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November 20, 2023

HAND DELIVERED

Registrar Balmanoukian
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

Dear Registrar Balmanoukian,

RE: In the Matter of the Notice of Intention to Make a Proposal of Chester Basin Seafood Group Inc.

We are counsel to Chester Basin Seafood Group Inc. (the "**Company**") in connection with this matter.

The Company has scheduled an Application to be heard before you in Halifax on Friday, November 24, 2023, at 1:30 p.m. wherein the Company seeks an order, among other things:

1. abridging notice periods and service requirements pursuant to s. 6 of the *Bankruptcy and Insolvency General Rules,* CRC, c. 368 ("***Bankruptcy Rules***");
2. extending the time for the Company to file a proposal by 45 days, up to and including January 21, 2024, pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended ("**BIA**");
3. approving an Amended DIP Facility Term Sheet (the "**DIP Agreement**") executed by the Company on November 19 2023 with 4519497 Nova Scotia Limited (the "**DIP Lender**") pursuant to which the DIP Lender has agreed to advance to the Company a total amount of up to $1.1 million (the "**DIP Facility**");
4. granting a "**DIP Lender's Charge**" against the assets, property, and undertakings of the Company (the "**Property**") as security for the Company's obligations under the DIP Agreement, which charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise with the exception of the Administration Charge (as defined herein); and
5. granting an "**Administration Charge**" against the Company's Property in the amount of $100,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by Grant Thornton Limited in its capacity as proposal trustee (in such capacity, the "**Proposal Trustee**"), counsel to the Proposal Trustee and counsel to the Company, in connection with this proceeding both before and after the making of the order.

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The Affidavit of Jose Teixeira sworn on November 20, 2023 (the "**Teixeira Affidavit**") and the First Report of the Proposal Trustee (the "**First Report**") have been filed in support of this Application.

The Company has engaged, with the assistance of the Proposal Trustee, in discussions with The Toronto-Dominion Bank ("**TD**"), its secured lender. The Company has discussed the relief sought with TD and has not been advised as at the date of this letter, that TD will be opposing the relief. It is however possible that there may be further variations to the DIP Agreement based on TD's demands.

Please accept the following as the pre-hearing memorandum on behalf of the Company.

Facts

The facts are as set out in the Teixeira Affidavit and the First Report of the Proposal Trustee.

The Company is in the business of harvesting, packaging, marketing, and selling groundfish, primarily Atlantic silver hake, also known as whiting (the "**Business**"). In connection with the Business, the Company holds groundfish quotas, fishing licenses and three groundfish vessels. The Company also controls and manages its own transportation logistics, including a ground fleet comprising of leased trucks and trailers. The Company sells and distributes product domestically but also exports product to customers internationally. Silver hake is predominantly consumed in Europe and China, and the Company's largest customer base is in Europe.

The Company employs approximately 29 non-union employees across both its harvesting and transportation sectors. Groundfish harvesting occurs year-round and the Company employs a greater proportion of full-time employees than is typical in the fisheries industry. The Company is not reliant on seasonal workers.

The Company experienced significant cash flow pressures in the latter part of 2022 due to certain industry-wide challenges and unforeseen events affecting the Company's operations. These challenges included low market prices, poor catch, rampant inflation, Hurricane Fiona, and the accumulation of significant capital expenditures relating to the Company's three fishing vessels.

In response to its cash flow pressures, the Company filed a Notice of Intention to Make a Proposal on November 7, 2023 (the "**NOI**").

The purpose of this NOI proceeding is to restructure the Company's balance sheet while maintaining going concern operations to preserve employment, maximize recovery for creditors and stakeholders, and avoid the bankruptcy of one of Atlantic Canada's largest groundfish operations.

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Issues

There are four issues before the Court on this Application:

1. Should the Court abridge the time for service of this Application pursuant to Rule 6 of the *Bankruptcy Rules*?

2. Should the Court extend the time to file a proposal for 45 days pursuant to section 50.4(9) of the BIA?

3. Should the Court approve the DIP Agreement and grant the corresponding DIP Lender's Charge pursuant to section 50.6 of the BIA?

4. Should the Court grant the Administration Charge pursuant to section 64.2 of the BIA?

Law and Argument

1. Abridgement of Time

Rule 6 of the *Bankruptcy Rules* states, in part:

> **6 (1)** Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.
>
> **(2)** Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules
>
> > **(a)** must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or
> >
> > **(b)** must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.
>
> **(3)** A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.[1]

The Company's Notice of Application was filed on November 20, 2023 for the hearing scheduled for November 24, 2023. It is being served electronically, as contemplated by Rule 6, and an Affidavit of Service will be filed with the Court in advance of the hearing.

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[1] *Bankruptcy Rules* at Rule 6.

Further, the Company has been engaged in discussions about the relief sought with its key stakeholders, including TD, which is aware of the relief being sought.

To the extent that abridgment of time is required, the Company respectfully submits that this is an appropriate case for the Court to exercise its discretion to do so. In particular, the Company submits that no prejudice will result to any party by reason of the proposed abridgement.

2. The Time to File a Proposal Should be Extended

Pursuant to section 69 of the BIA, a debtor that files an NOI is automatically given the benefit of an initial 30-day stay of proceedings, which may be extended in increments of 45 days on sufficient cause.[2]

The current stay of proceedings is set to expire at the end of the day on December 7, 2023. Despite diligent efforts, the Company is not yet in a position to deliver a proposal to its creditors. Accordingly, it seeks a 45-day extension of the time to file a proposal to enable it to continue its restructuring efforts and avoid a deemed bankruptcy.

The Court has discretion to extend the time for a debtor to file a proposal pursuant to section 50.4(9) of the BIA:

> **Extension of time for filing proposal**
>
> **(9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that
>
> > **(a)** the insolvent person has acted, and is acting, in good faith and with due diligence;
> >
> > **(b)** the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
> >
> > **(c)** no creditor would be materially prejudiced if the extension being applied for were granted.

[2] BIA at s. 50.4(9).

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In considering whether to exercise its discretion, the court assesses whether the debtor has discharged its burden of proving on a balance of probabilities that the factors enumerated in section 50.4(9) of the BIA are objectively satisfied.[3]

As will be further described below, the Company submits that each of the factors of 50.4(9) of the BIA are satisfied.

(a) The Company has acted in good faith and with due diligence

In *Re H&H Fisheries Limited*, 2005 NSSC 356, Justice Goodfellow noted that "the converse of good faith is bad faith, and bad faith requires some motivation or conduct which is unacceptable".[4]

In this case, there is no evidence that the Company has acted with bad faith or conducted itself in an unacceptable manner.

In contrast, the Company has submitted evidence, including the comments of the Proposal Trustee in the First Report, which confirms that the Company has acted in good faith and with due diligence since the filing of the NOI. Specifically, the Company has taken the following steps to address its liquidity issues and implement a restructuring that would see its Business emerge as a going concern:

(i) with the assistance of the Proposal Trustee and Company's legal advisors, began an analysis of its restructuring options for the benefit of the Company's stakeholders, including its customers, suppliers and employees;

(ii) engaged in discussions with its senior secured lender, TD, to seek consensus in these restructuring proceedings;

(iii) arranged for and negotiated the DIP Agreement to ensure that the Company has the necessary liquidity to fund the NOI proceeding, continue its ordinary course business operations, and meet its obligations; and

(iv) continued to operate its Business in the ordinary course.[5]

[3] *Re Dynamic Transport,* 2016 NBCA 70 **[TAB 1]** at paras. 6-7; *Nautican v. Dumont*, 2020 PESC 15 **[TAB 2]** at paras. 16-18; *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131 [Registrar Balmanoukian] **[TAB 3]** at paras. 19 and 24; *Scotia Rainbow Inc. v. Bank of Montreal* (2000), 186 NSR (2d) 153 [Chief Justice Kennedy] **[TAB 4]** at para. 14.
[4] *Re H&H Fisheries Limited*, 2005 NSSC 346 **[TAB 5]** at para. 17.
[5] Teixeira Affidavit at paras. 76 and 92.

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(b) The Company will be likely to make a viable proposal

The test for whether an insolvent person would likely be able to make a viable proposal if granted an extension is whether the insolvent person might (not certainly will) be able to present a proposal that seems reasonable on its face to a reasonable creditor.[6]

In describing the viability test in the context of a first extension, Registrar Balmanoukian stated this test "will not likely be a difficult standard to meet".[7]

The Company submits that the evidence before the Court satisfies this requirement. In particular, the evidence of the Company is that it will use the extension of the time to maximize realization for its creditors and stakeholders by preserving the going concern value of the enterprise while working to develop a proposal for the benefit of its general body of creditors.[8]

(c) No creditor is materially prejudiced

In considering this factor, courts consider whether there is a significant concern that would be unreasonable for a creditor to accept.[9]

In considering this factor, Registrar Balmanoukian took judicial notice that "proposals, if performed, generally result in a greater net recovery to creditors overall".[10]

The Company submits that there is no evidence of any material prejudice to any creditor if the requested extension is granted.

Conversely, if the extension is not granted, the Company will be deemed to have made an assignment in bankruptcy and its efforts to successfully restructure its Business will be terminated. In such circumstances, the Company would lose the majority of its going concern enterprise value to the detriment of its creditors.[11]

Accordingly, the extension of the stay will assist in the likelihood of a greater net recovery to creditors by allowing the Company to continue its Business as a going concern, and avoid a liquidation where the liquidation values of its vessels (two of which are out of commission) and licenses and quotas, could be minimal without a going concern operation behind them.

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[6] *Re Convergix Inc*., 2006 NBQB 288 **[TAB 6]** at para. 40; *Re H&H Fisheries Limited*, 2005 NSSC 346 **[TAB 5]** at para. 22; *Nautican v. Dumont*, 2020 PESC 15 **[TAB 2]** at para. 16; *Scotia Rainbow Inc. v. Bank of Montreal* (2000), 186 NSR (2d) 153 [Chief Justice Kennedy] **[TAB 4]** at paras. 18-19.

[7] *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131 [Registrar Balmanoukian] **[TAB 3]** at para. 24 cited in at *T & C Steel Ltd., Re,* 2022 SKKB 236 **[TAB 7]** at paras. 8 and 20.

[8] Teixeira Affidavit at paras. 78-79 and 81.

[9] *Re H&H Fisheries Limited*, 2005 NSSC 346 **[TAB 5]** at para. 37.

[10] *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131 [Registrar Balmanoukian] **[TAB 3]** at para. 22.

[11] Teixeira Affidavit at para. 78.

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3. The DIP Agreement Should be Approved and the DIP Lender's Charge Should be Granted

Section 50.6 of the BIA gives the Court the jurisdiction to approve a DIP financing charge. It provides as follows:

> **50.6 (1)** On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.
>
> **Priority**
>
> **(3)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.[12]

Section 50.6(5) enumerates a list of factors to guide the court's decision whether to grant the DIP financing and corresponding priority charge:

> **Factors to be considered**
>
> **(5)** In deciding whether to make an order, the court is to consider, among other things,
>
> (a) the period during which the debtor is expected to be subject to proceedings under this Act;
>
> (b) how the debtor's business and financial affairs are to be managed during the proceedings;
>
> (c) whether the debtor's management has the confidence of its major creditors;
>
> (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
>
> (e) the nature and value of the debtor's property;

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[12] BIA at s. 50.6(1) and (3). See *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 **[TAB 8]** at para. 26.

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(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.[13]

Courts have routinely concluded that DIP financing and a corresponding priority charge are appropriate where the evidence demonstrates that a debtor would cease operations if the relief was not granted, the proposal trustee supports the DIP facility, and the DIP lender would not participate without the protection of a security charge.[14]

The Company submits that the DIP Agreement and DIP Lender's Charge are appropriate in this case for the following reasons:

i. the cash flow projections demonstrate that, without interim financing, the Company will be unable to continue operating as a going concern and cease operations, which will deteriorate the value of the Company's Business and seriously jeopardize the Company's ability to make a proposal;[15]

ii. advances under the DIP Facility are conditional upon Court approval of the DIP Agreement and the granting of the DIP Lender's Charge;[16]

iii. the debtor's Business will continue to be managed in the ordinary course with the additional oversite of the Proposal Trustee;

iv. notice has been provided to all secured creditors and no objection has been raised;

v. the Proposal Trustee believes the DIP Agreement and DIP Lender's Charge are reasonable and necessary; and

vi. the DIP Lender's Charge does not secure an obligation that exists before the filing of the NOI.

4. The Administration Charge Should be Granted

The Company is seeking the Administration Charge, in the amount of $100,000, to secure the professional fees and disbursements of the Proposal Trustee, along with its counsel, and the Company's counsel.

Section 64.2 of the BIA authorizes this Court to grant a super-priority charge on a debtor's property to secure professional fees:

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[13] BIA at s. 50.6(5). See *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 **[TAB 8]** at para. 27.
[14] *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 **[TAB 8]** at para. 28.
[15] Teixeira Affidavit at paras. 87-88.
[16] Teixeira Affidavit at para. 98.

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> **64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of
>
> **(a)** the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
>
> **(b)** any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
>
> **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.
>
> **Priority**
>
> **(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.[17]

Such administration charges are routinely granted in insolvency proceedings where, as here: (a) the debtor has limited means to obtain professional assistance; (b) the involvement of professional advisors is critical to the success of the proceedings under the BIA; and (c) the quantum of the proposed charge is commensurate with the complexity of the debtor's business.[18]

These charges recognize the value that insolvency professionals bring to such proceedings and allow them to be properly compensated for their efforts.

The Company submits that it is appropriate for this Court to grant the Administration Charge given the evidence that, among other things:

(a) the Company requires the assistance of professional advisors to navigate the NOI proceeding;

(b) the beneficiaries of the Administration Charge each have a critical role that is essential to the success of the NOI proceeding;

(c) the roles of the beneficiaries of the Administration Charge are not duplicative;

(d) the quantum of the proposed Administration Charge is reasonable and appropriate in the circumstances;

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[17] BIA at s. 64.2.
[18] *Mustang GP Ltd., Re*, 2015 ONSC 6562 **[TAB 8]** at para. 33; *Nautican v. Dumont*, 2020 PESC 15 **[TAB 2]** at paras. 26-28.

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(e) the Proposal Trustee supports the granting of the Administration Charge; and

(f) TD and the DIP Lender do not oppose the Administration Charge.[19]

Relief Requested

The Company respectfully submits that this Court grant the requested relief noted above.

All of which is respectfully submitted.

Yours very truly,

RECONSTRUCT LLP

Sharon Kour
SK/jw

cc: The Service List

[19] Teixeira Affidavit at paras. 83-86.