



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

NOTICE OF APPLICATION

Name of applicant: North American Tungsten Corporation Ltd.

To: The Service List

Mr. Justice Butler

TAKE NOTICE that an application will be made by the applicant to the ~~presiding judge or master~~ at the courthouse at 800 Smithe Street, Vancouver, B.C. on 26/Jun/2015 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order abridging the time for service such that this Application is returnable on June 26, 2015 and that service upon any interested party, other than those parties on the service list maintained by North American Tungsten Corporation Ltd. ("NATC") and Alvarez & Marsal Canada Inc. (the "**Monitor**") in these proceedings, is hereby dispensed with.
2. An order approving the agreement between Wolfram Bergbau und Hütten AG ("**WBH**") and NATC amending certain terms of the Supply Agreement effective March 1, 2014 to allow for immediate set-off of the Prepayment advanced made by WBH.

Part 2: FACTUAL BASIS

1. On June 9, 2015, Mr. Justice Butler granted the Initial Order providing for a stay of proceedings to July 8, 2015 (the “**Stay of Proceedings**”), which will expire at 11:59 p.m. on Wednesday, July 8, 2015. A come-back hearing is set for July 8, 2015 at 9:00 a.m., at which time the Petitioner anticipates seeking an extension of the Stay of Proceedings.
2. Prior to these proceedings, NATC had structured an arrangement with one of its customers, WBH, to allow for prepayment of certain concentrate shipments. The amount of the prepayment was \$3 million (the “**Prepayment**”). Under the arrangement, WBH maintains a receivable owed to NATC of at least \$3 million for past invoices, and only pays down the receivable as additional shipments are made to maintain this amount.
3. In practical terms, WBH was paying for concentrate shipments as they were made. The Prepayment and the outstanding receivable were simply an accounting matter between WBH and NATC, arising from the original prepayment arrangement.
4. Given paragraph 9(d) of the Initial Order, WBH and NATC intend to amend the existing supply agreement to allow for immediate set-off of the Prepayment and the existing WBH receivables, and going forward for WBH to continue payment for shipments shortly after they leave the mine gate. Any such amendment will be subject to Court approval.
5. The amendment will reflect the current practice between WBH and NATC.
6. This amendment will ensure there is no interruption to the Petitioners cashflow, and is critical to the Petitioner’s ability to continue its business, as well as its ability to present a plan of arrangement to its creditors.

Part 3: LEGAL BASIS

1. Pursuant to section 21 of the CCAA, the law of set-off applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company. As a result, WBH’s existing right of set-off is preserved in this proceeding.
2. The proposed amendment will therefore not impact any other stakeholders.

3. The Petitioners further rely on the inherent and equitable jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Dennis Lindahl, sworn June 8, 2015;
2. Initial Order made June 9, 2015;
3. The First Report of the Monitor, dated June 19, 2015;
4. Affidavit #2 of Dennis Lindahl, sworn June 23, 2015;
5. Affidavit #2 of Miriam Dominguez, to be sworn; and
6. The Report of the Monitor, to be filed.

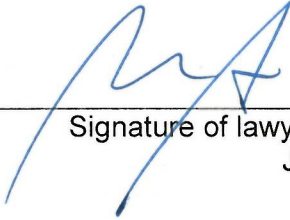
The applicant(s) estimate(s) that the application will take 1 hour.

- ☐ This matter is within the jurisdiction of a master.
- ☒ This matter is not within the jurisdiction of a master.

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: 24 / Jun / 2015



Signature of lawyer for filing party
John R. Sandrelli

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

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IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

SERVICE LIST
UPDATED JUNE 22, 2015

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