

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE MR.

) TUESDAY, the 28th

)

JUSTICE MORAWETZ

) DAY OF APRIL, 2009



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

IN THE MATTER OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C-43, AS
AMENDED;

AND IN THE MATTER OF A PROPOSED COMPROMISE AND ARRANGEMENT IN
RESPECT OF TAHERA DIAMOND CORPORATION and BENACHEE RESOURCES INC.

ORDER

THIS MOTION, made by Tahera Diamond Corporation ("Tahera") and Benachee Resources Inc. ("Benachee") (collectively, the "Applicants"), for an order, among other things, approving the transaction (the "Transaction") contemplated by the CBCA Arrangement Agreement among Tahera, Benachee, Ag Growth Income Fund (the "Fund") and Ag Growth Industries Inc. made as of April 19, 2009 (the "CBCA Arrangement Agreement") and vesting in a subsidiary of Tahera incorporated under the *Canada Business Corporations Act* ("Newco") all of Benachee's right, title and interest in and to its assets, and subject to its liabilities, and releasing and discharging Benachee from all liabilities, save and except the Remaining Intercompany Debt, all as described in the CBCA Arrangement Agreement, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Fourth Report of Farber & Partners Inc., the court-appointed Monitor of the Applicants (the "Monitor"), dated April 24, 2009 (the "Fourth Report"), and the Affidavit of Andrew Gottwald, sworn April 20, 2009 (the "Gottwald Affidavit"), and upon hearing the submissions of counsel for the Applicants, the Monitor, the Fund and Caz Petroleum Inc. ("Caz"),

DEFINITIONS

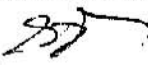
1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the CBCA Plan of Arrangement (the "CBCA Arrangement") attached as Exhibit A to the CBCA Arrangement Agreement.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in support of this Motion be and it is hereby abridged, such that this Motion is properly returnable today and that any further service of the Notice of Motion and the Motion Record is hereby dispensed with.

APPROVAL OF THE CBCA ARRANGEMENT AGREEMENT AND THE TRANSACTION

3. **THIS COURT ORDERS** that the CBCA Arrangement Agreement and the Transaction contemplated therein, to the extent that they affect the Applicants, are hereby authorized and approved.

4. ~~**THIS COURT ORDERS AND DECLARES**~~ that the CBCA Arrangement Agreement and the Transaction contemplated therein are commercially reasonable and in the best interests of the Applicants and their stakeholders. 

5. **THIS COURT ORDERS AND DECLARES** that all transactions, payments and directions by or in favour of Tahera and/or Benachee as contemplated by the CBCA Arrangement and the CBCA Arrangement Agreement are hereby authorized and approved in the manner and in the sequence as provided in the CBCA Arrangement.

IMPLEMENTATION OF THE TRANSACTION

6. **THIS COURT ORDERS AND DECLARES** that the execution of the CBCA Arrangement Agreement by the Applicants is hereby authorized and approved, and the Applicants are hereby authorized and directed to take all such steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction including, without limitation, the conveyance of the Divested Assets to, and the assumption of the Assumed Obligations by, Newco.

7. **THIS COURT ORDERS AND DECLARES** that the steps outlined in the CBCA Arrangement will be effective upon the Effective Date, as described in the CBCA Arrangement, being the date provided for on the Certificate issued by the Director pursuant to subsection 192(7) of the CBCA giving effect to the CBCA Arrangement (the "Director's Certificate").

8. **THIS COURT ORDERS** that, when all documents necessary to implement the Transaction are executed and delivered in escrow, subject only to the Articles of Arrangement being filed and the Director issuing the Director's Certificate, the Monitor shall file with this Court a Monitor's Certificate substantially in the form attached hereto as Schedule "A" (the "Monitor's Certificate").

9. **THIS COURT ORDERS AND DECLARES** that, upon the filing of the Articles of Arrangement and the issuance of the Director's Certificate, the CBCA Arrangement shall be

binding on Benachee, Tahera and Newco including their respective successors and assigns, all as provided for in the CBCA Arrangement.

10. **THIS COURT ORDERS** that, in the event that the Articles of Arrangement are not filed or the Director does not issue the Director's Certificate, the Transaction contemplated by the CBCA Arrangement Agreement will be deemed not to have occurred and the Applicants may apply to this Court for further advice and direction.

VESTING OF THE DIVESTED ASSETS AND ASSUMPTION OF ALL LIABILITIES

11. **THIS COURT ORDERS AND DECLARES** that, effective as at the time described in the CBCA Arrangement:

- (a) all of Benachee's right, title and interest in and to the Divested Assets, including, without limitation, all cash deposits and interests in letters of credit issued at the request of Benachee, shall vest absolutely in Newco, however all such Divested Assets shall be subject to all Claims including, without limitation, (i) all past and future environmental reclamation and other environmental liabilities, (ii) any encumbrances or charges created by the Order of the Honourable Justice Spence dated January 16, 2008, as amended by the Order of the Honourable Justice Morawetz dated March 6, 2009, and (iii) all liens, charges, security interests, encumbrances or claims including those evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other real or personal property registry system;
- (b) Newco shall, for all purposes, stand in substitution for Benachee in respect of all indebtedness, liabilities, liens, indemnities (including indemnities in respect of

any outstanding letters of credit), commitments, Claims, demands and obligations of any nature or kind, whether matured or unmatured, accrued, fixed, contingent or otherwise, whatsoever resulting from any matters, actions, events, facts or circumstances related to the activities, affairs or business of Benachee which occurred prior to the Effective Time including, without limitation, the Assumed Obligations (including all Environmental Obligations), the AGII DIP Loan Security and all indebtedness, liabilities, commitments, Claims, demands and obligations of Benachee to Tahera and CAZ including, without limitation, pursuant to the Benachee CAZ Debt Security (collectively, the "Liabilities"), save and except the Remaining Intercompany Debt as contemplated by the CBCA Arrangement; and

- (c) Benachee shall be and is hereby released and discharged from all Liabilities, save and except the Remaining Intercompany Debt.

12. **THIS COURT ORDERS** that upon the registration with the Mining Recorder's Office or any other applicable authority for the location(s) of the mining leases and claims identified in Schedule "B" hereto (the "Leases and Claims") of (i) a document evidencing the transfer of the Leases and Claims to Newco or (ii) a copy of this Order, the Mining Recorder's Office or such other applicable authorities are hereby directed to enter Newco as the owner of the Leases and Claims.

13. **THIS COURT ORDERS** that from and after the Effective Date, all Liabilities shall be the responsibility of Newco and shall attach to the Divested Assets to the same extent and with

the same priority, in both cases, if any, as they had with respect to the Divested Assets immediately prior to the sale.

14. **THIS COURT ORDERS** that, for greater certainty, Newco shall assume and stand in substitution for all of the liabilities and benefits associated with any and all permits, licences, leases, certificates, authorizations and approvals (collectively, "Operating Authorizations"), including those Operating Authorizations identified in Schedule "C" hereto, to the same extent, scope and effect as held or enjoyed by Benachee immediately prior to the Effective Time and Newco shall be subject to all Liabilities associated therewith. For greater certainty, all persons receiving notice of this Order being a counterparty to or having authority or jurisdiction over any Operating Authorization shall grant and acknowledge all Operating Authorizations in favour of Newco to the same extent, scope and effect as held or enjoyed by Benachee immediately prior to the Effective Time and Newco shall be liable for all Liabilities associated therewith after the Effective Time.

15. **THIS COURT ORDERS** that, with respect to Item #1 in Schedule "C" (the "Water Licence"), the determination with respect to Newco's entitlement to receive an assignment of the Water Licence is reserved pending approval by the Nunavut Water Board, failing which, further Order of this Court.

16. **THIS COURT ORDERS AND DIRECTS** the Nunavut Water Board to review and consider the assignment of the Water Licence from Benachee to Newco forthwith.

17. **THIS COURT ORDERS** that notwithstanding paragraphs 15 and 16 herein, Benachee is hereby released and discharged from any and all indebtedness, commitments, Claims, demands, indemnities, obligations and liabilities of any nature or kind, whether matured or unmatured,

accrued, fixed, contingent or otherwise, ~~under the Water Licence~~, save and except that the letters of credit provided by Benachee pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002 c.10, s.76 (the "Act") remain unaffected in respect of claims by the Crown solely against the letters of credit in respect of past and present costs incurred by the Crown in respect of the Act.

18. **THIS COURT ORDERS** that the guarantee and the general security agreement provided by Newco in favour of Caz shall not be or be deemed to be a fraudulent preference or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") or any other applicable federal or provincial legislation and shall have and be deemed to have the same priority as against the Divested Assets and relative to any charges, security interests, encumbrances or claims as the Benachee Caz Debt Security had immediately prior to the Effective Date.

19. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Applicants or Newco and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants or Newco;

the vesting of the Divested Assets in, and the assumption of the Assumed Obligations by, Newco and the release and discharge of Benachee from all Liabilities, save and except the Remaining Intercompany Debt, all pursuant to this Order, the creation of the guarantee and the granting of

the security by Newco and all payments, directions and other elements of the Transaction shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants or Newco and shall not be void or voidable by creditors of the Applicants or Newco, nor shall they constitute or be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

20. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

NEWCO

21. **THIS COURT ORDERS AND DECLARES** that Newco is insolvent and is a company to which the CCAA applies.

22. **THIS COURT ORDERS AND DECLARES** that Newco is an Applicant in these proceedings.

23. **THIS COURT ORDERS AND DECLARES** that the Initial Order, as amended, and any other Order issued in these proceedings, shall apply to Newco and that Newco is subject to all of the Orders issued in these proceedings.


THE CRO

24. **THIS COURT ORDERS** that the powers of the CRO set forth in paragraphs 21 and 22 of the Order of this Honourable Court dated December 12, 2008, as expanded by the Orders of this Honourable Court dated January 23, 2009 and March 6, 2009, are hereby further expanded, *nunc pro tunc*, to include the power to execute the CBCA Arrangement Agreement and any

additional documents as may be necessary or desirable for the completion of the Transaction and for the registration of the conveyance of the Divested Assets to Newco.

GENERAL PROVISIONS

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 28 2009

PER / PAR: 