

CANADA / JUDGMENT

1057863 B.C. Ltd. (Re)

2024 BCSC 1111

COURT

Supreme Court of British Columbia

DECIDED

25 June 2024

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2024 BCSC 1111 1057863 B.C. Ltd. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

1057863 B.C. Ltd. (Re),

2024 BCSC 1111

Date: 20240625

Docket: S206189

Registry: Vancouver

Between:

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 Justice Fitzpatrick

Reasons for Judgment

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R. Pink, K.C.

Place and Date of Hearing:

Vancouver, B.C.

May 31, 2024

Place and Date of Ruling with Written Reasons to Follow:

Vancouver, B.C.

May 31, 2024

Place and Date of Written Reasons:

Vancouver, B.C.

June 25, 2024

Introduction

- [1] This hearing was convened in this restructuring proceeding to obtain approval of a significant milestone--a settlement between the major stakeholders--in what has been a long, complex and difficult proceeding.

- [2] The petitioners seek an order approving a comprehensive settlement agreement and also, a claims process order. No party or stakeholder opposed the relief.
- [3] In June 2020, these proceedings began when the petitioners sought creditor protection under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 [CCAA]. At the time, the petitioners' business was the operation of a pulp mill (then in hibernation) and related timberland operations in Pictou County, Nova Scotia.
- [4] The proceedings were very contentious between the petitioners, its shareholders, its major secured creditor, and the Province of Nova Scotia (the "Province"), who is also a major secured creditor. Major issues arose between the parties concerning the petitioners' intention to restart the pulp mill and/or obtain financial compensation from the Province for legislation that had mandated its closure. This conflict had led to litigation and judicial reviews in Nova Scotia and allegations against the Province as to their conduct in the face of these restructuring proceedings.
- [5] In May 2022, I granted an order directing a mandatory mediation process between the parties, against the wishes of the Province: 1057863 B.C. Ltd. (Re), 2022 BCSC 759 [Mediation Order Reasons]. I appointed the Honourable Thomas Cromwell, C.C., as the Mediator.
- [6] Despite the rocky start to the mediation process, including the Province seeking to appeal the mediation order, the mediation continued for the next two years to address the multiple complex issues between the various parties. The parties have been assisted in the process to a large degree by not only Mr. Cromwell, but also the Monitor and its counsel.
- [7] The proposed settlement represents a significant and very positive turn of events that will bring certainty to the parties as to the path forward in these restructuring proceedings.
- [8] For the reasons discussed below, I approved the settlement and granted the claims process order, with reasons to follow. These are those reasons.

The Settlement Agreement

- [9] The settlement agreement is a global resolution of all claims between the petitioners and its shareholders, the interim lenders and the Province, including the litigation arising from the Province's legislation that directly affected the pulp mill and the petitioners' ability to operate the pulp mill.
- [10] The provisions of the settlement agreement are complex, but can be generally described as including either a "New Mill Scenario" or a "No Mill Scenario". Specifically:
 - a) The "New Mill Scenario": the first step is to obtain a feasibility study for the development of a new mill in Liverpool, Nova Scotia (the "New Mill"). That study is to be obtained within nine months of today and the parties have set out the specifics of what will determine whether the New Mill will be financially viable in terms of a rate of return. If a positive result arises, the petitioners will seek third-party financing. If that financing is obtained, the petitioners

will pay \$15 million to the Province and fund amounts required to wind-up the existing pension plans and deficiencies; and

- b) The "No Mill Scenario": if the plans for the New Mill do not materialize, the petitioners will liquidate the timberlands. The parties have agreed upon a waterfall of payments from those sale proceeds, including payment of the interim financing, amounts to wind-up the pension plans, payment of \$30 million to the Province plus \$15 million to maintain the existing pulp mill and implement a closure plan. The petitioners may seek to sell the existing mill.
- [11] In either scenario, the parties have agreed to dismiss or withdraw the various litigation claims, including challenges to the Province's legislation, a judicial review of certain environmental decisions, the appeal from the mediation order and allegations in these CCAA proceeding against the Province.
- [12] Given what is described as the Mediator's "instrumental" assistance in the past, the parties intend to continue to retain Mr. Cromwell in the event that any issues arise in the implementation of the steps contemplated by the settlement agreement.
- [13] This Court may approve the settlement agreement under its broad statutory jurisdiction under s. 11 of the CCAA, which refers to a court making such orders as are necessary to achieve the remedial objectives of the CCAA.
- [14] Settlement agreements have frequently been approved in CCAA proceedings where a settlement avoids complex and costly legal contests and which contribute to advancing the restructuring on a timely and efficient basis: *Walter Energy Canada Holdings, Inc. (Re)*, 2017 BCSC 1968 [Walter Energy] at paras. 35-36; *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1773 at para. 16; *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, 2013 ONSC 1078 [Sino-Forest] at para. 44.
- [15] Factors that are considered in deciding whether to approve a settlement under the CCAA include: whether the settlement is fair and reasonable; whether the settlement provides substantial benefits to stakeholders; and whether the settlement is consistent with the purpose and spirit of the CCAA: *Sino-Forest* at para. 49; *Walter Energy* at para. 33.
- [16] In assessing whether the proposed settlement is fair and reasonable, the court can consider the settlement's balancing of the interests of all parties, equitable treatment of the parties, including the creditors who are not signatories to the agreement, and its benefit to the petitioners and its stakeholders generally: *Nortel Networks Corporation (Re)*, 2010 ONSC 1708 at para. 73.
- [17] I accept the parties' joint submissions, supported by the Monitor, that approval of the settlement agreement is appropriate in the circumstances. In particular:
- a) The settlement agreement provides a significant benefit to the petitioners and their stakeholders. It facilitates a global resolution of all of the claims amongst the parties which will avoid significant cost and effort to resolve those claims;

- b) This result will bring certainty to what has been, in the past, a difficult and complex restructuring that, to a large degree, was hampered by uncertainty;
 - c) The settlement agreement also provides the petitioners with the time and resources necessary to start working towards a solution for the benefit of all creditors. There is no alternative to the settlement agreement that provides a better outcome for the petitioners' stakeholders in the short or medium term;
 - d) The settlement agreement also represents a significant step forward to permit the petitioners to implement either one of the two scenarios. This includes:
 - i. The agreement allows for the opportunity for development of the New Mill based on objectively determined criteria to assess its financial viability in a location that all parties have identified as preferable. If the New Mill meets these criteria, there is the possibility of the petitioners restarting business in Nova Scotia, which would include use of the timberlands. This would allow for further contribution to the Nova Scotia economy and employment of thousands of Nova Scotia residents;
 - ii. Alternatively, the No Mill Scenario allows the petitioners to resolve their outstanding financial matters through an organized liquidation and a transparent and clearly stated waterfall of payments; and
 - e) The settlement agreement provides certainty and clarity on a number of high-stakes issues for a variety of stakeholders, including those not directly involved in the settlement. In either scenario, there is a framework for the repayment of the outstanding pension obligations and ensuring that the petitioners' environmental obligations on the Mill Site are addressed in a responsible manner. In addition, the Pictou Landing First Nation ("PLFN") will be treated as an unaffected creditor in any future plan of arrangement that may be brought by the petitioners in the CCAA proceeding.
- [18] I recognize the substantial efforts that have brought the parties to the proposed settlement agreement. The mediation process has been lengthy and the outcome--the settlement--is the result of a significant good faith efforts of the parties. As stated above, the Monitor has had a significant role in advancing the mediation over that time and I accept the Monitor's support and recommendations on this application.
- [19] I conclude that the settlement agreement should be approved. It is fair and reasonable. Of course, the parties' agreement is indicative of their view of that fact. However, the benefits and fairness to the other stakeholders who are not parties is also evident from its terms. Finally, the settlement agreement is consistent with the remedial purposes and objectives of the CCAA: *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.

Interim Financing

- [20] The settlement agreement also involved various amendments to the interim financing that has been in place for some years now, as approved by the Court.
- [21] The negotiated amendments include: (i) extending the maturity date to March 31, 2025; (ii) removing the "Milestones" (which principally related to a restart of the existing mill); (iii) clarifying the principal amount available does not include interest (which ensures sufficient liquidity during the requested stay extension); and (iv) increasing the interest rate to 13% per annum, applicable to the entirety of the principal amount of the Interim Financing Facility. Any draws under the Interim Financing Facility will be in the amounts required, in consultation with the Monitor.
- [22] These amendments will ensure that the petitioners have sufficient funding during the proposed stay extension period. This funding will allow the petitioners to maintain their assets while the feasibility study is being completed.
- [23] In the New Mill Scenario, the Interim Financing Facility will remain in place. The petitioners will either repay the Interim Financing Facility with the financing of the New Mill or negotiate another solution with the interim lenders. In the No Mill Scenario, the Interim Financing Facility will be repaid from the proceeds from the sale of the timberlands given its senior priority.
- [24] In addition, the parties have agreed to an amendment of the Subordinated Interim Financing to extend the maturity date to March 31, 2025.
- [25] With the DIP Amendments (comprised of Third Amended and Restated DIP Financing Term Sheet and the Subordinated Amending Agreement), the petitioners have also confirmed that they will have sufficient liquidity to meet their obligations during the stay extension.
- [26] This Court has jurisdiction to consider and approve the proposed amendments to the interim financings pursuant to s. 11.2 of the CCAA, taking into account various non-exhaustive factors set out in s. 11.2(4).
- [27] I conclude that the proposed amendments are necessary and appropriate in terms of advancing this restructuring:
- a) the amendments will allow the petitioners to preserve value in the existing mill and the timberlands, the petitioners' only current source of revenue and most valuable assets;
 - b) the amendments will also enhance the prospects of a viable restructuring by allowing the petitioners breathing room to determine whether the New Mill is feasible or whether to proceed with the orderly liquidation contemplated in the settlement agreement;
 - c) the terms of the amendments are consistent with how the petitioners' affairs will be managed in the CCAA proceedings, in terms of their projected cash flow needs to maintain status quo operations to complete the feasibility study;

- d) the 3% increase to the interest rate is proportional to the change in the economic conditions since the Interim Financing Facility was originally negotiated; and
- e) the Province, the petitioners' primary secured creditor, does not oppose approval of the amendments and no other stakeholder or creditor will be materially prejudiced by reason of the amendments.

The Claims Process

- [28] The proposed Claims Process is designed to provide clarity and certainty in this CCAA proceeding by revealing the types of claims that may be asserted against the petitioners as part of their restructuring efforts.
- [29] The petitioners, in consultation with the Monitor, are of the view that conducting a claims process at this time to confirm the nature, quantum and priority of claims will help to ensure orderly execution of any plan of arrangement the petitioners put forward after the feasibility study in the New Mill Scenario, or a distribution in the No Mill Scenario. They both anticipate that this will dovetail with the timing of the feasibility study and use that time efficiently.
- [30] The Claims Process is structured on what I would generally describe as the usual terms. Claims that will be addressed include: Pre-Filing Claims, Restructuring Claims and Directors/Officers Claims. A number of claims will be excluded from the Claims Process, including of course those that cannot be addressed under the CCAA. Excluded claims will also cover any claims arising on or after the filing date (other than the Restructuring Claims and Directors/Officers Claims), the Province's claims relating to the environmental remediation of the existing mill and any claims raised in PLFN's litigation.
- [31] The proposed Claims Process is primarily a negative claims process.
- [32] The Claims Bar Date will be August 30, 2024 or, for the Restructuring Claims, such later date as is specified if there is a notice of disclaimer or resiliation.
- [33] The Monitor is to run the Claims Process and adjudicate any claims, in consultation with the petitioners. The petitioners, with oversight of the Monitor, will have an opportunity to resolve any proof of claim or disputed claim during the course of the Claims Process. Any claim that is referred to the Court for adjudication in accordance with the Claims Process is to be adjudicated on a de novo basis.
- [34] The jurisdiction of the Court to approve a claim process is found in s. 11 of the CCAA: Soccer Express Trading Corp. (Re), 2020 BCSC 749 at para. 106.

- [35] Claim processes are frequently granted in CCAA proceedings. They bring some certainty to the proceedings. Claim processes are a commonly recognized element of such proceedings and are an important step in achieving the remedial objectives in a CCAA restructuring: *Bul River Mineral Corp. (Re)*, 2014 BCSC 1732 at paras 29-32; *Quest University Canada (Re)*, 2020 BCSC 1845 [Quest University] at paras. 20-21.
- [36] I agree with the petitioners that the Claims Process is fair and reasonable to the affected stakeholders. The Claims Process was designed in consultation with the Monitor and the Monitor supports the proposed Claims Process. I agree that commencing the Claims Process at this time will, among other benefits, allow the Monitor to efficiently and effectively assess any potential claims, which will permit the determination of the nature, quantum, and priority of potential claims.
- [37] Also, the negative aspect of the Claims Process is fair to stakeholders, as it will minimize unnecessary costs by eliminating the need for creditors who receive a notice to fill out proof of claim forms and gather supporting evidence. This aspect of the Claims Process is acceptable as these proceedings have been underway and they have been well publicized: *Quest University* at para. 26; *Toys "R" Us (Canada) Ltd. (Re)*, 2018 ONSC 609 at para. 14. The negative Claims Process will also ensure that known claims are not lost due to a failure to file by the Claims Bar Date.
- [38] Finally, the Claims Process follows the usual steps and procedures.
- [39] I conclude that the terms of the proposed Claims Process are fair and reasonable and that the implementation of the Claims Process is appropriate and prudent as this time.

The Stay Extension

- [40] The petitioners seek an extension of the stay of proceedings to March 31, 2025.
- [41] The petitioners cite the need to preserve the status quo while implementing the settlement agreement. The proposed extension is said to be appropriate to provide them with time to complete the feasibility study in order to determine whether the New Mill is financially viable. They anticipate that this time will be sufficient to advance the next steps under the settlement agreement to the point that they can then decide upon a course of action based on the results of the feasibility study and the outcome of the Claims Process.
- [42] The proposed stay extension period is supported by the petitioners' cash flow projections which evidence sufficient liquidity to continue operations and complete the next steps contemplated by the settlement agreement.
- [43] This Court has the discretion to grant a stay extension for a period that it considers necessary on any terms that this Court may impose: s. 11.02(2) of the CCAA. I must be satisfied that the stay extension is appropriate and that the petitioners have acted and continue to act in good faith and with due diligence: s. 11.02(3), CCAA.

- [44] The Monitor states that, in its view, the stay extension period is reasonable in the circumstances and that the requirements of s. 11.02(3) have been met.
- [45] I am satisfied that the stay period should be extended to March 31, 2025. In a significant way, this stay extension is an integral part of allowing the parties to achieve the benefits of the settlement agreement.

Limited Partnership Relief

- [46] Pursuant to s. 2 of the CCAA, only "companies" are eligible to receive the protection afforded by the CCAA.
- [47] However, courts frequently exercise their jurisdiction under s. 11.02(2) of the CCAA to extend the protections of the CCAA to partnerships where the operations of the partnership are so intertwined with those of the debtor companies that irreparable harm would ensue if the partnerships were not included: *Lehndorff General Partners Ltd. (Re)*, 9 B.L.R. (2d) 275, 17 C.B.R. (3d) 24 (O.N.C.J.); *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, 2010 ONSC 222 at paras. 33-34; *Cinram International Inc. (Re)*, 2012 ONSC 3767, Schedule "B" at para. 64; *Miniso International Hong Kong Limited v. Migu Investments Inc.*, 2019 BCSC 1234 at paras. 58-62.
- [48] In this proceeding, I extended the benefit of the initial stay of proceeding in favour of the limited partnerships that are part of the Northern Pulp group: *1057863 B.C. Ltd (Re)*, 2020 BCSC 1057 at para. 5. In addition, the mediation process was also directed toward these entities: *Mediation Order Reasons* at para. 124.
- [49] I am satisfied that it is appropriate to continue to include the limited partnerships in the relief granted.
- [50] I am also satisfied that it is appropriate to include the limited partnership in the Claims Process because the limited partnerships are an integral part of the Northern Pulp group and this will provide further clarity regarding any claims to be presented and/or accepted. The petitioners refer to many examples where such entities have been included in claim processes: *Re Nordstrom Canada Retail Inc.* (30 May 2023), Toronto CV-23-00695619-00CL (O.N.S.C.) (Claims Procedure Order); *Re Old MM GP Inc.* (8 March 2024), Toronto CV-23-00710259-00CL (O.N.S.C.) (Claims Procedure Order); and *Joseph Richard Hospitality Group Ltd. (Re)* (27 July 2023), Vancouver S235026 (B.C.S.C.) (Order Made After Application (Claims Process Order)).

The Wind Farms

- [51] The petitioners also raise an issue that has not been previously addressed by the Court. In years past, the petitioners had identified that a portion of the timberlands had the potential to accommodate wind farms as a source of revenue.

- [52] Prior to the CCAA proceedings, the petitioners granted an option to lease land for the purpose of a wind farm. In April 2023, this option was extended. In December 2023, the option was exercised and, on April 25, 2024, the petitioners entered into a lease with Higgins Mountain Wind Farm Limited Partnership. The next steps involve the development of the lands for the project.
- [53] In addition, in September 2021, the petitioners entered into an option and lease agreement with Renewable Energy Systems Canada Inc. by which an option is granted to develop wind farms on the petitioners' lands.
- [54] None of these post-CCAA transactions were approved by the Court, as was required under the existing court orders.
- [55] I accept the petitioners' submissions that the failure to bring these matters to the Court arose through inadvertence. The Province, who has security on the lands, supports the transactions. In any event, the counterparties to these agreements now require court approval to regularize the transactions and provide certainty for the developments to proceed.
- [56] I am satisfied that, had the matters been raised at the outset, approval would have been granted. I approve these transactions and retroactively authorize the petitioners having entered into them.

Conclusion

- [57] The orders are granted on the terms sought. I approve the settlement agreement, the changes to the interim financing and approve, retroactively, the arrangements with respect to the wind farms. I extend the stay of proceedings to March 31, 2025. Finally, I grant the Claims Process order.
- [58] On a final note, as did many counsel on this application, the Court wishes to extend its thanks to the many people whose hard work led to this significant resolution, one that allowed this restructuring to go forward. That group of people includes the Court appointed Mediator, the Honourable Thomas Cromwell, the Monitor and the Monitor's counsel, who were all able to assist in the mediation process. In addition, the Court's thanks go to the other parties and their counsel whose good faith efforts and hard work resulted in this resolution that provides significant benefits to all concerned.

"Fitzpatrick J."

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