



No. S-224444
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 AND ARRANGEMENT OF
CANADIAN DEHUA INTERNATIONAL MINES GROUP INC.

PETITIONER

RESPONSE TO PETITION

Filed by: China Shougang International Trade & Engineering Corporation
(the "**Petition Respondent**" or "**Shougang**")

THIS IS A RESPONSE TO the petition filed 1/JUN/2022 (the "**Petition**").

Part 1: ORDERS CONSENTED TO

The Petition Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Petition: NIL.

Part 2: ORDERS OPPOSED

The Petition Respondent opposes the granting of the orders set out in ALL of the paragraphs of Part 1 of the Petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Petition Respondent takes no position on the granting of the orders set out in NONE of the paragraphs of Part 1 of the Petition.

Part 4: FACTUAL BASIS

1. Shougang is a limited liability company incorporated in Beijing, People's Republic of China, having an address for service in this proceeding care of its solicitors,

Dentons Canada LLP, 20th Floor, 250 Howe Street, Vancouver, British Columbia, V6C 3R8.

2. On or about January 20, 2020, Shougang commenced an action against Canadian Dehua International Mines Group Inc. (the “**Petitioner**” or “**Dehua**”) by filing a notice of civil claim in the Supreme Court of British Columbia, Action No. S-200699, Vancouver Registry (the “**Action**”).
3. The Action sought to recognize an arbitral award by the China International Economic and Trade Commission granted to Shougang against Dehua with respect to an agreement related to a coal project.
4. On January 19, 2021, the Supreme Court of British Columbia granted judgment in the Action against Dehua in favour of Shougang in the amount of \$20,826,789.83 (the “**Judgment**”).
5. Between January 2021 and February 2022, Shougang sought to enforce the Judgment, with limited success. Shougang has recovered only \$5,698.34. All other enforcement steps have been unsuccessful.
6. On or about February 9, 2022, Shougang made a further demand for payment of the Judgment. No payments have been made by Dehua on account of the Judgment.
7. On or about April 6, 2022, Shougang filed an application for bankruptcy order for an order that Dehua be adjudged bankrupt and that a bankruptcy order be made in respect of the property of Dehua (the “**Bankruptcy Application**”). Dehua was served with the Bankruptcy Application on April 14, 2022.
8. The hearing of the Bankruptcy Application was set down for May 17, 2022.
9. The Bankruptcy Application was adjourned to be heard concurrently with the Petition.
10. Shougang opposes the Petition in favour of the Bankruptcy Application.

Part 5: LEGAL BASIS

1. The Petition Respondent relies on:
 - (a) *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c. B-3](#), as amended (the “**BIA**”);
 - (b) *Companies’ Creditors Arrangement Act*, [R.S.C. 1985, c. C-36](#), as amended (the “**CCAA**”);
 - (c) *Bankruptcy and Insolvency General Rules*, [C.R.C., c. 368](#), as amended (the “**BIA Rules**”);
 - (d) *Supreme Court Civil Rules*, [B.C. Reg. 168/2009](#), as amended (the “**Civil Rules**”); and
 - (e) The inherent and equitable jurisdiction of this Honourable Court.

Bankruptcy Order

2. Pursuant to s. 43(1) of the *BIA*, one or more creditors may file an application for a bankruptcy order against a debtor if it is alleged in the application that:
 - (a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and
 - (b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

***BIA*, [s. 43\(1\)](#).**
3. Acts of bankruptcy are set out in s. 42(1) of the *BIA* and include a debtor ceasing to meet its liabilities generally as they become due.

***BIA*, [s. 42\(1\)\(i\)](#).**
4. Dehua has admitted to having debts in excess \$5,000,000, it is in the midst of a liquidity crisis, is insolvent on a cash flow basis, and is unable to meet its obligations as they generally come due.

5. Despite the facts in support of a bankruptcy order being uncontested, the Court may:
- (a) dismiss the Bankruptcy Application pursuant to s. 43(7) of the *BIA* if “for other sufficient cause no order ought to be made”; or
 - (b) “for other sufficient reason make an order staying the [Bankruptcy Application], either altogether or for a limited time, on any terms and subject to any conditions that the court may think just” pursuant to s. 43(11) of the *BIA*.

***BIA*, [ss. 43\(7\), \(11\)](#).**

6. As stated in *Chung, Re*:

Ordinarily, if all elements of a petition for a receiving order have been proved and there is no improper conduct on the part of the petitioning creditor, the court should, in the absence of exceptional circumstances, make the receiving order ...

***Bankruptcy of Ken Kin Man Chung*, [2004 BCSC 1669](#) at paras. 26, 30 [*Chung*].**

7. The onus is on Dehua to show sufficient cause why the order should not be granted. Vague and uncertain plans that are not supported by evidence are not sufficient to discharge this onus. As stated in *Chung, Re*:

If this were not so, any debtor facing a receiving order could simply state that he or she expects to receive a windfall in the “near future”, and thus prevent a receiving order from being granted. In my view this would defeat the purpose of bankruptcy laws and significantly weaken creditors’ ability to petition a debtor into bankruptcy where appropriate, thus bringing the integrity of the bankruptcy and insolvency system into disrepute ...

***Chung* at paras. 25, 36.**

8. The circumstances here are similar to those in *Mediacoaat Inc., Re*, albeit absent a competing CCAA petition, where the Court refused a stay under s. 43(11):

The court is very reluctant to put an active business into bankruptcy. However, looking at the future prospects of the debtor and its past history ... it is difficult to see much likelihood of the debtor being in a position to repay the secured creditors within a reasonable time. The debtor needs further capital to become fully operational. ... The need for more control and more sales has

been apparent for some time and there is little definite on the horizon. The interests of the creditor must also be taken into account. The onus under s. 43(11) is on the debtor and it has failed to persuade me that there is a sufficient reason for staying the petition.

Mediacost Inc., Re (1990), 80 C.B.R. (N.S.) 39, 1990 CarswellOnt 189 at para. 17 (Sup. Ct. (Bank)).

9. However, under s. 11.02(1)(a) of the CCAA, a court may stay “until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*”. Any such stay must be appropriate in the circumstances.

CCAA, [ss. 11.02\(1\), \(3\)](#).

10. The Petition Respondent submits the relief sought in the Petition is not appropriate in the circumstances or supported by the evidence such that the Bankruptcy Application should be dismissed or stayed. As a result, the Court should grant the bankruptcy order sought by Shougang.

Bankruptcy is more appropriate in the circumstances

11. Competing applications are not uncommon in insolvency proceedings. In choosing between the relief sought in the Bankruptcy Application and the Petition, the Court should “balance the competing interests of the various stakeholders to determine which process is more appropriate”.

BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc., 2020 ONSC 1953 at para. 60

12. Factors that favour the Bankruptcy Application include:
- (a) A bankruptcy will proceed more quickly, especially in comparison to the proposed CCAA proceeding, which has no defined timeframe.
 - (b) Despite Dehua’s argument with respect to the bankruptcy levy, the cost of a bankruptcy will be significantly less, increasing recovery for creditors. Dehua’s cash flow statement sets out professional fees in the amount of \$308,000 over 13 weeks, all of which will be paid for by a yet to be identified interim financing, with an additional administrative charge of \$500,000. The bankruptcy levy on a \$30,000,000 sale (the approximate value of Dehua’s

share in Canadian Kailuan Dehua Mines Co., Ltd. according to Dehua, a fact which is not admitted by Shougang) would amount to \$132,500, calculated as follows:

\$50,000 (five per cent of the first \$1,000,000)
\$12,500 (one and one-quarter per cent of the second \$1,000,000)
\$70,000 (one-quarter of one per cent of the amount in excess of
\$2,000,000)
\$132,500

BIA Rules, [s. 123\(1\)\(c\)](#).

- (c) The creditors engaged in these proceedings support a bankruptcy over a CCAA proceeding.
- (d) Dehua is essentially a holding company. It has no active business, and minimal employees and operational expenses. There is no benefit in preserving Dehua as a going concern and liquidation will be the result of either process.

Relief under the CCAA is not appropriate in the circumstances

- 13. The Petitioner seeks:
 - (a) a stay of proceedings;
 - (b) an administration charge in the amount of \$500,000;
 - (c) a directors' and officers' charge in the amount of \$200,000; and
 - (d) the appointment of a monitor.
- 14. On an initial application, a stay may be granted pursuant to s. 11.02(1) of the CCAA. Dehua must satisfy the Court "that circumstances exist that make the order appropriate".

CCAA, [s. 11.02](#).

- 15. In addressing a stay of proceedings, courts have stated:

[5] ... a judge has the discretion under the CCAA to make [an] order so as to effectively maintain the status quo in respect of an insolvent company while it attempts to gain the approval of its

creditors for the proposed compromise or arrangement which will be to the benefit of both the company and its creditors. ...

[6] ... It has been held that the intention of the CCAA is to prevent any manoeuvres for positioning among the creditors during the period required to develop a plan and obtain the approval of creditors. Such manoeuvres could give an aggressive creditor an advantage to the prejudice of others who are less aggressive and would undermine the company's financial position making it even less likely that the plan will succeed ...

7 One of the purposes of the CCAA is to facilitate ongoing operations of a business where its assets have a greater value as part of an integrated system than individually. The CCAA facilitates reorganization of a company where the alternative, sale of the property piecemeal, is likely to yield far less satisfaction to the creditors ...

***Miniso International Hong Kong Limited v. Migu Investments Inc.*, [2019 BCSC 1234](#) at para. 56, citing *Re Lehndorff General Partner Ltd.*, [1993] O.J. No. 14 (Ct. J. (Gen. Div.)).**

16. None of the above considerations apply:
- (a) The evidence does not support an intention by Dehua to attempt to gain the approval of its creditors for a proposed compromise or arrangement which will be to the benefit of both the company and its creditors.
 - (b) A bankruptcy order would have the same effect in staying proceedings, thereby preventing any aggressive creditor from attempting to gain an advantage to the prejudice of others.
 - (c) There is no indication in the evidence that Dehua is an ongoing business operation, and Dehua concedes its assets are not part of an integrated system.

17. The Petition is an attempt to “buy time”, and it will merely delay the inevitable bankruptcy, or liquidation, at the expense and prejudice of the creditors. This is not an appropriate use of the CCAA.

***Industrial Properties Regina Limited v. Copper Sands Land Corp.*, [2018 SKCA 36](#) at para. 31.
Marine Drive Properties Ltd. (Re), [2009 BCSC 145](#) at para. 38.**

18. An administration charge may be granted pursuant to s. 11.52(1) of the CCAA, provided the Court considers the amount is appropriate.

CCAA, [s. 11.52](#).

19. The factors considered in determining the amount of an administration charge include:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.

***Miniso* at para. 95.**

20. Dehua seeks a charge in the amount of \$500,000. The only evidence in support of this amount is the cash flow statement, which suggests \$308,000 will be paid in professional fees over the 13-week period. However, there is no evidence to suggest why that amount is appropriate in the circumstances.

21. Further, there is no evidence regarding:

- (a) the roles of the beneficiaries of the charge;
- (b) whether there is unwarranted duplication of roles; or

- (c) whether the quantum of the proposed charge appears to be fair and reasonable (with the exception of a bald statement by Dehua in this regard).
22. The proposed restructuring activities would be primarily driven by Dehua itself, with the exception of presumably the claims process and oversight on the sales and solicitation plan. As a result, there is no evidence to support why the professionals engaged in the CCAA proceeding require security in the amount of \$500,000.
23. A directors' and officers' charge may be granted pursuant to s. 11.51(1) of the CCAA. However, the "court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost."

**CCAA, [ss. 11.51\(1\), \(3\)](#).
Miniso at para. 98.**

24. Dehua has provided no evidence with respect to:
- (a) whether Dehua currently has an insurance policy in this regard, and if so why it does not or could not provide adequate indemnification; or
- (b) if Dehua does not have an insurance policy in this regard, why Dehua cannot obtain adequate indemnification insurance for the directors or officers at a reasonable cost.
25. As a result, pursuant to s. 11.51(3), Shougang submits it is not open to the Court to grant a directors' and officers' charge on the evidence before the Court.
26. Finally, although Dehua does not seek approval of interim financing at this time or a related charge, the CCAA proceeding is predicated on securing interim financing, as Dehua currently has almost no cash (\$2,312). Despite the importance, and the amount, of the required financing, Dehua provides no indication of the lender or terms.
27. Dehua's evidence in support of the Petition is indicative of the actual situation. There is no real plan to use the CCAA to foster a better outcome for creditors. Dehua is attempting to buy time and force the creditors out of their chosen proceeding: a bankruptcy.


28. Shougang submits the relief sought by Dehua is not appropriate or supported by the evidence, and the Court should not grant relief under the CCAA. Since relief under the CCAA is not appropriate, the Court should grant the bankruptcy order sought by Shougang in the Bankruptcy Application.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Yang Yang, made 30/MAR/2022 (filed in Vancouver Registry, Court No. B-220142, Estate No. 11-254383); and
2. Such further and other materials as counsel may advise and this Honourable Court may allow.

The Petition Respondent estimates that the application will take one day.

Date: 2/JUN/2022



Signature of Jordan Schultz
lawyer for Petitioner Respondent

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