

COURT FILE NUMBER

Q.B. 61 of 2018

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

SWIFT CURRENT

IN THE MATTER OF THE RECEIVERSHIP OF SWIFT HOTELS GROUP LTD.

NOTICE OF APPLICATION

(Sale Approval and Vesting Order)

NOTICE TO: Those Parties Identified on The Attached Service List.

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

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| Where: | Court House 121 Lorne Street West Swift Current, Saskatchewan, Canada |
| Date: | Friday, December 18, 2020 |
| Time: | 10:00 a.m. Saskatchewan Time |

Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. In the event that you are interested in participating in the December 18 hearing of the application, the dial-in particulars are as follows: Tel: 1-866-296-5646; Passcode: 627846. Please note that participation in the December 18 hearing is entirely voluntary.

Remedy claimed or sought:

1. An Order in substantially the form of the proposed draft Order filed herewith:
 - (a) approving, authorizing and directing Deloitte Restructuring Inc., in its capacity as Receiver (the "**Receiver**") of the assets, undertakings and properties of Swift Hotels Group Ltd. (the "**Debtor**"), to complete the proposed purchase and sale transaction (the "**Transaction**") respecting certain real property in Swift Current, Saskatchewan and certain personal property of the Debtor (collectively, the "**Purchased Assets**") more particularly described in the Asset Purchase Agreement between the Debtor and First Canadian Management Corporation (the "**Purchaser**") dated September 13, 2020, and amended on October 29, 2020 and November 2, 2020, respectively (the

"Sale Agreement"), attached to the Confidential Supplement to the Second Report of the Receiver dated December 3, 2020 (the **"Confidential Supplement"**), in accordance with the Sale Agreement;

- (b) vesting in the Purchaser all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all liens, charges, and encumbrances;
- (c) approving the activities, conduct, fees and disbursements of the Receiver and its legal counsel;
- (d) approving certain distributions by the Receiver of the net sale proceeds from the Transaction;
- (e) sealing the Confidential Supplement on the Court file; and
- (f) such further and other relief as counsel may request and this Honourable Court may allow.

Grounds for making this application:

- 2. The Debtor is an Alberta corporation engaged in the business of operating a Days Inn Hotel located in Swift Current, Saskatchewan.
- 3. On November 28, 2019, on the application of Innovation Credit Union, Deloitte Restructuring Inc. was appointed as Receiver of the assets, undertakings and properties of the Debtor pursuant to the Order of the Honourable Mr. Justice R.S. Smith pronounced in these proceedings (the **"Receivership Order"**).
- 4. In accordance with the terms of the Receivership Order, the Receiver took steps to market for sale, and to sell, the Purchased Assets.
- 5. Pursuant to paragraph 3(l)(ii) of the Receivership Order, the Receiver seeks the Court's approval for the sale of the Purchased Assets, in an aggregate amount exceeding the limits contained in paragraph 3(l)(i) of the Receivership Order.

Approval of Transaction and Vesting of Title to the Purchased Assets

- 6. As more particularly described in the Second Report of the Receiver dated December 3, 2020 (the **"Second Report"**) and the Confidential Supplement thereto, the offer by the Purchaser represents a reasonable realization of value for the Purchased Assets, particularly in light of the current state of the hospitality industry and real estate market, the impact of the COVID-19

pandemic, the anticipated Receiver's costs required in order to continue to maintain the Purchased Assets, and other factors more particularly detailed in the Confidential Supplement.

7. The Transaction is supported by Innovation Credit Union, the senior secured creditor of the Debtor and the primary financial stakeholder in these proceedings.
8. The Transaction is currently scheduled to close on the date described in the Sale Agreement, which is appended to and forms part of the Confidential Supplement.

Approval of the Activities, Conduct, Fees and Disbursements of the Receiver and its Counsel

9. As more particularly detailed in the Second Report and the Confidential Supplement, the sales process conducted by the Receiver, and the other actions of the Receiver have at all times been conducted with efficiency and integrity, with due regard for the interests of all parties, and with the support of Innovation Credit Union, the senior secured creditor.

Approval of Distributions by the Receiver

10. The Receiver exercised its authority pursuant to paragraph 3(s) of the Receivership Order to assign the Debtor into bankruptcy on November 27, 2020, which appointment was affirmed by the Office of the Superintendent of Bankruptcy on November 30, 2020.
11. The Debtor is indebted to certain Crown creditors whose respective claims rank in priority to the secured claim of Innovation Credit Union by operation of certain statutes, namely:
 - (a) the City of Swift Current, pursuant to *The Cities Act*, on account of property taxes due and owing by the Debtor;
 - (b) Canada Revenue Agency, pursuant to the *Income Tax Act*, in regard to the Debtor's unremitted employee source deduction arrears; and
 - (c) the Government of Canada, pursuant to the *Bankruptcy and Insolvency Act* and the *Wage Earner Protection Program Act*, in regard to wages owing by the Debtor to the Debtor's former employees.
12. Upon paying the above-noted creditors, a distribution order is required in order to confirm that a distribution of the net sale proceeds (less a residual holdback for legal and professional costs and all other costs of and incidental to the receivership) may be made to Innovation Credit Union following the closing of the Transaction.

Sealing of the Confidential Supplement

13. The Confidential Supplement contains commercially sensitive information, including details of the offers received for the Purchased Assets, as well as the Sale Agreement, which in turn references the purchase price being paid in the Transaction.
14. Publicly disclosing this commercially sensitive information prior to the closing of the Transaction would be highly prejudicial to any future sale in the event that this Honourable Court does not grant the Sale Approval and Vesting Order, or if the Transaction does not close for any reason.
15. The Receiver has given notice to the media of its intention to seek a sealing order, as required by General Application Practice Directive #3.
16. Such further or other grounds as counsel may advise and this Honourable Court may allow.

Material or evidence to be relied on:

17. The Applicant relies upon:
 - (a) this Notice of Application;
 - (b) the Second Report of the Receiver dated December 3, 2020;
 - (c) the Confidential Supplement to the Second Report of the Receiver dated December 3, 2020;
 - (d) a proposed form of draft Order;
 - (e) a redline document showing the changes made in the proposed form of draft Order from the Saskatchewan Template Sale Approval and Vesting Order, effective June 5, 2019;
 - (f) a Brief of Law;
 - (g) proof of compliance with General Application Practice Directive #3; and
 - (h) such further and other material as this Honourable Court may allow.

Applicable Acts and Regulations:

18. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, Part XI.
19. The *Personal Property Security Act*, 1993, SS 1993, c P-6.2, sections 63-64.

20. *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, section 12.

DATED at Saskatoon, Saskatchewan, this 4th day of December, 2020.

MLT AIKINS LLP

Per: 

Jeffrey M. Lee, Q.C. and Marek Coutu,
Counsel for the Receiver, Deloitte
Restructuring Inc.

NOTICE

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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