

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF AN APPLICATION UNDER SECTION 207 OF THE *BUSINESS CORPORATIONS ACT*, R.S.O 1990, C. B.16, AS AMENDED;

AND IN THE MATTER OF RULE 14.05(2) OF THE *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, REG. 194, AS AMENDED;

AND IN THE MATTER OF THE LIQUIDATION AND DISSOLUTION OF AREHADA MINING LIMITED

FACTUM OF THE LIQUIDATOR

September 21, 2023

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PART 1 - OVERVIEW

1. Albert Gelman Inc. (the “**Applicant**” or “**AGI**”) brings this motion for an order (the “**Discharge and Assignment in Bankruptcy Order**”) discharging AGI as liquidator (in such capacity, the “**Liquidator**”) of the undertaking, property and assets of Arehada Mining Limited (the “**Company**”); authorizing the Liquidator to assign the Company into bankruptcy, and appointing AGI to act as trustee in bankruptcy of the Company’s estate.

2. The Liquidator also seeks approval of its activities and conduct as set out in the Liquidators First Report (the “**First Report**”) dated September 15, 2023, and approval of the fees and disbursements of the Liquidator, those of the Liquidator’s counsel, and those of counsel for the Company. The Liquidator further requests approval of its final statement of receipts and disbursements as of September 12, 2023 (the “**Final SRD**”), including the estimated fee accruals to complete its mandate set out in the Final SRD.

PART 2 - FACTS

Background

3. The Company was a development-stage mining enterprise in the Inner Mongolian Autonomous Region of China that ceased operating in or around November 2010 after it had sold its interest in the mining operation.¹

4. The Company’s only asset, apart from cash on hand, was a receivable arising out of the sale of its mining operation and subsequent transactions.²

5. On February 10, 2023, the Ontario Superior Court of Justice appointed AGI as liquidator of the Company (the “**Appointment Order**”) and authorized AGI to undertake a claims solicitation process (the “**Claims Solicitation Procedure and Bar Order**”).³

Claim Solicitation Process

¹ Motion Record (“**MR**”), First Report of Albert Gelman Inc. dated September 15, 2023 (“**First Report**”), Tab 2, para 10.

² MR, First Report, Tab 2, para. 14.

³ MR, First Report, Tab 2, para 1; Appendix A; Appendix B.

6. Pursuant to the Claims Solicitation Procedure and Bar Order, the Liquidator published a notice in the National Post and the Toronto Star on February 21, 2023, and March 1, 2023, respectively (collectively, the “**Notices**”).⁴ In the Notices, the Liquidator described the Claims Solicitation Process and advised all creditors of the Company of the Claims Bar Date, which was May 18, 2023 (the “**Claims Bar Date**”).⁵

7. The Liquidator received the following claims which totaled \$827,838.98 in aggregate by the Claim Bar Date:

- (i) Graham Warren sworn on May 4, 2023 in the amount of \$480,254.97;
- (ii) Samuel Baker sworn on May 12, 2023 in the amount of \$134,605.10;
- (iii) Zhenguan Chen (Aka Philip Z Chen) sworn on May 1, 2023, in the amount of \$212,711.10; and
- (iv) TSX Trust Company sworn on April 12, 2023 in the amount of \$267.81 (collectively, the “**Received Claims**”).⁶

8. The Liquidator accepted the Received Claims. No claims were received by the Liquidator following the Claims Bar Date.⁷

Outstanding Receivable

9. On February 10, 2023, there was an outstanding receivable in the amount of approximately \$7.4 Million (the “**Outstanding Receivable**”) owing from the Company’s majority shareholder Arehada (Barbados) Holding Corporation (“**HoldCo**”) to the Company, which the former CEO of the Company, Steve Wang (a principal of Holdco) had represented he would collect and deliver to the Company.⁸

10. As set out in the First Report, the Liquidator and its counsel WeirFoulds LLP (“**WeirFoulds**”) assessed the collectability of the Outstanding Receivable. The Liquidator

⁴ MR, First Report, Tab 2, paras 14, 16.

⁵ MR, First Report, Tab 2, paras 14-16.

⁶ MR, First Report, Tab 2, para 17.

⁷ MR, First Report, Tab 2 paras 18-19.

⁸ MR, First Report, Tab 2, paras 21-22.

believes that the steps taken, and efforts made, by Management to review and assess the feasibility of collecting the Outstanding Receivable appear reasonable. Based on its review and its consultation with legal counsel, the Liquidator sees no reason to disagree with Management's assessment and decision not to pursue the Outstanding Receivable. Management's business judgment should be afforded reasonable deference and the Liquidator is satisfied that Management exercised reasonable diligence in assessing the feasibility of collecting the Outstanding Receivable. As a result, the Liquidator determined that the Outstanding Receivable was uncollectable and of no material value.⁹

11. The funds in the Company's bank account totals \$302,465.52 (the "**Cash in Bank**") and is its only remaining asset of value given that the Outstanding Receivable is of no material value. In consequence, there are insufficient funds available to distribute to satisfy the amounts set out in the Received Claims, as the latter exceeds the Company's Cash in Bank.¹⁰

PART 3 - THE ISSUES AND THE LAW

12. The Applicant submits that the following are the issues to be considered on this Application:

- A. Whether the Liquidator should be authorized to assign the company into bankruptcy?
- B. Should the Liquidator's First Report be approved?
- C. Should the Final SRD and the fees accrued by the Liquidator, the Liquidator's counsel, and Counsel for the Company be approved?
- D. Should the Liquidator be discharged?

⁹ MR, First Report, Tab 2, paras 26-27.

¹⁰ MR, First Report, Tab 2, paras 13, 20.

A. The Liquidator should be authorized to assign the company into bankruptcy

13. Pursuant to s. 2 of the *BIA*:

Insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.¹¹

14. An insolvent person's eligibility to make an assignment in bankruptcy flows from its satisfaction of the statutory criteria of an "insolvent person" set out in s. 2 of the *BIA*.

15. The Company's liabilities to creditors totals \$827,838.98 in aggregate per the Received Claims which are provable claims under the *BIA*. Since the Liquidator determined that the Outstanding Receivable is likely uncollectable and of no material value, the aggregate of the Company's property, being its Cash in Bank totalling \$302,465.52, is its only asset. This amount is insufficient to enable payment of all of the Company's obligations, due and accruing due.

16. As such, the Liquidator submits that the Company is an insolvent person according to s. 2 of the *BIA*.

¹¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "*BIA*") s 2.

17. Section 49(1) of the *BIA* provides:

An insolvent person or, if deceased, the executor or administrator of their estate or the liquidator of the succession, with the leave of the court, may make an assignment of all the insolvent person's property for the general benefit of the insolvent person's creditors.¹²

18. While the Liquidator is not a "liquidator of the succession" as that term is used in the *BIA*, the Liquidator submits that the *BIA* contemplates that an entity such as the Liquidator, can make the assignment in bankruptcy with leave of the court.

19. Moreover, the Appointment Order empowers the Liquidator to "execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the name and on behalf of the Company, for any purpose pursuant to this Order".¹³ The Appointment Order further provides that "nothing in this Order shall prevent the Liquidator from acting as a trustee in bankruptcy of the Company."¹⁴

20. Therefore, the Liquidator submits that this court has the jurisdiction to authorize and direct the Liquidator to assign the Company into bankruptcy, and to permit AGI to act as the trustee in bankruptcy.

B. The First Report should be approved

21. In *Target Canada Co., (Re)*¹⁵, the court held that approval of a court officer's activities is appropriate where mandated and authorized by the court.¹⁶

22. The Liquidator undertook various activities all of which were in accordance with the Claims Solicitation Procedure and Bar Order. The Liquidator submits that the Liquidator's First Report and the activities described therein ought to be approved on this basis.

C. The Fees are reasonable and should be approved

¹² *BIA. ibid. s 49(1)*.

¹³ MR, First Report, Tab 2, para 1; Appendix A.

¹⁴ MR, First Report, Tab 2, para 1; Appendix A.

¹⁵ [2015 ONSC 7574](#) at paras 12, 22[*Target*].

¹⁶ *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#) at para 15 [*Hanfeng*] citing *Target*.

23. The court has held that sufficient fees should be paid to receivers for their services.¹⁷ These fees, however, must be reasonable.¹⁸

24. The Liquidator submits that the Liquidator's activities and the costs incurred therefrom were within the bounds of reasonableness in light of the Appointment Order and the Claims Solicitation Procedure and Bar Order.

25. For this reason, the Liquidator respectfully submits that the Liquidator's Final SRD, estimated fee accruals to complete its mandate, and the fees and disbursement of,

- The Liquidator;
- The Liquidator's counsel; and
- The Company's counsel Hong Wilkin Business Law Professional Corporation ("**Hong Wilkin PC**")

ought to be approved by this court.

D. The liquidator should be discharged

26. Subject to completing Remaining Activities as set out in the First Report, the Liquidator will have completed its mandate. Accordingly, the Liquidator respectfully submits that it be discharged as liquidator and released from liabilities incurred while acting in its capacity as Liquidator, save and except for any gross negligence or wilful misconduct on the Liquidator's part, upon the filing with the Court of a discharge certificate.

¹⁷ [*BT-PR Realty Holdings Inc. v Coopers & Lybrand*](#), 1997 CarswellOnt 1246, [1997] OJ No 1097 at para 26 [**BT**].

¹⁸ *Ibid.*

PART 4 - ORDER REQUESTED

27. The Liquidator respectfully submits that it is entitled to the relief sought in its Notice of Motion and substantially in accordance with the draft Order set out in its Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

PHILIP CHO

Of counsel for Albert Gelman Inc. in its
capacity as court-appointed liquidator of
Arehada Mining Limited

SCHEDULE “A”

List of Authorities

[Target Canada Co., \(Re\)](#), 2015 ONSC 7574 [*Target*]

[Hanfeng Evergreen Inc., \(Re\)](#), 2017 ONSC 7161 at para 15 [*Hanfeng*]

[BT-PR Realty Holdings Inc. v Coopers & Lybrand](#), 1997 CarswellOnt 1246, [1997] OJ No 1097 at para 26 [*BT*].

SCHEDULE “B”

Statutes and Regulations Cited

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Definitions

2 In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- **(a)** who is for any reason unable to meet his obligations as they generally become due,
- **(b)** who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- **(c)** the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

Assignment for general benefit of creditors

- **49 (1)** An insolvent person or, if deceased, the executor or administrator of their estate or the liquidator of the succession, with the leave of the court, may make an assignment of all the insolvent person’s property for the general benefit of the insolvent person’s creditors.

Courts of Justice Act, RSO 1990, c C 43

Declaratory orders

97 The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed. 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

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Court File No. CV-23-00692786-00CL

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Proceeding commenced at Toronto

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