



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

330 University Avenue, 9th Floor
Toronto, ON M5G 1R7

(videoconference details to be provided)

On Monday, March 11, 2024, at 11:00 a.m., (*or on a day to be set by the registrar*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on

the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON M5G 1R7

TO: THE SERVICE LIST

APPLICATION

1. Skylink Express Inc. (“**Skylink**” or the “**Applicant**”) brings this application for an initial order (the “**Proposed Initial Order**”) substantially in the form included at Tab 3 of the Application Record, *inter alia*:

- (a) Abridging and validating the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;
- (b) Declaring that the Applicant is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
- (c) Appointing KSV Restructuring Inc. (“**KSV**”) as court-appointed monitor in these proceedings (in such capacity, the “**Monitor**”) in respect of the business and affairs of the Applicant;
- (d) Staying, for an initial period of not more than ten (10) days (the “**Stay**”), all proceedings and remedies taken or that might be taken in respect of the Applicant, the Monitor or affecting the Applicant’s business or any of their assets, undertakings and properties (the “**Property**”), except with the written consent of the Applicant and the Monitor, or with leave of this Court;
- (e) Authorizing the Applicant to borrow funds pursuant the DIP Facility (as defined below) to be provided to the Applicant pursuant to the DIP Term Sheet (as defined below), in the maximum initial amount of \$1.35 million;
- (f) Granting the following priority charges (the “**Charges**”) on the Property, such Charges to rank in the priority set out in the Proposed Initial Order:

- (i) First, the Administration Charge (as defined below) up to a maximum of \$350,000;
 - (ii) Second, the DIP Lender's Charge (as defined below); and
 - (iii) Third, the Directors' Charge (as defined below) up to a maximum of \$480,000;
- (g) Ordering that the Charges shall rank in priority to all other claims and encumbrances on the Property other than the DIP Lender's Charge and the Directors' Charge shall not rank in priority to the TD Loan Security (defined below); and
- (h) Authorizing, but not directing, the Applicant to make certain pre-filing payments in respect of corporate credit card balances.
2. If the proposed Initial Order is granted, the Applicant intends to seek an amended and restated initial order (an "**ARIO**") within 10 days of the Initial Order being granted,
- (a) Extending the Stay;
 - (b) Increasing the maximum borrowing limit under the DIP Facility to \$2.5 million;
 - (c) Increasing the Administration Charge; and
 - (d) Increasing the Directors' Charge; and
 - (e) Such other relief as may be requested at that time.
3. Such further and other Relief as to this Honourable Court may deem just.

4. The grounds for the application are:

Background

- (a) The Applicant is a company incorporated pursuant to the laws of Ontario;
- (b) Momentum Decisive Solutions Canada Inc. ("**Momentum**") is the sole shareholder of the Applicant;
- (c) TD Bank is the Applicant's senior secured creditor;
- (d) The Applicant's registered office is 55 St. Clair West, Suite 210, Toronto, Ontario;

The Business

- (e) The Applicant is in the business of providing air cargo delivery services throughout North America, principally to remote locations in Canada (the "**Business**");
- (f) The Applicant has been in business for over 25 years and currently has bases in Vancouver, Winnipeg, Hamilton, Montreal-Mirabel and Québec City;
- (g) The Applicant's primary customer is the United Parcel Service Canada Ltd. ("**UPS**") pursuant to a long-term feeder aircraft agreement (the "**UPS Contract**");
- (h) In late 2022, the Applicant began to experience serious cash flow and liquidity issues, and over the past year, the Applicant has experienced negative operating cash flow, such that it is now facing an imminent liquidity crisis due to a number of internal and external factors including, without limitation, reduction in demand for cargo services, increase in operating costs and turnover in the labour market and significant increase in the costs for aircraft parts and changes in regulatory requirements for aircraft. The UPS contract does not include any escalation

provisions to compensate the Applicant for these costs increases, and accordingly, the Applicant is unable to generate revenue sufficient to cover all costs;

- (i) While the Applicant has taken several steps with a view to restructuring the Business, it has become apparent to me that absent a restructuring of the UPS Contract, it is unlikely to be able to will be able to return to profitability;
- (j) The Applicant's cash forecast indicate that, absent additional funding, it is projected to have insufficient funds to pay its obligations as of March 11, 2024 including, notably, its payroll due on March 15, 2024;
- (k) While Momentum has historically supported the Applicant and the Business in a variety of ways, it has advised that any additional funding is contingent up on the Applicant commencing these CCAA proceedings;

Outstanding Obligations

- (l) The Applicant has a secured loan facility outstanding to the Toronto-Dominion Bank ("**TD**") in the amount of approximately \$13.7 million (the "**TD Loan Facility**");
- (m) In connection with the TD Loan Facility, the Applicant has granted security over all of its assets pursuant to, among other things, a general security agreement, aircraft security, assignment of insurance and hypothec (the "**TD Loan Security**");
- (n) As of March 8, 2024, the balance of the TD Loan Facility was approximately \$13.8 million and there was a balance of approximately \$300,000 in respect of a line of credit secured by the TD Loan Security;
- (o) Momentum has also provided a limited recourse guarantee of the TD Loan Facility and provided security in connection with its guarantee;

- (p) TD is the Applicant's only secured creditor;
- (q) In addition to outstanding obligations owing to TD, the Applicant has approximately \$1.7 million in trade payables;

CCAA Proceedings

- (r) As noted above, the Applicant is on the verge of an imminent liquidity crisis and has been or will shortly be unable to meet its obligations as they come due;
- (s) The Applicant is requesting a stay of proceedings for an initial period of not more than 10 days (the "**Stay Period**") to be granted to provide it time to pursue its restructuring options in a stabilized environment;

Appointment of Monitor

- (t) The Applicant seeks to appoint KSV as the monitor (in such capacity, the "**Proposed Monitor**") in the CCAA proceedings;
- (u) KSV has consented to act as the Monitor in these proceedings, should the Initial Order be granted;

Administration Charge

- (v) The Proposed Initial Order contemplates a super priority charge over its property, assets and undertaking in the initial maximum amount of \$350,000 to secure the fees and disbursements of the Proposed Monitor, its counsel and counsel to the Applicant incurred both before and during the CCAA proceedings (the "**Administrative Charge**");

- (w) The expertise and participation of the proposed beneficiaries of the Administration Charge are crucial to the completion of the Applicant's restructuring;

Directors and Officers

- (x) To facilitate the ongoing stability of the Applicant's business during the CCAA period and the efficient implementation of these restructuring proceedings, the Applicant requires the continued participation of its directors and officers who oversee the management of the Business and commercial activities of the Applicant;
- (y) Those directors and officers of the Applicant have indicated that they cannot continue their service in this restructuring unless the Proposed Initial Order grants the Directors' Charge (as defined below) to secure the Applicant's indemnity obligations to the directors and officers that arise post-filing;
- (z) The Applicant maintains directors' and officers' liability insurance (the "**D&O Insurance**"), which policies provide a total of up to \$5 million in primary coverage;
- (aa) The Proposed Initial Order contemplates the establishment of a charge in the amount of \$480,000 (the "**Directors' Charge**"), which has been reviewed by the Proposed Monitor;
- (bb) The benefit of the Directors' Charge will only be available to the extent that a liability is not covered by the D&O Insurance;
- (cc) The Applicant is unlikely to have sufficient funds available to satisfy any contractual indemnities to the directors and officers should the directors or officers need to call upon those indemnities;

DIP Facility and DIP Lenders' Charge

- (dd) Momentum has agreed to establish a secured debtor-in-possession financing facility ("**DIP Facility**") in favour of the Applicant to fund working capital, capex and restructuring costs during the CCAA proceedings;
- (ee) The parties have entered into a DIP term sheet dated March 8, 2024 (the "**DIP Term Sheet**") pursuant to which Momentum (in such capacity, the "**DIP Lender**") has agreed to providing DIP funding up to a maximum of \$2.5 million to the Applicant;
- (ff) The DIP Facility is contingent, among other things, upon the granting of a priority charge over the Property of the Applicant in favour of the DIP Lender, which will rank subordinate to the Administration Charge and the TD Loan Security but in priority to the Directors' Charge;
- (gg) The proposed initial borrowing under the DIP Facility is limited to a maximum of \$1.35 million, being the amount projected to be required in the first 10 days of the CCAA proceedings, and is supported by the Proposed Monitor;

Priority of Charges

- (hh) The proposed ranking of the Court-ordered charges as amongst themselves (the "**Charges**") is as follows:
 - (i) First, the Administration Charge (up to a maximum of \$350,000);
 - (ii) Second, the DIP Lender's Charge; and
 - (iii) Third, the Directors' Charge (up to a maximum of \$480,000).

- (ii) It is further proposed that in respect of the TD Loan Security, the Administration Charge would rank in priority to the TD Loan Security but the Directors' Charge and DIP Lender's Charge would rank subordinate to the TD Loan Security;

Pre-Filing Payments

- (jj) The Applicant maintains various American Express and VISA cards for use by its employees for Business related expenses;
 - (kk) The ongoing use of these credit cards is crucial to facilitate the continued operations of the Business as employees (including the Applicant's pilot group) are often traveling and required to incur expenses in the course of their employment;
 - (ll) In order to facilitate the ongoing access to the credit cards, specific relief is being requested to pay the outstanding balances on the pre-filing balances on those credit cards in the estimated amount of \$250,000, subject to the review by the Applicant and the Monitor;
 - (mm) Such further and other grounds as the lawyers may advise.
5. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of Kyle Dennhardt sworn March 8, 2024;
 - (b) The pre-filing report of KSV as proposed Monitor dated March 8, 2024;
 - (c) Consent of KSV to act as monitor in these proceedings; and
 - (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 11, 2024

NORTON ROSE FULBRIGHT CANADA LLP

222 Bay Street, Suite 3000

Toronto, ON M5K 1E7

Fax: 416.216.3930

Jennifer Stam LSO#: 46735J

Tel: 416. 202.6707

jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

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Proceeding commenced at TORONTO

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NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam LSO#: 46735J
Tel: 416. 202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant