

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., PUREWAL FARMS PARTNERSHIP and 0740656 B.C. LTD.**

**FIFTEENTH REPORT OF THE MONITOR**

**January 25, 2021**

## INTRODUCTION

1. This report (the “**Fifteenth 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. C-36, (the “**CCAA**”) as amended.
2. Purewal Blueberry Farms Ltd. (“**Purewal**”) commenced operations in 1981 for the purpose of producing, packing and marketing blueberries. Purewal was formed by three brothers: Malkiat Singh Purewal, Charan Singh Purewal and Gurjit Singh Purewal.
3. In May 2005, Purewal was amalgamated with two other corporate entities: Berar Farms Ltd. and Purewal Farms Ltd.
4. Since its inception, Purewal developed a reputation for quality blueberries, which it sold as fresh product predominantly through Safeway stores in Canada and the USA and in frozen form through an established network of North American fruit brokers.
5. Over the years Purewal expanded its operations to the point where, in the late 1990’s, it was recognized as one of the largest blueberry producers in North America, producing and marketing between 20 and 25 million pounds of blueberries per year.
6. During its off-peak season, Purewal also co-packed approximately 25 million pounds annually of mandarin and navel oranges for Safeway, Costco and Save-On-Foods.
7. As competition in the industry grew and profit margins declined, Purewal was slow to react and did not make the changes necessary to reduce its operating costs.

8. In addition, in 2007/2008, Purewal expanded its operations by planting 165 acres of blueberries on leasehold land in Pitt Meadows at a cost of approximately \$3 million, funded from its operating revenues.
9. As a result of these decisions, Purewal suffered a significant negative impact on its cash flow and liquidity leading to a loss of confidence by its supply chain and customers utilizing the capacity in its processing plant.
10. Due to increasing pressure from its secured lenders, suppliers and customers, Purewal commenced a process to reduce its financial obligations and restore its profitability.
11. In 2013 Purewal sold 368 acres of blueberry producing properties in Abbotsford, Coquitlam, Pitt Meadows and Richmond. Total proceeds from these land sales was approximately \$37 million which was primarily used to pay down long-term debt and bring the accounts payable current.
12. Since its inception Purewal was a family-run business with management and direction being provided by the three founding brothers. As the brothers aged and began to withdraw from the business, a coordinated succession plan was not implemented.
13. Accordingly, the management of the business suffered, resulting in poor financial results and increasing pressure from the secured lender for either an exit strategy or a succession plan.
14. In the fall of 2017, the secured lender had become frustrated with management's indecision and commenced foreclosure proceedings. On January 11, 2018, the secured lender (Blueberry Holdings (GP) Ltd.) obtained an Order Nisi subject to a six-month redemption period expiring in July 2018.

15. After several discussions amongst the three founding shareholders, it was decided by a majority vote to file a Notice of Intention to File a Proposal (“**NOI**”) on the basis that Purewal had significant value and an orderly process was required in order to maximize its value for all stakeholders.
16. Accordingly, on April 30, 2018, Purewal filed a 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 and FTI was appointed trustee under the NOI (the “**Proposal Trustee**”).

## **COURT PROCEEDINGS**

17. Subsequent to filing its NOI, Purewal sought and obtained extensions of the time to file a proposal under its NOI and its corresponding stay of proceedings as follows:
  - (a) by order of the Court pronounced May 30, 2018 extending the time to July 13, 2018;
  - (b) by order of the Court pronounced July 5, 2018 extending the time to August 27, 2018; and
  - (c) by order of the Court pronounced August 24, 2018 extending the time to October 11, 2018.
18. 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 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; and
- (b) two orders of the Court pronounced July 5, 2018 approving:
  - i. a 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**”).
- 19. On October 11, 2018, the NOI proceedings were converted into these CCAA proceedings by 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.
- 20. 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.
- 21. Among other things, the Initial Order extended the Administrative Charge over the property of Purewal and the Brothers’ Companies.
- 22. 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.

23. 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.
24. 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.
25. 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 CCAA proceedings (collectively with Purewal and the Brothers' Companies, the "**Petitioners**").
26. 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.

27. 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.
28. 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.
29. 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.
30. On August 12, 2019, the Petitioners sought and obtained two orders of this Court:
  - (a) the first order approved the sale of a property located at 13549 Hale Road, Pitt Meadows, 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.
31. On September 30, 2019, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to January 15, 2020.
32. On January 8, 2020, the Petitioners sought and obtained three orders of this Court:
  - (a) the first order approved an Amended and Restated Settlement Agreement dated December 2019 as between the Petitioners and Berar Farms Ltd. and provided a vesting order to facilitate the closing of the transaction;
  - (b) the second order extended the stay of proceedings provided in the Initial Order to March 18, 2020; and

- (c) the third order compelled the purchaser of Purewal's processing plant (1176094 BC Ltd.) to allow the Petitioners access to the server which was acquired in the sale of the processing plant for the purpose of making a copy of Purewal's electronic accounting records.
33. On January 8, 2020, counsel to the Monitor sought and obtained an order of the Court approving the Monitor's fees and expenses for the period from December 1, 2018 to June 30, 2019 and for the Monitor's legal counsel for its fees and expenses for the period from February 21, 2019 to December 23, 2019.
34. On March 6, 2020, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to June 19, 2020.
35. On June 17, 2020, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to August 19, 2020.
36. On August 19, 2020, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to September 30, 2020.
37. On September 28, 2020, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to October 2, 2020.
38. On October 2, 2020, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to November 30, 2020.
39. On November 25, 2020, the Petitioners sought and obtained an order of the Court extending the stay of proceedings provided in the Initial Order to February 1, 2021.



40. In addition, on November 25, 2020, the Monitor sought and obtained an order of the Court adding 0740656 B.C. Ltd. (“**074**”) as a Petitioner to these CCAA proceedings.
41. The reports of the Proposal Trustee and the Monitor and other information in respect of these CCAA proceedings are posted on the Monitor’s website at <http://cfcanada.fticonsulting.com/purewal/>.

## **PURPOSE**

42. The purpose of the Fifteenth Report of the Monitor is to provide the Court with an update on the following:
- (a) the activities of the Petitioners;
  - (b) a summary of the cash receipts and disbursements of the Monitor for the period from November 15, 2018 to January 21, 2021; and
  - (c) the Monitor's views and recommendations regarding its request for an extension of the provisions of the Initial Order, including the stay of proceedings, to June 30, 2021.

## **TERMS OF REFERENCE**

43. 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**").
44. 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.
45. 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.
46. 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.
47. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

## **THE ACTIVITIES OF THE PETITIONERS**

48. As indicated in the Fourteenth Report, the Petitioners were in the process of finalizing the claim of the Canada Revenue Agency (“**CRA**”) relating to unremitted GST.
49. As noted in the prior report, there is an outstanding issue related to CRA’s position with respect to its set off of post filing credits against pre-filing debt of the Petitioners.
50. The Monitor has discussed the issue with its legal counsel and is currently in the process of trying to resolve the matter with CRA on a consensual basis.

## **UPDATE ON THE PETITIONERS’ FUNDING**

51. As noted in the Fourteenth Report, there were some accrued but unpaid professional fees and fees due to the Petitioners’ former accountant.
52. Subsequent to the Fourteenth Report those fees were brought current.
53. In addition, some interest income was earned on the funds deposited in the Monitor’s trust account.
54. The following is a summary of the receipts and disbursements in the Monitor’s trust account for the period from November 15, 2018 to January 21, 2021:

Summary of Receipts and Disbursements		
<b>Receipts</b>		
Advances pursuant to DIP Loan		265,000
Extension fee		150,000
Funds released from Clark Wilson		3,061,062
Interest income		24,854
<b>Total receipts</b>		<b>3,500,916</b>
<b>Disbursements</b>		
DIP Lender fee		10,500
Insurance		93,279
Security		62,827
BC Hydro		73,267
Contractor fees and expenses		388,672
Payment to City of Pitt Meadows		51,080
Petitioners' legal counsel fees and disbursements		190,186
Monitor's fees and disbursements		286,627
Monitor's legal counsel fees and disbursements		108,988
Bank charges		150
<b>Total disbursements</b>		<b>1,265,576</b>
<b>Excess of receipts over disbursements</b>		<b>\$ 2,235,340</b>

55. As indicated, the Monitor is holding funds of approximately \$2.2 million as at January 21, 2021.

### **MONITOR'S REQUEST TO EXTEND THE STAY OF PROCEEDINGS**

56. The Monitor is seeking an extension of the provisions of the Initial Order, including the stay of proceedings, to June 30, 2021. Absent such extension, the stay will expire on February 1, 2021.

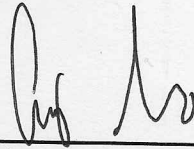
57. The following summarizes the issues to be resolved in order to finalize these CCAA proceedings:

- (a) as indicated previously, CRA’s claim with respect to the Petitioners’ GST returns requires resolution so that the CRA may submit its amended proof of claim in these CCAA proceedings;
  - (b) as detailed in the Fourteenth Report, the Monitor is of the view that the loss of the PMAS Lease by 074 was the result of a transfer at undervalue. Accordingly, the Monitor, with support from the major unsecured creditors of the Petitioners, intends to bring an application seeking to unwind this transaction for the benefit of the unsecured creditors; and
  - (c) the Monitor understands that the Petitioners intend to bring an application for a substantive consolidation of the Petitioners (the “**Consolidation Application**”) for the purpose of a dividend to the unsecured creditors. The Monitor has had some preliminary discussions with the Petitioners regarding the nature and timing of the Consolidation Application, which will need to be brought before the Monitor can issue a dividend to the unsecured creditors.
58. The Monitor’s legal counsel is in the process of preparing its application materials with respect to the PMAS Lease and is in discussions with legal counsel for Phoenix Farms Ltd. with respect to setting a date for that hearing.
59. 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.

60. Given that the Petitioners' assets have now been monetized and the remaining issues, with the possible exception of the Consolidation Application, are within the scope of the Monitor's expanded powers to pursue, the Monitor believes that 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.
61. Accordingly, the Monitor supports the Petitioners' request for an extension of the stay of proceedings to June 30, 2021.

All of which is respectfully submitted this 25<sup>th</sup> day of January, 2021.

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., Purewal Farms Partnership and  
0740656 B.C. Ltd.



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