

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF TERREBONNE

SUPERIOR COURT
Commercial Division

No. : 700-11-016462-162
700-11-016463-160

IN THE MATTER OF THE NOTICES OF
INTENTION TO MAKE A PROPOSAL OF:

2806436 CANADA INC.

-and-

2818396 CANADA INC.

Applicants

-and-

RICHTER ADVISORY GROUP INC.

Trustee

**FIRST APPLICATION FOR THE ISSUANCE OF ORDERS
EXTENDING THE STAY PERIOD**
(Section 50.4(9) of the Bankruptcy and Insolvency Act)

TO ONE OF THE JUDGES OF THE SUPERIOR COURT SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF TERREBONNE, THE
APPLICANTS RESPECTFULLY SUBMIT THE FOLLOWING:

I. ORDER SOUGHT

1. As further described below, the Applicants, 2806436 Canada Inc. and 2818396 Canada Inc., respectively doing business under the names "*Neuco Image Group*" ("**Neuco**") and "*Ultrapac Group*" ("**Ultrapac**"), hereby seek the issuance of an order

extending the Stay Period (as defined below) until June 3, 2016, as further set forth in the draft orders communicated herewith, *en liasse*, as Exhibit P-1.

2. Given the filing by each of Neuco and Ultracac of a *Notice of Intention to Make a Proposal* (collectively, the "NOIs", individually, an "NOI") pursuant to the *Bankruptcy and Insolvency Act* (the "BIA"), the present application has been filed by each of these applicants in the court files bearing numbers 700-11-016462-162 and 700-11-016463-160.

II. OVERVIEW

3. The Applicants, Neuco and Ultracac, were leading manufacturers of private label health and beauty care products in Canada.
4. As part of their businesses, the Applicants offered to their customers turnkey services for all of their private label needs, starting with the initial concept, the development of a formula, the marketing research, the design of the package to manufacturing and distribution. More specifically, the Applicants assisted their customers with, *inter alia*, the following:
 - a) Research and development;
 - b) Conception and design for products and private labels;
 - c) Development of packaging solutions; and
 - d) Logistics for shipping and distribution of products.
5. On March 22, 2016, Neuco and Ultracac each filed an NOI pursuant to the BIA, with the objective of selling their assets on the most favorable terms possible under the circumstances and keep their business and operations intact as a going concern to the greatest extent possible.
6. On the same date, Neuco and Ultracac each filed an *Application for the Issuance of Orders Authorizing a Sale of Assets* (the "Sale Applications") seeking the authorization to sell all or substantially of their assets as a going concern, as appears from the court record.
7. As further described in the Sale Applications, the NOIs and the Sale Applications were filed in a context where:
 - a) Neuco and Ultracac had been experiencing financial difficulties for the past several years, and were in a position where they could no longer generate sufficient liquidities to allow them to meet their obligations as they became due, and, as such, had become insolvent;
 - b) Therefore, starting in late December 2015 and early January 2016, the Applicants, with the assistance and under the supervision of Richter

Advisory Group Inc. ("**Richter**" or the "**Trustee**") - then acting as the financial consultant of the Applicants first ranking secured creditor, the Canadian Imperial Bank of Commerce ("**CIBC**") - initiated a sale investment and solicitation process (the "**SISP**") in order to thoroughly canvass the market in view of finding a suitable investor, financier or purchaser for the Applicants' business and, ultimately, allow them to continue their business and operations as a going concern; and

- c) Following numerous attempts by the Applicants and Richter to secure an acceptable binding offer in the context of the SISP, an Offer to Purchase (as amended and restated, the "**Davion Offer**") was executed between the Applicants and Davion Inc., acting on behalf of 9338-9641 Québec Inc. (the "**Purchaser**"), whereby the Purchaser offered to purchase all or substantially all of the Applicants' assets, *as a going concern*.
8. After careful review, both the Applicants and Richter believed that the sale transaction contemplated under the Davion Offer (the "**Transaction**") represented the best offer under the circumstances as it would secure the working capital funds necessary to continue both Neuco's and Ultracac's ongoing operations, preserve the employment for substantially all of their employees, and ultimately maximize the value of their assets and their businesses for the benefit of all of their stakeholders.
9. At that point, given the results of the SISP, which were further described in the Sale Applications and in the report prepared by Richter in support thereof, it was believed that unless the Transaction was completed and implemented within the best delays, the Applicants would imminently suffer a severe liquidity crisis preventing them from, *inter alia*, not only funding their on-going operations and paying their employees, but also to even attempt to seek an alternative purchaser.
10. On March 24, 2016, this Court granted the Sale Applications and rendered in each of the court files bearing numbers 700-11-016462-162 and 700-11-016463-160 an order approving the Davion Offer and the Transaction, and authorizing the transfer of the Applicants' assets to Davion free and clear of all charges, save exception, as appears from the Court Record (the "**Approval and Vesting Orders**").
11. On the same date, the Transaction closed and the purchase price set forth under the Davion Offer was paid to the Trustee, acting as escrow agent. However, as further described below, some of the elements of the Transaction remain to be completed *post-closing*.

III. REQUEST FOR AN EXTENSION OF THE STAY PERIOD

12. The Applicants hereby request, pursuant to section 50.4(9) of the BIA, an extension of the stay period resulting from the filing of the NOIs (the "**Stay Period**") in order to, *inter alia*:

- a) facilitate the transition of the Applicants' business and operations to the Purchaser; and
- b) complete the transfer of the Applicants' assets to the Purchaser, as contemplated in the Davion Offer.

(A) Transition of the Applicants' Business and Operations to the Purchaser

13. As previously stated, the Transaction as set forth in the Davion Offer contemplated the purchase by the Purchaser of all or substantially all of the Applicants' assets (the "**Purchased Assets**"), with a view of continuing the Applicants' business and operations as a going concern.

14. As such, since the closing of the Transaction, the Applicants and the Purchaser have been working towards transferring the former's business and operations to the latter in a manner which would allow such transition to appear seamless, to the extent possible.

15. As an example, since the closing of the Transaction, the Applicants and the Purchaser have both put in significant efforts in reaching out to, *inter alia*:

- a) the Applicants' principal suppliers;
- b) the Applicants' principal clients; and
- c) the Applicants' employees,

in order to reassure them of the Purchaser's intention in continuing the Applicants' business and operations and preserve the business relationship which the Applicants had with such parties.

16. Amongst these parties are Shoppers Drug Mart and Loblaws, who were both, as at the closing of the Transaction, major clients of the Applicants, and with whom the Applicants and the Purchaser have and continue to spend considerable time in order to ensure that such clients will continue to do business with the Purchaser.

17. The Applicants submit that although progress has been made since the filing of the NOIs, an additional period of time remains necessary to ensure that the transition of the Applicants' business to the Purchaser be completed as swiftly and seamlessly as possible. The Applicants further submit that their bankruptcy would likely disrupt such transition.

d) **Filing of Claim in Respect of the SR&ED Tax Credit**

18. In addition to the foregoing, the Applicants also submit that the extension of the Stay Period is necessary in order to facilitate the transfer of all of the Purchased Assets to the Purchaser, as contemplated in the Davion Offer, which included their claim *vis-à-vis* the Canada Revenue Agency ("CRA") in respect of the SR&ED Tax Credit (as defined below).
19. Indeed, as further described in the Sale Applications and in the Davion Offer, the Purchased Assets comprised of, *inter alia*, all of the Applicants' tax refunds, tax credits and other amounts owing by fiscal authorities to the Companies as of the date of the closing of the Transaction, including a tax credit to which the Applicants were and remain entitled to pursuant to the *Scientific Research and Experimental Development Tax Incentive Program* (the "SR&ED Tax Credit") put in place by CRA.
20. However, since the SR&ED Tax Credit could not be assigned to the Purchaser, the Applicants and the Purchaser agreed that the filing of the required forms and supporting documentation allowing the Applicants to claim such SR&ED Tax Credit and remit it to the Purchaser upon reception would be made *post-closing*.
21. As such, since the closing of the Transaction, the Applicants have taken various steps to complete and file the required forms with CRA, and has approached a third party consultant in view of claiming the SR&ED Tax Credit from CRA.
22. The payment of the SR&ED Tax Credit will not only enable the Applicants to complete the Transaction as set forth in the Davion Offer, but will also allow the Applicants to pay to the *Centre d'aide aux entreprises de la rive-sud* ("CAE"), a creditor of the Applicants to whom an amount of approx. \$208,000 is owed to pursuant to a *Convention de Prêt* (the "CAE Debt").
23. Indeed, as further set forth in the Sale Applications, since the CAE holds a first ranking hypothec over the SR&ED Tax Credit, the Purchaser had agreed, as appears from the Davion Offer, to assume the CAE Debt, on a limited recourse basis, whereby CAE's sole recourse would be to exercise its hypothec against the SR&ED Tax Credit.
24. Unless the Stay Period is extended, as requested herein, the Applicants will be deemed to be bankrupted, which will render the collection of the SR&ED Tax Credit much more difficult, to the detriment of not only the Purchaser, but also of CAE.
25. In light of the foregoing, the Applicants respectfully submit that the Stay Period should be extended until June 3, 2016.

26. The Applicants submit that the extension sought is appropriate in the present circumstances as they have both acted, and are continuing to act, in good faith and with due diligence and no creditor will suffer any undue prejudice by the extension of the Stay Period.
27. The present Motion is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

GRANT this *Application for the Issuance of Orders Extending the Stay Period* (the "**Application**");

DECLARE that the notices given for the presentation of the Motion are proper and sufficient;

ISSUE, in each of the court file bearing numbers 700-11-016462-162 and 700-11-016463-160, an order extending the stay of proceedings resulting from the filing by each of 2806436 Canada Inc.'s and 2818396 Canada Inc.'s respective Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act*, until June 3, 2016, as further set forth in the draft orders communicated, *en liasse*, as Exhibit P-1 in support of the Application;

ORDER the provisional execution of this Order to be rendered notwithstanding any appeal and without the necessity of furnishing any security;

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

MONTREAL, April 13, 2016

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NOTICE OF PRESENTATION

To:

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TAKE NOTICE that the *Application for the Issuance of Orders Extending the Stay Period* will be presented for adjudication before one of the Honourable Judges of Superior Court or to the Registrar, sitting in practice in and for the District of Terrebone, at the Saint-Jérôme Courthouse, located at 25, rue de Martigny Ouest, Saint-Jérôme (Québec) J7Y 4Z1, in room **B-1.07** on **April 21, 2016** at **9:00 a.m.** or soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, April 13, 2016

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