

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF CATALYST PAPER CORPORATION
AND OTHER PETITIONERS

PETITIONERS

RESPONSE TO NOTICE OF APPLICATION

Filed by: Canexus Chemicals Canada LP

THIS IS A RESPONSE TO the Notice of Application filed by the Petitioners on March 16, 2012.

Part 1: ORDERS CONSENTED TO

The Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application: none.

Part 2: ORDERS OPPOSED

The Meeting Order and the Claims Procedure Order in respect of the "Commencement Date". The Commencement Date should be January 17, 2012, the date of the commencement of the initial CBCA restructuring proceedings.

The Sale and Investor Solicitation Order should be adjourned until the draft Stalking Horse Agreement and details of the Expense Reimbursement (quantum and priority) are known.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Orders sought except to the extent objected to above.

Part 4: FACTUAL BASIS

1. Canexus Chemicals Canada LP (“Canexus”) has supplied and continues to supply caustic soda to Catalyst Paper Corporation (“Catalyst”) in accordance with a supply agreement entered into effective January 2007. In Catalyst’s own words outlined in earlier motion materials filed, Canexus is a “critical supplier” of caustic soda.
2. Catalyst’s restructuring proceedings commenced on January 17, 2012 when it sought and was granted protection under the CBCA.
3. The initial CBCA Order included an unusual request in the form of a stay of proceedings found at paragraph 34. In addition to seeking the unusual stay of proceedings, unlike the protections granted to suppliers under section 11.01 of the CCAA, there was no ability for suppliers to protect themselves by seeking cash on delivery (“COD”) protection and as such, unlike the CCAA, suppliers were forced to continue supplying goods and to extend credit to the Petitioners. The CBCA stay of proceedings were enforced as against Canexus to its detriment for the time period of January 17-31, 2012.
4. The Petitioners then filed for CCAA protection on January 31, 2012 and sought a further (aggressive) order as against the “critical suppliers” in the form of a critical suppliers’ charge granted on February 6, 2012. The Critical Suppliers’ Order provided for the ability to return to the Court after March 11, 2012 at which time the Petitioners continued to bear the burden in respect of the need for an appropriateness of a critical suppliers charge. Canexus has sought various information from the Petitioners and Monitor in respect of this proposed motion and await this information. Due to the intervening motions returnable on Wednesday March 21, 2012, the Petitioners and Monitor have been unable to supply the necessary information and instead the Critical Suppliers continue to be burdened by the Critical Suppliers’ Charge.
5. The filing of materials on the evening of March 16, 2012 in respect of the motions returnable on March 21st, marked the first time that it was made clear to Canexus as supplier that its pre-January 31, 2012 claims would be compromised. Prior to that time, Court filings and press releases suggested that this was and remained a restructuring of the secured and unsecured notes issued by Catalyst.
6. For the first time on March 16th it became clear that not only would pre-January 31, 2012 trade debt be compromised, but if the present form of Plan is approved for circulation and sanction, that the amounts incurred by suppliers during the course of the CBCA proceedings and as a direct result of the stay of proceedings and orders sought by the Petitioners while under Court protection, forcing a supplier to continue to supply goods and to extend credit involuntarily, would be compromised.

Part 5: LEGAL BASIS

Proposed Timelines

7. These restructuring proceedings were historically and remain currently a restructuring of the secured and unsecured notes issued by Catalyst. The unsecured creditors, even those who are critical suppliers, remain “outside the tent” of restructuring discussions and represent a minor portion of the actual Catalyst debt to be affected by the proposed Plan. (see section 3.5 and 3.8 of Monitor’s Fifth Report).

8. The timeline as set out in the Revised Plan is extremely aggressive. The Monitor itself has expressed concern that the timeline is unworkable and that it may not be able to meet the timelines in a fair manner. (see section 6.18 – 6.20 of the Monitor's Fifth Report).
9. The motion materials for what are arguably two of the more significant motions in the proceedings (other than the Critical Suppliers' Charge motion) were served on the evening of Friday March 16th for a motion returnable on March 21st. The Claims Bar Date is set for April 18th, the meeting of creditors only 3 business days later on April 23rd, responding materials for any opposing to a sanction hearing to be served on April 24th and Sanction hearing on April 25th.
10. These deadlines are self imposed and unnecessary. Other stakeholders who do not have the luxury of being involved in the restructuring discussions and who have not had the benefit of seeing earlier versions of the hundreds of pages of motion materials, should not be required to review and respond to such motions in the short time frame requested, nor should they be forced to participate in an expedited claims and meeting process. More importantly the Court should not be put in the position of having to make such significant decisions without the benefit of time.
11. The Monitor's Fifth Report seeks to identify some of the areas which the Monitor itself seeks to flag as unusual or requiring further review, but notes that the Monitor itself has not had time to comment on various issues in the Plan as outlined in the Monitor's Fifth Report including:
 - Distribution to Unsecured Creditors (para 3.16)
 - Fairness of the Plan (para 5.3)
 - Anticipated Recovery for Unsecured Creditors under the Plan (para 5.4)
 - There is only a passing reference to the fact that the Plan is on a substantive consolidated basis. This is a significant issue and more evidence is required to determine what effect this has on the unsecured creditors of individual Petitioner entities (para 3.4)
 - Petitioners' long term indebtedness on emergence from CCAA protection and its liquidity (para 5.4)
 - Deemed positive voting by Unsecured Creditors (para 6.14 – 6.17)
 - Recommendation of Stalking Horse Purchase Agreement (para 5.7)
 - Stalking Horse Expense Reimbursement (para 5.8)
12. The Court and those other stakeholders who may be adversely affected by the Plan, should have the benefit of the Monitor's comprehensive views and the time to consider and respond to these and other issues.
13. The CCAA provides the Petitioners protection from their creditors, but not without corresponding obligations, even within tight deadlines. Fairness, transparency and

openness towards all stakeholders cannot be compromised in the pursuit of a plan of arrangement.

Re Mecachrome Canada inc., 2009 QCCS 6355, at paragraph 48.

14. It is clear that the timeline is self imposed and there is room to extend the timelines being proposed. For example, there are significant conditions to be met within 21 days after the sanction hearing (paragraph 3.22 of the Monitor's Fifth Report). Furthermore, the alternative sales process proposes a timeline that is over 70 days post sanction hearing (paragraph 4.2 of the Monitor's Fifth Report). Presumably, the Petitioners have DIP financing to take them through this elongated process and such time period should therefore be available to be incorporated into the Plan and Claims Process as well.

"Commencement Date"

15. The central issue for Canexus at this time is in respect of the proposed date upon which suppliers can be compromised.
16. The proposed Plan and Meeting Order defines "Commencement Date" as January 31, 2012. This is important in that supplies to the Petitioners by trade creditors post January 31, 2012 will be Unaffected by the Plan, while supplies made pre-January 31, 2012 will be Affected Claims and as a result significantly compromised.
17. The Commencement Date for the proposed Plan and orders being sought should be January 17, 2012 being the actual commencement date for Catalyst's restructuring proceedings. January 17, 2012 is the date that Catalyst's restructuring proceedings effectively commenced, in the form of a CBCA restructuring. Significantly, January 17, 2012 is the date that the Petitioners sought and obtained a stay of proceedings which forced suppliers to continue to supply goods to Catalyst and continue to extend credit to Catalyst; while under the supervision of the Court. It is unclear whether the Court was advised as to the potential adverse affect that the stay of proceedings being sought without the additional protection of section 11.01 of the CCAA which provides that an order in respect of stay of proceedings must not have the effect of requiring the further advance of money or credit. However the adverse effect of the relief sought is now clear for the first time in the form of Plan before this Court. If the present form of Plan is approved for circulation and sanction, suppliers forced by Court order to supply to an insolvent company on credit during the CBCA proceeding will have their debt severely and adversely compromised without their consent.
18. Post filing supply of goods are regularly protected in practice and by Court order. In fact, this practice of not seeking to compromise post CCAA filing suppliers is recognized in the proposed plan and specifically in s. 19 of the CCAA.
19. Pursuant to section 19 of the CCAA the date on which claims may be compromised should be the date of the commencement of the CCAA proceedings or where a notice of intention to file a proposal is initiated, the earlier date.
20. The CBCA proceedings in this case, and the stay of proceedings sought thereunder, make this situation analogous to the filing of a notice of intention to file a proposal and as such the initial or commencement date of the Plan should be January 17, 2012. To have sought the protection of a CCAA-like stay of proceedings within the CBCA proceedings,

without the similar protections of s. 11.01 or 19(1) of the CCAA, offends the general principles of restructuring. The Petitioners should not be seeking such an aggressive and unjustified order from this Honourable Court.

21. The objective of the CCAA is contained in its preamble: to facilitate compromises and arrangements between companies and their creditors. Appropriateness is considered by the Supreme Court of Canada to be a "baseline consideration" in CCAA proceedings, assessed by determining whether the order sought advances the policy objectives of the CCAA. As noted by the SCC, "appropriateness extends not only to the purpose of the order, but also to the means it employs...chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit."

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60, at paragraph 70.

22. The solution is a simple one. The "Commencement Date" as referred to in the Plan, Meeting Order, Claims Procedure Order and related documents and notices can be amended to reflect January 17, 2012. Therefore, supplies rendered during the CBCA and CCAA will be protected as Unaffected Claims.

Part 6: MATERIAL TO BE RELIED ON

1. CBCA Interim Order dated January 17, 2012
2. CCAA Initial Order dated January 31, 2012
3. Affidavit #1 of Stephen Sutherland, dated March 20, 2012

The Respondent estimates that the application will take 15 minutes

- The Respondent has filed in this proceeding a document that contains its address for service.
- The Respondent has not filed in this proceeding a document that contains an address for service. Its ADDRESS FOR SERVICE is: 5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 (Telephone: 416-869-5623)

Stikeman Elliott LLP

per:



Signature of Lisa Hibert
lawyer for Canexus Corporation

Date: 20/Mar/2012

 Elizabeth Pillon / Kathryn Esaw

Schedule A
Response to Notice of Application filed by Canexus Corporation

Companies' Creditors Arrangement Act
RSC 1985, c C-36

General power of court

11. 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.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

- (a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or
- (b) requiring the further advance of money or credit.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

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