



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.:

CV-23-00693758-00CL

DATE: 9 February 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **In the Matter of the *Companies' Creditors Arrangement Act***
and
In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.

BEFORE JUSTICE: Osborne

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE OSBORNE:

- [1] This is the comeback hearing in this CCAA proceeding further to the Initial Order I granted on January 30, 2023.
- [2] The background to, and reasons for, this CCAA Proceeding and my Initial Order are set out in my Endorsement of January 30. I will not repeat all of those here. Defined terms have the meaning given to them in that Endorsement, the motion materials and/or the prefiling Report of the Proposed Monitor and the First Report of the Monitor unless otherwise indicated.
- [3] The Applicants bring this motion for an Amended and Restated Initial Order (“ARIO”). None of the relief sought today is opposed. It is fully supported and recommended by the Monitor. It is not opposed by RBC, the senior secured creditor, or the Ministry of Finance (“MOF”). Both of those parties are represented in Court today.
- [4] The Applicants seek a stay extension to and including April 28, 2023 and an increase in the Directors’ Charge to \$2,250,000. They rely on the affidavit of Scott Hill sworn February 7, 2023 as well as the First Report of the Monitor, in addition to the materials filed in support of the relief sought and granted on January 30.
- [5] I am satisfied that the Applicants continue to act in good faith and that the stay extension is necessary to provide the required stability for the Applicants to further enable and facilitate their restructuring. I observe the cash flow forecast provided by the Monitor which supports the conclusion that the Applicants should have sufficient liquidity during the stay extension period to fund obligations and costs of these proceedings. I am satisfied that no creditor will be materially prejudiced by the extension sought.
- [6] The February 7 Affidavit of Mr. Hill states that the stay extension to April 28, 2023 should also allow sufficient time to continue to investigate the missing financial records and documents of the OTE Group without having to seek a further extension.
- [7] The Applicants have now come to an agreement with the Ministry of Finance pursuant to which the OTE Group was granted conditional time-limited gas and fuel licences for the period February 1 to March 31, 2023. The key conditions of that agreement are set out in the materials.
- [8] Today, the Applicants seek proposed revisions to paragraph 19 and 20 of the ARIO following discussions with the MOF to enable regulatory agencies to seek leave of this Court to vary the stay in relation to the possible revocation of licences on 10 days notice.
- [9] The proposed revisions would also clarify that the stay does not prevent any government or regulatory agency or body from taking any action it deems necessary to protect public or employee health or safety, to address any exigent environmental contamination hazards or to investigate and prosecute criminal and quasi-criminal offences, recognizing that enforcement of monetary orders that may arise therefrom would be stayed subject to further order of this Court.
- [10] The Applicants do not oppose these amendments, and the Monitor is satisfied that they are appropriate in the circumstances (see paragraph 24 of the First Report). The language has been negotiated with the MOF which supports these amendments and the revised language. I am satisfied that they are appropriate.
- [11] In the Initial Order, I approved a Directors’ Charge in the amount of \$250,000, ranking in priority behind the Administration Charge of \$500,000, both of which were subordinate to the existing RBC Security.
- [12] Those amounts were limited to the amounts estimated to be reasonably necessary for the OTE Group to continue operations during the initial 10 day stay period.

- [13] The increase in the amount of the Directors' Charge sought today reflects amount reasonably necessary for the purposes of the Extended Stay Period and in particular to ensure that the Applicants have the requisite stability of which continuity of directors is an important component.
- [14] The amount sought of \$2,250,000 is comprised of \$250,000 for payroll source deductions and \$2 million for sales tax. I am satisfied that the increase in the quantum of the charge is appropriate and, as the Monitor notes, is proportionate to the anticipated potential director liabilities during the extended stay period.
- [15] I observe that there is a directors and officers insurance policy with a coverage limit of \$2 million. As noted by Monitor's counsel today, fuel tax obligations are approximately \$7 million per month with the result that even if the policy responded to a claim related to these liabilities, the quantum would not be sufficient to address anticipated exposure.
- [16] I further observe that the charge would apply only in the event that the insurance policy did not respond to any claims, or the policy limits had already been reached. In addition, the charge is not collateralized, with the result that it does not affect the cash flows of the Applicants. I am satisfied that the increase is appropriate.
- [17] ARIO to go in the form signed by me today. It is effective immediately and without the necessity of issuing and entering.



Osborne, J.