Court File No.

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

IN BANRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE RECEIVERSHIP OF IFOODEQUIPMENT.COM INC., D&P GOODER HOLDING LTD. and IBC FOOD EQUIPMENT INC.

PURSUANT TO SECTION 33 OF THE *JUDICATURE ACT*, R.S.N.B. 1973, c. J-2, RULE 41 OF THE RULES OF COURT, N.B. REG 82-73 and SECTION 243 OF THE *BANKRUPTCY AND INCOLVENCY ACT*

BETWEEN:

ROYAL BANK OF CANADA,

Applicant

-and-

IFOODEQUIPMENT.COM INC.,
D&P GOODER HOLDING LTD., and
IBC FOOD EQUIPMENT, INC.

Respondents

WRITTEN SUBMISSION OF THE APPLICANT
ROYAL BANK OF CANADA

Joshua J. Santimaw
BOYNECLARKE LLP
99 Wyse Road, Suite 600
Dartmouth, NS
B2Y 3Z5
T:902.460.3451
F: 902.463.7500
jsantimaw@boyneclarke.ca
Lawyer for the Applicant

Enrico A. Scichilone
ACTUS LAW · DROIT
774 Rue Main Street, 4th Floor
Moncton, NB
E1C 9V3
T: 506.854.4040
F: 506.854.4044
enrico@actuslaw.com
Lawyer for the Respondents

SERVICE LIST

PART I – INTRODUCTION

1. The Applicant, Royal Bank of Canada (the "**RBC**"), is a secured creditor of the Respondents, Ifoodequipment.com Inc. ("**Ifood**"), IBC Food Equipment, Inc. ("**IBC**") and D & P Gooder Holding Inc. ("**D & P**"), collectively referred to as the "**Ifood Group**".

2. RBC is seeking an Order appointing Deloitte Restructuring Inc. ("**Deloitte**") as Receiver of all of Ifood Group's assets, property and undertakings pursuant to s. 33 of the *Judicature Act*, R.S.N.B. 1973, Ch. J-12 as amended, Rule 41 of the *Rules of Court* and s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, ("**BIA**").

3. The Application is returnable on short notice, and RBC requests the abridgement of otherwise applicable notice periods pursuant to Rule 3.02 of the *Rules of Court*, and/or Rule 13 of the *Bankruptcy and Insolvency Act General Rules.*

4. The Affidavit of Joel Robbins sworn on November 15, 2024 (the "Robbins Affidavit") has been filed in support of RBC's Application.

5. Copies of RBC's Notice of Application, supporting Affidavit and Brief of Fact and Law and shall be served in accordance with Rule 6 of the *Bankruptcy and Insolvency General Rules*, Can Reg. 368, upon the Respondents and upon other parties with known interests in the property, assets and undertaking subject to this Application for a Receivership Order.

6. Please accept the following as RBC's Brief of Fact and Law.

PART II – FACTS

7. Ifoodequipment.com Inc. ("**Ifood**") sells food equipment and supplies to various end users including restaurants, businesses with commercial kitchens and individuals. Prior to the private receivership herein (the "**Private Receivership**"), Ifood operated out of the 170 Property and maintained operations in Halifax, Nova Scotia and Hamilton, Ontario. Ifood also maintained a strong e-commerce presence via its website Ifoodequipment.ca.

8. D&P Good Holder Inc. ("**D&P**") is real estate holding company and owns their commercial properties located at 166 Millenium Boulevard ("**166 Property**") and 170 Millenium Boulevard ("**170 Property**") in Moncton, New Brunswick. The 166 Property is encumbered by a charge in favour of the Business Development Bank of Canada ("**BDC**") and is not part of the Private Receivership. The 170 Property is part of the Private Receivership and includes a large showroom, office space, and warehouse storage. Adjacent to the 170 Property there is a large unfinished parking area that is used to store shipping containers.

9. IBC Food Equipment Inc. ("**IBC**") specialized in the production and distribution of refrigerated food equipment products manufactured and labelled under the IBC house brand "iBeeCool". IBC had established supply arrangements with Chinese manufacturers to produce a range of products including coolers, keg machines, ice machines, prep tables, and display cases.

10. The Respondents' assets consist primarily of:

    a. Inventory;

    b. Land and buildings;

    c. Capital assets including computer hardware and software, furniture and fixtures, vehicles and other personal property associated with operating a food service and equipment business; and

    d. Accounts receivable.

RBC Security and Default Ifoodequipment.com

11. On or about June 4, 2021, Ifood applied to RBC and was approved for a revolving demand facility in the amount of $1,200,000.00 with interest calculated and compounded monthly, at a rate of prime plus 1.5% per annum.

12. On or about June 16, 2021, Ifood applied to RBC and was approved for an Avion Visa Business credit card ("Ifood Visa") with a credit limit of $50,000.

13. As security for the loan, the following was signed in favour of RBC:

- A Guarantee and Postponement of claim dated July 22, 2021, signed by D&P to the maximum sum of $1,250,000 plus interest from date of demand at the RBC prime rate plus 5%.

- A Guarantee and Postponement of claim dated July 22, 2021, signed by IBC to the maximum sum of $1,250,000 plus interest from date of demand at the RBC prime rate plus 5%.

- General Security Agreement (the "Ifood GSA") dated June 16, 2021, executed by Ifood. The GSA grants a charge over all the "…of the Debtor's present and after-acquired personal property.

14. The Ifood GSA states, in part, the following:

> **11. EVENTS OF DEFAULT**
> The happening of any of the following events or conditions shall constitute default hereunder which is herein referred to as "default":
>
> c) the bankruptcy or insolvency of Debtor; the filing against Debtor of a petition in bankruptcy; the making of an assignment for the benefit of creditors by Debtor; the appointment of a receiver or trustee for Debtor or for any assets of Debtor or the institution by or against Debtor of any other type of insolvency proceeding under the Bankruptcy and Insolvency Act or otherwise;

15. On November 28, 2023, RBC forwarded various demand letters with respect to the Ifood debt:

- Demand Letter dated November 27, 2023, regarding the revolving demand facility, Avion Visa Business Credit Card, and general security agreement.

- Demand Letter dated November 27, 2023, regarding the guarantee and postponement of claim.

RBC Security and Default IBC Food Equipment Inc.

16. On or about June 4, 2021, IBC applied and was approved by RBC for a revolving demand facility in the amount of $300,000 with interest calculated monthly, at a rate of prime plus 1.5% per annum.

17. On or about July 16, 2021, RBC extended IBC an Avion Visa Business Credit Card (the "IBC Visa") with a credit limit of $10,000.00.

18. As security for the loan, the following was signed in favour of RBC:

- A Guarantee and Postponement of claim dated July 22, 2021, signed by D&P to the sum of $310,000.00 plus interest from date of demand at the RBC prime rate plus 5%.

- A Guarantee and Postponement of claim dated July 22, 2021, signed by Ifood the sum of $310,000.00 plus interest from date of demand at the RBC prime rate plus 5%.

- General Security Agreement (the "IBC GSA") dated June 16, 2021, executed by IBC. The IBC GSA grants a charge over all the "…of the Debtor's present and after-acquired personal property".

19. The IBC GSA states, in part, the following:

> **11. EVENTS OF DEFAULT**
> The happening of any of the following events or conditions shall constitute default hereunder which is herein referred to as "default":
>
> c) the bankruptcy or insolvency of Debtor; the filing against Debtor of a petition in bankruptcy; the making of an assignment for the benefit of creditors by Debtor; the appointment of a receiver or trustee for Debtor or for any assets of Debtor or the institution by or against Debtor of any other type of insolvency proceeding under the Bankruptcy and Insolvency Act or otherwise;

RBC Security and Default – D & P Gooder Holding Inc.

20. On or about July 21, 2021, D&P applied and was approved for two separate non-revolving demand facility agreements in the amount of $1,000,000.00 and $222,000.00 respectively. Interest was charged on both at the interest rate of 3.39% per annum.

21. On or about July 21, 2021, RBC extended D&P an Avion Visa Business Credit Card (the "D&P Visa") with a credit limit of $10,000.00.

22. As security for the loan, the following was signed in favour of RBC:

- A Guarantee and Postponement of claim dated July 22, 2021, signed by Ifood to the sum of $1,222,000.00 plus interest from date of demand at the RBC prime rate plus 5%.

- A Guarantee and Postponement of claim dated July 22, 2021, signed by IBC the sum of $1,222,000.00 plus interest from date of demand at the RBC prime rate plus 5%.

- D&P GSA dated June 16, 2021. The GSA grants a secure a charge over all the "…of the Debtor's present and after-acquired personal property".

- Collateral mortgages and assignment of rents over the 170 Property dated August 4, 2021, in the amount of $1,222,000, with interest at the RBC prime rate plus 5%.

23. The D&P GSA states, in part, the following:

> **11. EVENTS OF DEFAULT**
> The happening of any of the following events or conditions shall constitute default hereunder which is herein referred to as "default":
>
> c) the bankruptcy or insolvency of Debtor; the filing against Debtor of a petition in bankruptcy; the making of an assignment for the benefit of creditors by Debtor; the appointment of a receiver or trustee for Debtor or for any assets of Debtor or the institution by or against Debtor of any other type of insolvency proceeding under the Bankruptcy and Insolvency Act or otherwise;

24. The collateral mortgages state, in part, the following:

> **7.0 ACTS OF DEFAULT**
> **7.1** In default of the payment of the Principal Sum and any other monies secured hereunder, or on breach of any covenant or proviso herein contained, or if waste be committed by the Mortgagor or any other person, whether or not the Mortgagor has control over the acts of that person, or if the Mortgagor should make an assignment for the benefit of creditors, or a proposal under the Bankruptcy and Insolvency Act or Companies' Creditors Arrangements Act, or have a bankruptcy petition presented against the Mortgagor, or if the Mortgagor should allow a creditor to enter judgment against the Mortgagor by reason of its financial inability to pay a debt or debts, the whole of the Principal Sum and any other monies secured hereunder remaining unpaid shall become payable …

25. On November 28, 2023, RBC forwarded various demand letters with respect to the Ifood debt:

- Demand Letter dated November 27, 2023, regarding the revolving demand facility, Avion Visa Business Credit Card, and general security agreement.

- Demand Letter dated November 27, 2023, regarding the guarantee and postponement of claim.

26. On November 28, 2023, RBC forwarded various demand letters with respect to the IBC debt:

- Demand Letter dated November 27, 2023, regarding the revolving demand facility, Avion Visa Business Credit Card, and general security agreement.

- Demand Letter dated November 27, 2023, regarding the guarantee and postponement of claim.

27. On November 28, 2023, RBC forwarded various demand letters with respect to the D&P debt:

- Demand Letter dated November 27, 2023, regarding the revolving demand facility, Avion Visa Business Credit Card, and general security agreement.

- Demand Letter dated November 27, 2023, regarding the guarantee and postponement of claim.

28. On April 26, 2024, RBC extended the Forbearance Agreement until June 12, 2024. The Forbearance Agreement required, among other things, the D&P Gooder execute a further collateral mortgage to the maximum amount of $1,000,000.00 with interest charged thereon at RBC prime plus 5% per annum which it did.

29. On September 26, 2024, RBC appointed Deloitte as private receiver and now seeks its appointment as court-appointed receiver.

PART III – ISSUES

30. The Bank respectfully submits that the issues before this Court are as follows:

a. whether an Order abridging the time for service of this application ought to be granted;

b. whether Deloitte ought to be appointed as the receiver and receiver manager of all the assets and undertakings of the Ifood Group; and

c. whether the Sale Process as outlined in the First Report of the Proposed Receiver should be approved.

PART IV – LAW and ARGUMENT

A. Service

31. The application materials will be served pursuant to Rule 6 of the *Bankruptcy and Insolvency General Rules*, which reads, in part, as follows:

> (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.
>
> (2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules
>
> (a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or
>
> (b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

32. RBC will serve all parties who have recorded security interests against the property, assets and undertakings pursuant to the *Land Titles Act*, SNB 1981, c L-1.1 and *Personal Property Security Act*, SNB 1993, c P-7.1. RBC will file an Affidavit of Service prior to the hearing of the application.

B. The Receivership Application

i. Statutory Power to Appoint a Receiver

33. This Honourable Court possesses a broad discretionary jurisdiction regarding the appointment of a receiver. Section 243 of the *BIA* provides that the Court may appoint a receiver when it considers such an appointment to be just and convenient.

34. Subsection 243(1) reads as follows:

> Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
>
> (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
>
> (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> (c) take any other action that the court considers advisable.

35. In New Brunswick, the Court may also appoint a receiver pursuant to section 33 of the *Judicature Act*, RSNB 1973, c J-2 and Rule 41.02 of the *Rules of Court*, NB Reg 82-73.

36. Section 33 of the *Judicature Act* reads as follows:

> [33] **An order on judicial review or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that the order should be made**; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just; and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent a threatened or apprehended waste or trespass, such injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is, or is not, in possession under any claim of title or otherwise, or, if out of possession, does or does not claim under any colour of title a right to do the act sought to be restrained, and whether the estates claimed by both or either of the parties are legal or equitable; but without the leave of the Attorney General no injunction shall be applied for that, if granted, would delay or prevent the construction or operation of any manufacturing or industrial plant on the ground that the discharge from such plant is injurious to some other interest. [Emphasis added]

37. Rule 41.02 of the *Rules of Court* reads as follows:

> (1) Where
>
> (a) an instrument, other than an order of the court, provides for the appointment by the court of a receiver,
>
> (b) it is necessary to appoint a person as receiver to carry out a judgment or order of the court, or
>
> (c) where the court is satisfied that a receiver should be appointed,
>
> the court may appoint a suitable person accordingly or make such other order as may be just.

ii. Nature of the Receivership Sought

38. RBC is seeking to have Deloitte appointed as a court-appointed receiver and not seeking to confirm its appointment as a private receiver pursuant to Rule 41.03 of the *Rules of Court*.

39. In *Enterprise Cape Breton Corp v Crown Jewel Resort Ranch Inc*, 2019 NSSC 243 ("*Enterprise Cape Breton*"), the Court explained the distinction between a privately appointed receiver and a Court-appointed receiver as follows:

> [40] (…). A privately appointed receiver and manager is not acting in a fiduciary capacity; it need only ensure that a fair sale is conducted of the assets covered by the security documents and that a proper accounting is made to the debtor. A court-appointed receiver and manager, on the other hand, is an officer of the Court and acts in a fiduciary capacity with respect to all interested parties. Further a court appointed receiver derives its powers and authority wholly from the order of the court appointing it. It is not subject to the control and direction of the parties who had it appointed …

And in *La Pharmacie de Cap-Pele Ltee. et al. (Receivership)*, 2017 NBQB 229, this Honourable Court held that "a receiver may be appointed under s. 33 of the *Judicature Act*, in all cases where it appears to the court to be just and convenient that the order should be made."

40. The just and convenient test was addressed in *Pillar Capital Corp. v Harmon International Industries Inc*, 2020 SKQB 19, when the Court stated:

> [37] A question that often arises in the "just or convenient" analysis pertains to whether a court should appoint a receiver where the applicant's security provides for the private appointment of a receiver, as the security does in the present case. While the right to make such an appointment is a factor, the real inquiry is whether a court appointment is the "preferable" option – not the "essential" one. This point was also addressed in *Carnival*, where, at para. 27, Newbould J. recited the following passage from the decision of Blair J. in *Bank of Nova Scotia v Freure Village on Clair Creek* (1996), 1996 CanLII 8258 (ON SC), 40 CBR (3d) 274 (Ont Ct J):
>
> > 12. While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver – and even contemplate, as this one does, the secured creditor seeking a court appointed receiver – and where the circumstances of default justify the appointment of a private receiver, the "extraordinary" nature of the remedy sought is less essential to the inquiry. Rather, the "just or convenient" question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not. This, of course, involves an examination of all the circumstances which I have outlined earlier in this endorsement, including the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best way of facilitating the work and duties of the receiver-manager.

41. Further, In *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007, which was cited with approval in *La Pharmacie de Cap-Pele Ltee et al, supra*, Newbould, J. held as follows:

> [24] In *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 1996 CanLII 8258 (ON SC), 40 C.B.R. (3d) 274, Blair J. (as he then was) dealt with a similar situation in which the bank held security that permitted the appointment of a private receiver or an application to court to have a court appointed receiver. He summarized the legal principles involved as follows:

> 10. The Court has the power to appoint a receiver or receiver and manager where it is "just or convenient" to do so: the Courts of Justice Act, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently; see generally Third Generation Realty Ltd. v. Twigg (1991) 6 C.P.C. (3d) 366 at pages 372-374; Confederation Trust Co. v. Dentbram Developments Ltd. (1992), 9 C.P.C. (3d) 399; Royal Trust Corp. of Canada v. D.Q. Plaza Holdings Ltd. (1984), 1984 CanLII 2343 (SK QB), 54 C.B.R. (N.S.) 18 at page 21. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed: Swiss Bank Corp. (Canada) v. Odyssey Industries Inc. (1995), 30 C.B.R. (3d) 49.

42. RBC submits that the aforementioned comments apply in this case as:

> a. RBC has the power to appoint a receiver pursuant to its security documents;
>
> b. RBC has issued Notices of Intention to Enforce Security pursuant to subsection 244(1) of the *BIA*;
>
> c. the ten-day period referred to in subsection 244(1.1) of the BIA has expired;
>
> d. RBC has issued a Notice of Intention to Enforce Security to Royal pursuant to section 59 of the PPSA;
>
> e. the twenty-day period referred to in subsection 59(8) of the PPSA has expired; and
>
> f. a Court-appointed receiver would be able to offer protection to all the various interests involved.

43. In *Royal Bank of Canada v Eastern Infrastructure Inc,* 2019 NSSC 243 ("*Eastern Infrastructure*"), the Court also considered the "just or convenient" test and stated as follows:

> [46] The seemingly innocuous words "just or convenient" do not, of course, clothe the court with *carte blanche* to do as it pleases. There is authority as to what they mean within the current lexicon. Consider, for

example, the following excerpt from *Enterprise Cape Breton* (supra) at pp. 13 - 16:

> In *The 2013-2014 Annotated Bankruptcy and Insolvency Act*, Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra (Carswell: Toronto, Ontario 2013-2014) the authors set out at p. 1018 the factors I consider in determining whether it is appropriate to appoint a receiver. These are:
>
> (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed;
>
> (b) The risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
>
> (c) The nature of the property;
>
> (d) The apprehended or actual waste of the debtor's assets;
>
> (e) The preservation and protection of the property pending judicial resolution;
>
> (f) The balance of convenience to the parties;
>
> (g) The fact that the creditor has the right to appoint a receiver under the documentation provided for in the loan;
> (h) The enforcement of rights under a security instrument where the security holder encounters or expects to encounter difficulty with the debtor and others;
>
> (i) The principle that the appointment of a receiver is extraordinary relief that should be granted cautiously and sparingly;
>
> (j) The consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
>
> (k) The effect of the order on the parties:
>
> (l) The conduct of the parties;
>
> (m) The length of time that a receiver may be in place;

(n) The cost to the parties;

(o) The likelihood of maximizing return to the parties; and

(p) The goal of facilitating the duties of the receiver.

The author's further note that a court can, when it is appropriate to do so, place considerable weight on the fact that the creditor has the right to instrument – appoint a receiver.

[Emphasis original]

[47] It is not necessary that RBC or EY demonstrate irrevocable harm in order to succeed. Certainly, one may agree with RBC's contention that its position is being harmed or seriously compromised on the basis of what is contained in EY's reports, without necessarily accepting that this harm is irrevocable. I will state, however, that the failure by the Companies to bring forward or lead a single piece of evidence at this hearing, in the face of significant evidence that their capital position is relentlessly deteriorating, is very troubling."

44. The Court in *Eastern Infrastructure* concluded that it was appropriate for the Court to appoint a receiver and stated as follows:

[53] it is not necessary to "check all the boxes" with respect to the factors noted in Enterprise Cape Breton in order for the Plaintiff to succeed. Indeed, not all of these factors will be applicable to every case. Those that do apply in a given situation will also vary to some extent in the weight to be assigned to them. Conversely, in some cases, there will be additional factors which may militate for or against the remedy sought. The list is not exhaustive.

[54] It is correct to observe that a receivership is an extraordinary remedy, and is often sparingly granted. This concern is significantly attenuated, however, by the fact that RBC has a contractual right to appoint a receiver.

[55] I have concluded that the totality of the relevant factors noted in the Enterprise Cape Breton case, as well as the significant efforts made by RBC to accommodate the Companies since at least January 2019, shows that the decision to approach the court for relief in the present context has not been made precipitously.

45. In *Pillar Capital Corp.*, *supra*, the Court stated as follows:

> [36] In the consideration of the non-exhaustive factors cited in *Kasten*, it is important to observe that, while the factors vary in their importance, no one factor is determinative. This includes the presence, or not, of irreparable harm to the applicant or the applicant's security. See *Swiss Bank Corp. (Canada) v Odyssey Industries Inc.* (1995), 30 CBR (3d) 49 (Ont Ct J). By and large, courts have taken a contextual approach to the consideration of these factors. A court is expected to have consideration for all attendant circumstances, including the interests of all concerned, in the "just or convenient" analysis.

46. The Bank submits that the appointment of a receiver by the Court is just and convenient in the circumstances as:

a. any attempts by the Respondents to remedy its various defaults to RBC have failed, and it is clear that they are not financially capable of continuing its operations or servicing RBC's credit facilities;

b. there are other stakeholders and creditors aside from RBC;

c. a Court appointed Receiver would owe a fiduciary duty to all stakeholders, and would assist in the orderly and transparent realization of the Respondents' property, all subject to the supervision of this Honourable Court;

d. while RBC had the right to contractually appoint a Receiver pursuant to its security agreements, a Court-appointed Receiver would have greater powers in dealing with the property and operations of the Respondents, and a Court appointee would serve the interests of all stakeholders and not just RBC; and

e. the draft form of Receivership Order is generally consistent with the non-exhaustive list of powers articulated in s. 243 of the BIA, and

would be of sufficient breadth to see to the protection of the interests of stakeholders.

47. RBC submits that these factors confirm that it is just and convenient to appoint a receiver and that a receiver is required to address the indebtedness of the Respondents. As such, RBC requests the appointment of a receiver over the assets and property of the Respondents to subsection 33(1) of the *Judicature Act*, Rule 41.02(1)(c) of the *Rules of Court* section 243 of the *BIA*.

C. Sale Process

48. Pursuant to paragraph 3 of the draft form of Receivership Order, the Proposed Receiver would be granted authority to, among other things, take possession and control of the property and assets of the Respondents and any and all proceeds, receipts and disbursements arising out of or from the assets.

49. The Proposed Receiver would also be authorized, pursuant to paragraph 3(l) of the draft form of Receivership Order, "to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate."

50. Paragraph 3(m) of the draft form of Receivership Order confirms the Receiver's authority: "to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

> i. without the approval of this Court in respect of any transaction not exceeding $100,000.00 provided that the aggregate consideration for all such transactions does not exceed $250,000.00; and
>
> ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under section 59 of the PPSA shall not be required."

51. The Sale Process, as set out in the First Report of the Proposed Receiver, is designed to market Ifood Group's respective right, title and interest, if any, in the property and assets in a manner which would ensure the highest possible return for the benefit of Ifood Group's creditors.

52. The Sale Process would involve the conversion of the existing Sales Information Package to an "Invitation for Offers" utilizing similar information and seeking to market to the established list of potential buyers and others that have expressed an interest. Highlights of the Sale Process include the following:

(a) The Proposed Receiver has prepared a teaser advertisement to market the Respondents;

(b) The Proposed Receiver has created a dedicated website to market the Respondents property and business;

(c) The proposed receiver has prepared a tender package for proposed purchasers;

(d) Offers will be allowed on an "En Bloc" basis or by separate asset class;

(e) The Proposed Receiver shall advertise the assets being offered in local and national newspapers and internet advertisements;

(f) The proposed timeframe for the sale process would be 45 to 60 days for the open sale period with a closing to follow subject to Court approval on any accepted offer within 30 to 45 days. The Proposed Receiver would complete appraisals of the asset classes to assess the offers and would provide these valuations to the Court within the context of its report;

53. The Proposed Receiver has already identified several parties who may be interested in purchasing the Respondents' property and assets.

54. The approach to be taken by the Proposed Receiver is flexible and will allow interested parties to submit a bid to acquire all or some of the Respondents' property and assets.

55. RBC submits that the Sale Process outlined in the First Report of the Proposed Receiver provides a reasonable path to soliciting interest in the Respondents' property and assets and that the timelines suggested are reasonable in the circumstances given there is a defined market of potential purchasers with specific market knowledge of the assets to be acquired.

56. In considering the appropriateness of a proposed sale process in the receivership context, modern jurisprudence confirms that the Court should be mindful in advance of the principles which would subsequently be applied in any Motion to approve a transaction achieved through the proposed sale process, as were set forth by the Ontario Court of Appeal in *Royal Bank of Canada v. Soundair Corp*. [1991] O.J. No. 1137, (1991) 4 O.R. (3d) 1 (ONCA).

57. In the case of *CCM Master Qualified Fund, Ltd. v Blutip Power Technologies Ltd.*, 2012 ONSC 1750, Brown J. set forth the following general principles germane to the Court's assessment of a proposed receivership asset sale process (at paragraph 6):

> "Although the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in its decision in *Royal Bank v. Soundair*: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties. Accordingly, when reviewing a sales and marketing process proposed by a receiver a court should assess:
>
> (i) the fairness, transparency and integrity of the proposed process;
>
> (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,

> (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale."

See also *Re: PCAS Patient Care Automation Services Inc.* 2012 ONSC 2840 at paragraph 17, a case decided in the context of the *Companies' Creditors Arrangement Act.*

58. Similar general principles (and a common reference to the *Soundair* criteria) were derived by Veale, J., in the matter of *Yukon and Canada v. B.Y.G. Natural Resources Inc.*, 2007 YKSC 2 at paragraph 34.

59. The principles to be applied to assess a sales and marketing plan were set out in *Yukon v. United Keno Hill Mines Ltd.*, 2004 YKSC 59, as follows:

> [22] The law in this area is generally found in cases where court approval is sought for the sale of assets by a Receiver in circumstances where some creditors will not be satisfied. There are three principles that I glean from *Crown Trust Co. v. Rosenberg* (1986), 60 O.R. (2d) 87 (Ont. H.C.J.) and *Royal Bank of Canada v. Soundair Corp*., [1991] O.J. No. 1137 (O.C.A.):
>
> 1. Generally speaking, the court will not intervene when satisfied that the Receiver has acted reasonably, prudently, fairly and not arbitrarily.
>
> 2. The court should not proceed against the recommendations of the Receiver except in special circumstances, where the necessity and propriety of doing so are plain.
>
> 3. The wishes of interested creditors should be taken into consideration."

60. Justice Morawetz, in *Re Nortel Networks Corp.*, [2009] O.J. No. 3169 (ONSC) a case involving sale process proposed for approval by a CCAA Monitor, remarked

> [49] I now turn to a consideration of whether it is appropriate, in this case, to approve this sales process. Counsel to the Applicants submits that the court should consider the following factors in determining whether to authorize a sale under the CCAA in the absence of a plan:
>
> (a) is a sale transaction warranted at this time?

(b) will the sale benefit the whole "economic community"?

(c) do any of the debtors' creditors have a bona fide reason to object to a sale of the business?

(d) is there a better viable alternative?

I accept this submission."

61. After approving the proposed bidding and auction process in the *Nortel Networks* case, Morawetz J. observed that upon completion of the endorsed process, the Applicant was to return to Court for approval of any sale effected in accordance with the *Soundair* principles.

62. Embedded within this Sale Process is the ability of the Proposed Receiver to adapt to any possible circumstances which might unfold, which flexibility is essential in fulfilling the primary purpose of optimal return for the benefit of creditors.

63. We respectfully submit a review of the proposed sale process supports the conclusion that it is a reasonable, equitable, transparent and commercially efficacious means of maximizing return for the benefit of the Respondents' creditors.

PART V – RELIEF SOUGHT

64. RBC, therefore, respectfully requests the following relief:

a. the issuance of the Receivership Order in the form submitted;

b. the issuance of an Order approving the Sales Process in the form submitted; and

c. such further and other relief as this Honourable Court deems just.

ALL OF WHICH is respectfully submitted at Fredericton, New Brunswick, this 15th day of November 2024.

BOYNECLARKE LLP
Per: Joshua J. Santimaw
Solicitor for the Applicant,
Royal Bank of Canada