

Estate No: 51-2440231
Court No: 22376
District: Newfoundland & Labrador
Division No: 01- Newfoundland & Labrador

AND

Estate No: 51-2440230
Court No: 22375
District: Newfoundland & Labrador
Division No: 01- Newfoundland & Labrador

2018 01G 22375
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the Bankruptcy
& Insolvency Act, RSC. 1985, c. B-3,
as amended

AND IN THE MATTER OF the Proposal
of British Confectionery Company Limited

AND IN THE MATTER OF the Proposal
of British Bazaar Company Limited

Administration Charge Order

Upon the application of British Bazaar Company Limited and British Confectionery Company Limited (“the Companies”) for an order pursuant to Section 64.2 of the *Bankruptcy and Insolvency Act* (“BIA”) declaring that the professional advisors of the Companies shall have a charge over the assets of the Companies in respect of fees and expenses, and upon reading the affidavit of Blair Connolly and the 2nd Report of Deloitte Restructuring Inc. (“the Proposal Trustee”) filed, and upon hearing Tim Hill, Q.C., the solicitor for the said Applicants, and it appearing to the court that it is appropriate to issue an order:

IT IS ORDERED THAT:

Service

1. The service of the notice of application and the supporting documents as set out in the Affidavit of Service is deemed adequate so that the application is properly returnable today and further service thereof is hereby dispensed with.

Administrative Charge

2. The Proposal Trustee, counsel to the Proposal Trustee and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the property of the Applicants, which charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out herein.

Validity and Priority of Charges Created by this Order

3. The priority of the Administration Charge as against the existing security held by any secured creditor prior to the issuance of this Order (the "Existing Security"), shall be as follows:
 - a. First – any amounts deemed to be held in trust for Her Majesty which are described in section 67(3) of the *BIA*;
 - b. Second – Administration Charge; and
 - c. Third – Existing Security in such priority as they currently have.

4. The filing, registration, or perfection of the Administration Charge shall not be required, and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded, or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record, or perfect.
5. The Administration Charge shall constitute a charge on the property of the Applicants and, subject to paragraph 3 hereof, such charge shall rank in priority to all other security interests, trusts, liens, charges, and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.
6. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, Existing Security or the Administration Charge, unless the Applicants also obtain the prior written consent of the Proposal Trustee, its existing secured creditors, and the beneficiaries of the Administration Charge, or further order of this Court.
7. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of said charge shall not otherwise be limited or impaired in any way by i) the pendency of these proceedings and the declarations of insolvency made herein; ii) any application for a bankruptcy order issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or iv) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt, or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- a. the creation of the Administration Charge shall not create nor be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
 - b. none of the beneficiaries of the Administration Charge shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
 - c. the payments made by the Applicants pursuant to this Order, and the granting of the Administration Charge, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements, or other challengeable, voidable, or reviewable transactions under any applicable law.
8. The Administration Charge created by this Order over leases of real property in Canada shall only be a Charge on the Applicants' interest in such real property leases.
 9. Any amounts actually advanced or expended pursuant to the Administration Charge shall have the priority as provided for herein regardless of the time of advance or the use to which funds were actually put.

Service and Notice

10. The Applicants and the Proposal Trustee shall serve a copy of this Order on Canada Revenue Agency and all secured creditors of the Applicants and shall be at liberty to serve this Order on such other persons as they determine is appropriate. All such service shall be made in accordance with the provisions of the *BIA*.

General

11. Any interested party, including the Applicants and the Proposal Trustee, may apply to this Court to vary or amend this Order on such notice provided for under the *BIA* or on such notice as this Court may order.
12. This Order and all of its provisions are effective as of 12.01 a.m. Atlantic Standard Time on the 15th day of January, 2019.

Dated the day of January, 2019, at St. John's, Newfoundland and Labrador.

Deputy Registrar