

Estate No.: No. 32-2613323

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. )  
JUSTICE HAINEY )  
 )  
 ) WEDNESDAY, THE 26TH  
 ) DAY OF FEBRUARY, 2020

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF AIR GEORGIAN LIMITED,  
A CORPORATION INCORPORATED UNDER  
THE LAWS OF ONTARIO

ORDER

**THIS MOTION**, made by Air Georgian Limited (the “**Debtor**”) for an order extending the time for filing a proposal, approving and administration charge and certain debtor in possession funding, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Eric Edmondson sworn February 22, 2020 (the “**Affidavit**”) and the first report of KPMG Inc. in its capacity as proposal trustee (in such capacity, the “**Proposal Trustee**”) dated February 23, 2020 (the “**First Report**”), and on hearing the submissions of counsel for the Debtor, the Proposal Trustee, 2229275 Alberta Ltd. (“**222**”) and those other parties present, as indicated on the counsel slip, no other parties present, although properly served as appears from the affidavit of Jennifer Stam sworn February 23, 2020, filed:

**NOTICE AND SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the First Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

## EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”), the time for the Debtor to file a proposal with the Official Receiver be and is hereby extended to March 13, 2020.

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## ADMINISTRATION CHARGE

3. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and the Debtor’s counsel shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 8 and 10 hereof.

## DIP FINANCING

4. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to borrow monies (“**Post-Filing Advances**”) from 222 (in such capacity, the “**DIP Lender**”) pursuant to the ATB Facility and the ATB Debt and Security (as both terms are defined in the First Report) as assigned to 222 pursuant to the Assignment Agreement (as defined in the First Report) in order to finance the Debtor’s day to day operations and restructuring proceedings substantially in accordance with the cash flow budget attached as Appendix “E” to the First Report (the “**Cash Flow**”).

5. **THIS COURT ORDERS** that notwithstanding the terms of the ATB Facility and the ATB Debt and Security,

- (a) The Debtor may request weekly or bi-weekly Post-Filing Advances in amounts consistent with its funding requirements under the Cash Flow;
- (b) All Post-Filing Advances shall be subject to the consent of the Proposal Trustee;

- (c) All Post-Filing Advances and any other amounts secured by the DIP Lender's Charge shall be repayable in full with interest at the rate of 12% per annum (calculated from the date of advance to the date of repayment on the earlier of (a) the completion of a sale or sales for substantially all of the Debtor's assets and (b) April 30, 2020.

6. **THIS COURT ORDERS** that pursuant to Section 50.6 of the BIA, the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall secure only advances made to the Debtor under the ATB Facility after this Order is made as well as any accrued and unpaid interest and professional fees of counsel to the DIP Lender.

7. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the provisions of Section 69 of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge;
- (b) in keeping with the ATB Facility and the ATB Debt and Security (together, the "**Facility Documents**"), and the DIP Lender's Charge, the DIP Lender will be entitled, on 3 business days' notice to the Debtor and Proposal Trustee, to make demand, accelerate payment and give other notices; provided however that the DIP Lender must apply to this Court on 5 business days' notice to the Debtor and the Proposal Trustee to exercise any other its rights and remedies against the Debtor or the Property under or pursuant to the Facility Documents and DIP Lender's Charge including, without limitation, to cease making advances to the Debtor and set off and/or consolidate any amounts owing by the DIP Lender to the Debtor against the obligations of the Debtor to the DIP Lender under the Facility Documents or the DIP Lender's Charge, or for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtor and for the appointment of a trustee in bankruptcy of the Debtor; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtor or the Property.

#### **VALIDITY AND PRIORITY OF CHARGES**

8. **THIS COURT ORDERS** that the priorities of the Administration Charge and DIP Lender's Charge, as among them, shall be as follows:

- (a) First: Administration Charge (to the maximum amount of \$200,000); and
- (b) Second: DIP Lender's Charge.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge and the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

10. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and the Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person but subject to subsections 14.06(7) and 81.3(1) of the BIA and any properly perfected purchase money security interests in existence and priority to advances already made under the Facility Documents as at the time of this Order (the "**Permitted Priority Encumbrances**").

11. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtor shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtor also obtain the prior written consent of the beneficiaries of the applicable Charges or further Order of this Court.

12. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way

by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance in connection thereof shall create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party; and
- (b) the payments made by the Debtor pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

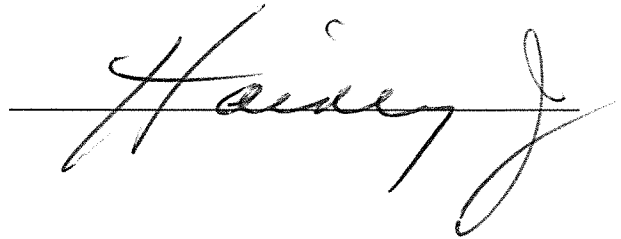
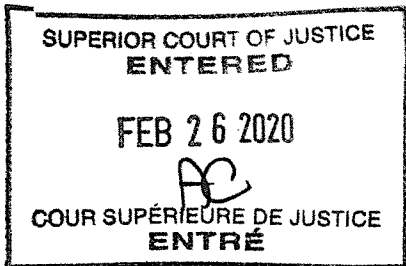
13. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Debtor’s interest in such real property leases.

#### **GENERAL**

14. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial]) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: [www.kpmg.com/ca/airgeorgian](http://www.kpmg.com/ca/airgeorgian).

**MISCELLANEOUS**

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in cursive script, appearing to read "Hainey J.", written over a horizontal line.

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**COMMERCIAL LIST**  
**Proceeding commenced TORONTO**

**ORDER**

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