



No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: Trevali Mining Corporation (the "Petitioner")

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Petitioner to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia on April 24, 2023 at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Petitioner seeks an order, substantially in the form attached as **Schedule "A"**, (a) extending the Stay Period (as defined in paragraph 15 of the Amended and Restated Initial Order of this Court pronounced on August 29, 2022) with respect to the Petitioner from April 30, 2023 until and including May 31, 2023; and (b) granting such further orders as counsel may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

2. The Petitioner has been working diligently towards its restructuring goals since it obtained protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") on August 19, 2022.

3. Among other things, the Petitioner's restructuring efforts have led to this Court's approval on December 21, 2022 of a Share and Asset Purchase Agreement dated December 15, 2022 (the "**Sale Agreement**") between the Petitioner, as vendor, and Appian Natural Resources Fund

III LP and Appian Natural Resources (UST) Fund III LP, as “**Purchasers**”, providing for the sale of the Petitioner’s 90% interest in the Rosh Pinah mine through the sale of the Petitioner’s 100% interest in GLCR Limited and assignment of debt owing from certain of the Petitioner’s subsidiaries (the “**Transactions**”).

4. The Petitioner is continuing to work with the Purchasers to satisfy the remaining conditions to the closing of the Transactions, and currently anticipates that the Transactions will close prior to the end of May 2023.

5. In addition to working towards the closing of the Transactions, the Petitioner has continued to advance its restructuring efforts by, among other things:

- (a) continuing operations at the Rosh Pinah mine and maintaining site integrity pending the closing of the Transactions;
- (b) developing a “**Claims Process**” with respect to claims that may be made against the Petitioner, Trevali Mining (New Brunswick) Ltd., or their respective directors and officers, and obtaining a “**Claims Process Approval Order**” from this Court on March 29, 2023;
- (c) working with the Monitor to implement the Claims Process in accordance with the Claims Process Approval Order;
- (d) developing in consultation with the Monitor and filing on April 12, 2023 an application for the approval of the Distribution Order, which is aimed at permitting the reduction or elimination of the principal debts owing under, as well as the interest payable on, the Petitioner’s Interim Financing Facility, the Revolving Credit Facility, and the Glencore Facility (in each case as described in Affidavit #13 of Brendan Creaney);
- (e) rationalizing costs in light of the status of these CCAA proceedings and the anticipated closing of the Transactions, including by issuing notices of disclaimer with respect to contracts and leases not being assumed by the Purchasers under the Sale Agreement and that are not otherwise required by the Petitioner;
- (f) continuing to consider potential options with respect to the Petitioner’s remaining assets including recovery of accounts receivable, recovery of insurance proceeds, and settlement of disputes;
- (g) communicating regularly with the Petitioner’s stakeholders, including its creditors, suppliers, lenders, employees, and governmental bodies, in particular their secured lenders, in connection with these CCAA proceedings; and
- (h) engaging frequently with the Monitor with respect to all aspects of the Petitioner’s restructuring efforts.

6. The Petitioner requires a further extension of the CCAA stay of proceedings to allow it to continue working towards the closing of the Transactions and to otherwise continue the collaborative and consultative efforts it has made to restructure its business.

7. The proposed stay extension from April 30, 2023 to May 31, 2023 is aligned with the anticipated closing of the Transactions and the anticipated maturity date of the Petitioner’s Interim Financing Facility.

8. The Petitioner does not anticipate requiring any further draws under the Interim Financing Facility if the extension of the stay period to May 31, 2023 is granted.

9. No creditor will suffer material prejudice if the proposed stay extension is granted by this Court.

Part 3: LEGAL BASIS

10. A stay of proceedings is the “central tool” by which this Court maintains the status quo for a debtor company, allowing it the necessary time, flexibility, and “breathing room” to carry out a supervised restructuring or organized sales process while continuing its ongoing operations.

***1057863 B.C. Ltd. (Re)*, 2022 BCSC 876, paras. 31, 35 [1057863], citing *Timminco Limited (Re)*, 2012 ONSC 2515, para. 15.**

11. The baseline considerations and requirements for a stay extension are that a stay is “appropriate” and that the debtor company subject to the CCAA is acting in good faith and with due diligence.

CCAA, ss. 11.02(2)-(3).

12. The basic purpose of the CCAA must be considered when determining what relief authorized by the CCAA is “appropriate” in the circumstances:

The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company. [...] appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

***1057863*, para. 33, citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para. 70.**

13. In the present case, the proposed stay extension is necessary to maintain the status quo as the Petitioner pursues restructuring efforts for the benefit of its stakeholders, and is appropriate given the status of such efforts, as described in greater detail above.

14. The Petitioner has been acting in good faith and with due diligence in these CCAA proceedings.

Part 4: MATERIAL TO BE RELIED ON

15. Affidavit #12 of Brendan Creaney, affirmed March 24, 2023;

16. Affidavit #13 of Brendan Creaney, affirmed April 12, 2023;

17. Affidavit #14 of Brendan Creaney, affirmed April 14, 2023;
18. Tenth Report of FTI Consulting Canada Inc., to be filed; and
19. Such further and other material as counsel for the Petitioner may advise.


The Petitioner estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: April 14, 2023



Signature of Peter L. Rubin / Peter Bychawski
Lawyers for the Petitioner

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To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

General

2. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso, and Namibia to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

3. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Peter L. Rubin
Lawyer for the Petitioner

BY THE COURT.

Registrar

Schedule "A"

COUNSEL NAME	PARTY REPRESENTED