

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, . B-3, AS AMENDED**

B E T W E E N:

CCM MASTER QUALIFIED FUND, LTD.

Applicant

-and-

BLUTIP POWER TECHNOLOGIES LTD.

Respondent

**FACTUM OF DUFF & PHELPS CANADA RESTRUCTURING INC.
IN ITS CAPACITY AS RECEIVER OF BLUTIP POWER TECHNOLOGIES LTD.**

April 24, 2012

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
Box 40, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario M5L 1A9

Linc Rogers, LSUC #43562N
Tel: 416-863-4168
Chris Burr, LSUC #55172H
Tel: 416-863-3301
Jenna Willis, LSUC #58498U
Tel: 416-863-3348
Fax: 416-863-2653

Lawyers for Duff & Phelps Canada
Restructuring Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, . B-3, AS AMENDED**

B E T W E E N:

CCM MASTER QUALIFIED FUND, LTD.

Applicant

-and-

BLUTIP POWER TECHNOLOGIES LTD.

Respondent

FACTUM OF THE RECEIVER

PART I -OVERVIEW

1. In early 2012, blutip Power Technologies Ltd. (the "**Company**") was facing a liquidity crisis. Immediate steps were required to stabilize the business and implement a solution that would preserve going concern value for stakeholders. If a solution could not be identified, the Company was facing a cessation of operations and termination of all employees.

2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on February 28, 2012 (the "**Receivership Order**"), Duff & Phelps Canada Restructuring Inc. was appointed as receiver (in such capacity, the "**Receiver**") of

the properties, assets and undertakings (collectively, the “**Assets**”) of the Company pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

3. During the receivership proceedings, the Receiver arranged funding for the Company and stabilized the business. The Receiver then entered into an asset purchase agreement with the Company’s sole secured creditor, CCM Master Qualified Fund, Ltd. (“**CCM**”) dated as of March 9, 2012 (the “**Stalking Horse Agreement**”) for substantially all of the Company’s business and Assets (as more specifically defined in the Stalking Horse Agreement, the “**Purchased Assets**”). The Stalking Horse Agreement provided for a purchase price equal to the amount of CCM’s secured debt plus the assumption of certain liabilities. The Stalking Horse Agreement also provided for the continuation of employment of all current employees and a going concern solution for the Company’s stakeholders.

4. The Receiver, using the Stalking Horse Agreement as a baseline offer, then solicited higher and better offers, pursuant to a robust, Court-approved Sales Process (all capitalized terms as defined below). The Sales Process is now complete and no additional offers were identified.

5. Accordingly, the Receiver now seeks this Court’s approval of the transaction contemplated by the Stalking Horse Agreement (the “**Recommended Transaction**”) and an order vesting the Purchased Assets in a party to be designated by CCM as the purchaser (such party, the “**Purchaser**”).

6. The Receiver views the Recommended Transaction to be the best available solution to the Company's financial problems.

7. Should this Court see fit to approve the Recommended Transaction and grant the Vesting Order, the mandate of the Receiver will be completed. Accordingly, the Receiver is also seeking the approval of the Second Report to Court of the Receiver, dated April 19, 2012 (the "**Report**"), the approval of the activities of the Receiver set out therein, and an order of this Court discharging and releasing it from its role as Receiver, upon the filing by the Receiver with the Court of a certificate certifying that all post-closing matters associated with the Recommended Transaction have been completed.

PART II -FACTS

blutip Power Technologies Ltd.

8. The Company is a publicly listed technology company based in Mississauga, Ontario, which engages in the research, development and sale of hydrogen generating systems and combustion controls. The Company presently employs nine individuals. The workforce is not unionized and the Company does not maintain any pension plans.

Report, at para. 2.0, Motion Record Tab 2, page 13.

9. As of the appointment of the Receiver, the Company was in a development phase with no significant sources of revenue. Accordingly, prior to the appointment of the Receiver, the Company depended on external sources of funding to continue to operate as a going concern.

Report, at para. 2.1, Motion Record Tab 2, page 13.

CCM Master Qualified Fund, Ltd.

10. CCM is the sole secured creditor of the Company, is the purchaser under the Stalking Horse Agreement and the Applicant in these proceedings.

11. At the commencement of these proceedings, the Company's indebtedness to CCM totalled approximately \$3.4 million, before costs. CCM has since advanced an additional \$240,000 under a term sheet dated February 27, 2012 between the Receiver and CCM (as amended, the "**Term Sheet**"), in order to fund the Company's operations and the costs of these proceedings. The Term Sheet expires on May 15, 2012.

Report, at para. 3.1, Motion Record Tab 2, page 14.

CCM's Security

12. The Company's pre-receivership obligations to CCM are secured pursuant to a general security agreement granted by the Company in favour of CCM, dated as of October 21, 2011 (the "**GSA**"), and advances under the Term Sheet are secured by the Receiver's Borrowings Charge (as defined in the Receivership Order).

Affidavit of James Schuler, sworn February 27, 2012, (the "**Schuler Affidavit**") at para. 27, First Report to the Court of the Receiver, dated March 9, 2012, at Appendix B.

Report, at para. 3.1, Motion Record Tab 2, Page 14.

13. The Receiver's counsel, Blake, Cassels & Graydon LLP, has rendered an opinion that, subject to the standard assumptions and qualifications set out therein, the security granted by the Company in favour of CCM under the GSA, as registered pursuant to the

Personal Property Security Act (Ontario), creates a valid and perfected security interest in the Company's business and Assets.

Report, at para. 3.1, Motion Record Tab 2, Page 14

Sales Process

14. The primary purpose of these receivership proceedings is to market and sell the Company's business and Assets.

Report, at para. 1.0, Motion Record Tab 2, Page 11.

15. Pursuant to an order of the Court made on March 15, 2012 (the "**Bidding Procedures Order**"), a sales process was approved (the "**Sales Process**"), including the approval of specific bidding procedures, detailed at length in the First Report of the Receiver, dated March 9, 2012 (the "**Bidding Procedures**").

Report, at para. 4.1, Motion Record Tab 2, Page 15.

16. Following the granting of the Bidding Procedures Order, the Receiver commenced the Sales Process in accordance with the Bidding Procedures. The Stalking Horse Agreement was entered into with CCM so as to set a minimum floor price in respect of the sale of the Company's Assets, and on March 20, 2012, an advertisement regarding this opportunity was placed in the national edition of The Globe and Mail newspaper.

Report, at para. 4.1, Motion Record Tab 2, Page 15.

17. The Receiver contemporaneously circulated an investment profile ("**IP**") to approximately 145 prospective purchasers. The IP included a form of confidentiality agreement ("**CA**") that interested parties were required to sign in order to obtain

additional information, including a confidential information memorandum (“**CIM**”) and access to an online data room. In total, seven prospective purchasers (including CCM) executed the CA and received the CIM.

Report, at para. 4.1, Motion Record Tab 2, Page 15.

18. The Receiver assembled information in an online data room and facilitated due diligence requests by interested parties, including updating the data room with information and correspondence, as required.

Report, at para. 4.1, Motion Record Tab 2, Page 15.

19. Pursuant to the Bidding Procedures, all interested parties were required to submit an offer by the “**Bid Deadline**” of 10:00 a.m. on April 16, 2012. If at least one “**Qualified Bid**” (as defined in the Bidding Procedures), other than the Stalking Horse Agreement, was submitted by the Bid Deadline, an auction was to be conducted by the Receiver. If no Qualified Bid (other than the Stalking Horse Agreement) was submitted by the Bid Deadline, the auction would not take place and the Stalking Horse Agreement would be declared the “**Successful Bid**”.

Report, at para. 4.1, Motion Record Tab 2, Page 16.

20. The Receiver did not receive any Qualified Bids on or prior to the Bid Deadline. Accordingly, on April 16, 2012, the Receiver advised CCM that the Stalking Horse Agreement was declared the Successful Bid in accordance with the Bidding Procedures and posted notice of such fact on its website established in connection with the receivership.

Report, at para. 4.1, Motion Record Tab 2, Page 16.

The Recommended Transaction

21. The Receiver now seeks to consummate the Recommended Transaction, pursuant to which:

- (a) CCM will assign its debt and security and its rights under the Stalking Horse Agreement to the Purchaser, a related party to be designated in writing to the Receiver prior to closing;
- (b) The Purchaser will acquire substantially all of the Company's business and Assets, including the Company's patent portfolio, other intellectual property and accounts receivable, on an "as is, where is" basis free and clear of any and all liens and encumbrances;
- (c) The Assets will be sold on a going concern basis so that the Company's business may be continued by the Purchaser;
- (d) The Purchaser will, no later than ten days prior to the closing date, advise the Receiver of any contracts that it wishes to exclude from the Purchased Assets;
- (e) The Purchaser will offer employment to all of the Company's current employees on terms no less favourable to the employees than their current employment terms and will recognize prior service of employees to the extent required by law;

- (f) The Purchaser will assume certain liabilities, as further set out in section 5.0 of the Report, including all obligations secured by encumbrances ranking in priority to CCM's security to the extent not paid or discharged on closing;
- (g) The Purchaser will tender the purchase price pursuant to a credit bid, with such purchase price being equal to the value of the "**Assumed Liabilities**" (as defined in the Stalking Horse Agreement) plus the Purchaser's secured debt outstanding under certain debt instruments as are assigned to it by CCM (collectively, the "**Purchase Price**"). That is, instead of paying cash which would ultimately be distributed back to the Purchaser based on its secured position, the Purchaser will give a credit to the Receiver and the Company against the secured indebtedness. The Purchase Price is estimated to be approximately \$3.6 million, before the value of Assumed Liabilities;
- (h) The Purchase Price will be satisfied by delivering credits, releases and/or waivers for the secured indebtedness outstanding to the Purchaser and by the assumption by the Purchaser of the Assumed Liabilities; and
- (i) The target closing date is May 3, 2012, with the Stalking Horse Agreement remaining irrevocable by the Purchaser until May 15, 2012.

Report, at para. 5.0, Motion Record Tab 2, Pages 16 & 17.

RECEIVER'S RECOMMENDATIONS

22. The Receiver believes that the Recommended Transaction provides for the greatest recovery available for the estate in the circumstances, and recommends that this Court issue an order approving it and authorizing the Receiver to do all necessary closing and post-closing activities.

Report, at para. 5.2, Motion Record Tab 2, page 18.

23. The Sales Process was commercially reasonable and was carried out in accordance with the Bidding Procedures Order. In the Receiver's view, further marketing efforts are unlikely to result in the identification of a superior transaction and, given the Company's cash position, any delay in closing will jeopardize the Recommended Transaction and the ongoing operations of the Company.

Report, at para. 5.2, Motion Record Tab 2, page 18.

24. There is no known source of funding available to continue the Company's operations beyond May 15, 2012 if the Recommended Transaction does not close. Such funding is provided for and will be continued under the Recommended Transaction, including the preservation of the employment of all of the Company's current employees.

Report, at para. 5.2, Motion Record Tab 2, page 18.

25. Accordingly, the Receiver believes the Recommended Transaction is in the best interests of all stakeholders, including employees, potential customers and the secured creditor, and should be approved by this Court.

RECEIVER'S ACTIVITIES

26. The Receiver's activities up to March 9, 2012 were approved in the Bidding Procedures Order. The Receiver's activities since that date have included, among other things (as more specifically set out in section 6.0 of the Report): drafting all Sales Process materials; carrying out the Sales Process in accordance with the Bidding Procedures Order; facilitating due diligence requests submitted by prospective purchasers; corresponding extensively with key stakeholders in these proceedings; and addressing all other matters pertaining to the administration of these receivership proceedings.

Report, at para. 6.0, Motion Record Tab 2, page 19.

27. The forgoing activities were undertaken pursuant to the Receiver's duties and powers set out in the Receivership Order, and were in each case in the best interests of the Company's stakeholders generally. Accordingly, the Receiver requests that such activities be approved by this Court.

PART III -- ISSUES

28. The issues on this application are as follows:

- (a) Should this Court approve the Recommended Transaction?
- (b) Should this Court grant an order vesting title in the Purchased Assets in the Purchaser, free and clear of all encumbrances?
- (c) Should this Court approve the activities of the Receiver?
- (d) Should this Court grant a discharge and release of the Receiver?

PART IV -- THE LAW AND ARGUMENT

A. THE RECOMMENDED TRANSACTION SHOULD BE APPROVED

29. The Receiver respectfully submits that the Purchased Assets were marketed and the Stalking Horse Agreement negotiated in a fair, transparent and commercially reasonable manner, consistent with the Bidding Procedures Order. The Purchase Price is commercially reasonable and is the highest and best result of the robust, fair and transparent Sales Process. The Receiver therefore respectfully submits that the legal and commercial requirements for this Court to approve the Recommended Transaction have been met.

30. In *Royal Bank v. Soundair Corp.*, the Ontario Court of Appeal summarized the factors a Court should consider when assessing whether to approve a transaction to sell assets:

- (i) It should consider whether the court-appointed officer has made sufficient effort to get the best price and has not acted improvidently;
- (ii) It should consider the interests of all parties;
- (iii) It should consider the efficacy and integrity of the process by which offers are obtained; and
- (iv) It should consider whether there has been unfairness in the working out of the process.

Royal Bank of Canada v. Soundair Corp. (1991), 4 O.R. (3d) 1 (C.A.) (“Soundair”) at para. 16, and see also: *Textron Financial Canada Ltd. v. Beta Ltee/Beta Brands Ltd.* (2007), 27 C.B.R. (5th) 1 (Ont. Sup. Ct. J.) [Commercial List] at para. 16.

31. As the Manitoba Court observed in *Re Shape Foods Inc.*, the *Soundair* case outlined two basic principles for the Court to consider in reviewing a sale of property: (a) a Court should place a good deal of confidence in the actions taken and the opinions formed by the Receiver; and (b) a Court should be reluctant to second-guess, with the benefit of hind-sight, the considered business decisions of the Receiver. Unless the contrary is clearly shown, the Court should assume the Receiver is acting properly.

Re Shape Foods Inc., 2009 CarswellMan 312 (Q.B.) (WL) at para. 21.

(i) Effort to Obtain the Best Price

32. In its efforts to obtain the best price for the Purchased Assets, the Receiver acted at all times in accordance with the Bidding Procedures Order and the Sales Process outlined in the First Report of the Receiver, and approved by the Court.

33. In the Receiver's view, the market for the Purchased Assets was sufficiently canvassed and parties who may have an interest were given a reasonable opportunity to review the opportunity and make an offer. No price superior to the Purchase Price has been obtained from the market, and none is expected to be forthcoming.

34. The Receiver respectfully submits that it has taken all reasonable steps to obtain the best price, has followed the Bidding Procedures Order and has not acted improvidently. The Receiver believes that the Purchase Price is reasonable in the circumstances.

(ii) Interests of the Parties

35. The primary interest in a receivership is that of the creditors of the debtor. The examination of the Sales Process, through the lens of the *Soundair* test, is to primarily be conducted from the perspective of those for whose benefit the Sales Process has been conducted. In *Soundair*, Justice Galligan referred to creditors, the debtor and the successful purchaser who has negotiated an agreement with a court-appointed officer, as parties whose interests ought to be considered when assessing a sales process.

Soundair at paras. 39 & 41.

Skyepharm PLC v. Hyal Pharmaceutical Corp. (2000), 47 O.R. (3d) 234 (C.A.) at para. 27.

36. As stated above, the Recommended Transaction represents the highest price for the Purchased Assets attainable after the Court approved Bidding Procedures had been concluded. Given the value of the Company and the amount of CCM's secured debt, CCM is the only party that has an economic interest in the Assets. All other parties, including other creditors, were welcome to bid on the Company, and ultimately chose not to.

37. Moreover, all parties with a known interest in the Company were given notice of the motion by the Receiver seeking the Bidding Procedures Order, and none objected.

(iii) Efficacy and Integrity of the Process

38. The Receiver marketed the Purchased Assets and sought bids from interested parties fairly and in accordance with the procedures and processes approved in the Bidding Procedures Order. All interested parties were given the opportunity to participate in the Sales Process: anyone willing to sign the CA was free to access the data

room, attend at the Company's premises in person, perform due diligence and/or make a bid.

39. The use of stalking horse bids to set a baseline for the bidding procedures, including credit bid stalking horses, has been recognized by this Court as a reasonable and useful element of a sales process. In making this observation, Justice Brown was referring to this Stalking Horse Agreement.

CCM Mater Qualified Fund v. butipPower Technologies, 2012 ONSC
1750 at paras. 7-8.

40. The Sales Process was a fair and effective process for maximizing realization of the Purchased Assets and the credit bid stalking horse mechanism has been judicially recognized as a reasonable one. The Purchased Assets have been appropriately marketed in accordance with the Bidding Procedures Order, the terms of the Stalking Horse Agreement are fair and commercially reasonable, and the integrity of the Sales Process has been maintained throughout.

(iv) No Unfairness in Working Out the Process

41. It is important that prospective purchasers know that if they act in good faith, bargain seriously with a receiver and enter into an agreement with it, the Court will not lightly interfere with the commercial judgment of that receiver. Parties who enter into agreements with receivers, following an appropriate Court-approved Sales Process, should expect that their bargain will be confirmed by the Court.

Soundair at paras. 46 & 69.

42. The process adopted by the Receiver in coming to the Recommended Transaction was a just and fair one. The Receiver made proper and sufficient efforts to get the best price that it could for the Purchased Assets. The Receiver followed a Court-approved Sales Process which was not opposed by any party when approval thereof was sought, and was fair to all persons who indicated an interest in bidding on the Purchased Assets. The Receiver has properly carried out the mandate it was given by the Bidding Procedures Order.

Conclusion with Respect to the Soundair Principles

43. The Recommended Transaction is therefore consistent with the *Soundair* principles and the Receiver respectfully requests that it be approved by this Court.

B. VESTING ORDER

44. The Bidding Procedures Order approved a process that included the Receiver seeking an order vesting the Purchased Assets in the eventual successful bidder (the “**Vesting Order**”). The Recommended Transaction includes such a vesting order as a closing deliverable, and the Receiver therefore seeks the Vesting Order from this Court to facilitate the closing of the Recommended Transaction.

45. All parties with a known interest in the Purchased Assets whose interests would be affected by the Vesting Order sought have been served with notice of this motion. Moreover, the terms of the Vesting Order sought provide that only the Company’s and Receiver’s interest in the Purchased Assets will be transferred; accordingly, any proprietary interest of another party in any of the Purchased Assets (including any

intellectual property) would not transfer to the Purchaser, or be vested out, should that proprietary interest ultimately be determined to be valid.

46. Because the Purchase Price is being satisfied by a combination of credit bid and assumption of the Assumed Liabilities, there will be no cash proceeds against which secured or proprietary interests can attach (as is the case in conventional cash purchases). In the Receiver's view, no party is prejudiced by this, because the proceeds of an all-cash transaction would all accrue to the benefit of CCM, given the value of the Purchase Price and the quantum of CCM's secured debt. To the extent any obligations are secured by liens or encumbrances ranking in priority to CCM's security that are not paid or discharged on closing, they shall constitute Assumed Liabilities.

47. The Receiver therefore respectfully submits that the Vesting Order should be granted.

C. APPROVAL OF ACTIVITIES AND DISCHARGE OF RECEIVER

48. The primary purpose of this receivership has been to facilitate the orderly sale of the Company's business and Assets. With the closing of the Recommended Transaction, should this Court see fit to approve it, that primary purpose will be satisfied. The Receiver therefore seeks an order of this Court discharging and releasing it, following the Receiver's filing of a certificate with the Court certifying that all necessary post-closing matters have been completed. As a result of the credit bid, there are no residual proceeds to distribute to creditors post-closing.

49. The activities of the Receiver, as set out in detail in the Report, were all necessary and undertaken in good faith in furtherance of the Receiver's duties and powers pursuant

to the Receivership Order and the Bidding Procedures Order. The Receiver therefore respectfully submits that such activities should be approved and that the Receiver should be discharged and released.

50. The Receiver is seeking a discharge at the hearing of this sale approval motion in order to avoid the cost to the estate of another motion, which would include another report to the Court, another motion record, and the re-attendance by the Receiver and its counsel. The Receiver believes, under the circumstances of this receivership, that it is both efficient and appropriate for this Court to grant the Receiver a discharge upon the filing of a certificate with the Court confirming the completion of all post-closing matters in relation to the Recommended Transaction. CCM, as noted above, the only party with an economic interest in the Assets, is supportive of this discharge mechanism.

PART V -- RELIEF REQUESTED

51. For the foregoing reasons, the Receiver respectfully requests that this Court grant an order:

- (a) abridging the time for service and validating the service of the Notice of Motion, the Motion Record and the Report, so that this Motion is properly returnable April 26, 2012 and dispensing with further service thereof;
- (b) approving the Recommended Transaction, comprising the sale of the Purchased Assets to the Purchaser, pursuant to the Stalking Horse Agreement;

- (c) authorizing and directing the Receiver to do such additional things and execute such additional documents as may be necessary to give effect to the Recommended Transaction;
- (d) vesting the Purchased Assets (as defined in the Stalking Horse Agreement) in the Purchaser free and clear of any liens, charges and encumbrances;
- (e) approving the Report and the activities of the Receiver as described therein;
- (f) discharging the Receiver as receiver of the undertaking, property and assets of the Company upon the filing by the Receiver of the Receiver's Discharge Certificate (as defined in the proposed Discharge Order); and,
- (g) releasing the Receiver from any and all liability it may currently have or may hereinafter have by reason of, or in any way arising out of, the acts or omissions of it while acting in its capacity as receiver of the Company.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to be a stylized 'L' followed by a long horizontal stroke and a diagonal flourish, positioned above a solid horizontal line.

Linc Rogers / Chris Burr / Jenna Willis,
Lawyers for the Court-Appointed Receiver

SCHEDULE “A”

LIST OF AUTHORITIES

Royal Bank v. Soundair (1991), 7 C.B.R. (3d) 1 (Ont.C.A.)

Textron Financial Canada Ltd. v. Beta Ltee/Beta Brands Ltd. (2007), 27 C.B.R. (5th) 1 (Ont. S.C.J.) [Commercial List]

Re Shape Foods Inc., 2009 CarswellMan 312 (Q.B.)

Skyepharma PLC v. Hyal Pharmaceutical Corp. (2000), 47 O.R. (3d) 234 (C.A.)

CCM Mater Qualified Fund v. butipPower Technologies, 2012 ONSC 1750

SCHEDULE “B”
RELEVANT STATUTES

Bankruptcy and Insolvency Act: Section 243

Court may appoint receiver

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of “receiver”

- (2) Subject to subsections (3) and (4), in this Part, “receiver” means a person who
- (a) is appointed under subsection (1); or
 - (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of “receiver” — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition “receiver” in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of "disbursements"

(7) In subsection (6), "disbursements" does not include payments made in the operation of a business of the insolvent person or bankrupt.

CCM MASTER QUALIFIED FUND, LTD.

-and-

BLUTIP POWER TECHNOLOGIES LTD.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM OF THE RECEIVER

BLAKE, CASSELS & GRAYDON LLP
Commerce Court West
199 Bay Street, Suite 4000
Toronto, ON M5L 1A9

Linc Rogers LSUC#: 43562N
Tel: (416) 863-4168

Chris Burr LSUC#: 55172H
Tel: (416) 863-3301

Jenna Willis LSUC#: 58498U
Tel: (416) 863-3348
Fax: (416) 863-2653

Lawyers for the Court-appointed Receiver