

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

THE HONOURABLE MR. ) TUESDAY, THE 25<sup>TH</sup>  
 )  
JUSTICE STRATHY ) DAY OF AUGUST, 2009



**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SKYPOWER CORP.**

**ORDER**

**THIS MOTION**, made by SkyPower Corp. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kerry Adler sworn August 24, 2009 and the exhibits thereto (the "**Adler Affidavit**"), the First Report of KPMG Inc. as monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, HSH Nordbank AG, New York Branch, as administrative agent and collateral agent on behalf of itself, Bayerische Landesbank, New York Branch and Union Bank of California, Canada Branch (n/k/a Union Bank, Canada Branch), Lehman Brothers Holdings Inc., CIM Group (the "**DIP Lender**"), West LB AG, Toronto Branch ("**West LB**"), and Norddeutsche Landesbank Girozentrale, New York Branch ("**Nord**"), no one else appearing.

**SERVICE**

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

**DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise indicated, all defined terms herein shall have the meaning given to those terms in the Initial Order of this Court dated August 12, 2009 (the "**Initial CCAA Order**").

**KERP**

3. **THIS COURT ORDERS** that the key employee retention plan (the "**KERP**") as described in paragraphs 17 to 23 of the Adler Affidavit be and is hereby approved and is given full force and effect, and the Applicant is hereby directed to make when due the payments provided for thereunder.
4. **THIS COURT ORDERS** that the Total KERP Amount (as defined in the Adler Affidavit) shall be secured by a charge (the "**KERP Charge**") on all Property.
5. **THIS COURT ORDERS** that Exhibit "D" to the Adler Affidavit be and is hereby sealed pending further Order of the Court.
6. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, the DIP Lender's Charge, the Marathon Charge (as defined in the Sale Process Order of this Court dated August 25, 2009) and the KERP Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000);

Second – Directors' Charge (to the maximum amount of \$1,250,000);

Third – DIP Lender's Charge

Fourth – KERP Charge

Fifth – Marathon Charge

7. **THIS COURT ORDERS** that the defined term “Charges” in paragraphs 38-42 of the Initial CCAA Order shall include the KERP Charge.

**STAY OF PROCEEDINGS**

8. **THIS COURT ORDERS** that, paragraph 13 of the Initial CCAA Order be and is hereby deleted and replaced with the following, *nunc pro tunc*:

**THIS COURT ORDERS** that until and including September 11, 2009, or such later date as this Court may order (the “Stay Period”), no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”) shall be commenced or continued against or in respect of the Applicant, the Monitor, Fermeuse Wind Power Corp., SunE Sky First Light LP or SkyPower Lite Corp., or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant, Fermeuse Wind Power Corp., SunE Sky First Light LP or SkyPower Lite Corp., or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

9. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in the Initial CCAA Order, the protection extended to SunE Sky First Light LP and the Applicant (in the case of the Applicant, solely in respect of the Guarantee dated November 14, 2008 and related Pledge Agreement dated November 14, 2008) in paragraphs 13-16 of the Initial CCAA Order insofar as it applies to Nord only, shall be limited so as to only stay Nord from exercising its remedies arising as a direct result of the Applicant’s insolvency, the Applicant’s proceedings under the CCAA, and the creation of the DIP Lender’s Charge and any other court-ordered charge granted in these proceedings.
10. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in the Initial CCAA Order, the protection extended to Fermeuse Wind Power Corp. and the Applicant (in the case of the Applicant, solely in respect of the Limited Recourse

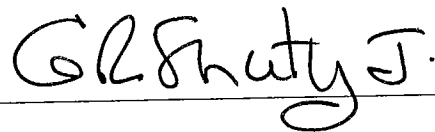
Guarantee dated as of September 3, 2008 and the related Share Pledge Agreement dated as of September 3, 2008) in paragraphs 13-16 of the Initial CCAA Order insofar as it applies to West LB only, shall be limited so as to only stay West LB from exercising its remedies arising as a direct result of the Applicant's insolvency, the Applicant's proceedings under the CCAA, and the creation of the DIP Lender's Charge and any other court-ordered charge granted in these proceedings.

11. **THIS COURT ORDERS** that in respect of the equity interests held by the Applicant in Fermeuse Wind Power Corp. (the "**Fermeuse Equity**"), SunE Sky First Light LP and SunE Sky GP First Light Ltd. (collectively, the "**SunE Sky Equity**") only, the DIP Lender's Charge (as defined in the Initial CCAA Order) and all other court-ordered charges in these proceedings shall be subordinate to the share pledges in favour of project lenders, West LB and Nord, respectively. For greater certainty, (a) if the DIP Lender's Charge shall have become enforceable and West LB shall have not disposed of the Fermeuse Equity or contracted for such disposition, the DIP Lender may redeem the Fermeuse Equity by paying the Secured Obligations as defined in the Share Pledge Agreement granted by Skypower in favour of West LB then owing (the "**West LB Payout Amount**") and (b) if the consent of West LB is required under the terms of the Share Pledge Agreement, the Loan Agreement dated September 3, 2008, as amended, and any related security documentation in connection with any sale or other disposition of the Fermeuse Equity which does not result in receipt of West LB of an amount equal to the West LB Payout Amount, any such sale or other disposition shall not be made without the consent of West LB. For greater certainty, (a) if the DIP Lender's Charge shall have become enforceable and ~~West LB~~ <sup>Nord</sup> shall have not disposed of the SunE Sky Equity or contracted for such disposition, the DIP Lender may redeem the SunE Sky Equity by paying the ~~Secured~~ <sup>Secured</sup> Obligations as defined in the ~~Share~~ <sup>Share</sup> Pledge Agreement granted by Skypower in favour of Nord then owing (the "**Nord Payout Amount**") and (b) if the consent of Nord is required under the terms of the ~~Share~~ <sup>Share</sup> Pledge Agreement, the Credit Agreement dated November 14, 2008, as amended, and any related security documentation in connection with any sale or other disposition of the SunE Sky Equity which does not result in receipt of Nord of an

amount equal to the Nord Payout Amount, any such sale or other disposition shall not be made without the consent of Nord.

**GENERAL**

12. **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, including the United States Bankruptcy Court for the District of Delaware, to give effect to this Order and assist the Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
13. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the United States Bankruptcy Court for the District of Delaware, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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

AUG 25 2009

PER / PAR: 

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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