

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 6TH DAY
)
JUSTICE MORAWETZ) OF OCTOBER, 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 BARZEL INDUSTRIES CANADA INC.

Applicant



BID PROCEDURES ORDER

THIS MOTION, made by the Applicant for the relief set out in the Applicant's notice of motion dated September 17, 2009 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Karen Narwold sworn September 17, 2009 and October 2, 2009, respectively, and the Exhibits thereto (collectively, the "**Narwold Affidavit**") and the Second Report of Deloitte & Touche Inc. dated October 2, 2009 (the "**Report**") in its capacity as the monitor appointed in these proceedings (the "**Monitor**") and on hearing the submissions of counsel for the Applicant, the Monitor, JP Morgan Chase Bank, NA and CIBC World Markets Corp., and Chriscott USA Inc. and 4513617 Canada Inc., no one appearing for any other person on the service list although served as appears from the Affidavit of Service, filed.

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Report and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Narwold Affidavit.
3. THIS COURT ORDER that the bidding procedures as described in the Narwold Affidavit and Report and attached as Schedule "A" hereto (the "**Bidding Procedures**") are hereby approved and, subject to approval of the Bidding Procedures in substantially the same form by the United States Bankruptcy Court for the District of Delaware in the Chapter 11 Proceedings of the US Debtors, the Applicants shall be authorized to conduct the sale process and auction (the "**Stalking Horse Process**") contemplated therein.
4. THIS COURT ORDERS that the asset purchase agreement dated as of September 14, 2009 between Chriscott USA Inc. and 4513614 Canada Inc., as purchasers, and the US Debtors and the Applicant, as vendors, as amended by Amendment No. 1 to the Asset Purchase Agreement dated as of September 30, 2009, each in the form attached to the Narwold Affidavit (collectively, the "**Stalking Horse APA**") be and is hereby approved and accepted for the purposes of conducting the Stalking Horse Process including, without limitation, the Sellers Termination Fee and the Expense Reimbursement (as defined in the Stalking Horse APA).
5. THIS COURT ORDERS that nothing herein approves the sale of any of the property or assets of the Applicant (collectively, the "**Assets**") on the terms set out in the Stalking Horse APA and that the validity of any sale of the property or assets of the Applicant shall be determined on a subsequent motion made to this Honourable Court.
6. THIS COURT ORDERS that, in connection with the Stalking Horse APA and the Stalking Horse Process and pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose to prospective purchasers or bidders for the Assets and their advisors all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees, including personal information of those employees listed on Schedules 4.14(b), 8.4(i)

and 8.4(ii) to the Stalking Horse APA, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Assets (a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall (i) return all such information to the Applicants; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of the Assets shall be entitled to continue to use the personal information provided to it, and related to the Assets, in a manner which is in all material respects similar to the prior use of such information by the Applicants, and shall (i) return all other personal information to the Applicants; (ii) ensure that all other personal information is destroyed; or (iii) in the case of all other personal information that is electronically stored, destroy all such other personal information to the extent it is reasonably practical to do so.

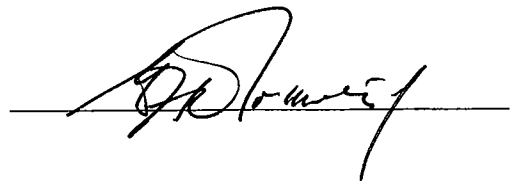
7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. 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.

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

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Schedule "A"

SALE PROCEDURES

Set forth below are the bidding procedures (the "Sale Procedures") to be employed with respect to the sale of substantially all of the assets (the "Purchased Assets") of Sellers (as defined below). The Purchased Assets being purchased and the terms and conditions upon which the Sellers contemplate consummating a sale are further described in the form of the Stalking Horse Agreement (the "APA") among the Debtors¹ and the Debtors' Canadian affiliate (the "Canadian Debtor") and together with the Debtors, the "Sellers") and Chriscott USA Inc. and 4513614 Canada Inc. (collectively, the "Stalking Horse Bidder"). Copies of the APA are available by sending a written request to (a) Debtors' counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801; or (b) the Monitor in the Canadian Debtor's proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"), Deloitte & Touche Inc. (the "Monitor"), 181 Bay Street, Bay Wellington Tower, Brookfield Place, Suite 1400, Toronto, ON M5J 2V1, Canada. The sale of the Purchased Assets of the Sellers (the "Sale") pursuant to the APA is subject to competitive bidding as set forth herein and approval by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure with respect to the Debtors and their assets and the Ontario Superior Court of Justice – Commercial List (the "Canadian Court") with respect to the Canadian Debtor and its assets.

I. The Sale Hearing

The Sellers will seek entry of an order from the Bankruptcy Court and the Canadian Court approving and authorizing the Sale to the Successful Bidder (as defined below) on terms and conditions consistent with the APA and in accordance with the Sale Procedures.

II. Participation Requirements

To participate in the Bidding Process (as defined below), each person or entity must deliver (unless previously delivered) to the Sellers, on or before the Bid Deadline (as defined below), an executed confidentiality agreement in form and substance satisfactory to the Sellers (the "Confidentiality Agreement") and evidence satisfactory to the Sellers, in consultation with Official Committee of Unsecured Creditors (the "Committee") and with the consent of the Sellers' debtor-in-possession lenders (the "DIP lenders"), of such person's or entity's financial capacity. Each person or entity that delivers the Confidentiality Agreement satisfactory to the Sellers on or before the Bid Deadline is hereinafter referred to as a "Potential Bidder."

After a Potential Bidder delivers the Confidentiality Agreement and evidence satisfactory to the Sellers, in consultation with the Committee and with the consent of the DIP lenders, of financial capacity, the Sellers shall deliver or make available (unless previously delivered or made available) to each Potential Bidder satisfying the criteria enumerated in the preceding paragraph certain designated information and financial data with respect to the Purchased Assets.

¹ The Debtors in the U.S. proceedings are Barzel Industries Inc., Barzel Holdings Inc., Barzel Finco Inc., Barzel Industries U.S. Inc., American Steel and Aluminum Corporation, Nova Tube and Steel, Inc., Novamerican Tube Holdings, Inc. and Nova Tube Indiana, LLC.

III. Determination by the Debtors

The Sellers, in consultation with the Committee and the DIP lenders, shall (a) coordinate the efforts of Potential Bidders in conducting their respective due diligence, (b) evaluate bids from Potential Bidders, (c) negotiate any bid made to acquire the Purchased Assets and (d) make such other determinations as are provided in these Sale Procedures (collectively, the "Bidding Process"). None of the Sellers nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Purchased Assets to any person who is not a Potential Bidder.

IV. Due Diligence

The Sellers shall afford any Potential Bidder such due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Sellers, in their business judgment, determine to be reasonable and appropriate. The Sellers may designate a representative to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. No additional due diligence will be required to be made available to Potential Bidders after the Bid Deadline (as defined below).

V. Bid Deadline

A Potential Bidder that desires to make a bid shall deliver copies of its bid by facsimile and/or email to (a) counsel to the Debtors, Cole, Schotz, Meisel, Forman & Leonard, P.A., Attn: Norman L. Pernick, Esq., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, [Fax: (302) 652-3117, E-mail: npernick@coleschotz.com], (b) special corporate counsel to the Debtor, Kelley Drye & Warren LLP, Attn: Benjamin Feder, Esq., 101 Park Avenue, New York, New York 10178, [Fax: (212) 808-7897, E-mail: bfeder@kelleydrye.com], and (c) counsel to the DIP lenders, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038, Attn: Andrew DeNatale, Esq., [Fax: (212) 806-7231, E-mail adenatale@stroock.com] and Richards Layton and Finger, P.A., 920 North King Street, Wilmington, DE 19801-1494, Attn: Mark Collins, Esq. [Fax: (302) 498-7531, E-mail collins@rlf.com]; by noon (Eastern Time) on October 26, 2009 (the "Bid Deadline").

VI. Bid Requirements

All bids must be accompanied by a letter:

- (a) offering to acquire the Purchased Assets, accompanied by an agreement attached to the letter, marked to show any proposed amendments and modifications to the APA and its schedules and exhibits (the "Marked Agreement");
- (b) agreeing that the Potential Bidder's offer is binding and irrevocable until 48 hours after the earlier of (i) the closing of the sale of the Purchased Assets, (ii) the withdrawal of the Purchased Assets for sale by the Sellers, or (iii) 30 days after the Sale Hearing;

- (c) offering to pay a purchase price greater than the aggregate consideration offered by the Stalking Horse Bidder pursuant to the APA by at least \$500,000 plus the amount of the Breakup Fee and the Expense Reimbursement (the "Initial Bid Increment");
- (d) enclosing a copy of a board resolution or similar document demonstrating authority to make a non-revocable bid, to execute the purchase agreement and to close a sale of the Purchased Assets; and
- (e) disclosing the identity of each entity that will be bidding for the Purchased Assets or otherwise participating with such Bid, and the complete terms of any such participation.

Bids must be accompanied by (a) a certified check or wire transfer in an amount equal to 10% of the aggregate purchase price of the bid payable to the order of the Sellers (a "Good Faith Deposit") and (b) written evidence of available cash, a commitment for financing if selected as the Successful Bidder (provided, however, that the closing of the Sale shall not be contingent in any way on the Successful Bidder's financing), and such other evidence of ability to consummate the transaction as the Sellers may reasonably request.

The Sellers, in consultation with the Committee, the DIP lenders and the Monitor, will review each bid received from a Potential Bidder to ensure that it meets the requirements set forth above. A bid received from a Potential Bidder that meets the above requirements will be considered a "Qualified Bid" and each Potential Bidder that submits a Qualified Bid will be considered a "Qualified Bidder." The Sellers, in consultation with the Committee and with the consent of the DIP lenders, will determine whether each bid meets the requirements of a Qualified Bid. The APA is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder, for all purposes and requirements pursuant to the Sale Procedures, notwithstanding the requirements that Potential Bidders must satisfy to be a Qualified Bidder.

A Qualified Bid will be valued by the Sellers, in consultation with the Committee and the DIP lenders, based upon any and all factors that the Sellers, in consultation with the Committee and the DIP lenders, may deem pertinent, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating a transaction with the Potential Bidder, (c) any Excluded Assets or executory contracts and leases, (d) the form of the purchase price; and (e) any other factors that the Sellers may deem relevant to the Sale.

The Sellers, in their business judgment, and in consultation with the Committee and with the consent of the DIP lenders, reserve the right to reject any bid if such bid:

- (a) is on terms that are more burdensome or conditional than the terms of the APA;
- (b) requires any indemnification of such Potential Bidder;
- (c) is not received by the Bid Deadline;
- (d) includes non-cash consideration; or

- (e) is subject to any due diligence, financing condition or other contingencies (including representations, warranties, covenants, and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the Purchased Assets other than as may be included in the APA.

Any bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid.

VII. Auction Participation

Unless otherwise ordered by the Bankruptcy Court or the Canadian Court for cause shown, only the authorized representatives, professionals or agents of the Stalking Horse Bidder and each Qualified Bidder, shall be eligible to participate at the Auction (as defined below) and, in addition to the Sellers, only the Committee and the Sellers' debtor-in-possession and prepetition lenders and the Monitor shall be permitted to attend. At least one business day prior to the Auction, each Qualified Bidder must inform the Sellers whether it intends to participate in the Auction. The Sellers will promptly thereafter inform in writing each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that may participate in the Auction and will provide copies of all other Qualified Bids to the Stalking Horse Bidder and such Qualified Bidders. If the Sellers do not receive any Qualified Bids other than the APA, it will not hold an Auction, the APA will be the Successful Bid (as defined below) and the Stalking Horse Bidder will be named the Successful Bidder.

VIII. Auction

If at least one Qualified Bid other than the APA is received by the Bid Deadline, the Sellers will conduct an auction (the "Auction"). The Auction shall take place on October 28, 2009 at 10:00 a.m. (Eastern Time) at the offices of special corporate counsel for the Debtors, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, or such other place as the Sellers shall designate and notify to all Qualified Bidders who have submitted Qualified Bids.

At the Auction, the bidding will start at the aggregate consideration for the Purchased Assets and terms proposed in the Qualified Bid that the Sellers, in consultation with the Committee and with the consent of the DIP lenders, select as the highest and best offer prior to the Auction and will continue in increments of at least \$500,000 in cash. The Sellers, upon consultation with the Committee, the DIP lenders and the Monitor, may announce at the Auction additional procedural rules for conducting the Auction so long as the rules are not inconsistent with these Sale Procedures.

Immediately prior to the conclusion of the Auction, the Sellers will, in consultation with the Committee, the DIP lenders and the Monitor: (a) review each bid made at the Auction on the basis of financial and contractual terms and such factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale; (b) with the consent of the DIP lenders, identify the highest and best bid for the Purchased Assets of the Sellers at the Auction (the "Successful Bid"); and (c) notify all Qualified Bidders at the Auction, prior to its

conclusion, of the name or names of the maker of the Successful Bid (the "Successful Bidder"), and the amount and other material terms of the Successful Bid.

All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court with respect to the Debtors and their assets and the Canadian Court with respect to the Canadian Debtor and its assets and waived any right to jury trial in connection with any disputes relating to the Auction, the sale of the Purchased Assets and the construction and enforcement of the APA.

IX. Acceptance of Qualified Bids

The Sellers, in consultation with the Committee and with the consent of the DIP lenders, may (a) determine, in their reasonable business judgment which Qualified Bid is the Successful Bid and the next best bid (the "Next Best Bid"); and (b) reject at any time before entry of the Sale Order any bid, other than the APA, that, in the Sellers' reasonable judgment, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Sale Procedures or the terms and conditions of the Sale or (iii) contrary to the best interests of the Sellers and their estates.

The Sellers, after consultation with the Committee, the DIP lenders and the Monitor, shall present to the Bankruptcy Court and the Canadian Court for approval the Successful Bid. If the Successful Bidder does not close the Sale within twenty-four (24) days of entry of the Sale Order and the Canadian Approval and Vesting Order, then the Sellers shall be authorized, but not required, and only with the consent of the DIP lenders, to close with the party that submitted the Next Best Bid (the "Next Best Bidder"), without a further court order.

X. No Fees for Potential Bidders or Qualified Bidders

Except for the Stalking Horse Bidder with respect to the Breakup Fee and the Expense Reimbursement, Potential Bidders or Qualified Bidders shall not be allowed any breakup, termination or similar fee. Moreover, all Potential Bidders and Qualified Bidders, by participating in the Bidding Process, waive any right to seek a claim for substantial contribution.

XI. Return of Good Faith Deposit

The Good Faith Deposits of all Potential Bidders shall be held in escrow by the Sellers, but shall not become property of the Sellers' estates absent further order of the Bankruptcy Court or the Canadian Court. The Good Faith Deposits of each Potential Bidder shall be retained by the Sellers, notwithstanding Bankruptcy Court and the Canadian Court approval of a sale, until 48 hours after the approval by the Bankruptcy Court and the Canadian Court of a Sale to a Bidder other than the Potential Bidder. At the closing of the Sale contemplated by the Successful Bid, the Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon.

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1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BARZEL INDUSTRIES CANADA INC.**

Court File No: 09-8363-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

BID PROCEDURES ORDER

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