

May 19, 2021

Firdhose Coovadia, Director  
Jamie Nelson, Director  
Mesabi Metallics Company, LLC  
17113 County Road 58, P.O. Box 25  
Nashwauk, MN 55769

*Sent via certified mail and email*

RE: Conditions Precedent to the Effectiveness of the 2020 Master Lease Amendment

Dear Mr. Coovadia and Mr. Nelson:

I write to follow up on my letter of May 5, 2021 notifying Mesabi Metallics Company, LLC (“Mesabi”) that it had failed to satisfy the conditions precedent to the effectiveness of the 2020 Master Lease Amendment, and that as a result, the Master Lease Amendment did not become effective.

The May 5 letter identified Mesabi’s failure to secure \$200 million in immediately available funds by May 1 as a basis for the Master Lease Amendment not becoming effective, and indicated the Minnesota Department of Natural Resources (“DNR”) would continue its review on other conditions precedent. While the DNR has not completed that review, it has completed enough review to determine that Mesabi and its parent Essar Global Fund Ltd. (“Essar Global”) failed to meet additional conditions precedent to the Master Lease Amendment becoming effective, as set forth below.

The DNR notes that Mesabi’s refusal (as set forth in the letter from Joshua Berman to Oliver Larson dated May 18) to provide even redacted copies of the operative documents to DNR prevents DNR from completing its review of whether Mesabi has satisfied the conditions precedent to the Master Lease Amendment. This letter therefore identifies those additional defaults DNR is presently aware of, without prejudice to DNR’s ability to contest other failures by Mesabi as DNR’s investigation continues.

First, the term loan commitment provided by Mark AB is not a binding and enforceable debt commitment within the meaning of Section 4(e)(i) of the Master Lease Amendment. It contains numerous contingencies. Of particular note, Mark AB is not required to advance any funds unless the cost to complete the project at the time of the draw request is less than \$450 million (as determined by Mark AB’s technical advisor). This renders the commitment conditional, and exposes the State to the exact risk that the Master Lease Amendment was written to eliminate – that financing for the project will evaporate if the cost to complete the facility exceeds \$850 million for any reason (a likely outcome given

the history of this project). DNR also notes that the financing is contingent upon the execution of an intercreditor agreement. This is a substantial and baseless contingency. There is no reason an intercreditor agreement could not have been executed in connection with the closing of the senior term loan agreement. For the reasons set forth below, DNR assumes that Mesabi, Essar Global, and Mark AB left this item uncompleted because Mark AB lacks the resources to fund the required \$450 million – requiring other lenders to be assembled. But that only further establishes the illusory nature of the loan commitment. This is by no means an exhaustive list of the impermissible contingencies in the Mark AB commitment, but given Mesabi’s refusal to provide a copy of the term loan document to DNR, DNR is unable to provide an exhaustive list of Mesabi’s failures.

Second, Mark AB is not a credible lender for the project. The materials Mesabi provided for inspection stated that Mark AB has approximately \$1.1 billion in assets under management. It is not credible to claim that Mark AB could or would commit more than 40% of its assets under management to a single project. The DNR also notes that the last “news” entry on Mark AB’s website dates to 2012, and there is little if any meaningful information on the site to suggest it is a credible lender for the project. The financial information concerning Mark AB that was provided for inspection (consisting of a PowerPoint presentation) also dates back to at least 2019. DNR will continue to perform due diligence on Mark AB, but the available information already establishes that it is not a credible lender for the \$450 million term loan commitment, a commitment that itself is also rendered meaningless by virtue of its contingent nature described above.

Third, the junior secured debt Essar Global proposes to provide allows it to hold a security interest in the assets of Mesabi. Unless these debt interests and related security have been structured to prevent Essar Global from exercising this security interest in the event of a default, this would constitute a failure by Mesabi to meet the condition precedent of Section 4(a) of the Master Lease Amendment.

In addition to the failures set forth above, the information DNR has now reviewed also clearly establishes that the COVID crisis in India was not the reason Mesabi failed to obtain \$200 million in immediately available funds by May 1. Rather, it was never Mesabi’s or Essar Global’s intent to meet this condition. The operative debt and equity agreements only require Essar Global to furnish \$100 million by May 1, with the second \$100 million to be committed *only* if DNR agreed to deem the Master Lease Amendment effective. Put another way, Mesabi and Essar Global attempted to turn the \$200 million condition precedent on its head.

Ultimately, the reason Mesabi and Essar Global failed to meet the \$200 million condition precedent is irrelevant, but DNR notes that it was not bad fortune that caused the failure – it was a deliberate choice by Mesabi and Essar Global to structure the \$200 million commitment in a way that directly contradicted the terms of the 2020 Master Lease Agreement to which they were both parties. It also fits Essar Global’s long-established pattern of showing up late, with less than what is required, and with illusory promises of

financing that is unlikely to ever materialize. This is also exactly the type of intentionally deficient performance that caused the project to fail in 2015.

Please note that the DNR is proceeding with termination of the underlying leases as set forth in its lease termination notice of May 5.

Sincerely,



Jess Richards  
Assistant Commissioner  
Minnesota Department of Natural Resources

cc: Oliver Larson, Asst. Attny. General, Minnesota Attorney General's Office  
Sherry Enzler, General Counsel, Department of Natural Resources  
Joseph Henderson, Division Director, Department of Natural Resources