

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-11-057570-190

SUPERIOR COURT
(Commercial Division)

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

9348069 CANADA INC.

-and-

4295862 CANADA INC.

-and-

**3441890 CANADA INC. (FORMERLY MOTOVAN
CORPORATION) (“MTV”)**

-and-

MONCY HOLDING COMPANY INC.

-and-

MONCY FINANCIAL SERVICES COMPANY INC.

-and-

NICHOLS MOTORCYCLE SUPPLY INC.

-and-

MONCY LLC

-and-

MOTORCYCLE TIRES & ACCESSORIES LLC (“MTA”)

CCAA Parties

- and-

KPMG INC.

Monitor

SEVENTH REPORT OF THE MONITOR

(Companies' Creditors Arrangement Act, R.S.C. 1985, C. C-36, As Amended)

JUNE 3, 2021

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A. INTRODUCTION AND PURPOSE OF THE MONITOR'S SEVENTH REPORT

1. On November 28, 2019, 9348069 Canada Inc., 4295862 Canada Inc. and 3441890 Canada Inc. (formerly Motovan Corporation) (collectively the "**CCAA Parties**") filed an application before the Quebec Superior Court, Commercial Division (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
2. On November 28, 2019, KPMG Inc., in its then capacity as proposed monitor, provided the Court with a pre-filing report dated November 29, 2019 (the "**Pre-Filing Report**") in connection with the CCAA Parties' application seeking, *inter alia*, the issuance of an Initial Order granting the CCAA Parties protection under the CCAA and the granting of certain priority charges, namely an administration charge and a directors and officers' charge.
3. On December 2, 2019, the Court granted an initial order which provides for, among other things, the appointment of KPMG Inc. as monitor of the CCAA Parties (in such capacity, the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**") and a stay of proceedings until December 12, 2019 (the "**Initial Order**").
4. On December 9, 2019, the CCAA Parties filed a motion (I) for an order extending the stay period, (II) to amend the initial order and (III) for the approval of a sale and investment solicitation process (the "**SISP**").
5. On December 12, 2019, the Court granted the Amended and Restated Initial Order (the "**Amended and Restated Initial Order**") and the Order approving the SISP and extending the stay period up to January 31, 2020.
6. On December 20, 2019, the Monitor, in its capacity as foreign representative, obtained provisional relief, and on January 23, 2020, obtained final relief under Chapter 15 of the Bankruptcy Code for recognition of the CCAA Proceedings by the United States Bankruptcy Court for the District of Delaware.
7. On January 29, 2020, the CCAA Parties filed a motion seeking an extension of the stay period until May 15, 2020, which order was granted on January 31, 2020.
8. On February 12, 2020, the CCAA Parties filed a Motion seeking approval of a sale MTV's assets and of certain assets of MTA to Gestion Claude Bigras Inc. ("**GCBI**", and the "**Transaction**") and ordered the remittance of the sale proceeds to the Monitor (the "**AVO Motion**"), which AVO Motion was granted and issued on February 19, 2020.
9. On February 19, 2020, the Court granted the AVO Motion and issued an approval and vesting order (the "**Approval and Vesting Order**").
10. Motovan and GCBI, which is now operating under Motovan Inc. (the "**Purchaser**"), executed the assets purchase agreement (the "**APA**") on February 28, 2020, and on the same day, the Monitor signed the Monitor's certificate which was filed with the Court on the following business day March 2nd, 2020, the whole in accordance with the Approval and Vesting Order.

11. On May 11, 2020, the CCAA Parties filed a motion (I) for an order extending the stay period, (II) to amend the initial order (the “**Re-Amended and Restated Initial Order**”) and (III) for the issuance of a distribution order (the “**Distribution Order**”), which motion was granted on May 15, 2020 and the stay period extended to November 16, 2020 as a result.
12. On November 11, 2020, the CCAA Parties filed a motion (I) for an order extending the stay period, (II) to amend the Re-Amended and Restated Initial Order (the “**Second Re-Amended and Restated Initial Order**”) and (III) for the issuance of a distribution order (the “**Second Distribution Order**”), which motion was granted on November 16, 2020 and the stay period extended to February 1, 2021 as a result.
13. On January 26, 2021, the CCAA Parties filed a motion for an order extending the stay period (the “**Fifth Extending Order**”), which motion was granted on January 29, 2021 and the stay period extended to June 1, 2021 as a result.
14. On June 1, 2021, the CCAA Parties filed a *Motion for the Issuance of (I) A Distribution Order, (II) an Order Terminating the CCAA Proceedings and (III) Other Ancillary Orders* (the “**Motion**”).
15. The purpose of this report (the “**Report**”) is to provide the following information to this Court as an update on the CCAA Proceedings and in support of the Motion:
 - The Monitor’s activities since the sixth report of the Monitor (section **C**);
 - The CCAA Parties’ restructuring efforts and events since the sixth report of the Monitor (section **D**);
 - MTV’ actual receipts and disbursements for the period between January 25, 2021 and June 3, 2021, as compared to the corresponding period reflected in the cash flow projections of MTV (the “**Motovan Cash Flow Forecast**”) previously filed as part of the Sixth Report of the Monitor (section **E**);
 - Distribution of the net recovery from the Duties Refunds (as defined below) (section **G**); and
 - The Monitor’s observations regarding the Motion, notably with respect to the ancillary orders sought pursuant to the Motion in order to bring an end to the present CCAA Proceedings (section **H**).
16. This Report of the Monitor should be read in conjunction with the Pre-filing Report of the Monitor and all previous reports of the Monitor, which include additional information which has not been duplicated herein.

B. RESTRICTIONS AND SCOPE LIMITATIONS

17. In preparing this Report, the Monitor has relied upon unaudited financial information, books, records and discussions that were prepared and provided by certain senior management of the CCAA Parties (“**Senior Management**”) and by other parties, including the Purchaser, (the “**Information**”) initially and throughout this file. The remaining assets are being administered by the Monitor in accordance with the Second Re-Amended and Restated Initial Order. That being said, the Information is still being relied upon by the Monitor to the extent necessary. As such, except as further described in this Report:

- a) The Information on which the Monitor may rely upon has been reviewed by the Monitor for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
 - b) Some of the information referred to in this Report consists of financial forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
18. Future oriented financial information referred to in this Report was prepared based on the Information provided by the Senior Management and the Monitor’s best estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.
19. The information contained in this Report is not intended to be relied upon by any purchaser or investor in any previous transaction with the CCAA Parties.
20. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars, which is the CCAA Parties’ common Reporting currency.

C. MONITOR'S ACTIVITIES SINCE THE SIXTH REPORT OF THE MONITOR

General

21. Since the issuance of the sixth Monitor's report, the Monitor has, *inter alia*:

- a) Posted on the Monitor's websites www.kpmg.com/ca/motovan and www.kpmg.com/ca/motovan-fr (the "**Website**"):
 - i. The motion (I) for an order extending the stay period;
 - ii. The Fifth Extending Order.
 - iii. The sixth report of the Monitor; and
- b) Prepared and provided updates to BMO and Richter, as requested by them;
- c) Issued payments from a in trust bank account specific to this CCAA Proceedings to the restructuring professionals based on invoices provided and following the approval of the Company, the whole in connection with the Motovan Cash Flow Forecast;

MTV - Status of the refunds of customs duties

22. In accordance with the powers granted to the Monitor in the Second Re-Amended and Restated Initial Order, managed, with the assistance of ALB Group ("**ALB**"), a company that specialize in customs duty reduction and recovery services, the claims and the collection process with regards to potentials refunds of overpaid customs duties (the "**Duties Refunds**") has continued, and the Monitor has collected approximately \$294,000 since January 25, 2021.

23. The Duties Refunds have now been fully collected and the Monitor now considers that the collection of the Duties Refunds is completed. Therefore, the Duties Refunds still held by the Monitor should now be distributed.

24. The collection of the Duties Refunds was the last outstanding item of the present CCAA Proceedings in order to maximize and complete the realization of the assets of MTV.

D. CCAA PARTIES' RESTRUCTURING EFFORTS AND EVENTS SINCE THE SIXTH REPORT OF THE MONITOR

MTV

25. MTV has no more employees and assets, with the exception of the Duties Refunds that were collected and which process was under the power of the Monitor, in accordance with the Second Re-Amended and Restated Initial Order;

26. In mid-March 2021, the Canada Revenue Agency ("**CRA**") informed MTV that a fraud was attempted against' s the company seeking to collect the wage subsidy. The fraudsters were able to change the corporate name at the federal registry. CRA has blocked the request for the wage subsidy and MTV has filed a complaint with Corporations Canada.

MTA

27. MTA is no longer in operation as it has no more employees and assets. However, the Monitor, with the assistance of former employees of MTA was able to collect a refund of \$USD 54,975 from Paymentech, a credit and debit card processing company that had serviced MTA before the company had ended its operations.

E. CASH FLOW RESULTS RELATIVE TO FORECASTS

MTV

28. The following table summarizes the cash receipts and disbursements for period between January 25, 2021 and June 3, 2021, as compared to the Motovan Cash Flow Forecast:

3441890 Canada Inc. (formerly Motovan Corporation)					
Cash flow Forecast - Extension period					
For the period January 25 to June 3rd, 2021					
	Actual	Forecast	Variance		
			\$	%	
(in CAD \$)					
RECEIPTS					
Collections from recovery of custom duties	293 640	341 724	(48 084)	-14%	
Other collections	69 538	7 000	62 538	893%	
Total receipts	363 178	348 724	14 454	4%	
DISBURSEMENTS					
Operating Disbursements					
Consulting fee - Custom duties (incl Tax)	(101 284)	(118 000)	16 716	-14%	
Insurance (D&O)	(15 652)	(15 000)	(652)	4%	
Contingency	(10 544)	(10 000)	(544)	5%	
Total Operating Disbursements	(127 480)	(143 000)	15 520	-11%	
Professional Fee Disbursements					
Professional Fees - Monitor (incl Tax)	(56 543)	(40 000)	(16 543)	41%	
Professional Fees - Other professionals (incl Tax)	(63 881)	(86 000)	22 119	-26%	
Total Professional Fee Disbursements	(120 424)	(126 000)	5 576	-4%	
Total Disbursements	(247 904)	(269 000)	21 096	-8%	
Net cash flow	115 273	79 724	35 550	45%	
Opening net bank indebtedness	(5 451 279)	(5 458 508)	7 229	0%	
Net cash flow	115 273	79 724	35 550	45%	
Ending net bank indebtedness	(5 336 006)	(5 378 784)	42 778	-1%	

29. As at June 3, 2021, MTV's net closing bank indebtedness was approximately of \$5,336,000, which represents a favorable difference of \$43,000 compared to the MTV Cash Flow Forecast.

30. The positive net cash flow during the period was approximately \$36,000 higher than projected. The primary reasons for the favorable net cash flow variance are summarized below:

- a) Total cash receipts during the period were approximately \$14,000 higher than forecasted mainly due to GST/QST refunds on payment of professional fees. However, the receipts of Duties Refunds were lower than forecasted due to the refusal and denial of some Duties Refunds claims by the Canada Border Services Agency (the “CBSA”). The Monitor and ALB were in agreement with CBSA’s decisions; and
- b) Total cash disbursements during the period were approximately \$21,000 lower than forecasted mainly due to lower commission paid to ALB.

MTA

- 31. As reported to the Court in the sixth report of the Monitor, MTA is no longer in operation and the Monitor did not expect that the company would have cash inflows and cash outflows. Therefore, no cash flow projection was prepared.
- 32. However, as previously mentioned in this Report, MTA was able to collect a refund of \$USD 54,975 from Paymentech. Consequently, the net closing bank indebtedness of MTA as at June 3, 2021 was approximately of USD\$ 3,575,000.

F. FINAL DISTRIBUTION

- 33. On the date of this Report, the Monitors is ready to make a final distribution of an amount of \$158,823 to BMO, as first ranking secured creditor of MTV (the “**Final Distribution**”);
- 34. After the Final Distribution, an amount of \$12,170.93 shall remain in trust with the Monitor for the purposes of being distributed by KPMG Inc. following its appointment as trustee to the bankruptcy of MTV (and not personally) upon the assignment in bankruptcy of MTV as a result of the issuance of the orders sought with the Motion. This amount represents the amount deemed to be held in trust in accordance with section 67(3) BIA for the *Quebec Revenue Agency* (the “**QRA Deemed Trust Amount**”).
- 35. The following table summarizes the Final Distribution:

3441890 Canada Inc. (formerly Motovan Corporation) Final Distribution to BMO	
	Amount (in CAS \$)
Net Realization of Duties Refunds and other collections (Amount held in trust by the Monitor)	170 994
Provision: QRA Deemed Trust Amount	(12 171)
Amount Available for Distribution to BMO	158 823
Final Distribution to BMO	158 823
Amount Available for Distribution	-

- 36. At the date of this Report, MTV has paid all invoices of professional and made deposit to all professionals in order to cover their fees to complete the CCAA Proceedings, including the hearing on the Motion. The Monitor is not aware of any post filing obligations that would have a prior rank to BMO.
- 37. With respect to MTV, the current balance owed to BMO under the line of credit is approximately of \$5,507,000.

38. The Monitor has obtained an independent security review from its counsels confirming the validity of the security interest granted by MTV in favour of BMO and the enforceability of BMO's rights resulting thereto over the assets subject to the Transaction ("**BMO Opinion**").
39. The BMO Opinion did not address the priority of the BMO security relative to other claims against MTV, other than the Court ordered Administration Charge, in the amount of \$500,000 and the Court ordered Directors and Officers Charge in the amount of \$723,000 (collectively, the "**Priority Charges**").
40. Moreover, aside from the determination of the QRA Deemed Trust Amount, there has been no claim process in the present matter as it was not appropriate to do so in the absence of equity for the unsecured creditors, the BMO secured indebtedness pursuant to the CCAA Parties' line of credit being substantially higher (approximately \$5,507,000) than the amount proposed to be distributed.
41. With respect to the determination of the QRA Deemed Trust Amount, the Monitor collaborated with the Quebec Revenue Agency in the determination of this amount prior to the contemplated bankruptcies and in the context of the present Motion for sake of efficiency in the administration of these proceedings, as this will simplify the administration said bankruptcies while allowing closure with the present CCAA Proceedings.

G. TERMINATION OF THE CCAA PROCEEDINGS AND ANCILLARY ORDERS SOUGHT

42. In addition to the orders sought to proceed with the Final Distribution, the Motion is seeking from the Court the issuance of the following ancillary orders:
 - a) An order declaring that the present CCAA Proceedings are terminated (the "**Termination Order**");
 - b) An order (i) discharging and terminating the charges established by this Court in the CCAA Proceedings, namely the CCAA Charge (as defined below), (ii) discharging the Monitor from any further obligations, duties, liabilities and responsibilities in its capacity as Monitor pursuant to the Initial Order and any other orders issued in the context of these CCAA Proceedings, and (iii) authorizing MTV to make an assignment in bankruptcy pursuant to the BIA, and the Monitor to proceed with such assignment on behalf of MTV (the "**Ancillary Orders**");
43. Considering notably the additional powers and mandate granted to the Monitor in the Second Re-Amended and Restated Initial Order for the purposes of completing the realization of the remaining assets of MTV, and considering that this process is now completed, it is appropriate for this Court to order the termination of the CCAA Proceedings, including the Stay Period (as this term is defined in the Second Re-Amended and Restated Initial Order).
44. The Monitor is also seeking the issuance of a release considering that it has discharged its mandates, obligations and duties in the present matter in accordance with the Second Re-Amended and Restated Initial Order, as has been kept apprised this Court throughout the present CCAA Proceedings.

45. As the CCAA Proceedings are being terminated and that all remaining amounts held in trust with the Monitor are being distributed, the Administration Charge and the D&O Charge (as such terms are defined in the Second Re-Amended and Restated Initial Order) will not be necessary anymore, and should be specifically discharged and terminated as a result.
46. Finally, upon termination of the CCAA Proceedings, the CCAA Parties will not hold any asset and will remain inactive. However, MTV and MTA remain indebted towards their creditors and remain insolvent. As result, it is respectfully submitted that it is appropriate and in accordance with the proper administration of justice to authorize MTV to file an assignment in bankruptcy upon the termination of the present CCAA Proceedings, and to further authorize the Monitor to proceed with such filings on behalf of MTV upon completion of the Final Distribution. Due to the fact that MTA is a corporation located in the United States, no decision was made yet on the process to close the entity.
47. The issuance aforementioned ancillary orders are appropriate in order to bring proper closure to the present CCAA Proceedings.

H. THE MONITOR'S RECOMMENDATIONS

48. The Monitor respectfully submits that the orders sought pursuant to the Motion should be granted since the CCAA Proceedings is completed and the Monitor is ready to make the Final Distribution.

All of which is respectfully submitted to this Honourable Court this 3rd day of June 2021.

KPMG INC.

in its capacity as the Monitor of
9348069 Canada Inc.;
4295862 Canada Inc.;
3441890 Canada inc. (Formerly Motovan Corporation);
Moncy Holding Company Inc.;
Moncy Financial Services Company Inc.;
Nichols Motorcycle Supply Inc.;
Moncy LLC &
Motorcycle Tires and Accessories LLC.



Per: Maxime Codere, CPA, CA, CIRP, LIT
Partner