

ONTARIO

SUPERIOR COURT OF JUSTICE

(Commercial List)

THE HONOURABLE MR.) WEDNESDAY, THE 11th DAY
)
JUSTICE CUMMING) OF OCTOBER, 2006
)



IN THE MATTER OF AN APPLICATION UNDER SECTION 47.1(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B.3, AS
AMENDED

AND IN THE MATTER OF THE APPOINTMENT OF AN INTERIM
RECEIVER OF METCONNEX CANADA INC. AND METCONNEX US
CORP.

Applicants

ORDER

THIS APPLICATION, made by Metconnex Canada Inc. and Metconnex US Corp. (collectively, the "Applicants") for an Order pursuant to section 47.1(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") appointing the proposal trustee (the "Proposal Trustee") of Metconnex Canada Inc., Doyle Salewski Inc. ("DSI") as Receiver (the "Receiver") without security, of all of the assets, undertakings and properties of the Applicants and for the additional relief set forth in the notice of application dated October 4 2006 (the "Notice of Application") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Peter Hunter sworn October 4, 2006 and the Exhibits thereto (the "Hunter Affidavit"), the first report of the Proposal Trustee and the proposed Receiver, dated October 6, 2006 (the "First Report") and the consent of DSI

to act as the Receiver, and on hearing the submissions of counsel for the Applicants, counsel for the proposed Receiver, counsel for JDS Uniphase Corporation (“**JDSU**”), counsel for the secured creditors (Comerica Bank and Skypoint II, G.P. Co. (US) Inc., Skypoint II G.P. Co. Inc., St. Paul Venture Capital VI, LLC, Innovacom 5 FCPR and BDC Capital Inc.) (collectively, the “**Secured Creditors**”), and upon being advised of the consent of all parties and that all persons listed on the service list were served with the application record dated October 4, 2006 (the “**Application Record**”),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that terms not otherwise defined in this Order shall have the meaning ascribed to them in the Order of the Honourable Mr. Justice Cumming dated October 11, 2006, (the “**October 2006 Appointment Order**”) which, *inter alia*, appointed DSI as Receiver without security, of all of the Property of the Applicants

THE PURCHASE AGREEMENT

3. **THIS COURT ORDERS** that the asset purchase agreement among the purchaser, JDSU, the Receiver as the vendor and the Applicants (the “**Purchase Agreement**”), a copy of which was presented to this Court on this day and the transactions contemplated therein (the “**Transactions**”), pursuant to which JDSU has agreed to purchase the right, title and interest of Metconnex Canada Inc. and Metconnex US Corp. in the assets described in the Purchase Agreement (the “**Assets**”), be and are hereby approved.

4. **THIS COURT ORDERS** that the Applicants and the Receiver be and are hereby authorized, empowered and directed to, *nunc pro tunc*, execute and deliver the Purchase Agreement to JDSU, and the Applicants and Receiver are further authorized, empowered and directed to implement and complete the Transactions in accordance with the terms and

conditions of the Purchase Agreement with such alterations, amendments, deletions and additions as the parties thereto may agree to, and to perform the obligations contained in the Purchase Agreement all without giving notice under any personal property or security legislation in effect in any jurisdiction in which any of the Assets are situate, including, without limiting the generality of the foregoing, the *Personal Property Security Act*.

5. **THIS COURT ORDERS AND DECLARES** that the *Bulk Sales Act* does not apply to the Transactions.

6. **THIS COURT ORDERS** and declares that the terms of the Purchase Agreement, including the purchase price set out in the Purchase Agreement (the "**Purchase Price**"), are fair and commercially reasonable and were arrived at in a commercially reasonable manner.

7. **THIS COURT ORDERS** that, in completing the Transactions subject to the terms and conditions of the Purchase Agreement, the Applicants and the Receiver are hereby authorized:

- (a) to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the Transactions as the Applicants and the Receiver, in their discretion, may deem to be reasonably necessary or advisable to conclude the Transactions, including the execution of such authorizations, directions, powers of attorney, conveyances, deeds and documents in the name and on behalf of the Applicants; and
- (b) to take such steps as are necessary or incidental to the performance of their obligations pursuant to the Purchase Agreement.

VESTING PROVISIONS

8. **THIS COURT ORDERS** that, upon the Purchase Price being paid or otherwise satisfied by JDSU on the closing of the Transactions in accordance with the Purchase Agreement and all conditions to closing with respect to the Assets having been satisfied or waived, the Receiver shall immediately file a certificate substantially in the form attached as **Schedule "A"** hereto with this Honourable Court and provide a copy to JDSU (the "**Receiver's Vesting Certificate**").

9. **THIS COURT ORDERS** that, effective immediately upon the filing with this Honourable Court of the Receiver's Vesting Certificate, the Applicants' right, title and interest in and to the Assets shall vest and are hereby vested in and to JDSU, absolutely and forever, free and clear of and from any and all estate, right, title, interest, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, encumbrances or other rights, limitations or restrictions of any nature whatsoever, including, without limitation, any rights or interests of any creditors of the Applicants, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent including the Administrative Charge (collectively, the "**Claims**"), by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executors, administrators or other legal representatives (collectively, the "**Claimants**"), including for greater certainty and without limiting the generality of the foregoing: (i) the Claims held by or in favour of the entities or their solicitors served with the Notice of Application relating to this Order; and (ii) the beneficiaries of any Claims, whether or not in the nature of charges (including the Administrative Charge) created or provided for pursuant to any previous Order of this Court in these proceedings.

SALE PROCEEDS AND DISTRIBUTION OF SALE PROCEEDS

10. **THIS COURT ORDERS** that, subject to paragraph 11 below, the proceeds of sale ("**Sale Proceeds**") shall stand in place and stead of the Assets, and any and all Claims in or to the Assets shall vest in the Sale Proceeds in place and stead of the Assets, without prejudice to any Claims being advanced against the Sale Proceeds as could have been advanced against the Assets, and any such Claims against the Sale Proceeds shall be subject to the same priorities as could have been claimed against the Assets subject to the charges created herein and in the October 2006 Appointment Order including, without limitation, the Administration Charge.

11. **THIS COURT ORDERS** that, upon closing of the sale of the Assets to JDSU in accordance with the terms of this Order, the Receiver shall hold the Sale Proceeds in a separate interest bearing account (subject to paragraph 12 below) and the Receiver is authorized to release and/or arrange to remit the all amounts owing by the Applicants to the Secured Creditors pursuant to payout statements that will be provided by the Secured Creditors and reviewed and approved by the Receiver, in full satisfaction and discharge of all debts, claims and charges of the Secured Creditors as against the Applicants, the receivership estate or the Receiver.

12. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to retain from the Sale Proceeds the sum of \$100,000 as security for the current and future administrative expenses of the estate, including the fees and disbursements of the Receiver and its counsel, and counsel for the Applicants.

13. **THIS COURT ORDERS** that upon the appointment of DSI or any other entity or person as trustee in bankruptcy of the Applicants, such trustee is hereby authorized to join with the Receiver and the Applicants' to perform or cause to be performed by the Receiver and the Applicants' obligations pursuant to the Purchase Agreement (to the extent necessary), without further seeking the approval of any inspectors of such bankruptcy estate.

14. **THIS COURT ORDERS** that the Receiver shall, within two (2) business days of the date hereof, send a copy of this Order to all persons who have a registered security interest in the assets of the Applicants.

15. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings
- (b) the pendency of any bankruptcy proceedings in respect of the Applicants pursuant to the BIA; and
- (c) the provisions of any federal or provincial statute,

the Purchase Agreement and the Transactions contemplated thereby and the vesting provisions contained herein shall be binding upon any trustee in bankruptcy or other court officer appointed in respect of the Applicants and shall not be void or voidable or

opposable by creditors and claimants of the Applicants nor shall they constitute nor be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the BIA or any other applicable federal or provincial legislation, nor do they constitute conduct meriting an oppression remedy.

JDSU – UNAFFECTED CREDITOR

16. **THIS COURT ORDERS** that the obligations of the Applicants to JDSU and JDSU's corresponding claims pursuant to the Purchase Agreement (and under any other agreements and documents contemplated by the Purchase Agreement (“**Ancillary Documents**”)) are not stayed by the notice of intention to make a proposal pursuant to Part III Division I of the BIA filed by Metconnex Canada Inc. on September 28, 2006, and no proposal filed by the Applicants or any other Person pursuant to the BIA shall compromise or affect any obligation owed by the Applicants to JDSU pursuant to the Purchase Agreement or the Ancillary Documents and JDSU shall be and remain an unaffected creditor of the Applicants in any such proposal.

Oct 11/06

Peter A. Cummins

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 11 2006

PER/PAR:

A

SCHEDULE "A"

Court File No.: 06-CL-6670

ONTARIO

SUPERIOR COURT OF JUSTICE

(Commercial List)

IN THE MATTER OF AN APPLICATION UNDER SECTION 47.1(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B.3, AS AMENDED

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RECEIVER'S VESTING CERTIFICATE

WHEREAS pursuant to the Order of the Honourable Mr. Justice Cumming of the Ontario Superior Court of Justice, Commercial List, dated October 11, 2006, Doyle Salewski Inc. was appointed the interim receiver of certain assets of the Applicants (the "**Receiver**");

AND WHEREAS the Receiver entered into an agreement of purchase and sale, dated October 3, 2006 (the "**Purchase Agreement**") with JDS Uniphase Corporation (the "**Purchaser**") in respect of the Assets as defined in the Purchase Agreement (the "**Property**").

AND WHEREAS pursuant to a second Order by the Honourable Mr. Justice Cumming dated October 11, 2006, this Court approved the Purchase Agreement and issued a Vesting Order of the same date, which Vesting Order is to be effective with respect to the Property upon the filing of an interim receiver's certificate confirming the payment by the Purchaser to the Receiver of the purchase price, all the conditions to closing of the Purchase Agreement having been satisfied or waived;

THE UNDERSIGNED HEREBY CERTIFIES as follows:

1. The Purchaser has paid and the undersigned has received the full purchase price payable pursuant to the Purchase Agreement for the Property; and

2. All the conditions to closing of the Purchase Agreement have been satisfied or waived.

DATED at Toronto, Ontario this _____ day of October, 2006

DOYLE SALEWSKI INC., solely in its capacity as the Court-appointed Receiver of Metconnex Canada Inc. and Metconnex US Corp. and not in its personal capacity

Per: _____

Name: Brian Doyle

Title: President

I have authority to bind the corporation.

IN THE MATTER OF AN APPLICATION UNDER SECTION 47.1(D) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B.3, AS AMENDED AND IN THE MATTER OF THE APPOINTMENT OF AN INTERIM RECEIVER OF METCONNEX CANADA INC. AND METCONNEX US CORP.

Applicants

Court File No. 06-CL-6670

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ORDER

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