



2018

Hfx No. 474742

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

IN THE MATTER OF: the Receivership of 3291735 Nova Scotia Limited

BETWEEN

**FIRST NATIONAL GP CORPORATION and
FIRST NATIONAL FINANCIAL LP**

Applicants

and

3291735 NOVA SCOTIA LIMITED

Respondent

Sale Process Order

Sgd.
C.M.B.
J.

Before JUSTICE CHRISTA M. BROTHERS

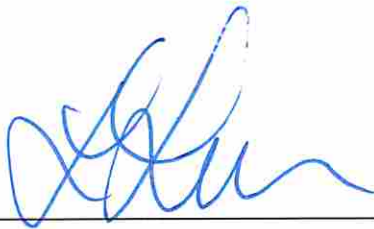
UPON READING the Supplemental Report of KSV Kolman Inc., in its capacity as proposed receiver of the Respondent (the "**Receiver**"), dated May 2, 2018 (the "**Supplemental Report**") and the appendices thereto, filed, and the submissions of counsel for the Applicants, the Receiver, and those for the secured creditors as appeared;

IT IS ORDERED THAT:

Stalking Horse Process

1. The Receiver is hereby authorized and directed, *nunc pro tunc*, to enter into an agreement to sell the assets, property and undertakings (the "**Purchased Assets**") to 3308949 Nova Scotia Limited (the "**Stalking Horse Bidder**"), substantially in the form of the agreement attached as Appendix "A" to the Supplemental Report (the "**Stalking Horse Asset Purchase Agreement**"), and such agreement, subject to the terms of this Order, is hereby approved and accepted for the purpose of conducting the Stalking Horse Process (defined below) in accordance with the Bidding Procedures (defined below).
2. The bidding procedures described in the Supplemental Report and attached hereto as Schedule "A" (the "**Bidding Procedures**") and the sale process and auction described therein (collectively, the "**Stalking Horse Process**") be and are hereby approved and the Receiver is hereby authorized and directed to conduct the Stalking Horse Process.

Issued May 11, 2018




Prothonotary

LORRAINE LUNN
Deputy Prothonotary

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.
I hereby certify that the foregoing document,
identified by the seal of the court, is a true
copy of the original document on the file herein.

MAY 11 2018



Deputy Prothonotary

LORRAINE LUNN
Deputy Prothonotary

Schedule "A"

Bidding Procedures

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the sale (the "**Sale**") of the property and assets of the Corporation known as Units 1 to 6, 1021 Beaufort Avenue, Halifax, Nova Scotia and more particularly identified as PIDs 41457615, 41457623, 41457631, 41457649, 41457656, and 41457664 (collectively, the "**Purchased Assets**") of 3291735 Nova Scotia Limited (the "**Corporation**") by KSV Kofman Inc., in its capacity as the Court-appointed receiver of the Corporation (the "**Receiver**").

On _____, 2018, the Court issued an order (the "**Bidding Procedures Order**") approving and accepting for the purpose of conducting a "stalking horse" sales process (the "**Stalking Horse Process**") in accordance with these Bidding Procedures that certain asset purchase agreement dated _____, 2018 (the "**Stalking Horse Bid**") between the Receiver and 3308949 Nova Scotia Limited (the "**Stalking Horse Bidder**"), including, without limitation, the payment of a break fee and expense reimbursement (the "**Break Fee and Expense Reimbursement**") by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures. All amounts specified herein are in Canadian dollars.

Subject to Court availability, within five (5) business days following the Auction (defined below), the Receiver shall bring a motion (the "**Sale Approval Motion**") seeking the granting of an order by the Court authorizing and approving the Sale of the Purchased Assets to the Qualified Bidder making the Successful Bid (each as defined below) (the "**Successful Bidder**") (such order, as approved, the "**Sale Approval Order**").

Assets to Be Sold

The Receiver is offering for sale all of the Corporation's right, title and interest in and to all of the Purchased Assets and encourages bids for all the Purchased Assets, in whole and not in part.

The Bidding Process

The Receiver has retained Keller Williams Select Realty (the "**Realtor**") to act as listing agent for the Purchased Assets. The Bidding Procedures Order approved the appointment of the Realtor and the process described by the Receiver in its supplemental report dated May 2, 2018 (the "**Bidding Process**"), which is set out below. The Receiver shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the consent of the Stalking Horse Bidder herein.

Participation Requirements

"**Qualified Bidder**" is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a Purchase Price of at least \$3,400,000 which is the amount of the Stalking

Horse Bid, plus the bid protections and \$50,000 and includes the Required Bid Terms and Materials (as defined below). Any bid meeting these criteria is a qualified bid. For greater certainty, the Stalking Horse Bid is a qualified bid.

Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials (defined below) to the Realtor not later than 5:00 p.m. (prevailing Atlantic time) on or around June 8, 2018 (the “**Bid Deadline**”).

Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver, the following (collectively, the “**Required Bid Terms and Materials**”):

- (i) A base cash purchase price equal to or greater than \$3,400,000, plus HST, being the Stalking Horse Bid (\$3,225,000) plus the break fee (\$100,000), expense reimbursement (\$25,000) and \$50,000;
- (ii) A provision stating that the bidder’s offer is irrevocably open for acceptance until the first business day after the Purchased Assets have been sold pursuant to the closing of the sale approved by the Court;
- (iii) An executed copy of a proposed purchase agreement and a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Bid (the “**Marked Agreement**”); and
- (iv) A cash deposit in the amount of not less than \$322,500 in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the “**Bid Deposit**”), which shall be held in the trust account of the Receiver’s solicitors (the “**Escrow Account**”). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer.

A bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a “**Qualified Bid**”. The Receiver reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the “**Lead Bid**”). Details of the Lead Bid will be provided to all Qualified Bidders after the Bid Deadline.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid.

Credit Bidding

No person shall be permitted to credit bid the indebtedness owed to them by the Corporation in connection with the making of a Qualified Bid or in the conduct of the Auction.

“As Is, Where Is, With All Faults”

The sale of the Purchased Assets shall be on an “as is, where is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Purchased Assets, the financial performance of the Purchased Assets or the physical condition or location of the Purchased Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

Free of Any and All Liens

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder’s purchase agreement, and subject to any permitted encumbrances therein, all of the Corporation’s right, title and interest in and to the Purchased Assets shall be sold free and clear of all liens and encumbrances pursuant to the Sale Approval Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

The Sale Process

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Receiver on or before the Bid Deadline, the Receiver shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to submit new offers with a minimum new purchase price at least \$25,000 above the Lead Bid (the “**Minimum Bid Increment**”). The Qualified Bidder who submitted the Lead Bid may, but is not obligated to, submit a new offer. The Receiver may amend the Minimum Bid Increment in each subsequent round of bidding, if any.

If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder.

Receiver To Determine Highest and/or Best Bid: The Receiver shall determine, in its reasonable business judgment, which Qualified Bid is the Lead Bid and which bid after each round

of offers is the then-prevailing highest and/or best bid. In making such determination, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of liabilities, if any; (iii) the ability of the Qualified Bidder in question to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase price adjustment; (vi) the net economic effect of any changes made to the Stalking Horse Bid; and (vii) such other considerations as the Receiver deems relevant in its reasonable business judgment. At the end of each round of offers, the Receiver shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bidder. The next highest offer, as determined by the Receiver, shall be required to keep its offer open and available for acceptance until Court approval of the offer made by the Successful Bidder and the closing of the sale to the Successful Bidder.

Highest versus Best Offer

In determining the Lead Bid, the highest and/or best offer during each round of offers, and the Successful Bid, the Receiver is not required to select the offer with the highest purchase price and may, exercising its reasonable business judgment, select another offer on the basis that it is the best offer even though not the highest purchase price. Without limiting the foregoing, the Receiver may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable, including those considerations described above under “Receiver To Determine Highest and/or Best Bid”.

Break Fee and Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee in the amount of \$100,000 and an Expense Reimbursement on account of its reasonable and documented fees and expenses, up to a maximum of \$25,000. The Receiver will take into account the Break Fee and Expense Reimbursement in each round of bidding with respect to the Stalking Horse Bidder.

The Break Fee and Expense Reimbursement were material inducements for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee and Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Bidding Procedures Order.

Sale Approval Motion Hearing

The Sale Approval Motion shall, subject to court availability, be made returnable on or before June 21, 2018, at 9:30 a.m. (prevailing Atlantic Time) in the Court. The Receiver, in the exercise of its business judgement, reserves its right to the extent consistent with the Stalking Horse Bid to change the date of the hearing of Sale Approval Motion in order to achieve the maximum value for the Assets.

At the hearing of the Sale Approval Motion, the Receiver shall, among other things, seek approval from the Court to consummate the Successful Bid.

Acceptance of Qualified Bids

The sale of the Purchased Assets to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Sale Approval Motion. The Receiver's presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Receiver will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Sale Approval Motion.

Miscellaneous

The Sale Process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Bidding Procedures Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order, the Stalking Horse Process and the Bidding Procedure.