

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE MR.)

MONDAY, THE 10TH

JUSTICE MCEWEN)

DAY OF FEBRUARY, 2020)



**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
VIAFOURA INC., OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by KSV Kofman Inc. (“**KSV**”), in its capacity as proposal trustee (“**Proposal Trustee**”) in connection with a Notice of Intention to Make a Proposal (“**NOI**”) filed on December 1, 2019 by Viafoura Inc. (the “**Company**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Proposal Trustee dated January 28, 2020 (the “**Second Report**”), the Supplement to the Second Report of the Proposal Trustee dated February 9, 2020 (the “**Supplement**”), the Affidavit of Annie Nguyen sworn February 6, 2020 (the “**Nguyen Affidavit**”) and the Affidavit of Alkarim Jivraj sworn February 7, 2020 (the “**Alkarim Affidavit**”) and together with the Second Report, the Supplement, the Nguyen Affidavit and the Alkarim Affidavit, and all facts filed in connection with this Motion, the “**Materials**”), and on hearing the submissions of counsel for the Proposal Trustee, for the Company, for Intercap Equity Inc. (“**Intercap**”), for National Bank of Canada, for Espresso Capital Ltd., and for such other parties in attendance at the motion,

1. **THIS COURT ORDERS** that in accordance with the terms of the Amended and Restated Term Sheet attached as Appendix “F” to the Second Report (the “**Amended DIP Term Sheet**”), the maximum amount available under the DIP Facility¹ is hereby increased from \$1 million to \$1.7 million, and that Amended DIP Term Sheet be and is hereby approved.

2. **THIS COURT ORDERS** that the Interim Financing Charge provided for in paragraph 5 of the Order of this Honourable Court in these proceedings dated December 3, 2019 (the “**December 3 Order**”), be and is hereby increased to secure the Company’s indebtedness and obligations under the Amended DIP Term Sheet.

3. **THIS COURT ORDERS** that the Sale Process, including the Stalking Horse Agreement and the Bid Protections, is hereby approved with the following amendments to the Sale Process and the Stalking Horse Agreement:

- (a) the amount of the Expense Reimbursement is amended to be a maximum of \$25,000;
- (b) the amount of the “Minimum Overbid Increment” in paragraph 1(d) of the Auction Procedure shall be “\$25,000” for the Opening Bid;

¹ All capitalized terms not defined in this Order are used as defined in the Second Report.

- (c) the location of any Auction shall be at the offices of the Proposal Trustee or as it may determine with regard to capacity, size and availability (but will not be at the offices of counsel for InterCap);
- (d) reference to publication of the acquisition opportunity in the Globe and Mail (National Edition) shall be removed;
- (e) reference to the Base Purchase Price shall be removed from any publicly available materials, but in order for a Bid to constitute a Qualified Bid it must provide for at least enough cash consideration for payment in full of the amounts owing under the DIP Facility, plus \$75,000 and a commitment to pay the Closing Cash Payment; and
- (f) for greater certainty, the Proposal Trustee shall not provide InterCap with information regarding the conduct of the process including questions from other potential Bidders provided that should there be an Auction, InterCap shall receive all information received by other Qualified Bidders participating in the Auction.

4. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Proposal Trustee, the Company and its representatives are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their representatives, if requested by such Bidders, personal

information of identifiable individuals, including, without limitation, all human resources and payroll information in the Company's records pertaining to the Company's past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale pursuant to the Sale Process (a "Sale"). Each Bidder or representative to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Proposal Trustee, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Proposal Trustee. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction(s) contemplated in the Successful Bid(s) (as defined in the Sale Process), shall be entitled to use the personal information provided to it that is related to the assets acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Company and shall return all other personal information to the Proposal Trustee, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Proposal Trustee.

5. **THIS COURT ORDERS** that a charge is hereby granted over the Company's property and assets in the amount of **[\$50,000]** in favour of Intercap to secure payment of the Bid Protections, which charge shall rank immediately behind the Interim Facility Charge, and in priority to all Encumbrances (as defined in the December 3 Order) other than the Administration Charge and the Interim Facility Charge.

6. **THIS COURT ORDERS** that the Materials are hereby sealed until the completion of a transaction in respect of the Company as evidenced by the filing of a certificate by the Proposal Trustee with this Court, provided that the Parties are hereby ordered to each serve and file redacted versions of their own Materials (not including the confidential appendices to the Second Report and the Supplement or Exhibit G to the Nguyen Affidavit) within 2 business days from the date hereof, removing reference to the Purchase Price (as defined in the Stalking Horse Agreement) or any other reference from which any party could determine the Purchase Price.

7. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to March 30, 2020.

8. **THIS COURT ORDERS** that the Proposal Trustee's activities as set out in the Second Report and the Supplement are hereby approved.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 10 2020

PER / PAR: 

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A ROPOSAL
OF VIAROURA INC., OF THE CITY OF TORONTO, IN THE PROVINCE OF
ONTARIO

Court File No: 31-2590812

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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**Lawyers for KSV Kofman Inc., in its capacity as
Proposal Trustee**