

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-040900-116

DATE: September 28, 2017

BY THE HONOURABLE MARIE-ANNE PAQUETTE, J.S.C.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, as amended ("**CCAA**"):**

KITCO METALS INC. ("Kitco")
DEBTOR COMPANY-Petitioner

v.

HERAEUS METALS NEW YORK LLC ("Heraeus")
CREDITOR-Respondent

and

RICHTER ADVISORY GROUP INC.
MONITOR-Mis-en-cause

JUDGMENT
ON KITCO'S AMENDED APPLICATION FOR A DECLARATORY JUDGMENT
REGARDING THE CURRENCY CONVERSION RATE APPLICABLE TO THE CLAIM
OF HERAEUS

OVERVIEW

[1] Kitco is under CCAA protection since June 8, 2011.

[2] The present application relates to Heraeus, an ordinary creditor having an originating claim in US currency.

[3] Heraeus filed a Proof of Claim and, with the authorization of the Court, received 5 payments from Kitco since the initiation of the current insolvency proceedings. The Court must now determine if as a result of these payments Heraeus' claim has been fully paid.

[4] Of importance is the fact that the 6-year-period which elapsed since the beginning of the proceedings was marked with a devaluation of Canadian currency, from 1.0225¹ on June 8, 2011 to 0.7405² on the date of the 5th payment.

[5] That raises the question of the applicable conversion rate.

[6] According to Kitco, the conversion rate applicable on June 8, 2011 (the Determination Date set out in the Claims Procedure Order) should be used. As a result, Heraeus would have been paid in full since June 2, 2017, when the 5th payment was made. Kitco furthermore argues that Heraeus is not entitled to legal interest and additional indemnity on the balance owing on its claim, if any.

[7] Heraeus disagrees and advocates that it should not bear the burden of the devaluation of the Canadian currency since June 8, 2011 and that the conversion rate applicable on the date of each partial payment made should be used to calculate the amount owing on its claim. Hence, a balance of CAN\$1,321,326 would remain unpaid. Heraeus requests payment of same, plus legal interest and additional indemnity accrued since the filing of its Proof of Claim.

[8] The Court holds that none of the orders issued to date make a definitive and binding ruling on the applicable conversion rate and on the resulting compromise of Heraeus' claim. The payments were made to Heraeus pursuant to specific orders issued in the course of the present CCAA proceedings and not pursuant to a duly approved plan of arrangement. Thus, the balance owing shall be calculated using the conversion rate applicable at the time of each payment.

[9] As a result, a balance of CAN\$1,321,326 is owing on Heraeus' claim. However, Heraeus is not entitled to legal interest and additional indemnity on same. It renounced to it in the Acknowledgement Agreement entered into with Kitco on August 8, 2016. Also, the "*interest stops rule*" should apply.

1. THE ESSENCE AND MILESTONES OF KITCO'S CCAA PROCEEDINGS

[10] The current insolvency proceedings stem from Notices of Assessment which the federal and Quebec tax authorities (**Agencies**)³ issued to claim \$313 million of sales tax credit allegedly received illegally by Kitco, against which Kitco filed Notices of Opposition. The related tax, civil and criminal litigations are all pending.

¹ (CAN\$1=US\$1.0225) On June 8, 2011, the Determination Date as per the Claims Procedure Order.

² (CAN\$1=US\$0.7405) On June 2, 2017, the date of the 5th payment.

³ Canada Revenue Agency (**CRA**) and Quebec Revenue Agency (**QRA**).

[11] If not for the above tax claims, Kitco is a solvent company, with profitable operations.

[12] Soon after the issuance of these Notices of Assessment, Kitco sought shelter from execution proceedings by the Agencies and filed, on June 8, 2011, a Notice of Intention to make a proposal under the *Bankruptcy and Insolvency Act* (**BIA**).⁴

[13] On July 7, 2011, the insolvency proceedings were continued under the CCAA and an Initial Order was issued pursuant to this statute (**Initial Order**).

[14] On April 18, 2012, the Court set the process to solicit claims (**Claims Procedure Order**).⁵

[15] The potential creditors were allotted until July 22, 2012 to file their proof of claim (**Claims Bar Date**)⁶ and June 8, 2011 was picked as the reference date to determine the amount of the claims against Kitco and the conversion rate applicable to claims denominated in a foreign currency (**Determination Date**).⁷

[16] On July 20, 2012, Heraeus, Kitco and Kitco International Limited entered into an agreement (**Assignment of claim**)⁸ pursuant to which Kitco acknowledged owing US\$4,704,489 to Heraeus in principal, interest and costs.

[17] On the same date, Heraeus filed a proof of claim as unsecured creditor for CAN\$4,968,326 (**Heraeus' Proof of Claim**).⁹ In conformity with the Claims Procedure Order and with the indication on the proof of claim form, Heraeus used the rate applicable on June 8, 2011 to convert its claim to Canadian currency.¹⁰

[18] Given the aim of the CCAA proceedings and the otherwise solvent situation of Kitco, the Court insisted that the other creditors should not be held hostage to the CCAA process, pending the resolution of the complex litigations with the Agencies. Hence, the Court issued 3 orders authorizing the payment of partial dividends to all the creditors other than the Agencies, including Heraeus.

[19] On April 17, 2014, the Court ordered a first partial payment (**1st Payment Order**). Hence, on April 29, 2014, Kitco remitted CAN\$1,738,914 to the Monitor, who paid such amount to Heraeus, after converting it into US currency (**1st Payment**).

⁴ R.S.C. (1985), ch. B-3, art. 50.4(1) and 69(1).

⁵ Order approving a process to solicit claims and for the establishment of a claims bar date (Exhibit R-1).

⁶ Claims Procedure Order, par. 2 e).

⁷ Claims Procedure Order, par. 2 n) and 13.

⁸ Exhibit R-2.

⁹ Exhibit R-2.

¹⁰ US\$1 = CAN\$0.978.

[20] On May 25, 2016, the Court ordered a second payment (**2nd Payment Order**). On August 16, 2016, Kitco thus remitted CAN\$1,229,412 to the Monitor, who in turn paid this amount to Heraeus, after converting it into US currency (**2nd Payment**).

[21] In the beginning of August 2016, Kitco initiated discussions with its remaining creditors, other than the Agencies, with the view to paying the full outstanding amount of their respective claims.

[22] The issue of the rate applicable to the conversion of Heraeus' claim then arose.

[23] Kitco and Heraeus ran into a disagreement. Kitco insisted on using the conversion rate applicable on June 8, 2011, as indicated in the Claims Procedure Order. Heraeus insisted on using the conversion rate applicable on the date of each payment so as to calculate the balance owing on its claim.

[24] On August 8, 2016, they entered into an Acknowledgement Agreement (**Acknowledgement Agreement**)¹¹ where they agreed, for instance, that their conflicting views shall not preclude further partial payments from being made and decided to postpone the debate on the conversion rate.

1.3 Heraeus' claim

The parties are in disagreement about the outstanding amount owed to Heraeus due to the applicable currency conversion rate, but they agree to postpone the resolution of these issues to a later date. In that respect, regardless of any of Kitco's personal accounting book entries, the parties agree and acknowledge that the payment of the Upstream Loan and ancillary transactions are without admission or prejudice to Heraeus' alleged right to claim the full amount of its outstanding claim, including the amount owed to it by KIL, and to the right of Kitco and KIL to contest same.

1.4 Interim payments

Kitco undertakes to file and present on or before October 3, 2016 a motion requesting the authorization of the Superior Court to:

- a) pay a portion of Heraeus' claim, namely an amount of CAD\$500,00 to Heraeus on or before November 15, 2016 and a proportionate amount to its other creditor G4S ("**G4S**") (Collectively, the "**November 2016 Payments**");
- b) pay a portion of Heraeus' claim, namely an amount of CAD\$500,00 to Heraeus on or before March 31, 2017 and a proportionate amount to its other creditor G4S (Collectively, the "**March 2017 Payments**")

¹¹ Exhibit R-3.

1.5 Additional payments

In addition to the November 2016 Payments and March 2017 Payments, Kitco agrees and undertakes to seek the authorization of the Superior Court to make, subject to cash flow availability, payments to Heraeus in reduction of its claim, from the following sources:

[...]

1.6 Final Payment

Subject to the authorization of the Superior Court, Kitco undertakes to pay to Heraeus on or before May 31, 2017 the balance of its claim.

[Emphasis added]

[25] On October 27, 2016, the Court authorized a 3rd and 4th payments (**3rd and 4th Payment Order**). On November 16, Kitco thus remitted CAN\$681,674.04 to the Monitor, who in turn paid this amount to Heraeus, after converting it into US currency (**3rd Payment**).

[26] On March 30, 2017, Kitco remitted an amount of CAN\$500,000 to the Monitor, who in turn paid this amount to Heraeus, after converting it into US currency (**4th Payment**).

[27] On May 24, 2017, the Court authorized the payment of a 5th dividend (**5th Payment Order**). On June 2, 2017, Kitco thus remitted CAN\$818,327 to the Monitor, who in turn paid this amount to Heraeus, after converting it in US currency (**5th Payment**).

[28] On December 1st, 2016, as agreed in the Acknowledgement Agreement, Kitco filed the Application under review, for declaratory judgment on the conversion rate applicable to Heraeus' claim.

2. THE ANALYSIS

2.1 The conversion rate

[29] Under Quebec civil law, general principles recognize a creditor's right to the most favourable conversion rate. For many reasons, this principle also applies to the determination of the applicable conversion rate if no duly approved plan of arrangement deals with this issue.

[30] Firstly, article 43 of the CCAA provides that the claims in foreign currency are converted at the rate applicable at the time of the Initial Order, unless provided otherwise by the plan of arrangement:

43 [Claims in foreign currency] If a compromise or an arrangement is proposed in respect of a debtor company, a claim for a debt that is payable in a currency other than Canadian currency is to be converted to Canadian currency as of the date of the initial application in respect of the company unless otherwise provided in the proposed compromise or arrangement.

[Emphasis added]

[31] This provision only applies when there is a compromise or plan of arrangement. In the absence of same, this CCAA provision does not compromise the creditors' rights deriving from the choice of the applicable currency rate. In such cases, those rights may only be compromised in accordance with the general principles of the applicable provincial civil law.

[32] In the case at hand, there is no such proposed compromise or arrangement.

[33] Secondly, none of the orders made to date conclusively state explicitly or implicitly ruling on the applicable conversion rate or compromise Heraeus' rights in this regard.

[34] The **Initial Order** suspends the rights of the creditors to pursue proceedings against the Debtor. It does not otherwise affect the rights of the creditors or rule on the amount or validity of their claim.

[35] The **Claims Procedure Order** is a procedural order, not a substantive one. It is not a stand-alone order which can, in and of itself, affect the claims or rights of creditors.

[36] Its main goal is to set a limit date for the filing of claims (Claims Bar Date). Such a framework is necessary to summarily establish the potential claims against the Debtor Company, with the view to regulating the vote on and the distribution pursuant to an eventual plan of arrangement.

[37] Hence, the Claims Procedure Order does not compromise the rights of the creditors. It sets the parameters of the creditors' claims; with the exact amount and validity of every claim to be decided at a later stage.

[38] The final determination on the amount of the claims, including the applicable conversion rate, may only arise from a further specific order of the Court or from a plan or arrangement providing for the compromise of the claims and for the applicable conversion rate.

[39] Understandably, it would be unrealistic, undesirable and unwise to force all the potential creditors to fight tooth and nail at such an early stage on every issue which could possibly, later down the road, have an impact on their claim. Potentially endless debates on useless issues, thriving from obsessional neurosis rather than from genuine necessity, could otherwise result.

[40] For instance, any debate in principle on the applicable conversion rate would have been unnecessary if full payment to Heraeus had been contemplated before the Canadian dollar significantly devaluated, or if no such devaluation had occurred.

[41] When setting a claims procedure, the Court should not be cluttered with pointless debates that overlook the purpose of this proceeding: set the parameters of the creditor's claim, with the view to an eventual vote and distribution on a plan of arrangement to come.

[42] The limited ambit of the Claims Procedure Order is confirmed in the following provision, which indicates that a new order will be necessary to set the procedure for reviewing and determining claims:

[7] **ORDERS** that the applicable procedures for reviewing and determining Claims and for calling, holding and conducting the Creditor's Meeting shall be established by further Order of the Court.¹²

[Emphasis added]

[43] The Claims Procedure Order also provides that the ruling on the applicable conversion rate is limited to the purposes of the Claims Procedure Order:

[13] **ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination date.

[Emphasis added]

[44] The **Payment Orders** also make no implicit or explicit ruling on the rate applicable to the conversion of foreign currency claims. They only allow partial payments to be made.

1st Payment Order

[3] **AUTORISE** Kitco à procéder, dans les soixante (60) jours suivant la présente Ordonnance, au paiement d'un dividende partiel à ses créanciers, à l'exception des Agences et de ses créanciers liés, au montant approximatif de 2 200 000 \$ comme suit :

[...]

- c) Paiement à 35 % des réclamations prouvées supérieures à 100 000 \$ soit celles de G4S International Logistics (USA) inc. et Heraeus Metals New York LLC, totalisant approximativement 5 471 000 \$ (soit un dividende partiel d'approximativement 1 914 000 \$).

2nd Payment Order

[6] **AUTHORIZES** and **ORDERS** Kitco Metals Inc. to pay the following partial dividend on or prior to August 15, 2016 :

¹² Claims Procedure Order.

c) \$1,229,412 to Heraeus Metals new York LLC

3rd and 4th Payment Order

[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) [...];

b) \$681,674.04 to Heraeus Metals New York LLC;
[...]

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

a) [...]

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

5th Payment Order

[5] **AUTHORIZES** and **ORDERS** Kitco to pay the following dividend on or prior to May 31, 2017 :

a) [...]

b) \$818,326 to Heraeus Metals New York LLC in full and final satisfaction of its claim, the whole subject to the final judgment to be rendered on Kitco's Application of Declaratory Judgment Regarding the Currency Conversion Rate Applicable to the Claim of Heraeus Metals New York LLC

[Emphasis added]

[45] None of the Payments Orders can be construed as a clear and definite ruling on the rate applicable to the conversion of Heraeus' claim into Canadian currency.

[46] The absence of any debate, evidence or allegation at the time of any of these orders makes it even more difficult to draw such inference from the Payment Orders.

[47] Understandably, the issue of the applicable conversion rate was never even alluded to at the time of the Initial Order, of the Claims Procedure Order or of the Orders for the 1st and 2nd Payments.

[48] The Orders for the 1st and 2nd Payments gave rise to no conversion rate controversy. Heraeus then had the opportunity of receiving part of its claim, in spite of the pending CCAA stay. Justifiably, Heraeus accepted without raising a potentially meaningless or moot debate. The conversion rate was not a live issue at that time.

[49] A conversion rate issue arose only when Kitco contemplated making a full and final payment to Heraeus in the beginning of August, 2016, prior to seeking permission to make the 3rd and 4th payments. This required an accurate calculation of the outstanding balance of Heraeus' claim and prompted informed discussions between Heraeus and Kitco on the applicable currency rate.

[50] Without delay, Heraeus and Kitco canvassed the issue on the first occasion and informed the Court of the upcoming debate on this matter. From then on, the Payments were authorized and made under reserve of Kitco and Heraeus' conflicting positions on the applicable conversion rate. The Acknowledgement Agreement was specifically entered into to that end.

[51] Thirdly, the compromise of a creditor's claim will only be effected through a plan of arrangement, after approval by the double majority required under the CCAA. If no such plan is filed or even contemplated, as in the present case, the rules of Quebec civil law will apply to the determination of the amount of a creditor's claim.

[52] According to Quebec civil law, a creditor is entitled to benefit from the conversion rate which is most favourable to him, provided that he acted diligently and that the reference rate that he suggests can be justified.

Le créancier, dans telle situation, doit faire la preuve d'un taux de conversion. Si sa réclamation est reconnue comme justifiée, il peut bénéficier de la date qui lui semble la plus favorable. Après tout, le débiteur pouvait toujours payer plus tôt. Une réserve nécessaire serait le cas où l'inaction ou la négligence du créancier porterait préjudice au débiteur, en raison de l'évolution du taux des changes.

L'on ne permettrait pas au créancier de spéculer aux dépens du débiteur. Par contre, s'il n'a pas payé en temps utile, celui-ci ne pourrait pas se plaindre du choix fait par son créancier quant à la date de conversion au taux des changes.¹³

[Emphasis added]

[53] Heraeus therefore has the right to the most favourable conversion rate, as the delay in obtaining payment is not attributable to its negligence and as the conversion rate on which it relies (date of payments) can be reasonably justified and is not arbitrary.

[54] Furthermore, applying this rule is acutely justified in the case at hand, where Kitco can pay the balance owing to Heraeus, even if calculated using the rate which is more favourable to this creditor, without jeopardizing its cash flow or the CCAA proceedings.

[55] This general Quebec civil law rule also justifies applying the conversion rate on the date when Heraeus received payment from the Monitor (as Heraeus suggests), as

¹³ *Cohen v. Hill Samuel & Co.*, 1989 CanLII 845, p. 7 (QC CA). Quoted with approval in *Équipements Stosik inc. v. Hock Seng Lee Heavy Industries, sdn bhd*, 2007 QCCA 1531, par. 10-11.

opposed to the rate on the date when Kitco remitted the funds to the Monitor (as Kitco suggests).

[56] Fourthly, it is of no assistance to Kitco to claim that it would have hedged its positions differently had it known that the conversion rate would vary in accordance with the date of payments and was not frozen at the June 8, 2011 rate.

[57] Heraeus is not to bear the burden of Kitco's unfounded assumption on the applicable conversion rate, particularly in as case such as here, where Kitco has the necessary funds to pay the balance of Heraeus' claim, as the latter calculates it, with interest and additional indemnity.

[58] Fifthly, accepting Heraeus' right to a more favourable conversion rate raises no issue of fairness as regards the other creditors.

[59] None of the other creditors who had a claim in foreign currency advanced a conversion rate issue. By now, these creditors have all been paid in full.

[60] The Court can reasonably assume that they raised no such issue because it had no significant impact in view of the amount of their claim and of the rate at the time they received payment. Hence, allowing the amount of Heraeus' claim to be converted at a different rate today does not run contrary to the principle of equal treatment of the creditors.

[61] Finally, Heraeus is not estopped from requesting the benefit of a conversion rate different from the one provided for in the Claims Procedure Order, 4 years after the filing of its own Proof of Claim, and after having accepted 2 partial payments.

[62] Estoppel (*fin de non-recevoir*) undoubtedly applies in cases where the Court's authority stems from statutes, such as the CCAA.¹⁴ However, such an exception, raised to defeat an otherwise valid claim, derives from the obligation of good faith which is incumbent on every person in the exercise of his rights.¹⁵

[63] In the case at hand, the delay in raising this debate does not derive from the negligence or lack of good faith of any of the parties involved. As explained above, the issue only arose in the beginning of August 2016, when full payment of Heraeus' claim was contemplated. The parties then informed the Court of their disagreement without delay. Heraeus has not tolerated and has not remained passive in the face of the state of fact or law which it aims to now change. Heraeus has not defeated the legitimate

¹⁴ *Stanford International Bank Ltd (Dans l'affaire de la liquidation de)*, 2009 QCCA 2475 (CanLII), par. 26.

¹⁵ *Richter & Associés inc. v. Merrill Lynch Canada inc.*, 2007 QCCA 124, par. 60, 62; *Arthur v. Williams*, 2002 CanLII 41237 (QC CA), par. 63.

expectations of Kitco on the issue of currency rate.¹⁶ Hence, there is no support for the estoppel issue which Kitco raises.

2.2 The interest and additional indemnity

[64] Kitco claims that interest and additional indemnity do not accrue on Heraeus' claim for the period subsequent to the Initial Order, as the « *interest stops rule* »¹⁷ would apply here. Kitco also argues that Heraeus would be estopped from claiming interest and an additional indemnity 4 years after filing its proof of claim.

[65] The Court comes to the same conclusion as Kitco, albeit for the following reasons.

[66] Firstly, the Court shares the Monitor's reading of the Acknowledgement Agreement which the parties knowingly entered into on August 8, 2016, when they came across the issue of conversion rates.

[67] The parties then meticulously and knowingly explored the contours of this dispute and came up with a full and complete agreement. Presumably no stone was left unturned. The parties had all opportunity to involve the relevant professionals and to make all necessary verifications.

[68] Nowhere does this agreement reserve Heraeus' right to claim interest and additional indemnity on the outstanding amount or allude to interest and an additional indemnity.

[69] Given the content and context of the Acknowledgement Agreement, the Court holds that Heraeus waived any claim for interest and an additional indemnity on the outstanding balance of its claim.

[70] Secondly, the « *interest stops rule* » applies here, even if the current insolvency proceedings occur under the auspices of the CCAA. According to this rule, interest on claims of the creditors stop accruing on the date of the initiation of the proceedings.

[71] Admittedly, the Supreme Court Canada and the Ontario Court of Appeal ruled in 2006 (*Canada 3000*)¹⁸ and in 2007 (*Stelco*)¹⁹ that interest continues to accrue under the CCAA; while under the BIA, they stop accruing after the date of bankruptcy.

¹⁶ *Arthur v. Williams*, 2002 CanLII 41237 (QC CA), par. 57, 58; *Alliance des professeures et professeurs de Montréal v. Morin*, 1994 CanLII 6360 (QC CA), par. 16, 20;

¹⁷ *Nortel Networks Corporation et al*, 2014 ONSC 5247, par. 12, 13, 18, 28, 29, 33; L.W. HOULDEN, Geoffrey B. MORAWETZ and Janis P. SARRA, « G\$45 "Interest on Claims of Creditors" and G\$163-Interest from date of Bankruptcy », in *Bankruptcy and Insolvency Analysis*, Toronto, Thomson Reuters, 2016-2017.

¹⁸ *Re Canada 3000 Inc.*, [2006] 1 S.C.R. 865, par. 96.

¹⁹ *Stelco Inc. Re*, 2007 ONCA 483.

[72] However, these precedents may need to be revisited in view of the subsequent teachings of the Supreme Court of Canada in 2010 (*Century*).²⁰

[73] In *Century*, the Supreme Court of Canada explained that the CCAA and the BIA form part of an integrated body of insolvency law,²¹ which share distinct purposes:

[15] As I will discuss at greater length below, the purpose of the CCAA — Canada's first reorganization statute — is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets. Proposals to creditors under the BIA serve the same remedial purpose, though this is achieved through a rules-based mechanism that offers less flexibility. Where reorganization is impossible, the BIA may be employed to provide an orderly mechanism for the distribution of a debtor's assets to satisfy creditor claims according to predetermined priority rules.²²

[Emphasis added]

[74] The Supreme Court of Canada stressed the necessity of interpreting these two statutes harmoniously, whenever possible, in order to avoid strange asymmetric results. If possible, Courts should stay away from an interpretation which would result in anomalous outcomes and provide skewed incentives in favour of one statute over another, for reasons that overlook the genuine purpose and object of each statutory regime.²³

[75] In 2013 (*Indalex*),²⁴ the Supreme Court of Canada reiterated this view.

[76] Hence, in the absence of clear legal provisions supporting conflicting interpretations, the Court should stay away from a reading that could create an unintended incentive to revert to the BIA (to avoid interest accrual for example), irrespective of the feasibility or preferability of achieving a CCAA reorganization.

[77] More importantly, on the issue of interest accrual, the notion of « Claim », as defined in the CCAA, provides support to an interpretation which is compatible with the BIA. The notion of “Claims” under the CCAA is indeed defined with specific reference to the notion of “Provable Claim” under the BIA. This latter definition was found to support the view that under the BIA, interest stops accruing on the date of bankruptcy.²⁵

²⁰ *Century Services inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379, par. 15, 47, 50, 78.

²¹ *Id.*, par. 78.

²² *Id.*

²³ *Id.*, par. 47, 50, 78.

²⁴ *Sun Indalex Finance, LLC v. United Steel Workers*, [2013] 1 S.C.R. 271, par. 50-51.

²⁵ *Re Canada 3000 Inc.*, [2006] 1 S.C.R. 865, par. 96.

CCAA

2. [Claim] means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;

BIA

2. [Claim provable in bankruptcy, provable claim or Claim provable] includes any claim or liability provable in proceedings under this Act by a creditor

121. (1) [Claims provable] All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

[Emphasis added]

[78] The Court thus holds, as the Superior Court of Ontario did in 2014 in *Nortel*,²⁶ that the “*interest stops rule*” applies also under the CCAA, unless a duly approved plan of arrangement provides otherwise.

2.3 The outstanding balance

[79] Accordingly, based on the interest rate calculations which Heraeus submitted with reference to the rates applicable on the day when each payment was received, the outstanding balance owed on Heraeus' claim amounts to CAN\$1,321,326.

[80] As mentioned above, Heraeus is not entitled to interest and additional indemnity on this balance.

WHEREFORE, THE COURT:

[81] **CONDEMN**S Kitco Metals inc. to pay CAN\$1,321,326 to Heraeus Metals New York LLC ;

[82] **WITH LEGAL COSTS.**



MARIE-ANNE PAQUETTE, J.S.C.

Me Yves Ouellette
Me Alexander Bayus

²⁶ *Nortel Networks Corporation et al*, 2014 ONSC 5247, par. 12, 13, 18, 28, 29, 33.

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