

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

THE HONOURABLE)
)
JUSTICE KIMMEL) MONDAY, THE 24TH
) DAY OF JULY, 2023

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK

Applicant

and

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC.,
11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC.,
2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC.,
2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC.,
2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC.,
2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC.,
421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED***

APPROVAL AND VESTING ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the “**Receiver**”) of Index Foods Inc., Index International Inc., and 270074 Ontario Inc. (collectively, the “**Debtors**”), for an order, *inter alia*, approving the sale transaction (the “**Popeyes Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Varun Kakkar (the “**Purchaser**”) dated July 19, 2023 (the “**Sale Agreement**”) and appended to the Second Report of the Receiver dated July 19, 2023 (the “**Second Report**”), and vesting in the Purchaser, the right, title and interest of the Debtors in and

to the Purchased Assets (as defined in the Sale Agreement), was heard this day via judicial video conference, at Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, Canadian Western Bank, no one appearing for any other person on the service list, although served as appears from the affidavit of Jennifer Samuels sworn July 20, 2023, filed:

1. THIS COURT ORDERS that that the time for service of the Receiver's Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Popeyes Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver 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 Popeyes Transaction and for the conveyance of the Purchased Assets as defined in the Sale Agreement to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the right, title and interest of the Debtors 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

the Honourable Penny dated May 8, 2023; (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; and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged.

4. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

5. 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 any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Debtors;

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 Debtors and shall not be void or voidable by creditors of any of the Debtors, 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, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. 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 Receiver and its 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 Receiver, as an officer of this Court, as

may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

7. THIS COURT ORDERS that the Second Report and the activities of the Receiver set out in the Second Report be and are hereby approved.

8. THIS COURT ORDERS that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Second Report detailed in paragraph 8 hereof.

9. THIS COURT ORDERS that Confidential Appendices A and B to the Second Report be and are hereby sealed pending the closing of the Popeyes Transaction, or further Order of this Court.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-23-00698447-00CL

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an the Order of the Honourable Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 8, 2023, MNP Ltd. was appointed receiver (the “**Receiver**”) of all of the assets, properties and undertakings of Index Foods Inc., Index International Inc., and 2700774 Ontario Inc. (the “**Debtors**”) and the other Respondents herein.

B. Pursuant to an Order of the Court dated July 24, 2023, the Court approved the transaction (the “**Popeyes Transaction**”) contemplated in an Agreement of Purchase and Sale dated July ●, 2023 between Karun Kakkar (the “**Purchaser**”) and the Receiver and the Purchaser (the “**Sale**”).

Agreement”), and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) the Popeyes Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Receiver has received the Purchase Price for the Purchased Assets payable pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Popeyes Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ 2023.

[Signature follows on page 2 of this Certificate]

**MNP LTD., solely in its capacity as Receiver
of the Debtors, and not in its personal
capacity.**

Per: _____
Name:
Title:

CANADIAN WESTERN BANK
Applicant

-and- INDEX HOLDING GROUP INC. et al.
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP

Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

JOHN D. LESLIE (29956P)

Email: JLeslie@dickinsonwright.com
Tel: 416-646-3801

LISA S. CORNE (27974M)

Email: lcorne@dickinsonwright.com
Tel: 416-646-4608

Lawyers for the Receiver

Email for parties served:
Service List