

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUÉBEC

No: 200-11-019127-102

DATE: June 19, 2012

PREENT: THE HONOURABLE ÉTIENNE PARENT, J.C.S. (JP-1892)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF :

43704222 CANADA INC., formerly Known as Davie Yards Inc./Chantiers Davie inc.

Petitioner
and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

JUDGMENT

[1] **CONSIDERING** the Debtor's Motion to sanction the amended Plan of compromise or arrangement, pursuant to section 6 of the Companies' Creditors Arrangement Act,¹.

[2] **CONSIDERING** the judgment rendered on November 3, 2011 indicating that the said motion would be taken under advisement when the judgment rendered on October 26, 2011, would become final and executory.

¹ R.S.C. 1985, c. C-36.

[3] **CONSIDERING** the provisions of the CCAA and the submissions of counsels.

FOR THESE REASONS, THE COURT:

[4] **GRANT** the motion of Petitioner to sanction the Plan (the "**Motion**").

[5] **ORDER** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the plan of compromise or arrangement, dated October 4, 2011, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") with respect to 4370422 Canada Inc., formerly known as Davie Yards Inc./Chantiers Davie Inc. ("**437**" or the "**Petitioner**"), filed by the Petitioner and which is attached hereto as Schedule "A" (the "**Plan**").

SERVICE AND MEETING

[6] **ORDER AND DECLARE** that there has been good and sufficient service and notice of both the Plan and the Notice of Meeting and Sanction Hearing (as defined in the Order of this Court made on September 2, 2011 (the "**Claims and Meeting Procedure Order**")) and that the Meeting of Creditors was duly called, held and conducted in accordance with the CCAA and the Orders of this Court in the CCAA Proceedings, including without limitation the Claims and Meeting Procedure Order.

[7] **DECLARE** valid and sufficient the service and the notices of presentation of the Motion, and **EXEMPT** the Petitioner from service or providing any notice of presentation of the Motion other than the service and notice already given.

SANCTION OF PLAN

[8] **ORDER AND DECLARE THAT:**

- a) the Plan has been approved by the Required Majorities of Affected Creditors in conformity with the CCAA;
- b) the Petitioner has complied with the provisions of the CCAA and the Orders of this Honourable Court in these CCAA Proceedings in all respects;
- c) the Court is satisfied that 437 has not done or purported to do anything that is not authorized by the CCAA; and
- d) the Plan and the transactions contemplated thereby are fair and reasonable.

[9] **ORDER AND DECLARE** that the Plan is hereby sanctioned and approved pursuant to section 6 of the CCAA.

PLAN IMPLEMENTATION

[10] **ORDER** that the Monitor be and is hereby authorized to perform its functions and fulfill its obligations under the Plan, the Claims and Meeting Procedure Order and this Order to facilitate the implementation of the Plan.

[11] **ORDER** that, upon the filing with this Court of the Monitor's Certificate in accordance with Section 7.2 of the Plan, the Plan Implementation Date shall occur and all of the conditions precedent (the "**Conditions Precedent**") to the implementation of the Plan set out in Section 7.1 of the Plan shall have been satisfied and be deemed to be satisfied or, where permissible, waived, and the Plan and associated steps, transactions, compromises, and arrangements shall be implemented in accordance with the terms of the Plan.

[12] **ORDER AND DECLARE** that, upon implementation of the Plan in accordance with its terms and this Order, the Plan, including all steps, transactions, compromises, releases, arrangements, and terms effected by the Plan, shall be effective and binding upon 437, the Affected Creditors and all other relevant Persons referred to in, or affected by the Plan, and their respective heirs, administrators, executors, legal personal representatives, successors and assigns, in accordance with the terms of the Plan.

[13] **ORDER AND DECLARE** that the Plan Implementation Fund shall be held by the Monitor and distributed by the Monitor on behalf of 437 in accordance with Articles 4 and 5 of the Plan, having regard only to Unaffected Priority Claims and Proven Distribution Claims that have been properly asserted by the Claims Bar Date in accordance with the Claims Procedure.

[14] **ORDER AND DECLARE** that all distributions and payments by or at the direction of the Monitor, in each case on behalf of 437, under the Plan are for the account of 437 and the fulfillment of its obligations under the Plan.

RELEASES AND DISCHARGES

[15] **ORDER AND DECLARE** that the compromises and releases set out in Article 6 of the Plan are approved and shall be binding and effective as of the Plan Implementation Date.

[16] **ORDER AND DECLARE** that, pursuant to and in accordance with Section 8.4 of the Plan, effective as of the Plan Implementation Date, all Affected Claims of any nature against the Petitioner shall be forever compromised, discharged and released, the ability of any Person to proceed against the Petitioner in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims are hereby

permanently stayed, subject only to the right of Affected Creditors to receive the distributions pursuant to the Plan in respect of their Affected Claims.

[17] **ORDER AND DECLARE** that the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceed with against any Released Party in respect of any and all Claims and any matter which is released pursuant to Section 6.1 of the Plan are hereby permanently stayed.

[18] **ORDER AND DECLARE** that any Claims for which a Proof of Claim has not been filed by the Claims Bar Date shall be and are hereby forever barred and extinguished.

[19] **ORDER AND DECLARE** that the Directors' Charge, Administration Charge and the DIP Charge (together, the "**CCAA Charges**"), as defined in and created pursuant to the Initial Order or any subsequent Orders of this Court are hereby terminated and discharged against the Property of the Petitioner on the Plan Implementation Date.

THE MONITOR

[20] **ORDER** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court on notice to the Monitor and upon further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with the proposed action or proceeding.

[21] **ORDER** that upon the completion of its Remaining Duties, including, without limitation, the Monitor's duties in respect of the Claims and Meeting Procedure Order and distributions made by or at the direction of the Monitor in accordance with the Plan, the Monitor shall file with the Court the Monitor's Certificate of Plan Completion stating that all of its Remaining Duties have been completed and that the Monitor is unaware of any claims with respect to its performance of such Remaining Duties, and upon the filing of such certificate, Samson Bélair/Deloitte & Touche Inc. shall be deemed to be discharged from its duties as Monitor and the Administration Charge shall be released.

EXTENSION OF STAY PERIOD

[22] **EXTEND** the Stay Period in respect of Petitioner until the Plan Implementation Date.

[23] **ORDER** that all Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or inconsistent with, this Order, the Claims and Meeting Procedure Order, or any further Order of this Court.

GENERAL

[24] **CONFIRM** the authority of the Monitor to accept the Proofs of Claim filed as a result of disclaimers sent by Petitioner to creditors after the Claims Bar Date.

[25] **DECLARE** that the Petitioner, the Monitor and any other directly affected parties may apply to this Court for any directions or determinations required to resolve any matter or dispute relating to, or to the subject matter of or rights and benefits under, the Plan or this Order.

[26] **DECLARE** that any other directly affected party referred to in paragraph 23 above that wishes to apply to this Court, including with respect to a dispute relating to the Plan, its implementation or its effects, must proceed by motion presentable before this Court after a 10-day prior notice of the presentation thereof given to the Petitioner and to the Monitor.

[27] **ORDER** that notwithstanding: (a) the pendency of the CCAA Proceedings and the declarations of insolvency made therein; (b) the pendency of any applications for bankruptcy orders hereafter issued pursuant to the BIA in respect of the Petitioner and any bankruptcy orders issued in respect of the Petitioner; or (c) the provisions of any federal or provincial statute, including section 36.1 of the CCAA and sections 95 to 101 of the BIA, that none of the transactions, asset transfers, steps, releases or compromises contemplated to be performed or effected pursuant to the Plan, shall: (i) constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions under any applicable law, federal, provincial or otherwise; or (ii) constitute conduct meriting an oppression remedy.

[28] **ORDER** the aid and recognition of any court of any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA), and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada, the legislature of any province or otherwise and any court or any judicial, regulatory or administrative body of the United States of America and the states or other subdivisions of the United States of America or any other nation or state to act in aid of and to be complementary to this court in carrying out the terms of this order where required.

[29] **THE WHOLE WITHOUT COSTS.**


ETIENNE PARENT, j.c.s.

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