

File No. CI 20-01-28589

**THE QUEEN'S BENCH**  
**WINNIPEG CENTRE**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER  
PURSUANT TO SECTION 243 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*,  
RSC 1985, c B-3, AS AMENDED AND  
SECTION 55 OF *THE COURT OF*  
*QUEEN'S BENCH ACT*, CCSM c C280

BETWEEN:

**THE TORONTO-DOMINION BANK,**

Plaintiff,

- and -

**KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.**

Defendants.

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**APPROVAL AND VESTING ORDER**

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Client File No. 32608-6

**THE QUEEN'S BENCH**

**Winnipeg Centre**

THE HONOURABLE ) WEDNESDAY, THE 27TH  
MR. JUSTICE CHARTIER ) DAY OF JANUARY, 2021

B E T W E E N:

**THE TORONTO-DOMINION BANK,**

Plaintiff,

- and -

**KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.,**

Defendants.

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-Appointed Receiver and Manager (the "**Receiver**") of the undertaking, property and assets (the "**Property**") of Kings Cargo Express Ltd. and Canada Cargo Lines Ltd. (the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement (the "**Asset Purchase Agreement**") between the Receiver and Lavish Transport Ltd. (the "**Purchaser**") dated January 13, 2021 appended as Appendix G to the Confidential Report of the Receiver dated January 21, 2021 (the "**Confidential Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Asset Purchase Agreement (the "**Purchased Assets**"), was heard this day at Winnipeg, Manitoba.

ON READING the First Report of the Receiver dated January 21, 2021 (the "**First Report**"), the Confidential Report and the Affidavit of Laura Leigh Buley sworn January 19, 2021, and on hearing the submissions of counsel for the Receiver, the Plaintiff, the Defendants and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Jami Jacyk affirmed January 26, 2021 filed:

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials is hereby abridged and validated so this motion is properly returnable today and hereby dispenses with further service thereof.

## **SEALING ORDER**

2. THIS COURT ORDERS AND DECLARES that the Confidential Report be sealed, kept confidential and not form part of public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Honourable Court and the presiding Judge and shall only be made accessible or form part of the public record upon further Order of this Court.

## **SALE APPROVAL AND VESTING**

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Asset Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice G.L. Chartier dated October 5, 2020 (the "**Receivership Order**"); and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any

other personal property registry system (all of which are collectively referred to as the "Encumbrances"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

## **PRIORITIES**

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "**Net Sale Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the Net Sale Proceeds from the sale of the Purchased Assets 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.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct or action other than in good faith pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS AND DIRECTS the Receiver to repay the Receiver's Borrowing Facility from the Net Sales Proceeds.

### **APPROVAL OF ACTIVITIES AND DISBURSEMENTS OF THE RECEIVER**

9. THIS COURT ORDERS that all activities, actions and proposed courses of action of the Receiver (the "**Actions of the Receiver**") to date in relation to the discharge of its duties as receiver of the Property, as such Actions of the Receiver are more particularly described in the First Report and the Confidential Report, as well as the statement or receipts and disbursements contained in the First Report, shall be and are hereby approved and confirmed.

10. THIS COURT ORDERS that the professional fees and disbursements of the Receiver, as set out in the First Report, are hereby approved without the necessity of a formal passing of accounts.

11. THIS COURT ORDERS that the professional fees and disbursements of the Receiver's legal counsel, Taylor McCaffrey LLP, as set out in the First Report, are hereby approved without the necessity of a formal assessment of its accounts.

### **MISCELLANEOUS MATTERS**

12. 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 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Digitally signed by G.L. Chartier, J.

Date: 2021.01.28 13:26:28 -06'00'

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I, David R.M. Jackson, of the firm of Taylor McCaffrey LLP, hereby certify that I have received the consents as to form of the following parties:

The Toronto-Dominion Bank, as represented by Sam Gabor at Dentons Canada LLP

The Purchaser, Lavish Transport Ltd., as represented by Norman Boudreau at Boudreau Law

The Defendants as represented by Kelsey McIntyre, at Hill Sokalski Walsh

as directed by the Honourable Mr. Justice Chartier.

**Schedule A – Form of Receiver’s Certificate**

Court File No. CI 20-01-28589

**THE QUEEN'S BENCH**

**WINNIPEG CENTRE**

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

**THE TORONTO-DOMINION BANK,**

Plaintiff,

- and -

**KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.,**

Defendants.

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice G.L. Chartier of the Manitoba Court of Queen's Bench (the "**Court**") dated October 5, 2020, Deloitte Restructuring Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertaking, property and assets of the Defendants (the "**Debtors**").

B. Pursuant to an Order of the Court dated January 27, 2021, the Court approved the Asset Purchase Agreement made as of January 13, 2021 (the "**Asset Purchase Agreement**") between the Receiver and Lavish Transport Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

Original Court Copy

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**Deloitte Restructuring Inc., in its capacity as  
Receiver and Manager of the undertaking,  
property and assets of debtors, and not in its  
personal capacity**

Per: \_\_\_\_\_

Name:

Title: