

Court File No. 32-2274873  
Estate File No. 32-2274873

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

BETWEEN:

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF HEAVEN FRESH CANADA INC.**

**MOTION RECORD**  
(Stay Extension,  
Motion Returnable October 4, 2017)

October 3, 2017

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Barristers & Solicitors  
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Lawyers for Heaven Fresh Canada Inc.

TO: **THE ATTACHED SERVICE LIST**

**SERVICE LIST**

**AND TO: MNP LTD.**

111 Richmond Street West, Suite 300  
Toronto, ON M5H 2G4

**Sheldon Title**

Tel: (416) 263-6945

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Proposal Trustee

**AND TO: DANBY PRODUCTS LIMITED**

5070 Whitelaw Road, P.O. Box 1778  
Guelph, ON N1H 6Z9

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Proposed DIP Lender

**AND TO: ROYAL BANK OF CANADA**

25 Milverton Drive  
Mississauga, ON L5R 3G2

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Fax: (905) 568-3403

Email: howard.wang@rbc.com

**AND TO: ROYAL BANK OF CANADA**

25 Milverton Drive  
Mississauga, ON L5R 3G2

**Pauline Chiasson**

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**AND TO: THINKING CAPITAL FINANCIAL CORPORATION**

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**AND TO: RICOH CANADA INC.**

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5560 Explorer Drive  
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Mississauga, ON L4W 5M3

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**AND TO: CANADA REVENUE AGENCY**

c/o Department of Justice  
Ontario Regional Office  
The Exchange Tower, Box 36  
130 King Street West, Suite 3400  
Toronto, ON M5X 1K6

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**AND TO: MINISTRY OF FINANCE (ONTARIO)**

Legal Services Branch  
33 King Street West, 6<sup>th</sup> Floor  
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# Index

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

BETWEEN:

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF HEAVEN FRESH CANADA INC.**

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# Tab 1

Court File No. 32-2274873  
Estate File No. 32-2274873

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF HEAVEN FRESH CANADA INC.**

**NOTICE OF MOTION**

(Stay Extension  
returnable October 4, 2017)

Heaven Fresh Canada Inc. ("**Heaven Fresh**"), will make a motion to a judge of the Superior Court of Justice (In Bankruptcy and Insolvency) on Wednesday, October 4, 2017, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, 8<sup>th</sup> floor, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. an Order substantially in the form attached as Tab 3 herein, and more particularly:
  - (a) if necessary, abridging the time for, and validating the service of, the Notice of Motion and Motion Record herein, such that this motion is properly returnable on October 4, 2017, and dispensing with any further service thereof;
  - (b) extending the stay of proceedings in this matter further to October 25, 2017;



- (c) approving the activities of the Proposal Trustee as described in the First and Second Reports; and,
- (d) such further and other relief as to this Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. Heaven Fresh is an Ontario corporation and carries on business manufacturing and supplying small consumer appliances, including air and water purifiers, humidifiers, and food and juice machines;
2. On July 21, 2017, Heaven Fresh filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to s. 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). MNP Ltd. (the “**Proposal Trustee**”) was appointed as per the NOI;
3. On August 4, 2017, this Court granted an order (“**August Order**”) authorizing Heaven Fresh to proceed with a Sale and Investor Solicitation Process (“**SISP**”), and, in conjunction with the Proposal Trustee, perform their obligations under the SISP, provided that any definitive agreement in respect of the sale of all or part of the assets and property of Heaven Fresh shall require further approval of the Court;
4. Pursuant to the August Order, Heaven Fresh did proceed to implement the SISP and did act and continues to act in conjunction with the Proposal Trustee to perform their respective obligations under the SISP;

5. In that regard, Heaven Fresh is currently in negotiations with respect to certain Qualifying Offers, as that term is defined under the SISP, but has not yet completed those negotiations;
6. Heaven Fresh therefore seeks an extension of the stay period from October 4, 2017 to October 25, 2017 to permit it to continue and hopefully complete the negotiations and return to court to seek approval of a negotiated agreement of purchase and sale;
7. Heaven Fresh has acted and continues to act with due diligence and in good faith;
8. Heaven Fresh believes that if the Court grants the proposed extension of the stay of proceedings, and a definitive agreement is concluded with an offeror, this will likely result in greater overall recoveries for the creditors than would be the case in a bankruptcy, which will likely be the result if the stay extension is not granted;
9. No creditor will be materially prejudiced if the requested stay extension is granted;
10. The Proposal Trustee supports the requested extension;
11. Sections 50(1), 50.4(9), 65.13 and 187(12) of the *BIA*, as amended;
12. the August Order;
13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

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- (a) the Affidavit of Mohammad Kamal Anwar, sworn October 3, 2017;
- (b) the Second Report of the Proposal Trustee; and,
- (c) such further and other materials as counsel may advise and this Honourable Court permit.

October 3, 2017

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
1500 - 2 Queen Street East  
Toronto, ON  
M5C 3G5

**Mervyn D. Abramowitz** (LSUC #28325R)  
Tel: (416) 597-4887  
Fax: (416) 593-3396  
Email: [mabramowitz@blaney.com](mailto:mabramowitz@blaney.com)

Lawyers for Heaven Fresh Canada Inc.

**TO: THE ATTACHED SERVICE LIST**

# Tab 2

Court File No. 32-2274873  
Estate File No. 32-2274873

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

B E T W E E N:

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF HEAVEN FRESH CANADA INC.**

**AFFIDAVIT OF MOHAMMAD KAMAL ANWAR**

(Stay Extension, returnable  
October 4, 2017)

I, **MOHAMMAD KAMAL ANWAR**, of the City of Mississauga, in the Province of Ontario, **DO SOLEMNLY AFFIRM:**

1. I am a director of Heaven Fresh Canada Inc. ("**Heaven Fresh**" or the "**Company**"), and as such, I have knowledge, information and belief of the matters to which are hereinafter deposed. Where statements are based upon information and belief, I so state and indicate the source of the information and the reason for my belief, and verily believe them to be true. To the extent that any of the information and belief set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.

2. This affidavit is sworn in support of Heaven Fresh's motion for an order substantially in the form attached at Tab 3 to the Motion Record, and in particular:

- (a) abridging the time for, and validating the service of the Notice of Motion and the Motion Record and dispensing with service on any other person other than those already served;

- (b) extending the stay of proceedings herein from October 4, 2017 to October 25, 2017; and,
  - (c) approving the activities of the Proposal Trustee as described in its Second Report to the Court.
3. On July 21, 2017, Heaven Fresh filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). MNP Ltd. was appointed as proposal trustee (“**Proposal Trustee**”). Attached hereto and marked as **Exhibits “A”** and “**B**” to this affidavit, respectively, are copies of the Certificate of Filing of a Notice of Intention to Make a Proposal and the NOI that was filed.

### **Background**

4. Heaven Fresh is a small, closely held corporation that is in the business of marketing and distributing household comfort appliances including air and water purifiers, humidifiers, and food and juice machines. It sells its products online and via authorized dealers.
5. As noted in the prior affidavit sworn in these proceedings by Heaven Fresh’s President, Imran Bashir, sworn July 27, 2017 (“**Bashir Affidavit**”), a copy of which is attached without exhibits as **Exhibit “C”** to my affidavit, Heaven Fresh is insolvent and no longer has any active employees and no longer operates out of its own separate business premises as it did before. Its product inventory and other assets are now located in a warehouse, pursuant to a Warehousing Services Agreement, with Danby Products Limited (“**Danby**”), who is also the DIP lender in these proceedings.

6. On August 4, 2017, this Court issued an Order (“**August Order**”) approving certain interim (or DIP) financing arrangements between Danby and Heaven Fresh, approving a Sale and Investor Solicitation (“**SISP**”) process, and extending the automatic stay of proceedings under the BIA to October 4, 2017. Attached hereto and marked as **Exhibit “D**” to this affidavit is a copy of the August Order.

### **SISP Implementation**

7. Pursuant to the August Order, Heaven Fresh, with the assistance and support of the Proposal Trustee, commenced and implemented the SISP. The Offer Deadline date has now passed and the Company is now considering Qualifying Offers, as that term was defined in the SISP.

8. I understand that the Proposal Trustee will be provided further information with respect to the details of the SISP process, including information with respect to what was sent out to various potential interested parties, what happened thereafter, and where we are now in the SISP process.

9. At this time, we are considering various options and we are currently negotiating in respect of certain Qualifying Offers.

10. The August Order approving the SISP required that the Winning Offer in the SISP be selected within five business days of the Offer Deadline (paragraph 8 of the Sale Process schedule, being Exhibit L to the Bashir Affidavit, and which is attached as **Exhibit “E**” to my affidavit).

11. Unfortunately, the timing of these most recent steps has taken longer than initially anticipated and we wish to ensure that the negotiations are not prejudiced by the October 4, 2017 stay expiry date.

12. The delay is partially due to the fact that the Company's key officers and directors have had certain difficulties finding time to communicate internally, and decide upon next steps, but also due to the fact that Mr. Bashir, the Company's President, has been travelling a good deal recently, including to places such as Hong Kong and San Francisco, in different time zones, making it more difficult still to make decisions in the short time frame allocated for the negotiation and finalization of the Winning Offer, as that is defined in the SISF.

13. We continue to work with the Proposal Trustee and hope that the negotiations will be successfully completed in a short period of time, and that we will be able to return to court to seek approval of a fully negotiated agreement of purchase and sale.

#### **Extension of Stay of Proceedings**

14. In my view, an extension of the stay of proceedings will provide Heaven Fresh with the additional time necessary to negotiate a Winning Offer. Without the extension, the stay of proceedings will expire, and Heaven Fresh will not be in a position to make a viable proposal to its creditors and will likely become bankrupt, forcing a liquidation of its assets. In my view, this can only be to the detriment of the creditors and indeed all of Heaven Fresh's stakeholders.

15. I am not aware of any creditor that would be materially prejudiced if the extension being applied for is granted. I am also not aware of anyone who objects to or is likely to object to the proposed extension.



16. Since the date of the filing of the NOI, Heaven Fresh has been acting in good faith and with due diligence, and continues to act in this manner in its relations with customers and suppliers.

17. I am also advised by Mr. Sheldon Title that the Proposal Trustee supports the requested stay extension and the other relief sought in this motion.

18. With the assistance of the Proposal Trustee, Heaven Fresh has prepared an updated cash flow forecast (the “**Cash Flow Forecast**”). To my knowledge, the assumptions made in the Cash Flow Forecast are both reasonable and accurate. Attached hereto and marked as **Exhibit “F”** to my affidavit is a copy of the Cash Flow Forecast.

19. Heaven Fresh has provided the Cash Flow Forecast to the Court; however, as noted above, Heaven Fresh no longer has any active employees and its operations are quite minimal at this time. Thus, there are no significant cash requirements at this time, and none are expected through to the end of the proposal period.

### **Conclusion**

20. In my view, the order sought herein is in the best interests of Heaven Fresh and all of its stakeholders, as it maximizes the likelihood of obtaining the greatest value for Heaven Fresh’s business and Property.

21. Without the requested relief, Heaven Fresh faces bankruptcy and a liquidation of its assets. This would not be in the best interests of Heaven Fresh’s stakeholders and as a result, we hereby request that the Court grant the relief sought in the Notice of Motion.

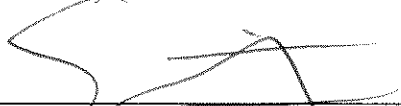
**AFFIRMED BEFORE ME**

at the City of Toronto,

in the Province of Ontario,

on October 3, 2017.

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A Commissioner for Taking Affidavits

*M.D. ABRAMOWITZ*



**MOHAMMAD KAMAL ANWAR**

# Tab A

This is **EXHIBIT "A"** referred to  
in the Affidavit of **Mohammad Kamal Anwar**

sworn before me, this 3<sup>rd</sup>

day of October, 2017.

  
A Commissioner, etc.



# Tab B

This is **EXHIBIT "B"** referred to  
in the Affidavit of **Mohammad Kamal Anwar**

sworn before me, this 3<sup>rd</sup>

day of October, 2017.

  
A Commissioner, etc.

District of: Ontario  
Division No. 09 - Mississauga  
Court No.  
Estate No.

- FORM 33 -  
Notice of Intention To Make a Proposal  
(Subsection 50.4(1) of the Act)

In the matter of the proposal of  
Heaven Fresh Canada Inc.

Take notice that:

1. We, Heaven Fresh Canada Inc., an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that we intend to make a proposal to our creditors.
2. MNP LTD. of 300 - 111Richmond Street West, Toronto, ON, M5H 2G4, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against us are stayed as of the date of filing of this notice with the official receiver in our locality.

Dated at the City of Toronto in the Province of Ontario, this 27th day of June 2017.

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Heaven Fresh Canada Inc.  
Insolvent Person

To be completed by Official Receiver:

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Filing Date

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Official Receiver



District of: Ontario  
 Division No. 09 - Mississauga  
 Court No.  
 Estate No.

## - FORM 33 -

Notice of Intention To Make a Proposal  
 (Subsection 50.4(1) of the Act)

In the matter of the proposal of  
 Heaven Fresh Canada Inc.

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Alive Pro	126 Upper Post Rd Vaughan ON L6A 4J9		22,374.79
Allseen Alliance	Box 743461, LosAngeles CA 90074-3461		5,284.56
BDC	4310 Sherwoodtowne Blvd. # 100 Mississauga ON L4Z 4C4	36213	223,434.00
Commerce Hub	23736 Network Place Chicago IL 60673-1257		536.38
Danby	5070 Whitelaw Rd \Box 1778 Guelph ON N1H 6Z9		108,475.13
Delmar	6399 Cantay Rd Mississauga ON L5R 0G4	859326340RM0001	251.20
DHL	18 Parkshore Dr Brampton ON L6T 5M1	287394	1,290.57
Future Mgmt	176-4-5694 Hwy 7 E Markham ON L3P 1B4		919.46
Glory Plaza	1759 Halifax St Regina SK S4P 1T2		36,000.00
Greatest Dragon	8 Java Road, North point, HONG KONG,		245,542.57
Huron	4311 Village Ctr Court Suite 201 Mississauga ON L4Z 1S2		1,163.90
Imran Bashir	303 Pinetree Way Mississauga ON L5B 2R4		2,949.00
Indoor Purification Systems	334 N. Marshall Way, Suite C Layton UT 84041		189,869.89
Javaid Khan	124 Mountainberry Rd Brampton ON L6R 2L7		21,834.00
Lodestar	1155 Appleby Line Unit E4 Burlington ON L7H 5H9		570.40
Master Card	Box 4016, Stn A Toronto ON M5W 2E6	(2) 6456 and 6464	4,566.91

District of: Ontario  
 Division No. 09 - Mississauga  
 Court No.  
 Estate No.

- FORM 33 -  
 Notice of Intention To Make a Proposal  
 (Subsection 50.4(1) of the Act)

In the matter of the proposal of  
 Heaven Fresh Canada Inc.

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
RBC CANADA	25 Milverton Drive Mississauga ON L5R 3G2	1018498	14,019.66
RBC Line of Credit	36 York Mills Rd 4th Floor Toronto ON M2P 0A4	677399320001	100,000.00
Seyed Miri	3555 Don Mills Road, Unit 18-107 Toronto ON M3M 1H6		20,000.00
Shanghai Neo Tec	4501 Hu Qing Ping Highway, Hong Cheng Zone Shanghai, China		17,075.76
Siber Circuits	145 Riviera Dr, Units 2, 3, 4 Markham ON L3R 5J6		1,084.80
Softech Systems	955 L phase 3 Johar Town Lahore, Pakistan 54770		24,731.74
T D Canada Trust	1900 Ellesmere Scarborough ON M1H 2V6	0239-5211274	9,874.02
Tariq Malik	2067 Eringate Blvd 2067 Eringate Blvd Pickering ON L1V 2V4		6,000.00
Thinking Capital	4200 Blvd Dorchester Montreal QC H3Z 1V4		82,013.95
Visa 1842	Box 4016, Stn A Toronto ON M5W 2E6	2(1842) (8163)	14,066.50
Visa1867	Box 4016, Stn A Toronto ON M5W 2E6	2(1867)(8148)	3,913.01
Wells Fargo	Box 6782 Stn A, Toronto ON M5W 1X5	5478-0203-0393-2883	39,966.38
Wires Law	1600-2300 Yonge St Toronto ON M4P 1E4		826.84
Xiaoqing Sheng	170 Esna Park Dr Mississauga ON L3R 1E3		9,321.00
Zhaohui Tang	170 Esna Park Dr Mississauga ON L3R 1E3		9,321.00

District of: Ontario  
Division No. 09 - Mississauga  
Court No.  
Estate No.

- FORM 33 -  
Notice of Intention To Make a Proposal  
(Subsection 50.4(1) of the Act)

In the matter of the proposal of  
Heaven Fresh Canada Inc.

Total			1,217,277.42
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Heaven Fresh Canada Inc.  
Insolvent Person

# Tab C

This is **EXHIBIT "C"** referred to  
in the Affidavit of **Mohammad Kamal Anwar**

sworn before me, this 3<sup>rd</sup>

day of October, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and lines, is written over a horizontal line. The signature is somewhat abstract and difficult to decipher.

A Commissioner, etc.

Court File No. 32-2274873  
Estate File No. 32-2274873

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

**B E T W E E N:**

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF HEAVEN FRESH CANADA INC.**

**AFFIDAVIT OF IMRAN BASHIR**

**(Approval of DIP, SISP, Stay Extension  
returnable August 4, 2017)**

I, **IMRAN BASHIR**, of the City of Mississauga, in the Province of Ontario, **DO SOLEMNLY AFFIRM:**

1. I am the President of Heaven Fresh Canada Inc. ("**Heaven Fresh**" or the "**Company**"), and as such, I have knowledge, information and belief of the matters to which are hereinafter deposed. Where statements are based upon information and belief, I so state and indicate the source of the information and the reason for my belief, and verily believe them to be true. To the extent that any of the information and belief set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.
2. This affidavit is sworn in support of Heaven Fresh's motion for an order substantially in the form attached at Tab 3 to the Motion Record, and in particular:
  - (a) if necessary, abridging the time for, and validating the service of the Notice of Motion and the Motion Record and dispensing with service on any other person other than those served;

- 2 -

- (b) declaring that the Commercial List E-Service Protocol applies to the within proceeding and permitting service of any documents herein by e-mail, in accordance therewith;
- (c) authorizing Heaven Fresh to enter into, and approving, an interim financing agreement (the “**DIP Agreement**”) between Heaven Fresh and Danby Products Limited (the “**DIP Lender**”), whereby the DIP Lender will provide Heaven Fresh with an interim financing facility (the “**DIP Facility**”) in the maximum amount of \$100,000.00, and granting a super-priority charge against all of Heaven Fresh’s property, assets and undertakings (the “**Property**”) as security for Heaven Fresh’s obligations in respect of the DIP Facility in favour of the DIP Lender (the “**DIP Charge**”);
- (d) approving a Sale and Investor Solicitation Process (the “**SISP**”), in the form attached as Exhibit “M” to my affidavit, with such non-material amendments or modifications as Heaven Fresh or the Proposal Trustee may consider appropriate, and authorizing Heaven Fresh in consultation with the Proposal Trustee to take steps to immediately implement the SISP; and,
- (e) extending the stay of proceedings effective July 21, 2017, upon the filing of the NOI, to October 4, 2017.

3. On July 21, 2017, Heaven Fresh filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). MNP Ltd. was appointed as proposal trustee (“**Proposal Trustee**”). Attached hereto and marked as **Exhibits “A” and “B”**

- 3 -

to this affidavit, respectively, are copies of the Certificate of Filing of a Notice of Intention to Make a Proposal and the NOI that was filed.

### **Overview**

4. Heaven Fresh is a small, closely held corporation that is in the business of marketing and distributing household comfort appliances including air and water purifiers, humidifiers, and food and juice machines. It sells its products online and via authorized dealers.
5. Heaven Fresh was incorporated pursuant to the Ontario *Business Corporations Act* on May 31, 2004. Its registered head office is located at 1600 Aimco Blvd., Suite 5, Mississauga, Ontario, L4W 1V1. Attached hereto and marked as **Exhibit "C"** to this affidavit is a copy of Heaven Fresh's Corporate Profile Report.
6. The Corporate Profile Report indicates that Heaven Fresh's directors and officers are Mohammad Kamal Anwar, Azam Mohammad Gondal, Taoufik Lahrache and myself. As a result of its financial difficulties, Heaven Fresh no longer has any active employees. In fact, all of the Company's employees were terminated prior to the filing of the NOI.
7. Further, Heaven Fresh no longer operates out of its own separate business premises as it did before. It recently moved its product inventory and other assets into a warehouse, pursuant to a Warehousing Services Agreement with the DIP Lender. Attached hereto and marked as **Exhibit "D"** to this affidavit is a copy of the Warehouse Services Agreement.
8. Over the past several years, Heaven Fresh has struggled to perform in the Canadian market. It is now insolvent. In particular, Heaven Fresh suffered net losses for 2015 and 2016 of \$253,380.00 and \$172,229.00, respectively, and also experienced negative cash flows over the



- 4 -

past two years. Attached hereto and marked as **Exhibit “E”** and **“F”** to this affidavit, respectively, are the unaudited financial statements for Heaven Fresh for the years ending June 30, 2015 and 2016.

9. In my view, Heaven Fresh encountered financial difficulties because the business was undercapitalized, and accordingly, was not able to grow to the scale where it could become profitable. The Company also invested heavily in research and development (“**R&D**”), which reduced the pool of funds Heaven Fresh had available to it to carry on its core business. The R&D turned out being a larger financial undertaking than Heaven Fresh expected, and consequently, it suffered financially.

10. I have been advised by Heaven Fresh’s legal counsel, Mervyn D. Abramowitz of Blaney McMurtry LLP, that the Commercial List provides for parties to serve documents via email. As Heaven Fresh has limited time and resources, and in order to increase efficiency and permit all those who are entitled to notice of these proceedings to receive notice on a timely basis, we hereby request that the Commercial List E-Service Protocol (the “**Protocol**”) be approved in this proceeding, permitting Heaven Fresh, and any other interested person, to serve any required documents via electronic mail as set out in the Protocol.

#### **Assets**

11. As noted in the financial statements, as at June 30, 2016, Heaven Fresh had total assets valued at \$845,551.00. The assets were a combination of accounts receivable, inventory, intellectual property and amounts due from related parties.

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12. Heaven Fresh's intellectual property is one of its key and valuable assets. The intellectual property includes internally generated software for Heaven Fresh's new product offerings, permitting many of Heaven Fresh's products to be connected to and controllable via the Internet.

13. We have already received expressions of interest in respect of our intellectual property, as many people see the Internet-connected appliances as part of the future.

14. Unfortunately, Heaven Fresh's financial position is such that it cannot afford to exploit the technology in a profitable manner.

15. The accounts receivable are relatively minor and the amounts due from related parties, though larger, are largely uncollectible. This is so because the related corporations are in other jurisdictions, and they simply do not have the assets to support the ability to repay the amounts initially loaned to them by Heaven Fresh.

#### **Liabilities**

16. As at the date of filing, Heaven Fresh had total liabilities of approximately \$1,227,277.42. Pursuant to the NOI, the list of creditors with claims of \$250.00 totalled \$1,217,277.42. After the date of filing, it was discovered that a further \$10,000.00 was omitted from the NOI due to oversight. As noted in the financial statements, as at June 30, 2016, Heaven Fresh had total liabilities in the amount of \$914,224.00.

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### **Secured Creditors**

17. I have been advised by Sheldon Title of the Proposal Trustee that the Proposal Trustee conducted searches of the Personal Property Security Registration System in the province of Ontario in respect of registrations under the *Personal Property Security Act* ("**PPSA**"). Attached hereto and marked as **Exhibit "G"** is a copy of the *PPSA* search results in respect of Heaven Fresh, current as at June 7, 2017 (the "**PPSA Report**").

18. The *PPSA Report* reveals that the Royal Bank of Canada ("**RBC**"), Thinking Capital and Ricoh Canada Inc. ("**Ricoh**") have each registered financing statements against Heaven Fresh. Both RBC and Thinking Capital entered into lending agreements with Heaven Fresh, while Ricoh provided Heaven Fresh with an office printer.

### *Secured Indebtedness to RBC, Thinking Capital and Ricoh*

19. RBC and Heaven Fresh entered into a revolving credit facility in the amount of \$100,000 pursuant to a Business Banking Loan Agreement dated June 4, 2014 (the "**RBC Loan**"). The interest rate is the RBC Prime Rate plus three percent (3%) per annum payable monthly. Attached hereto and marked as **Exhibit "H"** to this affidavit is a copy of the RBC Loan agreement.

20. As security for the RBC Loan, Heaven Fresh executed a General Security Agreement wherein it granted RBC a security interest in all of assets as collateral. It appears that RBC registered a financing statement in respect of its security under the *PPSA*. The RBC Loan still remains payable in full.

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21. Thinking Capital also agreed to provide Heaven Fresh with a loan in the amount of \$141,669, in one advance, on a non-revolving basis, for a term of twelve (12) months at an interest rate of 18.46% (the “**Thinking Capital Loan**”). Attached hereto and marked as **Exhibit “I”** to this affidavit is a copy of the Thinking Capital Loan agreement. My understanding is that the amount owing to Thinking Capital is in and around \$82,000.

22. Heaven Fresh also granted a security interest to Thinking Capital in all of Heaven Fresh’s present and after-acquired personal property, as security for the Thinking Capital Loan, and it appears that Thinking Capital also registered a financing statement under the *PPSA*.

23. It also appears that Ricoh registered a financing statement in respect of a printer that Heaven Fresh leased from them.

24. Heaven Fresh intends to contact each of the parties who registered financing statements under the *PPSA* to give them notice of the fact that we are seeking interim financing and an order that the interim financing loan amount be granted priority over each of the interests of those creditors who have registered their interests under the *PPSA*.

#### **Extension of Stay of Proceedings**

25. The proposal process was only recently commenced. However, it is clear that Heaven Fresh requires more time than the 30 days provided under the initial stay of proceedings to continue with its restructuring efforts and its efforts to preserve the business on a going concern basis for the benefit of all stakeholders, and to be able to formulate and file a viable proposal. Without the extension, the stay of proceedings will expire on August 20, 2017.

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26. In my view, it is more likely that Heaven Fresh will be able to make a viable proposal if the extension of time requested is granted. More particularly, an extension of the stay will permit Heaven Fresh to undertake and implement the SISP, which is described in greater detail below.

27. Without the extension, Heaven Fresh will likely not be in a position to make a viable proposal to its creditors and will likely become bankrupt, forcing a liquidation of its assets. In my view, this can only be to the detriment of the creditors and indeed all of Heaven Fresh's stakeholders.

28. I am not aware of any creditor that would be materially prejudiced if the extension being applied for is granted. I am also not aware of anyone who objects to or is likely to object to the proposed extension.

29. Since the date of the filing of the NOI, Heaven Fresh has been acting in good faith and with due diligence, and continues to act in this manner in its relations with customers, suppliers and in pursuing a restructuring plan.

30. I am also advised by Mr. Title that the Proposal Trustee supports the requested stay extension and the other relief sought in this motion.

#### **DIP Facility and DIP Charge**

31. Due to the current liquidity challenges, and as demonstrated in the Cash Flow Forecast (as defined below), Heaven Fresh requires interim financing to provide stability, continue operations on a going concern basis, look to restructure its business and commence the SISP.

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32. Without the interim financing, Heaven Fresh will not be able to proceed with the proposal process herein, and will simply be forced to make an assignment in bankruptcy or face a deemed assignment in bankruptcy in the very short term.

33. With the assistance of the Proposal Trustee, Heaven Fresh prepared a consolidated cash flow forecast for the time period commencing July 21, 2017 through to October 13, 2017 (the "**Cash Flow Forecast**"). The assumptions made in the Cash Flow Forecast are both reasonable accurate. Attached hereto and marked as **Exhibit "J"** to this affidavit is a copy of the Cash Flow Forecast.

34. The Cash Flow Forecast demonstrates that Heaven Fresh requires additional funds to enable it to carry on business during the restructuring process and to fund the SISP, working capital and the administrative costs of these proceedings.

35. The DIP Lender has agreed to provide interim, debtor-in-possession financing ("**DIP Financing**") to Heaven Fresh, up to a maximum amount of \$100,000, subject to certain conditions, including Heaven Fresh obtaining an Order in this NOI Proceeding granting the DIP Charge priority over all other security interests and encumbrances. Attached hereto and marked as **Exhibit "K"** to this affidavit is a copy of the proposed DIP Agreement.

36. The key terms of the DIP Agreement are:

- (a) principal amount of \$100,000, on a non-revolving basis;
- (b) repayable on demand and in accordance with the terms of any court order within these *BIA* proceedings;
- (c) a commitment fee of \$1,000; and

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(d) interest at a rate of 6% per annum, payable in cash, in advance, and compounded monthly.

37. The funds available under the DIP Agreement will be used to meet Heaven Fresh's funding requirements during the proposal proceedings in accordance with the Cash Flow Forecast, including payments to suppliers, for professional fees and other costs and expenses in connection with these proceedings.

38. In my view, and based upon the advice of the Proposal Trustee, the terms of the DIP Agreement and loan are quite reasonable in the circumstances and we therefore ask that the DIP Agreement and DIP Charge be approved.

39. As noted, in the absence of the DIP Financing, Heaven Fresh will not be able to conduct the SISP and will be forced to immediately cease all operations and commence a liquidation of its assets.

40. I also understand the Proposal Trustee supports the approval of the DIP Agreement and the granting of the DIP Charge.

41. Furthermore, to my knowledge, neither RBC nor Thinking Capital, or any other creditor will be materially prejudiced by the approval of the DIP Facility and the granting of the DIP Charge. In fact, it appears that the likelihood of enhanced recoveries arising out of the SISP will benefit the creditors, including the secured creditors.

#### **Approval of the SISP**

42. Heaven Fresh, in consultation with the Proposal Trustee, and subject to the approval of this Court, developed the SISP for the purpose of conducting a sale and investor solicitation

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process of its business as a going concern. Attached hereto and marked as **Exhibit "L"** to this affidavit is a copy of the SISP.

43. The purpose of the SISP is to seek out proposals for the acquisition of, or investment in, Heaven Fresh's business and / or Property. The proposed SISP will identify the best opportunities in the circumstances for maximizing value for Heaven Fresh's stakeholders.

44. Heaven Fresh intends to immediately commence the SISP, if approved by this Court. This will assist to reduce costs, streamline Heaven Fresh's restructuring proceedings and enhance the likelihood of maximizing recoveries for all of Heaven Fresh's stakeholders.

45. I understand that the Proposal Trustee supports the SISP and has stated in its report that the SISP would be more beneficial to the stakeholders than a sale or disposition of Heaven Fresh's assets in a bankruptcy.

46. Furthermore, Heaven Fresh has already engaged in discussions with possible strategic bidders/ purchasers, including a leader in the appliance market. It thus appears that there are already third parties who may be interested in acquiring the assets of Heaven Fresh.

47. If approved by the Court, the SISP will be implemented and administered by Heaven Fresh with oversight from Proposal Trustee.

48. The following is a summary of the key terms of the SISP and certain material milestones (any terms not otherwise defined herein, shall have the meaning assigned to such terms in the SISP):



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- (a) the SISP will commence within five (5) business days following the date of any Order approving same (the “**SISP Approval Date**”);
- (b) commencing immediately after the SISP Approval Date, the Proposal Trustee shall, on behalf of the Company, contact such initial parties previously identified by the Company as potential purchasers of the business and / or the Property of the Company (or known to have expressed such an interest) and advise such parties of the opportunity to acquire the business and / or the Property (the “**Opportunity**”), and distribute “teaser” documentation to other parties identified as potentially interested parties with respect to the Opportunity;
- (c) shortly following the SISP Approval Date, the Proposal Trustee will prepare and publish an advertisement in the Globe and Mail newspaper;
- (d) the Proposal Trustee will circulate and seek executed confidentiality agreements (“**Confidentiality Agreements**”) from interested parties who wish to undertake due diligence in respect of the opportunity. Following the execution of the Confidentiality Agreements, the Proposal Trustee will provide prospective purchasers or investors with a confidential information memorandum prepared by the Company with the assistance of the Proposal Trustee, describing the Property and the Opportunity, access to an electronic data room (the “**Data Room**”), and an opportunity to conduct site visits by prospective purchasers or investors, if requested;
- (e) the deadline for prospective purchasers to submit a bid in accordance with the Agreement of Purchase and Sale will be thirty (30) days from the commencement of the SISP (the “**Bid Deadline**”). All prospective purchasers will be required to

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submit along with their bid a deposit in an amount equal to fifteen percent (15%) of the aggregate purchase price by way of bank draft or certified cheque;

- (f) Heaven Fresh, in consultation with the Proposal Trustee will evaluate all bids received, and will determine which bid is the most favourable and will notify the successful party that it has been selected as having the most favourable bid (the **“Winning Bidder”**);
- (g) upon the selection of the Winning Bidder, a binding agreement of purchase and sale will be negotiated and concluded between the Winning Bidder and Heaven Fresh. Prospective purchasers with unaccepted bids will be notified and their deposits returned;
- (h) Heaven Fresh will thereafter promptly bring a motion to the Court for an order approving the agreement of purchase and sale between the Winning Bidder and Heaven Fresh (the **“Winning APA”**) and to vest title to the Property in the Winning Bidder; and,
- (i) If the Court approves the Winning APA and the transaction of purchase and sale based upon it, the closing of the transaction will take place within seven (7) business days following the expiry of any appeal period in connection with any order that may be granted by the Court.

### **Conclusion**

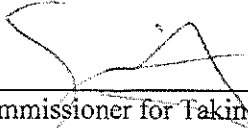
49. In my view, the order sought herein is in the best interests of Heaven Fresh and all of its stakeholders, as it maximizes the likelihood of obtaining the greatest value for Heaven Fresh's business and Property.

50. Without the requested relief, Heaven Fresh faces bankruptcy and a liquidation of its assets. This would not be in the best interests of Heaven Fresh's stakeholders and as a result, we hereby request that the Court grant the relief sought in the Notice of Motion.


*AFFIRMED*

**SWORN BEFORE ME**

at the City of Toronto,  
in the Province of Ontario,  
on July 27, 2017.

  
\_\_\_\_\_  
A Commissioner for Taking Affidavits,  
*M.D. ABRAMOWITZ*

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**IMRAN BASHIR**

# Tab D

This is **EXHIBIT "D"** referred to  
in the Affidavit of **Mohammad Kamal Anwar**

sworn before me, this 3<sup>rd</sup>

day of October, 2017.

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A Commissioner, etc.

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Court File No. 32-2274873  
Estate File No. 32-2274873

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



THE HONOURABLE )

FRIDAY, THE 4<sup>th</sup> DAY

JUSTICE )

OF AUGUST, 2017

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF HEAVEN FRESH CANADA INC.**

**ORDER**

(Approval of DIP, SISP, Stay Extension  
returnable August 4, 2017)

**THIS MOTION**, made by the Applicant, Heaven Fresh Canada Inc. ("**Heaven Fresh**"), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for approval of certain interim financing, a Sale and Investor Solicitation Process and for an extension of the automatic stay period in respect of the Notice of Intention to Make a Proposal herein, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notion of Motion, the Affidavit of Imran Bashir, sworn July 27, 2017, and the exhibits attached hereto (the "**Bashir Affidavit**"), the First Report of MNP Ltd., in its capacity as proposal trustee (the "**Proposal Trustee**") of Heaven Fresh dated July 31, 2017 (the "**First Report**"), and on being advised that the secured creditors who are likely to be

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affected by the charges created herein were provided notice of the within motion, and on hearing submissions of counsel for Heaven Fresh, and submissions of the Proposal Trustee, no one appearing for any other person on the Service List, although duly served as it appears from the Affidavit of Service of Elaine Persaud sworn July 31, 2017, filed,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged and service is validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which appears on the Commercial List website at the following link: <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. This Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure* (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.
3. **THIS COURT ORDERS** that the E-Service List Keeper (as defined in the Protocol) for the purpose of this proceeding shall be the Proposal Trustee.

#### **DIP FINANCING**

4. **THIS COURT ORDERS** that Heaven Fresh is hereby authorized and empowered to obtain and borrow under an interim financing facility (the “**DIP Facility**”) granted by Danby

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Products Limited (in such capacity, the “**DIP Lender**”) to be used for the purposes described in the interim financing agreement attached as Exhibit “K” to the Bashir Affidavit (the “**DIP Agreement**”), provided that the total borrowings under the DIP Facility shall not exceed \$100,000.00 as specified in the DIP Agreement, unless permitted by further Order of this Court.

5. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement.

6. **THIS COURT ORDERS** that Heaven Fresh is authorized and empowered to execute and deliver such other documents as may be contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and Heaven Fresh is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

7. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a super-priority charge (the “**DIP Charge**”), as more particularly set out below, which shall not exceed an aggregate amount of \$100,000.00, on Heaven Fresh’s current and future properties, assets and undertakings of every nature and kind whatsoever and wherever situated, including all proceeds thereof (collectively, the “**Property**”). The DIP Charge shall not secure any obligation that exists before this Order is made.

8. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the *BIA*:



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- (a) upon the occurrence of an event of default under the DIP Agreement, the DIP Lender, upon three (3) business days' notice to Heaven Fresh and to the Proposal Trustee, may exercise any and all of its rights and remedies against Heaven Fresh or the Property under or pursuant to the DIP Agreement, and the DIP Charge, including, without limitation, to cease making advances to Heaven Fresh, and exercise any and all of its rights and remedies against Heaven Fresh and the Property under or pursuant to the DIP Agreement and the DIP Charge, including without limitation, set off and / or consolidate any amounts owing by the DIP Lender to Heaven Fresh against the obligations of Heaven Fresh to the DIP Lender under the DIP Agreement, or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against Heaven Fresh and for the appointment of a trustee in bankruptcy of Heaven Fresh; and,
- (b) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of Heaven Fresh or the Property.

9. **THIS COURT ORDERS AND DECLARES** that that the DIP Lender shall be treated as an unaffected creditor in any proposal filed by Heaven Fresh under the *BIA* with respect to any advances made pursuant to the DIP Agreement.

10. **THIS COURT ORDERS** that: (a) pending expiry of the time for filing a notice of appeal or application for leave to appeal in respect of this Order and the disposition of any

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motions to review, rescind or vary this Order, applications for leave to appeal or appeals from this Order (collectively, "**Challenges**"), Heaven Fresh is authorized to borrow funds under the DIP Facility in accordance with the DIP Agreement; (b) irrespective of the disposition of any Challenges, the DIP Lender shall have the benefit of the DIP Charge and all other provisions of this Order in respect of all amounts so advanced; and (c) this Order is subject to provisional execution to the extent necessary to give effect to the foregoing.

### **SUPER-PRIORITY OF THE DIP CHARGE**

11. **THIS COURT ORDERS** that the filing, registration or perfection of the DIP Charge shall not be required, and that the DIP Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

12. **THIS COURT ORDERS** that the DIP Charge shall constitute a charge on the Property and the DIP Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any individual, firm, corporation, governmental body or agency (except statutory deemed trusts that, at law, rank in priority to all other charges), or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**").

13. **THIS COURT ORDERS** that, except as otherwise expressly provided for herein or as may be approved by this Court, Heaven Fresh shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, the DIP Charge, unless Heaven Fresh also

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obtains the prior written consent of the Proposal Trustee and the DIP Lender, or further Order of this Court.

14. **THIS COURT ORDERS** that the DIP Charge and the DIP Agreement shall not be rendered invalid or unenforceable, and the rights and remedies of the DIP Lender entitled to the benefit of the DIP Charge and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declaration of insolvency of Heaven Fresh; (ii) any application(s) for bankruptcy order(s) issued pursuant to the *BIA*, or any bankruptcy order made pursuant to such applications; (iii) the filing or deemed filing of any assignments for the general benefit of creditors made pursuant to the *BIA*; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which bind Heaven Fresh, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the DIP Charge, nor the execution, delivery, or performance of the DIP Agreement, shall create or be deemed to constitute a breach by Heaven Fresh of any Agreement to which it is a party;
- (b) the DIP Lender shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from Heaven Fresh entering into the DIP Agreement, or the creation of the DIP Charge; and,
- (c) the payments made by Heaven Fresh pursuant to this Order, or the DIP Agreement, and the granting of the DIP Charge, do not and will not constitute

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preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

#### **SALE AND INVESTOR SOLICITATION PROCESS**

15. **THIS COURT ORDERS** that the Sale and Investor Solicitation Process (the “SISP”) as set out in Exhibit “L” to the Bashir Affidavit and attached as Schedule A hereto, be and hereby is approved.

16. **THIS COURT ORDERS** that Heaven Fresh and the Proposal Trustee be and are hereby authorized and empowered to take such steps as are necessary or desirable to carry out and perform their obligations under the SISP, provided that any definitive agreement to be executed by Heaven Fresh in respect of the sale of all or part of the Property shall require further approval of the Court.

#### **EXTENSION OF PROPOSAL PERIOD**

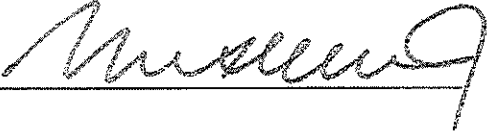
17. **THIS COURT ORDERS** that, pursuant to subsection 50.4(9) of the *BIA*, the time for filing a proposal with the Official Receiver in the proceedings of Heaven Fresh, including the stay of proceedings, is hereby extended to and including October 4, 2017.

#### **GENERAL**

18. **THIS COURT ORDERS** that both Heaven Fresh and the Proposal Trustee shall be at liberty, and are authorized and empowered, to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered

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to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any jurisdiction outside Canada.



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## SCHEDULE "A"

## SALE PROCESS

1. Commencement of Sale Process. Within five (5) Business days of an Order being issued by the Ontario Superior Court of Justice [Commercial List] (the "Court") (the "Sales Process Order") approving and authorizing, inter alia, the marketing and sale process for all or part of the business and assets (the "Property") of Heaven Fresh Canada Inc. (the "Company") (the "Sale Process"), the Company shall commence the Sale Process (the "Commencement Date")
2. Contacting Interest Parties. Commencing on the Commencement Date (a) the Proposal Trustee shall, on behalf of the Company, contact such initial parties previously identified by the Company as potential purchasers of the business and/or assets of the Company (or known to have expressed such an interest) and advise such parties of the opportunity to acquire the business and/or assets (the "Opportunity"); and, (b) distribute "teaser" documentation to other parties identified as potentially interested parties with respect to the Opportunity.
3. Advertisement. Within five (5) Business Days of the Commencement Date, the Proposal Trustee shall have an advertisement of the Opportunity published in The Globe and Mail (National Edition), and may, but not required, further advertise the Opportunity in such other industry and trade publications or media sources as determined appropriate by the Company, in consultation with the Proposal Trustee.
4. Due Diligence. Commencing on the Commencement Date, the Proposal Trustee shall make available to prospective purchasers (collectively, the "Prospective Purchasers"), upon receipt of an executed confidentiality agreement and non-disclosure agreement, in the prescribed form, from a Prospective Purchaser, (a) a confidential information memorandum, prepared by the Company with the assistance of the Proposal Trustee, describing the Property and Opportunity in sufficient detail as is reasonably required by Prospective Purchasers to consider submitting an offer for the Property and facilitate the conduct of due diligence by the Prospective Purchasers; and, if necessary, (b) access to an electronic data room, created and maintained by the Proposal Trustee on behalf the Company, containing documents and information pertaining to the Opportunity.
5. Offer Deadline. Any offers to purchase the Property must be submitted in writing to and received by the Company care of the Proposal Trustee at 111 Richmond Street West, Suite 300, Toronto, ON, M5H 2G4, attention: Sheldon Title, by no later than 5:00 pm (Toronto time) on thirtieth (30<sup>th</sup>) day following the Commencement Date (the "Offer Deadline"). Should the Offer Deadline not fall on a Business Day, it will be extended to the next Business Day.
6. Qualifying Offers. The Company, in consultation with the Proposal Trustee, shall determine whether any offers are "Qualifying Offers". Qualifying Offers must, among other things, meet the following minimum criteria:
  - (a) the offer must be for a purchase price that the Company, in consultation with the Proposal Trustee, would accept (subject to such further negotiation as may take place in accordance with this sales process);

## SCHEDULE "A"

- (b) the offer must be accompanied by a deposit in the form of certified cheque or bank draft payable to the Proposal Trustee in Trust which is equal to at least fifteen (15%) percent of the aggregate purchase price payable under the offer;
  - (c) the offer must be irrevocable and open for acceptance for fifteen (15) Business Days;
  - (d) the offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction;
  - (e) the offer must contain written evidence satisfactory to the Company of the ability to consummate the transaction; and
  - (f) the offer must be on such terms and conditions as are typical in the context of sales in the context of restructuring and insolvency proceedings, which terms shall include without limitation: (i) the sale of the Property on an "as is, where is" basis, without any representations, warranties or conditions made or granted in connection therewith; (ii) that the completion of the transaction is conditional on the granting of an approval and vesting Order by the Court (the "**Approval and Vesting Order**"); and, (iii) a closing of the transaction to occur within three (3) Business Days of the Approval and Vesting Order being issued by the Court.
7. Negotiation of Qualifying Offers. The Proposal Trustee may, in consultation with the Company, enter into negotiations on the Company's behalf with the offerors in respect of one or more of the Qualifying Offers in an effort to ascertain the highest and best offer. Additionally, it is open to the Company, in consultation with the Proposal Trustee, to elect not to accept any of the Qualifying Offers, whether before or after negotiation of the same.
  8. Winning Offer. Within five (5) Business Days of the Offer Deadline, the Company shall, in consultation with the Proposal Trustee, determine the highest and best offer with respect to the Property (the "**Winning Offer**"), at which point the Company shall proceed to enter into a definitive agreement of purchase and sale in connection therewith (the "**Sale Agreement**"), subject to Court approval.
  9. Court Approval of the Winning Offer. Within three (3) Business Days following the fully execution of Sale Agreement, the Company or the Proposal Trustee will direct its counsel to set a Court date for a motion for the approval of the Winning Offer and the Sale Agreement, and an approval and vesting order in respect of the same.
  10. Return of Deposits. All deposits received (except such deposit forming part of the Winning Offer) shall be held by the Proposal Trustee in Trust until the execution of the Sale Agreement and, thereafter, returned to the respective Prospective Purchasers thereafter. The deposit forming part of the Winning Offer shall be dealt with in accordance with the Sale Agreement.

Modifications. Subject to the Sales Process Order or other order of the Court, the Company, in consultation with the Proposal Trustee, shall have the right to adopt such other rules for the Sale Process, that, in its sole discretion, will better promote the goals of the Sale Process.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HEAVEN FRESH CANADA INC.**

Court File No. 32-2274873  
Estate File No. 32-2274873

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

Proceeding Commenced at Toronto

**ORDER**

(Approval of DIP, SISP, Stay Extension returnable August 4, 2017)

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
2 Queen Street East, Suite 1500  
Toronto, Ontario M5C 3G5

**Mervyn D. Abramowitz (LSUC #28325R)**  
Tel: (416) 597-4887  
Fax: (416) 593-3396  
Email: [mabramowitz@blaney.com](mailto:mabramowitz@blaney.com)

Lawyers for Heaven Fresh Canada Inc.



# Tab E

This is **EXHIBIT "E"** referred to  
in the Affidavit of **Mohammad Kamal Anwar**

sworn before me, this 3<sup>rd</sup>

day of October, 2017.

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A Commissioner, etc.

## SALE PROCESS

1. Commencement of Sale Process. Within five (5) Business days of an Order being issued by the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) (the “**Sales Process Order**”) approving and authorizing, inter alia, the marketing and sale process for all or part of the business and assets (the “**Property**”) of Heaven Fresh Canada Inc. (the “**Company**”) (the “**Sale Process**”), the Company shall commence the Sale Process (the “**Commencement Date**”)
2. Contacting Interest Parties. Commencing on the Commencement Date (a) the Proposal Trustee shall, on behalf of the Company, contact such initial parties previously identified by the Company as potential purchasers of the business and/or assets of the Company (or known to have expressed such an interest) and advise such parties of the opportunity to acquire the business and/or assets (the “**Opportunity**”); and, (b) distribute “teaser” documentation to other parties identified as potentially interested parties with respect to the Opportunity.
3. Advertisement. Within five (5) Business Days of the Commencement Date, the Proposal Trustee shall have an advertisement of the Opportunity published in The Globe and Mail (National Edition), and may, but not required, further advertise the Opportunity in such other industry and trade publications or media sources as determined appropriate by the Company, in consultation with the Proposal Trustee.
4. Due Diligence. Commencing on the Commencement Date, the Proposal Trustee shall make available to prospective purchasers (collectively, the “**Prospective Purchasers**”), upon receipt of an executed confidentiality agreement and non-disclosure agreement, in the prescribed form, from a Prospective Purchaser, (a) a confidential information memorandum, prepared by the Company with the assistance of the Proposal Trustee, describing the Property and Opportunity in sufficient detail as is reasonably required by Prospective Purchasers to consider submitting an offer for the Property and facilitate the conduct of due diligence by the Prospective Purchasers; and, if necessary, (b) access to an electronic data room, created and maintained by the Proposal Trustee on behalf the Company, containing documents and information pertaining to the Opportunity.
5. Offer Deadline. Any offers to purchase the Property must be submitted in writing to and received by the Company care of the Proposal Trustee at 111 Richmond Street West, Suite 300, Toronto, ON, M5H 2G4, attention: Sheldon Title, by no later than 5:00 pm (Toronto time) on thirtieth (30<sup>th</sup>) day following the Commencement Date (the “**Offer Deadline**”). Should the Offer Deadline not fall on a Business Day, it will be extended to the next Business Day.
6. Qualifying Offers. The Company, in consultation with the Proposal Trustee, shall determine whether any offers are “Qualifying Offers”. Qualifying Offers must, among other things, meet the following minimum criteria:
  - (a) the offer must be for a purchase price that the Company, in consultation with the Proposal Trustee, would accept (subject to such further negotiation as may take place in accordance with this sales process);

- (b) the offer must be accompanied by a deposit in the form of certified cheque or bank draft payable to the Proposal Trustee in Trust which is equal to at least fifteen (15%) percent of the aggregate purchase price payable under the offer;
  - (c) the offer must be irrevocable and open for acceptance for fifteen (15) Business Days;
  - (d) the offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction;
  - (e) the offer must contain written evidence satisfactory to the Company of the ability to consummate the transaction; and
  - (f) the offer must be on such terms and conditions as are typical in the context of sales in the context of restructuring and insolvency proceedings, which terms shall include without limitation: (i) the sale of the Property on an "as is, where is" basis, without any representations, warranties or conditions made or granted in connection therewith; (ii) that the completion of the transaction is conditional on the granting of an approval and vesting Order by the Court (the "**Approval and Vesting Order**"); and, (iii) a closing of the transaction to occur within three (3) Business Days of the Approval and Vesting Order being issued by the Court.
7. Negotiation of Qualifying Offers. The Proposal Trustee may, in consultation with the Company, enter into negotiations on the Company's behalf with the offerors in respect of one or more of the Qualifying Offers in an effort to ascertain the highest and best offer. Additionally, it is open to the Company, in consultation with the Proposal Trustee, to elect not to accept any of the Qualifying Offers, whether before or after negotiation of the same.
  8. Winning Offer. Within five (5) Business Days of the Offer Deadline, the Company shall, in consultation with the Proposal Trustee, determine the highest and best offer with respect to the Property (the "**Winning Offer**"), at which point the Company shall proceed to enter into a definitive agreement of purchase and sale in connection therewith (the "**Sale Agreement**"), subject to Court approval.
  9. Court Approval of the Winning Offer. Within three (3) Business Days following the fully execution of Sale Agreement, the Company or the Proposal Trustee will direct its counsel to set a Court date for a motion for the approval of the Winning Offer and the Sale Agreement, and an approval and vesting order in respect of the same.
  10. Return of Deposits. All deposits received (except such deposit forming part of the Winning Offer) shall be held by the Proposal Trustee in Trust until the execution of the Sale Agreement and, thereafter, returned to the respective Prospective Purchasers thereafter. The deposit forming part of the Winning Offer shall be dealt with in accordance with the Sale Agreement.

Modifications. Subject to the Sales Process Order or other order of the Court, the Company, in consultation with the Proposal Trustee, shall have the right to adopt such other rules for the Sale Process, that, in its sole discretion, will better promote the goals of the Sale Process.

# Tab F

This is **EXHIBIT "F"** referred to  
in the Affidavit of **Mohammad Kamal Anwar**

sworn before me, this 3<sup>rd</sup>

day of October, 2017.

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A Commissioner, etc.

In the Matter of the Proposal of  
Heaven Fresh Canada Inc.  
Statement of Projected Weekly Cash Flow for the 14 weeks ended October 27, 2017  
In Canadian \$ 000's

	Actual Week 1	Actual Week 2	Actual Week 3	Actual Week 4	Actual Week 5	Actual Week 6	Actual Week 7	Actual Week 8	Actual Week 9	Actual Week 10	Forecast Week 11	Forecast Week 12	Forecast Week 13	Forecast Week 14	Total
<b>Receipts</b>															
DIP Proceeds	415	1	483	29	127	600	746	5,000	193	231	95,000	500	500	500	100,000
Cash Sales	51	148	-	557	314	1,495	2,207	1,186	1,351	1,401	2,000	2,000	2,000	2,000	5,891
AR Collections	466	149	483	586	441	2,096	2,953	7,253	1,544	1,632	97,500	2,500	2,500	2,500	16,711
<b>Total Receipts</b>															122,603
<b>Disbursements</b>															
Inventory Purchases															-
Advertising and promotion															-
Business software, licenses, telephone and memberships															-
Commissions										100			100		200
Credit card / Interest Expenses / Bank Charges															-
Insurance															-
Warehousing/Shipping & Freight / Fulfillment															-
Sub-contractors (Payroll & Occupancy cost)															-
Other/loan				1,600											1,600
Accounting/Bookkeeping/Legal Fees				1,600											1,600
<b>Total Disbursements</b>															
<b>Net Cash Flow</b>															
	198	(14)	483	(1,014)	441	2,090	2,947	4,832	(5,325)	(340)	21,150	2,400	(22,850)	(14,234)	(9,237)
<b>Cash, Opening</b>	2,267	2,465	2,452	2,934	1,920	2,361	4,451	7,398	12,229	6,904	6,564	27,714	30,114	7,264	2,267
<b>Cash, Closing</b>	2,465	2,452	2,934	1,920	2,361	4,451	7,398	12,229	6,904	6,564	27,714	30,114	7,264	(6,970)	(6,970)

This statement of projected cash flow is prepared by the debtor in accordance with s. 50(6)(a) of the Bankruptcy and Insolvency Act and should be read in conjunction with the Trustee's Report on Cash Flow Statement.

MNP Ltd.  
acting in re: the Proposal of Heaven Fresh Canada Inc.

Heaven Fresh Canada Inc.

Per: \_\_\_\_\_  
Sheldon Title

Per: \_\_\_\_\_  
Kamal Anwar

# Tab 3



Court File No. 32-2274873  
Estate File No. 32-2274873

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

THE HONOURABLE	)	WEDNESDAY, THE 4 <sup>th</sup> DAY
	)	
JUSTICE	)	OF OCTOBER, 2017

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF HEAVEN FRESH CANADA INC.**

**ORDER**

(Stay Extension  
returnable October 4, 2017)

**THIS MOTION**, made by the Applicant, Heaven Fresh Canada Inc. (“**Heaven Fresh**”), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an extension of the stay period in respect of the Notice of Intention to Make a Proposal herein, from October 4, 2017 to October 25, 2017, and other corollary relief, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notion of Motion, the Affidavit of Mohammad Kamal Anwar, affirmed October 3, 2017 (“**Anwar Affidavit**”), and the Second Report of MNP Ltd., in its capacity as proposal trustee (“**Proposal Trustee**”) of Heaven Fresh (“**Second Report**”), and on

hearing submissions of counsel for Heaven Fresh, and submissions of the Proposal Trustee, no one appearing for any other person on the Service List, although duly served as appears from the Affidavit of Service of Elaine Persaud, sworn October 3, 2017, filed,

### **SERVICE**

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

### **EXTENSION OF PROPOSAL PERIOD**

2. **THIS COURT FURTHER ORDERS** that, pursuant to subsection 50.4(9) of the *BIA*, the time for filing a proposal with the Official Receiver in the proceedings of Heaven Fresh, and the stay of proceedings, are hereby extended to and including October 25, 2017.

### **APPROVAL OF ACTIVITIES OF PROPOSAL TRUSTEE**

3. **THIS COURT FURTHER ORDERS** that the activities of the Proposal Trustee, as described in the First and Second Reports to this Court, are hereby approved.

### **GENERAL**

4. **THIS COURT ORDERS** that both Heaven Fresh and the Proposal Trustee shall be at liberty, and are authorized and empowered, to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered

to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any jurisdiction outside Canada.

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HEAVEN FRESH CANADA INC.**

Court File No. 32-2274873  
Estate File no. 32-2274873

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at **Toronto**

**MOTION RECORD**  
(Stay Extension, returnable  
October 4, 2017)

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
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Lawyers for Heaven Fresh Canada Inc.