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No. S243645
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

- AND -

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

- AND -

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF
INCA ONE GOLD CORP.

NOTICE OF APPLICATION

Name of applicant: Inca One Gold Corp.

TO: Service List, attached hereto as Schedule "A"

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, in the Province of British Columbia, on June 13, 2024 at 9:00a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of a Associate Judge.

Part 1: ORDERS SOUGHT

1. The Petitioner, Inca One Gold Corp. ("**Inca One**"), seeks the following orders:
 - (a) an order substantially in the form of the draft order attached hereto as Schedule "B" (the "**ARIO**") amending and restating the Initial Order pronounced by the Honourable Justice Fitzpatrick on June 3, 2024 (the "**Initial Order**") and granting, among other things, the following relief:
 - i. deeming service of the application for the ARIO to be good and sufficient;

- ii. increasing the quantum of the administration charge (the “**Administration Charge**”) granted pursuant to the Initial Order, from CAD\$100,000 to CAD\$220,000;
- iii. extending the Stay Period (as defined below) up to and including July 19, 2024;

(b) such further and other relief as may be sought by Inca One and as the Court deems just.

Part 2: FACTUAL BASIS

A. Background

1. The facts supporting this application are fully set out in the Second Affidavit of Edward Kelly affirmed on June 11, 2024 (the “**Second Kelly Affidavit**”).

2. Capitalized terms used but not otherwise defined herein have the same meaning as ascribed to them in the Second Kelly Affidavit or the Affidavit of Edward Kelly affirmed on June 3, 2024 (the “**First Kelly Affidavit**”).

3. On June 3, 2024, the Honourable Justice Fitzpatrick pronounced the Initial Order in respect of Inca One pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Among other things, the Initial Order established a stay of proceedings against Inca One for an initial period of ten (10) days (the “**Stay Period**”). FTI Consulting Canada Inc. (“**FTI**”) was appointed as the monitor (when referred to in such capacity, the “**Monitor**”) of Inca One.

4. Inca One has made progress towards formulating a strategy for a proposed restructuring plan during. Inca One continues to negotiate with its secured creditors, particularly OCIM Metals and Mining S.A. (“**OCIM**”) on a path forward and working with proposed lenders for interim financing and a replacement facility. Inca One has not yet finalized terms for interim financing and as a result seeks only an extension of these proceedings that reflects the funding available to it at present. Inca One anticipates that an application for interim financing will be made to this Honourable Court in the near future.

5. The relief sought by Inca One on this application is consistent with the underlying purpose of the CCAA.

6. Unless otherwise noted, all references to monetary amounts in this Notice of Application are in Canadian dollars (“**CAD**”).

B. Status of Restructuring Proceedings and Operations

7. Inca One continues to engage in discussions with various lenders both for interim financing and for a replacement facility to be used as part of a potential proposal for a Plan of Arrangement to all or some of Inca One's creditors. Current discussions remain confidential.

8. There has not been an indication from OCIM as to whether they will support these proceedings or what outcome they would prefer.

9. Inca One continues to negotiate with its material stakeholders and secured creditors to develop a possible restructuring plan and/or sale process and determine the various outcomes for Inca One's business operations. Inca One continues to work with the Monitor on financial matters, cash flow projections, and Inca One's operations.

10. Inca One has completed processing almost all of its gold inventory except for a small amount which will be processed in the next two weeks. Approximately 140 employees in Peru have received their layoff notices and Inca One is working to reduce the remaining 70-75 employees to support a full care and maintenance work program. The care and maintenance program will include security at the plants, a small maintenance team, a small administrative team and the reduction of the leased truck fleet.

11. Despite demands by OCIM with respect to the shares of Chala One S.A.C. and Corizona S.A.C., OCIM has not taken additional steps in Peru.

C. Stay of Proceedings

12. As set out in the Cash Flow Forecast as set out in at Exhibit "U" of the First Kelly Affidavit, Inca One is anticipated to have sufficient liquidity to satisfy its obligations during the extended Stay Period.

13. The stay of proceedings is necessary for Inca One to pursue and implement a viable restructuring plan. Inca One has acted and is continuing to act in good faith and with due diligence.

Part 3: LEGAL BASIS

Stay Period

14. Inca One seeks an extension of the Stay Period up to and including July 19, 2024.

15. Subsection 11.02(2) of the CCAA grants this Court the discretion to grant the Stay Period for a period that this Court considers necessary and on any terms that this Court may impose.

Section 11.02(3) of the CCAA further provides that this court cannot exercise its discretion to grant the Stay Period unless it is satisfied that:

- (a) the Stay Period is appropriate in the circumstances; and
- (b) the Petitioner has acted and continues to act in good faith and with due diligence.

CCAA, ss 11.02(2), (3)
Worldspan Marine Inc, Re, 2011 BCSC 1758 at para. 12

16. In assessing whether an extension of the Stay Period is appropriate in the circumstances, this Court inquires whether the extension advances the remedial purpose of the CCAA.

Century Services Inc v. Canada (Attorney General), 2010 SCC 60 at para. 70
Worldspan at para. 13

17. The Supreme Court of Canada has held that the purpose of the CCAA is "to facilitate the survival of going concerns" by "permit[ing] the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets".

Century Services at para. 15
Canada v. Canada North Group Inc., 2021 SCC 30 at para. 21

18. A stay of proceedings helps achieve this purpose by preserving the status quo for the debtor company, facilitating the ongoing operations of the debtor company's business, preserving the value of the business, and providing the debtor company with the necessary time, flexibility, and "breathing room" to carry out a supervised restructuring or organised sale process.

Re Lehndorff General Partners Ltd. (1993), 17 CBR (3d) 24, 9 BLR 275 (Ont Gen Div)
at paras. 5- 7

Re North American Tungsten Corp., 2015 BCSC 1376 at para. 25

1057863 B.C. Ltd. (Re), 2020 BCSC 1359 at para 118, citing *Timminco Limited (Re)*,
2012 ONSC 2515 at para. 15

19. Debtor companies are entitled to seek protection under the CCAA in the context of a wide range of restructuring options.

Century Services at para 57, citing *Re Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at para. 44

20. Inca One requires additional time to continue the restructuring of its affairs in the best interest of its creditors and other stakeholders, including to continue to:

- (a) identify and finalize interim financing and refinancing options;
- (b) negotiate with OCIM, Equinox and other stakeholders; and
- (c) have a plan of arrangement or sale process approved by this Honourable Court.

21. These activities are necessary for Inca One's restructuring. The stay extension sought is reasonable in the circumstances.. Inca One intends to formulate and seek approval of any financing and a restructuring plan at the earliest opportunity. In light of the progress made to date, and the steps contemplated to be completed during the extended Stay Period, the extension of the Stay Period sought by Inca One is appropriate.

22. Inca One has been working in good faith and with due diligence to advance these CCAA proceedings.

23. Since the commencement of the Stay Period, Inca One has continued to develop its restructuring plan by engaging with its counsel, the Monitor, and its material stakeholders regarding Inca One's restructuring process and prospects.

24. Inca One has also confirmed that it has sufficient liquidity to meet its obligations during the Stay Period. Accordingly, the Company requests this Honourable Court to approve the requested extension of the Stay Period.

The Administrative Charge

25. The Initial Order established an Administrative Charge in the amount of CAD\$100,000, in favour of the Monitor, the Monitor's counsel, and Inca One's counsel, to secure their respective fees and disbursements incurred at their standard rates and charges.

26. Inca One seeks an increase in the amount of the Administration Charge to CAD\$220,000.

27. Section 11.52 of the CCAA expressly provides this Court with the power to grant a change in respect of professional fees and disbursements.

CCAA, s. 11.52

28. The increase in the amount of the Administration Charge sought by Inca One is appropriate in the circumstances given: (i) the length of the extension of the Stay Period which is being sought by Inca One; and (ii) the anticipated liabilities to be incurred with respect to the fees and disbursements of the Monitor, the Monitor's counsel, and Inca One's counsel, during such period.

29. Inca One has consulted with and obtained guidance from the Monitor in proposing this increase in the Administration Charge.

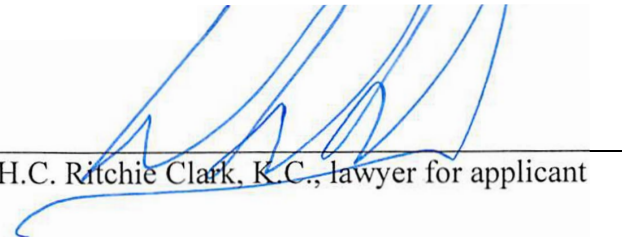
Part 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #2 of Edward Kelly, made June 11, 2024;
- 2. The pleadings and proceedings herein; and
- 3. Such further materials as counsel may advise.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must

- (a) file an application response in Form 33 within 5 days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and
- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of filed copy of the application response and other documents referred to in Rule 9-7(12) of the Supreme Court Civil Rules.

Date: June 11, 2024



H.C. Ritchie Clark, K.C., lawyer for applicant

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part I of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:
Date: Signature of <input type="checkbox"/> Judge <input type="checkbox"/> 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
- other 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.