

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-060613-227

**SUPERIOR COURT
(Commercial Division)**

**IN THE MATTER OF THE PLAN OF COMPROMISE
AND ARRANGEMENT OF:**

RISING PHOENIX INTERNATIONAL INC.

-and-
10864285 CANADA INC.

-and-
11753436 CANADA INC.

-and-
CDSQ IMMOBILIER INC.

-and-
COLLÈGE DE L'ESTRIE INC.

-and-
**ÉCOLE D'ADMINISTRATION ET DE
SECRÉTARIAT DE LA RIVE-SUD INC.**

-and-
9437-6852 QUÉBEC INC.

-and-
9437-6845 QUÉBEC INC.

Debtors

-and-
RICHTER INC.

Monitor

-and-
**13901823 CANADA INC. (CESTAR
COLLEGE)**

Purchaser/Applicant

**MOTION FROM CESTAR COLLEGE FOR WITHDRAWAL
OR SEALING OF DOCUMENTS**

(Section 11 of the *Companies' Creditors Arrangement Act*
and Section 12 of the *Code of Civil Procedure*)

**TO THE HONOURABLE JUSTICE DAVID R. COLLIER OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, COMMERCIAL DIVISION, THE
APPLICANT SUBMITS THE FOLLOWING:**

A. INTRODUCTION

1. 13901823 Canada Inc. ("**Cestar College**" or the "**Purchaser**") is an impleaded party in the matter of the plan of compromise and arrangement of the above-mentioned Debtors.
2. In the context of the sale process of the assets and operations of the Debtors, Cestar College submitted a bid and was ultimately chosen by the Debtors and the Monitor as the purchaser of these assets through an asset purchase agreement.
3. Following negotiations, the Debtors, the Monitor and Cestar College agreed to a transaction (the "**Transaction**") reflected in an agreement entitled Asset Purchase Agreement, dated March 9, 2022 ("**APA**"), which was communicated to the Court, under seal, for approval.
4. The APA was covered by a sealing order on March 14th, 2022, until the closing of the Transaction, which occurred on June 30, 2022.
5. Cestar College is seeking an order to withdraw the APA from the Court record, or alternatively for the APA to remain under seal until further order from this Honorable Court, as it is imperative to protect the commercial integrity of the Transaction and allow Cestar College to abide by its confidentiality obligations.

B. FACTUAL CONTEXT

6. Following the commencement of the proceedings by Debtors pursuant to the *Companies Creditors Arrangement Act*, (the "**CCAA**"), the Debtors and the Monitor, amongst others, initiated an accelerated Sale and Investment Solicitation Process ("**SISP**"), which was launched on January 24, 2022 and the bids were received on February 11, 2022, amongst them Cestar College.
7. On March 9, 2022, Cestar College agreed to the terms of the transaction with the Debtors in the APA, which was communicated to the Court for its approval as Exhibit R-3 in support of the Debtors' *Application for (i) the issuance of an approval and vesting order (ii) the approval of a junior interim financing agreement and (iii) a re-amended and restated initial order* of March 10, 2022 ("**AVO Application**"), copy of the AVO Application (without its exhibits) is attached herewith as **Exhibit RC-1**.
8. Within the AVO Application, Debtors also asked for the sealing of confidential documents, namely the APA, the *Junior Interim Financing Agreement* dated March 9, 2022 and the *Summary of Offers* received in the context of the SISP

appended to the Fifth Report by Monitor, as it appears from the AVO Application, paragraphs 47 to 50.

9. The above-mentioned documents were asked to be kept strictly confidential and under seal, at least until the closing of the Transaction, as the failure of a closing between the parties and the disclosure of the documents included in the APA could have had a prejudicial impact on any subsequent sale process, as it appears from Debtors' AVO Application.
10. On March 14, 2022, the Honourable David R. Collier granted the AVO Application and ordered at paragraph 25 of the Approval and Vesting Order ("**AVO**"), that "*the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court*", copy of the AVO is attached herewith as **Exhibit RC-2**.
11. As appears from Paragraph 20 of the AVO, attention was paid to the protection of the personal information relating to any students, as well as human resources and payroll information in the Debtors' records pertaining to past and current employees, including personal information of those employees listed on Schedule "6.6(a)" to the Asset Purchase Agreement, which the Purchaser was ordered to maintain and protect the privacy thereof, the whole in accordance with sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation.
12. The APA itself includes a confidentiality provision (Section 6.7 of the APA); furthermore, Debtors and Cestar College executed a non-solicitation confidentiality agreement at closing, regarding *inter alia* the terms of the APA, such agreement itself and the other Transaction documents, as appears from the Non-Solicitation and Confidentiality Agreement attached herewith as **Exhibit RC-3**, which **will be filed under seal**.
13. On or around June 30, 2022, the closing of the transaction between Debtors and the Purchaser was concluded, as appears from the Amended Certificate of the Monitor, attached herewith as **Exhibit RC-4**.

C. WITHDRAWAL OF THE APA FROM THE COURT RECORD

14. The APA was filed in the Court record for the sole purpose of providing all relevant information to the Court in the context of seeking the approval of the Transaction. As the Transaction has closed, there is no longer any reason for its retention in the Court record.
15. The withdrawal of the APA is necessary for the reasons cited in support of the alternative relief requested below regarding its sealing.
16. Counsel to the Debtors and to the Monitor have consented to the removal of the APA from the Court record and its delivery to counsel for Cestar College, provided it is also approved by this Honorable Court.

D. RENEWAL OF THE SEALING AND CONFIDENTIALITY ORDER

17. Alternatively, it is necessary that the sealing and confidentiality order in respect of the APA be renewed until further order from this Court, for the following reasons.
18. Cestar College has substantial and legitimate interests for these documents to be kept under seal and confidential. The APA contains greatly sensitive commercial information, which are at the center of its commercial operations.
19. Furthermore, the APA contains considerable personal information related to the students and employees of the educational institutions acquired by Cestar College thereunder.
20. As such, the APA is a highly confidential document and the entire sale process was undertaken with a high level of confidentiality (e.g., non-disclosure agreements, confidentiality clauses, etc.) between the parties because of its sensitive nature.
21. To protect the confidential nature of the transaction, the parties signed the Non-Solicitation and Confidentiality Agreement concurrently with the closing of the Transaction, Exhibit RC-3 (under seal).
22. The present proceedings and the Transaction itself have been the object of significant negative media attention, such that the withdrawal or sealing of the APA is necessary to prevent the confidential information therein contained from being circulated by traditional and/or social media outlets.
23. Failing the withdrawal of the APA from the Court record, renewing the sealing order for the APA is the only possible and reasonable measure to protect personal information, preserve contractual obligations and avoid this serious risk to the underlying commercial interests of Cestar College.
24. The Monitor and the Debtors do not oppose the request for the sealing of documents.
25. Both the withdrawal of the APA from the Court record, and in the alternative, the sealing order, are proportionate measures, their advantages overwhelmingly surpassing their negative effects, if any. The public has access, through information available in public registries, namely the Land Registry and the Register of Personal and Movable Real Rights, and through the Monitor's Reports, to sufficient information, including financial data.
26. The whole being respectfully submitted.

WHEREFORE, MAY THIS COURT:

- [1] **GRANT** this *Motion from Cestar College for Withdrawal or Sealing of Documents*;
- [2] **AUTHORISE** Cestar College to retrieve and remove from the Court record the document entitled *Asset Purchase Agreement*, previously filed under seal as Exhibit R-3 in support of the AVO Application;

ALTERNATIVELY:

- [3] **ORDER** that the *Asset Purchase Agreement* filed as Exhibit R-3 in support of the AVO Application and the *Non-Solicitation and Confidentiality Agreement* filed as Exhibit RC-3 herewith be kept confidential until further order from this Court;
- [4] **ORDER** the provisional execution of the Order to be rendered notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [5] **The whole without costs**, save and except in case of contestation.

MONTREAL, July 13, 2022

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LIST OF EXHIBITS

- Exhibit RC-1:** AVO Application of March 10, 2022 (without its exhibits);
- Exhibit RC-2:** Approval and Vesting Order of March 14, 2022;
- Exhibit RC-3:** Non-Solicitation and Confidentiality Agreement of June 30, 2022;
- (UNDER SEAL)**
- Exhibit RC-4:** Amended Certificate of the Monitor of June 30, 2022;

MONTREAL, July 13, 2022

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**NOTICE OF PRESENTATION
COMMERCIAL PRACTICE DIVISION**

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the Motion for Sealing of Documents will be presented **virtually** before Justice David R. Collier, JSC, in the Commercial Practice Division of the Superior Court, in the Montreal courthouse, on **a date and time to be determined**.

PLEASE GOVERN YOURSELF ACCORDINGLY.

MONTREAL, July 13, 2022

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