

**Court File No. 08-CL-7355**

**TAHERA DIAMOND CORPORATION  
AND BENACHEE RESOURCES INC.**

**MONITOR'S EIGHTH REPORT TO THE COURT**

**November 26, 2008**

**ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF

TAHERA DIAMOND CORPORATION  
BENACHEE RESOURCES INC.

**EIGHTH REPORT TO THE COURT SUBMITTED BY  
PRICEWATERHOUSECOOPERS INC.  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On January 16, 2008, Tahera Diamond Corporation ("Tahera") and its wholly owned subsidiary, Benachee Resources Inc. ("Benachee") (collectively, referred to herein as the "Applicants" or the "Company"), made an application under the *Companies' Creditors Arrangement Act* (the "CCAA") and an initial order (the "Initial Order") was granted by the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "Court") granting, *inter alia*, a stay of proceedings against the Company until February 14, 2008 (the "Stay Period") and appointing PricewaterhouseCoopers Inc. as monitor (the "Monitor"). The proceedings commenced by the Company under the CCAA will be referred to herein as the "CCAA Proceedings".
2. The Stay Period has been extended on a number of occasions since the date of the Initial Order. Pursuant to the extension provided for in the Amended and Restated Order of the Honourable Madam Justice Pepall made October 1, 2008 (the "October 1 Order"), the Stay Period expires on November 28, 2008.

3. The Monitor filed its seventh report (the "Seventh Report") with this Honourable Court on September 26, 2008, which, among other things, described the Company's progress with respect to the development of a plan of arrangement pursuant to the CCAA. A copy of the Seventh Report, without appendices, is attached hereto as Appendix A.
4. The purpose of this, the Monitor's eighth report (the "Eighth Report"), is to inform the Court of the following:
  - i) the Company's receipts and disbursements for the period September 7, 2008 to November 22, 2008;
  - ii) the Company's remaining Cash Reserves (as hereinafter defined);
  - iii) the termination of the Plan Sponsorship Agreement (as defined in the Monitor's Seventh Report), and the Company's consequent inability to complete a plan of arrangement under the CCAA Proceedings;
  - iv) the status of the Company's Claims Procedure (as defined in the Monitor's Seventh Report);
  - v) the Company's recent discussions with the Department of Indian and Northern Affairs Canada ("INAC") with respect to the Company's Jericho mine site (the "Jericho Mine"); and
  - vi) the assignment of secured debt owing to Laurelton Diamonds Inc. (together with Tiffany & Co., "Tiffany") secured debt to Caz Petroleum Inc. ("Caz").
5. This report is also intended to provide the Monitor's comments and recommendations in respect of the Company's motion to
  - i) extend the Stay Period to December 12, 2008;
  - ii) authorize and approve the indefinite suspension of the Claims Procedure; and

- iii) accept and approve the Eighth Report of the Monitor, and approve the Monitor's activities described therein.

6. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms used herein not otherwise defined are as defined in the Initial Order.

**RECEIPTS & DISBURSEMENTS FOR THE PERIOD FROM SEPTEMBER 7, 2008 TO NOVEMBER 22, 2008**

7. The Company's actual cash flow for the period September 7, 2008 to November 22, 2008 (the "Current Period"), together with an explanation of key variances as compared to the September 22 Forecast (as defined in the Monitor's Seventh Report) is attached hereto as Appendix <sup>B</sup>~~A~~. Actual net cash flows for the Current Period were approximately \$354,000 lower than the September 22 Forecast, summarized as follows:

	Actual	Forecast	Variance
	\$000	\$000	\$000
<b>Total Receipts</b>	<b>1,674</b>	<b>1,447</b>	<b>227</b>
<b>Disbursements:</b>			
Minc Overhead	1,115	1,115	(0)
Corporate Costs and Other	549	273	(276)
Employee Incentive Plans	203	165	(38)
Legal and Professional Fees	513	428	(85)
<b>Total Disbursements</b>	<b>2,380</b>	<b>1,981</b>	<b>(399)</b>
<b>Surplus/(deficiency)</b>	<b>(706)</b>	<b>(534)</b>	<b>(172)</b>
<b>Cash on hand:</b>			
Balance b/f	1,743	1,743	0
Net change for period	(706)	(534)	(172)
Balance c/f	1,037	1,209	(172)
Cash held by Monitor <sup>1</sup>	194	375	(181)
<b>Total balance c/f</b>	<b>1,231</b>	<b>1,584</b>	<b>(353)</b>

<sup>1</sup> in respect of supplier payment arrangements in accordance with paragraph 25(i) of the Initial Order

8. In addition to the net cash flows summarized above, as at November 22, 2008, the Company has unpaid obligations incurred during the CCAA Proceedings (the "Accrued Post-Filing Liabilities"), which are estimated to be approximately \$670,000, summarized as follows:

	\$000
Payroll, Payroll Taxes & Benefits	120
Jericho Overhead	410
Corporate and Other	40
Legal and Professional	100
Total	670

#### THE REMAINING CASH RESERVES

9. After providing for the Accrued Post-Filing Obligations, the Company has approximately \$560,000 of remaining cash reserves (the "Cash Reserves"), inclusive of the cash held on deposit by the Monitor to secure various performance obligations with certain suppliers. The Accrued Post-Filing Obligations includes, to the best of the Company's knowledge, amounts claimed by creditors pursuant to the Claims Procedure, arising subsequent to the Commencement of the CCAA Proceedings.
10. The Company estimates that, notwithstanding the cessation of mining and processing activities, the ongoing care and maintenance ("C&M") of the Jericho Mine, under optimal circumstances to maximize the ability to successfully recommence operations, could cost between \$4 million and \$5 million per annum.
11. The Company has attempted to develop a number of alternative scenarios associated with C&M in order to investigate lower cost options, short of completely abandoning the Jericho Mine. In the Company's view, complete abandonment could lead to damage to the Jericho Mine's processing plant and equipment, and the surrounding environment, thereby adversely impacting the Company's (or a successor's) ability to recommence operations. Unfortunately, although the Company believes that a significantly lower cost option may be available for ongoing C&M, the Cash Reserves are insufficient to allow the Company to continue to operate the Jericho Mine at this time.

12. Accordingly, in the absence of additional funding, the Company currently estimates that the Cash Reserves will be exhausted at a point in time between approximately December 15, 2008 and December 22, 2008, at which time the Company will be forced to cease operating.

#### **THE STATUS OF THE PLAN OF ARRANGEMENT**

13. As described in the Monitor's Seventh Report, the Company and the Monitor entered into the Plan Sponsorship Agreement (as defined in the Seventh Report) with 0835732 BC Ltd. (the "Plan Sponsor"), a subsidiary of Hunter Dickinson Acquisitions Inc. ("HDI"), as approved by this Honourable Court pursuant to the October 1 Order.
14. The Plan Sponsorship Agreement provided that the Plan Sponsor had until October 31, 2008 to complete its due diligence with respect to a transaction (the "Transaction") in respect of the Company.
15. On October 31, 2008, the Plan Sponsor advised Blair Franklin Capital Partners ("Blair Franklin"), the Company's financial advisor, that the Plan Sponsor was not willing to proceed with the Transaction as a result of the efforts of its due diligence.
16. On November 3, 2008, the Company issued a press release, which indicated that the Plan Sponsor's conditions were not satisfied by October 31, 2008 and, therefore, the Plan Sponsorship Agreement had terminated in accordance with its terms, the Company "... will continue to re-assess all strategic alternatives that may be available...".

17. As a result of the termination of the Plan Sponsorship Agreement, on November 3, 2008, the Company and Blair Franklin approached all of the parties that submitted an expression of interest during the Marketing Process as defined in the Monitor's Fourth Report to the Court dated February 7, 2008, as well as other parties that the Company and Blair Franklin reasonably believed might be interested in, and capable of, submitting an offer for either the purchase of the Company's assets, the sponsorship of a plan of arrangement or such other expression of interest that could potentially provide realizations to the Company's creditors. Unfortunately, as of the date of the Monitor's Eighth Report, Blair Franklin and the Company have been unsuccessful in this respect.
18. As of the date of this Eighth Report, the Company has no sponsor for a plan of arrangement pursuant to the CCAA Proceedings and has been unable to find a purchaser for its assets or alternative funding for its operations.
19. Accordingly, given that the Cash Reserves will be consumed by mid-to-late December 2008, there is currently no reasonable prospect of the Company being able to propose and implement a plan of arrangement to its creditors under the CCAA.

#### **REQUEST TO INDEFINITELY SUSPEND THE CLAIMS PROCEDURE**

20. The Claims Procedure (as defined in the Seventh Report) was approved by this Honourable Court pursuant to the October 1 Order and, as a result, the Monitor implemented the Claims Procedure as set out therein. As of November 13, 2008, the status of claims filed under the Claims Procedure was as follows:

	Proofs of Claim/Notices filed by the Claim Bar Date		Allowed Claims	
	#	\$	#	\$
Secured	11	27,013,322	2	11,500,001
Unsecured	244	83,597,533	241	70,717,940
D&O	1	753,438	-	-
<b>Total</b>	<b>256</b>	<b>111,364,294</b>	<b>243</b>	<b>82,217,941</b>

In accordance to the Claims Procedure, subsequent to issuing the Notices of Revision or Disallowances, the Monitor has received 7 Notices of Disputes from creditors disputing the Notices of Revision or Disallowances issued to them.

21. As a result of the termination of the Plan Sponsorship Agreement and there being no alternative plan sponsors available to the Company at this time, there is no benefit to continuing the Claims Procedure.
22. Accordingly, the Monitor recommends that the Court authorize and approve the indefinite suspension of the Claims Procedure.

#### **ASSIGNMENT OF TIFFANY'S CLAIM TO CAZ**

23. On November 21, 2008, the Monitor was advised by representatives of Tiffany and Caz that Tiffany had assigned to Caz its secured claim against the Company of approximately \$53 million (the "Assignment").
24. The Monitor is advised by the Company that the Assignment is permitted under the terms of the Demand Debenture executed by the Company as of July 12, 2005.
25. On November 21, 2008, Caz advised the Monitor that, as at that date, it did not intend to continue to fund the Company's ongoing operations, including the cost of maintaining the Jericho Mine.
26. Accordingly, based on information currently available to the Company and the Monitor, the Assignment will not provide funding to enable the Company to continue to operate.



#### INTERVENTION BY INAC

27. The Jericho Mine operations include uses of water and deposits of waste, authorized under a water licence issued to Benachee by the Nunavut Water Board pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (the "Nunavut Waters Act").
28. INAC has advised the Monitor and the Company that it believes that the cessation of operations at the Jericho Mine site without adequate provision for C&M, or closure of the Jericho Mine, would constitute non-compliance with the Nunavut Waters Act and Benachee's water licence and may lead to potential adverse effects.
29. INAC has advised the Monitor and the Company that INAC is charged with enforcement of licences issued under the Nunavut Waters Act.
30. Prior to the execution of the Plan Sponsorship Agreement, the Company and its legal counsel, and the Monitor and its legal counsel, met with representatives of INAC to discuss options in the event a plan of arrangement could not be implemented in the CCAA Proceedings or in the event that other circumstances arose that could adversely impact on the Company's ability to operate as a going concern.
31. On October 31, 2008, immediately after hearing from the Plan Sponsor that it would not be proceeding with the Transaction, the Company contacted representatives of INAC to advise that, although the Company would be seeking expressions of interest, there could be no assurance that an alternative transaction could be completed and that the Company may no longer be able to operate and oversee the Jericho Mine.

32. Between November 3, 2008 and November 7, 2008, the Company and the Monitor liaised with INAC concerning the Company's progress in seeking expressions of interest. On November, 7, 2008, INAC informed the Company and the Monitor that it would be engaging Deloitte & Touche Inc. ("Deloitte"), as its advisor in respect of matters related to the Company.
33. On November 13, 2008, the Monitor and the Company advised INAC and Deloitte that the Company had not succeeded in obtaining alternative expressions of interest. Accordingly, the Company began to provide information in respect of the Jericho Mine and the Company's financial position to INAC and Deloitte to enable INAC to better understand the various issues at hand and to assess the alternatives that may be available to Company and INAC with respect to the Jericho Mine.
34. Upon being advised by the Monitor and the Company of the near certainty that the Company would exhaust its Cash Reserves and would therefore have no alternative but to cease all operations by mid-December, on November 20, 2008, INAC advised the Company that the Minister of Indian and Northern Affairs (the "Minister") had certain authorities in respect of "closed or "abandoned" sites under subsection 89(1) the Nunavut Waters Act, which states as follows:

89. (1) Where the Minister believes, on reasonable grounds, that

(a) a person has closed or abandoned, temporarily or permanently, a work related to the use of waters or the deposit of waste in Nunavut, except in a national park, and

(b) either

(i) the person has contravened any condition of a licence or any provision of this Part or the regulations, whether or not the condition or provision relates to the closure or abandonment, or

(ii) the past operation of the work or its closure or abandonment may cause a danger to persons, property or the environment,

the Minister may take any reasonable measures to prevent, counteract, mitigate or remedy any resulting adverse effect on persons, property or the environment and may, for that purpose, enter any place in Nunavut,

other than a place that is designed to be used and is being used as a permanent or temporary private dwelling-place.

35. Although the Company has not abandoned the Jericho Mine, INAC has advised the Company and the Monitor that, upon cessation of all operations at the site (including C&M), or upon receiving information that the Company has abandoned the site, the Minister would have reasonable grounds under sections 89(1)(a) and 89(1)(b) of the Nunavut Waters Act to enter onto the Jericho Mine and take such steps as it deems appropriate to prevent or mitigate potential adverse effects on property or the environment (such steps, collectively, the "Intervention").
36. INAC has advised the Monitor and the Company of INAC's belief that any reasonable costs incurred by the Crown in the Intervention will be recoverable as debts due to Her Majesty under the applicable legislation.
37. INAC has advised the Monitor and the Company that implementing the Intervention would require that the following two conditions be met:
  - i) that the Crown is able to utilize the existing diesel fuel resources located at the Jericho Mine, without restriction; and
  - ii) that the Crown is able to enter into an arrangement for the ongoing use of leased, diesel powered generators located at the Jericho Mine with the lessor, Caterpillar Financial Services Limited ("Caterpillar").
38. The Company has advised the Monitor and INAC that it has no objection to the conditions set forth above.
39. INAC has advised the Monitor and the Company of the Crown's view that, in exercising the Minister's or INAC's authorities under the Nunavut Waters Act, the Crown is not responsible for the preservation of the value of assets or the protection of creditors' interests.

40. On November 21, 2008, after learning of the Assignment, the Monitor informed Caz about the Minister's Intervention and asked it confirm whether or not it was planning to:
- i) provide any funding to the Company to permit the continued operation of the Jericho Mine,
  - ii) seek a buyer(s) for the Company's assets charged under the security acquired from Tiffany; or
  - iii) identify a sponsor for a plan of arrangement.
41. Caz stated that no such plans existed, and that it did not intend to provide additional funding to the Company. Based on its discussions with Caz the Monitor is not aware of any objection on the part of Caz to the conditions set forth above.
42. The Intervention provides the following benefits:
- i) the Company will retain ownership of the Jericho Mine and its related assets, which may be of significant benefit to the Company's creditors, in the event a plan of arrangement is ultimately made in respect of the Company. A significant portion of the potential value associated with the Company is in respect of various tax attributes that are directly related to the Jericho Mine and which may only be available if the Jericho Mine is retained within either Tahera or Benachee; and
  - ii) the Nunavut Waters Act provides a regulatory framework for the protection of the environment after the cessation of all Company operations at the Jericho Mine site.
43. INAC has informed the Monitor and the Company that it requires a brief additional period in order to complete a site visit to the Jericho Mine, meet with the Company's employees on site and make such other arrangements as are necessary to ensure the Minister is adequately prepared to intervene.