



Court File No. 08-CL-7355

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

**THE HONOURABLE MR.** ) **FRIDAY, THE 12<sup>th</sup> DAY**  
 )  
**JUSTICE MORAWETZ** ) **OF DECEMBER, 2008**  
 )

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

**AND 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.**

Applicants

**ORDER**

THESE MOTIONS, brought by the APPLICANTS and CAZ PETROLEUM INC. ("Caz"), were heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notices of Motion of the Applicants and Caz dated December 10, 2008, the Eighth and Ninth Reports of PricewaterhouseCoopers Inc., in its capacity as the Monitor of the Applicants, filed, the Affidavit of Paul C. Champagne sworn on December 10, 2008, filed, and on hearing the submissions of counsel for Caz, the Applicants, Her Majesty the Queen in Right of Canada as represented by the Minister of Indian and Northern Affairs (the "Crown"), the Monitor and any other parties appearing, on reading the Consent of A. Farber & Partners Inc. to act as the Monitor, and on being advised that the Applicants intend to cease occupation of the Mine (as defined herein) as at 12:01 a.m. Eastern Standard Time on December 13, 2008 (the "Effective Date"):

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of these Notices of Motion and the materials filed in support thereof be and is hereby abridged, the service of these motions has been properly effected and these motions are properly made returnable today.

**EXTENSION OF STAY**

2. **THIS COURT ORDERS** that the “Stay Period” referred to in the Initial Order of the Honourable Mr. Justice Spence dated January 16, 2008 (the “Initial Order”) be and is hereby extended to January 23, 2009.

**CROWN AND CROWN AGENT**

3. **THIS COURT DECLARES** that notwithstanding the extension of the stay of proceedings (the “Stay”), the Crown remains at liberty to enter the Jericho Mine site (the “Mine”) at any time and without notice, and to take all measures necessary to prevent, counteract, mitigate or remedy any adverse effect on persons, property or the environment (the “Intervention”).

4. **THIS COURT ORDERS** that, as of the Effective Date, the Crown and its agent, Deloitte & Touche, Inc. (the “Agent”), are authorized to utilize any of the Applicants’ supplies, chattels, machinery or equipment located at the Mine in connection with the Intervention pending further Order of this Court, and without limiting the generality of the foregoing, shall be at liberty to utilize, at no cost, all fuel or supplies stored at the Mine.

5. **THIS COURT ORDERS** that neither the Crown, nor its Agent, shall have any liability, either directly or indirectly, for any act, omission, obligation or purchase of the Applicants, and without limiting the generality of the foregoing, shall not be liable for any employee-related liabilities of the Applicants including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Crown or the Agent may specifically agree in writing to pay or as may otherwise be ordered to be paid by the Crown or the Agent in a proceeding before a court or tribunal of competent jurisdiction.

6. **THIS COURT ORDERS** that the Crown and its Agent shall take no part whatsoever in the management or supervision of the Applicants' business and shall not, by fulfilling any regulatory obligations or carrying out statutory authorities, be deemed to have taken or maintained possession or control of the Applicants' business, or any part thereof and the Crown shall have no obligation, duty, nor responsibility to preserve or protect asset or shareholder value on behalf of third parties.

7. **THIS COURT ORDERS** that, without limiting the generality of the provisions of this Order and subject to Article 21 of the Nunavut Land Claims Agreement, all persons are hereby restrained and enjoined from disturbing or interfering with the occupation, use or possession by the Crown or the Agent of any premises owned or leased by the Applicants except with leave of this Court first being obtained and on at least seven (7) days' prior notice to the Crown.

8. **THIS COURT ORDERS** that the Applicants shall forthwith pay the sum \$100,000.00 from the cash on hand to the Agent (the "Funds"), and thereafter the Agent, in consultation with the Crown, shall be authorized to utilize the Funds in connection with the costs of the Intervention, with the Funds to be fully depleted prior to the Crown becoming obligated to draw upon any cash collateral or security it holds from the Applicants in connection with the Mine.

9. **THIS COURT ORDERS** that nothing in the Stay restricts the Crown from accessing, drawing on or applying any cash collateral or other security it holds from the Applicants in connection with the Mine, and the Crown may exercise any rights and/or remedies available to the Crown, whether pursuant to contract, license, lease or regulatory authority, and may take any other actions it deems necessary or appropriate in this regard, without leave or further Order of this Court.

10. **THIS COURT ORDERS** that the Applicants are hereby permitted to cease operation of the Mine as of the Effective Date.

11. **THIS COURT ORDERS** that the Applicants and their officers, directors, employees, contractors and agents shall not be liable for the negligent or wilful acts of the Crown or its agents occurring during the course of the INAC Intervention from and after the Effective Date.

## **SUBSTITUTION OF THE MONITOR**

12. **THIS COURT ORDERS AND DECLARES** that, subject to paragraphs 14, 16, 17, 18 and 19 hereof, PricewaterhouseCoopers Inc. (the "Former Monitor") be and it is hereby discharged as monitor of the Applicants, and, without limitation, discharged of all of its existing and future powers, duties, responsibilities and obligations pursuant to the CCAA and all Orders made in these CCAA proceedings and (ii) any and all claims against the Former Monitor shall be and they are hereby stayed.

13. **THIS COURT ORDERS AND DIRECTS** that no action or other proceeding shall be commenced against PricewaterhouseCoopers Inc. or any of its directors, officers or employees in any way arising from or related to its capacity or conduct as Former Monitor of the Applicants, except pursuant to an order securing, as security for costs, the substantial indemnity costs of PricewaterhouseCoopers Inc. in connection with the proposed action or proceeding.

14. **THIS COURT ORDERS AND DIRECTS** the Former Monitor to bring a motion before this Court for an Order on or before January 23, 2009, (i) approving of the Eighth Report, and Ninth Report and all of the Former Monitor's activities described therein, and (ii) passing the Former Monitor's accounts and those of its legal counsel in accordance with the Initial Order.

15. **THIS COURT ORDERS** that A. Farber & Partners Inc. be substituted as the Monitor (the "Monitor") in these proceedings effective immediately and shall be subject to and shall have the benefit of all of the provisions of the Initial Order and all other Orders issued in these proceedings including, but not limited to, the protections provided in paragraphs 15, 16 and 27 to 30 of the Initial Order and the Administration Charge set forth in paragraph 33 of the Initial Order.

16. **THIS COURT ORDERS** that, despite paragraph 13 of this Order, the Former Monitor and its counsel and counsel for the Applicants (collectively, the "Existing Professionals") shall continue to be entitled to the benefit of the Administration Charge and, further,

- (a) the accrued and/or unpaid fees and disbursements of the Existing Professionals for the period up to and including December 12, 2008 shall continue to participate in the Administration Charge in priority to the Monitor; and
- (b) the accrued and/or unpaid fees and disbursements of the Existing Professionals associated with the completion of their work and effecting the transition of responsibilities to the Monitor and the future fees and disbursements of counsel to the Applicants shall continue to participate in the Administration Charge on a *pari passu* basis together with the other beneficiaries of the Administration Charge.

17. **THIS COURT ORDERS** that, on or before January 30, 2009, the Former Monitor and its legal counsel shall remit to the Monitor all funds held by them as a retainer from the Applicants, after applying such reasonable amounts as may be required to pay any outstanding invoices of the Former Monitor and its legal counsel. All funds remitted to the Monitor pursuant to this paragraph 17 shall be held by the Monitor as a retainer for its fees and expenses and the fees and disbursements of its legal counsel.

18. **THIS COURT ORDERS AND DIRECTS** (i) the Former Monitor to remit forthwith to the Monitor all of the funds on deposit with the Former Monitor on account of various vendor deposits in the current amount of approximately \$138,000, including accrued interest thereon (the "Vendor Deposits"), (ii) that the Monitor shall have full responsibility for and the obligations in respect of the Vendor Deposits once transferred, and (iii) the Former Monitor be and it is hereby released of all responsibilities for and duties in respect of the Vendor Deposits.

19. **THIS COURT ORDERS** that from and after the making of this Order and notwithstanding any future discharge of the Former Monitor, the Former Monitor shall cooperate with the Monitor and shall provide to the Monitor all such information and documents as may reasonably be required to fulfil the role of Monitor in these proceedings.

20. **THIS COURT ORDERS** that, without limiting the provisions of paragraphs 27 and 28 of the Initial Order or of any other provision of the Initial Order or any other Order in these proceedings that provides protection to the Monitor, the Monitor shall not take possession or

control of the Mine, shall take no part in the Intervention whatsoever, and shall not, by fulfilling its obligations as Monitor, be deemed to take or be in possession or control of the Mine, or any part thereof, or to have any liability whatsoever relating in any way to the Intervention.

### THE CRO

21. **THIS COURT ORDERS** that 2192640 Ontario Inc. be and is hereby appointed as Chief Restructuring Officer (the "CRO") in these proceedings, such appointment to be effective as at 12:01 a.m. on December 13, 2008, for the limited purpose of:

- (a) signing all cheques on behalf of the Applicants in respect of all reasonable expenses incurred by the Applicants and the CRO and in respect of all professional, legal and advisor fees;
- (b) collecting receivables;
- (c) taking possession of the books and records of the Applicants;
- (d) fulfilling reporting requirements to all regulatory authorities; and
- (e) preparing financial statements and filing tax returns.

22. **THIS COURT AUTHORIZES** the Applicants and the CRO to retain Champco Capital Corp. as advisor for the purpose of assisting the Applicants and the CRO in the performance of their duties and the consideration of any plan of arrangement, to the extent needed.

### THE BLAIR FRANKLIN AGREEMENT

23. **THIS COURT ORDERS** that the agreement between Tahera Diamond Corporation and Blair Franklin dated February 28, 2008 (the "Blair Franklin Agreement") be and is hereby terminated, provided, however, that those paragraphs referenced in paragraph 11 of the Blair Franklin Agreement as surviving termination shall continue in full force and effect.

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

DEC 16 2008

PER/PAR:



E. Tiarnyu, Registrar  
Superior Court of Justice

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C-43, AS AMENDED  
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CORPORATION and BENACHEE RESOURCES INC.

Applicants

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

Proceedings commenced in Toronto

**ORDER**

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