IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, 2022 NLSC 25
Date: February 22, 2022
Docket: 202201G0709

BETWEEN:

PRICEWATERHOUSECOOPERS INC. IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF BRIDGING FINANCE INC. AND BRIDGING INCOME FUND LP

APPLICANT

AND:

CANADA FLUORSPAR (NL) INC. AND CANADA FLUORSPAR INC.

RESPONDENTS

Before: Chief Justice Raymond P. Whalen
Reasons for Judgment Given Orally

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: February 21, 2022

Date of Oral Judgment: February 21, 2022

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Appearances:

Joseph J. Thorne	Appearing on behalf of the Applicant
Darren D. O'Keefe and Allison J. Philpott	Appearing on behalf of the Respondents
Meghan M. King And Geoffrey L. Spencer	Appearing on behalf of the Intended Interim Receiver
Robert Kennedy	Appearing on behalf of HSBC Bank Canada
Brendan O'Neill	Appearing on behalf of Golden Gate Capital

Authorities Cited:

CASES CONSIDERED: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136: *CWB Maxium Financial Inc. v. 2026998 Alberta Ltd.*, 2020 ABCA 118; *Bank of Nova Scotia v. D.G. Jewelry Inc.*, 117 A.C.W.S. (3d) 245, 38 C.B.R. (4th) 7 (Ont. Sup. Ct.); *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508; *Norcon Marine Services Ltd., (Re)*, 2019 NLSC 238; *Big Sky Living Inc., Re*, 2002 ABQB 659; *GMAC Commercial Credit Corp. - Canada v. TCT Logistics Inc.*, 2006 SCC 35

STATUTES CONSIDERED: *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3; *Judicature Act*, R.S.N.L. 1990, c. J-4

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

WHALEN, C.J.:

INTRODUCTION

[1] The Applicant, PricewaterhouseCoopers Inc. (in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and Bridging Income Fund LP), requests an order appointing an interim receiver over the property of the Respondents, Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc., collectively known as "CFI". An interim receiver is necessary, it is submitted, to "preserve the Respondents' operations and maintain their property (and the security of their creditors) while their stakeholders pursue options to restructure the Respondents and avoid a bankruptcy".

[2] For the reasons that follow, I agree that an interim receiver should be appointed pursuant to s. 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"), in the terms I set out below.

FACTS

[3] The Applicant submitted an affidavit of Graham Page, a Director in the Consulting and Deals practice at PricewaterhouseCoopers Inc.

[4] The Respondents operate a fluorspar mine in St. Lawrence, NL. It employs 260 people, most of which are in Newfoundland and Labrador.

[5] The Respondents' business is financed by significant loans from secured creditors, including the Applicant. The Respondents' ongoing operations are financed by equity investments by its sole shareholder.

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[6] In the past several months, financial and logistical problems have hampered the Respondents' operation and it is generating a negative cash flow.

[7] The Respondents have been unable to locate additional funding to continue their operations.

[8] Within a week of the date of this Application, which was filed February 19, 2022, the Applicant expects that the Respondents will terminate their entire workforce and then cease operations.

[9] The Applicant and other secured creditors are attempting to develop a restructuring plan to avoid that outcome.

[10] Other interested parties described in the Application include:

(a) Golden Gate Capital, 100% shareholder of Canada Fluorspar Inc.;

(b) HSBC Bank Canada; and

(c) The Province of Newfoundland and Labrador.

[11] Bridging Finance Inc. is the largest debtholder for CFI.

[12] CFI is also a borrower under the following other facilities:

(a) HSBC: (i) a revolving term loan in the principal amount of USD$20,000,000, (ii) an overdraft account with a credit limit of up to US$2,000,000, (iii) a letter of credit facility with a credit limit of up to

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CAD$1,500,000, and (iv) a credit card facility with a credit limit of up to CAD$100,000 (collectively, the "HSBC Facilities"); and

(b) a non-revolving term loan from the Province of Newfoundland and Labrador, as represented by the Minister of Tourism, Culture, Industry and Innovation, in the principal amount of CAD$17,000,000 pursuant to a loan agreement dated March 30, 2017, as amended, with a maturity date of December 31, 2021 (the "NL Loan"). On November 29, 2021 the maturity date of NL Loan was extended to December 31, 2022.

ISSUES

[13] The first issue to determine is whether to appoint an interim receiver over the assets, undertakings, and property of the Respondents.

[14] Assuming such an appointment is appropriate, the Court must consider the scope and content of the order.

LAW AND ANALYSIS

Should Grant Thornton be appointed as interim receiver over the assets, undertakings, and property of the Respondents?

[15] The Applicant points to four different authorities upon which an interim receiver might be appointed in this case: s. 47(1) and s. 243(1.1) of the *BIA*; s. 105 of the *Judicature Act*, R.S.N.L. 1990, c. J-4; or r. 25.01 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

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[16] Section 47 of the *BIA* provides, in relevant part:

> 47(1) If the court is satisfied that a notice is about to be sent or was sent under subsection 244(1), it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates until the earliest of
>
> (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,
>
> (b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and
>
> (c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.
>
> ...
>
> (3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court ***to be necessary*** for the protection of
>
> (a) the debtor's estate; or
>
> (b) the interests of the creditor who sent the notice under subsection 244(1).
>
> [Emphasis Added]

[17] The Applicant is a secured creditor of the Respondents and asserts that it intends to send the notice required under s. 244 on Monday, February 21, 2022. I am therefore satisfied that the required notice is "about to be sent". The only issue that is left to be determined under s. 47 is whether the appointment is "necessary" for the protection of either the "debtor's estate" or "the interests of the creditor who sent the notice under subsection 244(1)".

[18] While the Applicant in this case points to the test set out in *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136, at paragraph 53, as that which governs the appointment of an interim receiver under s. 47(1) of the *BIA*, I do not think that that test is applicable under s. 47(1). That test was set out in the context of s. 243 of the *BIA*, which provides in relevant part:

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> 243(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be ***just or convenient*** to do so:
>
> (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
>
> (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> (c) take any other action that the court considers advisable.
>
> Restriction on appointment of receiver
>
> (1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless
>
> (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
>
> (b) the court considers it appropriate to appoint a receiver before then.
>
> [Emphasis Added]

[19] Subsections 47(1) and (3) do not employ the words "just and convenient". Instead, it requires that the Court consider whether the appointment of an interim receiver is "necessary" to achieve one of the ends noted in s. 47(3)(a) and (b). Undoubtedly, the factors considered in both tests may have overlap.

[20] The test to be applied under s. 47 of the *BIA* was recently considered by the Alberta Court of Appeal in *CWB Maxium Financial Inc. v. 2026998 Alberta Ltd.*, 2020 ABCA 118, where Pentelechuk J.A. noted:

> 12 … Grandin argues that the appointment of an interim receiver requires proof by a preponderance of evidence that an actual and immediate danger of dissipation of Grandin's assets, to the detriment of CWB Maxium's security, exists. Grandin relies on *Royal Bank v. Canadian Print Music Distributors Inc.*, 2006 CanLII 21048, (2006), 23 C.B.R. (5th) 42 (Ont. S.C.J.) [*Royal Bank v Canadian Print*

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Music]; *Trez Capital Corp. v. UC Investments Inc.*, 2013 NSSC 381 (N.S. S.C.) [*Trez Capital*]; and *Royal Bank v. Zutphen Brothers Construction Ltd.* (1993), 17 C.B.R. (3d) 314, 1993 CarswellNS 22 (N.S. S.C.) [*Royal Bank v Zutphen Brothers*] in support of this proposition.

13 A reading of these cases does not support the proposition suggested by Grandin and at least one decision expressly rejects this proposition: see *Bank of Nova Scotia v. D.G. Jewelry Inc.*, 2002 CanLII 12477, (2002), 38 C.B.R. (4th) 7 (Ont. S.C.J.) at para 1.

14 In *Royal Bank v Zutphen Brothers*, the Bank argued there was an immediate danger of dissipation of the company assets. This alleged risk of dissipation grounded the Bank's application for the appointment of an interim receiver. The company had already retained a trustee in bankruptcy to assist in preparation of a plan of reorganization. The court concluded there was insufficient evidence to establish a risk of dissipation of assets and denied the application for the appointment of an interim receiver.

15 In *Royal Bank v Canadian Print Music*, the appointment of an interim receiver was ordered. The court concluded that the Bank had met the onus of establishing a strong *prima facie* case of bankruptcy in as much as the respondents could not meet their liabilities as they became due. The court simply noted that the evidence showed "a significant danger that assets may disappear." The court did not expand the test beyond the wording of s 47(3) of the *BIA*.

16 In *Trez Capital* , the issue considered was whether or not the notice under s 244 of the *BIA* had been properly served. Whether the applicant had met the test under s 47(3) of the *BIA* was considered in the alternative. While the dicta in *Royal Bank v Zutphen Brothers* is referenced, the court in *Trez Capital* articulates the test for the appointment of an interim receiver in para 57:

> The burden under s 47.1(3) of the *BIA* is on the applicants to show that the appointment is necessary to either protect the respondents' estate or to protect the interests of one or more creditors, or of creditors generally.

Trez Capital does not stand for the proposition that evidence of dissipation of assets is necessary for the appointment of an interim receiver.

[21] In *Bank of Nova Scotia v. D.G. Jewelry Inc.*, 117 A.C.W.S. (3d) 245, 38 C.B.R. (4th) 7 (Ont. Sup. Ct.), Ground J. noted:

> 3 … The test, which I think this court should apply, is whether the appointment of a court-appointed Receiver will enable that Receiver to more effectively and efficiently carry out its duties and obligations than it could do if

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> privately appointed. I believe that test is met in the case at bar. It appears that the role of the Receiver, in this case, will be to develop and carry out a reorganization or restructuring of the various companies and to bring a plan to this court for approval. This will permit all stakeholders to have an input into the structure and detail of such a plan. This is particularly important where there appears to be at least some possibility of some return to subsequent secured creditors, unsecured creditors or even shareholders…

[22] In this case, the Applicant is similarly seeking to preserve the Respondents' property and business on a temporary basis until such time as a restructuring plan can be brought forward. The Applicant points to the following in support of its request for the appointment of an interim receiver:

(a) Bridging, the other secured creditors, Canada Fluorspar Inc.'s shareholder, and its employees, among others, will suffer irreparable harm if CFI's operations shut down permanently;

(b) Bridging and the other secured creditors hold tens of millions of dollars of debt secured against property that may be jeopardized if not preserved;

(c) CFI's remaining cash will be quickly expended if conservatory measures are not put in place;

(d) The secured lenders and CFI have consented to the appointment of an interim receiver.

(e) This interim receivership would not include taking possession of CFI's property, but rather taking certain steps such as borrowing, re-hiring of employees, and placing the business into care and maintenance mode;

(f) The interim receivership is intended for a short period of time, likely no longer than 30 days;

(g) Court appointment is necessary to permit the interim receiver to take steps for the preservation of CFI property and to take other steps for the benefit of all stakeholders;

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(h) An interim receiver will provide CFI the opportunity to explore restructuring and maximize the value of its going concern business, as compared to an immediate bankruptcy.

[23] I am satisfied that these grounds establish that the appointment of an interim receiver is necessary, as that term is used in s. 47(1). It appears the role of the interim receiver in this case will be to develop and carry out a restructuring of the Respondents' debt with the objective to continue its mine operations.

[24] Given that I am of the view that the relief requested may be granted under s. 47(1) of the *BIA*, I need not consider whether a receiver may be appointed under s. 243(1.1) of the *BIA*, s. 105 of the *Judicature Act* or r. 25.01 of the *Rules of the Supreme Court, 1986*, which all provide for the appointment of a receiver where it is "just and convenient". With that said, I do wish to provide some comment regarding appointments of receivers under s. 243(1), as this issue was raised by the Applicant.

[25] I note that s. 243 provides for the appointment of a receiver and not an interim receiver. Thus, the appointment is not time limited in the manner set out in s. 47(1)(a)-(c). Similarly, the powers the court may grant to a receiver under s. 243(1), and particularly s. 243(1)(c), appear to be broader in scope than those that the court may grant to an interim receiver under s. 47(2). On this point, see the discussion at paragraphs 48 to 58 of the decision of the Court of Appeal for Ontario in *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508.

[26] It is for this reason unsurprising that the test for an appointment of an interim receiver pursuant to s. 47(1) differs from the test for appointing a receiver under s. 243(1) or (1.1) of the *BIA*. Notably, the same test applies for determining whether a receiver may be appointed pursuant to s. 105 of the *Judicature Act*, or r. 25.01 of the *Rules of the Supreme Court, 1986.*

[27] Justice Orsborn set out the relevant considerations that the Court must apply in determining whether to appoint a receiver under s. 243(1) of the *BIA* in *Norcon Marine Services Ltd., (Re)*, 2019 NLSC 238:

> 41 In *Enterprise Cape Breton Corp. v. Crown Jewel Resort Ranch Inc.*, 2014 NSSC 128, Justice Edwards set out, from *The 2013-2014 Annotated Bankruptcy and Insolvency Act*, factors that may be considered by a court – at paragraph 26:
>
> (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed;
>
> (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
>
> (c) the nature of the property;
>
> (d) the apprehended or actual waste of the debtor's assets;
>
> (e) the preservation and protection of the property pending judicial resolution;
>
> (f) the balance of convenience to the parties;
>
> (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for in the loan;
>
> (h) the enforcement of rights under a security instrument where the security holder encounters or expects to encounter difficulty with the debtor and others;
>
> (i) the principle that the appointment of a receiver is extraordinary relief that should be granted cautiously and sparingly;
>
> (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
>
> (k) the effect of the order on the parties;
>
> (l) the conduct of the parties;
>
> (m) the length of time that a receiver may be in place;
>
> (n) the cost to the parties;

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(o) the likelihood of maximizing return to the parties; and

(p) the goal of facilitating the duties of the receiver.

42 In *Lemare Lake Logging Ltd. v. 3L Cattle Co.*, 2014 SKCA 35 (rev'd on constitutional grounds 2015 SCC 53), the Saskatchewan Court of Appeal suggested this analysis – at paragraph 99:

> 99 The third edition of *Bennett on Receiverships*, (Toronto: Carswell, 2011), at pp. 155-162, suggests that the following factors are typically taken into consideration in deciding whether to appoint a receiver: (a) whether irreparable harm might be caused if no order is made; (b) whether the security holder's position will be prejudiced if no receivership order is made; (c) whether it is necessary to apprehend or stop waste of the debtor's assets; (d) whether it is necessary to preserve and protect property pending a judicial resolution of matters outstanding; and (e) the balance of convenience between the parties. See also: Houlden, et al, *The 2013 Annotated Bankruptcy and Insolvency Act* (Toronto: Carswell, 2013) at p. 1005.

[28] Justice Orsborn noted at paragraph 44 of his decision that, "the court's appointment of a receiver over the property of a person is an extraordinary order". He went on to state:

> 45 The extraordinary and intrusive nature of the order must inform what is considered to be just and convenient, although as I will point out, this aspect assumes less importance when a party already has a contractual right to appoint a receiver.
>
> 46 The party asking the Court to appoint a receiver must persuade the Court that the appointment would be just or convenient. The word 'just' suggests a requirement of fairness and balance while "convenient' suggests, in my view, not just an order which the applicant would find helpful, but one that is necessary for the protection of the assets in question. To put it simply, is it fair or necessary that the authority of the Court be used to pass control of, in this case, the debtor's assets to a receiver who will deal with those assets pursuant to court supervision?

[29] In cases where a notice has not been sent in accordance with s. 244 of the *BIA* or the notice period has not yet expired, the Applicant seeking appointment of a receiver pursuant to s. 243 must also show that it is "appropriate" to appoint a

receiver before the expiry of that 10 day notice period, in accordance with s. 243(1.1)(b).

[30] In *Pandion*, the British Columbia Supreme Court addressed the factors that might be considered in determining whether it is appropriate to abridge the notice period under s. 244, stating:

> 46 In my view, important considerations bearing on the exercise of my discretion under s. 243(1.1)(b) are the extent to which the purpose of the 10-day notice requirement is engaged in this case, the possibility of prejudice to [the creditor] resulting from the requirement, and the possibility of prejudice to [the debtor] if it is waived.

[31] Whether one seeks the appointment of an interim receiver pursuant to s. 47(1) or a receiver pursuant to s. 243(1) and (1.1) will likely depend on the required duration of the receivership order and whether there are aspects of the order sought which might step outside of the ambit of s. 47(2).

What is the appropriate scope of the Order?

[32] The Applicant has established that the appointment of an interim receiver is necessary for the protection of the debtor's estate (s.47(3)(a)) and it is entitled to an interim receivership order in accordance with s.47(1) of the *BIA*. I am reminded that every insolvency situation is unique and demands a carefully tailored response. However in some respects, the order tendered for endorsement by the Court was overly broad and overly declaratory in nature and it goes beyond what is necessary for the protection of the estate of the debtor. It further attempts to provide the interim receiver with some immunity and protection that are not authorized by statute.

[33] Following further representations from counsel, the Court's Order is attached hereto as Schedule "I".

[34] Order accordingly.

RAYMOND P. WHALEN
Chief Justice

SCHEDULE "I"

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2022 01G 0709
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

PRICEWATERHOUSECOOPERS INC. in its capacity as court-appointed receiver and manager of BRIDGING FINANCE INC. and BRIDGING INCOME FUND LP

APPLICANT

AND:

CANADA FLUORSPAR (NL) INC. and CANADA FLUORSPAR INC.

RESPONDENTS

INTERIM RECEIVERSHIP ORDER

BEFORE THE HONOURABLE CHIEF JUSTICE RAYMOND P. WHALEN:

UPON The application of PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the "**Applicant**"), for appointment of an interim receiver in respect of Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc. (collectively, the "**Debtor**");

AND UPON READING the Originating Application and the affidavit of Graham Page sworn February 19, 2022, and the consent of Grant Thornton Limited to act as interim receiver (in such capacity, the "**Interim Receiver**") of the Debtor;

AND UPON HEARING counsel for the Applicant any other counsel or other interested parties present;

IT IS HEREBY ORDERED THAT:

SERVICE

1. The time for service of the notice of application and the material filed herein for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today and any further service thereof is hereby dispensed.

APPOINTMENT

2. Pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "*BIA*") Grant Thornton Limited is hereby appointed Interim Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, save and except for the Excluded Property (the "**Property**").

3. For greater certainty, the Interim Receiver will not take possession of the Property except to the extent necessary to carry out its obligations hereunder.

DEFINED TERMS

4. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in **Schedule "A"**.

INTERIM RECEIVER'S POWERS

5. The Interim Receiver is not authorized or permitted to operate or conduct the business of the Debtor; provided, however, that the Receiver is hereby empowered and authorized, but not obligated, to take such steps as are necessary (or cause the Debtor to take such steps as are necessary) to protect, preserve, and secure the Property.

6. The Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

(a) to exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, protect, and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, preserve and protect the assets of the Debtor, including the power to incur any obligations in the ordinary course of business, and the powers to enter into any agreements, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

(d) to retain or hire any employees on behalf of the Debtor for any period of time on substantially the same terms and conditions as those existing between such employees and the Debtor, if applicable, prior to the appointment of the Interim Receiver;

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim

Receiver's powers and duties, including without limitation those conferred by this Order;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor. For greater certainty, this provision shall not apply to the Excluded Property;

(g) to settle, extend or compromise any indebtedness owing to or by the Debtor;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;

(k) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Interim Receiver for registration this Order shall be immediately registered by the Registrar of Deeds for the Province of Newfoundland and Labrador or any other similar government authority, notwithstanding Section 7 of the *Registration of Deeds Act*, 2009, SNL 2009, c R-10.01, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of deeds shall accept all Affidavits of Corporate Signing Authority submitted by the Interim Receiver in its capacity as Interim Receiver of the Debtor and not in its personal capacity;

(l) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of the Debtor;

(m) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(n) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

(o) to commence proceedings for the Debtor pursuant to the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*; and

(p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

7. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Interim Receiver upon the Interim Receiver's request.

8. All Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records (and all transaction related thereof), and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraphs 7 and 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

9. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

10. Without leave of the Court no action lies against the interim receiver with respect to any report made under, or any action taken pursuant to *BIA*.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

11. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing

agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OR REMEDIES

12. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor or the Interim Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided, however, that nothing in this Order shall:

    (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;

    (b) prevent the filing of any registration to preserve or perfect a security interest;

    (c) prevent the registration of a claim for lien; or

    (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.

13. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such

party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Interim Receiver at the first available opportunity.

14. Nothing in this Order shall prevent HSBC from exercising any rights or remedies, taking any enforcement steps, actions or commencing any proceedings against the Debtor with respect to the Excluded Property.

NO INTERFERENCE WITH THE INTERIM RECEIVER

15. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, except with the written consent of the Debtor and the Interim Receiver, or leave of this Court.

CONTINUATION OF SERVICES

16. All persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtor or exercising any other remedy provided under such agreements or arrangements. The Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtor and the Interim Receiver, or as may be ordered by this Court.

INTERIM RECEIVER TO HOLD FUNDS

17. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, but excluding the Excluded Property, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

18. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Interim Receiver, on the Debtor's behalf, may terminate the employment of such employees.

19. Despite anything in federal or provincial law, if the Interim Receiver, in that position, carries on the business of the Debtor or continues the employment of a debtor's employees, the interim receiver is not by reason of that fact personally liable in respect of a liability,

including one as a successor employer, that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees and that exists before the interim receiver is appointed or that is calculated by reference to a period before the appointment.

LIMITATION ON ENVIRONMENTAL LIABILITIES

20. Nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively, the "Environmental Legislation"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

21. The Interim Receiver shall not be liable for any mine closure or environmental and land rehabilitation-related liabilities or obligations in respect of or in any way related to the Property (or caused by or resulting from any matter or thing originating on or coming from the Property). For greater certainty:

(a) Notwithstanding anything in any Environmental Legislation, the Interim Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

(i) before the Interim Receiver's appointment; or

(ii) after the Interim Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Interim Receiver's gross negligence or wilful misconduct.

(b) Nothing in sub-paragraph (a) exempts the Interim Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.

(c) Notwithstanding anything in any Environmental Legislation, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Interim Receiver to remedy any environmental condition or environmental damage affecting the Property, the Interim Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Interim Receiver:

(A) complies with the order, or

(B) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, by,

(A) the court or body having jurisdiction under the law pursuant to which the order was made to enable the Interim Receiver to contest the order; or

(B) the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(iii) if the Interim Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

22. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Interim Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property provided that the interim receiver shall act honestly and in good faith and deal with the Property in a commercially reasonable manner. Nothing in this Order shall derogate from any

limitation on liability or other protection afforded to the Interim Receiver under any applicable law.

INTERIM RECEIVER'S ACCOUNTS

23. The Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges.

24. The Interim Receiver and counsel to the Interim Receiver shall be entitled to the benefits of and are hereby granted a charge (the **"Interim Receiver's Charge"**) on the Property, which charge shall not exceed an aggregate amount of $250,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Interim Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

25. The Interim Receiver and its legal counsel shall pass their accounts from time to time.

26. Prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

27. Subject to prior approval of the Applicant, the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $2,000,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Interim Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

28. Neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

29. The Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Interim Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

30. The monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a pari passu basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

31. The Interim Receiver shall be allowed to repay any amounts borrowed by way of Interim Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

ALLOCATION

32. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Interim Receiver's Charge and the Interim Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

33. For greater certainty, neither the Interim Receiver's Charge nor the Interim Receiver's Borrowing Charge shall apply or attach to the Excluded Property.

34. The Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

35. Unless otherwise ordered by this Court, the Interim Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Interim Receiver's reports shall be filed by the registry notwithstanding that they do not include an original signature.

36. Nothing in this Order shall prevent the Interim Receiver from acting as a receiver, a receiver and manager, a trustee in bankruptcy, or a monitor of the Debtor.

37. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Interim Receiver in any foreign proceeding, or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

38. The Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

39. The Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

40. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

41. The Interim Receiver shall establish and maintain a website in respect of these proceedings at www.grantthornton.ca/cfi (the "**Interim Receiver's Website**") and shall post there as soon as practicable:

(a) all materials prescribed by statue or regulation to be made publicly available; and

(b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Interim Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

42. Service of this Order shall be deemed good and sufficient by:

a. serving the same on:

(i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

(ii) any other person served with notice of the application for this Order;

(iii) any other parties attending or represented at the application for this Order; and

b. posting a copy of this Order on the Interim Receiver's Website.

and service on any other person is hereby dispensed with.

43. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

DATED at St. John's, in the Province of Newfoundland and Labrador, this ______ day of ____________________, 2022.

____

SCHEDULE "A"

Defined Terms

"Excluded Property" means: (i) any and all Receivables and / or Financed Receivables, as such terms are defined pursuant to a Trade Invoice Recourse Financing Facility Agreement between HSBC and Canada Fluorspar (NL) Inc. dated May 25, 2018, as amended, together with all rights and remedies arising thereunder, insurance policies and proceeds resulting therefrom, and proceeds generally, and (ii) all Export Development Canada insurance policies or support in favour of HSBC.

"HSBC" means HSBC Bank Canada.

SCHEDULE "B"

Interim Receiver Certificate

Certificate No.

Amount $

This is to certify that Grant Thornton Limited, the interim receiver (the "**Interim Receiver**") of the assets, undertakings, and properties of Canada Fluorspar (NL) Inc., and Canada Fluorspar Inc., (the "**Debtors**") acquired for, or used in relation to, a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by order of the Supreme Court of Newfoundland and Labrador (the "**Court**") dated the day of February, 2022 (the "**Order**") made in an action having court file number 2022 01G 0709, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of $, being part of the total principal sum of $ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [*monthly/semi-annually/annually/other*] not in advance on the day of each month after the date hereof at a rate per annum equal to the rate of per cent above the prime commercial lending rate of from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at .

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

[*signature page to follow*]

Dated the day of , 2022.

Grant Thornton Limited, solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per:

____

Name:
Title: