

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B3, as amended**

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

**ROYAL BANK OF CANADA**

Applicant

and

**DISTINCT INFRASTRUCTURE GROUP INC., DISTINCT  
INFRASTRUCTURE GROUP WEST INC., DISTINCTTECH INC., IVAC  
SERVICES INC., IVAC SERVICES WEST INC., and  
CROWN UTILITIES LTD.**

Respondents

**SECOND SUPPLEMENTARY MOTION RECORD OF THE APPLICANTS,  
MEGA DIESEL HOLDINGS LTD. AND CHRIS ARON WOOD  
(Returnable December 17, 2019)**

**December 5, 2019**

**BIRENBAUM, STEINBERG, LANDAU,  
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Lawyers for Royal Bank of Canada

**AND TO: DISTINCT INFRASTRUCTURE GROUP INC.**  
77 Belfield Road, Suite 100  
Toronto, Ontario  
M9W 1G6

Debtor

**AND TO: iVAC SERVICES WEST INC.**  
77 Belfield Road, Suite 100  
Toronto, Ontario  
M9W 1G6

Debtor

**AND TO: DISTINCT INFRASTRUCTURE GROUP WEST INC.**  
10180-101 Street, Suite 2300  
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Debtor

**AND TO: DISTINCTTECH INC.**  
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Toronto, Ontario  
M9W 1G6

Debtor

**AND TO: CROWN UTILITIES LTD.**  
242 Hargrave Street, Suite 1700  
Winnipeg, Manitoba  
R3C 0V1

Debtor

# INDEX

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**I N D E X**

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A.	Email correspondence between William Nurnberger and Gary Ivany, dated December 19, 2018	3-5

TAB 1

Court File No. CV-19-00615270-00CL

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**AFFIDAVIT OF IVANA DITTA  
(Sworn December 5, 2019)**

I, **IVANA DITTA**, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

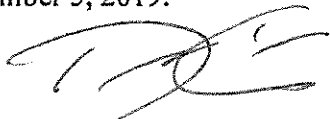
1. I am a legal assistant at the law firm of Birenbaum, Steinberg, Landau, Savin & Colraine LLP, solicitors for the Applicants, Mega Diesel Holdings Ltd. and Chris Aron Wood, and as such have knowledge of the matters to which I hereinafter depose. Where my evidence is based on information provided to me by others, I have so indicated, and I believe such information to be true.

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2. During the printing, binding and compiling process, the second page of Exhibit "N", an email between William Nurnberger and Gary Ivany dated December 19, 2018, to the Affidavit of Chris Aron Wood, sworn October 15, 2019, and contained in the Motion Record of the Applicants, Mega Diesel Holdings Ltd. and Chris Aron Wood, was inadvertently not included and as such, I have attached hereto as "Exhibit "A" the complete version of the email correspondence.

3. I swear this affidavit for the purposes of the within motion and for no other, or improper, purpose.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario on December 5, 2019.



*Commissioner for Taking Affidavits*



**IVANA DITTA**

**David A. Cassin**  
Barrister & Solicitor



TAB A


**Graham Sanson**

**From:** William Nurnberger <William.Nurnberger@diginc.ca>  
**Sent:** December-19-18 11:17 AM  
**To:** Ivany, Gary  
**Cc:** Joe Lanni; Alex Agius; Du, Alicia; O'Gorman, Phillip; Jay Vieira  
**Subject:** Re: RBC/DIG

Thank you Gary, as soon as I have confirmation of it moving and how I will let you know. I will confirm which account. Thank you

Sent from my Samsung Galaxy smartphone.

*This is Exhibit "A" referred to in the affidavit of Ivana Ditta sworn before me, this 5th day of December 2019.*

  
A COMMISSIONER FOR TAKING AFFIDAVITS

----- Original message -----

**From:** "Ivany, Gary" <gary.ivany@rbc.com>  
**Date:** 2018-12-19 1:14 PM (GMT-05:00)  
**To:** William Nurnberger <William.Nurnberger@diginc.ca>  
**Cc:** Joe Lanni <joe.lanni@diginc.ca>, Alex Agius <alex.agius@diginc.ca>, "Du, Alicia" <alicia.du@rbc.com>, "O'Gorman, Philip" <philip.ogorman@rbc.com>, Jay Vieira <Jay.Vieira@diginc.ca>  
**Subject:** RE: RBC/DIG

Thank you Willam.

We have provided our waiver to Ritchie Bros.

Please advise which account you expect the proceeds to be into.

Gary

**From:** William Nurnberger [mailto:William.Nurnberger@diginc.ca]  
**Sent:** 2018, December, 19 12:13 PM  
**To:** Ivany, Gary <gary.ivany@rbc.com>  
**Cc:** Joe Lanni <joe.lanni@diginc.ca>; Alex Agius <alex.agius@diginc.ca>; Du, Alicia <alicia.du@rbc.com>; O'Gorman, Phillip <philip.ogorman@rbc.com>; Jay Vieira <Jay.Vieira@diginc.ca>  
**Subject:** RE: RBC/DIG

Hi Gary, we accept the below statement and look forward to moving forward with you and your team.

Thank you



William Nurnberger, Interim Chief Financial Officer & Vice President Corporate Development  
Distinct Infrastructure Group

Corporate Office | 77 Balfield Road, Suite 102 | Toronto, ON M9W 1G6  
 O: 416.675.6485 | D: 587-583-8970 | C: 587-583-8970 | W: [www.diginc.ca](http://www.diginc.ca)

**TSXV: DUG**

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PLEASE PRINT RESPONSIBLY

**From:** Ivany, Gary [<mailto:gary.ivany@rbc.com>]

**Sent:** December 19, 2018 9:34 AM

**To:** William Nurnberger <[William.Nurnberger@diginc.ca](mailto:William.Nurnberger@diginc.ca)>

**Cc:** Joe Lanni <[joe.lanni@diginc.ca](mailto:joe.lanni@diginc.ca)>; Alex Agius <[alex.agius@diginc.ca](mailto:alex.agius@diginc.ca)>; Du, Alicia <[alicia.du@rbc.com](mailto:alicia.du@rbc.com)>; O'Gorman, Philip <[philip.ogorman@rbc.com](mailto:philip.ogorman@rbc.com)>

**Subject:** RBC/DIG

William, you have advised us that Distinct Infrastructure Group Inc. ("DIGI") and/or its subsidiaries wish to dispose of certain assets with an aggregate fair market value in excess of \$2,000,000. Such asset disposition will be a breach of DIGI's covenant set forth in Section 11.4.3 of the credit agreement dated March 23, 2017 (as amended to the date hereof, the "Credit Agreement") between DIGI and Royal Bank of Canada ("RBC"). RBC hereby consents to the asset disposition on the strict condition that immediately upon such disposition DIGI shall make a voluntary prepayment of principal in an aggregate amount of at least \$2 million towards its Term Loan (as defined in the Credit Agreement). This payment will be in addition to regularly scheduled payments, with no change to those payments. Failure to make such prepayment to the Term Loan as aforementioned shall result in an Event of Default under the Credit Agreement (as defined in the Credit Agreement) for which there shall be no grace period.

Further, an additional payment towards the term loan will be re-assessed in January 2019.

Please confirm your acceptance of the foregoing by reply email, and upon acceptance of which, we will forward our consent to Ritchie Bros.

Gary Ivany | Senior Director, Special Loans & Advisory Services | Royal Bank of Canada | 20 King Street West, Toronto ON M5H 1C4  
 | T (416) 974-2189

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If you received this email in error, please advise the sender (by return email or otherwise) immediately. You have consented to receive the attached electronically at the above-noted email address; please retain a copy of this confirmation for future reference.

Si vous recevez ce courriel par erreur, veuillez en aviser l'expéditeur immédiatement, par retour de courriel ou par un autre moyen. Vous avez accepté de recevoir le(s) document(s) ci-joint(s) par voie électronique à l'adresse courriel indiquée ci-dessus; veuillez conserver une copie de cette confirmation pour les fins de référence future.

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If you received this email in error, please advise the sender (by return email or otherwise) immediately. You have consented to receive the attached electronically at the above-noted email address; please retain a copy of this confirmation for future reference.

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Lawyers for Mega Diesel Holdings Ltd.  
and Chris Aron Wood

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