



COURT FILE NUMBER

2001-07984

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF

CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NORTHERN SILICA CORPORATION,  
HEEMSKIRK MINING PTY. LTD., CUSTOM BULK SERVICES  
INC., HEEMSKIRK CANADA LIMITED, HEEMSKIRK CANADA  
HOLDINGS LIMITED and HCA MOUNTAIN MINERALS  
(MOBERLY) LIMITED

APPLICANTS

QMETCO LIMITED and TAURUS RESOURCES NO. 2 B.V.

RESPONDENTS

NORTHERN SILICA CORPORATION, HEEMSKIRK MINING  
PTY. LTD., CUSTOM BULK SERVICES INC., HEEMSKIRK  
CANADA LIMITED, HEEMSKIRK CANADA HOLDINGS  
LIMITED and HCA MOUNTAIN MINERALS (MOBERLY)  
LIMITED

DOCUMENT

**ORDER**

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DOCUMENT:

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I hereby certify this to be a true copy of  
the original Order

Dated this 22 day of Oct 2020

[Signature]  
for Clerk of the Court

File No. 273913

DATE ON WHICH ORDER WAS PRONOUNCED:

October 22, 2020

NAME OF JUDGE WHO MADE THIS ORDER:

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The Honourable Justice Jones

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LOCATION OF HEARING:

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Calgary Courts Centre

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UPON the application of Northern Silica Corporation ("NSC"), Heemskirk Mining Pty. Ltd., Custom Bulk Services Inc. ("Custom Bulk"), Heemskirk Canada Limited ("Heemskirk Canada"), Heemskirk Canada Holdings Limited ("Heemskirk Holdings") and HCA Mountain Minerals (Moberly) Limited ("HCA Moberly") (collectively, the "Debtors"), AND UPON having read the Application, the Affidavit of Jerrad Blanchard sworn October 20, 2020 (the "Blanchard Affidavit"), filed, and the Affidavit of Service, filed; AND UPON reading the first report of the Monitor, Alvarez & Marsal Canada Inc. (in such capacity, the "Monitor") dated July 3, 2020, the second report of the Monitor dated July 21, 2020; the Third Report of the Monitor dated September 4, 2020, and the Fourth Report of the Monitor dated October 20, 2020; AND UPON reviewing the initial order granted on June 30, 2020, which was amended and restated on July 10, 2020 (together, the "Initial Order"); AND UPON reviewing the approval and vesting order granted September 11, 2020 (the "Approval and Vesting Order"); AND UPON hearing counsel for the Debtors, counsel for the Monitor, counsel for QMetco Limited ("QMetco"), Taurus Resources No. 2 B.V. and Vitreo Minerals Ltd., and other counsel present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **SERVICE**

1. The time for service of the notice of application for this order (the "Order") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

#### **APPROVAL OF NEW FACILITY AGREEMENT AND REPAYMENT OF QMETCO INDEBTEDNESS**

2. HCA Moberly is authorized and empowered to obtain and borrow under a credit facility pursuant to an Unsecured CAD Facility Agreement dated October 22, 2020 (the "New Facility Agreement") among HCA Moberly as borrower and QMetco as lender in order to repay indebtedness outstanding to QMetco in the amount of \$15,500,000.00 (the "New Loan Amount") under the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital Facility Agreement dated December 6, 2019 between HCA Moberly as borrower and QMetco as lender (the "Existing Facility Agreement") appended as Exhibit "D" to the Blanchard Affidavit.

3. Borrowings under the credit facility granted pursuant to the New Facility Agreement shall:
  - (a) not exceed the New Loan Amount;
  - (b) notwithstanding the date of execution of the New Facility Agreement or the date of any advance, not constitute a post-filing obligation of HCA Moberly; and
  - (c) have the same priority as the borrowings under the credit facility under the Existing Facility Agreement.
4. HCA Moberly is hereby authorized and empowered to execute and deliver the New Facility Agreement and such credit agreements and other definitive documents (collectively, the "Definitive Documents") as are contemplated by the New Facility Agreement or as may be reasonably required by QMetco pursuant to the terms thereof, and HCA Moberly is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to QMetco under and pursuant to the New Facility Agreement and the Definitive Documents as and when the same become due and are to be performed.
5. Notwithstanding:
  - (a) the pendency of these proceedings and any declaration of insolvency made herein;
  - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "BIA"), in respect of any of the Debtors, and any bankruptcy order issued pursuant to any such applications;
  - (c) any assignment in bankruptcy made in respect of any of the Debtors; and
  - (d) the provisions of any federal or provincial statute:

the New Facility Agreement and the Definitive Documents authorized and approved pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of HCA Moberly and shall not be void or voidable by creditors of HCA Moberly, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

**AMENDMENT OF APPROVAL AND VESTING ORDER**

6. Pursuant to Rule 9.12 of the *Alberta Rules of Court*, Alta Reg 124/2010, the Approval and Vesting Order shall be varied by amending the parcel identifier number in paragraph 9(b)(i) of the Approval and Vesting Order from 029-224-851 to 029-224-861.
7. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Debtors and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Debtors as may be necessary or desirable to give effect to this Order to to assist the Debtors and their agents in carrying out the terms of this Order.
8. Service of this Order shall be deemed good and sufficient by:
  - (a) serving the same on the persons listed on the service list created in these proceedings; and
  - (b) posting a copy of this Order on the Monitor's website at [www.alvarezandmarsal.com/northensilica](http://www.alvarezandmarsal.com/northensilica)and service on any other person is hereby dispensed with.
9. Subject to Rules 11.25 and 11.26 this Order shall constitute an order for substituted service pursuant to Rule 11.28 of the *Alberta Rules of Court*.
10. The Debtors and the Monitor are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



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Justice of the Court of Queen's Bench of Alberta