

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 14TH
JUSTICE *HAINES*) DAY OF JULY, 2016



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN
CANADA LTD.

Applicant

VARIATION OF RISP ORDER

THIS MOTION, made by Salus Capital Partners, LLC ("**Salus**") for an order varying the Refinancing and/or Investment Solicitation Process (the "**RISP**"), which RISP was approved pursuant to the Amended and Restated Initial Order (the "**Amended and Restated Initial Order**") in these *Companies' Creditors Arrangement Act* (the "**CCAA**") proceedings of Ben Moss Jewellers Western Canada Ltd. (the "**Applicant**"), and which RISP was previously amended by an order made July 7, 2016 (the "**July 7 Order**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kyle Shonak sworn July 13, 2016, and on hearing the submissions of counsel for Salus, counsel for the Applicant, counsel for Alvarez & Marsal Canada Inc., in its capacity as monitor in respect of the Applicant (the "**Monitor**"), and such other counsel as were present and on reading the Affidavit of Service of Sam Babe sworn July 14, 2016,

SERVICE

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

AMENDMENTS TO THE RISP

2. **THIS COURT ORDERS** that Phase 2 of the RISP, as amended by the July 7 Order, is hereby further amended as follows:

- (a) Section 12 is deleted in its entirety, without replacement;
- (b) Section 13 is deleted in its entirety and replaced with the following:

“13. Each Qualified Bidder that is not eliminated from the Process and that wishes to pursue a Transaction Opportunity must deliver a final binding proposal (the “**Final Bid**”):

- (a) in the case of a BM Sale Proposal, a duly authorized and executed purchase agreement based on the Form of Purchase Agreement and accompanied by a blackline to the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto; or
- (b) in the case of an Agent Proposal, a duly authorized and executed agency agreement based on the Form of Agency Agreement and accompanied by a blackline to the Form of Agency Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

to the Monitor at the address specified in Schedule “A” hereto (including by email) so as to be received by it not later than 5:00 pm (Eastern Daylight Time) on July 15, 2016 or such other date determined by the Monitor, BM and the Lender (the “**Bid Deadline**”). Upon receipt, the Monitor shall forthwith deliver all submitted Final Bids to the Lender and the CRO.”

- (c) Subsection 14(a) is deleted in its entirety, without replacement; and
- (d) Section 22 is deleted in its entirety and replaced with the following:

“22. In the event that the Auction will be held, the Monitor will send a process letter (the “**Process Letter**”) to all Auction participants by no later than July 18, 2016, which shall include, *inter alia*: (a) detailed bidding procedures, including bid assessment criteria; and (b) an overview of the Comparison Model, including underlying assumptions.”

GENERAL

3. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "Hainey J.", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 14 2016

PER / PAR: 

**IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BEN MOSS JEWELLERS
WESTERN CANADA LTD.**

APPLICANT

Court File No. CV-16-11397-00CL

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(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT
TORONTO**

VARIATION OF RISP ORDER

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