

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: 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 29, 2017 at 9:30 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) approving the auction services agreement (the "**Auction Services Agreement**") between the Petitioner and a joint venture comprised of Hilco Industrial Acquisitions Canada ULC, Gordon Brothers Canada ULC and A.M.King Industries, Inc. (collectively, the "**Auctioneer**");

- (b) ordering that the Auctioneer be the exclusive sales agent for the assets that are the subject of the Auction Services Agreement (collectively, the “**Sale Assets**”) during the Access Period (as that term is defined in the Auction Services Agreement);
- (c) authorizing the Petitioner to sell the Sale Assets and vesting the Sale Assets in any purchaser(s) thereof free and clear of all encumbrances; and
- (d) authorizing the Petitioner to distribute to Callidus Capital Corporation (“**Callidus**”) the net proceeds of sale of the Sale Assets without need for further order of this Court.

Part 2: FACTUAL BASIS

BACKGROUND

1. Pursuant to an order made in this proceeding on June 9, 2015, the Petitioner was granted protection from its creditors under the provisions of the *Companies' Creditors Arrangement Act*.
2. Pursuant to an order made in this proceeding on November 16, 2015, Alvarez & Marsal Canada Inc. (the “**Monitor**”) was empowered and authorized to, among other things, act in respect of the Property or Business (as such terms are defined in the November 16, 2015 Order), including directing the Petitioner to advertise and solicit offers in respect of the Property and negotiate the terms and conditions of sale of the Property.
3. The Sale Assets comprise substantially all of the equipment located at the Cantung Mine site, but do not include certain assets that are considered necessary for the ongoing care and maintenance program (collectively, the “**C&M Equipment**”) and which are expected to be redeemed at a later date pursuant to an agreement between NATC and Callidus. In addition, there is not yet consensus between Callidus and the Government of Canada as represented by the Department of Indian Affairs and Northern Development (“**DIAND**”) as to whose security interest has priority with respect to certain assets that are affixed to the Cantung mine site or buildings thereon (collectively, the “**Affixed**

Assets”). Depending on the resolution of this matter between Callidus and DIAND, certain of the Affixed Assets may not be included in the Sale Assets.

4. The Sale Assets are enumerated in a schedule to the Auction Services Agreement, which is attached as Appendix “A” to the Monitor’s Seventeenth Report to the Court dated September 27, 2017. The schedule of the Sale Assets identifies both the C&M Equipment and the Affixed Assets.
5. The Petitioner and Callidus are both of the view that it is appropriate that the Sale Assets be sold at this time, including so as to avoid any further diminishment in value of the idled Sale Assets. To that end, Callidus, in consultation with the Petitioner, contacted several qualified mining equipment auctioneers and discussed and assessed their capacities and capabilities to sell the Sale Assets. At the conclusion of such process, the Auctioneer was selected on the basis of its qualifications and the terms of its offer. The Petitioner, in cooperation with Callidus, subsequently negotiated the terms of the Auction Services Agreement with the Auctioneer.
6. Pursuant to the Auction Services Agreement, the Auctioneer has agreed to develop and implement an advertising and marketing plan for the sale of the Sale Assets on an as-is, where-is basis, and attempt to conclude the sale process within 12 months.
7. The Petitioner has agreed to allow access to the Cantung mine site during the Access Period and to cover the costs of reasonable accommodation and meals for anyone visiting the mine site in connection with the sale process. The Auctioneer is responsible for all sale-related expenses, however, the Petitioner has agreed to reimburse the Auctioneer for all such expenses up to \$50,000 and is responsible for the Petitioner’s normal operating costs and incidental costs incurred in connection with the extraction and removal of any of the Sale Assets. It is to be noted that pursuant to the amended support agreement between Callidus and the Petitioner, Callidus is to reimburse the Petitioner for all costs incurred by the Petitioner in relation to the sale process, including any amounts for which the Petitioner is to reimburse the Auctioneer.
8. The Auctioneer’s commission ranges from 16% of the gross proceeds of sale up to \$2,000,000 and 35% of the gross proceeds of sale greater than \$5,000,000.

9. The Monitor has approved of the process leading to the engagement of the Auctioneer and is satisfied that the Auctioneer is appropriately qualified to conduct the sale of the Sale Assets and that the terms of the Auction Agreement are commercially reasonable. The Monitor believes that the sale process contemplated by the Auction Services Agreement, including the timelines thereunder, is more likely to lead to a greater net recovery for creditors than other forms of sale process or liquidation of the Sale Assets, which otherwise may not occur for some time. Callidus has confirmed that it consents to the Petitioner engaging the Auctioneer to sell the Sale Assets in accordance with the terms of the Auction Agreement.

SECURITY REVIEW AND DISTRIBUTION ORDER

10. Counsel to the Monitor, Fasken Martineau DuMoulin LLP, has conducted a review of the security interest held by Callidus in respect of the Petitioner's assets and has concluded that Callidus holds a valid and effective security interest in the Petitioner's assets, including the Sale Assets. Fasken has also advised that Monitor that it believes that Callidus' security interest in the Petitioner's assets, other than land and fixtures, ranks ahead of the security interests of all other persons except the beneficiaries of the extant court-ordered charges.
11. The Monitor is satisfied that the value of the Sale Assets is less than the amount currently owing to Callidus.
12. For the foregoing reasons, the Monitor is seeking an order that directs the Petitioner to distribute the net proceeds of sale of the Sale Assets to Callidus without the need for further order of the Court. The Monitor considers such order to be appropriate in the circumstances as there is no prejudice to any other stakeholders in making such an order, and it will obviate the need for a further application.

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. Section 36 of the CCAA, which states:

(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

3. The Petitioner has been, and is, acting in good faith and with due diligence.

Part 4: MATERIAL TO BE RELIED ON

1. The Monitor Order, made November 16, 2015;

2. Monitor's Seventeenth Report to the Court dated September 27, 2017; 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.

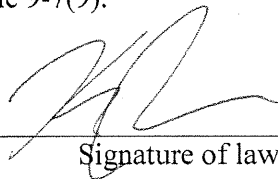
☐ This matter is within the jurisdiction of a master.

☒ 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: September 26, 2017



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

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PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

MR. JUSTICE BUTLER

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SEPTEMBER 29, 2017

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 Kibben Jackson, counsel for the Monitor, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Monitor's Seventeenth Report to the Court dated September 27, 2017 (the "**Seventeenth Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Monitor's Notice of Application herein and supporting materials be and is hereby abridged so that this application is properly returnable on September 29, 2017.

Auction Services Agreement

2. The auction services agreement dated September <@>, 2017 (the "**Auction Services Agreement**") between the Petitioner and Hilco Industrial Acquisitions Canada ULC, Gordon Brothers Canada ULC and A.M. King Industries, Inc. (collectively, the "**Auctioneer**"), a copy of which is attached as Appendix "A" to the Seventeenth Report, is hereby approved, and the Auction Services Agreement is commercially reasonable.
3. During the Access Period (as defined in the Auction Services Agreement), the Auctioneer shall be the exclusive sales agent for the assets that are the subject of the Auction Purchase Agreement (collectively, the "**Sale Assets**").
4. The Petitioner is at liberty to sell the Sale Assets without the need for further order of this Court.
5. Upon delivery by the Auctioneer to a purchaser (a "**Purchaser**") of a receipt confirming payment in full by such Purchaser for the full amount of the purchase price of any of the Sale Assets, inclusive of applicable taxes and the Buyer's Premium (as defined in the Auction Services Agreement), all of the Petitioner's right, title and interest in and to such Sale Asset(s) shall vest absolutely in such Purchaser free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia, the Northwest Territories or any other personal property registry system and all encumbrances or charges created by any order of this

Court in these proceedings (all of which are collectively referred to as the “**Encumbrances**”), and this Court orders that all of the Encumbrances and Court Charges affecting or relating to such Sale Asset(s) are hereby expunged and discharged as against such Sale Asset(s).

6. Notwithstanding:

- (a) these proceedings;
- (b) any applications for a bankruptcy order in respect of the Petitioner now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made by or in respect of the Petitioner,

the vesting of any Sale Asset(s) in a Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable by creditors of the Petitioner, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. Subject to the terms and conditions of any agreement between the Petitioner and Callidus Capital Corporation (“**Callidus**”), the Petitioner is hereby authorized to distribute to Callidus the net proceeds of sale of the Sale Assets received by the Petitioner up to the amount owing from the Petitioner to Callidus without the need for any further order of this Court.

8. 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 Kibben Jackson
Lawyer for the Monitor, Alvarez & Marsal Canada Inc.

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

COUNSEL	APPEARING FOR:
Lisa Hiebert	Callidus Capital Corporation