

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
REGISTRAR'S COURT**

**IN THE MATTER OF THE BANKRUPTCY OF 1585396 ONTARIO INC. o/a  
AAA TRADING CO. OF THE CITY OF MISSISSAUGA, PROVINCE OF ONTARIO**

**FACTUM OF THE TRUSTEE**

February 19, 2010

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**TRUSTEE'S FACTUM**

**Part I: Overview**

1. The trustee in bankruptcy, Deloitte & Touche Inc., (the "Trustee") has evidence that the bankrupt ("AAA Trading") transferred assets to a related company, Atan International Inc. ("Atan"). The Trustee wants to examine the principal of AAA Trading, Anupam Bhowmic, and his son, Atanu Bhowmic (the principal of Atan), to determine whether assets were transferred. The Trustee will be able to examine both men without court order under section 163(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), after the First Meeting of Creditors in March 2010. The Trustee fears that the assets will be dissipated if the Trustee waits until March 2010 and asks this Court to exercise its discretion under section 19 of the BIA to permit the Trustee to examine father and son immediately.

**Part II: Facts**

2. On December 23, 2010, the State Bank of India (Canada) obtained an *ex parte* order appointing Deloitte and Touche Inc. as interim receiver (the "Interim Receiver") without security, of all assets, undertakings and properties of AAA Trading.

**Trustee's Report on Preliminary Administration dated February 19, 2010,  
("Trustee's Report") at para. 2, Trustee's Motion Record, Tab 2.**

3. The Interim Receiver reviewed AAA Trading's books and records as well as its computers and noted that AAA Trading funds may have been redirected to Atan, a related company, whose registered principal is the son of AAA Trading's registered principal.

**Trustee's Report, at paras. 16-19, Trustee's Motion Record, Tab 2.**

4. On January 6, 2010, the Interim Receiver wrote to Atan and demanded that any funds directed to Atan by AAA Trading be returned to the Interim Receiver. Atanu Bhowmic replied that no monies had been received by Atan on account of AAA Trading.

**Trustee's Report, at para. 16, Trustee's Motion Record, Tab 2.**

5. Additional investigations by the Interim Receiver uncovered further evidence suggesting that Atan may be in possession of AAA Trading assets. The documents suggest that AAA Trading and Atan are operating substantially similar businesses with substantially similar customers and have commingled funds. For example, the email at Exhibit "G" shows AAA Trading "receiving funds in" Atan (more than \$11,000 on December 11, 2009). Similarly, the emails at Exhibits "L", "N", and "P" show Atan funded AAA Trading's payroll in October 2009 and made other payments on AAA Trading's behalf. Finally, the emails at Exhibits "M", "T", and "V" show the two companies dealing with the same customers.

**Trustee's Report, at para. 18, Trustee's Motion Record, Tab 2; Exhibits G, L, M, N, P, T, and V, to Trustee's Report, Trustee's Motion Record.**

6. On February 10, 2010, the Court granted a Bankruptcy Order against AAA Trading and appointed Deloitte & Touche Inc. as trustee in bankruptcy (the "Trustee") of AAA Trading.

**Trustee's Report, at para. 7, Trustee's Motion Record, Tab 2.**

7. The First Meeting of Creditors of AAA Trading is scheduled for March 2, 2010. The Trustee's opinion is that there is a serious risk of dissipation of the AAA Trading assets that may have been transferred to Atan. The delay between this motion and the First Meeting of Creditors increases the chance of asset dissipation.

**Trustee's Report, at paras. 8 and 18, Trustee's Motion Record, Tab 2.**

**Part III: Issues**

*This Court should exercise its discretion under section 19 of BIA to permit the Trustee to examine Anupam and Atanu Bhowmic immediately.*

8. Section 19(2) of BIA permits the Trustee to institute legal proceedings necessary to protect the estate of the bankrupt in an emergency where the necessary authority cannot be obtained from the inspectors in time to take appropriate action. The Court should use a common sense approach to legal proceedings instituted by the Trustee under section 19.

***National Capital Region Ottawa Rough Riders Professional Football Club Ltd. (Re)* (1995), 31 C.B.R. (3d) 136; [1995] O.J. No. 688, Chadwick J., at para. 22, Trustee's Factum and Book of Authorities, Tab 2.**

9. The Trustee was appointed on February 10, 2010. The First Meeting of Creditors will not be held and the inspectors will not be appointed until March 2, 2010. Meanwhile, assets of the bankrupt that were transferred to the related party, Atan, may dissipate. The Trustee seeks to perform its duties in a timely manner.

**Trustee's Report, at paras. 8 and 18, Trustee's Motion Record, Tab 2.**

***National Capital Region Ottawa Rough Riders Professional Football Club Ltd. (Re)* (1995), 31 C.B.R. (3d) 136; [1995] O.J. No. 688, Chadwick J., at para. 16, Trustee's Factum and Book of Authorities, Tab 2.**

**Rule 36, Bankruptcy and Insolvency General Rules, SOR/98-240.**

10. If the Trustee waits for the First Meeting of Creditors, then it is likely that the Trustee will be able to conduct a section 163(1) examination of Anupam and Atanu Bhowmic without a court order. Section 163(1) of BIA permits a Trustee on an ordinary resolution passed by creditors or on the written resolution of a majority of inspectors to examine under oath the bankrupt or any person reasonably thought to have knowledge of the affairs of the bankrupt without getting a court order. Neither of the preconditions in section 163(1) can be satisfied until the First Meeting of Creditors is held because it is at that meeting that an ordinary resolution of the creditors can be obtained and at that meeting that the inspectors are appointed. The Trustee needs a court order to examine Anupam and Atanu Bhowmic before the First Meeting of Creditors.

11. BIA is a “businessman’s statute” and as such the “courts should pay attention to business decisions which make good business sense”. Both common sense and business sense support the Court permitting the Trustee to do now what it will be entitled to do in a few weeks to prevent the dissipation of the bankrupt’s assets.

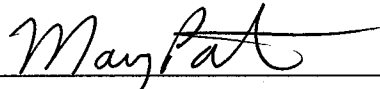
*National Capital Region Ottawa Rough Riders Professional Football Club Ltd. (Re) (1995), 31 C.B.R. (3d) 136; [1995] O.J. No. 688, Chadwick J., at para. 21, Trustee’s Factum and Book of Authorities, Tab 2.*

#### **Part IV: Order Requested**

12. The Trustee respectfully requests:
- (a) An Order permitting the Trustee to examine Anupam Bhowmic under oath before the registrar of the court or other authorized person respecting AAA Trading’s dealings and property and, in particular, AAA Trading’s dealings with Atan;

- (b) An Order permitting the Trustee to examine Atanu Bhowmic under oath before the registrar of the court or other authorized person respecting AAA Trading's dealings with Atan;
- (c) An Order requiring Anupam Bhowmic, Atanu Bhowmic, and Atan to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to AAA Trading's dealings or property; and
- (d) Costs of this motion on a substantial indemnity basis; and
- (e) Such further and other relief as this Honourable Court may deem just.

All of which is respectfully submitted,



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Mary Paterson

Of counsel for the Trustee, Deloitte & Touche  
Inc.

February 19, 2010

**SCHEDULE A**

*National Capital Region Ottawa Rough Riders Professional Football Club Ltd. (Re)* (1995), 31 C.B.R. (3d) 136; [1995] O.J. No. 688, Chadwick J.

## SCHEDULE B

### **Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3**

**19(1)** The trustee may prior to the first meeting of creditors obtain such legal advice and take such court proceedings as he may consider necessary for the recovery or protection of the property of the bankrupt.

**19(2)** In the case of an emergency where the necessary authority cannot be obtained from the inspectors in time to take appropriate action, the trustee may obtain such legal advice and institute such legal proceedings and take such action as he may deem necessary in the interests of the estate of the bankrupt.

**163(1)** The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the registrar of the court or other authorized person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the bankrupt, respecting the bankrupt or the bankrupt's dealings or property and may order any person liable to be so examined to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property.

**163(3)** The evidence of any person examined under this section shall, if transcribed, be filed in the court and may be read in any proceedings before the court under this Act to which the person examined is a party.

**164(1)** Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

**164(2)** Where a person fails to produce a book, document or paper or to deliver property as required by this section within five days after being required to do so, the trustee may, without an order, examine the person before the registrar of the court or other authorized person concerning the property, book, document or paper that the person is supposed to possess.

**164(3)** Any person referred to in subsection (1) may be compelled to attend and testify, and to produce on his examination any book, document or paper that under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as would apply to a bankrupt.



**192(1)** The registrars of the courts have power and jurisdiction, without limiting the powers otherwise conferred by this Act or the General Rules,

- (a) to hear bankruptcy applications and to make bankruptcy orders if they are not opposed;
- (b) to hold examinations of bankrupts or other persons;
- (c) to grant orders of discharge;
- (d) to approve proposals where they are not opposed;
- (e) to make interim orders in cases of urgency;
- (f) to hear and determine any unopposed or *ex parte* application;
- (g) to summon and examine the bankrupt or any person known or suspected to have in his possession property of the bankrupt, or to be indebted to him, or capable of giving information respecting the bankrupt, his dealings or property;
- (h) to hear and determine matters relating to proofs of claims whether or not opposed;
- (i) to tax or fix costs and to pass accounts;
- (j) to hear and determine any matter with the consent of all parties;
- (k) to hear and determine any matter relating to practice and procedure in the courts;
- (l) to settle and sign all orders and judgments of the courts not settled or signed by a judge and to issue all orders, judgments, warrants or other processes of the courts;
- (m) to perform all necessary administrative duties relating to the practice and procedure in the courts; and
- (n) to hear and determine appeals from the decision of a trustee allowing or disallowing a claim.

**192(2)** The powers and jurisdiction conferred by this section or otherwise on a registrar may at any time be exercised by a judge.

**Bankruptcy and Insolvency General Rules, SOR/98-240**

**3** In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

**11** Subject to these Rules, every application to the court must be made by motion unless the court orders otherwise.

**13** Subject to any order of the court given in exigent circumstances, a party who makes a motion must, at least one day before the day set for the hearing of the motion, file with the court

- (a) the original of the notice of motion, or the motion, as the case may be;
- (b) every affidavit in support of the notice of motion or the motion, as the case may be; and
- (c) proof of service, if any, of the documents described in paragraphs (a) and (b).

**36** Trustees shall perform their duties in a timely manner and carry out their functions with competence, honesty, integrity and due care.

**115** Examinations, other than those under section 159 or 161 of the Act, shall be held before a registrar, before a person who is qualified to hold examinations for discovery, examinations of judgment debtors or examinations of debtors after judgment or before any other person that the court may, on *ex parte* application, order, and shall be conducted in accordance with the rules of court in civil cases.

**Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rule 1.04**

**1.04(1)** These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

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Court File No. 31-207699-T

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
REGISTRAR'S COURT**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE TRUSTEE**

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