

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-057570-190

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

9348069 CANADA INC.

-and-

4295862 CANADA INC.

-and-

MOTOVAN CORPORATION

(collectively hereafter referred to as “**MTV**”)

Petitioners

-and-

MONCY HOLDING COMPANY INC.

-and-

**MONCY FINANCIAL SERVICES COMPANY
INC.**

-and-

NICHOLS MOTORCYCLE SUPPLY INC.

-and-

MONCY LLC

-and-

MOTORCYCLE TIRES & ACCESSORIES LLC;

Mises en cause

(Petitioners and the Mises en cause are collectively hereafter referred to as the « **CCAA Parties** »)

-and-

BANK OF MONTREAL

-and-

INVESTISSEMENT QUÉBEC

-and-

EXPORT DEVELOPMENT CANADA

-and-

BDC CAPITAL INC.

Secured Creditors

-and-

KPMG INC.

Monitor

**PETITIONERS' MOTION (I) FOR AN ORDER
EXTENDING THE STAY PERIOD, (II) TO AMEND THE RE-AMENDED
AND RESTATED INITIAL ORDER AND (III) FOR THE ISSUANCE OF A
DISTRIBUTION ORDER**

(Section 11 and *ff.* of the *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE JUSTICE MARIE-ANNE PAQUETTE, J.S.C. SITTING IN COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, THE CCAA PARTIES RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. On December 2, 2019, the Honourable Justice Marie-Anne Paquette, J.S.C., issued an initial order (the “**Initial Order**”¹) commencing these proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in respect of the CCAA Parties, as appears from the Court record;
2. Pursuant to the Initial Order, the Court:
 - a) Declared that the CCAA Parties are debtor companies to whom the CCAA applies, or companies entitled to benefit from the protection arising from the Initial Order;
 - b) Ordered a stay of proceedings in favour of the CCAA Parties and their respective directors and officers and other general CCAA relief pursuant to, inter alia, sections 11, 11.02 and 11.03 thereof for an initial period of ten (10) days, i.e. until on or about **December 12, 2019** (hereinafter the “**Initial Period**”); and
 - c) Authorized the CCAA Parties to continue their operations in order to preserve their assets and make payments in the normal course of business;
 - d) Appointed KPMG Inc. (“**KPMG**”) (Dev A. Coossa, PAIR, SI) as Monitor pursuant to Section 11 of the CCAA;
 - e) Granted an Administration Charge to secure the Petitioners’ obligations towards its legal advisors (BCF LLP), the Monitor (KPMG) and the Monitor’s legal advisors (Norton Rose Fulbright Canada LLP);
 - f) Granted a D&O Charge to secure the Petitioners’ obligations towards its directors and officers in respect of potential liabilities that could arise after the Initial Order has been issued, but only to the extent that such potential liability is not covered by existing insurance policies;
 - g) Authorized Petitioners to file at a later date a plan of arrangement with their creditors pursuant to the CCAA (the “**Plan**”);

¹ Except as otherwise provided for herein, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Initial Order.

- h) Authorized various measures required in order to facilitate the proposed restructuring; and
 - i) Declared that the Petitioners may at all times address this Court in order to seek any other measures necessary in order to carry out the restructuring process;
3. On December 12, 2019, the Honourable Marie-Anne Paquette, j.s.c. issued an Amended and Restated Initial Order pursuant to which the Court:
- a) Extended the Stay Period in respect of the CCAA Parties until January 31, 2020;
 - b) Amended the Initial Order to increase the amount of the Administration Charge from \$335,000.00 to \$500,000.00;
 - c) Approved the SISP proposed by the CCAA Parties;
4. On January 31, 2020, the Honourable Marie-Anne Paquette, j.s.c., issued an order pursuant to which the Court extended the Stay Period in respect of the CCAA Parties until May 15, 2020, in order notably to:
- a) Allow for the continuation of the liquidation process undertaken in the U.S. by Gordon Brothers;
 - b) Finalize the SISP process and the sale of MTV's assets in Canada;
5. On February 19, 2020, the Honourable Marie-Anne Paquette, j.s.c. issued an Approval and Vesting Order pursuant to which the Court notably approved the sale of Motovan Corporation's assets and of certain assets of Motorcycle Tires & Accessories LLC (Motovan Corporation and Motorcycle Tires & Accessories LLC being collectively referred to as the "**Vendor**") and ordered the remittance of the sale proceeds to the Monitor (the "**Vesting Order**");
6. On May 15, 2020, the Honourable Marie-Anne Paquette, j.s.c. issued (i) an Extension Order, (ii) a Re-Amended and Restated Initial Order, and (iii) a Distribution Order, by which the Court notably:
- a) Extended the Stay Period until November 16, 2020 in order to allow the CCAA Parties to maximize the collection proceeds in the U.S., to complete the liquidation process and to collect overpaid customs duties paid by MTV (the "**Duties**");

- b) Amended the Initial Order in order to provide powers to the Monitor with respect to collecting the Duties and filing a motion for final decree in the Chapter 15 proceedings;
- c) Allowed for the distribution of the sale proceeds held by the Monitor following the execution of the transaction pertaining to Vendor's assets;

II. ORDERS SOUGHT

- 7. The CCAA Parties hereby seek (i) an extension of the Stay Period until February 1st, 2021, (ii) the issuance of a Re-Re-Amended and Restated Initial Order with respect of the CCAA Parties and (iii) the issuance of a Distribution Order, for the reasons more fully explained hereafter, but notably to:
 - a) Finalize the collection of the Duties;
 - b) Amend the Re-Amended and Restated Initial Order to allow Bank of Montreal, in its capacity as Agent under the Motovan SARCA (as defined below) to send to the CCAA Parties a demand for payment of all outstanding sums owed to it;
 - c) Distribute the Duties collected to date and to be collected by the Monitor;

III. CHAPTER 15 PROCEEDINGS UPDATE

- 8. On December 12, 2019, Motorcycle Tires & Accessories LLC ("**MTA**") entered into an agreement with Gordon Brothers with respect to the liquidation of its U.S. inventory. The Agency Agreement is attached as Appendix D to the Monitor's report communicated herewith as **Exhibit R-2** (the "**Monitor's Report**");
- 9. On December 20th, 2019, the CCAA Parties sought provisional relief under Chapter 15 of the *Bankruptcy Code* for the recognition of the present proceedings by the U.S. Court;
- 10. On January 23, 2020, the CCAA Parties obtained final relief under Chapter 15 of the *Bankruptcy Code* for recognition of the present proceedings by the U.S. Court;
- 11. Initially, the liquidation process of MTA was to continue until at least April 2020 with the help of Gordon Brothers;
- 12. However, as of March 2020, the Covid-19 pandemic significantly hampered and delayed these efforts, and it became necessary for the CCAA Parties to request an extension of the Stay Period to complete the efforts and maximize the collection proceeds;

13. All parties acted diligently so that the liquidation of the U.S. inventory, and the closing of the U.S. operations have been completed and an Order for Final Decree was rendered in the Chapter 15 Proceedings on October 20, 2020, as it appears from **Exhibit R-3**;

IV. SISP UPDATE AND SALE PROCEEDS

14. Since the implementation of the SISP, on or about December 10, 2019, the CCAA Parties and KPMG CF carried out the process in accordance with the milestones approved by this Court;
15. The sale proceeds have been distributed by the Monitor in accordance with the Distribution Order issued by this Court on May 15, 2020;

V. EXTENSION OF THE STAY PERIOD

16. The CCAA Parties are seeking an extension of the Stay Period until February 1st, 2021, as MTV requires additional time to collect the Duties, which it estimates could reasonably be collected during the extension period proposed herein, as more detailed below;
17. As a result of the support of their operational lender, BMO, the CCAA Parties have sufficient liquidity to continue their current operations on a going concern basis during the extended Stay Period;

VI. COLLECTION OF THE DUTIES

18. On or around April 20, 2020, the Monitor was informed of a potential receivable pertaining to MTV, in the form of overpaid Canadian customs duties;
19. In effect, and following a favourable ruling by the Canadian International Trade Tribunal rendered on June 3, 2019, it appears MTV has over the years overpaid a significant amount of custom duties on certain products, namely motocross helmets, as it namely appears from a copy of the CITT order, communicated herewith as **Exhibit R-4**;
20. However, at this time, MTV has not completed the process to claim the Duties which was initiated before the present proceedings;
21. The Monitor and the CCAA Parties submit that the process required to produce the claim before the relevant authorities has been completed, but that the reimbursement of the Duties has not yet been received;
22. It is foreseeable that the extended Stay Period should be sufficient to receive payment of the Duties from the CBSA;

23. While subtracting the potential fees to be owed to the customs broker, it is likely that the amount to be collected will be substantial;

VII. AMENDMENT TO THE AMENDED AND RESTATED INITIAL ORDER

24. The CCAA Parties submit that certain amendments are desirable in order to allow Bank of Montreal, in its capacity as Agent under the Motovan SARCA, to send to the CCAA Parties a demand for payment of all outstanding sums owed to the Agent and the Lenders, the whole in accordance with the draft *Re-Re-Amended and Restated Initial Order* communicated herewith as **Exhibit R-5**, in order to:

- a) In 2015, Bank of Montreal and Export Development Canada, as Lenders, put at the disposal of Motovan Corporation, and Motorcycle Tires & Accessories LLC, the Petitioners, credit facilities that were also guaranteed by their affiliates who are also Petitioners or CCAA impleaded parties in these proceedings, as appears from the Second Amended and Restated Credit Agreement dated July 31, 2015, communicated herewith as **Exhibit R-6** (as amended from time to time, the "**Motovan SARCA**");
- b) The Facility C Credit under the Motovan SARCA was amended under the Second Amendment to the Motovan SARCA to increase the amount of the facility to US \$5,372,222.24 as appears from the Second Amendment dated April 24, 2017 (the "**Second Amendment to the Motovan SARCA**");
- c) The repayment to Bank of Montreal of the Facility C Credit is guaranteed up to 40% of the net loss by Investissement Quebec ("**IQ**"), the whole as appears from the said Guarantee dated April 28, 2017 communicated herewith as **Exhibit R-7** (the "**IQ Guarantee**");
- d) The IQ Guarantee was to terminate 16 months from April 28, 2017, however this term was extended numerous times by IQ, the last extension being granted ending December 15, 2020;
- e) As of today, all assets of the Petitioners and their affiliates have been sold and or realized, bringing to an end the monetization of the CCAA Parties' assets save and except for the Customs Duties recovery;
- f) Accordingly, Bank of Montreal is now in a position to establish its claim against IQ under the IQ Guarantee;
- g) One of the pre-requisite under the IQ Guarantee is to issue a demand letter to the Borrowers, and the Guarantors as defined under the Motovan SARCA;

- h) In order to accomplish this condition, the extension of the Initial Order to be rendered pursuant to this Motion must not prevent the Agent and the Lenders to issue their demand for payment of all obligations of the CCAA Parties under the Motovan SARCA;
- i) As such, the Order to be rendered by this Honourable Court pertaining to the stay of the rights of creditors to exercise their rights must not apply to Bank of Montreal, as Agent and as Lender and to Export Development Canada, as Lender in order to issue the said demand for payment;

VIII. ISSUANCE OF A DISTRIBUTION ORDER TO DISTRIBUTE THE DUTIES TO BE COLLECTED

- 25. As explained in the Monitor's fourth report, a formal claims process was not deemed appropriate to implement in the present case considering the absence of equity beyond the secured claims;
- 26. In the absence of a formal claim process, the CCAA Parties respectfully request that a Distribution Order, in the form of **Exhibit R-8**, be issued in order to allow the Monitor to distribute the Duties to be collected in the following months, in accordance notably with the provisions of the Re-Re-Amended Initial Order and of the CCAA;
- 27. BMO's outstanding secured claim amounts to approximately \$6M as of this date;
- 28. Monitor has obtained an independent security review from its counsels confirming the validity and enforceability of BMO's security interest;
- 29. Any proceeds resulting from the collection of the Duties is subject to the BMO's security interest;
- 30. In abundance of caution, all secured creditors as well as the tax authorities are receiving notification of the present Motion and of the draft Distribution Order;

IX. CONCLUSION

- 31. The CCAA Parties will continue their restructuring efforts with a view to preserve and maximize the value of their assets;
- 32. Since the issuance of the Initial Order, the CCAA Parties have acted, and continue to act, in good faith and with due diligence;
- 33. The Monitor supports the present Motion;
- 34. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

DECLARE that sufficient prior notice of the presentation of the Motion has been given to interested parties;

ISSUE an order substantially in the form of the draft Order (**Exhibit R-1**) communicated in support hereof;

ISSUE a *Re-Re-Amended and Restated Initial Order* in the form of the draft Order (**Exhibit R-5**) communicated in support hereof;

ISSUE a *Distribution Order* in the form of the draft Order (**Exhibit R-8**) communicated in support hereof;

THE WHOLE without costs, save and except in case of contestation.

Montreal, November 11, 2020



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Attorneys for the CCAA Parties

SOLEMN DECLARATION

I, the undersigned, **JAMES PALADINO**, businessman, residing and domiciled at 690, Des Châtaigniers, in the City of Boucherville, District of Longueuil, Province of Quebec, J4B 8S2, solemnly affirm the following:

- 1- I am director of the Petitioners in the present case;
- 2- All of the facts contained in the *Petitioners' Motion (i) for an Order extending the Stay Period, (ii) to amend the Initial Order and (iii) for the Issuance of a Distribution Order* dated May 11, 2020, are true to my knowledge.

AND I HAVE SIGNED



JAMES PALADINO

SOLEMNLY DECLARED before me
By technological means,
in Marieville, Province of Québec,
this 11th day of November, 2020.



Commissioner of Oaths for Québec



NOTICE OF PRESENTATION

TO: **THE ATTACHED SERVICE LIST**

TAKE NOTICE that the present *Petitioners' Motion (i) for an Order extending the Stay Period, (ii) to amend the Re-Re-Amended and Restated Initial Order and (iii) for the Issuance of a Distribution Order* will be presented, by videoconference, before one of the honourable judges of the Superior Court sitting in commercial division and for the district of Montreal, on **November 16, 2020, at 2:30 p.m. (Montreal time)**.

DO GOVERN YOURSELF ACCORDINGLY.

Montreal, November 11, 2020



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C A N A D A

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KPMG INC.

Monitor

LIST OF EXHIBITS

EXHIBIT R-1: Draft Order;

EXHIBIT R-2: Monitor's Report;

- EXHIBIT R-3:** U.S. Order approving Entry of Final Decree;
- EXHIBIT R-4:** CITT Order;
- EXHIBIT R-5:** Draft *Re-Re-amended and Restated Initial Order*;
- EXHIBIT R-6:** Second Amended and Restated Credit Agreement dated July 31, 2015 ("**Motovan SARCA**");
- EXHIBIT R-7:** IQ Guarantee dated April 28, 2017;
- EXHIBIT R-8:** Draft *Distribution Order*.

Montreal, November 11, 2020



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KPMG INC.

Proposed Monitor

**PETITIONERS' MOTION FOR AN ORDER
EXTENDING THE STAY PERIOD, (II) TO AMEND
THE RE-AMENDED AND RESTATED INITIAL
ORDER AND (III) FOR THE ISSUANCE OF A
DISTRIBUTION ORDER, SOLEMN DECLARATION
OF JAMES PALADINO, NOTICE OF
PRESENTATION AND LIST OF EXHIBITS**

*(Section 11 ff. of the Companies' Creditors
Arrangement Act)*

ORIGINAL

Me Bertrand Giroux

Our file: 008350-00318



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