

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY & INSOLVENCY)
[COMMERCIAL LIST]**

THE HONOURABLE) WEDNESDAY, THE 19th
JUSTICE CONWAY)
DAY OF APRIL, 2023

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

KIVUTO SOLUTIONS INC.

Respondent

APPLICATION UNDER SUBSECTION 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, R.S.O. 1990, C.43, AS AMENDED

DISCHARGE ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**"), of all of the undertakings, properties and assets of Kivuto Solutions Inc. (the "**Debtor**"), for an order, *inter alia*:

1. approving the activities of the Receiver as set out in the second of the Receiver dated April 10, 2023 (the "**Second Report**"), including the Receiver's interim statements of receipts and disbursements appended thereto;

2. approving the fees and disbursements of the Receiver and its counsel, including the estimated accrual to satisfy the Remaining Fees and Disbursements (as defined in the Second Report);
3. authorizing and directing the Receiver to (a) establish and maintain a reserve sufficient to satisfy the Outstanding Disbursements (as defined in the Second Report) and (b) to apply the same as set out herein;
4. authorizing and directing the Receiver to pay the amount of \$623,245.14 to Origin Merchant Partners on account of a transaction fee payable in connection with the closing of a previously Court-approved transaction;
5. authorizing and directing the Receiver to distribute the net proceeds available in the receivership estate of the Debtor, subject to the provisions of this Order, to The Toronto-Dominion Bank (“**TD Bank**”);
6. authorizing, but not obligating the Receiver to change the legal name of the Debtor;
7. authorizing, but not obligating the Receiver to assign the Debtor into bankruptcy;
8. approving the fees and disbursements of the Receiver and its legal counsel, Loopstra Nixon LLP (“**Loopstra Nixon**”), including an accrual for the Remaining Fees and Disbursements, as described in the Second Report; and
9. discharging BDO as Receiver of the undertaking, property and assets of the Debtor upon completion of the Remaining Matters (as defined in the Second Report) and releasing BDO Canada Limited. from any and all liability, as set out in paragraph 10 of this Order,

was heard this day by judicial videoconference at the Courthouse at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report, the affidavits of the Receiver and its counsel as to fees appended to the Second Report (collectively, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver, the Debtor, and such other counsel and parties as listed on the Attendance Slip, no one else appearing although served as appears from the Affidavit of Amanda Adamo sworn April 10, 2023;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Second Report and the motion record in respect of this motion is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

APPROVAL OF ACTIVITIES AND FEES

2. **THIS COURT ORDERS** that the Second Report, including the interim statement of receipts and disbursements, and the Receiver's activities set out therein in relation to the Debtor and these proceedings, are hereby ratified 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 in any way such approval.

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, including the Remaining Fees and Disbursements (as defined in the Second Report) and as set out in the Second Report and the Fee Affidavits (collectively the “**Approved Administrative Fees**”), are hereby approved.

RESERVE FOR OUTSTANDING DISBURSEMENTS

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to (a) establish and maintain a reserve in an amount sufficient to satisfy the Outstanding Disbursements (as defined in the Second Report) (the “**Reserve**”) and (b) to apply such Reserve, and any further receipts, to satisfy the Outstanding Disbursements without further approval of this Court.

PAYMENT OF TRANSACTION FEE

5. **THIS COURT ORDERS** that, after payment of or provision for the amounts set out in paragraph 3 hereof and the Reserve, the Receiver be and is hereby authorized and directed to pay, out of funds remaining in its hands, the transaction fee amount of \$623,245.14 to Origin Merchant Partners.

DISTRIBUTIONS TO TD BANK

6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make distributions out of funds remaining in its hands to TD Bank as follows:

- (a) after payment of or provision for the amounts set out in paragraphs 3, 4 and 5 hereof and the Reserve, the Receiver be and is hereby authorized to make an immediate interim distribution in the amount of \$2,600,000 to TD Bank, on account of its secured claim against the Debtor; and
- (b) after the foregoing and after satisfaction of or making provision for all Outstanding Disbursements, the Receiver be and is hereby authorized and directed to distribute all funds remaining in its hands to TD Bank,

provided that the aggregate of all distributions to TD shall not exceed the amount of TD's secured claim against the Debtor.

DEBTOR CHANGES

7. **THIS COURT ORDERS** that the Receiver is authorized but no obligated to cause the Debtor to make an assignment in bankruptcy.

DISCHARGE AND RELEASE

8. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraphs 3, 5 and 6 hereof, and upon the Receiver filing a certificate substantially in the form appended hereto as Schedule "A" certifying that it has completed the other remaining activities described in the Second Report (the "**Discharge Certificate**"), the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) 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 Canada Limited, in its capacity as Receiver.

9. **THIS COURT ORDERS AND DECLARES** that BDO Canada Limited is hereby released and discharged from any and all liability that BDO Canada Limited now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO Canada Limited while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO Canada Limited 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, save and except for any gross negligence or wilful misconduct on the Receiver's part.

10. **THIS COURT ORDERS** that this order is effective from today's date and is enforceable without the need for entry and filing.



SCHEDULE "A"

Court File No. CV-23-00693569-00CL

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DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to a Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 7, 2023, BDO Canada Limited was appointed as the receiver (the "**Receiver**") of all of the undertakings, properties and assets of Kivuto Solutions Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated April 19, 2023 (the "**Discharge Order**"), the Court approved the discharge of the Receiver effective upon the filing by the Receiver of a certificate confirming: (i) the completion of the payments and distributions contemplated by the Discharge Order (the "**Payments & Distributions**"); (ii) the payment of approved professional fees and disbursements; and, (iii) the completion of the remaining activities to complete its administration, as set out in the Second Report to Court of the Receiver dated April 10, 2023 (the "**Remaining Activities**").

THE RECEIVER CERTIFIES the following:

1. the Payments & Distributions has been completed;
2. the Receiver has paid all approved professional fees and disbursements; and
4. the Receiver has completed the Remaining Activities.

THIS CERTIFICATE was executed by the Receiver on _____, 2023

BDO CANADA LIMITED, solely in its capacity as Court-appointed Receiver of all of the undertakings, properties and assets of Kivuto Solutions Inc. and not in any personal, corporate or other capacity

Per: _____
Name:
Title:

THE TORONTO-DOMINION BANK
Applicant

-and-

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Court File No. CV-23-00693569-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY & INSOLVENCY)
[COMMERCIAL LIST]**

Proceedings commenced at **TORONTO**

DISCHARGE ORDER

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