



No. S-226670
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 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 applicant: Trevali Mining Corporation (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 January 27, 2023 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"**, extending the Stay Period (as defined in paragraph 15 of the Amended and Restated Initial Order of this Court pronounced on August 29, 2022) with respect to the Company from January 27, 2023 until April 30, 2023.
2. The Company also seeks such further orders as their counsel may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

Background

3. The Petitioners obtained protection under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an Order issued by this Court on August 19, 2022.

4. The Petitioners have been working diligently towards their restructuring goals since they obtained CCAA protection. Among other things, these efforts have led to a sale of the Company's 90% interest in the Rosh Pinah mine and assignment of debt owing from certain of the Company's subsidiaries (the "**Transactions**"), which Transactions were approved by this Court on December 21, 2022.

5. The current stay of proceedings expires on January 27, 2023. The Company now seeks an extension of the stay of proceedings to April 30, 2023 to permit it to continue its restructuring efforts for the benefit of its creditors, including in particular to permit the Company to close the Transactions.

Update on the Petitioners' Restructuring Efforts

6. In the six weeks since the Petitioners were last before this Court for an extension of the stay of proceedings, they have made significant further strides towards their restructuring goals. During this time the Petitioners have, in consultation with their secured lenders, with the assistance of the Monitor and, where appropriate, in consultation with the "**Sales Agent**", National Bank Financial Inc., among other things:

- (a) continued to implement the court-approved SISF, including reviewing and considering the multiple bids received with respect to the Company's interest in the Rosh Pinah mine, and ultimately selecting a "Winning Bid" for the Rosh Pinah mine;
- (b) worked with the "Administrative Agent", as agent to their first-ranking secured lenders and interim lenders, to agree to extensions of the SISF timelines where necessary (with the "Final Agreement Deadline" under the SISF being extended from December 9, 2022 to December 15, 2022 and the "Outside Closing Date" being extended from December 30, 2022 to January 31, 2023, with the Company now seeking a subsequent extension of that date until April 30, 2023);
- (c) negotiated, finalized and sought court approval of Transactions with the successful SISF bidders, Appian Natural Resources Fund III LP and Appian Natural Resources (UST) Fund III LP (the "**Purchasers**"), as more fully described in Brendan Creaney's Affidavit #9, which Transactions were approved by this Court on December 21, 2022;
- (d) worked with their advisors, the Purchasers, and other interested stakeholders to negotiate the definitive documentation required to close the Transactions, take the necessary steps to obtain foreign government and other approvals and consents, and address conditions precedent to the closing of the Transactions. In this regard, the Purchasers and the Company, with their local and foreign professional advisors, are working diligently and cooperatively towards a closing of the Transaction;
- (e) arranged for site visits and attending to various related matters in Namibia, where the Rosh Pinah mine is located;
- (f) engaged in discussions with their secured lenders and the Government of New Brunswick (the "**NB Government**") with respect to next steps for the Caribou Mine

and assets of Trevali Mining (New Brunswick Ltd.) ("**Trevali NB**"), which culminated in a consensual resolution between the parties and applications by the Petitioners' secured lenders and the NB Government before this Court on January 9, 2022 for a Stay Extension Order and a Receivership Order with respect to Trevali NB, to permit the orderly involvement of the NB Government and the maximization of value of the assets of Trevali NB, and most recently advanced negotiations with respect to an equipment rental agreement and schedule with the NB Government, which the parties are close to settling the terms of, to assist in the transition to a receivership;

- (g) continued operations at the Rosh Pinah mine and maintained site integrity at the Caribou mine;
- (h) continued to consider potential options with respect to the Company's remaining assets including recovery of accounts receivable, recovery of insurance proceeds, and settlement of disputes;
- (i) discussed and considered next steps in these CCAA proceedings;
- (j) communicated regularly with the Petitioners' stakeholders, including their respective creditors, suppliers, lenders, employees, and governmental bodies, in particular their secured lenders and the NB Government, in connection with these CCAA proceedings; and
- (k) engaged frequently with the Monitor with respect to all aspects of the Petitioners' restructuring efforts.

7. The protection and stability provided by the stay of proceedings has been essential to significant restructuring efforts the Petitioners have made to date, including those described above.

The Proposed Stay Extension

8. The Company requires a further extension of the stay of proceedings to continue the collaborative and consultative efforts it has made to restructure its business since being granted CCAA protection from this Court. In particular, the Company requires this extension of the stay of proceedings to allow it to continue efforts towards maximizing value for its assets, including by working to close the Transactions approved by this Court on December 21, 2022.

9. The Company therefore seeks an extension of the stay of proceedings to April 30, 2023 which is expected to, among other matters, allow for sufficient time to permit a closing of the Transactions.

10. Based on the Company's CCAA cash flow, the Company is projected to have sufficient liquidity to see it through to April 30, 2023 (assuming the Company and its interim lenders are able to agree to an amendment to the current interim lending facility to account for the revised SISP deadlines discussed above, which is anticipated), with additional availability under its current interim lending facility if required.

Part 3: LEGAL BASIS

11. A stay of proceedings is the “central tool” by which this Court maintains the status quo for a debtor company, allowing it 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, paras. 31, 35 [1057863], citing *Timminco Limited (Re)*, 2012 ONSC 2515, para. 15.

12. The baseline considerations and requirements for a stay extension are that a stay is “appropriate” and that the debtor company subject to the CCAA is acting in good faith and with due diligence.

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

13. 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. I would add that appropriateness 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, para. 33, citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para. 70.

14. In the present case, the Company has been acting in good faith and with due diligence in these CCAA proceedings.

15. The proposed stay extension is necessary to maintain the status quo as Company pursues restructuring efforts for the benefit of its stakeholders and is appropriate given the status of such efforts, as described in greater detail above.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #11 of Brendan Creaney, affirmed January 22, 2023;
2. Eighth Report of FTI Consulting Canada Inc., to be filed; and
3. Such further and other material as counsel for the Company may advise.

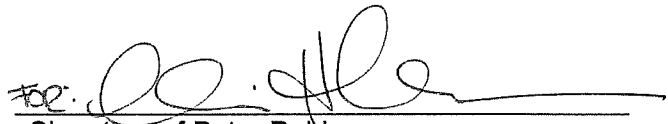
The Company estimates that the application will take 1 hour.

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: January 24, 2023



Signature of Peter Rubin
Lawyer for the Petitioners

Blake, Cassels & Graydon LLP
Barristers and Solicitors
Suite 2600, Three Bentall Centre
595 Burrard Street PO Box 49314
Vancouver, BC V7X 1L3
Email: peter.rubin@blakes.com
Telephone: 604.631.3315

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge 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" TO NOTICE OF APPLICATION

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PETITIONERS

ORDER MADE AFTER APPLICATION
(STAY EXTENSION)

BEFORE) THE HONOURABLE MADAM JUSTICE)
) FITZPATRICK) January 27, 2023
))

ON THE APPLICATION of the Petitioner Trevali Mining Corporation coming on for hearing at Vancouver, British Columbia, on the 27th day of January, 2023 ; AND ON HEARING Peter Rubin and Claire Hildebrand, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #11 of Brendan Creaney, made January 22, 2023, and the Eighth Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner) dated January [--], 2023; 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) with respect to the Petitioner Trevali Mining Corporation is hereby extended up to and including April 30, 2023.

General

2. 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.

3. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner 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 Petitioner

BY THE COURT.

Registrar

Schedule "A"

COUNSEL NAME	PARTY REPRESENTED