

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

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THURSDAY, THE 6TH

JUSTICE CAVANAGH

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DAY OF JANUARY, 2022

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B E T W E E N:

PIVOT FINANCIAL I LIMITED PARTNERSHIP

Applicant

- and -

HOCKEYSHOT INC.

Respondent

**ORDER
(Sale Process Approval)**

THIS APPLICATION, made by the Applicant for, *inter alia*, an Order approving a sale process (the "**Sale Process**") in respect of all of the assets, undertakings and properties (the "**Property**") of HockeyShot Inc.(the "**Debtor**") acquired for, or used in relation to, the business carried on by the Debtor, was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Dan Flaro sworn December 31, 2021 and the Exhibits thereto, the pre-filing report of PricewaterhouseCoopers Inc., LIT, as proposed receiver (the "**Receiver**"), dated January 4, 2022 and the appendices thereto (the "**Pre-Filing Report**"), and on hearing the submissions of counsel for the Applicant, the Receiver, and such other counsel as are present and listed on the counsel slip,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF SALE PROCESS

2. **THIS COURT ORDERS** that the Sale Process as described in the Pre-Filing Report and attached hereto as **Schedule “A”**, be and is hereby approved and the Receiver is hereby authorized to perform its obligations under and in accordance with the Sale Process and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.

KERP APPROVAL

3. **THIS COURT ORDERS** that the KERP (as defined in the Pre-Filing Report) is hereby approved and the Receiver is hereby empowered and authorized to cause the Debtor to implement the KERP.

SEALING

4. **THIS COURT ORDERS** that Confidential Appendix “A” to the Pre-Filing Report shall be sealed pending further Order of this Court.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or 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.

6. **THIS COURT ORDERS** that the Receiver shall 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 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 of Canada.

SCHEDULE “A”

SALE PROCESS TERMS AND PROCEDURES

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 6, 2022 (the “**Receivership Order**”), PricewaterhouseCoopers Inc., LIT was appointed as the receiver and manager (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) acquired for, or used in relation to, the business carried on by HockeyShot Inc. (the “**Debtor**”).

Set forth below is the sale process to be employed with respect to the proposed sale of all or substantially all of the Property. Pursuant to the Receivership Order, the Receiver was authorized to market, advertise, and solicit offers in respect of the sale, in whole or in part, of the Property.

Further in that regard, on January 6, 2022, the Court granted an Order (the “**Sale Process Approval Order**”) authorizing the Receiver to commence a sale process pursuant to which interest in the acquisition of the Property is to be solicited in a fair and competitive process wherein all qualified interested parties will be provided with the opportunity to submit offers for the Property (the “**Sale Process**”). Prior to the commencement of the Debtor’s receivership proceedings, the Debtor and Welch Capital Partners Inc. (“**Welch**”) entered into an agreement dated December 31, 2021 pursuant to which Welch would provide the Debtor with sell-side advisory services relating to the sale of the Property (the “**Welch Agreement**”). As part of the Sale Process, the Receiver has adopted and assumed the Welch Agreement and Welch will assist the Receiver in conducting the Sale Process. As set out below, certain components of the Sale Process will be undertaken by Welch under the supervision of the Receiver.

Timeline

The following table sets out the key milestones under the Sale Process.

Milestone	Deadline
Court approval of the Sale Process	January 6, 2022
Send teaser to Prospective Bidders	January 7, 2022
Advertise sales in <i>The Globe and Mail (National Edition)</i> and reference in social media resources	January 13, 2022
Provide NDA to interested parties	Upon request
Provide interested parties with virtual dataroom access	Forthwith upon executing NDA
Arrange on site diligence and management meetings subject to Government-mandated guidelines for COVID-19 and appropriate social distancing and mask protocols	At the Receiver’s discretion, subject to qualifying the degree of interest of each interested party
Bid Deadline	February 18, 2022
Sale Approval Motion	March 7, 2022

Closing Date	Within 14 days from the date of the Sale Approval Motion
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The Receiver shall have the option at its discretion and without a further order of the Court to extend the Bid Deadline, by a period not exceeding 10 days, and the deadline for a Sale Approval Motion.

Sale Process

The Sale Process set forth herein describes, among other things: (i) the Property available for sale, (ii) the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property, (iii) the manner in which bidders are determined to be Qualified Bidders (as defined herein), (iv) the manner in which bids are to be received and negotiated, (v) the ultimate selection of any Successful Bidder (as defined herein) and the process leading up to that selection, and (vi) the approval thereof by the Court.

Property To Be Sold

The Receiver, in accordance with this Sale Process, is offering for sale, in one or more transactions, the Property. The Receiver reserves the right to remove certain assets available for sale pursuant to the Sale Process prior to the Bid Deadline.

“As Is, Where Is”

The sale of the Property will be on an “as is, where is” basis without representations or warranties of any kind, nature, or description by the Receiver, or any of its respective directors, officers, partners, employees, agents, advisors or estates, except to the extent set forth in a Binding APA (as defined herein) and approved by the Court. By submitting a bid, each Potential Bidder (as defined below) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA and approved by the Court.

Free Of Any And All Claims And Interests

Except as may otherwise be provided in the Successful Bidder’s Binding APA or such order of the Court approving the transaction contemplated in the Binding APA (the “**Approval and Vesting Order**”), all of the right, title and interest of the Debtor in and to the Property, or any portion thereof, will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interest therein and thereon (together, the “**Claims**”), and the Property shall be vested in the Successful Bidder. For greater certainty, such Claims are to attach to the net proceeds of the sale of the Property following the granting of the Approval and Vesting Order.

Publication Notice

Within five (5) business days of the granting of the Sale Process Approval Order by the Court, or as soon as practicable thereafter, the Receiver shall publish notice of the Sale Process: (i) in *The Globe and Mail (National Edition)*, and (ii) in any other relevant publication that may advertise and potentially solicit interest in the Property.

Solicitation of Interest

As soon as reasonably practicable after the granting of the Sale Process Approval Order, Welch, in consultation with the Receiver, will prepare an initial offering summary (the “**Teaser Letter**”) notifying prospective purchasers of the existence of the Sale Process and inviting prospective purchasers to express their interest in making an offer for the Property pursuant to the terms of the Sale Process.

Participation Requirements

Unless otherwise ordered by the Court or as otherwise determined by the Receiver, each person who wishes to participate in the Sale Process (a “**Potential Bidder**”) shall be provided with a form of non-disclosure agreement (“**NDA**”) which they must execute and deliver to Welch and the Receiver prior to the distribution of any confidential information by Welch and to the extent applicable, the Receiver.

If it is determined by the Receiver, in its reasonable business judgment, that a Potential Bidder: (i) has a *bona fide* interest in an acquisition of the Property; (ii) has delivered the NDA; and (iii) has the financial capability (based on the availability of financing, experience, the Potential Bidder’s financial information and other considerations) to consummate such a transaction, then such Potential Bidder will be deemed by the Receiver to be a “**Qualified Bidder**”. Notwithstanding the foregoing, at any time during the Sale Process, the Receiver may, in its reasonable business judgment, disqualify a Potential Bidder from the Sale Process, even if such Potential Bidder has been deemed a Qualified Bidder.

Due Diligence

Welch may give each Qualified Bidder such access to due diligence materials and information relating to the Property as Welch, in consultation with the Receiver, deems appropriate, including a confidential information memorandum. Due diligence access may include access to an electronic data room (a “**Data Room**”), on-site inspections and other matters which a Qualified Bidder may reasonably request and as to which the Receiver, in its reasonable business judgment, may agree. The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated. Neither the Receiver nor any of its affiliates (or any of its respective representatives) will be obligated to furnish any information relating to the Property to any person other than to Qualified Bidders, in its discretion. The Receiver makes no representation or warranty as to the information to be provided through this due diligence process or otherwise, except as set forth in a Binding APA with the Successful Bidder.

Welch, and to the extent necessary the Receiver, will take all reasonable steps to assist Qualified Bidders in completing any due diligence, if any, or any other bid matters including any discussions or negotiations required to be completed with any stakeholders in the Debtor's receivership proceedings with a view to assisting such Qualified Bidders in submitting a Binding APA by the Bid Deadline.

Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid, in the form of the template asset purchase agreement located in the Data Room (the "**Template APA**"), together with a blackline outlining all changes made to the Template APA (a "**Binding APA**"), to the Receiver and Welch as follows: (i) Attention: Michelle Pickett, email: michelle.pickett@pwc.com, and (ii) Attention: Connor McGarry, email: cmcgarry@welchcapitalpartners.com, so as to be received by the Receiver no later than Feb 18, 2022 at 12:00 p.m. (ET) (as may be extended as set out below, the "**Bid Deadline**"). The Receiver may extend the Bid Deadline, once or successively, for a period not exceeding 10 days. If the Bid Deadline is extended, the Receiver will promptly notify all Qualified Bidders.

If the Receiver is not satisfied with the number or terms of bids submitted by the Bid Deadline, the Receiver may extend the Bid Deadline or terminate the Sale Process.

For greater certainty, a Binding APA shall:

- (a) be delivered to the Receiver by the Bid APA Deadline;
- (b) comply with all of the requirements set forth in the Sale Process for a Binding APA;
- (c) provide that the offer is irrevocable and open for acceptance until the transaction contemplated in the Successful APA (as defined herein) has closed;
- (d) include written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Receiver to make a determination as to the Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
- (e) not be conditional upon: (i) the outcome of any further due diligence, and/or (ii) obtaining financing;
- (f) fully disclose the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;
- (g) provide a deposit in the amount of not less than 10% of the Purchase Price set out in the Binding APA (the "**Deposit**");
- (h) include acknowledgments and representations of the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, (ii) it has relied solely upon its own independent

review, investigation and/or inspection of any documents and/or the Property in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith; and

- (i) provide for a closing date within 14 days from the date of the Sale Approval Motion (the “**Closing Date**”).

The Receiver may determine, in its reasonable business judgment, whether to entertain bids for the Property that do not conform to one or more of the requirements specified herein and deem such bids to be a Binding APA.

Selection of Successful APA

The Receiver will review and evaluate each Binding APA in determining which Binding APA contemplates the best bid for the Property (the “**Successful APA**” and the Qualified Bidder submitting the Successful APA shall be the “**Successful Bidder**”). A Binding APA will be evaluated based upon several factors including, without limitation, items such as the Purchase Price and the net value provided by such bid, the counterparties to such transaction, factors affecting the speed and certainty of the closing of the transaction, the assets included or excluded from the bid, any related transaction costs and the likelihood and timing of consummating such transactions, each as determined by the Receiver. For greater clarity, based on the foregoing factors, the Receiver is not required to select the Binding APA that provides for the highest Purchase Price. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding the Qualified Bidder or the Binding APA. Failure of a Qualified Bidder to comply with requests for additional information shall be a basis upon which the Receiver may choose to reject a Binding APA.

Each Binding APA may be negotiated by the Receiver and the applicable Qualified Bidder submitting the Binding APA, and may be amended, modified or varied to improve such Binding APA as a result of such negotiations. In the event that no Successful Bidder is declared, the Receiver will advise all Qualified Bidders who submitted a Binding APA accordingly. The selection of the Successful APA by the Receiver shall be subject to approval by the Court.

Notwithstanding the foregoing, a Binding APA may not be withdrawn, modified, or amended without the written consent of the Receiver prior to the closing of the transaction contemplated by the Successful APA. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the closing of the Successful APA shall result in the forfeiture of the deposit paid under the terms of such Binding APA as liquidated damages and not as a penalty.

The Receiver shall have no obligation to select a Successful APA, and it reserves the right to reject any or all Binding APAs.

Sale Approval Motion Hearing

If the Receiver selects a Successful APA, the motion for an order of the Court approving such Successful APA (the “**Sale Approval Motion**”) shall be heard on or before March 7, 2022, with the Receiver having the discretion to extend such deadline.

All of the Binding APAs other than the Successful APA, if any, shall be deemed rejected by the Receiver upon closing of the transaction contemplated by the Successful APA.

Reservation of Rights

The Receiver may: (a) determine which Binding APA, if any, is the highest or otherwise best offer; (b) reject at any time before the issuance and entry of an order approving a Binding APA, any bid that, in the Receiver’s reasonable business judgment, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Process or any order of the Court, or (iii) contrary to the best interests of the receivership estate, and (c) may modify the Sale Process or impose additional terms and conditions on the sale of the Property.

Miscellaneous

The Sale Process is solely for the benefit of the Receiver and nothing contained in the Sale Process Approval Order or the Sale Process shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale Process Approval Order.

Except as provided in an order of the Court, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Approval Order and the Sale Process.

Limitation of Liability

The Receiver shall not have any liability to any Potential Bidder, for any act or omission related to the process contemplated by the Sale Process. By submitting a bid, each Potential Bidder shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever.

Applicant

Respondent

Court File No. CV-21-00674530-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

SALE PROCESS APPROVAL ORDER

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