

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.
B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

**FACTUM OF TKC METAL RECYCLING INC.
(Returnable August 22, 2024)**

August 14, 2024

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TO: THE SERVICE LIST

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PART I - INTRODUCTION

1. On July 26, 2024 (the “**NOI Filing Date**”), the Applicant, TKC Metal Recycling Inc. (the “**Company**”) initiated proceedings (the “**Proposal Proceedings**”) under section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) by filing a notice of intention to file a proposal (the “**NOI**”) and BDO Canada Limited (“**BDO**”) was named as the proposal trustee in the NOI Proceedings (the “**Proposal Trustee**”).¹
2. This factum is filed in support of the Company’s motion for, *inter alia*,
 - (a) an order (the “**Ancillary Order**”), substantially in the form attached at Tab 3 to the Motion Record, among other things:
 - (i) granting an administration charge in the amount of \$200,000 (the “**Administration Charge**”) in favour of BDO Canada Limited (“**BDO**”),

¹ [s. 50.4\(1\)](#), BIA. 3

in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), counsel for the Proposal Trustee, and counsel for the Company;

(ii) granting a directors’ and officers’ charge in the amount of \$200,000 (the “**Directors’ Charge**”);

(iii) extending the time to file a proposal to October 9, 2024; and

(iv) approving the First Report of the Proposal Trustee (the “**First Report**”) and the activities and conduct of the Proposal Trustee detailed therein; and

(b) an order (the “**Sale Process Order**”) substantially in the form attached at Tab 4 to the Motion Record, among other things, approving the sale process and bidding procedures (the “**Sale Process**”) in respect of the Company’s business and assets and authorizing the Company and the Proposal Trustee to carry out the Sale Process; and

(c) such other relief as this Court may deem just.

3. The relief sought in the Company’s motion is proceeding with the consent of the Proposal Trustee and the Company’s primary secured lender, 1000909688 Ontario Inc. (the “**Lender**”).²

PART II - SUMMARY OF FACTS

4. A detailed background is more fully set out in the affidavit of Kenneth Baird sworn August 13, 2024 (the “**Baird Affidavit**”).

² Baird Affidavit, at para 41; First Report, at paras 7.1, 7.2.

5. All capitalized terms herein that are not defined has the meaning set out in the Baird Affidavit or the First Report.

A. BACKGROUND OF THE COMPANY

6. The Company is a scrap metal recycling company, incorporated under the *Business Corporations Act* (Ontario) on March 7, 2017, with a registered office at 20 Cushman Road, St. Catharines, Ontario L2M 6S8, Canada (the “**Cushman Road Property**”).³

7. The Company purchases and processes various types of ferrous (containing iron) and non-ferrous (without iron) scrap metals, including electronic waste.⁴ The processing system uses industrial equipment, some of which the Company leases from third parties.⁵

8. The Company operates its business out of the Cushman Road Property pursuant to the lease agreement (the “**Lease**”) dated May 12, 2017 with a term of twenty-one years less one day.⁶ During the first five years of the lease the base rent was \$6,705.83 per month. The Landlord increased the base rent to \$24,166.00 per month at the end of the five years and the Company has been making these basic rent payments.⁷

9. The Company holds two licences that are needed to operate the business: (i) a Salvage Yard Business Licence; and (ii) an Ontario Motor Vehicle Industry Council Licence.⁸

10. The Company has a total of 12 employees, and 3 independent contractors, and is current

³ Baird Affidavit, at para 8.

⁴ Baird Affidavit, at para 9.

⁵ Baird Affidavit, at para 10.

⁶ Baird Affidavit, at para 12.

⁷ Baird Affidavit, at para 13.

⁸ Baird Affidavit, at para 14; Exhibits “C” and “D” to the Baird Affidavit.

on payroll and source deductions.⁹

B. THE COMPANY'S FINANCIAL CIRCUMSTANCES

11. The Company's net loss at the end of 2023 was \$706,896, and, as at July 31, 2024, the Company's net losses are \$1,020,630.¹⁰
12. The amount of indebtedness owed by the Company to the Lender as at July 10, 2024 is \$2,206,341.96.
13. The Company's business is largely dependent on two factors: (i) the equipment used to process the scrap metals; and (ii) scrap commodity prices.¹¹
14. In or around 2023, the Company suffered a major equipment failure that is used as part of the processing the scrap metals. Once repaired, another part of the shears failed, causing the Company to incur more costs to repair and replace equipment. This also caused delays in processing and shipping scrap, which resulted in delayed payments.¹²
15. The Company's revenues have continued to decline since the beginning of 2024 due to, among other things, soft market conditions, weak consumer demand, and scrap commodity pricing.¹³

⁹ Baird Affidavit, at paras 17, 20.

¹⁰ Firs Report, at para 1.2.2.

¹¹ Baird Affidavit, at para 32.

¹² Baird Affidavit, at para 33.

¹³ Baird Affidavit, at para 36.

C. THE PROPOSAL PROCEEDINGS

16. The NOI filing was prompted due to the Company’s ongoing liquidity challenges and inability to meet their liabilities as they become due.¹⁴
17. The principal purpose of the Proposal Proceedings is to create a stabilized environment to allow the Company to run a Sale Process to solicit bids for the Company’s business and assets, with the intention of maximizing realizations for all stakeholders.¹⁵
18. These Proposal Proceedings were commenced with the support and consent of the Lender and pursuant to a forbearance agreement between the Lender and the Company (the “**Forbearance Agreement**”).¹⁶

D. THE SALE PROCESS AND BIDDING PROCEDURES

19. The Sale Process was developed by the Company, in consultation with the Proposal Trustee in respect of the Company’s assets (“**Assets**”), which comprise of the following:¹⁷

Lot #	Description
Lot 1	Machinery and Equipment
Lot 2	Inventory
Lot 3	Office furniture and equipment
Lot 4	Leased Assets
Lot 5	Intangible Assets
Lot 6	The Company’s interest, if any, in the Lease Agreement

¹⁴ Baird Affidavit, at paras 5, 37.

¹⁵ Baird Affidavit, at para 6.

¹⁶ Baird Affidavit, at para 7.

¹⁷ First Report, at paras 3.1.1, 3.1.2.

20. Potential bidders are invited to bid on all or part of the Assets.¹⁸ Any sale of the Assets will be completed on an “as is, where is” basis.¹⁹
21. On August 9, 2024, the Proposal Trustee prepared an advertisement (the “**Teaser**”) and placed it in the Financial Post. A Teaser was also prepared that summarizes the Company’s Assets and the Sale Process. The Teaser is also being advertised in Insolvency Insider with weekly releases beginning on Monday, August 12, 2024.²⁰
22. In addition to the publications, a list of potential prospective purchasers has been developed by the Company and provided to the Proposal Trustee.²¹
23. The Sale Process provides that bids must be submitted by Thursday, September 5, 2024 at 3:00 p.m. (the “**Bid Deadline**”), and the successful bidder will be selected by the Proposal Trustee, with the assistance of the Company.²²
24. In the event that multiple bids are received by the Bid Deadline, the Proposal Trustee, in consultation with the Company, may invite bidders to participate in an auction conducted by the Proposal Trustee.²³

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

25. The issues to be determined by this Honourable Court on this motion are whether:

¹⁸ Baird Affidavit, at para 59.

¹⁹ Baird Affidavit, at para 60.

²⁰ First Report, at para 3.1.2; Baird Affidavit, at para 62.

²¹ Baird Affidavit, at para 62.

²² Baird Affidavit, at para 64.

²³ Baird Affidavit, at para 64.

- (a) the Administration Charge should be approved;
- (b) the Directors' Charge should be approved;
- (c) the Company should be granted an extension of time to file a proposal to October 9, 2024;
- (d) the First Report and the activities and conduct described therein should be approved.; and
- (e) the Sale Process should be approved.

A. THE ADMINISTRATION CHARGE SHOULD BE APPROVED

26. The Company seeks an Administration Charge, in priority to all other charges, in the maximum amount of \$200,000 to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company incurred in connection with services rendered to the Company both before and after the commencement of these Proposal Proceedings.
27. Section 64.2 of the BIA provides that a court has jurisdiction to grant a super-priority charge in favour of financial, legal, or other professionals during proposal proceedings.²⁴

²⁴ s. 64.2, BIA; *Danier Leather Inc. (Re)*, 2016 ONSC 1044 (CanLII), at para 56 [*“Danier”*]; *In the Matter of the Notice of Intention to Make a Proposal of Hemsana Inc., Endorsement of Cavanagh J.* (9 April 2024) (Court File No.: BK-24-03054351-0031), Ontario Superior Court of Justice (Commercial List) [*“Hemsana Endorsement”*].

28. Courts routinely approved administration charges, where, as here, the assistance of professional advisors is necessary to facilitate a sale process and is critical to a successful restructuring.²⁵
29. In these circumstances, it is respectfully submitted that the proposed Administration Charge should be approved for the following reasons:
- (a) the professionals that are the beneficiaries of the Administration Charge have significantly contributed, and will continue to contribute, to advancing the objective of these Proposal Proceedings;²⁶
 - (b) the Company has worked with the Proposal Trustee and the other restructuring professionals to estimate the proposed quantum of the Administration Charge, and believes it to be reasonable and appropriate in the circumstances;²⁷
 - (c) the Company's secured creditors are on notice of the proposed Administration Charge and have been served with the motion materials.²⁸ The Administration Charge is also expressly contemplated in the Forbearance Agreement, which is executed by the Lender; and
 - (d) the Proposal Trustee recommends the granting of the proposed Administration Charge.²⁹

²⁵ *Danier*, at para 57; *Re Colossus Minerals Inc.*, 2014 CarswellOnt 1517 at paras. 12-15 [“*Colossus*”]; *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 (CanLII), at para 33 [“*Mustang*”].

²⁶ Baird Affidavit, at para 43.

²⁷ Baird Affidavit, at para 44; First Report, at paras 5.1, 5.3

²⁸ First Report, at para 5.4.

²⁹ First Report, at paras 5.3, 7.2.

B. THE DIRECTORS' CHARGE SHOULD BE APPROVED

30. The Company is seeking a Directors' charge in the amount of \$200,000 to secure the indemnity of the Company's directors and officers.
31. Section 64.1(1) of the BIA expressly provides that a court may grant a charge in favour of any director or officer to indemnify them against obligations and liabilities that they may incur as a director or officer after the commencement of proposal proceedings.³⁰
32. Section 64.1(2) provides that such a charge may "rank in priority over the claim of any secured creditor."³¹ The Directors' Charge is to be subordinate to the Administration Charge.³²
33. The Company's ordinary course operations give rise to potential director or officer liability, including for employee source deductions and sales tax.³³ The Company does not have a directors' and officers' insurance policy.³⁴
34. The Directors' Charge is intended to address potential claims that may be brought against directors and officers, with the exception of a claim raised as a result of a director's or officer's gross negligence or willful misconduct.³⁵

³⁰ [s. 64.1\(1\)](#), BIA.

³¹ [s. 64.1\(2\)](#), BIA.

³² Baird Affidavit, at para 45.

³³ Baird Affidavit, at para 48.

³⁴ Baird Affidavit, at para 47.

³⁵ First Report, at para 6.2.

35. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to the Sale Process and a successful restructuring.³⁶
36. The quantum of the Directors' Charge was developed with the assistance and support of the Proposal Trustee, and is reasonably necessary to address circumstances that could lead to potential directors' liability.³⁷
37. The Directors' Charge is supported by the Proposal Trustee and the Lender.³⁸

C. AN EXTENSION OF TIME TO FILE A PROPOSAL SHOULD BE GRANTED

38. Pursuant to section 50.4(9) of the BIA, the Court may extend the time by which the Company is required to file a proposal in 45-day intervals where the Court is satisfied that:
- (a) the debtor company has acted, and is acting, in good faith and with due diligence;
 - (b) the debtor company would likely be able to make a viable proposal if the extension being applied for were granted; and
 - (c) no creditor would be materially prejudiced if the extension being applied for were granted.³⁹
39. The Company is seeking a 45-day extension of time to file a proposal to and including October 9, 2024 (the "**Extended Stay Period**") to allow for the Company and the Proposal

³⁶ Baird Affidavit, at para 46; *Colossus*, *supra* note 7, at para 20; *Danier*, *supra* note 6, at para 35.

³⁷ Baird Affidavit, at para 49.

³⁸ First Report, at para 7.2.

³⁹ [s. 50.4\(9\)](#), BIA.

Trustee with the time necessary to undertake the proposed Sale Process and return to Court to approve the successful bid.⁴⁰

40. The Company has prepared and filed a 13-week cash flow forecast (the “**Cash Flow Forecast**”), which shows that the Company has sufficient liquidity to fund the Proposal Proceedings and undertake the proposed Sale Process through the Extended Stay Period.⁴¹
41. The Company has acted and continues to act in good faith and with due diligence in furtherance of these Proposal Proceedings in seeking to preserve and maximize value for the benefit of all of its stakeholders.⁴² If the Extended Stay Period is granted, the Company will likely be able to complete the Sale Process and make a viable proposal to its creditors.⁴³
42. No creditor will be materially prejudiced if the extension sought is granted.⁴⁴
43. The Extended Stay Period is supported by the Proposal Trustee and the Lender.⁴⁵

D. THE FIRST REPORT SHOULD BE APPROVED

44. The Company seeks this Court’s approval of the activities and conduct of the Proposal Trustee, as set out in the First Report, filed. The approval of a court officer’s activities and reports is relief that is routinely granted in insolvency proceedings.⁴⁶

⁴⁰ Baird Affidavit, at para 50.

⁴¹ Baird Affidavit, at paras 52, 53; Exhibit “G” to the Baird Affidavit; First Report, at para 4.3.

⁴² Baird Affidavit, at para 54; First Report, at paras 2.2.1, 4.4, 7.2; *Colossus*, *supra* note 7, at para 39.

⁴³ Baird Affidavit, at para 56; First Report, at para 4.4; *Hempsana Endorsement*; *Mustang*, *supra* note 7, at para 41.

⁴⁴ First Report, at paras 4.4, 7.2.

⁴⁵ First Report, at para 7.2.

⁴⁶ *In the Matter of the Notice of Intention to Make a Proposal of Go-For Industries Inc.*, [Order of Black J.](#) (3 June 2024) (Court File No.: BK-24-00459813-0031), Ontario Superior Court of Justice (Commercial List), at para 2; *In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited*, Order of [Cavanagh J.](#) (30 May 2024) (Court File No.: BK-24-03050418-0031), Ontario Superior Court of Justice (Commercial List), at para 3; *Hempsana Endorsement*.

45. The approval language in the proposed draft Order makes clear that the approval is only for the Proposal Trustee personally and is not intended to create rights or impose obligations for any other party.

E. THE SALE PROCESS SHOULD BE APPROVED

46. For the reasons detailed in the Baird Affidavit and in the First Report, the main intention of these Proposal Proceedings is to facilitate the sale of the Company's Assets to maximize realizations for all of its stakeholders.⁴⁷
47. Pursuant to section 65.13 of the BIA, the Court is authorized to approve a sale of assets in a proposal proceeding.⁴⁸
48. Section 65.13(4) provides a list of non-exhaustive factors for a sale of assets. These factors provide useful guidance for this Court to consider in approving a sale process:
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the Proposal Trustee approved the process leading to the proposed sale or disposition;
 - (c) whether the Proposal Trustee with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

⁴⁷ Baird Affidavit, at para 6; First Report, at para 7.2.

⁴⁸ [s. 65.13](#), BIA.

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.⁴⁹

49. In *Nortel Networks Inc. (Re)*, this Court considered the following factors in determining if a proposed sale process should be approved in a CCAA proceeding:

- (a) Is a sale transaction warranted at this time?
- (b) Will the sale benefit the whole ‘economic community’?
- (c) Do any of the debtors’ creditors have a *bona fide* reason to object to the sale of the business?
- (d) Is there a better viable alternative?⁵⁰

50. Even though *Nortel* relates to a restructuring under the *Companies’ Creditors Arrangement Act*, the factors have been applied in the context of a sale process under the BIA.⁵¹

51. The following factors support this Court granting the proposed Sale Process:

⁴⁹ [s. 65.13\(4\)](#), BIA

⁵⁰ [Nortel Networks Corporation \(Re\)](#), 2009 CanLII 39492 (ON SC), at para 49, <>, retrieved on 2024-08-12

⁵¹ [Mustang](#), 2015 ONSC 6562, at para 38; [FlexITy Solutions Inc. et al., Endorsement of Osborne J.](#) (23 July 2023) (Court File No.: BK-23-02926549-0031), Ontario Superior Court of Justice (Commercial List), at para 13; [Behr Technologies Inc., Endorsement of Kimmel J.](#) (26 Jan 2022) (Court File No.: 31-2788304), Ontario Superior Court of Justice (Commercial List), at para 2.

(a) the Sale Process was developed in consultation with the Proposal Trustee and is being undertaken by the Proposal Trustee;⁵²

(b) the Proposal Trustee has noted in its First Report that the intention of the Sale Process is to expose the Company's assets and business to the market and solicit bids with a view to maximizing realizations relative to liquidation. There are no viable alternatives to the Sale Process;⁵³

(c) the Lender supports the Sale Process and the Forbearance Agreement contemplates the Company facilitating a court-approved Sale Process;⁵⁴

(d) the Sale Process is being broadly advertised to a wide range of potential bidders in the market, by way of publishing the Teaser in the Financial Post and Insolvency Insider, as well as the Proposal Trustee reaching out to potential bidders;⁵⁵ and

(e) the Sale Process is in the best interest of all of the Company's stakeholders and is necessary to preserve value of the Company.⁵⁶

52. A further motion will be brought after the conclusion of the Sale Process to seek an approval and vesting order in respect of the sale of the Assets to the successful bidder.⁵⁷

⁵² Baird Affidavit, at para 61; First Report, at para 3.1.1.

⁵³ First Report, at para 3.1.1; Baird Affidavit, at para 6.

⁵⁴ Baird Affidavit, at para 41.

⁵⁵ Baird Affidavit, at para 62.

⁵⁶ First Report, at para 7.2.

⁵⁷ Baird Affidavit, at para 65.

PART IV - ORDER REQUESTED

53. For the foregoing reasons, the Company respectfully requests this Honourable Court grant the Ancillary Order and Sale Process Order in the forms proposed at Tabs “3” and “4” of the Motion Record, respectively.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of August, 2024.

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SCHEDULE “A”

LIST OF AUTHORITIES

1. [Danier Leather Inc. \(Re\)](#), 2016 ONSC 1044 (CanLII).
2. *In the Matter of the Notice of Intention to Make a Proposal of Hemsana Inc.*, [Endorsement of Cavanagh J.](#) (9 April 2024) (Court File No.: BK-24-03054351-0031), Ontario Superior Court of Justice (Commercial List)
3. [Re Colossus Minerals Inc.](#), 2014 CarswellOnt 1517.
4. [Mustang GP Ltd. \(Re\)](#), 2015 ONSC 6562 (CanLII).
5. *In the Matter of the Notice of Intention to Make a Proposal of Go-For Industries Inc.*, [Order of Black J.](#) (3 June 2024) (Court File No.: BK-24-00459813-0031), Ontario Superior Court of Justice (Commercial List).
6. *In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited*, [Order of Cavanagh J.](#) (30 May 2024) (Court File No.: BK-24-03050418-0031), Ontario Superior Court of Justice (Commercial List).
7. [Nortel Networks Corporation \(Re\)](#), 2009 CanLII 39492 (ON SC)
8. *FlexITy Solutions Inc. et al.*, [Endorsement of Osborne J.](#) (23 July 2023) (Court File No.: BK-23-02926549-0031), Ontario Superior Court of Justice (Commercial List).
9. *Behr Technologies Inc.*, [Endorsement of Kimmel J.](#) (26 Jan 2022) (Court File No.: 31-2788304), Ontario Superior Court of Justice (Commercial List).

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY - LAWS

[Bankruptcy and Insolvency Act](#), RSC 1985, c B-3

Notice of Intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

- (a) the insolvent person’s intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a “cash-flow statement”) indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

Creditors may obtain statement

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

Trustee protected

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

Trustee to notify creditors

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

Trustee to monitor and report

(7) Subject to any direction of the court under [paragraph 47.1\(2\)\(a\)](#), the trustee under a notice of intention in respect of an insolvent person

(a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

(b) shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

(i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

(ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

(c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Security or charge relating to director's indemnification

64.1 (1) On application by a person in respect of whom a notice of intention is filed under [section 50.4](#) or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under [section 50.4](#) or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under [section 50.4](#) or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF TKC METAL
RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding Commenced at Hamilton

**FACTUM OF TKC METAL RECYCLING INC.
(Returnable August 22, 2024)**

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