

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.

TWENTIETH REPORT OF THE MONITOR
September 11, 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 September 12, 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 twentieth report of the Monitor (the “**Twentieth Report**”) is to provide the Court with information regarding:
 - (a) the activities of EGR and the Monitor from June 10, 2024, the date of the nineteenth report of the Monitor (the “**Nineteenth Report**”), filed in connection with the previous motion to extend the Stay Period granted in the CCAA Proceedings, to the date of this Twentieth Report;
 - (b) EGR’s cash flow results for the 14-week period ended August 23, 2024, with a comparison to forecast amounts in the 17-week cash flow forecast that was included in the Nineteenth Report;

- (c) EGR's revised cash flow forecast (the "**Revised Cash Flow Forecast**") for the 17-week period from August 26, 2024 to December 20, 2024, and the Monitor's comments thereon;
 - (d) the status of the Tax Litigation;
 - (e) the status of the Third Party Mareva Injunction;
 - (f) EGR's requested extension of the Stay Period up to and including December 12, 2024 (the "**Stay Extension Period**"); and
 - (g) the Monitor's conclusions and recommendations in respect thereof.
5. This Twentieth Report should be read in conjunction with the Affidavit of Atef Salama sworn September 5, 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 Twentieth 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 Twentieth 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 Twentieth 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 NINETEENTH REPORT

11. The activities of EGR since the last stay extension motion, heard June 12, 2024, 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 NINETEENTH REPORT

12. Since the Nineteenth 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 May 31, 2024. The GST/HST filing for the June and July 2024 periods are currently under review by CRA;
- (c) communicated with EGR's restructuring counsel regarding developments in the CCAA Proceedings and Tax Counsel regarding the status of the Tax Litigation; and
- (d) 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 14-week period ended August 23, 2024 (the "**Reporting Period**"), as compared to the corresponding weeks in the cash flow forecast included in the Nineteenth Report.

Express Gold Refining Ltd.				
Summary of Actual versus Forecast Cash Flows				
For the 14-week period from May 21, 2024 to August 23, 2024				
(\$CAD '000s)				
Unaudited				
	Actual	Forecast	Variance	Note
Receipts				
Collection from Sales and Accounts Receivable	20,265	20,732	(467)	A
HST refunds	1,237	1,315	(78)	B
Interest, exchange gains / (losses), and other	(10)	9	(19)	
Total Receipts	21,492	22,056	(564)	
Disbursements				
Purchases	(19,883)	(19,902)	19	
Customer accounts and hedging	(1,020)	-	(1,020)	C
Salaries and wages	(251)	(235)	(16)	
Consulting and professional fees	(20)	(21)	1	
General Administrative Expenses	(60)	(61)	1	
Insurance	(33)	(49)	16	
Rent	(50)	(50)	-	
Advertising and promotion	(13)	(17)	4	
Vehicle	(5)	(9)	4	
Freight	(25)	(38)	13	
Income Tax	-	(12)	12	
Total Disbursements	(21,360)	(20,394)	(966)	
Litigation Costs	(450)	(600)	150	D
Restructuring Costs	(233)	(330)	97	E
Total Litigation and Restructuring Costs	(683)	(930)	247	
Net Operating Cash Flow	(551)	732	(1,283)	
Opening Operating Cash	1,426	1,425	1	
Ending Operating Cash	875	2,157	(1,282)	
Opening Trading Cash	1,173	-	1,173	
Ending Trading Cash	1,719	-	1,719	

14. EGR's actual net cash outflow for the Reporting Period was \$551,000 compared to forecast net cash inflow of \$732,000, resulting in an unfavourable variance of \$1.3 million. The following are the reasons for the major variances, identified by the Notes in the table above:

- A** An unfavourable variance of \$467,000 in sales receipts is a permanent difference due to lower than expected volume of transactions during the Reporting Period;
- B** An unfavourable variance of \$78,000 in HST refunds is a permanent difference due to lower than expected volume of transactions resulting in reduced receipts from net tax refunds;
- C** An unfavourable variance of \$1.0 million in customer accounts and hedging is a permanent difference that relates to i) \$816,000 advance against a customer's gold held at EGR and, ii) \$204,000 deposited into EGR's trading account, which is used primarily for hedging activities to support EGR's finance and operations functions. EGR's trade accounts held approximately \$1.7 million in cash as of August 23, 2024, up from \$1.2 million as of May 21, 2024;
- D** A favourable variance of \$150,000 in litigation costs is a timing difference that will reverse in the future;
- E** A favourable variance of \$97,000 in restructuring costs is a timing difference that 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 August 26, 2024 to December 20, 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 operating account cash balance on August 26, 2024 was \$875,000. The forecast cash flow surplus for the Revised Cash Flow Period before litigation and restructuring costs is estimated to be approximately \$1.9 million. Litigation and

restructuring costs in connection with the Tax Litigation and these CCAA proceedings are estimated to be approximately \$600,000 and \$430,000, 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 \$774,000, resulting in an estimated ending cash balance of \$1.6 million on December 20, 2024.

18. EGR's opening trading account cash balance on August 26, 2024 was \$1.7 million. The Revised Cash Flow Forecast does not assume any changes to this cash balance during the Revised Cash Flow Period; movement in the trading account is dependent on EGR's operational and hedging requirements, as well as fluctuations in foreign exchange and commodity prices, with cash requirements funded by the operating account, resulting in a net effect of zero.
19. Accordingly, the Applicant is expected to have sufficient liquidity to operate during the proposed Stay Extension Period.
20. 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.
21. 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.

22. 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.
23. 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 Twentieth Report.
24. 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 TAX LITIGATION

25. 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 June 2025, and closing arguments scheduled for September 2025.
26. The Tax Court booked a further case conference for January 29, 2024, which was adjourned to February 26, 2024.

27. Following the February 26, 2024 case conference, EGR advised the Monitor that a trial judge had been assigned and the trial would proceed according to the timeline set out in paragraph 25, above, subject to closing arguments potentially being moved to October or November 2025. The Monitor understands the following pre-trial steps have also been established:
- (a) September 30, 2024: lists of documents to be relied upon to be sent to the Tax Court;
 - (b) October 15, 2024: witness lists and will say statements to be exchanged;
 - (c) October 30, 2024: expert reports to be filed;
 - (d) November 15, 2024: expert rebuttal reports to be filed;
 - (e) November 30, 2024: expert sur-rebuttal reports to be filed.
28. EGR and its counsel have further advised the Monitor that they are engaged in discussions with CRA/DOJ regarding:
- (a) potential admissions, as noted at paragraph 11 of the Salama Affidavit, including at meetings held March 27, May 1, June 5, July 4 and July 25, 2024 (with further meeting schedules for September 2024); and
 - (b) next steps in the CCAA proceeding, including exploration of potential restructuring strategies.

THIRD PARTY MAREVA INJUNCTION

29. 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.

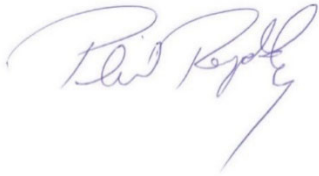
30. Following Justice Myers' Endorsement, counsel to CTIC and EGR have been collaborating and continuing discussions on a proposed form of production order pursuant to which the scope of EGR's document production would be circumscribed. While certain issues remain to be resolved, the Monitor remains hopeful that a resolution can be achieved without the need for advice and directions from this Court.

STAY EXTENSION

31. The current Stay Period expires on September 12, 2024. EGR is seeking an extension of the Stay Period up to and including December 12, 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) work towards a resolution of the Tax Litigation with CRA; and
 - (c) determine next steps in respect of the CCAA Proceedings.
32. As described above, the Revised Cash Flow Statement indicates that EGR will have sufficient liquidity during the Stay Extension Period.
33. In the Monitor's view, EGR has acted and continues to act in good faith and with due diligence in these CCAA Proceedings.
34. The Monitor supports EGR's request for the extension of the Stay Period to December 12, 2024.

All of which is respectfully submitted this 11th day of September, 2024.

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



Philip J. Reynolds, LIT
Senior Vice-President



Warren Leung, LIT
Senior Vice-President

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.

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PROCEEDING COMMENCED AT TORONTO

TWENTIETH REPORT OF THE MONITOR

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