SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-066133-253

DATE: February 4, 2026

BY THE HONOURABLE ANDRES C. GARIN, J.S.C.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c. C-36 OF:

ATALLAH GROUP INC.
Debtor/Applicant
-and-
ATALLAH INTERNATIONAL INC.
-and-
9416-7145 QUÉBEC INC.
-and-
ATALLAH GROUP US INC.
-and-
ATALLAH GROUP LIMITED
-and-
ATALLAH GROUP EU SRL
Debtors
-and-
ERNST & YOUNG INC.
Monitor
-and-
9549-0348 QUÉBEC INC.
Impleaded Party/Proposed Purchaser
-and-
BANK OF MONTREAL in its capacity as administrative agent for itself and Royal Bank of Canada, JP Morgan Chase Bank, N.A., Toronto Branch, National Bank of Canada, The Bank of Nova Scotia, and JP Morgan SE
Applicant
-and-
ROYAL BANK OF CANADA
Applicant
-and-

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INVESTISSEMENT QUÉBEC
Créancière garantie
-and-
ARK TECHNOLOGIES PTY. LTD
-and-
CETTIRE LIMITED
Applicants
-and-
THE REGISTRAR FOR THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS (QUÉBEC)
Impleaded Party

JUDGMENT[1]
(On an Application for the Issuance of an Approval and Vesting Order; an Application for Confirmation that Certain Applicants are Phase 2 Qualified Bidders; and on an Application for Issuance of a Liquidation Sale Approval Order)

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1 Vu la nature urgente de l'affaire, le Tribunal estime que de retarder la signature du présent jugement dans l'attente de la version traduite entraînerait un retard préjudiciable à l'intérêt public et causerait une injustice et un inconvénient grave aux parties au litige. La Traduction suivra.

INTRODUCTION

[1] The *Companies' Creditors Arrangement Act*[2] (**CCAA**) is a reorganization statute. Originally adopted in 1933, its purpose is to permit insolvent corporations to continue to carry on business and, where possible, avoid the significant social and economic costs of a liquidation.[3]

[2] On September 12, 2025, I granted an Initial Order recognizing that six companies forming part of the Atallah Group—Atallah Group Inc., Atallah International Inc., 9416-7145 Québec Inc., Atallah Group U.S. Inc., Atallah Group Ltd. and Atallah Group EU SRL (collectively the **Debtors**)—were insolvent and met the statutory criteria for the issuance of an initial order under the CCAA. Pursuant to that Initial Order, Ernst & Young Inc. was appointed monitor (the **Monitor**).[4]

[3] The application seeking an initial order under the CCAA was brought by the Debtors. It was unopposed, notably by their senior secured creditors, a lending syndicate comprised of the Bank of Montreal, Royal Bank of Canada, JP Morgan Chase Bank, N.A. (Toronto Branch), National Bank of Canada, The Bank of Nova Scotia and JP Morgan SE (collectively the **Lenders**). The Debtors' indebtedness to the Lenders amounts to approximately $113 million. It is secured by first-ranking security over all of the Debtors' property, with the exception of certain assets over which their security is second ranking.

[4] On August 28, 2025, prior to the Debtors' application for an initial order and following the maturity and non-renewal of their credit facility, the Lenders had originally brought their own application under the CCAA. A period of intense negotiations between the Debtors and the Lenders followed that application. These culminated in the Debtors' uncontested application of September 12 that was brought before the Court.

[5] On that same date, I also issued an order authorizing the Monitor to launch a Sale and Investment Solicitation Process (**SISP**), aimed at selling the Debtors' business as a going concern. That business consists of an online retail platform that specializes in the sale of luxury fashion goods and accessories to consumers. The Debtors conduct their business under the trade-name SSENSE.

[6] On January 7, 2026, following the completion of the SISP, the Monitor determined that a successful bid for the acquisition of the Debtors' business as a going concern had

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2 RSC 1985, c. C-36.
3 *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para. 15 [***Century Services***].
4 An Amended and Restated Initial Order was issued on September 26, 2025.

been submitted by a party related to the Debtors. He recommends approval of the transaction contemplated by that bid (the **Proposed Transaction**).

[7] As a result, the Debtors have brought an application seeking the Court's approval of the Proposed Transaction and the issuance of a vesting order. That application is opposed by the Lenders. Unhappy with the value obtained under the SISP for the Debtors' assets, which constitute their security, they prefer an orderly liquidation of those assets. The Lenders have thus brought their own application seeking the issuance of a liquidation sale approval order or, subsidiarily, the appointment of a receiver under section 243 of the *Bankruptcy and Insolvency Act*.[5]

[8] In addition to being a member of the lending syndicate, pursuant to six leasing agreements with the Debtors, the Royal Bank of Canada (**RBC**) is also the lessor of equipment constituting the automation system (the **Automation System)** used by the Debtors in their fulfilment centre located 3665 Poirier Boulverard in St-Laurent, Quebec (the **Fulfilment Centre**). In this capacity as well, RBC opposes the Debtors' application and supports that of the Lenders.

[9] The Debtors' application is also opposed by Investissement Québec, who granted the Debtors a $21.3 million loan used to finance the automation of the Fulfilment Centre. Investissement Québec holds security ranking beneath the Lenders over all of the Debtors' property, with the exception of certain assets in the Fulfilment Centre over which it holds first-ranking security.

[10] On the other hand, a number of the Debtors' suppliers and unsecured creditors have advised the Court of their support for the Proposed Transaction.

[11] Finally, two participants in the SISP—Ark Technologies Pty. Ltd and Cettire Limited (collectively **Cettire**)—have brought an application challenging the Monitor's determination that Cettire is not a qualified Phase 2 Bidder. They seek recognition of that status and an order requiring the Monitor to hold an auction.

[12] This judgment thus deals with the following applications and contestations:

1. Cettire's *Application Seeking a Confirmation that the Applicants are Proper Phase 2 Qualified Bidder*;

2. The Debtors' *Application for the Issuance of an Approval and Vesting Order*;

3. *Notice of Contestation of the Debtors' Application for the Issuance of an Approval and Vesting Order by the Lenders Syndicate and Application of the Lenders*

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5 RSC 1985, c. B-3.

Syndicate for the Issuance of a Liquidation Sale Approval Order and For an Order Expanding the Powers of the Monitor or Subsidiarily Appointing A Receiver;

4. *Contestation of the Debtors' Application for the Issuance of an Approval and Vesting Order by the Royal Bank of Canada*; and

5. *Avis de contestation de Investissement Québec—Application for the Issuance of an Approval and Vesting Order*.

[13] For the reasons that follow, I have come to the conclusion that Debtors' application should be granted and that the Proposed Transaction should be approved. It follows that the various contestations of that application and the Lenders' application for a liquidation sale approval order ought to be dismissed. I have also concluded that Cettire's application should be dismissed.

[14] Prior to launching into an analysis of the various applications before me, it is necessary to explore the SISP followed by the Monitor and that has brought us to this juncture.

CONTEXT—THE SALE AND INVESTMENT SOLICITATION PROCESS

[15] The SISP authorized on September 12, 2025, contemplated two phases: Phase 1, during which qualified bidders would be identified, and Phase 2, consisting of the delivery of binding offers, a possible auction and ultimately an application for court approval of a successful bid.

[16] Originally, the SISP Procedures approved in my order set out the following timeline for Phases 1 and 2 of the SISP:

EVENT	KEY DATE
PHASE 1	
Solicitation Letter Monitor to distribute Solicitation letter to potentially interested parties	By no later than September 19, 2025
CIM and VDR Debtors with the assistance of the Monitor to prepare and have available for parties having executed the NDA (Potential Bidders) the CIM and VDR	By no later than September 22, 2025
Phase 1 Qualified Bidders & Bid Deadline	By no later than October 13, 2025, at 5:00 p.m. (prevailing Eastern Time)

Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the SISP Procedures)	
<u>Phase 1 Satisfactory Bid</u> Monitor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Satisfactory Bid.	By no later than October 17, 2025, at 5:00 p.m. (prevailing Eastern Time)
PHASE 2	
<u>Phase 2 Bid Deadline & Qualified Bidders</u> Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the SISP Procedures)	By no later than November 21, 2025, at 5:00 p.m. (prevailing Eastern Time)
<u>Auction(s)</u> Auction(s) (if required in accordance with the SISP Procedures)	Week of November 24, 2025
<u>Selection of final Successful Bid(s)</u> Deadline for selection of final Successful Bid(s)	By no later than December 2, 2025, at 5:00 p.m. (prevailing Eastern Time)
<u>Definitive Documentation</u> Completion of definitive documentation in respect of Successful Bid(s)	By no later than December 4, 2025, at 5:00 p.m. (prevailing Eastern Time)
<u>Approval Application – Successful Bid(s)</u> Filing of Approval Application in respect of Successful Bid(s)	Week of December 8, 2025
<u>Closing – Successful Bid(s)</u> Anticipated deadline for closing of Successful Bid(s)	Week of December 15, 2025, or such earlier date as is achievable
<u>Outside Date – Closing</u> Outside Date by which the Successful bid must close	December 23, 2025

[17] During Phase 1 of the SISP, the Monitor contacted 170 parties from various sectors in an attempt to interest them in a transaction involving the Debtors' business or

assets.[6] Fifty-one potential bidders executed non-disclosure agreements (**NDAs**), received a confidential information memorandum (**CIM**) and were given access to a confidential virtual data room (**VDR**) set up by the Monitor.[7]

[18] By the Phase 1 bid deadline, the Monitor received six non-binding letters of intent.[8] Four parties who had submitted Phase 1 Letters of Intent were invited to proceed to Phase 2.[9] Potential bidders expressed concerns, however, regarding the tight nature of the Phase 2 bid deadline. As a result, the Phase 2 milestones were changed twice as follows[10]:

PHASE 2			
Event	Initial Dates	Revised dates (as of November 17, 2025)	Revised dates (as of November 28, 2025)
Phase 2 Bid Deadline & Qualified Bidders Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the SISP Procedures)	By no later than November 21, 2025, at 5:00 p.m. (prevailing Eastern Time)	By no later than December 1, 2025, at 5:00 p.m. (prevailing Eastern Time)	By no later than December 8, 2025, at 5:00 p.m. (prevailing Eastern Time)
Auction(s)/Mandatory Auction	Week of November 24, 2025	By no later than December 8, 2025	By no later than December 15, 2025
Selection of final Successful Bid(s) Deadline for selection of final Successful Bid(s)	By no later than December 2, 2025, at 5:00 p.m. (prevailing Eastern Time)	By no later than December 10, 2025, at 5:00 p.m. (prevailing Eastern Time)	By no later than December 17, 2025, at 5:00 p.m. (prevailing Eastern Time)
Definitive Documentation Completion of definitive documentation in respect of Successful Bid(s)	By no later than December 4, 2025, at 5:00 p.m. (prevailing Eastern Time)	By no later than December 12, 2025, at 5:00 p.m. (prevailing Eastern Time)	By no later than December 19, 2025, at 5:00 p.m. (prevailing Eastern Time)
Approval Application	Week of	Week of	By no later than

6 Fourth Report of the Monitor, para. 36.2 and Appendix C (exhibit R-9).
7 *Ibid.*, para. 36.3.
8 *Ibid.*, Appendix D.
9 *Ibid.*, para. 41 and Appendix D.
10 Pursuant to section 4 of the approved SISP Procedures.

Successful Bid(s) Filing of Approval Application in respect of Successful Bid(s)	December 8, 2025	December 15, 2025	December 30, 2025
Closing – Successful Bid(s) Anticipated deadline for closing of Successful Bid(s)	Week of December 15, 2025, or such earlier date as is achievable	By no later than December 23, 2025	By no later than January 16, 2026
Outside Date Closing Outside Date by which the Successful bid must close	December 23, 2025	December 23, 2025	January 30, 2026

[19] On December 8, 2025, the Monitor received two binding offers from Phase 2 qualified bidders.[11] One offer was from 9549-0348 Quebec Inc., a company controlled by the founders of SSENSE, Messrs. Firas, Rami and Bassel Atallah (the **Founders**) and First Avenue Advisory Inc.[12] The second offer was received from Cettire.[13] Upon analysis, both offers were determined to be unacceptable.[14]

[20] With the support of the Lenders and their financial advisor, Deloitte, the Monitor decided to proceed with a relaunched SISP in accordance with the following timeline:[15]

Event	Dates
Phase 2 Bid Deadline & Qualified Bidders Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the SISP Procedures)	By no later than December 23, 2025, at 10:00 a.m. (prevailing Eastern Time) (the "Relaunched SISP Bid Deadline")
Auction(s)/Mandatory Auction Auction(s) (if required in accordance with the SISP Procedures)	By no later than December 30, 2025

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11 Fourth Report of the Monitor, para. 47.

12 *Ibid.*, Appendix E-1; see also Exhibit L-10. While First Avenue Advisory Inc. is not a founder of the Debtors, for ease of reference, it will be included among the Founders when discussing the bids presented by 9549-0348 Quebec Inc. and First Avenue Advisory Inc. Such bids will be referred to collectively as the "**Founders' Bids**". The December 23 bid will be referred to as the "**Founders' Bid**".

13 Fourth Report of the Monitor, Appendix E-2.

14 *Ibid.*, para. 48, Appendix E-3 and Appendix K.

15 *Ibid.*, paras. 52 and 53.

Selection of final Successful Bid(s) Deadline for selection of final Successful Bid(s)	By no later than January 6, 2026, at 5:00 p.m. (prevailing Eastern Time)
Definitive Documentation Completion of definitive documentation in respect of Successful Bid(s)	By no later than January 8, 2026, at 5:00 p.m. (prevailing Eastern Time)
Approval Application – Successful Bid(s) Filing of Approval Application in respect of Successful Bid(s)	By no later than January 15, 2026
Closing – Successful Bid(s) Anticipated deadline for closing of Successful Bid(s)	By no later than January 30, 2026
Outside Date – Closing Outside Date by which the Successful bid must close	February 13, 2026

[21] On December 12, 2025, the Monitor thus sent a letter to three qualified Phase 2 bidders who remained interested in the SISP. His letter sets out the process and timeline for the relaunched SISP.[16] Three days later, the Monitor held calls with each of these bidders in order to ensure that the rules and the timeline of the relaunched SISP were clear to all.[17]

[22] As a result of the relaunched SISP, on December 23, 2025, the Monitor again received two binding offers.[18] As was the case on December 8, 2025, one offer was made by the Founders[19] and the other by Cettire[20].

[23] Upon review, because the Cettire bid was conditional on financing, the Monitor determined that it did not comply with the SISP procedures and did not constitute a Phase 2 qualified bid.[21] The Founders' Bid, however, did so qualify. Given that a single Phase 2 qualified bid was received, the Monitor determined that no auction could be held.[22]

[24] For the reasons explored further below, the Monitor determined that the Founders' Bid should be selected as the successful bid in the relaunched SISP. He also recommends that the Proposed Transaction should be approved and that the Debtors' business should be sold as a going concern pursuant to that transaction.

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16 *Ibid.*, Appendix F (also Exhibit C-7).
17 *Ibid.*, para. 54.
18 *Ibid.*, para. 55.
19 *Ibid.*, Appendix G-1.
20 *Ibid.*, Appendix G-2.
21 *Ibid.*, para. 58.
22 *Ibid.*, paras. 59-60.

ANALYSIS

[25] In my analysis, I will first address Cettire's application seeking recognition as a Phase 2 qualified bidder. Indeed, the relief sought by Cettire, should it be granted, would preclude me from granting the orders sought by either the Debtors or the Lenders.

[26] As Cettire's application must be dismissed, I will then examine the competing applications of the Debtors and the Lenders.

1. CETTIRE'S APPLICATION FOR RECOGNITION AS A PHASE 2 QUALIFIED BIDDER

1.1 Cettire's Objection to the Monitor's Report

[27] The Fourth Report of the Monitor is dated January 14, 2026. It was received by the Court and the parties on the service list well after the close of business on January 14, a few hours in advance of the hearing scheduled to begin at 9 a.m. the next day. Cettire objects to the admission of the Fourth Report on the basis that the delay in receiving it prior to the hearing is unacceptably short.

[28] Cettire's objection will be dismissed. To begin with, while not to be encouraged, it is not infrequent in insolvency matters that material is served and filed shortly in advance of a scheduled hearing.

[29] Moreover and in any event, Cettire's interest in these proceedings is to have itself recognized as a Phase 2 qualified bidder and, should it be so recognized, to participate in an auction. Cettire bears the burden of proof on its application seeking that relief.

[30] The Monitor testified in response to Cettire's allegations and gave much the same evidence as that offered in his report. Indeed, he could have repeated verbatim the contents thereof. It follows that Cettire's objection serves no real purpose in respect of the Monitor's response to the various grounds advanced in its application.

[31] Beyond that, for the reasons explored below, Cettire has failed to establish that it should be recognized as a Phase 2 qualified bidder. As a result, it has no standing in the debate regarding the proper outcome of these CCAA proceedings, or to advance objections in the context of that debate.

1.2 The Cettire Bids

[32] As mentioned, Cettire participated in the original and relaunched SISP, presenting a non-binding Phase 1 letter of intent and Phase 2 binding offers during both the original and relaunched SISP.

[33] The value of Cettire's bids evolved significantly over the course of the SISP. Its Phase 1 non-binding letter of intent proposed a purchase price of $125 million.[23] Cettire's first Phase 2 binding offer, presented on December 8, 2025, proposed a purchase price of $60 million, but was conditional upon financing.[24] Its second Phase 2 binding offer, presented on December 23, 2025, was for $35 million, and again was subject to a financing condition.[25] Cettire indicated, however, that it was confident that it could lift the financing condition by January 6, 2026.[26]

[34] On December 29, 2025, Cettire wrote to the Monitor to advise that it would like to drop the financing condition in its bid.[27] That same day, counsel for Cettire wrote to the Monitor to advise that it had increased the purchase price in its bid from $35 million to $40 million.[28]

[35] In response, the Monitor wrote to Cettire indicating that any modifications made to Cettire's bid after the bid deadline of December 23 would not be considered.[29] The Monitor added that the Cettire bid was non-compliant, notably as a result of the financing condition. Finally, he advised that as only one compliant bid had been received by the bid deadline, no auction would be held.

[36] Cettire communicated its disagreement with the view that its bid should not be qualified both directly to the Monitor and through exchanges between counsel.[30] Nonetheless, on January 7, 2026, the Monitor formally advised Cettire that its bid was not compliant and that no auction would be held.[31]

1.3 Cettire's Grounds for Challenging the Monitor's Determination

[37] In oral argument, counsel for Cettire explained that his client did not challenge the SISP itself, but rather its execution by the Monitor. Cettire thus raises three grounds in support of its application that it should be declared a Phase 2 qualified bidder and that an auction should be held:

1. A document disclosed late in the due diligence process reveals that the SISP was skewed in the Founders' favour;

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[23] Exhibit C-2.
[24] Fourth Report of the Monitor, Appendix E- 2.
[25] *Ibid.*, Appendix G-2 (also exhibit C-9).
[26] *Ibid.* Cettire's bid indicates January 6, 202<u>5</u>. I take this to be a typographical error.
[27] Exhibit C-11.
[28] Exhibit C-12; testimony of D. Tozer.
[29] Exhibit C-13.
[30] *Ibid.*; Exhibits C-14 and C-15.
[31] Exhibit C-1.

2. The quality of the information provided during the due diligence process was unsatisfactory affecting the transparency of the SISP; and

3. The Monitor ought to have acted with greater flexibility with respect to modifications made to Cettire's bid after the bid deadline of December 23 and ought not to have disqualified its bid.

[38] The Monitor argues that Cettire has no standing to advance its complaints.[32] I need not decide this point as Cettire's grounds for challenging the execution of the SISP are not made out and its application to be declared a Phase 2 qualified bidder should be dismissed in any event.

[39] Lying in the background to Cettire's complaints about the execution of the SISP is the Founders' ability to force an auction under paragraph 31 of the SISP Procedures. Pursuant to that provision, in the event that the Founders submit a Phase 2 qualified bid and at least one other Phase 2 qualified bid is submitted, the identity of the other bidder or bidders and the terms of those bids are disclosed confidentially to the Founders, who may then require an auction:

> 31. Notwithstanding paragraph 30 hereof, if the Founders Lenders or any of their affiliates, or any person and/or entity related (directly or indirectly) thereto (each, a "Related Bidder") has submitted a Phase 2 Qualified Bid, and at least one other Phase 2 Qualified Bid is also submitted, the identity of the other Phase 2 Qualified Bidder(s) having submitted a Phase 2 Qualified Bid, together with the terms of such Phase 2 Qualified Bid(s), will be disclosed, on a confidential basis, to the Related Bidder having submitted a Phase 2 Qualified Bid, and Related Bidder will advise the Monitor whether it requires that an auction be conducted, in which case the Monitor shall be required to conduct an auction (a "Mandatory Auction") in accordance with paragraph 32 hereof and any other terms and conditions to be determined by the SISP Team, in consultation with Deloitte, that may be necessary or useful to give effect to the Auction or the Mandatory Auction.

[40] The ability to require an auction is not given to any other Phase 2 qualified bidders. Rather, it rests with the Monitor, who may decide to hold such an auction where more than one Phase 2 qualified bids have been received.[33]

[41] In order to participate in the SISP, Cettire agreed to be bound by the SISP Procedures.[34] The Founders' ability to require an auction was known by and evident to Cettire from the beginning of the process. Had Cettire considered that this unfairly

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32 See in this regard: *AbitibiBowater inc. (Arrangement relatif à)*, 2010 QCCS 1742, paras. 82-84 [***AbitibiBowater***].

33 SISP Procedures, section 30.

34 Testimony of D. Tozer.

advantaged the Founders—whose interim financing made the SISP possible, at least in part—it had but to refrain from participating in the SISP.

[42] Cettire's first ground relates to a document added to the VDR during Phase 2 and that it discovered by happenstance. This document is a term sheet between the Lenders, the Debtors and the Founders entitled Binding Term Sheet for Restructuring dated September 12, 2025 (**Restructuring Term Sheet**).[35]

[43] The term sheet contains an agreed debt "waterfall" and grants the Founders the ability to acquire the Lenders' term debt for nominal consideration. It further grants the Founders the ability to credit bid residual indebtedness owed to the Lenders by paying them a cash equivalent of a defined portion of that debt. Cettire argues that the Founders' ability to acquire and credit bid portions of the Lenders' debt confers an unfair advantage on the Founders.

[44] The complaint is essentially twofold: (1) the Restructuring Term Sheet ought to have been disclosed at the inception of the SISP and not added to the VDR belatedly in November; and (2) it unfairly advantages the Founders.

[45] As for the first complaint relating to lack of transparency, Cettire was made aware of the Restructuring Term Sheet before it made its initial Phase 2 binding offer. Upon discovery of the Restructuring Term Sheet, Cettire complained to the Monitor about the unfairness resulting from the advantage it conferred on the Founders.[36] At the time, Cettire could have raised its concerns with the Court. It chose not to do so and rather to proceed by making Phase 2 binding offers, which happened not to comply with the SISP Procedures.

[46] In short, Cettire had access to the Restructuring Term Sheet prior to making its binding offers, did nothing to bring its complaints to the Court's attention in a timely fashion and elected rather to continue to participate in the process. Its complaints of lack of transparency relating to the Restructuring Term Sheet come far too late in the day.

[47] In argument, counsel for Cettire suggested that there was a link between the discovery of the Restructuring Term Sheet and the drop from $125 million in its non-binding Phase 1 letter of intent to $60 million and subsequently $35 million in its Phase 2 bids.

[48] I reject the link suggested by counsel.

[49] Indeed, in his testimony, Cettire's representative explained that the offer fluctuation related to the size of the Debtors' inventory—which was larger at the beginning of the process—and to changes in its composition, the inventory tail now being worse and

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35 Exhibit C-5.
36 Exhibit C-6.

longer than expected.[37] He added that the $60 million bid was dictated by the difficulty in obtaining financing on account of SSENSE's insolvency and the "taint" that now attached to its name. As for the reduction from $60 million on December 8, to $35 million on December 23, he explained that this was in part tactical, to tie up unconditional financing, and based on the assumption that an auction would be held.

[50] With respect to the second complaint and the claimed unfairness resulting from the Restructuring Term Sheet, the ability of the Founders to acquire and credit bid the Lenders' term debt was agreed to as between the Founders and the Lenders during the process leading up to the Debtors' uncontested application under the CCAA. Any advantage it confers upon the Founders is wholly theoretical in the circumstances of the present case.

[51] Indeed, the SISP Procedures expressly provide for the possibility of credit bidding by a party holding valid and enforceable security over the Debtors' property. The ability to credit bid is subject, however, to certain conditions. Notably, pursuant to section 40 of the SISP Procedures, the transaction contemplated by the bid must provide for the full repayment of debt that is senior to that held by the party making the credit bid:

> **Credit Bidding**
>
> 40. Any party or parties holding a valid and enforceable security interest or hypothec that may be set up against third parties and which encumbers any of the property forming part of the Business (an "**Enforceable Lien**") may credit bid the amount of debt secured by such Enforceable Lien as part of any transaction contemplated by these SISP Procedures; provided, however, that (i) any credit bid must be deposited in accordance with the terms and conditions of these SISP Procedures and that (ii) such transaction shall also provide for the repayment in full in cash on the date of closing of any and all obligations secured by an Enforceable Lien against the Property that is to be acquired under such transaction that are senior to the Enforceable Lien held by the party submitting such credit bid, unless the holder of any such senior Enforceable Lien otherwise agrees. Nothing contained in this paragraph is intended to, or shall, alter or amend the rights, terms or obligations under any intercreditor agreement or indenture.
>
> [Emphasis added.][38]

[52] It is obvious from the SISP Procedures and from the Initial Order that a credit bid by the Founders was a possibility. Indeed, the Initial Order approves an interim credit facility advanced by the Founders in the amount of $25 million, which is secured by a charge on the Debtors' property.[39] The Initial Order further provides that the charge securing the Founders' interim financing ranks below all the other CCAA charges created

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37 Testimony of D. Tozer.
38 SISP Procedures, section 40.
39 Initial Order, paras. 44 and 47.

by the Initial Order.[40] Moreover, pursuant to the Initial Order, that charge further ranks below an $80 million tranche of the Lenders' debt.[41]

[53] Accordingly, in order to credit bid its interim credit facility, the Founders would have to present a bid that provided for full repayment in cash of all obligations ranking above that credit facility as follows:

1. The Administration Charge ($850,000);
2. The *Charge intérimaire des prêteurs* ($3,700,000);
3. The Directors and Officers' Charge (a maximum of $7,400,000, but estimated by the Monitor to amount to $3,500,000[42]);
4. The KERP charge (a maximum of $2,500,000, but with a remaining balance estimated at $1,750,000[43]);
5. The Lenders' interim financing ($15,000,000); and
6. A tranche of the Lenders' credit facility ($80,000,000).[44]

[54] It follows that, on the face of the SISP Procedures and the Initial Order, in order to credit bid its own interim credit facility of $25 million and *before* credit-bidding the Lenders' term debt, the Founders' bid would have to provide for the cash repayment of more than $100 million in higher-ranking obligations.

[55] Significantly, the Lenders' term debt and the residual indebtedness that the Founders may credit bid under the term sheet complained of by Cettire, ranks below the Founders' interim credit facility. This signifies that the Founders' ability to credit bid that debt comes into play only in the event of bids involving cash recovery many tens of millions of dollars in excess of any of the Phase 2 bids received by the Monitor.

[56] In other words, for the Founders' ability to credit bid a portion of the Lenders' debt to pose a problem to Cettire, its own bid would have to be for an amount far greater than what it offered on December 23, even as increased on December 29. Equally, the cash portion of the Founders' bid would have to be far superior to what is found in its Phase 2 bid under the relaunched SISP. Based on the evidence, I do not find it probable that

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40 *Ibid.*, para. 74.
41 *Ibid.*, para. 75.
42 See Exhibit L-6, p. 10/11.
43 See Exhibit L-4, p. 8/81.
44 Initial Order, paras. 40, 56, 59, 72, 74 and 75.

Cettire or the Founders would make cash bids of a level such that the Founders' ability to potentially credit bid the Lenders' debt might be engaged.[45]

[57] In view of the foregoing, I do not accept Cettire's complaints in respect of the Restructuring Term Sheet.

[58] Cettire's second ground asserts that the information received for due diligence purposes was not of the quality expected and negatively impacted on its ability to work on and prepare its bid. Moreover, certain due diligence questions were never answered or incompletely answered.[46]

[59] The Monitor explains that the vast majority of Cettire's due diligence questions were answered.[47] He adds that Cettire had meetings with management, the Lenders, the landlord, had five site visits and participated in four due diligence meetings. In short, the Monitor's interactions with Cettire mirrored those it had with other participants.[48]

[60] I appreciate that the information provided to Cettire may not have met its expectations and posed challenges for it with respect to obtaining financing. That said, the evidence does not show that it was treated unfairly in this respect as compared to any other participant in the SISP.

[61] Cettire's final ground takes issue with the Monitor's refusal to consider post deadline modifications to its bid, notably the lifting of the financing condition on December 29.

[62] There can be no question that Cettire's December 23 bid was non-compliant. Subparagraph 24(d) of the SISP Procedures provides that a binding offer will only be considered as a Phase 2 qualified bid if it "is not subject to any due diligence or financing condition". Moreover, the Monitor's letter of December 12 to Cettire expressly indicates that the bid deadline would be December 23,[49] and that binding offers "should be on an all-cash basis without financing conditions". This requirement was reiterated orally to Cettire and its counsel in a call with the Monitor on December 15.

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45 Exhibit C-17 suggests that Cettire was willing to offer up to $80 million. Assuming that Cettire could obtain financing for that amount, and assuming that the Founders could match such a bid (there being no evidence on this point), we are still well short of a bid that could engage the unfairness that Cettire complains of.

46 Exhibit C-4.

47 Fourth Report of the Monitor, para. 97.

48 *Ibid.*, paras. 104-105.

49 Exhibit C-7. In his testimony, the Monitor explained that the December 23 date was chosen in part due to the fact that Cettire's initial Phase 2 binding offer of December 8 indicated that the bidder was confident that it financing condition could be lifted by December 23, 2025. See Fourth Report of the Monitor, Appendix F-2.

[63] Nevertheless, Cettire's December 23 binding offer was conditional on financing and was thus non-compliant.

[64] Given that Cettire's bid was manifestly non-compliant with the SISP Procedures, the true issues are whether the Monitor had the flexibility to consider post-deadline modifications and, if so, whether he ought to have allowed Cettire to modify its bid after the December 23 deadline.

[65] In this regard, Cettire mentions that the Monitor made numerous modifications to the SISP, including twice extending the Phase 2 timeline and even extending the deadline for selecting the successful bid pursuant to the relaunched SISP from January 6 to January 7, 2026.[50] Cettire relies, in particular, on the Monitor's ability to seek clarifications and negotiate amendments to binding offers. Paragraph 26 of the SISP Procedures explicitly gives this power to the Monitor:

> 26. The SISP Team, in consultation with Deloitte, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.

[66] The Monitor's position is that the flexibility conferred by this provision may only apply to binding bids that are otherwise compliant with the requirements of paragraph 24 of the SISP Procedures and that are submitted by the bid deadline.[51] In his view, the provision does not, however, allow him to accept substantive changes or waive fundamental requirements after the bid deadline. According to the Monitor, doing so would undermine the integrity and fairness of the SISP.

[67] In support of his position, the Monitor notes that the SISP Procedures gives him the ability to waive compliance with the Phase 1 non-binding letter of intent minimum requirements,[52] but no such power is found in the SISP Procedures in respect of Phase 2. The Monitor adds that when deadlines were extended during the SISP, these were always done prior to their expiry.

[68] I appreciate the challenges faced by Cettire in obtaining financing for its bid and in being able to make a bid that was free from conditions. Nonetheless, even assuming that the Monitor had the authority to consider post-deadline bid modifications aimed at making a bid compliant or at improving it, his refusal to do so in the present case was amply justified.

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50 Exhibit C-16.
51 Fourth Report of the Monitor, Appendix-M.
52 *Ibid.*, Appendix B, paras. 16 and 17.

[69] Not only was Cettire's bid non-compliant on account of the financing condition, from the Monitor's perspective there were other considerable problems with the bid. Most significantly, the bid also contemplated a downward adjustment of the purchase price based on the Debtors' inventory.[53] No particular wording for the adjustment was proposed in the bid and the terms of the price adjustment clause remained to be negotiated.

[70] While Cettire's wish to include such an adjustment is understandable, given that the value of the Debtors' business for Cettire lies in its inventory, the prospect of a price adjustment, notably based on a clause of unknown content, deprives its bid of the certainty required by the Monitor. In this regard, the Cettire bid also required an inventory count, which further contributed to unacceptable price uncertainty for the Monitor.

[71] Moreover, in his December 12 letter announcing the relaunched SISP sent to potential bidders, including Cettire, the Monitor writes:

> In the spirit of providing all interested parties with an equal opportunity <u>to put their best foot forward</u>, the Monitor, in consultation with the Debtors, Deloitte, the Lenders and the Agent, has decided to provide Phase 2 Qualified Bidders that remain interested in the Opportunity with <u>an ultimate and limited opportunity to confirm, submit, revise and/or improve a Binding Offer</u> (the "Relaunched SISP").
>
> [Emphasis added.][54]

[72] Cettire seems to have disregarded what the Monitor invited it to do. Instead of putting its "best foot forward" or making an improved offer, Cettire made a non-compliant bid for a purchase price that was $25 million lower than its initial Phase 2 bid in the hope and expectation that there would be an auction. In doing so, Cettire assumed the risk that its bid would not qualify.

[73] The Monitor was thus faced with a non-compliant, reduced bid with price uncertainty. In the circumstances, to the extent he had any discretion to consider post deadline modifications to Cettire's bid, the Monitor cannot be faulted for not exercising that discretion.[55] Cettire's application will thus be dismissed.

2. <u>THE APPLICATIONS FOR APPROVAL OF THE PROPOSED TRANSANCTION OR FOR AN ORDERLY LIQUIDATION OF THE DEBTORS' ASSETS</u>

[74] I turn now to the competing applications for approval of the Proposed Transaction or for an orderly liquidation of the Debtors' business.

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53 *Ibid.*, Appendix G-2.

54 Exhibit C-7.

55 See by analogy: *Central America Nickel inc. v. North American Lithium inc.*, 2021 QCCA 1186, paras. 18-20 [***Central America Nickel***].

2.1 The Approval of an Asset Sale under the CCAA: Governing Principles

[75] Pursuant to subsection 36(1) CCAA, a company subject to an order under that statute requires the authorization of the Court to sell or dispose of its assets outside the ordinary course of business. Subsection 36(3) CCAA provides a non-exhaustive list of six factors to be considered when deciding whether to approve such a transaction:

> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[76] As recognized by the case law, these factors largely reflect the principles identified in the Ontario Court of Appeal's seminal 1991 judgment in *Soundair*.[56] In his reasons, Galligan J.A. discusses the court's role when examining the conduct of a receiver charged with selling an insolvent business as a going concern:

> 1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.
>
> 2. It should consider the interests of all parties.
>
> 3. It should consider the efficacy and integrity of the process by which offers are obtained.
>
> 4. It should consider whether there has been unfairness in the working out of the process.[57]

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56 *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R.(3d) 1 (Ont. C.A.) [***Soundair***]; *Central America Nickel*, *supra*, para. 15; *Pride Group Holdings Inc. et al.*, 2024 ONSC 5908, para. 12 [***Pride Group***]; *Terrace Bay Pulp Inc. (Re)*, 2012 ONSC 4247, paras. 43-44 [***Terrace Bay***]; *Cameron Stephens Mortgage Capital Ltd. v. Conacher Kingston Holdings Inc.*, 2025 ONCA 732, para. 33 [***Cameron Stephens***].

57 *Soundair*, *supra*, p. 6.

[77] The *Soundair* principles are applicable to monitors appointed under the CCAA.[58] The case law further recognizes that, in the absence of evidence that a proposed sale transaction is improvident or that there has been an abuse of process, considerable deference ought to be afforded to a monitor's business judgment and opinion.[59]

[78] As the Proposed Transaction involves a related party, pursuant to subsection 36(4) CCAA, two further criteria must be satisfied for the issuance of an approval order:

> (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
>
> (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.[60]

[79] Prior to examining the application of section 36 CCAA and the *Soundair* principles to the Proposed Transaction, it is necessary to review the Founders' Bids and the Proposed Transaction itself, as well as the various liquidation scenarios explored by the parties.

2.2 The Founders' Bids and the Monitor's Recommendation

[80] As noted, on December 8, 2025, the Founders presented a Phase 2 binding offer.[61] That bid, which offered a cash payment of $20 million, was deemed unacceptable by the Monitor as the consideration offered was inadequate.[62] On December 12, the Founders were invited by the Monitor to submit an improved bid in the relaunched SISP.

[81] Accordingly, on December 23, 2025, the Founders submitted a second bid.[63] The Founders' Bid envisages the continued operation of the Debtors' business as a going concern. It offers a cash payment of $58.5 million and the assumption of certain liabilities, including cure costs in respect of assumed contracts estimated at $18.2 million.[64] The Monitor is of the view that the value of the Founders' Bid is approximately $78 million.[65]

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58 *Calpine Canada Energy Limited (Companies' Creditors Arrangements Act)*, 2007 ABQB 49, para. 29.

59 *Soundair*, *supra*; *Arrangement relatif à Elna Medical Group Inc./Groupe médical Elna inc.*, 2025 QCCS 1329, para. 10; *Cameron Stephens*, *supra*, para. 31; *AbitibiBowater*, *supra*, paras. 70-71; *Boutiques Euphoria inc. (Arrangement relatif à)*, 2007 QCCS 7128, paras. 90-95; *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920, para. 28 (leave to appeal denied : 2015 QCCA 1920).

60 See: *McEwan Enterprises Inc.*, 2021 ONSC 6878, para. 51.

61 Fourth Report of the Monitor, Appendix E-1.

62 *Ibid.*, Appendix K.

63 *Ibid.*, Appendix G-1.

64 *Ibid.*, para. 77.

65 Testimony of M. Rosenthal.

[82] As noted by the Monitor, the Founders' Bid is for the purchase on an "as is, where is" basis of almost all of the Debtors' assets, including inventory and accounts receivables, but with the exception of cash and cash equivalents and intercompany accounts receivables.[66] Also excluded is equipment subject to leasing agreements with RBC.[67] The Monitor was further advised by the Founders that they expected to maintain employment of approximately 660 regular employees and 100 occasional on-call employees.[68]

[83] The Monitor has determined that the Founders' Bid pursuant to the relaunched SISP is the successful bid and recommends that the transaction contemplated by that bid be approved. In his view, the Founders' Bid is the only and best Phase 2 qualified bid received in accordance with the relaunched SISP and, in the circumstances, the Proposed Transaction represents the best outcome for the Debtors and all stakeholders.[69] In his testimony, the Monitor recognized that the Founders' Bid was low. Nonetheless, according to the Monitor:

> 90. The proposed transaction contemplated in the [Asset Purchase Agreement] is beneficial to the stakeholders of the Debtors in that it will, among other things, allow for a maximization of the realization value of the Debtors' assets for the benefit of the Debtors' creditors, while also providing for the continuation of the business of the Debtors' as a going concern and, in doing so, a significant portion of their employees (i.e. approximately 760 employees) will be retained, its economic activities in Québec will be maintained and further developed, and several hundred of the Debtors' suppliers will benefit from the continuation of their business relationship with the Ssense Group;[70]

[84] In the event that I was inclined not to approve the Proposed Transaction, the Monitor initially suggested that a mandatory auction be held to give parties one final opportunity to put their best foot forward.[71] As the hearing progressed, however, on January 29, the Monitor advised me that an auction was no longer a viable alternative for a variety of reasons. Notably, the Monitor informed me that an agreement among the various parties to be bound by the results of an auction and to set a floor price for such auction could not be achieved.

[85] Despite the Monitor's recommendations, approval of the Proposed Transaction is opposed by the Lenders, by Investissement Québec and by RBC in its capacity as lessor of certain equipment used by the Debtors in their Fulfilment Centre. With the support of Investissement Québec and RBC, the Lenders thus seek an order providing for the orderly liquidation of the Debtors' business or, subsidiarily, the appointment of a receiver.

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66 Fourth Report of the Monitor, para. 71.1.
67 Exhibit R-3A, Schedule "B".
68 Fourth Report of the Monitor, para. 71.3 and Appendix G-1.
69 *Ibid.*, para. 89.
70 *Ibid.*, para. 90.
71 *Ibid.*, para. 92.

2.3 The Liquidation Scenarios

[86] At the beginning of Phase 1 of the SISP, the Monitor sent a teaser to many parties who might be interested in a transaction involving the Debtors' assets or business. These potentially interested parties included seven liquidators.[72] None of the liquidators so contacted by the Monitor presented a letter of intention during Phase 1 of the SISP or, for that matter, a bid during Phase 2.

[87] Nonetheless, in December 2025, the Monitor determined that he should consider an orderly liquidation scenario as a possible outcome under the CCAA. In this regard, he contacted a liquidator, Tiger Valuation Services (**Tiger**),[73] to obtain its assessment of the net orderly liquidation value (**NOLV**) of the Debtors' inventory.[74]

[88] A net orderly liquidation would involve the sale of the Debtors' inventory to consumers through its existing website at discounted prices. It may be contrasted with a forced liquidation which would involve the sale of that inventory to wholesalers at deeply discounted prices.

[89] On December 19, 2025, Tiger provided the Monitor with its estimation.[75] Based on inventory valued at cost at $177 million, it estimated gross orderly liquidation receipts of $139.2 million. After deduction of liquidation expenses of approximately $63.8 million, Tiger estimated a NOLV of $75.4 million.

[90] Subsequently, on January 2, 2026, Tiger further provided the Monitor with its assessment of the main factors that might cause the results of a liquidation of the Debtors' inventory to be materially different from its December 19 assessment.[76] These include:

- Uncertainty as to consumer response to the discounts offered;
- The duration of the liquidation sale term and its impact on liquidation expenses;
- Uncertainty as to retention of key employees and management;
- Uncertainty as to access to the Debtors' marketing and shipping service providers;
- Possible disruption of information technology services; and

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72 *Ibid.*, para. 36.2 and Appendix C.
73 Tiger was one of the liquidators to whom the Monitor's teaser was sent during Phase 1 of the SISP.
74 Fourth Report of the Monitor, Appendix H.
75 *Ibid.*, Appendix H, Exhibit B.
76 *Ibid.*

- Interference from luxury brands unwilling to see their products sold in the context of a liquidation.[77]

[91] In its January 2 assessment, Tiger further estimated that the net forced liquidation value (**NFLV**) of the Debtors' inventory would be 15% to 20% of its cost. Based, on the Founders' Bid submitted in the relaunched SISP and the liquidation scenarios obtained from Tiger, the Monitor projected that the net proceeds from the realization of the Debtors' assets were as follows:[78]

Founders' Bid	Tiger NOLV	Tiger NFLV
$60,683,000	$96,647,000	$52,014,000

[92] In the Monitor's view, the Founders' Bid was superior to an orderly liquidation scenario as it provides certainty regarding the quantum and receipt of the purchase price as compared to a liquidation, which involved significant execution risks.[79] Moreover, the Founders' Bid offered recovery to the Lenders as well as to certain unsecured creditors through the assumption of cure costs. Finally, as a going concern bid, it offered continued employment to hundreds of employees and ongoing future business relationships for the Debtors' vendors and suppliers.

[93] For their part, the Lenders were deeply dissatisfied with the initial Phase 2 bids received by the Monitor on December 8, 2025. Through Deloitte, their financial advisor, on December 12, the Lenders turned to Gordon Brothers Group, LLC (**Gordon Brothers**) to explore a liquidation scenario for the Debtors' assets.

[94] Gordon Brothers had originally been retained on behalf of the Lenders in August 2025 to develop a liquidation strategy and evaluation in respect of the Debtors' inventory.[80] Subsequently, Gordon Brothers was also one of the liquidators who had received the Monitor's teaser during Phase 1 of the SISP. Like Tiger and the other liquidators so contacted by the Monitor, it did not submit a letter of intent or a Phase 2 bid.

[95] Be that as it may, on December 19, Gordon Brothers projected a NOLV for the Debtors' inventory of between $85 million to $92 million.[81] Gordon Brothers further projected that a forced liquidation would result in proceeds of less than 10% of the value of the inventory at cost.[82]

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77 Many of these same risks were also identified by the Debtors' management in a memo provided to the Monitor on December 29, 2025. See: Fourth Report of the Monitor, Appendix H, Exhibit C.

78 Fourth Report of the Monitor, Appendix H, Exhibit C.

79 *Ibid.*, Appendix H.

80 Exhibit L-4, p. 19/81.

81 *Ibid.*, Appendix C.

82 *Ibid.*

[96] On January 13, 2026, Gordon Brothers provided the Lenders with a report entitled Strategic Orderly Liquidation Analysis.[83] That analysis explores two orderly liquidation scenarios: a high-selling scenario and a low-selling scenario.[84] Both scenarios are based on the Debtors' inventory having an at cost value of $175.5 million. According to Gordon Brothers' analysis, the estimated net recovery from an ordinary liquidation in each scenario is as follows:[85]

	High-selling (14 weeks)	**Low-selling (18 weeks)**
Gross Recovery	$141,763,115	$141,763,115
Expenses	$69,401,791	$79,620,538
Net Recovery	$72,361,324	$62,142,576
Net Recovery % of cost	41.2%	35.4%

[97] In order to address the uncertainty and risk inherent to a liquidation, Deloitte requested and obtained from Gordon Brothers a binding commitment letter (the **Commitment Letter**) regarding the terms under which it would enter into a guarantee agency agreement for the liquidation of the Debtors' inventory with a minimum guaranteed recovery (the **Gordon Brothers Minimum Guarantee**).[86]

[98] In its Commitment Letter of January 13, 2026, Gordon Brother guarantees a recovery amount of 27.25% of the cost value of the merchandise to be liquidated. The guarantee is conditional on the value of that merchandise—as defined in the Commitment Letter—being no less than $165 million and no greater than $175 million. For any realisation above 31.01% of the inventory's cost value, the Commitment Letter proposes a profit-sharing formula.

[99] Following receipt of the Monitor's recommendation, of Gordon Brothers' analysis and of its Commitment Letter, on January 14, 2026, Deloitte prepared an analysis of the various competing scenarios to ascertain their respective economic outcome for the Lenders.[87]

[100] Deloitte's January 14 analysis assumes that all of the Debtors' inventory qualifies as "Merchandise" under the Gordon Brothers Minimum Guarantee. That analysis concludes that liquidation by Gordon Brothers, in accordance with the terms of the

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83 Exhibit L-11.
84 Under the low-selling scenario, the liquidation would take longer (18 weeks, rather than 14 weeks), resulting in increased expenses and lower recovery.
85 Exhibit L-11.
86 Exhibit L-12.
87 Exhibit L-4.

Commitment Letter, would produce significantly greater economic return for the Lenders. A draft Guarantee Agency Agreement prepared by Gordon Brothers was also presented to the Court on January 15, 2026 (the **Gordon Brothers Agency Agreement #1**).[88]

[101] In response, the Debtors adduced evidence showing that when the definition of "Merchandise" in the Gordon Brothers Agency Agreement #1[89] was applied to the Debtors' inventory, the value of that "Merchandise" fell to $128.4 million, well below the threshold for the Gordon Brothers Minimum Guarantee of $165 million.[90] The Debtors further adduced evidence suggesting that when the various formulas in the Gordon Brothers Agency Agreement #1 were applied to its inventory,[91] the Gordon Brothers Minimum Guarantee would actually produce recovery of $16.5 million,[92] an amount far lower than Deloitte's minimum estimate of $47.7 million.

[102] On January 23, 2026, a revised analysis was prepared by Deloitte.[93] Deloitte's revised analysis takes into account the Debtors' evidence relating to the impact of the definition of "Merchandise" in the Gordon Brothers Agency Agreement #1 and of the contractual formulas used to calculate the Gordon Brothers Minimum Guarantee. It also takes into account modifications to the Gordon Brothers Agency Agreement #1. Indeed, with Deloitte's revised analysis, the Lenders produced an amended draft agency agreement (the **Gordon Brothers Agency Agreement #2**).[94]

[103] The new draft agency agreement contains, *inter alia*, a significantly modified definition of "Merchandise" which impacts on the calculation of the Gordon Brothers Minimum Guarantee. I note that a third draft agency agreement was produced by the Lenders on January 29, 2026.[95]

[104] As Deloitte's original analysis was based on incomplete information, the revised analysis is what is germane for our purposes. Nine different scenarios are examined by Deloitte.[96] In his testimony, Deloitte's representative focussed on the three scenarios offering a relative degree of certainty, to wit, the Founders' Bid and the Gordon Brothers Minimum Guarantee under a high-selling and a low-selling model.[97] According to Deloitte's analysis, the Gordon Brothers Minimum Guarantee would produce $19.4 million to $23.9 million more in economic return for the Lenders.

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88 Exhibit L-13.
89 *Ibid.*, section 5.2(a).
90 Exhibit R-11; testimony of P. Sullivan.
91 Exhibits 3.1(c) and 3.1(d) to the Gordon Brothers Agency Agreement #1 (Exhibit L-13).
92 Exhibit R-12; testimony of P. Sullivan.
93 Exhibit L-4A.
94 Exhibits L-13A and L-13B.
95 Exhibit L-13C.
96 Exhibit L-4A.
97 Testimony of B. Clouâtre.

[105] Indeed, applying the Gordon Brothers Minimum Guarantee formula and its profit-sharing formula to $154.9 million of inventory at cost (reduced from $175.5 million as a result of the Debtors' evidence and the revised definition of "Merchandise"), Deloitte calculates that the Gordon Brothers Minimum Guarantee would produce total recovery for the Lenders of $53.77 million in the high-selling scenario and $49.26 million in the low-selling scenario.[98] After adding the value of specific assets that would go to the Lenders in a liquidation to that recovery, deducting certain disbursements as well as the CCAA charges and the Lenders' interim financing, Deloitte is of the view that the Gordon Brothers Minimum Guarantee would produce between $60,649,000 (high-selling) and $56,138,000 (low-selling) for the Lenders, as compared to $36,783,000 under the Founders' Bid:[99]

	Founders' Bid	**Gordon Brothers Minimum Guarantee (High-Selling)**	**Gordon Brothers Minimum Guarantee (Low-Selling)**
Purchase price/Inventory recovery	$58,500,000	$53,770,000	$49,260,000
Cash	$2,183,000	$13,539,000	$13,539,000
Credit cards holdback	Purchased	$19,290,000	$19,290,000
Deposit customs	Purchased	$1,500,000	$1,500,000
Dematic litigation[100]	Purchased	$5,850,000	$5,850,000
Leasing payments to RBC	($2,600,000)	($6,500,000)	($6,500,000)
Additional professional fees	N/A	($2,000,000)	($2,000,000)
Administration charge	($850,000)	($850,000)	($850,000)
Interim lenders' charge	($3,700,000)	($3,700,000)	($3,700,000)
D&O charge	N/A	($3,500,000)	($3,500,000)
KERP charge	($1,750,000)	($1,750,000)	($1,750,000)

98 Exhibit L-4A, p. 18.
99 *Ibid.*, p. 10.
100 See : *Arrangement relatif à Atallah Group Inc.*, 2025 QCCS 4430 (on appeal).

Interim financing	($15,000,000)	($15,000,000)	($15,000,000)
Recovery for Lenders	**$36,783,000**	**$60,649,000**	**$56,138,000**

[106] As will be discussed below, the Debtors and the Monitor disagree with Deloitte's assessment of the actual recovery for the Lenders under the Gordon Brothers Minimum Guarantee. Indeed, in the Monitor's assessment, correctly calculated that Minimum Guarantee produces less return for the Lenders than the Founders' Bid.

[107] I turn now to the application of the factors and the conditions identified in section 36 CCAA for the approval of a transaction, beginning with the subsection 36(3) factors.

2.4 Application of the Subsection 36(3) CCAA Factors

[108] The subsection 36(3) factors relate to both process and outcomes for interested parties. They are not watertight compartments in that tainted processes will tend to increase the likelihood of improper outcomes, or at least cast doubt upon their fairness and reasonableness. On the other hand, one cannot exclude that an impeccable process may give rise to an improvident outcome that should be refused by the Court.

[109] That said, for the purposes of my analysis, I will first address the subsection 36(3) CCAA factors that relate to process (i.e., factors (a), (b), (c) and (d)). Indeed, these can be examined relatively succinctly, for I am of the view that the Lenders cannot truly complain about the Monitor's process. I will then turn to factors (e) and (f). These concern the crux of the Lenders' complaint, which is that the consideration offered in Founders' Bid offers is so inadequate such that the Proposed Transaction is neither fair nor reasonable.

2.4.1 The Monitor's Process Was Appropriate

[110] I find that the process leading to the Proposed Transaction was reasonable. That process was a SISP and was the product of intense negotiations with mutual concessions by all involved.

[111] The SISP Procedures were thus agreed upon by the Lenders and the Debtors and were approved by the Court. These procedures were scrupulously followed by the Monitor. They provide that Deloitte, as financial advisor to the Lenders, would be consulted throughout the SISP. In his testimony, Deloitte's representative confirmed that he found no fault with the SISP, nor with the Monitor's conduct in that process.[101] In short,

[101] Testimony of B. Clouâtre.

the Monitor's efforts to market the Debtors' business and assets were extensive and reasonable.[102]

[112] As for the Monitor, he too approved of the process followed during the SISP and believes that it was robust.[103] Moreover, in accordance with the SISP Procedures, the Monitor extended deadlines on several occasions to respond to concerns expressed by participants. When dissatisfied with the Phase 2 bids initially received, the Monitor determined that there should be a relaunched SISP. All this was done in consultation with Deloitte and with the Lenders concurrence.

[113] In view of the foregoing, the factors enumerated in subparagraphs 36(3)(a) and (b) are satisfied.

[114] The Monitor also produced two reports in which he recommends approval of the Proposed Transaction.[104] In the Fourth Report of the Monitor, he explains that he obtained liquidation evaluations from Tiger, but was of the view that the Proposed Transaction was more advantageous. In his estimation, the Proposed Transaction would generate proceeds no less than a forced liquidation and offered certainty as compared to the liquidation values, which were theoretical given that no liquidator submitted an offer in the SISP, notwithstanding the invitations extended to several entities engaged in this business.[105] He further notes the significant execution risk in a liquidation.[106]

[115] The Fourth Report of the Monitor also succinctly addresses the Gordon Brothers Commitment Letter, which he had received a few hours prior to submitting that report. While he had not completed his analysis of the Commitment Letter, the Monitor expressed the view that he could not consider it. In his opinion, the Commitment Letter threatened the integrity of the SISP, as it was submitted outside the process, notably by a party that had been invited to participate therein, but declined to do so.[107]

[116] On January 28, 2026, the Monitor prepared a Supplemental Report in response to Deloitte's revised analysis of January 23. He maintains that he should not consider the Gordon Brothers Commitment Letter and proposed Agency Agreements on the basis that they compromise the integrity of the SISP. Nonetheless, in his Supplemental Report, the Monitor confirms the Debtors' calculations of the true recovery under the Gordon Brothers Minimum Guarantee and the Gordon Brothers Agency Agreement #1.[108]

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[102] See by analogy: *Terrace Bay, supra*, para. 48; *Harbour Grace Ocean Enterprises Ltd., Re CCAA*, 2024 NLSC 47, para. 95 [***Harbour Grace***].
[103] Fourth Report of the Monitor, para. 73.
[104] *Ibid.*, paras. 88-91; and Supplemental Report of the Monitor—January 28th, 2026, paras. 36-38 (Exhibit R-17) [**Monitor's Supplemental Report**].
[105] Fourth Report of the Monitor, para. 63.2.1.
[106] *Ibid.*, para. 63.2.2.
[107] *Ibid.*, para. 87.
[108] Monitor's Supplemental Report, para. 11.

[117] In light of the changes to that Minimum Guarantee reflected in Gordon Brothers Agency Agreement #2, the Monitor then offers a comparative analysis of the recovery for the Lenders under the Proposed Transaction and that Agreement.[109] That comparative analysis suggests that Deloitte's assessment of recovery for the Lenders was overstated and that recovery would in fact be lower than under the Proposed Transaction.[110]

[118] I will examine below which of Deloitte's or the Monitor's respective assessments of recovery is more reliable. At this stage, suffice it to say that the Monitor has produced reports that satisfy the factor identified in subparagraph 36(3)(c) CCAA.

[119] The Lenders accept that they were consulted throughout the SISP. They complain, however, about a lack of consultation by the Montor at the final crucial stage—the acceptance of the Founders' Bid as the successful bid. I do not accept that complaint.

[120] On January 3, 2026, the Monitor wrote to Deloitte to provide his analysis of the SISP and recommendation that the Founders' Bid should be selected as the successful bid and submitted to the Court for approval.[111] Between January 3 and 5, the Monitor provided further information to Deloitte in response to the latter's requests.[112]

[121] On January 7, 2026, counsel for the Lenders communicated to the Monitor their disagreement with his recommendation and their intention to contest any application to approve the Founders' Bid.[113] Nonetheless, that same day, the Monitor issued a notice advising that the Founders' Bid had been selected as the successful bid pursuant to the relaunched SISP.[114]

[122] Manifestly, there was no *agreement* between the Monitor and the Lenders as to whether the Founders' Bid ought to be selected as the successful bid. However, lack of agreement does not signify that the Lenders were not consulted. They were consulted and expressed their view that the purchase price in the Founders' Bid was not fair and reasonable, a view with which the Monitor—based on the information available to him at the time—disagreed. The subparagraph 36(4)(d) CCAA factor is satisfied.

[123] It follows from the foregoing that there was no unfairness in the SISP leading to the Monitor's recommendation. Moreover, the evidence does not reveal any deficiency in the efficacy or integrity of that process.

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[109] *Ibid.*, para. 23, Appendix C.
[110] *Ibid.*, Appendix C.
[111] Exhibit L-5.
[112] Exhibit L-6.
[113] Exhibit L-7.
[114] Exhibit R-4.

2.4.2 The Proposed Transaction is Fair and Reasonable

[124] The factors identified in subparagraphs 36(3)(e) and (f) CCAA require examination of the effects of the Proposed Transaction on the creditors and other related parties as well as whether the consideration received for the Debtors' assets is fair and reasonable.

[125] The Lenders submit that they are the Debtors' principal creditors and most significant secured creditors. As such, they are the stakeholders with the primary economic interest in the proceedings. They submit that the credit facilities advanced by them are protected by a comprehensive security package featuring first-ranking hypothecs over the universality of the Debtors' movable property, subject only to certain specific equipment where they rank behind Investissement Québec.

[126] The Lenders further rely on the "legal preference" for secured creditors (article 2646 of the *Civil Code of Québec*) to frame their claim as a legally prioritized entitlement to be paid from their collateral, a reality mirrored in the CCAA's basic secured/unsecured creditor architecture. In the Lenders' view, the Proposed Transaction prevents them from realizing the full value of their security and thus improperly subordinates the very creditor class that is both most exposed and most structurally entitled to recover.

[127] The Lenders argue that the Proposed Transaction cannot be approved under section 36 CCAA, because it does not maximize value and produces an unfair economic outcome for the first-ranking secured creditors in a process that yielded only the Founders' Bid. It contends that the SISP's going-concern premise proved misguided and thus produced at "Failed SISP".

[128] I begin with subparagraph 36(3)(f) CCAA, as the essence of the Lenders' opposition to the Proposed Transaction relates to the inadequacy of the consideration received for the Debtors' assets. They believe that such consideration will result in economic recovery for them that is less favourable than that which they would achieve pursuant to a liquidation.[115]

[129] The principles identified by the Ontario Court of Appeal in *Soundair* offer useful guidance for assessing whether the consideration received under the Proposed Transaction is fair and reasonable.

[130] One of the issues in *Soundair* was whether the receiver in that case ought to consider an offer for the purchase of the debtor's business that was received *after* the process adopted for selling that business had been completed. In his reasons,

[115] As noted by the Lenders, it is now accepted that, in appropriate cases, the CCAA can be used to liquidate an insolvent debtor's assets. See *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10.

Galligan J.A. indicated that a cautious approach should be adopted in considering such offers:

> When deciding whether a receiver had acted providently, the court should examine the conduct of the receiver in light of the information the receiver had when it agreed to accept an offer. In this case, the court should look at the receiver's conduct in the light of the information it had when it made its decision on March 8, 1991. The court should be very cautious before deciding that the receiver's conduct was improvident based upon information which has come to light after it made its decision. To do so, in my view, would derogate from the mandate to sell given to the receiver [...].[116]
>
> [Emphasis added.]

[131] In this respect, Galligan J.A. agreed with and adopted the opinion expressed by MacDonald J.A. of the Nova Scotia Court of Appeal several years earlier in *Cameron v. Bank of Nova Scotia*:

> In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement.[117]

[132] The starting point must thus be the information available to the Monitor on January 7, 2026, when he determined that the Founders' Bid was successful. However, that does not signify that any subsequent offers can never be considered.

[133] Indeed, subsequent information can be considered if it shows that the consideration received under the Proposed Transaction is unreasonable.[118] That said, preserving the integrity of the process adopted by a receiver or monitor signifies that the test for considering subsequent offers is a robust one. Such offers must be substantially higher, thereby suggesting that the proposed sale is improvident. As explained by Galligan J.A. in *Soundair*:

> What those cases show is that the prices in other offers have relevance only if they show that the price contained in the offer accepted by the receiver was so unreasonably low as to demonstrate that the receiver was improvident in accepting it. I am of the opinion, therefore, that if they do not tend to show that the receiver was improvident, they should not be considered upon a motion to confirm a sale recommended by a court-appointed receiver. If they were, the process would be changed from a sale by a receiver, subject to court approval, into an auction conducted by the court at the time approval is sought. In my opinion, the latter course

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[116] *Soundair*, *supra*, p. 7.
[117] *Ibid.*, p. 8; quoting from *Cameron v. Bank of Nova Scotia* (1981), 45 NSR (2d) 303 (CA), p. 314.
[118] *Soundair*, *supra*, p. 8.

> is unfair to the person who has entered bona fide into an agreement with the receiver, can only lead to chaos, and must be discouraged.
>
> If, however, the subsequent offer is so substantially higher than the sale recommended by the receiver, then it may be that the receiver has not conducted the sale properly. In such circumstances, the court would be justified itself in entering into the sale process by considering competitive bids. However, I think that that process should be entered into only if the court is satisfied that the receiver has not properly conducted the sale which it has recommended to the court.[119]
>
> [Emphasis added.]

[134] In view of the foregoing, I will first examine whether the consideration in the Founders' Bid is fair and reasonable in light of the information available to the Monitor when he selected that bid as the successful bid on January 7, 2026. I will then consider the impact of Deloitte's analysis, as well as Gordon Brothers' Commitment Letter and its proposed Agency Agreements.

[135] By January 7, 2026, the Monitor had obtained opinions from Tiger as to the recovery that might be obtained from the liquidation of the Debtors' inventory. Those opinions suggested that the consideration offered by the Founders' Bid was superior to a forced liquidation, but inferior to that which could be obtained under an orderly liquidation.[120] On the other hand, the Monitor had also obtained information identifying the execution risks of a liquidation and understood that Tiger's NOLV was theoretical and, in this regard, compared unfavourably to the certainty offered by the Founders' Bid.[121]

[136] Considering the deference that I must afford the Monitor's business judgment as to the risks and uncertainty of a liquidation, I cannot find that the consideration received for the Debtors' assets under the Proposed Transaction is unfair or unreasonable based on the information available to him on January 7, 2026.

[137] I now turn to the new information that has arisen since the Monitor's determination of January 7, 2026. Such information consists of Gordon Brothers' liquidation analysis of January 13, 2026,[122] its Commitment Letter,[123] the various iterations of its Agency Agreement,[124] the Deloitte analysis,[125] the Debtors' evidence in response thereto[126] and the Monitor's Supplement Report[127].

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119 *Ibid.*, p. 8-9.
120 Exhibit L-6.
121 Fourth Report of the Monitor, para. 63.2.
122 Exhibit L-11.
123 Exhibit L-12.
124 Exhibits L-13, L-13A, L-13B and L-13C.
125 Exhibit L-4A.
126 Exhibits R-11 and R-12; testimony of P. Sullivan.
127 Exhibit R-17.

[138] As for Gordon Brothers' liquidation analysis of January 13, it provides information similar to that found in the opinion received by the Monitor from Tiger. It does not move the needle.

[139] What might move the needle is the Gordon Brothers Minimum Guarantee as reflected in its Commitment Letter and the various iterations of its Agency Agreement. That Minimum Guarantee has been somewhat of a moving target.

[140] Indeed, the definition of "Merchandise" upon which calculation of the Gordon Brothers Minimum Guarantee is based has evolved significantly since the Debtors presented evidence showing that, when applied to its inventory, the resulting Minimum Guarantee would be about $30 million lower than what Deloitte had calculated it to be.[128]

[141] The Lenders do not challenge that evidence. They complain that it suggests that the Debtors did not reveal the true value of their inventory to them in their regular reports and financial statements. There are two things to say in this regard.

[142] First, the evidence adduced by the Debtors is a function of a wholly new concept—Gordon Brothers' contractual definition of "Merchandise"—that involves different information from that found in their inventory lists.

[143] Second, an important downward adjustment to the Merchandise threshold used for the Gordon Brothers Minimum Guarantee results from the fact that the Debtors' evidence reveals that some of its inventory cannot be sold for an amount greater than cost. Although the exercise would be arduous, the evidence reveals that this information could be found in the Debtors' inventory lists.[129] Moreover, the Lenders were aware that some of the Debtors' inventory was quite aged, and the parties had factored this reality into the calculation of their agreed inventory floor covenant.[130]

[144] Be that as it may, the germane issue is not the adequacy of the Debtors' inventory lists as provided to the Lenders or the reporting in their monthly financial statements. The issue is whether the Gordon Brothers Minimum Guarantee shows that the consideration in the Proposed Transaction is so unreasonably low as to demonstrate that the Monitor was improvident in selecting the Founders' Bid.

[145] In this respect and as noted, the Lenders do not challenge the evidence offered by the Debtors as to how their inventory ought to be treated under the definition of "Merchandise" in the Gordon Brothers Agency Agreement #1. Rather, that definition has been changed so as to bring some excluded inventory back into the definition of "Merchandise" and to specify the value thereof.[131]

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128 Exhibits R-11 and R-12; testimony of P. Sullivan.
129 Testimony of B. Clouâtre.
130 Exhibit C-5, Schedule B.
131 See exhibit L-13B, clauses 5.2(a), 5.3(a) and Exhibit 5.3(a).

[146] Pursuant to the new definition of "Merchandise", the cost value of the inventory that would be used to calculate the Gordon Brothers Minimum Guarantee is \$154.9 million.[132] The question is thus whether the estimated recovery pursuant to the Lenders' preferred option of a liquidation applying the Gordon Brothers Minimum Guarantee shows that the consideration under the Proposed Transaction is unreasonably low.

[147] In this regard, there is competing evidence as to the recovery that would be achieved under the Gordon Brothers Minimum Guarantee.

[148] Deloitte calculates that the recovery for the Lenders under their preferred option is between \$60.6 million and \$56.1 million.[133] Using Deloitte's own calculation of the net recovery from the liquidation of the Debtors' inventory, the Monitor is of the view that liquidation applying the Gordon Brothers Minimum Guarantee would produce between \$40.5 million and \$29.2 million.[134] For the following reasons, I find that the Monitor's calculation is more reliable and prefer it.

[149] First, Deloitte's calculations are based on the estimated cash and credit card holdbacks available to the Lenders on January 16, 2026. When calculating cash and credit card holdbacks, the Monitor uses updated January 30, 2026, numbers—actual (for his "High" scenario) and projected (for his "Low" scenario).[135] It is evident that updated numbers provide the Court with a more reliable vision of recovery.

[150] The Lenders answer that it is only because the hearing of this matter was unable to be completed on January 16, 2026, that the cash and credit card holdback numbers are lower. This is true. However, if one returns in time to January 16, the definition of "Merchandise" then used to calculate the Minimum Guarantee would have generated far lower recovery.[136] The intervening time has allowed the Lenders and Gordon Brothers to modify that definition, making the Lenders' preferred option more attractive.

[151] Second, the current versions of the Gordon Brothers Agency Agreements include a provision whereby it will honour certain returns.[137] The Monitor's calculations thus include an estimated disbursement of \$9.15 million for such returns. That disbursement is absent from Deloitte's calculations.

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[132] Exhibit L-13B, Exhibit 5.3(a).
[133] Exhibit L-4A, pp. 8 and 10.
[134] Exhibit R-18A.
[135] *Ibid.*
[136] See Exhibit R-12 and Monitor's Supplemental Report, Appendix B.
[137] Exhibits L-13A, L-13B and L-13C, clause 8.6.

[152] The Lenders suggest that the Monitor's estimation of returns is too high. The Monitor's explanations as to how he arrived at his estimation of the value of the disbursement for returns are convincing and I accept them.[138]

[153] Finally, the Lenders complain that the Monitor did not use the value of the projected inventory for January 30, 2026, which was $185 million.[139] It appears that the actual inventory is lower than what was projected. Respectfully, I cannot fault the Monitor for using the actual numbers for inventory, which are the same as those relied on by Deloitte. A calculation based on inventory that does not exist would not be reliable.

[154] In view of the foregoing, I accept the Monitor's calculation that, in a best-case scenario, the Lenders' preferred option would produce recovery for them of between $40.5 million and $29.2 million.[140] Such recovery is not so substantially higher than that resulting from the Proposed Transaction to the point that it suggests that the Monitor acted improvidently.[141] On the contrary, as we shall see below, the Monitor's calculations, which I have found to be reliable, suggest that Proposed Transaction would result in slightly higher recovery for the Lenders.

[155] Based on the foregoing, while the Proposed Transaction results in consideration that falls well short of satisfying the amount owing to the Lenders, I conclude that it is reasonable and fair in light of the information available to the Monitor when selecting the Founders' Bid <u>and</u> considering the subsequent information in the form of the Gordon Brothers liquidation analysis, its Commitment Letter, the various iterations of its Agency Agreement, Deloitte's analysis and the responding evidence adduced by the Debtors and the Monitor.[142]

[156] With respect to subparagraph 36(3)(e) CCAA, it requires that the effects of the Proposed Transaction on the creditors and other interested parties be considered.

[157] The primary interest to be considered is that of the Lenders, who are the Debtors' senior secured creditors.[143] However, it is not the only or overriding interest.[144] The competing interests of the larger stakeholder group must also be weighed.[145]

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138 Testimony of M. Rosenthal.

139 Exhibit L-14.

140 Exhibit R-18A.

141 See by analogy: *Terrace Bay*, *supra*, paras. 53-54 and 63-65; and *Harbour Grace*, *supra*, para. 100. Compare: *Cameron Stephens*, *supra*, paras. 13-16.

142 Pursuant to *Soundair*, *supra*, given that recovery under the scenario of a liquidation applying the Gordon Brothers Minimum Guarantee is not substantially higher than the Proposed Transaction, in principle it should not be considered. To be clear, however, I have carefully considered that alternative given that the Lenders are fulcrum creditors whose interests and views must be given very considerable weight.

143 *Soundair*, *supra*, p. 12.

144 *Ibid.*

145 *Century Services*, *supra*, paras. 59-60.

[158] Under the Proposed Transaction, the Lenders' recovery will fall significantly short of the amount owed to them by the Debtors, which is estimated to be $113 million. This is not a matter to be taken lightly. The Lenders advanced very considerable sums to the Debtors under an asset-backed loan (ABL) credit facility and sought to protect themselves by taking first-ranking security over the Debtors' property. The Debtors' assets have thus been pledged in priority to the Lenders and they are, in principle, entitled to satisfy the Debtors' indebtedness to them from such assets.

[159] The Lenders' dissatisfaction with the recovery they will receive under the Proposed Transaction is understandable. However, as we have seen, liquidation by Gordon Brothers under its proposed Agency Agreement is not likely to generate greater recovery for the Lenders. Moreover, the recovery under a liquidation without a minimum guarantee is wholly uncertain, given the execution risks identified by the Monitor.

[160] On the other hand, consideration of the other relevant interests supports approval of the Proposed Transaction, as recommended by the Monitor.

[161] First, as a going concern bid, the Proposed Transaction will preserve employment for a significant number of persons, which, as mentioned, the Monitor estimates at 660 full-time positions and 100 on-call jobs.

[162] Those who oppose approval of the Proposed Transaction note that the Asset Purchase Agreement between the Debtors and the Founders does not provide any guarantee as to the number of jobs to be preserved, leaving the matter to the purchaser's entire discretion.

[163] While I accept that the number of positions that will ultimately be retained is uncertain, I also accept the Monitor's view that, under the Proposed Transaction, a considerable number of employees will retain their jobs. Moreover, the counterfactual is well known. In a liquidation, *all* the Debtors' employees will lose their positions entailing significant social and economic consequences.

[164] These social and economic consequences extend beyond the employees themselves. Families who lose a source of income are deeply affected. Society in general suffers as well. Not only are tax revenues lost, the state may also be required to expend resources in providing for those who now find themselves without means for supporting themselves. Preservation of employment is thus a consideration that weighs in favour of the Proposed Transaction.

[165] Another consideration weighing in favour of approval of the Proposed Transaction is that commercial relationships with the Debtors' suppliers will be preserved, generating beneficial economic activity. A liquidation will put an end to those relationships. On the other hand, maintaining them will allow those doing business with the Debtors to recoup

some of their losses resulting from the insolvency, perhaps even avoid redundancies of their own.

[166] Finally, I note that under the Proposed Transaction, the Founders will pay "cure costs" in respect of assumed contracts. This means that the Proposed Transaction will provide some benefit to certain of the Debtors' unsecured creditors. That would not be the case in a liquidation.

[167] Weighing all these competing considerations, I find that they support the Monitor's recommendation and that approval of the Proposed Transaction would generally be consistent with the overall purpose of the CCAA, which, as noted at the very beginning of these reasons, is to avoid, where possible, the social and economic costs of a liquidation. The avoidance of those costs is possible here.

2.5 Application of the Subsection 36(4) CCAA Conditions

[168] The Proposed Transaction involves a party related to the Debtors. Accordingly, the subsection 36(4) CCAA conditions must be satisfied if there is to be approval.

[169] The first condition under subparagraph 36(4)(a) CCAA is that good faith efforts were made to sell the Debtors' assets to unrelated persons. This condition is satisfied.

[170] Through the SISP the Monitor widely canvassed the market. As noted, he sent a teaser to 170 parties who might be interested in a transaction involving the Debtors' assets or business. The SISP was a dual-track process, and liquidation bids were also contemplated.[146] Indeed, seven liquidators received the Monitor's teaser.

[171] As mentioned earlier, 51 parties executed NDAs. Moreover, four unrelated parties who had submitted non-binding Phase 1 Letters of Intention were invited to proceed to Phase 2. Good faith efforts were made to sell the Debtors, business or assets to unrelated parties.

[172] The second condition under subparagraph 36(4)(b) CCAA is that the consideration to be received under the Proposed Transaction is superior to the consideration to be received under any other offer made in accordance with the process leading to the proposed sale. Relying on Deloitte's analysis of the anticipated recovery pursuant to a liquidation applying the Gordon Brothers Minimum Guarantee,[147] the Lenders argue that the consideration under the Proposed Transaction is inferior to that scenario and that subparagraph 36(4)(b) CCAA is not satisfied.

[173] For the reasons given earlier, I find that the Monitor's calculation of the anticipated recovery for the Lenders in the event of a liquidation applying the Gordon Brothers

146 Exhibit C-5, p. 6.
147 Exhibit L-4A.

Minimum Guarantee is more reliable than that offered by Deloitte. The Monitor's calculations show that, in a best-case scenario, using the most recent available information as to cash, credit card holdbacks and returns, liquidation applying the Gordon Brothers Minimum Guarantee would produce recovery of $40.5 million.[148] In the same circumstances—comparing apples to apples, so to speak—the Monitor explains that Proposed Transaction would produce superior recovery of $42.3 million.[149] I accept the Monitor's evidence on this point.

[174] Accordingly, assuming that the Gordon Brothers Minimum Guarantee scenario constitutes "an offer made in accordance with the process leading to the proposed sale" for the purposes of subparagraph 36(4)(b) CCAA, the consideration to be received under the Proposed Transaction is superior to that "offer". It follows that the second statutory condition for the approval of a related party sale is satisfied.

2.6 Conclusion on the Approval of the Proposed Transaction Under the CCAA

[175] This case is not an easy one. The evidence evolved as the matter progressed and the hearings went late into the day. It was hard fought, to say the least. Nevertheless, I have found that the subsection 36(4) CCAA conditions are satisfied here and that the subsection 36(3) CCAA factors and the *Soundair* principles favour approval of the Proposed Transaction.

[176] Subject to the contestations of RBC, in its capacity as equipment lessor, and of Investissement Québec, discussed below, it follows that the Proposed Transaction should be approved. It also follows that the Lenders' contestation and application for a liquidation order must be dismissed.

[177] Some comments regarding the "alternative"—to wit, liquidation applying the Gordon Brothers Minimum Guarantee—put forward by the Lenders are in order.

[178] While the Lenders had no veto over the results of the SISP, they were certainly entitled to contest an application to approve the Proposed Transaction in the event that they were dissatisfied with it, as here.[150] Moreover, I appreciate that a contestation by the Lenders would be difficult if they came to court without a viable alternative scenario. This explains the Lenders' efforts to obtain the Gordon Brothers Minimum Guarantee.

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148 Exhibit R-18A. The Deloitte analysis notes that the liquidation value of certain of the Debtors' assets (including furniture and equipment) and intellectual property remains "to be determined". As there is no evidence allowing me to ascribe a value to such assets, it would be speculative for me to consider them when assessing the consideration that would be produced by a liquidation applying the Gordon Brothers Minimum Guarantee.

149 Exhibit R-18A.

150 See paragraphs 32(i) and 33 of the SISP Procedures.

[179] Nevertheless, there are problems with the approach followed here by the Lenders, as it undermines the integrity of the process approved by the Court. Canadian courts have much emphasized the importance of respecting such processes and of preserving their integrity.[151] Indeed, participant confidence in their fairness and integrity is essential for the system to function and to produce fair and reasonable outcomes for all stakeholders.

[180] The Lenders argue that their preferred solution, a liquidation applying the Gordon Brothers Minimum Guarantee is an "alternative", rather than a bid or an offer. The argument is unconvincing. The Commitment Letter looks very much like an offer.

[181] Ultimately, once the results of the agreed and approved process have become known and are considered unsatisfactory by the Lenders, they have come forward with their preferred option in the form of post-process stalking horse bid[152] for which they seek the Court's approval. Participants in the Court-approved process would be entitled to see this as allowing Gordon Brothers, who was invited to participate in the SISP and declined the opportunity, to lie in the weeds and jump in once the process is complete with an offer that carries the day.

[182] This way of proceeding would assuredly rattle the confidence of participants in the fairness and integrity of the process that was approved by the Court, and supported by the very Lenders who now seek to come forward with a preferred "alternative" developed outside of that process. Few would expend the considerable resources and effort required to participate in a SISP if they understood that secured creditors could sit on the sidelines, yet, at the end of the day, come in with a post-process "alternative" that succeeds, rendering all their efforts for not.

[183] The integrity and fairness of the process for disposing of an insolvent debtor's assets or business is crucial to the system developed over the years by Canadian insolvency courts applying their extensive powers under the CCAA. This system rests notably on the confidence of all participants. Undermining that confidence carries systemic consequences that extend beyond this particular case.

[184] The Lenders suggest that their expectation from the SISP was to achieve at least \$80 million in recovery.[153] Assuming that this is the case, there are better ways of ensuring that expectations as to outcome are protected. The Lenders could have bargained for a veto, or a minimum price. Barring that, the SISP Procedures allowed the

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151 *Soundair*, *supra*, pp. 12-13 and 19; *Boutiques San Francisco Inc., Re*, 2004 CanLII 480 (QC CS), paras. 15-20 and 24; *Railpower Technologies Corp. (Arrangement relatif à)*, 2009 QCCS 2885, paras. 96-98; *Arrangement relatif à Endoceutics Inc.*, 2023 QCCS 1687, para. 27; *Harbour Grace*, *supra*, paras. 114-115.

152 See Exhibit L-13C, section 2.3 (which provides Gordon Brothers with a break-up fee in the event that the Lenders no longer oppose the Debtors' application should the economics of the Proposed Transaction improve) and testimony of R. Edwards.

153 They rely in this regard on the debt waterfall in exhibit C-5.

Lenders to credit-bid, which would permit them to effectively set a floor for an auction. If no participant were able to rise above the floor, the Lenders would then be in a position to liquidate the assets forming their security, as they now seek to do.[154]

[185] Be that as it may, irrespective of the process issues raised by the Lenders' preferred "alternative", I reject that alternative based on my conclusions that the Proposed Transaction itself meets the test for approval under section 36 CCAA.

3. THE OTHER CONTESTATIONS

[186] RBC, *qua* lessor of equipment constituting the Automation System used by the Debtors in its Fulfilment Centre, and Investissement Québec have also filed contestations opposing approval of the Proposed Transaction. For the following reasons, those contestations will not succeed.

3.1 Investissement Québec's Contestation

[187] The Debtors owe Investissement Québec an amount estimated at $21.3 million. As noted, these funds were used to finance the automation of the Debtors' Fulfilment Centre. That debt is secured by second-ranking security over all of the Debtors' property, with the exception of certain equipment in the Fulfilment Centre in respect of which Investissement Québec holds first-ranking security.

[188] Investissement Québec advances three arguments. I find that none of them justify refusing the approval sought by the Debtors.

[189] First, Investissement Québec complains that purchase price allocation provided for in the Asset Purchase Agreement appears to grant no value to the equipment over which it holds first-ranking security. That allocation is as follows:

> 1. Accounts Receivable up to their face amount (net of allowance for doubtful accounts); then
>
> 2. deposits made by Vendors for Inventory; then
>
> 3. Inventory; then
>
> 4. other assets that are depreciable property for Tax purposes up to their undepreciated capital cost for Tax purposes; then
>
> 5. identifiable Intellectual Property; then

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[154] In response to a question from the Court, counsel for the Lenders suggested that her clients would be accused of acting in bad faith had they credit bid in this fashion. Respectfully, I fail to see how using the approved process to ensure that the Lenders' expectations are met would be abusive, whereas achieving the equivalent outcome outside of that process would not be.

6. goodwill of the Business.[155]

[190] Investissement Québec understands from this allocation that it will receive no recovery on its loan to the Debtors. The Debtors and the Monitor respond that the issue of allocation of any recovery proceeds to Investissement Québec can and should be addressed in the context of a hearing on a distribution order.

[191] I agree. I note that the judgment in *Arrangement relatif à Bloom Lake* invoked by Investissement Québec in support of its submissions was rendered at the allocation stage.[156] I further note that the passages of Hamilton J.'s reasons in *Bloom Lake* relied on by Investissement Québec specify that the burden of proof rests on the creditor challenging a contractual allocation of value.[157] At this stage, Investissement Québec has not adduced evidence suggesting that, in light of the value of the other assets to be purchased pursuant to the Proposed Transaction, the contractual allocation constitutes a departure, significant or otherwise, from the relative value of those assets.

[192] Second, Investissement Québec complains that the draft Purchase Agreement does not clearly distinguish the assets under its first-ranking security that are purchased from those belonging to RBC, as lessor, that are not purchased. Both categories of assets are found in the Debtors' Fulfilment Centre. Some assets subject to Investissement Québec first-ranking security appear to have been integrated into the Automation System which is leased from RBC. As explained by the Monitor, there is confusion as to which assets fall within which category.

[193] That confusion is regrettable. I fail to see, however, how it should constitute an obstacle to approval of the Proposed Transaction, as precisely the same confusion will exist in a liquidation scenario.

[194] Be that as it may, at the hearing counsel for the Founders confirmed that they do not wish to purchase the Automation System, including any assets forming part thereof that belong to the Debtors and that are subject to Investissement Québec's first-ranking security. Pursuant to section 11 CCAA, I will issue a declaration that such assets are not purchased by the Founders under the Proposed Transaction, thereby preserving Investissement Québec's rights in relation thereto.

[195] Finally, Investissement Québec questions the number of jobs that will in fact be preserved under the Proposed Transaction. Investissement Québec's complaint here rings hollow. In a liquidation scenario, there is certainty that all Quebec jobs that would be preserved in a going concern transaction will be lost.

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155 Exhibit R-3A, Schedule G.

156 *Arrangement relatif à Bloom Lake*, 2017 QCCS 3529 (appeal dismissed: 2018 QCCA 551).

157 *Ibid.*, paras. 23-24.

3.2 RBC's Contestation

[196] Pursuant to six leasing agreements, RBC leases to the Debtors the Automation System used in their Fulfilment Centre. Arguing that these leasing agreements constitute true leases, on November 20, 2025, RBC brought an application seeking declaratory relief and rent payment.

[197] By case management order issued on December 12, 2025, I directed that RBC's requests for monetary relief would be dealt with in the context of a future hearing dealing with the allocation of the proceeds of any approved transaction or liquidation. I further specified that RBC could contest the approval of any proposed transaction based on the grounds raised in its application of November 20.

[198] The Proposed Transaction does not include property subject to RBC's leasing agreements, which is explicitly excluded from the purchased assets.[158] On the other hand, the Founders, as purchaser under the Asset Purchase Agreement, intend to use the equipment leased by the Debtors from RBC for a transitional period of several months.

[199] In this respect, the Founders' Bid of December 23, 2025, states that rent owed to RBC shall be paid out of the Proposed Transaction's purchase price for a period of three months:

> […] [E]ntering into a transition services agreement with Royal Bank of Canada ("**RBC**") regarding the use of the leased equipment financed by RBC is not a condition precedent to Closing under this Revised Offer. Furthermore, <u>the Purchase Price is inclusive of any amounts that may be owed following the entering into a transition services agreement for the use of such equipment for a three-month term post-Closing</u>.
>
> [Emphasis added.][159]

[200] That said, the Asset Purchase Agreement entered into between the Debtors and the Founders does not contain any provision stipulating that the purchase price is inclusive of post-closing amounts owed to RBC for a three-month period or otherwise.[160]

[201] I will examine the fairness of the proposed Transaction in relation to RBC as lessor of the Automation System equipment through three lenses: ownership rights, economic interests and contractual rights.

[202] With respect to ownership rights, the Proposed Transaction does not divest RBC of its title in respect of the leased equipment. The exclusion of the leased equipment from

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[158] Exhibit R-3A, Schedule B, par. 2.
[159] Fourth Report of the Monitor, Appendix G-1.
[160] Exhibit R-3A.

the assets purchased by the Founders does not therefore constitute a basis for opposing the Proposed Transaction.

[203] Turning to RBC's economic interests, its right to any pre-closing payments has been preserved and will be dealt with in due course. The difficulty relates to post-closing rent payments.

[204] RBC objects to the idea that post-closing rent payments be made from the Purchase Price, rather than by the Founders as purchasers of the Debtors' business. The use of the Purchase Price in this manner reduces the economic return available to the Lenders, including RBC. In other words, RBC as Lender is paying RBC as lessor for the Founders to use its equipment.

[205] The argument is an interesting one. Ultimately, however, it does not reveal that the Proposed Transaction is unreasonable or unfair to RBC. Indeed, its economic position is no different than under a liquidation. In that scenario, the leased equipment would also be used for several months to liquidate the Debtors' inventory. Rent payments owing for the use of the equipment would come from the liquidation proceeds which, like the Purchase Price, would otherwise inure to the Lenders, including RBC.

[206] What of the fact that the Asset Purchase Agreement does not impose an obligation to pay post-closing amounts due to RBC for a period of three months out of the Purchase Price. At the hearing, counsel for the Founders confirmed that this was their clients' intent and that any amounts due for the use of the leased equipment after that three-month period would be paid directly by the purchaser.

[207] In the circumstances, pursuant to section 11 CCAA, I will issue a declaration that, to the extent that the leased equipment is used by the purchaser for any period following the closing of the Proposed Transaction, amounts due to RBC for a period of three months will be paid out of the Purchase Price and will be paid by the purchaser for any subsequent period thereafter.

[208] As for RBC's contractual rights, it argues that the leasing agreements cannot be assigned to the Founders without its agreement or without compliance with section 11.3 CCAA. In particular, subsection 11.3(4) CCAA requires the payment of cure costs as a condition precedent for such assignment.

[209] I agree that RBC's leasing agreements cannot be assigned here. In any event, no such assignment is being sought. What is sought is the ability to temporarily use the leased equipment for a transitional period of time. That can be achieved through a transitional services agreement.

[210] A transitional services agreement is not tantamount to an assignment. While it would afford the Founders, as purchaser of the Debtors' business, the ability to use the

leased equipment, the rights and obligations under the leasing agreements will remain vested with the Debtors.

[211] Pursuant to section 11 CCAA, I will issue a declaration that any use by the purchaser of equipment leased from RBC will be contingent upon the Debtors and the Founders entering into a transitional services agreement in good faith and on mutually satisfactory terms.

[212] RBC further notes that, pursuant to the Asset Purchase Agreement, the Founders will acquire the Debtors' rights in any contracts with Dematic.[161] Dematic is the seller of the leased equipment. RBC correctly argues that Dematic's warranty, as seller of that equipment, attaches to the equipment itself and that RBC should continue to benefit from that warranty as long as it remains the owner of that property.

[213] As noted, the Founders do not intend to purchase the Automation System. It follows that they should not acquire Dematic's warranty in respect of that equipment. I will thus issue a declaration clarifying that the Dematic contracts assigned pursuant to the Asset Purchase Agreement do not include sellers' warranties relating to property subject to the six RBC leasing agreements.

[214] Ultimately, despite the interesting points raised by RBC in its contestation, I find that these do not constitute grounds for refusing approval of the Proposed Transaction.

4. PROVISIONAL EXECUTION NOTWITHSTANDING APPEAL

[215] The final issue to be addressed relates to the matter of provisional execution notwithstanding appeal. Both the Debtors and the Lenders submit that the orders they seek should be made executory notwithstanding appeal. They thus recognize that the delay inherent in an appeal would irremediably threaten the viability of both the Proposed Transaction and the Lenders' preferred option of liquidation applying the Gordon Brothers Minimum Guarantee.

[216] Time is of the essence here.

[217] The Monitor's cash flow projections show that the resources available for the continued operations of the Debtors' business are depleting and are projected to reach a low of $1.2 million on February 27, 2026.[162] It appears clear that if the Proposed Transaction is unable to close very shortly on account of the delays resulting from an appeal, the restructuring will fail.

[218] Without provisional execution, the possibility of a going concern transaction will vanish. Jobs and commercial relationships will be irremediably lost. The social and

[161] *Ibid.*, Schedule C, para. 26.
[162] Third Report of the Monitor – December 11, 2025, Appendix B.

economic consequences that the CCAA is aimed at preventing will come to pass and the prospect of a restructuring under this statute will be defeated.

[219] In their Additional Notes and Authorities, the Lenders write:

> 38. In the present case, where the proceedings are vigorously contested, the risk of appeal is real, yet the delays related to an appeal would cause a serious prejudice to all the parties and stakeholders involved. In such scenarios, the Court is justified to order the provisional execution notwithstanding appeal.

[220] I agree. The delay resulting from an appeal is likely here to cause irreparable harm to the parties and all stakeholders. Pursuant to article 661 of the *Code of Civil Procedure*, I will order provisional execution of this judgment notwithstanding appeal.

5. VARIA

[221] At the request of Cettire and the Lenders, several exhibits were provisionally placed under seal to allow them to adduce evidence and make representations as to whether the test for a sealing order was met.[163] Time constraints prevented argument on this matter.

[222] Should the relevant parties not wish to have the exhibits in question unsealed, they are directed to provide me with brief written submissions on the matter on or before February 13, 2026.

[223] Finally, I express sincere gratitude to counsel for all parties for their availability, dedication and the quality of their oral and written submissions.

* * * *

DISPOSITION

[224] In view of the foregoing, I have signed a separate Approval and Vesting Order as well as an *Ordonnance d'annulation et de radiation*.

FOR THESE REASONS, THE COURT:

[225] **DISMISSES** the *Application Seeking a* Confirmation *that the Applicants are Proper Phase 2 Qualified Bidder* of Ark Technologies Pty. Ltd and Cettire Limited;

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[163] *Sherman Estate v. Donovan*, 2021 SCC 25.

[226] **GRANTS** the *Application for the Issuance of an Approval and Vesting Order* of Atallah Group Inc., Atallah International Inc., 9416-7145 Québec Inc., Atallah Group U.S. Inc., Atallah Group Ltd. and Atallah Group EU SRL;

[227] **DISMISSES** the *Notice of Contestation of the Debtors' Application for the Issuance of an Approval and Vesting Order by the Lenders Syndicate and Application of the Lenders Syndicate for the Issuance of a Liquidation Sale Approval Order and For an Order Expanding the Powers of the Monitor or Subsidiarily Appointing A Receiver*;

[228] **DISMISSES** the *Contestation of the Debtors' Application for the Issuance of an Approval and Vesting Order by the Royal Bank of Canada*;

[229] **DISMISSES** the *Avis de contestation de Investissement Québec—Application for the Issuance of an Approval and Vesting Order*; and

[230] **TAKES ACT** that 9549-0348 Québec Inc. does not intend to purchase the Automation System in the Debtors' Fulfilment Centre, located at 3665 Boulevard Poirier, Montreal, Québec, including any property of the Debtors forming part of that Automation System and that is subject to Investissement Québec's first-ranking security;

[231] **DECLARES** that the Purchased Assets in Schedule A of the Asset Purchase Agreement of January 10, 2026, between the Debtors and 9549-0348 Québec Inc. do not include any property belonging the Debtors forming part of the Automation System in the Debtors' Fulfilment Centre and that is subject to Investissement Québec's first-ranking security;

[232] **DECLARES** that Investissement Québec's first-ranking security over the Debtors' property that forms part of the Automation System in the Debtors' Fulfilment Centre and referred to in paragraph [231] of this Judgment is not discharged or reduced by the *Ordonnance d'annulation et de radiation* signed on February 4, 2026;

[233] **DECLARES** that, to the extent that the equipment leased by the Debtors from the Royal Bank of Canada in accordance with the six leasing agreements between the Royal Bank of Canada and the Debtors is used by 9549-0348 Québec Inc. or by the Debtors for the benefit of 9549-0348 Québec Inc. following the closing of the Asset Purchase Agreement between the Debtors and 9549-0348 Québec Inc., rent due under those leasing agreements shall be paid to the Royal Bank of Canada from the Purchase Price received under the Asset Purchase Agreement for a period of up to three (3) months and **DECLARES** that, should the use of the equipment leased by the Debtors from the Royal Bank of Canada continue for any period greater than three (3) months following the closing of the Asset Purchase Agreement, the rent due under those leasing agreements shall be paid to the Royal Bank of Canada by 9549-0348 Québec Inc.;

[234] **DECLARES** that, following the closing of the Asset Purchase Agreement between the Debtors and 9549-0348 Québec Inc., any use by or for the benefit of 9549-0348

Québec Inc. of the equipment leased by the Debtors from the Royal Bank of Canada in accordance with the six leasing agreements between the Royal Bank of Canada and the Debtors will require the conclusion, in good faith and on mutually satisfactory terms, of a transitional services agreement between the Debtors and 9549-0348 Québec Inc.;

[235] **DECLARES** that the Purchased Assets, Assigned Contracts and Assigned Agreements under the Asset Purchase Agreement do not include any sellers' warranties in respect of property belonging to the Royal Bank of Canada and leased to the Debtors in accordance with the six leasing agreements between the Royal Bank of Canada and the Debtors;

[236] **ORDERS** the provisional execution of the present Judgment notwithstanding appeal and without the requirement to provide any security or provision for costs;

[237] **WITHOUT** costs.

ANDRES C. GARIN, J.S.C.

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Hearing dates: January 15, 16, 29 and 30, 2026