

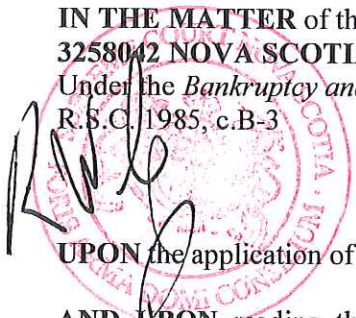
2015

Estate No. 51-1965976
Court No. 38866
District of Nova Scotia
Division No. 01-Halifax

**SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY & INSOLVENCY**

Court Administration
SEP 30 2015
Halifax, N.S.

IN THE MATTER of the Proposal of
3258042 NOVA SCOTIA LIMITED
Under the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c.B-3



ORDER REFUSING TO APPROVE PROPOSAL

UPON the application of the trustee, Deloitte Restructuring Inc.;

AND UPON reading the reports of the trustee dated the 21st day of August, 2015, the 8th day of September, 2015 and the 25th day of September, 2015;

AND UPON reading the affidavit of James Foran sworn the 25th day of September, 2015;

AND UPON the Court being satisfied that the required majority of creditors have duly accepted the proposal on the terms contained in the paper writing marked "A" annexed hereto;

AND UPON being satisfied that the said terms are not reasonable in the circumstance.

IT IS ORDERED THAT:

Service

1. The time for any required service of the Notice of Motion and Record on Motion herein are hereby abridged, *nunc pro tunc*, so that this motion is properly returnable today.
2. There has been good and sufficient notice, service and delivery of the within Notice of Motion and Record on Motion and further service on any interested party is hereby dispensed with.

Refusal

3. The Court does not approve the said proposal.

DATED at Halifax, Nova Scotia this 30th day of September, 2015

**IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.**

I hereby certify that the foregoing is a true copy of the original order on file herein.

Dated the 30 day of September
A.D., 2015

GINA DIDIODATO
Deputy Registrar in Bankruptcy
Province of Nova Scotia

(6208 13228 00258245.DOCX) DEPUTY REGISTRAR

GINA DIDIODATO
Deputy Registrar in Bankruptcy

"A"

Estate No: 51-1965976
Court No: 38866
District #: 02
Division #: 01 - Halifax

SUPREME COURT OF NOVA SCOTIA IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF
3258042 NOVA SCOTIA LIMITED**

**OF THE CITY OF DARTMOUTH
IN THE PROVINCE OF NOVA SCOTIA**

PROPOSAL

3258042 Nova Scotia Limited ("3258042" or the "Company"), an insolvent corporation, hereby submits the following Proposal pursuant to Section 50 of the *Bankruptcy and Insolvency Act* (Canada).

**PART I
INTERPRETATION**

Definitions

1. In this Proposal, the following items have the meanings herein set out:
 - a. "BIA" means the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c.B-3, as amended;
 - b. "BDC" means Business Development Bank of Canada, a financial institution;
 - c. "Claim" means any indebtedness, liability, action, cause of action, suit, debt due, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of 3258042 other than a secured creditor to any person, whether liquidated, unliquidated, fixed, contingent, matured, legal, equitable, present, future, known or unknown and whether by guarantee, surety or otherwise, incurred or arising or relating to the period prior to the NOI Date, or based in whole or in part on facts, contracts or arrangements which occurred or existed prior to the NOI Date, together with any other claims provable in bankruptcy had 3258042 become bankrupt on the NOI Date, including without limitation, repudiation, disclaimer or termination of any lease, license, contract, arrangement or contract of employment prior to the NOI Date, providing that all claims shall be allowed without allowance for interest after the NOI Date (except as otherwise provided for in this Proposal) and without allowance for penalties and net of any normal discounts. All claims must be converted to Canadian Dollars as of February 27, 2015;
 - d. "Court" means the Supreme Court of Nova Scotia in Bankruptcy and Insolvency;
 - e. "Court Approval Order" means the final order of the Court approving this Proposal in accordance with Section 60 of the BIA;
 - f. "Creditors" means the Secured, Preferred and Unsecured Creditors of 3258042, and for greater certainty does not include Subsequent Creditors in respect of only the amounts described in Paragraph 13 hereof;
 - g. "Deferred Creditor" means an Unsecured Creditor with a Proven Claim that is related to 3258042 as per the definition of a 'related person' in accordance with Section 4 of the BIA;
 - h. "Estate" means the estate of 3258042 under this Proposal pursuant to the BIA;

- i. "Effective Date" means the date seven days after the Court Approval Order and the expiration of all appeals;
- j. "Event of Default" means when any of the following occur:
 - i. Failure to pay a Creditor the amounts to be repaid in accordance with the terms hereof; and
 - ii. Statutory defaults under the BIA;
- k. "Filing Date" means July 14, 2015, the date on which 3258042 filed this Proposal with the Official Receiver in Halifax, Nova Scotia;
- l. "Fund" means monies provided by 3258042 to the Proposal Trustee in order to satisfy the Proven Claims of the Creditors pursuant to the terms of this Proposal that is not to exceed \$120,000;
- m. "HRM" means Halifax Regional Municipality, a municipality in the Province of Nova Scotia;
- n. "Inspector" means any persons appointed or elected as Inspectors of 3258042 pursuant to paragraph 21 of this Proposal;
- o. "Lien" means any mortgage, charge, pledge, assignment by way of security, lien, hypothec, security interest, deemed trust or other encumbrance granted or arising pursuant to a written agreement or statute or otherwise created by law;
- p. "Maturity Date" means the date on which all payments to Creditors have been made, provided that no Event of Default has occurred under this Proposal that has not been cured or waived;
- q. "NOI Date" means February 27, 2015, the date which 3258042 filed its Notice of Intention to File a Proposal with the Official Receiver;
- r. "Preferred Creditors" means those persons with Claims against 3258042 provable pursuant to the BIA as of the NOI Date whose Claims are entitled to be paid in priority to the claims of Unsecured Creditors as provided in Section 136 of the BIA;
- s. "Priority Creditors" means a Creditor with a Proven Claim that ranks in priority to the Proven Claims of Secured Creditors pursuant to the BIA or other legislation;
- t. "Proposal" means this Proposal of 3258042 under the BIA, as amended or supplemented from time to time;
- u. "Proposal Period" means the period between the Filing Date and the Maturity Date;
- v. "Proposal Trustee" and "Deloitte" means Deloitte Restructuring Inc, a licensed trustee of Nova Scotia, the Proposal Trustee acting in the Proposal of 3258042;
- w. "Proven Claim" means a provable claim pursuant to the BIA against 3258042 as of the NOI Date of a Creditor in respect of its Claim which has been proven in accordance with the provisions of the BIA;
- x. "Secured Creditors" means a party holding a claim that is secured:

- i. By operation of law; or
- ii. By a Lien that is duly registered or otherwise perfected in accordance with applicable law;
- y. "Subsequent Creditor" means a person who provided goods and services on credit to 3258042 subsequent to the NOI Date to and including the Effective Date, and employees of 3258042 employed subsequent to the NOI Date to and including the Effective Date;
- z. "Related Parties" means the following three Unsecured Creditors who are related to Tour Tech in accordance with the provisions of Section 4 of the BIA:
 - i. Peter Hendrickson;
 - ii. Robert Barrett; and
 - iii. Tour Tech. East Limited;
- aa. "Tour Tech" means Tour Tech. East Limited, a related entity.
- bb. "3258042" and "Company" means 3258042 Nova Scotia Limited, an insolvent corporation, with a head office located in Dartmouth, Nova Scotia.
- cc. "Unsecured Creditors" means those persons with ordinary unsecured Claims (including contingent claims) provable pursuant to the BIA against 3258042 as at the NOI Date which are not preferred pursuant to Section 136 of the BIA.

Headings

- 2. The division of this Proposal into parts, paragraphs and sub-paragraphs, and the insertion of headings herein, is for the convenience of reference only and is not to affect the construction or interpretation of this Proposal. Unless otherwise provided in this Proposal, references herein to parts, paragraphs and sub-paragraphs are references to parts, paragraphs and sub-paragraphs of this Proposal.

Number, etc.

- 3. In this Proposal, where the context requires a word importing the singular includes the plural and vice versa, and a word importing gender includes the masculine, feminine and neutral genders.

Successor and Assigns

- 4. This Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, personal representatives, successors and assigns of all persons named or referred to herein including, without limitation, all Creditors.

PART II PURPOSE AND EFFECT OF THE PROPOSAL

Purpose of Proposal

- 5. The purpose of this Proposal is to effect a restructuring of the business and affairs of 3258042 in the expectation that the Creditors as a whole will derive a greater return than would result from a forced liquidation of its assets.

Effect of Proposal

6. This Proposal restructures the affairs of 3258042 and amends the terms of any and all agreements between 3258042 and the Creditors existing as at the Effective Date to the extent affected by the Proposal, and provides the essential terms on which all Claims will be fully and finally resolved and settled. During the Proposal Period, the provisions of Section 69.1 of the BIA shall be in effect. Without limiting the generality of the foregoing, during the Proposal Period all Creditors will be stayed from commencing or continuing any proceeding or remedy against 3258042 or any of its property or assets in respect of a Claim, including, without limitation, any proceeding or remedy to recover payment of any monies owing to Creditors, to recover or enforce any judgment against 3258042 in respect of a Claim or commence any formal proceedings against it in respect of a Claim other than as provided under the Proposal.

Persons Affected

7. This Proposal will, as of the Effective Date, be binding on 3258042 and all Creditors in the manner provided for in this Proposal and the BIA.

PART III RESTRUCTURING OF 3258042

8. 3258042 will fund the Proposal, through cash flow generated from its operations, as follows:
 - i. 3258042 will generate the necessary funds for payment in full of Priority Creditor Claims outstanding against 3258042 as at the Effective Date in accordance with Part VI of this Proposal;
 - ii. 3258042 will generate the necessary funds for full and final settlement of all Secured Creditors' claims against 3258042 at the Effective Date in accordance with Part VII of this Proposal; and
 - iii. 3258042 will provide the Proposal Trustee with the required funds to establish the Fund for full and final settlement of all Unsecured Creditors' claims against 3258042 as at the NOI Date, in accordance with Part VIII of this Proposal.
9. The levy payable to the Superintendent of Bankruptcy by virtue of the provisions of subsection 147(1) of the BIA shall be payable on all distributions made by the Proposal Trustee.

PART IV CLASS OF CREDITORS AND VOTING

10. For the purposes of voting on this Proposal, there shall be one class of Secured Creditors, to which this Proposal is made, referred to as Class One and shall consist of all the Secured Creditors, including but not limited to, DBC and HRM.
11. For the purposes of voting on this Proposal, there shall be one class of Unsecured Creditors, referred to as Class Two and shall consist of all of the Preferred Creditors, Unsecured Creditors and Deferred Creditors.

**PART V
SUBSEQUENT CREDITORS**

12. Amounts owed by 3258042 to Subsequent Creditors for goods, services and employment actually provided to 3258042, subsequent to the NOI Date, to and including the Effective Date, but not for damages, severance or termination or other claims arising, will be paid by 3258042 in the normal course of operations.

**PART VI
PRIORITY CREDITORS**

13. All Priority Creditor Claims as at the Effective Date will receive a cash payment to be made on the Effective Date for full and final settlement of such Claims.

**PART VII
SECURED CREDITORS**

14. In consideration of BDC's outstanding advances as at the Effective Date, 3258042 and BDC will enter into an agreement whereby the advances will be fully extinguished on a monthly basis, over a period of 18 years and 11 months, starting in October 2015. Such payments will include principle and interest, calculated at a 5.0% base rate plus a 3.0% variable rate.
15. In consideration of BDC's outstanding advances to Tour Tech, 3258042 shall pay on an annual basis, all excess cash flows, after funding operations and fulfilling the Company's obligations under this Proposal, to BDC on account of outstanding advances owed by Tour Tech; said outstanding advances being guaranteed by the Company.
16. In consideration of HRM's outstanding property taxes as at the Effective Date, 3258042 and HRM will enter into an agreement whereby the outstanding property taxes will be fully extinguished on a semi-annual basis, over a period of five years, starting in October 2015. 3258042 will remain current property tax payments due for payment subsequent to the Effective Date.

**PART VIII
UNSECURED CLAIMS**

Preferred Claims and Mandatory Payments

17. Proven Claims of Preferred Creditors as of the NOI Date shall be paid in full, without interest, in priority to the claims of Unsecured Creditors, as follows:
 - i. Proven Claims of current and former employees equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) of the BIA if 3258042 became bankrupt on the NOI Date, shall be paid on the Effective Date, without interest. For greater certainty, amounts due or which may become due pursuant to this paragraph do not include claims for severance or termination;
 - ii. Proven Claims as of the NOI Date of Her Majesty in right of Canada or a province of a kind that could be subject to a demand under Section 224(1.2) of the *Income Tax Act* (Canada) or under any substantially similar provision of provincial legislation, shall be paid by 3258042 on the Effective Date; and
 - iii. Proven Claims as of the NOI Date of the other Preferred Creditors shall be paid in full (without interest subsequent to the date of the filing of the NOI) in priority to all claims of

Unsecured Creditors on the Effective Date in the manner as may be arranged with the Preferred Creditors but prior to any payments to the Unsecured Creditors.

Trustee Fees and Expenses

18. For the purposes of this Proposal, all proper fees of the Proposal Trustee, and the reasonable expenses and legal costs of the Proposal Trustee, on and incidental to the proceedings arising out of this Proposal (including the preparation of this Proposal) shall be paid in priority to all claims of the Secured Creditors, Preferred Creditors, Unsecured Creditors and Subsequent Creditors. Such fees shall be based on the time expended and charged by the Proposal Trustee and its legal counsel at their normal billing rates as set from time to time.

Unsecured Creditors

19. Proven Claims of Unsecured Creditors as of the NOI Date, excluding Proven Claims of Deferred Creditors, shall be paid 75% of Proven Claims over a three year period commencing on the effective date, payable in semi-annual payments from the Fund.
20. Deferred Creditors shall not receive any distribution in this Proposal.

PART IX INSPECTORS

Appointment of Inspectors

21. At the statutory meeting of Creditors to consider this Proposal, such Creditors may appoint up to five Inspectors and such Inspectors shall have the powers as set out in the BIA and for greater certainty these powers include, but are not limited to the following:
- i. To extend the dates of payments provided under this Proposal;
 - ii. To advise the Proposal Trustee from time to time on any matter the Proposal Trustee may refer to the them;
 - iii. To advise the Proposal Trustee regarding the admission or disallowance of Creditors proofs of claim where the Proposal Trustee requests such assistance;
 - iv. To approve on behalf of the Creditors any decision of the Proposal Trustee relating to any matter not contained in this Proposal which the Proposal Trustee may refer to them from time to time, including any extension of time of payment required under this Proposal; and
 - v. To waive any default in the performance of this Proposal. The Proposal Trustee shall notify the Inspectors of any default of which the Proposal Trustee becomes aware and the Proposal Trustee shall hold a meeting of Inspectors following such notice for the purpose of obtaining the instructions of the Inspectors with respect to such a default and the steps to be taken.

Decisions of Inspectors

22. Any decision, direction or act of the Inspectors may be referred to the Court by the Proposal Trustee and the Court may confirm, revoke or vary the decision, direction or act of the Inspectors and make such other order as it deems just.

**PART X
CONDITIONS PRECEDENT**

23. As provided for in the BIA, the arrangements set out in this Proposal will not take effect unless the conditions set forth below are satisfied or waived by 3258042 on or before the Effective Date:
- i. The Court Approval Order shall have been granted;
 - ii. No order or decree restraining or enjoining the consummation of the transactions contemplated by this Proposal will have been issued; and
 - iii. All agreements or instruments necessary to effect the intention and purpose of this Proposal shall have been received by 3258042 and the Proposal Trustee in a form satisfactory to them.
24. The arrangements set out in this Proposal will not take effect unless all classes defined in Part IV accept the Proposal.
25. Tour Tech submitted a proposal pursuant to Section 50 of the *Bankruptcy and Insolvency Act* (Canada) on July 14, 2015. The arrangements set out in this Proposal will not take effect unless the proposal filed by Tour Tech is accepted by its creditors and the Court after the expiration of all appeal periods.

**PART XI
GENERAL**

Acceptance of this Proposal

26. By acceptance of this Proposal and its approval by the Court, the Creditors shall be deemed to have accepted and consented to all matters, things and procedures provided for herein, including the full and final compromise of their Claims in accordance with Section 62(2) of the BIA.
27. By acceptance of this Proposal and its approval by the Court, the Creditors shall be deemed to have released all of their claims against any person who is or was, at any time, a director of 3258042 that arose before the NOI Date and that relate to Claims where such directors (or any of them) are by law liable in their capacity as directors for such Claims. For greater certainty, such current or former directors shall be released and discharged from any and all claims in respect of any and all potential statutory liabilities as set out in section 50(13) of the BIA, provided that nothing herein shall release or discharge any current or former director from claims which:
- i. Relate to contractual rights of one or more creditors arising from contracts with one or more directors; or
 - ii. Are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors.

For greater certainty, should 3258042 become bankrupt before this Proposal is fully performed, then this paragraph 27 shall be null and void and have no force and effect.

Consents, Waivers and Agreements

28. On the Effective Date, all Creditors will be deemed to have consented and agreed to all of the provisions of this Proposal in its entirety. For greater certainty, each such Creditor will be deemed to have waived any default by 3258042 in any provision, express or implied, in any agreement existing between the Creditors and 3258042 that has occurred on or prior to the Effective Date, and to have agreed that, to the extent that there is any conflict between the provisions of any such agreement and the provisions of the Proposal, the provisions of this Proposal take precedence and priority and the provisions of any such agreement are amended accordingly.

Further Actions

29. 3258042 and the Creditors will execute and deliver all such documents and instruments and do all such things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions completed hereby.

Performance

30. All obligations of 3258042 under this Proposal will commence as of the Effective Date. All terms of this Proposal will take effect as of the Effective Date. All obligations of 3258042 under this Proposal will be fully performed for the purposes of Section 65.3 of the BIA upon the Proposal Trustee having made all payments to the Creditors provided herein.

Binding Effect

31. The provisions of this Proposal will be binding on the Creditors and 3258042, and their respective heirs, executors, administrators, successors and assigns as of the Effective Date.

Compromise Effective for all Purposes

32. The payment, compromise or other satisfaction of any Claim under this Proposal shall be binding upon the Creditor holding the Claim, its heirs, executors, administrators, successors and assigns, for all purposes.

Her Majesty the Queen

33. 3258042 acknowledges and agrees that Her Majesty the Queen, during the term of the Proposal, may exercise any rights of set-off to which it is entitled by law and may apply, if any:
- i. Income tax refunds pertaining to the year of the Proposal or prior years to the Company's income tax arrears;
 - ii. HST refunds or rebates to all periods for which the HST liability is due; and
 - iii. Any other tax or customs refund to which the Company may be entitled.
34. 3258042 covenants and agrees that during the course of the Proposal it will:
- i. Remit current year installment payments of corporate tax and file income tax returns as required by the *Income Tax Act*;
 - ii. Remit current HST payments and file HST returns as required by the *Excise Tax Act*; and

- iii. Remit current year payroll deductions (employment insurance premiums, Canada Pension Plan contributions and income tax deductions) as required by law.
- 35. 3258042 covenants and agrees that all debts due to Her Majesty the Queen proved in this Proposal shall be compromised in accordance with the terms of this Proposal only in the event this Proposal is fully performed pursuant to its terms and the BIA. In the event the Company fails to comply with any of the terms of this Proposal and the Proposal is annulled pursuant to the provisions of the BIA, 3258042 agrees that Her Majesty the Queen will be entitled to recover the full amount of all debts due to Her Majesty the Queen proved in the Proposal, net of any payments or dividends received.

Other


- 36. 3258042 represents and warrants that it has disclosed all relevant information in respect of this Proposal.
- 37. Any payments made by the Proposal Trustee to Creditors hereunder shall be made by the Proposal Trustee net of any levies payable or due under the BIA.
- 38. Upon making final payments to Creditors in accordance with this Proposal and providing a certificate to 3258042 and the Official Receiver pursuant to Section 65.3 of the BIA, this Proposal shall be satisfied and all conditions and requirements fulfilled and met and the Proposal Trustee shall be entitled to be discharged.

**PART XII
THE PROPOSAL TRUSTEE**

- 39. Deloitte shall be the Proposal Trustee and the following provisions shall apply to the Proposal Trustee:
 - i. Deloitte, in acting as Proposal Trustee, is acting as Proposal Trustee and not in its personal capacity and shall not be responsible or liable for any obligations of 3258042;
 - ii. All monies and other consideration payable under the terms of this Proposal shall be paid over to the Proposal Trustee who shall make all payments in accordance with the terms of this Proposal; and
 - iii. Upon completion of all payments in accordance with the terms of this Proposal, and all other conditions and requirements being fulfilled, the Proposal Trustee shall be discharged.

DATED at Dartmouth, Nova Scotia the 14th day of July, 2015.

3258042 Nova Scotia Limited


Per: Peter Hendrickson
President