

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

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 Brainhunter Inc., TrekLogic Inc.,
Brainhunter Canada Inc., Brainhunter (Ottawa) Inc. and
Protec Employment Services Limited

Applicants

**NOTICE OF MOTION
(RE: DISTRIBUTION OF PROCEEDS AND SUCCESS FEE)
(RETURNABLE FEBRUARY 11, 2010)**

The Applicants will make a motion to a Judge on February 11, 2010 at 10:00 am or as soon after that time that the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order abridging the time for service of this Notice of Motion and the Motion Record and that the Notice of Motion is properly returnable on the date established by the Commercial List office and that further service of the Notice of Motion on any interested party, other than those served, may be dispensed with;

2. an Order authorizing and directing the Applicants to distribute from the proceeds of sale received pursuant to the Zylog Transaction (as defined below) certain amounts owed to The Toronto-Dominion Bank ("**TD Bank**") and to Roynat Capital Inc. ("**Roynat**") and authorizing the Applicants to direct Zylog (as defined below) to pay such amounts directly to TD Bank and Roynat;
3. an Order authorizing payment out of the DIP Facility to Breakwall Financial Corp. ("**Breakwall**") of a Success Fee that includes 3.5% of the value received by the Notes (as defined below) pursuant to the lock-up agreements (the "**Lock-up Agreements**") they entered into with Zylog Systems (Canada) Ltd. and Zylog Systems (India) Limited (together "**Zylog**") in connection with the Zylog Transaction between the Applicants', as vendors, and Zylog, as purchaser;
4. to the extent necessary, an order directing Zylog to disclose to Breakwall the consideration received, or to be received, by the Notes in respect of the Lock-up Agreements; and
5. such further and other relief as this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Applicants were granted protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an Order of this Court made December 2, 2009 (the "**Initial Order**");
- (b) by Order dated February 1, 2010, the Stay Period, as defined in paragraph 14 of Initial Order was extended to and including March 1, 2010;

- (c) the secured creditors of the Applicants are TD Bank (the first secured creditor and DIP Lender), Roynat (the second secured creditor), and the holders of approximately \$11 million in term notes issued pursuant to an amending agreement dated April 1, 2009 (the "**Notes**"). The Notes are secured only against the assets of Brainhunter;

The Bid Process

- (d) by Order dated December 11, 2009 (the "**Bid Process Order**"), this Court:
 - (i) approved and authorized the sale process and auction (the "**Bid Process**") as described in the materials previously filed with the Court and in the form attached to the Bid Process Order as Schedule "A";
 - (ii) approved the execution by the Applicants of the asset purchase agreement dated as of December 1, 2009 (the "**Stalking Horse APA**") between TalentPoint Inc., 2223945 Ontario Limited, 2223947 Ontario Limited and 2223956 Ontario Limited, as purchasers, (collectively, the "**Stalking Horse Purchasers**") and each of the Applicants, as vendors;
 - (iii) approved and ratified the Stalking Horse APA and the transactions contemplated therein;
- (e) pursuant to the Bid Process Order, the Stalking Horse APA was approved as a stalking horse bid under the Bid Process;
- (f) the Bid Process was monitored by Deloitte & Touche Inc. in its capacity as the court appointed monitor (the "**Monitor**") in these proceedings;
- (g) several Interested Parties carried out due diligence in respect of the Applicants' assets and businesses pursuant to the Bid Process;

- (h) Zylog requested an extension of the Bid Deadline from January 13, 2010 to January 18, 2010 in order to provide Zylog with sufficient time to submit a bid;
- (i) the Stalking Horse Purchaser consented to the extension and the Court approved the extension;
- (j) in the intervening period prior to the expiry of the Bid Deadline (as amended), Zylog entered into the Lock-up Agreements with all of the Notes (except for Notes held by parties related to the Stalking Horse Purchaser) pursuant to which Zylog acquired the Notes for consideration that has not been disclosed to the Applicants;
- (k) on January 18, 2010, the Monitor brought a motion for directions and asked the Court to determine what value the Notes should be given if tendered during the auction;
- (l) the Court determined that, in the particular circumstances of this case, the Notes should receive face value if tendered;
- (m) Zylog submitted an offer to purchase the Applicants' assets;
- (n) Zylog's offer was the only offer received prior to the Bid Deadline (as amended) other than the Stalking Horse Bid;
- (o) the Monitor accepted the Zylog Offer as a Qualified Bid;

The Auction

- (p) the Bid Process culminated with an auction on January 25, 2010;
- (q) at the commencement of the auction the Monitor confirmed, in accordance with the Bid Process, that the Zylog offer was the Superior bid, equivalent in value to the purchase price payable under the Stalking Horse APA, plus the Break Fee of \$700,000 payable to the Stalking Horse Purchasers as required by the Bid Process, plus \$150,000 in additional cash consideration;
- (r) following tabling of the Zylog offer as the Superior Bid, the Stalking Horse Purchasers advised all parties attending the auction that while they had upwards of \$7 million that could have been used in the auction, in light of the fact that any Notes tendered by Zylog would receive face value, they would not bid in the auction;
- (s) the Monitor declared the Zylog offer to be the Successful Bid, the Stalking Horse APA to be the Back-Up Bid and the Auction concluded;
- (t) the Applicants and Zylog have entered into an asset purchase agreement (the "**Zylog Transaction**");

Court Approval of the Zylog Transaction

- (u) by Order dated February 1, 2010, the Zylog Transaction was approved and a vesting order was granted vesting in Zylog the purchased assets following the filing of a Monitor's Certificate confirming that all closing conditions have been satisfied;

- (v) the Zylog Transaction is to be closed by February 17, 2010;

Distribution to TD Bank and Roynat

- (w) the consideration to be received from Zylog pursuant to the Zylog

Transaction includes:

- (i) payment to TD Bank of all amounts owing for principal, interest and costs pursuant to its credit agreement or security;
 - (ii) the amount outstanding under the DIP Facility up to \$7,000,000;
 - (iii) payment to Roynat of amounts owing for principal, interest and costs pursuant to its credit agreement or security;
- (x) the Monitor has reviewed the security granted by the Applicants in favour of TD Bank and Roynat and opined that the security is valid and enforceable (other than Crown debts to which the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended, applies);

The Breakwall Engagement Letter and the Success Fee

- (y) Breakwall was retained by Brainhunter in August 2009 as a restructuring advisor and the engagement letter was revised on October 3, 2009 (the "**Breakwall Engagement**");
- (z) pursuant to the Breakwall Engagement, Breakwall is to be paid a Success Fee in respect of the Zylog Transaction equal to \$325,000 plus 3.5% of the amount by which "the purchase price for the assets and undertakings of Brainhunter" exceeds \$25,001,000;

- (aa) the intent of the Applicants and Breakwall was for Breakwall to receive the Success Fee of 3.5% for every dollar of value received by the Applicants' stakeholders through these proceedings in excess of \$25,001,000;
- (bb) the holders of the Notes have, or will, receive value through the Lock-up Agreements they entered into with Zylog (the "**Note Consideration**");
- (cc) the value of the Zylog Transaction exceeds \$25,001,000 without including the Note Consideration;
- (dd) the Note Consideration is value received as a result of these proceedings;
- (ee) pursuant to the Breakwall Engagement, Breakwall's Success Fee should include 3.5% of the Note Consideration and this amount should be paid out of the DIP Facility on the closing of the Zylog Transaction;
- (ff) Rules 3.02 and 37 of the *Rules of Civil Procedure*;
- (gg) the provisions of the CCAA; and
- (hh) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (i) the Affidavit of Mr. Don McCreesh sworn February 9, 2010;
- (ii) the Fifth Report of the Monitor dated February 9, 2010;
- (iii) the Fourth Report of the Monitor dated January 27, 2010;

- (iv) the Third Report of the Monitor dated January 21, 2010; and
- (v) such further and other materials as counsel may advise and this Honourable Court may permit.

Date: February 9, 2010

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**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
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LIMITED**

Court File No. 09-8482-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST
Proceeding Commenced at Toronto

NOTICE OF MOTION

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