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COURT FILE NUMBER 25-2719774
COURT COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY
JUDICIAL CENTRE CALGARY



30939

MATTER IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, OF GS E&R CANADA INC.
APPLICANT GS E&R CANADA INC.

ENTERED

DOCUMENT APPLICATION FOR STAY EXTENSION AND RELATED RELIEF

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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Counsel for the Applicant, GS E&R Canada Inc.

This application will be heard as shown below:

DATE: **March 24, 2021**
TIME: 3:00 PM
WHERE: Edmonton Courthouse, via WEBEX
BEFORE WHOM: The Honourable Justice Mah

I. INTRODUCTION

1. On March 11, 2021, the Applicant, GS E&R Canada Inc. ("**E&R CANADA**"), filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to subsection 50.4(1) of the *Bankruptcy*

and *Insolvency Act* (the "**BIA**") and MNP Ltd. was appointed as the proposal trustee under the NOI (the "**Proposal Trustee**").

2. The NOI was filed to allow E&R CANADA to continue restructuring its business and affairs and to assess whether it is feasible and advisable, under the circumstances, to make a viable proposal to its creditors and to engage in a sale investment solicitation process (a "**SISP**").
3. As a result of the filing of the NOI, all proceedings against E&R CANADA and its assets were automatically stayed for an initial period of thirty (30) days (until April 10, 2021) (the "**Stay Period**").
4. For the reasons further described herein, E&R CANADA hereby seeks from this Court the issuance of an Order, providing for, *inter alia*:
 - (a) abridging the time for delivery and to deem service of this Application to be good and sufficient;
 - (b) extending the Stay Period for an additional period of forty-five (45) days (i.e. until **May 25, 2021**);
 - (c) granting each of the following professionals a priority charge over E&R CANADA's assets to secure the payment of their respective fees and disbursements incurred in connection with these proceedings up to an amount of \$300,000: (i) E&R CANADA's counsel; (ii) the Proposal Trustee; and (iii) the Proposal Trustee's counsel (the "**Administration Charge**");
 - (d) granting a priority charge over E&R CANADA's assets securing the payment of the amounts for which E&R CANADA may be called upon to indemnify its directors and officers, acting in such capacity during the post-NOI period, up to an amount of \$100,000 (the "**D&O Charge**"); and
 - (e) approving a SISP as described in the Proposal Trustee's First Report.

II. BACKGROUND

A. E&R CANADA's Business

5. E&R CANADA is a privately-owned company based in Calgary, Alberta. E&R CANADA's head office is located in Calgary, Alberta and its chief place of business is in Fort Nelson, British Columbia.
6. E&R CANADA's voting shares are entirely held by GS E&R Corp. ("E&R PARENT"), a body corporate with a registered address of 508, Nonhyeon-Ro, Gangnam-Gu, Seoul, Republic of Korea.
7. E&R CANADA's business focuses on energy exploration and production of a liquid rich natural gas in North East British Columbia, primarily from the Liard Basin. E&R CANADA is an operator, and has a 100% working interest in 147 gas wells. In addition, E&R CANADA has 7 satellite batteries, 265 km of pipelines, 1 compression station and 1 Natural Gas Liquid facility.
8. E&R CANADA has 4 full-time employees, most of whom are located in its office in Calgary, Alberta. E&R CANADA also retains 7 contractors to work in the field.

B. E&R CANADA's Indebtedness

9. For the last several years, E&R CANADA has recorded accumulated deficits due to low commodity prices and production decline. E&R CANADA revenue has plunged by 75% from 2014 to 2019. In the 2020 calendar year, E&R CANADA incurred a net loss of \$1,306,535.
10. These losses have been due to a variety of factors, including a significant reduction in gas prices and demand caused in part by the effects of the COVID-19 pandemic, and declining production rates due to the nature of the gas field. In 2020 E&R CANADA applied for conventional bank financing, but was unable to qualify, and E&R PARENT was forced to provide \$1.9 million in additional capital in order to cover operating expenses such as facility repairs, wages and taxes.
11. E&R CANADA's operations have been funded entirely by sales revenue, and by way of funding through paid-in capital increase from E&R PARENT.

12. As at February 28, 2021, E&R CANADA's principal assets pre-impairment* consisted of the following:

Nature	Book Value (CAD)
Cash	\$ 1,840,630
Oil and Gas Assets*	\$ 3,811,256
Non-Oil and Gas Assets	\$ 4,451,178
Accounts Receivable	\$ 751,963
Total:	\$ 10,855,027

* E&R CANADA is completing an impairment assessment of the carrying value of its oil and gas assets in accordance with IAS 36 "Impairment of assets", as the COVID-19 pandemic constitutes an impairment trigger for E&R CANADA due to its potential negative impact on the long term cashflows from the business. It is highly likely that these assets will be impaired, reducing their carrying values as reported above.

13. As at February 28, 2021, E&R CANADA's principal liabilities consisted of the following:

Nature	Book Value (CAD)
Accounts Payable	\$ 372,597
Asset Retirement Obligations	\$ 15,612,263
Total:	\$ 15,984,860

14. E&R CANADA has no secured creditors with the exception of those creditors who have registered security interests in the Alberta Personal Property Registry, as described below.
15. There are security interests registered against E&R CANADA's assets, including:

- (a) An all-present-and-after-acquired-property charge by the Toronto-Dominion Bank – this charge relates to \$475,000 in credit facilities, which is fully secured with a \$475,000 term deposit cash collateral.
 - (b) A serial number registration against a leased field truck by TDF Group Inc., with approximately \$32,500 owing and a lease term expiring October 31, 2022.
16. There is also an outstanding liability to the BC Oil and Gas Commission (“**BCOGC**”) as a security deposit for potential environmental reclamation costs, in the amount of \$4,313,938.

C. Previous Sale Attempts

17. Since 2019, E&R CANADA has made several attempts to sell its assets *en bloc* in order to mitigate its losses and ensure that its abandonment and reclamation obligations are assigned to a solvent purchaser.
18. Previous potential purchasers who have completed the due diligence phase include Crestmont Resources Ltd. (2019), MaxMin Resources LLC (2019) and Spoke Energy (2020). However, those efforts have proven unsuccessful, as these potential purchasers have failed to close any transaction

III. RESTRUCTURING EFFORTS SINCE THE FILING OF THE NOI

19. Since the filing of the NOI, E&R CANADA has taken the following steps:
- (a) Meeting with the Proposal Trustee and assisting in developing cash flow reports;
 - (b) Meeting with the Proposal Trustee with respect to upcoming discussions with the BCOGC;
 - (c) Meeting with its critical vendors and suppliers and answering their questions with respect to the NOI process;
 - (d) Meeting with Sayer Energy Advisors and the Proposal Trustee (“**Sayer**”) in order to develop a SISP and populate the data room with necessary information;

- (e) Reviewing its operating expenses, pursuing the collection of accounts receivable and taking other steps to ensure the company remains financially viable without recourse to interim financing during the restructuring process.

IV. GROUNDS FOR THE REQUESTED ORDERS

A. Stay Extension

- 20. E&R CANADA requires an extension of the Stay Period in order to, *inter alia*, continue the restructuring of its business and affairs, engage in a SISP, and attempt to make a viable proposal to its creditors.
- 21. It is believed that, in comparison with a forced sale, an extension of the Stay Period that will allow E&R CANADA to take these steps constitutes the best option for the realization of E&R CANADA's assets and the maximization of their value. The extension of the Stay Period will allow E&R CANADA to preserve the value of its business and assets as a whole by minimizing any disruptions while it conducts its restructuring, thereby ensuring that E&R CANADA's creditors are able to maximize their recovery. All stakeholders generally, including creditors, will benefit from these proceedings.
- 22. Management of E&R CANADA, in consultation with the Proposal Trustee, will continue to work in good faith on a restructuring path forward, which will include the cutting of costs, the maximization of returns, the pursuit of accounts receivable and the implementation of a viable exit strategy.
- 23. An extension of the Stay Period for a further period of forty-five (45) days will not materially prejudice any of E&R CANADA's creditors. In fact, to the contrary, absent an extension of the Stay Period:
 - (a) E&R CANADA will likely be forced to:
 - (i) shut-down its operations and risk its wells becoming orphaned and transferred to the care and custody of the BCOGC;
 - (ii) terminate all of its employees and contractor agreements, effective immediately; and
 - (iii) file or be deemed to have filed a voluntary assignment in bankruptcy;

- (b) E&R CANADA's efforts to restructure and put forward a Proposal will be abruptly terminated; and
 - (c) all of E&R CANADA's assets will have to be liquidated in the context of a bankruptcy scenario, on a piecemeal basis, where their value is expected to be significantly reduced.
24. As a result of these factors, E&R CANADA submits that if the requested stay extension is not granted and E&R CANADA is deemed to have made an assignment in bankruptcy, it expects that the position of E&R CANADA's creditors will materially deteriorate.
25. In the interim, all creditors of E&R CANADA will be kept apprised of the progress of E&R CANADA's efforts to restructure its operations by communicating with E&R CANADA and the Proposal Trustee.
26. E&R CANADA submits that it has acted and continues to act in good faith and with due diligence, with a view to maximizing value for the benefit of all of E&R CANADA's stakeholders.
27. E&R CANADA understands that the Proposal Trustee intends to file, in advance of the hearing of the present Application, its First Report with the Court supporting the extension of the Stay Period and the approval of the Administration Charge and D&O Charge, and the SISP as requested herein.

B. Administration Charge

28. The participation of the Proposal Trustee, the Proposal Trustee's counsel and E&R CANADA's counsel are essential to E&R CANADA's restructuring. Given the size and extent of the assets and the complexity of the proceedings, E&R CANADA seeks a \$300,000 Administration Charge over all of the assets, property and undertakings of E&R CANADA (the "**Property**") which shall secure the payments to be made to the foregoing professionals.
29. The Administration Charge is to rank in priority to all other encumbrances.

C. D&O Charge

30. In order to continue to carry on business, albeit on a limited basis, during these proceedings, E&R CANADA requires the active and committed involvement and continued participation of its directors and officers, who manage its business, commercial activities and internal affairs (collectively, the "**D&Os**").
31. Although E&R CANADA intends to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, the D&Os are nevertheless concerned about the possibility of personal liability in the context of the present proceedings.
32. Considering the risk to which the D&Os may be exposed to in assisting E&R CANADA during these proceedings, the D&Os require E&R CANADA to indemnify them for all liabilities which they may incur in the context of their roles after the filing of these proceedings.
33. Although E&R CANADA maintains directors and officers' liability insurance (the "**D&O Insurance**") for the benefit of the D&Os, the amount of the coverage set out in the D&O Insurance may potentially be insufficient to protect the D&Os from all of their potential liability, or subject to certain exclusions.
34. E&R CANADA therefore requests a D&O Charge in the amount of \$100,000 over its Property to indemnify the D&Os in respect of any liability which they may incur over the course of these proceedings.
35. E&R CANADA submits that the requested D&O Charge is reasonable and adequate given, notably, the potential exposure of the D&Os to personal liability.
36. E&R CANADA requests that the D&O Charge rank behind the Administration Charge.
37. E&R CANADA understands that the Proposal Trustee is supportive of the D&O Charge, including the amount thereof.

D. SISP

38. Following the filing of the NOI, E&R CANADA and the Proposal Trustee met with Sayer, a firm which has expertise in the marketing and sale of oil and gas related assets in Alberta

and British Columbia. As a result of that meeting, E&R CANADA, with the approval of the Proposal Trustee, considered it appropriate to develop a sales process to be run by the Proposal Trustee, with the assistance of Sayer, and to commence a formal SISP with the approval of this Honourable Court.

39. The proposed SISP is outlined in the Proposal Trustee's Report, and contemplates a process with the following steps and deadlines:

Milestones	Estimated Deadlines
Establishment of a virtual data room	Week of April 12, 2021
Commencement by Sayer of the issuance of a solicitation package (including teasers, confidential information memorandums and non-disclosure agreements).	Week of April 12, 2021
Placing of advertising	Week of April 12, 2021
Due Diligence End Date for Potential Bidders	May 13, 2021
Phase I Bid Deadline	May 13, 2021
Determination of the Successful Bidder(s)	Week of May 24, 2021
Approval Hearing	June, 2021
Closing of the transaction contemplated in the Successful Bid(s)	30 days after Court approval of sale(s)

V. REMEDY SOUGHT:

40. Considering the above, E&R CANADA submits that all of the applicable legal requirements have been met, and that it is therefore appropriate for this Court, under the circumstances, to take the following actions:
- (a) extend the stay of proceedings to May 25, 2021;
 - (b) abridge the time for delivery of this Application and deem service of this Application to be good and sufficient;

- (c) approve the Administration Charge in favour of E&R CANADA's counsel, the Proposal Trustee and the Proposal Trustee's Counsel in order to secure the payment of their fees in the context of the present proceedings;
- (d) approve the D&O Charge to indemnify the D&Os in respect of any liability which they may incur over the course of the present proceedings;
- (e) approve the ranking of the priorities as set forth above as between the Administration Charge and the D&O Charge, and ensure that each charge will rank ahead of any and all charges, security interests and encumbrances against E&R CANADA's assets;
- (f) approve the SISP as described herein, including the Proposal Trustee's engagement of Sayer; and
- (g) provide such other relief as may seem just and reasonable to this Honourable Court.

Affidavit or other evidence to be used in support of this application:

- 41. The Affidavit of Jungho Park, sworn on March ____, 2021.
- 42. The First Report of the Proposal Trustee.
- 43. Such further information as counsel may advise and as this Honourable Court may permit.

Applicable Acts and Regulations:

- 44. Rules 1.2, 1.3, 3.2(2)(d), 3.8, 11.27 and 13.5 of the *Alberta Rules of Court*, Alta Reg 124/2010.
- 45. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

Any Irregularity Complained of or Objection Relied on:

- 46. None

How the Application is proposed to be heard or considered:

47. By Webex.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the Applicant and against all persons claiming under the Applicant. You will be bound by any order that the Court makes, or another order might be given or other proceedings taken which the Applicant is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.