

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** IN THE MATTER OF THE RECEIVERSHIP OF SEAFIELD RESOURCES LTD.

**BEFORE:** Mr. Justice H. Wilton-Siegel

**COUNSEL:** *Wael Rostom and Stephen Brown-Okruhlik*, for the Receiver  
*Ashley Taylor*, for RMB Australia Holdings Limited and RMB Resources Inc.

**HEARD:** May 20, 2015

**ENDORSEMENT**

[1] The Receiver brought a motion seeking various relief in these proceedings. The Court heard the matter in chambers on May 19 and May 20, 2015, after which it granted an order dated May 20, 2015 (the "Order") indicating that written reasons would follow. This Endorsement sets out my written reasons for granting the Order. The Order addressed three principal matters which will be addressed in turn.

[2] First, the Receiver sought approval for a proposed sales and investment solicitation procedure (the "SISP"). The proposed SISP envisaged the usual two-stage process of solicitation of expressions of interest, followed by receipt of binding offers by parties deemed qualifying bidders after the first stage. In the first stage, parties who sign a confidentiality agreement will be provided with financial information, including a feasibility study for the mining project owned by the Debtor's Colombian subsidiary Minera Seafield SAS ("Minera"), which mining project is the principal asset of the Debtor.

[3] The principal creditor of the Debtor, RMB Australia Holdings Ltd. and RMB Resources Inc. (collectively, "RMB"), has security against all of the assets of the Debtor to secure outstanding loans under financing facilities in favour of the Debtor. It also has collateral security against the assets of Minera to secure a Minera guarantee of the RMB loans to the Debtor. The amount of the RMB claim against the Debtor is not currently expected to exceed the net enterprise value of the Debtor at current market prices for gold and silver.

[4] A complication in this proceeding is that RMB wishes to retain the option to credit bid its claim. The Receiver advises, and it would appear obvious, that potential purchasers are well aware of the potential for a credit bid by RMB, as well as of the approximate amount of the RMB claim. However, if RMB were to credit bid in the first stage of the SISP, the Receiver expects, and RMB advises, that RMB would either bid all of its claim, which given the anticipated value range would likely exclude any competing expressions of interest, or would not bid at all.

[5] The Receiver has proposed that RMB be allowed to defer making a bid until the second stage of the SISP and, more importantly, be permitted to review the expressions of interest received from third parties before making its credit bid. In effect, RMB would be entitled to make a stalking horse credit bid at the outset of the second stage of the SISP.

[6] The Court expressed a concern that such a provision would give RMB knowledge of the highest bid it had to meet, which information would not be available to the third party qualified bidders. On the other hand, the SISP provides that the amount of any credit bid by RMB will be communicated to the other qualified bidders. More importantly, the SISP further provides that RMB will not be able to raise any credit bid it makes. These two provisions effectively render any credit bid a floor price which third party bidders may or may not be willing to better. Further, in response to concerns of the Court, the SISP was amended to provide that any RMB bid in the second stage of the SISP may not exceed the amount of RMB's claim against the Debtor.

[7] To the Court's knowledge, this is not a structure for a SISP that has been employed in other insolvencies. However, the Receiver has advised the Court that it believes this structure will encourage rather than discourage bids by third parties. Specifically, it considers that the benefit of obtaining a credit bid from RMB that is less than the maximum amount of its claim outweighs any potential negative effect on the number or interest of third party bidders that may result from RMB's entitlement to review the third party expressions of interest prior to making any credit bid.

[8] While the Court continues to have reservations based on the possibility for unanticipated consequences of this arrangement, the Court has concluded that it should adopt the Receiver's recommendation and approve the SISP. It should be noted, however, that this decision turns in large measure on the particular facts in this proceeding, including the relationship between the expected enterprise value for any transaction generated by the SISP and the amount of the RMB claim against the Debtor. In addition, any third party bid for less than the amount of the RMB claim would require RMB's consent in view of its collateral security against the Minera assets. For these reasons, the proposed SISP is not necessarily an appropriate precedent in other insolvency situations.

[9] Second, the Receiver also seeks authority to assign the Debtor into bankruptcy. The principal, if not the sole, purpose of this action is to toll the limitation period under section 96 of the *Bankruptcy and Insolvency Act* (the "BIA"). The Receiver is of the view that the actions of the Debtor's board of directors in June 2014 in authorizing the execution of an employment agreement between David Prins, its chief executive officer, and Minera may constitute a "transaction at undervalue" for the purposes of section 96. The employment agreement between Mr. Prins and Minera reproduced Mr. Prins' existing contractual arrangements with the Debtor and added additional benefits in the event of a change of control. Under Colombian law, such benefits would have a priority over other claims in any reorganization of Minera, as defined for the purposes of such legislation.

[10] Mr. Prins opposes the relief sought. Essentially, he argues that the employment agreement between himself and Minera was properly authorized, that the terms were already

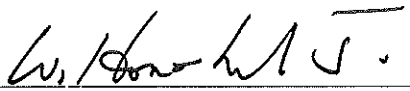
provided for under Colombian legislation, and that Columbia is the proper jurisdiction to adjudicate these issues.

[11] The Receiver says that its purpose in seeking this authority is solely to preserve its right to argue, as mentioned, that the resolution of the board of directors in June 2014 constituted a transaction that is subject to s. 96 of the BIA insofar as it transferred value from the Debtor and/or Minera to Mr. Prins.

[12] For the purposes of this motion, the important point is that an assignment in bankruptcy by the Debtor does not, by itself, affect Mr. Prins' rights against Minera, which he seeks to preserve and assert. Whether the Receiver can validly assert a claim in Ontario against Mr. Prins under the BIA or otherwise remains to be determined if the Receiver commences further proceedings. However, the Court is not in a position to assess the merits of the position of the Receiver or Mr. Prins on either the substantive issue or the jurisdictional issue. Nor is this the purpose of the hearing today. Given the very limited information before it, it is not appropriate for the Court to dismiss the Receiver's request on the ground that the Receiver has no legal basis for asserting such a claim under s. 96 of the BIA or otherwise.

[13] Based on the foregoing, I am satisfied that the Receiver should be authorized to assign the Debtor into bankruptcy for the purposes discussed above.

[14] Lastly, the Receiver also seeks approval of its first report. However, there are significant factual issues raised by Mr. Prins respecting the Debtor's circumstances and the Receiver's position, including but not limited to the matters pertaining to Mr. Prins' employment contracts with the Debtor and Minera. Accordingly, this matter is adjourned with a view to having this dispute be addressed later in these proceedings, if it becomes necessary to do so, on a more complete record. In doing so, however, I wish to state that I am not making any findings of any nature regarding either the Receiver's description of its activities or Mr. Prins' objections to that description.

  
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Wilton-Siegel J.

**Date:** June 12, 2015