



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 Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, in the Province of British Columbia, on October 7, 2024 at 10:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 1 day.

This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. The Petitioner, Inca One Gold Corp. ("**Inca One**"), seeks the following orders:
 - (a) deeming service of this application to be good and sufficient; and
 - (b) extending the Stay Period (as defined below) up to and including October 21, 2024; and
 - (c) 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 Fifth Affidavit of Edward Kelly affirmed on August 21, 2024 (the "**Fifth Kelly Affidavit**") and the pleadings filed by Inca One to date.
2. Capitalized terms used but not otherwise defined herein have the same meaning as ascribed to them in the Fourth Kelly Affidavit or the Affidavit of Edward Kelly affirmed on June 3, 2024 (the "**First Kelly Affidavit**").
3. On June 3, 2024, the Honourable Madam 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. On June 13, 2024, the Honourable Madam Justice Fitzpatrick pronounced the Amended and Restated Initial Order, which extended the Stay Period to July 22, 2024 and increased the Administration Charge to \$220,000.
5. On July 22, 2024, the Honourable Madam Justice Fitzpatrick pronounced an Order extending the Stay Period to July 25, 2024.
6. On July 25, 2024, the Honourable Madam Justice Fitzpatrick pronounced the Second Ario, which extended the Stay Period to August 26, 2024 and authorized an interim financing facility (the "**Interim Financing Facility**") from 401601 B.C. Ltd. (the "**Interim Lender**") and an Interim Financing Charge. As detailed in the materials presented to the Court on that day, Inca One obtained a term sheet (the "**Replacement Financing Term Sheet**") with Westmount Capital ("**Westmount**") to provide Inca One with a \$25,000,000 USD replacement financing facility (the "**Replacement Facility**") to close no later than September 30, 2024.
7. On August 25, 2024, the Honourable Madam Justice Fitzpatrick pronounced an Order extending the Stay Period to October 7, 2024.
8. Since the granting of the Second ARIO, Inca One has closed the Interim Financing and has been working with Westmount in advancing the Replacement Facility. The Replacement Facility contemplates replacement or arrangement of the existing priority security of OCIM Metals and Mining S.A. ("**OCIM**") and Equinox Gold Corp. ("**Equinox**").
9. This Notice of Application will also serve as a response to the application for the appointment of a receiver.
10. It is unclear what powers, or what effect a Receivership Order from this Court, would have in Peru.

11. Prior to the commencement of these proceedings, OCIM sought to exercise its share pledge, but was unable to do so, on the basis that the pledge was made in British Columbia, and could not be enforced in Peru.

12. After the Initial Stay granted by this Honourable Court, certain creditors in Peru took execution proceedings against certain bank accounts of the Petitioners, and were successful, on the basis that the British Columbia order granting a stay is not effective in Peru.

13. The costs of a receivership would be very significant, particularly given that the actual assets are in Peru. It is not wildly speculative to say that the costs could be as much as \$1 million, to the detriment of all of the creditors.

14. The concerns expressed in the Saenz affidavit #2 have been addressed in affidavit #5 of Edward Kelly.

15. There is no impairment of the assets, and the assets are not at risk. The plant has been operating in the care and maintenance mode, and, indeed, the factory's process is not operating and the machines are not being used.

16. The Petitioners have been in frequent communication with Westmount, and its other brokers, to seek replacement financing. Those discussions have been encouraging, and a number of investors, particularly some in Hong Kong, identified by Westmount, have expressed strong interest in the refinancing. However, no actual offers of refinancing or proposed term sheets have been made.

17. 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

18. As set forth in affidavit #5 of Edward Kelly, the debt financing approved by this Honourable Court will permit a further two weeks of operations.

19. The success of the reorganization has always depended on the ability of the petitioners to obtain refinancing.

20. Although the petitioners have received many expressions of interest, finalizing an offer to finance has proven extremely difficult.

21. The object of this legislation is to afford a full opportunity to attempt to solve the company's financial difficulties.

22. The company can afford a further two weeks of operations, and it has leads on refinancing from the Hong Kong investor group.

23. If at the end of that two-week process, a financing commitment has not been obtained, it is the position of the Petitioners that a sales investment solicitation process would be preferable to a receivership, with the attendant cost, and difficulty with assets in Peru.

24. A delay of a further two weeks would not result in any prejudice to the creditors, including OCIM, and it is likely a sales process would yield more proceeds for the stakeholders than a receivership.

Part 3: LEGAL BASIS

Stay Period

25. Inca One seeks an extension of the Stay Period up to and including October 21, 2024.

26. Subsection 11.02(2) of the CCAA grants this Court the discretion to order a 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

27. 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

28. 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

29. 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 organized 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

30. 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

31. Inca One requires additional time to continue the restructuring of its affairs in the best interest of its creditors and other stakeholders, including to conduct the Claims Process and to advance the Replacement Facility.

32. These activities are necessary for Inca One's restructuring. The stay extension sought is reasonable in the circumstances.

33. 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.

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

35. Inca One will have 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.

Part 4: MATERIAL TO BE RELIED ON

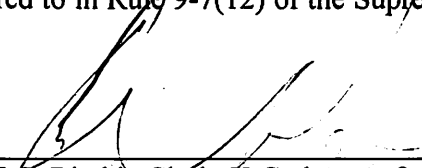
1. Affidavit #5 of Edward Kelly, made October 4, 2024;
2. The Fourth Report of the Monitor, to be filed;
3. The pleadings and proceedings herein; and
4. Such further materials as counsel may advise.

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: October 4, 2024



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

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part I of this notice of application

with the following variations and additional terms:

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Date: Signature of Judge Associate Judge

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.

SCHEDULE "A" - SERVICE LIST

SCHEDULE "B" – DRAFT ORDER