



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-22-00691990-00CL

DATE: 29 March 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **DCL Corporation**

BEFORE JUSTICE: **OSBORNE**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE OSBORNE

1. DCL moves for an order approving the Transaction contemplated by a second amended and restated asset purchase agreement made as of March 28, 2023, vesting in the Purchaser all of the Applicant's right, title and interest in and to the Canadian Operating Assets, and corollary relief, together with a stay extension to June 30, 2023.
2. This proceeding has been managed throughout by Justice Conway. On February 27, 2023, I approved a sales process and stalking horse bid. On March 16, 2023, I adjourned this sale approval motion to provide an opportunity for the Applicant and the key stakeholders to address external issues that required resolution prior to sale approval.
3. Today, DCL relies upon the Affidavit of Scott Davido sworn March 10, 2023 with exhibits thereto, the Supplement to the Fourth Affidavit of Mr. Davido sworn March 28, 2023, the affidavit of Ms. Nancy Thompson sworn March 29, 2023 and exhibits thereto, and the Fourth Report of the Monitor dated March 28, 2023.
4. Defined terms in this Endorsement have the meaning given to them in my earlier Endorsements referred to above, the motion materials, and/or the Reports of the Monitor.
5. The relief sought by DCL today is unopposed. It is strongly supported by the senior creditors, the Term Loan Lenders and Term Loan Agent, the Pre-Petition Agent and DIP Agent and, not surprisingly, the Purchaser and related entities. It is strongly recommended and supported by the Monitor.
6. As set out in the motion materials, no other Qualified Bids were received as part of the sales process approved by this Court. The Transaction flows from the stalking horse bid, with amendments.
7. I am satisfied that the Applicant, supported by the stakeholders, has been working in good faith to resolve the outstanding issues since the parties were last before the Court. Those issues have now been resolved, although the path to that global resolution of outstanding issues has been multifactorial and complex. Closing of the Transaction is now scheduled for April 14, 2023.
8. The key issues were significant.
9. Given that authority to borrow under the Final DIP ABL Credit Agreement expired on March 17, 2023 (in anticipation of the earlier closing of the Transaction), a forbearance agreement was necessary. The DCL Group and the DIP Agent have entered into a forbearance agreement dated March 22, 2023. It was

amended, and pursuant to the amended and restated Forbearance Agreement, the forbearance period was extended through to April 14, 2023.

10. The Inter-Creditor Agreement required a fourth amendment to delay Closing to an outside date of April 14, 2023. Among other things, the amendments provide that all amounts outstanding under the DIP ABL Facility, in excess of the DCL Group's borrowing base after giving effect to all reserves (Supplemental ABL DIP Debt), will be paid out of the Term Loan Priority Collateral, prior to any payments being applied to the Pre-Petition Term Loan Obligations. The Special Reserve of \$2 million applies only toward calculating the Supplemental ABL DIP Debt and does not restrict the borrowing capacity of the DCL Group.
11. DCL has had to address three grievances filed by the Teamsters in respect of layoffs. An agreement in principle has now been reached pending finalization of minutes of settlement and approval of the Monitor.
12. While the Canadian Operating Purchaser is not required to make a decision with respect to the assumption of any benefits plans until prior to Closing, the DB Plans are in surplus with the result that there are no anticipated negative impact on the retirees if the Salaried DB Plan is not assumed.
13. The Second Amended and Restated Sale Agreement was executed on March 28, 2023. It provides for, among other things, the assignment by the original intended purchaser to the ultimate purchasers. Counsel for the Purchaser confirmed to the Court in submissions today that all assignees are SPV entities created for the purpose of closing the Transaction. Moreover, the original Purchaser remains liable for all obligations.
14. The Second Amended and Restated Sale Agreement also provides for the deferral of fees by restructuring professionals until Closing, together with protections in the event Closing does not occur, the implementation of various Closing Steps to achieve tax efficiencies, the implementation of certain provisions regarding retiree benefits (which, I observe, do not adversely impact retirees relative to the prior Sale Agreement), a relaxed closing condition that has the effect of restricting the DCL Group from borrowing outside of its borrowing base formula now amended to provide additional flexibility and breathing room, and finally, the implementation of other cleanup or housekeeping changes.
15. The key benefits of the Transaction, some of which were summarized in my Endorsement approving the stalking horse bid as part of the sales process, remain. They are all set out in the motion materials and summarized in the Monitor's Fourth Report. Those include the following:
 - a. Preservation of the employment of substantially all of the Applicant's active employees other than those at the Ajax Plant affected by discontinued operations;
 - b. the ability of the Applicant to continue its existing supply relationship with suppliers;
 - c. uninterrupted supply of goods for third-party customers serviced by the Mississauga plant of DCL;
 - d. allocation of \$575,000 of the Designated Amount on behalf of the Applicant to the Monitor to conduct an orderly wind down;
 - e. funding of a CCAA Cash Pool in the amount of \$750,000; and
 - f. the continued expectation of the Applicant and all stakeholders that all material closing conditions will be satisfied.
16. This Court has jurisdiction to approve the sale pursuant to section 36 of the CCAA. Subsection 36(3) sets out the non-exhaustive factors that the Court is required to consider in deciding whether to authorize such a sale.
17. Those factors dovetail with the criteria established in the case law colloquially referred to as the Soundair Principles: *Royal Bank of Canada v. Soundair Corp.*, [1991] 46 OAC 321 at para. 16.

18. I am satisfied on the record before the Court today that the Transaction should be approved. All of the requisite factors have been satisfied. The Sale Agreement represents the final product of a comprehensive, fair and transparent court-approved sales process. It was conducted by TM Capital with relevant expertise, assisted by the Applicant and overseen by the Monitor.
19. The Transaction is (subject to amendments as summarized above and described fully in the motion materials) that which was approved previously as the stalking horse bid. That relief, also, was unopposed. There being no other qualified bid, the Transaction in respect of which approval is sought today is not a surprise to any stakeholder. I am satisfied that the sales process was carried out and implemented as contemplated in, and required by, my earlier order.
20. In my view, my conclusion that the Transaction represents the best possible outcome in challenging circumstances is reinforced not only by the recommendation and support of the Monitor, but by the support of key stakeholders and creditors and the absence of any opposition. There is no question that the Transaction is more beneficial to the Applicant and its creditors and other stakeholders, than would be an asset sale or disposition in the context of a bankruptcy. The Transaction provides a going concern solution thereby preserving the jobs of the active employees as well as critical supplier relationships. It provides some recovery for unsecured creditors of the Applicant through the provision of the CCAA Cash Pool.
21. The difficulties and challenges that the circumstances of the Applicant presented have continued right through until literally late in the evening yesterday. While resolution of the outstanding issues took somewhat longer than had been anticipated, that resolution has now been achieved.
22. The Transaction is approved.
23. Given the anticipated closing of the Transaction on April 14, 2023, the Applicant is requesting an extension of the stay. That stay may be extended for any period the Court considers necessary, pursuant to section 11.02(2) of the CCAA.
24. I am satisfied that the stay extension is required to deal with post-closing, cleanup and housekeeping matters. It is anticipated that the Applicant will return to this Court to request an order granting to the Monitor additional powers necessary to effect and implement the wind down of the estate of the Applicant and administer the CCAA Cash Pool. The stay needs to remain in place while all of that occurs.
25. The Supplemental DIP Budget reflects that the Applicant will have sufficient liquidity until Closing. The Canadian Designated Amount Portion is projected to provide sufficient liquidity through to the end of the proposed state extension period. There is no question that cash flow is going to be tight, but it is projected to be sufficient.
26. Accordingly, the circumstances exist that make the stay extension order appropriate and, in this respect as well as in respect of the sales process, I am satisfied that the Applicant has acted, and is acting, in good faith and with due diligence.
27. The stay extension is also approved.
28. I understand that it is the intention of the US Affiliates of the Applicant to seek companion relief from the US Court later today.
29. Orders to go (stay extension and approval and vesting order) in the form signed by me today. They are effective immediately and without the necessity of issuing and entering, although the Applicant may have them issued through the Commercial List Office if necessary.

30. I acknowledge with gratitude the intensity and good faith of the key stakeholders, their counsel and other professional advisors in resolving the outstanding issues to set the foundation for the relief sought today.

Oliver, J.