

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N° : 500-11-048114-157

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:

WABUSH IRON CO. LIMITED,
WABUSH RESOURCES INC.
WABUSH LAKE RAILWAY COMPANY,
LIMITED

Petitioners

-and-

WABUSH MINES,

Mise-en-cause

-and-

TACORA RESOURCES INC.
MAGGLOBAL LLC

Mises-en-cause

-and-

THE REGISTRAR OF DEEDS FOR THE
PROVINCE OF NEWFOUNDLAND AND
LABRADOR

THE MINERAL CLAIMS RECORDER FOR
THE PROVINCE OF NEWFOUNDLAND AND
LABRADOR

THE REGISTRAR OF MOTOR VEHICLES
FOR THE PROVINCE OF NEWFOUNDLAND
AND LABRADOR

THE DIRECTOR OF COMMERCIAL
REGISTRATIONS FOR THE PROVINCE OF
NEWFOUNDLAND AND LABRADOR

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

THE KAMI MINE LIMITED PARTNERSHIP

-and-

ALDERON IRON ORE CORP.

Kami Parties

NOTICE OF OBJECTION BY ALDERON IRON ORE CORP. AND THE KAMI MINE LIMITED PARTNERSHIP TO PETITIONERS' MOTION FOR THE ISSUANCE OF AN APPROVAL AND VESTING ORDER FOR THE SALE OF CERTAIN ASSETS AND AN ASSIGNMENT ORDER WITH RESPECT TO THE ASSIGNMENT OF CERTAIN CONTRACTS
(Sections 11, 11.3 and 36 of the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36)

TO THE HONOURABLE JUSTICE STEPHEN W. HAMILTON J.C.S. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, RESPONDANTS THE KAMI MINE LIMITED PARTNERSHIP AND ALDERON IRON ORE CORP., RESPECTFULLY SUBMIT THE FOLLOWING:

I. SCOPE AND PURPOSE

1. On June 13, 2017, Wabush Iron, Wabush Resources and Wabush Lake Railway (collectively, the "**Petitioners**"), notified to Alderon Iron Ore Corp. ("**Alderon**") and The Kami Mine Limited Partnership ("**Kami LP**") (collectively, the "**Kami Parties**") a *Motion for the Issuance of an Approval and Vesting Order with Respect to the Sale of Certain Assets and an Assignment Order with Respect to the Assignment of Certain Contracts* (hereinafter the "**APA Approval Motion**");
2. The APA Approval Motion seeks an order from this honorable Court to approve the Asset Purchase Agreement dated as of June 2, 2017 (hereinafter the "**Tacora APA**"), between Petitioners and the purchaser Tacora Resources Inc. (hereinafter "**Tacora**" or the "**Purchaser**");
3. In response, the Kami Parties hereby seek the postponement of the Petitioners' APA Approval Motion on the basis that:
 - a. the Tacora APA remains subject to significant conditions precedent that have not been satisfied by the Purchaser, may never be satisfied, and that render the APA Approval Motion premature; and
 - b. the APA Approval Motion should not be granted without due assessment of the contents of the undisclosed 2016 Reports (as defined below) regarding the economic viability of the Wabush Mine (as defined below).

II. THE KAMI PARTIES

4. Alderon is proposing to develop, with HBIS Group Co. Ltd. ("**HBIS**"), an iron ore mine in western Labrador known as the Kamistiatusset (Kami) project (the "**Kami Project**"). The Kami Project is located approximately 6 km south of the Wabush Mine (as defined below);
5. The Kami Project is held by the Kami LP, an Ontario limited partnership established by Alderon and HBIS. Alderon owns 75% of the Kami LP and HBIS, through its Canadian subsidiary, owns 25% of the Kami LP. HBIS is Alderon's strategic partner in the development of the Kami Project and has agreed to a long term off-take contract to acquire 60% of the iron ore production. The remaining 40% of iron ore production has been sold to Glencore under a long term off-take contract;

III. THE RELEVANT STEPS OF THE CCAA PROCEEDINGS

6. On January 27, 2015, Bloom Lake General Partner Limited and other parties (the "**Bloom Lake CCAA Parties**") sought and obtained an initial order under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") from this honorable Court (the "**Court**"), providing for, inter alia, the appointment of FTI Consulting Canada Inc. as monitor (the "**Monitor**"). The proceedings commenced under the CCAA by the Bloom Lake Petitioners will be referred to herein as the "**CCAA Proceedings**";
7. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited, Wabush Resources Inc, Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the "**Wabush CCAA Parties**") pursuant to an initial order providing for, inter alia, a stay of proceedings against the CCAA Parties (as defined hereinafter) until June 19, 2015, (the "**Stay Period**"). The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the "**CCAA Parties**";

IV. IMPORTANT FACTS RELATED TO THE WABUSH MINE SALE EFFORTS

8. The Wabush mine is an iron ore mine and processing facility located near the town of Wabush and Labrador City in Newfoundland and Labrador (the "**Wabush Mine**");
9. The operations at Wabush Mine were suspended in March 2014 and in November 2014, a process of permanently idling the Wabush Mine commenced, which involved the permanent shutdown of the Wabush Mine;
10. As discussed extensively in the Kami Motion (as defined hereinafter), there have been several unsuccessful efforts since 2014 to sell the Wabush Mine, both prior to and during the CCAA Proceedings;
11. As appears from the 30th Monitor's report, in late October 2016, the Monitor was contacted by a new party potentially interested in acquiring the Wabush Mine (i.e. the Kami Parties), which party executed a non-disclosure agreement and was given access to

the Wabush CCAA Parties' data and the Wabush Mine site. A conditional proposal in the form of a mark-up of a template asset purchase agreement was submitted by the said interested party on December 5, 2016;

12. As appears from the 31st Monitor's report, in early January 2017 another interested party, now revealed as Tacora, contacted the Monitor and engaged in separate negotiations for the potential acquisition of the Wabush Mine;
13. As appears from the 32nd Monitor's report, the Wabush CCAA Parties developed the Wabush Mine sale procedure in consultation with the Monitor, which was communicated to each of the interested parties (including the Kami Parties) on February 27, 2017;
14. On March 27, 2017, the deadline to submit binding offers, two proposals were received: the Kami Parties' and Tacora's. Tacora's offer was accepted by the Wabush CCAA Parties;

V. THE RELEVENCY OF THE 2016 REPORTS

a. The 2016 Reports are required for a fair assessment of the Tacora APA

15. In 2006 the Government of Newfoundland and Labrador (hereinafter the "**Government**"), ordered a study regarding the status of mineral reserves at the "Scully Mine" of Wabush Mines (the "**Strathcona 2006 Report**"), which concluded that the Wabush Mine would exhaust its economic mineral reserves by 2013. Such conclusion is consistent with the fact that the Wabush Mine was permanently idled on February 2014;
16. At the time the Wabush Mine was idled, Cliffs Natural Resources Inc. ("**CNR**") reported that cash operating costs were US\$143 per ton of iron ore produced, the whole as appears from the CNR's Press release dated February 13, 2014, the price of iron ore has recently been hovering just below US\$60 per ton;
17. Notwithstanding the foregoing, in the Affidavit of Larry Lehtinen sworn June 19, 2017 and filed in the CCAA Proceedings (the "**Lehtinen Affidavit**"), Mr. Lehtinen deposes on behalf of Tacora that it has "a business plan for restarting operations at the Scully Mine";
18. Alderon has learned that additional studies were recently commissioned by the Government regarding the "Scully Mine of Wabush Mines", which prompted Alderon to file, on February 22, 2017, a formal request for those studies under the *Access to Information and Protection of Privacy Act*;
19. On or about March 7, 2017, the Government confirmed the existence of the 2016 Reports (as defined in the Kami Motion, defined below) but refused to provide access to them;
20. Upon such refusal, the Kami Parties filed, on May 29, 2017, a *Motion for an Order Enjoining the CCAA Parties to Request and Obtain Copies of Reports from the Government of Newfoundland and Labrador* (the "**Kami Motion**");

21. On June 21, 2017 the Wabush CCAA Parties filed an objection to the Kami Motion (the “**Kami Motion Objection**”). The Kami Parties do not agree with the Wabush CCAA Parties that the 2016 Reports are irrelevant to the APA Approval Motion. On the contrary, the Kami Parties respectfully submit that the 2016 Reports, which were prepared for the Government at taxpayer cost, are directly relevant to the question of whether a Tacora APA that is predicated in part on the reopening of the Wabush Mine should be approved as being in the best interests of all of the stakeholders of the Wabush CCAA Parties;
22. Contrary to the assertion in the Kami Motion Objection, the Kami Parties cannot be fairly characterized as an unsuccessful bidder in the sale process and otherwise unconnected to the CCAA Proceedings. The Kami Parties have standing in these proceedings as a local community stakeholder with an interest in the outcome of the CCAA Proceedings and in the economic development of the region;
23. Since the Tacora APA is predicated on restarting operations at the Wabush Mine, it is the Kami Parties’ contention that the 2016 Reports are relevant to any assessment by the Court of Tacora’s credibility and the reasonableness of that aspect of its offer;
24. The Kami Parties acknowledge that the 2016 Reports are not currently publicly available, and that the APA Approval Motion will be before the Court on June 26, 2016. As discussed further below, the Kami Parties respectfully submit that the APA Approval Motion is premature on the basis that it is highly conditional and carries unreasonable closing risk, and that it should be adjourned on that basis. In the meantime, the Kami Parties submit that the Kami Motion should proceed so that the Court has all relevant information before it, if and when the APA Approval Motion or another sale approval motion comes before the Court at a future date;
25. The Kami Parties acknowledge that if the material conditions to the Tacora APA have been satisfied prior to the hearing of the APA Approval Motion and the Court is satisfied that the Tacora APA should be approved, then the Kami Motion will be moot;
26. The Kami Parties further submit that if the Court is satisfied that the Tacora APA should be approved, notwithstanding the continued existence of significant and critical subject conditions, then the Kami Motion should also proceed so that the 2016 Reports can be obtained and available in the event that the Tacora APA does not in fact close;

b. The Tacora APA bears excessive closing risk

27. The Kami Parties submit that the Tacora APA is not sufficiently advanced or “firm” to warrant Court approval at this time. The Wabush CCAA Parties seek the Court’s approval of the Tacora APA at a stage where it remains subject to Tacora meeting material and fundamental conditions precedent prior to Closing, some of which are not within the control of either the Wabush CCAA Parties or Tacora;
28. For example, Section 8.1(2) of the Tacora APA provides that Tacora must obtain *Mining Act* (Newfoundland and Labrador) approval on or before the Closing Date of no later than

July 31, 2017. The APA Approval Motion provides no indication of whether such *Mining Act* approval can or will be obtained before that date;

29. Similarly, prior to closing Tacora is required to fund all "Cure Costs", which the APA Approval Motion indicates are as much as \$18,800,000. Tacora is also required to reach an agreement with the Government as to the "Replacement Financial Assurance" by June 16, 2017. To achieve this, Tacora must replace nearly \$50,000,000 in surety bonds that are currently held by the government in respect of environmental liabilities at the Wabush Mine;
30. On June 16, 2017, the Government filed a Notice of Objection to the APA Approval Motion, noting that Tacora has "not yet succeeded at procuring sufficient Replacement Financial Assurance, and has not yet arrived at an agreement with the Government".¹ The Government reserved its right to raise grounds of objection on June 26. The Government notes in its Notice of Objection that Tacora has already represented and warranted in the APA that it has sufficient financial resources or financing to procure Replacement Financial Assurance;
31. The Kami Parties do not know whether Tacora has obtained *Mining Act* approval, but has seen nothing to indicate that it has;
32. The Lehtinen Affidavit appears to be an attempt to establish that Tacora has the financial backing and wherewithal to close the transaction under the Tacora APA, which includes obtaining funding for the Cure Costs, paying the balance of the cash purchase price, and meeting the condition for Replacement Financial Assistance, totaling in the range of \$70,000,000;
33. The Lehtinen affidavit states that MagGlobal LLC, the parent company of Tacora, has a commitment from a private equity investor for an equity subscription sufficient to pay all amounts necessary to close the Tacora APA and to capitalize the company for future reopening and operating of the Wabush Mine. Significantly, what is not mentioned is whether there are any conditions to that equity financing. The 37th Monitor's Report, however, observes at paragraph 49 that "*The Purchaser has provided evidence of financing commitment, though such commitment is conditional on the satisfaction of the [Replacement Financial Assurance condition] and expires concurrent with the Replacement Financial Assurance Condition Date [originally June 16, extended to June 25];*
34. Complicating the funding requirements of Tacora is the background fact that many of the senior management of Tacora and its parent company were recently the management of a bankrupt iron ore company, Magnetation LLC and its affiliates (collectively, "**Magnetation**"). In May of 2015, Magnetation filed for creditor protection under Chapter 11 of the US Bankruptcy Code, with secured debt of almost USD\$500,000,000. The

¹ The 37th Monitor's Report notes that the deadline under the Tacora APA for Tacora to meet the Replacement Financial Assurance was extended by agreement of the parties to June 25, 2017.

restructuring effort was ultimately unsuccessful and the Kami Parties understand that the assets of Magnetation were sold to a third party, early in 2017, for approximately USD\$22,000,000;

35. As the Lehtinen Affidavit confirms, Tacora is a recently incorporated special purpose acquisition vehicle with no history of operating a mine. Its parent, MagGlobal LLC appears to be a company that licenses iron ore processing technology but does not own or operate any mines;

VI. CONCLUSIONS

36. The Kami Parties are sensitive to the criticisms made of them in the Kami Motion Objection and anticipate that the same criticisms will be directed at them here. The Kami Parties are a stakeholder and significant member of the local community. The Kami Parties have concluded benefits agreements with the Government and local communities, including the Town of Wabush and Labrador City. The Kami Parties have also concluded benefits agreements with local aboriginal groups: the Innu Nation and the Nunatukavut. Further, in 2014, the Kami Parties were awarded the Developer of the Year Award (the "Award") from the Canadian Institute of Mining, Metallurgy and Petroleum ("CIM") Newfoundland Branch. The Award is in recognition for significant progress in advancing a mine toward production; for a significant contribution to health and safety, environmental stewardship or commitment to community; or for innovation in the Newfoundland and Labrador mining industry.
37. The Kami Parties did, of course, make an unsuccessful bid for a portion of the Wabush Mine, which was not accepted by the Wabush CCAA Parties and which the Monitor has concluded in the 37th Monitor's Report was not viable. However, the Kami Parties' motivation is not to advocate that their offer be accepted, and it is not to derail the Tacora APA. Nor do the Kami Parties object that the most recent sale process was unfair or improper in any way. The Kami Parties do not dispute that if Tacora is able to raise the significant amount of money required to close the Tacora APA Transaction and restart the mine, then as the successful bidder they have the right to attempt to do just that;
38. Despite the foregoing, the fact remains that the Kami Parties have a real interest in the outcome of the CCAA Proceedings, not as a "Bitter Bidder" but as an actual local community stakeholder. Given the Kami Parties' belief that the Wabush Mine cannot and will not ever reopen, the Kami Parties believe that approval of the Tacora APA will not just delay the development of their own Kami Project, but will also delay the economic development and well-being of the entire region. If it turns out that the Kami Parties are wrong and Tacora is able to both close the transaction and reopen the Wabush Mine, then the Kami Parties will be content to have been proven wrong. But if the Kami Parties are correct, then as local stakeholders who propose to invest a significant amount of money into the local and Provincial economy through the Kami Project, the Kami Parties believe it is not just in their own best interests, but is also their duty to their present and future

stakeholders to bring to light the reality of the Wabush Mine's future prospects and seek the release of the 2016 Reports;

39. As for the Tacora APA, what the Kami Parties do say is that on its own terms, it does not presently constitute a sufficiently firm offer, and that the APA Approval Motion is premature because there does not exist a reasonable level of assurance that the transaction can or will complete;
40. The Kami Parties further contend that to the extent that the Tacora APA is predicated on an unsupported and unrealistic claim that Tacora can restart the Wabush Mine, the Tacora APA should not be approved because the evidence is that the Wabush Mine will not reopen and therefore a sale to Tacora would, in the respectful submission of the Kami Parties, result in a disservice to former employees, suppliers, and other local stakeholders of the Wabush Mine by delaying the viable development of other economic mineral resources in the region;
41. The present *Notice of Objection to Petitioners' Motion for the Issuance of an Approval and Vesting Order for the Sale of Certain Assets and an Assignment Order with Respect to the Assignment of Certain Contracts* is well founded in fact and law;

WHEREFORE, MAY IT PLEASE THE COURT TO:

- [1] **RECEIVE** the present *Notice of Objection of Alderon Iron Ore Corp. and The Kami Mine Limited Partnership to the Motion for the Issuance of an Approval and Vesting Order for the Sale of Certain Assets and an Assignment Order with Respect to the Assignment of Certain Contracts*.
- [2] **POSTPONE** *Petitioners' Motion for the Issuance of an Approval and Vesting Order for the Sale of Certain Assets and an Assignment Order with Respect to the Assignment of Certain Contracts*.
- [3] **ORDER** the Wabush CCAA Parties to use best efforts to obtain from the Government of Newfoundland and Labrador, copies of the 2016 Viability Analysis and the Strathcona 2016 Report and communicate same to the Petitioners, the Monitor and this honorable Court.

Montréal, June 22, 2017


Borden Ladner Gervais LLP
Lawyers for the Kami Parties

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**SUPERIOR COURT
DISTRICT OF MONTREAL
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