

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.)	THURSDAY, THE 29 th
)	
JUSTICE OSBORNE)	DAY OF MARCH, 2023

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 OR
ARRANGEMENT OF DCL CORPORATION (the “**Applicant**”)

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order:

- (i) approving the transactions (collectively, the “**Transaction**”) contemplated by a second amended and restated asset purchase agreement (the “**Second Amended and Restated Sale Agreement**”) dated as of March 28, 2023, between DCL Corporation, as “Canadian Seller”, and its U.S. based related parties, H.I.G. Colors Holdings Inc., H.I.G. Colors, Inc., DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, DCL Corporation (BP) LLC, and Dominion Colour Corporation (USA), as “US Sellers”, and Pigments Services, Inc. as “Purchaser” (including any permitted assignees, “**Pigments**”), and attached as Exhibit “E” to

the affidavit of Scott Davido sworn March 28, 2023 (the “**Supplemental Davido Affidavit**”);

- (ii) vesting in and to Pigments’ assignee, Pigments Services Canada, Inc. (the “**Canadian Operating Purchaser**”), the Applicant’s right, title and interest in and to the Canadian Operating Assets (as defined below);
- (iii) vesting in and to Pigments’ assignee, Pigments Canada Real Estate LP (the “**Ajax Purchaser**”), the Applicant’s right, title and interest in and to the Ajax Plant (as defined below); and
- (iv) vesting in and to Pigments Services, Inc. (the “**European Shares Purchaser**” and together with the Canadian Operating Purchaser and the Ajax Purchaser, the “**Canadian Assets Purchasers**”) the Applicant’s right, title and interest in and to the European Shares (as defined below),

was heard this day by judicial video conference via Zoom in Toronto, Ontario.

ON READING the materials filed, including the Notice of Motion, the affidavit of Scott Davido sworn March 10, 2023 (the “**Fourth Davido Affidavit**”) and the exhibits attached thereto, the Supplemental Davido Affidavit and the exhibits attached thereto, the affidavit of Nancy Thompson sworn March 29, 2023 and the exhibits attached thereto, the fourth report of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Applicant (the “**Monitor**”) dated March 28, 2023, and on hearing submissions of counsel for the Applicant, counsel for the Monitor, counsel for Pigments and the Canadian Assets Purchasers, and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the Lawyer’s Certificate of Service dated March 28, 2023 filed:

DEFINITIONS

1. **THIS COURT ORDERS AND DECLARES** that capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to them in the Fourth Davido Affidavit, including terms in the Fourth Davido Affidavit defined by way of cross reference.

SALE APPROVAL

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the Second Amended and Restated Sale Agreement is hereby approved, with such non-material amendments as the parties thereto may deem necessary, with the consent of the Monitor. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Canadian Purchased Assets (as defined in the Second Amended and Restated Sale Agreement) to the Canadian Assets Purchasers.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to Pigments and the Sellers (as defined in the Second Amended and Restated Sale Agreement) substantially in the form attached as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to:

- (a) the Canadian Purchased Assets, including the real properties with the legal descriptions set out in **Schedule "B"** hereto (the "**Canadian Operating Real Property**") but excluding the Ajax Plant and European Shares (the "**Canadian Operating Assets**"), shall vest absolutely in the Canadian Operating Purchaser;

(b) the real property with the legal description set out in **Schedule “C”** hereto (the **“Ajax Plant”**), shall vest absolutely in the Ajax Purchaser; and

(c) 1,467,591 ordinary shares of DCL Corporation (Europe) Limited and 600,000 ordinary shares in the share capital of DCL Corporation (NL) B.V. (collectively, the **“European Shares”**) shall vest absolutely in the European Shares Purchaser,

in each case, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the **“Claims”**), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Amended and Restated Initial Order dated December 29, 2022, made in these CCAA proceedings (the **“ARIO”**); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) (**“PPSA”**) or any other personal property registry system; and (iii) those Claims listed on **Schedule “D”** hereto with respect to the Canadian Operating Real Property and **Schedule “E”** hereto with respect to the Ajax Plant (all of which are collectively referred to as the **“Encumbrances”**, which term shall not include Assumed Liabilities (as defined in the Second Amended and Restated Sale Agreement) and the permitted encumbrances, easements and restrictive covenants and PPSA registrations listed on **Schedule “F”** hereto (the **“Permitted Encumbrances”**)) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Canadian Purchased Assets are hereby expunged and discharged as against the Canadian Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Offices for the Land Titles Division of Toronto (No. 66) and the Land Titles Division of Durham (No. 40), respectively, of an Application for Vesting Order prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Canadian Operating Purchaser as the owner of the Canadian Operating Real Property (as described in **Schedule “B”** hereto) hereto in fee simple, and is hereby directed to delete and expunge from title to the Canadian Operating Real Property all the Claims listed in **Schedule “D”** hereto, subject only to the Permitted Encumbrances relating to the Canadian Operating Real Property listed in **Schedule “F”** hereto.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Durham (No. 40) of an Application for Vesting Order prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Pigments Canada Real Estate Associates Inc., in its capacity as general partner of the Ajax Purchaser, as the registered owner of the Ajax Plant (as described in **Schedule “C”** hereto) hereto in fee simple, and is hereby directed to delete and expunge from title to the Ajax Plant all the Claims listed in **Schedule “E”** hereto, subject only to the Permitted Encumbrances relating to the Ajax Plant listed in **Schedule “F”** hereto.

6. **THIS COURT ORDERS** that the Monitor is authorized to hold the Canadian Designated Amount Portion (as defined in the Second Amended and Restated Sale Agreement) pending further Order of this Court.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the CCAA Cash Pool, to be held by the Monitor pending further Order of this Court,

shall stand in the place and stead of the Canadian Purchased Assets, and that from and after the delivery of the Monitor's Certificate to Pigments and the Sellers, all Claims and Encumbrances (including, the Administration Charge), shall attach to the CCAA Cash Pool, but excluding any Claims and Encumbrances in respect of or relating to: (a) the ABL Credit Agreement (as defined in the First Davido Affidavit) (including the ABL Pre-Filing Security); (b) the Final DIP ABL Credit Agreement (including the DIP Charge); (c) the Term Credit Agreement (as defined in the First Davido Affidavit) (including the Term Loan Security); (d) the Intercompany Agreements (as defined in the First Davido Affidavit) (including the Intercompany Charge); and (e) the Directors' Charge, with the same priority as they had with respect to the Canadian Purchased Assets immediately prior to the Transaction, as if the Canadian Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Transaction. The Administration Charge, the ABL Pre-Filing Security, the DIP Charge, the Term Loan Security, the Intercompany Charge and the Directors' Charge shall have the meanings ascribed to them in the ARIO.

8. **THIS COURT ORDERS** that the quantum secured by the Administration Charge against the Term Loan Priority Collateral (as such terms are defined in the ARIO) is increased by the amount of the Deferred Fees (as defined in the Second Amended and Restated Sale Agreement) owing to counsel to the Applicant, the Monitor and counsel to the Monitor, provided that such increase shall only secure such Deferred Fees and only to the extent that Pigments does not pay such Deferred Fees in accordance with the Second Amended and Restated Sale Agreement. Any such increase in the Administration Charge shall not be or form a charge on the ABL Priority Collateral in priority to the DIP Lender's Charge (as defined in the ARIO), and any component of such increase in the Administration Charge to secure the Deferred Fees of counsel

to the Applicant shall also not be or form a charge on the Term Loan Priority Collateral in priority to the DIP Agent's rights (if any) under the ICA Fourth Amendment (as defined in the Supplemental Davido Affidavit).

9. **THIS COURT ORDERS** that, upon delivery of the Monitor's Certificate to Pigments and to the Sellers in accordance with the terms hereof, the DIP Charge, the Intercompany Charge and the Directors' Charge are hereby extinguished and released.

10. **THIS COURT ORDERS** that concurrently on or immediately following Closing, the Applicant shall indefeasibly and irrevocably repay, or cause to be repaid, in full in cash its Obligations (as defined in the Final DIP ABL Credit Agreement) and Pre-Petition ABL Obligations (as defined in the Final DIP ABL Credit Agreement) (the "**DIP Distribution**") and that the Applicant is authorized to sign a direction at the time of Closing, in a form acceptable to the Monitor, irrevocably authorizing Pigments to pay the DIP Distribution directly to the DIP Agent. The DIP Distribution shall be free and clear of all Encumbrances and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, a transfer at undervalue, a fraudulent conveyance or other reviewable transaction under the BIA, the CCAA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

12. **THIS COURT ORDERS** that the Monitor may rely on written notice from Pigments and the Sellers, regarding the satisfaction or waiver of conditions to Closing under the Second Amended and Restated Sale Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant and the Monitor are authorized and permitted to disclose and transfer to Pigments and the Sellers all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees, including personal information of those employees listed on schedules to the Second Amended and Restated Sale Agreement. Pigments and the Canadian Assets Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

14. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Canadian Purchased Assets in the Canadian Assets Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the

Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

NAME CHANGE

15. **THIS COURT ORDERS** that (a) the Applicant is hereby authorized, directed and permitted on or after Closing to execute and file articles of amendment or such other documents or instruments as may be required (including any necessary corporate resolutions) to change the legal name of the Applicant to the applicable legal name, as determined by the Applicant, in accordance with section 7.11 of the Second Amended and Restated Sale Agreement, and such articles, documents or other instruments (including any necessary corporate resolutions) shall be deemed to be duly authorized, valid and effective and shall be accepted by the Director, as defined in, and appointed under the Ontario *Business Corporations Act*, without the requirement (if any) of obtaining director or shareholder approval pursuant to any federal or provincial legislation; and (b) any third-party requirements, required consents or solvency requirement pursuant to any federal or provincial legislation relating to same shall be waived.

AID AND RECOGNITION

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

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

Schedule “A” – Form of Monitor’s Certificate

Court File No. CV-22-00691990-00CL

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MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the “**Court**”) dated December 20, 2022, the Applicant was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and Alvarez & Marsal Canada Inc. was appointed as the monitor (the “**Monitor**”) of the Applicant. Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to them in the affidavit of Scott Davido sworn March 10, 2023, filed in these CCAA proceedings.

B. Pursuant to an Order of the Court dated March 29, 2023 (the “**Approval and Vesting Order**”), the Court approved the second amended and restated asset purchase agreement dated as of March 28, 2023 (the “**Second Amended and Restated Sale Agreement**”) between the Applicant, as “Canadian Seller”, and its U.S. based related parties, H.I.G. Colors Holdings Inc., H.I.G. Colors, Inc., DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, DCL

Corporation (BP) LLC, and Dominion Colour Corporation (USA), as “US Sellers” (collectively, the Canadian Seller and the US Sellers, the “**Sellers**”) and Pigments Services, Inc. as “Purchaser” (including any permitted assignees, “**Pigments**”), and provided for the vesting in the Canadian Operating Purchaser, the Ajax Purchaser and the European Shares Purchaser, as applicable, the Applicant’s right, title and interest in and to the Canadian Operating Assets, the Ajax Plant and the European Shares, respectively, which vesting is to be effective upon the delivery by the Monitor to Pigments and the Sellers of a certificate confirming that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from Pigments and the Sellers that the conditions to Closing as set out in Article 9 of the Second Amended and Restated Sale Agreement have been satisfied or waived by Pigments and the Sellers, as applicable.

THE MONITOR CERTIFIES the following:

1. The Monitor has received (a) the CCAA Cash Pool (as defined in the Second Amended and Restated Sale Agreement), and (b) the Canadian Designated Amount Portion (as defined in the Second Amended and Restated Sale Agreement) to be delivered to the Monitor, on behalf of the Canadian Seller, pursuant to the Second Amended and Restated Sale Agreement.
2. The Monitor has received written confirmation from Pigments and the Sellers, in form and substance satisfactory to the Monitor, that all conditions to Closing as set out in Article 9 of the Second Amended and Restated Sale Agreement have been satisfied or waived by Pigments and the Sellers, as applicable.
3. This Certificate was delivered by the Monitor to Pigments and the Sellers at _____ [TIME] on _____ [DATE].

**ALVAREZ & MARSAL CANADA INC. in
its capacity as Court-appointed Monitor of
DCL Corporation, and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule “B” – Canadian Operating Real Property

Municipal Address	Legal Description
Land Registry Office for the Land Titles Division of Durham (No. 40)	
435 Finley Avenue, Ajax, Ontario	PIN 26464-0051 (LT): PT BLK E PL M26, PTS 11, 12, 13, 14, 15, 16, 17, 18 & 19, PLAN 40R26696; SUBJECT TO AN EASEMENT AS IN LT497617; TOWN OF AJAX
Land Registry Office for the Land Titles Division of Toronto (No. 66)	
199 New Toronto Street, Toronto	PIN 07600-0171 (LT): LT B & X, PL 1043 , PART 1 & 2 , 64R9896 ; S/T & T/W TB114144 ; ETOBICOKE , CITY OF TORONTO

Schedule “C” – Ajax Plant

Municipal Address	Legal Description
Land Registry Office for the Land Titles Division of Durham (No. 40)	
445 Finley Avenue, Ajax, Ontario	PIN 26464-0052 (LT): PCL BLOCK E-2 SEC M26; PT BLK E PL M26, PTS 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10, PLAN 40R26696; SUBJECT TO AN EASEMENT AS IN LT497617; TOWN OF AJAX

Schedule “D” – Claims to be deleted and expunged from title to the Canadian Operating Real Property

435 Finley Avenue, Ajax, Ontario

1. Instrument No. DR1708482 registered on June 6, 2018, is a charge/mortgage given by Dominion Colour Corporation, as chargor, in favour of Kelly Faykus and Virtus Group, LP, as chargees.
2. Instrument No. DR2152251 registered on July 12, 2022, is a transfer of charge given by Kelly Faykus and Virtus Group, LP, as transferors, in favour of Delaware Trust Company, as transferee.

199 New Toronto Street, Toronto

1. Instrument No. AT4880812 registered on June 6, 2018, is a charge/mortgage given by Dominion Colour Corporation, as chargor, in favour of Kelly Faykus and Virtus Group, LP, as chargees.
2. Instrument No. AT6168591 registered on August 26, 2022, is a transfer of charge given by Kelly Faykus and Virtus Group, LP, as transferors, in favour of Delaware Trust Company, as transferee.

Schedule “E” – Claims to be deleted and expunged from title to the Ajax Plant

445 Finley Avenue, Ajax, Ontario

1. Instrument No. DR1708482 registered on June 6, 2018, is a charge/mortgage given by Dominion Colour Corporation, as chargor, in favour of Kelly Faykus and Virtus Group, LP, as chargees.
2. Instrument No. DR2152251 registered on July 12, 2022, is a transfer of charge given by Kelly Faykus and Virtus Group, LP, as transferors, in favour of Delaware Trust Company, as transferee.

Schedule “F” – Permitted Encumbrances

1. Easements and Restrictive Covenants related to the Canadian Operating Real Property and the Ajax Plant (collectively, the “Real Property”)

(unaffected by the Vesting Order)

Capitalized terms used in this Schedule shall have the meanings given to them in the Second Amended and Restated Sale Agreement

- (a) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested;
- (b) construction, mechanics’, carriers’, workers’, repairers’, storers’ or other similar Encumbrances (inchoate or otherwise) if individually or in the aggregate: (i) they are not material; (ii) they arose or were incurred in the ordinary course of business; (iii) they have not been filed, recorded or registered in accordance with applicable Law; (iv) notice of them has not been given to the Applicant; and (v) the indebtedness secured by them is not in arrears;
- (c) title defects or irregularities, unregistered easements or rights of way, and other unregistered restrictions or discrepancies affecting the use of real property if such title defects, irregularities or restrictions would be disclosed by an up-to-date survey of such real property or, if not, are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (d) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (f) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, provided such easements have been complied with in all material respects;
- (g) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Real Property, provided such easements or rights-of-way have been complied with in all material respects;

- (h) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the Real Property, provided such agreements have been complied with in all material respects;
- (i) any minor encroachments by any structure located on the Real Property onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Real Property;
- (j) all encumbrances and instruments registered against title to the Real Property; and
- (k) in respect of the Real Property, the provisions of any applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

2. PPSA Registrations

- (a) PPSA registration number 20201028 1933 1531 4766 in favour of De Lage Landen Financial Services Canada Inc. (“**De Lage**”), but only to the extent that De Lage has obtained the priority afforded to the holder of a purchase money security interest under Section 33(2) of the PPSA.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL Corporation
Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

APPROVAL AND VESTING ORDER

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