

Court File No. CV-21-00658361-00CL

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

THE HONOURABLE MR.	)	MONDAY, THE 19TH
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2021

BETWEEN:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**ORBIT FREIGHT LTD.**

Respondent



**APPLICATION UNDER SUBSECTION 243(1) 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**

**APPROVAL AND VESTING ORDER  
(Re Auction Agreement)**

**THIS MOTION**, made by msi Spergel inc., in its capacity as receiver and manager (in such capacities, the “**Receiver**”), without security, of all the assets, undertakings and property of Orbit Freight Ltd. (the “**Debtor**”), for an Order, amongst other things: (i) approving the agreement between IronPlanet Canada Ltd., an affiliate of Ritchie Bros. Auctioneers (Canada) Ltd. (the “**Auctioneer**”), as auctioneer, and the Receiver (the “**Auction Agreement**”), as seller, a copy of which Auction Agreement is attached as Appendix “9” to the Second Report of the Receiver dated

April 12, 2021 (the “**Second Report**”); (ii) appointing the Auctioneer as the Receiver’s attorney-in-fact with limited power of attorney and authorizing the Auctioneer to offer and sell the equipment listed therein, and conduct the auction, as referenced in, and in accordance with the terms of, the Auction Agreement (collectively, the “**Auction**”); and (iii) vesting in each purchaser at such Auction (each, a “**Purchaser**”) the Debtor’s and the Receiver’s right, title and interest in and to the Property (as defined in the Order (appointing Receiver) made by this Court in this proceeding on March 11, 2021 (the “**Receivership Order**”)) purchased by such respective Purchaser at the Auction (in each case, the “**Purchased Assets**”), free and clear of any claims and encumbrances, was heard this day by judicial videoconference via Zoom due to the COVID-19 emergency.

**ON READING** the Second Report (including the appendices thereto), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Damian Lu, sworn April 12, 2021, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion, the motion record and the Second Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Auction is hereby approved, and the execution of the Auction Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Auction.

3. **THIS COURT ORDERS AND DECLARES** that upon the Auctioneer completing a sale to a Purchaser at the Auction of one or more Purchased Assets, upon receipt by the Auctioneer from such Purchaser of the purchase price determined at the Auction and upon delivery by the Auctioneer to such Purchaser of a bill of sale or similar evidence of purchase and sale (each, a “**Purchaser Bill of Sale**”), all the Debtor’s and the Receiver’s right, title and interest in and to the Purchased Assets purchased by such Purchaser at the Auction and described in such Purchaser’s Bill of Sale shall vest absolutely in such Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) all charges, security interests or claims pursuant to the *Repair and Storage Liens Act* (Ontario), and, for greater certainty, this Court orders that all the Claims affecting or relating to such Purchased Assets are hereby expunged and discharged as against such Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets at the Auction shall stand in the place and stead of the Purchased Assets sold at the Auction, and that from and after the delivery of a Purchaser’s Bill of Sale all Claims shall attach to the net proceeds from the sale of the Purchased Assets sold at the Auction and described in such Purchaser’s Bill of Sale with the same priority as they had with respect to such Purchased Assets immediately prior to their sale at the



Auction, as if such Purchased Assets had not been sold at the Auction and remained in the possession or control of the person having that possession or control immediately prior to their sale at the Auction.

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of each of the Purchased Assets in its respective Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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



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 Proceedings commenced at Toronto

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**(Re Auction Agreement)**

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