

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**

THIRTEENTH REPORT OF THE MONITOR

September 30, 2020

INTRODUCTION

1. This report (“**Thirteenth 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 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.
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 Brothers' 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 (the "**Expanded Powers Order**").
16. 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.
17. 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.
18. 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 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 (the “**Records Access Order**”).
19. 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.
 20. 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.
 21. 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.
 22. 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.
 23. On September 29, 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.
 24. 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://cfcanda.fticonsulting.com/purewal/>.

PURPOSE

25. The purpose of the Thirteenth 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 September 28, 2020; and
 - (c) 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 November 30, 2020.

TERMS OF REFERENCE

26. 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**").
27. 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.
28. 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.
29. 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.
30. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

THE ACTIVITIES OF THE PETITIONERS

31. As indicated in the Twelfth Report, the Petitioners' former accountant (the "**Contractor**") had updated the books and records of all of the Petitioners.
32. In addition to the outstanding GST returns noted in the Twelfth Report that were filed, CRA was also requesting the filing of the outstanding income tax returns for each of the Petitioners. The income tax returns outstanding were as far back as 2017.
33. Subsequent to the Twelfth Report, the Contractor filed all of the missing income tax returns.
34. As a result, based on recent discussions between the Monitor and the representative of CRA dealing with the Petitioners' accounts, the CRA is now in a position to file its revised proof of claim which it anticipates completing in the next few weeks.

UPDATE ON THE PETITIONERS' FUNDING

35. Subsequent to the date of the Twelfth Report, the Monitor has used the funds in its trust account to pay the Contractor in addition to the professional fees of the Monitor and its legal counsel.
36. 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 28, 2020:

Summary of Receipts and Disbursements		
Receipts		
Advances pursuant to DIP Loan		265,000
Extension fee		150,000
Funds released from Clark Wilson		3,061,062
Interest income		22,931
Total receipts		3,498,993
Disbursements		
DIP Lender fee		10,500
Insurance		93,279
Security		62,827
BC Hydro		73,267
Contractor fees and expenses		353,911
Payment to City of Pitt Meadows		51,080
Petitioners' legal counsel fees and disbursements		166,769
Monitor's fees and disbursements		276,806
Monitor's legal counsel fees and disbursements		97,641
Bank charges		145
Total disbursements		1,186,225
Excess of receipts over disbursements		\$ 2,312,767

37. As indicated, the Monitor is holding funds of approximately \$2.3 million as at September 28, 2020.

REMAINING ISSUES

38. As indicated in the Twelfth Report, the Monitor was expecting to bring an application in the near term to have 074 included in these proceedings.

39. However, counsel for Phoenix Farms Ltd. (“**Phoenix**”), the company which is now the lessee of the property previously leased from the Pitt Meadows Airport Society by 074, has advised that it intends to oppose the application. The Monitor has not yet considered what standing Phoenix would have to challenge the inclusion of 074 in the proceedings.

40. Notwithstanding that, the Monitor's counsel will be seeking dates with counsel for Phoenix for a date to hear the contested application.
41. Also, as indicated in the Twelfth Report, the Monitor understands that the Petitioners are considering seeking an order to consolidate the estates of the Petitioners.
42. It is expected that this application will be deferred until after the hearing regarding the inclusion of 074 in these proceedings.

PETITIONERS' REQUEST TO EXTEND THE STAY OF PROCEEDINGS

43. The Petitioners are seeking an extension of the provisions of the Initial Order, including the stay of proceedings, to November 30, 2020. Absent such extension, the stay will expire on October 2, 2020.
44. The Petitioners are seeking an extension for the following reasons:
 - (a) to allow time for the CRA to revise and submit its proof of claim in these proceedings;
 - (b) to allow the Monitor to bring its application to include 074 as a Petitioner in these proceedings; and
 - (c) to allow the Petitioners to bring their application for a substantive consolidation of the Petitioners for the purpose of a dividend to the unsecured creditors.
45. 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.
46. Given that the sale of the Petitioners' assets has now been completed, and the Monitor has been provided with expanded powers pursuant to the Expanded Powers Order, 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.
47. Accordingly, the Monitor supports the Petitioners' request for an extension of the stay of proceedings to November 30, 2020.

All of which is respectfully submitted this 30th day of September, 2020.

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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