



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 8 TH
)	DAY OF MAY, 2023
JUSTICE OSBORNE)	

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**")

EXPANSION OF MONITOR'S POWERS ORDER

THIS MOTION made by Alvarez & Marsal Canada Inc., in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, *inter alia*, (i) expanding the powers of the Monitor; (ii) changing the style of cause in these CCAA proceedings (the "**CCAA Proceedings**"); and (iii) granting related relief, was heard this day by judicial video conference via Zoom in Toronto, Ontario.

ON READING the materials filed, including the Notice of Motion and the Fifth Report of the Monitor dated May 3, 2023 (the "**Fifth Report**"), and on hearing submissions of counsel for the Applicant, the Monitor, and those other parties present, no one else appearing although duly served as appears from the affidavit of Marleigh Dick sworn May 4, 2023 filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and validated so that the Motion is properly returnable today.

2. **THIS COURT ORDERS** that any capitalized terms used and not defined herein shall have the meaning ascribed to them in (a) the Amended and Restated Initial Order granted on December 29, 2022 in the CCAA Proceedings (the “**Amended and Restated Initial Order**”); (b) the Approval and Vesting Order granted on March 29, 2023 in the CCAA Proceedings (the “**Approval and Vesting Order**”); or (c) the Second Amended and Restated Sale 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, as “US Sellers”, and Pigments Services, Inc. as “Purchaser” (including any permitted assignees, “**Pigments**”) as attached as Appendix “B” to the Fifth Report, as applicable.

RESERVES

3. **THIS COURT ORDERS** that the Canadian Designated Amount Portion shall be held by the Monitor in an interest-bearing account and used to conduct an orderly wind-down of the Applicant and to administer the CCAA Proceedings (and any subsequent proceedings) until completion. Subject to further Order of this Court, the Monitor shall have the sole discretion to administer the Canadian Designated Amount Portion in accordance with this Order and any other Orders of this Court in the CCAA Proceedings. The only Claim or Encumbrance that shall attach to the Canadian Designated Amount Portion is the Administration Charge.

4. **THIS COURT ORDERS** that the CCAA Cash Pool shall be held by the Monitor in an interest-bearing account for the benefit of the Applicant’s estate in the CCAA Proceedings, including any costs to administer the CCAA Proceedings, pending further Order of this Court. Any surplus amounts received by the Applicant pursuant to paragraph 5(l) hereof shall be deemed to form part of the CCAA Cash Pool. The only Claims and Encumbrances that shall attach to the CCAA Cash Pool are those Claims and Encumbrances set forth in paragraph 7 of the Approval and Vesting Order.

EXPANSION OF THE MONITOR'S POWERS

5. **THIS COURT ORDERS** that the Monitor, in addition to and without in any way limiting its powers set out in the Amended and Restated Initial Order, any other Order of this Court in the CCAA Proceedings, or under the CCAA or applicable law, is hereby authorized and empowered, but not obligated, *nunc pro tunc* to the Closing Date, to:

- (a) apply to this Court, on its own behalf or on behalf of the Applicant, for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order of this Court in the CCAA Proceedings, including for advice and directions with respect to any matter;
- (b) meet and consult with current or former management of (i) the Applicant and/or its affiliates; or (ii) Pigments and its affiliates, or any of their respective advisors, with respect to the carrying out of its powers and obligations under this Order or any other Order of this Court in the CCAA Proceedings;
- (c) receive, collect and take control of all property and assets owned or hereafter owned or owing to any of the Applicant, (i) which are not Purchased Assets for and on behalf of the Applicant and to sell or dispose of such property and assets in accordance with the Orders of this Court; and (ii) which are Purchased Assets for and on behalf of Pigments and to provide such property and assets to Pigments as applicable;
- (d) for and on behalf of the Applicant, to:
 - (i) perform, or cause the Applicant to perform, such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicant in dealing with any winding-up, dissolution, liquidation or other activities, including, without limitation,
 - (A) entering into any agreements or disclaiming any agreements; and
 - (B) taking any other action necessary or appropriate to affect a winding-up, dissolution or liquidation of the Applicant, including

withdrawing the Applicant from qualification in any jurisdiction to do business and executing, acknowledging or filing all necessary or appropriate certificates or other documents with the appropriate governmental agency or unit on behalf of the Applicant;

- (ii) take control of the existing bank accounts of the Applicant (the “**Bank Accounts**”) and the funds credited thereto or deposited therein including, but not limited to, closing any or all of the Bank Accounts, and/or transferring any funds received into these Bank Accounts, which are not Purchased Assets, to accounts held in the name of the Monitor; provided that, the Monitor shall endeavor to cause the Applicant to perform the obligations of the Applicant with respect to such Bank Accounts, including the payment of any fees or expenses arising in the ordinary course from the use of the accounts and obligations under the Transition Services Agreement (as defined in the Fifth Report). Nothing in this Order or anything done by the Monitor in furtherance of its duties as Monitor shall create any obligation or liability on the part of the Monitor in respect of any amounts owing by the Applicant on account of payment of such fees or expenses; and the financial institutions maintaining such Bank Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person. For greater certainty and except to the extent that any of the terms of the documentation applicable to the Cash Management System are inconsistent with the authorities granted to the Monitor pursuant to this sub-paragraph, nothing in this Order shall or shall be deemed to derogate from, limit, restrict or otherwise affect the protections granted pursuant to the Amended and

Restated Initial Order in favour of any bank providing the Cash Management System to the Applicant; and

- (iii) exercise any shareholder, partnership, joint venture or other right or power, contractual or otherwise, which the Applicant may have, including any right or power of the Applicant set out herein or in any Order of this Court in the CCAA Proceedings, including in connection with the Transition Services Agreement;
- (e) have access to all books and records that are the property of the Applicant in the Applicant's possession or control as of the Closing Date;
- (f) cause the Applicant to remit or file, or take such actions necessary for the preparation and remittance or filing of, on behalf of and in the name of the Applicant, (i) any tax returns; (ii) the Applicant's employee-related remittances, T4 statements and records of employment for the Applicant's former employees; and (iii) any sales taxes associated with the transaction contemplated by the Second Amended and Restated Sale Agreement that were delivered to the Monitor by Pigments for such purpose, in any case, based solely upon the information in the Applicant's books and records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documentation;
- (g) cause the Applicant to claim, or claim on behalf of the Applicant, any and all rebates, refunds, and other amounts of tax (including sales taxes, capital taxes and income taxes) paid or payable by the Applicant;
- (h) provide instructions to counsel to the Applicant on behalf of the Applicant in connection with the wind-down or post-Closing matters related to the Transaction;
- (i) have the authority to sign such agreements, instruments and other documents on behalf of the Applicant as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of the Applicant, including, without limitation, tax returns and tax filings;

- (j) take any and all corporate actions and actions regarding the governance of the Applicant and such actions taken by the Monitor are hereby authorized without requiring any further action or approval by any person, including any former directors or officers of the Applicant;
- (k) develop, facilitate and oversee a claims procedure for the identification and quantification of certain claims against the Applicant and the current and former directors and officers of the Applicant;
- (l) on behalf of the Applicant or on its own behalf, instruct and engage with any person regarding the Applicant's registered and non-registered pension, savings or retirement plans, and to the extent of any surplus assets held in connection with any of the Applicant's defined benefit pension plans, to apply for such assets to be allocated in accordance with each such plan's governing documents or as may otherwise be agreed with the applicable plan members or as ordered by the Court;
- (m) on behalf of the Applicant or on its own behalf, engage or continue to engage assistants or advisors or cause the Applicant to engage or continue to engage assistants or advisors as the Monitor deems necessary or desirable to carry out the terms of this Order, the Amended and Restated Initial Order or any other Order of this Court in the CCAA Proceedings, and such persons shall be deemed to be or shall continue to be "Assistants" under the Amended and Restated Initial Order;
- (n) pay from the Canadian Designated Amount Portion and the CCAA Cash Pool, in the name of and on behalf of the Applicant or in its own name, the fees, costs and expenses secured by the Administration Charge and/or incurred by the Monitor and the Applicant, in connection with post-Closing matters related to the Transaction, the wind-down of the Applicant and the administration of the CCAA Proceedings (and any subsequent proceedings) until completion; and
- (o) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and, in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the Applicant, and without interference from any person.

6. **THIS COURT ORDERS** that the Applicant is authorized, at the discretion of the Monitor and at such time as the Monitor may determine, if at all, to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”), and the Monitor is hereby authorized and empowered, but not obligated, to file any such assignment in bankruptcy for and on behalf of the Applicant, and to take any steps incidental thereto. Alvarez & Marsal Canada Inc. is hereby authorized and empowered, but not obligated, to act as trustee in bankruptcy in respect of the Applicant.

PROTECTIONS OF THE MONITOR

7. **THIS COURT ORDERS** that, without limiting the provisions of the Amended and Restated Initial Order; (a) the Monitor shall not take possession of the Property or Business and shall not be deemed to have taken possession of the Property or Business, or any part thereof; and (b) the Monitor shall be entitled to rely on the books and records of the Applicant without independent investigation.

8. **THIS COURT ORDERS** that the Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the CCAA, the Amended and Restated Initial Order and any other Order of this Court in the CCAA Proceedings and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in the fulfilment of its duties or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the powers of the Monitor as provided in the CCAA, the Amended and Restated Initial Order and the other Orders of this Court in the CCAA Proceedings.

9. **THIS COURT ORDERS** that, without limiting the provisions of the Amended and Restated Initial Order, all employees of the Applicant shall remain employees of the Applicant until such time as the employment of such employees is terminated.

10. **THIS COURT ORDERS** that nothing in this Order, and nothing done by the Monitor in carrying out its duties hereunder, shall result in, or be deemed to result in, the Monitor being an

employer, successor employer, responsible person, operator, officer, director, employee, receiver, trustee (unless assignments in bankruptcy are filed as contemplated by paragraph 6 hereof), assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Applicant, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the Monitor shall not, as a result of this Order, or anything done pursuant to its powers pursuant to this Order, be deemed to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and each of the respective regulations thereunder; provided however, if the Monitor is nevertheless found to be in possession of any Property, then the Monitor shall be deemed to be a person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the BIA and shall be entitled to the benefits and protections in relation to the Applicant and such Property as provided by section 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property.

11. **THIS COURT ORDERS** that the Monitor shall not be liable for any employment-related liabilities of the Applicant, including any successor employer liabilities as provided for in section 11.8(1) of the CCAA. Nothing in this Order shall cause the Monitor to be liable for any employment-related liabilities of the Applicant, including wages, severance pay, termination pay, vacation pay, and pension, retirement or benefit obligations, or amounts, in each case whether arising under statute, contract, collective bargaining agreement, common law or otherwise. Without limiting the foregoing, the Monitor shall not, as a result of this Order, or with respect to anything done pursuant to its powers pursuant to this Order, be (a) deemed to be the “administrator” of any of the Applicant’s pension, savings or retirement plans; (b) liable for any pension-related liabilities or costs of the Applicant; or (c) liable for the actions or inactions of any person instructed by the Monitor, or otherwise appointed, in connection with the Applicant’s pension, savings or retirement plans.

12. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court, under the Amended and Restated Initial Order or any other Order of this Court, the Monitor shall not incur any liability or obligation as a result of carrying out the provisions of this Order, save for gross negligence or wilful misconduct on its part, and the Monitor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on its part.

COOPERATION WITH THE MONITOR

13. **THIS COURT ORDERS** that Pigments and the Applicant, and their respective advisors and their current and former officers, directors, agents and representatives, shall reasonably co-operate with the Monitor in the exercise of its powers pursuant to this Order or any other Order of this Court in the CCAA Proceedings, and shall provide the Monitor with such reasonable assistance as the Monitor may request from time to time to enable the Monitor to carry out and discharge its powers as set out in this Order or any other Order of this Court in the CCAA Proceedings.

WAGE EARNER PROTECTION PROGRAM ACT

14. **THIS COURT ORDERS AND DECLARES** that that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 (“**WEPPA**”), the Applicant meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and the Applicant’s former employees are eligible to receive payments under and in accordance with WEPPA following the termination of their employment.

CHANGE OF STYLE OF CAUSE

15. **THIS COURT ORDERS** that the style of cause in the within proceedings be and is hereby amended to the following:

**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 1000156489 ONTARIO INC.**

AMENDED MONITOR'S CERTIFICATE

16. **THIS COURT ORDERS AND DECLARES** that, pursuant to and in accordance with the Effective Time Agreement (as defined in and attached as Appendix "C" to the Fifth Report), the date and time set forth in the Monitor's Certificate shall be and is hereby amended to be 11:59 p.m. (Toronto time) on April 14, 2023 (as amended, the "**Amended Monitor's Certificate**"), and the Monitor shall be hereby authorized and directed to serve the Amended Monitor's Certificate on the Service List and to file the Amended Monitor's Certificate with this Court, and the Monitor shall have no liability whatsoever with respect to the Amended Monitor's Certificate.

DISCHARGE OF CRO

17. **THIS COURT ORDERS** that Scott Davido, in his capacity as CRO, shall be and is hereby discharged from his duties as the CRO from and after Closing of the Transaction and shall have no further duties or responsibilities as CRO of the Applicant.

18. **THIS COURT ORDERS AND DECLARES** that the CRO shall each be and hereby is (a) deemed to have satisfied all of his duties and obligations pursuant to all Orders made in the CCAA Proceedings; and (b) released and discharged from any and all liability that the CRO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the CRO while acting in its capacity as CRO save and except any gross negligence or willful misconduct. Without limiting the generality of the foregoing, effective immediately after Closing of the Transaction, the CRO, shall be forever released and discharged from any and all liability

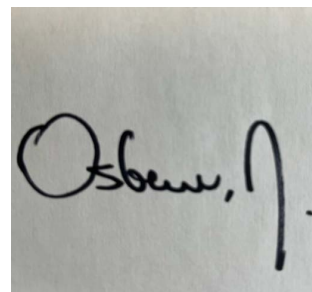
relating to matters that were raised, or which could have been raised, within the CCAA Proceedings, save and except for any gross negligence or willful misconduct on the CRO's part.

GENERAL

19. **THIS COURT ORDERS** that, except as may be necessary to give effect to this Order, the Amended and Restated Initial Order remains in full force and effect and in the event of a conflict between the terms of this Order and those of the Amended and Restated Initial Order, the provisions of this Order shall govern.

20. **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 office 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.

21. **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.

A rectangular stamp containing a handwritten signature in black ink. The signature appears to be "Osborne, J." with a stylized flourish at the end.

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**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**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

**EXPANSION OF MONITOR'S
POWERS ORDER**

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Counsel for Alvarez & Marsal Canada Inc., solely in
its capacity as Monitor of 1000156489 Ontario Inc.
(f/k/a DCL Corporation) and not in its personal or
corporate capacity