

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
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

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. (“**Custom Bulk**”), Heemskirk Canada Limited (“**Heemskirk Canada**”), Heemskirk Canada Holdings Limited (“**Holdings**”), and HCA Mountain Minerals (Moberly) Limited (“**Moberly**”) (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** reviewing the order granted on September 11, 2020, approving the sale transaction and related matters contemplated by an asset purchase agreement among Moberly, Custom Bulk, Heemskirk Canada, and Holdings as vendors, Vitreo Minerals Ltd. as purchaser (the “**Purchaser**”) and Alvarez & Marsal Canada Inc., in its capacity as Monitor, dated July 21, 2020, as amended by an amending agreement dated September 10, 2020 (together, the “**Asset Purchase Agreement**”); **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 Trade Liabilities (as defined in the Asset Purchase Agreement) 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 the CCAA Charges (as defined in the Asset Purchase Agreement);

and the balance of the NSC Funds shall be paid to the Purchaser. For certainty, upon payment of the obligations listed in paragraph 4(a) and (b) above and the return of the balance of the NSC Funds to the Purchaser:

- (a) the Monitor shall be forever and irrevocably released of its obligations set forth in Paragraph 4(a) and (b) above; and
- (b) to the extent that there are:
 - (i) additional Trade Liabilities owing by the Debtors and incurred after the commencement of the CCAA Proceedings that the Monitor did not pay as part of the payments made under Paragraphs 4(a) above (the "**Additional Trade Liabilities**"); or
 - (ii) additional remaining CCAA Charges that the Monitor did not pay as part of the payments made under Paragraph 4(b) above (the "**Additional CCAA Charges**"),

the Purchaser shall be responsible for the payment of such Additional Trade Liabilities and

Additional CCAA Charges.

2. 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.
3. 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.
4. 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.
5. 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

6. 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.

7. 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

8. 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.
9. 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.
10. 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

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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