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COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE EDMONTON

DOCUMENT THIRD REPORT OF THE TRUSTEE IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ALASKA – ALBERTA RAILWAY DEVELOPMENT CORPORATION

DATE October 7, 2021

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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INTRODUCTION

1. On June 18, 2021 (the “Filing Date”), Alaska – Alberta Railway Development Corporation (“AARDC” or the “Company”), 7198362 Manitoba Ltd. (“719”) and 12703131 Canada Ltd. (“127”, collectively with AARDC and 719 “the “NOI Companies”) filed Notices of Intention to Make Proposals (the “NOIs”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act, RSC 1985, c B-3* (the “BIA”). MNP Ltd. consented to act as Trustee under the NOIs (the “Trustee”).
2. Upon filing its NOI, AARDC became subject to a statutory 30-day stay of proceedings pursuant to Section 69(1) of the BIA (the “Stay”). Two extensions of the Stay were granted by the Court of Queen’s Bench of Alberta (the “Court”) pursuant to which the Stay was extended to October 15, 2021.
3. The NOI proceedings were initiated following the receivership of the NOI Companies’ primary secured lender, Bridging Finance Inc. (“BFI”) and certain other entities and investment funds related to BFI (collectively, “Bridging”) pursuant to Orders granted by the Ontario Superior Court of Justice on April 30, 2021 and May 3, 2021. PricewaterhouseCoopers Inc. (“PwC”) acts as the Court-appointed Receiver of Bridging (the “Bridging Receiver”). On June 8, 2021, the Bridging Receiver issued a demand letter and a Notice of Intention to Enforce Security to AARDC pursuant to Section 244 of the BIA.
4. On July 7, 2021, the Trustee issued a material adverse change report for AARDC pursuant to Section 50(10) of the BIA based on the following:
 - 4.1. The Bridging Receiver advised the Trustee that it would only support an extension of the Stay for AARDC if an Interim Receiver was appointed in respect of AARDC. Due to the size and nature of Bridging’s claim, the Company did not have the ability to make a viable proposal without the Bridging Receiver’s support.
 - 4.2. Outside of Mr. Sean McCoshen (“McCoshen”), the sole director and shareholder for AARDC, there was no party with the corporate authority to act on behalf of the Company. The Trustee had been advised that McCoshen was under medical care and was not involved in the day-to-day operations of AARDC. Further, McCoshen had not been accessible to the Trustee other than through the Company’s former legal counsel, Dickinson Wright LLP (“Dickinson”), in addition to which, the Bridging Receiver had expressed concern regarding McCoshen’s activities in relation to the NOI Companies prior to the NOI filing.
 - 4.3. The parties charged with the management of the day-to-day activities of AARDC did not appear to have comprehensive information regarding the Company’s assets or the required authority to manage and direct AARDC’s operations through these proceedings.

5. On July 12, 2021, on application by PwC, the Court granted an Order appointing MNP Ltd. as Interim Receiver of AARDC during the NOI proceedings (the “Interim Receiver”).
6. Copies of the relevant documents relating to these proceedings are available on the Trustee’s website at <https://mnpdebt.ca/en/corporate/corporate-engagements/alaska-alberta-railway-development-corporation-7198362-manitoba-ltd-and-12703131-canada-ltd>.

NOTICE TO READER

7. In preparing this report and making comments herein, the Trustee has relied upon, certain unaudited, draft or internal financial information, including AARDC’s books and records, and information from other third-party sources (collectively, the “Information”). The Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards or other standards established by the Chartered Professional Accountants of Canada (the “Standards”). Additionally, none of the Trustee’s procedures were intended to disclose defalcations or other irregularities. If the Trustee were to perform additional procedures or to undertake an audit examination of the Information in accordance with the Standards, additional matters may have come to the Trustee’s attention. Accordingly, the Trustee does not express an opinion, nor does it provide any other form of assurance on the financial or other information presented herein. The Trustee may refine or alter its observations as further information is obtained or brought to its attention after the date of this report.
8. All amounts included herein are in Canadian dollars unless otherwise stated.

PURPOSE OF THE REPORT

- 9 The First Report of the Trustee was dated July 7, 2021 and the Second Report of the Trustee was dated August 17, 2021 (the “Second Report”).
- 10 This report represents the third report of the Trustee (the “Third Report” or “this report”). The purpose of the Third Report is to provide the Court with an update on the Company’s operations since the date of the Second Report and with additional information regarding the following applications returnable October 13, 2021 (the “October 13 Hearing”):
 - 10.1 An application by the Interim Receiver seeking a 45-day extension of the Stay for AARDC from October 15, 2021 to November 29, 2021 (the “Extension”);
 - 10.2 An application by the Interim Receiver seeking to expand the Interim Receiver’s powers set out in the Interim Receivership Order, to empower and authorize, but not obligate, the Interim Receiver to negotiate and file a proposal pursuant to Part III, Division I of the BIA on behalf of AARDC (the “AARDC Proposal”); and

- 10.3 Applications by the Trustee and the Interim Receiver seeking approval of their respective professional fees and disbursements as well as those of their legal counsel, Lawson Lundell LLP (“Lawson”) for the period ended September 30, 2021 as further set out herein and in the Second Report of the Interim Receiver dated October 7, 2021 (the “Second IR Report”).

BACKGROUND

11. AARDC was originally incorporated as 1788099 Alberta Ltd. (“178”) under the *Alberta Business Corporations Act* on February 3, 2017. 178 originally changed its name to Alberta – Alaska Railway Development Corporation and then to Alaska – Alberta Railway Development Corporation.
12. AARDC’s operations were undertaken to advance its stated purpose of building and operating a railway that would extend from Alberta to Alaska and allow for the transport of resource commodities to global markets via the ports of Southcentral Alaska. The Trustee understands that AARDC’s most notable milestones have been the granting of a Presidential Permit issued by former U.S. President, Donald J. Trump, granting permission to AARDC to construct, connect, operate and maintain railway facilities at the international border of the United States and Canada (the “Presidential Permit”) and the execution of a master agreement with the Alaska Railroad Corporation that includes cooperation in permitting, selection of right-of-way, economic terms and authorization to operate on their track and extend several portions of their system.

EXPANSION OF THE INTERIM RECEIVER’S POWERS

13. As further set out in the Second IR Report, the Trustee understands that the Bridging Receiver wishes to further explore the filing of the AARDC Proposal to preserve the Company’s business and assets such that they may be monetized in the future should such efforts be supported by Bridging or its successor. In particular, maintaining AARDC as a corporate entity is necessary to preserve the Presidential Permit as the impact of a bankruptcy on the Presidential Permit is unknown.
14. At the October 13 Hearing, the Interim Receiver is seeking to expand the Interim Receiver’s powers, as set out in the Interim Receivership Order, to empower and authorize, but not obligate, the Interim Receiver to negotiate and file the AARDC Proposal. In light of the Bridging Receiver’s support, the Trustee is also supportive of the expansion proposed by the Interim Receiver to its powers.

EXTENSION

15. Based on the Trustee’s review of AARDC’s operations and restructuring efforts to date, pursuant to Section 50.4(9) of the BIA, the Trustee is supportive of the Extension for AARDC on the following basis:
- 15.1. AARDC, under the oversight of the Interim Receiver is acting in good faith and with due diligence;

- 15.2. The Extension will provide an opportunity for the Interim Receiver to file the AARDC Proposal to preserve AARDC's business and assets (in particular the Presidential Permit) such that they may be monetized in the future;
 - 15.3. An updated Statement of Projected Cash Flow for the thirteen-week period ended December 31, 2021 is attached as "Schedule 1" to the Second IR Report (the "Updated Forecast"). The Updated Forecast reflects that AARDC has sufficient cash on hand to fund their operations during the Extension but does not include the payment of professional fees following September 30, 2021. The Interim Receiver is currently in discussions with the Bridging Receiver regarding the potential sponsorship of the AARDC Proposal, which may include further payment of professional fees post-September 30, 2021. In the event these discussions do not result in the AARDC Proposal being filed, AARDC will likely be deemed bankrupt;
 - 15.4. Bridging, through the Bridging Receiver, the only creditor with an economic interest in the Company's assets, supports the Extension; and
 - 15.5. The Bridging Receiver has advised that it may sponsor the AARDC Proposal and is having ongoing discussions with the Interim Receiver as to the potential nature and extent of this sponsorship.
16. Based on the above, the Trustee supports the Extension.

VARIANCE ANALYSIS

17. Attached as "Schedule 1" is the variance analysis (the "Variance Analysis") for the seven-week period ended October 1, 2021 (the "Variance Period"). The Variance Analysis is based on the Statement of Projected Cash Flow for the Fourteen Week Period Ended November 19, 2021 (the "Forecast") that is attached as "Schedule 1" to the First Report of the Interim Receiver dated August 17, 2021.
18. The Variance Analysis includes information as to timing and permanent variances reported during the Variance Period. AARDC reported the following permanent variances over \$10,000 during the Variance Period:
 - 18.1. A permanent positive variance of approximately \$113,000 from the return of a retainer from Dickinson, which is being held in trust pending a review of the source of the funds; and
 - 18.2. A negative variance of approximately \$11,100 for professional fees of the Interim Receiver and the Interim Receiver's legal counsel during the Forecast Period. This includes a permanent negative variance of approximately \$56,100 for as a result of additional work that was required to evaluate the Bridging Security, to obtain required backups of AARDC's electronic records and to consult with the Bridging Receiver on a strategy to monetize and maximize the value of the assets of AARDC. This was offset by a positive timing related variance.

PROFESSIONAL FEES AND DISBURSEMENTS


19. Attached as "Schedule 2" is a summary of the professional fees and disbursements of the Trustee and Lawson for the period ended September 30, 2021 (collectively, the "NOI Fees"). As set out therein, the Trustee's fees and disbursements totaled approximately \$53,700 plus GST for a total of approximately \$56,400. Also as set out therein, the Trustee's legal fees and disbursements totaled approximately \$7,700 plus GST for a total of approximately \$8,200. A portion of the NOI Fees were paid from a retainer that was provided to MNP Ltd. prior to the Filing Date and is being used to satisfy, to the extent possible, the professional fees and disbursements of the Trustee of AARDC, 719 and 127. The remaining balance of the NOI Fees were paid by the Interim Receiver.
20. At the October 13 Hearing, the Trustee is seeking approval of the Trustee's Professional Fees. The Trustee believes that significant value has been provided through the services performed by the Trustee and that the fees are fair, appropriate and reasonable in the circumstances. The Trustee notes that work was delegated to junior staff members of the Trustee and Lawson, as appropriate, in order to reduce professional fees.
21. The Trustee's Professional Fees were charged by the Trustee and Lawson at their standard hourly rates and, in the Trustee's experience, are comparable to the standard rates of other providers of similar services in Alberta. The Trustee will make copies of both their accounts and the accounts of Lawson (subject to redaction for privilege) available to the Court or any interested person upon further request.
22. At the October 13 Hearing, the Interim Receiver is also seeking approval of their professional fees and disbursements and those of their legal counsel, Lawson (collectively the "IR Fees"). The IR Fees are further described in the Second IR Report and were paid by the Interim Receiver.

CONCLUSION

23. The Trustee is supportive of the relief sought by the Interim Receiver at the October 13 Hearing for the reasons set out herein.

All of which is respectfully submitted this 7th day of October 2021.

MNP Ltd., in its capacity as Trustee under the Notice of Intention to Make a Proposal of Alaska – Alberta Railway Development Corporation and not in its personal or corporate capacity

Per: 

Vanessa Allen, B. Comm, CIRP, LIT
Senior Vice President

SCHEDULES

SCHEDULE 1

Alaska - Alberta Railway Development Corporation ("AARDC")
Variance Analysis
For the Seven Week Period Ended October 1, 2021

Week ending:	Forecast (F) Total	Actual (A) Total	Variance (A - F) Total	Notes
Receipts				
Miscellaneous receipts	\$ -	\$ 113,007	\$ 113,007	1
Total Receipts	-	113,007	113,007	
Disbursements				
Contractor fees	- 37,105	- 42,001	- 4,896	2
Rent	- 5,000	- 3,369	1,631	2
IT support	- 5,000	- 2,825	2,175	2
Insurance	- 5,400	- 5,375	25	2
Restructuring costs	- 95,000	- 106,069	11,069	3
Contingency	- 2,000	- 39	1,961	
Total Disbursements	- 149,505	- 159,679	- 10,174	
Net Cash Flow	-\$ 149,505	-\$ 46,671	\$ 102,834	

Bank Balance

Beginning cash balance	\$ 281,844	\$ 281,844	\$ -
Net cash flow	- 149,505	- 46,671	102,834
Ending bank balance	\$ 132,339	\$ 235,173	\$ 102,834

Notes:

1. A permanent positive variance of approximately \$113,000 from the return of a retainer from Dickinson, which is being held in trust pending a review of the source of the funds.
2. Represents a permanent variance as a result of receipts/ disbursements being higher/ lower than originally forecast.
3. Approximately \$56,100 represents a permanent negative variance as a result of professional fees and disbursements being higher than originally estimated. This was offset by a positive timing related variance.

SCHEDULE 2

Alaska - Alberta Railway Development Corporation ("AARDC") - NOI
Summary of Professional Fees and Disbursements for the Period Ended September 30, 2021

MNP Ltd.

Invoice date	Invoice number	Description	Professional fees	Disbursements	GST	Total	Notes
21-Jul-21	9940374	To June 28, 2021	\$ 17,741	\$ -	\$ 887	\$ 18,628	1
23-Jul-21	9942176	To July 12, 2021	19,701	-	985	20,686	1
03-Sep-21	9993901	To August 30, 2021	5,455	17	274	5,745	2
06-Oct-21	10029848	To September 30, 2021	10,793	-	540	11,332	2
			\$ 53,690	\$ 17	\$ 2,685	\$ 56,392	

Lawson Lundell LLP

Invoice date	Invoice number	Description	Professional fees	Disbursements	GST	Total	Notes
13-Jul-21	1121513	To July 13, 2021	\$ 7,679	\$ 84	\$ 388	\$ 8,150	1
			\$ 7,679	\$ 84	\$ 388	\$ 8,150	
Total Professional Fees and Disbursements			\$ 61,369	\$ 100	\$ 3,073	\$ 64,542	

Notes

1. Professional fees were allocated between AARDC, 7198362 Manitoba Ltd. and 12703131 Canada Ltd. all of whom were subject to NOI proceedings during the period ended July 12, 2021. These invoices were paid by the Interim Receiver.
2. These invoices were paid from a retainer received from AARDC prior to the Filing Date.