

COURT FILE NO.: CV-09-8122-00CL

SUPERIOR COURT OF JUSTICE -- ONTARIO
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF INDALEX LIMITED, INDALEX HOLDINGS
(B.C.) LTD., 6326765 CANADIAN INC. AND NOVAR INC.

Applicants

BEFORE: MORAWETZ J.

COUNSEL: Linc Rogers, Katherine McEachern and Jackie Moher, for the Applicants

Ashley Taylor and Lesley Mercer, for FTI Consulting Canada ULC,
Monitor

Paul Macdonald and Jeff Levinc, for JPMorgan (DIP Lender)

Kenneth D. Kraft, for SAPA Holding AB

Andrew Hatnay and Demetrios Yiokaris and Andrew Mckinnon, for
Keith Carruthers and SERP Retirees

Brian Empey, for Sun Indalex

John D. Leslie, for the U.S. Unsecured Creditors' Committee

G. Finlayson, for U.S. Bank as Trustee for the Noteholders

HEARD: JULY 2, 2009

ENDORSEMENT

[1] The Applicants seek an Order approving the Bidding Procedures as well as an Order deeming the Stalking Horse Bid to be a Qualified Bid pursuant to the Bidding Procedures as well as approval of the Breakup Fee.

[2] The Monitor recommends that the relief be granted. No party, with the exception of Mr. Carruthers and the SERP Retirees, is opposed.

[3] This motion stems directly from the Marketing Process which was approved by the Court on April 22, 2009. The conduct of the Marketing Process is set out both in the Affidavit of Mr. Fazio and in the Monitor's Reports. The Stalking Horse Bid of SAPA Holdings was executed on June 16, 2009. The Notice of Motion was served on June 17, 2009.

[4] The Marketing Process was conducted in both U.S. and Canada. Mr. Rogers advised that the Bidding Procedures were approved, with minor modification, by the U.S. Bankruptcy Court earlier today.

[5] It is also noted that it is a condition precedent to the performance of the Stalking Horse Bidder that the Bidding Procedures be Court approved by today.

[6] Mr. Rogers expressed the view that the Stalking Horse Bid is a worst-case scenario – but that it does represent a “bird in the hand”.

[7] This is not a motion to approve the transaction. This issue will be addressed at a future time.

[8] The approval of the Bidding Procedures is opposed by Mr. Hatnay on behalf of certain retirees. Mr. Hatnay requests a 7-day adjournment. That request is problematic in view of the aforementioned condition precedent. The main concern of the retirees is that their position and views have not been considered in this process. The Stalking Horse Bidder is not assuming the pension liabilities. Further, Mr. Hatnay submits that there are a number of unanswered questions relating to both the Executive Pension and the Supplementary Pension.

[9] The position facing the retirees is unfortunate. The retirees are currently not receiving what they bargained for. However, reality cannot be ignored and the nature of the Applicants' insolvency is such that there are insufficient assets to meet its liabilities. The retirees are not alone in this respect. The objective of these proceedings is to achieve the best possible outcome for the stakeholders. In addressing this objective, the Applicants put forth a process – the Marketing Process – which has already been Court approved. No party objected to the previous approval. In my view, the Applicants have adhered to the Court approved process and there is no basis to either delay the consideration of this motion or to give effect to the objection raised by the retirees. To hold otherwise would be to jeopardize the Stalking Horse Bid.

[10] In my view, the issues raised by the retirees do not have any impact on the Bidding Procedures. The issues can be raised by the retirees on any application to approve a transaction – but that is for another day. The *Soundair* principles raised by Mr. Hatnay are more applicable, in my view, to any sale approval motion. For today's motion, the process that is relevant is the Marketing Process as approved on April 22, 2009 which the Applicants have followed.

[11] The Bidding Procedures are therefore approved. The Stalking Horse Bid is deemed to be a Qualifying Bid and the Breakup Fee is approved.

[12] The Monitor filed a Supplement to the Sixth Report. In my view, this document contains confidential information the release of which could be prejudicial to the interests of the Applicants and stakeholders. In my view, it is appropriate to grant a sealing order with respect to this Supplement. The document is to be sealed pending further order.



MORAWETZ J. ✓

DATE: July 2, 2009

Typed Version Released: July 16, 2009