

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF STAR NAVIGATION SYSTEMS  
GROUP LTD.**

**FACTUM**

(Re: Stay Extension and Administration Charge)

January 7, 2020

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Group Ltd.

TO: THE SERVICE LIST

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**PART I - OVERVIEW**

1. On December 11, 2019, Star Navigation Systems Group Ltd. (“**Star Navigation**” or the “**Company**”) commenced these proceedings (the “**Proposal Proceedings**”) under the *Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”) by filing a Notice of Intention to Make a Proposal (the “**NOI**”) and naming A. Farber & Partners Inc. as the proposal trustee (the “**Proposal Trustee**”).
2. The Company submits this factum in connection with the Company’s motion for an Order:
  - (a) extending the time to make a proposal for a period of 45 days from January 10, 2020, through and including February 24, 2020; and
  - (b) granting a charge (the “**Administration Charge**”) against all of the Company’s assets, property and undertaking in priority to all other encumbrances to a maximum of \$100,000 (plus HST) as security for the professional fees and disbursements of the Company’s counsel, the Proposal Trustee and its counsel.

3. In support of the Company's Motion, the Proposal Trustee has filed the First Report of the Proposal Trustee dated January 3, 2020 (the "**First Report**").
4. As is further described below, the Company has received communication from counsel for the Company's former CEO, Viraf Kapadia ("**Kapadia**"), of Kapadia's intention to oppose the relief sought in this Motion. This factum also addresses such opposition.

## **PART II - FACTS**

### **Background**

5. The background and facts giving rise to the Company's Proposal Proceedings are detailed in the Affidavit of Peter M. Clausi sworn January 2, 2020 (the "**Clausi Affidavit**") and are not repeated here except as necessary. Capitalized terms used but not defined in this factum are defined in the Clausi Affidavit.
6. The Company is a technology company focused on developing and licensing solutions for the aviation industry. The Company has 14 employees and is a reporting issuer with operations in Brampton, Ontario and Montreal, Quebec. The Company is headquartered in Toronto.<sup>1</sup>
7. The Company has no secured creditors and approximately \$3.4 million in unsecured liabilities.<sup>2</sup>

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<sup>1</sup> Affidavit of Peter M. Clausi sworn January 2, 2020, Tab 2, Motion Record at paras 3-5 [*Clausi Affidavit*].

<sup>2</sup> Clausi Affidavit, para 9.

### **The Former CEO – Viraf Kapadia**

8. Prior to being terminated, since 2003, the Company's CEO and Chairman of the Board was Kapadia.
  
9. Among other things, during Kapadia's tenure:
  - (a) the Company failed to generate material revenue;
  
  - (b) employees have been left unpaid;<sup>3</sup>
  
  - (c) source deductions have not been remitted to the CRA;<sup>4</sup>
  
  - (d) the Ministry of Labour garnished the Company's bank account;<sup>5</sup>
  
  - (e) Kapadia terminated the Company's CFO without cause, notice or a replacement;<sup>6</sup>
  
  - (f) a Cease Trade Order was issued against the Company for failing to meet ongoing disclosure requirements;<sup>7</sup>
  
  - (g) the Company has been embroiled in a shareholders' dispute;<sup>8</sup> and

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<sup>3</sup> Clausi Affidavit at para 12; First Report of the Proposal Trustee, dated January 3, 2020 at para 9 [*First Report*].

<sup>4</sup> Clausi Affidavit at para 12.

<sup>5</sup> First Report at para 9.

<sup>6</sup> Clausi Affidavit at para 36.

<sup>7</sup> Clausi Affidavit at para 13.

<sup>8</sup> Clausi Affidavit at para 14.

- (h) Kapadia caused the Company to file the NOI without any prior planning, legal advice or even any consultation with the Company's General Counsel.<sup>9</sup>
10. As detailed in the Clausi Affidavit and the First Report, Kapadia and his personal lawyers, Norton Rose Fulbright LLP ("**NRF**"), worked with the Proposal Trustee to file the NOI on December 11, 2019 at 5:25 a.m. The Company had no independent legal representation when the NOI was filed.
11. Kapadia caused the NOI to be filed only hours before<sup>10</sup> the commencement of the December 11 Meeting (defined and described below) where a vote was being conducted to remove the Old Board of Directors, including Kapadia, and appoint a new board of directors (the "**New Board**") to investigate Kapadia's related party transactions with the Company.<sup>11</sup>
12. The only planning apparently done by Kapadia prior to filing the NOI served his own interests as opposed to the Company's:
- (a) On December 10, 2019, approximately 14 hours before Kapadia and his personal lawyers caused the filing of the NOI,<sup>12</sup> Kapadia registered a financing

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<sup>9</sup> Clausi Affidavit at paras 30-32.

<sup>10</sup> First Report at para 17.

<sup>11</sup> Clausi Affidavit at paras 15 and 35.

<sup>12</sup> Clausi Affidavit at Exhibit "N".

statement under the PPSA against the Company for an alleged secured debt owing to him;<sup>13</sup> and

(b) Kapadia brought an application and interlocutory injunction before this Court to invalidate the results of the December 11 Meeting that resulted in his ouster from the Company and reinstate the Old Board of Directors.

### **The Shareholders' Dispute**

13. The Company is mired in a shareholder dispute that has been years in the making<sup>14</sup> and is the subject of ongoing litigation before this Court.<sup>15</sup> Below is a brief summary:

(a) a review of the public record for the Company on SEDAR shows that certain shareholders, known in the Clausi Affidavit as the "**Concerned Shareholders**" have sought to remove Kapadia as CEO and Chairman of the Board for quite some time;<sup>16</sup>

(b) Kapadia rejected each attempt by the Concerned Shareholders to convene a shareholders' meeting, citing technical grounds;<sup>17</sup>

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<sup>13</sup> Clausi Affidavit at para 34.

<sup>14</sup> Clausi Affidavit at para 27.

<sup>15</sup> Clausi Affidavit at para 14.

<sup>16</sup> Clausi Affidavit at para 27.

<sup>17</sup> Clausi Affidavit at para 27.

(c) the Concerned Shareholders ultimately called a special meeting of the shareholders, which occurred on December 11, 2019 (the “**December 11 Meeting**”);

(d) at the December 11 Meeting, a new board of directors (the “**New Board**”) was appointed and the New Board was authorized to investigate related party transactions. The vote passed with the support of 99% of voting shareholders;<sup>18</sup>

(e) the New Board terminated Kapadia as CEO, reinstated the Company’s CFO and appointed Mr. Clausi as interim CEO;<sup>19</sup>

(f) Kapadia brought an Application before this Court for an order setting aside the results of the December 11 Meeting (the “**Application**”) as well as an interlocutory injunction seeking to have the Old Board of Directors reinstated (the “**Injunction**”). Justice Conway dismissed the Injunction. The Application is scheduled to heard on the merits on January 22, 2020; and

(g) there is a pending motion to remove Kapadia as a director of the Company under Section 64 of the BIA if he is reinstated in that role after the hearing of the Application.

14. In addition, the shareholders’ dispute has been the subject of at least six (6) disclosures and press releases on SEDAR,<sup>20</sup> the most recent being issued on

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<sup>18</sup> Clausi Affidavit at para 55.

<sup>19</sup> *Ibid.*

<sup>20</sup> Clausi Affidavit at Exhibits “D”, “H”, “I”, “J”, “K” and “S”.

December 23, 2019 by Kapadia, despite Kapadia's termination as CEO and director following the December 11 Meeting.

### **Company's Efforts Since the NOI**

15. Despite the shareholders' dispute, the Company, under the New Board and interim CEO, has made significant progress towards restructuring its affairs. Those efforts are detailed in the Clausi Affidavit. In summary, the New Board and management has:

(a) begun the process of implementing proper corporate governance procedures;<sup>21</sup>

(b) arranged for financing to fund the Company's ongoing operations and critical expenses, which is being provided by the Concerned Shareholders without any request at this time for a priority DIP charge to secure such advances;

(c) comforted employees who were owed significant back wages under Kapadia's tenure;<sup>22</sup>

(d) communicated with the Company's stakeholders;

(e) gained possession of the Company's books and records despite interference from Kapadia and his lawyers;<sup>23</sup> and

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<sup>21</sup> Clausi Affidavit at para 57(a), (b) and (d).

<sup>22</sup> Clausi Affidavit at para 55(g).



- (f) addressed the ongoing shareholders' dispute, including the Injunction and Application.
16. The primary purpose of these Proposal Proceedings is to create a stabilized environment to allow the Company to address the shareholders' dispute and develop a restructuring plan.<sup>24</sup>
17. The Company has acted in good faith and with due diligence and needs the requested extension in order to resolve the shareholders' dispute pending before this Court and focus its attention on restructuring its affairs and making a viable proposal to its creditors.<sup>25</sup>

### **Kapadia Debt**

18. According to the Creditor List, Kapadia is allegedly owed, on an unsecured basis, approximately \$2,319,894.00.<sup>26</sup>
19. As described above, on the eve of the filing, Kapadia's lawyers registered a financing statement against the Company under the *Personal Property Security Act*.<sup>27</sup>
20. Despite repeated requests, Kapadia and his lawyers have failed to produce any documentation in support of Kapadia's unsecured and secured debt.<sup>28</sup>

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<sup>23</sup> Clausi Affidavit at paras 36-42.

<sup>24</sup> First Report at para 16.

<sup>25</sup> Clausi Affidavit at paras 63-65.

<sup>26</sup> Clausi Affidavit at para 11.

<sup>27</sup> Clausi Affidavit at para 34, Exhibit "N".

21. The validity and quantum of amounts allegedly owing to Kapadia are in dispute.<sup>29</sup>

### **PART III - ISSUES**

22. This factum addresses two issues:

(a) Should this Court grant the Company's motion for an extension of the time to file a proposal for a period of 45 days?; and

(b) Should this Court grant the Administration Charge?

### **PART IV - LAW & ARGUMENT**

#### **Issue 1: Should the Court grant the extension of time to file a proposal?**

23. The Court has jurisdiction to extend the time for the Company to file a proposal under 50.4(9) of the BIA where the Court is satisfied that:

(a) the Company has acted with good faith and due diligence;

(b) the Company would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.<sup>30</sup>

24. Extensions of time have been granted even in the face of opposition where (i) the opposition was premature; (ii) there was no evidence of bad faith by the debtor;

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<sup>28</sup> Clausi Affidavit at para 46.

<sup>29</sup> Clausi Affidavit at para 11.

<sup>30</sup> s. 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 at Schedule "B" [BIA].

and (iii) there is no evidence that the creditor would be materially prejudiced by the extension.<sup>31</sup>

25. This is the Company's first request for an extension. The Company submits it has satisfied the test for an extension despite any opposition from Kapadia.
26. The Company further submits that Kapadia's opposition is premature at this time given this is the first extension and Kapadia caused the Company to commence these Proposal Proceedings.

***Factor A: Good Faith and Due Diligence***

27. The Company submits that it has been acting with good faith and due diligence during these Proposal Proceedings.
28. In this case, since the commencement of the Proposal Proceedings and despite the shareholders' dispute, the Company has made progress implementing corporate governance procedures, obtaining the Company's books and records, arranging for current and future funding and preparing the necessary documentation to have the Cease Trade Order lifted.
29. The Company continues to take all of these steps to stabilize operations, to finally resolve the corporate governance issues faced by the Company and to focus its efforts on making a viable proposal to its creditors.

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<sup>31</sup> *Cantrail Coach Lines Ltd. Re*, 2005 BCSC 351, Tab 1 of the Book of Authorities, at paras 17-22.

30. The Company met all of its current financial obligations and made payments as they became due.
31. The Concerned Shareholders have raised approximately \$465,000 to fund the Company's ongoing operations and restructuring costs.<sup>32</sup>
32. The Proposal Trustee supports the requested extension.<sup>33</sup>

***Factor B: Viable Proposal***

33. The Company submits that an extension of the time for filing a proposal for 45 days would provide the Company with the time needed address its corporate governance issues, bring finality to the shareholders' dispute and focus its efforts on restructuring its affairs and making a viable proposal to its creditors.
34. Despite Kapadia claiming to hold 66% of the total claims against the Company, a perceived veto power of a creditor on a proposal is not dispositive.<sup>34</sup>
35. It is unclear whether Kapadia in fact has a veto over any proposal. The validity and quantum of Kapadia's claim is in dispute. Kapadia has refused or neglected to provide any supporting documentation in respect of the unsecured or purported secured debt allegedly owed to him. Kapadia has not filed a proof of

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<sup>32</sup> Clausi Affidavit at paras 60-61.

<sup>33</sup> First Report at paras 35-39.

<sup>34</sup> *NS United Kaiun Kaisha Ltd v. Cogent Fibre Inc.*, 2015 ONSC 5139, Tab 2 of the Book of Authorities at para 18.

claim. The nature of Kapadia's claims is unclear and will impact how its various elements are classified in a proposal.

36. Lastly, for the purpose of this argument, even if Kapadia's debt is entirely valid, Kapadia's vote may be excluded from a creditors' vote on a proposal pursuant to Section 109(6) of the BIA.<sup>35</sup> Section 109(6) provides as follows:

(6) If the chair is of the opinion that **the outcome of a vote was determined by the vote of a creditor who did not deal with the debtor at arm's length** at any time during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy, **the chair shall redetermine the outcome by excluding the creditor's vote**. The redetermined outcome is the outcome of the vote unless a court, on application within 10 days after the day on which the chair redetermined the outcome of the vote, considers it appropriate to include the creditor's vote and determines another outcome. [emphasis added]

37. Justice Penny recently accepted the application of Section 109(6) in the context of a vote on a BIA proposal to disregard the vote rejecting a proposal cast by a related party in the midst of a shareholder dispute with the debtor.<sup>36</sup> If necessary, it will be argued that this case meets the test set out by Justice Penny to exclude a vote of a related party creditor under Section 109(6).
38. In light of these considerations, the Company submits that Kapadia's perceived veto should not be given weight until the validity and quantum of Kapadia's claim has been adjudicated and finally determined.

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<sup>35</sup> s. 109(6) of the BIA at Schedule "B".

<sup>36</sup> *FT ENE Canada Inc. (Re)*, 2019 ONSC 5793, Tab 3 of the Book of Authorities.

39. Kapadia has for over three weeks refused to produce a single document in support of his unsecured and alleged secured debt. As at the date of this factum, Kapadia has even failed to disclose the amount of the alleged secured debt.

*Bad Faith*

40. The recent amendments to the BIA include a new statutory duty of good faith, which requires that any interested person in any proceedings under the BIA act in good faith with respect to those proceedings.<sup>37</sup>
41. In this case, Kapadia caused the filing of the NOI; registered a security interest on the eve of the filing; distracted the Company in protracted litigation before the Commercial List since the filing; advised the Company of his purported veto over any proposal<sup>38</sup> and his intention to seek a termination of the Proposal Proceeding;<sup>39</sup> and interfered with the Company in obtaining its books and records.<sup>40</sup>
42. Kapadia's "reasonable efforts" to work with the Company during the Proposal Proceeding, which he initiated in consultation with his personal lawyers, was in the form of a letter sent on December 23, 2019 by his lawyers to the Company demanding Kapadia receive a proposal from the Company by no later than January 3, 2020.

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<sup>37</sup> s. 4.2(1) and (2) of the BIA at Schedule "B".

<sup>38</sup> Clausi Affidavit at Exhibit "R".

<sup>39</sup> Affidavit of Shallon Garrafa, dated January 7, 2020, at Exhibit "A".

<sup>40</sup> Clausi Affidavit at paras 36 – 42, and 55(m).

43. The Company received another letter from Kapadia's lawyers on January 6, 2020 where they advise of Kapadia's intention to oppose the Company's motion and seek to terminate these Proposal Proceedings. Kapadia takes this position while having an Application before this Court to reinstate himself as CEO and director of the very Company that he currently seeks to bankrupt.
44. For the foregoing reasons, the Company submits that Kapadia's opposition to this Motion is tactical, in breach of the statutory duty good faith under the BIA and aimed at either gaining an advantage in the shareholders' dispute or ending it entirely.
45. Section 4.2(2) of the BIA provides that if the court is satisfied that an interested person fails to act in good faith, the court may make any order that it considers appropriate in the circumstances.<sup>41</sup>
46. The Company submits that the appropriate relief at this time to address Kapadia's lack of good faith in these Proposal Proceedings is to dismiss his opposition to the Company's motion for an extension.

***Factor C: Material Prejudice***

47. The Company submits that no creditor, including Kapadia, will be materially prejudiced by the requested extension.
48. The Company receives funding from the Concerned Shareholders, who are not at this time seeking a priority charge for such advances. Rather, the Concerned

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<sup>41</sup> s. 4.2(2) of the BIA at Schedule "B".

Shareholders are ameliorating the Company's financial situation and viability as an ongoing business for the benefit of all stakeholders while risking their own funds.

49. The Proposal Trustee is of the view that creditors would not be materially prejudiced by the extension. Rather, the Proposal Trustee reports a bankruptcy at this time would be to the detriment of creditors, including Kapadia.
50. The Cash Flow Forecast prepared by the Company and reviewed by the Proposal Trustee indicates that the Company will have sufficient cash flow to fund operations through the requested extension.

**Issue 2: Should the Court approve the Administration Charge?**

51. On notice to the secured creditors likely to be affected, this Court has jurisdiction to grant a priority charge against all of the Company's assets, property and undertaking as security for the professional fees and disbursements of the Company's counsel, the Proposal Trustee and its counsel under Section 64.2 of the BIA.<sup>42</sup>
52. The only PPSA registration is Kapadia's. Although the validity of any purported security interest is in dispute, for the purposes of this analysis, Kapadia was served with this Motion.
53. The Company's counsel, Proposal Trustee and any counsel for the Proposal Trustee will be integral to the Company successfully restructuring its affairs.

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<sup>42</sup> s. 64(2) of the BIA at Schedule "B".



54. The Company submits the quantum of the Administration Charge is fair and reasonable.
55. This Court has often granted administration charges as security for the professional fees and disbursements of the professionals tasked with administering the estate.<sup>43</sup>

#### **PART V - ORDER REQUESTED**

56. The Company respectfully requests that this Court grant the draft form of Order contained at Tab 3 of the Company's Motion Record, among other things, (i) extending the time for the Company to make proposal, and (ii) granting the Administration Charge.

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<sup>43</sup> *Colossus Minerals Inc., Re*, 2014 ONSC 514 at para 12, Tab 4 of the Book of Authorities; *Danier Leather Inc., Re* at paras 55-58, Tab 5 of the Book of Authorities

57. ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of January, 2020.



Per: Asim Iqbal

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**SCHEDULE “A”  
BOOK OF AUTHORITIES**

**Cases**

1. *Cantrail Coach Lines Ltd. Re*, 2005 BCSC 351.
2. *NS United Kaiun Kaisha Ltd v. Cogent Fibre Inc.*, 2015 ONSC 5139.
3. *FT ENE Canada Inc. (Re)*, 2019 ONSC 5793.
4. *Colossus Minerals Inc., Re*, 2014 ONSC 514.
5. *Danier Leather Inc., Re*, 2016 ONSC 1044..

**SCHEDULE “B”  
TEXT OF STATUTES, REGULATIONS & BY - LAWS**

**Bankruptcy and Insolvency Act, RSC 1985, c B-3**

**Notice of intention**

**50.4 (1)** Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

- (a) the insolvent person’s intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books, and attaching thereto a copy of the consent referred to in paragraph (b).

**Certain things to be filed**

**(2)** Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a “cash-flow statement”) indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

**Creditors may obtain statement**

**(3)** Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

**Exception**

**(4)** The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

### **Trustee protected**

**(5)** If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

### **Trustee to notify creditors**

**(6)** Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

### **Trustee to monitor and report**

**(7)** Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

**(a)** shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

**(b)** shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

**(i)** with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

**(ii)** with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

**(c)** shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

### **Where assignment deemed to have been made**

**(8)** Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

**(a)** the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

**(b)** the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

**(b.1)** the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

**(c)** the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

### **Extension of time for filing proposal**

**50.4 (9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

**(a)** the insolvent person has acted, and is acting, in good faith and with due diligence;

**(b)** the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

**(c)** no creditor would be materially prejudiced if the extension being applied for were granted.

### **Court may not extend time**

**(10)** Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

### **Court may terminate period for making proposal**

**(11)** The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

**(a)** the insolvent person has not acted, or is not acting, in good faith and with due diligence,

**(b)** the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,

**(c)** the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or

(d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

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### **Right of creditor to vote**

**109 (1)** A person is not entitled to vote as a creditor at any meeting of creditors unless the person has duly proved a claim provable in bankruptcy and the proof of claim has been duly filed with the trustee before the time appointed for the meeting.

### **Voting by proxy**

(2) A creditor may vote either in person or by proxy.

### **Form of proxy**

(3) A proxy is not invalid merely because it is in the form of a letter or printed matter transmitted by any form or mode of telecommunication.

### **Debtor may not be proxyholder**

(4) A debtor may not be appointed a proxyholder to vote at any meeting of the debtor's creditors.

### **Corporation**

(5) A corporation may vote by an authorized proxyholder at meetings of creditors.

### **Vote of creditors not dealing at arm's length**

(6) If the chair is of the opinion that the outcome of a vote was determined by the vote of a creditor who did not deal with the debtor at arm's length at any time during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy, the chair shall redetermine the outcome by excluding the creditor's vote. The redetermined outcome is the outcome of the vote unless a court, on application within 10 days after the day on which the chair redetermined the outcome of the vote, considers it appropriate to include the creditor's vote and determines another outcome.

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## **Good faith**

**4.2 (1)** Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

## **Good faith — powers of court**

**(2)** If the court is satisfied that an interested person fails to act in good faith, on application by any interested person, the court may make any order that it considers appropriate in the circumstances.

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## **Court may order security or charge to cover certain costs**

**64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

**(a)** the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

**(b)** any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

**(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

## **Priority**

**64.2 (2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

## **Individual**

**64.2 (3)** In the case of an individual,

**(a)** the court may not make the order unless the individual is carrying on a business; and

**(b)** only property acquired for or used in relation to the business may be subject to a security or charge.



**Act to Apply**

S. 66(1) of the BIA which says all the provisions of this Act, except Division II of this Part, insofar as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF STAR  
NAVIGATION SYSTEMS GROUP LTD.**

Court File No.: 32-2594575  
Estate No. 32-2594575

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding commenced at **Toronto**

**FACTUM OF STAR NAVIGATION SYSTEMS  
GROUP LTD.**

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