



Court File No. 09-8517-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE )  
MR. JUSTICE MORAWETZ ) WEDNESDAY, THE 23<sup>RD</sup> DAY  
OF DECEMBER, 2009

**IN THE MATTER OF AN APPLICATION UNDER SECTION 47  
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3**

**AND IN THE MATTER OF SECTION 101 OF  
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C.C-43**

**B E T W E E N:**

**STATE BANK OF INDIA (CANADA)**

**Applicant**

**- and -**

**1585396 ONTARIO INC.  
o/a AAA TRADING CO.**

**Respondent**

**ORDER**

THIS MOTION, made by the Applicant, State Bank of India (Canada) (the "Bank") for an *ex parte* Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing Deloitte & Touche Inc. as interim receiver (in such capacities, the "Interim Receiver") without security, of all of the assets, undertakings and properties of

1585396 Ontario Inc. o/a AAA Trading Co. (the "**Debtor**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Partha Sen sworn December 22, 2009 and the exhibits thereto, the affidavit of Robert A. Vincent sworn December 22, 2009 and the exhibits thereto, the affidavit of Sam Rappos sworn December 23, 2009 and the exhibits thereto, and on hearing the submissions of counsel for the Bank and independent counsel to the Interim Receiver, and on reading the consent of Deloitte & Touche Inc. to act as the Interim Receiver,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this application is properly returnable today.

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 47(1) of the BIA, Deloitte & Touche Inc. is hereby appointed Interim Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**").

3. **THIS COURT ORDERS** that, absent further Order of this Court, the Interim Receiver shall not operate, manage or carry on the business of the Debtor, or employ any employees of the Debtor.

### **INTERIM RECEIVER'S POWERS**

4. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the relocating of Property to safeguard it, the engaging of independent security personnel, and the taking of physical inventories;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, security personnel, private investigators and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (f) to summarily dispose of Property that is perishable or likely to depreciate rapidly in value, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (g) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (h) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to

the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;

- (i) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (j) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtor; and
- (k) to take any other conservatory measures that the Interim Receiver deems necessary,

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in

that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **ACCESS TO THE PREMISES**

8. **THIS COURT ORDERS AND DIRECTS** the Interim Receiver, as soon as reasonably possible, to attend at 1396 Avonlea Court, Mississauga, Ontario, the registered office and mailing address of the Debtor (the "**Premises**"), in order to recover possession of the Property and the Records, provided that (i) such access to the Premises shall be limited to access on the Premises where the Records or the Property of the Debtor are located; and (ii) if the Interim Receiver cannot gain access to the Premises it shall report to this Court the reasons why access was denied.

9. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other Persons acting on its instructions or behalf, and (iii) any Person appearing in charge of the Premises, shall forthwith permit entry and re-entry into the Premises to the Interim Receiver and any of its employees, agents, counsel and representatives for the purposes of searching for, identifying, inspecting, preserving, reproducing and removing into the possession of the Interim Receiver the Property and the Records.

10. **THIS COURT ORDERS** that entry and re-entry to the Premises pursuant to this Order shall be made between 8:00 a.m. and 8:00 p.m. (Toronto time) on any day of the week.

#### **EXECUTION OF THE ORDER**

11. **THIS COURT ORDERS** that, if requested by the Interim Receiver, the Sheriff for the District of Peel, or such other Sheriff having jurisdiction, be and is hereby authorized and directed to attend at the Premises to assist the Interim Receiver with gaining access to the Premises and securing the Property and the Records.

12. **THIS COURT ORDERS** that, if considered necessary by the Sheriff and/or the Interim Receiver, the Sherriff and/or the Interim Receiver may require a police officer or peace officer to accompany the Sheriff and/or the Interim Receiver to assist in the execution of the Order and to keep the peace.

13. **THIS COURT ORDERS** that any police service or peace officer be and is hereby authorized to arrest, or arrest and remove, any person who has knowledge of this Order and who the police service or peace officer has reasonable and probable grounds to believe is contravening or has contravened the provisions of this Order, and for greater certainty, such a police service or peace officer retains his or her discretion to decide whether to arrest or remove any person pursuant to this Order.

#### **NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

14. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

15. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property, other than the outstanding application for a bankruptcy order bearing Court File No. 31-207699-T that was commenced by the Bank against the Debtor (the “**Bankruptcy Application**”), shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property, other than the Bankruptcy Application, are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE INTERIM RECEIVER**

17. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Interim Receiver or leave of this Court.

### **INTERIM RECEIVER TO HOLD FUNDS**

18. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more

new accounts to be opened by the Interim Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

19. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA.

20. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Interim Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Interim Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

21. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the



protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE INTERIM RECEIVER'S LIABILITY**

22. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTERIM RECEIVER'S ACCOUNTS**

23. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Interim Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Interim Receiver's Charge**"), but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

24. **THIS COURT ORDERS** the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

25. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

**GENERAL**

26. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtor.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Bank shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Bank's security or, if not so provided by the Bank's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. **THIS COURT ORDERS** that, upon attending at the Premises, the Interim Receiver shall forthwith deliver a copy of this Order, the Application Record and the Bankruptcy Application materials (collectively, the "**Documents**") to any of the Debtor's current or former directors, officers, employees, agents, and shareholders present at the Premises at that time, and the delivery of the Documents by the Interim Receiver shall constitute good and valid service of the Documents on the Debtor.

30/

33. *THIS COURT ORDERS that this order is in effect to Thursday December 31, 2009.*

*JSN*

*[Signature]*

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PER / PAR: *JSN* Joanne Nicoara  
Registrar, Superior Court of Justice

1585396 ONTARIO INC. o/a AAA TRADING CO.

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
PROCEEDINGS COMMENCED AT  
TORONTO

**ORDER**

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