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.

SUPPLEMENTARY FACTUM OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.

(Responding to Tacora Motion for Replacement of the DIP and Supporting Cargill Cross-Motion, returnable April 10-12, 2024)

April 9, 2024

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1. Cargill provides this supplementary factum to update the Court regarding matters since the adjournment of Tacora's DIP Replacement Motion on March 18, 2024.

2. Following that adjournment, Cargill and Tacora entered into an amendment of the Cargill DIP Financing in order to provide additional DIP financing to Tacora. Cargill continues to provide Tacora with the liquidity and stability it has needed to date in these CCAA proceedings, on reasonable terms and to the benefit of Tacora and its stakeholders.

3. Cargill cross-examined Joe Broking on his affidavit sworn March 11, 2024 in support of Tacora's DIP Replacement Motion. The evidence shows that Tacora approached its efforts to replace the Cargill DIP Financing with the AHG Replacement DIP Financing with the same tunnel vision that it approached the SISP: Tacora narrowly pursued one option that benefits the AHG to the exclusion of viable and superior alternatives that benefit all stakeholders.

4. The AHG initiated the efforts to put in a replacement DIP on January 30, 2024.[1] The work of Tacora and its advisors in early February to prepare the cash flow forecasts requested by the AHG exposed Tacora's desire – if not its decision already prejudged – to have the AHG replace Cargill as DIP provider, before even knowing what terms the AHG (or Cargill) would provide. In an email sent on February 12, 2024 by a Tacora employee to two members of Greenhill and Tacora's CFO, the Tacora employee sent a cash flow forecast stating "It is my understanding that Greenhill is [sic] will use this to support the DIP need when we switch to the AHG DIP."[2]

5. Similar to the instructions provided by Tacora's advisors to Cargill, on February 21, Tacora requested a DIP proposal from the AHG, stating such proposal "should not be linked in any manner

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[1] Exhibit A to the Cross-Examination of Joe Broking on April 4, 2024 [CL p F1985]. Despite there being no question about the authenticity or accuracy of Tacora's own documents it produced in advance of the cross-examination, Tacora took the position that only documents that Mr. Broking could identify could be marked as exhibits, while others had to be marked for identification.

[2] Exhibit B to the Cross-Examination of Joe Broking on April 4, 2024 [CL p F1987].

relating to the ongoing litigation related to the Successful Bid under the SISP".[3] Despite those instructions, when the Board considered the proposals provided by Cargill and the AHG on March 7, the presentation reviewed by the Board made clear that the "benefits" of the AHG DIP proposal consisted almost entirely of its linkages to the AHG RVO transaction, including the "poison pill" aspect that would convert the cash exit fee to equity only if the AHG RVO transaction closes.[4]

6. On March 7, 2024, Tacora's Board approved the AHG Replacement DIP Financing over the Cargill DIP Financing even though the Board was explicitly advised that the Cargill DIP resulted in a "Lower quantum of DIP required" and was "Cheaper (due to smaller quantum and exit fee)", while the AHG Replacement DIP Financing resulted in "Greater volatility in revenues" and "Risk of potential disruptions to operations".[5] None of those positive features of the Cargill DIP Financing or negative aspects of the AHG Replacement DIP Financing were mentioned in Mr. Broking's affidavit sworn in support of Tacora's DIP Replacement Motion.[6]

7. Tacora did not advise Cargill until March 9 that it had agreed to the AHG Replacement DIP Financing, and at no time following March 7 did Tacora engage with Cargill to seek to negotiate any additional DIP terms or issues, or raise any concerns with the Cargill DIP Financing.[7] In contrast, on March 8 or 9, Tacora negotiated with the AHG for a lower exit fee on its DIP

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[3] Exhibit C to the Cross-Examination of Joe Broking on April 4, 2024 [CL p F1995]. That timing coincided with Tacora's outreach to Cargill: Affidavit of Matthew Lehtinen sworn March 14, 2024 at paras. 12-13 [CL p 1285].

[4] Confidential Exhibit 3 to the Cross-Examination of Joe Broking on April 4, 2024, Board Materials slide 6 [CL p F2040].

[5] Confidential Exhibit 3 to the Cross-Examination of Joe Broking on April 4, 2024, Board Materials slide 6 [CL p F2040]. When confronted with the Board presentation that incorrectly stated Cargill's DIP proposal provided no flexibility to disclaim the Cargill Offtake Agreement, and asked if the Board was made aware of Cargill's concession, Mr. Broking could only say he did not recall: Cross-examination transcript of Joe Broking on April 4, 2024, Q. 229 [CL p F1963].

[6] Cross-examination transcript of Joe Broking on April 4, 2024, Q. 201, 243-246 [CL pp F1954 and F1967-F1968].

[7] Affidavit of Matthew Lehtinen sworn March 14, 2024 at paras. 26-30 [CL p F1289-F1290].

proposal[8], and then served materials in support of Tacora's DIP Replacement Motion on March 11. In response, Cargill served its responding cross-motion and supporting materials on March 14, which included the Cargill Amended DIP Financing on terms disclosed in those materials.[9]

8. Following service of Cargill's materials, Tacora did not engage or negotiate with Cargill, but received from the AHG a waiver of all fees under the AHG DIP.[10] Tacora presumably did this to attempt to respond to the Cargill Amended DIP Financing and win Tacora's DIP Replacement Motion for the AHG's benefit (although this is not clear, since Tacora failed to produce any documents about its dealings with the AHG after March 11). The evidence shows that Tacora wanted to proceed at all times with a replacement DIP from the AHG notwithstanding the better terms and benefits of the Cargill Amended DIP Financing. Cargill submits that the AHG Replacement DIP Financing has been advanced for the improper purpose of aligning Tacora even more closely with the AHG to the detriment of other stakeholders.

9. As Cargill set out in its factum dated March 17, 2024, the AHG Replacement DIP Financing is an inferior alternative to the Cargill DIP Financing, is not in the best interests of Tacora or its stakeholders, and fails to meet the legal test for approval under the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

April 9, 2024

/s/ Goodmans LLP

Goodmans LLP

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[8] Exhibit 4 to the Cross-Examination of Joe Broking on April 4, 2024 [CL p F2051]; Cross-examination transcript of Joe Broking on April 4, 2024, Q. 256-258 [CL p F1970-F1971].

[9] Affidavit of Matthew Lehtinen sworn March 14, 2024 at para. 62 and Exhibit "R" being the Cargill Amended DIP Agreement [CL pp F1300-F1301 and F1760].

[10] Exhibit 5 to the Cross-Examination of Joe Broking on April 4, 2024[CL p F2061]; Cross-examination transcript of Joe Broking on April 4, 2024, Q. 263-266[CL p F1972-F1974].

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Proceeding commenced at Toronto

Supplementary Factum of Cargill, Incorporated and Cargill International Trading Pte Ltd.

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