



Court File No. CV-14-10659-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *MR*)
JUSTICE *T. McBlown*)

THURSDAY, THE 26TH
DAY OF MARCH, 2015

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

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT
INVOLVING BOMBAY & CO. INC., BOWRING & CO INC. AND BENIX & CO. INC.

ORDER

THIS MOTION, made by **RICHTER ADVISORY GROUP INC.** ("**Richter**") in its capacity as court-appointed monitor ("**Monitor**") of 2151456 Ontario Inc., formerly known as Bombay & Co. Inc. ("**215**"), 1677711 Ontario Inc., formerly known as Bowring & Co. Inc. ("**167**") and 1115926 Ontario Inc., formerly known as Benix & Co. Inc. ("**111**" together with 215 and 167, the "**Applicants**"), for an order

- (i) approving the activities of the Monitor as set out in the fourth report to the Court of the Monitor dated March 18, 2015 (the "**Fourth Report**"),

- (ii) approving the fees and disbursements of the Monitor as set out in the affidavit of Gilles Benchaya sworn March 18, 2015 (the “**Benchaya Affidavit**”),
- (iii) approving the fees and disbursements of Cassels Brock & Blackwell LLP (“**Cassels**”), in its capacity as counsel to the Monitor, as set out in the affidavit of R. Shayne Kukulowicz sworn March 17, 2015 (the “**Kukulowicz Affidavit**”),
- (iv) lifting the stay of proceedings (the “**Stay of Proceedings**”) established by the Order of Mr. Justice Penny made in these proceedings on August 6, 2014 (the “**Initial Order**”) to the extent necessary, for the limited purpose of permitting each of the Applicants to make an assignment into bankruptcy pursuant to the provisions of the *Bankruptcy and Insolvency Act* (the “**Bankruptcy Assignments**”), authorizing the Applicants to make such Bankruptcy Assignments, and naming Richter as Trustee in bankruptcy of each bankruptcy estate (respectively, the “**Trustee**”);
- (v) authorizing Cassels and the Applicants’ legal counsel, Fasken Martineau DuMoulin LLP (“**Faskens**”), to pay any unused retainer amounts to the Monitor;
- (vi) authorizing the Monitor to transfer to the Trustee, from the balance of the proceeds of sale in its accounts (the “**Escrowed Funds**”) the amount of \$30,000 (plus H.S.T.) to each of the bankruptcy estates of 215, 167 and 111, to provide funding for the respective professional

costs incurred by the Trustee for each bankruptcy estate as third party funds ("**Third Party Funds**") and directing the Trustee to remit any remaining amounts of such Third Party Funds to the Purchaser (as defined below);

(vii) authorizing the Monitor, after payment of the amounts set out in paragraphs (v) and (vi) above and payment of the fees and expenses set out in the Benchaya Affidavit and the Kukulowicz Affidavit, including the estimated costs to complete the administration set out therein, and any outstanding invoices to Faskens, to transfer any balance of the Escrowed Funds to Fluid Brand Inc. (the "**Purchaser**") in accordance with the agreement of purchase and sale among the Applicants as vendors and 2383029 Ontario Inc., 2437533 Ontario Inc. and the Purchaser as purchasers dated December 31, 2014, as previously approved by this Court by Order dated January 12, 2015 (the "**Sale Agreement**");

(viii) following the making of the Bankruptcy Assignments and payment of monies set out in paragraphs (v), (vi) and (vii) above and the filing of the certificate attached as Schedule "A" to the Draft Order (the "**Monitor's Certificate**"), (a) terminating the within CCAA proceedings of the Applicants (the "**CCAA Proceedings**"), (b) terminating the Charges as defined in the Initial Order (being the Administration Charge, the Directors' Charge and the DIP Lender's Charge), and (c) discharging Richter as Monitor of the Applicants and releasing Richter

from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Monitor herein, save and except for any gross negligence or wilful misconduct on the Monitor's part;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion dated March 18, 2015, the Fourth Report, the Benchaya Affidavit and the Kukulowicz Affidavit and upon hearing the submissions of counsel for the Monitor, the Applicants and no one else appearing, although duly served, as evidenced by the Affidavit of Service of Mary Carreiro sworn March 18, 2015, and filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged so that this motion is properly returnable today and any further service thereof is hereby dispensed with.

APPROVAL OF ACTIVITIES

2. **THIS COURT ORDERS** that the Fourth Report and the actions, conduct and activities of the Monitor described therein be and are hereby approved.

APPROVAL OF FEES

3. **THIS COURT ORDERS** that the fees and expenses of the Monitor as set out in the Benchaya Affidavit, including the estimated costs to complete the administration set out therein, be and are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of Cassels as set out in the Kukulowicz Affidavit, including the estimated costs to complete the administration set out therein, be and are hereby approved.

TRANSITION TO BANKRUPTCY

5. **THIS COURT ORDERS** that the Stay of Proceedings established pursuant to the Initial Order is hereby lifted, to the extent necessary, for the limited purpose of authorizing each Bankruptcy Assignment, and the Applicants are hereby authorized to make the Bankruptcy Assignments and to name Richter as Trustee.

6. **THE COURT ORDERS** Cassels and Faskens to pay any unused retainer amounts to the Monitor.

7. **THIS COURT ORDERS** that following the making of each Bankruptcy Assignment, the Monitor is hereby authorized and directed to pay to the Trustee from the Escrowed Funds, the Third Party Funds to provide funding for the respective professional costs incurred by the Trustee for each bankruptcy estate, and the Trustee

is hereby directed to remit any remaining amounts of such Third Party Funds to the Purchaser.

8. **THIS COURT ORDERS** that, after payment of the amounts set out in paragraphs 6 and 7 above and the fees and expenses set out in the Benchaya Affidavit and the Kukulowicz Affidavit, including the estimated costs to complete the administration set out therein, and any outstanding invoices of Faskens, the Monitor is hereby authorized and directed to remit the balance of the Escrowed Funds to the Purchaser in accordance with the Sale Agreement.

TERMINATION OF CCAA PROCEEDINGS AND DISCHARGE OF THE MONITOR

9. **THIS COURT ORDERS** that, following the making of the Bankruptcy Assignments and the payments set out in paragraphs 6, 7 and 8 hereof, and upon the Monitor filing with this Court a certificate in the form set out as Schedule "A" hereto (the "**Discharge Certificate**"):

- (a) these CCAA Proceedings shall be and are hereby terminated provided however, that nothing herein impacts the validity of any Orders made in the CCAA Proceeding or any actions or steps taken by any Person (as defined in the Initial Order) in reliance on such Orders;
- (b) the Charges as defined by the Initial Order specifically, the Administration Charge, the Directors' Charge and the DIP Lender's Charge, shall be and are hereby terminated;

- (c) Richter shall be discharged as Monitor and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the Initial Order, any other Order of this Court in the CCAA Proceeding, the CCAA or otherwise, provided that notwithstanding its discharge herein, (i) the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the CCAA Proceeding herein, and (ii) the Monitor shall continue to have the benefit of the provisions of all Orders made in the CCAA Proceeding, including all approvals, protections and stays of proceedings in favour of Richter in its capacity as Monitor; and
- (d) in addition to the protections in favour of the Monitor as set out in the Initial Order, in any other Order of this Court in the CCAA Proceeding or the CCAA, Richter is hereby released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Monitor herein, save and except for any gross negligence or wilful misconduct on the Monitor's part.

10. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor and such further order securing, as security for costs, the full indemnity costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

11. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the rights, approvals and protections in favour of the Monitor pursuant to the Initial Order,

any other Order of this Court in the CCAA Proceeding, the CCAA or otherwise, all of which are expressly continued and confirmed.

GENERAL

12. **THIS COURT ORDERS** that any and all administrative matters relating to the CCAA Proceeding, which arise following the termination of the CCAA Proceeding may be brought before the Court for determination, advice and direction.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or elsewhere to give effect to this Order and to assist the Monitor 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to the Order or to assist the Monitor and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 23 2015

NB

Schedule A

Court File No. CV-14-10659-00CL

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

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

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INVOLVING BOMBAY & CO. INC. , BOWRING & CO INC. AND BENIX & CO. INC.

MONITOR'S DISCHARGE CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 6, 2014, Richter Advisory Group Inc. ("**Richter**") was appointed as monitor (the "**Monitor**") of the property and assets of 2151456 Ontario Inc. formerly known as Bombay & Co. Inc. ("**215**"), 1677711 Ontario Inc. formerly known as Bowring & Co. Inc. ("**167**"), and 1115926 Ontario Inc. formerly known as Benix & Co. Inc. ("**111**" together with 215 and 167, the "**Applicants**").
- B. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order (as defined below).
- C. Pursuant to an Order of the Court dated March 26, 2015, (the "**Discharge Order**") upon the filing of a certificate by the Monitor with the Court confirming

the making of the Bankruptcy Assignments and payments set out in paragraphs 6, 7 and 8 of the Discharge Order:

- (a) these CCAA Proceedings shall be and are hereby terminated provided however, that nothing herein impacts the validity of any Orders made in the CCAA Proceeding or any actions or steps taken by any Person (as defined in the Initial Order) in reliance on such Orders;
- (b) the Charges as defined by the Initial Order specifically, the Administration Charge, the Directors' Charge and the DIP Lender's Charge, shall be and are hereby terminated;
- (c) Richter shall be discharged as Monitor and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the Initial Order, any other Order of this Court in the CCAA Proceeding, the CCAA or otherwise, provided that notwithstanding its discharge herein, (i) the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the CCAA Proceeding herein, and (ii) the Monitor shall continue to have the benefit of the provisions of all Orders made in the CCAA Proceeding, including all approvals, protections and stays of proceedings in favour of Richter in its capacity as Monitor; and
- (d) in addition to the protections in favour of the Monitor as set out in the Initial Order, in any other Order of this Court in the CCAA Proceeding or the CCAA, Richter is hereby released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Monitor herein, save and except for any gross negligence or wilful misconduct on the Monitor's part.

THE RECEIVER CERTIFIES the following:

1. each of the Applicants have each made a Bankruptcy Assignment; and
2. the Monitor has made the payments as set out in paragraphs 6, 7 and 8 of the Discharge Order.

This Certificate was executed by the Monitor at _____ on _____, and filed.

**RICHTER ADVISORY SERVICES INC. in
its capacity as the court appointed
monitor of 2151456 Ontario Inc. formerly
known as Bombay & Co. Inc., 1677711
Ontario Inc. formerly known as Bowring
& Co. Inc. and 1115926 Ontario Inc.
formerly known as Benix & Co. Inc. and
not in its corporate or personal capacity**

Per: _____

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING BOMBAY & CO. INC. , BOWRING & CO. INC.
AND BENIX & CO. INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(March 26, 2015)**

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Mon 26/15

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26 March 15 J. Dietrich -

The order sought is S. Brehner -
opposed. I have reviewed after
the matter with counsel. The
process has now come to a green
conclusion. The order sought
including fees, is reasonable in
the circumstances.

Order is to go as per draft
Filed & signed.

M. Est

ONTARIO SUPERIOR COURT OF JUSTICE PROCEEDING COMMENCED AT TORONTO	MOTION RECORD (RETURNABLE MARCH 26 2015)
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