

Form 90.06

2023

C.A. No. 525584

Nova Scotia Court of Appeal

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, c. B-3



Notice of Appeal (General)



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 Cucumber Ltd, appeals from a decision dated Thursday, July 14, 2023, in the proceedings before the Supreme Court of Nova Scotia in Bankruptcy and Insolvency, identified as Court Number Hfx No. 525172 (Estate No. 51-2939212) made by the Honourable Justice Peter Rosinski. The effect of the decision is that the Appellant was denied the opportunity to continue its proceeding commenced as a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "**BIA**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "**CCAA**").

Order or decision appealed from

The decision was made on Friday, July 14, 2023 in Halifax, Nova Scotia. Attached as Schedule 'B' is the Honourable Justice Rosinski's letter dated July 14, 2023 communicating his decision and advising that reasons will follow.

Grounds of appeal

The grounds of appeal are

1. the learned Justice erred in law by misapplying section 11.6 of the CCAA as follows:
 - a. failing to articulate or apply the appropriate test to make an order under subsection 11.6 of the CCAA;
 - b. incorrectly interpreting subsection 11.6 of the CCAA by interpreting it in a manner that:
 - i. is inconsistent with the plain language, overall context, purpose and intention of the *BIA* and CCAA;
 - ii. fails to appropriately balance the rights of the parties affected by the decision;
 - iii. is inconsistent with the plain language, overall context, purpose and intention of the *BIA* and CCAA;
 - c. failing to apply the relevant jurisprudence under section 11.6 of the CCAA;
 - d. failing to weigh and consider all relevant principles under subsection 11.6 of the CCAA;
 - e. considering irrelevant principles under subsection 11.6 of the CCAA leading to

palpable and overriding errors in fact and law;

2. the learned Justice erred in law by misapplying section 11 of the CCAA as follows:
 - a. incorrectly interpreting section 11 of the CCAA in a manner that is inconsistent with the jurisprudence, plain language, and overall context, purpose and intention of the CCAA;
 - b. failing to articulate or apply the appropriate test to make an initial order under section 11 of the CCAA;
 - c. failing to weigh and consider all relevant principles under section 11.6 of the CCAA;
 - d. considering irrelevant principles under section 11.6 of the CCAA; and
3. the learned judge erred in law by refusing to abridge the time for service of the hearing of the matter;
4. the learned judge erred in law by failing to conclude that the Appellant is a debtor company to which the CCAA applies in accordance with section 3 of the CCAA; and
5. such other grounds as counsel may submit and this Honourable Court may accept.

Authority for appeal

The Appellant pleads and relies upon the following authorities for its Appeal:

- the *Nova Scotia Civil Procedure Rules* including Rule 90;
- the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 including section 193;
- the *Bankruptcy and Insolvency General Rules*, CRC c. 368 including section 31; and
- the *Judicature Act*, RSNS 1989, c. 240 including sections 7 and 38.

Order requested

The appellant says that the Court of Appeal should allow the appeal, set aside the decision, and make an order granting the relief sought by the Appellant including an order:

1. abridging notice periods and service requirements pursuant to section 11 of the CCAA;
2. declaring that the Appellant is a company to which the CCAA applies;
3. authorizing the continuation under the CCAA of the Appellant's proposal proceedings commenced under the BIA, pursuant to the NOI;
4. appointing MSI Spergel Inc. as an officer of this Honourable Court to monitor the business and financial affairs of the Appellant;
5. granting an administration charge of up to the maximum amount of \$300,000 over the property of the Company (the "**Administration Charge**"); and
6. such further and other relief as the Appellant may request and this Honourable Court deems just.

Motion for date and directions

The appeal will be heard on a time and date to be set by a judge of the Court of Appeal. The Appellant must not more than eighty days after the date this notice is filed, make a motion to a judge of the Court of Appeal to set that time and date and give directions. You will be notified of the motion.

Contact information

The Appellant designates the following address:

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NSBS: 2022-0106

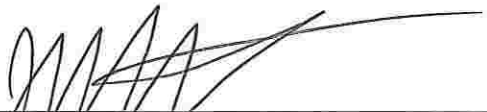
Documents delivered to this address will be considered received by the Appellant on delivery.

Further contact information is available to each party through the prothonotary.

Signature

Signed July 19, 2023

O'KEEFE & SULLIVAN

*Jessica
Wuthmann per* 

Darren D. O'Keefe
Counsel for the Appellant,
Atlantic Sea Cucumber Ltd.

Registrar's Certificate

I certify that this notice of appeal was filed with the court on July 19, 2023.



Caroline McInnes
Registrar

for Jessica
Bartlier

SCHEDULE 'A'

<p>O'KEEFE & SULLIVAN 80 Elizabeth Ave., 2nd Floor St. John's, NL A1A 1W7</p> <p>Darren D. O'Keefe Tel: 709.700.0911 darren@okeefeandcompany.com</p> <p>RECONSTRUCT LLP Royal Bank Plaza, South Tower 200 Bay Street Suite 2305, P.O. Box 120 Toronto, ON M5J 2J3</p> <p>Caitlin Fell (LSO #60091H) Tel: 416.613.8282 cfell@reconllp.com</p> <p>Shaun Parsons (LSO #81240A) Tel: 416.613.8284 sparsons@reconllp.com</p> <p>Fax: 416.613.8290</p> <p>Lawyers for the Company</p>	<p>ATLANTIC SEA CUCUMBER LTD 212 Pauls Point Rd, Hacketts Cove, NS B3Z 3K7</p> <p>Songwen Gao sam@atlanticseacucumber.ca</p> <p>The Company</p>
<p>BOYNECLARKE LLP 99 Wyse Road, Suite 600 Dartmouth, NS B3A 4S5</p> <p>Joshua J. Santimaw Tel: (902) 460-3451 jsantimaw@boyneclarke.ca</p> <p>Lawyer for the Proposal Trustee</p>	<p>MSI SPERGEL INC. 21 King Street West, Suite 1602, Hamilton, ON L8P 4W7</p> <p>Trevor Pringle Tel: (905) 527-2227 tpringle@spergel.ca</p> <p>The Proposal Trustee</p>
<p>ATLANTIC GOLDEN AGE HOLDING INC. 19 Carirnwel Close Halifax NS B3P 0A6</p> <p>samunisky@gmail.com</p> <p>A Secured Creditor</p>	<p>CANADA REVENUE AGENCY 4695 Shawinigan-Sud Blvd Shawinigan-Sud QC G9P 5H9</p>
<p>EXPORT DEVELOPMENT CANADA 150 Slater St., Ottawa, ON K1A 1K3</p>	<p>HALIFAX REGIONAL MUNICIPALITY PO Box 1749 Halifax, NS B3J 3A5</p>

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ATLANTIC CANADA OPPORTUNITIES AGENCY Blue Cross Centre 644 Main St. PO Box 6051. Moncton, NB E1C 9J8 Ghislain.martin@canada.ca	OFFICE OF SUPERINTENDENT OF BANKRUPTCY Maritime Centre, 1505 Barrington Street, 16th Floor, Halifax, NOVA SCOTIA, B3J 3K5, 877/376-9902

SCHEDULE "B"

JUSTICE PETER P. ROSINSKI
Supreme Court of Nova Scotia

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July 14, 2023

VIA EMAIL

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Dear Counsel:

RE: Atlantic Sea Cucumbers Ltd.
Hfx No. 525172

The present stay of proceedings expires on July 15, 2023. I heard the emergency motion between 2 and 5 PM on July 13, 2023. I am Chambers judge this week and had general chambers and appearance day as well as another emergency motion at 2 PM today.

I have been unable to create a decision supported by reasons in this frenetic time interval.

In order to ensure you have a result, I can advise you that I conclude that the application should be denied and that the matter not be converted to process under the CCAA. I will follow-up with written reasons as soon as I am able.

I direct you to file your submissions on costs no later than July 21, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Rosinski", written over a circular scribble.

Justice Peter P. Rosinski

PPR/vcc
c. Halifax Civil Scheduler