



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE 21st
)
JUSTICE HAINEY) DAY OF MARCH, 2019

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

DISTINCT INFRASTRUCTURE GROUP INC., DISTINCT INFRASTRUCTURE GROUP WEST INC., DISTINCTTECH INC., IVAC SERVICES INC., IVAC SERVICES WEST INC., and CROWN UTILITIES LTD.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Distinct Infrastructure Group Inc., Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd. ("**Crown**") (collectively, the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Crown Pipeline Ltd. (the "**Purchaser**") dated March 15, 2019 and appended to the First Report of the Receiver dated March 18, 2019 (the "**First Report**"), and vesting in the Purchaser Crown's right,

title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, the Affidavit of Gilles Gauthier sworn March 20, 2019 (the "**Gauthier Affidavit**") and on hearing the submissions of counsel for the Receiver and the Applicant, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Maria Magni sworn March 19, 2019 filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF TRANSACTION AND VESTING OF PURCHASED ASSETS

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of Crown's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, except as otherwise addressed herein, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Haaney dated March 11, 2019 (the "**Receivership Order**"); and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal*

Property Security Act (Manitoba) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in Crown's records pertaining to Crown's past and current employees, including personal information of those employees employed by Crown as at the date of the closing of the Transaction ("**Closing**"). The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Crown.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

ASSIGNMENT OF AGREEMENTS

8. THIS COURT ORDERS that upon the delivery of the Receiver's Certificate, all of the rights and obligations of Crown under the Assigned Leases (as defined in the Sale Agreement) shall be assigned to and assumed by the Purchaser. For greater certainty, the Assigned Leases referred to in this Order shall not include any equipment leasing agreement or schedule between any of the Debtors, including Crown, and Somerville National Leasing & Rentals Ltd.

9. THIS COURT ORDERS that the assumption by the Purchaser of the rights and obligations of Crown under the Assigned Leases and the assignment of the Assigned Leases to the Purchaser pursuant to this Order is valid and binding upon all of the counterparties to the Assigned Leases notwithstanding any restriction or prohibition contained in any such Assigned Leases relating to the assignment thereof, including any provision requiring the consent of any party to the assignment, and any counterparty to such Assigned Lease shall be forever barred, enjoined and estopped from enforcing the same against the Purchaser or Crown.

10. THIS COURT ORDERS that, except as otherwise addressed herein, upon Closing, Crown's right, title and interest in the Assigned Leases shall vest absolutely in the Purchaser free and clear of all Encumbrances. The Purchaser shall pay any amount owing by Crown to the counterparty under each Assigned Lease and shall perform all obligations arising under the Assigned Leases from and after Closing.

11. THIS COURT ORDERS that each counterparty to the Assigned Leases is prohibited from exercising any right or remedy under the Assigned Leases by reason of any defaults thereunder arising from the assignment of the Assigned Leases, the insolvency of Crown, the

appointment of the Receiver, or any failure of Crown to perform a non-monetary obligation under the Assigned Leases.

GENERAL

12. THIS COURT ORDERS that the unredacted Sale Agreement, attached as Confidential Appendix "1" to the First Report, is hereby sealed until six months after the Closing or further order of the Court, and shall not form part of the public record.

13. THIS COURT ORDERS that the appraisal conducted by Maynards Industries Canada Appraisals Ltd. and the Receiver's comparative liquidation analysis attached as Confidential Appendix "2" to the First Report, are hereby sealed until six months after the Closing or further order of the Court, and shall not form part of the public record.

14. THIS COURT ORDERS that the Purchaser's budget income statement for 2020, attached as Confidential Schedule "A" to the Gauthier Affidavit, is hereby sealed until further order of the Court, and shall not form part of the public record.

15. THIS COURT ORDERS that, in addition to the rights and protections afforded to the Receiver under the Receivership Order, the Receiver shall not be liable for any act or omission on the part of the Receiver pertaining to the discharge of its duties under this Order, save and except any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Receiver. Nothing in this Order shall derogate from the protections afforded to the Receiver by the *Bankruptcy and Insolvency Act*, any other federal or provincial applicable law, the Receivership Order or any other orders in this proceeding.

16. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ENREGISTRÉ À LA CLERKE
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 21 2019

PER / PAR: *fw*

Hanley

Schedule A – Form of Receiver’s Certificate

Court File No. CV-19-00615270-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

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Applicant

- and -

DISTINCT INFRASTRUCTURE GROUP INC., DISTINCT INFRASTRUCTURE GROUP WEST INC., DISTINCTTECH INC., IVAC SERVICES INC., IVAC SERVICES WEST INC., and CROWN UTILITIES LTD.

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 11, 2019, Deloitte Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Distinct Infrastructure Group Inc., Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd. ("**Crown**") (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court dated March 21, 2019, the Court approved the agreement of purchase and sale made as of March 15, 2019 (the "**Sale Agreement**") between the

Receiver and Crown Pipeline Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of Crown's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

Deloitte Restructuring Inc., in its capacity as Receiver of the undertaking, property and assets of Distinct Infrastructure Group Inc. et. al., and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Purchased Assets

All the Receiver's right, title and interest, if any, in and to the undertaking and all of the property and assets of Crown (the "**Business**") including, without limiting the generality of the foregoing the following (collectively, the "**Purchased Assets**"):

- a. Machinery, motor vehicles, trucks, trailers, equipment, tools, furniture, fixtures, furnishings, signs, inventory, and all accessories to the foregoing and all supplies of all kinds owned by Crown and used in connection with the Business including, but without limitation, the machinery and equipment described in Schedule "A" to the Sale Agreement, but excluding (i) assets subject to the Assigned Leases (as defined below); and (ii) any valid claims which might be made by suppliers to the Business pursuant to S. 81.1 of the *Bankruptcy and Insolvency Act*;
- b. The exclusive right to use the name "Crown Utilities";
- c. Work in progress;
- d. All contracts bid, bid and accepted;
- e. All accounts receivable of the Business (attached at Schedule "B" to the Sale Agreement) including customer holdbacks of every nature and kind, save and except for any intercompany accounts receivable owed by any of the other Debtors;
- f. Unbilled work in progress (attached at Schedule "B1" to the Sale Agreement);
- g. The Vendor's interest in any equipment or machinery subject to any purchase money security interests or leases (attached at Schedule "C" to the Sale Agreement) (the "**Assigned Leases**") wherein all rights and obligations of Crown under the Assigned Leases: (i) will be assigned to and assumed by the Purchaser either on consent of the Assigned Lease counterparties where such consent is required pursuant to the terms of such Assigned Leases (such consent to be sought by the Purchaser); or (ii) in the event that, where such consent is required pursuant to an Assigned Lease and not obtained, such Assigned Lease will be assigned to the Purchaser pursuant to the terms of the Approval and Vesting Order made upon notice having been given to all parties with an interest in the Assigned Leases; or (iii) where neither subparagraphs (i) or (ii) apply, the equipment or machinery in the Assigned Lease(s) not so assigned or vested will be removed from the Purchased Assets with no adjustment to the Purchase Price; and
- h. All other property, assets and rights, real or personal, tangible or intangible, owned by the Vendor in connection with the Business.

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ROYAL BANK OF CANADA

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DISTINCT INFRASTRUCTURE GROUP INC. et al.

Applicant

Respondents

Court File No. CV-19-00615270-00CL

ONTARIO
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(COMMERCIAL LIST)**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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