

Court File No. CV-12-9740-00CL

Ontario

Superior Court of Justice

Commercial List

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

2058756 ONTARIO LIMITED

Respondent

NOTICE OF MOTION

The Receiver, A. John Page & Associates Inc. will make a motion to a Judge sitting on the Commercial List on January 29, 2020 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, in substantially the form attached as **Schedule "A"** hereto, including, among other things, an order:
 - a. approving the conduct and activities of the Receiver to date as detailed in the Eighth Report of the Receiver dated January 15, 2020 (the "**Eighth Report**");
 - b. approving the Receiver's Statement of Receipts and Disbursements to Date (included as Exhibit "G" in the Eighth Report);

- c. approving the Receiver's Pro Forma Statement of Receipts and Disbursements (included as Exhibit "H" in the Eighth Report);
 - d. approving the fees and expenses of the Receiver and its counsel;
 - e. approving the estimates for fees and expenses of the Receiver and its counsel to complete this assignment;
 - f. approving the settlement with Canada Revenue Agency ("**CRA**") in respect of the deemed trust claim pursuant to the *Excise Tax Act*;
 - g. approving the final distribution to the applicant, ICICI Bank Canada ("**ICICI**");
 - h. unsealing any and all documents ordered sealed pursuant to any prior Orders made in this proceeding; and
 - i. discharging and releasing the Receiver upon the Receiver filing a discharge certificate with the Court; and
2. such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

3. The Receiver was appointed by Order of the Honourable Mr. Justice Brown on June 21, 2012 (the "**Initial Order**") over certain of the assets, undertakings and properties of 2058756 Ontario Limited ("**205**");
4. The mandate of the Receiver covered all of the assets of 205 except for the real estate located at 700 Gardiners Road, Kingston, Ontario (the "**Kingston Property**");
5. The principal asset of 205, apart from the Kingston Property, was real property comprising land and a 513,500 square foot industrial building located at 100 Central Avenue West in Brockville, Ontario (the "**Brockville Property**");
6. On April 25, 2013, Mr. Justice Wilton-Siegel made an order which, among other things, approved the agreement to sell the Brockville Property to Stonewater Properties Inc.

7. The sale of the Brockville Property closed on April 30, 2013;

The Admitted Nortel Indemnity Claim

8. Prior to the appointment of the Receiver, 205 submitted an amended claim for \$14,012,049.62 in the CCAA Proceedings of Nortel (the “**Nortel Indemnity Claim**”).
9. On May 5, 2015, the Receiver and the Monitor for Nortel reached a settlement by which the Nortel Indemnity Claim was admitted at the amount of \$127,000 (the “**Admitted Nortel Indemnity Claim**”).
10. To date, the Receiver has received two interim distributions as follows:
 - a. \$57,775.74 in July, 2018; and
 - b. \$5,986.40 in December, 2018.
11. As it will likely be years before the final Nortel distribution is made, the Receiver proposes endorsing any subsequent distributions relating to the Admitted Nortel Indemnity Claim that it receives over to ICICI.

The Deemed Trust Claim

12. On July 24, 2019, the Receiver received an Enhanced Requirement to Pay (the “**Enhanced RTP**”) for \$74,639.61 from CRA dated July 19, 2019.
13. Following discussions and negotiations between counsel for the Receiver and CRA, an agreement has been reached providing for Receiver to pay \$35,000 to CRA in full and final satisfaction of the Enhanced RTP, including any and all penalties and interest thereon (the “**Deemed Trust Claim Settlement**”).
14. ICICI supports the Deemed Trust Claim Settlement.

Statement of Receipts and Disbursements

15. The Receiver’s interim Statement of Receipts and Disbursements for the period from June 21, 2012 to January 15, 2020 is attached to the Eighth Report as Exhibit “G”, and the Receiver requests Court approval for that statement;

16. The Receiver's pro forma final Statement of Receipts and Disbursements (that includes the Receiver's estimate for all unpaid disbursements) is attached to the Eighth Report as Exhibit "H", and the Receiver requests Court approval for that statement;

Professional Fees

17. The Receiver's fees for the period from December 1, 2016 and ending January 14, 2020 are \$51,789.83 plus HST, as set out in the Fee Affidavit of A. John Page sworn January 15, 2020;
18. The fees of Heath Whiteley for the period from December 1, 2016 and ending January 10, 2020 are \$18,270 plus disbursements of \$227.72, plus HST, as set out in the Fee Affidavit of Heath Whiteley sworn January 11, 2020;
19. The foregoing fee affidavits also estimate the fees and expenses to complete the receivership (jointly, the "**Fee Estimates**");
20. The Receiver is asking the court to approve the above fees and expenses of the Receiver and its counsel, along with the Fee Estimates;

Final Distribution

21. To date, the Receiver has distributed \$1,270,000 to ICICI, with court approval, on account of the indebtedness of 205 to ICICI;
22. The Receiver is asking the court to authorize the Receiver paying over the net funds remaining on hand at present (estimated to be \$121,118.41) to ICICI as a further and final distribution to ICICI on account of the indebtedness of 205 to ICICI;
23. The Receiver is asking the court to authorize the Receiver to endorse over to ICICI any subsequent distributions relating to the Admitted Nortel Indemnity Claim that it receives over to ICICI.

Unsealing of Documents

24. During the course of the receivership there has been at least one order providing for the sealing of various confidential documents;
25. Consequently, the Receiver is asking the court to provide for the unsealing of any and all documents ordered sealed previously;

Discharge of the Receiver

26. In order to complete the receivership, the following tasks need to be undertaken:
 - a. pay the amount to CRA in accordance with the Deemed Trust Claim Settlement;
 - b. pay any unpaid professional fees and settle any outstanding expenses;
 - c. remit final distribution to the Bank;
 - d. file a final HST return;
 - e. close the Receiver's bank account;
 - f. prepare the actual final Statement of Receipts and Disbursements (the "**Actual Final R&D**"); and
 - g. prepare and issue the Final Report of the Receiver in accordance with the requirements of the BIA;
27. The Receiver is asking the court to discharge the Receiver upon the filing of a Certificate of Completion attesting to the completion of the tasks listed in paragraph 25(a) to (f) above and attaching the Actual Final R&D; and
28. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

29. The Eighth Report;

30. The fee affidavits of A. John Page and Heath Whiteley; and
31. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 16, 2020

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APPROVAL OF ACTIVITIES

1. **THIS COURT ORDERS** that the actions and activities of the Receiver, as set out in the Eighth Report, are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

2. **THIS COURT FURTHER ORDERS** that the R&D To Date (included as Exhibit "G" to the Eighth Report) is hereby approved.

3. **THIS COURT FURTHER ORDERS** that the Pro Forma Final R&D (included as Exhibit "H" to the Eighth Report) is hereby approved.

4. **THIS COURT FURTHER ORDERS** that the fees of the Receiver for the period from December 1, 2016 and ending January 14, 2020 in the amount of \$51,789.83 plus applicable GST/HST as set forth in the Receiver's Fee Affidavit are hereby approved and allowed.

5. **THIS COURT FURTHER ORDERS** that the fees of counsel to the Receiver for the period from December 1, 2016 and ending January 10, 2020 in the amount of \$18,270 plus applicable GST/HST as set forth in the Whiteley Fee Affidavit are hereby approved and allowed

6. **THIS COURT FURTHER ORDERS** that the fee estimate of the Receiver for the period from January 15, 2020 through to the discharge of the Receiver (as provided for in paragraph 13 below) in the amount of \$17,123 plus applicable GST/HST as set forth in the Receiver's Fee Affidavit is hereby approved and allowed.

7. **THIS COURT FURTHER ORDERS** that the fee estimate of counsel to the Receiver for the period from January 11, 2020 through to the discharge of the Receiver (as provided for in paragraph 13 below) in the amount of \$5,000 plus applicable GST/HST as set forth in the Whiteley Fee Affidavit is hereby approved and allowed.

APPROVAL OF DEEMED TRUST CLAIM SETTLEMENT

8. **THIS COURT ORDERS AND DIRECTS** the Receiver to pay \$35,000 to Canada Revenue Agency (“**CRA**”) in full and final satisfaction of the deemed trust claim of CRA, including any and all penalties and interest thereon, pursuant to the *Excise Tax Act* as against the respondent, 2058756 Ontario Limited.

APPROVAL OF FINAL DISTRIBUTION

9. **THIS COURT ORDERS** that, after payment of: (a) the \$35,000 to CRA; and (b) the fees and disbursements herein approved; the Receiver shall pay the monies remaining in its hands to the applicant, ICICI Bank Canada (“**ICICI**”) on account of the indebtedness of the respondent, 2058756 Ontario Limited to ICICI.

10. **THIS COURT ORDERS AND AUTHORIZES** the Receiver to endorse any subsequent distributions relating to the Admitted Claim (as defined in the Eighth Report) in the CCAA Proceedings (as defined in the Eighth Report) that it receives over to ICICI.

UNSEALING OF DOCUMENTS

11. **THIS COURT ORDERS** that any and all documents ordered sealed pursuant to any prior Orders made in this proceeding (including, without limitation, the documents listed in **Schedule “A”** hereto) be and the same are hereby unsealed.

12. **THIS COURT FURTHER ORDERS AND DIRECTS** the Registrar to assist in carrying out the unsealing of documents as ordered in paragraph 11 above.

DISCHARGE OF THE RECEIVER

13. **THIS COURT FURTHER ORDERS** that upon the Receiver filing a certificate (in substantially the form attached as **Schedule “B”** hereto) certifying that it has completed the ancillary activities described in the Eighth Report (the “**Discharge Certificate**”), the Receiver shall be discharged as Receiver of the undertaking, property and assets of the respondent, 2058756 Ontario Inc., provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental

duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of A. John Page & Associates Inc. In its capacity as Receiver.

14. **THIS COURT ORDERS AND DECLARES** that A. John Page & Associates Inc. is hereby released and discharged from any and all liability that A. John Page & Associates Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of A. John Page & Associates Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the part of the Receiver. Without limiting the generality of the foregoing, A. John Page & Associates Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the part of the Receiver.

Schedule "A"

| Document | Sealing Order |
|------------------------------------------------|------------------------------------------|
| Exhibits "B", "D" and "E" to the Second Report | Order dated April 25, 2013, paragraph 13 |

DRAFT

Schedule "B"

Court File No. CV-12-9911-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

ICICI BANK CANADA

Applicant

- and -

2058756 ONTARIO LIMITED

Respondent

DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to the Order of the Honourable Justice Brown dated June 21, 2012, A. John Page & Associates Inc. was appointed Receiver of the undertaking, property and assets of the respondent, save and except for the real property known municipally as 700 Gardiners Road, Kingston, Ontario.

B. Pursuant to the Order of the Honourable Justice • dated Janaury 29, 2020 (the "**Discharge Order**"), this certificate shall be filed with the Registrar of this Court upon the completion of the ancillary activities described in the Eighth Report of the Receiver dated January 15, 2020 (the "**Eighth Report**").

THE RECEIVER CERTIFIES the following:

1. The Receiver has completed all matters required by this Court, including the distribution of funds and the ancillary activities described in the Eighth Report and as approved by the Discharge Order.
2. Attached to this certificate is a copy of the Actual Final R&D (as defined in the Eighth Report).
3. Pursuant to the filing of this Certificate with the Registrar of this Court, the Receiver is discharged as of this filing date, all in accordance with the Discharge Order.

Filed, this _____ day of _____, 2020

A. JOHN PAGE & ASSOCIATES INC.
In its capacity as Receiver of certain of the assets of
2058756 Ontario Limited

Per: _____

Name: A. John Page
Title: President

B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

2058756 ONTARIO LIMITED
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION
(re Eighth Report)

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