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

In re:	§	
	§	**Case No. 19-10653-R**
INNOVA GLOBAL LTD., *et al.*,[1]	§	
	§	**Jointly Administered**
Debtors in a Foreign Proceeding.	§	
	§	**Chapter 15**

SECOND MOTION FOR AUTHORITY TO SELL PROPERTY OF THE DEBTOR BRADEN MANUFACTURING, LLC
FREE AND CLEAR OF LIENS AND INTERESTS
(Sale to NXTNano, LLC or high bidder)

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 (the "Canadian Court") 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

[1] 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.

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 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 its *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. On May 16, 2019, the Receiver filed a motion (the "First Sales Motion") in the jointly administered Bankruptcy Cases for sale of property that is essentially identical to the Assets (as hereafter defined).

5. On May 24, 2019, NXTNano, LLC ("NXTNano") filed an objection to the First Sales Motion (the "Objection") and the Bankruptcy Court held a hearing (the "Hearing") on the First Sales Motion, which was begun on May 29, 2019, continued on May 30, 2019 and which has not concluded.

6. Since the Hearing, the Receiver has entered into an agreement (the "APA") with NXTNano for the sale of the Filtration Assets (as hereafter defined) subject to a) approval of the Court and b) a sale process (the "Sales Process") under which another party may purchase the Filtration Assets at a price higher than the purchase price under the APA. A copy of the APA is attached to this Motion as Exhibit 1.

7. The Sales Process is generally described in Section 6.5 of the APA. Under the Sales Process, any party interested in purchasing the Filtration Assets on substantially the same terms[2] as NXTNano, but at a price that is at least thirty-five thousand US dollars ($35,000) higher than the purchaser price under the APA, may submit a signed asset purchase agreement to and deposit the sum of thirty-five thousand US dollars ($35,000) with the Receiver by a time specified in notices that the Receiver provides to prospective purchasers.

TERMS AND CONDITIONS OF SALE AND RELATED FACTS

8. The Receiver proposes to sell and NXTNano proposes to purchase the property (the "Filtration Assets") that are described in the APA and that are owned by Debtor Braden Manufacturing, L.L.C. ("Braden") pursuant to the terms of the APA for the sum of $300,000 plus additional consideration in the form of providing certain added protections in connection with any claims of the Landlord[3], as reflected in Section 8.1 of the APA.

9. NXTNano's obligation to purchase is conditioned upon approval of the Canadian Court and this Court's entry of an order authorizing the sale free and clear of liens and other interests, with the exception of any liens on or interests of the Landlord in any of the Filtration Assets.

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

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[2] As reflected in the APA, the terms of such alternative asset purchase agreement will not be identical to those of the APA because certain provisions of the APA are applicable only to NXTNano or to its role as a "stalking horse."

[3] Capitalized terms that are not defined in this Motion shall have the definition, if any, that the APA provides for them.

11. As set out in the Application Requesting Expedited Hearing, and Shortened and Limited Notice of Second Motion of Receiver to Sell, which the Receiver has filed contemporaneously with its filing of this Motion, it is important that the Receiver reduce the Debtors' expenses by ceasing use of the Premises, in which they are located, as quickly as possible and without any potential delay in closing based upon stay of the order approving the sale pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

ARGUMENT AND AUTHORITIES

12. 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.

13. A sale of assets of a Debtor or its estate 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 (2nd 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.

14. 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 Filtration 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.

15. In addition, with the exception of liens on or interests of the Landlord in the Filtration Assets, 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 Debtors' interests 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 that:

1. In the absence of the Receiver's receipt of a higher Qualified Bid under the Sales Procedures, authorizes the Receiver's sale of the Filtration Assets to NXTNano, pursuant to the terms of the APA, free and clear of any and all liens, claims, encumbrances, and other interests, with the exception of any liens on or interests of the Landlord in any of the Filtration Assets, with any such liens, claims encumbrances, and other interests to attach to the proceeds;

2. In the event of the Receiver's receipt, under the Sales Process, of a higher Qualified Bid, authorizes the Receiver's sale of the Filtration Assets to such party that is determined under the Sales Process to be entitled to purchase the Filtration Assets;

3. Approves and authorizes the Receiver's performance and consummation of the APA or of the asset purchase agreement submitted by the party entitled to purchase the Filtration Assets under the Sales Process;

4. Approves the Receiver's sale of the Filtration Assets to Power Filters, Inc. pursuant to the First Sales Motion in the event that the Court does not approve the sale to NXTNano or to a party submitting a Qualified Bid under the Sales Process;

5. Waives the 14-day stay that would otherwise be applicable pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and

6. Grants such other relief as the Court may deem just and proper.

Dated: July 3, 2019

Respectfully submitted,

ROSENSTEIN, FIST & RINGOLD

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