



FINAL ROUND PROPOSITION

TROUBLE IN ROBALIA

2ND ALLEN & OVERY - NLU JODHPUR
INTERNATIONAL DEAL
NEGOTIATION COMPETITION
16 - 18 FEBRUARY, 2024

BACKGROUND INFORMATION

Good Planet Mining Pvt. Ltd.

Good Planet Mining Pvt. Ltd. (“**GPM**” or the “**Company**”) is a private corporation headquartered in Delaware, USA working in the natural resource and mining sector. It specialises in the mining of rare earth minerals such as Lithium and operates a few of the world’s largest rare-earth mines. With mining projects spread across the world, it relies primarily on the leadership of Ms. Ferra Orenson, an Ultra-High Net Worth Individual who is a 76% promoter-shareholder in GPM, and the owner of substantial assets in relation to GPM’s operations.

Established in 2004, GPM has traditionally operated with low-risk financing options and always distributed its risk portfolio across the Good Planet Group (“**GPG**”), which has multiple subsidiaries and operates in the energy and infrastructure industry. With a strong commitment to sustainability and ethical mining, GPM has been at the forefront of the rare-earth mining industry and displayed strong financials over the past 2 years. It has a current Net Asset Value of GBP 1.5 Bn.

Since 2018, GPM has been running a successful Lithium mining project in Robalia, a mineral rich country in Middle Africa (the “**Robalia Project**”). Robalia offers financial incentives to potential investors, while also mandating stringent environmental checks and regulations for all mining operations.

Robalia has enacted a strict set of foreign investment rules, which restrict changes in control and creation of high-risk entities. The rules also prescribe stringent penalties for environmental violations and unsustainable practices by foreign investors.

Due to Ms. Orenson’s influence in the region, the Robalia Project remained successful for several years, allowing GPM to own and operate a smelter plant (the “**Plant**”) in Robalia through its subsidiary, GPM Smelting Co. (“**GPMS**”).

A GBP 2 Bn. amortising term loan facility comprising a seven-lender group was initially put together to finance the Robalia Project (the “**Facility**”). The Facility was fully collateralised through share security, guarantees, and all-asset security cover from GPG’s subsidiaries and parent company, Good Planet Mining Infrastructure Pvt. Ltd. (“**GPMI**”). As the Robalia Project became more self-sustaining and profitable, the Facility, which initially included a typical set of project finance-style covenants, has been amended over time to transition towards a general corporate finance-style facility with fewer operational restrictions in order to reduce the stress on GPM’s assets and grant it greater flexibility to manage its business operations as it sees fit.

Energy Infrastructure Capital LLC

Energy Infrastructure Capital LLC (“**EIC**”) is a private debt firm headquartered in London, UK, which finances infrastructure projects and operations internationally in collaboration with various renewable energy fund houses. Known for its strong stance on policy satisfaction and high environmental standards since 2009, it has a total of GBP 200 Bn. of assets under management. EIC typically prefers a senior position as a lender and requires extensive collateral for greenfield projects.

EIC was instrumental in securing financing for GPM with respect to the Robalia Project, being among the group of seven senior lenders (the “**Syndicate**”) under the Facility. GPG is one of EIC’s biggest clients, accounting for approximately 15% of its total assets under management, and EIC has long benefited from a fruitful relationship with GPG, having previously arranged several other financings for GPG’s various group entities over the years. Given EIC’s direct involvement and expertise in relation to the Robalia Project, the remaining lenders have indicated that they are agreeable to be bound by any proposals and agreements made between EIC and GPM.

EIC continues to maintain 45% of the total commitments under the Facility, which grants it an effective veto right, and the decisive vote, amongst the seven lenders in respect of any amendment or waiver to the Facility requiring Majority Lender consent (i.e., constituting 66% of the total commitments).

The loan facility is structured as a Syndicated Loan Agreement (the “**Agreement**”), which provides for multiple representations and undertakings, maintenance of minimum financial covenants, and other performance metrics. Interest under the Facility is payable on a quarterly basis, with amortising payments of principal due every year (the next payment of principal is due within 2 months from the date of the current round of negotiations).

The COVID-19 pandemic has not been a barrier to EIC’s growth, for EIC has been one of the few firms that has increased the size of its acquired investments and assets between Q4 2019 and Q4 2021. Notwithstanding the same, EIC has recently adopted stricter risk management protocols towards the structuring and covenant package on its loan facilities, oriented towards delivering better returns and mitigating any unforeseen risks stemming from the pandemic.

GENERAL INFORMATION

Performance of the Robalia Project

The Robalia Project, and the associated Plant, had been a resoundingly successful venture until the COVID-19 pandemic struck in Q2 2020. Prior to the pandemic, GPM and EIC had a stable debtor-creditor relationship, especially as GPM enjoyed relaxations and extensions on its covenants under the Agreement. In Q2 2020, the Syndicate also amended the amortising loan repayment schedule under the Agreement to give GPM a buffer against any unforeseen payment delays arising from the impact of COVID-19.

However, in Q1 2022, the post-pandemic results started to actualise on GPM's balance sheets, underperforming several analysts' base case forecasts. Further, owing to ongoing geopolitical tensions with the United States and China, the Government of Robalia imposed a series of embargoes on the export of rare-earth materials, and the Plant has suffered a slowdown of operations as a result. These issues have affected the profitability of the Robalia Project as a whole.

Further, citing these exigent circumstances, GPM has also failed to carry out bi-annual maintenance of its water and effluent treatment plants. Instead, it only undertook a perfunctory annual maintenance of the treatment plant. This has resulted in increased government scrutiny and checks, as well as reputational losses.

GPM and EIC have met twice to discuss the operational risks to the Project and agree potential solutions, however negotiations have been fraught, with emotions running high on both sides. At one stage during the previous round of discussions, EIC threatened to call an event of default and exercise its rights to accelerate the Facility.

While the parties have since tempered their rhetoric and are maintaining an ongoing dialogue, due to operational difficulties and blockage of international investments during the pandemic, GPM's Debt Service Cover Ratio and Gross Leverage Ratio – two key metrics under the Facility to assess the financial health of the Robalia Project which are tested every financial quarter ("Test Date") – have subsequently worsened, to the point that GPM is forecasting that it will not be able to meet the minimum standards for these financial covenants in time for its upcoming Test Date (in 2 months from the date of the current round of negotiations), and for some time thereafter.

GPM has indicated to EIC that the governmental embargoes will likely be lifted within 6 months based on unofficial reports and backchannel discussions with Robalian government officials. GPM is therefore keen to come to the table to negotiate a waiver/deferment of these Test Dates with EIC and the Syndicate.

EIC has informed GPM that is willing to consider relaxations of Test Dates, as well as a waiver of any action based on previous breaches of the Agreement, provided that GPM/GPMI gives the lenders sufficient additional protections under the Facility.

EIC understands, through informal communications with GPM, that GPG is amenable to exploring solutions to remedy any future breaches of the financial covenants, including through an equity cure mechanism to be provided by GPMI. EIC is keen to discuss the terms of any proposed equity cure mechanism more closely with GPM and GPMI and has suggested a potential amendment to the Agreement to cater to this (“Annexure A”).

Further, EIC is keen to explore the extent to which the Lenders can seek recourse directly against Ms. Orenson, in order to generally obtain some form of comfort from the ultimate sponsor of the Robalia Project. Ms. Orenson is open to GPM discussing this matter with EIC. However, she has made clear that while she has sufficient assets to pay in advance the Facility in full, for regulatory reasons, she will not be able to enter into a formal legal guarantee in respect of the Facility.

EIC has also tabled open discussions around what other forms of additional credit support may be available to the Syndicate, in order to enhance the Syndicate’s risk appetite. GPM have stated that they are open to any discussions in this respect.

Plant

Additionally, the Plant (for which development was not wholly completed) has recently started facing issues with respect to its development timeline.

Under the Agreement, GPM was obligated to (1) ensure that GPMS erected the main body of the Plant as a fully functional independent unit, and not only an ancillary infrastructure to the Robalia Project, by April 01, 2024, and (2) hire an engineering, procurement and construction contractor to complete development of the Plant.

However, due to labour shortages owing to previously imposed (and now lifted) pandemic-related restrictions, GPMS will be unable to fulfil the above obligations in a timely manner. Due to its financial state, GPM is unable to use its cash flows towards developing the Plant through GPMS.

In order to ensure the timely development of the Plant and realise the expected revenues once the Plant is fully operational, GPM is now proposing to hive off the assets of GPMS (which includes the land, buildings and machinery comprising the Plant) from the all-asset security package under the Facility, in order to be pledged as collateral for independent financing for the Plant.

GPM also aims to release the security over its shares in GPMS (which was also granted to the Syndicate) as part of the same contemplated financing package.

While EIC is agreeable, in principle, to GPMS obtaining separate financing for the development of the Plant, EIC is aware that any such financing may render the Syndicate as structurally subordinated to the rights of any new lenders. As such, EIC is conscious that it would need to obtain adequate protection to preserve the Syndicate's rights of repayment in priority to other creditors. Further, EIC stated that it would require GPM to maintain adequate cash in a secured account under the Facility in order to cover GPM's upcoming payment obligations under the Facility. EIC has tabled discussions on the terms of such debt service maintenance requirements, and potential solutions to address the Syndicate's subordination concerns, for its upcoming negotiations with GPM.

At the same time, GPM also hopes to resolve issues of over-collateralisation and the excessive involvement, and consequent overexposure to risk of all subsidiaries of GPG. In effect, it wants to draw risk away from GPMI and the involved subsidiaries. Further, it also wants to protect other subsidiaries from exposure to the Syndicate's risk, all while preserving the relationship between EIC and GPM.

In view of the above, EIC has now requested a re-negotiation of the Agreement to restructure the debt and keep in abeyance the relevant obligations, in order to avoid triggering an event of default and other cross-default provisions in the Agreement and other related agreements. Due to the magnitude of the loan amount and the financial risk associated with the Robalia Project, to the extent that negotiations are unsuccessful, there is a risk that other lenders of the Syndicate will trigger early-stage loan acceleration, which can put GPM on the brink of insolvency.

ANNEXURE-A

Syndicated Loan Agreement

24.4 Financial condition

The Company shall ensure that the Gross Leverage Ratio in respect of any Relevant Period specified in Column 1 *below* shall not exceed the ratio set out in Column 2 *below* opposite that Relevant Period.

Column 1 Relevant Period ending	Column 2 Covenant Level
31 March 2024	4.75:1
30 June 2024	4.0:1
30 September 2024	3.5:1
31 December 2024	3.0:1
At the end of each subsequent Relevant Period	2.5:1

24.5 Equity cure right

- (a) If the requirements of Clause 24.4 (Financial condition) are not met in respect of a Relevant Period but cash proceeds (the “**Equity Cure Amount**”) are received by the Company pursuant to any New Shareholder Injections after the end of that Relevant Period but prior to the end of a period of twenty (20) Business Days following the date on which the Compliance Certificate (relating to the Quarterly Financial Statement for the last Financial Quarter of the Relevant Period to which the non-compliance relates) setting out the calculations in respect of the relevant covenant determination is required to be delivered pursuant to Clause 24.2 (Compliance Certificate), the Company may elect to remedy such non-compliance by

subtracting the Equity Cure Amount from Total Gross Debt as if a prepayment of the Facility in the amount of the cash proceeds elected to be applied under this Clause 24.5 had been made on the last day of the last Financial Quarter of the Relevant Period to which the non-compliance relates for the purpose of calculating the Gross Leverage Ratio and the Equity Cure Amount subtracted from Total Gross Debt may exceed the amount required to remedy such non-compliance.

- (b) The amounts received in cash in respect of any Equity Cure Amount may only be taken into account to ascertain compliance with any requirement set out in Clause 24.4 (Financial condition) and for no other purpose (unless expressly provided in this Agreement to the contrary) and the Company may not make any such election:
- (i) more than two (2) times over the life of the Facility;
 - (ii) in respect of consecutive Relevant Periods; or
 - (iii) if it has not given notice on or prior to the due date for delivery of the relevant Compliance Certificate that it intends to exercise its right to remedy the non-compliance in accordance with this Clause 24.5.

If the Company makes an election and corresponding equity cure under paragraph (a) above after delivering the Compliance Certificate relating to the Quarterly Financial Statements for the last Financial Quarter of the Relevant Period to which the non-compliance relates, the Company shall deliver a notice to the Agent to such effect accompanied by a revised Compliance Certificate indicating compliance with the relevant financial covenant after taking into account the amounts used to remedy the non-compliance.

If, after giving effect to the adjustments referred to in paragraph (a) above, the requirements of Clause 24.4 (Financial condition) are met, then (subject to the other provisions of this Clause 24.5) the requirements of Clause 24.4 (Financial condition) shall be deemed to have been satisfied as at the relevant original date of determination.

The Company shall promptly apply any Equity Cure Amount received by it in prepayment of the Facilities.

KEY DEFINITIONS

Gross Leverage Ratio means in respect of any Relevant Period the ratio of Total Gross Debt on the last day of that Relevant Period to EBITDA in respect of any Relevant Period.

Group means the Company and its Subsidiaries for the time being.

New Shareholder Injections means the cash proceeds of the aggregate amount subscribed for by any person who is not a member of the Group:

- (i) for ordinary and/or preference shares in the Company; and
- (ii) Shareholder Loans; and
- (iii) any other non-cash interest bearing securities or loans made available to the Company by a person who is not a member of the Group on terms acceptable to the Majority Lenders (acting reasonably) and the rights of the creditor of the relevant Financial Indebtedness are made subject to Transaction Security on terms no more onerous than any equivalent existing Transaction Security, and which are subordinated to the rights of the Finance Parties on terms acceptable to the Majority Lenders (acting reasonably).

Relevant Period means each period of twelve (12) months ending on the last day of the Company's Financial Year and each period of twelve (12) months ending on each Quarter Date of the Company's Financial Year.

Total Gross Debt means, at any time, the aggregate outstanding principal or capital amount of all Borrowings of the Group calculated on a consolidated basis, except that:

- (i) ...
- (ii) Borrowings arising under any Shareholder Loans and under paragraph (f) of the definition of Financial Indebtedness shall not be included;
- (iii) ...
- (v) subject to Clause 24.5 (Equity cure right), the aggregate amount of any Equity Cure Amount shall be deducted (to the extent such Equity Cure Amount is subtracted from Total Gross Debt in accordance with Clause 24.5 (Equity cure right)),

This problem is drafted by Mr. Sunchit Sethi (Senior Member, Alternative Dispute Resolution Committee) in collaboration with Mr. Dhruv Velloor (Associate, Allen & Overy). This problem is drafted purely for academic purposes and for use as a mock problem in the 2nd Allen & Overy – NLU Jodhpur International Deal Negotiation Competition 2024. The narrative adopted by the authors of the problem is purely personal and is not attributable to the organization. Resemblance to any person or organization is purely coincidental.