

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

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FRIDAY, THE 23rd

JUSTICE

T. McEwen

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DAY OF FEBRUARY, 2018

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

NATIONAL BANK OF CANADA

Applicant

- and -

KOBIAN CANADA INC. AND THINKMAX TECHNOLOGIES INC.

Respondents

FINAL DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by Zeifman Partners Inc. ("**Zeifman**") in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the assets, properties and undertakings, of Kobian Canada Inc. ("**Kobian**") and Thinkmax Technologies Inc. ("**Thinkmax**") and together with Kobian, the "**Debtors**") for an order:

- (a) abridging, if necessary, the time for service of the Receiver's Motion Record and dispensing with further service thereof;
- (b) approving the Receiver's fourth report to the Court dated February 16, 2018 (the "**Final Report**") and approving the activities and conduct of the Receiver described therein;



- (c) approving the professional fees and disbursements of the Receiver and its legal counsel for the period from August 10, 2016 to February 15, 2018;
- (d) approving the Receiver's statement of receipts and disbursements for the period August 10, 2016 to February 15, 2018;
- (e) approving a distribution to National Bank of Canada (the "**Bank**") of the remaining funds held by the Receiver and authorizing and directing the Receiver to assign to the Bank all remaining assets and any further receipts in connection with the within estate;
- (f) approving the unsealing of Confidential Appendices 1, 2 and 3 to the Receiver's first report to the Court dated September 28, 2016 (the "**First Report**") and Confidential Appendix 1 to the Receiver's second report to the Court dated January 23, 2017 (the "**Second Report**");
- (g) discharging Zeifman as Receiver; and
- (h) releasing and discharging Zeifman from any liability in connection with the discharge of its duties as Receiver and barring all claims against Zeifman in connection with the within estate upon its discharge as Receiver,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Final Report, the affidavit of Allan Rutman sworn February 15, 2018 (the "**Rutman Affidavit**"), the affidavit of Grant Moffat sworn February 16, 2018 (the "**Moffat Affidavit**") and the affidavit of Jonathan Wigley sworn February 15, 2018 (the "**Wigley Affidavit**"), and on hearing the submissions of counsel for the Receiver, no one else appearing

for any other person on the service list, although properly served as appears from the affidavit of Rachel Bengino sworn February 16, 2018, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged, if necessary, and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF RECEIVER'S ACTIVITIES AND FEES

2. **THIS COURT ORDERS** that the Final Report and the Receiver's activities, decisions and conduct set out in the Final Report are hereby authorized and approved.

3. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements (the "Final R&D") for the period August 10, 2016 to February 15, 2018 be and it is hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from August 10, 2016 to February 15, 2018 (including estimated fees to completion of the estate herein) as set out in the Final Report and the Rutman Affidavit are hereby approved and the Receiver is authorized and directed to pay all such fees and disbursements.

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel, Thornton Grout Finnigan LLP, for services rendered during the period from August 10, 2016 to February 15, 2018 (including estimated fees to the completion of the estate herein) as set out in the Moffat Affidavit are hereby approved and the Receiver is authorized and directed to pay all such fees and disbursements.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel, Gardiner Roberts LLP, for services rendered during the period from August 10, 2016 to February 15, 2018 as set out in the Final Report and the Wigley Affidavit are hereby approved and the Receiver is authorized and directed to pay all such fees and disbursements.

DISTRIBUTIONS TO NATIONAL BANK OF CANADA

7. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to distribute to the Bank CAD\$3,400,000 and USD\$238,376, as well as all funds remaining in the Receiver's possession after payment of the disbursements identified in the Final R&D in partial repayment of the Bank's secured claim against the Debtors.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to assign to the Bank any future receipts in connection with the estates herein in partial repayment of the Bank's secured claim against the Debtors in an amount up to but not exceeding the Debtors' indebtedness to the Bank.

UNSEALING OF SEALED MATERIALS

9. **THIS COURT ORDERS** that Confidential Appendices 1, 2 and 3 to the First Report, which were sealed from the public record pursuant to the Order of the Court dated October 5, 2016 and Confidential Appendix 1 to the Second Report, which was sealed from the public record pursuant to the Order of the Court dated January 27, 2017, be unsealed and shall form part of the public record.

DISCHARGE AND RELEASE OF RECEIVER

10. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraphs 4, 5, 6, 7 and 8 hereof and upon the Receiver filing a certificate in the form of Schedule "A" attached hereto (the "**Receiver's Discharge Certificate**") certifying that it has completed the other activities described in the Final Report, the Receiver shall be discharged as Receiver of the assets, property and undertakings of the Debtors, provided, however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Zeifman in its capacity as Receiver.

11. **THIS COURT ORDERS AND DECLARES** that upon filing of the Receiver's Discharge Certificate, Zeifman is hereby released and discharged from any and all liability that Zeifman now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Zeifman while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Zeifman is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

12. **THIS COURT ORDERS** that this order shall be binding upon Zeifman in its capacity as trustee in bankruptcy of Kobian (the "**Trustee**").

13. **THIS COURT ORDERS** that, upon filing of the Receiver's Discharge Certificate, the Receiver is hereby deemed to have transferred the care, custody and control of the Debtors' books and records in the possession of the Receiver to the Trustee.

14. **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.



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

FEB 23 2018

PER / PAR:



Schedule "A" – Form of Receiver's Discharge Certificate

Court File No.: CV-16-11479-00CL

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

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

NATIONAL BANK OF CANADA

Applicant

- and -

KOBIAN CANADA INC. AND THINKMAX TECHNOLOGIES INC.

Respondents

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

1. Pursuant to an application by National Bank of Canada under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 10, 2016, Zeifman Partners Inc. was appointed as Receiver and Manager of the assets, undertakings and properties of Kobian Canada Inc. and Thinkmax Technologies Inc. (together, the "**Debtors**").
2. Pursuant to an Order of the Court dated [February 23, 2018] (the "**Discharge Order**"), Zeifman Partners Inc. was to be discharged as Receiver to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

- A. All matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver.
- B. The Receiver has made the payments outlined in paragraphs 4, 5, 6, 7 and 8 of the Discharge Order.
- C. This Certificate was filed by the Receiver with the Court on the ____ day of ____ at ____.

ZEIFMAN PARTNERS INC.
solely in its capacity as Receiver and
Manager of Kobian Canada Inc. and
Thinkmax Technologies Inc. and not
in its personal or corporate capacity.
