



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: BK-25-03205249-0031

DATE: April 25, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: SHAW-ALMEX INDUSTRIES LTD. V FTI CONSULTING CANADA INC.

BEFORE: JUSTICE J. DIETRICH

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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**For Defendant, Respondent, Responding Party:**

| Name of Person Appearing            | Name of Party                    | Contact Info   |
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## **ENDORSEMENT OF JUSTICE J DIETRICH:**

### **Introduction**

- [1] Shaw-Almex Industries Limited (the “**Company**”) filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (the “**BIA**”) on March 29, 2025. FTI Consulting Canada Inc. was appointed as Proposal Trustee under the NOI.
- [2] The Company now seeks an order:
- a. authorizing the Company to borrow up to \$1,000,000 under a credit facility (the “**Initial DIP Facility**”) from Royal Bank of Canada as DIP Lender;
  - b. granting an Administration Charge over the Company's property in the maximum amount of \$350,000;
  - c. granting a DIP Lender's Charge in the maximum amount of \$1,00,000;
  - d. extending the time to file a proposal pursuant to s. 50.4(9) of the BIA for 11 days, from April 28, 2025, up to and including May 9, 2025; and
  - e. authorizing the Company, with the written approval of the Proposal Trustee, to pay up to an aggregate amount of \$250,000 for amounts owing to suppliers for goods or services actually supplied to the Company prior to the filing date.
- [3] The Company’s material was only served yesterday afternoon. The Proposal Trustee’s First Report dated April 24, 2025, attached a draft of the DIP Term Sheet. A revised version of the DIP Term Sheet was uploaded to Case Center, and counsel to the Proposal Trustee has confirmed that it has now been signed.
- [4] Although BDC initially expressed concerns regarding the ranking of the proposed DIP Lender’s Charge over its security, that issue has been resolved as between the parties as noted below.
- [5] No opposition to the relief sought by the Company was raised at the hearing.
- [6] The Company also requested a further hearing be scheduled at which time it expects to seek an order continuing the NOI proceedings under the *Companies’ Creditors Arrangement Act*, approving an amended DIP Facility and approving a sale and

investment solicitation process. That hearing has now been scheduled for **May 13, 2025, at 10:00 am for 2 hours, in person.**

- [7] Given the scheduling of the next hearing on May 13, 2025, the requested extension of time in paragraph 2(d) above was similarly extended as agreed to by the parties during the hearing.
- [8] Terms not otherwise defined herein have the meaning provided to them in factum of the Company filed on this motion.

## **Background**

- [9] The Company is in the business of providing conveyor belt vulcanizing equipment technology, services and expertise. The Business began over 67 years ago in Parry Sound, Ontario as a small, family-run operation. Since that time, the Company has grown significantly. Its customers are in a diverse range of industries including mining, steel mills, ports, power generation, package handling, and aerospace.
- [10] The Company is the parent company of a global enterprise operating under the “Shaw Almex” name (the “**Almex Group**”). The Almex Group has 15 locations, plus exclusive distributors, across six continents worldwide. Through the Almex Group, the Company now services customers across 123 countries worldwide.
- [11] The Company manufactures the majority of the Business’ products and ships them to its subsidiaries or local distributors worldwide. The other principal manufacturing operations in the Almex Group are conducted by wholly owned subsidiaries in the United States, China, and Spain. The remaining companies within the Almex Group operate primarily as sales and distribution centres with limited ability to modify or finish machinery being shipped from North America to their local markets.
- [12] The Company operates a manufacturing facility in Parry Sound, has its head office in Stoney Creek, Ontario, and an office and manufacturing facility in Hamilton, Ontario. The Company owns the real property from which it operates in Parry Sound, Ontario.
- [13] The Company currently employs approximately 80 employees across Canada, 35 of which are unionized. Globally, the Almex Group employs approximately 500 employees.
- [14] The Company's present liabilities are estimated to be approximately \$54.9 million, based on its list of creditors filed with the NOI. The present book value of the Company's assets, based on internal unaudited financial statements as at December 31, 2024, is estimated to be \$24.7 million.
- [15] The company has several secured creditors, including RBC, BDC, BDC Capital Inc., and various equipment financiers.

- [16] RBC is the Company's principal secured creditor and is owed approximately CDN \$15.5 million and USD \$0.5 million plus accrued and unpaid interest.
- [17] BDC is secured by a mortgage on the real property in the principal amount of \$2 million owned by the Company in Parry Sound. BDC Capital Inc. is a general secured creditor. There are also secured equipment financiers.
- [18] The Company's financial and operational challenges in recent years include difficulties securing a reliable rubber supplier after a competitor purchased the Company's former rubber supplier in or around 2022, and quality control issues arising from a replacement rubber supplier. As well, the Company was faced with large losses arising from currency hedging transactions conducted under the supervision of its former Chief Financial Officer.
- [19] Although the Company previously canvassed sale or refinancing options, the Proposal Trustee understands that this was not a fulsome process and the efforts were unsuccessful.
- [20] On March 19, 2025, RBC issued a demand letter and notice of intention to enforce its security under the BIA. On March 28, 2025, BDC did the same.
- [21] The Company, with the assistance of the Proposal Trustee, has compiled a Cash Flow Forecast. The Cash Flow Forecast shows that the Company requires approximately \$1,000,000 in interim financing during the Stay Period. Accordingly, the Initial DIP Facility is necessary to meet the Company's immediate cash requirements.

## **Issues**

- [22] The issues to be decided today are:
- a. Should the Initial DIP Facility and DIP Lender's Charge be approved;
  - b. Should the Administration Charge be approved;
  - c. Should the Company be authorized to pay pre-filing amounts to certain critical suppliers with the approval of the Proposal Trustee; and
  - d. Should the time to file a proposal be extended until May 9, 2025 pursuant to s. 50.4(9) of the BIA?

## **Analysis**

### Initial DIP Facility and DIP Lender's Charge

- [23] Subsections 50.6(1) and (3) of the BIA provide that, on notice to affected secured creditors, the Court may grant a priority charge in favour of an interim lender who agrees to lend to the debtor an amount approved by the Court.

- [24] Pursuant to s. 50.6 of the BIA, in deciding whether to make such an order, the Court is to consider: (a) the period during which the debtor is expected to be subject to proceedings; (b) how the debtor's business and financial affairs are to be managed during the proceedings; (c) whether the debtor's management has the confidence of its major creditors; (d) whether the loan would enhance the prospects of a viable proposal being made; (e) the nature and value of the debtor's property; (f) whether any creditor would be materially prejudiced; and (g) the view of the proposal trustee.
- [25] The proposed amount of the Initial DIP Facility coincides with that which the Proposal Trustee advises, based on the Company's Cash Flow is expected to be required over approximately the next two weeks. The Proposal Trustee confirmed during the hearing that it is expected to be sufficient until the end of the revised requested stay extension on May 13, 2025.
- [26] As noted above, the Company has advised that it is the Company's intention is to return to this Court on May 13, 2025 to request an order continuing this proceeding under the *Companies' Creditors Arrangement Act*, approving of an amended DIP facility and approving a sale and investment solicitation process. Up until that time, the Company intends, under the supervision of the Proposal Trustee, to operate its Business in the ordinary course.
- [27] RBC is the proposed DIP Lender and the Company's primary secured creditor. BDC does not oppose the approval of the Initial DIP Facility (and on the terms of the revised draft order requested, BDC will not be primed by the DIP Lender's Charge at this time). During the hearing the parties agreed to amend the proposed draft order to also provide that equipment suppliers are not primed by the DIP Lender's Charge at this time. Priming may be sought, however, at the next hearing.
- [28] The Initial DIP Facility will enable the Company to preserve and stabilize the Business and prepare materials to appear before this Court to seek an order continuing the NOI Proceeding under the CCAA. Without the interim financing, the Company will be forced to cease operations to the detriment of its stakeholders.
- [29] The Proposal Trustee supports the approval of the Initial DIP Facility and DIP Lender's Charge.
- [30] In the circumstances, the Initial DIP Facility and the DIP Lender's Charge are approved.

#### Administration Charge

- [31] Section 64.2 of the BIA authorizes this Court to grant a super-priority charge on a debtor's Property to secure professional fees. Administration charges are routinely granted in insolvency proceedings where: (a) the debtor has limited means to obtain professional assistance; (b) the involvement of professional advisors is critical to the success of the proceedings under the BIA; and (c) the quantum of the proposed charge is

commensurate with the complexity of the debtor's business: see *Colossus Minerals Inc. (Re)*, 2014 ONSC 514 at para 11-15 and *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at para 33.

- [32] The quantum of the proposed Administration Charge is reasonable in the circumstances and not opposed by any person. The proposed Administration Charge is appropriate in the circumstances is approved.

#### Authorization to Pay Certain Pre-Filing Amounts

- [33] The Company requests authorization to pay, with the consent of the Proposal Trustee, up to an aggregate amount of \$250,000 for amounts owing for goods or services supplied to the Company prior to the NOI filing date if such payment is necessary to maintain the uninterrupted operations of the Business during this proceeding.
- [34] I agree that the ability for a debtor to pay certain critical suppliers in an NOI proceeding is consistent with the goal of the stay provisions of the BIA as it serves to encourage a debtor's successful reorganization see *1732427 Ontario Inc. v. 1787930 Ontario Inc.*, 2019 ONCA 947 at para 13.
- [35] However, in the present circumstances, there is nothing on the record which prohibits the Company from making payments to critical suppliers. Accordingly, no Court authorization is required at this time. That may change if the NOI proceeding is continued under the CCAA and the Company may request such authorization in that context should that occur.

#### Extension of time to file a proposal

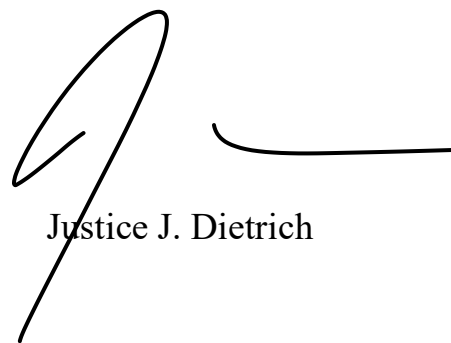
- [36] The current stay of proceedings is set to expire on April 28, 2025. The Company seeks an extension of the time to file a proposal up to and including May 13, 2025 to enable to continue its restructuring efforts and avoid a deemed bankruptcy.
- [37] Pursuant to s. 50.4(9) of the BIA, the Court has the authority to extend the period for filing a proposal and the stay of proceedings for a period of up to 45 days where it is satisfied that: (a) the insolvent person has acted, and is acting, in good faith and with due diligence; (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and (c) no creditor would be materially prejudiced if the extension being applied for were granted.
- [38] Based on the record before me, it appears that the Company is acting in good faith and with due diligence. A short initial extension is necessary so the Company can continue to pursue a restructuring. Given the approval of the Initial DIP Facility, the Company is expected to have sufficient liquidity to continue operations without material prejudice to any creditor.

[39] Accordingly, the requested extension is granted.

Disposition

[40] Order to go in the form signed by me this day.

April 25, 2025

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line.

Justice J. Dietrich