

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**

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

**DATED OCTOBER 16, 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 after the issuance of the First Report including events that, in the Monitor's view, resulted in a material adverse change in the Debtors' cash position. 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, which, among other things, significantly shortened the stay extension and deferred approval of a SISP. 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.
8. On October 4, 2023, the Monitor provided the Court with a second report (the "**Second Report**") that:
  - i. provided an update on the Subject Transactions (as defined in the Second Report);

- ii. provided an update on the magnitude of Pre-Filing Supplier Payments made by the Debtors;
  - iii. an update on the Debtors' financial position;
  - iv. an update on of the SISP; and
  - v. requested a further extension of the stay of proceedings to allow the Debtors and the Monitor to continue to work on a longer term cash flow forecast.
9. On October 5, 2023, the Court granted an order (the "**Stay Extension Order**") extending the stay of proceedings to October 25, 2023 and scheduled the next motion in this matter for October 25, 2023.

#### **PURPOSE**

10. The purpose of this third report (the "**Third Report**") is to provide information to the Court on:
  - i. the Debtors actual receipts and disbursements since the granting of the Initial Orders as compared to that contained within the Cash Flow Statement (the "**Variance Report**"); and
  - ii. the Applicant's motion for an order increasing the authorized borrowings under the DIP Facility from the principal amount of \$3,000,000 to \$4,000,000, which increase would be secured by the DIP Lender's Charge (the "**DIP Increase Order**").

#### **TERMS OF REFERENCE AND DISCLAIMER**

11. In preparing this Third 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**").
12. Except as described in this Third 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 Third 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.
13. Future oriented financial information referred to in this Third 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.
  14. Unless otherwise indicated, the Monitor’s understanding of the factual matters expressed in this Third Report concerning the Debtors and their businesses are based on the Information and not independent factual determinations made by the Monitor.
  15. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
  16. 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, the Supplemental Report, the Second Report and the Stay Extension Order.
  17. 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, the Second Report, the Stay Extension Order 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").

## VARIANCE REPORT

18. The table below summarizes the actual receipts and disbursements of the Debtors for the period September 22 to October 8, 2023 as compared to that contained within the Cash Flow Statement.

<b>South Shore Seafoods Group Variance Report</b>				
<b>Opening Ending Description</b>	<b>23-Sep-23 8-Oct-23 Forecast</b>	<b>22-Sep-23 8-Oct-23 Actual</b>	<b>Variance</b>	<b>Variance</b>
<b>Opening line of credit position</b>	(12,600,427)	(12,650,295)	(49,869)	0%
<b>Operating inflows</b>				
Collection of pre-filing accounts receivable	3,307,845	4,542,788	1,234,944	37%
Collection of new and post-filing sales	2,128,969	204,200	(1,924,770)	-90%
Collection of HST	171,433	188,107	16,674	10%
Other	-	73,683	73,683	n/a
	<u>5,608,247</u>	<u>5,008,777</u>	<u>(599,470)</u>	<u>-11%</u>
<b>Operating outflows</b>				
Critical pre-filing cost of goods sold	892,117	652,650	239,467	27%
Cost of goods sold	979,364	624,032	355,332	36%
Fixed operating expenses	-	1,432	(1,432)	n/a
Compensation, remittances and benefits	297,680	286,709	10,971	4%
Operating leases	-	2,240	(2,240)	n/a
Insurance	49,737	37,891	11,847	24%
Bank charges	2,710	2,546	164	6%
Rent and Property taxes	7,529	1,518	6,011	80%
Other	4,322	(796)	5,118	118%
	<u>2,233,459</u>	<u>1,608,221</u>	<u>625,237</u>	<u>28%</u>
<b>Non-operating outflows</b>				
Interest payments	123,178	148,699	(25,521)	-21%
	<u>123,178</u>	<u>148,699</u>	<u>(25,521)</u>	<u>-21%</u>
<b>Restructuring items</b>				
Professional fees	327,700	-	327,700	100%
<b>Intercompany</b>				
Inflow	-	20,002,227	20,002,227	n/a
Outflow	-	19,929,697	(19,929,697)	n/a
	<u>-</u>	<u>72,530</u>	<u>72,530</u>	<u>n/a</u>
Net weekly cash flow	2,923,910	3,324,387	400,477	14%
<b>Ending line of credit position</b>	<u>(9,676,516)</u>	<u>(9,325,908)</u>	<u>350,608</u>	<u>4%</u>
<b>Credit facilities</b>	<b>Forecast</b>	<b>Actual</b>	<b>Variance</b>	<b>Variance</b>
Ending net Existing Credit Facility balance	(6,992,180)	(7,452,442)	(460,262)	-7%
Ending DIP Facility balance	(2,684,336)	(1,873,466)	810,870	30%
	<u>(9,676,516)</u>	<u>(9,325,908)</u>	<u>350,608</u>	<u>4%</u>

19. The Monitor offers the following commentary regarding material variances to the Cash Flow Statement as presented herein:

- i. Total collections from customers (i.e. collection of pre-filing accounts receivable combined with collection of new and post-filing sales) is approximately \$690,000 (or 13%) lower than forecast in totality. This unfavourable variance has two components 1) a favorable timing variance pertaining to the collection of pre-filing accounts receivable which has been faster than anticipated; and 2) an unfavorable structural variance pertaining to the collection of new and post-filing sales driven by lower than anticipated sales discussed during the Monitor’s Supplemental Report.
- ii. The \$74,000 favorable variance pertaining to other operating inflows is structural in nature and primarily attributable to a \$65,000 advance received from a stakeholder in order to support the payment of critical pre-filing amounts to fishers.
- iii. The favorable variance pertaining to critical pre-filing cost of goods sold and cost of goods sold is primarily timing in nature. Amounts paid to date relating to critical pre-filing suppliers is as follows:

Description	Amount (\$)
Fishers, Fishers helpers and bait	630,456
Withholdings from Fishers on behalf of the Crown	17,605
Miscellaneous	4,589
Total	<u>652,650</u>

- iv. As at the date of this variance report, the Monitor continues to work with Management and the CRO in order to evaluate the necessity of all critical pre-filing payments. Known critical pre-filing payments (approximately \$139,000) have been incorporated into the October Forecast (as later defined) and primarily relate to payments for bait and payments to cold storage suppliers necessary for the release of product held.
- v. The unfavorable variance pertaining to interest payments is both structural and timing in nature. The structural variance related to the amount of interest charged on the Existing Facility and DIP Facility exceeding Management’s forecast. Furthermore, a timing variance pertaining to interest payments which have not yet been made will reverse in the October Forecast period.

- vi. The favorable variance pertaining to fees payable to the professionals involved in these CCAA Proceedings is timing in nature.
- vii. The favorable variance pertaining to intercompany transfers is structural in nature and pertains to discrepancies between foreign exchange rates contained within the Cash Flow Statement and actual foreign exchange rates realized when transferring funds between Canadian and USD accounts.

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

### *Increase to the Borrowing Limit under the DIP Facility*

- 20. Pursuant to the Initial Orders, the Court approved the DIP Facility with the maximum borrowing amount of \$3,000,000 and granted the DIP Lender's Charge in favour of the Applicant to secure advances under the DIP Facility. The Monitor has advised the Applicant that the Debtors require an increase in the maximum amount of borrowing under the DIP Facility on an urgent basis in order to fund critical payments during the week of October 16, 2023. A description of the required payments is set out below, however, the bulk of the payments that are required to be made are in respect of payroll and to payments to fishers for inventory purchased the week of October 9, 2023.
- 21. The Applicant has agreed to request, on an urgent basis, an order increasing the Debtors' maximum borrowing limit under the DIP Facility to \$4,000,000 (the "**DIP Facility Increase**").
- 22. The Monitor continues to work with Management and the CRO and will be filing a cash flow statement (the "**Amended Cash Flow Statement**") with the Court at the next hearing. With the lobster season now complete, the Debtors' businesses will be moving into a state of limited activity over the coming months.



23. As part of preparing the Amended Cash Flow Statement, the Monitor has worked with Management and the CRO to forecast the economic activity of the Debtors until the end of October (the “**October Forecast**”). A summary of the October Forecast is summarized in the table below:

<b>South Shore Seafoods Group Consolidated cash flow forecast For the 3-week period ending October 29, 2023</b>				
<b>Week ending</b>	<b>WK1 10/15/2023</b>	<b>WK2 10/22/2023</b>	<b>WK3 10/29/2023</b>	<b>Total</b>
<b>Opening line of credit position</b>	(9,316,295)	(8,577,102)	(8,664,849)	(9,316,295)
<b>Operating inflows</b>				
Collection of existing accounts receivable	1,556,566	831,760	1,183,923	3,572,249
Collection of new sales	-	-	-	-
Collection of HST	654	-	3,103	3,757
Other	-	-	-	-
	<u>1,557,220</u>	<u>831,760</u>	<u>1,187,026</u>	<u>3,576,006</u>
<b>Operating outflows</b>				
Payment of existing post-filing accounts payable	453,975	59,118	48,900	561,993
Critical pre-filing cost of goods sold	13,656	99,395	26,029	139,080
Cost of goods sold	55,737	285,316	69,458	410,511
Fixed operating expenses	24,975	91,943	57,594	174,512
Compensation, remittances and benefits	221,424	221,424	119,699	562,547
Operating leases	-	-	1,511	1,511
Insurance	39,165	24,396	10,000	73,561
Bank charges	-	2,620	699	3,318
Rent and Property taxes	7,529	-	-	7,529
Other	1,500	1,822	1,500	4,822
	<u>817,961</u>	<u>786,034</u>	<u>335,390</u>	<u>1,939,384</u>
<b>Non-operating outflows</b>				
Interest payments	66	133,474	328	133,867
Total outflows	<u>818,027</u>	<u>919,507</u>	<u>335,718</u>	<u>2,073,252</u>
Net weekly cash flow	739,193	(87,747)	851,308	1,502,754
<b>Ending line of credit position</b>	<b><u>(8,577,102)</u></b>	<b><u>(8,664,849)</u></b>	<b><u>(7,813,541)</u></b>	<b><u>(7,813,541)</u></b>
<b>DIP Facility</b>				
Opening balance	(7,442,829)	(5,885,610)	(5,053,849)	(7,442,829)
Add: Cash Receipts	1,557,220	831,760	1,187,026	3,576,006
<b>Ending Existing Credit Facility Balance</b>	<b><u>(5,885,610)</u></b>	<b><u>(5,053,849)</u></b>	<b><u>(3,866,824)</u></b>	<b><u>(3,866,824)</u></b>
<b>DIP Facility</b>				
Opening	(1,873,466)	(2,691,492)	(3,611,000)	(1,873,466)
Less: Draws	(818,027)	(919,507)	(335,718)	(2,073,252)
Add: Repayments	-	-	-	-
<b>Ending DIP Facility balance</b>	<b><u>(2,691,492)</u></b>	<b><u>(3,611,000)</u></b>	<b><u>(3,946,717)</u></b>	<b><u>(3,946,717)</u></b>
<b>Total net indebtedness</b>	<b><u>(8,577,102)</u></b>	<b><u>(8,664,849)</u></b>	<b><u>(7,813,541)</u></b>	<b><u>(7,813,541)</u></b>

24. The Monitor offers the following commentary as it relates to the October Forecast:

- i. as at the date of this Third Report, cumulative advances under the DIP Facility are approximately \$2,600,000;

- ii. the Debtors require the DIP Facility Increase to make the following disbursements:
    - a) payments to fishers of approximately \$697,000;
    - b) compensation expense (including withholdings) of approximately \$562,000;
    - c) payments of other cost of goods sold of approximately \$275,000;
    - d) general and administrative payments of approximately \$265,000
    - e) the payment of Pre-Filing Supplier Payments of approximately \$139,000 primarily relating to bait and cold storage suppliers; and
    - f) interest expense of approximately \$133,000;
  - iii. the October Forecast projects that the Debtors will need to borrow an additional \$900,000 to \$1 million (over the current maximum borrowing limit) to fund these amounts and will remain in compliance with the over advance position;
25. The Monitor has discussed the October Forecast with the Applicant and understands the Applicant is willing to provide the additional amounts available under the DIP Facility Request in the event the Court approves the DIP Increase Order.
26. The Monitor is of the opinion that the request for the DIP Facility Increase is reasonable and just for the following reasons:
- i. the disbursements contained in the October Forecast are considered critical to the continued operations of the Debtors' businesses;
  - ii. in some instances, the disbursements may maintain a priority position over other secured indebtedness;
  - iii. the disbursements contained above are being made with the view of maintaining the going concern value of the Debtors' businesses which should be accretive to value achieved during the SISP; and
  - iv. the Monitor is of the view that no creditor will be materially prejudiced by the DIP Facility Increase.

**CONCLUSION**

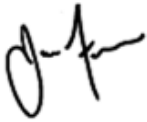
27. Based on the enclosed, the Monitor recommends the Court approve DIP Increase Order.

All of which is respectfully submitted this 16<sup>th</sup> 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