Court File No. CV-15-000011169-00CL

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

ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC., ESSAR STEEL ALGOMA (ALBERTA) ULC, CANNELTON IRON ORE COMPANY, AND ESSAR STEEL ALGOMA INC. USA

Applicants

UNOFFICIAL TRANSCRIPT OF ENDORSEMENT OF
THE HONOURABLE MR. JUSTICE NEWBOULD DATED NOVEMBER 16, 2015

Counsel: See Counsel Slip

On this comeback motion, some things can be settled, primarily the DIP loan, which is critical to the debtors efforts to restructure.

The timing of this comeback motion has been tight, as has this whole process due to the filing under the CCAA at such a critical time for Essar Algoma. It is clear that the drafting of the documentation is a work in progress.

In reviewing the DIP terms, I have the following comments:

1. The process should be open to persons to come to court. The DIP agreement is lengthy and the parties have not had a great deal of time to consider it – ie other than the debtors, the DIP agent and the Monitor. Some provisions should be changed:

   - the events of default in section 12.01(i) should delete the portions in parenthesis;
   - the provisions on p. 109 as to what may happen in the event of default states that the only issue that may be raised by any party being whether an event of default has occurred and continuing. That language should be removed;
   - Section 12.01(i) is to be amended to delete any reference to payments, as per the affidavit of Mr. Marwah and the statement of counsel to the DIP agent;

– the milestones should be amended as per the statements of counsel to the DIP agent regarding a 10 day moratorium before an event of default could occur and as per the other concessions recently negotiated.

The information flow must be even handed and the DIP lenders or the ABL or term lenders are to be in no privileged position regarding all relevant information. The language is to be settled before any approval of the DIP loan. Counsel for other interested parties should have the ability to participate in the discussions.

The parties are directed to attempt to work out appropriate language for these issues and any other issues regarding the DIP loan. This is not to be an open-ended discussion. If the terms are not agreed by Thursday morning, the parties are to attend before RSJ Morawetz on Thursday afternoon at 2 pm for a determination of the terms of the DIP.

Regarding the DIP in general, it is clearly needed in order for the debtors to pursue a restructuring. I am satisfied that generally the court's hands will not be tied as to what can or cannot be done if there is a default of the terms of the DIP, so long as the changes I have referred to are made. Nor will the other secured lenders me materially prejudiced by the DIP loan.

The DIP terms are supported by the Monitor. The terms are far from ideal and I do not see the DIP lenders as being merely altruistic. Like any DIP lender, it is in their interest to take what they can get. Their interest, of course, in a situation such as this in which they are all ABL or Term lenders, is to see the business successfully restructure, but to be sure they work it on their terms as much as possible.

In this case, the Monitor will have an important role to play in dealing with budgets and I am confident will play a large part in that and bring to the Court any issue that needs to be dealt with. In this connection, the extra terms of the Monitor's duties sought by the *ad hoc* committee of the junior noteholders are approved and are to be added to the amended initial order.

The request by the various parties for payment by the debtors of their pre-filing and post-filing fees and expenses are to be dealt with at a later date, as are the fees and expenses of Evercore.

Whether the special payments regarding pension liability shortfalls are to be made is an open question to be dealt with at a later date without restriction regarding the court's jurisdiction.

Whether the terms of the DIP are contrary to section 347(2) of the Criminal Code or contravene section 8 of the Interest Act are matters to be dealt with at a later date on proper material. The DIP lenders cannot be paid something contrary to these provisions. Para 45 of the draft order provided by the *ad hoc* committee of the senior and junior noteholders (clients of Goodmans) should be included in the amended initial order, as should a similar provision regarding section 8 of the Interest Act.

Regarding the request of the USW, the proposed tolling clauses should be added to the amended initial order, as should the clauses that any termination of employees should be in accordance with the collective agreements and applicable laws.

Regarding the issues raised by Mr. Bish, on behalf of the owner of Portco and Genco, I would not require a change in the DIP terms requiring the services to be provided to the debtors. These services are essential. The parents owe $20 million to these companies against $3 million costs per month.

Paragraphs 9(b), 14(b), 34(k) (recognizing the issue of fees to a number of persons in paragraph 39 have not yet been dealt with), 34(l), 52 and 66 to 70 as drafted by Mr. Chadwick are approved and to be included in this amended initial order.

The court's discretion or any issue raised by the parties is not to be hampered or limited in any way by the terms of the amended initial offer or of the DIP loan. I understand no one generally takes a different view.

"Original Signed"

The Honourable Mr. Justice Newbould