

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER SECTION 50.4(1) OF THE BANKRUPTCY
AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT **ORDER (procedural consolidation and ancillary relief)**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT

Blake, Cassels & Graydon LLP
Barristers and Solicitors
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Calgary, Alberta T2P 4J8

I hereby certify this to be a true copy of
the original Procedural order
Dated this 30th day of November 2022

Attention: Kelly Bourassa / Alexia Parente for Clerk of the Court
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Fax No.: 403-260-9700
File Ref: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.H. Hollins

UPON THE APPLICATION by Nilex Inc. and Nilex USA Inc. (each a “**Company**” and, collectively, the “**Companies**”) for an order, among other things: (i) procedurally consolidating the bankruptcy proceeding of Nilex Inc. (Estate No. 24-2878531) and Nilex USA Inc. (Estate No. 24-2887527) (each individually, a “**Proceeding**” and together, the “**Consolidated Proceeding**”) for administrative purposes; (ii) extending to Nilex USA Inc. certain relief granted previously to Nilex Inc.; (iii) ordering the style of cause in the within proceedings be amended to include Nilex USA Inc. as an applicant; (iv) authorizing KSV Restructuring Inc. (the “**Proposal Trustee**”), to act as the foreign representative (in such capacity, the “**Foreign Representative**”) in respect of the Companies for the purpose of having these Proceedings recognized and approved in the United States of America pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-

1532; and (v) authorizing the Proposal Trustee to make an interim distribution to Canadian Imperial Bank of Commerce (“**CIBC**”);

AND UPON HAVING READ the Application, the Affidavit of Jeff Allen sworn on November 21, 2022, the second report of the Proposal Trustee dated November 21, 2022, the confidential appendices thereto, the Affidavit of Service of Lindsay Farr sworn November 24, 2022, and such other material in the pleadings and proceedings as deemed necessary;

AND UPON HEARING the submissions of counsel for the Companies, the Proposal Trustee, CIBC and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

EXTENSION OF TIME TO FILE A PROPOSAL

1. Pursuant to Section 50.4(9) of the BIA, the time for the Companies to file their respective proposals is hereby extended to February 7, 2023 (as that date may be extended by further order of the Court).

PROCEDURAL CONSOLIDATION

2. The bankruptcy estates of the Proceedings shall, subject to further order of the Court, be procedurally consolidated into one proceeding and shall continue under Estate No. 24-2878531 (the “**Consolidated Proceeding**”).
3. The procedural consolidation of the Proceedings pursuant to this Order shall not:
 - (a) affect the legal status or corporate structure of the Companies; or
 - (b) cause either Company to be liable for any claim for which they are otherwise not liable, or cause either Company to have an interest in an asset to which it otherwise would not have.
4. The Proceedings are not substantively consolidated, and nothing in this Order shall be construed to that effect.

5. A copy of this Order shall be filed by the Companies in the Court file for each of the Proceedings but any subsequent document required to be filed hereafter will only be required to be filed in the Consolidated Proceeding.
6. For avoidance of doubt, any motion, application or action, including the herein application, in respect of the Companies shall be brought and filed in the Consolidated Proceeding and if so brought and filed it shall be deemed brought and filed in each of the Proceedings as appropriate, without prejudice to any rules of court or otherwise that are applicable.
7. The Style of Cause in the within proceedings is hereby amended and shall be assigned to the Consolidated Proceeding:

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL UNDER SECTION 50.4(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC
1985, c B-3, AS AMENDED

APPLICANTS

NILEX INC. and NILEX USA INC.

8. The relief granted by the Honourable Justice J.S. Little of this Court on November 8, 2022 (the "**November 8 Order**"), among other things, (i) approving a sale process as described in the Proposal Trustee's first report to the Court dated October 31, 2022; (ii) expanding the stay of proceedings under the *Bankruptcy and Insolvency Act* RSC 1985, c B-3, as amended, as set out in paragraphs 3 and 4 of the November 8 Order; and (iii) granting the Administration Charge, Lender Priority Charge, D&O Charge and KERP Charge (each as defined in the November 8 Order) and, in respect of the Charges (as defined in the November 8 Order) ordering that each shall constitute a charge on the Property (as defined in the November 8 Order), is hereby extended to Nilex USA Inc. and all of its present and future assets, undertakings and property of every nature and kind whatsoever and wherever in situate, including all proceeds thereof, in the same manner as set out in the November 8 Order.

FOREIGN REPRESENTATIVE

9. The Proposal Trustee is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for recognition of this Order (and other orders in the Consolidated Proceeding) and for assistance in carrying out the terms

of these orders and the Proposal Trustee is authorized and empowered to act as the Foreign Representative of the Companies or either Company in respect of the Consolidated Proceeding or either Proceeding for the purpose of having the Consolidated Proceeding or either Proceeding recognized in a jurisdiction outside Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § § 101-1532.

INTERIM DISTRIBUTION

10. The Proposal Trustee is hereby authorized, at such time as it determines appropriate, to make an interim distribution or interim distributions to CIBC from amounts received from the Transaction up to the full amount of the Company's indebtedness to CIBC, as set out in the Second Report, subject to the retention of amounts for any priority claims. Such interim distribution or interim distributions shall be free and clear of all claims and encumbrances and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of either of the Companies and shall not be void or voidable by creditors of the Companies, nor shall any such interim distribution 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 any such interim distribution constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
11. The interim distribution or interim distributions authorized in paragraph 10 of this Order shall be without prejudice to any rights of subrogation or marshaling that any subordinate creditors may have to amounts received from the Transaction following the interim distribution or interim distributions to CIBC.

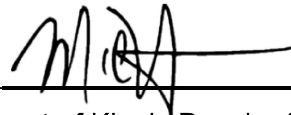
MISCELLANEOUS MATTERS

12. The Companies, the Proposal Trustee, and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

13. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or in any of its provinces or territories, or in any foreign jurisdiction including specifically, the United States of America, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order and other orders in the Consolidated Proceeding. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies or the Proposal Trustee, as an officer of this Court and Foreign Representative, as may be necessary or desirable to give effect to this Order and other orders in the Consolidated Proceeding, to grant representative status to the Proposal Trustee in any foreign proceeding of the Companies or either Company, or to assist the Companies and the Proposal Trustee and their agents in carrying out the terms of this Order and other orders in the Consolidated Proceeding.

SERVICE OF ORDER

14. Service of this Order shall be deemed good and sufficient:
- (i) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (ii) by posting a copy of this Order on the Proposal Trustee's website at: <https://www.ksvadvisory.com/experience/case/nilex-inc>.
15. Service of this Order on any other person is hereby dispensed with.
16. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta