

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.  
and 0726368 B.C. LTD.**

**FIRST REPORT OF THE MONITOR**

**OCTOBER 31, 2018**

## INTRODUCTION

1. This report (“**First Report**”) has been prepared by FTI Consulting Canada Inc. (“**FTI**”) in its capacity as the court-appointed Monitor (the “**Monitor**”) pursuant to an the 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 Consulting Canada Inc. 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, secured by a charge in priority to all other encumbrances, over the assets of Purewal (including any assets of Purewal held in trust for 0726357 B.C. Ltd., 0726365 B.C. Ltd. and 0726368 B.C. Ltd.) (the “**Purewal Property**”) (the “**DIP Lender’s Charge**”); 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**”) in priority to all other encumbrances (other than the DIP Lender’s Charge) against the Purewal Property for 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 all of the Petitioners (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.
5. Pursuant to the Initial Order, the NOI proceedings were converted into this CCAA proceeding, and all of the Orders granted in the NOI proceedings, including but not limited to the Claims Process Order and the Sales Process Order, were continued into these CCAA proceedings.
6. Three of the Petitioners were not included in the NOI proceedings and were added to these CCAA proceedings, namely:



- (a) 0726357 B.C. Ltd. (“**6357**”) which is the holding company of Malkiat Singh Purewal;
  - (b) 0726365 B.C. Ltd. (“**6365**”) which is the holding company of Charan Singh Purewal; and
  - (c) 0726368 B.C. Ltd. (“**6368**”) which is the holding company of Gurjit Singh Purewal.
7. Malkiat Singh Purewal, Charan Singh Purewal, and Gurjit Singh Purewal, are shareholders and the directors of Purewal. 6375, 6365, and 6368 (collectively the “**Brothers’ Companies**”), are the shareholders of 074 and the three partners of Purewal Farms Partnership (the “**Partnership**”), neither of which are currently in this proceeding. Together, Purewal and the Brothers’ Companies are the Petitioners in this proceeding.
8. The Brothers’ Companies have asserted a claim that they are the beneficial owners of the lands and premises on which Purewal’s primary processing plant is located. In addition, they have guaranteed the indebtedness of Purewal’s primary secured creditor Blueberry Holding (GP) Ltd. (in such capacity, the “**Primary Secured Creditor**”).
9. The Monitor has had discussions with the Petitioners’ legal counsel regarding the potential of adding 074 and the Partnership to this proceeding given their involvement in the group’s structure.
10. The Monitor has been advised by the Petitioners’ legal counsel that it is in discussions with the Petitioners regarding the above.
11. The Initial Order increased the amount of the approved DIP Loan from \$500,000 to \$1,000,000, increased the DIP Lender’s Charge to \$1,000,000, and extended the DIP Lender’s Charge and the Administration Charge over the property of all the Petitioners.

12. On October 11, 2018, the Court made a further Order approving an asset purchase agreement (the “**SH APA**”) submitted by 0801226 B.C. Ltd. (a party related to the Primary Secured Creditor) in the Sale Process, as the stalking horse bidder (the “**Stalking Horse Bidder**”) in the Sale Process.
13. 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**

14. The purpose of the First Report of the Monitor is to provide the Court with an update on the following:
  - (a) the activities of the Petitioners since the filing of the Initial Order;
  - (b) an update on the status of the Sale Process;
  - (c) an update on the status of the Claims Process; and
  - (d) 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 December 14, 2018.

## TERMS OF REFERENCE

15. 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**").
16. The Proposal Trustee 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; and
17. The Proposal Trustee 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.
18. 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.
19. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

## UPDATE ON THE PETITIONERS' ACTIVITIES

### *Operations*

20. Subsequent to the Initial Order, the Monitor contacted the former accounting staff (the “**Staff**”) who have been retained to assist the Petitioners with their accounting and finance functions in order to ascertain the extent of their post-filing accounts payable.
21. The Monitor summarized the outstanding amounts due to the Petitioners’ professionals and suppliers and discussed with the DIP Lender the need to draw an additional tranche from the DIP Loan.
22. The DIP Lender has responded that it needed some time to organize the funds, and has committed to provide the funds in the week of November 5, 2018.
23. The Monitor expects that the advance of the next tranche of \$555,000 will be sufficient to bring all the professionals’ and trade suppliers’ accounts current and fund the proceedings through to the conclusion of the Sale Process.
24. The Monitor estimates that the exposure currently outstanding under the Administrative Charge is approximately \$190,000. This is expected to be eliminated upon receipt of the next tranche of the DIP Loan.
25. The total advances to-date pursuant to the DIP Loan remain at \$445,000, and if the next tranche is advanced as anticipated, will total \$1,000,000.
26. The Staff are continuing to update the books and records of the Petitioners so that the claims submitted by creditors can be reconciled with the Petitioners’ accounts.

## *Legal*

27. As indicated in the Fourth Report of the Proposal Trustee and First Report of the Proposed Monitor (the “**Prior Report**”), the Monitor and its legal counsel have been investigating the bare trustee relationship between Purewal and the Brothers’ Companies.
28. The Monitor has now forwarded the documentation regarding the bare trustee arrangement to its legal counsel for review, and that review is on-going. The Monitor hopes to provide a full report on this relationship in its next report to Court.
29. The Monitor also forwarded the security documentation held by the Primary Secured Creditor to its legal counsel for review, and notes that the security was declared valid pursuant to an order nisi of foreclosure pronounced January 11, 2018 in Supreme Court of British Columbia, Action No. S-178864, and that the appeal periods in relation to this order have expired. A credit against the debt secured by this security has been ‘credit bid’ to satisfy a portion of the purchase price under the SH APA.

## *Lease with the Pitt Meadows Airport Authority*

30. As noted in the Prior Report, the Monitor was recently advised that the leasehold interest in the land around the Pitt Meadows Airport was not held by Purewal, but was instead owned by 0740656 B.C. Ltd. (“**074**”).
31. The Monitor has obtained a copy of the original ground lease dated June 1, 2007 (the “**Lease**”) and notes that the tenant under the Lease is 074, which at the time of entering the Lease was owned by Gurdawar Purewal.



32. On December 31, 2009 the shares of 074 were transferred from Gurdawar Purewal to the Brothers' Companies. As a result of the change in control of 074, the Pitt Meadows Airport Society ("PMAS") considered it an assignment of the Lease, to which it consented.
33. Accordingly, after the assignment of the Lease, 074 held the Lease, and its sole shareholders were the Brothers' Companies, who each had a one third interest.
34. Subsequent to the Prior Report, the Monitor was advised by parties related to one of the founding brothers, that the Lease had been surrendered by 074 and a new lease had been entered between the PMAS and a company owned by these related parties.
35. The Monitor obtained a copy of the new lease which indicated an agreement for the same lands was entered into on August 1, 2018 between PMAS and Phoenix Farms Ltd. ("Phoenix"), a company owned by Parminder Purewal ("PP") and Tajinder Purewal ("TP"), both sons of Gurjit Singh Purewal.
36. The Monitor expressed its concerns to PP and TP, and indicated that it would be further investigating the events surrounding this transaction.
37. The Monitor contacted a representative of PMAS and obtained a copy of a Surrender of Lease dated July 25, 2018, purported to be delivered on behalf of 074 and each of the Brothers' Companies.
38. The representative of PMAS advised the Monitor that her primary contacts with respect to the Lease were PP and TP.
39. At the time of these events, neither 074 nor the Brothers' Companies were subject to the NOI proceedings, and neither of PP nor TP were directors or officers of Purewal.

40. The Monitor was previously advised that the Lease had a value estimated at \$1.2 million, and there is evidence that the Lease may have been held by 074 in trust for, or otherwise for the benefit of, Purewal.
41. The Monitor has been advised by the Petitioners' legal counsel that Phoenix is intending to retain legal counsel with respect to these events.
42. The Monitor intends to fully investigate these transactions and work with the Petitioners' legal counsel to consider all of the options available to return control of the Lease to 074 or the Brothers' Companies, if appropriate.
43. The Monitor believes it currently has the powers within the Initial Order to compel parties with any knowledge regarding the new lease to provide the information to the Monitor and accordingly is not seeking any specific assistance from the Court at this time.

#### **UPDATE ON THE SALE PROCESS**

44. In the Prior Report, the Proposal Trustee summarized the progress of the Sale Process and the activities performed to that date.
45. The details of the SH APA, as previously approved, are summarized as follows:
  - (a) the purchase price for the processing plant, including the land, building and processing equipment, is \$8,000,000;
  - (b) a deposit in the amount of \$207,177.63 was paid consisting of a payment of \$50,000 to legal counsel for the Petitioners, in trust, and a payment to the City of Pitt Meadows in the amount of \$157,711.63 in satisfaction of delinquent property taxes;

- (c) the debt by Purewal to the Stalking Horse Bidder in its capacity as DIP Lender and as the Primary Secured Creditor will be applied as a credit towards the purchase price with the balance to be paid in cash;
  - (d) in the event the Stalking Horse Bidder is not the successful purchaser, it will be entitled to a termination fee in the amount of \$275,000; and
  - (e) the offer is subject to the terms of the bidding procedures which were outlined in the Prior Report, and as may be amended in accordance with their terms.
46. Subsequent to the approval of the SH APA, the Monitor immediately notified all interested parties of which it was aware (the “**Other Potential Purchasers**”) of the SH APA approval, provided a summary of the SH APA terms, and summarized the next steps in the Sale Process.
47. The Monitor advised the Other Potential Purchasers that the deadline to submit a Qualifying Bid was set for November 9, 2018.
48. On October 17, 2018 the Monitor forwarded a copy of the entered SH Approval Order to the Other Potential Purchasers.
49. On October 23, 2018 the Monitor forwarded a copy of a form of Asset Purchase Agreement (the “**Standard Form APA**”) that would be acceptable to the Petitioners and the Monitor to the Other Potential Purchasers. The Monitor requested that any changes to the Standard Form APA be highlighted through the provision of a blackline version tracking any revisions to the Standard Form APA.
50. The Monitor is aware that several of the Other Potential Purchasers continue to actively consider the acquisition opportunity. The Monitor was contacted by one party seeking to arrange a site tour this week and has been contacted by legal counsel engaged by some of the Other Potential Purchasers.

51. Accordingly, the Monitor is hopeful that it will receive additional Qualifying Bids (as defined in the Sale Process) resulting in an auction for the asset and increasing the selling price for the benefit of stakeholders.
52. In the event that additional Qualifying Bids are received, it is anticipated that an auction would be held on November 21, 2018, and an application seeking the approval for the highest bid arising from the auction process would be sought, to be heard on or around December 5, 2018.
53. If no additional Qualifying Bids are received, then the Petitioners expect to seek approval of the SH APA and a vesting order in mid to late November 2018.

#### **AN UPDATE ON THE CLAIMS PROCESS**

54. As indicated previously, an order of the Court was granted on July 5, 2018 authorizing the Proposal Trustee to commence the Claims Process in accordance with the provisions of the Claims Process Order.
55. In the Prior Report, the Proposal Trustee noted that 59 claims had been received resulting from the Claims Process summarized as follows:
  - (a) one deemed trust claim from Canada Revenue Agency (“CRA”) in the amount of \$3.5 million;
  - (b) three secured claims totaling \$1.1 million; and
  - (c) the claims of the remaining creditors being unsecured.
56. The Monitor was contacted this week by an additional creditor who has recently become aware of these proceedings. The Monitor forwarded the Claims Process Order and relevant forms to the creditor and expects to receive an additional claim in the near future from this creditor.

57. The totals indicated above do not include the mortgage debt due to the Primary Secured Creditor in the approximate amount of \$3.5 million, as they have not yet filed a claim.
58. The Monitor has had several discussions with a collections representative of CRA regarding the quantum of its deemed trust claim. The Monitor indicated to the representative that Purewal has now filed its T4 returns for the outstanding years of 2016 and 2017 and the returns yielded a significantly lower amount due than the assessments issued by CRA.
59. Accordingly, CRA requested to perform an audit of Purewal's records and the Monitor provided CRA with the contact details of the Staff. The Monitor was advised that the audit should be performed in the next few weeks.
60. The Monitor is hopeful that it may be able to clarify the quantum of this claim in its next report.
61. The Petitioners' legal counsel and the Monitor have also been in contact with one of the secured creditors that has submitted two claims totalling \$416,000 regarding preliminary discussions on a possible transaction to mitigate the claims.
62. The Monitor will provide a detailed analysis of this claim should those discussions develop further.
63. As indicated in the Fourth Report of the Proposal Trustee, a summary of the claims filed were provided to the Staff who undertook a preliminary review of the claims. The Monitor had a number of questions arising from that preliminary review and subsequently met with the Staff to review its queries.
64. As indicated previously the Staff are continuing to update the Petitioners' books and records and reconcile those claims with unresolved differences.

65. The Monitor will continue to work with the Staff to resolve the claims and will provide a more detailed summary in its next report.

#### **THE PETITIONERS' REQUEST TO EXTEND THE STAY OF PROCEEDINGS**

66. The Petitioners are seeking an extension of the provisions of the Initial Order, including the stay of proceedings, to December 14, 2018. Absent such extension, the stay will expire on November 9, 2018. The Petitioners are seeking an extension for the following reasons:
- (a) to provide the time required to conclude the Sale Process with respect to Purewal's processing plant and the land on which the processing plant is situate; and
  - (b) to allow the Monitor to complete the Claims Process, which will assist the Petitioners in formulating a plan of arrangement to creditors, with the assistance of the Monitor.
67. The Monitor has considered the tests 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 Petitioner must be acting in good faith and with due diligence; and
  - (b) the Petitioners satisfy the Court that the circumstances exist that make the order appropriate.
68. As indicated in a previous section, the Monitor has significant concerns regarding the Lease and the events that transpired with the result of a new lease being entered into between the PMAS and Phoenix.

69. However, the Monitor notes that neither PP or TP were or are officers or directors of the Petitioners and at present considers the events regarding the Lease to have been committed by parties not currently involved with the operations of the Petitioners, either inadvertently or with opportunistic intentions.
70. PP and TP have no formal nor current operational capacity with the Petitioners, and accordingly the Monitor has no reason to believe that the Petitioners are not acting in good faith and with due diligence. The Monitor will, however, continue to investigate this matter, work with the Petitioners' legal counsel, and report to the Court and stakeholders.
71. The Monitor believes that the extension of the stay of proceedings is in the best interest of all stakeholders to allow the Sale Process to complete, as a sale of the processing plant will result in:
- (a) proceeds to address the claims of secured creditors and the deemed trust claim in favour of the CRA;
  - (b) provide an opportunity to the former employees to regain employment in an operating plant; and
  - (c) allow the time necessary to evaluate the quantum of claims against the Petitioners in order to formulate a plan of arrangement(s) to their creditors.
72. Accordingly, the Monitor supports the Petitioners' request for an extension of the stay of proceedings to December 14, 2018.

All of which is respectfully submitted this 31<sup>st</sup> day of October, 2018.

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



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