

2019 01G 2868
**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
 GENERAL DIVISION**

IN THE MATTER OF: An Application by BRITISH CONFECTIONERY COMPANY LIMITED and BRITISH BAZAAR COMPANY LIMITED (the "Applicants") for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as am.

SUMMARY OF CURRENT DOCUMENT	
Court File No.	2019 01G 2868
Date of filing of document:	
Name of filing party or person:	Tim Hill, Q.C., (Counsel for the Applicants)
Application to which document being filed relates:	Charging Order pursuant to Section 11.52(1) of the <i>Companies' Creditors Arrangement Act</i> .
Statement of purpose in filing:	Application

Charging Order

Before the Honourable Justice *Marnack* in chambers

The Applicant applied for relief under the *Companies' Creditors Arrangement Act* including an initial order, which has been granted, and further orders on further motion;

The initial order was granted on even date herewith (the "Initial Order") and the Applicant now moves for an order providing certain Charges in priority to existing security;

The Applicant applied for a charging order along with supporting documents including the affidavit of service of Victoria Buntin-Brooks (the "Affidavit of Service"), and a report of the Monitor.

The following parties, represented by the following counsel, made submissions:

Tim Hill, Q.C., of counsel for the Applicants, Geoffrey L. Spencer, of counsel for the Bank of Montreal, and Joseph J. Thorne, of counsel for Atlantic Lottery Corporation;

On motion of the applicant the following is ordered and declared:

Service

1. The service of the notice of application and the supporting documents as set out in the Affidavit of Service is deemed adequate so that the application is properly returnable today and further service thereof is hereby dispensed with.

Interpretation

2. All capitalized words used in this Order that are not otherwise defined in this Order have the meanings ascribed to them in the Initial Order.

Administrative Charge

4. The Monitor, counsel to the Monitor and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out herein.

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Validity and Priority of Charges Created by this Order

5. The priority of the Administration Charge, as against the existing security held by any secured creditor prior to the issuance of this Order (the "Existing Security"), shall be as follows:

- a. First – any amounts deemed to be held in trust for Her Majesty described in section 67(3) of the *Bankruptcy and Insolvency Act*;
- b. Second – Administration Charge; and

c. Third – Existing Security in such priority as they currently have.

6. The filing, registration, or perfection of the Administration Charge shall not be required, and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded, or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record, or perfect.

7. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Existing Security or the Administration Charge, unless the Applicant also obtains the prior written consent of the Monitor, its existing secured creditors, and the beneficiaries of the Administration Charge, or further order of this Court.

8. The Administration Charge not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of said charge shall not otherwise be limited or impaired in any way by i) the pendency of these proceedings and the declarations of insolvency made herein; ii) any application for a bankruptcy order issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or iv) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt, or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

a. the creation of the Administration Charge shall not be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

b. none of the beneficiaries of the Administration Charge shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and

c. the payments made by the Applicant pursuant to this Order, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct,

settlements, or other challengeable, voidable, or reviewable transactions under any applicable law.

9. The Administration Charge created by this Order over leases of real property in Canada shall only be a Charge on the Applicant's interest in such real property leases.

10. Any amounts actually advanced or expended pursuant to the Administration Charge shall have the priority as provided for herein regardless of the time of advance or the use to which funds were actually put.

Periodic Payment of Accounts

11. The Monitor, counsel to the Monitor and the Applicants' counsel shall render accounts to the Companies on a bi-weekly basis, and such accounts shall be payable when rendered.

12. Should an account of Monitor, counsel to the Monitor or the Applicants' counsel remain unpaid ___ days after being rendered, the Monitor shall then immediately file a report thereof with the Court, and a copy of said report shall simultaneously be sent to the Service List.

Service and Notice

13. The Applicant and the Monitor shall serve a copy of this Order on Canada Revenue Agency and all secured creditors of the Applicant and shall be at liberty to serve this Order on such other Persons as it determines is appropriate. All such service shall be made in accordance with the provisions of the Initial Order.

General

14. The aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction outside Nova Scotia is hereby requested to give effect to this Order and to assist the Applicant, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, or regulatory and administrative bodies are hereby respectfully requested to make such

orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

15. Each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

16. Any interested party, including the Applicant and the Monitor, may apply to this Court to vary or amend this Order on such notice provided for under the *Civil Procedure Rules* or on such notice as this Court may order.

17.

This Order and all of its provisions are effective as of 12.01 a.m. Newfoundland Daylight Time on the 1st day of May, 2019

Dated the day of May, 2019, at St. John's, Newfoundland and Labrador.



Court Officer Trial Co-Ordinator