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IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c C-36, AS AMENDED

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF CANADIAN OVERSEAS PETROLEUM
LIMITED AND THOSE ENTITIES LISTED IN SCHEDULE
"A"

DOCUMENT:

BENCH BRIEF OF THE APPLICANTS

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**APPLICATION BEFORE THE HONOURABLE JUSTICE LITTLE JUNE 7, 2024 AT
10 AM ON THE COMMERCIAL LIST**

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PART I - INTRODUCTION

1. On March 8, 2024, Canadian Overseas Petroleum Limited, (“**COPL**”), together with the other applicants listed in Schedule “A” (collectively, the “**Applicants**”), were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order of the Court (the “**Initial Order**”). The stay of proceedings granted in the Initial Order (the “**Stay of Proceedings**”) was extended to Shoreline Canoverseas Petroleum Development Corporation Limited (“**Shorecan**”) and Essar Exploration and Production Limited, Nigeria (“**Essar Nigeria**” and, together with ShoreCan, the “**Non-Filing Affiliates**”).

2. On March 19, 2024, the Court approved a sale and investment solicitation process (the “**SISP**”, as approved by the “**SISP Order**”) whereby all or substantially all of the assets of the Applicants would be marketed as part of a sales process, which included a stalking horse bid (the “**Stalking Horse Bid**”). Following the completion of the SISP, the Stalking Horse Bid was determined to be the Successful Bid, and the Applicants brought a motion (the “**AVO Motion**”) seeking approval of the proposed approval and vesting order (the “**AVO**”), and authorization for the Applicants to execute the transactions contemplated therein (collectively, the “**Transaction**”).

3. The AVO Motion was opposed by BP Energy Company (“**BP**”) on a number of grounds, each of which was rejected by the Court, which granted the AVO and extended the Stay of Proceedings until June 7, 2024. BP subsequently sought leave to appeal the AVO (the “**BP Leave Application**”), which was rejected.

4. The closing date of the Transaction was postponed pending the outcome of the BP Leave Application. The Applicants therefore require that the Stay of Proceedings be extended until July 7, 2024, in order to provide the Applicants the time and breathing space needed to successfully implement the Transaction following closing.

PART II -FACTS

5. The facts are more fully set out in the Fifth Affidavit of Peter Kravitz.¹

A. CCAA Proceedings

6. On March 8, 2024, this Court granted the Initial Order, *inter alia*, (i) declaring the Applicants are companies to which the CCAA applies; (ii) appointing KSV Restructuring Inc. as Monitor of the Applicants in these proceedings (the “**Monitor**”); (iii) granting the Stay of Proceedings in respect of the Applicants up to and including March 18, 2024; (iv) extending the stay of proceedings to the Non-Filing Affiliates; (v) authorizing the Applicants to obtain and borrow under a senior secured, super priority loan (the “**DIP Loan**”), with borrowings not to exceed \$1.5 million and, to the extent drawn either in whole or in part and a corresponding charge in favour of the DIP Lender (the “**DIP Lenders’ Charge**”); and (vi) granting various other customary charges.²

7. At the comeback hearing held on March 19, 2024, the Court granted the Amended and Restated Initial Order, *inter alia*, (i) extending the Stay of Proceedings until May 20, 2024; (ii) approving the agreement between the Applicants and Province Fiduciary Services (“**Province**”), pursuant to which Province acts as the Chief Restructuring Officer of the Applicants; (iii) ratifying and approving the agreement between the Applicants and Province, LLC, pursuant to which, Province acts as financial advisor to the Applicants; (iv) authorizing the Applicants to enter into a restructuring support agreement (the “**RSA**”); and (v) increasing the maximum principal amount

¹ Affidavit of Peter Kravitz affirmed May 31, 2024 [Fifth Kravitz Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Fifth Kravitz Affidavit.

² Fifth Kravitz Affidavit at para. 4.

on which the Applicants could draw under the DIP Loan to \$11 million, with a corresponding increase to the amount secured by the DIP Lenders' Charge.³

8. On the same day, this Court granted the SISP Order, *inter alia*: (i) authorizing and directing the Applicant to negotiate and finalize the Stalking Horse Purchase Agreement, substantially on the terms set out in the Restructuring Term Sheet attached to the RSA; and (ii) approving the SISP, including the Stalking Horse Bid, and authorizing the Applicants to implement the SISP.⁴

9. After no LOIs (as defined in the SISP) were received, the Applicants applied for the AVO, which would, among other things, approve the Stalking Horse Purchase Agreement and the Transaction. BP opposed the AVO on a number of grounds, all of which were rejected at the hearing of the AVO Motion on April 24, 2024. At this time, the Court granted the AVO and extended the Stay of Proceedings until and including June 7, 2024.⁵

10. On May 14, 2024, BP filed an application with the Alberta Court of Appeal, for permission to appeal the AVO (as defined above, the “**BP Leave Application**”). This matter was heard before Justice de Wit of the Alberta Court of Appeal on May 29, 2024, who issued a decision dismissing the BP Leave Application on June 4, 2024.⁶

B. Chapter 15 Proceedings

11. On March 11, 2024, COPL, as Foreign Representative of the Applicants, commenced proceedings in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) seeking the recognition of these CCAA proceedings under chapter 15 of Title 11 of the U.S.

³ Fifth Kravitz Affidavit at para. 5.

⁴ Fifth Kravitz Affidavit at para. 6.

⁵ Fifth Kravitz Affidavit at paras. 7-8.

⁶ Third Report of the Monitor dated June 5, 2024, at paras. 1.3.1-1.3.4 [Third Report].

Bankruptcy Code (the “**Chapter 15 Case**”). On March 12, 2024, the U.S. Court granted an Order granting provisional relief.⁷

12. On March 21, 2024, COPL, as Foreign Representative, filed a motion in the Chapter 15 Case seeking recognition and enforcement of the SISP Order by the U.S. Court. On April 8, 2024, the U.S. Court recognized these CCAA proceedings as a Foreign Main Proceeding, and recognized and enforced the SISP Order.⁸

13. On April 30, 2024, COPL, as Foreign Representative, filed a motion in the Chapter 15 Case seeking recognition and enforcement of the AVO by the U.S. Court, as well as the Declaration in support of same (the “**AVO Recognition Order**”). On May 15, 2024, BP filed an objection to this motion, which was therefore consensually postponed pending the outcome of the BP Leave Application.⁹

PART III - LAW AND ARGUMENT

14. This Bench Brief addresses whether the Stay of Proceedings should be extended until July 7, 2024.

A. The Stay of Proceedings Should be Extended

15. Pursuant to section 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

⁷ Fifth Kravitz Affidavit at paras. 9-10.

⁸ Fifth Kravitz Affidavit at paras. 11-12.

⁹ Fifth Kravitz Affidavit at paras. 13, 15-16

16. The Stay of Proceedings currently expires on June 7, 2024. The target closing date for the Transaction has been postponed pending the AVO Recognition Order, which was itself pending the outcome of the BP Leave Application.¹⁰ The Applicants therefore request that the Stay of Proceedings to be extended to July 7, 2024, for the following reasons:

- (a) the Applicants have acted in good faith and due diligence throughout these proceedings, and require an extension of the Stay of Proceedings in order to have the continued breathing space needed to implement the Transaction;¹¹
- (b) the Monitor believes that the granting of the extension of the Stay of Proceedings will not materially prejudice any creditor of the Applicants;¹²
- (c) as of the date of this Bench Brief, neither the Applicants nor the Monitor are aware of any party opposed to extending the Stay of Proceedings;¹³ and
- (d) the cash flow forecast provided by the Monitor indicates that the Applicants are projected to have sufficient liquidity to fund their operations and the costs of these CCAA proceedings during the proposed extension of the Stay of Proceedings.¹⁴

17. The Monitor supports to the proposed extension.¹⁵

¹⁰ Fifth Kravitz Affidavit at para. 17.

¹¹ Fifth Kravitz Affidavit at paras. 22, 24.

¹² Report, at para. 4.0.2(b).

¹³ Third Report, at para. 4.0.2(d).

¹⁴ Third Report, at para. 3.0.2.

¹⁵ Third Report, at para. 4.0.2.

PART IV -NATURE OF THE ORDER SOUGHT

18. For the foregoing reasons, the Applicants respectfully submit that the Court should grant the Stay Extension Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of June, 2024:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Osler, Hoskin & Harcourt LLP
Counsel for the Applicants