

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

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

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

INTRODUCTION

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. On June 25, 2013 the Stay Period was extended to March 14, 2014;
9. On October 23, 2013, Kitco filed its *Motion to enforce the initial order, to declare illegal certain rights of set-off exercised by the Agence du revenu du Québec and the Attorney General of Canada, to declare inapplicable, invalid, inoperative, unconstitutional or of no force and effect certain provisions of certain tax statutes of the province of Quebec and of Canada and to condemn l'Agence du Revenu du Québec and the Attorney General of Canada to pay to the petitioner the input tax credits and the input tax refunds to which it is entitled* (the "**Set-off Motion**");
10. On March 13, 2014, the Stay Period was extended to August 21, 2014;
11. On August 21, 2014, the Stay Period was extended for a short period of time to October 9, 2014, namely in light of the fact that, following the appointment of Justice Mark Schrager to the Québec Court of Appeal, a new judge had to be assigned to this matter;
12. Shortly following the seventh extension of the Stay Period, Kitco received confirmation that the Honourable Marie-Anne Paquette had been assigned to this matter;
13. On November 6, 2014, the Stay Period was extended to June 18, 2015;
14. On or about February 6, 2015, the Agence du Revenu du Québec ("**ARQ**"), the Attorney General of Quebec ("**AGQ**") and the Attorney General of Canada ("**AGC**") filed their contestations of the Set-Off Motion;
15. On March 20, 2015, Kitco filed a motion to strike certain allegations from said contestations ("**Motion to Strike**");
16. On or about April 10, 2015, Kitco, the ARQ, the AGQ and AGC filed their joint declaration of readiness in respect of the Set-Off Motion;
17. Kitco's Motion to Strike will be heard on June 18, 2015;
18. By the present, Kitco seeks an extension of the Stay Period to May 31, 2016;

DEVELOPMENTS SINCE THE PREVIOUS EXTENSION

19. Kitco's operations and its relationship with its clients have remained generally stable;
20. As appears from the Monitor's Twenty-Fifth 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;
21. Moreover, as appears from the cash flow projections included with the Monitor's Twenty-Fifth Report, Kitco's cash flow situation is stable and, when excluding the cost of restructuring and the non-reimbursement of sales taxes by the ARQ, Kitco's operations would be cash flow positive for the extension period sought herein;
22. In light of the abovementioned cash flow projections, none of Kitco's stakeholders will suffer any real prejudice as a result of an extension of the Initial Order to May 31, 2016;

ALTITUDE TRANSACTIONS

23. Kitco, as well as the Monitor through its reports, has regularly kept the Court informed of developments surrounding its efforts to sell approximately 20,000 square feet of commercial condo space that it owns in the Montreal real estate project known as Altitude; more specifically, floors 4 to 7;
24. On December 12, 2014, Kitco changed real estate brokers and mandated Royal LePage Heritage, the whole as appears from the Monitor's Twenty-Fifth Report;
25. That mandate expires on June 30, 2015 but will be extended;
26. Based on the most recent marketing updates from Royal LePage Heritage, the space is being actively marketed but there are no active negotiations in process to sell any or all of the commercial space;
27. Kitco is in compliance with all the terms of its mortgage in respect of the commercial condo;

DISPUTE WITH ARQ

28. Kitco has been working diligently to advance the proceedings with respect to its dispute with ARQ;
29. As appears from the letter from Kitco's tax counsel to the Monitor dated as of June 10, 2015 and filed as an exhibit to the Monitor's Twenty-Fifth Report (the "**Tax Letter**"), the dispute between Kitco and ARQ will not be resolved by May 31, 2016, despite Kitco's efforts, the whole as it will be more fully explained at hearing;
30. Kitco's *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* has been suspended, by consent of the parties involved, until September 11, 2015. The reasons for same are more fully set out in paragraphs 44.2 and following of the Tax Letter;
31. As appears from paragraphs 45 and following of the Tax Letter, the debate of the validity of the Notices of Assessment cannot be held while Kitco and Mr. Kitner remain subject to penal proceedings;
32. Finally, Kitco intends to proceed with a hearing on the Set-Off Motion before the expiry of the extension sought herein;
33. In fact, it is expected that, following the hearing of Kitco's Motion to Strike on June 18, 2015, the Set-Off Motion will be scheduled for hearing on its merits;
34. On a related note and as appears from paragraph 56.8.1 of the Tax Letter,, Kitco recently held meetings with the ARQ and the AGC in hopes of speeding up the global resolution of this matter. The discussions held during said meetings remain confidential, as agreed between the parties;

35. No concrete results have been yielded thus far but Kitco remains open to further discussions;

GENERAL

36. The Monitor, as indicated in its Twenty-Fifth Report, supports the present motion;
37. 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;
38. 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;
39. Kitco has served the present motion upon all interested parties;
40. Kitco submits that the notice given of the presentation of the present motion is adequate and sufficient;
41. The extension sought herein will not cause any prejudice to Kitco's stakeholders;
42. 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;
43. 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;

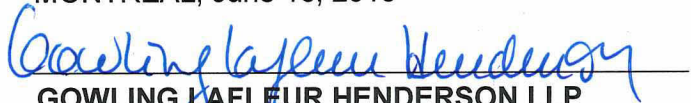
ORDER that the Stay Period as defined in the Initial Order be extended by this Court up to and including May 31, 2016;

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 16, 2015


GOWLING LAFLEUR HENDERSON LLP
 Attorneys for Petitioner

CANADA

SUPERIOR COURT
COMMERCIAL DIVISION

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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and

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Monitor

AFFIDAVIT OF DENIS MAJEAU

I, the undersigned, Denis Majeau, Chief Financial Officer, doing business at 620 Cathcart, Suite 900, City of Montreal, Province of Quebec, H3B 1M1, 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 ninth extension of the initial order* are true.

AND I HAVE SIGNED:



DENIS MAJEAU

SWORN TO before me in Montreal
this June 16, 2015



Commissioner for Oaths for the Province of Quebec



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NOTICE OF PRESENTATION

TO: The Creditor Service List

and

Me Sylvain Vauclair
WOODS S.E.N.C.R.L.
2000 avenue McGill College
Bureau 1700
Montréal QC H3A 3H3

Attorneys for Richter Advisory Group Inc.

TAKE NOTICE that the present *Motion for a ninth extension of the initial order* will be presented for adjudication before the Honourable Marie-Anne Paquette of the Superior Court of Quebec, sitting in practice division, on **June 18, 2015** in room (to be confirmed) of the Courthouse located at 1 Notre-Dame St. East, Montreal, at 9:00 a.m.. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 16, 2015


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

No. 500-11-040900-116

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(COMMERCIAL DIVISION)
DISTRICT OF MONTRÉAL

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KITCO METALS INC.

Petitioner

v.

L'AGENCE DU REVENU DU QUÉBEC et als.

and

RICHTER ADVISORY GROUP INC.

Monitor

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OF THE INITIAL ORDER
(SECTION 11.02 OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
C. C-36 ("CCAA"))

ORIGINAL

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File No.: **L121970003**

INIT.: PB/nh

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