

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF
DGS CONSTRUCTION LTD.**

TRUSTEE'S REPORT TO CREDITORS

May 11, 2021

BACKGROUND

DGS Construction Ltd. (the "**Company**" or "**DGS**") operated out of Edmonton, Alberta as a full-service construction company, primarily engaged in residential earthworks and commercial site development on industrial projects. During the construction off-season the Company provided snow removal services. The Company's sole director is Mr. Dale Sawchyn.

DGS operated out of a leased premise located at 8825 126 Avenue NW, Edmonton, Alberta, owned by a related company, Sawchy Holdings Inc. ("**Sawchy**"). Sawchy is not subject to bankruptcy proceedings.

We understand the Company struggled financially during fiscal 2019 and 2020 due to cost overruns and declining sales from a significant in value but limited in number, customer base. As a result of the financial difficulty during 2019, DGS was noncompliant with the covenants stipulated by its senior secured creditor, ATB Financial ("**ATB**"). On August 14, 2019, ATB demanded payment from both DGS and Sawchy and provided each with Notices of Intention to Enforce Security under the *Bankruptcy and Insolvency Act* ("**BIA**").

We understand DGS made numerous attempts to restructure its debt but was ultimately unsuccessful.

On or about January 21, 2020, ATB effected a seizure of DGS's equipment, machinery and tools, and the collateral was left in the possession of DGS on a bailee's undertaking. On or about February 4, 2021, ATB took further steps to collect DGS's outstanding receivables and served Servus Credit Union Ltd. ("**Servus**"), the institution where DGS held a deposit account, requesting any funds be remitted to ATB pursuant to their security. The funds in this deposit account were forwarded to ATB hindering regular operations and payment of critical expenses.

On February 4, 2021, the Company filed a Notice of Intention to file a Proposal under subsection 50.4(l) of the BIA. On March 8, 2021, the Company applied for and received an Order extending the time to file a Proposal to April 22, 2021. On April 22, 2021, the Company failed to file a Proposal. As a result, on April 23, 2021, the Company was deemed to have made an assignment into Bankruptcy. The Bowra Group Inc. was appointed Licensed Insolvency Trustee (the "**Trustee**") of the Company.

All bankruptcy materials, creditor information and regular updates will be posted to the Trustee's case website: <https://www.bowragroup.com/dgsconstructionltd>.

FINANCIAL SITUATION

As a result of the insolvency of the Company, we understand the March 31, 2021 financial statements have not been prepared.

Table 1 summarizes the reviewed income statement prepared by the Company's external accountant for fiscal years ended March 31, 2020 and March 31, 2019.

	Year Ended March 31, 2020 (000's)	Year Ended March 31, 2019 (000's)
Revenue	2,805	2,737
Cost of sales	1,346	2,318
Gross profit (52%; 2019 - 15%)	1,459	419
Operating and admin expenses	1,449	2,281
Other (income)	-	(211)
Income (loss) before income taxes	10	(1,651)
Income taxes (recovered)	-	(163)
Net Income (loss)	10	(1,488)

The Company reported a net income of \$9,621 in 2020 and a net loss of \$1.49 million in 2019. Gross profit as a percentage of revenue was 52% in 2020 and 15% in 2019.

Table 2 summarizes the reviewed balance sheet prepared by the Company's external accountant as at March 31, 2020 and March 31, 2019. The 2019 financial statements expressed a qualified conclusion regarding the valuation of the amounts due from the shareholder.

	As at March 31, 2020 (000's)	As at March 31, 2019 (000's)
Cash	104	21
Accounts receivable	890	872
Income taxes recoverable	107	163
Other current assets	25	40
Due from corporate shareholder	940	771
	2,066	1,867
Capital assets	1,372	1,743
Assets held in trust	22	-
	3,460	3,610
Bank indebtedness	901	841
Accounts payable and accrued liabilities	376	347
Current portion of long term debt	2,677	1,069
Other current liabilities	238	289
	4,192	2,546
Long-term debt	29	1,835
	4,221	4,381
Shareholder's equity (deficit)	(761)	(771)
	3,460	3,610

BOOKS AND RECORDS

The Trustee has taken possession of certain books and records of the Company including payroll records, employee records, banking records, general ledgers, and financial statements.

CONSERVATORY AND PROTECTIVE MEASURES

As noted earlier, ATB seized the majority of the Company's equipment, machinery, and tools in January 2020. On or about April 16, 2021, ATB sent the seized equipment, machinery, and tools to Ritchie Bros. Auctioneers ("**Ritchie Bros.**") to be sold by auction the week of May 3, 2021. The

results of the auction are still being finalized. The Trustee has asked ATB to provide a detailed accounting and reconciliation of the proceeds once available.

DGS generally ceased operations in April 2021 and all employees were terminated prior to the date of the bankruptcy. We understand there is approximately \$14,000 in outstanding wages and termination pay owing to employees. All outstanding amounts owing for vacation pay have been paid. 2020 T4s and ROEs have been prepared by the Company and the Trustee is working with the Company to prepare the 2021 T4s.

The Trustee sent correspondence to RBC Royal Bank of Canada (“**RBC**”) and Servus requesting the Company’s bank accounts be frozen and any future deposits be forwarded to the Trustee. As at the date of bankruptcy, we understand the RBC account was in overdraft and there were no funds in the Servus account.

The Trustee has obtained a detailed accounts receivable ledger and has requested copies of all service contacts and outstanding invoices from the Company. The Trustee will send out demand letters and initiate collection efforts.

The Trustee has identified two leased trucks not seized by ATB as follows:

Truck Description	Creditor	Estimated Value \$	Loan Amount \$
2017 Sierra 3500	Bank of Nova Scotia	47,000	15,737
2016 Silverado 3500	Royal Bank of Canada	38,000	14,335
		85,000	30,072

The trucks are still in the possession of DGS. Any equity available is likely subject to ATB’s security. The Trustee is working with ATB and the lessors of the trucks to determine a realization strategy.

The Trustee has also identified two pieces of heavy equipment not seized by ATB and leased by Caterpillar Financial Services Limited (“**CAT**”) as follows:

Equipment Description	Estimated Value \$	Loan Amount \$
2019 Caterpillar 950 GC	175,000	250,000
2020 Caterpillar 289 D3	65,000	82,000
	<u>240,000</u>	<u>332,000</u>

The Trustee does not believe there is any equity in these leases available to creditors and intends to release its interest accordingly.

SECURED CREDITORS

Table 3 provides a listing of claims, according to the Personal Property Registry that may have a priority over the claims of unsecured creditors. The claim amounts listed are estimates based on the Company's books and records.

Creditor	Assets Secured	Table 3 Estimated Claim (\$000's)
ATB Financial	General Security Agreement - all present and after-acquired property	3,518
Caterpillar Financial Services Limited	One (1) Caterpillar 950 GC Loader; and one (1) Caterpillar 289D3 Compact Track Loader; and after-acquired property	240
Bank of Nova Scotia	2017 GMC Sierra 3500 and after-acquired property	17
Royal Bank of Canada	2016 Chevrolet Silverado 3500 and after-acquired property	15
Wage Earner Protection Program	Current assets	3
Gregg Distributors	(1) ALE 1020-50 E Dual Tank PKG (2) MAS 1KAI Locks	Unknown
John Deere Financial Inc.	2015 John Deere 624KXBZ and after-acquired property	Unknown
Maynbridge Capital Inc.	General Security Agreement - all present and after-acquired property	Unknown
Canada Revenue Agency	Deemed Trust - all present and after-acquired property	Unknown
The EBF Group Ltd.	General Security Agreement - all present and after-acquired property	Unknown
Sawchy Holdings Inc.	General Security Agreement - all present and after-acquired property	Unknown
Meridian OneCap Credit Corp.	2018 CASE 590SN and after-acquired property	NIL

CRA has a priority deemed trust claim for unpaid source deductions. The Company has estimated the amount owing to be approximately \$350,000. The Trustee is working with CRA to complete a trust audit and finalize the claim amount. CRA's claim may take priority over all other secured claims.

The Wage Earner Protection Program (“**WEPP**”) has security for unpaid wages, vacation pay, and severance pay up to a maximum of \$2,000 over current assets. The Trustee has provided all employees with individual calculations of their entitlement under WEPP. Each employee is entitled to a maximum of \$7,578 for 2021. To the extent there is a distribution to the unsecured creditors

the first \$7,578 of any individual employee claim will be paid to WEPP and the balance to the employee.

ATB is the senior secured lender and has a registered general security agreement granting them priority charge over all present and after-acquired property. As at the date of bankruptcy ATB is owed approximately \$3.5M.

CAT, Bank of Nova Scotia, RBC, John Deere Financial Inc., Gregg Distributors and Meridian OneCap Credit Corp ("**Meridian**") all hold security over specific assets, which include vehicles, equipment, and tanks. Meridian has since discharged their registration and advised there are no amounts owing to them.

We understand the Company was in discussions with Maynbridge Capital Inc. ("**Maynbridge**") and The EBF Group Ltd. ("**EBF**") regarding refinancing of its debt. Maynbridge and EBF have registered general security agreements however we understand there are no amounts owing.

Sawchy has registered a general security agreement over all present and after-acquired property.

UNSECURED CREDITORS

We are aware of 33 unsecured creditors owed approximately \$363,000 based on the Company's books and records. Table 4 summarizes the major unsecured creditors.

Creditor	Table 4 Estimated Claim (\$000's)
Sawchy Holdings Inc	147
Cherrie Titus	65
AB Gill Trucking	28
Skolney & Company	19
CNH Capital	12
Duncan Craig LLP	12
Herb's Cat Service	12

IDENTIFICATION AND VALUATION OF ASSETS

The Company's assets consist of accounts receivable, equipment and trucks. Table 5 provides a preliminary estimate of the realizable value of the assets of the Company.

	Book Value (\$000's)	Estimated Realization	
		Low (\$000's)	High (\$000's)
Accounts receivable	493	360	400
Trucks	30	-	85
	523	360	485
CRA - deemed trust		400	350
Payment of secured truck loans		-	30
Professional fees		55	40
WEPP		3	3
Net funds available		(98)	62
Residual amount owing to ATB		Unknown	Unknown
Total unsecured creditors		363	363
Potential recovery per \$1 of unsecured claim		-	0.17

Accounts receivable include amounts owing to the Company as at the date of bankruptcy. Based on the nature of the services provided by DGS and the age of the receivables the Trustee estimates between \$360,000 and \$400,000 to be collectible.

We have excluded the leased CAT equipment from the estimated realization above as the Trustee estimates there is no equity available to any of the creditors.

As of the date of this report, ATB was still waiting on a reconciliation of proceeds from the Ritchie Bros. auction. As such is not known at this time if proceeds from the seized equipment will be sufficient to repay the ATB indebtedness.

In the low estimated realization, we assume that ATB's realization on the seized assets will not be sufficient to pay the debt outstanding and therefore ATB has priority over the other remaining assets, including the estimated equity in the trucks.

In the high estimated realization, we assume proceeds from the seized equipment will be sufficient to satisfy the ATB debt in full and therefore the remaining assets would be available to the bankrupt estate.

Based on our review of the Company's assets and liabilities we estimate the recovery to the unsecured creditors to be approximately \$nil to \$0.17 per \$1 of unsecured claim. This recovery is highly dependent on the CRA deemed trust claim and ATB's realization on the seized assets.

LEGAL ACTIONS

Other than the ATB seizure events described in this report, the Trustee is not aware of any ongoing legal actions against or by the Company.

REVIEW OF RECORDS & CONDUCT OF THE DEBTOR

The Trustee has reviewed the books and records that were made available, including bank statements for the period of May 1, 2020 to April 22, 2021. The Trustee has identified several unknown transactions that could be regarded as preference payments in accordance with the BIA. The Trustee will seek instructions from the Inspector of the bankrupt estate regarding further investigation of these payments, if deemed necessary.

CONCLUSION

At this time in the bankruptcy, it is unknown if there will be a recovery to the unsecured creditors.

The Bowra Group Inc.

Licensed Insolvency Trustee of DGS Construction Ltd.

Per: 

Kristin Gray, CPA, CA, CIRP, LIT