



No. S-228723
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF
PURE GOLD MINING INC.

PETITIONER

NOTICE OF APPLICATION

Name of applicant: KSV Restructuring Inc. (“KSV”) in its capacity as court-appointed monitor of the Petitioner in these proceedings (in such capacity, the “**Monitor**”).

To: On notice to the Service List, a copy of which is attached hereto as Schedule “A”

TAKE NOTICE that an application will be made by the Monitor to the Honourable Justice Walker at the courthouse at 800 Smithe Street, Vancouver, B.C. on January 23 at ~~9:00~~ ^{10:00} a.m. for the orders set out in Part 1, below.

Part 1 ORDERS SOUGHT

1. An order, substantially in the form attached hereto as Schedule “B”:
 - (a) approving the activities of the Monitor as set out in the First Report of the Monitor to the Court dated November 7, 2022 (the “**First Report**”) and Second Report of the Monitor to the Court dated January 18, 2023 (the “**Second Report**” and, together with the First Report, the “**Monitor’s Reports**”); and

- (b) approving the fees and disbursements of the Monitor (the “**Monitor’s Fees**”) and its counsel (“**Fasken’s Fees**”, and together with the Monitor’s Fees, the “**Fees**”) as set forth in the Monitor’s Reports and the other materials filed in support of this application.

Part 2 FACTUAL BASIS

Background

1. On October 31, 2022, on application by the Petitioner, Pure Gold Mining Inc. (the “**Company**” or “**Pure Gold**”), this court granted an order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) whereby, among other things: (a) Pure Gold was granted a stay of proceedings (the “**Stay**”) through to November 9, 2022; and (b) KSV was appointed Monitor in these CCAA proceedings. By subsequent order, the Stay was extended until January 27, 2023.
2. Further details regarding the status of the Company at the time of the Monitor’s appointment are set out in the Monitor’s Pre-Filing Report dated October 30, 2022.

Activities of the Monitor

3. Capitalized terms not otherwise defined in this section have the meanings ascribed to them in the Monitor’s Reports.
4. Generally speaking, in accordance with its duties under the orders made herein, including the Initial Order and the amended and restated initial order granted on November 9, 2022 (the “**ARIO**”), and under the CCAA, the Monitor has: (a) assisted in preparing and monitoring the Company’s cash flow forecasts; (b) responded to inquiries from the Company’s creditors and other stakeholders; and (c) assisted in carrying out the SISP.
5. A detailed description of the Monitor’s activities since the Initial Order is set out in section 4 in each of the First Report and the Second Report, including the following significant activities:
 - (a) Corresponded routinely with the Company’s management team;

- (b) Developed a stakeholder communication strategy with the Company;
- (c) Delivered CCAA notices to the Company's creditors and filed Forms 1 and 2 with the Office of Superintendent of Bankruptcy, as required under the CCAA;
- (d) Maintained current information on these CCAA proceedings on the Monitor's website;
- (e) Monitored the Company's receipts and disbursements;
- (f) Engaged with an interim lender, a sales agent, and the Company regarding the SISP;
- (g) Assisted the Company in dealing with suppliers;
- (h) Monitored the Company's receipts and disbursements including reviewing weekly cash flow reporting;
- (i) Engaged with counsel for the Monitor, for the Company and for the interim lender on various legal matters related to these proceedings; and
- (j) Prepared the Monitor's Reports.

First Report at para. 4.1.

Second Report at para. 4.0.

The Fees

6. The particulars of the Fees are included in the Second Report. For the period ended December 31, 2022, the Monitor's Fees totalled \$166,864.98 and Fasken's Fees totalled \$54,983.81, both inclusive of disbursements and taxes.
7. The Monitor has delivered its invoices to the Company in respect of the Monitor's Fees, and the Company has paid those invoices.
8. The Monitor has reviewed Fasken's invoices in respect of Fasken's Fees and concluded that they are reasonable and appropriate.

9. From the period immediately prior to the date of the Initial Order (October 31, 2022) through to December 31, 2022 (the “**Period**”), the Monitor has issued three invoices (collectively, the “**Monitor’s Invoices**”) for fees amounting to \$147,393.75, disbursements in the amount of \$274.37, and taxes in the amount of \$19,196.86, for a total of \$166,864.98 (collectively, the “**Monitor’s Fees**”). The Monitor’s Invoices include summaries of the time spent by each staff member.

Second Report at paras. 9.1 and 9.2 .

10. During the Period, Fasken has issued three invoices (collectively, “**Fasken’s Invoices**”) for fees amounting to \$45,645.50, disbursements in the amount of \$190.20, and taxes in the amount of \$9,152.11, for a total of \$54,983.81 (collectively, “**Fasken’s Fees**”).

First Affidavit of Kibben Jackson, at para. 5.

Part 3 LEGAL BASIS

1. The Monitor relies on
 - (a) the CCAA;
 - (b) the *Supreme Court Civil Rules*;
 - (c) the inherent and equitable jurisdiction of this Honourable Court; and
 - (d) such further and other legal basis as counsel may advise and this Honourable Court may allow.
2. The work performed by the Monitor and Fasken was done pursuant to, and in accordance with, the terms of the Initial Order, the ARIO, and the provisions of the CCAA

Approval of the Monitor’s Activities is appropriate

3. The Monitor seeks the approval of the Court with respect to its activities set out in the Monitor’s Reports. The Monitor has acted reasonably, prudently and not arbitrarily in these proceedings.

4. The activities of the Monitor have all been appropriate and conducted in accordance with the Monitor's powers under the Initial Order, the ARIO and the CCAA.
5. Approval of the Monitor's activities at this time is appropriate in the circumstances because such approval will, among other things:
 - (a) bring the Monitor's activities in issue before the court, providing an opportunity for any concerns of the court, the Petitioner and other stakeholders to be addressed;
 - (b) enable the court, tasked with supervising the CCAA process, to satisfy itself that the Monitor's court-mandated activities have been conducted in a prudent and diligent manner;
 - (c) provide protection for the court's officer not otherwise provided by the CCAA or other orders of this court; and
 - (d) protect creditors from delay that might otherwise be occasioned by:
 - (i) the re-litigation of steps taken to date; and
 - (ii) potential indemnity claims by the Monitor.

Target Canada Co. (Re), 2015 ONSC 7574, at paras. 12 and 23.

6. The approval sought by the Monitor is not a general approval of its activities but is the approval of the specific activities taken by the Monitor as detailed in the Monitor's Reports filed with this court.

Approval of Fees and Disbursements of the Monitor and its Counsel

7. The ARIO expressly provides that the accounts of the Monitor are referred to a judge of this Honourable Court and that the passing of those accounts may be heard on a summary basis.

ARIO at para. 30.

8. In *Re: Redcorp Ventures Ltd.*, 2016 BCSC 188 (“*Redcorp*”), Mr. Justice Burnyeat held that the timely passing of accounts was to be encouraged and that insolvency professionals should not put off the assessment of their fees for undue periods of time.

9. On an application to approve a Monitor’s fees in a CCAA proceeding, the analysis is:

[...] no different than that in a receivership or bankruptcy. The question is whether the fees are fair and reasonable in all of the circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process. As with any inquiry, the evidence proffered will be important in making those determinations.

Re Nortel Networks Corporation et al, 2017 ONSC 673, para. 13,
citing *Winalta Inc. (Re)*, 2011 ABQB 399, at para. 30.

10. This Court has referenced with approval the following relevant considerations when considering whether the fees of a court-appointed officer in insolvency proceedings are fair and reasonable in the circumstances:

- (a) the nature, extent and value of the assets;
- (b) complications and difficulties encountered by the court officer;
- (c) degree of assistance provided by the petitioner;
- (d) time spent by the court officer;
- (e) the court officer’s knowledge, experience and skill;
- (f) the court officer’s diligence and thoroughness;
- (g) responsibilities assumed;
- (h) results of the court officer’s efforts; and
- (i) cost of comparable services when performed in a prudent and economical manner.

Redcorp Ventures Ltd. (Re), 2016 BCSC 188, at para. 23,
citing *Bank of Montreal v. Nican Trading Co.* (1990), 1990 CanLii 454 (BC CA).

Re Nortel Networks, at para. 14.

11. Similar factors as considered on the assessment of a Monitor's fees are considered on the assessment of the accounts of counsel to the court officer, including the:
- (a) time expended;
 - (b) complexity of the proceedings;
 - (c) degree of responsibility assumed by the lawyers;
 - (d) amount of money involved, including the amount of proceeds after payments to the creditors;
 - (e) degree and skill of the lawyers involved;
 - (f) results achieved; and
 - (g) client's expectations as to the fee.

Redcorp, at para. 33.

12. In respect of the Monitor's Fees, the Monitor submits that the:
- (a) Monitor's Fees were properly incurred, and commensurate with fees charged by other insolvency firms of a similar size for work of a similar size, nature and complexity in British Columbia;
 - (b) work completed by the Monitor was delegated to the appropriate professionals in the Monitor's organization with the appropriate seniority and hourly rates; and
 - (c) Monitor's services were performed in a prudent and economical manner.
13. Similarly, the Monitor submits that Fasken's Fees are fair and reasonable in the circumstances as:
- (a) Fasken's professional fees and disbursements were properly incurred, and commensurate with fees charged by similar firms with the expertise and capacity to serve a matter of comparable size and complexity in British Columbia;
 - (b) the work completed by Fasken was delegated to the appropriate professionals in Fasken's organization with the appropriate seniority and hourly rates;

- (c) Fasken's services were performed in a prudent and economical manner; and
 - (d) Fasken's invoices were provided to the Monitor when rendered, and all have been approved by the Monitor.
14. The Monitor submits that its fees and disbursements, and that of its counsel, Fasken, are fair and reasonable as evidenced in the Monitor's Reports.

Part 4 MATERIAL TO BE RELIED ON

1. The Initial Order, made by the Honourable Justice Walker in these proceedings on October 31, 2022;
2. The Amended and Restated Initial Order, made by the Honourable Justice Walker in these proceedings on November 9, 2022;
3. The Monitor's First Report to the Court, dated November 7, 2022;
4. The Monitor's Second Report to the Court, dated January 18, 2023;
5. The First Affidavit of Kibben Jackson made on January 18, 2023; and
6. The other pleadings and materials filed in these proceedings and such further and other material as counsel may advise and this Honourable Court may permit.

The applicant estimates that the application will take 15 minutes.

- This matter is within the jurisdiction of a master
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that

- (i) you intend to refer to at the hearing of this application, and
- (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 18-Jan-2023



 Signature of Kibben Jackson
 Lawyer for **KSV Restructuring Inc.**, in its
 capacity as court-appointed Monitor of Pure
 Gold Mining Inc.

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this Notice of Application

with the following variations and additional terms:

Date:

.....
 Signature of Judge Master

The Solicitors for the Applicant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/267908.00015/)

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

SERVICE LIST

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF
PURE GOLD MINING INC.

PETITIONER

CCAA SERVICE LIST
As at January 12, 2023

<p>Fasken Martineau DuMoulin LLP</p> <p>Attention: Kibben Jackson Glen Nesbitt Suzanne Volkow Ashley Kumar</p> <p>Email: kjackson@fasken.com gnesbitt@fasken.com svolkow@fasken.com akumar@fasken.com</p> <p><i>Counsel for the Monitor, KSV Restructuring Inc.</i></p>	<p>Blake Cassels & Graydon LLP</p> <p>Attention: Peter Rubin Peter Bychawski Claire Hildebrand Alison Burns Jennifer Alambre</p> <p>Email: peter.rubin@blakes.com peter.bychawski@blakes.com claire.hildebrand@blakes.com alison.burns@blakes.com jennifer.alambre@blakes.com</p> <p><i>Counsel for the Petitioner</i></p>
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<p>KSV Restructuring Inc.</p> <p>Attention: Bobby Kofman David Sieradzki Christian Vit</p> <p>Email: bkofman@ksvadvisory.com dsieradzki@ksvadvisory.com cvit@ksvadvisory.com</p> <p><i>Court Appointed Monitor</i></p>	<p>DLA Piper LLP</p> <p>Attention: Edmond Lamek Colin Brousson Ilia Danef</p> <p>Email: edmond.lamek@dlapiper.com colin.brousson@dlapiper.com ilia.danef@dlapiper.com</p> <p><i>Counsel for Sprott Resource Lending Corp., Sprott Private Resource Lending II (Collector) LP, and Sprott Resource Lending II (CO), Inc.</i></p>
<p>Sprott Resource Lending Corp.</p> <p>Attention: George Kirichek Narinder Nagra Jim Grosdanis</p> <p>Email: gkirichek@sprott.com nnagra@sprott.com jgrosdanis@sprott.com</p>	<p>KND Complex Litigation</p> <p>Attention: Sage Nematollahi Eli Karp Take Soo Shin</p> <p>Email: sn@knd.law ek@knd.law ts@knd.law</p> <p><i>Counsel for Linda Larouche</i></p>
<p>Miller Thomson LLP</p> <p>Attention: Riccardo Del Vecchio Lori Goldberg</p> <p>Email: rdelvecchio@millerthomson.com lgoldberg@millerthomson.com</p> <p><i>Counsel for Nuna Logistics Limited</i></p>	<p>Caterpillar Financial Services Corporation</p> <p>Attention: Brett Parks</p> <p>Email: brett.parks@cat.com</p>
<p>Desmarais, Keenan LLP</p> <p>Attention: J. Robert Leblanc</p> <p>Email: leblanc@dklawyers.ca</p> <p><i>Counsel for SCR Mining and Tunnelling LP</i></p>	<p>Glaholt Bowles LLP</p> <p>Attention: Brendan Bowles</p> <p>Email: Brendanbowles@glaholt.com</p> <p><i>Counsel for SCR Mining and Tunnelling LP</i></p>

<p>Borden Ladner Gervais LLP</p> <p>Attention: Lisa Hiebert Jennifer Pepper</p> <p>Email: lhiebert@blg.com jpepper@blg.com</p> <p><i>Counsel for Epiroc Canada Inc.</i></p>	<p>Hydro One Networks Inc.</p> <p>Email:</p> <p>londoncollectionsclientservices@hydroone.com</p>
<p>Justice, Health and Revenue Legal Services Branch, Ministry of Attorney General</p> <p>Attention: Carmen Saldivia</p> <p>Email: AGLSBRevTaxInsolvency@gov.bc.ca</p>	<p>Cassels Brock & Blackwell LLP</p> <p>Attention: John Birch William Onyeaju</p> <p>Email: jbirch@cassels.com wonyeauju@cassels.com</p> <p><i>Counsel for XL Specialty Insurance Company</i></p>
<p>Lister Beaupré</p> <p>Attention: Ahmed Elahi Chantal Beaupre Disha Gajera</p> <p>Email: ahmed@listerlawyers.com chantal@listerlawyers.com disha@listerlawyers.com</p> <p><i>Counsel for Teresa Closs</i></p>	<p>Osler, Hoskin & Harcourt LLP</p> <p>Attention: Mary Buttery, K.C. Amanda Manasterski Bridget Berner</p> <p>Email: muttery@osler.com amanasterski@osler.com bberner@osler.com</p> <p><i>Counsel for His Majesty the King in Right of Ontario</i></p>
<p>Attorney General for Ontario</p> <p>Attention: Anathan Sinnadurai Adam Mortimer</p> <p>Email: anathan.sinnadurai@ontario.ca adam.mortimer@ontario.ca</p>	

E-Service List

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SCHEDULE "B"

DRAFT ORDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF
PURE GOLD MINING INC.

PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
JUSTICE) January 23, 2023
)

THE APPLICATION of KSV Restructuring Inc. (the "**Monitor**"), in its capacity as court-appointed monitor of Pure Gold Mining Inc. (the "**Company**"), coming on for hearing at Vancouver, British Columbia on the 23rd day of January, 2023; AND ON HEARING Kibben Jackson and Rebecca Nguinambaye, counsel for the Monitor, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Affidavit of Kibben Jackson affirmed January 18, 2023 (the "**First Jackson Affidavit**"), the First Report of the Monitor dated November 7, 2022 (the "**First Report**"), and the Second Report of the Monitor dated January 18, 2023 (the "**Second Report**"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The activities of the Monitor as described in the First and Second Reports are hereby approved.
2. The Monitor's accounts for professional fees and disbursements for the period immediately prior to the date of the Initial Order (October 31, 2022) through to December 31, 2022 in the amount of \$147,393.75 are hereby approved.
3. The accounts for professional fees and disbursements of the Monitor's legal counsel, Fasken Martineau DuMoulin LLP for the period October 31, 2022 to December 31, 2022 in the amount of \$54,983.81 are hereby approved.
4. Endorsement of this order by counsel appearing on this application, other than counsel for the Monitor, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Kibben Jackson
Lawyer for **KSV Restructuring Inc.**, in its
capacity as court-appointed monitor of Pure Gold
Mining Inc.

BY THE COURT

REGISTRAR

Schedule "A" to Order

COUNSEL NAME	PARTY REPRESENTED