

Clerk's stamp:

COURT/ESTATE 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
APPLICANT: NILEX INC.
DOCUMENT **ORDER (approving extension of time to file a
proposal, administration charge, and other relief)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP
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File Ref.: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 8, 2022

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta (via Webex)

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice J.S. Little

UPON THE APPLICATION by Nilex Inc. (the "**Company**"), for an order, among other things: (a) extending the time for the Company to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**"); (b) approving an Administration Charge (defined below); (c) approving the Sale Process (defined below) and its continuation; (d) approving the continued use of the Cash Management System (defined below); and (e) approving the distribution of the Garnished Funds (defined below) out of Court to the Company and directing any future Garnished Funds to be paid to the Company;

AND UPON HAVING READ the Application, the Affidavit of Jeff Allen sworn October 31, 2022 (the "**First Allen Affidavit**"), the First Report of KSV Restructuring Inc. in its capacity as proposal trustee of the Company (in such capacity, the "**Proposal Trustee**") dated October 31, 2022 (the "**First Report**"), and the Affidavit of Service of Lindsay Farr sworn November 3, 2022;

AND UPON HEARING the submissions of counsel for the Company, the Proposal Trustee, the Canadian Imperial Bank of Commerce ("**CIBC**"), and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

EXTENSION OF TIME TO FILE A PROPOSAL

2. Pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal is hereby extended to January 10, 2023 (as that date may be extended by further order of the Court, the "**Proposal Extension Date**").

NO INTERFERENCE WITH RIGHTS

3. Until and including the Proposal Extension Date, no individual, firm, corporation, governmental body, or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, or take any further action to issue or enforce any garnishee summons, except with the written consent of the Company and the Proposal Trustee, or leave of this Court.

CONTINUATION OF SERVICES

4. Until and including the Proposal Extension Date, all Persons having:
 - (a) statutory or regulatory mandates for the supply of goods and/or services; or

- (b) oral or written agreements or arrangements with the Company, including without limitation all purchase orders, supply agreements, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company;

are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company or exercising any other remedy provided under such agreements or arrangements. The Company shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Company in accordance with the payment practices of the Company, or such other practices as may be agreed upon by the supplier or service provider and each of the Company and the Proposal Trustee or as may be ordered by this Court.

ADMINISTRATION CHARGE

5. The Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company (collectively, the "**Administrative Professionals**") shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Administrative Professionals on a bi-weekly basis, or as they may otherwise agree.
6. The Administrative Professionals shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$350,000 (before GST), as security for payment of their respective professional fees and disbursements incurred at their normal rates and charges, both before and after the making of this Order, in respect of this proceeding.
7. The Administration Charge shall have the priority set out in paragraphs 21 and 23 hereof.

CASH MANAGEMENT SYSTEM AND LENDER PRIORITY CHARGE

8. The Company's execution and performance under the forbearance agreement dated as of October 17, 2022 between the Company and CIBC (among others), as may be amended from time to time (the "**Forbearance Agreement**") is hereby approved.
9. The Company shall be entitled to continue to utilize the credit facilities (the "**Cash Management System**") granted by CIBC under the Credit Agreement, as defined and described in the First Allen Affidavit (the "**Credit Agreement**"). For greater certainty, (i) the Company is authorized to borrow, repay and re-borrow such amounts from time to time as the Company may consider necessary or desirable under the Credit Agreement, subject to the terms and conditions of the Forbearance Agreement; and (ii) CIBC is authorized to apply receipts and deposits made to the Company's bank accounts, whether directly or through blocked accounts, against the indebtedness of the Company to CIBC in accordance with the Forbearance Agreement, whether such indebtedness arose before or after the date of this Order; provided, however that no advances made by CIBC to the Company under the Credit Agreement on or after the date hereof shall be used to pay the Company's obligations that were owing to CIBC prior to the date hereof.
10. The Cash Management System will be governed by the terms of the Credit Agreement and the Forbearance Agreement and such other documentation applicable to the Cash Management System. CIBC shall be an unaffected creditor in these proceedings, and the rights and remedies of CIBC shall be unaffected by paragraphs 3 and 4 of this Order or any other stay of proceedings that may be granted in these proceedings.
11. CIBC shall be entitled to the benefit of and is hereby granted a charge (the "**Lender Priority Charge**") on the Property, which charge shall not exceed an aggregate principal amount of 20,000,000 plus interest, fees and expenses, as security for any advances made under the Credit Agreement from and after the filing of the NOI.
12. The Lender Priority Charge shall have the priority set out in paragraphs 21 and 23 hereof.
13. The payments made by the Company pursuant to this Order, the Credit Agreement and the Forbearance Agreement, and the granting of the Lender Priority Charge shall not constitute or be deemed to be a preference, fraudulent conveyance or transfer at undervalue or other challengeable or reviewable transaction under the BIA or any

applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law. The rights of CIBC under this Order, including without limitation the Lender Priority Charge, shall be enforceable in any bankruptcy, interim receivership, or receivership or in any proceedings under the *Companies' Creditors Arrangement Act* (Canada) of the Company or Property.

D&O CHARGE

14. The Company shall indemnify the directors and officers against obligations and liabilities that they may incur in their role as directors and officers after the filing of the NOI, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's and officer's gross negligence or wilful misconduct.
15. Each of the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on all of the Property, which charge shall not exceed an aggregate amount of \$925,000, as security for the indemnity provided in this Order.
16. The D&O Charge shall have the priority set out in paragraphs 21 and 23 hereof.
17. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
 - (b) the Company's directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy.

KERP

18. The Company's key employee retention plan (the "**KERP**") described in the First Report is hereby approved and the Company is authorized and directed to make the payments contemplated thereunder should the beneficiaries become entitled thereto in accordance with the terms and conditions of the KERP.

19. The beneficiaries of the KERP are hereby granted a charge (the "**KERP Charge**") on the Property which charge shall not exceed an aggregate amount of \$800,000, as security for all obligations under the KERP.
20. The KERP Charge shall have the priority set out in paragraphs 21 and 23 hereof.

PRIORITY OF CHARGES

21. The priorities of the Administration Charge, the Lender Priority Charge, the D&O Charge, and the KERP Charge, as between them, shall be as follows:
 - (a) First – Administration Charge;
 - (b) Second – Lender Priority Charge;
 - (c) Third – D&O Charge; and
 - (d) Fourth – KERP Charge.(collectively, the "**Charges**").
22. The filing, registration or perfection of the Charges shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
23. The Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.
24. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Company also obtains the prior written consent of the Proposal Trustee and the other beneficiaries of the Charges affected thereby, or further order of this Court.

SALE PROCESS

25. The sale process (the "**Sale Process**") commenced prior to the filing of the notice of intention to file a proposal by the Company in this proceeding, as described in the First Report, is commercially reasonable and is hereby ratified and approved.
26. The Company, with the assistance of the Proposal Trustee and Valitas Capital Partners, is hereby authorized and directed to continue the Sale Process, and do all things reasonably necessary to conduct and give full effect to the Sale Process and carry out the obligations thereunder, including taking any additional steps or executing additional documents as may be necessary or desirable in order to carry out and complete the Sale Process and a transaction or transactions thereunder.
27. The Company is authorized to apply to this Honourable Court for advice and directions in connection with the Sale Process.

FUNDS PAID OUT OF COURT

28. The Clerk of the Court of the King's Bench of Alberta is hereby directed to release to the Company all funds currently being held by it, or which may be paid into Court subsequent to this Order, pursuant to garnishee summons issued in Court of King's Bench File Number 1903-07838 (the "**Garnished Funds**").
29. The Company shall deposit the Garnished Funds in the Company's accounts with CIBC and they shall be applied in accordance with the provisions of the Credit Agreement and the Cash Management System to reduce the amounts outstanding to CIBC as first priority secured creditor.
30. Any Person who has received a garnishee summons directing it to pay funds to the Clerk of the Court is hereby directed to pay any such funds directly to the Company to be deposited by the Company into its accounts with CIBC and applied in accordance with the provisions of the Credit Agreement and the Cash Management System.

SEALING

31. Notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010, confidential appendix 1 ("**Confidential Appendix**") of the First Report shall until further

Order of this Honourable Court, be sealed on the Court file and kept confidential to be shown only to a Justice of the Court of King's Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Confidential Appendices in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 24-2878531. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE C.M. JONES ON NOVEMBER 9, 2022.

32. The Company and the Proposal Trustee are empowered and authorized, but not directed, to provide the Confidential Appendix (or any portion thereof, or information contained therein) to any interested party, entity or person that the Company or Proposal Trustee considers reasonable in the circumstances, subject to confidentiality arrangements satisfactory to the Company or the Proposal Trustee.
33. Any party may apply to set aside paragraph 31 of this order upon providing the Company, Proposal Trustee and all other interested parties with 5 days notice of such application.

MISCELLANEOUS MATTERS

34. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Proposal Trustee will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Proposal Trustee's reports shall be filed by the Clerk of the Court notwithstanding that they do not include an original signature.
35. This 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, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order, and to assist the Proposal Trustee 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 order and to provide such assistance to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

36. Each of the Company or the Proposal Trustee shall be at liberty and are 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.
37. Any interested party (including the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SERVICE OF ORDER

38. Service of this Order shall be deemed good and sufficient:
- (a) 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
 - (b) by posting a copy of this Order on the Proposal Trustee's website at: [Nilex Inc. \(ksvadvisory.com\)](http://Nilex Inc. (ksvadvisory.com)).
39. Service of this Order on any other person is hereby dispensed with.
40. 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