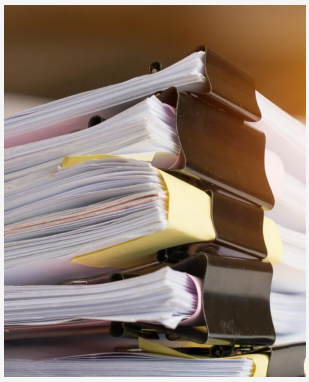
OSLER

Court of Queen's Bench of Alberta concurrently approves sales process and transaction proposed by stalking horse bidder



APRIL 4, 2022 5 MIN READ

Related Expertise

- Insolvency and Restructuring

Authors: Randal Van de Mosselaer, Emily Paplawski, Ilia Kravtsov

Introduction

On March 30, 2022, in the context of receivership proceedings of Balanced Energy Oilfield Services Inc., Balanced Energy Oilfield Services (USA) Inc. and Balanced Energy Holdings Inc. (collectively, the Debtors), the Court of Queen's Bench of Alberta (the Court) issued an order, among other things

- approving a sales solicitation process (SSP), including a stalking horse bid
- granting vesting orders (including a reverse vesting order) with respect to the transaction proposed by the stalking horse bidder (the Stalking Horse Transaction), to become effective in the event there is no superior bid through the SSP

This concurrent approval is novel in the context of insolvency proceedings, and, when appropriate, may allow court officers and debtors to close transactions with stalking horse bidders without the delays and expenses associated with an additional court hearing.

Background

The Debtors were oilfield services companies that provided intermediate and deep coil tubing services, nitrogen services and crane services to the oil and gas industry in Canada and the United States.

On March 7, 2022, on the application of the Debtors' senior secured lender, FTI Consulting Canada Inc. was appointed receiver and manager of all of the Debtors' assets, undertakings and properties (the Receiver) pursuant to section 243 of the *Bankruptcy and Insolvency Act*[1] (the BIA).

Prior to the Receiver's appointment, the Debtors' senior secured lender negotiated a transaction with a party interested in purchasing the Debtors' business as a going concern. Upon its appointment, the Receiver concluded that further canvassing of the market was

required in order to confirm that the transaction negotiated between the senior secured lender and the interested party represented the highest and best result for the Debtors' stakeholders. The Receiver therefore proposed to conduct a sales process to canvass the market and to convert the previously negotiated transaction into a stalking horse sales process. This would simultaneously prove a floor price for the purchase and sale of the Debtors' business and provide prospective purchasers with an opportunity to make an offer superior to the price being offered by the stalking horse bidder, if they believed that price to be too low.

The nature of the Debtors' assets required that the SSP be conducted as quickly as possible, as there was a significant benefit to closing a transaction prior to the spring break-up.

As a result, in order to potentially avoid the costs and delays associated with a court hearing normally required for the approval of the post-SSP transaction, the Receiver sought concurrent approval of the SSP *and* of the Stalking Horse Transaction. This approval is to become effective in the event that the Receiver files a certificate with the Court certifying that no superior bids have been received pursuant to the SSP, or that the stalking horse bidder is the successful bidder following the conduct of an auction contemplated under the SSP.

Submissions and orders

In its submissions to the Court, the Receiver argued that concurrent approval of the SSP and of the Stalking Horse Transaction was appropriate, given the following factors:

- It would avoid delays and expenses, which would be prejudicial to the Debtors' stakeholders.
- In its role as court-appointed officer, the Receiver will be able to ensure that the SSP is conducted in accordance with its terms, and that no superior bids have been received, thus protecting the fairness of the SSP process.
- If superior bids are received, the conditions for the closing of the transaction proposed by the stalking horse bidder will not be met, and the Receiver will be required to bring an application before the Court. Therefore, no stakeholders would be prejudiced by the concurrent approval of the SSP and of the Stalking Horse Transaction.
- A requirement for an additional hearing and the associated inherent delays may adversely affect the value of the Debtors' assets given the usual cycle of oilfield services work, and the benefit to close a transaction prior to the spring break-up.
- Concurrent approval would simplify the proceedings and preserve judicial resources.

The Court granted the orders sought by the Receiver, and the SSP is currently ongoing. The vesting orders issued by the Court provide that they become effective upon the filing by the Receiver of a certificate certifying that no superior bids have been received pursuant to the SSP, or that the stalking horse bidder is the successful bidder following the conduct of an auction contemplated under the SSP, and that they can be set aside by the Court on further application by the Receiver.

Implications

Concurrent approval of a sales process and a conditional approval of a stalking horse transaction is novel and, when justified in the circumstances, may allow debtors or court officers to avoid a hearing following the conduct of the sales process. This may result in a

quicker closing of the transaction, in addition to savings to the estate.

Notwithstanding the fact that this novel approach has first been used in the context of receivership proceedings, it is likely to be available in other restructuring mechanisms under the BIA and under the *Companies' Creditors Arrangement Act*.[2]

Osler's team composed of Randal Van de Mosselaer, Emily Paplawski, Ilia Kravtsov represents the Receiver in this matter.

---

[1] *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.

[2] *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.