



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 February 26, 2016 at 3:00 p.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"** extending the Stay Period, as defined in the Amended and Restated Initial Order made July 9, 2015, (the "**ARIO**") to 11:59 p.m. on October 28, 2016.

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.
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 March 31, 2016 pursuant to the November 16, 2015 Order of Mr. Justice Butler made herein (the "**Enhanced Powers Order**").
4. Also pursuant to the Enhanced Powers Order, the Monitor's powers were modified and expanded such that the Monitor was thereafter empowered and authorized, though not obligated, to act in respect of the Property and Business.
5. On November 16, 2016, Mr. Justice Butler also made three additional orders:
 - (a) an order (the "**Redundant Equipment Order**") authorizing the Equipment Financiers (as defined therein) to take possession of the Redundant Equipment (as defined therein) subject to the Monitor determining that there was no equity in such equipment, and provided each Equipment Financier paid to the Monitor, in trust, the amount estimated by the Monitor as necessary to satisfy the *pro rata* portion of the CCAA Charge Amount (as defined therein); and
 - (b) two separate orders approving and authorizing the Company to enter into termination agreements with Company and Wolfram Bergbau and Hutten AG and with Global Tungsten and Powders Corp. ("**GTP**") concerning the termination of certain tungsten supply agreements entered into by the Company and each of those parties.
6. On November 18, 2015, Mr. Justice Butler made an order (the "**Mactung Sale Approval Order**") approving the sale of the Company's assets comprising the "Mactung" mining claims and leases to the Government of the Northwest Territories for a purchase price of \$4.5 million, part of which was to be paid by way of credit bid and part of which, being the amounts owing to the beneficiaries of the CCAA Charges (as defined therein) as at the closing date, was to be paid in cash.

SALE OF MACTUNG ASSETS

7. The sale of the Mactung assets to GNWT completed on December 10, 2015, at which time GNWT paid in full the amount outstanding under the Interim Lender's Charge. That amount was subsequently paid to the Interim Lender, Callidus Capital Corporation ("**Callidus**") in satisfaction of the Company's obligations under the Interim Loan Agreement.

8. On December 15, 2015, GTP filed a Notice of Application for Leave to Appeal the Mactung Sale Approval Order. On January 4, 2016, GTP filed a Notice of Abandonment of Appeal in respect of that appeal.

ADMINISTRATION CHARGE AND AR FACILITY

9. The amounts realized from the collection of accounts receivable arising from sales of tungsten concentrate were sufficient to pay in full the amounts owing to Callidus under the AR Facility (as that term is defined in the August 13, 2015 Order of this Court) as at November 30, 2015 and to the beneficiaries of the Administration Charge. Those parties were paid out by December 4, 2015 and, accordingly, the AR Lender's Charge (as that term is defined in the August 13, 2015 Order of this Court) and the Administration Charge have been satisfied.

DOWNSIZING AND TRANSITION TO CARE AND MAINTENANCE

10. The mill at the Cantung Mine was shut down on October 26, 2015. Prior to the hearing on November 16, 2015, the Company was in the process of transitioning the Cantung Mine and related equipment to care and maintenance. With the exception of 12 employees who were retained to care for and maintain the Cantung Mine and the Company's equipment, the employment of all of the Company's employees was terminated effective November 18, 2015.
11. The Company's care and maintenance activities are detailed in the Monitor's Twelfth Report dated February 22, 2016.

PRESERVATION AND RETURN OF EQUIPMENT

12. As part of the transition to care and maintenance, all of the Company's equipment, other than equipment required for outside operations, was prepared for storage over the winter and moved into the maintenance shop located in the underground portion of the Cantung Mine.
13. The Monitor has insured all of the equipment remaining at the mine site having a property claims limit of USD \$16.5 million. Callidus agreed to pay the costs of insurance in respect of the equipment in respect of which it has a first-ranking security interest (subject to the Second Administration Charge, as defined in the Enhanced Powers Order). DIAND (as defined in the Enhanced Powers Order) has funded the insurance costs in respect of the equipment required to be retained by the Company to carry out care and maintenance. With respect to the balance of the equipment, the Monitor advised the equipment lessors that if they did not retrieve their equipment or insure the equipment themselves, the Monitor would insure that equipment and the lessors would

be expected to pay their share of the costs of such insurance before being permitted to remove their equipment.

14. Two equipment lessors have advised the Monitor that they wish to remove their pieces of Redundant Equipment. The Monitor has been in communication with those lessors, including to advise that there are challenges relating to accessing and removing the equipment from the underground mine. The Monitor is working with the lessors to enable them to gain access to their equipment and assess options for its removal.

WATER LICENCE

15. At the time these proceedings were commenced, the water licence issued by Mackenzie Valley land and Water Board (the "**Water Board**") to the Company in respect of the Cantung Mine (the "**Water Licence**") was due to expire on January 29, 2016. On April 21, 2015 (prior to the commencement of these proceedings), the Company applied for a renewal of the Water Licence.
16. On December 29, 2015, the Monitor learned that the Water Board had recommended to the Minister of Aboriginal Affairs and Northern Development approval the renewal of the Water Licence. On or about January 28, 2016, the Minister signed the Water Licence, which, subject to ongoing fulfilment by the Company of the conditions set forth in the Water Licence, is now due to expire on January 27, 2024.

ALLOCATION OF CCAA CHARGES

17. The Enhanced Powers Order also included a direction that the Monitor prepare a methodology concerning the allocation of the CCAA Charges among the assets comprising the Property. Given that the only CCAA Charge that was unsatisfied as at the closing of the sale of the Mactung assets was the Interim Lender's Charge, the allocation concerns only the amount secured by that charge.
18. The stakeholders with the greatest financial interest in the allocation methodology are GNWT, which had a first-ranking security interest in the Mactung assets, and Callidus, which has a first-ranking security interest in the Cantung mine and the majority of the related assets and equipment (there are several equipment lessors whose security interests in that equipment rank in priority to Callidus).
19. To assist the Monitor in preparing its allocation methodology, both GNWT and Callidus provided written submissions to the Monitor as to the appropriate allocation methodology. By agreement, those submissions are to be kept confidential by the Monitor.

20. On January 29, 2016, after delivering their submissions to the Monitor, GNWT and Callidus along with their legal counsel had a meeting in an effort to arrive at an agreement as to the appropriate allocation of the Interim Lender's Charge. The parties have yet to arrive at an agreement, however, at their request, the Monitor is awaiting the outcome of their negotiations before engaging further in preparing an allocation methodology.

EXTENSION OF THE STAY PERIOD AND NEXT STEPS

21. Since the November 16, 2015 hearing, the Monitor has been in regular contact with representatives of DIAND to discuss, among other things, ongoing funding obligations and the long-term strategy for dealing with the Cantung mine, including assessing alternative realization strategies.
22. The Monitor is also of the view that if there is to be a transaction concerning the Cantung mine, it may well be more convenient to complete such transaction within the context of the CCAA proceedings. Moreover, the continuation of the CCAA proceedings and the extension of the stay or proceedings will help to ensure the preservation of the Water Licence and facilitate the preservation of the mine and related assets.
23. DIAND has agreed to continue funding the Company during the extended Stay Period, including several projects related to regulatory initiatives which are expected to enhance the value of the Cantung mine and address various environmental concerns.
24. The extension of the Stay Period and the ongoing care and maintenance of the Cantung mine is, in the Monitor's view, appropriate in the circumstances and the Monitor recommends that the Court approve the extension of the Stay Period as sought.

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 and equitable jurisdiction of this Honourable Court.
2. The Petitioner has been, and is, acting in good faith and with due diligence.

Part 4: MATERIAL TO BE RELIED ON

1. Amended and Restated Initial Order, made July 9, 2015;
2. Monitor's Twelfth Report to the Court dated February , 2016; 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: 22 / February / 2016



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

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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AND

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ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)

MR. JUSTICE BUTLER)

) FEBRUARY 26, 2016
)

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 UPON READING the material filed, including the Monitor's Twelfth Report to Court dated February 22, 2016 (the "**Twelfth Report**");

THIS COURT ORDERS AND DECLARES THAT:

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 and November 16, 2015, is hereby continued and extended to 11:59 p.m. on October 28, 2016.

2. Her Majesty In Right of Canada as represented by the Department of Indian Affairs and Northern Development Canada (“**DIAND**”) shall fund the Petitioner’s expenditures as set out in the operating budget as set out in Appendix “B” to the Twelfth Report (the “**Updated Budget**”) for the period February 19 to October 28, 2016 (the “**Budget Period**”), including any Budget Adjustment (as defined herein) consented to by DIAND in accordance with paragraph 4 hereof.
3. Paragraph 18 of the November 16, 2015 Order of this Court is hereby amended such that the defined term “DIAND Funding” used therein shall henceforth be defined to include any funding provide by DIAND to the Petitioner pursuant to that Order, this Order and any subsequent Order of this Court.
4. 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 DIAND of such Budget Adjustment and DIAND shall notify the Monitor within three business days of such notice whether DIAND consents to an amendment to the Updated Budget to include the Budget Adjustment.

5. The need for endorsement of this Order by counsel appearing on this application, other than counsel for the Monitor, is hereby dispensed.

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

☐ Party ☒ Lawyer for the Monitor, Alvarez & Marsal Canada Inc.

Kibben Jackson

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

COUNSEL	APPEARING FOR:
<@>	Callidus Capital Corporation
<@>	Government of the Northwest Territories