

**SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY**

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 APPLICATION IN CHAMBERS
SEEKING EMERGENCY RELIEF

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

The applicant requests an order against you.

The applicant is applying to a judge in General Chambers 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 10 days, commencing from and including the 15 day of July 2023, to and including the 25 day of July 2023 pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, to allow the Applicant to place materials before the Registrar and seek a further stay to complete its proposed sale process.

The applicant started this application by filing this notice on the date certified by the prothonotary.

GROUNDS FOR ORDER:

The applicant is applying for the order on the following grounds: See **Schedule "B"** attached.

EVIDENCE SUPPORTING APPLICATION:

The applicant offers the following affidavits in support of the application:

- (a) the affidavit of Songwen Gao, filed on 7 July 2023;
- (b) the affidavit of Songwen Gao filed on 17 July 2023; and
- (c) the first report of the Proposal Trustee filed on 11 July 2023.

A copy of each affidavit is to be delivered to you with this notice, and further affidavits may be delivered before the deadlines provided in Civil Procedure Rule 5 - Application.

YOU MAY PARTICIPATE:

You may file with the court a notice of contest, and any affidavits upon which you rely, no more than 5 days after this notice is delivered to you or you are otherwise notified of the application. Filing the notice of contest entitles you to notice of further steps in the application, including notice of further affidavits.

TIME, DATE, AND PLACE:

The application is to be heard by the judge in chambers at _____ on July 17, 2023 in the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia. The moving parties have set the application for a half hour or less. The moving parties say that the application will not require more time.

You have the right to be present and to be represented by counsel or to act on your own. If you are not present, the judge may proceed without you.

POSSIBLE ORDER AGAINST YOU:

The judge may grant a final order on the application without further notice to you if you fail to deliver your notice of contest on time, or if you or your counsel fail to appear in chambers at the above time, date, and place.

FILING AND DELIVERING DOCUMENTS:

Any documents you file with the court must be filed at the office of the prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (telephone #424-2900).

When you file a document you must immediately deliver a copy of it to the applicant and 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 applicant designates the following address:

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

Documents delivered to this address are considered received by the applicant. Further contact information is available from the prothonotary.

Signature

Signed July 17, 2023

O'KEEFE & SULLIVAN



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

Prothonotary's certificate

I certify that this notice of application was filed with the court on July 17, 2023.

Prothonotary

SCHEDULE "B"
FACTS SUPPORTING THE WITHIN APPLICATION

A. PROCEDURAL HISTORY:

1. The Applicant Atlantic Sea Cucumber Ltd. (the "**Company**") is a body corporate and is registered to carry on business in the Province of Nova Scotia.
2. On May 1, 2023, the Company filed a Notice of Intention to Make a Proposal (the "**Notice**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. 8-3, as amended from time to time (the "**BIA**").
3. 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.
4. The Company appeared before Registrar Balmoukian on May 31, 2023 seeking an Order extending the Stay for a further 45 days through and to July 15, 2023 pursuant to section 50.4(9) of the BIA. This extension was granted.
5. The Company filed an application with the Supreme Court of Nova Scotia on 06 July 2023 to have the within BIA Division I Proceeding (the "**NOI Proceeding**") converted to a proceeding under s.11 of the *Companies Creditors Arrangement Act*, R.S.C. 1985 c-36 (the "**CCAA**").
6. The CCAA conversion application was heard on 13 July 2023 by Justice Rosinski of the Nova Scotia Supreme Court. The Application was opposed by Weihai Taiwei Haiyang Aquatic Food Co. Ltd ("**WTH**").
7. On 14 July 2023 Justice Rosinski's office informed the Company that the application to convert to the CCAA was denied, with reasons to follow. Given the

Company sought continuation of the stay of proceedings under the CCAA, no ruling was sought on an extension of time under the NOI Proceeding.

8. As this Honourable Supreme Court has refused to convert the matter to a proceeding under the CCAA, the Company wishes to continue its proceedings under Division I of the BIA. The Company hereby applies for an extension of time in the NOI Proceeding, on an emergency basis, to undertake the following:

- a. Provide the Registrar with an opportunity to review the First Report of the Proposal Trustee and consider the evidence of Songwen Gao as to (a) steps taken in furtherance of the NOI Proceeding to date, and (b) consider next steps to be taken in furtherance of the NOI 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;
- c. The Company would propose a return date within ten (10) days for all parties, including WTH to make submissions on the within application for an extension of time under the NOI Proceeding.

B. MATERIAL FACTS:

9. As noted above, the Company sought and obtained a stay of proceedings in connection with the NOI Proceeding up to and including 15 July 2023. As the 15 July 2023 is a Saturday, pursuant to 94 of the Rules of Civil Procedure, the stay

of proceedings under the NOI proceedings expires at the close of business on 17 July 2023.

10. Following the last extension hearing on May 31, 2023, the Company has been considering all of its restructuring options. However, WTH has indicated from the onset that it will not support any proposal and that it maintains a “veto” over the within NOI Proceeding notwithstanding the existence of the secured creditor. While the Company disputes that WTH maintains a veto, it is clear that WTH will oppose any extension of time or other relief granted in favor of the Company.

11. The Company, in consultation with its advisors, concluded that the NOI Proceeding should be converted to a proceeding under the CCAA, primarily for the following reasons:

- a. the Company met the test to file for protection under the CCAA;
- b. cost savings would be realized as the Company would not be required to seek sequential 45 day stay extension Orders.
- c. The Company seeks to run a sale and investor solicitation process to market and sell the Company as a going concern. This value of the Company is primarily driven by sales contracts with foreign wholesalers and retailers. In order to be able to monetize non-transferable licenses or contracts of the Company, the Company intended to seek to a reverse vesting order (RVO) as part of any proposed going concern sale. The RVO, typically used in a CCAA proceeding, would allow the Company to vest out unwanted liabilities and maintain the assets, including non-transferable contracts and licenses free and clear of all claims and liabilities.

- d. The Company would be afforded greater breathing room to restructure its affairs in the CCAA with the absence of the six-month time limit imposed in the BIA proposal proceedings. The Company believes that it might take more than six months to canvass the market and complete the proposed sales process. The Company's main business is in the sale of a niche food product, sold and consumed primarily in Asian markets (China, Southeast Asia, etc.). On that basis, interested acquires would most likely be from those areas of the world, and undertaking due diligence and other transaction steps with foreign companies is likely to take additional time relative to a typical transaction with a Company located in Canada.
- e. The CCAA Process is a more suitable forum for the resolution of complex creditor disputes. In this proceeding, WTH has stated on the record that it intends to challenge the security of Atlantic Golden Age Holding Ltd. – a secured creditor and affiliate entity of the Company. This matter will likely require a separate hearing of a request for instructions.
- f. In a bankruptcy, the Company's product has little to no value and as a perishable food item might in fact be a liability. Continuing proceedings under the CCAA or the BIA would be advisable to maintain the Company as a going concern pending the outcome of the Directions Application.

12. The Company has been proceeding in good faith and with due diligence in the NOI Proceedings. This is also the position of the Proposal Trustee as outlined in the by the First Report of the Proposal Trustee. Unfortunately, given the timing of the CCAA conversion application and the ruling from Justice Rosinski, the Company does not have enough time to fully canvass its case for an extension of the NOI Proceedings before the Registrar. As a result, the Company seeks an

emergency order extending the NOI Proceedings for a period of ten (10) days such that the file can be placed before the Registrar for consideration on the foregoing points.

13. There is no evidence that a ten (10) day extension would provide any prejudice to any party, however, the deemed bankruptcy of the Company for not obtaining an extension to the NOI Proceeding (notwithstanding the Company sought a continuation of the stay of proceedings albeit under the CCAA) would be catastrophic and entail a complete cessation of the Business, the loss of existing product, and the destruction of the value of the business as a going concern-being the nontransferable contracts and licenses.

C. RELIEF SOUGHT:

14. The Company seeks to abridge the time requirements for bringing this Application, pursuant to section 6 of the *Bankruptcy and Insolvency General Rules*.
15. The Company seeks an extension to the NOI Proceeding for a period of ten (10) days, to 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. This extension would also allow creditors, including but not listed to WTH, to make submissions as to why the extension should be granted or denied.

D. MATERIALS:

16. The Company shall rely upon the following legislation, rules or points of law in respect of the Application:

- a. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. 8-3, s. 50.4(9);

b. *Bankruptcy and Insolvency General Rules* (Can Reg. 368), ss. 6, 11 and 13;

c. Civil Procedure Rules 22.01, 23 and 28.

17. Since filing the Notice, the Company has worked diligently toward the goal of presenting a viable Proposal to its creditors. This task, however, cannot be achieved during the Stay period, which is currently scheduled to expire at the close of business on July 17, 2023. The Company respectfully asks for the extension as per the above.

Dated the 17 day of July, 2023.

O'KEEFE & SULLIVAN



Darren D. O'Keefe
Suite 202, 80 Elizabeth Ave.
St. Johns', NL
A1A 1W7
dokeefe@okeefesullivan.com
NSBS: 2022-0106

SCHEDULE "A"

- Weihai Taiwei Haiyang Aquatic Food Co. Ltd
c/o Gavin MacDonald, Cox & Palmer
via email: gmacdonald@coxandpalmer.com