

**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 AND ARRANGEMENT
INVOLVING BOMBAY & CO. INC. , BOWRING & CO. INC. AND BENIX & CO. INC.**

MOTION RECORD

(returnable August 22, 2014)

(Re Approval of Inventory Liquidation Consulting Agreement, SISP and stay extension)

Date: August 15, 2014

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(August 15, 2014)**

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AND TO: 4240073 CANADA INC., 9224-1892 QUEBEC INC. AND 9171-9922 QUEBEC INC., REPRESENTED BY THEIR MANDATARY CARBONLEO REAL ESTATE INC.
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INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
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**AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT
INVOLVING BOMBAY & CO. INC. , BOWRING & CO. INC. AND BENIX & CO. INC.**

**MOTION RECORD INDEX
(returnable August 22, 2014)**

| <u>TAB</u> | <u>DOCUMENT</u> | <u>PAGE</u> |
|-------------------|---|--------------------|
| 1 | Notice of Motion | 1 |
| A | Draft Order | 5 |
| 2 | Affidavit of Freddy Benitah, affirmed August 15, 2014 | 10 |
| A | Initial CCAA Order of the Honorable Mr. Justice Penny, dated August 6, 2014 | 20 |
| B | Initial CCAA Affidavit of Freddy Benitah, affirmed August 6, 2014 | 41 |
| C | Letter Agreement Governing Inventory Disposition, dated August 15, 2014 | 77 |
| D | Sale and Investor Solicitation Process | 93 |

TAB 1

**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 AND ARRANGEMENT
INVOLVING BOMBAY & CO. INC. , BOWRING & CO INC. AND BENIX & CO. INC.**

**NOTICE OF MOTION
(returnable August 22, 2014)
(Re Approval of Inventory Liquidation Consulting Agreement, SISP and stay extension)**

BOMBAY AND CO. INC. (“**Bombay**”), **Bowring and Co. Inc.** (“**Bowring**”) and **Benix & Co. Inc.** (“**Benix**”, and together with **Bombay** and **Bowring**, the “**B&C Entities**”) will make a motion to a judge of the Commercial List on Friday, August 22, 2014 at 10:00 a.m., or as soon after that time as the motion can be heard, at the Court House at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an order substantially in the form attached hereto as Schedule “A”, *inter alia*:
 - (i) abridging the time for service of the Notice of Motion and the Motion Record herein, if necessary, and validating service thereof;
 - (ii) approving the letter agreement governing inventory disposition dated August 15, 2014 (the “**Inventory Liquidation Consulting Agreement**”)

among the B&C Entities and a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners LLC (collectively, the “**Consultant**”), whereby the Consultant will act as consultant to Bombay and Bowring in order to assist in liquidating inventory and furniture, fixtures and equipment (“**FF&E**”) at certain store locations of Bombay and Bowring;

- (iii) approving a sale and investment solicitation process (the “**SISP**”) of the business and assets of the B&C Entities;
- (iv) extending the Stay Period (as defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Penny dated August 6, 2014 (the “**Initial Order**”)) until November 28, 2014;
- (v) approving the first report of Richter Advisory Services Inc. (the “**Monitor**”), in its capacity as the Monitor of the B&C Entities (the “**First Report**”), and approving the activities of the Monitor as described therein; and
- (vi) approving the fees and disbursements of the Monitor and counsel to the Monitor;

(b) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) those grounds as set out in the affidavit of Freddy Benitah affirmed on August 15, 2014, and the exhibits thereto (the “**Benitah Affidavit**”);
- (b) those further grounds as set out in the First Report, and the appendices thereto, to be filed;
- (c) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (d) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (e) such further other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Benitah Affidavit;
- (b) the First Report, and the appendices thereto, to be filed; and
- (c) such other material as counsel may advise and this Honourable Court may permit.

August 15, 2014

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TO: THE SERVICE LIST

TAB 1A

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

THE HONOURABLE ) FRIDAY , THE 22nd
JUSTICE ) DAY OF AUGUST, 2014

**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 AND ARRANGEMENT
INVOLVING BOMBAY & CO. INC. , BOWRING & CO INC. AND BENIX & CO. INC.**

**APPROVAL AND STAY EXTENSION ORDER
(Re Approval of Inventory Liquidation Consulting Agreement, SISP and stay extension)**

THIS MOTION, made by Bombay & Co. Inc. ("Bombay"), Bowring & Co. Inc. ("Bowring") and Benix & Co. Inc. ("Benix", and together with Bombay and Bowring, the "B&C Entities"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Freddy Benitah affirmed August 15, 2014 and the Exhibits thereto (the "Benitah Affidavit"), and the first report of the monitor, Richter Advisory Group Inc. (the "Monitor") dated August , 2014 (the "First Report") and on hearing the submissions of counsel for the B&C Entities, Canadian Imperial Bank of Commerce ("CIBC") and the Monitor, and , no one else appearing although duly served as appears from the affidavit of service of Tasha Boyd sworn , 2014,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF INVENTORY LIQUIDATION CONSULTING AGREEMENT

2. THIS COURT ORDERS AND DECLARES that the inventory liquidation consulting agreement dated August 15, 2014 (the "Inventory Liquidation Consulting Agreement") described in the affidavit of Freddy Benitah affirmed on August 15, 2014 (the "Benitah Affidavit") and attached thereto as Exhibit "C" (subject to such non-material amendments as may be agreed to by the B&C Entities and approved by the Monitor) among the B&C Entities and a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners LLP (collectively, the "Consultant") be and is hereby approved and the B&C Entities and the Monitor are hereby authorized and directed to take such steps as they deem necessary or advisable to carry out the Inventory Liquidation Consulting Agreement.

3. THIS COURT ORDERS, for greater certainty, that the liquidation of the inventory and FF&E in the Liquidation Stores (as defined in the Inventory Liquidation Consulting Agreement) shall be conducted in accordance with the Sales Guidelines attached thereto as Exhibit "C".

SALE AND INVESTMENT SOLICITATION PROCESS

4. THIS COURT ORDERS that the sale and investment solicitation process (the "SISP") described in the Benitah Affidavit and attached thereto as Exhibit "D" (subject to such non-material amendments as may be agreed to by the B&C Entities and approved by the Monitor) is hereby approved and the B&C Entities and the Monitor are hereby authorized and directed to take such steps as they deem necessary or advisable to carry out the SISP, subject to prior approval of this Court being obtained before completion of any such sale or financing under the SISP.

STAY EXTENSION

5. THIS COURT ORDERS that the Stay Period (as defined in paragraph 14 of the Initial Order be and is hereby extended until and including November 28, 2014.

APPROVAL OF MONITOR'S REPORT

6. THIS COURT ORDERS that the First Report and the activities of the Monitor as described therein be and are hereby approved.

7. THIS COURT ORDERS that the fees and disbursements of the Monitor for the period [date], 2014 to [date], 2014, as described in the affidavit of <@> sworn [date], 2014, be and are hereby approved.

8. THIS COURT ORDERS that the fees and disbursements of the Monitor's legal counsel for the period [date], 2014 to [date], 2014, as described in the affidavit of <@> sworn [date], 2014, be and are hereby approved.

GENERAL

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the B&C Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the B&C Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the B&C Entities and the Monitor and their respective agents in carrying out the terms of this Order.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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BOWRING & CO. INC. AND BENIX & CO. INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceedings commenced in Toronto

APPROVAL AND STAY EXTENSION ORDER

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceedings commenced in Toronto

**NOTICE OF MOTION
(Returnable August 22, 2014)**

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TAB 2

Court File No. CV-14-10659-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS
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INVOLVING BOMBAY & CO. INC. , BOWRING & CO INC. AND BENIX & CO. INC.**

Applicants

**AFFIDAVIT OF FREDDY BENITAH
(AFFIRMED AUGUST 15, 2014)**

I, Freddy Benitah, of the City of Vaughan, in the Province of Ontario, **AFFIRM
AS FOLLOWS:**

1. I am the Chief Executive Officer of each of Bombay & Co. Inc. ("**Bombay**"), Bowring & Co. Inc. ("**Bowring**") and Benix & Co. Inc. ("**Benix**", and together with Bombay and Bowring, the "**B&C Entities**") and as such, I have knowledge of the matters set out herein. Where information has been received from others, I have stated the source of the information and believe it to be true.

I. INTRODUCTION

2. I am swearing this affidavit in support of a motion brought by the B&C Entities for an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), among other things:

- (i) authorizing and directing the B&C Entities to enter into an agreement with a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners LLP (collectively, the "Consultant"), dated August 15, 2014, whereby the Consultant will act as consultant to Bowring and Bombay in order to assist in liquidating inventory and furniture, fixtures and equipment ("FF&E") at certain store locations of Bombay and Bowring (the "**Inventory Liquidation Consulting Agreement**");
- (ii) approving a sale and investment solicitation process (the "SISP") with respect to the going concern business and assets of the B&C Entities;
- (iii) extending the stay of proceedings herein to November 28, 2014; and
- (iv) approving the conduct of the Monitor and the fees of the Monitor and its counsel.

II. BACKGROUND

3. Bombay and Bowring offer distinctly branded home furnishings, giftware and accessories for sale through retail stores throughout Canada. Benix formerly sold houseware products with a focus on cooking, home entertaining and giftware. As of June 30, 2014 Benix had closed its remaining stores, liquidated its inventory and terminated its employees.

4. As described in detail in the affidavit affirmed by me on August 6, 2014, in support of the B&C Entities' application for an Initial Order (as defined below) (the "**Initial Order Affidavit**"), Bombay and Bowring are each facing a severe liquidity crisis as a result of, among other things, underperforming retail stores and liquidity constraints. As a result, the B&C Entities were in default of various financial and other covenants under the Amended, Restated and Consolidated Credit Agreement, as amended (the "**Credit Agreement**"), with their primary secured lender, the Canadian Imperial Bank of Commerce ("**CIBC**"). Each of Bombay, Bowring and Benix were insolvent and unable to meet their liabilities as they became due.

5. On August 5, 2014 the B&C Entities and CIBC entered into a First Amended and Restated Forbearance Agreement (the "**DIP Forbearance Agreement**") pursuant to which CIBC agreed to (a) forbear from enforcing its rights under the Credit Agreement until the earlier of January 20, 2015 and certain terminating events, and (b) provide additional borrowings with increased aggregate availability under the Operating Facility and the L/C Facility (as those terms are defined in the Credit Agreement) of up to \$5 million (subject to a refined borrowing base formula and certain availability step downs).

6. The B&C Entities were granted protection from their creditors under the CCAA pursuant to an Initial Order of the Ontario Superior Court of Justice dated August 6, 2014 (the "**Initial Order**"). Richter Advisory Group Inc. was appointed as monitor of the B&C Entities (the "**Monitor**") in the CCAA proceedings. Amongst other relief granted to the B&C Entities, the Court approved the DIP Forbearance Agreement and granted the DIP Charge in favour of CIBC. Now produced and shown to me and annexed hereto as Exhibit "A" to my affidavit is a copy of the Initial Order. The Initial Order, together with all other filings in the CCAA

proceedings are available on the Monitor's website at: www.richter.ca/en/insolvency-cases/b/bombay-and-co-inc-bowring-and-co-incbenix-and-co-inc.

7. Prior to filing under the CCAA, the B&C Entities worked with the then proposed Monitor to develop a business plan to be implemented through the CCAA proceedings. The business plan involved a two pronged approach to:

- (a) liquidate the inventory and FF&E located at, and disclaim the leases of, Bombay and Bowring store locations that are a net drain on the B&C Entities cash position and that are unlikely to be attractive to potential purchasers or investors in the SISP; and
- (b) implement the SISP to solicit offers for all of the remaining business or assets of the B&C Entities, any of them, or any part(s) of any of them.

8. Further details regarding the background to this CCAA proceeding are set out in the Initial Order Affidavit and, unless relevant to the present motion, are not repeated herein. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Initial Order Affidavit, the Inventory Liquidation Consulting Agreement and the SISP. Now produced and shown to me and annexed hereto as Exhibit "B" to my affidavit is a copy of the Initial Order Affidavit, without Exhibits.

III. THE INVENTORY LIQUIDATION CONSULTING AGREEMENT

9. Prior to seeking protection under the CCAA, the B&C Entities conducted a detailed analysis of the performance of each of their locations. This resulted in the closure of a number of underperforming Benix stores, some of which were assigned and rebranded under

either the Bombay or Bowring banner. This strategy was undertaken by the B&C Entities in an attempt to boost declining sales at the Benix locations by converting these stores to a more recognizable and profitable brand. The converted Benix locations have continued to underperform under the Bombay or Bowring banners and this has contributed to declining profitability of the B&C Entities as a whole.

10. The B&C Entities, in consultation with the Monitor, have determined that it is in the best interests of the B&C Entities to liquidate the inventory at a number of the poorest performing stores with a view to closing those locations and disclaiming the leases. The B&C Entities, with the assistance of the Monitor, have been in discussions with the Consultant with respect to their plans for liquidating inventory at underperforming stores and have determined that it is in the best interests of the B&C Entities and their stakeholders to enter into the Inventory Liquidation Consulting Agreement. Now produced and shown to me and annexed hereto as Exhibit "C" to my affidavit is a copy of the Inventory Liquidation Consulting Agreement.¹

11. The Consultant was selected by the B&C Entities with the assistance of the Monitor based on the Consultant's extensive knowledge and experience in liquidating inventory of retail stores. I am advised by the Monitor that, given the limited amount of store locations involved in the liquidation and the type and quantum of the commission being paid to the Consultant, it is not commercially reasonable to market the consulting opportunity widely. In addition, the Cash-Flow Statement filed in support of the Initial Order contemplates that inventory at the poorest performing locations would be liquidated expeditiously. It is therefore

¹ The copy of the Inventory Liquidation Consulting Agreement attached as Exhibit C does not include Exhibit A to the agreement - the list of 39 stores involved in the liquidation. This is because it will take a few days to properly warn staff affected by the store closures of the store closures. Exhibit A to the agreement will be filed with the Court at or before the court hearing herein.

necessary that the Inventory Liquidation Consulting Agreement be approved quickly to ensure that the B&C Entities have sufficient liquidity to fund their post-filing obligations during the cash flow period and in order to disclaim leases in under performing stores as quickly as possible.

12. The Inventory Liquidation Consulting Agreement provides that the Consultant will assist Bowring and Bombay in liquidating Merchandise commencing on or about August 23, 2014 (the “**Sale Commencement Date**”) and concluding no later than approximately November 23, 2014 (the “**Sale Term**”). Merchandise includes all goods, saleable in the ordinary course, located in the 39 Bombay and Bowring stores listed in Exhibit “A” to the Inventory Liquidation Consulting Agreement (the “**Stores**”) on the Sale Commencement Date, as well as certain inventory currently located in the B&C Entities’ distribution centre located at 3389 Steeles Avenue East, Brampton, Ontario. The Consultant will also assist Bombay and Bowring in selling FF&E located at the Stores.

13. The sale of Merchandise and FF&E in the Stores is to be conducted in accordance with the Sale Guidelines appended as Exhibit “C” to the Inventory Liquidation Consulting Agreement (the “**Sale Guidelines**”). I am advised by Fasken that the Sale Guidelines are consistent with sale guidelines that have been previously approved by CCAA courts in similar circumstances. The Merchandise will not be augmented by third party merchandise.

14. The Inventory Liquidation Consulting Agreement permits the Merchant to, *inter alia*, decrease the number of Stores involved in the liquidation process. Accordingly, if, during the Sale Term of each Store, lease terms regarding such stores can be renegotiated with the landlord of such Store, such that the Store location may become desirable to a potential

purchaser or investor, such store can be removed from the liquidation process and moved into the SISP process. In such cases such Stores will be dealt with in the SISP process.

15. At the conclusion of the Sale Term of each Store, each Store will be surrendered to the landlord and the lease will be disclaimed by Bombay or Bowring, as applicable, in accordance with the terms of the Inventory Liquidation Consulting Agreement and the requirements of the CCAA.

16. The Inventory Liquidation Consulting Agreement provides that the Merchant is responsible for all reasonable costs and expenses in connection with the sale of Merchandise and FF&E at the Stores. The Consultant will be paid a fee equal to 2% of the gross proceeds of sale of Merchandise in each Store during the Sale Term of such Store and 20% of the gross proceeds from the sale of FF&E located at such Stores.

17. The Monitor has reviewed the terms of the Inventory Liquidation Consulting Agreement and recommends that the B&C Entities enter into the agreement with the Consultant.

18. The B&C Entities are seeking authorization and direction to enter into the Inventory Liquidation Consulting Agreement.

IV. SISP

19. Since the Initial Order was granted by the Court, the B&C Entities have been working diligently with the Monitor to develop the SISP. The B&C Entities, with the assistance of the Monitor, have conducted a detailed review of their respective businesses and have determined that the SISP will provide the highest likelihood of identifying a potential sale or investment transaction involving the B&C Entities. The B&C Entities' management is of the

view that the SISP is the best viable alternative to see the B&C Entities continue as a going concern or maximize the value of the businesses.

20. The SISP is to be administered by the Monitor with the assistance of the B&C Entities. It is proposed that the B&C Entities will be marketed in a single process and that offers will be solicited for the going concern business or the assets of all B&C Entities, any of them, or any part(s) of any of them. Now produced and shown to me and annexed hereto as Exhibit "D" to my affidavit is a copy of the SISP.

21. The SISP provides that if Management of the B&C Entities, or a related party or parties, intend to participate in the SISP process as a potential purchaser, such party or parties must give a Participation Notice on or before August 29, 2014. Thereafter Management will be excluded from participation in the SISP other than as an Interested Party.

22. The terms of the SISP will be more fully described in a report of the Monitor, to be filed.

23. The proposed SISP provides a means for testing the market, gauging interest in the B&C Entities and/or their assets and determining whether a transaction is available that is advantageous to the B&C Entities and their stakeholders. The SISP provides an opportunity to sell the business of the B&C Entities as a going concern for the benefit of all stakeholders including creditors, employees and suppliers. The alternative to the SISP would be a liquidation of the businesses.

24. I believe that the SISP is reasonable and fair and will provide the highest likelihood of identifying a potential sale or investment transaction involving the B&C Entities. The Monitor has advised that it supports the SISP.

25. A copy of the proposed SISP was provided to counsel to CIBC, the DIP Lender, during the afternoon of August 14, 2014. CIBC has advised that it has not been provided with sufficient time to fully review the SISP and related timeline and that it reserves the right to object thereto and to negotiate the SISP further after a more careful review.

V. STAY EXTENSION

26. The SISP provides that any transaction resulting from offers that are accepted by the B&C Entities shall close on or before November 6, 2014. The Sale Termination Date of the Inventory Liquidation Consulting Agreement is November 23, 2014. The B&C Entities are seeking to extend the Stay Period (as defined in paragraph 14 of the Initial Order) up to and including November 28, 2014 in order to allow these processes to unfold.

27. The B&C Entities have confirmed, in consultation with the Monitor, that the B&C Entities have sufficient cash flow to carry on their business until November 28, 2014.

28. It is my belief that the B&C Entities have acted, and continue to act, in good faith and with due diligence in pursuing a restructuring and/ or sale of the B&C Entities. I do not believe that any creditor will suffer any material prejudice if the Stay Period is extended as requested.

29. I am informed by the Monitor that it supports the B&C Entities request to extend the Stay Period.

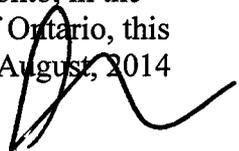
VI. PURPOSE OF AFFIDAVIT

30. I swear this Affidavit in support of the B&C Entities' motion in these proceedings and for no other or improper purpose.

AFFIRMED BEFORE ME at the)
City of Toronto, in the)
Province of Ontario, this)
15th day of August, 2014)
)



FREDDY BENITAH



A. Kauffman

TAB 2A

THIS IS EXHIBIT "A"

referred to in the Affidavit of

Freddy Benitah affirmed before me on

August 15th, 2014



A Commissioner for Taking Affidavits



Court File No. C114-10659-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|----------------|---|--------------------------------|
| THE HONOURABLE |) | WEDNESDAY, THE 6 TH |
| |) | |
| JUSTICE PENNY |) | DAY OF AUGUST, 2014 |

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 BOMBAY & CO. INC., BOWRING &
CO. INC. AND BENIX & CO. INC. (the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Freddy Benitah sworn August 6, 2014 and the Exhibits thereto (the "Benitah Affidavit"), and the Pre-filing Report of the proposed Monitor, Richter Advisory Group Inc. ("Richter") dated August 6, 2014 (the "Pre-filing Report") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, Canadian Imperial Bank of Commerce ("CIBC") and Richter, and on reading the consent of Richter to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that each Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (collectively, the "Business") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Benitah Affidavit and replace it with the blocked account and central cash management system contemplated in the Facility Agreement (as defined below) and the Definitive Documents (as defined below) (the "Cash Management System") and that any present or future bank providing the Cash

Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses (including expenses incurred by employees on behalf of the Applicants on company or employee credit cards for which the employee is personally liable) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements including any and all cheques for such employee obligations which have been issued, but not cleared prior to the date of this Order;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;
- (c) amounts owing to vendors (including, without limitation, foreign sales agents, suppliers, transportation providers and customs brokers) determined by the Applicants to be necessary in order to ensure an uninterrupted supply of goods and services to the Applicants and material to the continued operation of the Business, provided that such payments are approved in advance by the Monitor or by further Order of the Court; and
- (d) amounts payable in respect of customs and duties;

and to continue to honour or comply with existing warranty and return policies, customer deposits, customer layaways and pre-payments, gift cards and similar programs offered by the Applicant.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that each Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by it, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, each Applicant shall pay all amounts constituting rent or payable by it as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations,
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that each Applicant shall provide each of the relevant landlords with notice of its intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes an Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Applicant, or by further Order of this Court upon application by the relevant Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If an Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. THIS COURT ORDERS that until and including September 5, 2014, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect any of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all

Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of any of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any Applicant to carry on any business which such Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the relevant Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the relevant Applicant in accordance with normal payment practices of such Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the relevant Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that each Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall be allocated such that the Property of each Applicant shall stand as security

for the indemnity of such Applicant in favour of its officers and directors, and shall not exceed an aggregate amount of \$1 million in respect of the Property of Bombay & Co. Inc., \$600,000 in respect of the Property of Bowring & Co. Inc., and \$100,000 in respect of the Property of Benix & Co. Inc., as security for the indemnities provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information

as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicants in the preparation of their cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers

in the amounts of \$75,000, \$35,000 and \$35,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under their existing credit facilities from CIBC (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that aggregate borrowings under such credit facilities shall not exceed \$20 million unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facilities shall be on the terms and subject to the conditions set forth in the Amended, Restated and Consolidated Credit Agreement between CIBC and the Applicants dated as of December 13, 2010 (as amended, the "Existing Credit Agreement"), as amended by the First Amended and Restated Forbearance Agreement between CIBC and the Applicants dated as of August 5, 2014 (the "DIP Forbearance Agreement") (the Existing Credit Agreement and the DIP Forbearance Agreement, being together the "Facility Agreement"), filed.

34. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such additional credit agreements, mortgages, charges, hypothecs and security documents, guarantees, blocked account and other control agreements and other definitive documents (together with all such definitive documents previously executed and

delivered by the Applicants and presently in force and effect, the "Definitive Documents"), as are contemplated by the Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Facility Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Facility Agreement, the Definitive Documents or the DIP Lender's Charge, a Terminating Event (as defined in the Facility Agreement), or following the Termination Date (as defined in the Facility Agreement), the DIP Lender may exercise any of its rights and remedies against the Applicants or the Property under or pursuant to the Facility Agreement, Definitive Documents and the DIP Lender's Charge, subject to the following:
 - (i) the DIP Lender shall give the Applicants and the Monitor not less than three (3) business days' notice of its intention to enforce its rights and remedies against the Applicants and the Property (other than rights and remedies under the DIP Charge or other security) under the Facility Agreement and the Definitive Documents, including to cease making advances to the Applicants, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Facility Agreement, the Definitive Documents and the DIP Lender's Charge, to accelerate payments and give other notices;
 - (ii) any exercise by the DIP Lender of its rights and remedies against the Applicants or the Property under the DIP Charge or other security shall be

by application to the Court for the appointment of a receiver made on at least three (3) business days' notice to the Applicants and the Monitor; and

(iii) during the notice periods referred to in subparagraphs (i) and (ii) above, which notice periods may run concurrently, the DIP Lender shall continue to fund only the payment by the Applicants of employee wages, Priority Payables (as defined in the Facility Agreement) and, provided there is sufficient availability, such expenditures as are contemplated in the then current Approved CCAA Cash Flows (as defined in the Facility Agreement) and reasonably requested by the Applicants and as agreed by the Lender acting in its sole and unfettered discretion;

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

37. **THIS COURT ORDERS AND DECLARES** that the DIP Lender, with respect to the Facility Agreement and the Definitive Documents shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), or any plan of arrangement filed under the *Canada Business Corporations Act* or equivalent provincial legislation, with respect to any advances made under the Facility Agreement or the Definitive Documents and in furtherance thereof the DIP Lender, in its capacity as pre-filing lender and DIP Lender under the Facility Agreement shall be unaffected by the stay of proceedings provided for in paragraphs 14 through 17 hereof, but subject to the conditions as set out in paragraph 36(b) (i) through (iii).

38. **THIS COURT ORDERS** that the Applicants are hereby authorized to pay to the DIP Lender, in accordance with the terms of the Facility Agreement and the Definitive Documents, from funds on hand, or from funds generated by post-filing sales of inventory or otherwise, any and all amounts owing by the Applicants on account of their pre-filing indebtedness.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First -- Administration Charge;

Second – Directors' Charge; and

Third – DIP Lender's Charge.

40. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, with the exception, pending further Order of this Court, of:

- (a) subject to paragraph 45 hereof, those secured creditors with validly perfected security against the Property who have not been served with the materials filed in support of this Order, and
- (b) validly perfected purchase money security interests and statutory claims for sales taxes or employment related liabilities that have priority over the Existing Security (as defined in the Facility Agreement).

42. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge the DIP Lender's Charge, or the Existing Security unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

43. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Facility Agreement, the Definitive Documents and the DIP Lender's Charge shall not be

rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Facility Agreement or the Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Facility Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

44. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

45. THIS COURT ORDERS that the Monitor shall send by courier or registered mail a copy of this Order, with a cover letter referencing this paragraph and directing the recipient to the materials filed in support of this motion as posted on the Monitor's website, to all parties who have registered financing statements in accordance with the Personal Property Security Act

(Ontario) or similar provincial statutes in Canada (other than those described in paragraph 41(b) hereof) (each a “Secured Party” and collectively the “Secured Parties”) to the addresses noted for such party noted therein within 2 business days of the date of this Order. Any Secured Party who wishes to oppose or challenge the terms of this Order including the priority of the Charges granted herein must do so by delivering responding material to the Applicants, the Monitor, and the DIP Lender no later than August 19, 2014 and a motion to hear such objection will be scheduled no later than August 22, 2014. The security interest of all Secured Creditors who do not deliver responding materials as aforesaid will be subordinate to the Charges effective August 19, 2014.

SERVICE AND NOTICE

46. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

47. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL “www.richter.ca/en/insolvency-cases/b/bombay-and-co-inc-bowring-and-co-inc-benix-and-co-inc”.

48. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

49. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

50. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

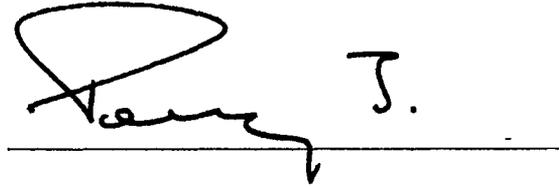
51. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

52. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

53. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53A. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT A TORONTO
CN / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG - 6 2014



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 AND ARRANGEMENT INVOLVING BOMBAY & CO. INC. ,
BOWRING & CO. INC. AND BENIX & CO. INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceedings commenced in Toronto

INITIAL ORDER

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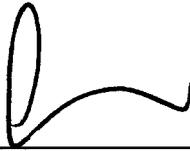
TAB 2B

THIS IS EXHIBIT "B"

referred to in the Affidavit of

Freddy Benitah affirmed before me on

August 15th, 2014



A Commissioner for Taking Affidavits



Court File No.

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 AND ARRANGEMENT
INVOLVING BOMBAY & CO. INC. , BOWRING & CO INC. AND BENIX & CO. INC.

Applicants

AFFIDAVIT OF FREDDY BENITAH
(AFFIRMED AUGUST 6, 2014)

I, Freddy Benitah, of the City of Vaughan, in the Province of Ontario, **AFFIRM**
AS FOLLOWS:

1. I am the Chief Executive Officer of each of Bombay & Co. Inc. ("**Bombay**"),
Bowring & Co. Inc. ("**Bowring**") and Benix & Co. Inc. ("**Benix**", and together with Bombay and
Bowring, the "**B&C Entities**") and as such, I have knowledge of the matters set out herein.
Where information has been received from others, I have stated the source of the information and
believe it to be true.

I. INTRODUCTION

2. I am swearing this affidavit in support of an application by Bombay, Bowring and Benix for an order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”):

- (a) declaring that each of Bombay, Bowring and Benix is a company to which the CCAA applies;
- (b) granting a CCAA stay of proceedings;
- (c) declaring that the B&C Entities are permitted to pay certain pre-filing amounts;
- (d) approving the DIP Forbearance Agreement (as defined below) and granting the DIP Charge (as defined below);
- (e) establishing the Administration Charge (as defined below);
- (f) declaring that the directors and officers of the B&C Entities shall be indemnified against obligations and liabilities that they may incur in their capacity as directors or officers of the B&C Entities after the commencement of these proceedings, and granting a D&O Charge (as defined below); and
- (g) appointing Richter Advisory Group Inc. to act as the monitor (the “**Monitor**”) of the B&C Entities in these CCAA proceedings.

3. Bombay and Bowring offer high quality home accessories and furnishings for sale through retail stores throughout Canada.

4. Benix formerly sold houseware products with a focus on cooking, home entertaining and giftware. As of June 30, 2014 Benix has closed its remaining stores and has liquidated its inventory and terminated all employees.

5. As described in detail below, Bombay, Bowring and Benix are each facing a severe liquidity crisis as a result of, among other things, underperforming retail stores and liquidity constraints. As a result, the B&C Entities are in default of various financial and other covenants with their primary secured lender.

6. Bombay, Bowring and Benix have not been able to successfully restructure their affairs outside of formal insolvency proceedings. Each of Bombay, Bowring and Benix are insolvent and unable to meet their liabilities as they become due. Bombay, Bowring and Benix require the protection of the CCAA to provide each entity with an opportunity to solicit offers for a sale or investment and/or develop a comprehensive restructuring plan to address underperforming stores, right size its overhead and address liquidity constraints.

II. SINGLE CCAA PROCEEDING

7. The objective of a single CCAA proceeding for Bombay, Bowring and Benix is to allow Bombay, Bowring and Benix, who are jointly liable under the Amended, Restated and Consolidated Credit Agreement (as defined below), to obtain a DIP Loan (as defined below) from their current secured lender, the Canadian Imperial Bank of Commerce ("CIBC"). In addition, it is expected that prospective purchasers may be interested in acquiring all three banners, or at a minimum leased locations held by multiple banners. It is therefore intended that Bombay, Bowring and Benix be marketed together pursuant to a sale and investment solicitation process to be developed with the assistance of the Monitor. For these reasons a single,

procedurally consolidated, CCAA proceeding will facilitate the restructuring or potential sale of all or part of the B&C Entities' business as a going concern.

8. Bombay, Bowring and Benix are distinct legal entities that operate separate businesses, own separate assets and record separate liabilities.

9. The B&C Entities maintain cash management arrangements with CIBC. Under those arrangements CIBC maintains a separate concentration account for each of the entities. The B&C Entities' retail locations maintain bank accounts at proximate bank branches, some of which are with CIBC and some are with other institutions. The cash management arrangements operate to sweep the balances in those accounts to the concentration account maintained by CIBC for each B&C Entity on a daily basis. As discussed in more detail below, these arrangements will change to a blocked account arrangement in accordance with the DIP Forbearance Agreement.

10. Notwithstanding their separate existence and operations, the B&C Entities are under ultimate common ownership, share common head office space, utilize a shared distribution centre, and are jointly liable for amounts owing under the Amended, Restated and Consolidated Credit Agreement. Interim financing during these CCAA proceedings is to be provided by way of a DIP Forbearance Agreement under the B&C Entities' existing operating loan facilities, for which the B&C Entities will continue to be jointly liable.

III. BACKGROUND

A) Bombay

Corporate History and Structure of Bombay

11. Bombay was incorporated under the *Business Corporations Act* (Ontario) on October 17, 2007. Bombay's head office is located at 98 Orfus Road, Toronto, Ontario.

12. Bombay is owned as to 50% of the common shares by each of Bombay FB Holding Corp. and Bombay IB Holding Corp.

Operations of Bombay

13. Bombay operates 55 stores across Canada that sell large furniture, small occasional furniture, wall décor and home accessories. Bombay has store locations in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Quebec. All store locations are operated out of leased premises. Now produced and shown to me and annexed hereto as Exhibit "A" to my affidavit is a schedule of Bombay store locations.

14. As of August 5, 2014, Bombay has 625 employees, of which 153 are salaried and 472 are paid on an hourly basis. Bombay's employees are not represented by a union and are not subject to a collective bargaining agreement.

Assets of Bombay

15. Bombay's assets, as reflected in the internal unaudited financial statements for the quarter ended June 23, 2014, had a net book value of approximately \$32,199,271, as follows:

| |
|--------|
| ASSETS |
|--------|

| | |
|-----------------------------|-------------------|
| Cash | \$366,876 |
| Accounts Receivable | 861,642 |
| Intercompany | 1,963,017 |
| Inventory | 19,956,940 |
| Prepaid Expenses | 296,681 |
| Deposits | 146,576 |
| Income Taxes Recoverable | 1,990,163 |
| Total Current Assets | 25,581,895 |
| Tangible assets | 5,816,480 |
| Finance Costs | 93,225 |
| Total Capital Assets | 5,909,705 |
| Future Income Tax | 707,671 |
| TOTAL ASSETS | 32,199,271 |

Liabilities of Bombay

16. As of June 23, 2104, the said financial statements reflect liabilities totalling \$35,316,331, as follows:

| | |
|------------------------------------|-------------------|
| LIABILITIES | |
| Bank Advance | 8,998,496 |
| Accounts Payable | 7,730,659 |
| Accrued Liabilities | 2,028,424 |
| Income Tax Payable | |
| Sales Tax Payable | 186,298 |
| Wages Payable | 218,528 |
| Credit Notes/Gift Cert/Layaways | 2,013,964 |
| Term Loan-Current | |
| Total Current Liabilities | 21,176,368 |
| Advances from Shareholders | 2,000,000 |
| Loan from Related Parties | 8,000,000 |
| Deferred Lease Inducements | 4,139,963 |
| Total Long-term Liabilities | 14,139,963 |
| TOTAL LIABILITIES | 35,316,331 |

17. The "Bank Advance" line item above includes only the amounts notionally allocated to Bombay in respect of indebtedness to CIBC as of the relevant date. As discussed in more detail below, the B&C Entities are jointly and severally liable for the outstanding indebtedness to CIBC which, as of June 23, 2014, was approximately \$14.5 million.

Employee Liabilities of Bombay

18. As at August 2, 2014 Bombay owes its current and former employees the following approximate aggregate amounts for unpaid wages and vacation pay:

- (a) ordinary course wage arrears: \$249,066; and
- (b) accrued and unused vacation pay: \$279,959.

19. It is contemplated (and reflected in the projected cash flow statements discussed below) that the wage arrears and accrued and unused vacation pay amounts for existing employees will be paid from the DIP Loan.

20. Bombay does not maintain a pension for its employees. Bombay is current on deductions from employee wages at source.

21. Bombay is current on its HST remittances. As HST is remitted in arrears, it is intended that certain HST amounts collected before the date of this Application will be remitted in the ordinary course post-filing. These HST remittances are reflected in the projected cash-flow statements discussed below.

Other Unsecured Creditors of Bombay

22. In addition to the foregoing, as at June 23, 2014, Bombay has approximately \$12,158,223 in accrued and unpaid liabilities (excluding inter-company and related party indebtedness, if any), including:

- (a) Trade payables: \$7,730,659;
- (b) Customer layaways: \$1,312,941;
- (c) Outstanding gift cards: \$701,023;
- (d) Accrued audit and sales taxes: \$479,342 (as of July 26, 2014); and
- (e) Arrears owing to landlords: \$1,934,258.

Litigation Claims of Bombay

23. Bombay has been named as a defendant in a number of law suits which are at various stages. The actions deal predominantly with employee and landlord claims.

Secured Indebtedness of Bombay

24. As discussed in detail below, Bombay is liable to CIBC pursuant to the terms of the Amended, Restated and Consolidated Credit Agreement in the amount of \$14.5 million on a joint and several basis. Bombay is also indebted, on a secured basis, to Isaac Bennet Sales Agencies, Inc (“IBSA”) in the amount of \$10,000,000.

B) Bowring***Corporate History and Structure of Bowring***

25. Bowring was incorporated under the *Business Corporations Act* (Ontario) on October 28, 2005. Bowring’s head office is located at 98 Orfus Road, Toronto, Ontario.

26. Bowring is owned as to 50% of the common shares by each of Bowring FB Holding Corp. and Bowring IB Holding Corp.

Operations of Bowring

27. Bowring operates 57 locations across Canada that sell home accents such as mirrors, prints, lamps, linens, garden collections, giftware and furniture. Bowring has store locations in Alberta, British Columbia, Saskatchewan, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Quebec. All store locations are operated out of leased premises. Now produced and shown to me and annexed hereto as Exhibit "B" to my affidavit is a schedule of Bowring store locations.

28. As of August 5, 2014, Bowring has 617 employees, of which 116 are salaried and 501 are paid on an hourly basis. Bowring's employees are not represented by a union and are not subject to a collective bargaining agreement.

Assets of Bowring

29. Bowring's assets, as reflected in the internal unaudited financial statements for the quarter ended June 23, 2014, had a net book value of a \$24,313,035, as follows:

| ASSETS | |
|-----------------------------|-------------------|
| Cash | \$392,692 |
| Accounts Receivable | -138,441 |
| Intercompany | 278,380 |
| Inventory | 17,697,591 |
| Prepaid Expenses | 408,254 |
| Deposits | 39,916 |
| Income Taxes Recoverable | 2,572,140 |
| Total Current Assets | 21,250,532 |
| Tangible assets | 2,747,268 |

| | |
|-----------------------------|-------------------|
| Goodwill | 74,013 |
| Finance Costs | 17,350 |
| Total Capital Assets | 2,838,631 |
| Future Income Tax | 223,872 |
| TOTAL ASSETS | 24,313,035 |

Liabilities of Bowring

30. Bowring's liabilities as reflected in the said financial statements as at June 23, 2014 were \$29,700,382 as follows:

| | |
|------------------------------------|-------------------|
| LIABILITIES | |
| Bank Advance | 2,578,367 |
| Accounts Payable | 8,963,674 |
| Accrued Liabilities | 2,097,412 |
| Sales Tax Payable | 156,397 |
| Wages Payable | 429,009 |
| Credit Notes/Gift Cert/Layaways | 1,314,271 |
| Total Current Liabilities | 15,539,131 |
| Advances from Shareholders | 6,100,000 |
| Loan from Related Parties | 6,154,000 |
| Deferred Lease Inducements | 1,907,251 |
| Total Long-term Liabilities | 14,161,251 |
| TOTAL LIABILITIES | 29,700,382 |

31. The "Bank Advance" line item above includes only the amounts notionally allocated to Bowring in respect of indebtedness to CIBC as of the relevant date. As discussed in more detail below, the B&C Entities are jointly and severally liable for the outstanding indebtedness to CIBC which, as of June 23, 2014, was approximately \$14.5 million.

Employee Liabilities of Bowring

32. As at August 2, 2014 Bowring owes its current and former employees the following approximate aggregate amounts for unpaid wages and vacation pay:

(a) ordinary course wage arrears: \$420,521; and

(b) accrued and unused vacation pay: \$294,030.

33. It is contemplated (and reflected in the projected cash flow statements discussed below) that the wage arrears and accrued and unused vacation pay amounts for existing employees will be paid from the DIP Loan.

34. Bowring does not maintain a pension for its employees. Bowring is current on deductions from employee wages at source.

35. Bowring is current on its HST remittances. As HST is remitted in arrears, it is intended that certain HST amounts collected before the date of this Application will be remitted in the ordinary course post-filing. These HST remittances are reflected in the projected cash-flow statements discussed below.

Other Unsecured Creditors of Bowring

36. In addition to the foregoing, as at June 23, 2014, Bowring has approximately \$11,630,122 in accrued and unpaid liabilities (excluding inter-company and related party indebtedness, if any), including:

(a) Trade payables: \$8,963,674;

(b) Customer layaways: \$304,246;

(c) Outstanding gift cards: \$1,010,025;

(d) Accrued audit and sales taxes: \$372,194 (as of July 26, 2014); and

(e) Arrears owing to landlords: \$979,983.

Litigation Claims of Bowring

37. Bowring has been named as a defendant in a number of law suits which are at various stages. The actions deal predominantly with employee and landlord claims.

Secured Indebtedness of Bowring

As discussed in detail below, Bowring is liable to CIBC pursuant to the terms of the Amended, Restated and Consolidated Credit Agreement in the amount of \$14.5 million on a joint and several basis. Bowring is also indebted, on a secured basis, to IBSA in the amount of \$16,500,000 and to F.B.I. Inc. ("FBI") in the amount of \$8,600,000.

C) Benix

Corporate History and Structure of Benix

38. Benix's head office is located at 98 Orfus Road, Toronto, Ontario. Benix is owned as to 50% of the common shares by each of Benix FB Holding Corp. and Benix IB Holding Corp.

Former Operations of Benix

39. Benix formerly sold houseware products with a focus on cooking, home entertaining and giftware. As of June 30, 2014, Benix has ceased its retail operations, has liquidated its inventory and terminated all employees. All of its former store locations are now closed.

40. Benix's employees were not represented by a union and were not subject to a collective bargaining agreement.

Assets of Benix

41. Benix's assets, as reflected in the internal unaudited financial statements for the quarter ended June 23, 2014, had a net book value of \$5,923,067, as follows:

| ASSETS | |
|-----------------------------|------------------|
| Cash | \$6,382 |
| Accounts Receivable | 156,801 |
| Intercompany | -2,241,397 |
| Inventory | 279,460 |
| Prepaid Expenses | 34,094 |
| Deposits | 3,858 |
| Income Taxes Recoverable | 3,038,399 |
| Total Current Assets | 1,277,597 |
| Investment in Benix US | 1,900 |
| Tangible assets | 261,738 |
| Finance Costs | 27,807 |
| Total Capital Assets | 291,445 |
| Future Income Tax | 4,354,025 |
| TOTAL ASSETS | 5,923,067 |

42. Benix has tax attributes that may have some value in a restructuring of the B&C Entities.

Liabilities of Benix

43. Benix's liabilities, as reflected in the internal unaudited financial statements for the quarter ended June 23, 2014, were \$21,559,704, as follows:

| LIABILITIES | |
|---------------------------------|-----------|
| Bank Advance | 2,915,190 |
| Accounts Payable | 673,560 |
| Accrued Liabilities | 268,957 |
| Sales Tax Payable | 30,466 |
| Wages Payable | 17,194 |
| Credit Notes/Gift Cert/Layaways | 33,164 |
| Term Loan-Current | |
| Capital Lease | |

| | |
|------------------------------------|-------------------|
| Total Current Liabilities | 3,938,532 |
| Term Loan-Long term | |
| Loan from Related Parties | 17,204,510 |
| Deferred Lease Inducements | 416,661 |
| Total Long-term Liabilities | 17,621,172 |
| TOTAL LIABILITIES | 21,559,704 |

44. The "Bank Advance" line item above includes only the amounts notionally allocated to Benix in respect of indebtedness to CIBC as of the relevant date. As discussed in more detail below, the B&C Entities are jointly and severally liable for the outstanding indebtedness to CIBC which, as of June 23, 2014, was approximately \$14.5 million.

Employee Liabilities of Benix

45. As at August 2, 2014 Benix owes its former employees approximately \$19,300 on account of accrued and unused vacation pay. Benix does not owe its former employees any amount on account of wage arrears.

46. Benix did not maintain a pension for its employees. Benix does not owe any amount on account of deductions from employee wages at source.

47. Benix is current on its HST remittances. As HST is remitted in arrears, it is intended that certain HST amounts collected before the date of this Application will be remitted in the ordinary course post-filing. These HST remittances are reflected in the projected cash-flow statements discussed below.

Other Unsecured Creditors of Benix

48. In addition to the foregoing, as at June 23, 2014, Benix has approximately \$785,484 in accrued and unpaid liabilities (excluding inter-company and related party indebtedness, if any), including:

- (a) Trade payables: \$673,560;
- (b) Customer layaways: \$54;
- (c) Outstanding gift cards: \$2,365;
- (d) Accrued audit and sales taxes: \$89,480 (as of July 26, 2014); and
- (e) Arrears owing to landlords: \$20,025.

Litigation Claims of Benix

49. Benix has been named as a defendant in a number of law suits which are at various stages. The actions deal predominantly with employee and landlord claims.

Secured Indebtedness of Benix

50. As discussed in detail below, Benix is liable to CIBC pursuant to the terms of the Amended, Restated and Consolidated Credit Agreement in the amount of \$14.5 million on a joint and several basis. Benix has also received loans from certain related parties. Benix is indebted to IBSA, FBI, Isaac Benitah, Freddy Benitah and Maxstan Imperial Limited ("Maxstan") in the aggregate amount of \$5,175,383, some of which I believe to be secured.

D) Common Premises

51. The B&C Entities operate from shared leased head office premises located at 98 Orfus Road, Toronto, Ontario.

52. The B&C Entities also share a leased distribution centre where each of the three entities have historically received, stored and shipped inventory to their various store locations. The distribution centre is located at 3389 Steeles Avenue East, Brampton, Ontario. Bombay holds the lease for the distribution centre and is responsible for payment of rent owing to the landlord. Bombay has historically charged Bowring and Benix on an intercompany basis for their proportionate share of the rent and certain operating costs, which is split between the entities based on the volume of inventory that is being held at the distribution centre on each of their behalf and goods processed on a monthly basis. There is little Benix inventory remaining in the distribution centre. These arrangements continue with respect to Bombay and Bowring.

E) Critical Suppliers

53. The B&C Entities do not manufacture any of their products. All inventory is purchased from foreign and domestic third party suppliers and is resold to customers through the B&C Entities' store locations.

54. Bombay and Bowring are dependent upon the continued supply of products from a number of furniture and homeware manufacturers to ensure that they have sufficient inventory to meet their customers' needs. In addition, Bombay and Bowring are highly dependent on other service providers, including overseas buying agents, freight forwarders, shipping agents, custom brokers and overseas and overland transport carriers, to ensure adequate and timely supply of inventory for their stores. The continued supply of goods and services by these parties is critical to Bombay and Bowring's ongoing operations.

55. Disruption to the services provided by some of these parties could severely interrupt the supply of inventory to Bombay and Bowring.

56. The B&C Entities are therefore requesting that they be permitted to pay pre-filing amounts owing to those suppliers that they consider critical to their business, in each case, subject to the express approval of the Monitor or further Order of the Court.

IV. SECURED CREDITORS

A) CIBC Consolidated Secured Credit Agreement

57. The B&C Entities are parties to an Amended and Restated and Consolidated Credit Agreement dated December 13, 2010 under which CIBC agreed to make available to the B&C Entities the following credit facilities:

- (a) a demand revolving operating credit facility (the “**Operating Facility**”) available to the B&C Entities in an initial maximum principal amount of \$21,500,000, with availability calculated in accordance with a borrowing base formula,
- (b) a non-revolving reducing demand instalment credit facility available to Benix up to a maximum of \$350,000;
- (c) a non-revolving reducing demand instalment credit facility available to Bombay up to a maximum of \$2,499,999;
- (d) a demand letter of credit facility (the “**L/C Facility**”) available to the B&C Entities in the initial maximum amount of \$10,000,000, provided that aggregate amounts outstanding under the Operating Facility and the L/C Facility and certain outstanding letters of credit were not to exceed \$29,500,000; and
- (e) a corporate visa demand facility available to Benix.

58. Pursuant to the terms of the Amended, Restated and Consolidated Credit Agreement, the B&C Entities are jointly and severally liable for all covenants, agreements and obligations of the B&C Entities relating to the Operating Facility and the L/C Facility. The Amended, Restated and Consolidated Credit Agreement was amended on July 30, 2011, December 21, 2012 and July 23, 2013 (the Amended, Restated and Consolidated Credit Agreement, as amended, is hereinafter referred to as the "**Credit Agreement**"). Now produced and shown to me and annexed hereto as Exhibit "C" to my affidavit is a copy of the Credit Agreement.

59. In addition to the joint and several liability referred to above, each of the B&C Entities has guaranteed the obligations of the other B&C Entities under the Credit Agreement. Further, the obligations under the Credit Agreement and the said guarantees are secured by, among other security, a general security agreement executed and a movable hypothec executed by each of Bombay, Bowring and Benix in favour of CIBC.

60. As a result of certain covenant defaults (not payment defaults) by the B&C Entities under the Credit Agreement, the B&C Entities and CIBC entered into a forbearance agreement dated as of March 6, 2014. (the "**Forbearance Agreement**") by which CIBC agreed to forbear from exercising its rights and remedies under the Credit Agreement until the earlier of June 30, 2014 and the occurrence or existence of a Terminating Event (as defined in the Forbearance Agreement) in consideration of certain representations, covenants and amendments to the Credit Agreement. Among those amendments to the Credit Agreement was an effective reduction in the maximum amount of the Operating Facility to \$11 million (later increased by agreement of CIBC and the B&C Entities to \$15 million). CIBC also required, as a condition to the effectiveness of the Forbearance Agreement that FBI and IBSA make subordinate secured

loans to the B&C Entities in the aggregate amount of \$8,100,000, which amounts were to be directed to repay existing indebtedness owing to CIBC.

B) Related Party Loans

61. From time to time certain related parties have made loans to the B&C Entities to fund working capital requirements. Below is a summary of the outstanding indebtedness of the B&C Entities to these related parties.

Bombay

62. Bombay is indebted to IBSA, on a secured basis, in the principal amount of \$10,000,000 (which amount includes \$2 million advanced by IBSA to Bombay in satisfaction of the funding condition in the Forbearance Agreement).

Bowring

63. Bowring is indebted to FBI, on a secured basis, in the principal amount of \$8,600,000 (which amount includes \$3.1 million advanced to Bowring in satisfaction of the funding condition in the Forbearance Agreement).

64. Bowring is indebted to IBSA, on a secured basis, in the principal amount of \$16,500,000 (which amount includes \$3 million advanced to Bowring in satisfaction of the funding condition in the Forbearance Agreement).

Benix

65. Benix is indebted to IBSA, FBI, Isaac Benitah, Freddy Benitah and Maxstan in the aggregate amount of \$5,175,383, some of which I believe to be secured.

C) PPSA Searches

66. Fasken Martineau DuMoulin LLP, counsel to the B&C Entities (“Fasken”) has conducted a search of registrations made against the B&C Entities pursuant to the (Ontario) *Personal Property Security Act* (“PPSA”) and similar registration systems in each of the provinces and territories of Canada as of July 24, 2014. Now produced and shown to me and annexed hereto as Exhibit “D” to my affidavit is a true copy of the PPSA search results.

67. Other than registrations in favour of CIBC, Isaac Benitah, Fred Benitah, IBSA, and FBI, all registrations appear to be in favour of equipment financiers with an interest in specific collateral, and real property lessors in Quebec.

V. FINANCIAL DIFFICULTIES & THE NEED FOR CCAA PROTECTION

A) Financial Difficulties

68. The housewares industry in Canada has become increasingly competitive, particularly with the recent entry of large scale retail chains into the sector. This increased competitiveness had a significant impact on the profitability of the Benix store locations. Between 2012 and 2014, the B&C Entities closed a number of underperforming Benix stores, some of which were assigned and rebranded under either the Bombay or Bowring banner. This strategy was undertaken by the B&C Entities in an attempt to boost declining sales at the Benix locations by converting these stores to a more recognizable and profitable brand. The converted Benix locations have continued to underperform under the Bombay or Bowring banners and this has contributed to declining profitability of the B&C Entities as a whole.

69. In addition, as described above, the B&C Entities were in breach of certain financial (not payment related) covenants under the Credit Agreement. As a result, the B&C Entities have had to deal with reduced borrowing limits on the Operating Facility and the L/C Facility, imposed as a term of the Forbearance Agreement. These liquidity constraints have prevented the B&C Entities from achieving desired stock positions at certain Bombay and Bowring store locations, which has negatively impacted sales.

70. The B&C Entities are also facing challenges with respect to their high overhead structure and underutilized distribution centre. The urgent need to address these challenges was accentuated by the significant losses incurred by the B&C Entities in fiscal 2014, as a result of, among other things, the difficult retail environment in Canada and poor 2013 Christmas sales due to an unusually harsh Canadian winter.

71. The B&C Entities continue to face severe strains on their cash flows. They are in breach of the financial covenants under the Credit Agreement and are dependent on the continued forbearance and financial support of CIBC.

B) Financial Position

Bombay

72. The most recent year-to-date (“YTD”) summary financial statements for Bombay are presented as at June 23, 2014 (unaudited). For the six months ended June 23, 2014, Bombay recorded a net loss of \$2,241,454.

73. Bombay has also reported recurring losses over the past two fiscal years, recording a net loss of \$1,170,338 in fiscal 2014 and \$659,870 in fiscal 2013.

74. At the same time, Bombay has seen its earnings before interest, taxes, depreciation and amortization ("EBITDA") decline from \$2,273,187 in fiscal 2012, to \$1,462,176 in fiscal 2013, to 479,123 in fiscal 2014.

75. Now produced and shown to me and annexed hereto to my affidavit are, to the best of my knowledge, copies of all financial statements, audited or unaudited, prepared during the past year for Bombay, which are marked as the following Exhibits:

- Exhibit "E" Draft 2014 Annual Audited Financial Statements
- Exhibit "F" Unaudited Internally Prepared Financial Statements as of June 23, 2014

Bowring

76. The most recent YTD summary financial statements for Bowring are presented as at June 23, 2014 (unaudited). For the six months ended June 23, 2014, Bowring recorded a net loss of \$1,978,227.

77. Bowring has also reported recurring losses over the past two fiscal years, recording a net loss of \$2,604,467 in fiscal 2014 and \$335,257 in fiscal 2013.

78. At the same time, Bowring has seen its EBITDA decline from \$2,197,458 in fiscal 2012, to \$1,824,936 in fiscal 2013, to negative \$1,920,770 in fiscal 2014.

79. Now produced and shown to me and annexed hereto to my affidavit are, to the best of my knowledge, copies of all financial statements, audited or unaudited, prepared during the past year for Bowring, which are marked as the following Exhibits:

- Exhibit "G" Draft 2014 Annual Audited Financial Statements

Exhibit "H" Unaudited Internally Prepared Financial Statements as of June 23, 2014

Benix

80. The most recent YTD summary financial statements for Benix are presented as at June 23, 2014 (unaudited). For the six months ended June 23, 2014, Benix recorded a net loss of \$2,364,737.

81. Benix has also reported recurring losses over the past two fiscal years, recording a net loss of \$3,106,108 in fiscal 2014 and \$2,207,122 in fiscal 2013.

82. Benix's EBITDA in fiscal 2012 was negative \$4,710,185, in fiscal 2013 it was negative \$937,097, and in fiscal 2014 it was negative \$1,680,437.

83. Now produced and shown to me and annexed hereto to my affidavit are, to the best of my knowledge, copies of all financial statements, audited or unaudited, prepared during the past year for Benix, which are marked as the following Exhibits:

Exhibit "I" Draft 2014 Annual Audited Financial Statements

Exhibit "J" Unaudited Internally Prepared Financial Statements as of June 23, 2014

C) Responses to Financial Difficulties

84. In response to the financial difficulties set out above, the B&C Entities have sought various going-concern solutions for their businesses.

85. Over the course of the past three years the B&C Entities have undertaken a comprehensive review of store performance with a view of identifying underperforming stores and product lines. As discussed above, this review culminated in the closure of a number of

Benix locations, certain of which were assigned and rebranded to the more profitable Bombay or Bowring banners. As of the date of swearing this affidavit, Benix has closed all remaining retail locations.

86. In conjunction with the performance review, the B&C Entities have taken steps to lower their overhead by reducing staff at their shared head office premises and distribution centre. Certain management personnel have also accepted wage reductions in an effort to lower costs generally.

87. The B&C Entities have also been actively seeking to refinance the CIBC loan facilities with the CIBC asset-based lending group or a third-party lender.

D) Each of Bombay, Bowring and Benix are Insolvent

88. The forbearance period contemplated in the Forbearance Agreement expired on June 30, 2014 and has not been extended. The B&C Entities have been negotiating a further forbearance since that time, without any binding assurance that CIBC will continue to forbear. Bombay, Bowring and Benix, either individually or collectively, do not have sufficient liquidity to repay the outstanding indebtedness if CIBC should make a demand for repayment. As of the date of swearing this affidavit there is approximately \$14.5 million outstanding under the Credit Agreement.

89. In addition, on August 1, 2014 rent totaling approximately \$2,500,000 became due (broken down as \$1,523,000 (Bombay) and \$976,000 (Bowring)). Without further financing, the B&C Entities do not have sufficient cash flow or funding available to meet their ongoing operating expenses, including payments of such rent.

90. Accordingly, and as set out elsewhere in this affidavit, each of Bombay, Bowring and Benix are insolvent. They cannot meet their liabilities as they come due and, without the protection of the CCAA and the benefit of the DIP facility hereinafter described, the ongoing viability of the B&C Entities is seriously impaired. If Bombay and Bowring were to cease operations it would negatively impact their employees (numbering more than 1,200 in aggregate), suppliers, customers, and other stakeholders, and would seriously jeopardize the ability of the B&C Entities to implement a sale or restructuring solution that could see them continue, in whole or in part, as a going concern.

91. The protection of the CCAA, including the stay of proceedings and interim financing which are available thereunder, will enable Bombay and Bowring to maintain operations while allowing the B&C Entities sufficient time to consider the restructuring alternatives available to them. While under CCAA protection, Bombay and Bowring will seek to close underperforming stores, liquidate inventory at those stores and reduce their operating costs, while at the same time pursuing a sale or restructuring of the B&C Entities as a going concern. The B&C Entities are in discussions with a professional liquidation firm with respect to its plans for liquidating inventory at underperforming stores and intends to return to Court in the near future for approval of same. The B&C Entities are also working with the Monitor to develop a sale and investment solicitation process, and intend on returning to Court in the near future for approval of same.

92. Benix requires protection under the CCAA to allow it to deal with ongoing lease and employee obligations and other outstanding liabilities in an orderly fashion. In addition, Benix has certain assets and tax attributes that may be attractive to a potential purchaser or

investor in the sale or investment solicitation process that is contemplated as part of these CCAA proceedings.

V. CASH-FLOW FORECASTS

93. Now produced and shown to me and annexed hereto as Exhibit "K" to my affidavit is a true copy of a projected consolidated cash flow statement with respect to the B&C Entities for the 13 week period August 9, 2014 to November 1, 2014 (the "**Cash Flow Statement**").

94. The Cash Flow Statement demonstrates the cash needs of the B&C Entities during the forecast period and demonstrates that, assuming the DIP Loan (defined below) is approved and advanced to the B&C Entities (among other assumptions outlined in the Cash Flow Statement and the Monitor's Report), the B&C Entities will have sufficient liquidity to fund their post-filing obligations and restructuring efforts during the cash flow period.

VI. THE AMENDED AND RESTATED FORBEARANCE AGREEMENT/DIP FINANCING

95. The Forbearance Agreement expired on its terms on June 30, 2014. On August 5, 2014 the B&C Entities and CIBC entered into a First Amended and Restated Forbearance Agreement (the "**DIP Forbearance Agreement**") pursuant to which CIBC has agreed, in the context of CCAA proceedings in respect of the B&C Entities, to (a) forbear from enforcing its rights under the Credit Agreement until the earlier of January 20, 2015 and certain terminating events, and (b) providing for additional borrowings with increased aggregate availability under the Operating Facility and the L/C Facility of up to \$5 million (subject to a refined borrowing

base formula and certain availability step downs). Now produced and shown to me and annexed hereto as Exhibit "L" to my affidavit is a copy of the DIP Forbearance Agreement.

96. Among other terms, the DIP Forbearance Agreement is conditional upon (a) the payment of forbearance fees in the aggregate amount of \$175,000, (b) approval by CIBC of the B&C Entities projected CCAA cash flow statements, and (c) an Initial Order in the CCAA proceedings that, among other terms, (i) grants to CIBC a first priority charge on the assets of the B&C Entities in respect of all advances made on or after the time of granting the Initial Order, (ii) provides that CIBC shall be treated as an "unaffected creditor" in the CCAA proceedings, and (iii) directs that at no time on or after the date of the Initial Order will the property of the B&C Entities be subject to a court ordered security or charge of any person ranking in priority to the CIBC security and charge, without CIBC's consent.

97. Further, the DIP Forbearance Agreement requires that the B&C Entities implement and operate under a blocked account arrangement which requires them to convert each of their accounts that receive proceeds of inventory or other property subject to CIBC's security into a blocked account subject to a blocked account agreement. Those blocked account arrangements (provided for in section 4.1.14 and Schedule 7 of the DIP Forbearance Agreement) require that all cash receipts of the B&C Entities be deposited into designated accounts subject to CIBC's security interest and blocked account agreements, and swept on a daily basis into a further account held by CIBC. As I understand it, once the blocked account arrangements are set up all receipts of the B&C Entities will, by operation of the blocked account arrangements, be swept to CIBC on a daily basis and applied against the indebtedness of the B&C Entities to CIBC and, as a result, all expenditures of the B&C Entities will be advances under the CIBC Facilities.

VII. RELIEF SOUGHT

A) Payment of Pre-Filing Amounts

98. The B&C Entities anticipate paying certain pre-filing amounts which must be paid following the date of the Initial Order to prevent significant impairment of Bombay and Bowring's business.

Critical Supplier

99. As described above, the continued engagement of certain of Bombay and Bowring's furniture and housewares manufacturers, overseas buying agents, freight forwarders, shipping agents, custom brokers and overseas and overland transport carriers, is critical to their ongoing operations. Disruption to the services provided by certain of these parties may interrupt the supply of inventory to Bombay and Bowring. The B&C Entities are therefore requesting that they be permitted to pay certain pre-filing amounts owing to certain of those suppliers that they consider critical to their business. It is contemplated that any pre-filing payments will be subject to the express prior approval of the Monitor or Order of the Court.

Employee Credit Card and Wages, etc.

100. The B&C Entities' employees often incur expenses on behalf of the B&C Entities for such costs as travel expenses. The B&C Entities have a system whereby they reimburse their employees for any disbursements or costs incurred on behalf of the companies. Employees of Bombay and Bowring have continued to incur such costs to the date of this affidavit. It is intended that Bombay and Bowring (and Benix, to the extent that any of these amounts owing to its former employees remain unpaid) will continue to reimburse employees for these amounts, including any disbursements and costs that may have been incurred prior to the making of the

Initial Order. The B&C Entities also intend to pay certain wages and accrued vacation pay and employee benefit amounts, other than amounts claimed in contested lawsuits by former employees. Failure to pay any of these amounts would severely disrupt the employee base of Bombay and Bowring.

Gift Cards and Layaway Program, etc.

101. Bombay and Bowring offer gift cards to its customers. It is critical to maintain the confidence of the customer base that gift cards continue to be honoured. Bombay and Bowring also maintain a layaway program for its customers through which Bombay and Bowring order an item to a specific store, upon pre-payment of a customer, and hold the item until the customer picks it up at the store. In the interest of maintaining customer loyalty, Bombay and Bowring are seeking permission to honour these sorts of pre-filing commitments to their customers, and to honour existing warranty and return policies.

B) Approval of the DIP Forbearance Agreement & DIP Charge

102. As set out above under the heading "The Amended and Restated Forbearance Agreement/ DIP Financing", the B&C Entities and CIBC have executed the DIP Forbearance Agreement pursuant to which CIBC has agreed, in the context of CCAA proceedings in respect of the B&C Entities, to (i) forbear from enforcing its rights under the Credit Agreement until the earlier of January 20, 2015 and certain terminating events, and (ii) providing for additional borrowings with increased aggregate availability under the Operating Facility and the L/C Facility of up to \$5 million (subject to a refined borrowing base formula and certain availability step downs).

103. As reflected in the Cash-Flow Statement, the DIP Forbearance Agreement is intended to provide the B&C Entities with sufficient capital to (i) maintain the ongoing operations of Bombay and Bowring during the course of these CCAA proceedings including payment of employees, critical suppliers and post-filing suppliers; (ii) fund the costs of these proceedings; (iii) undertake the liquidation of underperforming stores; and (iv) pursue a potential sale or restructuring of the B&C Entities.

104. It is a condition of the DIP Forbearance Agreement that in addition to its existing contractual security, CIBC be granted a first priority court-ordered charge on all the assets, rights, undertakings and properties of each of the B&C Entities as security for amounts advanced under the DIP Forbearance Agreement (the "**DIP Charge**"). CIBC has advised the B&C Entities that it will not advance any funds under the DIP Forbearance Agreement unless the court approves the DIP Charge.

105. Owing to the urgency of this Application, there is not sufficient time to serve all of the registered secured creditors with notice of the Application. To give effect to the requirement of CIBC that it obtain a priority charge, at the request of CIBC, the B&C Entities are seeking an Order that provides a mechanism for secured creditors who have not been served with these materials to receive a notice from the Monitor directing them to the Initial Order and the supporting materials and providing them with a period of time to oppose the priority of the DIP Charge over their security by delivering responding materials to the Court. Until such time period lapses, the DIP Charge will not have priority over those secured creditors. If those secured creditors do not deliver responding materials within the prescribed time, the DIP Charge will have priority over them without further Order of the Court. This mechanism will not apply to holders of validly perfected purchase money security interests or to statutory claims for sales

taxes or employment related liabilities that would otherwise have priority over CIBC's existing contractual security (the "Priority Mechanism").

106. The Cash Flow Statement demonstrates that, without DIP financing, they are unable to fund their operations and restructuring efforts. If the court approves the DIP Forbearance Agreement and funds are made available thereunder, the Cash Flow Statement projects that the B&C Entities will have sufficient funding to continue their operations and restructuring efforts during the projected cash-flow period.

107. The B&C Entities have considered, among other things, the following factors:

- (a) the Cash-Flow Statement indicates that the DIP Loan will provide the B&C Entities with sufficient liquidity to fund their ongoing operations and restructuring efforts throughout the projected cash-flow period;
- (b) it is expected that Bombay and Bowring will continue to operate while management of the B&C Entities implement a comprehensive plan to liquidate underperforming store locations and to reduce their overhead costs while pursuing a sale or restructuring of the B&C Entities;
- (c) the B&C Entities have the support of their primary secured creditor CIBC who has agreed to advance the DIP Loan;
- (d) the DIP Loan is necessary to permit Bombay and Bowring to maintain their operations and facilitate a restructuring of their business with a view to preserving the going concern; and

(e) the Monitor has indicated that it is supportive of the DIP Forbearance Agreement and the financing contemplated therein.

C) Approval of the Administration Charge

108. The B&C Entities are seeking a charge on the assets, rights, undertakings and properties of the B&C Entities, in priority to all other charges, including the DIP Charge, in the maximum amount of \$750,000 (the "Administration Charge") to secure the fees and disbursements of the Monitor, counsel to the Monitor and counsel to the B&C Entities incurred in connection with services rendered to the B&C Entities both before and after the commencement of these CCAA proceedings. I understand that CIBC is amenable to the Administration Charge, subject to the above maximum amount.

109. I believe that it is critical to the success of a restructuring and/ or any potential sale of the B&C Entities to have the Administration Charge in place to ensure the continued involvement of these insolvency professionals. The professionals that are the beneficiaries of the Administration Charge have contributed, and continue to contribute, to the restructuring of the B&C Entities.

110. The B&C Entities have worked with the Monitor and the other insolvency professionals to estimate the proposed quantum of the Administration Charge. I believe it to be reasonable and appropriate in view the services to be provided by the beneficiaries of the Administration Charge.

D) Approval of the D&O Indemnity and Charge

111. To ensure the ongoing stability of the B&C Entities during these CCAA proceedings and to maximize the potential of a successful sale or restructuring of its business, the B&C Entities require the continued participation of the director and officers of each of Bombay, Bowring and Benix.

112. The B&C Entities are seeking typical provisions staying all proceedings with respect to all claims against the director or officers that relate to any obligations and liabilities that they may incur as director or officers of the B&C Entities whereby the director or officers are alleged under any law to be liable in their capacity as director or officers of the B&C Entities.

113. The director and officers of the B&C Entities have specialized expertise and relationships with suppliers, employees and other stakeholders that cannot be replicated or replaced.

114. I am advised by Fasken that in certain circumstances director and officers can be held liable for certain obligations and liabilities that they may incur as a director or officer after the commencement of CCAA proceedings.

115. The director and officers of the B&C Entities do not benefit from any directors and officers' indemnification insurance. As a result of the financial position of the B&C Entities, I consider it highly unlikely that the director and officers will be able to procure such insurance for a reasonable cost and without a substantial deductible.

116. The B&C Entities have a large number of employees and significant sales tax accruals which arise from time to time. Given the lack of directors and officers indemnification insurance the director and officers of the B&C Entities have indicated that they require that the

Initial Order to: (i) indemnify them for obligations and liabilities that they may incur in their capacity as director or officers of the B&C Entities after commencement of these proceedings, and (ii) create a charge on the assets of each of the entities comprising the B&C Entities in the maximum amount of \$1 million in respect of Bombay, \$600,000 in respect of Bowring, and \$100,000 in respect of Benix (the "D&O Charge"), as security for the aforesaid indemnity. The D&O Charge is proposed to rank behind the Administration Charge and ahead of the DIP Charge.

117. The amount of the caps on the D&O Charge has been estimated in consultation with management and the Monitor. By ensuring the continued participation of the B&C Entities' directors and officers the D&O Charge will allow it to continue to benefit from their expertise and knowledge. I believe the D&O Charge is fair and reasonable in the circumstances. The D&O Charge and quantum is supported by the Monitor and CIBC.

118. In order to give effect to the priority of the Administration Charge and the D&O Charge relative to the DIP Charge and other security, the B&C Entities request that the Priority Mechanism apply to the Administration Charge and the D&O Charge as well.

E) Stay of Proceedings

119. The B&C Entities are seeking the standard stay of proceedings provisions contained in the model Initial CCAA Order. The stay is required to enable Bombay and Bowring to maintain operations while allowing the B&C Entities sufficient time to consider the restructuring alternatives available to them, including (i) the liquidation and closure of underperforming stores; (ii) the reduction of operating costs; and (iii) the pursuit of a potential sale of the B&C Entities.

F) The Monitor

120. Richter Advisory Group has consented to act as Monitor of the B&C Entities, subject to court approval.

121. Richter Advisory Group is a trustee within the meaning of section 2 of the BIA and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

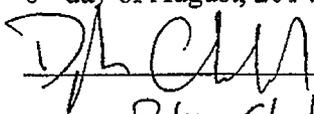
Urgency

122. The B&C Entities have hit the liquidity wall. A significant amount of rents were not paid when due on August 1, 2014 and, among other threats, the B&C Entities face the prospect of landlords taking action on the leases if the Initial Order is not made. The B&C Entities require immediate access to the DIP facility to normalize their operations, secure ongoing supply of goods and services and proceed with their restructuring plans.

VIII. PURPOSE OF AFFIDAVIT

123. I swear this Affidavit in support of the B&C Entities' Application in these proceedings and for no other or improper purpose.

AFFIRMED BEFORE ME at the)
City of Toronto, in the)
Province of Ontario, this)
6th day of August, 2014)



Dylan Chacka



FREDDY BENITAH

TAB 2C

THIS IS EXHIBIT "C"
referred to in the Affidavit of
Freddy Benitah affirmed before me on
August 15th, 2014



A Commissioner for Taking Affidavits


EXECUTION VERSION

MERCHANT RETAIL SOLUTIONS ULC GORDON BROTHERS CANADA ULC

August 15, 2014

VIA EMAIL

Mr. Fred Benitah
Bombay & Co. Inc.
Bowring & Co. Inc.
98 Orfus Road
Toronto, Ontario
Canada M6A 1L9

Re: **Letter Agreement Governing Inventory Disposition**

Dear Fred:

This letter shall serve as an agreement ("Agreement") between a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC, on the one hand ("Consultant" or a "Party"), and Bombay & Co. Inc. and Bowring & Co. Inc., on the other hand (collectively, "Merchant" or a "Party" and together with the Consultant, the "Parties"), under which Consultant shall act as exclusive consultant to Merchant for the purpose of advising with respect to a sale of certain Merchandise (as defined below) at the Merchant's stores set forth on Exhibit A (each a "Store" and collectively, the "Stores") through a "Store Closing", "Everything Must Go", "Everything on Sale" or similar themed sale as approved in writing by Merchant (the "Sale"). The Merchant may elect to increase or decrease the number of Stores included in the Sale at its discretion. To the extent necessary, Merchant and Consultant will mutually agree on any modifications to the Expense Budget as a result of the increase or decrease in the number of Stores included in the Sale.

A. Merchandise

For purposes hereof, "Merchandise" shall mean all goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date, as well as certain inventory currently located or to be located in the Merchant's distribution center which Merchant requires to be sold through the Sale. "Merchandise" does not mean and shall not include: (1) goods that belong to sublessees, licensees or concessionaires of Merchant; (2) owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores (collectively, "FF&E"); or (3) damaged or defective merchandise that cannot be sold.

B. Sale Term

For each Store, the Sale shall commence on or about August 23, 2014 (the "Sale Commencement Date") and conclude approximately November 23, 2014 (the "Sale Termination").

Date"); provided, however, that the Parties may mutually agree in writing to extend or Merchant may in writing terminate the Sale at any Store prior to the Sale Termination Date. The Consultant acknowledges that, pursuant to Section 32 of the *Companies Creditors' Arrangement Act* ("CCAA"), it is the intention of the Merchant to give thirty (30) days' notice of disclaimer of the lease agreement for each Store on October 24, 2014 (such date being thirty (30) days before the Sale Termination Date), so that the effective date of the disclaimer of the lease coincides with the Sale Termination Date. If the Consultant recommends the termination of the Sale at any Store prior to the Sale Termination Date, the Consultant shall provide the Merchant with notice of that recommendation no less than thirty-five (35) days prior to the revised Sale Termination Date applicable to such Store in order to allow the Merchant to give notice of disclaimer of the lease thirty (30) days prior to the revised Sale Termination Date applicable to such Store. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the "Sale Term." At the conclusion of the Sale, Consultant shall arrange that the premises for each Store are in broom clean condition and in accordance with the lease requirements for such premises specified by Merchant; provided, however, Merchant shall bear all costs and expenses associated with surrendering the premises to the landlords according to the budget to be established by Merchant and Consultant. At the conclusion of the Sale at each Store, Consultant shall photographically document the condition of each such Store.

C. Project Management

(i) Consultant's Undertakings

During the Sale Term, Consultant shall (a) provide qualified supervisors (the "Supervisors") engaged by Consultant to oversee the management of the Stores; (b) recommend appropriate point-of-sale and external advertising for the Stores, for approval in writing by Merchant; (c) recommend appropriate discounts of Merchandise and staffing levels for the Stores and appropriate bonus and incentive programs, if any, for the Stores' employees, for approval in writing by Merchant; (d) oversee display of Merchandise for the Stores; (e) to the extent that information is available, evaluate sales of Merchandise by category, provide sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; and (h) provide such other related services deemed necessary or appropriate by Merchant and Consultant.

The Parties expressly acknowledge and agree that Merchant shall have no liability to the Supervisors for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Consultant's hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of Merchant.

(ii) Merchant's Undertakings

All sales of Merchandise during the Sale Term shall be made by Merchant for its own account. Accordingly, during the Sale Term, Merchant shall (a) be the employer of the Stores' employees, other than the Supervisors; (b) pay all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all HST/GST and other applicable taxes assessed on the sale of the Merchandise and pay them to the appropriate taxing

earned hereunder) no later than forty five (45) days following the Sale Termination Date for the last Store.

F. Indemnification

(i) Merchant's Indemnification

Merchant shall indemnify, defend, and hold Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates, and Supervisors (collectively, "Consultant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or negligent acts or omissions of Merchant or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or a Consultant Indemnified Party, except claims arising from Consultant's negligence, willful misconduct or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant's Indemnified Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties; and (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

(ii) Consultant's Indemnification

Consultant shall indemnify, defend and hold Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; (c) any liability or other claims made by Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's services hereunder, except claims arising from Merchant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.

G. Insurance

(i) Merchant's Insurance Obligations

Merchant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability (to the extent currently provided), comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in

connection with the Stores, and shall cause Consultant to be named an additional insured with respect to all such policies. At Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(ii) Consultant's Insurance Obligations

As an expense of the Sale, Consultant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least Two Million dollars (\$2,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores. Consultant shall name Merchant as an additional insured and loss payee under such policy, and upon execution of this Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers compensation insurance compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

H. Representations, Warranties, Covenants and Agreements

(i) Merchant warrants, represents, covenants and agrees that (a) Merchant is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and maintains its principal executive office at the address set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Merchant and this Agreement constitutes a valid and binding obligation of Merchant enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein, (c) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices; (d) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with customary Merchant's practices, and (e) the Stores will be operated in the ordinary course of business in all respects, except as determined by Merchant in writing.

(ii) Consultant warrants, represents, covenants and agrees that (a) Consultant is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Agreement and to perform the Consultant's obligations hereunder, and maintains its principal executive office at the addresses set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Consultant and this Agreement constitutes a valid and binding obligation of Consultant enforceable against Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for Consultant to fully perform all of its obligations herein, (c) Consultant shall comply with and act in accordance with any and all

applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities, and (d) Consultant will not take any disciplinary action against any employee of Merchant.

I. Furniture, Fixtures and Equipment

Consultant shall advise in connection with the sale of the FF&E in the Stores from the Stores themselves. Merchant shall be responsible for all reasonable costs and expenses incurred by Consultant in connection with such advice, which costs and expenses shall be incurred pursuant to a budget or budgets to be established from time to time by mutual agreement of the Parties. All sales of FF&E during the Sale Term shall be made by Merchant for its account, at prices, payable in cash, and upon such other terms determined by Merchant. Any unsold FF&E shall be disposed of as Merchant may, in its discretion, determine.

In consideration for providing the services set forth in this section I, Consultant shall be entitled to a fee equal to twenty percent (20%) of the Gross Proceeds of the sale of the FF&E.

During each weekly reconciliation described in section E above, Consultant's FF&E fee shall be calculated, and Consultant's calculated FF&E fee and all reasonable, documented out of pocket costs and expenses then incurred pursuant to this Section I shall be paid within seven (7) days after each such weekly reconciliation.

J. Termination

The following shall constitute "Termination Events" hereunder:

- (a) Merchant's or Consultant's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or
- (c) the Sale is terminated or materially interrupted or impaired for any reason other than an event of default by Consultant or Merchant.

If a Termination Event occurs, the non-defaulting Party (in the case of an event of default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired) may, in its discretion, elect to terminate the term of this Agreement by providing seven (7) business days' written notice thereof to the other Party and, in the case of an event of default, in addition to terminating the term of this Agreement, pursue any and all rights and remedies and damages resulting from such default. If the term of this Agreement is terminated, Merchant shall be obligated to pay Consultant all amounts due under this Agreement through and including the termination date.

K. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by fax or by recognized overnight delivery service as follows: (a) To Merchant: at the address listed above;

(b) To Consultant: Merchant Retail Solutions, ULC c/o Hilco Merchant Resources, LLC, One Northbrook Place, 5 Revere Drive, Suite 206, Northbrook, IL 60062, Fax: 847- 897-0859, Attn: Ian S. Fredericks; or (c) such other address as may be designated in writing by Merchant or Consultant.

L. Independent Consultant

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. Merchant shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant.

M. Non-Assignment

Neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

N. Severability

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

O. Governing Law, Venue, Jurisdiction and Jury Waiver

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the internal laws of the Province of Ontario (without reference to the conflicts of laws provisions therein). Merchant and Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Consultant against Merchant or Merchant against Consultant on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between Merchant and Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect.

P. Entire Agreement

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of

any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

Q. Execution

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

R. Court Approval

The Parties acknowledge and agree that enforceability of this Agreement shall be contingent upon the approval of this Agreement by the Ontario Superior Court of Justice in connection with the CCAA proceedings of the Merchant.

any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

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This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

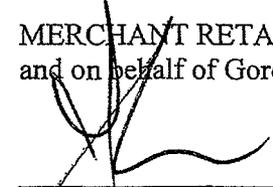
R. Court Approval

The Parties acknowledge and agree that enforceability of this Agreement shall be contingent upon the approval of this Agreement by the Ontario Superior Court of Justice in connection with the CCAA proceedings of the Merchant.

If this Agreement is acceptable to you, kindly execute a copy in the space provided, and return a countersigned version to the undersigned. Thank you again for this opportunity -- we look forward to working with you.

Very truly yours,

MERCHANT RETAIL SOLUTIONS, ULC, on its own behalf
and on behalf of Gordon Brothers Canada ULC



By: Ian S. Fedele
Its: VP. AGC, Legation of HMOR

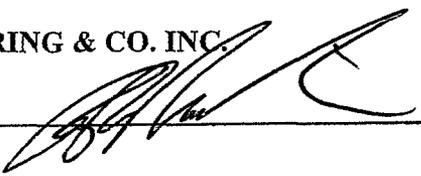
AGREED AND ACCEPTED as of the ___ day
of August, 2014:

BOMBAY & CO. INC.



By:
Its:

BOWRING & CO. INC.



By:
Its:

Exhibit A
Stores

[To be filed separately with the Court at or before the hearing]

EXECUTION VERSION

Exhibit B
Expense Budget

**Bombay and Bowring
Exhibit B**

| |
|---------------------------|
| Expense Budget (1) |
|---------------------------|

| | Bombay | Bowring | Total |
|-----------------------------|-----------------------|-----------------------|-------------------------|
| <u>Advertising</u> | | | |
| Media | 72,000 | 68,500 | 140,500 |
| Signs | 51,567 | 50,544 | 102,111 |
| Sign Walkers | 57,840 | 75,120 | 132,960 |
| Subtotal Advertising | <u>181,407</u> | <u>194,164</u> | <u>375,571</u> |
| | | | |
| <u>Supervision</u> | | | |
| Fees / Wages / Expenses (2) | 343,099 | 375,010 | 718,110 |
| Subtotal Supervision | <u>343,099</u> | <u>375,010</u> | <u>718,110</u> |
| | | | |
| Total Expenses | <u><u>524,506</u></u> | <u><u>569,174</u></u> | <u><u>1,093,680</u></u> |

Note(s):

1. The expense budget is based upon 39 stores, to the extent that the store list is increased or decreased, the expense budget may be adjusted in amounts to be mutually agreed upon.
2. Includes Deferred Compensation and Insurance.



Exhibit C
Sale Guidelines

SALE GUIDELINES

The following procedures shall apply to any sale of Merchandise¹ and FF&E held in the Stores during the Sale Term:

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) approving the Inventory Disposition Agreement; or (ii) any written agreement between the Merchant and the applicable landlord(s), the Sale shall be conducted in accordance with the terms of the applicable lease in respect of each Store.
2. The Sale shall be conducted so that the Stores remain open no longer than the normal hours of operation provided for in the respective leases or other occupancy agreement for the Stores.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Merchant and the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Merchant and the Consultant may advertise the Sale at the Stores as a “sale on everything”, “store closing” or similar themed sale as approved in writing by the Merchant. The Merchant and the Consultant shall not use neon or day-glo signage. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless permitted by the applicable leases. Nothing contained herein shall be construed to create or impose upon the Merchant and the Consultant any additional restrictions not contained in the applicable lease or other occupancy agreement. In addition, the Merchant and the Consultant shall be permitted to utilize exterior banners at non-enclosed mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall; provided, however, that such banners shall be located or hung so as to make clear that the Sale is being conducted only at the affected store and shall not be wider than the premises occupied by the Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant.
5. The Merchant and the Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping center/mall premises.

¹ Capitalized terms that are not defined herein have the meanings ascribed to them in the letter agreement governing inventory disposition, dated August 15, 2014 “the “**Inventory Disposition Agreement**”), between Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC, on the one hand (collectively, the “**Consultant**”) and Bombay & Co. Inc. and Bowring & Co. Inc. on the other hand (collectively, the “**Merchant**”).

6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and that customers with any questions or complaints subsequent to the conclusion of the Sale may contact a named representative of the Merchant or the Consultant at a specified telephone number.
7. The Merchant and the Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores, unless permitted by the applicable lease or, if distribution is customary in the shopping center in which the Store is located. Otherwise, the Merchant and the Consultant may solicit customers in the Stores themselves. The Merchant and the Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
8. At the conclusion of the Sale, the Merchant and the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall otherwise leave the Stores in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No fixtures may be removed without complying with the provisions of the Initial Order of the Court, dated August 6, 2014. In any event, no property of any landlord of a Store shall be removed or sold during the Sale.
9. Subject to paragraph 8 above and the terms of the Inventory Disposition Agreement, the Merchant and/or the Consultant may sell furniture, fixtures and equipment ("FF&E") owned by the Merchant and located in the Stores during the Sale. The Merchant or the Consultant, as the case may be, may advertise the sale of FF&E consistent with the guidelines provided in paragraphs 4 and 6 hereof. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas or through other areas after store business hours or through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag.
10. The Merchant and/or the Consultant shall not make any alterations to interior or exterior Store lighting. No property of any landlord of a Store shall be removed or sold during the Sale. The hanging of exterior banners or other signage shall not constitute an alteration to a Store.
11. The Consultant and its representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable leases, and the landlords shall have the rights of access to the Stores during the Sale provided for in the applicable leases (subject, for greater certainty, to the stay of proceedings set out in the Initial Order of the Court, dated August 6, 2014).
12. The Merchant and/or the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
13. Except with respect to FF&E that can fit in a shopping bag, removal of other furniture, movable fixtures and equipment shall take place before or after the regular hours of the Store or shopping center and through service of the exits and corridors designated by the landlord. The Merchant and/or the Consultant may abandon any of the FF&E not sold in the Sale at the Store premises at the conclusion of the Sale; provided however the

landlord for the subject Store shall have the right to remove and dispose of such property without liability to the Merchant and the Consultant.

14. The Consultant shall designate a party to be contacted by landlords should an issue arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Ian Fredericks who may be reached by phone at (847) 418-2075 or email at ifredericks@hilcoglobal.com. If the parties are unable to resolve the dispute between themselves, the landlord, the Merchant or the Consultant shall have the right to schedule a "status hearing" before the Court on no less than five (5) days written notice to the other party or parties.
15. Nothing herein or in the Inventory Disposition Agreement is, or shall be deemed to be, a consent by any landlord to the sale, assignment or transfer of any leases or grant to the landlord any greater rights than already exist under the terms of any applicable leases.

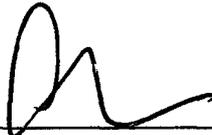
TAB 2D

THIS IS EXHIBIT "D"

referred to in the Affidavit of

Freddy Benitah affirmed before me on

August 15th, 2014



A Commissioner for Taking Affidavits

A. Rouffon

**SALE AND INVESTOR SOLICITATION PROCESS
("SISP")**

Overview

1. Benix & Co. Inc., Bombay & Co. Inc. and Bowring & Co. Inc. (collectively the "**Applicants**") are three (3) separate legal entities:
 - (i) Bombay & Co. Ltd., which currently operates fifty-five (55) stores across Canada and offers large furniture, small occasional furniture, wall décor and home accessories;
 - (ii) Bowring & Co. Ltd., which currently operates fifty-seven (57) stores across Canada and offers giftware, fashion tableware, and decorative home accessories; and
 - (iii) Benix & Co. Ltd., which closed its final store in June, 2014, and prior to closing operated a chain of stores specializing in housewares, with a focus on cooking, home entertaining and giftware.

2. As a result of sustained losses and insufficient liquidity to finance operations, the Applicants, on August 6, 2014, obtained an order (the "**Initial Order**") for protection, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended ("**CCAA**"). Richter Advisory Group Inc. was appointed as the monitor of the Applicants (the "**Monitor**").

3. The Applicants and the Monitor believe that prospective buyers and/or investors will be interested in purchasing or investing in the Applicants' business for the following reasons:
 - (i) the Applicants have developed a restructuring plan, which includes the closure of underperforming store locations, significant cost cutting measures including headcount reductions and rent reductions, and an overall focus on profitable stores;
 - (ii) the Applicants have strong, established brand names, which are considered to be a staple in the home furniture and housewares industry in Canada;
 - (iii) the Applicants have a widespread national retail presence, including desirable store locations across Canada;
 - (iv) the Applicants have well established distribution channels; and
 - (v) the Applicants have an experienced management team capable of delivering on the Applicants' restructuring plan.

4. The Applicants, with the assistance of the Monitor, will be conducting a liquidation process concurrent with the SISP. The purpose of the concurrent process will be to effect the closure of those stores that are cash negative stores or otherwise have a net negative effect on the Applicants' overall business. References made to the "Applicants business" in

this SISP refer only to those stores and operations that the Applicants, in consultation with the Monitor, intend to continue operating and exclude those stores that will be closed.

Objectives

5. The Objective of the SISP are to:
- (i) solicit offers from the market from those parties that are interested in refinancing the Applicants' business in an amount at least sufficient to repay all indebtedness owing to secured creditors of the Applicants and to provide sufficient working capital for the Applicants' ongoing business (the "**Investment Proposal**");
 - (ii) solicit offers from the market from those parties that are interested in purchasing the Applicants' business or a portion thereof (the "**Sale Proposal**");
 - (iii) ensure that the SISP is fair and effective for all parties, and is undertaken in a cost-effective manner;
 - (iv) preserve the continuity of the Applicants' operations during the SISP; and
 - (v) maximize value for the Applicants' stakeholders.
- (collectively the "**SISP Objectives**")

Role of the Monitor

6. The Monitor, will be responsible for managing all aspects of the SISP, while consulting with the Applicants' management ("**Management**") on how best to achieve the SISP Objectives. The Monitor's primary responsibilities will include:
- (i) preparing a list of potential buyers and investors;
 - (ii) drafting of an initial offering summary ("**Teaser Letter**");
 - (iii) assisting legal counsel with the preparation of a confidentiality agreement ("**CA**");
 - (iv) populating and managing an electronic data room ("**Data Room**");
 - (v) assisting legal counsel with the preparation of a template offer;
 - (vi) managing all communications with prospective buyers or investors and negotiating transactional documentation; and
 - (vii) consulting with the Canadian Imperial Bank of Commerce, in its capacity as "**DIP Lender**", throughout the process as the Monitor determines is appropriate.
7. The Monitor, in consultation with Management, will have responsibility for managing all communications with prospective purchasers prior to and after receipt of binding offers. These communications include, but are not limited to, facilitating the delivery of all

communications, contacting prospective purchasers/investors and providing them with the Teaser Letter, coordinating the execution of CAs, soliciting and tracking all expressions of interest, facilitating any requests for tours of the Applicants' facilities, managing the process of answering all inquiries from purchasers/investors, coordinating any presentations that may be requested by purchasers/investors, soliciting and tracking all offers and reviewing and negotiating transactional documentation.

Role of Management

8. Management shall assist the Monitor with the preparation of all of the material listed above and generally cooperate with the Monitor with all actions necessary to achieve the SISP Objectives.
9. Management has advised the Monitor that it, or a related party or parties, may submit a bid for the purchase of the Applicants' business. Any such party or parties who is/are interested to do so must advise the Monitor in writing of such intention on or before August 29, 2014 (the "**Participation Notice**"). Upon receipt of a Participation Notice, Management will be excluded from any participation in the SISP that might create an unfair advantage or jeopardize the integrity of the SISP. For greater certainty any such party or parties delivering a Participation Notice will be subject to the SISP procedures as an Interested Party.

Identification of Potential Interested Parties

10. The Monitor, after consultation with Management, will develop a list of strategic and financial parties who may be interested in investing in the Applicants and/or acquiring the Applicants' business (the "**Potential Bidders**").
11. The Applicants will obtain a Court order approving, *inter alia*, the SISP on or before August 22, 2014 (the "**SISP Approval Order**").

Sale and Investor Solicitation Process

12. The Monitor will, on or before August 27, 2014, distribute the Teaser Letter to all Potential Bidders and any other party who requests same.
13. Potential Bidders who wish to commence due diligence will be required to sign a CA, in a form acceptable to the Monitor.
14. Upon execution of a CA, the Monitor will provide each Potential Bidder (now an "**Interested Party**") with:
 - (i) a copy of the SISP; and
 - (ii) access to the Data Room, where information in connection with the Applicants' business will be available.

(collectively the "**Data Room Information**")

15. The Monitor will work with Management to complete the population of the Data Room with the Data Room Information on or before August 29, 2014. The Applicants, in consultation with the Monitor, reserve the right to limit any Interested Party's access to the Data Room Information where, in the Applicants' discretion, to do so could negatively impact the Applicants' business operations.
16. The Monitor will provide each Interested Party with the form of template offer ("**Template Offer**") on or before August 29, 2014. Each Interested Party who wishes to advance an Investment Proposal may do so in any form provided it meets the requirements set out in Section 18(ii) hereof.
17. Requests from Interested Parties for additional information will be made to the Monitor. Subject to Section 9 of the SISP, the Monitor, where necessary, will coordinate its responses to requests for additional information with Management.
18. Each Interested Party will be required to submit an irrevocable offer to the Monitor on or before 12:00 noon (EST) on September 26, 2014 (the "**Offer Deadline**"), which offer, shall set out to the extent applicable, among other things:
 - (i) in the case of a Sale Proposal, an executed offer containing the following terms and information: (i) the purchase price (including the liabilities to be assumed by the Interested Party); (ii) any of the Applicants' assets and liabilities to be excluded; (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the transaction and any related contingencies, as applicable); (iv) the treatment of employees of the Applicants; and; (v) any regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; (vi) an allocation of the purchase price between the Applicants' assets; and a blackline of the Template Offer to the offer; or
 - (ii) in the case of an Investment Proposal, an executed Investment Proposal containing the following terms and information: (i) the aggregate amount of the equity and debt financing with an allocation between each Applicant (including, the sources of such financing, evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the transaction and any related contingencies, as applicable); (ii) the underlying assumptions regarding the anticipated debt levels, debt service fees, interest and amortization); (iii) any amount to be allocated to the Applicants' unsecured creditors and employees; (iv) confirmation that any anticipated corporate, shareholder or internal approvals required to close the transaction have been obtained; (v) any anticipated regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; and
 - (iii) such other information reasonably requested by the Monitor.

Offer Recommendation, Acceptance and Negotiation Process

19. The Monitor, in consultation with the Applicants, may seek clarifications with respect to the offers and may negotiate any and all aspects of the offers or bids at any time prior to the completion of the Auction or No Auction process. The Monitor is not obligated to consult the Applicants in circumstances where a Participation Notice pursuant to paragraph 9 hereof has been delivered.
20. All offers must be capable of acceptance and must be irrevocable until 11:59 pm EST on November 6, 2014. All Offers must be accompanied by a deposit in the form of a wire transfer (to a bank account specified by the Monitor), or such other form of immediately available funds acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to 10% of the total financing or purchase consideration to be held and dealt with in accordance with the terms of the offer (the "**Deposits**").
21. Deposits received from Interested Parties shall be held in an interest bearing account. Deposits, other than the Deposit of the Successful Bidder, shall be returned to such Interested Parties two business days after the selection of the Successful Bidder as set out in paragraph 27(v) or paragraph 30. The Deposit received from the Successful Bidder shall be applied to the purchase price of such transaction at closing or otherwise dealt with in accordance with the definitive documentation entered into with the Applicants.

Auction Trigger

22. Immediately after the Offer Deadline, the Monitor shall, where necessary, take such steps as are required to clarify values and information set out in any offer and/or negotiate the terms of any offer. Once all offers are clarified the Monitor shall summarize the values set out in each offer and determine which offer provides the greatest value to the Applicants' stakeholders. If such an offer is an Investment Proposal, the Applicants and/or the Monitor may return to Court for directions as appropriate. If such an offer is a Sale Proposal for the purposes of this Auction section the Interested Party that the Monitor has determined submitted the greatest value bid shall be referred to as the "**Threshold Bidder**". The determination of greatest value bid shall be made by the Monitor considering the following factors (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities, if any; (iii) the ability of the bidder to close the transaction; (iv) the impact of the contemplated transaction on any actual or potential litigation; (v) any purchase price adjustments; (vi) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (vii) the net economic effect of any changes from the Template Offer; (viii) the net after-tax consideration to be received by the Applicants; and (ix) such other considerations as the Monitor deems relevant in their reasonable business judgment (collectively the "**Bid Assessment Criteria**").
23. The Monitor shall identify any other offers that are within CDN \$5 million of the Threshold Bidder's offer. For the purposes of this Auction section any Interested Party that submits an offer that is within CDN \$5 million of the Threshold Bidder's offer and satisfied the Bid Assessment Criteria shall be referred to as a "**Qualified Bidder**".

24. In the event the Monitor identifies Qualified Bidders the Monitor shall send written notice to any Qualified Bidders, on or before noon on October 3, 2014, advising the Qualified Bidders that they are Qualified Bidders (the "**Auction Notice**"). The Auction Notice shall also include:
- (i) the date, time and location of the proposed auction;
 - (ii) the terms of the Opening Bid (as defined below);
 - (iii) the minimum first bid required in order to exceed the Threshold Bidder's offer; and
 - (iv) the procedures pursuant to which the auction will be conducted.
25. Qualified Bidders must notify the Monitor, in writing, by no later than noon on October 6, 2014, of their intention to participate in the auction (the "**Auction Notice Response**"). Where the Monitor does not receive an Auction Notice Response it shall be deemed that the applicable Interested Parties declined to participate.
26. In circumstances where no Qualified Bidder, other than the Threshold Bidder elects to participate in the auction process the Applicants and the Monitor shall proceed to consummate the sale transaction in accordance with the "No Auction" section of the SISP. If the only Qualified Bidder electing to participate in the Auction process is the Threshold Bidder, the Threshold Bidder shall be deemed to be the Successful Bidder, subject to court approval.
27. In circumstances where a Qualified Bidder elects to participate an auction shall be conducted on or before October 8, 2014, according to the following procedures:
- (i) Participation at the Auction. Only the Threshold Bidder and Qualified Bidders (collectively the "**Auction Participants**") are eligible to participate at the auction. Only the authorized representatives (including counsel and other advisors) of each Auction Participant shall be permitted to attend the auction. The bidding shall begin with the Threshold Bidder's offer (the "**Opening Bid**") and each subsequent round of bidding shall continue in minimum increments of at least the Minimum Overbid Increment (as defined below).
 - (ii) Monitor Shall Conduct the Auction. The Monitor shall direct and preside over the auction. At the start of the auction the Monitor shall confirm the terms of the Opening Bid to all Auction Participants. All bids made after the Opening Bid shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Auction Participants. The Monitor shall maintain a transcript of the Opening Bid and all Overbids made and announced at the auction.
 - (iii) Terms of Overbids. An "Overbid" is any bid made at the auction subsequent to the announcement of the Opening Bid. To submit an Overbid, in any round of the auction, an Auction Participant must comply with the following requirements:

a. Minimum Overbid Increment

Any Overbid shall be made in increments of at least \$150,000.

b. Announcing Overbids

At the end of each round of bidding, the Monitor shall announce the material terms of the then highest and/or best Overbid, the basis for the calculating the total consideration offered in such Overbid, and the resulting benefit to the Applicants based on, among other things, the Bid Assessment Criteria.

c. Failure to Bid

If at the end of any round of bidding an Auction Participant fails to submit an Overbid, then such Auction Participant shall not be entitled to continue to participate in the next round of the Auction.

- (iv) Additional Procedures. The Monitor may, with consultation of the Auction Participants and its advisors, adopt rules for the auction at or prior to the auction that will better promote the goals of the auction and that are not inconsistent with any of the provisions of these bidding procedures, provided that no such rules may change the requirement that all Overbids shall be made and received in one room, within a defined period, on an open basis, and all other Auction Participants shall be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant submitting a bid shall be fully disclosed to all other Auction Participants and that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Auction Participants.
- (v) Closing the Auction. Upon conclusion of the bidding, the auction shall be closed, and the Monitor shall immediately review the final Overbid of each Auction Participant on the basis of the Bid Assessment Criteria and notify the Auction Participants as to the winner of the auction process subject to Court Approval (the "**Successful Bidder**" and the Successful Bid being the "**Successful Bid**").

The bidders shall bid in inverse order according to the ranking of their offers or previous bids, as determined by the Monitor; the terms and conditions of all bids shall be open to all other Qualified Bidders at such time as they are made; and the Auction process shall continue until there are only two Qualified Bidders, each of which has submitted its final bid or the lowest ranking of which does not wish to make a further bid.

28. The Applicants shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Applicants will be deemed to have accepted the Successful Bid only when this bid is approved by the Court.
29. The Applicants shall file a motion with the Court to approve the Successful Bid by no later than October 15, 2014 (the "**Auction Approval Hearing**"). The Applicants and the

Successful Bidder will make best efforts to have the Auction Approval Hearing scheduled prior to October 31, 2014.

No Auction

30. In circumstances where no auction is required and Management has not delivered a Participation Notice, the Monitor will summarize the terms of all offers received from Interested Parties and provide its recommendation to Management with respect to selecting the offer to consummate the transactions (the "**Accepted Offer**"). If, under these circumstances, Management selects an offer, the Monitor shall promptly notify the Successful Bidder that its offer has been accepted (the "**Acceptance Notice**"), subject to the terms of the SISP and subject to the approval by the *Ontario Superior Court of Justice* (Commercial List) (the "**Court**"). The Applicants shall file a motion with the Court for the approval of the Accepted Offer on or before October 8, 2014. Management shall however, have the discretion to accept the Monitor's recommendation, select an alternative to the Monitor's suggestion, or to refuse all offers received and if Management chooses to do so, the Applicants shall return to Court for directions regarding same.
31. Subject to paragraph 26 in circumstances where no auction is required and where Management has submitted a Participation Notice the Monitor shall have the sole discretion to accept an offer or to refuse all offers received. If, under these circumstances, the Monitor selects an offer, the Monitor shall promptly provide the Successful Bidder with the Acceptance Notice, which shall be subject to the terms of the SISP and subject to the Court's approval. The Monitor shall file a motion with the Court for the approval of the Accepted Offer on or before October 8, 2014.
32. If the Applicants in the first instance or the Monitor in the second instance determine that no offer should be accepted, the SISP process shall be terminated and the Applicants shall seek direction from the Court.

Court Approval and Closing

33. The Accepted Offer or the Successful Bid shall be subject to approval by the DIP Lender if the cash proceeds payable on the closing of the Accepted Offer or Successful Bid are not sufficient to repay all amounts owing to the DIP Lender in full, and shall be subject only to the conditions contained in the Accepted Offer or Successful Bid.
34. Any Accepted Offer or Successful Bid shall be conditional upon the Applicants obtaining Court approval of the Accepted Offer or Successful Bid.
35. Following the selection of the Accepted Offer or the Successful Bid and after receipt of the foregoing approvals, the Monitor shall take such steps as may be necessary to facilitate a closing of each transaction by no later than November 6, 2014.

Other

36. The Monitor, after consulting with the Applicants, may amend the SISP, including as it relates to any time limits as may be necessary to achieve the above objectives, or as may be amended by further Order of the Court.
37. Neither the Applicants nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP Procedures arising out of any agreement or arrangement entered into by the party that submitted the Accepted Offer or Successful Bid. Any such claim shall be the sole liability of the party that submitted such Accepted Offer or Successful Bid.

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 AND ARRANGEMENT INVOLVING BOMBAY & CO. INC. ,
BOWRING & CO. INC. AND BENIX & CO. INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceedings commenced in Toronto

**AFFIDAVIT OF FREDDY BENITAH
(AFFIRMED AUGUST 15, 2014)**

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**MOTION RECORD
(returnable August 22, 2014)**

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