

Court File No.: CV-20-00649558-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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 WITH RESPECT TO
EXPRESS GOLD REFINING LTD.

EIGHTEENTH REPORT OF THE MONITOR

February 29, 2024

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INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 15, 2020 (the “**Initial Order**”), Express Gold Refining Ltd. (“**EGR**” or the “**Applicant**”) was granted creditor protection under the *Companies’ Creditors Arrangement Act*, RSC c C-36 (the “**CCAA**”), and Deloitte Restructuring Inc. was appointed as monitor (in such capacity, the “**Monitor**”) in the proceedings (the “**CCAA Proceedings**”). The Initial Order also provided for, among other things, a stay of proceedings with respect to the Applicant until and including October 19, 2020 (the “**Stay Period**”). The Stay Period in these CCAA Proceedings has been extended numerous times by further Orders, most recently up to and including March 4, 2024.
2. Copies of all orders and endorsements granted in these CCAA Proceedings are located on the Monitor’s website accessible at: <https://www.insolvencies.deloitte.ca/en-ca/pages/ExpressGoldRefiningLtd.aspx> (the “**Monitor’s Website**”). The Monitor encourages interested stakeholders to review the Monitor’s Website for a complete history of the CCAA Proceedings, including the various orders, endorsements and Monitor’s reports previously issued.
3. Unless otherwise stated, capitalized terms not defined herein are as defined in the Monitor’s prior reports.

PURPOSE

4. The purpose of this Eighteenth report of the Monitor (the “**Eighteenth Report**”) is to provide the Court with information regarding:
 - (a) the activities of EGR and the Monitor from November 30, 2023, the date of the Seventeenth Report of the Monitor (the “**Seventeenth Report**”), filed in connection with the previous motion to extend the Stay Period granted in the CCAA Proceedings, to the date of this Eighteenth Report;
 - (b) EGR’s cash flow results for the 12-week period ended February 9, 2024, with a comparison to forecast amounts in the 17-week cash flow forecast that was included in the Seventeenth Report;

- (c) EGR's revised cash flow forecast (the "**Revised Cash Flow Forecast**") for the 21-week period from February 12 to July 5, 2024, and the Monitor's comments thereon;
 - (d) the status of the Tax Litigation;
 - (e) information regarding the outcome of the Monitor's motion for a Mediation Order, which this Honourable Court heard on December 4, 2023 (the "**Mediation Motion**");
 - (f) the status of the Third Party Mareva Injunction;
 - (g) EGR's requested extension of the Stay Period up to and including July 4, 2024 (the "**Stay Extension Period**"); and
 - (h) the Monitor's conclusions and recommendations in respect thereof.
5. This Eighteenth Report should be read in conjunction with the Affidavit of Atef Salama sworn February 22, 2024 in support of the Applicant's motion for an extension of the Stay Period (the "**Salama Affidavit**").

TERMS OF REFERENCE AND DISCLAIMER

6. In preparing this Eighteenth Report and making the comments herein, the Monitor has been provided with, and has relied upon, the following information (collectively, the "**Information**"): unaudited financial information, books and records and financial information prepared by EGR, and discussions with management of the Applicant ("**Management**").
7. 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.

8. Some of the information referred to in this Eighteenth 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.
9. Future oriented financial information referred to in this Eighteenth 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.
10. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

ACTIVITIES OF EGR SINCE THE SEVENTEENTH REPORT

11. The activities of EGR since the last stay extension motion, heard December 4, 2023, are set out in the Salama Affidavit, and such activities of EGR that are related to or arising out of these CCAA Proceedings include:
 - (a) complying with the terms of the Second Amended and Restated Monitoring Protocol;
 - (b) continuing to manage its relationships with customers and suppliers to minimize business disruptions;
 - (c) continuing to provide regular updates and information to the Monitor with respect to EGR's business and the Tax Litigation; and
 - (d) continuing its efforts to advance the Tax Litigation. A status update of the Tax Litigation is provided in paragraphs 9 to 11 of the Salama Affidavit.

ACTIVITIES OF THE MONITOR SINCE THE SEVENTEENTH REPORT

12. Since the Seventeenth Report, the Monitor has undertaken the following activities:
- (a) monitored EGR's business in accordance with the Second Amended and Restated Monitoring Protocol;
 - (b) reviewed EGR's GST/HST filings and communicated with CRA regarding the processing status. In this regard, CRA processed and released net tax refunds for GST/HST filings for the periods from October 16, 2020 to December 31, 2023;
 - (c) communicated with EGR's restructuring counsel regarding developments in the CCAA Proceedings and Tax Counsel regarding the status of the Tax Litigation;
 - (d) communicated with CRA regarding developments in these CCAA Proceedings;
 - (e) communicated with EGR , including its respective counsel, regarding potential measures to amend the scope and cost of the Second Amended and Restated Monitoring Protocol with a view to preserving cash; and
 - (f) assisted EGR in preparing the Revised Cash Flow Forecast and cash flow variance reporting.

CASH FLOW FORECAST AND RESULTS RELATIVE TO FORECAST

13. Summarized in the following table are EGR's actual cash receipts and disbursements for the 12-week period ended February 9, 2024 (the "**Reporting Period**"), as compared to the corresponding weeks in the cash flow forecast included in the Seventeenth Report.

Express Gold Refining Ltd.				
Summary of Actual versus Forecast Cash Flows				
For the 12-week period from November 20, 2023 to February 09, 2024				
(\$CAD '000s)				
Unaudited				
	Actual	Forecast	Variance	Note
Receipts				
Collection from Sales and Accounts Receivable	15,380	14,039	1,341	A
HST refunds	1,451	1,028	423	B
Interest, exchange gains / (losses), and other	47	11	36	C
Total Receipts	16,878	15,078	1,800	
Disbursements				
Purchases	(14,779)	(13,478)	(1,301)	D
Customer accounts and hedging	(1,766)	-	(1,766)	E
Salaries and wages	(166)	(192)	26	F
Consulting and professional fees	(23)	(26)	3	
General Administrative Expenses	(24)	(56)	32	G
Insurance	(42)	(15)	(27)	H
Rent	(50)	(50)	-	
Advertising and promotion	(51)	(29)	(22)	I
Vehicle	(5)	(7)	2	
Freight	(27)	(38)	11	J
Income Tax	(89)	(89)	-	
Total Disbursements	(17,022)	(13,980)	(3,042)	
Litigation Costs	(300)	(300)	-	
Restructuring Costs	(372)	(830)	458	K
Total Litigation and Restructuring Costs	(672)	(1,130)	458	
CEBA Loan	(40)	(40)	-	
Total CEBA Loan	(40)	(40)	-	
Intercompany loan	22	-	22	L
Total Intercompany loan	22	-	22	
Net Cash Flow	(834)	(72)	(762)	
Opening Cash	1,670	1,670	-	
Ending Cash	836	1,598	(762)	

14. EGR's actual net cash outflow for the Reporting Period was \$834,000 compared to forecast net cash outflow of \$72,000, resulting in an unfavourable variance of \$762,000. The following are the reasons for the major variances, identified by the Notes in the table above:

- A** A favourable variance of \$1.3 million in sales receipts is a timing difference due to fluctuations in the price of gold during the Reporting Period;
- B** A favourable variance of \$423,000 in HST refunds is a permanent difference due to higher than expected receipts from October and November 2023 net tax refunds;
- C** A favourable variance of \$36,000 in interest, exchange gains / (losses), and other receipts is a permanent difference due to the exchange rate differences between the average actual foreign exchange rate during the Reporting Period of 1.34 compared to the forecast foreign exchange rate of 1.37 used when converting from Canadian to US dollars.
- D** An unfavourable variance of \$1.3 million in purchases is a timing difference due to fluctuations in the price of gold during the Reporting Period.
- E** An unfavourable variance of \$1.7 million in customer accounts and hedging is a permanent difference that relates to advances to a customer's gold held at EGR. This customer deposited similar value of gold held at EGR over the Reporting Period;
- F** A favourable variance of \$26,000 in salaries and wages is a timing difference that will reverse in the future;
- G** A favourable variance of \$32,000 in general administrative expenses is due in part to a permanent difference from Management's efforts to conserve cash and due in part to a reversal of a timing difference from prior periods;
- H** An unfavourable variance of \$27,000 in insurance is a permanent difference due to the payment of EGR Director's insurance premium;
- I** An unfavourable variance of \$22,000 in advertising and promotion is a permanent difference due to higher-than-expected cost of a specific advertising campaign;
- J** A favourable variance of \$11,000 in freight is primarily a permanent difference due to Management's efforts to conserve cash;

K A favourable variance of \$458,000 in restructuring costs is a timing difference that will reverse in the future.

L A favourable variance of \$22,000 in intercompany borrowings is a temporary difference due to borrowing funds from a related party for working capital needs. The funds borrowed are expected to be repaid the week ending April 5, 2024, and the timing difference will reverse in the future.

APPLICANT'S REVISED CASH FLOW FORECAST

15. The Applicant, with the assistance of the Monitor, has prepared the Revised Cash Flow Forecast, which covers the period from February 12 to July 5, 2024 (the “**Revised Cash Flow Period**”) for the purposes of projecting the cash position of the Applicant’s planned operations and other activities during the Revised Cash Flow Period. A copy of the Revised Cash Flow Forecast is attached hereto as **Appendix “A”**.
16. The Revised Cash Flow Forecast has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Revised Cash Flow Forecast (the “**Assumptions**”), and is presented on a weekly basis during the Revised Cash Flow Period.
17. EGR’s opening cash balance on February 12 was \$856,000. The forecast cash flow surplus for the Revised Cash Flow Period before litigation and restructuring costs is estimated to be approximately \$2.0 million. Litigation and restructuring costs in connection with the Tax Litigation and these CCAA proceedings are estimated to be approximately \$750,000 and \$680,000, respectively, over the Revised Cash Flow Period. As a result, the forecast net cash flow for the Revised Cash Flow Period after litigation and restructuring costs is estimated to be \$479,000, resulting in an estimated ending cash balance of \$1.3 million on July 5, 2024.
18. Accordingly, the Applicant is expected to have sufficient liquidity to operate during the proposed Stay Extension Period.
19. The Monitor has reviewed the Revised Cash Flow Forecast to the standard required of a Court-appointed monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a

monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor's report on a cash flow statement.

20. In accordance with the standard, the Monitor's review of the Revised Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Information. Since the Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Revised Cash Flow Forecast.
21. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:
 - (a) the Assumptions are not consistent with the purpose of the Revised Cash Flow Forecast;
 - (b) as at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Assumptions; or
 - (c) the Revised Cash Flow Forecast does not reflect the Assumptions.
22. Since the Revised Cash Flow Forecast is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Revised Cash Flow Forecast or relied upon by the Monitor in preparing this Eighteenth Report.

23. The Revised Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes

THE MEDIATION MOTION

24. The Mediation Motion was heard on December 4, 2023, being the same date as EGR's last stay extension motion.
25. On December 22, 2023, the Honourable Mr. Justice Cavanagh released his endorsement dismissing the Mediation Motion (the "**Mediation Motion Endorsement**"). A copy of the Mediation Motion Endorsement is attached hereto as **Appendix "B"**.
26. In short, while Justice Cavanagh found that he had jurisdiction to grant the Mediation Order (paragraph 13), Justice Cavanagh declined to exercise such jurisdiction in the circumstances and given the status of the Tax Litigation.
27. The Monitor did not appeal the Mediation Motion Endorsement.

THE TAX LITIGATION

28. The next substantive step in the Tax Litigation is trial. On December 18, 2023, the Tax Court held a case conference to discuss and consider trial logistics. The Monitor's counsel attended the case conference. Following the case conference, the Tax Court released an endorsement stating that the trial will commence in February 2025, with evidence to be completed in or around June 2025, and closing arguments scheduled for September 2025.
29. The Tax Court booked a further case conference for January 29, 2024. EGR has advised the Monitor that the January 29 case conference was adjourned by the Tax Court and rescheduled to February 26, 2024.
30. Following the case conference on February 26, 2024, EGR advised the Monitor that a trial judge has been assigned and the trial will proceed according to the timeline described in paragraph 28. A timetable for pre-trial steps was also established as follows:
 - (a) September 30, 2024 – lists of documents to be relied upon to be sent to the Court;

- (b) October 15, 2024 – witness lists and will say statements exchanged;
 - (c) October 30, 2024 – expert reports filed;
 - (d) November 15, 2024 – expert rebuttal reports filed; and
 - (e) November 30, 2024 – expert sur-rebuttal reports filed.
31. EGR and its counsel have further advised the Monitor that they are engaged in discussions with CRA/DOJ regarding potential admissions, as noted at paragraph 11 of the Salama Affidavit.

THIRD PARTY MAREVA INJUNCTION

32. On December 19, 2022, the parties, including the Monitor and its counsel, attended before Justice Myers regarding, among other matters, whether EGR should have been added as a defendant to the action that Chicago Title Insurance Company (“CTIC”) had initiated in June 2022, and whether the *Mareva* relief should have been extended against EGR. Justice Myers set aside the prior orders that added EGR as a defendant and extended the *Mareva* relief against it. Justice Myers also indicated that CTIC and EGR should cooperate regarding the former’s request for certain documents and that the Monitor should provide assistance if necessary.
33. Following Justice Myers’ Endorsement, counsel to CTIC and EGR have been collaborating and continuing discussions on a proposed form of production order pursuant to which the scope of EGR’s document production would be circumscribed. While certain issues remain to be resolved, the Monitor remains hopeful that a resolution can be achieved without the need for advice and directions from this Court.

STAY EXTENSION

34. The current Stay Period expires on March 4, 2024. EGR is seeking an extension of the Stay Period up to and including July 4, 2024 in order to allow EGR, with the assistance of the Monitor, to:
- (a) preserve the *status quo* and continue to maintain the stability of operations;

- (b) monitor the Tax Litigation; and
 - (c) determine next steps in respect of the CCAA Proceedings.
35. As described above, the Revised Cash Flow Statement indicates that EGR will have sufficient liquidity during the Stay Extension Period.
36. In the Monitor's view, EGR has acted and continues to act in good faith and with due diligence in these CCAA Proceedings.
37. The Monitor supports EGR's request for the extension of the Stay Period to July 4, 2024.

All of which is respectfully submitted this 29th day of February, 2024.

**Deloitte Restructuring Inc., solely in its
capacity as Court-appointed Monitor of
Express Gold Refining Ltd.**



Phil Reynolds, LIT
Senior Vice-President

Appendix “A”

Express Gold Refining Ltd.
21-week cash flow forecast for the period February 12, 2024 to July 05, 2024
Amounts in CAD, unaudited

Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	Total	
Notes	Week Ending	16-Feb	23-Feb	1-Mar	8-Mar	15-Mar	22-Mar	29-Mar	5-Apr	12-Apr	19-Apr	26-Apr	3-May	10-May	17-May	24-May	31-May	7-Jun	14-Jun	21-Jun	28-Jun	5-Jul	Total
Receipts																							
1	Sales	1,336,452	1,069,162	1,336,452	1,336,452	1,336,452	1,336,452	1,069,162	1,336,452	1,336,452	1,336,452	1,336,452	1,336,452	1,336,452	1,336,452	1,069,162	1,336,452	1,336,452	1,336,452	1,336,452	1,336,452	1,069,162	26,996,331
2	HST refunds	-	-	-	300,290	-	-	-	329,132	-	-	329,132	-	-	-	-	-	329,132	-	-	-	329,132	1,616,819
3	Interest income	-	-	-	3,198	-	-	-	3,198	-	-	3,198	-	-	-	-	-	3,198	-	-	-	3,198	15,988
	Total Receipts	1,336,452	1,069,162	1,336,452	1,639,939	1,336,452	1,336,452	1,069,162	1,668,782	1,336,452	1,336,452	1,336,452	1,668,782	1,336,452	1,336,452	1,069,162	1,336,452	1,668,782	1,336,452	1,336,452	1,336,452	1,401,492	28,629,138
Disbursements																							
4	Purchases	(1,282,994)	(1,026,395)	(1,282,994)	(1,282,994)	(1,282,994)	(1,026,395)	(1,282,994)	(1,282,994)	(1,282,994)	(1,282,994)	(1,282,994)	(1,282,994)	(1,282,994)	(1,026,395)	(1,282,994)	(1,282,994)	(1,282,994)	(1,282,994)	(1,282,994)	(1,282,994)	(1,026,395)	(25,916,478)
5	Salaries and wages	(32,694)	(23,480)	-	(15,000)	(19,000)	(37,000)	(15,000)	(15,000)	(34,000)	(22,000)	(15,000)	(19,000)	(22,000)	(15,000)	(34,000)	(22,000)	(15,000)	(34,000)	(22,000)	(15,000)	(34,000)	(340,173)
6	Consulting and professional fees	-	(3,587)	-	(3,587)	-	(3,587)	-	(3,587)	-	(3,587)	-	(3,587)	-	(3,587)	-	(3,587)	-	(3,587)	-	(3,587)	-	(35,871)
7	General Administrative Expenses	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(2,661)	(55,879)
8	Insurance	(39,679)	-	-	(4,000)	-	-	(8,121)	-	-	-	(8,921)	-	-	-	-	(8,121)	-	-	-	(10,000)	(8,121)	(102,963)
9	Rent	-	-	(16,653)	-	-	-	-	-	-	-	-	(16,653)	-	-	-	-	-	-	-	-	-	(83,267)
10	Advertising and promotion	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)	(1,060)
11	Vehicle	(1,114)	(226)	(1,226)	(226)	(1,114)	(226)	(1,114)	(226)	(1,114)	(226)	(1,114)	(226)	(1,114)	(226)	(1,114)	(226)	(1,114)	(226)	(1,114)	(226)	(1,114)	(14,191)
12	Freight	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(2,615)	(54,917)
13	Income Tax	-	-	-	(4,000)	-	-	-	(4,000)	-	-	(4,000)	-	-	-	-	(4,000)	-	-	-	-	(4,000)	(20,000)
	Total Disbursements	(1,362,816)	(1,060,024)	(1,307,210)	(1,316,143)	(1,309,444)	(1,330,143)	(1,042,079)	(1,334,897)	(1,289,556)	(1,328,031)	(1,321,477)	(1,317,797)	(1,304,556)	(1,313,031)	(1,085,958)	(1,316,264)	(1,314,210)	(1,327,143)	(1,322,444)	(1,317,264)	(1,057,611)	(26,648,100)
	Net Cash Flow Before Litigation and Restructuring Costs	(26,364)	9,137	29,242	323,796	27,008	6,309	27,083	333,885	46,896	8,421	14,975	350,985	31,896	23,421	13,204	20,188	354,572	9,309	14,008	19,188	343,881	1,981,038
14	Litigation Costs	(150,000)	-	-	-	(150,000)	-	-	-	(150,000)	-	-	-	(150,000)	-	-	-	(150,000)	-	-	-	-	(750,000)
15	Restructuring Costs	(20,000)	-	(100,000)	-	-	(20,000)	-	(100,000)	-	(20,000)	(40,000)	(100,000)	-	(20,000)	-	(100,000)	-	(20,000)	(40,000)	(100,000)	-	(680,000)
	Total Litigation and Restructuring Costs	(170,000)	-	(100,000)	-	-	(170,000)	-	(100,000)	-	(170,000)	(40,000)	(100,000)	-	(170,000)	-	(100,000)	-	(170,000)	(40,000)	(100,000)	-	(1,430,000)
16	Intercompany loan	-	-	-	-	-	-	(72,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(72,000)
	Total Intercompany Loan	-	-	-	-	-	-	(72,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(72,000)
	Net Cash Flow	(196,364)	9,137	(70,758)	323,796	27,008	(163,691)	27,083	161,885	46,896	(161,579)	(25,025)	250,985	31,896	(146,579)	13,204	(79,812)	354,572	(160,691)	(25,992)	(80,812)	343,881	479,038
17	Opening Cash	856,069	659,705	668,842	598,085	921,881	948,889	785,197	812,280	974,165	1,021,061	859,482	834,457	1,085,442	1,117,338	970,758	983,963	904,150	1,258,722	1,098,031	1,072,039	991,227	856,069
	Ending Cash	659,705	668,842	598,085	921,881	948,889	785,197	812,280	974,165	1,021,061	859,482	834,457	1,085,442	1,117,338	970,758	983,963	904,150	1,258,722	1,098,031	1,072,039	991,227	1,335,107	1,335,107

Notes
General Receipts and disbursements denominated in U.S. Dollars have been converted into Canadian Dollars using an exchange rate of CDNS1.35 = USDS1.00.
Projected disbursements include GST and HST charged for purchases of goods and services.

- 1 EGR is closed on February 19, 2024, March 29, 2024 and May 20, 2024, July 01, 2024.
- 2 Receipts from sales are estimated based on historical average monthly sales, collected weekly.
- 3 The projected tax refunds are estimated based on input tax credits claimed on GST and HST paid to vendors.
- 4 Receipts from interest income earned on deposits.
- 5 These projected disbursements represent payments to suppliers of precious metals such as gold, silver, platinum and palladium bullion in the form of bars. The Company also purchases unrefined bars and scrap gold for refining.
- 6 These projected disbursements include payroll costs for all salaried and hourly employees and expense reimbursements. The forecast amounts are based on historic run rates. Hourly employees are paid monthly, and salaried employees are paid twice a month. Payroll disbursements include all employee source deductions, employee and employer portions of CPP and EI, and other payroll-related taxes.
- 7 These projected disbursements include payments to EGR's advisors for corporate matters.
- 8 These projected disbursements include payments related to office supplies, repair and maintenance, telephone and networking, bank charges, travel, software and utilities.
- 9 These projected disbursements include premium payments for general, property and liability insurance, employee benefits, life insurance, and car insurance.
- 10 These projected disbursements include rent payments to Farag Properties Inc., a related party.
- 11 These projected disbursements relate to the various advertising and promotional initiatives.
- 12 These projected disbursements represent vehicle lease and other vehicle-related expenses.
- 13 These projected disbursements represent freight expenses to transport inventory for refining or for delivery to customers.
- 14 These projected disbursements represent corporate income tax instalments.
- 15 These projected disbursements include payments to legal advisors for litigation matters.
- 16 These projected disbursements include payments to EGR's legal advisor for specialist restructuring advice and the fees and costs of the Monitor and its counsel.
- 17 These projected disbursements include repayments to related parties for working capital purposes.
- 18 The opening cash balance reflects the bank balance and cash on hand balance at the start of the cash flow forecast.



EXPRESS GOLD REFINING LTD.

215 Victoria St., Suite 400, Toronto, Ontario M5B 1T9

February 26, 2024

Deloitte Restructuring Inc.
Bay Adelaide East
8 Adelaide Street West
Suite 200
Toronto, Ontario M5H 0A9
Canada

Attention: Phil Reynolds

Dear Sirs:

**Re: Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA")
Responsibilities/Obligations and Disclosure with Respect to Cash Flow Projections**

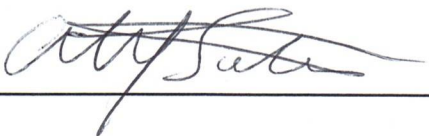
In connection with the CCAA proceedings in respect of Express Gold Refining Ltd. ("EGR"), the management of EGR ("**Management**") has prepared the attached Cash Flow Statement and the assumptions on which the Cash Flow Statement is based.

EGR confirms that:

1. The Cash Flow Statement and the underlying assumptions are the responsibility of EGR;
2. All material information relevant to the Cash Flow Statement and to the underlying assumptions has been made available to Deloitte Restructuring Inc., in its capacity as Monitor of EGR;
3. Management has taken all actions that it considers necessary to ensure:
 - a. That the individual assumptions underlying the Cash Flow Statement are appropriate in the circumstances;
 - b. That the individual assumptions underlying the Cash Flow Statement, taken as a whole, are appropriate in the circumstances; and

- c. That all relevant assumptions have been properly presented in the Cash Flow Statement or in the notes accompanying the Cash Flow Statement.
4. Management understands and agrees that the determination of what constitutes a material adverse change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of EGR, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination;
5. Management understands its duties and obligations under the CCAA and that a breach of these duties and obligations could make EGR's Management liable to fines and imprisonment in certain circumstances; and
6. The Cash Flow Statement and assumptions have been reviewed and approved by the EGR's board of directors or Management has been duly authorized by EGR's board of directors to prepare and approve the cash flow assumptions.

Yours truly,



Atef Salama
Vice President

Appendix “B”



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-20-00649558-00CL DATE: 22 December 2023 (Heard)

NO. ON LIST: 4

TITLE OF PROCEEDING: EXPRESS GOLD REFINING LTD. v. THE ATTORNEY GENERAL
OF CANADA on behalf of Her Majesty the Queen in Right of
Canada as represented by the Minister of National Revenue

BEFORE JUSTICE: MR JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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Mark Freake		mark.freake@dentons.com 416-863-4456
Mario Forte	Lawyer for the Applicant, Express Gold Refining Ltd.	forte@gsnh.com 416-597-6477
Phil Reynolds	Representatives of the Court Appointed Monitor, Deloitte Restructuring Inc.	philreynolds@deloitte.ca 647-620-2996
Warren Leung		waleung@deloitte.ca 416-874-4461

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Kevin Dias	Lawyers for the Respondent, The Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue (Department of Justice	kevin.dias@justice.gc.ca
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Fozia Chaudary		fozia.chaudary@justice.gc.ca
Sarah Mackenzie		sarah.mackenzie@justice.gc.ca

	Canada/CRA)	
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CAVANAGH:

Introduction

- [1] Deloitte Restructuring Inc. (“Deloitte”) in its capacity as the court-appointed monitor (“Monitor”) of Express Gold Refining Ltd. (“EGR”) brings this motion for an order appointing a mediator as an officer of the Court to act as a neutral third party to assist in the mandatory mediation of certain tax disputes and litigation pending in the Tax Court of Canada (“TCC”) between EGR and the Canada Revenue Agency (“CRA”).
- [2] For the following reasons, the Monitor’s motion is dismissed.

Background Facts

- [3] EGR’s business relates to gold refining, which consists of EGR purchasing unrefined bars and scrap gold for refining at a specialized facility Toronto and arranging for the final stages of refining to be conducted by third-party refiners offsite. EGR also engages in the trading of gold bullion (and other precious metals) and forward contracts, and takes trading positions on its own behalf and for its clients based on short and long-term fluctuations in the price of gold and other precious metals, either for hedging purposes or for investment purposes.
- [4] As a GST/HST registrant under Part IX of the *Excise Tax Act*, EGR pays GST/HST on unrefined gold purchased from its suppliers, but does not collect GST/HST on the refined gold sold to its customers. GST/HST paid to suppliers in a business transaction gives rise to input tax credits that EGR may claim. When a registrant’s input tax credits exceed the GST/HST collected, it is entitled to a net tax refund from the CRA.
- [5] On July 29, 2020, CRA issued Notices of Reassessment related to EGR’s June 1, 2016 to October 31, 2018 reporting periods, imposing tax, penalties and interest in excess of \$189.5 million. CRA further advised EGR that it intended to take enforcement actions notwithstanding EGR’s contestation.
- [6] On October 15, 2020, EGR sought and obtained creditor protection under the *CCAA* to provide for the continued operation of the business, stay the enforcement actions commenced by CRA, and to create breathing room while EGR pursued its appeal from the reassessments in the TCC. Deloitte was appointed as Monitor in the proceedings.
- [7] The litigation in the TCC has proceeded. The parties have completed examinations for discoveries. The trial has been scheduled to commence in February 2025.

- [8] On March 31, 2023, CRA and EGR jointly wrote to the TCC requesting that a settlement conference be scheduled. In the joint letter, the parties wrote that they believe that a settlement conference would be beneficial. A further letter dated April 17, 2023 was sent requesting a settlement conference.
- [9] By letter dated May 29, 2023, the Hearings Coordinator for the TCC advised the parties that the request for a settlement conference is denied. In this letter, the Hearings Coordinator wrote that “[p]arties must have exchanged written offers of settlement before the Court will consider scheduling a Settlement Conference.”
- [10] CRA’s position is that it is no longer willing to discuss settlement of the tax litigation with EGR. It opposes the requested order for mandatory mediation.
- [11] At the hearing of this motion, I was advised that a case management conference was scheduled to be held in the TCC on December 18, 2023. I asked counsel for the Monitor to report on that conference to the extent that it may affect the issues on the motion before me. By email dated December 19, 2023, counsel for the Monitor reported that although EGR raised the prospect of a settlement conference in correspondence to the TCC before the case management conference, the topic was not pursued further at the case management conference.

Analysis

- [12] Section 11 of the CCAA provides:

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

- [13] I am satisfied that this Court has the jurisdiction to grant the requested order under its broad statutory jurisdiction under the CCAA.
- [14] The TCC is a superior court of record and has exclusive original jurisdiction to hear and determine tax appeals arising from the *Excise Tax Act*.
- [15] The Monitor submits that this Court should impose a procedure in the CCAA proceedings requiring EGR and CRA to engage in settlement negotiations with the assistance of a neutral mediator. The Monitor submits that the imposition of mandatory mediation would further the remedial purpose of the CCAA, as described by the Court of Appeal for Ontario in *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662, at para. 47:

There is no dispute about the purpose of the CCAA. It describes itself as “an Act to facilitate compromises and arrangements between companies and their creditors”. Its purpose is to avoid the devastating social and economic effects of commercial bankruptcies.

- [16] The Monitor must satisfy the Court that the requested order is in furtherance of the remedial objectives of the CCAA and that the three following baseline considerations are met: (i) that the order sought is appropriate in the circumstances, and (ii) that the applicant has been acting in good faith, and (iii) with due diligence.

- [17] “Appropriateness” is assessed by enquiring whether the order sought advances the policy objective underlying the *CCAA*. See *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, at para. 70. A determination of whether a mandatory mediation order is appropriate will depend on the unique factual landscape in the restructuring: *1057863 B.C. Ltd. (Re)*, 2022 BCSC 759, at para. 49.
- [18] Considerable deference is owed to procedural rulings made by a tribunal with the authority to control its own process: *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, at para. 231.
- [19] CRA submits that an order for mandatory mediation would usurp the right of the TCC to control its own process and amount to a collateral attack on the decision of the TCC to decline the request for a settlement conference.
- [20] The request to the TCC for a direction convening a settlement conference was made by EGR, jointly with the CRA. The Monitor is not bound by this procedural direction and its motion to this Court is not a collateral attack on the TCC’s procedural direction declining the request for a settlement conference.
- [21] The Monitor submits that the broad jurisdiction granted under section 11 of the *CCAA* has been used to approve mediation orders in various cases in Ontario and elsewhere in Canada. The Monitor places particular reliance on the decision of the Supreme Court of British Columbia in *1057863 B.C. Ltd. (Re)*, 2022 BCSC 759 [“105”].
- [22] In *105*, the Petitioners were the owners of a pulp mill in Nova Scotia. The Province of Nova Scotia was a significant creditor. Nova Scotia passed a statute that required the Petitioners to cease using an effluent treatment facility that it had been leasing from Nova Scotia and using as part of its operations at the mill. As a result, the mill operations ceased. The Petitioners asserted compensation claims against Nova Scotia arising from the closure of the mill. The consequences of the mill closure were the genesis of the Petitioners’ application for protection under the *CCAA*.
- [23] The Petitioners sought a settlement of their claim for compensation from Nova Scotia. The Petitioners suggested mediation but Nova Scotia opposed. The Court approved the expenditure needed to fund litigation expenses and allow the Petitioners to file a claim against Nova Scotia to preserve the viability of their “litigation asset”. The Petitioners did so. The Petitioners brought an application for approval by the *CCAA* Court of a mandatory mediation process and appointing a respected, retired, former Justice of the Supreme Court of Canada as an officer of the *CCAA* Court to act as a neutral third-party mediator. At the time of the application, Nova Scotia had not yet filed a statement of defence to the action. Nova Scotia opposed the application for a mandatory mediation order.
- [24] The application judge accepted that the circumstances of the proposed mediation were unique in that the dispute involved claims by the Petitioners rather than claims against them. The application judge concluded that the time had come to determine whether any settlement is achievable because a settlement, if achieved, would be for the benefit of all stakeholders. The application judge considered that the benefits of a mediation were manifest and, even if no settlement was achieved, there may be benefits in the form of a narrowing of the issues in the action. The application judge concluded that the requested mediation order is consistent with the remedial purposes of the *CCAA* and that the granting of the requested order was appropriate. The requested mediation order was made.
- [25] The circumstances in which a mandatory mediation was ordered in *105* differ materially from the circumstances on the motion before me. In *105*, the order was sought just after the litigation had

commenced, and before Nova Scotia had even filed a statement of defence. The application judge considered that there would be no downside to the mediation because there might be benefits through narrowing the issues even if no settlement was achieved. The action by the Petitioners against Nova Scotia was not being case managed, and there is no suggestion in the reasons of the application judge that the action was subject to any judicial oversight. In contrast, on this motion, the evidence is that the tax appeals are being case managed in the TCC. I am asked to make an order directing the parties to the tax litigation in the TCC, a court with specialized expertise and exclusive jurisdiction over this litigation, to attend a mandatory mediation, in circumstances where the TCC, exercising its case management authority, has already declined to direct a settlement conference.

[26] In my view, in these circumstances, for me to direct the parties to attend a mandatory mediation of a tax appeal pending in the TCC would inappropriately intrude on the right of the TCC to control its own process. The tax litigation in the TCC is being case managed, and the case management judge or judges of that Court are fully informed of the subject matter of the litigation and the procedural status of the litigation. The Monitor does not suggest that EGR is not able to renew its request for a settlement conference to the case management judge who is well positioned to consider such a request and give appropriate procedural directions to the parties.

[27] I conclude that the requested order is not appropriate in the circumstances.

Disposition

[28] For these reasons, the Monitor's motion is dismissed.

[29] If the parties are unable to resolve costs, they may make written submissions in accordance with a timetable (and with page limits) to be agreed upon by counsel and approved by me.

December 22, 2023

**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 WITH RESPECT TO EXPRESS GOLD REFINING LTD.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

EIGHTEENTH REPORT OF THE MONITOR

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