



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 Reflourish Capital Limited (the "**Purchaser**") dated February 14, 2023, as described in the Report of the Receiver dated February 17, 2023 ("**Pre-Filing Report**") and appended to the Affidavit of Benjamin Trefler sworn February 15th, 2023 (the "**Trefler Affidavit**"), and vesting in the Purchaser the Debtor's right, title and interest in and to Purchased Shares (as defined in the Sale Agreement), was heard this day by Zoom video conference. .

ON READING the 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.

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 and approved, with such minor amendments as the Receiver may deem necessary. 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 Debtor's right, title and interest in and to the Purchased Shares described in the Sale Agreement and 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, 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 Osborne dated February 21, 2023; and (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 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;

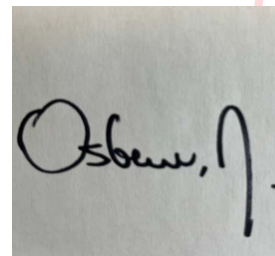
the vesting of the Purchased Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, 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.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in Germany 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 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. Eastern Standard/Daylight Time on the date of this Order without any need for entry and filing.

A rectangular stamp containing a handwritten signature in black ink. The signature appears to be "Osborne, J." with a stylized flourish at the end.

2023.04.1
2 11:22:45
-04'00'

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 (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 February 15, 2023 (the "**Sale Agreement**") between the Receiver and Reflourish Capital Limited (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest 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

100% of the issued and outstanding shares in the share capital of Materia Deutschland GmbH, more particularly described below:

Company	Purchased Shares			
	Class of Shares	Number of Shares owned by Materia	% of Issued and Outstanding Shares owned by Materia (non-diluted)	% of Issued and Outstanding Shares owned by Materia (fully diluted)
Materia Deutschland GmbH	Not specified	25,000 (in a nominal amount of EUR 1.00 each)	100%	100%

ELA CAPITAL INC.

- / - and

11157353 CANADA CORPORATION

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

Applicant

Respondent

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

Proceeding Commenced at
Toronto

APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Asim Iqbal LSO# 61884B

aiqbal@millerthomson.com
Tel: 416.597.6008

Monica Faheim LSO#82213R

mfaheim@millerthomson.com
Tel: 416.597.6087

Lawyers for the Proposed Receiver,
KSV Restructuring Inc.