

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF ABITIBI

No: 615-11-001311-127

*“Commercial Division”*

SUPERIOR COURT

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**IN THE MATTER OF THE RECEIVERSHIP  
OF:**

**CENTURY MINING CORPORATION,**

Debtor

-and-

**SAMSON BÉLAIR / DELOITTE & TOUCHE  
INC.,**

Receiver/Petitioner

-and-

**COMPUTERSHARE TRUST COMPANY OF  
CANADA,**

Collateral Agent

-and-

**DEUTSCHE BANK AG, LONDON BRANCH.,**

Principal Secured Creditor

-and-

**CORPORATE ASSETS INC.,** a corporation duly  
constituted having its principal place of business at  
2, St. Clair Ave. W, Suite 1002, Toronto, Ontario,  
M4V 1L5;

-and-

**THE REGISTRAR OF THE REGISTER OF  
PERSONAL AND MOVABLE REAL RIGHTS**  
Of 1 Notre Dame East, Suite 7.07, Montreal,  
(Québec) H2Y 1B6

Mises en cause

**AMENDED MOTION TO AUTHORIZE THE SALE OF PART OF THE DEBTOR'S  
ASSETS**

(Section 249 of the Bankruptcy and Insolvency Act,  
R.S.C. (1985) c. B-3 (hereinafter the “BIA”))

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF ABITIBI, THE PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

**A. PURPOSE OF THE MOTION**

1. Pursuant to the present Motion, for the reasons set forth hereinafter, *Samson Bélair / Deloitte & Touche Inc.*, in its capacity of Court appointed receiver, requests that this Honourable Court authorizes it to accept an offer to acquire part of the Debtor's assets and declare that the transfer of such assets resulting therefrom be made in favour of the *Mise en cause Corporate Assets Inc.* ("**CAI**") free and clear of any hypothec, charge, lien or encumbrance of any nature whatsoever, the whole in accordance with the conclusions hereof;

**B. THE PARTIES**

2. The Debtor *Century Mining Corporation* ("**CMC**") is a corporation continued under the *Canada Business Corporations Act*, RSC 1985, c. C-44 and which was operating as a gold producer, with its principal mining operations in Val d'Or, Québec (the "**Lamaque Mine**") and an indirect majority equity interest in mining operations situated in San Juan, Arequipa, Peru (the "**San Juan Mine**"), as appears from the Court record herein;
3. The Petitioner *Samson Bélair / Deloitte & Touche Inc.* was appointed receiver to all of the assets, properties and undertakings of CMC (the "**Receiver**") pursuant to an order from the Superior Court of Québec rendered on May 29, 2012 (the "**Receivership Order**");
4. The *Mise-en-cause Deutsche Bank AG* ("**DB**") is a corporation duly constituted acting through its London, U.K. Branch, and is the principal secured creditor of CMC and maintains, through *Computershare Trust Company of Canada* ("**Computershare**"), in its capacity as collateral agent for DB, a security over CMC's property, the whole as appears from the Court record herein;
5. The Receivership Order was rendered by this Honourable Court at the request of DB, through Computershare, as it appears from the Court record herein. As of May 25, 2012, CMC was indebted towards DB in a total amount of **US\$66,805,018.00** (the "**Indebtedness**");
6. The *Mise en cause CAI* operates internationally with respect to sales of industrial equipments. It submitted an offer to acquire certain assets owned by CMC, for which the Receiver is seeking with the present Motion leave to accept, as well as the terms and conditions under which a transaction pursuant to said offer is to occur, as more fully detailed hereinafter;

**C. THE PROCEEDINGS AND THE RECEIVERSHIP**

7. Since the issuance of the Receivership Order on May 29, 2012, the Receiver has taken multiple measures in order to achieve the orderly sale of CMC's assets, as well as taken all conservatory measures deemed necessary with respect to said assets and other

measures to settle CMC's obligations as needed during its mandate, the whole as more fully appears from a copy of the Receiver's report filed herewith under seal as **Exhibit R-1**;

8. With respect to CMC's assets, the Receiver has, notably taken the following measures:
  - a) Setting up and implementation of a sale process for the Lamaque Mine during Summer 2012 (the "**Initial Lamaque Mine Sale Process**");
  - b) Solicitation efforts with respect to other various mining interests, such as mining claims and leases, in jurisdictions in Canada and United States of America where such interests are located;
  - c) Sale of the mining claims and leases with the respect to the Northbelt Property;
  - d) Setting up and implementation of the New Lamaque Mine Sale Process (as this term is defined hereinafter) on October 1, 2013;
  - e) Setting up an implementation of a sale process with respect to specific assets of CMC (the "**Lot 1D Assets**") which had been included in the New Lamaque Mine Sale Process but remained unsold afterwards (the "**Lot 1D Sale Process**"), and which resulted in the proposed transaction with CAI that is the object of the present Motion;

the whole as more fully appears from the Receiver's report (**Exhibit R-1**), including "**Annexe E**" of the Receiver's report which lists the Lot 1D Assets", and as will be more detailed hereinafter;

9. In that context, the Receiver obtained from this Honourable Court five modifications of the Receivership Order, on July 13, 2012, on September 27, 2012, on December 19, 2012, on June 18, 2013 and on November 27, 2013 in order notably to obtain and/or extend the borrowing facilities and the priority charges required for the exercise of its mandate pursuant to the Receivership Order, the whole as appears from the Court record herein and from the Receiver's report (**Exhibit R-1**);

**D. THE SOLICITATION PROCESS WITH RESPECT TO THE LOT 1D ASSETS**

10. Pursuant to the Receivership Order, the Receiver was granted with the power to solicit and entertain offers on CMC's various assets, including the Lot 1D Assets, as well all powers incidental to such sale process:

*"[10] **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, wherever located, using any and all legal means it has to constrain the remittance of the Property;*

[...]

*(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;*

*(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with the prior approval of this Court in respect of any transaction;*

[...]

*(m) to register a copy of the pursuant order and any other orders in respect of the Property against title to any of the Property;*

11. Since its appointment, the Receiver has taken the following steps to solicit offers and interest for the Lot 1D Assets specifically:

- a) Setting up and implementation of a new sale process on October 1, 2013 for the Lamaque Mine and of certain secondary CMC assets located in Canada and in Alaska during the fall of 2013, including with respect to Lot 1D Assets (the “**New Lamaque Mine Sale Process**”):
  - i) The New Lamaque Mine Sale Process was different than the Initial Lamaque Mine Sale Process due to the inclusion of most of CMC’s assets in it, separated by lots on which interested parties could submit a bid (including “Lot 1D”), the whole in order to maximise the realization of the assets by allowing both offers *en bloc* or on specific lots;
  - ii) The deadline to submit offers for any lots of assets in the New Lamaque Mine Sale Process was November 15, 2013;
  - iii) In the context of the New Lamaque Mine Sale Process, and after advertisements and transmission of information packages to 468 identified potential purchasers in various sectors and industries, the Receiver received 11 offers, but after a detailed review, none of said offers were deemed acceptable for the Receiver or DB,
- b) Given the results of the New Lamaque Mine Sale Process, the setting up and implementation on January 16, 2014, with the support of DB, of another call for tenders with respect to mostly the same assets than the Lot 1D Assets (i.e. the Lot 1D Sale Process), which represent equipments that are not essential for the care and maintenance program implemented by the Receiver for the Lamaque Mine (the “**Care & Maintenance Program**”), the whole in order to maximize the realization value of CMC’s assets without compromising the Care & Maintenance Program;

the whole as appears from the Receiver’s report (**Exhibit R-1**);

12. The Lot 1D Assets represent assets selected in accordance with the following criteria:

- a) They are not necessary for the Care & Maintenance Program;

- b) They are subject to a diminution in value if they are not sold to third parties in the short term;
  - c) They are not essential assets for a potential purchaser of the mine properties of the Lamaque Mine;
  - d) They are mostly the same assets included in lot 1D of the New Lamaque Mine Sale Process (see “**Annexe A**” of the Receiver’s report, **Exhibit R-1**);
13. The Lot 1D Sale Process proceeded as follows:
- a) On January 16, 2014, the call for tenders with respect to the Lot 1D Sale Process was sent to interested parties, the deadline to present an offer being February 28, 2014 (see **Annexe B** of the Receiver’s report, **Exhibit R-1**);
  - b) Pursuant to the Lot 1D Sale Process documents, the Receiver was only soliciting firm offers without conditions by the purchaser for the purchase of the Lot 1D Assets on a *as is, where is* basis (see **Annexe B** of the Receiver’s report, **Exhibit R-1**);
  - c) As such, over 120 parties in Canada and the United States have been contacted with respect to the Lot 1D Sale Process, notably with the help and expertise of a previous procurement agent of Century retained as a consultant for the Receiver (see “**Annexe C**” to the Receiver’s report, **Exhibit R-1**, containing a list of the parties contacted);
  - d) On February 28, 2014, the Receiver received 14 offers for the Lot 1D Assets, 6 of them being for the Lot 1D Assets as a whole, as appears from the “**Annexe D**” of the Receiver’s report, **Exhibit R-1**;
14. Amongst the offers received, CAI offered to purchase the Lot 1D Assets, for a cash consideration, and to commence in May 2014 with an auction, notably on the Lamaque Mine premises, to resale these assets to third parties, the result of such resales determining the balance of the cash consideration to be paid to the Receiver, the whole as more fully appears from the Receiver’s report, **Exhibit R-1** (the “**CAI Offer**”);
15. Pursuant to the Receivership Order and in addition to the powers to solicit offers for the sale of CMC’s assets, the Receiver was granted with the power to seek a purchaser and agree to conditions it deems acceptable in the circumstances with respect to said sale of the Purchased Assets, the whole in order to petition this Honourable Court for authorization to sell the assets outside the ordinary course of business of CMC:
- [11] ORDERS the Receiver to petition the Court for authorization to sell all or any part of the Debtor’s Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;”*
16. The Receiver, with the support of DB, came to the conclusion that the CAI Offer represented the best possible offer under the circumstances for the Lot 1D Assets;

17. The Receiver and CAI agreed to the terms and conditions under which a transaction of the purchase and sale for the Purchased Assets would have to occur, including with respect to an increase in the cash consideration to be paid to the Receiver, subject to the authorization of this Honourable Court (collectively the “*CAI Transaction*”), as appears from a copy of a draft *Asset Purchase Agreement* between the Receiver and CAI (the “*Asset Purchase Agreement*”) to be filed under seal as “**Annexe F**” to the **Exhibit R-1**;
18. The CAI Transaction is conditional, *inter alia*, upon the issuance of an order by this Honourable Court approving the CAI Transaction pursuant thereto and subject to the terms of said orders, vesting the Lot 1D Assets in favour of CAI, free and clear of any hypothec, charges, lien or encumbrance of any kind whatsoever, the whole as appears from sections 6 and 8 of the *Asset Purchase Agreement* (see **Annexe F, Exhibit R-1**);
19. In respect to the Lot 1D Assets that would be subject to the CAI Transaction, an amended list is contained at the “**Annexe E**” of the Receiver’s report

**E. CONCLUSIONS SOUGHT**

20. The Receiver respectfully submits to this Honourable Court that the CAI Transaction is the best offer under the circumstances, notably given the serious efforts of the Receiver and the extensive search for a potential purchaser of the Lot 1D Assets resulting from the Lot 1D Sale Process, the whole as more fully appears from a copy of the Receiver’s report (**Exhibit R-1**);
21. DB, as the secured creditor of CMC, agrees with the conclusions set forth pursuant to the present Motion;
22. In light of the foregoing, the Receiver respectfully submits to this Honourable Court that the CAI Transaction should be authorized in accordance with the conclusions set forth herein;
23. The present Motion is well founded both in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:**

[A] **GRANT** the Motion.

**SERVICE**

[B] **ORDER** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

[C] **PERMIT** service of this Order at any time and place and by any means whatsoever.

**SALE APPROVAL**

[D] **ORDER** and **DECLARE** that the transaction (the “**Transaction**”) contemplated by the asset purchase agreement (the “**Purchase Agreement**”) between *Samson Bélair / Deloitte & Touche Inc.* in its capacity as receiver (the “**Receiver**”) to the assets of

Century Mining Corp. (“CMC”), and Corporate Assets Inc. (the “Purchaser”), for the purchase of the assets described in the Purchase Agreement (the “Purchased Assets”) and the execution of the Purchase Agreement, copy of which is filed as Annex F of Exhibit R-1, are hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Receiver.

### EXECUTION OF DOCUMENTATION

- [E] **AUTHORIZE** the Receiver and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (**Annexe F of Exhibit R-1**) and any other ancillary document which could be required or useful to give full and complete effect thereto.

### AUTHORIZATION

- [F] **ORDER** and **DECLARE** that this Order shall constitute the only authorization required by the Receiver to proceed with the Transaction and that no **CMC’s** shareholder or regulatory approval, if applicable, shall be required in connection therewith.

### VESTING OF PURCHASED ASSETS

- [G] **ORDER** and **DECLARE** that upon the issuance of a Receiver's certificate substantially in the form appended as Schedule "A" hereto **and representing the First Certificate of the Receiver as referred to in the Purchase Agreement** (the “Certificate”), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, deemed trusts, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* or any other applicable legislation providing for a security interest in personal or movable property, and, for greater certainty, **to ORDER** that **upon filing of the Certificate**, all of the Encumbrances affecting or relating to the Purchased Assets be expunged, **radiated, cancelled** and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [H] **DECLARE** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*.
- [I] **ORDER** and **DIRECT** the Receiver to file with the Court a copy of the Certificate, forthwith after issuance thereof.

## CANCELLATION OF SECURITY REGISTRATIONS

[J] **ORDER** the (...) Registrar of Personal and Movable Real Rights (Québec) (the “RPMRR”), upon presentation of the required form with a (...) certified copy of this Order and the Certificate, to **discharge and** strike the Encumbrances and registrations, if any, in connection with the Purchased Asset, **including the total discharge and striking of the Encumbrances listed below**, in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such Encumbrances and registrations :

- Registration of “rights resulting from a lease” in favour of Atlas Copco Canada Inc. under section 2961.1 of the Civil Code of Québec, registered at the RPMRR under number 10-0194864-0001;
- Registration of rights in favour of Atlas Copco Canada Inc. under section 2961.1 of the Civil Code of Québec, registered at the RPMRR under number 10-0136504-0001;
- Registration of rights, “Droits de propriété du crédit-bailleur” in favour of Atlas Copco Canada Inc. registered at the RPMRR under number 11-0018213-0001;

## NET PROCEEDS

[K] **ORDER** that the net proceeds from the sale of the Purchased Assets (the “**Net Proceeds**”) shall be remitted to the Receiver in accordance with the Purchase Agreement and shall be distributed in accordance with applicable legislation.

[L] **ORDER** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances shall attach to the Net Proceeds 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 that possession or control immediately prior to the sale.

## VALIDITY OF THE TRANSACTION

[M] **ORDER** that notwithstanding

- the pendency of these proceedings;
- the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA, **section 1631 and ss. of the**

Civil Code of Québec or any other applicable federal or provincial legislation, as against the Receiver **and CMC**.

### **LIMITATION OF LIABILITY**

**[N]** **DECLARE** that no action lies against the Receiver by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph.

### **GENERAL**

**[O]** **ORDER** that the Purchaser or the Receiver shall be authorized to take all steps as may be necessary to effect the discharge **and striking** of the Encumbrances.

**[P]** **ORDER** that **Exhibit R-1**, including the Purchase Agreement, be kept confidential and under seal **in the Court record herein** until further order of this Court.

**[Q]** **DECLARE** that this Order shall have full force and effect in all provinces and territories in Canada.

**[R]** **DECLARE** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose.

**[S]** **REQUEST** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

**[T]** **ORDER** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

**[U]** **THE WHOLE** without costs, save in case of contestation.

Montréal, this **April 1**, 2014

  
**Fasken Martineau DuMoulin LLP**  
Attorneys for Petitioner *Samson Bélair / Deloitte & Touche Inc.*