ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: **CV-23-00707394-00CL** **DATE:** **10 October 2023**

NO. ON LIST: **2**

TITLE OF PROCEEDING: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE KIMMEL:

1. Tacora Resources Inc. ("Tacora") is a private company incorporated under the *Business Corporations Act* (Ontario) with its head office in Toronto, Ontario.
2. Tacora operates the Scully Mine, located near Wabush, Newfoundland and Labrador, Canada. It produces, transports and sells high grade iron-ore concentrate. It employs over 450 people (just over half of whom are hourly wage earners under a collective agreement). Tacora also engages with other service providers and suppliers.
3. The cash flow projections prepared by Tacora and reviewed by the proposed Monitor, FTI Consulting, indicate that the company will run out of money this week without interim financing. The company has a number of secured obligations that are due today and has significant other obligations that have been declared by the counterparties to be in default and which could be subject to enforcement steps in the near term if a stay is not granted.
4. Tacora seeks an initial order under the *Companies' Creditors Arrangement Act* R.S.C. 1095, c. C-36 ("CCAA").
5. This application was made in the face of operational and liquidity challenges that Tacora has been attempting to address since Q3 2022, but has not been able to do so to date, despite:
    a. A strategic review process that was undertaken commencing in January 2023 in furtherance of which the applicant engaged Greenhill to assist it to, among other things, explore, review and evaluate a broad range of alternatives including sale opportunities or additional investment into Tacora (the "Strategic Process").
    b. Tacora's engagement of a mining operations consultant to, among other things, implement operational initiatives to ramp up production at the Scully Mine in February 2023.
    c. Various interim capital raises implemented to improve Tacora's liquidity position in collaboration with its primary secured creditors who also agreed to defer various debt obligations over the preceding months.
    d. Attempts over the past month to reach an agreement on a consensual restructuring and capitalization plan.
6. The applicant's liquidity and operational challenges and the confluence of factors that have led to the present application have transpired over the past few years since the Scully mine first became operational in 2019 and are detailed in the supporting materials filed.
7. No one appearing at the hearing today suggested that Tacora is not in need of urgent interim financing and court protection given its current circumstances. On that basis, there was no opposition to the requested initial order being granted today, on the understanding that the usual process will ensue and

the applicant will return within 10 days for a *de novo* hearing at which it will seek an amended and restated initial order.

8. The primary point of contention relates to the proposed DIP financing under the initial order.
9. Tacora has entered into an agreement for DIP financing dated October 9, 2023 with one of its significant secured creditors, Cargill, with which it also has various operational agreements. Among those other agreements is an Offtake Agreement, which is described by Tacora as a life of mine contract pursuant to which Tacora is required to sell and Cargill is required to buy all the iron order produced at the Scully Mine.
10. The reasons for the company choosing the Cargill DIP financing proposal are detailed in the materials filed and will not be reviewed in this short endorsement.
11. Prior to an earlier proposed CCAA filing last month, Tacora entered into an agreement for DIP financing dated September 11, 2023 with the other significant secured creditors, the Ad Hoc Group of Noteholders. That agreement was never implemented but the Ad Hoc Group of Noteholders is still willing to proceed with that agreement and has raised, on a preliminary basis, various process, governance and substantive issues with the now proposed DIP financing agreement with Cargill. In fairness to the Ad Hoc Group of Noteholders, they only received the terms of the Cargill Dip financing agreement early this morning and have not had an opportunity to fully review and consider their position. They will now have the time to do so between now and the comeback motion.
12. For today's purposes, the court is satisfied that:

    a. Tacora's registered office is located in Toronto, Ontario and the Ontario court is therefore an appropriate venue under s. 9(1) of the CCAA for these CCAA Proceedings.
    b. Tacora is a company that does business and has assets in Canada with total indebtedness, liabilities and obligations that exceed C$5,000,000. On a balance sheet test, the company is insolvent and, without interim financing, it will be unable to meet its obligations generally as they become due in the very near term. It is, thus, a "debtor company" to which the CCAA applies.
    c. The relief sought in the proposed initial order comes within the broad discretion of the court under s. 11 of the CCAA and is what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period (per s.11.001 of the CCAA). Tacora has limited the relief sought during the initial Stay Period to what is immediately required and intends to seek additional relief as necessary at the comeback motion.
    d. A stay of proceedings under s. 11.02(1), which preserves the *status quo* to stabilize the debtor company's situation by shielding it from its creditors while the restructuring process is underway, is necessary given certain obligations that are imminently due within the 10 day initial stay period. It will provide the breathing space that the applicant requires to continue its operations for the next 10 days, all for the benefit of the stakeholders.
    e. The provision in the Initial Order prohibiting any person from setting off pre-filing obligations against post-filing obligations is necessary and appropriate in the particular circumstances of this case. The main (although not the only) justification for the inclusion of this provision is the extensive contractual dealings between the company and Cargill and, in particular, obligations that Cargill has under the Offtake Agreement (and other agreements) upon which the applicant is dependent for its continuing operations and which, if set off against past obligations of the applicant, would undermine the intended restructuring process. The court has broad discretion to order this under s. 11 of the CCAA and the applicant points out that there is precedent for it in the decision of the Supreme Court of Canada in *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53, in which it was confirmed (at para. 62) that sections 11 and 11.02 of the CCAA authorize the Court to stay pre-post set-off.
    f. The court's authority to grant the requested priority DIP charge is found in 11.2 of the CCAA, and must be considered in light of the factors in s. 11.2(4) of the CCAA. Those factors and the

criteria for approval of DIP financing will be further considered at the comeback motion. There is an immediate need for interim financing which is limited under the initial installment under the Cargill DIP financing to what is needed by Tacora until the end of the initial 10 day period. The DIP Charge secures only the DIP financing provided during the initial Stay Period.

g. FTI has, based on the record currently before the court, satisfied the requirements of s. 11.7 of the CCAA to be appointed as the Monitor.
h. The requested administration charge is dependent upon the cash flow projections, which have been reviewed by the proposed Monitor. The effective cap of $1 million at any given time for this charge, which assumes obligations to professionals are paid in the normal course during the CCAA proceedings, appears fair and reasonable having regard to the requirements of s. 11.52 of the CCAA.
i. The proposed directors' charge is similarly limited to projected potential uninsured obligations and to what is fair and reasonable for the initial 10 day period having regard to the requirements of s. 11.51 of the CCAA and the need for continuity and to keep the directors in place.

13. I note that there was originally a request for a sealing order that was withdrawn.
14. For these reasons and in light of the approval of the proposed Monitor and having regard to the material filed for this motion, including the pre-filing report of the proposed monitor, I am satisfied that the relief sought for the initial 10-day period is limited to relief that is "reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period", and the Initial Order may issue in the form signed by me today. This order is effective from today's date and is enforceable without the need for entry and filing.
15. The come back hearing has been scheduled before me on Thursday October 19, 2023 commencing at 12:00 noon ET by Zoom. The parties shall advise the court of the schedule of pre-hearing steps that they agree to with a view to having all material for the comeback hearing served, filed and uploaded onto CaseLines bundle for that day by no later than 9 pm. ET on Wednesday October 18, 2023. Any materials from today's appearance that are relied upon shall also be uploaded, as should a copy of this endorsement and the Initial Order.
16. If the issues have not been narrowed, consideration should be given to proceeding on October 19, 2023 with only that which is essential for that day, with a further hearing to be scheduled.
17. If the parties encounter any difficulties in agreeing upon a schedule that achieves this, they may request an urgent case conferment before me through the Commercial List office.

KIMMEL J.