VANCOUVER
JUL 23 2024
REGISTRY

FORCE FILED

No. S-237354
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

TEBO MILL INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC., ALGON HOLDINGS INC., FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH CONSULTANTS INC., ALANKARA KHARA, and JYOTI KHARA

DEFENDANTS

NOTICE OF APPLICATION

Name of applicant: KPMG Inc. ("**KPMG**") in its capacity as receiver (in such capacity the "**Receiver**") of Tebo Mill Installations Inc., Tebo Mill Construction Inc., Algon Holdings Inc., Fraserview Fabrication and Machining Inc., and Ptolemytech Consultants Inc. (collectively, the "**Companies**")

To: The Service List attached as Schedule "A"

TAKE NOTICE that an application will be made by the applicant to the Honourable Justice Stephens at the courthouse at 800 Smithe Street, Vancouver, British Columbia on July 25, 2024 at 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 1 hour.

This matter is not within the jurisdiction of an Associate Judge.

Justice Stephens is seized of these proceedings. The date and time for this application has been set with Scheduling.

Part 1: ORDERS SOUGHT

1. An Order that the time for service of this Notice of Application and supporting materials is abridged such that the Notice of Application is properly returnable on July 25, 2024 and any further service thereof is dispensed with;

2. An Order (the "**Realization Strategy Approval, Fee Approval, Consolidation & Discharge Order**") substantially in the form attached hereto as Schedule "B", (with the

changes to the Model Discharge Order as shown on the blacklined Model Discharge Order attached hereto as Schedule "C"), among other things:

(a) approving the Receiver's proposed realization strategy for the Companies' certain assets (the "**Proposed Realization Strategy**");
(b) authorizing the Receiver to enter into an auction agreement with Able Auctioneers ("**Able**") in respect of the Proposed Realization Strategy;
(c) approving the activities of the Receiver, as set forth in the Receiver's First and Final Report to Court dated July 22, 2024 (the "**Report**")
(d) approving the fees and disbursements of the Receiver and its counsel, Poulsen & Company ("**Poulsen**"), including their respective estimates to conclude these proceedings;
(e) approving the Receiver's estimated final statement of receipts and disbursements (the "**Estimated Final SRD**") for the period May 7, 2024 to the date of discharge of the Receiver (the "**Discharge Date**") attached as Appendix "A" to the Report;
(f) approving the Receiver administering the Receivership of the Companies on a substantive consolidated basis as described in the Report;
(g) authorizing the Receiver to make the Final Distribution of the receivership estate in accordance with the Receiver's estimated statement of receipts and disbursements as set forth in Appendix "A" to the Report;
(h) effective upon the Receiver's filing of a certificate with this Court (the "**Discharge Certificate**"), discharging the Receiver of its duties and obligations arising under the Receivership Order (as defined herein); and
(i) releasing KPMG from any and all liability that KPMG has, or may hereafter have, by reason of, or in any way related to, the acts or omissions of KPMG while acting in its capacity as Receiver, save and except for gross negligence or wilful misconduct on the part of KPMG.

Part 2: FACTUAL BASIS

1. Capitalized terms used but not otherwise defined in this Notice of Application have the meanings ascribed to them in the Report.

I. OVERVIEW

2. The Companies are British Columbia-based businesses.

3. The operating companies TMI and TMC install industrial plants, and act as industrial and commercial contractors and subcontractors and FFM is in the steel fabrication business and Algon is a financial holding company and the main debtor to Royal Bank of Canada ("**RBC**") with the Companies cross-guaranteeing the debt to RBC. Ptolemytech offered logistics solutions and was dormant before the Receivership.

4. RBC was the primary lender and is the only secured creditor of the Companies.

5. This action was commenced on October 30, 2023 as enforcement proceedings. It was then transitioned first into failed proceedings by the Companies (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") which failed due to the Monitor filing a Material Adverse Change Report, and subsequently

transitioned into a receivership, pursuant to the order pronounced by the Honorable Justice Stephens of the Supreme Court of British Columbia (the "**Court**") on May 2, 2024 to be effective on May 7, 2024 (the "**Receivership Order**").

6. Canada Revenue Agency ("**CRA**") has performed audits and has filed Proofs of Claim totalling $809,568.00 to date. Of this amount, $476,776.00 relates to a Payroll Deemed Trust Property Claim and the amount of $90,375.00 has been assessed as a GST Deemed Trust Claim.

II. BACKGROUND

7. Pursuant to the Receivership, the Receiver was authorized to borrow up to $200,000.00 (the "**Receivership Facility**"), to be advanced by RBC, for the purpose of carrying out its duties and powers under the Receivership Order.

8. The Receiver conducted an extensive review of the Companies and their assets, as detailed in the Report.

9. As set out in the Receiver's estimated final statement of receipts and disbursements, the Receiver has sold work in progress and inventory for $32,191.00 and collected accounts receivable of $44,161.00 and recovered a GST refund of $7,114.00 and the only sizeable asset remaining is the proposed sale of equipment for $240,000.00 by an auction by Able. Unfortunately with the CCAA Administration Charge of $200,000.00 and the WEPPA super-priority charge and the Receiver fee and expenses, there will not be enough monies left over to repay to RBC the full amount of the Borrowing Certificate of $75,000.00 and no monies left over to pay the Deemed Trust Claim to CRA.

III. RECEIVER'S ACTIVITIES

10. The Report collectively details the activities of the Receiver from May 7, 2024, which include, but are not limited to, the following:
    (a) attendance at the business premises and secured the properties;
    (b) arranging for insurance;
    (c) retained a former employee to assist in fixed asset and inventory counts;
    (d) taking possession of the Companies' books and records and reviewing the same;
    (e) demanding payment of various accounts receivable and dealing with disputed claims including partially completed projects;
    (f) arranging for the extension of insurance coverage up to the anticipated closing date of the sale;
    (g) liaising with CRA and Service Canada in relation to their respective statutory priority claims (payroll deductions, GST, and WEPPA claims);
    (h) arranging for a sale of the inventory and work in progress;
    (i) obtaining an appraisal of the equipment from Maynards;
    (j) searching for missing assets;
    (k) dealing with leased vehicles;
    (l) terminating the employment of 22 employees and hiring 4 former employees on a contract basis to assist with books and records, CRA trust audit and filings and equipment;

(m) requesting an Administration Agreement from CRA whereby CRA would postpone its security in favour of the Receiver's reasonable fees and costs;
(n) soliciting proposals for the sale of certain assets from auctioneers, the original founders of the Companies, and former employees;
(o) attending to various statutory matters pursuant to the *Bankruptcy and Insolvency Act*; and
(p) preparing the Report for use by this Court.

IV. PROPOSED REALIZATION STRATEGY

11. As set out in the Report the remaining assets have been appraised by Maynards and the appraised value ranges from a low of $155,600.00 to a high of $365,100.00.

12. Even if the remaining assets sold at the high range of $365,100.00 the secured creditor RBC is expected to receive no recovery on its loan.

13. The Receiver has received 5 auctioneer proposals ranging from $30,000.00 to $250,000.00.

14. The most favourable offer was from Able Auctioneers ("**Able**"). Able offered a net minimum guarantee of $240,000.00, and Able is prepared to pay the rent for August of approximately $27,000.00.

15. The Receiver is recommending that the offer from Able be approved as being in the best interest of the estate.

16. RBC as the sole secured creditor supports the Able offer.

V. SUBSTANTIVE CONSOLIDATION ORDER

17. As set out in the Report the Receiver is seeking approval to consolidate the administration of the Receivership Proceedings for all the Companies in view of the limited recovery and in order to reduce Receiver's costs of this proceeding.

18. The Receiver notes in the Report that the Companies comprising the Tebo Group is a vertically integrated business enterprise and operated on a consolidated basis.

VI. RECEIVER'S AND COUNSEL'S FEES

(i) Estimated Final Statement of Receipts and Disbursements ("SRD")

19. The Receiver's estimated SRD for the period from May 7, 2024 to completion is attached as Appendix "A" to the Report.

(ii) Receiver's and Poulsen & Company's Legal Fees

20. Pursuant to the Receivership Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges. The Receivership Order further provides that the Receiver and its counsel will pass their

accounts from time to time, with such accounts referred to a judge of this Court for determination (which may be by hearing before the judge on a summary basis).

21. The particulars of the fees for the Receiver and its counsel, Poulsen & Company (collectively, the "**Fees**"), are summarized in the Report, Affidavit #1 of Huey Lee made July 22, 2024 (the "**Lee Affidavit**") and Affidavit #1 of Jef Poulsen made July 19, 2024 (the "**Poulsen Affidavit**").

22. To June 30, 2024, the Receiver's fees total $110,992.00 plus disbursements and applicable taxes.

23. The Receiver's fees are detailed in the Lee Affidavit.

24. Poulsen & Company Fees are summarized in the table below and further detailed in the Poulsen Affidavit:

Invoice #	Invoice Date	Fees ($)	Disburse-ments ($)	GST/PST ($)	Total ($)
24138	Jul. 4, 2024 (Apr. 30 - May 15, 2024)	7,380.00	268.25	908.49	8,556.74
24145	Jul. 15, 2024 (May 16 - Jun. 28, 2024)	5,826.00	154.65	707.48	6,688.13
	TOTAL:	**13,206.00**	**422.90**	**1,615.97**	**15,244.87**

25. The Receiver has reviewed the Poulsen & Company invoices in respect of the above and concluded that they are reasonable and appropriate in the circumstances.

26. Assuming this application is not opposed:
    (a) the Receiver estimates that its fees from June 30, 2024 to conclusion of the Receivership will amount to approximately $58,000.00 plus applicable taxes; and
    (b) Poulsen & Company estimates that its fees from June 28, 2024 to the conclusion of this matter will amount to approximately $6,000.00, plus disbursements and applicable taxes.

27. In the event that the Realization Strategy Approval, Fee Approval, Consolidation & Discharge Order is granted as sought, prior to its filing the Discharge Certificate, the Receiver and Poulsen & Company will render final invoices for services rendered in relation to this matter (the "**Completion Invoices**").

28. The Receiver submits that its fees and the fees of its counsel are fair and reasonable in the circumstances, and that the time spent was necessary and the work was delegated to the appropriate professionals within each firm. Accordingly, the Receiver seeks an order approving its fees and activities and approving the fees of its counsel.

VII. CREDITORS AND PROPOSED DISTRIBUTIONS

29. RBC is the Companies' only secured creditor and is owed more than $5 million by the Companies pursuant to various credit facilities.

30. Pursuant to the Order made in the CCAA Proceedings, this Court granted an administration charge (the "**Administration Charge**") in the amount of $200,000.00 in favour of the Monitor and its counsel and the Companies and their counsel, to secure amounts respectively owed to them for professional fees incurred in relation to the CCAA Proceedings. Pursuant to the CCAA Order, the Administration Charge has priority over all other claims.

31. The Receiver has been advised that the fees of the CCAA Monitor and counsel exceed the $200,000.00 charge. The Monitor will bring an application, scheduled to be heard at the same time or after this Application, to have the Monitor's fees and its counsel's fees approved and the Monitor discharged.

32. CRA has submitted Deemed Trust Claims against the Companies in the aggregate amount of $567,151.00 (collectively, the "**CRA Claim**") in respect of outstanding deemed trust payroll deductions and outstanding GST.

33. Service Canada is expected to file a priority claim in the amount of $10,510.00 (the "**WEPPA Claim**") in respect of amounts due and owing by the Companies under the Wage Earner Protection Program and *Wage Earner Protection Program Act*, S.C. 2005, c.47 ("**WEPPA**").

34. As at the date of the Report, the Receiver has borrowed $75,000.00 from RBC under the Receivership Facility, which, in addition to interest thereon, remains due and payable to RBC. No funds will be available for repayment to RBC of the Receivership Facility or the RBC loans.

35. The Receiver intends to distribute all funds in accordance with the Estimated Final SRD. No funds are expected to be available for distribution to CRA respecting its Deemed Trust Claims. RBC will suffer a significant shortfall in the amount owed to it as no funds are anticipated to be paid to RBC on the Receivership Facility or on the loans owed to RBC.

VIII. RELEASE AND DISCHARGE

36. If the Realization Strategy Approval, Fee Approval, Consolidation & Discharge Order is granted, subject to the Receiver making the Final Distribution contemplated above and pursuant thereto, the Receiver will have completed its duties as set out in the Receivership Order, except for the following (the "**Concluding Matters**"):
    (a) destroying or returning the Company's Records;
    (b) preparing the final bank reconciliations and closing the Receiver's bank accounts;
    (c) preparing the final bank reconciliations and GST return on behalf of the Company and closing the Receiver's GST account; and
    (d) any other matters incidental to the wind up of the administration of the Receivership.

37. The Concluding Matters are administrative and the Receiver is of the view that it is appropriate to seek the Realization Strategy Approval, Fee Approval, Consolidation & Discharge Order approving its discharge, which discharge shall be effective upon the filing

of the Discharge Certificate, and that doing so will benefit stakeholders by avoiding additional costs in these proceedings.

38. As a term of the Order, the Receiver is also seeking a release from the Court in respect of any and all claims and obligations arising as a result of the Receiver acting in its respective capacities on behalf of the Companies, excepting those claims and obligations arising as a result of gross negligence or willful misconduct.

Part 3: LEGAL BASIS

1. The Receiver relies on:
   (a) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA");
   (b) Rules 8-1 and 10-2 of the *Supreme Court Civil Rules*;
   (c) the Receivership Order;
   (d) the CCAA Order;
   (e) the inherent and equitable jurisdiction of this Court; and
   (f) such further and other legal basis as counsel may advise and this Honourable Court may allow.

2. The work performed by the Receiver and Poulsen & Company was done pursuant to, and in accordance with, the terms of the Receivership Order, the other orders of the Court made in these proceedings and the provisions of the BIA.

I. APPROVAL OF THE RECEIVER'S ACTIVITIES

3. The Court has inherent jurisdiction to review the activities of a court-appointed receiver and, if satisfied that the receiver has acted reasonably, prudently and not arbitrarily, to approve the activities set out in the receiver's report. The assessment of whether the receiver has acted "reasonably, prudent and not arbitrarily" is made on an objective basis.
   Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd., 2014 BCSC 1855, para. 54.

4. There are good policy and practice reasons for the Court to provide a level of protection for the receiver by approving its activities, provided the benefit of the approval is limited to the receiver itself.
   Hanfeng Evergreen Inc. (Re), 2017 ONSC 7161 at para. 17.

5. The activities of the Receiver are summarized in Part 2 and are detailed in the Report. The Receiver has reported to the Court, all interested parties and stakeholders in these proceedings. The Receiver carried out a transparent, orderly and timely sale process for the Companies' assets and acted reasonably to preserve and capture as much value as possible for the Companies' stakeholders in the proposed Realization Strategy. The activities of the Receiver have all been necessary and were conducted in accordance with its powers under the relevant orders made herein.

6. The Receiver respectfully submits that its activities, as described in the Report, have been carried out in a reasonable, prudent and not arbitrary manner and, accordingly, seeks approval of its activities.

II. APPROVAL OF THE FEES

7. The Receivership Order expressly provides that the Receiver's accounts be referred to a judge of this Honourable Court and that the passage of those accounts be heard on a summary basis.

   Receivership Order, para. 21.

8. There is no fixed rate or settled scale for determining a receiver's compensation. A receiver may either be allowed a percentage payment based on receipts, or a lump sum based on "the time, trouble and degree of responsibility involved". The governing principle is that a receiver's compensation should be measured by the "fair and reasonable" value of its services.

   Belyea v. *Federal Business Development Bank,* [1983] N.B.J. No. 41 (N.B. C.A.) ["***Belyea***"], para. 3;
   see also: *Confectionately Yours Inc., Re,* [2002] O.J. No. 3569, para. 44.

9. This principle was adopted by the British Columbia Court of Appeal in *Bank of Montreal v. Nican Trading Co.*, [1990] B.C.J. No. 340 (B.C. C.A.) ["*Nican*"]. The Court of Appeal went on to list "relevant considerations" in determining whether a receiver's compensation was fair and reasonable, including:
   (a) the value of the assets;
   (b) complications and difficulties encountered by the receiver;
   (c) the degree of assistance provided by the debtor;
   (d) time spent by the receiver;
   (e) receiver's knowledge, experience and skill;
   (f) diligence and thoroughness;
   (g) responsibilities assumed;
   (h) results; and
   (i) cost of comparable services.

   Bank of Montreal v. Nican Trading Co., [1990] B.C.J. No. 340 (B.C. C.A.) ["***Nican***"], paras. 23 -32.

10. Similar factors as considered on the assessment of a receiver's fees are also considered on the assessment of the accounts of legal counsel to a receiver, including, the:
    (a) time expended;
    (b) complexity of the proceedings;
    (c) degree of responsibility assumed by the lawyers;
    (d) amount of money involved, including reference to the debt, amount of proceeds after realization and payments to the creditors;
    (e) degree and skill of the lawyers involved;
    (f) results achieved; and
    (g) client's expectations as to the fee.

    Redcorp Ventures Ltd., Re, 2016 BCSC 188, para. 33.

11. In respect of the Receiver's fees, the Receiver submits that:

(a) the fees were properly incurred, and commensurate with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity in British Columbia;
(b) the work completed by the Receiver was delegated to the appropriate professionals with the appropriate seniority and hourly rates; and
(c) the Receiver's services were performed in a prudent and economical manner.

12. Similarly, the Receiver submits that the Poulsen & Company fees are fair and reasonable in the circumstances as:
    (a) the Poulsen & Company professional fees and disbursements were properly incurred, and commensurate with fees charged by similar firms with the expertise and capacity to serve a matter of comparable size and complexity;
    (b) the work completed by Poulsen & Company was delegated to the appropriate professionals with the appropriate seniority and hourly rates;
    (c) the Poulsen & Company services were performed in a prudent and economical manner; and
    (d) the Poulsen & Company invoices were provided to the Receiver when rendered, and all have been approved by the Receiver.

13. In light of the foregoing, the Receiver submits that the Fees are reasonable in the circumstances and should now be approved, as the Receiver has substantially completed its mandate.

III. PROPOSED DISTRIBUTION

14. The Receiver seeks authorization from this Court to distribute all remaining funds held by it, in accordance with the Receiver's final estimated statement of receipts and disbursements as detailed in the Report.

15. Pursuant to the Receivership Order, the Administration Charge created in the CCAA Proceedings is a first-ranking charge on all of the Company's assets to a maximum amount of $200,000.00.

16. In respect of the Priority Claims ranking after the Administration Charge in the CCAA Proceedings:
    (a) the WEPPA Claim is a priority statutory lien claim against all assets of the Company pursuant to the provisions of WEPPA and section 81.4 of the BIA;
    (b) the CRA Claim in respect of unremitted payroll source deductions and the GST deemed trust claim comprise a deemed trust claim against all assets of the Company; and
    (c) the Receivership Facility was granted priority by the Receivership Order in these proceedings, however there will be no funds available to repay the Receivership Facility.

17. CRA has agreed to postpone its Deemed Trust Claims for payroll deductions and GST to the Receiver's fees up to a maximum of $114,101.00.

IV. DISCHARGE OF THE RECEIVER

18. The release sought by the Receiver on this application includes the language set forth in the British Columbia model discharge order, modified to include the appropriate carve outs for any claims arising from gross negligence or wilful misconduct on the part of the Receiver.

19. Upon the filing of the Discharge Certificate, the Receiver should be discharged.

Part 4: MATERIAL TO BE RELIED ON

1. The First and Final Report of the Receiver, dated July 22, 2024 (the "**Report**");

2. Order, granted April 15, 2024 (the "**CCAA Order**");

3. Order, granted May 2, 2024 (the "**Receivership Order**");

4. Affidavit #1 of Huey Lee, made July 22, 2024;

5. Affidavit #1 of Jef Poulsen, made July 19, 2024; and

6. Such further other materials as counsel may advise and this Honourable Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

(a) file an Application Response in Form 33,
(b) file the original of every affidavit, and of every other document, that
  (i) you intend to refer to at the hearing of this application, and
  (ii) has not already been filed in the proceeding, and
(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  (i) a copy of the filed Application Response;
  (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: July 23, 2024

Jef Poulsen
Lawyer for KPMG Inc.,
in its capacity as Receiver

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs _____ of Part 1 of this Notice of Application

[ ] with the following variations and additional terms:

Dated: *[month, day, year].*

_____
Signature of
[ ] Judge [ ] Associate Judge

The Solicitors for KMPG Ltd. are Poulsen & Company, whose office address and address for delivery is 1800 - 999 West Hastings Street, Vancouver, BC V6C 2W2 Telephone: 604-681-0123 (File Reference: Jef Poulsen, File Number: 19942P)

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

[ ] discovery: comply with demand for documents

[ ] discovery: production of additional documents

[ ] other matters concerning document discovery

[ ] extended oral discovery

[ ] other matter concerning oral discovery

[ ] amend pleadings

[ ] add/change parties

[ ] summary judgment

[ ] summary trial

[ ] service

[ ] meditation

[ ] adjournments

[ ] proceedings at trial

[ ] case plan orders: amend

[ ] case plan orders: other

[ ] expert

[X] OTHER

SCHEDULE "A"

The Service List

No. S-237354
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

TEBO MILL INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC., ALGON HOLDINGS INC., FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH CONSULTANTS INC., ALANKARA KHARA, and JYOTI KHARA

DEFENDANT

SERVICE LIST
(as at May 15, 2024)

Fasken Martineau DuMoulin LLP Attention: Kibben Jackson Glen Nesbitt Suzanne Volkow Ashley Kumar Email: kjackson@fasken.com gnesbitt@fasken.com svolkow@fasken.com akumar@fasken.com *Counsel for the CCAA Monitor, Crowe MacKay & Company Ltd.*	**Bennett Jones LLP** Attention: David Gruber Mia Laity Victor Fong Email: GruberD@bennettjones.com LaityM@bennettjones.com FongV@bennettjones.com *Counsel For the Defendant Tebo Mill Installations Inc., Tebo Mill Construction Inc., Algon Holdings Inc., Fraserview Fabrication and Machining Inc., and Ptolemytech Consultants Inc.*

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Mega Cranes Ltd. Attention: Janet Shaw Email: paralegal@megacranes.com *Creditor*	

SCHEDULE "B"

Discharge Order

No. S-237354
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

TEBO MILL INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC., ALGON HOLDINGS INC., FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH CONSULTANTS INC., ALANKARA KHARA, and JYOTI KHARA

DEFENDANTS

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY
IN THE MATTER OF THE RECEIVERSHIP OF
TEBO MILL INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC.,ALGON HOLDINGS INC., FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH CONSULTANTS INC.

ORDER MADE AFTER APPLICATION

DISCHARGE ORDER

BEFORE THE HONOURABLE JUSTICE STEPHENS) JULY 25, 2024

THE APPLICATION of KPMG Inc.], in its capacity as Court-appointed Receiver and Manager (the "Receiver") of the assets, undertakings and properties of Tebo Mill Installations Inc., Tebo Mill Construction Inc., Algon Holdings Inc., Fraserview Fabrication and Machining Inc., and Ptolemytech Consultants Inc. (the "Debtors") coming on for hearing at Vancouver, British Columbia, on the 25th day of July, 2024; AND ON HEARING Jef Poulsen, counsel for the

Receiver, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Report of the Receiver dated July 22, 2024 (the "Report");

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application filed July 23, 2024 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and any further service thereof is hereby dispensed with.

2. The activities of the Receiver, as set out in the Report, are hereby approved, and the Receiver's proposed realization strategy whereby the remaining assets of the Debtors be auctioned for sale by Able Auctioneers with a net minimum guarantee of $240,000.00 is hereby approved, and the Receiver is authorized to enter into such an agreement with Able Auctioneers.

3. The fees and disbursements of the Receiver and its counsel, as set out in the Report and the Affidavit #1 of Jef Poulsen and the Affidavit #1 of Huey Lee, are hereby approved, and the estimated fees and disbursements of the Receiver and its counsel to complete this matter as set out in the Report are approved, but the payment of the Receiver's fees in priority to the deemed trust claim of Canada Revenue Agency is limited to the amount of $114, 101.00. [2]

4. The Receiver shall pay all funds remaining in its hands in accordance with the Estimated Final Statement of Receipts and Disbursements as set out in the Report, with such adjustments as necessary to be made by the Receiver once the final receipts have been conclusively determined by the Receiver.

5. Upon payment of the amounts set out in paragraph 4 hereof and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Report , the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtors, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KPMG Inc. in its capacity as Receiver.

6. KPMG Inc., in its capacity as Receiver, shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of any order made in these proceedings, save and except:

(a) any gross negligence or wilful misconduct on its part; or
(b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded KPMG Inc., in its capacity as Receiver, by section 14.06 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA"), or by any other applicable legislation.

7. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court.

8. The Receiver is authorized to administer the receivership of the Debtors on a consolidated basis as described in the Report.

9. The Receiver may apply to this Court for advice and directions in relation to this Order and any related matters.

10. Endorsement of this Order by counsel appearing, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

_____

Signature of
☐ Party ☑ Lawyer for the Receiver

_____

Jef Poulsen

_____

_____

_____

BY THE COURT

_____

REGISTRAR

SCHEDULE "C"

Discharge Order (blacklined version)

~~MODEL DISCHARGE ORDER~~

~~*[CURRENT TO AUGUST 1, 2015]*~~

~~NO.~~

~~REGISTRY~~

~~IN THE SUPREME COURT OF BRITISH COLUMBIA~~

~~BETWEEN:~~

~~[PLAINTIFF(S)/PETITIONER(S)]~~

~~<PLAINTIFFS>/<PETITIONERS>~~

~~AND:~~

~~[DEFENDANT(S)/RESPONDENT(S)]~~

~~<DEFENDANTS>/<RESPONDENTS>~~

~~Action No.~~

~~Estate No.~~

No. S-237354
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

TEBO MILL INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC., ALGON HOLDINGS INC., FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH CONSULTANTS INC., ALANKARA KHARA, and JYOTI KHARA

DEFENDANTS

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY
IN THE MATTER OF THE RECEIVERSHIP OF
TEBO MILL INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC.,ALGON HOLDINGS INC., FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH CONSULTANTS INC. ~~[NAME OF DEBTOR(S)]~~

ORDER MADE AFTER APPLICATION

DISCHARGE ORDER

BEFORE THE HONOURABLE	)	
	)	JULY 25, 2024~~dd/mm/yyyy~~
JUSTICE STEPHENS	)	

THE APPLICATION of KPMG Inc.~~[RECEIVER'S NAME]~~, in its capacity as Court-appointed ~~[Receiver or~~ Receiver and Manager~~]~~ (the "Receiver") of the assets, undertakings and properties of ~~[Name of Debtor]~~, Tebo Mill Installations Inc., Tebo Mill Construction Inc., Algon Holdings Inc., Fraserview Fabrication and Machining Inc., and Ptolemytech Consultants Inc. (the "Debtors") coming on for hearing at Vancouver, British Columbia, on the 25th day of July, 2024~~1~~; AND ON HEARING Jef Poulsen, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Report of the Receiver dated July 22, 2024(the "Report")~~[1]~~;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application filed July 23, 2024 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and any further service thereof is hereby dispensed with.

~~1.~~2. The activities of the Receiver, as set out in the Report, are hereby approved, and the Receiver's proposed realization strategy whereby the remaining assets of the Debtors be auctioned for sale by Able Auctioneers with a net minimum guarantee of $240,000.00 is hereby approved, and the Receiver is authorized to enter into such an agreement with Able Auctioneers.~~.~~

~~2.~~3. The fees and disbursements of the Receiver and its counsel, as set out in the Report and the Affidavit #1 of Jef Poulsen and the Affidavit #1 of Huey Lee ~~Fee Affidavit~~, are hereby approved, and the estimated fees and disbursements of the Receiver and its counsel to complete this matter as set out in the Report are approved, but the payment of the Receiver's fees in priority to the deemed trust claim of Canada Revenue Agency is limited to the amount of $114, 101.00. [2]

~~3.~~4. ~~After payment of the fees and disbursements of the Receiver as herein approved,~~ ~~t~~The Receiver shall pay all funds remaining in its hands in accordance with the Estimated Final Statement of Receipts and Disbursements as set out in the Report, with such adjustments as necessary to be made by the Receiver once the final receipts have been conclusively determined by the Receiver. ~~to [NAME OF PARTY]. [3]~~

5. Upon payment of the amounts set out in paragraph ~~4~~3 hereof ~~[~~and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Report~~]~~ ~~[4]~~, the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtors, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KPMG Inc. ~~[RECEIVER'S NAME]~~ in its capacity as Receiver.

~~4.~~

6. ~~[Release of Receiver.]~~ ~~[5]~~ KPMG Inc., in its capacity as Receiver, shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of any order made in these proceedings, save and except:

(a) any gross negligence or wilful misconduct on its part; or
(b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded KPMG Inc., in its capacity as Receiver, by section 14.06 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA"), or by any other applicable legislation.

~~5.~~

7. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court. ~~[6]~~

8. The Receiver is authorized to administer the receivership of the Debtors on a consolidated basis as described in the Report.

9. The Receiver may apply to this Court for advice and directions in relation to this Order and any related matters.

10. Endorsement of this Order by counsel appearing, other than counsel for the Receiver, is hereby dispensed with.

~~6.~~11.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
☐ Party ☑ Lawyer for the Receiver~~Petitioners~~

Jef Poulsen<Print Name>

~~Signature of~~
~~☐ Party ☐ Lawyer for <name of party(ies)>~~

~~<Print Name>~~

BY THE COURT

REGISTRAR

BRITISH COLUMBIA MODEL DISCHARGE ORDER - EXPLANATORY NOTES

B.C. Model Insolvency Order Committee,
Vancouver, British Columbia

These Notes are to be read together with the model Discharge Order developed by the B.C. Model Insolvency Order Committee (as described below).

[1] This model order assumes that the time for service does not need to be abridged.

[2] This model order assumes the approval of the Receiver's fees and disbursements is done on a summary basis. If the Court determines that the assessment of the Receiver's fees and disbursements should be assessed by a Registrar, then this paragraph should be changed to read: "The Receiver shall pass its accounts before a Registrar of the Supreme Court who shall prepare a report and recommendation to the Court." The balance of the relief provided for in this model order should in such case be deleted and can be sought on the subsequent application for approval of the Registrar's report.

[3] This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

[4] Counsel should consider including this provision only if the Receiver's Report identifies any outstanding matters that should be completed before the Receiver's discharge.

[5] The BCMIOC was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity and as the Court's officer, so the Court may be of the view that it is appropriate to insulate the Receiver from liability by way of a general release. Some members of the BCMIOC felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership.

Without intending to express an opinion as to whether a general release is appropriate, the BCMIOC has decided not to include the general release language in the body of the model order. Whether such language is appropriate is a matter to be considered by the presiding Judge based on the specific circumstances of the case. If this relief is being sought, stakeholders should be specifically advised and given ample notice.

If a general release is ordered, the language approved by the BCMIOC is as follows:

5. [RECEIVER'S NAME] is hereby released and discharged from any and all liability that [RECEIVER'S NAME] now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of [RECEIVER'S NAME] while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, [RECEIVER'S NAME] is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

[6] If not included in a previous report, the Receiver should include in the Report filed in support of the application evidence that the Receiver satisfied its notice obligations, including under the *Bankruptcy and Insolvency Act*.

No. S-237354
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

TEBO MILL INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC., ALGON HOLDINGS INC., FRASERVIEW FABRICATION AND MACHINING INC., PTOLEMYTECH CONSULTANTS INC., ALANKARA KHARA, and JYOTI KHARA

DEFENDANTS

NOTICE OF APPLICATION

POULSEN & COMPANY
Barristers & Solicitors
1800 – 999 West Hastings Street
Vancouver, BC V6C 2W2
Tel: 604-681-0123
Fax: 604-683-1375
Attention: Jef Poulsen