



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

Name of applicant: Trevali Mining Corporation (the "Petitioner")

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Petitioner to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia on April 24, 2023 at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order (the "**Distribution Order**") substantially in the form attached hereto as **Schedule "A"** and such further relief as counsel may advise and this Court finds appropriate in the circumstances.

Part 2: FACTUAL BASIS

Background

2. The Petitioner obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c C-36 (the "**CCAA**") on August 19, 2022.

3. Since obtaining CCAA protection, the Petitioner has worked diligently to further its restructuring efforts. Among other things, the Petitioner has entered into a Share and Asset Purchase Agreement dated December 15, 2022 (the "**Sale Agreement**") with Appian Natural

Resources Fund III LP and Appian Natural Resources (UST) Fund III LP (the "**Purchasers**") for the acquisition of the Petitioner's 90% interest in Rosh Pinah mine through the sale of the Petitioner's 100% interest in GLCR Limited and assignment of debt owing from certain of the Petitioner's subsidiaries (the "**Transactions**").

4. The Transactions were approved by this Court pursuant to an Approval and Vesting Order dated December 21, 2022. The Petitioner and the Purchasers are working diligently and cooperatively towards closing the Transactions. The Petitioner anticipates that the Transactions will close prior to the end of May 2023.

The Proposed Distribution Order

5. Upon closing of the Transactions, the net proceeds from the sale of the "**Purchased Shares**" and "**Capital Loans**" (as defined in the Sale Agreement) (the "**Sale Proceeds**") are to stand in the place and stead of the Purchased Shares and Capital Loans, and from and after the closing of the Transactions, all claims against the Petitioner are to attach to the Sale Proceeds.

6. The claims against the Petitioner that will attach to the Sale Proceeds include, among others, (a) the fees and interest owing under the interim financing tranche approved by this Court in the Interim Financing Approval Order granted on October 11, 2022 (the "**Interim Financing Facility**"); (b) amounts owing under the Petitioner's first-ranking secured credit facility (the "**Revolving Credit Facility**"); and (c) amounts owing under the Petitioner's second-ranking secured credit facility (the "**Glencore Facility**").

7. In consultation with the Monitor, the Petitioner has determined that it would be in the interest of stakeholders if the Sale Proceeds, net of any payment or withholding obligations under the Sale Agreement including the payment of the "Indemnity Escrow Amount" and the "Working Capital Escrow Amount" (in each case as defined in the Sale Agreement) (the "**Immediately Available Sale Proceeds**"), were distributed upon the closing of the Transactions in a manner that would reduce the principal debts owing under, as well as the interest payable on, the Interim Financing Facility, the Revolving Credit Facility, and the Glencore Facility.

8. The proposed Distribution Order authorizes the Petitioner to make payments (the "**Authorized Distributions**") to the Administrative Agent (as defined in the "**Settlement Approval Order**" granted on October 11, 2022) for distribution, as follows:

- (a) subject to the availability of sufficient Immediately Available Sale Proceeds, and the requirement to maintain a Holdback Reserve (as defined in the Distribution Order), from the Immediately Available Sale Proceeds in an amount not to exceed the "**Outstanding Interim Financing Balance**" (as defined in the "**Settlement Agreement**" approved by the Settlement Approval Order) plus the aggregate amounts owing under the Revolving Credit Facility and the Glencore Facility (in each case as defined in the Settlement Agreement); and
- (b) from available funds other than the Immediately Available Sale Proceeds with the consent of the Monitor provided that the total amount of distributions to the Administrative Agent authorized by the proposed Distribution Order will in no case exceed the Outstanding Interim Financing Balance plus the aggregate amounts owing under the Revolving Credit Facility and the Glencore Facility.

9. The Authorized Distributions from the Immediately Available Sale Proceeds are subject to (a) the completion of the Transactions; (b) receipt by the Petitioner of the Immediately Available Sale Proceeds; and (c) the Petitioner retaining from the Immediately Available Sale Proceeds a Holdback Reserve in an amount satisfactory to the Petitioner and the Monitor that will be sufficient for the payment of incurred and/or estimated (i) professional fees, (ii) post-filing obligations, and (iii) amounts secured by the charges created by this Court in these CCAA proceedings, among other amounts specified in paragraph 2 of the proposed Distribution Order.

Part 3: LEGAL BASIS

10. The Authorized Distributions, if made, will reduce the principal debts owing under, as well as the interest payable on, the Outstanding Interim Financing Balance, the first-ranking secured Revolving Credit Facility, and the second-ranking secured Glencore Facility. As such, the Distribution Order is in the interest of stakeholders and appropriate in the circumstances.

CCAA, s. 11.

Part 4: MATERIAL TO BE RELIED ON

11. Affidavit #13 of Brendan Creaney, made April 12, 2023;
12. Tenth Report of the Monitor, to be filed; and
13. Such further and other materials as counsel for the Petitioner may advise.

The applicant estimates that the application will take 10 minutes.

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: April 12, 2023



Signature of Peter L. Rubin / Peter Bychawski
Lawyers for the Applicant

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To be completed by the court only:

Order made:

on 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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ORDER MADE AFTER APPLICATION
(DISTRIBUTION ORDER)

BEFORE THE HONOURABLE) April 24, 2023
MADAM JUSTICE FITZPATRICK)
)

ON THE APPLICATION of Trevali Mining Corporation (the "**Petitioner**") coming on for hearing at Vancouver, British Columbia on the 24th day of April 2023; AND ON HEARING Peter L. Rubin, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #13 of Brendan Creaney, made April 12, 2023 and the Tenth Report of FTI Consulting Canada Inc. (in its capacity as Court-appointed "**Monitor**" of the Petitioner) dated April [-], 2023; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), as amended, the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

CAPITALIZED TERMS

1. Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Approval and Vesting Order granted by this Court on December 21, 2022.

HOLDBACK RESERVE

2. The distributions authorized and approved by paragraphs 4 and 5 of this Order shall at all times be subject to (a) the completion of the Transactions; (b) receipt by the Petitioner of the proceeds from the sale of the Purchased Shares and Capital Loans (as defined in the Sale Agreement) (the "**Sale Proceeds**") net of any payment obligations under the Sale Agreement including the payment of the Indemnity Escrow Amount and the Working Capital Escrow Amount (in each case as defined in the Sale Agreement) (the "**Immediately Available Sale Proceeds**"); and (c) the Petitioner retaining from the Immediately Available Sale Proceeds a reserve of funds (the "**Holdback Reserve**") in an amount satisfactory to the Petitioner and the Monitor sufficient for the payment of:

- (a) amounts owing by the Petitioner in respect of (i) fees and expenses of the Monitor, the Monitor's legal counsel, legal counsel to the Petitioner's directors and officers, and legal counsel to the Petitioner incurred prior to the delivery of the Monitor's Certificate, and (ii) the estimated fees and expenses of the Monitor, the Monitor's legal counsel, legal counsel to the Petitioner's directors and officers, and legal counsel to the Petitioner incurred in connection with these proceedings from and after the delivery of the Monitor's Certificate;
- (b) amounts owing by the Petitioner in respect of (i) its ordinary course post-filing obligations incurred since the commencement of these CCAA proceedings up to and including the date of this Order, and (ii) amounts incurred, or estimated to be incurred, by the Petitioner in respect of its ordinary course post-filing obligations from and after the date of this Order;
- (c) amounts estimated to be owing for Taxes (as defined in the Sale Agreement) in connection with the Transactions and the sale of the Purchased Shares;
- (d) the obligations secured by the:
 - (i) D&O Charge and the Intercompany Advances Charge (in each case as defined in the Amended and Restated Initial Order granted by this Court on August 29, 2022 (the "**ARIO**")); and
 - (ii) Sales Agent Charge (as defined in the SISP and Sales Agent Approval Order granted by this Court on September 14, 2022);
- (e) any other obligations of the Petitioner that rank in priority to the Charges (as defined in the "**Interim Financing Approval Order**" granted by this Court on October 11, 2022); and
- (f) such other obligations or claims for which the Monitor in consultation with the Petitioner deems it to be prudent in the circumstances to maintain a Holdback Reserve for.

3. The Petitioner is hereby authorized and directed to deliver the Holdback Reserve to the Monitor.

AUTHORIZED DISTRIBUTIONS

4. Subject to the availability of sufficient Immediately Available Sale Proceeds, and the requirement to maintain the Holdback Reserve, upon the delivery by the Monitor of the Monitor's Certificate, or as soon thereafter as practicable, the Petitioner is authorized and directed to make, or to authorize and direct the Purchasers to make, payments from the Immediately Available Sale Proceeds to the Administrative Agent (as defined in the "**Settlement Approval Order**" granted by this Court on October 11, 2022) for distribution in accordance with the Settlement Agreement (as defined in the Settlement Approval Order) in an amount not to exceed the Outstanding Interim Financing Balance (as defined in the Settlement Agreement) plus the aggregate amounts owing under the Revolving Credit Facility and the Glencore Facility (in each case as defined in the Settlement Agreement). The Petitioner is further authorized with the consent of the Monitor to make additional distributions to the Administrative Agent from available funds other than the Immediately Available Sale Proceeds for distribution in accordance with the Settlement Agreement provided, for greater certainty, that the total amount of distributions authorized by this paragraph 4 shall not exceed the Outstanding Interim Financing Balance plus the aggregate amounts owing under the Revolving Credit Facility and the Glencore Facility.

5. Subject to the availability of sufficient Immediately Available Sale Proceeds, and the requirement to maintain the Holdback Reserve, the Monitor is authorized, in consultation with the Petitioner, to make from time to time partial or full payments from the Holdback Reserve with respect to amounts for which the Holdback Reserve has been established pursuant to this Order.

6. Notwithstanding;

- (a) the pendency of these proceedings;
- (b) any assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") and any order issued pursuant to any such petition;
- (c) any application for a receivership order; or
- (d) any provisions of any federal or provincial legislation;

the Holdback Reserve and the payments, distributions and disbursements contemplated by this Order shall be made free and clear of any Claims and Encumbrances, shall be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioner, the Monitor, and any party receiving payments, distributions, and disbursements pursuant to this Order, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

MONITOR'S PROTECTIONS

7. In addition to the rights and protections afforded to the Monitor under the ARIO, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the administration of the Holdback Reserve or the discharge of its duties under this Order, save and except for any claim or liability arising out of any gross negligence or willful misconduct on the

part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the ARIO, the CCAA, or any other federal or provincial applicable law.

8. Notwithstanding any other provision of this Order and without in any way limiting the protections for the Monitor set forth in this Order, the ARIO, and the CCAA, the Monitor shall have no obligation to make any payment unless the Monitor is in receipt of funds adequate to make any such payment, subject always to paragraph 2 of this Order.

9. Any payments, distributions, and disbursements made by the Monitor under this Order shall not constitute a "distribution" for the purposes of section 159 of the *Income Tax Act*, R.S.C. 1985, c. 1, as amended, or section 270 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 or any other similar federal or provincial legislation (collectively, the "**Tax Statutes**"). The Monitor in making any such payments, distributions, or disbursements is not "distributing", nor shall be considered to "distribute" nor have "distributed", such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of the making of any payments ordered or permitted under this Order.

GENERAL

10. Nothing herein shall prevent the Petitioner from making, and for greater certainty the Petitioner is hereby authorized to make with consent of the Monitor, payments to the Administrative Agent to reduce the Outstanding Interim Financing Balance.

11. The Petitioner and the Monitor may apply to the Court as necessary to seek further orders and directions with respect to payments and distributions.

12. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, in the United States or in any of its states, in Namibia, or in the United Kingdom, or in any other foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

13. 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 L. Rubin
Lawyer for the Petitioner

BY THE COURT.

Registrar

SCHEDULE "A"

COUNSEL NAME	PARTY REPRESENTED