

District of: Ontario
Division No.: 09-Toronto
Court No.: 31-3038619
Estate No.: 31-3038619

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

THE HONOURABLE)
JUSTICE CONWAY)
TUESDAY, THE 27TH
DAY OF FEBRUARY, 2024

B E T W E E N:

(Court Seal)

IN THE MATTER OF NOTICE OF INTENTION TO MAKE
A PROPOSAL OF
BRR LOGISTICS LIMITED

ORDER

THIS MOTION, made by BRR Logistics Limited (the “**Company**”), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) was heard this day by video conference at 330 University Avenue, Toronto, Ontario in accordance with the Guidelines to Determine Mode of Proceeding in Civil.

ON READING the Notice of Motion, the Affidavit of Michael Wakefield sworn February 23, 2024 and the exhibits thereto (the “**Wakefield Affidavit**”), and the First Report of BDO Canada Limited (“**BDO**”) dated February 23, 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 Shallon Garrafa, filed,

SERVICE AND INTERPRETATION

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 Wakefield Affidavit or the First Report, as applicable.

EXTENSION OF THE PROPOSAL PERIOD

3. **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 the Company, including the stay of proceedings, is extended up to and including April 15, 2024.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Company shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). The Company is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or

employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Company shall be entitled to continue to utilize any cash management system currently in place or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or financial institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Company of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any individual, firm, corporation, governmental body or agency or any other entities (all of the foregoing, collectively being "**Persons**", and individually, a "**Person**") other than the Company, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, solely in its capacity as provider of the Cash Management System only, an unaffected creditor under any proposal filed by the Company with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System on or after the date of this Order.

6. **THIS COURT ORDERS** that the Company shall be entitled, but not required, to pay the following expenses, whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, vision, insurance and similar benefit plans or

arrangements), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements of the Company;

- (b) the fees and disbursements of any Assistants retained or employed by the Company in respect of these proceedings, at their standard rates and charges; and
- (c) amounts owing for goods or services actually provided to the Company prior to the date of this Order by third parties if, in the opinion of the Company, such third party is critical to the Company's business and ongoing operations of the Company, provided that such payments shall: (i) be consistent with the cash flow forecast appended to the First Report, (ii) not exceed an aggregate amount of \$100,000, and (iii) be approved in advance by the Proposal Trustee or by further Order of the Court.

PROFESSIONAL FEES

7. **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 for the Proposal Trustee and counsel for the Company on a bi-weekly basis.

8. **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 Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

9. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the Company's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Company's counsel, the Proposal Trustee and its counsel both before and after the making of this Order in respect of these proceedings.

10. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration 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 Administration Charge 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, except any validly perfected security interest in favour of equipment lessors.

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.

APPROVAL OF LIQUIDATION PLAN

13. **THIS COURT ORDERS** that the Liquidation Plan, as described and defined in the First Report, be and is hereby approved, and the Company and the Proposal Trustee, as applicable, are hereby authorized to take such steps as are necessary to carry out the Liquidation Plan.

DISTRIBUTION TO SECURED CREDITOR

14. **THIS COURT ORDERS** that the Company is hereby authorized to make distributions to Sallyport Commercial Finance ULC (“**Sallyport**”) from the sales of inventory and collections of accounts receivable subsequent to January 31, 2024 up to the amount of the indebtedness owing to Sallyport, as detailed in the First Report.

SALES OUT OF ORDINARY COURSE

15. **THIS COURT ORDERS** that the Company is hereby authorized to complete sales of inventory and equipment outside of the ordinary course of business:

- (a) without the necessity for further Court approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000 in the aggregate; and

- (b) provided that all such transactions are approved by the Proposal Trustee.

APPROVAL OF PROPOSAL TRUSTEE REPORT AND ACTIVITIES

16. **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

17. **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>>’.

18. **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.

19. **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.

20. **THIS COURT ORDERS** that the Company and the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, and 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 creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

21. **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.

22. **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.

23. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order, and this Order is enforceable without the need for entry and filing.



(Signature of judge, officer or registrar)

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Proceeding Commenced at
Toronto

ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Gregory Azeff (LSO#: 45324C)

gazeff@millerthomson.com
Tel: 416-595-2660

Monica Faheim (LSO#: 82213R)

mfaheim@millerthomson.com
Tel: 416.597.6087

Lawyers for BRR Logistics Limited