2022 01G 0709

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of Grant Thornton Limited, as Court- Appointed Monitor of Canada Fluorspar (NL) Inc., Canada Fluorspar Inc., and Newspar (collectively, "**CFI**" or the "**Company**"); and

AND IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "**CCAA**")

NOTICE OF MOTION

Grant Thornton Limited, as Court-Appointed Monitor of the Company (hereinafter the "**Applicant**") will make a motion before the presiding Judge in Bankruptcy and Insolvency on Tuesday, the 21st day of February 2023 at 9:30 a.m., or so soon thereafter as the motion can be heard at the Courthouse, Duckworth Street, St. John's, Newfoundland and Labrador.

On the hearing of this Motion, the Applicant intends to apply for the following relief:

1. An order, pursuant to the CCAA *inter alia*:

    (a) amending the Amended and Restated Initial Order (the "**ARIO**") dated the 18th of March, 2022, Amendment #1 to the ARIO (the "**Amended ARIO**") dated the 10th day of June, 2022, Amendment #2 to the ARIO dated the 30th day of August, 2022 ("**2nd Amended ARIO** ") and Amendment #3 to the ARIO dated the 12th day of October, 2022 ("**3rd Amended ARIO**"), issued pursuant to section 11 of the CCAA in order to extend the stay of proceedings issued thereunder until the 31st day of May, 2023;

    (b) directing that the Monitor's Second Confidential Report be sealed with the Court and remain under seal until the earlier of (a) the closing of a transaction for the sale of all of the assets or shares of the Company; (b) the conclusion of the CCAA proceedings in the within matter; or (c) further order of this Honourable Court;

    (c) abridging the notice periods pursuant to Section 11 of the CCAA and the Rules of the *Supreme Court*, 1986, Rule 3.03(1), Rule 6.04(2) and Rule 6.06;

(d) pursuant to Section 11 of the CCAA directing that the service on the service list set out in **Schedule "A"** hereto is sufficient for the purposes of this Application; and

(e) Such further and other relief as this Honourable Court deeds just and equitable.

THE GROUNDS FOR THIS APPLICATION ARE AS FOLLOWS:

Background

2. As of February 21, 2022, the Company was insolvent and was unable to meet its debt obligations as they became due. As a result, PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc., and Bridging Income Fund LP ("**PWC**") applied for an interim receivership order pursuant to s.47 (1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3 (the "**BIA**") over substantially all the assets and undertaking of the Company, which order was issued by the Honorable Court on the 21st of February, 2022 (the "**Interim Receivership Order**"). Pursuant to the Interim Receivership Order, Grant Thornton Limited ("**GTL**") were appointed as Interim Receiver of all the assets and undertakings of the Company, with the exception of those assets and undertakings, which were carved out of the receivership (defined therein as the "**Excluded Property**").

3. On the 8th day of March 2022, GTL as Interim Receiver made an application to this Honorable Court declaring the Company was a company to which the CCAA applied and requesting protection under the CCAA. As a result of this application, the Court granted an initial CCAA Order on the 11th day of March 2022 (the "**Initial CCAA Order**"), and the Court subsequently granted the ARIO on the 18th day of March 2022. In both orders GTL were appointed and confirmed as CCAA Monitor.

4. In the Initial CCAA Order, this Honourable Court authorized the Monitor, on behalf of the Company, to enter into a DIP Financing Agreement with the DIP Lenders referenced in the Initial CCAA Order (the "**DIP Lenders**").

5. Since the 18th of March 2022 the Monitor has been running the SISP as contemplated in the order of this Honourable Court issued on the same day as the ARIO (the "**SISP Order**"). The activities of the Monitor in executing the SISP during this period are outlined generally the Monitor's Third, Fourth and Fifth Report.

6. On the 31st day of May 2022, the Monitor made an application to this Honorable Court seeking an extension of the stay period until the 2nd day of September 2022 and amending the SISP procedures to extend the dates of the Phase 2 Bid Deadline and each step

thereafter in order to correspond with the CCAA stay period (the "**Amended SISP Order**"). The extension was requested to allow the Monitor to arrange completion a National Instruments 43-101 Technical Report with the expectation that it would assist in increasing the purchase price for the Company's assets. The court granted these amendments by Order dated the 10th day of June 2022.

7. As outlined in the Monitor's Fourth Report, the Monitor received multiple bids on the Company's assets. The Monitor made a recommendation to the DIP Lenders as to its preferred choice on the bids received. The DIP Lenders were in support of the Monitors recommendation and the Successful Bidder was notified on August 18, 2022.

8. On the 30th day of August 2022, this Honourable Court issued the 2nd Amended ARIO extending the CCAA stay period until the 17th day of October 2022 and amending the SISP procedures in order to allow time to (i) complete the SISP; (ii) enter into a definitive agreement with the Successful Bidder (the "**Definitive Agreement**"); and (iii) obtain court approval.

9. As outlined in the Monitor's Fifth Report, the Monitor completed the SISP and awarded, with the consent and the agreement of the DIP Lenders, the sale of the Company's assets to a Successful Bidder.

10. As outlined in the Monitors Sixth Report, the Monitor and the Company worked diligently to complete the Definitive Agreement. However, the Successful Bidder failed to top up the agreed upon deposit as required by the SISP, and therefore failed to complete a key deadline as outlined in the SISP. As a result of this material adverse change, the agreement with the Successful Bidder was then terminated.

11. On the 12th day of October 2022, this court issued the 3rd Amended ARIO extending the CCAA stay period until the 26th day of February, 2023 to allow the senior secured creditors and the DIP Lenders time to determine next steps as it related to the Company assets, including the possibility of another SISP or a different type of sale or liquidation process.

12. Since the 12th day of October 2022, the Monitor and the Company have been diligently working to solicit bids from parties that previously submitted proposals during the SISP. As of January 26, 2023, the Monitor has selected, and the DIP Lenders have approved a new successful bidder (the "**New Successful Bidder**").

13. On the 13th day of February, 2023 the Monitor entered into a Letter of Intent with the New Successful Bidder.

14. As such, the Monitor is requesting that the stay of proceedings under section 11 of the CCAA be extended until May 31 2023, to allow time for the New Successful Bidder to complete its due diligence, enter into the Definitive Agreement, obtain court approval and close the proposed transaction.

Extension to Stay:

15. The stay period will currently expire on the 26th day of February, 2023.

16. The Applicant is requesting the Stay Period be extended until May 31, 2023.

17. As set out in the Clarke Affidavit, the Monitor believes the extension to the stay of proceedings would be in the best interest of the Company and its stakeholders, including the senior secured creditors, and that it would not materially prejudice any stakeholder or creditor.

18. The senior secured creditors and the DIP Lenders have consented to the extension of the stay of proceedings under section 11 of the CCAA until May 31, 2023.

19. As set out in the cash flow projection, the Monitor expects that it will have sufficient cash from the DIP Financing and the Deposit paid by the New Successful Bidder to fund its projected operating costs during the proposed stay extension period.

20. The Monitor and the Company have continued to act in good faith and with due diligence throughout these CCAA Proceedings.

Sealing Order:

21. The Applicant requests that a Court Order be granted sealing the Monitor's Second Confidential Report and that it remain under seal with the court until the earlier of the following (a) the closing of a transaction for the sale of all of the assets or shares of the Company; (b) the conclusion of the CCAA proceedings in the within matter; or (c) further order of this Honourable Court, to avoid any negative impact that could result from dissemination of the information contained therein. The report contains commercially sensitive information pertaining to the new offers for purchase of the mine and other confidential information in respect of the offers submitted to the Monitor and the agreement with the New Successful Bidder. Publication of the information contained in the Monitor's Second Confidential Report would pose serious risk to the commercial interests of

stakeholders and would irreparably harm the Monitor's efforts to maximize realizations from the Company's assets.

22. Any interested party may apply, on notice to the Applicant, to vary the terms of the Sealing Order or to unseal the Monitor's Second Confidential Report.

Other Grounds:

23. The provisions of the CCAA, including section 11, section 11.02 and section 36 thereof, and the inherent equitable jurisdiction of this Honourable Court;

24. The following documentary evidence will be used at the hearing of this Application;

   (a) The affidavit of Phil Clarke, sworn as of the 16th day of February 2023;

   (b) The Monitor's Second Confidential Report;

   (c) The Monitor's Seventh Report; and

   (d) Such further and other evidence as counsel may advise and this Honourable Court may permit,

All of which is respectfully submitted.

DATED at St. John's, Newfoundland and Labrador, this 16th day of February 2023.

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TO: O'KEEFE & COMPANY
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Whose address for service is:
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Attn: Darren D. O'Keefe

AND TO: Service List attached hereto as **SCHEDULE "A"**

SCHEDULE "A"
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