

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 THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

NOTICE OF APPLICATION

Names of applicants: Trevali Mining Corporation ("Trevali Corp.") and Trevali Mining (New Brunswick) Ltd. ("Trevali NB" and together with Trevali Corp., the "Company")

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Company to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia on December 14, 2022 by MS Teams at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Company seeks an Order substantially in the form attached as **Schedule "A"** (the **"Stay Extension and Assignment Approval Order"**), which shall:

- (a) extend the Stay Period, as defined in paragraph 15 of the Amended and Restated Initial Order of this Court pronounced on August 29, 2022 (the **"ARIO"**) from December 15, 2022 until January 31, 2023 (the **"Stay Extension"**); and
- (b) approve the transactions described in the Assignment Agreement dated October 26, 2022 between Trevali Corp., as assignor, and Wilru Investments One Hundred and Thirty Four (Proprietary) Limited, as assignee (the **"Assignment Agreement"**).

2. The Company also seeks such further orders as its counsel may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

Extension of the Stay of Proceedings

3. On August 19, 2022, this Court granted an initial order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), granting, among other things, a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Company.

4. The current Stay of Proceedings expires on December 15, 2022 (the “**Stay Period**”).

5. Since the granting of the Initial Order the Company, in consultation with the Monitor, and, where appropriate, its stakeholders, has been working diligently to carry out its restructuring plans. It has made significant efforts to date to advance its restructuring efforts in a collaborative and consultative manner.

6. In the past two months, the Company’s restructuring efforts have focused on maximizing value for their stakeholders through, among other things, the implementation of the court-approved sales and investment solicitation process (the “**SISP**”) with respect to the Company’s interest in the Rosh Pinah Mine, the Company’s primary asset of value. Discussions and negotiations in furtherance of the SISP remain ongoing and progress towards a transaction is being made.

7. In addition, in furtherance of its restructuring goals the Company has also been working with its secured lenders and the Government of New Brunswick (the “**NB Government**”) to consider next steps with respect to the Caribou Mine, another of the Company’s assets, given its operational status on care and maintenance and the liquidity challenges faced by Trevali NB.

8. At this time, the Company requires an extension of the Stay Period so that it can continue to benefit from the stability and breathing room provided by these CCAA proceedings as it works to, among other things:

- (a) finalize an agreement for the sale and/or restructuring of the Company’s interest in the Rosh Pinah Mine;
- (b) continue to maintain site integrity at the Caribou Mine, as the stakeholders of the Caribou Mine work with the Company, the Monitor and the NB Government to assess next steps; and
- (c) continue to assess and attend to various CCAA matters to further the interests of the Company and its stakeholders.

9. The Company seeks approval of an order extending the Stay Period until January 31, 2023, a reasonable length of time considering the Company’s current and anticipated restructuring efforts.

Approval of Assignment Agreement

10. In anticipation of a transaction for the Rosh Pinah Mine, the Company has been considering the desirability of, or need for, effecting certain intercompany transactions to simplify its intercompany balance sheets.

11. One area where the Company has determined that balance sheet efficiencies could be realized relates to the netting of intercompany accounts as between Trevali Corp., Rosh Pinah Zinc Corporation PTY Limited (“**RPZC**”), the subsidiary that owns Trevali Corp.’s 90% indirect interest in the Rosh Pinah Mine, and Wilru Investments 134 Ltd. (“**Wilru**”), an entity that indirectly holds Trevali Corp.’s interest in the Rosh Pinah Mine.

12. The Company seeks court approval of the Assignment Agreement, the purpose of which is to simplify the intercompany balance sheets of these three entities. The Company believes that the netting of intercompany accounts provided for by the Assignment Agreement will facilitate the closing for a transaction for the acquisition of RPZC (and therefore the Rosh Pinah Mine). Given that the transactions contemplated by the Assignment Agreement are purely intercompany ones, the Company does not believe that any stakeholders of Trevali Corp. will incur a negative impact as a result of Trevali Corp. entering into the Assignment Agreement.

Part 3: LEGAL BASIS

The Stay of Proceedings Should be Extended

13. A stay of proceedings is the “central tool” by which this Court maintains the status quo for a debtor, allowing a debtor the necessary time, flexibility and “breathing room” to carry out a supervised restructuring or organized sales process while continuing its ongoing operations.

1057863 B.C. Ltd. (Re), 2022 BCSC 876 at paras. 31, 35 [1057863], citing Timminco Limited (Re), 2012 ONSC 2515 at para. 15.

14. The baseline considerations and requirements for a stay extension are that a stay is “appropriate” and that debtors have been and are acting in good faith and with due diligence.

CCAA, ss. 11.02(2)-(3)

15. The basic purpose of the CCAA must be considered when determining what relief authorized by the CCAA is “appropriate” in the circumstances:

[...] The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA -- avoiding the social and economic losses resulting from liquidation of an insolvent company [...] [A]ppropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

1057863 at para. 33, citing Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at para. 70.

16. For the reasons set out above, granting the Stay Extension will allow the Company to continue its restructuring efforts and in particular to continue efforts towards seeking to maximize value for its assets, including by concluding a sale transaction pursuant to the SISP.

17. The Company has been working in good faith and with due diligence. Granting the Stay Extension is appropriate and necessary in the circumstances.

18. The Company therefore respectfully requests this Court grant the Stay Extension Order.

The Assignment Agreement Should be Approved

19. Section 11 of the CCAA provides this Court with a broad power to make any order that it considers appropriate in the circumstances. This includes the ability to approve agreements that will further the insolvent debtor's restructuring.

U.S. Steel Canada Inc. (Re), 2014 ONSC 7121 at paras. 7-8; Walter Energy Canada Holdings Inc. (Re), 2017 BCSC 1968 at para. 32

20. The Company believes that simplifying the status of certain intercompany balance sheets pursuant to the Assignment Agreement will assist in facilitating the efficient closing of a transaction for the Rosh Pinah Mine, being the Company's most valuable asset.

21. The Company submits that approving the Assignment Agreement is both reasonable and appropriate in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #8 of Brendan Creaney, affirmed December 9, 2022;
2. Fifth Report of FTI Consulting Canada Inc., to be filed; and
3. Such further and other material as counsel for the Applicants may advise.

The applicant estimates that the application will take 1 hour.

This matter is not within the jurisdiction of a master.

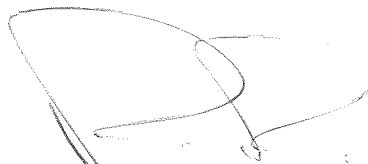
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: December 9, 2022



Signature of Peter Rubin
Lawyer for the Applicants

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Barristers and Solicitors
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To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 2px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 2px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 2px;"/>	
Date: _____	_____ Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

No. S-226670
Vancouver Registry

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PETITIONERS

**ORDER MADE AFTER APPLICATION
(STAY EXTENSION AND APPROVAL OF ASSIGNMENT AGREEMENT)**

BEFORE) THE HONOURABLE MADAM JUSTICE)
) FITZPATRICK) December 14, 2022
))

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 14th day of December, 2022 via MS Teams; AND ON HEARING Peter Rubin and Claire Hildebrand, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #8 of Brendan Creaney, made December 9, 2022 ("**Creaney Affidavit #8**"), and the Fifth Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioners) (the "**Monitor**") dated December [--], 2022; AND pursuant to the *Companies Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended, the British Columbia *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

Stay Extension

1. The Stay Period (as defined in the Amended and Restated Initial Order of this Court dated August 29, 2022) is hereby extended until and including January 31, 2023.

Approval of Assignment Agreement

2. The transactions described in the Assignment Agreement dated October 26, 2022 between Trevali Mining Corporation, as assignor, and Wilru Investments One Hundred and Thirty Four (Proprietary) Limited, as assignee, attached as **Exhibit "B"** to the Creaney Affidavit #8 are approved.

General

3. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso, and Namibia to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner 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 Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

4. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Peter Rubin
Lawyer for the Petitioners

BY THE COURT.

Registrar

Schedule "A"

COUNSEL NAME	PARTY REPRESENTED

No. S-226670
Vancouver Registry

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ORDER MADE AFTER APPLICATION

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