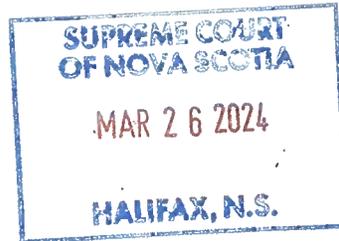


Form 5.03

2024



Hfx No. 53 19 15

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

**In the Matter of the Receivership of TCAS Holdings Limited, Sustainable
Fish Farming (Canada) Limited, Sustainable Blue Inc. and TCAS IP Inc.**

Between:

4595756 Nova Scotia Limited

Applicant

and

**TCAS Holdings Limited, Sustainable Fish Farming (Canada) Limited, Sustainable
Blue Inc. and TCAS IP Inc.**

Respondents

NOTICE OF APPLICATION IN CHAMBERS

To: Attached service list at Schedule "A"

The Applicant requests an Order against you

The Applicant, 4595756 Nova Scotia Limited, is applying to the Supreme Court of Nova Scotia for an Order for the appointment of a Receiver and Manager pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended ("the BIA"), and s. 43(9) of the *Judicature Act*, R.S.N.S. 1989, c. 240 (the "**Judicature Act**"), of all of the assets, undertakings and properties of TCAS Holdings Limited ("**TCAS Holdings**"), Sustainable Fish Farming (Canada) Limited ("**SFFC**"), Sustainable Blue Inc. ("**Sustainable Blue**") and TCAS IP Inc. ("**TCAS IP**", and collectively, with TCAS Holdings, SFFC, and Sustainable Blue, the "**Companies**").

The Applicant started this application by filing this notice on the date certified by the Prothonotary.

Grounds for order

The Applicant is applying for the order on the following grounds:

Background

1. Each of the Companies is a Nova Scotia limited company, registered to do business in the province of Nova Scotia, with a registered office located at 20 MacDonald Avenue in Dartmouth, Nova Scotia.
2. The Companies conduct their business through SFFC, which owns and operates a land-based marine aquaculture facility in Hants County, Nova Scotia (the "**Facility**") where it grows Atlantic salmon. SFFC's salmon are marketed under the brand name 'Sustainable Blue'. Operations at the Facility are based upon, in part, a proprietary water filtration technology owned by TCAS IP and licenced to SFFC.
3. On November 4, 2023, the building at the Facility that holds the largest, most mature fish in SFFC's production cycle experienced a structural collapse in a critical piece of equipment known as the biological filter (the "**Incident**"). The failure of the biological filter caused carbon dioxide levels in the in the main fish tank to become lethal within a few hours.
4. There were approximately 96,000 fish in the particular building on the date of the Incident, all of which perished within 12 hours. The fish lost represented all of SFFC's fish scheduled to be harvested between November 28, 2023 and July 31, 2024.
5. As a result of the Incident, SFFC faced an immediate and significant gap in revenue.
6. Protective disbursements and advances have been made to suppliers and other contractors, whose supplies and services are critical to keeping SFFC's remaining fish alive in order to re-start SFFC's revenue stream.
7. Such emergency loans and funding to SFFC have been made primarily by minority shareholders of the Companies, and this is not a sustainable long-term solution. SFFC is facing an immediate liquidity crisis.

Credit Facilities and Security

8. The Bank of Nova Scotia ("**BNS**") advanced funds to TCAS Holdings pursuant to a pursuant to a third amended and restated credit agreement dated June 27, 2023 (the "**Credit Agreement**"). The credit facilities originally made available by BNS to TCAS Holdings consist of two non-revolving term loan facilities in the principal amounts of \$17.5 million and \$4 million.
9. As security for the TCAS Holdings' obligations to BNS under the Credit Agreement, the Companies provided certain security to BNS, including but not limited to:
 - (a) a Debenture dated March 5, 2021 granted by SFFC charging the real property located at 259 Red Bank Road, Centre Burlington, Nova Scotia;
 - (b) a General Security Agreement dated March 9, 2021 granted by TCAS Holdings;

- (c) a General Security Agreement dated March 9, 2021 granted by SFFC;
 - (d) a General Security Agreement dated October 19, 2021 granted by Sustainable Blue;
 - (e) a Share Pledge Agreement (Special Hypothecation) dated October 19, 2021 granted by SFFC;
 - (f) a Share Pledge Agreement (Special Hypothecation) dated March 9, 2021 granted by TCAS Holdings;
 - (g) an Assignment of Insurance dated March 9, 2021 granted by SFFC;
 - (h) an Assignment of Material Contracts dated March 9, 2021 granted by SFFC;
 - (i) an Assignment of Material Contracts dated March 9, 2021 granted by TCAS IP;
 - (j) an Omnibus Guarantee dated March 9, 2021 granted by TCAS Holdings, SFFC and TCAS IP;
 - (k) a Guarantee dated October 19, 2021 granted by Sustainable Blue
 - (l) a Postponement and Subordination Undertaking dated March 9, 2021; and
 - (m) a Postponement and Subordination Undertaking dated March 9, 2021 made by TCAS Holdings and Bayt al Qoot UK Ltd.
10. On March 8, 2024, TCAS Holdings entered into an Assignment of Debt and Security with BNS and the Applicant, whereby BNS assigned all of its right, title, and interest in the Credit Agreement, the credit facilities and outstanding balance of the indebtedness owing thereunder, and all guarantees and security held in connection with the Credit Agreement to the Applicant.

Default and Demands

11. TCAS Holdings is in default of its obligations under the Credit Agreement including, but not limited to, the failure to repay the credit facilities on the maturity date, being March 8, 2024.
12. On March 12, 2024, the Applicant issued a demand to each of the Companies (the demands to SFFC, TCAS IP and Sustainable Blue being made under their respective guarantees of the indebtedness of TCAS Holdings) together with Notices of Intention to Enforce a Security pursuant to section 244 of the BIA. As of the date of demand, the total indebtedness owing by the Companies to the Applicant was \$21,577,198.63.
13. To date, the Companies have failed to pay the amounts outstanding and have no prospect of doing so.

Appointment of Receiver

14. The Applicant (which includes certain members of the management group of the Companies) believes that SFFC's operations can be viable both in the medium and long

term. As shareholder loans to SFFC are no longer a viable option, the Applicant believes a sale and investment solicitation process is the best chance for SFFC's business to continue long-term.

15. Deloitte Restructuring Inc. ("**Deloitte**") has agreed to act as court-appointed receiver and manager if the requested relief is granted.
16. The Applicant brings this application for the appointment of Deloitte as receiver and manager over all of the assets, undertakings and properties of the Companies, pursuant to s. 243 of the BIA and s. 43(9) of the *Judicature Act*.
17. The Order sought by the Applicant is relief under the BIA and the application is not being commenced under the *Civil Procedure Rules* of Nova Scotia. The Applicant relies on the following legislation, Rules or points of law:
 - (a) the BIA;
 - (b) the timelines as set out in the *Bankruptcy and Insolvency General Rules*, Can. Reg. 368 (the "**BIA Rules**"), and the four (4) days of notice as required under BIA Rule 6; and
 - (c) such further and other grounds as counsel may advise and this Court may permit.

Evidence supporting application

The Applicant offers the following Affidavits in support of the application:

1. Affidavit of Thane Stevens sworn on March 26, 2024 and filed with this notice; and
2. Solicitor's Affidavit of David Wedlake sworn on March 22, 2024 and filed with this notice.

A copy of each Affidavit is to be delivered to you with this notice, and further Affidavits may be delivered before the deadlines provided in Civil Procedure Rule 5 - Application.

You may participate

You may file with the Court a Notice of Contest, and any affidavits upon which you rely. Filing the Notice of Contest entitles you to notice of further steps in the application, including notice of further affidavits.

Time, date, and place

The Application is to be heard by the judge in Chambers at 9:30 a.m. on Thursday, April 4, 2024 in the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia. You have the right to be present and to be represented by counsel or to act on your own. If you are not present, the judge may proceed without you.

Possible order against you

The judge may grant a final order on the Application without further notice to you if you fail to deliver your Notice of Contest on time, or if you or your counsel fail to appear in chambers at the above time, date, and place.

Filing and delivering documents

Any documents you file with the Court must be filed at the office of the Prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 902-424-6900).

When you file a document you must immediately deliver a copy of it to the Applicant and each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The Applicant designates the following address:

Maurice P. Chiasson, K.C. / David Wedlake
Stewart McKelvey
600-1741 Lower Water Street
Halifax, NS B3J 0J2

Documents delivered to this address are considered received by the Applicant.

Further contact information is available from the Prothonotary.

Signature

Signed March 26, 2024



Maurice P. Chiasson, K.C. / David Wedlake
Stewart McKelvey
600-1741 Lower Water Street
Halifax, NS B3J 0J2
Telephone: 902.420.3300 / 902.444.1705
Facsimile: 902.420.1417
Counsel for the Applicant

Prothonotary's Certificate

I certify that this Notice of Application was filed with the Court on *March 26*, 2024.



Prothonotary

KIMBERLEY WEBBER
Deputy Prothonotary

SCHEDULE "A"
SERVICE LIST

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SERVICE LIST

<p>4595756 Nova Scotia Limited c/o Stewart McKelvey 600-1741 Lower Water Street Halifax, NS B3J 0J2</p> <p>Maurice P. Chiasson, K.C. 902-420-3300 mchiasson@Stewartmckelvey.com</p> <p>David Wedlake 902-444-1705 dwedlake@stewartmckelvey.com</p> <p>Applicant</p>	<p>TCAS Holdings Limited TCAS IP Inc. 20 MacDonald Ave. Dartmouth, NS B3B 1C5</p> <p>Chris Sangster cgs@stevensgroup.ca</p> <p>Sustainable Fish Farming (Canada) Limited Sustainable Blue Inc. 20 MacDonald Ave. Dartmouth, NS B3B 1C5</p> <p>Kirk Havercroft kirkhavercroft@sffc.ca</p> <p>Respondents</p>
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<p>Deloitte Restructuring Inc. 1741 Lower Water Street, Suite 800 Halifax, NS B3J 0J2</p> <p>James Foran, CPA, CA, CIRP, LIT 902-721-5661 jforan@deloitte.ca</p> <p>Proposed Receiver and Manager</p> <p>Josh McElman, K.C. 506-633-2708 jmcelman@coxandpalmer.com</p> <p>Counsel to Proposed Receiver and Manager</p>	<p>Bayt Al Qoot UK Ltd. c/o Clyde & Co 401 Bay Street, Suite 2500 Toronto, ON M5H 2Y4</p> <p>George Karayannides, Q.Arb 647-789-4831 george.karayannides@clydeco.ca</p> <p>Abhi Jalan 971-4-384-4000 Abhi.Jalan@clydeco.ae</p>
<p>Atlantic Compressed Air Ltd. 484 Edinburgh Drive Moncton, NB E1E 2L1</p> <p>Luc Theriault 506-858-9500, ext. 104 luctheriault@atlanticcompressedair.ca</p>	<p>Linde Canada Inc. 80 Westcreek Blvd Brampton, ON L6T 0B8</p> <p>Brian Ramnarine 833-796-3800, ext. 4517 brian.ramnarine@linde.com</p>
<p>Atlantic Fisheries Fund PO Box 1006 1 Challenger Drive Dartmouth, NS B2Y 4A2</p> <p>Stacey Frame 902-401-8255 stacey.frame@dfo-mpo.gc.ca</p>	<p>Atlantic Canada Opportunities Agency 1801 Hollis Street Room 700 Halifax, NS B3J 3N4</p> <p>Paul Owens, CPA, CA 902-402-1307 paul.owens@acoa-apeca.gc.ca</p>