

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF RICHELIEU

No.: 765-11-002344-195

**SUPERIOR COURT**  
(Commercial Division)

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**IN THE MATTER OF THE RECEIVERSHIP OF:**

**MOMETAL STRUCTURES INC.,**

Debtor

-and-

**DELOITTE RESTRUCTURING INC.,**

Petitioner/Receiver

-and-

**HSBC BANK CANADA,**

-and-

**INVESTISSEMENT QUÉBEC,**

-and-

**9357-1578 QUÉBEC INC.,**

-and-

**ROYAL BANK OF CANADA,**

-and-

**ACIER PICARD INC.,**

-and-

**TALBOT & ASSOCIÉS** 725 Rossiter, Saint-Jean-  
sur-Richelieu, QC, J3B 8A4

Mises-en-cause

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**AMENDED MOTION TO AUTHORIZE THE SALE OF PART  
OF THE DEBTOR'S ASSETS**

(Section 243, 249 and following of the *Bankruptcy and Insolvency Act*,  
R.S.C. (1985) c. B-3 (hereinafter the "BIA"))

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF RICHELIEU, THE  
PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

**A. PURPOSE OF THE MOTION**

1. Pursuant to the present Motion, and for the reasons more fully set out herein below, Petitioner, Deloitte Restructuring Inc., in its capacity as Court appointed receiver (the "**Receiver**"), requests that this Honourable Court authorize it to accept an offer to purchase part of the Debtor's assets and declare that the transfer of such assets be made in favour of the Mise-en-cause Talbot & Associés ("**Talbot**") free and clear of any hypothec, charge, lien or encumbrance of any nature whatsoever, the whole in accordance with the conclusions hereof;

**B. THE PARTIES**

2. The Debtor is based in Varennes and specializes in the fabrication and installation of non-conventional steel structures and architecturally exposed structures in the non-residential construction industry, the whole as appears from a copy of the *État de renseignements d'une personne morale au registre des entreprises* communicated herewith as **Exhibit R-1**;
3. The Receiver was appointed receiver to the universality of the Debtor's movable property pursuant to an order of the Superior Court of Québec rendered on May 8, 2019 (the "**Receivership Order**"), as appears from the court record;
4. The Mise-en-cause HSBC Bank Canada ("**HSBC**") is a duly constituted chartered bank and is the first ranking secured creditor of the Debtor for the principal amount of \$8,253,661.10 as at June 27, 2019;
5. The Mise-en-cause Royal Bank of Canada ("**RBC**") is a duly constituted chartered bank and is the next ranking secured creditor for the principal amount of approximately \$2,261,931 [...];
6. The Mises-en-cause, Intact Compagnie D'assurance, Investissement Québec, 9357-1578 Québec Inc. and Acier Picard Inc., are all lower ranking secured creditors, which, given the amount of secured indebtedness in favor of HSBC and RBC, cannot reasonably expect to receive any distribution from the sale of assets contemplated herein;
7. The Mise-en-cause Talbot is a professional auctioneer, which submitted a bid to purchase certain assets of the Debtor, for which the Receiver is seeking leave from this Court to accept in accordance with the terms and conditions of said bid (the "**Talbot Bid**"), produced herewith under seal as **Exhibit R-2**;

**C. THE PROCEEDINGS AND THE RECEIVERSHIP**

8. Since the issuance of the Receivership Order on May 8, 2019, the Receiver has taken all appropriate measures in order to achieve the orderly sale of Debtor's assets, as well as taken all conservatory measures reasonably necessary with respect to said assets and other measures to settle Debtor's obligations as needed during its mandate, the whole as more fully appears from a copy of the

Receiver's report (the "**Report**") produced herewith (with "Annex C" under seal) as **Exhibit R-3**;

9. Without limiting the generality of the foregoing, and as more fully appears from the Report, R-3, the Receiver has taken the following measures and steps in the execution of its mandate:
  - a. Took possession and control of Mometal's various premises in order to appropriately deal with the assets located thereon;
  - b. Arranged for the preparation of a detailed inventory of the tangible assets located at the Debtor's Quebec facility, as well as its accounts receivable, holdback and claims, as appears from a copy of the Confidential Information Memorandum, produced as "Annexe A" to the Receiver's report (the "**Information Memorandum**"), Exhibit R-3;
  - c. Issued a Notice and Statement of the Receiver in accordance with subsections 245(1) and 246(1) of the BIA, as appears from a copy of said Notice and Statement, produced herewith as **Exhibit R-4**;
  - d. Proceeded with a public call for tenders for the assets of the Debtor, collected and analysed all valid bids, and obtained the consent of the mises-en-cause HSBC and RBC to accept the Talbot Bid;
  - e. Published liens and/or legal hypothecs in relation to projects in which the Debtor was involved;
  - f. With the support of some of the former employees of Mometal, began collection of the accounts receivable and negotiations with debtors for payment of sums due;

#### **D. THE CALL FOR TENDERS PROCESS AND OUTCOME**

10. Pursuant to paragraph 11.3 of the Receivership Order, the Receiver was granted the power to solicit offers on the Debtor's various assets, including by way of a public call for tenders, as appears from the court record;
11. Given the nature and scope of the assets, and the fact that the Debtor operated facilities in Quebec and Ontario, the Receiver proceeded by way of a public call for tenders for the sale of the assets detailed in the Information Memorandum, namely, all of the equipment, material, rolling stock, office furniture and computer equipment located in the Debtor's Quebec facility, as well as its accounts receivable, holdback and claims (collectively, the "**Assets**"), which in any event represent the majority of the Debtor's total assets;
12. Indeed, the sale of the remaining assets located in Ontario may be the subject of a subsequent order request;

13. Between May 31 and June 3, 2019, the Receiver contacted 144 entities which it felt would consider making a bid on the Assets, and sent a follow up email to each such entity with the Information Memorandum in attachment;
14. The Receiver then posted the Information Memorandum on the website managed and/or hosted by Services F.L., which website is visited by more than 1000 potential bidders;
15. In fact, Services F.L. is a corporation specializing in asset management, inventory count, preparation of public calls for tender and the valuation of corporate and industrial assets;
16. Thereafter, the Receiver also posted the Information Memorandum on its own website at [www.insolvencies.deloitte.ca/fr-ca/pages/Mometal-fr](http://www.insolvencies.deloitte.ca/fr-ca/pages/Mometal-fr);
17. Once the call for tenders was made public, the Receiver responded to questions from prospective bidders, provided them with necessary and useful information and scheduled visits with 15 such bidders for the purpose of inspecting the Assets;
18. As appears from the Report, R-3, all bids were to be submitted by no later than June 14, at 4:00 p.m., in conformity with specific conditions more fully detailed at pages 7-10 of the Information Memorandum;
19. As at June 14, 2019, the Receiver received 17 bids from 12 different bidders, as appears from "Annexe C" of the Report, R-3, under seal;
20. The Receiver immediately refused 5 such bids on the grounds that they did not conform to one or more of the applicable conditions, such as payment of a deposit of 15% of the bid price;
21. Two such bids were made by the former principal of the Debtor, Érik Lafontaine, who failed to submit his bids in conformity with the express conditions of the call for tenders. For this reason and those more fully detailed in the Report, R-3, Mr. Lafontaine's bids were also refused;
22. Of the remaining valid bids, the Receiver prefers the Talbot Bid for the reasons more fully detailed at pages 3 and 4 of its Report, R-3, and as proof will be made during the hearing of this motion;

**E. CONCLUSIONS SOUGHT**

23. The Receiver respectfully submits that the Talbot Bid is the best and most reasonable offer in the circumstances;
24. The purchase price set out in the Talbot Bid is commercially reasonable and was arrived at in a commercially reasonable manner, as appears from the Report, R-3;

25. Neither additional marketing efforts nor a second round of bidding would likely result in a new bidder or higher offered purchase price;
26. Moreover, HSBC and RBC, the two highest ranking secured creditors, agree that the Talbot Bid should be accepted and consent to the conclusions of this Motion;
27. In light of the foregoing, the Receiver respectfully submits that this Court should authorize the sale contemplated by the Talbot Bid in accordance with the conclusions set forth herein;
28. The present Motion is well founded both in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:**

- [A] **GRANT** the Motion

**SERVICE**

- [B] **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.

- [C] **PERMIT** service of this Order at any time and place and by any mean whatsoever.

**SALE APPROVAL**

- [D] **ORDER** and **DECLARE** that the transaction (the "**Transaction**") contemplated by the asset purchase agreement (the "**Purchase Agreement**") "Schedule A" between Deloitte Restructuring Inc. in its capacity as receiver (the "**Receiver**") to the assets of Mometal Structures Inc., and Talbot & Associés (the "**Purchaser**") hereto, for the purchase of the assets described in the Purchase Agreement (the "**Purchased Assets**") and the execution of the Purchase Agreement, are 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 the Receiver.

**EXECUTION OF DOCUMENTATION**

- [J] **AUTHORIZE** the Receiver and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement Schedule A and any other ancillary document which could be required or useful to give full and complete effect thereto.

## AUTHORIZATION

- [K] **ORDER** and **DECLARE** that this Order shall constitute the only authorization required by the Receiver to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

## VESTING OF PURCHASED ASSETS

- [L] **ORDER** and **DECLARE** that upon the issuance of a Receiver's certificate substantially in the form appended as Schedule "C" 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, deemed trusts, 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 been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and 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 personal or movable 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.
- [M] **DECLARE** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Québec*.
- [N] **ORDER** and **DIRECT** the Receiver to file with the Court a copy of the Certificate, forthwith after issuance thereof.

## CANCELLATION OF SECURITY REGISTRATIONS

- [O] **ORDER** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope of the following registrations [...] in connection with the Purchased Asset in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations:
- 1) Right of ownership of Lessor in favor of HSBC Bank Canada published in the RDPRM on 2018-10-31 under registration number 18-1204387-0001;

- 2) Right of ownership of Lessor in favor of HSBC Bank Canada registered in the RDPRM on 2018-08-21 under registration number 18-0918619-0001;
- 3) Right of ownership of Lessor in favor of Royal Bank of Canada registered in the RDPRM on 2015-07-07 under registration number 15-0633451-0003;
- 4) Right of ownership of Lessor in favor of Royal Bank of Canada registered in the RDPRM on 2014-09-19 under registration number 14-0872307-0002;
- 5) Right of ownership of Lessor in favor of Royal Bank of Canada registered in the RDPRM on 2014-09-19 under registration number 14-00872307-0001;
- 6) Right of ownership of Lessor in favor of Royal Bank of Canada registered in the RDPRM on 2017-10-06 under registration number 17-1061522-0001;
- 7) Moveable hypothec in favor of HSBC Bank Canada registered in the RDPRM on 2018-07-19 under registration number 18-0786833-0001;
- 8) Moveable hypothec in favor of Acier Picard Inc. registered in the RDPRM on 2018-07-03 under registration number 18-0715201-0001;
- 9) Moveable hypothec in favor of Intact Compagnie d'assurance registered in the RDPRM on 2018-02-23 under registration number 18-0172066-0002;
- 10) Moveable hypothec in favor of Royal Bank of Canada registered in the RDPRM on 2017-12-28 under registration number 17-1357648-0001;
- 11) Moveable hypothec in favor of Royal Bank of Canada registered in the RDPRM on 2017-12-13 under registration number 17-1315751-0001;
- 12) Moveable hypothec in favor of 9357-1578 Québec Inc. registered in the RDPRM on 2017-09-01 under registration number 17-0929349-0001;
- 13) Moveable hypothec in favor of Intact Compagnie d'assurance registered in the RDPRM on 2014-11-21 under registration number 14-1093492-0001;

- 14) Moveable hypothec in favor of Investissement Québec registered in the RDPRM on 2017-08-31 under registration number 17 0924222-0001.

### **NET PROCEEDS**

- [P] **ORDER** that the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall be remitted to the Receiver and shall be distributed in accordance with applicable legislation.
- [Q] **ORDER** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the purchase price set out in the Purchase Agreement by the Purchaser, all Encumbrances shall attach to the Net 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 or control of the person having that possession or control immediately prior to the sale.

### **VALIDITY OF THE TRANSACTION**

- [R] **ORDER** that notwithstanding
- (a) the pendency of these proceedings;
  - (b) 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 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 settlement, fraudulent 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 Receiver.

### **LIMITATION OF LIABILITY**

- [R.1] **DECLARE** that, subject to other orders of this Court, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Receiver 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;
- [S] **DECLARE** that no action lies against the Receiver 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 Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph.

**GENERAL**

- [T] **ORDER** that the Purchaser or the Receiver shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [U] **ORDER** that Exhibit R-2 and Annexe C of R-3, as well as the Purchase Agreement, be kept confidential and under seal until further order of this Court.
- [V] **DECLARE** that this Order shall have full force and effect in all provinces and territories in Canada;
- [W] **DECLARE** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose
- [X] **REQUEST** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [Y] **ORDER** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [Z] **THE WHOLE** without costs, save in case of contestation.

MONTREAL, June 28, 2019

  
**ROBINSON SHEPPARD SHAPIRO**

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Attorney for Petitioner

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**LIST OF EXHIBITS**

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- Exhibit R-1: Copy of the *État de renseignements d'une personne morale au registre des entreprises*;
- Exhibit R-2 : Talbot Bid;  
(Under seal)
- Exhibit R-3: Copy of the Receiver's report with "Annex C" under seal
- Exhibit R-4: Notice and Statement of the Receiver in accordance with subsections 245(1) and 246(1) of the BIA

MONTREAL, June 28, 2019



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Attorney for Petitioner

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**NOTICE OF PRESENTATION**

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To : **Mr. Érik Lafontaine**  
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TAKE NOTICE that the Amended Motion to authorize the sale of part of the Debtor's Assets will be presented for adjudication before the Honorable Justice Louis-J. Gouin, j.c.s., on **July 5, 2019**, at 9:00 a.m., at the **Montreal Courthouse, 1 Notre-Dame Street in Montreal, room to be determined.**

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, June 28, 2019

  
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N° : 765-11-002344-195

SUPERIOR COURT  
(Civil Division)  
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HSBC BANK CANADA,  
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**AMENDED MOTION TO AUTHORIZE THE  
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(Section 243, 249 and following of the *Bankruptcy and  
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"BIA"))

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