

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

THE HONOURABLE MADAM) FRIDAY, THE 13TH
)
JUSTICE DIETRICH) DAY OF AUGUST, 2021
)

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:



HSBC BANK CANADA

Applicant

- and -

**MARS FREIGHT LTD., ALL LINK FREIGHT SERVICES LTD. and 11675443
CANADA INC.**

Respondents

**ORDER
(Distribution and Discharge)**

THIS MOTION made by BDO Canada Limited (“**BDO**”) in its capacity as the Court-appointed Receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Mars Freight Ltd., All Link Freight Services Ltd. and 11675443 Canada Inc. (collectively, the “**Debtors**”) for an Order (i) approving the Receiver’s activities and its fees and disbursements; (ii) approving a distribution to HSBC Bank Canada (the “**Bank**”); and (iii) discharging the Receiver, was heard this day in Toronto, Ontario by way of judicial teleconference due to the COVID-19 pandemic.

ON READING the Third Report of the Receiver dated August 5, 2021 (the “**Third Report**”), the fee affidavit of Gary Cerrato sworn August 5, 2021 (the “**Cerrato Affidavit**”), the fee affidavit of Jason Spetter sworn August 5, 2021 (the “**Spetter Affidavit**”) and on hearing the submissions of counsel for the Receiver and those listed on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of Rachel Bengino sworn August 6, 2021, filed;

SERVICE

1. THIS COURT ORDERS that the service of the Notice of Motion and the Motion is hereby validated so that this motion is properly returnable today.

APPROVAL OF RECEIVER’S ACTIVITIES AND FEES

2. THIS COURT ORDERS that the Third Report and the activities of the Receiver as set out in the Third Report are hereby authorized and approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize such approval.

3. THIS COURT ORDERS that the fees and disbursements of the Receiver for the period from August 1, 2020 to August 4, 2021, in the amount of \$24,710.00, plus Harmonized Sales Tax (“**HST**”) of \$3,212.30, for a total of \$27,922.30, along with the projected estimate of fees to complete the administration of the receivership in the amount of \$2,500 plus HST, as further set out in the Third Report and the Cerrato Affidavit are hereby approved and the Receiver is authorized and directed to pay all such fees and disbursements.

4. THIS COURT ORDERS that the fees and disbursements of the Receiver’s independent legal counsel, Lipman, Zener & Waxman PC, for the period from July 1, 2020 to August 24, 2020 in the amount of \$2,859.29 for fees and disbursements, plus HST of \$371.71, for a total of

\$3,231.00, as further set out in the Third Report and the Spetter Affidavit are hereby approved and the Receiver is authorized and directed to pay all such fees and disbursements.

5. THIS COURT ORDERS that the Receiver's final statement of receipts and disbursements as set out in the Third Report and attached as Appendix "G" to the Third Report, is hereby approved.

DISCHARGE OF RECEIVER

6. THIS COURT ORDERS that upon payment of the amounts set out in paragraphs 8, 9 and 10 hereof and upon the Receiver filing a certificate in the form of Schedule "A" attached hereto (the "**Receiver's Discharge Certificate**"), the Receiver shall be discharged as Receiver of the assets, property and undertakings of each of the Debtors, provided, however, that notwithstanding its discharge herein, the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO in its capacity as Receiver.

7. THIS COURT ORDERS AND DECLARES that upon filing of the Receiver's Discharge Certificate, BDO is hereby released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver of the Debtors herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings with respect to any of the Debtors, save and except for any gross negligence or wilful misconduct on the Receiver's part.

DISTRIBUTIONS

8. THIS COURT ORDERS that the Receiver is hereby authorized and directed to distribute \$6,654.94 to Canada Revenue Agency in respect of the CRA Property Claim (as defined in the Third Report).

9. THIS COURT ORDERS that the Receiver is hereby authorized and directed to distribute up to \$137,696.69 to the Bank in partial satisfaction of the Bank's secured claim against the Debtors.

10. THIS COURT ORDERS that the Receiver is authorized and directed to make future distributions of the proceeds of the Property to the Bank as the Receiver deems appropriate up to the amount of the Bank Secured Indebtedness (as each term is defined in the Third Report).

11. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Debtors;

the distributions set out in paragraphs 8, 9 and 10 of this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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Schedule "A" – Form of Receiver's Discharge Certificate

Court File No.: CV-20-00636836-00CL

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

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

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- and -

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RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

1. Pursuant to an application by HSBC Bank Canada under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, and an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 26, 2020, BDO Canada Limited was appointed as Receiver of the assets, undertakings and properties of Mars Freight Ltd., All Link Freight Services Ltd. and 11675443 Canada Inc. (collectively, the "**Debtors**").
2. Pursuant to an Order of the Court dated August 13, 2021 (the "**Discharge Order**"), BDO Canada Limited was to be discharged as Receiver of the Debtors to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

- A. All matters, if any, to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver.
- B. The Receiver has made the payments outlined in paragraphs 8, 9 and 10 of the Discharge Order.
- C. This Certificate was filed by the Receiver with the Court on the ___ day of ____, 2021 at _____.

BDO CANADA LIMITED solely in its capacity as Receiver of the Debtors and not in its personal or corporate capacity.

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

HSBC BANK CANADA

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SERVICES LTD. and 11675443 CANADA INC.**

Respondents

Court File No.: CV-20-00636836-00CL

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

Proceedings commenced at Toronto

**ORDER
(Distribution and Discharge)**

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