



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 (interim distribution)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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File Ref: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: December 13, 2022

LOCATION OF HEARING: Edmonton, Alberta (via Webex)

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice J.T. Neilson

UPON THE APPLICATION by Nilex Inc. ("**Nilex**") and Nilex USA Inc. ("**Nilex USA**", and together with Nilex, the "**Companies**") for an order, among other things, (a) authorizing KSV Restructuring Inc. (the "**Proposal Trustee**") to make an interim distribution or distributions to PEF 2010 Nilex Investment Limited Partnership ("**Fulcrum**"); (b) declaring that the *Wage Earner Protection Program Act (Canada)*, SC 2005, c. 47, s.1 ("**WEPPA**") applies to the terminated employees of Nilex; and (c) ratifying and approving the actions, conduct, and activities of the Proposal Trustee as set out in the first report of the Proposal Trustee dated October 31, 2022, the second report of the Proposal Trustee dated November 21, 2022, and the third report of the Proposal Trustee dated December 7, 2022 (the "**Third Report**");

AND UPON HAVING READ the Application by Companies, the Affidavit of Jeff Allen sworn on December 7, 2022 (the "**Third Allen Affidavit**"), and the Third Report;

AND UPON HAVING READ the Affidavit of Service of Lindsay Farr sworn December 12, 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:

SERVICE

1. Service of this Application and supporting materials is hereby abridged, if necessary, and the Application is properly returnable today and any requirement for service of the Application upon any party not served is hereby dispensed with.

INTERIM DISTRIBUTION

2. The Proposal Trustee is hereby authorized, at such time as it determines appropriate, to make an interim distribution or distributions on behalf of the Companies to Fulcrum of proceeds of sale resulting from the sale of the assets or business of Nilex up to the full amount of the Nilex's indebtedness to Fulcrum, as set out in the Third Report, and an interim distribution or distributions of the proceeds of sale resulting from the sale of the assets or business of Nilex USA, up to the amount of the Assigned Debt (as defined in the Third Allen Affidavit), subject to the retention of amounts for any priority claims. Such interim distribution or 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 the Companies and shall not be void or voidable by creditors of the Companies, nor shall any such interim distribution or distributions 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 or distributions constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

WAGE EARNER PROTECTION PROGRAM ACT

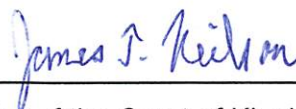
3. Pursuant to section 5(5) of the WEPPA, Nilex and its employees whose employment has been or may be terminated in these proceedings meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222, and Nilex is a former employer all of whose employees in Canada that have been or may be terminated during the pendency of these proceedings are individuals to whom the WEPPA applies as of their respective termination dates.

PROPOSAL TRUSTEE'S ACTIVITIES

4. The actions, conduct, and activities of the Proposal Trustee as set out in the first report of the Proposal Trustee dated October 31, 2022, the second report of the Proposal Trustee dated November 21, 2022, and the Third Report are hereby ratified and approved, provided that only the Proposal Trustee shall be entitled to rely on or utilize such approval.

SERVICE OF ORDER

5. 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>.
6. Service of this Order on any other person is hereby dispensed with.
7. 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