

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

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc. (the "Monitor") in its capacity as
Court-appointed Monitor of North American Tungsten Corporation
Ltd. ("NATC" or the "Petitioner")

To: The Service List

TAKE NOTICE that an application will be made by the Applicant to the Honourable Mr. Justice Butler at the courthouse at 800 Smithe Street, Vancouver, B.C. on September 7, 2016 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order substantially in the form attached hereto as **Schedule "A"**:
 - (a) extending the Stay Period, as defined in the Amended and Restated Initial Order made July 9, 2015 (the "**ARIO**"), to 11:59 p.m. on October 27, 2017;
 - (b) directing the Department of Indian Affairs and Northern Development ("**DIAND**") to fund the Company's expenses as set out the Ninth Cash Flow Statement, as that term is defined in the Monitor's Thirteenth Report to the Court dated September 1, 2016 (the "**Thirteenth Report**");

- (c) expanding the assets charged by DIAND Charge, as that term is defined in the Enhancement of Powers Order (as that term is defined below), to include: (i) any funds provided by DIAND to the Company or the Monitor pursuant to its funding obligations; and (ii) any assets acquired by the Company using any funding provided by DIAND or any assets of the Company in respect of which secured charges encumbering such assets are satisfied using any funding provided by DIAND; and
- (d) allowing DIAND and any of its agents or representatives to have access to the Cantung mine site upon reasonable written notice to the Monitor for the purposes of performing a Phase III Environmental Site Assessment.

Part 2: FACTUAL BASIS

BACKGROUND

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the ARIO.
2. On June 9, 2015, Mr. Justice Butler granted the Initial Order providing for a stay of proceedings to July 8, 2015.
3. On July 9, 2015, Mr. Justice Butler granted the ARIO, pursuant to which (among other things) the Stay Period was extended to 11:59 p.m. on July 17, 2015. The Stay Period has since been extended on a number of occasions, most recently to October 28, 2016 pursuant to the November 16, 2015 Order of Mr. Justice Butler made herein (the “**Enhancement of Powers Order**”).
4. Also pursuant to the Enhanced Powers Order, the Monitor’s powers were modified and expanded such that the Monitor was thereafter empowered and authorized, though not obligated, to act in respect of the Property and Business.
5. On November 16, 2016, Mr. Justice Butler also made an order (the “**Redundant Equipment Order**”) authorizing the Equipment Financiers (as defined therein) to take possession of the Redundant Equipment (as defined therein) subject to the Monitor

determining that there was no equity in such equipment, and provided each Equipment Financier paid to the Monitor, in trust, the amount estimated by the Monitor as necessary to satisfy the *pro rata* portion of the CCAA Charge Amount (as defined therein).

6. On February 26, 2016, Mr. Justice Butler made an order extending the Stay Period to October 28, 2016.

CARE AND MAINTENANCE

7. Since February 22, 2016, the date on which the Monitor filed its Twelfth Report, the Company, under the Monitor's oversight, has continued its care and maintenance program at the Cantung mine and mine site. This includes monitoring and reporting in respect of environmental obligations, meeting obligations arising in respect of the Company's water licence, maintaining equipment, the underground mine and the mine site, including roads, and meeting with various stakeholder groups, including First Nations.
8. A detailed summary of the Company's care and maintenance activities are set out in section 4.1 of the Thirteenth Report.

ALLOCATION OF CCAA CHARGES

9. The Enhancement of Powers Order included a direction that the Monitor prepare a methodology concerning the allocation of the CCAA Charges among the assets comprising the Property (the "**Allocation Methodology**"). Given that the only CCAA Charge that was unsatisfied as at the closing of the sale of the Mactung assets was the Interim Lender's Charge, the allocation concerns only the amount secured by that charge.
10. The Interim Lender's Charge was paid in full by the Government of the Northwest Territories ("**GNWT**") in connection with the closing of the sale of the Mactung assets. The amount owing under the Interim Lender's Charge at that time was approximately \$2.56 million.
11. The only stakeholders with a financial interests in the Allocation Methodology are:
 - (a) GNWT, which had a first-ranking security interest in the Mactung assets;

- (b) Callidus Capital Corporation (“**Callidus**”), which has a first-ranking security interest in the Cantung mine and the majority of the related assets and equipment; and
 - (c) Equipment Lenders.
- 12. To assist the Monitor in preparing its Allocation Methodology, both GNWT and Callidus provided written submissions to the Monitor setting out their respective positions, which the Monitor has agreed to keep confidential. GNWT and Callidus, along with their legal counsel, held meetings and engaged in discussions with respect to the appropriate Allocation Methodology but were unable to reach agreement and instead requested that the Monitor prepare the Allocation Methodology.
- 13. The Monitor has prepared a draft of the Allocation Methodology, the details of which are to be provided to Callidus and GNWT. Unless those parties are able to arrive at a consensual resolution as to allocation after having received the draft of the Allocation Methodology, the Monitor plans to make an application to this Honourable Court for approval of its Allocation Methodology.

PRESERVATION AND RETURN OF EQUIPMENT

- 1.1 The Company has continued to insure and perform maintenance on all of the equipment remaining at the mine site, including the Redundant Equipment. The Monitor advised the Equipment Lenders that they were required to pay for their share of the costs of insurance, or arrange alternative insurance coverage at their own expenses. Finning International Inc. (“**Finning**”) was the only Equipment Lessor to arrange for its own insurance for its equipment.
- 1.2 The Redundant Equipment Order specifically allowed for the release of nine pieces of Redundant Equipment to Equipment Lenders on conditions, including payment to the Monitor, in trust, of an amount estimated by the Monitor as necessary to satisfy the maximum amount of the Interim Lender’s Charge that might attach to such equipment (the “**Allocation Amounts**”).

- 1.3 All of the Redundant Equipment had been released to the Equipment Lenders. The Monitor is currently holding approximately \$510,000 in trust, being the total of the Allocation Amounts, plus another approximately \$21,000, being the share of the insurance costs payable by the Equipment Lessors in respect of their equipment.
- 1.4 The Monitor notes in the Thirteenth Report that the Allocation Amount attributed to the Finning R1700G Scoop Tram in the Redundant Equipment Order was calculated without any reduction in the estimated value of that equipment arising from the significant damage to the unit caused by an accident that occurred in July 2015. Finning has remitted the full Allocation Amount for this unit as prescribed in the Redundant Equipment Order. The Monitor has agreed that it will take the estimated damage to the unit and repair costs into consideration when determining the amounts of the Interim Lender's Charge attributable to each piece of Redundant Equipment as part of the final Allocation Methodology.

EXTENSION OF THE STAY PERIOD AND NEXT STEPS

14. The Company seeks to extend the Stay Period until October 27, 2017. The Monitor supports the application, including for the following reasons:
- (a) the Company and DIAND require additional time to assess alternative transactional strategies with respect to the Cantung mine and related assets;
 - (b) the extension provides for the ongoing care and maintenance of the Cantung mine and mine site to preserve those assets as well as to ensure continued compliance with the Company's environmental obligations and terms of the water licence;
 - (c) the Monitor does not believe there will be material financial prejudice to any of NATC's creditors, employees, customers or suppliers as a result of an extension of the Stay Period; and
 - (d) the Company's prospects of affecting a viable restructuring and/or transaction involving the Cantung mine would be enhanced by an extension of the Stay Period.

15. DIAND has committed to fund the care and maintenance expenses of the Company through to the proposed extension date, and the Ninth Cash Flow Statement indicates that the Company will have sufficient liquidity during that period. The funding commitment by DIAND is contingent on the expansion of the DIAND Charge as provided for in the draft Extension Order.
16. The Company, in consultation with DIAND, is working with Callidus to extend the Support Agreement for the term of the extension of the Stay Period being sought.

Part 3: LEGAL BASIS

1. Sections 11 and 11.02, of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "CCAA") and the inherent jurisdiction and statutory discretion of this Honourable Court.
2. The Petitioner has been, and is, acting in good faith and with due diligence.

Part 4: MATERIAL TO BE RELIED ON

1. Amended and Restated Initial Order, made July 9, 2015;
2. Monitor's Thirteenth Report to the Court dated September 1, 2016; and
3. Such further and other materials as counsel may advise and as this Court deems admissible.

The applicant(s) estimate(s) that the application will take 1 hour.

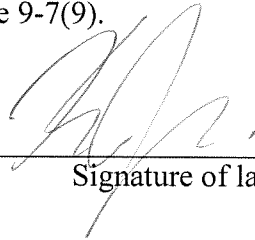
☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master. Mr. Justice Butler is seized of these proceedings and this application has been scheduled to be heard before Mr. Justice Butler by Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days of service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 1/September/2016



Signature of lawyer for filing party
Kibben Jackson

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
- ☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

SCHEDULE "A"

No. -154746
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
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AND

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PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)

MR. JUSTICE BUTLER)

SEPTEMBER 7, 2016

THE APPLICATION of Alvarez & Marsal Canada Inc. in its capacity as court-appointed monitor of the Petitioner (the "**Monitor**") coming on for hearing at Vancouver, British Columbia on this day, and ON HEARING <@>, counsel for the Monitor, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Monitor's Thirteenth Report to Court dated September 1, 2016 (the "**Thirteenth Report**");


THIS COURT ORDERS AND DECLARES THAT:

1. The relief granted in the Initial Order made herein on June 9, 2015, as amended and restated by the Amended and Restated Initial order made herein on July 9, 2015, and as extended by Orders of this Court made herein on July 17, October 14, November 16, 2015 and February 26, 2016, is hereby continued and extended to 11:59 p.m. on October 27, 2017 .

2. 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 Appendix “A” to the Thirteenth Report (the “**Updated Budget**”) for the period August 26, 2016 to October 27, 2017 (the “**Budget Period**”), including any Budget Adjustment (as defined herein) consented to by DIAND in accordance with paragraph 3 hereof.
3. 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 Updated Budget to include the Budget Adjustment.
4. Paragraph 20 of the November 16, 2015 Order of this Court (the “**Enhancement of Powers Order**”) is hereby amended such that the assets charged by the DIAND Charge (as defined in the Enhancement of Powers Order) shall henceforth be expanded to include: (i) any funds provided by DIAND to the Petitioner or the Monitor pursuant to its funding obligations under this Order or any other Order of this Court; and (ii) any assets acquired by the Petitioner using any funding provided by DIAND or any assets of the Petitioner in respect of which any and all secured charges encumbering such assets are satisfied using any funding provided by DIAND.
5. DIAND and any of its agents or representatives, including any contractors engaged by DIAND, are hereby granted access to the Cantung mine and mine site upon reasonable written notice to the Monitor for the purposes of performing a Phase III Environmental Site Assessment of the Cantung mine and mine site. Alvarez & Marsal Canada Inc., in its personal capacity and in its capacity as Monitor, shall have no liability to any person having access to the Cantung mine or mine site pursuant to this Order for any matter arising from such access.

6. The need for endorsement of this Order by counsel appearing on this application, other than counsel for the Monitor, 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 
Lawyer for the Monitor, Alvarez & Marsal Canada Inc.

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

COUNSEL	APPEARING FOR: