

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 11TH
)
CHIEF JUSTICE MORAWETZ) DAY OF MARCH, 2020

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

Applicants

ORDER

(Re Approval of BMO Engagement, DIP Agreement and Extension of the Stay of
Proceedings)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the affidavit of Edward A. Sellers sworn March 10, 2020 (the "**Sellers Stay Extension Affidavit**") and the Exhibits thereto, the affidavits of Edward A. Sellers sworn March 10, 2020 (the "**Second Sellers BMO Affidavit**") and January 21, 2020 (the "**First Sellers BMO Affidavit**") and the Exhibits thereto, and the Third Report of Alvarez & Marsal Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") dated March 10, 2020 (the "**Third Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor, Caterpillar Financial Services (UK) Limited ("**CAT**"), Orion Capital Management, Resource Capital Fund VI LP, Osisko Bermuda Limited and ING Bank N.V./ ABS Svensk Exportkredit (publ) ("**ING**"), and on being advised that those parties listed in the affidavits of service filed were given notice of this motion,

EXTENSION OF STAY PERIOD

1. **THIS COURT ORDERS** that the stay period as referred to in the Amended and Restated Initial Order of Chief Justice Morawetz dated January 23, 2020 (the "**Amended and Restated Initial Order**") is extended until and including April 30, 2020 in respect of the Applicants and the Non-Applicant Stay Parties.

APPROVAL OF FINANCIAL ADVISOR'S ENGAGEMENT, INCREASE TO ADMINISTRATION CHARGE AND TRANSACTION CHARGE

2. **THIS COURT ORDERS** that the Applicants are authorized to continue the engagement of BMO Nesbitt Burns Inc. ("**BMO**") on the terms and conditions set out in the Revised BMO Engagement Letter (as defined in the Second Sellers BMO Affidavit).

3. **THIS COURT ORDERS** that BMO shall be paid its fees and expenses in accordance with the terms of the Revised BMO Engagement Letter, whether incurred prior to or after the date of this Order, by the Applicants, and shall be entitled to the benefit of the Administration Charge (the "**Administration Charge**") provided for in paragraph 32 of the Amended and Restated Initial Order in respect of its Monthly Fee (as defined in the Second Sellers BMO Affidavit) and a charge (the "**Transaction Charge**") on the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") to secure the Recapitalization Fee (as defined in the Second Sellers BMO Affidavit). The Transaction Charge shall have the priority set out in paragraphs 10 and 12 hereof.

4. **THIS COURT ORDERS** that the Administration Charge shall be increased to secure the Monthly Fee, up to the maximum aggregate amount of \$658,200 (being US\$500,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for the professional fees and disbursements of the Monitor, counsel to the Monitor, the Applicants' counsel and BMO, incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 10 and 12 hereof.

DIP FINANCING

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place among the Applicants, the Non-Applicant

Stay Parties and any other of the entities in the Lydian Group, as set out in the Amended and Restated Initial Order.

6. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to guarantee a credit facility from Orion Co IV (ED) Limited, Resource Capital Fund VI L.P. and Osisko Bermuda Limited (collectively, the “**DIP Lenders**”) in connection with the Sixteenth Amending Agreement dated March 10, 2020 between the DIP Lenders, Lydian Armenia CJSC (“**Lydian Armenia**”) as Borrower and the Applicants and the other Lydian Group entities listed therein as guarantors (the “**DIP Agreement**”), in order to finance working capital requirements of the Applicants and Non-Applicant Stay Parties, and other general corporate purposes, all as specifically provided for in the DIP Agreement.

7. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Charge**”), which DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 10 and 12 hereof.

8. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Charge;
- (b) upon the occurrence of an event of default under the DIP Agreement, the DIP Lenders may apply to the Court to exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Agreement and the DIP Charge; and
- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

9. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the DIP Agreement.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

10. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge (as each of those terms is defined in the Amended and Restated Initial Order), the Transaction Charge and the DIP Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$658,200 (being US\$500,000 as per the Bank of Canada's published exchange rate on December 20, 2019));

Second- the Directors' Charge (to the maximum amount of \$263,280);

Third- the Transaction Charge (to the maximum amount of \$5,923,800 (being US\$4,500,000 as per the Bank of Canada's published exchange rate on December 20, 2019));

Fourth- the DIP Charge.

11. **THIS COURT ORDERS** that, for greater certainty, the Administration Charge, the Director's Charge, the Transaction Charge and the DIP Charge shall not apply to the equipment owned by Lydian Armenia intended for use in connection with the Amulsar Project (as defined in the Sellers Stay Extension Affidavit) and financed by equipment financiers including CAT and ING.

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the Directors' Charge, the Transaction Charge or the DIP Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

13. **THIS COURT ORDERS** that each of the Administration Charge, the Directors' Charge, the Transaction Charge or the DIP Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any individual, firm, corporation, governmental

body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person").

14. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the Directors' Charge, the Transaction Charge or the DIP Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge, the Directors' Charge, the Transaction Charge and the DIP Charge.

15. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the Transaction Charge and the DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

MONITOR'S FEES AND ACTIVITIES

16. **THIS COURT ORDERS** that the Monitor's activities, as set out in the Second Report of the Monitor dated February 28, 2020, be and hereby are approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

17. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and the Monitor's counsel, Thornton Grout Finnigan LLP, as disclosed in the Third Report and detailed in the Affidavit of Alan Hutchens sworn March 10, 2020 (the "**Hutchens Affidavit**") and the Affidavit of D.J. Miller sworn March 9, 2020 (the "**Miller Affidavit**"), respectively, as appended to the Third Report, be and hereby are approved.

SEALING

18. **THIS COURT ORDERS** that the First Sellers BMO Affidavit, the Second Sellers BMO Affidavit, the BMO Engagement Letter, the Revised BMO Engagement Letter, the CAT Settlement and the ING Settlement (as each of the foregoing terms are defined in the Sellers Stay Extension Affidavit), the unredacted DIP Agreement, the unredacted Sellers Stay Extension Affidavit, and the unredacted invoices attached as Confidential Exhibit 1 to each of the Hutchens Affidavit and Miller Affidavit are hereby sealed and shall not form part of the public record until further order of the Court.

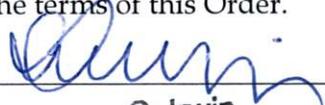
GENERAL

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 11 2020

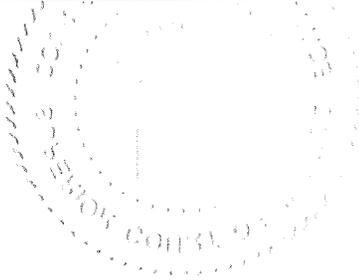
PER / PAR:


C. Irwin
Registrar



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

Court File No.: CV-19-00633392-00CL



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Proceeding commenced at Toronto

**ORDER
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Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSO#: 35638M
Tel: (416) 869-5623
Email: epillon@stikeman.com

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Sanja Sopic LSO#: 66487P
Tel: (416) 869-6825
Email: ssopic@stikeman.com

Nicholas Avis LSO#: 76781Q
Tel: (416) 869-5504
Email: navis@stikeman.com
Fax: (416) 947-0866

Lawyers for the Applicants