

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

RE EXPRESS GOLD REFINING LTD

Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order     Direction for Registrar (No formal order need be taken out)  
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)  
 Adjourned to: \_\_\_\_\_  
 Time Table approved (as follows):

① I heard this Initial Application today via zoom teleconference.

② In light of the complexity of the relief sought in the draft initial order and

\_\_\_\_\_ Date

\_\_\_\_\_ Judge's Signature

Additional Pages \_\_\_\_\_

(2)

The very limited time available for the hearing today, I directed that the draft initial order be revised to reflect only the basic requirements of the Applicant at this time. I am satisfied that the relief sought in the revised draft initial order is reasonably necessary for the Applicant to maintain the status quo until the comeback hearing. Blaitte Lestrade is appointed Master and consents to this appointment.

(3) The comeback hearing is scheduled for Monday

(3)

October 19, 2020 at 2pm  
before McEwen J who will  
consider the balance of the  
relief sought by the  
Applicant.

(4) Although the Canada  
Revenue Agency ("CRA")  
was not present for the  
hearing today, I understand  
that the Applicant wishes  
to engage in meaningful  
discussions with CRA  
through this CAA process.  
CRA appears to be an  
important stakeholder and  
I am hopeful that, with the

(4)

assistance of my monitor,  
meaningful discussions  
can take place between the  
Applicant and CPA before  
the Comeback Hearing with  
a view to settling all or  
some of the issues that  
arise on this application.

(5) Order to go on the terms  
of the attached Initial  
Order.

October 15, 2020

Fainley J.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) THURSDAY, THE 15<sup>TH</sup>  
JUSTICE HAINES )  
DAY OF OCTOBER, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS GOLD REFINING LTD.  
(the "Applicant")

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INITIAL ORDER

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THIS INITIAL APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Atef Salama sworn October 14, 2020 and the exhibits thereto (collectively, the "**Salama Affidavit**"), and on reading the pre-filing report of Deloitte Restructuring Inc. ("**Deloitte**") as proposed monitor, and on hearing the submissions of counsel for the Applicant and Deloitte, and on reading the consent of Deloitte to act as the monitor (in such capacity, the "**Monitor**"),

**INITIAL APPLICATION**

1. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

2. THIS COURT ORDERS AND DECLARES that the herein Order is effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date it is made.

3. THIS COURT ORDERS AND DECLARES (i) that the time for service of the Notice of Application and the Application Record, as to the parties on whom those were served, is hereby abridged and validated, and that this Application is properly returnable today, and (ii) that the Applicant or the Monitor shall serve on the Canada Revenue Agency (“CRA”) as well as any other Person (as defined hereafter) whose rights may be affected by this Order, in accordance with paragraphs 25 to 28 hereof and at the latest at 2 p.m. Toronto time on the day after the date of this Order, a copy of (a) this Order, and (b) the application record filed in respect of the herein application.

4. THIS COURT ORDERS that the Applicant, the Monitor and any Person having an interest in the herein proceeding shall attend before this Court for a hearing on October 19, 2020 at 2 p.m. (Toronto time) and make relevant representations, including on the extension of this Order for an additional time period.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case

incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay or otherwise deal with its creditors' claims, whether arising before or after the making of this Order, in accordance with the contracts and agreements in place as of the date of this Order, or that may be mutually agreed upon thereafter.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order; and
- (c) payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date or thereafter.

9. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, “Sales Taxes”) required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. THIS COURT ORDERS that the Applicant is hereby directed, until further Order of this Court:

- (a) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (b) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

11. THIS COURT ORDERS that from the date of the present Order and until and including Monday, October 19, 2020, or such later date as this Court may order (the “Stay Period” or the “Stay”), no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, and any and all Proceedings currently underway against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended.



## **NO EXERCISE OF RIGHTS OR REMEDIES**

12. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities, as those terms may be understood in their broadest sense (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property (each such right, a "**Stayed Right**"), are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

13. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

14. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier

or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

15. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

16. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations (including, but not limited to Proceedings arising from section 323 of the ETA), until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION**

17. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

## **APPOINTMENT OF MONITOR**

18. THIS COURT ORDERS that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant as to the herein proceedings, including the eventual formulation of a plan of arrangement or compromise;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

20. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

22. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

23. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

24. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant incurred in respect of these proceedings or attendant matters both before and during the period for which this Order is effective, and the Applicant is further hereby authorized to pay to the Monitor and counsel to the Applicant, retainers in the amount of \$50,000 for the former and \$40,000 for the latter, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**E-Service Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the E-Service Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the E-Service Protocol, service of documents in accordance with the E-Service Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in

accordance with the E-Service Protocol with the following URL: [insolvencies.deloitte.ca/en-ca/ExpressGoldRefiningLtd].

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the E-Service Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. THIS COURT ORDERS that except to the extent incompatible with paragraphs 25 to 27 hereof, due to the COVID-19 pandemic and save Court instructions, the *Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media* dated May 13, 2020, as amended (the "**Consolidated Notice**"), the text of which is available at [ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice], and the guidelines set out on the *Changes to Commercial List Operations in light of COVID-19* available at [ontariocourts.ca/scj/changes-to-commercial-list-operations-in-light-of-covid-19], as both may be amended or supplemented from time to time, shall apply to the herein proceeding.

#### **GENERAL**

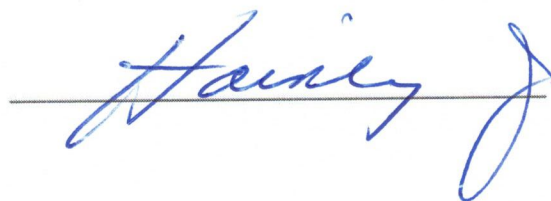
29. THIS COURT ORDERS that the Applicant or the Monitor may apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective 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 the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

32. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Hainley J".

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

AND IN THE MATTER OF A COMPROMISE OR ARRANGEMENT OF  
EXPRESS GOLD REFINING LTD.

Court File No. \_\_\_\_\_

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced in TORONTO

**INITIAL ORDER**

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