

Estate #: 51-1963560
Court #: 38848
District #: 02
Division #: 01 - Halifax

SUPREME COURT OF NOVA SCOTIA IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF
TOUR TECH. EAST LIMITED**

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

PROPOSAL

Tour Tech. East Limited ("Tour Tech" 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 Tour Tech 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 Tour Tech 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 20, 2015;
 - d. "Convenience Class" means the first \$2,000 of any Unsecured Creditor's Proven Claim;
 - e. "Court" means the Supreme Court of Nova Scotia in Bankruptcy and Insolvency;
 - f. "Court Approval Order" means the final order of the Court approving this Proposal in accordance with Section 60 of the BIA;
 - g. "Creditors" means the Secured, Preferred and Unsecured Creditors of Tour Tech, and for greater certainty does not include Subsequent Creditors in respect of only the amounts described in Paragraph 12 hereof;

- h. "Deferred Creditor" means an Unsecured Creditor with a Proven Claim that is related to Tour Tech as per the definition of a 'related person' in accordance with Section 4 of the BIA;
- i. "Estate" means the estate of Tour Tech under this Proposal pursuant to the BIA;
- j. "Effective Date" means the date seven days after the Court Approval Order and the expiration of all appeals;
- k. "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;
- l. "Filing Date" means July 14, 2015, the date on which Tour Tech filed this Proposal with the Official Receiver in Halifax, Nova Scotia;
- m. "Fund" means monies provided by Tour Tech 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 \$200,000;
- n. "Inspector" means any persons appointed or elected as Inspectors of Tour Tech pursuant to paragraph 21 of this Proposal;
- o. "Investor" means any persons providing a financial investment into Tour Tech;
- p. "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 of otherwise created by law;
- q. "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;
- r. "NOI Date" means February 20, 2015, the date which Tour Tech filed its Notice of Intention to File a Proposal with the Official Receiver;
- s. "Preferred Creditors" means those persons with Claims against Tour Tech provable pursuant to the BIA as of the NOI Date whose Claims are entitled to be paid in priority to the claims on Unsecured Creditors as provided in Section 136 of the BIA;
- t. "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;
- u. "Proposal" means this Proposal of Tour Tech under the BIA, as amended or supplemented from time to time;
- v. "Proposal Period" means the period between the Filing Date and the Maturity Date;
- w. "Proposal Trustee" and "Deloitte" means Deloitte Restructuring Inc, a licensed trustee of Nova Scotia, the Proposal Trustee acting in the Proposal of Tour Tech;

- x. "Proven Claim" means a provable claim pursuant to the BIA against Tour Tech 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;
- y. "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 LLC;
- z. "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;
- aa. "Subsequent Creditor" means a person who provided goods and services on credit to Tour Tech subsequent to the NOI Date to and including the Effective Date, and employees of Tour Tech employed subsequent to the NOI Date to and including the Effective Date;
- bb. "TD" means Toronto Dominion Bank, a financial institution;
- cc. "Tour Tech" and "Company" means Tour Tech. East Limited, an insolvent corporation, with a head office located in Dartmouth, Nova Scotia;
- dd. "Unsecured Creditors" means those persons with ordinary unsecured Claims (including contingent claims) provable pursuant to the BIA against Tour Tech as at the NOI Date which are not preferred pursuant to Section 136 of the BIA;
- ee. "3258042" means 3258042 Nova Scotia Limited, a related entity.

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 Tour Tech 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 Tour Tech and amends the terms of any and all agreements between Tour Tech 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 Tour Tech 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 Tour Tech 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 Tour Tech and all Creditors in the manner provided for in this Proposal and the BIA.

**PART III
RESTRUCTURING OF TOUR TECH**

8. Tour Tech will enter into a transaction with the Investor via a Newco. Newco will purchase assets from Tour Tech for proceeds of \$1,300,000 to be disbursed as follows:
 - i. An amount estimated to be \$267,000 for payment in full of Priority Claims outstanding against Tour Tech as at the Effective Date;
 - ii. An amount estimated to be \$575,000 for payment in full of TD's advances to Tour Tech as at the Effective Date;
 - iii. To provide the Proposal Trustee with the required funds to establish a Fund of \$200,000 to be used for full and final settlement of all Unsecured Creditors claims against Tour Tech as at the NOI Date, in accordance with Part VIII of this Proposal; and
 - iv. To provide Tour Tech with funds to be used in the operation of the business.
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 two classes of Secured Creditors to which this Proposal is made, being:
 - a. Class One which shall include BDC and TD; and
 - b. Class Two which shall include:
 - i. Wells Fargo Equipment Finance Company;
 - ii. O'Regan Chevrolet Cadillac Limited;
 - iii. O'Regan Chevrolet Buick GMC Cadillac Limited;
 - iv. National Leasing Group Inc.;
 - v. Roynat Inc.;
 - vi. A.C.T. Lighting Canada Inc.;
 - vii. ADD Capital Corp; and
 - viii. German Light Products Inc.

11. For the purposes of voting on this Proposal, there shall be one class of Unsecured Creditors, referred to as Class Three and shall consist of all of the Preferred Creditors, Unsecured Creditors and Deferred Creditors.

**PART V
SUBSEQUENT CREDITORS**

12. Amounts owed by Tour Tech to Subsequent Creditors for goods, services and employment actually provided to Tour Tech, 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 Tour Tech 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, Tour Tech and BDC will enter into an agreement whereby the advances will be fully extinguished over a period of fifteen years on a monthly basis starting in October 2015.
15. In consideration of BDC's outstanding advances as at the Effective Date, 3258042 shall pay on an annual basis, all excess cash flows, after funding operations and fulfilling 3258042's obligations under its Proposal, to BDC on account of outstanding advances owed by Tour Tech; said outstanding advances being guaranteed by 3258042.
16. In consideration of TD's outstanding advances as at the Effective Date, Newco will fully purchase the advances and TD security.
17. In consideration of the outstanding advances of the Class Two Secured Creditors, that Class shall have the option to either:

- i. begin receiving regularly scheduled payments over the terms of the various finance agreements based upon 50% of the NOI Filing Date balance, beginning in October 2015; or
- ii. take possession and enforce their security.

**PART VIII
UNSECURED CLAIMS**

Preferred Claims and Mandatory Payments

18. 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 Tour Tech 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 Tour Tech 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

19. 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

20. Proven Claims of Unsecured Creditors as of the NOI Date, excluding Proven Claims of Deferred Creditors, shall be paid as follows:
 - i. The Convenience Class portion of the claim will be paid in full, without interest; and
 - ii. Remaining Proven Claims of Unsecured Creditors not paid within the Convenience Class will participate on a pro-rata basis from the Fund.
21. Deferred Creditors shall not receive any distribution in this Proposal.

PART IX INSPECTORS

Appointment of Inspectors

22. 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

23. 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

24. 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 Tour Tech 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 Tour Tech and the Proposal Trustee in a form satisfactory to them.
25. The arrangements set out in this Proposal will not take effect unless all classes defined in Part IV accept the Proposal.
26. 3258042 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 3258042 is accepted by its creditors and the Court after the expiration of all appeal periods.

**PART XI
GENERAL**

Acceptance of this Proposal

27. 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.
28. 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 Tour Tech 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 Tour Tech 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

29. 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 Tour Tech in any provision, express or implied, in any agreement existing between the Creditors and Tour Tech 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

30. Tour Tech 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

31. All obligations of Tour Tech 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 Tour Tech 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

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

Compromise Effective for all Purposes

33. 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

34. Tour Tech 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, Tour Tech 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

35. Tour Tech represents and warrants that it has disclosed all relevant information in respect of this Proposal.
36. 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.
37. Upon making final payments to Creditors in accordance with this Proposal and providing a certificate to Tour Tech 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

38. 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 Tour Tech;
 - 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.

Tour Tech. East Limited



Per: Peter Hendrickson
President

We the undersigned, being the Related Parties as herein defined, hereby consent to the terms of this Proposal.

Peter Hendrickson
Per: 

Peter Hendrickson

Robert Barrett
Per: 

Robert Barrett

Tour Tech LLC
Per: 

Peter Hendrickson, Authorized Officer