

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11- 054208-182

DATE: 16 Mars 2018

UNDER THE PRESIDING OF: **Me Chantal Flamand, registraire**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:
COMPTOIR DES INDES INC.

Debtor / Petitioner

-and-

KPMG INC.

Trustee

CHARGE ORDER

- [1] **ON READING** the Application for the Authorization of a Sale and Solicitation Process, Priority Charges and Other Interim Reliefs (hereinafter the "Application") of Comptoir des Indes Inc. (hereinafter the "Debtor"), the solemn declaration and the exhibits in support thereof;
- [2] **CONSIDERING** the notification / service of the Application;
- [3] **CONSIDERING** the submissions of counsel;

- [4] **CONSIDERING** Sections 50.6, 64.1 and 64.2 of the *Bankruptcy and Insolvency Act*, Canada (hereinafter the "BIA");
- [5] **CONSIDERING** that all secured creditors likely to be affected by the charges resulting from the orders herein have been notified and/or served with the Application;
- [6] **CONSIDERING** that it is appropriate to order charges, ranking behind any hypothecs and security interests over any or all of the Debtor's property existing in favour of the Debtor's secured creditors (hereinafter the "CIBC Security" and the "BDC Security"), CIBC Bank (hereinafter "CIBC") and Business Development Bank of Canada ("BDC"), in order to:
- i. secure the fees of the Debtor's counsel, the Trustee and the Trustee's counsel; and
 - ii. indemnify the directors and officers of the Debtor for any obligations and/or liabilities they may incur in such capacities;

THE COURT:

- [7] **GRANTS** the Application

Notification / Service

- [8] **ORDERS** that any prior delay for the presentation of this Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further notification / service thereof.
- [9] **PERMITS** notification / service of this Order at any time and place and by any means whatsoever.

Administration Charge

- [10] **ORDERS** and **DECLARES** that the Debtor's present and future assets, rights, undertakings and property, movable, personal, corporeal or incorporeal, tangible or intangible and wherever situate, including all proceeds thereof (hereinafter collectively the "Property") are hereby charged by and subject to a security and charge to the extent of the aggregate principal amount of \$100,000 in favour of the Debtor's counsel, the Trustee and the Trustee's counsel, as continuing and collateral security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings under the BIA and the sale and solicitation process, in particular, and the Debtor's restructuring, in general, having the priority established by paragraph [12] hereof (hereinafter the "Administration Charge").

Directors' and Officers' Charge

[11] **ORDERS** and **DECLARES** that the Property is hereby charged by and subject to a security and charge to the extent of the aggregate principal amount of \$100,000 in favour of the directors and officers of the Debtor, as security for the indemnification of directors and officers for any obligations and/or liabilities that they may incur as directors or officers of the Debtor during these proceedings under the BIA, in particular, and the Debtor's restructuring, in general, having the priority established by paragraph [12] hereof (hereinafter the "D&O Charge"). The D&O Charge shall only apply in excess to any coverage the directors of the Debtor may have under a policy of directors' and officers' insurance or to the extent that the directors of the Debtor do not have coverage under such insurance policy.

Priorities and General Provisions Relating to the Charges

[12] **ORDERS** and **DECLARES** that the priorities of the CIBC Security, the BDC Security, the Administration Charge and the D&O Charge shall be as follows:

- i. first, the CIBC Security and the BDC Security, in accordance with their security documents and registration at the Register of Personal and Movable Real Rights;
- ii. second, the Administration Charge, senior to and ahead of all hypothecs, prior charges, security interests, statutory deemed trusts (other than those created under express provisions of the BIA), liens, charges and encumbrances and any other rights of any nature or source (hereinafter collectively the "Encumbrances") other than the CIBC Security and the BDC Security, all without any requirement of publication, registration, recording, filing or perfection in any jurisdiction whatsoever; and
- iii. third, the D&O Charge, senior to and ahead of the Encumbrances other than the CIBC Security, the BDC Security and the Administration Charge, all without any requirement of publication, registration, recording, filing or perfection in any jurisdiction whatsoever.

[13] **DECLARES** that each of the Administration Charge and the D&O Charge (hereinafter collectively the "Charges") shall attach, as of 12:01 a.m., Montreal time, province of Quebec, on the date of this Order, to the Property, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

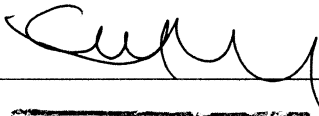
[14] **DECLARES** that the Charges shall subsist without necessity of any publication, registration, recording, filing or perfection.

- [15] **ORDERS** that the Debtor shall not grant any encumbrances in or against any of the Property which ranks in priority to or *pari passu* with the Charges unless either the Court orders same or the beneficiaries of the Administration Charge, the D&O Charge, CIBC and BDC consent in writing thereto;
- [16] **DECLARES** that the Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and any declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Debtor or any receiving order made or deemed to be made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtor (hereinafter a "Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- i. the creation of any of the Charges shall not create or be deemed to constitute a breach by the Debtor of any Third Party Agreement to which it is a party; and
 - ii. any of the beneficiaries of the Charges shall not have liability to any person whatsoever as a result of any breach of a Third Party Agreement caused by or resulting from the creation of the Charges.
- [17] **DECLARES** that the claims of the respective parties pursuant to the Charges shall not be compromised pursuant to these proceedings, any proposal filed pursuant to the BIA (hereinafter a "Proposal") or any plan of arrangement filed pursuant to the *Companies' Creditors Arrangement Act*, Canada (hereinafter a "Plan") and the beneficiaries of the Charges, in such capacity, shall each be treated as an unaffected creditor in these proceedings and in any Proposal or Plan;
- [18] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Debtor and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Debtor pursuant to this Order and the granting of the Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- [19] **DECLARES** that the Charges shall be valid and enforceable as against all Property and against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtor, for all purposes.
- [20] **ORDERS** the Registrar of the Register of Personal and Movable Real Rights of the province of Quebec, upon application by the beneficiaries of the Administration Charge and/or the beneficiaries of the D&O Charge, to register in the Registre des droits personnels et réels mobiliers of the province of Quebec, the Charges created by this Order against the Property located in the province of Quebec.

General

- [21] **DECLARES** that this Order shall have full force and effect in all provinces and territories of Canada.
- [22] **REQUESTS** the aid and recognition of any court or administrative body in any province or territory of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
- [23] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.
- [24] **THE WHOLE** without costs.



Me Chantal Flamand, registraire