



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 presiding judge at the courthouse at 800 Smithe Street, Vancouver, B.C. on April 8, 2022 at 9:45 a.m. for the orders set out in Part 1 below. *by MS TEAM*

**Part 1: ORDERS SOUGHT**

1. **An order substantially in the form attached hereto as Schedule "A":**

- (a) extending the Stay Period, as defined in the Amended and Restated Initial Order made July 9, 2015 (the "**ARIO**") to April 30, 2023;
- (b) directing Her Majesty in Right of Canada as represented by the Department of Crown-Indigenous Relations and Northern Affairs ("**DCIRNA**") to fund the Company's expenditures as set out the Fourteenth Cash Flow Statement, as that term is defined in the Monitor's Twenty Third Report to the Court dated March 24, 2022 (the "**Twenty Third Report**");
- (c) directing the Monitor to notify DCIRNA of budget adjustments if the Monitor anticipates any material increase in the cumulative amount to be spent by the

Petitioner during the Budget Period, including without limitation with respect to the operating costs and environmental costs of the Petitioner and the fees and disbursements of the Petitioner, the Monitor and their respective counsel incurred during the Budget Period (a “**Budget Adjustment**”). The Monitor shall notify DCIRNA of such Budget Adjustment and DCIRNA shall notify the Monitor within three business days of such notice whether DCIRNA consents to an amendment to the Updated Budget to include the Budget Adjustment; and

- (d) approving the activities of the Monitor as described in the Twenty Third Report with respect to those parties to whom notice of these proceedings has been given in accordance with the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”).

## **Part 2: FACTUAL BASIS**

### **BACKGROUND**

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the ARIO.
2. On June 9, 2015, Mr. Justice Butler granted the Initial Order providing for a stay of proceedings to July 8, 2015.  
**Monitor’s Twenty Third Report at para. 1.1.**
3. On July 9, 2015, Mr. Justice Butler granted the ARIO, pursuant to which (among other things) the Stay Period was extended to 11:59 p.m. on July 17, 2015. The Stay Period has since been extended on a number of occasions, most recently to April 30, 2022, pursuant to the March 30, 2021 order of Madame Justice Iyer.  
**Monitor’s Twenty Third Report at paras. 1.1 and 1.2.**
4. At the date of the Initial Order, NATC was in the business of mine development and tungsten concentrate production. Its key mining assets included one producing mine located in the Northwest Territories (“**Cantung**”) and one development property located on the border of the Yukon and the Northwest Territories (“**Mactung**”).  
**Monitor’s Twenty Third Report at para. 1.3.**

5. On October 26, 2015, the Company discontinued production at Cantung and transitioned the mine to care and maintenance. The care and maintenance plan was designed to, among other things, enable the Company to remain in compliance with Cantung's water licence issued by the Mackenzie Valley Land and Water Board ("**MVLWB**") and various environmental regulations, preserve the value of the Cantung mine site and mitigate reclamation liabilities associated with the mine. Since November 2015, funding for the care and maintenance program has been provided by DCIRNA (formerly known as the Department of Indian Affairs and Northern Development or DIAND).

**Monitor's Twenty Third Report at para. 1.4.**

6. On November 16, 2015, the Court granted an order which, among other things, granted the Monitor exclusive authority to act in respect of NATC's property and business.

**Monitor's Twenty Third Report at para. 1.5.**

7. On November 17, 2015, the Court granted an order approving the sale of Mactung to the Government of the Northwest Territories (the "**GNWT**"), in part by way of offset of a portion of the secured debt owing to GNWT by NATC. The transaction to sell Mactung to GNWT closed on December 10, 2015.

**Monitor's Twenty Third Report at para. 1.6.**

8. In May 2017, NATC entered into a contract with Tetra Tech Canada Inc. ("**Tetra Tech**") to perform environmental and geotechnical investigations of the Cantung mine site (the "**Phase III ESA**") to assist with long-term planning for potential remediation.

**Monitor's Twenty Third Report at para. 1.7.**

9. On May 24, 2019, the Monitor entered into a memorandum of understanding with DCIRNA and the GNWT (together, the "**Governments**") whereby the Governments retained and appointed the Monitor to jointly market for sale the Cantung mine and Mactung deposit (together, the "**Assets**").

**Monitor's Twenty Third Report at para. 1.8.**

10. Subsequently, on July 16, 2019, Mr. Justice Grauer granted an order (the "**Competitive Selection Process Order**") approving a competitive selection process (the "**Competitive Selection Process**") having the purpose of transferring the Assets to the private sector to ensure timely development of the Mactung deposit towards a producing mine and to

evaluate the options for production at the Cantung mine and management of environmental liabilities.

**Monitor's Twenty Third Report at para. 1.9.**

## **OPERATIONS AND RESTRUCTURING ACTIVITIES**

11. Since March 16, 2021 (the date of the Monitor's Twenty Second Report to the Court), the Monitor's primary activities have included:

- (a) managing the care and maintenance activities at the Company's Cantung mine site;
- (b) attending to environmental and regulatory matters including regular reporting to and discussions with the MVLWB;
- (c) attending to various applications and extensions of land use permits as well as updating various plans and holding discussions with DCIRNA and the various regulatory bodies regarding same;
- (d) communicating with key stakeholders including DCIRNA, GNWT and representatives of relevant Indigenous groups and related communities;
- (e) continuing discussions with interested parties and the relevant Indigenous groups and related communities to advance the Competitive Selection Process;
- (f) attending to general site and administrative activities such as road and equipment maintenance, environmental sampling, payroll administration and other related matters; and
- (g) attending to general corporate reporting and administration matters.

**Monitor's Twenty Third Report at para. 4.1.**

12. A detailed summary of the Company's operations and restructuring activities, geotechnical and environmental investigations, regulatory activities and engagement with Indigenous groups since March 16, 2021 is set out in Section 4 in the Twenty Third Report.

## ENVIRONMENTAL AND GEOTECHNICAL INVESTIGATIONS

13. Since the Monitor's Twenty Second Report to the Court, Tetra Tech has submitted analyses of the results of its environmental and geotechnical investigation work in the form of eight separate assessment reports (together, the "**Assessment Reports**").

**Monitor's Twenty Third Report at paras. 1.7 and 4.4.**

14. From June 22, 2021 to June 25, 2021, Tetra Tech facilitated technical engagement sessions ("**Technical Sessions**") in order to present the findings in the Assessment Reports to the relevant Indigenous groups. The Technical Sessions provided an opportunity to receive comments from the Indigenous groups, all of which will be considered as Tetra Tech continues to review the findings contained in the Assessment Reports in order to inform subsequent assessment work and remedial options.

**Monitor's Twenty Third Report at para. 4.5.**

15. Due to factors including, but not limited to, (i) the delays caused by COVID-19; (ii) comments received on the Assessment Reports from an independent peer review panel of environmental and geotechnical professionals; and (iii) additional work having to be completed by Tetra Tech to support conclusions, the additional assessment work and remedial options analyses are expected to be completed during the summer of 2022.

**Monitor's Twenty Third Report at para. 4.6**

## ENVIRONMENTAL AND REGULATORY MATTERS

16. In addition to the regular monthly and annual reports submitted to MVLWB as required under the Company's water licence, the Company and the Monitor have had correspondence and attended meetings with representatives of:

- (a) MVLWB, regarding the water licence, environmental and geotechnical assessment program, Competitive Selection Process, interim closure and reclamation plan applications and extensions; and
- (b) DCIRNA inspectors, relating to reporting requirements under the water licence and other regulatory requirements. A physical inspection of the Cantung mine site was conducted by DCIRNA's land use inspector ("**Land Use Inspector**") on October 6, 2021 as well as on February 24, 2022.

**Monitor's Twenty Third Report at para. 4.8 and 4.9.**

17. Since the date of the last report, the Company reported one minor spill of liquid propane in gaseous form from a storage tank on October 8, 2021. The Company rectified the cause of the spill and immediately advised the Land Use Inspector and affected Indigenous groups. As an additional precaution, the Company has contacted qualified contractors to empty and remove the storage tank from the site.

**Monitor's Twenty Third Report at para. 4.10.**

## **COMPETITIVE SELECTION PROCESS**

18. The Monitor has continued to advance the Competitive Selection Process since the granting of the Competitive Selection Process Order.

19. As contemplated by the Competitive Selection Process, the Monitor prepared and administered an RFQ process to select a group of Shortlisted Proponents who were invited to participate in the Request for Proposals (“RFP”) stage of the process.

**Monitor's Twenty Third Report at para. 5.1.**

20. The RFP document was issued to the Shortlisted Proponents on March 25, 2021 with an RFP submission deadline of August 20, 2021, which was subsequently extended on multiple occasions, at the various requests of the Shortlisted Proponents and certain of the Indigenous groups, most recently to February 25, 2022 (the “**RFP Deadline**”).

**Monitor's Twenty Third Report at para. 5.4.**

21. On or before the RFP Deadline, the Monitor received multiple submissions from Shortlisted Proponents which, under the RFP, are evaluated by a committee comprised of members of the Monitor and the Governments and if the committee elects to do so, with the assistance of technical, financial, legal, and other advisors (together, the “**Evaluation Committee**”). The Evaluation Committee met on March 1 and 2, 2022 to evaluate the proposals. The Evaluation Committee adjourned the evaluation meeting on March 2, 2022, without concluding the evaluations, and the Governments are continuing to consider the proposals within their respective departments.

**Monitor's Twenty Third Report at para. 5.5.**

22. Although the Monitor has been working diligently towards concluding the RFP process, the timeline for completion has been severely impacted by factors outside of the Monitor's control, including COVID-19, which has precluded site visits and has delayed

the requisite engagement consultation process between the Shortlisted Proponents, the Governments and the various Indigenous groups. The Evaluation Committee expects to provide a response to the Shortlisted Proponents by the end of April 2022.

**Monitor's Twenty Third Report at paras. 5.4 and 5.6.**

23. A detailed summary of the Company's activities with respect to the Competitive Selection Process is set out in Section 5 of the Twenty Third Report.

### **EXTENSION OF THE STAY PERIOD AND NEXT STEPS**

24. The Monitor, on behalf of the Company, seeks to extend the Stay Period until 11:59 p.m. on April 30, 2023. The Monitor recommends that the court grant the application, including for the following reasons:

- (a) the extension provides for the ongoing care and maintenance of the Cantung mine site to preserve the asset and will allow for continuing compliance with the Company's environmental obligations and the terms of the Company's water licence;
- (b) the extension will enable the Company to conclude the Competitive Selection Process and, if applicable, develop transition plans to potential new owners of the Cantung mine or develop alternatives for dealing with the Cangtung mine site and its environmental liabilities;
- (c) subject to the granting of the Extension Order, DCIRNA has committed to fund care and maintenance expenses of the Company through to the proposed extension date, and the Fourteenth Cash Flow Statement indicates that the Company will have sufficient liquidity during that period;
- (d) the Monitor does not believe that there will be any material prejudice to any of NATC's creditors, employees, suppliers or other stakeholders, including the relevant Indigenous groups, as a result of an extension of the Stay Period; and
- (e) the Company's prospects of effecting a viable restructuring and/or transaction involving the Cantung mine would be enhanced by an extension of the Stay Period.

**Monitor's Twenty Third Report at para. 8.4.**

### **Part 3: LEGAL BASIS**

1. The Monitor relies on ss. 11 and 11.02, of the CCAA and the inherent jurisdiction and statutory discretion of this Honourable Court.

2. The extension of the Stay Period will enable the Company to continue the care and maintenance program for the Cantung mine as well as to continue the environmental assessment work undertaken by Tetra Tech in order to manage the environmental liabilities at the Cantung mine.
3. The extension of the Stay Period will allow for the conclusion of the Competitive Selection Process, enhancing the Company's prospects of effecting a viable restructuring and/or transaction involving the Cantung mine and its liabilities.
4. DCIRNA is the primary stakeholder in the Company, as it is ultimately responsible for the environmental liabilities at the Cantung mine, and is supportive of the Monitor's application to extend the Stay Period and has agreed to fund the ongoing activities of the Petitioner as provided for in the Fourteenth Cash Flow Statement.
5. The Petitioner has been, and is, acting in good faith and with due diligence.

**Part 4: MATERIAL TO BE RELIED ON**

1. Monitor's Twenty First Report to the Court dated March 16, 2020;
2. Monitor's Twenty Second Report to the Court dated March 16, 2021;
3. Monitor's Twenty Third Report to the Court dated March 24, 2022; and
4. Such further and other materials as counsel may advise and as this Court deems admissible.

The applicant estimates that the application will take 20 minutes.

This matter is not within the jurisdiction of a master.

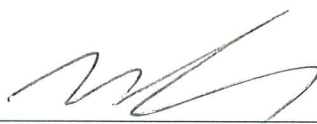
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (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).

Date: March 24, 2022



Signature of lawyer for filing party

For: Fergus McDonnell

[fmcdonnell@fasten.com](mailto:fmcdonnell@fasten.com)

**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

The Solicitors for the Monitor are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Fergus McDonnell/285937.00010)

## 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
- X other

SCHEDULE "A"

DRAFT ORDER

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

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

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)

April 8, 2022

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 Fergus McDonnell, counsel for the Monitor and Tom Isaac, counsel for Her Majesty in Right of Canada, as represented by the Department of Crown-Indigenous Relations and Northern Affairs and no one else appearing, although duly served; AND UPON READING the material filed, including the Monitor’s Twenty Third Report to the Court dated March 24, 2022 (the “**Twenty Third Report**”);

THIS COURT ORDERS AND DECLARES THAT:

Extension of Relief

1. The relief granted in the Initial Order made herein on June 9, 2015, as amended and restated by the Amended and Restated Initial order made herein on July 9, 2015, and as extended by Orders of this Court made herein on July 17, October 14, November 16, 2015, February 26, September 12, 2016, September 11, 2017, December 5, 2018, March 30, 2020 and March 30, 2021 is hereby continued and extended to 11:59 p.m. on April 30, 2023.
2. Her Majesty in Right of Canada as represented by the Department of Crown-Indigenous Relations and Northern Affairs (“**DCIRNA**”) shall fund the Petitioner’s expenditures as set out in the Cash Flow Statement attached as Appendix “A” to the Monitor’s Twenty Third Report (the “**Updated Budget**”) for the period March 19, 2022 to April 30, 2023 (the “**Budget Period**”), including any Budget Adjustment (as defined herein) consented to by DCIRNA.
3. If the Monitor anticipates any material increase in the cumulative amount to be spent by the Petitioner during the Budget Period, including without limitation with respect to the operating costs and environmental costs of the Petitioner and the fees and disbursements of the Petitioner, the Monitor and their respective counsel incurred during the Budget Period (a “**Budget Adjustment**”), the Monitor shall notify DCIRNA of such Budget Adjustment and DCIRNA shall notify the Monitor within three business days of such notice whether DCIRNA consents to an amendment to the Updated Budget to include the Budget Adjustment.
4. The activities of the Monitor as described in the Twenty Third Report are hereby approved with respect to those parties to whom notice of these proceedings has been given in accordance with the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

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:

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Signature of Fergus McDonnell  
Lawyer for the Monitor, Alvarez & Marsal Canada Inc.

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Signature of Tom Isaac  
Lawyer for Her Majesty in Right of Canada.

BY THE COURT

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REGISTRAR

**Schedule "A"**  
(List of Counsel)

COUNSEL	APPEARING FOR:



No. S154746  
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

AND IN THE MATTER OF NORTH  
AMERICAN TUNGSTEN CORPORATION  
LTD.

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ORDER MADE AFTER APPLICATION

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604 631 3131

Counsel: Fergus McDonnell  
Matter No: 285937.00010