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July 19, 2023

Hand Delivered

The Honourable Justice Darlene Jamieson
Supreme Court of Nova Scotia
The Law Courts
1601 Lower Water Street
Halifax, NS B3J 1S7

Honourable Justice Jamieson:

Re: In the Matter of the Receivership of Meridien Atlantic Fishing Ltd., Rocky Coast Seafoods Ltd. and 9514228 Canada Inc. – Hfx No. 521470

Motion Hearing: Thursday, July 27, 2023 at 9:30 a.m.

We are counsel for Deloitte Restructuring Inc. ("**Deloitte**"), the court appointed Receiver of the assets, undertakings and properties of Meridien Atlantic Fishing Ltd. ("**MAF**"), Rocky Coast Seafoods Ltd. ("**RCS**"), and 9514228 Canada Inc. ("**951Can**" and collectively with MAF and RCS, the "**Companies**") acquired for, or used in relation to a business carried on by the Companies. Gavin MacDonald is counsel for Toronto-Dominion Bank ("**TD**"), the secured lender of the Companies. Tracy Smith is counsel for the Companies.

Deloitte has filed a motion seeking the following relief:

1. to seal certain portions of the third report of Deloitte dated July 19, 2023 (the "**Third Report**"), as contained in the confidential supplement as referenced in the Third Report (the "**Confidential Supplement**"); and

2. to approve the sale of the real property located at 1431 Highway 1, Church Point, Nova Scotia (the "**Property**").

Please accept the following as Deloitte's submissions in support of its motion scheduled for Thursday, July 27, 2023 at 9:30 a.m.

I. BACKGROUND

1. Deloitte relies on the following material in support of these submissions:

(a) the first report of Deloitte dated April 5, 2023 (the "**First Report**"), previously filed in these proceedings;

(b) the second report of Deloitte dated June 27, 2023 (the "**Second Report**"), previously filed in these proceedings;

(c) the Third Report, filed with this motion; and

(d) affidavit of David Wedlake dated July 17, 2023 outlining the various interests registered against the Property (the "**Solicitor's Affidavit**").

2. The Companies were involved in the silver hake industry, a white fish predominately consumed in European markets.

3. On January 9, 2023, in response to financial challenges of the Companies, TD engaged Deloitte to act as a consultant and assess the operations, business plan and financial position of the Companies.

4. By Order dated March 9, 2023, and amended on April 14, 2023 and July 4, 2023 (together, the "**Receivership Order**"), Deloitte was appointed as Receiver of all of the assets, undertakings and properties of the Companies.

5. By Order dated April 14, 2023 (the "**SISP Order**"), a sale and investment solicitation process ("**SISP**") was approved that would seek solicitation of offers, through the services of the TriNav Group of Companies ("**TriNav**"), a marine consulting firm, for the assets of the Companies. The details of the SISP are set out in the First Report (First Report, paras 16 - 29). In summary, the SISP contemplated that:

(a) TriNav would publish notice of the SISP and seek solicitation of offers for the assets of the Companies;

(b) prospective bidders would submit a non-binding letter of intent for the assets of the Companies prior to the bid deadline set out in the SISP (being 42 days following the issuance of the SISP Order);

(c) from the non-biding letters of intent received, Deloitte would select bidders to provide a final, legally binding offer, in a form negotiated by Deloitte, TriNav, and the bidder; and

(d) the final, successful offers are subject to approval of this Court.

6. The SISP was amended by an Order dated July 4, 2023. The Purchase Agreement (as defined below) was entered into pursuant to the original SISP, prior to its amendment.

7. In accordance with the SISP (prior to its amendment), Daniel LeBlanc (the "**Purchaser**") submitted a letter of intent to purchase the Property. Following the receipt of such letter of intent, the Purchaser and Deloitte entered into an agreement of purchase and sale dated June 30, 2023 (the "**Purchase Agreement**") in respect of the Property. Details of the marketing activities undertaken by TriNav in connection with the SISP (which includes the Property) are set out in the Second Report (Second Report, para 15), and further details concerning the entering into of the Purchase Agreement are set out in the Third Report (Third Report, Confidential Supplement, paras 8 - 11).

8. The closing date for the purchase and sale of the Property (the "**Transaction**") set out in the Purchase Agreement is July 31, 2023. As noted above, the SISP provides that the Transaction and Purchase Agreement are subject to court approval (First Report, para 24) and the Purchase Agreement is similarly conditional upon court approval (Third Report, Confidential Supplement, para 11).

9. The Solicitor's Affidavit shows the encumbrances listed against each Property. With respect to each Property, there are no encumbrances (other than certain right of ways which will remain on title following the closing of the Transaction) and, accordingly, there are no known third-party interests which will be foreclosed upon the completion of the sale.

10. In connection with the sale of the Property, Deloitte seeks an Order sealing the Confidential Supplement to the Third Report.

II. ISSUES

11. The following issues are to be determined on this motion:

(a) whether this Honourable Court should seal certain portions of the Third Report; and

(b) whether this Honourable Court should approve the sale of the Property.

III. LAW AND ARGUMENT

Notice & Service Requirements

12. As Deloitte has been appointed as Receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") (Book of Authorities, **Tab 10**), it relies on the BIA Rules, and in particular, section 6 (Book of Authorities, **Tab 11**), for both notice and service requirements in respect of this motion. This section provides:

> *General*
>
> ...
>
> *6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.*
>
> *(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules*
>
> > *(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or*
> >
> > *(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.*
>
> [Emphasis added]

13. Deloitte will provide confirmation of service of notice of this motion in accordance with the foregoing in advance of the motion date.

Issue 1 – Request for Sealing Order

14. As part of this motion, Deloitte is seeking an Order sealing the Confidential Supplement to the Third Report. The Confidential Supplement includes:

(a) a copy of the Purchase Agreement;

(b) details of the offers received for the Property pursuant to the SISP; and

(c) a copy of an appraisal of the Property.

Deloitte requests that above-noted materials contained in the Confidential Supplement remain sealed and kept confidential until the Transaction has closed, or upon further order of this Honourable Court.

15. *Civil Procedure Rule* 85.04 provides as follows:

> *Order for confidentiality*
>
> *85.04 (1) A judge may order that a court record be kept confidential only if the judge is satisfied that it is in accordance with law to do so, including the freedom of the press and other media under section 2 of the Canadian Charter of Rights and Freedoms and the open courts principle.*
>
> *(2) An order that provides for any of the following is an example of an order for confidentiality:*
>
> *(a) sealing a court document or an exhibit in a proceeding;*
>
> *(b) requiring the prothonotary to block access to a recording of all or part of a proceeding;*
>
> *(c) banning publication of part or all of a proceeding;*
>
> *(d) permitting a party, or a person who is referred to in a court document but is not a party, to be identified by a pseudonym, including in a heading.*
>
> *(3) A judge who is satisfied that it is in accordance with law to make an order excluding the public from a courtroom, under Section 37 of the Judicature Act, may make an order for confidentiality to aid the purpose of the exclusion.*

16. As set out in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 (Book of Authorities, **Tab 8**) (para 53) and *Sherman Estate v Donovan*, 2021 SCC 25 (Book of Authorities, **Tab 7**) (paras 38 and 41-43), sealing orders may be granted when:

(a) court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

17. A sealing order will assist to maximize returns to the creditors of the Companies should the Transaction not close. It is submitted that there is a public interest in maximizing returns to creditors and maintaining the integrity of the receiver's sales process. Courts have previously identified the public interest of sealing orders following a bidding or sales process in a receivership. For example, in *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 2 (Book of Authorities, **Tab 9**), the Yukon Territory Supreme Court made the following comments in response to a request to seal the details of bids and the receiver's evaluation of such bids in connection with a sales process (at para 39):

> *In the insolvency context, especially where there is a sale process, it is a standard practice to keep all aspects of the bidding or sales process confidential. Courts have found this appropriately meets the Sierra Club test as modified by Sherman Estate, as sealing this information ensures the integrity of the sales and marketing process and avoids misuse of information by bidders in a subsequent process to obtain an unfair advantage. The important public interest at stake is described as the commercial interests of the Receiver, bidders, creditors and stakeholders in ensuring a fair sales and marketing process is carried out, with all bidders on a level playing field.*
>
> [Emphasis added]

18. Courts have found that a temporary sealing order, sealing the commercially sensitive information relating to a sales process until the applicable transaction has closed, is necessary to protect such information, and that the benefits of such sealing order outweigh the negative effect. In *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832 (Book of Authorities, **Tab 3**), the Ontario Superior Court of Justice noted as follows (at paras 138 – 141):

> *The requested partial sealing order is limited in its scope (only specifically identified confidential exhibits) and in time (until the Transaction is completed). It is necessary to protect commercially sensitive information that could negatively impact the Company and its stakeholders if this transaction is not completed and further efforts to sell the property must be undertaken.*
>
> *The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with*

> *subsequent attempts to market and sell the property, and to avoid any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved Ora Transaction.*
>
> *These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41, [2002] 2 S.C.R. 522 requirements, as modified by the reformulation of the test in Sherman Estate v. Donovan, 2021 SCC 25, 458 D.L.R. (4th) 361, at para. 38.*
>
> *Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with approval and vesting orders.*

19. In the present matter, the proposed Confidential Supplement to the Third Report for which the sealing order is being sought contains sensitive commercial information, including the sales price of the Property, details of the bids for the Property, and an appraisal of the Property (Third Report, para 5). If made publicly available, this information could negatively impact realization if the Transaction does not close. Further, the SISP was premised on a confidential process, and potential bidders were required to enter into non-disclosure agreements before they received information concerning the assets of the Companies (First Report, para 22). As a result of the foregoing, it is submitted that there is an important public interest in preserving: (i) the integrity of tender processes generally; and (ii) confidentiality with respect to the assessed value of, and bids for, assets to be sold pursuant to a bidding process within an insolvency proceeding. Alternative measures will no prevent risk of disclosure.

20. As a matter of proportionality, in light of the relatively short period of time during which the Confidential Supplement to the Third Report will be under seal, the beneficial effects of the confidentiality sought outweigh its deleterious effects. Accordingly, it is respectfully submitted that this is an appropriate case for the Court to exercise its discretion pursuant to Rule 85.04 of the *Civil Procedure Rules* and grant an Order sealing the Confidential Supplement to the Third Report. The sealing order will preserve the integrity of the sales process, which greatly outweighs any negative effects that result from temporarily limiting public access to the small amount of commercially sensitive information.

21. Deloitte will provide the required notices of this motion to the media, in accordance with Rule 85.04, confirmation of which will be provided to the Court in advance of the motion date.

Issue 2 – Approval of Sale of Property

22. As part of this motion, Deloitte is seeking the Court's approval for the sale of the Property located at 1431 Highway 1, Church Point, Nova Scotia, which is comprised of two vacant lots. Through the SISP, Deloitte entered into the Purchase Agreement for Property, which Deloitte recommends be approved by this Honourable Court (Third Report, para 12).

23. The principles for the Court to consider on a motion for the approval of a sale of assets by a receiver are well established and set out in *Royal Bank v. Soundair Corp.,* 1991 CarswellOnt 205 (C.A.) (Book of Authorities, **Tab 6**). These principles are:

(a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.

24. Section 247(b) of the *BIA, supra* (Book of Authorities, **Tab 10**), requires that a receiver deal with any property of an insolvent person in a "commercially reasonable manner". In *Royal Bank of Canada v. 2M Farms Ltd.*, 2017 NSSC 105 (Book of Authorities, **Tab 4**), Moir J. stated the following in respect of the test set forth in *Soundair, supra* (at paras 5 – 8):

> *The receiver submits that Royal Bank of Canada v. Soundair Corporation 1991 CanLII 2727 (ON CA), [1991] O.J. 1137 (CA) is the leading case on approval of sales. It emphasizes: (1) sufficiency of the sales effort, (2) interests of the parties, (3) efficacy or integrity of the sale process, and (4) fairness in working out the process.*
>
> *The Bankruptcy and Insolvency Act was amended after Soundair. The amendment established a national receivership and included a provision on the general duties of receivers, which must now be kept in mind when approval of a receiver sale is sought. An appointment of a receiver to enforce security is now usually made*

> *under both the national receivership provisions and provincial law (both statutory and common law).*
>
> *As stated by Justice Wood at paragraph 14 of ECBC v. Crown Jewel Resort Ranch Inc., 2014 NSSC 420 (CanLII): "it is not the role of the Court to review in detail every element of the process followed by the Receiver". Under s. 247(b) of the Bankruptcy and Insolvency Act, a receiver must deal with the receivership property in a commercially reasonable manner. Justice Wood followed long standing authorities when he held, also at paragraph 14 of Crown Jewel, that the court will consider fairness of the process that led to the sale.*
>
> *As I see it, the general obligation under s. 247(b) is the touchstone for approval of a sale by the receiver when the receiver has been appointed under the Bankruptcy and Insolvency Act, alone or in combination with provincial law. Commercial reasonableness is the touchstone for approval. The case law tells us that commercial reasonableness includes fairness, efficacy, integrity, and sufficiency of the sale process. It also tells us that the interests of the parties have to be borne in mind.*
>
> [Emphasis added]

It is submitted that the factors set out in *Soundair*, *supra*, should be considered with a view to the overall commercial reasonableness of the proposed sale of the Property.

25. Galligan J.A. examined each of the four factors separately in *Soundair* and the subsequent jurisprudence has tended to focus on the factors in isolation.

Factor 1 – Sufficient Effort

26. With respect as to whether the Receiver has made sufficient effort to get the best price, there is little in the jurisprudence following *Soundair* to suggest that, absent an egregious lack of effort on the part of the receiver or a deficiency in a key component of the general sales process, the Courts will quash a sale based on the "sufficient effort" factor.

27. The Purchase Agreement was entered into in accordance with the SISP, which was previously approved by this Honourable Court. It is submitted that the Second Report and Third Report set out that sufficient effort has been made to get the best price for the Property (Second Report, paras 15, 16, 21, & 22; Third Report, Confidential Supplement, paras 8 - 12). In particular, the Property was listed with a reputable commercial brokerage and was the subject of an extensive marketing campaign.

Factor 2 – The Interests of All Parties

28. The second factor set out in *Soundair* and the balancing of interests that forms part of this factor, is often addressed by the Courts through an analysis of the fourth factor, fairness.

29. Galligan J.A., in *Soundair,* did provide some additional guidelines in addressing this factor:

> *39 It is well established that the primary interest is that of the creditors of the debtor: see Crown Trust Co. v. Rosenberg, supra, and Re Selkirk, supra (Saunders J.). However, as Saunders J. pointed out in* Re Beauty Counsellors, *supra at p. 244 [C.B.R.], "it is not the only or overriding consideration."*
>
> *40 In my opinion, there are other persons whose interests require consideration. In an appropriate case, the interests of the debtor must be taken into account. I think also, in a case such as this, where a purchaser has bargained at some length and doubtless at considerable expense with the receiver, the interests of the purchaser ought to be taken into account. While it is not explicitly stated in such cases as Crown Trust Co. v. Rosenberg, supra, Re Selkirk (1986), supra, Re Beauty Counsellors, supra, Re Selkirk (1987), supra, and (Cameron), supra, I think they clearly imply that the interests of a person who has negotiated an agreement with a court-appointed receiver are very important.*
>
> [Emphasis added]

30. An acknowledgment of the interest of the purchaser is also provided by Duncan J. in *Bank of Montreal v. Sportsclick Inc.,* 2009 NSSC 354 (Book of Authorities, **Tab 1**) at paragraph 33.

31. In the present matter, it is submitted that the proposed sale supports the interests of TD, the Companies and the purchaser. TD, the primary creditor, as well as the guarantors of the Companies, are in support of the proposed sale, and the purchaser wishes to complete the transaction pending the outcome of this motion (Third Report, para 12). It is further submitted that the proposed sale provides a commercially reasonable return for creditors of the Companies.

32. It is respectfully submitted that there are no parties known to Deloitte that will be prejudiced by the proposed sale. Given the foregoing, it is respectively submitted that the interests of all parties, on balance, favour approval of the proposed sale.

Factor 3 – Efficacy and Integrity of the Process

33. The third factor of efficacy and integrity was addressed by Galligan J.A. in *Soundair,* by reference to the decision of the Nova Scotia Supreme Court, Appeal Division, in *Cameron v. Bank of N.S.,* 1981 CarswellNS 47 (S.C., A.D.):

> *43 The importance of a court protecting the integrity of the process has been stated in a number of cases. First, I refer to Re Selkirk, supra, where Saunders J. said at p. 246 [C.B.R.]:*
>
> > *In dealing with the request for approval, the court has to be concerned primarily with protecting the interest of the creditors of the former bankrupt. A secondary but important consideration is that the process under which the sale agreement is arrived at should be consistent with commercial efficacy and integrity.*
> >
> > *In that connection I adopt the principles stated by Macdonald J.A. of the Nova Scotia Supreme Court (Appeal Division) in Cameron v. Bank of N.S. (1981), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303, 86 A.P.R. 303 (C.A.), where he said at p. 11:*
> >
> > > *In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement. On the contrary, they would know that other bids could be received and considered up until the application for court approval is heard – this would be an intolerable situation.*
> >
> > *While those remarks may have been made in the context of a bidding situation rather than a private sale, I consider them to be equally applicable to a negotiation process leading to a private sale. Where the court is concerned with the disposition of property, the purpose of appointing a receiver is to have the receiver do the work that the court would otherwise have to do.*

34. Galligan J.A. went on to refer to the unreported holding in *Crown Trust Co. v. Rosenberg*:

> *45 Finally, I refer to the reasoning of Anderson J. in* Crown Trust Co. v. Rosenberg, *supra, at p. 124 [O.R.]:*

> *While every proper effort must always be made to assure maximum recovery consistent with the limitations inherent in the process, no method has yet been devised to entirely eliminate those limitations or to avoid their consequences. Certainly it is not to be found in loosening the entire foundation of the system. Thus to compare the results of the process in this case with what might have been recovered in some other set of circumstances is neither logical nor practical.*
>
> [Emphasis added by Galligan J.A.]
>
> . . .
>
> *47 Before this court, counsel for those opposing the confirmation of the sale to OEL suggested many different ways in which the receiver could have conducted the process other than the way which he did. However, the evidence does not convince me that the receiver used an improper method of attempting to sell the airline. The answer to those submissions is found in the comment of Anderson J. in Crown Trust Co. v. Rosenberg, supra, at p. 109 [O.R.]:*
>
> > *The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise.*

35. This characterization of the third factor, as ensuring that commercial good-sense be present, was again echoed by Duncan J. in *Sportsclick, supra,* at paragraph 33, and also by Roscoe J.A. writing for the Nova Scotia Court of Appeal in *Edwards v. Edwards Dockrill Horwich Inc.,* 2009 NSCA 37 (Book of Authorities, **Tab 2**) at paragraph 5. So long as the receiver has acted in a commercially reasonable manner in conducting the sale, the efficacy and integrity of the process is intrinsically upheld as a direct result.

36. It is submitted that the requirements of this factor have been met for the following reasons:

(a) the Purchase Agreement resulted from the SISP;

(b) Deloitte engaged TriNav, reputable commercial brokerage, and the Property was the subject of an extensive marketing campaign; and

(c) the proposed sale is not opposed by the creditors and there is no evidence to suggest that that a better result can be realistically expected from an extended or alternative sales process; and

(d) the additional reasons set out in the Confidential Supplement of the Third Report (paras 12 - 13).

Factor 4 – Unfairness

37. As stated by Galligan J.A. in *Soundair,* the Court must also decide whether the sales process was fair (para 49). Roscoe J.A. for the Nova Scotia Court of Appeal in *Edwards, supra*, in noting the trial decision of MacAdam J., referenced the decision in *Rosenberg, supra*:

> *5 Justice MacAdam found that there was no excess of power, fraud or lack of bona fides on behalf of the receivers and therefore the question was whether the receivers' report was reasonable. He also adopted the test established in Crown Trust Co. v. Rosenberg (1986), 39 D.L.R. (4th) 526 (Ont. H.C.) where Anderson, J., stated at page 548:*
>
> > *. . . The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise. The court ought not to embark on a process analogous to the trial of a claim by an unsuccessful bidder for something in the nature of specific performance. The court should not proceed against the recommendations of its Receiver except in special circumstances and where the necessity and propriety of doing so are plain. Any other rule or approach would emasculate the role of the Receiver and make it almost inevitable that the final negotiation of every sale would take place on the motion for approval.*
> >
> > *In all of this it is necessary to keep in mind not only the function of the court but the function of the Receiver. The Receiver is selected and appointed having regard for experience and expertise in the duties which are involved. It is the function of the Receiver to conduct negotiations and to assess the practical business aspects of the problems involved in the disposition of the assets.*
>
> *and at page 550:*
>
> > *It is equally clear, in my view, though perhaps not so clearly enunciated, that it is only in an exceptional case that the courts will intervene and proceed contrary to the Receiver's recommendations if satisfied, as I am, that the Receiver has acted reasonably, prudently and fairly and not arbitrarily.*
>
> *And further at page 551:*

> *If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.*

38. Accordingly, while maintaining the ability to quash the sale, the jurisprudence indicates that Courts make great effort to confirm that such power will only be wielded in "the most exceptional circumstances", when unfairness is obvious and fundamentally detrimental. It is respectfully submitted that there can be no fundamental or obvious unfairness shown in this matter.

39. Based on the foregoing, it is submitted that Deloitte has acted in a commercially reasonable manner and that the sale of the Property, as contemplated under the Purchase Agreement, satisfies the *Soundair* principles.

Approval and Vesting Order

40. With respect to the proposed sale of the Property, Deloitte requests an approval and vesting order. The authority of this Honourable Court to grant such an order pursuant to section 243(1)(c) of the BIA was considered by Rosinski, J. in *Royal Bank of Canada v Eastern Infrastructure*, 2019 NSSC 297 (Book of Authorities, **Tab 5**), where the Court stated at para 7:

> *[7] Lemare Logging was released one year after Justice Wood made his comments in Crown Jewel. Although Nova Scotia does not have express provincial legislation giving the court jurisdiction to make such vesting orders, it is clear that in appropriate circumstances courts can rely on s 243(1)(c) BIA to do so. In Dianor, the court cited Crown Jewel at para. 78, noting that "...the case law on vesting orders in the insolvency context is limited."*

41. Regarding the appropriate circumstances to make an approval or vesting order, Rosinski J. in *Eastern Infrastructure*, supra, cited at paragraph 8 the test set out in *Soundair*, as approved in Nova Scotia by Duncan J. in *Sportsclick*, *supra*. Given the foregoing, it is submitted that the proposed form of approval and vesting order requested by Deloitte in

this matter, which is in a form similar to other orders granted by this Honourable Court since the decision of Rosinski, J. in *Eastern Infrastructure, supra*, is appropriate in the circumstances.

IV. RELIEF SOUGHT

42. Based on the foregoing, it is respectfully submitted that this Honour Court grant an Order for the following relief:

(a) sealing certain portions of the Third Report;

(b) approving the sale of the Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of July, 2023.

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