



Court File No. 23-00694886-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE

)

TUESDAY, THE 12TH

JUSTICE OSBORNE

)

DAY OF APRIL, 2023

)

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and -

11157353 CANADA CORP.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties other than the Excluded Assets (as defined in the Receivership Order) of 11157353 Canada Corp. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by the share purchase agreement (the "**Sale Agreement**") between the Receiver and JMCC (Canada) Corp. dated March 31, 2023 and appended to the Report of the Receiver dated April 3, 2023 (the "**Report**"), and vesting in JMCC (Canada) Corp. or such other person as it may designate (the "**Purchaser**") the right, title and interest of the Debtor and the Receiver in and to the Purchased Shares (as defined in the Sale Agreement), was heard this day by videoconference.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Purchaser, and such other counsel as were present and listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shallon Garrafa sworn April 3, 2023 filed:

1. **THIS COURT ORDERS** that the time and manner of service of the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof. All capitalized terms used and not defined herein shall have the meanings given to them in the Sale Agreement.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized, ratified and approved, with such amendments as may be agreed between the Receiver and the Purchaser. 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 Shares to the Purchaser.

3. **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 right, title and interest of the Debtor and the Receiver in and to the Purchased Shares described in the Sale Agreement including as listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, pledges, rights or options to acquire, or other claims of any kind or nature whatsoever, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, 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 Orders of the Honourable Justice Osborne dated February 21, 2023 (including, without limitation, the Receiver's Charge, the Receiver's Borrowing Charge and

the KERP Charge, each as defined therein), and any other Order of the Court granted in the within proceedings; (ii) all Claims of the Materia Lenders; (iii) all Claims of Lyphe Group Limited and its affiliates; (iv) all Claims of the Debtor and its Affiliates (other than the Purchased Entity and the Malta Subsidiary); and (v) 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 Shares are hereby expunged and discharged as against the Purchased Shares.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares shall stand in the place and stead of the Purchased Shares, 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 Shares with the same priority as they had with respect to the Purchased Shares immediately prior to the sale, as if the Purchased Shares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

6. **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 Shares 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

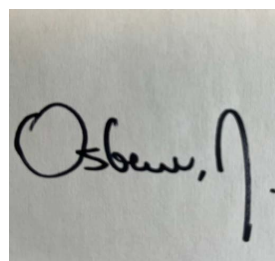
void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that, following the closing of the Transaction, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the Purchased Shares and to register the Purchased Shares in the name of the Purchaser in the register of members of the Purchased Entity.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Malta or any other foreign jurisdiction to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that the Receiver and the Purchaser be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

10. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. prevailing Eastern Time on the date of this Order without any need for entry and filing.



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SCHEDULE "A"

Court File No. 23-00694886-00CL

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

B E T W E E N:

ELA CAPITAL INC.

Applicant

- and -

11157353 CANADA CORP.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2023, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties, other than the Excluded Assets (as defined in the Receivership Order), of 11157353 Canada Corp. (the "**Debtor**").

B. Pursuant to an Order of the Court dated April 12, 2023, the Court approved the share purchase agreement dated March 31, 2023 (the "**Sale Agreement**") between the Receiver and JMCC (Canada) Corp. and provided for the vesting in JMCC (Canada) Corp. or such other person as it may designate (the "**Purchaser**") of the right, title and interest of the Debtor and the Receiver in and to the Purchased Shares, which vesting is to be effective with respect to the Purchased Shares 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 Shares; (ii) that the

conditions to Closing as set out in Article 6 of the Sale 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 Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale 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 RESTRUCTURING INC., in its
capacity as Receiver of the undertaking,
property and assets of 11157353 Canada
Corp., and not in its personal or corporate
capacity**

Per:

Name:

Title:

SCHEDULE "B"
PURCHASED SHARES

Person	Purchased Shares		
	Class of Shares	Number of Shares Issued and Outstanding	Ownership Information
Materia Ventures Malta Ltd.	Ordinary	1,250	100% owned by 11157353 CANADA Corp., on both non-diluted and fully-diluted basis

ELA CAPITAL INC.

and

- v -

11157353 CANADA

Court File No. CV-23-00694886-00CL

CORPORATION

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at
Toronto

APPROVAL AND VESTING ORDER

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