

No. S-226670
Vancouver Registry

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

**ORDER MADE AFTER APPLICATION
(INTERIM FINANCING APPROVAL)**

BEFORE) THE HONOURABLE MADAM JUSTICE)
) FITZPATRICK) October 11, 2022
))

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia on the 11th day of October, 2022; AND ON HEARING Peter Rubin and Claire Hildebrand, 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, Affidavit #7 of Brendan Creaney, made October 11, 2022, the Third Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioners) (the "**Monitor**") dated October 3, 2022, and the Fourth Report of the Monitor dated October 11, 2022; AND pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985 c. C-36, as amended, the British Columbia *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

Time for Service

1. The time for service of the Petitioners' Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service

thereof upon any interested party other than those parties on the Service List maintained by the Monitor in these proceedings is hereby dispensed with.

Capitalized Terms

2. Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Amended and Restated Initial Order of this Court granted on August 29, 2022 as may be amended from time to time, the “**Amended and Restated Initial Order**”).

Interim Financing

3. Trevali Mining Corporation (“**Trevali Corp.**”) is hereby authorized and empowered to obtain and borrow under an interim financing tranche (the “**DIP Tranche**”) to be made available to Trevali Corp. pursuant to the terms of an amendment (the “**Fifth Amendment**”) to the existing credit facility extended to Trevali Corp. under the Second Amended and Restated Credit Agreement dated August 6, 2020 between Trevali Corp., as borrower, The Bank of Nova Scotia and HSBC Bank Canada, as co-lead arrangers and joint bookrunners, The Bank of Nova Scotia, as administrative agent (the “**Administrative Agent**”), and lenders party thereto (the “**Interim Lenders**”) (as amended from time to time, including by the Fifth Amendment, the “**Credit Agreement**”), provided that:

- (a) borrowings under the DIP Tranche shall not exceed the principal amount of US \$16.5 million unless permitted by further Order of this Court; and
- (b) such authorization and empowerment is conditional upon the execution by Trevali Corp. (with the consent of the Monitor), the Administrative Agent and the Interim Lenders of the Fifth Amendment, as contemplated by the Interim Financing Term Sheet.

4. The DIP Tranche shall be on the terms and subject to the conditions set forth in the Credit Agreement as amended by the Fifth Amendment on the terms set forth in the Indicative Term Sheet Debtor-in-Possession Facility attached to the Affidavit #7 of Brendan Creaney made October 11, 2022 (the “**Interim Financing Term Sheet**”).

5. The Petitioners are hereby authorized and empowered to execute and deliver such amendments to the Credit Agreement, including the Fifth Amendment and any Credit Documents and Security Documents (in each case as defined in the Credit Agreement) entered into in connection therewith, and any mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive DIP Documents**”), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by Administrative Agent or the Interim Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their respective indebtedness, interest, fees, liabilities and obligations to the Administrative Agent and the Interim Lenders under and pursuant to the Interim Financing Term Sheet and the Definitive DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. The Administrative Agent, for and on behalf of the Interim Lenders, shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Lenders’ Charge**”) on the Property. The Interim Lenders’ Charge shall not secure an obligation that existed prior to August 19, 2022 (the date the Initial Order was made in these proceedings). For certainty, the preceding sentence shall

apply to the Interim Lenders' Charge only and not to any other Security (as defined in the Credit Agreement). The Interim Lenders' Charge shall have the priority set out in paragraphs 9 and 11 hereof.

7. Notwithstanding any other provision of this Order, the Amended and Restated Initial Order or any other order of this Court:

- (a) the Administrative Agent and the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive DIP Documents;
- (b) upon the occurrence of an event of default under the Interim Financing Term Sheet, any of the Definitive DIP Documents or the Interim Lenders' Charge, the Administrative Agent and the Interim Lenders may immediately cease making advances to Trevali Corp. and, upon three (3) Banking Days' (as defined in the Credit Agreement) notice to the Petitioners and the Monitor, may exercise any and all of their rights and remedies against the Petitioners or the Property under or pursuant to the Interim Financing Term Sheet, the Definitive DIP Documents, and the Interim Lenders' Charge, including without limitation, set off and/or consolidate any amounts owing by the Interim Lenders to the Petitioners in connection with the DIP Tranche against the obligations of the Petitioners to the Administrative Agent or Interim Lenders under the Interim Financing Term Sheet, the Definitive DIP Documents or the Interim Lenders' Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and
- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.

8. The Interim Lenders, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive DIP Documents.

Validity and Priority of Charges

9. The priorities of:

- (a) the Administration Charge;
- (b) the D&O Charge;
- (c) the Intercompany Advances Charge;
- (d) the KERP Charge (as defined in the Key Employee Retention Plan Approval Order granted by this Court on September 14, 2022);

- (e) the Sales Agent Charge (as defined in the SISP and Sales Agent Approval Order granted by this Court on September 14, 2022, the “**SISP Order**”); and
- (f) the Interim Lenders’ Charge;
(collectively, the “**Charges**”)

as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – D&O Charge;

Third – the Intercompany Advances Charge;

Fourth – the KERP Charge (to the maximum amount of US \$800,000);

Fifth – the Sales Agent Charge solely in respect of amounts payable upon completion of a transaction for the sale of the Rosh Pinah Mine pursuant to the SISP (as defined in the SISP Order);

Sixth – the Interim Lenders’ Charge (to a maximum principal amount of US \$16,500,000 plus capitalized, accrued, or outstanding interest, fees and expenses); and

Seventh – the Sales Agent Charge in respect of all remaining amounts secured thereby.

10. Any security documentation evidencing, or the filing, registration or perfection of, the Interim Lenders’ Charge shall not be required, and the Interim Lenders’ Charge shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Interim Lenders’ Charge coming into existence, notwithstanding any failure to file, register or perfect the Interim Lenders’ Charge.

11. The Interim Lenders’ Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and shall rank in priority to all other security interests, trusts, liens, mortgages, charges, and encumbrances and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

12. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent of the Monitor and the beneficiaries of the Charges (or in the case of the Interim Lenders’ Charge, the Administrative Agent).

13. The Interim Financing Term Sheet, Fifth Amendment, the Credit Agreement, and the Definitive DIP Documents and the Interim Lenders’ Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Administrative Agent and the Interim Lenders shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s)

issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Interim Lenders’ Charge nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet, Fifth Amendment, the Credit Agreement or the Definitive DIP Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;
- (b) none of the Administrative Agent or the Interim Lenders shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the Interim Financing Term Sheet or the Fifth Amendment, the creation of the Interim Lenders’ Charge, or the execution, delivery or performance of the Credit Agreement or the Definitive DIP Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Interim Financing Term Sheet, the Fifth Amendment, the Credit Agreement or the Definitive DIP Documents, and the granting of the Interim Lenders’ Charge, does not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

14. THIS COURT ORDERS that any charge created by this Order over leases of real property in Canada shall only be a charge in the Petitioners’ interest in such real property leases.

General

15. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso, and Namibia to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

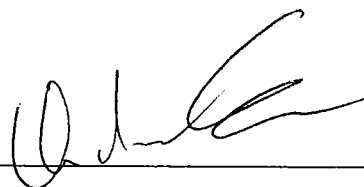
16. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

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
FTI Consulting Canada Inc., the Monitor	John Sandrelli Valerie Cross
Bank of Nova Scotia, as Administrative Agent for the RCF Lenders	Kibben Jackson Glen Nesbitt
Glencore International AG Glencore AG Glencore Canada Corporation	Lance Williams Forrest Finn
Directors of Trevali Mining Corporation	Mary Buttery K.C.