SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: _____ - _____ **DATE:** **December 20 2022**

NO. ON LIST: _____

TITLE OF PROCEEDING: **CROSS BORDER – CONFIDENTIAL MATTER**

BEFORE JUSTICE: **JUSTICE CONWAY**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE CONWAY:

All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of DCL Corporation dated December 20, 2022.

[1] The Applicant seeks an initial order under the CCAA. The Application is made together with corresponding Chapter 11 Proceedings in the U.S. for the Applicant's U.S.-based related parties.

[2] The DCL Group is in the business of supplying pigments and dispersions to customers in the coatings, plastics, and digital printing markets. The DCL Group operates six manufacturing facilities throughout Canada, the U.S., the Netherlands, and the United Kingdom. Three of those facilities are located in Ontario – the New Toronto Plant, the Mississauga Plan and the Ajax Plant. The Ajax Distribution Centre is located next to the Ajax Plant.

[3] The Applicant has 206 employees in its operating facilities. It employs key members of the executive management team for the DCL Group who work out of the DCL Head Office and/or the U.S. facilities. The proposed Chief Restructuring Officer works out of both the DCL Head Office and the New York office of Ankura Consulting Group LLC.

[4] In terms of its debt structure, as of July 31, 2022, the DCL Group had outstanding secured debt of $90 million pursuant to a term loan ($11.6 million owed by the Applicant). It also has a maximum $55 million revolving ABL credit facility, $40 million of which was owed by the Applicant. The ABL Credit Facility was restructured on December 16, 2022 such that DCL US is the sole borrower under that facility. It repaid the Applicant $40 million and the Applicant's borrowings under the ABL Credit Facility were reduced to zero. Mr. Davido of Ankura, the proposed CRO, explains that this was done for various reasons including to pay down and align the indebtedness under the ABL Credit Facility with the party that owns the DCL Group's primary working capital assets. Completing the transaction was also a precondition to securing the required DIP Financing.

[5] The Applicant's unsecured debt includes an earnout payment of over $9 million to KNRV and $11.9 million to third-party vendors and trade creditors as of December 9, 2022. According to Mr. Davido, the Applicant is unable to pay its obligations generally as they become due. However, it is current on its statutory obligations to employees and HST.

[6] The applications under the CCAA and Chapter 11 are being made due to the liquidity crisis faced by the DCL Group. The business has been impacted by factors including higher input costs due to inflation, supply chain issues, and difficulties in retaining and recruiting employees. The Applicant is heavily burdened with secured debt. The Applicant seeks the stability afforded by a CCAA stay to secure additional financing and pursue a going concern solution for its business. While discussions have occurred with a potential stalking horse purchaser, no agreement has been reached yet and the Applicant is not seeking any relief today related to a sale or other process.

[7] I am satisfied that the Applicant is a company to which the CCAA applies. Based on the record before me, the Applicant is incorporated in Ontario, is unable to meet its obligations as they generally become due and has claims in excess of $5 million against it. Its head office is in Toronto. It has complied with the filings required under s. 10(2) of the CCAA.

[8] The Applicant seeks to have the stay extended to DCL US but only with respect to the DCL Inventory located in the Distribution Centres in Ontario. I agree that the stay should be extended given the integration between the two companies, the purchase arrangements between them for that inventory, and the material value of that inventory to the business.

[9] I approve the appointment of the CRO pursuant to s. 11 of the CCAA. Mr. Davido's expertise in restructuring is evident from the record, as well as his familiarity with the problems faced by the DCL Group. He can assist with the cross-border dimension of this restructuring. His involvement will enable the Applicant to focus on the continued operation of the business during the restructuring process.

[10] With respect to the DIP Facility, I am satisfied that $4 million to be financed during the initial period is limited to "what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period", as required by s. 11.2(5) of the CCAA (the Applicant initially sought $5 million but agreed to reduce it to $4 million for the initial stay period). The DIP Charge is also acceptable considering the factors set out in s. 11.2(4) of the CCAA. At this point, none of the charges will rank ahead of any secured party not served with the Application. I note that the Applicant is already underway in its restructuring efforts, the CRO will be overseeing those efforts and the existing secured lenders are supportive of the financing. The proposed Monitor is supportive of the terms of the DIP Facility.

[11] Under the DIP Facility, the Applicant will be required to guarantee the obligations of DCL US. This is a requirement of the DIP financing that the Applicant urgently requires. According to the proposed Monitor, the borrowing of DCL US is tied to its asset base and realization on those assets should be sufficient to repay the debt. Also, there is a provision in the credit agreement that the guarantee will only be called on after the proceeds of the US Borrowers' collateral has been applied to the debt. Significantly, the Monitor also points out that prior to the restructuring of the Prepetition ABL Facility described above, the Applicant would have continued to be liable for the full $40 million in any event – and that amount has now been assumed by DCL US.

[12] There are three charges sought today. The first is the Administration Charge of $175,000, which is acceptable. I am granting it under s. 11.52 of the CCAA. The second is the Directors' Charge of $1 million, which has been calculated with reference to their exposure during the initial ten day period. It will apply only if insurance is not available. I approve it under s. 11.51 of the CCAA.

[13] The third is the Intercompany Charge (and the related Intercompany Agreements pursuant to which DCL US buys the inventory from the Applicant and makes intercompany payments to the Applicant). I advised counsel that I was not prepared to approve those agreements or the charge in the initial order and that I did not see any reason that it needed to be included at this early stage. They have agreed to defer seeking that approval to the comeback hearing.

[14] I have reviewed the form of order with counsel. They have made the amendments that I required. Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

[15] Counsel are directed to file all materials with the court office and upload them to CaseLines forthwith.

[16] The comeback hearing on this matter is scheduled for **December 30, 2022 at 3 p.m. before me for one hour (confirmed with the Commercial List office)**.