



COURT FILE NUMBER 2001-05482
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
 ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

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 Oct 1 2020
 Justice Eidsvik

AND IN THE MATTER OF THE COMPROMISE OR
 ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and
 2161889 ALBERTA LTD.

AND IN THE MATTER OF A PLAN OF ARRANGEMENT
 OF JMB CRUSHING SYSTEMS INC. and MANTLE
 MATERIALS GROUP, LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC., 2161889 ALBERTA LTD.
 and MANTLE MATERIALS GROUP, LTD.

DOCUMENT **APPLICATION FOR ASSIGNMENT ORDER, PLAN
 SANCTION ORDER AND STAY EXTENSION ORDER**

ADDRESS FOR SERVICE AND CONTACT
 INFORMATION OF PARTY FILING THIS
 DOCUMENT **Gowling WLG (Canada) LLP**
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 File No.: A163514

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must attend Court by videoconference or phone when the application is heard as shown below:

Date: October 1, 2020
 Time: 2:00 pm
 Where: Calgary Courts Centre – via Webex. Videoconference details are enclosed as **Appendix “A”** to this Application
 Before: The Honourable Justice K.M. Eidsvik – Commercial List

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Applicants, JMB Crushing Systems Inc. (“**JMB**”), 2161889 Alberta Ltd. (“**2161889**”, and together with JMB Crushing, the “**JMB Applicants**”), and Mantle Materials Group, Ltd. (“**Mantle**”) seek an order pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended, (the “**CCAA**”), as follows:
 - (a) An Order, substantially in the form attached as **Schedule “A”** hereto, assigning the rights and obligations of the JMB Applicants under Restricted Agreements (as defined in the Amended and Restated Asset Purchase Agreement between JMB, 216 and Mantle dated September 28, 2020 (the “**APA**”)) that require consent to Mantle, notwithstanding restrictions on assignment contained in such agreements, as part of the purchase and sale transaction arising from the APA (the “**Purchase and Sale Transaction**”), with such assignment to be subject to the payment of the applicable cure costs (the “**Assignment Order**”);
 - (b) An Order, substantially in the form attached as **Schedule “B”** hereto, sanctioning and approving the Plan of Compromise and Arrangement (the “**Plan**”), substantially in the form attached to the Affidavit of Byron Levkulich sworn September 30, 2020 as Exhibit “A”, as may be further amended, varied or supplemented from time to time in accordance with the terms thereof, and granting the related relief (the “**Sanction Order**”);
 - (c) An Order, substantially in the form attached as **Schedule “C”** hereto, extending the Stay Period, as defined in the Initial Order granted in these proceedings by the Honourable Justice K.M. Eidsvik on May 1, 2020 (the “**Initial Order**”), up to and including October 30, 2020 (the “**Stay Extension Order**”);
 - (d) As part of each the Assignment Order, the Sanction Order and the Stay Extension Order, abridging the time for service of notice of this Application and supporting materials, abridging the time for service to the time provided, deeming service good and sufficient, and declaring that no other person is required to have been served with notice; and
 - (e) Such further and other relief as counsel requests and this Honourable Court may grant.

Grounds for making this application:**Assignment Order**

2. The Acquired Assets (as defined in the APA) to be acquired by Mantle as part of the Purchase and Sale Transaction include the Assigned Contracts (as defined in the APA) to which the JMB Applicants or one of them is a party. A number of the Assigned Contracts require the applicable counterparty's consent for assignment to Mantle (collectively, the "**Restricted Agreements**").
3. Pursuant to the APA, Mantle is required to use commercially reasonable efforts to obtain the requisite third party consents, failing which it may require the JMB Applicants to obtain the Assignment Order needed to effectuate the assignment of the Restricted Agreements.
4. Given the short time between the finalization of the APA and the anticipated closing date of October 2, 2020, it is not possible for consents relating to the Restricted Agreements to be obtained in advance of Closing. The JMB Applicants are therefore seeking the Assignment Order to order the assignment of the Restricted Agreements that have been identified by the JMB Applicants and Mantle and included on Schedule "A" to the proposed Assignment Order to Mantle pursuant to section 11.3 of the CCAA, which assignment would be effective on implementation of the Purchase and Sale Transaction notwithstanding restrictions on assignment contained in such Restricted Agreements, and would require the satisfaction of any applicable Cure Costs (as defined in the APA).
5. None of the Restricted Agreements are: (a) agreement that have been entered into subsequent to the commencement of these CCAA Proceedings; (b) eligible financial contracts; or (c) collective agreements.
6. Pursuant to the proposed Assignment Order, to the extent that there are additional Restricted Agreements that are not listed on Schedule "A" to the Assignment Order that the JMB Applicants are party to and in respect of which the required consent thereunder has not been obtained (each an "**Additional Restricted Agreement**"), the proposed Assignment Order provides: (a) a mechanism for the provision of notice of the assignment to Mantle of any such Additional Restricted Agreements to the counterparties thereto; (b) a right for such counterparties to object to such assignment; and (c) absent any objection to the assignment to Mantle of any such Additional Restricted Agreements subject to the satisfaction of any applicable Cure Costs.

7. Pursuant to the proposed Assignment Order, all monetary defaults in respect of the Restricted Agreements (and any Additional Restricted Agreements), other than arising by reason only of the insolvency of the JMB Applicants, the initiation of these CCAA Proceedings, or the failure to perform a non-monetary obligation under the Restricted Agreement (or Additional Restricted Agreement), will be required to be satisfied by Mantle.
8. The assignment of the Restricted Agreements (and any Additional Restricted Agreements) to Mantle is required to facilitate the completion of the Purchase and Sale Transaction for the benefit of the JMB Applicants and a broad range of their stakeholders.
9. Notwithstanding the assignment of the Restricted Agreements, or any other provisions of the proposed Assignment Order, the JMB Applicants shall continue to be entitled to exercise all of their rights to set-off (or any other contractual rights) and apply any and all post-filing amounts that the JMB Applicants or one of them owe or may come to owe to any party, as the case may be, as against any amounts that are owed by such party to the JMB Applicants or one of them.
10. The Applicants are also seeking a declaration that any Assigned Contracts that do not require the applicable counterparty's consent for assignment to Mantle (the "**Unrestricted Agreements**") shall be transferred to and vested in Mantle free and clear of any liabilities or monetary claims owing to or accruing in favour of the counterparties to such Unrestricted Agreements that arose prior to May 1, 2020, the Filing Date, which Unrestricted Agreements are listed in Schedule "C" of the proposed Assignment Order.
11. Granting the Assignment Order is a condition precedent to the implementation of the Plan.

Sanction Order

12. The Plan provides for the following:
 - (a) to enable Mantle to continue the Business as a going concern from and after the Plan Implementation Date;
 - (b) to provide for the arrangement of the ATB Indebtedness such that Mantle is deemed to assume the ATB Assumed Debt and, upon the occurrence of the Non-Recourse Event, ATB shall cease to have any right, remedy or recourse for the Remaining ATB Debt as

against JMB, but in any event without prejudice to any rights, remedies or recourses of ATB against 216 for the Remaining ATB Debt;

- (c) to provide for the arrangement of the Fiera Indebtedness such that Mantle is deemed to assume the Fiera Assumed Debt and, upon the occurrence of the Non-Recourse Event, Fiera shall cease to have right, remedy or recourse for the Remaining Fiera Debt as against JMB, but without prejudice to any rights, remedies or recourses of Fiera as against 216 for the Remaining Fiera Debt;
- (d) to redeem and cancel all issued and outstanding Class B Common Shares, Class C Common Shares and Other Securities for no consideration, such that none of the shares of those classes of shares are allotted or issued;
- (e) to terminate the classes of Class B Common Shares and the Class C Common Shares from the authorized share structure of JMB and terminate any classes of any Other Securities;
- (f) to alter the Original Articles substantially in the form set out on Schedule “A”;
- (g) to alter the Notice of Articles to reflect the elimination of the Class B Common Shares and the Class C Common Shares in the authorized share structure of JMB; and
- (h) to effect the transfer by CARC of the Class A Common Shares registered in its name, being the sole issued and outstanding Class A Common Shares, to RLF Holdings.

13. The Plan meets the statutory requirements of the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and is fair and reasonable and ought to be sanctioned and approved.

14. Granting the Sanction Order is a condition precedent to the implementation of the Plan.

Stay Extension Order

15. The stay of proceedings granted by the Initial Order and subsequently extended currently expires on October 2, 2020 (the “**Stay Period**”).

16. The JMB Applicants are seeking a further extension of the Stay Period pursuant to the Stay Extension Order to and including October 30, 2020.

17. The JMB Applicants require an extension of the Stay Period to implement the Purchase and Sale Transaction, to address various post-closing matters, and to handle various upcoming applications in relation to aggregate ownership and lien claim determinations, among others.
18. The JMB Applicants believe that the stakeholders will not be prejudiced by the proposed extension of the Stay Period.
19. The Monitor is supportive of the proposed extension of the Stay Period to and including October 30, 2020.
20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

21. The pleadings and materials filed in the within proceedings;
22. Affidavit of Byron Levkulich sworn September 30, 2020, filed concurrently with the within Application;
23. Seventh Report of the Monitor, to be filed; and
24. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

25. Rules 1.3, 1.4 and Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010.

Applicable Acts and regulations:

26. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended and this Honourable Court's equitable and statutory jurisdiction thereunder; and
27. Such further and other authority as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

28. None.

How this application is proposed to be heard or considered:

29. By Webex.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicants a reasonable time before the application is to be heard or considered.

APPENDIX “A”
(Webex instructions)

Virtual Courtroom 92 has been assigned for the following matter:

Date: Oct 01, 2020 02:00 PM

Style of Cause: JMB CRUSHING SYSTEMS INC v. COMPANIES CREDITORS ARRANGEMENT ACT, 2001 05482

Presiding Justice: EIDSVIK, J

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom92>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here:

<https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

SCHEDULE "A"
[Assignment Order]

SCHEDULE "B"
[Sanction Order]

SCHEDULE “C”
[Stay Extension Order]