



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 presiding judge at the courthouse at 800 Smithe Street, Vancouver, B.C. on April 25, 2023 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) extending the Stay Period, as defined in the Amended and Restated Initial Order made July 9, 2015 (the “**ARIO**”) to April 30, 2024;
 - (b) directing His Majesty in Right of Canada as represented by the Department of Crown-Indigenous Relations and Northern Affairs (“**DCIRNA**”, formerly known as the Department of Indian Affairs and Northern Development or DIAND) to fund the Company’s expenditures as set out in the Fifteenth Cash Flow Statement, as that term is defined in the Monitor’s Twenty Fourth Report to the Court dated April 11, 2022 (the “**Twenty Fourth 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 Forecast Period, as that term is defined in the Twenty Fourth Report (a “**Budget Adjustment**”); and
- (d) approving the activities of the Monitor as described in the Twenty Fourth Report.

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. The Twenty Fourth Report sets out the procedural history of this matter, a summary of the Monitor’s activities since 2015 and further details of the Monitor’s activities in the past year in relation to the relief sought in this Application.
3. On June 9, 2015, Mr. Justice Butler granted the Initial Order providing for a stay of proceedings to July 8, 2015.

Monitor’s Twenty Fourth Report at para. 1.1.

4. 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, 2023, pursuant to the April 8, 2022 order of this Court.

Monitor’s Twenty Fourth Report at paras. 1.1 and 1.12.

5. 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 Fourth Report at para. 1.2.

6. Following a sales and investment solicitation process for the Cantung and Mactung assets (the “**SISP**”) which was terminated after it did not result in a transaction, the Mactung property was eventually purchased by the Government of the Northwest Territories

(“GNWT”), and the Cantung mine and its associated assets have been the focus of this proceeding.

Monitor’s Twenty Fourth Report at paras. 1.5 and 4.6.

7. The Cantung mine has been in care and maintenance since October 26, 2015. The care and maintenance program 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 Cantung and mitigate reclamation liabilities associated with the mine.
8. After the termination of the SISP, Canada agreed to provide funding for the CCAA proceedings through its Northern Abandoned Mine Reclamation Program to allow the care and maintenance to continue.

Monitor’s Twenty Fourth Report at paras. 1.3 and 4.10.

9. 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 and also granted a first-ranking charge to Canada over the Cantung mine assets for its funding of the CCAA proceedings.

Monitor’s Twenty Fourth Report at para. 1.4 and 4.10.

10. 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 and Mactung assets (together, the “**Assets**”). The Court granted an Order approving the process (“**Competitive Selection Process**”), which included a request for proposals on how to transfer the Assets to the private sector to ensure timely development of Mactung towards a producing mine, and to evaluate the options for production at Cantung and management of environmental liabilities.

Monitor’s Twenty Fourth Report at paras. 1.8 to 1.9.

11. Further details of the Competitive Selection Process are set out in the Monitor’s Twenty Fourth Report. Ultimately the process was terminated in April, 2022 without a transaction for the Cantung mine.

Monitor's Twenty Fourth Report at para. 1.11.

ENVIRONMENTAL EVALUATION AND ENGAGEMENT

12. In December 2016, pursuant to an engagement plan approved by the MVWLB, the Company established a communities working group (the "**CWG**") with eight affected First Nations communities (the "**Affected Indigenous Groups**") to facilitate discussions regarding the present and future activities relating to the Cantung mine. The CWG has held 18 quarterly meetings to date.

Monitor's Twenty Fourth Report at paras. 4.11 – 4.12.

13. In 2017, NATC engaged 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. The site is technically complex, particularly with respect to the historic tailings dams, which require significant geotechnical and stability evaluation as well as risk assessment to determine a long term management plan.

Monitor's Twenty Fourth Report at para. 1.7 and 5.19.

14. Evaluations and assessments of the environmental and geotechnical aspects at the Cantung mine site have continued since Tetra Tech was engaged. Several aspects at the site have been identified that require technical evaluation and assessment in order for a long term closure plan (including the costs, risks, and impacts on adjacent lands, drainages and affected communities) to be developed. Those aspects (some of which are particularly complex and unresolved at this time) include:
 - a) the geotechnical stability and long term solution for the historic tailings dams;
 - b) the management of water on the site, including seasonal fluctuations that require infrastructure such as ditching and culverts;
 - c) the reclamation and deconstruction of buildings and milling infrastructure;
 - d) the management and remediation of potential historic contamination including diesel plumes.

Monitor's Twenty Fourth Report at para. 5.19.

15. Canada has also established an independent peer review panel, consisting of external environmental scientists, engineers, and experts (the "**IPRP**") which has met with the

Monitor, the relevant technical consultants, the CWG and other interested parties to review and discuss the technical work performed by Tetra Tech and other consultants engaged by NATC.

Monitor's Twenty Fourth Report at para. 4.14.

16. A detailed remedial options analysis for the Cantung mine site, which will inform the long term closure and reclamation plans, is expected to be completed during the winter of 2023-2024. Currently, and in the past year, Tetra Tech continues to perform analyses in respect of assessment reports which were primarily produced in 2021, which analyses have been shared and discussed with the CWG and IPRP.

Monitor's Twenty Fourth Report at paras. 1.7, 4.14 and 4.15.

17. Following this engagement, and along with the Monitor, the Company and DCIRNA, Tetra Tech prepared a failure modes and effect analysis (the "**FMEA**") in 2022. The FMEA was issued for use on January 31, 2023 following a technical workshop hosted by Tetra Tech in the summer of 2022.

Monitor's Twenty Fourth Report at para. 5.20.

18. The schedule for the technical process that will allow the Cantung mine to move towards its long term closure and reclamation plan, including all of the necessary engagement, consultation, regulatory approvals and procurements has been extended more than initially anticipated. Much of these delays have been attributable to the technical complexities of the site, the impact of the COVID-19 pandemic and the enhanced processes associated with IPRP.

Monitor's Twenty Fourth Report at para. 4.15.

RENEWAL OF WATER LICENCE

19. A key focus of the Monitor's activities is NATC's application to obtain a new water licence and land use permit from the MVLWB (the "**New Water Licence and Land Use Permit**") because the existing water licence will expire in January, 2024. The New Water Licence and Land Use Permit will be necessary to continue with care and maintenance activities and ultimately, to proceed with a long term closure and reclamation plan.

20. Considerable work and planning has gone into the application including consultation with Company employees, technical advisors, DCIRNA and the Affected Indigenous Groups, and revisions based on feedback and requests from the MVLWB.

Monitor's Twenty Fourth Report at paras. 1.6, and 5.9 to 5.14.

21. The Monitor submitted an application for the New Water Licence and Land Use Permit on March 13, 2023. The process is expected to take until the expiry of the current water licence and possibly longer. There are numerous steps in the process including a preliminary screening decision and technical sessions with the Affected Indigenous Groups, related communities, and interested parties.

Monitor's Twenty Fourth Report at paras. 5.12 and 5.14.

22. Materials related to the New Water Licence and Land Use Permit application are now available on the MVLWB's online review system for public review and the Monitor has notified the Affected Indigenous Groups.

Monitor's Twenty Fourth Report at para. 5.13.

23. The extension of the stay of proceedings and the continuation of the CCAA Proceedings will allow the application process for the New Water Licence and Land Use Permit to continue efficiently, building on the work done by the Monitor and NATC and their communications with the MVLWB and other stakeholders.

OPERATIONS AND RESTRUCTURING ACTIVITIES

24. Since March 24, 2022 (the date of the Monitor's Twenty Third Report to the Court), the Monitor's primary activities have included:

- (a) managing the care and maintenance activities at Cantung and planning to transition the site to permanent closure;
- (b) commencing preliminary planning and making submissions for the New Water Licence and Land Use Permit;
- (c) attending to environmental and regulatory matters including submissions to and discussions with the MVLWB;

- (d) attending to various applications as well as updating various plans and holding discussions with DCIRNA and the various regulatory bodies regarding same;
- (e) communicating with key stakeholders including DCIRNA, GNWT and representatives of the Affected Indigenous Groups and related communities;
- (f) addressing periodic enquiries from interested parties with respect to commercialization of the Cantung mine site;
- (g) attending to general site and administrative activities such as road and equipment maintenance, environmental sampling, payroll administration and other related matters; and
- (h) attending to general corporate reporting and administration matters.

Monitor's Twenty Fourth Report at para. 5.1.

25. A detailed summary of the Company's operations and restructuring activities, geotechnical and environmental investigations, regulatory activities and engagement with Indigenous groups since March 24, 2022 is set out in Section 5 in the Twenty Fourth Report.

TRANSITION TO A REDUCED SITE PRESENCE

26. Since the Twenty Third Report, the Monitor has been working in consultation with DCIRNA to modify the existing care and maintenance program under the existing Cantung Water Licence ("**C&M Program**") to allow for reduced site presence and to commence a transition towards future closure and reclamation. On December 21, 2022, after public review, the MVLWB approved a modified and amended C&M Program.

Monitor's Twenty Fourth Report at para. 5.6.

27. The Monitor anticipates initiating a procurement process in the late spring of 2023 for a contractor to attend the Cantung mine site for up to five days per month. The contractor would conduct activities such as maintenance, monitoring, and emergency response and would be in substitution of the existing site work crews.

Monitor's Twenty Fourth Report at para. 5.7.

EXTENSION OF THE STAY PERIOD AND NEXT STEPS

28. The Monitor, on behalf of the Company, seeks to extend the Stay Period until 11:59 p.m. on April 30, 2024. The Monitor recommends that the Court grant the application, including for the following reasons:
- (a) the extension will allow for the ongoing care and maintenance of the Cantung mine site to preserve the asset, prevent environmental harm and will allow for continuing compliance with the Company's environmental obligations and the application for the New Water Licence and Land Use Permit;
 - (b) the extension will enable the Company to continue to work collaboratively with the Government of Canada to consider viable options to transition NATC out of these CCAA Proceedings, including pursuing any potential opportunities to commercialize the Cantung mine site;
 - (c) the extension will also allow the Company to continue performing site clean-up and progressive reclamation work;
 - (d) DCIRNA has committed to fund care and maintenance expenses of the Company through to the proposed extension date, and the granting of the order will provide Canada with the necessary protections through its court ordered charge and allow a vehicle for it to continue the care and maintenance and planning activities;
 - (e) The Monitor does not consider that an extension of the stay of proceedings will prejudice any creditors, employees, suppliers, the Affected Indigenous Groups or other stakeholders. Rather, those stakeholders will either be unaffected or will benefit from the ongoing advancement of the long term closure and reclamation plan and the day-to-day care and maintenance activities.
 - (f) the Company has been working in good faith and with due diligence to remediate the Cantung mine site and prospects of safely closing the site would be enhanced by an extension of the Stay Period.

Monitor's Twenty Fourth Report at paras. 8.3 to 8.5.

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 the Court.
2. Section 11 of the CCAA provides the court with broad authority to make any order that it considers appropriate in the circumstances, including for an extension of the stay of proceedings: “The CCAA is designed to be a flexible instrument and it is that very flexibility which gives it its efficacy.”

Canadian Red Cross Society/Société canadienne de la Croix-Rouge, Re, 1998 CanLII 14907, 5 CBR (4th) 299, at para. 45.

3. The continuation of the CCAA proceedings is appropriate in the circumstances and in the best interest of all interested and affected parties.
4. The remedial objective of the CCAA is to provide “an array of overarching remedial objectives intended to avoid the potentially catastrophic effects of insolvency,” and also takes into account “the broader public interest” that may be engaged by aspects of the reorganization.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60, [Century Services] paras. 59-60, and 67-68.

5. Other factors to be considered by the court are maximizing creditor recovery, preservation of going-concern value, and the preservation of jobs and communities affected by the company’s financial distress.

9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10, [Callidus] at para. 42.

6. The extension of the Stay Period is in the best interests of the affected stakeholders of the Company, because it will allow for the immediate continuation of critical care and maintenance activities and progressive site remediation. It will also allow for the ongoing technical work that is being performed by Tetra Tech and others to delineate the long term risks and options for the Cantung mine site, in a convenient manner that will allow the funding and the necessary regulatory steps to continue.
7. The New Water Licence and Land Use Permit application has been a major endeavour requiring input from consultants and experts and ongoing work by the Company. The

CCAA proceeding is an appropriate vehicle to allow the application of this key permit to efficiently continue without unnecessary delays and costs.

8. His Majesty in Right of Canada, through DCIRNA, is the primary stakeholder in the Company, as it is the first ranking secured creditor and ultimately responsible for the environmental liabilities at Cantung. Canada is unlikely to recover its secured debt from NATC, although there is residual possibility for commercialization of the Cantung site. These CCAA proceedings will also allow a more cost effective and efficient process for managing the environmental liabilities, which is likely to decrease the costs incurred by Canada.
9. The relevant legal authorities, such as *Callidus*, refer to the “maximization of recovery” for creditors as being an objective of the CCAA. In this circumstance, it is the “minimization of losses” for Canada that is relevant and it is respectfully submitted that this Court should view this on the same legal footing as the “maximization of recoveries”.
10. The Company, through the Monitor, has been, and is, acting in good faith and with due diligence to meet regulatory obligations, consult with the necessary parties and move forward with care and maintenance, advancing the technical evaluation process and planning for closure and remediation. This is a consideration for the Court in the granting of the relief sought.

Century Services, para. 69.

11. For the above reasons, the Monitor respectfully submits that an extension of the stay of proceedings should be granted.

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;
4. Monitor’s Twenty Fourth Report to the Court dated April 11, 2023; and

5. Such further and other materials as counsel may advise and as this Court deems admissible.

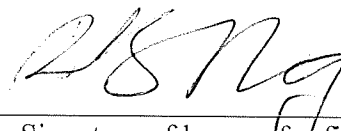
The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of a master.

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: April 11, 2023



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:

.....
.....
.....

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
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IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE
MR. JUSTICE MACINTOSH

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)

April 25, 2023

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 Fourth Report to the Court dated April 5, 2023 (the “**Twenty Fourth 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, March 30, 2021, and April 8, 2022 is hereby continued and extended to 11:59 p.m. on April 30, 2024.
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 Fourth Report (the “**Updated Budget**”) for the period March 19, 2023 to April 30, 2024 (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 Fourth 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; provided however that only Alvarez & Marsal Canada Inc. in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon or utilize in any way such approval.

5. The endorsement of this order by all parties other than the Monitor, Alvarez & Marsal Canada Inc. 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:
Fergus McDonnell	The Monitor, Alvarez & Marsal Canada Inc.
Tom Isaac	Her Majesty in Right of Canada

No. S154746
Vancouver Registry

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1985, c. C-36

AND IN THE MATTER OF NORTH
AMERICAN TUNGSTEN CORPORATION
LTD.

ORDER MADE AFTER APPLICATION

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Counsel: Fergus McDonnell
Matter No: 285937.00010