

CANADA

SUPERIOR COURT
COMMERCIAL DIVISION

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

KITCO METALS INC.

Petitioner

and

RICHTER ADVISORY GROUP INC.

Monitor

JUDGMENT
ON APPLICATION FOR AUTHORIZATION TO PAY A FURTHER PARTIAL
DIVIDEND (seq. 150)

CONSIDERING THE FOLLOWING:

- [1] Kitco Metals Inc.'s (the "**Petitioner**" or "**Kitco**") Application for authorization to pay a further partial dividend, pursuant to section 9 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") (the "**Motion**"), the exhibits filed in support thereof (Exhibits R-1, R-2, R-3, R-4), the Twenty-Ninth Report of the Monitor, dated October 7, 2016 (Exhibit R-5) and the submissions of counsel present at the hearing;
- [2] Kitco seeks the authorization to pay a further partial dividend to Heraeus Metals New York LLC (**Heraeus**) and to G4S International Logistics (USA) Inc. (**G4S**), the two remaining creditors of Kitco, aside from the Agence du Revenu du Québec and the Canada Revenue Agency ("**Agencies**");

[12] **GRANTS** the Motion;

[13] **ACKNOWLEDGES** the consent of the Agencies to Kitco's request to pay an additional partial dividend to trade creditors, the whole subject to the following:

- a) Such consent is without prejudice to the arguments raised by the Agencies on their appeal of the judgment rendered on February 1, 2016 regarding compensation of input tax credits and input tax refunds (Court of Appeal docket numbers 500-09-025913-161 and 500-09-025914-169);
- b) Such consent shall not be construed as an undertaking by the Agencies not to contest any further request for payment of a partial dividend and does not bind the Agencies with respect to any such further request by Kitco;
- c) The present Order does not constitute a plan of arrangement that could bind the Agencies with respect to the settlement of their claims and does not constitute novation of the Agencies' claims;

[14] **AUTHORIZES** Kitco to pay the following partial dividends on or prior to November 15, 2016 using the funds presently held in trust by the Monitor's counsel following the sale of the commercial property known as Suite 600 in the Altitude project (the "**Trust Funds**");

- a) \$50,000 to G4S International Logistics (USA), Inc.;
- b) \$681,674.04 to Heraeus Metals New York LLC;

[15] **AUTHORIZES** Kitco to pay an additional partial dividend of \$18,167.41 to G4S International Logistics (USA), Inc. on or prior to November 15, 2016;

[16] **AUTHORIZES** Kitco to pay the following partial dividends on or prior to March 31, 2017:

- a) \$50,000 to G4S International Logistics (USA), Inc.;

- [3] The further partial dividend for which Kitco seeks authorization totals \$1,244,841.50¹;
- [4] Heraeus brings forward an interpretation of the Agreement of August 8, 2016 (Exhibit R-1, s. 1.5 (1)) which would increase the overall contemplated payments to Heraeus by \$50,000 and to G4S by \$5,000;
- [5] Such interpretation is not unreasonable;
- [6] The Monitor has already concluded that the impact of the overall \$1,244,841.50 proposed payment on Kitco's operating cashflow will be extremely minimal (Exhibit R-5, par. 26-27);
- [7] The proposed \$55,000 increase in the payments to be made to Heraeus and G4S will therefore have no significant impact of Kitco's operating cashflow;
- [8] Moreover, there is no submission or evidence that refusing the \$55,000 increase of the payments to Heraeus and G4S would better serve Kitco's CCAA restructuring process;
- [9] On the other hand, refusing the \$55,000 increase would have an immediate impact on the remaining amounts owing to Heraeus and G4S. Even after the payment of the further partial dividend, Heraeus and G4S will indeed be left with amounts owing on their claims against Kitco;
- [10] Kitco has not convinced the Court that the interpretation which it advances, which admittedly is also not unreasonable, shall be retained for better furtherance of the goals of the CCAA in the present matter;
- [11] The Court will therefore uphold the interpretation which Heraeus advances and will accordingly increase the overall amounts to be paid by \$55,000;

WHEREFORE, THE COURT:

¹ \$694,841.46 payable on or prior to November 15, 2016 and \$550,000 payable on or prior to March 31, 2017.

b) \$500,000 to Heraeus Metals New York LLC;

- [17] **ORDERS** Woods LLP to remit the Trust Funds to Kitco's counsel, Gowling WLG (Canada) LLP, upon a written demand from Kitco's counsel requesting such funds on behalf of Kitco for the purposes of paying the partial dividend described in conclusion 14 hereof;
- [18] **ORDERS** the provisional execution of the Order notwithstanding any appeal without the need to furnish any security;
- [19] **THE WHOLE** without costs.

Montreal, October 27, 2016



MARIE-ANNE PAQUETTE, J.S.C.