

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-053428-179

DATE: January 30, 2018

PRESIDING : Me Julie Bégin, registraire , Registrar

IN THE MATTER OF THE RECEIVERSHIP OF:

TRANSPORT MEDICAR INC.

Debtor

-and-

DELOITTE RESTRUCTURING INC.

Receiver/Petitioner

-and-

MAYNARDS INDUSTRIES CANADA LTD.

-and-

THE REGISTRAR OF PERSONAL AND MOVABLE REAL RIGHTS (QUÉBEC)

Mis en cause

APPROVAL AND VESTING ORDER

[1] **ON READING** the Receiver's *Requête pour l'émission d'une ordonnance autorisant la vente d'actifs* (the "**Motion**"), the affidavit and the exhibits in support thereof,

- [2] **SEEING** the receivership order issued by this Court on December 13, 2017;
- [3] **SEEING** the service of the Motion to the secured creditors of the Debtor;
- [4] **SEEING** the Report of the Receiver dated January 30, 2018 (the "**Report**");
- [5] **SEEING** the submissions of the parties;
- [6] **SEEING** that it is appropriate to issue an order approving the transaction (the "**Transaction**") contemplated by the agreement entitled Asset Purchase Agreement (the "**APA**") by and between Receiver, as vendor, and Maynards Industries Canada Ltd. (the "**Purchaser**"), as purchaser, copy of which was filed under confidential seal as Exhibit R-3 to the Motion, and vesting in the Purchaser the assets described in the APA (the "**Purchased Assets**");
- [7] **SEEING** section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**");

WHEREFORE THE COURT:

- [8] **GRANTS** the Motion;

SERVICE

- [9] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [10] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

- [11] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the APA by the Receiver is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to between the Receiver and the Purchaser.

EXECUTION OF DOCUMENTATION

- [12] **AUTHORIZES** the Receiver and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the APA and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

- [13] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

- [14] **ORDERS** and **DECLARES** that upon the delivery to the Purchaser and the issuance of a Receiver's certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, or any other applicable legislation providing for a security interest in personal or movable property and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [15] **DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*.
- [16] **ORDERS** and **DIRECTS** the Receiver to file with the Court a copy of the Certificate, forthwith after the delivery and issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [17] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to strike the following registrations:
- conventional hypothec without delivery constituted by the Debtor in favor of Toronto-Dominion Bank, bearing number 17-0224041-0001;

- conventional hypothec without delivery constituted by 9266-7849 Québec Inc. in favor of Investissement Québec, bearing number 13-0803659-0001;
- conventional hypothec without delivery constituted by the Debtor in favor of L'Unique General Insurance, bearing number 16-0202082-0002;

in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

NET PROCEEDS

- [18] **ORDERS** that the net proceeds from the sale of the Purchased Assets (the “**Net Proceeds**”) shall be remitted to the Receiver and shall be distributed in accordance with applicable legislation.
- [19] **ORDERS** the Receiver to proceed with the distribution of the Net Proceeds, net of all and any fees related to the administration and liquidation of the assets (including without limitation the professional fees and disbursements of the Receiver and of its legal counsel), to the secured creditors as soon as the Receiver is able to accurately calculate the amount available for distribution to the secured creditors.
- [20] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the APA) by the Purchaser, all Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

VALIDITY OF THE TRANSACTION

- [21] **ORDERS** that notwithstanding:
- (i) the pendency of these proceedings;
 - (ii) any assignment in bankruptcy pursuant to the BIA; or
 - (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the APA pursuant to this Order, are to be binding on any trustee in bankruptcy, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable

transaction under the BIA or any other applicable federal or provincial legislation, as against the Purchaser or the Receiver.

LIMITATION OF LIABILITY

- [22] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;
- [23] **DECLARES** that no action lies against the Receiver by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

CONFIDENTIALITY

- [24] **ORDERS** that exhibits R-3, R-10, R-11, R-12 and R-13 be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court;

and R-20 JS

GENERAL

- [25] **ORDERS** that the Purchaser or the Receiver shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [26] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [27] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [28] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.


Me Julie Bégin, registraire

Sébastien Guy
Blake, Cassels & Graydon LLP
Attorneys for the Receiver/Petitioner

SCHEDULE "A"
DRAFT CERTIFICATE OF THE RECEIVER

CANADA

**PROVINCE OF QUEBEC
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**THE REGISTRAR OF PERSONAL AND
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CERTIFICATE OF THE RECEIVER

RECITALS:

WHEREAS on October 31, 2017, Transport Medicar inc. (the "**Debtor**") filed a proposal, which was subsequently amended on November 8, 2017 (the "**Proposal**"), pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**");

WHEREAS on November 30, 2017, despite the approval of the Proposal by its creditors, the Debtor made a voluntary assignment in bankruptcy pursuant to the BIA;

WHEREAS on December 13, 2017, the Superior Court of Quebec (the "**Court**") issued an order appointing a receiver to the assets of the Debtor (the "**Receivership Order**");

WHEREAS pursuant to the terms of the Receivership Order, Deloitte Restructuring Inc. (the "**Receiver**") was named Receiver of the Debtor; and

WHEREAS on January 30, 2018, the Court issued an Approval and Vesting Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Purchaser of an agreement entitled *Asset Purchase Agreement* (the "**APA**") by and between the Receiver solely in its capacity as receiver and manager of the Debtor, as vendor (the "**Vendor**") and Maynards Industries Canada Ltd., as purchaser (the "**Purchaser**"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with between the Receiver and the Purchaser.

WHEREAS the Vesting Order contemplates the delivery to the Purchaser and the issuance of this Certificate of the Receiver once the (a) the APA has been executed and delivered; (b) the Purchase Price (as defined in the APA) has been paid by the Purchaser; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE RECEIVER CERTIFIES THE FOLLOWING:

- (a) the APA has been executed and delivered;
- (b) the Purchase Price (as defined in the APA) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was delivered and issued by the Receiver at ____ [TIME] on _____ [DATE].

Deloitte Restructuring Inc. in its capacity as Receiver,
and not in its personal capacity.

Name: Jean-Christophe Hamel

Title: Responsible representative