

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-11-045642-135

DATE: November __, 2013

PRESIDING : THE HONOURABLE MARK SCHRAGER, J.S.C.

IN THE MATTER OF THE RECEIVERSHIP OF:

AVEOS FLEET PERFORMANCE INC. / AVEOS PERFORMANCE AÉRONAUTIQUE
INC.

CRÉDIT SUISSE AG, CAYMAN ISLANDS BRANCH, AS FONDÉ DE POUVOIR

Petitioner

-and-

MNP LTD.

Receiver

ORDER APPOINTING A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)

[1] **ON READING** the Petitioner's *Motion for the Issuance of an Order to appoint a Receiver* (the "**Motion**") pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the affidavit and the exhibits in support thereof;

[2] **CONSIDERING** the service of the Motion;

- [3] **CONSIDERING** the submissions of Petitioner's attorneys;
- [4] **CONSIDERING** that Petitioner sent the Debtor a notice pursuant to the terms of Section 244 of the BIA;
- [5] **CONSIDERING** that it is appropriate to appoint a receiver to the Property (such as defined herein) of the Debtor;

WHEREFORE THE COURT:

- [6] **GRANTS** the Motion;

SERVICE

- [7] **ORDERS** that any prior notice period for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable when presented, and **DISPENSES** with further service thereof;
- [8] **AUTHORIZES** the service by the Petitioner to Aveos Fleet Performance Inc. (the "**Debtor**") of the Motion and the *Notice of Intention to Enforce Security over the Debtor's Property* pursuant to s. 244 of the BIA (the "**244 Notice**"); and **LIFTS** the stay of proceedings in the CCAA Proceedings, *nunc pro tunc*, in order to permit the service of this Motion and the 244 Notice;

APPOINTMENT

- [9] **APPOINTS** MNP Ltd., through its representative Sheri Aberback, Trustee, CIRP, effective concurrent with the termination of the CCAA Proceedings, to act as receiver (the "**Receiver**") of the Property (as defined below) of the Debtor until one of the following events comes to pass:
 - (a) the distribution of all the Property; or
 - (b) the issuance of any order by the Court terminating the mandate of the Receiver;

- [10] **DECLARES** that the order (the "**Order**") and its effects shall survive the filing by the Debtor of a notice of intention to make a proposal or a proposal pursuant to the terms of the BIA or the bankruptcy of the Debtor, unless the Court orders otherwise;

RECEIVER'S POWERS

- [11] **AUTHORIZES** the Receiver to exercise the following powers:

11.1 Powers related to the possession of the Property

AUTHORIZES the Receiver to take possession of the Debtor's remaining property and assets as described herein and to exercise the following powers listed hereinafter in the place and stead of the Debtor in respect thereof:

(a) Affected Property of the Debtor:

- All of the Debtor's cash and any sums deposited in any bank account or financial institution in the name of or on behalf of the Debtor, whether held or controlled by the CRO, the Monitor or any other person;
- All other tangible property and assets of the Debtor, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in;
- All the, accounts receivable, claims and input tax credits (or any other form of credits) and any intangible property of the Debtor, wherever situated, and regardless of whose possession they may be in;

(collectively, the "**Property**")

11.2 Powers related to the preservation of the Property:

- (b) all the powers necessary for the preservation and for the protection of the Property including;
- (c) all the powers necessary to control the Property, the place of business and the premises occupied by the Debtor;
- (d) all the powers necessary to grant the Receiver access, at all times, to the place of business and to the premises of the Debtor, to the Property, and to change the locks granting access to such premises and places of business of the Debtor;
- (e) all the powers necessary to grant the Receiver access to all the accounting records of the Debtor, as well as to any document, contract and records of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;

11.3 Powers related to the Debtor's operations

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor, and to exercise all actions, remedies and recourses of the Debtor in collecting such monies;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including, without limitation, for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property, and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings, including appeals or applications for judicial review in respect of any order or judgement pronounced in any such proceeding;
- (j) to exercise all the powers necessary to collect all the accounts receivable and all the other claims of the Debtor and to transact in respect of same, as well as to sign any document for this purpose;
- (k) to exercise all the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution and, without limitation, to transfer sums being held by the Debtor, the CRO, the Monitor, or any other person; to cash any item payable to the Debtor; and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtor's operations or to give effect to the present Order or to any agreement or transaction;
- (l) to report to, meet with and discuss with any appropriate persons, as the Receiver deems appropriate, all matters relating to the Property and the receivership, and to provide creditors and other relevant stakeholders with information in response to requests made by them in writing; provided that, where the Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court;
- (m) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

11.4 Powers related to the distribution or disposition of the Property

- (n) subject to subsection [11.4](o) hereof, to exercise all the powers necessary to carry out the distribution or the disposition of the Property from time to time, at its discretion and in accordance with the rights of the secured creditors and the distribution scheme provided for in the BIA, without the requirement of further order from this Court, to transact in that regard, and to sign any document or any

contract required or useful for these purposes or meant to give effect to any such distribution or disposition;

(o) notwithstanding anything in this Order, the Receiver shall:

i. Reserve, segregate and set aside an amount equal to the value of the Disputed Funds (as such term is defined in the Motion) and shall not distribute or otherwise dispose of same until a final and executory judgment on the OSFI Motion (as such term is defined in the Motion) is rendered directing the Receiver on the modalities of such distribution;

ii. Reserve, segregate and set aside an amount sufficient to pay all costs and professional fees and disbursements incurred or to be incurred to give effect to this Order, to perform the functions and to exercise the powers of the Receiver in such amounts as the Receiver deems appropriate from time to time;

[12] AUTHORIZES the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions on such terms as the Receiver considers appropriate, including the services of R.e.I. group inc., as agent of the Receiver;

DEBTOR'S DUTIES

[13] ORDERS the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the places of business and to the premises of the Debtor, as well as to the Records;

[14] ORDERS the Debtor, its employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;

[15] ORDERS the Debtor not to dispose of, alienate, encumber or otherwise transact in any manner whatsoever with regard to the Property, other than with the authorization of the Receiver;

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY

[16] ORDERS that, subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;

[17] ORDERS that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into

with the Debtor without the prior consent of the Receiver or without the authorization of the Court;

CONTINUATION OF SERVICES

[18] **ORDERS** that any person having an oral or written agreement with the Debtor, as well as any supplier of goods or services to the Debtor is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver and that the Receiver shall be authorized to continue use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver, in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court;

PROTECTION OF PERSONAL INFORMATION

[19] **DECLARES** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver;

LIMITATION OF LIABILITY

[20] **DECLARES** that, subject to the powers granted to the Receiver pursuant to the terms of paragraph 11 of the Order, nothing contained herein shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;

[21] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;

[22] **DECLARES** that section 215 of the BIA applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver, belonging to the same group as the Receiver, or acting as agent

or mandatory thereof, as well as the Receiver's employees, attorneys, principals and those of any agent or mandatory of the Receiver, shall benefit from the protection arising under the present paragraph;

FEES

- [23] **DECLARES** that, as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Receiver, the Receiver's agents, attorneys and other advisors, to the extent of the aggregate amount of \$500,000 (the "**Administration Charge**");
- [24] **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;
- [25] **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) on the day of the Order, all the Debtor's present and future Property;
- [26] **DECLARES** that, notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Debtor and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to the Order and the granting of the Administration Charge does not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtor;
- [27] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the BIA, if applicable;
- [28] **AUTHORIZES** the Receiver to pay from time to time, out of the proceeds of the receivership, the fees and disbursements of the attorneys for the Petitioner at their standard rates and charges in respect of the receivership proceedings and the bankruptcy proceedings, pursuant to copies of invoices to be provided from time to time to the Receiver by counsel to the Petitioner;

GENERAL

- [29] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [30] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;
- [31] **DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;
- [32] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtor's and the Receiver's counsel and to any other party who may request such delivery;
- [33] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Debtor and the Receiver and has filed such notice with the Court;
- [34] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days' notice to the Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
- [35] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [36] **DECLARES** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders

which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;

- [37] REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [38] ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [39] THE WHOLE** without costs, save and except in case of contestation, in which case with costs against the contesting party.

MARK SCHRAGER, J.S.C.

Hearing date: November 22, 2013