



Hopaco Properties Limited  
First Report of Rosen Goldberg Inc.

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# **TAB 1**



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-14-10797-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C.  
C.43, AS AMENDED**

BETWEEN:

**PT ATPK RESOURCES TBK (Indonesia) RC No. AHU.60183.AH.01.02**

Applicant

-and-

**HOPACO PROPERTIES LIMITED (Virgin Islands, British) RC No. 178636**

Respondent

**FIRST REPORT OF ROSEN GOLDBERG INC.**

**June 29, 2015**



## I INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo dated January 12, 2015, (the “**Receivership Order**”), SF Partners Inc. was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, property and undertaking of Hopaco Properties Limited (Virgin Islands, British) RC No. 178636 (the “**Debtor**”) pursuant to section 101 of the *Courts of Justice Act*. A copy of the Receivership Order is attached herewith as **Appendix “A”** to this first report of the Receiver (the “**First Report**”).
2. On January 1, 2015, SF Partners Inc. changed its name to Rosen Goldberg Inc., prior to the return date of the motion (the “**Motion**”) seeking the Receiver’s appointment, but subsequent to the date that materials were filed by the Applicant in respect of the Motion.
3. The purpose of this First Report is:
  - (a) to seek this Honourable Court’s approval of the actions of the Receiver to date;
  - (b) to seek this Honourable Court’s approval of a sale to the Applicant of the shares in Diversified Energy and Resources Corporation owned by the Debtor;
  - (c) to seek this Honourable Court’s approval of a claims process in respect of the Debtor, as more thoroughly described hereunder; and
  - (d) to advise this Honourable Court of the Receiver’s intended continuing course of action.



## **II TERMS OF REFERENCE**

4. In preparing this First Report, the Receiver has relied upon information from third party sources (collectively, the “**Third Party Information**”). Certain information contained in this First Report may refer to, or be based on, the Third Party Information. As the Third Party Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Third Party Information, and to the extent possible, reviewed the Third Party Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Third Party Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Third Party Information.

## **III BACKGROUND**

5. The Debtor, incorporated pursuant to the laws of the British Virgin Islands, owns approximately 49% of the issued and outstanding common shares in the capital of Diversified Energy and Resource Corporation (“**DEAR**”), a Canadian corporation. The Receiver is unaware of any other assets owned by the Debtor.



6. The Receiver is advised that the Debtor's original purpose was to hold shares in PT ATPK Resources TBK ("**ATPK**"), an Indonesian corporation whose shares are publicly-traded on the Indonesia Stock Exchange. The Debtor's ATPK shares were subsequently exchanged for 113,398,260 DEAR shares, representing approximately 49% of the issued and outstanding DEAR shares. The Receiver is further advised that, aside from its holding of ATPK (and subsequently DEAR) shares, Debtor had no commercial operations.
  
7. As a result of the share exchange, DEAR currently owns approximately 85,845,000 shares in the capital of ATPK. The Canadian-dollar market value of DEAR's ownership interest in ATPK at June 15, 2015 is approximately \$1,555,000, based on information received from the Mackie Research Capital, the broker who is holding the shares on behalf of DEAR (the "**Broker**").
  
8. Pursuant to an order (the "**Interlocutory Injunction**") of the Honourable Mr. Justice Newbould dated November 1, 2012, DEAR is restrained from selling or otherwise dealing with its shares in ATPK. The Interlocutory Injunction also ordered the Broker to freeze DEAR's brokerage account and prevent the transfer of the ATPK shares. A copy of the Interlocutory Injunction is attached herewith as **Appendix "B"**. Aside from the ATPK shares, the Receiver is unaware of any other assets owned by DEAR.



#### IV INITIAL ACTIONS OF THE RECEIVER

9. As the Receiver had limited information regarding the DEAR shares, shortly after its appointment, the Receiver wrote to Adam Szweras of Fogler Rubinoff, former counsel to DEAR requesting documentation regarding the affairs of the Debtor and DEAR. Mr. Szweras provided several documents to the Receiver including, *inter alia*:
- Shareholder lists and ledgers re: DEAR
  - Share certificates in the capital of DEAR
  - Registers of directors and officers of DEAR
  - Asset transfer agreements between the Debtor and DEAR
10. Although useful from a corporate reporting and record-keeping perspective, none of the documents delivered by Mr. Szweras provide any indication of the financial position of either DEAR or of the Debtor. The Receiver is advised that financial statements might have been prepared several years ago in respect of DEAR, but in any event, the Receiver understands that nothing has been prepared recently.
11. The Receiver has been unable to secure any documents that provide an indication of the financial position of the Debtor or of DEAR, including financial statements, general ledgers, lists of assets or lists of creditors. The only substantive document indicating financial position provided to date to the Receiver is a Broker statement indicating DEAR's ownership interest in



ATPK. A copy of the Broker statement is attached herewith as **Appendix “C”**.

12. In a letter dated October 30, 2014 written by Mr. Szweras to the Sheriff, Mr. Szweras advised that on September 4, 2013, Mr. Tobby Tan, on the direction of Mr. Ishkandar Shah, director of DEAR, collected the minute book and share certificates of DEAR including the share certificate issued to the Debtor. This information is noted in the Application Record seeking the appointment of the Receiver. A copy of the letter of Mr. Szweras to the Sheriff is attached herewith as **Appendix “D”**.
  
13. Given the Receiver’s mandate to liquidate the assets of the Debtor including the DEAR shares, the Receiver was concerned that it possessed too little information to quantify the value of the Debtor or of DEAR, and therefore, it was unable to begin a sale process in respect of the DEAR shares. In addition, the Receiver did not have possession of the Debtor’s share certificates in the capital of DEAR. To gain a greater understanding of the financial position of DEAR, and to review DEAR’s minute books and share certificates, the Receiver convened a meeting of the shareholders of DEAR.

### **Shareholders’ Meeting**

14. On February 2, 2015, the Receiver delivered to the directors of DEAR a Requisition for Shareholders’ Meeting (the “**Requisition**”), pursuant to s.105 of the Ontario *Business*



*Corporations Act* (the “OBCA”). A copy of the Requisition is attached herewith as **Appendix “E”**. Thereafter, the Directors failed to call a Shareholders’ Meeting within the time required by the OBCA, and thus, the Receiver (in its capacity as receiver of the Debtor, a 49% shareholder in DEAR) convened a meeting of the Shareholders of DEAR on April 20, 2014. A copy of the Notice of Meeting of the Shareholders of DEAR is attached herewith as **Appendix “F”**.

15. The shareholder meeting resolved *inter alia* to elect Brahm Rosen and Robert Tjandra as the sole directors of DEAR, and also to appoint Collins Barrow as accountants of DEAR. Mr. Rosen is also President of the Receiver. A copy of the minutes of the shareholder meeting is attached herewith as **Appendix “G”**.
16. In a subsequent Director meeting, Mr. Rosen was appointed as the President and Secretary of DEAR.
17. Following the shareholder meeting, the Receiver was put in a position to issue replacement share certificates evidencing the Debtor’s ownership interest in DEAR, and to convey the DEAR shares.



## V SALE PROCESS

18. The Receiver considered several options when determining its realization strategy. It first considered a sale of the ATPK shares held by DEAR (currently subject to the Interlocutory Injunction). The directors of DEAR could resolve to sell the ATPK shares on the Indonesian Stock Exchange. The directors would then resolve to distribute the net proceeds realized from the sale on a pro-rata basis to the shareholders in the form of a corporate dividend.
  
19. The Receiver also considered a sale of the DEAR shares. A sale of the DEAR shares avoids the sale by the Receiver of the ATPK shares, which in turn avoids two possibly undesirable and/or inefficient results. First, a possible breach of the Interlocutory Injunction which would necessitate further advice and directions from this Honourable Court and the incurrence of additional costs. Second, the increased costs of two claims processes that would be required in respect of both DEAR and the Debtor. Given the lack of DEAR's financial records, the Receiver is uncertain of the creditors of DEAR. If it were to liquidate the ATPK shares, the Receiver would be unable to distribute the net proceeds to DEAR's shareholders until it had complete certainty as to the creditors of DEAR. Otherwise, it might be committing an offence under the OBCA, especially if the dividend was declared at a time when DEAR was insolvent, or if the dividend made DEAR insolvent.



20. The Receiver ultimately decided on a tender process in respect of the DEAR shares. The Receiver's decision was partly influenced by its own understanding that at least one party was likely interested in purchasing the DEAR shares.
  
21. An advertisement was placed in the May 19, 2015 issue of the National Post, soliciting offers for the Receiver's right, interest and title in the DEAR shares.
  
22. In addition to the National Post advertisement, the Receiver did the following with respect to the sale process:
  - Prepared an Information Package outlining the assets available for sale, including terms of sale and form of offer for distribution to prospective purchasers (a copy of the Information Package is attached herewith as **Appendix "H"**)
  - Distributed the Information Package to two interested parties
  - Solicited interest, and had follow-up correspondence and/or communication with three interested parties
  
23. In total, three parties contacted the Receiver in respect of the opportunity. Two Information Packages were sent to interested parties. The Receiver had various follow-up correspondence and discussion with the three interested parties. Ultimately, one party submitted an offer for the DEAR shares, subject to court approval.



### **Offer Received**

24. The offer (the “**Offer**”), in the amount of \$750,000, submitted by the Applicant, is substantially in the form of a ‘credit bid’, wherein \$710,000 of the proceeds are set off against amounts owed by the Debtor to the Applicant, pursuant to a judgment of this Honourable Court. The remaining \$40,000 will be paid in cash to the Receiver, and will be used to satisfy the Receiver’s fees and costs of administration, subject to assessment by this Honourable Court. A copy of the Offer is attached herewith as **Appendix “I”**.
  
25. The Receiver has accepted the Offer, subject to court approval. The Receiver has prepared an Agreement of Purchase and Sale (the “**APS**”) evidencing the terms of the Offer, as well as certain other terms requested by the Applicant and agreed by the Receiver. An executed copy of the APS is attached herewith as **Appendix “J”**. The transaction as outlined in the APS (the “**Transaction**”) is conditional on the result of a claims process in respect of the creditors of the Debtor. Should there be other claims in respect of the Debtor, the cash proceeds in respect of the Transaction would have to increase, so that any other creditors would receive their pro-rata distribution of the proceeds. Given the Receiver’s uncertainty regarding the makeup and quantum of claims of the creditors of the Debtor, the Applicant has chosen to make the Transaction conditional on a final and conclusive determination of the creditors’ claims.



26. The Receiver believes that the Transaction is fair, given the fair market value of the Debtor's interest in DEAR, and given the likely impairment in the value of the ATPK shares pursuant to the Interlocutory Injunction. The Debtor's effective interest in the ATPK shares is approximately 49%, as represented by its percentage ownership of DEAR. At present, the value of the ATPK shares of approximately \$1,555,000 translates to approximately \$762,000 of value attributable to the Debtor. The Transaction proceeds of \$750,000 are therefore reflective of the value of the ATPK shares attributable to the Debtor, notwithstanding the Interlocutory Injunction. In addition, the Receiver has received no other offers in respect of the DEAR shares.
27. Given that the Receiver has received no other offers in respect of the DEAR shares, and given the effect of the Interlocutory Injunction, the Transaction proceeds of \$750,000 is reasonable, and the Receiver requests that this Honourable Court approve the sale.
28. The Receiver has proposed below a claims process which it believes, in the circumstances, is the most expeditious and cost-effective method of determining the creditors of the Debtor.

## **VI CLAIMS PROCESS**

29. The Receiver proposes a thirty-day process (the "**Claims Process**") to determine the creditors of the Debtor. Claims filed after the thirty-day period will not be eligible to share in a dividend.



30. The Receiver intends to proceed with the Claims Process in the following manner:

- Forthwith upon this Honourable Court's approval of the Claims Process, the Receiver will place an advertisement in the National Post soliciting claims from creditors (a copy of the form of advertisement is attached herewith as **Appendix "K"**)
- Creditors will be permitted thirty days from the date of the advertisement to prove claims in the estate of the Debtor
- Claims received after the thirtieth day (the "**Claims-Bar Date**") will not be accepted by the Receiver
- All claims proven prior to the Claims-Bar Date will be eligible to participate in the distribution of the proceeds received from the DEAR share sale.

## **VII CONTINUING ACTIONS OF THE RECEIVER**

31. The Receiver intends to take the following continuing actions:

- (a) Undertake the Claims Process;
- (b) Finalize sale in respect of the DEAR shares;
- (c) Deal with the stakeholders and creditors on an ongoing basis.



## VIII RECOMMENDATION

32. On the basis of the foregoing, the Receiver respectfully requests that this Honourable Court issue an Order:

- (a) Approving the Receiver's actions to date;
- (b) Approving the Receiver's sale of the DEAR shares; and
- (c) Approving the Receiver's recommended Claims Process.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 29<sup>th</sup> day of June 2015.

**ROSEN GOLDBERG INC., IN ITS CAPACITY AS  
RECEIVER OF HOPACO PROPERTIES LIMITED  
(Virgin Islands, British), RC No. 178636, AND NOT IN  
ITS CORPORATE, PERSONAL, OR OTHER CAPACITY**

*Rosen Goldberg Inc.*

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