



Court File No. CV-23-00703958-00CL

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

THE HONOURABLE MADAM

)

TUESDAY, THE 28TH DAY

)

JUSTICE KIMMEL

)

OF NOVEMBER, 2023

BETWEEN:

**DeA CAPITAL ALTERNATIVE FUNDS SGR S.p.A.
as managing company of Italian closed-end investment
Fund IDeA CCR (Corporate Credit Recovery) I**

Applicant

- and -

UTIL CANADA LIMITED

Respondent

**IN THE MATTER OF SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*
(CANADA) R.S.C. 1985 cB-3 AS AMENDED, AND SECTION 101 OF THE *COURTS OF
JUSTICE ACT* (ONTARIO) R.S.O. 1990, c. C.43, AS AMENDED**

**APPROVAL AND VESTING ORDER
(Auction Services Agreement)**

THIS MOTION, made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Util Canada Limited (the “**Debtor**”), for an order, amongst other things: (i) approving the auction services agreement between Perfection Global LLC (the “**Auctioneer**”), as auctioneer, and the Receiver dated October 30, 2023 (the “**Auction Agreement**”), a copy of which is attached to the report of the Receiver dated November 17, 2023 (the “**Report**”); (ii) authorizing the Auctioneer to conduct the auction, as

referenced in, and in accordance with the terms of, the Auction Agreement (collectively, the “**Auction**”); and (iii) vesting in each purchaser at such Auction (each, a “**Purchaser**”) the Debtor’s and the Receiver’s right, title and interest in and to the Property purchased by such respective Purchaser at the Auction (in each case, the “**Purchased Assets**”), free and clear of any claims and encumbrances, was heard this day by video-conference.

ON READING the Report (including the appendices thereto), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the Service List, as appears from the affidavit of service, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Auction is hereby approved, and the execution of the Auction Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Auction.

3. **THIS COURT ORDERS AND DECLARES** that upon the Auctioneer completing a sale to a Purchaser at the Auction of one or more Purchased Assets (which Purchaser, for greater certainty, may include the Auctioneer), upon receipt by the Auctioneer from such Purchaser of the purchase price determined at the Auction and upon delivery by the Auctioneer to such Purchaser (or, in the case such Purchaser is the Auctioneer, upon delivery by the Receiver to the Auctioneer) of a bill of sale or similar evidence of purchase and sale (each, a “**Purchaser Bill of Sale**”), all the

Debtor's, the Trustee's (as defined below) and the Receiver's right, title and interest in and to the Purchased Assets purchased by such Purchaser at the Auction and described in such Purchaser's Bill of Sale shall vest absolutely in such Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the assignment in bankruptcy of the Debtor on August 4, 2023, and the appointment of KSV Restructuring Inc. on that date as licensed insolvency trustee (in such capacity, the "**Trustee**") of the Debtor's bankrupt estate by the Office of the Superintendent of Bankruptcy; (ii) any encumbrances or charges created by the Order of The Honourable Mr. Justice Cavanagh made August 8, 2023 (the "**Receivership Order**"); and (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, and, for greater certainty, this Court orders that all the Claims affecting or relating to such Purchased Assets are hereby expunged and discharged as against such Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets payable to the Receiver from the Auction shall stand in the place and stead of the Purchased Assets sold at the Auction, and that from and after the delivery of a Purchaser's Bill of Sale all Claims shall attach to such net proceeds from the sale of the Purchased Assets sold at the Auction and described in such Purchaser's Bill of Sale with the same priority as they had with respect to such Purchased Assets immediately prior

to their sale at the Auction, as if such Purchased Assets had not been sold at the Auction and remained in the possession or control of the person having that possession or control immediately prior to their sale at the Auction.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of each of the Purchased Assets in its respective Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it 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 it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

6. **THIS COURT ORDERS** that the Receiver be at liberty and is 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.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any other Canadian and foreign court, tribunal, regulatory or administrative body (“**Judicial Bodies**”) to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All Judicial 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its respective agents in carrying out the terms of this Order.



Digitally signed by
Jessica Kimmel
Date: 2023.11.28
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Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER
(Auction Services Agreement)

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the Court-appointed Receiver