Court File No: CV-14-10667-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. c. C.43 (as amended)

AND IN THE MATTER OF HANFENG EVERGREEN INC.

NOTICE OF MOTION
(Re: Distribution & Discharge Order)
(Returnable August 29, 2024)

Ernst & Young Inc. ("**EYI**"), in its capacity as the Court-appointed Receiver (EYI in such capacity, the "**Receiver**") of Hanfeng Evergreen Inc. ("**Hanfeng**") will make a motion to a Judge presiding over the Commercial List on August 29, 2024, at 10:00 a.m. or as soon after that time as the motion can be heard by video conference. Please contact Nicholas Avis (navis@stikeman.com) if you plan to attend the motion and require a video conference link.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally by video conference.

THE MOTION IS FOR:

1. An Order:

   (a) approving the making of payments and distributions (collectively, the "**Distributions**") from any funds in the possession of the Receiver:

      (i) first, to the Receiver and its counsel, Stikeman Elliott LLP ("**Stikeman Elliott**"), in satisfaction of any fees and disbursements they have incurred and not yet been paid, and fees and disbursements to be incurred;

(ii) second, to holders of the Accepted Claims (as defined below) in an amount up to 100% of their accepted value, without any interest or penalties that might otherwise have accrued after August 20, 2014; and

(iii) third, any remaining funds to shareholders of Hanfeng on a *pro rata* basis, provided that no funds shall be distributed to Mr. Xinduo Yu or Mrs. Lei Li;

(b) authorizing the TSX Trust Company and any of its affiliates, successors and assigns, as applicable, to facilitate and implement distributions to any remaining shareholders of Hanfeng;

(c) approving the Receiver's Seventh Report, to be filed (the "**Seventh Report**"), and the Receiver's Sixth Report dated May 18, 2021 (the "**Sixth Report**"), and the activities of the Receiver described therein;

(d) approving the fees and disbursements of the Receiver and Stikeman Elliott, including the estimated fees and disbursements of the Receiver and Stikeman Elliott through to the date of the Receiver's discharge;

(e) terminating these proceedings and discharging the Receiver;

(f) granting a release in favour of the Receiver and Stikeman Elliott; and

(g) such further and other relief as counsel may advise and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The facts summarized in this Notice of Motion are more fully set out in the Seventh Report;

2. Capitalized terms that are not otherwise defined herein have the meaning ascribed to them in the Seventh Report;

3. All dollar references in this Notice of Motion are to Canadian dollars;

Generally

4. Hanfeng was a holding company for certain entities that were incorporated and, at the relevant times, operated in China, including its wholly owned subsidiary Hanfeng Slow-Release Fertilizer Co., Ltd. (the "**Chinese Subsidiary**");

5. The Chinese Subsidiary was managed by Mr. Yu and a team of individuals designated by him;

6. On August 20, 2014, this Court issued an Order appointing EYI as the Receiver of the assets, undertakings and properties of Hanfeng pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

7. The primary purpose of these receiver proceedings was to complete a share transfer transaction pursuant to which the shares of the Chinese Subsidiary were vested in Heilongjiang Pengcheng Fertilizer Co. Ltd. ("**HLJ Pengcheng**"), as purchaser, and the proceeds thereof distributed;

8. The purchasing entity was switched from HLJ Pengcheng to the Chinese language translation of Harbin Pengcheng Fertilizer Co. Ltd. ("**New Pengcheng**") in the share transfer agreement;

9. As the Receiver attempted to close the share transfer transaction, it uncovered evidence of concealed loans, legal actions and other information that led to mounting

concerns over the state of the Chinese Subsidiary, the potential linkage between Mr. Yu and New Pengcheng, as well as Mr. Yu's role in the entire transaction;

10. New Pengcheng paid a RMB 12.4 million (approximately CAN$2.48 million) deposit (the "**Deposit**") to the Receiver in connection with the share transfer transaction, but failed to make any further payments;

11. The share transfer transaction did not close;

Deposit Litigation

12. New Pengcheng commenced an action in China against Hanfeng, the Chinese Subsidiary, Mr. Yu and EYI in its personal capacity on or about August 3, 2015, seeking the termination of the share transfer agreement and the return of the Deposit (the "**Chinese Litigation**");

13. After years of litigation and appeals, the Receiver obtained a favourable judgement from the Heilongjiang Province Superior Court, which judgement was affirmed by the Supreme People's Court of China in December 2017;

14. In April 2021, the Receiver's Chinese counsel obtained a decision rendered on February 17, 2020, by the Supreme People's Procuratorate in China, which had the effect of concluding the Chinese Litigation and confirmed Hanfeng's entitlement to retain the Deposit;

15. The Deposit represents all of the funds left in the Hanfeng's estate;

Chinese Subsidiary Investigations

16. The Receiver, with the assistance of Chinese counsel and advisors, investigated the financial affairs of the Chinese Subsidiary and uncovered substantial financial irregularities that were unknown at the outset of these receivership proceedings;

17. The Receiver, with the assistance of its counsel and advisors, took steps with a view to preserve the assets of the Chinese Subsidiary, including reorganizing the three-member board of the Chinese Subsidiary to gain corporate control;

18. The Receiver's efforts were unsuccessful due to e.g., non-cooperation from local management and challenges related to the regulatory process in China;

19. The Receiver suspended its activities related to the Chinese Subsidiary pending the outcome of the Chinese Litigation;

20. The Receiver has now determined that it is challenging, if not impossible, to determine whether any recovery from the Chinese Subsidiary is feasible without investing substantial additional time, effort and funding, and the Receiver lacks the necessary resources to make such an investment;

Other Litigation

21. The Receiver commenced actions against Mr. Yu and his spouse, Mrs. Li, in the Ontario Superior Court of Justice (Toronto) on March 22, 2016, for relief including damages for breaches of fiduciary duties and fraudulent misrepresentation;

22. The Receiver's actions against Mr. Yu and Mrs. Li were settled, which settlement resulted in, among other things, Mr. Yu and Mrs. Li withdrawing the claims they filed against Hanfeng, agreeing not making any further claims in respect of their ownership of shares of Hanfeng, and waiving any and all rights to recovery and distribution in respect of same;

The Claims Process & Proposed Distribution

23. This Court issued an Order approving a claims process on September 23, 2014 (such claims process, the "**Claims Process**", and such order, the "**Claims Procedure Order**");

24. As part of the Claims Process, the Receiver:

(a) received 17 claims with a face value of $4,307,663 prior to the applicable deadline, of which it accepted or settled eleven of the 17 claims for a total amount of $456,191.32 (the "**Accepted Claims**");

(b) received one late claim of $173.32, which it disallowed; and

(c) received 61 claims related to shareholder rights with a total face value of $11,944,533 (the "**Equity Claims**"), none of which were (and have not yet been) accepted, revised or dismissed;

25. The Receiver holds funds in the amount of approximately C$1,788,432 before accounting for unpaid and accrued fees and disbursements of the Receiver and its counsel;

26. The Receiver proposes to distribute the funds it holds on the following basis:

(a) first, to the Receiver and Stikeman Elliott in satisfaction of any fees and disbursements they have incurred and not yet been paid, and fees and disbursements to be incurred;

(b) second, to holders of the Accepted Claims in an amount up to 100% of their accepted value without any interest or penalties that might otherwise have accrued after August 20, 2014; and

(c) third, any remining funds to shareholders of Hanfeng on a *pro rata* basis, provided that no funds shall be distributed to Mr. Yu or Mrs. Li;

27. In accordance with the Claims Procedure Order, the proposed Distribution does not pay any interest or penalties that might otherwise have accrued after August 20, 2014 (i.e., the date of the receivership) to holders of Accepted Claims;

28. Approximately $458,702 is estimated to be available for distribution to holders of Equity Claims;

29. TSX Trust Company previously served as the transfer agent for the shareholders of Hanfeng and has access to Hanfeng's latest shareholder registry;

30. The Receiver intends to work with TSX Trust Company to effect the distribution to holders of Equity Claims;

Termination and Discharge of the Receiver

31. After completing the distribution and certain administrative matters, the Receiver expects all remaining tasks in these receivership proceedings to be complete;

32. The proposed Order provides that the Receiver shall be discharged as receiver and manager of Hanfeng effective upon serving a certificate on the service list in these receivership proceedings;

33. The proposed Order includes a limited release in favour of the Receiver and Stikeman Elliott from any and all claims arising from these receivership proceedings;

Approval of the Fees and Disbursements of the Receiver and Stikeman Elliott

34. This Court previously approved the fees and disbursements of (a) the Receiver up to and including April 28, 2017, and (b) Stikeman Elliott up to and including May 5, 2017;

35. The Receiver is now seeking approval of:

(a) its fees and disbursements for the period of April 29, 2017, to June 30, 2024, in the amount of $246,804.17 (inclusive of HST);

(b) the fees and disbursements for Stikeman Elliott for the period of May 6, 2017,[1] to July 18, 2024, in the amount of $526,892.63 (inclusive of HST); and

(c) the fees and disbursements of the Receiver and Stikeman Elliott from July 1, 2024 (in the case of the Receiver) and July 19, 2024 (in the case of Stikeman Elliott) to the date of the Receiver's discharge, provided that neither the Receiver nor Stikeman Elliott's fees and disbursements exceed $50,000 each (inclusive of HST);

36. The fees and disbursements incurred by the Receiver and Stikeman Elliott, as set out in the affidavit of Allen (Liang) Yao, to be affirmed (the "**Yao Affidavit**"), and the affidavit of Brian Pukier, affirmed July 29, 2024 (the "**Pukier Affidavit**"), are reasonable in the circumstances and have been validly incurred;

37. The Receiver and Stikeman Elliott each estimate that they will incur fees and disbursements in the amounts of $50,000 (inclusive of HST), from July 1, 2024 (in the case of the Receiver) and July 19, 2024 (in the case of Stikeman Elliott), to the completion of these receivership proceedings;

38. The proposed Order provides that the Receiver and Stikeman Elliott are not required to pass their accounts in respect of the period from July 1, 2024 (in the case of the Receiver)

[1] Stikeman Elliott's accounts include one docket entry from April 17, 2017 (i.e. prior to May 6, 2017). Stikeman Elliott is seeking to have that one docket entry from April 17, 2017, approved as part of the current motion. All of the time entries that Stikeman Elliott is otherwise seeking to have approved as part of the current motion relate to the period from May 6, 2017, to July 18, 2024. Any references to Stikeman Elliott's accounts for the period from May 6, 2017, to July 18, 2024, should be read to include that single docket entry from April 17, 2017.

and July 19, 2024 (in the case of Stikeman Elliott), to the completion of these receivership proceedings, provided that their fees and disbursements do not exceed their estimates;

Approval of Receiver's Activities and Reports

39. The Receiver is seeking approval of its Sixth Report, the Seventh Report, any supplements thereto and the Receiver's activities and conduct of the Receiver as set out therein;

Other Grounds

40. The provisions of *Courts of Justice Act*, R.S.O. c. C.43, as amended, and the inherent and equitable jurisdiction of this Court;

41. Rules 1.04, 1.05, 2.03, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

42. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

43. The Yao Affidavit, to be filed;

44. The Pukier Affidavit, to be filed;

45. The Seventh Report of EYI in its capacity as the Receiver, to be filed; and

46. Such further and other materials as counsel may advise and this Honourable Court may permit.

July 31, 2024

STIKEMAN ELLIOTT LLP
Barristers and Solicitors
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 2B9

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
mkonyykhova@stikeman.com

Nicholas Avis LSO#: 76781Q
Tel: (416) 869-5563
navis@stikeman.com
Fax: (416) 947-0866

Lawyers for the Receiver

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STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
mkonyukhova@stikeman.com

Nicholas Avis LSO#: 76781Q
Tel: (416) 869-5504
navis@stikeman.com
Fax: (416) 947-0866

Lawyers for the Receiver