

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HARTE GOLD CORP**

MEMORANDUM

I. INTRODUCTION

1. On December 7, 2021, Harte Gold Corp. ("**Harte**") sought and obtained an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), providing for, *inter alia*, a stay of proceedings until December 16, 2021, and appointing FTI Consulting Canada Inc. ("**FTI**") as monitor (the "**Monitor**"). The comeback hearing was scheduled for December 16, 2021.

2. On December 16, 2021, Justice Pattillo adjourned the comeback hearing to December 21, 2021 (subsequently rescheduled by Justice McEwen to December 20, 2021, before Justice Penny) on the basis that certain motion materials had been late-served and the Court had not had sufficient time to consider them. In addition, following the December 16 hearing, Justice Pattillo granted an Order: (i) extending the CCAA stay to December 21, 2021, and (ii) approving an increase in the DIP financing by \$2.1 million (consistent with Harte's liquidity requirements through December 24).

3. At the conclusion of the December 16 hearing, Justice Pattillo directed that a brief background memorandum be provided to the judge hearing the adjourned comeback motion to

assist the Court in understanding the matters before it. The Monitor respectfully submits this memorandum pursuant to the foregoing direction.

II. OVERVIEW

4. Harte is an Ontario-based gold mining company that sought and obtained CCAA protection on December 7, 2021.

5. A comeback hearing was scheduled for December 16, 2021, to consider Harte's motion for:

- (a) an amended and restated Initial Order substantially in the form of the Ontario model order, including an extension of the CCAA stay to January 31, 2022, an increase in the amount of the administration charge granted under the Initial Order from \$500,000 to \$1,500,000, and an increase in the amount Harte is authorized to borrow under its DIP financing facility to \$10.8 million; and
- (b) approval of a sale and investment solicitation process ("**SISP**") for Harte's business and assets, including approval of a subscription agreement (the "**Initial Stalking Horse**") entered into with an affiliate of Silver Lake Resources Limited (together with its affiliates, "**Silver Lake**"), Harte's DIP lender and one of its first-lien creditors, to serve as the "stalking horse" bid in the proposed SISP.

6. Harte's motion is supported by its two most senior creditors, Silver Lake and BNP Paribas ("**BNP**"), as well as the Monitor. To the best of the knowledge of the Monitor, the motion is also unopposed, including by Harte's second-lien lender, AHG (Jersey) Limited, and certain of its

affiliates (collectively, “**Appian**”) who are party to royalty, offtake and certain financing arrangements with Harte.

7. Harte’s relief sought at the comeback hearing was included in its CCAA Application Record and Harte also subsequently served a motion record in respect of the comeback hearing on December 8, 2021, the day following the Initial Order being granted.

8. On the afternoon prior to the comeback hearing (December 15), Harte served and filed a supplemental motion record relating to the SISP and later that evening the Monitor served and filed its First Report. The late filing of these materials was the result of Harte and Silver Lake entering into an amended and restated subscription agreement on the afternoon of December 15 following negotiations by Harte and the Monitor with Silver Lake that led to improvements to the Initial Stalking Horse in advance of the comeback hearing. This agreement now represents the proposed stalking horse bid under the SISP (the “**Amended Stalking Horse**”). As described below, the Amended Stalking Horse represents a significantly improved starting bid for Harte and its stakeholders and also served to resolve the cross-motion and sole objection to Harte’s motion that had been filed by Appian.

III. THE ADJOURNED RELIEF SOUGHT

(i) The Proposed SISP

9. Harte seeks approval of a proposed SISP. The key milestones under the proposed SISP are set forth below:

MILESTONE	DATE
Distribution by the Monitor of the Solicitation Notice to Known Potential Bidders	By no later than 1 day following the issuance by the Court of the SISP Order

Bid Deadline	January 14, 2022 at 5:00 p.m. (prevailing Eastern Time)
Auction Date	By no later than January 20, 2022
Sale Approval Motion	No later than seven (7) calendar days following either the conclusion of the Auction or the date on which a determination is made not to proceed with an Auction

10. The proposed SISP follows an extensive pre-filing marketing process conducted by Harte with the assistance of FTI, which commenced in June 2021. Those efforts saw a teaser sent to 246 potentially interested parties and NDAs executed by 31 parties to gain access to a data room, but ultimately no binding proposal being submitted by the bid deadline. Following this process, direct discussions took place among BNP and a number of interested parties, including Appian, related to potential restructuring options for Harte's business without an agreement being reached. On November 19, 2021, Harte's first-lien debt (excluding hedge obligations) was assigned by BNP to Silver Lake. At this stage, both Appian and Silver Lake indicated they were interested in bidding on Harte's business and assets. Following this, Harte, with the assistance of FTI, engaged in further negotiations with each of Silver Lake and Appian and requested final and best offers by December 4, 2021, to act as a stalking horse in connection with a SISP. After receiving offers from both parties, Harte determined the offer from Silver Lake represented the best in the circumstances and entered into the Initial Stalking Horse on December 6, 2021. The day after, Harte filed for CCAA protection and indicated it intended to pursue the SISP, subject to approval of the Court at the comeback hearing. A timeline reflecting Harte's pre-filing marketing process and developments in the case to date is attached as Schedule "A" hereto.

11. Following the initial CCAA hearing, Appian advised Harte and the Monitor that it intended to improve its offer and subsequently delivered an amended form of subscription agreement to Harte on December 11, 2021. On December 13, 2021, Appian served and filed a cross-motion seeking to have its updated proposed subscription agreement declared the stalking horse bid under a revised form of proposed SISP.

12. On December 14, 2021, Silver Lake advised Harte and the Monitor that it intended to improve the Initial Stalking Horse, and on December 15, 2021, Harte and Silver Lake entered into the Amended Stalking Horse. Later that evening, after reviewing Harte's supplemental motion materials (including the Amended Stalking Horse), Appian advised the Monitor that it was withdrawing its cross-motion and would not oppose Harte's SISP motion.

13. The Amended Stalking Horse is a going-concern reverse vesting transaction that would see Silver Lake become the sole shareholder of Harte on closing and includes the following key features:

- (a) a credit bid by Silver Lake of the DIP obligations and approximately US\$65 million of first-lien debt, as well as a payment in cash necessary to satisfy any priority obligations and administrative and wind-down expenses;
- (b) the first-lien hedge obligations owing to BNP being retained by Harte;
- (c) the full amount of the properly perfected Appian second-lien debt being paid in cash on closing from proceeds derived from the sale of Silver Lake shares to be delivered to Harte prior to the closing;

- (d) the retention of almost all of Harte's contractual obligations, including all of its royalty agreements and offtake agreements;
- (e) payment of cure costs in respect of retained contracts and other outstanding trade amounts relating to the business, subject to a cap of \$10 million (which Harte believes should be sufficient to satisfy all such obligations); and
- (f) there is no break-fee or incremental expense reimbursement contemplated by the Amended Stalking Horse if it is not the successful bid under the SISP.

14. The negotiations that took place in the 48 hours leading up to the comeback hearing among Harte, the Monitor and Silver Lake resulted in significant improvements to the Amended Stalking Horse relative to the Initial Stalking Horse, including Silver Lake's agreement for Harte to retain all of its royalty and offtake agreements (which had previously been excluded), agreement on a mechanism to pay Appian's second-lien debt in cash (rather than being paid in shares of Silver Lake) and an increase in the cure cost and trade amount cap by \$2.5 million (from \$7.5 million to \$10 million). These improvements led to Appian withdrawing its cross-motion and otherwise not opposing the relief being sought by Harte at the comeback hearing.

15. The late filing of supplemental motion materials and the First Report on the afternoon and evening prior to the comeback hearing was the result of these "real time" developments and negotiations that led to a significantly improved starting point for the proposed SISP, and also served to resolve the sole objection to the SISP.

(ii) *The Proposed DIP Increase*

16. The other main outstanding request for relief is Harte's motion to increase its DIP financing to up to \$10.8 million, which is also unopposed. As demonstrated by the cash flow forecast

appended at Appendix “A” to the Monitor’s Pre-Filing Report, Harte forecasts a net cash outflow of approximately \$14.3 million through April 1, 2022, with the result that DIP financing in the requested amount is necessary to ensure it is able to continue operations, conduct the SISP and implement a transaction for the benefit of stakeholders.

(iii) The Amended and Restated CCAA Initial Order and Stay Extension

17. Finally, Harte is also requesting that the Court grant an amended and restated Initial Order substantially in the form of the model Ontario order, including an increase in the administration charge from \$500,000 to \$1,500,000, as well as an extension of the CCAA stay until January 31, 2022, to allow it to continue to receive the benefit of CCAA protection and conduct the proposed SISP. Again, this relief is unopposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

December 17, 2021

/s/ *Goodmans LLP*

Goodmans LLP, counsel to FTI Consulting Canada Inc. in its capacity as Monitor of Harte Gold Corp. and not in its personal capacity

SCHEDULE “A”

TIMELINE

[see attached]

CCAA Proceedings of Harte Gold Corp. – Timeline of Events

