

NO. S-154746
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

)	THE HONOURABLE)	
BEFORE))	16 / Nov / 2015
)	MR. JUSTICE BUTLER)	

ON THE APPLICATION of North American Tungsten Corporation Ltd. coming on for hearing at Vancouver, British Columbia on this day and on hearing John Sandrelli, counsel for North American Tungsten Corporation Ltd., and those counsel listed in **Schedule "A"** hereto;

THIS COURT ORDERS AND DECLARES that:

NOTICE

1. The time for service of the Notice of Application herein be and is hereby abridged such that the Notice of Application is properly returnable today and service upon any interested party, other than those parties on the service list maintained by the Petitioner and Alvarez & Marsal Canada Inc. (the "**Monitor**") in these proceedings is hereby dispensed with.
2. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Initial Order granted by this Court on June 9, 2015 (as the same has been amended and restated by the Amended and Restated Initial Order made July 9, 2015, as the same may be amended or amended and restated further from time to time, the "**ARIO**").

EXTENSION OF STAY

3. The relief granted in the Initial Order and ARIO, as extended by further Order in this proceeding on July 17, 2015, and October 14, 2015, including the Stay Period as defined therein, is hereby continued and extended to 11:59 p.m. on March 31, 2016.

EXPANSION OF THE MONITOR'S POWERS

4. The powers and duties of Alvarez & Marsal Canada Inc., in its capacity as Monitor and not in its personal capacity (the “**Monitor**”) are hereby modified and expanded such that the Monitor, in addition to its powers set forth in the ARIO, is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and Business and, without in any way limiting the generality of the foregoing, is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:
- (a) take any and all steps in order to direct or cause the Petitioner to exercise rights under paragraph 11 of the ARIO;
 - (b) take any and all steps in order to direct or cause the Petitioner to administer the Property and operations of the Petitioner or to perform such other functions or duties as the Monitor considers necessary or desirable to deal with the Property or Business, including restructuring, wind-down, liquidation, disposal of assets, or other activities;
 - (c) monitor, review, and direct the Petitioner's receipts and disbursements and implement such measures of control as the Monitor deems reasonably necessary to ensure the appropriate monitoring of the Petitioner's expenses and disbursements, including adding or removing signing authorities to or from the Petitioner's bank accounts;
 - (d) initiate and administer any claims bar and/or claims resolution process, or protocol as may be approved by Order of this Court within these proceedings;
 - (e) subject to the requirement for Court approval set forth in section 36 of the CCAA, direct or cause the Petitioner to complete one or more transactions for the sale of all or any part of the Business, Property or any part thereof, and conduct, supervise and recommend to the Court any procedure regarding the allocation and/or distribution of proceeds of any sales;
 - (f) settle, extend or compromise any indebtedness owing to or by the Petitioner;
 - (g) engage or cause the Petitioner to engage consultants, assistants, advisors, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, as the Monitor deems necessary or desirable to carry out the Monitor's powers and duties, including, without limitation, those conferred by the ARIO and this Order and all such persons shall be deemed to be “Assistants” under the ARIO;
 - (h) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter; and

- (i) meet with management of the Petitioner, if any, with respect to any of the foregoing including, without limitation, operational, transactional and restructuring matters,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined in the ARIO), including the Petitioner and its past or present directors and officers, and without interference from any other Person, provided, however, that the Monitor shall comply with all applicable laws and shall not have any authority or power to elect or to cause the election or removal of directors of the Petitioner or to take any action to restrict or to transfer to the Monitor any of their powers, duties or obligations, except in accordance with section 11.5(1) of the CCAA.

- 5. Without limiting the provisions of the ARIO, the Petitioner shall remain in possession and control of the Property and the Business and the Monitor shall not take, nor by carrying out its duties hereunder and under the ARIO be deemed to take, possession of the Property or the Business or any part thereof.

CASH MANAGEMENT

- 6. The Petitioner shall be entitled to continue to utilize the Cash Management System under the supervision of the Monitor and the Monitor shall be authorized and empowered to implement such controls and procedures as it considers necessary, including adding or removing signing authorities to or from the Petitioner's bank accounts, to control the Petitioner's receipts and disbursements including receipt of all funds, monies, cheques, instruments, and other forms of payments received or collected from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any part of the Property or Business and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence.

EMPLOYEES

- 7. Subject to the right of employees to terminate their employment, all employees of the Petitioner shall remain the employees of the Petitioner until such time as the Petitioner, under the direction of the Monitor, may terminate the employment of such employees. The Monitor shall not be liable for any employee-related liabilities of the Petitioner, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee-related liabilities of the Petitioner, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.
- 8. The enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Petitioner of any person under the direction of the Monitor in connection with the Monitor's

appointment and the exercise and performance of its powers and duties shall not constitute the Monitor, the employer, successor employer or related employer of the employees of the Petitioner within the meaning of the *Employment Standards Act* of British Columbia, the *Pension Benefits Standards Act* of British Columbia, the *Canada Labour Code*, the *Pension Benefits Standards Act* of Canada or any other provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by the Petitioner. In particular, the Monitor shall not be liable to any of the employees for any wages (as "wages" are defined in the *Employment Standards Act* of British Columbia or in the *Employment Standards Act* of the Northwest Territories, as applicable), including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.

9. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Monitor may disclose personal information of identifiable individuals to Her Majesty in right of Canada or the Government of the Northwest Territories (each a "**Government**"), but only to the extent desirable to transition operation of the Property or Business to the Government. The applicable Government shall maintain and protect the privacy of such information and limit the use of such information to its administration of the Property or Business of the Petitioner and shall be entitled to continue to use the personal information provided to it, and related to the Property, in a manner which is in all material respects identical to the prior use of such information by the Petitioner, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

10. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor is not, and shall not be deemed to be, an owner of any of the Property for any purpose including without limitation, for purposes of Environmental Legislation (for purposes of this Order, the term "**Environmental Legislation**" shall mean any federal, provincial, territorial or other jurisdictional legislation, statute, regulation or rule of law or equity (whether in effect in Canada or any other jurisdiction) respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F 14, the *Environmental Protection Act*, R.S.N.T. 1988, c E-7, and the *Environmental Rights Act*, R.S.N.W.T. 1988, c 83 (Supp), and regulations thereunder.

11. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purposes of this Order, the term "**Adverse Environmental Condition**" shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the date of the Initial Order.
12. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof that arose, occurred or continued after the date of this Order unless such Adverse Environmental Condition is caused by the gross negligence or wilful misconduct of the Monitor.
13. Notwithstanding the immediately preceding paragraph, the Monitor shall not be liable beyond the net realized cash value received and available to the Monitor from the Property under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof which is caused by the gross negligence or wilful misconduct of the Monitor.
14. Nothing contained in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "**Possession**"), or require the Monitor to take Possession, of any part of the Property which may be a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any Environmental Legislation.
15. The Monitor is not, and shall not be or be deemed to be, a director, officer or employee of the Petitioner.
16. Notwithstanding anything to the contrary contained in this or any other order in these proceedings, the Monitor shall not incur any liability or obligation as a result of the enhancement of the Monitor's powers and duties hereunder, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except as may result from the gross negligence or wilful misconduct of the Monitor. Any liability of the Monitor in respect of the performance of its duties hereunder shall not in any event exceed the aggregate of the quantum of fees and disbursement paid to or incurred by the Monitor in connection with the performance of its duties hereunder.
17. In the event of a conflict between this Order and any previous Order, including the ARIO, this Order shall govern, but the terms of the ARIO and all subsequent Orders previous to this Order shall not otherwise be affected by this Order, including without limitation:
 - (a) the creation and, except as modified by this Order, the priority of the Administration Charge (as that term is defined in the ARIO); and

(b) the limitation on the Monitor's liability as set forth in paragraph 30 of the ARIO.

FUNDING OF ENVIRONMENTAL CARE AND MAINTENANCE ACTIVITIES

18. Her Majesty in Right of Canada as represented by the Department of Indian Affairs and Northern Development Canada ("**DIAND**"), shall fund the Petitioner's expenditures as set out in the operating budget as set out in Exhibit "A" to the First Affidavit of Thomas Powell sworn herein on November 13, 2015 (the "**Budget**"), for the period November 18, 2015, to March 31, 2016 (the "**Budget Period**"), including any Budget Adjustment consented to by DIAND pursuant to paragraph 19 herein (the "**DIAND Funding**").
19. If the Monitor anticipates any material increase in the cumulative amount to be spent by the Petitioner during the Budget Period, including without limitation with respect to the operating costs and environmental costs of the Petitioner and the fees and disbursements of the Petitioner, the Monitor and their respective counsel incurred during the Budget Period (a "**Budget Adjustment**"), the Monitor shall notify DIAND of such Budget Adjustment and DIAND shall notify the Monitor within three business days of such notice whether DIAND consents to an amendment to the Budget to include the Budget Adjustment.
20. As security for the DIAND Funding, DIAND shall be entitled to the benefit of and is hereby granted a charge (the "**DIAND Charge**") upon the real property that comprises and is contiguous to the Cantung Mine, including mineral tenures and surface leases (collectively, the "**Cantung Mine Real Property**"), which charge shall rank in priority to all other charges and encumbrances of any nature and kind upon such real property.

SECOND ADMINISTRATION CHARGE

21. Paragraph 33 of the ARIO is hereby deleted in its entirety and replaced with the following:

"33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order, which are related to the Petitioner's restructuring. the Administration Charge shall secure only those fees and disbursements incurred for the period up to 11:59 p.m. on November 16, 2015, and shall have the priority set out in paragraphs 41 and 43 hereof.

33A. The Monitor and counsel to the Monitor, if any, shall be entitled to the benefit of and are hereby granted a charge (the "**Second Administration Charge**") on the Property other than (a) the Property known as the "**Mactung Property**" which is located

in the Selwyn mountain range in an area straddling the territorial border between Yukon and the Northwest Territories and (b) the "Redundant Equipment" identified on Schedule "B" to the Order made in these proceedings on November 16, 2015, lifting the stay of proceedings as against such equipment, provided such equipment is retrieved by the party identified in such ^{the Equipment L (the "Equipment Schedule")} Schedule "B" as having a security interest in such equipment on or before December 18, 2015 (the "Retrieved Equipment"), which charge shall not exceed an aggregate amount of \$250,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, after 12:00 a.m. on November 17, 2015. The Second Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof."

ABF
and (c) the "Allocation Amounts" set forth on the Equipment Schedule in respect of the Retrieved Equipment (the "Retrieved Equipment Allocation Amounts")

22. Paragraphs 41 and 42 of the ARIO are hereby deleted in their entirety and replaced with the following:

"41. The priorities of the DIAND Charge, the Administration Charge, the Interim Lender's Charge and the Directors' Charge, as among them, shall be as follows:

First – the DIAND Charge, as against the Cantung Mine Real Property only;

Second – Administration Charge (to the maximum amount of \$500,000) and Second Administration Charge (to the maximum amount of \$250,000, and only as against the Property other than the Mactung Property ^{the Retrieved Equipment,} and the Retrieved Equipment), with priority as between these charges as follows:

Allocation Amounts

Until payment in full to the then-beneficiaries of the Administration Charge of all amounts then-outstanding thereunder, in conjunction with the closing of a sale of the Mactung Property to the Government of the Northwest Territories or otherwise, the Administration Charge shall be senior in priority to the Second Administration Charge; and

After payment in full to the then-beneficiaries of the Administration Charge of all amounts then-outstanding thereunder, in conjunction with the closing of a sale of the Mactung Property to the Government of the Northwest Territories or otherwise, the Second Administration Charge shall be senior in priority to the Administration Charge;

Third – Interim Lenders' Charge and the GSA (to the maximum amount of \$2,500,000 plus all interest, costs, fees and expenses as provided in the Term Sheet);

Fourth – the AR Lender's Charge (to the maximum amount of \$2,500,000 plus all interest, costs, fees and expenses as provided in the AR Term Sheet); and

Fifth – Directors' Charge (to the maximum amount of \$500,000).

42. Any security documentation evidencing, or the filing, registration or perfection of, the DIAND Charge, the Administration Charge, the Second Administration Charge, the Interim Lenders' Charge, the GSA, the AR Lender's Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges; provided, however, that the Second Administration Charge shall not attach to the Mactung Property."

23. Paragraph 44 of the ARIO is hereby deleted in its entirety and replaced with the following:


"44. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to or pari passu with the Charges, unless the Petitioner obtains the prior written consent of the Monitor, DIAND, the Interim Lender, the AR Lender and the beneficiaries of the DIAND Charge, the Administration Charge, the Second Administration Charge and the Director's Charge."

GENERAL

24. The Petitioner and its advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and shall provide the Monitor with such assistance as the Monitor may request from time to time to enable the Monitor to carry out its duties and exercise its powers as set out in the ARIO, this Order or any other Order of this Court; provided, however, that any obligation on the part of any of the Petitioner's advisors to cooperate with the Monitor and follow its directions shall be predicated on suitable compensation and payment arrangements' being made as between the Monitor and each such advisor.
25. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor, on notice to the Service List, may apply to this Court to seek its discharge in the event it believes it is necessary or appropriate to do so.

26. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of KAREN TOLSON
Lawyer for ADVANCE AND PROSAL
CANADA INC.

By the Court.

Registrar



*Van +
for*

SCHEDULE "A"

COUNSEL	PERSONALLY APPEARING FOR:
John Sandrelli and Tevia Jeffries	Counsel for North American Tungsten Corporation Ltd.
Kibben Jackson F. McDonnell	Alvarez & Marsal Canada Inc (" Monitor ")
Tom Isaac	Counsel for Canada Revenue Agency
Robert Lauer Jeffrey Mackay	Counsel for Indigenous and Northern Affairs Canada
William Skelly Lise Hiebert	Counsel for Callidus Capital Corporation
Gordon G. Plottel	Counsel for Finning International
Jonathan McLean Angela Crimeni	Counsel for Wolfram Bergbau und Hütten AG
Matthew Nied	Counsel for Amalgamated Mining Inc.
Jason Levine Melissa Nicolls	Counsel for Her Majesty the Queen, Department of Indian Affairs & Northern Development Canada
Mary Buttery Lance Williams	Counsel for Government of the Northwest Territories
Kieran Siddall Scott Boucher	Counsel for Global Tungsten & Powders Corp.
COUNSEL	APPEARING VIA VIDEO CONFERENCEFOR:
Jose Delgado	Counsel for Driving Force Inc.
Ken Landa	Department of Justice Canada