

Estate No: 51-2397788  
Court No: 22164  
District: Newfoundland & Labrador  
Division No: 01- Newfoundland & Labrador

**2018 01G**  
**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**  
**GENERAL DIVISION**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF the Bankruptcy  
& Insolvency Act, RSC. 1985, c. B-3,  
as amended

AND IN THE MATTER OF the Proposal  
of Burry's Shipyard Inc.

**CHARGING ORDER**

Upon the application of Burry's Shipyard Inc. ("the Applicant") for an Order pursuant to Section 50.6 of the *Bankruptcy and Insolvency Act* ("BIA") approving the granting of interim financing security to the Applicant by Business Development Bank of Canada ("BDC"), and for an order pursuant to Section 64.2 of the *BIA* declaring that the professional advisors of the Applicant shall have a charge over the assets of the Applicant in respect of fees and expenses, and upon reading the affidavits of Glenn Burry and Tim Hill, Q.C., and the 1<sup>st</sup> Report of the Deloitte Restructuring Inc. ("the Proposal Trustee") filed, and upon hearing Tim Hill, Q.C., the solicitor for the Applicant, and it appearing to the court that it is appropriate to issue an order:

**IT IS ORDERED THAT:**

**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.

## **Administrative Charge**

2. The Proposal Trustee, counsel to the Proposal Trustee and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the property of the Applicant, which charge shall not exceed an aggregate amount of \$50,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee 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.

## **DIP Financing and Charge**

3. The Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from BDC (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$300,000 (the "DIP Facility") unless permitted by further order of this Court.

4. The DIP Facility shall be substantially on the terms and subject to the conditions set forth in the draft letter of offer between the Applicant and the DIP Lender dated July 24, 2018 (the "DIP Term Sheet") annexed hereto as Schedule "A", as same may be amended from time to time with the Proposal Trustee's written consent provided any amendment may not affect a secured creditor's rights without further order of this Court.

5. The Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and other security documents, guarantees, and other definitive documents (collectively, the "DIP Documents") as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the DIP

Lender under the DIP Term Sheet as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the property of the Applicant as security for any and all obligations of the Applicant under or pursuant to the DIP Facility and the DIP Term Sheet, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Facility and the DIP Term Sheet. The DIP Lender's Charge shall have the priority set out herein.

7. Notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or the DIP Term Sheet or any of the DIP Documents;

(b) upon the occurrence of an event of default under the DIP Term Sheet or DIP Documents or the DIP Lender's Charge, the DIP Lender, upon 10 days' notice to the Applicant and the Proposal Trustee, may with leave of the Court exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, DIP Documents and the DIP Lender's Charge; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the property of the Applicant.

### **Validity and Priority of Charges Created by this Order**

8. The priorities of the Administration Charge and the DIP Lender's Charge as among them, and 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 – Administration Charge;

- (b) Second – DIP Lender’s Charge; and
- (c) Third – Existing Security in such priority as they currently have.

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

10. Each of the Charges, all as constituted and defined herein, shall constitute a charge on the property of the Applicant and such Charges shall rank in priority to all other security interests, trusts, liens, charges, and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

11. 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 any of the Charges, unless the Applicant also obtains the prior written consent of the Proposal Trustee, its existing secured creditors, and the beneficiaries of the Charges (the "Chargees"), or further order of this Court.

12. The Charges, the DIP Term Sheet, and the DIP Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees 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 the *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) neither the creation of the Charges nor the execution, delivery, perfection, registration, or performance of the DIP Term Sheet or the DIP Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements, or other challengeable, voidable, or reviewable transactions under any applicable law.

13. Any 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.

14. The Proposal Trustee, in addition to its prescribed rights and obligations under the BIA, is hereby directed and empowered to:

- (a) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender; and
- (b) advise or assist the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Proposal Trustee and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender.

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

### **Service and Notice**

16. The Applicant and the Proposal Trustee shall serve a copy of this Order on 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 *BIA*.

### **General**

17. Any interested party, including the Applicant and the Proposal Trustee, may apply to this Court to vary or amend this Order on such notice provided for under the *BIA* or on such notice as this Court may order.

18. This Order and all of its provisions are effective as of 12.01 a.m. Atlantic Standard Time on the 2<sup>nd</sup> day of August, 2018 .

Dated the    day of August, 2018, at St. John's, Newfoundland and Labrador.

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Deputy Registrar