

Clerk's Stamp

COURT FILE NUMBER
COURT
JUDICIAL CENTRE OF

2001-07984
COURT OF QUEEN'S BENCH OF ALBERTA
CALGARY

APPLICANTS:

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 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

APPLICATION

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

McMillan LLP

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File No. 273913

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	November 23, 2020
Time:	2:00 p.m.
Where:	Edmonton – Via Webex.
Before:	The Honourable Justice Lema – Commercial List

Go to the end of this document to see what you can do and when you must do it.

Order Sought:

1. The Respondents, Northern Silica Corporation, Custom Bulk Services Inc., Heemskirk Canada Limited, Heemskirk Canada Holdings Limited, HCA Mountain Minerals (HCA Moberly) Limited, and Heemskirk Mining Pty. Ltd., (collectively referred to herein as the “**NSC Companies**”) seek an order (the “**Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”) substantially in the form attached as Schedule “A” hereto, *inter alia*:
 - (a) extending the stay of proceedings (the “**Stay Period**”) up to and including the date on which the Monitor files with this Court a monitor’s certificate in the form attached as Schedule “A” to the Order (the “**Monitor’s Certificate**”);
 - (b) ordering that upon the filing of the Monitor’s Certificate, the within proceedings (the “**CCAA Proceedings**”) shall be terminated and granting ancillary relief for such termination;
 - (c) ordering that the NSC Companies pay certain remaining funds in their possession (the “**NSC Funds**”) to the Monitor;
 - (d) directing that the Monitor pay the balance of the NSC Funds to the Purchaser (as defined below) after payment of:
 - (i) any outstanding amounts owing by the NSC Companies and incurred after the commencement of the CCAA Proceedings;
 - (ii) any remaining costs of administration of the CCAA Proceedings, including costs subject to the Charges (as defined in the Initial Order);
 - (e) approving the actions and conduct of the Monitor in the CCAA Proceedings from September 11, 2020 to the date the Order is granted;

- (f) approving the Monitor's professional fees and those of its counsel incurred in the CCAA Proceedings from September 1, 2020 to the date the Order is granted; and
- (g) such further relief as counsel may advise and this Court deems just.

Basis for this Claim:

A. History of Proceedings

2. On June 30, 2020, QMetco Limited ("**QMetco**") and Taurus Resources No. 2 B.V. ("**Taurus**", and together with QMetco, the "**Secured Lenders**") applied for and were granted an initial order in respect of the NSC Companies. The Secured Lenders applied for relief under the CCAA in their capacity as secured lenders of certain of the NSC Companies.
3. On July 10, 2020, the NSC Companies applied for and were granted an amended and restated initial order (the "**ARIO**") that, inter alia, approved an interim financing agreement with Vitreo Minerals Ltd. ("**Vitreo**" and Vitreo in such capacity, the "**Interim Lender**"), an affiliate of the Secured Lenders, and granted an Interim Lender's Charge (as defined in the ARIO). The ARIO was further varied by an order granted on July 27, 2020 (as varied, the "**Initial Order**") that approved a sales agent charge in favour of Whitehorn Merchant Capital, as sales agent.
4. On July 27, 2020, the NSC Companies applied for and were granted an order that, *inter alia*:
 - (a) approved a sale and investment solicitation process ("**SISP**"); and
 - (b) approved the stalking horse bid made by Vitreo (Vitreo in such capacity, the "**Purchaser**") pursuant to an asset purchase agreement dated July 21, 2020 (as subsequently amended by an amending agreement dated September 10, 2020) (together, the "**APA**") and authorized the NSC Companies to execute the APA.
5. On September 11, 2020, the NSC Companies applied for and were granted an approval and vesting order ("**AVO**") that, inter alia:
 - (a) terminated the SISP;
 - (b) approved the APA submitted by the Purchaser as the Successful Bid (as defined in the SISP); and
 - (c) authorized the NSC Companies that are parties to the APA (the "**Sellers**") to take such additional steps and execute such additional agreements, contracts, deeds bills of sale, transfers or any other document as may be necessary or desirable for completion of the transactions contemplated by the APA.

6. On October 22, 2020 the NSC Companies applied for an order to authorize a new borrowing arrangement between HCA Moberly and QMetco. Such relief was obtained for tax-related purposes in relation to the APA and can be characterized as an administrative step required in connection with the closing of transactions contemplated by the APA.

B. Termination of CCAA

7. The transactions contemplated by the APA closed on October 22, 2020. As a result, substantially all of the assets of the Sellers have been sold to the Purchaser.
8. The NSC Companies are seeking an Order that, upon the filing of the Monitor's Certificate, the Monitor be discharged of its duties as Monitor of the NSC Companies subject to incidental duties as may be required to complete the administration of the CCAA Proceedings.
9. The form of Monitor's Certificate certifies that the remaining outstanding items described in the Fifth Report of the Monitor have been completed to the satisfaction of the Monitor.

C. Distribution of the NSC Funds

10. The NSC Companies expect to receive or are already in possession of the NSC Funds from various sources as described in the affidavit of Jerrad Blanchard, sworn November 16, 2020.
11. The NSC Companies seek approval to pay the NSC Funds to the Monitor.
12. The Monitor will then pay the balance of the NSC Funds to the Purchaser after payment of certain post-filing outstanding invoices and any remaining costs of administration of the CCAA Proceedings, including costs subject to the Charges (as defined in the Initial Order), if applicable.

D. Approval of Monitor's Activities and Fees

13. The fees and disbursements of the Monitor from September 1, 2020, to October 31, 2020 total \$117,910.50 (exclusive of GST).
14. The fees and disbursements of the Monitor's legal counsel from September 1, 2020 to October 31, 2020 total \$48,052.50 (exclusive of GST).
15. The Monitor and its counsel expect to incur professional fees associated with administrative matters and other closing matters of approximately \$35,000 (exclusive of GST).

16. The invoice rendered by the Monitor and its legal counsel are reasonable in the circumstances and were validly incurred.
17. The activities undertaken by the Monitor between September 11, 2020 to present have been necessary to complete the administration of the CCAA Proceedings.

E. Extension of Stay

18. The NSC Companies have acted and continue to act in good faith and with due diligence.
19. The ongoing benefit provided by the CCAA stay of proceedings is critical to the NSC Companies' ability to complete the outstanding items described in the Fifth Report of the Monitor.
20. The Monitor is supportive of the proposed extension.

Affidavit or Other Evidence to be used in support of this application:

1. The Affidavit of Jerrad Blanchard, sworn on November 16, 2020.
2. The Affidavit of Service of David Tsumagari, filed.
3. The Third Report of the Monitor.
4. The Fourth Report of the Monitor.
5. The Fifth Report of the Monitor.
6. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

7. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
8. *Judicature Act*, RSA 2000, c J-2.
9. *Rules of Court*, Alta Reg 124/2010.
10. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this Application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the Application is heard or considered, you must reply by giving reasonable notice of the material to the Applicant.

Schedule “A”

Clerk's Stamp:

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 (CCAA TERMINATION)**

CONTACT
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Kourtney Rylands

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File No. 273913

DATE ON WHICH ORDER WAS PRONOUNCED:	November 23, 2020
NAME OF JUDGE WHO MADE THIS ORDER:	The Honourable Justice Lema
LOCATION OF HEARING:	Edmonton

UPON the application 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 (collectively, the “**Debtors**”), **AND UPON** having read the Application, the Affidavit of Jerrad Blanchard sworn November 16, 2020, filed (“**Blanchard 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**”) dated July 3, 2020, the second report of the Monitor dated July 21, 2020; the Third Report of the Monitor dated September 4, 2020, the Fourth Report of the Monitor dated October 20, 2020, and the Fifth Report of the Monitor dated November [16], 2020 (“**Fifth Report**”); **AND UPON** reviewing the initial order granted on June 30, 2020, which was amended and restated on July 10, 2020, and further varied by order dated July 27, 2020 (collectively, the “**Initial Order**”); **AND UPON** hearing counsel for the Debtors, counsel for the Monitor, counsel for Vitreo Minerals Ltd., QMetco Limited, and Taurus Resources No. 2 B.V. and other counsel present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

STAY OF PROCEEDINGS AND TERMINATION OF CCAA

1. The Stay Period (as defined in the Initial Order) shall be and is hereby extended to and including the date on which the Monitor files with this Court a certificate in the form attached as Schedule “A” to this Order (the “**Monitor’s Certificate**”) certifying that the outstanding items described in the Fifth Report have been completed to the satisfaction of the Monitor.
2. Upon the filing of the Monitor’s Certificate, the within proceedings (the “**CCAA Proceedings**”) shall be terminated.

3. The Debtors shall pay the NSC Funds (as defined in the Blanchard Affidavit) to the Monitor as soon as reasonably practicable following receipt of such NSC Funds and the granting of this Order.
4. The Monitor shall use the NSC Funds, as necessary, to pay:
 - (a) any outstanding amounts owing by the Debtors and incurred after the commencement of the CCAA Proceedings; and
 - (b) any remaining costs of administration of the CCAA Proceedings, including costs subject to the Charges (as defined in the Initial Order);

and the balance of the NSC Funds shall be paid to the Purchaser. Upon payment of the NSC Funds to the Purchaser, the Monitor shall be forever and irrevocably released of its obligations set forth in Paragraph 4(a) and (b) above.

5. Upon the filing of the Monitor's Certificate, the Monitor shall be discharged as Monitor of the Debtors, provided however, that notwithstanding its discharge herein (a) the Monitor shall remain the Monitor for the performance of such incidental duties as may be required to complete the administration of the proceedings, and (b) the Monitor shall continue to have the benefit of the provisions of all Orders made in the proceedings, including all approvals, protections and stay of proceedings in favour of the Monitor in its capacity as Monitor.
6. Upon the filing of the Monitor's Certificate any and all claims against the Monitor, its officers, directors, employees and affiliates, in connection with its appointment or the performance of its duties as Monitor to the date of this Order shall be and are hereby stayed, extinguished and forever barred and the Monitor, its officers, directors, employees and affiliates, shall have no obligation or liability in respect thereof except for any liability arising out of gross negligence or wilful misconduct on the part of the Monitor.
7. No action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor, except (a) with prior leave of this Court on at least seven (7) days notice to Alvarez & Marsal Canada Inc. and (b) the posting of security for costs by the plaintiff or moving party in an amount sufficient to cover the

substantial indemnity costs of Alvarez & Marsal Canada Inc. for the proposed action or proceeding.

8. The actions and conduct of the Monitor in the CCAA Proceedings from September 11, 2020 to the date of this Order are approved.

PROFESSIONAL FEES

9. The Monitor's accounts for fees and disbursements (including forecast fees), as set out in the Fifth Report, are hereby approved without the necessity of a formal passing of its accounts.
10. The accounts of the Monitor's legal counsel, Torys LLP, for their fees and disbursements (including forecast fees), as set out in the Fifth Report, are hereby approved without the necessity of a formal assessment of their accounts.

SERVICE

11. The time for service of the notice of application for this Order is hereby abridged and deemed good and sufficient and this application is properly returnable today.
12. 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/northernsilicaand service on any other person is hereby dispensed with.
13. 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*.

Justice of the Court of Queen's Bench of Alberta

Schedule “A” – Form of Monitor’s Certificate

COURT FILE NUMBER	2001-07984
COURT	COURT OF QUEEN’S BENCH OF ALBERTA
JUDICIAL CENTRE OF	CALGARY
	IN THE MATTER OF THE <i>COMPANIES’ CREDITORS ARRANGEMENT ACT</i> , 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	MONITOR’S CERTIFICATE
CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	McMillan LLP Suite 1700, 421 - 7 Avenue S.W. Calgary, AB T2P 4K9 Phone: 403-531-4700 Fax: 403-531-4720 Attention : Adam Maerov Phone: 403-215-2752 Email: adam.maerov@mcmillan.ca Kourtney Rylands Phone: 403-355-3326 Email: kourtney.rylands@mcmillan.ca

RECITALS

A. Pursuant to an Order of the Court of Queen's Bench of Alberta (the "**Court**") dated June 30, 2020, as amended and restated by an Order dated July 10, 2020, Alvarez & Marsal Canada Inc. was appointed as the monitor (the "**Monitor**") 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.

B. Pursuant to a further Order of the Court dated November 23, 2020 (the "**Termination Order**"), the Monitor was authorized to file this Certificate in accordance with the terms of the Termination Order.

1. The Monitor certifies that the outstanding items described the Fifth Report of the Monitor dated November [16], 2020, have been completed to the satisfaction of the Monitor.

2. This Certificate was delivered by the Monitor at ● [TIME] on ● [DATE].

Alvarez & Marsal Canada Inc. in its capacity as
Monitor of the Debtors and not in its personal
capacity

Per: _____

Name: Orest Konowalchuk, LIT

Title: Senior Vice President