

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF RICHELIEU

SUPERIOR COURT
(Commercial Division)
In bankruptcy and insolvency

N° : 765-11-

IN THE MATTER OF THE RECEIVERSHIP
OF:

MOMETAL STRUCTURES INC., a legal person having its domicile at 201 chemin de l'Énergie, in the City of Varennes, Province of Québec, J3X 1P7

Debtor

-and-

HSBC BANK CANADA, a legal person having a place of business at 2001 McGill College Avenue, Suite 160, in the City of Montreal, Province of Québec, H3A 1G1

Petitioner

-and-

DELOITTE RESTRUCTURING INC., a legal person having a place of business at 1190 Avenue des Canadiens-de-Montréal, Suite 500, in the City of Montréal, Province of Québec, H3B 0M7

Receiver

-and-

INTACT COMPAGNIE D'ASSURANCE, a legal person having a place of business at 2020 boulevard Robert Bourassa, Suite 100, in the City of Montréal, Province of Québec, H3A 2A5

-and-

INVESTISSEMENT QUÉBEC, a legal person having a place of business at 413 rue Saint-Jacques, Suite 500, in the City of Montréal Province of Québec, H2Y 1N9

- and-

9357-1578 QUÉBEC INC., a legal person having a place of business at 108 av. de Charente, in the City of Saint-Lambert, Province of Québec, J4S 1K3

-and-

ROYAL BANK OF CANADA, a legal person having a place of business at 9090 boulevard Leduc, Suite 210, in the City of Brossard, Province of Québec, J4Y 0E2

-and-

ACIER PICARD INC., a legal person having a place of business at 3000 rue de l'Etchemin, in the City of Lévis, Province of Québec, G6W 7X6

Mises en cause

<p style="text-align: center;">MOTION FOR THE APPOINTMENT OF A RECEIVER (Section 243 of the <i>Bankruptcy and Insolvency Act</i>)</p>
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TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL CHAMBER, IN THE DISTRICT OF RICHELIEU OR THE REGISTRAR OF THAT COURT, THE PETITIONER STATES:

I. INTRODUCTION

1. By the present motion, HSBC Bank Canada (the "**Bank**") seeks the appointment of Deloitte Restructuring Inc. ("**Deloitte**") to act as receiver to the assets of Mometal Structures Inc. (the "**Debtor**");

II. FACTUAL BACKGROUND

2. The Bank is a Canadian chartered bank duly constituted and having a place of business at 2001 McGill College Avenue, Suite 160, in the city of Montréal, province of Québec;
3. The Bank has business dealings with the Debtor, being the Debtor's banker and most important secured creditor;
4. The Debtor is based in Varennes and specializes in the fabrication and installation of non-conventional steel structures and architecturally exposed structures in the non-residential construction industry, the whole as appears from a copy of the *État de renseignements d'une personne morale au registre des entreprises* communicated herewith as **Exhibit R-1**;

5. On July 18, 2018, the Debtor, as borrower, entered into a credit facilities agreement (the “**Facility Letter**”) with the Bank, as lender, providing for various credit facilities, the whole as appears from a copy of the Facility Letter communicated herewith as **Exhibit R-2**;
6. The Debtor’s obligations under the Facility Letter are secured by a hypothec charging the universality of the Debtor’s movable property (the “**Movable Hypothec**”), the whole as appears from a copy of the Movable Hypothec and its certificate of registration at the Register of Personal and Movable Real Rights communicated herewith, *en liasse*, as **Exhibit R-3**;
7. The Bank also holds personal guarantees from Erik Lafontaine, Nathalie Rivet, Mathieu Lafontaine and Yanik Péloquin (hereinafter referred to collectively as the “**Guarantors**”), the whole as it appears from a copy of such guarantees communicated herewith, *en liasse*, as **Exhibit R-4**;

III. EVENTS LEADING TO THE PRESENT MOTION

8. On April 5, 2019, management of the Debtor’s account was transferred to the Bank’s Loan Management Unit for the following two key reasons (i) a projected significant increase in Bank exposure over the next few months and (ii) an important deterioration in the Bank’s security position;
9. Indeed, during the month of March 2019, the Debtor provided the Bank a 13-week cash flow forecast which demonstrated the following:
 - a) An increase of the Bank’s exposure by CAD 5.6 million over the next 8 weeks (from a CAD 5.6 million overdraft during the week of March 16, 2019, to a CAD 11.2 million overdraft during the week of May 11, 2019); and
 - b) A substantial deterioration of the margin position by CAD 5.6 million over a 10-week period (from a CAD 2.1 million margin surplus during the week of March 16, 2019, to a CAD 3.5 million margin deficit during the week of May 25, 2019), which deficit would only be resolved by a CAD 5.0 million injection during the week of June 1, 2019;

the whole as it appears from the 13-week cash flow forecast communicated herewith as **Exhibit R-5**;

10. Furthermore, the following financial information was provided to the Bank in March 2019:
 - a) The Debtor’s 2018 financial statements, which showed operating loss of more than CAD 1,800,000;
 - b) A Review Engagement Report from the firm Blain, Joyal, Charbonneau on the 2018 financial year-end statements, which had the following telling observation:

“Sans assortir notre conclusion d’une réserve, nous attirons l’attention sur la note 2 des états financiers, qui indique que la société a subi une perte d’exploitation et que les ratios sur l’emprunt bancaire et la dette à long terme ne sont pas respectés. Cette situation, conjuguée aux autres questions exposées dans

la note 2, indiquent l'existence d'une incertitude significative susceptible de jeter un doute important sur la capacité de la société à poursuivre son exploitation."

the whole as it appears from the Review Engagement Report communicated herewith as **Exhibit R-6**;

11. In addition, the Bank had been informed that Raymond Chabot Grant Thornton ("RCGT") had been mandated by the Debtor to bring in an equity investor, presumably to inject the CAD 5.0 million indicated in the 13-week cash flow forecast. It would appear that RCGT had sent a teaser to approximately 100 potential investors. Despite RCGT's efforts, investors have yet to be found;
12. The Bank was also advised that the Debtor had retained the law firm McCarthy Tétrault LLP as counsel;
13. Following the transfer of the file to the Loan Management Unit, a meeting occurred in Montreal on April 8, 2019, among the Bank, Deloitte, the Debtor and RCGT where the Bank advised the Debtor and RCGT that it was extremely preoccupied by the large margin deficit on the account (more than CAD900,000) and requested up-to-date financial information from the Debtor;
14. On April 12, 2019, the Bank advised the Debtor and the Guarantors in writing of the following:
 - a) Events of default existed under the Facility Letter;
 - b) The Bank and Deloitte would analyze in the coming days the financial position of the Debtor in order to decide if the Bank would continue to finance the Debtor and if so, on which terms and conditions;
 - c) The Debtor had to provide to the Bank and Deloitte by April 15, 2019, an updated 13-week cash flow projections which would not demonstrate a further deterioration of the Bank's position during that period;
 - d) The loan limit would shortly be reduced in light of the events of default;
 - e) Any decision to continue the financing of the Debtor would imply the signature of a forbearance agreement on terms and conditions satisfactory to the Bank; and
 - f) The Bank was not waiving the events of default and was reserving its rights to enforce its security;

the whole as it appears from a copy of the correspondence communicated in support hereof as **Exhibit R-7**;

15. On April 15, 2019, RCGT provided to the Bank the Debtor's 13-week cash flow projections (the "**Cash Flow Projections**") to be reviewed and analyzed by the Bank, the whole as it appears from a copy of the Cash Flow Projections communicated in support hereof as **Exhibit R-8**;
16. On April 16, 2019, the Bank advised the Debtor and the Guarantors in writing of the following:

- a) The loan limit would be capped at CAD 6,750,000 on the earlier of (i) April 22, 2019, or (ii) the date on which a receivable of CAD 866,000 would be collected from EllisDon, the most important client of the Debtor;
- b) The Bank would analyze the Cash Flow Projections;
- c) The Bank reiterated that the parties needed to conclude a forbearance agreement in order for the Bank to continue to finance the Debtor;

the whole as it appears from a copy of the correspondence communicated in support hereof as **Exhibit R-9**;

17. On April 17, 2019, the Bank sent to the Debtor a draft forbearance agreement setting forth the conditions upon which it was prepared to continue to finance the Debtor until July 5, 2019;
18. One of the essential conditions of the forbearance agreement was that the Debtor had to operate within the limits set forth in the Cash Flow Projections and that the borrowing under the Facility Letter would not materially vary from the projections set forth therein;
19. As it appears from the Cash Flow Projections (Exhibit R-6), the position of the Bank was not forecasted to deteriorate during the 13-week period solely due to the fact that the Debtor was forecasting collections of more than CAD 11 million from EllisDon during the period. The CAD 5.0 million equity injection contemplated in March 2019 was no longer forecasted and appeared to have been abandoned by the Debtor;
20. It was represented to the Bank by the Debtor that these receipts from EllisDon were in fact advances on future work to be performed by the Debtor for EllisDon and that EllisDon would only accept to make these advances if an agreement was put in place between the parties;
21. As indicated in the correspondence of April 16, 2019 (Exhibit R-7), the loan limit under the Facility Letter was reduced to CAD 6,750,000 on April 22, 2019;
22. Between April 17, 2019, and April 25, 2019, the parties negotiated the terms of the draft forbearance agreement and the Bank, Deloitte and its legal counsel regularly followed up with the Debtor and RCGT to enquire if an agreement had been reached with EllisDon since such agreement was an essential component of the continued support of the Bank;
23. During that period, the Debtor advised the Bank that the negotiations with EllisDon were progressing well, but not at the pace it had initially anticipated;
24. On April 25, 2019, seeing that no tangible progress had been made with EllisDon, the Bank issued a demand letter to the Debtor and the Guarantors whereby it informed them of the following:
 - a) that the Bank remained extremely preoccupied by the financial situation of the Debtor as a result, among others, of the fact that the Debtor's internal financial statements for the 6 month period ended February 28, 2019, showed a cumulative year to date loss of CAD 3,089,735;
 - b) that the following events of default (the "**Events of Default**") had occurred under

the Facility Letter:

- (i) margin shortfall of at least CAD 1,693,317.98;
 - (ii) breach of both financial ratios provided in the Facility Letter;
- c) that the indebtedness owed under the Facility Letter had to be paid in full by no later than May 7, 2019;

the whole as it appears from a copy of the demand letter communicated herewith as **Exhibit R-10**;

25. On the same day, the Bank also sent to the Debtor and the Guarantors a notice under Section 244 of the BIA advising of its intention to enforce its security, the whole as it appears from a copy of the notice communicated herewith as **Exhibit R-11**;
26. On April 26, 2019, the Debtor and RCGT advised the Bank and Deloitte that EllisDon was not prepared to make any of the CAD 11 million advances contemplated in the Cash Flow Projections, which significantly deteriorate the financial position of the Debtor and leave the Debtor with no availability under the Facility Letter to operate;
27. On April 29, 2019, the Bank was advised of the following:
- a) The Debtor was working on a plan to reduce its operations and to maximize its realization;
 - b) The Debtor had decided to cease its operations on all construction sites of EllisDon, the Debtor's biggest client;
 - c) The Debtor had reduced its operations to a minimum on all other construction sites;
 - d) The plant would be closed until further notice;

the whole as it appears from an email correspondence from the Debtor's then counsel McCarthy Tétrault, a copy of which is communicated herewith as **Exhibit R-12**;

28. In light of this information, the Bank immediately tried to schedule a call with the Debtor and its counsel to discuss the next steps and the necessity to appoint a receiver quickly, but was informed that McCarty Tétrault LLP was no longer representing the Debtor and that the Debtor's new counsel was not available to discuss the matter until the next day, the whole as it appears from the email correspondences communicated herewith as **Exhibit R-13**;
29. On April 30, 2019, a conference call occurred among representatives of the Bank, Deloitte, Fasken (as counsel to the Bank), Investissement Québec (a secured creditor of the Debtor), the Debtor and Kaufman (as new counsel to the Debtor) where the Bank expressed to need to appoint a receiver to preserve and protect the assets as soon as possible while the Debtor informed the Bank that it was looking to secure financing to repay the Bank at a substantial discount;

IV. REASONS TO APPOINT A RECEIVER

30. The Bank submits that it is now appropriate for this Court to appoint Deloitte as receiver to the assets of the Debtor for the following reasons:
- a) Events of default have occurred under the Facility Letter and are not susceptible of being cured;
 - b) The Debtor has ceased operating since April 29, 2019;
 - c) The Debtor and the Guarantors do not have the financial ability to fund the operations and to pay the employees;
 - d) As at the opening of business on April 30, 2019, the Debtor was indebted to the Bank in the amount of CAD 7,763,040.15, the whole as more fully appears from a statement of account communicated herewith as **Exhibit R-14**;
 - e) The Bank cannot tolerate a further deterioration of its position;
 - f) The Movable Hypothec (Exhibit R-3) charges the universality of the movable property of the Debtor;
 - g) The Bank issued a notice under section 244 of the BIA on April 25, 2019;
 - h) The nomination of the receiver will allow the receiver to put in place the following essential measures:
 - (i) secure, preserve and protect the premises and the assets;
 - (ii) carry on, all or any part of the Debtor's operations if it is deemed appropriate to do so by the receiver;
 - (iii) control the Debtor's receipts and disbursements; and
 - (iv) initiate a sale process for the assets for the benefit of all creditors.

V. THE MISES EN CAUSE

31. Intact Compagnie d'Assurance, Royal Bank of Canada, Investissement Québec, Acier Picard Inc. and 9357-1578 Québec (collectively, the "**Mises en cause**") are secured creditors of the Debtors, the whole as it appears from a copy of the registrations made against the Debtor at the Register of Personal and Movable Real Rights communicated herewith as **Exhibit R-15**;
32. The Mises en cause have all agreed to cede the rank of their security on the movable property of the Debtor in favour of the Bank, the whole as it appears from a copy of the various cessions of rank communicated herewith, *en liasse*, as **Exhibit R-16**;
33. The Mises en cause will receive service of this Motion considering that the Bank will be seeking from this Court an administrative charge which shall rank in priority to any and all other security charging the movable property of the Debtor;

VI. CONCLUSIONS

34. The Bank hereby respectfully seeks the issuance of an order substantially in the form of the draft Order communicated herewith as **Exhibit R-17**;
35. The Bank proposes that the firm Deloitte, through its representative, Martin Franco, CPA, CA, CIRP, LIT, act as receiver to the Debtor's assets;
36. Deloitte is qualified to act as receiver in this matter as it holds a licence to act as trustee under the BIA, and has agreed to act in this matter if appointed by this Court;
37. Given the urgency of the situation, the Bank is well-founded to ask this Court that any delay of service or presentation of the present Motion be shortened and that provisional execution of the order to be rendered hereunder be ordered notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

FOR THESE REASONS, THE PETITIONER REQUESTS THIS COURT TO:

- [1] **GRANT** the present *Motion for the Appointment of a Receiver* (the "**Motion**");
- [2] **ISSUE** an order in the form of the draft Order communicated in support of the Motion as Exhibit R-17;
- [3] **THE WHOLE**, without costs save and except in case of contestation.

Montreal, May 2, 2019

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