

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: Global Tungsten & Powders Corp. ("GTP", or the "applicant")

To: The Service List

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, British Columbia on 16/Nov/2015 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order that the time for service of the Notice of Application be and is hereby abridged such that the Notice of Application is properly returnable November 16, 2015;
2. An order approving the agreement between GTP and North American Tungsten Corporation Ltd. ("NATC") attached as Appendix "A" to the Affidavit #1 of Jessica Gugay, terminating the Supply Agreement dated December 19, 2013 (the "Supply Agreement");
3. In the alternative, an order that the Supply Agreement is terminated; and
4. In the further alternative, that the stay period set out in the Amended and Restated Order made July 9, 2015, and as amended or may be amended (the "ARIO"), does not apply to the Supply Agreement following November 30, 2015.

Part 2: FACTUAL BASIS

1. GTP is a world-leading manufacturer of tungsten oxide, tungsten metal, and tungsten carbide powders.

2. GTP owns and operates a tungsten processing plant in Towanda, Pennsylvania, which processes tungsten concentrates and tungsten containing secondary raw materials into tungsten containing powders. An affiliate of GTP also owns and operates a tungsten plant in Bruntal, Czech Republic.
3. In order to ensure certainty in the amount of tungsten concentrate GTP receives and competitive pricing, GTP entered into the Supply Agreement.
4. The Supply Agreement provides for the annual delivery by NATC of 100,000 to 115,000 metric tonne units (MTUs) of tungsten concentrate for a total of at least 320,000 MTUs of tungsten concentrate as more particularly described in the Supply Agreement.
5. The Supply Agreement is to end on the later of:
 - (a) February 1, 2017; or
 - (b) the date on which the Total Contracted Quality, as that term is defined, has been delivered in total to GTP.
6. In 2014, GTP received approximately 35-40% of its required external tungsten concentrate pursuant to the Supply Agreement.
7. Under s. 17 of the Supply Agreement, GTP has the right to terminate the Supply Agreement if, among other things:
 - (a) Concentrates do not materially conform to Specifications for three consecutive months; or
 - (b) NATC otherwise fails to make deliveries or breaches any other material term or material condition as provided in the Supply Agreement.
8. Since the initiation of these CCAA proceedings in June 2015, GTP has continued to purchase tungsten concentrate, pursuant to the Supply Agreement, from NATC.
9. The Supply Agreement provides for the delivery of 105,000 MTU for the period February 1, 2015 to February 1, 2016. Since February 1, 2015, NATC has shipped 87,667 MTU to GTP.
10. Throughout these proceedings, NATC has presented an operating plan which, among other things, was to see the Cantung mine cease operations at the end of October 2015 and transition into care and maintenance.
11. NATC has advised GTP that it will not be in a position to ship tungsten concentrate as required by the Supply Agreement when the Cantung mine ceases operation and transitions into care and maintenance.
12. On October 27, 2015, GTP received an e-mail from Bruce Penich at NATC advising that the mill at the Cantung mine has been shut down and that one last shipment was available to be made to GTP.

13. Based on these representations and expectations, GTP made alternative arrangements to secure its required supply of tungsten concentrate beyond November 2015.
14. Without certainty of supply, GTP cannot ensure that it can meet its processing requirements and scheduled deliveries to customers.
15. It is imperative that the Supply Agreement be terminated to provide GTP with the ability to plan and secure appropriate quantities of tungsten concentrate to effectively run its business.
16. GTP and NATC have reached an agreement to terminate the Supply Agreement (the "Termination Agreement"). A copy of the Termination is attached hereto as Schedule "A".

Part 3: LEGAL BASIS

1. An anticipatory breach occurs when a party, by express language or conduct, or as a matter of implication from what that party has said or done repudiates his or her fundamental contractual obligations before they fall due.

Re Bul River Mineral Corporation, 2014 BCSC 645 at para. 83.

2. If the innocent party accepts the repudiation, the contract is terminated and the parties are discharged from future obligations.

Bul River, supra, at paras. 98-99.

3. NATC has presented to the Court, through various affidavits, and to GTP that it will cease shipments of tungsten concentrate following the first week of November 2015.
4. A failure to deliver tungsten concentrates is a fundamental breach of the Supply Agreement and triggers GTP's right to terminate. GTP has accepted the repudiation of the Supply Agreement and has made alternative arrangements.
5. It is not equitable to keep GTP a party to the Supply Agreement when the prospect of future tungsten deliveries is unknown. GTP requires the ability to plan and secure the appropriate quantities of tungsten concentrate to effectively run its business.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Karin Laursen sworn on 7/July/2015;
2. Affidavit #2 of Karin Laursen, sworn on 16/Nov/2015;
3. Affidavit #1 of Dennis Lindahl, sworn on 8/Jun/2015;
4. Affidavit #9 of Dennis Lindahl, sworn on 21/Jul/2015;
5. Affidavit #10 of Dennis Lindahl, sworn on 24/Jul/2015;

6. Affidavit #13 of Dennis Lindahl, sworn on 11/Nov/2015;
7. Eleventh Report of the Monitor, dated 12/Nov/2015;
8. Order made after application, dated June 26, 2015; and
9. The pleadings and proceedings herein.

The applicant estimates that the application will take 20 minutes.

- ☐ 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 after 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).

Bull, Housser & Tupper LLP

per:



Date: 16/Nov/2015

Signature of lawyer for applicant

Kieran E. Siddall

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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APPLICATION RESPONSE

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KES/nca

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