



FORCE FILED

No. S1910538
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

PETITIONER

AND:

QUINSAM COAL CORPORATION, BARCLAYS CANADA LEASING CORPORATION,
BARCLAYS BANK OF CANADA, ENCECO, INC. and GORD KNIGHT VENTURES LTD.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: The Bowra Group Inc., in its capacity as court-appointed receiver
and manager of Quinsam Coal Corporation (the "Receiver")

To: the Service List

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 by MS Teams on November 30, 2021, at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

Service

1. An Order that service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

Settlement Agreement Approval

2. Approval of the Receiver entering into a Settlement Agreement dated November 26, 2021 (the "Settlement Agreement") with ENCECo, Inc. ("ENCECo") and Her Majesty the

Queen in right of the Province of British Columbia (the "**Province**") substantially in the form attached as **Appendix "D"** in the Receiver's Supplemental Report dated November 26, 2021 (the "**Supplemental Report**") concerning *inter alia* the resolution of the Priority Dispute (defined herein).

Vesting Order for Continuous Miner

3. A conditional vesting order (the "**Vesting Order**") in the draft form attached as **Schedule "A"** to this Notice of Application approving the sale and vesting of Quinsam Coal Corporation's (the "**Company**" or "**Quinsam**") right, title and interest in the Miner (as defined in the Settlement Agreement and Vesting Order) to ENCECo free and clear from any and all security interests, hypothecs, mortgages, trusts or deemed trusts, liens, executions, levies, charges or other financial or monetary claims.
4. Such further and other relief as counsel may advise and this Honourable Court may deem appropriate.

Part 2: FACTUAL BASIS

Background

1. On September 20, 2019, an application was made by the Province to the Supreme Court of British Columbia (the "**Court**") to appoint The Bowra Group Inc. as the receiver and manager of Quinsam. The terms of this Order were then finalized amongst the stakeholders and it was entered on September 26, 2019 (the "**Receivership Order**").
2. The primary operations of Quinsam were operating an underground thermal coal mine (the "**Mine**") near Campbell River, British Columbia.

Priority Dispute

3. ENCECo and the Province have been embroiled in a dispute over priority to certain coal proceeds and personal property related to the Mine and this Receivership for some time (the "**Priority Dispute**"). In brief, ENCECo claimed priority pursuant to its General Security Agreement and the Province claimed priority pursuant to regulations under the *Mines Act*.

4. The dispute was heard by the Court in November 2019 with a decision being issued in April 2020 by Mr. Justice Giaschi (the "**Decision**"). The Decision *inter alia* determined that the coal inventory and sale proceeds thereof were not an asset of the estate and accordingly the Province's claim of priority under the *Mines Act* did not need to be addressed by the Court.
5. The Province appealed and was seeking clarification of some aspects of the Decision.

The Settlement

6. On November 19, 2021 the Receiver filed and served an application which sought authorization of the Receiver to borrow up to \$2,350,000.00 (the "**Receiver's Borrowings**"), in order to fund the ongoing care and maintenance of the Mine and create a priority charge for the Receiver's Borrowings (the "**Receiver's Borrowing Charge**") over all assets and property of Quinsam (the "**Receiver's Borrowing Application**").
7. The Receiver's Borrowing Application prompted renewed discussions as between the Province, ENCECo and the Receiver concerning not only the Receiver's upcoming application, but also the Priority Dispute.
8. On November 26, 2021, the Priority Dispute was resolved and the Settlement Agreement terms were finalized as between respective legal counsel for the parties.
9. The Settlement Agreement was conditional upon both Court authorization for the Receiver to enter it and upon the Vesting Order being pronounced, but un-entered and held in escrow by the Receiver until ENCECo makes an irrevocable election under the Settlement Agreement to take ownership of the Miner rather than a deferred cash payment.
10. The resolution of the Priority Dispute will of course save substantial legal fees for all involved. Importantly it should also clear the way for the Receiver's Borrowing Application to become unopposed, thereby saving even more professional fees and allowing for the critical borrowing necessary to fund the ongoing care and maintenance of the Mine until the long-term future of the Mine is decided.
11. The Receiver also notes that the proposed settlement represents intensive efforts and negotiations and significant back and forth on the parties' respective interests as facilitated by the Receiver.

Part 3: LEGAL BASIS

1. The Receiver relies on:
 - (a) The Receivership Order, made in these proceedings;
 - (b) *Law and Equity Act*, R.S.B.C. 1996, c. 250; and
 - (c) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, particularly Part XI and sections 243, 246, 247, and 249;
 - (d) Supreme Court Civil Rules; and
 - (e) The inherent jurisdiction of this Court.

2. When determining whether or not to approve a sale of certain assets in a receivership, there are a number of considerations that should guide a court in its analysis, including:
 - (a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;
 - (b) the interests of all parties;
 - (c) the efficacy and integrity of the process by which offers were obtained; and,
 - (d) whether there has been any unfairness in the sales process.

Royal Bank of Canada v. Soundair Corp. (1991), 4 O.R. (3d) 1 (Ont. C.A.) ("**Soundair**") at para. 6, *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 176.

3. More generally, in analyzing whether a transaction should be approved, a court is to consider the transaction as a whole and decide whether or not the sale is appropriate, fair and reasonable.

Veris Gold Corp. (Re), 2015 BCSC 1204 at para. 23.

4. The resolution of the Priority Dispute will lead to substantial savings of future professional fees and a clearer path to critical funding of the ongoing care and maintenance of the Mine. The potential sale price of the Miner appears to the Receiver to be fair market value and provident. As such, it is the Receiver's view that the Settlement Agreement, including the potential sale of the Miner, is appropriate, fair and reasonable and represents the best approach for all stakeholders in these circumstances.

Part 4: MATERIAL TO BE RELIED ON

1. Receiver's First Report to Court, dated November 17, 2021; and
2. Receiver's Supplemental Report to the First Report, dated November 26, 2021.

The applicant estimates that the application will take 20 minutes.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

November 26, 2021 _____
Dated

per M. Cowley

Signature of lawyer for filing party
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)
Lawyer for Receiver

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____ Signature of Judge 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
- oral 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
- none of the above

"SCHEDULE A"

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BARCLAYS BANK OF CANADA, ENCECO, INC. and GORD KNIGHT VENTURES LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

))
))
BEFORE)	THE HONOURABLE)
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))
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November 30, 2021

ON THE APPLICATION of The Bowra Group Inc., court-appointed receiver and manager of Quinsam Coal Corporation (the "Receiver") coming on for hearing at Vancouver, British Columbia on November 30, 2021 by a way of MS Teams; and on hearing Jeffrey Bradshaw, counsel for the Receiver, and other counsel as listed on **Appendix "A"** hereto; and no one appearing on behalf of the other parties, although duly served; AND ON READING the Receiver's First Report dated November 17, 2021 and the Supplemental Report to the Receiver's First Report dated November 26, 2021 (the "**Supplemental Report**"), filed herein;

THIS COURT ORDERS that:

1. service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

2. In the event that ENCECo, Inc. ("**ENCECo**"), under the terms of a Settlement Agreement dated November 26, 2021 (the "**Settlement Agreement**") between ENCECo, the Receiver, and Her Majesty the Queen in right of the Province of British Columbia (the "**Province**"), elects to forego the Deferred Payment as defined under the Settlement Agreement and instead acquire:

- (a) the Joy Continuous Miner marked "CM#15" with cutting head and track;
- (b) all parts selected by ENCECo from Part List A attached hereto as **Appendix "B"**, being those parts that will only work on the CM#15 and will not work on any of the other miners owned by Quinsam Coal Corporation ("**Quinsam**"); and
- (c) a minimum of 1 unit and maximum of 1/3 of the units selected by ENCECo from Part List B attached hereto as **Appendix "C"**, being those parts that are interchangeable and can work on the CM#15 and on Quinsam's other miners;

(collectively the "**Miner**").

all of the right, title and interest of Quinsam, in and to the Miner shall vest absolutely in ENCECO free and clear from any and all security interests, hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by Orders of this Court dated September 20, 2019 and November 30, 2021;

- 3. the sale of the Miner to ENCECo is hereby approved;
- 4. the Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order, including addressing any dispute concerning the parts described in Appendix B or C hereto; and

5. endorsement of this Order by counsel or any unrepresented party appearing on this application, other than counsel to the Receiver, is hereby dispensed with.

Signature of lawyer for the Receiver
DLA Piper (Canada) LLP (Jeffrey Bradshaw)

BY THE COURT

REGISTRAR

APPENDIX "A"
LIST OF COUNSEL

NAME OF LAWYER	REPRESENTING

APPENDIX "B"

PART LIST A

Part	Description	Quantity on hand
600128-702	CM#15 GATHERING HEAD MOTOR/REPAIRABLE	1
100595728	C/M#15 PUMP MOTOR/REPAIRABLE	1
RP100595728	C/M # 15 PUMP MOTOR	1
100221487	C/M #15 CUTTER HEAD MOTOR/REPAIRABLE	1
100486185	C/M #15 CUTTER TORQUE SHAFT	9
100177913	BIT HOLDER, PRESSED SLEEVE, 30MM (C/M#15)	5
601875-85	C/M TEACH LEARN CABLE	2
100153630	SOLINOID C/M 15, CARTRIDGE PULSER	2
100175986	CM # 15 SHEAR CYLINDER	1
100815739	KIT, REPAIR, PRESS FIT C/M#15 CONVEYOR	6
100386987	C/M - #15 CAPACITOR, FILTER	2
571379-214	C/M DUST SCRUBBER SCREEN FILTER	2
100111914	C/M #15 Sequence Cartridge	1
J30 S-12	J30 S-12 BIT SLEEVE (INSERT)	22
100307638	CHAIN LINK, ROLLER, 83MM C/M 15 CONVEYOR	6
1069145-2021	CARRIER (C/M 15 GATHERING POT)	2
100242374	FLIGHT BAR ASSEMBLY C/M 15 CONVEYOR 100 LB	1
00601548-0044	TRACTION OVERLOAD RELAY 12/CM/12	1
8080-0220S	SNIFFER COVER (STAINLESS)	2
100813905	Cable, asm, remote, antenna (C/M #15)	2
3/8 BD-5	SPRAY NOZZLES FOR C/M #15	14

**APPENDIX "C"
PART LIST B**

Part	Description	Quantity on hand
C/M TRAC MOTOR	35hp c/m traction motor/REPAIRABLE	3
100169744(500112-539)	C/M Tail lift Cylinder/REPAIRABLE(14")	6
C/M DUST COLL	C/M dust collector motor 30hp/REPAIRABLE	3
530735-37	C/M TRACTION PLANETARY/repairable	1
REDUCER	8" 20:1 Cone Drive Reducer	1
1069540-2035	C/M CLA Tip(right hand)	2
1565677-3	C/M FINAL DRIVE-SOLID HUB 60LB	3
1069701-78	gear spur 4dp	2
1069701-145	C/M FINAL DRIVE-SUN GEAR	2
601849-104	C/M 12/11 BRIDGE/REPAIRABLE (37lbs)	2
1069701-112	12/12 final drive sun gear 44LB	2
1069701-2060	C/M GEAR SHAFT 45LB	2
100177909	SLEEVE, BIT BLOCK, J35, STEP PRESS FIT (C/M#15)	9
534613-23	C/M LOAD LOCK VALVE	3
100071253	footshaft c/m	1
1069528-2126	C/M FOOT SHAFT ASSEMBLY(33LB)	2
1069528-513	C/M CONVEYOR TORQUE SHAFT (33LB)	7
00572065-0136	GLAND ASSEMBLY, ANGLED, EXTENDED	4
HRPC-24D	C/M SPRAY BAR HOUSING (. CENTER)	3
00601548-0046	C/M OVERLOAD RELAY	4
100150644	CABLE, ASM, REMOTE (IS CABLE)	1
1567352-5	CUTTER DRUM LOCK WEDGE	12
8080-1459S	Stainless Sensors for C/M and R/B Methane monitors	1
531840-4	C/M TAIL ROLLER ASSEMBLY(60lb)	2
Q1043	10" STAINLESS SPRAY BAR (C/M)	3
1565677-2022	C/M OUTER HUB 60LB	1
572065-135	C/M GLAND ASSEMBLY 2 1/2-CONVEYOR MOTOR	3
DD2F	#2 FAN NOZZLES FOR WATER SPRAY SYSTEM	92
100431530	CABLE, ASM, REMOTE, CAP LAMP	2
5012235	C/M CONVEYOR CHAIN CONNECTING LINKS	8
00601506-0359	Switch (For C/M)	1
3069533-370	SHIM (C/M TRACK)	3
100105955	SWITCH, TOGGLE, GREY, TRAM (C/M REMOTE STATION SWITCH)	6
100105956	SWITCH, TOGGLE, GREY, HYD'S AND MOTORS(C/M REMOTE STATION SWITCH)	6
00601506-0264	C/M DUST COLLECTOR SWITCH (switch, rotary, 2 stage, 4 position)	1
1069125-45	SPADE MOUNT BUSHING	2
100428374	VALVE,CHECK,IN-LINE,1/4,NPT/F (C/M BRAKES)	2
00601843-0146	Joy Antenna Cable	1
100105953	SWITCH, TOGGLE, SHORT RED(C/M REMOTE STATION SWITCH)	6
100105954	SWITCH, TOGGLE, GREY, HYD'S AND MOTORS(C/M REMOTE STATION SWITCH)	6
00602115-0007	CONNECTOR, FEMALE	6
Q1042	5" STAINLESS SPRAY BAR (C/M)	1
913123-9 cat seal	C/M 12/12 FINAL DRIVE SEAL	8
1452053	CAT PAD PIN (10 7/8") - C/M	6
QUCM1000	CM 12/12 TAIL ROLLER STUB SHAFT	2
1452124-28	BIT SLEEVE J25 (S-11)	5
1452051	C/M RED RETAINING RING	145
1069533-376	C/M TRACK SHIM 3/8"	6
1452051-001	C/M BLUE RETAINING RINGS	76
1069533-377	C/M TRACK SHIM 5/8"	4
1069533-374	C/M TRACK SHIM 1/4"	6
D50BN	2" WEAR BUTTON	12
100157287	BOOT, SWITCH, REMOTE STATION(C/M)	6
00643231	RETAINING RING - SMALLY STEEL for C/M Torque Shaft	17
1069533-373	C/M TRACK SHIMS 3/16"	6
64010	STA LAMP, LED, MR16, 6.5W, 30K, 38 FLOOD (C/M and S/C LIGHTS)(50K light)	3
00056680	6307LLUC3/EM BALL BRG (C/M & S/C BRAKES)	2
1069533-375	C/M TRACK SHIM 5/16"	2
W-10	W-10 WASHERS(C/M SCRUBBER MOTORS OR DUST COLLECTORS)	5
00644684	SMALLEY STEEL RETAINING RING (C/M 15)	19
1069127-350	C/M MAIN CUTTER BOOM HINGE PIN BUSHING	4
530735-33	C/M TRACTION PLANETARY(4 SPLINE)	1

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RESPONDENTS

ORDER MADE AFTER APPLICATION

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CDB/day

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