

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

No.: 500-11-049142-157
Estate No: 41-2016258

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

INDUSTRIES COVER INC.

Debtor/Petitioner

-and-

DELOITTE RESTRUCTURING INC.

Trustee

-and-

THE REGISTRAR OF THE LAND REGISTRY
OFFICE FOR THE REGISTRY DIVISION OF
MONTRÉAL having its registered office at 2050,
de Bleury Street, suite #RC 10 and 1.10, Montréal,
Quebec, H3A 2J5

-and-

THE REGISTRAR OF THE LAND REGISTRY
OFFICE FOR THE REGISTRY DIVISION OF
LOTBINIÈRE having its registered office at 6375,
Garneau Street, suite 101, Sainte-Croix, Quebec,
G0S 2H0

Impleaded Parties

**MOTION FOR THE ISSUANCE OF AN ORDER APPROVING THE SALE OF ASSETS
AND A VESTING ORDER**
(Sections 65.13 and 66 of the *Bankruptcy and Insolvency Act*)

A. BACKGROUND

1. Industries Cover Inc. (the "**Petitioner**") is a corporation initially incorporated under Part 1A of the *Quebec Companies Act*, CQLR, c. C-38, and continued under the *Quebec Business Corporations Act*, CQLR, c. S-31.1;
2. Since its constitution in 1990, the Petitioner has specialized in the manufacturing of glass products, mainly (but not exclusively) insulated glass units, which are sold to manufacturers of windows (industrial, commercial and residential);

3. Petitioner is held by the following shareholders:
 - (a) Guardian Industries Canada Corp. ("**Guardian Canada**") holds 75% of all the issued and outstanding shares of the Petitioner; and
 - (b) Gestion J&N Boudreault Inc. holds 25% of all the issued and outstanding shares of the Petitioner;
4. Petitioner's head office is located in Saint-Apollinaire and it has three other manufacturing facilities located in Montréal (Anjou), Saint-Agapit and Baie-Saint-Paul;
5. Petitioner also held until recently a 51% participation in Thermos Rive-Nord Inc. ("**Thermos**") and it holds a 60% ownership in Vitrierie Novy Glass Ltd. ("**Novy Glass**"), respectively located in Terrebonne, Québec and Shippagan, New Brunswick;
6. Until April 2015, the Petitioner employed approximately 122 employees in all of its three (3) plants other than the Baie-Saint-Paul plant which has been closed since the month of October 2014;
7. As of April 2015, Petitioner was already insolvent, facing a liquidity crisis and unable to meet its obligations as they became due;
8. On April 17, 2015, as a result of its liquidity crisis, Petitioner was forced to lay off its remaining employees, either on a permanent or temporary basis, and all operations were shut down;
9. During the month of June 2015, Petitioner, with the assistance of Deloitte's M&A professionals, developed a structured divestiture process of its business and/or assets with the following expected timeline:
 - Transmittal of teasers to potential purchasers June 26
 - Signing of non-disclosure agreements and distribution of confidential information memorandum June 29 - July 24
 - Due diligence, including management presentations, data room and sites visits Starting July 9
 - Submittal of binding offers July 31
 - Court approval August 14 -(the "**Sale Process**");
10. On July 10, 2015, Revenue Québec seized Petitioner's bank account for unpaid GST/QST, leaving Petitioner with no choice but to file for insolvency protection to preserve the value of its business and assets;
11. On July 16, 2015, Petitioner filed a *Notice of Intention to Make a Proposal* (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") and Deloitte Restructuring Inc. ("**Deloitte**" or the "**trustee**") was appointed as trustee to the proposal;

12. As at the filing date, the Petitioner's total indebtedness included:
 - (a) unsecured claims amounting to \$1,134,000;
 - (b) the secured claim of Gestion J&N Boudreault Inc. in the amount of \$1,000,000 plus interest (secured by a first ranking charge on the Anjou property); and the secured claim of Guardian Canada in the amount of \$495,000, plus interest (secured by a second ranking charge on the Anjou and the Saint-Apollinaire properties and by a first ranking charge on all other movable and immovable assets);
 - (c) the claim of Revenue Québec of approximately \$441,766 for unpaid sale taxes and/or deductions at source (including a claim of \$109,843 secured by a first ranking charge on the Saint-Apollinaire property);
 - (d) warranty claims and contingent claims for an undetermined amount;
13. On July 20, 2015, this Court granted Petitioner's motion for the approval of a first ranking DIP financing by Guardian Canada, for an amount of \$700,000 (the "**Dip Financing**");
14. The stay of proceedings resulting from the filing of the NOI was extended by the Court to September 27, 2015;

B. THE SALE PROCESS

15. The Sale Process was launched in order to maximize the value of Petitioner's assets and to provide potential for returning employees back to work;
16. On or about June 29, Deloitte initiated the Sale Process and sent out teasers to approximately twenty-seven (27) potential buyers;
17. Twelve (12) interested parties executed a *non-disclosure agreement* which allowed them to have access to the virtual data room that contains relevant information on Petitioner's business;
18. Five (5) visits and management presentations were conducted between July 9 and July 29 and potential buyers performed their due diligence with the help of Deloitte, Petitioner's management and counsel;
19. On or about July 22, 2015, all interested parties were provided with a process letter, and a draft form of share purchase agreement;
20. On July 31, 2015, Deloitte received six (6) offers or letters of intent for all or selected assets of the Petitioner, plus two (2) offers relating respectively to Petitioner's shares of Thermos and Novy Glass, all subject to closing conditions including further due diligence, financing, etc.;

21. Following the review of the offers received, Deloitte therefore asked the bidders to submit final, binding and unconditional offers on or before August 17, 2015;
22. However, considering that the Sale Process had generated a limited interest for the shares of Thermos held by Petitioner (the "**Shares**"), Deloitte and Petitioner recommended the sale of the Shares to 9309-2286 Québec Inc., controlled by the other co-shareholder of Thermos, and the sale was approved by the Court on August 13, 2015;
23. The Dip Financing was subsequently repaid in full;
24. On August 17, 2015, Deloitte received four (4) revised offers to purchase, two of which were considered as more serious and retained for further clarifications and negotiations;
25. This process resulted in the submission by Novatech Group Inc., on August 20, 2015, of a binding and unconditional Asset Purchase Agreement (the "**Asset Purchase Agreement**") for the purchase of substantially all of Petitioners' assets listed in the Asset Purchase Agreement, excluding the Baie-Saint-Paul facility and related movable assets, the Thermos Shares and the Novy Glass Shares (the "**Purchased Assets**"), which after analysis by Deloitte and Petitioner's board of directors, is the best transaction with certainty of closure that could be obtained; it will enable a restart of the operations and the preservation of several employments at Cover's three plants located in Anjou, Saint-Apollinaire and Saint-Agapit (the "**Sale**");
26. A copy of the Asset Purchase Agreement is filed herewith as **Exhibit R-1**, under seal;
27. The purchase price offered for the Purchased Assets is fair and reasonable and the proposed Sale is more beneficial to the creditors than a sale under a bankruptcy;
28. The closing of the Sale is conditional upon, *inter alia*, the issuance of an order by this Court vesting all of Petitioner's rights, titles and interest in and to the Purchased Assets absolutely free and clear of all claims and encumbrances, upon the filing by the trustee of a trustee's certificate substantially in the form attached as **Exhibit R-2**, the whole in accordance with the conclusions of the present Motion;
29. Deloitte intends to file with the Court, prior to the hearing of the present Motion, a report stating its opinion that the proposed Sale would be more beneficial to the creditors than a sale under a bankruptcy;

C. CONCLUSIONS

30. Considering the foregoing, it is in the Petitioner's interest and the interest of all of its secured and unsecured creditors that the present Motion be granted by this Court;
31. Since the information set forth in the Asset Purchase Agreement is sensitive and could prejudice Petitioner should the Sale not be completed, Petitioner requests that the Asset Purchase Agreement be filed under seal of confidentiality until completion of the Sale Process;

32. The present motion is well founded in facts and in law;

THEREFORE, THE PETITIONER PRAYS BY JUDGMENT TO INTERVENE HEREIN, THIS HONOURABLE COURT TO:

GRANT the Motion for the issuance of an Order Approving the Sale of Assets and a Vesting Order (the "**Motion**").

SERVICE

ORDER that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

SALE APPROVAL

ORDER AND DECLARE that the sale of Petitioner's assets described in the Asset Purchase Agreement (Exhibit R-1) (the "**Purchased Assets**") to Novatech Group Inc. (the "**Purchaser**") (the "**Sale**") is hereby approved, that the execution of the Asset Purchase Agreement by Industries Cover Inc. (the "**Vendor**") is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of Deloitte Restructuring Inc., in its capacity as trustee to the *Notice of Intention to Make a Proposal* filed by Petitioner (the "**Trustee**").

EXECUTION OF DOCUMENTATION

AUTHORIZE the Vendor, the Trustee and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any document, deed, provision, transaction or undertaking stipulated in the Asset Purchase Agreement (Exhibit R-1) and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

ORDER and DECLARE that this Order shall constitute the only authorization required by the Vendor to proceed with the Sale and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

ORDER and DECLARE 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 Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, 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, 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, or any other applicable legislation providing for a security interest in movable or immovable property; and, for greater certainty, **ORDER** that all of the Encumbrances affecting or relating to the Purchased Assets be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

DIRECT the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

ORDER the Registrars of the land registries for the registry divisions of Montreal and Lotbinière to strike the registration numbers 191 456, 21 622 252, 21 076 701, 21 076 607, 21 716 657, 21 687 454, 21 621 979, 21 719 053 and 21 724 268, upon presentation of the required form with a true copy of this Order and the Certificate.

ORDER the Vendor to take all steps as may be necessary to effect the discharge of the Encumbrances.

PROCEEDS

ORDER that the proceeds from the Sale (the "Proceeds") shall be remitted to the Trustee in trust and shall be used in accordance with applicable legislation, including for the reimbursement by Petitioner of its secured creditors.

ORDER that the Proceeds shall stand in the place and stead of the Purchased Assets, and that upon payment of the purchase price by the Purchaser, all Encumbrances shall attach to the Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Sale, as if the Purchased Assets had not been sold and remained in the possession of control of the person having that possession or control immediately prior to the Sale.

PROTECTION OF PERSONAL INFORMATION

ORDERS that, pursuant to sub-section 7(3)© of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Trustee and the Vendor are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Vendor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.

VALIDITY OF THE SALE

ORDER that notwithstanding:

- (i) The pendency of these proceedings;
- (ii) Any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition;
- (iii) Any assignment in bankruptcy made in respect of the Vendor, or
- (iv) The provisions of any federal or provincial legislation.

The vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Asset Purchase Agreement 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 Vendor, the Purchaser or the Trustee, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any federal or provincial legislation.

LIMITATION OF LIABILITY

DECLARE that, subject to other orders of the Court, nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA.

DECLARE 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.

GENERAL

ORDER that the Asset Purchase Agreement be kept confidential and under seal until completion of the sale process.

DECLARE that this Order shall have full force and effect in all provinces and territories in Canada.

ORDER the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.

MONTREAL, August 25, 2015

(S) STIKEMAN ELLIOTT S.E.N.C.R.L., s.r.l.

COPIE CONFORME

Stikeman Elliott LLP

STIKEMAN ELLIOTT S.E.N.C.R.L., s.r.l.

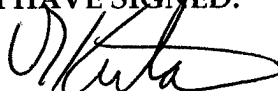
STIKEMAN ELLIOTT LLP
Attorneys for the Debtor/Petitioner
INDUSTRIES COVER INC.

AFFIDAVIT

I, the undersigned, Dave Kuta, having a place of business at 9300 Ray-Lawson Blvd., in the city of Anjou, province of Québec, solemnly declare:

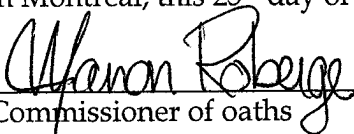
1. I am Chief Restructuring Officer of Industries Cover Inc.;
2. All the facts alleged in the *Motion for the issuance of an order approving the sale of assets and a vesting order* are true.

AND I HAVE SIGNED:



DAVE KUTA

SOLEMNLY DECLARED before me
in Montréal, this 25th day of August 2015



Commissioner of oaths



NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the *Motion for the Issuance of an Order Approving the Sale of Assets and a Vesting Order* will be presented for adjudication before one of the Honourable Judges of Superior Court, sitting in practice in and for the District of Montréal, in the Montréal Courthouse, 1 Notre-Dame Street East, on **August 26, 2015 at 9:00 a.m. in Room 16.10** of the Montreal Courthouse.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, August 25, 2015

(S) STIKEMAN ELLIOTT S.E.N.C.R.L., s.r.l.

STIKEMAN ELLIOTT LLP
Attorneys for the Debtor/Petitioner
INDUSTRIES COVER INC.

COPIE CONFORME

Stikeman Elliott LLP
STIKEMAN ELLIOTT S.E.N.C.R.L., s.r.l.

SUPERIOR COURT
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PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

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

INDUSTRIES COVER INC.

Debtor /Petitioner

- vs -

DELOITTE RESTRUCTURING INC.

Trustee

-and-

THE REGISTRAR OF THE LAND REGISTRY
OFFICE FOR THE REGISTRY DIVISION OF
MONTREAL and al.

Impleaded Parties

BS0350

File: 138084-1001

MOTION FOR THE ISSUANCE OF AN ORDER
APPROVING THE SALE OF ASSETS AND A
VESTING ORDER (Sections 65.13 and 66 of the
Bankruptcy and Insolvency Act)

COPY FOR THE SERVICE LIST

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