

FORCE FILED



No. S-248267
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44,
THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF SAN INDUSTRIES LTD.,

AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: Deloitte Restructuring Inc. (the "Monitor"), in its capacity as Court-appointed Monitor of San Industries Ltd. and those parties listed on Schedule "A" (collectively, the "San Group" or the "Petitioners").

To: The Service List

TAKE NOTICE that an application will be made by the Monitor at the courthouse at 800 Smithe Street, Vancouver, British Columbia on May 7, 2025, at 10 a.m. for the orders set out in Part 1 below.

The Monitor estimates that the application will take 2 hours.

This application is not within the jurisdiction of an associate judge. Justice Stephens is seized of this matter.

Part 1: ORDERS SOUGHT

1. The Monitor seeks the following orders:
 - a) a **"Stay Extension & DIP Increase Order"**, substantially in the form attached as **Schedule "B"** hereto, approving: (i) an extension of the stay of proceedings with respect to the Petitioners up to and including July 18, 2025; and (ii) an increase in

the Interim Lending Facility and corresponding increase in the Interim Lender's Charge (each as defined in the Second Amended and Restated Initial Order dated December 19, 2024 (the "**SARIO**")), to a maximum of \$7,000,000; and

- b) an "**Inventory Sale Process Approval Order**", substantially in the form attached as **Schedule "C"** hereto, approving the Proposal for Orderly Sale by Auction and Liquidation of Lumber Inventory between Tradewest Asset Solutions Inc., and the Monitor (the "**Inventory Sale Agreement**") and authorizing the Monitor to sell the Petitioners' Remaining Inventory (as defined below) pursuant to the process contemplated by the Inventory Sale Agreement (the "**Inventory Sale Process**")

(collectively, the "**Orders**").

2. The Monitor may also seek such other orders as counsel for the Monitor may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

Introduction and Background

3. On November 29, 2024, this Court granted an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the "**CCAA**") with respect to the Petitioners. Under the Initial Order, this Court granted, among other things, certain enhanced powers to the Monitor.

4. On December 9, 2024, this Court granted an amended and restated initial order and on December 19, 2024, this Court granted the SARIO which, among other things, granted the Monitor further enhanced powers.

5. On January 16, 2025, this Court approved a sales and investment solicitation process (the "**SISP**") with respect to certain of the Petitioners' business and assets. That same day, this Court granted an order that, among other things, extended the stay of proceedings up to and including May 30, 2025, and increased the Interim Lender's Charge and the total amount of borrowings under the Interim Lending Facility to a maximum of \$5,000,000.

6. As is further set out in detail in the Sixth Report of the Monitor, dated April 30, 2025 (the "**Sixth Report**"), since the approval of the SISP, the Monitor has been working to implement the SISP and otherwise advance the Petitioners' restructuring under the CCAA.

7. In order to continue to advance these CCAA proceedings and maximize value for the San Group's stakeholders, the Monitor now seeks approval of orders: (i) extending the stay of proceedings to July 18, 2025, with a corresponding \$2 million increase in the Interim Financing Facility; and (ii) permitting the Monitor to sell the San Group's Remaining Inventory, which is not being marketed pursuant to the SISP.

8. Capitalized terms not defined in this Notice of Application shall have the meanings given to them in the Sixth Report.

The Need for an Extension of the Stay of Proceedings

9. The current stay of proceedings expires on May 30, 2025. Given the timeline of these proceedings and status of San Group's restructuring efforts, the Monitor is of the view that a further extension to the stay of proceedings up to and including July 18, 2025 (the "**Stay Extension**") is both appropriate and necessary.

10. In particular, the SISP contemplates the following key dates (with defined terms as in the SISP):

- a) a Final Bid Deadline of April 30, 2025;
- b) a Definitive Agreement Deadline of May 30, 2025;
- c) an Approval Application on or about June 16, 2025 (subject to Court availability);
and
- d) an Outside Closing Date of June 30, 2025.

11. Accordingly, the proposed Stay Extension will allow the Monitor and the Petitioners sufficient time to, among other things, review and consider the bids received pursuant to the SISP, bring an application before this Court for a sale approval, and consummate any transaction approved by this Court.

The Need for Increased Funding

12. As set out in the cash flow forecast included in the Sixth Report, the Petitioners require a further increase to the Interim Lending Facility and a corresponding further increase in the Interim Lender's Charge from \$5,000,000 to \$7,000,000 (representing an increase of \$2,000,000) (the "**DIP Increase**") to provide the liquidity required to operate during the proposed Stay Extension period.

13. The proposed DIP Increase is necessary to provide the Petitioners and the Monitor sufficient liquidity to, among other things, continue to administer the SISP, maintain the value of the Petitioners' assets while in care and maintenance, pursuing the outstanding insurance claims related to the Petitioners' business and assets, and administer the proposed Inventory Sale Process.

The Inventory Sale Process

14. Following the commencement of these CCAA proceedings, in January 2025, the Langley Plant and the Coulson Mill (two of the San Group's primary operational locations) were placed on care and maintenance and all inventory production and processing ceased. All sales staff were terminated and only limited inventory sales have occurred since that time.

15. The San Group has significant remaining inventory, in particular the inventory located at the Coulson Mill, Langley Plant, and San Forest Product Plant (collectively, the "**Remaining Inventory**"). In the Monitor's view, this Remaining Inventory should be liquidated to generate value for the San Group estate. Given certain challenges, including the lack of sales staff, complexities and uncertainties surrounding US trade regulations, and the logistical challenges of

arranging trucking companies to deliver product, the Monitor is of the view it is not feasible to sell the Remaining Inventory through the San Group's previous sales channels.

16. The Monitor has therefore engaged Tradewest Asset Solutions Inc. ("**Tradewest**") to, subject to Court approval, undertake the Inventory Sale Process for the Remaining Inventory.

17. The proposed Inventory Sale Process can be summarized as follows:

- (a) Tradewest will approach potential interested parties, including the San Group's previous customers, to seek private sale bids on blocks of the Remaining Inventory;
- (b) if required, a phase 2 auction of any other Remaining Inventory will then occur;
- (c) the Monitor will have the right to approve each private brokered sale, acting reasonably;
- (d) Tradewest will receive a commission fee of 6% on gross sale proceeds of up to \$1,000,000, and 8% on any gross sales proceeds that exceed \$1,000,000;
- (e) the Monitor will cover Tradewest's costs of travel and accommodation to Port Alberni, up to a maximum of \$5,000; and
- (f) Tradewest will be responsible for the various costs associated with cataloguing, marketing, staff, sale preparation and supervision of the removal of inventory.

Part 3: LEGAL BASIS

The Stay Extension is Necessary and Appropriate

18. A stay of proceedings is the "central tool" by which this Court maintains the status quo for a debtor company, allowing it the necessary time, flexibility, and "breathing room" to carry out a supervised restructuring or organized sales process while continuing its ongoing operations.

***Canada v. Canada North Group Inc., 2021 SCC 30
at para. 19 [Canada North]; 1057863 B.C. Ltd.
(Re), 2022 BCSC 876, paras. 31, 35***

19. The baseline considerations and requirements for a stay extension are that a stay is "appropriate" and that the debtor company subject to the CCAA is acting in good faith and with due diligence.

CCAA, ss. 11.02(2)-(3).

20. As discussed above, the proposed Stay Extension is needed to provide the necessary time, flexibility, and "breathing room" for the Monitor to continue to advance the Petitioners' CCAA proceedings, in particular with respect to the SISP.

21. The Monitor does not believe any of the Petitioners' creditors will be materially prejudiced by the Stay Extension and is of the view that a further stay extension is necessary and appropriate in the circumstances.

The DIP Increase is Necessary and Appropriate

22. Section 11.2(1) of the CCAA gives this Court the authority to grant a charge, in an amount the court considers appropriate, to secure interim financing provided during the course of CCAA proceedings. Subsection 11.2(4) sets out the following non-exhaustive factors for the Court on to consider on an application for interim financing:

- a) the period during which the company is expected to be in CCAA protection;
- b) how the company's business and financial affairs are to be managed during the proceedings;
- c) whether the loan would enhance the proposes for a successful restructuring;
- d) the nature and value of the company's property;
- e) whether any creditor would be materially prejudiced as a result of the security or the charge; and
- f) the Monitor's view.

23. Having regard to the Petitioners' current financial needs and the progress of these CCAA proceedings, the Monitor submits that granting the DIP Increase is both prudent and appropriate in the circumstances and meets the non-exhaustive list of statutory factors set out in s. 11.2(4) of the CCAA. In particular, providing the Petitioners with the additional liquidity afforded by the DIP Increase will allow the Monitor to take the steps contemplated during the proposed Stay Extension, as described above and in the Sixth Report, to the benefit of the San Group estate. The Monitor does not believe any creditor will be materially prejudiced by the approval of the DIP Increase.

The Auction Agreement is Necessary and Appropriate

24. In exercising their broad powers to facilitate restructurings under the CCAA, courts consider a number of factors in connection with the approval of a sale process, including, *inter alia*:

- a) whether a transaction is warranted at this time;
- b) whether the sale will benefit the whole economic community;
- c) whether creditors have a *bona fide* reason to object to a sale of the business; and
- d) whether there is a better viable alternative.

Nortel Networks Corp. Re, 2009 CarswellOnt 4467, [2009] O.J. No. 3169, at para 49; Brainhunter Inc., Re, 2009 CarwellOnt 8207, [2009] O.J. No. 5578, at para 13.

25. Courts have also held that the factors set out in section 36(3) of the CCAA, relative to the approval of an eventual transaction, are relevant considerations in approving a sale process. The factors enumerated under section 36 are:

- a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b) whether the monitor approved the process leading to the proposed sale or disposition;
- c) whether the monitor filed with the Court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d) the extent to which creditors were consulted;
- e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, s. 36(3).

26. Courts have also considered additional factors in approving a sale process under the CCAA:

- a) the fairness, transparency and integrity of the proposed process;
- b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- c) whether the sales process will, in the circumstances, optimize the chances of securing the best possible price for the assets for sale.

Walter Energy Canada Holdings Inc., 2016 BCSC 1076 at paras 20-21

27. In addition to the broad authority to approve a sale of a debtor's assets pursuant to section 36, section 11 of the CCAA grants this Court broad discretion to make any order that it considers appropriate in the circumstances.

CCAA, s. 11; *Canada North* at paras. 21,138

28. The Monitor is of the opinion that:

- a) the Inventory Sale Process will allow for the Remaining Inventory to be properly marketed and the market sufficiently canvassed to maximize realizations for the Remaining Inventory in the circumstances;

- b) the proposed Inventory Sale Process is fair, transparent, and reasonable;
- c) Tradewest is well-suited to undertake the Inventory Sale Process, being a full service auction and appraisal firm with significant experience in the sale of forest products, sawmill related goods and equipment;
- d) the terms of Tradewest's commission fee and costs are reasonable in the circumstances;
- e) selling the Remaining Inventory through the Inventory Sale Process will be more beneficial to the San Group's stakeholders than a sale under a bankruptcy; and
- f) selling the Remaining Inventory through the Inventory Sale Process is in the best interests of the San Group's stakeholders.

29. The Monitor has consulted with the San Group's senior secured lenders, who the Monitor understands are supportive of the proposed Inventory Sale Process.

30. The Monitor respectfully submits that, in these circumstances, it is reasonable, appropriate, and necessary that the proposed Inventory Sale Process and Inventory Sale Agreement be approved.

Part 4: MATERIAL TO BE RELIED ON

- 1. Sixth Report of the Monitor, dated April 30, 2025; and
- 2. such further and other materials as counsel may advise.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: April 30, 2025



Signature of lawyer for the Monitor
Peter L. Rubin / Claire Hildebrand

To be completed by the court only:

Order made
 in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____ Signature of Judge Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

Schedule "A"

Petitioners

Acorn Forest Products Ltd.
Axon Lumber Ltd.
Coulson Manufacturing 2017 Ltd.
San Cedar Direct Sales Ltd.
San Forest Products Ltd.
San Holdings Inc.
Super-Cut Lumber Industries Ltd.
1224676 B.C. Ltd.
1260729 B.C. Ltd.
Mountainside Logging Ltd.
1170518 B.C. Ltd.
1175465 B.C. Ltd.
San Farming Ltd.
San Forest Specialty Ltd.
San Terminals Inc.

Stay Extension

2. The Stay Period with respect to the Petitioners is hereby extended up to and including July 18, 2025.

Interim Lending Facility and Interim Lender's Charge

3. Paragraph 44 of the SARIO is hereby amended such that the total amount of borrowings under the Interim Lending Facility with respect to the Borrowers is increased to a maximum of \$7,000,000.

4. The Interim Lender's Charge is correspondingly increased to a maximum of \$7,000,000. The Interim Lender's Charge shall secure all amounts advanced to the Borrowers under the Interim Lending Facility in accordance with the SARIO and this Order, including any amounts owing under the Interim Lending Facility that the Interim Lender transfers or assigns to the Business Development Bank of Canada by way of a syndication or participation.

Other

5. Endorsement of this Order by counsel appearing on this application other than counsel for the Monitor is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Monitor
Peter L. Rubin

BY THE COURT.

Registrar

Schedule "A"

Petitioners

Acorn Forest Products Ltd.
Axon Lumber Ltd.
Coulson Manufacturing 2017 Ltd.
San Cedar Direct Sales Ltd.
San Forest Products Ltd.
San Holdings Inc.
Super-Cut Lumber Industries Ltd.
1224676 B.C. Ltd.
1260729 B.C. Ltd.
Mountainside Logging Ltd.
1170518 B.C. Ltd.
1175465 B.C. Ltd.
San Farming Ltd.
San Forest Specialty Ltd.
San Terminals Inc.

Schedule "B"

Appearance List

COUNSEL NAME	PARTY REPRESENTED

hereby approved and the Monitor is authorized, but not directed, to sell the Inventory pursuant to the Inventory Sale Agreement and the terms of this Order.

2. The Monitor is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the sale of the Inventory, and the Monitor shall not incur any liability as a result thereof.

3. Upon the closing of a transaction or transactions (each, a "**Transaction**") for the sale of the Inventory (the "**Sold Inventory**") to a purchaser or purchasers (each, a "**Purchaser**"), all of the Petitioners' right, title and interest in and to the Sold Inventory shall be sold, transferred and vest absolutely in the Purchaser of such Sold Inventory, free and clear of, and from, any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trust (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, or otherwise in respect of that Sold Inventory (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Second Amended and Restated Initial Order of this Court dated December 19, 2024, and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registration systems.

4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Sold Inventory shall stand in the place and stead of the Sold Inventory, and from and after the closing of a Transaction for Sold Inventory, all Claims shall attach to the net proceeds from the Transaction of the Sold Inventory with the same priority as they had with respect to the Sold Inventory immediately prior to the sale, as if the Sold Inventory had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) the application for a bankruptcy order in respect of the Petitioners now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**") and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made by, or in respect of, the Petitioners;

the vesting of the Sold Inventory in a Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioners and shall not be void or voidable by creditors of the Petitioners, nor shall it constitute nor be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. The Monitor may apply for such further or other directions as may be necessary or desirable to give effect to this Order, including without limitation the discharge of its powers and duties under this Order.

7. Endorsement of this Order by counsel appearing on this application other than counsel for the Monitor is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Monitor,
Peter L. Rubin

BY THE COURT.

Registrar

Schedule "A"

Petitioners

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San Forest Specialty Ltd.
San Terminals Inc.

Schedule "B"

COUNSEL NAME	PARTY REPRESENTED