



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**Citation:** *HSBC Bank Canada v. Canada Fluorspar (NL) Inc.*, 2022 NLSC 55

**Date:** March 29, 2022

**Docket:** 202201G0994

**BETWEEN:**

**HSBC BANK CANADA**

**APPLICANT**

**AND:**

**CANADA FLUORSPAR (NL) INC.**

**RESPONDENT**

---

**Before: Justice Alexander MacDonald  
Edited Transcript of Oral Reasons for Judgment**

---

**Place of Hearing:** St. John's, Newfoundland and Labrador

**Date(s) of Hearing:** March 25, 2022

**Date of Oral Judgment:** March 25, 2022

Filed *Mar. 29/2022* 

**Appearances:**

Geoffrey W.P. Davis-Abraham and Robert J. Kennedy	Appearing on behalf of the Applicant
James Foran	Appearing on behalf of Deloitte Restructuring Inc., financial advisor for HSBC Bank Canada and Proposed Receiver
Darren D. O’Keefe and Allison J. Philpott	Appearing on behalf of the Respondent
David G. Rogers and Julia Tomson	Appearing on behalf of Her Majesty in Right of Newfoundland and Labrador
Geoffrey L. Spencer and Phil Clarke	Appearing on behalf of Grant Thornton Limited, Court-Appointed Interim Receiver of Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc.
Joseph J. Thorne and Liam Murphy	Appearing on behalf of PricewaterhouseCoopers Inc., on behalf of Bridging Finance Inc.

**Authorities Cited:**

**CASES CONSIDERED:** *Norcon Marine Services Ltd., (Re)*, 2019 NLSC 238; *Hickman Equipment (1985) Ltd., Re*, 2005 NLTD 146; *Lemare Lake Logging Ltd. v. 3L Cattle Co.*, 2014 SKCA 35

**STATUTES CONSIDERED:** *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36; *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

**RULES CONSIDERED:** *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D



**TEXTS CONSIDERED:** Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *The 2021-2022 Annotated Bankruptcy and Insolvency Act* (Toronto: Thomas Reuters, 2021)

## REASONS FOR JUDGMENT

**MACDONALD J.:**

### **INTRODUCTION**

[1] HSBC Bank Canada (“Bank”) is one of the secured lenders to Canada Fluorspar NL Inc. (“Company”). The Bank asks me, pursuant to Rule 25.01(1) of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D (“Rules”), to appoint Deloitte Restructuring Inc. (“Deloitte”), as a receiver of the Company.

[2] The Bank asks that I restrict the scope of Deloitte’s appointment to any and all receivables or financed receivables (“Financed Receivables”), as these terms are defined in a May 25, 2018, Trade Invoice Recourse Financing Facility Agreement, as amended (“Facility Agreement”).

[3] For the reasons that follow, I grant the receivership order described in Schedule “A” attached to this decision.

### **FACTS**

[4] The Company, and its related company, Canada Fluorspar Inc. (collectively, the “Companies”), and Newspar, a general partnership, operate or support operations of a fluorspar mine and related facilities, including a mill facility and marine terminal, all near St. Lawrence. In early February 2022, they employed about 280 people, most of whom are in Newfoundland and Labrador.



[5] In early 2022, the Companies suffered a liquidity crisis which came to a head on February 21, 2022, when this Court, pursuant to an interim receivership order (“Interim Receivership Order”), appointed Grant Thornton Ltd. (“Interim Receiver”) as an interim receiver for the Companies. The Interim Receivership Order specifically provided that the Bank’s interest in the Financed Receivables is unaffected by the receivership.

[6] The Companies applied for an Initial Order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“*CCAA*”). I heard the application on March 11, 2022, and found that the Companies were insolvent. I granted an Initial Order in which I appointed Grant Thornton Limited as the Company’s monitor (“Monitor”). I stayed all proceedings against the Companies for 10 days. On March 18, 2022, I granted an Amended and Restated Initial Order and continued the stay until July 10, 2022.

[7] The Initial and Amended and Restated Orders also specifically provided that the Bank’s interest in the Financed Receivables is unaffected by the *CCAA* proceeding.

[8] The Bank is one of the Companies’ secured creditors. As of March 4, 2022, the Companies have about \$95 million in secured debt, about \$10 million in capital leases, and about \$23 million in unsecured debt. The other secured creditors are Bridging Finance Inc. and the Government of Newfoundland and Labrador.

[9] Pursuant to the Facility Agreement, the Bank provided the Company a maximum facility financing of up to USD \$20 million (“Trade Facility”). As of March 10, 2022, the Company owes the Bank about USD \$11,881,582.05, together with other ancillary charges, interest, and legal fees (“Secured Debt”).



[10] As security for the Trade Facility, the Company granted the Bank a General Security Agreement dated May 25, 2018, as amended. The Companies, the Bank, and the other secured creditors executed a Restated Inter-Creditor Agreement by which the parties agreed the Bank held a first priority position in relation to the Financed Receivables.

[11] The Company is in default of its obligations to the Bank and on March 14, 2022, the Bank, through its counsel, delivered to the Interim Receiver as receiver for the Company:

- (a) a letter dated March 11, 2022, demanding repayment of the Secured Debt; and
- (b) a Notice of Intention also dated March 11, 2022, required under section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*").

[12] The Bank demanded payment by no later than close of business on March 21, 2022. The ten-day notice of intention expired on March 24, 2022, and the Bank may now take steps under section 244(2) of the *BIA* to enforce its security, and under Section 243(1.1), to apply to appoint a receiver.

## ISSUES

[13] The issues for me to decide are:

Issue 1: should I appoint Deloitte as receiver for the Company? and

Issue 2: what is the scope of the appointment?



## ANALYSIS

### Issue 1: Should I Appoint Deloitte As Receiver for the Company?

[14] I hereby appoint Deloitte as receiver for the Company on the terms I will describe later. I will now tell you why.

[15] Rule 25.01(1) provides that I may appoint a receiver in any proceeding in which it appears to be just or convenient. The appointment may be made either unconditionally or upon such terms and conditions as I think just. I must exercise this discretion judicially (*Norcon Marine Services Ltd., (Re)*, 2019 NLSC 238 at para. 40).

[16] Hall J. in *Hickman Equipment (1985) Ltd., Re*, 2005 NLTD 146 at para. 13, confirmed that I have inherent jurisdiction to appoint a receiver and ancillary powers necessary to make that jurisdiction effective.

[17] In *Norcon*, Orsborn J. discussed the meaning of “just and convenient” in Rule 25. He observed that the word “just” suggests a requirement of fairness and balance while “convenient” suggests that the order would be not only helpful to the Bank but is necessary for the protection of the assets in question (*Norcon* at paragraph 46).

[18] He then outlined the factors I might consider in exercising my discretion. The Saskatchewan Court of Appeal did likewise in *Lemare Lake Logging Ltd. v. 3L Cattle Co.*, 2014 SKCA 35, as did the authors of *The 2021-2022 Annotated Bankruptcy and insolvency Act* (Houlden, Morawetz and Sarra). It is clear that the appointment of a receiver is an extraordinary measure and should not be made if other less intrusive methods are available to the Bank.



[19] I have considered a number of factors. Many of these factors can be grouped under the consideration of whether the Bank might suffer irreparable harm if I do not grant the order.

[20] I find this factor clearly engages many of the other ones considered by courts. In broad terms, these require me to consider whether the Bank's interest in the Financed Receivables is at greater risk if I refuse the receivership order. These other factors include:

- (a) whether the Bank encounters or expects to encounter difficulty enforcing its rights under its security;
- (b) whether the order is necessary to enable the receiver to carry out its duties more effectively;
- (c) whether the Bank's position will be prejudiced if I don't grant the order;
- (d) whether the order is necessary to apprehend or stop waste of the Secured Receivables;
- (e) whether the order is necessary to preserve and protect the Financed Receivables pending a judicial resolution of matters outstanding;
- (f) whether the Bank encounters or expects to encounter difficulty enforcing its rights under its security; and
- (g) whether the order is necessary to enable the receiver to carry out its duties more effectively.



[21] These factors favour the appointment of a receiver for the following reasons.

[22] First, both the Monitor and Brian Pettit, Assistant Vice President of Special Credit for the Bank, told me the Companies have ceased operations. They no longer supply fluorspar to their customers. The ongoing business relationship with their customers has collapsed. This may remove the customers' incentive to pay their obligations.

[23] Second, the Bank has incomplete details of the Financed Receivables. It is unaware if the sale contracts have terms that could affect their collectability. These terms could relate to allocation of risk and other bill of lading terms. It is unaware if any of the sales contracts contain ongoing obligations for the Company to continue to ship product.

[24] This information deficit can be mitigated by the provisions of the draft order requiring all persons having notice of the order to give the receiver access to documentation relating to the Financed Receivables.

[25] Third, the order provides that no party shall interfere with any of the Company's contractual rights.

[26] Fourth, the stay of proceeding granted in the order is consistent with the Amended and Restated Order which is applicable to the Company's other assets. This provides the stability for the receiver to properly undertake his duties.

[27] Fifth, the Company's customers are outside of Newfoundland and Labrador and this can make private enforcement more difficult. The draft order asks that courts, tribunals and regulatory and administrative bodies in Canada and the United States of America give the receiver, as officer of this Court, assistance in carrying out the duties under the receivership order. The Bank is not aware if any of the customers might have Canadian or American counterparties or affiliates.





[28] Sixth, the Companies' senior management and Board of Directors have resigned. Many of their functions are now being undertaken by the Monitor. He has no rights or control over the Financed Receivables.

[29] Because of these circumstances, I find that the Bank may be prejudiced if I do not grant the order. Indeed, it may suffer irreparable harm because of a reduction in the realizable value of the Financed Receivables. The Bank financed only a portion of Financed Receivables. A more efficient collection process can benefit other creditors of the Company. Many of the provisions I described previously are not available to a private receiver.

[30] That is not to say the appointment of the receiver will guarantee the value of the Financed Receivables, but it is another tool which may protect their value.

[31] I also find that the balance of convenience favours appointment of a receiver. The Companies, the other secured creditors, the Monitor, and the Interim Receiver do not oppose the appointment. Furthermore, the Bank has a right to appoint a receiver under the terms of its security. If I do not appoint a receiver today, the Bank can still appoint a private receiver, but without the additional rights I described earlier.

[32] The Monitor is responsible for the operations of the Companies except for the Financed Receivables. The Monitor and the Interim Receiver, are officers of the Court. They both have an obligation to the Court to manage the *CCAA* process and the Interim Receivership in an open and transparent manner. The receiver will now share those responsibilities. The receivership order also has provisions which govern the interaction between this receiver and the Monitor, to both of their benefit.

[33] Finally, Deloitte has consented to act as a court-appointed receiver. I am satisfied that Deloitte is qualified to act as the receiver. Bank's counsel will continue to act for the receiver for collection of the Financed Receivables.



[34] However, the receiver told me that he has or will retain independent counsel to assist it to conduct a review of the Bank's security. The receiver shall report to the Court on the results of this review. This independent counsel would be available should the Court or the receiver later expand the scope of the retainer. The Bank agreed to amend the draft order to provide for these requirements.

[35] I am satisfied with this arrangement. I see no need at this stage for the receiver to retain independent counsel to assist him beyond the scope I just described. The added cost of independent counsel is not justified at this time. This, of course, may change if circumstances change.

### **Issue 2: What Is the Scope of the Appointment?**

[36] Counsel provided me with a draft receivership order. Secured creditors were consulted on the form of the order and consented to it. For example, the Monitor asked and the Bank agreed for changes relating to its interactions with the proposed receiver.

[37] The draft order appropriately limits the scope of the receivership to the Company's and the Bank's interest in the Financed Receivables. The Company's other assets are dealt with in the Interim Receivership Order and the Revised and Restated Initial Order. However, the Bank agreed to make changes to the draft order on two matters.

[38] First, Bank's counsel agreed to remove the "Receiver's Indemnity Charge" and a related clause. The draft order provides that this charge on the Financed Receivables as "security for all of the obligations incurred by the Receiver including obligations arising from or incidental to the performance of its duties and functions under this Order or otherwise, saving only liability arising from gross negligence or willful misconduct ...". I was concerned this provision was too broad and open-ended.

*DN*

[39] Second, Bank's counsel agreed to remove a provision allocating collection costs to classes of assets. Bank's counsel agreed that this provision was unnecessary.

**DISPOSITION**

[40] For all of these reasons, I grant the Order described in Schedule "A".



---

**ALEXANDER MACDONALD**  
Justice

SCHEDULE "A"

2022 01G 0994  
SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION

**BETWEEN:**

**HSBC BANK CANADA**

**APPLICANT**

**AND:**

**CANADA FLUORSPAR (NL) INC.**

**RESPONDENT**

**RECEIVERSHIP ORDER**

**BEFORE THE HONOURABLE JUSTICE MACDONALD:**

UPON the application made by the Applicant, HSBC Bank Canada ("HSBC") for an Order pursuant to Section 105 of the *Judicature Act*, RSNL 1990, c J-4, as amended ("Judicature Act") and Rule 25.01 of the *Rules of the Supreme Court, 1986* ("Rules") appointing Deloitte Restructuring Inc. ("Deloitte") as receiver (in such capacity, the "Receiver") without security, of the Property (as defined herein) of the Respondent, Canada Fluorspar (NL) Inc. (the "Debtor"), heard this day at 309 Duckworth St, St. John's, NL A1C 1G9.

ON READING the Originating Application (*Inter Partes*) dated March 16, 2022, the affidavit of Brian Pettit sworn March 16, 2022 and the Exhibits thereto, and corresponding materials (collectively, the "Application Record") and on hearing the submissions of counsel for HSBC, the Debtor and other counsel present and on reading the consent of Deloitte to act as the Receiver,

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 105 of the Judicature Act and Rule 25.01 of the Rules, Deloitte is hereby appointed Receiver, without security, of any and all Receivables and/or Financed Receivables, as such terms are defined pursuant to a Trade Invoice Recourse Financing Facility Agreement between HSBC and Canada Fluorspar (NL) Inc. dated May 25, 2018, as amended, together with all rights and remedies arising thereunder, insurance policies and proceeds resulting therefrom, and proceeds generally (collectively, the "**Property**").

## **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof;
- (c) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor in connection to the Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (d) to settle, extend or compromise any indebtedness owing to the Debtor in connection to the Property;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;



- (f) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor relating to the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (g) to make payment of any and all costs, expenses, and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect, or maintain the Property;
- (h) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person, save and except to the extent that any such actions or steps conflict with the actions of the Monitor in the CCAA Proceedings, acting reasonably.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental



bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.



7. **THIS COURT ORDERS** that notwithstanding paragraphs 4, 5 and 6 herein, nothing contained herein shall create an obligation on the Monitor or the CCAA Proceedings, or shall require the Monitor, or the CCAA Proceedings, to incur any costs without agreement for reimbursement by the Receiver. The Monitor shall respond to reasonable requests of the Receiver pursuant to paragraphs 4, 5 and 6 herein, provided that the Monitor shall be compensated (upon the agreement of the Receiver and the Monitor) for any and all reasonable costs that are incurred by the Monitor to fulfill the requests of the Receiver.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, except the CCAA Proceedings, which are not stayed by this Order.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, except the CCAA Proceedings, which are not stayed by this Order, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act* (Canada) ("BIA"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE RECEIVER**

11. **THIS COURT ORDERS** that 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 Debtor with respect to the Property, without written consent of the Receiver or leave of this Court.

**RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

**PIPEDA**

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.



### **LIMITATION ON THE RECEIVER'S LIABILITY**

14. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out 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 to a Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

15. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Administrative Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

16. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Supreme Court of Newfoundland and Labrador General Division.

17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

18. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000



(or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Administrative Charge.

19. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days' notice to the Receiver and the Applicant.

20. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

21. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

22. **THIS COURT ORDERS** that the Receiver shall establish and maintain a website in respect of these proceedings, and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publicly available; and
- (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.



## SERVICE AND NOTICE

23. **THIS COURT ORDERS** that service of material in these receivership proceedings may be effected by electronic mail, personal delivery or courier. Service is deemed to be effected the on the same business day as transmission or delivery of the respective material.

24. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with this Order is not practicable, the Receiver is 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

## GENERAL

25. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in **Schedule "B"**.

26. **THIS COURT ORDERS** that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties including, without limitation, those conferred by this Order. Such solicitors may include Dentons Canada LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent solicitors in respect of the review of the validity and enforceability of HSBC's security, and any legal advice or services where a conflict exists, or may arise. The Receiver shall report to this Court on the results of that review.

27. **THIS COURT ORDERS** that the Receiver and the Monitor (as applicable) may from time to time apply to this Court for advice and directions in relation to: (i) the Receiver's discharge of its powers and duties hereunder, (ii) any matters in which a conflict arises between the Receiver's powers and duties hereunder and the Monitor's powers and duties set forth in the ARIO and the CCAA Proceedings, and (iii) the matters set forth in paragraph 7 herein.



28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. **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 Receiver 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 the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver 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 Receiver 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.

31. **THIS COURT ORDERS** that HSBC shall have its costs of this motion, to be paid out of the sale or collection of the Property, up to and including entry and service of this Order, provided for by the terms of HSBC's security or, if not so provided by HSBC's security, then on a substantial indemnity basis to be paid by the Receiver from the sale or collections of the Property with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. **THIS COURT ORDERS** that in addition to the reports to be filed by the Receiver under legislation, the Receiver shall file a report of its activities with the Court when the Receiver determines that a report should be made, when the Court orders the filing of a report on the motion of an interested party or on the Court's own motion, and at the conclusion of the receivership.



34. **THIS COURT ORDERS** that the Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 25<sup>th</sup> day of March, 2022.

---

*OR*

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

**CERTIFICATE NO.** \_\_\_\_\_

**AMOUNT \$** \_\_\_\_\_

1. **THIS IS TO CERTIFY** that Deloitte Restructuring Inc., the receiver (the "**Receiver**") of (i) any and all Receivables and/or Financed Receivables, as such terms are defined pursuant to a Trade Invoice Recourse Financing Facility Agreement between HSBC and Canada Fluorspar (NL) Inc. (the "**Debtor**") dated May 25, 2018, as amended, together with all rights and remedies arising thereunder, insurance policies and proceeds resulting therefrom, and proceeds generally and (ii) Export Development Canada insurance policies, or support in favour of HSBC (collectively, the "**Property**"), appointed by Order of the Supreme Court of Newfoundland and Labrador General Division (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2022 (the "**Order**") made in an action having Court file number 2022 01G 0994, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the \_\_\_\_\_.



5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**DELOITTE RESTRUCTURING INC., solely  
in its capacity as Receiver of the Property,  
and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:





## **SCHEDULE “B”**

### **DEFINED TERMS**

“**ARIO**” means the Amended and Restated Initial Order dated March 21, 2022 granted in the CCAA Proceedings.

“**CCAA Proceedings**” means the proceedings bearing Court File No. 2022 01G 0709 in the Supreme Court of Newfoundland and Labrador, in which Canada Fluorspar Inc., Canada Fluorspar (NL) Inc., and Newspar (a General Partnership) were granted protection from creditors and Grant Thornton Limited was appointed Monitor pursuant to an Initial Order dated March 11, 2022 and the ARIO.

“**Monitor**” means the Court appointed monitor appointed for the purposes of and in the CCAA Proceedings.



