C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N°: 500-11-058116-209

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1995, c. 36, as amended)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

and

ERNST & YOUNG INC.

Monitor

and

EXPORT DEVELOPMENT CANADA

and

THIRD PARTIES LISTED IN THE ATTACHED SCHEDULE "A" BEING PARTY TO THE SPECIFIC ASSIGNED AGREEMENTS

Impleaded Parties

APPLICATION FOR I) THE ISSUANCE OF AN APPROVAL AND VESTING ORDER; II) THE ISSUANCE OF AN ASSIGNED CONTRACTS ORDER; AND III) A FIFTH EXTENSION OF THE STAY OF PROCEEDINGS

Sections 11.02 (2), 11.3 and 36 and of the *Companies' Creditors Arrangement Act R.S.C. (1985), c. C-36)* ("**CCAA**")

INTRODUCTION

1. By the present *Application for i) the issuance of an Approval and Vesting Order; ii) issuance of an Assigned Contract Order; and iii) a fifth extension of the stay of proceedings* (the "**Application**"), the Petitioners (the "**Spectra Group**") seek, inter alia:

   a. The issuance of the Approval and Vesting Order communicated as **Exhibit R-1**, in order to approve the sale outside the ordinary course of business of the Canadian Purchased Assets and the US Purchased Assets (as defined in the Asset Purchase Agreement and together the "**Purchased Assets**") representing substantially all of the Petitioners Spectra Premium Industries Inc. and Spectra Premium (USA) Corp.'s assets (collectively, the "**Sellers**") to Spectra Premium Mobility Solutions Canada Ltd. and Spectra Premium Mobility Solutions USA, LLC (collectively, the "**Purchasers**"), as contemplated and detailed in the Asset Purchase Agreement, communicated **UNDER SEAL** as **Exhibit R-2** (the "**Asset Purchase Agreement**" or the "**APA**");

   b. The issuance of the Assigned Contracts Order communicated as **Exhibit R-3**, in order to approve and order the assignment to the Purchasers of all the rights and obligations of the Sellers under and to the Specific Assigned Agreements (as defined in the Assigned Contracts Order); and

   c. The issuance of an order extending the Stay of Proceedings until April 30, 2022 (the "**Fifth Extension Order**" and together with the Approval and Vesting Order and the Assigned Contracts Order, the "**Orders**").

BACKGROUND

2. The Spectra Group are debtor companies in the Motion for the issuance of an Initial Order filed on March 9, 2020 (the "**Initial Motion**") for whom a First Day Initial Order under the *Companies' Creditors Arrangement Act* ("**CCAA**") was issued in this Court file on March 10, 2020 and an Amended and Restated Initial Order was issued on March 24, 2020 (the "**A&R Initial Order**"), as appears from the Court record.

3. The A&R Initial Order provided, *inter alia*, that all proceedings against Spectra Group were stayed until June 6, 2020.

4. On June 5, 2020, the Court issued an Order extending the stay of proceedings until September 26, 2020.

5. On September 25, 2020, this Court issued a Second Amended and Restated Initial Order (the "**Second A&R Initial Order**") ordering that the stay of proceedings be extended until January 30, 2021.

6. On November 19, 2020, this Court issued three (3) Approval and Vesting Orders with regards to the sale of the three (3) Spectra Premium Industries Inc.'s properties constituting the Debert plant.

7. On January 29, 2021, this Court issued a Third Order extending the stay of proceedings until May 31, 2021.

8. On May 31, 2021, this Court issued a Fourth Order extending the stay of proceedings until September 30, 2021.

9. Throughout its CCAA proceedings, Spectra Group, with the assistance of the Monitor, maintained communications with its suppliers and several other stakeholders advising them of the *status quo* resulting from the Second A&R Initial Order and of Spectra Group's continuous operations in the normal course of business.

ACTIVITIES SINCE THE LAST EXTENSION AND GO TO MARKET PROCESS

10. As previously communicated, Spectra Group's management finalized the details of its post restructuring business plan.

11. Accordingly, Spectra Group has continued to restructure its operations in order to realign its activities with its post restructuring business plan, as more fully detailed in the *Application for a Third Extension of the Stay of Proceedings* and the *Application for a Fourth Extension of the Stay of Proceedings*.

Bankruptcy of Spectra Premium AB (Sweden)

12. Although Spectra Premium AB ("**SPAB**") had been able to successfully complete a financial restructuring under the Swedish insolvency and restructuring laws (the "**Swedish Laws**"), in early April 2021, it received an early termination notice from Volvo Car Company for the existing gas tanks supply contract (the "**Volvo Contract**"), as of May 30, 2021.

13. In fact, SPAB completed the ongoing orders from Volvo under the Volvo Contract and ended its production operations in April 2021.

14. The Volvo Contract was SPAB's principal source of revenue and such unilateral early termination notice by Volvo had a dramatic effect on SPAB's future.

15. In May of 2021, SPAB decided to file for bankruptcy under the Swedish Laws considering the challenges it faced and the uncertainty of its short- and long-term future.

16. The trustee appointed under the Swedish Laws has undertaken to realise SPAB's assets and work in collaboration with Spectra Premium Industries Inc., a secured creditor of SPAB, and with Spectra Group's secured lenders, including EDC which holds security interests on specific equipment that were financed by a term loan granted to the Petitioner Spectra Premium Industries inc.

Go to Market Process

17. Furthermore, in February 2021, Spectra Group, with the assistance of its consultants and the Monitor, has put together a detailed restructuring action plan to secure exit financing through a transaction with a strategic partner/investor with a view to ultimately allow Spectra Group to submit a plan of arrangement to its creditors (the "**Go to Market Process**").

18. This Go to Market Process was aimed at identifying and attracting a majority partner for the Spectra Group's post-restructuring business ("**Spectra 2.0**").

19. More particularly, the Go to Market Process, which was completed as thoroughly as possible, aimed to solicit a wide array of both strategic and financial players within the industry to find a suitable equity partner with a strong level of interest in acquiring a majority equity stake in Spectra Group.

20. As a result, Spectra Group, with the assistance of its consultants and the Monitor solicited a total of 104 entities between April and May 2021.

21. Out of those 104 entities, 27 signed a non-disclosure agreement ("**NDA**") and received a confidential information memorandum ("**CIM**") and financial model.

22. Upon receiving the CIM and financial model, the 27 NDA signing entities performed their respective preliminary due diligence and analyses with the help of the Monitor and of Spectra Group's consultant, when and as requested.

23. Of the 27 NDA signing entities who received the CIM, 3 presented non-binding expressions of interest ("**EOI**") and were met by Spectra Group's management during the first week of June 2021 for presentations which were followed by an additional Q&A period until the June 18th, 2021, deadline for submission of non-binding Letters of Intent ("**LOI**").

24. On June 18th, 2021, after previous informal discussions with the three (3) parties that had filed an EOI, Spectra Group received a bid from Turnspire Capital Partners ("**Turnspire**"), for one or more entities to be formed, for the acquisition of substantially all of its assets on a going-concern basis, bid for which the LOI was eventually signed on June 30th, at the best possible terms and conditions in order to maximize value for all stakeholders of Spectra Group's assets.

25. In the course of August and September 2021, a confirmatory due diligence was undertaken by Turnspire and, in parallel, the terms and conditions of the APA were negotiated and finalized to be signed on September 17, 2021 by Spectra Group and by the Purchasers, newly constituted entities acting as designee of Turnspire.

26. The APA provides, *inter alia*, that :

a. substantially all of the Sellers' assets (with the exception of the Excluded Assets) are to be transferred to the Purchasers upon Closing;

b. several contracts of the Sellers will be assumed by the Purchasers, including the Specific Assigned Contracts which are to be specifically assigned to the Purchasers in accordance with the CCAA;

c. Spectra Group's main secured creditors, Wells Fargo Capital Finance Corporation Canada, in its capacity as administrative agent for itself and Canadian Imperial Bank of Commerce (collectively: "**Wells Fargo**") and Laurentian Bank of Canada, in its capacity as administrative agent for itself and Export Development Canada (collectively: "**LBC**") are to be repaid in full upon Closing;

d. In addition to the repayment of Wells Fargo and LBC, a portion of the purchase price will be paid in cash upon Closing (which will allow Spectra Group to pay some professional fees and certain obligations towards former employees);

e. The Purchasers will assume certain liabilities of the Sellers, including certain current liabilities to be confirmed prior to the Closing and the liabilities under the Specific Assigned Agreements, as further set out in the APA;

SECURITY INTERESTS AGAINST THE PURCHASED ASSETS

27. Spectra Group hereby files as **Exhibit R-4** a summary of the rights registered at the RPMRR in Quebec and other provinces of Canada.

28. As presented in the Initial Motion, Wells Fargo and LBC hold priority security interest over all assets of Spectra Group and the Monitor has confirmed the validity of their security interest.

29. Both Wells Fargo and LBC have been consulted with prior to the presentation of the present Application and are in agreement with the transaction contemplated in the APA (the "**Contemplated Transaction**").

30. EDC holds security interests on Spectra Group's assets to secure the repayment of a term loan in the amount of $6,100,000 granted to finance the purchase of equipment for the manufacturing line of SPAB in Sweden.

31. This third ranking security interest on Spectra Group's assets is in addition to a specific security interest on SPAB's financed equipment.

32. The proceeds of the Contemplated Transaction will be insufficient to repay EDC's claim secured by the third ranking security interests against Spectra Group's assets.

REASONS JUSTIFYING THE APPROVAL OF THE CONTEMPLATED TRANSACTION

33. Spectra Group submits that it is appropriate for this Court to approve the Contemplated Transaction as described in the APA, and that all conditions of sections 36 CCAA are met:

a. The Go to Market Process, which led Spectra Group to the Contemplated Transaction, as fully described above, represented an extensive exercise to identify a suitable equity partner and is reasonable in the circumstances;

b. The Monitor was involved at all steps of the Go to Market Process and approves of it;

c. Moreover, as will be confirmed in the 8th Report of the Monitor to be filed in support of the present Application before the hearing (the "**8th Report of the Monitor**"), the Contemplated Transaction is more beneficial to Spectra Group's stakeholders than a sale or disposition of the Purchased Assets under a bankruptcy;

d. As stated above, both Wells Fargo and LBC, Spectra Group's main secured creditors, have been consulted with prior to the presentation of the present Application and are satisfied with the fact that the Contemplated Transaction would have the effect of allowing Spectra Group to have their respective claims fully paid;

e. The consideration to be received for the Purchased Assets is reasonable and fair, taking into account that the thorough Go to Market Process resulted in only one bid, namely the one made by Turnspire;

f. Finally, and more importantly, although the Spectra Group as entities will remain under CCAA protection, the Contemplated Transaction allows the Spectra Group's business to emerge from CCAA protection and continue its operations as a solvent Spectra 2.0, to the benefit of the more than 700 employees, clients and suppliers of the Spectra Group.

34. As for the opportunity to sell the Purchased Assets, it is consistent with Spectra Group's Go to Market Process, as exposed to this Court on several occasions and more particularly since the *Third Extension of the Stay of Proceedings*.

35. Considering the post-COVID-19 economic reality and the fairly limited number of purchasers that would be interested in the Purchased Assets, as confirmed by the Go to Market Process results, it is submitted that the Contemplated Transaction is reasonable and fair in the circumstances.

SPECIFIC ASSIGNED AGREEMENTS

36. The Contemplated Transaction also provides for the assignment to the Purchasers by the Sellers of their rights and obligations under and to the Specific Assigned Agreements, as part of the going concern basis of the Contemplated Transaction.

37. The Specific Assigned Agreements are key for the Purchasers as their assignment will ensure their capacity to continue Spectra Group's operations in Spectra 2.0.

38. As such, the assignment of the Specific Assigned Agreements is specifically requested by the Purchasers pursuant to section 2.2 of the Asset Purchase Agreement and is a condition precedent to Closing as appears from section 4.1.4 of the APA.

39. The Monitor supports and approves of the Contemplated Transaction as well as the proposed assignment of the Specific Assigned Agreements, as will be detailed in the 8th Report of the Monitor.

40. Furthermore, as the Contemplated Transaction is made on a going concern basis and that the Purchasers will continue operating Spectra Group with the assistance of the same employees, the Purchasers are able to perform the obligations to be assigned to them under the Specific Assigned Agreements.

41. Consequently, Spectra Group represents to this Court that it is appropriate to assign the Sellers' rights and obligations under the Specific Assigned Agreements to the Purchasers.

42. Finally, Spectra Group also represents to this Court in relation to the Specific Assigned Agreements, that there will be no monetary defaults to be cured at closing which did not arise by reason of Spectra Group's insolvency or the commencement of the present CCAA proceedings.

43. In fact, the Purchasers have come to an agreement with Dream Industrial REIT, a counterparty to a Specific Assigned Agreement, pursuant to which they undertake to assume all the Sellers' obligations under said Specific Assigned Agreement, including the payment of all post filing rent and other amounts payable which include the Specific Assigned Agreement's cure costs to be paid as of September 2022 in equal monthly instalments until June 2025, as appears from confirmation letter from Dream Industrial REIT, **Exhibit R-5**.

44. Any and all parties to the Specific Assigned Agreements are added to the present CCAA proceedings' service list and are therefore duly notified with the present Application. For ease of reference, a list of the parties to the Specific Assigned Agreements is attached hereto as **Schedule "A"**. Should they intend to object to this Application and to the assignment of the Specific Assigned Agreements, we refer them to the notice of presentation attached hereto which provides for contestation modalities.

FINANCIAL SITUATION TO DATE AND PROJECTIONS

45. The details of Spectra Group's financial state as well as the cashflow forecast for the period ending April 30, 2022 are presently being finalized ("Cash Flow Period"). This information will be included in the 8th Monitor's Report and will be communicated to the Court and the Service List before the hearing on the present Application.

GROUNDS FOR THE EXTENSION OF THE STAY OF PROCEEDINGS

46. Spectra Group has acted in good faith and with due diligence since the issuance of the First Initial Order and continues to do so.

47. The Stay of Proceedings currently expires on September 30, 2021, and Spectra Group seeks an extension of the Stay of Proceedings until April 30, 2022 (the "**Fifth Extension Period**").

48. Spectra Group hereby submits that despite all stakeholders' best efforts in expediting the closing of the Contemplated Transaction and the issuance of the Certificate (as defined in the Approval and Vesting Order), the Fifth Extension Period is necessary and would give

enough time to the parties to complete all steps and tie up loose ends for the Contemplated Transaction to close and for the Certificate to be issued.

49. It will also allow Spectra Group to finalise with SPAB's trustee the ongoing liquidation of SPAB's assets.

50. The Fifth Extension Period sought will not negatively impact Spectra Group's creditors as it continues to satisfy for its post-filing obligations in the normal course of business.

CONCLUSION

51. Considering the above facts, Spectra Group submits that it is appropriate to render the Orders.

52. Spectra Group has conducted itself in good faith since the issuance of the First Day Order, especially considering the COVID-19 pandemic that started almost simultaneously with the First Day Order.

53. The Monitor supports the issuance of the Orders, as will appear from the 8th Report of the Monitor to be filed in support of this Application.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for i) the issuance of an Approval and Vesting Order; ii) issuance of an Assigned Contracts Order; and iii) a fifth extension of the stay of proceedings* (the "**Application**")*;*

ABRIDGE the delays of presentation of the Application;

ISSUE an Approval and Vesting Order in accordance with the draft Approval and Vesting Order communicated as **Exhibit R-1**;

ISSUE an Assigned Contracts Order in accordance with the draft Assigned Contracts Order communicated as **Exhibit R-3**;

EXTEND the Stay Period (as such term is defined in paragraph 8 of the Second Amended and Restated Initial Order dated September 25, 2020) until April 30, 2022.

THE WHOLE without costs, except if contested.

MONTREAL, September 20, 2021

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

AFFIDAVIT

I, the undersigned, DENIS CHABOT, Vice President and Chief Financial Officer of the Petitioners, having a place of business at 1421 Ampère Street, Boucherville, Québec, J4B 5Z5, solemnly affirm that:

1. I am the authorized representative of the Petitioners and, as such, I have cognizance of all the facts in the present matter.

2. All the facts alleged in the *Application for i) the issuance of an Approval and Vesting Order; ii) issuance of an Assigned Contracts Order; and iii) a fifth extension of the stay of proceedings* are true.

AND I HAVE SIGNED:

____

DENIS CHABOT

ASSERMENTÉ, ce 20 septembre 2021, devant moi par vidéoconférence Teams, à Longueuil et à St-Hubert m'ayant permis de reconnaître Denis Chabot, de le voir lire l'entièreté de la déclaration sous serment puis signer. Le document transmis par courriel est *Application for i) the issuance of an Approval and Vesting Order; ii) issuance of an Assigned Contracts Order; and iii) a fifth extension of the stay of proceedings*

____

Mélanie Brunet (#185028), Commissioner of Oaths for Province of Quebec

NOTICE OF PRESENTATION

TO: **THE SERVICE LIST**

TAKE NOTICE that the present *Application for i) the issuance of an Approval and Vesting Order; ii) issuance of an Assigned Contracts Order; and iii) a fifth extension of the stay of proceedings* will be presented for before the Honourable Justice Louis J. Gouin, S.C.J., **on September 28, 2021** at a time and in a forum to be further announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, September 20, 2021

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N°: 500-11-058116-209

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1995, c. 36, as amended)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

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-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

and

ERNST & YOUNG INC.

Monitor

LIST OF EXHIBITS

[*Application for i) the issuance of an Approval and Vesting Order; ii) issuance of an Assigned Contracts Order; and iii) a fifth extension of the stay of proceedings*]

Exhibit R-1: Draft Approval and Vesting Order;

Exhibit R-2: **UNDER SEAL**, Asset Purchase Agreement;

Exhibit R-3: Draft Assigned Contracts Order;

Exhibit R-4: Up-to-date summary of the rights registered at the RPMRR in Quebec as well as the UCC registrations in the state of Indiana and Delaware;

Exhibit R-5 Confirmation letter from Dream Industrial REIT.

MONTREAL, September 20, 2021

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

SCHEDULE "A"

LIST OF PARTIES TO THE SPECIFIC ASSIGNED AGREEMENTS

- Ford Motor Company
- Isuzu
- Autozone Parts, Inc.
- O'Reilly (Ozark Purchasing, LLC)
- BRP
- FCA Chrysler

Real Property Leases

- MVP (Imperial Square) Properties Inc.
- Kane Investment Corp.
- Baramy Investments Ltd.
- Neptune Properties Inc.
- Dream Industrial Twofer (GP) Inc.
- M.A. Commercial Centre Inc.
- KS Eastern Industrial Inc.
- Pensionfund Realty Limited
- 9150-6394 Québec Inc.
- Société Immobilière Bruno Roussin Inc.
- US Opco
- Indiana Becknell Investors 2011 LLC
- N.H.D. Developments Limited
- SREIT (Quest Montreal) Ltd.
- P.S. Atlantic Limited

IT Contracts

- Oracle or any of its Affiliates

- Creaform CCP or any of its Affiliates
- InnovMetric PolyWorks/Modeler or any of its Affiliates

Nº: 500-11-058116-209

S U P E R I O R   C O U R T
(Commercial Division)
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC. et al.
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AND

THIRD PARTIES LISTED IN THE ATTACHED SCHEDULE "A" BEING PARTY TO THE SPECIFIC ASSIGNED AGREEMENTS

Impleaded Parties

APPLICATION FOR I) THE ISSUANCE OF AN APPROVAL AND VESTING ORDER; II) ISSUANCE OF AN ASSIGNED CONTRACTS ORDER; AND III) A FIFTH EXTENSION OF THE STAY OF PROCEEDINGS, AFFIDAVIT, NOTICE OF PRESENTATION AND LIST OF EXHIBITS

ORIGINAL

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