

FORCE FILED

No. S2110503
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 OTSO GOLD CORP., OTSO GOLD OY, OTSO GOLD AB, and
2273265 ALBERTA LTD.

PETITIONERS

NOTICE OF APPLICATION

Name of applicants: Petitioners

To: Service List

TAKE NOTICE that an application will be made by the applicants to the Honourable Mr. Justice Gomery at the courthouse at Vancouver, BC on December 13, 2021 at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order extending the Stay Period as defined in the Initial Order pronounced December 3, 2021 (the "Initial Order") in these proceedings to January 14, 2021.
2. An order increasing the Administration Charge from \$100,000 to \$300,000.

Part 2: FACTUAL BASIS

1. On December 3, 2021 this Court pronounced the Initial Order.
2. Since the Initial Order, the Petitioners have:
 - (a) Obtained creditor protection in Sweden and Finland;
 - (b) Served materials on stakeholders and communicated with them;
 - (c) Taken further steps to obtain records of the Petitioners;
 - (d) Conducted further review of business and financial records; and
 - (e) Considered the next steps in their restructuring.

3. Each is discussed further below.

Foreign Proceedings

4. The Petitioners have obtained creditor protection in each of Sweden and Finland.
5. On December 7, in the District Court of Oulu, proceeding no. 2296579-4 (the “Finnish Proceeding”), Otso Gold Oy obtained an order:
 - (a) Staying all proceedings against it; and
 - (b) Requiring Otso Gold Oy to produce a statement by a certified auditor on certain material aspects of its restructuring application by December 31, subject to an application to extend that deadline.
6. On December 7, in the District Court of Södertön, case no. Ä-20470-21 (the “Swedish Proceeding”), Otso Gold Ab obtained a stay of proceedings until March 7, 2022 subject to further extension, and with a creditors’ meeting to be held on December 22, 2021.
7. The Petitioners are consulting with their advisors to determine an appropriate main proceeding. In particular, the Petitioners understand that Finnish courts will not recognize and enforce a Canadian insolvency proceeding, so the Petitioners are considering and require time to consider the jurisdictional issues.

Stakeholders

8. The Petitioners have served the Petition and supporting materials on Pandion Mine Finance LP and PFL Raahe Holdings Ltd. (together, “Pandion”) as well as Lionsbridge Pty Ltd. (“Lionsbridge”) and the federal and provincial governments in accordance with the relevant statutes.
9. The Petitioners have particularly engaged with Pandion, their secured creditor, and have facilitated meetings with Pandion and their counsel with Alvarez & Marsal ULC (“A&M”) as well as with the Petitioners to obtain more information.
10. The Petitioners have also sought specific information from Pandion to better understand its claimed indebtedness owing from the Petitioners, which was not disclosed in the Petitioners’ financial statements. Pandion is asserting that its indebtedness increased from approximately US\$25 million to US\$95 million on December 8, 2021. The Petitioners are considering this position.

Access to Records

11. The Petitioners are making efforts to obtain control of their business, including from Lionsbridge. The Petitioners demanded certain business assets on December 1 from Lionsbridge. Lionsbridge responded on December 3, and the Petitioners again on December 5.

12. There are matters that remain in dispute between the Petitioners and Lionsbridge, including the return of:
 - (a) the Petitioners' e-mails server, document servers, and data room; and
 - (b) other property, including computers and phone.
13. The question of the status of the Services Agreement (as defined in the Petition) remains in dispute. The Petitioners require time to resolve that issue to bring stability to the operations of its mine.
14. The Petitioners are also taking steps to retain control of their bank accounts.

Review of Records and Next Steps

15. Based on the Petitioners' review of records since December 3, 2021 they have learned that:
 - (a) The production, operating costs, maintenance capital expenditure, and revenue projections set out in the Petitioners' earlier models (produced by prior management) were overly optimistic; and
 - (b) The mine plan for the Otso Gold Mine ends next week, being December 17.
16. The absence of a mine plan means the Otso Gold Mine cannot continue to operate, and in order to preserve cash on hand the Petitioners intend to temporarily cease production effective December 13. This will allow the Petitioners to minimize cash expenditures while they develop a new mine plan. They will also use this time to focus on a deeper assessment of the Petitioners' financial and operational position, with a view to having a comprehensive re-opening and financial plan before the expiration of the stay extension.
17. The Petitioners expect to have sufficient cash on hand to fund operations through January 14.

Next Steps in Restructuring

18. The Petitioners seek to January 14, 2022 to:
 - (a) Work with A&M and the Monitor to:
 - (i) Refine and revise their production projections;
 - (ii) Refine and revise their cash flow projections based on revised production estimates; and
 - (iii) Create a new plan and mine plan to finance and re-start operations;
 - (b) Stabilize operations, including:

- (i) Obtaining certainty surrounding the Services Agreement; and
- (ii) Obtaining business property, including business infrastructure;
- (c) Consider the jurisdictional path forward between and among the Swedish Proceeding and the Finnish Proceeding;
- (d) Further communicate with Pandion, including obtaining certainty with respect to the amount alleged to be owed to it;
- (e) Ultimately consider whether a re-financing transaction, an equity injection, a plan of arrangement, or a liquidating CCAA is in the best interests of all stakeholders.

Part 3:LEGAL BASIS

Stay of Proceedings

1. Under s. 11.02(2) of the CCAA, the Court has broad jurisdiction to extend a stay of proceedings where the circumstances warrant and for any period the Court considers necessary. Baseline considerations include those set out in s. 11.02(3) of the CCAA, including confirmation that:
 - (a) the debtor is acting with due diligence and in good faith; and
 - (b) that the relief sought is appropriate.
2. The stay of proceedings is one of the main tools available to achieve the purpose of the CCAA. The stay provides the debtors with a degree of time in which to attempt to arrange an acceptable restructuring plan or sale of assets in order to maximize recovery for stakeholders. The court's jurisdiction in granting a stay extends to both preserving the status quo and facilitating a restructuring.
3. In the circumstances, the Petitioners are acting with due diligence and in good faith. A stay is reasonable and appropriate to allow the Petitioners to consider their restructuring plan, and there is little to no prejudice to any creditor in respect of the intended stay extension.

Amendment of Initial Order

4. The Petitioners seek amendments to the Initial Order:
 - (a) Extending the Stay Period as described above; and
 - (b) Removing any references to the "Interim Lender" from the Initial Order.

Part 4: MATERIAL TO BE RELIED ON

- 1. Initial Order pronounced December 3, 2021;
- 2. Affidavit #1 of Victor Koshkin, sworn December 3, 2021
- 3. Affidavit #3 of Victor Koshkin, sworn December 8, 2021;
- 4. Affidavit #1 of Laura Ferguson, sworn December 8, 2021;


The applicants estimate that the application will take 60 minutes.

This matter is not within the jurisdiction of a master because Mr. Justice Gomery is assigned to this proceeding.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the 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).

Dated: December 8, 2021



Signature

Applicant

Lawyer for applicants

Rebecca Morse

THIS NOTICE OF APPLICATION is prepared and delivered by Tim Louman-Gardiner of the firm Farris LLP, Barristers & Solicitors, whose place of business and address for service is 2500 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B3. Telephone: 604-661-1729. Email: tlg@farris.com. **Attention: Tim Louman-Gardiner.**

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:

Dated:	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

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
- other