Court File No. CV-23-00707394-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

AIDE MEMOIRE OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.
(Case Conference – February 6, 2024)

February 5, 2024

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TO: **THE SERVICE LIST**

1. While Tacora Resources Inc. ("**Tacora**") and a consortium including an ad hoc group of noteholders (collectively the "**Ad Hoc Group**") present their motion for approval of an Approval and Reverse Vesting Order (the "**ARVO Motion**") as a straightforward approval of a winning bid, it would in fact be precedent-setting relief in the reverse vesting order context.

2. Reverse vesting orders are to be used sparingly and exceptionally and only when there has been compliance with the CCAA and a long list of factors are satisfied.

3. Never has there been an attempt to use a reverse vesting order for the purpose of ridding a debtor company of a contract it has not disclaimed, to avoid having to deal with a substantial creditor on a plan, and to pay all material unsecured creditors other than the holder of the contract which is being transferred and put into a company which has no assets or money and no ability to perform the contract. What is proposed is repugnant to the objectives and scheme of the CCAA.

4. There are, and Tacora and the Ad Hoc Group must reasonably have anticipated that, there would be many important and novel issues to be dealt with given the structure of their share transaction they seek approved in the ARVO Motion. There are also serious concerns about the sale process. The concerns of Cargill, Incorporated and Cargill International Trading Pte Ltd. (together, "**Cargill**") have long been known to Tacora, the Ad Hoc Group and the Monitor. The suggestion that Cargill should by reason of any foreknowledge of potential issues have been prepared for an unreasonably compressed Court process, rather than Tacora structuring matters so that issues could be appropriately litigated, is untenable.

5. A key issue is that the stay expires on March 18 and Tacora has not filed a motion or presented cashflows to support any extension. A stay extension is paramount to Tacora's stability, and cannot be avoided even on (and is not even contemplated by) Tacora's unreasonable schedule. Since Tacora and the Ad Hoc Group assert potential financial calamity as a basis for their rushed process, such a stay extension motion should proceed immediately, with the benefit of a report from the Monitor, before setting a schedule for the ARVO Motion, so the Court has an understanding of Tacora's ability to operate in all

circumstances for an extended period of time. The ARVO Motion may not be approved, conditions may not be satisfied, or the opposed process may take a longer period of time. Tacora should have its financial foundation in place immediately to ensure its stability for the benefit of all stakeholders – this should be Tacora's immediate focus. A litigation schedule can be set on the return of that stay motion with proper cashflows and evidence. At a minimum, the litigation schedule should not be set until the Monitor has filed a report on Tacora's proposed cashflows.

6. Cargill has served, as Tab 3 of its Motion Record dated February 5, 2024 (the "**Cargill Motion Record**"), a list of issues that need to be addressed (along with the estimated time required by all parties to argue the particular issue):

    1. Factual matters that are in dispute (4 hours).

    2. The conduct of the sales process and related sale process issues (3 hours).

    3. The valuation of Tacora (2 hours).

    4. Fairness and treatment of stakeholders (2 hours).

    5. The ability of Tacora, pursuant to the ARVO, to receive a reverse vesting order (5 hours).

    6. The ability of Tacora to set-off secured amounts due on closing to Cargill (1.5 hours).

    7. The ability of Tacora to obtain third-party releases outside of a CCAA plan (1.5 hours).

    8. The ability of Tacora, pursuant to the ARVO, to bind parties to a shareholders agreement pursuant to Court order (0.5 hours).

    9. Sealing of documents (0.5 hours)

10. Tacora's requirement to comply with the disclaimer provisions of s. 32 of the CCAA, and whether:

(a) the offtake agreement and stockpile agreement between Tacora and Cargill (collectively, the "Offtake Agreement") are eligible financial contracts or financing agreements (3.5 hours); and

(b) whether the disclaimer or resiliation of the Offtake Agreement would enhance the prospects of a viable compromise or arrangement of Tacora (1.5 hours).

7. These substantial issues concern factual and legal matters particular to the structure of the Ad Hoc Group's proposed share transaction with Tacora. Cargill only learned details last week. Cargill could not reasonably have prepared in advance to address them.

8. Tab 3 of the Cargill Motion Record also contains Cargill's proposed schedule for the hearing of the ARVO Motion, which is fair and reasonable.

9. In contrast, Tacora's schedule is neither fair nor reasonable.

10. For example, Tacora originally proposed a schedule giving Cargill 6 business days to marshal a responding record, including any expert report responding to Tacora's expert report only provided on the evening of Friday, February 2. Tacora's revised schedule provides for an extra 8 business days, which is not sufficient.

11. Tacora also proposes that Tacora and the other supporting parties serve their factums on March 12 (the Tuesday of the March break) and that Cargill have 4 business days to respond on March 18 (the Monday right after March break).

12. Tacora proposes 1 day for the hearing of the ARVO Motion, when at least 3 are needed.

13. What is clear, because the proposed transaction is a credit bid by the Ad Hoc Group, is that the Ad Hoc Group will not walk away if they have to extend the closing of any transaction by a month or two.

14. Instead of providing ample room for determination of the issues necessary to fairly address its ARVO Motion, Tacora asserts an arbitrary and self-imposed deadline of April 1 to have the ARVO Motion decided by this Court, and then insists that Cargill compromise its procedural rights to meet that artificial deadline. There is no evidence before the Court as to how the April 1 deadline was arrived at. A fair process is paramount versus a condition imposed by a buyer.

15. Tab 3 of the Cargill Motion Record contains Cargill's proposed schedule for the hearing of the ARVO Motion. Cargill's proposed schedule is reasonable and there can be no argument that, but for the arbitrary and self-imposed April 1 deadline, there could be no objection to it.

16. What Tacora and the Ad Hoc Group seem to want to do is get to court on March 25, with an April 1 deadline looming, and urge the Court to turn aside objections to the fairness of the transaction and the process, along with significant legal issues, on the basis that there is no time to fix them.

17. Additionally, Cargill has served in a timely manner (given that it only received draft materials from Tacora mid-last week) a preliminary threshold motion for a declaration that Tacora's proposed transaction with the Ad Hoc Group is not available to Tacora absent a valid disclaimer of the Offtake Agreement in accordance with s. 32 of the CCAA (the "**Preliminary Threshold Motion**"). Cargill's notice of motion on the Preliminary Threshold Motion, found at Tab 1 of the Cargill Motion Record, details why this Court cannot even get to the exercise of its discretion under s. 11 of the CCAA to grant the reverse vesting order contemplated by the ARVO Motion, without Tacora having first complied with s. 32 of the CCAA (which Tacora's proposed litigation schedule would not permit it to do). The Preliminary Threshold Motion raises a threshold, gating issue.

18. It is not in the interests of stakeholders, other then the Ad Hoc Group, to come to the ARVO Motion only to learn then that the proposed transaction was never available. If there is truly time sensitivity to getting a deal done, as Tacora and the Ad Hoc Group want the Court to

believe, then having the Preliminary Threshold Motion resolved early would seem vastly preferable.

19. If the reversing vesting order is not granted at the ARVO Motion and Tacora wants to proceed with an asset transaction with the Ad Hoc Group, Tacora would have to open up negotiations with the Ad Hoc Group, enter into a new asset purchase agreement (versus the Subscription Agreement that Tacora has signed), and file an entirely motion. The entire process may have to start over again from the beginning to seek approval of that new asset transaction (including, potentially, responding materials, new examinations and new factums). It is clearly preferable to determine upfront the Preliminary Threshold Motion, which if decided now, will allow the Court to put the right schedule in place, and to schedule any remaining proceedings after there has been a Monitor's report updating Tacora's cashflows for a reasonable period of time. To push, at this time, all matters to an approval hearing with an unduly compressed schedule where the exceptional remedy of a reverse vesting order is being sought (and being opposed by Cargill, a fulcrum stakeholder) and where if granted that remedy would be precedent setting based on the facts and circumstances of the Tacora case, cannot be the right solution to a CCAA restructuring.

20. Cargill has the right to bring the Preliminary Threshold Motion. It believes that early determination is vital to ensure that the outcome in these proceedings is both optimal and fair.

21. Fundamentally, the process has to be fair and reasonable and the rights of Cargill need to be considered before a Court is asked to terminate and reverse vest a long-term agreement (contrary to the requirements of the CCAA) for no consideration. Fairness and process must be paramount.

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Proceeding Commenced At Toronto

CARGILL AIDE MEMOIRE
(CASE CONFERENCE – FEBRUARY 6, 2024)

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