

Clerk's Stamp

COURT FILE NUMBER

COURT

COURT OF KING'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

PROCEEDINGS:

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF NOMODIC
MODULAR STRUCTURES INC., AITHRA PROJECTS INC.
AND NOMODIC MODULAR STRUCTURES (ONTARIO) LTD.

APPLICANT

ATB FINANCIAL

RESPONDENT

NOMODIC MODULAR STRUCTURES INC., AITHRA
PROJECTS INC. AND NOMODIC MODULAR STRUCTURES
(ONTARIO) LTD.

JUDICIAL CENTRE

CALGARY

DOCUMENT

APPLICATION FOR BANKRUPTCY ORDER

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Pantelis Kyriakakis / Nathan Stewart
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**NOTICE TO NOMODIC MODULAR STRUCTURES INC., AITHRA PROJECTS INC. AND
NOMODIC MODULAR STRUCTURES (ONTARIO) LTD.**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: October 6, 2023
Time: 2:00 p.m.
Where: Calgary Courts Centre
Before Whom: Justice D.B. Nixon

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, ATB Financial (“**ATB**”), seeks a Bankruptcy Order, substantially in the forms attached hereto as Schedule “**A**”, granting, among other things, the following relief:

- (a) Abridging and deeming to be good and sufficient the time for service of this Application and the materials in support thereof, pursuant to sections 70, 71, and 72, of the *Bankruptcy and Insolvency General Rules*;
- (b) Dispensing with the requirement, under section 69 of the *Bankruptcy and Insolvency General Rules*, that a registrar in the judicial district of the locality of the debtor must sign and affix the seal of the court to a bankruptcy application prior to service thereof upon the debtor;
- (c) Declaring, pursuant to section 71(1) of the *Bankruptcy and Insolvency General Rules*, that service of this Application and the supporting materials may be completed by way of service upon the Respondents’ counsel;
- (d) Declaring that the Respondents, Nomodic Modular Structures Inc. (“**Nomodic**”), Aithra Projects Inc. (“**Aithra**”), and Nomodic Modular Structures (Ontario) Ltd. (“**Nomodic Ontario**”, Nomodic Ontario, Aithra, and Nomodic are collectively referred to as, the “**Debtors**”), be adjudged bankrupt;
- (e) Declaring that FTI Consulting Canada Inc. (“**FTI**”), a licensed insolvency trustee in the Province of Alberta, be appointed as the Trustee in Bankruptcy of the estate of the Debtors; and,
- (f) Such further and other relief as counsel to ATB may advise and this Honourable Court may deem just and appropriate.

Basis for this claim/facts:

2. The Respondent, Nomodic, is a corporation incorporated pursuant to the provisions of the *Business Corporations Act* (Canada) with a registered office located in the City of Calgary in the Province of Alberta. Nomodic carried on business in the Province of Alberta.

3. The Respondent, Aithra, is a corporation incorporated pursuant to the provisions of the *Business Corporations Act* (Alberta) with a registered office located in the City of Calgary in the Province of Alberta. Aithra carried on business in the Province of Alberta.

4. The Respondent, Nomodic Ontario, is a corporation incorporated pursuant to the provisions of the *Business Corporations Act* (Canada) with a registered office located in the City of Calgary in the Province of Alberta. Nomodic Ontario carried on business in Ontario and Alberta and the greater portion of the property of Nomodic Ontario is located in the City of Calgary, in the Province of Alberta.

5. The sole remaining director of each of the Debtors is located in the City of Calgary, in the Province of Alberta. To the best of ATB's knowledge, Nomodic is the sole shareholder of Aithra, and ATB does not have knowledge of the shareholders of Nomodic Ontario.

6. The head office and all management functions of the Debtors were carried out in the City of Calgary in the Province of Alberta.

7. Each of the Debtors is within the jurisdiction of this Honourable Court.

8. The Debtors are insolvent companies within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**").

9. Nomodic ceased operations and all employees either resigned or were terminated on or around October 1, 2023, with the exception of the Chief Executive Officer and sole remaining director, Mr. Kevin Read.

10. There are significant concerns regarding the Debtors' ongoing use of their assets, property, and undertakings, to the detriment of ATB and all other creditors and stakeholders.

11. As of October 6, 2023, each of the Debtors were justly and truly indebted to the applicant, ATB, in the amount of \$3,073,408.50 plus interest, costs, fees and expenses including, without limitation, solicitor and own client costs on a full indemnity basis (collectively, the "**Indebtedness**").

12. ATB holds security for payment of the Indebtedness and estimates that the value of such security is approximately \$2,777,163.98, as described in further detail in the Affidavit of Muhammad Ashraf, sworn on October 6, 2023.

13. The Debtors have unsecured debts owing to ATB in an amount in excess of one thousand (\$1,000.00) dollars.

14. The Debtors, within the six months preceding the date of the filing of this Application, have committed acts of bankruptcy, including, among others:

- (a) each of the Debtors has ceased to meet its liabilities generally as they become due and suspended payment of its debts, as contemplated by sections 42(1)(h) and 42(1)(j) of the BIA;
- (b) Nomodic and Nomodic Ontario have each assigned, removed, secreted or disposed of, or attempted to, or are about to, assign, remove, secrete, or dispose of, any of their property with intent to defraud, defeat or delay their respective creditors or any of them, as contemplated by the BIA; including, among other things, by:
 - (i) concealing and wrongfully withholding property subject to the various security interests in favour of ATB, including certain cheques, and have taken steps to delay ATB's enforcement of its rights as a secured creditor;
 - (ii) disposing of property subject to the various security interests in favour of ATB, including cash held in certain bank accounts, by transferring such property to various creditors of the applicable Debtors; and,
 - (iii) concealing certain property, including a \$1.639 million cheque, for the purpose of delaying, hindering or defeating their creditors generally, and ATB specifically.

15. The Debtors' counsel has endorsed counsel's consent on a Bankruptcy Order, with respect to the Debtors, which is currently enforceable.

16. FTI is a licensed trustee in bankruptcy and qualified to act as trustee of the properties, assets and undertakings of the Debtors, and has agreed to act in such capacity.

Affidavit and other material or evidence to be relied on in support of this application:

17. The Affidavit of Truth of Muhammad Ashraf, sworn on October 6, 2023, to be filed.

18. The Consent to Act as Trustee of FTI, to be filed.
19. Such further and other evidence as counsel for ATB may advise.

Applicable rules:

20. *Bankruptcy and Insolvency General Rules*, Sections 9-13, 69-72.
21. *Alberta Rules of Court*, Rules 1.3, 1.4, 6.2, 6.3, 6.9(1).
22. Such further and other rules as counsel for ATB may advise.

Applicable acts and regulations:

23. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, Sections 42, 43, 183(1)(d), 187(3), 192(1).
24. Such further and other acts and regulations as counsel for ATB may advise.

Any Irregularity Complained of or Objection Relied On:

25. There are no irregularities complained of, or objections relied on.

How the Application is Proposed to be Heard or Considered:

26. ATB proposes that the Application be heard by Webex videoconference or in person with one, some, or all of the parties present.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

DATED at the City of Calgary, in the Province of Alberta, this 6th day of October, 2023.

ATB FINANCIAL

Per: "McCarthy Tétrault LLP"
McCarthy Tétrault LLP
Counsel for ATB Financial

ISSUED at the City of Calgary, in the Province of Alberta, this 6th day of October, 2023.

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"
CONSENT BANKRUPTCY ORDER

[see attached]

Clerk's Stamp

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McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Pantelis Kyriakakis / Nathan Stewart
Tel: 403-260-3536 / 3536
Fax: 403-260-3501
Email: pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:

_____, 2023

LOCATION OF HEARING OR TRIAL:

Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER:

Registrar _____

UPON THE APPLICATION FOR BANKRUPTCY ORDER (the "**Application**") filed by ATB Financial (the "**Applicant**"), creditor of Nomodic Modular Structures Inc. ("**Nomodic**") Aithra Projects Inc. ("**Aithra**"), and Nomodic Modular Structures (Ontario) Ltd. ("**Nomodic Ontario**", Nomodic Ontario, Aithra and Nomodic are collectively referred to as, the "**Bankrupts**"), filed the ____ day of _____, 2023; **AND UPON HAVING READ** the Application and the Affidavit of Truth of _____, sworn on _____, 2023 (the "**Affidavit**"), filed in support hereof; **AND UPON HAVING READ** the Affidavit of Service of _____, sworn on _____, 2023 (the "**Service Affidavit**"), filed; **AND UPON NOTING** the consent of _____, in its capacity as court-appointed trustee in bankruptcy of the Bankrupts (the "**Trustee**") to the within Order; **AND UPON** noting the consent endorsed hereon of counsel to the Bankrupts, for the Bankrupts; **AND UPON HEARING** the submissions of counsel for the Applicant and any other parties present at the

Application; **AND UPON** it appearing that all interested and affected parties have been served with notice of this Application; **AND UPON** it appearing to the Court that the following acts of bankruptcy have been committed by the Bankrupts:

- (a) the debts owing by the Bankrupts exceed \$1,000; and,
- (b) within the 6 months preceding the date of filing of the Application for Bankruptcy Order, the Bankrupts ceased to meet its liabilities generally as they become due.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The time for service of the Application is abridged, if necessary, the Application is properly returnable today, service of the Application on the service list (the "**Service List**") attached as Exhibit "A" to the Service Affidavit, in the manner described in the Service Affidavit, is good and sufficient, and no other persons other than those listed on the Service List, are entitled to service of the Application.
2. Nomodic, a corporation who carries on business in Alberta, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against Nomodic.
3. Aithra, a corporation who carries on business in Alberta, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against Aithra.
4. Nomodic Ontario, a corporate who carries on business in Ontario, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against Nomodic Ontario.
5. The Trustee be and is hereby appointed as trustee of the estate of the Bankrupts, Nomodic, Aithra, and Nomodic Ontario, without security.
6. The costs of and incidental to this Application and of this Order shall be paid to the Applicant, on a full indemnity, solicitor and his own client basis, out of the assets of the estate of the Bankrupts, Nomodic, Aithra, and Nomodic Ontario.
7. This Order must be served only upon those interested parties attending or represented at the within application and serve may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

8. Service of this Order on any party not attending this Application is hereby dispensed with.

REGISTRAR IN BANKRUPTCY

CONSENTED TO BY:

BORDEN LADNER GERVAIS LLP

Per: 

Name: Kevin E. Barr
Counsel to Nomodic Modular Structures
Inc., Aithra Projects Inc., and Nomodic
Modular Structures (Ontario) Ltd.