

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

1199403 ONTARIO INC., 1274442 ONTARIO INC., and GULU THADANI

Applicants

-and-

SAPTASHVA SOLAR S.A.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. 8-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43. AS AMENDED

**SECOND SUPPLEMENTARY MOTION RECORD OF THE RECEIVER,
IRA SMITH TRUSTEE & RECEIVER INC.**

December 11, 2022

ROBINS APPLEBY LLP
Barristers & Solicitors
2600 - 120 Adelaide Street West
Toronto ON M5H 1T1

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Email: dmichaud@robapp.com
Tel: (416) 360-3795

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Email: asamat@robapp.com
Tel: (416) 360-3728
Fax: (416) 868-0306

Lawyers for the Receiver, Ira Smith Trustee &
Receiver Inc.

TO: ATTACHED SERVICE LIST

SERVICE LIST
(as at November 9, 2022)

TO: IRA SMITH TRUSTEE & RECEIVER INC.

6-167 Applewood Crescent
Concord, ON L4K 4K7

Email: ira@irasmithinc.com

Tel: (905) 738-4167 ext. 111

Fax: (905) 738-9848

Court-Appointed Receiver

AND ROBINS APPLEBY LLP

TO: Barristers + Solicitors
2600-120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No.: 56871V

Email: dmichaud@robapp.com

Tel: (416) 360-3795

Fax: (416) 868-0306

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EnviroEn Inc. and Harshal Gunde

AND DEPARTMENT OF JUSTICE
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Email Service List: ira@irasmithinc.com; dmichaud@robapp.com; sturk@stephenturklaw.com;
lparvez@businesslawyers.com; allan@morrisonlaw.ca; vibhu@morrisonlaw.ca;
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| | A. | Endorsement of The Honourable Madam Justice Conway dated December 7, 2022 |
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| | C. | Ms. Bolton's email dated December 7, 2022 |
| | D. | Receiver's email dated December 7, 2022 |

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Court File No. CV-21-00655706-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

1199403 ONTARIO INC., 1274442 ONTARIO INC., and GULU THADANI
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-and-

SAPTASHVA SOLAR S.A.
Respondent

SECOND SUPPLEMENTARY REPORT TO THE
FIRST REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
SAPTASHVA SOLAR S.A.

DECEMBER 11, 2022

**SECOND SUPPLEMENTARY REPORT TO THE
FIRST REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
SAPTASHVA SOLAR S.A.**

DECEMBER 11, 2022

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**SECOND SUPPLEMENTARY REPORT TO THE
FIRST REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
SAPTASHVA SOLAR S.A.**

DECEMBER 11, 2022

Appendices

- Appendix “A” Endorsement of The Honourable Madam Justice Conway dated December 7, 2022
- Appendix “B” Mr. Michaud’s email dated December 7, 2022
- Appendix “C” Ms. Bolton’s email dated December 7, 2022
- Appendix “D” Receiver’s email dated December 7, 2022

Court File No. CV-21-00655706-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

**SECOND SUPPLEMENTARY REPORT TO THE
FIRST REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
SAPTASHVA SOLAR S.A.**

DECEMBER 11, 2022

1.0 INTRODUCTION

1. This second supplementary report (the “**Second Supplementary Report**”) is filed by Ira Smith Trustee & Receiver Inc. (“**ISI**”) in its capacity as Court-appointed Receiver (the “**Receiver**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the Courts of Justice Act, R.S.O 1990, c.43, as amended (the “**CJA**”), without security, of all of the assets, undertakings and properties of Saptashva Solar S.A. (“**Saptashva**” OR the “**Company**” or the “**Debtor**”).

2. This report is supplementary to the Receiver’s First Report to Court dated November 10, 2022 (the “**First Report**”) contained in the Receiver’s motion record of the same date for the Receiver’s motion heard on December 2, 2022; and the Receiver’s Supplementary Report to Court dated December 7, 2022 (the “**Supplementary Report**”).

3. After hearing the submissions of all counsel and of the Receiver, the Honourable Madam Justice Conway granted a further very brief adjournment of the Receiver’s motion to Monday,

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December 12, 2022 to allow for the Receiver reconsider selling the business through a stalking horse sales process with Hexa Ventures Ltd. (“**Hexa**”) standing at the stalking horse bidder, instead of operating it as recommended in the First Report. As articulated by the Receiver in Court that would include:

- a. Hexa retaining independent legal counsel;
 - b. Hexa’s demonstration that it can conduct itself in a manner that gives the Receiver comfort that Hexa is a *bona fide* party by its retention of counsel and depositing with the Receiver’s legal counsel \$100,000.00 as a deposit towards its purchase of the assets of Saptashva (the “**Deposit**”); and
 - c. if the above conditions are met, the Receiver would provide Hexa’s counsel with a form of asset purchase agreement appropriate for a Receivership stalking horse sales process, subject to the approval of this Honourable Court.
4. Attached as **Appendix “A”** is a copy of Her Honour’s endorsement.

1.1 Purpose of this Report

5. The purpose of this Second Supplementary Report is to report to this Honourable Court on the events that have transpired since this Honourable Court adjourned on December 7, 2022.

1.2 Disclaimer

6. This report is prepared solely for the use of the Court and the stakeholders in this proceeding, for the purpose of assisting the Court in making a determination whether to approve

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the actions and activities of the Receiver, and other relief being sought in the Receiver's First Report. It is based on the Receiver's analysis of information provided to it by the management, Directors, staff, and contractors of the Debtor, and other third parties as stated herein, which included unaudited financial statements and internal financial reporting. The Receiver's procedures did not constitute an audit or financial review engagement of the Debtor's financial reporting. Where stated, the Receiver has relied upon the Information in reaching the conclusions set out in this report.

2.0 COMMUNICATIONS WITH MR. MORRISON ON DECEMBER 7, 2022

7. Following adjournment of Court on December 7, 2022, Mr. D. Michaud of Robins Appleby LLP, counsel to the Receiver wrote to Mr. Morrison to provide wire instructions for its trust account, for the purpose of receiving the Deposit and to request the contact details of Hexa's counsel. Attached as **Appendix "B"** is a copy of Mr. Michaud's email.

8. Ms. A. Bolton of Mr. Morrison's office replied stating that there were three elements to be satisfied regarding Hexa's offer, including the Receiver providing a form of asset purchase agreement for Hexa's review and erroneously stating that the Deposit could be made to either Messers. Michaud's or Morrison's trust account. Attached as **Appendix "C"** is a copy of the email of Ms. Bolton.

9. Mr. I. Smith of the Receiver replied by email stating *inter alia* that what was discussed amongst the parties in Court, was that the Deposit was to be placed into Mr. Michaud's trust account and following that and Hexa's retention of counsel and paying of the Deposit, the Receiver would provide to Hexa's counsel a form of asset purchase agreement suitable for these

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proceedings, for discussion amongst the parties and execution by Hexa. A subsequent email was sent by Mr. Smith clarifying a typographical error with respect to the quantum of the Deposit.

Appendix “D” is a copy of Mr. I. Smith’s emails.

3.0 HEXA’S CONDUCT

10. At the close of business on December 9, 2022 the Receiver contacted Mr. Michaud who confirmed that he neither received the Deposit from Hexa nor was he contacted by counsel for Hexa.

11. At 4:00PM on the date of this Second Supplementary Report neither the Receiver nor Mr. Michaud had been contacted by Hexa, their counsel nor had the Deposit been received.

12. As reported in the Supplementary Report, given that Hexa has refused several invitations to meet with the Receiver and respective counsel and specifically after being advised by the Receiver on November 21, 2022, what the terms of offer the Receiver would consider appropriate, Hexa chose to not respond until the evening prior to the December 2, 2022 return date of the Receiver’s motion, and everything that has transpired since, the Receiver does not believe that Hexa is acting in good faith or is a *bona fide* purchaser.

4.0 CONCLUSION AND RECOMMENDATIONS

13. As neither Hexa nor any legal counsel advising they are representing Hexa has contacted the Receiver and Mr. Michaud has not received the Deposit, the Receiver reiterates its recommendations from the First Report and Supplementary Report that the Operations Plan and

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other matters for which it seeks the approval of this Honourable Court be approved without any further requests for adjournment.

14. Any unsolicited offer that may be made to the Receiver going forward is mutually exclusive from the Operations Plan. In the event an offer is made that the Receiver feels it can recommend to this Honourable Court as part of a Court-approved sales process, that approved sales process can be incorporated at that time into the Operations Plan. The Operations Plan is meant to bring the remaining inoperative solar project online and allow for additional warranty replacement work of parts. This will allow the Receiver to attempt to maximize the value of the assets, properties and undertaking when all solar projects of the Company are fully operational.

15. For the reasons set out in the First Report and the Supplementary Report, and this Second Supplementary Report, the Receiver respectfully requests that this Honourable Court approve the Receiver's First Report and the actions, activities, fees and disbursements and the Operations Plan, all as described in the First Report and the Receiver's motion record.

**

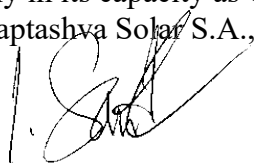
**

**

All of which is respectfully submitted at Toronto, Ontario this 11th day of December, 2022.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Receiver
of Saptashva Solar S.A., and not in its personal Capacity

Per:



Ira Smith – President

APPENDIX A



SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: CV-21-655706-CL DATE: Wednesday, December 7, 2022NO. ON LIST: 4TITLE OF PROCEEDING: **11199403 ONTARIO INC. et al v SAPTASHVA SOLAR S.A.**BEFORE JUSTICE: **MADAM JUSTICE CONWAY****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---|--|
| Dom Michaud | Court Appointed Receiver - Ira Smith Trustee & Receiver Inc. | dmichaud@robapp.com |
| Ira Smith | Court Appointed Receiver - Ira Smith Trustee & Receiver Inc. | ira@irasmithinc.com |

For Defendant, Respondent, Responding Party, Defence:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---|--|
| Stephen M. Turk | 1199403 Ontario Inc., 1274442 Ontario Inc., Gulu Thadani and 1034523 Ontario Ltd. | sturk@stephenturklaw.com |
| Allan Morrison | EnviroEn Inc. and Harshal Gunde | allan@morrisonlaw.ca |
| Amanda Bolton | EnviroEn Inc. and Harshal Gunde | office@morrisonlaw.ca |
| Elham Beygi | EnviroEn Inc. and Harshal Gunde | office@morrisonlaw.ca |

ENDORSEMENT OF JUSTICE CONWAY:

Mr. Morrison seeks a further adjournment to present what he says is a real offer from Hexa that can form the basis for a stalking horse bid process. There has been communication between the Receiver and Mr. Morrison about the Hexa offer that did not satisfy the Receiver as of today's date. Issues remain over who Hexa is and how much of a deposit they are prepared to put down. They do not have independent counsel either – they have been presenting their offer through Mr. Morrison, counsel for the debtor. All of this is concerning to me. However, the only other option on the table is an operations plan in which the Receiver would, at the cost of the secured creditor, operate the business for another year. Mr. Morrison says that this will cause costs to escalate unnecessarily, to the detriment of his client.

I am granting a final adjournment of this matter to **December 12, 2022 at 3 p.m. before me – one hour (confirmed with the CL office)**. At that time, I will decide how this receivership is going to move forward.

Conway J.

APPENDIX B

Ira Smith

From: Dominique Michaud <dmichaud@robapp.com>
Sent: December 7, 2022 1:42 PM
To: Allan Morrison
Cc: Ira Smith; Brandon Smith
Subject: Hexa Deposit
Attachments: Wire Details.pdf

Alan:

As Justice Conway stated today, please have Hexa wire the deposit to my firm's trust account to be held in trust pending completion of the negotiation of a stalking horse bid. If the stalking horse bid sales process is not approved, the deposit will be returned to Hexa.

Also, please have Hexa's new counsel reach out to us asap to discuss this matter.

If you have any questions please call me.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

Robins Appleby LLP | 2600-120 Adelaide St.W., Toronto, ON M5H
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ROBINS APPLEBY
BARRISTERS + SOLICITORS

INCOMING WIRE PAYMENTS

Trust Account for Canadian Dollars information:

Robins Appleby LLP Trust Account
2600 – 120 Adelaide Street West
Toronto, ON M5H 1T1

Bank of Montreal
155 Rexdale Blvd,
Etobicoke, ON M9W 5Z8
Bank No.: 001
Transit No.: 24162
Account No.: 1045-425
Swift Code No.: BOFMCAM2

Trust Account for U.S. Dollars information:

Robins Appleby LLP Trust Account
c/o Wells Fargo, N.A New York
ABA No.: 026005092
Swift No.: PNBPUS3NNYC

FOR FURTHER CREDIT TO:

Robins Appleby LLP Trust Account
2600 – 120 Adelaide Street West
Toronto, ON M5H 1T1

Bank of Montreal
155 Rexdale Blvd.
Etobicoke, ON M9W 5Z8
Bank No.: 001
Transit No.: 24162
Account No.: 4603-663
Swift Code: BOFMCAM2

robapp\

APPENDIX C

Ira Smith

From: MLAW <office@morrisonlaw.ca>
Sent: December 7, 2022 2:03 PM
To: Dominique Michaud; Allan Morrison
Cc: Ira Smith; Brandon Smith
Subject: RE: Hexa Deposit

Dear Mr. Michaud,

There are 3 issues:

1. The form of an agreement to be worked out rapidly with the receiver
2. A deposit of 100k into your trust account or mine
3. An independent counsel to represent Hexa Ventures

Best regards,
Amanda

Amanda Bolton
Legal Assistant

Morrison Law

Barristers and Solicitors

333 Adelaide St. W., 6th Floor
Toronto, ON M5V 1R5, Canada
Tel.: [416.598.0708](tel:416.598.0708)
Fax: [416.598.7732](tel:416.598.7732)
office@morrisonlaw.ca

From: Dominique Michaud <dmichaud@robapp.com>
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Cc: Ira Smith <ira@irasmithinc.com>; Brandon Smith <brandon@irasmithinc.com>
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Also, please have Hexa's new counsel reach out to us asap to discuss this matter.

If you have any questions please call me.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795

E. dmichaud@robapp.com

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..--

APPENDIX D

Ira Smith

From: Ira Smith
Sent: December 7, 2022 3:07 PM
To: 'MLAW'; 'Dominique Michaud'; 'Allan Morrison'
Cc: Brandon Smith
Subject: RE: Hexa Deposit

To be clear, that is \$100K.

Best regards.

IRA SMITH MBA CPA CA CIRP LIT
 President

167 Applewood Cres. Suite 6, Concord, ON L4K 4K7

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Check out our weekly blog - <http://www.irasmithinc.com/blog/>

Check out our YouTube videos

<https://www.youtube.com/c/IraSmithTrustee/videos>



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From: Ira Smith
Sent: December 7, 2022 3:04 PM
To: 'MLAW' <office@morrisonlaw.ca>; Dominique Michaud <dmichaud@robapp.com>; Allan Morrison <allan@morrisonlaw.ca>
Cc: Brandon Smith <brandon@irasmithinc.com>
Subject: RE: Hexa Deposit

Dear Amanda:

Thank you for your recent email.

Mr. Michaud is tied up on another matter. Your articulation of what occurred in court today is ambiguous.

To be clear, this is what Her Honour agreed to, based on all submissions:

1. Hexa will advance the amount of \$100,00.00 to Mr. Michaud's trust account. Mr. Michaud already provided your office with his wire instructions. The funds sitting in your trust account is not an option and was never discussed in court today.
2. After or concurrent with Hexa providing Mr. Michaud with the required funds, Hexa's legal counsel retained for a proposed purchase of the Saptashva assets should reach out to both Mr. Michaud and the Receiver to identify themselves and to confirm that they have been retained.
3. Upon BOTH nos. 1 & 2 above having taken place, then Mr. Michaud will provide Hexa's new legal counsel with the proposed stalking horse asset purchase agreement for review and discussion.

Her Honour was extremely clear that she expects the Receiver to advise her on Monday afternoon if the Receiver is satisfied with Hexa's bona fides. Please be advised that if the funds are not wired into Mr. Michaud's trust account, no further discussions can be held.

This is totally consistent with Her Honour's views during the hearing. Any attempt to create a structure other than the above-noted will lead to the Receiver advising the Court on Monday that it is not satisfied to continue to attempt to reach an agreement with Hexa.

Best regards.

Ira



IRA SMITH MBA CPA CA CIRP LIT
President

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Check out our weekly blog - <http://www.irasmithinc.com/blog/>

Check out our YouTube videos

<https://www.youtube.com/c/IraSmithTrustee/videos>



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Best regards,
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Amanda Bolton
Legal Assistant

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AL.**

SAPTASHVA SOLAR S.A.

Applicants

Respondent

Court File No.: CV-21-00655706-00CL

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

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RECORD OF THE RECEIVER, IRA SMITH,
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Barristers + Solicitors
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Anisha Samat LSO No. 82342Q
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Tel: (416) 360-3728
Fax: (416) 868-0306

Lawyers for the Receiver, Ira Smith Trustee & Receiver
Inc.