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)

NOTICE OF MOTION
(Returnable June 26, 2024)

Tacora Resources Inc. ("**Tacora**", "**Company**" or the "**Applicant**") will make a Motion before the Honourable Madam Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) on June 26, 2024, at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard in person at courtroom 8-1, 330 University Avenue, Toronto, Ontario.

THE MOTION IS FOR:

1. A declaration that the Offtake Agreement and the Debt Documents (each as defined below) may, as a matter of law, be transferred to and vested in a newly incorporated company ("**ResidualCo**") pursuant to a reverse vesting order ("**RVO**"); and

2. Costs of this Motion on a substantial indemnity basis, including substantial indemnity costs in respect of Cargill's prior "preliminary threshold motion"; and

3. Such further relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Tacora operates the Scully Mine which produces high-grade and quality iron ore products. The Company is the second largest employer in the Labrador West region, employing

approximately 460 employees, and is an important part of the local and provincial economy of Newfoundland.

2. Tacora and Cargill are parties to an offtake agreement dated April 5, 2017, as restated on November 9, 2018, and as further amended from time to time, and a stockpile agreement dated December 17, 2019 (collectively, the "**Offtake Agreement**").

3. Pursuant to the Offtake Agreement, Tacora sells 100% of the iron ore concentrate production at Tacora's Scully Mine to Cargill.

4. Tacora issued $225,000,000 of senior notes and $27,000,000 of senior priority notes pursuant to indentures (the "**Note Indentures**") among Tacora and Computershare Trust Company, N.A., as trustee and collateral agent for the notes.

5. Tacora's obligations in respect of the Note Indentures are secured by, among other things:

(a) a general security agreement dated May 11, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora granted the Notes Trustee security interests in substantially all Tacora's present and after-acquired personal property;

(b) an assignment of material contracts dated May 11, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora assigned all its right, title and interest in and to various material contracts to the Notes Trustee;

(c) a deed of hypothec dated August 3, 2021, executed by Tacora in favour of the Notes Trustee, as amended by a deed of correction dated August 16, 2021, between the same parties. Pursuant to the agreement, Tacora hypothecated all its present and future movable and immovable property to and in favour of the Notes Trustee;

(d) a share pledge agreement dated August 4, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora pledged the issued and outstanding shares of Tacora Norway to and in favour of the Notes Trustee; and

(e) a debenture dated August 9, 2021, executed by Tacora in favour of the Notes Trustee, as amended by a debenture amending agreement dated February 16,

2022. Pursuant to the debenture, Tacora granted a security interest in substantially all its owned real estate holdings to and in favour of the Notes Trustee,

(collectively, the "**Note Security Documents**").

6. Tacora also borrowed funds pursuant to an advance payment facility agreement (as amended from time to time, the "**APF Agreement**") with Cargill. Tacora's obligations under the APF Agreement are secured with a collateral and security package substantially similar to the Notes Security Documents. The security documents securing the APF Agreement are in the same form as the Notes Security Documents (the "**APF Security Documents**" and together with the Note Indentures, Notes Security Documents and the APF Agreement, the "**Debt Documents**")

7. The Offtake Agreement and many of the Debt Documents provide that they cannot be assigned without the consent of the counterparty.

8. On January 19, 2024, Tacora received three phase 2 bids in connection with its solicitation process and on January 29, 2024, the Board of Tacora exercised their good faith business judgement and unanimously determined that the bid received from a group of investors, including the ad hoc group of noteholders, Javelin and RCF, was the only qualified phase 2 bid and should be declared the successful bid (the "**Successful Bid**").

9. The Successful Bid excluded the Offtake Agreement and Debt Documents and sought to transfer such agreements to ResidualCo pursuant to an RVO.

10. On February 2, 2024, Tacora filed a motion seeking to approve the Successful Bid. On February 5, 2024, Cargill filed a "preliminary threshold motion" seeking a declaration that the Offtake Agreement could not be transferred to ResidualCo as a legal matter because Tacora could not satisfy the relevant test for assignment pursuant to Section 11.3 of the CCAA and the Offtake Agreement had not been disclaimed pursuant to Section 32 of the CCAA.

11. The arguments made by Cargill in the "preliminary threshold motion" equally apply to the Debt Documents since (a) certain of the Debt Documents contain assignment restrictions; and (b) Tacora will not satisfy the relevant test for assignment pursuant to Section 11.3 of the CCAA in seeking to transfer and vest such agreements to and in ResidualCo pursuant to an RVO transaction.

12. The Debt Documents likely cannot be disclaimed because they are "financing agreements where the company is a borrower" pursuant to Section 32(9)(c) of the CCAA.

13. On April 11, 2024, the Successful Bid was terminated due to the inability of Tacora to satisfy a net debt condition contained within such bid as result of litigation delay and a concurrent fall in iron ore prices.

Sales Process

14. Tacora is seeking approval of a second sales process (the "**Sales Process**"), which contemplates a July 12, 2024 bid deadline.

15. Given that, due to the termination of the Successful Bid, the "preliminary threshold motion" filed by Cargill was not heard by the Court, there is uncertainty with respect to the availability of an RVO transaction structure where the Offtake Agreement and the Debt Documents are not assumed by the purchaser. The Company is seeking a declaration on the legal issue of whether agreements with assignment restrictions can be transferred to and vested in ResidualCo pursuant to an RVO without satisfying the test under Section 11.3 of the CCAA or disclaiming the agreements pursuant to Section 32 of the CCAA.

16. Any RVO transaction ultimately brought to the Court for approval will still subject to approval by the Court on the established legal test. The Company is seeking to specifically address the legal issue raised by Cargill – does the Court have the jurisdiction to grant an RVO that transfers agreements with assignment restrictions to ResidualCo?

17. Tacora will direct all bidders to submit one type of transaction pursuant to the Sales Process – either an RVO or an asset sale – based upon, among other things, the outcome of this Motion and the disclaimer of the Offtake Agreement.

18. An RVO structure will allow a much quicker closing compared to an asset sale (which will require the transfer or issuance of multiple permits and licences). An RVO is also expected to maximize value since it preserves Tacora's significant tax attributes.

19. Based on the solicitation processes run by the Company to date, Tacora believes that all bidders will prefer an RVO structure compared to an asset sale.

20. Tacora cannot afford to endure another round of protracted litigation following identification of a successful bid pursuant to the Sales Process.

OTHER GROUNDS:

21. Sections 11, 11.3, 32 and 36 of the CCAA and the inherent and equitable jurisdiction of this Court.

22. Rules 1.04, 2.03, 3.02, 16, 37, and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

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

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

1. Affidavit of Brennan Caldwell sworn February 5, 2024;

2. Affidavit of Natasha Rambaran, to be filed; and

3. Such further and other evidence as counsel may advise and this Court may permit.

May 31, 2024

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PROCEEDING COMMENCED AT TORONTO

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(RETURNABLE JUNE 26, 2024)

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