

Clerk's Stamp:

COURT FILE NUMBER

2401-09247

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LONG RUN EXPLORATION LTD. AND CALGARY SINOENERGY INVESTMENT CORP.

DOCUMENT

**BENCH BRIEF OF THE COLLATERAL AGENT**

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## I. INTRODUCTION

1. This bench brief is submitted on behalf of China Construction Bank Toronto Branch, in its capacity as collateral agent (the “**Agent**” or “**CCBT**”) in support of the application by FTI Consulting Canada Ltd., in its capacity as the Court-appointed Monitor (the “**Monitor**”) of Long Run Exploration Ltd. (“**Long Run**” or the “**Borrower**”) and Sinoenergy Investment Corp. (“**Sinoenergy**”, and collectively with Long Run, the “**Debtors**”), seeking a sale approval and reverse vesting order (the “**SARVO**”) in respect of an amended and restated subscription agreement (the “**Transaction**”) between the Debtors and 2657493 Alberta Ltd. (the “**Purchaser**”), a wholly-owned subsidiary of Hiking Group Shandong Jinyue Int’l Trading Corporation (“**Hiking**”).

2. Long Run has faced significant liquidity issues that have negatively impacted its finances and it requires a restructuring solution. The Transaction, which is supported by the Agent, represents such a solution.

3. The Transaction provides the highest possible consideration for the Borrower’s businesses and is the product of a Court-ordered robust sale and investment solicitation process carried out by the Monitor. In an uncertain market, the Transaction provides certainty in recovery to the secured creditors and certainty in the continuation of the Borrower’s businesses for the benefit of its employees, suppliers, and customers.

4. The Agent, as the Borrower’s first-ranking pre-filing secured creditor with security over substantially all the assets of the Borrower, is the most significant creditor with a direct economic interest in the Transaction. As such, its views ought to be given due consideration by this Court.

5. Only one party opposes approval of the Transaction – Henenghaixin Corp. (“**H Corp**”). H Corp filed a Statement of Claim on February 28, 2020, in Court of King’s Bench of Alberta Action No. 2001-03353 (the “**Action**”). The Action has been ongoing for more than four years with no resolution in sight.

6. In the course of the Action, H Corp secured an *ex parte* Attachment Order/Mareva injunction/disclosure order (the “**Attachment Order**”) against the Debtors and other individual defendants on April 23, 2020. The Attachment Order was set aside against the Debtors on March

3, 2021 and was then later overturned by the Court of Appeal of Alberta on August 22, 2022, due to lack of direct evidence.

7. The H Corp claims, which have not been proven, are unsecured claims that are subordinate to the Agent's secured claim. The Action does not impact the Agent's position as the first-ranking pre-filing secured creditor. H Corp's opposition to the Transaction is an opportunistic attempt by a subordinate creditor to gain priority over others, which should not be permitted, given the result will be to unfairly disadvantage the Agent and other stakeholders.

8. Moreover, Hiking has made it clear that if the Transaction and the SARVO are not approved, they will withdraw their bid, rendering the Transaction impossible. This would cause irreparable harm to many significant stakeholders.

## II. BRIEF SUMMARY OF THE FACTS

### A. Loan Agreements and Advances

9. Long Run as borrower and Sinoenergy as guarantor entered into a credit agreement with CCBT dated January 31, 2017 (the "**Credit Agreement**").<sup>1</sup> The Credit Agreement established credit facilities in an amount up to \$431,000,000 (the "**Credit Facilities**").<sup>2</sup>

10. The Debtors issued a drawdown notice on January 30, 2017, requesting the full amount of the Credit Facilities.<sup>3</sup>

11. On January 26, 2017, CCBT registered its security over Long Run's assets in the Alberta Personal Property Registry (the "**CCBT Security**").<sup>4</sup>

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<sup>1</sup> Fifth Report of FTI Consulting Canada Inc, in its capacity as monitor of Long Run Exploration Ltd. and Calgary Sinoenergy Investment Corp. dated October 30, 2024 at para 55. [**Fifth Report**].

<sup>2</sup> Fifth Report at para 56.

<sup>3</sup> Supplement to the Fifth Report of FTI Consulting Canada Inc, in its capacity as Monitor of Long Run Exploration Ltd. and Calgary Sinoenergy Investment Corp. at para 26 [**Supplement to Fifth Report**].

<sup>4</sup> Supplement to Fifth Report at para 29.

12. The Credit Agreement was subsequently amended or amended and restated on three occasions: November 15, 2018, November 30, 2018, and October 27, 2020.<sup>5</sup>

13. Long Run applied the Credit Facilities' proceeds to settle and terminate its previous credit facilities, which had a balance of approximately \$413 million as of December 31, 2016.<sup>6</sup>

14. The Debtors owe an outstanding balance of approximately \$355,707,551 under the Credit Facilities (the "**CCBT Debt**").<sup>7</sup>

## **B. Initiation of CCAA Proceedings**

15. On July 2, 2024, the Agent filed an originating application pursuant to the *Companies' Creditor Arrangement Act* (Canada)<sup>8</sup> seeking an initial order (the "**Initial Order**") to, among other things, commence CCAA proceedings in respect of the Debtors and to appoint the Monitor, with enhanced powers, pursuant to the provisions of the CCAA. On July 4, 2024, the Honourable Justice K.M. Horner of the Court of King's Bench of Alberta granted the Initial Order.<sup>9</sup>

16. On July 12, 2024, the Honourable Justice P.R. Jeffrey granted an amended and restated initial order (the "**ARIO**") in the CCAA proceedings. The ARIO granted, among other things, an extension to the Stay Period in favour of the Debtors to July 31, 2024.<sup>10</sup>

17. On July 30, 2024, the Honourable Justice J.S. Little of the Court of King's Bench of Alberta granted a Second Amended and Restated Initial Order (the "**SARIO**") to, among other things:

- (a) approving the terms of a stalking horse subscription agreement between Long Run and Hiking or its nominee dated July 23, 2024 (the "**Stalking Horse Subscription Agreement**"); and

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<sup>5</sup> Fifth Report at paras 59-60.

<sup>6</sup> Supplement to Fifth Report at para 31.

<sup>7</sup> Supplement to Fifth Report at para 27.

<sup>8</sup> *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#), as amended (the "CCAA") [Tab 1].

<sup>9</sup> Fifth Report at para 1.

<sup>10</sup> Fifth Report at para 2

- (b) approving a stalking horse sale and investment solicitation process in relation to the assets, property, and undertakings and/or business operations of the Debtors (the “SISP”).<sup>11</sup>

**C. The SISP Process**

18. Following the SARIO, the Monitor, with enhanced powers, implemented the SISP, which generated significant interest and is detailed in the Fifth Report.<sup>12</sup>

19. Based on the evidence filed, the record demonstrates the significant efforts the Monitor has undertaken in order to find a restructuring solution and maximize value for all stakeholders.

**D. The H Corp Action**

20. The background and the remedy sought in the Action by H Corp is detailed in the Supplement to Fifth Report.<sup>13</sup>

**III. ISSUES**

21. The critical issue to be determined at this hearing is whether this Court should approve the Transaction.

22. For the reasons set out below, it is the Agent’s position that the criteria under the CCAA have been satisfied and the Transaction ought to be approved.

**IV. LAW AND ARGUMENT**

**A. The Agent supports the application of the Monitor**

23. The Agent supports the application brought by the Monitor to approve the Transaction.

24. The Monitor, with enhanced powers and under the supervision of the Court, has conducted an extensive SISP. Both the process and outcome are supported by the Court-appointed Monitor

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<sup>11</sup> Fifth Report at para 3.

<sup>12</sup> Fifth Report at paras 24-38.

<sup>13</sup> Supplement to Fifth Report at paras 16-24.

and the Agent. In the difficult circumstances facing Long Run, the evidence shows that all available options were explored in order to secure the best outcome for all stakeholders.

25. The SISP has led to the Transaction, which will ensure Long Run's operations continue for the benefit of its employees, trade creditors, and customers.<sup>14</sup>

26. Although the CCAA restructuring is Monitor driven, and it is ultimately the Monitor who must determine if a proposed restructuring solution is in the best interest of the Applicants' stakeholders, the views of the Agent are important in this context as well.

27. As the first-ranking pre-filing secured creditor with security over substantially all of the assets of Long Run, the Agent is a necessary and proper participant in the process and its interests must be given due consideration. As recognized by Justice Morawetz (as he was then) in *Windsor Machine & Stamping Limited (Re)*:

There is no basis, in my view, for the argument that somehow the absence of a statutory distribution scheme entitles unsecured creditors to obtain enhanced priority over secured creditors for pre-filing obligations. To give effect to this argument would result in a situation where secured creditors would be prejudiced by participating in CCAA proceedings as opposed to receivership/bankruptcy proceedings. This could very well result in a situation where secured creditors would prefer the receivership/bankruptcy option as opposed to the CCAA option as it would recognize their priority position. Such an outcome would undermine certain key objectives of the CCAA, namely, (i) maintain the status quo during the proceedings; and (ii) to facilitate the ability of a debtor to restructure its affairs. In my view, it is essential, in a

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<sup>14</sup> Fifth Report at para 34.

court supervised process, to give due consideration to the priority rights of secured creditors.<sup>15</sup>

28. As described above, the Agent supports the Monitor’s restructuring efforts. In its capacity as the first-ranking pre-filing secured creditor of Long Run, it has participated in these proceedings with one goal in mind, to maximize value. The Transaction secured by the Monitor as part of the SISP, accomplishes this goal.

29. The Agent respectfully submits that the proposed Transaction satisfies the criteria under section 36(3) of the CCAA and the *Harte Gold* factors.<sup>16</sup> The Agent supports the Monitor’s request for approval of the Transaction and the approval and reverse vesting order (the “**ARVO**”) and respectfully asks this Honourable Court to grant the ARVO.

**B. The H Corp Objections have no merit**

30. The Credit Agreement and the corresponding monetary advances thereunder were first provided to the Borrower on January 31, 2017 (the “**Advances**”), predating any alleged advances made by H Corp to Sinoenergy.<sup>17</sup> Any alleged amounts owed to H Corp are subordinate in priority to the Advances and should not be allowed to stand in the way of approving the Transaction.

31. In *Windsor*, the Court dealt with the opposition of unsecured creditors to an Approval and Distribution Order as follows:

Although the outcome of this process does not result in any distribution to unsecured creditors, this does not give rise to a valid reason to withhold Court approval of these transactions. I am

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<sup>15</sup> *Windsor Machine & Stamping Limited (Re)*, 2009 CanLII 39771 (ON SC) at [para. 43](#) [Tab 2].

<sup>16</sup> *Harte Gold Corp (Re)*, 2022 ONSC 653 at [para 38](#) [Harte Gold] [Tab 2]

<sup>17</sup> Supplement to Fifth Report at para 27.

satisfied that the unsecured creditors have no economic interest in the assets.<sup>18</sup>

32. H Corp’s attempt to establish a constructive trust is also without merit. CCBT provided the Credit Facilities around January 31, 2017, and perfected the CCBT Security shortly before, on January 26, 2017.<sup>19</sup> H Corp, by contrast, asserts that the disputed funds were disbursed from January through September 2017.<sup>20</sup> Importantly, H Corp’s first transfer only occurred on April 13, 2017, well after CCBT had advanced the Credit Facilities and registered the CCBT Security.<sup>21</sup> Granting a constructive trust in H Corp’s favour would effectively create a super-priority, placing H Corp’s claim ahead of the CCBT Security—even though CCBT fulfilled all statutory obligations and holds valid, perfected security.

33. The Courts have ruled that a constructive trust as a remedy in insolvency proceedings is used “only in the most extraordinary cases” and the threshold to show that there is a “constructive trust in a bankruptcy setting is high”.<sup>22</sup>

34. In the present circumstances, it is clear that the Agent as the first-ranking pre-filing secured creditor of Long Run is legally entitled to have its claim paid in priority to the H Corp’s alleged unsecured claim.

35. Any determination to the contrary would compromise the CCBT Debt and unfairly disadvantage the CCBT Security, eroding the priority and legal protections CCBT achieved by adhering to statutory requirements.

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<sup>18</sup> *Re AbitibiBowater Inc.*, 2009 QCCS 6461 at [para 74](#) [Tab 4] citing *Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772 (ON SC) at [para. 13](#) [Windsor] [Tab 5].

<sup>19</sup> Supplement to Fifth Report at para 30.

<sup>20</sup> Supplement to Fifth Report at para 32.

<sup>21</sup> Supplement to Fifth Report at para 33.

<sup>22</sup> *Credifinance Securities Limited v. DSLC Capital Corp.*, 2011 ONCA 160 (CanLII), at paras [32](#) and [33](#) [Tab 6].



36. Allowing H Corp’s objections to stand in the way of the only exit for the Debtors from these CCAA proceedings has the effect of treating their unproven claim as in priority to the Agent’s secured claims.

37. Considering H Corp’s failure over the past four years to present any substantial evidence in connection with the Action,<sup>23</sup> its opposition to the Transaction is unsupported and a bridge too far.

### **C. Jeopardizing the Transaction**

38. Furthermore, the amendments to the economics of the Transaction that H Corp is seeking will result in the Transaction’s demise.<sup>24</sup> Counsel for Hiking, as stated in a letter dated September 11, 2024, maintains the position that Hiking will not proceed with the Transaction, or any other similar transaction, if the H Corp Action is treated as a “Retained Liability” under the Transaction.<sup>25</sup>

39. The Debtors will not have sufficient liquidity to continue meeting post-filing obligations or the cost of these CCAA proceedings past November 30, 2024, and will exhaust any amounts available.<sup>26</sup>

40. The Transaction represents the highest available recovery to creditors and there was no viable alternative identified though the SISP that resulted in a higher potential recovery to creditors.<sup>27</sup>

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<sup>23</sup> Supplement to Fifth Report at paras 25-29.

<sup>24</sup> Supplement to Fifth Report at para 59(e).

<sup>25</sup> Supplement to Fifth Report at para 55.

<sup>26</sup> Supplement to Fifth Report at para 57.

<sup>27</sup> Supplement to Fifth Report at para 52.

41. An alternative to the Transaction would likely be a bankruptcy which would further erode value being offered by the Transaction and lead to many of Long Run's stakeholders being worse off.<sup>28</sup>

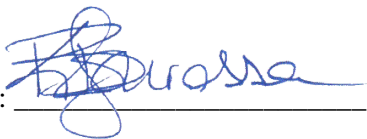
42. Such an outcome would significantly prejudice the Agent, the entirety of the stakeholders, and place in peril the entire restructuring process of Long Run.

## V. CONCLUSION

43. In light of the foregoing, the Agent requests that this Honourable Court approve the Application, the Transaction, and the ARVO sought by the Monitor.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 7<sup>TH</sup> day of November 2024.

**BLAKE, CASSELS & GRAYDON LLP**

Per:  \_\_\_\_\_

**Kelly J. Bourassa / Farrukh Ahmad**  
Counsel for China Construction Bank, Toronto Branch, as Agent

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<sup>28</sup> Supplement to Fifth Report at para 56.

## TABLE OF AUTHORITIES

TAB	AUTHORITY
1	<i>Companies' Creditors Arrangement Act</i> , <a href="#">RSC 1985, c C-36</a>
2	<i>Harte Gold Corp (Re)</i> , <a href="#">2022 ONSC 653</a>
3	<i>Windsor Machine &amp; Stamping Limited (Re)</i> , <a href="#">2009 CanLII 39771 (ON SC)</a>
4	<i>Re AbitibiBowater Inc.</i> <a href="#">2009 QCCS 6461</a>
5	<i>Windsor Machine &amp; Stamping Limited (Re)</i> , <a href="#">2009 CanLII 39772 (ON SC)</a>
6	<i>Credifinance Securities Limited v. DSLC Capital Corp.</i> , <a href="#">2011 ONCA 160 (CanLII)</a>