

No. S240195  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 1985, c C-36, as amended**

**and**

**IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC., 4540514  
CANADA INC., 1061660 B.C. LTD., 0592286 B.C. LTD, 0713447 B.C. LTD, AND 0597783  
B.C. LTD**

**PETITIONERS**

**DISTRIBUTION, STAY EXTENSION AND  
FEE APPROVAL ORDER**

BEFORE THE HONOURABLE  
JUSTICE STEPHENS

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AUGUST 27, 2024

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed Monitor (in such capacity the "Monitor"), coming on for hearing at Vancouver, British Columbia, on the 27<sup>th</sup> day of August, 2024; AND ON HEARING from counsel of the Monitor, Sean Zweig and Andrew Froh and those other counsel listed on Schedule "A" hereto, and no one else appearing although duly served; AND UPON READING, the material filed, including the Fourth Report of the Monitor dated August 22, 2024 (the "Fourth Report"); AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Court;

## THIS COURT ORDERS AND DECLARES THAT:

1. Capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the: (i) Initial Order of Justice Stephens made on January 11, 2024 (the “**Initial Order**”), as amended by the Order of Justice Stephens dated January 22, 2024 (the “**Amended and Restated Initial Order**”); or (ii) the First Report (as defined in the Amended and Restated Initial Order), the Second Report of the Monitor dated April 19, 2024 (the “**Second Report**”), the Third Report of the Monitor dated June 24, 2024 (the “**Third Report**”) and the Fourth Report, as the case may be.
2. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

## DISTRIBUTION

3. The Monitor and/or any of the Petitioners are hereby authorized to distribute the remaining proceeds received from the Nexii Transaction up to and including USD \$67,800,000 (the “**Remaining Proceeds**”) to the Senior Secured Lenders or such other person(s) as the Senior Secured Lenders may direct (the “**Distribution**”).
4. The Monitor and/or any of the Petitioners are hereby authorized to take all necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.
5. Notwithstanding:
  - (a) the pendency of these CCAA proceedings;
  - (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) or other applicable legislation in respect of the Petitioners and any bankruptcy or receivership order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Petitioners;
  - (d) and any provisions of any federal or provincial legislation,

the Distribution shall be made free and clear of all Encumbrances (including the Charges) and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Petitioners and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. The Monitor and/or any of the Petitioners shall be entitled to deduct and withhold from any Distribution such amounts as may be required to be deducted or withheld with respect to such Distribution under any applicable tax legislation and to remit such amounts to the appropriate governmental authority or other person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the Distribution in respect of which such withholding or deduction was made.
7. Any payments, distributions and disbursements made under this Order shall not constitute a “distribution” by any person and the Monitor shall not constitute a “legal representative” or “representative” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 23 of the *Canada Pension Plan Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), and section 97.39 of the *Customs Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), and the Monitor, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under this Order, and is not exercising any discretion in making such distributions, disbursements or payments under this Order and no person is “distributing”, nor shall be considered to “distribute” nor have “distributed”, such funds for the purpose of the Tax Statutes. Further, the Monitor shall not incur any liability under the Tax Statutes in respect of its making any payments, distributions or disbursements ordered or permitted under this Order, and are hereby forever released and discharged from any claims against it, him or her under or pursuant to the Tax Statutes or otherwise at law, arising in respect of any such payments, distributions or disbursements made under this Order and any claims of this nature are hereby forever barred.

#### **STAY EXTENSION**

8. The Stay Period granted in paragraph 16 of the Amended and Restated Initial Order, as extended pursuant to paragraph 17 of the Ancillary Order of Justice Stephens dated June 28, 2024, is hereby extended to the earlier of: (a) the CCAA Termination Time; and (b) September 30, 2024.

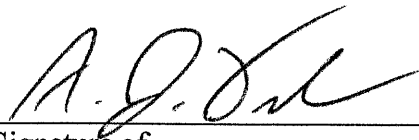
#### **APPROVAL OF ACTIVITIES AND FEES**

9. The activities of the Monitor as described in the Fourth Report are hereby approved; provided however that only KSV Restructuring Inc. in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
10. The Monitor's and Bennett Jones' estimated aggregate future fees and disbursements up CAD \$50,000 to the CCAA Termination Time, as outlined in the Fourth Report, are hereby approved.

**GENERAL**

- 11. The Petitioners or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.
- 12. Endorsement of this Order by counsel appearing, other than counsel for the Monitor, is hereby dispensed with.
- 13. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court overseeing the Petitioners' proceedings under Chapter 15 of the Bankruptcy Code in Case No. 24-10026-JKS, or in any other foreign jurisdiction, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

  
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Signature of  
 Party  Lawyer for KSV  
Restructuring Inc.

Bennett Jones LLP  
(~~Sean Zweig~~)  
Andrew Froh

BY THE COURT

  
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REGISTRAR



Schedule "A"

List of Counsel

NAME	PARTY
<del>Sean Zweig</del> and Andrew Froh	The Monitor, KSV Restructuring Inc.

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