

COURT FILE NUMBER 2101-05019
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF COALSPUR MINES (OPERATIONS) LTD.

DOCUMENT **APPLICATION**
**(Stay Extension, Critical Supplier Charge and Restricted Court
Access Order)**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File Number: 1217428

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: July 9, 2021
Time: 10:00 a.m.
Where: Calgary Courts Centre (by Webex)
Before: The Honourable Madam Justice Romaine

Go to the end of this document to see what you can do and when you must do it.

Order Sought:

1. The Applicant, Coalspur Mines (Operations) Ltd. (“**Coalspur**” or the “**Applicant**”), seeks Orders substantially in the forms attached hereto as **Schedule “A”** and **Schedule “B”**:
 - (a) declaring that the time for service of this application is abridged and deemed good and sufficient and the application is properly returnable today;
 - (b) extending the Stay Period up to and including September 3, 2021, or such further and other date as this Honourable Court considers appropriate;
 - (c) declaring Trafigura Pte. Ltd. (“**Trafigura**”) to be a critical supplier to Coalspur pursuant to section 11.4 of the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (“**CCAA**”);
 - (d) amending the Amended and Restated CCAA Initial Order granted by this Honourable Court on May 6, 2021 (the “**Amended Initial Order**”) to:
 - (i) declare that Trafigura is a critical supplier to Coalspur;
 - (ii) order Trafigura to continue to supply services to Coalspur on such terms and conditions as are consistent with the agreements between Trafigura and Coalspur; and
 - (iii) declare that the assets and property of Coalspur are subject to a Critical Supplier Charge in favour of Trafigura, which Critical Supplier Charge shall rank subordinate only to the Administration Charge, and in priority to the Interim Lender’s Charge;
 - (e) sealing the Confidential Supplement to the Third Report of the Monitor, dated June 28, 2021 (the “**Confidential Supplement**”) on the Court file; and
 - (f) such further and other relief as the Applicant may request and this Honourable Court may grant.
2. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Amended Initial Order.

Basis for this claim:

Background

3. On April 26, 2021 (“**Filing Date**”), Coalspur obtained protection from its creditors under the CCAA pursuant to an Initial Order of this Court (the “**Initial Order**”). The Initial Order was amended and restated and the Amended Initial Order was granted on May 6, 2021.
4. The Amended Initial Order, among other things, extended the Stay Period until and including July 23, 2021.

Extension of the Stay Period

5. Coalspur is seeking to extend the Stay Period to September 3, 2021.
6. Coalspur has been acting and continues to act in good faith and with due diligence. Since obtaining the Amended Initial Order, Coalspur has been working diligently to, among other things, prepare a sale and investment solicitation process (“**SISP**”), and engage regularly with a broad range of stakeholders, including the Interim Lender, suppliers, royalty holders, the AER, and others.
7. In addition, Coalspur has been diligently pursuing resolution of a dispute with Ridley Terminals Inc. (“**RTI**”) arising out of RTI’s application to oppose Coalspur’s disclaimer of its agreement with RTI, and has been taking those steps required by the Scheduling Order granted by this Court on May 28, 2021.
8. Extending the Stay Period will allow Coalspur to obtain a determination of the Pending Applications (as defined in the Fourth Affidavit of Michael Beyer, sworn June 28, 2021), finalize a SISP to maximize value for the benefit of all stakeholders, and seek Court approval of the SISP.
9. Coalspur has sufficient funds to continue its operations and fund these CCAA proceedings through September 3, 2021.
10. Coalspur has been acting, and continues to act, in good faith and with due diligence in these CCAA proceedings, and circumstances exist that make the order appropriate.

Critical Supplier Charge

11. Trafigura is the sole purchaser and supplier of sale and export services to Coalspur in respect of all coal production from the Project. Interruption of these services would interrupt the sole means by which Coalspur generates revenue – export and sale of its coal production. The services provided by Trafigura are accordingly critical to the ongoing operation of Coalspur’s business, for which there is no replacement readily available.
12. As at the Filing Date, Coalspur was indebted to Trafigura in the approximate amount of \$13.8 million USD (the “**Claim Balance**”). Trafigura has agreed pursuant to the terms of a letter agreement (the “**Fourth Letter Agreement**”) to permit Coalspur to repay the Claim Balance over a period time by means of deductions from the purchase prices otherwise payable by Trafigura for certain coal shipments. Such agreement is subject to Coalspur obtaining a Critical Supplier Charge in favour of Trafigura securing the Claim Balance.
13. The Critical Supplier Charge sought by Coalspur is supported by the Interim Lender and the Monitor.

Restricted Court Access Order

14. The Confidential Supplement discusses the highly confidential, commercially sensitive information (which is subject to third party confidentiality obligations) contained in the Confidential Affidavit of Donald Swartz, sworn June 8, 2021 (the “**Confidential Swartz Affidavit**”). The Confidential Swartz Affidavit was sealed on the Court file pursuant to the Restricted Court Access Order of Madam Justice Romaine, granted June 16, 2021.
15. Given that the Confidential Supplement incorporates and cites to the information previously sealed by this Honourable Court of the Court file, I understand that the Monitor is seeking a similar Restricted Court Access Order sealing the Confidential Supplement.
16. The Restricted Court Access Order is necessary to prevent the Confidential Supplement from forming part of the public record or otherwise being published and disclosed. For the same reasons described in respect of the Confidential Swartz Affidavit, disclosure of the information contained in the Confidential Supplement would cause irreparable damage to the legitimate business interests of both Coalspur and various third parties. The benefits

of the Restricted Court Access Order outweigh any deleterious effects on the rights and interests of the public.

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

Affidavit or other evidence to be used in support of this application:

18. The Affidavit of Michael Beyer, sworn June 28, 2021.
19. The Affidavits of Michael Beyer, sworn April 19, April 23, April 30, and June 10, 2021.
20. The Confidential Affidavit of Donald S. Swartz II, sworn June 8, 2021.
21. Second Report of the Monitor, dated June 11, 2021.
22. Third Report of the Monitor, dated June 28, 2021.

Applicable Acts and regulations:

23. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
24. *Judicature Act*, RSA 2000, c J-2.
25. *Rules of Court*, Alta Reg 124/2010.
26. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you

intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

Clerk's Stamp:



COURT FILE NUMBER 2101-05019
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF COALSPUR MINES (OPERATIONS) LTD.

DOCUMENT **ORDER (Stay Extension and Critical Supplier Charge)**
CONTACT INFORMATION **OSLER, HOSKIN & HARCOURT LLP**
OF PARTY FILING THIS Barristers & Solicitors
DOCUMENT: Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Emily Paplawski
Telephone: (403) 260-7000
Facsimile: (403) 260-7024
Email: RVandemosselaer@osler.com / EPaplawski@osler.com
File Number: 1217428

DATE ON WHICH ORDER WAS PRONOUNCED: July 9, 2021

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice Romaine

LOCATION OF HEARING: Calgary Courts Centre
601 – 5th Street SW
Calgary, AB

UPON the application of **COALSPUR MINES (OPERATIONS) LTD.** (the "**Applicant**"); **AND UPON** having read the Fourth Affidavit of Michael Beyer, sworn June 28, 2021; **AND UPON** having read the Second and Third Reports of FTI Consulting Canada Inc. in its role as Court-appointed Monitor of the Applicant (the "**Monitor**"), dated June 11, 2021 and

June 28, 2021 (the “**Third Report**”), respectively; **AND UPON** reviewing the Amended and Restated Initial Order granted by the Honourable Madam Justice Shelley on May 6, 2021 (the “**Amended Initial Order**”); **AND UPON** hearing from counsel for the Applicant, counsel for the Monitor, and any other counsel present; **AND UPON** noting that capitalized terms used but not otherwise defined in this Order shall have the meanings given to such terms in the Amended Initial Order; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

STAY EXTENSION

2. The Stay Period shall be and is hereby extended up to and including September 3, 2021.

CRITICAL SUPPLIER CHARGE

3. Trafigura Pte. Ltd. (“**Trafigura**”) is hereby declared to be a critical supplier to Coalspur pursuant to section 11.4 of the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (“**CCAA**”), and shall, from the date of this Order, be required to continue to supply services to Coalspur on such terms and conditions as are consistent with the agreements between Trafigura and Coalspur.
4. Trafigura shall be entitled to the benefits of and is hereby granted a charge (the “**Critical Supplier Charge**”) on the Property in the aggregate amount of \$17 million CAD, as security for Coalspur’s indebtedness to Trafigura under an amended and restated purchase contract 1812957, dated May 11, 2020 between Coalspur and Trafigura, together with each of a First Letter Agreement of January 27, 2021, a Supplemental Letter Agreement of February 17, 2021, a Third Letter Agreement of April 21, 2021 and a Fourth Letter Agreement.
5. Paragraph 34 of the Amended Initial Order is hereby amended from and after the date of this Order and shall read as follows:

The priorities of the Administration Charge, the Interim Lender's Charge and the Critical Supplier Charge (the "**Charges**"), as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of \$500,000, unless further ordered by the Court);
 - (b) Second – Critical Supplier Charge; and
 - (c) Third – Interim Lender's Charge.
6. Paragraph 40 of the Amended Initial Order is hereby amended from and after the date of this Order as follows:
- Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Interim Lender's Charge and the Critical Supplier Charge among the various assets comprising the Property.
7. Except as otherwise provided for in this Order, or as may be required to give effect to the terms of this Order, all terms of the Amended Initial Order shall remain in full force and effect, unamended.

Justice of the Court of Queen's Bench of Alberta

Schedule "B"

CLERK'S STAMP

COURT FILE NUMBER 2101-05019
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF THE
COMPROMISE OR ARRANGEMENT OF
COALSPUR MINES (OPERATIONS) LTD.

DOCUMENT

RESTRICTED COURT ACCESS ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
3500, 855 – 2nd Street SW
Calgary, AB T2P 4J8

Attention: Kelly Bourassa / James Reid
Email: kelly.bourassa@blakes.com /
james.reid@blakes.com
Telephone: 403-260-9697 / 403-260-9731
Facsimile: 403-260-9700
File: 79294/15

**DATE ON WHICH ORDER WAS
PRONOUNCED:** July 9, 2021

**LOCATION WHERE ORDER WAS
PRONOUNCED:** Calgary Courts Centre

**NAME OF JUSTICE WHO MADE THIS
ORDER:** Justice B.E. Romaine

UPON THE APPLICATION of Coalspur Mines (Operations) Ltd. ("**Coalspur**");

AND UPON HAVING READ the application and Third Report of FTI Consulting Canada, Inc., in its capacity as Monitor of Coalspur (the "**Monitor**") dated June 28, 2021 and the Confidential Supplement thereto (the "**Confidential Supplemental Report**") and such other material in the pleadings and proceedings as deemed necessary;

AND UPON BEING ADVISED that the notice to media of application to restrict access has been submitted;

AND UPON HEARING the submissions of counsel for Monitor, counsel for Coalspur and counsel for other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of the application for this Order and supporting materials is hereby declared to be good and sufficient on the parties named in the service list maintained by the Monitor in these proceedings, and updated from time to time (the "Service List"), and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

SEALING

2. The Confidential Supplemental Report contains confidential and commercially sensitive information, including information subject to third party confidentiality obligations of Coalspur and, subject to further Order of this Honourable Court, the Confidential Supplemental Report, shall be sealed on the Court file and shall not form part of the public record, notwithstanding Division 4, Part 6 of the Alberta Rules of Court.
3. The Clerk of this Honourable Court shall file the Confidential Supplemental Report in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED BY FTI CONSULTING CANADA INC.

THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE RESTRICTED COURT ACCESS ORDER ISSUED BY MADAM JUSTICE ROMAINE ON JULY 9, 2021.

4. The Monitor is empowered and authorized, but not required, to provide the Confidential Supplemental Report (or any portion thereof, or any information contained therein) to any

interested party, entity or person that the Monitor, in consultation with Coalspur, considers reasonable in the circumstances subject to confidentiality arrangements agreeable to the Monitor and Coalspur.

5. Every person who is provided with or who has access to a copy of the Confidential Supplemental Report shall keep the information contained therein confidential and such information:
 - (a) shall be used only for the purposes of this proceeding and not for any business or other purpose whatsoever; and
 - (b) shall not be given, shown, made available or communicated in any way to anyone other than for the purpose of retaining and instructing counsel with respect to these proceedings only, who shall be bound by the terms of this Order.

6. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying, or varying the terms of this Order, with such application to be brought on notice to the Monitor and Coalspur and any other affected party in accordance with the Alberta Rules of Court, Alta Reg 124/2010 and this Order.

J.C.Q.B.A.