

COURT FILE NUMBER        Q.B. 572 of 2021

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE        SASKATOON

PLAINTIFF                AFFINITY CREDIT UNION 2013

DEFENDANT                RITCHIE INDUSTRIES INC. and DUCK MOUNTAIN  
ENVIRONMENTAL LTD.

IN THE MATTER OF THE RECEIVERSHIP OF RITCHIE INDUSTRIES INC. and DUCK  
MOUNTAIN ENVIRONMENTAL LTD.

AND IN THE MATTER OF THE BANKRUPTCY OF RITCHIE INDUSTRIES INC. and  
DUCK MOUNTAIN ENVIRONMENTAL LTD.

**NOTICE OF APPLICATION**  
**(Sale Approval & Vesting Order, Miscellaneous Approvals)**

**NOTICE TO: Those Parties Identified on the Attached Service List**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Where	520 Spadina Crescent East, Saskatoon, Saskatchewan
Date	10:00 AM
Time	Friday, November 5, 2021

**Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. To confirm the telephone number where you can be reached on the date of the application, you must immediately contact the office of the local registrar at (306) 787-8363 and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.**

*(Read the Notice at the end of this document to see what else you can do and when you must do it.)*

**Remedy claimed or sought:**

1. An Order:

**In respect of Ritchie Industries Inc.:**

- (a) Approving and authorizing MNP Ltd. (the "**Receiver**"), in its capacity as Receiver and Manager and Trustee in Bankruptcy of the assets, undertakings and properties of Ritchie Industries Inc. ("**Ritchie**") and Duck Mountain Environmental Ltd. ("**DME**") pursuant to *inter alia* the Receivership Order of the Honourable Madam Justice A.R. Rothery issued June 29, 2021 (the "**Receivership Order**"), to complete, the Asset Purchase Agreements (the "**Agreements**") made by Dhyan Holdings Ltd. and Jai Setaliyaveer Gas Inc. (the "**Proposed Purchasers**"), as outlined in the First Report of the Receiver in Relation to Ritchie Industries Inc. dated October 29, 2021, (the "**Ritchie Receiver's Report**") in Schedule 4 attached to the Confidential Addendum thereto (the "**Ritchie Confidential Addendum**");
- (b) Vesting the Proposed Purchasers with all right, title, and interest in and to, the assets described in the Agreements, free and clear of all liens, charges, and encumbrances except as provided in such agreements, if any;

**In respect of Duck Mountain Environmental Ltd.:**

- (c) Approving, authorizing and directing the Receiver to enter into the Bill of Sale dated October 31, 2021 between Grasswood Auctions ("**Grasswood**") and the Receiver (the "**Bill of Sale**") as outlined in the First Report of the Receiver in Relation to Duck Mountain Environmental Ltd. dated October 31, 2021 (the "**DME Receiver's Report**") in Schedule 11 to the Confidential Addendum thereto (the "**DME Confidential Addendum**") which has the effect of the selling the equipment of DME more particularly described in, and subject to the terms and conditions set forth in the Bill of Sale, for the purchase price plus applicable taxes identified in the Bill of Sale;
- (d) Vesting Grasswood with all right, title, and interest in and to, the assets described in the Bill of Sale, free and clear of all liens, charges, and encumbrances except as provided in such agreements, if any;

**In respect of Miscellaneous Matters of the Receivership:**

- (e) Approving the Receiver's activities as described within the Ritchie Receiver's Report and the DME Receiver's Report and the fees and disbursements of the Receiver and its legal counsel;
- (f) Sealing the Ritchie Confidential Addendum and the DME Confidential Addendum until the transactions contemplated therein successfully close and Receiver's Certificates are filed; and
- (g) Such further and other relief as counsel may request and this Honourable Court may allow.

**Grounds for making this application:**

1. The Receiver makes this application pursuant to section 3 of the Receivership Order, which permits the Receiver to, with approval of this Honourable Court, sell the assets of the Ritchie and DME and apply for any Order(s) necessary to do so.
2. This application concerns two distinct groups of assets of Ritchie and DME.

**Introduction**

3. The first asset is a PetroCanada service station located in Kamsack, Saskatchewan which prior to these proceedings was owned and operated by Ritchie (the "**Petro Can Property**"). The Petro Can Property consists of 2 single story commercial buildings which are used as a convenience store/quick serve gas station and a car wash. The buildings were constructed in 2014.

4. The second group of assets consists of miscellaneous pieces of equipment used by DME in its septic, potable water delivery and hydrovac excavation services (the "**DME Equipment**"). Here, the Receiver proposes a sale of such assets to Grasswood.

**Petro Can Property Sale**

5. The sale of the Petro Can Property is brought before this Court without the Receiver having run a sale process. The Proposed Purchasers had expressed interest in purchasing the Petro Can Property before the Receiver's appointment and corporate counsel for Ritchie

had made significant progress on an asset purchase agreement as of the Receiver's appointment.

6. Upon the appointment of the Receiver, the negotiations with representatives of the Proposed Purchasers and ultimately two separate Agreements were signed which were tailored to fit within the insolvency process. One agreement is for the real property making up the Petro Can Property, while the other is for associated personal property.

7. Overall, the Receiver is of the view that the sale of the Petro Can Property represents good value for the estate of Ritchie, as the aggregate purchase price is above appraised value. The Receiver is also of the view that running a sale process would not have resulted in a higher price for these assets. The primary secured Creditor, Affinity Credit Union 2013 is supportive of the sale and is financing the transaction.

#### **DME Property Sale**

8. On August 26, 2021, the Receiver initiated an *en bloc* sales process for the assets of DME. Following this brief sale process, 9 different parties signed the Confidentiality Agreement and were granted access to the online data room and Confidential Information Package. A total of 3 Offers to Purchase and/or Proposals were submitted to the Receiver by the above deadline.

9. However, the Receiver was not satisfied by the offers received in the sales process and determined that the best method of sale is to list the DME real property with a commercial realtor and to solicit proposals for the auction for the equipment assets.

10. In respect of the DME Equipment now subject to sale, the Receiver solicited four auction proposals seeking both a Net Minimum Guarantee and Straight Commission proposals. As a result of these proposals, the Receiver now recommends that it accept the Straight Purchase Proposal submitted by Grasswood based on its analysis found in the DME Confidential Addendum.

### **Approval Sought**

11. The Receiver is of the view that the above sales are commercially reasonable and that:

- (a) the Receiver made sufficient effort to get the best price and has not acted improvidently in its efforts;
- (b) the proposed sales are in the interests of all parties and stakeholders;
- (c) the sales process was marked by both efficacy and integrity; and
- (d) there has not been unfairness in the working out of the process.

### **The Proposed Distribution**

12. The Receiver has not completed a security review as of the date of this application and, as such, no distribution is proposed at this time.

### **The Confidential Appendix**

13. Sensitive information, including the particulars of the appraised values for the assets of Ritchie and DME are contained in the Ritchie Confidential Addendum and the DME Confidential Addendum to the respective to the First Reports of the Receiver (the "**Confidential Addenda**").

14. The Receiver is concerned that publicly disclosing this highly sensitive information would be prejudicial to the sales efforts in future sales process(es) should the proposed transactions contemplated in this application fail to close.

15. To strike a balance between the harm caused by releasing this sensitive information and the Open Court Principle, the Receiver proposes that the Confidential Addenda remain sealed until the respective transactions they concern are confirmed closed by the Receiver.

16. To accomplish this, the Receiver proposes that an additional line be added to the Receiver's Certificates to be served on stakeholders and filed with the Court, thereby notifying the stakeholders and the Court that the Confidential Addenda may then be unsealed.

**Material or evidence to be relied on:**

1. This Notice of Application with proof of service (to be filed);
2. Three (3) draft Sale Approval and Vesting Orders;
3. The First Report of the Receiver in Relation to Ritchie Industries Inc. dated October 29, 2021 and the Confidential Addendum thereto;
4. The First Report of the Receiver in Relation to Duck Mountain Environmental Ltd. dated October 31, 2021 and the Confidential Addendum thereto;
5. A Brief of Law;
6. Proof of Compliance with General Application Practice Directive #3 (to be filed); and
7. Such further and other material as this Honourable Court may allow.

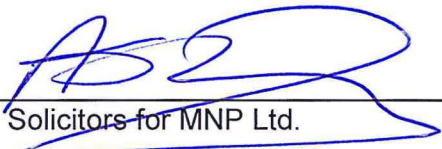
**Applicable Acts, Regulations, and Jurisprudence:**

1. *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, s. 12.
2. *The Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, ss. 243, 247 and 249.
3. *The Personal Property Security Act*, 1993, SS 1993, c P-6.2, ss. 63-64.

DATED at Regina, Saskatchewan, this 1<sup>st</sup> day of November, 2021.

KANUKA THURINGER LLP

Per: \_\_\_\_\_

  
Solicitors for MNP Ltd.

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

KANUKA THURINGER LLP

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