
CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
DIVISION: 01- MONTRÉAL
S.C.: 500-11-058403-201
SUPER: 41-2653429

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:**

MODASUITE INC., legal person duly incorporated according to law having its principal place of business at 160 Saint-Viateur Street East, Suite 702, in the city of Montreal, province of Quebec, H2T 1A8;

Applicant

- and -

KPMG INC., a corporation duly incorporated under the *Canada Business Corporations Act* (Canada), having a place of business at 600, boul. De Maisonneuve Blvd. West, Suite 1500, in the city of Montreal, province of Quebec, H3A 0A3;

Trustee

**TRUSTEE'S FOURTH REPORT ON THE APPLICANT'S REQUEST
FOR SALE OF THE ASSETS OUTSIDE OF THE ORDINARY COURSE OF BUSINESS
(SECTION 65.13 BIA) AND ON
THE STATE OF THE APPLICANT'S BUSINESS AND FINANCIAL AFFAIRS**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF **MODASUITE INC.:**

I, Stéphane De Broux, CPA, CA, CIRP, LIT of the firm KPMG Inc. ("**KPMG**" or the "**Trustee**"), the trustee under the Notice of Intention to Make a Proposal filed by **MODASUITE INC.** (hereinafter "**Modasuite**", the "**Debtor**" or the "**Company**"), hereby report to the Court as follows.

INTRODUCTION

1. On June 22, 2020, the Company filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and KPMG was appointed as Trustee to the NOI. As a result of the filing of the NOI, all proceedings against the Company and its assets were stayed until July 22, 2020.
2. 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**"). We refer the Court to the First Report of the Trustee for more information.
3. On June 29, 2020, the Trustee sent a copy of the NOI and other statutory documents to all known creditors of the Company.

4. On June 30, 2020, the Trustee filed with the official receiver (i) a projected cash-flow statement for the period of June 22, 2020, to July 26, 2020, (ii) the Company's report on its cash flow statement, and (iii) the Trustee's report on said cash flow statement, in accordance with section 50.4(2) of the BIA.
5. On July 21, 2020, the Court issued an Order extending the delay to file a proposal under the NOI until September 4, 2020, which was supported by the Trustee ("**Second Report**").
6. On September 2, 2020, the Court issued an Order extending the delay to file a proposal under the NOI until October 19, 2020, which was supported by the Trustee ("**Third Report**").
7. On September 30, 2020, the Company filed an Application for the Issuance of an Approval and Vesting Order and Assignment Order and an Extension Order (the "**Application**"), for the purpose of seeking the approval of transaction and the extension of the delay to file a proposal.
8. The purpose of this report ("**Fourth Report**") is to provide this Honourable Court with information regarding:
 - a) Background information on the Company;
 - b) The Company's activities since the Third Report;
 - c) The analysis of the offers received pursuant to the sale and investment solicitation process (the "**SISP**");
 - d) The principal terms of the transaction contemplated under the Asset Purchase Agreement (the "**APA**") entered between the Debtor and UCG Canada Holdings Inc. (the "**Purchaser**" or "**UCG Canada**"), for the sale of substantially all of the Debtor's assets (the "**Transaction**");
 - e) The alternative to the Transaction, being a liquidation scenario;
 - f) Activities of the Trustee since the Third Report; and
 - g) The Trustee's recommendation that this Court issue the following orders, as requested by Modasuite:
 - i) the authorization to complete the sale of the assets contemplated in the APA and proceed with the closing of the Transaction, and the vesting in the Purchaser of all of the right, title and interest in the Purchased Assets (as defined in the APA) free and clear of any and all security, hypothecs, charges, encumbrances or other restrictions, upon the issuance of the Trustee's Certificate, the whole as set forth in the Asset Purchase Agreement;
 - ii) the assignment of the Assumed Contracts as more fully described in the Approval and Vesting Order; and
 - iii) the extension of delay to file a proposal.

RESTRICTIONS AND SCOPE LIMITATIONS

9. In preparing this report, the Trustee has been provided with and has relied upon unaudited financial information, books and records (the "**Information**") prepared by management of the Company ("**Management**") and following discussions with Management. Except as further described in this report:
 - a) The Trustee has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner

that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

- b) Some of the Information referred to in this report consists of financial forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
10. Future oriented financial information referred to in this report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.
 11. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with Modasuite.
 12. Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars, which is the Company’s common reporting currency.

BACKGROUND INFORMATION

13. This report should be read in conjunction with the Application, the First, Second and Third Reports of the Trustee which provide background and other information regarding the Debtor and the NOI proceedings. Capitalized terms not defined in this report are used as defined in the Application.
14. Modasuite is a privately-owned company incorporated in 2009. The company’s head office is located at 160 Saint-Viateur Street East, Suite 702, in the City and District of Montreal, Province of Quebec.
15. Modasuite sells modern men’s and women’s clothing, footwear and accessories, with a focus on using eco-conscious materials and methods for its products and ethical practices throughout its supply chain.
16. The Company sells its merchandise through its e-commerce platform and its retail stores.

THE COMPANY’S ACTIVITIES SINCE THE FILING OF THE NOI

17. Since the granting of the First Order, Modasuite conducted the liquidation sale (the “**Liquidation Sale**”) of all inventory and furnishings, fixtures and equipment located at certain stores (the “**Closing Stores**”). The Liquidation Sale was completed on or about August 31, 2020.
18. Since the Third Report, Modasuite has continued to operate its stores and its e-commerce platform in the ordinary course, under the supervision of the Trustee.
19. Modasuite, in consultation with, and under the supervision of the Trustee has also sent lease disclaimer notices to landlords of the Closing Stores.

THE SALE AND INVESTMENT SOLICITATION PROCESS

20. As part of its restructuring plan, Modasuite retained an investment banking firm, Stifel Nicolaus Canada Inc. (“**Stifel**”), to assist management with the SISP in order to market and solicit offers for the business and its assets.

21. On July 10, 2020, the Debtor and Stifel launched the SISP and established a virtual data room (the “**Data Room**”) with the necessary information for interested parties to evaluate Modasuite’s business and assets.
22. A total of 233 parties consisting of strategic buyers and financial investors were contacted in the context of the SISP and sixty (60) parties signed a confidentiality agreement and were granted access to the Data Room (the marketing summary prepared by Stifel being communicated herewith under seal as **Exhibit 1**).
23. As part of the SISP, interested parties were given a deadline of August 7, 2020, to submit an Expression of Interest (an “**EOI**”).
24. Accordingly, on or about August 7, 2020, Stifel received eight (8) EOIs from various strategic and financial investors (the “**Initial Bidders**”).
25. Considering the significant interest in Modasuite’s assets, the Initial Bidders were invited by Stifel to revise their respective EOIs by August 21, 2020 (the “**Revised EOIs**”).
26. Accordingly, on August 21, 2020, Stifel received five (5) Revised EOIs from Initial Bidders.
27. Modasuite and Stifel reviewed the Revised EOIs and four (4) Initial Bidders were invited to make a binding offer pursuant to the SISP (the “**Final Bidders**”).
28. On or about September 2, 2020, Stifel received three (3) binding offers from the Final Bidders (the “**Offers**”).
29. Modasuite, Stifel and the Trustee reviewed and considered the Offers. The Company determined that the binding offer submitted by Unified Commerce Group, LLC, parent company of the Purchaser (the “**UCG Offer**”), was superior to the other two offers.
30. Accordingly, with the consent of the Debtor’s senior secured lender, Fédération des Caisses Desjardins du Québec (“**Desjardins**”), Modasuite accepted the UCG Offer on September 4, 2020.
31. It is noted that the Trustee has received an independent legal opinion confirming the validity and enforceability of the secured rights of Desjardins.

ANALYSIS OF THE OFFERS RECEIVED

32. A document prepared by Stifel summarizing the terms of the Offers is presented under seal as **Exhibit 2**, including copies of the Offers.
33. The Trustee prepared an analysis showing the estimated distribution to unsecured creditors under each of the Offers. This analysis is communicated herewith under seal as **Exhibit 3**.
34. Based on the information and analysis presented in Exhibits 2 and 3, the Trustee determined that the UCG Offer represents the best offer under the circumstances with the highest return for the Debtor’s stakeholders.

TERMS OF THE TRANSACTION

35. The terms of the Transaction are reflected in the APA entered into on September 30, 2020, between Modasuite and UCG Canada. A copy of the APA being communicated herewith under seal as **Exhibit 4**.

36. Unless otherwise defined herein, all capitalized terms in this section have the meaning ascribed thereto in the APA.
37. Pursuant to the APA, the Purchaser seeks to acquire most of Modasuite's assets, tangible or intangible, rights and interests (the "**Purchased Assets**") free and clear of all encumbrances, on an "as is, where is" basis. The Purchased Assets include, without limitation, all of Modasuite's Cash, Accounts Receivable, Inventory, Equipment, Intellectual Property (including trademark oppositions), rights, title and interests in and to the Contracts, Authorizations, Books and Records, Prepaid Expenses, Goodwill, Warranty Rights, Trademark Oppositions and the Assumed Employee Plans.
38. The Purchased Assets do not include any of the following assets, which shall remain the property and responsibility of Modasuite: amounts payable to Modasuite in connection with any litigation other than any litigation in connection with the Trademark Oppositions, Corporate Records, Tax credits or refunds payable to Modasuite, all of the Employee Plans except the Assumed Employee Plans, all Contracts that are not Assumed Contracts and all Authorizations that are not transferable.
39. The Purchased Assets also include the assignment of specific contracts (the "**Assumed Contracts**") listed in Exhibit P-1 of the Application. The Purchaser shall pay all applicable Cure Costs with respect to the assignment of the Assumed Contracts.
40. The Purchaser agrees to assume certain liabilities of Modasuite (the "**Assumed Liabilities**") as of the Closing Date including credits owed on gift cards, store credits, any refund obligations in connection with any returns of merchandise by customers, the accrued but unpaid regular wages and salary of the Transferred Employees at Closing and the Accrued Vacation of the Transferred Employees up to the Closing Date.
41. In addition to the Transaction, Modasuite intends to make a proposal to its creditors in accordance with the BIA (the "**Proposal**"). The Purchaser has undertaken to contribute an additional amount of \$400,000 towards the Proposal which results in the transfer of the equity of the Company to the Purchaser (and the associated tax attributes), the Proposal to be in form and substance satisfactory to the Purchaser.
42. Furthermore, with a view of seeking the active engagement in the new business from current management and certain investors, the Purchaser has committed, and has made it a condition of its offer, that certain Transferred Employees as well as certain of the Company's existing shareholders take a minor stake in its share capital, pursuant to terms which are to be finalized prior to closing of the Transaction.
43. As more fully appears from the APA, the Purchaser will be offering continued employment to all remaining employees of Modasuite.
44. The Purchaser will also retain and assume the leases for Modasuite's head office, distribution center, and store which are all located on Saint-Viateur Street East in Montréal.
45. As for the other nine stores and corresponding leases, they have been disclaimed or terminated by the Company concurrently with the execution of the APA, as permitted under the BIA or the applicable lease. The Trustee understands that Purchaser is currently assessing its options, in order to determine which, if any, premises and associated leases may be part of the continuing business and under what conditions.

46. As part of the APA, the Purchaser and the Debtor agreed on a Transition Services Agreement (Schedule 1.1(60) of the APA) whereby, among other things, the Debtor will provide certain transitional services to the Purchaser, at the Purchaser's sole cost and expense, and the Purchaser will allow certain Transferred Employees to provide transitional services to Modasuite, relating to its wind-down.
47. In order to ensure the success of its business following closing, the Purchaser has indicated its intention to invest substantial amounts in the business. The terms of such investment will be determined by the Purchaser following the closing of the Transaction.
48. Other relevant terms and conditions of the APA are as follows:
 - a) the Purchased Assets must be free of all liens or other encumbrances, except (for greater certainty) the Assumed Liabilities;
 - b) the Purchaser shall not assume any liabilities of Modasuite other than the Assumed Liabilities;
 - c) the Purchaser shall not assume any undertaking or agreement of Modasuite other than the Assumed Contracts;
 - d) the head office is to remain in Montréal for at least four years following closing of the Transaction;
 - e) the Transaction is not conditional upon any additional due diligence or financing condition; and
 - f) issuance by this Court of the Approval and Vesting Order.
49. It is understood that all the above conditions would be met if the Approval and Vesting Order is issued by the Court.
50. It is noted that the loan owed to Desjardins will be repaid in full by the Purchaser on the Closing Date by way of deduction from the Purchase Price as part of the Transaction.
51. The cash component of the Purchase Price shall be paid in full at the closing of the Transaction.
52. It is anticipated that the Transaction will close no later than October 7, 2020, subject to the satisfaction of the closing conditions set forth in the APA.

ALTERNATIVE TO THE TRANSACTION – LIQUIDATION SCENARIO

53. As an alternative to the Transaction, the Trustee estimated the net proceeds that would be available to the stakeholders under a liquidation scenario following a bankruptcy, as presented in the following table:

| Modasuite Inc. Estimated liquidation value As at September 30, 2020 (except when otherwise indicated) | | | | | |
|---|---------------------|-----------------|--------------------|------|------------------|
| Description | Book value | Estimated value | | | |
| | | | Low | | High |
| Current Assets | | | | | |
| Cash | - | 100% | - | 100% | - |
| Accounts Receivable | Note 1 3 763 576 | 20% | 752 715 | 30% | 1 129 073 |
| Intercompany Receivable | Note 1 5 276 903 | - | - | - | - |
| Inventory (as at September 20, 2020) | Note 2 2 383 276 | 40% | 953 310 | 60% | 1 429 965 |
| Prepaid Expenses and deposits | Note 1 1 538 821 | 40% | 615 528 | 60% | 923 292 |
| | 12 962 575 | | 2 321 554 | | 3 482 331 |
| Non-Current Assets | | | | | |
| Capital Assets | Note 1 2 542 698 | 5% | 127 135 | 10% | 254 270 |
| Other Assets and intangibles | Note 1 1 326 834 | - | - | - | - |
| | 3 869 532 | | 127 135 | | 254 270 |
| Estimated value before professional fees and priority claims | 16 832 108 | | 2 448 689 | | 3 736 600 |
| Estimated priority claims | | | | | |
| Salaries and DAS payable | Note 3 | | TBD | | TBD |
| Vacation payable | Note 4 | | (530 000) | | (530 000) |
| Total estimated priority claims | | | (530 000) | | (530 000) |
| Estimated administration and professional fees | | | (500 000) | | (300 000) |
| Estimated liquidation value | | | 1 418 689 | | 2 906 600 |
| Due to secured creditors | | | | | |
| Desjardins Debt (as at September 29, 2020) | Note 5 | | (3 359 515) | | (3 359 515) |
| Estimated deficit before unsecured creditors | | | (1 940 826) | | (452 914) |

Note 1: Book value per the Company's latest internal financial statements as at June 30, 2020

Note 2: Net liquidation value based on the Trustee's experience

Note 3: Salaries and DAS payable at the end of the liquidation process

Note 4: Per the Company's books and records

Note 5: Amount does not include interest accrued since September 1, 2020, legal fees, EDC fees and credit card obligations

54. The table above shows that, while providing for a partial repayment for the secured lender, the net proceeds to the unsecured creditors in a liquidation scenario are estimated to be nil.
55. As at September 29, 2020, the outstanding aggregate amount due by Modasuite to its secured lender, Desjardins, totaled approximately US \$2.5 million, excluding interest accrued since September 1, 2020, legal fees, EDC fees and credit card obligations.
56. In addition to the above calculation, it is important to mention that, under a liquidation scenario, jobs would not be preserved, and landlords and suppliers would have lost an important tenant and customer going forward.
57. Based on the analysis above, the Trustee is of the view that the Transaction is the highest and best Transaction resulting from the SISP and the consideration is fair and reasonable in the circumstances.

TRUSTEE'S ACTIVITIES SINCE THE FILING OF THE NOI

58. Since the filing of the NOI, the Trustee has, *inter alia*:
- a) Monitored the daily receipts and disbursements and the Company's current and ongoing operations;
 - b) Reviewed weekly variances between the actual cash flow results versus the cash flow projections for the period from June 21, 2020, to September 20, 2020;
 - c) Assisted the Company in the preparation of an updated weekly cash flow forecast;
 - d) Responded in a timely manner to inquiries from affected stakeholders, including creditors, employees, customers and landlords;
 - e) Assisted the Company in dealing with various operational issues;
 - f) Assisted senior management with the NOI process and planning for next steps;
 - g) Prepared the First Report, Second Report, Third Report and the present report, and attended Court hearings in relation to the NOI process;
 - h) Updated the Trustee's website to allow stakeholders to access relevant documents in connection with the NOI process;
 - i) Supervised the SISP;
 - j) Participated in several conference calls with the Debtor and its legal advisors in connection with the Company's restructuring efforts.
 - k) Reviewed various financial information of the Debtor in order to assess its financial position and to make a recommendation on the Transaction; and
 - l) Held various discussions with Management and participated in discussions between Modasuite, its legal counsel and the Purchaser.

REQUEST FOR AN EXTENSION OF TIME

59. Modasuite is seeking an extension of time until December 3, 2020, in order to submit a Proposal to its creditors which will allow them to maximize their recovery.
60. Modasuite will have the capacity to meet its obligations during the projected stay period as a result of the liquidity made available pursuant to the Transaction.
61. Following the closing of the Transaction, Modasuite will have disposed of substantially all of its assets in favour of the Purchaser and its activities will be essentially limited to fulfilling its obligations under the Transition Service Agreement and analyzing the potential of submitting a proposal to its creditors.
62. Following the closing of the Transaction, all costs of the Transition Services (as defined in the Transition Services Agreement), as well as certain payments made by the Company on behalf of the Purchaser for administrative reasons, shall be assumed and guaranteed by the Purchaser under the Transition Service Agreement.
63. The net proceeds from the Transaction will be remitted to the Trustee and held in trust and used to pay all post-filing expenses of the Applicant. The remaining balance will be used to fund a proposal to Modasuite's creditors.

64. Considering that the Trustee shall be funding, from the net proceeds of the Transaction, all amounts required for Modasuite to pay all of its post-filing liabilities, Modasuite's projected cash flow, presented in **Exhibit 5**, reflects no receipts, no disbursements and no cash balance on hand after September 30, 2020.
65. It is submitted that the request for an extension order, being made slightly ahead of October 19, 2020, is appropriate in the circumstances and is in the interest of the administration of justice in the present context, considering notably the Covid-19 pandemic, potential re-confinement and the limited activities of Modasuite after closing of the Transaction.

TRUSTEE'S RECOMMENDATIONS AND CONCLUSIONS

66. Based on the foregoing, the Trustee considers the relief sought in the Application to be fair, reasonable and appropriate in the circumstances, and supports the issuance of the orders sought therein.

Transaction and Assignment of Contracts

67. The Trustee is of the opinion, based upon all of the reasons described throughout this Fourth Report, that the Transaction contemplated by the APA should be approved and including the assignment of the Assumed Contracts. The main reasons are summarized as follows:
- a) The Transaction results from a *bona fide* offer by the Purchaser to purchase the Purchased Assets following a fulsome sale process through the SISP;
 - b) The Transaction offers the highest potential return to the Debtor's stakeholders. In addition, the Transaction provides for a full repayment of the secured creditor's debt;
 - c) The Trustee estimates that the potential realization following the Transaction is superior to the consideration that would be realized under the other two (2) binding offers received by the Debtor;
 - d) The Purchaser agrees to pay all the Cure Costs associated to the Assumed Contracts;
 - e) The Transaction is reasonable and fair considering all of the circumstances and would be more beneficial to the creditors and other stakeholders than a liquidation following a bankruptcy;
 - f) Unlike a liquidation scenario, the Purchaser intends to continue the Company's business operations on a going concern basis, to the benefit of employees, landlords and suppliers; and
 - g) The Transaction has been approved by the secured creditor, Desjardins.
68. With respect to Modasuite's request to maintain the APA and other Transaction documents confidential, the Trustee's view is that it is reasonable, justified and appropriate in the circumstances.

Extension of time

69. The Trustee supports the request sought by Modasuite in its Application for an extension of time, for the following reasons:
- a) The Company has acted, and is acting in good faith and with due diligence;
 - b) No creditor would be materially prejudiced if the extension being applied for is granted;
 - c) Modasuite may be able to make a proposal if the extension being applied for is granted.

All of which is respectively submitted this 2nd day of October 2020.

KPMG INC., in its capacity
of Trustee of MODASUITE INC.



Stéphane De Broux, CPA, CA, CIRP, LIT

EXHIBIT 1
SISP MARKETING SUMMARY
(under seal)

EXHIBIT 2
SUMMARY TERMS OF THE OFFERS
(under seal)

EXHIBIT 3
ESTIMATED DISTRIBUTION
(under seal)

EXHIBIT 4
ASSET PURCHASE AGREEMENT
(under seal)

**EXHIBIT 5
PROJECTED CASH FLOW**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
Division N° : 01 - Montreal
Court N° : 500-11-058403-201
Estate N° : 41-2653429

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF :**

MODASUITE INC., legal person duly incorporated according to law having its principal place of business at 160 Saint-Viateur Street East, Suite 702, in the city of Montreal, province of Quebec, H2T 1A8.

| Modasuite Inc. | | | | | | | | | | |
|---------------------------------------|----------------|----------------|----------------|---------------|---------------|----------------|----------------|----------------|---------------|--------------|
| Projected Cash flow | | | | | | | | | | |
| For the weeks ending | | | | | | | | | | |
| <i>In CAD ('000)</i> | Oct. 11 | Oct. 18 | Oct. 25 | Nov. 1 | Nov. 8 | Nov. 15 | Nov. 22 | Nov. 29 | Dec. 6 | Total |
| Receipts | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Cash Disbursements | | | | | | | | | | |
| Inventory purchases and deposits | - | - | - | - | - | - | - | - | - | - |
| Salaries, benefits (net of subsidy) | - | - | - | - | - | - | - | - | - | - |
| Operational direct costs | - | - | - | - | - | - | - | - | - | - |
| Rent | - | - | - | - | - | - | - | - | - | - |
| SG&A and marketing | - | - | - | - | - | - | - | - | - | - |
| Sales tax payable | - | - | - | - | - | - | - | - | - | - |
| Other expenses | - | - | - | - | - | - | - | - | - | - |
| | - | - | - | - | - | - | - | - | - | - |
| Net cash flow | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Cash balance - opening balance | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Net cash flow | - | - | - | - | - | - | - | - | - | - |
| Cash balance - closing balance | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |

Dated October 2, 2020