

# SUPERIOR COURT

(Commercial Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-11-057679-199

DATE: September 26, 2023

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

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In the Matter of *The Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "CCCA") of Fortress Global Enterprises et al.:

**INVESTISSEMENT QUÉBEC**

Applicant / Secured Creditor

and

**FIERA PRIVATE DEBT INC.**

Impleaded Party

and

**FORTRESS GLOBAL ENTERPRISES INC.**

**FORTRESS SPECIALTY CELLULOSE INC.**

**FORTRESS BIOENERGY LTD.**

**FORTRESS XYLITOL INC.**

**9217-6536 QUÉBEC INC.**

Debtors

and

**DELOITTE RESTRUCTURING INC.**

Applicant/Monitor

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**JUDGMENT ON AN APPLICATION FOR THE ISSUANCE OF AN ORDER  
TO EXTEND THE STAY PERIOD & APPROVING A SEVENTH AMENDING  
AGREEMENT TO THE INTERIM FINANCING AGREEMENT  
(Sections 11.02(2) and 11.2 of the CCCA)**

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## **OVERVIEW**

[1] The Applicant, Investissement Québec (“**IQ**”), in its capacity as interim lender and secured creditor of the Debtors, seeks the issuance of an order:

- 1.1. extending the Stay Period (as defined below) until January 31, 2024;
- 1.2. approving a Seventh Amending Agreement (the “**Seventh Amending Agreement**”)<sup>1</sup> to the Interim Financing Agreement (as defined below) previously approved by this court and increasing the total amount of the Interim Lender Charge (as defined below) accordingly; and
- 1.3. approving the activities of Deloitte Restructuring Inc., in its capacity as monitor to the Debtors (“**Deloitte**” or the “**Monitor**”), as described in its Twenty-first report.

## **CONTEXT**

[2] The context of the present request has been set out in prior decisions of this court<sup>2</sup>. It is summarized here for ease of understanding.

[3] On December 16, 2019, Justice Marie-Anne Paquette, j.s.c. (as she then was) issued a first-day initial order (the “**First Day Order**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in respect of Fortress Global Enterprises Inc., Fortress Specialty Cellulose Inc., Fortress Bioenergy Ltd., Fortress Xylitol Inc. and 9217-6536 Québec Inc. (collectively, “**Fortress**” or the “**Debtors**”), pursuant to which:

- 3.1. Deloitte was appointed as monitor of the Debtors;
- 3.2. all claims against the Debtors, their properties and their directors and officers were stayed (the “**Stay**”) until December 26, 2019 (the “**Stay Period**”); and
- 3.3. the Debtors were authorized to borrow from IQ an amount of up to \$1,000,000 on the terms and conditions of the Interim Financing Term Sheet (the “**Interim Financing Term Sheet**”), which was to be secured by a super-priority charge and security over all of the assets of each of the Debtors in the aggregate amount of \$1,200,000 (the “**Interim Lender Charge**”).

[4] On December 26, 2019, the Court issued an Amended First Day Order which:

- 4.1. Extended the Stay Period until January 10, 2020;

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<sup>1</sup> Exhibit R-2.

<sup>2</sup> *Arrangement relatif à Investissement Québec inc.*, 2023 QCCS 2242; *Arrangement relatif à Fortress Global Enterprises*, 2023 QCCS 1353.

- 4.2. Authorized the Debtors to borrow from IQ an amount of up to \$1,500,000 under the terms and conditions set forth in the Interim Financing Agreement, to be secured by an Interim Lender Charge of \$1,800,000; and
- 4.3. Authorized the Debtors (with the prior approval of the Monitor), or the Monitor (on behalf of the Debtors), to pay amounts owing for goods or services actually supplied to the Debtors either prior to or after the date of this Order up to a maximum of \$250,000, to the extent that, in the opinion of the Monitor, the supplier was essential to the business and ongoing operations of the Debtors.

[5] On January 10, 2020, the Court issued an Amended and Restated Initial Order which provided:

- 5.1. an extension of the Stay Period until May 2, 2020;
- 5.2. the authorization for the Debtors to borrow from IQ an amount of up to \$6,000,000 under the terms and conditions set forth in the Interim Financing Agreement, to be secured by an Interim Lender Charge of \$7,200,000;
- 5.3. the creation of a key employee retention plan (the “**KERP**”) and a charge in the amount of \$610,000 to secure the payment of Fortress’s obligations under the KERP (the “**KERP Charge**”); and
- 5.4. an increase in the Monitor’s powers, including the powers to conduct and control the financial affairs and operations of the Debtors, and carry on the business of the Debtors.

[6] The Court also issued a Claims Procedure Order which established a “Claims Bar Date” of March 16, 2020 (except for restructuring claims).

[7] Since then, the Court has rendered further orders, including:

- 7.1. orders extending the Stay Period (which is currently set to expire on September 29, 2023);
- 7.2. orders to approve amendments to the Interim Financing Term Sheet, providing for an increase to the Facility Amount (as defined in the Interim Financing Agreement) to a total amount of \$33,800,000, and a corresponding increase to the Interim Lender Charge to a total amount of \$40,460,000; and

[8] On April 20, 2023, the undersigned was appointed to case manage the present proceedings.

## **ANALYSIS**

### **1. The Stay of Proceedings**

[9] The Debtors' restructuring efforts have proven challenging.

#### **1.1 Pre-Filing Solicitation Efforts**

[10] Prior to the issuance of the First Day Order, a sale and investment solicitation process ("**SISP**") was conducted by the Debtors with the assistance of its financial advisors (and in consultation with IQ and Deloitte).

[11] Despite these efforts, no offer, indication of interest or other proposal were submitted to the Debtors prior to the filing of the proceedings.

#### **1.2 The 2021 SISP**

[12] Further to the commencement of the CCAA proceedings, the Debtors and the Monitor, in consultation with IQ and Fiera, held discussions with various parties on an informal basis regarding a potential transaction which would allow the continuation of the Debtors' operations.

[13] On September 3, 2020, the Monitor received an offer from one of these parties for the acquisition of Fortress Bioenergy Ltd.'s ("**Fortress Bioenergy**") cogeneration facility (the "**Cogeneration Facility**"). The offer was shared with IQ and Fiera and was subsequently refused. The Monitor also received a draft letter of intention for the same facility, which was also shared with IQ and Fiera, and was subsequently refused.

[14] In 2021, the Debtors and the Monitor continued to have active discussions with various interested parties with a view of securing a binding offer with a party willing to continue the operations of the Debtors as a going concern.

[15] Despite these continued efforts, no agreement was reached.

[16] In late July 2021, the Monitor met with respective representatives and counsel of IQ and Fiera to discuss the status of this file as well as the next steps.

[17] The parties agreed to establish a formal deadline for the submission of letters of intent as well as the terms and conditions in connection with the acquisition of the Debtors' business and assets (the "**2021 SISP**").

[18] The Monitor communicated with (22) potentially interested parties, including parties that had previously manifested some interest in acquiring the Debtors' business and assets (parties potentially interested in a going concern transaction and parties potentially interested in submitting liquidation offers whereby the Debtors' assets would be decommissioned and dismantled).

[19] On August 4, 2021, the Monitor sent these parties solicitation materials and advised them that offers should be submitted to the Monitor by no later than September 15, 2021.

[20] The Monitor received several offers (the “**2021 Offers**”) from various parties including going concern offers from strategic parties as well as liquidation bids.

[21] On September 17, 2021, the Monitor presented a summary of the 2021 Offers to IQ and Fiera.

[22] Since several of the 2021 Offers contained conditions relating to IQ and the Québec government (including requests for financial support), IQ, together with the Monitor, proceeded with a detailed review of each and every one of the 2021 Offers in order to assess their respective viability.

[23] In late 2021, IQ and the Monitor decided to focus their discussions on one of the bidders (the “**Original Potential Purchaser**”) and to evaluate its ability to implement a project involving the restart of Fortress’ Pulp Mill and Cogeneration Facility (the “**Original Proposed Project**”).

[24] Discussions and meetings were held between this Original Potential Purchaser, the Monitor, IQ as well as other governmental entities to clarify its offer, negotiate certain improvements to same and ultimately discuss the path going forward in order to properly assess the Original Potential Purchaser’s Original Proposed Project and determine how this project could be implemented.

[25] Unfortunately, it became clear that certain conditions relating to the Original Proposed Project and the required participation from the Quebec government in the project could not be met.

[26] In March 2022, the Quebec government notified the Original Potential Purchaser that no agreement could be reached in connection with the Original Proposed Project.

### 1.3 Subsequent Discussions with Other Potential Purchasers

[27] Fortress, the Quebec government and the Monitor continued discussions with other parties and considered other potential transactions and projects involving the acquisition of Fortress’ assets.

[28] In late September 2022, Fortress and the Monitor received a non-binding letter of intent, together with a business plan, from a party potentially interested in acquiring the business and assets of Fortress.

[29] Again, the offer did not result in a transaction.

[30] Fortress and the Monitor continued their discussions with several other parties which remained interested in a potential transaction involving the assets of Fortress.

#### 1.4 The 2023 SISP

[31] On March 16, 2023, the Monitor communicated new terms and conditions to potential bidders who had shown renewed interest in Fortress' assets.

[32] By the deadline of April 14, 2023, Fortress and the Monitor had received six offers from different interested parties (the "**2023 Offers**"), including parties which had previously demonstrated an interest in a potential transaction, as well as other parties which had, until then, demonstrated no such interest.

[33] The Monitor, in consultation with IQ, pursued discussions and exchanges with two of the offerors to clarify the terms and conditions of each of their respective offers.

[34] The Monitor, in consultation with IQ, subsequently identified one particular offeror (the "**Potential Purchaser**"), who has indicated a willingness to implement a transaction prior to the end of this year, subject to completing its due diligence including a Phase II environmental report.

[35] Since the previous Report of the Monitor, the Monitor, the Potential Purchaser, the Interim Lender, the Government (through various Government entities such as the *Ministère de l'Économie, de l'Innovation et de l'Énergie*, the *Ministère des Affaires municipales et de l'Habitation*, the *Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs* and the *Ministère des Ressources naturelles et des Forêts*), the Municipality of Thurso, the Municipalité of Lochaber-Partie-Ouest and each of their legal counsels had various discussions and meetings in order to move the project forward and try to reach a transaction in a timely manner.

[36] On August 25, 2023, the Monitor, in consultation with IQ and the Quebec government, entered into an Exclusivity Agreement with the Potential Purchaser, to which IQ intervened, pursuant to which the Monitor committed not to solicit offers from third parties with respect to the assets subject to the Potential Purchaser's offer, until October 15, 2023, subject to a further extension.

[37] In parallel, a Phase II environmental report has been requested and is currently underway. The stakeholders are working diligently to resolve issues, including environmental liabilities, land registration and the transfer of different permits.

[38] Based on the negotiations, IQ is optimistic that a viable transaction may be implemented over the course of the next few months, which will ultimately benefit the Debtors, their employees and the city of Thurso.

#### 1.5 Implementation of the "Cold Idle Plus Scenario"

[39] In parallel with the above discussions, the Monitor continued to maintain Fortress' activities to a minimum, in order to reduce operating costs, while maintaining the value of

Fortress' assets for a potential purchaser in the hope that the demand for pulp and related products would increase.

[40] In accordance with the powers granted to it by the Court, the Monitor, in consultation with IQ, decided that:

40.1. Fortress Specialty Cellulose Inc.'s ("**Fortress Specialty**") specialty cellulose mill located in Thurso, Québec (the "**Pulp Mill**") would be idled indefinitely so as to minimize operating costs while market conditions improved; and

40.2. Fortress Bioenergy's Cogeneration Facility would continue to operate, but at a substantially reduced production rate.

[41] On March 24, 2020, the Quebec Government ordered the closure of all Quebec non-essential businesses due to the COVID-19 pandemic. This prompted the temporary shutdown of the Cogeneration Facility, which was intended to take place, in any event, a few weeks later given low demand for electricity and the fact that the Pulp Mill would not require to be heated during the spring and summer months.

[42] As non-essential businesses gradually reopened and the market price for dissolving pulp increased, Fortress, under the supervision and oversight of the Monitor, proceeded to restart its Cogeneration Facility between the fall of 2020 until the spring of 2021, with a view to preserve the value of Fortress' assets and maximize its revenues.

[43] As the market price for dissolving pulp remained strong,<sup>3</sup> Fortress, under the supervision and oversight of the Monitor, restarted the Cogeneration Facility during the fall of 2021 until the spring of 2022.

[44] However, further to the unsuccessful 2021 SISP, a decision was taken to gradually implement a "Cold Idle Plus Scenario", as described in the Monitor's Sixteenth, Seventeenth and Eighteenth Report.

[45] The scenario's goal was to allow Fortress to significantly reduce its operating expenses while it continued to work with the Quebec government to determine the eventual path forward, and, at the same time, allow it to protect and preserve any remaining value of its assets for any future transaction or project, as the case may be.

[46] The Cold Idle Plus Scenario also allowed Fortress to assist the City of Thurso for the treatment of its wastewater and plan for environmental remediation of the site, which has remained ongoing over the course of the past few months.

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<sup>3</sup> In December 2019, dissolving pulp was sold at market price of US\$640 per metric ton, whereas in the first half of 2021, the market price for dissolving pulp went up to US\$1,100 per metric ton. Today, the market price for dissolving pulp now ranges between US\$900 to \$US925 per metric ton.

[47] Finally, as discussed in the Monitor's Twenty-First Report, since it is anticipated that the technology being developed by Fortress Xylitol Inc. will not be part of a transaction with the Potential Purchaser, it has been agreed between the Monitor and Fortress that the activities of Fortress Xylitol would come to an end. The closure of Fortress Xylitol is expected to be completed in the coming weeks

### 1.6 Extension of the Stay Period

[48] The Stay Period is currently set to expire on September 29, 2023.

[49] IQ asks that the Stay Period be extended to January 31, 2024.

[50] While the restructuring and/or sale of Fortress has proven to be lengthier and much more challenging than initially contemplated, IQ requests an approximate four-month extension of the Stay Period in order to allow IQ, together with the Quebec government, and with the Monitor, to pursue their discussions with the Proposed Purchaser, allow the proposed Purchaser to conduct its due diligence and, ultimately and hopefully, take the appropriate steps in order to complete a transaction before year-end.

[51] Absent an order from this court ordering the extension of the Stay Period, the parties would be forced to initiate receivership or bankruptcy proceedings under the *Bankruptcy and Insolvency Act*<sup>4</sup> (the "BIA"). IQ submits that such proceedings would not significantly alter the current situation or the challenges which Fortress and its stakeholders are currently facing.

[52] However, such proceedings would require additional filing of court materials and reports which would distract funds and efforts from the primary goal of finding a viable solution.

[53] IQ, Fortress and the Monitor all believe that the maintenance of the CCAA proceedings and the Stay remain appropriate in the circumstances, especially given the current negotiations.

## 2. The Amendment to the Interim Financing

[54] In December 2019, this Court approved an Interim Financing Agreement as part of the Initial Order which confirmed interim financing to be provided to Fortress by IQ, up to an amount of \$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%)).

[55] The Interim Financing Agreement was amended several times. The maximum amount of interim financing which can be advanced to and borrowed by Fortress currently stands at \$33,800,000, which is secured by an increased Interim Lender Charge in the

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<sup>4</sup> *Bankruptcy and Insolvency Act*, L.R.C. 1985, c. B-3.



amount of \$40,560,000 (i.e. the total amount of the interim financing, plus twenty percent (20%)).

[56] IQ, Fortress and the Monitor have worked on revised cash-flow projections and a budget to the Interim Financing Agreement (the “**Revised Cash-Flow Projections**”). According to the Revised Cash-Flow Projections set out in the Monitor’s Twenty-First Report, Fortress requires additional funding in the amount of approximately \$4.5 million, over and above the interim financing which IQ has already committed to fund to Fortress in the aggregate amount of \$33,300,000.

[57] IQ has obtained the necessary governmental authorizations to be able to advance to Fortress such additional interim financing and has prepared a draft Seventh Amending Agreement to the Interim Financing Agreement.<sup>5</sup>

[58] The Seventh Amending Agreement, provides that, subject to the conditions set out thereunder, IQ is prepared to increase the interim financing to be provided to Fortress by an additional amount of \$4.5 million - for total amount of \$38.3 million to be secured by an increased Interim Lender Charge in the total amount of \$45,960,000 (representing, once again, the total amount of the interim financing which has and will be provided by IQ to Fortress, plus twenty percent (20%)).

[59] 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, including by funding the costs necessary to allow a transaction to be concluded in respect of Fortress’ assets. IQ remains the only party willing to advance more money towards the restructuring of Fortress. It is thus highly unlikely that alternative financing can be arranged.

[60] No creditor will be materially prejudiced as a result of the increase in interim financing.

[61] The approval of the Seventh Amending Agreement to the Interim Financing Agreement, and the corresponding increase of the Interim Lender Charge are appropriate in the circumstances and supported by the Monitor.

**FOR THESE REASONS, THE COURT:**

[62] **GRANTS** the *Application for the Issuance of an Order Extending the Stay Period and Approving a Seventh Amending Agreement to the Interim Financing Agreement* (the “**Application**”);

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<sup>5</sup> Exhibit R-2.

[63] **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;

[64] **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 January 31, 2024;

[65] **APPROVES** the Seventh Amending Agreement (the "**Seventh 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 \$38,300,000, 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**") and by the Seventh 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 and the Sixth 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 Revised Cash-Flow Projections (as defined in the Application) attached as an appendix to the Twenty-First Report, which Revised Cash-Flow Projections are hereby approved;

[66] **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 \$45,960,000 (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 and the Seventh 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.

[67] **APPROVES** the activities of the Monitor, up to the date of this Order as described in the Twenty-First Report of the Monitor and in its testimony at the hearing, thereby fulfilling its obligations pursuant to the CCAA and the orders of this Court up until the date of this Order;

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

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

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MARTIN F. SHEEHAN, J.S.C.

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Hearing date: September 26, 2023