Receiver specifically relies upon:
- (a) *BIA*, s. 247(b);
 - (b) *Business Corporations Act*, S.B.C. 2002, c. 57, including ss. 257 and 263;
 - (c) *Law and equity Act*, R.S.B.C. 1996, c. 253, as amended, including ss. 37 and 64;
 - (d) *Personal Property Security Act*, R.S.B.C. 1996, c. 359, as amended;
 - (e) *Supreme Court Civil Rules*, B.C. Reg. 241/2010, as amended, including Rules 8-1 and 13-1; and
 - (f) the inherent jurisdiction of this Honourable Court.

Part 4 MATERIAL TO BE RELIED ON

1. The Receiver's First Report, dated May 12, 2020.
2. Affidavit of Joe Seidel, sworn on February 27, 2020 (Body Only).
3. Such further and other materials as counsel may advise and to this Honourable Court seems just.


The applicant estimates that the application will take 20 minutes.

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 of 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: 12-May-2020

DocuSigned by:

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Signature of Fergus McDonnell
 Lawyer for Applicant, MNP Ltd.

To be completed by the court only:

Order made

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

<input type="checkbox"/> with the following variations and additional terms:
Date:
..... Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

The Solicitors for the Receiver are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Fergus McDonnell/278733.00010)

APPENDIX

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 - SERVICE LIST

Company	Counsel Email
The Toronto-Dominion Bank	sbhura@harpergrey.com
DDK Ventilation Products Ltd.	rmorse@farris.com
Wilshire Investments Ltd.	gg@gdlaw.ca
606381 Alberta Ltd. o/a Tradesman Manufacturing	(unrepresented) david@tradesmanmfg.ca; ar@tradesmanmfg.ca

SCHEDULE B - DRAFT ORDER

No. S202352
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE TORONTO-DOMINION BANK

PETITIONER

AND:

DDK VENTILATION PRODUCTS LTD.

RESPONDENT

ORDER MADE AFTER APPLICATION

))	
)	THE HONOURABLE MADAM JUSTICE)	
BEFORE)	FITZPATRICK)	May 14, 2020
))	
))	

ON THE APPLICATION OF MNP Ltd., in its capacity as court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties of DDK Ventilation Products Ltd. (the “**Debtor**”) coming on for hearing at Vancouver, British Columbia on May 14, 2020, and on hearing Fergus McDonnell, counsel for the Receiver, and those counsel listed in Schedule “A” attached hereto; AND UPON READING the material filed, including the First Report of the Receiver dated May 12, 2020 (the “**Receiver’s First Report**”).

THE COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the “**Sale**”) contemplated by the asset purchase agreement dated May 8, 2020 (the “**Asset Purchase Agreement**”) between the Receiver and Pitt Meadows Plumbing & Mechanical Systems Ltd. (the “**Purchaser**”), a copy of which is attached as Appendix “A” to the Receiver’s First Report, is hereby approved, and the Asset Purchase Agreement is commercially reasonable. The execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, and 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 Sale or

the conveyance to the Purchaser of the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”).

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule “**B**” hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets shall vest absolutely in the 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 this Court dated March 2, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule “**B**” hereto (all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver’s Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
4. The Receiver is to file with the Court a copy of the Receiver’s Certificate forthwith after delivery thereof to the Purchaser.
5. Subject to the terms of the Asset Purchase Agreement, the Receiver shall provide access to the Purchaser to take possession of the Purchased Assets upon receipt of the amounts owing to the Receiver under the Asset Purchase Agreement, which shall be within seven (7) days of the making of this order.
6. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court, provided that the Closing Date occurs within 21 days of the date of this Order.
7. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. Following the receipt of the proceeds of the Purchased Assets, the Receiver is authorized to make one or more interim distributions to the Petitioner, The Toronto-Dominion Bank (“TD”), in such amounts as the Receiver deems appropriate.
9. The activities of the Receiver as described in the Receiver’s First Report are hereby approved with respect to those parties to whom notice of these proceedings has been given in accordance with the *Bankruptcy and Insolvency Act*.
10. The Receiver and all other parties affected by this Order have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
11. Endorsement of this Order by counsel and parties appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

Signature of Fergus McDonnell
Lawyer for the Receiver, MNP Ltd.

BY THE COURT

REGISTRAR

SCHEDULE A - COUNSEL

SCHEDULE B - RECEIVER'S CERTIFICATE

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BETWEEN:

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PETITIONER

AND:

DDK VENTILATION PRODUCTS LTD.

RESPONDENT

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Supreme Court of British Columbia (the "**Court**") dated March 2, 2020, MNP Ltd. (the "**Receiver**") was appointed as the receiver of all of the assets, undertakings and properties of DDK Ventilation Products Ltd. ("**DDK**").

B. Pursuant to an Order of the Court dated <@>, 2020 (the "**Vesting Order**"), the Court approved the Asset Purchase Agreement dated May 8, 2020 (the "**Agreement**") between the Receiver and Pitt Meadows Plumbing & Mechanical Systems Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of all of DDK's right, title and interest in and to the Assets (as defined and described in the Agreement).

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Agreement.

D. Pursuant to the Vesting Order, the vesting of the Assets in the Purchaser free and clear of all Encumbrances (as defined in the Vesting Order) is to be effective upon the delivery by the Receiver to the Purchaser of this certificate confirming: (i) the payment by the Purchaser of the

Purchase Price in accordance with the Agreement; (ii) that the conditions precedent to closing as set out in Section 2 of the Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has completed to the satisfaction of the Receiver.

THE RECEIVER HEREBY CERTIFIES as follows:

1. The Purchaser has paid and the Receiver has received the Purchase Price in accordance with the Agreement;
2. The conditions to Closing set out in Section 2 of the Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The transaction has completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____, 2020 [DATE].

MDP LTD., in its capacity as Receiver of the assets, undertakings and properties of DDK Ventilation Products Ltd. and not in its personal capacity

Per: _____

Name:

Title:

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ORDER MADE AFTER APPLICATION

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