

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

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

DATED DECEMBER 20, 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. 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' financial 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, amongst other things, significantly shortened the stay extension and deferred approval of the 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, amongst 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. provided an update on the Debtors' financial position;
 - iv. provided 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 these CCAA Proceedings for the same day.
10. On October 16, 2023, the Monitor provided the Court with a third report (the "**Third Report**") that requested 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**").
11. On October 17, 2023, the Court granted the DIP Increase Order.
12. On October 23, 2023, the Monitor provided the Court with a fourth report (the "**Fourth Report**") that:
 - i. provided an update on the activities of the Debtor and the Monitor since the First Report;
 - ii. provided an update on the Subject Transactions;
 - iii. provided an overview of the Second Cash Flow Statement;
 - iv. requested further amendments to the Amended and Restated Initial Orders (the "**Second ARIOs**") including an extension of the stay of proceedings until January 31, 2024; and
 - v. requested the SISP Order.
13. On October 25, 2023, the Court granted the Second ARIOs and the SISP Order.

PURPOSE

14. The purpose of this fifth report (the "**Fifth Report**") is to provide information to the Court on:
 - i. the Debtors' activities since the Fourth Report;
 - ii. the Monitor's activities since the Fourth Report;
 - iii. an update on the financial position of the Debtors; and
 - iv. an update on the SISP, including the results of the Phase 1 Bid Deadline.

TERMS OF REFERENCE AND DISCLAIMER

15. In preparing this Fifth 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**"). In respect to the Information:

- 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 Fifth 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.
16. Future oriented financial information referred to in this Fifth 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.
 17. Unless otherwise indicated, the Monitor's understanding of the factual matters expressed in this Fifth Report concerning the Debtors and their businesses are based on the Information and not independent factual determinations made by the Monitor.
 18. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars. Amounts converted from United States dollars have been converted at an exchange rate of 1.36:1.
 19. Capitalized terms not otherwise defined herein are as defined in the various materials filed with the Court in these CCAA Proceedings which can be found on the Monitor's website at: <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods> (the "**Monitors Website**").

ACTIVITIES OF THE DEBTORS

20. Since the Fourth Report, the activities of the Debtors have included, but have not been limited to the following:
- i. working in conjunction with the Monitor and the CRO in order to collect outstanding accounts receivable and sell remaining inventory;
 - ii. participating in discussions with BDC regarding an ongoing insurance claim;
 - iii. working to prepare its facilities for the off season and consolidating inventory holdings to reduce operating costs;
 - iv. working in conjunction with the Monitor and the CRO to reduce headcount levels by approximately 81%;
 - v. participating in discussions with representatives from the Canada Revenue Agency (“**CRA**”) regarding pre-filing excise tax amounts and other administrative matters;
 - vi. assisting the Monitor and the CRO in their efforts to collect the Subject Transaction amounts as further discussed herein;
 - vii. working in conjunction with the Monitor, the CRO and the Applicant to respond to a cyber incident impacting certain customers discussed further herein (the “**Cyber Incident**”);
 - viii. participating in discussion with interested parties to the SISP and assisting the Monitor in addressing due diligence questions and information requests;
 - ix. providing regular updates, and financial information to the Monitor, the CRO and the Applicant; and
 - x. working in consultation with the Monitor and the CRO to update weekly cash flow variance reports.
21. The Monitor would like to advise the Court that Management and the CRO have cooperated fully and been helpful to the Monitor in the performance of its duties since the Fourth Report.

ACTIVITIES OF THE MONITOR

22. Since the Fourth Report, the activities of the Monitor have included, but have not been limited to the following:
- i. reviewing and approving all disbursements of the Debtors;
 - ii. reviewing reporting to the Applicant regarding availability under the DIP Facility;
 - iii. participating in discussions with representatives from CRA;
 - iv. participating in discussions with and issuing correspondence to a promissory note holder who is currently in arrears to the Debtors;
 - v. participating in regular update calls with Management regarding sales and approving all sales to customers;
 - vi. participating in calls with key stakeholders and or their representatives;
 - vii. participating in weekly calls with representatives from BDC and BDC Capital;
 - viii. participating in weekly calls with the Applicant;
 - ix. participating in regular calls with Management and the CRO;
 - x. preparation of and review weekly variance reports pertaining to the consolidated receipts and disbursements of the Debtors as compared to that contained within the Second Cash Flow Statement;
 - xi. pursuing the collection of the Subject Transaction amounts and other accounts receivable as further discussed herein; and
 - xii. completing administrative activities pertaining to the SISP as further described herein.

FINANCIAL POSITION OF THE DEBTORS

23. In its Fourth Report, the Monitor provided the Court with the Second Cash Flow Statement representing Management's best estimate of the consolidated projected receipts and disbursements for 17-week period from October 16, 2023 to February 4, 2024. The table herein summarizes the actual receipts and disbursements of the Debtors for period October 16 to December 10, 2023 as compared to the Second Cash Flow Statement (the "**Variance Report**").

South Shore Seafoods Group Variance Report				
Opening Ending Description	16-Oct-23 10-Dec-23 Forecast	16-Oct-23 10-Dec-23 Actual	Variance	Variance
Opening line of credit position	(9,359,422)	(9,361,461)	(2,039)	0%
Operating inflows				
Collection of pre-filing accounts receivable	4,966,502	3,861,002	(1,105,500)	-22%
Collection of new and post-filing sales	1,510,044	2,096,245	586,202	39%
Collection of subject transaction amounts	-	169,282	169,282	n/a
Collection of HST	103,048	106,828	3,780	4%
Other	-	8,000	8,000	n/a
	<u>6,579,594</u>	<u>6,241,357</u>	<u>(338,237)</u>	<u>-5%</u>
Operating outflows				
Payment of existing post-filing accounts payable	400,402	392,861	7,540	2%
Critical pre-filing cost of goods sold	162,675	197,231	(34,556)	-21%
Cost of goods sold	147,406	151,087	(3,681)	-2%
Fixed operating expenses	315,124	209,388	105,736	34%
Compensation, remittances and benefits	580,060	597,372	(17,312)	-3%
Operating leases	4,480	4,480	-	0%
Insurance	216,823	240,909	(24,087)	-11%
Bank charges	7,256	13,823	(6,567)	-91%
Rent and Property taxes	52,125	46,903	5,223	10%
Other	12,644	4,966	7,678	61%
	<u>1,898,994</u>	<u>1,859,020</u>	<u>39,974</u>	<u>2%</u>
Non-operating outflows				
Interest payments	519,849	524,002	(4,153)	-1%
Repayment of advance from R. Arsenault	65,000	-	65,000	n/a
	<u>584,849</u>	<u>524,002</u>	<u>60,847</u>	<u>10%</u>
Restructuring items				
Professional fees	881,053	700,991	180,062	20%
Intercompany				
Inflow	-	13,384,299	13,384,299	n/a
Outflow	-	13,361,310	(13,361,310)	n/a
	<u>-</u>	<u>22,990</u>	<u>22,990</u>	<u>n/a</u>
Net weekly cash flow	3,214,698	3,180,335	(34,363)	-1%
Ending line of credit position	<u>(6,144,724)</u>	<u>(6,181,126)</u>	<u>(36,402)</u>	<u>-1%</u>
Credit facilities	Forecast	Actual	Variance	Variance
Ending net Existing Credit Facility balance	(186,191)	(459,018)	(272,827)	-147%
Ending DIP Facility balance	(5,958,533)	(5,722,108)	236,425	4%
	<u>(6,144,724)</u>	<u>(6,181,126)</u>	<u>(36,402)</u>	<u>1%</u>

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

- i. Total collections from customers (i.e. collection of pre-filing accounts receivable and new post-filing sales) are approximately \$350,017 (or 5%) lower than forecast in totality. This unfavorable variance is primarily attributable to slower than anticipated collections pertaining to pre-filing accounts receivable (approximately 22% behind forecast) offset by faster than anticipated collections on new post-filing sales (approximately 39% ahead

of forecast) and collections on the Subject Transactions. The unfavourable variance pertaining to existing accounts receivable is primarily attributable to two accounts as further described below:

*Export Development Canada ("**EDC**") Insurance Policies ("the "**EDC Insurance**")*

- a) The Second Cash Flow Statement contemplated a collection of approximately \$538,000 relating to an unpaid account receivable balance insured under the EDC Insurance (the "**EDC AR**").
- b) The Monitor and Management have participated in several discussions with representatives of EDC regarding the EDC AR. As at the date of this Fifth Report, the Monitor and Management continue to work with representatives from EDC to facilitate the collection of this claim.

Cyber Incident

- c) The Second Cash Flow Statement contemplated the collection of approximately \$233,000 from a customer. On November 29, 2023, after following up with the customer, the Monitor was informed by the Debtors' sales team that the customer had received a suspicious email advising them that the Debtors' banking information had changed and that a payment of approximately \$132,000 was directed to this inaccurate bank account.
- d) The Monitor and CRO, with cooperation from the Applicant quickly took steps to investigate this matter and issued correspondence to all customers advising that the Debtors' banking information had not changed.
- e) On December 15, 2023, the Monitor participated in a telephone discussion with the customer's agent regarding the Cyber Incident and an agreed upon a path forward for both parties to pursue.
- f) The Monitor will update the Court with respect to the Cyber Incident in due course.

Subject Transactions

- g) The Monitor previously provided the Court with information regarding the Subject Transactions in its Supplemental Report to the First Report with further updates in all subsequent reports.
 - h) As contained in the Variance Report, the Debtors' collected a payment from Customer A that was approximately 50% of the balance.
 - i) On December 14, 2023 the Debtors received a payment in full from Customer B and on December 19, 2023, the Debtors received the remaining payment from Customer A.
 - j) As at the date of the Fifth Report, the Subject Transactions have been collected in full.
- ii. The unfavourable variance of \$34,556 pertaining to the payment of critical pre-filing cost of goods sold is structural in nature and relates to payments approved by the Monitor as critical to continued operations. Material payments approved by the Monitor which make up most of the variance are further summarized below:
- a) approximately \$20,000 of certification fees relating to seafood certifications maintained by the Debtors allowing them to sell seafood products; and
 - b) approximately \$10,100 of employee expense claims pertaining to supplies acquired to support fishing operations (i.e. bait, fuel, etc.).
- iii. The favorable variance pertaining to fixed operating costs is attributable to the following:
- a) an approximate \$42,000 structural variance attributable to a lower number of temporary foreign workers requesting transportation to their home counties than contemplated in the Second Cash Flow Statement; and
 - b) an approximate \$63,000 of timing related variances attributable to the billing cycles applicable to core fixed operating expenses such as utilities.
- iv. The unfavorable variance pertaining to bank charges is structural in nature and relates to banking fees exceeding that which were original contemplated in the Second Cash Flow Statement.

- v. The favorable variance of \$65,000 pertaining to the repayment of an advance received from a stakeholder is timing in nature. At this time the Monitor continues to negotiate repayment of this amount with the stakeholder.
 - vi. The favorable variance pertaining to professional fees is a timing variance. As at the date of the Fifth Report, the Monitor is aware of approximately \$198,000 of professional invoices which are anticipated to be paid prior to December 22, 2023.
25. As summarized and discussed herein, the Debtors actual receipts and disbursements are materially in line with that contained within the Second Cash Flow Statement with the Debtors reporting a cumulative net negative cash flow variance of approximately one percent.
26. In addition to the Variance Report discussed above, the Monitor provides the following update pertaining to other matters impacting the financial position of the Debtors:
- i. As at October 16, 2023 (i.e. the starting point of the Second Cash Flow Statement) the Debtors maintained accounts receivable of approximately \$7,300,000. As at December 10, 2023, accounts receivable remaining to collect is approximately \$4,100,000. With the exception of the two accounts discussed herein (i.e. the EDC AR and Cyber Incident account receivable), collection of accounts receivable has continued generally in the normal course.
 - ii. As at October 16, 2023 the Debtors maintained inventory of approximately \$4,000,000. As at December 10, 2023, inventory remaining to be sold is approximately \$1,200,000. Conversion of inventory to accounts receivable has been slower than contemplated in the Second Cash Flow Statement primarily due to market conditions within the seafood industry and the nature of the remaining product held. The Monitor, CRO and Management continue to work diligently to monetize remaining inventory of the Debtors.
 - iii. Based on the working capital accounts discussed herein, the Monitor anticipates that the Existing Facility will be extinguished in the near-term allowing future monetization of working capital to reduce the borrowings under the DIP Facility.
27. Based on the Debtors' financial performance as at the date of this report, the Monitor is of the view that the existing DIP Facility limit (i.e. \$7,000,000) is sufficient to support the Debtors' continued operations under the current stay period.

SISP UPDATE

28. Subsequent to the granting of the SISP Order, the Monitor undertook the following marketing activities pursuant to the SISP (the "**Marketing Activities**"):
 - i. provided the Teaser to 52 interested parties identified by the Debtors, the Monitor, the CRO and other key stakeholders;
 - ii. advertised the SISP in the November 15, 2023 and November 18, 2023 editions of each of the Telegraph Journal, Daily Gleaner and Times & Transcript;
 - iii. advertised the SISP in the November 11, 2023, and November 18, 2023 editions of the Guardian;
 - iv. advertised the SISP with AllAtlantic for the period of November 9 to November 23, 2023; and
 - v. advertised the SISP with Insolvency Insider commencing on November 20, 2023.
29. As a result of the Marketing Activities the Monitor executed 27 non-disclosure agreements which allowed parties access to the Monitor's virtual data room and confidential information memorandum.
30. As at the Phase 1 Bid Deadline, the Monitor received several non-binding expressions of interest (the "**Phase 1 Bids**") from parties interested in acquiring all or portions of the Debtors' operations.
31. On December 13, 2023, the Monitor provided a summary of the Phase 1 Bids to the Applicant, BDC, BDC Capital and MTTCI.
32. After consultation with the above noted key stakeholders, and pursuant to the terms of the SISP Procedures, on December 15, 2023, the Monitor informed certain parties they had been deemed to be Qualified Phase 1 Bidders.
33. As at the date of this Fifth Report, the Monitor is encouraged by the results of the SISP to date and the cooperation received from the Debtors. The Monitor will continue to work in concert with the CRO in order to assist Qualified Phase 1 Bidders in their due diligence prior to the Phase 2 Bid Deadline of January 12, 2024.

CONCLUSION

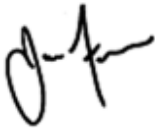
34. The Fifth Report has been prepared to provide this Court with information regarding the Debtors' activities since the Fourth Report, the Monitor's activities since the Fourth Report, an update regarding the financial position of the Debtors, and update the Court on the outcome of the SISP to date.

All of which is respectfully submitted this 20th day of December 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