



2024

Hfx. No. 538745

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C- 36 as Amended (the "**CCAA**")

AND IN THE MATTER OF an application of Blue Lobster Capital Limited ("**Blue Lobster Capital**"), 3284906 Nova Scotia Limited ("**328NSL**"), 3343533 Nova Scotia Limited ("**334NSL**") and 4318682 Nova Scotia Limited ("**431NSL**"), (the "**Applicants**")

MEMORANDUM OF FACT AND LAW OF THE APPLICANTS

PART I: INTRODUCTION

1. On 13 December 2024, the Applicants obtained CCAA protection from the Nova Scotia Supreme Court under an initial order ("**Initial Order**") providing relief including:
 - a. declaring the Applicants are debtor companies to which the CCAA applies;
 - b. granting an administration charge up to \$175,000.00 (the "**Administration Charge**");
 - c. granting a stay of proceedings until the comeback hearing on 20 December 2024 (the "**Comeback Hearing**");
 - d. appointing KSV Restructuring Inc. ("**KSV**" or the "**Monitor**") as Monitor of the Applicants in these proceedings (the "**CCAA Proceeding**"); and
 - e. authorized the Applicants and Monitor to pursue a refinance or sale process and perform a transaction whereby the Applicants' obligations to the Royal Bank of Canada ("**RBC**") would be repaid in full (the "**Refinance Process**").
2. The Applicants subsequently received an Amended and Restated Initial Order ("**ARIO**"), which extended the Stay Period to 08 March 2025.
3. The Applicants as proposed borrower and RBC as proposed lender (the "**DIP Lender**")

have entered a debtor-in-possession (“DIP”) term sheet for funding (the “DIP Facility”), attached as **Schedule “A”** in its proposed form to the Motion filed herein (the “DIP Term Sheet”).

4. The Applicants are seeking a Charging Order which declares that there be a DIP Lender’s Charge granted on the Property as security for any and all obligations of the Applicants under or pursuant to the DIP Facility and the DIP Term Sheet, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Facility and the DIP Term Sheet. The DIP Lender’s charge shall have the priority set out herein and in the draft Charging Order.
5. At the hearing, the Applicants will rely on the Monitor’s Second Report, which it anticipates will be filed on 17 January 2025.

PART II: ISSUES AND LAW

6. The sole issue for consideration is whether the proposed Charging Order should be granted.
7. Section 11 of the CCAA confers jurisdiction on the Court in the broadest of terms: “the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances”.
8. Interim financing is dealt with under s. 11.2 of the CCAA:

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and 23(1)(b), if any.

9. In the present case, the DIP Term Sheet satisfies the factors identified in 11.2(4). RBC is the senior secured creditor who would be impacted by DIP financing. RBC has proposed the DIP Term Sheet attached in draft.
10. The Charging Order as requested supports and accords with the objectives of the CCAA and other insolvency legislation in Canada. These include timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of claims; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company.

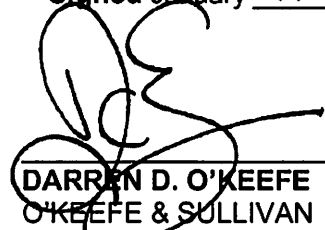
PART III: CONCLUSION AND RELIEF SOUGHT

11. The Applicants submit that this CCAA Proceeding remains the best solution available to stabilize the Applicants' operational and financial situation and allow them to maximize value for stakeholders, satisfy their secured creditor, and continue as a going concern. The DIP Term Sheet and associated Charging Order will facilitate the Applicants' successful emergence from this CCAA.
12. The Applicants therefore seek this Honourable Court's approval of the draft Charging

Order pursuant to the CCAA substantially in the form presented.

All of which is respectfully submitted.

Signed January 14, 2025



DARREN D. O'KEEFE
O'KEEFE & SULLIVAN
Counsel for the Company
80 Elizabeth Avenue, Suite 202
St. John's, NL, A1A 1W7
dokeefe@okeefesullivan.com



MARC DUNNING
BURCHELL WICKWIRE
BRYSON LLP
Local Counsel for the Company
190 - 1801 Hollis Street,
Halifax, NS B3J 3N4
mdunning@bwblp.ca

Schedule "A"

Service List

Name	Contact
<p>Blue Lobster Capital Limited 3284906 Nova Scotia Limited 3343533 Nova Scotia Limited 4318682 Nova Scotia Limited</p> <p>Applicants</p>	<p>Darren O'Keefe, Lawyer for the Applicants O'Keefe Sullivan 80 Elizabeth Avenue, Suite 202 St, John's, NL A1A 1W7 Email: dokeefe@okeefesullivan.com</p> <p>Marc Dunning, Lawyer for the Applicants (Local Counsel) Burchell Wickwire Bryson LLP 1900-1801 Hollis Street Halifax, NS B3J 3N4 Email: mdunning@bwblp.ca</p>
<p>KSV Restructuring Inc. 220 Bay Street, Suite 1300 Toronto, ON M5J 2W3</p> <p>Monitor</p>	<p>Bobby Kofman Email: bkofman@ksvadvisory.com</p> <p>Mitch Vininsky Email: mvininsky@ksvadvisory.com</p> <p>Sharon Kour, Lawyer for the Monitor Reconstruct LLP 120 Adelaide Street West, Suite 2500 Toronto, ON M5H 1T1 Email: skour@reconllp.com</p>
<p>Royal Bank of Canada 700-1871 Hollis Street Halifax, NS B3J 0C3</p>	<p>Dave Northrup Email: dave.northrup@rbc.com</p> <p>Maurice P. Chiasson, KC Email: mchiasson@stewartmckelvey.com</p> <p>Sara Scott Email: sscott@stewartmckelvey.com</p> <p>Colton Smith Email: csmith@stewartmckelvey.com</p> <p>Stewart McKelvey Queen's Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2</p>

Name	Contact
Ernst & Young Inc. Benjamin Place 11 Englehart Street, Suite 200 Dieppe, NB E1A 7Y7	Steven J. McLaughlin Email: Steven.J.McLaughlin@parthenon.ey.com Drew MacCormack Email: Drew.Maccormack@parthenon.ey.com
Bank of Nova Scotia 1709 Hollis Street, 6 th Floor Halifax, NS B3J 1W1	Stephen Kingston, Recognized Agent McInnes Cooper 1969 Upper Water Street, Suite 1300 Halifax, NS B3J 3R7 Email: stephen.kingston@mcinnescooper.com
Tesla Motors ULC 1325 Lawrence Avenue, East Toronto, ON M3A 1C6	Christopher MacIntyre, Recognized Agent McInnes Cooper 1969 Upper Water Street, Suite 1300 Halifax, NS B3J 3R7 Email: chris.macintyre@mcinnescooper.com
Penske Truck Leasing Canada Inc. / Locations de Camions Penske Canada Inc. 7405 East Danbro Crescent Mississauga, ON L5N 6P8	Robert Eiding Eiding & Associates 1350 rue Sherbrooke ouest, suite 320 Montreal, PQ H3G 1J1 Email: robert.eiding@eiding.ca
Toyota Credit Canada 80 Micro Court, Ste. 200 Markham, ON L3R 9Z5	Gavin MacDonald, Recognized Agent Cox & Palmer Nova Centre, South Tower 1500-1625 Grafton Street Halifax, NS B3J 3E5 Email: gmacdonald@coxandpalmer.com
L. Burge Services Limited 179 Foord Street Stellarton, NS B0K 1S0	Ray O'Blenis, Recognized Agent O'Blenis Law 179 Foord Street Stellarton, NS B0K 1S0 Email: ray@oblenislaw.com
Shell Canada Products Limited 2000 Barrington Street, Suite 1101-C Halifax, NS B3J 3K1	Barry Horne Miller Thompson, LLP 40 King Street West, Suite 5800 Toronto, ON M5H 3C2 Email: bhorne@millerthomson.com
Crews Automotive Incorporated 1917 Drummond Road Westville, NS B0K 2A0	Kenneth Crews, Recognized Agent Email: kennycrews@yahoo.ca
Name	Contact

Saint-Famille Wines Limited 106 Greenpark Close, Unit 612 Halifax, NS B3S 0A4	Michael MacKenzie Atlantica Law Group 99 Water Street Windsor, NS B0N 2T0 Email: mmackenzie@atlanticalaw.ca
Suzanne Corkum 106 Greenpark Close, Unit 612 Halifax, NS B3S 0A4	Michael MacKenzie Atlantica Law Group 99 Water Street Windsor, NS B0N 2T0 Email: mmackenzie@atlanticalaw.ca
Kevin Alexander Rice Daniel Ronald Allen Tracey Lynn Allen	Paul Radford, KC Patterson Law 2100-1801 Hollis Street Halifax, NS B3J 3N4 Email: pradford@pattersonlaw.ca
Canada Revenue Agency Insolvency Intake Centre Shawinigan – Sud National Verification and Collections Centre 4695 Shawinigan-Sud Boulevard Shawinigan, QC G9P 5H9	Deanna Frappier, KC Email: deanna.frappier@justice.gc.ca Caitlin Ward Email: caitlin.ward@justice.gc.ca
Office of the Superintendent of Bankruptcy Maritime Centre 1505 Barrington Street, 16 th Floor Halifax, NS	Email: ic.osbccaa-laccbsf.ic@canada.ca

Email List

dokeefe@okeefesullivan.com; mdunning@bwblp.ca; bkofman@ksvadvisory.com;
mvininsky@ksvadvisory.com; skour@reconllp.com; dave.northrup@rbc.com;
mchiasson@stewartmckelvey.com; sscott@stewartmckelvey.com;
csmith@stewartmckelvey.com; Steven.J.McLaughlin@parthenon.ey.com;
Drew.Maccormack@parthenon.ey.com; stephen.kingston@mcinnescooper.com;
chris.macintyre@mcinnescooper.com; robert.eidinger@eidinger.ca;
gmacdonald@coxandpalmer.com; ray@oblenislaw.com; bhorne@millertthomson.com;
kennycraws@yahoo.ca; mmackenzie@atlanticalaw.ca; pradford@pattersonlaw.ca;
deanna.frappier@justice.gc.ca; caitlin.ward@justice.gc.ca; ic.osbccaa-laccbsf.ic@canada.ca;