

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<b>In re:</b>	§	
	§	<b>Case No. 19-10653-R</b>
<b>INNOVA GLOBAL LTD., et al.,<sup>1</sup></b>	§	
	§	<b>Jointly Administered</b>
<b>Debtors in a Foreign Proceeding.</b>	§	
	§	<b>Chapter 15</b>

**MOTION FOR AUTHORITY TO SELL PROPERTY OF THE ESTATE FREE  
AND CLEAR OF LIENS AND INTERESTS  
(Sale to Industrial Assets Corp. et al)**

PricewaterhouseCoopers Inc., LIT, (“PWC”), solely in its capacity as court-appointed receiver (the “Receiver”) of the Debtors in these jointly administered cases based upon the Receivership Order that the Court of Queen’s Bench of Alberta in the Judicial Centre of Calgary, Canada entered on April 1, 2019 in Court File No. 1901-04589, and as the Debtors’ Chapter 15 recognized foreign representative, respectfully presents this motion (the “Motion”).

**JURISDICTION AND CORE ALLEGATIONS**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(a) and (b) and 11 U.S.C. §§ 109 and 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), (O) and (P). Venue is proper in this district pursuant to 28 U.S.C. § 1410.

**BACKGROUND FACTS**

2. On April 1, 2019, the Canadian Court, Honorable Justice B.E.C. Romaine, entered the Receivership Order (the “Receivership Order”) pursuant to section 243(1) of the BIA and 13(2) of the Judicature Act, appointing the Receiver. The Receivership Order specifically

---

<sup>1</sup> The Debtors are: (1) Innova Global Ltd., (2) Innova Global Operating Ltd., (3) Innova Global Limited Partnership, (4) 1938247 Alberta Ltd., (5) Innova Global Holdings Limited Partnership, (6) Innova Global Inc. (formerly AEM Emissions Management, Inc., formerly ATCO Emissions Management Inc.), (7) Innova Global LLC (formerly AEM Noise Management LLC, formerly ATCO Noise Management LLC), and (8) Braden Manufacturing, L.L.C.

authorizes the Receiver to act as foreign representative for the Debtors for all purposes and pursuant to Chapter 15 of the Bankruptcy Code. Receivership Order ¶ 3.

3. On April 18, 2019, the United States Bankruptcy Court entered *Order Granting Petition For Recognition As Foreign Main Proceeding Pursuant To Sections 1515 And 1517 Of The United States Bankruptcy Code And Related Relief* (Doc 54) (“Recognition Order”) in these jointly administered cases. The Recognition Order recognized the Debtors’ cases as foreign main proceedings and the Receiver as foreign representative under Chapter 15.

4. The Receiver has entered into an agreement (the “APA”) with INDUSTRIAL ASSETS CORP., a California corporation with a principal place of business in Huntington Park, California (“IAC”), MAYNARDS INDUSTRIES CANADA, LTD., a company incorporated in British Columbia (“Maynards”), and DeCosmo Industrial Auctions, a trade name of THOMAS INDUSTRIAL MACHINERY CO., INC., a Massachusetts corporation (“DeCosmo” and together with IAC and Maynards, the “Buyer”) for the sale of all of the tangible assets of the Debtor Braden Manufacturing, L.L.C. (“Braden”) that are located on or within the premises of the Braden facility at 17 St. Mark Street, Auburn, Massachusetts (the “Premises”) and certain other related assets. The assets to be sold are more particularly described in the APA as the “Purchased Assets.”<sup>2</sup> A copy of the APA is attached to this Motion as **Exhibit 1**.

#### **TERMS AND CONDITIONS OF SALE AND RELATED FACTS**

5. The Receiver proposes to sell and the Buyer proposes to purchase the Purchased Assets, pursuant to the terms of the APA, for the sum of \$632,317 USD.<sup>3</sup>

---

<sup>2</sup> Capitalized terms that are not defined in this Motion shall have the definition, if any, that the APA provides for them.

<sup>3</sup> In the event of a conflict between this Motion and the terms of the APA, the terms of the APA shall control.

6. Buyer's obligation to purchase is conditioned upon the Court's entry of an order authorizing the sale of the Purchased Assets obtained after proper notice to creditors and parties in interest consistent with the Bankruptcy Code, in form and substance satisfactory to Buyer, to be entered by the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code: (i) approving this Agreement and the Transactions; (ii) approving the sale of the Assets to Buyer free and clear of all liens pursuant to Section 363(f) of the Bankruptcy Code; (iii) finding that Buyer is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code; (iv) providing that the provisions of Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure are waived and there will be no stay of execution of the Sale Order under Rule 62(a) of the Federal Rules of Civil Procedure; (v) retaining jurisdiction of the Bankruptcy Court to interpret and enforce the terms and provisions of this Agreement; and (vi) authorizing the results of an auction, if one occurs (the "Sales Order").

7. Under the APA, Seller may share the APA with third parties for the purpose of responding to inquiries or offers about the sale of the Purchased Assets or to solicit inquiries or offers about the sale of the Purchased Assets and otherwise negotiate the sale of Purchased Assets. Buyer intends to auction the Purchased Assets. In order for Buyer to adequately market the Purchased Assets in the short period of time available, Buyer will incur costs in the form of Buyer's expenditure for marketing, advertising, lotting, and readying the Purchased Assets for sale ("Costs"). If the Seller receives other offers for the Purchased Assets from other parties, and subject to the Bankruptcy Court's approval, the Buyer shall be entitled to be repaid those actual Costs in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) USD ("Buyer Expenses"), payable solely out of the proceeds of the sale of the Purchased Assets (the "Proceeds"), if the Bankruptcy Court approves a sale of the Purchased Assets (or a substantial

part thereof) to a party other than Buyer. In the event of competitive bidding by Buyer for the Purchased Assets with one or more other parties bidding on the Purchased Assets, Buyer shall be entitled to “credit-bid” its full Buyer Expenses in each counteroffer/competitive bid. In connection with this, the Receiver created Sale Procedures in the form of **Exhibit 2** to use to solicit competing bids.<sup>4</sup> The Receiver requests that the Court approve the sale to the Buyer or any Alternate Buyer per the terms of the Sale Procedures.

8. ATB Financial (“ATB”), as agent and lender, asserts priority liens and security interests in virtually all assets of the Debtors, including the Purchased Assets. It has consented to the sale of the Purchased Assets.

9. Braden is a tenant in the Premises. The landlord of the Premises (the “Landlord”) has made arrangements to lease the Premises to a new tenant beginning September 1, 2019. As part of the APA, the landlord and the Buyer have entered into an Occupancy Agreement to allow the Buyer to occupy the Premises in order to complete that sale and its auction of the Purchased Assets, but the occupancy period ends on August 30, 2019. The Buyer intends to conduct an auction of the Purchased Assets on the Premises and requires adequate times to advertise and conduct the auction. Therefore, it is critical to the Receiver and the Buyer that the Court consider this Motion on an expedited basis. For that purpose, Receiver is filing, contemporaneously with its filing of this Motion, the Receiver’s Application Requesting Expedited Hearing and Shortened and Limited Notice of Receiver’s Motion to Sell.

### **ARGUMENT AND AUTHORITIES**

10. Sections 363 and 1520 of the United States Bankruptcy Code provide that the Receiver “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,” property of the Debtors.

---

<sup>4</sup> Exhibit 2 does not include the APA as an attachment.

11. A sale of Debtors' assets under § 363(b) of the Bankruptcy Code is a matter within a court's discretion, giving due consideration to the sound business judgment of the debtor-in-possession. *See In re Lionel Corp.*, 722 F.2d 1062, 1071 (2<sup>nd</sup> Cir. 1983); *In re Castre, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004) (citing *Lionel*). Courts typically consider multiple factors to determine whether to approve such sales, including: (i) whether there is a sound business reason for the sale; (ii) whether there has been adequate notice to interested parties (iii) whether the terms of the sale have been fully disclosed; (iv) whether the seller's relationship with the buyer taints the sale; and (v) whether the buyer is proceeding in good faith. *In re Medical Software Solutions*, 286 B.R. 431, 439-40 (Bankr. D. Utah 2002); *see also Castre*, *supra*, 312 B.R. at 428.

12. The relevant factors to support a § 363 sale are met in this instance and the sale should be approved by the Court. The sale is the best opportunity to promptly realize the maximum value for the Purchased Assets and to preserve the value of the same for the benefit of creditors and parties-in-interest. The proposed purchase price is fair and reasonable. Lastly, the parties negotiated the sale at arm's length.

13. The Court may order that the sale will be free and clear of any and all liens, claims encumbrances, and other interests, with such liens, claims encumbrances, and other interests, if any, to attach to the proceeds with the same validity, priority, and extent as they attached to the Purchased Assets prior to the sale. *See generally In re Lady H Coal Co., Inc.*, 199 B.R. 595, 605 (S.D. W. Va. 1996). The Receiver may sell the assets of the Debtors free and clear of liens, claims, encumbrances and other interest of other entities if applicable non-bankruptcy law allows such a sale, the interest holder consents, there is a bona fide dispute, the interest is a lien and the price at which the property is to be sold is greater than the aggregate

value of all liens on the property, or if the interest holder could be compelled to accept a money satisfaction for its interest. *See* 11 U.S.C. §§ 363(f), 1520. ATB has consented to the sale.

**RELIEF REQUESTED**

WHEREFORE, the Receiver moves the Court for the entry of an order:

1. Authorizing the Receiver's sale of the Purchased Assets to the Buyer or any Alternate Buyer, free and clear of any and all liens, claims, encumbrances, and other interests; with a finding under 11 U.S.C. § 363(m) that the Buyer or any Alternate Buyer are in good faith;
2. Approving and authorizing the Receiver's performance and consummation of the terms of the APA, including the Buyer Expenses;
3. Waiving any stay that would otherwise be applicable pursuant to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure or Rule 62(a) of the Federal Rules of Civil Procedure; and
4. Granting such other relief as the Court may deem just and proper.

Dated: June 26, 2019

Respectfully submitted,

**ROSENSTEIN, FIST & RINGOLD**

/s/ John E. Howland

---

John E. Howland, OBA No. 4416  
525 South Main, Suite 700  
Tulsa, Oklahoma 74103  
Telephone: (918) 585-9211  
Facsimile: (918) 583-5617  
johnh@rfrlaw.com

*and*

**NORTON ROSE FULBRIGHT US LLP**

Steve A. Peirce, TX Bar No. 15731200  
(*admitted pro hac vice*)  
300 Convent Street, Suite 2100  
San Antonio, Texas 78205-3792  
Telephone: (210) 224-5575  
Facsimile: (210) 270-7205  
steve.peirce@nortonrosefulbright.com

**COUNSEL FOR CANADIAN RECEIVER AND  
FOREIGN REPRESENTATIVE**