

CITATION: Lydian International Limited (Re), 2020 ONSC 2700
COURT FILE NO.: CV-19-00633392-00CL
DATE: 2020-04-30

**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 G.B. Morawetz

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

D. J. Miller and Rachel Bergino, for Alvarez & Marsal Inc.

Virginie Gauthier, for Osisko Bermuda Limited

Pamela Huff, for Resource Capital Fund VI L.P.

David Bish and Jeremy Opolsky, for Orion Capital Management

Alexander Steele, for Caterpillar Financial Services (UK) Limited

Bruce Darlington, for ING Bank N.V./Abs Svensk Exportkredit (publ)

HEARD: April 30, 2020

RELEASED:

ENDORSEMENT

[1] This motion is brought by the Applicants seeking an Order:

- (a) extending the Stay Period in respect of the Applicants and the Non-Applicant Stay Parties to June 30, 2020;
- (b) approving an amendment to the Applicants' DIP Agreement to provide for an increase in the Applicants' DIP Facility to fund certain obligations of the Applicants and the Non-Applicant Stay Parties through the stay extension period

to June 30, 2020, to be secured by the DIP Charge previously approved by this Court;

- (c) sealing the unredacted DIP Amendment;
- (d) sealing the unredacted April Stay Extension Affidavit and the Supplemental April Stay Extension Affidavit (as those terms are defined below);
- (e) approving the fees of the Monitor and its counsel, as detailed in the affidavit of Alan Hutchens sworn April 27, 2020 and the affidavit of D.J. Miller sworn April 27, 2020, each of which are appended to the Monitor's Fourth Report to the Court (the "Fourth Report"); and
- (f) approving the Monitor's activities to date as set out in its Third Report to the Court dated March 10, 2020, the Fourth Report and the Monitor's Supplemental Fourth Report to the Court (the "Supplemental Fourth Report").

[2] The requested relief was supported by the Monitor and no party opposed the motion.

[3] Capitalized terms have the meaning ascribed to them in the affidavit of Edward A. Sellers sworn April 27, 2020 (the "April Stay Extension Affidavit") and the supplemental affidavit of Edward A. Sellers sworn April 29, 2020 ("Supplemental April Stay Extension Affidavit").

[4] The court granted the Applicants the Initial Order on December 23, 2019. The initial ten day Stay Period was extended on January 2, 2020 to January 23, 2020. On January 23, 2020, the Comeback Motion was held at which point this Court issued an Amended and Restated Initial Order that, among other things, expanded the Applicants' restructuring capabilities, granted additional protections to the Monitor and extended the Stay Period until March 2, 2020.

[5] On March 2, 2020, the Stay Period was extended to March 11, 2020. On March 11, 2020, an Order (the "March Stay Extension Order") was granted, that further extended the Stay Period to April 30, 2020, approved BMO's engagement as the Applicants' financial advisor, and approved the DIP Agreement.

[6] The Applicants' activities since the granting of the March Stay Extension Order are outlined in the unredacted April Stay Extension Affidavit and the Fourth Report of the Monitor.

[7] The Applicants and Non-Applicant Stay Parties, in consultation with the Monitor, have calculated that the Applicants require additional financing through the extension of the proposed Stay Period ending June 30, 2020.

[8] The Applicants sought additional support from their Lenders and have entered into the DIP Amendment. The DIP Amendment increases the amount of financing provided by the DIP Lenders under the DIP Facility. The increase to the DIP Facility is to be secured by the DIP Charge.

[9] The issues for consideration are whether:

- (a) the Applicants' DIP Agreement should be amended to increase the DIP Facility to fund certain obligations of the Applicants and the Non-Applicant Stay Parties through to June 30, 2020 (such increase to be secured by the DIP Charge);
- (b) the activities of the Monitor as set out in its Third Report, Fourth Report and the Supplemental Fourth Report should be approved;
- (c) the fees of the Monitor and its counsel should be approved;
- (d) the following documents should be sealed: the unredacted DIP Amendment, the unredacted April Stay Extension Affidavit, and the unredacted Supplemental April Stay Extension Affidavit; and
- (e) the Stay Period should be extended to June 30, 2020.

[10] The DIP Amendment modifies the DIP Agreement approved by this Court in the March Stay Extension Order. The DIP Amendment increases the DIP Facility, which will have the effect of providing the Applicants with sufficient liquidity to satisfy obligations incurred and scheduled to be paid through to the end of the proposed Stay Period ending June 30, 2020.

[11] A condition of the additional funding to be provided by the DIP Amendment is that the Applicants are to provide a term sheet or memo to the DIP Lenders that sets out the terms, transactions, steps and timelines for the proposed completion of the Applicants' restructuring and prospective conclusion of these CCAA proceedings (the "Exit Plan Term Sheet").

[12] The Applicants submit that, based on the following factors, the DIP Amendment should be approved and the increase to the DIP Facility should be secured by the DIP Charge:

- (a) the current DIP Facility is set to mature on April 30, 2020. The DIP Amendment will extend the maturity date to June 30, 2020, with milestones to be met in the interim;
- (b) the increased DIP Facility will provide the Applicants with the required liquidity to maintain the Applicants' business and allow the Applicants to continue focusing on restructuring transactions, including a potential sale;
- (c) based on the Applicants' cash-flow forecasts, the increased DIP Facility is sufficient to allow continued operations to and including June 30, 2020;
- (d) the Monitor is supportive of the DIP Amendment;
- (e) the DIP Amendment is not anticipated to give rise to any material financial prejudice; and
- (f) the DIP Lenders are a subset of the Lydian Group's senior secured creditors.

[13] Having considered the non-exhaustive list of factors set out in s. 11.2(4) of the CCAA and the submissions of counsel, I am satisfied that the requested relief in respect to the DIP Amendment is reasonably necessary and appropriate in the circumstances and is granted.

[14] The Applicants are seeking an order approving the Monitor's activities to date, as detailed in the Third Report, the Fourth Report and the Supplemental Fourth Report.

[15] In the absence of any adverse comment to the approval request, I am satisfied that it is appropriate to approve these Reports.

[16] The Applicants also seek approval of the fees and disbursements of the Monitor and its counsel for the period March 1, 2020 to April 15, 2020, inclusive. The Applicants have reviewed the fees of the Monitor and its counsel and support the payment of the same.

[17] I am satisfied that the fees and disbursements of the Monitor and its counsel are fair and reasonable in the circumstances and they are approved.

[18] There are a number of documents containing commercially sensitive information that have been placed before the Court for this hearing. The Applicants are seeking to seal these documents, which include:

- (a) the unredacted DIP Amendment;
- (b) the unredacted April Stay Extension Affidavit; and
- (c) the unredacted Supplemental April Stay Extension Affidavit.

[19] I am satisfied that the documents in question contain certain sensitive commercial information, the disclosure of which could be harmful to the stakeholders. Having considered the *Sierra Club* principles, I am satisfied that the sealing request is reasonable in the circumstances and it is granted.

The Stay Period Should be Extended

[20] The Stay Period expires on April 30, 2020. Pursuant to s. 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (i) circumstances exist that make the order appropriate; and (ii) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.

[21] The Applicants are seeking to extend the Stay Period to and including June 30, 2020. The Applicants contend that this will provide the Applicants with stability and allow them to continue their efforts to achieve a viable path forward that will maximize recoveries for all stakeholders. During the extended Stay Period, the Applicants intend to conduct the activities provided for in the DIP Amendment (including the development of the Exit Plan Term Sheet), continue to negotiate a transactional outcome with the SISF Party, and advance their dialogue with the GOA in an effort to gain access to the Amulsar Project.

[22] The Applicants submit that subject to the DIP Amendment being finalized and approved, the Applicants will have access to sufficient liquidity to continue current operations during the requested extension of the Stay Period. The Monitor supports extending the Stay Period until June 30, 2020.

[23] Finally, the Applicants submit that no creditors are expected to suffer material prejudice as a result of the extension of the Stay Period.

[24] I am satisfied that the Applicants are acting in good faith and with due diligence in pursuing their restructuring strategy and will continue to do so during the proposed extension of the Stay Period through to June 30, 2020. In these circumstances, it is appropriate to extend the Stay Period to June 30, 2020.

[25] In the result, the requested relief is granted and the order has been signed.

“G.B. Morawetz, C.J.”
Chief Justice Geoffrey B. Morawetz

Date: April 30, 2020