

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF  
EASTCOAL INC.

**NOTICE OF APPLICATION**

**Name of applicant: EastCoal Inc.**

To: Deloitte Restructuring Inc., the proposal trustee herein  
Surrey Dynamics Inc.  
George Lawton  
Office of the Superintendent of Bankruptcy

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, BC on 16 / Jan / 2014 at 9:45 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order extending the time for filing the Proposal herein by 45 days to March 3, 2014.
2. An order, substantially in the form attached hereto as **Schedule "A"**, approving the sale of 100% of the shares of East Coal Company LLC, 100% of the shares of Ukraine Energy Ltd. and certain intercompany debt to EFI Holding GmbH.
3. An order, substantially in the form attached hereto as **Schedule "B"**, approving the sale of 100% of the shares of Inter-Invest Coal LLC and certain intercompany debt to Strong Group Corporation Limited.
4. 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 develops and operates (through wholly owned subsidiaries) coal mining interests in the Ukraine.
2. The Company's primary asset is a mine located in South Eastern Ukraine, known as the "Verticalnaya Mine" (the "**Mine**"), which the Company operates through a wholly owned subsidiary.
3. The Mine is currently in the development stage, and the Company has been seeking to bring the Mine to targeted production through capital raised to date.
4. While the Company was able to raise significant capital in early 2013, certain regulatory and operations 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 File a Proposal (the "**NOI**") on November 5, 2013. Deloitte Restructuring Inc. (the "**Trustee**") was appointed trustee in these proposal proceedings.
5. The Company's assets are made up of (i) cash and (ii) shares in subsidiary companies through which it develops and operates its mining interests.
6. The Company's liabilities, as reported in the NOI, are made up of:
  - (a) secured claims of approximately \$200,000; and
  - (b) unsecured claims of approximately \$2,800,000.
7. Pursuant to an Order made December 5, 2013, the deadline by which the Company was required to file a proposal in this proceeding was extended to January 17, 2014.
8. Since the date of the NOI, the Company has undertaken an extensive marketing process to seek further financing or, alternatively, a sale of its assets. The results of those efforts are two offers for, collectively, substantially all of the Company's assets, and in particular:
  - (a) a sale of the assets related to the Mine to EFI Holding GmbH for US \$500,000; and

- (b) a sale of the assets related to the Menzhinsky mine (currently in liquidation proceedings) to Strong Group Corporation Limited for US \$15,020.
- 9. The proceeds from the foregoing sale transaction will be used to fund a proposal to the creditors, and ongoing corporate expenditures through the end of this proposal process.
- 10. The Company is also seeking a further extension of the time to file a proposal, during which time it intends to pursue a transaction to capitalize on its status as a publicly listed vehicle with significant tax losses.
- 11. A condition to any such transaction will be a successful proposal to the Company's creditors, in order to provide a "clean" debt-free company, and if successful would likely improve the terms of any proposal the Company is able to offer to its creditors.
- 12. The Company has undertaken this process in good faith and is proceeding with due diligence.
- 13. The Company and its management have been fully co-operative with the Trustee.
- 14. The Company will have sufficient cash on hand to carry it through this process.
- 15. The Company is not aware of any creditor who would be materially prejudiced by an extension of time for filing a proposal.

### **Part 3: LEGAL BASIS**

#### **Extension of Time for Filing Proposal**

- 1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), s. 50.4(9), and the inherent jurisdiction of this Honourable Court.
- 2. The Court may grant an extension of time to file a proposal, for up to 45 days, if it is satisfied that:
  - (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
  - (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

**Sale of Assets**

- 3. BIA, ss. 65.13 and the inherent jurisdiction of this Honourable Court.
- 4. The statutory factors for the Court to consider in determining whether to authorize the sale of assets are:
  - (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - (b) whether the Trustee approved the process leading to the proposed sale or disposition;
  - (c) whether the Trustee 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.

**Part 4: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Abraham Jonker, made 28 / Nov / 2013;
- 2. The Proposal Trustee's First Report to the Court, dated 29 / Nov / 2013;
- 3. Order made 05 / Dec / 2013;
- 4. The Proposal Trustee's Second Report to the Court, dated 09 / Jan / 2014;
- 5. Affidavit #2 of Abraham Jonker, to be sworn;
- 6. Such further and other material as counsel may advise and this Honourable Court may permit.

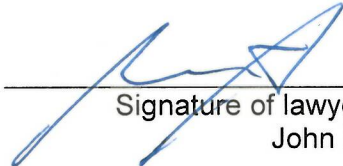
The applicant(s) estimate(s) that the application will take 15 minutes.

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

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: 09 / Jan / 2014

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

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:
<hr style="border: 0; border-top: 1px solid black;"/> <hr style="border: 0; border-top: 1px solid black;"/> <hr style="border: 0; border-top: 1px solid black;"/>	
Date:	<hr style="border: 0; border-top: 1px solid black;"/> Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

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## 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"

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.

**ORDER MADE AFTER APPLICATION**

**APPROVAL AND VESTING ORDER**  
**[EFI TRANSACTIONS]**

BEFORE ) THE HONOURABLE )  
) ) 16 / Jan / 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 sale transactions (the "**Transactions**") contemplated by:
  - (a) the Sale and Purchase Agreement between EFI Holding GmbH ("**EFI**") and EastCoal Inc. ("**EastCoal**") in respect of EastCoal's 0.1% interest in East Coal Company LLC ("**ECC**"), a copy of which is attached as Exhibit "A" to the Affidavit #2 of Abraham Jonker (the "**Affidavit**");
  - (b) the Sale and Purchase Agreement between EFI and Gramsico Holdings Ltd. ("**Gramsico**") in respect of Gramsico's 99.9% interest in ECC, a copy of which is attached as Exhibit "B" to the Affidavit;
  - (c) the Sale and Purchase Agreement between EFI and EastCoal in respect of EastCoal's 0.1% interest in Ukraine Energy Ltd. ("**UEL**"), a copy of which is attached as Exhibit "C" to the Affidavit;

- (d) the Sale and Purchase Agreement between EFI and Gramsico in respect of Gramsico's 99.9% interest in UEL, a copy of which is attached as Exhibit "D" to the Affidavit; and
- (e) the Claim Assignment Agreement between EFI and EastCoal, a copy of which is attached as Exhibit "E" to the Affidavit

(collectively, the "**Sale Agreements**"),

are hereby approved, and the Sale Agreements are commercially reasonable. The execution of the Sale Agreements by EastCoal and Gramsico, respectively, are hereby authorized and approved, and EastCoal and Gramsico are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance to EFI of the assets described in the Sale Agreements (the "**Purchased Assets**").

2. Upon delivery by EastCoal to EFI of a certificate confirming completion of the Transactions (the "**Closing Certificate**"), all of EastCoal's and Gramsico's right, title and interest in and to the Purchased Assets described in the Sale Agreements shall vest absolutely in EFI in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system, and, for greater certainty, this Court orders that all encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Completion Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.



4. EastCoal is to file with the Court a copy of the Closing Certificate forthwith after delivery thereof.
5. EastCoal, Gramsico and EFI shall be at liberty to extend the closing date to such later date as those parties may agree without the necessity of a further Order of this Court.
6. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of EastCoal now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of EastCoal,

the vesting of the Purchased Assets in EFI pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of EastCoal and shall not be void or voidable by creditors of EastCoal, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist EastCoal and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to EastCoal as may be necessary or desirable to give effect to this Order or to assist EastCoal and its agents in carrying out the terms of this Order.

8. EastCoal or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

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:

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Signature of Jordan Schultz  
Lawyer for EastCoal Inc.

BY THE COURT

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REGISTRAR

SCHEDULE "B"

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.

**ORDER MADE AFTER APPLICATION**

**APPROVAL AND VESTING ORDER**  
**[STRONG TRANSACTIONS]**

BEFORE ) THE HONOURABLE )  
) ) 16 / Jan / 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 sale transactions (the "**Transactions**") contemplated by:
  - (a) the Sale and Purchase Agreement between Strong Group Corporation Limited ("**Strong**") and EastCoal Inc. ("**EastCoal**") in respect of EastCoal's 0.1% interest in Inter-Invest Coal LLC ("**IIC**"), a copy of which is attached as Exhibit "F" to the Affidavit #2 of Abraham Jonker (the "**Affidavit**");
  - (b) the Sale and Purchase Agreement between Strong and Gramsico Holdings Ltd. ("**Gramsico**") in respect of Gramsico's 99.9% interest in IIC, a copy of which is attached as Exhibit "G" to the Affidavit;
  - (c) the Assignment Agreement between Strong and EastCoal, a copy of which is attached as Exhibit "H" to the Affidavit;

- (d) the Assignment Agreement No. 1 between Strong and EastCoal, a copy of which is attached as Exhibit "I" to the Affidavit;
- (e) the Assignment Agreement No. 2 between Strong and EastCoal, a copy of which is attached as Exhibit "J" to the Affidavit

(collectively, the "**Sale Agreements**"),

are hereby approved, and the Sale Agreements are commercially reasonable. The execution of the Sale Agreements by EastCoal and Gramsico, respectively, are hereby authorized and approved, and EastCoal and Gramsico are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance to Strong of the assets described in the Sale Agreements (the "**Purchased Assets**").

2. Upon delivery by EastCoal to Strong of a certificate confirming completion of the Transactions (the "**Closing Certificate**"), all of EastCoal's and Gramsico's right, title and interest in and to the Purchased Assets described in the Sale Agreements shall vest absolutely in Strong in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system, and, for greater certainty, this Court orders that all encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Completion Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

4. EastCoal is to file with the Court a copy of the Closing Certificate forthwith after delivery thereof.
5. EastCoal, Gramsico and Strong shall be at liberty to extend the closing date to such later date as those parties may agree without the necessity of a further Order of this Court.
6. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of EastCoal now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of EastCoal,

the vesting of the Purchased Assets in Strong pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of EastCoal and shall not be void or voidable by creditors of EastCoal, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist EastCoal and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to EastCoal as may be necessary or desirable to give effect to this Order or to assist EastCoal and its agents in carrying out the terms of this Order.

8. EastCoal or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

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