

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) FRIDAY, THE 14TH
)
JUSTICE OSBORNE) DAY OF APRIL, 2023

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

SUNRISE ACQUISITIONS (HWY 7) INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

AMENDED AND RESTATED ORDER
(Amending Order for Repayment of Amounts Owing Dated December 20, 2022)

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties of Sunrise Acquisitions (Hwy 7) Inc. (the "**Company**") acquired for or used in relation to a business carried on by the Company and the proceeds therefrom, for an Order, *inter alia*, directing payment of certain amounts due and owing to the Company, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver dated August 5, 2022, the Responding Motion Record of the responding parties dated September 16, 2022, the Supplementary Responding Motion Record of the responding parties dated October 18, 2022, the Further Supplementary Responding Motion Record of the responding parties dated November 23, 2022, the Reply Motion Record of the Receiver dated November 30, 2022, the Brief of Transcripts dated November 30, 2022, the Factum and Authorities of the Receiver dated December 2, 2022, the Responding Factum of the responding parties dated December 12, 2022, the Reply Factum and Authorities of the Receiver dated December 16, 2022, the Order of the Honourable Justice Osborne dated December 20, 2022 (the "**December 20 Order**"), and the endorsement of the Honourable Justice Osborne issued in connection with the December 20 Order, and on hearing the submissions of counsel for the Receiver and counsel for the responding parties, and such other counsel that were present, no one else appearing although duly served as appears from the Affidavits of Service, filed;

AND UPON BEING ADVISED that each of Muzammil Kodwavi, Safana Kodwavi, Sajjad Hussain, Mahvesh Hussain, SH & MK Management Inc., Sunrise Homes Ltd., Sunrise Acquisitions (Bronte) Inc., Sunrise Acquisitions (Unionville) Inc., Sunrise Acquisitions (Keswick) Inc., Sunrise Acquisitions (Keswick II) Inc., Sunrise Acquisitions (Tisdale) Inc., Sunrise Acquisitions (Tisdale II) Inc., Sunrise Acquisitions Inc., Sunrise Acquisitions (Burlington) Inc.,

IKH Holdings Inc., Amal Financial Inc., and 2303484 Ontario Inc. (collectively, the "**Acknowledged Debtors**") and the Receiver consent to this Order,

REPLACEMENT OF THE EXISTING REPAYMENT ORDER

1. **THIS COURT ORDERS** that the Order of the Honourable Justice Kimmel in these proceedings dated November 2, 2022 is hereby vacated and replaced with this Order.

JUDGMENT ON ACKNOWLEDGED DEBT AND THE DEBT OF NAYYAR SHABBAR

2. **THIS COURT ORDERS** that the amount of CAD\$14,510,545.24 (the "**Repayment Amount**") is due and payable to the Receiver forthwith, with liability of the applicable parties as noted below:

- (a) CAD\$14,334,012 payable forthwith by Sajjad Hussain, Muzammil Kodwavi (together, the "**Principals**"), SH & MK Management Inc., Sunrise Homes Ltd., Sunrise Acquisitions (Bronte) Inc., Sunrise Acquisitions (Unionville) Inc., Sunrise Acquisitions (Keswick) Inc., Sunrise Acquisitions (Keswick II) Inc., Sunrise Acquisitions (Tisdale) Inc., Sunrise Acquisitions (Tisdale II) Inc., Sunrise Acquisitions Inc., Sunrise Acquisitions (Burlington) Inc., IKH Holdings Inc., Amal Financial Inc. and 2303484 Ontario Inc. on a joint and several basis;
- (b) CAD\$724,443 payable forthwith by Nayyar Shabbar; and
- (c) CAD\$132,353.35 and CAD\$44,179.89 (together, the "**Unpaid Occupancy Fees**") payable forthwith by Safana Kodwavi ("**Ms. Kodwavi**") and Mahvesh Hussain

("Ms. Hussain"), respectively, with the Principals being jointly and severally liable with Ms. Kodwavi and Ms. Hussain for these amounts.

3. **THIS COURT ORDERS** that (i) the Repayment Amount, exclusive of the Unpaid Occupancy Fees, bears interest at the rate of 4% per year commencing from December 20, 2022 (being the date of the December 20 Order), and (ii) the Unpaid Occupancy Fees bear interest at the rate of 4% per year commencing from the date of this Order.

COSTS

4. **THIS COURT ORDERS** that the Receiver's costs relating to this Order are to be awarded as against the Acknowledged Debtors in the amount of CAD\$500,000.00.

PROHIBITION ON DISSIPATION OF ASSETS

5. **THIS COURT ORDERS** that, without the prior written consent of the Receiver, the Acknowledged Debtors, including, as applicable, their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this Order, are hereby prohibited, restrained and enjoined from directly or indirectly, by any means whatsoever (i) selling, removing, transferring, conveying, alienating, dissipating, pledging, encumbering or similarly dealing with any assets of the Acknowledged Debtors, wherever situate, outside the ordinary course, (ii) instructing, counselling, demanding or encouraging any other person to do so, and (iii) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so, until the Repayment Amount is repaid in full.

6. **THIS COURT ORDERS** that paragraph 5 of this Order applies to all of the Acknowledged Debtors' assets whether or not they are in their own name and whether they are solely or jointly owned. For the purpose of this order, the Acknowledged Debtors' assets include any asset which they have the power, directly or indirectly, to dispose of or deal with as if it were their own. The Acknowledged Debtors are to be regarded as having such power if a third party holds or controls the assets in accordance with their direct or indirect instructions.

SURVIVAL

7. **THIS COURT ORDERS AND DECLARES** that, as against the Principals, this Order survives any personal bankruptcy pursuant to and in accordance with subsection 178(1)(d) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), as a debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity.

RECEIVER'S AND TRUSTEE'S RIGHTS AND REMEDIES

8. **THIS COURT ORDERS AND DECLARES** that this Order is made without prejudice to any of the Receiver's rights and remedies at law and in equity with respect to any matters not addressed directly in this Order, including, without limitation, with respect to the Receiver's entitlement to costs and interest as against parties other than the Acknowledged Debtors, and those of the Company's Licensed Insolvency Trustee in Bankruptcy, including, without limitation, under sections 95-96 of the BIA and under the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 and *Assignments and Preferences Act*, R.S.O. 1990, c. A.33.

GENERAL

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.

10. **THIS COURT ORDERS** that the December 20 Order is hereby amended and restated pursuant to this Order, and this Order and all of its provisions are effective from the date of this Order, and this Order is enforceable without the need for entry or filing.

The Honourable Justice Osborne

KINGSETT MORTGAGE CORPORATION

-and-

SUNRISE ACQUISITIONS (HWY 7) INC.

Applicant

Respondent

Court File No. CV-21-00663051-00CL

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED ORDER
(Amending Order for Repayment of Amounts Owing Dated December 20, 2022)**

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