



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, 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 Grauer at the courthouse at 800 Smithe Street, Vancouver, B.C. on July 16, 2019 at 9:00 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 activities of the Monitor as described in the Monitor's 20th Report to the Court; and
 - (b) approving the Competitive Selection Process as defined and described herein and in the Monitor's 20th Report to the Court and authorizing the Monitor to manage the process described therein.

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 April 30, 2020, pursuant to the December 5, 2018 order of Mr. Justice Grauer made herein.

CARE AND MAINTENANCE

4. Since November 30, 2018 (the date of the Monitor's Nineteenth Report to the Court), the Company, under the Monitor's oversight, has continued its care and maintenance program at the Cantung mine. This includes monitoring and reporting in respect of environmental obligations, meeting obligations arising in respect of the Company's water licence, maintaining equipment, the underground mine and the mine site, including roads, and meeting with various stakeholder groups, including various Indigenous groups.
5. The Company continues to employ twelve full time employees who perform water sampling and reporting, inspections and repairs to building and infrastructure and maintain equipment and site access. The Company also continues to perform site clean-up and progressive remediation tasks.
6. A detailed summary of the Company's care and maintenance activities since November 30, 2018 are set out in section 4 of the Twentieth Report.

EQUIPMENT

7. The security discharge release agreement, dated November 30, 2018 (the "**Security Release Agreement**"), between the Company and Callidus Capital Corporation

(“**Callidus**”), which was approved by the Court pursuant to the order of Mr. Justice Grauer made December 5, 2018, has been completed. The amounts owing to Callidus under the Security Release Agreement were paid in January 2019.

ENVIRONMENTAL AND GEOTECHNICAL INVESTIGATIONS

8. The Company continues to work with Tetra Tech Canada Inc. (“**Tetra Tech**”), who is performing a Phase III Environmental Site Assessment (the “**Phase III ESA**”). The field work with respect to the Phase III ESA is anticipated to be completed by early fall 2019.
9. Tetra Tech is also providing services with respect to the development of various remediation options relating to the Cantung mine site and the calculation of the Company’s reclamation liabilities, which is expected to enhance the Company’s prospects of effecting a restructuring transaction in accordance with the Competitive Selection Process.
10. The Company has increased the scope of Tetra Tech’s services since the Monitor’s Nineteenth Report to the Court to include the following:
 - (a) contracting and supervising drilling and civil construction contractors;
 - (b) gathering and interpreting further data on the stability of the tailings ponds;
 - (c) engaging and consulting with Indigenous groups regarding potential remedial options;
 - (d) preparing a preliminary design for the preferred remedial options selected;
 - (e) preparing long-term monitoring plans and related cost estimates; and
 - (f) conducting an archaeological study of the Cantung mine site.

THE COMPETITIVE SELECTION PROCESS

11. The Monitor seeks approval of a competitive selection process for the sale of the Cantung and Mactung assets and the procurement of a contract for the management of environmental liabilities at the Cantung mine site (the “**Competitive Selection Process**”), which is described in greater detail in the Twentieth Report.

12. The Government of the Northwest Territories is the owner of the Mactung assets, which it purchased following the Sales and Investment Solicitation Process that the Monitor undertook in 2015, pursuant to the order of Mr. Justice Butler made November 17, 2015, in a transaction that involved a credit bid by the Government of the Northwest Territories.
13. The purpose of the Competitive Selection Process is to transfer the Mactung and Cantung assets to the private sector to ensure the timely development of the Mactung deposit towards a producing mine, to evaluate the options for production at the Cantung mine and to execute a contract for the management of environmental liabilities at the Cantung mine (the “**Cantung Work**”) with a goal of eventual mine closure, in order to create economic development in Northern Canada and job opportunities for Northern residents as well as minimizing the costs to Canadian taxpayers associated with the ongoing care and maintenance and remediation of the Cantung mine site.
14. The Monitor intends to manage the Competitive Selection Process in its capacity as Monitor of NATC, which owns the Cantung mine assets, and in its capacity as advisor to the Government of the Northwest Territories, which owns the Mactung deposit, and Her Majesty the Queen in Right of Canada, represented by the Minister of Indian Affairs and Northern Development (“**Canada**” and together with the Government of the NWT, the “**Governments**”).
15. The Monitor and the Governments entered into a memorandum of understanding on May 24, 2019 (the “**MOU**”), whereby the Governments retained and appointed the Monitor to jointly market the Mactung and Cantung assets for sale and to undertake a procurement process for the contract for the Cantung Work. Under the MOU, the Governments are responsible for the fees of the Monitor relating to the Competitive Selection Process.
16. Canada is the primary stakeholder of NATC, as it is the first ranking secured creditor of the Cantung mine and related lands and also responsible for the residual environmental liabilities of the Cantung mine site.
17. A coordinated and joint sales and procurement process for both the Mactung and Cantung assets and the Cantung Work is expected to maximize value to the Governments, by

simultaneously transferring both assets and the management of environmental liabilities to the private sector while also ensuring the appropriate engagement of and opportunity for Indigenous groups, Northern Canada businesses and Northern Canada residents.

18. The Competitive Selection Process involves two main stages. The first is the issuance of a request for qualifications (“**RFQ**”), to be publicized in print and electronic media, which will seek responses from all interested parties to submit their relevant qualifications, experience, financial capacity and a description of their intended approach to engaging with Indigenous groups and Northern communities and developing the Mactung and Cantung assets and performing the Cantung Work.
19. The Monitor and the Governments will then select a shortlist (the “**Shortlisted Proponents**”) who, as the second stage of the process (the “**RFP**”), will be invited to submit proposals to purchase the Cantung and Mactung assets and perform the Cantung Work. Following this, the Monitor and the Governments intend to select a preferred proponent from the Shortlisted Proponents and enter into negotiations with that party to finalize the form of agreements for the purchase of the assets and the performance of the Cantung Work.
20. The final agreements with respect to the sale of the Cantung assets and the performance of the Cantung Work will require approval of the Court.

ENGAGEMENT WITH INDIGENOUS GROUPS

21. One of the key features of the Competitive Selection Process is the Monitor’s ongoing engagement with Indigenous groups and local communities, in conjunction with the Governments. As set out in the Twentieth Report, the Monitor has been actively involved in engagement with Indigenous groups through the Company’s Engagement Plan. As the Governments and the Monitor will be working collaboratively to finalize wording and structure of the RFQ and work towards development of the RFP, this will also provide an opportunity for on-going dialogue and consultation with the relevant Indigenous groups.
22. The Competitive Selection Process is not prescriptive with respect to the formation of respondent entities, but it is anticipated that respondents to the RFQ may initially include

Indigenous group firms and businesses based in Northern Canada. The Competitive Selection Process also allows for changes to respondent entities throughout the process, which may involve the formation of partnerships, joint ventures or other vehicles to allow for the participation of various groups in the ultimate transactions.

Part 3: LEGAL BASIS

1. The authority of the Court to approve the Competitive Selection Process is found in Sections 11 and 11.02, and 36 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 grants the court the ability to authorize a sale or disposition of a debtor company's assets outside of the ordinary course of business. This section, combined with the general power of the court as stated in Section 11, provides inherent jurisdiction to authorize a sale and procurement process.

Nortel Networks Corp (Re) (2009), 55 C.B.R. (5th) 229 at paras. 48-49

3. Pursuant to Subsection 36(3) of the CCAA, the court should consider the following factors in deciding whether to approve a sale:
 - (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 fair market value.

4. In *Brainhunter Inc (Re)*, Justice Morawetz indicated that there is a distinction between the approval of the sales process and the approval of a sale. While the factors outlined in Subsection 36(3) are directly applicable when determining the approval of a transaction, they need only be indirectly considered when a court is assessing the approval of a proposed sale process.

Brainhunter (Re) (2009), 62 C.B.R. (5th) 41, at paras. 16-17

5. As articulated by Justice Morawetz, the important questions that are to be considered when approving a proposed sale process include:

- (a) Is a sales process warranted at this time?
- (b) Will the sale benefit the whole “economic community”?
- (c) Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- (d) Is there a better viable alternative?

Brainhunter, supra, at para. 13

6. These factors all favour the approval of the Competitive Selection Process. In particular:

- (a) the Company’s primary stakeholder and secured creditor, Canada, is supportive of and involved in this process. Canada, who also holds the residual liability for the environmental liabilities at the Cantung mine site, is the only creditor with any stake in the outcome of these proceedings;
- (b) the process allows for the involvement and engagement of other interested parties, including Indigenous groups and local communities, which is consistent with Canada’s objectives;
- (c) although NATC does not own the Mactung assets, the joint marketing of the Cantung and Mactung assets and the simultaneous transfer of the Cantung Work to the private sector is expected to maximize value for the Governments and minimize the long term environmental liabilities of Canada; and
- (d) the prospect of developing the Mactung deposit and further development of the Cantung mine and the management of its environmental liabilities is consistent with Canada’s objectives and would benefit the whole economic community.

7. The Competitive Selection Process includes an ongoing process for consultation and engagement with Indigenous groups and local communities, and although not a prescriptive process, provides for the opportunity for involvement by those parties in the final transactions.
8. The foregoing factors favour the approval of the Competitive Selection Process and the authorization of the Monitor to manage the process in accordance with its terms.

Part 4: MATERIAL TO BE RELIED ON

1. Monitor's Twentieth Report to the Court dated July 9, 2019; and
2. Such further and other materials as counsel may advise and as this Court deems admissible.

The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of a master. Mr. Justice Grauer is seized of these proceedings and this application has been scheduled to be heard before Mr. Justice Grauer 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 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: July 9, 2019



Signature of lawyer for filing party
Fergus McDonnell

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:

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Date:

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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

SCHEDULE A

No. S-154746
Vancouver Registry

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PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

MR. JUSTICE GRAUER

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JULY 16, 2019

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 no other counsel appearing, although duly served; AND UPON READING the material filed, including the Monitor’s Twentieth Report to the Court dated July 9, 2019 (the “**Twentieth Report**”);

THIS COURT ORDERS AND DECLARES THAT:

Approval of the Activities of the Monitor

1. The activities of the Monitor as described in the Twentieth 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*.
2. The Competitive Selection Process, as defined and described in the Twentieth Report, is approved and the Monitor is authorized to manage the process described therein without further order of this Court, subject to the requirement to obtain an order approving any transactions with respect to the Cantung Mine that result from the Competitive Selection Process.
3. 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 Fergus McDonnell
Lawyer for the Monitor, Alvarez & Marsal Canada Inc.

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

COUNSEL	APPEARING FOR: