

NO. S-1810743
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c.57, AS AMENDED**

AND

**IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c.44, AS AMENDED**

AND

**IN THE MATTER OF A PLAN OR COMPROMISE AND ARRANGEMENT OF
PUREWAL BLUEBERRY FARMS LTD., 0726357 B.C. LTD., 0726365 B.C. LTD.,
0726368 B.C. LTD. and PUREWAL FARMS PARTNERSHIP**

EIGHTH REPORT OF THE MONITOR

SEPTEMBER 25, 2019

INTRODUCTION

1. This report (“**Eighth Report**”) has been prepared by FTI Consulting Canada Inc. (“**FTI**”) in its capacity as the court-appointed Monitor (the “**Monitor**”) pursuant to an order of the Supreme Court of British Columbia (the “**Court**”) pronounced October 11, 2018 (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c.36, as amended.
2. On April 30, 2018, Purewal Blueberry Farms Ltd. (“**Purewal**”) filed a Notice of Intention to File a Proposal (“**NOI**”) with the Superintendent of Bankruptcy pursuant to Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and FTI was appointed trustee under the NOI (the “**Proposal Trustee**”).
3. Purewal sought and obtained extensions of its stay of proceedings under the NOI as follows:
 - (a) By Order of the Court pronounced May 30, 2018 extending the time to file a proposal under its NOI (and corresponding stay of proceedings) to July 13, 2018;
 - (b) By Order of the Court pronounced July 5, 2018 extending the time to file a proposal under its NOI (and corresponding stay of proceedings) to August 27, 2018; and
 - (c) By Order of the Court pronounced August 24, 2018 extending the time to file a proposal under its NOI (and corresponding stay of proceedings) to October 11, 2018.
4. Additional Orders sought and obtained by Purewal in the NOI proceedings included:
 - (a) An Order of the Court pronounced May 30, 2018 approving:

- i. An interim financing facility (the “**DIP Loan**”) from Blueberry Holding (GP) Ltd. (in such capacity, the “**DIP Lender**”) in the maximum principal amount of \$500,000; and
 - ii. An administrative charge to secure the fees and disbursements of Purewal’s legal counsel, the Proposal Trustee, and its legal counsel (the “**Administrative Charge**”) for an amount up to \$200,000.
- (b) Two Orders of the Court pronounced July 5, 2018 approving:
 - i. A claims process (the “**Claims Process**”) by the Proposal Trustee to assist in identifying and understanding the quantum and extent of creditor’s claims against Purewal (the “**Claims Process Order**”); and
 - ii. A sale process (the “**Sale Process**”) for Purewal’s processing plant in accordance with a proposed set of bidding procedures, to be administered by the Proposal Trustee (the “**Sale Process Order**”).
5. On October 11, 2018, the NOI proceedings were converted into this CCAA proceeding by an order of this Court (the “**Initial Order**”), and all of the orders granted in the NOI proceedings, including but not limited to the Claims Process Order and the Sale Process Order, were continued into these CCAA proceedings.
6. Three companies that were not included in the NOI proceedings were added to these CCAA proceedings; namely 0726357 B.C. Ltd. (“**6357**”), 0726365 B.C. Ltd. (“**6365**”) and 0726368 B.C. Ltd. (“**6368**”). 6357, 6365 and 6368 (collectively the “**Brothers’ Companies**”) are holding companies owned by Malkiat, Charan and Gurjit Purewal, respectively.
7. Among other things, the Initial Order extended the Administrative Charge over the property of Purewal and the Brothers’ Companies.

8. On October 11, 2018, the Court made a further Order approving an asset purchase agreement submitted by 0801226 B.C. Ltd. (a party related to the DIP Lender) in the Sale Process, as the stalking horse bidder in the Sale Process.
9. On November 2, 2018, the Petitioners sought and obtained an order of this Court extending the stay of proceedings provided in the Initial Order to December 14, 2018.
10. On December 12, 2018, the Petitioners sought and obtained two orders of this Court:
 - (a) The first order approved an Offer to Purchase and Agreement of Purchase and Sale dated November 21, 2018 between Purewal and 1176094 B.C. Ltd. for the processing plant owned by Purewal; and
 - (b) The second order approved the extension of the stay of proceedings provided in the Initial Order to March 1, 2019 as well as increasing the Administrative Charge from a maximum aggregate of \$200,000 to \$300,000.
11. On February 6, 2019, the Petitioners sought and obtained two orders of this Court:
 - (a) The first order approved an extension for the closing of the sale of Purewal's processing plant to March 8, 2019 or a date as agreed between the Monitor, on behalf of Purewal, and the purchaser no later than 21 days after March 8, 2019; and
 - (b) The second order approved the extension of the stay of proceedings provided in the Initial Order to April 15, 2019, increased the Administrative Charge from an aggregate of \$300,000 to \$450,000 and added Purewal Farms Partnership (the "**Partnership**") as a petitioner to these proceedings (collectively with Purewal and the Brother's Companies, the "**Petitioners**").

12. On February 6, 2019, the Monitor sought and obtained an order of this Court approving its fees and expenses for the period from April 1, 2018 to November 30, 2018 and approving the fees and expenses of its legal counsel for the period from June 1, 2018 to November 30, 2018.
13. On April 12, 2019, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to May 6, 2019.
14. On May 6, 2019, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to May 10, 2019.
15. On May 8, 2019, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to August 13, 2019 and expanding the Monitor's powers.
16. On August 12, 2019, the Petitioners sought and obtained two orders of this Court:
 - (a) The first order (the "**Sale Approval Order**") approved the sale of a property located at 13549 Hale Road, Pitt Meadows (the "**House Property**"), the details of which were described in the Seventh Report of the Monitor; and
 - (b) The second order approved the extension of the stay of proceedings provided in the Initial Order to September 30, 2019 and authorized the Petitioners' legal counsel to distribute the surplus funds remaining from the sale of Purewal's processing plant to the Monitor after providing for certain holdbacks related to priority claims (the "**Distribution Order**").
17. The reports of the Proposal Trustee and the Monitor and other information in respect of these proceedings are posted on the Monitor's website at <http://cfcanada.fticonsulting.com/purewal/>.

PURPOSE

18. The purpose of the Eighth Report of the Monitor is to provide the Court with an update on the following:
 - (a) The status of the Petitioners' funding;
 - (b) The status of the Berar claim and CRA claim;
 - (c) The rent due from Thiara related to the 2018 blueberry harvest from the Richmond Farm;
 - (d) An update on the closing of the offer on the House Property;
 - (e) The results of the Expanded Claims Process; and
 - (f) The Monitor's views and recommendations regarding the Petitioners' request for an extension of the provisions of the Initial Order, including the stay of proceedings, to January 15, 2020.

TERMS OF REFERENCE

19. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Petitioners' books and records and discussions with various parties (collectively, the "**Information**").
20. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
21. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
22. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
23. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

UPDATE ON THE PETITIONERS' FUNDING

24. As indicated previously, pursuant to the Distribution Order the balance of the proceeds from the sale of the processing plant were to be released by the Petitioner's legal counsel to the Monitor after providing for the following holdbacks:
- (a) An amount of \$1,955,000 plus applicable taxes with respect to the claim of Harjinder Singh Berar, Karmjit Singh Berar, Berar Farms Ltd. and Nelson Road Investments Ltd. (collectively "**Berar**"); and
 - (b) An amount of \$1,778,724.57 with respect to the deemed trust claim of the Canada Revenue Agency ("**CRA**").
25. Accordingly, the Petitioners' legal counsel remitted the sum of \$488,012 to the Monitor which was deposited into the Monitor's trust account.
26. The Monitor utilized the proceeds to bring the professionals who were subject to the Administration Charge current.
27. In addition, the Monitor paid the outstanding fees and expenses of the former staff assisting the Petitioners in updating the books and records, filing overdue statutory returns and other administrative matters.
28. As detailed in a subsequent section of this report, the sale of the House Property closed resulting in cash proceeds being paid to the Petitioners' legal counsel. After payment of the outstanding taxes and utilities associated with the property, an amount of approximately \$1.7 million was forwarded to the Monitor.
29. The following is a summary of the receipts and disbursements in the Monitor's trust account for the period from November 15, 2018 to September 24, 2019:

Summary of Receipts and Disbursements	
Receipts	
Advances pursuant to DIP Loan	265,000
Extension fee	150,000
Funds released from Clark Wilson	2,248,043
Interest income	441
Total receipts	2,663,484
Disbursements	
DIP Lender fee	10,500
Insurance	93,279
Security	62,827
BC Hydro	73,029
Contractor fees and expenses	186,377
Payment to City of Pitt Meadows	51,080
Petitioners' legal counsel fees and disbursements	90,454
Monitor's fees and disbursements	177,053
Monitor's legal counsel fees and disbursements	70,523
Bank charges	95
Total disbursements	815,217
Excess of receipts over disbursements	\$ 1,848,267

30. The Monitor is currently holding funds of approximately \$1.8 million.
31. The Petitioners' legal counsel is holding funds totalling \$4.6 million. The purpose of the holdbacks are as follows:

Funds held by Petitioners' legal counsel	
Balance of trust account	4,615,319
Holdback for Berar claim (including taxes)	(2,248,250)
Holdback for CRA deemed trust claim	(1,778,725)
Holdback relating to the House Property sale	(581,070)
Interest earned but not distributed	(7,274)
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THE CRA AND BERAR CLAIMS

CRA

32. As noted in the Seventh Report of the Monitor, CRA's claim against Purewal for unremitted source deductions is comprised of amounts due by Purewal, Purewal Brothers Enterprises Ltd. ("**PBE**"), 0740656 B.C. Ltd. ("**074**") and 1078429 B.C. Ltd. ("**107**").
33. The Monitor asked CRA to provide it with CRA's authority to assess the claims of these other companies against Purewal.
34. CRA has now provided the Monitor with a response to its query. The Monitor has forwarded the response to its legal counsel for review and comment, which at the time of this report is in progress.

Berar

35. As detailed in prior reports of the Monitor, the Berar claim relates to a complex series of transactions related to a 140 acre farm with blueberry plantings (the "**Richmond Farm**") that was previously owned by Purewal.
36. In September 2013, Purewal sold an undivided 1/10 interest in the Richmond Farm to Harjinder Singh Berar and Karmjit Kaur Berar and an undivided 4/10 interest in the Richmond Farm to Berar Farms Ltd. (collectively "**Berar**").
37. In conjunction with the sale, the Partnership entered into a lease with Berar (the "**Richmond Lease**").

38. In support of the Partnership's obligations under the Richmond Lease, Purewal and the Brothers' Companies provided guaranties to Berar. As security for the guaranties, Purewal and the Brothers' Companies granted collateral mortgages in favour of Berar over all of the properties owned by Purewal and the Brother's Companies.
39. In February 2016, Purewal sold its remaining 5/10 undivided interest in the Richmond Farm to 1043806 B.C. Ltd. ("104"). Pursuant to the terms of the sale agreement, 104 covenanted to assume the Richmond Lease and indemnify Purewal against any liability under the Richmond Lease.
40. In addition, 104 provided a covenant to use its best commercial efforts to provide Berar with alternative security so that the guaranties of Purewal and the Brother's Companies could be discharged.
41. Under the terms of the Richmond Lease, Purewal was prohibited from assigning the lease without the consent of Berar, which consent was not to be unreasonably withheld.
42. Subsequent to closing the sale with 104, Purewal forwarded a document to 104 purporting to assign the Richmond Lease to 104. The document was signed by Purewal, 104 and representatives of the Brother's Companies, however the Monitor was advised by Berar that it did not consent to the assignment.
43. The Monitor is further advised by Berar that to date 104 has not provided alternative security.
44. Berar filed a claim in these proceedings for its rent arrears due from September 2017 in relation to the 2018 blueberry harvest, and in addition raised the following concerns:

- (a) The 2018 rent payment in the amount of \$339,900 plus taxes relating to the 2019 blueberry harvest is now due;
 - (b) Due to the Petitioners' lack of working capital, the Richmond Farm has suffered damages due to neglect;
 - (c) Given that the Partnership is no longer farming the Richmond Farm, Berar is seeking control of the Richmond Lease for its remaining term; and
 - (d) As a result of the damages, the rent that Berar will now be able to achieve has been significantly reduced.
45. After several meetings and related telephone conversations, the Petitioners and Berar agreed to settle the claim as follows:
- (a) An amount of \$1,955,000 (plus applicable taxes) will be paid to Berar from the closing proceeds being held by the Petitioners' legal counsel;
 - (b) The rights of the Partnership as tenant under the Richmond Lease will be assigned to Berar;
 - (c) Each of Berar, the Partnership and Purewal will provide mutual releases with respect to any claims related to the Richmond Lease and Berar will discharge his mortgage over the House Property; and
 - (d) The Petitioners will seek a vesting order in these proceedings with respect to any claims registered against the Petitioners' interest in the Richmond Lease.
46. However, prior to the hearing on August 12, 2019, legal counsel for 104 forwarded a letter to the Petitioners' counsel and Berar's counsel raising concerns regarding the vesting order being sought as part of the settlement with Berar.

47. Accordingly, the Petitioners agreed to adjourn the portion of the hearing dealing with the vesting order.
48. As indicated previously, the Petitioner's legal counsel continues to hold funds sufficient to satisfy the Berar claim and at this time, discussions are continuing as to how to resolve the settlement.

RENT DUE FROM THIARA

49. As detailed in the Seventh Report of the Monitor, the Petitioners purported to sublet the Richmond Farm to another farmer, Barinder Thiara ("**Thiara**") for the 2018 blueberry harvest.
50. However, Thiara failed to make payment of the agreed upon rent amount to any of the Petitioners, 104 or Berar.
51. As a result, in November 2018 104 sought and obtained judgement against Thiara and garnishment orders against the two processors used by Thiara for the 2018 harvest.
52. In addition, in April 2019 the Petitioners' legal counsel sent a letter to Thiara demanding payment of the outstanding rent payment for 2018 and subsequently issued a statement of claim.
53. Thiara filed a response to the Petitioners' claim indicating that due to the confusion regarding its sublease, it had not issued payment.
54. Following subsequent discussions as between the Monitor, Berar and Thiara, and legal counsel for the Petitioners, Berar, Thiara and 104, Thiara paid \$250,000 plus the costs awarded for 104's legal counsel, to 104's legal counsel.

55. 104's legal counsel has agreed to remit the funds to Berar upon receipt of an accounting from Berar for the prior years' rent receipts.
56. As agreed in the proposed settlement between the Petitioners and Berar, the claim of Berar against the Petitioners will be reduced by the amount of the rent upon payment to Berar.

THE SALE OF THE HOUSE PROPERTY

57. Pursuant to the Sale Approval Order, the sale of the House Property closed on September 5, 2019.
58. After payment of the commission and adjustments for property taxes and utilities, net proceeds of approximately \$2.3 million were paid to the Petitioner's legal counsel.
59. Subsequent to closing, the Petitioners' legal counsel paid \$20,755 to the City of Pitt Meadows in relation to all outstanding property taxes and interest on delinquent amounts and a further sum of \$7,064 to the City of Pitt Meadows with respect to outstanding metered water billings.
60. One of the documents required for closing was a Statutory Declaration regarding the owner's residency for income tax purposes. Although the document was signed by the Petitioners' representative, it was not sworn in front of a lawyer.
61. As a result, the document could not be relied upon by the purchaser at the time of closing and accordingly the Petitioners' counsel agreed to holdback 25% of the net sale proceeds, or an amount of approximately \$581,000.
62. The Petitioners' legal counsel forwarded the net proceeds of approximately \$1.7 million to the Monitor which has been deposited into its trust account.

63. Upon the provision of a duly signed and sworn Statutory Declaration to the purchaser's legal counsel, the holdback can be released to the Monitor.

AN UPDATE ON THE CLAIMS PROCESS

64. As noted in the Seventh Report, pursuant to the Expanded Claims Order the Monitor:
- (a) Forwarded a Claims Package to all known creditors of the Petitioners;
 - (b) Published a notice in the Vancouver Sun newspaper; and
 - (c) Posted the applicable documents on its website.
65. The Monitor worked with the Petitioners former accountant to review all of the claims received and issued notices of revision to several creditors on the basis of unreconciled differences between the Petitioners records and those of the creditor.
66. To date, no creditor has issued a Notice of Dispute although a few creditors provided additional documents for the Monitor's consideration.
67. The Monitor is working through the few remaining claims as well as reviewing the basis provided by CRA for its deemed trust claim.
68. As noted previously CRA's claim for GST was still pending finalization of GST returns. The Monitor understands that the GST returns have now been brought up to date and accordingly expects receipt of CRA's claim for unremitted GST in the near term.
69. Once the claims have been finalized, the Monitor will be able to provide a final summary of the claims.

OTHER ISSUES

70. The Monitor is continuing to investigate the circumstances surrounding the Airport Lease.
71. The Monitor requested some information from the Petitioners' former external accountant which has now been received.
72. The Monitor is now consulting with its legal counsel on the appropriate next steps with respect to the Airport Lease as well as the equipment transferred from the Partnership to a company controlled by Parminder and Tajinder Purewal.
73. As indicated previously, the Monitor is holding proceeds in the approximate amount of \$1.8 million. Accordingly, given the lack of continuing operations, the Company has sufficient cash flow to pay its professionals and operating costs through the extension period of the stay being sought by the Petitioners.

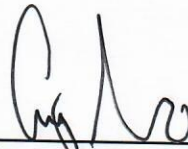
PETITIONERS' REQUEST TO EXTEND THE STAY OF PROCEEDINGS

74. The Petitioners are seeking an extension of the provisions of the Initial Order, including the stay of proceedings, to January 15, 2020. Absent such extension, the stay will expire on September 30, 2019.
75. The Petitioners are seeking an extension for the following reasons:
 - (a) To finalize its settlement with Berar;
 - (b) To finalize the Claims Process, including the review of CRA's claim;
 - (c) To finalize the Monitor's investigation and evaluate the remedies with respect to a potential realization on the Airport Lease; and

- (d) To consider the process for a distribution to unsecured creditors.
76. The Monitor has considered the test that the Court must be satisfied with in order to grant an extension of the stay of proceedings to the Petitioners, namely that:
- (a) the Petitioners must be acting in good faith and with due diligence; and
 - (b) the Petitioners satisfy the Court that circumstances exist that make the order appropriate.
77. Given that the sale of the majority of the Petitioners' assets have now been completed, the Monitor believes that despite the concerns raised in its Fifth Report the Petitioners are acting in sufficiently good faith and due diligence such that the extension of the stay of proceedings is in the best interests of all stakeholders.
78. Accordingly, the Monitor supports the Petitioners' request for an extension of the stay of proceedings to January 15, 2020.

All of which is respectfully submitted this 25th day of September, 2019.

FTI Consulting Canada Inc., in its capacity as
Monitor of Purewal Blueberry Farms Ltd.,
0726365 B.C. Ltd., 0726368 B.C. Ltd., 0726357
B.C. Ltd. and Purewal Farms Partnership



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