



COURT FILE NUMBER 2001-05482  
 COURT COURT OF QUEEN'S BENCH OF ALBERTA  
 JUDICIAL CENTRE CALGARY

APPLICANTS 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 JMB CRUSHING SYSTEMS INC. AND 2161889 ALBERTA LTD.

\$50  
 JS  
 Aug 26 2020  
 Justice Eidsvik

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP  
 4000, 421 – 7th Avenue SW  
 Calgary, Alberta T2P 4K9  
 Attention: Sean Collins / Pantelis Kyriakakis  
 Tel: 403-260-3531 / 3536  
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 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

### **NOTICE TO RESPONDENT(S)**

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

You have the right to state your side of this matter before the master/judge.

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

Date: August 26, 2020  
 Time: 9:45 a.m.  
 Where: Calgary Courts Centre  
 Before Whom: The Honourable Justice K.M. Eidsvik

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

**Remedy claimed or sought:** FTI Consulting Canada Inc. (the “**Monitor**”), in its capacity as the court-appointed monitor of JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216 Alberta**”, 216 Alberta and JMB are collectively referred to as, the “**Applicants**”) pursuant to the initial order granted under the *Companies' Creditors Arrangement Act* (Canada) (the “**CCAA**”) on May 1, 2020, as subsequently amended and restated on May 11, 2020 (collectively, the “**Initial Order**”) in the within proceedings (the “**Proceedings**”) applies for an Order, substantially in the form attached as Schedule “**A**” hereto:

## Service

1. Declaring that the time for service of this application (the “**Application**”) and the Fourth Report of the Monitor, dated August 25, 2020 (the “**Fourth Monitor’s Report**”), is abridged, that the Application is properly returnable on August 26, 2020, that service of the Application and the Fourth Monitor’s Report on the service list is good and sufficient, and that no persons other than those on the service list are entitled to service of the Fourth Monitor’s Report, the Application, or any orders arising therefrom.

## Approval of the APA

2. Approving the Asset Purchase Agreement, dated August 25, 2020 (the “**APA**”), between JMB, as vendor, and McDonald Aggregates Inc. (the “**Purchaser**”), as purchaser, attached as Appendix “**A**” to the Fourth Monitor’s Report, and the sale, transfer, and assignment of the equipment and personal property, as identified therein (collectively, the “**Acquired Assets**”), and the transfer and vesting of the Acquired Assets to the Purchaser, and authorizing JMB and the Monitor to take any and all such steps as are necessary or advisable to close the transaction for the purchase and sale of the Acquired Assets, as contemplated by the APA, the Initial Order, and the sale and investment solicitation process attached as Schedule “A” to the Initial Order (the “**SISP**”).

3. Ordering and declaring that, effective immediately upon the Monitor filing a certificate with this Honourable Court (the “**Monitor’s Certificate**”) confirming that all terms and conditions under the APA and any and all modifications thereto have either been satisfied or waived and that the transactions contemplated by the APA have otherwise been completed, to the satisfaction of the Monitor, all legal and beneficial ownership of and title to the Acquired Assets shall vest in the Purchaser (or its designated assignee or nominee, to the extent permitted by the APA), free and clear of any and all security interests (whether contractual, statutory, or otherwise), liens, writs, executions, ownership interests, levies, charges, or other financial or monetary claims, whether or not they have been attached, registered, perfected, or filed, and whether secured, unsecured, liquidated, contingent, or absolute.

4. Ordering that JMB and any and all persons claiming through, by, or under JMB and all other persons in possession of any or all of the Acquired Assets to deliver up possession of the Acquired Assets to the Purchaser or its assignee or nominee, upon the filing of the Monitor’s Certificate.

### **Vesting Provisions**

5. Ordering and declaring that, notwithstanding the pendency of these proceedings or the provisions of any federal or provincial statute, the vesting provisions contained in the proposed form of Order, attached as Schedule "A" hereto, concerning the assignment, sale, and transfer of the Acquired Assets:

- (a) will not be void or voidable at the instance of creditors or claimants;
- (b) do not constitute and shall not be deemed to be a fraudulent preference, a fraudulent conveyance, a transfer at undervalue, or otherwise subject to challenge under the *Bankruptcy and Insolvency Act (Canada)*, the *Fraudulent Preferences Act (Alberta)*, or any other applicable federal or provincial legislation; and,
- (c) do not constitute and shall not be deemed to constitute conduct meriting an oppression remedy.

### **Miscellaneous Matters**

6. Ordering and declaring that service of any orders arising from this Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, or pursuant to the CaseLines Service Order granted on May 29, 2020, to the persons listed on the service list, present at the Application, or who were otherwise served with the Application, shall constitute good and sufficient service of such orders and that no persons other than those on the service list are entitled to be served with a copy of such orders.

7. Such further and other relief as counsel for the Monitor may advise and this Honourable Court considers to be just and appropriate in the circumstances.

**Grounds for Making this Application:** The grounds for the Application are as follows:

### **Background**

8. The Monitor was appointed as the monitor of the Applicants, pursuant to the Initial Order.

9. The Initial Order, among other things, also approved the SISP.

10. Prior to the commencement of the SISP, Canadian Aggregate Resources Corp. ("**CARC**"), the primary equity holder of JMB, declared that it may submit a bid in the process. Furthermore, JMB's legal counsel was retained to act as legal counsel to CARC.

11. In order to manage the potential conflict of interest, the Applicants, the Monitor, and Sequeira Partners, in its capacity as sales agent under the SISP (the “**Sales Agent**”), took a number of steps, including, among others: (i) requiring CARC to sign an NDA; (ii) not sharing any information with CARC or their legal counsel concerning bids, potential purchasers, or non-binding LOIs; and, (iii) enhancing the role of the Monitor under and in connection with the SISP.

12. Pursuant to the SISP, the Monitor is, *inter alia*, authorized to: (i) direct and manage any sale and investment solicitation process and all bids made therein; (ii) assess the bids in consultation with the Sales Agent, the Applicants, and the secured creditors, as appropriate; and, (iii) seek, among other things, approval from the Court for the consummation of any successful bid.

13. In accordance with the terms of the SISP the Monitor and the Sales Agent have been marketing the business and assets of the Applicants. Specifically, pursuant to the SISP, the Monitor, with the assistance of the Sales Agent, has taken numerous actions with respect to the Applicants, which include, *inter alia*:

- (a) proceeding to market and sell the Applicants’ property, in accordance with the Monitor’s duties and powers under the SISP and the Initial Order;
- (b) researched and identified potentially interested parties including strategic and financial investors;
- (c) prepared a process summary letter (the “**Teaser Letter**”) and conditional information memorandum (the “**CIM**”) with input from the Monitor, its legal counsel, and JMB;
- (d) contacted 196 interested parties by email and/or telephone to determine their interest in the SISP, including 90 strategic, 70 financial, and 36 other potential investors and provided them with a copy of the Teaser Letter;
- (e) arranged for notice of the SISP to be published in the Calgary Herald, Edmonton Journal, Bonnyville Nouvelle, and the Insolvency Insider;
- (f) arranged for notice of the SISP to be sent to the members of the Saskatchewan Heavy Construction Association and the British Columbia Stone Sand & Gravel Association;

- (g) prepared and populated an electronic data site containing information on the Applicants' assets and operations (the "**Data Room**") for prospective purchasers;
- (h) obtained signed non-disclosure agreements (each an "**NDA**") from 53 interested parties and provided those parties with a copy of the CIM and access to the Data Room; and,
- (i) responded to due diligence requests from potential investors and their advisors.

14. Pursuant to the SISP, the Monitor and the Sales Agent discussed the Purchaser's bid with relevant and key stakeholders and the primary secured creditors of the Acquired Assets, being ATB Financial ("**ATB**"), Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., and Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc. (collectively, "**Fiera**").

15. The APA is supported by both ATB and Fiera

16. The Monitor and the Purchaser negotiated the APA. The APA is conditional, *inter alia*, on the approval of this Honourable Court.

17. The Acquired Assets being conveyed pursuant to the APA were sufficiently exposed to the relevant market in a commercially reasonable and fair marketing process as approved and in accordance with the terms of the SISP and the Initial Order. The price to be paid for the Acquired Assets, pursuant to the APA, represents the highest and best price that can be obtained for the Acquired Assets in the current circumstances.

18. The APA, as proposed, is in the best interests of JMB's estate and stakeholders.

19. Such further and other considerations, as counsel may advise and this Honourable Court considers just and appropriate in the circumstances.

**Affidavit or other Evidence and Materials to be used in Support of this Application:**

20. The SISP and the Initial Order.

21. The Second Report of the Monitor, dated July 6, 2020.

22. The Fourth Monitor's Report, filed.

23. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

24. Rule 6.3, 6.9, 6.28, and 11.27 of the *Alberta Rules Of Court*, Alta. Reg. 124/2010.

25. Such further and other rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

26. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.

27. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

**Any Irregularity Complained of or Objection Relied On:**

28. There are no irregularities complained of or objections relied on.

**How the Application is Proposed to be Heard or Considered:**

29. The Monitor proposes that this Application be heard in person or via Webex 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.

**SCHEDULE "A" TO THE APPLICATION**

**ORDER (SALE APPROVAL AND VESTING ORDER)**

Clerk's Stamp

COURT FILE NUMBER      2001-05482  
COURT                      COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE        CALGARY

APPLICANTS              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 JMB CRUSHING SYSTEMS INC. AND  
2161889 ALBERTA LTD.

DOCUMENT                **ORDER (Sale Approval and Vesting Order)**

ADDRESS FOR              McCarthy Tétrault LLP  
SERVICE AND              4000, 421 – 7th Avenue SW  
CONTACT                    Calgary, Alberta T2P 4K9  
INFORMATION OF          Attention: Sean Collins / Pantelis Kyriakakis  
PARTY FILING THIS        Tel: 403-260-3531 / 3536  
DOCUMENT:                Fax: 403-260-3501  
                                      Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

**DATE ON WHICH ORDER WAS PRONOUNCED:**              **August 26, 2020**  
**LOCATION OF HEARING OR TRIAL:**                              **Calgary, Alberta**  
**NAME OF JUDGE WHO MADE THIS ORDER:**                      **Honourable Justice K.M. Eidsvik**

**UPON** the application (the "**Application**") of FTI Consulting Canada Inc. (the "**Monitor**"), in its capacity as the court-appointed monitor of JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216 Alberta**", 216 Alberta and JMB are collectively referred to as, the "**Applicants**") pursuant to the initial order granted under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") on May 1, 2020, as subsequently amended and restated on May 11, 2020 (collectively, the "**Initial Order**") in the within proceedings (the "**Proceedings**"), for an order approving the sale transaction (collectively, the "**Transaction**") contemplated by the Asset Purchase Agreement, dated August 25, 2020 (the "**APA**"), between JMB, as vendor, and McDonald Aggregates Inc. (the "**Purchaser**"), as purchaser, attached as Appendix "**A**" to the Fourth Report of the Monitor, dated August 25, 2020 (the "**Fourth Monitor's Report**"), and vesting in the Purchaser (or its nominee), all of JMB's right, title, and interest in and to the assets described in the APA (collectively, the "**Acquired Assets**");

**AND UPON HAVING READ** the Initial Order and the SISP; **AND UPON HAVING READ** the Second Report of the Monitor, dated July 6, 2020 (the "**Second Monitor's Report**") and Fourth Monitor's Report, both filed; **AND UPON HAVING READ** the Affidavit of Service of Katie Doran (the "**Service Affidavit**"), to be filed; **AND UPON** having read Appendix "A" to the Fourth Monitor's Report, filed; **AND UPON HEARING** the submissions of counsel for the Monitor and for any other parties who may be present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the Application and the Fourth Monitor's Report is abridged, the Application is properly returnable today, service of the Application and the Fourth Monitor's Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Fourth Monitor's Report.

**APPROVAL OF THE TRANSACTION**

2. The Transaction is hereby approved and execution of the APA is hereby authorized, ratified, confirmed, and approved, with such minor amendments as the Monitor and the Purchaser may agree to, with the consent of JMB. The Monitor and JMB are hereby authorized and directed to take such additional steps and JMB is hereby authorized and empowered to execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Acquired Assets to the Purchaser (or its nominee).

**VESTING OF THE ACQUIRED ASSETS**

3. Upon the delivery of a Monitor's certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule "A" hereto (the "**Monitor's Certificate**"), all of JMB's right, title, and interest in and to the Acquired Assets, as described in the APA, shall vest absolutely, exclusively, and entirely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary, or otherwise, whether or not they have attached or been perfected,



registered, or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Initial Order; and,
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;

and for greater certainty, this Court orders that all Claims, affecting or relating to the Acquired Assets are hereby expunged, discharged and terminated as against the Acquired Assets.

4. Upon delivery of the Monitor’s Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested, and directed to accept delivery of such Monitor’s Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Acquired Assets. Without limiting the foregoing, the Registrar of the Alberta Personal Property Registry (the “**PPR Registrar**”) shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests in the estate or interest of JMB in any of the Acquired Assets which are of a kind prescribed by applicable regulations as serial-number goods.

5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and the Monitor’s Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Acquired Assets of any Claims.

6. The Monitor is authorized and directed to undertake and perform such activities and obligations as are contemplated to be undertaken or performed by the Monitor pursuant to this Order, the SISP, the APA, or any ancillary document related thereto, and shall incur no liability in connection therewith, save and except for any gross negligence or wilful misconduct on its part.

7. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Acquired Assets is required for the due execution, delivery and performance by JMB of the APA.

8. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Acquired Assets shall stand in the place and stead of the Acquired Assets from and after delivery of the Monitor's Certificate and all Claims shall not attach to, encumber, or otherwise form a charge, security interest, lien, or other Claim against the Acquired Assets and may be asserted against the net proceeds from sale of the Acquired Assets with the same priority as they had with respect to the Acquired Assets immediately prior to the sale, as if the Acquired Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. Upon completion of the Transaction, JMB and all persons who claim by, through or under JMB in respect of the Acquired Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Acquired Assets, shall stand absolutely and forever barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Acquired Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Acquired Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Acquired Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

10. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for its own use and benefit without any interference of or by JMB, or any person claiming by, through or against JMB.

11. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

12. The Monitor may rely on written notice from JMB and the Purchaser or their respective counsel regarding the fulfillment of conditions to closing under the APA and shall incur no liability with respect to the delivery of the Monitor's Certificate.

## MISCELLANEOUS MATTERS

13. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of JMB, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of JMB; and
- (d) the provisions of any federal or provincial statute:

the vesting of the Acquired Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of JMB and shall not be void or voidable by creditors of JMB, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. JMB, the Monitor, the Purchaser (or its nominee), and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

15. Service of this Order shall be deemed good and sufficient by:

- (a) Serving the same on:
  - (i) the persons listed on the service list created in these proceedings;
  - (ii) any other person served with notice of the application for this Order;
  - (iii) any other parties attending or represented at the application for this Order;
  - (iv) the Purchaser or the Purchaser's solicitors; and

(b) Posting a copy of this Order on the Monitor's website at:  
<http://cfcanada.fticonsulting.com/jmb/default.htm>

and service on any other person is hereby dispensed with.

16. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted on May 29, 2020.

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Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A" TO THE ORDER (SALE APPROVAL AND VESTING)  
MONITOR'S CERTIFICATE**

Clerk's Stamp

COURT FILE NUMBER 2001-05482  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICATIONS 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 JMB CRUSHING SYSTEMS INC. AND  
2161889 ALBERTA LTD.

DOCUMENT **MONITOR'S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP  
4000, 421 – 7th Avenue SW  
Calgary, Alberta T2P 4K9  
Attention: Sean Collins / Pantelis Kyriakakis  
Tel: 403-260-3531 / 3536  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice K.M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), dated May 1, 2020 as subsequently amended and restated on May 11, 2020, FTI Consulting Canada Inc., was appointed as the monitor (the "**Monitor**") of JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216 Alberta**", 216 Alberta and JMB are collectively referred to as, the "**Applicants**").
- B. Pursuant to an Order of the Court, dated August 26, 2020 (the "**Sale Approval Order**"), the Court approved the Asset Purchase Agreement, dated August 25, 2020 (the "**APA**"), between JMB, as vendor, and McDonald Aggregates Inc. (the "**Purchaser**"), as purchaser, and provided for the vesting in the Purchaser of JMB's right, title, and interest in and to the Acquired Assets, which vesting is to be effective with respect to the Acquired Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Acquired Assets; (ii) that all

conditions to the closing of the APA have been satisfied or waived by JMB and the Purchaser; and, (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, all capitalized terms have the meanings set out in the Sale Approval Order.

**THE MONITOR CERTIFIES** the following:

1. The Purchaser (or its nominee) has paid and JMB has received the purchase price for the Acquired Assets, in accordance with and as contemplated by the terms of the APA;
2. The conditions to the closing of the APA have been satisfied or waived by JMB and the Purchaser (or its nominee); and,
3. The Transaction has been completed to the satisfaction of the Monitor.

This Certificate was delivered by the Monitor at **[Time]** on **[Date]**.

**FTI CONSULTING CANADA INC.**, in its capacity as the monitor of **JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.**, and not in its personal or corporate capacity.

Per: \_\_\_\_\_  
Name:  
Title: