

2022 01G 0994
SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

HSBC BANK CANADA

APPLICANT

AND:

CANADA FLUORSPAR (NL) INC.

RESPONDENT

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION made by Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as receiver (the "**Receiver**"), without security, of any and all Receivables and/or Financed Receivables, as such terms are defined pursuant to a Trade Invoice Recourse Financing Facility Agreement between HSBC Bank Canada ("**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 (the "**Excluded AR**") for an Order,

- (a) abridging the time for service of the Notice of Motion, filed December 6, 2023 (the "**Notice Of Motion**"), so that this Motion is properly returnable on January 25, 2024, and dispensing with further service thereof;
- (b) approving and authorizing a final distribution of funds in the Receiver's possession to HSBC, as set out in the Final R&D (as defined herein), after deducting the amount of CAD80,172.34 on account of potential priority claims (the "**Priority Claim Reserve**") and an amount equivalent to the professional fees secured by the receiver's charge, as set out in the Fee Affidavits (as defined herein) and the Second Report (as defined herein) (the "**Final Distribution**");
- (c) approving and authorizing the holdback of the Priority Claim Reserve, and the distribution of the Priority Claim Reserve to a later date to satisfy any applicable

and priority *Wage Earner Protection Program Act* (Canada) claims and Canada Revenue Agency source payments, as described in the Second Report;

- (d) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP ("**Dentons**"), as set out in the Second Report, the fee Affidavit of James Foran, sworn November 24, 2023 (the "**Foran Affidavit**"), and the fee Affidavit of Robert Kennedy, sworn December 4, 2023 (the "**Kennedy Affidavit**" and together with the Foran Affidavit, the "**Fee Affidavits**");
- (e) approving the Second Report of the Receiver, dated November 24, 2023 (the "**Second Report**"), and the activities of the Receiver as set out therein;
- (f) approving the Receiver's final statement of receipts and disbursements for the period ending October 31, 2023 ("**Final R&D**");
- (g) discharging Deloitte as Receiver effective upon the filing of the Receiver's discharge certificate, attached as Schedule "A" hereto (the "**Receiver's Discharge Certificate**"), certifying that the Remaining Activities (as defined therein) have been completed to the satisfaction of the Receiver; and
- (h) such further and other grounds as counsel may advise and this Supreme Court of Newfoundland and Labrador General Division (the "**Court**") may permit.

was heard this day January 25, 2024.

ON READING the Notice of Motion, and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Geoffrey Davis-Abraham sworn January 24, 2024, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Motion Record is hereby dispensed with.

DISTRIBUTIONS AND RESERVE

2. **THIS COURT ORDERS** that the Final Distribution is hereby approved and authorized.

3. **THIS COURT ORDERS** that the Priority Claim Reserve is hereby approved and authorized, and that the distribution on account of the allocated priority *Wage Earner Protection Program Act* (Canada) claim in the amount of CAD46,206.04, and the distribution on account of the allocated Canada Revenue Agency unremitted withholding tax claim in the amount of CAD33,966.30, are hereby approved and authorized.

RECEIVER'S ACTIVITIES

4. **THIS COURT ORDERS** that the Second Report, and the activities described therein, are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Dentons, as set out in the Second Report and the Fee Affidavits, are hereby approved, together with the Estimated Fees (as defined in the Second Report).

6. **THIS COURT ORDERS** that the Final R&D is hereby approved.

RECEIVER'S DISCHARGE

7. **THIS COURT ORDERS** that, upon the Receiver filing the Receiver's Discharge Certificate, Deloitte shall be discharged as Receiver, provided however that notwithstanding its discharge herein: (a) Deloitte shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) Deloitte shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Deloitte in its capacity as Receiver.

8. **THIS COURT ORDERS** that, upon the filing of the Receiver's Discharge Certificate, Deloitte is hereby released and discharged from any and all liability that Deloitte now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Deloitte while acting in its capacities as Receiver, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, upon the filing of the



Receiver's Discharge Certificate, Deloitte is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership, save and except for any gross negligence or wilful misconduct on the Receiver's part.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 25th day of January, 2024.



**COURT
OFFICER**



Schedule "A"
Receiver's Discharge Certificate

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HSBC BANK CANADA

APPLICANT

AND:

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RESPONDENT

DISCHARGE CERTIFICATE

RECITALS

- A. Pursuant to an Order of Justice MacDonald of the Supreme Court of Newfoundland and Labrador – General Division (the “Court”) dated March 25, 2022, Deloitte Restructuring Inc. (“Deloitte”) was appointed as receiver (in such capacity, the “Receiver”), over any and all Receivables and/or Financed Receivables, as such terms are defined pursuant to the Trade Invoice Recourse Financing Facility Agreement between HSBC and CFNI dated May 25, 2018 (as amended), together with all rights and remedies arising thereunder, insurance policies and proceeds resulting therefrom, and proceeds generally.
- B. Pursuant to an Order of the Court dated January 25, 2024 (the “Distribution and Discharge Order”), Deloitte was discharged as Receiver, effective upon the filing by the Receiver with the Court of a certificate certifying that Deloitte has completed the Remaining Activities (as defined in the Receiver’s Second Report dated November 24, 2023), provided however that, notwithstanding its discharge: (a) Deloitte shall remain Receiver for the performance of such



incidental duties as may be required to complete the administration of the receivership herein, and (b) Deloitte shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Deloitte, in its capacity as Receiver.

THE RECEIVER CERTIFIES the following:

1. The Receiver has paid all amounts, fees, and disbursements required to be paid pursuant to the Distribution and Discharge Order; and
2. The Receiver is satisfied that all Remaining Activities have been completed to the satisfaction of the Receiver.

THIS CERTIFICATE was delivered by the Receiver on _____ [TIME] on _____ [DATE].

Deloitte Restructuring Inc., solely in its capacities as the Court-appointed Receiver of the Excluded AR of Canada Fluorspar (NL) Inc., and not in any other capacity

Per:

Name:

Title:

