

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-052159-171

DATE: July 25, 2017

BEFORE Me Julie Bégin, registraire

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:

BCBG MAX AZRIA CANADA INC.

Debtor / Petitioner

and

DELOITTE RESTRUCTURING INC.

Trustee

and

GBG USA INC.

and

GBG Acquisition ULC

Mises-en-cause

APPROVAL, VESTING, ASSIGNMENT AND EXTENSION ORDER

- [1] **CONSIDERING** the Application for approval of an asset sale, assignment of an agreement, for the issuance of a vesting order and for extension of time to file a proposal pursuant to sections 50.4(9), 65.13 and 84.1 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended ("**BIA**"), as well as the exhibits and the affidavit of Mr. Naveed Z. Manzoor, filed in support thereof (the "**Application**") by the Debtor / Petitioner BCBG Max Azria Canada Inc. (the "**Petitioner**");

[2] **CONSIDERING** the representations of counsel;

[3] **CONSIDERING** the provisions of the BIA;

THE COURT HEREBY:

[4] **GRANTS** the Application.

Definitions

[5] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.

Service

[6] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly presentable and **DISPENSES** with further service thereof.

[7] **PERMITS** service of this Order at any time and place and by any means whatsoever.

Sale Approval

[8] **APPROVES** the Sale Transaction.

[9] **AUTHORIZES** and **RATIFIES** the execution of the Asset Purchase Agreement (**Exhibit R-1** to the Application) and **AUTHORIZES** the execution of the Transfer, Assignment and Assumption Agreement (**Exhibit R-2** to the Application) (together, the "**Sale Agreements**") by the Petitioner, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Trustee.

Execution of Documentation

[10] **AUTHORIZES** the Trustee and the Petitioner to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in each of the Sale Agreements and any other ancillary document which could be required or useful to give full and complete effect thereto.

Authorization

[11] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Petitioner to proceed with the Sale Transaction with respect to the

Canadian Assets and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

Vesting of Canadian Assets

- [12] **ORDERS** and **DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as **Schedule A** hereto (the "**Certificate**"), all rights, title and interest in and to the Canadian Assets shall vest absolutely and exclusively in and with GBG USA Inc. or GBG Acquisition ULC (jointly or individually, as applicable, the "**Buyer**"), free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the *Civil Code of Québec*, the *Personal Property Security Act* of the Provinces of Québec, Nova Scotia, Ontario, Manitoba, Alberta and British Columbia, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants set out in the Asset Purchase Agreement and reproduced in **Schedule B** hereto (the "**Permitted Encumbrances**").
- [13] For greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Canadian Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Canadian Assets, in each case effective as of the applicable time and date of the Certificate.
- [14] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Petitioner under the Licensed Department Agreement dated as of October 1, 2012 between the Petitioner and Hudson's Bay Company, as amended from time to time (the "**Assumed Contract**"), are assigned to the Buyer.
- [15] **ORDERS** the Trustee to notify a copy of this Order to every party to the Assumed Contract.
- [16] **ORDERS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof.

Net Proceeds

- [17] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the net proceeds from the sale of the Canadian Assets (the "**Net Proceeds**") shall stand in the place and stead of the Canadian Assets, and that upon issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Canadian Assets immediately prior to the sale, as if the Canadian Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
- [18] **ORDERS** that the Petitioner shall distribute the Net Proceeds (excluding any reserves determined by the Trustee to be necessary to satisfy obligations secured by Encumbrances ranking in priority to the DIP Charge (as defined in the First Order)) to the ABL Lenders (as defined below) in an amount up to the maximum amount of the ABL Lenders' secured claim under the Second Amended and Restated Loan Agreement dated as of February 5, 2015 with Bank of America, N.A. and other lenders party thereto (collectively, the "**ABL Lenders**") and the Canadian Forbearance Agreement dated as of March 3, 2017 (jointly, the "**Loan Documents**") and **DECLARES** that such distribution shall be free and clear of all Encumbrances other than those in favour of the ABL Lenders, and shall be applied against the indebtedness, liabilities and obligations owing by the Petitioners to the ABL Lenders under the Loan Documents.
- [19] **ORDERS** that, if any Net Proceeds remain after the distribution described in the paragraph immediately above, such amounts shall be distributed by the Trustee in accordance with applicable legislation.

Protection of Personal Information

- [20] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, or any similar provision of any applicable provincial private-sector privacy legislation (collectively, the "**Applicable Privacy Laws**"), the Petitioner and the Trustee are authorized to disclose to the Buyer the personal information in the custody or control of the Petitioner listed in Schedule C hereto (the "**Disclosed Information**").
- [21] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
 - (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioner and as may otherwise be permitted by Applicable Privacy Laws; and

- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

Validity of the Sale Transaction

[22] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a receiving order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

the vesting of the Canadian Assets contemplated in this Order, as well as the execution of the Sale Agreements pursuant to this Order, and the payments, distributions and disbursements made pursuant to this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioner, the Buyer, the ABL Lenders or the Trustee.

Limitation of Liability

[23] **DECLARES** that nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Canadian Assets.

[24] **DECLARES** that no action lies against the Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee or belonging to the same group as the Trustee shall benefit from the protection arising under the present paragraph.

Extension of Time

[25] **EXTENDS** the time period within which the Petitioner may file a proposal under the BIA to August 31, 2017.

General

[26] **DECLARES** that the Petitioner or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.

- [27] **DECLARES** that the Petitioner and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [28] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [29] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist, the Petitioner, the Trustee and their respective agents in carrying out the terms of this Order.
- [30] **ORDERS** that each of the Petitioner and the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.
- [31] **ORDERS** provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.
- [32] **THE WHOLE** without costs.

(s) me Julie Bégin, registraire
Me Julie Bégin, registraire

MTRE. JULIEN MORISSETTE
(OSLER HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONER

Hearing date: July 25, 2017

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR
J. H. Osler
Personne désignée par le greffier

500-11-052159-171

SCHEDULE A
DRAFT CERTIFICATE OF THE TRUSTEE

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File No.: 500-11-052159-171

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF::**

BCBG MAX AZRIA CANADA INC.
Debtor/Petitioner

-and-

DELOITTE RESTRUCTURING INC.
Trustee

-and-

GBG USA INC.

-and-

GBG Acquisition ULC
Mises-en-cause

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on March 1, 2017, BCBG Max Azria Canada Inc. ("**BCBG Canada**") filed a Notice of intention to make a proposal ("**NOI**") under the relevant provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B 3 and Deloitte Restructuring Inc. was appointed as trustee thereto (the "**Trustee**");

WHEREAS on July ●, 2017, the Court issued an Order (the "**Approval and Vesting Order**") thereby authorizing and approving, *inter alia*, the execution by the Petitioner of (i) an asset purchase agreement by and among, *inter alios*, BCBG Canada as vendor (the "**Vendor**") and GBG USA Inc. as purchaser (the "**US Purchaser**"), copy of which was filed in the Court record (the "**Asset Purchase Agreement**"); (ii) a transfer, assignment

Sok

500-11-052159-171

and assumption agreement by and between the Vendor, the US Purchaser and GBG Acquisition ULC (jointly with the US Purchaser, the "**Buyer**") (the "**Transfer, Assignment and Assumption Agreement**" and together with the Asset Purchase Agreement, the "**Sale Agreements**"), and into all the transactions contemplated therein (the "**Sale Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustee.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Trustee once the (a) the Sale Agreements have been executed and delivered; and (b) the Canadian Purchase Price (as defined in the Approval and Vesting Order) has been paid by the Buyer to the Vendor; and (c) and all the conditions to the closing of the Sale Transaction have been satisfied or waived by the parties thereto.

THE TRUSTEE CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE BUYER AS TO THE FOLLOWING:

- (a) the Asset Purchase Agreement has been executed and delivered;
- (b) the Transfer, Assignment and Assumption Agreement has been executed and delivered;
- (c) the Canadian Purchase Price (as defined in the Approval and Vesting Order) payable upon the closing of the Sale Transaction and all applicable taxes have been paid; and
- (d) all conditions to the closing of the Sale Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Trustee on _____ [DATE].

DELOITTE RESTRUCTURING INC., in its capacity as trustee to the Notice of intention to make a proposal of BCBG Max Azria Canada Inc., and not in its personal capacity.

Per: _____

Name: _____

Title: _____

Sok

SCHEDULE B
PERMITTED ENCUMBRANCES

Per the Asset Purchase Agreement, "Permitted Encumbrances" means:

- a) Encumbrances for taxes that (i) are not yet due and payable or (ii) are being contested in good faith by appropriate proceedings and for which adequate reserves have been made with respect thereto;
- b) mechanics Encumbrances and similar Encumbrances for labor, materials or supplies in the ordinary course of business consistent with past practice;
- c) zoning, building codes and other land use laws regulating the use or occupancy of any real property or the activities conducted thereon that are imposed by any governmental entity having jurisdiction over such real property and that do not prohibit the current use or occupancy of such real property; and
- d) easements, covenants, conditions, restrictions and other similar matters affecting title to any real property and other title defects that do not or would not reasonably be expected to materially impair the use or occupancy of such real property in the current operation of the Petitioner.

500-11-052159-171

SCHEDULE C
DISCLOSED INFORMATION

The following information shall constitute the Disclosed Information for the purposes of this Order:

- a) the human resources and payroll information in the Petitioner's records pertaining to those of the Petitioner's employees employed in the Partner Shop business that have accepted an offer of employment from the Buyer; and
- b) the name, email, and other contact information of Partner Shop customers.