

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

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 SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, AND ARSENAULT'S FISH MART INC. (each a "DEBTOR" and collectively the "DEBTORS")

BETWEEN:

THE TORONTO-DOMINION BANK

APPLICANT

- and -

SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, AND ARSENAULT'S FISH MART INC.

RESPONDENTS

**SECOND REPORT OF THE MONITOR,
DELOITTE RESTRUCTURING INC.**

DATED OCTOBER 4, 2023

INTRODUCTION

1. On September 21, 2023, Toronto-Dominion Bank (the "**Applicant**") brought an application (the "**Initial Application**") before the Court of King's Bench of New Brunswick Trial Division (the "**Court**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to, among other things, obtain a stay of proceedings for the Debtors to allow them to prepare for a going concern sale of the Debtors' business while exploring other restructuring alternatives.

2. On that same day, the Court granted orders (the "**Initial Orders**") in these CCAA proceedings (the "**CCAA Proceedings**") that, among other things:
 - i. appointed Deloitte Restructuring Inc. ("**Deloitte**") as the monitor of the Debtors (the "**Monitor**");
 - ii. appointed David Boyd, a representative of Resolve Advisory Services Ltd. ("**Resolve**") as the chief restructuring officer (the "**CRO**") of the Debtors;
 - iii. ordered a stay of proceedings in favor of the Debtors up to and including October 1, 2023 (the "**Stay Period**");
 - iv. granted an administration charge in the amount of \$250,000 (the "**Administration Charge**") in favour of the Monitor, Monitor's counsel, Applicant's counsel, Debtors' counsel (limited to an aggregate maximum amount of \$25,000), and the CRO;
 - v. granted a directors' charge in favour of the directors and officers of the Debtors in the amount of \$375,000 (the "**Directors' Charge**"); and
 - vi. approved an interim financing facility with a maximum borrowing limit of \$3,000,000 (the "**DIP Facility**") provided by the Applicant and granted a charge in favor of the Applicant (the "**DIP Lender's Charge**").

3. Included in the report of the Proposed Monitor dated September 18, 2023 (the "**Pre-Filing Report**"), was the Debtors' 13-week cash flow projection September 23 to December 22, 2023 (the "**Cash Flow Statement**").

4. On September 22, 2023, the Service List was provided with the Pre-Filing Report that contained the Cash Flow Statement.
5. On September 25, 2023, the Service List was provided with the First Report of the Monitor along with the proposed amended and restated orders (the "**September 25 Draft ARIOs**") and the proposed SISP Order to be sought at the hearing scheduled for September 28, 2023 (the "**Comeback Hearing**").
6. On September 27, 2023, the Monitor provided the Court with a supplemental first report (the "**Supplemental Report**") that provided an update on the Debtors' liquidity and financial position subsequent to the issuance of the First Report. In addition to the Supplemental Report, the Court was provided with revised amended and restated Initial Orders (the "**Revised ARIOs**") considering the matters disclosed in the Supplemental Report. Copies of the Supplemental Report and the Revised ARIOs were provided to the Service List on the same day.
7. As part of the Comeback Hearing, the Court granted the Revised ARIOs in these CCAA Proceedings that, among other things:
 - i. ordered a stay of proceedings in favor of the Debtors up to and including October 6, 2023 (the "**Revised Stay Period**"); and
 - ii. increased the quantum of the Administration Charge from \$250,000 to \$500,000 in favour of the Monitor, Monitor's counsel, Applicant's counsel, Debtors' counsel (limited to an aggregate maximum amount of \$25,000) and the CRO.

PURPOSE

8. The purpose of this second report (the "**Second Report**") is to provide information to the Court on:
 - i. further information regarding the Subject Transactions described in the Supplemental Report;
 - ii. an update on the quantum of payments the Debtors' have made to critical suppliers in relation to pre-filing obligations (the "**Pre-Filing Supplier Payments**");

- iii. an update on the Debtors' financial position;
- iv. an update on the SISP; and
- v. the Applicant's revised request for amendments to the Revised ARIOs (the "**October 6 ARIOs**") that would, among other things, extend the stay of proceedings to October 20, 2023, 2023 (the "**Stay Period**").

TERMS OF REFERENCE AND DISCLAIMER

- 9. In preparing this Second Report and making the comments herein, the Monitor has been provided with, and has relied upon, audited and unaudited financial information, books and records and financial information prepared by the Debtors, discussions with management of the Debtors ("**Management**"), discussions with the CRO, and information from other third-party sources (collectively, the "**Information**").
- 10. Except as described in this Second Report in respect of the Cash Flow Statement:
 - i. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Generally Accepted Assurance Standards ("**Canadian GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.
 - ii. Some of the Information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
- 11. Future oriented financial information referred to in this Second Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the

actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

12. Unless otherwise indicated, the Monitor's understanding of the factual matters expressed in this Second Report concerning the Debtors and their businesses are based on the Information and not independent factual determinations made by the Monitor.
13. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
14. Capitalized terms not otherwise defined herein are as defined in the Initial Orders, the Pre-Filing Report, the September 25 Draft ARIOs, the First Report, the Revised ARIOs, and the Supplemental Report.
15. The Pre-Filing Report described, among other things, certain background information about the Debtors and their Cash Flow Statement. Copies of the Initial Orders, the Pre-Filing Report, the September 25 Draft ARIOs, the First Report, the Supplemental Report, the Revised ARIOs, and the Service List in respect of these CCAA Proceedings are available on the Monitor's website at <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods> (the "**Monitors Website**").

SUBJECT TRANSACTIONS

16. The Monitor provided an overview of the Subject Transactions in its Supplemental Report and during the Comeback Hearing undertook to provide this Court with a further update at the next Court hearing.
17. On October 2, 2023, the Monitor participated in a conference call with Management, the CRO and the Debtors' legal counsel (the "**Subject Transactions Call**"). The purpose of the Subject Transactions Call was to allow the Monitor to obtain a more extensive understanding of the Subject Transactions.

18. As part of the Subject Transactions Call, the Monitor was advised of the following:
- i. both Customer A and Customer B (collectively, the "**Customers**") are lobster brokers and neither maintain infrastructure required to store live product;
 - ii. historically, the Debtors did not maintain an active commercial relationship with Customer A, however, due to procurement challenges during June and July 2023, they entered into a verbal arrangement to receive product from Customer A and in return provided Customer A with an undertaking to replace the product at some future date in lieu of payment;
 - iii. the Debtors maintained an active commercial relationship with Customer B and a similar verbal agreement was provided to Customer B;
 - iv. a portion of the product provided to these Customers was European and/or B grade product that was neither a) ideal for processing at SSSL, or b) suitable for sale in the open market;
 - v. the product was weak and perishable in nature which justified the significant reduction in selling price reflected in the invoices issued to the Customers;
 - vi. in so far as the Subject Transactions may be reviewable as they honoured a pre-filing obligation that was stayed pursuant to the Initial Orders (as further amended), Management advises that it undertook the transactions in good faith and without any intention to prefer the Customers over other creditors.
19. The Monitor was not consulted prior to the Subject Transactions occurring and as such is unable to substantiate Management's comments regarding the grade, quality, or marketability of the product. Accordingly, the Monitor is unable to comment as to the appropriateness of the substantial discount contained within the invoices.
20. The Monitor understands that the Debtors will be advising the Customers that they are reversing the credit notes issued pursuant to the Subject Transactions and communicate that they expect to receive payment in full for the product delivered.

21. Depending on the response from the Customers to the demand for payment, further action may be required by the Debtors.
22. As of the date of this Second Report, the Monitor does not foresee a solution in the immediate term that will reverse the liquidity constraint caused by the Subject Transactions.
23. The Monitor will provide this Court with a further update on the Subject Transactions at the next Court hearing.

PRE-FILING SUPPLIER PAYMENTS

24. As contained in the Cash Flow Statement filed with the Pre-Filing Report, the Debtors were forecasting to make Pre-Filing Supplier Payments of approximately \$900,000, which were approved in the Initial Orders. The majority of these Pre-Filing Supplier Payments were for fishers, packaging, and transportation services identified as critical to maintain the going concern operation of the Debtors' businesses.
25. As at the date of this Second Report, the Debtors have made payments of approximately \$626,000 to Pre-Filing Supplier Payments as summarized in the table below:

Description	Amount (\$)
Fishers and Fisher helpers	614,293
Withholdings from Fishers on behalf of the Crown	8,176
Miscellaneous	3,190
Total	625,659

26. In addition to the Pre-Filing Supplier Payments, as at the date of the Initial Application, Arsenault's Fish Market Inc. maintained approximately \$374,000 of cash in a bank account (the "**AFM Account**"). The AFM Account was segregated in the Cash Flow Statement and excluded from the Debtors Cash Management System.
27. The purpose of the AFM Account is to cover outstanding cheques provided to fishers. The Monitor has been aware of the AFM Account since the commencement of these CCAA Proceedings and

on a regular cadence receives bank reconciliation reports showing the status of outstanding cheques issued from the AFM Account.

28. The Monitor has discussed the use of AFM Account with Management and the CRO throughout these CCAA Proceedings and is of the opinion that it is critical that it remains in place to provide confidence to the fishers that they will be paid for prior catches and to ensure the fishers will continue to supply the Debtors.

DEBTORS' LIQUIDITY POSITION

29. The Monitor continues to work closely with the CRO and Management to understand the Debtors liquidity position during these CCAA Proceedings. In its Supplemental Report, the Monitor advised this Court that the Debtors liquidity requirement was approximately \$610,000 for the week ending September 28, 2023. The Debtors, with the deferral of an interest payment to the Applicant and a small capital injection from a stakeholder, were able to meet their obligations last week.
30. On October 3, 2023, a revised cash flow forecast for the period October 2 to December 31, 2023 was prepared and discussed between the Monitor, the Debtors and the CRO (the "**Revised Cash Flow Statement**"). A copy of the Revised Cash Flow Statement has been shared with the Applicant.
31. The outcome of the Revised Cash Flow Statement contemplates the over-advance position exceeding its limit as contained in the DIP Facility Agreement. The Monitor, the CRO and Management are now investigating alternatives to the Debtors' business model over the short-term and will be updating the Revised Cash Flow Statement in due course.
32. As of the date of this Second Report, the Monitor has been advised by the Applicant that it has reviewed the Revised Cash Flow Statement and does not support advances under the DIP Facility which would result in a growing over-advance position.
33. At the Comeback Hearing, this Court increased the Administration Charge to \$500,000. The Monitor is currently working with the Professionals to accumulate their accounts; however, to

date the Debtors have not generated sufficient liquidity to make any payments to the Professionals and the outstanding fees are now approaching the limit of the Administration Charge.

34. The Monitor will provide this Court with a further update on the Debtors' financial position, including filing a version of the Revised Cash Flow Statement at the next Court hearing.

UPDATE ON THE SISP

35. In its First Report, the Monitor advised the Court that in conjunction with the Applicant and the CRO it had developed the SISP, including the SISP Procedures which were attached to the First Report. The Monitor had anticipated commencing the SISP on or before October 4, 2023; however, due to the Material Adverse Charge in the Debtors' financial position the Applicant withdrew the SISP Order as part of the Comeback Hearing.
36. The Monitor continues to develop the SISP, including further refinement of financial and operational data to place into its data room along with identifying potential interested parties in the Debtors' assets. As at the date of this Second Report, the Monitor has identified or has been contacted by approximately 40 interested parties. The Monitor is encouraged by this level of interest, especially considering it has yet to advertise the SISP.
37. The Monitor has discussed the SISP with the Applicant, BDC, BDC Capital, the Debtors and the CRO and all are in agreement that the SISP should be delayed until such time as the Revised Cash Flow Statement has been presented to the stakeholders.
38. The Monitor anticipates seeking an order approving the SISP (the "**SISP Order**") at the next Court hearing.

THE APPLICANT'S REQUEST FOR THE REVISED AMENDED AND RESTATED INITIAL ORDERS

Stay of Proceedings

39. The Stay Period contained within the ARIOs Orders is set to expire on October 6, 2023. The Applicant is requesting an extension of the Stay Period up to and October 20, 2023 (the "**Revised Stay Period**").
40. The Monitor is of the opinion that the Applicant's request for the Stay Period is reasonable and just for the following reasons:
- i. the Debtor's, with assistance from the CRO and the Monitor require further time to finalize a Revised Cash Flow Statement;
 - ii. due to changes in the Debtors' financial position the Monitor requires time to further consider the structure of the SISP, including phases and milestone dates;
 - iii. the Monitor and the CRO, with the powers granted to them, have acted and continue to act in good faith and with due diligence in their oversight of the operations of the Debtors; and
 - iv. the Monitor is of the view that no creditor will be materially prejudiced by the Stay Period.

CONCLUSION

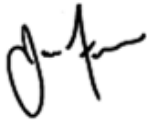
41. Based on the enclosed, the Monitor recommends the Court grant the extension of the Stay Period to October 20, 2023.

All of which is respectfully submitted this 4th day of October 2023.

Deloitte Restructuring Inc.

Acting in its capacity as CCAA Monitor of South Shore Seafoods Ltd., Captain Cooke’s Seafood Inc., By the Water Shellfish (2012) Inc., South Shore Seafoods International Ltd., Can-Am Lobster and Shellfish Ltd., Bridge Lobsters Limited and Arsenault’s Fish Mart Inc., and not in its personal capacity

Per:



James Foran, CPA, CA, CIRP, LIT
Senior Vice President

Per:



Kurt Macleod, MBA, CIRP, LIT
Vice-President