

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

THE HONOURABLE

)

FRIDAY, THE 26th

JUSTICE HAINEY

)

DAY OF MARCH, 2021

)

BETWEEN:

**PILLAR CAPITAL CORP.**

Applicant

-and-

**TURUSS (CANADA) INDUSTRY CO., LTD.**

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990, c. C-43, AS AMENDED

**APPROVAL ORDER  
(Auction Procedures)**

**THIS MOTION**, made by MNP Ltd., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”) for an order:

- (a) abridging the time for service of the Motion Record of the Receiver dated March 23, 2021 (the “**Motion Record**”) and validating service thereof;
- (b) authorizing the Receiver to extend the offer deadline (the “**Deadline**”) contemplated and set forth in the sale process (the “**Sale Process**”) approved by the order of Justice Cavanagh dated October 29, 2020 from March 26, 2021 to April 16, 2021;
- (c) approving the auction procedures, as set out in **Schedule “A”** hereto (the “**Auction Procedures**”);

- (d) approving a sealing order for the lease expansion, extending and amending agreement between Turuss and Bruce Power L.P., contained in the **Confidential Appendix "A"** to the Fourth Report;
- (e) approving the fourth report of the Receiver dated March 23, 2021 to the Court (the "**Fourth Report**"), and the activities of the Receiver as described therein;
- (f) approving the Receiver's interim statement of receipts and disbursements dated March 19, 2021 (the "**R&D Statement**");
- (g) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP ("**Dentons**"), as set out in the Fourth Report, fee affidavit of Jerry Henechowicz sworn March 23, 2021 ("**Henechowicz Affidavit**") and the fee affidavit of Robert Kennedy sworn March 23, 2021 ("**Kennedy Affidavit**", and together with the Henechowicz Affidavit, the "**Fee Affidavits**");
- (h) such other matters considered relevant to the Receiver's administration of this proceeding.

was heard this day judicial videoconference via Zoom due to the COVID-19 pandemic.

**ON READING** the Motion Record, and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Amanda Campbell sworn March 23, 2021, filed:

### **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **DEADLINE EXTENSION**

3. **THIS COURT ORDERS** that the Deadline be and is hereby extended from March 26, 2021 to April 16, 2021.

**AUCTION PROCEDURES**

4. **THIS COURT ORDERS** that the Auction Procedures be and is hereby approved and shall supplement the Sale Process. The Receiver is hereby authorized to implement the Auction Procedures, in its discretion. In the event that there is any conflict between any provision contained in the Sale Process and the Auction Procedures, the terms of the Auction Procedures shall prevail and govern.

**SEALING ORDER**

5. **THIS COURT ORDERS** that **Confidential Appendix "A"** to the Fourth Report shall be sealed and kept confidential and not form part of the public record, but shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title to these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

**RECEIVER'S ACTIVITIES**

6. **THIS COURT ORDERS** that the Fourth Report, and the activities of the Receiver as described therein, is hereby approved.

7. **THIS COURT ORDERS** that the R&D Statement is hereby approved.

**FEES AND DISBURSEMENTS**

8. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Dentons, as set out in the Fourth Report and the Fee Affidavits, are hereby approved.

**GENERAL**

9. **THIS COURT ORDERS** that the Receiver may from time to time apply to this court for advice and directions on the discharge of its duties and powers hereunder.

A handwritten signature in blue ink, appearing to read "Hailey J.", is written over a horizontal line. The signature is cursive and extends to the right of the line.

**Schedule "A" – Auction Procedures**



## AUCTION PROCEDURES (March 23, 2021)

The Receiver may determine to conduct an auction (the “**Auction**”) if it receives one or more Qualified Offers for the commercial property located at 60 Industrial Park Road, Chesley, Ontario (the “**Chesley Property**”) as part of the sale process (the “**Sale Process**”) approved by the Order of Justice Cavanagh dated October 29, 2020. The Receiver will notify the Selected Offerors that the Auction will be held via Zoom Video Conference at 10:00 a.m. (Eastern Time) on a date that is determined by the Receiver, provided that that is not later than ten (10) business days after the Deadline, or such other place and time as the Receiver may advise.

Capitalized terms not otherwise defined herein shall have the meaning given to them in the Sale Process.

The Auction shall be conducted in accordance with the following procedures:

1. Participation At The Auction. Only a Selected Offeror is eligible to participate in the Auction. The Receiver shall provide all Selected Offerors with the amount of the bid that the Receiver believes constitutes the highest and/or best bid received on or before the Deadline (“**Lead Bid**”) by 5:00 p.m. (Eastern Time) two (2) business days before the date scheduled for the Auction. Each Selected Offeror must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the business day prior to the Auction. Only the authorized representatives of each of the Selected Offerors, the Receiver, Turuss and their respective counsel and other advisors shall be permitted to attend the Auction.
2. Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. Bidding at the Auction shall include an opening bid (“**Opening Bid**”). The Lead Bid shall constitute the Opening Bid for the first round and the highest and/or best Overbid (as defined herein) at the end of each round shall constitute the Opening Bid for the following round. In each round, a Selected Offeror may submit no more than one Overbid. Any Selected Offeror who bids in a round (including the Selected Offeror that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
3. Receiver Shall Conduct The Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Selected Offerors at the Auction. The determination of which bid from a Selected Offeror constitutes the Opening Bid for each round shall take into account any factors that the Receiver reasonably deems relevant to the value of the bid including, among other things, the following:
  - a. (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver’s assessment of the certainty of the Selected Offeror to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing;

(v) the net economic effect of any changes from the Opening Bid of the previous round, and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively referred to as the “**Bid Assessment Criteria**”).

All bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and/or best Overbid shall be fully disclosed to all other Selected Offerors that are participating in the Auction and have bid in a corresponding Auction round. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

4. Terms of Overbids. An “**Overbid**” (pluralized as “**Overbids**”) is any bid made at the Auction subsequent to the Receiver’s announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Selected Offeror must comply with the following conditions:
- a. *Minimum Overbid Increment:* Any Overbid shall be made in minimum increments of \$100,000 above the Opening Bid, or such increments as the Receiver may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”, pluralized as “**Minimum Overbid Increments**”). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment, plus any additional Minimum Overbid Increments (if applicable).
  - b. *The Bid Requirements apply:* Except as modified herein, an Overbid must comply with the requirements outlined at paragraph 14 of the Sale Process (the “**Bid Requirements**”) provided, however, that the Deadline shall not apply and that any Overbid made by a Selected Offeror remains irrevocable and binding on the Selected Offeror and open for acceptance as the next highest and/or best bid, as determined by the Receiver (the “**Back-up Bid**”) until the closing of the bid accepted by the Receiver (the “**Successful Offer**”, and the Selected Offeror providing the Successful Offer as the “**Successful Offeror**”). In addition, the Overbid must include a provision stating that any mortgage being assumed in lieu of cash is being done with the prior written consent of the relevant mortgagee (a copy of which consent shall be provided with the bid).
  - c. *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Selected Offerors and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
  - d. *Consideration of Overbids:* The Receiver reserves the right to make one or more adjournments in the Auction to, among other things:



- i. allow individual Selected Offerors to consider how they wish to proceed during a bidding round;
    - ii. consider and determine the current highest and/or best Overbid at any given time during the Auction; and,
    - iii. give Selected Offerors the opportunity to provide the Receiver with such additional evidence as it may require that the Selected Offerors has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Selected Offeror, and the Receiver may allow a Selected Offeror to make technical clarifying changes to its Overbid following such discussions as between them.
  - e. *Failure to Bid*: If at the end of any round of bidding a Selected Offeror (other than the Selected Offeror that submitted the Opening Bid), fails to submit an Overbid, then such Selected Offeror shall not be entitled to continue to participate in the next round of the Auction.
5. Additional Procedures. The Receiver may adopt new rules or modify existing rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction and the order of bidding provided that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Selected Offerors.
  6. Closing the Auction. The Auction shall be closed after the Receiver has: (i) reviewed the final Overbid of each Selected Offeror on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Offer and the Back-Up Bid and advised the Selected Offerors participating in the Auction of such determination.
  7. Finalizing Documentation. Promptly following a bid of a Selected Offeror being declared the Successful Offer or the Back-Up Bid, the Selected Offeror shall provide the Receiver with such further deposit monies (as necessary), and shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Offer or Back-Up Bid.

8. Completion of Transaction. Following the selection of the Successful Offer, the Receiver shall bring an Approval Motion for an order, substantially in the form of the approval and vesting order (the “**Approval and Vesting Order**”) attached to the APS, authorizing the Receiver to take such further actions as may be necessary or appropriate, to give effect to the Successful Offer and transaction, and vest in and to the Successful Offeror the Turuss interest in the Chesley Property. Following the granting of any Approval and Vesting Order by the court, the Receiver shall take all reasonable steps necessary to complete the transaction set forth in the Successful Offer. The transaction shall be completed within five (5) business days following the granting of the Approval and Vesting Order.



PILLAR CAPITAL CORP.  
Applicant

- and -

Court File No: CV-20-00646729-00CL

TURUSS (CANADA) INDUSTRY CO., LTD.  
Respondent

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PROCEEDING COMMENCED AT TORONTO

**APPROVAL ORDER  
(Auction Procedures)**

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