

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

THE HONOURABLE MR. )  
JUSTICE HAINES )  
FRIDAY , THE 22<sup>nd</sup>  
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 19, 2014 (the "First Report") and on hearing the submissions of counsel for the B&C Entities, counsel for the Canadian Imperial Bank of Commerce (the "DIP Lender"), counsel for the Monitor, and such other parties as were present, no one else appearing although duly served as appears from the affidavits of service of Tasha Boyd sworn August 18, 2014 and August 20, 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, after consultation with the DIP Lender) 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, after consultation with the DIP Lender, 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 that the Sale Guidelines attached hereto as Schedule "A" be and are hereby approved and that the liquidation of the inventory and FF&E in the Stores (as defined in the Inventory Liquidation Consulting Agreement) shall be conducted in accordance with such Sale Guidelines. In the event of a conflict as between the terms of the Inventory Liquidation Consulting Agreement and the terms of the Sale Guidelines, the terms of the Sale Guidelines shall prevail.

## **SALE AND INVESTMENT SOLICITATION PROCESS**

4. THIS COURT ORDERS that the sale and investment solicitation process (the "SISP") attached hereto as Schedule "B" (subject to such non-material amendments as may be agreed to by the B&C Entities and approved by the Monitor, after consultation with the DIP Lender) is hereby approved and the B&C Entities and the Monitor, after consultation with the DIP Lender, 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.

  
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## Schedule "A"

## SALE GUIDELINES

The following procedures shall apply to any sale of inventory ordinarily sold in the Stores (as defined below) and located in the Stores, warehouse or distribution centres, and assets or other property owned by the B&C Entities (as defined by the Order to which these Sale Guidelines are appended – the "**Order**" which B&C Entities are referred to as the "Merchant" herein), other than real property leases, (collectively, the "**Merchandise**") and any fixtures, furniture and equipment (collectively, the "**FF&E**") owned by the Merchant in connection with a sale (the "**Sale**") to be held by the Merchant with the assistance of the Consultants (as such term is defined in the Order) in the Merchant's retail stores (individually a "**Store**" and, collectively, the "**Stores**"), such Sale to end by no later than November 24, 2014:

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 Liquidation Consulting Agreement; or (ii) any written agreement between the Merchant and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**"), or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**").
2. The Sale shall be conducted so that the Stores remain open during the normal hours of operation provided for in the respective Leases for the Stores. Rent payable under the respective Leases shall be paid as provided in the Initial CCAA Order dated August 6, 2014.
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 in consultation with the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Merchant may advertise the Sale at the Stores as a "sale on everything", "store closing" or similar theme sale at the Stores (save that no signs shall advertise the Sale as "bankruptcy", "a liquidation" or a "going out of business sale"). Forthwith upon request, the Merchant shall provide the proposed signage packages by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Merchant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Merchant shall not use neon or day-glo or handwritten signage, other than "you pay" and "topper" signs. If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Merchant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute. 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 Lease. Nothing contained herein shall be construed to create or impose upon the Merchant any additional restrictions not contained in the applicable Leases. In

addition, the Merchant shall be permitted to utilize exterior banners/signs only at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall; provided, however, that where such banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used. Any banners permitted to be used 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 affected 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 Merchant.

5. The Merchant 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 centre or mall premises.
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 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 centre in which the Store is located. Otherwise, the Merchant may solicit customers in the Stores themselves. The Merchant 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 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, the Merchant in consultation with the Consultant may sell furniture, fixtures and equipment ("FF&E") owned by the Merchant and located in the Stores during the Sale. The Merchant may advertise the sale of FF&E consistent with the guidelines provided in paragraphs 4 and 6 hereof on the understanding that the Landlord may require such signs to be placed in discreet locations within the Store reasonably acceptable to the Landlord. 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 designated by the Landlord or through other areas after regular 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 with Landlord's supervision as required by the Landlord. The Merchant shall repair any damage to the Stores resulting from the removal of any FF&E.
10. The Merchant 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 shall not conduct any auctions of Merchandise or FF&E at any of the Stores. Subject to an agreement between the Merchant and the Landlords, the Merchant shall not augment the Merchandise included in the Sale except that they shall be entitled to include in the Sale, Merchandise to be located in the Merchant's distribution centre provided that it had been ordered by the Merchant prior to August 6, 2014 but has not yet been delivered.
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 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.
14. The Consultant shall designate a party to be contacted by landlords should a dispute 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 or Merchant shall have the right to schedule a "status hearing" before the Court on no less than **two (2) days** written notice to the other party or parties, during which time the Merchant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court.
15. Nothing herein or in the Inventory Liquidation Consulting 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.
16. For greater certainty, the Consultant is acting as the Merchant's consultant in accordance with the terms of the Inventory Liquidation Consulting Agreement. The Consultant shall have no different rights than the Merchant in the conduct of the liquidation shall and shall be bound by the same terms as the Merchant with respect thereto.
17. These Guidelines can be amended by written agreement between the Merchant and the applicable Landlord.

## Schedule "B"



## 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 and in accordance with the First Amended and Restated Forbearance Agreement among the Applicants, as borrowers and guarantors, and the DIP Lender, as lender, dated as of August 5, 2014 (as amended, revised, restated and/or replaced, from time to time to time, referred to as the "**FARFA**") and the Credit Agreement (as the term "**Credit Agreement**" is defined in the FARFA).
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 and the DIP Lender, 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; (vi) any regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; (vii) 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, after consultation with the Applicants and the DIP Lender, may seek clarifications with respect to the offers and may, after consultation with the DIP Lender, 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, and after consulting with the DIP Lender, 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:
  - (i) summarize the values set out in each offer;
  - (ii) after consulting with the DIP Lender, determine which offers provide for the indefeasible cash payment in full by the bidder to the DIP Lender, of all amounts owing to the DIP Lender under the FARFA, the Credit Agreement and the other Loan Documents (as defined in the FARFA) including, without limitation, all of the Outstanding Obligations (defined in the Credit Agreement) upon the successful closing thereof which closing is completed prior to the expiry or termination of the Forbearance Period (as defined in the FARFA), (such payment within such timeframes being referred to as “**Lender Payment in Full**”); and
  - (iii) determine which offer provides the greatest value to the Applicants’ stakeholders.

The Monitor shall provide a copy of such summary to the DIP Lender as soon as practicable. 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 and provided for Lender Payment in Full shall be referred to as the “**Threshold Bidder**”. The determination of greatest value bid shall be made by the Monitor considering the following factors (a) the amount and nature of the consideration, including the ability to pay the Lender Payment in Full; (b) the proposed assumption of any liabilities, if any; (c) the ability of the bidder to close the transaction, within

the time period contemplated for a Lender Payment in Full; (d) the impact of the contemplated transaction on any actual or potential litigation; (e) any purchase price adjustments; (f) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (g) the net economic effect of any changes from the Template Offer; (h) the net after-tax consideration to be received by the Applicants; and (i) such other considerations as the Monitor deems relevant in their reasonable business judgment, after consulting with the DIP Lender, (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, after consulting with the DIP Lender, 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 elects to participate in the auction process the Applicants and the Monitor, after consultation with the DIP Lender, 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 and the DIP Lender 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, after consultation with the Auction Participants and its advisors and the DIP Lender 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 after consultation with the DIP Lender, 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 and the DIP Lender, as with respect to selecting the offer to consummate the transactions (the "**Accepted Offer**"). The Monitor's recommendation shall be subject to the same criteria as enumerated in paragraph 22. Any proposed Accepted Offer that does not provide for Lender Payment in Full shall be subject to the consent of the DIP Lender prior to being designated as the Accepted Offer. If, under these circumstances, Management selects the Accepted Offer, the Monitor, after consulting with the DIP Lender, 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 the latter, the Applicants shall immediately bring a motion to the Court for directions regarding same. Nothing whatsoever in this SISP precludes the DIP Lender from objecting to and opposing the approval of the Accepted Offer where the DIP Lender has not consented to the Accepted Offer whether or not such offer provides for Lender Payment in Full.

31. Subject to paragraph 26 and to the prior consent of the DIP Lender where the Accepted Offer does not provide for Lender Payment in Full, 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, after consulting with the DIP Lender, 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, after consulting with the DIP Lender, determine that no offer should be accepted, the SISP process shall be terminated and the Applicants shall immediately bring a motion seeking directions from the Court.

### **Court Approval and Closing**

33. The Accepted Offer or the Successful Bid, as the case may be, shall be subject to approval by the DIP Lender where such Accepted Offer or Successful Bid does not provide for the Lender Payment 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 and the DIP Lender, 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.

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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.

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

**Proceedings commenced in Toronto**

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**APPROVAL AND STAY EXTENSION ORDER**

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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.

*August 22/14*

*Aug 22-14*

*a. Kauffman for applicants*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]

Proceedings commenced in Toronto

*Approval and Stay*

MOTION RECORD

(returnable August 22, 2014)

*Extension Order granted*

*our consent in accordance*

*with terms of  
with attached  
orders*

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