

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF LONGUEUIL

No.
DATE: March 8, 2017

PRESIDING: *SOPHIE PICARD, J.C.S.*

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:

DENSI CORPORATION

Debtor/Applicant

-and-

KPMG INC.

TRUSTEE

ORDER

ON READING Densi Corporation (the "**Applicant**")'s *Application for the Issuance of an Order Approving a Sale Process, Priority Charges and Other Interim Reliefs*, pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") and the exhibits, the affidavit of Mr. Eric Melka filed in support thereof (the "**Application**"), relying upon the submissions of the counsels to the Applicant and being advised that the secured creditors who are likely to be affected by the charges sought in the Application were given prior notice of the presentation of the Application;

GIVEN the filing by the Applicant of a *Notice of Intention to Make a Proposal* pursuant to section 50.4 of the BIA (the "**NOI**");

GIVEN the provisions of the BIA;

WHEREFORE, THE COURT:

1. **GRANTS** the Application.

Service

2. **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Applicant to interested parties who are likely to be affected by the charges created herein.

The Sale Process

3. **ORDERS AND DECLARES** that the the Applicant is authorized to conduct a sale process in order to sell, outside of its ordinary course of business, part or portion(s) of its Property (as defined below), substantially in accordance with the sale process described in paragraph 27 of the Application (the "**Sale Process**") as well as the various milestones described therein;
4. **ORDERS and DECLARES** that upon accepting a purchase offer (outside of its ordinary course of business) in respects of all or portion(s) of the Property (as deccribed below) in the context of the Sale Process or otherwise, the Applicant shall petition the Court in order to seek its authorization to sell all of such portion(s) of the Property.

Administration Charge

5. **ORDERS** that the Applicant shall pay the reasonable fees and disbursements of KPMG Inc., trustee to NOI (the "**Trustee**"), the Trustee's legal counsel, if any, and Stikeman Elliott LLP, the Applicant's legal counsel (collectively, the "**Professionals**"), which are directly related to these proceedings and the Sale Process, whether incurred before or after the Order (collectively, the "**Professional Fees**"), and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
6. **DECLARES** that the Professionals shall be entitled to the benefit of and are hereby granted a charge and security in the Applicant's present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively, the "**Property**") to the extent of the aggregate amount of \$100,000 (the "**Administration Charge**"), as a security for the payment of the Professional Fees. The Administration Charge shall have the priority set out in paragraphs 12 and 13 of this Order.

Key Employee Contract

7. **ORDERS** that the terms and conditions of the Key Employee Contract, filed as Exhibit P-3 to the Application, are hereby ratified and that the Applicant is authorized to perform its obligation thereunder, including making all payments required in accordance with the terms thereof and **DECLARES** that the Key Employee Contract contains sensitive and confidential information and shall be sealed in the court file in this proceedings and segregated from, and not form part of, the public record.
8. **ORDERS** that the employee eligible under the Key Employee Contract shall be entitled to the benefit of and is hereby granted a charge and security in the Property to the extent of the aggregate amount of \$75,000 (the "**KERP Charge**"), as security for the payment of the shortfall between the amounts owed to such employee under the Key Employee Contract and any payment or distribution made or expected to be made under a proposal to be filed in the context of these proceedings or any other insolvency or liquidation proceedings filed by the Applicant. The KERP Charge shall have the priority set out in paragraphs 12 and 13 of this Order.

Directors' Indemnification and Charge

9. **ORDERS** that the Applicant shall indemnify its director (the "**Director**") from all claims relating to any obligations or liabilities the Director may incur and which have accrued by

reason of or in relation with its capacities as director or officer of the Applicant after the filing of the NOI, except where such obligations or liabilities were incurred as a result of such Director's gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 64.1(4) BIA.

10. **ORDERS** that the Director shall be entitled to the benefit of and is hereby granted a charge and security in the Property to the extent of the aggregate amount of \$50,000 (the "**Director's Charge**"), as security for the indemnity provided in paragraph 9 of this Order as it relates to obligations and liabilities that the Director may incur in such capacity after the filing of the NOI. The Director's Charge shall have the priority set out in paragraphs 12 and 13 of this Order.
11. **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary (if any), (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Director's Charge, and (b) the Director shall only be entitled to the benefit of the Director's Charge to the extent that he does not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Director is entitled to be indemnified in accordance with paragraph 9 of this Order.

Priorities and General Provisions Relating to Charges

12. **DECLARES** that the priorities of the Administration Charge, the KERP Charge and the Director's Charge (collectively, the "**Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
 - (a) first, Administration Charge;
 - (b) second, the KERP Charge; and
 - (c) third, the Directors' Charge.
13. **DECLARES** that each of the Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.
14. **ORDERS** that, except as otherwise expressly provided for herein, the Applicant shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant obtains the prior written consent of the Trustee and the prior approval of the Court.
15. **DECLARES** that each of the Charges shall attach, as of the date hereof, to all present and future Property of the Applicant, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
16. **DECLARES** that the Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Applicant or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Applicant; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings,

incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Applicant (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of any of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Third Party Agreement to which it is a party; and
 - (b) any of the beneficiaries of the Charges shall not have liability to any person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the Charges.
17. **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Applicant and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Applicant, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Applicant pursuant to the Order and the granting of the Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
18. **DECLARES** that the Charges shall be valid and enforceable as against all Property of the Applicant and against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Applicant, for all purposes.

General

19. **DECLARES** that the Applicant and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Applicant shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
20. **DECLARES** that, unless otherwise provided herein, under the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Applicant and the Trustee and has filed such notice with this Court, or appears on the service list prepared by the Trustee or its attorneys, save and except when an order is sought against a person not previously involved in these proceedings;
21. **DECLARES** that the Applicant or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.
22. **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
23. **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or

administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

24. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

Sophie Picard
SOPHIE PICARD

COPIE CONFORME
[Signature]
GREFFIER ADJOINT