

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

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

THE HONOURABLE MR.) THURSDAY, THE 22nd
)
JUSTICE PARAYESKI) DAY OF AUGUST, 2024

**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.**

ORDER

**Re: Administration Charge, Directors' Charge, Extension of Time to File Proposal and
Approval of Proposal Trustee's First Report and Conduct**

THIS MOTION, made by TKC Metal Recycling Inc. (the "**Company**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order, *inter alia*, (i) granting an Administration Charge (as defined below) in the amount of \$200,000; (ii) granting a Directors' Charge (as defined below) in the amount of \$200,000; (iii) granting a forty-five (45) day extension of time to file a proposal extending the stay of proceedings to and including October 9, 2024 in accordance with the BIA; and (iv) approving the Proposal Trustee's First Report, was heard this day in the Ontario Superior Court of Justice (Hamilton).

ON READING the Notice of Motion, the Affidavit of Kenneth Baird sworn August 13, 2024 and the exhibits thereto (the "**Baird Affidavit**"), and the First Report of BDO Canada Limited ("**BDO**") dated August 14, 2024 (the "**First Report**"), in its capacity as proposal trustee of the Company (in such capacity, the "**Proposal Trustee**"), and on being advised that the secured

creditors who are likely affected by the charge created herein were given notice, and on hearing the submissions of counsel for the Company and counsel for the Proposal Trustee, and those other parties present, no one else appearing although duly served as appears from the Affidavit of Service of Kim Sellers, sworn August 14, 2024, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record of the Company are hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service hereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Baird Affidavit or the First Report, as applicable.

ADMINISTRATION CHARGE

3. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company on a bi-weekly basis.
4. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time and for this purpose, the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice (Hamilton).

5. **THIS COURT ORDERS** that, pursuant to Section 64.2 of the BIA, the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on all of the Company’s current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate including all proceeds thereof (the “**Property**”), which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the standard rates and charges 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 9 and 11 herein.

DIRECTORS’ INDEMNIFICATION AND CHARGE

6. **THIS COURT ORDERS** that the Company shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Company 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 willful misconduct.

7. **THIS COURT ORDERS** that the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for the indemnity provided in paragraph 6 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 9 and 11 herein.

8. **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 Company's 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 6 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

9. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge, shall be as follows:

- (a) First – Administration Charge (to a maximum amount of \$200,000); and
- (b) Second – Directors' Charge (to a maximum amount of \$200,000).

10. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge and the Directors' Charge (together, 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.

11. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and 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.

12. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee 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 to the Proposal Trustee under the BIA or any applicable legislation.

EXTENSION OF THE PROPOSAL PERIOD

13. **THIS COURT ORDERS** that the time for the filing of a proposal by the Company is hereby extended in accordance with section 50.4(9) of the BIA by a period of forty-five (45) days up to and including October 9, 2024.

APPROVAL OF FIRST REPORT AND ACTIVITIES

14. **THIS COURT ORDERS** that the First Report and the conduct and activities of the Proposal Trustee described therein are hereby approved, provided that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon or utilize in any way such approval.

GENERAL

15. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, 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/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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 and shall be accessible by selecting the Company’s name from the engagement list at the following URL <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/TKCMetal>.

16. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Company and the Proposal Trustee 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 Company’s creditors or other interested parties at their respective addresses as last shown on the records of the Company 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.

17. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other

correspondence, by forwarding true copies thereof by electronic message to the Company's creditor or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

18. **THIS COURT ORDERS** that the Proposal Trustee shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the "**Service List**"). The Proposal Trustee shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to these proceedings. Notwithstanding the foregoing, the Proposal Trustee shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

GENERAL

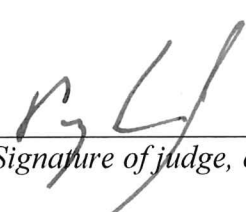
19. **THIS COURT ORDERS** that the Company or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Company, the Proposal Trustee 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 Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect

to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that each of the Company or the Proposal Trustee shall be at liberty and are 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.

22. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without the need for entry and filing.



(Signature of judge, officer or registrar)

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Proceeding Commenced at Hamilton

ORDER

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