

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: **Wolfram Bergbau and Hütten AG ("WBH")**

To: The Service List

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on 16/November/2015 at 09:45a.m. for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order that the time for service of the Notice of Application be and is hereby abridged such that the Notice of Application is properly returnable November 16, 2015;
2. An order that endorsement of this Order by counsel appearing on this application is hereby dispensed with;
3. An order approving the agreement between WBH and North American Tungsten Corporation Ltd. ("NATC") attached hereto as Schedule "A", terminating the Supply Agreement dated February 20, 2014 and Amended June 24, 2015;
4. In the alternative, a direction that the Supply Agreement dated February 20, 2014 and Amended June 24, 2015 is hereby terminated; and

5. In the further alternative, that the stay period set out in the Amended and Restated Order made July 9, 2015, and as amended or may be amended (the "ARIO"), does not apply to the Supply Agreement following November 30, 2015.

Part 2: FACTUAL BASIS

1. WBH is a world-leading manufacturer of tungsten oxide-, tungsten metal-, and tungsten carbide powders. WBH operates a mine and ore dressing plant in Mitterstill Austria and a refining plant in St. Martin, Austria.
2. In order to ensure certainty in the amount of tungsten concentrate WBH receives and competitive pricing, WBH entered into a long term supply agreement with NATC on February 20, 2014, effective March 1, 2014 (the "Supply Agreement").
3. The Supply Agreement was amended by an Amending Agreement dated June 24, 2015 (the "Amending Agreement"). The Amending Agreement was approved by order of this Honourable Court made June 26, 2015.
4. Without certainty of supply, WBH cannot ensure that it can meet its processing requirements and scheduled deliveries to customers.
5. The Supply Agreement is to end on the latter of:
 - a. February 1, 2017; or
 - b. The date on which the Total Contracted Quantity, as that term is defined, has been delivered in total to WBH.
6. Under section 17(2) of the Supply Agreement, WBH has the right to terminate the Supply Agreement if, among other things:
 - a. Concentrates do not materially conform to Specifications for three consecutive months; or
 - b. NATC otherwise fails to make deliveries or breaches any other material term or material condition as provided in the Supply Agreement.

7. In 2014, WBH received approximately 50% of its required external tungsten concentrate from NATC pursuant to the Supply Agreement.
8. Throughout these CCAA proceedings, NATC has presented an operating plan which, among other things, was to see the Cantung mine cease operations at the end of October 2015 and transition into care and maintenance.
9. It is uncontroverted that NATC will not make any shipments of tungsten concentrate while the Cantung mine is in care and maintenance.
10. On September 25, 2015, WBH received an email from Bruce Penich at NATC, which confirmed that NATC's final shipment to WBH, prior to the Cantung mine going into care and maintenance, would be the first week of November 2015.
11. Based on these representations, WBH made alternative arrangements to secure its required supply of tungsten concentrate beyond November 2015.
12. WBH cannot replace the tungsten concentrate it intended to purchase from NATC from a single supplier. WBH will be required to enter into a number of supply agreements with numerous suppliers. As with NATC, these suppliers require long term agreements to purchase a fixed volume of tungsten concentrate.
13. WBH is in the process of negotiating and finalizing long term replacement contracts for the delivery of tungsten concentrate through all of 2016.
14. WBH does not have capacity to receive and pay for an excessive supply of tungsten concentrates that are not required by its customer demand. An oversupply of tungsten concentrates, without an increased demand from WBH's customers, would jeopardize WBH's business by prejudicing its available cash flow and ability to pay invoices.
15. Having an outstanding supply arrangement that is being held in abeyance for an indeterminate time, or perhaps forever, is completely inconsistent with the business model of WBH which requires a consistent and predictable supply of tungsten concentrates into the future.

Part 3: LEGAL BASIS

1. An anticipatory breach occurs when a party, by express language or conduct, or as a matter of implication from what that party has said or done repudiates his or her fundamental contractual obligations before they fall due.

Re Bul River Mineral Corporation, 2014 BCSC 645 at para. 83 [*Bul River*]

2. If the innocent party accepts the repudiation, the contract is terminated and the parties are discharged from future obligations.

Bul River at paras. 98-99

3. NATC has presented to the Court, through various affidavits, and to WBH that it will cease shipments of tungsten concentrate following the first week of November 2015.
4. A failure to deliver tungsten concentrates is a fundamental breach of the Supply Agreement and triggers WBH's right to terminate. WBH has accepted the repudiation of the Supply Agreement and has made alternative arrangements.
5. It is not equitable to keep WBH a party to the Supply Agreement when the prospect of future tungsten deliveries is unknown. An oversupply of tungsten will be prejudicial to WBH's business.
6. WBH requires the ability to plan and secure the appropriate quantities of tungsten concentrate to effectively run its business.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #2 of Dennis Lindahl, made June 23, 2015;
2. Affidavit #2 of Miriam Dominguez, made June 25, 2015;
3. Order made after application, dated June 26, 2015;
4. Affidavit #4 of Dennis Lindahl, made July 2, 2015;
5. Affidavit #1 of Steffen Schmidt, made July 7, 2015;

6. Affidavit #13 of Dennis Lindahl, made November 11, 2015; and

7. Affidavit #2 of Steffen Schmidt, made November 16, 2015;

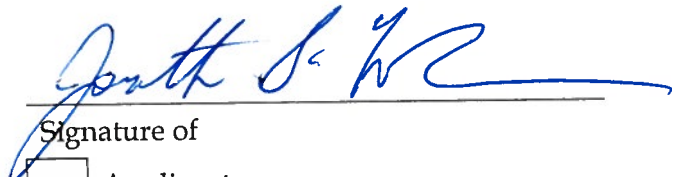
The applicant estimates that the application will take 20 minutes

<input type="checkbox"/>	This matter is within the jurisdiction of a master.
<input checked="" type="checkbox"/>	This matter is not within the jurisdiction of a master. Mr. Justice Butler is seized of these proceedings and the parties are scheduled to appear before him on November 16, 2015

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).

Dated: November 16, 2015


Signature of
☐ Applicant
☒ Lawyer for Applicant
Jonathan McLean
Stikeman Elliott LLP
Barristers and Solicitors

1700 - 666 Burrard Street
Vancouver, BC V6C 2X8
Phone: 604-631-1300
Fax: 604-681-1825

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

THIS TERMINATION AGREEMENT is entered into this 16th day of November, 2015 by and between Wolfram Bergbau and Hütten AG ("WBH"), an Austrian corporation having an address at Bergla 33, 8543 St. Martin im Sulmtal, Austria and North American Tungsten Corporation Ltd. ("NTC"), a public company listed on TSXV, having its registered office at #1640-1188 West Georgia Street, Vancouver, BC V6E 4A2, Canada.

WHEREAS NTC and WBH entered into and have been operating under a Supply Agreement effective March 1, 2014 (the "Supply Agreement") that provides for the purchase and sale of tungsten concentrate ("Concentrate") produced at NTC's Cantung Mine (the "Mine");

WHEREAS certain terms of the Supply Agreement were amended by an Amending Agreement dated June 24, 2015 (the "Amending Agreement");

WHEREAS NTC has sought creditor protection under the provisions of the *Companies' Creditors Arrangement Act* in the Supreme Court of British Columbia, Action No. S154746, Vancouver Registry (the "CCAA Proceeding"), and is subject to an Order of the Court pronounced June 9, 2015 and various subsequent orders;

WHEREAS the Mine is entering into care and maintenance for the foreseeable future and will not be producing Concentrate;

WHEREAS the Parties now wish to terminate the Supply Agreement and the Amending Agreement on the terms set out herein;

NOW, THEREFORE, intending to be legally bound, and in consideration of the mutual covenants and agreements set forth herein, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. WBH will make payment to NTC for shipment 2165F in the amount of USD \$29,335.15 according to the terms of the Supply Agreement, as amended by the Amending Agreement, without deduction or setoff, on or before November 18, 2015.
2. The final shipment that will be made by NTC and accepted by WBH under the terms of the Supply Agreement will be shipment 2166F (the "Final Shipment"), such shipment to be made from the Mine as soon as practicable, but in any event no later than November 18, 2015.
3. WBH will make payment to NTC for the Final Shipment according to the terms of the Supply Agreement, as amended by the Amending Agreement, without deduction or setoff.
4. If for any reason the Final Shipment is not made by NTC on or before November 18, 2015, then the Final Shipment will be cancelled and WBH will have no liability to NTC in regard to that Final Shipment.

5. Upon the Final Shipment being made by NTC, or cancellation in accordance with paragraph 4 herein, and upon payment by WBH for shipment 2165F and the Final Shipment (if applicable), the Supply Agreement and the Amending Agreement shall be terminated except for the warranty obligations of NTC provided in Section 13 of the Supply Agreement, which shall remain in effect for any shipments that are in transit to WBH's mill in Austria, until such time as WBH has had a reasonably opportunity for inspection of such shipments upon receipt.
6. Except as provided for herein, upon termination of the Supply Agreement and the Amending Agreement, the parties remise, release and forever discharge each other, and their respective successors and assigns, from any and all manner of actions, causes of action, suits, claims, contracts, debts, demands and damages of any nature or kind whatsoever, at law or in equity, known as well as unknown, that either party, or its respective successors and assigns, hereafter can, shall or may have by reason of any matter, cause or thing whatsoever arising out of or connected with the Supply Agreement or the Amending Agreement.
7. This Agreement is subject to the approval by the Supreme Court of British Columbia in the CCAA Proceeding.
8. This Agreement may be executed in counterparts and delivered by electronic file transfer. Each such executed counterpart will be considered an original. All executed counterparts taken together will constitute one agreement.

This Agreement is made by and between the parties hereto as of the date set forth above.

NORTH AMERICAN TUNGSTEN
CORPORATION LTD.

By: _____

Name: Kurt Heikkela

Title: President – CEO

WOLFRAM BERGBAU UND HÜTTEN AG

By: _____

Name: Ulrika Wedberg

Title: President – CEO