



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 **AMENDED AND RESTATED CCAA INITIAL ORDER**

CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT:

McMillan LLP
Suite 1700, 421 7th Avenue SW
Calgary, AB T2P 4K9

Phone: 403-531-4700

Fax: 403-531-4720

Attention : Adam Maerov
adam.maerov@mcmillan.ca

File No. 273913

I hereby certify this to be a true copy of
the original Order
Dated this 15 day of July 2020
M. Neitzel
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED:

July 10, 2020

NAME OF JUDGE WHO MADE THIS ORDER:

The Honourable Justice B.E. Romaine

LOCATION OF HEARING:

Calgary Courts Centre

UPON the application of Northern Silica Corporation (“NSC”), Heemskirk Mining Pty. Ltd., Custom Bulk Services Inc. (“**Custom Bulk**”), Heemskirk Canada Limited, Heemskirk Canada Holdings Limited and HCA Mountain Minerals (Moberly) Limited (collectively, the “**Debtors**”), **AND UPON** having read the Application, the Affidavit of Jerrad Blanchard (the “**Blanchard Affidavit**”), filed, the Affidavit of Martin Boland, sworn June 26, 2020, filed (the “**Boland Affidavit**”), and the Affidavit of Service, filed; **AND UPON** reading the First Report of the Monitor, Alvarez & Marsal Canada Inc. (in such capacity, the “**Monitor**”) and the Pre-Filing Report of the Monitor; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either do not oppose or alternatively consent to the within Order; **AND UPON** hearing counsel for the Debtors, counsel for the Monitor, counsel for QMetco Limited, Taurus Resources No. 2 B.V., the proposed Interim Lender (as defined below), 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.

APPLICATION

2. The Debtors are companies to which the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, of Canada, as amended (the “**CCAA**”) applies.

PLAN OF ARRANGEMENT

3. The Debtors shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. The Debtors shall:
 - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);

- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and the Property;
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel, financial advisors and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and
 - (d) be entitled to continue to utilize the central cash management system currently in place as described in the Boland Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) in each case, so long as the Monitor shall have oversight over such Cash Management Systems, and any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Debtors of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Debtors, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
5. To the extent permitted by law, the Debtors shall be entitled but not required to make the following advances or payments of the following expenses, whether incurred prior to, on or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses (including without limitation, payroll and benefits processing and servicing expenses) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Debtors in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order;

- (c) scheduled payments of principal and interest by Custom Bulk to ATB Financial (“**ATB**”) pursuant to the terms of the ATB Loan Agreement (as defined in paragraph 65 of the Boland Affidavit); and
 - (d) with consent of the Monitor, amounts owing for goods or services supplied to the Debtors, including for periods prior to the date of this Order if, in the opinion of the Debtors following consultation with the Monitor, the supplier or vendor of such goods or services is necessary for the operation or preservation of the Business or the Property.
6. Except as otherwise provided to the contrary herein, the Debtors shall be entitled but not required to pay all reasonable expenses incurred by the Debtors in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Debtors following the date of this Order.
7. The Debtors shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan,
 - (iii) Quebec Pension Plan, and
 - (iv) income taxes,
- but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Debtors in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Debtors.
- 8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Debtors may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Debtors from time to time for the period commencing from and including the date of this Order (“**Rent**”), but shall not pay any rent in arrears at the date of this Order.
- 9. Except as specifically permitted in this Order, the Debtors are hereby directed, until further order of this Court:
 - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Debtors to any of their creditors as of the date of this Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

- 10. The Debtors shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined in paragraph 33) , have the right to:

- (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Debtors (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Debtors and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Debtors deem appropriate, in accordance with section 32 of the CCAA; and
- (d) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Debtors to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. The Debtors shall provide each of the relevant landlords with notice of the Debtors’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Debtors’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Debtors, or by further order of this Court upon application by the Debtors on at least two (2) days’ notice to such landlord and any such secured creditors. If the Debtors disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Debtors’ claim to the fixtures in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

- (e) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Debtor and the Monitor 24 hours' prior written notice; and
- (f) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Debtors in respect of such lease or leased premises and such landlord shall be entitled to notify the Debtors of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

13. Until and including August 7, 2020 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Debtors, or the Monitor, or affecting the Business or the Property, except with the written consent of the Debtors and the Monitor, or with the leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court or the written consent of the Debtors and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Debtors or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Debtors and the Monitor, or leave of this Court, provided that nothing in this Order shall:
- (a) empower the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on;

- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for a lien; or
 - (e) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.
15. Nothing in this Order shall prevent any party from taking an action against the Debtors where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Debtors and the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with the Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, shipping and transportation, services, utility or other services to the Business or the Debtors

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtors or exercising any other remedy provided under such agreements or arrangements. The Debtors shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers,

internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with the payment practices of the Debtors, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, other than the Interim Lender where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Debtors.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Debtors, if one is filed, is sanctioned by this Court or is refused by the creditors of the Debtors or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Debtors shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and or officers of the Debtors after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
21. The directors and officers of the Debtors shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37, 38 and 40 hereof.

22. Notwithstanding any language in any applicable insurance policy to the contrary:
- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Debtors' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Debtors with the powers and obligations set out in the CCAA or set forth herein and that the Debtors and each of their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Debtors pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Debtors' receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Debtors;
 - (c) assist the Debtors, to the extent required by the Debtors, in their dissemination to the Interim Lender and its counsel on a bi-weekly basis of financial and other information as agreed to between the Debtors and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
 - (d) advise the Debtors in their preparation of the Debtors' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and

delivered to the Interim Lender and its counsel on a periodic basis, but not less than bi-weekly, or otherwise agreed to by the Interim Lender;

- (e) advise the Debtors, to the extent required by the Debtors, in their development of the Plan and any amendments to the Plan;
 - (f) assist the Debtors, to the extent required by the Debtors, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Debtors to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Debtors or to perform its duties arising under this Order;
 - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
 - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Debtors and any other Person; and
 - (j) perform such other duties as are required by this Order or by this Court from time to time.
25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to

be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide the Interim Lender and any creditor of the Debtors with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Debtors is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Debtors may agree.
27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
28. The Monitor, counsel to the Monitor and counsel to the Debtors shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), by the Debtors, in each case at their standard rates and charges, subject to the terms set forth in their respective engagement letters with the Debtors, as applicable, as part of the costs of these proceedings. The Debtors are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Debtors on a regular basis.
29. The Monitor and its legal counsel shall pass their accounts from time to time.
30. The Monitor, counsel to the Monitor and counsel to the Debtors as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37, 38 and 40 hereof.

INTERIM FINANCING

31. The Debtors are hereby authorized and empowered to obtain and borrow under a credit facility from Vitreo Minerals Ltd. (the “**Interim Lender**”) in order to finance the Debtors’ working capital requirements and other general corporate purposes and capital expenditures, provided that the principal amount of the borrowings under such credit facility shall not exceed \$3,000,000 unless permitted by further order of this Court.
32. Such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Debtors and the Interim Lender dated as of July 3, 2020 (the “**Credit Agreement**”), filed.
33. The Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Credit Agreement or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Credit Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
34. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the “**Interim Lender's Charge**”) on the Property to secure all obligations under the Credit Agreement and the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Credit Agreement and Definitive Documents, including interest, costs and such other amounts payable under the Credit Agreement. The Interim Lender’s Charge shall not secure any obligation existing before this the date this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 37, 38 and 40 hereof.
35. Notwithstanding any other provision of this Order:
 - (a) the Interim Lender may but is not obligated to take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the Credit Agreement, Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon five (5) days notice to the Debtors and the Monitor or such other notice period as approved by this Court, may exercise any and all of its rights and remedies against the Debtors or the Property under or pursuant to the Credit Agreement, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to the Debtors and set off and/or consolidate any amounts owing by the Interim Lender to the Debtors against the obligations of the Debtors to the Interim Lender under the Credit Agreement, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtors and for the appointment of a trustee in bankruptcy of the Debtors; and
 - (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtors or the Property.
36. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Debtors under the CCAA, or any proposal filed by the Debtors under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

37. The priorities of the Directors' Charge, the Administration Charge and the Interim Lenders' Charge, as among them, shall be as follows:
- First – Administration Charge (to the maximum amount of \$200,000);
- Second – Directors' Charge (to the maximum amount of \$150,000); and
- Third – Interim Lender's Charge (to the maximum amount of \$3,500,000).
38. The Administration Charge, the Directors' Charge, and the Interim Lender's Charge shall rank subordinate to ATB's existing security interest in the Property of Custom Bulk.
39. The filing, registration or perfection of the Directors' Charge, the Administration Charge, or the Interim Lender's Charge (collectively, the “**Charges**”) shall not be required, and the Charges shall

be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. Each of the Directors' Charge, the Administration Charge, and the Interim Lender's Charge shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except as set out in paragraph 38 above.
41. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with either of the Directors' Charge or the Administration Charge, or the Interim Lender's Charge, unless the Debtors also obtain the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Directors' Charge, the Administration Charge, and the Interim Lender's Charge (the "**Chargees**") or further order of this Court.
42. The Directors' Charge, the Administration Charge, the Credit Agreement, the Definitive Documents, and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees and the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
 - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), or any bankruptcy order made pursuant to such applications;
 - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - (d) the provisions of any federal or provincial statutes; or
 - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "**Agreement**") that binds the Debtors and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Credit Agreement or the Definitive Documents, shall create or be deemed to constitute a breach of any provision contained in the amended and restated unanimous shareholder agreement of NSC effective as of May 18, 2017 or any other Agreement to which any of the Debtors is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Debtors entering into the Credit Agreement or the execution, delivery or performance of the Definitive Documents; and
- (iii) the payments made by the Debtors pursuant to this Order, including the Credit Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

43. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Interim Lender's Charge, and the Directors' Charge amongst the various assets comprising the Property.

SERVICE AND NOTICE

44. The Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Debtors of more than \$1,000; and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
45. Subject to Rules 11.25 and 11.26 this Order shall constitute an order for substituted service pursuant to Rule 11.28 of the Rules of Court.

46. The Monitor shall establish a case website in respect of the within proceedings at www.alvarezandmarsal.com/northernsilica

GENERAL

47. The Debtors or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties under this Order or the interpretation or application of this Order hereunder.
48. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
49. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Debtors, the Business or the Property.
50. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Debtors, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Debtors and the Monitor and their respective agents in carrying out the terms of this Order.
51. 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 and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
52. Any interested party (including the Debtors and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

A handwritten signature in blue ink, consisting of stylized initials followed by a long horizontal stroke.

Justice of the Court of Queen's Bench of Alberta