



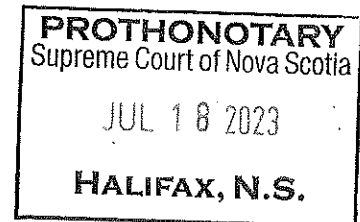
SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Hfx 5 2 5 5 9 4

District of: Nova Scotia
Division No.: 01-Halifax
Estate No.: 51-2939212
Court No.: 45461

IN THE MATTER OF: A Notice of Intention to Make a Proposal filed by **ATLANTIC SEA CUCUMBER LTD.** pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, B-3

NOTICE OF APPEAL



To: The parties listed in Schedule "A" via electronic mail.

And to: msi Spergel Inc., Proposal Trustee

Attn: Joshua Santimaw, Counsel (jsantimaw@boyneclarke.ca)

And to: The Office of the Superintendent of Bankruptcy Canada

Maritime Centre, 1505 Barrington Street, 16th Floor
Halifax, Nova Scotia, B3J 3K5
877/376-9902

APPELLANT APPEALS

The appellant, Atlantic Sea Cucumbers Limited (the "**Appellant**"), appeals under Rule 30 of the *Bankruptcy and Insolvency General Rules*, CRC, c. 368, subsection 192(4) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 ("**BIA**"), and Rule 7.19 of the *Nova Scotia Civil Procedure Rules* from the decision of Registrar Balmoukian, in their capacity as Registrar in Bankruptcy of the Supreme Court of Nova Scotia under the *BIA*, which decision provides that the Appellant's stay of proceedings under the *BIA* will not be extended for an interim period of ten (10) days pursuant to section 50.4(9) of the *BIA* until the contested application could be considered on a fulsome record (the "**Decision**").

DECISION BEING APPEALED

The Decision was made on July 17, 2023. It was made at Halifax, Nova Scotia. It was communicated to the Appellant verbally on July 17, 2023. A summary of the Decision is attached as Schedule 'B'.

GROUND OF APPEAL

The grounds of appeal are:

1. the Registrar erred in law by ruling on a contested application on the merits and granting the Decision, which was outside his jurisdiction and exceeded the authority granted to him under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3;
2. the Registrar erred in law by failing to direct that the contested application be scheduled to proceed before a Judge of the Supreme Court of Nova Scotia for a fulsome hearing and determination;
3. the Registrar erred in law by making a decision which went beyond the scope of the emergency hearing and effectively barred future statutory relief which would otherwise be available to the Appellant;
4. in the alternative, if the Registrar is found to have the jurisdiction to have properly heard the opposed application and granted the Decision, the Registrar made the following errors of law:
 - a. incorrectly interpreting subsection 50.4(9) of the *BIA*;
 - b. interpreting subsection 50.4(9) of the *BIA* in a manner that is inconsistent with the plain language, overall context, purpose and intention of the *BIA*;
 - c. interpreting subsection 50.4(9) of the *BIA* in a manner that fails to appropriately balance the rights of the parties affected by the Decision;

- d. failing to apply the relevant jurisprudence under section 50.4(9) of the *BIA*; and
5. such other grounds as counsel may submit and this Honourable Court may accept.

ORDER REQUESTED

The appellant says that the court should allow the appeal, that the Decision appealed from be set aside and that the Court should grant an order as follows:

- (a) extending the time for the Appellant to make a Proposal in these proceeding pursuant to section 50.4(9) of the *BIA* for a period of 45 days or until such time as the contested application can be heard by a Judge of the Supreme Court of Nova Scotia;
- (b) awarding the Appellant its costs of this appeal and the motion below; and
- (c) such further and other relief as the Appellant may request and this Honourable Court may deem just.

RECORD

The record of the proceeding under appeal is held by counsel for the Appellant at 202 – 80 Elizabeth Avenue, St. John's, Newfoundland. The record will consist of:

1. all materials filed in the Company's Application returnable May 31, 2023 seeking, among other things, an extension of the stay of proceedings under section 50.4(9) the *BIA* until July 15, 2023;
2. all materials filed in the Company's emergency Application returnable July 17, 2023 including:
 - a. the Affidavit of Songwen Gao dated 07 July 2023;
 - b. the Affidavit of Songwen Gao dated 11 July 2023;
 - c. the Proposal Trustee's Report dated 11 July 2023;
 - d. the Company's submissions for extension dated 17 July 2023;

- e. WTH's submissions for extension dated 17 July 2023;
 - f. the Letter of Justice Rosinski dated 13 July 2023; and
 - g. the email exchange between counsel (G. MacDonald and J. Santimaw) from
14/15 July 2023 concerning the expiry of the BIA extension period;
- 3. the written reasons of the Registrar (once released); and
 - 4. the transcript of the hearing held on July 17, 2023 (once obtained).

FILING AND DELIVERING DOCUMENTS

Any documents you file with the court must be filed at the office of the prothonotary, the Supreme Court of Nova Scotia, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 902.424.6900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

CONTACT INFORMATION

The appellant designates the following address:

Darren D. O'Keefe
Suite 202, 80 Elizabeth Ave.,
St. John's, NL, A1A 1W7
dokeefe@okeefesullivan.com
Tel: 709 699 3002
NSBS: 2022-0106

Documents delivered to this address are considered received by the Appellant on delivery.

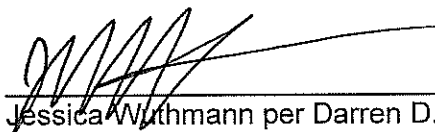
Further contact information is available from the prothonotary.

MOTION FOR DATE AND DIRECTIONS

At 11:00 a.m. on Tuesday, October 3, 2023, the Appellant will appear before a judge in Chambers at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia to make a motion for an order giving directions for the appeal and setting a date and time for the hearing of it. The judge may make an order or provide directions in your absence if you or your counsel fail to attend, and the court may determine the appeal without further notice to you.

Signature

Signed July 17, 2023

O'KEEFE & SULLIVAN

Jessica Wuthmann per Darren D. O'Keefe
Suite 202, 80 Elizabeth Ave.,
St. John's, NL, A1A 1W7
dokeefe@okeefesullivan.com

Counsel for the Appellant, Atlantic Sea
Cucumber Ltd.

Prothonotary's certificate

I certify that this notice of appeal was filed with the court on July 18, 2023.



Prothonotary

Caroline Molnes
Prothonotary

for Jessica Boutlier

SCHEDULE 'A'

Weihai Taiwei Haiyang Aquatic Food Co. Ltd

c/o Gavin MacDonald, Cox & Palmer

via email: gmacdonald@coxandpalmer.com; mkells@coxandpalmer.com

SCHEDULE "B"
SUMMARY OF THE DECISION

6. On July 17, 2023, Atlantic Sea Cucumbers Limited (the "**Company**") filed an emergency application ("**Application**") in connection with the proposal proceedings commenced by the Company under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "**BIA**") arising from the Notice of Intention to Make a Proposal (the "**NOI**") filed by the Company on May 1, 2023.
7. The Application sought to apply to a judge in General Chambers or to the Registrar in Bankruptcy in Halifax on July 17, 2023, for an Order:
 - a. abridging notice periods and service requirements pursuant to section 6 of the *Bankruptcy and Insolvency General Rules*; and
 - b. extending the time for the Applicant to make a Proposal in these proceedings by ten (10) days, pursuant to section 50.4(9) of the *BIA*.

Procedural History

8. The Company is a body corporate and is registered to carry on business in the Province of Nova Scotia.
9. On May 1, 2023, the Company filed the NOI pursuant to section 50.4(1) of the *BIA*. Pursuant to section 69 of the *BIA*, a debtor filing an NOI is automatically given the benefit of an initial 30 day stay of proceedings, which may be extended in increments of 45 days on sufficient cause pursuant to section 50.4(9) of the *BIA*.
10. The Company appeared before Registrar Balmoukian on May 31, 2023 seeking an Order extending the stay of proceedings for a further 45 days through and to July 15,

2023 pursuant to section 50.4(9) of the *BIA*. This extension was granted. As the 15 July 2023 is a Saturday, pursuant to Rule 94 of the *Rules of Civil Procedure*, the stay of proceedings under the NOI proceedings expires at the close of business on July 17, 2023.

Background of the Application

11. On July 13, 2023, the Company appeared before Justice Rosinski of the Nova Scotia Supreme Court (the "**Court**") in order to obtain an Order converting the *BIA* proposal proceedings into proceedings commenced under s.11 of the *Companies Creditors Arrangement Act*, R.S.C. 1985 c-36 (the "**CCAA**"). This application was opposed by a creditor of the Company, Weihai Taiwei Haiyang Aquatic Food Co. Ltd ("**WTH**").
12. By way of correspondence from the Court dated July 14, 2023, the Court declined to grant the Order converting the *BIA* proceedings into proceedings under the *CCAA* and indicated that written reasons were to follow.
13. By way of correspondence dated July 14, 2023 from counsel to the *msi* Spergel, in its capacity as Proposal Trustee of the Company, sought to clarify the meaning of His Lordship's statement that the matter would not be converted to a process under the *CCAA*. More specifically, clarity was sought as to whether the Court intended for the Company to continue its Division I proposal proceedings under the *BIA*, or whether the Court's ruling meant that the Company would be deemed bankrupt under s. 50.4(8) of the *BIA*. Counsel did not receive a response to this query.
14. Although the Court declined to convert the matter to a proceeding under the *CCAA*, the Company nonetheless wishes to continue the Division I *BIA* proceedings. The Company

also believes it is in the best interest of all stakeholders that the BIA Proceedings continue and that it is allowed to present a proposal to its creditors.

15. Given the ambiguity of the CCAA conversion ruling and the imminent expiry of the stay of proceedings, the Company brought the Application to obtain a short ten-day extension of the stay of proceedings under the *BIA*, on an emergency basis, to undertake the following:
 - a. Provide the Registrar with an opportunity to review the Second Report of the Proposal Trustee and consider the evidence of Songwen Gao as to (a) steps taken in furtherance of the BIA Proceeding to date, and (b) consider next steps to be taken in furtherance of the BIA Proceeding, including the implementation of the proposed sales and investor solicitation process that was originally contemplated to be executed within the proposed CCAA proceedings;
 - b. Make the appropriate submissions to the Registrar as to why the stay of proceedings under the BIA Proceeding should be extended for a further period of forty-five (45) days; and
 - c. The Company would propose a return date within ten (10) days for all parties, to make submissions on the within application for an extension of time under the BIA Proceeding.
16. The Company believed that a short extension to the NOI Proceeding for a period of ten (10) days would allow the Company to properly place its evidence and materials before the Registrar and seek a hearing for a further extension to complete the proposed sales process. The extension would also allow creditors, including but not limited to WTH, to make submissions as to why the extension should be granted or denied.

Decision on the Application

17. The Registrar in Bankruptcy of the Supreme Court of Nova Scotia heard the emergency Application on July 17, 2023. WTH appeared at and contested the Application.

18. At the hearing, the Registrar concluded that he would not extend the stay of proceedings under the BIA for the requested ten-day extension to allow for a hearing on a fulsome record. The Decision was communicated to the parties orally. As of today's date, the Decision has not been communicated in writing.