



FORCE FILED

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

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: Pure Gold Mining Inc. ("Pure Gold")

To: The Service List

TAKE NOTICE that an application will be made by Pure Gold to the Honourable Justice Walker at the courthouse at 800 Smith Street, Vancouver, BC on May 29, 2023 at 10:00 am for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order (the "**Approval and Reverse Vesting Order**") a Share Purchase Agreement (the "**SPA**") dated May 17, 2023 between PGM ResidualCo Inc. ("**PGM ResidualCo**"), as vendor, and West Red Lake Gold Mines Ltd. (the "**Purchaser**"), as purchaser, Pure Gold, and Sprott Private Resource Lending II (Collector) LP ("**Sprott Collector LP**") and Sprott Private Resource Lending II (CO) Inc. ("**Sprott Lending**" and together with Sprott Collector LP, "**Sprott**") (the "**Transaction**"), and granting such other relief as is necessary to give effect to the Transaction. The proposed Approval and Reverse Vesting Order shall be substantially in the form attached as Schedule "A" to the SPA, which is attached as Exhibit "C" – "E" to Affidavit #2 of Jonathan Singh made May 18, 2023 (the "**Singh Affidavit #2**").

2. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

Background and Introduction

1. Pure Gold was granted protection pursuant to the *Companies' Creditors Arrangement Act*, 1985, c. C-36, (the "CCAA") on October 31, 2022.
2. Since being granted CCAA protection, Pure Gold has been working towards its restructuring goals and seeking to maximize the value of its assets for the benefits of its stakeholders, including through the implementation of a Court-approved sale and investment solicitation process (the "SISP").
3. Pure Gold's restructuring efforts to date have been undertaken under the supervision of, and in consultation with, among other parties, KSV Restructuring Inc., the Court-appointed "Monitor", and its Court-appointed "Sales Agent", National Bank Financial Inc. Pure Gold's restructuring efforts have also been undertaken in consultation with and with the support of Sprott, Pure Gold's senior secured lender, largest creditor, and interim lender. Sprott is owed approximately US \$146.3 million, plus interest and costs which continue to accrue in respect of its pre-filing debt, and approximately \$13.05 million in respect of post-filing secured advances under a court-approved debtor-in-possession loan facility, that is near fully drawn (the "DIP Facility").
4. As was disclosed in a Pure Gold Press Release on April 17, 2023, Pure Gold's sale efforts have resulted in a Transaction for the sale of its business to the Purchaser, which was the only acceptable offer to arise following the SISP and a pre-filing "Strategic Review Process" undertaken by Pure Gold. Pure Gold now seeks Court approval of the Transaction as contemplated by the SPA and the other ancillary relief provided for in the Approval and Reverse Vesting Order.
5. In Pure Gold's view, the approval of the Transaction by this Court, which will provide for a going-concern sale of the Pure Gold's Mine, is the best option available to Pure Gold's stakeholders. The relief sought in the Approval and Reverse Vesting Order is appropriate and necessary in the circumstances.
6. Capitalized terms not otherwise defined in this Notice of Application shall have the meaning given to them in the SPA.

The Sales Process

7. Pure Gold's efforts to market its assets for sale began prior to the commencement of these CCAA proceedings. As is described in greater detail in the "Sales Process Overview" from the Sales Agent (to be attached to the Monitor's Sixth Report), and the Singh Affidavit #2, in July 2022 Pure Gold commenced a Strategic Review Process that contemplated an LOI deadline of September 26, 2022. No acceptable LOIs were received during the Strategic Review Process.
8. Once under CCAA protection, on November 9, 2022, Pure Gold sought and obtained Court approval of the SISP. This SISP, which was designed and implemented in consultation with the Monitor, the Sales Agent, and Sprott, was intended to market Pure Gold's business and assets for sale in order to maximize value for Pure Gold's stakeholders.

9. The SISP, which is also described in greater detail in the Sixth Report of the Monitor and the Singh Affidavit #2, commenced on November 10, 2022. A total of 84 parties were contacted, and while the SISP generated interest from various participants, and various participants performed due diligence, Pure Gold did not receive any acceptable letters of interest by the LOI deadline of December 19, 2022. After the LOI deadline passed, Sprott and Pure Gold, with the assistance of the Sales Agent, continued to engage with several potential bidders regarding a transaction and their ongoing due diligence.

The Transaction

10. Pure Gold's pre-filing and post-filing sales efforts have resulted an offer for the purchase of its assets from the Purchaser, for which Pure Gold now seeks Court approval.

11. The Transaction, as set out in detail in the SPA and which is described in the Monitor's Sixth Report, can be summarized as follows:

Reorganization and Transaction Structure:	<p>Prior to Closing, Pure Gold will incorporate a wholly-owned subsidiary, PGM ResidualCo. All issued and outstanding common shares of Pure Gold will be exchanged for common shares of PGM ResidualCo, such that Pure Gold will become a wholly-owned subsidiary of PGM ResidualCo.</p> <p>Pursuant to the terms of the Approval and Reverse Vesting Order, PGM ResidualCo will assume the Excluded Contracts and Excluded Liabilities of Pure Gold, with Pure Gold retaining the Assumed Contracts and Assumed Liabilities, as outlined below.</p> <p>At Closing, PGM ResidualCo will transfer the Purchased Shares to the Purchaser, resulting in the Purchaser becoming the sole shareholder of Pure Gold.</p> <p>The Purchaser will also enter into an Investor Rights Agreement with Sprott, pursuant to which the Purchaser will grant Sprott certain rights with respect to the common shares of the Purchaser issued to Sprott.</p>
Consideration:	<p>The consideration payable by the Purchaser to Pure Gold and Sprott includes the following:</p> <ul style="list-style-type: none">(a) \$1,767,500 will be paid to the Monitor (to the benefit of PGM Residual Co.) for payment of any obligations secured by the Court Ordered Charges (being the Administration Charge (\$750,000), the D&O Charge (\$650,000), and the Sales Agent Charge (\$367,500));(b) \$4,732,500 will be paid to Sprott;(c) 40,730,677 common shares in the Purchaser will be issued to Sprott;

	<p>(d) a convertible promissory note will be issued by the Purchaser to Sprott (pursuant to which, upon the occurrence of a Change of Control Transaction, the Purchaser will pay Sprott US\$6,783,932); and</p> <p>(e) the Purchaser will also grant Sprott a 1% NSR.</p>
Assumed Contracts and Liabilities:	All of the rights and obligations of Pure Gold under certain Assumed Contracts, which are set out in Schedule "B" to the SPA, will be retained by the Purchaser. The Purchaser may designate additional contracts of Pure Gold to be Assumed Contracts until 120 days following Closing, subject to any change of control provisions in those contracts. The Assumed Contracts include certain license agreements, insurance policies, supplier contracts, employment agreements, equipment leases, and permits needed to continue to operate the Mine, as well as the Project Agreement between Pure Gold and the Wabauskang and Lac Seul First Nations, which is discussed in greater detail in Chris Haubrich's Affidavit #1.
Excluded Contracts and Liabilities:	All other contracts and liabilities of Pure Gold will be transferred to and assumed by PGM Residual Co. and will no longer be binding on Pure Gold. These include certain royalty agreements that are not registered on title.
Discharged Encumbrances:	Certain registered real property and personal property Encumbrances of Pure Gold will be discharged prior to Closing, as are more particularly set out in Schedule "D" to the SPA. These discharged encumbrances include lien claims and one royalty agreement.
Conditions Precedent:	The SPA is subject to standard conditions precedent. It is also subject to the granting of the Approval and Reverse Vesting Order by this Court and the BC Securities Commission having lifted the Cease Trade Order and authorizing Pure Gold to cease to be a reporting issuer.
Addition of PGM Residual Co. as a CCAA Applicant	<p>In order to consummate the Transaction, PGM Residual Co. must become an applicant in these CCAA proceedings. Doing so will allow the Purchaser to acquire all of Pure Gold's shares, free and clear of all Encumbrances (except for Permitted Encumbrances), while allowing the claims of Pure Gold's stakeholders to continue against PGM ResidualCo.</p> <p>PGM Residual Co. will be a company incorporated pursuant to the laws of British Columbia.</p>
Target Closing Date:	June 28, 2023

12. As is discussed in greater detail below, it is Pure Gold's view that the Transaction, which is the only acceptable offer after a lengthy and robust Strategic Review Process and post-filing SISP, is the best outcome available for its stakeholders in the circumstances.

Part 3: LEGAL BASIS

The Approval and Reverse Vesting Order Should be Approved

13. The Approval and Reverse Vesting Order uses an "RVO" structure which, unlike a traditional vesting order, transfers excluded assets and liabilities of the debtor to a new entity, leaving the assumed assets and liabilities with the debtor company. The purchaser becomes the sole shareholder of the debtor company, and the excluded assets are then used to satisfy the liabilities transferred to the new entity in accordance with their pre-existing priority. The use of an RVO structure has received appellate approval in this province.

Just Energy v. Morgan Stanley Capital Group, 2022 ONSC 6354 at para. 27 [*Just Energy*]; *Quest University Canada (Re)*, 2020 BCCA 364 [*Quest*].

14. The jurisdictional basis for a RVO in the CCAA context is section 11 of the CCAA, which grants this Court a broad power to make any order appropriate in the circumstances.

Quest University Canada (Re), 2020 BCSC 1883 at paras. 127-149.

15. While CCAA courts have been clear that use of an RVO should not be the "norm", reverse vesting orders are commonly used to sell insolvent businesses, particularly in the mining sector, that are reliant on licenses, permits, and other intangibles so as to avoid the complications related to the transfer of these critical assets.

Just Energy at para. 33

16. As noted by the Quebec Court in *Blackrock Metals*, the use of an RVO is appropriate in situations "where a traditional sale of assets would lead to uncertainty regarding the transfer of numerous agreements, permits, authorizations and other regulatory approvals that are required for the continuation of the company's business". Similarly, in *Just Energy*, Justice McEwan observed that RVOs have previously been granted in circumstances where "the debtor operated in a highly-regulated environment in where its existing permits, licenses or other rights were difficult or impossible to reassign to a purchaser."

Arrangement relatif à Blackrock Metals Inc., 2022 QCCS 2828 at paras. 86, 115 [*Blackrock*]; *Just Energy* at para. 34

17. While the jurisdiction to approve an RVO is largely considered to arise under section 11, courts have also looked at the non-exhaustive list of statutory factors to approve a sale set out in section 36(3) of the CCAA, which are:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Harte Gold Corp., 2022 ONSC 653 at paras. 20, 23 [*Harte Gold*].

18. In addition, when seeking Court approval of a RVO the debtor, purchaser and Monitor should consider the following questions:

- (a) why is the RVO necessary in this case;
- (b) does the RVO structure produce an economic result at least as favourable as any other viable alternative;
- (c) is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative; and
- (d) does the consideration being paid for the debtor's business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure?

Harte Gold at para. 38.

19. The *Harte Gold* factors were recently applied by this Court in *PaySlate Inc. (Re)*.

PaySlate Inc. (Re), 2023 BCSC 608 at paras. 96-99 [*PaySlate*].

20. The relief sought in the Approval and Reverse Vesting Order meets the criteria set out in both section 36 and *Harte Gold* for the following reasons:

- (a) the Court-approved SISF, which was developed and implemented in consultation with and with the approval of the Monitor, Sprott, and the Sales Agent, was reasonable in the circumstances and extensively canvassed the market for a potential sale of Pure Gold's business, which was undertaken after a sale process was undertaken by Pure Gold prior to the commencement of CCAA proceedings;

- (b) the Transaction, which was the only acceptable offer for Pure Gold's assets to materialize from the SISP (or the pre-filing Strategic Review Process), will result in a going concern sale of the Mine, which is in the best interests of Pure Gold's stakeholders (including the Mine's employees and the Red Lake community);
- (c) Sprott, Pure Gold's senior secured creditor, largest creditor, and interim lender in these CCAA proceedings, is supportive of the Transaction. Sprott will incur a substantial shortfall on its advances to Pure Gold;
- (d) Pure Gold's other stakeholders and creditors have been consulted during these CCAA proceedings, including with respect to the Transaction, of which they have had extensive notice through Pure Gold's press releases and other forms of public communication, and any creditor that has requested has been added to the CCAA service list;
- (e) an RVO structure is necessary to transfer the value of the Mine and Pure Gold's assets, specifically the Mining Tenures, Permits, and tax attributes, to the Purchaser;
- (f) the consideration paid (to both PGM ResidualCo. and Sprott) is reasonable, fair, and reflects the value of Pure Gold's business, in particular the Mineral Tenures, Permits and tax attributes being preserved through the RVO structure;
- (g) the RVO structure produces an economic result at least as favourable as any other viable alternative (of which there is none, as no other acceptable bids for Pure Gold's assets were received during the SISP and filing a plan of arrangement or compromise is not an option in these proceedings);
- (h) no stakeholder is worse off under the RVO structure than they would have been under any other viable alternative (again, of which there is none); and
- (i) Pure Gold understands that the Monitor will file a report stating their opinion that the Transaction is more beneficial to the creditors than a sale or disposition in a bankruptcy.

21. Pure Gold submits that approving the Transaction and granting the relief sought in the Approval and Reverse Vesting Order is necessary and appropriate.

PGM Residual Co. Should be Added as an Applicant in these CCAA Proceedings

22. As is a common feature of RVO transactions, Pure Gold seeks the addition of PGM ResidualCo as an applicant in these CCAA proceedings.

23. PGM ResidualCo must become an applicant in these CCAA proceedings in order to consummate the Transaction. The addition of PGM ResidualCo will allow the Purchaser to acquire all of Pure Gold's shares, free and clear of all Encumbrances (except for Permitted Encumbrances), while allowing the claims of Pure Gold's stakeholders to continue against PGM ResidualCo.

24. Immediately after the Excluded Liabilities are transferred to PGM ResidualCo, PGM ResidualCo will be balance sheet insolvent and will have liabilities in excess of \$5 million.

25. The Monitor is supportive of adding PGM ResidualCo as an applicant.

The Releases Should be Granted

26. As part of the Transaction Pure Gold seeks certain releases (the “**Releases**”) in favour of Pure Gold’s (and PGM ResidualCo’s) present and former directors, officers, employees, legal counsel, and advisors; the Monitor and its legal counsel; and Sprott (collectively, the “**Released Parties**”).

27. The Releases release the Release Parties from, among others, claims in connection with or related to the Transaction, in connection with or relating to these CCAA proceedings, and related to the management, operations or administration of Pure Gold.

28. CCAA courts frequently approve third party releases in favour of directors, officers, monitors, counsel, employees, shareholders, advisors and others as part of a reverse vesting order.

Harte Gold at para. 79; *Harte Gold* CCAA proceedings (Court File No. CV-21-00673304-00CL), Approval and Reverse Vesting Order of Justice Penny granted January 28, 2022; ~~*Cannapiece* CCAA proceedings (Court File No. CV-22-00689631-00CL), Approval and Vesting Order of Justice Osbourne, granted February 10, 2023~~

29. In considering whether to approve releases in CCAA proceedings, including third-party releases in a reverse vesting order, courts have considered several factors. While it is not necessary for each of these factors to apply in order for the proposed release to be granted, they include:

- (a) whether the released claims are rationally connected to the purpose of the restructuring;
- (b) whether the restructuring can succeed without the releases;
- (c) whether the parties being released contributed to the restructuring;
- (d) whether the releases benefit the debtors as well as the creditors generally;
- (e) creditors’ knowledge of the nature and effect of the release; and
- (f) whether the releases are fair, reasonable and not overly-broad.

Harte Gold at paras. 80-86; *Blackrock* at paras. 130-137; *PaySlate* at para. 143; *Green Relief Inc. (Re)*, 2020 ONSC 6837 at para. 23

30. The Releases sought by Pure Gold are reasonable and appropriate in the circumstances for the following reasons:

- (a) The Releases are rationally connected to Pure Gold's restructuring in that they will help achieve finality and certainty for the Released Parties and will facilitate the release of the CCAA priority charges. They will have the effect of diminishing claims against the Released Parties, which will in turn diminish indemnification claims by the Released Parties against the CCAA priority charges.
- (b) The Released Parties have made significant contributions to Pure Gold's restructuring, both prior to and throughout these CCAA proceedings. Pure Gold's personnel have been instrumental in its efforts to maximize value for its assets, the Monitor and its advisors have played an important role in these CCAA proceedings, and Sprott has contributed throughout, including by providing over US \$13 million in interim financing.
- (c) The Releases are fair, reasonable, and not overly broad, and are narrower than those approved by CCAA courts in other reverse vesting orders. The Releases do not release claims that cannot be compromised pursuant to section 5.1(2) of CCAA.
- (d) The Releases benefit Pure Gold as well as its creditors generally as they will reduce the potential for the Released Parties to seek indemnification from Pure Gold; minimizing further claims against Pure Gold.
- (e) Pure Gold's creditors have been provided with sufficient notice of the Releases. Pure Gold's CCAA proceedings, which have been ongoing since October 31, 2022, have been widely publicized through its Press Releases and other forms of communication. All creditors have had ample opportunity to be added to the CCAA service list, which will be served with these materials. Pure Gold will also make efforts to serve certain other affected parties, including all counterparties to the Assumed Contracts.

31. The Monitor supports the granting of the Releases with respect to the Released Parties. Pure Gold understands that the Monitor will include in its Sixth Report information as to the appropriateness of the Approval and Reverse Vesting Order in addition to that set out above.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Chris Haubrich, made October 30, 2022;
2. Affidavit #2 of Chris Haubrich, made November 4, 2022;
3. Affidavit #4 of Chris Haubrich, made January 18, 2023;
4. Affidavit #5 of Chris Haubrich, made March 2, 2023;
5. Affidavit #1 of Jonathan Singh, made May 4, 2023;
6. Affidavit #2 of Jonathan Singh, made May 18, 2023;

7. Affidavit # 2 of Jennifer Alambre, made May 18, 2023;
8. The Sixth Report of KSV Restructuring Inc., to be filed; and
9. Such further and other material as counsel may advise.

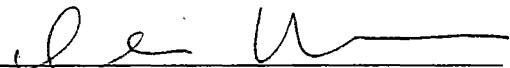
Pure Gold estimates that the application will take 1 day.

This matter is not within the jurisdiction of a master. Justice Walker is seized of the matter.

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).

Date: May 18, 2023

For: 
Signature of Peter L. Rubin
Lawyer for Pure Gold Mining Inc.

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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

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- 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