

**FORCE FILED**

No. S-234515  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

**NOTICE OF APPLICATION**

**Name of applicant:** FTI Consulting Canada Inc. in its capacity as the Receiver of Eagle Graphite Corporation, and not in its personal capacity

To: The Petitioner and the Respondent

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on November 30, 2023 at 10:00 a.m. for the order set out in Part 1 below.

9:45 a.m. SG

**Part 1: ORDER SOUGHT**

1. A sale approval and vesting order substantially in the form attached as Schedule "A" (the "**Approval and Vesting Order**"):
  - (a) declaring that service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given;
  - (b) approving the Purchase and Sale Agreement, dated September 25, 2023 (the "**Purchase Agreement**") made between the Receiver, as vendor, and 1420027

B.C. Ltd. (the "**Purchaser**"), as purchaser of all of the right, title and interest of Eagle Graphite Corporation as defined in the Purchase Agreement;

- (c) vesting all of Eagle's right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement) in the Purchaser; and
  - (d) approving pay out to Weaver Capital Corp. the net proceeds from the estate as final payment of the indebtedness owing to Weaver Capital Corp. by Eagle, less amounts to be reserved by the Receiver for outstanding professional fees, Receiver Certificates and receivership administrative costs.
2. Such other relief as this Honourable Court may deem just.

## **Part 2: FACTUAL BASIS**

### *Background*

1. Eagle Graphite Corporation ("**Eagle**") is a mining company that is federally incorporated, with a registered office at 6420 Eagles Drive, Courtenay, British Columbia.
2. Eagle holds certain contracts, rights, permits, licences, mineral claims and mining leases in relation to a graphite production and processing facility known as the "Black Crystal" property, located in the Slocan Valley Area of British Columbia, approximately 35 kilometers west of the city of Nelson and 35 kilometers north of the city of Castlegar (the "**Property**"). The Property includes an open-pit quarry allowing access to the graphite deposits (the "**Quarry**"), a processing facility and equipment (the "**Plant and Equipment**") and two mining or mineral leases registered in the name of Eagle under title numbers 390937 and 392322 (the "**Mineral Leases**") and two mineral claims under title numbers 318625 and 318627 (the "**Mineral Claims**").
3. No graphite has been mined from the Quarry since approximately 2013.

### *The Security*

4. Weaver Capital Corp. ("**Weaver**") is a company incorporated under the laws of Ontario, having its address for service in these proceedings only at c/o Clark Wilson LLP, 900 - 885 West Georgia Street, Vancouver, British Columbia.

5. Eagle's indebtedness, and the security securing that indebtedness, was assigned and transferred to Weaver. The original debt of Eagle arose pursuant to an Annual Supply Contract between Eagle and ANH Refractories Company, for itself and as agent for its affiliates, Harbison-Walker Refractories Company, North American Refractories Company, ANH Canada Incorporated, and A.P. Green Industries Inc. (collectively, the "**Original Secured Parties**") dated September 3, 2010 and amended August 30, 2012, January 1, 2014, and May 30, 2014 (collectively, the "**Supply Agreement**").
6. As security for its indebtedness under the Supply Agreement, Eagle granted various security in favour of the Original Secured Parties, including a general security agreement between Eagle and the Original Secured Parties dated March 5, 2013 (the "**GSA**") and an assignment of Contracts, Rights, Permits and Licences from Eagle to the Original Secured Parties dated January 1, 2014 (the "**Mining Assignment**", and collectively with the GSA, the "**Security**").
7. Under the Mining Assignment, Eagle agreed to assign and transfer to the Original Secured Parties Eagle's interest in all contracts, rights, permits and licences held by Eagle including those described or listed in Schedule "A" of the Mining Assignment to Weaver.
8. On July 20, 2023, an order was made by the Supreme Court of British Columbia in these proceedings (the "**Receivership Order**") appointing FTI Consulting Canada Inc. as the receiver of all the assets, undertakings and property of Eagle (the "**Receiver**").
9. On August 16, 2023, an order was made by the Supreme Court of British Columbia in these proceedings (the "**SISP Order**"), approving the sale procedure (the "**Sale Procedure**") and the Stalking Horse Offer from Weaver for \$3.7 million.

*Summary of Results of Sale Procedure*

10. The Receiver conducted the Sales Procedure as set out in the SISP Order from August 17, 2023 to September 25, 2023.
11. As part of the sales process the Receiver:
  - (a) prepared sales and marketing materials, including teaser letters, non-disclosure agreements, and print advertisements;

- (b) advertised in the Globe and Mail newspaper and the Northern Miner publication, and on the Receiver's website;
  - (c) prepared an electronic data room (the "**Data Room**") which included the appraisals of the Property, a technical report and resource estimate, photographs of the site, a copy of the stalking horse offer, and a draft form of asset purchase agreement;
  - (d) instructed legal counsel to draft a form of confidentiality agreement (the "**NDA**");
  - (e) identified and prepared a list of potential purchasers; and
  - (f) held discussions with potential purchasers
- (the "**Marketing Efforts**").
12. As a result of Marketing Efforts, the Receiver received five signed NDAs from potential purchasers, and those parties were granted access to the Data Room. One party requested and received a site visit on September 21, 2023.
13. Potential purchasers had until September 25, 2023 to submit a qualified bid.
14. On September 25, 2023, the Receiver received an offer to purchase Eagle's assets (the "**Purchase Offer**") from 1420027 B.C. Ltd. (the "**Purchaser**") with, *inter alia*, the following material terms:
- (a) **Purchased Assets** (as defined in the Purchase Offer):
    - (i) all of Eagle's right, title and interest to the Property, which includes, *inter alia*:
      - A. the Property;
      - B. the Quarry;
      - C. the Plant and Equipment;
      - D. the Mineral Leases;
      - E. the Mineral Claims; and

- F. any and all inventory, chattels, fixtures, equipment, intellectual property and Assigned Contracts (as defined in the Purchase Offer).
- (b) **Purchase Price:** \$3.8 million cash, including a \$570,000 cash deposit;
- (c) **Excluded Assets:**
- (i) cash on hand of Eagle prior to the Closing Date;
  - (ii) personal items;
  - (iii) accounts receivable of Eagle in respect of the business existing at the Closing Date and attributable to any period of time prior to the Closing Date; and
  - (iv) all insurance policies of Eagle or the Receiver in respect of the Purchased Assets.
- (d) **Closing Date:** the later of (i) November 30, 2023, or (ii) 5 business days after the vesting order is granted by this Court; and
- (e) **Representations and Warranties:** consistent with the standard terms of an insolvency transaction (i.e., on an “as-is, where-is” basis, without any representations, warranties or covenants by the Receiver in respect of the purchased assets).
15. In accordance with the SISP Order, the Receiver contacted Weaver to discuss whether Weaver would be interested in participating in an auction. Weaver declined to participate in an auction.
16. The Receiver accepted the Purchase Offer as the Successful Bidder.
17. Weaver has provided a payout statement to the Receiver in the amount of \$4,200,987 projected to November 30, 2023. Based upon this payout statement together with the Receiver’s review of the Security, it appears Weaver is the only party with an economic interest in the proceeds of the purchase of Eagle. The Receiver is therefore seeking a

distribution order to disburse any residual funds to Weaver, net of outstanding professional fees, Receiver Certificates and receivership administrative costs.

**Part 3: LEGAL BASIS**

1. The Applicant relies on:
  - (a) Rule 8-1, Rule 13-5, Rule 21-7 of the *Supreme Court Civil Rules*;
  - (b) *Law and Equity Act*, R.S.B.C. 1996, C. 253;
  - (c) the Receivership Order pronounced in this proceeding; and
  - (d) such further and other materials as counsel may advise.
  
2. In deciding to approve a sale by a Receiver, the following factors have been considered helpful by our courts:
  - (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
  - (b) the efficiency and integrity of the receiver's sale process by which offers were obtained;
  - (c) whether there has been unfairness in the working out of the process; and
  - (d) the interests of all parties.

*Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA)  
("Soundair"), at para 16.

3. The primary interest to be considered by the Court is that of the creditors, and to see that the best possible price is obtained, though the interests of all parties, including the debtor and the Receiver's recommended purchaser, must also be considered.

*Soundair*, at paras. 42-46.

4. In the present case, the SISP Order set out in detail the process for the Receiver to implement in terms of exposing the assets of Eagle to the market in order to determine if a superior offer to the Stalking Horse Bid was available.

5. The Receiver submits that it acted in a reasonable and provident manner in its implementation of the SISP so as to fully expose the assets of Eagle to the market and to prospective purchasers. A superior offer to the Stalking Horse Bid was received and accepted.
6. In these circumstances the Receiver submits that there has been no unfairness in the sales process and the efficacy and integrity of the Court-approved SISP Order has been maintained.
7. The Receiver seeks Court approval of the Purchase Agreement for the purchase of Eagle's assets and vesting Eagle's right title and interest in its assets, property and undertakings to the Purchaser.

**Part 4: MATERIAL TO BE RELIED ON**

1. The First and Second Reports of the Receiver.
2. Any such further or other materials as counsel may advise, and the Court may permit.

The applicant estimates that the application will take 1 hour.


- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

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 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).

NOV. 20, 2023  
Dated

  
Signature of  lawyer for filing party  
DLA Piper (Canada) LLP (Colin D. Brousson)  
Lawyer for FTI Consulting Canada Inc.

**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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Signature of  Judge  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
- oral 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
- none of the above

**SCHEDULE "A"**

**Approval and Vesting Order**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

**ORDER MADE AFTER APPLICATION**

**APPROVAL AND VESTING ORDER**

BEFORE THE HONOURABLE )  
 ) November 30, 2023  
 )

THE APPLICATION of FTI Consulting Canada Inc., in its capacity as Court-appointed Receiver (the "**Receiver**") of the assets, undertakings and properties of Eagle Graphite Corporation ("**Eagle**") coming on for hearing at Vancouver, British Columbia, on the 30th day of November, 2023; AND ON HEARING Colin D. Brousson, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Report of the Receiver dated \_\_\_\_\_ (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.
2. The sale transaction (the "**Transaction**") contemplated by the Agreement of Purchase and Sale dated September 25, 2023 (the "**Sale Agreement**") between the Receiver and 1420027 B.C. Ltd. (the "**Purchaser**"), a copy of which is attached as Appendix "A" to the Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and

directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").

3. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule "C" hereto shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated July 20, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule "D" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "E" hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
4. Upon presentation for registration in the Land Title Office for the Land Title District of \_\_\_\_\_ a certified copy of this Order, together with a letter from Receiver's counsel, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles, the Mineral Titles Branch and any other public registry in which an interest in the Purchased Assets may be registered (collectively, the "**Registries**") is hereby directed to:
  - (a) enter the Purchaser as the owner (in place of Eagle Graphite Corporation) of the mineral claims identified in Schedule "F" hereto (the "**Mineral Claims**") and this Court declares that it has been proved to the satisfaction of the Court on investigation that title of the Purchaser in and to the Mineral Claims is good, safe holding and marketable title and directs the Registries to register indefeasible title in favour of the Purchaser as set out above; and
  - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Mineral Claims all of the registered Encumbrances except for those listed in Schedule "E".
5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all

Claims shall attach to the net proceeds from the sale of the Purchased Assets 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 had possession or control immediately prior to the sale.

6. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "E".
7. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court provided that the Closing Date occurs by November 30, 2023 or within five (5) days of the date of this Order.
8. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of Eagle now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of Eagle,the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
9. The Receiver is authorized to pay out to Weaver Capital Corp. the net proceeds from the estate as final payment of the indebtedness owing to Weaver Capital Corp. by Eagle, less amounts to be reserved by the Receiver for outstanding professional fees, Receiver Certificates and receivership administrative costs.
10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, 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.

11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
12. Endorsement of this Order by counsel or any unrepresented party appearing on this application, other than counsel to the Petitioner and the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Counsel for the Petitioner,  
Weaver Capital Corp.  
Katie Mak

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Signature of Counsel for the Receiver,  
DLA Piper (Canada) LLP (Colin D. Brousson)

BY THE COURT

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REGISTRAR

**Schedule A – List of Counsel**

**Schedule B – Form of Receiver’s Certificate**

No. S-234515  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

**RECEIVER’S CERTIFICATE**

- A. Pursuant to an Order of the Honourable Justice Fitzpatrick of the Supreme Court of British Columbia (the “Court”) dated July 20, 2023, FTI Consulting Canada Inc. was appointed as the receiver of all of the undertakings and property of Eagle Graphite Corporation (“Eagle”).
- B. Pursuant to an order of the Court dated \_\_\_\_\_, 2023, the Court approved the agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and 1420027 B.C. Ltd. (the “**Purchaser**”) dated September 25, 2023, and provided for the vesting in the Purchaser of Eagle’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon delivery by the Receiver to the Purchaser of a certificate confirming (i) payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) the Transaction has been completed to the satisfaction of the Receiver.
- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER HEREBY CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement.



2. The Transaction has been completed to the satisfaction of the Receiver.

DATED at the City of Vancouver, in the Province of British Columbia, this \_\_ day  
of \_\_\_\_\_, 2023.

FTI Consulting Canada Inc., in its capacity as  
Receiver of Eagle Graphite Corporation

Per:

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### Schedule C – Purchased Assets

1. All of the right, title and interest of Eagle Graphite Corporation in:
  - a. a graphite mine located in the Slocan Valley area of British Columbia, approximately 35 kilometres west of the city of Nelson and 35 kilometres north of the city of Castlegar, with an open-pit quarry allowing access to graphite deposits;
  - b. a processing facility and related equipment;
  - c. two mining or mineral leases registered in the name of the Debtor under title numbers 390937 and 392322;
  - d. two mineral claims under title numbers 318625 and 318627; and
  - e. the following assets, if any:
    - i. all inventory;
    - ii. all chattels, fixtures and equipment;
    - iii. all intellectual property;
    - iv. all rights under non-disclosure or confidentiality, non-compete or non-solicitation agreements with employees and agents or with third parties;
    - v. the Assigned Contracts, if any, and the Permitted Encumbrances; and
    - vi. all other personal property not contemplated by the foregoing, but excluding the Excluded Assets.

**Schedule D - Claims to be Deleted from the Purchased Assets**

**Schedule E - Permitted Encumbrances**

1. Any rights reserved to or vested in any Governmental Authorities by any statutory provision or authority with respect to the Property;
2. Any rights of expropriation, access or use or any other rights conferred or reserved by or in any statute of Canada, or the Province of British Columbia regarding the Property including the Quarry and/or Plant and Equipment;
3. Any unregistered interest in the Property (including, without limitation, leases, claims and other encumbrances) of which the Purchaser has actual notice;
4. Any unregistered easements regarding the provision of utilities to the Quarry and/or Plant and Equipment; and
5. Any reservations, limitations, provisions, conditions or exceptions, including royalties, charges or user fees, related to the Mineral Leases and/or Mineral Claims.

**Schedule F - Mineral Claims**

1. Mineral claims under title numbers: 318625 and 318627.

No. S-234515  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE  
CORPORATION

RESPONDENT

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
EAGLE GRAPHITE CORPORATION

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**ORDER MADE AFTER APPLICATION**

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CDB/saa

No. S-234515  
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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

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**NOTICE OF APPLICATION**

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