

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act, RSC 1985, c B-3)

No.: 500-11-058403-201

IN THE MATTER OF THE PROPOSAL OF:

MODASUITE INC.

Debtor

-and-

KPMG INC.

Petitioner/Proposal Trustee

APPLICATION FOR THE APPROVAL OF A PROPOSAL
(Sections 50(1)(a) and 58 of the *Bankruptcy and Insolvency Act*)

TO ONE OF THE HONOURABLE JUDGES OR TO THE REGISTRAR OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONER / PROPOSAL TRUSTEE RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. By the present application (this “**Application**”), the Proposal Trustee is seeking an Order approving and ratifying the Proposal (the “**Proposal**”) filed by the Debtor on December 2, 2020 with the Office of the Superintendent of Bankruptcy Canada (the “**Superintendent**”) pursuant to section 62 of the BIA, and subsequently approved by the required majority of the Debtor’s creditors (“**Creditors**”) during a meeting of Creditors (the “**Meeting of Creditors**”) held by videoconference on January 18, 2021, the whole substantially in the form of the draft Proposal Approval Order (the “**Proposal Approval Order**”), communicated herewith as **Exhibit P-1**.
2. The Trustee is of the view that the terms of the Proposal are reasonable in the circumstances and that the Proposal is made in good faith as well as advantageous to Creditors generally. Furthermore, the approval of the Proposal pursuant to the Proposal Approval Order is an important feature of the sale transaction approved by this Court that has facilitated the successful restructuring of the Debtor’s business for the benefit of all of its stakeholders.

3. It is therefore respectfully submitted that the relief sought pursuant to this Application should be granted.

II. BACKGROUND

4. On June 22, 2020, Modasuite Inc. ("**Modasuite**" or the "**Debtor**") filed a *Notice of intention to make a proposal* ("**NOI**") under the relevant provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**") and KPMG Inc. was appointed as trustee thereto ("**KPMG**" or the "**Trustee**"). As a result of the filing of the NOI, all proceedings against the Debtor and its assets were stayed until July 22, 2020, the whole as appears from the Court record.
5. On June 26, 2020, at Modasuite's request, the Court granted the *Order Approving an Administration Charge, a D&O Charge, Sale Guidelines and Granting Ancillary Relief* (the "**First Order**"), as appears from Court record.
6. On July 21, 2020, the Court issued an Order extending the delay to file a proposal under the NOI until September 4, 2020.
7. On September 2, 2020, the Court issued an Order extending the delay to file a proposal under the NOI until October 19, 2020.
8. On October 6, 2020, the Court issued an Order extending the delay to file a proposal under the NOI until December 3, 2020.
9. On October 6, 2020, the Court issued an *Approval, Vesting and Assignment Order, inter alia*, approving the sale transaction (the "**Transaction**") contemplated by *Asset Purchase Agreement* entered into on September 30, 2002 (the "**Purchase Agreement**") between the Petitioner, as vendor, and UCG Canada Holdings inc., or any entity it may designate, (the "**Purchaser**"), as purchaser, as appears from the Court record.
10. On October 7, 2020, the Trustee issued and filed the Certificate of the Trustee, confirming that it had been advised that:
 - (a) the Purchase Agreement has been executed and delivered;
 - (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
 - (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto,the whole as appears from the Court record.
11. On December 2, 2020, Modasuite, with the assistance of the Trustee, filed the Proposal with the Superintendent pursuant to section 62 of the BIA, a copy of which is communicated herewith as **Exhibit P-2**.

12. On or around December 3, 2020, the Trustee sent to Creditors:
 - (a) a Notice of filing of the Proposal to Creditors pursuant to section 51 of the BIA, in which, *inter alia*, the Trustee indicated that the Meeting of Creditors would be held on December 23, 2020, at 11:00 am by videoconference and that an application for court-approval of the Proposal would, provided the Proposal was accepted by Creditors, be heard on December 29, 2020, a copy of which is communicated herewith as **Exhibit P-3**;
 - (b) The Trustee's Report on the Proposal pursuant to section 50(10) (b) of the BIA (the "**Trustee's Proposal Report**"), a copy of which is communicated herewith as **Exhibit P-4**; and
 - (c) Other relevant documents in connection with the Meeting of Creditors.
13. On December 4, 2020, following an application of the Trustee, the Court issued an *Order Appointing a Receiver, inter alia*, appointing KPMG as receiver without security over a certain limited pool of funds, for the sole purpose of allowing the Debtor's employees to benefit from payments provided under the *Wage Earner Protection Program Act* (S.C. 2005, c. 47, s. 1), as appears from the Court record.
14. On December 23, 2020, the Meeting of Creditors with respect to the vote on the Proposal by Creditors was held by videoconference with the assistance of the Trustee and was adjourned to January 18, 2021, as appears from the minutes of the meeting, communicated herewith as **Exhibit P-5**.

III. THE PROPOSAL¹

15. As summarized in the Trustee's Proposal Report (Exhibit P-4), the main features of the Proposal (Exhibit P-2) can be described as follows:
 - (a) The Proposal contemplates the distribution of the Basket Amount to the Creditors with Unsecured Claims, in the manner and with the priority set forth in the Proposal. The Basket Amount means an amount equal to the aggregate of: (a) the Net Transaction Amount; (b) the Purchaser Contribution; and (c) the Tax Refunds.
 - (b) The Net Transaction Amount is currently estimated to represent an amount of approximately \$2,225,000.
 - (c) The Purchaser Contribution represents an amount of \$400,000 that is contributed by the Purchaser as per the Transaction, subject to the implementation of the Proposal and the Reorganization set out therein.

¹ All capitalized terms used but not otherwise defined in this application shall have the meaning ascribed to such terms in the Proposal.

- (d) The Tax Refunds represent a potential asset of the Debtor which the Debtor currently estimates to be in the aggregate amount of approximately \$100 000.
- (e) According to the terms of the Proposal, the following amounts must be paid in full by Modasuite:
 - i) Professional Fees;
 - ii) Post-Filing Claims, in the ordinary course of business, and on regular trade terms;
 - iii) Secured Claims, if any;
 - iv) Crown Priority Claims, without interest, within six (6) months after issuance of the Proposal Approval Order;
 - v) Employee Priority Claims, without interest, immediately after issuance of the Proposal Approval Order;
 - vi) Preferred Claims, without interest, within sixty (60) days after issuance of the Proposal Approval Order; and
 - vii) Superintendent's Levy.
- (f) The Basket Amount will be distributed by the Proposal Trustee to the holders of Proven Claims, within ninety (90) days of the issuance of the Proposal Approval Order as follows: (a) the lesser of \$ 1,000 or the amount of the Proven Claim; and (b) for Creditors with a proven Unsecured Claim in excess of \$ 1,000, for the portion of each such Proven Claim in excess of \$ 1,000, such Creditors will receive an amount equal to their *pro rata* share of the Basket Amount relative to the aggregate value of the Proven Claims not addressed by Articles 2.4 (a) to (e) of this Proposal.
- (g) Provided that the Proposal is accepted by the Required Majority of the Creditors and that the Proposal Approval Order is granted by the Court, the Purchaser Contribution shall be remitted to the Proposal Trustee within three (3) Business Days of the issuance of the certificate of amendment by the Director (as defined in and appointed under the CBCA) confirming the Reorganization.
- (h) Any Creditor, other than a Preferred Creditor, holding a Proven Claim which is to be paid in full pursuant to the Proposal shall be conclusively deemed to vote in favour of this Proposal.
- (i) On the Effective Date, all Claims of the Creditors existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Filing

Date relating to, arising out of or in connection with Modasuite or its assets, business or affairs, wherever and however conducted, the Proposal and the Proposal Proceedings shall be deemed to be fully and finally satisfied, settled and discharge and no Creditor shall have any further right, remedy or claim against Modasuite in respect of all or any portion of the Creditor's Claim.

- (j) On the Effective Date, in accordance with section 50(13) of the BIA, all claims, of any nature or source whatsoever against all of Modasuite's past and present Directors in connection with any Claims, and any indemnification obligations with respect thereto, the business and affairs of Modasuite whenever or however conducted, the administration and/or management of Modasuite, the Proposal, or any document, instrument, matter or transaction involving Modasuite taking place in connection with the Proposal, shall be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred, to the fullest extent permitted by governing law, provided that nothing herein will waive, discharge, release, cancel or bar (a) the right to enforce Modasuite's obligations under the Proposal, or (b) any Claim that is not permitted to be released pursuant to sections 50(13) and 50(14) of the BIA.
 - (k) Upon the issuance of the Proposal Approval Order, the Debtor will proceed with the Reorganization, which consists in the creation and issuance of a new class of shares to the Purchaser and the cancellation of all existing shares of the Debtor. The implementation of the Reorganization is a condition for the distribution of the Purchaser Contribution.
16. As indicated by the Trustee in the Trustee's Proposal Report, the Proposal is beneficial to the mass of the Debtor's Creditors, with an average dividend to holders of Proven Claims of approximately 17.2%, as compared to 13.8% in the event of a bankruptcy. In addition, the Trustee anticipates that the dividend should be distributed faster through the Proposal process than in a bankruptcy.
17. For these reasons, the Trustee recommended to Creditors that they vote in favour of the Proposal.

IV. THE MEETING OF CREDITORS

18. As indicated above, on December 23, 2020, the Meeting of Creditors with respect to the vote on the Proposal was adjourned to January 18, 2021.
19. On January 18, 2021 the Meeting of Creditors was held by videoconference with the assistance of the Trustee and the Proposal was accepted by the required majority of Creditors, namely by:
- (a) 98.90% in number; and
 - (b) 95,55% in value,

as appears from a copy of the minutes of the Meeting of Creditors, communicated herewith as **Exhibit P-6**.

20. As further appears from those minutes (Exhibit P-6), the Trustee advised the Creditors in attendance that an application for court-approval of the Proposal would be heard on January 22, 2021.
21. The Trustee also published information regarding the time and place of the upcoming hearing on its website and is in the process of sending a notice of the upcoming hearing by email to the Debtor, the Superintendent and to all Creditors having proved a claim under the Proposal and having provided email addresses, a copy of which is communicated herewith as **Exhibit P-7**.
22. Following the vote at the Meeting of Creditors, the Trustee issued its Report on the Proposal pursuant to subsection 58 (d) BIA (the "**Trustee's Approval Report**"), which shall be notified and filed prior to the hearing of this Application.

V. ABRIDGMENT OF DELAYS AND PROVISIONAL EXECUTION

23. As noted above, the Purchaser Contribution, which serves to increase the amount available for distribution to Creditors by \$400,000, is being contributed by the Purchaser as part of the Transaction but subject to the implementation of the Proposal and the Reorganization.
24. Pursuant to the agreement governing the Transaction, the Purchaser was bound to make the Purchaser Contribution only if an order approving the Proposal was rendered by December 31, 2020. However, on December 23, 2020, the parties to the Transaction agreed to modify this condition such that the Purchaser Contribution shall be payable provided that the Proposal and Reorganization are implemented no later than January 31, 2021, which, being a Sunday, effectively requires that these steps be accomplished no later than January 29, 2021.
25. In order to ensure that these requirements are respected, the Trustee respectfully requests that any applicable delays for the sending, forwarding or filing of notices or documents in connection with this Application be abridged, in accordance with section 187 BIA, so that this Application is properly returnable at the date of its presentation.
26. The Trustee further requests, in order to facilitate the implementation of the Proposal and the Reorganization as soon as possible and, in all cases, within the above mentioned delays, that the Proposal Approval Order be rendered executory notwithstanding any appeal.

VI. CONCLUSION

27. The Proposal has been approved by the requisite majority of Creditors and the Trustee is of the view that its terms are reasonable and that it is advantageous for

Creditors generally, as appears from the Trustee's Proposal Report and the Trustee's Approval Report.

28. The Debtor supports this Application and has, in the view of the Trustee, made the Proposal, and otherwise acted, in good faith.
29. In light of the foregoing and in order to facilitate the completion of the Debtor's restructuring, the Trustee respectfully submits that the relief sought pursuant to this Application should be granted.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Application for the Approval of a Proposal* (the "**Application**");

ORDER that any delays for the service of the Application or for the sending, forwarding and filing of any documents or notices in connection therewith, including under section 58 BIA, be abridged and validated such that the Application is properly returnable at the date of its presentation;

RENDER an order substantially in the form of the draft *Proposal Approval Order* communicated herewith as **Exhibit P-1**;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

Montreal, January 18, 2021



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AFFIDAVIT

I the undersigned, Stéphane De Broux, CPA, CA, CIRP, LIT, domiciled for the purpose hereof at 600, de Maisonneuve Blvd. West, Suite 1500, Montréal, Province of Québec, H3A 0A3, solemnly declare the following:

1. I am a Director of KPMG Inc. and a duly authorized representative for the purposes hereof.
2. I have taken cognizance of the attached *Application for the Approval of a Proposal* (the "**Application**").
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where I have obtained facts alleged in the Application from others, I believe them to be true.

AND I HAVE SIGNED:



STÉPHANE DE BROUX

SOLEMNLY DECLARED BEFORE ME BY
TECHNOLOGICAL MEANS IN MONTRÉAL,
QUÉBEC, ON JANUARY 18 , 2021.



Laura Moncy

Commissioner for Oaths for the Province of
Québec



**NOTICE OF PRESENTATION
COMMERCIAL DIVISION (ROOM 16.10)**

TO: THE SERVICE LIST (SEE ATTACHED)

**AND TO: THE DIRECTOR appointed under the
*Canada Business Corporations Act***

**OFFICE OF THE SUPERINTENDENT OF
BANKRUPTCY**

Corporations Canada
C.D. Howe Building, 235 Queen Street,
W. Tower, 7th floor
Ottawa, Ontario K1A 0H5

Sun Life Building, 1155 Metcalfe Street,
Suite 950
Montreal, Quebec H3B 2V6

Email:
ic.corporationscanada.ic@canada.ca

Email :
ic.osbservice-bsfservice.ic@canada.ca

1. PRESENTATION OF THE PROCEEDING

TAKE NOTICE that the *Application for the Approval of a Proposal* will be presented for hearing and adjudication before the Superior Court (Commercial Division), in room 16.10, of the Montréal Courthouse, at the virtual calling of the roll on **January 22, 2021, at 8:45 a.m.**, or so soon thereafter as counsel may be heard.

2. HOW TO CONNECT TO THE VIRTUAL ROLL CALL

The coordinates for you to join the virtual calling of the roll in room 16.10 are as follows:

- a) **By Teams:** by clicking on the [Teams Link](http://www.tribunaux.qc.ca) available at <http://www.tribunaux.qc.ca>:
("Liens TEAMS pour rejoindre les salles du Palais de justice")

You must fill in your name and click on «Join now» (« *Rejoindre maintenant* »). To facilitate the process, we invite you to fill in your name as follows:

Lawyers: M^e First name, Last name (Name of the party you represent)

Trustees: First name, Last name (Trustee)

Superintendent: First name, Last name (Superintendent)

Parties not represented by a lawyer: First name, Last name (specify: Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or Other)

For individuals attending a public hearing: the mention can be limited to:
(public)

- b) **By telephone:**

Canada, Québec (Charges may apply): +1 581-319-2194

Canada (Toll-free number): (833) 450-1741

Conference ID: 820 742 874#

c) **By VTC videoconference:** teams@teams.justice.gouv.qc.ca

Videoconference ID: 11973653703

d) **In person:** If and only if you do not have access to one of the above mentioned technological means of connecting, you may then attend in room 16.10 of the Montreal Courthouse located at: 1, Notre-Dame Street East, Montréal, Québec.

3. DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that if you wish to contest the proceeding, you must inform the initiator of the said proceeding in writing at the coordinates mentioned in the present Notice of Presentation at least 48 hours before the date of presentation and participate at the virtual calling of the roll, failing which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Cooperation

TAKE NOTICE that the parties are duty-bound to cooperate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved (s. 20, *Code of Civil Procedure*).

4.2 Dispute prevention and resolution processes

TAKE NOTICE that the parties must consider private prevention and resolution processes before referring their dispute to the courts, which are namely negotiation, mediation or arbitration, for which the parties call on a third party (*Code of Civil Procedure*, art. 2).

DO GOVERN YOURSELF ACCORDINGLY

MONTREAL, January 18, 2021



NORTON ROSE FULBRIGHT CANADA LLP
Attorneys for the Trustee, KMPG Inc.

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Debtor

-and-

KPMG INC.

Petitioner/Proposal Trustee

LIST OF EXHIBITS

- P-1** Draft *Proposal Approval Order*
- P-2** Proposal dated December 2, 2020
- P-3** Notice of Proposal to Creditors dated December 3, 2020
- P-4** Report of the Trustee dated December 2, 2020.
- P-5** Minutes of the Creditors' Meeting dated December 23, 2020
- P-6** Minutes of the Creditors' Meeting dated January 18, 2021
- P-7** Notice of Hearing dated January 18, 2021

MONTREAL, January 18, 2021

Norton Rose Fulbright Canada S.E.N.C.R.L., d.r.l.

NORTON ROSE FULBRIGHT CANADA LLP
Attorneys for the Trustee, KMPG Inc.