

Court File No. CV-19-629552-00CL

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 OR
ARRANGEMENT OF DEL EQUIPMENT INC.

Applicant

NOTICE OF APPLICATION

(CCAA Application returnable October 22, 2019)

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on Tuesday, October 22, 2019, at 10:00 a.m. or as soon after that time as the matter may be heard at 330 University Avenue, Toronto, Ontario.

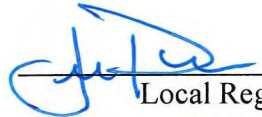
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with the documents in the application, you or an Ontario lawyer acting for you must prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyers and file it, with proof of service, in the court office where the application is to be heard, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you and your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyers and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than two (2) days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LEGAL AID OFFICE.

Date: October 22, 2019

Issued by:

 Jan Plonka
Local Registrar

Address of 330 University Avenue
Court Office: Toronto, ON M5G 1R7

APPLICATION

1. Del Equipment Inc. (the “**Company**” or “**DEL**”) makes this application for an initial order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) substantially in the form included in the Company’s Application Record, *inter alia*:¹
 - (a) abridging the time for and validating the service of this Notice of Application and the Application Record;
 - (b) declaring that DEL is a company to which the CCAA applies;
 - (c) authorizing the Company to carry on business in a manner consistent with the preservation of its business and property;
 - (d) authorizing the Company to pay the reasonable expenses incurred by the Company in carrying out its business in the ordinary course, including certain expenses incurred prior to the date of the Initial Order;
 - (e) appointing MNP Ltd. (“**MNP**”) as an officer of the Court to monitor the assets, business and affairs of the Company (the “**Monitor**”);
 - (f) staying all proceedings taken or that might be taken in respect of the Company or its assets, properties and undertakings (the “**Property**”) or the directors and officers of the Company or the Monitor;
 - (g) authorizing the Company to borrow up to \$1,000,000 under an interim financing facility substantially in the form attached to the Initial Affidavit (the “**DIP Financing**”) to be provided by Diesel Equipment Limited (“**Diesel**”), the Company’s parent company and senior secured lender;

¹ Capitalized terms used but not otherwise defined herein have the meanings given to them in the affidavit of Douglas Lucky sworn October 20, 2019 (the “**Initial Affidavit**”) in support of this application.

- (h) authorizing the Company to pay the reasonable fees and expenses of the Monitor and its counsel and the Company's counsel;
- (i) authorizing the Company to pay certain expenses incurred prior to, on or after the date of the Initial Order, subject to the provisions of the Initial Order;
- (j) approving the engagement of 2255987 Ontario Limited o/a Strategic Results Advisors ("SRA") and the appointment of Douglas Lucky as Chief Restructuring Officer (the "CRO") of DEL pursuant to the terms of the CRO Engagement Letter between the Company and SRA, and granting certain customary protections to the CRO;
- (k) approving the commencement of a sale and investment solicitation process in respect of the Company ("Sale Process"), which process contemplates expressions of interest being received on or before December 6, 2019, and binding bids being received by January 31, 2020;
- (l) granting the following charges over the Property, with the relative priorities as set out below:
 - (i) *first* – the Administration Charge in the aggregate amount of \$400,000 in favour of the Monitor, legal counsel to the Monitor, legal counsel to the Company, the Company's financial advisor and the CRO as security for their professional fees and disbursements;
 - (ii) *second* – the Directors' Charge in favour of the Company's directors, officers and CRO in the amount of \$1,200,000;
 - (iii) *third* – the DIP Lender's Charge to secure the Company's obligations in respect of the DIP Financing; and
 - (iv) *fourth* – the Success Fee Charge in the amount of \$100,000 to secure the Company's obligation in respect of the Success Fee; and
- (m) such further and other relief as this Court deems just.

2. The grounds for the Application are:

- (a) DEL is a leading Canadian truck body and equipment “up-fitter” that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles through its nation-wide distribution network. The Company has operations nation-wide at six manufacturing and distribution locations where it employs approximately 174 employees;
- (b) the Company is currently facing a liquidity crisis and is in significant arrears to many of its suppliers;
- (c) in June 2017, an agreement was reached with Gin-Cor Industries Inc. (“**Gin-Cor**”), a company that operates in the same field as DEL, pursuant to which Gin-Cor would acquire a 40% equity interest in and management control of DEL for a nominal sum, with a view to earning a 100% equity interest upon the achievement of certain profitability related milestones (the “**Gin-Cor Transaction**”);
- (d) the majority of the business synergies anticipated to result as of the Gin-Cor Transaction failed to materialize, with the Company experiencing increasing losses during the period of Gin-Cor management control;
- (e) the Gin-Cor Transaction was terminated in July 2018, and 100% ownership and control of DEL reverted to Diesel as at such time;
- (f) despite efforts to address the operational issues that challenged the business while under Gin-Cor management and to pursue other restructuring initiatives, the Company has been unable to resolve its financial and operational challenges. Among other things, the Company is more than \$8 million in arrears to its supplier base, many of whom have begun to compress payment terms (including in some cases requiring cash in advance and cash on delivery);
- (g) the Company’s liquidity position has also been significantly negatively impacted by a recent payment dispute involving Mack Defense, LLC and Gin-Cor (the

“**Payment Dispute**”), which resulted in an approximately 20% reduction in DEL’s anticipated receipts for September 2019;

- (h) while Diesel has provided certain limited discretionary emergency financing to DEL in recent weeks, it has indicated that it is not prepared to provide further financing in the absence of a formal restructuring process being commenced;
- (i) the Company requires a stay of proceedings to provide stability to the business and time to undertake the Sale Process to seek to identify and assess a potential going-concern sale or restructuring transaction or other alternative that may be available to maximize the value of its business for the benefit of the Company and its stakeholders;
- (j) the Company requires access to the DIP Financing to fund its operational needs while pursuing the Sale Process and restructuring efforts;
- (k) the CCAA proceedings also provide the Company with a forum to expeditiously resolve the Payment Dispute to the extent it cannot be resolved on a consensual basis in the near-term, and the Company intends to bring a motion in connection with the commencement of this Application to secure the funds at issue in the Payment Dispute for the benefit of the Company and its stakeholders;
- (l) MNP has consented to act as Court-appointed Monitor of the Company in these CCAA proceedings if so appointed by the Court;
- (m) the granting of the Administration Charge, the Directors’ Charge, the DIP Lender’s Charge and the Success Fee Charge is appropriate in the circumstances and will facilitate the active involvement of the beneficiaries of the charges during the CCAA proceedings;
- (n) the other relief in the proposed Initial Order is appropriate in the circumstances;
- (o) the provisions of the CCAA and this Court’s equitable and statutory jurisdiction thereunder;

- (p) Rules 1.04, 2.03, 3.02, 14.05(2), 16 and 38 of the Ontario *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended; and
 - (q) such further and other grounds as counsel may advise and this Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Initial Affidavit and the exhibits attached thereto;
 - (b) the Monitor's Pre-Filing Report and the appendices attached thereto;
 - (c) the consent of MNP to act as Monitor; and
 - (d) such further and other materials as counsel may advise and this Court may permit.

Date: October 22, 2019

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