

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE )  
JUSTICE MCEWEN )  
TUESDAY, THE 8<sup>TH</sup>  
DAY OF JUNE, 2021

B E T W E E N :

**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 WITH RESPECT TO  
EXPRESS GOLD REFINING LTD.**

**PRODUCTION AND CONFIDENTIALITY ORDER**

**THIS MOTION**, made by Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the court-appointed monitor (in such capacity, the "**Monitor**") of Express Gold Refining Ltd. ("**EGR**"), for an order granting the Monitor unfettered access to the books and records of EGR, including all documents in EGR's possession in connection with the Tax Litigation (as defined herein) and GST/HST Reassessments (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario, via judicial videoconference due to the COVID-19 pandemic.

**ON READING** the Motion Record of the Monitor dated May 19, 2021, including the Fourth Report of the Monitor dated May 19, 2021, and the consent of EGR to the relief sought by the Monitor, and upon the CRA filing materials and making submissions opposing the relief sought by the Monitor on the basis that the Tax Court of Canada was the proper court of jurisdiction to



hear EGR and the Monitor's request for a waiver of the implied undertaking made by EGR in the Tax Litigation and on the basis of s. 295 of the *Excise Tax Act* and on hearing the submissions of counsel for the Monitor and counsel for EGR, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Campbell sworn June 7, 2021, filed;

### **INTERPRETATION**

1. **THIS COURT ORDERS** that for the purposes of this Order:

- (a) “**CCAA**” means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (b) “**CCAA Proceeding**” means the within proceeding commenced by EGR at the Ontario Superior Court of Justice (Commercial List), at Toronto, bearing Court File No. CV-20-00649558-00CL;
- (c) “**CRA**” means the Canada Revenue Agency, and shall include its legal counsel in connection with the Tax Litigation, being the Department of Justice, Canada;
- (d) “**EGR's Tax Counsel**” means Baker McKenzie LLP;
- (e) “**GST/HST (Re)Assessments**” means all GST/HST assessments and reassessments that have been issued or will be issued by the CRA to EGR that form part of the Tax Litigation, including but not limited to reassessments dated July 22, 2019 and assessments and reassessments dated July 29, 2020;
- (f) “**Monitor's Legal Counsel**” means Dentons Canada LLP;

- (g) “**Subject Document(s)**” means all documents in EGR’s possession and control that have been provided to EGR or EGR’s Tax Counsel by the CRA in connection with the GST/HST (Re)Assessments relating to the Tax Litigation including, but not limited to, documents produced to EGR or EGR’s Tax Counsel by the CRA in the course of the Tax Litigation;
- (h) “**SARIO**” means the Second Amended and Restated Initial Order of Justice McEwen dated October 27, 2020;
- (i) “**Tax Litigation**” means the appeal commenced by EGR at the Tax Court of Canada bearing Court File No. 2020-1214(GST)G;

## **PRODUCTION**

2. **THIS COURT ORDERS** that, notwithstanding any express, deemed or implied undertaking given by EGR or EGR’s Tax Counsel to any person, and notwithstanding the limitations on disclosure of confidential taxpayer/registrant information set out in s. 295 of the *Excise Tax Act*, EGR shall forthwith produce and make available to the Monitor all Subject Documents.

## **CONFIDENTIALITY**

3. **THIS COURT ORDERS** that, in the event any privileged, irrelevant or inadvertently unredacted Subject Document is disclosed to EGR and provided to the Monitor in accordance with this Order, CRA shall immediately bring such inadvertent disclosure to the attention of EGR and the Monitor, and such disclosure and treatment of the Subject Document shall be addressed and governed by written agreement between EGR and CRA, or by further Order of the Court.

4. **THIS COURT ORDERS** that the Monitor shall keep the Subject Documents strictly confidential, shall use the Subject Documents solely for the purposes of the CCAA Proceeding, including for the purposes of discharging its duties as Monitor pursuant to the SARIO and the CCAA, and shall not produce or disclose the Subject Documents to any person (in whole or in part), except to the following firms, entities and individuals:

- (a) any Judge, Master or personnel of the Court as may be necessary for the conduct of the CCAA Proceeding, in which case the Subject Documents shall be marked as “confidential” and filed under seal;
- (b) Monitor’s Legal Counsel; and
- (c) such other persons as EGR, EGR’s Tax Counsel, CRA and the Monitor may agree in writing or as the Court may order.

5. **THIS COURT ORDERS AND DIRECTS** that in the event any Subject Document is disclosed to any person other than in the manner authorized by this Order, the party responsible for such disclosure shall immediately bring all pertinent facts relating to the disclosure to the attention of EGR’s Tax Counsel, CRA and the Monitor’s Legal Counsel and shall make every effort to prevent further disclosure of the Subject Documents.

6. **THIS COURT FURTHER ORDERS** that the termination of the CCAA Proceeding shall not relieve any person to whom the Subject Documents were disclosed pursuant to this Order from the obligation of maintaining the confidentiality of the Subject Documents in accordance with the provisions of this Order.

7. **THIS COURT ORDERS** that upon final termination of the CCAA Proceeding (including appeals, if any), or the earlier discharge of the Monitor in the CCAA Proceeding, all copies of the Subject Documents in the possession of the Monitor and the Monitor's Legal Counsel shall be destroyed within thirty (30) days, unless CRA and EGR's Tax Counsel authorize some other disposition, and confirmation of destruction will be sent in writing to all parties.

8. **THIS COURT ORDERS** that nothing in this Order shall:

- (a) foreclose or limit a party from moving before the Court to vary any term of this Order, provided that such motion is brought on notice to the Monitor, EGR and CRA;
- (b) foreclose or limit the Monitor, EGR or CRA from applying for a further order of confidentiality with respect to documents to be submitted to the Court or produced in connection with the Tax Litigation; or
- (c) constitute a waiver of solicitor-client privilege as between EGR and EGR's Tax Counsel, the Monitor and Monitor's Legal Counsel, and the CRA and the Department of Justice.

9. **THIS COURT ORDERS** that CRA may only waive all or any part of its rights over the Subject Documents under this Order expressly and in writing.

10. **THIS COURT ORDERS** that, if part or all of the Subject Documents subsequently become available in the public domain, such Subject Documents thereafter cease to be governed by this Order. The onus of establishing that particular Subject Documents have become available

in the public domain through no fault or participation of the Monitor or EGR shall rest with the party asserting such.

11. **THIS COURT ORDERS** that the Monitor, EGR and CRA shall have the right to apply to the Court, on notice, for any modification or variation of the restrictions on disclosure imposed by this Order as applied to any specific document.

  
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c C-36 AS AMENDED  
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8 June 21

Order to go, on an unopposed basis, as per the draft filed and signed.



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**PRODUCTION AND CONFIDENTIALITY ORDER**

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*Lawyers for Deloitte Restructuring Inc., in its capacity  
as court-appointed Monitor of Express Gold Refining  
Ltd.*