



No. S236214
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1392752 B.C. LTD.

PETITIONER

AND:

SKEENA SAWMILLS LTD.
SKEENA BIOENERGY LTD.
ROC HOLDINGS LTD.

RESPONDENTS

NOTICE OF APPLICATION

NAME OF APPLICANT: The Petitioner, 1392752 B.C. Ltd. (the “Applicant”)

To: All Parties of Record

TAKE NOTICE that an application will be made by the Applicant/Petitioner 1392752 B.C. Ltd. to the Honourable Madam Justice Blake at the courthouse at **800 Smithe Street, Vancouver, B.C.** on Friday, the 22nd day of December 2024 at **9:45 a.m.**, for the orders set out in Part 1 below.

10:00

PART 1: ORDERS SOUGHT

1. A case planning conference be held and a Case Plan Order in the form attached as Schedule “A” to this Notice of Application be granted setting the schedule for an application (the “**Enforceability Application**”) to determine the validity, enforceability and priority of security held by the Applicant 1392752 B.C. Ltd. (the “**Applicant**”).
2. The abridgement of any timelines or service periods as necessary to allow the scheduling, hearing and determination of the Enforceability Application prior to any court approval of the sales process being run by the receiver of the Respondents, Skeena Sawmills Ltd., Skeena Bioenergy Ltd. and ROC Holdings Ltd. (collectively, the “**Skeena Entities**”).
3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

The Parties

4. The Respondents, Skeena Sawmills Ltd., Skeena Bioenergy Ltd. and ROC Holdings Ltd. (collectively, the “**Skeena Entities**”) are related parties and operated a sawmill and pellet plant in Terrace, British Columbia on property owned by ROC Holdings Ltd.
5. The Applicant/Petitioner 1392752 B.C. Ltd. (the “**Applicant**”) is related to the Skeena Entities as it is controlled by Xiao Peng Cui and Shenwei Wu (the “**Shareholders**”) who are the beneficial shareholders of Skeena Entities.
6. The Applicant is the assignee of various shareholder loans made to the Skeena Entities by the Shareholders over a period of years with an aggregate value of in excess of \$100 million (the “**Shareholder Loans**”).

Affidavit #1 of Xiao Peng Cui (“Cui #1”), para.

7. By way of a Forbearance Agreement dated January 31, 2023 (the “**Forbearance Agreement**”), the Skeena Entities confirmed, as at January 31, 2023, indebtedness to the Applicant for the Shareholder Loans in the amount of \$135,596,000 (the “**Indebtedness**”), payable on demand.

Cui #1, Ex. B.

8. Pursuant to the Forbearance Agreement, the Skeena Entities agreed to provide additional security to the Applicant, including:
 - (a) two Grid Promissory Notes dated January 31, 2023 and May 1 2023 (collectively, the “**Promissory Notes**”); and
 - (b) A General Security Agreement (the “**GSA**”) dated January 31, 2023.

Cui #1, Exs. C and G

9. Following execution of the Forbearance Agreement, the Applicant advanced additional sums to the Skeena Entities in the aggregate amount of \$7.614 million (the “**2023 Loans**”).

The Receivership Proceedings

10. The Applicant commenced this proceeding on September 8, 2023, seeking to appoint Alvarez & Marsal Canada Inc. (the “**Receiver**”) as receiver and manager over all of the property of the Skeena Entities.

11. By order pronounced September 20, 2023, this Honourable Court appointed the Receiver over all of the assets, property and undertakings of the Skeena Entities (the “**Receivership Order**”).

The Sales Process

12. Pursuant to the authority granted to it by the Receivership Order, the Receiver embarked on a process to sell the assets of the Skeena Entities.

First Report of the Receiver, October 25, 2023 (“**1st Report**”), paras. 9.1 - 9.3;
Second Report of the Receiver, December 13, 2023 (the “**2nd Report**”), para. 6.0

13. The Receiver received and is assessing nine expressions of interest for the assets, property and undertakings of the Skeena Entities, including an expression of interest from the Applicant (the “**Applicant’s EOI**”). The Receiver has invited four parties, including the Applicant, to participate in phase II of the sales process

2nd Report, paras. 6.6 - 6.7, 6.10.

14. The Applicant’s EOI includes a term for the “payment of a portion of the purchase price by way of credit bid (i.e. setoff against the secured claim it has asserted)” (the “**Credit Bid**”).

2nd Report, para. 6.10.

15. Certain creditors of the Skeena Entities advised the Receiver that they challenge the validity and enforceability, among other things, of the Forbearance Agreement, the GSA and the Promissory Notes and, therefore, the Applicant’s ability to use the Credit Bid.

1st Report, para. 8.1(f), App. F;
2nd Report, para. 7.1.

16. The Receiver intends to conclude the sale of the assets of the Skeena Entities in the first quarter of 2024. In the event the Applicant’s bid is chosen, the Applicant will need to establish its ability to use the Credit Bid in partial payment of the purchase price.

2nd Report, para. 6.3.

17. The Applicant seeks to establish a process and timeline within which to determine the validity of the Credit Bid.

2nd Report, para. 7.4.

PART 3: LEGAL BASIS

18. The Applicant relies on Part 5 of the Supreme Court Civil, Rules and the inherent jurisdiction of this Court.

PART 4: MATERIAL TO BE RELIED ON

19. Receivership Order pronounced September 20, 2023
20. First Report of the Receiver dated October 25, 2023.
21. Second Report of the Receiver dated December 13, 2023
22. Affidavit #1 of Xiao Peng Cui, made September 8, 2023.

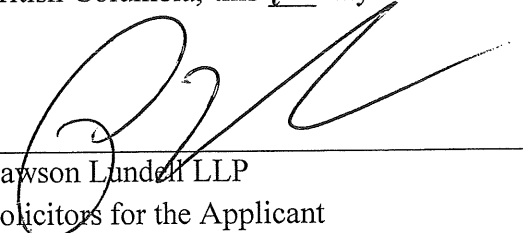
The applicant estimates that the application will take **45 minutes**.

- ☐ This matter is within the jurisdiction of a Master.
- ☒ This matter is not within the jurisdiction of a Master as it involves inherent jurisdiction

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application:

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (d) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 14th day of December 2023.



Lawson Lundell LLP
Solicitors for the Applicant

This Notice of Application is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
- ☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Master

Schedule "A"

No. S236214
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RESPONDENTS

CASE PLAN ORDER

BEFORE THE HONOURABLE MADAM) Friday, the 22nd day of
JUSTICE BLAKE) December, 2023

AT A CASE PLANNING CONFERENCE conducted on the 22nd day of December, 2023
by Madam Justice Blake in the presence of those counsel enumerated in Schedule "A" attached
hereto;

THIS COURT ORDERS that:

1. By no later than ●, 2024, the Petitioner, 1392752 B.C. Ltd. (the "**Applicant**") shall file and serve on all persons on the service list (the "**Service List**") maintained by Alvarez & Marsal Canada Inc. (the "**Receiver**"), in its capacity as receiver of certain assets of Respondents, Skeena Sawmills Ltd., Skeena Bioenergy Ltd. and ROC Holdings Ltd. (collectively, the "**Skeena Entities**"):
 - a. a Notice of Application seeking declarations as to the validity, enforceability and priority of: (i) two Grid Promissory Notes dated January 31, 2023 and May 1 2023 (collectively, the "**Promissory Notes**") ; and (ii) the General Security Agreement (the "**GSA**") dated January 31, 2023 between the Petitioner, 1392752 B.C. Ltd. and the Skeena Entities; and
 - b. any affidavit evidence in support of the Notice of Application (the "**Supporting Affidavits**").

2. By no later than ●, 2024 the Receiver shall deliver by email or regular mail to all persons claiming against the Skeena Entities (except those persons who are either on the Service List or whose legal counsel are on the service list) (all such persons and all persons on the Service List are hererafter referred to as the “**Parties**”), the following:
 - a. a copy of this Case Plan Order;
 - b. a copy of the Notice of Application;
 - c. copies of the Supporting Affidavits; and(collectively, the “**Delivery Materials**”).
3. By no later than ●, 2024, the Receiver shall file in these proceedings and serve on all persons on the Service List an affidavit of delivery confirming the identities of the persons to whom the Delivery Materials were delivered and evidence verifying the manner of deliver to such persons.
4. All Parties that intend to dispute the validity, enforceability, priority or amount of the Promissory Notes and the GSA or who otherwise assert a claim ranking equal or in priority to Applicant must, by no later than ●, 2024, file and serve on all persons on the Service List a Response to the Notice of Application along with any supporting affidavits in respect of such Response.
5. Any Party that serves a Response and that is not already on the Service List shall: (i) be bound by the terms of this Case Plan Order; and (ii) be added to the Service List by the Receiver.
6. The Applicant has until ●, 2024 to file and serve on all persons on the Service List any Reply and additional affidavits arising from the Responses.
7. The Notices of Application shall be heard at a date and time to be scheduled through trial division.
8. The terms of this Order may be amended or varied by by court order or with the consent in writing of all Parties enumerated in Schedule “A” to this Case Plan Order.
9. Any Party may apply to this court on no less than two clear business days’ notice for any order varying this Case Plan Order.

10. The need for endorsement of this order by counsel appearing at this case planning conference, other than counsel for the Petitioner, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

BY THE COURT

Peter J. Roberts, K.C.
Counsel for the Petitioner/Applicant

REGISTRAR

DRAFT