

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

NO : 500-11-049079-151

IN THE MATTER OF RECEIVERSHIP OF:

QUÉBEC LITHIUM INC, QLI MÉTAUX INC., RB
ENERGY INC. AND SIROCCO MINING INC.

Debtors

and

KSV KOFMAN INC.

Receiver/Petitioner

NORTH AMERICAN LITHIUM INC.

-and-

TIANJIN PRODUCTS AND ENERGY
RESOURCES DEVELOPMENT CO., LTD

-and-

ATACAMA MINERALS CHILE S.C.M.

Mises en cause

**MOTION FOR AN ORDER AUTHORIZING THE DIVESTITURE OF CERTAIN
ASSETS OF SIROCCO MINING INC. AND FOR A VESTING ORDER**
(Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("BIA"),
Articles 25 and 49 C.C.P., S.Q. 2014, c.1)

TO THE HONORABLE JUSTICE MARTIN CASTONGUAY OR TO ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION
IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, PETITIONER TIANJIN PRODUCTS
AND ENERGY RESOURCES DEVELOPMENT CO., LTD. RESPECTFULLY SUBMITS AS
FOLLOWS:

I. INTRODUCTION

1. Tianjin Products and Energy Resources Development Co., Ltd. ("**Tewoo**") is a creditor of Québec Lithium Inc. ("**QLI**") and Sirocco Mining Inc. ("**Sirocco**"), as appears from the Court record.
2. Tewoo adopts and relies on the facts and conclusions set forth in the Receiver's *Application for the Termination of the Receivership and for a Discharge Order with Respect to QLI Métaux Inc., RB Energy Inc. and Sirocco Mining Inc.* (the "**Receiver's Motion**") and the Second Report of the Receiver, both dated June 20, 2017 (the "**Second Report**").
3. Specifically, as set out in the Receiver's Motion and the Second Report:
 - (a) Sirocco guaranteed QLI's indebtedness to Tewoo pursuant to a guarantee dated August 19, 2014 (the "**Guarantee**"), and pledged its shares in Boron Chemical Holdings Ltd. ("**Boron**") [Rec. Mot., para 25; Sec. Rep., p 4].
 - (b) Sirocco has no known third-party debt other than amounts owed to Tewoo pursuant to the Guarantee [Sec. Rep., p 4].
 - (c) Atacama Minerals Chile S.C.M. ("**AMC**") is indebted to Chempro Finance Ltd. ("**Chempro**") [Rec. Mot., paras 31-33; Sec. Rep., p 6].
 - (d) The purchaser of the lithium project in the receivership had an option to acquire the shares of Sirocco for \$10,000 and declined to do so [Rec. Mot., para 56; Sec. Rep., p 10]. The purchaser also has a right of first refusal which will expire on July 5, 2017 [Rec. Mot., para 57; Sec. Rep., p 10].
 - (e) The Receiver is of the view that there are no assets of realizable value in Sirocco's dormant subsidiaries [Rec. Mot., para 61].
 - (f) The Receiver is of the view that the shares of Sirocco, as ultimate shareholder of AMC, and shareholder of Chempro, have no realizable value [Rec. Mot., para 63; Sec. Rep., pp 11-12].
4. Since the filing of the Receiver's Motion, counsel for Tewoo has been in discussions with the Receiver and counsel for the Receiver to determine whether there is a way to preserve Tewoo's ability to receive some recovery on account of its debt in the event the market for iodine improves or the outlook for the Aguas Blancas project improves.
5. Because of the debt owed to Chempro, merely enforcing on the pledge of Sirocco's shares in Boron may not be sufficient to realize any recovery from value in the Aguas Blancas project, if any.

6. In addition, counsel for Tewoo was informed by management of AMC that repayment of the Chempro debt would be taxed at a lower rate than distributions to equity, and as such provides a more efficient vehicle for recovery of value.

II. THE DIVESTITURE

7. In the context of discussions with the Receiver and its counsel, Tewoo was informed that, considering the lack of interest in the Sirocco shares and the absence of known creditors, the Receiver would not object to Tewoo implementing any mechanism whereby it could take possession of and become owner of the Sirocco shares, so long as the Receiver could not incur liability or be exposed to such liability. Accordingly, in practical terms, this means that the Receiver is not in a position to take any positive action to effect the conveyance of the Sirocco Shares to Tewoo without the Court's order or supervision.
8. Akin to remedies available through the Civil Code of Quebec, namely giving in payment, the relief requested by Tewoo would see the Shares deemed abandoned by the Receiver or divested from the Receiver and vested in Tewoo.

III. MOTIVES JUSTIFYING THE RELIEF SOUGHT

9. Courts in receivership are given broad jurisdiction and authority to cause a receiver to take any action the court considers advisable if the court considers it to be "just and convenient" to do so [BIA, s 243].
10. In the circumstances, it is just and convenient to enable Tewoo to preserve some possible future recovery in the manner requested. Specifically:
 - (a) Tewoo is the only known third-party creditor of Sirocco;
 - (b) Tewoo is a secured creditor with respect to the shares of Boron;
 - (c) Tewoo has recovered nothing in respect of its debt in these proceedings and has fully supported all of the Receiver's and Debtors' initiatives, measures and decisions in view of giving the Debtors, the Monitor and Receiver every opportunity to maximize recovery of assets and restructure its affairs;
 - (d) the Receiver does not think value is recoverable in respect of the Shares;
 - (e) vesting the Shares in Tewoo avoids the expense and delay of enforcement proceedings in British Columbia, Antigua and Barbuda, and/or Bermuda; and
 - (f) it is unclear where the share certificates are located and what personal property law would apply thereto.

- (g) there no longer exists any governance, management or activities whatsoever in respect of Sirocco.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [1] **DECLARE** sufficient and valid the service and notice of the Motion *for an Order Authorizing the Divestiture of Certain Assets of Sirocco Mining Inc. and for a Vesting Order* (the "**Motion**") on all persons and that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and **DISPENSE** with any further requirements for service or notice thereof **PERMIT** service of the Order to be rendered herein at any time and place and by any means whatsoever;

APPROVAL OF TRANSFER

- [2] **PRAYS ACT** of the Receiver's determination that the Shares have no realizable value, as set forth in the Second Report of the Receiver, dated June 20, 2017 Report and the Receiver's *Application for the Termination of the Receivership and for a Discharge Order with Respect to QLI Métaux Inc., RB Energy Inc. and Sirocco Mining Inc.* (the "**Receiver's Motion**");
- [3] **ORDER AND DECLARE** that the Shares are deemed abandoned by the Receiver as of the date hereof to the benefit of Tianjin Products and Energy Resources Development Co., Ltd. ("**Tewoo**") as creditor of Sirocco Mining Inc. ("**Sirocco**") (the "**Divestiture**");
- [4] **ORDER AND DECLARE** that the Divestiture is hereby approved, and given immediate effect;

EXECUTION OF DOCUMENTATION

- [5] **AUTHORIZE** Tewoo and/or Sirocco to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking which could be required or useful to give full and complete effect to the Divestiture;

AUTHORIZATION

- [6] **ORDER and DECLARE** that this Order shall constitute the only authorization required to proceed with the Divestiture and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith;

VESTING OF SHARES

- [7] **ORDER and DECLARE** that as of the date hereof, all rights, title and interest in and to the Shares shall vest absolutely and exclusively in and with Tewoo, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on

transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the British Columbia Personal Property Security Act, or any other applicable legislation providing for a security interest in personal or movable property, and, for greater certainty, **ORDER** that all of the Encumbrances affecting or relating to the Shares be expunged and discharged as against the Shares;

- [8] **DECLARE** that the Divestiture shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*;

WITHOUT PREJUDICE TO OTHER REMEDIES

- [9] **ORDER** and **DECLARE** that the vesting of the Shares in Tewoo shall not result in an extinction of the debt owed to Tewoo by Sirocco and is without prejudice to the rights of Tewoo to exercise its rights or other relief with respect to such debt;

VALIDITY OF THE TRANSACTION

- [10] **ORDER** that notwithstanding:

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Shares contemplated in this Order is to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against Sirocco, Tewoo or the Receiver;

LIMITATION OF LIABILITY

- [11] **DECLARE** that no action lies against the Receiver by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

GENERAL

- [12] **ORDER** that Tewoo or Sirocco shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances;

- [13] **DECLARE** that this Order shall have full force and effect in all provinces and territories in Canada;
- [14] **DECLARE** that Tewoo shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, Antigua and Barbuda, Chile or elsewhere, for orders which aid and complement the Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to Tewoo as may be deemed necessary or appropriate for that purpose;
- [15] **REQUEST** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [16] **ORDER** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.

Vancouver, June 30, 2017



DENTONS CANADA LLP

Attorneys for Tianjin Products and Energy
Resources Development Co., Ltd.

AFFIDAVIT OF TEVIA JEFFRIES

I, the undersigned, **TEVIA JEFFRIES**, lawyer, doing business at 250 Howe Street, Vancouver, British Columbia (V6C 3R8), solemnly declare as follows:

1. I am a partner of Dentons Canada LLP, counsel for Tianjin Products and Energy Resources Development Co., Ltd.;
2. All the facts alleged in the present *Motion for an Order Authorizing the Divestiture of Certain Assets of Sirocco Mining Inc. and for a Vesting Order* not otherwise alleged in the Receiver's *Application for the Termination of the Receivership and for a Discharge Order with Respect to QLI Métaux Inc., RB Energy Inc. and Sirocco Mining Inc.* and the Second Report of the Receiver dated June 20, 2017, are true.

AND I HAVE SIGNED:



TEVIA JEFFRIES

SWORN TO before me at Vancouver, BC, this 30
day of June 2017



Commissioner for Oaths for British Columbia

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NOTICE OF PRESENTATION

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TAKE NOTICE that this *Motion for an Order Authorizing the Divestiture of Certain Assets of Sirocco Mining Inc. and for a Vesting Order* will be presented for adjudication before the Honourable Jean-François Michaud of the Superior Court of Quebec **in a room and at a time to be determined by the Court and to be subsequently communicated to counsel.**

Vancouver, June 30, 2017



DENTONS CANADA LLP

Attorneys for Tianjin Products and Energy
Resources Development Co., Ltd.