

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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 SKYLINK EXPRESS INC. (the "**Applicant**")

FACTUM OF THE APPLICANT, SKYLINK EXPRESS INC.

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J

Tel: 416. 202.6707

jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO#: 87151U

Tel: 416.278.3787

lauren.archibald@nortonrosefulbright.com

Lawyers for the Applicant

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PART 1 – INTRODUCTION

1. The Applicant, Skylink Express Inc. (the “**Applicant**”), brings this motion requesting the following relief, among other things:

- (a) Extending the Stay Period (as defined below) up to and including to April 30, 2025;
- (b) Increasing the maximum borrowing amount under the Applicant’s debtor in possession credit facility (the “**DIP Facility**”) from \$4.55 million to \$5.90 million, in accordance with a third amendment to the DIP Term Sheet (as defined below); and
- (c) Approving the seventh report of KSV Restructuring Inc. (“**KSV**”), in its capacity as the monitor of the Applicant (the “**Monitor**”), dated January 23, 2025 (the “**Seventh Report**”), and the Monitor’s activities described therein.

PART 2 – SUMMARY OF FACTS

2. Further background in these proceedings is set out in the Affidavit of David Atkins sworn January 23, 2025¹ and the Seventh Report.² Capitalized terms used herein and not otherwise defined have the meaning given to them in the Seventh Report.

¹ Affidavit of David Atkins sworn January 23, 2025 (“**Atkins Affidavit**”), Motion Record of the Applicant returnable January 29, 2025 (“**MR**”), Tab 2, p. 8.

² Seventh Report to Court of KSV Restructuring Inc. as Monitor of Skylink Express Inc. dated January 23, 2025 (“**Seventh Report**”).

Background

3. On March 11, 2024, the Applicant sought and obtained an initial order (as amended and restated, the “**Initial Order**”), which granted the Applicant protection pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “**CCAA**”), and imposed a stay of proceedings (the “**Stay Period**”) to March 21, 2024. Pursuant to the Initial Order, KSV was appointed as the Monitor.³

4. In connection with these CCAA proceedings (the “**Proceedings**”), the Applicant and the Applicant’s senior secured creditor, The Toronto-Dominion Bank (“**TD**”), have entered into an escrow agreement and a forbearance agreement (together, the “**TD Stand Still Agreements**”). The TD Stand Still Agreements were approved by the Court on April 25, 2024.⁴

5. On May 30, 2024, the Court approved a sale process (the “**Sale Process**”) for the Applicant’s various aircraft and certain other assets. Subsequently, on July 5, 2024, the Court issued an order approving the sale of one of the Applicant’s caravan aircraft. On July 29, 2024, the Court approved the sale of three additional caravan aircraft.⁵

6. Since the granting of the Initial Order, the Applicant has sought and obtained various orders from the Court approving extensions to the Stay Period. Most recently, on October 30, 2024, the Court extended the Stay Period up to and including January 31, 2024 to allow the Applicant to continue to advance the Sale Process with respect to the balance of the Applicant’s unsold assets (collectively, the “**Remaining Assets**”).⁶

³ Atkins Affidavit at para. 4, MR, Tab 2, p. 9.

⁴ Atkins Affidavit at para. 6, MR, Tab 2, p. 9.

⁵ Atkins Affidavit at paras. 7-8, MR, Tab 2, p. 9.

⁶ Atkins Affidavit at paras. 5-9, MR, Tab 2, p. 9.

Sale Process

7. From the outset, the principal purpose of the Proceedings was to provide the Applicant with time to restructure its primary customer contract with United Parcel Services Canada Ltd. (“UPS”). Those negotiations were unsuccessful, and the Applicant entered into a wind-down agreement dated on July 31, 2024 setting out the terms of the agreed wind down of the Applicant’s performance of that contract. The wind-down services are now complete.⁷

8. The primary remaining activity in the Proceedings is to complete the Sale Process with respect to the Remaining Assets, which include ten Beechcraft 1900C aircrafts, plus inventory and other sundry assets.⁸

9. The Applicant, with the Agent, continues to carry out the Sale Process for the Remaining Assets. In particular, the Applicant has been in communication with interested parties, including two parties that have expressed an interest in acquiring the majority of the Remaining Assets and, in one case, its air operator certificate.⁹

DIP Facility

10. The Initial Order approved the Applicant’s debtor in possession term sheet with the DIP Lender dated as of March 8, 2024 (the “**DIP Term Sheet**”) and authorized an initial borrowing of \$1.35 million under the DIP Term Sheet, as secured by a corresponding DIP Lender’s Charge in the same amount.¹⁰ On March 21, 2024, the Court approved an increase in the Applicant’s permitted borrowings under the DIP Facility to \$2.5 million.¹¹

⁷ Atkins Affidavit at para. 10, MR, Tab 2, p. 10.

⁸ Atkins Affidavit at para. 11, MR, Tab 2, p. 10.

⁹ Atkins Affidavit at paras. 12-13, MR, Tab 2, p. 10.

¹⁰ Seventh Report at para. 1.2(b)(ii), p. 1.

¹¹ Seventh Report at para. 1.3(c), p. 2.

11. Thereafter, on May 30, 2024, the Court approved a further increase in the maximum borrowing under the DIP Facility to \$3 million.¹² An Order of the Court dated July 29, 2024 approved the current maximum borrowing amount under the DIP Term Sheet at \$4.55 million, pursuant to a second amendment to the DIP Term Sheet (the “**Second Amended DIP Term Sheet**”).¹³

12. The DIP Lender has agreed to increase the Applicant’s permitted borrowings under the DIP Facility to \$5.90 million pursuant to the Third Amended DIP Term Sheet, which amounts are to be secured by the DIP Lender’s Charge. The Third Amended DIP Term Sheet is identical to the Second Amended DIP Term Sheet except for the maximum amount that can be borrowed under the DIP Facility.¹⁴

PART 3 – STATEMENT OF ISSUES, LAW & AUTHORITIES

13. The issues to be determined on this motion are as follows:

- (a) Whether to extend the Stay Period up to and including April 30, 2025;
- (b) Whether to approve an increase in the maximum borrowing amount under the DIP Facility from \$4.55 million to \$5.90 million; and
- (c) Whether to approve the Seventh Report and the Monitor’s activities as described therein.

Stay Extension

14. The Court may extend the Stay Period pursuant to Section 11.02(2) of the CCAA. The Court may make such an order where it is satisfied that: (a) circumstances exist which may such

¹² Seventh Report at para. 1.5(d), p. 2.

¹³ Seventh Report at para. 1.9(b), p. 2.

¹⁴ Atkins Affidavit at para. 21, MR, Tab 2, pp. 11-12.

an order appropriate; and (b) the Applicant has acted and is continuing to act in good faith and with due diligence.¹⁵

15. Extending the Stay Period is necessary and appropriate in the circumstances for the following reasons, among others:

- (a) The extension of the Stay Period will provide the Applicant with sufficient time to continue to advance the Sales Process;¹⁶
- (b) A revised cash flow forecast demonstrates that, subject to the requested increase in the DIP Facility, the Applicant will be able to fund its post-filing obligations;¹⁷
- (c) The Monitor is of the opinion that the extension is in the best interests of the Applicant's stakeholders and that no stakeholder will be prejudiced by extending the Stay Period;¹⁸
- (d) TD does not oppose the extension of the Stay Period and the DIP Lender supports it;¹⁹ and
- (e) Neither the Applicant nor the Monitor is aware of any party opposed to an extension of the Stay Period.²⁰

16. Furthermore, the Applicant has acted, and continues to act, in good faith and with due diligence during the course of the Proceedings.²¹

¹⁵ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), ss. [11.02\(2\)-\(3\)](#).

¹⁶ Seventh Report at para. 7.2(c), p. 10.

¹⁷ Seventh Report at para. 7.2(b), p. 10.

¹⁸ Seventh Report at para. 7.2(e), p. 10.

¹⁹ Seventh Report at para. 7.2(d), p. 10.

²⁰ Seventh Report at para. 7.2(f), p. 10.

²¹ Seventh Report at para. 7.2(a), p. 10.

DIP Facility Increase

17. Section 11.2 of the CCAA provides a court with the jurisdiction to approve interim financing and related priority charges.²² In determining whether to approve a proposed increase in interim financing and a corresponding charge, a court is to consider the following non-exhaustive factors:²³

- (a) The period during which the company is expected to be subject to proceedings under the CCAA;
- (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) The nature and value of the company's property; and
- (e) Whether any creditor would be materially prejudiced as a result of the security or charge.

18. In this case, the following factors support the request for the proposed DIP Facility increase pursuant to the Third Amended DIP Term Sheet:

- (a) The Third Amended DIP Term Sheet will provide the Applicant with essential funding to continue to carry out the Sale Process and maintain its remaining aircraft during the extension of the Stay Period;²⁴

²² CCAA, [s. 11.2](#).

²³ *Ibid*, [s. 11.2\(4\)](#).

²⁴ Seventh Report at para. 4.2.1, p. 8.

- (b) Without the increased amount, the Applicant may not have sufficient cash flow to carry out the Sale Process and to service its debt owing to TD;²⁵
- (c) The proposed DIP Facility ranks subordinate to TD's security interest, which is a requirement of TD;²⁶
- (d) The Monitor believes it is unlikely that any other lender would provide DIP funding on a subordinated basis to TD;²⁷
- (e) The DIP Lender is not seeking an increase in the cost of the DIP Facility, and the Monitor has previously concluded that the DIP Facility's cost is within the range of similar interim financing facilities recently approved by the Court and other Canadian courts in CCAA proceedings;²⁸
- (f) TD does not oppose the proposed increase in the DIP Facility and corresponding DIP Lender's Charge;²⁹ and
- (g) There are no structuring, facility, standby or other fees being charged by the DIP Lender under the DIP Facility.³⁰

The Monitor's Activities

19. In *Re Target Canada Co.*, the Court noted that there are good policy and practical reasons to grant the approval of a monitor's report and the activities described therein.³¹ The Monitor's activities, as detailed in the Seventh Report, were necessary and carried out in good faith by the Monitor. In addition, the Monitor's activities were undertaken in accordance with its

²⁵ Seventh Report at para. 4.2.1, p. 8.

²⁶ Seventh Report at para. 4.2.1, p. 8.

²⁷ Seventh Report at para. 4.2.1, p. 8.

²⁸ Seventh Report at para. 4.2.1, p. 8.

²⁹ Seventh Report at para. 4.2.1, p. 9.

³⁰ Seventh Report at para. 4.2.1, p. 9.

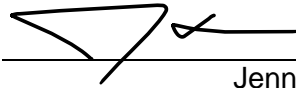
³¹ *Re Target Canada Co.*, [2015 ONSC 7574](#) at para 22; see also *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at para 13.

mandate set forth in the previous Orders issued in the Proceedings and the CCAA more generally. Approval of the Monitor's activities will assist in moving forward with the next steps in the Proceedings.

PART 4 - ORDER REQUESTED

20. For the reasons set out above, the requested relief set out in the Applicant's notice of motion should be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of January, 2025.



Jennifer Stam

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO#: 87151U

Tel: 416.278.3787

lauren.archibald@nortonrosefulbright.com

Lawyers for the Applicant

Schedule "A"

LIST OF AUTHORITIES

1. *Laurentian University of Sudbury*, 2022 ONSC 2927
2. *Re Target Canada Co.*, 2015 ONSC 7574

Schedule "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

COMPANIES' CREDITORS ARRANGEMENT ACT R.S.C., 1985, c. C-36

Section 11.02

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Section 11.2

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
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

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Lauren Archibald LSO#: 87151U

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Lawyers for the Applicant