

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

NO.: 500-11-054445-180

SUPERIOR COURT  
(Commercial Division)  
*Bankruptcy and Insolvency Act (the "BIA")*

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

**DIRECTION NORD-SUD (D.N.S.) LTÉE**, a corporation constituted pursuant to the *Canada Business Corporations Act*, having its head office at 1405 Saint-Amour Street, in the City of Montreal, Province of Québec, H4S 1J2

-and-

**SOCIÉTÉS NORD SUD (D.N.S.) LTÉE**, a corporation constituted pursuant to the *Canada Business Corporations Act*, having its head office at 1405 Saint-Amour Street, in the City of Montreal, Province of Québec, H4S 1J2

-and-

**3137520 CANADA INC.**, a corporation constituted pursuant to the *Canada Business Corporations Act*, having its head office at 1405 Saint-Amour Street, in the City of Montreal, Province of Québec, H4S 1J2

**Debtors/Respondents**

- and -

**THIRD EYE CAPITAL CORPORATION**, a corporation constituted pursuant to the *Ontario Business Corporations Act*, having its main business establishment at 888 Sherbrooke Street West, in the City of Montreal, Province of Quebec, H3A 1G3

**Secured Creditor/Petitioner**

- and -

**BLT LAPOINTE & ASSOCIÉS INC.**, licensed insolvency trustee, having its registered office at 1080, Côte du Beaver Hall, Suite 1810, in the City of Montreal, Province of Québec, H2Z 1S8

**Trustee to the Notice of Intention to Make a  
Proposal**

- and -

**KPMG INC.**, licensed insolvency trustee, having its registered office at 600 de Maisonneuve Blvd. West, Suite 1500, in the City of Montreal, Province of Québec, H3A 0A3

**Proposed Interim Receiver**

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**MOTION TO APPOINT AN INTERIM RECEIVER  
(Sections 47, 47.1 and 69(2)(b) BIA)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT (COMMERCIAL DIVISION), DISTRICT OF MONTREAL, OR TO THE REGISTRAR THEREOF, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. THE ORDERS SOUGHT**

1. For the reasons described hereinafter, the Petitioner, Third Eye Capital Corporation ("**TEC**" or the "**Petitioner**") hereby seeks the issuance of an order appointing KPMG Inc. ("**KPMG**") as interim receiver to all of the assets of Direction Nord-Sud (D.N.S.) Ltée ("**DNS**"), Sociétés Nord Sud (D.N.S.) Ltée ("**Sociétés**") and 3137520 Canada Inc. ("**3137520**", and collectively with DNS and Sociétés, the "**Debtors**"), with such powers as provided for in the draft order proposed by the Petitioner and communicated herewith as **Exhibit P-1**.

**II. THE PARTIES**

2. The Debtors are a group of companies based in Montreal, which are ultimately owned, whether directly or indirectly, by Serge Dauphin, Claude Dauphin, who control the companies, and Gérald Séguin (collectively, the "**Shareholders**").
3. DNS is a corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, which operates as a logistics support company that also rents dry and refrigerated trailers and chassis specifically customized to its customer's needs, for both short-term and extended periods, servicing the greater Montreal and Ottawa regions. A copy of the relevant extract of the Québec Register of Enterprises is communicated herewith as **Exhibit P-2**.
4. 3137520 is a corporation incorporated under the *Canada Business Corporations Act* and affiliated to DNS. 3137520 previously owned an immovable property in Montreal where DNS maintained and stored its excess fleet of trailers, before such immovable property was sold in July of 2016. A copy of the relevant extract of the Québec Register of Enterprises is communicated herewith as **Exhibit P-3**.
5. Sociétés is a corporation incorporated under the *Canada Business Corporations Act*, whose sole activity consists in holding the shares of DNS. A copy of the

relevant extract of the Québec Register of Enterprises is communicated herewith as **Exhibit P-4**.

6. TEC is a financing company that specializes in providing debt financing solutions primarily to middle market Canadian companies that are often overlooked or underappreciated by conventional sources of capital. A copy of the relevant extract of the Québec Register of Enterprises is communicated herewith as **Exhibit P-5**.
7. As more fully described below, TEC made available to DNS certain credit facilities pursuant to which each of the Debtors and Shareholders are, as of the date of this Motion, indebted in an amount of \$6,411,057.04.

### III. THE LOAN AGREEMENT AND TEC'S SECURITY

8. On June 19, 2014, a *Loan Agreement* (as amended, from time to time<sup>1</sup>, the "**Loan Agreement**")<sup>2</sup> was entered into between TEC, in its capacity as administrative agent, collateral agent and *fondé de pouvoir* to the lenders listed therein (collectively, the "**Lenders**"), DNS, as borrower, 3137520 and Sociétés, as corporate guarantors, and the Shareholders, as personal guarantors. A copy of the Loan Agreement (including the First Amendment and the Second Amendment) is communicated herewith, *en liasse*, as **Exhibit P-6**.
9. Pursuant to the Loan Agreement, the Lenders made available to DNS a non-revolving senior secured term loan credit facility in the maximum principal amount of \$5,270,000 (the "**Loan**"), bearing interests at variable rates as provided in the Loan Agreement.
10. Pursuant to the Loan Agreement, the Loan was scheduled to mature on June 19, 2017 (the "**Maturity Date**").
11. To secure the payment and performance of their obligations under the Loan Agreement, whether as borrower or corporate guarantors, each of the Debtors granted to TEC a hypothec and security interest on the universality of their respective movable and immovable property, as reflected in, *inter alia*, the following *Deeds of Hypothecs* (collectively, the "**Universal Hypothecs**") and *General Security Agreement* (the "**GSA**"), each of which were executed in favour of TEC, namely:
  - (a) a *Deed of Hypothec* dated June 17, 2014 entered into between DNS and TEC, a copy of which is communicated herewith as **Exhibit P-7**;
  - (b) a *General Security Agreement* dated June 19, 2014 entered into between DNS and TEC, a copy of which is communicated herewith as **Exhibit P-8**;

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<sup>1</sup> Including by way of a *Consent and First Amendment to Loan Agreement* dated May 27, 2017 (the "**First Amendment**") and by a *Consent and Second Amendment to Loan Agreement* dated July 13, 2016 (the "**Second Amendment**").

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

- (c) a *Deed of Hypothec* dated June 17, 2014 entered into between Sociétés and TEC, a copy of which is communicated herewith as **Exhibit P-9**; and
  - (d) a *Deed of Hypothec* dated June 17, 2014 entered into between 3137520 and TEC, a copy of which is communicated herewith as **Exhibit P-10**.
- 12. The Universal Hypothecs were registered in favour of TEC at the *Registry of Personal Movable Real Rights* (the "**RPMRR**"), as appears from the relevant extracts of the RPMRR, which are communicated herewith as **Exhibit P-11, P-12 and P-13**, respectively.
- 13. The GSA was perfected by registration under the Personal Property Security Registry of Ontario and of Newfoundland & Labrador, as appears from the search reports from the Ontario and Newfoundland & Labrador Personal Property Security Registry ("**PPSR**") communicated herewith as **Exhibit P-14 and P-15**, respectively.
- 14. As appears from the aforementioned extracts of the RPMRR and PPSR, TEC is the first ranking secured creditor of the Debtors:
  - (a) Apart from TEC, the only other secured creditor with registered security on the assets of DNS is The Bank of Nova Scotia, which holds a movable hypothec ranking after TEC's hypothec, the sole purpose of which is to secure the payment of an amount equal to 25% of the net proceeds otherwise payable to the Shareholders of DNS (if any, which is highly unlikely) in the event that all or a material part of the underlying value of DNS is realized in consideration for cash and/or securities, as appears from the Memorandum of Agreement of Reimbursement of Credit Facilities dated June 17, 2014 between The Bank of Nova Scotia and DNS, communicated herewith as **Exhibit P-16**;
  - (b) TEC is the only secured creditor of Sociétés; and
  - (c) The only other secured creditor with registered security on the assets of 3137520 is Banque de Développement du Canada, which had registered a moveable hypothec with respect to the rents and other movable assets related to the immovable property formerly owned by 3137520, which has since been sold by 3137520.
- 15. On September 14, 2014, TEC, DNS, and Royal Bank of Canada entered into a *Blocked Account Agreement* (the "**Blocked Account Agreement**"), in accordance with Section 3.1 of the Loan Agreement, in which DNS undertook to deposit all Revenues (as defined in the Loan Agreement) from all sources, including without limitation the proceeds of collection of accounts receivable, the control over which would be triggered by way of an *Activation Notice* upon the occurrence of an event of default by the Debtors under the Loan Agreement, A copy of the Blocked Account Agreement is communicated herewith as **Exhibit P-17**.

#### IV. EVENTS OF DEFAULT UNDER THE LOAN AGREEMENT

16. Since 2015, numerous events of default (collectively, the “**Events of Default**”) have occurred and are continuing under the Loan Agreement.
17. Pursuant to the First Amendment under the Loan Agreement, DNS was required to comply with several obligations and post-closing covenants by June 30, 2015, which included, *inter alia*:
  - (a) the delivery by DNS to TEC of a landlord waiver for some of its leased location, pursuant to Section 1 of Schedule 5.20 of the Loan Agreement and Section 3.9 of the First Amendment;
  - (b) the delivery by DNS to TEC of a physical appraisals in respect of some of DNS’ trailers, pursuant to Section 6 of Schedule 5.20 of the Loan Agreement
  - (c) the completion by DNS of a sale of 63 trailers, for an aggregate net sale proceeds of not less than \$400,000, pursuant to Section 7 of Schedule 5.20 of the Loan Agreement;
  - (d) the maintenance by DNS of minimum EBITDA of no less than \$1,700,000 for the trailing twelve months ending on July 31, 2015, pursuant to Section 6.6(c) of the Loan Agreement; and
  - (e) the maintenance by DNS of a minimum Net Orderly Liquidation Value of DNS of its “Rental Property (Borrower Owned)” in an amount equal to 100% of the then amount outstanding under the Loan Agreement, calculated as at June 30, 2015, pursuant to Section 6.6(d) of the Loan Agreement.
18. On August 27, 2015, as a result of DNS failing to comply with each of the above obligations and post-closing covenants, TEC formally notified DNS under a first notice of default (the “**First Notice of Default**”) of the occurrence of Events of Default under the Loan Agreement. A copy of the First Notice of Default is communicated herewith as **Exhibit P-18**.
19. Over the course of the next year, each of the above-mentioned Events of Default continued to remain outstanding.
20. On May 30, 2016, given the Debtors’ continuing Events of Default under the Loan Agreement, TEC issued to RBC and DNS an *Activation Notice* in accordance with the Blocked Account Agreement, a copy of which is communicated herewith as **Exhibit P-19**. The Blocked Account continues to remain blocked to date, although TEC reviews company expenses on a weekly basis and has allowed certain essential payments to be made from the deposits made by the Debtors in the Blocked Account.
21. On July 13, 2016, TEC, the Debtors and the Shareholders executed the Second Amendment (P-6), in which each of the Debtors and Shareholders acknowledged the continued existence of the Events of Defaults previously noted in the First

Notice of Default, as well as the occurrence of additional Events of Default, including, without limitation, the following:

- (a) On September 3, 2015, DNS made certain interest payments to Serge Dauphin, in an amount of \$39,999.96, in breach of Section 6.8(b) of the Loan Agreement;
  - (b) DNS deposited revenues and receivables in an account opened with the Royal Bank of Canada (account #1012830) which was not a Blocked Account, in breach of Section 6.9 of the Loan Agreement;
  - (c) DNS failed to make the mandatory repayment in the amount of \$70,000 on June 1, 2016 and \$70,000 on July 1, 2016, in breach of Section 1.7 of the Loan Agreement;
  - (d) DNS failed to make monthly interest payments within the prescribed time period set out in Section 1.4(a) of the Loan Agreement, for the months ending October, November and December 2015, and January, February, March, April, May and June 2016 (although partial arrears payments were subsequently received);
  - (e) DNS failed to deliver to TEC, by December 1, 2014, June 1, 2015, December 1, 2015 and June 1, 2016, semi-annual general updates in respect of its cash-flow projections, as well as a written report summarizing all variances, in breach of Section 5.1(b)(ii) of the Loan Agreement;
  - (f) DNS failed to deliver to TEC, for its approval, its annual budget within 45 days of the end of its fiscal year, in breach of Section 5.1(b)(iii) of the Loan Agreement;
  - (g) DNS failed to deliver to TEC Schedule I's to its compliance certificate, for the months ending September 30, 2015, November 30, 2015, December 31, 2015, January 31, 2016, February 29, 2016, March 31, 2016, April 30, 2016 and May 31, 2016; and
  - (h) DNS failed to obtain a consent from TEC for debt received from Rapid Finance.
22. As part of the Second Amendment, TEC agreed, subject to various conditions, to tolerate the above-mentioned Events of Default and forbear from exercising its rights and remedies until the earlier of the Loan Maturity Date (i.e. June 19, 2017) or the occurrence or existence of any additional Events of Default.

#### **V. THE SOLICITATION PROCESS CONDUCTED BY THE DEBTORS**

23. With the support of TEC, the Debtors engaged Richter Advisory Group Inc. ("Richter") on October 17, 2016, to undertake a professional sales process (the "Solicitation Process") to identify a strategic partner or interested buyer of the Debtors' business and assets, in order to repay the outstanding Obligations under the Loan Agreement.

24. As part of the Solicitation Process, the Debtors, with the assistance of Richter:
- (a) prepared a list of prospective investors and/or purchasers;
  - (b) prepared and sent a “teaser” to such prospective investors and/or purchasers advising them of the Solicitation Process and inviting them to submit an offer in the context thereof; and
  - (c) made available certain information and documents, as requested, to those parties potentially interested in providing the Debtors with a refinancing or in purchasing their assets.
25. The Solicitation Process resulted in the receipt of qualified letters of intent, including *inter alia* from Trailer Wizards Ltd. (“**Wizard**”) and Frigid Rentals Inc. (“**Frigid**”).
26. By April 2017, TEC was advised by Richter that Wizard elected not to proceed with the transaction after a meeting with the Debtors’ management.
27. On July 4, 2017, the Debtors entered into a non-disclosure agreement with Frigid. By December 2017, the parties terminated discussions and negotiations on a potential transaction due to financing related contingencies presented by Frigid.
28. TEC has forbore from enforcing on its security to date because it was hopeful that a sale of the Debtor’s assets outside of formal insolvency proceedings would generate proceeds sufficient to repay all amounts outstanding under the Loan Agreement. No such transaction has been consummated and, TEC has lost faith in management’s ability to market and sell the Debtor’s assets.

## **VI. THE DEBTORS’ UNSUCCESSFUL ATTEMPTS TO FIND REFINANCING**

29. In addition to the Solicitation Process that was conducted, in late 2015, TEC requested that the Borrower take steps to refinance TEC’s outstanding indebtedness, in large part due to financial underperformance and the breach of certain Financial Covenants (such as minimum Net Orderly Liquidation Value and Trailing Twelve Months EBITDA).
30. The Debtors engaged Marc Rousseau, a local finance broker, to facilitate the refinancing. Through Mr. Rousseau, the Debtor has had dialogue with various lenders including The Toronto-Dominion Bank (“**TD**”), Business Development Bank (“**BDC**”) and Finloc Inc. (“**Finloc**”), and each expressed interest in providing in aggregate sufficient financing to payout TEC’s debt. Despite expressions of interest from TD, BDC and Finloc, none of these lenders provided a formal offer to proceed with refinancing of the Debtors’ operations.

## **VII. THE MATURITY OF THE LOAN**

31. On June 19, 2017, although the Loan Agreement came to maturity, the Debtors failed to reimburse the Loan.

32. As of the date hereof, the amount owing and payable under the Loan Agreement amounts to \$6,411,057.04, in capital, interest and fees, as appear from a copy of a statement of account which is communicated herewith as **Exhibit P-20**.
33. TEC has lost confidence in management's ability to repay the Loan, given the Debtors' failed attempts at refinancing their operations or selling their assets, and lack of an honest and credible plan to reimburse the amounts owing to the Lenders under the Loan Agreement.

**VIII. SERIOUS CONCERNS REGARDING THE HONESTY AND INTEGRITY OF THE DEBTORS AND THEIR PRINCIPALS**

34. TEC has become aware of a number of fraudulent and suspicious activities (detailed below) by the Debtors and Shareholders, which are of great concern and put TEC's security interest at risk.
35. First, there were the following defaults which were previously noted and acknowledged by the Debtors and the Shareholders in the Second Amendment:
  - (a) On September 3, 2015, DNS made certain payments to Serge Dauphin, in an amount of \$39,999.96. These payments were made to service interest payments on a loan that was subordinated to the Loan and were made in breach of Section 6.8(b) of the Loan Agreement; and
  - (b) DNS diverted accounts receivable pledged to TEC to an account opened with the Royal Bank of Canada (account #1012830) which was not a Blocked Account, in breach of Section 6.9 of the Loan Agreement. All accounts receivable of the Debtors should have been deposited in the Blocked Account, as required by the Loan Agreement and the Blocked Account Agreement.
36. On November 29, 2017, TEC performed an audit at DNS' head office, which uncovered a discrepancy in the amount of approximately \$180,000 between DNS' stated accounts receivable and its actual accounts receivable. As part of this audit, it was discovered that DNS' accounts receivable were significantly lower than the accounts receivable accounted for for the year 2017. When asked about the reasons for such discrepancies, DNS' representatives explained that they had on three occasions, purportedly in error, recorded certain of their 2017 accounts receivable in 2016.
37. Later, in January 2018, it was discovered that Claude Dauphin had deposited cheques received from DNS' customers totaling approximately \$6,500 into his *personal* bank account. Mr. Dauphin admitted having deposited the said amounts in his personal account (allegedly by mistake), and therefore agreed to return and deposit these amounts into the Blocked Account. This was not the first instance that the Debtors and Shareholders were reminded of their obligations to deposit all cheques payable to the Debtors in the Blocked Account.
38. On March 27, 2018, a meeting (the "**March 27, 2018 Meeting**") was held at TEC's offices, between the representatives of DNS and TEC, the purpose of which was, *inter alia*, to allow DNS to provide further explanations with regard to



various concerns raised by TEC pertaining to DNS's management of its operations and the recording of its revenues.

39. During the March 27, 2018 Meeting, Serge Dauphin and Claude Dauphin admitted to having committed certain actions or participated in certain transactions during the course of the lending relationship with TEC, which they recognized to be fraudulent, in particular the following:
- (a) In January 2018, TEC learned that a company incorporated as 9345-5699 Québec Inc. ("9345"), and controlled by an extended relative of Serge Dauphin and Claude Dauphin, had collected monies that should have been properly deposited in the Blocked Account. DNS had a practice of paying rents for one of its leased locations located in Mascouche, QC, through its broker, Francois Gamelin. TEC learned that an additional amount of \$2,500 was paid by DNS to Francois Gamelin and/or his company, over and above the monthly rent expense for such location. During the March 27, 2018 Meeting, Serge Dauphin and Claude Dauphin admitted to TEC that such payments were made so as to allow 9345 to pay, on their behalf, some of their *personal* debts;
  - (b) In 2017, DNS deposited two cheques from its customers, in the aggregate amount of approximately \$13,000, in 9345's account;
  - (c) Also in 2017, DNS entered into an arrangement with Train Trailer Rentals Limited ("**Train**"), another rental company based in Ontario, whereby DNS referred some of its customers to Train. As part of this arrangement, DNS would pay Train the applicable amount charged for the rental of the trailers, and subsequently charge its own customer an amount higher than that which it paid to Train for the same trailers. The excess amounts earned by DNS through these transactions were not disclosed as Revenues by DNS and deposited into the Blocked Account, but were instead deposited into 9345's account. Despite TEC's repeated requests to DNS to be provided a copy of any and all agreements setting out the terms of its relationship with Train, DNS was unable to provide to TEC any signed contract or agreement; and
  - (d) During the March 27, 2018 Meeting, Serge Dauphin and Claude Dauphin also admitted to TEC that for the 2016 and 2017 financial years, DNS artificially increased its revenues by approximately \$300,000 and \$70,000, respectively, so as to lead TEC to believe that it was in a better financial situation than it was and that it was in compliance with the financial ratios set out in the Loan Agreement (which were specifically set out to monitor the Debtors' performance).
40. As things currently stand, TEC is deeply concerned with the dishonesty, lack of transparency and deviousness shown by the Debtors and the Shareholders, the way that the assets and the receivables of DNS are being managed, and fears a deterioration of TEC's security.

IX. THE ISSUANCE OF THE DEMANDS AND NOTICES AND THE FILING OF THE NOI

41. In view of the all of the above, on April 3, 2018, approximately ten (10) months after the Maturity Date, TEC was left with no alternative but to issue to each of the Debtors and the Shareholders, as applicable:
- (a) a (second) *Notice of Default and Demand for Repayment* (the “**Second Notice of Default**”), copy of which is communicated herewith with the bailiff’s reports of service, *en liasse*, as **Exhibit P-21**;
  - (b) a *Notice of Intention to Enforce its Security* pursuant to Section 244 BIA (the “**244 Notices**”), copy of which is communicated herewith with the bailiff’s reports of service, *en liasse*, as **Exhibit P-22**; and
  - (c) a *Prior Notice of Exercise of Hypothecary Rights* pursuant to Article 2758 of the *Civil Code of Québec* (the “**Prior Notices of Exercise of Hypothecary Rights**”, together with the Second Notice of Default and the 244 Notices, the “**Demands and Notices**”), copy of which is communicated herewith with the bailiff’s reports of service and the certified statement of registration at the RPMRR, *en liasse*, as **Exhibit P-23**.
42. As appears from the Demands and Notices, and more specifically the Second Notice of Default, TEC, once again, formally notified the Debtors and the Shareholders of the numerous Events of Default which had occurred and which remained un-remedied under the Loan Agreement, and demanded the repayment in full of the Loan, failing which it would have no other choice but to exercise its rights under the Loan Agreement and realize on its security.
43. Although it had no obligation to do so, TEC also proposed to forbear from exercising its rights and remedies until May 31, 2018 at the latest in order to allow the Debtors and the Shareholders a final opportunity to seek a refinancing of their operations or to sell their assets, strictly conditional upon the fulfilment of each of the forbearance conditions listed in the Second Notice of Default (the “**Forbearance Conditions**”). The Debtors and the Shareholders were granted until April 9, 2018, to confirm, in writing, their agreement to the Forbearance Conditions.
44. By April 9, 2018, TEC had not received response from the Debtors. Rather, the Debtors, through its counsel, requested a call with TEC’s legal counsel, indicating that DNS wanted to understand and discuss the Forbearance Conditions proposed in the Second Notice of Default.
45. A conference call was held on April 12, 2018, during which TEC was unable to obtain any clarity as to what, if any, proposal or conditions would be acceptable to the Debtors. Following this call, the Debtors’ legal counsel reached out to TEC’s legal counsel to advise that they should be expecting a “*counter-offer*” shortly. Presumably, this was a “counter-offer” to the Forbearance Conditions presented in the Second Notice of Default.

46. On April 13, 2018, TEC communicated with the Debtors' representatives to verbally advise them that given the outstanding amounts owing under the Loan Agreement, combined with TEC's lack of confidence that management would be able to propose a workable solution, it was not prepared to consider any "counter-offer".
47. By April 15, 2018, the 10-day delay provided in the 244 Notices had expired.
48. On April 16, 2018, without consultation with TEC, DNS (but not the other Debtors) filed a *Notice of Intention to Make a Proposal* pursuant to Section 50.4 of the BIA (the "NOI"), a copy of which is communicated herewith as **Exhibit P-24**, and BLT Lapointe & Associés Inc. was appointed as trustee to the NOI (the "Trustee to the NOI").

**X. AN INTERIM RECEIVER SHOULD BE APPOINTED**

49. For the reasons described herein, the appointment of KPMG as interim receiver to the assets of the Debtors is necessary in order to protect the Debtors' estates as well as the interests of TEC and the Lenders.

**(A) The Debtors' Insolvency**

50. As previously mentioned, as at April 26, 2018, DNS; along with the other Debtors and the Shareholders, as guarantors, were, on a solidary basis, each indebted towards the Lenders pursuant to the Loan Agreement in the aggregate amount of \$6,411,057.04, in principal, interest and costs (P-20).
51. DNS has admitted that it is insolvent by filing the NOI. Sociétés, whose sole known assets are its shares of DNS, and 3133520, whose sole known asset was the immovable property it sold in July 2016, are also clearly insolvent.

**(B) The Debtors' have not acted in good faith and with due diligence**

52. Over the course of the past weeks, months and years, in addition to defaulting on several provisions of the Loan Agreement, the Debtors have acted in a fraudulent manner, making multiple false representations to their first ranking secured creditor, TEC, about their operations and the receipts and disbursements of the business.
53. As mentioned above, Serge Dauphin and Claude Dauphin admitted to several instances where assets of DNS were misappropriated.
54. On April 17, 2018, a judgment was rendered by the Court of Quebec in an action opposing two of the Shareholders, namely Gérald Séguin and Claude Dauphin, in file number 500-22-227629-162. A copy of the judgment is communicated herewith as **Exhibit P-25**. Upon reading that judgment, TEC learned that, in addition to the mismanagement and misappropriation of the Debtors' revenues already mentioned above, from November 2014 to October 2015, the Shareholders caused DNS to make 20 payments totaling \$47,500 to Gérald Séguin, in flagrant and deliberate breach of the Loan Agreement, through a

stratagem developed by Claude Dauphin (paragraphs 45 and 54 of the judgment).

55. The judgment further revealed that the timing of these prohibited payments was carefully calculated in order to circumvent the due diligence done by TEC in 2014, and that it was only due to the setting up of the Blocked Account in November 2015 that the payments to Mr. Séguin stopped, because the Blocked Account suddenly prevented Claude Dauphin from covering (“*camoufler*”) the said payments (paragraph 29 of the judgment).
  56. Furthermore, since the filing of the NOI, TEC became aware that only approximately \$2600 of Revenues were deposited in the Blocked Accounts for the week ended April 20, 2018, which is well below the level of weekly Revenue deposits that should have normally been made into the Blocked Account. Further to TEC’s request, Claude Dauphin confirmed that he had not yet deposited cheques into the Blocked Account as of April 23, 2018. This is particularly concerning to TEC, as it indicates that the Debtors are not managing the operations in the normal course.
  57. TEC has lost all faith and confidence in the Debtors and the Shareholders, including in their ability to properly manage their operations or even to run a sale process, and it cannot wait any longer to realize on its security and take the necessary actions to mitigate its losses and the Lenders’ losses.
- (C) Unless KPMG is appointed as interim receiver, TEC and the Lenders are likely to suffer a real and immediate prejudice.**
58. Over the course of the past few weeks, months and years, DNS and the other Debtors have acted without regard to their contractual obligations under the Loan Agreement, or to TEC’s rights as its first ranking secured creditor.
  59. Moreover, despite multiple attempts to obtain visibility regarding, *inter alia*, the location and value of, and the cash-flow derived from TEC’s collateral, the information provided to TEC by Debtors has been piecemeal, incomplete and unreliable.
  60. Given past experience, TEC has a real and legitimate fear that unless an interim receiver is immediately appointed and takes possession of its collateral, TEC and the Lenders will likely suffer a prejudice resulting from, *inter alia*, the misappropriation of assets by the representatives of the Debtors and the loss of value of same.
- (D) The appointment of an interim receiver is just and convenient in the circumstance**
61. In the circumstances, TEC respectfully submits that it is appropriate, just and convenient to immediately appoint KPMG as interim receiver to the Debtors’ assets.

62. KPMG is well aware of the Debtors' current financial situation and dealings with third parties and has advised TEC of its consent to act as the Debtors' interim receiver.
63. Given the special circumstances of this case, where the Debtors and their principals have been dishonest and where there are indicia of fraudulent behavior, TEC requests that the powers granted to the interim receiver include the power to hire an experienced manager to carry on the operations of the Debtors, pending the sale of the Debtors' assets as described below.

**(E) DNS is unlikely to be able to put forth a viable proposal**

64. On April 17, 2018, following the filing of the NOI, TEC communicated with the representative of the Trustee to the NOI so as to gain a better understanding of DNS' plan going forward.
65. During such discussions, it was apparent that DNS does not have a viable proposal or contemplated plan of action during the stay period.
66. Considering its current financial situation, the only two potential options that are available to DNS in order to repay its creditors, including its first ranking secured creditor, TEC, are:
  - (a) to proceed with a sale process of its assets and business in an effort to repay its creditors; and/or
  - (b) to submit to its creditors a proposal pursuant to the BIA.
67. For either of the above options, the continued support of TEC will be required as TEC is, not only by far the largest creditor of DNS, but also its first-ranking secured creditor, with security over all of its assets. The only creditors with a real economic interest in these proceedings are TEC and the Lenders for which TEC is acting as administrative agent, collateral agent and *fondé de pouvoir*.
68. However, the discussions that took place between TEC and the Trustee between the filing of the NOI and April 24, 2018 with respect to DNS' plan going forward were not satisfactory to TEC. TEC and the Lenders are no longer willing to support DNS (or the other Debtors), including in connection with any of their efforts to sell their assets, and are not prepared to accept any proposal from DNS unless such proposal provides for the payment in full of the amount owing to the Lenders pursuant to the Loan Agreement.
69. For the reasons described herein, TEC fears that unless KPMG is immediately appointed as interim receiver, and if the Debtors remain in control of the sale process, the value of its collateral will be materially diminished.

(F) **Accelerated process for the sale of the Debtors' assets by the interim receiver**

70. As mentioned above, attempts were made in the past to sell the Debtor's assets however there was too much conditionality in these offers to allow for repayment of the Debtor's loan obligations under the Loan Agreement.
71. In the circumstances, TEC asks the Court to confer upon KPMG, as the interim receiver, the necessary powers to conduct an accelerated sale process of the Debtors' assets.
72. TEC believes that the best way to maximize the value of the Debtors' assets for the benefit of it, as secured creditor, the Lenders and the other stakeholders, is to proceed with a sale process that takes into account the steps that have already been accomplished since October 2016 as part of the solicitation process conducted by the Debtors.
73. Accordingly, TEC asks the Court to authorize an accelerated sales process whereby KPMG, in its capacity as interim receiver, shall :
- (a) update the "teaser" prepared previously by the Debtors and/or Richter and send it to all the prospective investors and/or purchasers previously contacted as part of the Solicitation process, inviting them to submit an offer for the Debtors' assets, by no later than May 14, 2018 at 4:00 pm;
  - (b) make available certain information and documents, as requested, to those parties potentially interested in purchasing the Debtors' assets; and
  - (c) review and evaluate each offer received, and identify the highest or otherwise best offer, in consultation with TEC.
74. If an offer is received that KPMG, in consultation with TEC, considers acceptable, KPMG and/or TEC shall bring a motion seeking approval from the Court to conclude the transaction as soon as possible.
75. The interim receiver, if appointed on the terms sought by TEC, is intended to preserve and protect the Debtors' assets and operations for the duration of the sale process and ensure a transparent process under the auspices of the Court. TEC submits that only an interim receiver is capable of providing the foregoing direction, transparency and confidence, under the circumstances.
76. The present request is urgent given the situation enunciated above.
77. The present Motion is well-founded in fact and in law.

**WHEREFORE, MAY THIS COURT:**

**SHORTEN** the delays for service of the present *Motion to Appoint an Interim Receiver* (the "**Motion**") and **ORDER** that any delay for the presentation of the Motion is hereby abridged and validated so that this Motion is properly returnable on April 25, 2018 and hereby dispenses with further service thereof;

**GRANT** the Motion;

**ISSUE** an order substantially in the form of the draft order communicated as **Exhibit P-1** in support of the Motion.

**THE WHOLE** without costs, save and except in the event of contestation.

**MONTREAL, April 26, 2018**

*Fishman Flanz Meland Paquin*

**FISHMAN FLANZ MELAND PAQUIN LLP**  
Attorneys for **THIRD EYE CAPITAL**  
**CORPORATION**

**AFFIDAVIT**

I, the undersigned, Talel Sahraoui, domiciled for the purposes hereof at 888 Sherbrooke West, in the City of Montreal, Province of Quebec, H3A 1G3, solemnly declare:

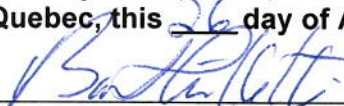
- (a) I am a duly authorized representative of Third Eye Capital Corporation; and
- (b) All the facts alleged in the *Motion to Appoint an Interim Receiver* are, to my knowledge, true and correct.

**AND I HAVE SIGNED**



TALEL SAHRAOUI

SOLEMNLY DECLARED before me in  
the City of Montreal, in the Province of  
Quebec, this 26 day of April 2018

  
Commissioner for oaths





**NOTICE OF PRESENTATION**

**TO: DIRECTION NORD-SUD (D.N.S.) LTÉE**  
1405 Saint-Amour Street  
Montreal, Québec, H4S 1J2

**SOCIÉTÉS NORD SUD (D.N.S.) LTÉE**  
1405 Saint-Amour Street  
Montreal, Québec, H4S 1J2

**3137520 CANADA INC.**  
1405 Saint-Amour Street  
Montreal, Québec, H4S 1J2

**BLT LAPOINTE & ASSOCIÉS INC.**  
1080, Côte du Beaver Hall,  
Suite 1810,  
Montreal, Québec, H2Z 1S8

**THE BANK OF NOVA SCOTIA**  
1002 Sherbrooke Street West  
Montreal, Quebec, H3A 3M3

**BANQUE DE DÉVELOPPEMENT DU CANADA**  
5 Place Ville-Marie  
Montreal, Quebec, H3B 5E7

**TAKE NOTICE** that the *Motion to Appoint an Interim Receiver* will be presented for adjudication before one of the Honourable Judges of Superior Court (Commercial Division) sitting in bankruptcy matters for the District of Montreal or to the Registrar thereof, in room 16.10 of the Montreal Courthouse, located at 1, Notre-Dame Street East, on, **April 27, 2018** at 8:45 a.m. or soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

**MONTREAL, April 26, 2018**

  
**FISHMAN FLANZ MELAND PAQUIN LLP**  
Attorneys for **THIRD EYE CAPITAL CORPORATION**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)  
*Bankruptcy and Insolvency Act (the "BIA")*

NO.: 500-11-054445-180

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

DIRECTION NORD-SUD (D.N.S.) LTÉE

-and-

SOCIÉTÉS NORD SUD (D.N.S.) LTÉE,

-and-

3137520 CANADA INC.,

**Debtors/Respondents**

- and -

THIRD EYE CAPITAL CORPORATION

**Secured Creditor/Petitioner**

- and -

BLT LAPOINTE & ASSOCIÉS INC.,

**Trustee to the Notice of Intention to Make a  
Proposal**

- and -

KPMG INC.,

**Proposed Interim Receiver**

**NOTICE OF DISCLOSURE OF EXHIBITS TO  
MOTION TO APPOINT AN INTERIM RECEIVER**

In support of the Motion to Appoint an Interim Receiver dated April 26<sup>th</sup>, 2018, Petitioner, Third Eye Capital Corporation, discloses the following exhibits, copies of which are available upon request:

Exhibit P-1	Draft order appointing KPMG Inc. (" <b>KPMG</b> ") as interim receiver to all of the assets of Direction Nord-Sud (D.N.S.) Ltée (" <b>DNS</b> "), Sociétés Nord Sud (D.N.S.) Ltée (" <b>Sociétés</b> ") and 3137520
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	Canada Inc.;
Exhibit P-2	Extract of the Québec Register of Enterprises relating to Direction Nord-Sud (D.N.S.) Ltée ("DNS");
Exhibit P-3	Extract of the Québec Register of Enterprises relating to 3137520 Canada Inc ("3137520");
Exhibit P-4	Extract of the Québec Register of Enterprises relating to Sociétés Nord Sud (D.N.S.) Ltée ("Sociétés");
Exhibit P-5	Extract of the Québec Register of Enterprises relating to Third Eye Capital Corporation ("TEC");
Exhibit P-6	Loan Agreement entered into on June 19, 2014 between TEC, in its capacity as administrative agent, collateral agent and <i>fondé de pouvoir</i> to the lenders, DNS, as borrower, 3137520 and Sociétés, as corporate guarantors, and the Shareholders, as personal guarantors;
Exhibit P-7	Deed of Hypothec dated June 17, 2014 between DNS and TEC,
Exhibit P-8	General Security Agreement dated June 19, 2014 between DNS and TEC;
Exhibit P-9	Deed of Hypothec dated June 17, 2014 between Sociétés and TEC;
Exhibit P-10	Deed of Hypothec dated June 17, 2014 between 3137520 and TEC
Exhibit P-11	Extract of RPMRR report of registrations with respect to DNS;
Exhibit P-12	Extract of RPMRR report of registrations with respect to Sociétés
Exhibit P-13	Extract of RPMRR report of registrations with respect to 3137520;
Exhibit P-14 and	Extracts of reports from the Ontario Personal Property Security Registry with respect to DNS;
Exhibit P-15	Extracts of reports from the Newfoundland & Labrador Personal Property Security Registry with respect to DNS;
Exhibit P-16	Memorandum of Agreement of Reimbursement of Credit Facilities dated June 17, 2014 between The Bank of Nova Scotia and DNS;
Exhibit P-17	Blocked Account Agreement dated September 14, 2014 between TEC, DNS, and Royal Bank of Canada;
Exhibit P-18	First Notice of Default dated August 27, 2015;

Exhibit P-19	Activation Notice dated May 30, 2016;
Exhibit P-20	Statement of Account as at April 26, 2018;
Exhibit P-21 <i>en liasse</i>	(Second) Notice of Default and Demand for Repayment dated April 3, 2018, together with bailiff's reports of service;
Exhibit P-22 <i>en liasse</i>	Notices of Intention to Enforce Security dated April 3, 2018, together with bailiff's reports of service;
Exhibit P-23 <i>en liasse</i>	Prior Notices of Exercise of Hypothecary Rights, together with bailiff's reports of service and certified statement of registration at the RPMRR;
Exhibit P-24	Notice of Intention to Make a Proposal;
Exhibit P-25	Judgment dated April 17, 2018 in file number 500-22-227629-162 of the Court of Quebec.

**MONTRÉAL, April 26, 2018**

*Fishman Flanz Meland Paquin*  
**FISHMAN FLANZ MELAND PAQUIN LLP**  
Attorneys for **THIRD EYE CAPITAL CORPORATION**

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No. 500-11-054445-180

DATE: April 6, 2018

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**PRESIDING :**

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**IN THE MATTER OF THE NOTICE OF INTENTION OF:**

**DIRECTION NORD-SUD (D.N.S.) LTÉE**

Debtor/Respondent

-and-

**SOCIÉTÉS NORD SUD (D.N.S.) LTÉE**

**3137520 CANADA INC.**

Debtors/Respondents

-and-

**THIRD EYE CAPITAL CORPORATION**

Secured Creditor/Petitioner

-and-

**BLT LAPOINTE & ASSOCIÉS INC.**

Trustee to the Notice of Intention to Make a Proposal

-and-

**KPMG INC.**

Proposed Interim Receiver

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**ORDER APPOINTING AN INTERIM RECEIVER**  
**(Sections 47 and 47.1 of the *Bankruptcy and Insolvency Act*)**

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- [1] **ON READING** the Petitioner's Motion to Appoint an Interim Receiver (the "**Motion**") pursuant to Sections 47 and 47.1 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the affidavit and the exhibits in support thereof;
- [2] **SEEING** the submissions of Petitioner's attorneys;
- [3] **SEEING** that Petitioner sent the Debtors a notice pursuant to the terms of Section 244 of the BIA;
- [4] **SEEING** the circumstances as set forth in the Motion, which warrant the appointment of an interim receiver with powers akin to a receiver;
- [5] **SEEING** that it is appropriate to appoint an interim receiver to the Property (such as defined herein) of the Debtors;

**WHEREFORE THE COURT:**

- [6] **GRANTS** the Motion;

**SERVICE**

- [7] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;

**APPOINTMENT**

- [8] **APPOINTS** KPMG Inc., trustee, to act as interim receiver (the "**Interim Receiver**") to the Property of Direction Nord-Sud (D.N.S.) Ltée ("**DNS**"), Sociétés Nord Sud (D.N.S.) Ltée ("**Sociétés**") and 3137520 Canada Inc. ("**3137520**", and collectively with DNS and Sociétés, the "**Debtors**" and each individually a "**Debtor**") until one of the following events comes to pass:
- (a) the sale of all the Property; or
  - (b) the issuance of any order by the Court terminating the mandate of the Interim Receiver, subject to Sections 47(1) and 47.1(1.1) BIA;

## **INTERIM RECEIVER'S POWERS**

**[9]** **AUTHORIZES** the Interim Receiver to exercise the following powers:

### **9.1 Powers related to the possession of the Property**

**AUTHORIZES** the Interim Receiver to take possession of all of the Debtors' property, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in (the "**Property**") and to exercise the following powers listed hereinafter in the place and stead of the Debtors in respect of the Property:

### **9.2 Powers related to the preservation of the Property**

- (a) all the powers necessary for the preservation and for the protection of the Property;
- (b) all the powers necessary to control the Property, the place of business and the premises occupied by the Debtors;
- (c) all the powers necessary to grant the Interim Receiver access, at all times, to the place of business and to the premises of the Debtors, to the Property, and to change the locks granting access to such premises and places of business of the Debtors;
- (d) all the powers necessary to grant the Interim Receiver access to all the accounting records of the Debtors, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Interim Receiver's functions;
- (e) all the powers necessary to undertake an analysis of the Debtors' Records;
- (f) all the powers necessary to take inventory of all assets of the Debtors wherever located;
- (g) the power to communicate with all customers of the Debtors;
- (h) the power to review all contracts with customers of the Debtors;

### **9.3 Powers related to the Debtors' operations**

- (i) all the powers necessary to carry on, for and on behalf of the Debtors, all or any part of the Debtors' operations, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, cease to perform or disclaim any contracts of any Debtor;
- (j) all the powers necessary to control the Debtors' receipts and disbursements;

- (k) all the powers necessary to collect all the accounts receivable and all the other claims of the Debtors and to transact in respect of same, as well as to sign any document for this purpose;
- (l) all the powers necessary to open any required bank account, pursuant to the terms and conditions the Interim Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to the Debtors, and to issue any payment which, in the opinion of the Interim Receiver, is necessary or useful to the Debtors' operations;
- (m) the power to approve all financial commitments to be made on behalf of the Debtors;
- (n) the power to make all payments to be made by the Debtors;
- (o) the power to hire a general manager to operate the business of the Debtors, for and on behalf of the Debtors;
- (p) the power to terminate or change the conditions of employment of any employee of the Debtors;

#### **9.4 Powers related to the disposition or sale of the Property**

- (q) all the powers necessary to carry out the sale or the disposition of the Property in the ordinary course of business of the Debtors, to transact in that regard, and to sign any document or any contract required or useful for these purposes or meant to give effect to any such sale or disposition;
  - (r) all the powers necessary to conduct a sale process of all or any part of the Property;
  - (s) all the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;
  - (t) the power to use all information in possession of the Debtors from a previous sale process to identify, solicit offers from and negotiate with potential purchasers;
- [10] ORDERS** the Interim Receiver to petition the Court for authorization to sell all or any part of the Debtors' Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;
- [11] GRANTS** the Interim Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;



- [12] **AUTHORIZES** the Interim Receiver to engage the same legal counsel as engaged by the first ranking secured creditor of the Debtors in order to appropriately fulfil its functions;
- [13] **AUTHORIZES** the Interim Receiver to retain the services of any person or business in order to appropriately fulfil its functions, *inter alia*, consultants, appraisers, agents, experts, auditors, accountants, managers and such other advisors or professionals from time to time and on whatever basis, including on a temporary basis;
- [14] **DECLARES** that the Interim Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Interim Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Interim Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court.

#### **TRUSTEE'S AND DEBTORS' DUTIES**

- [15] **ORDERS** the Trustee to the Notice of Intention to Make a Proposal, the Debtors, and their respective directors, officers, employees, agents and representatives to forthwith provide the Interim Receiver with access to the Property, to the places of business and to the premises of the Debtors, as well as to the Records;
- [16] **ORDERS** the Trustee to the Notice of Intention to Make a Proposal, the Debtors, and their respective directors, officers, employees, agents and representatives to cooperate with the Interim Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;
- [17] **ORDERS** the Debtors not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than with the authorization of the Interim Receiver;

#### **NON-INTERFERENCE WITH THE INTERIM RECEIVER, THE DEBTORS AND THE PROPERTY**

- [18] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Interim Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;
- [19] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtors without the prior consent of the Interim Receiver or without the authorization of the Court;

### **CONTINUATION OF SERVICES**

[20] **ORDERS** that any person having an oral or written agreement with the Debtors, as well as any supplier of goods or services to the Debtors is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Interim Receiver and that the Interim Receiver shall be authorized to continue use of the Debtors' current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver, in accordance with the normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court;

### **EMPLOYEES**

[21] **AUTHORIZES** the Interim Receiver to continue to engage the services of the Debtors' employees until the Interim Receiver, acting for and on behalf of the Debtors, terminates the employment of such employees. The Interim Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the *BIA* other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*;

### **PROTECTION OF PERSONAL INFORMATION**

[22] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Interim Receiver;

### **LIMITATION OF LIABILITY**

[23] **DECLARES** that subject to the powers granted to the Interim Receiver pursuant to the terms of paragraph [9] of the Order, nothing herein contained shall require the Interim Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Interim Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the *BIA*;

- [24] **DECLARES** that the powers of the Interim Receiver shall be exercised pursuant to its sole discretion and judgment and that in exercising such powers, the Interim Receiver shall be deemed to act for and on behalf of the Debtors;
- [25] **DECLARES** that the Interim Receiver shall be entitled to be indemnified out of the Property from and against all liabilities arising from the due and proper performance of its duties as Interim Receiver and that the Interim Receiver shall have no personal or corporate liability as a result of its appointment or as a result of the performance of its duties, save and except for liabilities arising as a result of the negligence or willful misconduct of the Interim Receiver;
- [26] **DECLARES** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Interim Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Interim Receiver or belonging to the same group as the Interim Receiver shall benefit from the protection arising under the present paragraph;

#### **FEES**

- [27] **DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Interim Receiver, of the Interim Receiver's attorneys and other advisors and of Petitioner's attorneys, to the extent of the aggregate amount of \$ 100,000 (the "**Administration Charge**");
- [28] **DECLARES** that the Administration Charge 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;
- [29] **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the "**Effective Time**"), all the Debtors' Property present and future;
- [30] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the *BIA* in respect of the Debtors and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtors and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Interim Receiver pursuant to the Order and the granting of the Administration Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtors;

- [31] **AUTHORIZES** the Interim Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

**GENERAL**

- [32] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [33] **DECLARES** that the Interim Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;
- [34] **DECLARES** that the Interim Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Interim Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;
- [35] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtors', the Interim Receiver's and the Petitioner's counsel and to any other party who may request such delivery;
- [36] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the *BIA*, 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 Debtors, the solicitors for Interim Receiver and the solicitors for Petitioner and has filed such notice with the Court;
- [37] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Interim Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
- [38] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;

- [39] **DECLARES** that the Interim Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Interim Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Interim Receiver as may be deemed necessary or appropriate for that purpose;
- [40] **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;
- [41] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
-

**SUPERIOR COURT**  
(Commercial Division)

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**No. 500-11-054445-180**

**DATE: April 6, 2018**

---

**PRESIDING :**

---

**IN THE MATTER OF THE NOTICE OF INTENTION OF:**

**DIRECTION NORD-SUD (D.N.S.) LTÉE**

Debtor/Respondent

-and-

**SOCIÉTÉS NORD SUD (D.N.S.) LTÉE  
3137520 CANADA INC.**

Debtors/Respondents

-and-

**THIRD EYE CAPITAL CORPORATION**

Secured Creditor/Petitioner

-and-

**BLT LAPOINTE & ASSOCIÉS INC.**

Trustee to the Notice of Intention to Make a Proposal

-and-

**KPMG INC.**

Proposed Interim Receiver

---

**ORDER APPOINTING AN INTERIM RECEIVER**  
**(Sections 47 and 47.1 of the *Bankruptcy and Insolvency Act*)**

---

- [1] **ON READING** the Petitioner's Motion to Appoint an Interim Receiver (the "**Motion**") pursuant to Sections 47 and 47.1 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the affidavit and the exhibits in support thereof;
- [2] **SEEING** the submissions of Petitioner's attorneys;
- [3] **SEEING** that Petitioner sent the Debtors a notice pursuant to the terms of Section 244 of the BIA;
- [4] **SEEING** the circumstances as set forth in the Motion, which warrant the appointment of an interim receiver with powers akin to a receiver;
- [5] **SEEING** that it is appropriate to appoint an interim receiver to the Property (such as defined herein) of the Debtors;

**WHEREFORE THE COURT:**

- [6] **GRANTS** the Motion;

**SERVICE**

- [7] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;

**APPOINTMENT**

- [8] **APPOINTS** KPMG Inc., trustee, to act as interim receiver (the "**Interim Receiver**") to the Property of Direction Nord-Sud (D.N.S.) Ltée ("**DNS**"), Sociétés Nord Sud (D.N.S.) Ltée ("**Sociétés**") and 3137520 Canada Inc. ("**3137520**", and collectively with DNS and Sociétés, the "**Debtors**" and each individually a "**Debtor**") until one of the following events comes to pass:
- (a) the sale of all the Property; or
  - (b) the issuance of any order by the Court terminating the mandate of the Interim Receiver, subject to Sections 47(1) and 47.1(1.1) BIA;

## **INTERIM RECEIVER'S POWERS**

**[9]** **AUTHORIZES** the Interim Receiver to exercise the following powers:

### **9.1 Powers related to the possession of the Property**

**AUTHORIZES** the Interim Receiver to take possession of all of the Debtors' property, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in (the "**Property**") and to exercise the following powers listed hereinafter in the place and stead of the Debtors in respect of the Property:

### **9.2 Powers related to the preservation of the Property**

- (a) all the powers necessary for the preservation and for the protection of the Property;
- (b) all the powers necessary to control the Property, the place of business and the premises occupied by the Debtors;
- (c) all the powers necessary to grant the Interim Receiver access, at all times, to the place of business and to the premises of the Debtors, to the Property, and to change the locks granting access to such premises and places of business of the Debtors;
- (d) all the powers necessary to grant the Interim Receiver access to all the accounting records of the Debtors, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Interim Receiver's functions;
- (e) all the powers necessary to undertake an analysis of the Debtors' Records;
- (f) all the powers necessary to take inventory of all assets of the Debtors wherever located;
- (g) the power to communicate with all customers of the Debtors;
- (h) the power to review all contracts with customers of the Debtors;

### **9.3 Powers related to the Debtors' operations**

- (i) all the powers necessary to carry on, for and on behalf of the Debtors, all or any part of the Debtors' operations, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, cease to perform or disclaim any contracts of any Debtor;
- (j) all the powers necessary to control the Debtors' receipts and disbursements;



- (k) all the powers necessary to collect all the accounts receivable and all the other claims of the Debtors and to transact in respect of same, as well as to sign any document for this purpose;
- (l) all the powers necessary to open any required bank account, pursuant to the terms and conditions the Interim Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to the Debtors, and to issue any payment which, in the opinion of the Interim Receiver, is necessary or useful to the Debtors' operations;
- (m) the power to approve all financial commitments to be made on behalf of the Debtors;
- (n) the power to make all payments to be made by the Debtors;
- (o) the power to hire a general manager to operate the business of the Debtors, for and on behalf of the Debtors;
- (p) the power to terminate or change the conditions of employment of any employee of the Debtors;

#### **9.4 Powers related to the disposition or sale of the Property**

- (q) all the powers necessary to carry out the sale or the disposition of the Property in the ordinary course of business of the Debtors, to transact in that regard, and to sign any document or any contract required or useful for these purposes or meant to give effect to any such sale or disposition;
  - (r) all the powers necessary to conduct a sale process of all or any part of the Property;
  - (s) all the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;
  - (t) the power to use all information in possession of the Debtors from a previous sale process to identify, solicit offers from and negotiate with potential purchasers;
- [10] ORDERS** the Interim Receiver to petition the Court for authorization to sell all or any part of the Debtors' Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;
- [11] GRANTS** the Interim Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;

- [12] **AUTHORIZES** the Interim Receiver to engage the same legal counsel as engaged by the first ranking secured creditor of the Debtors in order to appropriately fulfil its functions;
- [13] **AUTHORIZES** the Interim Receiver to retain the services of any person or business in order to appropriately fulfil its functions, *inter alia*, consultants, appraisers, agents, experts, auditors, accountants, managers and such other advisors or professionals from time to time and on whatever basis, including on a temporary basis;
- [14] **DECLARES** that the Interim Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Interim Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Interim Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court.

#### **TRUSTEE'S AND DEBTORS' DUTIES**

- [15] **ORDERS** the Trustee to the Notice of Intention to Make a Proposal, the Debtors, and their respective directors, officers, employees, agents and representatives to forthwith provide the Interim Receiver with access to the Property, to the places of business and to the premises of the Debtors, as well as to the Records;
- [16] **ORDERS** the Trustee to the Notice of Intention to Make a Proposal, the Debtors, and their respective directors, officers, employees, agents and representatives to cooperate with the Interim Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;
- [17] **ORDERS** the Debtors not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than with the authorization of the Interim Receiver;

#### **NON-INTERFERENCE WITH THE INTERIM RECEIVER, THE DEBTORS AND THE PROPERTY**

- [18] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Interim Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;
- [19] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtors without the prior consent of the Interim Receiver or without the authorization of the Court;

### **CONTINUATION OF SERVICES**

[20] **ORDERS** that any person having an oral or written agreement with the Debtors, as well as any supplier of goods or services to the Debtors is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Interim Receiver and that the Interim Receiver shall be authorized to continue use of the Debtors' current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver, in accordance with the normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court;

### **EMPLOYEES**

[21] **AUTHORIZES** the Interim Receiver to continue to engage the services of the Debtors' employees until the Interim Receiver, acting for and on behalf of the Debtors, terminates the employment of such employees. The Interim Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the *BIA* other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*;

### **PROTECTION OF PERSONAL INFORMATION**

[22] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Interim Receiver;

### **LIMITATION OF LIABILITY**

[23] **DECLARES** that subject to the powers granted to the Interim Receiver pursuant to the terms of paragraph [9] of the Order, nothing herein contained shall require the Interim Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Interim Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the *BIA*;

- [24] **DECLARES** that the powers of the Interim Receiver shall be exercised pursuant to its sole discretion and judgment and that in exercising such powers, the Interim Receiver shall be deemed to act for and on behalf of the Debtors;
- [25] **DECLARES** that the Interim Receiver shall be entitled to be indemnified out of the Property from and against all liabilities arising from the due and proper performance of its duties as Interim Receiver and that the Interim Receiver shall have no personal or corporate liability as a result of its appointment or as a result of the performance of its duties, save and except for liabilities arising as a result of the negligence or willful misconduct of the Interim Receiver;
- [26] **DECLARES** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Interim Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Interim Receiver or belonging to the same group as the Interim Receiver shall benefit from the protection arising under the present paragraph;

#### **FEES**

- [27] **DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Interim Receiver, of the Interim Receiver's attorneys and other advisors and of Petitioner's attorneys, to the extent of the aggregate amount of \$ 100,000 (the "**Administration Charge**");
- [28] **DECLARES** that the Administration Charge 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;
- [29] **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the "**Effective Time**"), all the Debtors' Property present and future;
- [30] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the *BIA* in respect of the Debtors and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtors and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Interim Receiver pursuant to the Order and the granting of the Administration Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtors;

- [31] **AUTHORIZES** the Interim Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

**GENERAL**

- [32] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [33] **DECLARES** that the Interim Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;
- [34] **DECLARES** that the Interim Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Interim Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;
- [35] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtors', the Interim Receiver's and the Petitioner's counsel and to any other party who may request such delivery;
- [36] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the *BIA*, 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 Debtors, the solicitors for Interim Receiver and the solicitors for Petitioner and has filed such notice with the Court;
- [37] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Interim Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
- [38] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;

- [39] **DECLARES** that the Interim Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Interim Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Interim Receiver as may be deemed necessary or appropriate for that purpose;
- [40] **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;
- [41] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
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**SUPERIOR COURT**  
**(Commercial Division)**  
**Bankruptcy and Insolvency Act (the "BIA")**  
**DISTRICT OF MONTREAL**  
**PROVINCE OF QUEBEC**

**DIRECTION NORD-SUD (D.N.S.) LTEE ET AL**  
Debtors/Respondents  
-and-

**THIRD EYE CAPITAL CORPORATION**  
Secured Creditor/Petitioner  
-and-

**BLT LAPOINTE & ASSOCIÉS INC.**  
Trustee to the Notice of Intention to Make Proposal  
-and-  
**KPMG INC.**  
Proposed Interim Receiver

**MOTION TO APPOINT AN INTERIM RECEIVER**  
(Sections 47, 47.1 and 69(2)(b) IA)  
**AND EXHIBIT P-1**

ORIGINAL

NSB: THIRDE-1

Pour toutes notifications/for all notifications:

[notifications@ffmp.ca](mailto:notifications@ffmp.ca)

avec copie à/with copy to:

Me Nicolas Brochu

[nbrochu@ffmp.ca](mailto:nbrochu@ffmp.ca)

**FISHMAN FLANZ MELAND PAQUIN**

S.E.N.C.R.L.

4100-1250 boul. René-Lévesque ouest,

Montréal, Québec H3B 4W8

Tel: 514 / 932-4100

Fax: 514 / 932-4170

CODE: BM-0309