

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE
)
MADAM JUSTICE) 5th DAY OF JULY,
)
KIMMEL 2022

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

DISTINCT INFRASTRUCTURE GROUP INC., DISTINCT INFRASTRUCTURE GROUP WEST INC., DISTINCTTECH INC., IVAC SERVICES INC., IVAC SERVICES WEST INC., and CROWN UTILITIES LTD.

Respondents

SETTLEMENTS APPROVAL AND DISTRIBUTION ORDER

THIS MOTION, made by Deloitte Restructuring Inc., in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets (collectively, the “**Property**”) of each of Distinct Infrastructure Group Inc. (the “**Company**”), Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd. (collectively, the “**Debtors**”), for an Order, *inter alia*, (i) approving the Settlement Agreements (as defined below); (ii) sealing Confidential Appendices “1”, “2”, “3” and “4”, as described below, (iii) authorizing distributions to Royal Bank of Canada (the “**Bank**”), and (iv) approving the Third Special Report of the Receiver dated June 23, 2022 (the “**Third Special Report**”), and the conduct

and activities of the Receiver set out therein, was heard this day via judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Motion Record of the Receiver, including the Third Special Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver and those other counsel listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Maria Magni sworn June 27, 2022 filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF SETTLEMENT AGREEMENTS

2. **THIS COURT ORDERS** that (i) the Minutes of Settlement dated March 22, 2022 (the “**Settlement Agreement**”) entered into by the Company by its Special Receiver Douglas J. Cunningham (the “**Special Receiver**”), along with the other parties thereto, (ii) the Minutes of Settlement dated March 22, 2022 (the “**Side Letter**”) entered into by the Company by the Special Receiver, along with the other parties thereto, and (iii) the Minutes of Settlement dated March 22, 2022 (the “**Expenses Settlement Agreement**” and together with the Settlement Agreement and Side Letter, the “**Settlement Agreements**”) entered into by the Company by the Special Receiver, along with the other parties thereto, are each hereby authorized and approved.

3. **THIS COURT ORDERS** that the Receiver is authorized and directed to disburse the OSA Holdback (as defined in the Settlement Agreement) in accordance with the terms of the Settlement Agreement.

4. **THIS COURT ORDERS** that approval of the Settlement Agreements does not impair or affect the rights, remedies and defences available to MNP LLP in respect of the action against it by the Special Receiver with Court File Number CV-20-00648746-00CL (the “**MNP Action**”), except that MNP LLP may not crossclaim or make any third party claim against Giuseppe Lanni, Alexander Agius, George M. Newman, Garry Wetsch, Douglas Horner, Robert Normandeau, William Nurnberger, George Parselias, Royston Rachpaul, Jacinto Vieira, Emanuel Bettencourt,

and Michael Mifsud (the “**Settling Defendants**”) arising from the issues in the MNP Action for contribution and indemnity, whether under the *Negligence Act*, R.S.O. 1990, c. C.N.1 or otherwise.

5. **THIS COURT ORDERS** that the Settling Defendants will preserve and retain any documents in their possession that are relevant to the MNP Action. To the extent that such documents are not privileged, the Settling Defendants will provide such documents to the Special Receiver on written request after pleadings in the MNP Action are closed. The Special Receiver will subsequently deliver such documents to MNP, in accordance with the discovery plan to be entered into in the MNP Action. The Special Receiver shall reimburse the Settling Defendants for reasonable legal costs incurred by them in responding to a request for production, including the review of documents for privilege.

SEALING OF CONFIDENTIAL APPENDICES

6. **THIS COURT ORDERS** that Confidential Appendices “1”, “2”, “3” and “4” attached to the Third Special Report, which contain (i) a summary of the Settlement Agreement, (ii) the Settlement Agreement, (iii) the Side Letter, and (iv) the Expenses Settlement Agreement, respectively, are hereby sealed pending further order of the Court and shall not form part of the public record.

DISTRIBUTIONS TO ROYAL BANK OF CANADA

7. **THIS COURT ORDERS** that the Receiver is authorized and directed to distribute the proceeds received by the Receiver pursuant to the Settlement Agreements to the Bank in partial satisfaction of the Bank’s secured claim against the Debtors.

8. **THIS COURT ORDERS** that, in addition to and separate from those distributions provided for in paragraph 5 herein, the Receiver is authorized and directed to make future distributions of the proceeds of the Property to the Bank as the Receiver deems appropriate up to the amount of the Bank’s secured claim against the Debtors. For greater certainty, any distribution to the Bank under this paragraph is subject to those amounts payable by DistinctTech Inc. and iVac Services Inc. to the Laborers' International Union of North America, Local 183 (“**LiUNA**”) and/or its members and/or related trust funds pursuant to the Settlement Agreement between LiUNA and the Receiver dated August 13, 2020, which agreement was approved by the Court pursuant to an Order dated December 2, 2020.

9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications (including with respect to the ongoing bankruptcy proceedings of DistinctTech Inc.); and
- (c) any assignment in bankruptcy made in respect of any of the Debtors;

the distributions set out in paragraphs 5 and 6 of this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors (including Deloitte Restructuring Inc. in its capacity as trustee in bankruptcy of DistinctTech Inc.) and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF THE THIRD SPECIAL REPORT

10. **THIS COURT ORDERS** that the Third Special Report and the conduct and activities of the Receiver and the Special Receiver described therein be and are hereby approved; provided, however, that only the Receiver and the Special Receiver, in their personal capacities and only with respect to their own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

11. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver in carrying out the terms of this Order. All courts, tribunals, regulatory and

administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver as may be necessary or desirable to give effect to this Order or to assist the Receiver in carrying out the terms of this Order.

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ROYAL BANK OF CANADA

and

DISTINCT INFRASTRUCTURE GROUP INC. et al.

Applicant

Respondents

Court File No. CV-19-00615270-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

SETTLEMENTS APPROVAL AND DISTRIBUTION ORDER

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