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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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.

Applicant

WRITTEN SUBMISSIONS OF THE CONSORTIUM NOTEHOLDER GROUP (DIP Motion– March 18, 2024)

March 17, 2024

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Overview

1. These Submissions are filed on behalf of the Consortium Noteholder Group[1] the ("**Consortium**") in response to Cargill's objection and cross-motion challenging the determination of Tacora Resources Inc. ("**Tacora**" or the "**Company**"), following a competitive process and in the business judgment of the board of directors (the "**Board**"), with the support of the Court-appointed Monitor, to accept the Consortium's Replacement DIP Facility (as defined below). The Replacement DIP Facility is urgently required by Tacora and should be approved without delay at the Company's motion returnable on March 18, 2024.

2. Cargill's opposition to the Company's decision to accept the Replacement DIP Facility, and its attempt to delay resolution of the issue, should not be countenanced for the following reasons:

(a) Cargill's opposition to the Replacement DIP Facility is part of Cargill's strategy of delay and objection to Tacora's efforts to restructure and save hundreds of jobs. Cargill's current objection follows its opposition to Tacora's selection of the Consortium's bid in the Court-approved SISP, despite the fact that the Consortium submitted the best – and the only – Phase 2 Qualified Bid (the "**Successful Bid**"). The Successful Bid is the only executable transaction available that will provide a prompt and viable exit from these CCAA proceedings, which is urgently required. Cargill's determination, as bitter bidder, to challenge the results of the SISP and its

[1] The Consortium is comprised of Snowcat Capital Management LP, Brigade Capital Management, LP, Millstreet Capital Management LLC, MSD Partners, LP, O'Brien-Staley Partners, Resource Capital Fund VII L.P., and Javelin Global Commodities (SG) Pte Ltd. as holders of US$207,930,000 (92.4%) in principal of 8.250% Senior Secured Notes due 2026 and/or US$14,955,000 (55.4%) in principal of 9.00% Cash / 4.00% PIK Senior Secured Priority Notes due 2023.

push for a protracted litigation schedule are important causes of Tacora's immediate need for replacement DIP financing.

(b) Now that Tacora's DIP replacement process did not result in Cargill's new DIP terms being accepted, Cargill once again seeks to play for time by impugning a competitive process in which Cargill was not the successful party. The DIP replacement process was overseen by the Monitor. There is no tenable basis on which this process can legitimately be impugned. In any event, Cargill has had ample time to put its objections to this Court and has, in fact, filed a 25-page affidavit and a comprehensive factum. Notably, Cargill has had the Company's affidavit for a week, but has not yet made any request to cross-examine the Company's affiant. This Court has all the materials before it that are needed to properly determine this motion immediately.

(c) This is not a question of maintaining the *status quo*. There is no *status quo* in relation to the existing DIP. The existing DIP is fully drawn and there is no additional financing available to Tacora under that DIP. In recognition of this, the Company had no option but to seek further financing and quite properly ran a competitive process to select a new DIP facility to carry it through to the end of this proceeding. As such, it required both Cargill and the Consortium (the only two parties offering to provide alternative DIP financing) to present their best offers for a new DIP facility.

(d) As outlined in the Company's materials, the Company had legitimate business reasons for preferring the Replacement DIP Facility to the proposed Cargill replacement DIP. Cargill now asks this Court to second-guess the DIP replacement

process and the business judgment of Tacora's Board. Cargill seeks to force the Company to accept Cargill's interim DIP facility, despite the Company's good faith determination that it is not in the best interests of the Company or its stakeholders for Cargill to continue as the DIP lender in the current circumstances.

(e) Whether the Replacement DIP Facility should be approved requires a balancing of prejudices, as is required in any CCAA hearing to approve DIP financing. Since the original DIP Facility was approved, the dynamics of these CCAA proceedings – and therefore the relevant prejudices – have significantly changed. Cargill has adopted an adversarial stance, as it has embroiled the Company in protracted litigation to challenge the Board's selection of the Consortium's restructuring proposal as the Successful Bid. This litigation is not only prolonging the exit of the Company from these proceedings, but is clearly aimed at frustrating the Company's ability to close its only actionable restructuring transaction.

(f) In balancing the prejudices, it must be emphasized that the prejudice to the Consortium if Cargill's interim DIP facility were approved pending further litigation outweighs the prejudice to Cargill if the Replacement DIP Facility is approved. The Consortium represents the largest economic stakeholder in this proceeding and is owed indebtedness of $223 million, on a fully secured basis. Requiring the Company to accept Cargill's interim DIP facility would further prime the secured indebtedness owed to the Consortium, to its continued prejudice. In contrast, Cargill will forthwith be fully repaid all amounts owing under its original DIP Facility, including exit fees of over $2 million payable thereunder, if the Replacement DIP is approved.

(g) Moreover, approving Cargill's proposed interim DIP facility would hand over further important rights to information regarding, and approval rights over, the Company's business, including its cash flows, to a party that has sought to undermine the Company's restructuring at every turn since the litigation challenging the results of the SISP was commenced. Again, this is to the prejudice of the Consortium and the Consortium Transaction, but more importantly, to the prejudice of the Company, and fully justifies the determination by the Company to accept the Replacement DIP Facility, including because it creates an alignment between the interests of the Company and its DIP lender.

DIP Solicitation Process

3. The acute short-term liquidity issues currently being experienced by Tacora have arisen because of a significant fall in iron ore prices coupled with the prolonged litigation schedule, demanded by Cargill, which is preventing Tacora's timely emergence from these CCAA proceedings. As such, Tacora solicited DIP proposals from both the Consortium and Cargill.

4. In order to obtain the best possible terms for additional financing, the Company engaged in discussions and negotiations with Cargill and the Consortium that were overseen by the Monitor.[2] At the request of Tacora, the Consortium participated in this process in good faith to find a solution to the Company's liquidity concerns.

5. Running this type of competitive process during a CCAA process is typical and allows the Company to evaluate whether, in light of a need for additional DIP financing, the terms offered by

[2] Monitor's Third Report, at para 26.

an existing DIP lender are as favourable as those offered by an alternate lender and whether other circumstances arising in the restructuring would justify consideration of alternatives.

6. Following receipt of advice from its advisors, and input and views from the Monitor, the Board exercised its good faith business judgment and determined that the Consortium's DIP proposal (the "**Replacement DIP Facility**") was the best DIP facility available to Tacora.

7. While the Board recognized that the Subscription Agreement has not yet been approved by the Court, and that its approval is being contested by Cargill, it also recognized that "the current reality is that Tacora does not have any other actionable transaction that would allow it to exit from this CCAA Proceeding on a timely basis."[3] As such, the Board's view was that Replacement DIP Agreement is more likely to facilitate Tacora's successful and timely emergence from the CCAA Proceeding.

8. The Board and Monitor both agree that "the Replacement DIP Facility will align the interests of the Applicant and the Investors and will provide the Applicant with the greatest chance to implement the only actionable restructuring transaction currently available to the Applicant to emerge from the CCAA Proceeding on a timely basis."[4]

9. This Court should not engage in an exercise of second-guessing the business judgment of the Board regarding its preference for the terms of the Replacement DIP Facility. Notably, with respect to the fees under the Replacement DIP Facility, at the request of the Company and the Monitor, the Consortium has agreed to remove the Exit Fee and the Extension Fee from the Replacement DIP Facility.

[3] Monitor's Third Report, at para 32.
[4] Monitor's Third Report, at para 34(e).

Cargill's Request for an Adjournment is Prejudicial and Should be Refused

10. Cargill is once again attempting to tactically delay, seeking an adjournment of the motion to approve the Replacement DIP Facility until the week of April 2, 2024, or after the Sale Approval Motion, despite the fact that there is no dispute that the replacement financing is required immediately. Given Tacora's urgent need for additional DIP financing, Cargill's answer is to seek to have the Court force Tacora to borrow an additional $30 million ***from Cargill*** under the "Cargill Interim Amended DIP Agreement," to allow the Company to continue operations through the Sale Approval Motion that Cargill is also challenging.[5]

11. The existing Cargill DIP Facility is fully drawn. In seeking an adjournment, Cargill (not Tacora) is asking the Court to approve an ***entirely new***, additional DIP facility. Moreover, it is doing so in the face of the Company's objections, asking the Court to compel Tacora to be an involuntary borrower.

12. Acceding to Cargill's adjournment request and approving additional Cargill funding (the former cannot practically happen without the latter) would grant Cargill the relief it seeks under the guise of maintaining the *status quo* – but in fact would prime the Noteholders' secured debt with additional advances under a new, additional Cargill DIP facility. Granting an adjournment will not maintain the *status quo* – it would instead prejudice the Noteholders whose security position continues to be eroded.

13. Moreover, there is simply no need for an adjournment in these circumstances. The only matter at issue at this hearing is whether the Court is prepared to overturn the business judgment of the Company – supported by the Monitor – that the Replacement DIP Facility (which Cargill has had a copy of for a week) ought to be approved.

[5] Affidavit of Matthew Lehtinan dated March 14, 2024 at para 61.

14. Tacora is in critical need of additional financing given the length of the litigation schedule demanded by Cargill, the recent decline in iron ore prices, and the Company's limited ability to hedge during the CCAA proceeding.[6] In these circumstances, delaying the determination of the DIP motion to facilitate more litigation is unnecessary, prejudicial to Tacora and not in the best interests of this restructuring proceeding.

Cargill's Pattern of Inappropriate Behaviour

15. Cargill's interests are plainly not aligned with the interests of Tacora. Cargill's latest adjournment request is yet another attempt to leverage delay to extract every possible drop of value from Tacora and its stakeholders. It is consistent with its prior efforts to delay the Sale Approval hearing so it can continue to extract significant profits (which Tacora recently discovered are even higher than it was previously aware)[7] under the Offtake Agreement for as long as possible.

16. Cargill's complaint that the selection of the Replacement DIP Facility causes "more distraction, litigation and wasted resource"[8] is ironic, as Cargill's transparent focus has been to delay the resolution of this CCAA proceeding as long as possible through protracted litigation. Cargill's claim that its proposed DIP facility provides the flexibility to extend these CCAA proceedings until October demonstrates Cargill's true intentions in this matter. Delay only benefits Cargill, which continues to make substantial profits from the Offtake Agreement at the expense of Tacora and its prospects upon emergence from these CCAA proceedings.[9]

[6] Monitor's Third Report, at para 34(a).
[7] Affidavit of Joe Broking dated March 14, 2024 at para 15-17.
[8] Affidavit of Matthew Lehtinan dated March 14, 2024 at para 69.
[9] Affidavit of Joe Broking dated March 14, 2024 at para 15-17.

17. Cargill should not be permitted to profit further from its delay tactics by forcing Tacora to borrow under a new DIP facility with Cargill, where Tacora has determined that it does not wish to do so.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of March, 2024.

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PROCEEDING COMMENCED AT TORONTO

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