

CANADA / JUDGMENT

1057863 B.C. Ltd. (Re)

2020 BCSC 1057

COURT

Supreme Court of British Columbia

DECIDED

19 June 2020

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2020 BCSC 1057 1057863 B.C. Ltd. (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: 1057863 B.C. Ltd. (Re), 2020 BCSC 1057 Date: 20200619 Docket: S206189 Registry:

Vancouver In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 and In the Matter of the Business Corporations Act, S.B.C. 2002, c. 57 and In the Matter of a Plan of Compromise or Arrangement of 1057863 B.C. Ltd., Northern Resources Nova Scotia Corporation, Northern Pulp Nova Scotia Corporation, Northern Timber Nova Scotia Corporation, 3253527 Nova Scotia Limited, 3243722 Nova Scotia Limited and Northern Pulp NS GP ULC Petitioners Before: The Honourable Madam Justice Fitzpatrick Oral Reasons for Judgment In Chambers (Via videoconference) Counsel for the Petitioners: M.A. Feder, Q.C. W.W. MacLeod V. Lucas Counsel for the Respondent, Province of Nova Scotia: R. Grant, Q.C. M. Chiasson, Q.C. Counsel for the Respondent, Paper Excellence Canada Holdings Corporation: P.J. Reardon Counsel for the Proposed Monitor, Ernst & Young: E. Pillon Place and Date of Hearing: Vancouver, B.C. June 19, 2020 Place and Date of Judgment: Vancouver, B.C. June 19, 2020

- [1] THE COURT: On June 17, 2020, the petitioners filed this proceeding pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "CCAA"). The matter before the Court today is the petitioners' application for an initial order under the CCAA.
- [2] I have reviewed the relief sought and I am satisfied that the relief is appropriate in the circumstances.
- [3] The petitioners are a highly integrated group of companies whose main purpose is to operate pulp mill facilities in Nova Scotia.
- [4] I am satisfied that the petitioners are insolvent, as that term is commonly considered in CCAA proceedings. That is particularly so here given the expansive view of insolvency as set out in *Stelco Inc. (Re)*, [2004] O.J. No. 1257 (Ont. S.C.) at paras. 21-22, 28; leave to appeal refused [2004] O.J. No. 1903; leave to appeal refused, [2004] S.C.C.A. No. 336.
- [5] There are two limited partnerships within the complex group of entities which comprise the petitioners. It is not uncommon in CCAA proceedings to extend the stay of proceedings to the limited partnerships in accordance with my general jurisdiction under s. 11 of the CCAA: see 4519922 Canada Inc. (Re), 2015 ONSC 124 at para. 37. Given the high degree of

integration within this corporate group, it would no doubt pose some difficulty if the stay was not extended to the limited partnerships. It is anticipated that a stay with respect to the entire group will benefit the proceedings generally.

- [6] The petitioners also seek certain protections in favour of the directors and officers of the various entities. The relief sought is somewhat unusual in that the petitioners submit that it is also appropriate to extend the benefit of the protections to the directors and officers of Paper Excellence Corporation (PEC). PEC is the ultimate owner of the petitioners. As the petitioners' counsel has indicated, this aspect of the relief sought is intended to provide protections to PEC's directors and officers only in the event that they might attract liability in some fashion as de facto directors and officers of the petitioners.
- [7] In the usual fashion, the petitioners seek various charges against their assets.
- [8] Firstly, they seek an Administration Charge in the amount of \$500,000. Such protection for the professionals involved in this matter is appropriate: see CCAA, s. 11.52 and Timminco Ltd. (Re), 2012 ONSC 506 at para. 66. Given the magnitude of the petitioners' operations and the issues that are anticipated to arise in this proceeding, I am satisfied that the \$500,000 amount is appropriate.
- [9] Secondly, the petitioners seek a directors and officers charge in the amount of \$500,000. I am also satisfied that this charge and the amount of this charge are appropriate. This is particularly so given the significance of the petitioners' operations in Nova Scotia and the inherent risks that are faced by the directors and officers, particularly with respect to employee claims.
- [10] Finally, the petitioners' counsel has referred me to the proposed initial order that clarifies that the charges granted are not to prime any claims for deemed trust amounts under s. 37(2) of the CCAA and also, any secured creditors who have not received notice of this application for the initial order.
- [11] In summary, I am satisfied that the relief by the petitioners is appropriate and the initial order is granted on the terms sought. "Fitzpatrick J."

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