CITATION: Tacora Resources Inc. (Re), 2024 ONSC 2454
COURT FILE NO.: CV-23-00707394-00CL
DATE: 20240426

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: **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.

BEFORE: KIMMEL J.

COUNSEL: *Ashley Taylor/Lee Nicholson/Philip Yang/Natasha Rambaran*, for the Applicant, Tacora Resources Inc.

Robert Chadwick/Caroline Descours, for Cargill, Incorporated and Cargill International Trading Pte Ltd.

Marc Wasserman/ Jeremy Dacks/ Michael De Lellis/ Ben Muller/ Carla Breadon/ Shaan Tolani, for the Consortium Noteholders Group

Alan Merskey /Jane Dietrich/ / Ryan Jacobs, for the Monitor, FTI Consulting Canada Inc.

John Leslie/David Seifer, Caterpillar Financial Services Ltd.

Natasha MacParland/Chenyang Li, for Crossing Bridge Advisors

Joe Thorne, for 1128349 BC Ltd.

Gerry Apostolatos, for Quebec North Shore and Labrador Railway Inc.

HEARD: April 25, 2024 (adjourned from April 23, 2024)

ENDORSEMENT
(STAY EXTENSION AND DIP APPROVAL)

[1] Counsel have used various analogies for what appears to be a recurring motion for approval of Debtor in Possession, or "DIP", financing and the extension of the CCAA Stay Period, which is now before the court for the third time. For the third time, the court is faced with competing DIP proposals from Cargill International Trading Pte Ltd. ("Cargill"), a stakeholder of Tacora in various capacities and its affiliates, and an Ad Hoc Group of Noteholders and their associates. Although not necessarily the same group each time, the

noteholders are referred to in this endorsement as the "AHG", as they may be constituted from time to time[1].

[2] Tacora seeks approval of an Amended and Restated DIP Term Sheet dated April 21, 2024 (the "Cargill Amended and Restated DIP Agreement") entered into between Tacora and Cargill, Incorporated, an affiliate of Cargill. Tacora also seeks an extension of the CCAA Stay Period until and including June 24, 2024. The Stay Period was last extended until, and expires on, April 26, 2024. As a result of timing concerns due to short service over the weekend and Passover, this motion that was originally returnable on Tuesday, April 23, 2024 was adjourned to Thursday, April 25, 2024.

[3] DIP financing is required for the company to continue operating. Its cash flow projections filed for this motion indicate that it will require more funds by Monday, May 12, 2024, and may need to draw funds during the week of May 6, 2024, based on certain assumptions about the price of iron ore. That commodity has experienced some market volatility in recent months.

[4] The extension of the Stay Period is not opposed. The AHG is opposing the approval of the Cargill Amended and Restated DIP Agreement and asks that Tacora instead be directed to work with the AHG to come to an agreement regarding the "AHG Alternative DIP Proposal" contained in their DIP Facility Term Sheet dated April 18, 2024.

[5] Alternatively, the AHG asks that the court direct that Tacora and Cargill renegotiate the Cargill Amended and Restated DIP Agreement to remove:

a. The additional $800,000 exit fee;

b. The payment of approximately $2 million in legal costs to Cargill, proposed to be financed by the DIP; and

c. The Offtake Condition (defined below).

Summary of Outcome

[6] For the reasons that follow, the Stay Period is extended to June 24, 2024 and the Cargill Amended and Restated DIP Agreement is approved. The company cannot afford (financially or operationally) to continue in protracted negotiations and litigation over its DIP financing. The Cargill Amended and Restated DIP Agreement was selected by Tacora's Board of Directors and is recommended by the Monitor as the preferred DIP facility for the company's immediate short term objectives. The economics of the competing DIP Proposals are similar but the Cargill

[1] On this motion, the AHG calls itself the Consortium Noteholder Group and is comprised of Snowcat Capital Management LP, Brigade Capital Management, LP, Millstreet Capital Management, LLC, MSD Partners, LP, O'Brien-Staley Partners, and Javelin Global Commodities (SG) Pte Ltd.

Amended and Restated DIP offers greater short term stability and the ability to manage market volatility without introducing further litigation risk.

[7] The Cargill Amended and Restated DIP Agreement does not materially prejudice the AHG or other stakeholders. The core prejudice that the AHG complains about stems from the Cargill Offtake Agreement that they say has created an uneven playing field where Cargill has too much power and leverage at the negotiating table. That is not a prejudice that arises from the approval of the Cargill Amended and Restated DIP Agreement.

[8] The AHG suggests that the court should take this opportunity to reset the inequality of bargaining power by either selecting the AHG Alternative DIP Proposal and/or eliminating the Offtake Condition in the Cargill Amended and Restated DIP Agreement (discussed below). However, neither of these outcomes will eliminate the Offtake Agreement which has been identified to be one of the main obstacles to Tacora's restructuring; at best, they will preserve the company's ability to decide to breach the Offtake Agreement at some later strategic point in time. The company does not see this as a practical advantage within the context of the DIP financing and timeframe that it is working under and has identified other concrete benefits from the Cargill Amended and Restated DIP that it wishes to avail itself of in the meantime.

[9] The AHG's is asking the court to decline to approve the Cargill Amended and Restated DIP Agreement so that Tacora might be better equipped to withstand the pressures that Cargill is able to exert through its leverage under their pre-CCAA commercial arrangements. To use the AHG's analogy, they want the court to step in to give a "time out" to the schoolyard bully who is taking everyone's lunch money just because they can. That does not fit obviously within the criteria that are appropriate to consider when evaluating competing DIP Proposals. It has not been suggested, in the context of this motion for approval of the Cargill Amended and Restated DIP Agreement, that Cargill has been doing anything other than exercising its contractual rights and acting in its own commercial interests, which it is entitled to do.

[10] As was indicated in the court's previous endorsement approving the original Cargill DIP Facility at the come-back hearing (see *Tacora Resources Inc. (Re)*, 2023 ONSC 6126), at paras. 133 and 134:

> [133] The real concern that is expressed in the AHG's factum is that the current terms of the Offtake Agreement are not commercially reasonable, are considered to be prejudicial to Tacora, and are considered by the AHG to be prohibitive to an effective restructuring. The AHG does not like this agreement and would like Tacora to be able to rid itself of it. As a prospective purchaser, the AHG would no doubt prefer to be rid of the Offtake Agreement. This position exposes that the AHG is also commercially motivated, to try to get rid of a contractual burden of the company to advance its interests as a prospective purchaser.
>
> [134] All participating stakeholders agree that the question of whether the Offtake Agreement is a commercially unreasonable contract and/or whether it can be disclaimed at all is not a question that is

> before the court to decide on this motion. The validity or enforceability of the Offtake Agreement is not properly before the court on this motion. If Cargill has arguments that the Offtake Agreement cannot be disclaimed those would be available to it irrespective of the DIP Facility terms.

[11] I expect, what has been said by all of the parties about the Offtake Agreement, that there will come a time when the viability and appropriateness of the continuation of the Cargill Offtake Agreement will be before the court, but that issue is not properly before the court today. In that regard, nothing has changed since the October 2023 hearing, except that the parties have become more entrenched in their views about the Offtake Agreement. The concerns remain the same.

[12] Having regard to the applicable criteria under s. 11.2(4) of the CCAA, the Cargill Amended and Restated DIP Agreement,

a. approved by the Tacora Board, and recommended by the Monitor, as the DIP Proposal that (i) affords the company the highest level of short term stability and short term liquidity and the funding it needs to continue its operations on economic terms that are not materially better, or worse, than those available from other sources, (ii) with additional flexibility to manage its mark to market pricing and the ability to manage commodity price volatility through hedging without facing additional litigation or commercial risk under their existing arrangements, while it continues its restructuring efforts, and

b. that does not create any new prejudice to other stakeholders that they do not face already through the existence of the Cargill Offtake agreement and related commercial arrangements (entered into pre-CCAA filing) that the company currently depends upon in order to continue its operations for the foreseeable future,

is approved.

The Evolving Debtor in Possession Financing

[13] Two previous DIP Agreements with Cargill have been approved by the court:

a. The Cargill DIP Facility entered into between Tacora and Cargill, Incorporated, an affiliate of Cargill approved following the October 24, 2023 come-back hearing; and

b. The Interim DIP Agreement between Tacora and Cargill Incorporated dated March 18, 2024 that was entered into following a hearing that day (see the court's endorsement in this matter dated March 25, 2024).

[14] In both instances, the AHG had proposed alternative DIP financing. In the first instance, Tacora was seeking approval of the Cargill DIP Facility and the AHG opposed it, on many of the same grounds as it now opposes the Cargill Amended and Restated DIP Agreement.

[15] In the second instance, Tacora was seeking approval of a Replacement DIP Agreement with a consortium (including members of the AHG) that was behind the then proposed Investor Transaction. Cargill opposed the requested court approval of the Investor Transaction and reverse vesting order ("RVO") sought by Tacora to implement it, and opposed the Replacement DIP being put in place on an interim basis.

[16] The motion for the approval of the Replacement DIP was adjourned to be heard at the same time as the motion for the approval of the Investor Transaction that was scheduled to return before the court on April 10-12, 2024. The Cargill Interim DIP Agreement that was signed shortly after that.

[17] However, literally at the eleventh hour before the return of those and other motions on April 10, 2024 (at 11:08 p.m. on April 9, 2024), the Monitor advised the court that it had just been advised: "that the consortium is not in a position to proceed with the Investor Transaction and as a result we understand the company will not be proceeding with the motion for approval of the Investor Transaction. We expect to issue a report to the service list in the morning and will appear before you for your directions and to address any further matters."

[18] On April 11, 2024 Tacora scheduled a return to court on April 16, 2024 to seek approval of a further DIP facility and an extension of the Stay Period, but that motion was adjourned at the request of the company to April 23, 2024 (and then April 25, 2024 for reasons noted earlier) after it was advised on April 15, 2024 that the AHG would be delivering a competing DIP proposal. In light of this, the company wanted some additional time to continue discussions with both parties (Cargill and the AHG) about the DIP financing options.

[19] Tacora engaged in multiple rounds of negotiations with both lender groups and was able to improve the terms originally presented in each DIP proposal. Consideration was also given to the possibility of joint DIP Financing.

The Cargill Amended and Restated DIP Agreement

a) Tacora Board Approval

[20] At the conclusion of the negotiations and with the two improved competing DIP options before them, Tacora's Board of Directors, with the advice of its legal and financial advisors and the support of the Monitor, determined that the Cargill Amended and Restated DIP Agreement was the preferred DIP financing option over the AHG Alternative DIP Proposal.

[21] The Board considered various factors, including, among other things, the costs and expenses of each proposal, the company's cash flow forecast and anticipated timeline to enter and consummate another going-concern transaction, potential risks of each DIP proposal, potential prejudice to the company's stakeholders and the views of the Monitor. The Board approved the Cargill Amended and Restated DIP Agreement, which it viewed as the best DIP facility available to the company in the circumstances.

[22] The Monitor's Eighth Report dated April 21, 2024 provides the following additional insights into the factors considered:

a. Given each of the DIP Proposals provided sufficient funding for Tacora during the next stage of the CCAA Proceeding, in selecting a DIP Proposal, further consideration was given by the Tacora Board to whether any creditor would be materially prejudiced and whether the loan would enhance the prospects of a viable restructuring and provide stability to Tacora during the next stage of this CCAA proceeding.

b. Iron ore price volatility and a limited ability to hedge during the CCAA Proceeding have each had a significant negative impact on the Applicant's liquidity position. Tacora is in critical need of additional financing to continue operating while its Board of Directors continue to explore its strategic alternatives to determine next steps and seeks to emerge from these CCAA Proceedings in a timely manner.

c. The Board carefully considered the two DIP Proposals having regard to the Applicant's circumstances and the legal requirements imposed under the CCAA and exercised its business judgment in selecting the Cargill Amended and Restated DIP Agreement because it was considered by the Board to provide the most stability and certainty for the company while it evaluates options to advance the CCAA proceedings and emerge on a timely basis. The Monitor concurs with this view.

[23] While the Board's independent decision to approve the Cargill DIP Facility is not determinative of the ultimate decision of the court about whether to approve the Cargill Amended and Restated DIP Agreement, it is a relevant consideration. See *Crystallex International Corp, Re,* 2012 ONCA 404, 293 O.A.C. 102, at para. 85, aff'g *Crystallex International Corp, Re,* 2012 ONSC 2125, 91 C.B.R. (5th) 169, at para. 35.

b) Comparison of Cargill and AHG Competing DIP Proposals

[24] The Tacora Board received a summary comparison of the economic terms of the competing DIP Proposals from the two lender groups. The AHG suggests that this comparison demonstrates that the AHG Alternative DIP Proposal was superior economically. However, my high level assessment, having listened to those submissions and reviewed the comparison charts that I was directed to, is that the overall effects of the economic terms of the Cargill Amended and Restated DIP Agreement and the AHG Alternative DIP Proposal are similar and neither one is economically superior to the other.

[25] There are some additional fixed costs associated with the Cargill Amended and Restated DIP Agreement:

a. An additional $800,000 exit fee (in addition to the exit fee already earned under the Cargill DIP Facility of $2.25 million) which will be earned and payable on May 8, 2024 unless Tacora repays all DIP Obligations and all Post-Filing Credit Extensions on or prior to May 8, 2024 (this hiatus was originally intended to allow time for the AHG and Cargill to explore a joint financing arrangement).

b. A negotiated amount of C$2,032,000 plus applicable taxes for Cargill's partial indemnity litigation costs associated with the last minute termination of the Investor Transaction, and withdrawal of the motion to approve that transaction and the AHG Replacement DIP on the eve (or morning) of the hearing, after Cargill (and others) had spent many weeks preparing their evidence and submissions for that hearing.

c. Reimbursement of out-of-pocket legal and financial advisory fees and expenses incurred by both Cargill and the AHG in connection with the CCAA Proceedings from the date of the Second Amended DIP Agreement, with certain applicable restrictions and caps.

[26] The AHG takes exception to what it describes as the "New DIP Costs" of $2.8 million (items a and b above). In response Tacora relies upon:

a. The Monitor's review and comparison of the exit fees paid and payable to Cargill to similar fees of other senior-secured debtor-in-possession facilities in comparable restructuring proceedings in Canada and the Monitor's view that the exit fees are reasonable based on the circumstances of these CCAA Proceedings.

b. Its process of negotiation of the partial indemnity litigation costs to be paid to Cargill, which were ultimately agreed to by the company with the support of the Monitor as part of a total financial package.

[27] Tacora points out that, while the AHG Alternative DIP Proposal does not contain these "New DIP Costs" or any exit fees, there is a higher cost under the AHG Alternative DIP Proposal for the incremental amount of "new" money that it has to advance to make up for some of the economic benefits of the financial arrangements with Cargill that Tacora cannot count on if Cargill is not the DIP lender. These higher AHG DIP costs are offset by some of the New DIP Costs that the AHG complains about (extra exit fees and legal costs that are embedded in the Cargill Amended and Restated DIP Agreement). While characterized differently, the net economic effects are not materially different under the two competing DIP Proposals.

[28] Beyond the economics, the Cargill Amended and Restated DIP Agreement contains certain features that Tacora believes will provide much needed stability to the company and its operations while it pursues the next stage of its restructuring. In particular:

a. The Stockpile Agreement (also sometimes referred to as the OPA) remains in place providing predicable and consistent cash flow to the Company and results in a smaller overall DIP amount, and therefore lower amounts of interest payable; and

b. It affords the company the ability to hedge commodity price exposure, if desirable.

[29] The Monitor’s Eighth Report addresses these and other considerations. The Monitor emphasizes that, in the short term, staying with Cargill avoids having to potentially replace the Stockpile Agreement, find other parties to hedge with (which the company recognizes would be

difficult given the current state of its balance sheet), perhaps having to replace the Offtake Agreement and avoids all of the uncertainty for the company, its employees and suppliers that would come with having to undergo significant operational transitions without any proposed transaction or plan for moving forward in place.

[30] In *Great Basin* (at para. 15), the court noted that when approving DIP financing it "must determine which proposal is most appropriate and most importantly, which will best serve the interests of the stakeholders of the [Applicants] as a whole by enhancing the prospects of a successful restructuring". I find the Cargill Amended and Restated DIP Agreement to be the most appropriate in the present circumstances.

c) Comparison of Cargill Amended and Restated DIP to Cargill Interim DIP

[31] Aside from the features discussed above, the Cargill Amended and Restated DIP Agreement contains substantially the same terms as the Cargill Interim DIP Agreement.

[32] One feature of the Cargill Amended and Restated DIP Agreement that has not changed substantively since the Cargill DIP Facility was approved in October 2023 is what is described by the AHG as the "Offtake Condition". The Offtake Condition provides that Tacora must comply with the terms of the Offtake Agreement and keep it in full force and effect, unless disclaimed or otherwise eliminated pursuant to an order of the CCAA Court. Furthermore, the termination, suspension or disclaimer of the Existing Arrangements (which include the Offtake Agreement) will be an Event of Default under the Cargill Amended and Restated DIP Agreement, unless effected pursuant to a court order. Finally, it is an Event of Default if Tacora commits a default under any Material Contract (with certain exceptions including where the Offtake Agreement is disclaimed pursuant to a court order).

[33] The AHG maintains that the Cargill Amended and Restated DIP must be reviewed in its entirety, applying the factors under section 11.2(4) of the CCAA, based on all the evidence before the court, including whether provisions such as the Offtake Condition remain appropriate at this stage of the CCAA Proceeding. They contend that the Offtake Condition is not a "red herring" and must be critically considered and not simply accepted because it has been a condition of the two previously approved Cargill DIP facilities. That is a fair point, but the court can still take into consideration that many of these same arguments were made and rejected at the come-back hearing. See for example the court's review and analysis at paras. 103, 117-118 and 140 of the court's endorsement from the come-back hearing.

[34] The AHG describes the Offtake Agreement as a shackle around Tacora that is interfering with its restructuring efforts. The existence of the Offtake Agreement and other pre-filing commercial arrangements between Tacora and Cargill is perceived to be giving Cargill leverage and to create an imbalance in favour of Cargill in the ongoing negotiations. It has been suggested that Cargill has an effective veto in the CCAA Proceedings under the existing arrangements (building on a comment made by Cargill's counsel that all paths or solutions must go through Cargill), and the AHG wants the court to step in to put an end to that. The AHG wants the court to reject the Cargill Amended and Restated DIP Agreement in favour of the AHG Alternative DIP Proposal so as to even the playing field.

[35] What is clear is that it is the Offtake Agreement, not the Offtake Condition, that is the source of the problem for which the AHG seeks redress. The AHG tries to bring it back to the DIP financing issue that is before the court by suggesting that the Offtake Condition is somehow entrenching or perpetuating the problem by taking away one of the means by which Tacora might shed itself of the shackle by effectively walking away from the Offtake Agreement at some strategic point in time in the future. But what the Offtake Condition does is require that the Cargill DIP be repaid if Tacora choses to try to get out from under the Offtake Agreement by breaching that agreement and leaving Cargill to pursue a claim for damages. This point was made at para. 135 of the court's endorsement from the come-back hearing.

[36] Tacora agrees with the AHG that the Offtake Agreement has been and remains an impediment to Tacora successfully restructuring. However, the Offtake Condition does not entrench the Offtake Agreement. Rather, it limits one of the available options that Tacora would otherwise have, namely the ability to unilaterally stop performing under the Offtake Agreement without engaging with the formal disclaimer process (see *Bellatrix Exploration Ltd. (Re)*, 2020 ABQB 809, leave to appeal ref'd 2021 ABCA 85). Tacora and the Monitor do not consider this to be a practical option currently available.

[37] Tacora says that it remains ready, willing and able to use other tools available to it if Cargill does not materially amend the Offtake Agreement to reflect "market" terms and permit the company to attract new capital, such as issuing a disclaimer or entering into a transaction and seeking a RVO which leaves the Offtake Agreement behind just as it did when it selected the Investor Bid in the SISP, all done with Cargill's DIP Facility (containing the Offtake Condition) in place. The AHG argues that Cargill's positions to date regarding these other two options create significant litigation risk around either of these other two options (disclaimer or asset purchase transaction and RVO) for any prospective equity investor or counterparty. However, a breach to the Offtake Agreement that leaves Cargill with a damages claim also has litigation risk as well as significant stability and transition risks.

[38] While it is open to the court to refuse to approve DIP financing where the DIP lender has imposed an unreasonable condition that will have a chilling effect on the restructuring, as occurred in *Energy Ltd (Re)*, 2016 ABQB 324 at para. 5(2), leave to appeal ref'd 2016 ABCA 217, the Offtake Condition is not such a condition. Nor has the inclusion of the Offtake Condition (as distinct from the Offtake Agreement itself) been shown to have materially altered the equilibrium for negotiations in any practical way that I can see up until now. It is the Offtake Agreement itself that is the "shackle", the off-market agreement that the AHG and Tacora would like to get rid of. This DIP approval motion is not the time or place for the court to address the problem of the Offtake Agreement itself, as much as the AHG would like the court to do so.

[39] The Offtake Condition in the Amended and Restated DIP Agreement, even if considered *de novo* rather than simply treated as a continuing and previously approved condition, has not been shown to give Cargill a practical incremental advantage given that Tacora cannot operate without the Offtake Agreement and has no other viable options. As was noted previously by this court when the original Cargill DIP Facility was approved, Tacora does not have a readily available replacement marketing or offtake agreement that could be implemented in the CCAA Proceedings: "it would not be practical to terminate, suspend or disclaim the Offtake Agreement before the company had the means to sell its iron ore concentrate to one or more alternative

customers." (See *Tacora Resources Inc (Re)*, 2023 ONSC 6125 at para. 118; see also para. 117). The court concluded, at para. 140:

> [140] The Offtake Agreement (among other agreements with Cargill) is the sole source of revenue for Tacora. Cargill has committed to purchasing 100% of the output of the Scully Mine under the Offtake Agreement. This is why Tacora has argued that it is unlikely that it would seek to disclaim, terminate, suspend, etc. that agreement, other than in the context of a transaction arising out of the Solicitation Process, which would be exempt from the restriction in the Cargill DIP Facility on such actions.

[40] The only replacement thus far identified was lost when the Investor Transaction was terminated by the AHG. The hypothetical scenario of a replacement offtake provider materializing and Tacora breaching the Offtake Agreement to allow this replacement provider to seamlessly step in without requiring repayment of the Cargill DIP is just that, hypothetical.

[41] This scenario, in which the court steps in to narrow the playing field by not approving the Cargill Amended and Restated DIP Agreement also assumes that Cargill will, without the Offtake Condition and after being replaced as the DIP lender, still be willing, in the short term pending some further transaction, not only to carry on business as usual under the Offtake Agreement, the Stockpile Agreement and other financial and operational arrangements that it has with Tacora, but to offer some of the concessions it has agreed to under the Cargill Amended and Restated DIP Agreement. The AHG suggests that the court can assume that Cargill will not abandon the company in its time of need and will continue to work with Tacora under its commercial agreements. Tacora was not prepared to assume that in its assessment of the situation, and I consider that it would be imprudent for the court to do so at this time.

d) Approval of the Cargill Amended and Restated DIP Agreement

[42] The court's authority to approve the DIP financing provided for in the Cargill Amended and Restated DIP Agreement is found in s. 11.2 of the CCAA. The court may consider the following factors set out in s. 11.2(4) of the CCAA:

> (4) In deciding whether to make an order, the court is to consider, among other things,
> (a) the period during which the company is expected to be subject to proceedings under this Act;
> (b) how the company's business and financial affairs are to be managed during the proceedings;
> (c) whether the company's management has the confidence of its major creditors;
> (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
> (e) the nature and value of the company's property;
> (f) whether any creditor would be materially prejudiced as a result of the security or charge; and

> (g) the monitor's report referred to in paragraph 23(1)(b), if any.

[43] These factors may be equally applicable in deciding who shall be the DIP lender and on what terms DIP financing ought to be provided. See *Great Basin Gold Ltd., Re*, 2012 BCSC 1459, 94 C.B.R. (5th) 228, at para. 14. The two factors that were the focus of submissions of the AHG in opposition to this motion are:

> (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
>
> (f) whether any creditor would be materially prejudiced as a result of the security or charge.

[44] Tacora is currently focused on determining the best path forward since the termination of the Investor Transaction. It intends to continue discussions and negotiations with the AHG and Cargill in respect of options for a consensual restructuring and recapitalization transaction. It has identified those two stakeholders in particular, Cargill and the AHG, as the key to solving the two fundamental obstacles that it faces to achieve its goal of raising the new capital necessary to ramp up production at the Scully Mine, namely: a prohibitive offtake agreement (with Cargill) and an overleveraged capital structure (associated with the AHG's priority notes and senior secured notes).

[45] The AHG and Cargill are in a position to negotiate a resolution to solve both issues and facilitate the company's emergence from these CCAA Proceedings. However, in the past, negotiations have been protracted and Tacora has found these two parties to have been intransigent on key issues. The company intends to restart such discussions and negotiations to try to get to a consensual resolution. The court may also provide some incentives for them to do so, at the appropriate time. While Tacora advances such efforts, it requires additional incremental liquidity the certainty and stability provided by committed DIP financing to continue operating.

[46] Tacora has determined that it can best achieve the certainty and stability that it needs to continue its operations through the delivery of, and payment for, its iron ore product under established arrangements in place with Cargill that the AHG acknowledges provide a short term liquidity lift (through the margin and mark to market available under the Stockpile Agreement with enhanced flexibility being afforded under the Cargill Amended and Restated DIP Agreement) and with the added flexibility to manage the commodity price volatility to the greatest extent possible through hedging arrangements, also provided under the Cargill Amended and Restated DIP Agreement and reinforced in paragraphs 7 and 8 of the proposed form of order (the specific wording of which no party has opposed).

[47] Time is of the essence. Tacora has made it clear that the *status quo* is not sustainable in the longer term. However, the company has also made it clear that maintaining the *status quo* in the shorter term is important for its short term goals, to allow it to maintain stability and avoid the uncertainty of interim changes without a transaction or other path forward in place.

[48] If Cargill and the AHG cannot achieve a consensual resolution in the near term, the company expects to seek further relief from the court to establish timelines related to a short-term process with a view to achieving a transaction that will allow it to emerge from these CCAA Proceedings.

[49] The Cargill Amended and Restated DIP Agreement supports and enhances these initiatives and the prospects of a viable compromise or arrangement being made in respect of the company.

[50] The alleged prejudice to the AHG said to arise from the Offtake Agreement and perceived prejudice from the Offtake Condition have been addressed earlier in this endorsement and have not been found to override all of the other reasons for Tacora's selection of the Cargill Amended and Restated DIP Agreement at this time. Nor is the intangible shift in leverage or deal tension that might occur in favour of the AHG if the Cargill Amended and Restated DIP Agreement is not approved a justification for overriding the applicable s. 11.2(4) CCAA factors that have been taken into account in arriving at the decision to approve the Cargill Amended and Restated DIP Agreement.

[51] In terms of some of the other factors under s. 11.2(4) of the CCAA, the Cargill Amended and Restated DIP amount lines up with the company’s cash flow forecasts for the extended Stay Period and provides the funding for the company’s anticipated business and financial affairs that are to be managed during the CCAA proceedings. The company needs it to enhance the prospects of a viable compromise or arrangement being made. The Monitor recommends the approval of the Cargill Amended and Restated DIP Agreement. I am satisfied, having considered the relevant factors, that the requirements under the CCAA for the court to approve it and any corresponding increase in the DIP Charge have been satisfied.

Stay Extension

[52] The Court may grant an extension of the Stay Period under s. 11.02 (2)-(3) "for any period that the court considers necessary" where: (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and (b) the applicant satisfies the court that it has acted, and is acting, in good faith and with due diligence.

[53] No one opposes the requested extension of the Stay Period to June 24, 2024 and the Monitor supports it. Tacora and the Monitor consider it to be necessary for Tacora, together with its advisors and the Monitor, to continue in good faith to review and advance its potential available alternatives and pursue a value-maximizing transaction for the benefit of the company and its stakeholders generally.

[54] Tacora's Updated Cash Flow Forecast reflects that, subject to the assumptions related thereto, Tacora is forecast to have sufficient liquidity to fund its obligations and the costs of the CCAA Proceedings through the end of the proposed extension of the Stay Period.

Directions Regarding Next Steps

[55] The AHG asked the court to provide specific directions regarding timelines and next steps. Tacora asked the court not to provide any directions at this time. It intends to come back

to seek directions, as appropriate, on a proper record and after consultations with appropriate stakeholders.

[56] The company should develop a proposal, rather than have one imposed now. However, time is of the essence and the court expects that this will occur promptly, so that all avenues can be explored.

[57] In the meantime, the Stay Extension and DIP Amendment Approval Order may issue in the form signed by me today.

Kimmel J.

Date: April 26, 2024