

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-11-058403-201

DATE: December 4, 2020

PRESIDING : Me VINCENT-MICHEL AUBÉ, REGISTRAR

(JA 0858)

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

MODASUITE INC.

Debtor
and

KPMG INC.

Receiver

ORDER APPOINTING A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)

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- [1] **ON READING** the *Amended Application to Appoint a Receiver* (the “**Application**”) made by KPMG Inc. in its capacity as trustee to the notice of intention to make a proposal of Modasuite Inc. (the “**Debtor**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) seeking its appointment as receiver (in such capacity, the “**Receiver**”) as well as the affidavit and the exhibit in support thereof;
- [2] **SEEING** the service of the Application and the proof filed in the file;
- [3] **SEEING** the submissions of the attorneys for KPMG Inc. for the Debtor and for the Attorney General of Canada, including the withdrawing of his opposition while confirming that this should not be interpreted as an admission on how to proceed in this matter,
- [4] **SEEING** that it is appropriate in this case to appoint a receiver to the Receivership Property (such as defined herein) of the Debtor,

WHEREFORE THE COURT:

- [5] **GRANTS** the Application.

SERVICE

- [6] **ORDERS** that the time for service of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with any further service thereof.

APPOINTMENT

- [7] **APPOINTS** KPMG Inc (Stéphane De Broux, CPA, CA, CIRP) to act as Receiver over cash in the amount of \$100.00 to be remitted by the Debtor to the Receiver (the "**Receivership Property**") until
- (a) the filing of an assignment in bankruptcy in respect of the Debtor, or
 - (b) the issuance of any order by the Court terminating the mandate of the Receiver
- [8] **DECLARES** that the Receiver is a receiver within the meaning of section 243(2) BIA
- [9] **DECLARES** that this order (this "**Receivership Order**") and its effects shall survive the filing by the Debtor of a proposal pursuant to the terms of the BIA or the issuance of an initial order in regard of the Debtor pursuant to the terms of the *Companies' Creditors Arrangements Act* (the "**CCAA**"), unless the Court orders otherwise

RECEIVER'S POWERS

- [10] **ORDERS** that the Receiver will be empowered and authorized, but not obligated, to act at once in respect of the Receivership Property and the Receiver will be expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable
- (a) to take possession and exercise control over the Receivership Property,
 - (b) to perform its statutory obligations under the *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 (the "**WEPPA**"),
 - (c) to take any action reasonably incidental to the exercise of its powers under this Receivership Order or the fulfillment of any statutory obligations, and
 - (d) to retain the services of any lawyer, or of any person or business in order to appropriately fulfil the Receiver's power conferred by this Receivership Order, and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusions of all other persons, and without interference from any other person.
- [11] **ORDERS** that the Receiver be and is hereby relieved from compliance with sections 245(1), 245(2) and 246 of the BIA, provided that the Receiver shall provide notice of its appointment in the prescribed form and manner to the Superintendent of Bankruptcy, accompanied by the prescribed fee

DEBTOR'S DUTIES

- [12] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Receivership Property and to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of this Receivership Order

LIMITATION OF LIABILITY

- [13] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph [10] of this Receivership Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Receivership Property
- [14] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment
- [15] **DECLARES** that sections 14 06 and 215 of the BIA apply *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph.
- [16] **ORDERS** that no proceeding or enforcement process in any court or tribunal, shall be commenced or continued against the Receiver or the Receivership Property, except with the written consent of the Receiver or with leave of this Court.

FEES

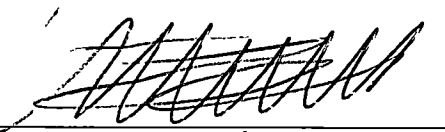
- [17] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys

GENERAL

- [18] **DECLARES** that this Receivership Order, the Application and the affidavit filed in support thereof do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement
- [19] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Debtor's records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail
- [20] **DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter

- [21] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtors' and the Receiver's counsel and to any other party who may request such delivery
- [22] **DECLARES** that unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Debtor and the Receiver
- [23] **DECLARES** that any interested person may apply to this Court to vary or rescind this Receivership Order or seek other relief upon five (5) days' notice to the Receiver, the Debtor and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order
- [24] **DECLARES** that this Receivership Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [25] **REQUESTS** the aid and recognition of any court or administrative body in any Province 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 this Order
- [26] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever

THE WHOLE, WITHOUT COSTS



Me VINCENT-MICHEL AUBÉ
REGISTRAR