

No. S1813807
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA
BANKRUPT UNDER THE LAWS OF JAPAN

ORDER MADE AFTER APPLICATION

))
))
BEFORE)	THE HONOURABLE JUSTICE)
)	FRANCIS)
))

August 16, 2022

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the Court appointed receiver over all of the assets, undertakings and property owned or beneficially owned by Masahiko Nishiyama in Canada (the "**Receiver**"), and Hiroshi Morimoto, trustee over the bankruptcy estate of Masahiko Nishiyama (the "**Trustee**") coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1 on August 16, 2022, and on hearing Jeffrey D. Bradshaw, lawyer for the Receiver and Trustee and no one else appearing although duly served; AND ON READING the Receiver's Third Report dated July 11, 2022, filed herein;

THIS COURT ORDERS that:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

ACTIVITIES OF THE RECEIVER APPROVAL

2. The activities of the Receiver from February 12, 2020, to May 31, 2022, as set out in the Third Report, are hereby approved.

DISTRIBUTION

3. The Receiver is authorized to pay out to the Foreign Representative, Hiroshi Morimoto, the net proceeds from the estate, less amounts to be reserved by the Receiver to fund the costs associated with the Receiver's discharge including final Receiver's fees and legal fees, including but not limited to any amounts held by the Receiver, or those amounts held by counsel to the Receiver and the Trustee in trust, to the benefit of those certain proceedings pursuant the *Bankruptcy Act of Japan*, undertaken in the Kyoto District Court against Masahiko Nishiyama, as recognized by this Court by Order of the Honourable Justice Maisonneville made on December 21, 2018 (the "**Recognition Order**"), as a foreign main proceeding pursuant to sections 269 and 270 the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**").

TERMINATION OF PROCEEDINGS

4. Upon the service by the Receiver of an executed certificate in substantially the form attached hereto as **Schedule "A"** (the "**Receiver's Termination Certificate**") on the Service List, by email, certifying that, to the knowledge of the Receiver, all matters to be attended to in these proceedings have been completed, these proceedings commenced under Part XIII of the *BIA*, shall be terminated without any further act or formality (the "**Termination Time**"), provided that nothing herein impacts the validity of any Orders made in these proceedings or any action or steps taken by any by individual, firm, partnership, corporation, governmental body or agency, or any other entity pursuant thereto.
5. The Receiver is hereby directed to file a copy of the Receiver's Termination Certificate with the Court as soon as practicable following service thereof on the Service List.
6. The Receiver is hereby directed to post a copy of the filed Receiver's Termination Certificate on the Receiver's website.

DISCHARGE OF RECEIVER

7. Effective at the Termination Time, Alvarez & Marsal Canada Inc., shall be and is hereby discharged from its duties as the Receiver and shall have no further duties, obligations, liabilities, or responsibilities as Receiver from and after the Termination Time, provided that, notwithstanding its discharge as Receiver, Alvarez & Marsal Canada Inc. shall have the authority to carry out, complete or address any matters in its role as Receiver as are ancillary or incidental to these proceedings following the Termination Time as may be required.

8. Notwithstanding any provision of this Order, the Receiver's discharge or the termination of these proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Receiver shall continue to have the benefit of any of the rights, approvals and protections in favour of the Receiver at law or pursuant to the *BIA*, the Receivership Order, any other Order of this Court in these proceedings or otherwise, all of which are expressly continued and confirmed following the Termination Time, including in connection with any actions taken by the Receiver following the Termination Time with respect to Masahiko Nishiyama.
9. No action or other proceeding shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver except with prior leave of this Court on not less than fifteen (15) days' prior written notice to the Receiver.

DISCHARGE OF FOREIGN REPRESENTATIVE

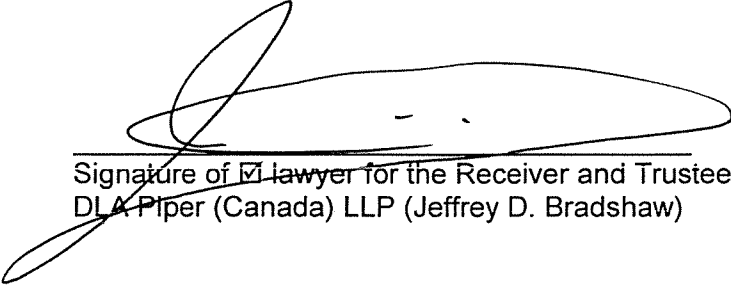
10. Effective at the Termination Time, Hiroshi Morimoto, shall be and is hereby discharged from his duties as the Foreign Representative in these proceedings and shall have no further duties, obligations, liabilities, or responsibilities as Foreign Representative from and after the Termination Time, provided that, notwithstanding its discharge as Foreign Representative, Hiroshi Morimoto shall have the authority to carry out, complete or address any matters in his role as Foreign Representative as are ancillary or incidental to these proceedings following the Termination Time as may be required.
11. Notwithstanding any provision of this Order, the Receiver's discharge or the termination of these proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and Hiroshi Morimoto shall continue to have the benefit of any of the rights, approvals and protections in favour of a Foreign Representative at law or pursuant to the *BIA*, the Recognition Order, any other Order of this Court in these proceedings or otherwise, all of which are expressly continued and confirmed following the Termination Time, including in connection with any actions taken by Hiroshi Morimoto as Foreign Representative in Canada following the Termination Time with respect to Masahiko Nishiyama.
12. No action or other proceeding shall be commenced against Hiroshi Morimoto in any way arising from or related to its capacity or conduct as Foreign Representative except with prior leave of this Court on not less than fifteen (15) days' prior written notice to Hiroshi Morimoto.

GENERAL

13. Any party affected by this order may apply to the Court as necessary to seek further orders and directions to give effect to this Order.
14. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver

and the Foreign Representative and their respective agents 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 Foreign Representative or the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Foreign Representative or the Receiver and their respective agents in carrying out the terms of this Order.

15. Endorsement of this Order by counsel or any unrepresented party appearing on this application, other than counsel to the Receiver, is hereby dispensed with.



Signature of ☒ lawyer for the Receiver and Trustee
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)

BY THE COURT



REGISTRAR

SCHEDULE "A"

RECEIVER'S TERMINATION CERTIFICATE

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RECEIVER'S TERMINATION CERTIFICATE

- A. By Order pronounced on December 21, 2018, (the "**Recognition Order**") by Justice Maisonville of the Supreme Court of British Columbia, Hiroshi Morimoto was recognized as the Foreign Representative under Part XIII of the *Bankruptcy and Insolvency Act* ("**BIA**") for those certain proceedings pursuant the *Bankruptcy Act of Japan*, undertaken in the Kyoto District Court against Masahiko Nishiyama, (the "Foreign Proceedings"), a foreign main proceeding pursuant to sections 269 and 270 of the *BIA*.
- B. By Order pronounced on February 14, 2019, (the "**Receivership Order**") by Justice Voith of the Supreme Court of British Columbia, Alvarez and Marsal Canada Inc. was appointed as the Receiver of the assets, undertakings and property of Masahiko Nishiyama in Canada (and in such capacity, the "**Receiver**").
- C. Pursuant to an order of the Court dated August ____, 2022 (the "**Termination Order**"), the Court authorized these within proceedings be terminated and the Receiver be discharged by delivery of a Receiver's Termination Certificate by way of email on the Service List.
- D. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Termination Order.

THE RECEIVER HEREBY CERTIFIES the following:

1. The within proceedings are terminated.

This Certificate was delivered by the Receiver at [TIME] on _____ 2022.

Alvarez and Marsal Canada Inc., in its
capacity as the Receiver of Masahiko
Nishiyama and not in its personal capacity:

Per: _____

Name

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JDB/day