

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-058116-209

DATE: June ____, 2023

PRESIDING: THE HONOURABLE LOUIS J. GOUIN, J.S.C.

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

4406443 CANADA INC. (fka Spectra Premium Industries Inc.)

-and-

4406443 PREMIUM HOLDINGS (USA) CORP. (fka Spectra Premium Holdings
(USA) Corp.)

-and-

4406443 PREMIUM (USA) CORP. (fka Spectra Premium (USA) Corp.)

-and-

4406443 PREMIUM PROPERTIES (USA) CORP. (fka Spectra Premium Properties
(USA) Corp.)

Debtors

-and-

ERNST & YOUNG INC.

Monitor

ORDER

- [1] **ON READING** the *Motion for the Issuance of (i) a Distribution Order, (ii) an Order Terminating the CCAA Proceedings, and (iii) Other Ancillary Orders* (the "**Motion**"), the affidavit and the exhibits in support thereof, including the ninth report of Ernst & Young Inc. (the "**Monitor**") dated June 20, 2023 (the "**Ninth Report**");
- [2] **GIVEN** the terms of the Initial Order of this Court dated March 10, 2020 (as amended and restated on March 24 and September 25, 2020, the "**Initial Order**"), the terms of the Claims Process Order dated September 25, 2020 (the "**Claims Process Order**"), and the provisions of the *Companies Creditors' Arrangement Act* (the "**CCAA**");
- [3] **GIVEN** the service of the Motion;
- [4] **GIVEN** that following the service of the Motion to the members of the Service List, no notices of contestation were received;
- [5] **GIVEN** that, under the present circumstances and in accordance with the provisions of the Initial Order, it was agreed that the Court would rule on the Motion on the fact of the submissions, the exhibits, and the affidavit filed in support thereof, including the Ninth Report;
- [6] **GIVEN** that, in the Court's opinion, no additional evidence is required or necessary to rule on the Motion;
- [7] **GIVEN** that it is appropriate to issue orders as requested in the Motion;

WHEREFORE THE COURT:

- [8] **GRANTS** the Motion and issues the present order (the "**Order**"), divided under the following headings:
- a) Service and Definitions;
 - b) Distribution of Proceeds;
 - c) Termination of the CCAA Proceedings;
 - d) Ancillary Orders;
 - e) Stay Period;
 - f) General.

SERVICE AND DEFINITIONS

- [9] **DECLARES** that the Monitor has given sufficient prior notice of the presentation of the Motion to interested parties.
- [10] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [11] **PERMITS** service of this Order at any time and place and by any means whatsoever.
- [12] **ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order or the Claims Process Order, as applicable.

DISTRIBUTION OF PROCEEDS

- [13] **ORDERS** that the Monitor be and is hereby authorized and directed, without any further Order of the Court, to distribute the amount specified hereunder from the proceeds held by the Monitor as a result of the realization of the remaining assets of the Debtors since November 2021, the whole subject to minor adjustments as to the amount indicated hereunder as may be deemed necessary by the Monitor upon receipt of final statements and claims, as applicable (the “**Final Distribution**”):
- (i) An amount of \$● to Export Development Canada;
- [14] **ORDERS** that notwithstanding the provisions of any federal or provincial legislation, including the *Bankruptcy and Insolvency Act* (the “**BIA**”) and the CCAA, the Final Distribution shall be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Debtors or the Monitor.

TERMINATION OF CCAA PROCEEDINGS

- [15] **ORDERS** that following the Final Distribution, the Monitor is hereby authorized and empowered to act on behalf of 4406443 Canada Inc. (“**4406443 Canada**”) for the purposes of filing a voluntary assignment of 4406443 Canada into bankruptcy pursuant to the BIA, and that nothing in this Order shall prevent the Monitor from acting as trustee in bankruptcy of 4406443 Canada (the “**Trustee**”).
- [16] **ORDERS** and **DECLARES** that, upon the issuance by the Official Receiver of a Certificate of Appointment in respect of the assignment in bankruptcy of 4406443 Canada (the “**Effective Date**”), the present proceedings under the

CCAA (the “**CCAA Proceedings**”) are terminated and discontinued, and the Debtors are discharged and released from these CCAA Proceedings, including any orders made therein.

- [17] **ORDERS** and **DECLARES** that upon the bankruptcy of 4406443 Canada on the Effective Date, the appointment of the Monitor, Ernst & Young Inc., in these CCAA Proceedings shall be automatically terminated and the Monitor discharged and released from any obligations under the Initial Order or any other Order of this Court in the CCAA Proceedings.

ANCILLARY ORDERS

- [18] **ORDERS** that the CCAA Charges, namely the Administration Charge, the KERP Charge (including the First Tranche KERP Charge and the Second Tranche KERP Charge), and the Directors’ Charge are terminated and discharged and shall be released and deleted as charges against the Property as of the Effective Date.
- [19] **ORDERS** that, prior to the Effective Date, Ernst & Young Inc. shall, in its capacity as proposed Trustee, maintain a retainer of \$150,000 in connection with its anticipated fees and disbursements and the anticipated fees and disbursements of its counsel in relation to such BIA proceedings, which retainer shall be held by Ernst & Young Inc. free and clear of any Claims, including Excluded Claims, against the Debtors. Following the conclusion of the bankruptcy of 4406443 Canada, any remaining amount held as retainer shall be remitted to Export Development Canada.
- [20] **ORDERS** that all unsecured Claims, excluding Scheduled Employees Claims, filed or deemed to have been filed in the present CCAA proceedings with respect to 4406443 Canada shall be used in the bankruptcy proceedings of 4406443 Canada, and a unsecured Creditor, excluding Scheduled Employees, who has filed, or has been deemed to have filed, a Proof of Claim in the present CCAA proceedings shall not be required to file an additional Proof of Claim in the bankruptcy of 4406443 Canada, unless such Creditor wishes to amend its Proof of Claim.
- [21] **DECLARES** that all actions of the Monitor from the date of its appointment to the time of their discharge under this Order are hereby approved, ratified and sanctioned.
- [22] **ORDERS** that as of the Effective Date, the Monitor and its advisors shall be and hereby are released and discharged from any and all claims that any Person may have or be entitled to assert against them, whether known or unknown, matured or unmatured, existing or hereafter arising, based in whole or in part on any act or omission in any way relating to, arising out of or in respect of the CCAA Proceedings or with respect to its conduct in connection therewith, save and except for any gross negligence or intentional fault on the part of the Monitor or its advisors.

- [23] **ORDERS** that any and all administrative matters relating to the CCAA Proceedings, which arise following the termination of the CCAA Proceedings and the Effective Date, may be brought before this Court for determination, advice and direction.
- [24] **ORDERS** and **DECLARES** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings and the discharge of the Monitor, the Monitor may carry out such functions and duties as may be incidental to the termination of the CCAA Proceedings and the transition to the bankruptcy of 4406443 Canada, or of the other Debtors if applicable, pursuant to any further order of this Court or as otherwise required. In carrying out such functions and duties, the Monitor shall continue to have the benefit of any and all protections granted in the CCAA Proceedings.
- [25] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [26] **ORDERS** and **DECLARES** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the rights, approvals and protections in favour of the Monitor pursuant to the Initial Order or any other order of this Court in these CCAA Proceedings, the CCAA or otherwise, all of which are expressly continued and confirmed.

STAY PERIOD

- [27] **ORDERS** and **DECLARES** that the Stay Period is extended until July 31, 2023, the whole subject to all the other terms of Initial Order, as amended, and the provisions of this Order.

GENERAL

- [28] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [29] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of *the U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

- [30] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
- [31] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.

, J.S.C.

Mtre Guillaume Michaud
Mtre Arad Mojtahedi
Norton Rose Fulbright Canada LLP
Attorneys for the Monitor, Ernst & Young Inc.