

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE

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FRIDAY, THE 6TH

REGIONAL SENIOR JUSTICE  
MORAWETZ

DAY OF OCTOBER, 2017

BETWEEN :

COMERICA BANK

Applicant

- and -

DRAGONWAVE INC.

Respondent

**APPLICATION PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, C. B-3, as amended and section 101(1) of the COURTS  
OF JUSTICE ACT, R.S.O. 1990, C. c.43, as amended**

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by KSV Kofman Inc. (“**KSV**”) in its capacity as the Court-appointed receiver and receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of DragonWave Inc. (the “**Debtor**”) for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Asset Purchase Agreement**”) between the Receiver and DragonWave-X Canada, Inc. (the “**Purchaser**”) dated September 28, 2017 and appended to the Second Report of the Receiver dated September 29, 2017 (the “**Second Report**”), and vesting in the Purchaser the Debtor’s and the Receiver’s right, title and interest in and to the Purchased Assets as defined in the Asset Purchase Agreement, (ii) authorizing the Receiver on behalf of the Debtor pursuant to section 100 of the Canada Business Corporations Act (the “**CBCA**”) to file articles of amendment changing the name of the Debtor

to 3517667 Canada Inc., (iii) approving the distribution of funds in the hands of the Receiver from time to time, including without limitation, the Net Proceeds, to Comerica Bank ("**Comerica**") as agent (the "**Agent**") for Comerica and Export Development Canada ("**EDC**") as the Receiver determines is appropriate in its sole discretion; (iv) approving the First Report of the Receiver dated August 10, 2017 (the "**First Report**"), the Second Report and the activities of the Receiver as set out therein; (v) approving the fees and expenses of the KSV as Receiver and Cassels Brock & Blackwell LLP ("**Cassels**") as counsel to the Receiver as set out in the affidavit of David Sieradzki sworn September 29, 2017 (the "**Sieradzki Affidavit**") and the affidavit of Joseph Bellissimo sworn September 28, 2017 (the "**Bellissimo Affidavit**"); and (vi) sealing and treating as confidential the Confidential Appendices to the Second Report pending further order of the Court was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report, the Sieradzki Affidavit, and the Bellissimo Affidavit, and on hearing the submissions of counsel for the Receiver, ~~Comerica~~, Westchester Fire Insurance Company & ACE INA Insurance, Jabil Inc. and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Benjamin Goodis sworn October 4, 2017 filed:

*Nokia Solutions and Networks B.V.*

1. THIS COURT ORDERS that the time for service of this motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used in this Order and not otherwise defined have the meanings given to them in the Asset Purchase Agreement.
3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as agreed between the Purchaser and Receiver, after consultation with Comerica and EDC. The Receiver is hereby authorized, and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, pledge, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, title retention agreement, license, forbearance from suit, adverse claim, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Penny dated July 31, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"); and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the Net Proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, upon delivery of the Receiver's Certificate to the Purchaser, the Receiver (or its legal counsel or agents) is hereby empowered and authorized to forthwith complete all necessary filings and other steps required to discharge all registrations

against the Purchased Assets in respect of Encumbrances registered pursuant to any intellectual property registry system, and shall forthwith after completion of same deliver to the Purchaser evidence that all such discharges have been completed.

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

9. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.



#### NAME CHANGE

10. THIS COURT ORDERS AND DECLARES that following the filing of the Receiver's Certificate, the Receiver is authorized, pursuant to section 100 of the CBCA to file articles of amendment ("**Articles of Amendment**") to change the Debtor's name to 3517667 Canada Inc.,

and that the Debtor is not required to hold any meeting of its shareholders to consider the change of its name, nor pass a special resolution pursuant to the CBCA in order to give effect to the change of its name.

## DISTRIBUTIONS

11. THIS COURT ORDERS that the Receiver be and is hereby authorized, as the Receiver determines is appropriate in its sole discretion, to distribute any funds in its hands from time to time, including without limitation the Net Proceeds, or any portion thereof, to the Agent without further Order of this Court, in an amount not to exceed the amount owing by the Debtor to the Agent, Comerica and EDC.

 12. ~~THIS COURT Orders and declares that that any distributions, disbursements or payments made under this Order shall not constitute a "distribution" of property or money by the Receiver for the purposes of section 107 of the Corporations Tax Act (Ontario), section 117 of the Taxation Act, 2007 (Ontario), section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the "Tax Statutes"), and the Receiver shall not incur any liability under the Tax Statutes in respect of such distributions, disbursements or payments made by it and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of such distributions made by it in accordance with this Order and any claims of this nature are hereby forever barred.~~ 

## APPROVAL OF ACTIVITIES AND FEES

13. THIS COURT ORDERS and declares that the First Report, the Second Report and the activities of the Receiver as set out therein be and are hereby approved.

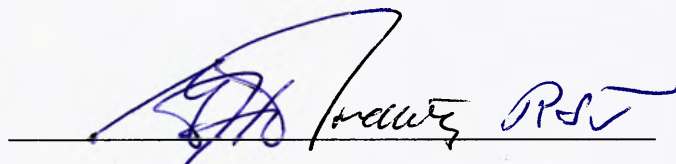
14. THIS COURT ORDERS and declares that the fees and expenses of KSV as Receiver and Cassels as counsel to the Receiver as set out in the Sieradzki Affidavit and the Bellissimo Affidavit be and are hereby approved.

## SEALING

15. THIS COURT ORDERS AND DECLARES that the Confidential Appendices to the Second Report be and are hereby sealed and shall be treated as confidential until further order of this Court.

## GENERAL

16. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other jurisdiction to give effect to this Order and to assist the Purchaser, the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Purchaser and to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Purchaser, the Receiver and their respective agents in carrying out the terms of this Order.



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OCT 06 2017

PER / PAR:





**Schedule A – Form of Receiver’s Certificate**

Court File No.: CV-17-579715-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

APPLICATION PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, C. B-3, as amended and section 101(1) of the COURTS OF  
JUSTICE ACT, R.S.O. 1990, C. c.43, AS AMENDED

COMERICA BANK

Plaintiff

- and -

DRAGONWAVE INC.

Defendant

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the “Court”) dated July 31, 2017, KSV Kofman Inc. was appointed as the receiver and receiver and manager (the “Receiver”) of the assets, undertakings and properties of DragonWave Inc. (the “Debtor”).

B. Pursuant to an Order of the Court dated October 6, 2017, the Court approved the agreement of purchase and sale made as of September 28, 2017 (the “Asset Purchase Agreement”) between the Receiver and DragonWave-X Canada, Inc. (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s and Receiver’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and, to the extent provided for under the Asset Purchase Agreement the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at «time» on «date».

KSV Kofman Inc., solely in its capacity as court-appointed Receiver of the assets, undertakings and properties of DragonWave Inc., and not in its personal capacity

Per:

\_\_\_\_\_  
Name: »

Title: »



COMERICA BANK  
Applicant

and DRAGONWAVE INC.  
Respondent

Court File No. CV-17-579715-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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Lawyers for KSV Kofman Inc., in its capacity as court  
appointed Receiver and Receiver and manager of the assets,  
properties and undertakings of Dragonwave Inc.