

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-052159-171

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF:**

BCBG Max Azria Canada Inc.

Debtor / Petitioner

-and-

Deloitte Restructuring Inc.

Trustee

-and-

GBG USA Inc., a corporation governed by the laws of Delaware, having an office at 350 Fifth Avenue, 6th floor, New York City, New York, 10118, United states of America

-and-

GBG Acquisition ULC, a corporation governed by the laws of British Columbia, having an office at 250 Howe Street, 20th floor, Vancouver, British Columbia, V6C 3R8

Mises-en-cause

**APPLICATION FOR APPROVAL OF AN ASSET SALE, ASSIGNMENT OF AN
AGREEMENT, ISSUANCE OF A VESTING ORDER AND FOR EXTENSION
OF TIME TO FILE A PROPOSAL**

**(Sections 50.4(9), 65.13 and 84.1 of the *Bankruptcy and
Insolvency Act*, RSC 1985, c B-3, as amended)**

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

I. BACKGROUND

1. The Debtor/Petitioner BCBG Max Azria Canada Inc. (“**BCBG Canada**”) is a company governed by the *Canada Business Corporations Act*, RSC 1985, c C-44 and an indirect wholly-owned subsidiary of BCBG Max Azria Global Holdings, LLC (“**BCBG Global Holdings**”), a Delaware corporation.
2. BCBG Canada is the Canadian operating entity of the BCBG Max Azria group of companies (the “**BCBG Group**”), a fashion design, wholesale and retail conglomerate founded in 1989 and headquartered in California. The BCBG Group has retail operations across the United States, Europe, Japan and Canada.
3. As of the date of the NOI (as defined below), BCBG Canada operated its retail business from a total of 51 retail and factory stores in Québec, Ontario, British Columbia, Alberta, Manitoba and Nova Scotia (the “**Stores**”). In addition, it operates 17 licensed departments within Hudson’s Bay Company (“**HBC**”) retail locations in Canada (the “**Partner Shops**”).
4. On February 28, 2017 (the “**Chapter 11 Petition Date**”), BCBG Global Holdings and certain of its United States affiliates commenced proceedings under Chapter 11 of the Bankruptcy Code (the “**Chapter 11 Proceedings**”) before the United States Bankruptcy Court for the Southern District of New York.
5. On March 1, 2017, BCBG Canada filed a Notice of intention to make a proposal (“**NOI**”) under the relevant provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”) and Deloitte Restructuring Inc. was appointed as trustee thereto (the “**Trustee**”), the whole as appears from Court record.
6. On March 3, 2017, at BCBG Canada’s request, the Honourable David R. Collier, JSC, granted the *Order approving a DIP Financing and DIP Charge, an Administration Charge, a D&O Charge, a Consulting Agreement and Sale Guidelines and granting ancillary relief* (the “**First Order**”), as appears from Court record.
7. On March 29, 2017, Registrar Bégin of this Court granted an order extending the time to file a proposal to May 15, 2017, as appears from Court record.
8. On May 12, 2017, Registrar Flamand of this Court granted a second order extending the time to file a proposal to June 29, 2017, as appears from Court record.
9. On June 28, 2017, Registrar Bégin of this Court granted a third order extending the time to file a proposal to August 11, 2017, as appears from Court record.

II. SECURED CREDITORS

10. BCBG Canada and certain other members of the BCBG Group are party to a Second Amended and Restated Loan Agreement (the “**ABL Agreement**”) dated

as of February 5, 2015 with Bank of America, N.A. and other parties thereto (collectively, the “**ABL Lenders**”), pursuant to which the ABL Lenders provide BCBG Canada with a secured asset-based revolving credit line of up to \$15 million (the “**ABL Facility**”).

11. The obligations of BCBG Canada under the ABL Agreement are secured by first-ranking hypothecs and liens on substantially all of the company’s assets.
12. As of February 27, 2017, the outstanding aggregate amount due from BCBG Canada under the ABL Facility totalled C\$13,483,923.88, excluding interest, costs, fees and expenses.
13. As a result of certain events of default that occurred under the ABL Agreement, on February 14, 2017, BCBG Canada, certain other members of the BCBG Group and the ABL Lenders entered into a Forbearance Agreement (the “**First Forbearance Agreement**”). The First Forbearance Agreement was necessary to ensure that the ABL Lenders did not enforce the rights and any remedies available to them under the ABL Agreement. In accordance with its terms, the First Forbearance Agreement expired on February 28, 2017.
14. On March 3, 2017, in accordance with the First Order, BCBG Canada, certain other members of the BCBG Group and the ABL Lenders entered into the Canadian Forbearance Agreement (the “**DIP Agreement**”), in order to provide debtor-in-possession financing to BCBG Canada by way of the ABL Facility (in such capacity, the “**DIP Facility**”).
15. BCBG Canada’s obligations under the DIP Agreement are secured by a Court-ordered priority charge over all of the assets and undertakings of BCBG Canada.
16. Since the date of the DIP Agreement, in accordance with its terms and the First Order, BCBG Canada has been drawing upon and paying down the DIP Facility.
17. As of July 19, 2017, the outstanding aggregate amount due from BCBG Canada under the DIP Facility totalled approximately C\$795,000.
18. The ABL Lenders are supportive of this Application and the conclusions sought herein.

III. LIQUIDATION SALE

19. Following the granting of the First Order, BCBG Canada, with the assistance of its consultant, a joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions, ULC, began the liquidation sale of all of its inventory and furnishings, fixtures and equipment (“**FF&E**”) located at its Stores (the “**Liquidation Sale**”).
20. The Liquidation Sale was completed on or about May 31, 2017. In addition, disclaimers for all Store leases became effective by May 31, 2017.

IV. SALES PROCESS – PARTNER SHOPS

21. In parallel to the Liquidation Sale, BCBG Canada has continued to operate the Partner Shop business in the ordinary course since the date of the NOI.
22. On March 28, 2017, an order was granted in connection with the Chapter 11 Proceedings approving a sale and solicitation process (the “**Sale Process**”) for the assets of the BCBG Group including the Canadian Assets (as defined in paragraph 32 below). The BCBG Group retained the services of Jefferies, LLC to run the Sale Process.
23. As appears from the Disclosure Statement dated June 14, 2017 filed in connection with the Chapter 11 Proceedings, of which relevant excerpts are filed in support hereof as **Exhibit P-1**, the BCBG Group established a data room for purposes Sales Process (the “**Data Room**”) and reached out to more than 130 prospective bidders. More than 65 interested parties ultimately executed non-disclosure agreements for purposes of accessing the Data Room. Each of these parties were also provided “teaser” materials and a process letter.
24. The deadline for submitting final bids in connection with the Sale Process was May 19, 2017, by which date several bids were received.
25. Further to negotiations, and subject to the approval of this Court in respect of BCBG Canada, on June 9, 2017, certain debtors in the Chapter 11 Proceedings, BCBG Canada and certain of their affiliates (collectively, the “**Sellers**”), entered into an asset purchase agreement (the “**Asset Purchase Agreement**”) with GBG USA Inc. (the “**Purchaser**”) with respect to the sale and purchase of certain of the Acquired Assets (as defined below) (the “**Sale Transaction**”). A copy of the Asset Purchase Agreement is filed in support hereof as **Exhibit P-2**.
26. Also on June 9, 2017, certain Sellers (other than BCBG Canada) entered into a second asset purchase agreement with respect to the sale of certain intellectual property assets of the BCBG Group to a third-party purchaser (the “**IP Transaction**”).
27. On June 23, 2017, an order was granted in connection with the Chapter 11 Proceedings authorizing the Chapter 11 debtors to enter into a plan support agreement (the “**Plan Support Agreement**”) with, *inter alia*, the Purchaser. Pursuant to the Plan Support Agreement, the Purchaser undertakes to use commercially reasonable efforts to support and cooperate with the BCBG Group in its restructuring efforts, including to take all commercially reasonable actions necessary or appropriate to consummate the Sale Transaction.
28. On July 12, 2017, a Notice of Filing of Plan Supplement was filed under the Chapter 11 Proceedings (the “**FPS Notice**”), which included a schedule of assumed executory contracts containing, amongst others, the HBC Agreement (as defined below).

29. The deadline for submitting objections in connection with the FPS Notice was July 17, 2017, by which date no objection was received.

V. SALE TRANSACTION

30. Unless otherwise defined herein, all capitalized terms in this Section V have the meaning ascribed to them in the Asset Purchase Agreement.
31. The Asset Purchase Agreement provides for the sale by the Sellers to the Purchaser of certain assets, including inventory, contracts, and other assets related to the BCBG Group's wholesale, e-commerce, partnership and retail businesses, the whole as further set out in the Asset Purchase Agreement (collectively, the "**Acquired Assets**").
32. Those Acquired Assets being the property of BCBG Canada (the "**Canadian Assets**") include the inventory located in the Partner Shops (the "**Inventory**") and the Licensed Department Agreement dated as of October 1, 2012 between BCBG Canada and HBC (as amended from time to time, the "**HBC Agreement**"). The FF&E associated with the Partner Shops does not belong to BCBG Canada, but rather HBC.
33. Subject to authorization of the Court, in order to fully document the Sale Transaction as it regards the Canadian Assets, BCBG Canada, the Purchaser and BCBG Acquisition ULC (the "**CA Buyer**"), shall enter into a Transfer, Assignment and Assumption Agreement (the "**Transfer Agreement**") substantially in the form of the document filed in support hereof as **Exhibit P-3**.
34. As appears from the Asset Purchase Agreement, the aggregate cash purchase price for the Acquired Assets is US\$23,000,000 (the "**Purchase Price**"). As appears from the Transfer Agreement, that portion of the Purchase Price which is payable to BCBG Canada in consideration for the Canadian Assets is US\$500,000 (the "**Canadian Purchase Price**") which represents, as of the date hereof, approximately C\$630,000.
35. As more fully appears from the Transfer Agreement, the CA Buyer will be offering continued employment to all remaining employees of the Partner Shop operations of BCBG Canada and BCBG Canada may be providing certain limited transitional services to the CA Buyer, the whole in accordance with the terms set forth in the Transfer Agreement.
36. Other material terms of the Sale Transaction include:
- (a) the assumption by the Purchaser of the obligations and liabilities of BCBG Canada under the HBC Agreement, as and from the closing of the Sale Transaction; and

- (b) the Acquired Assets are being sold and purchased on an “as is, where is” basis and free and clear of all liens and other encumbrances, other than the “Permitted Liens” as described in the Asset Purchase Agreement.
37. It is anticipated that the Sale Transaction will close on or about July 31, 2017, subject to the satisfaction of the closing conditions set forth in the Asset Purchase Agreement, including:
- (a) the issuance of the relevant orders and approvals to be obtained in connection with the Chapter 11 Proceedings;
 - (b) the issuance of the approval and vesting order sought herein; and
 - (c) the closing of the IP Transaction;
38. In connection with the Sale Transaction, BCBG Canada retained the services of Hilco Valuation Services, LLC (“**Hilco**”) to provide an appraisal of the net orderly liquidation value (“**NOLV**”) of the Inventory.
39. As appears from Hilco’s report filed in support hereof as **Exhibit P-4**, the NOLV of the Inventory is estimated to be approximately C\$517,000.
40. In light of the foregoing, it is submitted that the Sale Transaction represents the best offer available in the circumstances in respect of the Canadian Assets, given that:
- (a) the Sale Transaction results from a *bona fide* offer by the Purchaser to purchase the Acquired Assets following a lengthy and thorough Sales Process by the BCBG Group;
 - (b) the Canadian Assets were bundled into the Acquired Assets in order to maximize their value and attract the highest bids from the largest numbers of potentially interested parties;
 - (c) the Canadian Purchase Price is greater than the NOLV of the Inventory, which would have been the best possible return otherwise available; and
 - (d) the employees of the Partner Shops operations of BCBG Canada will have the opportunity for continued employment with the CA Buyer.
41. BCBG Canada respectfully requests that this Court order the assignment of the HBC Agreement to the CA Buyer. As of the date hereof, there are no monetary defaults of BCBG Canada under the HBC Agreement. The CA Buyer is undertaking to assume all obligations of BCBG Canada thereunder. Further, the CA Buyer has advised BCBG Canada that HBC does not object to this Court ordering the assignment of the HBC Agreement.

42. As appears from the Trustee's report (the "**Trustee's Report**") filed in support of this Application on or about the date hereof, the Trustee is also of the view that the Sale Transaction in respect of the Canadian Assets provides the greatest benefit to BCBG Canada stakeholders.

VI. EXTENSION OF TIME

43. BCBG Canada continues to work with its stakeholders to determine whether it will be able to formulate a proposal to its unsecured creditors.
44. It is expected that the Sale Transaction, including as it regards the Canadian Assets, will close on July 28, 2017. BCBG Canada anticipates that it will require additional time to complete the Sale Transaction, deal with any post-closing issues and determine whether it will be able to formulate an acceptable proposal.
45. BCBG Canada has continued to pay suppliers, employees and other creditors for sums due from the date of the NOI in the ordinary course of business and intends to continue doing so.
46. Accordingly, BCBG Canada hereby respectfully requests that this Court extend the time period to make a proposal to August 31, 2017 (the "**Extension Date**"), pursuant to subsection 50.4(9) of the BIA.
47. BCBG Canada's cash flow is sufficient to continue operations up to and until the Extension Date, as appears from the Trustee's Report to be filed with the Court on or about the date hereof.
48. In BCBG Canada's opinion, no creditor will be materially prejudiced by an extension.

VII. CONCLUSION

49. To summarize, BCBG Canada hereby respectfully requests that this Honourable Court:
- (a) approve and ratify, as applicable, the execution of the Asset Purchase Agreement and the Transfer Agreement;
 - (b) authorize BCBG Canada to complete the sale of the Canadian Assets and to proceed with the closing of the Sale Transaction and vesting in and to the CA Buyer of all of the right, title and interest in and to the Canadian Assets in accordance with the terms and conditions of the Asset Purchase Agreement;
 - (c) order the assignment of the HBC Agreement to the CA Buyer in accordance with the terms and conditions of the Asset Purchase Agreement and the Transfer Agreement;

- (d) extend the stay of proceedings until the Extension Date; and
 - (e) render such other orders sought from this Court so as to allow for the closing of the Sale Transaction.
50. BCBG Canada is also seeking the authorization of this Court to remit to the ABL Lenders, from the Canadian Purchase Price (net of any applicable deductions or adjustments), an amount up to the aggregate amount outstanding under the DIP Agreement.
51. As stated above, the ABL Lenders are supportive of this Application and the conclusions sought herein.
52. The Trustee is also supportive of this Application and the conclusions sought herein.
53. BCBG Canada has acted and continues to act in good faith and with due diligence.

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

1. **GRANT** the present Application for approval of an asset sale, assignment of an agreement, issuance of a vesting order and for extension of time to file a proposal (the "**Application**");
2. **ISSUE** an order substantially in the form of the draft Approval, Vesting, Assignment and Extension Order filed in support hereof as **Exhibit P-5**;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

MONTRÉAL, July 20, 2017

Osler, Hoskin & Harcourt LLP
OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtor / Petitioner

AFFIDAVIT

I the undersigned, Naveed Z. Manzoor, domiciled for the purpose hereof at 6 Adelaide Street East, Suite 220, Toronto, Ontario, M5C 1H6, solemnly declare the following:

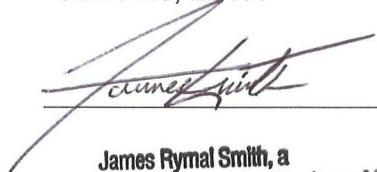
1. I am the Chief Canadian Restructuring Advisor of the Debtor/Petitioner BCBG Max Azria Canada Inc. and a duly authorized representative of the Debtor/Petitioner for the purposes hereof;
2. I have taken cognizance of the attached Application for approval of an asset sale, assignment of an agreement, issuance of a vesting order and for extension of time to file a proposal (the "**Application**");
3. The facts alleged in the Application are true or, where I rely on information received from others, I verily believe the facts alleged in the Application to be true.

AND I HAVE SIGNED:



Naveed Z. Manzoor

Mississauga
SOLEMNLY DECLARED BEFORE
ME IN TORONTO, ONTARIO, ON
JULY 20, 2017.



James Rymal Smith, a
Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires March 28, 2020.

NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the Application for approval of an asset sale, assignment of an agreement, issuance of a vesting order and for extension of time to file a proposal will be presented for hearing and allowance in the Superior Court (Commercial Division), in room 16.10 of the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6, on July 25, 2017, at 8:45 a.m., or so soon thereafter as counsel may be heard.

MONTRÉAL, July 20, 2017

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Debtor / Petitioner

**CANADA
PROVINCE OF QUÉBEC
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No.: 500-11-052159-171

SUPERIOR COURT
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TO MAKE A PROPOSAL OF:**

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Deloitte Restructuring Inc.

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-and-

GBG USA Inc.

-and-

GBG Acquisition ULC

Mises-en-cause

LIST OF EXHIBITS

- P-1 Excerpts from the Disclosure Statement dated June 14, 2017 filed in connection with the Chapter 11 Proceedings
- P-2 Asset Purchase Agreement
- P-3 Transfer, Assignment and Assumption Agreement
- P-4 Report by Hilco Valuation Services, LLC
- P-5 Draft Approval, Vesting, Assignment and Extension Order

MONTRÉAL, July 20, 2017

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtor / Petitioner

EXHIBIT P-1

**Excerpts from the Disclosure Statement dated June 14, 2017 filed in connection
with the Chapter 11 Proceedings**

(Please see attached.)

EXHIBIT P-2

Asset Purchase Agreement

(Please see attached.)

EXHIBIT P-3

Transfer, Assignment and Assumption Agreement

(Please see attached.)

EXHIBIT P-4

Report by Hilco Valuation Services, LLC

(Please see attached.)

EXHIBIT P-5

Draft Approval, Vesting, Assignment and Extension Order

(Please see attached.)

No.: 500-11-052159-171

**SUPERIOR COURT
(Commercial Division)**
DISTRICT OF MONTRÉAL

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:**

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Debtors/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Trustee

**APPLICATION FOR APPROVAL OF AN ASSET SALE,
ASSIGNMENT OF AN AGREEMENT, ISSUANCE OF A
VESTING ORDER AND FOR EXTENSION OF TIME TO
FILE A PROPOSAL, AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS, EXHIBITS P-1
TO P-5**

COPY

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o/f: 1179263

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