

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-057679-199

DATE: March 15, 2024

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

**IN THE MATTER OF: *THE COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED:**

INVESTISSEMENT QUÉBEC
Applicant / Secured Creditor

and
FIERA PRIVATE DEBT INC.
Impleaded Party

and
FORTRESS GLOBAL ENTERPRISES INC.

and
FORTRESS SPECIALTY CELLULOSE INC.

and
FORTRESS BIOENERGY LTD.

and
FORTRESS XYLITOL INC.

and
9217-6536 QUÉBEC INC.
Debtors

and
DELOITTE RESTRUCTURING INC.
Monitor

JUDGMENT

[1] Applicant, Investissement Québec ("**IQ**") seeks the Issuance of an Order (the "**Application**):

- 1.1. Extending the Stay Period until May 10, 2024;
- 1.2. Approving an Eighth Amending Agreement (the “**Eighth Amending Agreement**”) (Exhibit R-2) to the Interim Financing Agreement and increasing the total amount of the Interim Lender Charge accordingly.

The Stay Period

[2] The current Stay Period is set to expire on March 15, 2024, as per the undersigned’s order of January 19, 2024.

[3] Since the last order, significant progress has taken place. Regular communications continue to occur between the various protagonists (including various governmental entities and ministries) to finalize a memorandum of understanding (the “**MOU**”) with a potential purchaser (the “**Potential Purchaser**”).

[4] The parties are also negotiating an amendment to the Exclusivity Agreement that would allow a limited extension of the exclusivity period in favour of the Potential Purchaser, in exchange for the payment of an exclusivity fee. Such a fee could help fund the Debtors’ cash-flow forecast and the current on-going proceedings.

[5] A preliminary phase II environmental report was completed in November 2023 and was delivered to the Monitor, IQ, the Quebec government, and the Potential Purchaser. The final report has not yet been completed but discussions continue in parallel on other issues.

[6] The Potential Purchaser continues to be actively engaged in the process.

[7] The parties remain optimistic that a viable transaction, which would ultimately benefit the Debtors, their employees and the city of Thurso, is possible over the course of the next few months.

[8] However, an extension of the Stay period is required to allow the Potential Purchaser to complete its due diligence and the parties to finalize an agreement.

[9] Absent an order to extend the Stay Period, the parties would be forced to initiate proceedings under the *Bankruptcy and Insolvency Act* which would entail useless associated costs and expenses and would further complicate the negotiation and implementation of a transaction with the Potential Purchaser.

[10] Fortress and the Monitor support the maintenance of the CCAA proceedings. The Application was notified to the service list, and no one has opposed the Application.

The Amendment to the Interim Financing Agreement

[11] In December 2019, IQ entered into an Interim Financing Agreement which was approved as part of the Initial Order. The Interim Financing Agreement provided for financing of up to \$6,000,000, to be secured by an Interim Lender Charge in the amount of \$7,200,000 (i.e. the total amount of the interim financing, plus twenty percent (20%)).

[12] The Interim Financing Agreement and the corresponding Interim Lending Charge were amended several times since then.

[13] In September 2023, IQ agreed with Fortress on the terms and conditions of a seventh amendment to the Interim Financing Agreement (the "**Seventh Amending Agreement**") providing for an increase in the amount of the interim financing which could be advanced to and borrowed by Fortress up to a total amount of \$38,300,000, to be secured by an increased Interim Lender Charge in the amount of \$45,960,000 (i.e. the total amount of the interim financing, plus twenty percent (20%)). The Seventh Amending Agreement, together with the aforementioned increase in the Interim Lender Charge, were approved by this Court.

[14] The current revised cash-flow projections and budget to the Interim Financing Agreement appended to the Monitor's Twenty-Third Report, demonstrate that additional funding is required.

[15] The additional interim financing sought amounts to \$700,000, over and above the interim financing which IQ has already committed - for total amount of \$39 million to be secured by an increased Interim Lender Charge in the total amount of \$46,800,000 (representing, once again, the total amount of the interim financing which has and will be provided by IQ to Fortress, plus twenty percent (20%)).

[16] IQ has already obtained the necessary governmental authorizations to be able to advance to Fortress such additional interim financing.

[17] The Monitor believes that it is in the interest of Fortress and its stakeholders for the Eighth Amending Agreement and the related increase to the Interim Lender's Charge to be approved.

[18] Despite the significant amounts already funded by IQ to Fortress both prior to and during the CCAA proceedings, IQ continues to be willing to financially support Fortress in the hopes of eventually reaching a positive outcome for Fortress, its employees and the city of Thurso.

[19] The Monitor supports this relief. No creditors of Fortress have opposed it.

[20] Finally, the sealing of the appendixes to the Monitor's report is required to protect the integrity of the negotiations.

FOR THESE REASONS, THE COURT:

[21] **GRANTS** the Application;

[22] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses the Applicant with any further notification thereof;

[23] **ORDERS** that the Stay Period (as defined in the Initial Order and extended thereafter, from time to time, by Order of this Court) shall be further extended to and including May 10, 2024;

[24] **APPROVES** the Eighth Amending Agreement (the "**Eighth Amending Agreement**") (Exhibit R-2 to the Application) to the Interim Financing Term Sheet dated January 9, 2020 (the "**Interim Financing Term Sheet**") and **AUTHORIZES** the Debtors to borrow from IQ such amounts as the Debtors may consider necessary or desirable, from time to time, in consultation with the Monitor, up to an aggregate maximum amount of \$39,000,000, outstanding at any time, on terms and conditions as set forth in the Interim Financing Term Sheet, as amended by the First Amending Agreement dated September 1, 2020 (the "**First Amending Agreement**"), by the Second Amending Agreement dated October 23, 2020 (the "**Second Amending Agreement**"), by the Third Amending Agreement dated October 8, 2021 (the "**Third Amending Agreement**"), by the Fourth Amending Agreement dated March 3, 2022 (the "**Fourth Amending Agreement**"), by the Fifth Amending Agreement dated May 27, 2022 (the "**Fifth Amending Agreement**"), by the Sixth Amending Agreement dated November 25, 2022 (the "**Sixth Amending Agreement**"), by the Seventh Amending Agreement (the "**Seventh Amending Agreement**") and by the Eighth Amending Agreement (the "**Eighth Amending Agreement**", together with the Interim Financing Term Sheet, the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement, the Fourth Amending Agreement, the Fifth Amending Agreement, the Sixth Amending Agreement and the Seventh Amending Agreement, the "**Interim Financing Agreement**"), to fund the ongoing expenditures of the Debtors and to pay such other amounts as are permitted by the terms of this Order, the Interim Financing Agreement and the Cash-Flow Projections attached as an appendix to the Twenty-Third Report, which Cash-Flow Projections are hereby approved;

[25] **ORDERS** that paragraph 24 of the Initial Order shall be further amended and restated as follows:

***DECLARES** that all of the Property is hereby subject to a charge and security for an aggregate amount of \$46,800,000 (such charge and security is referred to herein as the "Interim Lender Charge") in favour of the Interim Lender as security for all obligations of the Debtors to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Interim Financing Term Sheet (as amended, from time to time, including pursuant to the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement, the Fourth Amending Agreement the Fifth Amending Agreement, the Sixth Amending Agreement, the Seventh*

Amending Agreement and the Eighth Amending Agreement thereto) and the Interim Financing Documents (collectively, the “Debtors’ Obligations”). The Interim Lender Charge shall have the priority established in paragraphs 55 and 56 of this Order.

[26] **APPROVES** the activities of the Monitor, up to the date of this Order, as described in the Twenty-Third Report of the Monitor and in the testimony of its representative at the hearing on the Application, and confirms that the Monitor has fulfilled its obligations pursuant to the CCAA and the orders of this Court up until the date of this Order;

[27] **ORDERS** that Appendix A to the Twenty-Third Report be kept confidential and under seal, until further order of this Court;

[28] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

[29] **THE WHOLE**, without costs.

MARTIN F. SHEEHAN, J.S.C.

Hearing date: March 15, 2024