



IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF THE BUSINESS CORPORATIONS ACT,
S.B.C. 2002, C. 57, AS AMENDED AND THE BUSINESS
CORPORATIONS ACT, S.N.B. 1981, C. B-9.1, AS AMENDED
AND**

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.**

PETITIONERS

NOTICE OF APPLICATION

**Names of applicants: Trevali Mining Corporation and Trevali Mining (New Brunswick) Ltd.
(the "Applicants")**

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smith Street, Vancouver, British Columbia via Microsoft Teams on October 6, 2022 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Applicants seek an Order substantially in the form attached as **Schedule "A"** (the "**Stay Extension Order**") extending the Stay Period, as defined in paragraph 15 of the Amended and Restated Initial Order of this Court pronounced on August 29, 2022 (the "**ARIO**") from October 6, 2022 until October 18, 2022 (the "**Stay Extension**").
2. Such further orders as counsel for the Applicants may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

3. All capitalized terms used but not otherwise defined herein have the meanings given to them in Affidavit #1 of Brendan Creaney, affirmed August 19, 2022.

4. On August 19, 2022, this Court granted an initial order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), granting, among other things, a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants, until the initial return date of August 29, 2022.

5. On August 29, 2022, this Court granted the ARIO granting, among other matters, an extension of the Stay of Proceedings until October 6, 2022 (the “**Stay Period**”).

6. Since the granting of the ARIO, the Applicants, in consultation with the Monitor, have been working diligently to carry out their restructuring plans. These efforts, which are described in greater detail below and have been with a view to maximize value for their stakeholders, have included the development, court approval and implementation of a sales investment and solicitation process (the “**SISP**”) for the Applicants’ interests in the Caribou and Rosh Pinah Mines.

7. At this time, the Applicants require further preservation of the status quo to allow them the breathing room to continue their restructuring efforts, including implementation of the SISP, to the benefit of their stakeholders.

8. While the SISP contemplates a Final Bid Deadline in respect of the Rosh Pinah Mine of November 21, 2022 and a Final Agreement Deadline of December 9, 2022, the Stay Period will need to be further extended into December 2022. However, at this time, the Applicants seek an order extending the stay of proceedings only until and including October 18, 2022 and intend on seeking a further extension of the stay of proceedings – likely in connection with an application seeking approval of the required interim financing.

Part 3: LEGAL BASIS

9. Subsection 11.02 of the CCAA provides this Court with broad discretion to allow a debtor time and space to advance its restructuring efforts, including by extending a stay of proceedings. A stay of proceedings is the “central tool” by which this Court maintains the status quo for a debtor, allowing a debtor the necessary time, flexibility and “breathing room” to carry out a supervised restructuring or organized sales process while continuing its ongoing operations.

1057863 B.C. Ltd. (Re), 2022 BCSC 876 at paras. 31, 35 [1057863], citing Timminco Limited (Re), 2012 ONSC 2515 at para. 15.

10. The baseline considerations and requirements for a stay extension are that a stay is “appropriate” and that debtors have been and are acting in good faith and with due diligence.

CCAA, ss. 11.02(2)-(3)

11. The basic purpose of the CCAA must be considered when determining what relief authorized by the CCAA is “appropriate” in the circumstances:

[...] The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA -- avoiding the social and economic losses resulting from liquidation of an insolvent company [...] [A]ppropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where

participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

1057863 at para. 33, citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.

12. The Applicants have been working in good faith and due diligence and granting the Stay Extension is appropriate and necessary in the circumstances.

13. Since the granting of the ARIO the Applicants have, with the assistance of and in consultation with the Monitor, and where appropriate in discussion with their stakeholders (including the RCF Administrative Agent and Glencore), among other things:

- (a) developed and negotiated the terms of the SISP in order to maximize value for the Applicants' interests in the Caribou Mine and the Rosh Pinah Mine;
- (b) negotiated and entered into a Sales Agent Agreement with National Bank Financial Inc. ("**NBF**") in order to engage NBF as Sales Agent with respect to the SISP;
- (c) developed a key employee retention plan to secure the continued employment of certain of the Applicants' key employees (the "**KERP**");
- (d) sought and obtained Orders from this Court on September 14, 2022 which, among other things, approved the SISP, Sales Agent Agreement and KERP;
- (e) considered, in consultation with the Monitor, the Applicants' cash flow needs, both with respect to the SISP and ongoing operations of their business;
- (f) worked to negotiate the terms of an interim-financing term sheet with the RCF Lenders (which negotiations remain ongoing);
- (g) commenced Phase 1 of the SISP, including by working with their advisors, particularly NBF, and the Monitor to:
 - (i) prepare confidentiality agreements for interested parties;
 - (ii) develop an electronic data room; and
 - (iii) prepare and distribute a teaser letter;
- (h) considered the impact of certain set-off rights purported to be held by the Glencore entities on the Applicants' restructuring efforts and filed an application to be heard October 11, 2022, seeking a Non-Applicant Stay Party Order with respect to Rosh Pinah Zinc Corporation (Proprietary) Limited ("**RPZC**") to stay the exercise of any "global" set-off rights against RPZC;
- (i) maintained operational or site integrity at each of Rosh Pinah Mine, Caribou Mine, and Perkoa Mine, including:
 - (i) continued production at the Rosh Pinah Mine, which remains operational;

- (ii) worked to transfer the Caribou Mine into a care and maintenance program in light of the operational challenges facing the mine; and
- (iii) continued to consider available options and next steps at the Perkoa Mine (which is not for sale in the SISP) and attend to the issues related to both the detention and trial of the Perkoa mine manager and a manager with Trevali's contractor Byrncut as well as the continuing political unrest in Burkina Faso, where Canadian and international news outlets have reported a "counter-coup" has been launched in the past several days that has overthrown the country's former coup leader-turned-president after only nine months in power;
- (j) worked to ensure smooth transitions with respect to the resignations of certain members of Trevali's management and Board of Directors, including Ricus Grimbeek, President and Chief Executive Officer and Derek du Preez, Chief Operating Officer and members of the Board of Directors of Trevali Corp. (as have been publicly disclosed in press releases, including the recent resignations of Jill Gardiner and Jeane Hull);
- (k) communicated regularly with the Applicants' stakeholders, including their respective creditors, suppliers, lenders, and employees, in particular the RCF Administrative Agent and Glencore, as well as with certain governmental agencies, in connection with the CCAA proceedings; and
- (l) engaged frequently with the Monitor with respect to all aspects of the Applicants' restructuring efforts and provided the Monitor with full cooperation and complete access to the Applicants' property, premises and books and records.

14. Granting the Stay Extension will allow the Applicants to continue these restructuring efforts and in particular to continue efforts towards seeking to maximize value for their assets.

15. The Applicants therefore respectfully request this Court grant the Stay Extension Order.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #6 of Brendan Creaney, affirmed October 3, 2022;
2. Affidavit #1 of Brendan Creaney, affirmed August 19, 2022
3. Third Report of FTI Consulting Canada Inc., to be filed; and
4. Such further and other material as counsel for the Applicants may advise.

The applicant estimates that the application will take 1 hour.

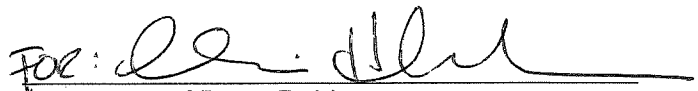
This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application

or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: October 3, 2022



Signature of Peter Rubin
Lawyer for the Applicants

Blake, Cassels & Graydon LLP
Barristers and Solicitors
Suite 2600, Three Bentall Centre
595 Burrard Street PO Box 49314
Vancouver, BC V7X 1L3
Email: peter.rubin@blakes.com
Telephone: 604.631.3315

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

No. S-226670
Vancouver Registry

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PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE) THE HONOURABLE MADAM JUSTICE)
) FITZPATRICK) October 6, 2022
))

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia by Microsoft Teams, on the 6th day of October, 2022; AND ON HEARING Peter Rubin and Peter Bychawski, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #6 of Brendan Creaney, made October 3, 2022, and the Third Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioners) dated October [redacted], 2022; AND pursuant to the *Companies Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended, the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

1. The Stay Period (as defined in the Amended and Restated Initial Order of this Court dated August 29, 2022) is hereby extended until and including October 18, 2022.

2. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Peter Rubin
Lawyer for the Petitioners

BY THE COURT.

Registrar

Schedule "A"

| COUNSEL NAME | PARTY REPRESENTED |
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Peter Rubin
BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
Suite 2600, Three Bentall Centre
595 Burrard Street, P.O. Box 49314
Vancouver, B.C. V7X 1L3
604.631.3300
Agent: Dye & Durham