Amended pursuant to Supreme Court Civil Rule 6-1(1)(a)(i)
Original filed on 29 / Apr / 2014

No. B131400
Estate No. 11-1806986
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
EASTCOAL INC.

AMENDED NOTICE OF APPLICATION

Name of applicant: EastCoal Inc.

To: Deloitte Restructuring Inc., proposal trustee
TSX Venture Exchange Inc.
George Lawton
Office of the Superintendent of Bankruptcy

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC on 20 / May / 2014 at 9:45 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 "A"** approving the Proposal and the various transactions associated therewith, extending the stay of proceedings to apply to the TSX Venture Exchange Inc., and certain ancillary relief.

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

Part 2: FACTUAL BASIS

1. EastCoal Inc. (the "**Company**") is a publicly listed company which developed and operated (through wholly owned subsidiaries) coal mining interests in the Ukraine. The Company is currently listed on the AIM market of the London Stock Exchange and the NEX exchange as administered by the TSX Venture Exchange Inc.

2. At the commencement of these proceedings, the Company's primary asset was a mine located in South Eastern Ukraine, known as the "Verticalnaya Mine" (the "**Mine**"), which the Company operated through a wholly owned subsidiary.

3. The Mine was in the development stage and the Company had been seeking to bring the Mine to targeted production.

4. While the Company was able to raise significant capital in early 2013, certain regulatory and operational delays prevented the Company from achieving target production at the Mine. As a result, the Company's financial situation became critical in November, 2013, following which the Company filed a Notice of Intention to Make a Proposal (the "**NOI**") on November 5, 2013. Deloitte Restructuring Inc. (the "**Trustee**") was appointed trustee in these proposal proceedings.

5. Upon filing the NOI, the Company undertook an extensive marketing process, resulting in the sale of substantially all of the Company's assets. The asset sales were approved by the Court on January 16, 2014.

6. The time for filing a proposal in this proceeding was extended pursuant to various orders, the most recent of which provided a proposal was to be filed on or before April 17, 2014.

7. Since the completion of the asset sales, the Company has sought to complete a further transaction to capitalize on its status as a publicly listed vehicle which would see the creditors recover more than what they might in a bankruptcy. The Company has now entered into several share subscription agreements (the "**Agreements**") with various existing shareholders, including some (and possibly all) of the existing directors (the "**Investors**").

8. The transactions contemplated by the Agreements (the "**Share Subscriptions**") will result in the Investors owning 95% of the equity of the Company leaving the existing shareholders with an ongoing stake, albeit small, in the Company.

9. The Company filed its proposal to creditors on April 10, 2014 (the "**Proposal**").

10. Under the terms of the Proposal, a portion of the proceeds from the Share Subscriptions will be used to fund a payment to unsecured creditors. The indebtedness to the secured creditor will be extended for a year, subject to certain conversion rights.

11. On April 22, 2014, those creditors voting on the Proposal (either in person or by proxy) voted unanimously to approve the Proposal.

12. The Share Subscriptions will result in the Company breaching certain listing policy rules of the NEX exchange. Policies of the NEX exchange are enforced by the "NEX Board", which is administered by TSX Venture Exchange Inc. (herein, the "**Exchange**"). As a result of these breaches, the Exchange would ordinarily have discretion to delist the Company from the NEX exchange.

13. The Company has had several discussions with the Exchange. To date, the Exchange has declined to waive the breaches of certain policy rules that would result from the Share Subscriptions, which could lead to the Company being delisted.

14. It is critical to the investment contemplated by the Agreements that the Company remain listed on the NEX exchange. As a result, both the Agreements and the Proposal are conditional on the Court granting an order applying the stay of proceedings to the Exchange and restraining the Exchange from delisting the Company as a result of the transactions contemplated by the Proposal and the Subscription Agreements.

15. If the Company is delisted by the Exchange, it will be unable to complete the transactions contemplated by the Proposal, and creditors will be faced with a bankruptcy scenario where they will recover very little on their claims and the existing shareholders' interest will be effectively eliminated.

16. As such, the Proposal represents the only option for preserving any value in the Company for existing shareholders.

Part 3: LEGAL BASIS

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), ss. 58, 59 and 69.6, *Bankruptcy and Insolvency General Rules*, C.R.C. 1978, c. 368, r. 6(4), and the inherent jurisdiction of this Honourable Court.

Approval of Proposal

2. Before a proposal can be approved, the Court must be satisfied that:

   (a) the terms are reasonable;

   (b) the terms are calculated to benefit the general body of creditors; and

   (c) the proposal is made in good faith.

3. The Court must also be satisfied that the formalities of the *BIA* have been complied with, and that the terms required by the *BIA* to be included in the proposal are in fact included.

Re Magnus One Energy Corp. (2009), 53 C.B.R. (5th) 243 (Alta Q.B.)

4. The Court is not bound to approve a proposal even though it has been given an unqualified recommendation by the trustee and the overwhelming support of creditors. However, where a proposal has been approved by a large majority of creditors and is recommended by the trustee, a substantial deference will be accorded to their views.

Re Abou-Rached (2002), 5 C.B.R. (4th) 165 (B.C.S.C.)

Amendment of Articles

5. Pursuant to section 13 of the Agreements (as attached to the Proposal), the Company is required to complete a 10:1 consolidation of shares as part of the Share Subscriptions.

6. The Articles of the Company provide that, subject to (among other things) any regulatory or stock exchange requirements, the Company may by directors' resolution consolidate all or any of its unissued, or fully paid issued, shares.

7. NEX Policy 10.1 requires shareholders' approval for a share consolidation.

8. Pursuant to section 59(4) of the BIA, if the Court approves a proposal, "it may order that the debtor's constating instrument be amended in accordance with the proposal to reflect any change that may lawfully be made under federal or provincial law".

9. Section 54 of the *Business Corporations Act*, S.B.C. 2002, c. 57 (the "**BCA**") authorizes a company to effect a consolidation of shares by passing the type of resolution specified in the Articles, and therefore contemplates approval by director resolution.

Stay of Proceedings Against Regulatory Body

10. Pursuant to subsection 69.6(2) of the BIA, the stay of proceedings imposed by filing a proposal does not affect (among other things) any action, suit or proceeding that is taken in respect of an insolvent person by a regulatory body, other than the enforcement of a payment order.

11. Pursuant to subsection 69.6(3) of the BIA, the court may order (on notice to the regulatory body) that subsection 69.6(2) does not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if, in the court's opinion:

    (a) a viable proposal could not be made in respect of the insolvent person if that subsection were to apply; and

    (b) it is not contrary to the public interest that the regulatory body be affected by the stay provided by section 69 or 69.1.

Relief from Obligation to Account for Profits

12. Sections 147 to 153 of the BCA provide a framework governing agreements that directors or senior officers of a company enter into with that company and which may give rise to a conflict of interest.

13. Pursuant to section 147 of the BCA, a director or senior office holds a "disclosable interest" in a contract or transaction if it is material to the company, the company has entered into the contract or transaction, and the director or senior officer holds a material interest in the contract or transaction.

14. Pursuant to section 148 of the BCA, a director or senior officer is liable to account to the company for all profits that accrue to him or her as a result of a contract or transaction which the director or senior officer holds a disclosable interest in, unless certain conditions are met or the court orders otherwise.

15. The two primary conditions are director approval from the directors without a disclosable interest (pursuant to section 148(2)(b)) or a special resolution of the shareholders (pursuant to section 148(2)(c)).

16. The interests of the directors who are investing in the restructuring under the Agreements constitute "disclosable interests". As all of the directors may be party to the Agreements, it is not possible to obtain director approval. Given the Company's limited financial resources, it is not practical to hold a shareholder meeting on this matter.

17. Pursuant to section 150 of the BCA, the Court may, if it determines that a contract or transaction in which a director or senior officer has a disclosable interest was fair and reasonable to the company,

(a) order that the director or senior officer is not liable to account for any profit that accrues to the director or senior officer under or as a result of the contract or transaction, and

(b) make any other order that the court considers appropriate.

Relief from Valuation and Minority Approval Obligation

18. Multilateral Instrument 61-101, "Protection of Minority Security Holders in Special Transactions" ("**MI 61-101**"), is incorporated into the NEX Policies. Sections 5.4 to 5.7 of MI 61-101 provide that, subject to certain exceptions, a company is required to obtain a formal valuation and seek minority approval of any "related party transaction".

19. As MI 61-101 is adopted by the *Securities Act*, an extension of the stay of proceedings to the Exchange, as contemplated above, would not absolve the Company of its obligations under MI 61-101.

20. The Proposal and the Agreements involve investments by directors and significant shareholders, and the Transactions therefore qualify as a "related party transaction" under MI 61-101.

21. Under section 5.4 of MI 61-101, the Company would ordinarily need to prepare a valuation of the Company before completing the transactions. In addition, under section 5.6 of MI 61-101, the Company would ordinarily be required to obtain "minority approval" from non-interested shareholders before completing the transactions.

22. However, under sections 5.5(f) and 5.7(1)(d) of MI 61-101, the valuation and minority approval need not be obtained where:

(a) the transaction is subject to court approval, or the court orders that the transaction be effected, under bankruptcy or insolvency law;

(b) the court is advised of the requirements of MI 61-101 regarding formal valuations and minority approval for related party transactions, and of the provisions of 5.5(f) and 5.7(1)(d); and

(c) the court does not require compliance with sections 5.4 and 5.6.

Payment of Trustee Interim Fees

23. Section 5.2 of the Proposal requires court approval prior to any interim draw by the Trustee.

Part 4: MATERIAL TO BE RELIED ON

1. Order made 03 / Mar / 2014, extending proposal proceedings;

2. Affidavit #4 of Abraham Jonker, to be sworn;

3. The Proposal Trustee's Fourth Report to the Court, to be filed; and

4. Such further and other material as counsel may advise and this Honourable Court may permit.

The applicant(s) estimate(s) that the application will take 10 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 of 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: 08 / May / 2014

Signature of lawyer for filing party
John R. Sandrelli and
Jordan Schultz

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

☐ 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

SCHEDULE "A"

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IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
EASTCOAL INC.

ORDER MADE AFTER APPLICATION

	) THE HONOURABLE	)	
BEFORE	)	)	20 / May / 2014
	) _____ JUSTICE _____	)	

ON THE APPLICATION of Eastcoal Inc., coming on for hearing at Vancouver, British Columbia, on this day and on hearing Jordan Schultz, counsel for Eastcoal Inc., and no one else appearing although duly served;

THIS COURT ORDERS AND DECLARES that:

1. The Proposal of Eastcoal Inc. (the "**Company**") dated April 10, 2014, and filed herein (the "**Proposal**"), is hereby approved.

2. The Share Subscription Agreements and transactions contemplated by the Proposal (collectively, the "**Transactions**") are hereby approved, and the Company is hereby directed to effect and complete the Transactions.

3. The Articles of EastCoal Inc. are hereby amended such that, notwithstanding any restriction contained therein, the Company may, for the purposes of meeting the conditions and terms of the Transactions, consolidate all or any of its unissued, or fully paid issued, shares by directors resolution.

4. Subsection 69.6(2) of the *Bankruptcy and Insolvency Act* (the "**BIA**") does not apply in respect of any action, suit or proceeding taken by or before TSX Venture Exchange Inc. (the "**Exchange**") due to, or as a result of, the Transactions, and the Exchange is hereby stayed from taking any step to delist the Company due to, or as a result of, the Transactions.

5. Pursuant to section 150(1)(a) of the *Business Corporations Act*, any director or senior officer that is party to any of the Transactions is not liable to account to the Company for any profit that accrues to the director or senior officer under or as a result of the Transaction.

6. Having been advised of the requirements of Multilateral Instrument 61-101 ("**MI 61-101**") regarding formal valuations for related party transactions, the provisions of paragraph 5.5(f) of MI 61-101, minority approval of related party transactions and the provisions of paragraph 5.7(1)(d) of MI 61-101

   (a) compliance with section 5.4 of MI 61-101, solely in relation to the Transactions, is not required; and

   (b) compliance with section 5.6 of MI 61-101, solely in relation to the Transactions, is not required.

7. Deloitte Restructuring Inc., in its capacity as trustee under the Proposal, is hereby authorized and entitled to pay its interim fees, subject to final taxation.

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 Jordan Schultz
Lawyer for Eastcoal Inc.

By the Court.

_____
Registrar

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IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
EASTCOAL INC.

ORDER MADE AFTER APPLICATION

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Attn: Jordan Schultz