SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00722252-00CL **DATE: June 21, 2024**

NO. ON LIST: 3

In the Matter of NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD., LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE PENNY:

Overview

[1] At the conclusion of hearing of this matter, I granted the orders sought with reasons to follow. These are the reasons. The capitalized terms used in this endorsement have the meaning assigned in the documents contained in the application record.

[2] The Applicant has been designated the foreign representative of the Debtors by order of the U.S. Bankruptcy Court for the District of Nevada (Justice Barnes). The Debtors (which include Canadian legal entities) are the owning, operating and related entities associated with a copper mine and other potential copper-producing properties in Nevada. The copper mine project is the Debtors' only material asset.

[3] The Applicant seeks orders under sections 46 to 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, for, among other things:

(a) an Initial Recognition Order (Foreign Main Proceeding):

(i) abridging and validating the time for service;

(ii) declaring that the Applicant is the "foreign representative" of the Debtors as defined in section 45 of the CCAA;

(iii) declaring that the center of main interest for each of the Debtors is the United States of America and recognizing the Chapter 11 Cases as a "foreign main proceeding" under Part IV of the CCAA; and

(iv) granting a stay of proceedings in respect of the Debtors and ordering the other mandatory relief set out in section 48(1) of the CCAA;

(b) a Supplemental Order (Foreign Main Proceeding):

(i) recognizing and enforcing certain First Day Orders entered by the Bankruptcy Court;

(ii) granting additional stays and protections in respect of the Debtors and their directors and officers consistent with the Model Supplemental Order in Ontario;

(iii) appointing Alvarez & Marsal Canada Inc. as information officer in these proceedings; and

(iv) granting the DIP Charge and the Administration Charge against the Debtors' property in Canada.

Background

[4] As a result of strained liquidity and a prior unsuccessful marketing process, the Debtors commenced the Chapter 11 Cases on June 10, 2024. At the same time, the Debtors filed several first day motions (the "First Day Motions"), following which, on June 14, 2024, the Bankruptcy Court entered interim and/or final orders. These orders provided relief that authorized the Debtors to, among other things, continue to operate their business in the ordinary course and to borrow under the DIP Facility.

[5] The DIP Credit Agreement establishes case milestones to ensure that the Chapter 11 Cases and these Part IV proceedings proceed at an appropriate and efficient pace, culminating in the consummation of a sale of the Debtors' assets within approximately four months. One of these milestones is a requirement that this Court recognize the Chapter 11 Cases and the U.S. Interim DIP Order within 14 days following entry of the U.S. Interim DIP Order by the Bankruptcy Court.

[6] The Applicant believes that Canadian recognition of the Chapter 11 Cases of each of the Debtors, along with the additional relief that the Applicant seeks from this Court for the Debtors, including recognition of the U.S. Interim DIP Order and the other First Day Orders, is necessary to protect the Debtors' assets and business in Canada and will appropriately support the Chapter 11 Cases.

[7] The issues to be determined in this motion are:

(a) are the Chapter 11 Cases of the Debtors "foreign main proceedings" under Part IV of the CCAA?

(b) if so, are the Debtors entitled to the relief sought in these proceedings? and

(c) is Ontario the proper jurisdiction for these recognition proceedings?

Foreign Main Proceedings

[8] Under Part IV of the CCAA, the foundational principles are comity and cooperation between courts of various jurisdictions; Canadian courts will respect the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance it is unacceptably different from the bankruptcy and insolvency law of Canada or because the legal process that generates the foreign order diverges radically from the process

in Canada. Cooperation between courts under Part IV promotes the fair and efficient administration of cross-border insolvencies and the protection and maximization of the value of the debtors' property.

[9] The CCAA sets out a series of technical requirement, Where a foreign representative, like the Applicant, applies to the Court for the recognition of a foreign proceeding, section 46(2) requires (a) a certified copy of the instrument that commenced the foreign proceeding, (b) a certified copy of the instrument authorizing the foreign representative to act in that capacity; and (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative. The Applicant has provided the certified copies required in (a) and (b) and evidence that the Chapter 11 Cases are the only foreign proceedings with respect to the Debtors. All of these technical requirements are met.

[10] Section 47 of the CCAA provides that the Court *shall* make an order recognizing a foreign insolvency proceeding if the following two requirements are met:

(a) the application for recognition of a foreign proceeding relates to a "foreign proceeding" within the meaning of the CCAA, as defined in section 45(1); and

(b) the applicant is a "foreign representative" within the meaning of the CCAA in respect of that foreign proceeding.

Both criteria are met here. First, Canadian courts have consistently recognized insolvency proceedings commenced under the Bankruptcy Code to be a "foreign proceeding" for purposes of the CCAA. Second, a foreign representative includes an entity that is authorized to act as such in the foreign proceeding; here, the Bankruptcy Court entered an order declaring the Applicant as the foreign representative for purposes of the Chapter 11 Cases.

[11] Each of the Debtors' Chapter 11 Cases are foreign main proceedings because the center of main interest ("COMI") of each of the Debtors is in the United States. Section 45(1) of the CCAA defines "foreign main proceeding" as a foreign proceeding in a jurisdiction where the debtor company has its COMI. A "foreign non-main proceeding" is a foreign proceeding other than a foreign main proceeding. The CCAA does not define what constitutes COMI; rather, it provides a presumption under section 45(2) that, absent evidence to the contrary, a debtor's COMI is presumed to be the location of its registered office. However, the presumption is rebuttable; COMI is a substantive, not technical, determination.

[12] Each Debtors' COMI is in the United States. First, the registered offices of four of the six Debtors—the Applicant, Lion Iron, NC Farms and NC Ditch—are located in Nevada. Each of these Debtors' COMI is presumed to be the United States and there is no evidence to rebut this presumption. Second, while the registered offices of the remaining two Debtors—NCU and 0607 BC— are in British Columbia, this is not their COMI. Rather, their COMI is in Nevada. 0607 BC is a dormant shell company with no assets or business and it cannot exist independently of the Debtors' Nevada operations. Its COMI is the United States. Additionally, all of NCU's business activities are ancillary and derivative of, and entirely dependent on, the operations and business activities conducted by NCI in Nevada. NCU's only material assets are its interests in the Applicant, NCI, a Nevada-based company whose primary business is to own and operate the Project in Nevada. NCU does not have any revenue streams or sources of income other than in respect of those interests in the Applicant. Only one member of NCU's management team resides in Canada; the other six reside in Nevada. Similarly, only two of NCU's five directors reside in Canada; the others all reside in Nevada and South Africa. NCU is not staffed to operate independently of the Applicant. It has only three employees who, together with the Applicant's employees, provide services to the collective debtors.

Proper Jurisdiction for These Proceedings

[13] Ontario is the proper jurisdiction for these recognition proceedings in Canada. Subsection 9(1) of the CCAA provides that an application may be made to the court that has jurisdiction in the province where the "head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated."

[14] The NCU's shares are publicly listed on the TSX exchange and may continue to be listed on that exchange for an indefinite period of time going forward. The Applicant's longtime principal corporate counsel is the Toronto office of Torys LLP. Torys continues to be integrally involved in the Debtors' restructuring and sale activities, including the Chapter 11 Cases and these Part IV proceedings. One of NCU's two Canadian-resident directors is resident in Ontario.

The Initial Recognition Order

[15] By operation of the Bankruptcy Code, the Debtors obtained the benefit of a stay of proceedings upon filing voluntary petitions with the Bankruptcy Court. A stay of proceedings in Canada will recognize and give effect to the stay of proceedings in the United States and is essential to protect the efforts of the Debtors to resolve their acute liquidity crisis within the Chapter 11 Cases and emerge from the reorganization process.

[16] The Initial Recognition Order sought by the Applicant is based on the Court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all the relief required by section 48 of the CCAA. In light of the requirements of the CCAA and the Debtors' need to find a long-term solution to their financial and operational challenges, they require a stay of proceedings and other relief identified in the Initial Recognition Order in order to proceed with the Chapter 11 Cases.

[17] That Order is granted.

The Supplemental Order

[18] In addition to the mandatory relief provided for in section 48, section 49 of the CCAA grants this Court broad discretion to make any order that it considers appropriate, if it is satisfied that the order is necessary for the protection of the debtor's property or the interests of creditors.

[19] The Supplemental Order includes the broader stay of proceedings than the mandated stay provided for in the Initial Recognition Order and is consistent with the broad stay typically granted in Part IV and other CCAA proceedings, including in favour of the Debtors' current and former directors and officers.

[20] The ongoing day-to-day management of the Debtors will continue to be carried out by their respective directors and officers. For the Debtors to maintain stability and continue their operations during the Chapter 11 Cases, they require the active and committed involvement of those directors and officers, who have historical knowledge of the financial and operational aspects of the Debtors' complex business and mining operations. The requested stay would also prevent creditors and other potential claimants from seeking to do in Canada what is prohibited in the Chapter 11 Cases. The directors and officers will be vital to the Debtors' restructuring due to their historical knowledge of the financial and operational aspects of the Debtors' complex business and mining operations. Th requested broader stay of proceedings is therefore appropriate in order to preserve the *status quo* while the Debtors attempt to find a sustainable solution to their financial and operational challenges that maximizes value for creditors.

Recognition of the First Day Orders

[21] The First Day Orders, while different in form from orders in a Canadian CCAA proceeding, represent in substance the kinds of relief that are frequently granted in CCAA proceedings in Canada. There is nothing being sought which can be regarded as contrary to public policy in Canada.

[22] The Applicant seeks recognition orders in respect of the following First Day Orders:

(a) Order Authorizing Nevada Copper, Inc., to Act as Foreign Representative of the Debtors;

(b) Order Authorizing Joint Administration of Chapter 11 Cases;

(c) Interim Order Authorizing the Debtors to Continue to (I) Use Their Existing Cash Management System, (II) Use and Maintain Existing Bank Accounts, (III) Continue Intercompany Transactions and (IV) Use Their Existing Business Forms;

(d) Interim Order (I) Authorizing the Debtors to (A) Continue their Prepetition Insurance Policies, (B) Continue their Prepetition Surety Bond Program, and (C) Enter into New Premium Financing Agreements and (II) Granting Related Relief;

(e) Interim Order Authorizing the Debtors to (I) Pay Prepetition Employee Wages, Salaries, and Other Compensation, (II) Reimburse Prepetition Business Expenses, (III) Continue Prepetition Employee Benefits Programs, (IV) Make Payments for Which Prepetition Payroll Deductions Have Been Withheld and Pay Certain Employment-Related Taxes, (V) Pay Amounts That Were Awarded Under the Debtors' 2023 Short Term Incentive Program, and (VI) Pay All Costs and Expenses Incident to the Foregoing; and

(f) Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens, Including Senior Secured Priming Liens, and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief (the "U.S. Interim DIP Order").

[23] The granting of an order recognizing and giving effect to these First Day Orders is appropriate because:

(a) the Bankruptcy Court has appropriately taken jurisdiction over the Chapter 11 Cases of all the Debtors and comity will be advanced by this Court's recognition of and support for the Chapter 11 Cases already under way in the United States;

(b) coordination of proceedings in the two jurisdictions will ensure equal and fair treatment of all stakeholders irrespective of where they are located;

(c) given the close connection between the United States and the Debtors' business, including the business of the Applicant and 0607 BC, it is reasonable and sensible for the Bankruptcy Court to have principal control over the insolvency process; and

(d) the First Day Orders were obtained by the Debtors to minimize the adverse effects of the Chapter 11 Cases on their business to preserve the value of the Debtors' assets for the benefit of their creditors, employees and other stakeholders.

[24] Also, the proposed Information Officer supports the granting of these orders.

US Interim DIP

[25] Given the specific importance attributed to the need for approval of the terms of the interim DIP orders, I will address this issue separately and in more detail.

[26] This Court has held that there is no impediment to granting approval of DIP financing in foreign recognition proceedings under Part IV of the CCAA. In doing so, it has emphasized the importance of comity in foreign recognition proceedings.

[27] The applicant asks that the Chapter 11 Cases be recognized as a foreign main proceeding, and the Bankruptcy Court has granted the U.S. Interim DIP Order. In doing so, the Bankruptcy Court made specific findings as to the need for and reasonableness the terms of the DIP financing and that the terms of the DIP financing had been negotiated in good faith. Consistent with the findings of the Bankruptcy Court, the relief requested today is necessary for the protection of the Debtors' property and for the interests of creditors in Canada and the U.S. Moreover, it is a requirement of the DIP Credit Agreement that the DIP Order be recognized by the Court within fourteen days of its entry. The inability of the Debtors to do so could result in default.

[28] As part of the DIP financing, the DIP Lender requires a charge over the Debtors' assets (the "DIP Lender's Charge" or "DIP Charge"). Therefore, the DIP Lender will be entitled to the benefit of a charge on the property in Canada. The DIP Lender's Charge will be consistent with the liens and charges created by the U.S. Interim DIP Order, which was granted on June 14, 2024. As such, the DIP Charge provides a superpriority charge on the Canadian assets in favor of the DIP Lender and subject to the ranking, priorities and other conditions of the U.S. Interim DIP Order. The DIP Charge will have the priorities as set out in the proposed draft Supplemental Recognition Order, which in turn references U.S. Interim DIP Order.

[29] The DIP Facility and DIP Charge furthers the objectives of the CCAA: it represents "new money" and does not does not contain a "roll-up" component, attaches to assets that are subject to liens across *all* of the Debtors' property and does not materially prejudice Canadian creditors. Accordingly, the DIP Order shall be recognized by this Court and the DIP Charge ordered in Canada.

Information Officer

[30] . It is common in Part IV proceedings for the Court to appoint an information officer under the court's broad discretion in section 49. The Model Supplemental Order includes the appointment of an information officer. The information officer helps effect cooperation between the Canadian proceeding, the foreign representative and the foreign court, as required by section 52(1) of the CCAA. The Applicant seeks to appoint A&M as the Information Officer in this proceeding on terms consistent with the Model Order and the terms on which information officers have been appointed in recent Part IV proceedings. The proposed role of A&M as Information Officer is based on the Model Order. This order is approved.

Administration Charge

[31] The Applicant is requesting that this Court grant the proposed Information Officer, its legal counsel, Cassels Brock & Blackwell LLP, and the Debtors' legal counsel, Torys, an administration charge securing their fees and disbursements in the maximum amount of C$500,000 (the "Administration Charge") on the Debtors' property in Canada and authorize the Debtors' payment of reasonable retainers to the proposed Information

Officer, its counsel and the Debtors' counsel. Section 11.52 of the CCAA provides the court with the statutory jurisdiction to grant an Administration Charge in an amount that the court considers appropriate in respect of the fees and expenses of an information officer, its counsel and the Debtors' counsel. The Debtors' circumstances provide for the granting of the Administration Charge. Each of the Debtors' secured creditors have received notice of these Part IV proceedings. The secured creditors are supportive of this charge (as they are supportive of all the orders being sought today). Moreover, the amount and priority of the Administration Charge are appropriate. The Debtors' restructuring depends on their ability to address their complex debt structure and finding a long term solution to their and their operating subsidiaries' ongoing challenges.

[32] For these reasons, the Supplemental Order is granted.

[33] Orders to issue in the form signed by me this day.

Penny J.