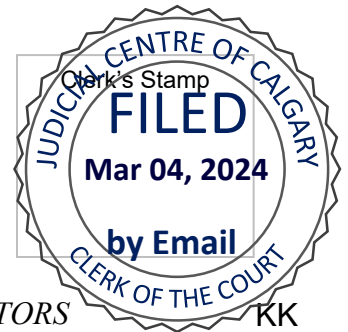


COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **ORDER**
(Sale and Investment Solicitation Process)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
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File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: March 1, 2024

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Whitling

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

UPON THE APPLICATION of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (the “**Applicants**”); **AND UPON** having read the Application, the Affidavit of Michael Woodward sworn February 22, 2024, the Confidential Affidavit of Michael Woodward sworn February 22, 2024, the Affidavit of Micheal Woodward sworn February 28, 2024, and the Confidential Affidavit of Michael Woodward sworn February 28, 2024; **AND UPON** reading the First Report of FTI Consulting Canada Inc. in its capacity as monitor of the Applicants (the “**Monitor**”), filed February 28, 2024; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for Indigo Northern Ventures LP, counsel for the Monitor, and counsel for any other party present at the application; **AND UPON** reviewing the initial order granted in the

within proceedings pursuant to the *Companies' Creditors Arrangement Act (Canada)* (the "CCAA") by the Honourable Justice Gill on February 22, 2024; **AND UPON** noting that capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the SISP;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, this Application is properly returnable today, and no other person is required to have been served with notice of this Application. Capitalized terms used in this Order and not otherwise defined shall be given the same meaning as they have been given in the SISP (as that term is defined below).
2. The "Procedures for the Sale and Investment Solicitation Process" which are attached hereto as Appendix "A" (the "**SISP**") are (subject to any amendments thereto that may be made in accordance therewith and with this Order) hereby approved, and the Applicants and the Monitor are hereby authorized and directed to implement the SISP in accordance with the terms thereof and do all things as may be reasonably necessary to conduct and give full effect to the SISP and implement and carry out the terms thereof.
3. The Boeing Agreement shall not be made available in the VDR or provided to any party without the express written consent of Boeing until such time as the terms of the SISP are amended to the satisfaction of Boeing in its sole discretion or as may be ordered by this Court.
4. The Monitor (and their respective affiliates, partners, directors, employees, agents, consultants, advisors, experts, accountants, counsel and controlling persons) shall have no liability whatsoever for any and all losses, claims, damages or liabilities, of any nature or kind to any person or party for any act or omission related to the SISP, except to the extent such act or omission is the result of gross negligence or wilful misconduct of the Monitor.

5. The Applicants shall serve by courier, fax transmission, email transmission or ordinary post, a copy of this Order on all parties present at this Application and on all parties who are presently on the service list established in these proceedings and such service shall be deemed good and sufficient for all purposes.


Justice of the Alberta Court of King's Bench

Appendix “A”

PROCEDURES FOR THE SALE AND INVESTMENT SOLICITATION PROCESS

Preamble

- A. On February 22, 2024, Lynx Air Holdings Corporation and 1263343 Alberta Inc. (collectively, “Lynx Air”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Court of King's Bench of Alberta (the “**Court**”) pursuant to an initial order granted by the Court on the same day (collectively, as further amended or restated from time to time, the “**Initial Order**”). On March 1, 2024, the Court also issued a Sale Process Order (the “**Sale Process Order**”) that, among other things, authorized Lynx Air to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof.
- B. This SISP sets out the manner in which (i) binding bids for the purchase of the assets of Lynx Air, including *inter alia* the Aircraft Leases and the Boeing Agreement (collectively, the “**Assets**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court approval of any Successful Bid will be sought.
- C. The SISP shall be conducted by Lynx Air under the oversight of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the “**Monitor**”).
- D. Parties who wish to have their bids considered shall participate in the SISP as conducted by Lynx Air and the Monitor in accordance with the present bidding procedures set out herein (the “**Bidding Procedures**”) governing the solicitation of offers or proposals for the acquisition of the Assets.

Defined Terms

1. Capitalized terms used in this SISP have the meanings given thereto in Appendix A.

Bidding Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for one or more sales of the Assets (the “**Opportunity**”).
3. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning Lynx Air and the Assets, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below) and the requisite approvals to be sought from the Court in connection therewith. Lynx Air and the Monitor shall conduct the SISP in the manner set forth herein.

Lynx Air, in consultation with the Monitor and the Interim Lender, may at any time and from time to time, modify, amend, vary or supplement the SISP or the Bidding Procedures, without the need for obtaining an order of the Court, provided that the Monitor determines that such modification, amendment, variation or supplement are useful in order to give

effect to the substance of the SISP, the Bidding Procedures, the Sale Process Order and the Initial Order.

The Monitor shall post on the Monitor's website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and Lynx Air or the Monitor shall inform the bidders impacted by such modifications.

In the event of a dispute as to the interpretation or application of the SISP or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

As more particularly set out herein, a summary of the key dates pursuant to the SISP are as follows:

<u>Event</u>	<u>Date</u>
1. <u>Approval of the SISP and Bidding Procedures by the Court</u>	March 1, 2024
2. <u>Monitor and Lynx Air to create list of Pre-Qualified Known Potential Bidders</u>	March 1, 2024
3. <u>Monitor to prepare the VDR</u>	By no later than March 4, 2024
4. <u>Monitor to distribute Teaser and NDAs to Pre-Qualified Known Potential Bidders</u>	By no later than March 8, 2024
5. <u>Binding Bid Deadline</u>	By no later than April 1, 2024, at 5:00 p.m. (Calgary Time)
6. <u>Auction (if required)</u>	By no later than April 5, 2024, at 5:00 p.m. (Calgary Time)
7. <u>Definitive documentation</u>	By no later than April 7, 2024
8. <u>Approval Application – Successful Bid(s)</u>	By no later than April 10, 2024
9. <u>Outside Date – Closing</u> Outside Date by which the Successful Bid must close	April 12, 2024

Solicitation of Interest: Notice of the SISP

4. As soon as reasonably practicable after the granting of the Sale Process Order, Lynx Air, with input from the Monitor, will prepare a list of potential bidders (the “**Pre-Qualified Known Potential Bidders**”) who may have interest in the Assets.
5. The Monitor shall identify potential buyers and investors.
6. By March 8, 2024, the Monitor will send a package to the Pre-Qualified Known Potential Bidders which includes (i) a process summary (“**Teaser**”); and (ii) a non-disclosure agreement (“**NDA**”).

Virtual Data Room

7. As soon as practicable, and only after reaching agreement with the Boeing and the Counterparties to the Aircraft Leases on appropriate and acceptable confidentiality protections and terms of access, a confidential virtual data room (the “**VDR**”) in relation to the Assets will be made available by the Monitor to each Pre-Qualified Known Potential Bidder who has executed an NDA with Lynx Air in accordance with paragraph 8 herein (and Boeing or any of the Counterparties to the Aircraft Leases as may be necessary). Lynx Air, in consultation with the Monitor, may establish or cause the Monitor to establish separate VDRs (including “clean rooms”), if Lynx Air reasonably determines that doing so would further compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. Lynx Air, in consultation with the Monitor, may also limit the access to any confidential information in the VDR where Lynx Air reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Assets or their value.

Non-Disclosure Agreement

8. In order to participate in the SISP, and prior to the distribution of any confidential information to a Pre-Qualified Known Potential Bidder (including access to the VDR), such Pre-Qualified Known Potential Bidder must deliver to the Monitor an executed non-disclosure agreement in form and substance satisfactory to Lynx Air, and to Boeing, and to the Counterparties to the Aircraft Leases (as may be necessary) in consultation with the Monitor (each, an “**NDA**”), which shall enure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by its Successful Bid. Pursuant to the terms of the NDA to be signed by a Pre-Qualified Known Potential Bidder, each Pre-Qualified Known Potential Bidder will be prohibited from communicating with any other Pre-Qualified Known Potential Bidder regarding the Assets during the term of the SISP, without the consent of the Monitor, in consultation with Lynx Air. Prior to Lynx Air executing an NDA with any Pre-Qualified Known Potential Bidder, any Pre-Qualified Known Potential Bidder may be required to provide evidence, reasonably satisfactory to Lynx Air and to Boeing, in consultation with the Monitor, of its financial wherewithal to complete a transaction in respect of the Assets (either with existing capital or with capital reasonably anticipated to be raised prior to closing) in accordance with the key dates described above and/or to disclose details of their ownership and/or investors.

Binding Offers

9. Any Pre-Qualified Known Potential Bidder that wishes to make a formal offer with respect to the Assets shall submit a binding offer (a “**Binding Offer**”) not later than 5:00 p.m. (prevailing Central Standard Time) on April 1, 2024, or such other date or time as may be agreed by Lynx Air, with the consent of the Monitor (as may be extended the “**Binding Bid Deadline**”).
10. A Binding Offer will only be considered if it:
 - (a) has been received by the Binding Bid Deadline;

- (b) identifies the Assets of interest to the Pre-Qualified Known Potential Bidder;
- (c) if the Assets of interest include the Aircraft Leases, includes consent of the applicable lessors to the assignment to such Aircraft Lease to the Pre-Qualified Known Potential Bidder;
- (d) is not subject to any due diligence or financing condition;
- (e) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
- (f) does not provide for any break fee, expense reimbursement or similar type of payment;
- (g) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein by no later than April 12, 2024 (the “**Outside Date**”);
- (h) contemplates that the Pre-Qualified Known Potential Bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid, is agreeing to refrain from and waive any assertion or request for reimbursement on any basis.

Selection of Successful Bid(s)

11. Lynx Air, in consultation with the Monitor and the Interim Lender, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer.
12. Lynx Air and the Monitor will: (a) review and evaluate each Binding Offer with respect of, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the likelihood of the Pre-Qualified Known Potential Bidder ability to close a transaction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; financial wherewithal to meet all commitments; and required governmental or other approvals), (iii) the likelihood of the Court’s approval of the Binding Offer, (iv) the net benefit to Lynx Air and its stakeholders, and (v) any other factors Lynx Air may deem relevant; and (b) identify the highest or otherwise best non-overlapping bids (the “**Successful Bid(s)**”). Any Successful Bid shall be subject to approval by the Court.
13. In the alternative, Lynx Air, in consultation with the Monitor, may: (a) continue negotiations with a selected number of Pre-Qualified Known Potential Bidders (collectively, the “**Selected Bidders**”) with a view to finalizing an agreement with one or more of the Selected Bidders and declaring such bids to constitute Successful Bids, or (b) conduct one or more auctions (the “**Auction(s)**”) to determine the highest or otherwise best non-overlapping Binding Offers, pursuant to Auction rules to be determined by Lynx Air, in consultation with the Monitor and the Interim Lender.

14. In the event no Pre-Qualified Known Potential Bidder submits Binding Offer, Lynx Air may, and in consultation with the Monitor and the Interim Lender, terminate the SISP.
15. The definitive documentation in respect of the Successful Bid must be finalized and executed no later than April 7, 2024, which definitive documentation shall be conditional only upon the receipt of the Approval Order(s) (as defined below) and the express conditions set out therein. In any event, the Successful Bid must be closed by no later than the Outside Date.

Approval of Successful Bid(s)

16. Lynx Air shall apply to the Court (the “**Approval Application**”) for one or more orders: approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby. The Approval Application will be held on a date to be scheduled by Lynx Air and confirmed by the Court upon application by Lynx Air, who shall use its best efforts to schedule the Approval Application by no later than April 10, 2024, subject to Court availability. With the consent of the Monitor and the Successful Bidder(s), the Approval Application may be adjourned or rescheduled by Lynx Air without further notice, by an announcement of the adjourned date at the Approval Application or in a notice to the service list of the CCAA Proceedings prior to the Approval Application. Lynx Air shall consult with the Monitor and the Successful Bidder regarding the application material to be filed by Lynx Air for the Approval Application.

Further Orders

17. At any time during the SISP, Lynx Air, or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP and the Bidding Procedures including, but not limited to, the continuation of the SISP or with respect to the discharge of their powers and duties hereunder.

APPENDIX A DEFINED TERMS

“Aircraft Leases” means nine 12-year aircraft lease agreements and three engine lease agreements for three CFM LEAP-1B25 spare engines as more particularly described in paragraphs 70 and 71 of the Affidavit of Michael Woodward sworn on February 22, 2024 in the CCAA Proceedings..

“Approval Application” shall have the meaning set forth in paragraph 16.

“Approval Order(s)” shall have the meaning set forth in paragraph 16.

“Auction(s)” shall have the meaning set forth in paragraph 13.

“Bidding Procedures” shall have the meaning set forth in the preamble.

“Binding Offer” shall have the meaning set forth in paragraph 9.

“Boeing” means the Boeing Company.

“Boeing Agreement” means an agreement between Lynx Air and Boeing for the purchase 737 MAX aircraft.

“CCAA Proceedings” shall have the meaning set forth in the preamble.

“CCAA” shall have the meaning set forth in the preamble.

“Court” shall have the meaning set forth in the preamble.

“Initial Order” shall have the meaning set forth in the preamble.

“Interim Lender” means Indigo Northern Ventures LP.

“Monitor” shall have the meaning set forth in the preamble.

“NDA” shall have the meaning set forth in paragraph 6.

“Outside Date” shall have the meaning set forth in paragraph 10(g).

“Sale Process Order” shall have the meaning set forth in the preamble.

“Selected Bidders” shall have the meaning set forth in paragraph 13.

“SISP” shall have the meaning set forth in the preamble.

“Successful Bid” shall have the meaning set forth in paragraph 12.

“Successful Bidder” shall have the meaning set forth in paragraph 12.

“Teaser” shall have the meaning set forth in paragraph 6.

“VDR” shall have the meaning set forth in paragraph 7.