



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

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

**THE HONOURABLE**

)

**THURSDAY, THE 15<sup>th</sup>**

)

**JUSTICE WILTON-SIEGEL**

)

**DAY OF FEBRUARY, 2024**

**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

**ORDER**

**(Approval of Stalking Horse APA and Bidding Procedures)**

**THIS MOTION** made by the Ira Smith Trustee & Receiver Inc. ("**ISI**"), in its capacity as the Court-appointed receiver (the "**Receiver**") of Saptashva Solar S.A. (the "**Debtor**") for the relief set out in the Notice of Motion dated January 31, 2024, including, *inter alia*, the approval of the bidding procedures substantially in the form attached as Schedule "A" (the "**Bidding Procedures**") and approving the Stalking Horse APA (defined below) was heard this day by videoconference.

**ON READING** the Motion Record of the Receiver and the Second Report of the Receiver dated January 31, 2024 (the “**Second Report**”), the Affidavit of Irving Marks sworn January 29, 2024 (the “**Robins Fee Affidavit**”), the Affidavit of Brandon Smith sworn January 29, 2024 (the “**ISI Fee Affidavit**”) and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavit of Wendy Lee sworn February 1, 2024, filed.

## **SERVICE**

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

## **BIDDING PROCEDURES**

2. **THIS COURT ORDERS** that the Bidding Procedures are hereby approved.

3. **THIS COURT ORDERS** that the Receiver and its advisors are hereby authorized and directed to carry out the Bidding Procedures and take such steps and execute such documentation as may be necessary or incidental to the Bidding Procedures.

4. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages, or liability of any nature or kind to any person in connection with or as a result of the Bidding Procedures, except to the extent that such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Receiver in performing

its obligations under the Bidding Procedures.

5. **THIS COURT ORDERS** that, in carrying out the Bidding Procedures, the Receiver shall have all benefits and protections granted to it under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, the Order (Appointing Receiver) dated January 24, 2022 and any Order of this Court in the within proceeding.

### **STALKING HORSE APA**

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to enter into the asset purchase agreement dated January 31, 2024 (the “**Stalking Horse APA**”), among the Receiver as Vendor and 1034523 Ontario Limited (“**103co**”) as purchaser, in the form attached as Appendix “D” to the Second Report with such minor amendments as may be acceptable to each of the parties thereto; provided that nothing herein approves the sale and vesting of the assets contemplated in the Stalking Horse APA (the “**Assets**”) and the approval and sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following the completion of the sale process pursuant to the terms of the Bidding Procedures if 103co is the successful bidder.

7. **THIS COURT ORDERS** that the break fee of \$12,500 as set out in the Stalking Horse APA (the “**Break Fee**”) is hereby approved and the Receiver is hereby authorized and directed to pay the Break Fee to 103co (or as it may direct) in the manner and circumstances described in the Bidding Procedures out of the proceeds from the completion of the sale of the Assets with any party other than 103co.

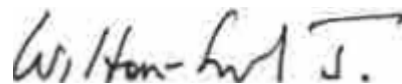
### **GENERAL**

12. **THIS COURT ORDERS** that this Order shall have full force and-effect in all provinces and territories in Canada.

13. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder or under the Bidding Procedures.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Receiver and its agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



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## SCHEDULE "A" – BIDDING PROCEDURES

### STALKING HORSE BID

#### BID PROCEDURES, BREAK FEE AND TERMS AND CONDITIONS OF SALE

Set forth below are the Terms and Conditions of Sale (the "**Terms and Conditions of Sale**") to be employed with respect to the sale of the assets, undertakings and properties and (the "**Purchased Assets**") of Saptashva Solar, S. A. (the "**Company**") as more particularly defined in the Stalking Horse Asset Purchase Agreement (the "**Agreement**") submitted by 1034523 Ontario Limited (the "**Stalking Horse Bidder**"). It is expressly acknowledged and agreed that notwithstanding any other provision herein, the stalking horse sales process shall occur in accordance with this essential timetable and in the event of any conflict between the provisions of this timetable and any other provision of this Agreement, the provisions of this timetable set out in the immediately following chart shall govern to the extent necessary (and only to the extent necessary) to resolve the conflict:

Advertisement in Financial Post	February 20, 2024 (subject to motion date)
Summary information document (" <b>Teaser</b> ") distributed to interested parties	Commencing February 20, 2024
Confidentiality Agreement (" <b>CA</b> ") distributed to interested parties	Commencing February 20, 2024
Data room access provided to interested parties after receipt of signed CA	Commencing February 20, 2024
Deadline for submission of bids	April 5, 2024 (3:00 PM Toronto time) provided that in the event that there are no Qualified Bidders, the Receiver and the Stalking Horse Bidder shall, upon granting court approval, proceed to close the transaction called for under the Agreement on or before May 31, 2024.
Bidders notified of Qualified Bidder status	No later than April 12, 2024
Indication by Qualified Bidders of intention to participate in Auction (if necessary)	April 15, 2024 (5:00 PM Toronto time)
Auction (if necessary)	April 18, 2024 10:00 AM Toronto time (" <b>A</b> ")
Court motion to approve Successful Bid	May 3, 2024
Transaction close	On or before 10 days following granting of Approval and Vesting Order or May 31, 2024

#### **Marketing Process and Identifying Potential Bidders**

1. Upon Court approval of the Agreement and the sales process described within these Terms and Conditions of Sale (the “**Sales Process**”), Ira Smith Trustee & Receiver Inc., solely in its capacity as Court-appointed Receiver of the assets, undertakings and properties of the Company (the “**Receiver**”), will immediately commence the following marketing process:
  - a) a list of potential buyers has been identified by the Receiver and will be advised of the current opportunity to acquire the Purchased Assets;
  - b) an advertisement will be placed in the national edition of the National Post within 5 business days, or as soon thereafter as practical; and
  - c) a notice will be placed on the website of the Receiver.

### **Due Diligence**

2. All interested parties that sign the Receiver’s form of confidentiality agreement (a “**Potential Bidder**”) will be provided access to a data room containing detailed information regarding the assets to enable them to perform their due diligence.
3. Subject to access being provided by the respective landlords, a Potential Bidder will also be provided with a site visit, facilitated by the Receiver, to supplement their due diligence procedures.
4. Potential Bidders are cautioned not to rely upon any documentation or information provided by or on behalf of the Receiver. Any such documentation or other material provided with respect to the Purchased Assets was prepared solely for the convenience of Potential Bidders and is not warranted to be complete or accurate, has not been independently verified, and is not part of these Terms and Conditions of Sale or any resulting Asset Purchase Agreement or Bill of Sale. Each Potential Bidder shall be deemed to have relied entirely on its own inspection and investigation in submitting its offer. Potential Bidders are required to obtain such third-party consents as they consider necessary. Potential Bidders are to make such independent enquiries, as they deem necessary, concerning all Purchased Assets prior to submitting their Bid (as defined herein).

### **Bid Deadline**

5. A Potential Bidder that desires to make a bid shall deliver its bid to the Receiver no later than 3:00 PM (Toronto Time) on April 15, 2024 (the “**Bid Deadline**”). Any Potential Bidder who submits a bid by the Bid Deadline (the “**Bid**”) will be considered a Bidder.

### **Bid Requirements**

6. All bids must include:

- a) an offer to pay a cash purchase price greater than the aggregate consideration offered by the Stalking Horse Bidder pursuant to the Agreement, plus the amount of the break fee of \$12,500.00 plus an overbid in the amount of \$5,000.00 (which in aggregate equals the Break Fee amount plus the bid increment proposed by the Receiver in the Auction process) (the “**Purchase Price**”);
- b) no provision making the offer subject to any due diligence, financing condition or other contingencies (including representations, warranties, covenants, and timing requirements) of any kind or any other conditions precedent on such party's obligation to acquire the Purchased Assets other than as may be specifically included in the Agreement;
- c) an executed copy of a purchase agreement in the form of the Agreement, together with a blackline copy of the Agreement reflecting any changes made to the Agreement, shall be submitted to the Receiver and shall be binding and irrevocable until either (i) such time as the Receiver rejects a Bidder's Bid in accordance with paragraph 11 herein; (ii) at the conclusion of the Auction, if held, each respective Qualified Bidder (as defined herein) does not become the Successful Bidder; or (iii) if the Court does not approve the Successful Bidder's Accepted Bid;
- d) a certified cheque, bank draft or wire transfer drawn on a Canadian Schedule “**T**” Chartered Bank (an “**Acceptable Institution**”) in the amount of fifteen per cent (15%) of the Bidder's Purchase Price contained in the Bidder's Bid payable to the Receiver in trust. This amount will either (i) be applied to satisfy the purchase price of a Successful Bidder, the balance of which purchase price shall be due on closing; (ii) be returned to the Bidder if its bid is not successful (subject to the other provisions of these Terms and Conditions of Sale), or (iii) be forfeited to the Receiver in the event that the Successful Bidder breaches its obligations to complete the purchase in accordance with the Bidder's Accepted Bid (as defined herein);
- e) a representation of the Bidder and such written evidence of available cash and/or a commitment for financing to evidence the Bidder's ability to consummate the proposed transaction as the Receiver may reasonably request;
- f) a copy of a resolution or similar document demonstrating authority to make an irrevocable bid, and to execute the transaction contemplated by the offering bid for the Purchased Assets;
- g) disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating with such bid and the complete terms of any such participation;

- h) disclosure of the identity of each of the Officers and Directors or Partners, as the case may be, of each entity bidding for the Purchased Assets or otherwise participating with such bid;
- i) an acknowledgement by such Bidder that if its bid becomes a Qualified Bid and the bidder becomes a Qualified Bidder (as such terms are hereinafter defined) that the such Qualified Bidder's continued participation in any Auction is on a non-exclusive basis; and
- j) a description of the Bidder's current operations.

### **Qualified Bids**

- 7. A bid received from a Bidder not later than the Bid Deadline that meets the above requirements will be considered a "**Qualified Bid**" and each Bidder that submits a Qualified Bid will be considered a "**Qualified Bidder**".
- 8. The Agreement shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder for all purposes and requirements pursuant to the sale procedures set out this Schedule (the "**Sale Procedures**"), notwithstanding the requirements that other potential Bidders must satisfy to be considered a Qualified Bidder.
- 9. Qualified Bids will be valued and assessed by the Receiver in its sole commercial discretion based upon any and all factors that the Receiver may, in its sole discretion, deem pertinent.
- 10. The Receiver, in its business judgment, reserves the right to reject any Bid if such Bid:
  - a) is on terms that are more burdensome or conditional than the terms of the Agreement;
  - b) requires any indemnification of such Bidder;
  - c) excludes assets or contracts, or leases of the Company;
  - d) is not received by the Bid Deadline;
  - e) is subject to any due diligence, financing condition or other contingencies (including representations, warranties, covenants, and timing requirements) of any kind or any other conditions precedent on such party's obligation to acquire the Purchased Assets; or
  - f) includes any other considerations that the Receiver may deem relevant to the bid.
- 11. Any Bid rejected pursuant to Paragraph 10 above, shall not be deemed to be a Qualified Bid.
- 12. The Receiver will advise all Bidders by email whether or not they are a Qualified Bidder by 5PM (Toronto time) on April 12, 2024 or by such further date as the Receiver may



determine in its sole discretion, but in any event not less than 48 hours before the start of the Auction (the “**Notification Date**”).

13. In the case of a rejected bid, the Receiver shall return to the Bidder, the amount provided in the Bid in accordance with paragraph 6(b) above, within 5 business days after the Notification Date.

### **The Auction and Auction Procedures**

14. If the Receiver determines that it has received more than one Qualified Bid (including the Agreement), it will invite Qualified Bidders to participate in an Auction, as described in more detail below (the “**Auction**”). If the Receiver does not receive any Qualified Bids other than the Agreement, it will not hold an Auction, in which case the Agreement will be deemed the Successful Bid (as this term is defined herein) and the Stalking Horse Bidder will be named the Successful Bidder (as this term is defined herein) and the Receiver will proceed towards completion of the Transaction in accordance with its terms.
15. By 5PM (Toronto time) on April 15, 2024, each Qualified Bidder must inform the Receiver, by email, whether it intends to participate in the Auction.
16. The Receiver will promptly thereafter inform, in writing, each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have expressed their intention to participate in the Auction and will provide copies of all other Qualified Bids to such Qualified Bidders.
17. Only the authorized representatives, professionals or agents of the Stalking Horse Bidder and each other Qualified Bidder identified in advance to the Receiver, shall be eligible to participate at the Auction.
18. The Auction, if any, shall be conducted by the Receiver, commencing on April 18, 2024, at 10AM. (Toronto Time) via video conference using a weblink to be provided by the Receiver to Qualified Bidders 24 hours prior to the Auction.
19. At the Auction, the bidding will start at the aggregate consideration for the Purchased Assets and terms proposed in the offer that the Receiver selects as the highest and best offer prior to the Auction and will continue in cash increments of at least \$5,000.
20. The Receiver, in its sole discretion, may adjourn the Auction at any time to permit the Qualified Bidders and the Stalking Horse Bidder, the opportunity to consider improved bids.
21. During the Auction, Qualified Bidders including the Stalking Horse Bidder may submit revised bids that otherwise comply with the rules of this bidding and Auction process (a “**Revised Bid**”).

22. If no Qualified Bidder submits a Revised Bid after a period of 15 minutes following the Receiver's acceptance of a Revised Bid and the Receiver in its sole discretion chooses not to adjourn the Auction further, the Auction will be concluded whereupon the Receiver shall enter into a binding agreement of purchase and sale with the Qualified Bidder or the Stalking Horse Bidder that submitted the leading bid as determined by the Receiver in its sole discretion (the "**Successful Bidder**"). The bid process shall end at the conclusion of the Auction.
23. The Successful Bidder agrees to do all such things as may be required by the Receiver to obtain Court approval of the Accepted Bid.
24. Subject to the Receiver obtaining the approval and vesting order in respect of the Accepted Bid, if the Successful Bidder fails to consummate the transaction by on or before 10 days following the granting of the approval and vesting order or May 31, 2024 (or such date that may otherwise be mutually agreed upon), the Receiver shall be authorized but not required to deem that the Successful Bidder has breached its obligations pursuant to the Accepted Bid, has forfeited its deposit to the Receiver, and the Company and the Receiver are authorized to seek an alternative bidder for the Purchased Assets.
25. Except for the Stalking Horse Bidder with respect to the Break Fee, Potential Bidders, Bidders and/or Qualified Bidders shall not be allowed any breakup, termination or similar fee or expense reimbursement. For greater certainty, Potential Bidders, Bidders and/or Qualified Bidders/Successful Bidder shall be responsible for all of their own professional and other fees and costs relating to their investigation or closing of any transaction in this regard.
26. The Receiver shall have the right to adopt and implement such other rules for the Auction as may be necessary to promote the goals of this bid process generally.
27. The highest or any offer will not necessarily be accepted.

### **Court Approval**

28. The sale of Purchased Assets is subject to an approval and vesting Order being issued by the Court.
29. In the case of an Agreement for the Receiver's interest in any lease, the Receiver shall assign (without covenants) all of its right, title and interest, if any, in such lease to the Successful Bidder on closing. The Receiver agrees to use all commercially reasonable efforts to obtain the requisite consent of the landlord or lessor, as the case may be, and/or the approval of the Court, to such assignment (if required by the lease) but in so doing shall not be required to incur any expense or liability (except as the Receiver in its absolute discretion may see fit).

30. Pursuant to the Terms and Conditions of Sale Order, the Receiver shall report to the Court and provide its recommendations to the Court regarding the sale of the Purchased Assets on May 3, 2024, or as soon thereafter as the Court may allow.
31. The Receiver shall not be required to pay any commission or finder's fee with respect to any sale pursuant hereto.

**“As is, where is”**

32. The Purchased Assets are being sold on an “as is, where is” basis and no warranty, condition or representation, whether statutory, express or implied, is being given by the Receiver as to the description, condition, state, cost, size, quality, fitness for purpose, merchantability, or in respect to any other matter or thing whatsoever concerning the Purchased Assets other than as may be expressly set out herein. The Successful Bidder is deemed to have satisfied itself with regard to all of the foregoing and any matter or thing whatsoever in respect of the Purchased Assets.

**Miscellaneous**

33. The Purchased Assets shall be and remain at the risk of the Receiver as its interest may appear until closing. From and after closing, the Purchased Assets shall be at the Successful Bidder's risk. Pending closing, the Receiver shall hold any insurance policies or proceeds thereof in trust for itself, the Successful Bidder and others as their respective interests may appear. In the event of substantial damage to or loss prior to closing of the Purchased Assets which are insured, the Successful Bidder may elect by notice in writing, 15 days after receiving notice from the Receiver, of such damage or loss, either to close the Agreement and receive the remaining Purchased Assets and the proceeds of the insurance, or may rescind the Agreement, have all moneys theretofore paid returned without interest, costs, deduction or compensation, but shall have no further or other right to damages, costs, specific performance or any other remedy.
34. The Successful Bidder shall pay on closing, in addition to the purchase price, all applicable federal, provincial and municipal taxes in connection with the sale.
35. The Successful Bidder shall, at its own cost and expense, be responsible for compliance with all municipal, provincial and federal laws insofar as they apply to the Purchased Assets and the use thereof by the Successful Bidder from and after closing.
36. All stipulations as to time are strictly of the essence.
37. Any tender of documents or money hereunder may be made upon the Receiver, a Bidder, the Successful Bidder or their respective solicitors. Money may only be tendered by certified cheque, bank draft or wire transfer drawn on an Acceptable Institution.

38. The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and applicable laws of Canada and enure to the benefit of and be binding upon the parties thereto and their respective heirs, executors, administrators, successors or assigns as the case may be.
39. The obligations of the Receiver to complete the Agreement shall be relieved if, on or before the closing of such sale, any asset which is the subject of the sale has been removed from the control of the Receiver by any means or process, or any such asset is redeemed, or if the completion of the sale is restrained or prohibited by an injunction or other order issued by a court of competent jurisdiction, whereupon the only obligation of the Receiver shall be to return the applicable deposit, without interest, deduction, costs or compensation.
40. All communications, inquiries and requests for information relating to the acquisition of the Purchased Assets should be addressed to:

Ira Smith Trustee & Receiver Inc.  
167 Applewood Crescent, Suite 6  
Concord, Ontario L4K 4K7

Attention: Brandon Smith

T: (905) 738-4167 x113  
E: brandon@irasmithinc.com  
F: 905.738.9848

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*Applicants*

*Respondent*

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OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

PROCEEDING COMMENCED AT TORONTO

**ORDER**

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