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

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

Dec 11/17

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
RETURNABLE DECEMBER 11, 2017

December 11, 2017.

Jane Dietrich
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for Applicants

B. Empey
R. Bauilke
for Grant Thornton Ltd - Monitor.

E. Cobb for HTI Construct.

G. Moffat for Syndicate of Lenders.

P. Riesterer. for Independent Electrical System Operator.

S. Bomhof for Index Mills Rd Index Agent.

The motion was not opposed.

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Counsel to the Applicant summarized recent developments which centred around negotiation between the Applicant and related entities and HMI concerning HMI Litigation Assets.

The court was presented with suggested wording to be included in the endorsement which records the basis of their agreement.

Counsel to the Monitor is satisfied that the proposed language in the endorsement would not have impacted the stalking horse proposal.

The Applicant seeks 2 Orders

(1) Approval and Vesting Order

(2) Stay Extension.

The evidence in support of the motion is the Second Report of the Monitor and the affidavit of Derek Blois.

Having reviewed the evidence and hearing submissions, I am satisfied that the Transaction should be approved.

The sale process consisted of a court approved SISP with the ~~purchase~~ ~~as the~~ Purchase Agreement as the Stalking Horse Bid.

There were no superior bids.

The Monitor is satisfied that the Transaction is more beneficial to the Applicant's creditors than a sale or disposition under a bankruptcy.

I am satisfied that the Purchase Agreement provides fair and reasonable consideration for the Purchased Assets.

Articles of Reorganization to take effect from Closing Date.

The Applicant is authorized to distribute $20 M to National Bk. as agent.

Ancillary relief set out in ~~pr~~ draft order also granted.

Applicant has requested that Confidential Appendix 1 to the Second Report be sealed.

The Appendix contains information related to the bid process. I am satisfied that the disclosure of this information, at this time could be detrimental to the stakeholders of the Applicant. This material is to be sealed pending the filing of the Monitor's Certificate.

~~Order so~~

The suggested wording provided by counsel is incorporated by reference to this endorsement and is attached hereto.

With respect to the Stay Extension, I am satisfied that the parties are working in good faith and with due diligence such that the request to extend the Stay Period to February 24, 2018 is appropriate and this order is granted.

Fees of Monitor and counsel also approved.

Motion granted.

Two orders signed.

subject to edit, if typed

RSJ

This Approval and Vesting Order is granted on the basis that the Monitor, the Applicant and the Purchasers have confirmed that the Sale Agreement will be amended to provide:

1. All claims, refunds, entitlements, rights of recovery, rights of set-off, rights of recoupment, remedies and causes of action in favour of the Applicant against HMI Construction Inc. ("HMI") arising under or in respect of the HMI Litigation Assets will be transferred to Mills Road Corporation.

2. All claims, refunds, entitlements, rights of recovery, rights of set-off, rights of recoupment, remedies and causes of action in favour of HMI against the Applicant arising under or in respect of the HMI Litigation Assets will be assumed by Mills Road Corporation.

The vesting of the Applicant's right, title and interest in and to the Holdback Funds (as defined in the Sale Agreement) in Mills Road Corporation does not constitute a determination of entitlement to such funds, and any claims that any person – including Mills Road Corporation or HMI – may have to the Holdback Funds (as defined in the Sale Agreement) are unaffected. For greater certainty, any lien claim or charge against the Holdback Funds that HMI currently has in accordance with s. 21 of the *Construction Lien Act*, R.S.O. 1990 c. C-30 is not affected by the Approval and Vesting Order.

Notwithstanding any amendments set out herein, the HMI Lien Claim (as defined in the Sale Agreement) shall remain an Excluded Liability (as defined in the Sale Agreement) and shall be vested out pursuant to the Approval and Vesting Order, except to the extent that HMI's Lien Claim remains a charge against the Holdback Funds as set out above.

HMI reserves its rights to seek security for costs in the event that Mills Road Corporation pursues any of the matters described in item 1 above against HMI.