

Clerk's Stamp

COURT FILE NUMBER
COURT
JUDICIAL CENTRE OF

2001-07984
COURT OF QUEEN'S BENCH OF ALBERTA
CALGARY

APPLICANTS:

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 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

APPLICATION

ADDRESS FOR SERVICE AND
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

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	October 22, 2020
Time:	2:30 p.m.
Where:	Calgary Courts Centre – Via Webex.
Before:	The Honourable Justice Jones – Commercial List

Go to the end of this document to see what you can do and when you must do it.

Orders Sought:

1. Capitalized terms not otherwise defined shall have the meaning given to them in the Affidavit of Jerrad Blanchard to be sworn October 20, 2020.
2. The Respondents, Northern Silica Corporation (“NSC”), Custom Bulk Services Inc. (“Custom Bulk”), Heemskirk Canada Limited (“Heemskirk Canada”), Heemskirk Canada Holdings Limited (“Heemskirk Holdings”), HCA Mountain Minerals (HCA Moberly) Limited (“Moberly”) and Heemskirk Mining Pty. Ltd., (“Heemskirk Australia”) (collectively referred to herein as the “NSC Companies”) seek relief pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”) as follows.
3. An order (the “Order”) substantially in the form attached as Schedule “A” hereto, *inter alia*:
 - (a) authorizing and empowering HCA Moberly to obtain and borrow under a credit facility pursuant to the New Facility Agreement (as defined below) among HCA Moberly as borrower and QMetco Limited (“QMetco”) as lender in order to repay HCA Moberly’s indebtedness outstanding to QMetco in the amount of \$15,500,000.00 (the “New Loan Amount”) under the Existing Facility Agreement (as defined below);
 - (b) ordering that borrowings under the credit facility granted pursuant to the New Facility Agreement shall:
 - (i) not exceed the New Loan Amount;

- (ii) notwithstanding the date of execution of the New Facility Agreement or the date of any advance, not constitute a post-filing obligation of HCA Moberly; and
 - (iii) have the same priority as the borrowings under the credit facility under the Existing Facility Agreement;
- (c) authorizing and empowering HCA Moberly to execute and deliver the New Facility Agreement and such credit agreements and other definitive documents (collectively, the “Definitive Documents”) as are contemplated by the New Facility Agreement or as may be reasonably required by QMetco pursuant to the terms thereof,
- (d) authorizing and directing HCA Moberly to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to QMetco under and pursuant to the New Facility Agreement and the Definitive Documents as and when the same become due and are to be performed;
- (e) ordering that the New Facility Agreement and the Definitive Documents shall be binding on any trustee in bankruptcy that may be appointed in respect of HCA Moberly and shall not be void or voidable by creditors of HCA Moberly;
- (f) varying the Approval and Vesting Order by amending the parcel identifier number in paragraph 9(b)(i) of the Approval and Vesting Order from 029-224-851 to 029-224-861; and
- (g) such further relief as this Court deems just.

Basis for this Claim:

A. New Facility Agreement

1. The Approval and Vesting Order approved the terms of the APA and the transactions contemplated thereunder whereby certain of the NSC Companies will sell substantially all of their assets to Vitreo Minerals Ltd. (“Vitreo”).
2. QMetco is an affiliate of Vitreo and the other Secured Lender.
3. The terms of the APA provide that the NSC Companies will cooperate with Vitreo in the transfer or assignment by Vitreo and its affiliates of the Senior Secured Claims Amount (as defined in the APA), which includes a portion of the indebtedness owing to QMetco under the Existing Facility Agreement.
4. On Friday October 16, 2020 Vitreo requested that HCA Moberly execute an Unsecured CAD Facility Agreement among HCA Moberly as borrower and QMetco Ltd. (“QMetco”) as lender (the “New Facility Agreement”) in order to repay indebtedness outstanding to QMetco under the HCA Mountain Minerals (Moberly) Limited – Secured Working Capital

Facility Agreement dated December 6, 2019 between HCA Moberly as borrower and QMetco as lender (the “Existing Facility Agreement”).

5. The NSC Companies have been advised that repayment of the indebtedness under the Existing Facility Agreement using the credit facility granted under the New Facility Agreement is an important and necessary step in the organization of Vitreo’s business operations which is required to close the transactions contemplated by the APA.
6. The repayment terms of the proposed New Facility Agreement are not less favourable to HCA Moberly than those under the Existing Facility Agreement.
7. The borrowings under the New Facility Agreement would have the same priority as the borrowings under the Existing Facility Agreement.
8. The borrowings under the New Facility Agreement would not exceed the New Loan Amount.
9. The transactions contemplated by the New Facility Agreement constitute a purely administrative step required in connection with the closing of the transactions contemplated by the APA.
10. The terms of the New Facility Agreement do not prejudice any stakeholder of HCA Moberly or the other NSC Companies.
11. In order to facilitate the closing of the transactions contemplated by the Court approved APA, the NSC Companies are seeking an Order authorizing HCA Moberly to enter into the New Facility Agreement and perform its obligations thereunder.

B. Varying the Approval and Vesting Order

12. Paragraph 9(b)(i) of the Approval and Vesting Order inadvertently referenced an incorrect Parcel Identifier number with respect to the the real property of the NSC Companies located in British Columbia with Legal Description: LOT A SECTION 29 TOWNSHIP 28 RANGE 22 WEST OF THE 5TH MERIDIAN KOOTENAY DISTRICT PLAN EPP30862 (the “BC Lands”).
13. The Parcel Identifier number of the BC Lands listed in paragraph 9(b)(i) of the Approval and Vesting Order should be 029-224-861, not 029-224-851. Other references to the Parcel Identifier number in the Order are correct, as can be seen on page 17 of Schedule B to the Order.
14. The error is a typographical one and should be corrected.

15. The variation of the Approval and Vesting Order to correct the error does not change the substance of the Order nor does it prejudice any stakeholder.

Affidavit or Other Evidence to be used in support of this application:

1. The Affidavit of Jerrad Blanchard, sworn on October 20, 2020.
2. The Affidavit of Service of David Tsumagari, filed.
3. The Pre-Filing Report of the Monitor.
4. The First Report of the Monitor.
5. The Second Report of the Monitor.
6. The Third Report of the Monitor.
7. The Fourth Report of the Monitor, to be filed.
8. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

9. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
10. *Judicature Act*, RSA 2000, c J-2.
11. *Rules of Court*, Alta Reg 124/2010.
12. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this Application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the Application is heard or considered, you must reply by giving reasonable notice of the material to the Applicant.