

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. (formerly
RSM RICHTER INC.)**

Monitor

**MOTION FOR A FIFTH EXTENSION OF THE INITIAL ORDER
(Section 11.02 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36
("CCA"))**

**TO THE HONOURABLE MARK SCHRAGER, J.S.C., SITTING IN COMMERCIAL DIVISION,
IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER (HEREINAFTER "KITCO")
RESPECTFULLY SUBMITS AS FOLLOWS:**

CONCLUSIONS SOUGHT

1. On June 8, 2011, the Petitioner filed a Notice of Intention to make a proposal under the Bankruptcy and Insolvency Act;
2. On July 7, 2011, this Court issued an initial order (the "Initial Order") pursuant to section 11.02 of the CCAA in respect of Kitco;
3. The Initial Order established that the initial "Stay Period" (as defined therein) would expire on July 27, 2011;
4. On July 27, 2011, the Stay Period was extended to October 18, 2011, the whole as appears from the Court record;
5. On October 18, 2011, the Stay Period was extended to April 18, 2012;
6. On April 18, 2012, the Stay Period was extended to October 17, 2012;
7. On October 15, 2012, the Stay Period was extended to June 26, 2013;
8. By the present, Kitco seeks an extension of the Stay Period to June 26, 2014;

DEVELOPMENTS SINCE THE INITIAL ORDER

9. Kitco's operations and its relationship with its clients have remained generally stable;
10. As appears from the Monitor's Fourteenth Report that will be filed in support of the present motion, the quantity of precious metals held in Kitco's customer pool accounts is consistent with the levels at the commencement of this restructuring;
11. Kitco's customers have continued to demonstrate their confidence in Kitco by depositing significant amounts of cash in Kitco's segregated accounts. The current balance of approximately \$47.9 million is within the range of segregated cash deposit accounts experienced by Kitco since the commencement of the restructuring and is correlated with general market conditions, as well as with Kitco's overall activity levels, the whole as appears from the Monitor's Fourteenth Report;
12. Moreover, as appears from the cashflow projections included with the Monitor's Fourteenth Report, Kitco's cashflow situation is stable and, when excluding the cost of restructuring and the non-reimbursement of sales taxes by l'Agence du Revenu du Québec ("**ARQ**"), Kitco would be profitable for the extension period sought herein;
13. In light of the abovementioned cashflow projections, none of Kitco's creditors will suffer any real prejudice as a result of an extension of the Initial Order to June 26, 2014;
14. Moreover, as appears from the Monitor's Fourteenth Report, Kitco continues to control its administrative costs and, as reflected in said report, there is a positive \$3.6 million variance in cash disbursements for the period ending May 31, 2013;
15. Finally, the Monitor shall continue to file regular quarterly reports and shall continue to make same available to all interested parties;

ANTICIPATED DEVELOPMENTS

16. As has been brought to the attention of the Court on previous occasions, Kitco has certain commitments to purchase office and residential condo space in the Montreal real estate project known as Altitude; more specifically, floors four (4) to seven (7) representing approximately 20 000 square feet of commercial space, as well as two residential units known as 2903 and 3203;
17. As outlined in the Monitor's Fourteenth Report, the total financial commitment in respect of these units is \$16,594,000, with a deposit of approximately \$4.1 million (or 25%) having already been disbursed;
18. Pursuant to the *Order for a Fourth Extension of the Initial Order*, Kitco was entitled to solicit offers of financing, lease or sale for both the commercial space and the two residential units;
19. With respect to the commercial space, real estate brokerage firm, Services Immobiliers Asgaard Inc. ("**Asgaard**"), currently has a mandate to find a buyer or a tenant;

20. An offer to purchase was presented to Kitco via Asgaard on April 22, 2013 but said offer was far too low to merit consideration; it was rejected following consultation with the Monitor and Asgaard Inc. continues to search for other potential buyers or tenants;
21. With respect to the residential units, Re-Max, the brokerage firm mandated by Altitude to sell the project as a whole, is currently seeking potential buyers or tenants;
22. To the best of Kitco's knowledge, Altitude will likely seek to close the sale of the residential units prior to the end of the summer of 2013 and the sale of the commercial space prior to the end of 2013;
23. Kitco remains in contact with Altitude and the parties are currently exploring alternative solutions with the view of preserving Kitco's investment in the Altitude project. Depending on the outcome of these discussions and whether purchasers or tenants are found or not for the residential units and the commercial space, Kitco shall address the Court in due course to seek the appropriate authorizations or instructions;
24. On a separate note, following a solicitation process implemented in conjunction with the Monitor, Kitco has recently reached an agreement with a third party that would result in the sale of its platinum division for a minimum amount of \$1,700,000.00, as well as other considerations. Kitco thus intends to present a *Motion for the Issuance of an Order Authorizing the Sale of Certain Assets* on the date of presentation hereof;
25. The sale of Kitco's platinum division could have a positive impact on the company's cashflow for the extension period sought herein;

DISPUTE WITH ARQ

26. Kitco has been working diligently to advance the proceedings with respect to its dispute with ARQ;
27. As appears from the letter from Kitco's tax counsel to the Monitor dated as of June 19, 2013 and filed as an exhibit to the Monitor's Fourteenth Report, the dispute between Kitco and ARQ will not be resolved by June 26, 2014;
28. The without admission discussions held between the parties did not bear fruit and it thus appears highly unlikely that the matter will be resolved in the short-term;
29. The debate regarding the confidentiality of documents is still ongoing and its current status is summarized in paragraphs 7 to 14.27 of the letter from Kitco's tax counsel;
30. As mentioned at paragraphs 29 of the letter from Kitco's tax counsel, the ARQ has thus yet to complete its investigation of Kitco, meaning that Kitco is not yet in a position to debate the validity of the Notices of Assessment;
31. On a related note and as previously mentioned to the Court, Kitco has instituted proceedings entitled "*Motion to Institute Proceedings in Damages and to Obtain Remedies Pursuant to the Canadian Charter of Rights and Freedoms and Charter of Human Rights and Freedoms*", whereby Kitco seeks damages in the amount of \$120,738,959.72, in addition to punitive damages in the amount of \$1,500,000. A copy

of said Motion to institute proceedings in damages was filed as Exhibit R-3 in support of the *Motion for a Fourth Extension of the Initial Order*,

32. These proceedings have been suspended until September 23, 2013 in order to allow the parties to debate Heenan Blaikie LLP's capacity to represent ARQ and the Attorney General of Canada against the interests of Kitco, the whole as more fully described by Kitco's tax counsel in his letter attached to the Monitor's Fourteenth Report. Kitco has been informed that the Associate Chief Justice will be appointing a judge to preside over this matter imminently;
33. Also and as already brought to the attention of this Court on previous occasions, the ARQ has been withholding sales tax reimbursements from Kitco, both prior to and after the issuance of the Initial Order, alleging that it has the right to invoke compensation up to the amount of its contested and unliquidated claim against Kitco. Kitco is of the view that the ARQ does not have the right to invoke compensation;
34. As previously announced, Kitco is now bringing this debate before this Court in order to request the reimbursement of all sales tax credits withheld or compensated by the ARQ before and since the Initial Order, as well as on a going forward basis. A motion to that effect will be served and filed in the upcoming days and, in any event, prior to the hearing of the present Motion for a fifth extension of the Initial Order;

GENERAL

35. The Monitor, as indicated in its Fourteenth Report, supports the present motion;
36. Since the issuance of the Initial Order, Kitco has acted and continues to act in good faith, with due diligence and towards the resolution of its dispute with ARQ, which is at the basis of this restructuring process;
37. In light of the nature of the dispute with ARQ, additional time is required in order to litigate with ARQ and it has become clear that the dispute will not be resolved by the end of the extension sought herein;
38. Kitco has served the present motion upon all interested parties;
39. Kitco submits that the notice given of the presentation of the present motion are adequate and sufficient;
40. The extension sought herein will not cause any prejudice to Kitco's stakeholders;
41. A lengthier extension will reduce the costs associated with regular motions for extension of delays and is even more appropriate in the circumstances, namely in light of the stability demonstrated by Kitco since the Initial Order;
42. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present motion;

DECLARE that the notices given of the presentation of the present motion are adequate and sufficient;

ORDER that the Stay Period as defined in the Initial Order be extended by this Court up to and including June 26, 2014;

DECLARE that the Initial Order shall remain otherwise unchanged;

ORDER the provisional execution of the Order notwithstanding any appeal without the need to furnish any security;

THE WHOLE without costs except if contested.

MONTREAL, June 19, 2013


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
COMMERCIAL DIVISION

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
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AFFIDAVIT OF DENIS MAJEAU

I, the undersigned, Denis Majeau, Chief Financial Officer, domiciled and residing at 1245 Les Abymes, Boucherville J4B 8C6, province of Quebec, solemnly declare as follows:

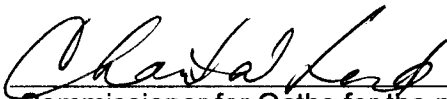
1. I am the Chief Financial Officer of Petitioner, Kitco Metals Inc.;
2. All the facts alleged in the present *Motion for a fifth extension of the initial order* are true.

AND I HAVE SIGNED:



DENIS MAJEAU

SWORN TO before me in Montreal
this June 19, 2013



Commissioner for Oaths for the province of ~~QUÉBEC~~ **ONTARIO**



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PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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Monitor

NOTICE OF PRESENTATION

TO: Me Gary Rivard
-and-
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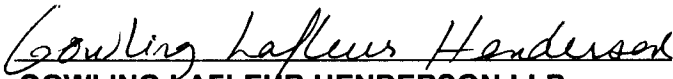
Attorneys for Heraeus

NOTICE OF PRESENTATION

TAKE NOTICE that the present *Motion for a fifth extension of the initial order* will be presented for adjudication before one of the honourable Judges of the Superior Court of Quebec, sitting in practice division, on **June 25, 2013** in room 16.12 of the Courthouse located at 1 Notre-Dame St. East, Montreal, at 9:15 pm or so soon as counsel may be heard

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 19, 2013


GOWLING-LAFLEUR HENDERSON LLP
Attorneys for Petitioner

No. 500-11-040900-116

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(Section 11.02 of the Companies' Creditors
Arrangement Act, R.S.C. 1985, c. C-36
("CCAA"))**

ORIGINAL

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