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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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)

FACTUM OF THE APPLICANT
(Re: Second Amended and Restated Initial Order and A&L Premium Finance Agreement Approval Order)
(Returnable March 18, 2024)

March 15, 2024

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TO: THE SERVICE LIST

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PART I - OVERVIEW[1]

1. Recent dramatic decreases in global iron ore prices have forced Tacora to draw down the remaining availability under the Cargill DIP Facility and seek additional DIP financing.

2. Given its immediate need for additional incremental liquidity, Tacora solicited, received and negotiated DIP proposals from both Cargill and the Investors. The Company's Board exercised their good faith business judgement and determined that the Investors' DIP proposal was the best DIP facility available to the Company. Tacora entered into the Replacement DIP Agreement with the Investors or their affiliates on March 9, 2024.

3. The economic terms of the Replacement DIP Agreement and Cargill's DIP proposal are substantially similar, but the Replacement DIP Facility provides certain key enhancements that benefit the Company. Tacora seeks this Court's approval of the Replacement DIP Facility, the Replacement DIP Charge and certain related relief.

4. This factum is filed in support of the Company's motion returnable March 18, 2024 for approval of:

   (a) the Second Amended and Restated Initial Order substantially in the form of the draft order at Tab 3 of the Motion Record of the Applicant dated March 11, 2024 (the "**Motion Record**") to, among other things:

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[1] Capitalized terms used and not defined herein have the meanings ascribed to them in the Affidavits of Joe Broking sworn October 9, 2023 (the "**First Broking Affidavit**"), October 15, 2023, January 17, 2024, February 2, 2024 (the "**Fourth Broking Affidavit**") and March 11, 2024 (the "**Fifth Broking Affidavit**", and collectively, the "**Broking Affidavits**").

(i) approve the Replacement DIP Agreement entered into between Tacora and the Investors or their affiliates pursuant to which the Investors have agreed to advance up to approximately $188,000,000 to Tacora to replace the existing DIP facility (the "**Cargill DIP Facility**") and fund Tacora's operations;

(ii) authorize and direct Tacora to repay the Cargill DIP Facility from the proceeds of the Replacement DIP Facility;

(iii) grant the corresponding Replacement DIP Charge against the Property as security for Tacora's obligations under the Replacement DIP Facility;

(iv) extend the Stay Period until and including May 19, 2024; and

(v) increase the Transaction Fee Charge from $5,600,000 to $5,989,917.50.

(b) the A&L Premium Finance Agreement Approval Order substantially in the form of the draft Order at Tab 5 of the Motion Record to, among other things, approve the A&L Premium Finance Agreement between Tacora and Marsh, for the renewal and financing of certain auto and liability insurance policies held by Tacora (the "**A&L Financed Policies**").

PART II - FACTS

5. The facts with respect to this motion are more fully set out in the Broking Affidavits.

A. Background

6. Tacora is a private company focused on the production and sale of high-grade and quality iron ore products that improve the efficiency and environmental performance of steel making. The Company is the second largest employer in the Labrador West region and is an important part of the local and provincial economy.[2]

[2] First Broking Affidavit, *supra* at para. 6.

7. As a result of liquidity issues and an inability to meet its obligations as they became due, Tacora sought and obtained protection under the CCAA by way of the Initial Order granted by this Court on October 10, 2023.[3]

8. On October 30, 2023, the Court granted the ARIO, which, among other things: (a) authorized Tacora to obtain and borrow up to the principal amount of $75,000,000 under the Cargill DIP Facility and approved the Post-Filing Credit Extensions under the DIP Agreement with Cargill up to the principal amount of $20,000,000; and (b) approved the Greenhill Engagement Letter, pursuant to which Greenhill was appointed as financial advisor and investment banker to the Applicant and granted a corresponding charge to a maximum amount of $5,600,000 to secure certain fees that may become payable thereunder (the "**Transaction Fee Charge**").[4]

9. On that same date, the Court granted the Solicitation Order which, among other things: (a) approved the Solicitation Process to solicit offers or proposals for a sale, restructuring, or recapitalization transaction in respect of Tacora's assets and business operations; and (b) authorized and directed Tacora, Greenhill and the Monitor to immediately commence the Solicitation Process.[5]

10. On January 24, 2024, the Court granted: (a) an order extending the Stay Period until and including March 18, 2024, to provide Tacora sufficient time to complete the Solicitation Process and select a Successful Bid;[6] and (b) the Property Financing Agreement Approval Order approving the Property Financing Agreement dated January 10, 2024, between Tacora and Marsh, with respect to Tacora's property insurance policies.[7]

11. The Solicitation Process has concluded and Tacora selected the Phase 2 Qualified Bid submitted by the Investors as the Successful Bid. Following the selection of the Successful Bid, Tacora and the Investors finalized and entered into the Subscription Agreement on January 29, 2024. Tacora will seek this Court's approval of the Subscription Agreement and the

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[3] *In the Matter of Tacora Resources Inc*., Initial Order of Kimmel J. dated October 10, 2023 (Court File No. CV-23-00707394-00CL).
[4] *In the Matter of Tacora Resources Inc.*, Amended and Restated Initial Order of Kimmel J. dated October 30, 2023 (Court File No. CV-23-00707394-00CL).
[5] *In the Matter of Tacora Resources Inc.*, Solicitation Order of Kimmel J. dated October 30, 2023 (Court File No. CV-23-00707394-00CL).
[6] Fifth Broking Affidavit, *supra* at para. 25; **see also** *In the Matter of Tacora Resources Inc.*, Stay Extension Order of Kimmel J. dated January 24, 2024 (Court File No. CV-23-00707394-00CL).
[7] Fifth Broking Affidavit at para. 31; **see also** *In the Matter of Tacora Resources Inc*., Property Finance Agreement Approval Order of Kimmel J. dated January 24, 2024 (Court File No. CV-23-00707394-00CL).

Transactions contemplated thereunder at the sale approval motion returnable April 10 – 12, 2024.

B. Replacement DIP

12. Recent decreases in the price of iron ore resulted in, among other things, Tacora submitting a DIP advance request for the remaining maximum amount of $19,500,000 available under the Cargill DIP Facility weeks earlier than anticipated and Tacora requiring additional DIP financing.[8] Tacora solicited DIP proposals from both Cargill and the Investors.[9] Following receipt of initial proposals, Stikeman and Greenhill, in consultation with the Monitor, communicated key issues in each party's DIP proposal and negotiated with both parties to secure the best possible terms for the Company.[10]

13. Following these negotiations, the DIP proposals from each of the Investors and Cargill were provided to the Company's Board and management. Following receipt of advice from Greenhill and Stikeman, and after receiving input and views from the Monitor, the Board exercised its good faith business judgement and determined that the Investors' DIP proposal was the best DIP facility available to the Company. On March 10, 2024, Tacora entered into the Replacement DIP Agreement with the Investors.[11]

14. The Replacement DIP Agreement provides for a maximum facility of $188,000,000 (less the Deposit of $26,865,000 paid by the Investors and held by the Monitor in trust pursuant to the Subscription Agreement). The Replacement DIP Facility will be used to repay all amounts owing to the Cargill as the existing DIP lender under the Cargill DIP Facility and fund Tacora's business, including the costs of the CCAA Proceedings.[12]

15. The economic terms of the Replacement DIP Agreement are set forth in detail in the Fifth Broking Affidavit and Confidential Appendix "1" to the Monitor's Third Report.[13]

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[8] Fifth Broking Affidavit, *supra* at para. 8.
[9] Fifth Broking Affidavit, *supra* at para. 11.
[10] Fifth Broking Affidavit, *supra* at para. 12.
[11] Fifth Broking Affidavit, *supra* at para. 12.
[12] Fifth Broking Affidavit, *supra* at para. 14.
[13] Fifth Broking Affidavit, *supra* at para. 16; **see also** Third Report of FTI Consulting Canada Inc. dated March 13, 2024 ("**Third Report**"), Confidential Appendix "1".

C. Tacora's Recent Activities

16. Tacora has been working in good faith and with due diligence to advance its restructuring within these CCAA Proceedings since the last extension of the Stay Period was approved by this Court on January 24, 2024.[14]

17. Tacora, with the assistance of Greenhill and the Monitor, as applicable, has, among other things:

(a) continued to operate in the ordinary course of business;

(b) finalized the Solicitation Process by accepting the Investors' Bid as the Successful Bid;

(c) finalized definitive transaction documents for the Successful Bid with the Investors;

(d) settled a schedule for the hearing of the sale approval motion;

(e) updated and revised its cash flow forecast to address the recent, significant decrease in iron ore prices;

(f) engaged in discussions with the Canada Revenue Agency regarding the refund of income tax credits;

(g) solicited and negotiated additional DIP financing;

(h) entered into the A&L Premium Financing Agreement for the funding of Tacora's automotive and liability insurance policies;

(i) scheduled a Court hearing to hear a dispute between Tacora and MFC involving certain pre-filing claims asserted against Tacora by MFC; and

(j) responded to creditor and stakeholder enquiries regarding these CCAA Proceedings.[15]

18. The Stay Period currently expires on March 18, 2024.

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[14] Fifth Broking Affidavit, *supra* at para. 25.
[15] Fifth Broking Affidavit at para. 26.

D. Insurance Orders

19. Tacora's various auto and liability insurance policies were set to renew on March 1, 2024. Historically, Tacora has financed the annual premiums due under its auto and liability insurance policies.[16]

20. On March 4, 2024, Tacora entered into the A&L Premium Finance Agreement, pursuant to which FIRST Canada has agreed to provide financing in the amount of C$467,134.42 towards the total premium amount of C$692,051.00 for the financing and renewal of the A&L Financed Policies. The agreement is subject to Tacora making a down payment of C$224,916.58 towards the A&L Financed Policies and this Court granting the A&L Premium Finance Agreement Approval Order sought on this motion.[17]

PART II - ISSUES

21. The issues to be determined on this motion are whether this Court should grant the Second Amended and Restated Initial Order and the A&L Premium Finance Agreement Approval Order.

PART III - LAW AND ANALYSIS

A. The Second Amended and Restated Initial Order Should be Granted

1. The Court Should Approve the Replacement DIP Facility

(a) Framework and considerations for approval of DIP financing

22. DIP financing is specifically authorized under section 11.2 of the CCAA. Subsection 11.2(4) sets out the following factors that the Court may consider in determining whether to make an order approving DIP financing:

> (a) the period during which the company is expected to be subject to proceedings under this Act;

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[16] Fifth Broking Affidavit, *supra* at para. 32.
[17] Fifth Broking Affidavit, *supra* at para. 33.

(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.[18]

23. Courts have recognized that while the factors set out in subsection 11.2(4) of the CCAA are typically addressed in the context of whether a particular interim financing proposal will be approved, these factors are "equally applicable in deciding who shall be the DIP lender and on what terms the DIP financing is to be provided."[19] In selecting a DIP proposal, the Court must also make an "independent determination" having regard to the factors in subsection 11.2(4).[20] The Company's selection of the DIP facility and the business judgement of the Board is not determinative but is a factor that should be weighed by the Court. [21]

24. In *Great Basin,* the Court stated that when approving DIP financing the Court "must determine which proposal is most appropriate and most importantly, which will best serve the interests of the stakeholders of the [Applicant] as a whole by enhancing the prospects of a successful restructuring."[22] [Emphasis added.]

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[18] CCAA, s. 11.2(4).
[19] *Great Basin Gold Ltd (Re)*, 2012 BCSC 1459 ("***Great Basin***") at para. 14.
[20] *Crystallex (Re)*, 2012 ONCA 404 ("***Crystallex***") at para. 85.
[21] *Crystallex, supra* at para. 84.
[22] *Great Basin, supra* at para. 15.

(b) The Replacement DIP Facility best serves the interests of Tacora and its stakeholders as a whole

(i) The Replacement DIP Agreement is economically comparable to the Cargill DIP proposal

25. In *Great Basin*, the Court considered pricing and fees, milestones and other covenants of the DIP proposals in deciding which DIP proposal should be approved. The Court acknowledged that "the financial terms of each proposal, [and] factors such as timing, prejudice, risk and uncertainty play a central role in assessing each proposal."[23]

26. The economic terms of the Replacement DIP Agreement and Cargill's DIP proposal are similar. The two DIP proposals provide similar availability. In terms of the overall facility being provided, the Cargill DIP proposal provides for a total of $147,500,000 (including Post-Filing Credit Extensions), whereas the Replacement DIP Agreement provides for availability of $188,000,000, which accounts for Tacora no longer having the benefit of the Stockpile Agreement if the Replacement DIP Agreement is approved by the Court and Cargill elects not to extend the Stockpile Agreement.[24]

27. With respect to cost of capital, both DIP proposals have the same interest rate of 10% per annum, compounded monthly. The Cargill DIP proposal provides for an exit fee of 2% payable in cash which, calculated on the incremental committed financing of $52,500,000, is an additional $1,050,000. The Replacement DIP Agreement provides for an Exit Fee of 1.5% of the aggregate committed amount ($188,000,000 less the Deposit, being $161,135,000) equal to $2,417,025. In addition, if the Company elects to extend the Maturity Date from June 1, 2024 to June 30, 2024, an Extension Fee of an additional 1.5%, being $2,417,025, is payable.[25] However, if the Transactions close, Tacora has the option to equitize the Exit Fee and the Extension Fee (if applicable) and pay both fees with common shares of Tacora of an equivalent value.[26]

28. Equitization of the Exit Fee under the Replacement DIP Agreement will assist the Company preserve cash upon closing of the Transactions (provided it is Court approved) with the Investors, which has been a critical goal of the Company as set forth in the Fifth Broking Affidavit.

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[23] *Great Basin, supra* at paras. 10, 14.
[24] Fifth Broking Affidavit, *supra* at para. 16(a).
[25] Fifth Broking Affidavit, *supra* at para.16(c).
[26] Fifth Broking Affidavit, *supra* at para. 16(d).

(ii) The Replacement DIP Agreement provides additional benefits to Tacora over the Cargill DIP Proposal

29. As this Court recognized at the Comeback Hearing, the existing DIP Agreement contains terms that benefit the commercial interests of Cargill and reduce the Company's flexibility and/or options in the context of the Company's Solicitation Process.[27] The Court was referring to the Event of Default in the Cargill DIP Facility, which remained in Cargill's DIP proposal, which provides that the termination, suspension or disclaimer of the Existing Arrangements (including the Offtake Agreement and the Onshore Agreement), or the taking of any steps to terminate, suspend or disclaim any of the Existing Arrangements (other than in certain limited circumstances) constitutes an Event of Default.[28] Conversely, the Replacement DIP Agreement does not include any such restrictions.[29]

30. As acknowledged by the Court at the Comeback Hearing, it was always contemplated that the Offtake Agreement could be disclaimed or replaced in the context of a transaction or restructuring arising out of the Solicitation Process or in the context of the repayment and replacement of the Cargill DIP Facility.[30] The Solicitation Process agreed to in the Cargill DIP Facility expressly contemplated that the Company would solicit "Alternative Offtake or Services Agreements" as part of the Solicitation Process[31] and the Company maintained the flexibility to refinance (repay and replace) the Cargill DIP Facility at any time.[32]

31. The Successful Bid contemplates the replacement of the Offtake Agreement with a new offtake provided by Javelin. If the Successful Bid is approved by the Court, the Company may need to take steps in contemplation of the termination of the Offtake Agreement prior to closing the Successful Bid in order to ensure an orderly transition to Javelin. Under Cargill's DIP proposal, Cargill might take the position that such steps constitute an Event of Default and immediately terminate its DIP Facility.[33] Under the DIP Replacement Agreement, the Company will have the flexibility to attempt to orchestrate a smooth transition from the Offtake Agreement to a new offtake agreement.

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[27] *Tacora Resources Inc (Re)*, 2023 ONSC 6126 ("***Tacora Comeback Decision***") at para. 37.
[28] Fifth Broking Affidavit, *supra* at para. 24.
[29] Fifth Broking Affidavit, *supra* at para. 23.
[30] *Tacora Comeback Decision*, *supra* at paras. 103 and 135.
[31] *Tacora Comeback Decision*, *supra* at para. 103.
[32] *Tacora Comeback Decision*, *supra* at para. 120.
[33] Fifth Broking Affidavit, *supra* at para. 24.

(iii) The Replacement DIP Agreement aligns the Lenders' interests with the interests of Tacora and its stakeholders as a whole

32. As set out above, the Court-approved Solicitation Process run by the Company with the assistance of Greenhill and Stikeman, and under the supervision of the Monitor, resulted in a single Phase 2 Qualified Bid being submitted (by the Investors). Cargill had the requisite understanding of Tacora's business and the financial wherewithal to submit a winning Bid, but failed to submit a Phase 2 Qualified Bid.

33. The benefits of the Transactions with the Investors are outlined in the Fourth Broking Affidavit. Without repeating all of the benefits, the Transactions provide for continued employment of all current employees and the assumption of all Tacora's equipment capital leases, all outstanding Pre-Filing Trade Amounts and Post-Filing Trade Amounts, and the vast majority of Tacora's contractual obligations. The Transactions contemplated by the Subscription Agreement, if approved by this Court, represent the best available outcome for Tacora, its creditors, and other stakeholders in the circumstances.[34]

34. The Replacement DIP Agreement represents a significant investment of new money in Tacora by the Investors, including RCF and Javelin. In addition to providing the necessary flexibility to permit the Company to continue operating in the ordinary course while it seeks approval of the Successful Bid, this investment constitutes a critical commitment to Tacora and its future success.[35]

35. The Ad Hoc Group is owed approximately $230 million in pre-filing secured debt and have committed to invest a further approximately $128 million in Tacora pursuant to the Subscription Agreement. RCF and Javelin were not significant stakeholders of Tacora prior to the CCAA Proceedings and hold only an immaterial portion of the Senior Secured Notes. RCF and Javelin's commitment to advance approximately $100 million of DIP financing to Tacora in advance of their commitment to invest over $140 million of new equity in Tacora pursuant to the Subscription Agreement demonstrates their commitment and motivation to complete the Transactions and provide the Company, its stakeholders and the Court with more certainty that Tacora will emerge successfully from these CCAA Proceedings.[36]

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[34] Fifth Broking Affidavit, *supra* at para. 21.
[35] Fifth Broking Affidavit, *supra* at para. 19.
[36] Fifth Broking Affidavit, *supra* at para. 19.

36. The impact of the DIP investment, in addition to providing critical funding, is to align the interests of the Investors with those of Tacora and its stakeholders – the emergence of Tacora from the CCAA Proceedings as soon as possible pursuant to a successful restructuring.[37]

(iv) Cargill's interests are contrary to the interests of Tacora and its stakeholders as a whole

37. Courts are required to carefully scrutinize financing proposals that may advance the interests of one particular stakeholder and "be constantly vigilant against such strategies."[38]

38. In *Quest University Canada (Re)*, in determining whether competing DIP loan proposals would enhance the prospects of a viable compromise or arrangement, the Court considered the competing parties' true intentions behind the financing proposal, and whether such motives were counterproductive to the interests of the CCAA debtor and its stakeholders.[39] The Court ultimately expressed concern over the alternate proposed DIP lender's intentions, given its lack of independence and certain control provisions in its DIP proposal, which would not serve the interests of the debtor and its stakeholders as a whole.[40]

39. In the *Tacora Comeback Decision*, this Court recognized that both Cargill and the Ad Hoc Group have their own commercial interests that will inevitably influence their conduct in these CCAA Proceedings.[41] As this Court recognized, the Cargill DIP Facility contains terms that benefit Cargill's commercial interests "with respect to the preservation of the Offtake Agreement pending a transaction arising from, or the termination of, the Solicitation Process".[42]

40. Notwithstanding that Cargill possessed the necessary knowledge regarding Tacora's operations and the required financial wherewithal to submit a Phase 2 Qualified Bid, Cargill chose not to. Instead, Cargill has decided to oppose approval of the Transactions in an attempt to protect the Offtake Agreement.

41. On February 2, 2024, Joe Broking, the President and Chief Executive Officer of Tacora, outlined his concerns about the significant damage that will result to Tacora and its stakeholders if Tacora cannot emerge from the CCAA Proceedings as a going concern in an expedited

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[37] Fifth Broking Affidavit, *supra* at para. 20.
[38] *Great Basin*, *supra* at paras. 179-181; *Tacora Comeback Decision* at para. 127.
[39] *Quest University Canada (Re),* 2020 BCSC 318 ("***Quest***") at paras. 85-86, 95-100.
[40] *Quest*, *supra* at paras. 70 and 99-100.
[41] *Tacora Comeback Decision*, *supra* at para. 128.
[42] *Tacora Comeback Decision*, *supra* at para. 37.

manner.[43] Further, Mr. Broking noted that the volatile nature of the iron ore market, which is difficult to mitigate through hedging activities while the CCAA Proceedings are ongoing, can have a rapid and significant negative impact on Tacora's already limited liquidity.[44] Between January 1, 2024, and March 8, 2024, the price of iron ore dropped from $144/tonne to $108.40/tonne.

42. While Tacora can access additional incremental liquidity through additional DIP financing (subject to Court approval), Tacora and its stakeholders will be prejudiced if the Transactions cannot close quickly.[45] There is no controversy that Tacora has historically operated, and will continue to operate, at a deficit until production can ramp up. The Company's capital expenditure plan to ramp up production requires significant capital investment as soon as possible. Any additional debt incurred by Tacora during the CCAA will result in less capital being available for these capital investments.[46]

43. It is transparent and unmistakable that Cargill's commercial interest is not aligned with the interests of Tacora and its stakeholders as a whole — protection of their Offtake Agreement versus approval of the Transactions and Tacora's timely emergence from the CCAA Proceedings as a going concern. Closing of the Transactions will result in significant benefits to Tacora, its secured creditors and its broader stakeholder group. In contrast, Cargill is the only stakeholder who stands to benefit if the Transactions do not close in a timely manner. In this scenario, Cargill would continue to profit from the Offtake Agreement while continuing to prime the Noteholders' secured debt with additional advances under the Cargill DIP Facility.

44. For the reasons outlined above, the Cargill DIP proposal does not enhance the prospects of a successful restructuring and therefore does not serve the best interests of Tacora's stakeholders as a whole. The Replacement DIP Agreement represents the best DIP proposal available to Tacora in the circumstances.

2. Replacement DIP Charge Should be Approved

45. Tacora seeks this Court's approval of a Replacement DIP Charge against the Property as security for Tacora's obligations under the Replacement DIP Agreement.

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[43] Fourth Broking Affidavit, *supra* at paras. 70-74.
[44] Fourth Broking Affidavit, *supra* at para. 71.
[45] Fourth Broking Affidavit, *supra* at para. 72.
[46] Fourth Broking Affidavit, *supra* at para. 72.

46. Pursuant to the Replacement DIP Agreement, the Replacement DIP Charge would rank senior to all encumbrances, except the Permitted Priority Liens, which include the Administration Charge, the Directors' Charge, the KERP Charge, the Transaction Fee Charge and the Liens, as security for the Replacement DIP Facility.[47]

47. This Court has jurisdiction to grant the Replacement DIP Charge "in an amount that the court considers appropriate", provided notice is given to the secured creditors who are likely to be affected by such security or charge.[48] The Court also has jurisdiction to order that the DIP Charge rank in priority over the claim of any secured creditor of the Company.[49]

48. In determining whether to grant the Replacement DIP Charge, the Court is to consider the same factors enumerated in subsection 11.2(4) that the Court is to consider in determining whether to approve the Replacement DIP Facility.[50]

49. The application of the facts to the criteria enumerated in subsection 11.2(4) support approval of the Replacement DIP Agreement and the Replacement DIP Charge on the terms sought in the Second Amended and Restated Initial Order:

(a) notice of this motion has been given to Tacora's major secured creditors, including Cargill;[51]

(b) based on the Updated Cash Flow Forecast, the Replacement DIP Facility should provide adequate liquidity to fund Tacora through the sale approval hearing and the implementation and closing of the Transactions;[52]

(c) the funding of the Replacement DIP Facility is necessary for Tacora to continue operating in the ordinary course while it seeks approval of the Successful Bid;[53]

(d) the Replacement DIP Charge will not secure any obligations that existed before the Second Amended and Restated Initial Order is made; and

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[47] Fifth Broking Affidavit, *supra* at para. 14.
[48] CCAA, s. 11.2(1).
[49] CCAA, s. 11.2(2).
[50] CCAA, s. 11.2(2).
[51] Affidavit of Service of Philip Yang sworn March 11, 2024 (Court File No. CV-23-00707394-00CL).
[52] Fifth Broking Affidavit, *supra* at para. 29.
[53] Fifth Broking Affidavit, *supra* at para. 19.

(e) the Monitor supports this Court's approval of the Replacement DIP Agreement and the Replacement DIP Charge.[54]

3. Transaction Fee Charge Should be Increased

50. Pursuant to the ARIO, on October 30, 2023, this Court approved the Greenhill Engagement Letter and the corresponding Transaction Fee Charge to a maximum amount of $5,600,000 to secure certain fees that may become payable thereunder.[55]

51. Tacora now seeks this Court's approval to increase the Transaction Fee Charge from $5,600,000 to $5,989,917.50.[56]

52. Based on the quantum of the Replacement DIP Facility, Greenhill will earn a financing fee of $389,917.50 pursuant to the Greenhill Engagement Letter approved by this Court. To assist the Company in preserving liquidity, Greenhill has agreed to defer this financing fee for the duration of the CCAA Proceedings, and, accordingly, Tacora seeks to increase the Transaction Fee Charge to secure the additional financing fee amounts.[57]

53. The Monitor supports the approval of the Second Amended and Restated Initial Order,[58] which includes the proposed increase to the Transaction Fee Charge.

4. Stay Period Should be Extended

54. The current Stay Period expires on March 18, 2024. Tacora is seeking an extension of the Stay Period until and including May 19, 2024.

55. The Court may grant an extension of the Stay Period "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.[59]

56. The extension of the Stay Period until and including May 19, 2024, is necessary and appropriate in the circumstances, as:

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[54] Third Report, *supra* at para. 36.
[55] Third Report, *supra* at para. 5.
[56] Fifth Broking Affidavit, *supra* at para. 5.
[57] Fifth Broking Affidavit, *supra* at para 39.
[58] Third Report, *supra* at para. 36.
[59] CCAA, s. 11.02(2) and (3).

(a) the requested extension of the Stay Period will provide sufficient time for Tacora's sale approval motion to be heard and decided by this Court;[60]

(b) in the event the Court approves the Subscription Agreement and the Transactions contemplated therein, the requested extension of the Stay Period will be necessary in order for Tacora to close the Transactions;[61]

(c) Tacora has acted, and continues to act, in good faith and with due diligence;[62]

(d) the proposed extension of the Stay Period will provide significant benefits to Tacora's stakeholders;[63]

(e) Tacora's creditors will not be materially prejudiced by the proposed extension of the Stay Period;[64]

(f) as detailed in the Updated Cash Flow Forecast, should the spot price of iron ore remain stable, with access to the Replacement DIP Facility, Tacora is expected to maintain sufficient liquidity to fund operations during the contemplated extension of the Stay Period;[65] and

(g) the Monitor supports the requested extension of the Stay Period.[66]

57. Accordingly, Tacora believes the requested extension of the Stay Period until and including May 19, 2024, is necessary and appropriate in the circumstances.

B. A&L Premium Finance Agreement Approval Order Should be Granted

58. Tacora is seeking approval of the A&L Premium Finance Agreement and issuance of an order carving out certain exceptions to the Second Amended and Restated Initial Order in order to give effect to the terms of the A&L Premium Finance Agreement.[67]

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[60] Fifth Broking Affidavit, *supra* at para. 27; **see also** Third Report, *supra* at para. 41.
[61] Fifth Broking Affidavit, *supra* at para. 27; **see also** Third Report, *supra* at para. 41.
[62] Fifth Broking Affidavit, *supra* at para. 28; **see also** Third Report, *supra* at para. 41.
[63] Fifth Broking Affidavit, *supra* at para. 30.
[64] Third Report, *supra* at para. 41.
[65] Fifth Broking Affidavit, *supra* at para. 29; **see also** Third Report, *supra* at para. 40.
[66] Fifth Broking Affidavit, *supra* at para. 30; **see also** Third Report, *supra* at para. 41.
[67] Fifth Broking Affidavit, *supra* at para. 34.

59. The proposed order is on substantially the same terms as the Property Financing Agreement Approval Order granted by this Court on January 25, 2024.[68]

60. Among other things, the proposed A&L Premium Finance Agreement Approval Order provides:

(a) the validity and priority of the Court-ordered priority charges set out in paragraphs 47 and 50 of the Second Amended and Restated Initial Order are not applicable to any unearned premiums under the A&L Financed Policies;

(b) approval of Tacora's assignment to FIRST Canada of a security interest in the A&L Financed Policies in accordance with the terms of the A&L Premium Finance Agreement;

(c) notwithstanding paragraphs 4 and 14 – 16 of the Second Amended and Restated Initial Order, approval of FIRST Canada's right as agent under the A&L Premium Finance Agreement, after providing thirty (30) days' written notice to the Applicant and the Monitor, to: (i) cancel the A&L Financed Policies; (ii) receive all sums assigned to FIRST Canada; and (iii) execute and deliver on behalf of the Applicant all documents relating to the A&L Financed Policies; and

(d) if and after any of the A&L Financed Policies are cancelled, providing for FIRST Canada to have the right to receive all unearned premiums and other funds assigned to FIRST Canada as security.[69]

61. It is crucial to Tacora's business that it maintains auto and liability insurance. Given Tacora's liquidity situation, it is prudent to finance the A&L Financed Policies. Accordingly, approval of the A&L Premium Financing Agreement will be beneficial to Tacora and its stakeholders.[70]

62. Payments due to FIRST Canada under the A&L Premium Finance Agreement are spread out in nine monthly payments. Such payments to be made in the CCAA Proceedings are

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[68] Fifth Broking Affidavit, *supra* at para. 35; **see also** *In the Matter of Tacora Resources Inc*., Order of Kimmel J. dated January 24, 2024 (Court File No. CV-23-00707394-00CL).
[69] Fifth Broking Affidavit, *supra* at para. 36.
[70] Fifth Broking Affidavit, *supra* at para. 37.

in compliance with the Cargill DIP Facility, the Replacement DIP Agreement and the Updated Cash Flow Forecast.[71]

63. The Monitor supports approval of the A&L Premium Finance Agreement and related relief in the A&L Premium Finance Agreement Approval Order.[72]

PART IV - ORDER SOUGHT

64. Tacora respectfully requests that this Court grant the Second Amended and Restated Initial Order and the A&L Premium Finance Agreement Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of March, 2024.

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Counsel for the Applicant

[71] Fifth Broking Affidavit, *supra* at para. 38; **see also** Third Report, *supra* at para. 46.
[72] Third Report, *supra* at para. 47.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Crystallex (Re)*, 2012 ONCA 404.
2. *Great Basin Gold Ltd (Re)*, 2012 BCSC 1459.
3. *Quest University Canada (Re)*, 2020 BCSC 318.
4. *Stelco Inc, Re*, 2005 CanLII 40140.
5. *Tacora Resources Inc (Re)*, 2023 ONSC 6126.

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(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.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.

(Applicant)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT
(Second Amended and Restated Initial Order and A&L Premium Finance Agreement Approval Order)

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