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.

MOTION RECORD OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.
(Global Process Motion)

(Motion Returnable June 26, 2024)

June 11, 2024

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert J. Chadwick (LSO No. 35165K)
rchadwick@goodmans.ca

Caroline Descours (LSO No. 58251A)
cdescours@goodmans.ca

Peter Kolla (LSO No. 54608K)
pkolla@goodmans.ca

Sarah Stothart (LSO No. 73068O)
sstothart@goodmans.ca

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.

I N D E X

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NOTICE OF MOTION
(Global Process Motion)

Cargill, Incorporated ("**Cargill Inc.**") and Cargill International Trading Pte Ltd. ("**CITPL**" and together, "**Cargill**") will make a motion before Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) on June 26, 2024 at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard,

☐ In writing under subrule 37.12.1(1);

☐ In writing as an opposed motion under subrule 37.12.1(4);

☒ In person;

☐ By telephone conference;

☐ By video conference.

THE MOTION IS FOR:

(a) a declaration that, as a matter of law, a reverse vesting order ("**RVO**") is not available to a debtor under the *Companies' Creditors Arrangement Act*, RSC 1985,

c. C-36, as amended ("**CCAA**") where (i) there is a material unsecured creditor in a position to vote against a CCAA plan of compromise or arrangement and the plan cannot satisfy section 6(1) of the CCAA without the support of such unsecured creditor; (ii) that unsecured creditor opposes the RVO and the RVO is sought over their objection; and (iii) there is an unsecured CCAA plan alternative which provides for consideration to all affected unsecured creditors in the form of restructured shares or other consideration; and

(b) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Overview

1. In these CCAA proceedings, Tacora Resources Inc. ("**Tacora**" or the "**Company**") has previously sought, and may seek again, a form of extraordinary relief: court approval of an RVO transaction that would come at the expense of stranding its largest unsecured creditor's claim in excess of USD $500 million, over the objection of that creditor, in a situation where Tacora would not be able to do so via a CCAA plan of compromise or arrangement.

2. Cargill seeks a declaration that, as a matter of law, an RVO is not available in such a circumstance, in lieu of a negotiated and consensual plan of compromise or arrangement or an asset sale transaction. An RVO cannot be employed to do indirectly what the CCAA law does not allow to be done directly.

3. While Cargill initially sought to bring the present motion in an effort to obviate the need to address Tacora's desired Disclaimer of the Offtake Agreement (described and defined below), it subsequently considered that these legal issues could be considered alongside any factual and

legal issues associated with the application of the legal test under *Harte Gold Corp. (Re)*, 2022 ONSC 653, and applicable law under the CCAA, on any eventual RVO transaction. Nonetheless, Cargill files this Notice of Motion pursuant to the Endorsement of Justice Kimmel dated June 7, 2024, directing that this motion is to be raised as a "question of legal impermissibility" on the basis of assumed facts on June 26, 2024, otherwise Cargill would "be foreclosed from raising the intended arguments on that [Global Process Motion] at the sale approval motion if the successful transaction in the Sale Process is a share (RVO) deal." To the extent any party objects to this motion as hypothetical or premature because the facts of the Second Sale Process and any proposed RVO transaction are not yet known, or otherwise, or the Court finds that this motion cannot be properly determined for a similar reason, then Cargill, Tacora and any third parties should be permitted to raise these issues on any future transaction approval hearing once the factual circumstances have crystallized.

The Offtake Agreement

4. Tacora is a private company focused on the production and sale of iron ore concentrate. It owns the Scully Mine, located in Labrador, which it acquired in 2017.

5. Tacora and CITPL are parties to an Iron Ore Sale and Purchase Contract, dated April 5, 2017 and restated on or about November 11, 2018, and as further amended from time to time, whereby Cargill buys 100% of the iron ore concentrate production at the Scully Mine and performs ancillary services for Tacora (the "**Offtake Agreement**"). The Offtake Agreement was amended in 2020 to last for the life of the Scully Mine.

Tacora's CCAA Proceedings

6. On October 10, 2023, Tacora was granted protection under the CCAA pursuant to an initial order (as amended, the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Most recently, the stay of proceedings was extended to July 29, 2024.

7. From October 30, 2023 to January 19, 2024, Tacora solicited offers or proposals for a sale, restructuring or recapitalization transaction in respect of Tacora's assets and business operations, through a two-phase sale, investment and services solicitation process approved by the Court (the "**SISP**").

8. As part of the SISP, Tacora received three Phase 2 bids (including a bid from Cargill), and selected a bid from a consortium formed by an ad hoc ground of noteholders and new equity participants as the successful bid (the "**AHG Reverse Vesting Transaction**"). The AHG Reverse Vesting Transaction was in the form of an RVO which did not contemplate assuming the Offtake Agreement. The AHG Reverse Vesting Transaction provided no recovery to any affected claims that were not being paid or assumed as part of the transaction (the "**Affected Claims**"). The AHG Reverse Vesting Transaction was a disguised asset sale with a mechanic to transfer the shares of Tacora to the purchaser in the form of a subscription agreement for no consideration to any creditors with Affected Claims. It was not a better or superior recovery for any Affected Claims: it was zero recovery to such creditors like Cargill.

9. Upon selecting the AHG Reverse Vesting Transaction as the successful bid in the SISP, Tacora brought a motion on February 2, 2024 seeking an RVO from this Court to approve the transaction contemplated by the AHG Reverse Vesting Transaction (the "**RVO Motion**"). Tacora

sought this relief in order to rid itself of its obligations under the Offtake Agreement (without, at that time, purporting to follow the disclaimer procedures of section 32 of the CCAA).

10. Cargill disputed this relief on numerous bases, including that an RVO is an extraordinary remedy that was not available or appropriate, as it was not the only available transaction or the best available alternative for Tacora and its stakeholders in the circumstances.

11. The AHG Reverse Vesting Transaction was subsequently withdrawn as a result of an unfulfilled condition, and Tacora therefore withdrew the RVO Motion.

12. On May 16, 2024, Tacora delivered a Notice of Disclaimer to Cargill seeking to disclaim the Offtake Agreement and the related Iron Ore Stockpile Purchase Agreement dated December 17, 2019 (the "**Stockpile Agreement**") (the "**Disclaimer**").

13. On June 5, 2024, Tacora sought and obtained approval of a new Sale Process Order, which would see a further sale solicitation process occur from early June to July 2024 (the "**Second Sale Process**").

14. Cargill has brought a motion for an order that the Offtake Agreement and Stockpile Agreement not be disclaimed on the basis that they are eligible financial contracts, financing agreements and/or on the basis the Disclaimer will not enhance the prospects of a viable restructuring or arrangement. Cargill is of the view the Disclaimer is not valid under the CCAA based on any outlined grounds.

15. The Second Sale Process invites submission of transactions in the form of an asset purchase transaction or share purchase transaction. Tacora has made clear that its preferred transaction structure is an RVO.

Disclaiming the Offtake Agreement will make Cargill Tacora's largest unsecured creditor

16. If the Offtake Agreement is disclaimed, the effect would be to create a damages claim in excess of US$500 million in favour of Cargill against Tacora.

17. In such a circumstance, Cargill would be the largest unsecured creditor of Tacora, resulting in a claim that could block a vote of an unsecured creditor class on a CCAA plan of compromise or arrangement (the "**CCAA Plan**").

Cargill could vote against any plan that erases its claim

18. In the event Tacora presents a share transaction (which could only be presented by way of a CCAA plan of arrangement or RVO) that would strand the Offtake Agreement and Stockpile Agreement without any consideration for Cargill's damages claim, Cargill could oppose such a transaction.

Tacora could proceed with a CCAA Plan

19. Tacora obtained a Claims Procedure Order in connection with a potential restructuring and launched the claims process, in order to be in a position to seek a Meeting Order and advance a CCAA Plan.

20. Cargill itself is considering and may present a CCAA Plan in connection with its bid in the Second Sale Process or to acquire the restructured shares following the completion of an asset sale. In any event, an alternative to an RVO could be available to Tacora, because it is open to Tacora as the CCAA debtor to proceed with an unsecured CCAA Plan which provides for consideration to all affected unsecured creditors in the form of restructured shares or other consideration, either alone or in combination with an asset sale.

General

21. This Global Process Motion is based on three assumed facts:

(a) there is a material unsecured creditor in a position to vote against a CCAA plan of compromise or arrangement;

(b) that unsecured creditor opposes the RVO and the RVO is sought over their objection; and

(c) there is an unsecured CCAA plan alternative which provides for consideration to all affected unsecured creditors in the form of restructured shares or other consideration.

22. Where these three facts are present, an RVO is not available as a matter of law.

23. An RVO is an extraordinary remedy. It is not a work-around to avoid the negotiation and compromise with significant creditors that would otherwise be necessary to ensure a CCAA Plan can be completed. No Canadian case law has established otherwise. If Tacora is not in a position to obtain unsecured creditor support for an RVO transaction or for an unsecured class vote on a CCAA Plan, it is required to proceed by way of an asset sale.

24. The CCAA, including section 11 and 32 and the Regulations thereof.

25. Rules 2.03, 3.02, 10.01, 12.07 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

26. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

27. To the extent necessary, the evidence filed on the other motions to be heard on June 26, 2024; and

28. Such further and other materials as counsel may advise and this Honourable Court may permit, including, to the extent necessary, the evidence filed by Cargill in respect of the RVO Motion.

June 11, 2024

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
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Sarah Stothart LSO#73068O
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Tel: 416.979.2211

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pkolla@goodmans.ca

Sarah Stothart (LSO No. 73068O)
sstothart@goodmans.ca

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.

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