

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MITSUBISHI HC CAPITAL CANADA, INC.
and MITSUBISHI HC CAPITAL CANADA LEASING, INC.

Applicants

and

ORBIT EXPRESS INC., 10055913 CANADA INC.,
and 8615314 CANADA INC.

Respondents

**MOTION RECORD OF THE INTERIM
RECEIVER**

(Returnable August 23, 2024)

August 21, 2024

HARRISON PENZA LLP

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel: 519-679-9660

Fax: 519-667-3362

Email: thogan@harrisonpensa.com

Solicitors for the Interim Receiver,
msi Spergel inc.

TO: Service List

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Respondents

**SERVICE LIST
(as at August 21, 2024)**

GOWLING WLG (CANADA) LLP

1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Lawyers for the Applicants

Asim Iqbal

Tel: 416-862-4693

Email: Asim.Iqbal@gowlingwlg.com

Heather Fisher (LSO#75006L)

Tel: 416-369-7202

Email: Heather.Fisher@gowlingwlg.com

ORBIT EXPRESS INC.

c/o Kulwant Singh
28 Cape Dorset Cres
Brampton, ON L6R 3L2

Respondent

Yadwinder Singh

Email: yours.randhawa@gmail.com

Kulwant Singh

Email: kulwantcheema2@gmail.com

10055913 CANADA INC. c/o Kulwant Singh 66 Executive Crt Brampton, ON L6R 0L5 Respondent	Yadwinder Singh Email: yours.randhawa@gmail.com Kulwant Singh Email: kulwantcheema2@gmail.com
8615314 CANADA INC. 330 Rankin Ave Windsor, ON N9B 2R7 Respondent	Yadwinder Singh Email: yours.randhawa@gmail.com Kulwant Singh Email: kulwantcheema2@gmail.com
YADWINDER SINGH 15 Flatlands Way Brampton, ON L6R 2B5 Guarantor	Yadwinder Singh Email: yours.randhawa@gmail.com
KULWANT SINGH 66 Executive Crt Brampton, ON L6R 0L5 Guarantor	Kulwant Singh Email: kulwantcheema2@gmail.com
MSI SPERGEL INC 200 Yorkland Boulevard Suite 1100 North York, ON M2J 5C1 Interim Receiver	Mukul Manchanda Tel: (416) 498-4314 Email: mmanchanda@spergel.ca
RECONSTRUCT LLP 120 Adelaide Street West Suite 2500 Toronto, ON M5H 1T1 Independent Conflict Counsel to the Applicants	Caitlin Fell Tel: (416) 613-8282 Email: cfell@reconllp.com
SECURED CREDITORS	
CONVOY DIESEL INC. 1700 Sismet Road Unit #2 Mississauga, ON L4W 1R4	Email: convoydieselinc@gmail.com

DAIMLER TRUCK FINANCIAL SERVICES CANADA CORPORATION 2680 Matheson Blvd. E. Ste 202 Mississauga, ON L4W 0A5	
BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West Toronto, ON M5H 4E3 Lawyers for General Motors of Canada Company	R. Bevan Brooksbank Tel: (416) 367-6604 Email: bbrooksbank@blg.com Daphne Chu Tel: (416) 367-7870 Email: dchu@blg.com
JONES KOPP LITIGATION PARTNERS LLP 20 Adelaide Street East, Suite 600 Toronto, ON M5C 2T6 Lawyers for Ryder	Bahram Dehghan Tel: (416) 350-6679 Email: bdehghan@joneskopplitigation.com
MAYA LEASING CORP. 215 Advance Blvd, Unit 7 Brampton, ON L6T 4V9	
TPINE LEASING CAPITAL CORPORATION 6050 Dixie Road Mississauga, ON L5T 1A6	
THORNTON GROUT FINNIGAN LLP TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7 Lawyers for TPine Leasing Capital Corporation	Rachel Nicholson Tel: (416) 304-1153 Email: rnicholson@tgf.ca
BODKIN, A DIVISION OF BENNINGTON FINANCIAL CORP 102-1465 North Service Rd E Oakville, ON L6H 1A7	Lisa Lackey Tel: 905-618-0464 Email: lisal@benningtonfinancial.ca
THE BANK OF NOVA SCOTIA 10 Wright Boulevard Stratford, ON N5A 7X9	

ESSEX LEASE FINANCIAL CORPORATION 10768 74th Street SE Calgary, AB T2C 5N6	
GEOLIN CREDIT-BAIL INC. 401-3135 Boul. Moise-Vincent Saint-Hubert, QC J3Z 0G7	
RIORDAN LEASING INC. 1158 King St. E Kitchener, ON N2G 2N4	
TFG FINANCIAL CORPORATION 400 - 4180 Lougheed Highway Burnaby, BC V5C 6A7	
SUMMIT CREDIT CORPORATION c/o Everyday Equipment Finance Inc. 1131A Leslie Street, Suite 510 Toronto, ON M3C 3L8	Taylor Arnold Tel: 800-961-4899 x261 Email: taylor@everydayef.com
MERIDIAN ONECAP CREDIT CORP. 800-40 Sheppard Avenue West Toronto, ON M2N 6K9	
COAST CAPITAL EQUIPMENT LEASING LTD. 800-9900 King George Blvd. Surrey, BC V3T 0K7	
CONCENTRA BANK C/O Comm Leasing, 333-3rd Ave N Saskatoon, SK S7K 2M2	
LBEL INC. 5035 South Service Road Burlington, ON L7L 6M9	
VAULT CREDIT CORPORATION 41 Scarsdale Road, Suite 5 Toronto, ON M3B 2R2	

MAYA LEASING CORP. 215 Advance Blvd, Unit 7 Brampton, ON L6T 4V9	
R & S TRAILER LEASING LIMITED 5185 Fountain Street North Breslau, ON N0B 1M0	
WELLS FARGO EQUIPMENT FINANCE COMPANY 1290 Central Parkway W, 11th Fl. Mississauga, ON L5C 4R3	
COAST CAPITAL EQUIPMENT FINANCE LTD. 800-9900 King George Blvd. Surrey, BC V3T 0K7	
MERCADO CAPITAL CORPORATION, A DIV. OF WESTMINSTER SAVINGS CREDIT UNION Suite 1900, 13450 - 102 Avenue Surrey, BC V3T 5Y1	
STOUGHTON TRAILERS CANADA CORPORATION 416 S. Academy Street Stoughton, WI 53589	
BUSINESS DEVELOPMENT BANK OF CANADA 201 City Centre Drive, Suite 301 Mississauga, ON L5B 2T4	Jason Spetter Tel: 416-789-0655 Email: jspetter@szklaw.ca
CANADIAN DEALER LEASE SERVICES INC. 372 Bay Street Suite 1800 Toronto, ON M5H 2W9	
PACCAR FINANCIAL LTD. 6711 Mississauga Rd. N., Ste 500 Mississauga, ON L5N 4J8	

DE LAGE LANDEN FINANCIAL SERVICES CANADA INC. 5046 Mainway, Unit 1 Burlington, ON L7L 5Z1	
BODKIN, A DIVISION OF BENNINGTON FINANCIAL CORP 102-1465 North Service Rd E Oakville, ON L6H 1A7	
GOVERNMENT	
ATTORNEY GENERAL OF CANADA Department of Justice of Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1	Email: agc-pgc.toronto-tax-fiscal@justice.gc.ca
CANADA REVENUE AGENCY 1 Front Street West Toronto, ON M5J 2X6	Email: agc-pgc.toronto-tax-fiscal@justice.gc.ca
MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 11-777 Bay Street Toronto, ON M5G 2C8	Leslie Crawford Tel: 1-866-668-8297 Email: leslie.crawford@ontario.ca
MINISTRY OF FINANCE (ONTARIO) INSOLVENCY UNIT 6th Floor, 33 King Street West Oshawa, ON L1H 8H5	Email: Insolvency.Unit@ontario.ca
OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY (CANADA) 1155 Metcalfe Street, Suite 950 Montreal, QC H3B 2V6	Email: ic.osbservice-bsfservice.ic@canada.ca

INDEX

INDEX

Tab	Document	Page No.
1	First Report of the Interim Receiver dated Augst 21, 2024	11
	Appendix 1 – The Endorsement of Justice Emery dated July 31, 2024 and the Interim Receivership Order	22
	Appendix 2 – The August 8 th Email	43
	Appendix 3 – The August 15 th Letter	51
	Appendix 4 – The August 1 st Letter	82
	Appendix 5 – The August 6 th Letter	85

Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**MITSUBISHI HC CAPITAL CANADA, INC. and
MITSUBISHI HC CAPITAL CANADA LEASING, INC.**

Applicants

and

**ORBIT EXPRESS INC., 10055913 CANADA INC.,
and 8615314 CANADA INC.**

Respondents

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER OF
ORBIT EXPRESS INC., 10055913 CANADA INC., and 8615314 CANADA INC.**

AUGUST 21, 2024

Table of Contents

I.	APPOINTMENT AND BACKGROUND	4
II.	PURPOSE OF THIS FIRST REPORT AND DISCLAIMER	5
III.	NON-COMPLAINE OF THE DEBTORS	6
IV.	GENERAL MOTORS AND RYDER	9

APPENDICES

1. The endorsement of Justice Emery dated July 31, 2024 and the Interim Receivership Order
2. The Aug 8th Email
3. The Aug 15th Letter
4. The Aug 1st Letter
5. The Aug 6th Letter

I. APPOINTMENT AND BACKGROUND

1. This first report (the “**First Report**”) is filed by msi Spergel inc. (“**Spergel**”), in its capacity as the Court-appointed interim receiver (in such capacities, the “**Interim Receiver**”) of Orbit Express Inc. (“Orbit”), 10055913 Canada Inc. (“**1005 Canada**”) and 8615314 Canada Inc. (“**8615 Canada**” together with Orbit and 1005 Canada, the “**Debtors**”).
2. Orbit is an Ontario corporation that operates in the transportation and logistics industry. Orbit was primarily engaged in the business of logistics and trucking. Orbit’s registered head office is specified to be 28 Cape Dorset Crescent, Brampton Ontario. The directors of Orbit are Kulwant Singh (“**Kulwant**”) and Yadwinder Singh (“**Yadwinder**” collectively, the “**Principals**”).
3. 1005 Canada is a federal corporation that guaranteed all of Orbit’s obligations to Mitsubishi HC Capital Inc. (“**MHCCA**”) and its affiliate, Mitsubishi HC Capital Canada Leasing, Inc. (“**MHCCL**”, and together with MHCCA, the “**Lender**”).
4. 8615 Canada is a federal corporation, with the same principals as Orbit, that leased certain additional equipment from the Lender for us in the Debtors’ business.
5. The Lender, a secured creditor of the Company, moved by way of an application in the Ontario Superior Court of Justice in Brampton, Ontario (the “**Court**”) for a Court order appointing Spergel as the receiver, without security, of all of the assets, undertakings and properties, (collectively, the “**Property**”) of the Debtors.
6. The Lender’s application was originally returnable on July 31, 2024. Following submissions of counsel for the Lender and the principal of the Debtors, the

Honourable Justice Emery issued an endorsement on July 31, 2024 and an Order appointing Spergel as the Interim Receiver of the Debtors (the “**Interim Receivership Order**”). Attached to this First Report as **Appendix “1”** are copies of the endorsement of Justice Emery dated July 31, 2024 and the Interim Receivership Order.

7. The Monitor retained Harrison Pensa LLP (the “**Monitor’s Counsel**”) as its independent legal counsel.

II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER

8. The purpose of this First Report is to apprise the Court of the actions taken by the Interim Receiver since the date of the appointment and the lack of cooperation and the non-compliance of the Debtors with the Interim Receivership Order.

Disclaimer

9. The Interim Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction, or use of this First Report for any other purpose than intended.
10. In preparing this First Report, the Interim Receiver has relied upon certain information provided to it by the management of the Debtors including, without limitation, certain financial information. The Interim Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Interim Receiver expresses no opinion or other forms of assurance with respect to such information. Future oriented financial information relied upon in this First Report is based on assumptions regarding future events, actual results achieved may vary from this information and these variations may be material.

11. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

III. **NON-COMPLAINT OF THE DEBTORS**

12. Immediately upon its appointment, the Interim Receiver contacted Yadwinder and arranged for a meeting. On August 9, 2024 the Interim Receiver met with Yadwinder wherein Yadwinder advised the Interim Receiver of the following:
- a) Orbit stopped operating the business on June 15, 2024 due to lack of funds required to pay fuel and drivers;
 - b) All accounts receivable of Orbit are factored with the Lender;
 - c) One of the customers, Ryder OMC, is currently withholding payment of approximately \$900,000 in receivables;
 - d) Several tractors/trailers leased through Bodkin are in Mexico and Texas;
 - e) Not certain about the location(s) of the trailers purchased using funds from Business Development Bank of Canada ("**BDC**") and the Lender but undertook to provide such locations;
 - f) Orbit is expecting approximately \$800,000 in refunds related to its filing of *Harmonized Sales Tax* ("**HST**") returns with Canada Revenue Agency ("**CRA**") for the period from September 2023 to December 2023. Orbit may have additional HST refund of approximately \$900,000 for unfiled period from January 2024 to June 2024;
 - g) Orbit is expecting a refund of approximately \$900,000 from refiling of a previous year corporate tax return; and

- h) Orbit owes approximately \$465,000 in outstanding source deductions to CRA.
13. Following the meeting, the Interim Receiver on August 8, 2024 sent an email (the “**Aug 8th Email**”) to Yadwinder outlining the information that Yadwinder promised to provide by end of day August 9, 2024. Attached as **Appendix “2”** is a copy of the Aug 8th Email.
14. Orbit and/or Yadwinder did not provide the Records (as defined in the Interim Receivership Order) and/or any of the information requested in the Aug 8th Email by end of day August 9, 2024. The Interim Receiver followed up with Yadwinder on August 12, 2024 and August 14, 2024. On August 14, 2024, Yadwinder advised the Interim Receiver that his partner was returning from overseas and that he should be able to provide all Records and the location(s) of Property by end of day August 14, 2024.
15. On August 15, 2024, the Interim Receiver sent a letter (the “**Aug 15th Letter**”) to Yadwinder reminding him of his obligations pursuant to paragraphs 4 and 5 of the Interim Receivership Order of providing the Interim Receiver with all of the Records of the debtors and the location(s) of Property of the Debtors. The Interim Receiver further advised Yadwinder that information and the location(s) of Property was not provided by end of day on August 15, 2024, the Interim Receiver will have no alternative but to report his non-compliance of the Interim Receivership Order to the Court at the upcoming hearing. Attached as **Appendix “3”** is a copy of the Aug 15th Letter.
16. On August 19, 2024, Yadwinder sent emails providing a list of certain trailers/trucks and their locations subject to the security interest of BDC and the Lender. On the same day, the Interim Receiver provided a list of trucks and trailers (obtained from the Lender) that are subject to the security interest of the Lender and asked

Yadwinder to provide locations for same. On August 20, 2024, Yadwinder advised as follows with respect to the trucks and trailers subject to the Lender's security interest:

Contract	Marque	Modèle	Année	Numéro de Série	Comments	Trailer no.
V46091	Wabash	Dry van Trailer	2015	1JJV532D3FL867965	Bailiff	OR091
V46091	Wabash	Dry van Trailer	2015	1JJV532D5FL867966	Bailiff	OR087
V46091	Wabash	Dry van Trailer	2015	1JJV532D0FL867969	Bailiff	OR088
V46091	Wabash	Dry van Trailer	2015	1JJV532D7FL867970	Bailiff	OR089
V46091	Wabash	Dry van Trailer	2015	1JJV532D9FL867971	Bailiff	OR090
V46560	Stoughton	Dry van trailer	2023	1DW1A5328PSB14447	BAILIFF	OR063
V46560	Stoughton	Dry van trailer	2023	1DW1A5321PSB14452	BAILIFF	OR062
V46560	Stoughton	Dry van trailer	2023	1DW1A5323PSB14453	León, GUA, 36125	OR073
C359717	Kenworth	Highway truck	2020	1XKYDP9X0LJ960955	NO LOAN	1338
V36914	International	Truck Lt	2018	3HSDZAPR9JN244781	Bailiff	1361
V36914	International	Truck PS	2016	3HSDJAPR4GN735520	Bailiff	1360
V50781	Vanguard	Dry van trailer	2021	5V8VA5328MM100145	Carretera Libramiento Noroeste de Monterrey, General Escobedo, NLE, 66053	OR080
V50781	Vanguard	Dry van trailer	2021	5V8VA5324MM100126	Los Héroes Monterrey, Ciénega de Flores, NLE, 65550	OR081
V50781	Vanguard	Dry van trailer	2023	5V8VA5324MM100188	8037 San Lorenzo Drive, Laredo, TX, 78045	OR082
C366870	International	Truck LT625	2024	3HSDZAPR0RN062902	Bailiff	1381
V61076	Kenworth	Truck T680	2024	1XKYD49X2RJ978302	Bailiff	1379
EBR	Stoughton	Trailer AVX	2018	1DW1A5325JS807335	NO LOAN OR CONTRACT	OR114
EBR	Stoughton	Trailer AVX	2018	1DW1A5327JS807336	NO LOAN OR CONTRACT	OR115
EBR	Stoughton	Trailer ZGP	2018	1DW1A5327JEA00981	NO LOAN OR CONTRACT	OR001
EBR	Stoughton	Trailer ZGP	2018	1DW1A5327JEA00977	NO LOAN OR CONTRACT	OR002
EBR	Stoughton	Trailer ZGP	2019	1DW1A5321KBA14747	NO LOAN OR CONTRACT	OR119
EBR	Stoughton	Trailer ZGP	2019	1DW1A5326KEA16900	NO LOAN OR CONTRACT	OR120
EBR	Stoughton	Trailer ZGP	2019	1DW1A532XKEA16902	NO LOAN OR CONTRACT	OR121
EBR	Stoughton	Trailer ZGP	2019	1DW1A5323KEA16899	NO LOAN OR CONTRACT	OR122
EBR	Stoughton	Trailer ZGP	2019	1DW1A5323KEA16885	NO LOAN OR CONTRACT	OR124
EBR	Stoughton	Trailer ZGP	2019	1DW1A5328KEA16901	NO LOAN OR CONTRACT	OR125
EBR	Hyundai	Trailer HYTR	2019	3H3V532CCKT665089	NO LOAN OR CONTRACT	OR134
EBR	Hyundai	Trailer HYTR	2019	3H3V532C8KT665088	NO LOAN OR CONTRACT	OR135
EBR	Volvo	Tractor	2014	4V4NC9EH3EN162638	NO LOAN OR CONTRACT	1419
EBR	Volvo	Tractor	2015	4V4NC9EJ6FN188039	NO LOAN OR CONTRACT	1420
EBR	International	Tractor	2007	2HSCEAPR77C363043	NO LOAN OR CONTRACT	1201
EBR	Freightliner	Tractor	2011	1FUJGLDR0BSAV3553	NO LOAN OR CONTRACT	1313
EBR	Freightliner	Tractor	2012	1FUJGLDR2CSBC5205	NO LOAN OR CONTRACT	1328

17. On August 21, 2024, Yadwinder advised that the tractors and trailers listed as “NO LOAN OR CONTRACT” in the above schedule were sold to someone else a long time ago as Orbit took loan from someone to run the business. In addition, Yadwinder is not able to identify which Bailiff's took possession of the trucks and trailers marked as “Bailiff”.
18. The Lender has advised the Interim Receiver that it believes that all of the tractors and trailers marked as “NO LOAN OR CONTRACT” above are subject to the Lender's security interest. The Interim Receiver is in the process of obtaining

Vehicle Identification Number (“**VIN**”) searches for these vehicles to determine the date of transfer of these vehicles and other relevant information with respect to the transfer of these vehicles.

19. As reported earlier in this First Report that Yadwinder advised the Interim Receiver, amongst other things, of the following:
 - a) One of the customers, Ryder OMC, is currently withholding payment of approximately \$900,000 in receivables;
 - b) Orbit is expecting approximately \$800,000 in refunds related to its filing of HST returns with CRA for the period from September 2023 to December 2023. Orbit may have additional HST refund of approximately \$900,000 for unfiled period from January 2024 to June 2024; and
 - c) Orbit is expecting a refund of approximately \$900,000 from refiling of a previous year corporate tax return;
20. As at the date of this First Report, the Interim Receiver, with the exception of the information outlined in this First Report, has not received any substantial books and records from the Debtors or the Principals in order for the Interim Receiver to protect and preserve the Property including, receivables, HST refunds and corporate tax refunds. All of the information related to receivables, HST refunds and corporate tax refunds should be readily available to the Debtors and the Principals however the Interim Receiver has not yet been provided with this information in breach of the Interim Receivership Order.

IV. GENERAL MOTORS AND RYDER

21. As indicated above the Interim Receiver was advised by Orbit that Ryder OMC and/or General Motors of Canada Company ("**GM**") owes approximately \$900,000 to Orbit. On August 1, 2024 the Interim Receiver wrote to Ryder and GM advising of the appointment of the Interim Receiver and requesting that any and all amounts outstanding to Orbit be paid to the Interim Receiver.
22. The Receiver has been in correspondence with counsel for Ryder and GM.
23. On August 21st, 2024 the Interim Receiver received an email from counsel for GM attaching a letter dated August 6th, 2024 addressed to the Interim Receiver outlining the concerns and position of GM. Attached as **Appendices 4 and 5** are the Interim Receiver's letter to GM and the letter from GM's counsel to the Interim Receiver.

All of which is respectfully submitted.

Dated at Toronto, this 21st day of August 2024

msi Spergel inc.,
solely in its capacity as Court-appointed
Interim Receiver of the Debtors and not
in any corporate or personal capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

Appendix 1

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	TUESDAY, THE 30 TH
)	
JUSTICE EMERY)	DAY OF JULY, 2024

MITSUBISHI HC CAPITAL CANADA, INC. and
MITSUBISHI HC CAPITAL CANADA LEASING, INC.

Applicants

and

ORBIT EXPRESS INC., 10055913 CANADA INC.,
and 8615314 CANADA INC.

Respondents

APPLICATION UNDER SECTION 47 OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF
JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

ORDER
(appointing Interim Receiver)

THIS APPLICATION made by the Applicants for an Order pursuant to section 47 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. C.43, as amended (the "**CJA**") appointing msi Spergel Inc. ("**MSI**") as interim receiver and manager (in such capacities, the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of Orbit Express Inc., 10055913 Canada Inc., and 8615314 Canada Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 7755 Hurontario Street, Brampton, Ontario.

ON READING the affidavit of Samuel Leblond affirmed July 18, 2024 and the Exhibits thereto and on hearing the submissions of counsel for the Applicants and all other parties listed on the Counsel Slip, no one else appearing although duly served as

appears from the affidavit of service of Heather Fisher, affirmed July 19, 2024 and on reading the consent of MSI to act as the Receiver, filed,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 47 of the BIA and section 101 of the CJA, MSI is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

INTERIM RECEIVER'S POWERS

3. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such

appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$200,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the

Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim

Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Interim Receiver shall provide each of the relevant landlords with notice of the Interim Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Interim Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Interim Receiver, or by further Order of this Court upon application by the Interim Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial

contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

INTERIM RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of

all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "**Post Interim Receivership Accounts**") and the monies standing to the credit of such Post Interim Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Interim Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Interim Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the

Debtors, and shall return all other personal information to the Interim Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

21. THIS COURT ORDERS that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by

this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Interim Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Interim Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<@>'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

29. 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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Interim 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, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court.

SCHEDULE "A"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the interim receiver and manager (the "**Interim Receiver**") of the assets, undertakings and properties Orbit Express Inc., 10055913 Canada Inc., and 8615314 Canada Inc. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the ____ day of _____, 20__ (the "**Order**") made in an action having Court file number CV-24-00003220-0000, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2024.

msi Spergel Inc., solely in its capacity
as Interim Receiver of the Property, and not
in its personal capacity

Per: _____

Name:

Title:

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: MITSUBISHI HC CAPITAL CANADA, INC.,
MITSUBISHI HC CAPITAL CANADA LEASING, INC., **Applicants**

AND:

ORBIT EXPRESS INC.,
10055913 CANADA INC.,
8615314 CANADA INC., **Respondents**

BEFORE: Justice Emery

COUNSEL: FISHER, HEATHER and IQBAL, ASIM, for the applicants
Email: heather.fisher@gowlingwlq.com /
asim.iqbal@gowlingwlq.com

SELF-REP (SINGH, YADWINDER), for ORBIT EXPRESS INC.
Email: yours.randhawa@gmail.com

HEARD: July 30, 2024, by video conference

AMENDED ENDORSEMENT

[1] The Applicants (jointly, “Mitsubishi”) bring this application for a receivership order under s. 243(1) of the *Bankruptcy and Insolvency Act* (the “BIA) and s. 101 of the *Courts of Justice Act*.

[2] Mr. Singh appeared on the application today on behalf of the Respondent Orbit Express Inc. and the other two corporate Respondents. He has requested an adjournment to obtain funding so that the Respondents are able to retain counsel As

corporations, they must be represented by a lawyer unless leave is given by the court under Rule 15.01(2).

[3] The Applicants oppose the request for an adjournment. Their lawyers served the application record on July 19, 2024. They take the position that the Respondents have had 12 days to retain counsel. The Applicants obtained this hearing date for the application to be heard on an urgent basis as urgency was found by Rahman J. on July 24, 2024 and set the deadline of July 29 for the Respondents to file responding materials.

[4] No responding materials have been filed on the application to date.

[5] In the event the court grants the adjournment, the Applicants seek terms including a timetable for the delivery of responding materials (which will require the Respondents to engage legal representation), and an order appointing an interim receiver to protect against the risk of any dissipation of assets that would impair Mitsubishi's security.

[6] I consider that it would be in the interests of justice that the Respondents be given time to obtain legal representation and to deliver responding materials to the application. The parties agree that August 23, 2024 as the hearing date would provide more than enough time for the Respondents to retain and instruct counsel. The Applicants anticipate that their submissions shall take no more than 30 minutes to make. They are confident that the application will take less than 59 minutes in total as they do not know if the Respondents will file any materials or make submissions. It is their expectation the application can be heard as a regular motion on a regular motions day.

[7] Counsel for the Applicants will take the necessary steps to book this application on August 23, 2024 through Calendly. The application is therefore adjourned to that date, subject to two terms that will have the force of orders.

[8] For the first term, I order the following timetable for the service and filing of materials by all applicants and all respondents. This timetable is made on consent:

- a. The responding application record containing all affidavits, by August 13;
- b. Reply application record, if any, by August 15;
- c. Factum of the Respondents (as the Applicants have already filed their factum, uploaded to Case Centre), by August 19;
- d. Reply factum, if any, of the Applicants, by 12 noon on August 21; and
- e. Confirmation of Motion/Application Form by the Applicants, by 2 p.m. on August 21.

[9] The time for the service and filing of materials by any party is abridged to accommodate this timetable.

[10] As a second term of the adjournment, I grant an Order appointing an interim receiver in the form of the revised draft Order filed by the Applicants, as modified and issued by me today (the “Interim Receiver Order”). I consider that it was just and convenient to make the Interim Receiver Order pending the return of the application on a full record. I modified the revised draft provided by the Applicants to show that Mr. Singh attended on behalf of the corporate Respondents. The Interim Receiver Order was not

made on consent and is without prejudice to the rights of all parties on the application. It shall remain in place until further order.

A handwritten signature in blue ink, appearing to read "Emery J.", is positioned above a horizontal line.

Emery J.

Appendix 2

Mukul Manchanda

From: Paula Amaral
Sent: Thursday, August 8, 2024 1:04 PM
To: Yadwinder Singh Randhawa
Cc: Mukul Manchanda; Lindsay Lesmeister; Tim Hogan (thogan@harrisonpensa.com)
Subject: RE: Orbit Express Inc

Hi Yawinder,

As discussed, please forward the following:

- 1) accounts receivable listing with all supporting invoices
- 2) accounts payable listing and indicate which companies are drivers, repair shops (which one has trucks – D-Tec)
- 3) list of all trucks/trailers and their locations. Provide make, model, leasing/financing company
 - list of BDC trailers and location
 - list of Mitsubishi trailers and location
 - list of Bodkin trailers in Mexico and Texas and Canada
 - list Summit Leasing trailers in Mexico
- 4) location of books and records
- 6) financials for last 3 fiscal years and internal financials for the current fiscal year

Thank you,

Paula Amaral, CPA, CMA | Senior Manager
Corporate Restructuring & Insolvency

msi Spergel inc. | Licensed Insolvency Trustees
200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1
T: 416-498-4302 | F: 416-498-4302

pamaral@spergel.ca | www.spergelcorporate.ca

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From: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>
Sent: Thursday, August 8, 2024 10:24 AM
To: Paula Amaral <pamaral@spergel.ca>
Cc: Mukul Manchanda <mmanchanda@spergel.ca>; Lindsay Lesmeister <llesmeister@spergel.ca>; Tim Hogan (thogan@harrisonpensa.com) <thogan@harrisonpensa.com>
Subject: Re: Orbit Express Inc

Hi Paula,
On my way

Eta is around 1130H

Thanks

Yadwinder

On Thu, Aug 8, 2024 at 10:19 AM Paula Amaral <pamaral@spergel.ca> wrote:

Hi Yawinder,

We were expecting you at our office at 10 am. Please let us know when you will arrive as Mukul has a meeting at 11 am.

Thank you,

Paula Amaral, CPA, CMA | **Senior Manager**
Corporate Restructuring & Insolvency
msi Spergel inc. | Licensed Insolvency Trustees
[200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1](#)
T: 416-498-4302 | F: 416-498-4302
pamaral@spergel.ca | www.spergelcorporate.ca
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From: Mukul Manchanda <mmanchanda@spergel.ca>
Sent: Friday, August 2, 2024 11:30 AM
To: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>

Cc: Lindsay Lesmeister <llesmeister@spergel.ca>; Paula Amaral <pamaral@spergel.ca>; Tim Hogan (thogan@harrisonpensa.com) <thogan@harrisonpensa.com>

Subject: Re: Orbit Express Inc

Thanks Yadwinder, we will see you on Thursday at our office.

In the meantime, please provide us with an updated accounts receivable listing and a list including locations of all trucks and trailers owned/leased by Orbit as required by the appointment Order.

Thank you in advance for your anticipated cooperation in this matter.

Mukul Manchanda, CPA, CIRP, LIT | Managing Partner

Corporate Restructuring & Insolvency

msi Spergel inc. | Licensed Insolvency Trustees

[200 Yorkland Blvd., Suite 1100, Toronto, ON, M2J 5C1](#)

T: 416-498-4314 | F: 416-498-4314

mmanchanda@spergel.ca | www.spergelcorporate.ca

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From: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>

Sent: Friday, August 2, 2024 11:25 AM

To: Mukul Manchanda <mmanchanda@spergel.ca>

Cc: Lindsay Lesmeister <llesmeister@spergel.ca>; Paula Amaral <pamaral@spergel.ca>

Subject: Re: Orbit Express Inc

Hi Mukul,

Sure,

I can make that work

Will see you on Thursday at 1000H

Thanks

Yadwinder Singh

On Fri, Aug 2, 2024 at 11:22 AM Mukul Manchanda <mmanchanda@spergel.ca> wrote:

Yadwinder,

Perhaps you can come to our office.

**Mukul Manchanda, CPA, CIRP, LIT | Managing Partner
Corporate Restructuring & Insolvency**

msi Spergel inc. | Licensed Insolvency Trustees
[200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1](#)
T: 416-498-4314 | F: 416-498-4314
mmanchanda@spergel.ca | www.spergelcorporate.ca

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From: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>

Sent: Friday, August 2, 2024 11:21:06 AM

To: Paula Amaral <pamaral@spergel.ca>

Cc: Lindsay Lesmeister <llesmeister@spergel.ca>; Mukul Manchanda <mmanchanda@spergel.ca>

Subject: Re: Orbit Express Inc

Thanks Pula,

1000H works for me.

Will let you the place shortly

Thanks

Yadwinder Singh

On Fri, Aug 2, 2024 at 11:20 AM Paula Amaral <pamaral@spergel.ca> wrote:

Hi Yadwinder,

I am sorry to hear that.

We can meet Thursday between 10:00 am and 2:00 pm.

Thanks,

Paula Amaral, CPA, CMA | Senior Manager

Corporate Restructuring & Insolvency

msi Spergel inc. | Licensed Insolvency Trustees

[200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1](#)

T: 416-498-4302 | F: 416-498-4302

pamaral@spergel.ca | www.spergelcorporate.ca

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From: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>

Sent: Friday, August 2, 2024 11:12 AM

To: Paula Amaral <pamaral@spergel.ca>

Cc: Lindsay Lesmeister <llesmeister@spergel.ca>; Mukul Manchanda <mmanchanda@spergel.ca>

Subject: Re: Orbit Express Inc

Hi Paula,

Apologies for that

My Partner Kulwant Singh Father has passed away yesterday and we were busy there.

and i am only one working from home

We don't have any office since our office was being cased by Landlord due to non payment as MHCC holds all our payments.

We can meet next week sometime.

I think Thursday would be fine

Lemme know if Thursdays work for you and will let you know the timing and place.

Thanks

Yadwinder Singh

On Fri, Aug 2, 2024 at 11:06 AM Paula Amaral <pamaral@spergel.ca> wrote:

Good morning Yadwinder,

As you are aware msi Spergel inc has been appointed Interim Receiver of Orbit Express Inc as per the attached court order.

I called your number and was advised by a lady that you are not available today. We would like to schedule a time this afternoon to visit the business and meet with you. If today is not possible then please advise on your availability for Tuesday.

Thank you,

**Paula Amaral, CPA, CMA | Senior Manager
Corporate Restructuring & Insolvency**

msi Spergel inc. | Licensed Insolvency Trustees

[200 Yorkland Blvd., Suite 1100, Toronto, ON, M2J 5C1](#)

T: 416-498-4302 | F: 416-498-4302

pamaral@spergel.ca | www.spergelcorporate.ca

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Appendix 3



SPERGEL

msi Spergel inc., Licensed Insolvency Trustees
Head Office: 200 Yorkland Blvd., Suite 1100
Toronto, ON M2J 5C1
T: 416 497 1660 • F: 416 494 7199
www.spergelcorporate.ca

August 15, 2024

VIA EMAIL – yours.randhawa@gmail.com

Yadwinder Singh Randhawa

Re: In the Matter of the Interim Receivership of Orbit Express Inc. (“Orbit”), 10055913 Canada Inc. (“1005 Canada”) and 8615314 Canada Inc. (“8615 Canada”, collectively, the “Debtors”)

Dear Sir,

As you are aware, msi Spergel inc. (“**Spergel**”) was appointed as interim receiver (in such capacity, the “**Interim Receiver**”) of all the assets, undertakings and properties (collectively, the “**Property**”) of the Debtors. Spergel was appointed as the Interim Receiver pursuant to the Order of the Honourable Justice Emery of the Ontario Superior Court of Justice (the “**Court**”) made on July 30, 2024 (the “**Appointment Order**”). A copy of the Appointment Order and the endorsement of the Honourable Justice Emery were provided to you and are also enclosed.

The Appointment Order empowers and authorizes the Interim Receiver to, amongst other things, “*take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property*” and “*receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies.*” The Appointment Order also, amongst other things:

- a) provides that the Receiver is “*exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined [in the Appointment Order]), including the Debtors, and without interference from any other Person;*”
- b) requires that all Persons “*shall forthwith advise the Receiver of the existence of any Property in such Persons’ possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request;*” and
- c) requires that all Persons “*shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor ... (the foregoing, collectively, the ‘Records’) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof ...*”

The Receiver met with you on August 8, 2024 and you advised the Receiver of the following:

- Orbit stopped operating its business on June 15, 2024 due to lack of funds required to pay fuel and drivers;

Barrie 705 722 5090 • Brampton 905 874 4905 • Downsview 416 633 1444 • Hamilton 905 527 2227 • London 519 902 2722 • Mississauga 905 602 4143
Oshawa 905 721 8251 • Peterborough 705 748 3333 • Scarborough 416 642 1363 • Toronto 416 778 8813 • Vaughan 647 288 7636
Saskatchewan 306 341 1660 • British Columbia 604 365 74 34

Member **ICIN** The Independent Canadian Insolvency Network



- All accounts receivable of Orbit are factored with Mitsubishi HC Capital Canada (“**Mitsubishi**”);
- GM/Ryder is currently withholding payment of approximately \$900,000 in receivables;
- Several tractors/trailers leased through Bodkin are in Mexico and Texas;
- You were unsure of the location of the trailers purchased using funds from Business Development Bank of Canada and Mitsubishi;
- Orbit is expecting approximately \$800,000 in refunds related to its filing of *Harmonized Sales Tax* (“**HST**”) returns with Canada Revenue Agency (“**CRA**”) for the period from September 2023 to December 2023. You further advised that Orbit may have additional HST refund of approximately \$900,000 for unfiled period presumable from January 2024 to June 2024.
- Orbit is expecting a refund of approximately \$900,000 from refiling of a previous year corporate tax return; and
- Orbit owes approximately \$465,000 in outstanding source deductions to CRA.

Following the meeting, the Receiver sent an email to you outlining the information that you promised to provide by end of day August 9, 2024. A copy of that email is enclosed herein.

As at the date of this letter you have not provided any Records and/or location(s) of Property to the Receiver and the Receiver has followed up with you on August 12, 2024 and August 14, 2024. On August 14, 2024, you advised the Receiver that your partner was returning from overseas and that you should be able to provide all of the Records and the location(s) of Property by end of day August 14, 2024. As noted above, the Receiver, as at the date of this letter, has not received any information from you, other than the verbal information you provided to the Receiver at the meeting on August 8, 2024.

Pursuant to paragraphs 4 and 5 of the Interim Receivership Order, the Receiver notes that you have a positive obligation to provide to the Receiver all of the Records of the Debtors and the location(s) of Property of the Debtors.

Should we not receive the outstanding information and the location(s) of Property from you by the end of day today, the Receiver will have no alternative but to report your non-compliance of the Appointment Order to the Court at the upcoming hearing and you will be called upon to explain your non-compliance of the Appointment Order to the Court.

The Receiver trusts that you will provide all of the information and the location(s) of the Property by end of day today. Should you have any questions or concerns please do not hesitate to contact the undersigned.



SPERGEL

msi Spergel inc.,
solely in its capacity as the Court-Appointed
Interim Receiver of the Debtors and not in its
personal or corporate capacities.

Per:

A handwritten signature in black ink, appearing to read 'Mukul', with a small blue mark above the 'u'.

Mukul Manchanda, CPA, CIRP, LIT
Managing Partner



SPERGEL

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: MITSUBISHI HC CAPITAL CANADA, INC.,
MITSUBISHI HC CAPITAL CANADA LEASING, INC., **Applicants**

AND:

ORBIT EXPRESS INC.,
10055913 CANADA INC.,
8615314 CANADA INC., **Respondents**

BEFORE: Justice Emery

COUNSEL: FISHER, HEATHER and IQBAL, ASIM, for the applicants
Email: heather.fisher@gowlingwlq.com /
asim.iqbal@gowlingwlq.com

SELF-REP (SINGH, YADWINDER), for ORBIT EXPRESS INC.
Email: yours.randhawa@gmail.com

HEARD: July 30, 2024, by video conference

ENDORSEMENT

[1] The Applicants (jointly. “Mitsubishi”) bring this application for a receivership order under s. 243(1) of the *Bankruptcy and Insolvency Act* (the “BIA) and s. 101 of the *Courts of Justice Act*.

[2] Mr. Singh appeared on the application today on behalf of the Respondent Orbit Express Inc. and the other two corporate Respondents. He has requested an adjournment to obtain funding so that the Respondents are able to retain counsel As

corporations, they must be represented by a lawyer unless leave is given by the court under Rule 15.01(2).

[3] The Applicants oppose the request for an adjournment. Their lawyers served the application record on July 19, 2024. They take the position that the Respondents have had 12 days to retain counsel. The Applicants obtained this hearing date for the application to be heard on an urgent basis as urgency was found by Rahman J. on July 24, 2024 and set the deadline of July 29 for the Respondents to file responding materials.

[4] No responding materials have been filed on the application to date.

[5] In the event the court grants the adjournment, the Applicants seek terms including a timetable for the delivery of responding materials (which will require the Respondents to engage legal representation), and an order appointing an interim receiver to protect against the risk of any dissipation of assets that would impair Mitsubishi's security.

[6] I consider that it would be in the interests of justice that the Respondents be given time to obtain legal representation and to deliver responding materials to the application. The parties agree that August 29, 2024 as the hearing date would provide more than enough time for the Respondents to retain and instruct counsel. The Applicants anticipate that their submissions shall take no more than 30 minutes to make. They are confident that the application will take less than 59 minutes in total as they do not know if the Respondents will file any materials or make submissions. It is their expectation the application can be heard as a regular motion on a regular motions day.

[7] Counsel for the Applicants will take the necessary steps to book this application on August 29, 2024 through Calendly. The application is therefore adjourned to that date, subject to two terms that will have the force of orders.

[8] For the first term, I order the following timetable for the service and filing of materials by all applicants and all respondents. This timetable is made on consent:

- a. The responding application record containing all affidavits, by August 13;
- b. Reply application record, if any, by August 15;
- c. Factum of the Respondents (as the Applicants have already filed their factum, uploaded to Case Centre), by August 19;
- d. Reply factum, if any, of the Applicants, by 12 noon on August 21; and
- e. Confirmation of Motion/Application Form by the Applicants, by 2 p.m. on August 21.

[9] The time for the service and filing of materials by any party is abridged to accommodate this timetable.

[10] As a second term of the adjournment, I grant an Order appointing an interim receiver in the form of the revised draft Order filed by the Applicants, as modified and issued by me today (the “Interim Receiver Order”). I consider that it was just and convenient to make the Interim Receiver Order pending the return of the application on a full record. I modified the revised draft provided by the Applicants to show that Mr. Singh attended on behalf of the corporate Respondents. The Interim Receiver Order was not

made on consent and is without prejudice to the rights of all parties on the application. It shall remain in place until further order.

A handwritten signature in blue ink, appearing to read "Emery J.", is positioned above a horizontal line.

Emery J.

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	TUESDAY, THE 30 TH
)	
JUSTICE EMERY)	DAY OF JULY, 2023

MITSUBISHI HC CAPITAL CANADA, INC. and
MITSUBISHI HC CAPITAL CANADA LEASING, INC.

Applicants

and

ORBIT EXPRESS INC., 10055913 CANADA INC.,
and 8615314 CANADA INC.

Respondents

APPLICATION UNDER SECTION 47 OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF
JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

ORDER
(appointing Interim Receiver)

THIS APPLICATION made by the Applicants for an Order pursuant to section 47 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. C.43, as amended (the "**CJA**") appointing msi Spergel Inc. ("**MSI**") as interim receiver and manager (in such capacities, the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of Orbit Express Inc., 10055913 Canada Inc., and 8615314 Canada Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 7755 Hurontario Street, Brampton, Ontario.

ON READING the affidavit of Samuel Leblond affirmed July 18, 2024 and the Exhibits thereto and on hearing the submissions of counsel for the Applicants and all other parties listed on the Counsel Slip, no one else appearing although duly served as

appears from the affidavit of service of Heather Fisher, affirmed July 19, 2024 and on reading the consent of MSI to act as the Receiver, filed,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 47 of the BIA and section 101 of the CJA, MSI is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

INTERIM RECEIVER'S POWERS

3. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such

appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$200,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the

Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim

Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Interim Receiver shall provide each of the relevant landlords with notice of the Interim Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Interim Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Interim Receiver, or by further Order of this Court upon application by the Interim Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial

contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

INTERIM RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of

all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "**Post Interim Receivership Accounts**") and the monies standing to the credit of such Post Interim Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Interim Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Interim Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the

Debtors, and shall return all other personal information to the Interim Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

21. THIS COURT ORDERS that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by

this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Interim Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Interim Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<@>'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

29. 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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Interim 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, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court.

SCHEDULE "A"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the interim receiver and manager (the "**Interim Receiver**") of the assets, undertakings and properties Orbit Express Inc., 10055913 Canada Inc., and 8615314 Canada Inc. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the ____ day of _____, 20__ (the "**Order**") made in an action having Court file number CV-24-00003220-0000, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2024.

msi Spergel Inc., solely in its capacity
as Interim Receiver of the Property, and not
in its personal capacity

Per: _____

Name:

Title:

Mukul Manchanda

From: Paula Amaral
Sent: Thursday, August 8, 2024 1:04 PM
To: Yadwinder Singh Randhawa
Cc: Mukul Manchanda; Lindsay Lesmeister; Tim Hogan (thogan@harrisonpensa.com)
Subject: RE: Orbit Express Inc

Hi Yawinder,

As discussed, please forward the following:

- 1) accounts receivable listing with all supporting invoices
- 2) accounts payable listing and indicate which companies are drivers, repair shops (which one has trucks – D-Tec)
- 3) list of all trucks/trailers and their locations. Provide make, model, leasing/financing company
 - list of BDC trailers and location
 - list of Mitsubishi trailers and location
 - list of Bodkin trailers in Mexico and Texas and Canada
 - list Summit Leasing trailers in Mexico
- 4) location of books and records
- 6) financials for last 3 fiscal years and internal financials for the current fiscal year

Thank you,

Paula Amaral, CPA, CMA | Senior Manager
Corporate Restructuring & Insolvency

msi Spergel inc. | Licensed Insolvency Trustees
200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1
T: 416-498-4302 | F: 416-498-4302

pamaral@spergel.ca | www.spergelcorporate.ca

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From: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>
Sent: Thursday, August 8, 2024 10:24 AM
To: Paula Amaral <pamaral@spergel.ca>
Cc: Mukul Manchanda <mmanchanda@spergel.ca>; Lindsay Lesmeister <llesmeister@spergel.ca>; Tim Hogan (thogan@harrisonpensa.com) <thogan@harrisonpensa.com>
Subject: Re: Orbit Express Inc

Hi Paula,
On my way

Eta is around 1130H

Thanks

Yadwinder

On Thu, Aug 8, 2024 at 10:19 AM Paula Amaral <pamaral@spergel.ca> wrote:

Hi Yawinder,

We were expecting you at our office at 10 am. Please let us know when you will arrive as Mukul has a meeting at 11 am.

Thank you,

Paula Amaral, CPA, CMA | Senior Manager
Corporate Restructuring & Insolvency
msi Spergel inc. | Licensed Insolvency Trustees
[200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1](#)
T: 416-498-4302 | F: 416-498-4302
pamaral@spergel.ca | www.spergelcorporate.ca
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From: Mukul Manchanda <mmanchanda@spergel.ca>
Sent: Friday, August 2, 2024 11:30 AM
To: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>

Cc: Lindsay Lesmeister <llesmeister@spergel.ca>; Paula Amaral <pamaral@spergel.ca>; Tim Hogan (thogan@harrisonpensa.com) <thogan@harrisonpensa.com>

Subject: Re: Orbit Express Inc

Thanks Yadwinder, we will see you on Thursday at our office.

In the meantime, please provide us with an updated accounts receivable listing and a list including locations of all trucks and trailers owned/leased by Orbit as required by the appointment Order.

Thank you in advance for your anticipated cooperation in this matter.

Mukul Manchanda, CPA, CIRP, LIT | Managing Partner

Corporate Restructuring & Insolvency

msi Spergel inc. | Licensed Insolvency Trustees

[200 Yorkland Blvd., Suite 1100, Toronto, ON, M2J 5C1](#)

T: 416-498-4314 | F: 416-498-4314

mmanchanda@spergel.ca | www.spergelcorporate.ca

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From: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>

Sent: Friday, August 2, 2024 11:25 AM

To: Mukul Manchanda <mmanchanda@spergel.ca>

Cc: Lindsay Lesmeister <llesmeister@spergel.ca>; Paula Amaral <pamaral@spergel.ca>

Subject: Re: Orbit Express Inc

Hi Mukul,

Sure,

I can make that work

Will see you on Thursday at 1000H

Thanks

Yadwinder Singh

On Fri, Aug 2, 2024 at 11:22 AM Mukul Manchanda <mmanchanda@spergel.ca> wrote:

Yadwinder,

Perhaps you can come to our office.

Mukul Manchanda, CPA, CIRP, LIT | **Managing Partner**
Corporate Restructuring & Insolvency

msi Spergel inc. | Licensed Insolvency Trustees
[200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1](#)
T: 416-498-4314 | F: 416-498-4314
mmanchanda@spergel.ca | www.spergelcorporate.ca

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From: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>

Sent: Friday, August 2, 2024 11:21:06 AM

To: Paula Amaral <pamaral@spergel.ca>

Cc: Lindsay Lesmeister <llesmeister@spergel.ca>; Mukul Manchanda <mmanchanda@spergel.ca>

Subject: Re: Orbit Express Inc

Thanks Pula,

1000H works for me.

Will let you the place shortly

Thanks

Yadwinder Singh

On Fri, Aug 2, 2024 at 11:20 AM Paula Amaral <pamaral@spergel.ca> wrote:

Hi Yadwinder,

I am sorry to hear that.

We can meet Thursday between 10:00 am and 2:00 pm.

Thanks,

Paula Amaral, CPA, CMA | Senior Manager

Corporate Restructuring & Insolvency

msi Spergel inc. | Licensed Insolvency Trustees

[200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1](#)

T: 416-498-4302 | F: 416-498-4302

pamaral@spergel.ca | www.spergelcorporate.ca

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From: Yadwinder Singh Randhawa <yours.randhawa@gmail.com>

Sent: Friday, August 2, 2024 11:12 AM

To: Paula Amaral <pamaral@spergel.ca>

Cc: Lindsay Lesmeister <llesmeister@spergel.ca>; Mukul Manchanda <mmanchanda@spergel.ca>

Subject: Re: Orbit Express Inc

Hi Paula,

Apologies for that

My Partner Kulwant Singh Father has passed away yesterday and we were busy there.

and i am only one working from home

We don't have any office since our office was being cased by Landlord due to non payment as MHCC holds all our payments.

We can meet next week sometime.

I think Thursday would be fine

Lemme know if Thursdays work for you and will let you know the timing and place.

Thanks

Yadwinder Singh

On Fri, Aug 2, 2024 at 11:06 AM Paula Amaral <pamaral@spergel.ca> wrote:

Good morning Yadwinder,

As you are aware msi Spergel inc has been appointed Interim Receiver of Orbit Express Inc as per the attached court order.

I called your number and was advised by a lady that you are not available today. We would like to schedule a time this afternoon to visit the business and meet with you. If today is not possible then please advise on your availability for Tuesday.

Thank you,

**Paula Amaral, CPA, CMA | Senior Manager
Corporate Restructuring & Insolvency**

msi Spergel inc. | Licensed Insolvency Trustees

[200 Yorkland Blvd., Suite 1100, Toronto, ON, M2J 5C1](#)

T: 416-498-4302 | F: 416-498-4302

pamaral@spergel.ca | www.spergelcorporate.ca

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Appendix 4



SPERGEL

msi Spergel inc., Licensed Insolvency Trustees
Head Office: 200 Yorkland Blvd., Suite 1100
Toronto, ON M2J 5C1
T: 416 497 1660 • F: 416 494 7199
www.spergelcorporate.ca

August 1, 2024

VIA EMAIL – stensk@ryder.com; besan_h_fawaz@ryder.com; kelly_l_porter@ryder.com;
sahib.singh@gm.com

Ryder OMC – GM Operations / Novi
39550 W. Thirteen Mile Rd
Novi, MI 48377
United States

Attention: Legal Department

Re: In the Matter of the Interim Receivership of Orbit Express Inc. (“Orbit”), 10055913 Canada Inc. (“1005 Canada”) and 8615314 Canada Inc. (“8615 Canada”, collectively, the “Debtors”)

Dear Sirs,

Please be advised that msi Spergel inc. (“**Spergel**”) was appointed as interim receiver (in such capacity, the “**Interim Receiver**”) of all the assets, undertakings and properties (collectively, the “**Property**”) of the Debtors. Spergel was appointed as the Interim Receiver pursuant to the Order of the Honourable Justice Emery of the Ontario Superior Court of Justice made on July 30, 2024 (the “**Appointment Order**”). A copy of the Appointment Order and the endorsement of the Honourable Justice Emery are enclosed.

The Appointment Order empowers and authorizes the Interim Receiver to, amongst other things, “take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property” and “receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies.” The Appointment Order also, amongst other things:

- a) provides that the Receiver is “*exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined [in the Appointment Order]), including the Debtors, and without interference from any other Person;*”
- b) requires that all Persons “*shall forthwith advise the Receiver of the existence of any Property in such Persons’ possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request;*” and
- c) requires that all Persons “*shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor ... (the foregoing, collectively, the ‘Records’) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof ...*”

Barrie 705 722 5090 • Brampton 905 874 4905 • Downsview 416 633 1444 • Hamilton 905 527 2227 • London 519 902 2722 • Mississauga 905 602 4143
Oshawa 905 721 8251 • Peterborough 705 748 3333 • Scarborough 416 642 1363 • Toronto 416 778 8813 • Vaughan 647 288 7636
Saskatchewan 306 341 1660 • British Columbia 604 365 74 34

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The Records available to the Interim Receiver indicate that Ryder OMC is presently indebted to Orbit (and/or the Debtors) in the amount of at least USD \$462,725.37 and CAD \$404,083.90 subject to the Interim Receiver's reconciliation of the Debtors' accounts.

In accordance with the terms of the Appointment Order, the Interim Receiver requires that all amounts outstanding to the Debtors be paid to the Interim Receiver without delay. Should there be a dispute of any amounts, the undisputed amounts shall be paid to the Interim Receiver immediately and details of the disputed amounts shall be provided to the Interim Receiver in writing.

In accordance with the terms of the Appointment Order, the Interim Receiver requires that: (i) copies and status of all contracts with the Debtors be provided; and (ii) copies any communications with the Debtors regarding the outstanding amounts and/or business dealings for the last 12 months be provided to the Interim Receiver forthwith.

The funds referenced above are to be made payable to "msi Spergel inc. as Interim Receiver of Orbit Express Inc." and can be delivered to Mukul Manchanda, the licenced insolvency trustee at Spergel with carriage of these matters, at the following address:

Mukul Manchanda
msi Spergel inc.
200 Yorkland Blvd., Suite 1100
Toronto, Ontario M2J 5C1

Alternatively, wire transfer instructions to the Receiver's trust account can be provided upon request.

Should you have any questions or concerns please do not hesitate to contact the undersigned.

msi Spergel inc.,
solely in its capacity as the Court-Appointed
Interim Receiver of the Debtors and not in its
personal or corporate capacities.

Per:



Mukul Manchanda, CPA, CIRP, LIT
Managing Partner



SPERGEL

Appendix 5

Bevan Brooksbank
T: 416-367-6604
bbrooksbank@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto ON M5H 4E3
Canada
T 416-367-6000
F 416-367-6749
blg.com



File No. 004871/000899

August 6, 2024

DELIVERED BY EMAIL
mmanchanda@spergel.ca

Mukul Manchanda
msi Spergel inc.
200 Yorkland Blvd.
Suite 1100
Toronto, ON M2J 5C1

Dear Mr. Manchanda:

Re: In the Matter of the Interim Receivership of Orbit Express (“Orbit”), 10059913 Canada Inc. (“1005 Canada”) and 8615341 Canada Inc. (“8615 Canada”, collectively the “Debtors”)

We are Canadian litigation counsel to General Motors of Canada Company (“**GMCC**”).

We understand that msi Spergel inc. (“**Spergel**”) was appointed Interim Receiver of all of the assets, undertakings and properties of the Debtors (the “**Debtors’ Property**”) by way of Order granted by Justice Emery on July 30, 2024 (the “**Interim Receivership Order**”). We further understand that there is a comeback hearing scheduled for August 29, 2024.

We are writing to advise that Orbit may be in possession of certain property owned by GMCC, and in particular shipping containers (the “**GMCC Property**”), which cannot form part of the Debtors’ Property. We will provide you with further particulars of this GMCC Property in due course. To the extent such GMCC Property is identified by Spergel, we request that counsel be notified and arrangements may be made for GMCC to recover and repossess the GMCC Property, which is integral to its parts supply in support of GMCC’s manufacturing operations.

Further, over the past several months, Orbit has relocated various GMCC Property to the premises of Crossdock Systems Inc. (“**Crossdock**”) and Interload Truck Service Ltd. (“**Interload**”) without any prior knowledge, authorization or consent from GMCC. As a result of Orbit’s actions, the GMCC Property has, and continues to, accrue storage fees at the Crossdock and Interload’s premises. It is GMCC’s position that those storage fees are payable by Orbit, not by GMCC.

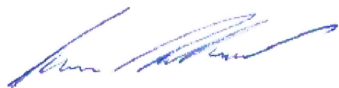
As such, on August 2, 2024, GMCC issued a Notice of Action and served motion materials on Orbit, Crossdock and Interload Truck for the recovery of the GMCC Property. Attached hereto is a copy of the Notice of Action and motion materials.

We ask that we be added to the service list for the Orbit receivership proceedings on behalf of GMCC.

Please feel free to contact the undersigned should you have any questions.

Yours Truly,

BORDEN LADNER GERVAIS LLP



R. Bevan Brooksbank





BB/sk

Encls.

Cc: Daphne Chu, BLG

Title	Orbit Express
File name	First_Report_of_t...21_2024_Final.pdf
Document ID	487896846c96234d627823bbf895b4b34ab8b539
Audit trail date format	MM / DD / YYYY
Status	<div><div></div>Signed</div>

Document history

<div> SENT</div>	<div>08 / 21 / 2024 13:01:15 UTC-4</div>	Sent for signature to Mukul Manchanda (mmanchanda@spergel.ca) from msispergelinc@gmail.com IP: 104.171.204.20
<div> VIEWED</div>	<div>08 / 21 / 2024 13:04:21 UTC-4</div>	Viewed by Mukul Manchanda (mmanchanda@spergel.ca) IP: 104.253.52.7
<div> SIGNED</div>	<div>08 / 21 / 2024 13:04:41 UTC-4</div>	Signed by Mukul Manchanda (mmanchanda@spergel.ca) IP: 72.143.195.245
<div> COMPLETED</div>	<div>08 / 21 / 2024 13:04:41 UTC-4</div>	The document has been completed.

MITSUBISHI HC CAPITAL CANADA, INC.
and MITSUBISHI HC CAPITAL CANADA LEASING, INC.

and

ORBIT EXPRESS INC., et al.

Applicants

Respondents

Court File No. CV-24-00003320-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BRAMPTON, ONTARIO

MOTION RECORD

HARRISON PENSA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel: (519) 679-9660
Fax: (519) 667-3362
Email: thogan@harrisonpensa.com

Solicitors for the Interim Receiver,
msi Spergel inc.