

2015

Estate No. 51-1963560
Court No. 38848
District No. 02
Division No. 01-Halifax

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

Court Administration

MAR 4 2015

Halifax, N.S.

In the Matter of: **THE PROPOSAL OF TOUR TECH. EAST LIMITED**



ORDER

BEFORE THE REGISTRAR IN BANKRUPTCY:

UPON a Motion made by Tour Tech. East Limited (the "Company"), an insolvent person, for an order pursuant to sections 50.6 and 64.2 of the *Bankruptcy & Insolvency Act* ("the BIA"), providing for interim financing and an administrative charge;

AND UPON reading the Notice of Motion of the Company, the Report of Deloitte Restructuring Inc. ("the Trustee") on the state of the Company's business and financial affairs as at February 20, 2015, the affidavit of Peter Hendrickson, sworn February 24, 2015, and the Addendum to the Report of the Trustee dated March 3, 2015;

AND UPON the court approving the Service List attached hereto as Schedule "A";

AND UPON HEARING the submissions of Brian Casey, QC, counsel for the Company, Gavin MacDonald, counsel to Business Development Bank of Canada ("BDC"), Stephen Kingston, counsel to Toronto-Dominion Bank and Robert MacKeigan, QC counsel for A.C.T. Lighting Canada Inc.;

IT IS HEREBY ORDERED:

Service

1. The time for service of this motion be and it is hereby abridged, and it is declared that the Notice of Motion is properly returnable today;
2. To the extent necessary any required notice periods with respect to this motion are hereby abridged;
3. Any lack or deficiency in service of this motion are hereby waived and excused;
4. Service on the secured creditors of the Company shall be sufficient service for the

purposes of this motion.

DIP Loan

5. Pursuant to s. 50.6 of the BIA, the Company is hereby authorized and empowered to obtain and borrow under a credit facility from BDC in order to finance the Company's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$300,000 unless permitted by further Order of this Court.
6. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Company and BDC dated March 3, 2015 (the "Commitment Letter").
7. The Company is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Company Documents") and its affiliate, 3258042 Nova Scotia Limited ("325") is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "325 Documents" and together with the Company Documents collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by BDC pursuant to the terms thereof, and the Company is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to BDC under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
8. Pursuant to s. 50.6(3) of the BIA, BDC shall be entitled to the benefit of and is hereby granted a charge (the "DIP Charge") on all the property, assets and undertaking of the Company and the property of 325 described in the Commitment Letter, being municipally known as 180 Thornhill Drive, Dartmouth, NS (the "Thornhill Property") and all buildings thereon (collectively, the "Property"), which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraph 14 hereof.
9. The filing, registration or perfection of the DIP Charge shall not be required, and such charges shall be enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Charge coming into existence, notwithstanding any such failure to file, register, record or perfect. Notwithstanding the foregoing, BDC may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge.
10. Notwithstanding any other provision of this Order:

- (a) BDC may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Charge, BDC, upon 3 business days notice to the Company and the Monitor, may exercise any and all of its rights and remedies against the Company or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Company and set off and/or consolidate any amounts owing by BDC to the Company or 325 against the obligations of the Company and 325 to BDC under the Commitment Letter, the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Company and for the appointment of a trustee in bankruptcy of the Company; and

the foregoing rights and remedies of BDC shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Company or the Property.

- 11. BDC shall be treated as unaffected in any proposal filed by the Company under the BIA with respect to any advances made under the Definitive Documents.

Administration Charge

- 12. The Trustee, counsel to the Trustee, and the Company's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") pursuant to section 64.2 of the BIA, said charge being a first ranking charge over the personal property of the Company and a second ranking charge over the real property mortgage in favour of BDC on the Thornhill Property, ranking in priority to all mortgages, charges, liens or security interests, trusts, deemed trusts and other encumbrances, contractual, statutory or otherwise, held by or for the benefit of any person but subject to the existing charge in favour of BDC on the Thornhill Property, which charge shall not exceed an aggregate amount of \$75,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Trustee and such counsel, both before and after the making of this Order in respect of these proceedings.

Subsequent Proceedings

- 13. The charges created herein shall not be rendered invalid or unenforceable, and the rights and remedies of the chargees shall not be limited or impaired in any way, by (i) the pendency of these proceedings and the declarations of insolvency made

herein; (ii) any bankruptcy order issued subsequent hereto; or (iii) any negative covenants, prohibitions or similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing loan documents or other agreements and, notwithstanding any provision to the contrary in any Agreement:

- (a) The creation of the charges and the performance of the Commitment Letter shall not create, or be deemed to constitute, a breach of any agreement to which the Company or 325 is a party;
- (b) None of the chargees shall have any liability to any person as a result of a breach of any agreement caused by or resulting from the grant of the charges or the operation of the Commitment Letter;
- (c) Payments made by the Company pursuant to this order, and the granting of the charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

Priority of the DIP Charge and Administrative Charge

- 14. The priorities of the Administration Charge and the DIP Charge, as among them, shall be as follows :
 - (a) First – Administration Charge (to the maximum amount of \$75,000); and
 - (b) Second – DIP Charge

Effective Date and Time

- 15. This Order and all of its provisions are effective as of 12:01 a.m. local time on the date of this Order.

Issued March 4, 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 4th day of March
A.D., 20 15
Phyllis Perry
DEPUTY REGISTRAR
Phyllis Perry
PHYLLIS PERRY
Deputy Registrar of Bankruptcy

Phyllis Perry
Deputy Registrar in Bankruptcy

Schedule "A"

Service List

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