Court File No. CV-17-580840-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

(Court Seal)

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 INDEX ENERGY MILLS ROAD CORPORATION

(the "**Applicant**")

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on August 16, 2017, at 9:00 a.m., before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO

OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date August 15, 2017 Issued by Maggie Sawka
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto ON
M5G 1R7

TO: The Attached Service List

Updated August 13, 2017

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(the "**Applicant**")

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Lawyers for the Lending Syndicate comprised of National Bank of Canada, Canadian Western Bank, Laurentian Bank of Canada, and Business Development Bank of Canada

APPLICATION

1. The Applicant, Index Energy Mills Road Corporation ("**Index Energy Ajax**") makes an application for:

   (a) an Order substantially in the form attached hereto as Schedule "A" (the "**Initial Order**"), *inter alia*;

      (i) abridging the time for service of the Notice of Application and the Application Record herein and validating service thereof;

      (ii) declaring that Index Energy Ajax is a company to which the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;

      (iii) granting a stay of proceedings and remedies taken or that might be taken in respect of Index Energy Ajax or any of its property or its directors or officers, except where otherwise set forth in the Initial Order or otherwise permitted by law;

      (iv) authorising the Applicant to carry on business in a manner consistent with the preservation of its property and business and to make certain payments in connection with its business;

      (v) appointing Grant Thornton Limited ("**GTL**") as Monitor of the Applicant in these proceedings;

(vi) authorising Index Energy Ajax to borrow the maximum sum of $5,000,000 pursuant to a credit facility (the "**DIP Financing**") as interim financing from Index Equity US LLC ("**Index US**", and, in this capacity, the "**DIP Lender**") with a maximum amount of $1.6 million being advanced by the DIP Lender prior to the comeback hearing to be scheduled ("**Comeback Hearing**");

(vii) granting the following priority charges (collectively, the "**Charges**") over the Property, such charges to rank in the priority set out in the Initial Order and described in the affidavit of Rickard Haraldsson, to be dated and notarized on August 16, 2017 (the "**Haraldsson Affidavit**"):

(1) a charge in the maximum amount of $1,000,000 to secure payment of the fees and disbursements of the Monitor, its counsel, and the Applicant's counsel associated with the preparation for these CCAA proceedings and activities during the proceedings (the "**Administration Charge**");

(2) a charge to secure obligations under the DIP Financing (the "**DIP Lender's Charge**");

(3) a charge, in the maximum amount of $250,000, to protect the directors and officers of the Applicant (the "**Directors' Charge**");

(viii) sealing a copy of the optimization plan attached as Confidential Appendix "A" to the pre-filing report of GTL as proposed Monitor (the "**Pre-Filing Report**"); and

(b) such further and other Relief as to this Court may seem just.

2. The grounds for the application are:

(a) Index Energy Ajax owns and operates an electrical co-generation facility located in Ajax, Ontario that generates electricity by burning wood waste from the construction industry to produce steam to drive turbine generators (the "**Biomass Facility**");

(b) Index Energy Ajax had engaged an engineering, procurement and construction contractor, HMI Construction Inc. ("**HMI**"), to retrofit the Biomass Facility, however, as a result of various design and construction issues, Index Energy Ajax has encountered difficulties and actual energy output has been lower and operational costs have been higher than anticipated;

(c) Index Energy Ajax has been engaged in protracted litigation with HMI regarding certain deficiencies in its work on the Biomass Facility and has been forced to deal with numerous liens arising from the construction associated with the Biomass Facility including a lien claim (the "**HMI Lien Claim**") of approximately $31.3 million registered by HMI (the amount of security required to vacate this lien claim was recently reduced by Court order);

(d) With less than forecast output, Index Energy Ajax is in default of various obligations to its secured lenders (the "**Syndicate**"), who have made demand for payment of amounts in excess of $45 million;

(e) The Syndicate has issued letters of default and most recently on January 18, 2017, the Syndicate issued a demand letter and a notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA Notice**");

(f) Although the 10 day notice period pursuant to the BIA Notice has expired, on January 30, 2017, the Syndicate agreed to extend the notice period and forbear on a day-to-day basis provided, among other things, that the Syndicate could terminate the notice period on one (1) business day's prior notice in writing to Index Energy Ajax;

(g) Index Energy Ajax is experiencing significant liquidity constraints and has insufficient funds to meet its obligations as they come due and owing in the ordinary course of business and the existence of the HMI Lien Claim has impaired the Applicant's ability to obtain additional financing;

(h) Over the past couple of years, Index Energy Sweden AB (publ) ("**Index Sweden**") and a related Swedish company, Index Residence AB (formerly Index International AB (publ)) ("**Index Residence**") have funded significant operating losses and capital requirements of Index Energy Ajax, but they are no longer prepared to do so other than through the DIP Financing offered by a related party on a priority basis;

(i) Index Energy Ajax and Index US are currently in negotiations with the Syndicate to reach agreement on terms:

   (i) of a mutually acceptable sale and solicitation process ("**SISP**") which would include a stalking horse bid; and

   (ii) to allow further advances under the DIP Financing beyond the initial permitted draw amount of $1.6 million, on a consensual basis

all of which would be subject to further court approval.

(j) In these circumstances, Index Energy Ajax needs a period of time to move forward with a SISP to explore potential restructuring and/or sale transactions and also urgently requires interim financing on a priority basis to preserve value, create stability and to ensure its viability as a going concern;

(k) The DIP Lender has agreed to provide Index Energy Ajax with debtor-in-possession financing as set out in a debtor-in-possession credit agreement dated as of August 14, 2017 to allow Index Energy Ajax to operate during these proceedings;

(l) Index Energy Ajax intends to return to court shortly to seek approval of a SISP in order for it to ultimately emerge as a restructured business, either through an investment or a going-concern sale, and approval of the DIP Financing on a final basis;

(m) GTL has consented to act as Monitor of the Applicant, subject to Court approval;

(n) Those further grounds set out in the Haraldsson Affidavit;

(o) The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(p) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14.05(2), 16, 38 and 39 of the *Rules of Civil Procedures,* R.R.O 1990, Reg. 194, as amended; and

(q) Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the application:

(a) The Haraldsson Affidavit and the exhibits thereto;

(b) The Pre-filing Report; and

(c) Such further and other evidence as the lawyers may advise and this Court may permit.

August 15, 2017

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