Mantle decision: Alberta courts approach to CCAA proceedings

February 23, 2024

Insolvent gravel pits operator, Mantle Materials Group Ltd. (Mantle), sought to convert restructuring proceedings under the *Bankruptcy and Insolvency Act* (BIA) into proceedings under the *Companies' Creditors Arrangement Act* (CCAA).

In a reported decision, the Alberta Court of King's Bench granted the conversion application and usefully outlined the legal basis for a conversion between restructuring regimes. Additionally, the Court addressed several features of the requested CCAA relief, including a contentious request to extend the stay of proceedings to a third party and to appoint a super-monitor.

The latest from the Mantle restructuring proceedings offers insight into how Alberta's courts will approach certain aspects of CCAA proceedings.

The decision

NOI conversion to CCAA

In approaching the primary issue, namely whether to allow Mantle's request to convert its extant BIA proceedings to proceedings under the CCAA, the Court reviewed the applicable tests set out in the legislation and case-law.

To begin, the Court concluded that Mantle was properly a "debtor company" within the meaning of the CCAA, and that Mantle had satisfied the lone statutory requirement for a conversion, namely that Mantle had not yet filed a proposal in the BIA proceedings.

Thereafter, the Court reviewed and applied several factors from Ontario case-law, which have been used by Canadian Courts as guidelines for the exercise of the Court's discretion to permit the conversion of a restructuring. In particular, the Court analyzed the purpose of the conversion and whether it would further the purposes of the CCAA. In the unique circumstances of this case, the Court held that the "remedial objectives" of a CCAA proceeding for Mantle would be to satisfy and remediate environmental obligations. The Court held this was an appropriate use of the CCAA, and in the circumstances, granted relief to convert the BIA proceedings to CCAA proceedings.

Extension of stay to RLF Canada

Following its analysis of Mantle's primary relief, the Court then considered several aspects of the proposed CCAA order.

One such significant issue was whether the CCAA stay of proceedings should be extended to include a third party, RLF Canada Holdings Limited (RLF Canada). Mantle was a wholly owned subsidiary of RLF Canada. Mantle sought protection for RLF Canada on the basis that Mantle shared management with RLF Canada, and a lack of stay would mean the shared management team would divert time and essentially be distracted from the Mantle restructuring.

This aspect of the relief was opposed by two of Mantle's secured creditors. Among other things, they argued that Section 11.04 of the CCAA prevents, or at least significantly restricts, the extension of the stay to third parties. That provision states that "no order made under section 11.02 has affect on any action, suit or proceeding against a person, other than the company in respect of whom the order is made, who is obligated under a letter of credit or guarantee in relation to the company."

In the result, the Court noted that Section 11.4 of the CCAA has been given narrower and broader interpretations from time to time, and that case-law has nevertheless held that it may be appropriate to grant a stay of proceedings, in exceptional circumstances, which might otherwise appear contrary to Section 11.04 of the CCAA.

On the facts in issue, the Court ruled that Mantle's environmental responsibilities "must be given priority" and thus there existed sufficiently exceptional circumstances to extend the stay to RLF Canada. The Court reasoned that the extended stay was necessary to ensure environmental clean-up of Mantle's properties was not further delayed.

Denial of enhanced monitor powers

One of the secured creditors of Mantle made a cross-application to enhance the Monitor's powers for the CCAA proceedings. The secured creditor argued that the proposed monitor, with increased powers, could handle the remaining reclamation work more efficiently than Mantle's management. The lender also argued that management was in a conflict and needed to be removed; however, the Court denied the request for a super-monitor.

Central to the Court's deliberation was the recognition that Mantle's existing management team had industry-specific knowledge and extensive experience that would assist environmental objectives. The Court also found defects in the lender's request based on a lack of evidence as to how the monitor, acting as a super-monitor, could effectively perform the necessary environmental work. In the result, the Court sided with the debtor's proposed form of relief.

Conclusion

This decision is noteworthy as it highlights the flexibility of the CCAA to address complex environmental remediation obligations. It is yet a further step in the Courts' interpretation and expansion of the *Redwater* decision.

From a practical standpoint, the case confirms that converting proceedings under the BIA to proceedings under the CCAA is a viable strategy in Alberta restructurings, provided the proposed conversion will achieve a legitimate purpose of the CCAA as broadly construed.

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