



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: FTI Consulting Canada Inc., in its capacity as court-appointed
monitor of Trevali Mining Corporation (in that capacity, the "**Monitor**"
or the "**Applicant**")

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Applicant to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, British Columbia on October 25, 2023, at 9:00 a.m., by MS Teams, for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Applicant seek an Order substantially in the form attached hereto as **Schedule "A"** (the "**Stay Extension Order**") extending 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**"), in respect of Trevali Mining Corporation ("**Trevali Corp.**") from October 27, 2023 until April 26, 2024 (the "**Stay Extension**").
2. Such further orders as counsel for the Applicant may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

3. The Monitor currently has expanded powers with respect to Trevali Corp. The Monitor seeks the Stay Extension to permit the Monitor to continue progressing various matters in this proceeding, including without limitation, the on-going claims process, certain sale transactions, recoveries related to Trevali Corp.'s interests in Burkina Faso, and administration of Trevali Corp.'s estate.
4. 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 Trevali Corp. and Trevali Mining (New Brunswick) Ltd. ("**Trevali NB**", and collectively with Trevali Corp., "**Trevali**" or the "**Petitioners**") until the initial return date of August 29, 2022.
5. On August 29, 2022, this Court granted the ARIO, which extended the Stay of Proceedings until October 6, 2022, among other matters. The Stay Period in respect of Trevali Corp. has been further extended as follows:
 - (a) until December 15, 2022, by the Order of this Court pronounced October 11, 2022;
 - (b) until January 27, 2023, by the Order of this Court pronounced December 14, 2022;
 - (c) until April 30, 2023, by the Order of this Court pronounced January 27, 2023;
 - (d) until June 2, 2023, by the Order of this Court pronounced April 24, 2023;
 - (e) until July 14, 2023, by the Order of this Court pronounced June 2, 2023; and
 - (f) until October 27, 2023, by the Order of this Court pronounced June 28, 2023.
6. Since being granted protection under the CCAA, both Trevali Corp. and Trevali NB have worked to restructure their affairs for the benefit of their stakeholders and to maximize recovery for creditors.
7. On September 14, 2022, this Court approved a Sales and Investment Solicitation Process (the "**SISP**") to solicit offers for, among other things, the purchase of Trevali Corp.'s interest in the Rosh Pinah mine in Namibia.
8. On March 28, 2023, this Court approved a Claims Process Order (the "**CPO**"). As is discussed in the Monitor's reports filed in this CCAA proceeding, the Monitor continues to

implement and adjudicate the Claims Process (as defined in the CPO). In summary, pursuant to the CPO the Monitor has:

- (a) issued 12 Notices of Revision or Disallowance; and
 - (b) extended the applicable timelines in respect of certain claims due to the contingent nature of these claims.
9. The SISF resulted in a sale (the “**Appian Transaction**”) of Trevali Corp.’s 90% interest in the Rosh Pinah mine, Trevali Corp.’s primary asset of value, by way of a sale of the shares of GLCR Limited, to Appian Natural Resources Fund III LP and Appian Natural Resources (UST) Fund III LP (collectively, “**Appian**”) pursuant to a Share and Asset Purchase Agreement dated December 15, 2022 (the “**Appian SPA**”), as subsequently assigned pursuant to an assignment agreement dated June 2, 2023, to ANR RP Limited, an Appian affiliate, as authorized in the Appian SPA.
 10. On December 21, 2022, this Court approved the Appian Transaction.
 11. On April 24, 2023, this Court approved a distribution order (the “**Distribution Order**”) authorizing the distribution by Trevali Corp. of available funds including in respect of the Immediately Available Sale Proceeds (as defined in the Distribution Order) arising from the Appian Transaction. The Distribution Order authorizes the distribution of funds as more particularly set out in that order including distribution on account of the Outstanding Interim Financing Balance, the Revolving Credit Facility and the Glencore Facility (each as defined in the Distribution Order), subject to certain required holdbacks, as further defined and described in the Distribution Order.
 12. On June 23, 2023, the Appian Transaction closed. On closing of the Appian Transaction, funds were distributed on account of the Outstanding Interim Financing Balance, the Revolving Credit Facility and the Glencore Facility as authorized in the Distribution Order. The Outstanding Interim Financing Balance and the Revolving Credit Facility were repaid in full.
 13. While there are certain remaining receivables that are expected to further maximize value for Trevali Corp.’s stakeholders, as discussed below, the vast majority of Trevali’s assets have been sold or otherwise liquidated/restructured as part of this CCAA proceeding or other court processes.

14. With respect to Trevali Corp.'s other two principal mining assets, namely the Caribou Mine in New Brunswick and the Perkoa Mine in Burkina Faso, since Trevali filed for CCAA protection:
 - (a) on November 14, 2022, a liquidation process was commenced for Nantou Mining Burkina Faso S.A. ("**Nantou Mining**"), Trevali's 90% indirectly owned subsidiary that operates the Perkoa Mine. The liquidator in Burkina Faso has assumed responsibility for the operations of Nantou Mining; and
 - (b) on January 9, 2023, FTI Consulting Canada Inc. was appointed as receiver (in that capacity, the "**Receiver**") of all the assets, undertakings and property of Trevali NB, including all proceeds thereof, other than any real property, mineral claims, mining leases or real property leases owned or held by Trevali NB, effective from January 24, 2023 at 11:59 pm. Since its appointment, the Receiver has been working to maximize value for those Trevali NB assets as detailed in the Second Report of the Receiver dated October 18, 2023.
15. Trevali's remaining employees ceased their employment with Trevali on or prior to June 30, 2023. In addition, Trevali's one remaining director also resigned prior to June 30, which was also when Trevali's directors' and officers' insurance expired.
16. Given the status of Trevali Corp.'s restructuring efforts, the nature of its remaining assets, and the reduction of its employees and management, Trevali Corp. brought an application to expand the Monitor's powers regarding Trevali Corp.
17. On June 28, 2023, this Court granted an order expanding the powers of the Monitor with respect to Trevali Corp. and its property (the "**EMP Order**").
18. Since the Monitor's powers were expanded pursuant to the EMP Order, the Monitor has, among other things:
 - (a) retained certain former management to assist the Monitor on a contract basis;
 - (b) with the assistance of former management, pursued Trevali Corp.'s interest in the liquidation proceedings of Nantou Mining;
 - (c) pursued the recovery of insurance proceeds relating to the tragic flooding incident in April 2022 of the mine operated by Nantou Mining;
 - (d) administered the Working Capital Escrow Account (as defined in the Appian SPA);

- (e) reviewed and analyzed the Closing Balance Sheet and Closing Statement (as defined in and under the Appian SPA) and corresponded with Appian's financial advisors retained with respect to same;
 - (f) corresponded with creditor claimants pursuant to the Claims Process (as defined in the CPO);
 - (g) prepared the Thirteenth Report of the Monitor dated July 25, 2023 (the "**Thirteenth Report**"), in respect of Trevali Corp.'s application for the Settlement Approval Declaration Order (as defined in the Thirteenth Report); and
 - (h) prepared the Fourteenth Report of the Monitor dated October 18, 2023.
19. The Monitor seeks the Stay Extension Order to allow the Monitor time to, among other things:
- (a) attend to remaining post-closing matters associated with the Appian Transaction;
 - (b) make one or more further distributions as necessary pursuant to the Distribution Order;
 - (c) review and evaluate unresolved creditor claims; and
 - (d) continue to pursue Trevali Corp.'s interest in the liquidation of Nantou Mining; and
 - (e) otherwise administer Trevali Corp.'s estate.
20. Trevali Corp. will have sufficient liquidity during the period of the Stay Extension.

Part 3: LEGAL BASIS

21. The Monitor relies on:
- (a) CCAA, in particular, sections 11 and 11.02;
 - (b) *Supreme Court Civil Rules*, in particular Rules 8-1 and 13-1;
 - (c) inherent and equitable jurisdiction of this Court; and
 - (d) such further and other legal bases and authorities as counsel may advise and this Court may permit.
22. Subsection 11.02 of the CCAA provides this Court with broad discretion to allow a debtor time and space to advance its restructuring efforts, including by extending a stay of

proceedings. 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. This includes time to arrange an acceptable sale of assets in order to maximize recovery for stakeholders

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

23. 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.

**CCA, ss. 11.02(2)-(3).
1057863 B.C. Ltd. (Re), 2022 BCSC 876 at para. 31.**

24. “Appropriateness” is assessed by inquiring whether the order sought advances the policy objectives underlying the CCA. While the primary objective underlying the CCA is to avoid the social and economic losses resulting from liquidation of an insolvent company, the CCA has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm’s financial distress and enhancement of the credit system generally. “Liquidating CCAs” are now commonplace in the CCA landscape.

***Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.
9354-9185 Québec Inc. v. Callidus Capital Corp., 2020 SCC 10 at para. 42.**

25. The relative weight that the different objectives of the CCA take on in a particular case may vary based on the factual circumstances, the stage of proceedings, or the proposed solutions that are presented to the court for approval. For example, “where a reorganization or liquidation is complete and the court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take centre stage.”

9354-9185 Québec Inc. v. Callidus Capital Corp., 2020 SCC 10 at para. 46

26. The Monitor and Trevali Corp. have been working in good faith and with due diligence and granting the Stay Extension Order is appropriate and necessary in the circumstances.

27. The Stay Extension will allow the Monitor to take further steps to maximize creditor recovery. Among other things, during the Stay Extension the Monitor may:
- (a) attend to remaining post-closing matters associated with the Appian Transaction;
 - (b) make one or more further distributions pursuant to the Distribution Order;
 - (c) review and evaluate unresolved creditor claims;
 - (d) continue to pursue Trevali Corp.'s interests in connection with the liquidation of Nantou Mining; and
 - (e) take further steps to administer Trevali Corp.'s estate for the benefit of stakeholders.
28. The cashflow included in the Fourteenth Report of the Monitor dated October 18, 2023, indicates that Trevali Corp. will have sufficient liquidity during the period of the Stay Extension.
29. There is not any material financial prejudice to Trevali Corp.'s creditors as a result of the Stay of Proceedings being extended to April 26, 2024.
30. Granting the Stay Extension will allow the Monitor to continue the CCAA proceeding and its efforts towards maximizing value for Trevali Corp.'s assets.
31. The Monitor respectfully requests that this Court grant the Stay Extension Order.

Part 4: MATERIAL TO BE RELIED ON

- 1. Fourteenth Report of the Monitor, dated October 18, 2023;
- 2. Second Report of the Receiver, dated October 18, 2023; and
- 3. Such further and other material as counsel for the Applicants may advise.

The Applicant estimates that the application will take 30 minutes.

This matter is within the jurisdiction of a master.

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 of 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: October 18, 2023



Signature of lawyer for the Applicant
Eamonn Watson

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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:

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
- other matters concerning document discovery
- 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
- none of the above

SCHEDULE "A"

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PETITIONERS

ORDER MADE AFTER APPLICATION

))
BEFORE) THE HONOURABLE MADAM) 25/OCT/2023
JUSTICE FITZPATRICK
))

ON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Trevali Mining Corporation (in such capacity, the "**Monitor**"), coming on for hearing at Vancouver, British Columbia, by MS Teams on the 25th day of October, 2023; AND ON HEARING John Sandrelli and Eamonn Watson, counsel for the Monitor, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Fourteenth Report of the Monitor dated October 18, 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 Trevali Mining Corporation is hereby extended up to and including April 26, 2024.

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 Trevali Mining Corporation and 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 Trevali Mining Corporation 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 Monitor 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 John Sandrelli
Lawyer for the Monitor

By the Court.

Registrar

SCHEDULE "A"

LIST OF COUNSEL

Counsel Name	Party Represented

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ORDER MADE AFTER APPLICATION

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File No.
584476-8