

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

Nº: 500-11-058763-208

---

IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT* OF:

GROUPE DYNAMITE INC.  
-and-  
GRG USA HOLDINGS INC.  
-and-  
GRG USA LLC

Debtors

-and-

DELOITTE RESTRUCTURING INC.

Monitor

-and-

MINISTRY OF ATTORNEY GENERAL OF  
BRITISH COLUMBIA

Respondent

---

**CONTESTATION OF MINISTRY OF ATTORNEY GENERAL OF BRITISH COLUMBIA  
TO THE APPLICATION TO AMEND THE AMENDED AND RESTATED INITIAL  
ORDER WITH RESPECT TO SALES TAXES**

**FOR CONTESTATION TO THE APPLICATION TO AMEND THE AMENDED AND  
RESTATED INITIAL ORDER WITH RESPECT TO SALES TAXES, THE RESPONDENT  
STATES:**

1. Paragraph 1 speaks for itself; however, the conclusions sought in the application are contested;
2. As regards paragraph 2, the Respondent is only attempting to enforce the order contained in article 22 (b) of the Initial Order as amended and restated ("**ARIO**");
3. Paragraph 3 is denied for the reasons set out hereinafter;
4. Paragraphs 4, 5 and 6 speak for themselves;

5. Paragraph 7 and Exhibit P-2 speak for themselves;
6. The Respondent ignores paragraph 8;
7. Paragraph 9 and Exhibit P-3 speak for themselves, the Respondent adding that the Ontario form has been previously used in Quebec, including in the following CCAA filings:

Name of Debtor	Date of order
Groupe SMI Inc.	August 24 <sup>th</sup> , 2018
Nemaska Lithium Inc. et al.	December 23 <sup>rd</sup> , 2019

8. As regards paragraph 10, the provisions of law speak for themselves;
9. As regards paragraph 11, the Respondent states that the tax amounts owing are as set out in the present Contestation;
10. As regards paragraph 12, the Respondent states that the BC Sales Taxes collected by Groupe Dynamite Inc. is required to be remitted to the Government of British Columbia on the dates prescribed by regulation under the *British Columbia Provincial Sales Tax Act*, not on “dates determined according to the date of collection” as alleged by the Debtor, the whole as appears from the *British Columbia Provincial Sales Tax Regulation*, BC Reg. 96/2013, at section 72 (1), a copy of which is communicated as **EXHIBIT C-1**;
11. Paragraph 13 is admitted;
12. As regards paragraph 14, the Respondent denies that all BC Sales Taxes accrued or collected prior to the Initial Order are pre-filing Sales Taxes;
13. Paragraph 15 is admitted;
14. As regards paragraph 16, the deferral of the remittance deadline was until September 30<sup>th</sup>, 2020, and not September 30<sup>th</sup>, 2021, as stated in the application;
15. In addition, as regards paragraph 16, the Respondent adds that the deferral of the deadline to remit the BC Sales Taxes to September 30<sup>th</sup>, 2020, was announced by the Government of British Columbia on March 23<sup>rd</sup>, 2020, the whole as appears from a news release dated March 23<sup>rd</sup>, 2020, a copy of which is communicated as **EXHIBIT C-2**;
16. As regards paragraphs 17 and 18, the provisions of the law speak for themselves;
17. As regards paragraph 19, the Respondent denies that the BC Sales Taxes collected from March 24<sup>th</sup>, 2020, are pre-filing and denies the words “the unusual consequence”;



18. As regards paragraph 20, Exhibit P-5 speaks for itself; however, the Monitor and the Debtor were made aware of the Respondent's tax debt on December 9<sup>th</sup>, 2020, the whole as appears from an email dated December 9<sup>th</sup>, 2020, from M<sup>e</sup> Aaron Welch, attorney for the Respondent, a copy of which is communicated as **EXHIBIT C-3**;
19. As regards paragraphs 21, 22 and 23, Exhibit P-6 and Exhibit P-7 speak for themselves and all inconsistencies are denied;
20. As regards paragraphs 24 and 25, the Respondent admits that a letter was sent but denies the content of the said letter (Exhibit P-8);
21. As regards paragraphs 26 and 27, these paragraphs are denied as drafted and constitute an interpretation of the law, the Respondent adding that there is no obligation to remit the sales taxes until the prescribed deadline has passed, and, that the amendments sought would not assure fairness between the creditors but would prejudice the Respondent, as set out hereinafter;
22. As regards paragraph 28, the Respondent refers to the terms of the ARIO, which wording was chosen by the Debtor itself, and not the Respondent, and, furthermore, states that the Sales Taxes are not pre-filing;
23. As regards paragraph 29, the provisions of the *Companies' Creditors Arrangement Act* ("**CCAA**") and the interpretations thereof are questions of law;
24. With regard to paragraph 30:
  - a. Paragraph 30 (a) is denied for the reasons set out hereinafter;
  - b. Paragraph 30 (b) is denied for the reasons set out in the present Contestation;
  - c. Paragraph 30 (c) is denied as drafted and the Respondent states that there appears, according to the Debtor, to be other unpaid sales taxes, which the Debtor collected on sales of its goods and did not remit to the relevant tax authorities. The Respondent ignores whether payment of such taxes immediately would, in fact, impact the Debtor's cash flows and potentially the progress of the restructuring. The Respondent adds that in these circumstances, the Respondent would not expect to be paid immediately but would expect to be paid in a reasonable time based on the means of the Debtor;

d. Paragraph 30 (d) is denied as drafted, the whole for the reasons set out hereinafter, and in particular as the Debtor has benefited from the *Economic Stabilization Act* (“**ESA**”).

25. Paragraph 31 speaks for itself without any admission by the Respondent;

26. Paragraph 32 is denied in the present circumstances, the Respondent adding that the Debtor has taken advantage of the provisions of the ESA and the amendment sought by the Debtor would only serve to perpetuate the Debtor’s actions in benefiting from the ESA, without striking a fair balance and equitable treatment of the Respondent;

27. The Respondent denies the allegations contained in paragraph 33, adding that the Debtor would have been aware of the extension of the remittance deadline due, including in virtue of the public announcement (Exhibit C-2), and, as appears from the fact that the Debtor had withheld paying its British Columbia sales taxes from March 2020 until the date of the Initial Order, and the Debtor cannot, on the one hand, take advantage of the ESA by not remitting sales taxes, which belong to the Government of British Columbia and then, on the other hand, plead that the Debtor did not anticipate the result of the sales tax provision in the initial Order and ARIO;

28. Paragraph 34 is denied as drafted, adding that, in fact, it is the Debtor who has acted in reliance of the ESA;

29. Paragraph 35 is denied;

30. Paragraph 36 is denied as drafted, the Respondent adding that, as mentioned above, the Debtor and the Monitor were advised of the Respondent’s tax debt on December 9<sup>th</sup>, 2020, (Exhibit C-3), but did not take any action for over three (3) months, and this only at the insistence of the Respondent;

31. As regards paragraph 37, the Respondent ignores the allegations contained therein;

32. As regards paragraph 38, the Respondent agrees that this matter should be determined with diligence.

**AND FOR FURTHER CONTESTATION, THE RESPONDENT STATES:**

33. As appears from Exhibit C-3, M<sup>e</sup> Aaron Welch, Attorney of Respondent, advised the Debtor and the Monitor of the Respondent’s claim on December 9<sup>th</sup>, 2020;

34. As appears from the various correspondence already produced, it was only at the insistence of the Respondent that any consideration was given by the Debtor to the British Columbia debt, as the Debtor seems to have preferred to ignore the British Columbia tax debt;



35. As appears from an email dated April 8<sup>th</sup>, 2021, and table contained therein, which is reproduced hereunder, and a copy of which is communicated as **EXHIBIT C-4**, the Debtor is also in arrears of sales taxes for the provinces of Manitoba, Saskatchewan and Quebec, only since August 1<sup>st</sup>, 2020, having paid the sales taxes prior thereto:

**Manitoba**

Start of period	End of period	Description of period	Remittance date	Total amount of sales tax collected (\$)	Total amount of sales tax remitted (\$)
August 1 <sup>st</sup> , 2020	August 31 <sup>st</sup> , 2020	August 2020	September 20 <sup>th</sup> , 2020	68,432.79	0
September 1 <sup>st</sup> , 2020	September 30 <sup>th</sup> , 2020	September 2020	October 20 <sup>th</sup> , 2020	86,904.70	58,069.58

**Saskatchewan**

Start of period	End of period	Description of period	Remittance date	Total amount of sales tax collected (\$)	Total amount of sales tax remitted (\$)
August 1 <sup>st</sup> , 2020	August 31 <sup>st</sup> , 2020	August 2020	September 20 <sup>th</sup> , 2020	47,674.44	0
September 1 <sup>st</sup> , 2020	September 30 <sup>th</sup> , 2020	September 2020	October 20 <sup>th</sup> , 2020	55,796.57	35,940.19

**Quebec**

Start of period	End of period	Description of period	Remittance date	Total amount of sales tax collected (\$)	Total amount of sales tax remitted (\$)
August 1 <sup>st</sup> , 2020	August 31 <sup>st</sup> , 2020	August 2020	September 30 <sup>th</sup> , 2020	2,737,888.15	0
September 1 <sup>st</sup> , 2020	September 30 <sup>th</sup> , 2020	September 2020	October 31 <sup>st</sup> , 2020	2,372,578.29	1,782,759.94

36. Moreover, the Debtor has not stated to this Honorable Court the situation as regards the amounts due and/or unpaid pertaining to the Ontario HST, the federal GST or the HST owing in any of the Maritime provinces;

37. As further appears from paragraph 11 of the Application to Amend, the Debtor collected, retained and benefited from the BC Sales Taxes for the period from March 2020 until September 2020, in the total amount of \$1,183,315.74, of which \$993,944.12 has not been remitted;
38. Whereas as other Tax Jurisdictions were paid for the period ending at July 31<sup>st</sup>, 2020, as appears from Exhibit C-4, the Debtor collected, retained and benefited from the BC Sales Taxes for the period from March 1<sup>st</sup>, 2020, until August 1<sup>st</sup>, 2020, in the total amount of \$724,255.65, and purposely did not remit these taxes to the Respondent, as opposed to the other tax authorities which did not have a provision similar to the ESA, as appears hereinbelow:

<b>Month</b>	<b>Amount</b>
March 2020	\$110,467.97
April 2020	\$64,278.98
May 2020	\$133,590.60
June 2020	\$230,329.97
July 2020	\$185,588.13
<b>TOTAL:</b>	<b>\$724,255.65</b>

39. Contrary to the tax authorities for Manitoba, Saskatchewan and Quebec, the Debtor paid nothing to the Respondent for the months of March, April, May, June and July 2020, evidently, relying on the provisions of the ESA, in order to benefit from the suspension provided by the said act; therefore, it is evident that the Debtor was well aware of the provisions of the ESA, which it used to its advantage in collecting, withholding and keeping the taxes collected, and not paying the Respondent the said sum of \$724,255.65;
40. It is highly unlikely that in the preparation of the application for an initial order under the CCAA, the Debtor would not have made known its reliance on the ESA, having suspended payments of the BC Sales Taxes, which would also be obvious from a review of the financial situation of the Debtor prior to its CCAA filing;
41. It is not accurate to pretend that the use of the Ontario model caused a prejudice to the Debtor in that, as stated by the Debtor in its application, this form is used in Ontario and most other common law provinces, and thus does not of itself represent an inequitable and unfair situation;
42. It is the Debtor who chose to use the model CCAA initial order used in Ontario and various common law provinces and not the Respondent, the Respondent noting that the Debtor has not provided a cogent explanation as to why the Ontario Model was utilized;



43. It is evident that the granting of the application to amend, as sought by the Debtor, would not be equitable to the Respondent but would perpetuate an unfair situation, which occurred when the Debtor, who had knowledge of the ESA, having relied on the provisions thereof to not pay taxes it had collected in British Columbia, while, at the same time, paying the sales taxes to other provinces and/or the HST to other tax authorities, the Respondent noting that the Debtor has not revealed the amounts due and owing and/or previously paid since March 2020 with regards to the HST for the province of Ontario, the GST to the federal government or the HST owing to any of the Maritime provinces;
44. In fact, the Respondent has relied on section 22 (b) of the Initial Order in order to claim the amounts, which are clearly due, in virtue of the said Initial Order and the granting of the amendment requested would not create equity, but would permit the Debtor to escape paying taxes, which it paid to other tax authorities but not to the Respondent;
45. The Debtor's application is based on article 11 of the CCAA, often referred to as a comeback provision;
46. The purpose of the amendment or comeback order is to "allow creditors or other stakeholders who did not receive notice or that received notice only on very short notice the opportunity to come before the Court to make submissions on the order that has been issued" (Dr. Janis P. Sarra, *Rescue! The Companies Creditors Arrangement Act*, page 59);
47. In the present case, the purpose of the amendment is to improve the Debtor's position *vis-à-vis* the Respondent, by relieving itself of the obligation to pay the provincial sales taxes due to the Respondent that have been collected since March 2020;
48. The Respondent respectfully submits that the Debtor, knowing full well the implications of the ESA, should not be able to rely on an amendment, in order to vary an order to pay an amount to the Respondent, known to the Debtor at the time of the Initial Order, granted in virtue of an application by the Debtor, supported by solemn declaration, upon which the Initial Order was granted;
49. The Debtor has not alleged nor proven any material change of circumstance, which was unforeseen, or could not have been foreseen by the Debtor at the time of issuance of the Initial Order and the ARIO;
50. The granting of the Application to Amend would in fact perpetuate the Respondent's position to be worse position than that of the other Tax Jurisdictions who did not have legislation similar to the ESA;
51. The Respondent respectfully submits that the Debtor, having done nothing at all since December 9<sup>th</sup>, 2020, until the insistence by the Court that a response be given to a reasonable demand by the Respondent, constitutes an undue delay by the Debtor, which is sufficient reason to reject the application to amend;

52. The Respondent submits that the Application is not a matter for amendment, but in reality, is an attempt to revoke or appeal a judgment;
53. For the above reasons, the Respondent submits that the Debtor's Application to Amend is not founded and should be dismissed;
54. In virtue of the Application to Amend, the Debtor appears to be asking this Honorable Court to declare that the Ontario model initial order is prejudicial to the Debtor and/or the creditors, and the Quebec edition is not, and this despite the Debtor's choosing of the form of initial order;
55. Alternatively, should this Honorable Court decide to grant, in whole or in part, the Application to Amend, the Respondent respectfully asks that, as a matter of equity and fairness, the Debtor be ordered to pay to the Respondent the sum of \$724,255.65, representing the sums collected by the Debtor, but not remitted to the Respondent as a result of the ESA, as above;
56. The present contestation is well founded in fact and in law.

**WHEREFORE, MAY IT PLEASE THIS HONORABLE COURT TO:**

**MAINTAIN** the Respondent's contestation;

**DISMISS** the Debtor's Application to Amend the Amended and Restated Initial Order with respect to sales taxes;

**OR, ALTERNATIVELY,**

**MAINTAIN** the Amended and Restated Initial Order with respect to provincial sales taxes due to the Respondent exclusively for the period from March 1<sup>st</sup>, 2020, to July 31<sup>st</sup>, 2020;

**ORDER** the Debtor to pay to the Respondent the British Columbia Sales Taxes due in the sum of \$724,255.65 on such terms and conditions that this Honorable Court may decide;

**RENDER** such other Order as this Honorable Court may deem just in the circumstances;

**THE WHOLE** with costs.

Montreal, April 14<sup>th</sup>, 2021.

  
**TIGER BANON INC.**  
*Attorneys for the Respondent*



**ME AARON TIGER**

1010 Sherbrooke Street West; Suite 716

Montreal (Quebec) H3A 2R7

Telephone: (514) 284-8401; Ext. 102

Fax: (514) 284-8408

Email: [atiger@tigerbanon.com](mailto:atiger@tigerbanon.com)

Permanent Code: BT-1332

Our reference: 14194-2

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

Nº: 500-11-058763-208

---

IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT OF:

GROUPE DYNAMITE INC.  
-and-  
GRG USA HOLDINGS INC.  
-and-  
GRG USA LLC

Debtors

-and-

DELOITTE RESTRUCTURING INC.

Monitor

-and-

MINISTRY OF ATTORNEY GENERAL OF  
BRITISH COLUMBIA

Respondent

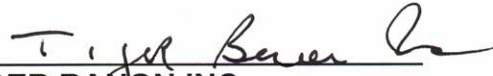
---

**LIST OF EXHIBITS**

- EXHIBIT C-1:** Copy of an extract of the *British Columbia Provincial Sales Tax Regulation*, BC Reg. 96/2013, at section 72 (1);
- EXHIBIT C-2:** Copy of a news release dated March 23<sup>rd</sup>, 2020;
- EXHIBIT C-3:** Copy of an email dated December 9<sup>th</sup>, 2020;
- EXHIBIT C-4:** Copy of an email dated April 8<sup>th</sup>, 2021.



Montreal, April 14<sup>th</sup>, 2021.



**TIGER BANON INC.**

*Attorneys for the Respondent*

**ME AARON TIGER**

1010 Sherbrooke Street West; Suite 716

Montreal (Quebec) H3A 2R7

Telephone: (514) 284-8401; Ext. 102

Fax: (514) 284-8408

Email: [atiger@tigerbanon.com](mailto:atiger@tigerbanon.com)

Permanent Code: BT-1332

Our reference: 14194-2

Case N°: 500-11-058763-208

**SUPERIOR COURT**  
(COMMERCIAL DIVISION)  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

**IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT OF:**

**GROUPE DYNAMITE INC.**

-and-

**GRG USA HOLDINGS INC.**

-and-

**GRG USA LLC**

Debtors

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

-and-

**MINISTRY OF ATTORNEY GENERAL OF  
BRITISH COLUMBIA**

Respondent

**CONTESTATION OF MINISTRY OF ATTORNEY  
GENERAL OF BRITISH COLUMBIA TO THE  
APPLICATION TO AMEND THE AMENDED  
AND RESTATED INITIAL ORDER WITH  
RESPECT TO SALES TAXES, LIST OF  
EXHIBITS AND EXHIBIT C-1 TO C-4**

**ORIGINAL**

O/📁: **14194-2**

BT-1332



**TIGER BANON INC.**  
AVOCATS+LAWYERS

**ME AARON TIGER**

Email: [atiger@tigerbanon.com](mailto:atiger@tigerbanon.com)

1010 Sherbrooke Street West; Suite 716

Montreal (Quebec) H3A 2R7

Telephone: (514) 284-8401; Ext. 102

Fax: (514) 284-8408