

CITATION: Lydian International Limited (Re), 2020 ONSC 34
COURT FILE NO.: CV-19-00633392-00CL
DATE: 2020-01-02

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 ARRANGMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

Applicants

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Elizabeth Pillon, Maria Konyukhova, Sanja Sopic, and Nicholas Avis*, for the
Applicants

MOTION IN WRITING: January 2, 2020

ENDORSEMENT

[1] This endorsement should be read in conjunction with the endorsement released December 24, 2019.

[2] On December 23, 2019, an initial order granted the Applicants protection under the *Companies' Creditors Arrangement Act* ("CCAA"). Reasons were released the following day.

[3] Paragraphs [22] – [26] of the Endorsement of December 24, 2019 read as follows:

[22] Pursuant to section 11.02(1) of the CCAA, a court may make an order staying all proceedings in respect of a debtor company for a period of not more than 10 days, provided that the court is satisfied that circumstances exist to make the order appropriate.

[23] Section 11.02(1) of the CCAA was recently amended and the maximum stay period permitted in an initial application was reduced from 30 days to 10 days. Section 11.001 which came into force at the same time as the amendment to s. 11.02(1), limits initial orders to "ordinary course" relief.

[24] Section 11.001 provides:

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that

subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[25] The News Release issued by Innovation, Science and Economic Development Canada specifically states that these amendments “limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players.”

[26] In my view, the intent of s. 11.001 is clear. Absent exceptional circumstances, the relief to be granted in the initial hearing “shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period”. The period being no more than 10 days, and whenever possible, the *status quo* should be maintained during that period.

[4] Also on December 23, 2019, the Applicants brought a motion requesting that the stay period be extended to January 17, 2020. I declined to deal with this motion. Instead, I stated that I would deal with the motion to extend the stay period on January 2, 2020 and that any party that wished to oppose the extension of the stay was required to notify the Applicants, the Monitor and the Commercial List Office of their intention to do so no later than 2:00 p.m. on December 30, 2019. In the event that the extension was unopposed, the motion to extend the stay period would be determined, in writing, using the materials filed with the court.

[5] No opposition to the motion was filed.

[6] The decision not to address the motion on December 23, 2019 flows from my interpretation of s. 11.001 of the CCAA that, whenever possible, the initial order should provide for limited relief and that the status quo should be maintained during the initial stay period, which cannot exceed 10 days. In my view, to have granted an extension of the stay, at the conclusion of the initial hearing, would be inconsistent with this interpretation of s. 11.001 of the CCAA.

[7] By deferring consideration of the motion to extend the stay period until today, stakeholders have had the opportunity to consider their respective positions.

[8] The Applicants submit that the stay period extension is warranted because they require additional time to continue their discussions with their lenders and other stakeholders in order to, amongst other things, resolve the issues that have resulted in the Applicants being unable to access and complete construction of their gold mine located in south-central Armenia, and pursue financing and/or sale options for the Applicants and the Lydian Group as a whole.


[9] The Applicants further submit that the Applicants and stakeholders will benefit from the additional time to continue discussions and that availability of the stakeholders and their advisors has been limited over the year-end holiday period.

[10] I also note that the Monitor supports extending the stay period to January 23, 2020.

[11] As noted above, no party opposes the requested relief.

[12] I am satisfied that the Applicants are working in good faith and with due diligence and that circumstances justify the extension of the stay period to January 23, 2020, the date on which the Applicants have scheduled a Comeback Motion.

[13] An order shall issue to reflect the forgoing.



Chief Justice Geoffrey B. Morawetz

Date: January 2, 2020