2022 01G 0709

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

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

AND 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 a Plan of Compromise or Arrangement of the Company;

SIXTH REPORT OF GRANT THORNTON LIMITED, IN ITS CAPACITY AS MONITOR UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36 OF CANADA FLUORSPAR (NL) INC. AND CANADA FLUORSPAR INC. AND NEWSPAR.

October 27, 2022

GrantThornton

Grant Thornton Limited,
Court Appointed Monitor

Suite 300 - 15 International Place
St. John's, NL A1A 0L4

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INTRODUCTION

1. On February 21, 2022, upon the application of PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and Bridging Income Fund LP (collectively referred to as "**Bridging**"), Grant Thornton Limited ("**GTL**") was appointed as Interim Receiver (the "**Interim Receiver**") of all the current and future assets, undertakings and properties (the "**Property**") of Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc. by Order of the Supreme Court of Newfoundland and Labrador (the "**Court**").

2. The Interim Receivership Order authorized the Interim Receiver, among other things, to:

   (a) receive, preserve, protect and maintain control over the Property;

   (b) to retain or hire any employees on behalf of the Company;

   (c) to report to, meet with and discuss with such Affected Persons (as defined in the Interim Receivership Order) as the Interim Receiver deems appropriate;

   (d) to utilize monies on hand or borrowed by the Interim Receiver to fund payments of employee payroll obligations, rent, insurance, utilities, and other obligations determined by the Interim Receiver to be integral to the preservation of the Property;

   (e) to commence proceedings for the Company pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") or the *Companies' Creditors Arrangement Act* ("**CCAA**"); and

   (f) to report to the Court and the creditors of CFI regarding the status of the business and financial affairs of CFI, including its assets, liabilities, accounts payable and other matters deemed relevant by the Interim Receiver.

3. On March 8, 2022, the Interim Receiver made application to commence proceedings pursuant to the CCAA and the Court issued an Initial Order on March 11, 2022. Grant Thornton Limited was appointed Monitor ("**Monitor**").

4. The Initial Order imposed a stay of proceeding against Canada Fluorspar (NL) Inc., Canada Fluorspar Inc., and Newspar (a General Partnership) (collectively referred to as the "**Company**" or "**CFI**").

5. The Initial Order granted an initial stay of proceedings and authorized the Monitor, among other things, to:

(a) Preserve and protect the Business and Property of CFI excluding certain property in favour of HSBC Bank of Canada ("**HSBC**");

(b) Providing the Monitor with certain enhanced powers;

(c) Approving the debtor in possession financing to allow CFI to continue to operate in the ordinary course pending the comeback hearing; and

(d) Setting down the comeback hearing for March 18, 2022 at 10am NL Time.

6. On March 18, 2022 (Court order is dated March 21, 2021), the Court issued an Amended and Restated Initial Order ("**ARIO**") which affirmed the terms of the Initial Order and authorized the Monitor, among other things:

(a) Authority to file, if deemed appropriate, a plan of compromise and arrangement on behalf of the Company;

(b) Authority to implement operational changes and pursue restructuring opportunities on behalf the Company;

(c) Authority under s. 32 of the CCAA to disclaim or rescind agreements for real property;

(d) Granted an extension of the stay of proceedings to July 10, 2022;

(e) Empowered to run a Sales and Investment Solicitation Process ("**SISP**"), with the terms being outlined in the SISP Process on behalf of the Company and approved by the Court via a SISP Order;

(f) Provided enhanced powers within the CCAA due to the directors of the Company resigning and there being no officers;

(g) Authorized an increase to the DIP Financing Agreement to borrow on behalf of the Company in accordance with the DIP Financing Agreement.

7. On June 10, 2022, the Monitor made application to the Court to extend the stay of proceedings and extend the SISP process. The Court issued an Order regarding the SISP, an extension of the stay of proceedings and authorized the Monitor, among other things:

(a) Approved of the Monitor's activities to the date of the Third Report of the Monitor of May 30, 2022;

(b) Granted an extension of the stay of proceedings to September 2, 2022;

(c) Granted and declared that pursuant to section 5(5) of the *Wage Earners Protection Act* ("**WEPPA**") the Company's former employees meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and are individuals to whom the WEPPA applies as of March 18, 2022;

(d) Granted approval of amendments to the SISP Order; and

(e) Granted approval of amendments to the ARIO Order.

8. On August 24, 2022, the Monitor made application to the Court for, amongst other things, an extension of the stay of proceedings and to extend the SISP process. The purpose of the second extension was to provide additional time for the Monitor to finalize the Definitive Agreements as required by the SISP Order. The Court issued an Order that, among other things:

(a) Approved the Monitor's activities to the date of the Fourth Report of the Monitor of August 24, 2022;

(b) Granted approval of amendments to the SISP Order;

(c) Granted approval of amendments to the ARIO Order; and,

(d) Granted an extension of the stay of proceedings to October 17, 2022;

9. On October 12, 2022, the Monitor made application to the Court for, amongst other things, an extension to the stay of proceedings. The purpose of the third extension was to provide additional time for the DIP Lenders to re-evaluate and determine next steps. The Court issued an Order that, among other things:

(a) Approved the Monitor's activities to the date of the Fifth Report of the Monitor of October 6, 2022;

(b) Granted approval of amendments to the ARIO Order; and

(c) Granted an extension of the stay of proceedings to February 26, 2022.

10. The preceding reports of Grant Thornton Limited as Interim Receiver and Monitor, and all other information in respect of the interim receivership, and all other information in respect to the CCAA proceeding, are posted on the Interim Receiver's and Monitor's website at www.GrantThornton.ca/CFI. Readers are encouraged to read the following reports of Grant Thornton Limited, the materials filed with the court in relation to the applications, and the orders of the Court to provide additional information:

Reports to the Court

a) First Report of Grant Thornton Limited in its capacity as Interim Receiver and Proposed Monitor dated March 8, 2022

b) Second Report of Grant Thornton Limited in its capacity as Monitor dated March 15, 2022

c) Third Report of Grant Thornton Limited in its capacity as Monitor dated May 30, 2022

d) Fourth Report of Grant Thornton Limited in its capacity as Monitor dated August 24, 2022

e) Fifth Report of Grant Thornton Limited in its capacity as Monitor dated October 6, 2022

f) First Confidential Report of Grant Thornton Limited in its capacity as Monitor dated October 5, 2022

Court Orders

a) Interim Receivership Order dated February 21, 2022, including reasons for judgement

b) CCAA Initial Order dated March 11, 2022, including reasons for judgement

c) ARIO dated March 21, 2022, including reasons for judgement

d) Order approving the SISP dated March 21, 2022

e) Order approving the Revised SISP, Amended and Restated Initial Order – Amendment #1, and WEPP eligibility dated June 10, 2022

f) Order approving the Amended and Restated Initial Order – Amendment #2 dated August 30, 2022

g) Order approving the Amended and Restated Initial Order – Amendment #3 dated October 12, 2022 and Order dated October 12, 2022 sealing the Monitor's First Confidential Report

11. On March 25, 2022, on application by HSBC Bank Canada, the Court appointed Deloitte Restructuring Inc. ("**Deloitte**") as receiver over the accounts receivable of the Company.

Stakeholders wishing additional information on that proceeding are encouraged to contact Deloitte.

12. This is the Sixth Report of the Monitor.

PURPOSE OF THE REPORT

13. The purpose of this report (the "**Sixth Report**") is to inform the Court of the following:

(a) That a Material Adverse Change in the CCAA proceeding has occurred and the details thereon;

(b) That the Monitor has advised the stakeholders that the Monitor has sought an extension to the stay of proceedings to allow the Monitor, the Company and the DIP Lenders time to re-evaluate the situation and determine next steps. That extension was supported by the DIP Lenders, who are the senior secured creditors; and

(c) That the Monitor advised the stakeholders that the Court granted the extension of the stay of proceedings to February 26, 2023 to allow the DIP Lenders time to evaluate the situation and determine next steps.

TERMS OF REFERENCE

14. In preparing this Sixth Report, the Monitor has relied upon unaudited financial information, certain Company's records, financial information and projections, and discussions with the Management of the Company, and its legal advisors. While the Monitor reviewed various documents provided by the Company and its legal advisors (including, among other things, unaudited internal financial statements and financial projections) and believes that the information therein provides a fair summary of the transactions as reflected in the documents, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Monitor expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

15. Some of the information used in preparing this Sixth Report consists of financial projections, including the Cash Flow Forecast. The Monitor cautions that these forecasts are based upon assumptions about future events and conditions that are not

ascertainable. The Company's actual results may vary from the Cash Flow Forecast, even if the Hypothetical and Probable Assumptions (defined herein) contained therein materialize, and the variations could be significant. The Monitor's review of the future oriented information used to prepare this Sixth Report did not constitute an audit of such information under Generally Accepted Auditing Standards, GAAP or IFRS.

16. In the course of its mandate, the Monitor has assumed the integrity and truthfulness of the information and explanations presented to it by the Company, its Management and other stakeholders, within the context in which such information was presented. To date, nothing has come to the Monitor's attention that would cause it to question the reasonableness of these assumptions, or accuracy of the information. The Monitor has requested that Management bring to its attention any significant matters which were not addressed in the course of the Monitor's specific inquiries. Accordingly, this Sixth Report is based solely on the information (financial or otherwise) made available to the Monitor by the Company and its Management.

17. This Sixth Report has been prepared for the use of this Court and the Company's stakeholders as general information relating to the Company and to assist the Court in supervising the administration of the estate. Accordingly, the reader is cautioned that this Report may not be appropriate for any other purpose. The Monitor will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Sixth Report contrary to the provisions of this paragraph.

18. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

19. On July 22, 2022 the Successful Bidder submitted a binding offer to the Monitor pursuant to the SISP. The Successful Bidder submitted a deposit of $750,000 with this binding offer.

20. On August 14, 2022 the Successful Bidder submitted a further improved offer to the Monitor pursuant to the SISP (the "**Improved Offer**").

21. After discussion between the Company, the Monitor, and on consultation with the DIP Lenders, the Monitor accepted the Improved Offer.

22. The Successful Bidder had agreed to, and was required, pursuant to the SISP [paragraph 22(i)], to top up the deposit paid by the Successful Bidder in an amount of $1,400,000 to make the deposit total $2,150,000.

23. On August 29, 2022 the Monitor confirmed the Improved Offer required an increase in the deposit with the Successful Bidder in writing.

24. On September 15, 2022 the Successful Bidder was to provide the Monitor an update on the status of the deposit and confirm it was aware of the Monitor's deadlines. On September 16, 2022 the Successful Bidder acknowledged with the Monitor the deposit top up amount and requested confirmation of wire instructions.

25. On September 20, 2022 the Monitor advised the Successful Bidder that it did not believe the Successful Bidder could finalize the Definitive Agreements in time to have the Proposed Transaction approved by the Court at a hearing scheduled for September 27, 2022, and that it was NOT changing the Closing Date or Outside Date as defined in the SISP. The Monitor requested that the deposit top up be paid by September 21, 2022. The Monitor also warned the Successful Bidder that any delays would put the closing dates at risk. The deposit top up was not received as requested.

26. On September 29, 2022 the form of Warrants Agreement, a condition of closing under the Subscription Agreement, and the Subscription Agreement were finalized.

27. On September 29, 2022 the Successful Bidder requested confirmation of wire details for the deposit top up of $1,400,000 as required pursuant to the Subscription Agreement and SISP.

28. On September 30, 2022 the Monitor advised the Successful Bidder that the only available court date to approve the Proposed Transaction was October 12, 2022. The Monitor again indicated that the deposit top up was required in advance of the hearing.

29. On October 5, 2022 the Monitor advised the Successful Bidder that it would file materials seeking court approval of the Proposed Transaction relying on the representations made by the Successful Bidder that it would send the deposit on October 7, 2022. This was confirmed by the Successful Bidder, at which time it was confirmed that the top up of the deposit maybe available sooner. The Successful Bidder did not provide the top up of the deposit and therefore did not achieve this milestone as outlined in the Subscription Agreement and the SISP.

30. After multiple missed deadlines, the Successful Bidder had still not paid the top up deposit as required before the October 12, 2022 hearing date. On consultation with the DIP Lenders the Monitor adjourned the October 12, 2022 sale approval hearing sine die (without day).

31. The Monitor does not support the Proposed Transaction without payment of the top up of the deposit.

32. The DIP Lenders do not support the Proposed Transaction without the payment of the deposit top up.

33. As a result, the Monitor sought an extension to the stay of proceedings until February 26, 2023. This period will allow the DIP Lenders time to re-evaluate the situation and determine a revised path forward. The Court approved this application and granted the order.

34. It is the Monitor's opinion that no creditors would be prejudiced by extending the stay of proceedings.

35. The Monitor is supportive of extending the stay of proceeding to allow stakeholders to re-evaluate the situation.

36. The adjournment of the approval of the Proposed Transaction means that the Proposed Transaction will not close within the timelines outlined in the SISP.

37. Successful Bidder has not complied with the terms of the SISP. This failure to pay the top up of the deposit casts significant doubt on the Successful Bidders ability to close the Proposed Transaction.

38. The DIP Lenders supported the Monitor's application for an extension to the stay of proceeding to give the Monitor, Company, and the DIP Lender's time to re-evaluate their options. Those options could include re-running the SISP, running a different kind of sales process, closing the Proposed Transaction with the Successful Bidder, or a liquidation.

39. In order to reduce the holding costs for the mine, the Monitor has determined that it is necessary to move the mine into a cold idle mode.

NOTICES AND STATUTORY REPORTING

40. The Monitor has reported to the Court in the Second Report on the CCAA statutory notices. The Monitor continues to update the estate's website at www.GrantThornton.ca/CFI providing estate stakeholders updates when available.

MATERIAL ADVERSE CHANGE

41. The Monitor is of the opinion that the failure of the Successful Bidder to pay the top up of the deposit and close the Proposed Transaction in accordance with the SISP, is a Material Adverse Change pursuant to s.23(1)(d) of the CCAA, and the DIP Financing Agreement.

42. The Monitor continues to be of the opinion that s.23(1)(h) of the CCAA does NOT apply and it would be more beneficial to the Company's creditors to continue with the SISP within the CCAA proceeding.

CASH FLOW UPDATE AND REVISED FORECAST

43. The Monitor has prepared an analysis of budget to actual as of September 18, 2022 which is attached in the Monitor's Fifth Report.

44. The Monitor has prepared a revised cash flow forecast, attached to the October 11, 2022 affidavit of Phil Clarke, CPA, CA, CIRP (the "**Revised Cash Flow Forecast**") as a result of the Monitor's proposed extension to the SISP. The Cash Flow Forecast covers the period from September 19, 2022 to February 26, 2023 (the "**Revised Cash Flow Period**");

45. The Revised Cash Flow Forecast has been prepared by the Monitor using probable and hypothetical assumptions set out therein (the "**Probable and Hypothetical Assumptions**");

46. The requirement of s. 23(1)(b) of the CCAA states that the Monitor is to review the Revised Cash Flow Forecast for reasonableness. As the Directors of the Company have resigned, the Monitor has prepared the Revised Cash Flow Forecast based on the actual expenses incurred since the date of the Interim Receivership and Initial Order. The Monitor is of the opinion that the Revised Cash Flow Forecast is reasonable in all material respects:

    (a) The Probable and Hypothetical Assumptions are consistent with the purpose of the Revised Cash Flow Forecast;

(b) As at the date of this Sixth Report, the Probable and Hypothetical Assumptions developed by the Monitor are suitably supported and consistent with the Company's plans and provide a reasonable basis for the Revised Cash Flow Forecast; and

(c) The Revised Cash Flow Forecast reflects the Probable and Hypothetical Assumptions.

47. The Company's cash position, held in trust with the Monitor, as of September 20, 2022 is $2,665,554.84. The Company is forecasting future cash receipt of $750,000 representing the Successful Bidders non-refundable deposit and $2,070,000 in future disbursements from September 19, 2022 through to February 26, 2023. This disbursement includes $77,000 to cover the unremitted withholding taxes payable, and an estimated $85,000 to pay the WEPP priority claim from Service Canada.

GENERAL COMMENTS ON THE CASHFLOW

48. In addition, the Monitor makes the following general comments on the Revised Cash Flow Forecast:

(a) Disbursements appear to be consistent with the level of operations since the date of the Initial Order;

(b) The Revised Cash Flow Forecast includes the encumbering of estimated priority claims by the Canada Revenue Agency and Employment and Social Development Canada relating to WEPPA. The Monitor understands a portion of those claims would have priority over the secured creditors in relation to the Company's current assets; and

(c) Disbursements include forecasted payments to the Company's legal counsel and financial advisors, and the Monitor and its legal counsel.

49. The Monitor has the funds in place to support the requested extension of the Revised SISP and stay of proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of October 2022.

GRANT THORNTON LIMITED,
SOLELY IN ITS CAPACITY AS MONITOR
OF THE COMPANY, AND NOT IN ITS PERSONAL CAPACITY

Per: ________________________________

Phil Clarke, CPA, CA, CIRP, LIT

Senior Vice-President