

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 HARTE GOLD CORP. (Applicant)

Before: Penny J.

Heard by videoconference in Toronto: December 20, 2021

ENDORSEMENT:

On December 7, 2021, Harte sought and obtained a stay of proceedings and certain other ancillary relief in an initial order granted by Pattillo J. under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as am. Under the initial order, the Court ordered or approved:

- (a) a stay of all proceedings and remedies against or in respect of Harte, its property, business, and its director and officers, for an initial period of ten (10) days;
- (b) the appointment of FTI as the Monitor of Harte in the CCAA proceedings;
- (c) the execution by Harte of the DIP financing agreement, and authorizing Harte to borrow under the DIP financing agreement an initial amount of \$400,000 during the initial 10-day stay period, to be secured by a priority charge over the property in favour of the DIP lender;
- (d) an administration charge against the property in an initial amount of \$500,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, counsel to Harte and counsel to Harte's directors and officers, in connection with the CCAA proceedings; and

(e) a directors charge against the property in a maximum amount of \$2,400,000 in favour of the directors and officers of Harte Gold as security for Harte's obligation to indemnify such directors and officers for obligations and liabilities they may incur after the commencement of these proceedings.

The first comeback hearing scheduled on December 16, 2021, was adjourned because late-breaking developments did not permit the Court sufficient time to review the material before the hearing. Ancillary extension orders were made to preserve the status quo in the interim.

There was, effectively, a competition between Silver Lake and Appian (now the two principal secured creditors) about whose stalking horse bid ought to be preferred as the bid underpinning the proposed sales and investment solicitation plan. As a result of a competing proposal from Appian, Silver Lake materially improved its original proposal. As a result of Silver Lake's improved proposal, Appian ultimately withdrew its competing proposal, such that the SISP based on the improved Silver Lake stalking horse bid is no longer opposed by anyone.

Following the hearing of the Harte motion, I indicated I would sign the proposed orders once clean updated copies were provided and provide brief reasons.

The main issues are the SISP, the stay extension and the increase in the DIP financing limit, given the proposed process going forward.

SISP

The key milestones under the proposed SISP are:

Distribution by the Monitor of the solicitation notice - 1 day following the issuance by the Court of the SISP order

Bid deadline - January 14, 2022 at 5:00 p.m.

Auction date - no later than January 20, 2022, and

Sale approval motion - no later than seven (7) calendar days following either the conclusion of the auction or the date on which a determination is made not to proceed with an auction

This is obviously an extremely abbreviated schedule. It is justified, in the circumstances however, because the proposed SISP follows an extensive pre-filing marketing process conducted by Harte with the assistance of FTI, which commenced in June 2021. Those efforts saw a teaser sent to 246 potentially

interested parties and NDAs executed by 31 parties to gain access to a data room. Although this process did not result in any binding proposal being submitted by the bid deadline, discussions took place among BNP (the original first secured lender) and a number of interested parties, including Appian (another secured lender), related to potential restructuring options for Harte's business. On November 19, 2021, Harte's first-lien debt (excluding hedge obligations) was assigned by BNP to Silver Lake. It was at this stage that both Appian and Silver Lake indicated for the first time that they were interested in bidding on Harte's business and assets.

The main point is that a wide market solicitation has already taken place. If the focused interest of Silver Lake and Appian is to generate renewed interest among other potential bidders as well, it will not require an additional lengthy process to beat those bushes.

The proposed SISP itself, as noted above, has already benefitted from the competing proposals of Silver Lake and Appian. It otherwise displays the indicia of an appropriate balance of offer solicitation to likely interested parties against the equally important need for expedition and certainty. The research supports the frequently beneficial impact of stalking horse bids in general. This bid, in particular, in the context of the proposed SISP as a whole appears fair and reasonable. The stalking horse transaction, if it proceeds, contemplates an approval and reverse vesting order. The justification for an RVO in this case arises from the highly regulated nature of the gold mining business operated by Harte. It is an essential feature of the Silver Lake bid because Silver Lake simply will not take the risk of extended delays were it required to re-apply for new regulatory permits, as would be required if this transaction were structured as a traditional asset purchase. There is no evidence of any stakeholder who would be materially worse off because of the use of an the RVO scenario specifically. Indeed, the evidence suggests, and both the applicant and the Monitor submit, that the RVO scenario is the best way to maximize benefit for all stakeholders.

For these reasons, the proposed SISP is approved.

Extension of Stay

The unfolding of the SISP requires a stay extension. The request is in good faith and manifestly reasonable. The stay is granted.

Increase in DIP

As now required under the CCAA, the initial order can only do the minimum necessary to stabilize the situation until the comeback hearing no more than 10 days later. The plan was always to increase the DIP financing to cover the anticipated cash shortfall during the time period required to conduct the SISP and conclude and implement a transaction. The applicant has prepared an analysis of those cash needs, which the Monitor has reviewed and found no fault with. The proposed increase is consistent with that analysis. Harte forecasts a net cash outflow of approximately \$14.3 million through April 1, 2022, with the result that DIP financing in the requested amount is necessary to ensure Harte is able to continue operations, conduct the SISP and implement a transaction for the benefit of stakeholders.

The proposed increase to the DIP financing is approved.

Restated Initial Order and Other Matters

Finally, Harte is also requesting that the Court grant an amended and restated initial order substantially in the form of the model Ontario order, including an increase in the administration charge from \$500,000 to \$1,500,000. This increase is also a by-product of the “skinny” initial order made December 7 and is consistent with the increased cost of professional advisors for the applicant and the Monitor while the SISP is undertaken and the results implemented.

These orders too are approved.

Orders to issue in the form signed by me this day.

Going forward, as Justice Pattillo is soon scheduled to retire, I have agreed to be the principal contact for additional appointments with the Court in this matter.



Penny J.