C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

Nº: 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

APPLICATION FOR THE ISSUANCE OF AN ORDER EXPANDING THE POWERS OF THE MONITOR, AND FOR THE ISSUANCE OF OTHER ANCILLARY ORDERS

INTRODUCTION

1. By the present *Application for the issuance of an order expanding the powers of the Monitor, and for the issuance of other ancillary orders* (the "**Application**"), the Petitioners (the "**Spectra Group**") seek the issuance of an Order Expanding the Powers of the Monitor and Other Ancillary Orders, communicated as **Exhibit R-1**, in order to amend and expand the Powers of the Monitor as described in the Second A&R Initial Order (as defined below), and in an accessory manner, to terminate the present proceedings with respect only to the Petitioners *Spectra Premium Taiwan Co. Ltd.* ("**Spectra Taiwan**"), *Spectra Premium (Shanghai) Automotive Technical Services Co. Ltd.* ("**Spectra Shanghai**"), and *Spectra Premium (Chongqing) Automotive Services Co. Ltd.* ("**Spectra Chongqing**").

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 which 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*, i) that all proceedings against Spectra Group were stayed until June 6, 2020, ii) the appointment of Ernst & Young inc. as Monitor and, iii) listing and detailing the Powers of the Monitor, as defined therein.

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 modifying the A&R Initial Order, listing and confirming the Powers of the Monitor, and ordering, *inter alia*, that the stay of proceedings be extended until January 30, 2021 (the "**Second A&R Initial Order**").

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

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

8. On September 21, 2021, the Petitioners filed an *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 "**AVO Application**").

9. On September 28, 2021, this court issued i) an *Approval and Vesting Order* and ii) an *Assigned Contracts Order* as well as iii) a *Fifth Order Extending the Stay of Proceedings* until April 30, 2022.

10. Capitalized terms hereinafter have the meaning given to them in the September 28, 2021, Approval and Vesting Order or the Purchase Agreement, as defined therein.

<u>DEVELOPMENTS SINCE SEPTEMBER 28, 2021</u>

11. Although the Purchase Agreement contemplated that the Closing was to take place no later than October 31, 2021, certain issues (notably the set-up of the financing of the Purchasers) made it impossible for the Closing to take place within that time frame.

12. In the circumstances, the Sellers and the Purchasers, with the agreement of the Monitor, agreed to extend the time limit for the Closing to November 12, 2021.

13. Prior to the Closing, it came to the Petitioners' attention that upon said Closing, all members of the Spectra Group's boards of directors as well as their officer had the intention to resign with immediate effect, leaving no decision-making structure for any and all of the Spectra Group entities or any person authorized to act on their behalf (the "**Mass Resignation**").

14. The Closing effectively took place on November 12, 2021.

15. On that date and as announced, all members of the Petitioners' boards of directors (Michel Baril, Marc Di Maria, Marc Baillargeon and Denis Chabot) (the "**Directors**") and their officer (Henri-Paul Boyer), resigned, as appears from their respective resignation letters communicated *en liasse* as **Exhibit R-2**.

16. On the same day and before their resignations, the Directors signed a unanimous resolution pertaining to the present Application, authorising Mr. Denis Chabot to duly execute and deliver its supporting affidavit prior to his resignation, resolution communicated as **Exhibit R-3**.

<u>SPECTRA TAIWAN, SPECTRA SHANGHAI AND SPECTRA CHONGQING</u>

17. Moreover, with respect to the Petitioners Spectra Taiwan, Spectra Shanghai and Spectra Chongqing:

    a. The share capital of Spectra Taiwan was acquired by the Purchasers as contemplated in the Purchase Agreement;

    b. As reported to this Court in previous months, Spectra Shanghai and Spectra Chongqing were both liquidated and have been dissolved in accordance with applicable Chinese laws;

18. As such, the present CCAA proceedings for these Petitioners are now without object and should be terminated.

<u>REASONS JUSTIFYING THE EXPANDING OF THE POWERS OF THE MONITOR</u>

19. As provided in the Purchase Agreement and as convened by the Sellers and the Purchasers:

    a. substantially all of the Sellers' assets (with the exception of the Excluded Assets) were transferred to the Purchasers at Closing on November 12, 2021;

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

c. A portion of the purchase price was paid in cash at Closing (thereby allowing Spectra Group to pay some professional fees and certain obligations towards former employees after the Closing);

d. The Purchasers have assumed certain liabilities of the Sellers, including certain current liabilities and the liabilities under the Specific Assigned Agreements, in accordance with the Purchase Agreement.

20. As presented in the AVO Application, notwithstanding the Closing, the Spectra Group remains under CCAA protection and will still have to carry out and see through the present CCAA proceedings.

21. Furthermore, and as provided in the Purchase Agreement, upon Closing, only the Sellers have sold substantially all of their assets (with the exception of the Excluded Assets), leaving the other Spectra Group entities vested with their assets to be liquidated within the present CCAA proceedings, should there be any.

22. Moreover, the Sellers' Excluded Assets include, inter alia, the shares of Spectra Premium AB (Sweden) ("**SPAB**") or any assets owned by SPAB, and also include any claims or receivables of the Sellers against SPAB, up to Export Development Canada's secured claim and costs.

23. As presented in the AVO Application, SPAB decided to file for bankruptcy under the Swedish Laws and the trustee appointed under the Swedish Laws has undertaken to realise SPAB's assets and work in collaboration with one of the Sellers, Spectra Premium Industries Inc., a secured creditor of SPAB.

24. Furthermore, notwithstanding Closing, the Spectra Group and particularly the Sellers, still have several post-Closing items to carry out in order to finalize the transaction contemplated in the Purchase Agreement and approved by this Court, and the Sellers have entered into a *Transition Services Agreement* with the Purchasers in that regard and to ensure an orderly transition as well as winding-up of this CCAA matter, the whole for the benefit of all stakeholders.

25. Finally, as the Petitioners have no more commercial activities since the Closing, a dispense pursuant to section 23(d)ii) CCAA is hereby requested for the Monitor not to file reports to the Court.

CONCLUSION

26. Therefore, considering the Mass Resignation and the fact that none of the Spectra Group entities, including the Sellers, will be able to act in any shape or form now that the Closing occurred, particularly pertaining to the above mentioned situations, the Petitioners submit that it is appropriate for this Court to issue the proposed Order Expanding the Powers of the Monitor and Other Ancillary Orders communicated as Exhibit R-1, so that the Monitor be authorized by this Court to act on behalf of the Spectra Group, in a similar manner than a Court-appointed Receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act*,

including with respect to the vesting of the Spectra Group remaining assets with the Monitor.

27. It is also submitted that it is appropriate for this Court to order the termination of the present CCAA proceedings with respect to Spectra Taiwan, Spectra Shanghai and Spectra Chongqing in accordance with the terms of the proposed Order Expanding the Powers of the Monitor and Other Ancillary Orders (Exhibit R-1), considering the sale of Spectra Taiwan to the Purchasers and the dissolution of Spectra Shanghai and Spectra Chongqing under applicable Chinese laws.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for the issuance of an order expanding the powers of the Monitor and other ancillary orders* (the "**Application**")*;*

ISSUE an Order Expanding the Powers of the Monitor and Other Ancillary Orders in accordance with the draft filed as **Exhibit R-1**;

THE WHOLE without costs, except if contested.

MONTREAL, November 17,2021

Lavery De Billy

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

AFFIDAVIT

I, the undersigned, DENIS CHABOT, former Chief Executive 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 the issuance of an order expanding the powers of the Monitor and other ancillary orders* are true.

AND I HAVE SIGNED:

DENIS CHABOT

SOLEMNLY AFFIRMED before me on November 17, 2021, by videoconference Teams, in Montréal and Longueuil allowing me to recognize Denis Chabot, and witnessing him having read the motion and the sworn declaration and having signed it. The document transferred by email is *Application for the issuance of an order expanding the powers of the Monitor and other ancillary orders*

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

NOTICE OF PRESENTATION

TO: **THE SERVICE LIST**

TAKE NOTICE that the present *Application for the issuance of an order expanding the powers of the Monitor* will be presented for before the Honourable Justice Louis J. Gouin, S.C.J., on **December 3rd, 2021** at a time and in a forum to be further announced to the Service List.

Any party wishing to object to this motion shall file a notice of objection **no later than November 30, 2021, at 13:00 pm.**

If no one objects, judgment will be rendered without a hearing on December 3rd, 2021. If a notice of objection is filed, the coordinates will circulate for a hearing on December 3rd, 2021 at 9:30 am.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, November 17, 2021

Lavery De Billy

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

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LIST OF EXHIBITS
[*Application for the issuance of an order expanding the powers of the Monitor*]

Exhibit R-1: Order Expanding the Powers of the Monitor;

Exhibit R-2: *En Liasse*, Resignation letters;

Exhibit R-3: Directors’ Resolution.

MONTREAL, November 17, 2021

Lavery De Billy

LAVERY, DE BILLY, L.L.P.