

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-054445-180

DATE: - 27 AVR. 2018

PRESIDING :

Chantal Flemand, registraire

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;

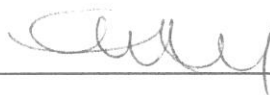
- [31] **AUTHORIZES** the Interim Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

GENERAL

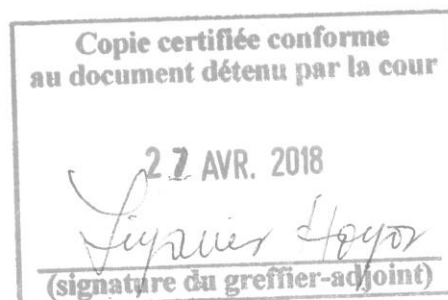
- [32] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [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;



M^{lle} Chantal Floreant, registraire



LILLANIR HOYOS
GREFFIÈRE ADJOINTE C.S.M.

