



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.**

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 05 / Dec / 2013 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 January 19, 2014.
2. An order that \$240,706.50, being funds paid into Court pursuant to a Garnishing Order entered June 5, 2013 to the credit of Supreme Court of British Columbia, Action Number S134107, Vancouver Registry, be immediately released and paid out of Court to EastCoal Inc.
3. 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 is seeking to bring the Mine into production through capital raised to date.
4. While the Company was able to raise significant capital earlier this year, 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. As at November 22, 2013, the Company had cash on hand of approximately \$259,000.
7. In addition, in *George Lawton v. EastCoal Inc.*, S.C.B.C. Action No. S134107, Vancouver Registry (the "**Lawton Action**"), an action commenced by a former executive of the Company, approximately \$240,000 (the "**Garnished Funds**") was garnished from the Company's bank account. The Garnished Funds remain in Court pending the outcome of the Lawton Action.
8. 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.
9. The Company's objective in this proceeding is to arrange further financing in order to fund a proposal and allow the Company to bring the Mine into full production.
10. Since the filing of the NOI, the Company has been in discussions with a potential investor. However, the Company does not have a financing commitment at this time, and seeks and extension of time to file its proposal in order to conclude negotiations for the same.

11. If the Company is able to complete the further financing it will be in a position to present a viable proposal 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. If the Garnished Funds are released, 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.

Release of Garnished Funds

3. BIA, ss. 66, 69 and 70, *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, s. 5, and the inherent jurisdiction of this Honourable Court.
4. The BIA takes precedence over all garnishments, except those that have been paid out: *Canadian Credit Men’s Trust v. Beaver Trucking Ltd.* (1959), 38 CBR (NS) 1 (SCC).

5. Similarly, given the stay of proceedings following the NOI, Mr. Lawton is stayed from executing on the Garnished Funds, and therefore they ought to be returned to the Company: *Re Chaulk Air Inc.* (2012), 215 ACWS (3d) 278 (NBQB).
6. Finally, in light of the NOI, there is no scenario in which Mr. Lawton will have access to the Garnished Funds. The Company is in a NOI process, under the supervision of the Trustee, and requires access to the Garnished Funds to pursue its proposal, for the benefit of all creditors. Accordingly, it is just in all the circumstances for the Garnished Funds to be released back to the Company.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Abraham Jonker, made 28 / Nov / 2013;
2. Affidavit #1 of Avic Arenas, made 28 / Nov / 2013;
3. The Proposal Trustee's First Report to the Court, to be filed; and
4. Such further and other material as counsel may advise and this Honourable Court may permit.

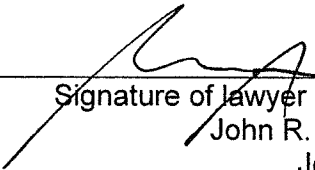
The applicant(s) estimate(s) that the application will take 30 minutes.

- 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: 28 / Nov / 2013


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:

Date:	_____
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> 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